

**Excerpts from Training Materials for
Defense Attorneys Regarding the
Scope of the *Padilla* Duty**

Amelia Marritz, an attorney admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

1. I, Amelia Marritz, am a Senior Litigation Attorney employed by the Immigrant Defense Project.
2. On July 13, 2023, I emailed public defender organizations, New York State Office of Indigent Legal Services Regional Immigration Assistance Centers (hereinafter, “RIACs”), and organizations of criminal defense and immigration lawyers across New York State to request training materials used by their offices to instruct criminal defense attorneys how to comply with their constitutional obligations pursuant to Padilla v. Kentucky.
3. On July 19, 2023, I received an email from New York County Defender Services (“NYCDS”) that attached slides excerpted from a NYCDS training entitled “Effective Representation of Immigrant Clients,” dated October 2019. This document is attached to this Affirmation as Exhibit C-1.
4. On July 19, 2023, I received an email attaching a document entitled “Complying with Padilla and Peque: A Skills & Diversity Training,” which contains slides excerpted from a training program presented by RIAC–Western New York. The attorney who emailed this document to me is currently an attorney working for the RIAC–Western New York and stated in

the email that this training was given as a Continuing Legal Education (CLE) training in 2019. This document is attached to this Affirmation as Exhibit C-2.

5. On July 19, 2023, I received an email from Brooklyn Defender Services that attached slides excerpted from a training program entitled “Immigration Consequences: Background, Strategies, and Protocol for Working with BDS Padilla Counsel,” dated October 7, 2019. This document is attached to this Affirmation as Exhibit C-3.
6. On July 19, 2023, I received several materials by email from RIAC–Central New York. I received slides excerpted from a training program entitled “Padilla Principles in Practice: Implications on Immigration from Family and Criminal Court Matters,” which state that the training was held on April 24, 2019, in Oneonta, NY. I received slides excerpted from a second training entitled “Padilla Principles in Practice 2019,” which state that the training was held on November 4, 2019, in Elmira, NY. Finally, I received a RIAC newsletter, dated January 2019, containing an article entitled “Anatomy of an Advisal: Relief from Removal.” These three documents are attached to this Affirmation as Exhibits C-4, C-5, and C-6, respectively.
7. On July 20, 2023, I received an email from the Neighborhood Defender Services of Harlem (“NDS”) attaching slides excerpted from a training entitled

“Immigration Consequences of Criminal Dispositions,” given by NDS’s Immigration Defense Practice. The email stated that this training was given in 2019. This document is attached to this Affirmation as Exhibit C-7.

8. On July 20, 2023, I received an email from RIAC–Hudson Valley that attached a document entitled “Crimmigration Update 2019,” which contained a program agenda and slides from a training program entitled “Immigration Proceedings and Relief from Removal: Defenses in Immigration Court and Benefits Available to Non-citizens.” The document states the training was held on October 25, 2019, in Hudson, NY. This document is attached to this Affirmation as Exhibit C-8.
9. On July 20, 2023, I obtained from the records of my own office, the Immigrant Defense Project (“IDP”), which is also RIAC–NYC, slides excerpted from a training program entitled “The Intersection of Immigration, Criminal, and Family Law: An Overview,” a training given by IDP and other presenters at the New York State Court of Appeals. The training is dated March 28, 2019. This document is attached to this Affirmation as Exhibit C-9.
10. On July 20, 2023, from IDP’s files, I obtained slides excerpted from a training program entitled “2018 Updates Crim-Imm 101: Understanding Immigration Status.” This training was presented in March 2018 by IDP’s Padilla Support

Center and in our role as RIAC–NYC. This document is attached to this Affirmation as Exhibit C-10.

11. On July 20, 2023, I obtained from IDP’s files an excerpt from a document entitled “Immigration Status Guide for Assigned Counsel,” dated May 2019.

This document is attached to this Affirmation as Exhibit C-11.

12. On July 23, 2023, I received an email from the New York State Defenders Association (“NYSDA”) attaching slides excerpted from a training program entitled, “Life After Padilla v. Kentucky: What Defense Attorneys Should Know.” The document states that this training was presented by the NYSDA Criminal Defense Immigration Project and Queens Law Associates on May 4, 2010. This document is attached to this Affirmation as Exhibit C-12.

13. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

/s/ Amelia Marritz
Amelia Marritz, Esq.
Immigrant Defense Project
P.O. Box 1765
New York, NY 10027

Dated: New York, NY
January 31, 2024

**Reformatted version of affirmation originally dated August 3, 2023.*

EXHIBIT C-1

EXCERPT FROM TRAINING BY NEW YORK COUNTY DEFENDER SERVICES

“Effective Representation of Immigrant Clients” (October 2019)



EFFECTIVE REPRESENTATION OF IMMIGRANT CLIENTS

NYCDS Immigration Unit

October 2019

WHAT WILL WE LEARN TODAY?



Basics of immigration law



How contacts with Family & Criminal Court can adversely impact immigration status



Types of immigration status & consequences



Practice tips for talking to your clients about immigration status



You have a constitutional duty to give affirmative, individualized and accurate advice about the immigration consequences of a criminal case.

See Padilla v. Kentucky, 559 U.S. 356 (2010).

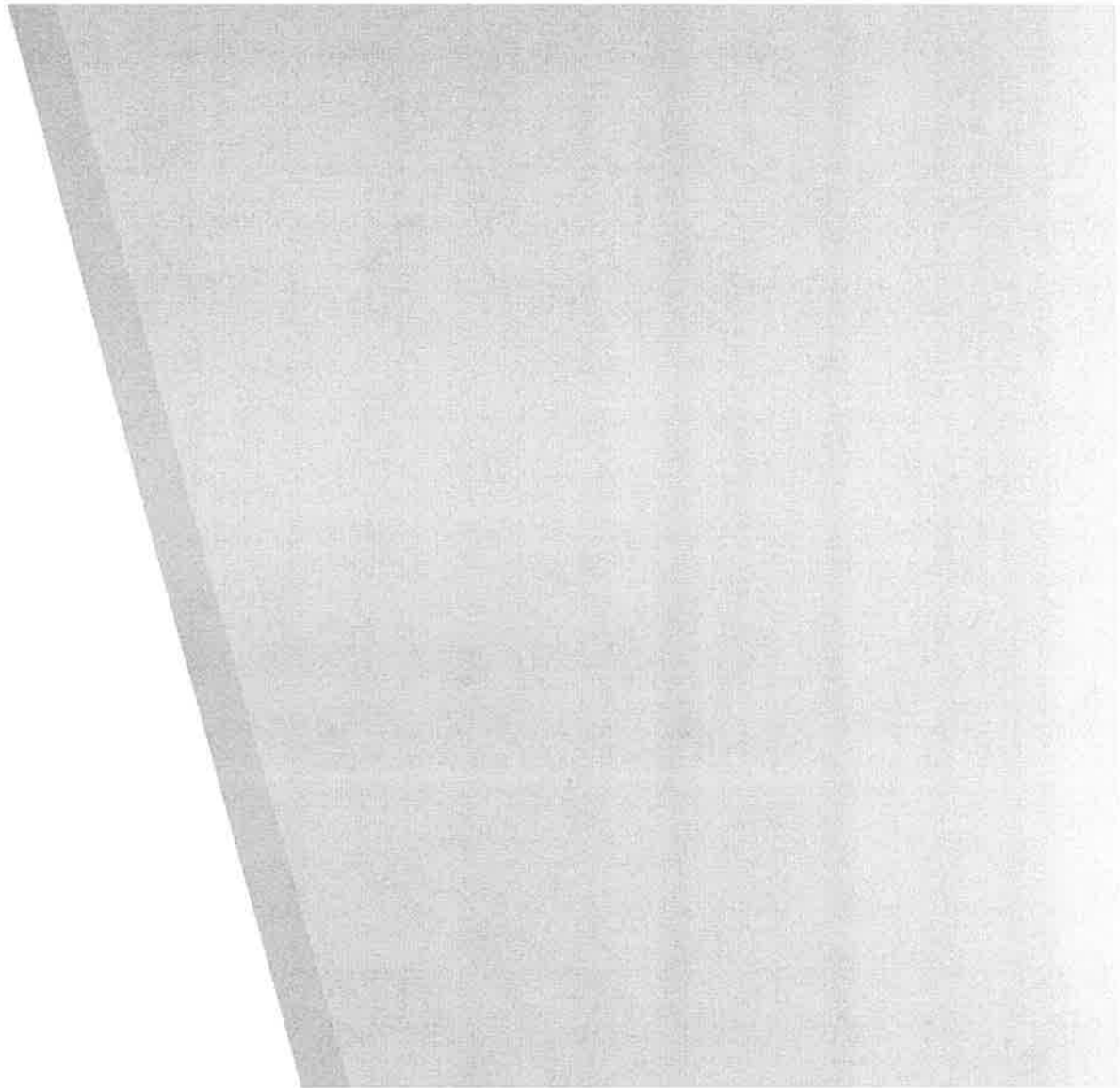
If you do not provide affirmative, competent advice, a client may seek a claim of ineffective assistance of counsel.



This includes:

- negotiating to minimize adverse immigration consequences**
- advising about the immigration consequences of alternate dispositions & sentencing options.**

However,
deportation is not
the only possible
consequence of
Criminal/Family
Court contacts!



Possible consequences of Family & Criminal Court contacts

Ineligibility for or
denial of application
for:

lawful status

green card

citizenship

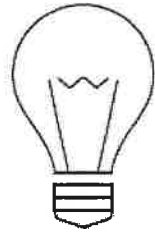
Inability to
**reenter from
abroad**

**Enhanced
sentence for
illegal reentry**

Ineligibility
for bond in
immigration
detention

**Bar to relief
from
deportation**

**Deportation
&
exposure to
enforcement**



ABOUT UNDOCUMENTED CLIENTS

People who are undocumented may be eligible to become documented.

Criminal and Family Court contacts
can bar eligible clients.

Refer, refer, refer!

