

*“FEDMIGRATION”:
ANATOMY OF IMMIGRATION CONSEQUENCES
OF FEDERAL CRIMINAL CASES*

INTRODUCTION (*Judge John Gerrard*)

1:30 p.m.

Case 1: Elvis Presley (Identity Theft)

1:45 p.m.

Hearing 1: Initial appearance on indictment and combined federal detention hearing (10 minutes)

- Federal Judge: *Judge John Gerrard*
- Assistant United States Attorney: *Thomas Niklitschek*
- Counsel for the Defendant: *Raul Guerra*

Hearing 2: Immigration detained master calendar hearing (10 minutes)

- Immigration Judge: *Judge Daniel Morris*
- Counsel for the Department of Homeland Security: *Thomas Niklitschek*
- Counsel for the Respondent: *Kristen Fearnow*

Hearing 3: Federal sentencing (10 minutes)

- Federal Judge: *Judge John Gerrard*
- Assistant United States Attorney: *Thomas Niklitschek*
- Counsel for the Defendant: *Raul Guerra*

Q & A Session (15 minutes) (Moderator: *Bassel El-Kasaby*)

15-MINUTE BREAK

Case 2: Slippery Pete (Alien Harboring)

2:45 p.m.

Hearing 1: Immigration detained master calendar hearing (10 minutes)

- Immigration Judge: *Judge Daniel Morris*
- Counsel for the Department of Homeland Security: *Thomas Niklitschek*
- Counsel for the Respondent: *Kristen Fearnow*

Hearing 2: Federal detention hearing (10 minutes)

- Federal Judge: *Judge John Gerrard*
- Assistant United States Attorney: *Thomas Niklitschek*
- Counsel for the Defendant: *Raul Guerra*

Hearing 3: Renewed immigration detention master calendar hearing (10 Minutes)

- Immigration Judge: *Judge Daniel Morris*
- Counsel for the Department of Homeland Security: *Thomas Niklitschek*
- Counsel for the Respondent: *Kristen Fearnow*

Q & A Session (15 minutes) (Moderator: *Bassel El-Kasaby*)

15-MINUTE BREAK

Case 3: Tammy Chong (Distribution of Methamphetamine)

3:45 p.m.

Hearing 1: Federal detention hearing (10 minutes)

- Federal Judge: *Judge John Gerrard*
- Assistant United States Attorney: *Thomas Niklitschek*
- Counsel for the Defendant: *Raul Guerra*

Hearing 2: Immigration detained master calendar hearing (10 minutes)

- Immigration Judge: *Judge Daniel Morris*
- Counsel for the Department of Homeland Security: *Thomas Niklitschek*
- Counsel for the Respondent: *Kristen Fearnow*

Hearing 3: Federal sentencing (10 minutes)

- Federal Judge: *Judge John Gerrard*
- Assistant United States Attorney: *Thomas Niklitschek*
- Counsel for the Defendant: *Raul Guerra*

Q & A Session (15 minutes) (Moderator: *Bassel El-Kasaby*)

Case Synopsis

Case 1: Elvis Presley (“Identity Theft”)

Charges: Mr. Presley has been charged in a three count indictment with violations of §§ 18 U.S.C. 911, 18 U.S.C. 1546(b), & 42 U.S.C. 408(a)(7)(B).

Facts: Mr. Presley was arrested while allegedly working with a Social Security number he knew was not assigned to him. The Social Security number Mr. Presley was allegedly using was actually assigned to Johnny Cash. Mr. Presley was born in Canada and was arrested by Immigration Customs and Enforcement (“ICE”) agents while working at a local Omaha guitar shop, “Omaha Guitar.”

Court Process: Mr. Presley will first have an arraignment on a Federal Indictment and have a combined Federal Detention Hearing. Assuming the Federal Judge released Mr. Presley, Mr. Presley will then have an Immigration Detained Master Calendar Hearing. Following the Immigration Detention Hearing, Mr. Presley will appear before a Federal Judge for Sentencing.

Questions from the Moderator:

1. If Mr. Presley is released from federal custody, how is that possible while he has an immigration detainer?
2. If Mr. Presley is released from immigration custody, how is that possible while he has a federal indictment?
3. If Mr. Presley were convicted, how would that affect his immigration case? (**Hint:** see the Immigration Consequences Table)

Case 2: Slippery Pete (“Alien Harboring”)

Charges: Mr. Pete has been charged in a two count indictment with violations of §§ 8 U.S.C. 1324(a)(1)(A)(iii). & 42 U.S.C. 408(a)(7)(B)

Facts: Mr. Pete, an electrician by trade, was arrested by ICE agents after allegedly hiring and concealing two workers who he knew had entered the United States and remained in violation of law. Mr. Pete is also allegedly using a Social Security number not assigned to him. Mr. Pete claims he needed the workers to help him with a complicated moving project, which included moving an original 1981 “Frogger” Arcade game. Mr. Pete claims he didn’t know that his two workers didn’t have permission to stay and work in the United States. Mr. Pete was born in Mexico. In addition, Mr. Pete’s two employees have been arrested and are being held as Federal Material Witnesses. Both the material witnesses are citizens of Mexico.

Court Process: Mr. Pete will first have an Immigration Detained Master Calendar Hearing because his lawyer was quick to file a request for Bond Review Hearing with the Immigration Court. After the Detained Master Calendar Hearing, Mr. Pete will have a Federal Detention Hearing, and assuming his release from the Federal Judge will have a renewed Immigration Bond Hearing.

