

MacKenzie Debbie

From: Lehman Kristian
Sent: Tuesday, April 03, 2012 9:06 AM
To: MacKenzie Debbie
Subject: FW: CLE Friday, Jan 6, 2012

From: McGregor Rene
Sent: Tuesday, December 27, 2011 10:33 AM
Cc: Lehman Kristian
Subject: CLE Friday, Jan 6, 2012



Brown Bag – CLE

Up to 1 hour of CLE Credit

You **do not** need to register for this CLE, just show up and sign in.
The room seats up to 80, and it will be first come first seated.

Immigration Consequences

A discussion on the most common types of Arizona convictions in
immigration proceedings
and
how certain plea agreements impact immigration proceedings.

Dominique J. Honea

Assistant Chief Counsel

U.S. Immigration and Customs Enforcement

U.S. Department of Homeland Security

When: Friday, January 6, 2012
12:15 p.m. to 1:15 p.m.

Where: Admin Building
301 W. Jefferson
10th Floor Board of Supervisors Conference Room

Please email me with any questions.

Thanks,

René

S. René McGregor
Attorney Career Trainer Manager
Maricopa County Attorney's Office
Training & Development
11 W. Jefferson, 2nd Floor
Phoenix, AZ 85003
602-372-0136 office
602-526-1362 blackberry

From: McGregor Rene
To: "Honea, Dominique J"
Subject: RE: Immigration Consequences Presentation
Date: Tuesday, January 03, 2012 4:19:28 PM

Thanks, I figured it would not be approved to record but I have had a lot of requests because they are unavailable.

You can email me a copy of the Power Point or if you would prefer to bring copies the room seats 80 people.

I will meet you at 301 W. Jefferson on the 10th floor. I will be there between 11:30 and 11:45 am. to make sure the room is set up and ready.

Thanks,
René

S. René McGregor
Attorney Career Trainer Manager
Maricopa County Attorney's Office
Training & Development
11 W. Jefferson, 2nd Floor
Phoenix, AZ 85003
602-372-0136 office
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From: Honea, Dominique J [mailto:DJHonea@ice.dhs.gov]
Sent: Tuesday, January 03, 2012 4:14 PM
To: McGregor Rene
Subject: RE: Immigration Consequences Presentation

Renee:

We are still awaiting permission from our headquarters to use the most current Power Point presentation. I will let you know as soon as we obtain approval. As to the second question, we are not permitted to video-tape our presentations. However, as mentioned before, we would be willing to come back to present to those who have other commitments.

Please let me know if you have any other questions!

Thanks,
-Dominique

Dominique J. Honea
Assistant Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

Are we still aiming for January 6?

Thanks,

Dominique J. Honea
Assistant Chief Counsel
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U.S. Department of Homeland Security
1705 E. Hanna Rd.
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From: Honea, Dominique J
Sent: Wednesday, November 23, 2011 1:31 PM
To: 'McGregor Rene'
Subject: RE: Immigration Consequences Presentation

René:

January 6, 2012 should work. I'm not sure whether our headquarters will approve of video-taping. However, I'm sure that we could come back on an additional date if necessary. Let me get back to you on that. Also, I don't see why I couldn't mail you a copy of the PowerPoint presentation we intend to use. I'll see about doing that once we re-tweak our presentation.

As for the presentation itself, I would not be presenting alone. I believe that our Senior Attorney, Jennifer Wiles, and another colleague, Christopher Kelly will be present.

Let's keep in touch, and plan for January 6.

Thanks and have a great holiday!

Dominique J. Honea
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From: Honea, Dominique J [mailto:DJHonea@ice.dhs.gov]
Sent: Tuesday, November 22, 2011 8:41 AM
To: McGregor Rene
Subject: FW: Immigration Consequences Presentation

Rene:

Please see below.

