UNBALANCED SCALES OF JUSTICE: HOW ICE IS PREVENTING NONCITIZENS FROM HAVING EQUAL ACCESS TO DIVERSION PROGRAMS AND THERAPEUTIC COURTS

Sara Elizabeth Dill

This article examines the evolution of the criminal justice system to focus on rehabilitation, deterrence, and punishment through the creation of therapeutic courts and diversion programs that benefit society and decrease recidivism rates. However, unknown to many, these programs are unavailable to an overwhelming majority of noncitizens due to pretrial detention solely as a result of an immigration detainer, resulting in an inequity with a high personal cost to the individual, his or her family and community, and society as a whole. This article will discuss the harsh immigration penalties associated with criminal convictions or other lesser contacts with the criminal justice system as well as provide recommendations for diversion programs and therapeutic courts so that participation does not create severe collateral consequences, as it often does with noncitizen defendants. By allowing all eligible defendants equal access to therapeutic courts and diversion programs, our system will also have a positive impact on children and families. Not only will defendants receive treatment and skills necessary for reentry to the community, but they will remain in the United States with their families.

Key Points for the Family Court Community:
• The immigration penalties of criminal convictions (or even arrests) have become so severe that deportation has become the norm, rather than the exception
• Diversion programs and therapeutic courts provide rehabilitation and treatment and often do not result in immigration penalties, yet are frequently unavailable to noncitizens solely due to immigration issues
• Family ties no longer provide relief in a majority of cases where an alien has criminal issues, thus creating a system where immigration interferes with issues of custody, child support, and marriage

Practitioner’s Key Points:
• Provide attorneys with a background in the issues facing noncitizens in the criminal justice system, including the harsh immigration penalties that result from a conviction
• Explain the importance and benefits of therapeutic courts and diversion programs
• Discuss the inequities in access to justice that result when noncitizens are facing criminal charges but have an immigration detainer, preventing admission into therapeutic courts or diversion programs

Keywords: Conviction; Criminal Justice; Deportation and Removal; Diversion Programs; Immigration; Immigration Detainers; Rehabilitation; and Therapeutic Courts.

I. INTRODUCTION

The goals of the criminal justice system have evolved over the years, shifting the focus from punishment, to deterrence, to rehabilitation, and now, a blend of all of these factors. As we understand more how the human brain works and why individuals commit certain types of crimes, we are able to adjust how we respond to criminal cases in a somewhat individualized fashion. Additionally, as court dockets grow to unmanageable numbers and prisons experience overcrowding, the only option is to seek alternatives to incarceration and means to ease the burdens on our courts, prosecutor’s offices, and public defenders. In recent years, following harsh changes to immigration law, noncitizens facing criminal charges created a new wrinkle in the system, one that in 2010 the U.S. Supreme Court recognized was an important and necessary part of the criminal justice process.1

In recent decades, problem-solving courts such as drug treatment courts, mental health courts, and, more recently, veterans’ courts, have become part of the mainstream of criminal justice in the United

Correspondence: saraedill@gmail.com
States. These courts, operating under principles of therapeutic jurisprudence, seek to use their authority to benefit defendants appearing before them by diverting them from jail to alternative-to-incarceration programs. However, these courts are not accessible to everyone who could benefit.

Noncitizens cannot avail themselves of the benefits of therapeutic courts, which results in an inequity with a high personal cost to the individual, his or her family and community, and society as a whole. In most, if not all, of these courts, the prosecution and court require the entry of a guilty plea as a condition of participation. For noncitizens, however, the entry of a guilty plea will result in deportation, detention, or other serious immigration consequences. In many jurisdictions, the successful completion of a court treatment mandate resulting in a dismissal of the case is meaningless for immigration purposes and the alien will be deported.

Individuals, regardless of immigration status or lack thereof, should have equal and uniform access to therapeutic courts, regardless of the custody or detention status of the individual. This will ensure that provisional pleas of guilt entered in such courts as a condition to receiving alternative-to-incarceration treatment do not trigger adverse immigration consequences unless and until the court accepting the plea imposes final sentence as a result of the defendant’s noncompliance with the program.

