



When Systems Collide: A Guide to Immigration Issues for Criminal Justice Judges and Practitioners

Understanding the critical intersection where criminal and
immigration law meet

Panelists



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The "Dual System" Reality

Immigration law has been described by federal courts as "second only to the Internal Revenue Code" in its complexity. This intersection—where a local shoplifting charge can trigger a federal removal order—represents a merger of enforcement and adjudication with profound consequences.

The Paperwork Pipeline

An Immigration Judge's file often does not include a state court Certificate of Disposition. Immigration courts are the downstream recipients of decisions made by the criminal bar.

Non-Criminal "Convictions"

The INA definition of "conviction" (8 U.S.C. § 1101(a)(48)(A)) is broader than state law. A conviction vacated for rehabilitative purposes still counts as a conviction for immigration purposes. This can include expungements, sealing, vacature, and dismissal.

The Civil Penalty Fallacy

While labeled "civil," detention occurs in jail-like settings with no right to court-appointed counsel, no speedy trial rights, and no automatic discovery.

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ICE Directive Enforcement Actions in or Near Courthouses

- Non-public places - Civil immigration enforcement actions in or near courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and use the court building's non-public entrances and exits.
- When practicable, ICE officers and agents will conduct civil immigration enforcement actions against targeted aliens discreetly to minimize their impact on court proceedings.

ICE officers and agents should generally avoid enforcement actions in or near courthouses, or areas within courthouses that are wholly dedicated to non-criminal proceedings – examples include family court and small claims courts.

- When an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director, Special Agent in Charge, or his or her designee is required prior to conducting the enforcement action.

Reach out to us if you are looking for additional support.

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Immediate Actions After an ICE Arrest



1. Document the Incident

- Thoroughly record arrest details: location (court vestibule, hallway, etc.), number of ICE agents, their appearance and identification, responses to inquiries (e.g., for a warrant), and any court staff involvement or awareness.
- Identify factors applicable to a motion to suppress.
- 4th Amendment violations must be egregious and widespread to suppress identity. *INS v. Lopez-Mendoza*, 468 US 1032 (1984)
- Identify factors applicable to a motion to suppress.
- 4th Amendment violations must be egregious and widespread to suppress identity. *INS v. Lopez-Mendoza*, 468 US 1032 (1984)
- Counseling practice tip - Must affirmatively invoke the 5th Amendment to remain silent.
- Identifying factors to determine what factors are considered involuntary - lengthy interrogation, denial of food or drink, inability to exercise regulatory rights, etc. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980)

Case to watch - *Noem v. Vazquez-Perdomo*, 606 US ___ (2025)

- Ethnicity alone can't raise reasonable suspicion. But, when multiple ethnicity factors are present, it may raise reasonable suspicion of an immigration violation.

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Immediate Actions After an ICE Arrest



2. Alert Advocacy Groups

Report the documented event to organizations actively tracking ICE courthouse arrests.

Illinois Governor J.B. Pritzker signed H.B. 1312 into law, banning civil immigration arrests at state courthouses or within 1,000 feet of those facilities. The law also provides for civil damages against immigration officers who violate the law.

Historical context

Arrests in the courthouse are a recent policy choice.

Former Immigration and Naturalization Service part of DOJ – Assistants District Counsel had authority to ensure justice was served.

DHS ICE Assistants Chief Counsel have had more discretion in the past to ensure justice was served.



3. Locate & Seek Counsel

Utilize the ICE Online Detainee Locator to find your client. Immediately consult an immigration lawyer to navigate the criminal matter while the client is in ICE custody.

For context



www.ilrc.org



Relief Chart: Eligibility for Immigration Relief Despite Crimina

This Chart summarizes the criminal record bars to many forms of relief, to provide a quick way to check whether your client is potentially eligible

ICE in the State Courthouse

Identifying the Agent

Plainclothes agents are identifiable with "ICE" on a lanyard or windbreaker. They often shadow the "Traffic" or "Arrestment" calendars, confirming identity through consensual.

The Warrant Check

ICE agents typically do not have warrants signed by a judge. Form I-200 (Administrative Warrant) signed by an "Authorized Immigration Officer" lacks authority to enter non-public areas.

