

**EXCERPT FROM TRAINING TO FEDERAL DEFENSE COUNSEL:**  
*Representing Noncitizen Criminal Defendants (September 2021)*

Andrew Wachtenheim, an attorney admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

1. I, Andrew Wachtenheim, am an attorney employed by the Immigrant Defense Project.
2. On October 13, 2023, I received an email from the Federal Defenders of New York, attaching excerpts from a training entitled *Representing Noncitizen Criminal Defendants*, given to federal criminal defense counsel.

Respectfully submitted,

/s/ Andrew Wachtenheim  
Andrew Wachtenheim, Esq.  
Immigrant Defense Project  
P.O. Box 1765  
New York, NY 10027

Dated: New York, NY  
October 23, 2023



# Representing Noncitizen Criminal Defendants

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Isaac Wheeler  
NYU Federal Defender Clinic  
Sept. 2021

# Consequences of criminal cases beyond removability

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- “Good moral character” bar to naturalization; denaturalization
- Discretionary denial of LPR status
- Bar to TPS, DACA
- Bar to asylum/withholding of removal
- Mandatory detention

**EXCERPT FROM TRAINING TO FEDERAL DEFENSE COUNSEL:**  
*Defending Noncitizens in Federal Court: A Primer (March 31, 2023)*

Andrew Wachtenheim, an attorney admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

1. I, Andrew Wachtenheim, am an attorney employed by the Immigrant Defense Project.
2. On October 10, 2023, I received an email from the Office of the Federal Public Defender, Central District of California, attaching excerpts from a training entitled *Defending Noncitizens in Federal Court: A Primer*, given to federal criminal defense counsel.

Respectfully submitted,

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October 23, 2023

# **DEFENDING NONCITIZENS IN FEDERAL COURT:**

A PRIMER

[David\\_Menninger@fd.org](mailto:David_Menninger@fd.org)

# AGENDA

*Padilla v. Kentucky*

Unpacking “Removability”

Crimes and Removability

Practical Tips



# IMMIGRATION STATUS

- Lawful Permanent Resident (LPR)/green card holder
- Undocumented
- “Nonimmigrant” (temporary visa holder: H-1B, F-1, etc.)
- Previously deported
- U.S. citizen
  - Watch for recently naturalized citizens

# AGGRAVATED FELONIES

- Makes ineligible for almost all relief from removal
- *Lee v. United States*, 137 S.Ct. 1958 (2017): AFs lead to “mandatory deportation”
- Saying an AF “may” lead to deportation is not an accurate advisal



Don't plead to conduct  
pre-dating naturalization!



**EXCERPT FROM TRAINING TO STATE DEFENSE COUNSEL:**  
*Representing our Noncitizen/Foreign-born Clients in Marin (May 8, 2023)*

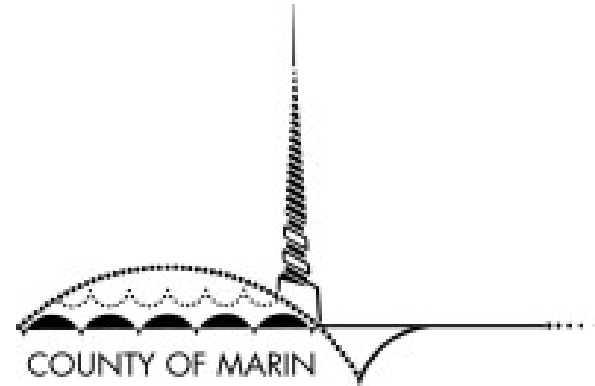
Andrew Wachtenheim, an attorney admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

1. I, Andrew Wachtenheim, am an attorney employed by the Immigrant Defense Project.
2. On October 10, 2023, I received an email from Office of the Public Defender, Marin County, attaching excerpts from a training entitled *Representing Our Noncitizen/Foreign-Born Clients in Marin*, given to state criminal defense counsel.

Respectfully submitted,

/s/ Andrew Wachtenheim  
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Dated: New York, NY  
October 23, 2023



# Representing Our Noncitizen/Foreign-born Clients in Marin

Rachael Keast – [rkeast@marincounty.org](mailto:rkeast@marincounty.org)  
Immigration Attorney  
Marin County Office of the Public Defender  
May 8, 2023

(optional  
STEP  
1A/1.5):

- “BUT WHAT IF MY CLIENT WAS BORN ABROAD BUT IS A NATURALIZED U.S. CITIZEN???”

