

My client is a naturalized citizen, could a conviction subject him or her to de-naturalization and deportation?

Case law update (February, 2025)

On October 31, 2024, the en banc Second Circuit reaffirmed that denaturalization risks are included within the ambit of constitutionally-mandated advice under *Padilla v. Kentucky*. *U.S. v. Farhane*, 121 F.4th 353, 358 (2d Cir 2024) (en banc) (“[C]riminal defense attorneys have a Sixth Amendment obligation to inquire into and advise a naturalized citizen client of any risk of deportation following denaturalization proceedings that accompany the client’s guilty plea.”)

In June 2018, the Department of Homeland Security United States Citizenship and Immigration Services (USCIS) announced a [denaturalization task force](#). The task force is charged with investigating people who should not have been granted citizenship in order to revoke their citizenship and deport them.

In one reported case, [the Department of Justice initiated a suit to strip Norma Borgono, a Miami grandmother who immigrated from Peru, of her citizenship](#). After Ms. Borgono was granted citizenship, she pled guilty to a federal fraud offense. She’s now facing denaturalization because *although she had not yet been charged with a crime when she applied for citizenship*, the DOJ claims she lied on her application by not divulging the criminal activity that occurred prior to her grant of citizenship.

The below guidance for defense attorneys provides tips and background for protecting naturalized citizens from allegations of citizenship fraud based on a guilty plea to a crime. We anticipate that this issue is most likely to come up in conspiracy and fraud cases that allege criminal activity began long before criminal charges were filed with a court.

1. What is naturalization?

Naturalization is the process by which people born outside of the United States who meet certain requirements can become U.S. citizens. Colloquially it is often referred to as applying for citizenship or becoming a citizen. To naturalize, immigrants must submit an application to the USCIS along with an application fee, submit to fingerprinting for a background check, attend an in-person interview, and pass a citizenship test. If they complete these steps successfully, they receive a date for a swearing-in ceremony. At the swearing-in ceremony, they take an oath of

citizenship and officially become a U.S. citizen. Until an immigrant takes the oath of citizenship, they are not a citizen, even if all other requirements are met. After the ceremony, they are issued a naturalization certificate which proves their citizenship and can be used to obtain a U.S. passport.

2. How can someone lose their citizenship?

The government may not strip citizenship from people born in the United States. However, naturalized citizens may have their citizenship stripped by a federal court through a criminal prosecution or civil lawsuit brought by the Department of Justice. The general grounds for denaturalization are illegal procurement of naturalization or concealment of a material fact or willful misrepresentation¹.

There are several questions on the naturalization application which address criminal activity and can later be used as the basis for alleging a person concealed a material fact. For example, the application asks:

*Have you **EVER** committed, assisted in committing, or attempted to commit, a crime or offense for which you were **NOT** arrested?* Yes No

3. What should I find out from clients who were born in another country but are now citizens?

A defense attorney has an obligation under Padilla v. Kentucky to provide information about the immigration consequences of a criminal court contact. We recommend you start by asking every client “Where were you born?” Clients born within the United States² are not at risk of losing their citizenship. Clients who report being citizens despite having been born outside of the United States will often also not face consequences. But the defense attorney’s goal should be to find out what the client’s immigration status was at the time of the alleged criminal conduct.

Sample intake questions for clients who were:

Born *outside* of the United States + Are *currently* U.S. citizens

- How did you get U.S. citizenship?³
- When did you naturalize?
- When did you submit your citizenship (naturalization) application?
- When was your oath ceremony?

4. How can I protect my criminal defense clients?

You must determine your client's immigration status at the time of charged criminal conduct. A client who naturalized ten years ago cannot be denaturalized based on a crime committed yesterday because the conduct occurred after naturalization. However, a client who naturalized a year ago and is now being charged with a conspiracy going back five years may be at risk for denaturalization and immigration consequences if s/he pleads guilty to the conspiracy. We expect that you'll most often see this fact pattern in conspiracy and fraud cases.

5. What should I do if my client is accused of criminal conduct that occurred before he or she naturalized?

There may be ways to structure a plea to mitigate or minimize the chance that your client will be at risk of denaturalization. At the very least, information about immigration collateral consequences should be part of your negotiation strategy with the prosecutor, your advice about the benefit and consequences of any plea offer, and your explanation about the risks of going to trial. You should consult with an experienced immigration attorney about how to best advise your client in light of potential severe immigration consequences.

¹ Additional grounds apply to people who obtain naturalization through military service and are later dishonorably discharged. People who are found to be members or affiliated with certain designated groups within five years of naturalization may also face denaturalization. For more information about denaturalization based on membership in a designated group, contact the CUNY CLEAR Program at cunyclear@mail.law.cuny.edu.

² The United States includes all 50 states, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

³ Some people may derive citizenship from a parent. This is a process that happens automatically through operation of law. Determining whether a person derived citizenship is a complicated immigration analysis for which defense attorneys should seek out assistance from an experienced immigration attorney.