

THE TRUTH ABOUT
INMIGRANTS
AND THE **LAW**

LESSONS LEARNED BY HELPING
MORE THAN 80,000 INMIGRANTS

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INTRODUCTION

It was 1994 and I was a young Marine stationed in Guantanamo Bay, Cuba. I was a member of Rifle Security Company Windward (remember the movie “A Few Good Men”) and my unit’s job was to provide security on the fence line separating ourselves from communist Cuba. While on the fence line I had the experience of assisting Cubans escape their communist homeland. Most of those desperate souls walked through minefields, some swam through shark infested waters, but in every situation our government chose to accept and welcome them to the United States.

Fast forward to 2005. I was no longer in the Corps, I had graduated law school, and I was living as a small-town lawyer in eastern North Carolina. My work was no different than any other local attorney. At least that was until I met Celia. One afternoon a Spanish speaking woman walked into my office on a mission. She was determined to find answers for immigrants like her. Celia was from Mexico and not one to stand for injustice. When I met Celia, she was trying to find someone to listen to yet another story of an immigrant mistreated by the system. Some of the stories she was carrying were horrible. But Celia was no victim, she refused to accept the frustrations she and her community faced and sought help. Soon Celia would bring me more stories of immigrants desperate for action. Eventually it became a stream of similar experiences. Many of the issues we were facing were new to me and I too had difficulty finding answers. What we relied on was the spirit that defines Diener Law, “find a way.” We continue to refuse to accept the standard beliefs or limited options for our immigrant friends. We believe if we care enough, if we try enough, we will find a way. This is what Celia demonstrated to me over and over again.

It didn’t take long to realize working with immigrants filled me with a sense of purpose, it was my calling. I read once that you don’t find your calling, it finds you. In my situation Celia was the messenger. I find it ironic that the government trained me as a Marine to support and defend the constitution of the United States against all enemies foreign and domestic. The irony is that after

meeting Celia and representing so many immigrants is that the biggest threat to the constitution was from the government itself. And what my training didn't teach me, but my faith did, is that helping those Cuban refugees is not more right than helping the undocumented immigrant population already here in America.

Diener Law's mission has been extended to protect immigrants from insurance companies, individuals who prey on immigrants and from even poverty itself. Injustice comes in many forms, and I am honored to know Celia and am thankful for the lessons she has taught me. And still to this day, I get calls from Celia to take action. Looking in hindsight, I can see it all was meant to be. My last name is German and means "servant." A servant to the immigrant community is what I am proud to be.

TRUTHS

Truth #1 You are not in good hands with insurance companies

Whether you've been hurt at work or by the negligence of someone else, you can't rely upon the relevant insurance company to look out for your interests. Their duty is to their insureds, and they will attempt to resolve your claim for as little as possible. Only by hiring an experienced attorney can you know that your interests are being looked after.

Truth #2 It does not pay to be macho

After an accident people are often concerned about getting back to work and on with their lives as soon as possible—as they should be. But if you are in pain, you owe it to yourself to get checked out and to follow your doctor's instructions. People often put off going to the doctor for days or weeks, thinking the pain will go away. When it doesn't and people finally seek treatment, they find that the insurance company will refuse to pay for it arguing that it wasn't caused by the accident. Therefore, obtaining timely, appropriate treatment is important after an accident. Also, after a work accident, you should give your employer prompt notice, including written notice within 30 days to preserve your right to any workers compensation benefits.

Truth #3 If you are undocumented, you have rights, but you must be willing to defend them

If you are undocumented, you still have rights to compensation but must be willing to assert them. You can't rely upon insurance companies or others who are responsible for your injuries to protect your interests.

Truth #4 If you are in an accident and you don't have a driver's license you can still get compensation

Even if you do not have a driver's license you are still entitled to compensation if you've been injured, and the other driver was at fault. There are often criminal traffic citations in such circumstances that need to be dealt with but in many cases the fact that you do not have a license is not relevant in a personal injury claim.

