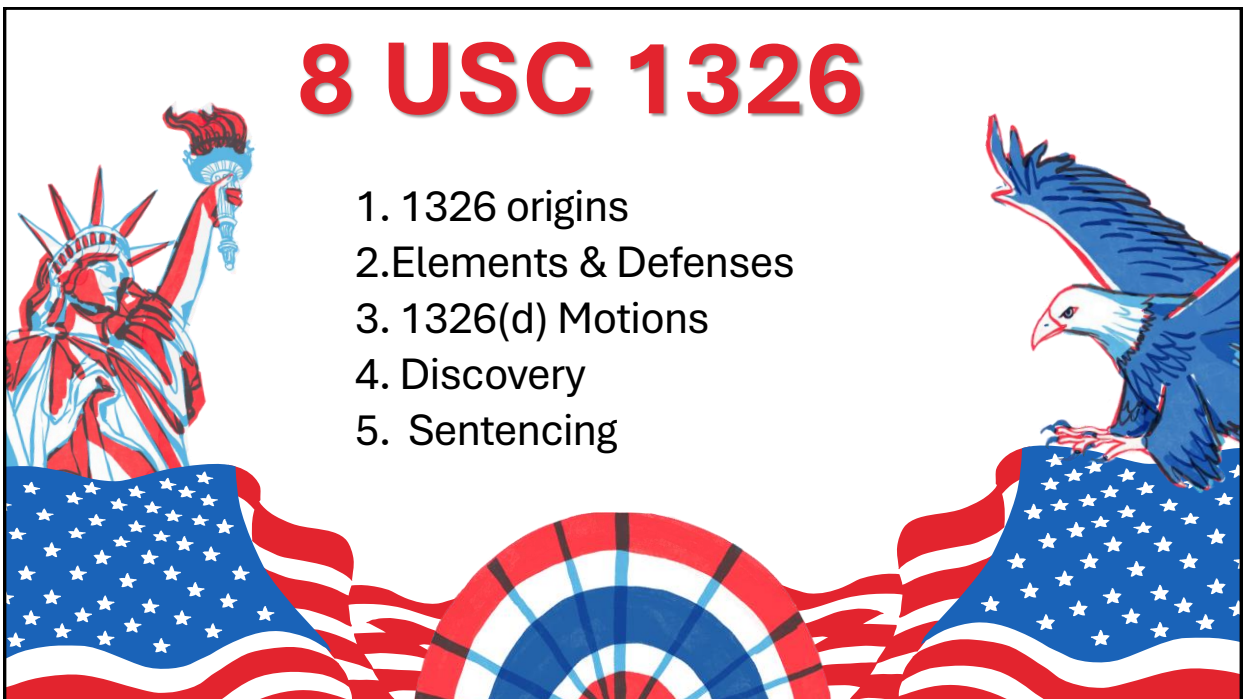


Sara Peloquin & Bridget Kennedy

May 15, 2025

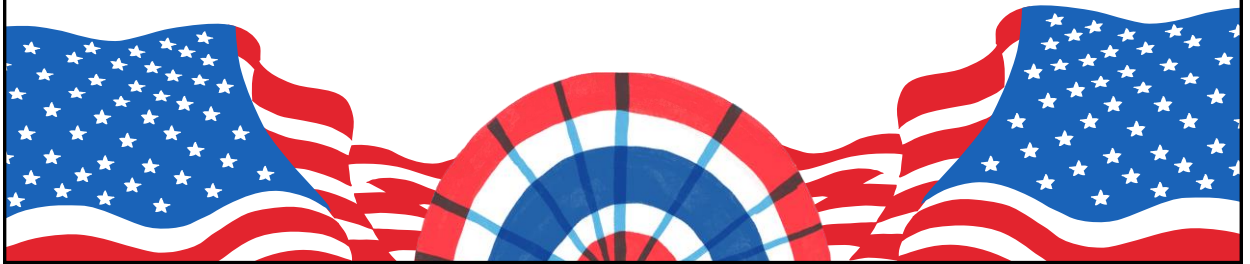


1



2

1326's Origins



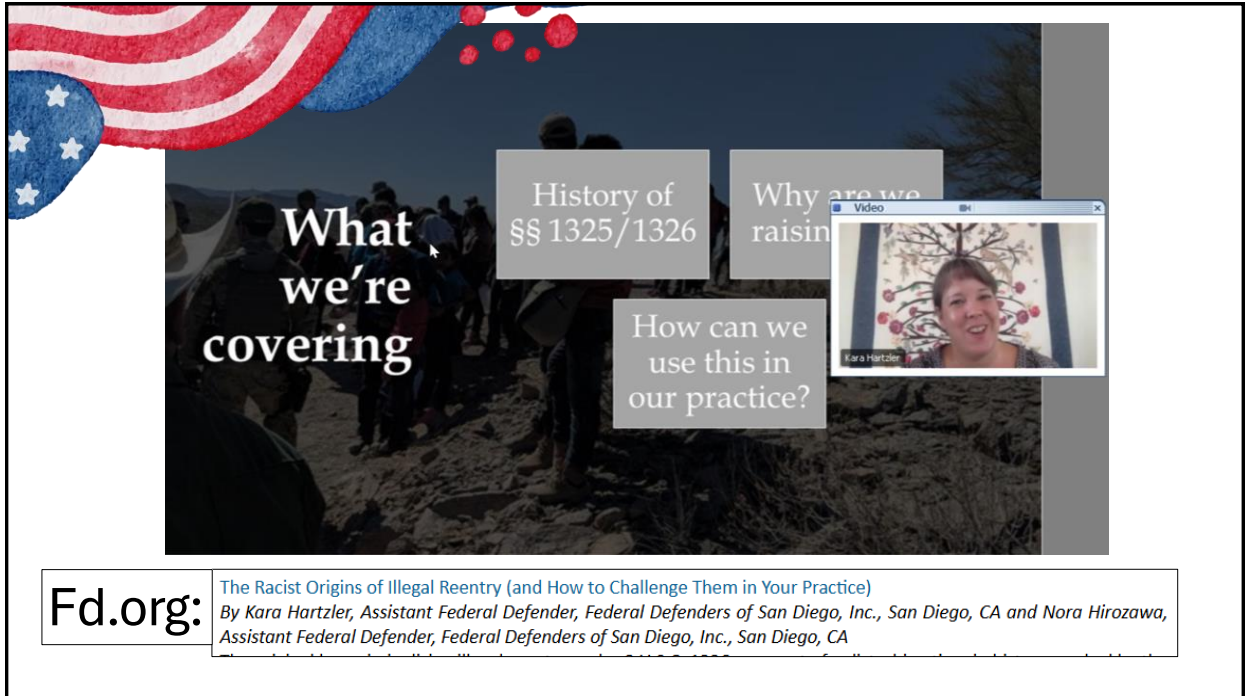
3

Which of the following were recorded motivations for passing the first version of 8 USC 1326 in 1929, making it a crime to enter the country without permission?

- A. The eugenics movement and the desire to purge the United States of the “biological problem” of Latin American bloodlines
- B. Concern that immigrants from Mexico were a “mongrel” race with mixed Spanish, Native, and African ancestry, who would encourage further racial mixing
- C. The desire to encourage immigration of more white people from Europe to provide “sound human stock” for the future of the country
- D. All of the above, and many more really racist things

Eric S. Fish, Race, History, and Immigration Crimes, 107 Iowa L. R. 1051 (March 2022)

4



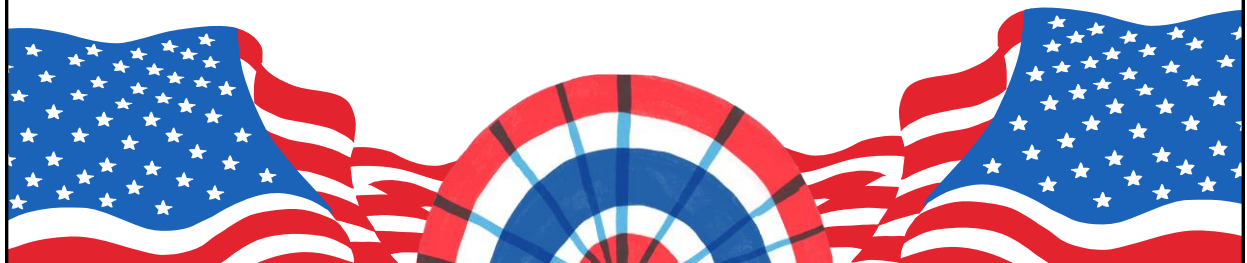
What we're covering

- History of §§ 1325/1326
- Why are we raising...
- How can we use this in our practice?

Fd.org: [The Racist Origins of Illegal Reentry \(and How to Challenge Them in Your Practice\)](#)
 By Kara Hartzler, Assistant Federal Defender, Federal Defenders of San Diego, Inc., San Diego, CA and Nora Hirozawa, Assistant Federal Defender, Federal Defenders of San Diego, Inc., San Diego, CA

5

Elements & Defenses



6

The Constitution

“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”

Zadvydas v. Davis, 533 U.S. 678, 693 (2001)

7

8 U.S. Code § 1326 - Reentry of removed aliens

(a) IN GENERAL

Subject to subsection (b), any alien who—

- (1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter
- (2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,



8

6.01 DEFENSE THEORY

(1) That concludes the part of my instructions explaining the elements of the crime. Next I will explain the defendant's position.

(2) The defense says _____



9

8 U.S. Code § 1326 - Reentry of removed aliens

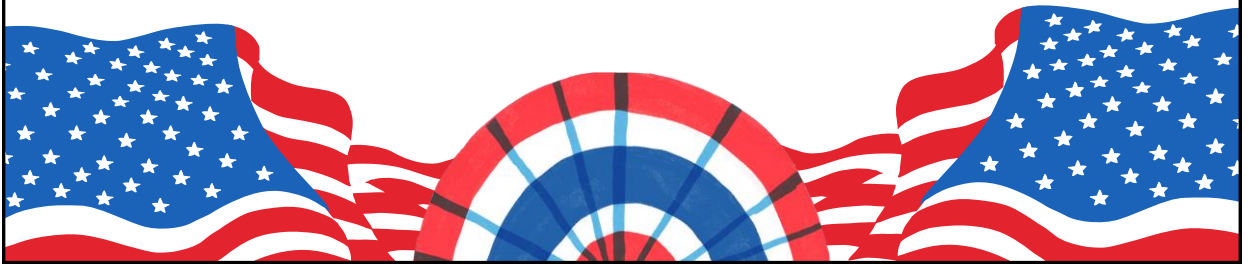
1. Alienage
2. Prior Removal
3. Found in *or* entered *or* attempted to enter
4. No AG consent to apply for admission



10

Element 1

Alienage



11



Alienage must be proven Beyond A Reasonable Doubt

12

Who is an “alien?”

Etymology: Derived from Latin word “alienus” meaning of or belonging to another, not own’s own, foreign, or strange.

First used to describe non-citizens in U.S. law in the Naturalization Act of 1790.

Why it’s offensive?

Because we’re all human!



13

Legal Definition:

Any person who is not a citizen or national of the United States as defined in 8 U.S.C. 1101(a)(3).

14

CITIZENSHIP STATUS

“It’s Complicated”

Your client doesn’t know

15

Four kinds
of
citizenship



Born in U.S.

Acquired Citizenship

Derivative Citizenship

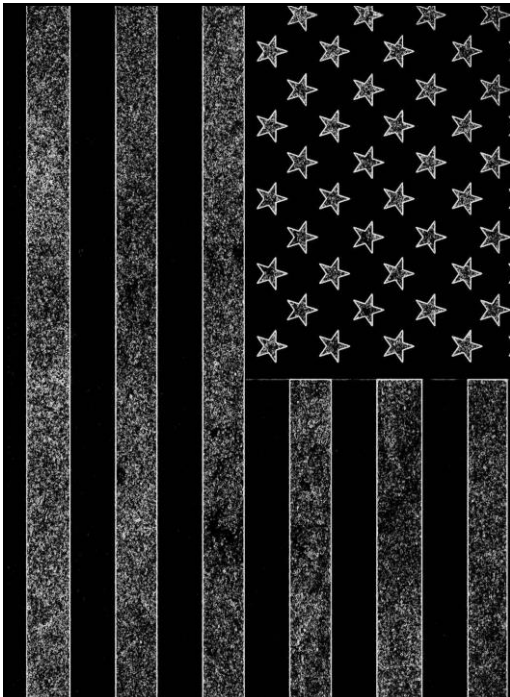
Naturalized

16

Born in the USA



17

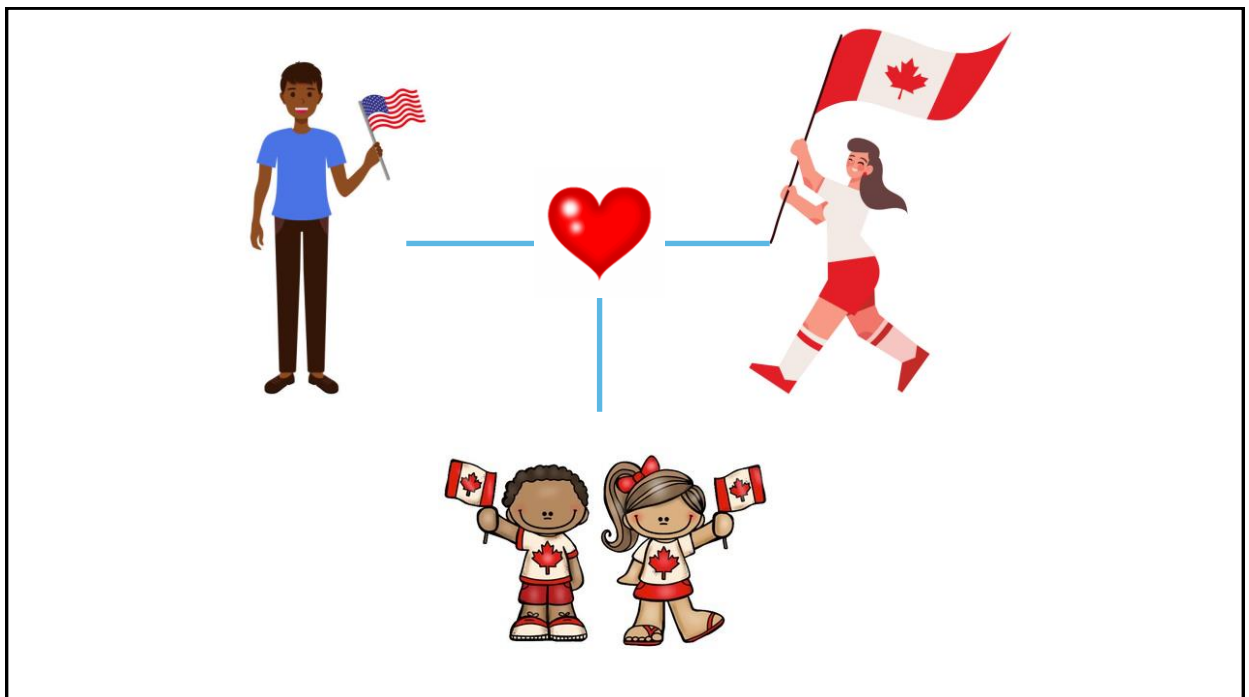


**Wong Kim Ark v.
United States, 169
U.S. 649 (1898)**

18



19



20

Provided certain conditions are met...