Dominique J. Honea
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From: Honea, Dominique J
Sent: Thursday, November 03, 2011 3:54 PM
To: (lehman@mcao.maricopa.gov)
Subject: Immigration Consequences Presentation

Kris:

Just a follow up from my last email. We've finalized our presentation, and in fact already presented to the Pinal County Attorney's Office. The presentation as previously presented took about 90 minutes, including a question period. However, we've trimmed down the presentation to about 60 minutes. Is your office still interested?

Let me know your thoughts.

Thanks,

Dominique J. Honea
Assistant Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
1705 E. Hanna Rd.

GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 USC §§ 552(b)(5), (b)(7).

Immigration Consequences of Common Arizona Convictions

Date:

Jennifer Wiles, Senior Attorney
Dominique Honea, Assistant Chief Counsel
Christopher Kelly, Assistant Chief Counsel

ICE Office of Chief Counsel - Arizona



Immigration Consequences of Criminal Convictions

Violations of many state criminal laws can render an alien:

- Subject to removal from the United States
- Ineligible for certain forms of relief from removal
- Subject to mandatory detention by ICE
- Subject to high bond or no bond



Sources of Immigration Law

Governing bodies of law:

- Title 8 of the U.S. Code (the Immigration and Nationality Act - Act or INA)
- Title 8 of the Code of Federal Regulations
- Board of Immigration Appeals decisions
- Federal Circuit Court decisions (Ninth Circuit)
- U.S. Supreme Court decisions



Categories of Removable Offenses

1. *Controlled Substance Offenses* - INA sections 212(a)(2)(A)(i)(II), 237(a)(2)(B)(i)
2. *Firearms Offenses* - INA section 237(a)(2)(C)
3. *Crimes Involving Moral Turpitude* - INA sections 212(a)(2)(A)(i)(I), 237(a)(2)(A)(i), 237(a)(2)(A)(ii)
4. *Domestic Violence and Child Abuse* - INA sections 237(a)(2)(E)(i), 237(a)(2)(E)(ii)
5. *Aggravated Felonies* - INA section 101(a)(43), 237(a)(2)(A)(iii)



Establishing Charges of Removal

- By clear and convincing evidence;
- The elements of state offenses must mirror their federal counterparts.
- By using *Taylor-Shepard* categorical approach or modified categorical approach.
- By using a three-part test discussed in *Matter Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008) to establish that an offense involves moral turpitude.



Conviction Documents to Establish the Charges

- Complaint/Indictment/Information
- Plea Agreement
- Minute Entries (from change of plea hearing and sentencing hearing)
- Judgment and Sentence
- Plea Transcript
- Presentence Investigation Reports
- Police Reports

Conviction documents must specify the subsection!



Controlled Substances

▪ INA section 237(a)(2)(B)(i) - Any alien who at any time after admission has been convicted of a violation of (or a *conspiracy* or *attempt* to violate) any law or regulation of a State, the United States, or a foreign country *relating* to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable

▪ INA section 212(a)(2)(A)(i)(II) - Any alien convicted of, or who admits having committed, or who admits committing acts that constitute the essential elements of a violation of (or a *conspiracy* or *attempt* to violate) any law or regulation of a State, the United States, or a foreign country *relating* to a controlled substance (as defined in section 802 of Title 21), is inadmissible.



Controlled Substances

Possession or Use of Marijuana – A.R.S. § 13-3405(A)(1) = simple possession

▪ ICE LITIGATION CHALLENGE: a first time offense does not necessarily constitute a removable offense unless record of conviction specifies that the amount is *greater* than 30 grams

▪ BUT NO PROBLEM IF: The amount of marijuana is specified throughout the record of conviction

▪ GOVERNING LAW: INA section 237(a)(2)(B)(i)