Questions from the moderator

1. Why doesn't the immigration judge have jurisdiction to determine bond?
2. How does Pete's immigration status (or lack thereof) affect his release from federal custody?
3. If Pete is released from federal and immigration custody, how do the rules differ regarding release in immigration proceedings?

Case 3: Tammy Chong ("Distribution of Methamphetamine")

Charges: Ms. Chong has been charged in a seven count indictment in violations of §§ 21 U.S.C. 841(a)(1) & (b)(1); and 21 U.S.C. 846.

Facts: Ms. Chong was arrested after allegedly knowingly and intentionally conspiring with the co-defendants to distributing 500 grams or more of methamphetamine (actual), its salts, isomers, or salts of its isomers, a Schedule II controlled substance. Ms. Chong was first arrested by ICE and released on her own recognizance (RoR). She was then later re-arrested and indicted in the Federal District of Nebraska. Ms. Chong is a native and citizen of Mexico.

Court Process: Ms. Chong will first have a Federal Detention Hearing after previously being arraigned on a Federal Indictment. Assuming Ms. Chong is released from her U.S. Marshal hold. Ms. Chong will then have an Immigration Detention Hearing wherein Department of Homeland Security has alleged an additional charge against Ms. Chong, to wit: suspected controlled substance trafficker. Finally, Ms. Chong will appear for her Federal Sentencing.

Questions from the Moderator:

1. How can someone be arrested and released by ICE and then denied bond in federal court?
2. What is RICO and how does that play into immigration and federal release?
3. If there is a RICO determination, does it matter if Chong is actually convicted in federal court for immigration purposes?

Hon. John M. Gerrard

Judge John Gerrard is a U.S. District Court Judge in the District of Nebraska. He was nominated by Barack Obama on May 4, 2011, to a seat vacated by Senior U.S. District Court Judge Richard Kopf. The Senate confirmed Judge Gerrard on January 23, 2012, and he received his commission on February 6, 2012. Judge Gerrard graduated from Nebraska Wesleyan University, B.S., 1976. He received his M.P.A from the University of Arizona in 1977 and his J.D. in 1981 from the University of the Pacific, McGeorge School of Law. He was engaged in the private practice of law in Norfolk, Nebraska from 1981 to 1995, and served as a Nebraska Supreme Court Justice from 1995 to 2012.

Hon. Daniel A. Morris¹

Judge Daniel Morris was appointed as a United States Immigration Judge in Omaha, Nebraska in April 2009. His court has jurisdiction over federal immigration cases in Nebraska and Iowa. He formerly served as Assistant Chief Counsel for the United States Department of Homeland Security and as an Assistant United States Attorney for the District of Nebraska. When in private practice, he was at different times a partner with the law firm now known as Husch Blackwell, L.L.P., in Omaha and Senior Corporate Counsel for the Mutual of Omaha Insurance Companies. Judge Morris has served as president of the Omaha Bar Association and the Omaha chapter of the American Inns of Court.

Kristin Fearnow, Esq.

Kristin Fearnow graduated from the University of Kansas in 2002 with a B.A. in Latin American Studies and Spanish. She graduated from the University of Nebraska College of Law in 2005. She is licensed to practice in Nebraska. After law school Kristin worked for the Douglas County Public Defender's office for two years. Following that, Kristin was a regional attorney for Justice For Our Neighbors, a national non-profit organization that provides free legal immigration services. Kristin is currently senior associate at Peck Law Firm, where her practice focuses on immigration law. Kristin is a member of the American Immigration Lawyers Association, the National Immigration Project, and the Nebraska State Bar Association.

Thomas Niklitscheck, Esq.

Thomas Niklitscheck focuses on Criminal and Immigration defense matters in both state, federal, and immigration courts. He is fluent in Spanish and has a good deal of experience working with native Spanish speaking clients. Mr. Niklitscheck received an International Economics degree from Weber State University in 2008 and a Juris Doctor degree from the University of Nebraska College of Law in 2011. While in law school, he participated in Moot Court and also argued in front of the Nebraska Supreme Court. Mr. Niklitscheck is licensed to practice law in Nebraska and is a member of District of Nebraska Bar. Mr. Niklitscheck is also a member of the Nebraska Bar Association and the American Immigration Lawyers Association.

¹Judge Morris' presentation is in his personal capacity. The views expressed are solely his and do not necessarily represent the positions of the Executive Office for Immigration Review, the United States Department of Justice, or any other federal department or agency.

Raul Guerra, Esq.

Mr. Guerra has experience with a variety of immigration cases. He has been employed with the United States Citizenship and Immigration Services of the Department of Homeland Security, formerly known as Immigration and Naturalization Services. His practice is predominantly in the area of immigration law. Mr. Guerra is a graduate of University of Nebraska College of Law and is licensed in Nebraska and Colorado.

Paul Stultz, esq.

Paul Stultz is the Deputy Chief Counsel of the Immigration and Customs Enforcement in Omaha. He obtained his Juris Doctor degree from Creighton University in 1983. During his studies, Mr. Stultz was a Fulbright Scholar at Kabul University in 1978. Mr. Stultz started his professional career in private practice as an associate with Martin & Martin, PC in Omaha before he joined the legacy Immigration and Naturalization Service as District Counsel in 1988. Mr. Stultz is a member of the Nebraska Bar Association and is also admitted to practice in the Nebraska federal district. Mr. Stultz was a presenter in over 100 immigration law seminars. He also served as an instructor at the legacy INS law enforcement academy.