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Our Plan for Today – and Looking Ahead

- What is Crimmigration?
- Major Federal changes in the past year
- Representing non-citizens charged with criminal offenses



What is Crimmigration?



- 1990s major statutory shifts on federal side
 - ▣ Created lots of mandatory bars for convictions
 - ▣ Rise of enforcement of federal migration crimes
 - ▣ Rise of criminal enforcement tactics in immigration
- 2010
 - ▣ Padilla v. Kentucky
- Expansion of Crimmigration system
 - ▣ Increased ICE presence in jails
 - ▣ Increased prosecution of migration crimes
 - ▣ Requirement to advise on state charges

Expansion of Interior Immigration Enforcement

- ▣ Increased ICE detention – more facilities
- ▣ Expanded 287g
 - SB8 requiring compliance from big cities
 - Dallas and surrounding only in jail
 - But Texas DPS deputizing agents
- ▣ ICE in communities
 - This is rare in Texas but creates fear
 - ICE is arguing they do not need judicial warrants to enter a home
 - We need to keep giving our KYR info
- ▣ ICE picking up at ICE check-ins/immigration court



Recission of Sensitive Locations Memo

- Recission of multiple DHS memos that limited DHS arrest locations
- So far VERY few reports of arrests in “sensitive locations”
 - ▣ Be vigilant but don’t discourage clients to go to school, medical care etc
 - ▣ Also now most arrests are targeted no indication of raids at this time
- 4th and 5th amendment still apply
 - ▣ No entry into private without consent or judicial warrant
 - ICE warrant is not a judicial warrant
- Court house arrests not reported in Dallas but contact us
 - ▣ We have seen clients picked up on probation but still rare

Where folks are getting picked up

- Dallas County Jail
- TDC
- USCIS interviews
- ICE Check-Ins
- Immigration Court if in first two years in the U.S.
- Raids are not as common in Texas
 - ▣ But if client is out of custody
 - Worth giving KYR, particularly about not opening home door unless a signed judicial warrant
 - Less protections in public



Third Country Removals and ACA agreement

- ICE is forcing some folks to seek Asylum in a Third Country
- ICE is removing people to countries other than their country of origin
- If client has a fear of removal to that third country
 - Client must “affirmatively states a fear” right when they are notified
 - Then USCIS will screen to see if the person is “more likely than not” going to be persecuted on a statutory ground or tortured in the third country.
 - If USCIS finds the noncitizen meets this standard, may get to see judge or ICE can simply designate an additional country of removal.
 - If USCIS finds the noncitizen does not meet the screening standard, they will be immediately removed to the third country

Many more people became undocumented

- TPS provides temporary protection and work permit for people from specific countries with some form of disaster
 - ▣ Trump terminated most grants- VERY volatile in terms of litigation
 - Clients may have been in status and now out of status and then may be back in status as litigation succeeds
- Termination of categorical parole programs (CHNV)
- The end of CBP One Parole
- Country-based bans mean some folks who were about to get status now cannot
- Folks getting removal terminated and placed in Expedited Removal



Purging of judges, re-writing court rules: the death of impartiality



- Massive lay offs of immigration judges
- Hiring of non-immigration practitioners as judges
- Massive changing of rules
 - Huge bars to filing asylum with ACA
 - Pretermission of asylum
- Directive to judges to not follow federal court orders etc
- Judges are distributing self deportation materials
- Proposed appeals court rules
 - Appeals deadline 10 days instead of 30
 - BIA can summarily deny if the majority of judges are not interested in the appeal
 - No reply briefs

Immigration Bonds Eviscerated: Big Impact

- *Matter of Q Li*
 - Those detained near border at entry not bond eligible no matter how long they have been out post-parole
- ICE policy saying all folks who entered EWI are bond ineligible
- BIA follows with *Matter of Yajure Hurtado*
- Class Action in *Maldonado Bautista*
- Explosion of Habeas filings
- Fifth Circuit in *Buen Rostro* sides with government and against 200 district court judges but habeas continues



Detention is coercive and many folks will not fight their case detained

Pro Bono Opportunity – Immigration Detention Project

- The Immigration Detention Project (IDP) helps eligible community members seek release from immigration detention, whether through bond hearings in immigration court or habeas petitions in federal court.
- What they Provide
 - ▣ Training materials
 - ▣ Sample petitions and checklist
 - ▣ Mentorship and support
 - Case review with expert attorney
 - Non-attorney volunteer for support
- Additional considerations
 - ▣ Short timelines but overwhelmingly successful
 - ▣ Admission into Texas federal courts needed
- Release from detention changes lives
- Contact: zainab_khan@tamu.edu





Padilla v. Kentucky (2010)

The Judiciary and *Padilla*

What the Judge Should Do

1. Grant continuances for the defense to get technical support
2. Encourage collaboration between state and defense to find immigration neutral pleas
3. Grant funds to get an advisal for indigent clients (email me for a sample motion)



