

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 “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 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
Prostitution and Commercialized Vice Conviction of two or more offenses of any type + aggregate prison sentence of 5 yrs.	Conviction of a Firearm or Destructive Device Offense	
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 a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)	
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 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 more than 5 grams of crack or any amount of flunitrazepam and possibly including 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 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)	
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) ➤ 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	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) ➤ 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.

** The “at least 1 year” prison sentence requirement includes a suspended prison sentence of 1 year or more.

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Suggested Approaches for Representing a Noncitizen in a Criminal Case*

Below are suggested approaches for criminal defense lawyers in planning a negotiating strategy to avoid negative immigration consequences for their noncitizen clients. The selected approach may depend very much on the particular immigration status of the particular client. For further information on how to determine your client's immigration status, refer to Chapter 2 of our manual, *Representing Immigrant Defendants in New York* (4th ed., 2006).

For ideas on how to accomplish any of the below goals, see Chapter 5 of our manual, which includes specific strategies relating to charges of the following offenses:

- ◆ Drug offense (§5.4)
- ◆ Violent offense, including murder, rape, or other sex offense, assault, criminal mischief or robbery (§5.5)
- ◆ Property offense, including theft, burglary or fraud offense (§5.6)
- ◆ Firearm offense (§5.7)

1. If your client is a **LAWFUL PERMANENT RESIDENT**:

- First and foremost, try to avoid a disposition that triggers deportability (§3.2.B)
- Second, try to avoid a disposition that triggers inadmissibility if your client was arrested returning from a trip abroad or if your client may travel abroad in the future (§§3.2.C and E(1)).
- If you cannot avoid deportability or inadmissibility, but your client has resided in the United States for more than seven years (or, in some cases, will have seven years before being placed in removal proceedings), try at least to avoid conviction of an “aggravated felony.” This may preserve possible eligibility for either the relief of cancellation of removal or the so-called 212(h) waiver of inadmissibility (§§3.2.D(1) and (2)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid conviction of a “particularly serious crime” in order to preserve possible eligibility for the relief of withholding of removal (§3.4.C(2)).
- If your client will be able to avoid removal, your client may also wish that you seek a disposition of the criminal case that will not bar the finding of good moral character necessary for citizenship (§3.2.E(2)).

2. If your client is a **REFUGEE** or **PERSON GRANTED ASYLUM**:

- First and foremost, try to avoid a disposition that triggers inadmissibility (§§3.3.B and D(1)).
- If you cannot do that, but your client has been physically present in the United States for at least one year, try at least to avoid a disposition relating to illicit trafficking in drugs or a violent or dangerous crime in order to preserve eligibility for the so-called 209(c) waiver of inadmissibility for refugees and asylees (§3.3.D(1)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid a conviction of a “particularly serious crime” in order to preserve eligibility for the relief of withholding of removal (§3.3.D(2)).

3. If your client is **ANY OTHER NONCITIZEN** who might be eligible now or in the future for **LPR status, asylum, or other relief**:

If your client has some prospect of becoming a lawful permanent resident based on having a U.S. citizen or lawful permanent resident spouse, parent, or child, or having an employer sponsor; being in foster care status; or being a national of a certain designated country:

- First and foremost, try to avoid a disposition that triggers inadmissibility (§3.4.B(1)).
- If you cannot do that, but your client may be able to show extreme hardship to a citizen or lawful resident spouse, parent, or child, try at least to avoid a controlled substance disposition to preserve possible eligibility for the so-called 212(h) waiver of inadmissibility (§§3.4.B(2),(3) and(4)).
- If you cannot avoid inadmissibility but your client happens to be a national of Cambodia, Estonia, Hungary, Laos, Latvia, Lithuania, Poland, the former Soviet Union, or Vietnam and eligible for special relief for certain such nationals, try to avoid a disposition as an illicit trafficker in drugs in order to preserve possible eligibility for a special waiver of inadmissibility for such individuals (§3.4.B(5)).

If your client has a fear of persecution in the country of removal, or is a national of a certain designated country to which the United States has a temporary policy of not removing individuals based on conditions in that country:

- First and foremost, try to avoid any disposition that might constitute conviction of a “particularly serious crime” (deemed here to include any aggravated felony), or a violent or dangerous crime, in order to preserve eligibility for asylum (§3.4.C(1)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid conviction of a “particularly serious crime” (deemed here to include an aggravated felony with a prison sentence of at least five years), or an aggravated felony involving unlawful trafficking in a controlled substance (regardless of sentence), in order to preserve eligibility for the relief of withholding of removal (§3.4.C(2)).
- In addition, if your client is a national of any country for which the United States has a temporary policy of not removing individuals based on conditions in that country, try to avoid a disposition that causes ineligibility for such temporary protection (TPS) from removal (§§3.4.C(4) and (5)).

*References above are to sections of our manual, *Representing Immigrant Defendants in New York* (4th ed., 2006).