For example*:

Citizen parent is biological parent

Citizen parent physical presence in USA

Marriage or Acknowledgement of Child

***conditions depend on law in effect at the time of your client's birth**

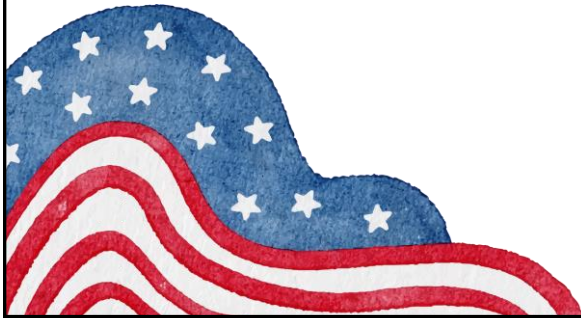


21



22

From birth!



23

A child cannot acquire citizenship at birth through an adoption.¹

PART 1: MOTHER IS A U.S. CITIZEN AT THE TIME OF THE CHILD'S BIRTH

Date of Child's Birth:	Residence / Physical Presence Requirements ²
Prior to 12/24/52: ³	Mother was citizen who resided in U.S. or its outlying possessions at some point prior to or birth of child. EXCEPTION: The child will not acquire citizenship through the U.S. citizen mother if she was legitimated by the father under the following circumstances: ⁴ 1. The child was born before 5/24/34; 2. The child was legitimated before turning 21; AND 3. The legitimation occurred before 1/13/41.
On/after 12/24/52 and prior to 6/12/17 (or 6/13/17): ⁵	Mother was U.S. citizen physically present in the U.S. or its outlying possessions for a continuous period of 1 year at some point prior to birth of child.
On/after 6/12/17 (or 6/13/17): ⁶	Both parents citizens Father: 1) father meets paternity requirements in Part 2 and one citizen parent resided in the U.S. or outlying possessions before the birth of the child, or 2) citizen mother was physically present in U.S. or its outlying possessions for a continuous period of 1 year, or 3) citizen mother had been physically present in U.S. or its outlying possessions 5 years, at least 2 of which were after age 14; ⁷ One citizen, one non-citizen parent According to State Dept., father must meet paternity requirements in Part 2 and citizen parent must have been physically present in U.S. or its outlying possessions for a continuous period of 1 year. If father doesn't meet Part 2 requirements, treat as one citizen, one non-citizen parent (see box below). ⁸ One citizen, one non-citizen parent U.S. citizen mother had been physically present in U.S. or its outlying possessions 5 years, at least 2 of which were after age 14. ⁹

PART 2: MOTHER WAS NOT A U.S. CITIZEN AT THE TIME OF THE CHILD'S BIRTH AND THE CHILD WAS LEGITIMATED OR ACKNOWLEDGED BY FATHER.¹⁰ WHO WAS A U.S. CITIZEN WHEN CHILD WAS BORN?¹¹

Date of Child's Birth:	Requirements:
Prior to 1/13/41:	1. Child legitimated at any time after birth, including adulthood, under law of father's domicile. 2. If so, use CHART A to determine if child acquired citizenship at birth.
On/after 1/13/41 and prior to 12/24/52:	1. Child legitimated before age 21 under law of father's domicile, or paternity established through court proceedings before 12/24/52. Legitimation requirement does not apply if child acquired from a parent with honorable service in the U.S. Armed Forces. ¹² If so, use CHART A unless paternity established through court proceeding. ¹³
On/after 12/24/52 and prior to 11/15/68:	1. Child legitimated before age 21 ¹⁴ under law of father's or child's domicile. ¹⁵ 2. If so, use CHART A to determine if child acquired citizenship at birth.
On/after 11/15/68 and prior to 11/15/71:	OPTION A: 1. Child/father blood relationship established by clear and convincing evidence; ¹⁶ 2. Father must have been a U.S. citizen at the time of child's birth; 3. Father, unless deceased, must provide written statement under oath that he will provide financial support for child until she reaches 18; ¹⁷ and 4. While child is under age 18, child must be legitimated under law of child's residence or domicile, or father must acknowledge paternity in writing under oath, or paternity established by competent court. If its 1-4 are met, use CHART A to determine if child acquired citizenship at birth. OPTION B:¹⁸ 1. Child/father blood relationship established by clear and convincing evidence; ¹⁹ 2. Father must have been a U.S. citizen at the time of child's birth; 3. Father, unless deceased, must provide written statement under oath that he will provide financial support for child until she reaches 18; ²⁰ and 4. While child is under age 18, child must be legitimated under law of child's residence or domicile, or father must acknowledge paternity in writing under oath, or paternity established by competent court. If its 1-4 are met, use CHART A to determine if child acquired citizenship at birth. ²¹
On/after 11/15/71: ²²	1. Child/father blood relationship established by clear and convincing evidence; ²³ 2. Father must have been a U.S. citizen at the time of child's birth; 3. Father, unless deceased, must provide written statement under oath that he will provide financial support for child until she reaches 18; ²⁴ and 4. While child is under age 18, child must be legitimated under law of child's residence or domicile, or father must acknowledge paternity in writing under oath, or paternity established by competent court. If its 1-4 are met, use CHART A to determine if child acquired citizenship at birth. ²⁵

*In your materials

CHART A: DETERMINING WHETHER CHILDREN BORN OUTSIDE THE U.S. ACQUIRED CITIZENSHIP AT BIRTH²⁶

(If child/born out of wedlock, see Chart B) - **Please Note: A child cannot acquire citizenship at birth through an adoption.¹**

STEP 1: Select period in which child was born	STEP 2: Select applicable percentage and immigration status of parents	STEP 3: Measure citizen parent's residence or physical presence, whichever is required, PRIOR to the child's birth against the requirements for the period in which child was born. The child acquired U.S. citizenship at birth if, at time of child's birth, citizen parent had already met applicable requirements.	STEP 4: Determine whether child has since lost U.S. citizenship. Citizenship was lost on the date it became impossible to meet necessary requirements – never before age 26. Individuals who have failed to meet the requirements can regain citizenship by taking an oath of allegiance.
PERIOD	PARENTS	RESIDENCE / PHYSICAL PRESENCE REQUIRED FOR USC PARENT ²⁷	RESIDENCE / PHYSICAL PRESENCE REQUIRED FOR CHILD ²⁸
Born prior to 5/24/34	Father or mother citizen	Citizen parent had resided in the U.S.	None
	Both parents citizens	One had resided in the U.S.	None
Born on/after 5/24/34 and prior to 1/14/41	One citizen and one non-citizen parent	Citizen had resided in the U.S.	Either: 1) 2 years continuous physical presence ²⁹ between the ages of 14 and 28; ³⁰ or 2) began before 12/24/52, 5 years continuous physical presence between the ages 13 and 21, or 3) if began before 10/27/72, 5 years continuous physical presence between the ages 14 and 28. ³¹ Individuals unaware, unable, or misinformed of potential U.S. citizenship may fulfill the retention requirement through constructive physical presence. ³² No retention requirements if either non-citizen parent naturalized and child began to reside permanently in U.S. while under age 18, or if parent employed in certain occupations such as the U.S. Government. Individuals who failed to meet physical presence requirements can regain citizenship by taking an oath of allegiance. ³³
	Both parents citizens or one citizen and one national ³⁴	One had resided in the U.S. or its outlying possessions.	None
Born on/after 1/14/41 and prior to 12/24/52	One citizen and one non-citizen parent	Citizen had resided in U.S. or its outlying possessions 10 years, at least 5 of which were after age 16. If citizen parent served honorably in U.S. Armed Forces between 12/741 and 12/31/46, 5 of the required 10 years may have been after age 12. ³⁵ If the citizen parent served honorably in U.S. Armed Services between 3/1/47 and 12/24/72, the requirement consists of 10 years of physical presence, 5 of which may have been after age 14. ³⁶	If began before 10/27/72, 2 or 5 years continuous physical presence ³⁷ between ages 14 and 28. ³⁸ If began after 10/27/72, 2 years continuous physical presence between ages 14 and 28. Individuals unaware of potential U.S. citizenship may fulfill the retention requirement through constructive physical presence. ³⁹ No retention requirements if either non-citizen parent naturalized and child began to reside permanently in U.S. while under age 18, or if parent employed in certain occupations such as the U.S. Government. (This exemption is not applicable if parent transmitted under the Armed Services exceptions). Individuals who failed to meet physical presence requirements can regain citizenship by taking an oath of allegiance. ⁴⁰
Born on/after 12/24/52 and prior to 11/14/96	Both parents citizens	One had resided in the U.S. or its outlying possessions.	None ⁴¹
	One citizen, one national parent	Citizen had been physically present ⁴² in U.S. or its outlying possessions for a continuous period of one year.	None ⁴³
	One citizen, one non-citizen parent	Citizen had been physically present ⁴⁴ in U.S. or its outlying possessions 10 years, at least 5 of which were after age 14.	None ⁴⁵
Born on/after 11/14/96	Both parents citizens	One had resided in the U.S. or its outlying possessions. ⁴⁶	None ⁴⁷
	One citizen and one non-citizen parent	Citizen had been physically present ⁴⁸ in U.S. or its outlying possessions 10 years, at least 5 of which were after age 14.	None ⁴⁹

24

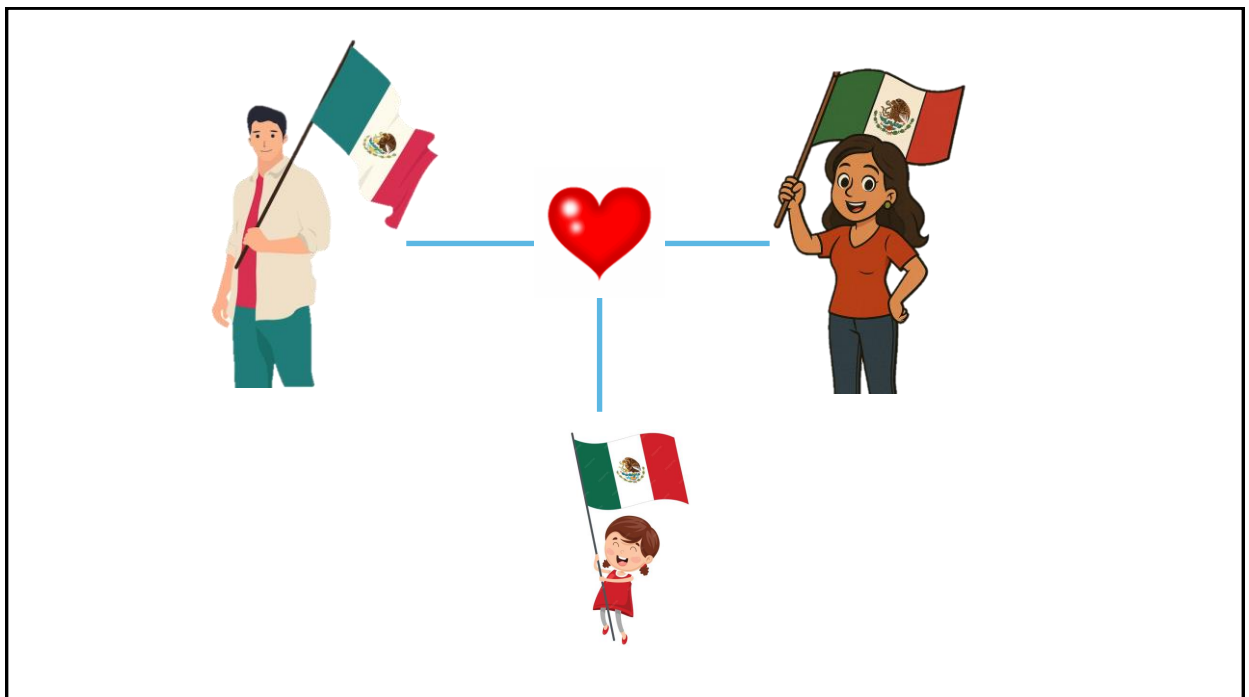


*see upcoming 1326 In a Box video series on fd.org

Derivative Citizenship



25



26

Provided certain conditions are met...

For example*:

**One or both parents
naturalize as US citizens**

**Child is a lawful permanent
resident and living in U.S.**

**Child is under 18 in legal and
physical custody of US parent**

***conditions depend on law in effect at the
time of your client's birth**



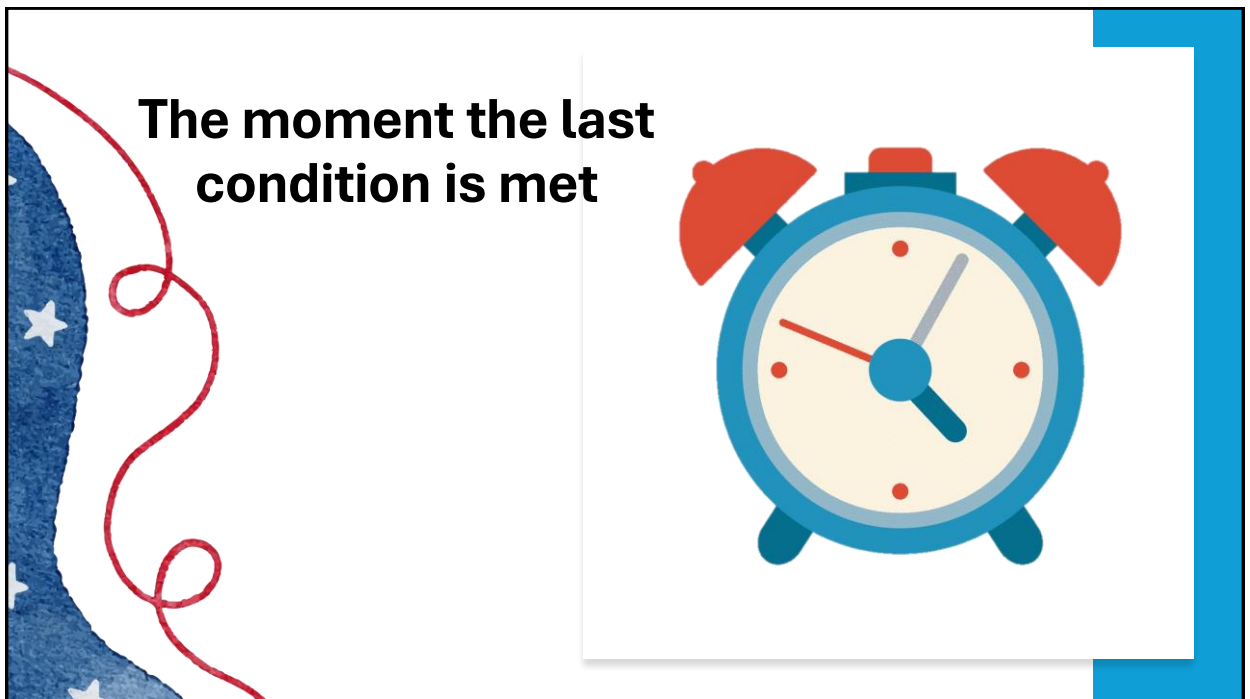
27



28



29



30

CHART C: DERIVATIVE CITIZENSHIP -- LAWFUL PERMANENT RESIDENT CHILDREN GAINING CITIZENSHIP THROUGH PARENTS' CITIZENSHIP

Date of Last Act ¹	Requirements
Prior to 5/24/94 ²	a. Either one or both parents must have naturalized prior to the child's 21st birthday;³ b. Child must be lawful permanent resident residing in U.S. with parent(s) before the child's 21st birthday;⁴ c. Legitimate child generally may derive through mother's naturalization only;⁵ d. Legitimated child must have been legitimated according to the laws of the father's domicile;⁶ e. Adopted child and stepchild cannot derive citizenship.
5/24/94 to 1/12/01 ⁷	a. Both parents must have naturalized and begun lawful permanent residence in the U.S. prior to the child's 21st birthday; b. If only one parent naturalized and s/he is not widowed or separated, the child must have 5 years lawful permanent residence in the U.S.¹² commencing before the 21st birthday, unless the other parent is already a U.S. citizen;¹ c. Child must be lawful permanent resident before the child's 21st birthday; d. Legitimate child generally may derive through mother's naturalization only;¹³ in which case the status of the other parent is irrelevant; e. Legitimated child must have been legitimated according to the laws of the father's domicile;¹⁴ f. Adopted child and stepchild cannot derive citizenship.
1/13/01 to 12/23/02 ¹⁵	a. Both parents must naturalize, or if only one parent naturalizes, the other parent must 1) be a U.S. citizen at the time of the child's birth and remain a U.S. citizen, 2) be deceased, or 3) the parents must be legally separated¹⁶ and the naturalizing parent must have legal custody;¹⁷ b. Parent or parents must have naturalized prior to the child's 18th birthday; c. Child must have been lawfully admitted for permanent residence and residing in U.S.¹⁸ before the child's 18th birthday;¹⁹ d. Legitimate child generally can derive only if, while s/he was under 16, and on or after 1/13/01 and before 12/24/02, s/he 1) became a lawful permanent resident, and 2) the mother naturalized;²⁰ e. Legitimated child must be legitimated under the law of the child's residence or place of domicile before turning 16 and be in the legal custody of the legitimating parent;²¹ f. Adopted child and stepchild cannot derive citizenship.²²
12/24/02 to 10/5/78 ²³	a. Both parents must naturalize,²⁴ or if only one parent naturalizes, the other parent must 1) be a U.S. citizen at the time of the child's birth and remain a U.S. citizen,²⁵ 2) be deceased,²⁶ or 3) the parents must be legally separated²⁷ and the naturalizing parent must have custody;²⁸ OR in the case of a child who was born out of wedlock and has not been legitimated,²⁹ it must generally be the mother who naturalizes;³⁰ b. Parent or parents must have naturalized prior to the child's 18th birthday;³¹ c. Child must be a lawful permanent resident or have begun to reside permanently in U.S.³² (check circuit for whether that also means lawful permanent residence, or something lesser) before the child's 18th birthday;³³ d. Child must be unmarried;³⁴ e. Adopted child and stepchild cannot derive citizenship.³⁵
10/5/78 to 2/26/01 ³⁶	a. Both parents must naturalize, or if only one parent naturalizes, the other parent must 1) be a U.S. citizen at the time of the child's birth and remain a U.S. citizen, 2) be deceased,³⁷ or 3) the parents must be legally separated³⁸ and the naturalizing parent must have legal custody;³⁹ OR in the case of a child who was born out of wedlock and has not been legitimated,⁴⁰ it must generally be the mother who naturalizes;⁴¹ b. Parent or parents must have naturalized prior to the child's 18th birthday;⁴² c. Child must be a lawful permanent resident or have begun to reside permanently in U.S. (check circuit for whether that also means lawful permanent residence, or something lesser) before the 18th birthday;⁴³ d. Child must be unmarried;⁴⁴ e. Adopted child may derive citizenship if the child is residing in the U.S. at the time of the adoptive parent(s)' naturalization,⁴⁵ is in the custody⁴⁶ of the adoptive parent(s), is a lawful permanent resident, and adoption occurred before s/he turned 18.⁴⁷ Stepchild cannot derive citizenship.⁴⁸
Anyone who, on or after 2/27/01, meets the following requirements, is a U.S. citizen. Another way to look at it is anyone born on or after 2/28/03 and meets the following requirements after 2/27/01 is a U.S. citizen. ⁴⁹	a. At least one parent is a U.S. citizen either by birth or naturalization;⁵⁰ b. In the case of a child who was born out of wedlock, the mother must be the one who is or becomes a citizen,⁵¹ OR if the father is a U.S. citizen through naturalization or other means then the child generally must have been legitimated by the father under either the law of the child's or father's residence or domicile and the legitimation must take place before the child reaches the age of 18;⁵² c. Child is under 18 years old;⁵³ d. Child must be unmarried;⁵⁴ e. Child is a lawful permanent resident⁵⁵ or natural;⁵⁶ f. Child is residing in the U.S.⁵⁷ in the legal⁵⁸ and physical custody⁵⁹ of the citizen parent; g. Adopted children qualify so long as s/he was adopted before the age of 16 and has been in the legal custody of, and has resided with, the adopting parent(s) for at least two years.⁶⁰ An adopted child who qualifies as an orphan under INA § 101(b)(3)(B) also will qualify for derivation.

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*In your materials

31

Naturalization



32

Who is a 'national' of the United States?

“[A] person who, though **not a citizen** of the United States, owes **permanent allegiance** to the United States.” 8 U.S.C. 1101(a)(22)(B).



33



*see upcoming 1326 In a Box video series on [fd.org](https://www.fedcourts.org)

United States v. Morin, 80 F.3d
124 (4th Cir. 1996)



34

How do you pursue a citizenship defense?

N-600

**Passport
Application**

Trial

35

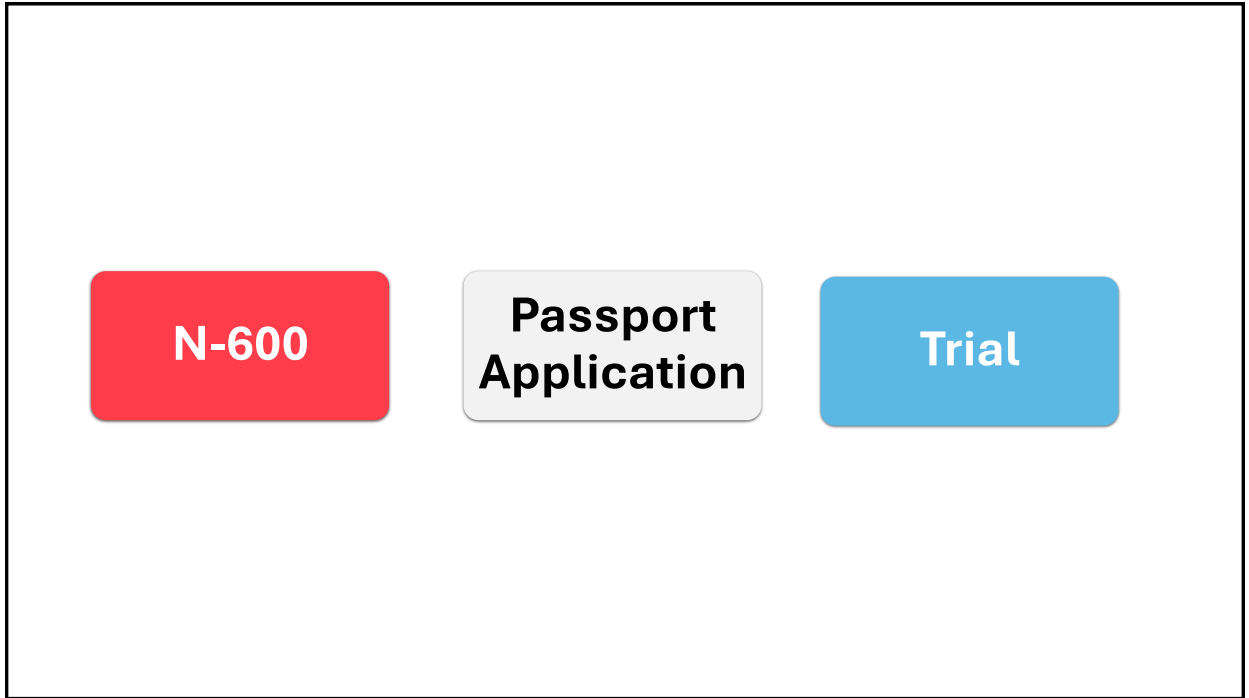
N-600

**Passport
Application**

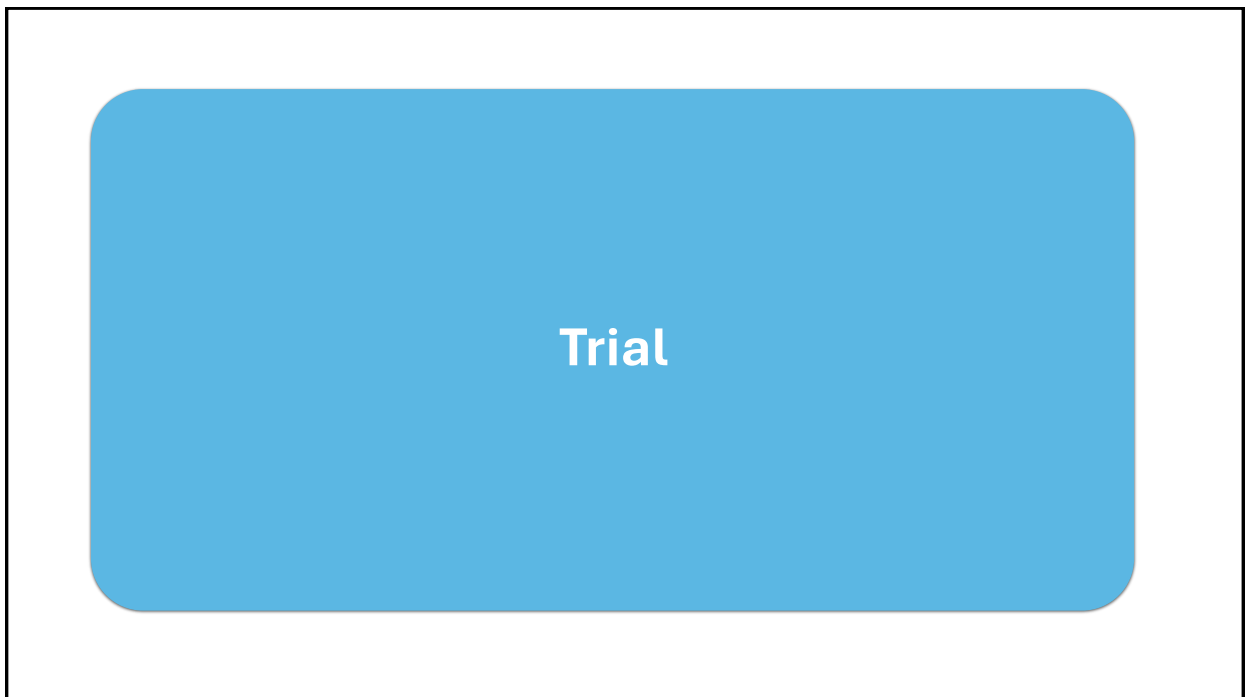


*see upcoming 1326 In a Box video series on fd.org

36



37



38

How will the government prove alienage?

- Client's statements
 - Post arrest
 - Sworn statements in A-file
 - Statements at removal hearing
- A-file documents
 - Birth certificate (if submitted)
 - Removal order (not BARD)
- Manner of Entry



39

How will you defend?

- No birth certificate
 - No one knows where they were born
 - No one with personal knowledge testified
 - Didn't get the BC from purported country of birth
 - *Corpus Delecti*— only evidence of alienage is client's statements
 - Obama had to show his



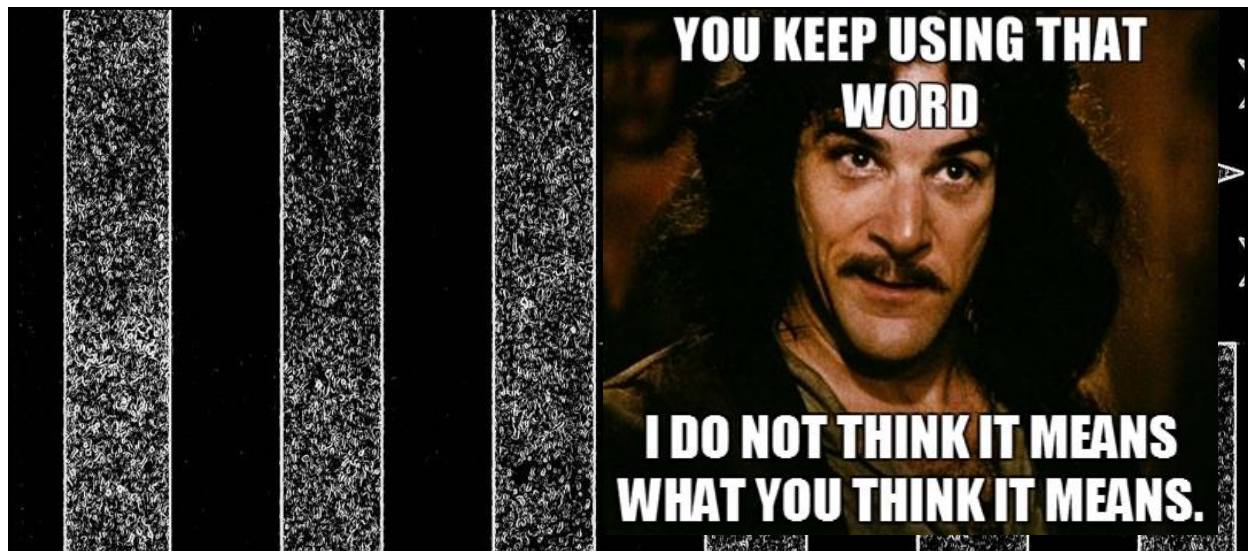
40

How will you defend?

- Some evidence of acquired or derivative citizenship
 - A parent or grandparent was a USC
 - G didn't investigate



41



United States v. Hodulik, 44 Fed.Appx. 656 (6th Cir. 2002)
(unpublished)

42

How will you defend?

G didn't prove not a national

- Evidence client was an LPR
- G didn't put on evidence that client didn't apply to naturalize
- G failed to investigate



43



How do you choose the way to present a citizenship defense?

