#### **Detailed Table of Contents**

- 1. Concepts, Terms, and Definitions
  - I. THE MISSION OF THIS BOOK §1.1
  - A. For Criminal Counsel §1.2
  - B. For Immigration Counsel §1.3
  - C. For Both Specialties §1.4
  - II. THE PROBLEM PADILLA INTENDS TO ADDRESS §1.5
  - III. BASIC PROCEDURE TO PROTECT NONCITIZEN DEFENDANTS §1.6
  - IV. SIGNIFICANCE OF STATE LAW §1.7
  - V. DEFINITIONS §1.8
    - A. Immigration Status §1.9
    - B. Coming to the United States §1.10
    - C. Criminal Immigration Concepts §1.11
    - D. Procedural Terminology §1.12
  - VI. RESOURCES §1.13
- 2. Investigating Immigration Consequences
  - I. IMMIGRATION STATUS §2.1
  - A. Identifying U.S. Citizens and Nationals §2.2
    - 1. Birth in United States or Certain Territories §2.3
    - 2. Derivative or Acquired Citizenship §2.4
    - 3. Naturalization §2.5
    - 4. U.S. Nationals §2.6
    - 5. Nondeportable Persons §2.7

## B. Investigating Noncitizens

- 1. Status §2.8
- 2. Equities §2.9
- 3. Criminal History §2.10
- 4. English Proficiency §2.11
- 5. Cultural Background §2.12
- 6. Criminal Versus Immigration Goals §2.13
- 7. Responses to Questioning **§2.14**

## C. Sources of Information

- 1. Client Interview §2.15
  - a. Considerations Before Interview §2.16
  - b. Interview Goals §2.17
- 2. Interpreter **§2.18**
- 3. Family and Friends §2.19
- 4. Immigration Records §2.20
- 5. Criminal History Reports §2.21
- 6. Criminal Court Records §2.22
- 7. Former Criminal Counsel §2.23
- 8. Cultural Expert §2.24
- 9. Consular Officials §2.25
- 10. Foreign Investigation §2.26

## D. Categories §2.27

1. Lawful Permanent Residents (LPRs) §2.28

- 2. Non-Immigrant Visa Holders §2.29
- 3. Refugees and Persons Granted Political Asylum §2.30
- 4. Undocumented or Deportable Persons Hoping to Obtain Lawful Status §2.31
- 5. Noncitizens Who Will Be Removed §2.32
- E. Form: Defendant Immigration Questionnaire—Basic Information §2.33

## II. LANGUAGE AND CULTURE §2.34

- A. Duties to Non-English-Speaking Client §2.35
  - 1. Selecting an Interpreter §2.36
  - 2. Paying the Interpreter §2.37
  - 3. Questioning the Interpreter §2.38
  - 4. Qualifying the Interpreter §2.39
  - 5. Supervising the Interpreter §2.40
  - 6. Maximizing Effectiveness of the Interpreter §2.41
  - 7. Making a Record §2.42
- B. Reference Material for Specific Cultures §2.43

## III. PRIOR CRIMINAL HISTORY §2.44

- A. Plea Records §2.45
- B. Court Trial Records §2.46
- C. Jury Trial Records §2.47
- D. Post-Conviction Records §2.48
- E. Federal Convictions §2.49
- F. Other Documents §2.50
- IV. CURRENT CRIMINAL CASE §2.51

## V. DEFENSE STRATEGY §2.52

- A. Preparation §2.53
- B. Significant Criminal Events §2.54
- C. Significant Immigration Events §2.55
- D. Chart: Sample Chronology §2.56
- E. Analysis and Use of Chronology §2.57

## 3. Consulting Experts and Resources

- I. LEGAL RESEARCH §3.1
- A. Where to Begin §3.2
- B. Immigration Counsel §3.3
  - 1. Weighing Expert Immigration Experience §3.4
  - 2. Screening §3.5
- C. Other Resources §3.6
  - 1. Websites **§3.7**
  - 2. Professional Associations §3.8
  - 3. Publications §3.9
- D. Post-Conviction Counsel §3.10

# II. COLLABORATION BETWEEN IMMIGRATION AND DEFENSE COUNSEL §3.11

- A. Determining Immigration Status and Consequences of Current Case
  - 1. Basic Immigration Status Questionnaire §3.12
  - 2. Immigration Effect of Criminal Offenses: DIRS §3.13
- B. Developing Strategy for Current Case

- 1. Identify Adverse Consequences of Individual Offenses §3.14
- 2. Assess the Collective Effect of Multiple Offenses §3.15
- 3. Set Realistic Goals §3.16
  - a. Avoiding Immigration Detention §3.17
  - b. Maintaining Lawful Immigration Status §3.18
  - c. Retaining Freedom to Travel §3.19
  - d. Preserving Eligibility for New Immigration Status §3.20
- 4. Consider a Post-Conviction Strategy §3.21
- III. WEIGHING CRIMINAL DEFENSE AND IMMIGRATION GOALS \$3.22
- IV. PRIORITIZING CONFLICTING GOALS §3.23
- V. IMMIGRATION CONSEQUENCES OF CRIMINAL OFFENSES §3.24
  - A. Conviction §3.25
    - 1. Immigration Definition §3.26
    - 2. Categorical Analysis to Determine Nature of Conviction §3.27
      - a. Single Offense Statute: Categorical Approach §3.28
      - b. Multiple Offense (Divisible) Statute: Modified Categorical Analysis §3.29
        - (1) Record of Conviction §3.30
        - (2) Factual Basis of Plea §3.31
    - 3. Looking at Facts to Determine Nature of Conviction §3.32
  - B. Conduct and Admissions §3.33
    - 1. Crimes Involving Moral Turpitude §3.34
    - 2. Controlled Substance Offenses §3.35
    - 3. Substance Abuse or Addiction §3.36

