

PRACTICING AFTER *PADILLA*:

Where do we go from here¹?

By:

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In what can be viewed as Justice John Paul Stevens’ last move to drag parts of this country’s Bar into conformity with the U.S. Constitution, *Padilla v. Kentucky*, 559 U.S. ____ (2010) stands for a couple of very important principles. *Padilla* sets a certain baseline for basic competence of criminal defense attorneys in the immigration realm. It destroys the notion that immigration consequences are ‘collateral’ to a criminal case. By doing so it renders materially important the ideal that criminal defense attorneys must take ample consideration of and advise on the immigration consequences of certain types of convictions. What are these new parameters? What will be required of criminal defense practitioners? What can we do to avoid being but mere road-kill in an effective assistance of counsel claim? And, what, if anything, can we do if we represent a defendant who has previously suffered at the hands of poor or silent advice?

Jose Padilla

Jose Padilla was a forty-year resident alien of the United States and a native and citizen of Honduras. He served the nation with honor in the Vietnam conflict. He was charged in the state courts of Kentucky with the offense of transportation of a large amount of marijuana. His defense counsel incorrectly advised him that he “did not have to worry about immigration status since he had been in the country so long.” In a post-conviction proceeding, Padilla alleged that his counsel had been ineffective because he not only failed to advise of the immigration consequences of his plea, but he also gave incorrect advice to him. The Supreme Court of Kentucky denied the petition. The Supreme Court of the United States reversed that decision and remanded the case to the lower court for further proceedings. Justice Stevens wrote in the majority opinion that constitutionally competent counsel must advise his client of the potential for automatic deportation, if the case applies. The Court specifically declined to discuss the matter of prejudice.

Against this legal framework, what should we do to ensure that clients are receiving the fullest and most competent legal advice?

¹This paper is intended as a starting point for discussion and ideas. As with any other legal issue, one should follow-up with in-depth research and careful analysis.

STEP ONE

Know your client.

Oftentimes, we begin a representation of a client and pay little attention to their status or citizenship. And, this happens in two ways: those of us who are hardened to border practice assume everyone is illegal and those of us who are not accustomed to representing non-citizens assume everyone has iron-clad status or, worse yet, citizenship.

Only by knowing your client's status will you be aware of potential pitfalls that may accompany a finding of guilt for your client. But you should get more information than just this. I'd want to know:

- 1) Is the person a United States citizen?
- 2) What is the date the person first entered the US?
- 3) What is the person's current immigration status (Legal permanent resident, Temporary Protective Status, etc.)
- 4) How long has the alien been in that status?
- 5) When did they adjust to that status?
- 6) Are there any pending applications with Immigration? What are they? When were they filed?
- 7) How long has he resided in the United States?
- 8) Has the alien been in continuous presence in the United States for at least seven years?
 - A. What proof does the alien have of that (IRS forms, pay stubs, medical records, etc.)?
- 9) Has the person ever departed the US since the date of his 1st entry?
 - A. Get all dates left and returned.
- 10) What is the alien's A number?
- 11) Is the person afraid to return to their country? Why?
- 12) Does the person suffer from a life-threatening illness or have significant mental health issues?
- 13) Has the person ever had any contact with Immigration? When and Why?
- 14) Has there ever been a final order of removal filed against the person? Get the date and location.
- 15) Get the person's full immigration record.

- 16) Get the person's full criminal history.
- 17) Equitable Information
 - a. Family Ties
 - b. Community Ties
 - c. Work history
 - d. Good conduct
 - e. Prior good acts
- 18) Know and understand your client's priorities: Between jail time and deportation, which does your client view as worse?

STEP TWO

KNOW THE STATUS OF THE CRIME CHARGED

Justice Stevens makes clear that Padilla's counsel could have easily ascertained that a conviction for an aggravated felony as that term is used and defined in Title 8 U.S.C. §1101(a)(43) would have subjected his client to almost certain or automatic deportation upon conviction.

A. KNOW YOUR AGGRAVATED FELONIES INTIMATELY²

A conviction for an 'aggravated felony' can lead to serious trouble for our immigration-sensitive clients. There are some convictions that will automatically yield deportation and some that require a certain imposition of or potential for a certain sentence. The term 'aggravated felony' comes from Title 8 U.S.C. 1101(a)(43). It defines a subset of offenses and conditions which attach to certain offenses that almost automatically³ spell doom for your client's immigration status. The important thing to know is what is contained in this particular section. The following represent 'aggravated felonies' under Title 8 U.S.C. 1101(a)(43)(a)-(u):

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;

(E) an offense described in Title 18 section 842 (h-i) or 844(d), (e), (f), (g), (h), or (I) (relating to explosive materials offenses) or an offense described in Title 18 section 922(g)(1-5), Title 18

²I have attached Dan Kesselbrenner and Sandy Lin's Selected Immigration Consequences of Certain Federal Offenses, ©2010. As Dan states, use the paper as a starting point and then conduct careful research thereafter. The paper talks about aggravated felony status, CIMT status, other grounds of deportability and appears to be the most definitive paper on the issue.

