

Crimmigration: Best Practices in Representing Non-Citizen Clients
2019 SPD Conference Outline

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I. Introduction

- a. Goal of today's training: Not make you experts, but very least start to get you to be able to issue spot and start to recognize some of these issues and know where to go for resources

II. Why do we care about a client's immigration status: *Padilla v. Kentucky*: 559 U.S. 356 (2010)¹

- a. Who was Jose Padilla
 - i. LPR from Honduras, here more than 40 years, served in armed forces in Vietnam:
 - ii. Plead guilty to transporting a large amount of THC in Kentucky in his Semi Truck. Counsel did not advise of consequences and told him "did not have to worry about immigration status since he had been in the country for so long"
 - iii. Kentucky Court of Appeals agreed with Padilla that the bad advice amounted to ineffective assistance of counsel. Kentucky Supreme Court reversed said merely a "collateral" consequence of his conviction
- b. *Padilla* decision: SCOTUS reverses and said that constitutionally competent counsel would have advised him that his conviction for drug distribution made him subject to automatic deportation.
 - i. The Court instead emphasized that deportation is a unique and "particularly severe penalty"
 - ii. Immigration is not merely "collateral" consequence:
 - iii. Immigration consequences are a "penalty" of the conviction, subject to Sixth Amendment protection.
- c. Counsel's duty under *Padilla*: inform non-citizen clients of the risk of deportation under three circumstances:
 - i. If the law is clear and succinct (unambiguous), attorneys must advise their criminal clients that deportation will result from a conviction.
 - ii. If the immigration consequences of a conviction are unclear or uncertain, attorneys must advise that deportation may result.
 - iii. Attorneys must give their clients some advice about deportation; counsel cannot remain silent about immigration consequences.
- d. Some things are really easy to figure out in immigration law...Which is why the *Padilla* standard says when the law is "clear and succinct" a defense attorney is obligated to explain that particular immigration consequence;
 - i. For example you can look at federal code to find a list of deportable offenses, inadmissible offenses, and aggravated felonies:
 - 1. List of aggravated felonies: 8 USC § 1101(a)(43)
 - 2. List of deportable offenses: 8 USC § 1227 (2)

¹ Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1. Diligence ;SCR 20:1.4 Communication

- e. If immigration consequence is not clear – explain why and advise that it “may carry” risk of immigration consequence
- f. Wisconsin cases regarding Padilla obligations are not good enough:
 - i. *State v. Shata*, 364 Wis. 2d 63 (2015): held a defense attorney’s duty under Padilla to be the same as the court’s statutory duty under Wis. Stat. §971.08(1)(c) – both are satisfied if defendant is warned that deportation “may result”
 - ii. *State v. Ortiz-Mondragon*, 364 Wis. 2d 1 (2015): held that when the immigration consequence is not clear, a defense attorney need only convey the general and equivocal immigration warning contained in the plea questionnaire
 - iii. **Not good enough** – Doesn’t appear to be consistent with Padilla which created a 6th Amendment duty depending on whether an immigration consequence is truly clear

III. How far does counsel’s obligation under *Padilla* extend?²

- a. Not required to be immigration experts/immigration lawyers
- b. Some say duty to simply determine consequences and advise
- c. Some say, above + duty to negotiate a resolution that doesn’t result or minimizes immigration consequences
- d. When we’re talking about client -centered representation and best practices, it’s all of the above and maybe even more:
 - i. If a client is likely to go into immigration detention, encourage them to seek an immigration attorney and provide a list of immigration attorneys. Provide them with helpful information like a “know your rights” pamphlet; discuss with them the importance of creating a “safety” plan for their families.
- e. AT MINIMUM: inquire about your client’s status, research and evaluate the immigration-related consequences of their criminal case and how that affects their status and ADVISE them of those consequences.

IV. Screening³ first point of entry to start the process of properly/effectively advising a client on immigration consequences of a criminal case

- a. SPD process to identify immigration status of clients:
 - i. SPD uses 3 different documents to ensure proper screening: trying to get everyone in the state to use the same forms/same process and if your office is using a different procedure-please talk to me!
 - 1. Complete the white intake sheet, which asks if a person is a U.S. citizen, and where the person was born.
 - 2. If the client informs staff that they were not born in the U.S, then staff should then complete the Green "Confidential Intake Immigration Screening Form" to make sure that the attorney is aware that the client may not be a U.S. citizen. This should be done even if the client indicates that they are a U.S. citizen but born outside of the U.S.

² Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1 Diligence; SCR 20:1.4 Communication

³ Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1 Diligence; SCR 20:1.4 Communication; and SCR 20:1.6 Confidentiality

- a. Why? Mistakes happen. The reason that green sheet is so important is that it puts the lawyer on notice that they may be dealing a potential non-citizen and immigration issue. It's an added step of protection because it requires us to ask clients more questions about their immigration status by asking whether they are a (1) U.S. citizen; (2) lawful permanent resident; (3) refugee or granted asylum; (4) entered with a permission (visa); or (5) undocumented
 - 3. Private bar warning form
 - ii. These documents are the starting point; not the end point
 - 1. None of the documents are a substitute for an attorney doing due diligence and having conversations with client about immigration status
- b. How to get more detailed information from clients
 - i. It can be uncomfortable to ask clients where they were born and what their immigration status is so early in a relationship when we are trying to establish trust with a new client.
 - ii. But the only way we can help them avoid potentially devastating immigration consequences **is if we ask the right questions, early, often, and consistently**. A client may be reluctant to share that information with you. That is understandable. Remind them that the information is confidential; remind them that you are there to help, not hurt them; and that as their lawyer (or law firm) it is critical that they share this information with you so we can make sure that we properly identify any issues that could affect their immigration status and ability to remain in the U.S.; remind them that criminal convictions can impact a person's ability to remain in the U.S. And if they won't answer those questions, and then do a green sheet because you don't know the status and note that the client did not want to answer those questions, a strong indicator that the client may not be a US citizen.
 - iii. Sometimes our client's don't know their status **it's best to start out by simply asking where the client was born**. If the client indicates they were not born in the U.S. then can ask more specific follow up questions such as: (1) when did you come to the U.S.?; (2) did you come with any type of formal documentation like a visa, or a permanent resident card (green card)?; (3) when you came to the U.S. were you ever detained by an immigration official?; (4) when you came to the U.S., did you have any paperwork or permission to come to U.S. (if yes, what type)?; (5) what is your parent's status?; (6) when did you become a U.S. citizen, and where did you complete the ceremony/oath to become a citizen and describe what that ceremony was like ; (7) have you ever had to complete documentation to get a work permit?; (8) did you leave your country due to some kind of dangerous/scary situation?; (9) have you ever left the U.S. since you initially arrived and were detained by immigration officials at the airport upon your return; (10) do you have a social security number?; and (11) how did you enter the U.S., i.e., mode of transportation

1. Whenever there is any doubt about a person's citizenship status, err on the side of caution, and complete a green sheet, and note any relevant information on the green sheet.
- iv. **Cultural competence:** Be mindful of the language you use that could alienate a non- citizen client.
 1. “illegal alien” “illegal” v. “Undocumented” “Entered without Inspection”
 - a. Understand that a minor offense may cause high levels of anxiety
- c. Different types of status:
 - i. Immigrant-intent to remain permanently like a lawful permanent resident
 1. Examples:
 - a. family based or employment based permanent residency petitions
 2. Example: Refugees and asylees
 - a. The difference between asylees and refugees is largely procedural. A person who requests asylum in the United States is called an asylee. A person who requests protection while still overseas, and then is given permission to enter the U.S. as a refugee, is naturally called a refugee.
 3. Permanent residency only path to citizenship =indefinite permission to remain. Ineligible for public benefits for a certain period of time/ don't ability to vote) can be deported/found inadmissible regardless of how much time they've been in the U.S.A.
 - ii. Nonimmigrant-no intent to remain permanently in US:
 1. Examples:
 - a. Tourists, students, temporary types of employment visas
 - b. Temporary protected status (TPS) :immigrants in the U.S. who cannot return to their country of origin due to ongoing armed conflict, natural disaster, or other extraordinary reasons:
 - i. Syrians: just extended
 - ii. Administration terminated TPS for El Salvador, Haiti, Nicaragua, and Sudan (but law suit put termination on hold)
 2. Usually can't work unless it's an employment based visa
 - a. Exception: TPS holders
 3. Doesn't path to permanent residency
 - iii. Deferred Action for Childhood Arrivals (DACA) allowed some individuals with unlawful presence in the U.S. after being brought to the country as children to receive a renewable two-year period of deferred action from deportation and become eligible for a work permit
 1. DACA IS OVER. Administration ended it.
 2. Courts halted the end of the program;