II. DEFINING THERAPEUTIC COURTS AND THEIR IMPORTANCE

In 1989, in response to the rapidly growing crack cocaine epidemic, the first drug court opened in Miami, Florida. At that time, spending on corrections exceeded $26 billion nationally. Just seven years later, in 1997, the first mental health court began in Broward County, Florida. This movement highlights a shift in criminal justice theory and policy that recognized the need for rehabilitation and treatment in certain types of cases, rather than strictly punishment and deterrence. These specialty courts provide not only treatment, but also mental health services, trauma and family therapy, job skills training, and many other life-skill programs. The goal is truly to have reintegration into society, as well as to avoid recidivism, by actually solving the problem, rather than simply sentencing people to jail.

Therapeutic courts promote recovery through a coordinated response to defendants with substance abuse problems. Therapeutic courts benefit defendants by diverting them from jail to alternative-to-incarceration programs. The scientific evidence overwhelmingly shows that adult therapeutic courts reduce crime and substance abuse, improve family relationships, and increase a defendant’s earning potential. Additionally, these courts return net dollar savings back to their communities that are at least “two to three times the initial investments.” In 2007, the American Bar Association adopted a policy recommended by the Commission on Effective Criminal Sanctions urging that all levels of government “support and fund programs that offer community based treatment alternatives to incarceration.”

Studies have found that therapeutic courts reduce criminal recidivism. By 2006, the scientific community had concluded beyond a reasonable doubt from advanced statistical procedures that drug courts reduce criminal recidivism, typically measured by fewer rearrests for new offenses and technical violations. In each analysis, the results revealed that drug courts significantly reduced crime rates by an average of approximately eight to twenty-six percent. Government research agencies have found similar results. The Government Accountability Office (GAO) concluded in a 2005 report, for instance, that therapeutic courts reduce crime.

Another benefit is the cost-effectiveness and returned net investment of the therapeutic courts. A recent cost-related study concluded that drug courts produce an average of $2.21 in direct benefits to the criminal justice system for every $1.00 invested—a 221% return on investment. These savings reflect measurable cost-offsets to the criminal justice system stemming from reduced rearrests, law enforcement contacts, court hearings, and use of jail or prison beds. The result has been net economic savings to local communities ranging from approximately $3,000 to $13,000 per drug court participant.
A therapeutic court benefits a defendant by diverting him from jail to alternative-to-incarceration programs. An arrest can be a traumatic event, creating an immediate crisis that forces an individual to address his or her substance abuse. The period immediately after an arrest provides a “critical window of opportunity for intervening and introducing treatment.” By taking judicial action promptly after the arrest, the justice system can capitalize on the crisis nature of a defendant. A study of four drug courts in Suffolk County, Massachusetts found that drug court participants were thirteen percent less likely to be rearrested, thirty-four percent less likely to be reconvicted, and twenty-four percent less likely to be reincarcerated than others similarly situated but who did not receive treatment.

Outside the treatment advantages, therapeutic courts also benefit the defendant by allowing him or her to return to society without a criminal conviction. Normally, the defendant’s sentencing is deferred if he or she opts to participate in treatment. When the defendant successfully completes the program, the case is either dismissed or the charges are reduced. Therefore, the defendant has great incentive to complete the program, in order to receive the benefit of plea vacatur. Additionally, it is beneficial for prosecutors because they are not worried about lost witnesses or stale evidence that may result from a deferred prosecution.

Finally, third parties and the community benefit because families do not lose a wage earner due to incarceration, children and spouses have their loved one at home, and the community receives a positive addition upon successful reentry of the defendant. All too often, the criminal justice system fails to acknowledge or consider the outlying impact of each criminal case, forgetting that defendants often have families who will be directly affected by incarceration or the failure of the system to rehabilitate the individual.

Specialized courts are not limited to drug offenses. Many jurisdictions have established courts to address mental illness, homelessness, domestic violence, prostitution, parole violations, and community reentry from custody. The most common courts are as follows:

**Adult Drug Court:** A specially designed court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse among nonviolent substance abusing offenders and to increase the offender’s likelihood of successful rehabilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, community supervision, and use of appropriate sanctions and other rehabilitation services.

