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*BETTER TOGETHER:  
CRIMINAL AND  
IMMIGRATION  
DEFENSE*

# AGENDA

## Importance

- Padilla v. Kentucky
- Constitutional Rights
- Quality of Service

## Does it make a Difference

- Deportability
- Relief Options
- Mandatory Detention
- Travel

## Putting it all together

## myPadilla

WHY IS THIS IMPORTANT?

# PADILLA V. KENTUCKY



## Facts:

- Mr. Padilla had been a Legal Permanent Resident for 40 years and served in the US military
- Then he was charged with drug trafficking
- His defense attorney told him to take the plea without getting an immigration consult
- Ordered deported and appealed his case

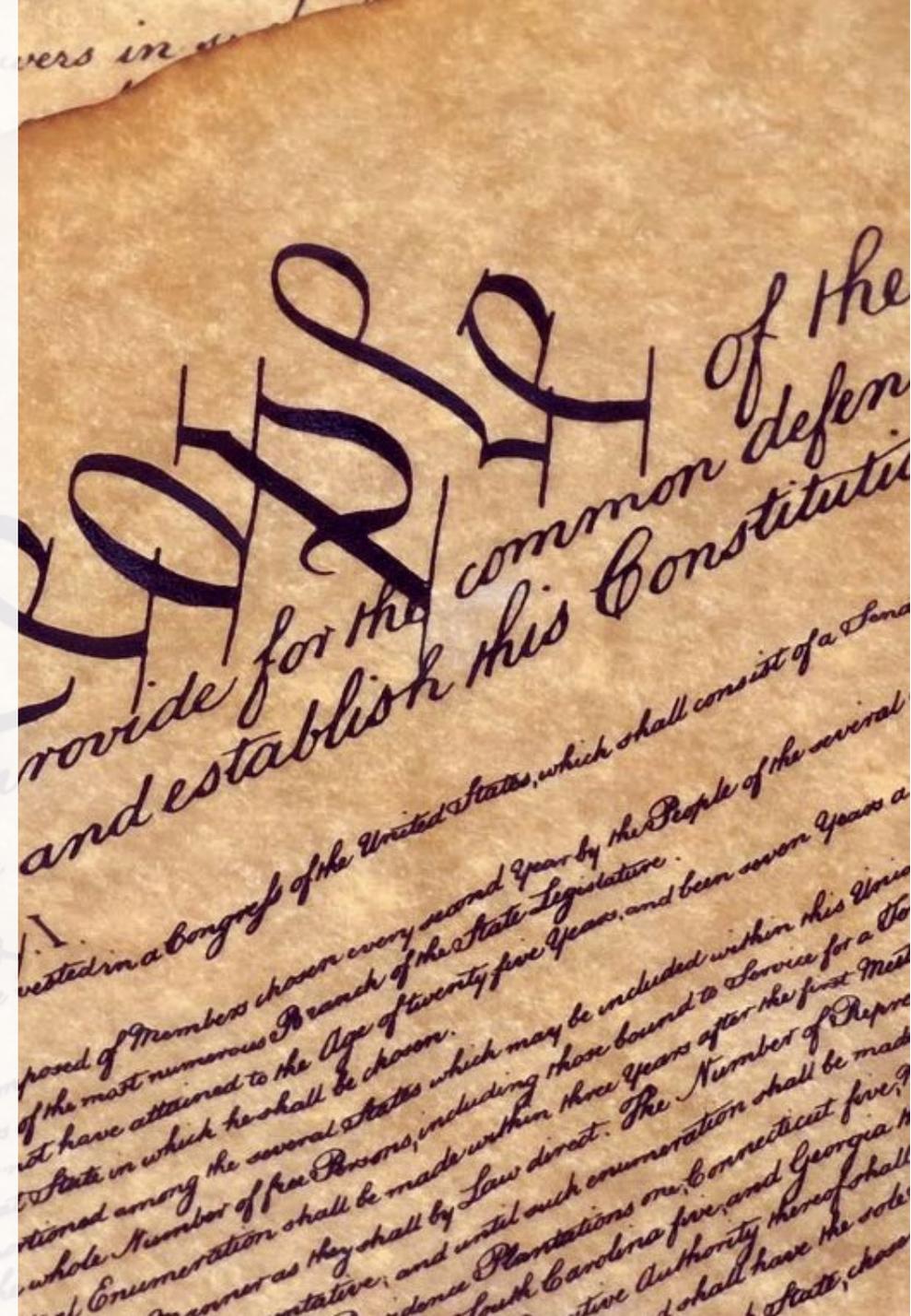
## Holdings:

- Padilla advice is not the same as a judicial admonishment
- Defense counsel has an obligation to warn their clients of immigration consequences. If they fail to do so, they can face an Ineffective Assistance of Counsel claim
- The warning must be specific and detailed when the consequences are clear

# PROTECTS CONSTITUTIONAL RIGHTS

A failure to provide a warning is a violation of the person's 6th amendment right to counsel

A failure to ensure competent representation on behalf of the judge is a violation of the person's 5th amendment right to due process



# QUALITY OF SERVICE

What if you're wrong?

What if it was you or your loved one?

Who else will help?

How much will the client appreciate it?



DOES IT MAKE A DIFFERENCE

REDEFINING AN  
IMMIGRATION  
"WIN"

Deportation

Relief

Bond Eligibility

Travel



# DEPORTABILITY

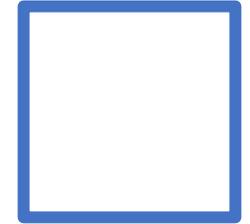
# INADMISSIBLE VS. DEPORTABLE



Inadmissible  
= no entry

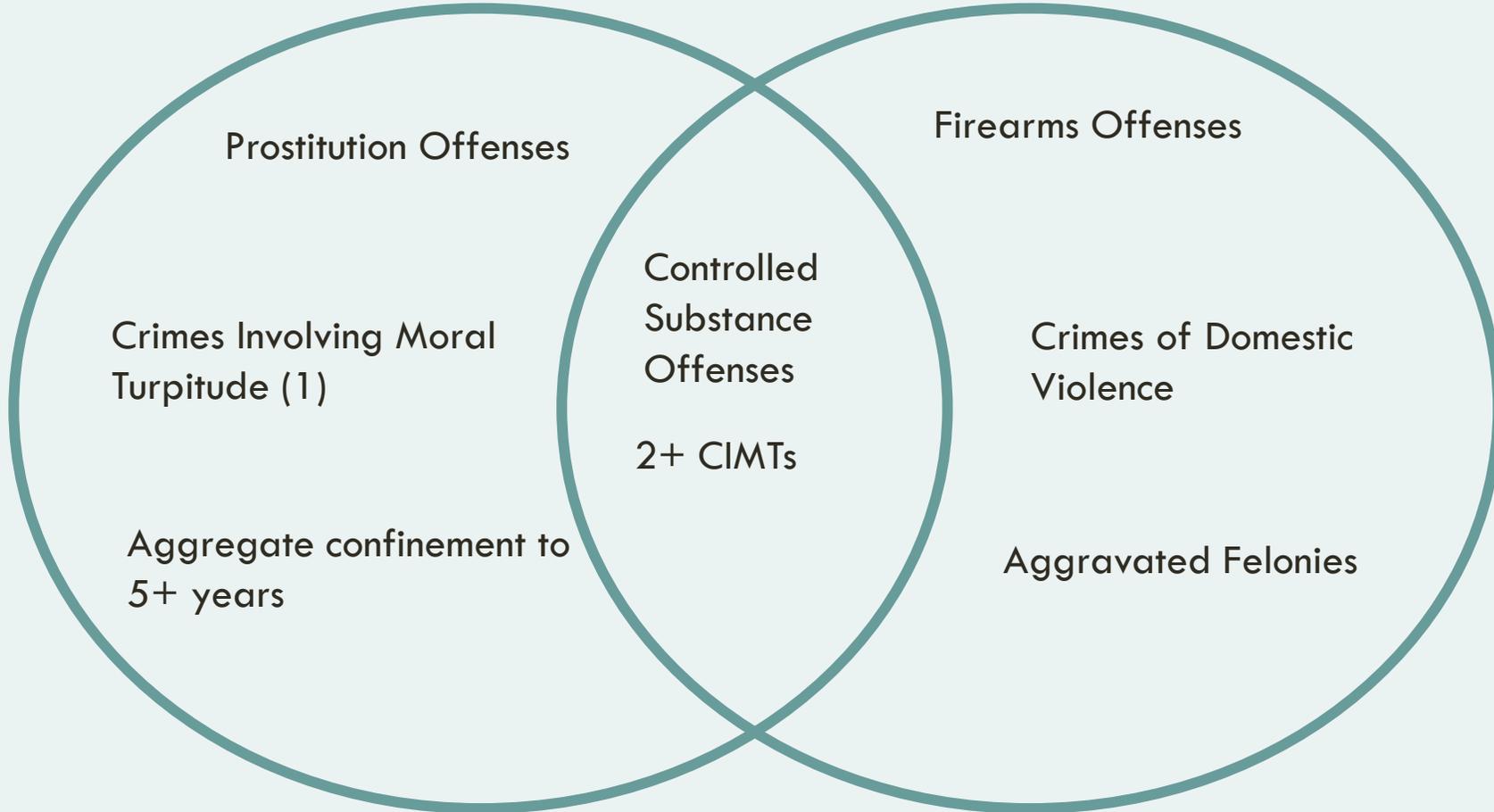
Deportable  
= kicked  
out

Can be both,  
can be  
neither



**Inadmissible Crimes**

**Deportable Crimes**



Prostitution Offenses

Firearms Offenses

Crimes Involving Moral Turpitude (1)

Controlled Substance Offenses

Crimes of Domestic Violence

2+ CIMTs

Graffiti

Trespass

Aggregate confinement to 5+ years

Aggravated Felonies

Criminal Mischief

DWI

Traffic Tickets

# AVOIDING DEPORTABILITY



Arnold Schwarzenegger has been a Legal Permanent Resident ("LPR") for 2 years

He is charged with Unlawful Possession of a Firearm

Any firearms offense is a deportable offense

If the charges are amended to Unlawful Possession of Body Armor he will not be deportable at all.