- 4. Alcohol-Related Offenses §3.37
- 5. Illicit Drug Trafficking §3.38
- 6. Prostitution and Commercialized Vice §3.39
- 7. False Claims of U.S. Citizenship §3.40
- 8. Admissions During Pleas or Sentencing §3.41

## VI. MINIMIZING IMMIGRATION CONSEQUENCES §3.42

- A. Avoid a Conviction §3.43
- B. Minimize the Maximum Sentence §3.44
- C. Avoid Sentence Enhancement §3.45
- D. Minimize Length of Actual Sentence Ordered §3.46
- E. Minimize Level of Conviction §3.47
- F. Minimize the Restitution Ordered §3.48
- G. Minimize Fine Imposed for Conviction §3.49
- H. Minimize Other Direct and Indirect Criminal Consequences of Conviction §3.50

## VII. CRIMINAL CONSEQUENCES OF IMMIGRATION STATUS §3.51

- 4. Immigration Detention
  - I. IMMIGRATION AND CRIMINAL DETENTION §4.1
  - II. IMMIGRATION HOLD OR DETAINER; CALIFORNIA TRUST ACT §4.2
    - A. Legal Basis for Issuing Detainers §4.3
      - 1. Officials Who Can Issue ICE Detainers §4.4
      - 2. Standard for Issuance of ICE Detainer §4.5
      - 3. ICE Policy: Offenses for Which a Detainer Should Not Issue §4.6
    - B. Lawful Duration of Detainer §4.7

- C. Remedies for Violation of 48-Hour Rule §4.8
- D. Resources on Detainers §4.9
- III. IMMIGRATION DETENTION §4.10
- IV. MANDATORY DETENTION §4.11
  - A. Noncitizens Subject to Mandatory Detention §4.12
    - 1. Effective Date §4.13
    - 2. Grounds §4.14
  - B. Constitutionality §4.15
- C. Requirement That ICE Arrest Noncitizen at Time of Release From Criminal Custody **§4.16** 
  - V. IMMIGRATION BOND PROCEDURES
    - A. Setting Bond §4.17
    - B. Bond Hearing §4.18
  - VI. CRIMINAL DETENTION OF NONCITIZENS
    - A. Bail Determinations §4.19
    - B. Jail Security Classification §4.20
  - VII. STRATEGIES FOR AVOIDING AN ICE HOLD AND DETENTION IN JAIL **§4.21** 
    - A. Avoiding or Removing an ICE Hold
      - 1. Advise Defendant to Remain Silent §4.22
      - 2. Keep Defendant Out of Custody §4.23
      - 3. Limit Information Available to ICE §4.24
      - 4. Ask ICE to Cancel Hold §4.25
        - a. Cancel Hold Imposed on U.S. Citizen §4.26
        - b. Cancel Hold Imposed on Noncitizens Who Are Not Yet Removable §4.27

- c. Cancel Hold as a Matter of Discretion §4.28
- B. Avoiding Detention Pursuant to an ICE Hold
  - 1. Research Whether TRUST Act Prohibits Detention Pursuant to ICE Hold **§4.29** 
    - a. When a Jailer May Detain Pursuant to ICE Hold §4.30
      - (1) Offenses That Permit ICE Detention Pursuant to an ICE Hold **§4.31**
      - (2) Offenses That Do Not Permit ICE Detention Pursuant to an ICE Hold §4.32
      - (3) Juveniles and the TRUST Act §4.33
      - (4) Local Policies May Provide Greater Protection Than TRUST Act §4.34
      - (5) Jailer May Exercise Discretion Despite ICE Hold §4.35
    - b. Remedies for Wrongful Detention in Jail Pursuant to ICE Hold §4.36
  - 2. Seek Immigration Bond and Defendant's Release From Criminal Custody §4.37
    - a. Release From Criminal Custody §4.38
    - b. Immigration Bond Hearing §4.39
- 3. Obtain Defendant's Release When ICE Fails to Pick Up Defendant Within 48 Hours **§4.40** 
  - 4. Advise Defendant About Voluntary Departure §4.41
- 5. Obtain a Disposition That Will Not Trigger Mandatory Immigration Detention §4.42
  - 6. Challenge the Detainer §4.43
  - C. Avoiding a Detainer After Sentencing §4.44
    - 1. Obtain Post-Conviction Relief From the Conviction §4.45
    - 2. Obtain Post-Conviction Relief From the Sentence §4.46
    - 3. Bond Defendant Out of Both Criminal and Immigration Custody §4.47
    - 4. Obtain Release if ICE Fails to Pick Up Defendant Within 48 Hours §4.48