**Community Court:** Community courts bring the court and community closer by addressing ‘quality of life’ crimes (e.g. petit theft, vandalism, disorderly conduct, etc.), and have a bifurcated goal of solving the problems of defendants before the court while also requiring the offender to give back to the community through community service hours, restitution, and other means of compensation.

**Domestic Violence Court:** These courts are designed to address traditional problems of domestic violence, working with both the defendant and the victim, to discuss low reporting, withdrawn charges, and high recidivism. The family and community are involved throughout the process, and resources are provided to the victim to give him or her independence and a life that is not dependent upon the offender. These courts focus on therapy, rehabilitation, and prevention of repeat instances of domestic violence. They also frequently assist in matters of child custody and divorce.

**Mental Health Court:** These courts are modeled after drug courts and developed in response to the overrepresentation of people with mental illnesses in the criminal justice system. These courts divert the defendant into judicially supervised community-based treatment, and these courts are all voluntary. Courts, prosecutors, defense attorneys, and mental health professionals all work together to develop treatment plans and supervise the offender throughout the process, including reentry.

The primary benefit of therapeutic courts is that they have led to a large number of offenders, many of whom also have mental, emotional, and physical health problems, receiving treatment, counseling, and other services they need to lead productive and law-abiding lives in the future.
III. BARRIERS TO NONCITIZEN PARTICIPATION IN THERAPEUTIC COURTS

Unfortunately, noncitizens overwhelmingly face deportation and other negative immigration consequences as a result of pleading guilty through deferred adjudication programs. These consequences directly and harshly affect the defendants, their families, the communities, and the criminal justice system itself. Immigrants and their families face the most obvious difficulties given the prospect of deportation and permanent separation of families and communities. Families lose wage earners and caretakers who would otherwise rejoin them as law-abiding and productive individuals following rehabilitation and disposition of the criminal case. Whole families may be uprooted because the primary wage earner is deported simply because he or she enters a plea of guilty prior to entering a diversion program, even though upon successful completion the plea and conviction are vacated. Sadly, this often results in the deportation of U.S. citizen children to countries of poverty, little or no educational opportunities, and inadequate health care. Certainly this is not the result Congress intended, or that the prosecutors offices foresee as an appropriate consequence.

A. IMMIGRATION’S OVERLY HARSH DEFINITION OF “CONVICTION”

The early drug courts were primarily pre-plea or diversionary models; however, in the last few years, the court systems experienced a shift, and now only seven percent of adult drug courts are diversionary programs, compared to fifty-nine percent that are strictly post-conviction (although the conviction is later vacated and expunged upon completion of the program). Of all the courts, seventy-eight percent of adult drug courts in the United States have a probationary or post-plea condition. This shift causes the most significant problem for noncitizens, as it results in a “conviction” for immigration purposes, that more likely than not will trigger severe immigration penalties.

An alien’s removability for a crime depends on whether his conviction fits within a removable offense identified in the Immigration and Nationality Act (INA). The INA separates removal grounds into two categories: inadmissibility grounds codified at 8 U.S.C. § 1182(a) and deportability grounds codified at 8 U.S.C. § 1227(a). Both inadmissible and deportable aliens are referred to as “removable” aliens. The question of which category applies turns on whether the alien has been admitted to the United States, that is, whether the alien has made a lawful entry after inspection and authorization by an immigration officer. An alien who has not been admitted to the United States is subject to removal based on one or more grounds of inadmissibility. In contrast, an alien who has been admitted to the United States and thereafter commits a crime may be subject to removal based on one or more grounds of deportability.

An alien’s removability may also depend on whether the plea would result in a conviction, as the term is defined in the INA, not according to state law. Deferred adjudications, terms of imprisonment, conditional dismissals involving a guilty plea that is later vacated, and suspended entries of sentences or withholds of adjudications are all considered convictions for immigration purposes. Therefore, an alien who enters a guilty plea to participate in a diversion program is convicted in the eyes of immigration, notwithstanding the court’s subsequent vacating of the plea and conviction.

