

**NATIONAL CONSORTIUM ON RACIAL AND
ETHNIC FAIRNESS IN THE COURTS
27TH ANNUAL MEETING**

**THE IMPACT OF IMMIGRATION
CONSEQUENCES WITHIN THE
STATE COURT SYSTEM**

**Joanne Macri, Esq.
New York State
Office of Indigent Legal Services**

**Buffalo, NY
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**WHO IS AT RISK AND
WHY?**

**ASSESSING
IMMIGRATION STATUS**

DETERMINING IMMIGRATION STATUS

- ASKING “WHERE WERE YOU BORN?”

- ANSWER: UNITED STATES



- ANSWER: NOT THE UNITED STATES?

Determine if NATURALIZED U.S. CITIZEN or
DERIVATIVE U.S. CITIZEN

ACQUIRING U.S. CITIZENSHIP

- 3 ways to acquire U.S. citizenship:
 - ❖ Birth in the US or Puerto Rico;
 - ❖ Birth to US citizen parent(s); (i.e., may include grandparents);
 - ❖ Naturalization Process (applying to become a US citizen)
- US citizens cannot be removed (i.e., deported) from the U.S.

(NB: Many young people born outside of the US are not aware that they are U.S. citizens)

CUSTODY OF U.S. CITIZEN PARENT – DERIVING CITIZENSHIP

- **Child Citizenship Act of 2000** – derive U.S. citizenship if, after lawful admission to the U.S., residing in the legal and physical custody of US citizen parent while under the age of 18
- **Adoption** by U.S. citizen parent - legal adoption must be **before** the child is 16 years of age (INA §101(b)(1)(E); 8 U.S.C. §1101(b)(1)(E))

WHO CAN BE REMOVED?

Lawful Permanent Resident

- Admitted to the U.S. as a green card holder

Refugee or Asylee

- Granted refugee status outside of the U.S. or asylum status from within the U.S.

Nonimmigrant

- Admitted to the U.S. on a temporary basis
- (i.e., to visit, attend school, work, etc.)

Humanitarian Relief

- Granted temporary protection within the U.S. (i.e., TPS, DACA, T, U or S visa, etc.)

Undocumented

- Entered the United States illegally
- (i.e., without being inspected and admitted)

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

- **Under 31 years of age** as of June 15, 2012
- Arrived in the U.S. while **under 16 years of age**;
- Continuously resided in the U.S. since **June 15, 2007 to present time**;
- Present in the U.S. on **June 15, 2012**;
- Currently **in school**, have **graduated** or obtained a certificate of **completion or a GED** or an honorable discharge from the **Coast Guard or Armed Forces**;
- **No valid immigration status** as of **June 15, 2012**; and
- **Not convicted of a felony, a significant misdemeanor, or 3+ misdemeanors**) or posing a **threat to public safety or national security** (i.e., gang membership).

EXAMPLE OF DETERMINING STATUS

- John is 18 years of age. He entered the U.S. illegally with his parents in 2003 when he was 6 years of age. He and his parents have continuously resided in the U.S., without valid immigration status, since 2003. He is currently being charged with his first offense involving a burglary felony and could face a sentence of 6 months incarceration if convicted of this offense.



EXAMPLE OF DETERMINING STATUS

- In 2008, Jane Doe was admitted to the U.S. to reside in the physical and legal custody of her LPR mother and father when she was 10 years of age.
- Jane's parents are battling over custody of Jane following a divorce proceeding.
- Jane's biological mother is currently in the process of applying for and obtaining her U.S. citizenship through naturalization.



IMPACT OF IMMIGRATION CONSEQUENCES

CRIMINAL & FAMILY COURT PROCEEDINGS

EFFECTIVE COUNSEL

Padilla v. Commonwealth of Kentucky 599 U.S. ___, 130 S. Ct. 1473 (2010); (Docket No. 08-651)

