Collateral Consequences for Non-Citizen Defendants: When a Criminal Conviction Results in the Loss of All That Makes Life Worth Living

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COLLATERAL CONSEQUENCES FOR NON-CITIZEN DEFENDANTS: WHEN A CRIMINAL CONVICTION RESULTS IN THE LOSS OF ALL THAT MAKES LIFE WORTH LIVING

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ABSTRACT

This article seeks to provide a brief overview of the most common immigration consequences of criminal convictions and strategies for practitioners representing non-citizen defendants. While not every immigration consequence is examined, nor is a complete and in-depth analysis provided, this article should provide practitioners with a general overview and starting point for ensuring that defendants are properly advised pursuant to the Constitutional requirements set forth in Padilla v. Kentucky.

I. INTRODUCTION

Modern American society has seen an exponential growth in the number of crimes a person can commit. Previously, violations considered to only be actionable in the civil context have now become criminal offenses, frequently at the felony level. Criminal sentencing has expanded to include a wide range of punishments. The most common is prison time, with a recent expansion to include drug treatment or other punitive sanctions. However, beyond what may be imposed by a criminal court judge upon pronouncement of sentence, state and federal legislatures have enacted additional penalties, not described at sentencing, that are often a direct and automatic result of a criminal conviction. Many of these penalties are permanent and do not allow for exceptions or their elimination after a passage of time. The system has become unforgiving, resulting in even first time offenders facing consequences for the rest of their lives. In the last two decades, following harsh changes to immigration law, non-citizens facing criminal charges created a new wrinkle in the system, one that in 2010 the United States Supreme Court recognized was an important and necessary part of the criminal justice process. 1 For most non-citizens, a criminal conviction results in deportation, banishment from a country that many have spent a majority of their life in, and in the words of the Supreme Court, “loss of both property and life, or of all that makes life worth living.” 2

II. PADILLA V. KENTUCKY: NEW RESPONSIBILITIES FOR PROSECUTORS AND DEFENSE ATTORNEYS

Immigration law, as it applies to non-citizens, is complex and often unforgiving. Even more problematic is that few attorneys in the criminal justice system have the knowledge of immigration law to effectively advise their clients. The lack of appointed counsel in detained immigration cases further exacerbates the problem, especially in those cases where an individual has pending cases before the criminal and immigration courts at the same time.

2 Ng Fung Ho v. White, 259 U.S. 276, 284 (1922).
In *Padilla v. Kentucky*, the United States Supreme Court held that criminal defense attorneys for non-citizen defendants have an affirmative duty under the Sixth Amendment to provide competent advice regarding the immigration consequences of a plea. The Court acknowledged that deportation is a "particularly severe penalty" that is "intimately related" to the criminal process; therefore, advice regarding deportation and immigration consequences of conviction fall within the ambit of the Sixth Amendment right to effective assistance of counsel. Unfortunately, many individuals in the criminal justice system do not have access to learned counsel and are unable to navigate the two systems on their own. This is further hampered by the fact that there is no statutory right to appointed counsel in the immigration courts, even when an individual is detained pending his or her merits hearing.

Defense attorneys, whether privately retained or court appointed, must ensure that the advice given to clients includes a full consideration of the immigration consequences of a conviction. Prosecutors must also consider these consequences, presented as mitigating evidence in support of proposed plea offers or sentences. One notable authority on the matter, and a former prosecutor, stated it best "[h]owever 'justice' might be defined by a prosecutor, the Supreme Court's recognition of the importance of collateral consequences to a just resolution of a matter should influence a prosecutor's views."

Courts repeatedly acknowledge the unique role that immigration penalties play in a defendant's decision whether to plead guilty or go to trial. For example, "[p]reserving the client's right to remain in the United States may be more important . . . than any potential jail sentence." Additionally, deportation proceedings "practically . . . are [criminal] for they extend the criminal process of sentencing to include on the same convictions as additional punishment," and "deportation is a drastic measure and at times the equivalent of banishment or exile." "Everyone knows that to be forcibly taken away from their home, their family and friends, their business, their property, and sent across the ocean to a distant land, is punishment. Oftentimes, that is most severe and cruel." It is through this lens that defense counsel must proceed in any criminal case involving a non-citizen defendant.