Regardless of whether there is a conviction, the INA also provides grounds of removal based on an alien’s criminal conduct alone. These grounds are generally based on: (1) an alien’s admission that he or she committed a crime or (2) a finding by immigration authorities that there is reason to believe that an alien has engaged in certain specified criminal activities. Thus, diversion programs requiring statements or admissions of the facts of the offense as part of the rehabilitative process may also result in harsh immigration penalties if immigration authorities examine the court records.

Finally, any alien who is convicted of an aggravated felony at any time after admission is deportable. “Aggravated felony” is a term of art created by Congress to describe a set of criminal offenses that subject an alien convicted of such an offense to more serious immigration consequences. The INA sets forth a multipart definition of the term “aggravated felony,” which applies to violations of federal and state law. As a general matter, an alien convicted of an aggravated felony offense is statutorily ineligible for most forms of discretionary relief from removal, including cancellation of
removal and asylum. Under certain very narrow circumstances, an alien may be eligible for adjustment of status and a waiver of inadmissibility under 8 U.S.C. § 1182(h). Finally, a conviction for an aggravated felony offense may subject an alien to mandatory detention and expedited removal procedures. An aggravated felon deportee is also permanently barred, regardless of the date of conviction, from readmission to the United States, unless the attorney general consents to the alien’s application for readmission on a temporary basis under limited circumstances. The law provides that aliens who have been convicted of certain crimes face restrictions on readmission: an alien who (1) has been convicted of an aggravated felony, (2) has been ordered removed, and (3) again seeks readmission is inadmissible at any time he or she seeks admission. By contrast, aliens previously removed who have not been convicted of aggravated felonies do not face a permanent bar to readmission, but instead face either a five-year bar (arriving aliens), ten-year bar (aliens other than arriving aliens), or a twenty-year bar (in the case of a second or subsequent removal). Although ineligible for readmission, an alien convicted of an aggravated felony may apply to the attorney general for special advance consent outside of the United States and show exceptional hardship and compelling circumstances.

Thus, immigration law as it applies to noncitizens is complex and often unforgiving. Even more problematic is that few attorneys in the criminal justice system have the knowledge of immigration law to effectively advise their clients. The lack of appointed counsel in detained immigration cases further exacerbates the problem, especially in those cases where an individual has pending cases before the criminal and immigration courts at the same time.

In Padilla v. Kentucky, the U.S. Supreme Court held that criminal defense attorneys for noncitizen defendants have an affirmative duty under the Sixth Amendment to provide competent advice regarding the immigration consequences of a plea. The Court acknowledged that deportation is a “particularly severe penalty” that is “intimately related” to the criminal process; therefore, advice regarding deportation and immigration consequences of conviction fall within the ambit of the Sixth Amendment right to effective assistance of counsel. Unfortunately, many individuals even in the criminal justice system, do not have access to counsel and are unable to navigate the two systems on their own. This creates further difficulties in noncitizen access to therapeutic courts and diversion programs, absent the work of dedicated and knowledgeable counsel.

Unbeknownst to most practitioners in the criminal justice system, for noncitizens, the entry of a guilty plea, even in therapeutic courts, will result in deportation, detention or other serious immigration consequences. It is not only the undocumented alien facing these consequences, but also lawful permanent residents, refugees, and visa holders. All of this stems from the bizarre definition of conviction adopted by immigration.

As a general rule, an expunged conviction qualifies as a conviction under the INA. In the case of In re Roldan-Santoyo, the amendment to the law required the deportation of an alien who had his guilty plea to a drug charge dismissed under Idaho’s amelioration statute for first-time drug offenders. The court held that the guilty plea alone, and not the eventual outcome of the case, constituted a conviction under the law. This interpretation of the law has been widely upheld.

However, recently, some state rehabilitation laws have protected aliens from immigration consequences when their conviction has been expunged. In Retuta v. Holder, the California court held that a deferred entry of judgment in an alien’s prosecution did not constitute a conviction. There also has been a recent trend in cases holding that an alien’s conviction is expunged for minor drug offense charges, specifically under the Federal First Offender Act. In Ramirez-Altamirano v. Holder, a California alien’s conviction for possessing a controlled substance was expunged and by state rehabilitative statute, he was released from all penalties and disabilities, including deportation, which would have resulted from his conviction. The court determined that the alien cannot be deemed convicted for immigration purposes if his first drug possession offense received relief under a state rehabilitative statute.

