

Immigration Law Committee
MCLE Meeting
Attorney Resource Center (ARC)
November 21, 2014

11:45 AM - Noon

Welcome/Introductions
Chair, Sean McCumber

Noon - 1:00 PM

Program

"What Every Criminal Lawyer Should Know About Immigration Law"

Richard Hanus

A discussion of the most common questions criminal lawyers face when counseling non-U.S. citizen clients, including how/when a criminal conviction may prompt the deportation process as well as the ramifications a given criminal conviction may present for a non-U.S. citizen seeking U.S. permanent residence (Green Card status) or U.S. citizenship.

Richard Hanus is a graduate of Northwestern University and the University of Illinois College of Law. He has been practicing exclusively immigration law since 1990, representing individual and corporate clientele in family and employment based immigration matters. He also provides deportation defense representation for individuals before the U.S. Department of Justice's Executive Office of Immigration Review, (Immigration Court and Board of Immigration Appeals) as well as before U.S. District Courts and U.S. Circuit Courts of Appeal.

Next Meeting:

January 16th
Roundtable Discussion
of Common Issue in Immigration Cases

DCBA Events:

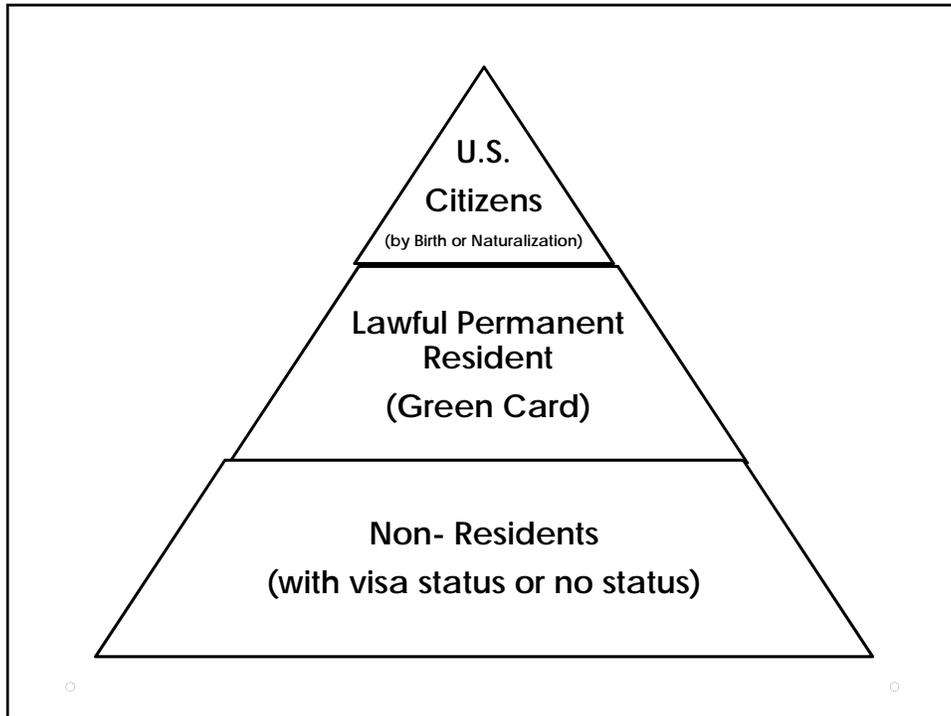
December 9th
DCBA Holiday Party

December 18th
DCBF Holiday Breakfast

What Every Criminal Lawyer Should Know About Immigration Law

Presented by Richard Hanus
for
DuPage County Bar Association, CLE Program
November 21, 2014

The Sixth Amendment to the United States Constitution dictates that criminal defense attorneys must advise non-citizen clients about the **deportation** risks of a **guilty plea**.



Removal Proceedings



Administrative Proceedings before U.S. Department of Justice, Executive Office of Immigration Review

All Non-U.S. Citizens are vulnerable

Sometimes relief (defense) is available, sometimes not.

The Big 3

Department of Homeland Security:
Immigration and Customs Enforcement (**ICE**)

Department of Homeland Security:
Customs and Border Protection (**CBP**)

Department of Homeland Security:
Citizenship and Immigration Services (**CIS**)

Issues Facing Non-U.S. Citizens

- Vulnerable to removal
- Green Card holders may want U.S. citizenship
- Non-residents may want a green card

Plea Deals: Myth or Fact?

A plea deal that leads to negative immigration consequences is **always** bad.

- Removal proceedings / Removal
- Citizenship ineligibility
- Green Card ineligibility

Really, That's a "Conviction"!?

Per *8 U.S.C. § 1101(a)(48)*, in the immigration world, a **conviction** is: "a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Crimes and Misdemeanors



Myth or Fact:

All misdemeanor convictions are harmless for immigration purposes.

Myth or Fact:

All felony convictions are toxic for immigration purposes.

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Get an Inventory of Convictions and Arrests

The first time may be benign, but not so much after that.

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Criminal Offenses

That Should Be On Your Radar

- A. **CRIMES OF MORAL TURPITUDE** – involves “conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between persons or society in general.”



