

## BRAUWERMAN LAW FIRM, P.A.

Immigration & Nationality Law

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## The Immigration Connection

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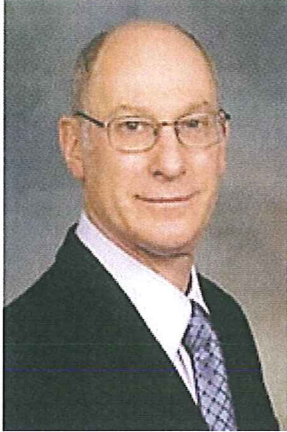
Welcome to the **Brauerman Law Firm** newsletter. You are being sent this newsletter because of your interest in immigration and nationality matters. Should you wish to unsubscribe you may do so below.

### Legacy of John Lennon.



In England in 1968 Lennon had been convicted of possessing hashish (cannabis resin). Cannabis resin had been found *in* a binocular case in the apartment Ringo permitted him to use. INS contended that his 1968 guilty plea, for which he paid a fine in the amount of \$150.00, made him an excludable alien, thus mandating the denial of his application for permanent residence. Lennon countered by arguing that he was not

Featured Article



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excludable under INA § 212(a)(23) since he had not been convicted of violating a law forbidding *illicit* possession. Under British law, Lennon urged, guilty knowledge was not an element of the offense.

The Court concluded that Lennon was convicted under a law which in effect makes guilty knowledge irrelevant and that a foreign conviction for possession of marijuana under such a law does not render the convicted alien excludable. The immigration statute in force *at that time* required, *illicit* possession, that is, that the convicted alien have guilty knowledge; in other words, that he knew that he possessed a controlled substance. The law has since been amended to require only that the alien had been convicted of any law related to a controlled substance. Lennon, today would be found to be inadmissible.

### **Supreme Court Rejects Equal Protection Challenge to Former Citizenship Provisions.**

The Court, in *Flores-Villar v. U.S.*, \_\_\_ US \_\_\_ (06/13/11) upheld the Ninth Circuit which found that the imposition of a 5-year residence requirement only on USC fathers before citizenship could be conferred to a child born abroad out of wedlock does not violate equal protection.

### **U.S. Court of Appeals for the Ninth Circuit, En Banc Court, Overrules Equal Protection Holding in *Lujan-Armendariz*.**

The Court, sitting, *en banc*, in *Nunez-Reyes v. Holder*, \_\_\_ F.3d \_\_\_, (9th Cir. 7/14/11) held that equal protection does not require treating, for immigration purposes, an expunged state conviction of a drug crime the same as a federal drug conviction that has been expunged under the FFOA.

### **Ninth Circuit on Retroactivity of Unlawful Presence Under §212(a)(9)(C)(i)(I).**

The Court held, in *Carrillo de Palacios v. Holder*, \_\_\_ F.3d \_\_\_ (9th Cir. 06/22/11) that unlawful presence under §212(a)(9)(C)(i)(I) may accrue prior to IIRIRA's 4/1/97 effective date and that the alien must remain outside the U.S. for 10 years to be eligible for the 212(a)(9)(C)(ii) exception.

### **Tenth Circuit Says Constitutionality of Plea is Not an Element of Proving "Conviction".**

In *Waugh v. Holder*, \_\_\_ F.3d \_\_\_ (10th Cir. 06/22/11) the court rejected Petitioner's argument that in light of *Padilla v. Kentucky*, the government must prove in immigration proceedings that the alien received constitutionally adequate advice about the consequences of his criminal plea.

### **Eleventh Circuit Rejects Ineffective Assistance Claim Where Counsel Conceded Removability.**

The court held in *Ali v. U.S. Att'y Gen.*, \_\_\_ F.3d \_\_\_ (11th Cir. 6/22/11) that substantial evidence supports the BIA's finding that counsel made a reasonable strategic decision in conceding removability for Petitioner's misrepresentation where Petitioner was eligible for §237(a)(1)(H) waiver.

**Call Us Today For A Professional Consultation**

Jeffrey N. Brauwerman, of [Brauwerman Law Firm, P.A.](#), is available for consultations in either of our two offices and is also available for telephonic consultations.

We look forward to meeting with you and ultimately providing you with representation. Please note that a consultation does not constitute an attorney-client relationship although information disclosed during the consultation to any member of the firm will be strictly confidential.

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