



Advisory Board
John Burton
Nancy Pelosi
Cruz Reynoso

Board of Directors
Cynthia Alvarez
Richard Boswell
Eva Grove
Bill Hing
Sallie Kim
Lisa Lindelef
Larry Miao
Guadalupe Sordia Ortiz
Richard W. Odgers
Lisa Spiegel
Reg Steer
Donald Ungar
James L. Warren
Allen S. Weiner
Roger Wu
A. Lee Zeigler

Staff
Eric Cohen
Executive Director

Sally Kinoshita
Deputy Director

Bill Hing
General Counsel

Donald Ungar
Of Counsel

Katherine Brady
Angie Junck
Lourdes Martinez
Mark Silverman
Staff Attorneys

Christopher Godwin
Annual Giving & Event Manager

Jonathon Huang
IT Manager

Shari Kurita
Assistant Director

Afroz Mirza
Front Office Coordinator

Deirdre O'Shea
Foundations Relations Manager

Nora Privitera
Special Projects Attorney

Tim Sheehan
Program Coordinator

Byron Spicer
Finance Assistant

Shellie Stortz
Finance Manager

Sayako Suzuki
Marketing Coordinator

Advice on Representing Immigrant Defendants in the Ninth Circuit: Conviction on Direct Appeal of Right Remains a “Conviction” for Immigration Purposes

Planes v. Holder (9th Cir. July 5, 2011)

Criminal defenders must assume that filing a timely direct appeal of right will not prevent a conviction from having immigration effect. This is a change in the law, created by *Planes v. Holder, supra*. Advocates will file a petition for rehearing and there is a good chance that this will be granted, and a reasonable chance, although no guarantee, that *Planes* may be reversed.

Up to now a way to prevent a “conviction” for immigration purposes has been to file a direct appeal of right of a conviction by trial, a slow plea, or other ruling. This has meant that the disposition did not attain sufficient finality to be a “conviction” for immigration purposes, at least if the appeal was timely filed. See, e.g., *Matter of Cardenas-Abreu*, 24 I&N Dec. 795 (BIA 2009). For example, a conviction on direct appeal could not be the sole basis for detaining an otherwise lawfully present noncitizen or bringing her into removal proceedings.

Now, *Planes v. Holder* is a confusing opinion that immigration prosecutors will read as meaning that a criminal conviction continues to have immigration effect even while on direct appeal of right.

The court did acknowledge that once a conviction is reversed on appeal or vacated for legal error, it will no longer have immigration effect. Therefore, it makes sense for defense counsel concerned about immigration consequences to continue to appeal convictions in appropriate cases, because (a) the appeal might be sustained and (b) in the future, *Planes* might be reversed by the Ninth Circuit *en banc* or the Supreme Court. Defendants must understand, however, that at the present time the fact that a proper appeal has been filed will not prevent the conviction from having immigration effect.

For questions or comments on this case contact Kathy Brady at the Immigrant Legal Resource Center, kbrady@ilrc.org.