Hallway Engagement

Defendants or even courtwitnesses may want to be mindful about responding to their names in the hallway. If the client stays in the courtroom, there will be a judicial presence and a recorded environment.

Breaking News

Development: ICE asserts sweeping power to enter homes without a judge's warrant - Memorandum May 12, 2025, Acting ICE Director Todd Lyons authorizes ICE agents to forcibly enter into certain people's homes without a judicial warrant, consent, or an emergency.

Developing area of the law - How viable is the emergency that would support a forcible entry into a home without a judicial warrant and with no consent?



Motions to Suppress

With ICE-authorized entry into homes without judicial warrants, such motions are expected to be key defenses against unlawful, coercive, or egregious enforcement actions. Work with your client's immigration attorney to coordinate on particulars of motions to suppress in both court process.

ICE in the State Courthouse

Judicial Ethics Concerns

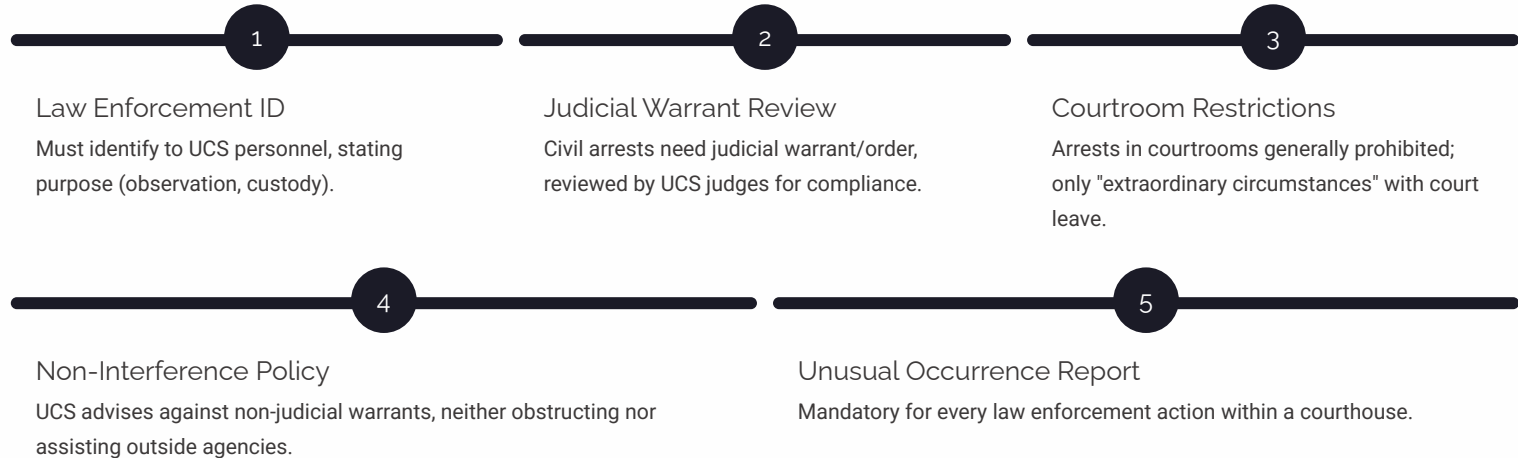
Under the 2017 ABA Resolution, a judge's primary duty is the "Presumption of Openness." ICE presence can deter victims and witnesses, which impacts the core mission of state judiciary.

Staff Neutrality

Court clerks and officers should be careful about providing ICE with non-public release times or home addresses as it constitutes an ethical breach of the court's neutral status.



New York State Courthouse Protocols



Immigration Enforcement Documents

Critical to distinguish between judicial and administrative actions.

Form I-200 (Warrant for Arrest of Alien): Administrative warrant, not judicial; based on probable cause of removability.

Form I-205 (Warrant of Removal/Deportation): Commands custody and removal based on a final deportation order.

Form I-247 (Immigration Detainer): Request to local LE to hold individual for up to 48 hours (excluding weekends/holidays) for DHS custody.

Note: DHS discourages dismissing criminal charges solely due to a detainer.

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Navigating ICE Enforcement: Key "Touchpoints"

Immigration counsel must be involved early to mitigate two separate risks:

Custody Risk: Potential apprehension by ICE during the criminal case.