Also Toxic:

- B. **“Aggravated Felony”** – per 8 U.S.C. 1101(a)(43) – which sometimes includes misdemeanors
- C. **Domestic Violence** – per 8 U.S.C. § 1227(a)(2)(E)
- D. **Drugs and Paraphernalia** – per 8 U.S.C. 1227 and 8 U.S.C. 1182
- E. **Guns**

Expungement

Expungement does **NOT** make the conviction go away for immigration purposes.

How Does ICE Find Out About Your Client?

- A. Prosecutor, Police, Probation Officer
- B. CBP Inspection at Airport
- C. Application for U.S. Citizenship
- D. Application for Permanent Residence

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What Every Criminal Lawyer Should Know **About Immigration Law**

Presented by Richard Hanus for DuPage County Bar Association, CLE Program – November 21, 2014
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- I. **The Sixth Amendment to the United States Constitution dictates that criminal defense attorneys advise non-citizen clients about the deportation risks of a guilty plea.**
- II. **The First Question to Ask Your Client: Are You A U.S. Citizen?**
(If the answer is YES, the discussion below is irrelevant)
 - A. U.S. Citizen – by birth, or naturalization
 - B. Lawful Permanent Resident (Green Card)?
 - C. Nonresident (on a visa.....or undocumented)?
- III. **Other Important Terminology**
 - A. Removal Proceedings (formerly Deportation Proceedings)
 - B. Crime of Moral Turpitude (yes, that includes some misdemeanors)
 - C. “Aggravated Felony” (yes, that includes some misdemeanors!)
- IV. **Considering a plea deal**
 - a. is pleading guilty and then getting removed or placed in removal proceedings necessarily a bad thing?
 - b. negotiating with prosecutors and teaching them about immigration law
- V. **Why Do Criminal Convictions Matter to Non-Citizens?**
 - A. Because a Lawful Permanent Resident May Become Subject to Removal per 8 U.S.C. § 1227
 - B. Because a Lawful Permanent Residents May Want to Become A U.S. Citizen per 8 U.S.C. § 1427
 - C. Because a Nonresident Seeking Lawful Permanent Residence (Green Card) May be deemed “inadmissible” per 8 U.S.C. § 1182
- VI. **Really, That’s a “Conviction”!?** (Warning: Ignorance is Not Bliss)
 - A. Per 8 U.S.C. § 1101(a)(48), in the immigration world, a conviction is:
“a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
 - a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

- **the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.”**

- B. Yes, “supervision” or other types of pacifying “non-convictions” may indeed constitute a conviction for immigration purposes**

VII. Get An Inventory of Convictions

- A. Is this the first conviction?**
 - B. Sometimes a second conviction for a seemingly benign offense can be toxic**

VIII. Criminal Offenses That Should Be On Your Radar

- A. **CRIMES OF MORAL TURPITUDE** - involves “conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between persons or society in general”. **For common non-definitive examples - see Appendix A****
 - B. “Aggravated Felony” – per 8 U.S.C. 1101 (a)(43) – which sometimes includes misdemeanors – Appendix B**
 - C. Domestic Violence - Especially, in Illinois, 720 ILCS 5/12-3.2(a)(1) “causes bodily harm.....” can be toxic**
 - D. Drugs and Paraphernalia**
 - E. A one-time misdemeanor conviction is mostly harmless in the long run, but sometimes a single misdemeanor conviction can be toxic, such as in certain Domestic Violence, or Sexual Abuse of a Minor contexts**
- IX. Removal Proceedings – Sometimes We Have a Defense, Sometimes We Don’t**
- X. Mandatory Detention - 8 U.S.C. § 1226(c)**
- XI. Expungement Does NOT Make the Conviction Go Away For Immigration Purposes**
- XII. Post-Conviction Relief – Ineffective Assistance in Accepting Plea Deal**

XIII. How Does ICE Find Out About Your Client?

- A. Prosecutor, Police, Probation Officer
- B. CBP inspection at Airport
- C. Application for U.S. Citizenship
- D. Application for Permanent Residence

APPENDIX A: Non-Definitive Examples of Crimes of Moral Turpitude

CRIMES AGAINST THE PERSON	
Involving Moral Turpitude	<ul style="list-style-type: none"> - Assault - Assistance, Failure to Stop and Render Aid - Battery (Aggravated) - Carrying a Concealed Weapon with Intent to Use - Child / Spousal Abuse - Criminal Reckless Conduct - Disorderly Conduct - Driving Under the Influence - Firearms Discharge - Kidnapping - Mayhem - Murder and Voluntary Manslaughter - Restraint - Robbery - Threats: Terrorist Threats
Not Involving Moral Turpitude	<ul style="list-style-type: none"> - Assault - Aggravated Assault - Assault and Battery (Simple) - Battery - Child Abandonment - Delinquency of a Minor (Contributing to) - Domestic Violence - DUI (Simple) - Leaving the Scene of an Accident - False Imprisonment (Misdemeanor) - Harassing Telephone Calls - Kidnapping (Simple) - Malicious Mischief - Manslaughter - Reckless Endangerment (Attempted) - Weapons Possession
SEXUAL OFFENSES	
Involving Moral Turpitude	<ul style="list-style-type: none"> - Adultery - Bigamy - Incest - Independent Assault - Lewdness - Oral Sex - Prostitution - Prostitution, Soliciting - Rape