Questions to ask if you think your client is undocumented

- When and how they entered the U.S.
- Current status and when received it
- Any past contact with immigration, including when entered the US
- Any pending applications or removal proceedings



**Grey Zone:
Documented
People**

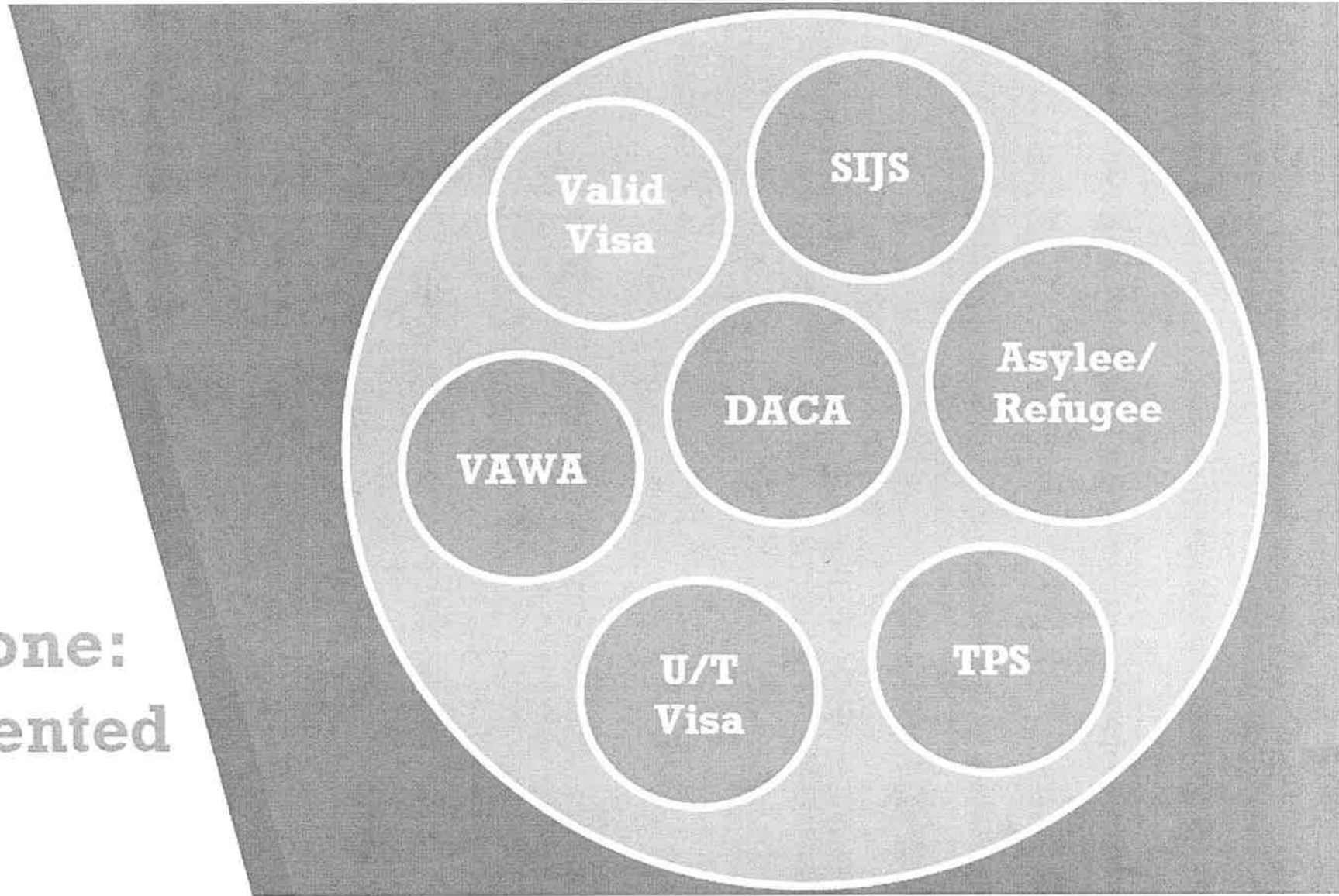


EXHIBIT C-2

**EXCERPT FROM TRAINING BY WESTERN NEW YORK
REGIONAL IMMIGRATION ASSISTANCE CENTER**

“Complying with *Padilla* and *Peque*: A Skills & Diversity Training” (2019)

COMPLYING WITH *PADILLA* AND *PEQUE*: A SKILLS & DIVERSITY TRAINING

Daniel E. Jackson

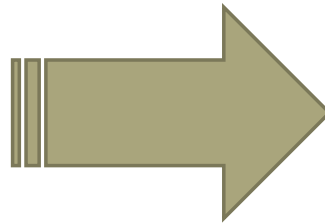
Immigration Staff Attorney,
Western New York Immigration
Assistance Center

Tel: 716-847-0662 x314

Email: djackson@ecbavlp.com

NEGATIVE EFFECTS OF CRIMINAL ACTIVITY ON USC:

- ❖ Criminal Record
- ❖ Sentencing



NEGATIVE EFFECTS OF CRIMINAL ACTIVITY ON NON-CITIZENS:

- ❖ Criminal Record
- ❖ Sentencing
- AND*
- ❖ Removability
- ❖ Admissibility
- ❖ Effect on Discretion
- ❖ Bars to relief
- ❖ Eligibility for a waiver
- ❖ Visa Violation/Revocation
- ❖ Mandatory Detention



EXHIBIT C-3

EXCERPT FROM TRAINING BY BROOKLYN DEFENDER SERVICES

“Immigration Consequences: Background, Strategies, and Protocol for Working with BDS *Padilla* Counsel” (October 7, 2019)

Immigration Consequences: Background, Strategies, and Protocol for Working with BDS *Padilla* Counsel

October 7, 2019



Immigration Consequences of Criminal Offenses can be Extraordinarily Harsh

- Deportation (sometimes “virtually guaranteed”)
- Immigration detention (sometimes mandatory) for the duration of removal proceedings
- Barred from permanent residence, asylum, or other forms of status or relief from deportation
- Barred from U.S. citizenship – for several years or permanently
- Prohibited from lawfully returning to the U.S. after deportation

In a given case, the potential consequences will depend on:

1. Client’s particular immigration status/history; and
2. Client’s criminal history.

WHAT DOES ALL THIS MEAN FOR US?

Why should defenders care?

Attorneys have a duty to ensure that noncitizen clients understand how the existence and resolution of the criminal case may affect their ability to lawfully remain in the United States.

- Immigration-related considerations—like avoiding deportation or preserving future eligibility for a visa—may override other typical client objectives, like avoiding jail or prison.

Attorneys also have a duty to keep clients reasonably informed about significant and material developments in their case.

- The prospect of ICE arrest may be reasonably foreseeable in some circumstances, and clients who are at risk should be advised about how such developments could complicate or frustrate their criminal cases.

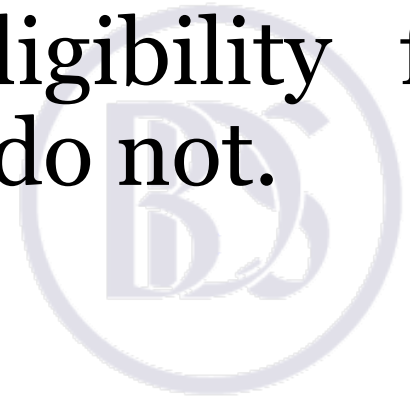
Grounds of Inadmissibility (INA § 212; 8 USC § 1182)

Obstacles to obtaining entry/status

- **General rule** - a noncitizen who is inadmissible cannot:
 - Enter the U.S. (this includes LPRs returning from trip abroad);
 - Get a green card or other lawful status;
 - Show “good moral character” needed for some forms of relief from removal.
- Some inadmissibility grounds, in some situations, carry exceptions or can be waived at the discretion of an immigration officer/judge.

Criminal Grounds for Removability

- A conviction can trigger removability under more than one ground.
- Some convictions bar eligibility for relief from removal; some do not.



Significance of (Potential) Sentence

- Some offenses are AFs only if a sentence of 1 year or more is imposed (*e.g.* crime of violence, theft, forgery, counterfeiting, obstruction of justice, perjury, bribery)
- Some CIMT convictions cause inadmissibility/deportability depending on potential and/or imposed sentence. INA §§ 212(a)(2)(A)(ii)(II), 237(a)(2)(A)(i).
- Inadmissible if total imprisonment for 2+ offenses is 5 yrs, even if suspended. INA § 212(a)(2)(B).
- 212(c) ineligible if 5+ years served.
- Some forms of relief are impacted by sentence
 - Ex: Good Moral Character as defined by INA prohibits a GMC finding if person imprisoned 180 days or more, regardless of type of conviction.
- *N.B.* VOPs (Probation) & VOCDs (Cond. Discharge) can trigger imm. consequences even where original sentence was safe

Step 4: Preliminary advisal from Padilla atty

- If my client takes this plea:
 - Will they become deportable or inadmissible?
 - Will they become ineligible for LPR status or some other relief from deportation?
 - Will they end up in immigration custody?
 - Will they be subject to mandatory detention in immigration custody?
 - Will they be able to travel and/or naturalize?

Step 7: Advice

- Advise client with specificity and certainty on both the clear and unclear consequences of
 - the charge,
 - the offer, and
 - any alternate plea dispositions that may be attainable in the case
 - the immigration consequences of going to trial and losing
- Specificity includes
 - Risk of deportability
 - Eligibility for future relief from deportation
 - Eligibility for immigration status and/or citizenship in the future
 - Impact on discretionary grants of relief or status
 - Risk of traveling
 - Chance of detection
 - Application of mandatory detention

EXHIBIT C-4

**EXCERPT FROM TRAINING BY REGIONAL IMMIGRATION
ASSISTANCE CENTER REGION 2**

“*Padilla* Principles in Practice: Implications on Immigration from Family and Criminal Court Matters”
(April 24, 2019)

Wednesday, April 24, 2019
3:00 pm - 5:00 pm

Hosted by Del-Chen-O WBASNY
at Bella Michael's Restaurant
57 River Street
Oneonta, NY

PADILLA PRINCIPLES IN PRACTICE:

Implications on Immigration from
Family and Criminal Court Matters

Regional Immigration Assistance Center, Region 2, 302 N. James Street, Rome, NY 13440
RIAC2@ocgov.net 315-356-5794 (p) 315-356-5795 (f)

ANATOMY OF AN ADVISAL

➤ *With the documentation we receive, the RIAC will provide to defense counsel a written advisal letter that will ensure Padilla compliance. The advisal letter covers:*

❖ YOUR CLIENT

- ✓ *Client's Immigration Status/History*
- ✓ *Client's Prior Criminal History*
- ✓ *Current Criminal/Family Offenses*
- ✓ *Current Offer*

❖ IMMIGRATION CONSEQUENCES

- ✓ *Deportability*
 - Aggravated Felonies (AF)
 - Crimes Involving Moral Turpitude (CIMT)
 - Controlled Substance Offenses (CSO)
 - Crimes of Domestic Violence (CODV)
 - Crimes of Stalking
 - Crimes against a Child (CAC)
 - Violations of Orders of Protections (VOOP)
 - Firearms Offenses (FO)
- ✓ *Inadmissibility*
 - CIMT
 - CSO (or "reason to believe drug trafficker")
 - Previous Immigration Violations
 - Previous Orders of Deportation
 - Medical Grounds (e.g. alcohol or drug related convictions, mental health)
- ✓ *Relief from Removal (in Immigration Court)*
- ✓ *Future Applications (e.g. green card and citizenship)*

❖ LANGUAGE ACCESS

❖ CURRENT OFFER

❖ OPTIONS FOR DISPOSITIONS

❖ SUMMARY

IMMIGRATION CONSEQUENCES

- *Deportability*
- *Inadmissibility*
- *Relief from Removal*
- *Future Applications*

NEGATIVE IMMIGRATION CONSEQUENCES OF A PLEA

DEPORTATION	INADMISSIBILITY	FUTURE APPLICATIONS
Aggravated Felonies (AF)	CIMT or admission to conduct <i>that is</i> a CIMT	Green Card
Crimes Involving Moral Turpitude (CIMT)	Controlled Substance Offense (CSO)	Citizenship
Controlled Substance Offense (CSO)	“Reason to believe” drug trafficker	Waiver of Inadmissibility
Firearms Offense (FO)	Medical Grounds (alcohol/ drug abuse or mental health issues)	Relief in Immigration Court removal proceeding (e.g. Cancellation of Removal, Asylum, Withholding of Removal, CAT, etc.)
Crimes of Domestic Violence (CODV)	Previous Removal Orders	
Stalking		
Violation of Orders of Protection (OOP)		
Crimes Against Children (CAC)		

INADMISSIBILITY

Laws of Inadmissibility apply to anyone who is seeking admission to the U.S. at a port of entry; anyone who entered the U.S. illegally (without being lawfully admitted after inspection by an immigration officer); and those who are applying for a green card.