³I use the phrase 'almost automatically' because, of course, nothing in life is truly certain. I had one client who sustained an aggravated felony conviction and was allowed to remain in the United States. Presumably, the Service never got around to initiating proceedings against him for his removal. I would not counsel my client on this as a possibility. From time to time, officers with ICE don't use both hands to scratch their back sides.

section 922(j), (n), (o), (p), (r), 924(b) or (h) or Title 26 section 5861 (relating to firearms offenses);

(F) crime of violence (as defined in Title 18 section 16, but not including a purely political offense) for which the term of imprisonment of at least one (1) year has been imposed;

(G) a theft offense (including receipt of stolen property) or burglary offense for which a term of imprisonment of at least one (1) year has been imposed;

(H) an offense described in Title 18 section 875, 876, 877, or 1202 (offenses relating to ransom or demand for receipt of ransom);

(I) an offense described in Title 18 section 2251, 2251A, or 2252 (offense relating to child pornography);

(J) an offense described in Title 18 section 1962 (RICO), or section 1084(second or subsequent offense), or section 1955 (gambling offenses), for which a sentence of on year imprisonment or more may be imposed;

(K) offenses relating to: (i) owning, controlling, managing, or supervising prostitution; (ii) an offense described in Title 18 section 2421, 2422, or 2423 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or (iii) an offense described in Title 18 section 1581-1585, 1588 (relating to slavery, and/or involuntary servitude);

(L) an offense described in: (i) Title 18 section 793, 798, 2153, or 2381 or 2382 (relating to gathering or transmitting national defense information; disclosure of classified information; sabotage; treason); (ii) Title 50 section 421 (protecting identity of intelligence agents);

(M) an offense that: (i) involves fraud or deceit in which loss to victim exceeds \$10,000; (ii) is described in Title 26 section 7201 (relating to tax evasion) in which loss to government exceeds \$10,000;

(N) an offense described in paragraph 1A or 2 of 1324(a) (relating to alien smuggling), except for a first offense for which the alien has shown that he committed the offense for the purpose of assisting, aiding, etc. only the alien's spouse, child, or parent;

(O) an offense described in 1325(a) or 1326 by an alien previously deported on the basis of a conviction for an offense listed in 1101(a)(43) of Title 8;

(P) an offense (i) which either is falsely making, forging, counterfeting, mutilating or altering a passport or instrument in violation of Title 18 section 1543 or is described in Title 18 section 1546 (relating to document fraud); **and** (ii) term of imprisonment is at least 12 months, except in first offense where offense committed to aid immediate relative;

(Q) an offense relating to a failure to appear for a defendant for service of sentence if the underlying offense is punishable by imprisonment for at least five (5) years or more;

(R) an offense relating to commercial bribery, counterfeiting, or forgery, or trafficking in vehicles for the identification numbers of which have been altered and for which a term of imprisonment of at least one (1) year has been imposed;

(S) an offense relating to obstruction of justice, perjury, subornation of perjury, bribery of a witness for which a term of imprisonment of at least one (1) year has been imposed;

(T) offense relating to failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of two (2) years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit any of the above offenses.

As Justice Stevens rightly notes, a conviction for any of these offenses, some that require certain specific terms of imprisonment, will lead to almost certain deportation with no chance of being able to avoid that outcome. Justice Stevens notes that it would have been easy for Padilla's lawyer to determine that Padilla was facing certain deportation. And although Justice Stevens states in his opinion that convictions for offenses that do not carry the stigma of 'aggravated felony,' it is difficult to understand how or why lines should be drawn on our universe of knowledge in this realm.

Stated a different way, if it was über easy to determine that Padilla was facing an aggravated felony and certain deportation, how much more difficult is it for a practitioner to know when their client is otherwise deportable? And, how much more difficult is it for a practitioner to know whether their client would qualify for cancellation of removal?

STEP THREE

AVOIDING THE AGGRAVATED FELONY

Oftentimes, you face a prosecutor who either doesn't care or doesn't understand and appreciate the consequences of certain pleas on your immigration-sensitive client. You will often get a prosecutor who will overcharge a case. In this context, treat that prosecutor as if he is manna⁴. He may allow you to choose your count of conviction. If this is your reality, take it. It is always better to avoid the automatic deportation even if your client is deportable on another basis. In this context, the alien can try to seek a waiver (ie, apply for cancellation of removal)⁵.

But, what advice do you give your client about the aggravated felony? What advice do you give about any other count in the indictment that is less than an aggravated felony? This tricky scenario can lead to wrong advice on the part of the practitioner.

An alien can petition for cancellation of removal in cases less than aggravated felonies if two other conditions are met (see below). If you don't know what those conditions are, how can one categorize their chances at avoiding deportation as anything.⁶

So, let's say that you are feeling good about your ability to avoid the aggravated felony. You tell your client that now he has a fighting chance to stay in the country. How do you know he has a fighting chance to stay here? Just because you might avoid the aggravated felony conviction, make sure your client can potentially take advantage of cancellation of removal before advising him that he has a fighting chance to avoid deportation.

⁴Manna, of course, is Biblical in origin. It is said that manna mysteriously sustained the Israelites as they roamed the desert. It was said to have arrived for the Israelites with the dew during the night.

⁵Taking your client from certain deportation to a position where can make an equitable argument to avoid deportation is a tremendous feat in and of itself. Counsel must be aware of the legal landscape surrounding immigration law to replace the certainty of deportation with only the prospect of it. A conviction for a deportable offense, as opposed to an aggravated felony, allows a person to attempt to cancel their removal (ie, avoid deportation) under Title 18 U.S.C. §1229b(a) or (b) for nonpermanent resident aliens. I.E., HOPE. But, even in that context, there are pitfalls, discussed later.

⁶This is not unlike Padilla's lawyer's wrong advice about avoiding deportation. That lawyer had no clue. We are attempting to have a clue.

STEP FOUR

MAKING SURE YOUR AVOIDANCE OF THE AGGRAVATED FELONY ISN'T IN VAIN

For all those instances where you manage to avoid an aggravated felony either through trick, cajole, sweet-talk, dumb luck, or prosecutorial largesse, before giving any advice as to the possibility of deportation, the practitioner should know to use extreme caution before giving other admonishments. Consider this exchange between lawyer and client:

LAWYER: Whew-ee!! I got the prosecutor to reduce the charge to something that's not an aggravated felony.

CLIENT: What does that mean?

LAWYER: That means you are gonna avoid deportation!

CLIENT: Yay! Thank you. Thank you. Gracias!

(Exit stage left, hand-in-hand).