Truth #5 Insurance companies want you to handle your own claim and not hire a lawyer because they keep more of your money

Insurance companies will often contact you quickly after an accident and offer you money to settle your claim. This is rarely a good idea. If you have been injured, you probably will not even know the full extent of your injuries and are unlikely to know what compensation you may be entitled to. But once the claim is settled you give up your ability to obtain any future or additional compensation. You may find out that you need a surgery or other expensive procedure as a result of the accident and have no way to pay for it. Fortunately, a consultation with a personal injury attorney is usually free and you owe it to yourself to consult one before settling your claim.

Truth #6 Insurance Companies and many attorneys base virtually all their decisions on the strength of your case simply on what others write about you. Often the information they rely upon is wrong because of language difficulties or biases

Accident reports and medical records often have mistakes in them, even in the best of circumstances. This issue is compounded when there is a language barrier or when the maker of the record has a bias against you. Knowing how to deal with these mistakes and inaccuracies can make a huge difference in an injury case.

Truth # 7 It has been proven in CA you are more than 90% more likely to have your vehicle searched if you are Hispanic compared if you are white.

There are variety of reasons why Hispanics are more likely to have their vehicle searched. The language barrier between the officer and the driver of the vehicle is the main reason why these searches occur. Drivers often cannot understand the officers' questions when the officer is asking for permission to search the vehicle. The driver mistakenly shakes his head yes or gives a quick answer not knowing that the officer is asking for permission to search the vehicle. Whenever you are stopped by an officer, you are not required to allow the officer to search the vehicle. Absent consent to search, generally the officer must have knowledge that a crime has been committed and evidence of that crime is in the car in order to search a vehicle during a traffic stop.

Truth # 8 When police stop you, they can lie to you, but you can be charged with a crime if you lie to them.

Police officers often use traffic stops as a way to investigate potential criminal activity. Police officers are allowed to lie to the driver and occupants of the vehicle in an effort to get the driver to confess to committing a crime. For example, a police officer may lie to a driver stating that the officer witnessed the driver cross the center line or run a red light. This is done with the intent to get the driver to admit to drinking earlier in the night. Such an admission would lead to potential Driving While Impaired charge. Sometimes the lies which the officers use are meant to secure consent to search the vehicle and try to find evidence of a crime.

In contrast, if you lie to officers during a traffic stop you may be charged with a crime. In California, it is a misdemeanor under Vehicle Code 31 VC to provide false information or documentation to a police officer who is enforcing traffic laws. This particular California statute is limited to the enforcement of the traffic code by local law enforcement and peace officers. Vehicle Code 20 VC covers providing false identification to the California Highway Patrol (CHP) or to the Department of Motor Vehicles (DMV). Another statute, Penal Code 148.9 PC, prohibits knowingly providing false identification to police after being arrested or lawfully detained.

Truth # 9 If the police are asking you questions, it is because they are trying to build a case against someone, and it is probably you.

Police officers are responsible for investigating potential crimes and uncovering who might be responsible. Once they make certain findings or come to conclusions about who they believe committed the crime, they turn this information over to the prosecutor's office. The prosecutor is then responsible for convicting the individual in court. Police officers have many techniques they use to investigate crimes. The most popular method in criminal investigations is to interview potential witnesses and people who the police believe committed the crime. This technique is used to gather more information about the facts of the case and develop theories about how the crime occurred. When police have a suspect of a crime, they will almost always approach the suspect in the case to get their version of the events. Everything they receive during this conversation will be used by the prosecutor during the subsequent prosecution of the crime. In short, police officers talk to people to

establish the necessary facts for the prosecutor to have a better chance of convicting a person of a crime.

If the police come to you asking questions about a crime, they are looking to strengthen the state's case at trial. They have approached you because they either believe you witnessed a crime or that you were the person who committed the crime. It is important that you understand what you are obligated to say to police officers. Under the United States Constitution, you are under no obligation to answer questions to a police officer. When approached by the police you should always ask them if you are free to leave and not answer any questions. If the police tell you that you are not free to leave, you should inform them that you will not answer questions without your attorney present. Once you make this statement, the police are not allowed to question you without your attorney present.

