



Seminar on

“Crimmigration” 101 for Defense Lawyers

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CRIMINAL

IMMIGRATION

MUNICIPAL

**POST CONVICTION
RELIEF**

Immigration Statuses

- US Citizen
- Lawful Permanent Resident (Green Card)
- Temporary visitors (visitors, student)
- EWI
- DACA
- Deferred Action Status
- There are over 60 different kinds of visas

Determining Status



VS



Inadmissibility

- ▣ A Legal Fiction – mere physical presence in the U.S. does not mean that the FN lawfully entered or was admitted to the U.S.
- ▣ You had to have been inspected and authorized by an immigration officer to be admitted therefore **YOU HAVE NOT BEEN ADMITTED EVEN THOUGH YOU ARE HERE!**
- ▣ INA § 212 – Grounds of inadmissibility

Entry without Inspection

EWI/No Inspection



Deportability

- ▣ A FN has been lawfully admitted to the U.S. and then commits a crime
- ▣ INA § 237 – Grounds of Deportability

Lawful Permanent Resident

Green Card/Inspected



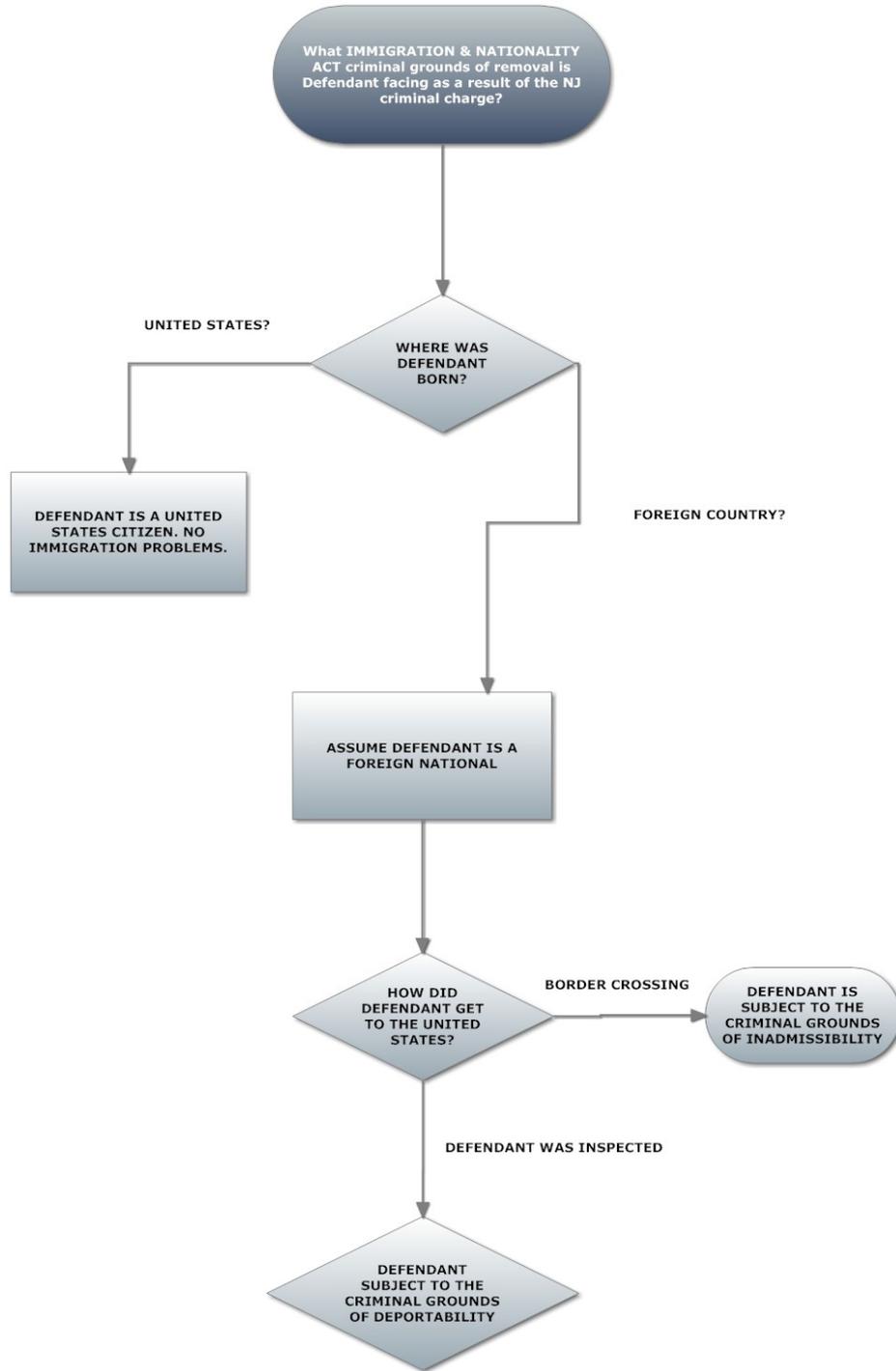
**WHY DOES A NJ CRIMINAL
DEFENSE HAVE TO KNOW THAT?**

Different immigration consequences between criminal grounds of inadmissibility and deportability.

For example:

A NJ criminal conviction may not have the same effect on a green card holder versus an EWI

A NJ criminal conviction may only effect a green card holder if he leaves the country and returns



EXAMPLES

INADMISSIBLE OR DEPORTABLE?

- ✘ Mexican FN here for 10 years. Got here via “Coyote”. If he gets pulled over for DWI; coke in the car and ICE shows up, he is ?
- ✘ Polish FN gets here with a B-2 visitor visa. It expires in 6 months. He gets busted for only simple possession of pot. ICE shows up, he is ?
- ✘ Italian FN with a green card has a criminal conviction for theft. He travels to another country for vacation. When he returns to JFK, he is ?