EXHIBIT C-5

**EXCERPT FROM TRAINING BY REGIONAL IMMIGRATION
ASSISTANCE CENTER REGION 2**

“Padilla Principles in Practice 2019” (November 4, 2019)

Regional Immigration Assistance Center, Region 2, 302 N. James Street, Rome, NY
RIAC2@ocgov.net 315-356-5794 (p) 315-356-5795 (f)

PADILLA
PRINCIPLES
IN PRACTICE 2019

Tuesday, November 5, 2019
12:30pm – 2:30pm
Chemung County PD Office
163 Lake Street
Elmira, NY

ANATOMY OF AN ADVISAL

- With the documentation we receive, the RIAC will provide to defense counsel (or family court counsel) a written advisal letter that will ensure *Padilla* compliance.
- The advisal letter covers:
 - ❖ YOUR CLIENT
 - ✓ Client's Immigration Status/History
 - ✓ Client's Prior Criminal History
 - ✓ Current Criminal/Family Offenses
 - ✓ Current Offer
 - ❖ IMMIGRATION CONSEQUENCES
 - ✓ Deportability
 - Aggravated Felonies (AF)
 - Crimes Involving Moral Turpitude (CIMT)
 - Controlled Substance Offenses (CSO)
 - Crimes of Domestic Violence (CODV)
 - Crimes of Stalking
 - Crimes against a Child (CAC)
 - Violations of Orders of Protections (VOOP)
 - Firearms Offenses (FO)
 - ✓ Inadmissibility
 - CIMT
 - CSO (or "reason to believe drug trafficker")
 - Previous Immigration Violations
 - Previous Orders of Deportation
 - Medical Grounds (e.g. alcohol or drug related convictions, mental health)
 - ✓ Relief from Removal (in Immigration Court)
 - ✓ Future Applications (e.g. green card and citizenship)
 - ❖ LANGUAGE ACCESS
 - ❖ CURRENT OFFER
 - ❖ OPTIONS FOR DISPOSITIONS
 - ❖ SUMMARY

NEGATIVE IMMIGRATION CONSEQUENCES OF A PLEA

DEPORTATION	INADMISSIBILITY	FUTURE APPLICATIONS
Aggravated Felonies (AF)	CIMT or admission to conduct <i>that is</i> a CIMT	Green Card
Crimes Involving Moral Turpitude (CIMT)	Controlled Substance Offense (CSO)	Citizenship
Controlled Substance Offense (CSO)	“Reason to believe” drug trafficker	Waiver of Inadmissibility
Firearms Offense (FO)	Medical Grounds (alcohol/ drug abuse or mental health issues)	Relief in Immigration Court removal proceeding (e.g. Cancellation of Removal, Asylum, Withholding of Removal, CAT, etc.)
Crimes of Domestic Violence (CODV)	Previous Removal Orders	
Stalking		
Violation of Orders of Protection (OOP)		
Crimes Against Children (CAC)		

WHICH LAWS APPLY?

- **Laws of Deportability** apply to anyone who is present in the U.S. after a lawful admission, whether permanently or temporarily.
- **Laws of Inadmissibility** apply to anyone who entered the U.S. illegally (without being lawfully admitted after inspection by an immigration officer).

There are exceptions to these laws (of course) depending on circumstances!

INADMISSIBILITY

(applies to anyone who is seeking admission to the U.S., including those individuals who entered the U.S. without being lawfully admitted after inspection by an immigration officer)



Inadmissibility also applies to anyone seeking to become a Lawful Permanent Resident (LPR)- green card holder. The applicant cannot be “inadmissible” to the U.S.

This is important if your client is applying for or will apply for a green card, as denial of that application most often means your client becomes deportable from the U.S. !

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.**

CRIMINAL GROUNDS OF INADMISSIBILITY

DRUGS – NO EXCEPTIONS



CIMTs

“**CONVICTION**” or
“**ADMITTED COMMISSION**”
such as crimes with:

- intent to steal or defraud
- bodily harm
- most sex offenses

PROSTITUTION!!



CATCH ALL PROVISION

CRIMINAL GROUNDS OF INADMISSIBILITY

THE “PETTY OFFENSE EXCEPTION” for CIMTs:

The “petty offense” exception applies if a person has only **one** conviction for a CIMT AND the possible sentence is less than one year AND the sentence imposed is less than 180 days in jail.

(In other words, if it is a felony CIMT conviction, the “petty offense exception” does not apply! A felony CIMT conviction will make your client inadmissible!

CITIZENSHIP

- Criminal arrests and/or convictions can affect a person's eligibility for U.S. citizenship. RIAC advisals include the consequences relating to your client's eligibility for naturalization as a result of a disposition in criminal and/or family court.
- Examples of dispositions that affect citizenship:
AF (permanently ineligible); CIMT(s) within the statutory five year period or beyond;
DWIs(habitual drunkard)

EXHIBIT C-6

**EXCERPT FROM NEWSLETTER BY REGIONAL IMMIGRATION
ASSISTANCE CENTER REGION 2**

“Anatomy of an Advisal: Relief from Removal” (January 2019)



HAPPY NEW YEAR!

As we start the 2019 new year, we are sitting on a mountain of non-citizen cases, yet we do not have the information needed to provide the advisals. Please review your cases and get us the information we need or give us an update so that your client's case gets the necessary attention. We appreciate your cooperation!

In This Issue: Relief from Removal

UPCOMING EVENTS

Oswego County, Criminal Law
CLE, March 22, 2019

Oswego County, Family Law
CLE, September 13, 2019

**BOOK YOUR NEXT TRAINING
SESSION NOW!**

The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

ANATOMY OF AN ADVISAL:

RELIEF FROM REMOVAL

Although we do our best to avoid any client being placed in removal proceedings, there are often times when your client is "otherwise removable" for reasons unrelated to your criminal or family court case. In those circumstances, if your client's goal is to remain in the U.S. (as opposed to wanting to be deported and obtaining a shorter jail sentence), it is imperative to preserve your client's eligibility for relief in Immigration Court.

There are many types of relief that may be available to someone in removal proceedings: Adjustment of Status (AOS); Cancellation of Removal (COR) for LPRs and, though more difficult, non-LPRs; COR for victims protected under the Violence Against Women Act (VAWA*); eligibility for certain special visas: T Visa (victims of trafficking), U Visa (victims of certain crimes); Special Immigrant Juvenile Status (SIJS); Temporary Protected Status (TPS), Asylum, Withholding of Removal, Application under Convention Against Torture (CAT); waivers of inadmissibility and deportation; and, Voluntary Departure. Depending on the circumstances, one or more criminal convictions will disqualify your client for most, if not all, forms of relief from removal.

What criminal convictions disqualify someone from these types of relief? Here are a few examples:

1. Aggravated Felony (AF): precludes relief in all but CAT claims.
2. CIMT: precludes relief in non-LPR COR applications and AOS (unless petty offense exception applies).
3. Controlled Substance Offense (CSO): precludes COR and AOS.

(*VAWA: if it is re-enacted, as of this writing, it has expired with no action from Congress.)



CONTACT US!

Tel. (315)356-5794

Fax (315)356-5795

Sharon Ames, Esq.
sames@ocgov.net
CELL: (315)272-0505

Tina Hartwell, Esq.
thartwel@ocgov.net
CELL: (315)264-9217

Chief Defenders & Assigned Counsel Administrators:

Contact the RIAC2 to schedule your 2019 training, lunch hour or other session in your office/county. We will provide CLE credit!

The best way to illustrate this is with a hypothetical that represents a common scenario:

You have been assigned to represent Samuel, who is charged with Attempted Robbery 2d. Based on the thorough intake that you got from your client, you know that he entered the U.S. as a refugee in 2011 and got his green card after he was here for a year. The copy of his green card that you were able to obtain says he has been a resident since July 1, 2011. The date the alleged offense is December 15, 2018. He has never left the U.S. since his arrival. He has two prior convictions for Petit Larceny from June 2013 and September 2018. He was sentenced to a CD for the first PL conviction (2013) and 3 years of probation for the second (2018); a VOP has been filed. On the current charge, the ADA has offered a plea to Petit Larceny with a sentence of one-year in jail in satisfaction of the Attempted Robbery 2d; the VOP sentence is 179 days in jail concurrent. He is not eligible for YO treatment.

Can he accept the offer?

Answer: No.

Why?

Samuel is “otherwise removable” because he has two CIMT convictions. No matter what he pleads to, he is at risk of being placed in removal proceedings based on those two CIMT convictions. However, because he has been a LPR for five years and has been continuously present in the U.S. for a period of 7 years prior to the commission of the second CIMT, he is eligible for Cancellation of Removal for LPRs as long as he has not been convicted of an Aggravated Felony (see, INA §240A(a)). Because the offer to plead to Petit Larceny with a sentence of one-year in jail is an Aggravated Felony (“theft offense” with a sentence of one year or longer; see, INA §101(a)(43)(G)), Samuel will be ineligible for any relief from removal other than a possible claim under the CAT, which is extremely difficult to win.

The advice from the RIAC will be to ask the ADA for a reduction of the sentence by one day to 364 days in jail (i.e. they can have their Petit Larceny conviction), so that Samuel’s eligibility for relief from removal will be preserved. This is one possible way to protect his ability to remain in the United States even though he is “otherwise removable.”

The lesson here is that just because your client may be subject to removal from the U.S., you should not assume that there is “nothing to be done” to protect your client from being deported. Avoiding the AF, or a CIMT, or a CSO can make all the difference to your client. You will have this information as part of the RIAC’s advisal. If you are certain that your client will be placed in removal proceedings, give your client a copy of the advisal to show to an immigration attorney who will be able to investigate the avenues of relief available.

To avoid disastrous consequences of post-indictment plea restrictions, contact the RIAC immediately upon your assignment so that you can take a proactive approach in getting an immigration “friendly” disposition for your client.

EXHIBIT C-7

EXCERPT FROM TRAINING BY NEIGHBORHOOD DEFENDER SERVICES OF HARLEM

“Immigration Consequences of Criminal Dispositions” (2019)



IMMIGRATION CONSEQUENCES OF CRIMINAL DISPOSITIONS

By: Immigration Defense Practice

HOW CAN A CONVICTION AFFECT A NON-CITIZEN?

