

One reason why I do what I do

Joel Lopez died of COVID this January. Apart from his wife Maria and his 2-year-old daughter Julieta, few people noticed. I did. For me, Joel was the living embodiment of why some of us love practicing criminal defense. I had the privilege of representing Joel for 23 years. During those years, Joel and I suffered wins and losses, but we never gave up trying. That is our story, and I want to share it.



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Joel Lopez and his daughter Julieta (courtesy of Maria Lopez)

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I met Joel in 1998, when I was a deputy federal public defender. At first blush, he seemed like dozens of my clients: accused of the status crime of "illegal reentry following deportation," which in those days meant an almost automatic sentence of 77 months

(nearly 6.5 years) in federal prison before an automatic deportation. Most of the people charged in those cases ended up with no bail (they were here illegally after all) and were run through a perfunctory process including quick guilty pleas and abbreviated and foreordained sentencing hearings.

Joel seemed different. He was born in Mexico, yes. But in 1973, in order to try to find a better life, he crossed the border on foot with his family. He had been a part of America for over twenty-five years when I met him -- he had learned English and was a proud taxpayer who filed his Form 1040 each and every year. He had been deported, yes. But only after a conviction in state court for a crime that seemed on its face suspect. It is well-known that innocent people sometimes plead "no contest" to state court offenses when they are denied bail and can hasten their release, and this had been Joel's situation. Plus Joel was a productive member of society: He was the proud proprietor of J's Body Shop, an automobile collision repair business in South Gate, which paid its taxes, did good work, and employed several people. When I met Joel, his sole focus was not on his case, but on how he could keep his business going. "My guys are counting on me," he told me, referring to his employees and, by extension, to their families. Joel had become an integral part of the fabric of our American society.

On a whim, I quixotically asked for a bail hearing. Several people in the courthouse told me I was wasting my time. All his siblings showed up at the hearing, and U.S. Magistrate Judge Carla Woehrlé was courageous enough to grant bail. For whatever reason, when he was released, the Immigration and Naturalization Service (the predecessor to the Department of Homeland Security) failed to detain him. Joel was free on bail.

He immediately went to his body shop.

Soon thereafter, with the help of respected immigration attorney Mathew Millen, I concluded that Joel's prior deportation -- the predicate for his federal illegal reentry indictment -- was unconstitutional. Full of public defender bravado, I moved to dismiss the charges. Our trial judge, the respected and wise Judge Audrey Collins, did not dismiss the case but she stayed the criminal proceedings and invited Joel to go back to immigration court to correct his unjust deportation. Joel appreciated that someone was fighting on his behalf, but the details didn't matter to him -- he was focused on making sure his body shop survived so his guys could keep working to support their own families.

I wish I could tell you that we accomplished the goal of undoing his unjust deportation. But then, as now, our immigration "courts" are less than fair. They lack Article III independence and are little more than an arm of immigration law enforcement. I knew there was little chance we would not prevail in this kangaroo court. We could have given up. But we didn't.

Enter Gail Standish, then an assistant United States attorney and now a United States magistrate judge. Gail heard Joel's story and became convinced. She battled her office to offer Joel what is called a diversion agreement: The deal was that if Joel would continue to be his law-abiding and productive self, the government would dismiss the charges. Joel was permitted to pursue his immigration case all the way to the U.S. Supreme Court -- with the caveat that if he lost, he would voluntarily leave the United States and return to Mexico.

In 2001, I left the public defender's office and went to private practice. Two years later, with Joel's immigration appeal still pending, I got a desperate call. "Michael," Joel said, "I am calling you from Tijuana. The immigration police arrested me over the weekend and in two days deported me to Mexico." DHS had ignored the agreement Joel had with the government, and agents had arrested him and deported him before anyone could stop it.

I remember Joel's voice on that call. He was defeated. He was depressed. His voice had a note of resignation as if to say, my life in America is over. Again, his foremost concern was his body shop and his employees who worked there and their families who all counted on Joel.

I begged my new law firm to let me continue to represent Joel pro bono. My colleague, and future lifelong friend, Andy Esbenshade, agreed to be my co-counsel. Together, in two days, we filed a petition for writ of habeas corpus for Joel, and a motion for summary judgment seeking an order that Joel be escorted back into the United States per our deal with the government. We knew it was a longshot, but we felt good doing it. And you know what? When the government filed an opposition, arguing we were misrepresenting Joel's diversion agreement, Gail Standish, the signatory on that agreement, valiantly stepped forward to sign a declaration stating the government was wrong -- and deporting Joel was a violation of Joel's agreement with the United States.

In my line of work, you kiss a lot of frogs, rarely any princes. In this case, the fates gave me and Joel not one but two princes. Not only had Gail stepped forward to be true to her and the government's word, but Judge Woerhle, after reading our emergency papers, signed an order allowing Joel to cross back into the United States and return to South Gate. Joel left Mexico, returned to South Gate, and again went immediately to his body shop. His employees kept their jobs. And some immigration agent -- I don't know who -- was probably very unhappy or maybe he didn't even care.

Over the next 15 years, Joel fought many legal battles to stay in the U.S. In the immigration Court, in the Board of Immigration Appeals, in the 9th Circuit. Together, he and I kept on fighting and trying. He could not afford to pay, but in a way, I did this for my own selfish reasons: The feeling of altering for the better the trajectory of a good person's life made me remember why I went to law school, why I became a criminal defense lawyer, and why I continue to fight for clients despite the odds.

Every time I visited Joel, he would remind me that the government has been trying to send him to Mexico since 1998. And I would always say, America is better for failing to deport him. Then we'd talk about his auto body shop.

Joel died in January. In the United States. His memorial service is April 13. In the United States, not far from his beloved body shop. His employees and many of their family members will be there.

In the ultimate tribute to Joel, his widow, Maria, who has no experience repairing and painting cars, decided she would try to keep J's Body Shop open. In the last two months, she has thrown herself into the business, learning how to manage a collision repair shop for the first time in her life. Like Joel, she is doing it for all the good people -- the employees and their families -- who work at the shop. She seems to be succeeding. When I visited the shop last week, "Joel's guys" were working, Maria was hitting her stride as the new boss, and Joel's two-year-old daughter, Julieta, was charming customers (from a safe, social distance) -- they too are part of the fabric of our American society.

Being a criminal defense lawyer means "losing" most of your cases. But more than that it means not giving up. Not giving up means the world to someone. And, I've learned, not giving up means the world to me. Joel died way too early, but at least he died in the country he chose, in the country he contributed to, in the country he fought to stay in. □

If you want to give, please contact Michael at mproctor@durietangri.com. You can also support Maria, Julieta, and Joel's guys by referring business to J's Body Shop, 9534 Atlantic Avenue, South Gate, California, 90280.