**III. UNDERSTANDING THE IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS**

Immigration law is complex, confusing, and fact-specific. Even two individuals with seemingly similar situations may encounter

3 *See Padilla*, 559 U.S. at 388.
4 *Id* at 365.
6 *See*, e.g., INS v. St. Cyr, 533 U.S. 289, 322 (2001) (citing 3 Bender, Criminal Defense Techniques §§ 60A.01, 60A.02(2) (1999)).
8 Fong Haw Tan v. Phelan, 333 U.S. 6, 10 (1948).
9 Fong Yue Ting v. United States, 149 U.S. 698, 740 (1893) (Brewer, J. dissenting).
10 Author's Comment: While there are some circumstances in which naturalized citizens may face loss of citizenship and deportation as a result of a conviction, these are narrow and specific circumstances beyond the scope of this article. However, practitioners should be aware of this and when representing naturalized defendants (as opposed to those born with United States citizenship), attorneys should consult with an immigration attorney to verify that de-naturalization will not result.
very different results in the immigration system. While this article does not seek to provide a comprehensive explanation of all facets of immigration law, a brief overview of the basics and most common issues arising in the criminal justice context is provided below. Practitioners should use this guide as a starting point or means to spot potential issues in a case. From there, defense counsel should conduct additional research or consult with an immigration attorney who is familiar with both immigration and criminal law.

A. Inadmissibility vs. Removability – Where Does Your Client Fit?

The first distinction that is important in any analysis of the immigration consequences of a criminal conviction is whether your client is inadmissible or removable. This impacts not only your client’s current situation, but also future consequences. For example, a person may not be deportable for a particular conviction, but if the person leaves the United States and attempts to return, he may be found to be inadmissible based on that conviction, placed into immigration proceedings, or refused entry to the United States.

An alien’s removability for a crime depends on whether his conviction fits within a removable offense identified in the Immigration and Nationality Act (INA). The INA separates removal grounds into two categories: inadmissibility grounds codified at 8 U.S.C. § 1182(a) and deportability grounds codified at 8 U.S.C. § 1227(a). Both inadmissible and deportable aliens are referred to as “removable” aliens. The question of which category applies turns on whether the alien has been admitted to the United States, i.e., whether the alien has made a lawful entry after inspection and authorization by an immigration officer. An alien who has not been admitted to the United States is subject to removal based on one or more grounds of inadmissibility.

In contrast, an alien who has been admitted to the United States, and thereafter commits a crime, may be subject to removal based on one or more grounds of deportability.

B. What Constitutes a “Conviction” for Immigration Purposes and the Diversion Program Dilemma

Immigration law is complex and often unforgiving. Unbeknownst to most practitioners, for non-citizens, the entry of a guilty plea that is later vacated, even in therapeutic courts, will result in deportation, detention, or other serious immigration consequences. It is not only the undocumented alien facing these consequences, but also lawful permanent residents, refugees, and visa holders. All of this stems from the bizarre definition of “conviction” adopted by immigration.

An alien’s removability may also depend on whether the plea would result in a “conviction,” as the term is defined in the INA, not according to state law. Deferred adjudications, terms of imprisonment, conditional dismissals involving a guilty plea that is later vacated, and suspended entries of sentences or withholds of adjudications are all considered convictions for immigration purposes. Therefore, an alien who enters a guilty plea to participate in a diversion program is “convicted” in the eyes of immigration, notwithstanding the court’s subsequent vacating of the plea and conviction.

Regardless of whether there is a conviction, the INA also provides grounds of removal based on an alien’s criminal conduct alone. These grounds are generally based on: (1) an alien’s admission that he or she committed a crime; or (2) a finding by immigration authorities that there is reason to believe that an alien has engaged in certain specified criminal activities. Thus, diversion programs requiring statements or admissions of the facts of the offense as part of the rehabilitative process may also result in harsh immigration penalties if immigration

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authority examine the court records.