	<ul style="list-style-type: none"> - Registration (failure to register) by Sex Offender - Statutory Rape
Not Involving Moral Turpitude	<ul style="list-style-type: none"> - Bastardy - Fornication or Mann Act Violations - Indecency - Mailing Obscene Letter - Minors, Contributing to the Delinquency of - Sex Offender (Failure to Register) - Statutory Rape
CRIMES AGAINST PROPERTY	
Involving Moral Turpitude	<ul style="list-style-type: none"> - Arson - Blackmail - Burglary - Credit Card Fraud / Use - Counterfeit Goods - Embezzlement - Extortion - Forgery - Food Stamp Fraud - Identity Fraud - Larceny - Larceny (Petit) - Possession of Stolen Property - Receipt of Stolen Property - Shoplifting - Stealing Cellular Air Time - Theft - Securities Fraud - Vehicle Fraud - Disregard for Property While Eluding Police in Vehicle
Not Involving Moral Turpitude	<ul style="list-style-type: none"> - Breaking and Entering or Unlawful Entry - Burglary - Burglary (Possession of Tools to Commit) - Entry of Goods by Means of a False Statement - Malicious Destruction of Property - Malicious Mischief - Passing Bad Checks - Possession of Stolen Property - Joyriding - Rioting - Theft of Services - Unauthorized Use of a Vehicle

CRIMES AGAINST GOVERNMENT

Involving Moral Turpitude	<ul style="list-style-type: none">- Bribery- Counterfeiting- Driver's License (use of fraudulent license)- False Statements (on passport applications)- False Statement Under 18 U.S.C. §1101- Fleeing (Aggravated) a Police Officer- Harboring a Fugitive- ID Document Fraud- Impersonating a Federal Officer- Larceny Defrauding a Public Community- Mail (Possession of Stolen Mail)- Money Laundering- Naturalization, Unlawful Procurement- Obstruction of Justice- Pell Grant Fraud- Perjury- Social Security Misuse
Not Involving Moral Turpitude	<ul style="list-style-type: none">- Alien Smuggling- Conspiracy to Commit Offenses Against U.S.- Contempt of Congress- False Attestation on I-9- False Identification to a Police Officer- False Statements (not amounting to perjury)- False Social Security Card- False Statement Under 18 U.S.C. §1101- Military Crimes- Money Laundering- Reentry After Deportation- Social Security Misuse

APPENDIX B: Definition of Aggravated Felony

8 U.S.C. 1101(a)(43) - The term “aggravated felony” means—

- (A) murder, rape, or sexual abuse of a minor;
- (B) illicit trafficking in a controlled substance (as defined in section [802](#) of title [21](#)), including a drug trafficking crime (as defined in section [924 \(c\)](#) of title [18](#));
- (C) illicit trafficking in firearms or destructive devices (as defined in section [921](#) of title [18](#)) or in explosive materials (as defined in section 841(c) of that title);
- (D) an offense described in section [1956](#) of title [18](#) (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
- (E) an offense described in—
 - (i) section [842 \(h\)](#) or (i) of title [18](#), or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
 - (ii) section [922 \(g\)\(1\)](#), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or [924 \(b\)](#) or (h) of title [18](#) (relating to firearms offenses); or
 - (iii) section [5861](#) of title [26](#) (relating to firearms offenses);
- (F) a crime of violence (as defined in section [16](#) of title [18](#), but not including a purely political offense) for which the term of imprisonment at ^[5] least one year;
- (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at ^[5] least one year;
- (H) an offense described in section [875](#), [876](#), [877](#), or [1202](#) of title [18](#) (relating to the demand for or receipt of ransom);
- (I) an offense described in section [2251](#), [2251A](#), or [2252](#) of title [18](#) (relating to child pornography);
- (J) an offense described in section [1962](#) of title [18](#) (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
- (K) an offense that—
 - (i) relates to the owning, controlling, managing, or supervising of a prostitution business;
 - (ii) is described in section [2421](#), [2422](#), or [2423](#) of title [18](#) (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
 - (iii) is described in any of sections 1581–1585 or 1588–1591 of title [18](#) (relating to peonage, slavery, involuntary servitude, and trafficking in persons);
- (L) an offense described in—
 - (i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18;
 - (ii) section 3121 of title [50](#) (relating to protecting the identity of undercover intelligence agents); or
 - (iii) section 3121 of title [50](#) (relating to protecting the identity of undercover agents);
- (M) an offense that—
 - (i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or
 - (ii) is described in section [7201](#) of title [26](#) (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;
- (N) an offense described in paragraph (1)(A) or (2) of section [1324 \(a\)](#) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violate a provision of this chapter ^[6]
- (O) an offense described in section [1325 \(a\)](#) or [1326](#) of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;
- (P) an offense
 - (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section [1543](#) of title [18](#) or is described in section 1546(a) of such title (relating to document fraud) and

(ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.