Inadmissibility v. Deportability

Criminal Grounds

Inadmissibility INA § 212(a)(2)

- Conviction or admitted commission of any *controlled substance offense*
- Conviction or admitted commission of a *crime involving moral turpitude* (**subject to a one-time petty offense exception**)
- Conviction of *two or more offenses of any type* with aggregate sentences to imprisonment of at least five years
- Reason to believe *Prostitution* and commercialized vice
- Reason to believe (RTB) drug dealer
- (RTB) Human Trafficking
- (RTB) Money Laundering

Deportability INA § 237(a)(2)

- Conviction of any *controlled substance offense* (**other than a single offense of simple possession of 30 grams or less of marijuana**)
- Conviction of a *crime involving moral turpitude* (“CIMT”), committed within five years of admission to the United States and punishable by a year in prison
- Conviction of *two crimes involving moral turpitude* committed at any time and regardless of actual or potential sentence.
- Conviction of a *firearm or destructive device offense*
- Conviction of a *crime of domestic violence, stalking, child abuse, child neglect, or child abandonment, violation of an order of protection*, whether issued by a civil or criminal court.
- Conviction of an *aggravated felony* as defined in INA § 101(a)(43)

Definition of Conviction

- Immigration and Nationality Act (INA) defines a “conviction” as:

formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

(i) 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

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. (INA § 101(a)(48))

What does that mean for New Jersey “convictions”?

- Only a finality of conviction counts (all times for all direct appeals have expired)
- PCR is collateral. The filing does not change the finality of the conviction
- Any PTI, Conditional Dismissal, or Conditional Discharge with a PLEA is a conviction (IJ will ask for plea transcript)
- Juvenile Delinquency Adjudication is not a conviction (DON'T waive up)

CRIMES INVOLVING MORAL TURPITUDE

- The phrase “moral turpitude” is one of the most ambiguous in the long list of ambiguous legal phrases and the cases are far from consistent.
- Moral turpitude refers to conduct that is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed other persons, either individually or to society in general.
- In determining whether an offense involves moral turpitude, it is a common mistake to consider whether the crime is a DP or a “degree” crime. Intentional theft of a piece of bubble gum is theft and involves moral turpitude.
- The facts of your clients case does not determine whether an offense involves moral turpitude. If they did, immigration judges would be charged with retrying the criminal case in immigration court.
- The focus is on whether the elements necessary to obtain a conviction under a particular NJ Criminal Statute render the offense a crime involving moral turpitude.
- **Generally need a specific intent to do harm, or knowledge of the act’s illegality. Recklessness might be enough. Negligence is not moral turpitude.**

Crimes involving moral turpitude



- Discussion of Specific NJ Offenses and Whether they are CIMTs:
 - Theft when a permanent taking is intended (not joyriding)
2C:20-11 Shoplifting
 - Burglary – CIMT if you are there to steal not watch TV or sleep
 - Fraud - need intent to defraud or guilty knowledge
2C:21-5 Bad Checks (intent to defraud is an element)
2C:21-2.1(c) False Documents (intent to defraud is not an element)
 - Crimes of violence (bodily harm is intentionally or knowingly caused or threatened)
 - Most sex offenses
 - DWI plus an aggravating factor like a 39:3-40 where defendant knew his license was suspended (knowledge)
 - CDS (generally not a CIMT but drug dealing is)
 - Firearms (standing alone, not a CIMT but a separate ground of deportability)

"Juvie" & Petty Offense Exceptions for Inadmissible FN Convicted of CIMT's

"Juvie"

- Crime was committed when FN under 18 years of age and "waived" up to Adult Court; AND
- The FN released from prison
- More than 5 years before the date of application for a visa or other documentation
- And the date of application for admission to the United States

Petty Offense Exception

- Maximum sentence possible does NOT exceed one year; AND
- You are NOT sentenced in excess of six months
- Regardless of actual time spent in jail
- Suspended sentence = Sentence

“Get Out of Deportation Cards” for Deportable FN Convicted of CIMT’s

- CARD 1 - Maximum sentence possible is less than one year (our DP’s). Can occur at anytime.
- CARD 2 - Any Indictable Offense CIMT committed after five years of green card status then one free CIMT crime
- Two or more CIMT’s NOT arising out of a single scheme of criminal conduct regardless of jail or possible sentence and regardless of when occurred = DEPORTABLE
- Not applicable to AF’s

Domestic Violence/DWI

Inadmissible

- “significant misdemeanor” like DV or DWI
- Our DP DV’s and our DWI’s will result in deportation for EWI Defendants
- Conditional Dismissal is unavailable for DV
- Even if it was...NO GOOD! Why?
- The arrest on CCH is “labeled” Domestic Violence

Deportable

- In order to be **deportable** for Domestic Violence, it must be a “crime of violence” at 18 USC § 16
- What is a Crime of Violence? Next slide
- Generally No issues with DWI’s (DWS)(USC)

Crime of Violence at 18 USC § 16

WILSON EMILIO PEGUERO MATEO - VOID FOR VAGUENESS!

- 18 USC § 16a – An offense that has as an element the use, attempted use, or threatened use of physical force against a person or property.
- 18 USC § 16b – Any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another maybe used in the course of committing the offense.
- Look to the *mens rea* – Purposeful v. Negligence
- Specific Intent to Harm v. Thoughtless or Careless Action. One year jail sentenced required.