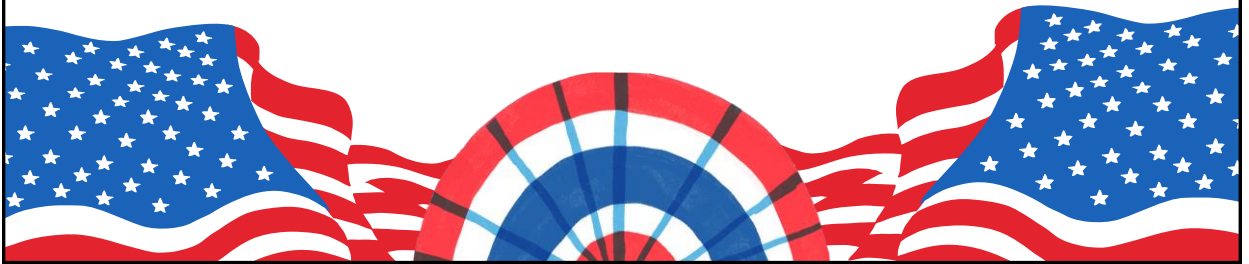


*see upcoming 1326 In a Box video series on fd.org

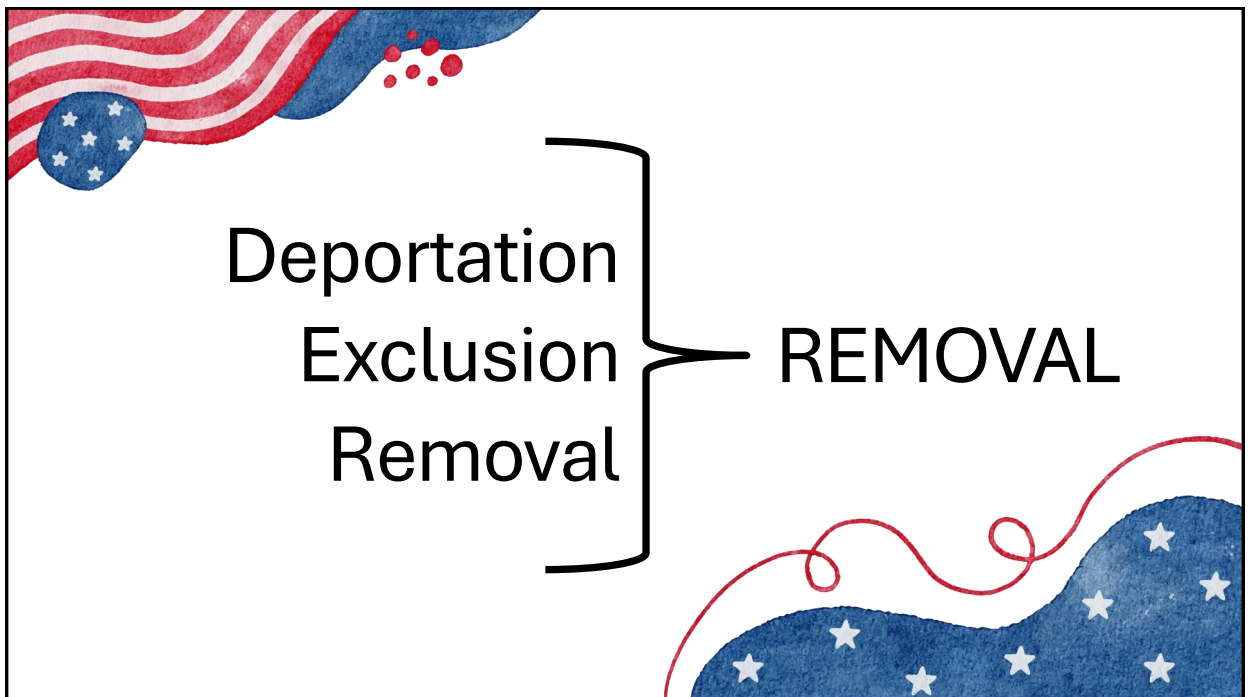
44

Element 2

Prior Removal

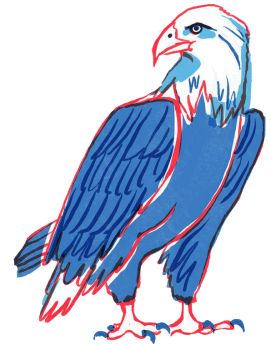


45



46

- Immigration Judge Order
- Expedited Removal
- Administrative Removal for Aggravated Felons



IJ Order of Removal

U.S. Department of Homeland Security Notice to Appeal In removal proceedings under section 248 of the Immigration and Nationality Act: <u>Subject No. [REDACTED]</u> In the Matter of: _____ Respondent: _____ ☐ 1. You are an arriving alien. ☒ 2. You are an alien present. ☐ 3. You have been admitted. The Department of Homeland Security has received a request for removal of you from the United States under the following grounds: 1. You were not a citizen. 2. You are a native of _____. 3. You received an INA date: _____. 4. You were not 180 days in _____. On the basis of the foregoing, it is recommended that you be removed from the United States under the following grounds: ☐ The nature is being treated as an alien. ☐ Section 208(b)(1) order was issued. YOU ARE ORDERED to appear at the hearing on _____ at _____. on the day of _____ at _____. deputy or authorized representative. Date: <u>March 23, 2017</u>	In the Matter of: _____ Respondent: _____ IN REMOVAL PROCEEDINGS Case No. _____ IN REMOVAL PROCEEDINGS FILE NO: A _____ RESPONDENT STIPULATED REQUEST FOR REMOVAL ORDER AND WAIVER OF HEARING I, _____, Respondent herein make the following requests, statements, admissions, and stipulations: 1. I have received a copy of the Notice to Appeal (NTA) dated _____, and my full, true and correct name is as indicated therein. See attached NTA. I have also received a legal aid list. I (have/do not have) an attorney who will represent me in this matter. See attached Form EOIR-28. 2. I request that my deportation proceedings be conducted completely on a written record, without a hearing. I waive all my rights and advsals contained in 8 C.F.R. §§ 240.10 and 240.11, including my right to have a hearing, to be advised by the Immigration Judge of my	TICKET OF IMMIGRATION REVIEW MIGRATION COURT 151 STREET, SUITE 3 ACOMA, WA 98421 Case No. _____ IN REMOVAL PROCEEDINGS could be appealed or reopened, _____. CO _____ was ordered removed to _____ under safeguards with _____. and under Article III of the _____. own () other: _____. withdrawal () other: _____. own () other: If granted, it is to give effect to this order: _____. own () other: If granted, it is to give effect to this order: _____. () withdrawal () other: If necessary to give effect to this order: _____. omit _____. omit _____. ates and returned to _____. and, and withholding under the _____. ICE (P) _____ FAX (P) _____ P (P) DHS _____ VD Advals _____ Q6 _____
--	--	--

24

NOT removal orders under 1326

Voluntary Departure
Reinstatement of Removal
Voluntary Returns
“catch and release”

U.S. Department of Homeland Security **Notice of Intent/Decision to Reinstate Prior Order**

File No. [REDACTED]
 Answer: Yes
 Date: 2015/05/13, 2015

Name: [REDACTED]

In accordance with section 241(a)(5) of the Immigration and Nationality Act (INA) and 8 CFR 241.8, you are hereby notified that the Secretary of Homeland Security intends to reinstate the order of [REDACTED] against you. This intent is based on the following determination:

- You are an alien subject to a prior order of deportation/exclusion/reinstatement on April 27, 2017 at [REDACTED] [REDACTED].
- You have been identified as an alien who:
 - ☒ was removed on May 3, 2015 pursuant to an order of deportation/exclusion/reinstatement.
 - ☐ departed voluntarily on [REDACTED] pursuant to an order of deportation/exclusion/reinstatement on or after the date on which such order took effect (i.e., who self-deported).
- You illegally reentered the United States on or about [REDACTED] Date [REDACTED] at or near [REDACTED] Location [REDACTED].

In accordance with Section 241(a)(5) of the Act, you are removable as an alien who has illegally reentered the United States after having been previously removed or departed voluntarily while under an order of exclusion, deportation or removal and are therefore subject to removal by reinstatement of the prior order. You may contest this determination by making a written or oral statement to an immigration officer. You do not have a right to a hearing before an immigration judge.

The facts that formed the basis of this determination and the existence of a right to make a written or oral statement concerning this determination were communicated to the alien in the Spanish language.

[REDACTED] (Print name of alien)

IMMIGRATION OFFICER (Print name)

Acknowledgment and Response

☐ I do not wish to make a statement concerning this determination.
 5/13/2015

Decision, Order, and Officer's Certification

Having reviewed all available evidence, the administrative file and any statement made or submitted in rebuttal, I have determined that the above-named alien is subject to removal through reinstatement of the prior order, in accordance with section 241(a)(5) of the INA.

APPROVED: [REDACTED] Forfeited, IN
 Location [REDACTED] (Department of Homeland Security official)
 C. TOL MONTGOMERY (Print name of official) [REDACTED] (Title)

Form I-807 (Rev. 08/04/17)

[X] Respondent's application for voluntary departure was granted until 5/13/15 under safeguards with an alternative order of removal to Mexico.

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Order & Physical Departure

DEPARTMENT OF HOMELAND SECURITY
 U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No: [REDACTED]
 Date: [REDACTED]

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien) [REDACTED]
 who entered the United States at [REDACTED] (Place of entry) on [REDACTED] (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings;
- ☐ a designated official;
- ☐ the Board of Immigration Appeals;
- ☐ a United States District or Magistrate Court Judge;

and pursuant to the following provisions of the Immigration and Nationality Act:

1. the undersigned officer of the United States, exercising the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by prior or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

[REDACTED] (Signature of immigration officer)
 [REDACTED] (Title of immigration officer)
 [REDACTED] (Date and office location)

ICE Form 1-209 (8/07) Page 1 of 2

To be completed by immigration officer executing the warrant: Name of alien being removed: [REDACTED]

Port, date, and manner of removal: [REDACTED]

Photograph of alien removed [REDACTED]
 Right index fingerprint of alien removed [REDACTED]

(Signature of alien being fingerprinted)
 (Signature and title of immigration officer taking print)

Departure witnessed by: [REDACTED] (Signature and title of immigration officer)

If actual departure is not witnessed, fully identify manner or means of verification of departure:
 [REDACTED]

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here: ☐

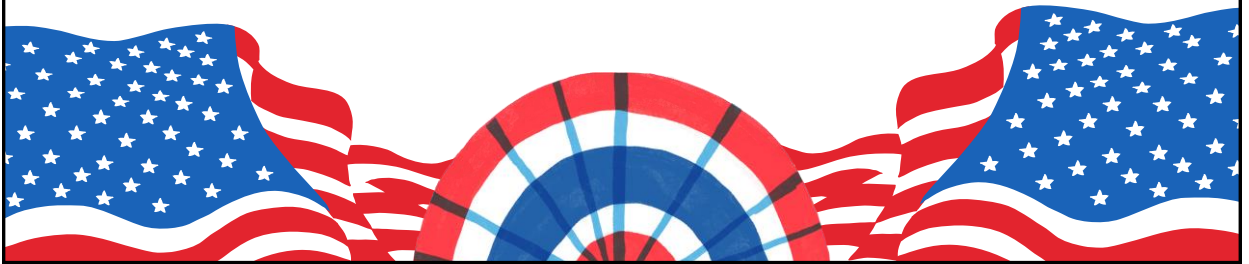
Departure Verified by: [REDACTED] (Signature and title of immigration officer)

ICE Form 1-209 (8/07) Page 2 of 2

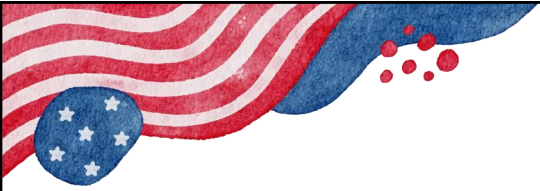
52

Element 3

Found in *or* Entered *or* Attempted to Enter

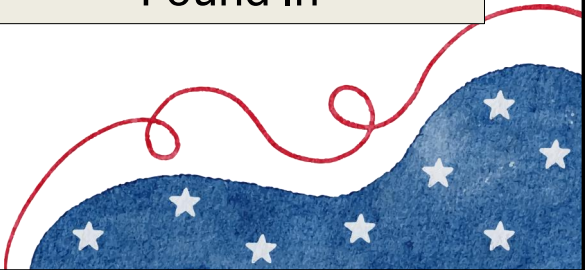


53



enters, attempts to enter, or is at any time found in, the United States,

<u>Border</u> Enters Attempts to Enter	<u>Interior</u> Found In
--	--



54

enters, the United States,

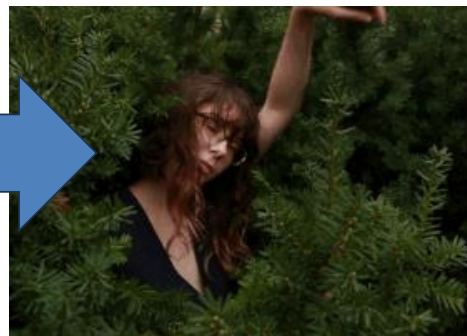
“...one small step on American soil does not an ‘entry’ make...”

Lopez v. Sessions, 851 F.3d 626, 630 (6th Cir. 2017)

1. Physical entry
2. Inspected and admitted or intending to evade inspection
3. Freedom from official restraint

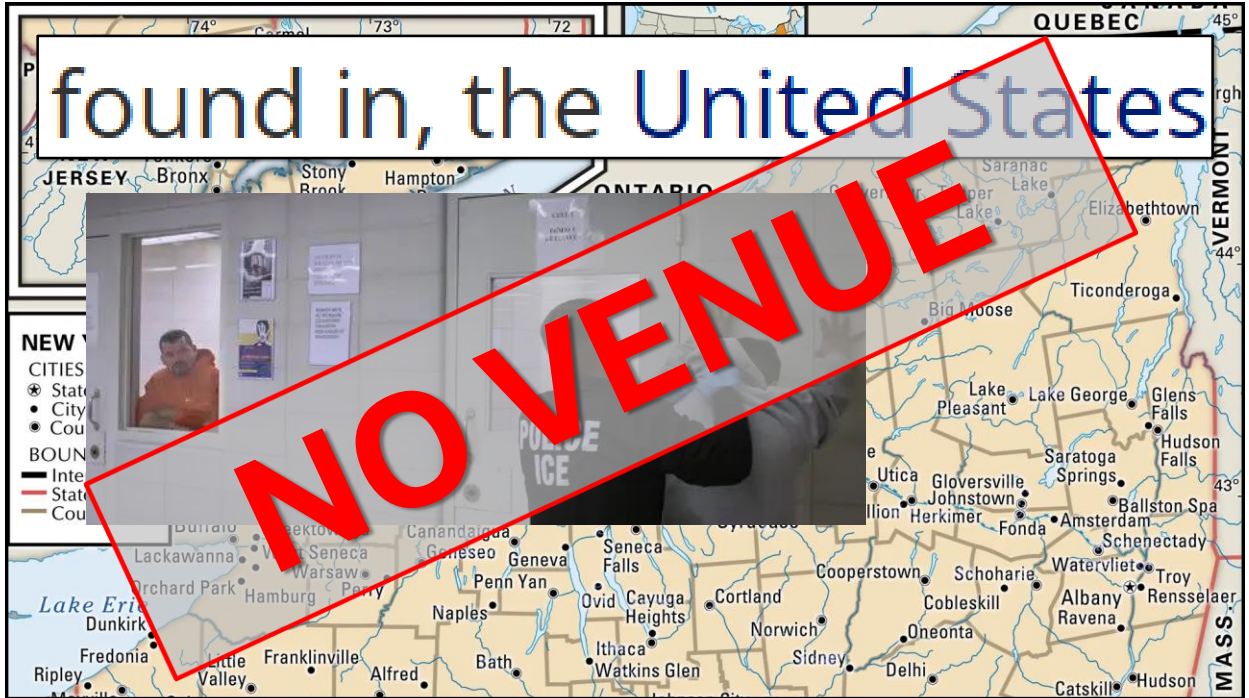
55

found in, the United States

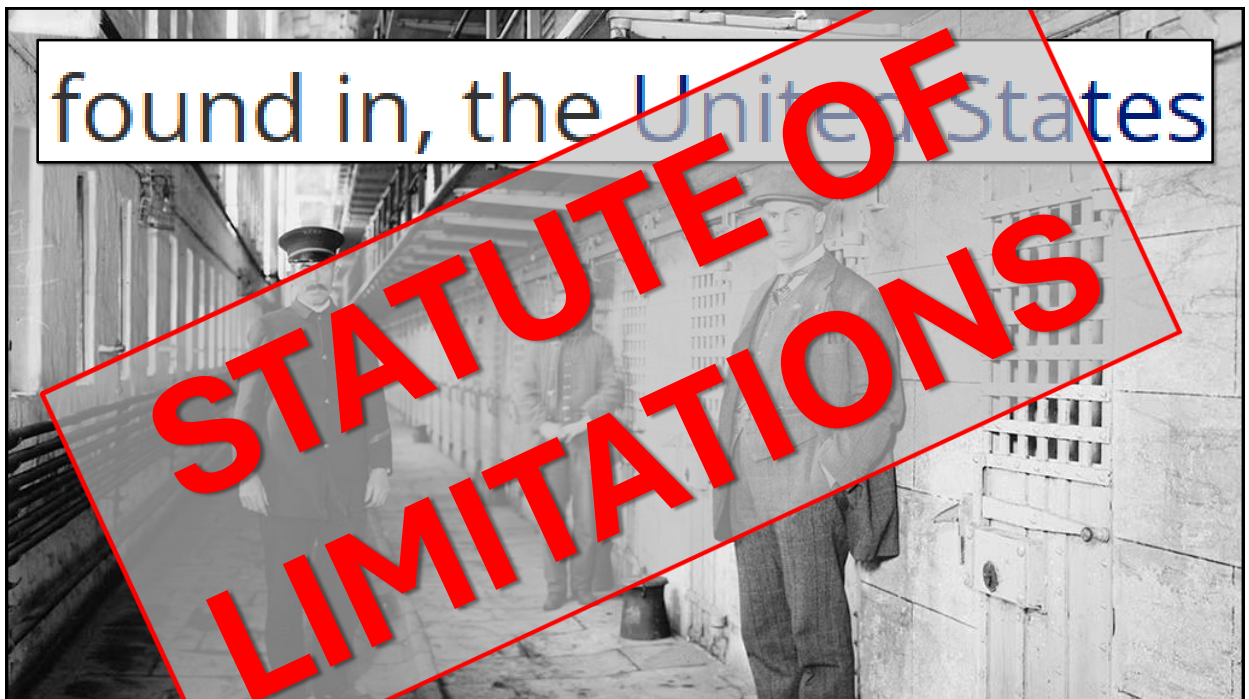


Continuing Offense
Entry through discovery

56



57



58

Prior Immigration Detainer?