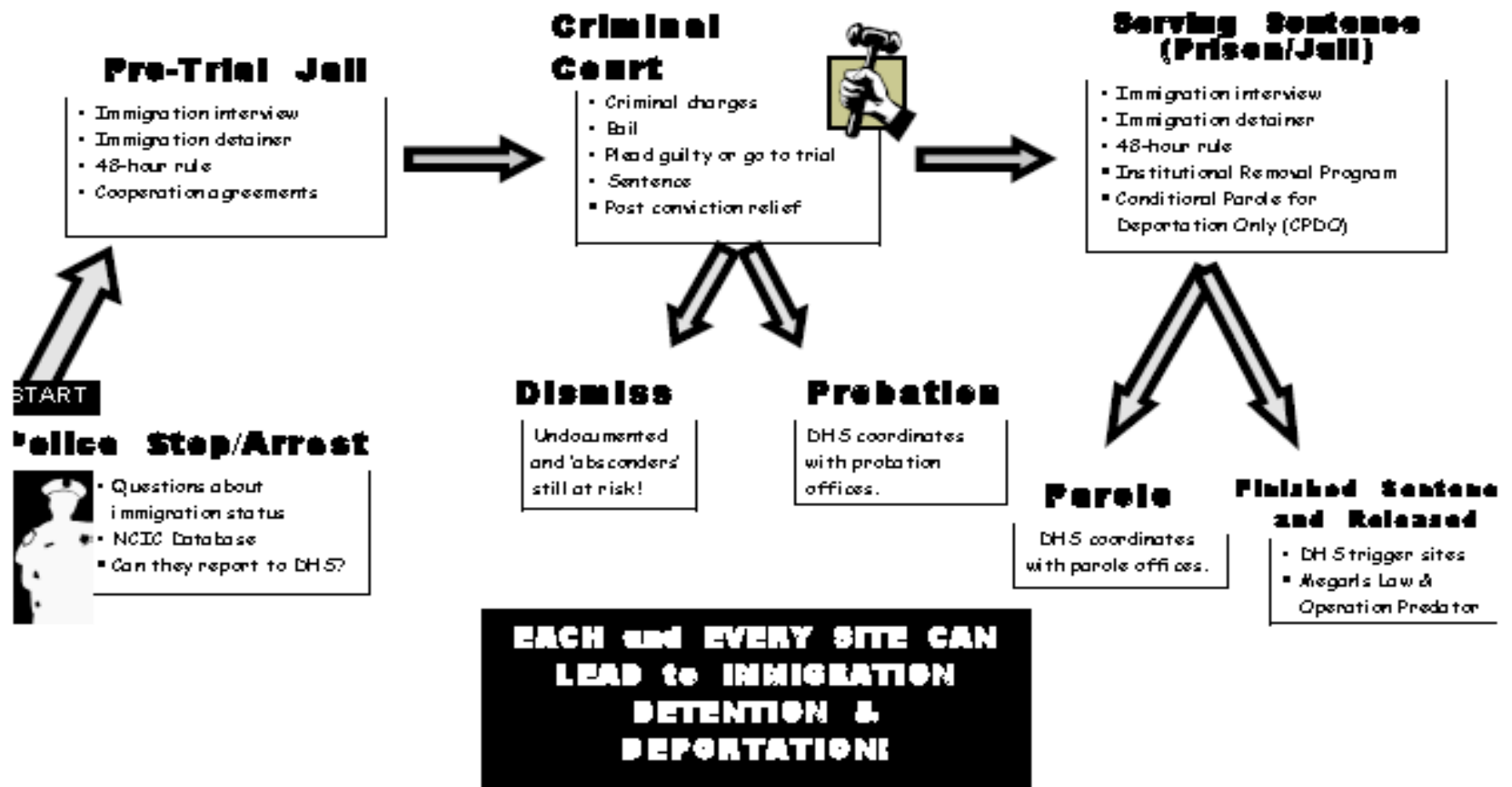
- 6th Amendment guarantee of effective assistance requires defense counsel to provide affirmative, competent advice to a noncitizen defendant regarding the immigration consequences of a guilty plea.

Missouri v. Frye, 132 S. Ct. 1399 (2012) and

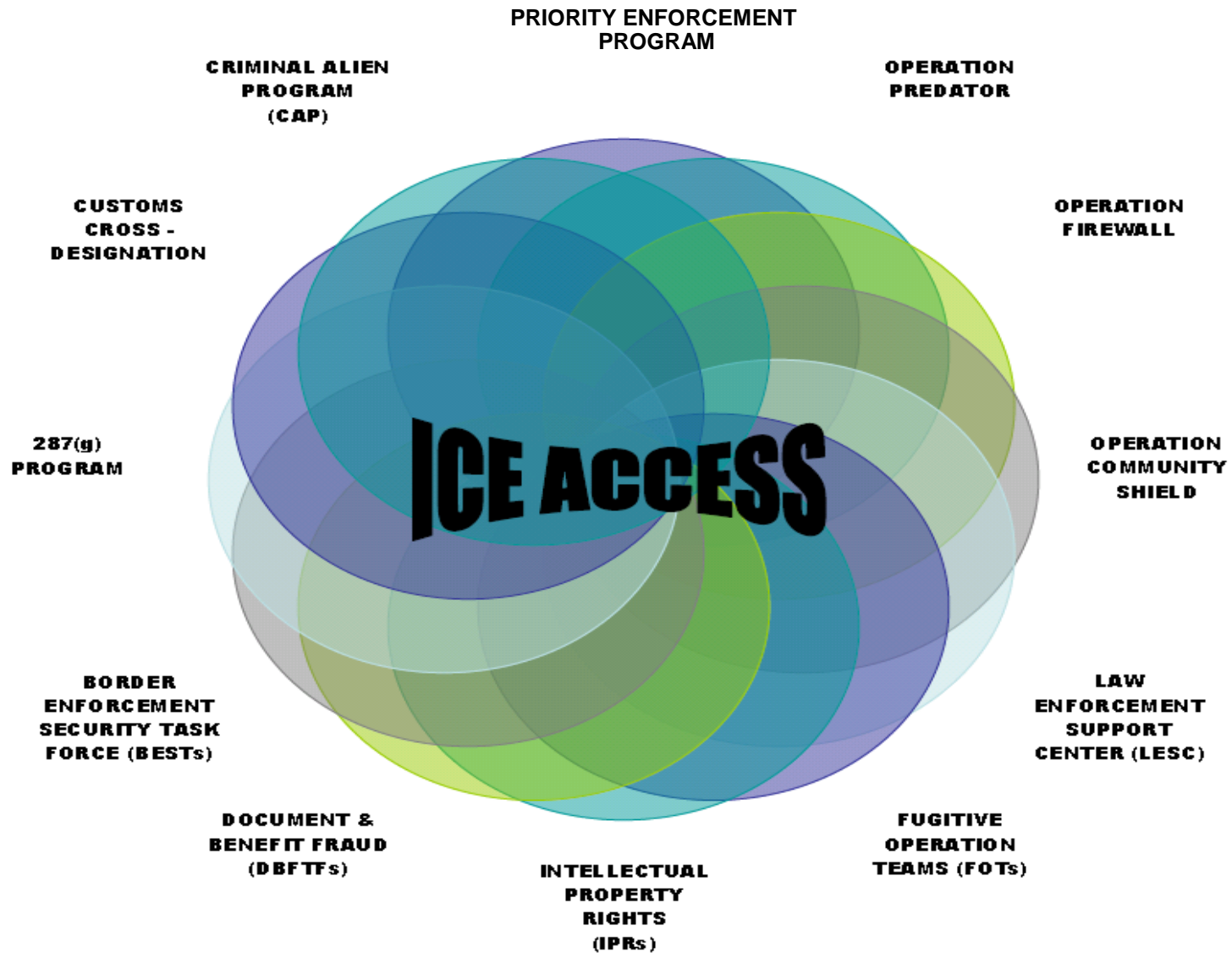
Lafler v. Cooper, No. 10-209 (March 21, 2012)