Aggravated Felonies

- Definition found in INA §101(a)(43)
- Generally, no relief available to FN
- Three categories:
 - (1) Offenses that are AF by their very nature
 - (2) Offenses that are AF based on monetary amounts or loss to victim
 - (3) Offenses that are AF based upon sentence

Aggravated Felonies

Nature of the Offense

- ⦿ Murder, rape, or sexual abuse of a minor
- ⦿ Drug trafficking (not school zone – wow)
- ⦿ Firearms trafficking (including destructive devices)
- ⦿ Prostitution business
- ⦿ Human trafficking
- ⦿ Kidnapping
- ⦿ Child Pornography

Aggravated Felonies

Monetary Amounts

- Money laundering involving funds in excess of \$10,000
- Fraud or deceit where loss to the victim exceeds \$10,000
- Tax evasion where loss to the Government exceeds \$10,000

Aggravated Felonies

Sentence imposed exceeds one year

- Theft
- Burglary
- Crime of violence (Mateo?)
- Possession of stolen property
- U.S. Passport Fraud
- Commercial bribery, counterfeiting, forgery, or trafficking in vehicles
- Obstruction of justice, perjury or subornation of perjury, or bribery of a witness
- Bail Jumping (2C:29-7 – third degree only)

NJ AF Crimes that Defense Attorneys should Avoid

- ⦿ NJSA 2C:24-4(a) - Endangering the welfare of a child
(but see Safe Havens)
- ⦿ NJSA 2C:12-1(b) - Aggravated assault
jail => one year (but Mateo?)
- ⦿ NJSA 2C:20-et. seq. Theft
jail => one year
- ⦿ NJSA 2C:18-2 Burglary of a dwelling to steal
jail => one year
- ⦿ NJSA 2C:35-5 Possession with intent to distribute a
CDS
(but see Safe Havens)

SAFE HAVENS IN ORDER TO AVOID AF CLASSIFICATION

- ⦿ NJSA 2C:24-4(a) - Endangering the welfare of a child (eliminate the “sexual conduct”). Defense Counsel should ask for Title 9. Still grounds for Removal.
- ⦿ N.J.S.A. 2C:35-5(b) possession with intent to distribute any controlled substance, except a small amount of marijuana for no remuneration
- ⦿ Criminal sexual contact in which age of the victim is not an element (e.g. N.J.S.A. 2C:14-3(a) and 2C:14-2(a)(7) – aggravated criminal contact in which the victim is helpless)
- ⦿ Reduce Jail sentence to 364 days
- ⦿ Reduce Monetary loss to < \$10,000

Controlled Substance Violations

- Not all drugs are controlled substances
- Illegal possession of cancer drugs from Haiti is a crime but not a “controlled substance” violation
- Must be listed on the federal schedule (21 USC § 802) otherwise not a controlled substance
- CSV are independent grounds of inadmissibility and deportability (1 simple pot possession 30 grams or less OK for deportable aliens...not for inadmissible aliens)
- Do not need a conviction – or even an arrest – on his record. “Reason to believe” he is a drug dealer is sufficient to be denied admission to the U.S.
- Green Card holder returning from abroad = convicted or admits = denied
- Simple possession of either Crack or Ruffies flu·ni·tra·ze·pam is AF

Illicit Trafficking in a CDS as an AF

Illicit Trafficking Route

- The offense is a felony under the law of the convicting state
- The offense **MUST** contain a trafficking element
- Trafficking means some sort of commercial dealing

Hypothetical Federal Felony Route

- The offense is an AF when the state conviction includes **ALL** the elements of an offense that could be punished as a felony under the Controlled Substance Act (CSA) (21 U.S.C. § 801 *et seq.*)

Illicit Trafficking in a CDS as an AF

Hypothetical Federal

Illicit Trafficking Route

- What is a trafficking element? Need a “commercial transaction”
- Distribute or Dispense does not require the exchange of money, value or consideration
- NJSA 2C:35-2
- Nothing in our Jury Instructions requires exchange of money

Felony Route

- Under this route, the state conviction can be either a misdemeanor or felony, as long as the hypothetical federal conviction would be a felony under federal law
 - Feds view conviction as a non-felony misdemeanor IF (maximum term of imprisonment 365 or less)
OR
 - Distribution of a small amount of marijuana
 - For no \$ is deemed a simple possession offense
 - 21 U.S.C. § 841(b)(4)

Regular Distribution vs. School Distribution (WTF? What the Fiddlesticks)

- NJSA 2C:35-5 is an Aggravated Felony
 - 21 U.S.C. § 841(a)
- (1) to manufacture, distribute, or **dispense**, or possess with intent to manufacture, distribute, or **dispense**, a controlled substance; or
- (2) to create, distribute, or **dispense**, or possess with intent to distribute or **dispense**, a counterfeit substance.

- NJSA 2C:35-7 is NOT an Aggravated Felony
 - 21 U.S.C. § 860
- Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility.

Alternative Elements of the Statute or Alternative Means of Committing the Crime?

Elements

- Must be unanimously found by a Jury beyond a reasonable doubt
- Might contain different minimum or maximum punishments

Means

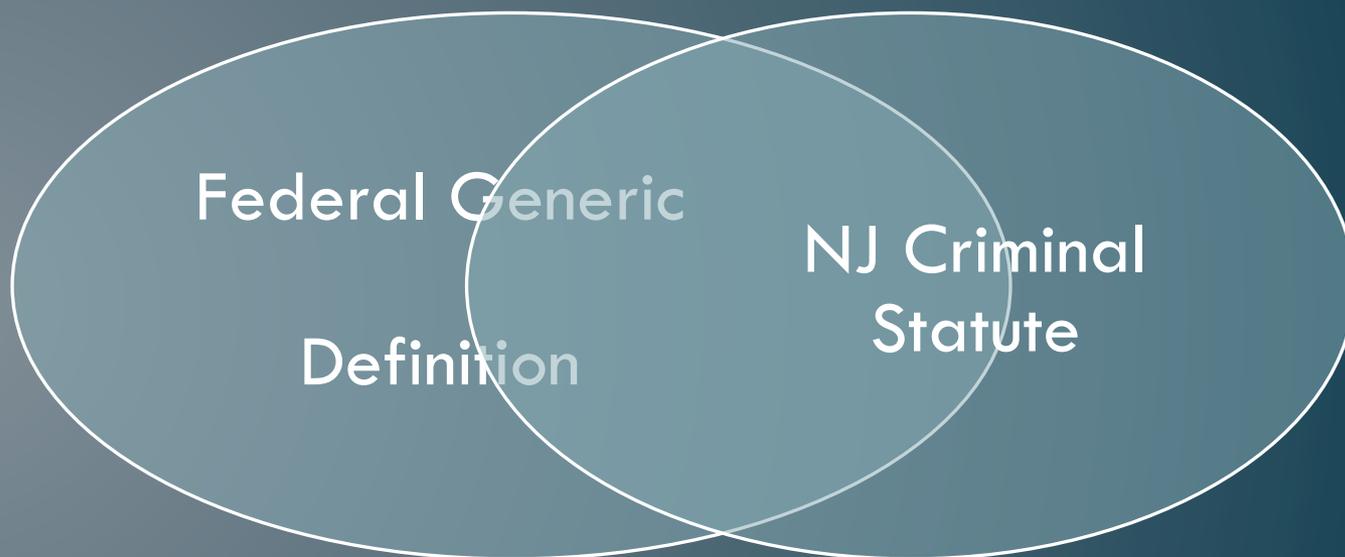
- Jury need not unanimously find
- Only alternative means of fulfilling an element of the statute
- Possible means of commission, not an element that a prosecutor must prove to a jury

