

TIPS ON HOW TO WORK WITH AN IMMIGRATION LAWYER TO BEST PROTECT YOUR NONCITIZEN DEFENDANT CLIENT

by Manuel D. Vargas

1. As a preliminary matter, know your professional duties relating to a noncitizen client

Revised ABA Standards for Criminal Justice, Pleas of Guilty, Third Edition (1999):

- Responsibilities of Defense Counsel -- Standard 14-3.2(f):

To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.

- Commentary on Standard 14-3.2(f) (Collateral consequences)

This Standard . . . strives to set an appropriately high standard, providing that defense counsel should be familiar with, and advise defendants of, all of the possible effects of conviction. In this role, defense counsel should be active, rather than passive, taking the initiative to learn about rules in this area rather than waiting for questions from the defendant, who will frequently have little appreciation of the full range of consequences that may follow from a guilty, nolo or Alford plea. Further, counsel should interview the client to determine what collateral consequences are likely to be important to a client given the client's particular personal circumstances and the charges the client faces. For example, depending on the jurisdiction, it may well be that many clients' greatest potential difficulty, and greatest priority, will be the immigration consequences of a conviction. To reflect this reality, counsel should be familiar with the basic immigration consequences that flow from different types of guilty pleas, and should keep this in mind in investigating law and fact and advising the client.

2. Attend immigration law training programs to develop base of knowledge on the immigration consequences of criminal convictions

Some training providers:

- **National Immigration Project of the National Lawyers Guild** (Boston, Massachusetts) – (617) 227-9727
- **Immigrant Legal Resource Center** (San Francisco, California) – (415) 255-9499
- **Immigrant Defense Project of the New York State Defenders Association** (New York, New York) -- (212) 898-4131

- Expert private criminal and/or immigration lawyers also provide training on the immigration consequences of criminal convictions. One leading example is Norton Tooby of The Law Offices of Norton Tooby in Oakland, California – (510) 601-1300. For a referral to an appropriate local immigration lawyer who provides such training, defense lawyers may contact the local chapter of the **American Immigration Lawyers Association (AILA)**. Contact the Washington, D.C. AILA national office at (202) 371-9377 for a current telephone number for your local AILA chapter.

3. Get necessary basic information from a foreign-born client before consulting with an immigration lawyer/expert

- Determine citizenship status – make sure you are getting right answer
- Obtain detailed information regarding immigration history – make sure you are getting right answer
 - Current immigration status?
 - If lawfully admitted, when?
 - Re-admission(s) during the last five years?
 - Prior removal?
 - Look at documents
 - If young client, talk to parent or guardian
- Obtain detailed information regarding criminal record – make sure you are getting right answer (including any out-of-state convictions)
 - Info regarding priors
 - Info regarding current charges, and possible alternatives
 - Immigration lawyer needs to know more than name of offense, needs to know elements of offense and what will be in the record of conviction
- Obtain information regarding client's equities
- Determine how important immigration consequences vis-à-vis penal consequences are for the particular client
- Use immigration questionnaire, such as the following samples:
 - Immigration Intake Questionnaire (developed by Ann Benson of the Washington Defender Immigration Project in the State of Washington) (attached)
 - Basic Immigration Status Questionnaire (developed by The Law Offices of Norton Tooby in Oakland, California) (attached)
 - Client Questionnaire (developed by Bretz and Coven, LLP, in New York, New York) (attached)

4. Consult with published materials and/or internet resources before consulting with the immigration lawyer/expert

Consult with published materials, such as the following:

- Immigration Law and Crimes, by Dan Kesselbrenner and Lory D. Rosenberg, under the auspices of the National Immigration Project of the National Lawyers Guild (published by West Group, 620 Opperman Drive, St. Paul, MN 55164 / (800) 328-4880)
- Criminal Defense of Immigrants, by Norton Tooby with Katherine A. Brady (distributed by the The Law Offices of Norton Tooby, 516 52nd Street, Oakland, CA 94604 / (510) 601-1300)
- Cultural Issues in Criminal Defense, edited by James G. Connell, III, and Rene L. Valladares, including Chapter 11, “Immigration Consequences of Criminal Convictions” by Tova Indritz (published by Juris Publishing, Inc., 9 East Carver Street, Huntington, NY 11743 / (800) 887-4064)
- California Criminal Law and Immigration, by Katherine A. Brady (distributed by The Immigrant Legal Resource Center, 1663 Mission Street, Suite 602, San Francisco, CA 94103 / (415) 255-9499)
- Defending Non-citizens in Minnesota Courts: A Summary of Immigration Law and Client Scenarios, by Maria Baldini-Potermin (distributed by the Minnesota Bar Association / (612) 333-1183)
- Representing Noncitizen Criminal Defendants in New York State, by Manuel D. Vargas (distributed by the New York State Defenders Association, 194 Washington Avenue, Suite 500, Albany, NY 12210-2314 / (518) 465-3524)
- “Deportation: An Immigration Law Primer for the Criminal Defense Lawyer,” by William R. Maynard (published in the June 1999 issue of NACDL’s The Champion and available on the internet at <http://www.criminaljustice.org/public.nsf/freeform/Immigration?OpenDocument>)