## VIII. AVOIDING MANDATORY DETENTION §4.49

- A. Screen Defendant for Prior Criminal or Immigration History That Triggers Mandatory Detention **§4.50** 
  - B. Obtain a Disposition That Does Not Trigger Inadmissibility or Deportability §4.51
- C. Argue Defendant Was Not Taken Directly From Criminal to Immigration Custody **§4.52** 
  - D. Seek Post-Conviction Relief §4.53
  - E. Seek a Ground of Removal That Does Not Trigger Mandatory Detention §4.54
- IX. BRINGING DEFENDANT FROM IMMIGRATION CUSTODY TO CRIMINAL CUSTODY **§4.55** 
  - A. Before Trial §4.56
    - 1. Transportation Orders §4.57
    - 2. Departure Control Order §4.58
  - B. After Deportation §4.59
  - C. After Illegal Re-Entry §4.60
- X. ENTRY INTO THE UNITED STATES TO ATTEND CRIMINAL PROCEEDINGS §4.61
  - XI. IMMIGRATION DETENTION OF JUVENILES §4.62
- 5. Safe Havens for Criminal Pleas and Sentences
  - I. SAFE HAVENS §5.1
  - A. Definition of Safe Haven §5.2
    - 1. Conviction-Based Grounds of Removal §5.3
    - 2. Conduct-Based Grounds of Removal §5.4
  - B. Types of Safe Haven §5.5

- 1. Defendants Who Cannot Be Removed §5.6
- 2. Dispositions That Are Not Convictions §5.7
- 3. Convictions That Do Not Trigger Removal §5.8
- 4. Convictions That Do Not Trigger Mandatory Detention §5.9
- 5. Dispositions That Preserve Eligibility for Relief §5.10

## II. FINDING SAFE HAVENS §5.11

- A. Identifying Potential Safe Havens §5.12
  - 1. Types of Offenses §5.13
  - 2. Nexus Between Conduct and Offense of Conviction §5.14
- B. Analyzing Elements and Minimum Conduct of Conviction §5.15
- C. Confirming Conviction Is Safe §5.16
  - 1. ILRC Chart & Notes **§5.17**
  - 2. Chapters 6–13 §5.18
  - 3. Immigration Counsel §5.19
- D. Memorializing Exact Target Disposition §5.20

#### III. CONSTRUCTING SAFER DISPOSITIONS §5.21

- A. Immigration Status Identifies Priorities §5.22
- B. Burdens of Proof in Immigration Proceedings §5.23
- C. Length of Criminal Sentence Can Affect Immigration Consequences §5.24
- D. Aggravated Felonies Result in Most Severe Consequences §5.25
  - 1. Sentence-Based Aggravated Felonies §5.26
  - 2. Other Aggravated Felonies §5.27
- E. Crimes Involving Moral Turpitude (CIMT) May Result in Adverse Immigration Consequences §5.28

- 1. Deportability §5.29
- 2. Inadmissibility §5.30
- 6. Assault and Battery Offenses
  - I. ASSAULT AND BATTERY OFFENSES §6.1
  - II. IMMIGRATION CONSEQUENCES §6.2
    - A. Deportable Offenses §6.3
      - 1. Crime of Violence Aggravated Felony
        - a. "Crime of Violence" §6.4
        - b. Aggravated Felony §6.5
      - 2. Crime Involving Moral Turpitude (CIMT) §6.6
    - B. Inadmissibility §6.7
      - 1. Aggravated Felony §6.8
      - 2. Moral Turpitude §6.9
        - a. Single Moral Turpitude Conviction §6.10
        - b. Multiple Convictions With Aggregate Sentence of 5 Years **§6.11**
    - C. ICE Detention §6.12
    - D. Immigration Relief §6.13
      - 1. Permanent Residents §6.14
      - 2. Undocumented Immigrants §6.15
  - III. SAFER PLEA STRATEGIES §6.16
    - A. Defending Permanent Residents **§6.17** 
      - 1. Plead to Nonviolent Conduct §6.18
      - 2. Plead to Statute Involving Mere Negligence or Recklessness **§6.19**

	3. Obtain Sentence Under 365 Days §6	.20
	B. Defending Undocumented Immigrants	§6.21
7.	Burglary Offenses	

# I. BURGLARY OFFENSES §7.1

## II. IMMIGRATION CONSEQUENCES §7.2

- A. Aggravated Felonies §7.3
  - 1. Crime of Violence Aggravated Felony §7.4
  - 2. Burglary Aggravated Felony §7.5
  - 3. Attempted Theft Aggravated Felony §7.6
- B. Crime Involving Moral Turpitude §7.7
- C. Immigration and Customs Enforcement (ICE) Detention §7.8
  - 1. Permanent Residents §7.9
  - 2. Undocumented Immigrants §7.10
- D. Immigration Relief §7.11

## III. SAFER PLEA STRATEGIES §7.12

- A. Defending Permanent Residents §7.13
  - 1. Avoid Sentence of 365 Days §7.14
  - 2. Plead to Commercial Burglary (Pen C §§459, 460(b)) **§7.15**
  - 3. Avoid Plea to Unlawful Entry §7.16
  - 4. Plead to "Intent to Commit Larceny or Any Felony" §7.17
- B. Defending Undocumented Immigrants §7.18
  - 1. Avoid an Aggravated Felony Conviction §7.19
  - 2. Avoid Conviction of a Crime of Moral Turpitude §7.20