Record Risk: How the eventual conviction, sentence, and plea documents shape the federal immigration case.



Criminal Courthouse Appearances

ICE Directive 11072.3 (Jan 2025) permits targeted civil enforcement actions near courthouses, especially where local agencies limit cooperation. This creates predictable locations for arrests, including potential collateral arrests.



Jail / Release Window

This is the most common pickup point. ICE detainers request holding individuals for up to 48 hours (excluding weekends/holidays) after criminal release to transfer them to ICE custody, often leading to Fourth Amendment challenges.



Probation Check-ins

Scheduled probation appointments offer convenient, predictable times and places for ICE to locate and apprehend individuals, irrespective of local probation department cooperation levels.



DHS & Immigration Interviews

Concerns are rising about arrests at USCIS field offices during scheduled interviews. Revised NTA guidance (2025) also increases coordination with ICE/CBP, potentially fast-tracking individuals into removal proceedings.

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Practice Tips: Early Intervention

Confirm custody and legal posture **before** plea negotiations begin

Information to Collect

Identifiers: Full name/aliases, DOB, country of birth, citizenship, language.

Immigration IDs: A-number, USCIS receipt numbers.

Docs on hand: Green card/EAD, I-94, passport/visa, NTA/hearing notices, prior orders.

Entry & History: Last entry method/date; any prior removal/deportation; ICE/ATD/check-ins.

Criminal case snapshot: Exact statute/subsection charged, next dates, custody/bail, detainer rumor.

Quick Links

[ICE Online Detainee Locator \(ODLS\)](#): Find someone currently in ICE custody.

[EOIR Case Status \(ACIS\)](#): Check for outstanding removal orders, next hearings, and basic case status by A-number and country of citizenship.

[EOIR Respondent Access \(Portal\)](#): If eligible, view hearing info, upload/file certain items.

If A-number unknown, prioritize getting it—everything moves faster once you have it.

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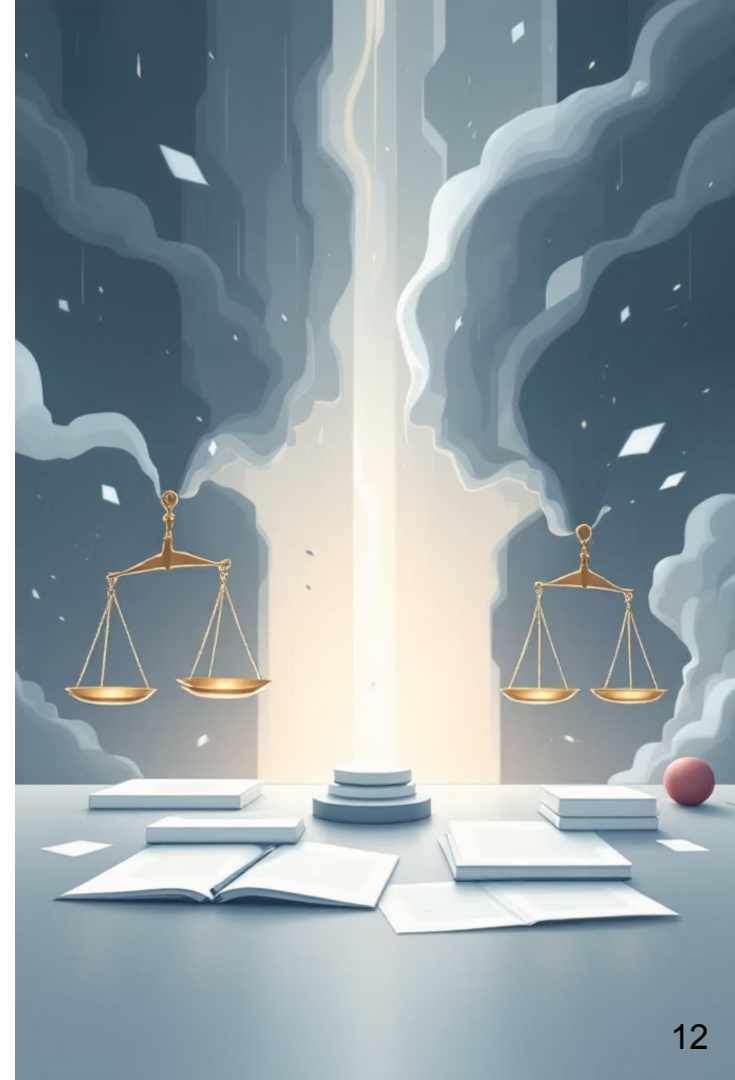
Key Differences Between State Criminal and Federal Immigration Law

A critical **mindset shift** is essential: federal immigration law operates under its own distinct definitions, often **not aligning** with state criminal law labels.