- Removal a/k/a Deportation
- Inability to receive a visa or permanent residence
- Mandatory immigration detention during removal proceedings
- Bars to relief from removal including hardship waivers and persecution-based protection such as asylum
- Inability to travel internationally
- Inability to naturalize (become a U.S. Citizen)
- Inability to renew an expired green card
- Enhanced sentence for illegal re-entry





**CRIMINAL BARS TO RELIEF
FROM REMOVAL AND
CITIZENSHIP**

PRESERVE ELIGIBILITY FOR RELIEF: TYPES OF RELIEF AND BARS

Types of Relief:

- Discretionary waivers
 - LPR cancellation of removal
 - Criminal bar: aggravated felony
 - Non-LPR cancellation of removal
 - Criminal bar: “good moral character” requirement
 - “212(h)” hardship waiver
 - Criminal bar: CSOs, aggravated felony for LPRs
 - 212(c) waiver
- Adjustment of status through family member
 - Criminal bar: ground of inadmissibility
- Persecution-based relief: asylum, withholding, CAT
 - Criminal bar: “Particularly serious crime” except for CAT
- DACA
 - Criminal bar: single felony conviction, a significant misdemeanor, three non-significant misdemeanor convictions (possibly includes NY violations and a gang offense)



ELIGIBILITY FOR CITIZENSHIP

- Eligibility requirements:
 - At least 18 years;
 - LPR for 5 years, in U.S. at least half that time;
 - “good moral character” for 5 year period
- Bars to good moral character finding:
 - Murder;
 - Any aggravated felony on or after 11/29/90;
 - Most of the grounds of removability during 5 year period;
 - Other categories not requiring conviction, e.g. “habitual drunkard”
- Risk of naturalization application for deportable LPRs



EXHIBIT C-8

EXCERPT FROM TRAINING BY REGIONAL IMMIGRATION ASSISTANCE
CENTER OF HUDSON VALLEY

“Crimmigration Update 2019: Immigration Proceedings and Relief from Removal” (October 25, 2019)

Crimmigration Update 2019

PROGRAM AGENDA

- Client Intake and Meeting Obligations under *Padilla v. Kentucky*; Legislative/Case Law Update.
- Immigration Court and Defenses to Removal: What are We Trying to Preserve?

**Robert Horne, Esq. &
Craig J. Small, Esq.**

Regional Immigration Assistance Center,
Region 4

October 25, 2019

1:00 pm – 3:00pm

(Registration begins at 12:30 pm)

**Columbia-Greene
Community College**

4400 Rt. 23
Hudson, NY 12534
Room PAC 614

Presented by

**Columbia County Public Defender's
Office**

Greene County Public Defender's Office

**The Regional Immigration Assistance
Center**

Legal Aid Society of Westchester County

MCLE Credit 2.0

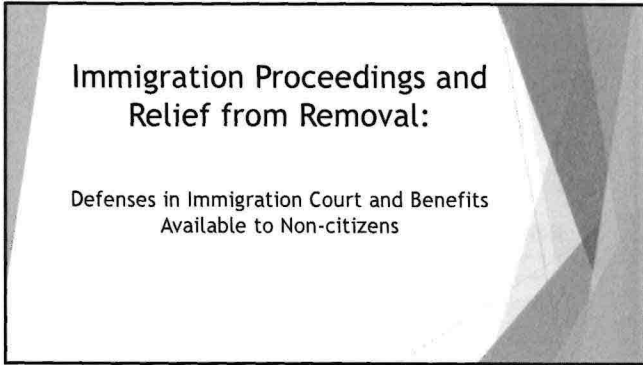
The Legal Aid Society of Westchester County has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of Continuing Legal Education in the State of New York. This transitional/nontransitional program has been approved in accordance with the requirements of the Continuing Legal Education Board for a maximum of 2 credit hours. No CLE credit may be earned for repeat attendance at any accredited CLE activity within any one reporting cycle.

Robert Horne is the Managing Attorney of the Regional Immigration Assistance Center, Region 4 (RIAC). Prior to joining the RIAC, Mr. Horne engaged in criminal, immigration and family court representation for over 25 years while in private practice.

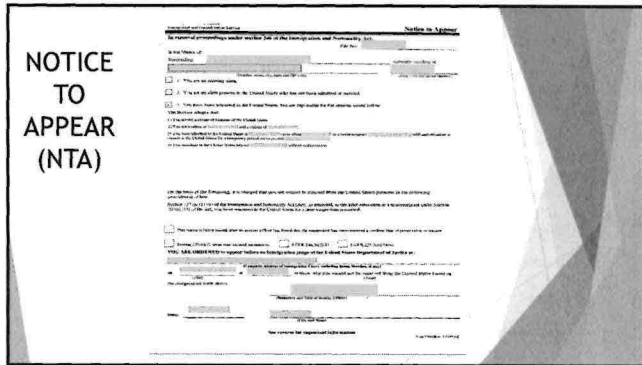
Craig J. Small is a Staff Attorney for the Regional Immigration Assistance Center, Region 4 (RIAC). Prior to joining the RIAC, Mr. Small worked with the Immigrant Defense Project and the Catholic Charities of Newark Immigration Assistance Program.

This program is open to Public Defenders, Legal Aid Attorneys and 18B Attorneys. The program is free, but pre-registration by October 21, 2019 is required.

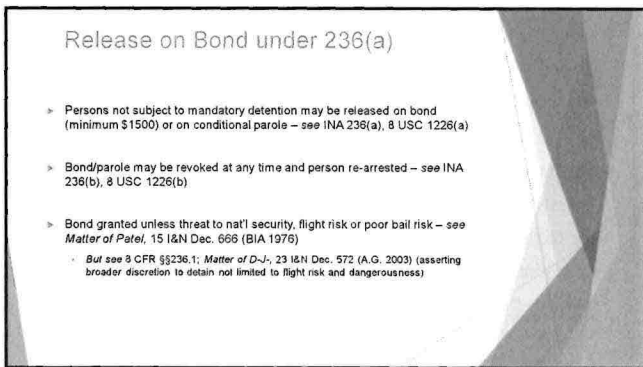
To register, please email the Regional Immigration Assistance Center at cjsmall@laswest.org. Be sure to include your name, address, telephone number and email address so the certificate of CLE attendance can be delivered to you.



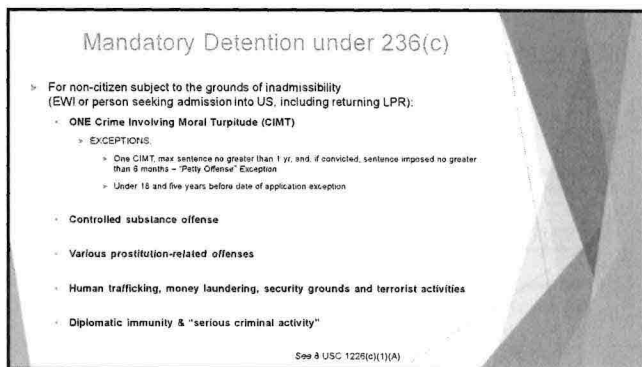
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4

Mandatory Detention under 236(c)

- For non-citizen subject to the grounds of deportability (LPR currently in US or person who entered lawfully with inspection):
 - Two or more CIMT (anytime after admission)
 - One CIMT conviction and sentence of at least one year
 - **NOTE:** No longer includes A misdemeanor offenses in NYS
 - Aggravated felony
 - Controlled substance offense (other than a single offense for possession of 30g or less MJ)
 - Deportable "Firearms offense"
 - Various security and terrorist activity grounds

See 9 USC 1226(c)(1)(B),(C)

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Proceedings in Immigration Court

Master Calendar Hearings

- These are **short** immigration hearings
- There may be several master calendar appearances
- Admit or deny allegations alleged in the Notice to Appear (NTA)
- Inform the immigration judge of what relief is being sought
- Set up schedules to file applications with the court

Individual/Merits Hearing

- If there is an application for relief or if denying allegations of removability
- This is the immigration trial

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Immigration Proceedings: While Serving Criminal Sentence

Institutional Removal Program (IRP)/Institutional Hearing Program (IHP):

- These are immigration hearings that are held while noncitizen is in prison serving a criminal sentence
- Many of these hearings are done in state/federal prisons by telephone or video conferencing
- Noncitizen has the right to object to these video and telephone hearings (But they will likely still happen)

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Applications to Avoid Being Deported - "Relief" from Removal

- Adjustment of Status - (applying or re-applying for a green card)
- Cancellation of Removal - (i.e. non-LPR and LPR cancellation of removal)
- Waiver of Inadmissibility - (i.e. 8 USC 1182(h))
- Persecution-based relief - (i.e. asylum, withholding of deportation, CAT)
- Special visas - (i.e. T, U ft S visas)
- Citizenship - (i.e. acquire or derive citizenship through parent's citizenship)
- Voluntary departure - (leaving the U.S. on your own; IJ can grant up to 120 days to depart)

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Defense to Removal: Adjustment of Status

- Must have an:
 - United States Citizen spouse
 - United States Citizen child 21 years old or older
 - United States Citizen parent (if under 21 years old and unmarried)
- Certain criminal convictions or conduct can prevent Adjustment of Status if it renders the noncitizen inadmissible
 - A waiver of inadmissibility may be available. See 8 USC 1182(h)
- Generally, must have entered the US in lawful status (with a visa or green card)

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Defense to Removal: Cancellation of Removal

Lawful Permanent Resident Cancellation of Removal (Green Card Holders)

- ❑ Requires:
 - ❑ 7 years continuous residence in the United States after "admission"
 - ❑ 5 years as a green card holder
 - ❑ Have not been convicted of an "aggravated felony"
- ❑ Discretionary decision: Positive factors outweigh negative factors

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Defense to Removal: Cancellation of Removal

Non-Lawful Permanent Resident Cancellation of Removal

- ❑ Requires:
 - ❑ 10 years physical presence in the United States
 - ❑ Good moral character for 10 years prior to and through the application process
 - ❑ Not convicted of an offense under 11A § 212(a)(2) (Criminal Grounds of Inadmissibility), INA § 237(a)(2) (Criminal Grounds of Deportability), or INA § 237(a)(3) (Failure to Register/Fraud Deportability Grounds)
 - Ex: 1 CIMT punishable by a year or more in jail, regardless of sentence (No longer includes Class A misdemeanors in NYS), OR 1 CIMT with a sentence of more than 6 months in jail
 - ❑ Deportation would cause "exceptional and extremely unusual hardship" to US citizen or Lawful Permanent Resident spouse, child, or parent ("qualifying relative")
- ❑ Discretionary decision: Positive factors outweigh negative factors

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Notes on: Cancellation of Removal

- Lawful Permanent Residence Cancellation of Removal terminates removal proceedings and allows noncitizen to maintain LPR status
- Non-Lawful Permanent Residence Cancellation of Removal terminates removal proceedings and grants noncitizen LPR status
- Can only receive either form of Cancellation of Removal once
- Can only apply for Cancellation of Removal while in removal proceedings

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Cancellation of Removal: Stop Time Rule

- The "stop-time" rule defines when continuous residence or continuous physical presence ends.
- Continuous residence/physical presence ends when either the noncitizen commits a designated criminal offense or is served with a Notice to Appear (NTA) placing him/her in removal proceedings.
- **Designated Criminal Offense:** Offense referred to in INA § 212(a)(2) (Criminal Grounds of Inadmissibility) that renders noncitizen inadmissible under INA § 212(a)(2) or deportable under INA § 237(a)(2) (Criminal Grounds of Deportability) or INA § 237(a)(4) (Security Related Grounds)