- 6th Amendment right to effective assistance of defense counsel at plea bargaining stage

IMMIGRATION IN THE CRIMINAL JUSTICE SYSTEM



ICE ACCESS = AGREEMENTS OF COOPERATION IN COMMUNITIES TO ENHANCES SAFETY AND SECURITY



IMPACT OF AN IMMIGRATION “HOLD”/DETAINER?

- Pursuant to 8 C.F.R. Sec. 287.7(a):
*“...is a **request** that such agency advise the Department prior to release of the alien, in order for the Department to arrange to assume custody.” (emphasis added)*

(See NYSDA Advisory, “Immigration Detainers: What You Need to Know” at <http://www.nysda.org/docs/PDFs/CIDP/NYSDA%20DETAINER%20ADVISORY.pdf>)

ICE “HOLDS” ARE NOT MANDATORY

“While immigration detainers are an important part of ICE’S effort to remove criminal aliens who are in Federal, state or local custody, they are **not mandatory as a matter of law.**”

Letter to Congressman Mike Thompson (CA -5th District)
From ICE Deputy Director, Daniel Ragsdale
February 25, 2014

See also [Liranzo v United States](#) (690 F3d 78, 82 [2d Cir 2012]) ;
[Galarza v Szalczyk](#) (No. 12-3991, 2014 US App LEXIS 4000 [3d Cir 3/4/14]);
[Miranda-Olivares v. Clackamas County](#), 2014 WL 1414305 (D. Or.)

PEP ENFORCEMENT PRIORITIES

LEVEL 1	LEVEL 2	LEVEL 3
<p>“Aggravated felonies” as defined in INA Section 101(a)(43) OR 2 or more “felonies” (i.e., punishable for + 1yr imprisonment)</p>	<p>One felony conviction OR 3 or more “misdemeanor” convictions</p>	<p>Convicted of crimes punishable by less than 1 year</p>
<p>EXAMPLES: rape, murder, kidnapping, weapons and/or drug trafficking, robbery, burglary</p>	<p>EXAMPLES: theft, assault, forgery, property crimes, drug crimes, auto theft offenses</p>	<p>EXAMPLES: drug crimes, theft, theft of services, trademark counterfeiting,</p>

According to ICE IDENT/IAFIS INTERPOLIBILITY STATISTICS, over 8 million fingerprints have been submitted for DHS verification nationwide between October 2008 and September 2013. Over 535,000 submissions of fingerprints in the NYC area between May 2012 and September 30, 2013.

HELPFUL INFORMATION

- NAME, DATE AND COUNTRY OF BIRTH
- ALIEN REGISTRATION NUMBER (“A” #)
- COPY OF ANY IMMIGRATION DOCUMENTS
- PRIOR CRIMINAL HISTORY – Criminal History Report (RAP Sheet) will contain prior orders of removal/deportation with A# and helps assess immigration consequences

USEFUL INFORMATION:

- Locating Client: ICE Locator <https://locator.ice.gov/>
- Pending or Prior Immigration Hearing: Immigration Court (EOIR) hotline at 1-800-898-7180
- Criminal Justice Stakeholder Request for Certification