Controlled Substances

Possession or Use of Marijuana – A.R.S. § 13-3405(A)(1) = simple possession

- ICE LITIGATION CHALLENGE: The inchoate offense of Solicitation renders the substantive drug offense non-removable for immigration purposes
- BUT NO PROBLEM IF: Charged as Attempt or Conspiracy to Possess or Use Marijuana, which constitute removable offenses.
- GOVERNING LAW: *Coronado-Durazo v. INS*, 123 F.3d 1322 (9th Cir. 1997) and *Leyva-Licea v. INS*, 187 F.3d 1147 (9th Cir. 1999)



Controlled Substances

Possession or Use of Dangerous Drugs – A.R.S. § 13-3407;
Possession or Use of Narcotic Drugs – A.R.S. § 13-3408

- ICE LITIGATION CHALLENGE: Arizona definition of "dangerous drugs" and "narcotic drugs" encompass a greater variety of drugs than contemplated by the federal Controlled Substances Act (is not coextensive)
- BUT NO PROBLEM IF: The drug is identified throughout the record of conviction.
- GOVERNING LAW: *Ruiz-Vidal v. Gonzalez*, 473 F.3d 1072 (9th Cir. 2007)



Controlled Substances

Drug Paraphernalia – A.R.S. § 13-3415

ICE LITIGATION CHALLENGE: None!

GOVERNING LAW: *Luu-Le v. INS*, 224 F.3d 911 (9th Cir. 2000)



Deportability Requirements for Controlled Substance Convictions

- If a defendant pleads to the complaint/indictment/information, then the complaint must specify a drug listed in the federal Controlled Substances Act. See *Ruiz-Vidal v. Gonzalez*, 473 F.3d 1072 (9th Cir. 2007)
- The judgment and sentence must specify guilty as charged in the complaint/indictment/information; however, not fatal. See *U.S. v. Vidal*, 504 F.3d 1072 (9th Cir. 2007)
- If a defendant pleads to an amended count, then the complaint/indictment/information must state the amended count and specify the drug at issue. See *Ruiz-Vidal*.



Deportability Requirements for Controlled Substance Convictions

- If there is no amended complaint/indictment/information, then the plea agreement must include a written factual basis identifying the drug at issue. See *Ruiz-Vidal*.
- If there is no factual basis in the plea agreement, then the drug must be identified on the record at the plea hearing. See *Ruiz-Vidal*.
- The title of offense throughout the record of conviction must specify the drug (e.g., minute entries of judgment and sentence can title offense "Possession of a Dangerous Drug (Methamphetamine).” See *Ramirez-Villalpando v. Holder*, 645 F.3d 1035 (9th Cir. 2011).



Defense Counsel Strategies for Controlled Substance Convictions

- Defense counsel is likely familiar with *Ruiz-Vidal* and will ask for a plea to an unspecified controlled substance.
- Defense counsel is likely familiar with *Coronado-Durazo v. INS*, 123 F.3d 1322 (9th Cir. 1997) and *Leyva-Licea v. INS*, 187 F.3d 1147 (9th Cir. 1999), and will ask to plead down to a solicitation offense.



Crimes Involving Moral Turpitude

INA section 237(a)(2)(A)(i) - Any alien who is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status) after the date of admission, and is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.

INA section 237(a)(2)(A)(ii) - Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

INA section 212(a)(2)(A)(i)(I) - Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.



Crimes Involving Moral Turpitude

Endangerment – A.R.S. § 13-1201(A)(1)

▪ **ICE LITIGATION CHALLENGE:** To establish reprehensible conduct

▪ **NO PROBLEM IF:** Defendant's actions are identified with particularity throughout the record of conviction

▪ **GOVERNING LAW:** *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)

Mirroring the language of the substantive statute throughout the record of conviction is not enough!