#### 8. Controlled Substance Offenses

#### I. CONTROLLED SUBSTANCE OFFENSES §8.1

## II. IMMIGRATION CONSEQUENCES §8.2

- A. Deportable Offenses §8.3
  - 1. Controlled Substance Offense §8.4
  - 2. Aggravated Felony Drug Trafficking §8.5
  - 3. Drug Abusers and Addicts §8.6
  - 4. Crimes Involving Moral Turpitude §8.7
- B. Offenses Causing Inadmissibility §8.8
  - 1. Controlled Substance Offense §8.9
  - 2. Crime Involving Moral Turpitude §8.10
  - 3. "Reason to Believe" Illicit Drug Trafficking **§8.11**
  - 4. Current Drug Addict or Abuser §8.12
- C. Immigration and Customs Enforcement (ICE) Detention §8.13
  - 1. Legal Permanent Residents **§8.14**
  - 2. Undocumented Immigrants §8.15
- D. Immigration Relief §8.16

#### III. SAFER PLEA STRATEGIES §8.17

- A. Defending Permanent Residents §8.18
  - 1. Avoid a Conviction §8.19
  - 2. Plead to a Non-Drug Offense **§8.20**
  - 3. Plead to an Unidentified Drug **§8.21**
  - 4. Plead to a Single Offense of Possessing 30 Grams or Less of Marijuana §8.22

- 5. Avoid an Aggravated Felony; Obtain Relief **§8.23**
- 6. Avoid Providing Evidence of Drug Abuse or Addiction **§8.24**
- B. Defending Undocumented Immigrants §8.25
  - 1. Avoid a Conviction §8.26
  - 2. Plead to a Non-Drug Offense §8.27
- 3. Plead to an Offense Involving a Specific Controlled Substance Not on Federal Schedules **§8.28** 
  - 4. Avoid an "Admission" of a Controlled Substance Offense §8.29
  - 5. Avoid "Reason to Believe" Drug Trafficking; Obtain Relief **§8.30**
  - 6. Avoid Providing Evidence of Current Drug Addiction or Abuse **§8.31**
- 9. Domestic Violence Offenses
  - I. DOMESTIC VIOLENCE OFFENSES §9.1
  - II. IMMIGRATION CONSEQUENCES §9.2
    - A. Deportable Offenses §9.3
      - 1. "Crime of Domestic Violence" §9.4
      - 2. Stalking Offenses **§9.5**
      - 3. Child Abuse Offenses **§9.6**
      - 4. Violation of a Domestic Violence Temporary Restraining Order §9.7
    - B. Aggravated Felony Crime of Violence **§9.8**
    - C. Crimes Involving Moral Turpitude (CIMT) §9.9
    - D. Immigration and Customs Enforcement (ICE) Detention §9.10
    - E. Immigration Relief §9.11
  - III. SAFER PLEA STRATEGIES **§9.12** 
    - A. Defending Permanent Residents §9.13

- 1. Avoid a Crime of Violence **§9.14**
- 2. Obtain a Sentence of Less Than 365 Days §9.15
- 3. Avoid Evidence of Protected Relationship or Age of Minor Victim §9.16
- 4. Plead to Single Act of Nonviolent Stalking **§9.17**
- 5. Avoid Conviction for Violating a Temporary Restraining Order **§9.18**
- 6. Avoid Moral Turpitude Intent to Inflict Significant Bodily Harm **§9.19**
- B. Defending Undocumented Immigrants and Deportable Permanent Residents \$9.2010. DUI Offenses
  - I. DRIVING UNDER THE INFLUENCE OFFENSES §10.1
  - II. IMMIGRATION CONSEQUENCES §10.2
    - A. Crime of Violence Aggravated Felony §10.3
    - B. Crime Involving Moral Turpitude (CIMT) §10.4
    - C. Crime Involving Controlled Substances §10.5
    - D. Inadmissibility §10.6
      - 1. Physical or Mental Disorder §10.7
      - 2. "Habitual Drunkard" §10.8
    - E. Possible Bar to Asylum or Withholding of Removal §10.9
    - F. Bar to Deferred Action for Childhood Arrivals §10.10
    - G. Immigration and Customs Enforcement (ICE) Detention §10.11

## III. SAFER PLEA STRATEGIES §10.12

- A. Permanent Residents Who Are Not Deportable
  - 1. Plead to Veh C §23152(a), (b), or (d) §10.13
  - 2. Avoid Possible Moral Turpitude Conviction §10.14

## B. Undocumented Immigrants; Deportable Permanent Residents §10.15

#### 11. Firearms Offenses

- I. FIREARMS OFFENSES §11.1
- II. IMMIGRATION CONSEQUENCES §11.2
  - A. Deportability §11.3
    - 1. Aggravated Felonies
      - a. Illicit Trafficking in Firearms §11.4
      - b. Listed Firearms Offenses §11.5
      - c. "Crime of Violence" §11.6
    - 2. Firearms Deportation Ground §11.7
    - 3. Crime of Domestic Violence or Child Abuse §11.8
    - 4. Crime Involving Moral Turpitude (CIMT) §11.9
  - B. Inadmissibility §11.10
  - C. Immigration and Customs Enforcement (ICE) Detention §11.11
  - D. Immigration Relief §11.12