8 USC 1229b(d)

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Defense to Removal: Persecution Based Applications

Asylum, Withholding of Removal, and Convention Against Torture:

- Ask judge to not deport or remove your client because afraid of being persecuted or tortured in their native country
- Being afraid of having economic troubles or hardships not enough

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Persecution Based: Asylum

- **Eligibility:**
 - Meet the definition of Refugee under INA § 101(a)(42)(a)
 - Outside country of nationality
 - Unable or unwilling to return
 - Unable or unwilling to avail themselves of the protection of that country
 - Because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion
 - Present in the United States or arriving to the United States
 - Applied for asylum within 1 year of their arrival to the United States
 - Except if exceptional circumstances or a change in circumstances
- **Ineligible if:**
 - Ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a PSG, or political opinion
 - Convicted of a "particularly serious crime" (i.e., aggravated felony)
 - Reasonable grounds for regarding noncitizen as a danger to national security
 - Was firmly resettled in another country prior to arriving in the United States
 - **NOTE: Recent Update/Displaces Litigation**
- **Benefits:**
 - Allows family to join or be included (parents, children, or spouse)
 - Provides lawful status in the United States
 - After one year can apply for Lawful Permanent Resident Status

8 USC 1158

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Persecution Based: Withholding of Removal

- **Must be applied for while in removal proceedings**
- **No one year filing deadline**
- **Permission to remain in the US and employment authorization, but no pathway to LPR status**
- **Government retains right to deport individual to a third country**
- **Family members cannot join or be included**
- **Eligibility**
 - Life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion
 - *Proof of past persecution or can establish that it is "more likely than not" that would be persecuted upon removal to that country*
- **Ineligible if:**
 - Convicted of a "particularly serious crime" (i.e., aggravated felony) with aggregate sentence of 5 years or more
 - Ordered, incited, assisted, or participated in persecution of others because of race, religion, nationality, membership in a PSG, or political opinion
 - Reasonable grounds to believe the noncitizen is a danger to national security
 - Deportable under INA § 237(a)(4)(D) (Participation in Nazi persecutions, genocide, or acts of torture or extrajudicial killings)
 - **NOTE: No "firm resettlement" Bar**

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Persecution Based: Convention Against Torture

- Must be applied for while in removal proceedings
- No one year filing deadline
- Permission to remain in the United States and employment authorization, but no pathway to LPR status
- Government retains right to deport individual to another third country
- Family members cannot join or be included
- Eligibility:
 - It is "more likely than not" that they will be tortured if removed to the proposed country of removal
- Ineligible if:
 - Convicted of a "particularly serious crime" (i.e., aggravated felony(ies) with aggregate sentence of 5 years or more)
 - Ordered, incited, assisted, or participated in persecution of others because of race, religion, nationality, membership in a PSG, or political opinion
 - Reasonable grounds to believe the noncitizen is a danger to national security
 - Deportable under INA § 237(a)(4)(D) (Participation in Nazi persecutions, genocide, or acts of torture or extrajudicial killings)
 - NOTE: No "firm resettlement" bar

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Special Visas

- ❑ By working with law enforcement or certain government agencies, a noncitizen may be eligible for a visa to temporarily remain in the United States and potentially a pathway to Lawful Permanent Resident status and United States Citizenship. Law enforcement and certain government agencies must cooperate in the application process.
 - ❑ **T Visa**
 - For victims of human trafficking
 - ❑ **U Visa**
 - For victims of certain serious crimes
 - ❑ **S Visa**
 - For providing important information on a criminal organization

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T Visa: VICTIM OF TRAFFICKING

- ❑ Eligibility:
 - Victim of severe form of trafficking in persons;
 - Comply with reasonable request for assistance in investigation or prosecution of acts of trafficking (except <18 years of age);
 - Will suffer extreme hardship involving unusual and severe harm if removed from the U.S.
- ❑ Benefits:
 - Enables residence and employment in the U.S. for up to 4 years
 - Provides pathway to Lawful Permanent Resident (i.e., green card) status
 - Allows foreign family to join (i.e., spouses, children or parents of children under 21)
- ❑ Maximum annual number of visas available = 5,000 T visas annually available

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U Visa: VICTIM OF CRIME

- ❑ Eligibility
 - ❑ Must be victim of a qualifying crime/criminal activity violating US law or occurring in the US
 - ❑ Must suffer substantial physical or mental abuse as a result of the criminal activity
 - ❑ Must have knowledge and information about the details of the criminal activity
 - ❑ Must have been, is being, or is likely to be helpful to a "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; May also include Family court and certain other government agencies.
 - ❑ Must obtain signed U visa certification signed within the previous 6 months by:
 - (I) The head of the certifying agency or any person(s) designated by the certifying agency
 - (II) Can include: Federal, State, or local Judge, DA's offices, Police Department, State Troopers, etc.
- ❑ Benefits
 - Enables residence and employment in the U.S. for up to 4 years
 - Provides pathway to Lawful Permanent Resident (i.e., green card) status
 - Allows foreign family to join (i.e., spouses, children or parents of children under 21)
- ❑ Maximum annual number of visas available = 10,000 U visas annually available

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U Visa: QUALIFYING CRIMES

The U Visa applicant must be DIRECT or INDIRECT victim of one of the following crimes:

Abduction	Abusive Sexual Contact	Blackmail	Domestic Violence	Extortion	False Imprisonment	Female Genital Mutilation
Felonious Assault	Fraud in Foreign Labor Contracting	Hostage	Incest	Involuntary Servitude	Kidnapping	Manslaughter
Murder	Obstruction of Justice	Peonage	Perjury	Prostitution	Rape	Sexual Assault
Sexual Exploitation	Slave Trade	Stalking	Torture	Trafficking	Witness Tampering	Unlawful Criminal Restraint

NOTE:

- Includes any similar activity where the elements of the crime are substantially similar
- Includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes

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U Visa: Who Can Sign a U Visa Certification?

- Any entity that detects, investigates, prosecutes, convicts, or sentences criminal activity may sign a certification including:
 - Based on probable cause or detection of criminal activity
 - Judges, Magistrates, Commissioners, Other Judicial Officers
 - EEOC, State and federal departments of labor
 - Based on investigation or prosecution of criminal activity
 - Police and prosecutors
 - Child or Adult Protective Services
 - Family Court
 - Federal agencies (DHS, ATF, FBI, DOL)
 - Based on Conviction or Sentencing
 - Prosecutors
 - Judges, magistrates, commissioners, and other judicial officers

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S Visa: INFORMANT VISA

- Eligibility
 - Possess critical and reliable information concerning a criminal organization or enterprise
 - Willing to share or has shared this information with federal or state authorities or court
 - Presence in the US is critical to the success of a criminal investigation or prosecution

OR

 - Possess critical and reliable information concerning a terrorist organization
 - Willing to supply or has supplied such information to federal authorities or court
 - Will be or has been placed in danger as a result of providing the information
- Benefits
 - Enables residence and employment in the U.S. for up to 3 years
 - Provides pathway to Lawful Permanent Resident (i.e., green card) status
 - Allows foreign family to join (i.e., spouses, children or parents)

Maximum annual number of visas available = 200 under first basis for eligibility and 50 under second basis for eligibility

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Temporary Protect Status (TPS)

- The Department of Homeland security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from safely returning or where country is unable to handle the return of its nationals
 - Ongoing armed conflict
 - An environmental disaster or an epidemic
 - Other extraordinary and temporary condition
- Generally authorized for 18 month period with an option to renew if DHS re-designates the country for TPS
- Those with TPS:
 - Are not removable from the United States
 - Can obtain employment authorization
 - May be granted authorization to travel
- Does not provide a pathway to apply for Lawful Permanent Resident status
- May be revoked or application to renew denied if individual no longer eligible

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Temporary Protect Status (TPS)

- Eligible if:
 - National of a country designated for TPS
 - Extended: Somalia, South Sudan, Syria, and Yemen
 - Termination Enjoined: El Salvador, Honduras, Nicaragua, Haiti, Sudan, and Haiti
 - Have been continuously physically present in the US since the effective date of the most recent designation of the specific country
 - Exception: brief, casual and innocent departures from the US
 - Have continuously resided in the US since the dates specified for the specific country
 - Exception: brief, casual and innocent departures from the US
 - Admissible to the United States as an Immigrant under INA § 212
 - No waivers of inadmissibility for the criminal or national security related grounds of inadmissibility
- Not Eligible If:
 - Convicted of any felony
 - Convicted of any 2 or more "misdemeanors"
 - Punishable by a year or less in jail, but more than 5 days
 - Subject to any of the mandatory bars of asylum
 - Including, being convicted of a "Particularly Serious Crime" (i.e., an aggravated felony conviction)
 - Rendered inadmissible under INA § 212

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Special Immigrant Juvenile Status (SIJS)

- Eligibility
 - State court (generally family court) order finding:
 - Noncitizen is dependent on a juvenile court or is legally placed into the custody of a state agency, a private agency, or a private person
 - Reunification with one or both of the noncitizen's parents is not viable due to abuse, abandonment, neglect, or a similar reason under state law AND
 - It is not in the noncitizens best interest to return to their home country
 - Under 21 years of age
 - Not married
 - Present in the United States
- Grant of Special Immigrant Juvenile Status (Form I-360) provides a basis to apply to Adjust Status to Lawful Permanent Resident (green card holder)
- NOTE: Child granted SIJS cannot petition for either of their parents

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CITIZENSHIP: Derivative or Acquisition

- Some people are US citizens but are not aware
- This could be possible if:
 - Their parent(s) were US citizens when they were born
 - OR
 - They got their green card as a minor and their parent(s) became US citizens before they turned a certain age (usually 18)
- If an individual is a US citizen, generally CANNOT be deported

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• UNDER THE AGE OF 18 (on or after February 27, 2001)

+

• ONE PARENT IS A U.S. CITIZEN (note: If adopted – adoption completed before client's 16th birthday)

+

• RESIDED IN PHYSICAL & LEGAL CUSTODY OF U.S. CITIZEN PARENT

+

• CLIENT LAWFULLY ADMITTED TO THE U.S. AS AN IMMIGRANT (i.e., admitted as a green card holder)

U.S. Citizenship Act of 2000
See 8 USC §1431

AUTOMATICALLY DERIVES U.S. CITIZENSHIP

NOTES:

- If US Citizenship Act of 2000 does not apply specific requirements dependent on the specific law at the time last condition met
- Can file Form N-600, Application for Certificate of Citizenship, or apply for US passport for proof of citizenship

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Voluntary Departure

- ❑ Voluntary Departure: Request to the immigration judge to not issue an order of deportation. Noncitizen agrees to leave on his/her own.
- ❑ Immigration Judge can be given up to 120 days to depart.
- ❑ If allowed to leave voluntarily, noncitizen must have a travel document (i.e., passport) and must buy their own ticket with the assistance of family or the Immigration Service if in custody.
- ❑ Once your client departs, he/she may be prevented from coming back to the US.
- ❑ CANNOT be granted if convicted of an aggravated felony or deportable based on terrorism grounds.
- ❑ Additional requirements if requesting Voluntary Departure at the conclusion of removal proceedings:
 - ❑ Physical presence for at least one year prior to issuance of NTA
 - ❑ Person of "good moral character" for at least 5 years immediately preceding application for Voluntary Departure
 - ❑ Establish that have means to depart US and intends to do so

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If Lose Your Immigration Case...