3. Current status: no new applicants accepted but renewals must still be accepted
 4. Discuss what it is and status of it.
- iv. Child Citizenship Act of 2000: Guess what, your client may already be a citizen!
1. The child has at least one parent, including an adoptive parent who is a U.S. citizen by birth or through naturalization;
 2. The child is under 18 years of age;
 3. The child is a lawful permanent resident (LPR); and
 4. The child is residing in the United States in the legal and physical custody of the U.S. citizen parent

V. Now that we know the client's status we can start working on evaluating consequences⁴

- a. Have to identify the client's goal
 - i. Avoid deportation, path to citizenship or some other legal status, get out of jail, immigration consequences not a priority or desire to be deported, or maybe the priority is to get deported.
 1. For everyone, it's different
 - ii. Some want to avoid jail and don't care about immigration consequences
 1. You're still required to advise them and document that you did advise...but if they know the consequences and want to resolve with a conviction that triggers them. That's their choice

VI. Effect of Prior record in determining immigration consequences⁵

- a. Some consequences are only triggered if there is a prior qualifying conviction:
 - i. Lawful permanent resident deportable for 2 or more crime of moral turpitude any time after admission
- b. Some consequences are triggered based on length of prior sentence:
 - i. Certain aggravated felonies triggered when 365 days or more of imprisonment imposed
 - ii. Sentence of 180 days or more cumulative for any type of conviction means no "good moral character" for cancellation of removal defense
- c. Definition of Conviction " A finding of guilty or admission of sufficient facts, AND " the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. 8 U.S.C. § 1101(a)(48)
 - i. Expunged conviction = conviction
 - ii. deferred prosecution agreement=conviction
 - iii. drug court = conviction
 - iv. Civil (municipal) ordinance violations ≠ conviction
 - v. juvenile delinquency=Not considered a conviction BUT WATCH OUT FOR JUVENILE ISSUES:
 1. some grounds of deportability or inadmissibility are not triggered by convictions but by conduct:

⁴ Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1 Diligence; SCR 20:1.4 Communication; and SCR 20:1.6 Confidentiality

⁵ Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1 Diligence; and SCR 20:1.6 Confidentiality

- a. reason to believe known drug trafficker 8 USC 1182(a)(2)(C):
- b. impact: permanently inadmissible
 - i. Example: client is charged with possession with intent to distribute marijuana, police reports include description of scales, multiple phones, cash, and other indicia of “intent to deliver.” Ultimately charge reduced to non-criminal marijuana possession ticket. Still a danger that permanently inadmissible for being a drug trafficker
- d. Other conduct based grounds of inadmissibility:
 - i. Being a habitual drunkard constitutes a statutory bar to showing Good Moral Character under INA § 101(f) (1). Multiple OWI convictions can contribute to finding a noncitizen is a habitual drunkard. Good moral character is a prerequisite to obtaining many different immigration
 - 1. **RECENT UPDATE:** Matter of CASTILLO-PEREZ (27 I&N Dec. 664 (A.G. 2019): 2 or more OWI conviction is a presumptive bar to “good moral character”
 - ii. OWI convictions can contribute to a finding of inadmissibility based on a physical or mental disorder – alcoholism – if it has caused a threat to the property, safety, or welfare of the alien or others under INA § 212(a)(1)(A)(iii).
 - iii. Drug Abuse or Addiction: Repeated drug findings, finding of abuse (more than one time experimentation in the last year), addiction to drugs
 - 1. Impact: deportable and inadmissible
- e. Prior sentences: Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part. 8 U.S.C. § 1101(a)(48)(B):
 - i. Includes: imposed/stayed sentences
 - ii. Example: 9 months jail, stayed for 1 year probation: 30 days jail as a condition of probation: sentence for immigration purposes is 9 months

VII. Three main consequences non-citizen clients generally want to avoid⁶

- a. Deportable (8 USC 1227): person can lose status they have
 - i. A non-citizen who is convicted of an offense that makes him/her deportable can lose whatever lawful status he/she may already have and be “removed”
 - ii. Generally people with a lawful status are concerned with avoiding criminal grounds of removal and inadmissibility
- b. Inadmissible (8 USC 1182) A non-citizen who is inadmissible for crimes may be barred from getting new lawful status, admission or re-admission in the U.S., relief from removal