While the parties might be ecstatic about the possibilities, does that truly mean that the person is going to avoid deportation? Even if you manage to avoid the aggravated felony, you shouldn't give any advice about deportability unless you are more certain about the declaration you are making. I have often heard practitioners tell their clients that they would have a fighting chance to keep their papers. How did they know that? With what certainty were they able to make that statement? Whether because of the euphoria of the moment (ie, avoiding the aggravated felony), or because of contentment with getting a reduced charge, emotions can run high and we, as human beings, tend to want to focus on the positive.⁷

To this end, we must be reasonably informed about the other grounds of deportability that might ensnare our clients and the possibilities they have to avoid that potential.

⁷I have no empirical data for this assertion. However, I have often heard people say, "You gotta think positive." And, I have never heard anyone say, "You have to think negative." Empirical? No. Ordinary everyday thinking? Probably.

DODGING ANOTHER BULLET: OTHER GROUNDS OF DEPORTABILITY

Title 8 U.S.C. §1227 lists the various classes of deportable⁸ aliens. Section 1227 not only lists the certain classes of aliens subject to deportation on other grounds, but it also lists when and to what degree, if any, the Attorney General can disregard the ground for deportability and NOT initiate deportation proceedings against an alien (they are boxed in a gray box).

1227(a)(1)(A-D) Roughly categorized as illegal status deportability grounds (ie, Inadmissible aliens at time of entry or adjustment of status or in violation of status for the grounds below).

NO WAIVER OF DEPORTABILITY

1227(a)(1)(E) Smuggling....Any alien who (before entry, at time of entry, or within 5 years of date of any entry) has encouraged, aided, abetted any other alien to enter/attempt to enter US in violation of law.

DEPORTATION NOT AUTHORIZED for

1. Alien who is an eligible immigrant, physically present in US on May 5, 1988⁹, and is seeking admission as an immediate relative if prior to May 5, 1988 the alien aided only the alien's spouse, parent, son or daughter (and no one else) to enter the US in violation of law.

WAIVER OF DEPORTABILITY AUTHORIZED for

1. For humanitarian reasons, to keep family together, in the public interest, where alien has aided only spouse, parent, son, or daughter to enter US in violation of law.

1227(a)(1)(G) Marriage Fraud

NO WAIVER AUTHORIZED

1227(a)(1)(H) **WAIVER AUTHORIZED FOR CERTAIN MISREPRESENTATIONS**

⁸It should be noted that every time I use the word 'deportable,' my spell check keeps wanting me to correct it to 'deplorable.'

⁹Yes, Cinco de Mayo.

1. An alien who has tried to gain admission to the US through fraud or misrepresentation who is the spouse, parent, son, or daughter or a US citizen or legal permanent resident AND
2. Was in possession of immigrant visa or equivalent and was admissible but for misrepresentation (other than false claim to US citizenship)

1227(a)(2) CRIMINAL OFFENSES

1227(a)(2)(A)(i)	Crimes of Moral Turpitude
	<ol style="list-style-type: none"> 1. Any conviction for a crime involving moral turpitude committed within 5 years after date of admission (within 10 years if alien received LPR status as result of adjusting from nonimmigrant to LPR); and 2. Is convicted of a crime for which a sentence of one year or longer may be imposed.
1227(a)(2)(A)(ii)	Multiple criminal convictions
	<ol style="list-style-type: none"> 1. Any alien who, at any time after admission, is convicted of 2 CIMT not arising from one common scheme, regardless of whether convictions came from a single trial.
1227(a)(2)(A)(iii)	Aggravated Felony (see above)
1227(a)(2)(A)(iv)	High speed flight from immigration checkpoint
1227(a)(2)(A)(v)	WAIVER AUTHORIZED FOR i-iv (above) if alien pardoned by President or Governor ¹⁰ .

1227(a)(2)(B)(i) Controlled substance conviction other than single offense of possession of less than 30 g of marijuana.

1227(a)(2)(B)(ii) Dug abusers/addicts....any alien who is, or at any time after admission has

¹⁰Just now I was thinking about how I could get my client who has a aggravated sexual assault of a child conviction to get a pardon from Texas Governor Rick Perry (aka Governor Secession). And then I thought it might just be easier to dream up and build a time machine and go back in time and intercede that way.

been a drug abuser or addict.

- 1227(a)(2)(C), (D) Firearms, destructive device, and treason/sabotage convictions.
- 1227(a)(2)(E) Domestic violence convictions, stalking, violation of protective order, crimes against children (abuse, neglect, abandonment)
- 1227(a)(3)(A), (B) Failure to register (Title 8 USC 1305, 1306)/Falsification of Documents (18 USC 1546)

1227(a)(3)(C) Document Fraud...Violation of Title 8 USC 1324c

WAIVER AUTHORIZED where defendant is LPR where no civil penalty was imposed and was done to benefit spouse or child.

1227(a)(3)(D) Falsely claiming citizenship

1227(a)(4)(A-D) Security, Terrorism, Enemy of the State, Genocide, Helped the Nazis¹¹

¹¹Still, those damn Nazis. At any rate, I often wonder with these types of grounds why someone would even really think that immigration consequences are the most important consideration of the day. I mean, if they want you gone for genocide, terrorism, or helping the Nazis, you probably have bigger worries than maintaining your status.

DODGING ANOTHER BULLET: GROUNDS OF INADMISSIBILITY (for returning aliens)

Not only do you have to have a decent grasp over grounds of deportability, but you also have to be aware of certain circumstances when your alien client WHO IS RETURNING to the United States can be deemed inadmissible.¹² The circumstances that can deem a returning alien as inadmissible is just as disastrous as deportability. The rules governing inadmissibility can be found at Title 8 USC 1182. As with the section on deportability, I will highlight those areas where inadmissibility can be avoided.

I'll try to list those circumstances that might have the most impact on our clients.