- ❑ An appeal must be within 30 days of losing an immigration case
- ❑ A motion to reopen or to reconsider an immigration decision can be filed
- ❑ If individual is in custody: Custody Review
- ❑ Each person in custody has the right to 90-day, 6 month, and 1-year reviews of their immigration custody
- ❑ Immigration cannot detain indefinitely unless they can show that they will deport noncitizen in the near future or noncitizen is a threat to the community

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Early/Conditional Parole for Deportation Only (E/CPDO)

- ❑ Allows a noncitizen serve less time in New York State prison
- ❑ Board of Parole can release noncitizen – but only to let Immigration deport him/her
- ❑ ECPDO: Need to serve at least half of the minimum sentence
 - ❑ Cannot have been convicted of Violent Felony Offense
 - ❑ Have no other unsettled criminal charges or appeals pending
- ❑ CPDO: Need to have served minimum sentence
 - ❑ Have no other unsettled criminal charges or appeals pending
- ❑ Procedure:
 - ❑ Get ordered deported by an immigration judge or sign an order to deport
Means giving up or using up all immigration appeals
 - ❑ Ask Parole Board to grant ECPDO or CPDO

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EXHIBIT C-9

**EXCERPT FROM TRAINING BY NEW YORK STATE OFFICE OF
INDIGENT LEGAL SERVICES *ET AL***

“The Intersection of Immigration, Criminal, and Family Law: An Overview” (March 28, 2019)

THE INTERSECTION OF IMMIGRATION, CRIMINAL & FAMILY LAW IN NEW YORK

AN OVERVIEW

Evelyn Kinnah, Esq.
RIAC (Capital Region and
Northern New York)
evelyn.kinnah@albanycountyny.gov
518.447.5539

Joanne Macri, Esq.
NYS Office of Indigent
Legal Services
Joanne.Macri@ils.ny.gov
518.408.2728

Ryan Muennich, Esq.
RIAC (NYC)
Immigrant Defense Project
ryan@immdefense.org
212.725.6422

DEPORTABILITY v. INADMISSIBILITY

INA § 237, 8 U.S.C. § 1227

INA § 212, 8 U.S.C. § 1182

- *Technically:*
 - Deportability applies to non-citizens whom the government has “admitted” into the United States (e.g. LPRs, refugees)
 - Inadmissibility applies to those seeking lawful admission or permanent residency status (e.g. undocumented, visa overstays applying for permanent residency, LPRs applying for admission)
- *Practically:*
 - Each set of rules, or both, may apply to the same person in various situations

EXHIBIT C-10

EXCERPT FROM TRAINING BY IMMIGRANT DEFENSE PROJECT
PADILLA SUPPORT CENTER

“2018 Updates Crim-Imm 101: Understanding Immigration Status” (March 2018)



2018 Updates

**CRIM-IMM 101:
UNDERSTANDING
IMMIGRATION
STATUS**

March 2018

WHO ARE WE?



The Padilla Support Center is one of six Regional Immigration Assistance Centers funded by an innovative grant from the New York State Office of Indigent Legal Services through the New York City Mayor's Office of Criminal Justice.



WHO ARE WE?

IMMIGRANT DEFENSE PROJECT PADILLA SUPPORT CENTER

- Advise defenders and appointed counsel on immigration consequences of Criminal & Family Court contacts
- Provide trainings & resources on criminal-immigration issues

Learn how to talk to your client about immigration history so you can ask the right questions and properly advise them.

Learn when to call us.



WHY ARE
WE HERE
TODAY?

WHAT WILL WE LEARN TODAY?



Basics of immigration law



How contacts with Family & Criminal Court can adversely impact immigration status



Types of immigration status & consequences



Practice tips for talking to your clients about immigration status

**AS A DEFENSE
ATTORNEY,
WHY SHOULD I
CARE ABOUT
IMMIGRATION
LAW?**



Padilla v. Kentucky

Immigration consequences are “**enmeshed**” in the criminal process. “Deportation is an integral part—indeed, sometimes **the most important part**—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.”



You have a constitutional duty to give **affirmative, individualized and accurate advice about the immigration consequences of a criminal case.**

See Padilla v. Kentucky, 559 U.S. 356 (2010).

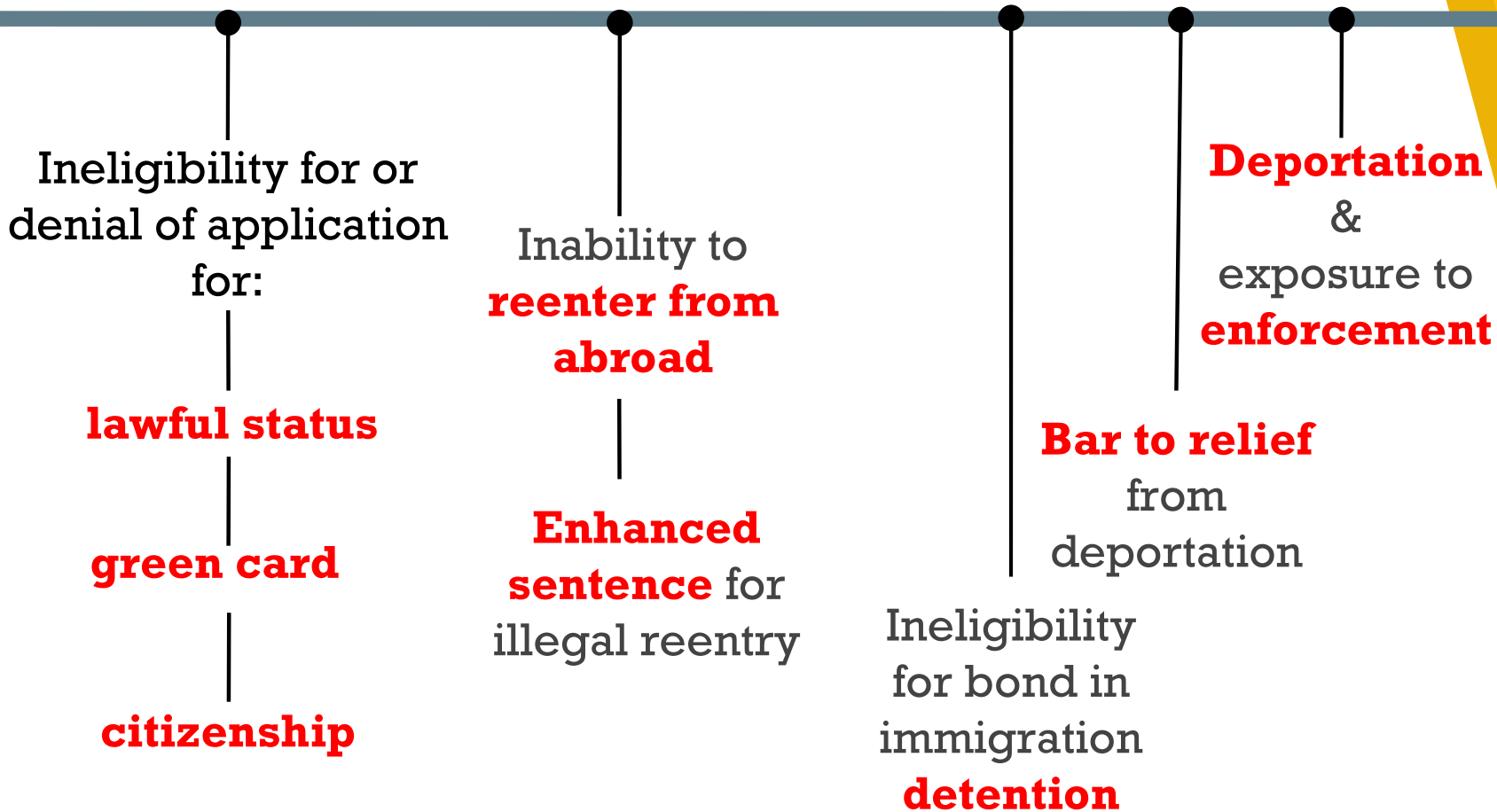
If you do not provide affirmative, competent advice, a client may seek a claim of ineffective assistance of counsel.

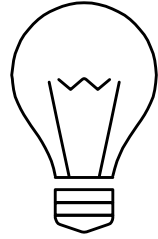
This includes:

- **negotiating** to minimize adverse immigration consequences
- advising about the immigration consequences of **alternate dispositions & sentencing options.**

However,
deportation is not
the only possible
consequence of
Criminal/Family
Court contacts!