As a general rule, an expunged conviction qualifies as a conviction under the INA. 13 In Matter of Roldan-Santoyo, the amendment to the law required the deportation of an alien who had his guilty plea to a drug charge dismissed under Idaho’s amelioration statute for first time drug offenders. 14 It held that the guilty plea alone, and not the eventual outcome of the case, constituted a conviction under the law. This interpretation of the law has been widely upheld.15

However, recently some state rehabilitation laws have protected aliens from immigration consequences when their conviction has been expunged. 16 In Retuta v. Holder, the California court held that a deferred entry of judgment in an alien’s prosecution did not constitute a “conviction.” 17 There also has been a recent trend in cases holding that an alien’s conviction is expunged for minor drug offense charges, specifically under the Federal First Offender Act (FFOA).18

Therefore, the immigration definition of “conviction” must be carefully considered by practitioners when advising clients, especially in jurisdictions where outcomes include a withholding of adjudication (often described by judges as “not a conviction”) or where diversion programs require the individual to plead guilty and then later vacate the plea upon successful completion of the program.

C. Crimes Involving Moral Turpitude

One of the most common areas that defense attorneys need to be aware of is that of the “crime involving moral turpitude” (CIMT). There are three chief immigration consequences of conviction or admission of one or more crimes of moral turpitude. First, a conviction or admission of one or more CIMTs will, under certain circumstances, trigger inadmissibility. Second, one CIMT conviction will, under certain circumstances, trigger deportability. Third, two or more CIMT convictions will, under other circumstances, trigger deportability. Finally, a conviction or admission of a CIMT may also bar a noncitizen from demonstrating the “Good Moral Character” required for various immigration benefits, such as naturalization.

Unfortunately, no provision of the INA specifically defines a CIMT. To determine whether a conviction is for a crime involving moral turpitude, first look to the statute of conviction under the categorical inquiry. Second, if the categorical inquiry does not resolve the question, engage in a modified categorical inquiry and examine the record of conviction, including documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. Third, if the record of conviction is inconclusive, consider any additional evidence deemed necessary or appropriate. 19

Crimes involving negligent conduct, where the offender failed to be aware of a substantial risk involved in the conduct, are generally not found to involve moral turpitude. 20

The Board has held that acts that are wrong in themselves, but not those forbidden only by positive enactment, are treated as crimes of moral

13 De Jesus Melendez v. Gonzales, 503 F.3d 1019, 1024 (9th Cir. 2007).
15 See Wellington v. Holder, 623 F.3d 115; (2nd Cir. 2010); Ballester v. Ashcroft, 452 F.3d 1153; (10th Cir. 2006); Ali v. Attorney General, 443 F.3d 804; (11th Cir. 2006); Gill v. Ashcroft, 335 F.3d 574; (7th Cir. 2003); Herrera-Inirio v. I.N.S., 208 F.3d 299). (1st Cir. 2000).
16 See generally Sandoval v. I.N.S., 240 F.3d 577 (7th Cir. 2001) (stating that an alien convicted in state court of marijuana possession was not subject to deportation due to conviction.).
17 Retuta v. Holder, 591 F.3d 1181, 1190 (9th Cir. 2010).
18 Under the Federal First Offender Act, a first-time drug offense conviction is expunged and no legal consequences may be imposed as a result of the defendant committing the offense. 18 U.S.C.A. § 3607 (2015).
turpitude. In doing so, the Board has crafted the following definition of moral turpitude:

Moral turpitude refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. Moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, or malum in se, so it is the nature of the act itself, and not the statutory prohibition of it which renders a crime one of moral turpitude. Among the tests to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind.

