

Louisiana State Bar Association



*Diversity and Inclusion:
Moving From “A Foot in the Door” to “A Voice at the Table”*

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Immigration Law and Louisiana

What you can do!

What are the current challenges facing both foreign nationals and immigration practitioners in Louisiana?

What are some of the pro bono opportunities available for those who want to help?

Immigration Law Ethics

How is it different?

What constitutes an attorney/client relationship for an immigration matters?

- Similar to all state laws on creating a relationship
- Federal law considerations
- Language and cultural considerations

What is dual representation for an immigration filing?

- Family based immigration filing
- Employment based immigration filing
- Removal / Criminal proceedings

Immigration Law Ethics

Family based immigration

What are some of the most common challenges?

What can an attorney do to protect him/herself?

Immigration Law Ethics

Employment Based

What are some of the most common challenges?

- Employee wanting to leave an employer
- Employers considering adverse employment actions

What can an attorney do to protect him/herself?

- Limited retainer agreements
- Educating foreign nationals on meaning of dual representation

Immigration Law Ethics

Employment Based

What are some of the most specific challenges?

- Mergers and Acquisitions
- Immigration and Customs Enforcement – I-9 audits

ICE

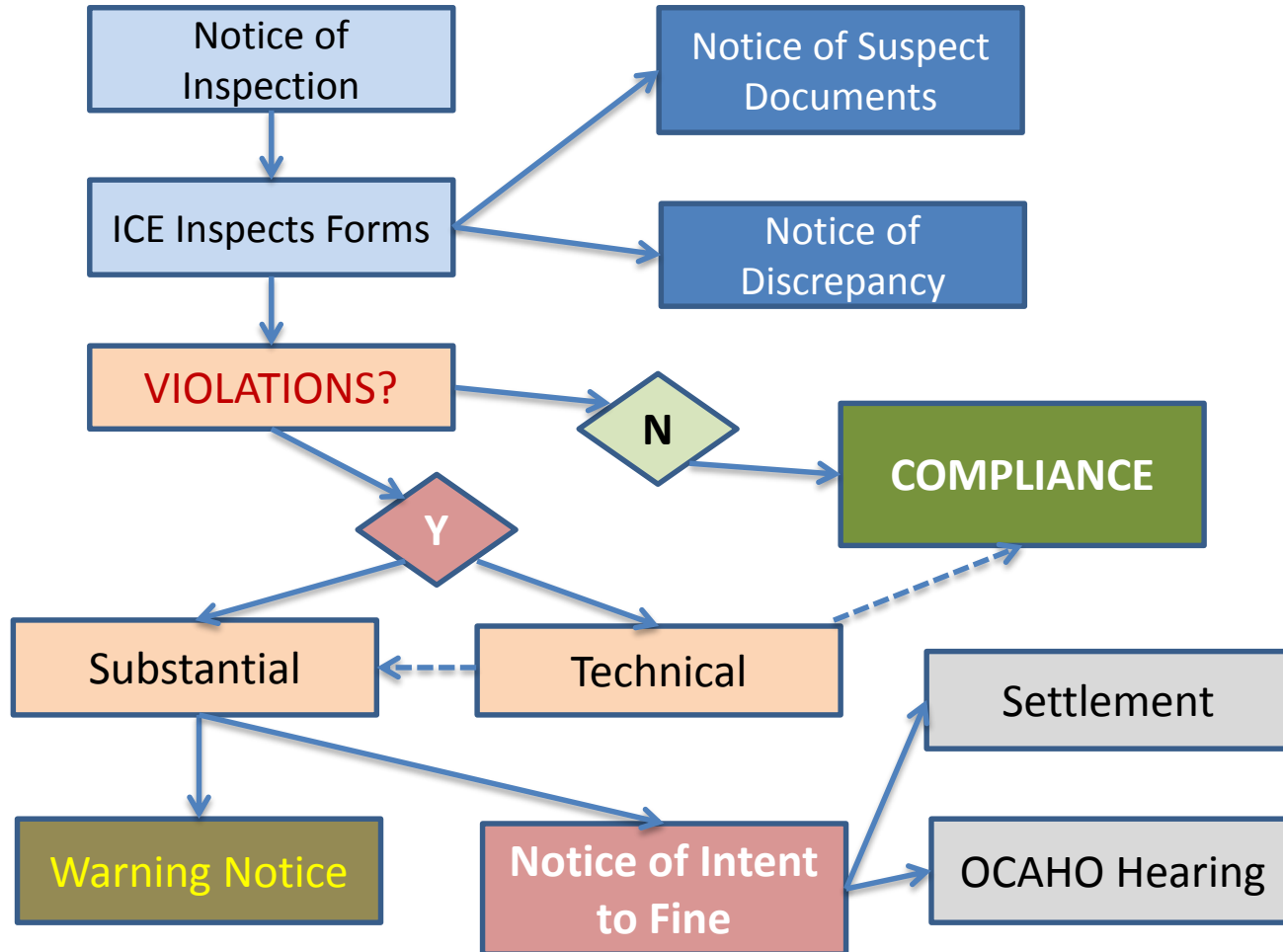
Notice of Inspection Procedure

What can you expect when you are visited by ICE?