Crimes Involving Moral Turpitude

Aggravated Assault – A.R.S. § 13-1204, 1203

- ICE LITIGATION CHALLENGE: Establishing the level of scienter and level of conduct
- NO PROBLEM IF: *Mens rea* is identified by specifying subsection under A.R.S. § 13-1203.
- NO PROBLEM IF: Type of conduct is identified by specifying subsection under A.R.S. § 13-1204. Defendant's actions are identified with particularity throughout the record of conviction.
- GOVERNING LAW: *Matter of Silva-Trevino*



Crimes Involving Moral Turpitude

Possession of Burglary Tools – A.R.S. § 13-1505(A)(1)

- ICE LITIGATION CHALLENGE: To establish reprehensible conduct
- NO PROBLEM IF: Defendant's actions are identified with particularity throughout the record of conviction.
- GOVERNING LAW: *Matter of Silva-Trevino*



Crimes Involving Moral Turpitude

Third Degree Burglary – A.R.S. § 13-1506(A)(1)

- ICE LITIGATION CHALLENGE: To establish conduct that constitutes entering or remaining unlawfully in or on a nonresidential structure or in a fenced commercial or residential yard with the intent to commit any theft or felony
- NO PROBLEM IF: Defendant's actions are identified with particularity throughout the record of conviction
- EXAMPLE FACTUAL BASIS: "Defendant broke into X store through the front window with the intent to steal equipment"



Crimes Involving Moral Turpitude

Second Degree Burglary – A.R.S. § 13-1507

- ICE LITIGATION CHALLENGE: To establish that the residential structure is occupied/inhabited
- NO PROBLEM IF: The record of conviction identifies whether the residential structure is occupied/inhabited
- GOVERNING LAW: *Matter of Louissaint*, 24 I&N Dec. 754 (BIA 2009)



Crimes Involving Moral Turpitude

Theft – A.R.S. § 13-1802

- ICE LITIGATION CHALLENGE: To establish that an offense involves intent to permanently deprive
- NO PROBLEM IF: Defendant's actions are identified with particularity throughout the record of conviction
- EXAMPLE FACTUAL BASIS: "Defendant took X that belongs to John Doe and did not intend to return the item or with the intent to permanently deprive"



Crimes Involving Moral Turpitude

Shoplifting – A.R.S. § 13-1805

- Generally there are no challenges for ICE with shoplifting convictions, but identification of subsections and providing a detailed factual basis are helpful.
- Definition of "deprive" (13-1801(A)(4)) includes withholding of property interest of another permanently or for a period in which the property interest loses portion of its economic value or usefulness



Crimes Involving Moral Turpitude

Forgery – A.R.S. § 13-2002(A)

- Generally, no litigation challenges for ICE with forgery convictions
- “A person commits forgery if, with *intent to defraud*, the person . . .” = this language is key, and all subsections include inherently reprehensible conduct



Crimes Involving Moral Turpitude

Criminal Possession of Forgery Device – A.R.S. § 13-2003

- Generally, no litigation challenges for ICE with these convictions
- Both subsections (A)(1) and (A)(2) include either intent to commit fraud or intent to use for purpose of forgery = inherently reprehensible conduct



Crimes Involving Moral Turpitude

Criminal Impersonation – A.R.S. § 13-2006

- ICE LITIGATION CHALLENGE: 13-2006(A)(3) includes conduct that is not inherently reprehensible. However, subsections (A)(1) and (A)(2) require reprehensible conduct.
- NO PROBLEM IF: Subsection specified.
- NO PROBLEM IF: Defendant's actions are identified with particularity throughout the record of conviction. For example, if the defendant stole an actual person's identity/social security number, the record of conviction must so state, and identify what it was used for and resulting harm.



Crimes Involving Moral Turpitude

Taking Identity of Another – A.R.S. § 13-2008

- ICE LITIGATION CHALLENGE: To establish inherently reprehensible conduct
- NO PROBLEM IF: Defendant's actions are identified with particularity throughout the record of conviction. For example, if the defendant stole an actual person's identity/social security number, the record of conviction must so state, and identify what they it was used for and resulting harm.