1182(a)(2)(A)(i)	CIMT (Moral Turpitude crimes, whether convicted, or whether facts were simply admitted)...BUT alien can escape inadmissibility issue if he was younger than 18 when crime committed and crime was committed and released from confinement, if applicable, more than 5 years before the date of application for admission OR if maximum penalty for offense convicted of or admitted to did not exceed one year BUT if alien was convicted, sentence not greater than six months.
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1182(a)(2)(A)(ii)	Controlled Substance Offense
	Conviction or admission or if DHS has reason to believe person is drug trafficker.
	WAIVER AUTHORIZED for single offense of simple possession of less than 30 g marijuana

1182(a)(6)(C)(i)	Misrepresentations made to procure visa, document, or admission to US.
	WAIVER AUTHORIZED where alien is son, daughter, or spouse of US citizen or LPR and AG finds that inadmissibility would lead to extreme hardship to US citizen or LPR lawfully in country.

1182(a)(6)(C)(ii)	Falsely claiming citizenship.
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1182(a)(6)(E)	Smuggling
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¹²Inadmissibility is a strange animal. It occurs when your client who is returning to the United States runs into some trouble. Essentially, their papers are taken from them on the spot and they are denied admission henceforth. It is summary and it is harsh.

Any alien who at any time has aided/abetted another alien to enter US unlawfully.

DOES NOT APPLY TO IN CERTAIN FAMILY REUNIFICATION CIRCUMSTANCES

WAIVER AUTHORIZED where special circumstances exist where aiding was only to spouse, parent, son, or daughter.

STEP FIVE

CANCELLATION OF REMOVAL

In those cases where your client is deportable still, even though you've managed to avoid the aggravated felony issue, you might still want to know if your client can cancel removal and thereby avoid deportation anyway.

Title 8 U.S.C. §1229b allows for cancellation of removal if the alien¹³:

- 1) has been an alien lawfully admitted for permanent residence for not less than five years;
- 2) has resided in the United States continuously for 7 years after having been admitted in any status; and
- 3) has not been convicted of an aggravated felony.

As a practitioner, you would want to know if your client, who still faces deportation on grounds other than because of an aggravated felony, might be able to take advantage of cancellation of removal.

In the event that he cannot seek cancellation of removal because he has less than five years as a permanent resident, giving him advice that is hopeful in nature is suspect¹⁴ and borders on the type of wrong advice that Padilla's lawyer gave to his client.

Next, the discussion will center on what we should say, what we shouldn't say, what we must be very careful about saying in the context of representing a person who is not a US citizen and who faces criminal charges.

¹³This statute provides for cancellation of removal for permanent resident aliens. Title 8 USC §1229b(b) provides for cancellation of removal procedures for nonpermanent resident aliens.

¹⁴I have heard advice about avoiding deportation in various ways:

“You have a fighting chance to save your papers.”

“You might be able to stay in the country.”

“You might not get deported.”

“Yeehaw!”

AVOIDING THE *PADILLA* PITFALLS

1. Know your client

If you do not venture to know anything about your client's status, how on earth can you possibly help him understand the Draconian deportation possibility that awaits him?

2. Know the status of the crime charged.¹⁵

A. Know what is an aggravated felony.

At a bare minimum, you must know what is and isn't an aggravated felony. For us (as federal defenders), we should be aware of the offenses that are or might be aggravated felonies. To help with that assessment, see the attached Selected Immigration Consequences of Certain Federal Offenses by Dan Kesselbrenner and Sandy Lin.

B. Know what will make your client deportable/inadmissible.

Only by knowing whether an offense makes your client deportable/inadmissible will you know whether your client can take advantage of cancellation of removal relief. If the practitioner does not know that the client is deportable, he will not know whether his client can avoid that deportation through cancellation of removal.

3. Speak up.

You must tell your client about the potential for deportation. YOU DO NOT HAVE THE RIGHT TO REMAIN SILENT! In fact, after *Padilla*, you have the duty to say something. Since you cannot simply bury your head in the immigration sand, what do you say? Be careful not to give equivocating language when dealing with aggravated felony convictions. A finding of guilt will get your client automatically booted. Don't equivocate on that point.

If your client is not looking at an aggravated felony, don't tell them they are avoiding deportation because that might also be affirmative misadvice along the *Padilla* lines. In situations just short of aggravated felony status but where the client is still deportable/inadmissible, you must still inform the client that they are still potentially facing deportation proceedings. You can definitely also advise the client to seek advice from an immigration lawyer.

¹⁵To help with your research, I have attached two checklists. One is entitled "Suggested Approaches for Representing a Noncitizen in a Criminal Case." The other is entitled "Immigration Consequences of Convictions Summary Checklist." Both are prepared by the NYSDA Immigrant Defense Project. While the papers are intended for New York practitioners practicing in New York, the basic approaches are the same with our federal cases.

4. When you speak up, make sure it isn't a one-size-fits-all admonishment.

Curiously, since *Padilla* was released, many practitioners, judges, and observers immediately took the position that a general admonishment would suffice to adequately warn a criminal defendant of the impending immigration consequences. Plea agreements and verbal admonishments essentially went like this:

“This conviction may have immigration consequences.”

“This conviction may have adverse immigration consequences.”

“This conviction may lead to deportation.”

While the one-size-fits-all approach is appealing in its simplicity and ease, it lacks the specificity and tailoring that is required to adequately warn your client. On the truly bad side, it gives hope to an otherwise hopeless immigration issue. This has been the discussion of the earlier part of this discussion. But, if you advise a client that there are immigration consequences when there really aren't any, have you altered a client's decision-making processes?

For example, let's assume that a person is charged with an offense that is not deportable for any reason, yet you tell them that there might be immigration consequences to their plea. As a result, they decide to go to trial and get convicted. Now, because of your advice the client is facing a loss of acceptance of responsibility or other forms of rent on the courtroom.¹⁶ Your affirmative misadvice has led to more grave circumstances for your client. Remember, there were seven votes in the United States Supreme Court that giving affirmative misadvice is ineffective assistance of counsel.

