

2.3 Additional Interview Objectives for a Noncitizen Client

- A. Gather Additional Information from Your Client
 - B. Gather Your Client's Criminal Record
 - C. Assess Your Client's Goals in the Case
 - D. Advise Your Clients of Their Rights
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2.3 Additional Interview Objectives for a Noncitizen Client

A. Gather Additional Information from Your Client

You should use the initial and later interviews to gather additional details about your client's immigration history, including length of residence in the U.S., any U.S. citizen family relationships, and potential fear of returning to his or her country of nationality. This information will help you determine the immigration consequences of the potential conviction and whether your client will be eligible for any form of relief from deportation. *See infra* §3.2B, Relief from Removal.

B. Gather Your Client's Criminal Record

You will also need to gather your client's entire criminal record. A record of past convictions will be necessary to determine the immigration consequences of any potential conviction and whether your client will be eligible for any form of relief from removal.

C. Assess Your Client's Goals in the Case

After obtaining information to determine your client's immigration status, you should discuss with your client the relative importance of any immigration consequences of conviction. It may be that the traditional criminal defense goals of minimizing the severity of the conviction and sentence will conflict with the immigration-related goal of minimizing adverse immigration consequences. For example, in certain situations, your client may be able to plead guilty to a non-deportable offense in exchange for a longer sentence. Thus, it is necessary to gauge the immigration goals of the case, as it will inform your ultimate strategy in the criminal proceeding.

D. Advise Your Clients of Their Rights

U.S. Immigration and Customs Enforcement (ICE) prioritizes the removal of noncitizens who are in jails and prisons. ICE and cooperating law enforcement agents identify, question, and detain individuals who may be subject to removal based on criminal grounds or lack of immigration status. Admissions by noncitizen defendants may be used as evidence against them in deportation or criminal proceedings.

The client's Fifth Amendment privilege against self-incrimination covers immigration status if that information could lead to a criminal prosecution (certain immigration violations, including entering the U.S. without inspection, may carry criminal penalties).

You should therefore advise all noncitizen clients not to discuss their immigration status, birthplace, or manner of entry into the U.S. with federal immigration agents or other law enforcement officers, except with the advice of counsel. You should also advise your noncitizen clients not to sign any documents while in custody, which could contain a stipulation that they are removable, except with the advice of counsel. If questioned by an immigration agent, your client may remain silent or ask for an attorney.

You should also advise your noncitizen clients not to lie or misrepresent their status, as they can be criminally prosecuted for making a false statement. *See* 18 U.S.C. § 1001 (false statements), § 911 (false claim to citizenship).

In addition, immigration agents may ask your clients to waive the opportunity for a removal hearing before an immigration judge. You should advise your clients not to waive their rights to a hearing (“stipulation of removal”) until all of their options are fully evaluated.