State terms like “misdemeanor,” “violation,” “sealed,” “expunged,” or “conditional discharge” can be misleading. Immigration uses **federal definitions** for what constitutes a “conviction” and “sentence.”

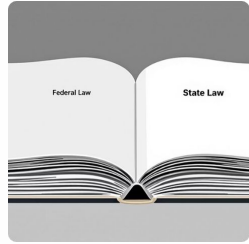
The crucial questions are: Does the **Immigration and Nationality Act (INA)** treat it as a conviction, and does it align with a federal immigration category such as a **Crime Involving Moral Turpitude (CIMT)**, a **controlled substance offense**, a **domestic violence ground**, or an **aggravated felony**?

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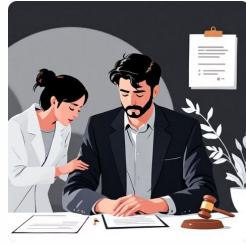
What Counts as a "Conviction" in Immigration?

Understanding the precise definition of a "conviction" under immigration law is critical, as it often differs significantly from state criminal law definitions.



Broader Federal Definition

Federal immigration law defines "conviction" more broadly than many state systems. It includes formal judgments of guilt **and** cases where adjudication is withheld but a plea or admission of facts leads to any punishment or restraint (INA § 101(a)(48)(A)).



Diversion Can Still Count

Even if a state court dismisses a case after a diversion program (e.g., community service, classes), if there was a plea or factual admission and a court-ordered condition, it may still be considered a conviction under the INA.



Expungement Rarely Helps

State expungements or rehabilitative relief generally do not erase a conviction for immigration purposes. Once the INA definition is met, the conviction typically stands despite state actions (*Matter of Roldan*).



Vacatur Offers Hope (With Caveats)

If a conviction is vacated due to a procedural or substantive defect, immigration may treat it as no longer a conviction. However, if vacated solely for rehabilitation or immigration hardship, it may still be counted (*Matter of Pickering*).

The takeaway: Do not assume diversion avoids immigration consequences or that expungement fixes them. Involve immigration counsel before any plea.

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Sentence Definitions: State vs. Federal

The term "sentence" carries distinct meanings in state criminal law and federal immigration law, creating critical differences in consequences.

State Criminal Sentences

State courts may issue a wide range of sentences, including probation, suspended sentences, or conditional discharges, often without considering federal immigration implications.

Federal Immigration

"Sentence"

Under immigration law, the actual sentence imposed (even if suspended) is paramount. A sentence of one year or more, regardless of whether it was served, can reclassify a state misdemeanor as an aggravated felony for immigration purposes.

Aggravated Felonies & CIMTs

Many state criminal convictions can be deemed Crimes Involving Moral Turpitude (CIMT) or aggravated felonies under federal immigration law, leading to severe penalties like mandatory detention, inadmissibility, or deportation.

Always evaluate the specific sentence length and type against federal immigration definitions, as state labels can be misleading.

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Key Deportable Convictions

Certain criminal convictions carry severe, often mandatory, immigration consequences. These categories frequently trigger removal proceedings:



Domestic Violence & Protective Orders

Immigration law broadly covers DV, child abuse, and stalking. Crucially, a violation can be triggered by a court **finding** (not just a conviction), making technical breaches of protective orders highly consequential.



Crimes Involving Moral Turpitude (CIMT)

CIMTs are not explicitly defined but established through case law, often encompassing theft, fraud, and intentional harm offenses. Analysis is typically elements-based, focusing on the statute's requirements, not specific case facts.