Chang-Cruz v. Attorney General USA

659 Fed.Appx. 114 (2016)

- The Third Circuit found that there is uncertainty as to whether “distribution” and “dispensing” in NJSA 2C:35-7 constitute alternative elements or alternative means
- Uncertainty means the Foreign National wins
- If they are both means, there is one element satisfied by either distribution or dispensing, in which case 2C:35-7 sweeps more broadly than 21 U.S.C. § 860
- School Zone distribution is NOT an Aggravated Felony but plain vanilla distribution is!

Not a Categorical Match



Where the NJ criminal statute defines the offense more broadly than the immigration grounds of removal at issue, the conviction will not trigger the immigration penalty regardless of the information that may appear in the individual's record of conviction

Specific Issues in NJ Municipal Court

- ❑ N.J.S.A. 2C:35-10c - Possession, Use or Being Under the Influence, or Failure to Make Lawful Disposition. Failure to turn over or under the influence. Drug is coke. DP, no problem. Right? WRONG! SAFE HAVEN = N.J.S.A. 2C:35-10a(4) POT- 30 grams or less.
- ❑ §36 Conditional Discharge – If Defendant makes a statement of possession in order to exculpate his girlfriend. IJ will request transcript.
- ❑ N.J.S.A. 2C:36-2 – Drug Paraphernalia. “Relating to” a controlled substance violation. A Crack pipe is a BIG PROBLEM.
- ❑ N.J.S.A. 2C:33-2.1 – Loitering. Not a good deal for FN. They lose out on a potential waiver (30 grams or less of pot). Loitering for WHAT?
- ❑ N.J.S.A. 2C:20-11 – Shoplifting. CIMT. SAFE HAVEN = N.J.S.A. 2C:33-2A(1) Disorderly Conduct. Neutral factual basis. I was in Hackensack and created a disturbance.

WHO IS SAFE FROM A DWI?

U.S.C. - SAFE

LPR – SAFE

EWI – ABSOLUTE DANGER!!!!

F1 Student – Discretionary DANGER!!!!

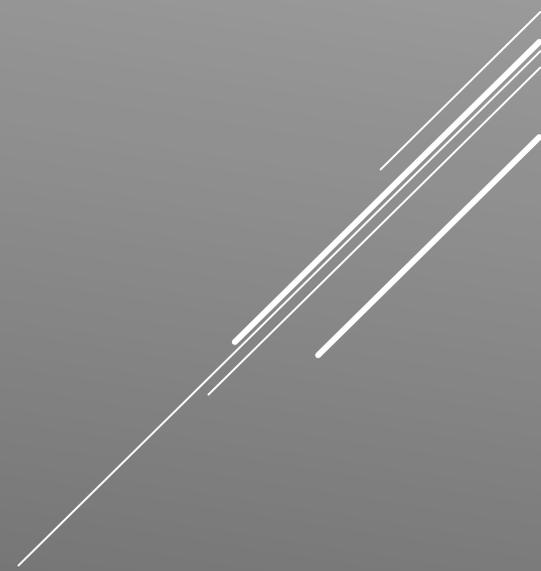
B1/B2 Visitor – Discretionary DANGER!!!!

H1B – Discretionary DANGER!!!!

EXPUNGEMENTS =



EXPUNGEMENTS =



FN Defendant is in the Candem County Jail with an ICE Detainer



ICE DETAINER



- After an alien is taken into state custody, DHS places a notice with state prison officials requesting the Bureau of Prisons or state equivalent to notify DHS if they intend to release the detained alien or hold the alien for DHS.
- Pursuant to 8 CFR 236.1, 287.7, 1236.1, state officials can only hold aliens for 48 hours based on DHS detainer request
- **Immigration Bonds**
 - DHS and EOIR (Executive Office of Immigration Review) typically refer to “bail” as “bond”
 - Immigration Bonds cannot be paid with cash or by personal check and the usual 10% rule that is common in the criminal context is generally not applicable
- **Decision to Detain**
 - Immigration must make a decision within 48 hours of arrest, or in the case of an emergency, a reasonable period of time. See 8 CFR 287.3(d)

Mandatory Detention: INA § 236(c)



- Noncitizens who have committed certain offenses must be detained, without bail, by U.S. Immigration and Customs Enforcement (USICE) during the pendency of their removal proceedings
- We conclude that 8 C.R.F. § 287.7 does not compel state or local LEAs to detain suspected aliens subject to removal pending release to immigration officials. Section 287.7 merely authorizes the issuance of detainers as requests to local LEAs. Given this, Lehigh County was free to disregard the ICE detainer. **Galarza v. Szalczyk** (C.A.3). March 4, 2014 WL 815127

