

Daniel Jackson

From: Daniel Jackson
Sent: Friday, June 14, 2019 2:48 PM
To: '[EMAIL]'
Cc: '[EMAIL]'
Subject: Padilla Advisal - [ATTORNEY NAME], [ATTORNEY AFFILIATION (Client: [CLIENT NAME])

Hi [NAME],

Good talking to you earlier. As discussed; your proposed disposition of this case is the best one for him (short of a dismissal for factual innocence). Even though this disposition will not cause him too much trouble, it will have some immigration consequences, just like any criminality.

As such, the information below is mainly for Mr. [NAME]'s benefit in future, rather than anything that needs to immediately be done. Let me know if you need any more input.

Dan

YOU ARE

[ATTORNEY NAME]
[ATTORNEY AFFILIATION]
[ATTORNEY EMAIL]
[ATTORNEY TELEPHONE]

YOUR CLIENT

Immigration Status & History

LPR since 2005

Existing & Previous Immigration Problems

None

Criminal Priors & Past Bad Acts

None

CASE AGAINST YOUR CLIENT

Facts Stated At Their Worst (Not Necessarily What Can Be Proved)

Some kind of altercation with a former colleague (i.e. not domestically related to the victim)
Victim was older than 18
He may have had a box cutter on him
No drugs even tangentially involved in the incident

Charges

CPW 4th 265.01(1) simple possession (not intent to injure) – to wit: Box cutter (i.e. NOT a firearm)
Menacing 120.14(1)

Likelihood of conviction

We did not discuss this

Potential Plea Offers

ACD 6 months; Apology in writing via the DA (but NOT in the court file) to the victim.

The apology says sorry for being bad to a former colleague, based on a misunderstanding. It does not admit to the elements of menacing etc. and is more consistent with having been rude/unreasonable/obnoxious.

IMMIGRATION CONSEQUENCES

Because you have already secured the best possible plea to this offense (short of dismissal for factual innocence) I will not fully advise on the consequences if he had taken this to trial and lost. However:

- *Menacing is a crime involving moral turpitude and*
- *CPW 4 sub 2 (which I do not believe he was charged with) is also a CIMT*

As such, he could have faced consequences up to and including becoming deportable if found guilty of all charges.

OF CURRENT CHARGES

Deportability (You Are in the Country; Can They Kick Him Out)

Inadmissibility (You Are Asking For a Legal Admission; Can They Keep You Out?)

Visa Revocation

Good Moral Character

Particularly Serious Crime

Discretion

OF PROPOSED PLEA OFFER

Deportability (You Are in the Country; Can They Kick Him Out)

An ACD will not make him deportable.

Inadmissibility (You Are Asking For a Legal Admission; Can They Keep You Out?)

When a non-citizen is outside of the U.S. and asking to come in, they are usually considered an "applicant for admission", which means they (1) are subject to the grounds of inadmissibility and (2) have a burden upon them to prove they are not inadmissible.

However, Lawful Permanent Residents (green card holders) are not applicants for admission unless one of the exceptions of 8 USC 1101(a)(13)(C) applies. See *Matter of Pena*, 26 I&N Dec. 613 (BIA 2015).

One of the exceptions is if he is inadmissible for **committing** a crime that would make him inadmissible [8 USC 1101(a)(13)(C)(v)] such as a crime involving moral turpitude [8 USC 1182(a)(2)(A)(i)]. This includes admitting the material elements of the offense, not just being convicted of it. [8 USC 1182(a)(2)(A)(i)] .

As such, the ACD does not make him inadmissible itself, but if he were to admit the conduct in, for example, an arrest report/confession (specifically menacing and possessing a weapon with the intent to use it against someone), he could be.

Whether he admits to all material elements would be governed by *Matter of C*, 1 I&N Dec. 14 (BIA AG 1940), but they would have to be very specific about the mental elements of the offense for admissibility to be triggered. (i.e. Q: “did you possess a weapon” A: “yes” would probably not be enough)

As such, if he ever crosses a border, he should refuse to answer any questions if asked about the details of what happened (which he is entitled to do because he is a returning resident not applicant for admission), and just tell the truth: that

- 1) there was an incident and
- 2) the case was eventually dismissed.

In addition, the letter of apology actually supports his narrative that (while he was morally wrong and acted unreasonably) he did not commit a crime rising to the level of a CIMT. He can describe the whole incident as (1) there was a misunderstanding and (2) I was very rude to a former colleague which (3) I am now very remorseful about.

Visa Revocation

N/A

Good Moral Character

Some applications require you proving you have good moral character, such as naturalization (citizenship). First you have to show you are not subject to any of the statutory bars, then you have to show you are generally a person of GMC.

The statutory bars under 8 USC 1101(f) include if any of the following apply (for citizenship, the lookback period is within the 5 years before applying):

- Being a habitual drunkard
- Being inadmissible under the criminal grounds (on which see above);
- Committing a drug offense; and
- Being incarcerated for an aggregate period of 180 days.

As such, an ACD would not on its own bar him from establishing GMC. However, another of the statutory bars is having **committed** (i.e. not just having been convicted of) a crime involving moral turpitude or controlled substance offense. As a result, if they ask him questions the incident (which they will) he is required to provide answers about what actually happened. If he reveals that he really did commit ‘turpitudinous’ conduct (such as menacing or CPW with intent to use), he would have three options:

- 1) Tell the full truth; that he intentionally committed menacing (and then he may have just admitted to a CIMT)
- 2) Say nothing about the incident (and then he has failed to meet his burden to show that he is a person of GMC); or
- 3) Lie (and then he will be prosecuted for lying and held to be barred for lying);

Your apology letter does a good job in avoiding this problem. This is because, as discussed above, you have crafted a narrative that does not involve him committing a CIMT or CSO, and therefore it does not seem like he will trigger the bar. That having been said, this whole issue will depend entirely on what he says at the interview. As such, he needs to be made aware in advance how to **truthfully** explain what happened in a way that does not admit a CIMT/CSO. In particular, there is a big difference between (1) being rude / having a conversation in a belligerent way based on a misunderstanding, and (2) threatening someone with a knife to the extent they were placed in fear of bodily harm.

Additionally, regardless of what you do, this entire incident will weigh against him for the overall consideration of whether he is a person of GMC. As such, he should think very hard about joining every single community group he can find, paying taxes, kissing babies etc.

You should also advise him that because this is a highly highly discretionary application, he is under an affirmative obligation to disclose this incident to USCIS. Omission of a material fact (and this is arguably material) in order to procure naturalization is a federal offense, so he needs to understand very very clearly, that it is about how to disclose this, not whether he should disclose this. As such, He should definitely talk to an immigration attorney before submitting anything to them though.

Particularly Serious Crime

N/A

Discretion

See GMC

Daniel E. Jackson, Esq.

Immigration Consequences Advisor
CrimImmAdvisal.com

t: 617-449-1070 | e: Contact@CrimImmAdvisal.com | w: CrimImmAdvisal.com