Truth #10 If you are a victim of a violent crime and are undocumented you may be eligible to apply for legal status

A person should never be afraid of filing a police report or assisting with the prosecution of a case. Did you know that if you are the victim of a serious crime, you may be eligible to apply for a U Visa? Congress created the U Visa in 2000 with the hope of strengthening the ability of law enforcement agencies to investigate and prosecute serious crimes, while also protecting victims. It is available to victims of certain crimes who have suffered mental or physical abuse and who have assisted law enforcement or government officials in investigating or prosecuting cases, such as human trafficking, sexual assault, and domestic violence, among others. It does not matter what status you currently have or the country that you are originally from. Even individuals who are currently in removal proceedings may be able to apply for a U Visa and thereby fight their deportation. There are many benefits associated with a U Visa, including four years of lawful presence in the United States and permission to work and drive lawfully. Most importantly it is a pathway to residency and later citizenship. These benefits may also be available to members of the victim's family as well. The important thing to remember is to report any and all crimes committed against you to law enforcement and always cooperate in the investigation.

Truth # 11 What may be a good result for an American citizen in a criminal case does not mean that it is a good result for an immigrant

American citizens do not risk losing their status as a result of a criminal conviction. While they may lose certain privileges or rights following a conviction, they will still be able to live in the country legally. The same cannot be said for immigrants. Immigrants with lawful permanent status in the United States can potentially put that residency in jeopardy by pleading to certain crimes. Immigrants without legal status in the United States must be extra cautious when dealing with criminal charges. Certain convictions may carry the potential for time in jail. Given the type of charge a small amount of jail time may be a great result for someone with citizenship. However, an undocumented immigrant runs the risk of being picked up for deportation if they are held in jail. Additionally, undocumented immigrants must try to keep their records as clean as possible in case they were to become eligible for future immigration relief. Any type of visa which an undocumented immigrant applies for will have requirements and restrictions based upon the person's prior criminal record.

A plea with minimal active time or a particular reduced charge may be a great result for a citizen. However, immigrants must consult an attorney to understand the consequences of a criminal convictions on their ability to stay in the United States.

Truth # 12 If any lawyer guarantees you a criminal result, run

Results in criminal cases depend on numerous factors. There are the facts the case, the investigating officer, the assigned District Attorney, and the Judge in the case. Different Judges handle certain cases differently and there is no way to determine which Judge a defendant will get in their case. Likewise, different District Attorneys have varying policies about the types of pleas offers they will agree to. Sometimes a case is assigned to a District Attorney who will provide a great plea offer and other times the District Attorney may be strict. Any lawyer who guarantees a certain result in a criminal case is only trying to get your money. The best attorneys lay out all the possible resolutions and clearly explain what the best and worst outcomes would be. Then they provide an opinion on what they think they can get for the client.

Truth # 13 Taking care of a criminal charge doesn't mean that charge is wiped off your record

Handling a criminal charge in court does not mean that it is wiped off your criminal record. Depending on the result of the case a charge will still be on your record. A conviction on your record will show what the result of the case was. A charge and a conviction are two separate things. You can be charged with speeding, and it can be reduced in court to a non-moving violation and what will show up on your record is that you were charged with speeding, but the conviction would be a nonmoving violation. Now if a charge is completely dismissed in court, then there is a possibility that the charge can be expunged from your record. So always remember just because the case was handled it does not mean that it is wiped off your record.

Truth # 14 Just because someone says they will drop the charges against you, doesn't mean the prosecutor will

If you are charged with a criminal charge and there is an alleged victim, and this victim decides to not pursue the charges that does not mean that the prosecutor will drop the charges. If there is enough evidence to be found guilty in a case, then a prosecutor can move forward with the case to get a conviction. So, it is very important to know that just because a person says they will drop the charges that does not mean that prosecutor cannot move forward with case. Prosecutor's job is to get a conviction so they will try to move forward on case, and this is why it is very important to hire an attorney to make sure you are defended well so that you can get the best result.