Crimes Involving Moral Turpitude

Aggravated Driving or Actual Physical Control While Under the Influence – A.R.S. § 28-1383(A)(1)

- ICE LITIGATION CHALLENGE: To establish actual driving knowing that the driver's license was suspended.
- NO PROBLEM IF: Record of conviction identifies that the defendant *drove* a vehicle while *knowing* that his driver's license was suspended.
- GOVERNING LAW: *Marmolejo-Campos v. Holder*, 558 F.3d 903 (9th Cir. 2009)



Crimes Involving Moral Turpitude

▪ Congress did not define "crime involving moral turpitude"; therefore, under administrative law, the United States Attorney General is charged with gatekeeping the definition and is entitled to *Chevron* deference, where published (precedential) decision is involved

▪ Traditionally, crime involving moral turpitude (CIMT) viewed as an offense that is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999)



Crimes Involving Moral Turpitude

- The United States Attorney General defined crime involving moral turpitude in published decision, *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), as involving both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness

Scienter/Mens Rea + Reprehensible Conduct



Analysis of Crimes Involving Moral Turpitude

- Analyze statutory elements (categorical approach).
- If the statute of conviction is overinclusive, determine what conduct is described throughout the record of conviction (modified categorical approach).
- If the record of conviction is inconclusive as to the conduct, examine the presentence investigation report, probation report, police report, and possibly even the defendant's own testimony (extended modified categorical analysis).



Class 6 Undesignated Felonies

- Re-designation of an offense from class 6 undesignated felony to a misdemeanor can render the offense non-removable for immigration purposes.



Firearms

INA section 237(a)(2)(C) – Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18) in violation of any law is deportable.



Firearms

Misconduct Involving Weapons – A.R.S. § 13-3102; Drive-by Shooting – A.R.S. § 13-1209

- ICE LITIGATION CHALLENGE: Proving that the weapon is a firearm
- NO PROBLEM IF: Weapon is specified or identified as a *non-antique* firearm throughout the record of conviction.
- GOVERNING LAW: INA section 237(a)(2)(C)



Firearms

Aggravated Assault with a Deadly Weapon – A.R.S. § 13-1204(A)(2); Disorderly Conduct with a Deadly Weapon or Dangerous Instrument – A.R.S. § 13-2904(A)(6)

- ICE LITIGATION CHALLENGE: To establish that the weapon is not an antique firearm.
- NO PROBLEM IF: Weapon is specified or identified as a *non-antique* firearm throughout the record of conviction.
- GOVERNING LAW: INA section 237(a)(2)(C)



Firearms – Practical Considerations

Is the weapon a firearm? "From a plain reading of [237(a)(2)(C)], it is clear that Congress intended to embrace the entire panoply of firearms offenses." *Valerio-Ochoa v. INS*, 241 F.3d 1092, 1095 (9th Cir.2001)

- If the statute of conviction does not specifically require possession or use of a firearm (i.e., cases where a person may be convicted for having/using a "deadly weapon"), the record of conviction must identify the specific weapon (i.e. 9mm handgun), or at the very least must state that the weapon involved was a firearm.



Domestic Violence and Child Abuse

INA section 237(a)(2)(E)(i) - Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable.

INA section 237(a)(2)(E)(ii) - Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.



Domestic Violence and Child Abuse

Stalking – A.R.S. § 13-2923

- Record of conviction must establish with particularity how the defendant committed the act of stalking.