It would seem that Congress did not intend the INA to require the deportation of individuals who successfully complete treatment programs. In Lujan-Armendariz v. I.N.S., the Court of Appeals held that the 1996 amendment adopted a new definition of conviction for purposes of federal immigration
and that aliens were not considered convicted under federal immigration law and therefore not subject to removal. The Court decided the 1996 amendment was a congressional attempt to clear up the ambiguity in the definition of whether a conviction exists for immigration purposes. Additionally, at the time the 1996 amendment of the statute was enacted, many problem-solving courts did not require the entry of a guilty plea and allowed entry into treatment pre-plea with the prosecution deferred. Even today, the federal diversion programs do not require the entry of a guilty plea.

Therefore, the immigration definition of conviction presents the most serious barrier to noncitizens receiving equal access to therapeutic courts and diversion programs.

B. IMMIGRATION DETAINERS—THE “DO NOT ENTER” SIGN FOR DIVERSION PROGRAMS AND THERAPEUTIC COURTS

Currently, in an overwhelming majority of cases, noncitizens do not have access to therapeutic courts due to their pretrial detention once the U.S. Immigration and Customs Enforcement (ICE) has placed a detainer or “immigration hold.” This occurs because, in most jurisdictions, once law enforcement arrests a noncitizen for any offense, ICE is contacted and almost automatically places a detainer on the individual. This means that, once the individual is released from criminal court custody (whether on bond or because the case has been closed), immigration officials are given forty-eight hours to transfer the individual to their custody for placement into removal proceedings. Detainers are also frequently viewed by judges and magistrates as evidence of alienage and flight risk, making bail or bond unavailable or too high for the individual to afford.

Detainers are not just issued for those believed to be in the United States without authorization. All noncitizens (including long-time lawful permanent residents) who may be subject to deportation are under ICE’s jurisdiction and may be subjected to an immigration detainer. A recent report found that “[n]on-citizens involved in the criminal justice process spend more time behind bars than citizens facing similar charges.” Immigrants with detainers may be held in pretrial criminal detention for weeks or months on a nonviolent, misdemeanor charge while a citizen with the same charge would be released immediately pending the outcome of the case.

Many individuals in immigration detention also have a difficult time securing release due to the expense of the immigration bond (often in the range of $5,000 to $15,000, and often bondsmen are not willing to write the bond), the lack of counsel to successfully litigate a bond motion, and the application of a mandatory detention law. For many immigrants, absent being afforded an opportunity to be released from criminal custody directly into a treatment or diversion program, they will be unable to participate once they are transferred to immigration detention.

Most therapeutic courts and diversion programs require that the person is not in custody for entry into and participation in the program. Therefore, noncitizens are being denied equal access to these programs and, as a result, are being denied an alternative to resolve their case. Many times, given the harsh immigration penalties currently in place, noncitizens who would otherwise be eligible for diversion or therapy are forced to take their cases to trial. In immigrant-heavy jurisdictions, this will only result in additional crowding of an already burdened system, especially given the cost in lengthy pretrial detention and/or trials for individuals who are unable or unwilling to plead guilty given the immigration penalties that would result.

One possible solution is for jurisdictions to develop a way for these programs to be made available to those held in pretrial detention. Possible alternatives include: jail or pretrial detention center courts or programs, video conferencing of the diversion classes that many jurisdictions use to be shown in the jails, and/or other programs that a particular jurisdiction sees fit based on its needs. Another solution is for jurisdictions to alter the way they treat ICE holds, allowing for release of individuals directly into diversion programs.