Truth # 15 A hunting permit doesn't give the right to have a firearm if you are an immigrant, it is a felony under federal law

A legal immigrant (permanent resident on green card) or legal non-immigrant on a visa with an exception (current valid State hunting license or DOJ waiver) if the alien is a resident of a State and gives his alien number or admission number which has been issued by the U.S. Department of Homeland Security. It is illegal for an undocumented immigrant to possess a firearm and can be charged federally and can face up to 10 years in a federal prison and then be placed in removal proceedings.

Truth # 16 If you have had a driver's license in California under another name and later get one under your real name, you can count on the government finding out

With the technology that the DMV possesses today if you ever obtained a license in your real name and also in an alias, they have programs that will find out about the fraud, and they will try to find you. DMV also has combined with Homeland Security Tasks Forces that their job is to find and eventually charge said person with fraud. These charges can range from misdemeanors to felony and potentially federal charges. DMV runs these analysts year-round so even if you obtained these ID's or driver's licenses several years ago, they would still find out and try to locate the person.

Truth # 17 Using a false name in the past doesn't protect you from future punishment if they took fingerprints

If you were ever charged criminally and arrested and your fingerprints were taken that record will follow you forever. It does not matter if you used a false name, fingerprints are unique. Lots of times people who have used a false name and have been charged with a crime decide they do not want to handle case because that is not their real name, but if they have been fingerprinted and anytime in the future they get charged and arrested again and fingerprinted then the arresting agency can and will serve the person with an Order of Arrest for not handling the previous case they had under a false name.

Truth # 18 Just paying off tickets are usually more expensive than getting the help of a lawyer

When a person is cited with traffic infractions it seems like the easy and less stressful thing to do is just go pay it off, but not knowing that every time a person does that it basically pleading guilty to the charge and adding points to a person's driving record. After a certain accumulation of points the DMV can revoke/suspend a person's driving privilege and this can result in a person spending a lot of money on attorney fees just to try and avoid probation or even jail time. This is why even if it is a simple traffic infraction the best thing to do is consult an attorney because the attorney can reduce infraction and even avoid points that will not come back to haunt you in the future and even in most cases the client does not even have to appear in court, the attorney can handle without the client having to be present because most traffic offenses are waivable offenses.

Truth # 19 If you are working or worked under someone else's name in the past, law enforcement generally come looking when someone files a report because money is owed....

In recent years, there has been a lot of press about identity theft. The type of identity theft that most people are familiar with is when someone uses another person's name and social security number to make purchases without any intent to pay for those purchases. But there is another type that is less known and is simply motivated by the need to work. Many of the eleven million undocumented immigrants in this country have at one time or another used someone else's identification for this second purpose. This "truth" is not intended to discuss this problem as a whole, but is written instead to help those people who, out of necessity, may have done what they believed they had to do for them and their families to survive.

First, whether the rest of us want to admit it or not, in one way or another, we are all criminals. Someone may be reading this article with contempt for the undocumented individual who freely chose to use another person's identity. I remind you that each of us has certainly done one or more of the following: speeding, texting while driving, not paying a parking meter, betting on the game,

sharing a prescription medication, taking a pen from the office, eating a grape at the grocery store before paying for your groceries, and/or not reporting every dollar you earn on your taxes. I am not condoning any of these violations, merely reminding all of us that we should not judge. Now that we have that out of the way, we can move on to the task of educating people on how to reduce their exposure for acts they may have already committed in the area of identity theft. Again, I am not condoning or recommending any form of identity theft, merely offering assistance to those who may find themselves in this situation.

Comprehensive immigration reform, God willing, is coming. Many of the same people who plan on applying for this potential form of immigration relief will have at some point bent our identity theft laws in order for them and their families to survive. Working under someone else's name is one thing. Using another's social security number is another. And in California, if you are caught for these actions, you can be charged with a misdemeanor. A felony is a particularly serious crime, both under state criminal and federal immigration law. And unlike the case with misdemeanors which generally must be prosecuted within a year in California, for felonies, California can usually prosecute you for up to three years for felonies like these that are punishable by more than a year and less than 8 years in prison.