- In A-file
- In jail records
- In client's possession



DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: _____ File No: _____
Event #: _____ Date: _____

TO: (Name and title of institution - OR Any Subsequent Law Enforcement Agency) _____ FROM: (Department of Homeland Security Office Address) _____

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____ Sex: _____
Date of Birth: _____ Nationality: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

☐ Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (check as that apply):

- ☐ has a prior felony conviction or has been charged with a felony offense;
- ☐ has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- ☐ has three or more prior misdemeanor convictions;
- ☐ has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
- ☐ has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assault, sexual abuse or exploitation, driving under the influence of alcohol or a controlled substance, unlawful flight from the scene of an accident, the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance, or other significant threat to public safety;
- ☐ otherwise poses a significant risk to national security, border security, or public safety; and/or
- ☐ other (specify): _____

☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date) _____.

☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date) _____.

☐ Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

☐ Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from Federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, you are not authorized to hold the subject beyond these 48 hours. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling _____ during business hours or _____ after hours or in an emergency, if you cannot reach a DHS Office at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.

☐ Provide a copy to the subject of this detainer.

☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

☐ Notify this office in the event of the individual's death, hospitalization or transfer to another institution.

☐ Consider this request for a detainer operative only upon the subject's conviction.

☐ Cancel the detainer previously placed by this Office on _____ (date) _____.

(Name and title of Immigration Officer) (Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:
Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: _____ Latest criminal charge/conviction: _____ (date) _____ Estimated release: _____ (date) _____
Last criminal charge/conviction: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer) (Signature of Officer)

DHS Form I-247 (12/12) Page 1 of 1

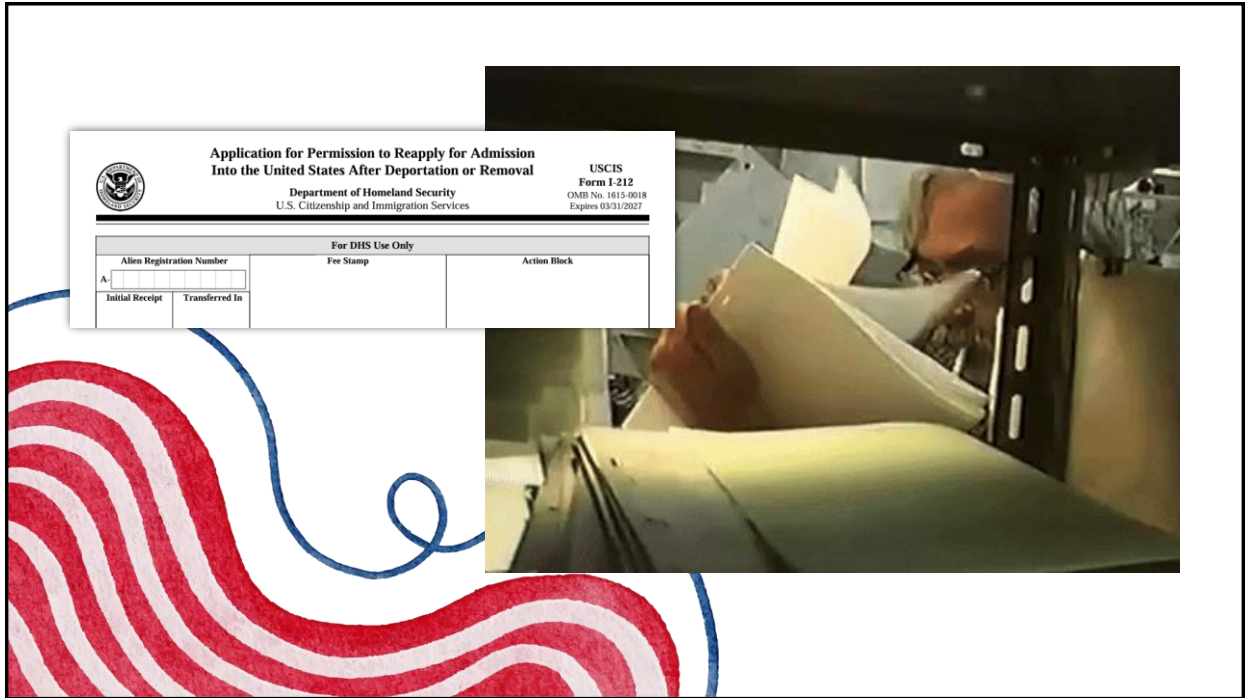
59

Element 4

No AG consent to apply for admission



60



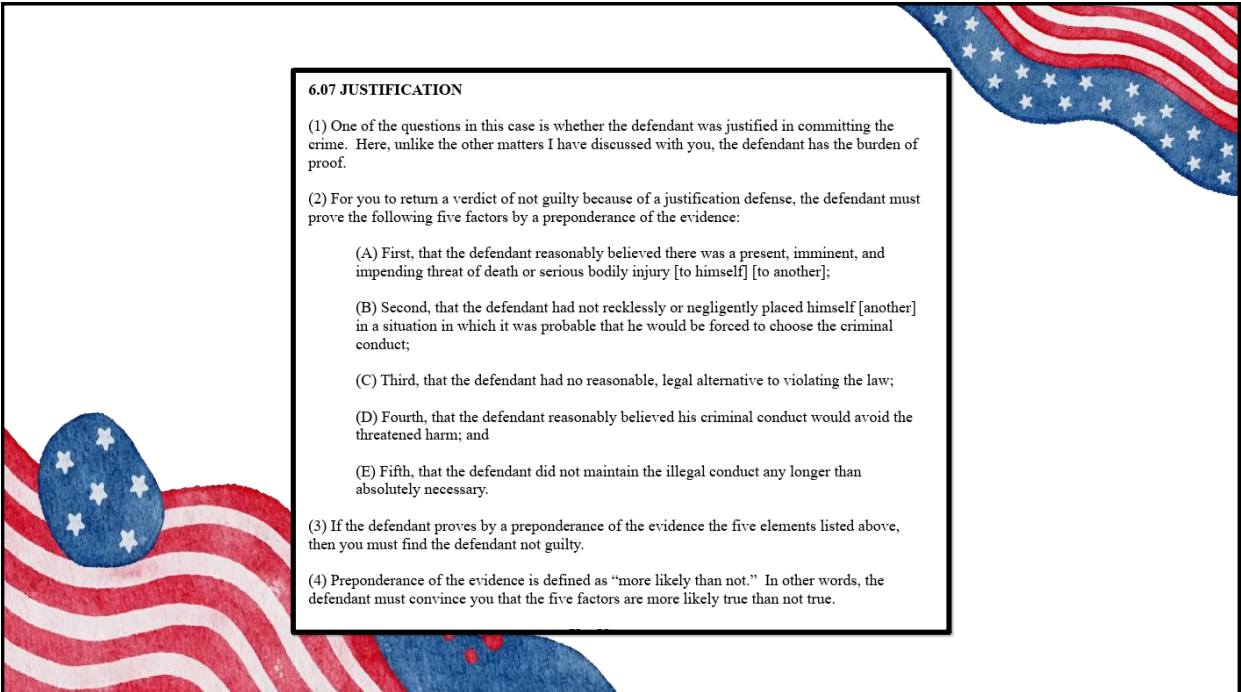
61

Necessity

an affirmative defense



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6.07 JUSTIFICATION

(1) One of the questions in this case is whether the defendant was justified in committing the crime. Here, unlike the other matters I have discussed with you, the defendant has the burden of proof.

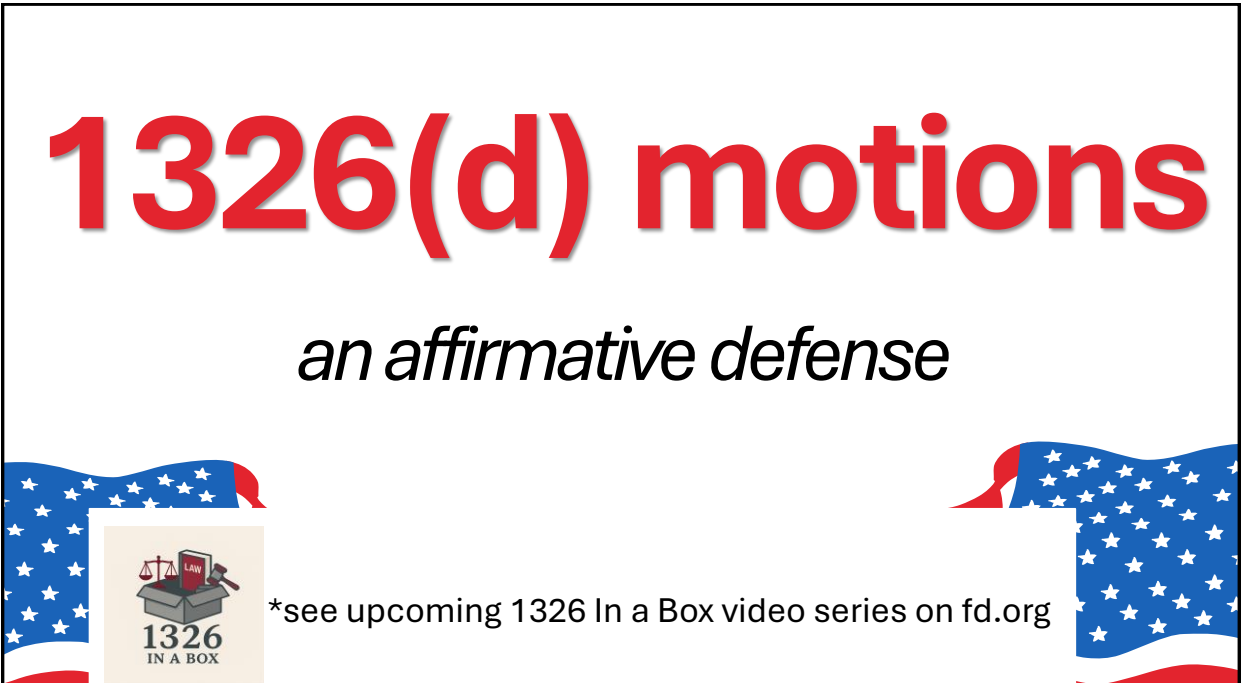
(2) For you to return a verdict of not guilty because of a justification defense, the defendant must prove the following five factors by a preponderance of the evidence:

- (A) First, that the defendant reasonably believed there was a present, imminent, and impending threat of death or serious bodily injury [to himself] [to another];
- (B) Second, that the defendant had not recklessly or negligently placed himself [another] in a situation in which it was probable that he would be forced to choose the criminal conduct;
- (C) Third, that the defendant had no reasonable, legal alternative to violating the law;
- (D) Fourth, that the defendant reasonably believed his criminal conduct would avoid the threatened harm; and
- (E) Fifth, that the defendant did not maintain the illegal conduct any longer than absolutely necessary.

(3) If the defendant proves by a preponderance of the evidence the five elements listed above, then you must find the defendant not guilty.

(4) Preponderance of the evidence is defined as “more likely than not.” In other words, the defendant must convince you that the five factors are more likely true than not true.

63



1326(d) motions

an affirmative defense



1326
IN A BOX

*see upcoming 1326 In a Box video series on fd.org

64

1326(d) Motions

United States v. Mendoza-Lopez, 481 U.S. 828 (1987)

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that-

- (1) the alien **exhausted any administrative remedies** that may have been available to seek relief against the order;
- (2) the deportation proceedings at which the order was issued improperly **deprived the alien of the opportunity for judicial review**; and
- (3) the entry of **the order was fundamentally unfair**.