- Two options:

1. Just do a TR, make a note of that, and I'll handle it (meaning you essentially go to Step 2 and leave it at that)
2. Conduct brief analysis:
  - If client was sworn in as a US citizen *before* the conduct alleged on the complaint, no need to consider immigration consequences.
  - If sworn in *after* alleged conduct (as in 1. committed crime, 2. became US citizen, 3. now facing charges for that crime), please do TR and let me talk to client



## STEP 1:

### • WAS YOUR CLIENT BORN IN THE UNITED STATES??

- Should be on financial form
- If financial form not done, do the financial form
  - Ask for assistance if in another language or send form in Spanish
- In EJUS
- Sometimes on rap sheet

**BORN IN THE USA → YOU'RE DONE! Go about your day!**

**BORN OUTSIDE THE USA → GO TO STEP 2!**

**EXCERPT FROM TRAINING TO STATE DEFENSE COUNSEL:**  
***Immigration: A History of Discrimination (March 31, 2023)***

Andrew Wachtenheim, an attorney admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

1. I, Andrew Wachtenheim, am an attorney employed by the Immigrant Defense Project.
2. On October 10, 2023, I received an email from the University of California, Davis School of Law, and the Santa Barbara County Public Defender, attaching excerpts from a training entitled *Immigration: A History of Discrimination*, given to state criminal defense counsel.

Respectfully submitted,

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Dated: New York, NY  
October 23, 2023

