

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & JEREMIAH JOHNSON

Avoiding immigration consequences from criminal convictions

LOOK before you leap: everyone makes mistakes, however some mistakes may prove more costly than others. For immigrants, a mistake resulting in a criminal charge and

conviction can have severe immigration consequences, including detention and deportation. Many immigrants (and criminal defense lawyers) do not fully realize these consequences when pleading to the criminal charge. Often a criminal defense attorney will advise a defendant to plead guilty to avoid incarceration without investigating the immigration consequences. Furthermore, many immigrants think future expungement under a state rehabilitative statute will take care of the mistake. However, only certain legal procedures, like a writ of "coram nobis" or a writ of "habeas corpus", are effective for post conviction relief of immigration consequences. Unfortunately, the California Supreme Court has recently issued two decisions affecting an immigrant's ability to obtain post conviction relief: *People v. Kim* and *People v. Villa*.

To obtain a writ of coram nobis a defendant must show 1) "that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of the judgment;" 2) that "newly discovered evidence does not go to the merits of issues tried; issues of fact, once adjudicated, even though incorrectly, cannot be reopened except on motion for new trial;" and 3) "that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier

than the time of his motion for the writ."

In the past, an immigrant could demonstrate that his criminal trial attorney was ineffective in not investigating the immigration consequences of pleading guilty to an offense. As such, the immigrant could withdraw his plea and vacate the original conviction based on a defect. Moreover, and perhaps more importantly, immigration courts have recognized that a successful writ of coram nobis would wipe out the immigration consequence of the conviction. However, as the California Supreme Court noted in *People v. Kim*, ineffective assistance is not an issue of fact; rather it is an issue of law which cannot be the basis of a writ of coram nobis. This holding leaves many immigrants without a vehicle to obtain post conviction relief.

Perhaps, more troubling for immigrants seeking post conviction relief is the Court's decision in *People v. Villa* affecting an immigrant's ability to obtain post conviction relief through a writ of habeas corpus. A writ of habeas corpus is a legal action through which a person can seek relief from unlawful detention. Originally, the California Court of Appeal considered *Villa's* writ of habeas corpus since he was in "custody" based upon a 1989 conviction even though he completed probation. However, the California Supreme Court denied the writ finding that *Villa* was neither in constructive or actual state custody and therefore it could not issue a writ. Specifically, the California Supreme Court held that there is no habeas corpus relief to address the immigration consequences of a conviction when the defendant is no longer

in custody. In short, neither habeas corpus or coram nobis is likely to correct errors in pleadings after the period of probation or parole has ended.

As such, it is important to seek a highly skilled and knowledgeable immigration attorney as early as possible if you are an immigrant facing a criminal conviction. Although criminal convictions can have severe immigration consequences, an individual facing a criminal conviction may avoid some of the harsh consequences by having his/her criminal attorney consult with an experienced immigration attorney. It is important for the immigration attorney to analyze the criminal case because the defense strategy for a legal permanent resident will be different for each case. The analysis changes depending upon past convictions and what type of immigration relief is potentially available. Although in some cases post conviction relief may still be available, immigrants can no longer rely on post conviction relief to ensure they remain in the United States with their friends and families.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.
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The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case.

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The Voice of FilAmerica

Political empowerment is still a treasure that eludes us as a community here in America. While we are the second largest Asian American community in the United States, we have yet to harvest the power that comes from our numbers. The Voice of FilAmerica features elected and appointed officials - regardless of political affiliation - in the different US states who are of Filipino ancestry. As your Filipino American community newspaper, the Asian Journal recognizes the fact that we all have a responsibility towards bringing political empowerment to fruition, especially for our future generations. It is our hope to have our voices heard all over America.

Shaylene Iseri-Carvalho

First Female Hawaii Prosecutor Elected Twice to the Kauai County Council

by CYNTHIA DE CASTRO
AJPress

A FEW months ago, Filipino American Shaylene Iseri-Carvalho was elected as Kauai County Prosecuting Attorney, becoming the first female prosecutor in Hawaii's history. In an interview with KGMB9 News, Iseri-Carvalho was asked to comment on the honor of having the new title.



"It's very exciting to learn that I'm the first female Hawaiian prosecutor. I learned about it after I got elected. It wasn't something I knew about prior to getting elected," she said.

Shaylene Iseri-Carvalho graduated from the University of Colorado and UH William S. Richardson School of Law. She has been practicing law for 20 years, since 1989. In 1999, she was nominated for judgeship. She was the Public Defender for Kauai and Maui, before being elected for the first-time to public office in 2004. Having ousted incumbent Joe Munechika, Shaylene became the only newcomer in the seven-member county council.

After a diverse and valuable experience as a councilmember for almost four years, Iseri-Carvalho chose to leave the County Council and ran unopposed to become the new County Prosecuting Attorney. Explaining her move in an interview, she said, "It had always been my passion to do litigation, to be in the courtroom setting. My experience over at the Kauai County Council has really allowed

me to see things at a much broader perspective than just looking at law in and of itself. Based on these experiences, we have developed a concept and vision of what our office of the Prosecuting Attorney should be about. That concept is the guiding principle of Pono Kaulike- Equal Right and Justice for all."

Born and raised on Kauai, Shaylene comes from a family of ten. She is married and the proud mother of two children. For her outstanding work in government, Iseri-Carvalho

was among a selected group of Hawaii's Filipino American elected officials honored by the National Federation of Filipino American Associations (NaFFAA) last Aug 2008. The NaFFAA is a national, non-partisan organization comprised of 12 regional chapters that represent more than 500 Filipino-American organizations across the US and the Pacific Basin.

Kauai's Prosecuting Attorney said her office will have a "grassroots approach to being a problem solver instead of being a case processor, which is what the traditional roots of a Prosecutor had been in the past." ■