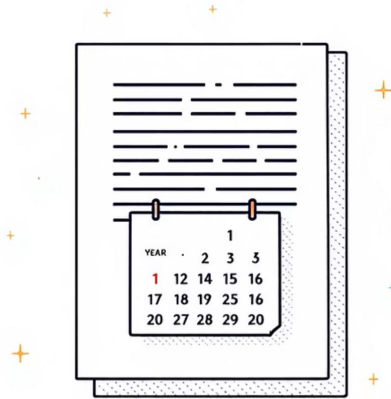
Aggravated Felonies

It frequently leads to mandatory detention, severely limited avenues for relief, and often an almost automatic path to removal from the U.S.

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Aggravated Felonies: The Critical 364-Day Rule

Understanding the precise sentencing thresholds is paramount, as a single day can dictate whether a conviction becomes an "aggravated felony" with devastating immigration consequences.



The One-Year Trigger

Many aggravated felony categories, such as theft/burglary and crimes of violence, are triggered by a "term of imprisonment of at least one year" under INA § 101(a)(43).

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The "364 Days" Distinction

The difference between a 365-day sentence and a 364-day sentence can be the sole determinant for relief eligibility, making this one day a critical "landmine" in criminal plea negotiations.



Real-World Consequences

For a Lawful Permanent Resident (LPR), a "one-year suspended sentence" for a theft offense, while seemingly lenient in criminal court, can reclassify the crime as an aggravated felony, leading to mandatory detention and removal.

Analyzing Convictions: Categorical Approach, Record & Burdens

Immigration courts use a distinct methodology to determine if a conviction aligns with federal immigration categories like Crimes Involving Moral Turpitude (CIMT), controlled substance offenses, or aggravated felonies.

01

The Categorical Approach

Immigration courts compare the elements of the offense of conviction to the federal immigration category. The focus is on the statute's definition, not usually on the underlying facts of the specific case.

03

Burdens of Proof Matter

DHS bears the burden to prove deportability for admitted noncitizens by clear and convincing evidence. Noncitizens often bear the burden to prove eligibility for many forms of relief.

Understanding the nuances of federal immigration law's interpretation of convictions is crucial, as state labels can be misleading and the criminal record's details are paramount.

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02

The Indispensable Record

For criminal lawyers, the "record" is everything: charging language, plea agreements, judgment orders, and sentence details. The precise wording in these documents critically impacts immigration outcomes.

04

The "Pereida" Effect

Following the Supreme Court's "Pereida" decision, an ambiguous criminal record for a "divisible" statute can defeat relief eligibility, as the noncitizen may fail to meet their burden of proving a non-disqualifying prong.

Deportability vs. Inadmissibility: Impact of *Padilla v. Kentucky*

Understanding the distinction between deportability (being removed from the U.S. after lawful entry) and inadmissibility (being barred from entering or re-entering the U.S.) is fundamental. Both carry severe consequences for noncitizens and are heavily influenced by criminal convictions.

The *Padilla* Mandate

The Supreme Court held that criminal defense attorneys must advise noncitizen defendants about the potential immigration consequences of a plea agreement.

Immigration Consequences

Plea bargains and admissions of guilt can have profound effects, including making a defendant removable or inadmissible, rendering them ineligible for cancellation of a removal order, and preventing them from naturalizing to U.S. citizenship.

Ineffective Assistance of Counsel

A failure by defense counsel to provide accurate advice regarding these immigration risks can amount to ineffective assistance of counsel in the criminal case, potentially leading to a vacated plea.

No Right to Counsel in Immigration

Crucially, unlike in criminal proceedings, noncitizens do not have a constitutional right to appointed counsel in immigration court. This places an even greater burden on criminal defense attorneys to provide timely and accurate advice.

Best Practices for Referrals to Immigration Counsel

1 Information is Key

A referral requires an A-Number (Alien Registration Number), a copy of the Notice to Appear (NTA), and the client's Date of Entry and current status (LPR, DACA, TPS).

2 Speed Matters

The referral must happen during the discovery phase, not the week of trial. Early intervention maximizes options and potential defenses.

3 Vet the Expert

Referrals to attorneys that handle "Removals" or "Crim-Imm" cases specifically offer expert analysis as these counsel are up-to-date on the details of crim-imm. These are specialized practice areas.



Immigrant Defense Project (IDP)

Access comprehensive practice advisories and resources specifically designed for criminal-immigration intersection cases.



DOJ Pro Bono List

Identify qualified immigration attorneys through the Executive Office for Immigration Review (EOIR) website's pro bono directory.