¹⁶‘Rent on the courtroom’ is a common legal colloquialism which reflects a sentiment that a person receives a higher sentence when they pursue a trial in their case and are convicted.d

USING *PADILLA* OFFENSIVELY IN THE RE-ENTRY CONTEXT

Let's assume that you represent a person charged with Title 8 USC 1326 and you determine that he was deported after sustaining a conviction for which he was never informed that deportation was a certainty or even a possibility. Can you use this to your advantage in the 1326 context. Maybe.

The one issue that the Supreme Court did not address in *Padilla* was the issue of prejudice. Prejudice is the second prong of the *Strickland v. Washington*, 466 U.S. 668 (1984) analysis. Prejudice is not whether the person would have avoided deportation, but rather whether the outcome of the criminal case would have been different absent counsel's ineffective performance. To that end, a plea of guilty or any admission will likely kill any petitioner's *Strickland* claim.

Similar to a conviction that has been sustained as a result of a faulty admonishment relating to counsel, what if we can harness the ineffective assistance of counsel (ie, a Sixth Amendment right) to ask a court to disregard a conviction? The process would be similar to challenging an uncounseled conviction. Remember, uncounseled convictions should not score out because a violation of the right to counsel essentially amounts to a jurisdictional defect, rendering the conviction null and void. *Custis v. United States*, 511 U.S. 485 (1994)(holding that uncounseled convictions cannot serve as the basis for a statutory enhancement). The strength of this argument was curtailed somewhat by *Iowa v. Tovar*, 124 S.Ct. 1379 (2004) wherein the Court held that in a guilty plea scenario "the constitutional requirement [for a valid waiver of counsel] is satisfied when the trial court informs the accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant upon the entry of a guilty plea." *Id.* at 1383. In so holding, the Court rejected the idea that lower courts must advise the defendant pursuant to *Faretta v. California*, 422 U.S. 806 (1975) regarding the value of an independent legal opinion as well as the risk of proceeding where a viable defense may be present. While *Tovar* has curtailed the success of challenging prior uncounseled convictions, the possibility still exists to challenge the waiver of counsel on knowing and intelligent grounds. Keep in mind that for that type of challenge we bear the burden.

What if we made an analogous argument under *Custis* and *Tovar* that a person had previously sustained a conviction as the result of ineffective assistance of counsel because counsel failed to properly inform on the immigration consequences of a person's guilty plea. Could the *Padilla* violation—failure to adequately advise—rise to the level of deprivation of counsel as in *Custis*? If so, perhaps an argument that this prior conviction in violation of the Sixth Amendment right to counsel is tantamount to depriving him of counsel altogether and, therefore, should not be scored may have legs.

APPENDIX

SELECTED
IMMIGRATION
CONSEQUENCES
OF FEDERAL
CRIMINAL
OFFENSES

Introduction

1. **Using the Chart.** The chart analyzes adverse immigration consequences that flow from conviction of the following select federal offenses and suggests how to avoid these consequences. The chart is organized numerically by code section.
2. **Sending comments about the Chart.** This is the updated edition of the chart, which we first published in 2003. Please contact us if you disagree with an analysis, see a relevant new case, want to suggest other offenses for us to discuss, want to propose other alternate “safer” pleas, want to suggest improvements, or have other comments. Please send your comments to dan@nationalimmigrationproject.org.
3. **Disclaimer and Note to Users.** Immigration consequences of crimes are a complex, unpredictable, and constantly changing area of law where there are few guarantees. Practitioners should use this chart as a starting point rather than as a substitute for legal research. For a more detailed analysis of offenses and arguments, see *Immigration Law and Crimes* available at: http://west.thomson.com/store/product.asp?product_id=13514773

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STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
8 U.S.C. § 1324(a)(1)(A)	Harboring, smuggling, and transporting	Yes, under 8 U.S.C. § 1101(a)(43)(N). Statutory exception for first offense for assisting, abetting, or aiding one’s spouse, child, or parent.	Unlikely.	Yes, under smuggling ground for bringing in offense.	
8 U.S.C. § 1325 (a)	Illegal entry	Yes, under 8 U.S.C. § 1101(a)(43)(O) when person convicted was	No.	n/a	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
8 U.S.C. § 1326	Illegal reentry	Yes, under 8 U.S.C. § 1101(a)(43)(O) when person convicted was previously deported for an aggravated felony conviction other than illegal entry or reentry.	No.	n/a	
18 U.S.C. § 3	Accessory after the fact	Yes, under 8 U.S.C. § 1101(a)(43)(S) as an obstruction of justice offense if the defendant receives a sentence of a year or more.	Possibly, if the underlying offense involves moral turpitude.	Not a controlled substance offense.	
18 U.S.C. § 4	Misprision of felony	No.	Yes.	Not a conviction under controlled substance ground even where felony concealed involves drug distribution.	
18 U.S.C. § 111	Assaulting, resisting, or impeding certain officers or employees	Possibly if defendant receives a sentence of a year or more.	Very likely.	n/a	
18 U.S.C. § 201(b)	Bribery of public officials and witnesses	Possibly an aggravated felony under 8 U.S.C. § 1101(a)(43)(S) for commercial bribery where the defendant receives a sentence of a year or more. It is not clear that bribing a public official necessarily includes a commercial	Yes.	n/a	Try to ensure that the record of conviction does not include any evidence that the bribery was commercial in nature.