65

1326(d) Motions

Exhausted administrative remedies & Deprived of judicial review

1. Client appealed
2. Client's waiver of appeal was invalid
3. Pro se client was not informed of right to appeal and administrative remedies
4. Removal prohibited review (expedited removal) *and to a lesser extent administrative removal of aggravated felons*

66

1326(d) Motions



U.S. Department of Homeland Security **Notice and Order of Expedited Removal**

DETERMINATION OF INADMISSIBILITY

Event Number: _____
 File No: _____
 Date: _____

In the Matter of: _____

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) ☐ (b)(1) ☐ (b)(2)(A) ☐ (b)(2)(B) ☐ (b)(2)(C) ☐ (b)(2)(D) ☐ (b)(2)(E) ☐ (b)(2)(F) ☐ (b)(2)(G) ☐ (b)(2)(H) ☐ (b)(2)(I) ☐ (b)(2)(J) ☐ (b)(2)(K) ☐ (b)(2)(L) ☐ (b)(2)(M) ☐ (b)(2)(N) ☐ (b)(2)(O) ☐ (b)(2)(P) ☐ (b)(2)(Q) ☐ (b)(2)(R) ☐ (b)(2)(S) ☐ (b)(2)(T) ☐ (b)(2)(U) ☐ (b)(2)(V) ☐ (b)(2)(W) ☐ (b)(2)(X) ☐ (b)(2)(Y) ☐ (b)(2)(Z) ☐ (b)(2)(AA) ☐ (b)(2)(AB) ☐ (b)(2)(AC) ☐ (b)(2)(AD) ☐ (b)(2)(AE) ☐ (b)(2)(AF) ☐ (b)(2)(AG) ☐ (b)(2)(AH) ☐ (b)(2)(AI) ☐ (b)(2)(AJ) ☐ (b)(2)(AK) ☐ (b)(2)(AL) ☐ (b)(2)(AM) ☐ (b)(2)(AN) ☐ (b)(2)(AO) ☐ (b)(2)(AP) ☐ (b)(2)(AQ) ☐ (b)(2)(AR) ☐ (b)(2)(AS) ☐ (b)(2)(AT) ☐ (b)(2)(AU) ☐ (b)(2)(AV) ☐ (b)(2)(AW) ☐ (b)(2)(AX) ☐ (b)(2)(AY) ☐ (b)(2)(AZ) ☐ (b)(2)(BA) ☐ (b)(2)(BB) ☐ (b)(2)(BC) ☐ (b)(2)(BD) ☐ (b)(2)(BE) ☐ (b)(2)(BF) ☐ (b)(2)(BG) ☐ (b)(2)(BH) ☐ (b)(2)(BI) ☐ (b)(2)(BJ) ☐ (b)(2)(BK) ☐ (b)(2)(BL) ☐ (b)(2)(BM) ☐ (b)(2)(BN) ☐ (b)(2)(BO) ☐ (b)(2)(BP) ☐ (b)(2)(BQ) ☐ (b)(2)(BR) ☐ (b)(2)(BS) ☐ (b)(2)(BT) ☐ (b)(2)(BU) ☐ (b)(2)(BV) ☐ (b)(2)(BW) ☐ (b)(2)(BX) ☐ (b)(2)(BY) ☐ (b)(2)(BZ) ☐ (b)(2)(CA) ☐ (b)(2)(CB) ☐ (b)(2)(CC) ☐ (b)(2)(CD) ☐ (b)(2)(CE) ☐ (b)(2)(CF) ☐ (b)(2)(CG) ☐ (b)(2)(CH) ☐ (b)(2)(CI) ☐ (b)(2)(CJ) ☐ (b)(2)(CK) ☐ (b)(2)(CL) ☐ (b)(2)(CM) ☐ (b)(2)(CN) ☐ (b)(2)(CO) ☐ (b)(2)(CP) ☐ (b)(2)(CQ) ☐ (b)(2)(CR) ☐ (b)(2)(CS) ☐ (b)(2)(CT) ☐ (b)(2)(CU) ☐ (b)(2)(CV) ☐ (b)(2)(CW) ☐ (b)(2)(CX) ☐ (b)(2)(CY) ☐ (b)(2)(CZ) ☐ (b)(2)(DA) ☐ (b)(2)(DB) ☐ (b)(2)(DC) ☐ (b)(2)(DD) ☐ (b)(2)(DE) ☐ (b)(2)(DF) ☐ (b)(2)(DG) ☐ (b)(2)(DH) ☐ (b)(2)(DI) ☐ (b)(2)(DJ) ☐ (b)(2)(DK) ☐ (b)(2)(DL) ☐ (b)(2)(DM) ☐ (b)(2)(DN) ☐ (b)(2)(DO) ☐ (b)(2)(DP) ☐ (b)(2)(DQ) ☐ (b)(2)(DR) ☐ (b)(2)(DS) ☐ (b)(2)(DT) ☐ (b)(2)(DU) ☐ (b)(2)(DV) ☐ (b)(2)(DW) ☐ (b)(2)(DX) ☐ (b)(2)(DY) ☐ (b)(2)(DZ) ☐ (b)(2)(EA) ☐ (b)(2)(EB) ☐ (b)(2)(EC) ☐ (b)(2)(ED) ☐ (b)(2)(EE) ☐ (b)(2)(EF) ☐ (b)(2)(EG) ☐ (b)(2)(EH) ☐ (b)(2)(EI) ☐ (b)(2)(EJ) ☐ (b)(2)(EK) ☐ (b)(2)(EL) ☐ (b)(2)(EM) ☐ (b)(2)(EN) ☐ (b)(2)(EO) ☐ (b)(2)(EP) ☐ (b)(2)(EQ) ☐ (b)(2)(ER) ☐ (b)(2)(ES) ☐ (b)(2)(ET) ☐ (b)(2)(EU) ☐ (b)(2)(EV) ☐ (b)(2)(EW) ☐ (b)(2)(EX) ☐ (b)(2)(EY) ☐ (b)(2)(EZ) ☐ (b)(2)(FA) ☐ (b)(2)(FB) ☐ (b)(2)(FC) ☐ (b)(2)(FD) ☐ (b)(2)(FE) ☐ (b)(2)(FF) ☐ (b)(2)(FG) ☐ (b)(2)(FH) ☐ (b)(2)(FI) ☐ (b)(2)(FJ) ☐ (b)(2)(FK) ☐ (b)(2)(FL) ☐ (b)(2)(FM) ☐ (b)(2)(FN) ☐ (b)(2)(FO) ☐ (b)(2)(FP) ☐ (b)(2)(FQ) ☐ (b)(2)(FR) ☐ (b)(2)(FS) ☐ (b)(2)(FT) ☐ (b)(2)(FU) ☐ (b)(2)(FV) ☐ (b)(2)(FW) ☐ (b)(2)(FX) ☐ (b)(2)(FY) ☐ (b)(2)(FZ) ☐ (b)(2)(GA) ☐ (b)(2)(GB) ☐ (b)(2)(GC) ☐ (b)(2)(GD) ☐ (b)(2)(GE) ☐ (b)(2)(GF) ☐ (b)(2)(GG) ☐ (b)(2)(GH) ☐ (b)(2)(GI) ☐ (b)(2)(GJ) ☐ (b)(2)(GK) ☐ (b)(2)(GL) ☐ (b)(2)(GM) ☐ (b)(2)(GN) ☐ (b)(2)(GO) ☐ (b)(2)(GP) ☐ (b)(2)(GQ) ☐ (b)(2)(GR) ☐ (b)(2)(GS) ☐ (b)(2)(GT) ☐ (b)(2)(GU) ☐ (b)(2)(GV) ☐ (b)(2)(GW) ☐ (b)(2)(GX) ☐ (b)(2)(GY) ☐ (b)(2)(GZ) ☐ (b)(2)(HA) ☐ (b)(2)(HB) ☐ (b)(2)(HC) ☐ (b)(2)(HD) ☐ (b)(2)(HE) ☐ (b)(2)(HF) ☐ (b)(2)(HG) ☐ (b)(2)(HH) ☐ (b)(2)(HI) ☐ (b)(2)(HJ) ☐ (b)(2)(HK) ☐ (b)(2)(HL) ☐ (b)(2)(HM) ☐ (b)(2)(HN) ☐ (b)(2)(HO) ☐ (b)(2)(HP) ☐ (b)(2)(HQ) ☐ (b)(2)(HR) ☐ (b)(2)(HS) ☐ (b)(2)(HT) ☐ (b)(2)(HU) ☐ (b)(2)(HV) ☐ (b)(2)(HW) ☐ (b)(2)(HX) ☐ (b)(2)(HY) ☐ (b)(2)(HZ) ☐ (b)(2)(IA) ☐ (b)(2)(IB) ☐ (b)(2)(IC) ☐ (b)(2)(ID) ☐ (b)(2)(IE) ☐ (b)(2)(IF) ☐ (b)(2)(IG) ☐ (b)(2)(IH) ☐ (b)(2)(IJ) ☐ (b)(2)(IK) ☐ (b)(2)(IL) ☐ (b)(2)(IM) ☐ (b)(2)(IN) ☐ (b)(2)(IO) ☐ (b)(2)(IP) ☐ (b)(2)(IQ) ☐ (b)(2)(IR) ☐ (b)(2)(IS) ☐ (b)(2)(IT) ☐ (b)(2)(IU) ☐ (b)(2)(IV) ☐ (b)(2)(IW) ☐ (b)(2)(IX) ☐ (b)(2)(IY) ☐ (b)(2)(IZ) ☐ (b)(2)(JA) ☐ (b)(2)(JB) ☐ (b)(2)(JC) ☐ (b)(2)(JD) ☐ (b)(2)(JE) ☐ (b)(2)(JF) ☐ (b)(2)(JG) ☐ (b)(2)(JH) ☐ (b)(2)(JI) ☐ (b)(2)(JJ) ☐ (b)(2)(JK) ☐ (b)(2)(JL) ☐ (b)(2)(JM) ☐ (b)(2)(JN) ☐ (b)(2)(JO) ☐ (b)(2)(JP) ☐ (b)(2)(JQ) ☐ (b)(2)(JR) ☐ (b)(2)(JS) ☐ (b)(2)(JT) ☐ (b)(2)(JU) ☐ (b)(2)(JV) ☐ (b)(2)(JW) ☐ (b)(2)(JX) ☐ (b)(2)(JY) ☐ (b)(2)(JZ) ☐ (b)(2)(KA) ☐ (b)(2)(KB) ☐ (b)(2)(KC) ☐ (b)(2)(KD) ☐ (b)(2)(KE) ☐ (b)(2)(KF) ☐ (b)(2)(KG) ☐ (b)(2)(KH) ☐ (b)(2)(KI) ☐ (b)(2)(KJ) ☐ (b)(2)(KK) ☐ (b)(2)(KL) ☐ (b)(2)(KM) ☐ (b)(2)(KN) ☐ (b)(2)(KO) ☐ (b)(2)(KP) ☐ (b)(2)(KQ) ☐ (b)(2)(KR) ☐ (b)(2)(KS) ☐ (b)(2)(KT) ☐ (b)(2)(KU) ☐ (b)(2)(KV) ☐ (b)(2)(KW) ☐ (b)(2)(KX) ☐ (b)(2)(KY) ☐ (b)(2)(KZ) ☐ (b)(2)(LA) ☐ (b)(2)(LB) ☐ (b)(2)(LC) ☐ (b)(2)(LD) ☐ (b)(2)(LE) ☐ (b)(2)(LF) ☐ (b)(2)(LG) ☐ (b)(2)(LH) ☐ (b)(2)(LI) ☐ (b)(2)(LJ) ☐ (b)(2)(LK) ☐ (b)(2)(LL) ☐ (b)(2)(LM) ☐ (b)(2)(LN) ☐ (b)(2)(LO) ☐ (b)(2)(LP) ☐ (b)(2)(LQ) ☐ (b)(2)(LR) ☐ (b)(2)(LS) ☐ (b)(2)(LT) ☐ (b)(2)(LU) ☐ (b)(2)(LV) ☐ (b)(2)(LW) ☐ (b)(2)(LX) ☐ (b)(2)(LY) ☐ (b)(2)(LZ) ☐ (b)(2)(MA) ☐ (b)(2)(MB) ☐ (b)(2)(MC) ☐ (b)(2)(MD) ☐ (b)(2)(ME) ☐ (b)(2)(MF) ☐ (b)(2)(MG) ☐ (b)(2)(MH) ☐ (b)(2)(MI) ☐ (b)(2)(MJ) ☐ (b)(2)(MK) ☐ (b)(2)(ML) ☐ (b)(2)(MM) ☐ (b)(2)(MN) ☐ (b)(2)(MO) ☐ (b)(2)(MP) ☐ (b)(2)(MQ) ☐ (b)(2)(MR) ☐ (b)(2)(MS) ☐ (b)(2)(MT) ☐ (b)(2)(MU) ☐ (b)(2)(MV) ☐ (b)(2)(MW) ☐ (b)(2)(MX) ☐ (b)(2)(MY) ☐ (b)(2)(MZ) ☐ (b)(2)(NA) ☐ (b)(2)(NB) ☐ (b)(2)(NC) ☐ (b)(2)(ND) ☐ (b)(2)(NE) ☐ (b)(2)(NF) ☐ (b)(2)(NG) ☐ (b)(2)(NH) ☐ (b)(2)(NI) ☐ (b)(2)(NJ) ☐ (b)(2)(NK) ☐ (b)(2)(NL) ☐ (b)(2)(NM) ☐ (b)(2)(NN) ☐ (b)(2)(NO) ☐ (b)(2)(NP) ☐ (b)(2)(NQ) ☐ (b)(2)(NR) ☐ (b)(2)(NS) ☐ (b)(2)(NT) ☐ (b)(2)(NU) ☐ (b)(2)(NV) ☐ (b)(2)(NW) ☐ (b)(2)(NX) ☐ (b)(2)(NY) ☐ (b)(2)(NZ) ☐ (b)(2)(OA) ☐ (b)(2)(OB) ☐ (b)(2)(OC) ☐ (b)(2)(OD) ☐ (b)(2)(OE) ☐ (b)(2)(OF) ☐ (b)(2)(OG) ☐ (b)(2)(OH) ☐ (b)(2)(OI) ☐ (b)(2)(OJ) ☐ (b)(2)(OK) ☐ (b)(2)(OL) ☐ (b)(2)(OM) ☐ (b)(2)(ON) ☐ (b)(2)(OO) ☐ (b)(2)(OP) ☐ (b)(2)(OQ) ☐ (b)(2)(OR) ☐ (b)(2)(OS) ☐ (b)(2)(OT) ☐ (b)(2)(OU) ☐ (b)(2)(OV) ☐ (b)(2)(OW) ☐ (b)(2)(OX) ☐ (b)(2)(OY) ☐ (b)(2)(OZ) ☐ (b)(2)(PA) ☐ (b)(2)(PB) ☐ (b)(2)(PC) ☐ (b)(2)(PD) ☐ (b)(2)(PE) ☐ (b)(2)(PF) ☐ (b)(2)(PG) ☐ (b)(2)(PH) ☐ (b)(2)(PI) ☐ (b)(2)(PJ) ☐ (b)(2)(PK) ☐ (b)(2)(PL) ☐ (b)(2)(PM) ☐ (b)(2)(PN) ☐ (b)(2)(PO) ☐ (b)(2)(PP) ☐ (b)(2)(PQ) ☐ (b)(2)(PR) ☐ (b)(2)(PS) ☐ (b)(2)(PT) ☐ (b)(2)(PU) ☐ (b)(2)(PV) ☐ (b)(2)(PW) ☐ (b)(2)(PX) ☐ (b)(2)(PY) ☐ (b)(2)(PZ) ☐ (b)(2)(QA) ☐ (b)(2)(QB) ☐ (b)(2)(QC) ☐ (b)(2)(QD) ☐ (b)(2)(QE) ☐ (b)(2)(QF) ☐ (b)(2)(QG) ☐ (b)(2)(QH) ☐ (b)(2)(QI) ☐ (b)(2)(QJ) ☐ (b)(2)(QK) ☐ (b)(2)(QL) ☐ (b)(2)(QM) ☐ (b)(2)(QN) ☐ (b)(2)(QO) ☐ (b)(2)(QP) ☐ (b)(2)(QQ) ☐ (b)(2)(QR) ☐ (b)(2)(QS) ☐ (b)(2)(QT) ☐ (b)(2)(QU) ☐ (b)(2)(QV) ☐ (b)(2)(QW) ☐ (b)(2)(QX) ☐ (b)(2)(QY) ☐ (b)(2)(QZ) ☐ (b)(2)(RA) ☐ (b)(2)(RB) ☐ (b)(2)(RC) ☐ (b)(2)(RD) ☐ (b)(2)(RE) ☐ (b)(2)(RF) ☐ (b)(2)(RG) ☐ (b)(2)(RH) ☐ (b)(2)(RI) ☐ (b)(2)(RJ) ☐ (b)(2)(RK) ☐ (b)(2)(RL) ☐ (b)(2)(RM) ☐ (b)(2)(RN) ☐ (b)(2)(RO) ☐ (b)(2)(RP) ☐ (b)(2)(RQ) ☐ (b)(2)(RR) ☐ (b)(2)(RS) ☐ (b)(2)(RT) ☐ (b)(2)(RU) ☐ (b)(2)(RV) ☐ (b)(2)(RW) ☐ (b)(2)(RX) ☐ (b)(2)(RY) ☐ (b)(2)(RZ) ☐ (b)(2)(SA) ☐ (b)(2)(SB) ☐ (b)(2)(SC) ☐ (b)(2)(SD) ☐ (b)(2)(SE) ☐ (b)(2)(SF) ☐ (b)(2)(SG) ☐ (b)(2)(SH) ☐ (b)(2)(SI) ☐ (b)(2)(SJ) ☐ (b)(2)(SK) ☐ (b)(2)(SL) ☐ (b)(2)(SM) ☐ (b)(2)(SN) ☐ (b)(2)(SO) ☐ (b)(2)(SP) ☐ (b)(2)(SQ) ☐ (b)(2)(SR) ☐ (b)(2)(SS) ☐ (b)(2)(ST) ☐ (b)(2)(SU) ☐ (b)(2)(SV) ☐ (b)(2)(SW) ☐ (b)(2)(SX) ☐ (b)(2)(SY) ☐ (b)(2)(SZ) ☐ (b)(2)(TA) ☐ (b)(2)(TB) ☐ (b)(2)(TC) ☐ (b)(2)(TD) ☐ (b)(2)(TE) ☐ (b)(2)(TF) ☐ (b)(2)(TG) ☐ (b)(2)(TH) ☐ (b)(2)(TI) ☐ (b)(2)(TJ) ☐ (b)(2)(TK) ☐ (b)(2)(TL) ☐ (b)(2)(TM) ☐ (b)(2)(TN) ☐ (b)(2)(TO) ☐ (b)(2)(TP) ☐ (b)(2)(TQ) ☐ (b)(2)(TR) ☐ (b)(2)(TS) ☐ (b)(2)(TT) ☐ (b)(2)(TU) ☐ (b)(2)(TV) ☐ (b)(2)(TW) ☐ (b)(2)(TX) ☐ (b)(2)(TY) ☐ (b)(2)(TZ) ☐ (b)(2)(UA) ☐ (b)(2)(UB) ☐ (b)(2)(UC) ☐ (b)(2)(UD) ☐ (b)(2)(UE) ☐ (b)(2)(UF) ☐ (b)(2)(UG) ☐ (b)(2)(UH) ☐ (b)(2)(UI) ☐ (b)(2)(UJ) ☐ (b)(2)(UK) ☐ (b)(2)(UL) ☐ (b)(2)(UM) ☐ (b)(2)(UN) ☐ (b)(2)(UO) ☐ (b)(2)(UP) ☐ (b)(2)(UQ) ☐ (b)(2)(UR) ☐ (b)(2)(US) ☐ (b)(2)(UT) ☐ (b)(2)(UU) ☐ (b)(2)(UV) ☐ (b)(2)(UW) ☐ (b)(2)(UX) ☐ (b)(2)(UY) ☐ (b)(2)(UZ) ☐ (b)(2)(VA) ☐ (b)(2)(VB) ☐ (b)(2)(VC) ☐ (b)(2)(VD) ☐ (b)(2)(VE) ☐ (b)(2)(VF) ☐ (b)(2)(VG) ☐ (b)(2)(VH) ☐ (b)(2)(VI) ☐ (b)(2)(VJ) ☐ (b)(2)(VK) ☐ (b)(2)(VL) ☐ (b)(2)(VM) ☐ (b)(2)(VN) ☐ (b)(2)(VO) ☐ (b)(2)(VP) ☐ (b)(2)(VQ) ☐ (b)(2)(VR) ☐ (b)(2)(VS) ☐ (b)(2)(VT) ☐ (b)(2)(VU) ☐ (b)(2)(VV) ☐ (b)(2)(VW) ☐ (b)(2)(VX) ☐ (b)(2)(VY) ☐ (b)(2)(VZ) ☐ (b)(2)(WA) ☐ (b)(2)(WB) ☐ (b)(2)(WC) ☐ (b)(2)(WD) ☐ (b)(2)(WE) ☐ (b)(2)(WF) ☐ (b)(2)(WG) ☐ (b)(2)(WH) ☐ (b)(2)(WI) ☐ (b)(2)(WJ) ☐ (b)(2)(WK) ☐ (b)(2)(WL) ☐ (b)(2)(WM) ☐ (b)(2)(WN) ☐ (b)(2)(WO) ☐ (b)(2)(WP) ☐ (b)(2)(WQ) ☐ (b)(2)(WR) ☐ (b)(2)(WS) ☐ (b)(2)(WT) ☐ (b)(2)(WU) ☐ (b)(2)(WV) ☐ (b)(2)(WW) ☐ (b)(2)(WX) ☐ (b)(2)(WY) ☐ (b)(2)(WZ) ☐ (b)(2)(XA) ☐ (b)(2)(XB) ☐ (b)(2)(XC) ☐ (b)(2)(XD) ☐ (b)(2)(XE) ☐ (b)(2)(XF) ☐ (b)(2)(XG) ☐ (b)(2)(XH) ☐ (b)(2)(XI) ☐ (b)(2)(XJ) ☐ (b)(2)(XK) ☐ (b)(2)(XL) ☐ (b)(2)(XM) ☐ (b)(2)(XN) ☐ (b)(2)(XO) ☐ (b)(2)(XP) ☐ (b)(2)(XQ) ☐ (b)(2)(XR) ☐ (b)(2)(XS) ☐ (b)(2)(XT) ☐ (b)(2)(XU) ☐ (b)(2)(XV) ☐ (b)(2)(XW) ☐ (b)(2)(XX) ☐ (b)(2)(XY) ☐ (b)(2)(XZ) ☐ (b)(2)(YA) ☐ (b)(2)(YB) ☐ (b)(2)(YC) ☐ (b)(2)(YD) ☐ (b)(2)(YE) ☐ (b)(2)(YF) ☐ (b)(2)(YG) ☐ (b)(2)(YH) ☐ (b)(2)(YI) ☐ (b)(2)(YJ) ☐ (b)(2)(YK) ☐ (b)(2)(YL) ☐ (b)(2)(YM) ☐ (b)(2)(YN) ☐ (b)(2)(YO) ☐ (b)(2)(YP) ☐ (b)(2)(YQ) ☐ (b)(2)(YR) ☐ (b)(2)(YS) ☐ (b)(2)(YT) ☐ (b)(2)(YU) ☐ (b)(2)(YV) ☐ (b)(2)(YW) ☐ (b)(2)(YX) ☐ (b)(2)(YY) ☐ (b)(2)(YZ) ☐ (b)(2)(ZA) ☐ (b)(2)(ZB) ☐ (b)(2)(ZC) ☐ (b)(2)(ZD) ☐ (b)(2)(ZE) ☐ (b)(2)(ZF) ☐ (b)(2)(ZG) ☐ (b)(2)(ZH) ☐ (b)(2)(ZI) ☐ (b)(2)(ZJ) ☐ (b)(2)(ZK) ☐ (b)(2)(ZL) ☐ (b)(2)(ZM) ☐ (b)(2)(ZN) ☐ (b)(2)(ZO) ☐ (b)(2)(ZP) ☐ (b)(2)(ZQ) ☐ (b)(2)(ZR) ☐ (b)(2)(ZS) ☐ (b)(2)(ZT) ☐ (b)(2)(ZU) ☐ (b)(2)(ZV) ☐ (b)(2)(ZW) ☐ (b)(2)(ZX) ☐ (b)(2)(ZY) ☐ (b)(2)(ZZ)