Possible consequences of Family & Criminal Court contacts





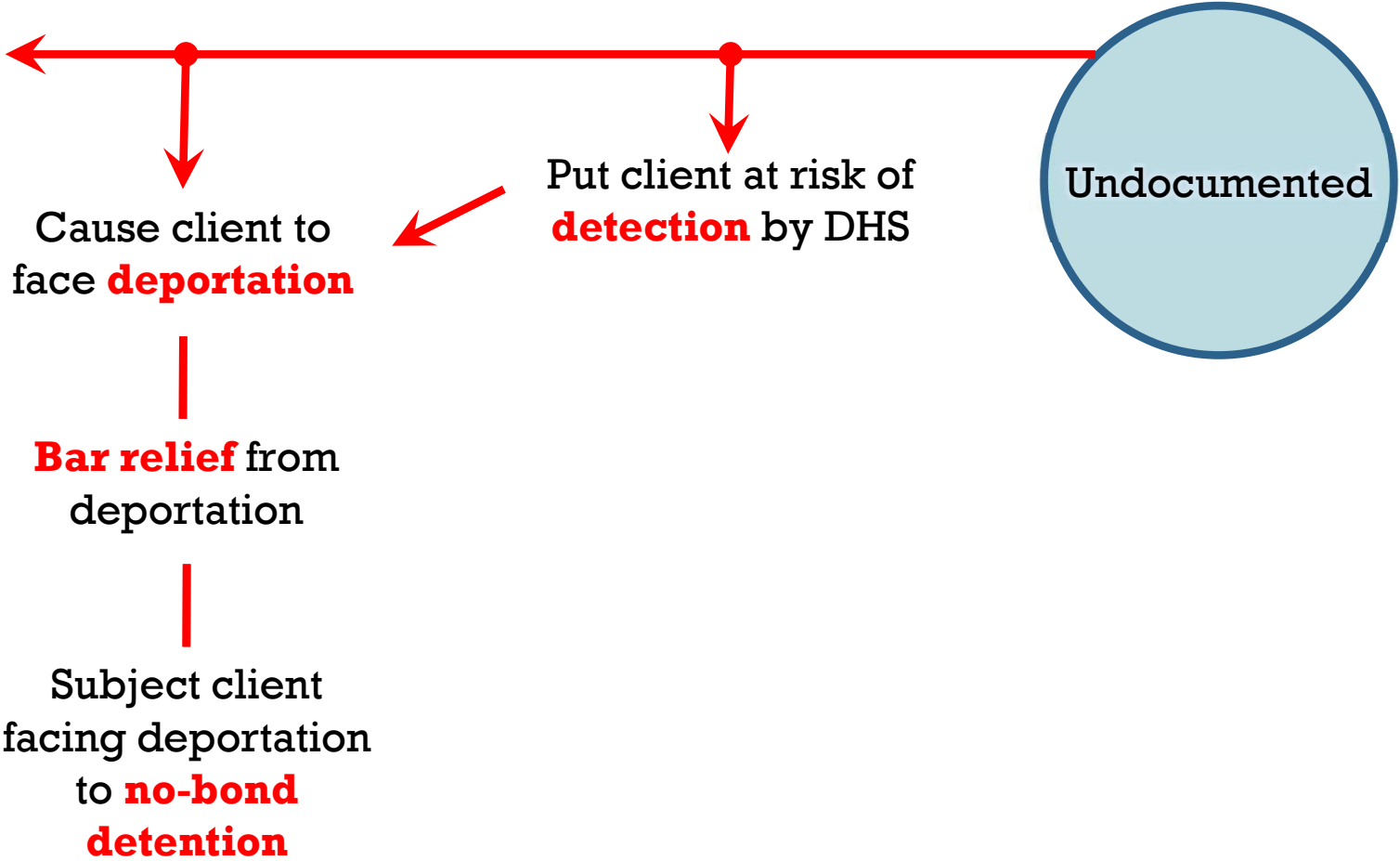
ABOUT UNDOCUMENTED CLIENTS

**People who are undocumented may
be eligible to become documented.**

Criminal and Family Court contacts
can bar eligible clients.

Refer, refer, refer!

Family/Criminal Court contacts can:



Family/Criminal Court contacts can:

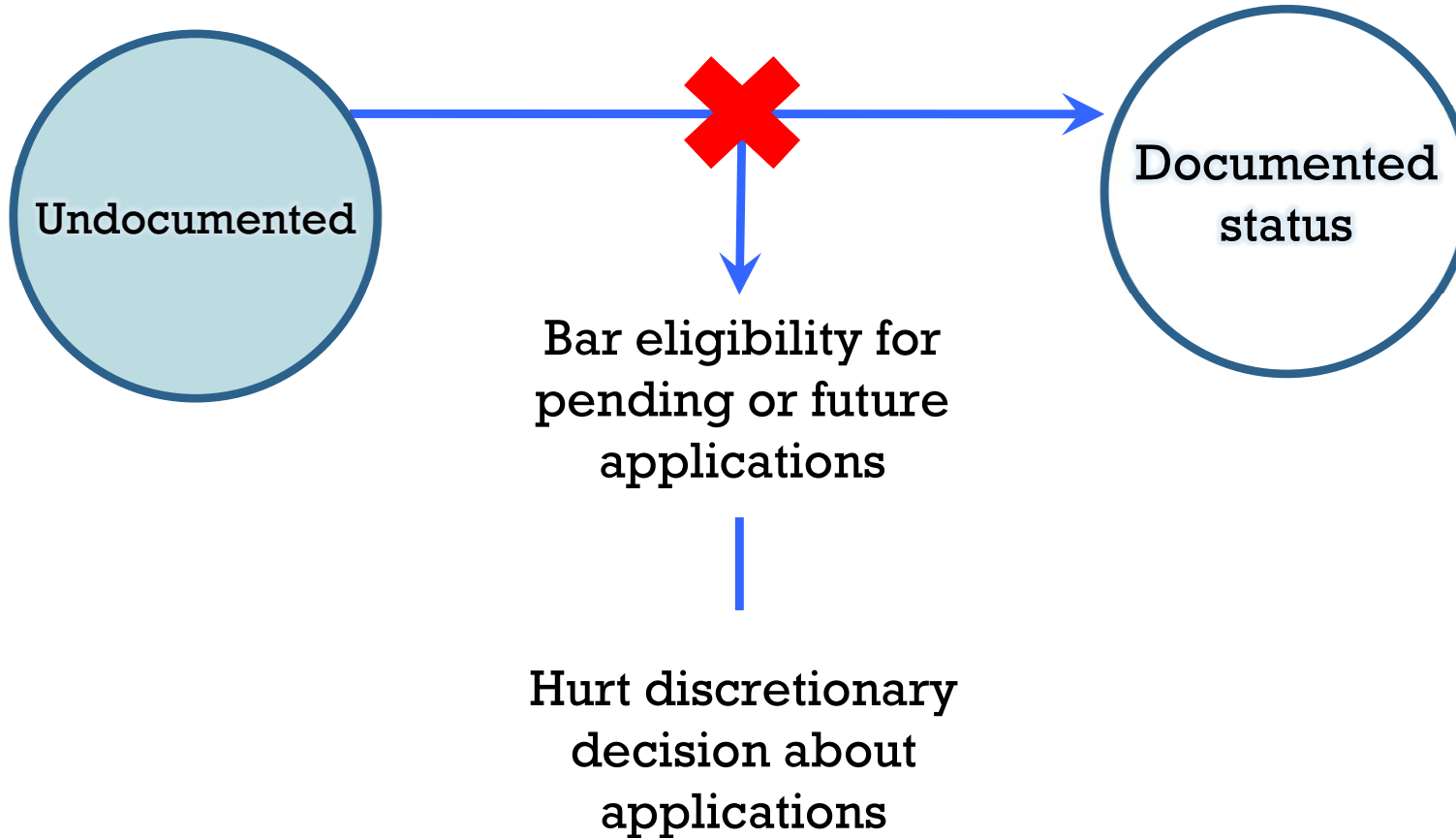
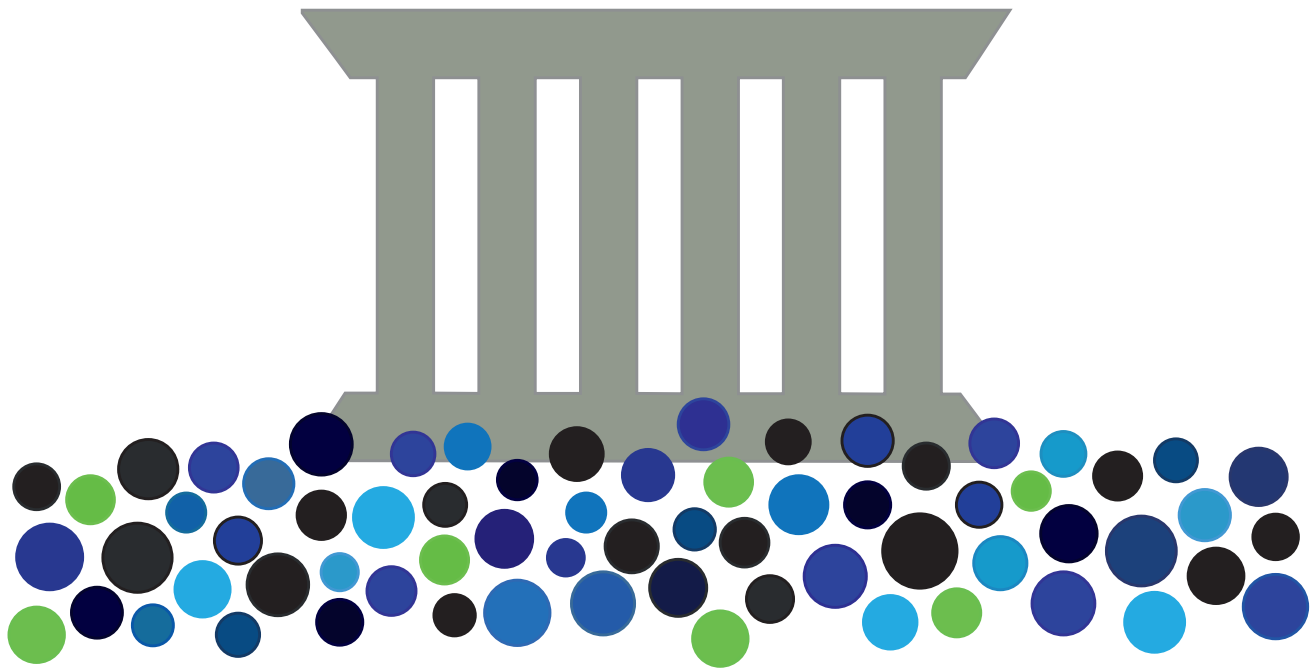


EXHIBIT C-11

EXCERPT FROM TRAINING RESOURCE BY IMMIGRANT DEFENSE PROJECT

“Immigration Status Guide for Assigned Counsel” (May 2019)



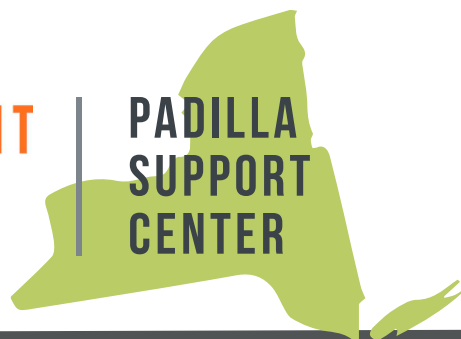
IMMIGRATION STATUS GUIDE FOR ASSIGNED COUNSEL

This quick-reference guide is designed to help appointed counsel in NYC Criminal Court and Family Court interview clients and identify common immigration statuses for the purposes of receiving accurate legal consults from the Padilla Support Center.

This guide is not exhaustive. It is for informational purposes only and is not a substitute for individualized legal advice.



**IMMIGRANT
DEFENSE
PROJECT**



Immigrant Defense Project | Padilla Support Center
212-725-6422 | immdefense.org/psc

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Illustrations by Bishakh Som, www.archicomix.com

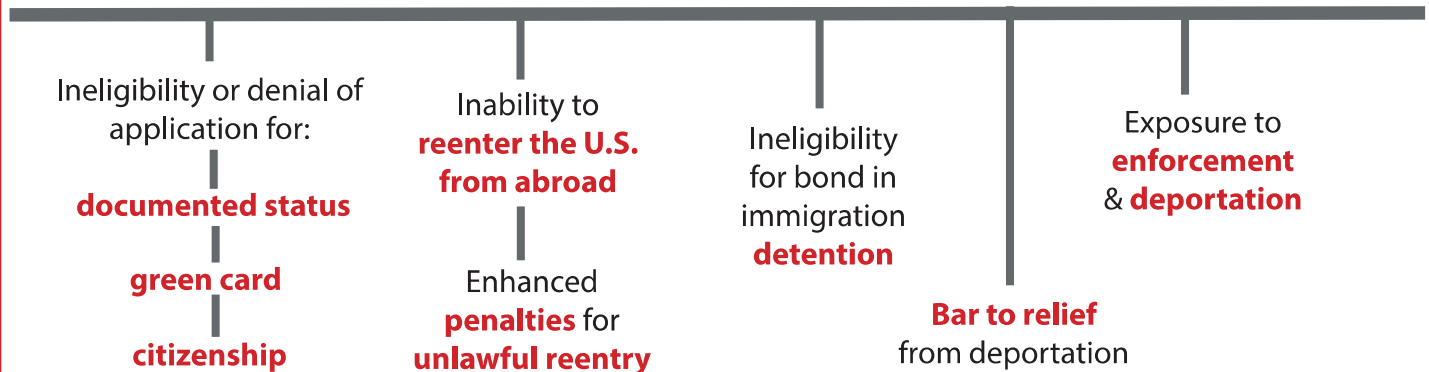
INTRODUCTION: USING THIS GUIDE

Contact with the Criminal & Family Court systems can lead to a broad range of adverse immigration consequences—including deportation—for both documented and undocumented people. These consequences are not always immediately obvious and can impact clients years after the resolution of a case. Moreover, even a *pending* Criminal or Family Court case can impact clients who are not U.S. citizens.