Mandatory Detention INA § 236(c)



INADMISSIBLE

- CIMT (Juvie and POE)
- Conviction or admitted commission of *any controlled substance offense*
- 2 or more convictions (non-CIMT or CIMT) for which aggregate prison sentences 5 years or more
- Reason to believe (RTB) drug dealer
- (RTB) Prostitution
- (RTB) Human Trafficking
- (RTB) Money Laundering

DEPORTABLE

- CIMT w/i 5 years of admission AND sentenced to at least 1 year jail
- 2 or more CIMT not arising out of single scheme
- Aggravated Felony
- Controlled Substances (except 30 grams or less of pot)
- Firearms Offenses
- Miscellaneous Crimes like espionage, sabotage, treason

First Executive Order



Under Obama DEPORTATION

- ▣ New program – Priority Enforcement (changing priorities)
 - Priority One – Terrorists, street gang related crimes, felonies and Aggravated Felonies
 - Priority Two – 3 or more misdemeanors, one “significant misdemeanor like DWI/DV, or any offense Jail = 90 days, FN entering illegally AFTER 1/1/2014
 - Priority Three – FN with a deportation order issued AFTER 1/1/2014
 - Many if not Most FN NOT on the priority list to deport
- ▣ Secure Communities Program eliminated and replaced with – Priority Enforcement Program
- ▣ In general, NO MORE DETAINERS if FN not on the priority list!

Enforcement - Deportation

How has immigration enforcement changed?
Law versus Policy



Secretary
U.S. Department of Homeland Security
Washington, DC 20528



Homeland Security



MEMO FROM KELLY IMPLEMENTING EXECUTIVE ORDER

Secretary
U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

February 20, 2017

MEMORANDUM FOR: Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

A handwritten signature in black ink, appearing to read "John Kelly", written over the printed name and title.

SUBJECT:

**Enforcement of the Immigration Laws to Serve the National
Interest**

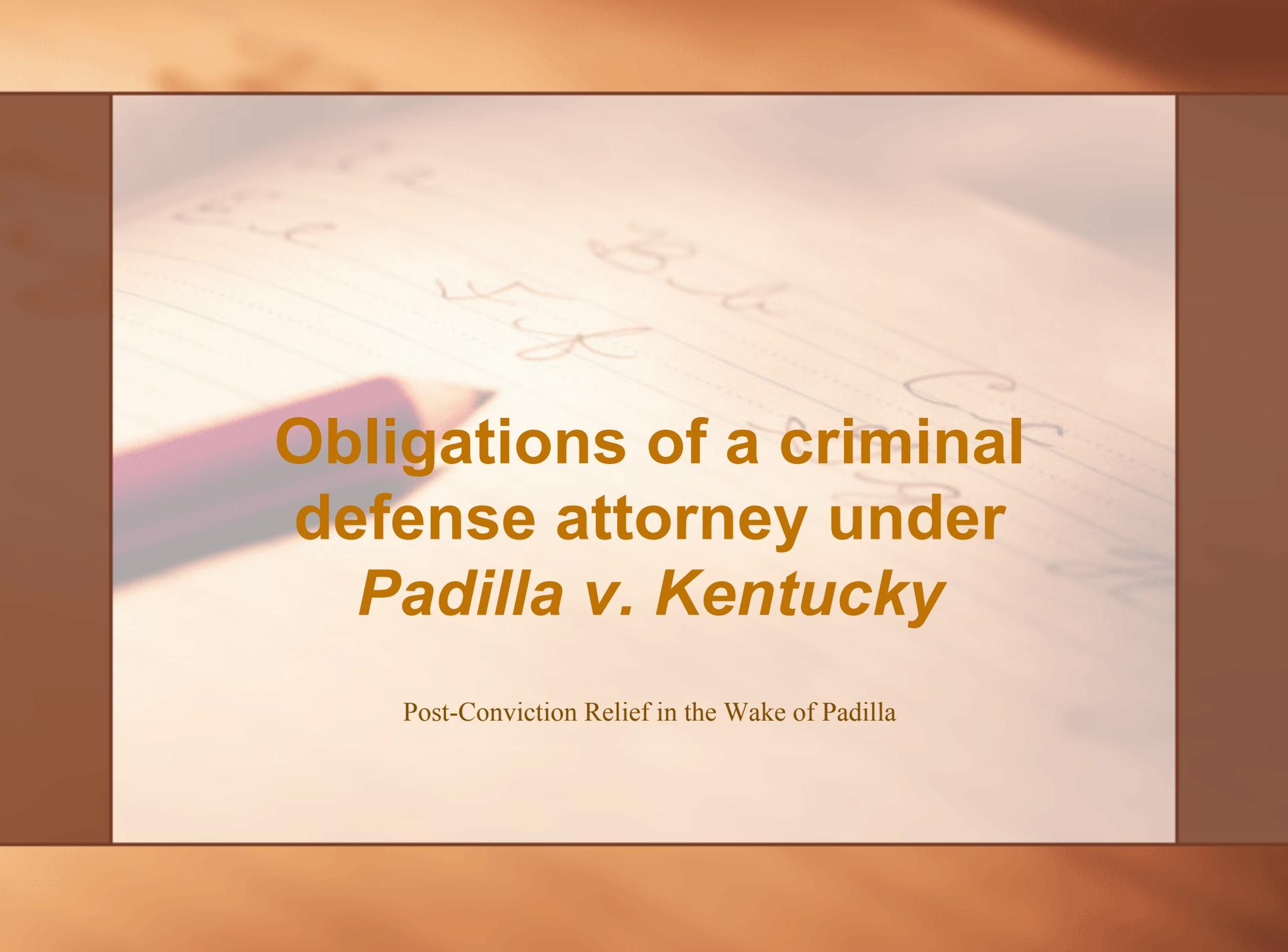
This memorandum implements the Executive Order entitled "Enhancing Public Safety in the Interior of the United States," issued by the President on January 25, 2017. It constitutes guidance for all Department personnel regarding the enforcement of the immigration laws of the