⁶ Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1 Diligence; SCR 20:1.4 Communication; and SCR 20:1.6 Confidentiality

- i. Generally, people without a status want to preserve admissibility because they are deportable simply by lacking a status.
- ii. Example: undocumented immigrant convicted of a crime that makes them inadmissible. The consequence is that they may not be able to obtain a lawful status in the future Deportable/removal
- iii. Example: LPR seeks to re-enter U.S. after having been convicted of an inadmissible offense and is denied re-entry due to conviction triggering inadmissibility
- iv. Conviction of two or more offenses of any type + aggregate prison sentence of 5 years =inadmissible
- c. Lack of good moral character for Naturalization (INA 316(e); 8 CFR 316.10)
 - i. Good moral character “means character which measures up to the standards of average citizens of the community in which the applicant resides”
 - ii. Person who wants to naturalize must establish good moral character for the 5 years preceding the naturalization petition
 - iii. Permanent bars on lack of good moral character:
 - 1. Murder
 - 2. Aggravated felony convictions
 - iv. Conditional bars on good moral character during look back period
 - 1. Confinement in jail for an aggregate of 180 days or more
 - 2. One or more CIMT
 - 3. Aggregate sentence of 5 years or more
 - 4. Controlled substance violations (exception simple possession THC 30 grams or less)

VIII. Types of offenses that trigger consequences⁷

- a. **Crimes of moral turpitude: (CIMT)**
 - i. Defined through case law
 - ii. Typically depraved or immoral act and with a mens rea of at least recklessness
 - 1. Examples Intentional or Reckless Physical Abuse of a Child §948.03(3) – felony CIMT, theft offenses, fraud offenses, drug offenses
 - iii. LPR deportable for one felony level CIMT conviction committed within 5 years of admission; or two or more CIMT convictions of any kind any time after admission
One CIMT conviction of any kind makes a non-citizen inadmissible unless it falls under the petty offense exception: max possible sentence one year or less imprisonment + actual sentence is 6 months or less
 - 1. Can only be claimed
- b. **Offense-specific grounds of deportation**
 - i. Controlled substance violations-INA § 237(a)(2)(B)(i)
 - ii. Firearms: convictions that include firearms as an element of the offense-INA § 237(a)(2)(C)
 - iii. Domestic violence convictions-INA § 237(a)(2)(E)

⁷ Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1 Diligence; SCR 20:1.4 Communication

- iv. Conviction for crimes against children-INA § 237(a)(2)(E)
- v. Conviction for stalking or violation of protective order-INA § 237(a)(2)(E)
- c. Aggravated felonies 8 U.S.C. § 1101(a)(43)
 - i. Death sentence of immigration consequences
 - 1. Almost certain deportation for many non-citizens
 - 2. Permanent inadmissibility and bar to returning to the U.S.
 - 3. Bar to many forms of relief from deportation such as cancellation of removal
 - 4. Mandatory detention and subject to expedited removal; less due process protections during immigration proceedings
 - 5. Increased sentence enhancements in illegal reentry prosecutions under 8 U.S.C. 1326
 - ii. Non exhaustive list
 - 1. AN AGGRAVATED FELONY CAN BE A MISDEMEANOR – i.e. misdemeanor possession of cocaine
 - 2. Murder, rape, or sexual abuse of a minor;
 - 3. Controlled substance offenses
 - 4. Firearms, destructive devices, or explosive materials related offenses
 - 5. Crimes related to money laundering, forgery, counterfeiting, etc.
 - 6. Theft or burglary which the term of imprisonment at least one year
 - 7. Fraud or deceit in which the loss to the AV exceeds \$10,000
 - 8. Child porn
 - 9. Prostitution related offenses
 - 10. Failure to appear to serve a sentence when underlying offense is punishable by imprisonment for a term of 5 years or more (BAIL JUMPING)
 - 11. Crime of Violence: 18 U.S.C § 16 (a) an offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another + 1 year or more of imprisonment imposed

IX. How to determine if a crime is a CIMT or a deportable offense: Categorical v. Modified –Categorical Approach ⁸

- a. Traditional Categorical Approach: analysis only focuses on the elements of the offense, NOT the specific facts underlying the conviction. Focus on minimum conduct necessary to violate the statute/ if the generic definition of the crime in the removal ground (i.e. inadmissible or deportable) does not match the elements of the offense, then a conviction does not trigger removal ground. Generic definition= often federal definitions
- b. Modified-Categorical Approach: court can examine the underlying factual record
 - i. An immigration judge is permitted to go beyond the elements of the offense and examine the record of conviction (e.g. the Information, Complaint, or Plea Colloquy) to determine whether there is an immigration consequence.