D. Aggravated Felonies

The next area of even more serious concern for criminal defendants, is whether the offense constitutes an aggravated felony. Any alien who is convicted of an aggravated felony at any time after admission is deportable. "Aggravated felony" is a term of art created by Congress to describe a set of criminal offenses that subject an alien convicted of such an offense to more serious immigration consequences. The INA sets forth a multi-part definition of the term "aggravated felony," which applies to violations of federal and state law. Drug offenses under state law may only be treated as felonies for immigration purposes if the deeds are also felonies under federal law. Thus, § 1182(a)(2)(A)(i)(II) operates similarly to 8 U.S.C. § 1101(a)(43)(B), which López v. Gonzales read to create a rule that drug offenses under state law may be treated as aggravated felonies for immigration purposes only if the deeds also are felonies under federal law.

As a general matter, an alien convicted of an aggravated felony offense is statutorily ineligible for most forms of discretionary relief from removal, including cancellation of removal and asylum. Under certain very narrow circumstances, an alien may be eligible for adjustment of status and a waiver of inadmissibility under 8 U.S.C. § 1182(h). Finally, a conviction for an aggravated felony offense may subject an alien to mandatory detention.

A crime involves moral turpitude only if all of the conduct that is prohibited is turpitudinous. If a statute covers defendants who intend to facilitate a broad range of unlawful

22 See Hamdan v. INS, 98 F.3d 183, 186 (5th Cir. 1996) (quoting the BIA's decision in that case).
23 Hamdan, 98 F.3d at 189.
24 Id.
27 López v. Gonzales, 549 U.S. 47, 50 (2006) (a state drug offense is only an aggravated felony if "it proscribes conduct punishable as a felony under that federal law."). See also United States v. Pacheco-Diaz, 506 F.3d 545 (7th Cir. 2007).
28 549 U.S. 47,(2006). See also United States v. Pacheco-Diaz, 506 F.3d 545 (7th Cir. 2007), rehearing denied, 513 F.3d 776 (7th Cir. 2008).
and expedited removal procedures. An aggravated felon deportee is also permanently barred, regardless of the date of conviction, from readmission to the United States, unless the Attorney General consents to the alien’s application for readmission on a temporary basis under limited circumstances. The law provides that aliens who have been convicted of certain crimes face restrictions on readmission: an alien who (1) has been convicted of an aggravated felony; (2) has been ordered to be removed; and (3) again seeks readmission is inadmissible at any time he or she seeks admission.

By contrast, aliens previously removed who have not been convicted of aggravated felonies do not face a permanent bar to readmission, but instead face either a five-year bar (arriving aliens); a ten-year bar (aliens other than arriving aliens); or a twenty-year bar (in the case of a second or subsequent removal). Although ineligible for readmission, an alien convicted of an aggravated felony may apply to the Attorney General for special advance consent outside of the United States and show exceptional hardship and compelling circumstances.

E. Particularly Serious Crimes

A person will be ineligible for asylum or other forms of immigration relief if he has been convicted of a particularly serious crime. Conviction of an aggravated felony is considered a conviction for a particularly serious crime, and a grant of asylum is barred without balancing the interests. A particularly serious crime is defined as an offense considered a felony under immigration law, and the individual receives a five-year jail sentence. If a sentence is under five years, the adjudicator must conduct an individual analysis under Matter of Frentescu.

F. Controlled Substance Offenses and the Risk of a Finding of “Reason to Believe” an Individual is a Drug Trafficker

Immigration can determine that the client is removable because it has “reason to believe” that he knowingly participated in drug trafficking. Section 1182(a)(2)(C) specifically states that an alien is inadmissible if “the Attorney General knows or has reason to believe is or has been an illicit trafficker in any controlled substance or is or has been a knowing assister, abettor, conspirator, or co-conspirator with others in the illicit trafficking in any such controlled substance.”