My point in explaining how these situations develop is not to encourage someone to commit identity theft, but rather to advise those in such situations of ways to avoid causing more damage to themselves and to others. If you are in the middle of a similar situation, you should try to stop using the other ID, and never, and I mean never, leave someone else paying for your use of that identity. This is a difficult situation for many people. Money isn't plentiful, and the thought of possibly escaping from a debt because it is in another person's name is tempting. But the reality of these situations is that typically, law enforcement comes looking when money is owed, and the actual person did not incur the debt. Otherwise, if no money is owed, law enforcement spends their time on more serious offenses.

Truth # 20 You are on the hook for anything a notario puts on an immigration petition

DON'T be the victim of a fraud. In most Latin American countries, "notarios" are considered attorneys and sometimes have the authority to give you legal advice and guide you on a legal matter. Here in the United States, a "notario" is simply a person who is authorized to notarize documents. They are not prepared or qualified to assist with immigration matters. Immigration law is not just a process of filling out some forms but knowing from start to finish the pros and cons of an immigration case. Many individuals have lost thousands of dollars because they hired a notario to help with their case. Sometimes the notario knows that you don't have any chances for an immigration case, but they still file the application/case with USCIS anyway, knowing that the consequences could be catastrophic. Some people are even put in removal proceedings because the notario either didn't understand the complexity of their case or choose not to fully explain all the possible consequences. After a petition is filed by a "notario" you are solely responsible for the consequences of such petition/application. A "notario" can't go back to fix any issues or represent you in immigration court because they are NOT attorneys and don't have the legal authority to represent you. In addition, you are required to sign every immigration form under penalty of perjury that everything it says is true. That is why it's important to hire an experienced attorney when applying for any immigration benefit.

Truth # 21 Immigration rules and policies are changing rapidly so don't rely on what your cousin's wife's lawyer said

EVERY case is different. Immigration law is complex. Details are extremely important in determining whether an individual is eligible for an immigration benefit and whether, even if they are eligible, they should apply for that benefit. As a result, it's important to remember that no matter how similar your case may appear to the case of someone else you know, there are likely important differences that could vastly change the outcome. Furthermore, immigration law, with its rules and policies, is constantly changing day by day, so it is unwise to compare a current case with the results that were obtained for a different client three, two or even a year ago.

Truth # 22 Just because you may have lived here for over 10 years it doesn't mean you can become legal

Just because you have lived in the United States for over 10 years doesn't mean you can apply for legal status. This so called "10-year immigration law" does NOT exist. Instead, when people talk about getting status after being in the United States for ten years, they are likely referring to cancellation of removal. Cancellation of removal is only available to individuals who are currently in removal proceedings and who have lived in the United States for at least ten years. In addition to the residency requirement, these individuals must also show that they are a person of good moral character, and their removal would result in exceptional and extremely unusual hardship to their spouse, parent, or child who is a United States citizen or legal permanent resident. Exceptional and extremely unusual hardship is a high standard to meet, financial concerns and worries about missing family members unfortunately aren't enough. Therefore, since cancellation of removal can only be granted by an immigration judge, it is only a good option for individuals who are already in removal proceedings.

Truth # 23 As many as 1 out of 4 people who apply for DAPA or DACA are eligible for legal status

"DACA" (Deferred Action for Childhood Arrivals) is an immigration policy which allows eligible, undocumented immigrants to legally work in the United States and makes them a much lower priority for deportation. It is not a legal status, and it is temporary. Recipients must apply to renew their status every few years and hope that future presidential administrations continue the policy. Fortunately, as many as 1 out of 4 individuals who apply for DACA are eligible to obtain legal status through other methods. Spouses, children, parents, and siblings of United States citizens, for instance, may be eligible to become legal permanent residents. The same is true for spouses and children of legal permanent residents. Victims of certain crimes may be eligible for a U Visa, which is a pathway to residency and later citizenship, as is Special Immigrant Juvenile status, which is for minors who have been abandoned, abused, or neglected by one or both parents. Therefore, it is important to consult with an experienced attorney to determine your eligibility for legal status in the United States.