It is crucial to seek expert immigration advice early in a case so that you can try to mitigate these potentially devastating consequences and your client can make informed choices prior to the outcome of the case.

Moreover, **Criminal Court defenders**, in 2010, the U.S. Supreme Court held that **it is your constitutional duty** to provide affirmative, accurate and individualized advice about the immigration consequences of criminal charges prior to any plea. See *Padilla v. Kentucky*, 559 U.S. 356 (2010).

The broad spectrum of immigration consequences that can flow from Criminal & Family Court contacts



The foundation of an accurate immigration consult

In order to get an accurate consult, it is important to gather the following information unique to your client:

1 Immigration history, including past & current immigration status

2 Information about prior Criminal/Family Court contacts

3 Information about current Criminal/Family Court case

This guide will help you identify common immigration statuses so that you can have a productive conversation with clients and gather the most accurate information possible. On the next page, we detail some of the **fundamental questions** to ask clients about their immigration histories. Throughout the guide, we provide **follow-up questions** you may ask clients to verify their immigration status. Additionally, the appendices lay out definitions for common **immigration terms/abbreviations** and depict common **immigration documents**.

EXHIBIT C-12

EXCERPT FROM TRAINING BY NEW YORK STATE DEFENDERS ASSOCIATION
CRIMINAL DEFENSE PROJECT AND QUEENS LAW ASSOCIATES

“Life After *Padilla v. Kentucky*: What Defense Attorneys Should Know” (May 4, 2010)



**NEW YORK STATE DEFENDERS
ASSOCIATION
CRIMINAL DEFENSE
IMMIGRATION PROJECT**

**Life After *Padilla v. Kentucky*:
What Defense Attorneys
Should Know**

**Queens Law Associates
Advanced CLE On Immigration Consequences
of Criminal Convictions
Forest Hills, NY**

May 4, 2010



OVERVIEW:
PADILLA V. KENTUCKY

INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

Padilla v. Commonwealth of Kentucky 599 U.S.
___ (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, and, absent such advice, a noncitizen may raise a claim of ineffective assistance of counsel.

Life After *Padilla*: Defending In Criminal Court

- Unique nature of deportation is “particularly severe penalty” that is intimately tied to criminal process.

Id. at 8-9.

- Preserving the client’s right to remain in the U.S. may be more important to the client than any potential jail sentence.”

Id. at 10.

Affirmative Advice & The Strickland Standard

- Court expressly rejected option of limiting application of *Strickland* to claims of affirmative misadvice:
- “[T]here is no relevant difference between an act of commission and an act of omission in this context.” *Id.* at 13.

What Is Effective Assistance?

- Scope of 6th Amendment duty extends to not just avoiding deportation but also to the possibility of **preserving discretionary relief from deportation.**
- “[P]reserving the possibility of discretionary relief from deportation...would have been one of the principle benefits sought by defendants deciding whether to accept a plea offer or instead of proceed to trial.”

Id. at 10.



Life After *Padilla v. Kentucky?*

- Non-advice (silence) is insufficient (ineffective)
- Deportation is a “penalty,” not a “collateral consequence”
- “Informed consideration” of deportation consequences required during plea-bargaining
- Professional standards require counsel to determine citizenship/immigration status



What Is Effective Assistance?

1. Investigate Facts
2. Determine client's defense goals
3. Analyze immigration consequences
4. Defend the case according to client's priorities



STEP ONE: Relevant Facts?

1. Client's Immigration Status
2. Client's U.S. Family Ties
3. Any lodged ICE Detainer
4. Client's Criminal History, Charges, Plea Offers

STEP TWO: Client's Defense Goals

- Avoid conviction that triggers deportation
- Preserve eligibility to get future immigration benefits (lawful permanent resident or “green card” status, citizenship, TPS, U, V or T visa, etc.)
- Preserve ability to ask immigration judge to stay in U.S.
- Get out of jail ASAP to avoid ICE detainer and transfer
- Immigration consequences not a priority for your client
- Client seeks expedited transfer to ICE for removal from the US



STEP THREE: Analyze Immigration Consequences of Plea/Sentence

- Determine likelihood that charge/plea will trigger deportation
- Determine likelihood that charge/plea will trigger inadmissibility
- Determine impact of charge/plea offer on “discretionary relief” or other immigration status (i.e., LPR status or citizenship, etc.)



STEP FOUR: Prioritize Client's Defense Strategies

- Negotiate to non-deportable offense
- Sterilize record of conviction
- Obtain sentence of less than 365 (or 180 for CIMT) days
- File an appeal of conviction/sentence
- Get client out of jail before ICE detainer



**Who is at risk of
removal and how?**

WHO CAN BE REMOVED?

- **LAWFUL PERMANENT RESIDENT**
- (i.e., “Green Card Holders”)

- **REFUGEES & ASYLEES**
- (i.e., Those granted humanitarian protection in U.S.)

- **NONIMMIGRANTS**
- (ex. temporary visitors, students, workers)

- **UNDOCUMENTED**
- (ex. entered the U.S. without being inspected and admitted)

= SUBJECT TO REMOVAL FROM THE U.S.

DEPORTABILITY vs. INADMISSIBILITY

DEPORTABILITY

NON-U.S. CITIZENS
inspected and
lawfully admitted to
the United States

INADMISSIBILITY

NON-U.S. CITIZENS
who entered illegally (i.e.,
not inspected and
admitted) **OR** who are
seeking lawful admission
to the United States

DEPORTABILITY VS. INADMISSIBILITY

DEPORTABILITY

LPR's ("Greencard Holder)

Nonimmigrants

(ex. visitors, students, workers on valid status)

Visa "Overstayers"

(ex. overstayed authorized period of stay in U.S.)

INADMISSIBILITY

Refugees, Asylees,
Undocumented, Non-LPRs

Returning LPR's (Green Card Holders) (i.e., even after brief departure from U.S.)

Nonimmigrants (i.e., persons seeking permission to visit, work or go to the school in the U.S.)

**NYSDA Immigrant Defense Project
Immigration Consequences of Convictions Summary Checklist***

GROUND OF DEPORTABILITY (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR)—greencard holder)	GROUND OF INADMISSIBILITY (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)	INELIGIBILITY FOR US CITIZENSHIP
<p>Aggravated Felony Conviction</p> <p>➤ <i>Consequences</i> (in addition to deportability):</p> <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Ineligibility for voluntary departure ◆ Permanent inadmissibility after removal ◆ Subjects client to up to 20 years of prison if s/he illegally reenters the US after removal <p>➤ <i>Crimes covered</i> (possibly even if not a felony):</p> <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (may include, whether felony or misdemeanor, any sale or intent to sell offense, second or subsequent possession offense, or possession of more than 5 grams of crack or any amount of flunitrazepam) ◆ Firearm Trafficking ◆ Crime of Violence + 1 year sentence** ◆ Theft or Burglary + 1 year sentence** ◆ Fraud or tax evasion + loss to victim(s) > \$10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + 1 year sentence** ◆ Obstruction of justice or perjury + 1 year sentence** ◆ Certain bail-jumping offenses ◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ◆ Attempt or conspiracy to commit any of the above 	<p>Conviction or <i>admitted commission</i> of a Controlled Substance Offense, or DHS has reason to believe individual is a drug trafficker:</p> <p>➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)</p> <p>Conviction or <i>admitted commission</i> of a Crime Involving Moral Turpitude (CIMT)</p> <p>➤ Crimes in this category cover 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 (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months</p>	<p>Conviction or admission of the following crimes bars a finding of good moral character for up to 5 years:</p> <p>➤ Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana)</p> <p>➤ 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)</p> <p>➤ 2 or more offenses of any type + aggregate prison sentence of 5 years</p> <p>➤ 2 gambling offenses</p> <p>➤ Confinement to a jail for an aggregate period of 180 days</p>
<p>Controlled Substance Conviction</p> <p>➤ EXCEPT a single offense of simple possession of 30g or less of marijuana</p>	<p>Prostitution and Commercialized Vice</p> <p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p>	<p>Aggravated felony conviction on or after Nov. 29, 1990 (and murder conviction at any time) <i>permanently</i> bars a finding of moral character and thus citizenship eligibility</p>
<p>Crime Involving Moral Turpitude (CIMT) Conviction</p> <p>➤ For crimes included, see Grounds of Inadmissibility</p> <p>➤ One CIMT committed within 5 years of admission into the US and for which a sentence of 1 year or longer may be imposed (e.g., in New York, may be a Class A misdemeanor)</p> <p>➤ Two CIMTs committed at any time *not arising out of a single scheme*</p>	<p>CONVICTION DEFINED</p>	
<p>Firearm or Destructive Device Conviction</p>	<p>A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where:</p> <p>(i) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, AND</p> <p>(ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed.</p>	
<p>Domestic Violence Conviction or other domestic offenses, including:</p> <ul style="list-style-type: none"> ➤ Crime of Domestic Violence ➤ Stalking ➤ Child abuse, neglect or abandonment ➤ Violation of order of protection (criminal or civil) 	<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 disposition without a guilty plea (e.g., NY ACD) is NOT a conviction ➤ A youthful offender adjudication (e.g., NY YO) is NOT a conviction 	
<p>INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL</p>		
<p>➤ Aggravated felony conviction</p> <p>➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the United States</p>		
<p>INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL</p>		
<p>*"Particularly serious crimes" make noncitizens ineligible for asylum and withholding. They include:</p> <ul style="list-style-type: none"> ➤ Aggravated felonies <ul style="list-style-type: none"> ◆ All will bar asylum ◆ Aggravated felonies with aggregate 5 year sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding ➤ Other serious crimes—no statutory definition (for sample case law determination, see Appendix F) 		

*For the most up-to-date version of this checklist, please visit us at <https://www.immigrantdefenseproject.org>.
**The 1-year requirement refers to an actual or suspended prison sentence of 1 year or more. [A New York straight probation or conditional discharge without a suspended sentence is not considered a part of the prison sentence for immigration purposes.]

See reverse ➤



GROUPS OF INADMISSIBILITY

- ◆ **Controlled substance offense**
(NO EXCEPTIONS!)
- ◆ **Crime involving moral turpitude (CIMT)**
(Admissions or Convictions)
- ◆ **Prostitution**
- ◆ **2 or more offenses w/ aggregate sentence of 5 years + sentence**