# IMMIGRATION: A HISTORY OF DISCRIMINATION

Onyx Starrett & Holly Cooper

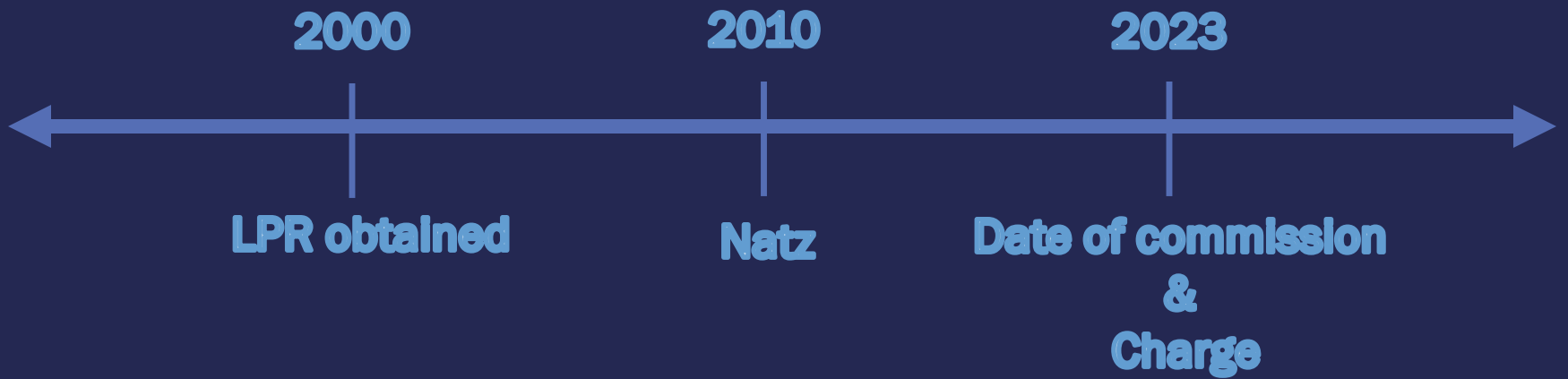
March 31, 2023

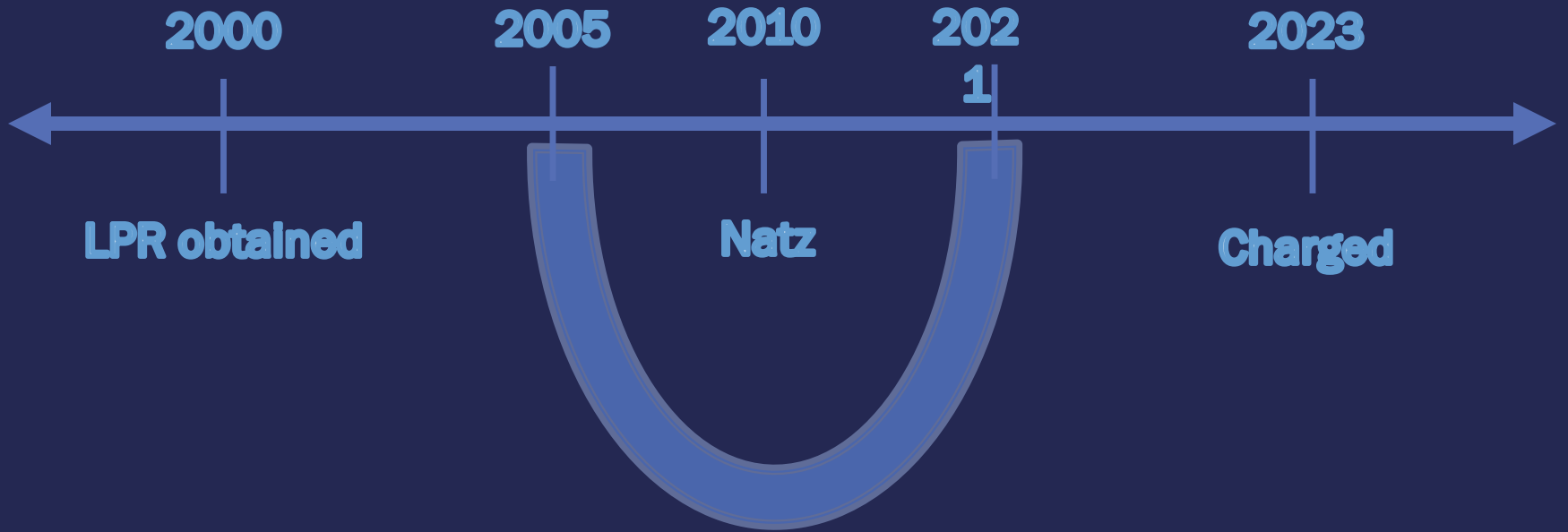
# Is Denaturalization the Next Front in the Trump Administration's War on Immigration?

The prosecution of naturalized United States citizens is a sign of a gathering storm.



**What can you do as a  
criminal defender?**





Commission dates



# NEXT STEPS

- Work with the crimmigration crew on crafting a safe disposition (if plea) or to discuss imm risks directly with client (if trial)
  - Limit conduct in question to after naturalization date
- Warn client not to discuss case / conviction with immigration without an experienced crimmigration attorney

**EXCERPT FROM TRAINING TO STATE DEFENSE COUNSEL:**  
*Effective Representation of Immigrant Clients (October 2022)*

Andrew Wachtenheim, an attorney admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

1. I, Andrew Wachtenheim, am an attorney employed by the Immigrant Defense Project.
2. On October 20, 2023, I received an email from New York County Defender Services, attaching excerpts from a training entitled *Effective Representation of Noncitizen Clients*, given to state criminal defense counsel.

Respectfully submitted,

/s/ Andrew Wachtenheim  
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Dated: New York, NY  
October 23, 2023

# EFFECTIVE REPRESENTATION OF IMMIGRANT CLIENTS

NYCDS Immigration Unit

October 2022

## USCs - Naturalization



Discretionary.

Must be an LPR for a period before applying.

Must prove "good moral character" (GMC).

Criminal & family contacts can bar GMC  
and/or affect discretion.

\*\* If your client recently naturalized and/or the commission of the offense **pre-dates** the naturalization date, **make a Padilla referral as this could have serious immigration consequences.** See <http://bit.ly/DenaturalizationAdvisory> for **more information** \*\*

**EXCERPT FROM TRAINING TO STATE DEFENSE COUNSEL:**

*[Untitled training to Nassau and Suffolk County, New York, assigned criminal defense counsel]*

Andrew Wachtenheim, an attorney admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

1. I, Andrew Wachtenheim, am an attorney employed by the Immigrant Defense Project.
2. On October 13, 2023, I received an email from Nassau County Legal Aid, attaching excerpts from a training given to state criminal defense counsel.