#### III. SAFER PLEA STRATEGIES

- A. Defending Permanent Residents §11.13
  - 1. Plead to Nontrafficking Conduct §11.14
  - 2. Plead to Statute That Has No Federal Analogue §11.15
  - 3. Plead to Undesignated Weapon §11.16
  - 4. Plead to Statute Under Which Antique Firearms Have Been Prosecuted §11.17
  - 5. Obtain a Sentence Less Than 365 Days for a Crime of Violence §11.18
  - 6. Plead to Owning or Possessing a Firearm §11.19

- 7. Plead to a Statute With a Mental State of Negligence or Recklessness §11.20
- 8. Avoid Evidence of Protected Relationship or Victim Under Age of 18 §11.21
- B. Defending Undocumented Immigrants §11.22

## 12. Sex Offenses

- I. SEX OFFENSES §12.1
- II. IMMIGRATION CONSEQUENCES §12.2
  - A. Deportability §12.3
    - 1. Aggravated Felony §12.4
      - a. Sexual Abuse of a Minor §12.5
      - b. Rape §12.6
      - c. Crime of Violence §12.7
      - d. Prostitution Business §12.8
      - e. Child Pornography §12.9
    - 2. Child Abuse **§12.10**
    - 3. Domestic Violence §12.11
    - 4. Importing Persons for Prostitution §12.12
    - 5. Crimes Involving Moral Turpitude (CIMT) §12.13
  - B. Inadmissibility §12.14
    - 1. Prostitution **§12.15**
    - 2. Crimes Involving Moral Turpitude (CIMT) §12.16
  - C. Immigration and Customs Enforcement (ICE) Detention §12.17
  - D. Immigration Relief §12.18
- III. SAFER PLEA STRATEGIES §12.19

- A. Defending Permanent Legal Residents §12.20
  - 1. Avoid Aggravated Felony
    - a. Sexual Abuse of a Minor
      - (1) Plead to an Age-Neutral Statute §12.21
      - (2) Plead to Nonharmful Conduct §12.22
    - b. Rape §12.23
    - c. Crime of Violence
      - (1) Obtain Sentence Less Than 365 Days §12.24
      - (2) Plead to Insufficient Violence or Intent §12.25
      - (3) Plead to Consensual Sex With a Minor Age 15 or Older §12.26
  - 2. Avoid Deportable Offense
    - a. Crimes of Child Abuse §12.27
    - b. Crimes of Domestic Violence §12.28
  - 3. Avoid Crime Involving Moral Turpitude (CIMT) §12.29
- B. Defending Undocumented Immigrants §12.30
  - 1. Avoid Inadmissibility
    - a. Pattern and Practice of Prostitution §12.31
    - b. Moral Turpitude Crimes Related to Prostitution §12.32
  - 2. Avoid Aggravated Felony §12.33
- 13. Theft Offenses
  - I. THEFT, RECEIPT OF STOLEN PROPERTY, AND FRAUD OFFENSES §13.1
  - II. IMMIGRATION CONSEQUENCES §13.2
    - A. Deportability §13.3

- 1. Aggravated Felonies §13.4
  - a. Theft §13.5
  - b. Receiving Stolen Property §13.6
  - c. Fraud or Deceit §13.7
- 2. Crimes Involving Moral Turpitude (CIMT) §13.8
- B. Inadmissibility §13.9
- C. ICE Detention §13.10
- D. Immigration Relief §13.11

## III. SAFER PLEA STRATEGIES §13.12

- A. Defending Lawful Permanent Residents §13.13
  - 1. Avoid a Theft Aggravated Felony
    - a. Obtain Sentence Under 365 Days §13.14
    - b. Plead to Non-"Theft" Offense §13.15
    - c. Plead to Fraud With Loss of \$10,000 or Less **§13.16**
  - 2. Avoid a Fraud Aggravated Felony §13.17
  - 3. Avoid Moral Turpitude Conviction §13.18
- B. Defending Undocumented Immigrants §13.19
- 14. Negotiation and Entry of Plea
  - I. GOAL OF PLEA BARGAINING §14.1
  - II. FACTORS AFFECTING PLEA BARGAINING IN NONCITIZEN CASES §14.2
  - III. PREPARING FOR PLEA NEGOTIATIONS §14.3
    - A. Prosecutor's Role §14.4
    - B. Defense Counsel's Duties §14.5

- C. Defendant's Decision §14.6
- D. Court's Role §14.7

#### IV. IDENTIFYING TARGET DISPOSITION

- A. Whether to Alert Prosecution or Court to Immigration Issues §14.8
- B. Neutralizing Bias Against Noncitizens §14.9
  - 1. Construct a Safe Haven §14.10
  - 2. Criteria of Agreeable Safe Haven Dispositions §14.11
  - 3. Secure the Safe Haven §14.12
    - a. Date of Conviction §14.13
    - b. Date of Offense §14.14

## V. THE PLEA AGREEMENT

- A. Binding Effect of Plea §14.15
- B. Sentence Considerations §14.16
- C. Restitution Issues §14.17