TRUMP'S EXECUTIVE ORDER

Foreign Nationals w/o Status ARE Removable (EWI's, Overstays, Out of Status)

► Enforcement Priorities

- Have been convicted of any criminal offense;
- Have been charged with any criminal offense, where such charge has not been resolved;
- Have committed acts that constitute a chargeable criminal offense;
- Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency;
- Have abused any program related to receipt of public benefits;
- Are subject to a final order of removal, but have not departed; or
- Otherwise pose a risk to public safety or national security



**Obligations of a criminal
defense attorney under
*Padilla v. Kentucky***

Post-Conviction Relief in the Wake of Padilla

Padilla v. Kentucky

- Requires defense attorneys to advise as to the risks of deportation
- When the immigration law consequences are easy obtained, criminal defense attorneys must advise client
- When the immigration consequences are complex the duty to advise is more limited (see State v. Telford)
- Complex = duty is to advise charges MAY carry a risk of adverse immigration consequences
- Clear = duty to give correct advice
- Prior to Padilla, if you said nothing no IAC. If you gave wrong advice, then IAC. Court recognized prior to Padilla the law was encouraging criminal defense attorneys to say nothing
- After Padilla, you MUST give some form of advice
- For an AF, you MUST tell your client that he is subject to mandatory deportation

Justice Alito in Padilla summarized duties of defense counsel

- They must not give unreasonably incorrect advise
- They must alert the client that a plea may have deportation consequences
- They must tell clients that if they wish to know more that they should consult with an immigration attorney...should be a “crimmigration attorney”. NJ Law as a result of State v. Gaitan.

IAC Claims After Chaidez

- Padilla (3/31/10) requires defense counsel to give accurate immigration advice before plea.
- If the immigration consequences are clear then you must tell them. If unclear then tell client to seek immigration advice.
- Chaidez reaffirmed Padilla's holding that professional norms since 1995 required defense counsel to advise of immigration consequences. It even cited a 1968 ABA standard that did so. Padilla Not Retroactive!
- Gaitan – If not an AF tell client you might be deported and they should seek immigration advice. Court will look to the transcript to see if this occurred.

Specific IAC Claims

- Failure to Advise – failure to advise on immigration consequences not retroactive.
- Affirmative Misadvice – affirmative misadvice concerning immigration consequences can be retroactive and Chaidez does not apply to this ground. We have Nunez-Valdez.
- Affirmative Misadvice II – can be about any topic, not just immigration consequences.

Potential Future IAC Claims

Problems to “Look Out” for

- **Failure to Defend** against adverse immigration consequences. Even if correct immigration advice was given, defense counsel has a duty to try to prevent bad consequences. Padilla is inapplicable, since it deals only with advice. Many cases predating Padilla recognize this ground. E.g., *Janvier v. US*, 793 F.2d 449 (2d Cir. 1986)(failure to seek JRAD); *People v. Bautista*, 115 Cal.App. 4th 229 (2004)(failure to seek to plead up to greater non-deportable offense).
- **Failure to Mitigate** plea or sentence. Since *Strickland*, in 1984, defense counsel has always had a duty to minimize sentence. A sentence even one day greater caused by IAC = prejudice. *Glover v. US*, 531 U.S. 198 (2001). Padilla is irrelevant.
- **Failure to Investigate** immigration status, to use as a tool in defense of the criminal case, such as trying to reduce sentence from 365 to 364. This duty has existed since *Strickland*, in 1984. This ground can neutralize a governmental claim that defense counsel had no immigration-related duties because he or she was unaware of D’s noncitizen status.
- **Failure to Negotiate** effectively is a variation of the failure to defend ground. *Missouri v. Frye*, U.S. 132 S. Ct. 1399, 1406 (2012); *Lafler v. Cooper*, U.S., 132 S. Ct. 1376, 1384. These cases establish that prejudice includes failure to negotiate a better plea bargain, not merely to take a case to trial with a better result.