- 1st and foremost, ICE is looking towards criminal prosecution:
 - e.g. human trafficking, harboring of illegal aliens
- For most employers, it is about I-9s and record keeping
 - Authority: INA Sec. 274a.2
- Step 1: Issuance of Notice of Inspection by ICE.
- Step 2: Employer has 3 days to all requested Forms I-9.
- Step 3: ICE reviews and employers are given 10 days to correct technical and/or procedural violations.

ICE

The Inspection Process – Trail Map



ICE

Employing Undocumented Workers

Actual v. Constructive Knowledge:

- Actual knowledge –
 - An employee provides really bad documents for I-9 verification.
 - An employee tells the employer of lack of status.
 - After date of hire, employee asks for assistance in obtaining an immigration benefit.
- Constructive knowledge –
 - Willful blindness.
 - Contractors on average making less than minimum wage (Walmart case).
 - Verifiable tips from multiple sources.

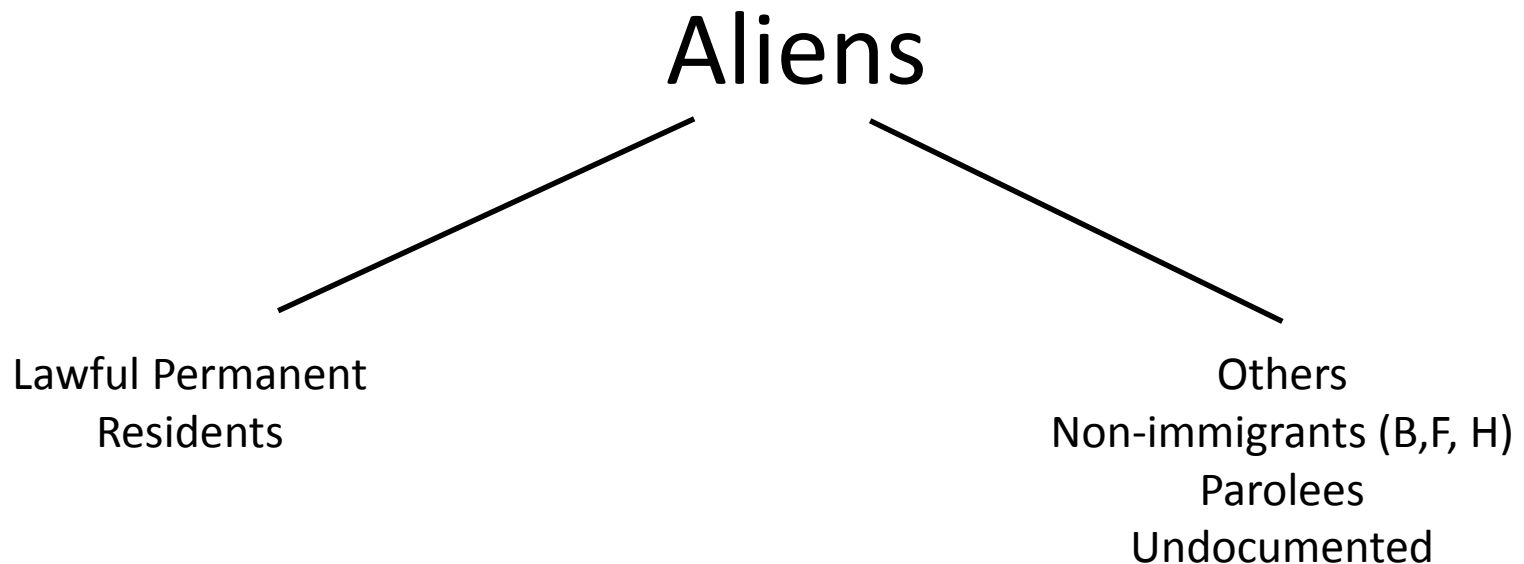
New Moguls on the Trail

New Identity, New Issues

- **Under the executive action, there will be potentially 5 million new workers with status.**
 - ***What to do about Form I-9?***
 - According to USCIS regulation and confirmed by the OSC, if an employee provides evidence of new status and a new identity, you should complete Form I-9 anew with the new documentation.
 - Termination and rejection of the new documents can lead to discrimination claims.
 - ***What to do about misrepresentation?***
 - What does an employer do when part of its job application process calls for termination if the employee misrepresented in the past?
 - Can a reverse discrimination claim be brought by US workers fired under this provision if foreign nationals with new identifies are allowed to remain employed?

Who Can Be Deported & Why, cont.

