

DEFENDING NONCITIZENS:

Immigration Consequences of Drug Offenses

Presented by Sejal Zota

School of Government

The University of North Carolina at Chapel Hill

Drug Crimes Carry Adverse Immigration Consequences

2

- **BAD NEWS:** noncitizens can be deported for most drug crimes
- Drug trafficking & sale offenses are the worst drug crimes
- Defense counsel may be able to mitigate adverse immigration consequences in a few cases

Overview of Analysis

3

1. What is your client's particular immigration status?
2. Is there a conviction for immigration purposes?
3. Does the drug offense fall within a ground of removal?
4. What can I do to mitigate the adverse immigration consequences?



Step 1:

**What is Your Client's Particular
Immigration Status?**

Types of Immigration Status

5

- Lawful permanent resident status
- Refugee and asylee status
- Individuals with temporary status
- Individuals with no status

Lawful Permanent Resident (LPR)

6

- Live and work permanently in the US
- Green card – evidence of status
- Can apply to become a USC
- Can be deported or face other immigration consequences because of a conviction

Refugees and Asylees

7

- Admitted to the U.S. due to a threat of persecution in country of nationality
- Allowed to work in the U.S.
- Can apply to become LPR
- Can be deported or face other immigration consequences because of a conviction

Step 2:

Is there a Conviction for Immigration Purposes?

Definition of Conviction

9

- A formal judgment of guilt entered by a court;
OR
- Withholding of adjudication, where:
 - judge or jury finds noncitizen guilty; OR
 - noncitizen enters guilty plea or plea of *nolo contendere*;
OR
 - noncitizen admits sufficient facts to warrant finding of
guilt;

AND

judge orders some form of punishment, penalty, or
restraint on the noncitizen's liberty

Deferred Prosecution – is it a Conviction?

10

- Depends on structure of agreement -- is there an admission of facts and court-ordered restraints?
- If yes, probably a conviction
- If no, probably not a conviction
- Informal deferral is not a conviction

Drug Treatment Court

11

- Probably a conviction if D is required to admit facts in court or plead guilty, and sentenced to program or other conditions by court

90-96 Deferral

12

- Probably a conviction for immigration purposes

Not a Conviction for Immigration Purposes

13

- Juvenile delinquency finding
- Acquittal or finding of not guilty
- Deferral without admission of guilt
- Conviction vacated because of a legal or procedural error

Step 3:

Does the NC Offense Fall into the Drug Ground of Removal

Drug Offenses- Deportability

15

A noncitizen is deportable if convicted for any violation of law relating to a controlled substance

Drug Offenses – Covered Offenses

16

Includes:

- ❑ Misdemeanors
- ❑ Drug paraphernalia offenses

Does not include:

- ❑ One offense of simple possession of 30 grams or less of marijuana, if D has no prior drug convictions

Record of Conviction

17

- Charging document (indictment, warrant, etc.)
- Plea and plea agreement
- Verdict, judgment, and sentence
- Factual admissions by D during plea & sentence

Drug Offenses - Inadmissibility

18

- Any violation makes a noncitizen inadmissible
- Drug offenses permanently prevent noncitizens from getting a green card
 - *Only exception* -- 30 grams or less of marijuana can be waived by immigration court

Drug Trafficking—Aggravated Felony Offense

19

➤ Drug Trafficking

- Includes any sale or possession with intent to sell
- Does not include simple possession, if no prior drug convictions, except for > 5 grams of crack cocaine and any amount of flunitrazepam (date rape drug)
- May include a second simple drug possession conviction

Drug Abuse & Addiction

20

- A noncitizen is deportable if he or she has been a drug abuser or addict any time after admission

Step 4:

How can you help your client?

Hypo 1

22

- Your client is charged with possession of cocaine. She is a passenger in a vehicle owned by her boyfriend, and the cocaine is found under her seat. On the scene, your client denies any knowledge of the cocaine to the officer, but tells you she has a drug program and wants help.
- The prosecutor offers your client drug treatment court. Your client must plead guilty to the charges, and the court will sentence her to probation and drug treatment. If she completes the drug program, the guilty plea will be vacated.
- Your client is in the process of applying for a green card.
- How do you advise your client to proceed?

Hypo 2

23

- Your noncitizen client is stopped for speeding, and he is arrested for impaired driving. After a search incident to arrest, the police find a pipe. The client spontaneously states that he only smokes weed with that pipe, not crack. He blows a .06 on the intoxilyzer.
- Your client is charged with possession of drug paraphernalia and impaired driving (on the theory that he is impaired by the marijuana). The prosecutor will allow your client to plead to the drug paraphernalia charge and will dismiss the impaired driving charge.
- How do you advise your client to proceed?

Hypo 3

24

- Your client was stopped after a voluntary contact and gave consent to be searched. The police officer found rolling papers and $\frac{3}{4}$ oz of marijuana.
- The client is charged with possession of drug paraphernalia and Class 1 misdemeanor possession of marijuana. The prosecutor will let your client plead to either Class 1 misdemeanor.
- Your client doesn't have any status.
- How do you advise your client to proceed?

Hypo 4

25

- Your client is charged with sale of cocaine.
- The State alleges that your client Maria drove the co-defendant Jose to the location of the drug sale and then she and Jose drove away after the sale when the police tried to arrest Jose. Maria tells you she did not know what Jose was doing—he just asked her for a ride. However, she says that she panicked and drove away even though she knew the police were trying to stop them.
- Maria is offered attempted sale with a sentence of probation.
- Maria is an LPR (green card holder).

How do you advise Maria as to the immigration consequences?

Hypo 5

26

- Cops get an anonymous tip that a tall, black man is selling drugs at the corner of 1st and 2nd St., a high drug area. Cops arrive immediately to the area and stop your client 1 block from the sale location. Your client is from Somalia and 5'10," and he is the only person out on that block. The officers pat down your client and recover 2.5 grams of crack cocaine (12 rocks) from his jacket pocket and \$50 cash. The drugs are not individually packaged. The client is charged with possession of cocaine with intent to sell.
- Prosecutor offers probation on a plea to the charge (but offer is gone if stop and search are challenged).
- Client is a refugee and has no prior convictions.
- What if client is charged with possession of marijuana with intent to sell (for 216 g)? Would you do anything different?

Strategies to Mitigate Immigration Consequences

27

- ✓ Plead to non-drug offenses
- ✓ Arrange for a Deferred Prosecution without admission of facts or court-ordered sentence
- ✓ Plead to simple drug possession instead of sale or possession with intent
- ✓ Plead to possession of 30 grams or less of marijuana
- ✓ Plead to accessory after the fact to a drug offense

CONSULT! CONSULT! CONSULT!

28

- Use forthcoming manual
- Call/e-mail me - 919.843.8404,
szota@sog.unc.edu
- Call a reputable immigration attorney
- Call on your in-house defender with
immigration expertise (if you have one)