ANALYZING CRIMINAL STATUTES
Record of Conviction & Record
of Proceedings

A STATUTE OF CONVICTION MAY TRIGGER A REMOVABLE OFFENSE IN THE INA

NJ Statute of Conviction



Aggravated felony



Firearms offense

Crime of violence

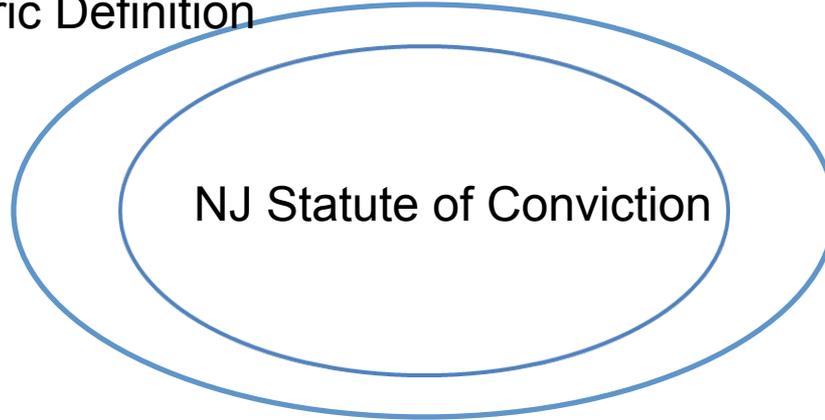


CIMT

Controlled substance offense

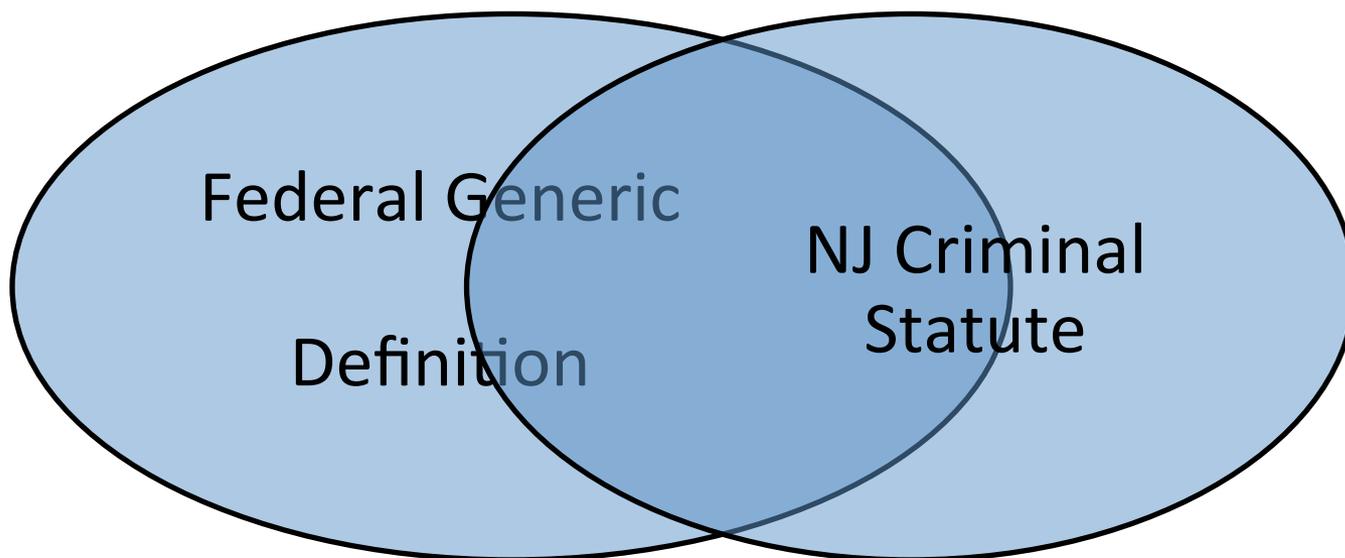
A Categorical Match

Federal Generic Definition



The NJ criminal statute is a categorical match with the applicable generic definition.

Not a Categorical Match



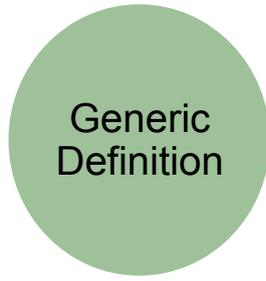
Where the NJ criminal statute defines the offense more broadly than the immigration grounds of removal at issue, the conviction will not trigger the immigration penalty regardless of the information that may appear in the individual's record of conviction

CATEGORICAL APPROACH:

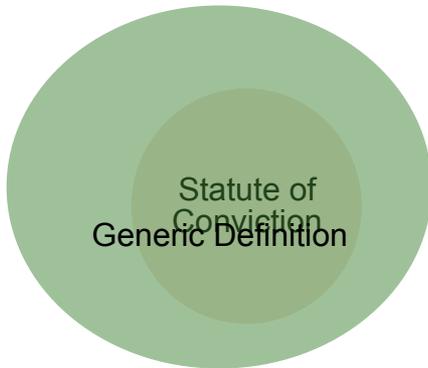
- Is the statute of conviction by its “elements” broader than the federal generic crime? (“minimum conduct”)
 - **Realistic Probability Test:**
 - There must be “a realistic probability, not a theoretical possibility that the State would apply its statute to **conduct** that falls outside the [federal] generic definition.” *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1685 (2013)
 - HOW DO YOU SHOW THIS?
 - Respondent must show that the State has prosecuted, this conduct at some point resulting in a “**successful prosecution**” or “**conviction.**” See *Matter of Mendoza Osorio*, 26 I&N Dec. 703, 707 (BIA 2016).

Categorical Approach:

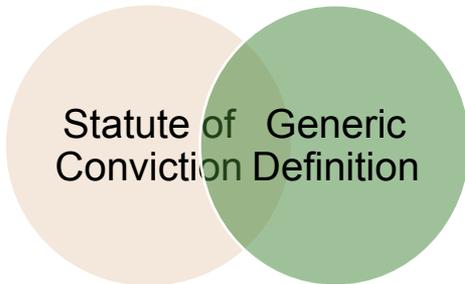
- **Expressly overbroad** (facially and by its own elements) → “realistic probability” test applies. *Matter of Ferreira*, 26 I&N Dec. 415 (BIA 2014), *but see Mellouli v. Lynch*, 135 S. Ct. 1980 (2015).
 - *E.g.* where a state statute on its face covers a controlled substance not included in the federal schedules.
- **Implicitly overbroad** → “realistic probability” test applies. The Third Circuit deemed the “realistic probability” test to apply only where the SOC is implicitly overbroad. *Jean-Luis v. Att’y Gen.*, 582 F.3d 462, 481 (3d Cir. 2009).
 - *E.g.* Antique firearms. Where the state statute regulates firearms, but has no exception for antique firearms, while the federal generic offense contains such an exception.