Immigration Consequences of Crimes Summary Checklist *

Immigrant Defense Project

CRIMINAL INADMISSIBILITY GROUNDS – Will or may prevent a noncitizen from being able to obtain lawful status in the U.S. May also prevent a noncitizen who already has lawful status from being able to return to the U.S. from a trip abroad in the future.	CRIMINAL DEPORTATION GROUNDS – Will or may result in deportation of a noncitizen who already has lawful status, such as a lawful permanent resident (LPR) green card holder.	CRIMINAL BARS ON OBTAINING U.S. CITIZENSHIP – Will prevent an LPR from being able to obtain U.S. citizenship.
Conviction or admitted commission of a Controlled Substance Offense , or DHS reason to believe that the individual is a drug trafficker	Conviction of a Controlled Substance Offense EXCEPT a single offense of simple possession of 30g or less of marijuana	Conviction or admission of the following crimes bars the finding of good moral character required for citizenship for up to 5 years: > Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana) > Crime Involving Moral Turpitude (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months) > 2 or more offenses of any type + aggregate prison sentence of 5 years > 2 gambling offenses > Confinement to a jail for an aggregate period of 180 days
Conviction or admitted commission of a Crime Involving Moral Turpitude (CIMT) , which category includes a broad range of crimes, including: ♦ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery) ♦ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes) ♦ Most sex offenses <i>Petty Offense Exception</i> – for one CIMT if the client has no other CIMT + the offense is not punishable >1 year + does not involve a prison sentence > 6 mos.	Conviction of a Crime Involving Moral Turpitude (CIMT) [see Criminal Inadmissibility Gds] > One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed > Two CIMTs committed at any time after admission and “not arising out of a single scheme”	Conviction of an Aggravated Felony on or after Nov. 29, 1990 (and conviction of murder at any time) <i>permanently</i> bars the finding of moral character required for citizenship “CONVICTION” as defined for immigration purposes A formal judgment of guilt of the noncitizen entered by a court, OR , if adjudication of guilt has been withheld, where: (i) A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or <i>nolo contendere</i> or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed THUS: > A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition <u>IS</u> a conviction for immigration purposes if a guilty plea is taken <i>even</i> if the guilty
Conviction of a Firearm or Destructive Device Offense	Conviction of a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)	
Prostitution and Commercialized Vice Conviction of two or more offenses of any type + aggregate prison sentence of 5 yrs.	Conviction of an Aggravated Felony > <i>Consequences</i> , in addition to deportability: ♦ Ineligibility for most waivers of removal ♦ Permanent inadmissibility after removal ♦ Enhanced prison sentence for illegal reentry > <i>Crimes included</i> , probably even if not a felony: ♦ Murder ♦ Rape ♦ Sexual Abuse of a Minor ♦ Drug Trafficking (including most sale or intent to sell offenses, but also including possession of any amount of flunitrazepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism) ♦ Firearm Trafficking ♦ Crime of Violence + at least 1 year prison sentence ** ♦ Theft or Burglary + at least 1 year prison sentence ** ♦ Fraud or tax evasion + loss to victim(s) >10,000 ♦ Prostitution business offenses ♦ Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence ** ♦ Obstruction of justice or perjury + at least 1 year prison sentence ** ♦ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ♦ Other offenses listed at 8 USC 1101(a)(43) ♦ Attempt or conspiracy to commit any of the above	
CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter > Conviction or admitted commission of a Controlled Substance Offense other than a single offense of simple possession of 30 g or less of marijuana > Conviction or admitted commission of a violent or dangerous crime will presumptively bar 212(h) relief > In the case of an LPR, conviction of an Aggravated Felony [see Criminal Deportation Gds], or any Criminal Inadmissibility if removal proceedings initiated before 7 yrs of lawful residence in U.S.	Conviction of an Aggravated Felony	
CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal Conviction of a “ Particularly Serious Crime ” (PSC), including the following: > Aggravated Felony [see Criminal Deportation Gds] ♦ All aggravated felonies will bar asylum ♦ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding ♦ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding of removal > Violent or dangerous crime will presumptively bar asylum > Other PSCs – no statutory definition; see case law	Conviction of a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)	

Immigration Consequences of Crimes Summary Checklist *

Immigrant Defense Project

CRIMINAL INADMISSIBILITY GROUNDS	CRIMINAL DEPORTATION GROUNDS	CRIMINAL BARS ON OBTAINING U.S. CITIZENSHIP
<p>– Will or may prevent a noncitizen from being able to obtain lawful status in the U.S. May also prevent a noncitizen who already has lawful status from being able to return to the U.S. from a trip abroad in the future.</p>	<p>– Will or may result in deportation of a noncitizen who already has lawful status, such as a lawful permanent resident (LPR) green card holder.</p>	<p>– Will prevent an LPR from being able to obtain U.S. citizenship.</p>
<p>Conviction or admitted commission of a Controlled Substance Offense, or DHS reason to believe that the individual is a drug trafficker</p>	<p>Conviction of a Controlled Substance Offense EXCEPT a single offense of simple possession of 30g or less of marijuana</p>	<p>Conviction or admission of the following crimes bars the finding of good moral character required for citizenship for up to 5 years:</p> <ul style="list-style-type: none"> ➤ Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana) ➤ Crime Involving Moral Turpitude (single CIMT offense in not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months) ➤ 2 or more offenses of any type + aggregate prison sentence of 5 years ➤ 2 gambling offenses ➤ Confinement to a jail for an aggregate period of 180 days
<p>Conviction or admitted commission of a Crime Involving Moral Turpitude (CIMT), which category includes a broad range of crimes, including:</p> <ul style="list-style-type: none"> ◆ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery) ◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes) ◆ Most sex offenses <p><i>Petty Offense Exception</i> – for one CIMT if the client has no other CIMT + the offense is not punishable >1 year + does not involve a prison sentence > 6 mos.</p>	<p>Conviction of a Crime Involving Moral Turpitude (CIMT) [see Criminal Inadmissibility Gds]</p> <ul style="list-style-type: none"> ➤ One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed ➤ Two CIMTs committed at any time after admission and “not arising out of a single scheme” 	<p>Conviction of an Aggravated Felony on or after Nov. 29, 1990 (and conviction of murder at any time) <i>permanently</i> bars the finding of moral character required for citizenship</p>
<p>Prostitution and Commercialized Vice</p> <p>Conviction of two or more offenses of any type + aggregate prison sentence of 5 yrs.</p>	<p>Conviction of a Firearm or Destructive Device Offense</p>	<p>“CONVICTION” as defined for immigration purposes</p> <p>A formal judgment of guilt of the noncitizen entered by a court, OR, if adjudication of guilt has been withheld, where:</p> <ol style="list-style-type: none"> (i) A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or <i>nolo contendere</i> or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed
<p>CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter</p> <ul style="list-style-type: none"> ➤ Conviction or admitted commission of a Controlled Substance Offense other than a single offense of simple possession of 30 g or less of marijuana ➤ Conviction or admitted commission of a violent or dangerous crime will presumptively bar 212(h) relief ➤ In the case of an LPR, conviction of an Aggravated Felony [see Criminal Deportation Gds], or any Criminal Inadmissibility if removal proceedings initiated before 7 yrs of lawful residence in U.S. 	<p>Conviction of a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)</p>	<p>THUS:</p> <ul style="list-style-type: none"> ➤ A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated) ➤ A deferred adjudication without a guilty plea IS NOT a conviction ➤ NOTE: A youthful offender adjudication IS NOT a conviction if analogous to a federal juvenile delinquency adjudication
<p>CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal</p> <p>Conviction of a “Particularly Serious Crime” (PSC), including the following:</p> <ul style="list-style-type: none"> ➤ Aggravated Felony [see Criminal Deportation Gds] <ul style="list-style-type: none"> ◆ All aggravated felonies will bar asylum ◆ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding of removal ➤ Violent or dangerous crime will presumptively bar asylum ➤ Other PSCs – no statutory definition; see case law 	<p>Conviction of an Aggravated Felony</p> <ul style="list-style-type: none"> ➤ <i>Consequences</i>, in addition to deportability: <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Permanent inadmissibility after removal ◆ Enhanced prison sentence for illegal reentry ➤ <i>Crimes included</i>, probably even if not a felony: <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (including most sale or intent to sell offenses, but also including possession of any amount of flunitrazepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism) ◆ Firearm Trafficking ◆ Crime of Violence + at least 1 year prison sentence ** ◆ Theft or Burglary + at least 1 year prison sentence ** ◆ Fraud or tax evasion + loss to victim(s) >10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence ** ◆ Obstruction of justice or perjury + at least 1 year prison sentence ** ◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ◆ Other offenses listed at 8 USC 1101(a)(43) ◆ Attempt or conspiracy to commit any of the above 	<p>CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter</p>
<p>CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)</p> <ul style="list-style-type: none"> ➤ DHS reason to believe that the individual is a drug trafficker ➤ Conviction or commission of a violent or dangerous crime will presumptively bar 209(c) relief 	<p>Conviction of a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)</p>	<p>CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)</p> <ul style="list-style-type: none"> ➤ Conviction of an Aggravated Felony ➤ Offense triggering removability referred to in Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in U.S.