Truth # 24 You don't need permission from your spouse to get divorced, even if you were married in another country

If you or your spouse have lived in California for six months and have a legally acceptable reason to seek a divorce (such as "irreconcilable differences"), you have a right to file a divorce case

and to get a divorce in California, even if your spouse does not want a divorce, and even if you were married in another country. Once the divorce papers are filed with the court, the papers must be served on the spouse in one of a few ways allowed by law. There are three main ways to serve a legal papers of this type: 1) service by the Sheriff from a courthouse near where the defendant lives or works, 2) hire a registered process server, or 3) having a friend or family member over the age of eighteen provide the service. If the papers cannot be served by one of the ways listed, or if we do not know where your spouse lives, in some circumstances, we can put legal notice in a newspaper, and that will satisfy the service requirement. If your spouse lives in another country and we have an exact address for your spouse, we will most likely have to complete an expensive type of service based on international treaties. If your spouse lives in another country and you do not know the address, we can usually serve by publication and move forward with the divorce.

Truth # 25 Every parent that is an undocumented immigrant is entitled to go to court and seek custody of their children

Based on the United States Constitution, the courts have recognized the rights of parents who are undocumented immigrants to seek custody of their children. Almost a hundred years ago, the United States Supreme Court held that under the Due Process Clause, parents had a liberty interest under the Due Process Clause of the 14th Amendment to “establish a home and bring up their children.” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Then, in the important case of *Plyler v. Doe*, the United States Supreme Court reaffirmed that, regardless of immigration status, individuals are entitled to the protections of the Due Process and Equal Protection Clauses. 457 U.S. 202, 210 (1982). According to California law, the immigration status of a parent, legal guardian, or relative does not disqualify that person from receiving custody. However, California courts do still apply residency requirements to see if the custody case can be brought in California.

In fact, immigration status has very little relevance at all in custody proceedings. The court is required to consider all the facts and circumstances of the case and decide which custody arrangement is in the best interest of the minor child or children. What is important and relevant to the best interest of the child is what one parent has done or can do to provide for the physical, emotional, and psychological wellbeing of the child. Also, if either parent has done anything that was harmful or might be harmful to the child, that is very relevant.

Truth # 26 You have a constitutional right in the United States to get married regardless of whether you have legal status

The courts have generally held that individuals possess a fundamental right to marry under the United States Constitution. This basic but important idea became a little more complicated for illegal immigrants when the United States Congress passed a law requiring a social security number be provided to obtain a marriage license, so that it would be easier to enforce court orders for child support and spousal support. This requirement conflicted with the fundamental right to marry because illegal immigrants are not generally able to obtain a social security number under current law. Many courts addressed this issue, and they clarified that preventing illegal immigrants who could not get a social security number from obtaining a marriage license would violate the fundamental right to marry of these individuals. California does not have any special requirements for undocumented persons who want to get married in the state. A social security number or card is not required. It is only necessary to show valid, legal identification showing the person’s full name.

Truth # 27 Many immigrant employers frequently count on their employees not knowing federal and state wage and hour laws, but the government will investigate anonymously for free

Employers in California who employ illegal immigrants often take advantage of the fact that these employees will most likely not know federal and state wage and hour laws. Whether illegal immigrants know it or not, they have definite rights under the law. For example, the minimum hourly wage in California is \$14.00, although different laws apply to tip-earners like waiters and waitresses. Some employers pay illegal immigrants less than this minimum wage, in violation of the law. Also, for all hours over forty worked in a week, employees are generally entitled to be paid “time and a half,” which mean one and a half times their hourly wage. If illegal immigrants are employees being paid hourly, they are also entitled under the law to be paid on their regularly scheduled payday. In the United States, Form I-9 is used for verifying the identity and employment authorization of individuals hired for employment, and the law requires the **employers** to complete this form. Employers will sometimes hire illegal immigrants and employ them for a period of time, then refuse to pay them, sometimes after a significant amount of work, if the employee cannot produce a social security card. The courts consider this an example of “unclean hands” and not a sufficient reason not to pay the employee, as it was the employer’s failure to complete the I-9 Form, not the employee’s.