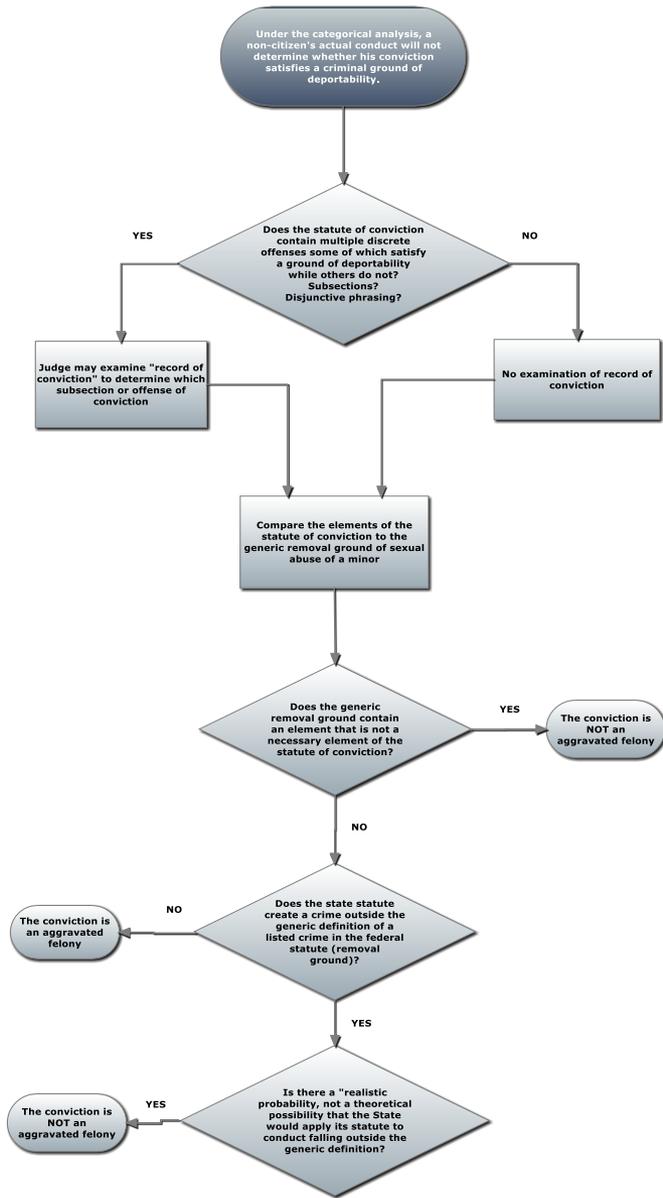
Respondent wins



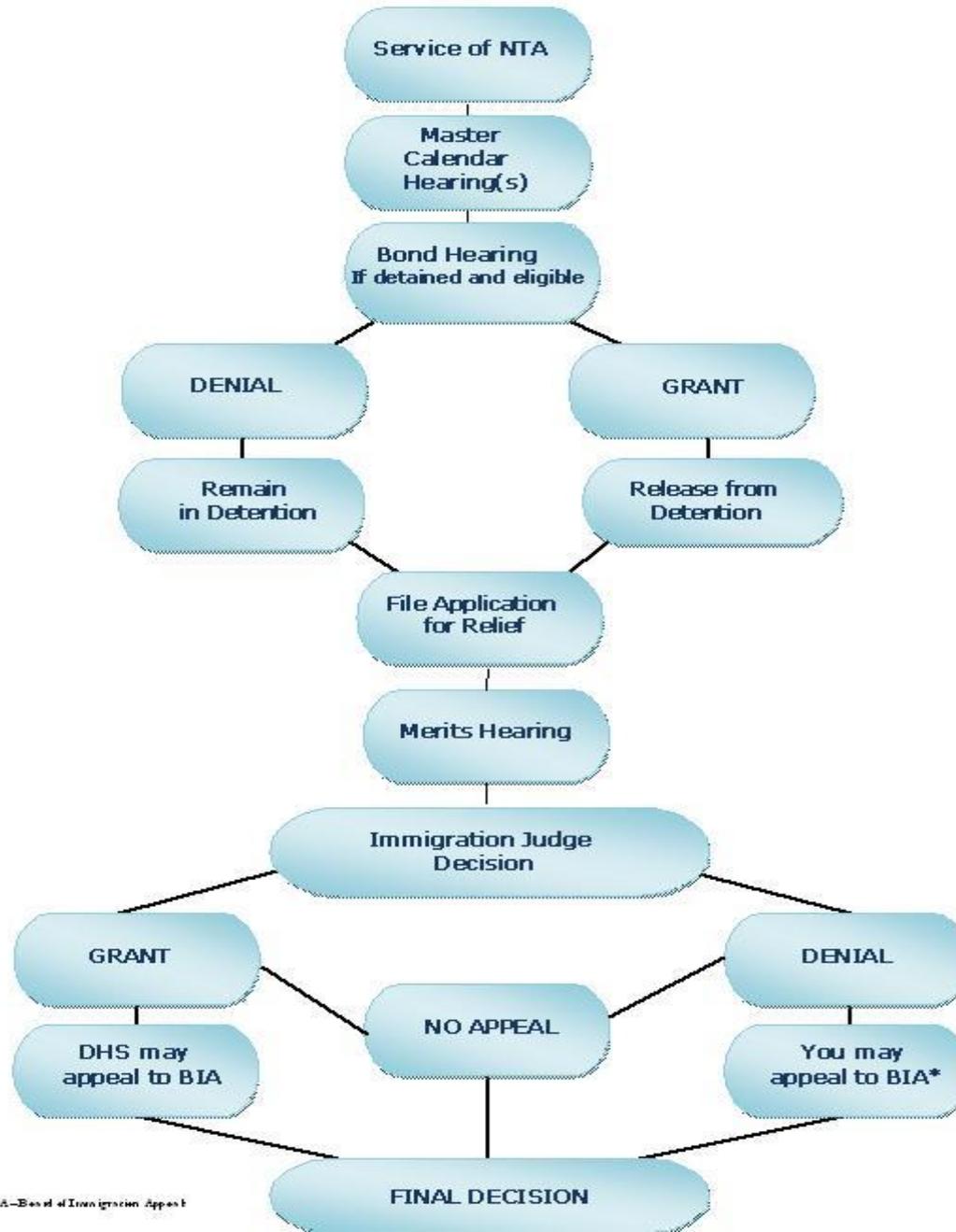
Respondent loses



Look to record of conviction



The Immigration Removal Process: *An Overview*



Questions and Answers



When?

Who?

How?

What?