Based upon the determination set forth above and evidence presented during inspection or evaluation pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

Name and title of investigation officer (Print) _____ Signature of investigation officer _____

ORDER OF REMOVAL UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or evaluation pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

Name and title of investigation officer (Print) _____ Signature of investigation officer _____

Name and title of supervisor (Print) _____ Signature of supervisor, if available _____

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on _____ (Date)

Signature of investigation officer _____

Form I-860 (Rev. 08/03/07)

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1326(d) Motions

Fundamental
Unfairness

Due Process
Violation

Prejudice

68

1326(d) Motions

Due Process Violation

What is the process due?

- Statute
- CFR
- Circuit Caselaw
- BIA Caselaw

Specific to the type of removal



69

1326(d) Motions

Prejudice

Not deportable as charged

or

Had some likelihood of relief from removal

70

1326(d) Motions

Not deportable as charged
= Prejudice

U.S. Department of Homeland Security Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: _____ FIN #: _____ File No: _____
 DOB: _____ Event No: _____

In the Matter of: _____

Respondent: _____ currently residing at: _____

 (Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. You arrived in the United States at or near SAN YSIDRO, CALIFORNIA, on or about August 1, _____;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

71

1326(d) Motions

Could have gotten relief
from removal = Prejudice



72

1326(d) Motions



US v. Estrada, 876 F.3d 885 (6th Cir. 2017) (no due process right to be informed of eligibility for discretionary relief)



US v. Vargas-Molina, 392 F.Supp.3d 809 (ED Mich 2019) (due process right to have IJ develop factual record for you on available discretionary relief)



US v. Tilley, 2003 WL 25729209 (ND Oh 2003)

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1326(d) Motions

In Absentia

Can AFPDs/CJA file motion to reopen in immigration court?

- *Valadez-Lara v. Barr*, 963 F.3d 560 (6th Cir. 2020)
- *US v. Flores-Perez*, 1 F.4th 454 (6th Cir. 2021)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

Respondent Name: MARTINEZ, [REDACTED]
A-Number: [REDACTED]
Riders: In Removal Proceedings Initiated by the Department of Homeland Security
Date: 12/11/2024

To: Jesus Reyes, Esq.
14201 SW 120th ST
Suite 206
Miami, FL 33186

ORDER OF THE IMMIGRATION JUDGE

Respondent was ordered removed from the United States in absentia on 04/04/2024

☒ Respondent ☒ the Department of Homeland Security has now filed a motion to reopen these proceedings.

Upon reading and considering the motion, and any opposition from the non-moving party, the motion is ☒ granted ☐ denied for the following reason(s):

☐ Failure to demonstrate that Respondent's failure to appear was the result of exceptional circumstances. See INA § 240(b)(5)(C)(i), (e)(1).

☐ Failure to demonstrate that the Respondent did not receive notice under INA § 239(a)(1)-(2). See INA § 240(b)(5)(C)(ii).

☒ Joint Motion to Reopen is granted.

74

1326(d) Motions



Discovery

- View Alien File (A-File)
- Recording of removal hearing

Basic Investigation

- FOIA Immigration Judge file
- Client Interviews



75

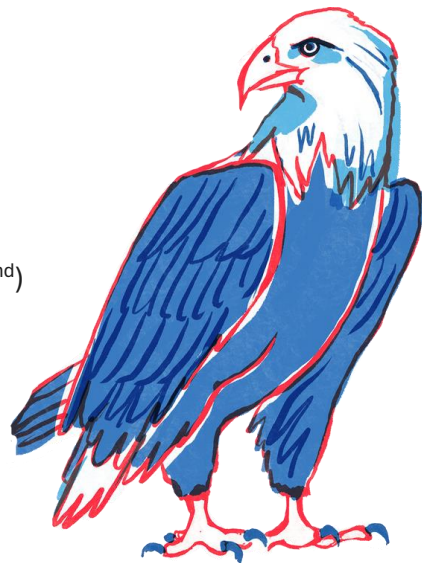
1326(d) Motions

Legal research

- Code of Federal Regulations
- INA (Title 8 of USC)
- Board of Immigration Appeals caselaw
- Circuit caselaw on immigration cases
- Out-of-circuit caselaw (Start with 9th and 2nd)

Factual development

- Mitigation
- Fear in home country
- Family story
- Educational history
- Language abilities



76

Discovery



*see upcoming 1326 In a Box video series on fd.org



77

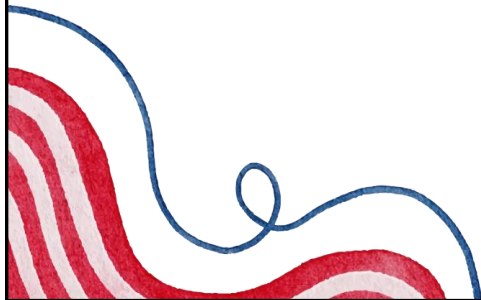
Rule 16



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Send a discovery letter immediately

*In your materials



FEDERAL DEFENDERS OF SAN DIEGO, INC.

THE COMMUNITY DEFENDER ORGANIZATION FOR THE SOUTHERN DISTRICT OF CALIFORNIA

April 30, 2025

****Delivered via electronic mail only****

Assigned Assistant United States Attorney
880 Front Street
San Diego, CA 92101

RE: **United States v. CLIENT**
Case No.: 25MJ0000

Dear Counsel:

I represent Mr. CLIENT in the above-captioned criminal case. Mr. CLIENT asserts his Fifth and Sixth Amendment rights to remain silent and to be represented by counsel both inside and outside the courtroom. He also requests that the government preserve and disclose all information and material discoverable under applicable constitutional provisions, statutes, and the Federal Rules. Mr. CLIENT's request is continuing; that is, he requests that the government disclose all information and material currently in its custody and control and that the government immediately provide all discoverable information and material it obtains in the future.

Mr. CLIENT requests that counsel for the government confirm receipt of this letter. He requests that government counsel renew his requests and notify defense counsel of any discovery disputes or attempt not to comply with the general or specific requests below within 5 days of the receipt of this letter. Last, he requests that the government notify defense counsel of a convenient time, no later than 14 days after arraignment on an indictment or information, to meet and confer regarding discovery under Fed. R. Crim. P. 16.1 and Criminal Local Rule 16.1.

I. Mr. CLIENT asserts his rights under the Fifth and Sixth Amendments to remain silent and to communicate with the government only through counsel.

Mr. CLIENT asserts his right under the Fifth and Sixth Amendments to remain silent and to have all communication about his case (or any other criminal investigation) take place through counsel. *See Maine v. Moulton*, 474 U.S. 159, 176 (1985) (holding that the Sixth Amendment is violated when government obtains confession by knowingly circumventing accused's right to have counsel present in a confrontation between accused and government); *Edwards v. Arizona*, 451 U.S. 477, 484 (1981) (stating that once accused has expressed desire to deal with law enforcement only through counsel, no interrogation may take place in absence of counsel unless accused initiates communication with law enforcement). He does not wish to speak with prosecutors or any agent or employee of the government about his case.