⁸ Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1 Diligence; SCR 20:1.4 Communication

- c. Recent developments: *Mathis v. United States* 579 U.S. ____ (2016) court strongly reaffirmed the application of a strict, elements-based categorical approach for determining when a prior conviction will trigger adverse sentencing or immigration consequences. Court also clarified the limited circumstances in which a criminal statute is deemed “divisible” and subject to a modified categorical approach,
 - i. Example Carry Concealed Weapon, Wis. Stat. 941.23
 - 1. Old Law= Deportable Firearms Offense Because Modified Categorical Approach Permitted To Determine If ‘Dangerous Weapon’ Is Firearm. See *Matter of Madrigal*, 21 I&N Dec. 323 (BIA 1996) (modified categorical approach is permitted to determine if conviction for possession of a weapon was a firearm. Because respondent admitted weapon was a firearm during plea colloquy, respondent is deportable for firearms offense).
 - 2. New Interpretation= ‘Dangerous Weapon’ is ‘indivisible’, weapon is vague and can refer to a lot of different things not just a firearm, thus should not be categorically a deportable firearms offense.

X. Negotiations :Immigration safe v. non safe⁹

- a. Safe:
 - i. Traffic - OWL’s, OAR’s, OWI’s
 - 1. Potential Impact - Holds, Length of Sentence
 - ii. Disorderly Conduct
 - iii. Ordinance convictions
 - iv. Negligent offenses (b/c not CIMTS)
 - v. Juvenile adjudications
- b. Unsafe:
 - i. Offenses with the Domestic Abuse modifier
 - ii. Drugs and firearm offenses
 - iii. CIMT convictions (unless petty offense or for an LPR that only has 1 felony 5 years after admission)
 - iv. Aggravated Felony - Homicide, Sexual Assault, Offenses Involving Children
 - v. Drug court and deferred prosecution agreements
- c. Negotiation strategies:
 - i. “Why should I treat your client differently?”
 - 1. We are always asking prosecutors to take into consideration individual circumstances of our client that mitigate conduct. Immigration status just one piece of this
 - 2. But there is a key difference: citizens conviction of most offenses (short of homicide offense) do not risk permanent separation for their loved ones
 - 3. Emphasize that minor offense can have more lifelong consequences of non-citizen clients

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4. With client's permission, consider seeking a jail sentence if it means avoiding a certain type of conviction
 5. Emphasize what would deportation look like to your client
 - a. Research country conditions, get good family background to explain: Hardship, Personal Safety Concerns, Lack of Infrastructure, services, Conflict, Fear of Persecution
 6. Remind prosecutors of their ethical duty to not just seek convictions but to do justice
 - a. Get input from victims who may be non-citizens too to see how they would feel if their non-citizen defendant (sometimes a loved one) were to be convicted and deported
- d. Sentencing considerations:
- i. What if the Judge asks my client's immigration status in open court? And Can the Judge consider my client's status when making a sentencing decision?
 1. State v. Leopoldo R. Salas Gayton, 2016 WI 58 Circuit Court - The fact that Gayton was an illegal alien "It goes to character. It's a minor character flaw very honestly." COA affirmed consideration of immigration status, not an erroneous exercise of discretion. SCOW affirmed.
 2. Many non-Wisconsin cases holding that a court may not consider immigration status at sentencing "do not absolutely foreclose consideration of unlawful conduct related to immigration." ¶32. Yemson v. U.S., 764 A.2d 816, 819 (D.C. 2001); U.S. v. Gomez, 797 F.2d 417, 419 (7th Cir. 1986); U.S. v. Leung, 40 F.3d 577, 586-87 (2d Cir. 1994). Ditto re sentencing a defendant more harshly because of his "illegal immigrant" status. See e.g. State v. Mendoza, 638 N.W.2d 480, 484 (Minn. Ct. App. 2002); Martinez v. State, 961 P.2d 143, 145 (Nec. 1998); State v. Zavala-Ramos, 840 P.2d 1314, 1316 (Or. Ct. App. 1992). Non-citizen in the United States unlawfully still has due process protections. Plyer v. Doe, 457 U.S. 202, 210 (1982). ¶51. And punishing a person based on his status is constitutionally prohibited. Robinson v. California, 370 U.S. 660, 665-667 (1962) (status of being addicted to narcotics).
 - ii. Likelihood of deportation can mitigate a sentence
 1. Crimes of violence
 2. Crimes involving children
 3. Drug offenses
- e. ALWAYS obtain your client's permission before argument in open court and disclosing immigration status to prosecutor or court.