*For more comprehensive legal resources, visit IDP at www.immigrantdefenseproject.org or call 212-725-6422 for individual case support.

CRIMINAL GROUNDS OF DEPORTABILITY

Includes state offenses that are not “felonies” (i.e., NY State Class A misdemeanors)

Conviction of an **Aggravated Felony**

- *Consequences*, in addition to deportability:
 - ◆ Ineligibility for most waivers of removal
 - ◆ Permanent inadmissibility after removal
 - ◆ Enhanced prison sentence for illegal reentry
- *Crimes included*, probably even if not a felony:
 - ◆ **Murder**
 - ◆ **Rape**
 - ◆ **Sexual Abuse of a Minor**
 - ◆ **Drug Trafficking** (including most sale or intent to sell offenses, but also including possession of any amount of flunitrazepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism)
 - ◆ **Firearm Trafficking**
 - ◆ **Crime of Violence + at least 1 year prison sentence ****
 - ◆ **Theft or Burglary + at least 1 year prison sentence ****
 - ◆ **Fraud or tax evasion + loss to victim(s) >10, 000**
 - ◆ **Prostitution business offenses**
 - ◆ **Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence ****
 - ◆ **Obstruction of justice or perjury + at least 1 year prison sentence ****
 - ◆ **Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.)**
 - ◆ **Other offenses listed at 8 USC 1101(a)(43)**
 - ◆ **Attempt or conspiracy to commit any of the above**

**The 1-year requirement refers to an actual or suspended prison sentence of 1 year or more. It also includes a cumulative sentence of 1 year or more resulting from a VOP.


CRIMINAL DEPORTATION GROUNDS

– Will or may result in deportation of a noncitizen who already has lawful status, such as a lawful permanent resident (LPR) green card holder.

CRIMINAL GROUNDS OF DEPORTABILITY

(continued)

**Requires a
Criminal
“Conviction”**



Conviction of a Controlled Substance Offense

EXCEPT a single offense of simple possession of 30g or less of marijuana

Conviction of a Crime Involving Moral Turpitude (CIMT) [see Criminal Inadmissibility Gds]

- One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed
 - Two CIMTs committed at any time after admission and “not arising out of a single scheme”
-

Conviction of a Firearm or Destructive Device Offense

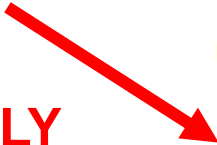
CRIMINAL & FAMILY LAW

GROUND OF DEPORTABILITY

CRIMINAL DEPORTATION GROUNDS

– Will or may result in deportation of a noncitizen who already has lawful status, such as a lawful permanent resident (LPR) green card holder.