When employers do things that violate wage and hour laws, employees have definite rights. One option is to contact the California Labor Commissioner’s Bureau of Field Enforcement (“BFE). On their website, they state: **“In California, all workers are protected by labor laws. The Labor Commissioner’s Office will not question your immigration status nor report it to other government agencies. There is no need for a social security number or photo identification to file a report of labor law violation.”**

How to Report a Labor Law Violation

(<https://www.dir.ca.gov/dlse/howtoreportviolationtobofofe.htm>)

1. Submit the Report in Person or by Mail
2. Download and complete the form
3. Print and sign it
4. Take it to the Labor Commissioner's office located nearest you or mail the completed form to the Labor Commissioner's office that handles investigations in the region where you performed the work or the violation occurred. To locate that office, go to the Office Locator for the alphabetical listing of cities. It is best to include your name and contact information so that the Labor Commissioner can contact you for more information if needed for the investigation. Your complaint will be kept confidential to the maximum extent possible under the law. paycheck, you must wait 10 days after the payday in order to file a wage complaint with the Wage and Hour Bureau.

Also, any additional information that you can provide, such as copies of pay stubs, personal records of hours worked, or other information on your employers’ pay practices, can be helpful. To file a federal wage and hour claim, call 1-866-487-9243 or visit www.wagehour.dol.gov.

Truth # 28 Not everyone is eligible for an immigration bond hearing, especially if you already had one before you were ready

Technically there is not a right to an immigration bond, one has to request one first. However, an ICE agent may offer someone detained to have a bond hearing immediately. It is common for someone detained to take this opportunity to go before a judge without any preparation hoping that the faster, he or she has their bond hearing, the faster they will be out of detention. However, it doesn't always work out that way. Normally, when an immigrant gets arrested and transferred to a detention facility, they do not have all the necessary paperwork for the judge to consider when deciding on a bond. This is a reason why in many cases a bond is refused or is so high that the families cannot afford the bond. It is crushing when when the person detained is stuck in the detention center without a bond. It is all too frequent that someone is stuck because they didn't talk with attorney before a bond hearing. **BY LAW, YOU ONLY HAVE ONE CHANCE TO REQUEST A BOND HEARING!**

Truth # 29 Just because you pay a criminal bond, it doesn't mean you will be released.

When a person is charged with a crime and arrested, they are taken in front of a local Magistrate. That magistrate sets a bond in the case depending on several established factors. These factors include ties to the community, prior criminal record, and facts of the case (just to name a few). If the magistrate orders a secure bond, then the defendant must either pay the amount of the bond in cash or hire a bondsman to put up the money for the defendant. If the defendant puts up the money himself, it will be returned when the charges are disposed of. For American citizens, once the bond is posted they are released from custody.

In the cases of undocumented persons, there is often times an "ICE hold" placed on the person arrested. This means that the federal government has been notified that a person with undocumented status has been taken into custody. Under the federal law, the federal government has 48 hours from the time that person is eligible for release to take the person into federal custody. This means that even if the defendant pays the criminal bond, the local jail can hold the defendant for another 48 hours. If the criminal bond is posted and the person is picked up by the federal government, the money posted for the criminal bond may be lost. It is always best to consult an attorney before posting any type of criminal bond to make sure that the person will be released but also so that the money is not lost.

Truth # 30 Receiving public benefits may or may not affect your ability to gain legal residency

A lot of my clients when coming in for consultations are concerned about obtaining public benefits. Many of them asked for those benefits on behalf of their children who are United States citizens, some of them asked for benefits for delivering a baby, some for food stamps, etc. The immigration service can punish immigrants who by requesting public benefits might become a "public charge." However, receiving public benefits does not automatically make an individual a public charge. The term "public charge" has been part of immigration law for over 100 years as a ground for admissibility or even deportation. A person who is likely to become a public charge is inadmissible to the United States and is ineligible to become a permanent resident.

A "public charge" is defined as someone who is likely to become primarily dependant on the government for subsistence in terms of income for maintenance or long-term care at the

government's expense. In determining whether someone meets the definition a number of factors are considered including age, health, family status, assets, education, and skills. No single factor, other than the lack of an affidavit of support if required, will determine whether an individual is a public charge.