What the Judge Should NOT do

1. Give specific legal advice to the defendant
2. Solicit prejudicial immigration info on the record
(see 21 WL 4071153)
3. Sacrifice competency for speed

Negotiating with the DA

- SCOTUS recognizes role of DA in *Padilla* system (see next slides)
- Proportionality is a key
 - ▣ Not a better deal for a non-citizen
 - ▣ Avoiding a double and super severe punishment for a non-citizen
- Ethics requires DAs to consider community benefit/justice as a whole
- Article in Fair and Just Prosecution on *Padilla*



Creative Pleading under Padilla



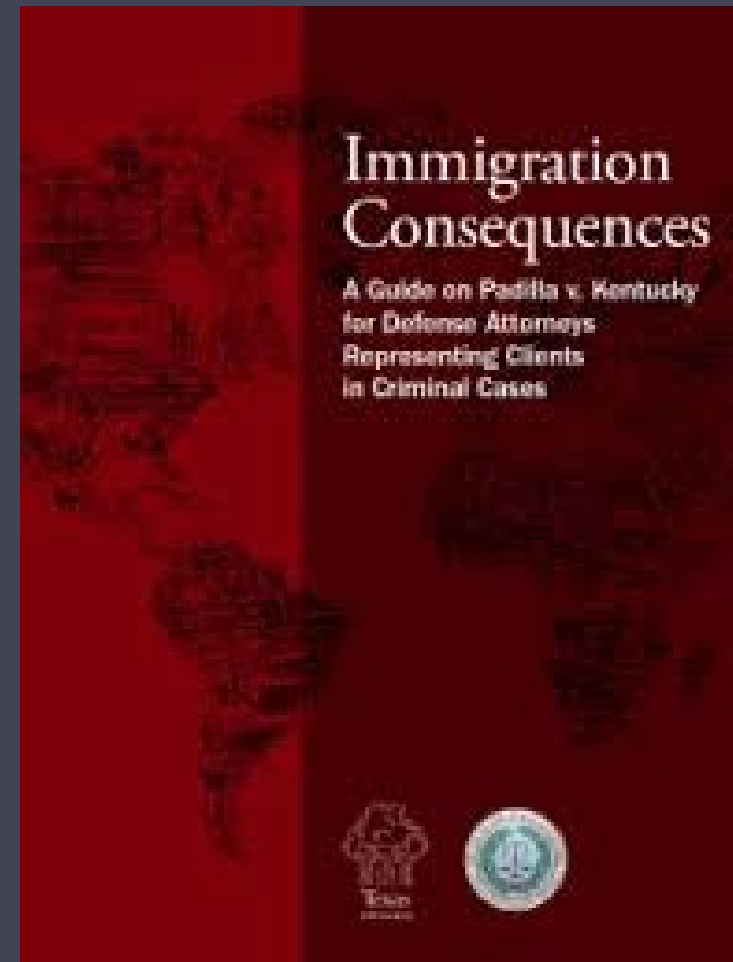
The categorical approach is how immigration officials analyzes whether a state offense triggers immigration consequences. This is statutory not conduct-based and can be used creatively by the defense!

- “A criminal episode may provide the basis for multiple charges, of which only a subset mandate deportation following conviction. Counsel ... may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation... At the same time, the threat of deportation may provide the defendant with a powerful incentive to plead guilty to an offense that does not mandate that penalty in exchange for a dismissal of a charge that does.”

Padilla at 373

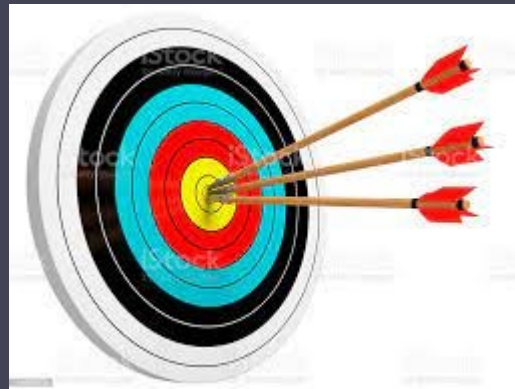
We made a manual!

- Go to www.immigrationconsequencestx.org
- You will need to request access as we are very actively hoping to stop these folks from using the manual:
 - ICE prosecutors
 - Assistant District Attorneys (you can share info as you wish strategically but I don't want them using the manual on their own)
 - Assistant U.S. Attorneys



What does Effective Assistance look like?

- ❑ Advise on how to avoid being deportable
- ❑ Advise on how to avoid bars to relief from removal
- ❑ Advise regarding ability to travel
- ❑ Advise regarding naturalization if possible
- ❑ Advocate for avoidance of negative outcomes



Referring to the Dallas County Immigration Advisal Program

- Court Appointed Attorneys in Dallas
 - Please use this Google Form
 - <https://forms.office.com/g/3ThVbmhDUg>
 - If you need it back before the reset, please note that
 - You must complete the referral sheet with your client, the program will not meet with your client
 - You will get the memo via email



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