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony? element.	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 287	False, fictitious or fraudulent claims	Offense is divisible. If record of conviction indicates that offense involved fraud or deceit and loss to the victim exceeded \$10,000, then it would be an aggravated felony under 8 U.S.C. § 1101(a)(43)(M)(i).	Probably	n/a	The safest plea would be to a simple false statement, but even that is risky. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 371	Conspiracy to commit offense or to defraud United States	Divisible offense. If substantive offense is an aggravated felony then a conviction for conspiracy to commit the offense will be an aggravated felony under 8 U.S.C. § 1101(a)(43)(U). If offense is for defrauding United States, then a conviction will be an aggravated felony under 8 U.S.C. § 1101(a)(43)(M)(i) where loss to the victim exceeds	Yes, where underlying offense involves moral turpitude or where offense involves fraud.	Firearm, controlled substance, or other criminal ground where underlying offense would make a noncitizen deportable.	If possible, plead to conspiracy to commit an offense that does not involve fraud or trigger other immigration consequences. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		\$10,000.			outside of record of conviction in determining loss amount.
18 U.S.C. § 373	Solicitation to commit crime of violence offense	Probably crime of violence aggravated felony where defendant receives a sentence of a year or more.	Probably.	n/a	
18 U.S.C. § 401(3)	Criminal contempt	Possibly.	Unlikely.	n/a	
18 U.S.C. § 472	Uttering counterfeit obligations or authorities	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 473	Dealing in counterfeit obligations or securities	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 474	Possessing counterfeit securities	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Not necessarily.	n/a	
18 U.S.C. § 485	Possessing counterfeit coins	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Not necessarily.	n/a	Divisible statute.
18 U.S.C. § 487	Possessing U.S. coin	Yes, under 8 U.S.C. §	Yes.	n/a	Try to plead to 18

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	molds with intent to defraud	1101(a)(43)(M)(i) as a fraud offense where the loss to the victim exceeds \$10,000 or probably as a counterfeiting offense under 8 U.S.C. § 1101(a)(43)(R) if the defendant receives a sentence of a year or more.			U.S.C. § 485 to avoid crime of moral turpitude. Under Supreme Court's decision in <i>Nijthawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 494	Counterfeiting and forgery	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 510	Forging endorsements on Treasury check	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more and under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000.	Yes.		
18 U.S.C. § 513(a)	Securities of the States and private entities	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or	Possibly.	n/a	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 545	Smuggling goods into the U.S.	Probably under fraud ground 8 U.S.C. § 1101(a)(43)(M)(i) if loss to the victim exceeds \$10,000.	Possibly.	Not necessarily controlled substance ground where record of conviction does not indicate type of merchandise.	The statute includes knowingly bringing into the United States any merchandise contrary to law, which appears to be the least likely offense under 18 U.S.C. § 545 to trigger immigration consequences. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 656	Theft, embezzlement, or misapplication by bank officer or employee	Possibly a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if loss to victim exceeded \$10,000.	Yes.	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 751	Escape	Unlikely.	Probably.	n/a	evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 758	High speed flight from immigration checkpoint	Unlikely.	Unlikely.	Yes, separate ground of deportability under 8 U.S.C. § 1227(a)(2)(A)(iv).	
18 U.S.C. § 793	Gathering, transmitting or losing defense information	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Possibly.	Possibly, under national security ground.	
18 U.S.C. § 798	Disclosing classified information	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Probably.	Possibly, under national security ground.	
18 U.S.C. § 842(h)	Offenses related to explosive materials	Yes, under 8 U.S.C. § 1101(a)(43)(E)(i).	Possibly.	Yes, under firearm ground.	
18 U.S.C. §§ 844(d)-(i)	Explosives	Yes, under 8 U.S.C. § 1101(a)(43)(E)(i).	Probably.	n/a	
18 U.S.C. § 875	Interstate communications	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably.	n/a	
18 U.S.C. § 876	Mailing threatening communications	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably.	n/a	
18 U.S.C. § 877	Mailing threatening communications from foreign country	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably.	Possibly under international child abduction ground.	
18 U.S.C. § 911	False claim to U.S. citizenship	Unlikely to be an aggravated felony.	Probably.	Yes, under false claim to citizenship ground.	
18 U.S.C. § 912	Impersonation	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i) where the loss to the	Yes.	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> ,

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		victim exceeds \$10,000.			557 U.S. __, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. §§ 922(g)(1), (2), (3), (4), or (5)(j), (n), (o), (p), (r)	Firearms offenses	Yes, under 8 U.S.C. § 1101(a)(43)(E)(ii).	Depends on section.	Yes, under firearm ground.	
18 U.S.C. § 922(g)(5)	Unlawful possession or transportation of a firearm by certain noncitizens	Yes, under 8 U.S.C. § 1101(a)(43)(E).	Unlikely.	Yes, under firearm ground.	
18 U.S.C. §§ 922(j), (n), (o), (p), (r)	Firearms offenses	Yes, under 8 U.S.C. § 1101(a)(43)(E).	Depends on section.	Yes, under firearm ground.	
18 U.S.C. § 924(h)	Transfer of a firearm for certain unlawful purposes	Yes, under 8 U.S.C. § 1101(a)(43)(E).	Yes.	Yes, under firearm ground and possibly also under controlled substance ground.	
18 U.S.C. § 871	Threats against the President	Likely to be a crime of violence if defendant receives a sentence of a year or more.	Likely.	Yes, under miscellaneous crimes ground.	
18 U.S.C. § 960	Expedition against friendly nation	Possibly.	Possibly	Yes, under miscellaneous crimes ground.	
18 U.S.C. § 1001	False statements	Possibly under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds	Probably.	n/a	There is a possibility that pleading to a simple false, but not

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		\$10,000.			<p>fraudulent statement, is not a crime involving moral turpitude, but even a simple misstatement is very risky.</p> <p>Under Supreme Court's decision in <i>Nijhawan v. Holder</i>, 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.</p>
18 U.S.C. § 1014	False statement on loan application	Yes, under theft offense ground if defendant receives a sentence of a year or more.	Possibly.	n/a	<p>If charge bargaining is possible, it would be preferable to plead to a non-material statement under 18 U.S.C § 1014 or 1015, if there is a basis to plead under one of those statutes.</p>