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Overview of the Immigration Court

Administrative vs. Judicial

Immigration courts are administrative courts within the U.S. Department of Justice, distinct from federal courts established under Article III of the Constitution. They hear cases involving noncitizens the government seeks to "remove" from the country.

Representation and Rights

A DHS attorney, part of the ICE division, represents the government as the prosecutor. Immigrants have the right to an attorney, but the government is not required to provide one, meaning they must secure their own legal counsel or represent themselves.

Key Distinction

Unlike criminal courts, where public defenders are provided for indigent defendants, immigrants in removal proceedings generally face proceedings without court-appointed counsel.

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Immigrants' Rights in Removal Proceedings



Right to Counsel, Not Appointed

Removal hearings are civil, not criminal. Immigrants must find and pay for their own lawyers, with no public defender provision, even for children.



Fifth Amendment Due Process

Established by the Supreme Court (e.g., Wong Wing, Flores v. Reno), guaranteeing due process, including judicial review and timely notice before removal. "Reasonable time" remains a litigated issue.



Statutory Protections

Immigrants have the right to notice of removal reasons, to examine and present evidence, and to cross-examine witnesses. Decisions must be based solely on hearing evidence, with a complete record maintained.

Basic Procedure in Immigration Court



Master Calendar Hearing (MCH)

Think of this as a procedural status conference where the court takes "Pleadings." Counsel should often request a "Continuance for Attorney Preparation" to review the state court record before admitting the allegations in the NTA.



Individual Hearing

This is the "trial on the merits." The focus shifts from "Are they deportable?" to "Do they qualify for relief?" such as Asylum or Cancellation of Removal.



Custody Redetermination (Bond)

To obtain bond, the respondent must prove they are not a flight risk and not a danger to the community. Your criminal record is the primary factor used to determine danger.

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What Issues Can Be Raised in Immigration Court?



Challenge to Citizenship

The immigration judge must first determine if the individual DHS seeks to remove is a U.S. citizen, as citizens are not subject to removal proceedings.



Disputing Removability

Immigrants can challenge the government's claim that they are removable under the law, for instance, by arguing they had permission to enter or did not commit an alleged offense.



Asserting Defenses & Relief

Individuals can present legal arguments to remain in the U.S., such as demonstrating a credible fear of persecution to qualify for asylum, withholding of removal, or CAT protection.

What Law Applies in Immigration Court?

Governing Legal Framework

Immigration courts operate under a specific legal hierarchy:

Immigration and Nationality Act (INA): The foundational statute and its binding regulations (Title 8 CFR)

Administrative Precedent: Decisions from the Board of Immigration Appeals (BIA).

Judicial Review: Rulings from relevant federal courts of appeals and the U.S. Supreme Court.

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Key Procedural Distinctions

Agency Authority: Immigration judges and the BIA cannot rule on whether regulations comply with the Administrative Procedure Act (APA).

Constitutional Challenges: While due process questions can be heard, judges **cannot rule** on the constitutionality of the INA itself.



Appealing Immigration Judge Decisions

Appeal to the Board of Immigration Appeals (BIA)

Either party may appeal an immigration judge's decision to the BIA. This administrative body reviews rulings, and historically, fewer than 10% of immigration judge decisions are appealed to it annually.

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Appeal to Federal Circuit Courts

Immigrants can further appeal many BIA decisions, including issues of removability and due process violations, to a federal circuit court of appeals. These appeals typically range between 15% and 20% of BIA cases.



Key Takeaways

The records you create are the only "truth" immigration judges are allowed to see.



The Minefield - The "Crim-Imm" intersection is unforgiving—your signature on a state plea deal is often pivotal in federal immigration court.



Draft Carefully - Every detail in the records you create—police reports, sentences—becomes the permanent record shaping your client's immigration future.

"Decisions made in state court echo through the federal immigration system for years to come." – **Hon. Mimi Tsankov (Ret.)**

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Join our upcoming

event



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We extend our sincere gratitude to the ABA Criminal Justice Section for inviting us to share insights and expertise on the complex intersection of criminal and immigration law. We hope our collective experience as former Immigration Judges provides a critical perspective for all legal practitioners and judges navigating these challenging cases.