For example, in September 2011, the Cook County Board approved an ordinance specifically relating to ICE detainers. This ordinance, recognizing that Cook County is a “Fair and Equal County for Immigrants,” states that “ICE detainers are merely ‘requests’ that local law enforcement advise . . . [the Department of Homeland Security] when the individual is due to be released,” rather than
mandatory holds (as would occur with a warrant). The ordinance goes to great lengths to describe the unjust and unregulated process of issuing ICE detainers, including the mistaken detention of U.S. citizens. Most notably, the ordinance states that “it costs Cook County approximately $43,000 per day to hold individuals ‘believed to be undocumented’ pursuant to ICE detainers,” that “the enforcement of immigration laws is a responsibility of the federal government,” and that “ICE detainers encourage racial profiling and harassment.” This position, that ICE detainers are not mandatory, has also been upheld by a federal district court in Indiana, which held that an ICE detainer “is not a criminal warrant, but rather a voluntary request that the law enforcement agency advise DHS prior to the release of the alien.”

The ordinance then requires that the sheriff of Cook County “shall decline ICE detainer requests unless there is a written agreement with the federal government by which all costs incurred by Cook County in complying with ICE detainer shall be reimbursed” and that “[u]nless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes.”

When individuals are denied placement in diversion programs because of an ICE detainer, or are unable to obtain release on bond, the effect on the jurisdiction is a direct one—higher incarceration rates, litigation costs, and the subsequent recidivism rate because drug addictions and mental health issues are not treated. However, detainers do not have to be a barrier if people within the criminal justice and immigration systems work together in appropriate cases to obtain the release of individuals under appropriate safeguards and facilitate access to therapeutic courts and diversion programs.

IV. HOW DO WE REHABILITATE OUR IMMIGRATION AND CRIMINAL JUSTICE SYSTEMS?

Noncitizens should have uniform access to therapeutic courts. Uniform access is desirable because of the overwhelming evidence of the benefits of these courts to defendants, prosecutors, and the criminal justice system. Additionally, Congress’ intent when passing the 1996 amendment to the INA was to clarify the definition of conviction and not allow for a conviction to prevent access to therapeutic courts or to serve as the basis for a deportation order.

Detainers should not act as a barrier for noncitizens to enter diversion programs. While ICE does have an interest in tracking noncitizens in the criminal justice system, there are systems in place that would allow for the release of an individual so he or she could participate in a diversion program. Prosecutors’ offices, courts, defense attorneys and ICE should all work together in these circumstances. Public defenders should receive training on how to handle these situations and navigate the two court systems to obtain the best result for the client.

Diversion programs and therapeutic courts should also have an exception available to the requirement that an individual plead guilty to the offense prior to entering treatment or other programs where the plea would create severe collateral consequences, as it often does with noncitizen defendants. By allowing exceptions to this requirement, noncitizens and citizens will have equal access to the criminal justice system and similarly situated defendants will not receive disparate treatment.

By allowing all eligible defendants equal access to therapeutic courts and diversion programs, our system will also have a positive impact on children and families. Not only will defendants receive treatment and skills necessary for reentry to the community, but they will remain in the United States with their families. Deportation of a parent often results in deportation of U.S. citizen children. By avoiding that harsh penalty, the noncitizen will maintain his or her ability to support the family financially, as well as maintain and/or improve the family structure. This is true during both the pretrial stage and following successful completion of the program. Finally, by avoiding deportation merely due to a guilty plea in a diversion program, we will save our systems the time and cost of child custody and support disputes, including the problems that arise when a deported parent seeks visitation with
children outside of the United States (or, under limited circumstances, through a visa and waiver to temporarily and briefly enter the United States for visitation). Our system should not punish innocent children for small transgressions of the parent.

Finally, any reforms to diversion programs and therapeutic courts must take into account the issues of prosecutorial discretion. It is vital that standards and clear requirements exist to identify who is eligible for diversion or therapeutic programs. Within the United States, prosecutors hold a level of discretion that is unknown in most court systems. Biases or other factors should not bar one individual from accessing treatment or diversion simply depending on which prosecutor is assigned to the case.

No longer do we live in a world that is confined to the borders of the United States. Nor can our criminal justice system ignore the realities of society and fail to adapt accordingly. All individuals are afforded the same rights within the criminal justice system—ICE should not wield a level of authority over a system that results in denial of access and denial of equal protection based on nationality or citizenship. Therapeutic courts and diversion programs should be made available to all defendants.

