

PREFACE

In 2003, I started writing this book with two independent reasons in mind. The first was that after years of writing articles on specific, limited topics for seminars and conferences, I wanted to cover the entire concept of immigration defense in one big picture. In my mind, the flow of that discussion was coming together and I really needed to write it down. So I did. From start to finish, this book seeks to explain the sources of immigration law, the system and various agencies, detention, convictions, classifications and consequences of crime—on up through relief. This book follows a natural flow and is appropriate for both the beginning law student, criminal defense lawyer dealing with one specific issue, or seasoned immigration lawyer looking for a fresh perspective.

The second inspiration for my writing was feeling increasingly disheartened when consulting with clients who had made bad plea deals and were shocked to find that they were facing mandatory detention and almost certain deportation. Sixteen years ago, most criminal defense attorneys did not understand that a deferred adjudication and dismissal could still be considered a “conviction,” or that 366 days in order to get a few days jail credit would leave someone in mandatory ICE custody. Defense lawyers were not thinking about fraud, theft, financial loss, or sale versus distribution. I wanted to get the word out to both criminal and immigration lawyers that we could work together and think about analyses, consequences, and strategies. Collectively, the American Bar has made great progress in thinking about the immigration consequences of crime. We still have work to do, but the awareness, I believe, is there in the minds of most criminal attorneys.

Now it’s 2019, and this is the eighth edition of *Immigration Consequences of Criminal Activity*. My purpose for this publication—and I’ll remind the reader—is not to cover each any every case on every particular crime. Certainly, many decisions from different circuits and the BIA (and sometimes the AAO) are mentioned and summarized here, but my real goal is not to give the short and easy headnote, but explain the analysis, point out differing points of view—the circuit split—and highlight how the court arrived at a certain conclusion. I try to identify and explain trends in certain analyses, such as the BIA’s insistence at every turn on applying a realistic-probability test, and assigning this burden to the non-American citizen. This edition includes a significant focus on detention (chapter 4), including prolonged-detention litigation and other case law updates, following the Supreme Court’s disappointing decision in *Jennings v. Rodriguez*. Also included is discussion of moral turpitude and a new (old) perspective on whether this concept is simply void for vagueness. My conclusion? Whether or not, let’s leave removability for moral turpitude crimes in place, and avoid the alternative. *Read more* in chapter 6. Moving on, there is a lot of fluidity in the circuits’ approach to mismatched controlled substance schedules and defining aggravated felony drug trafficking—especially positive cases in the Second Circuit. I discuss the circuits’ decisions post-*Mellouli*. And I am hoping that other circuits disavow a burden shift in the relief stage where the statute is divisible, whereby the modified categorical approach will almost always hurt the non-American citizen; I discuss the courts’ approach to *Almanza* at length in chapter 10.

I approached writing this book from a circuit split of my own: the aggravated felonies chapter was written oceanside in Cartagena; moral turpitude was inspired in the

woods of Wisconsin; detention emerged at the dining room table in Miami. I'm encouraged that so many attorneys across the country are winning petitions for review, mandamus actions, and habeas petitions. I'm not sure this book does justice to all the great litigation going on out there—but I know I've tried my best to summarize, explain, and equip immigration and criminal attorneys alike to defend to the very best of their abilities the non-American citizen. *Enjoy!*