****ONLY REQUIRES
A “FINDING”
IN CRIMINAL
OR CIVIL/FAMILY
COURT**



*Conviction of a Crime of Domestic Violence, Crime
Against Children, Stalking, or Violation of
Protection Order (criminal or civil)*

VIOLATION OF AN ORDER OF PROTECTION

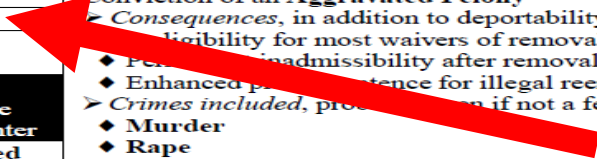
- Immigration and Nationality Act (INA), §237(a)(2)(E)(ii) makes a person deportable when a:

“...court determines [that the person] has engaged in conduct that violates the portion of a protection order that **involves protection against credible threats of violence, repeated harassment, or bodily injury...”**

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Conviction of a Firearm or Destructive Device Offense	Conviction of a Firearm or Destructive Device Offense	“CONVICTION” as defined for immigration purposes
Conviction of a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)	Conviction of a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)	A formal judgment of guilt of the noncitizen entered by a court, OR if adjudication of guilt has been withheld, where: <ul style="list-style-type: none"> (i) A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or <i>nolo contendere</i> or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed THUS: <ul style="list-style-type: none"> ➤ A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated) ➤ A deferred adjudication without a guilty plea IS NOT a conviction ➤ NOTE: A youthful offender adjudication IS NOT a conviction if analogous to a federal juvenile delinquency adjudication
Conviction of a Prostitution and Commercialized Vice	Conviction of an Aggravated Felony <ul style="list-style-type: none"> ➤ <i>Consequences</i>, in addition to deportability: <ul style="list-style-type: none"> ◆ Eligibility for most waivers of removal ◆ Permanent inadmissibility after removal ◆ Enhanced prison sentence for illegal reentry ➤ <i>Crimes included</i>, <i>provisionally</i> if not a felony: <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (including most sale or intent to sell offenses, but also including possession of any amount of flunitrazepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism) ◆ Firearm Trafficking ◆ Crime of Violence + at least 1 year prison sentence ** ◆ Theft or Burglary + at least 1 year prison sentence ** ◆ Fraud or tax evasion + loss to victim(s) >10, 000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence ** ◆ Obstruction of justice or perjury + at least 1 year prison sentence ** ◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ◆ Other offenses listed at 8 USC 1101(a)(43) ◆ Attempt or conspiracy to commit any of the above 	Conviction of two or more offenses of any type + aggregate prison sentence of 5 yrs.
CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter	CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal	CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)
Conviction or admitted commission of a Controlled Substance Offense other than a single offense of simple possession of 30 g or less of marijuana	Conviction or admitted commission of a violent or dangerous crime will presumptively bar 212(h) relief	Conviction of a “Particularly Serious Crime” (PSC), including the following: <ul style="list-style-type: none"> ➤ Aggravated Felony [see Criminal Deportation Gds] <ul style="list-style-type: none"> ◆ All aggravated felonies will bar asylum ◆ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding of removal ➤ Violent or dangerous crime will presumptively bar asylum ➤ Other PSCs – no statutory definition; see case law
Conviction or admitted commission of a Controlled Substance Offense other than a single offense of simple possession of 30 g or less of marijuana	Conviction or admitted commission of a violent or dangerous crime will presumptively bar 212(h) relief	Conviction of a Particularly Serious Crime” (PSC) , including the following: <ul style="list-style-type: none"> ➤ Aggravated Felony [see Criminal Deportation Gds] <ul style="list-style-type: none"> ◆ All aggravated felonies will bar asylum ◆ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding of removal ➤ Violent or dangerous crime will presumptively bar asylum ➤ Other PSCs – no statutory definition; see case law
CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)	CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)	CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)
DHS reason to believe that the individual is a drug trafficker	Conviction or commission of a violent or dangerous crime will presumptively bar 209(c) relief	Conviction of an Aggravated Felony <ul style="list-style-type: none"> ➤ Offense triggering removability referred to in Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in U.S.



CRIMINAL GROUNDS OF INADMISSIBILITY

DRUGS – NO EXCEPTIONS

“CONVICTION”

or

“ADMITTED COMMISSION”

**DON'T FORGET THE CIMT:
“PETTY OFFENSE
EXCEPTION”**

CRIMINAL INADMISSIBILITY GROUNDS

– Will or may prevent a noncitizen from being able to obtain lawful status in the U.S. May also prevent a noncitizen who already has lawful status from being able to return to the U.S. from a trip abroad in the future.

Conviction or admitted commission of a **Controlled Substance Offense**, or DHS reason to believe that the individual is a drug trafficker

Conviction or admitted commission of a **Crime Involving Moral Turpitude (CIMT)**, which category includes a broad range of crimes, including:

- ◆ Crimes with an *intent to steal or defraud* as an element (e.g., theft, forgery)
- ◆ Crimes in which *bodily harm* is caused or threatened by an intentional act, or *serious bodily harm* is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes)
- ◆ Most sex offenses

Petty Offense Exception – for one CIMT if the client has no other CIMT + the offense is not punishable >1 year + does not involve a prison sentence > 6 mos.

Prostitution and Commercialized Vice

Conviction of **two or more offenses** of any type + **aggregate prison sentence of 5 yrs.**