NOTES

5. Id.
7. Marlowe, supra note 4, at 7.
8. Id. at 1.
10. Avinash Singh Bhati et al., To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involving Offenders XII (The Urban Institute 2008).
11. Marlowe, supra note 4, at 3.
12. Id. at 4.
14. Id.
15. Id.
20. Id.
21. Id.
24. Id. § 1227(a)(2)(A)(ii).
25. Id.
30. Id.
31. De Jesus Melendez v. Gonzales, 503 F.3d 1019 (9th Cir. 2007).
33. See Wellington v. Holder, 623 F.3d 115 (2nd Cir. 2010); Ballester v. Ashcroft, 452 F.3d 1153 (10th Cir. 2006); Ali v. Attorney General, 443 F.3d 804 (11th Cir. 2006); Gill v. Ashcroft, 335 F.3d 574 (7th Cir. 2003); Herrera-Inirio v. I.N.S., 208 F.3d 299 (1st Cir. 2000).
34. See generally Sandoval v. I.N.S., 240 F.3d 577 (7th Cir. 2001) (an alien convicted in state court of marijuana possession was not subject to deportation due to conviction).
35. Retuta v. Holder, 591 F.3d 1181, 1190 (9th Cir. 2010).
36. Under the Federal First Offender Act, a first-time drug offense conviction is expunged and no legal consequences may be imposed as a result of the defendant committing the offense. 18 U.S.C.A. § 3607 (2011) (proposed legislation).
37. Ramirez-Altimirano v. Holder, 563 F.3d 800 (9th Cir. 2009) (overruled in part by Nunez-Reyes v. Holder, 646 F.3d 864 (9th Cir. 2011)).
38. Id. See also Rice v. Holder, 597 F.3d 952 (9th Cir. 2010) (overruled in part by Nunez-Reyes v. Holder, 646 F.3d 864 (9th Cir. 2011)).
39. Lujan-Armendariz v. I.N.S., 222 F.3d 728 (9th Cir. 2000) (overruled in part by Nunez-Reyes v. Holder, 646 F.3d 864 (9th Cir. 2011)).
40. Id.
41. NAT’L ASS’N OF DRUG CT. PROF., supra note 3, at 7.
45. Id.
47. Id.

Sara Elizabeth Dill is a founding partner in the Chicago and Miami offices of the Law Offices of Sara Elizabeth Dill. Her practice focuses on immigration and criminal defense domestically and internationally. Sara represents individuals and corporations before the immigration service and immigration courts and provides criminal defense representation in state and federal courts, both pre- and postindictment, for trials and appeals. She is currently serving as the co-chair of the American Bar Association (ABA) Criminal Justice Section’s Immigration Committee. From 2008 to 2011, she was appointed as a Commissioner for the ABA Commission on Immigration. She also served multiple terms on the ABA Criminal Justice Council. In these roles she has been active in drafting policy on criminal justice and immigration issues, including a comprehensive report on immigration reform that was sent to Congress in February 2010 and many recommendations that have been cited in congressional hearings and court decisions. Most recently, she authored amicus briefs in the American Civil Liberties Union and Department of Justice lawsuits against the State of Arizona and its controversial immigration law, SB 1070. She also authored an amicus brief on behalf of the League of Women Voters before the Wisconsin Supreme Court in the same-sex marriage amendment cases. She also has an extensive pro bono practice, representing victims of human trafficking and domestic violence as well as successfully litigating asylum cases for refugees from Rwanda, Cameroon, Sudan, Haiti, and Colombia. She has also published numerous articles in recent years, on topics ranging from the representation of noncitizens in criminal and immigration courts, federal sentencing reform, and human trafficking. In addition to publishing, she frequently speaks at national and international legal conferences and educational seminars on human trafficking, immigration law, federal criminal defense, and representing noncitizens in criminal court. She attended Marquette University, where she majored in political science, with an emphasis in economics, criminology, and international affairs. She then earned her J.D. at Marquette Law School.