

# Defending Immigrants in the 9th Circuit

Thomas J. Baker, Esq

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## Thomas J. Baker, Esq

- 12 years practicing immigration and criminal defense
- 1400 closed cases, 380 active case load
- 50+ deportation trials
- 30+ criminal convictions vacated
- AILA Sacramento Immigration Court liaison

# Defending Immigrants in the 9th Circuit

There are three primary reasons for us, as criminal lawyers, to protect our clients' immigration status as we handle their cases:

(1) It is in our clients' interest for us to do so.

(2) If we don't help the client avoid adverse immigration consequences in criminal court, very often the client cannot be helped at all, and it's difficult or impossible to recover from a mistake.

(3) It is part of our job as criminal lawyers, and it is in our own interest to do a good job.

-Norton Tooby

# Defending Immigrants in the 9th Circuit

## Topics Covered

1. Intake Issues
2. Important Definitions
3. Plea Bargaining
4. Statutes and Case Law
5. Hypotheticals or Q/A

# Defending Immigrants in the 9th Circuit

Intake Issues  
Knowing your client is critical

1. What is your immigration status? Citizen (USC), Resident (LPR/Green Card), Visa (tourist, student, employment, etc), Undocumented
  - a. Obtain proof of their status, if possible.
2. Length of time in that status?
3. How did they obtain this status?
4. Country of origin?
5. Criminal conviction history?

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## Important Definitions

1. Removable - A noncitizen who has been admitted to the United States but is convicted of an offense that makes them deportable can lose their lawful status and be “removed” (deported).
2. Inadmissible - A noncitizen who is inadmissible for crime may be unable to obtain status, admission to the U.S., waivers of a crime, or other new immigration benefit from the government.

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## Important Definitions

1. Crimes Involving Moral Turpitude - A “CIMT” has been vaguely defined as a depraved or immoral act, or a violation of the basic duties owed to fellow man, or recently as a “reprehensible act” with a mens rea of at least recklessness.
2. Aggravated Felony (AF) Aggravated felonies are defined at 8 USC § 1101(a)(43), which is a list of dozens of common-law terms and references to federal statutes.
3. Controlled Substances (CS) Drug offenses can cause extremely serious immigration consequences, including making the person deportable and
4. inadmissible, or worse

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## Important Definitions

### Aggravated Felonies – The Immigration “Death Penalty”

#### Unconditional Aggravated Felonies

8 USC § 1101(a)(43) The term "aggravated felony" means-

- (A) murder, rape, or sexual abuse of a minor
- (B) illicit trafficking in a controlled substance, including a drug trafficking crime
- (C) illicit trafficking in firearms or destructive devices
- (D) money laundering
- (H) relating to the demand for or receipt of ransom
- (I) child pornography
- (k) Commercialized prostitution and human trafficking offenses



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## Conditional Aggravated Felonies

8 USC § 1101(a)(43) The term "aggravated felony" means-

(F) a crime of violence, for which the term of imprisonment (is) at least one year

Examples: PC 273.5, 245(a)(1-4), 192(a), 203, 211, 215, 273d

(G) a theft or burglary offense for which the term of imprisonment at least one year

Examples: VC 10851, PC 211, 350(a), 368(d), 484\*/487\*, 496, 498(b)/(d)

(M) an offense that (i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000

Examples: PC 350(a), 368(d), 484\*487\*, 498(b)/(d), 530.5(a)/(d(2)), WIC 10980(c)

(S) an offense relating to obstruction of justice, perjury ... for which the term of imprisonment is at least one year

Examples: PC 32, 69, 136.1, 148

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## Plea Bargaining

1. Analyze the current offer for immigration consequences
  - a. You must know your client's immigration status and criminal history.
2. Know the details of the offer
  - a. Code section, sentence, severity
3. Know the details of the incident
  - a. Be on the lookout for reasonably related offenses in the discovery

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## Statutes and Case Law

1. Padilla v. Kentucky, 559 U.S. 356 (2010) - Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases.

Expanded by California case law: defense counsel must investigate and advise regarding the immigration consequences of the available dispositions, and should...defend against adverse immigration consequences.

2. Padilla codified at PC 1016.2

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## Statutes and Case Law

### PC 1016.3

(a) Defense counsel shall provide accurate and affirmative advice about the immigration consequences of a proposed disposition, and when consistent with the goals of and with the informed consent of the defendant, and consistent with professional standards, defend against those consequences.

(b) The prosecution, in the interests of justice, and in furtherance of the findings and declarations of Section 1016.2, shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.

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## Statutes and Case Law

### Post Conviction Relief

PC 1016.5 - If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

PC 1473.7 - A person ... may file a motion to vacate a conviction or sentence for any of the following reasons:

(1) The conviction or sentence is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.

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Statutes and Case Law

Post Conviction Relief

17(b) - reduction from felony to misdemeanor

1203.4 – “expungement”/ dismissal after conviction

Prop 64 - legalizes the nonmedical use of cannabis by adults 21 and older

1203.43 – DEJ

Prop 36 – drug treatment program

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Hypotheticals/QA