Immigration Consequences of Crimes Summary Checklist *

Immigrant Defense Project

CRIMINAL INADMISSIBILITY GROUNDS	CRIMINAL DEPORTATION GROUNDS	CRIMINAL BARS ON OBTAINING U.S. CITIZENSHIP
– Will or may prevent a noncitizen from being able to obtain lawful status in the U.S. May also prevent a noncitizen who already has lawful status from being able to return to the U.S. from a trip abroad in the future.	– Will or may result in deportation of a noncitizen who already has lawful status, such as a lawful permanent resident (LPR) green card holder.	– Will prevent an LPR from being able to obtain U.S. citizenship.
Conviction or admitted commission of a Controlled Substance Offense , or DHS reason to believe that the individual is a drug trafficker	Conviction of a Controlled Substance Offense EXCEPT a single offense of simple possession of 30g or less of marijuana	Conviction or admission of the following crimes bars the finding of good moral character required for citizenship for up to 5 years: <ul style="list-style-type: none"> ➢ Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana) ➢ Crime Involving Moral Turpitude (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months) ➢ 2 or more offenses of any type + aggregate prison sentence of 5 years ➢ 2 gambling offenses ➢ Confinement to a jail for an aggregate period of 180 days
Conviction or admitted commission of a Crime Involving Moral Turpitude (CIMT) , which category includes a broad range of crimes, including: <ul style="list-style-type: none"> ◆ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery) ◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes) ◆ Most sex offenses <i>Petty Offense Exception</i> – for one CIMT if the client has no other CIMT + the offense is not punishable >1 year + does not involve a prison sentence > 6 mos.	Conviction of a Crime Involving Moral Turpitude (CIMT) [see Criminal Inadmissibility Gds] <ul style="list-style-type: none"> ➢ One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed ➢ Two CIMTs committed at any time after admission and “not arising out of a single scheme” 	Conviction of an Aggravated Felony on or after Nov. 29, 1990 (and conviction of murder at any time) <i>permanently</i> bars the finding of moral character required for citizenship
Conviction of a Firearm or Destructive Device Offense	Conviction of a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)	
Prostitution and Commercialized Vice Conviction of two or more offenses of any type + aggregate prison sentence of 5 yrs.	Conviction of an Aggravated Felony <ul style="list-style-type: none"> ➢ <i>Consequences</i>, in addition to deportability: <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Permanent inadmissibility after removal ◆ Enhanced prison sentence for illegal reentry ➢ <i>Crimes included</i>, probably even if not a felony: <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (including most sale or intent to sell offenses, but also including possession of any amount of flunitrazepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism) ◆ Firearm Trafficking ◆ Crime of Violence + at least 1 year prison sentence ** ◆ Theft or Burglary + at least 1 year prison sentence ** ◆ Fraud or tax evasion + loss to victim(s) >10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence ** ◆ Obstruction of justice or perjury + at least 1 year prison sentence ** ◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ◆ Other offenses listed at 8 USC 1101(a)(43) ◆ Attempt or conspiracy to commit any of the above 	Conviction of an Aggravated Felony on or after Nov. 29, 1990 (and conviction of murder at any time) <i>permanently</i> bars the finding of moral character required for citizenship
CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter		“CONVICTION” as defined for immigration purposes
<ul style="list-style-type: none"> ➢ Conviction or admitted commission of a Controlled Substance Offense other than a single offense of simple possession of 30 g or less of marijuana ➢ Conviction or admitted commission of a violent or dangerous crime will presumptively bar 212(h) relief ➢ In the case of an LPR, conviction of an Aggravated Felony [see Criminal Deportation Gds], or any Criminal Inadmissibility if removal proceedings initiated before 7 yrs of lawful residence in U.S. 		A formal judgment of guilt of the noncitizen entered by a court, OR if adjudication of guilt has been withheld, where: <ul style="list-style-type: none"> (i) A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or <i>nolo contendere</i> or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed
CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal		THUS: <ul style="list-style-type: none"> ➢ A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated) ➢ A deferred adjudication without a guilty plea IS NOT a conviction ➢ NOTE: A youthful offender adjudication IS NOT a conviction if analogous to a federal juvenile delinquency adjudication
Conviction of a “Particularly Serious Crime” (PSC), including the following: <ul style="list-style-type: none"> ➢ Aggravated Felony [see Criminal Deportation Gds] <ul style="list-style-type: none"> ◆ All aggravated felonies will bar asylum ◆ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding of removal ➢ Violent or dangerous crime will presumptively bar asylum ➢ Other PSCs – no statutory definition; see case law 		
CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)	CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)	
<ul style="list-style-type: none"> ➢ DHS reason to believe that the individual is a drug trafficker ➢ Conviction or commission of a violent or dangerous crime will presumptively bar 209(c) relief 	<ul style="list-style-type: none"> ➢ Conviction of an Aggravated Felony ➢ Offense triggering removability referred to in Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in U.S. 	

What Is a “Conviction” for Immigration Purposes?

“Conviction” (8 USC §1101(a)(48)(A), INA §101(a)(48)(A)):

FORMAL JUDGMENT OF GUILT entered by a court;

or

IF ADJUDICATION HAS BEEN WITHHELD, where:

a. **A judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt;**

and

b. **The judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.**

ICE PROSECUTORIAL DISCRETION

- MILITARY VETERAN OR MEMBER OF U.S. FORCES;
- LONG TIME LAWFUL PERMANENT RESIDENT (i.e., green card holder);
- VICTIM OF DOMESTIC VIOLENCE, TRAFFICKING OR OTHER CRIME;
- PERSON IN THE WITNESS PROTECTION PROGRAM OR POLICE INFORMANT
- PREGNANT OR NURSING WOMEN;
- ELDERLY PERSON OR PERSON PRESENT IN THE U.S. SINCE CHILDHOOD (i.e., Deferred Action for Childhood Arrivals); or
- PERSON SUFFERING FROM SERIOUS MENTAL HEALTH OR MEDICAL ISSUES OR FROM A PHYSICAL DISABILITY

See “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens” dated June 17, 2011 issued by former ICE Director, John Morton.