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 1028(a)	Fraud and related activity in connection with identification documents and information	Yes, under fraud or deceit where loss exceeds \$10,000.	Yes, for those offenses for which fraud is an essential element.	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1029(a)	Fraud and related activity in connection with access devices	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000.	Yes, all subsections involve "intent to defraud."	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1036	Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000.	Yes, if defendant admits to using a fraudulent pretense.	n/a	
18 U.S.C. § 1071	Concealing person from arrest	Unlikely.	Yes.	n/a	
18 U.S.C. § 1111	Murder	Yes, under murder aggravated felony	Yes.	n/a	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 1112	Voluntary manslaughter	ground.	Yes.		If defendant pleads to an offense that involves negligently or recklessly taking life of another, it would not be a crime of violence.
18 U.S.C. § 1112	Involuntary manslaughter	Unlikely since offense does not require intentional mental statement.	Yes.	n/a	
18 U.S.C. § 1113	Attempt to commit murder	Yes, under 8 U.S.C. § 1101(a)(43)(U) if defendant convicted of attempted murder.	Yes.	n/a	
18 U.S.C. § 1201	Kidnapping	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Yes.	n/a	
18 U.S.C. § 1202	Ransom proceeds	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably.	n/a	
18 U.S.C. § 1341	Mail fraud	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000.	Yes.	n/a	Investigate pleading to an offense under 18 U.S.C. § 1342 that involves use of mail for unlawful purpose other than fraud or deceit. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. , 129

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 1342	Fictitious name or address	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000 and where underlying offense involves fraud or deceit.	Yes, if defendant pleads to section that requires a fraudulent intent. It is possible to commit offense by using mail for an unlawful purpose other than fraud.	n/a	S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount. Plead to use of mail for unlawful purpose other than fraud or deceit. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1343	Fraud by wire, radio, or television	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i) where loss exceeds \$10,000.	Yes.	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 1344	Bank fraud	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i) where loss exceeds \$10,000.	Yes.	n/a	determining loss amount. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1426(b)	Reproduction of naturalization or citizenship papers	Unlikely.	Yes.	Possibly, under false claim to citizenship ground.	
18 U.S.C. § 1503	Influencing or injuring officer or juror generally	Yes, under 8 U.S.C. § 1101(a)(43)(S) if defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 1510	Obstruction of justice	Yes, under obstruction of justice ground if defendant receives a sentence of a year or more.	Probably.	n/a	
18 U.S.C. § 1542	False statement in application and use of passport	Possibly, under 8 U.S.C. § 1101(a)(43)(P) where defendant receives a sentence of a year or more.	Yes.	Yes, under false claim to citizenship ground.	
18 U.S.C. § 1543	Forgery or false use	Aggravated felony under	Probably.	Possibly, under false	The statute creates an

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	of passport	8 U.S.C. § 1101(a)(43)(P) where defendant receives a sentence of a year or more.		claim to citizenship ground.	exception for a first offense in which a noncitizen aided only his or her spouse, child, or parent. If applicable, ensure that the record of conviction reflects that crime relates to family member covered by exception. Consider a possible plea under 18 U.S.C. § 1542, which is not enumerated as an aggravated felony offense under 8 U.S.C. § 1101(a)(43)(P).
18 U.S.C. § 1546(a)	Fraud and misuse of visas, permits, and other documents	Yes, under § 1101(a)(43)(P) where sentence imposed is at least one year.	Yes.	A conviction for violating 18 U.S.C. § 1546(a) is a separate ground of deportability under 8 U.S.C. § 1227(a)(3)(B)(iii).	The aggravated felony definition creates an exception for a first offense in which a noncitizen aided only his or her spouse, child, or parent. If applicable, ensure that the record of conviction reflects that crime relates to family member

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 1581	Peonage	Yes, under ground "relating to peonage, slavery, and involuntary servitude."	Yes.	n/a	covered by exception.
18 U.S.C. § 1582	Vessels for slave trade	Yes, under ground "relating to peonage, slavery, and involuntary servitude."	Yes.	n/a	
18 U.S.C. § 1583	Enticement into slavery	Yes, under ground "relating to peonage, slavery, and involuntary servitude."	Yes.	n/a	
18 U.S.C. § 1584	Sale into involuntary servitude	Yes, under ground "relating to peonage, slavery, and involuntary servitude."	Yes.	n/a	
18 U.S.C. § 1585	Seizure, detention, transportation or sale of slaves	Yes, under ground "relating to peonage, slavery, and involuntary servitude."	Yes.	n/a	
18 U.S.C. § 1588	Transportation of slaves from United States	Yes, under ground "relating to peonage, slavery, and involuntary servitude."	Yes.	n/a	
18 U.S.C. § 1621	Perjury generally	Yes, under 8 U.S.C. § 1101(a)(43)(S) if defendant receives a sentence of a year or more.	Yes.	n/a	Consider plea to 18 U.S.C. § 1001 if possible.
18 U.S.C. § 1622	Subornation of	Yes, under 8 U.S.C. §	Yes.	n/a	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	perjury	1101(a)(43)(S) if defendant receives a sentence of a year or more.			
18 U.S.C. § 1708	Theft or receipt of stolen mail matter generally	Yes, under 8 U.S.C. § 1101(a)(43)(G) where defendant receives a sentence of a year or more.	Yes.	n/a	Consider a plea to delay of mail under 18 U.S.C. § 1703.