XI. Defenses to removal/statuses your client may qualify for

- a. Cancellation of removal for LPR INA § 240A(a) & 8 U.S.C. § 1229b "The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien –

- i. Has been an alien lawfully admitted for permanent residence for not less than 5 years;
 - ii. Has resided in the United States continuously for 7 years after having been admitted in any status, and
 - iii. Has not been convicted of any aggravated felony.
- b. Cancellation of removal for Non-LPR: INA § 240A(a)(b) & 8 U.S.C. § 1229b(b)
 - i. have lived in the United States for 10 years or more;
 - ii. can show that you have “good moral character;
 - iii. have a spouse, parent or child (under age 21) who is legal permanent residents or U.S. citizen; and
 - iv. Can show that a member of your family will suffer “exceptional” and “extremely unusual” hardship.
- c. U visa: if obtained, includes a path to permanent residency
 - i. The noncitizen was the victim of a qualifying crime, and suffered substantial physical or mental abuse as a result of the crime.
 - ii. The noncitizen (or in the case of a noncitizen child under the age of 16, the parent or guardian) possesses information concerning the crime and has been, is being, or is likely to be helpful in the investigation or prosecution of the crime.
 - iii. The federal, state, or local law enforcement authority (includes a Child Protective Service (CPS) agency if it has criminal investigative jurisdiction) has signed a specific form certifying the noncitizen’s helpfulness in the investigation or prosecution of the crime.
 - iv. The criminal activity violated the laws of the United States.
 - v. The noncitizen is admissible, or any applicable inadmissibility grounds are waived.
 - vi. BUT: U visa law only permits 10,000 U visas to be issued per year. The number of U visa petitions has outpaced this limit for many years, creating a long backlog (multiple years). However, once individuals are added to the U visa wait-list, they are eligible for employment authorization.
- d. T Visa: The noncitizen must have been the victim of a severe form of human trafficking. Work permit/and path to permanent residency
 - i. Severe form of trafficking requirement may be proven by a certification by law enforcement, evidence that immigration authorities have arranged for the individual’s continued presence in the United States as a victim of trafficking, or any other evidence.
 - ii. The noncitizen is physically present in the United States or at a port of entry on account of the trafficking.
 - iii. The noncitizen must have complied with any reasonable request for assistance in the investigation or prosecution of the trafficking (exceptions for age and trauma)
 - iv. The noncitizen would suffer extreme hardship involving unusual and severe harm if removed.
 - v. The noncitizen is admissible, or any applicable inadmissibility grounds are waived

XII. Relevant Updates¹⁰

- a. Immigration law is in a state of flux. While the immigration code (INA) remains intact and changes can only be made through the legislative process, administration is taking executive action to scale back the rights of non-citizens in immigration proceedings, to broaden enforcement priorities, and to reduce the flow of non-citizens to U.S.
 - i. End of DACA
 - ii. Placing denied U-visa applicants in removal
 - iii. Removing TPS protections
 - iv. Adding regulations to narrow admissibility:
 1. Public charge rule
 2. Requiring people to have enough money to obtain private health insurance as a condition of admissibility
 - v. Forcing asylum seekers to remain in Mexico
 1. Narrowing definitions of persecution
 - vi. Broadening grounds that would lead to lack of good moral character (OWI example)
- b. Enforcement Priorities - Obama Era Rescinded moved from Narrow Approach to Very Broad Approach: new priorities
 - i. Have been convicted of any criminal offense;
 - ii. Have been charged with any criminal offense that has not been resolved;
 - iii. Have committed acts which constitute a chargeable criminal offense;
 - iv. Have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency;
 - v. Have abused any program related to receipt of public benefits;
 - vi. Are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or
 - vii. In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

¹⁰ Rules of Professional Conduct: SCR 20:1.1 Competence; SCR 20:1 Diligence; SCR 20:1.4 Communication