#### VI. THE PLEA HEARING

- A. Advise Defendant of Consequences of Conviction and Disposition §14.18
- B. Prepare Defendant to Speak §14.19
  - 1. Record of Conviction §14.20
  - 2. Oral Statements and Factual Admissions of Defendant §14.21
- C. Entry of Plea **§14.22** 
  - 1. Guilty Plea **§14.23**
  - 2. No Contest Plea §14.24
  - 3. Plea Without Admission of Guilt §14.25

- 4. Not Guilty by Reason of Insanity §14.26
- 5. Slow Plea of Guilty §14.27
- 6. Dispositions Without Plea §14.28
- D. Checklist: Safe Plea §14.29
- E. Court's Advice on Possible Immigration Consequences
  - 1. Statutory Warning §14.30
    - 2. Modified Warning §14.31

## 15. Litigation

- I. GENERAL CONSIDERATIONS §15.1
- II. MOTIONS §15.2
  - A. Fourth Amendment Motion to Suppress Evidence §15.3
  - B. Fifth Amendment Motion to Suppress Statements §15.4
  - C. Selective or Discriminatory Prosecution Motion §15.5
  - D. Motion to Dismiss for Deportation of Exculpatory Witnesses §15.6
  - E. Motion to Withdraw Plea or Set Aside Prior Conviction §15.7
  - F. Motion to Reduce "Wobbler" Offense to Misdemeanor §15.8
  - G. Motion to Strike Enhancement §15.9
- III. JURY TRIAL §15.10
  - A. Jury Waiver **§15.11**
  - B. Jury Selection §15.12
  - C. Language Interpreter §15.13
  - D. Admissible Evidence §15.14
  - E. Jury Instructions §15.15

## IV. CULTURAL DEFENSE §15.16

## V. CULTURAL EXPERT §15.17

## 16. Sentencing

- I. IMMIGRATION CONSEQUENCES OF SENTENCING
- A. Four Main Areas of Concern §16.1
- B. Definition of Sentence "Imposed" §16.2
- C. Length of Sentence Imposed §16.3
- D. Actual Length of Confinement §16.4
- E. Probation or Parole Bar to Naturalization §16.5
- F. Other Consequences of Sentencing §16.6
- II. CONSIDERING Immigration Consequences AT Sentencing
  - A. The Court **§16.7**
  - B. The Prosecution §16.8
  - C. Defense Counsel §16.9
- III. MinimizING Immigration Consequences §16.10
  - A. Avoid a Conviction §16.11
  - B. Avoid Expanding Nature of Conviction §16.12
  - C. Avoid Damaging Sentencing Order §16.13
  - D. Avoid Actual Service of Sentence §16.14
  - E. Minimize Maximum Sentence §16.15
  - F. Minimize Restitution Ordered §16.16
  - G. Minimize Level of Offense §16.17
  - H. Qualify for Post-Conviction Relief §16.18

- I. Avoid Probation §16.19
- J. Avoid Immigration Detention §16.20
- K. Avoid Bars to Relief §16.21
- IV. Effects of Immigration Status on Sentence §16.22
- V. Mitigating Sentence §16.23
- VI. Special Immigration-Related Proceedings §16.24
  - A. Early Release to Removal §16.25
  - B. Prisoner Transfer Treaties §16.26
- 17. Violations of Probation and Supervised Release
  - I. IMMIGRATION EFFECTS OF PROBATION VIOLATIONS §17.1
- II. DEPORTATION FOR VIOLATION OF DOMESTIC VIOLENCE PROTECTIVE ORDER **§17.2**
- III. INADVERTENT CREATION OF AGGRAVATED FELONY CONVICTION WITH PROBATION VIOLATION §17.3
  - A. With 1-Year Sentence or More Imposed §17.4
  - B. Regardless of Sentence §17.5
  - IV. PLEA BARGAINING TO MITIGATE ADVERSE CONSEQUENCES \$17.6
    - A. Accept Custody Time on a New Offense §17.7
    - B. Accept Custody Time for Probation Violation §17.8
    - C. Waive Credits; Vacate Original Sentence §17.9
  - V. FINAL SENTENCE GOVERNS §17.10
- 18. Juvenile Proceedings
  - I. JUVENILE ADJUDICATIONS §18.1
  - II. DEFENSE STRATEGY

A.	Investigate Case and Advise Client	§18	3.2
B.	Screen for Possible Immigration Rel	ief	§18.3

# III. JUVENILE IMMIGRATION DETENTION \$18.4

## IV. PREVENTING ADVERSE IMMIGRATION CONSEQUENCES

- A. Naturalize Minor Before Eighteenth Birthday §18.5
- B. Do Not Admit Noncitizen Status §18.6
- C. Avoid Damaging Facts and Admissions §18.7
- V. JUVENILES IN ADULT COURT §18.8
- 19. Concluding the Criminal Case
  - I. DOCUMENT THE FINAL DISPOSITION §19.1
  - A. Correct the Criminal History Reports §19.2
  - B. Give Defendant Summary of Immigration Consequences §19.3
  - C. Keep the Case File §19.4
  - II. PROVIDE ADVICE CONCERNING TRAVEL §19.5
    - A. International Travel §19.6
    - B. Domestic Travel §19.7
  - III. PROVIDE ADVICE CONCERNING ILLEGAL RE-ENTRY §19.8
- 20. Post-Conviction Proceedings
  - I. POST-CONVICTION RELIEF §20.1
  - II. AVENUES TO POST-CONVICTION RELIEF
    - A. Vacating the Conviction §20.2
      - 1. Legal Invalidity §20.3
      - 2. Rehabilitation §20.4

