Crimmigration

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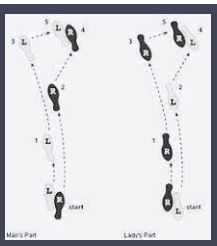
Today's Discussion: Overview



- Working with Criminal Defense Counsel
- Overview of the Categorical Approach
- Deeper dive/practice with Categorical Approach and new cases

How and when to work with a criminal defense attorney?

- As soon as possible!
  - Ask about pre-trial diversion programs (where pleas/admissions are *not* required) early as there are enrollment deadlines
  - Reach out to *Padilla* experts if you need help identifying possible alternate/safe pleas.
- Set your expectations
  - Reduction or dismissal often not available
  - Non-detained criminal cases move slowly
  - Going to trial can be a very big risk, as Texas has broad sentencing range

How a case moves in criminal court

Reminder of Defense Counsel Duties

- *Padilla* requires defense counsel to give detailed and specific advice
- Not just referring the client to immigration counsel
  - Defense counsel needs to talk to immigration counsel
- For writs, be aware of *U.S. v. Armendariz* (5th Cir. 2023)
  - That said, not a standard to advance with defense counsel

Important Texas Criminal Court Terminology

- Deferred Adjudication
  - Is a conviction but the period on deferred is not a sentence
- Straight Probation
  - Is a conviction and the suspended sentence is a sentence
    - (e.g. 2/5)
- Pre-Trial Diversion
  - Must look at the diversion contract to see if plea or admission
- SAFPF
  - "rehabilitation" that counts as a sentence

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