Respectfully submitted,

/s/ Andrew Wachtenheim  
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New York, NY 10027

Dated: New York, NY  
October 23, 2023

## US CITIZENS ARE NOT SUBJECT TO REMOVAL

Exceptions:

Unless fraud in the Naturalization process

Conduct *after* Naturalization poses no risk of removal

## CITIZENSHIP IS CONFERRED

By birth within the US

By birth abroad to citizen parent/s under certain conditions

By operation of law when a parent Naturalizes

Through adoption

**EXCERPT FROM TRAINING TO STATE DEFENSE COUNSEL:**  
*[Untitled training to Brooklyn Defender Services criminal defense counsel]*



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1. I, Andrew Wachtenheim, am an attorney employed by the Immigrant Defense Project.
2. On October 20, 2023, I received an email from Brooklyn Defender Services, given to state criminal defense counsel.

Respectfully submitted,

/s/ Andrew Wachtenheim  
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Dated: New York, NY  
October 23, 2023

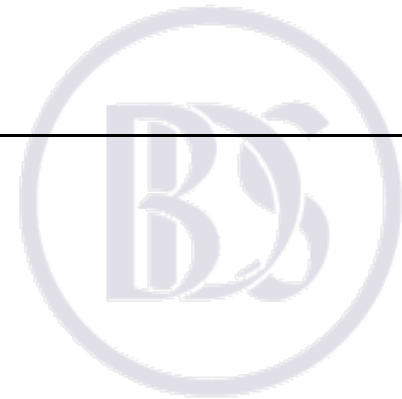
# Naturalized Citizens & the Risk of Denaturalization

- **Only ONE extra question for U.S. citizen clients not born in the U.S.: “WHEN did you become a U.S. citizen?”**
- Naturalized U.S. citizens are generally not at risk of deportation, except when alleged criminal activity predated naturalization.
  - If you have a client who was not born in the U.S. but **obtained citizenship through naturalization** and who is charged based on conduct which **predates** their naturalization, please make a Padilla referral.
  - Example: sex abuse alleged from Oct. 2014 through March 2018. Client’s naturalization ceremony was in May 2015. **CLIENT IS AT RISK FOR DENATURALIZATION.**

# Risk of Denaturalization (cont'd)

## SCREENING FOR DENATURALIZATION RISK

IF BORN IN THE US		NO PADILLA REFERRAL NECESSARY
IF NOT BORN THE US BUT NATURALIZED		ASK WHEN NATURALIZED
IF NATURALIZATION CLEARLY PREDATES CONDUCT WHICH IS THE BASIS FOR CHARGES		NO PADILLA REFERRAL NECESSARY
IF THERE IS A POSSIBILITY THAT THE CONDUCT WHICH IS THE BASIS FOR CHARGES PREDATES THE CLIENT'S NATURALIZATION		MAKE A PADILLA REFERRAL



**EXCERPT FROM TRAINING TO STATE DEFENSE COUNSEL:**  
*Crimes and Naturalization (May 2023)*

Andrew Wachtenheim, an attorney admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

1. I, Andrew Wachtenheim, am an attorney employed by the Immigrant Defense Project.
2. On October 11, 2023, I received an email from the Washington Defenders Association, attaching excerpts from a training entitled *Crimes and Naturalization*, given to state criminal defense counsel.

Respectfully submitted,

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Dated: New York, NY  
October 23, 2023

# Crimes and Naturalization



Lori Walls, WDAIP Resource Attorney  
Jonathan Moore, BIA-Accredited Representative

Washington Defender Association's Immigration Project

**May 2023**

## Conviction after taking the oath for offense committed before taking the oath

*Operation False Haven: Convicted Child Molester Sentenced for Passport Fraud, Civilly Denaturalized and Judicially Ordered Removed from the United States, 2021 WL 963227*

- Aquino filed a naturalization application on **May 28, 2009**, marking “no” to “Have you ever committed a crime or offense for which you were not arrested?”
- **On August 26, 2009**, Aquino was granted U.S. citizenship.
- On June 8, 2015, Aquino was convicted of two counts of indecent liberties with a child. The offense date noted on the judgment was **January 1, 2007**, *before* he applied to naturalize.