- We can also divide non-citizens who are present in the U.S. into two (2) specific categories:



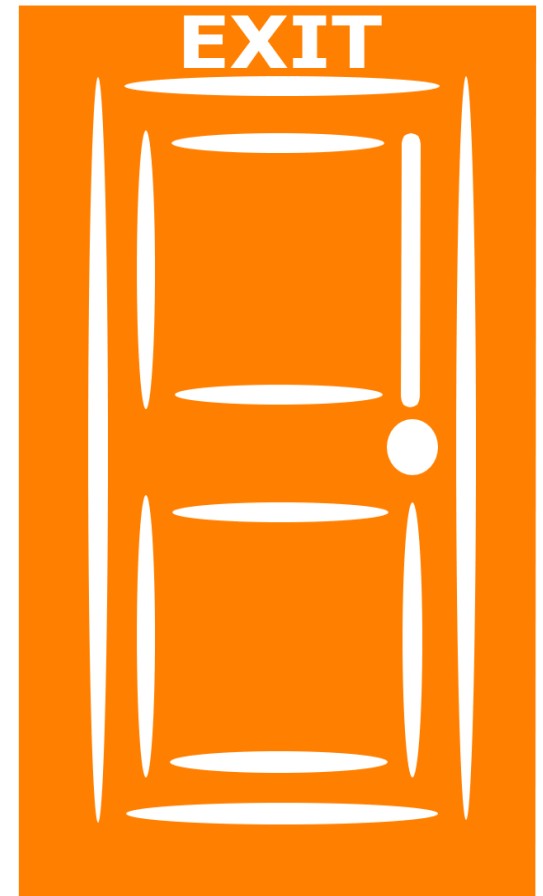
INADMISSIBLE (INS§ 212)



- ← Health Grounds
- ← Criminal Grounds
- ← Security Grounds
- ← Public Charge Grounds
- ← Lack of Labor Certification
- ← Past Immigration Violations
- ← Lack of proper documents
- ← Ineligibility for Citizenship
- ← Previous removal
- ← Miscellaneous grounds

REMOVABLE (INA § 237)

- Violation of Immigration Status →
- Commission of Criminal Offense →
- Falsification of documents →
- Security grounds →
- Public charge →
- Unlawful voting →



Consequences of the Definition of Conviction

- Deferred Adjudication is a Conviction:
 - After 1996, when a new definition of conviction as it is found in the INA § 101(a)(48) was introduced, deferred adjudication in Texas will not save the alien from possible inadmissibility or removability charge based on offense committed. In fact this new definition is applied **retroactively!** See *Moosa v. INS*, 171 F.3d 994 (5th Cir. 1999).
- Probation Means Nothing in Immigration Court if Tied to Suspended Sentence
 - It makes no difference if any or even all of the alien's sentence of imprisonment is suspended in lieu of probation. A sentence of one (1) year is considered a sentence of one (1) year, even if the alien never actually served a day in jail.

Sentence May Play a Role but Not Always

- 364 v. 365 Days:
 - Some misdemeanor offenses turn into “aggravated felony” under the INA if sentence imposed is one year. In Texas, maximum sentence for a Class A Misdemeanor is one year. *See* Tex. Penal Code § 12.22.
- Sometimes Jail Time is Better than Probation:
 - If individual is sentenced to a total of 2 years, inadmissibility under the INA §212(a)(2)(B) kicks in, even if crimes in question are not CIMTs or aggravated felonies. It might be worth negotiating a shorter jail time, than a longer probation period, so as to avoid immigration consequences, e.g., so it might be worth taking 30 days jail time instead of 2 yrs. probation.

Sentence, cont.

- Deferred Adjudication is a Conviction But It Imposes No Sentence:
 - There is no mention of a “term of imprisonment” anywhere in the language of the Code. TEX. CODE OF CRIM. P. Art. 42.12, §5(b).
 - The Court may defer adjudication of guilt and place the defendant on probation for a period of up to two (2) years for any misdemeanor, and up to ten (10) years for any felony.
 - But this is NOT a pronouncement of a sentence, since it can come only AFTER an adjudication of guilt, so deferred adjudication can be helpful.

A Word on Effective Assistance

- The U.S. Supreme Court in its decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010), found that the Sixth Amendment of the U.S. Constitution imposes a constitutional duty on attorneys representing noncitizen criminal defendants to advise their clients about the potential removal consequences arising from a guilty plea.
- In a later decision in *Chaidez v. United States*, 568 U.S. ____ (2013), the Supreme Court clarified that decision in *Padilla* announced a “new” rule and therefore is not retroactive.
- The State of Texas concluded the same thing. *See Ex parte De Los Reyes*, 350 S.W.3d 723 (Tex. App.—El Paso 2011), joining about 30 other states.
- In sum: *Padilla* rule applies to all criminal pleas after 03/31/2010.

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A world map is centered in the background, rendered in a dark blue color against a lighter blue gradient. Sunburst rays emanate from behind the map, creating a sense of global reach and illumination.

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