The “reason to believe” standard for excluding aliens satisfies the jurisdictional bar for aliens who are removable because of “having committed” certain offenses. This determination involves an issue regarding burden of proof and sufficiency of the evidence under 8 U.S.C. § 1101(a)(13)(C). Section 1101(a)(13)(C) uses the terms “has engaged” and “had committed.” The “reason to believe” standard

35 18 U & N Dec. 244, 244, 247-48 (BIA 1982).
38 See Lopez-Molina v. Ashcroft, 368 F.3d 1206, 1209 (9th Cir. 2004).
must be met by clear and convincing evidence. To prove something by “clear and convincing evidence,” the party with the burden of proof must convince the trier of fact that it is substantially more likely than not that the thing is in fact true. This is a lesser requirement than “proof beyond a reasonable doubt,” which requires that the trier of fact be almost certain of the matter at issue, but a stricter requirement than proof by “preponderance of the evidence,” which merely requires that the matter at issue seems more likely than not.39

The BIA held that “reasonable, substantial, and probative evidence” must support an Immigration Judge’s determination of a “reason to believe” that the alien knew he was participating in drug trafficking.40 In Lopez-Molina, the government presented evidence in the form of numerous documents of the alien’s attempted escape and subsequent arrest for driving a car containing 147 pounds of concealed marijuana.41 The criminal case stemmed from extensive surveillance and a tip and was resolved with a guilty plea by Lopez-Molina.42

A secondary question is whether an alien is removable for having “committed a criminal offense” listed in § 1182(a)(2). Section 1182(a)(2)(C) does not require a conviction in order for the alien to be deemed removable. It only requires that an immigration official have “reason to believe” that the alien is or has been involved in illicit drug trafficking.43 The question is thus two-part: one, whether an alien is removable pursuant to § 1182(a)(2)(C) because an immigration official had “reason to believe” he was involved in illicit drug trafficking, and if so, two, whether the alien “is removable by reason of having committed a criminal offense covered in section 1182(a)(2).”44

The appropriate way of measuring whether there was “reason to believe” an individual was participating in drug trafficking is to determine whether substantial evidence supports such a conclusion.45 In Alarcon-Serrano, the alien was arrested with a large amount of marijuana concealed in his car.46 Another case supporting such a determination is Mendez-Solorio v. Mukasey, where the court upheld the determination of the Immigration Judge’s finding that he had “reason to believe” the alien had been involved in drug trafficking.47 This finding was based on substantial evidence, including police reports and a guilty plea to possessing cocaine for sale.48 Thus, even where an offense may not result in a conviction, defense counsel must take care to protect the record and mitigate against any future finding under this provision.

G. Bail and Pretrial Release Implications

Non-citizens also face unique hardships involving issues of pretrial release or bail. In federal cases, the Bail Reform Act mandates the release of all persons facing trial unless no condition, or combination of conditions, will “reasonably assure” the appearance of the person as required and the safety of the community.49 Nothing in the Bail Reform Act of 1984 or any of its amendments specifically denies bail to non-citizens.50 Bail determinations for noncitizens must be made “notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings.”51 Deportation of an alien who is a party in a criminal case pending in a court in the United States shall be “deemed prejudicial to the

40 Lopez-Molina, 368 F.3d at 1211.
41 Id.
42 Id.
44 Id.
45 Lopez-Molina, 368 F.3d at 1209-10 (citing Alarcon-Serrano v. INS, 220 F.3d 1116, 1119 (9th Cir. 2000). See also Hamid v. INS, 538 F.2d 1389, 1390-91 (9th Cir. 1976).
46 Alarcon-Serrano, 220 F.3d at 1119.
48 Id.
49 18 U.S.C. 3142(c)(2).
interests of the United States." If immigration authorities do not take the individual into custody for removal under 8 U.S.C. 3142(d), "such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings."

In terms of evaluating flight risk, one needs to keep in mind that flight risk is indicative of a volitional act. Deportation is involuntary and often against the wishes or desires of the alien. A court cannot find flight risk simply because Immigration and Customs Enforcement (ICE) may deport. A detainer is not indicative, nor does it tip scales toward flight risk. Thus, counsel should argue that a deportable alien is not a flight risk where conditions could be imposed to ensure return to court. The mere fact that the defendant is an alien "does not tip the balance either for or against detention." Nor does an illegal reentry, a defendant’s "status as a deportable alien . . . mandate detention." Congress chose not to exclude deportable aliens from consideration for release or detention in criminal proceedings.