San Diego Office • 225 Broadway, Suite 900 • San Diego, CA 92101 • T: 619.234.8467 • F: 619.687.2666
El Centro Office • 1699 W. Main Street, Suite D • El Centro, CA 92243 • T: 760.335.3510 • F: 760.335.3610

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UNITED STATES V. _____ 1326 Discovery Checklist

Related to the arrest in this case including:

- ☐ I-213
- ☐ Radio communications
- ☐ RVSS
- ☐ Body Camera Footage
- ☐ Airport/POE footage
- ☐ Record of Sworn Statement
- ☐ Post arrest statement
- ☐ ICE Detainers
- ☐ Warrant Applications/ Warrants/Returns
- ☐ Signed Waivers and Consents
- ☐ Phone Discovery
- ☐ Physical Belongings

All documents related to removals alleged including:

- ☐ Warrant for Arrest
- ☐ Notice to Appear
- ☐ Bond Determination Documents
- ☐ Order of Removal
- ☐ Warrant of Removal
- ☐ Reinstatements of Removal Orders
- ☐ Audio of IJ Removal Hearing

All the documents in A-file including:

- ☐ Petitions for Visas or other Status
- ☐ G-28 (notice of attorney appearance)
- ☐ List of Free or Low Bono Legal Services
- ☐ Appeals Documents
- ☐ FINs
- ☐ Criminal History Documents
- ☐ Immigration Warnings
- ☐ Prior Records of Sworn Statements

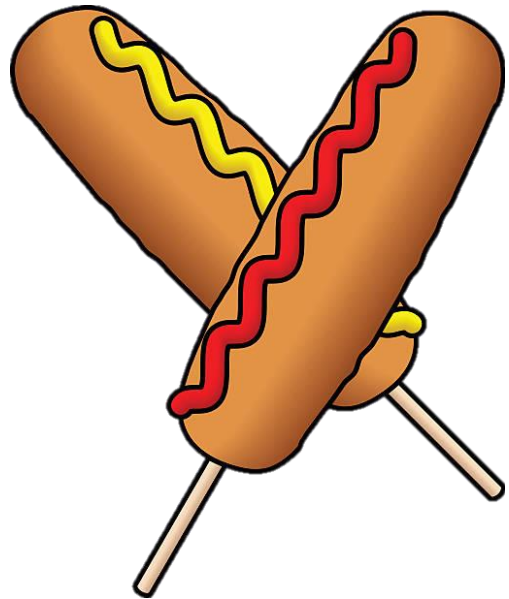
*In your materials



80

A-file

- Client's complete immigration history
- All applications for status
 - Visas
 - Permanent Resident
 - Asylum
- All supporting documents for applications
- All grants of status
- All removal documents
- All appeals



81



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Removal Documents

- Notice to Appear
- Removal Order
- Warrant of Removal



85

Notice to Appear

- Type of Removal Proceeding
- Allegation about status
 - Undocumented
 - Visa holder
 - Lawful Permanent Resident
- Allegation of removability
 - Entered Without Inspection
 - Overstayed Visa
 - Committed a Crime
- Date, Time, Place of Hearing

C3

U.S. Department of Homeland Security Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] PTIN: [REDACTED] File No: [REDACTED]
 DOB: [REDACTED] Arrest Ref: F001101000181

In the Matter of: [REDACTED]

Respondent: [REDACTED] currently residing at:
 8802 - 8013 1611 East 3 Street Suite 3 Tacoma, WA 98406, 98401
 (Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
 2. You are a native of MEXICO and a citizen of MEXICO; *MEXICO, TX*
 3. You arrived in the United States at or near an unknown location, on or about unknown date; *2012*
 4. You were not then admitted or paroled after inspection by an Immigration Officer. *By R*

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without having been admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 235(d)(1) order was vacated pursuant to: ☐ 8CFR 208.30(b)(2) ☐ 8CFR 235.30(a)(3)(i)

YOU ARE ORDERED to appear before an Immigration Judge of the United States Department of Justice at:
 1423 E. 3 Street 83 Tacoma WA 98401. DOIR Tacoma, WA

(Complete Address of Immigration Court, including Room Number, if any)

on To be set: at To be set: to show why you should not be removed from the United States based on the
 (Date) (Date)
 charged) set forth above: *ROBERT W BYTES* SDOO
 (Signature and Title of Hearing Officer)

Date: March 25, 2017 Portland, OR (City and State)

See reverse for important information Form I-862 (Rev. 05/11/07)

FAS 3000629

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Removal Order

- Which allegation was sustained
- Legal basis for removal
- Identity of official ordering removal
- Type of official ordering removal
 - Immigration Judge
 - Other DHS official
- Appeal Waiver/Availability of Appeal

EXECUTIVE OFFICE OF IMMIGRATION REVIEW IMMIGRATION COURT 1633 EAST J STREET, SUITE 3 TACOMA, WA 98421

In the Matter of: _____ Case No.: _____
Respondent IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on April 27, 2017.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☒ The respondent was ordered removed from the United States to Mexico.
- ☒ Respondent's application for voluntary departure was denied and respondent was ordered removed to Mexico.
- ☐ Respondent's application for voluntary departure was granted until _____ under safeguards with an alternative order of removal to _____.
- Respondent's application for:
- ☐ Asylum was () granted () denied () withdrawn () other.
- ☐ Withholding of removal was () granted () denied () withdrawn () other.
- ☐ Respondent's application for () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn () other.
- ☐ A Waiver under section _____ was () granted () denied () withdrawn () other.
- ☐ Cancellation of removal under section 240A(a) was () granted () denied () withdrawn () other.
- Respondent's application for:
- ☐ Cancellation under section 240A(b)(1) was () granted () denied () withdrawn () other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was () granted () denied () withdrawn () other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Adjustment of Status under section _____ was () granted () denied () withdrawn () other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a _____ until _____.
- ☐ As a condition of admission, respondent is to post a \$ _____ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
- ☐ Respondent's request to withdraw application for admission into the United States and returned to _____ under 8 C.F.R. section 1240.1d has been granted.
- ☐ Proceedings were terminated.
- ☐ Respondent waived the opportunity to apply for asylum, withholding of removal, and withholding under the Convention Against Torture.
- ☒ Other: **RE-ENTRY WARNINGS PROVIDED**
- Date: April 27, 2017

Appeal: **WAIVED / RESERVED (A/V/B)**
If RESERVED - APPEAL DUE BY: May 30, 2017

Paul DeFonzo
Immigration Judge

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)
TO: () ALIEN () ALIEN Custodial Officer () ALIEN ATTORNEY () DHS
DATE: 04/27/17 BY: COURT STAFF
Attachments: () EOIR-33 () EOIR-28 () Legal Services List () Other: VD Advisals Q6

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Warrant of Removal

- Client's photo
- Client's fingerprint
- Date and place of physical removal
- Identity of DHS officer who witnessed removal

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

Subject: ID: 157511332
File No. _____
Event: _____
Date: _____

To be completed by immigration officer executing the warrant. Name of alien being removed: _____
Allies: No: 235 726 333

Part, date, and manner of removal: _____

To any immigration officer of the United States Department of Homeland Security:
who entered the United States at: _____ (Full name of alien)
(Date of entry) _____ (Date of entry) _____
is subject to removal/deportation from the United States, based upon a final order by:
☒ an immigration judge in exclusion, deportation, or removal proceedings
☐ a designated officer
☐ the Board of Immigration Appeals
☐ a United States District or Magistrate Court Judge
and pursuant to the following provisions of the Immigration and Nationality Act:
816 (a) (1) of the Act, as amended.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by this or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:
Initiative and Response, Department of Homeland Security 2157

[Signature]

(Signature of immigration officer)

Departure witnessed by: _____
(Signature and title of immigration officer taking photo)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removed (self-deportation), pursuant to 8 CFR 241.1, check "yes": ☐

Departure Verified by: _____
(Signature and title of immigration officer)

[Signature]

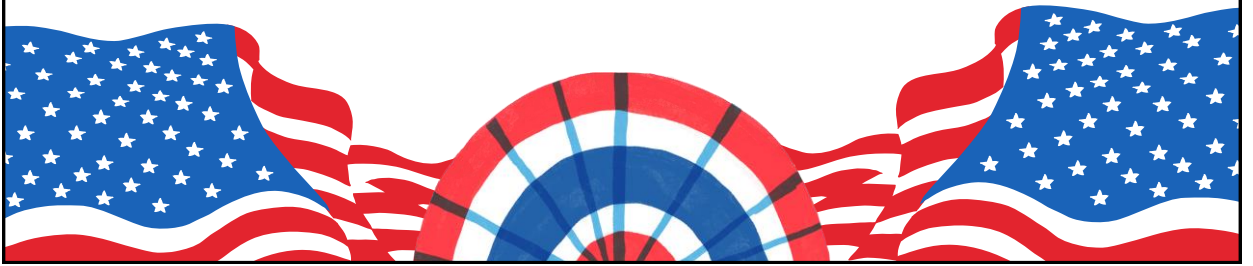
(Signature of immigration officer)

Page 1 of 2
Page 2 of 2

ICE Form 1-208 (8/07) ICE Form 1-208 (8/07) ICE Form 1-208 (8/07)

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Sentencing



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How much time am I going to get?

90

Statutory Maximums

No felonies → removal



2 years

Felony conviction → Removal



10 years

Aggravated* felony conviction →
Removal



20 years

*Categorical approach required

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Jail Sweeps

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Aggravated Felony

8 U.S.C.1101(a)(43)

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Fd.org:

Presenter: Kara Hartzler, Assistant Federal Defender, Federal Defenders of San Diego, Inc., San Diego, CA
Part 12: The Categorical Approach - A Primer (May 7, 2025)

"I love the categorical approach!" - said no federal practitioner (or court), ever. The categorical approach has been a thorn in our sides since it was created by the Supreme Court in *Taylor v. United States*, 495 U.S.

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Date of first removal is key

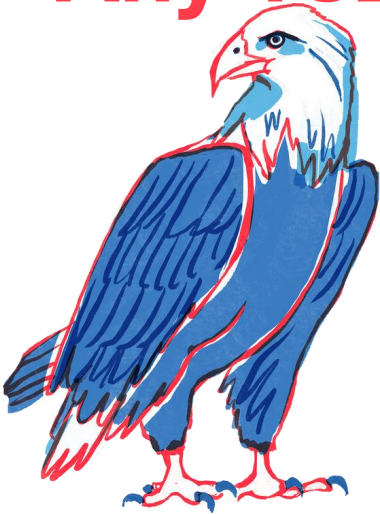


96

<u>Sentence Before</u>		F I R S T	<u>Sentence After</u>	
5+ years	+10		5+ years	+10
2+ years	+8		2+ years	+8
>13 months	+6	R	>13 months	+6
<13 months	+4	E	<13 months	+4
3 misdos COV or Drug Trafficking +2	+2	M	3 misdos COV or Drug Trafficking +2	+2
		O		
		V		
		A		
		L		

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Any 1326 sentence

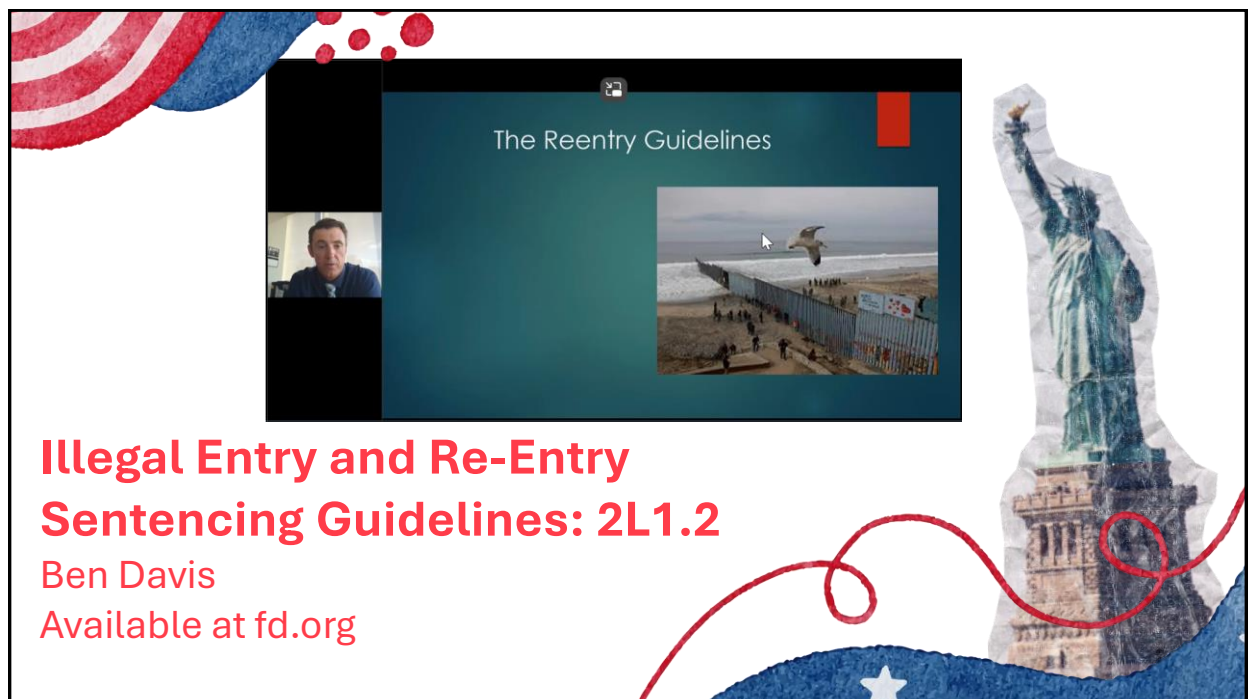


+4

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PAID PAID PAID
ALREADY PAID
PAID PAID PAID

99

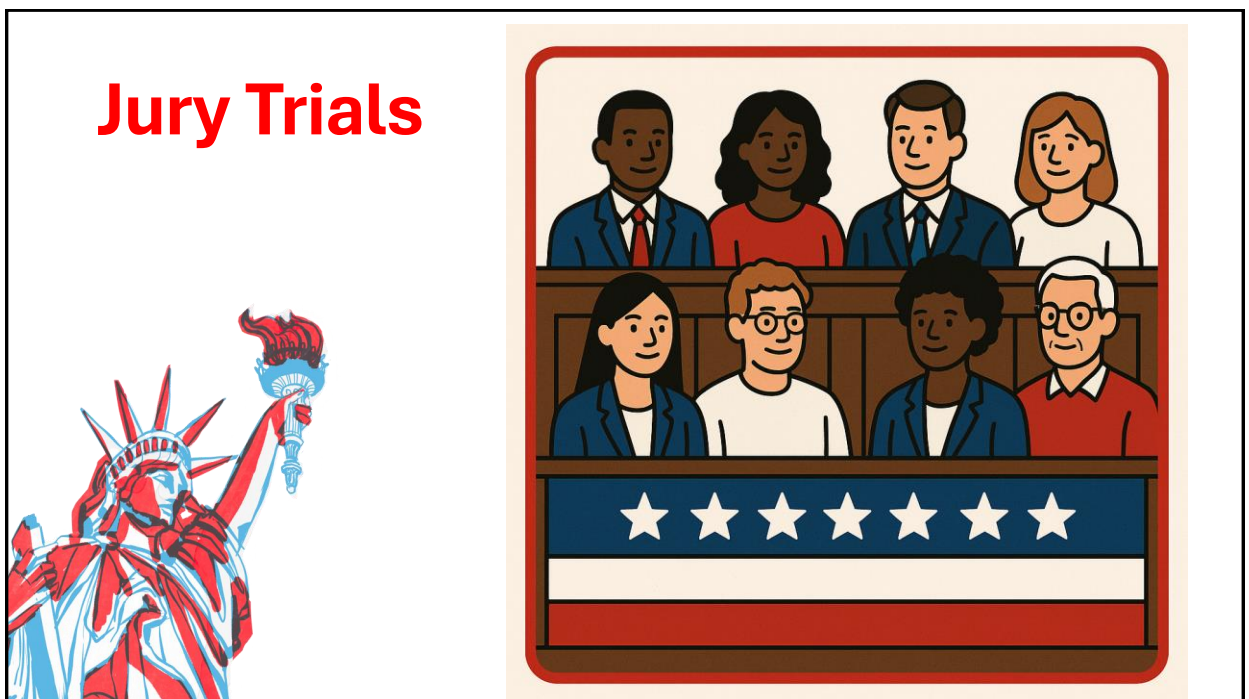


Illegal Entry and Re-Entry
Sentencing Guidelines: 2L1.2
Ben Davis
Available at [fd.org](https://www.fed.org)

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Resources

NIJC

(312) 660-1610

defenders@immigrantjustice.org

CJA training videos

Fd.org

Citizenship charts

<https://www.ilrc.org/resources/acquisition-derivation-quick-reference-charts>

bridget_kennedy@fd.org

sara_peloquin@ao.uscourts.gov