The following benefits ARE NOT considered a "public charge." Under agency guidance, non-cash benefits and special purpose cash benefits that are not intended for income maintenance:

- Medicaid and other health insurance
- Food Stamps, WIC, national school lunch program and other emergency or supplemental food assistance programs
- Housing benefits
- Childcare services
- Energy assistance, such as the Low-Income Home Energy Assistance Program (LIHEAP)
- Emergency disaster relief
- Foster care and adoption services
- Educational assistance including head start
- Job training programs
- Community based programs like shelters, crisis centers, counseling, and intervention services
- Non-cash benefits under TANF such as subsidized childcare or transit subsidies
- Cash payments that have been earned such as Title II Social Security benefits, government pensions, and veteran's benefits
- Unemployment compensation

PLEASE NOTE THAT LAWFUL PERMANENT RESIDENTS WHO CURRENTLY POSSESS A "GREEN CARD" CANNOT BE DENIED U.S. CITIZENSHIP FOR LAWFULLY RECEIVING ANY PUBLIC BENEFITS FOR WHICH THEY ARE ELIGIBLE.

Truth # 31 Preparing your own immigration petition may be the biggest mistake of your life

If you ask a bunch of attorneys whether it is okay to file without an attorney? I would venture that 100% will advise you that the answer is no, and that you should use an attorney. In all seriousness, the preparation, filing and follow up required in many different petition processes can be deceptively complicated; you should retain an experienced immigration attorney if you want it done correctly. Otherwise, you are risking your future and potentially your family members as well. Given everything you have gone through to get to this point, gambling is not wise. And not all errors can be reversed. Every week we have people call our offices that are seeking us to fix what a notario or themselves have done and often we just can't.

Truth # 32 If you have reentered the United States after being deported for a felony you are likely a priority target of ICE

ICE has limited time and money to arrest and deport undocumented immigrants. However, if you were convicted of a felony, deported, and later reentered, ICE will spend that limited time and money on picking you up. What is getting increasingly common is that the United States Attorney (the prosecutor for the federal government) is charging and easily convicting individuals for these very type of cases. Fingerprints taken after arrests when someone returns is generally how they find

you, but it can be as simple as someone turning you into ICE. In these situations, you are not eligible for a bond, and you will be at the complete mercy of the federal government and its slow-moving process.

Truth # 33 ICE may not even want to deport you or a loved one (prosecutorial discretion)

“Prosecutorial discretion” is the authority to decide what charges to bring and how to pursue each case. Prosecutorial discretion can be exercised on either an agency-wide basis or by an individual officer or employee. Prosecutorial discretion may be exercised at any stage of an immigration case. Specifically, prosecutorial discretion may be exercised when deciding whether to: issue a detainer; initiate removal proceedings; focus enforcement resources on particular violations or conduct; stop, question, or arrest a particular person; detain or release someone on bond, supervision, or personal recognizance; settle or dismiss a removal case; stay a final order of removal; pursue an appeal; and/or execute a removal order. Examples of the favorable exercise of prosecutorial discretion in immigration matters include a grant of deferred action; a decision to terminate or administratively close removal proceedings; a stay of removal; or a decision not to issue a charging document in the first place. While too lengthy to list here, the factors to determine whether the government can or will exercise prosecutorial discretion include: the person’s pursuit of education in the U.S.; the circumstances of the person’s arrival in the U.S.; the person’s length of presence in the U.S.; whether the person or any immediate relative has served in the armed forces; the person’s ties and contributions to the community; whether the person has a U.S. citizen or permanent resident spouse, child, or parent; the person’s age; the person’s ties to his or her home country; and whether the person is likely to be granted some sort of temporary or permanent relief from removal.

Truth # 34 Many immigrants are eligible for work authorization, and they don’t even know it

Some immigrants who do not have permanent residency can still obtain a social security number (SSN) and an employment authorization document (EAD) in order to legally work in the United States. If you have already submitted your paperwork with the immigration service for your permanent residency and are still waiting for the decision on your case, you are allowed to legally work in the United States with the EAD and SSN. Also, if you are currently in removal proceedings fighting your case in front of an immigration judge, you may be allowed to apply and obtain an EAD as well. There are also other instances when immigrants can apply for work authorization as well.