# RELIEF OPTIONS

# TYPES OF RELIEF

## Cancellation of Removal

- Nonpermanent Residents win status
- Permanent Residents keep their status

## Adjustment of Status

- Gaining status through a petitioner/existing application

## Asylum

- 3 forms

## Visas

- U visa
- Work Visa

# PRESERVING RELIEF OPTIONS

Pablo Escobar has been an LPR for 10 years

He is charged with Manufacturing and Delivery of a Controlled Substance

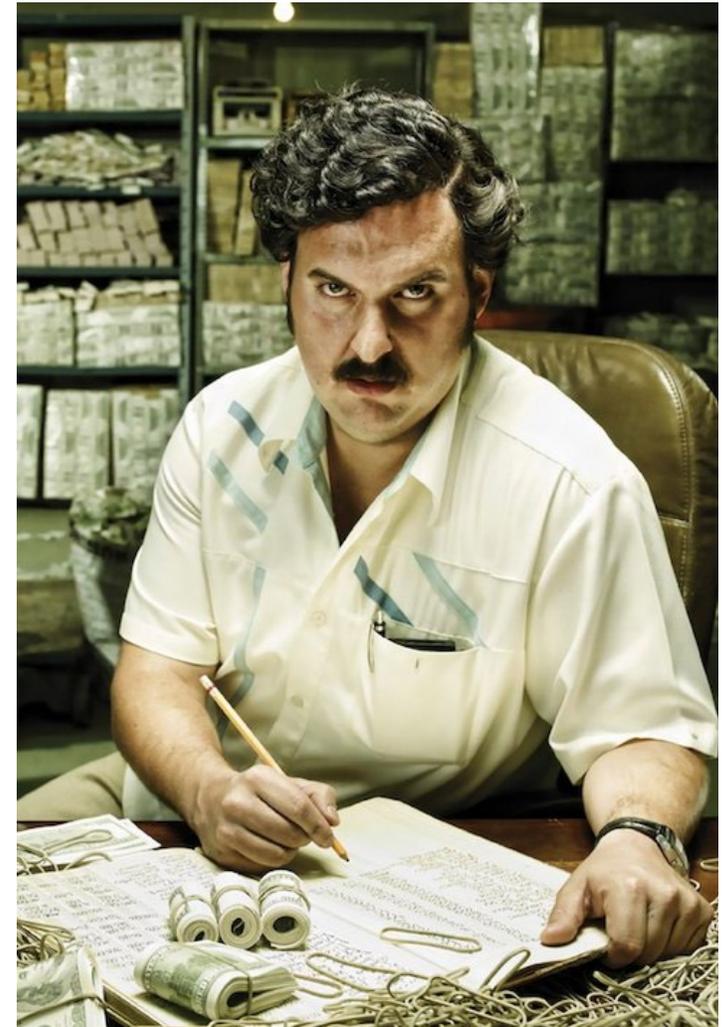
Any crime involving a controlled substance is a deportable offense.

Drug Trafficking is an aggravated felony

An aggravated felony bars him from Cancellation relief

Amending to Unlawful Delivery or Manufacture with Intent to Deliver *Simulated* Controlled Substance saves Pablo (kind of).

Man/Del of a Simulated Controlled Substance is a deportable offense, but not an aggravated felony so he will still be eligible for 42A Cancellation of Removal



# PRESERVING RELIEF OPTIONS

OJ Simpson has been in the US for 25 years without documentation and has 5 US citizen children (not including Khloe Kardashian)

He has a pending Evading Arrest charge

Evading Arrest is a CIMT based on which subsection it is charged under

Generally, evading on foot *is not* a CIMT. Evading in a vehicle *is* a CIMT.

He will not be eligible for Cancellation of Removal if he is convicted of an inadmissible offense (a CIMT)

Specifying the plea to TPC 38.04(a) will keep him eligible for relief in immigration court.





# MANDATORY DETENTION

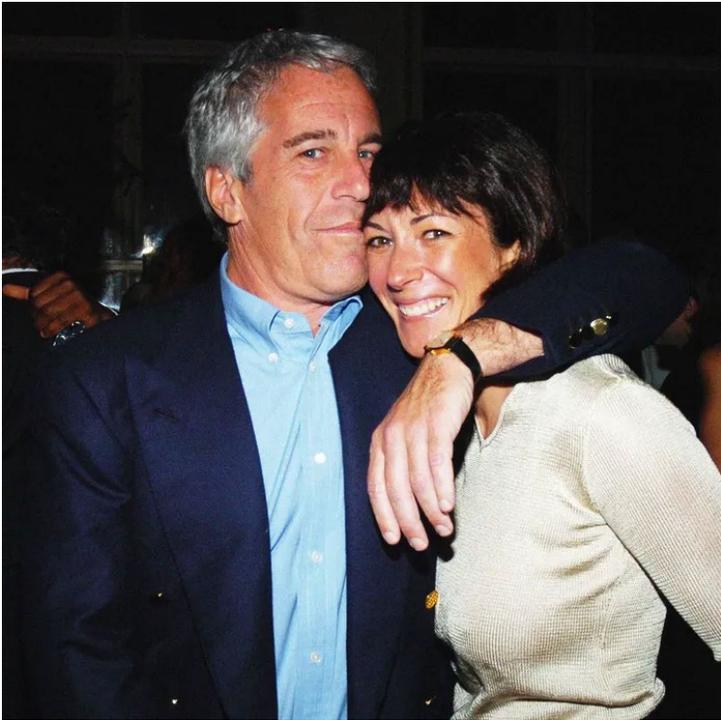
# MANDATORY DETENTION

A person is completely ineligible for an immigration bond if convicted of:

- A CIMT with a sentence of one year or more
- An offense involving a controlled substance
- Multiple CIMTs
- Any offense involving a firearm
- An aggravated felony



# AVOIDING MANDATORY DETENTION



Ghislaine Maxwell overstayed her visa and is now in the US without status

She is charged with Promotion of Prostitution

An offense involving prostitution is a CIMT

If she is convicted of a potential sentence of a year or more, she will be subject to mandatory detention

If she is sentenced to 364 days or less, she can be granted an immigration bond

TRAVEL

# RE-ENTRY

Even a permanent resident must be "admissible" to come back into the US after traveling abroad

A person can be inadmissible, but not deportable

If convicted of an inadmissible offense, a person will be denied entry and can be placed in removal proceedings at a port or entry



# PRESERVING ABILITY TO TRAVEL

Batman has been an LPR since 2008

He is charged with TPC 38.02 Failure to ID

Failure to ID becomes a CIMT aka an inadmissible offense when there is fraud involved

If he is convicted of TPC 38.02(b) or (d)(2) he will be inadmissible

If he travels abroad, he will not be allowed to return to Gotham

If he is convicted of TPC 38.02(a) or (d)(1), he will not be inadmissible and will be able to travel freely



PUTTING IT ALL TOGETHER

# ASSAULT!

Gordon Ramsay has been an LPR for 23 years

He is charged with intentional and knowing Aggravated Assault with a Deadly Weapon; to wit, a butcher knife

If he is charged as-is with a potential sentence to confinement for one year or more:

- Inadmissible for a CIMT (because it involves a deadly weapon)
- Crime of Violence (because intentional/knowing)
- Aggravated Felony (because sentencing)
- He is deportable and ineligible for bond and ineligible for relief in removal proceedings.



# ASSAULT CONT.

If we amend the conviction to Reckless Assault:

- No CIMT so he can travel internationally
- Not a crime of violence so not deportable at all
- Not an aggravated felony because not a crime of violence so he's eligible for relief in removal proceedings if he's charged with a deportable offense in the future



## ASSAULT CONT.

What if the victim was his wife?

A crime of domestic violence is a deportable offense. If there is a sentence to a year or more, it becomes an aggravated felony.

BUT, a crime of domestic violence must first be a crime of violence

*Reckless* assault cannot be a crime of domestic violence even if there is a family violence finding in state court.



# TPC 22.01

## Sec. 22.01. ASSAULT.

- (a) A person commits an offense if the person:
  - (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; 
  - (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or 
  - (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative. 
- (b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:
  - (1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;
  - (2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:
    - (A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or
    - (B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth; 

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A project of the Capital Area Private Defender Service



myPadilla: Signup

## Sign Up

First Name Last Name

Email

Password

Firm / Organization

Phone Number (optional)

Counties you practice in

"myPadilla gives us sound, professional, expert immigration advice so our clients can"



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Welcome Krista

Dashboard All Forms Log Out Start New Intake

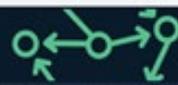
### Recent Intake Forms

You haven't created any new intake forms yet

### How it Works

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myPadilla: Intake - Dashboard

### Intake Dashboard

- There are 3 sections. You can start with Step 1, 2, or 3 depending on what best fits your situation.
- You can save and exit a section at any time. The section will appear complete once all the required questions are answered.
- Once all 3 sections are complete, you can finish and submit the form for review.

1 Not Started **Current Charges**  
Enter information about the pending criminal case

2 Not Started **Criminal History**  
Enter information about your client's comprehensive prior criminal history

3 Not Started **Client Info**  
Ask your client about imm status & history, family, and more

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# WHAT'S IN THE MEMO?

Inadmissible or  
deportable

Naturalization

Travel

Bond

Relief Options

Plea  
Recommendations

QUESTIONS AND  
CONTACT INFO

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