- 3. Judicial Recommendation Against Deportation (JRAD) §20.5
- 4. Executive Pardon §20.6
- B. Vacating or Modifying the Sentence **§20.7**
- C. Reducing the Level of Offense §20.8
- D. State Rehabilitative Relief
  - 1. General Rule §20.9
  - 2. Exception for Expungements in the Interests of Justice §20.10
- 3. Ninth Circuit Exception for Federal First Offender Act (FFOA) Qualified Convictions **§20.11** 
  - a. Eligibility §20.12
  - b. Qualifying Offenses §20.13
  - c. Non-Qualifying Offenses §20.14
  - d. Multiple Simultaneously Obtained Convictions §20.15
  - e. Probation Violations §20.16
  - f. Foreign Convictions §20.17
  - 4. Risk of Removal **§20.18**

## III. STRATEGY FOR OBTAINING POST-CONVICTION RELIEF

- A. Elements **§20.19** 
  - 1. Procedural Vehicle §20.20
  - 2. Ground of Legal Invalidity §20.21
  - 3. Safe Haven **§20.22**
  - 4. Equities §20.23
- B. Timing §20.24
- C. Checklist: Post-Conviction Case Evaluation §20.25

## IV. ATTACKING CONVICTIONS §20.26

- A. Procedural Vehicles
  - 1. Motion to Withdraw Plea Under Pen C §1018 §20.27
  - 2. Direct Appeal §20.28
- 3. Habeas Corpus §20.29
- 4. Nonstatutory Motion to Vacate §20.30
- 5. Motion to Vacate Under Pen C §1016.5 **§20.31**
- 6. Coram Nobis **§20.32**
- 7. Dismissal Under Pen C §1385
  - a. Grounds for Dismissal §20.33
  - b. Who May Make the Motion §20.34
  - c. Timing of Dismissal §20.35
  - d. Immigration Effect of Dismissal §20.36
- 8. Dismissal Under Expungement Statutes §20.37
- B. Grounds for Relief
  - 1. Scope of Discussion §20.38
  - 2. Ineffective Assistance of Counsel §20.39
    - a. Failure to Advise of Actual Immigration Consequences §20.40
      - (1) Scope of Advice **§20.41**
      - (2) Retroactivity of *Padilla* §20.42
    - b. Affirmative Misadvice of Immigration Consequences §20.43
    - c. Failure to Defend Against Immigration Consequences §20.44
    - d. Failure to Mitigate Level of Offense or Sentence §20.45

- 3. Invalid Waiver of Counsel §20.46
- 4. Court's Failure to Warn of Potential Immigration Consequences §20.47
  - a. Sufficiency of Proof §20.48
  - b. Burden of Proof §20.49
  - c. Prejudice **§20.50**
  - d. Appellate Review §20.51

## V. ALTERING THE SENTENCE AND LEVEL OF OFFENSE §20.52

- A. Procedural Vehicles
  - 1. Same Vehicles Used to Attack Convictions §20.53
  - 2. Motion to Correct Void Sentence §20.54
  - 3. Correction of Sentence Under Pen C §1170 §20.55
  - 4. Motion to Shorten or Modify Probation **§20.56**
- B. Grounds for Relief
  - 1. Particular to Noncitizens §20.57
  - 2. Ineffective Assistance at Sentencing §20.58
- a. Failure to Seek Sentence of 6 Months or Less, Forfeiting Eligibility for Petty Offense Exception **§20.59**
- b. Failure to Seek Aggregate Sentences of Less Than 5 Years, Rendering Client Inadmissible **§20.60**
- c. Failure to Seek Actual Custody of 180 Days or Less, Barring Establishment of Good Moral Character **§20.61**
- d. Failure to Seek Sentence of 364 Days or Less, Resulting in Aggravated Felony **§20.62** 
  - 3. Failure to Seek Judicial Recommendation Against Deportation §20.63
  - C. Reducing Felony to Misdemeanor §20.64

#### VI. REHABILITATIVE RELIEF

- A. Effectiveness §20.65
- B. Procedural Vehicles
  - 1. No-Plea Drug Diversion Prior to January 1, 1997 **§20.66**
  - 2. Rehabilitative Relief When Plea Was Entered **§20.67** 
    - a. Deferred Entry of Judgment §20.68
    - b. Proposition 36 Drug Treatment §20.69
    - c. Expungement Under Pen C §§1203.4, 1203.4a **§20.70**
    - d. Expungement Under Pen C §1203.41 After Realignment Sentence §20.71
- C. Travel Warning §20.72

## 21. Immigration Proceedings

- I. SUBSTANTIVE IMMIGRATION LAW §21.1
- A. Deportation §21.2
  - 1. Who Is Subject to Deportation §21.3
  - 2. Grounds of Deportation §21.4
    - a. Aggravated Felony Convictions §21.5
    - b. Controlled Substances Convictions §21.6
    - c. Convictions of Crimes Involving Moral Turpitude §21.7
    - d. Firearms Convictions §21.8
    - e. Domestic Violence Convictions and TRO Violations §21.9
    - f. Other Grounds of Deportation §21.10
    - g. Alphabetical List of Aggravated Felonies §21.11
  - 3. Burden of Proof §21.12

