

SECOND CIRCUIT

Doe v USA, 2/14/19 – CORAM NOBIS GRANTED / IMMIGRATION MISADVICE

Petitioner Doe pleaded guilty to an aggravated felony. When he applied to renew his green card, he was placed in removal proceedings. Thereafter he filed a writ of coram nobis, alleging that counsel had erroneously assured him that his plea should not result in removal. The petition also set forth an earlier statement in which counsel admitted ignorance of immigration law and the mandatory deportation consequences of the conviction. After initially opposing the petition, the Government changed course and opined that the petitioner received ineffective assistance. Yet the District Court denied the petition. The Second Circuit reversed. The District Court failed to apply the proper standard: (1) whether circumstances compelled relief to achieve justice; (2) whether sound reasons existed for the failure to timely seek relief; and (3) whether the petitioner continued to suffer legal consequences that the writ could remedy. Ineffective assistance in plea negotiations can compel relief. The petitioner was prejudiced, as shown by undisputed proof about his conversations with counsel, and by his history in the U.S., family circumstances, and gainful employment—all of which signaled his strong desire to remain here. Further, the record established a reasonable probability that the prosecution would have accepted, and the court would have approved, a deal that had no adverse immigration impact. Misrepresentations by Government agents justified the petitioner’s delay in seeking relief. For all these reasons, the petition was granted, and the plea and conviction were vacated. The reviewing court was troubled by the changing positions taken by the Government, which upon appeal opposed the coram nobis petition. The court was reminded of then Attorney General Robert F. Kennedy’s declaration: “It is...not the Department of Prosecution but the Department of Justice...The interest of the Government...is not that it shall win a case, but that justice shall be done.” *See Berger v U.S.*, 295 US 78, 88. <http://www.ca2.uscourts.gov/decisions.html>.

APPELLATE DIVISION

Plea Cases – Other Issues

People v Ramos-Mondroy, 2/14/19 – MENTAL CONDITION / VOLUNTARY PLEA

The defendant appealed from a judgment of New York County Supreme Court, convicting him upon his plea of guilty of 2nd degree murder. The **First Department** held that the plea was knowing, voluntary, and intelligent. At the colloquy, nothing warranted an inquiry into whether the defendant’s mental condition impaired his ability to understand the proceedings. The plea court specifically noted, based on its observations, that the defendant appeared to be mentally competent.

http://nycourts.gov/reporter/3dseries/2019/2019_01136.htm

Family Court

***Matter of Lucas F. V. (Jose N. F.),* 2/13/19 – SIJS / REVERSED**

In a guardianship proceeding pursuant to Family Court Act Article 6, the child appealed from an order of Nassau County Family Court, which denied his motion seeking an order making specific findings to enable him to petition for special immigrant juvenile status. The **Second Department** reversed; granted the motion; and found that reunification of child and father was not viable due to parental neglect, and that returning to El Salvador would not benefit the child. When the child lived with the parents there, the father physically mistreated the mother and child, and provided no financial support for the child. The child also testified that Salvadoran gang members assaulted him and would have killed him, if not for the police. Binder & Schwartz represented the appellant.

http://nycourts.gov/reporter/3dseries/2019/2019_01079.htm

***Damaris D. (Durven D. – Stephanie D.),* 2/14/19 – NEGLECT / SUPPORTED**

The father appealed from a finding that he neglected the subject children. Such finding was sound, in the view of the **First Department**. A caseworker testified that one of the children saw the respondent and the mother engage in physical fights. Further, the mother said that she and the father had a history of hitting each other in the children's presence. During one altercation, a four-year-old child tried to intervene, and the father picked her up and tossed her into a chair.

http://nycourts.gov/reporter/3dseries/2019/2019_01148.htm

OTHER MATTERS

Lawful Permanent Residents Also May Be Affected by *Suazo*

LETTER TO EDITOR, *NYLJ*, BY ANGAD SINGH, 2/13/19

I write to inform you that there is a grave error in the article titled “NY Gives Birth to Non-Citizens’ Right to a Jury Trial If Deportation Possible” by Joseph D. Nohavicka, published February 11, 2019. Specifically, the article claims that, under the recent case of *People v Suazo*, “The defendant has the burden to prove that he or she is in the country illegally.” This is severely misleading because it is not just people who are here without status whose ability to avoid deportation may be affected by a criminal conviction. Crucially, many people with status, including Lawful Permanent Residents, may be rendered deportable by certain misdemeanor convictions. Indeed, even certain violations can be problematic. As a criminal appellate lawyer focusing on non-citizen representation, I have noticed a common misconception that a misdemeanor conviction is somehow irrelevant for those with legal status. This article strengthens that dangerous myth. In short, the *Suazo* case placed the burden on the defendant to show that the charged crime is a deportable offense given the defendant’s status (whatever that may be).

Angad Singh is a staff attorney at Appellate Advocates.

Family Court / IMMIGRATION CONSEQUENCES

Adverse immigration consequences can flow from Family Court dispositions, including orders of protection and violations of such orders. An OCA Advisory Council has produced a helpful memo and chart (attached). Below are links to the memo and the Feb. 11 NYSDA *NEWS PICKS* discussing the memo.

<https://protect2.fireeye.com/url?k=de7d5d9d-8245faff-de7fa4a8-000babd9f75c-b641fa02510ac33f&u=http://immigrants.moderncourts.org/wp-content/uploads/sites/2/2017/12/AdverseConsequences-GuidanceMemoCharftGlossary1.pdf>

<https://myemail.constantcontact.com/News-Picks-from-NYSDA-Staff--February-11--2019.html?soid=1111756213471&aid=z0VeTzHBaS4>

CYNTHIA FEATHERS, Esq.

Director of Quality Enhancement
For Appellate and Post-Conviction Representation
NY State Office of Indigent Legal Services
80 S. Swan St., Suite 1147
Albany, NY 12210
Office: (518) 473-2383
Cell: (518) 949-6131