Consult with internet resources, such as the following:

- United States Code
<http://www.law.cornell.edu/>
- Code of Federal Regulations
www.access.gpo.gov/nara/cfr/cfr-table-search.html

- U.S. Supreme Court and Court of Appeals decisions
<http://laws.findlaw.com/>
- Board of Immigration Appeals precedent decisions
<http://www.usdoj.gov/eoir/efoia/bia/biindx.htm>
- Immigration and Naturalization Service information and forms
<http://www.ins.usdoj.gov>
- U.S. State Department Country Reports on Human Rights Practices
http://www.state.gov/www/global/human_rights/hrp_reports_mainhp.html
- American Immigration Lawyers Association
<http://www.aila.org/>
- National Lawyers Guild/National Immigration Project
<http://www.nlg.org/nip/homepage.html>
- Immigrant Legal Resource Center
<http://www.ilrc.org>
- New York State Defenders Association/Criminal Defense Immigration Project
http://www.nysda.org/NYSDA_Resources/Defense_Immigration_Project/defense_immigration_project.html
- Law Offices of Norton Tooby
<http://www.ilw.com/tooby>
- NACDL Immigration Articles
<http://www.criminaljustice.org/public.nsf/freeform/Immigration?OpenDocument>

5. Consult with an immigration lawyer who is an expert on crime-related issues

- Private immigration lawyers

When immigration counsel is required for a specific case, defense lawyers are encouraged to contact an immigration lawyer with expertise in criminal/immigration issues. An expert should be aware of the latest developments in the law relevant to your client's particular situation. For a referral to an appropriate local immigration lawyer, defense lawyers may contact the local chapter of the **American Immigration Lawyers Association (AILA)**. Contact the Washington, D.C. AILA national office at (202) 371-9377 for a current telephone number for your local AILA chapter.

- National backup resource

National Immigration Project of the National Lawyers Guild – (617) 227-9727 (Contact Dan Kesselbrenner)

- Some state backup resources

California

Immigrant Legal Resource Center – (415) 255-9499 (Charges fee with lower rate for public defenders)

Florida

Florida Immigrant Advocacy Center – (305) 573-1106 (Contact Rebecca Sharpless)

Illinois

Midwest Immigrant Rights Center – (312) 660-1370 (Contact Maria Baldini-Potermin)

New York

Immigrant Defense Project of the New York State Defenders Association -- (212) 898-4132 (Contact Immigrant Defense Project hotline staff person on Tuesdays and Thursdays)

Texas

Lawyers' Committee for Civil Rights Under Law of Texas – (915) 532-3370 (Contact Lynn Coyle)

Washington

Washington Defender Immigration Project of the Washington Defender Association – (206) 726-3332 (Contact Ann Benson)

6. **Consult with the immigration lawyer/expert as early as possible**
7. **Give the immigration lawyer/expert information on your client's criminal record and immigration history in advance or have it ready**
8. **Discuss the immigration implications of conviction of each charge against your client, and potential alternative pleas**

- 9. Discuss the immigration effect of any potential sentence**
- 10. Discuss the immigration effect of any potential disposition that is not a conviction under the law of your jurisdiction to make sure that the disposition will not be considered a conviction for immigration purposes**
- 11. If necessary, obtain the immigration analysis in writing (e.g., where D.A. may want to see expert's analysis before agreeing to certain disposition of the case)**
- 12. Discuss other issues regarding which you may want to advise your client, e.g. effect of appeal or post-conviction relief, early parole, removal proceedings, future inadmissibility, consequences of illegal reentry**
- 13. If client will be subject to removal proceedings after the criminal case, hook the client up with immigration lawyer before or after criminal case is over**
- 14. To minimize consultation costs, develop relationship with specific immigration attorney or expert (for quick free evaluations in return for referrals and/or occasional evaluation fee in a more complicated case)**
- 15. If client is indigent, contact not-for-profit backup resource center and/or seek reimbursement for any consultation fee -- Assigned counsel consulting with an expert immigration lawyer should seek reimbursement for any fees charged from assigned counsel plan funds available for expert testimony or consultations**