In addition to flight risk considerations, another obstacle in litigating a criminal case is when the criminal court is willing to grant bond or release, but immigration issues a detainer requesting the individual be held in custody pending the outcome of the case. Detainers are not just issued for those believed to be in the United States without authorization. All noncitizens (including long time lawful permanent residents) who may be subject to deportation are under ICE’s jurisdiction and may be subjected to an immigration detainer. A recent report found that "[n]on-citizens involved in the criminal justice process spend more time behind bars than citizens facing similar charges." Immigrants with detainers may be held in pretrial criminal detention for weeks or months on a nonviolent, misdemeanor charge while a citizen with the same charge would be released immediately pending the outcome of the case.

Many individuals in immigration detention also have a difficult time securing release due to the expense of the immigration bond (often in the range of $5,000 to $15,000, and often bondsmen are not willing to write the bond), the lack of counsel to successfully litigate a bond motion, and the application of a mandatory detention law. Thus counsel must be diligent in working with immigration counsel to attempt to secure the defendant’s release prior to trial or understand that under certain circumstances a person is subject to mandatory detention in the immigration court and has no opportunity for release.

IV. STRATEGIES AND TOOLS FOR PRACTITIONERS

One of the first questions that every criminal defense attorney should ask his or her client is regarding the person’s immigration status. If the person is not a United States citizen, then a lengthier inquiry should be made, including determining the person’s status, length of time in the United States, and family members. Additionally, a detailed investigation of the client’s previous interactions with the criminal justice system should be conducted. Often a detailed client intake form will help obtain much of the initial information; however, follow-up questions are often needed.
as clients may not know what information is relevant or important. Additionally, the client’s long-term wishes for remaining in the United States should be ascertained. Some may only wish to visit on occasion, whereas others may want to either preserve or obtain lawful permanent resident or citizenship status. In other cases, a client may be willing to give up the right to remain in the United States in order to avoid a long prison sentence. Regardless of the client’s wishes, advice must be given as to all potential consequences, so that the client may be advised properly in case circumstances change in the future.

Once the client’s status is determined, the attorney should evaluate the client’s risks and options in case of a conviction. If the attorney is not knowledgeable in immigration law, this is the point where the attorney needs to either: (a) consult an immigration lawyer; or (b) include a provision in the retainer agreement where the client will retain an immigration lawyer. The earlier in the process that one retains an immigration lawyer, the better the results. This is especially true if the client is being detained pursuant to an ICE hold or detainer. Additionally, an arrest or conviction is frequently the triggering event for a client to be placed in immigration removal proceedings. By retaining an immigration attorney early in the process, the client may be better prepared to contest removal in immigration court. What is absolutely vital is that the defense attorney and immigration attorney work hand in hand, consulting with one another prior to making any decisions, and keeping the other informed of every step in the process.

In cases where ICE has not placed an immigration hold or detainer on the defendant, defense counsel should discuss, as early as possible, the fact that immigration consequences will be a concern in any plea discussions or decisions to go to trial. It is often advisable to prepare a mitigation packet, including information about the defendant’s background, family situation, ties to community,
and otherwise good character. Letters of reference and documentation of payment of taxes and employment history are often helpful. Most of all, prepare or have an immigration attorney prepare a detailed letter outlining not only the potential consequences of pleading guilty to the offense as charged, but also outlining other possible pleas and resolutions, including the relevant statutory and case law. Prosecutors are rarely experts in immigration law, and it is helpful to the negotiation to provide them with the research and information that may justify a particular plea. This is also an arena where creative thinking can be helpful, as there may be other penalties that can be imposed that will not have as deleterious of an effect on the client’s immigration status.