Domestic Violence and Child Abuse

Domestic Violence – A.R.S. § § 13-3601, 13-1203

- ICE LITIGATION CHALLENGE: To establish that the offense is a crime of violence as defined by 18 U.S.C. § 16
- NO PROBLEM IF: Record of conviction identifies conduct involving the *intentional use of force* that is *violent* in nature, and identifies the relationship of the victim to the defendant.
- GOVERNING LAW: *Fernandez-Ruiz v. Gonzalez*, 466 F.3d 1121 (9th Cir. 2006); *Matter of Velasquez*, 25 I&N Dec. 278 (BIA 2010)



Domestic Violence and Child Abuse

Child or Vulnerable Adult Abuse – A.R.S. § 13-3623

- ICE LITIGATION CHALLENGE: To establish that the victim was a child
- NO PROBLEM IF: Record of conviction identifies the victim as a child and specifies how the child was harmed/abused.
- GOVERNING LAW: *Matter of Soram*, 25 I&N Dec. 378 (BIA 2010), *Matter of Velasquez-Herrera*, 24 I&N Dec. 503 (BIA 2008)



Domestic Violence and Child Abuse

Violation of Protective Order; Interfering with Judicial Proceeding –
A.R.S. § 13-2810

- ICE LITIGATION CHALLENGE: To establish that a lawfully issued domestic violence order of protection was violated, and what portion of the order was violated.
- NO PROBLEM IF: Record of conviction identifies subsection 13-2810(A)(2), which states "[d]isobeys or resists the lawful order, process or other mandate of a court," identifies the portion of the protective order the defendant has violated, describes how the defendant has violated it, and identifies the relationship between the victim and the defendant.
- GOVERNING LAW: *Matter of Strydom*, 25 I&N Dec. 507 (BIA 2011)



Aggravated Felonies

There are many different types of aggravated felonies under the Act. Most common are convictions involving illicit trafficking in a controlled substance, crimes of violence, theft, and prohibited possession of firearms.

Many of the aggravated felony charges require a sentence of one year, which is defined as 365 days or more.

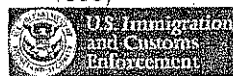
Reduction of sentence from 365 to 364 days disqualifies certain crimes (e.g., crimes of violence, theft offenses) from being Aggravated Felonies for immigration purposes.



Aggravated Felonies – Illicit Trafficking in a Controlled Substance

Possession, Use, Production, Sale or Transportation of Marijuana –
A.R.S. § 13-3405

- ICE LITIGATION CHALLENGE: A.R.S. § 13-3405(A)(4) includes the language that constitutes Solicitation = not a categorical trafficking offense
- NO PROBLEM IF: Defendant's actions are identified with particularity throughout the record of conviction or subsection 13-3405(A)(2), which provides that "[a] person shall not knowingly possess marijuana for sale," is specified.
- GOVERNING LAW: *Leyva-Licea v. INS*, 187 F.3d 1147 (9th Cir. 1999)



Aggravated Felonies – Crime of Violence

- **ICE LITIGATION CHALLENGE:** To establish that the defendant's conduct amounted to a crime of violence as defined in 18 U.S.C. § 16, and that a sentence of incarceration of one year or more was imposed.
- **NO PROBLEM IF:** Record of conviction specifically notes that the defendant's conduct was intentional and involved violent force. Record of conviction also specifies that a sentence of 365 or more days was imposed.



Aggravated Felonies – Theft

- **ICE LITIGATION CHALLENGE:** To establish that a theft/taking involved property or services and that the sentence of incarceration of one year or more was imposed.
- **NO PROBLEM IF:** Record of conviction identifies with particularity that the theft/taking involved property or services and specifies that the sentence was at least 365 days.



Aggravated Felonies – Prohibited Possessor of Firearms

Misconduct Involving Weapons - A.R.S. § 13-3102(A)(4)

- ICE LITIGATION CHALLENGE: To establish that the weapon is a non-antique firearm and that the defendant is a prohibited possessor because of a prior felony conviction.
- NO PROBLEM IF: Record of conviction identifies the weapon as a non-antique firearm *and* specifies the defendant's prior felony conviction or cites A.R.S. § 13-3101(A)(7)(b).



Questions?

Contact:

Duty Attorney
Office of Chief Counsel – Arizona
Eloy Detention Center
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Eloy, AZ 85131
(520) 464-3032