Facilitating Parental Interests

- ICE Parental Interests Directive
- Frequently Asked Questions (FAQs)
- Parental Interests Directive Fact Sheet in English and Spanish
- Both of these resources are posted at <http://www.ice.gov/about/offices/enforcement-removal-operations/ero-outreach/>

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

= Pathway to lawful permanent resident status for children

- Not reunifying with one or both parents (i.e., based on abuse, abandonment, neglect, public charge, deceased or incapacitated parents, etc.);
 - whose best interests are not served by return to their country of nationality/habitual residence.
- Requires a court order (i.e., sample order can be found at <http://www.nycourts.gov/forms/familycourt/general.shtml>)

IMMIGRATION PITFALLS INVOLVING DIVORCE

Divorce may result in following immigration consequences:

- Termination of conditional LPR status for spouse and foreign-born child;
- Denial and/or delay of filing for U.S. citizenship through naturalization (i.e., 3 years for LPR obtained through marriage to a U.S. citizen);
- Denial of pending immigrant visa for spouse and/or foreign born child;



VICTIMS OF DOMESTIC VIOLENCE

- VAWA Self Petitions for Conditional Lawful Permanent Residents
- VAWA Battered Spouse/Children Waivers
- VAWA Cancellation of Removal
- U or T visa – Victim of a Crime/Trafficking



FORM I-751 WAIVER OF FILING OF JOINT PETITION

Marriage entered into in **good faith**, but the marriage was terminated because of:

- Divorce; or
- Death of U.S. citizen spouse; or
- Being subjected physical battering and/or extreme mental cruelty; and
- Applicant would suffer extreme hardship if returned to his/her native country.

VICTIM OF DOMESTIC VIOLENCE: Violence Against Women Act (VAWA) Self-Petitions

= A path to LPR status for certain domestic violence victims (child or parent) at the hands of abusive USC/LPR spouses;

- No physical abuse required;
- “Any credible evidence” required and no court, police or other government involvement necessary.

See INA §204, 8 USC §1154; INA §245, 8 USC 1155

VICTIM OF DOMESTIC VIOLENCE: Violence Against Women Act (VAWA) Battered Spouse/Child Waivers

= A path to unrestricted LPR status for conditional LPR's who are victim to domestic violence of USC or LPR spouses or parent:

- No physical abuse required;
- Evidentiary standard is “any credible evidence;”
- No court, police or other government involvement required.

See INA §216(c)(4), 8 USC §1186a(c)(4)

VICTIM OF DOMESTIC VIOLENCE: Violence Against Women Act (VAWA) Cancellation of Removal

= A path to LPR status for certain non-USCs who are domestic violence victims at the hands of abusive USC/LPR spouses, USC/LPR parents and persons with USC/LPR children in common with abusive USCs/LPRs.

- Requires 3 years of continuous presence in U.S.;
- Evidentiary standard is “any credible evidence.”
- No court, police or other government involvement required.

See INA §240A(b)(2), 8 USC §1229b(b)(2)

VICTIM OF DOMESTIC VIOLENCE: U VISA – VICTIM OF A CRIME

- Must be **victim** of a qualifying crime/criminal activity (i.e., may include family violence, sexual assault and felony assault).
- Must suffer **substantial harm** as a result of the qualifying crime/criminal activity.
- Must **cooperate** with “Certifying agency (i.e., federal, state, or local law enforcement agency, prosecutor, judge, or other authority responsible for the investigation and/or prosecution of a qualifying crime or criminal activity).

See INA §101(a)(15), 8 U.S.C. §1101(a)(15); INA §214(p), 8 U.S.C. §1184(p); INA §245(m), 8 U.S.C. § 1255(m); 8 *CFR* §214.14

VICTIM OF DOMESTIC VIOLENCE: U VISA – VICTIM OF A CRIME

- Must obtain **signed U visa certification** signed within the previous 6 months by:
 - (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
 - (ii) A Federal, State, or local judge

T VISA: TRAFFICKING VICTIMS PROTECTION ACT OF 2000

- Subject to “severe trafficking”
- Agree to assist in enforcement or is less than 18 years old and
- Would suffer “extreme hardship involving unusual and severe harm upon removal”
- Limited waiver for crimes



WHERE TO GET HELP?

**Immigration
Resources**

HELPFUL CRIMINAL OFFENSE CHARTS

- NY State Offense Checklist at www.immigrantdefenseproject.org
- Out-of-state and Federal offense Checklists available at www.defendingimmigrants.org

RESOURCES

Seeking assistance:

IMMIGRANT DEFENSE PROJECT – HOTLINE
(Available Tues. & Thurs. 1:30 p.m.-4:30 p.m.)
(212) 725-6422; www.immigrantdefenseproject.org

(Representing Immigrant Defendants in New York, 5th edition, written by Manny Vargas and available for order at www.immigrantdefenseproject.org)



RESOURCES

Seek assistance:

**IMMIGRATION INTERVENTION PROJECT – SANCTUARY
FOR FAMILIES, NYC FAMILY JUSTICE CENTER**

www.sanctuaryforfamilies.org

**ILRC's (2010) Bench Book for Juvenile and Family Court
Judges available at**

http://www.ilrc.org/files/2010_sijs_benchbook.pdf

COMING SOON!!

New York State Regional Immigration Assistance Centers

Immigration/Criminal Website Resources

- NYSDA www.nysda.org
- Immigrant Defense Project www.immigrantdefenseproject.org
- Defending Immigrants Partnership www.defendingimmigrants.org
- NLG National Immigration Project
www.nationalimmigrationproject.org
- Immigrant Legal Resource Center www.ilrg.org
- Columbia Law School Collateral Consequences Calculator
http://ccnmtl.columbia.edu/portfolio/law/collateral_consequen.html