It is always best, whether a United States citizen or not, to obtain a result that will not result in a conviction, especially for first time offenders. In many cases, defense attorneys representing non-citizens must understand that the end result may be to go to trial, or extensively litigate the case through pre-trial motions and investigation. While certainly this should be done in every case (absent extenuating circumstances or cases where an early plea is in the client’s best interest), in cases involving non-citizen defendants, the client may have to run the risk of going to trial.

Finally, sentencing is also a key area where a defense attorney must remain vigilant about immigration consequences. A sentence must be carefully crafted in many circumstances so as to preserve a client’s right to remain in the country or eligible for relief. Often times, the length or type of sentence imposed can have a direct impact on immigration relief or result in a complete, non-discretionary bar to relief. For example, in federal criminal cases, defendants often prefer a sentence of one year and one day because it generally results in the person only serving approximately nine months. However, for non-citizen defendants, it is usually preferable to have a sentence of only 364 days, because it is a sentence of less than one year. Additionally, it may be advisable to request a sentence of 179 days, thus keeping the sentence below the 180 day mark. Judges may be sympathetic to this, given the difference in sentence of only a few months. Additionally, defense counsel should advocate that a court should consider the time a person will spend in immigration custody following completion of the criminal sentence. Depending on the nature of the case, an individual may not be eligible for bond in immigration court, and thus, may spend three to six months in immigration custody awaiting a hearing. This is a factor that may be influential in securing a lower sentence in criminal court.

V. CONCLUSION

All parties in the criminal justice system desire a result that is just, reliable, and based on a fair process. A guilty plea by a defendant must be knowingly and voluntarily made with consideration of all consequences, but especially immigration consequences for non-citizen defendants. As defense counsel, we have a duty to investigate and advise our clients on these consequences and to advocate effectively for them to ensure that these consequences are eliminated or mitigated to the extent possible. While certainly there will be circumstances in which removal is inevitable, that choice must be one for the client, and one made with full knowledge of all facts and law governing the case. While the task may seem daunting, through careful investigating, learning, research, and consulting with skilled immigration attorneys, defense counsel can ensure that a client’s decisions are the result of good lawyering and vigilant protection of the client’s interests and rights.
About the AUTHOR

Sara Elizabeth Dill is a founding partner in the Chicago, London, and Miami offices of the Law Offices of Sara Elizabeth Dill. Her practice focuses on representing corporations and individuals domestically and internationally in criminal defense and immigration matters before state, federal trial and international courts. Her practice includes representation in pre-indictment and internal investigations in white collar criminal cases, including FCPA, money laundering, FTC violations, securities fraud, health care fraud, OFAC and ITAR compliance, and other related matters. Sara has also represented individuals accused of war crimes before the U.S. Federal Courts and facing investigation by international tribunals. Previously, she was a trial and appellate lawyer for a private law firm, a non-profit immigration agency and the Miami-Dade Public Defender’s Office.

Sara was previously the co-chair of the American Bar Association Criminal Justice Section’s Immigration Committee and as a Commissioner for the ABA Commission on Immigration. She currently serves on the ABA Criminal Justice Council. Sara served as the chair of the ABA Young Lawyer Division Criminal and Juvenile Justice section from 2006-2007.

Sara is also a member of the American Immigration Lawyers Association, the National Association of Criminal Defense Lawyers, and the Florida Association of Criminal Defense Lawyers. Sara has published numerous articles in recent years on international law, criminal defense, immigration, human trafficking and free speech. In addition to publishing, Sara has spoken at international and national legal conferences and educational seminars regarding OFAC Compliance and Counter-Terrorism, the immigration consequences of criminal convictions, corporate compliance with immigration laws, corporate social responsibility, FCPA prosecutions, human trafficking and federal sentencing.

Sara has an LLM in international human rights with high honors from Northwestern Law School. Prior to that, Sara attended Marquette University, where she majored in political science, with an emphasis in economics, criminology, and international affairs. She then continued her legal education at Marquette Law School.