- B. Inadmissibility §21.13
  - 1. Who May Be Inadmissible **§21.14**
  - 2. Grounds of Inadmissibility §21.15
- C. Relief in Immigration Court §21.16
  - 1. General Principles §21.17
  - 2. Uncharged Convictions §21.18
  - 3. Discretionary Decisions §21.19
- II. REMOVAL PROCEDURE §21.20
  - A. Detention **§21.21** 
    - 1. General Principles §21.22
    - 2. Mandatory Detention §21.23
  - B. Hearings in Immigration Court §21.24
    - 1. Bond Hearing **§21.25**
    - 2. Master Calendar Hearing §21.26
    - 3. Individual (Merits) Hearing §21.27
    - 4. Rulings In Absentia §21.28
    - 5. Representation by Counsel §21.29
    - 6. Burdens of Proof §21.30
      - a. Deportability §21.31
      - b. Inadmissibility §21.32
      - c. Relief **§21.33**
    - 7. Conviction-Based Grounds of Removal **§21.34** 
      - a. Conviction Under a Multi-Offense Statute §21.35

- b. Minimum-Conduct Analysis §21.36
- c. Conduct-Based Grounds of Removal §21.37
- 8. Evidence **§21.38**
- C. Appeal **§21.39**
- D. Review in Circuit Court §21.40
- E. Motions to Re-Open Removal Proceedings §21.41
  - 1. Motions to Re-Open §21.42
  - 2. Motions to Reconsider §21.43

## 22. Immigration Relief

- I. ASSESSING ELIGIBILITY FOR RELIEF §22.1
- II. DEFENDANT RELIEF QUESTIONNAIRE §22.2
- III. FORMS OF RELIEF
  - A. Acquired or Derived Citizenship §22.3
    - 1. Quick Eligibility Test §22.4
    - 2. Additional Information §22.5
  - B. Naturalized U.S. Citizenship §22.6
    - 1. Quick Eligibility Test §22.7
    - 2. Additional Information §22.8
  - C. Cancellation of Removal for Permanent Residents §22.9
    - 1. Quick Eligibility Test §22.10
    - 2. Additional Information §22.11
  - D. Section 212(c) Relief **§22.12** 
    - 1. Quick Eligibility Test §22.13

- 2. Additional Information §22.14
- E. Family Immigration and Adjustment of Status §22.15
  - 1. Quick Eligibility Test **§22.16**
  - 2. Additional Information §22.17
- F. Violence Against Women Act (VAWA) §22.18
  - 1. Quick Eligibility Test §22.19
  - 2. Additional Information §22.20
- G. Section 212(h) Waiver of Inadmissibility §22.21
  - 1. Quick Eligibility Test §22.22
  - 2. Additional Information §22.23
- H. Domestic Violence Waiver §22.24
  - 1. Quick Eligibility Test §22.25
    - 2. Additional Information §22.26
- I. Special Immigrant Juvenile Status (SIJS) §22.27
  - 1. Quick Eligibility Test §22.28
  - 2. Additional Information §22.29
- J. Deferred Action for Childhood Arrivals (DACA) §22.30
  - 1. Quick Eligibility Test §22.31
  - 2. Additional Information §22.32
- K. "Ten Year" Cancellation for Nonpermanent Residents §22.33
  - 1. Quick Eligibility Test **§22.34**
  - 2. Additional Information §22.35
- L. Suspension of Deportation §22.36

- 1. Quick Eligibility Test §22.37
- 2. Additional Information §22.38
- M. Asylum and Withholding of Removal §22.39
  - 1. Quick Eligibility Test §22.40
  - 2. Additional Information §22.41
- N. Convention Against Torture (CAT)
  - 1. Quick Eligibility Test §22.42
  - 2. Additional Information §22.43
- O. Asylee and Refugee Status §22.44
  - 1. Quick Eligibility Test §22.45
  - 2. Additional Information §22.46
- P. Temporary Protected Status (TPS) §22.47
  - 1. Quick Eligibility Test §22.48
  - 2. Additional Information §22.49
- Q. NACARA Relief §22.50
- R. Relief for HRIFA Dependents §22.51
- S. Victims of Alien Traffickers: The "T" Visa §22.52
  - 1. Quick Eligibility Test §22.53
  - 2. Additional Information §22.54
- T. Victims of Crime: The "U" Visa §22.55
  - 1. Quick Eligibility Test §22.56
  - 2. Additional Information §22.57
- U. Informants: The "S" Visa §22.58

- 1. Quick Eligibility Test §22.59
  - 2. Additional Information §22.60
- V. Amnesty Programs and Family Unity §22.61
- 1. Quick Eligibility Test
  - a. Pending Amnesty Applications §22.62
  - b. Family Unity Status §22.63
  - 2. Additional Information §22.64
- W. Registry **§22.65**
- X. Non-Immigrant Visa Waiver of Inadmissibility §22.66
- Y. Voluntary Departure §22.67
- 1. Quick Eligibility Test §22.68
- 2. Additional Information §22.69
- IV. GOOD MORAL CHARACTER (GMC) §22.70
  - A. Quick Eligibility Test §22.71
  - B. Additional Information §22.72