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 1952	Interstate and foreign travel or transportation in aid of racketeering enterprises	Yes, under drug trafficking ground where record of conviction established that underlying offense involved distribution of a controlled substance.	Probably.	Possibly, under controlled substance ground where record of conviction establishes that underlying conduct involved a controlled substance.	If possible, have record of conviction reflect that underlying offense did not involve distribution of a controlled substance.
18 U.S.C. § 1955	Prohibition of illegal gambling businesses	Yes, under 8 U.S.C. § 1101(a)(43)(J) where potential sentence of one year exists.	Probably.	n/a	
18 U.S.C. § 1956(a)(1)(A)	Laundrying of money instruments	Yes, under money laundering grounds if amount of funds exceeds \$10,000.	Probably.	n/a	Investigate whether there is a factual basis to plead to structuring transactions to avoid a reporting requirement in violation of 31 U.S.C. § 5322(b).
18 U.S.C. § 1957	Engaging in monetary transactions in property derived from specified unlawful activity	Yes, under 8 U.S.C. § 1101(a)(43)(D) when amount of funds exceeds \$10,000.	Probably.	Possibly depending on underlying activity.	
18 U.S.C. § 1962	Racketeer influenced corrupt organizations (RICO) offenses	Yes, under 8 U.S.C. § 1101(a)(43)(J) where the potential sentence is one year or more.	Probably.	Possibly, depending on underlying offense.	
18 U.S.C. § 2113(b)	Bank robbery and	Yes, under 8 U.S.C. §	Yes.	n/a	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 2114	Mail theft	Yes, under 8 U.S.C. § 1101(a)(43)(G) if defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 2241	Aggravated sexual abuse	Yes, under 8 U.S.C. § 1101(a)(43)(A) (rape) regardless of sentence. Also a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 2242	Sexual abuse	Yes, under 8 U.S.C. § 1101(a)(43)(A) as a rape offense. Also a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 2251	Sexual exploitation of children	Yes under sexual abuse of minor ground regardless of sentence imposed, and under trafficking ground. 8 U.S.C. § 1101(a)(43)(D).	Yes.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	
18 U.S.C. § 2251A	Selling or buying of children	Yes, under sexual abuse of minor ground aggravated felony, regardless of sentence	Yes.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 2252	Certain activities relating to material involving the sexual exploitation of minors	imposed, and under trafficking ground. 8 U.S.C. § 1101(a)(43)(D). Yes, under 8 U.S.C. § 1101(a)(43)(I) as an offense related to child pornography regardless of sentence imposed.	Yes.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	
18 U.S.C. §§ 2261	Interstate domestic violence	Possibly, crime of violence under 8 U.S.C. § 1101(a)(43)(F), if defendant receives a sentence of a year or more.	Yes.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	
18 U.S.C. §§ 2262	Interstate violation of protection order	Possibly, crime of violence under 8 U.S.C. § 1101(a)(43)(F), if defendant receives a sentence of a year or more.	Probably.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	
18 U.S.C. § 2312	Transportation of stolen vehicles	Yes, under 8 U.S.C. § 1101(a)(43)(G) as a conviction for receipt of stolen property.	Yes.	n/a	
18 U.S.C. § 2313	Sale or receipt of stolen vehicles	Probably under 8 U.S.C. § 1101(a)(43)(G) as a receipt of stolen property theft offense if the defendant receives a sentence of a year or more	Likely, depending on the crime committed.	n/a	
18 U.S.C. § 2314	Transportation of	Yes, under 8 U.S.C. §	Yes, where fraud is	n/a	The offense that is

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	stolen goods	1101(a)(43)(G) if the defendant receives a sentence of a year or more.	element of the offense.		least likely to trigger immigration consequences under 18 U.S.C. § 2313 would be transporting a falsely made security knowing the same to be a false security that is made with an unlawful intent.
18 U.S.C. § 2381	Treason	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Yes.	Yes, under national security grounds.	
18 U.S.C. § 2382	Misprision of treason	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Yes.	Yes, under national security grounds.	
18 U.S.C. § 2421	Transportation of minors, generally	Yes, under 8 U.S.C. § 1101(a)(43)(K)(ii) if defendant committed offense for commercial advantage.	Yes.	Yes, under domestic violence ground.	Under dictum in Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining whether offense involved "commercial advantage."
18 U.S.C. § 2422	Coercion and enticement of minors	Yes, under 8 U.S.C. § 1101(a)(43)(K)(ii) if defendant committed	Yes.	Yes, under domestic violence ground.	Under dictum in Supreme Court's decision in

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 2423	Transportation of minors	Yes, under 8 U.S.C. § 1101(a)(43)(K)(ii) if defendant committed offense for commercial advantage.	Yes.	Yes, under domestic violence ground.	<i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining whether offense involved "commercial advantage."
18 U.S.C. § 2701(a)(1)	Unlawful access to stored communication	Possibly a theft offense under 8 U.S.C. § 1101(a)(43)(G) if the defendant receives a sentence of a year or more.	Probably not.	n/a	<i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining whether offense involved "commercial advantage."
18 U.S.C. § 3146	Penalty for failure to	Yes, under 8 U.S.C. §	Probably not.	n/a	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	appear	1101(a)(43)(T) if the crime for which the defendant did not appear is a felony punishable by two years or more.			
18 U.S.C. § 3607	First Offender Act.	No.	No.	No.	
18 U.S.C. § 5031-5042	Juvenile Delinquency	No.	No.	No.	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
19 U.S.C. § 1593	Smuggling merchandise	Probably not.	Yes.	n/a	
20 U.S.C. § 1097(a)	Student loan fraud	Yes, under 8 U.S.C. § 1101(a)(43)(M) fraud offense if loss to the victim exceeds \$10,000.	Yes, where fraud is element of offense.	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
21 U.S.C. § 333(b)	Prescription drug marketing violations	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 841(a)	Manufacture, distribution, or possession with intent to distribute	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 841(c)	Offenses involving listed chemicals	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. §§ 841(f)(1), (2)	Wrongful distribution or possession of listed chemicals	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 842(b)	Manufacture of a controlled substance	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 843(b)	Communication facility	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
21 U.S.C. § 846	Attempt or conspiracy to violate controlled substance laws.	trafficking offense. If the principal offense is an aggravated felony, then an attempt or conspiracy conviction would also be an aggravated felony.	If the principal offense involved distribution or trafficking in a controlled substance, than an attempt or conspiracy conviction for that offense would be a crime involving moral turpitude.	Yes, under controlled substance ground.	
21 U.S.C. § 849(b)	Distribution or possession for sale within 1,000 feet of a truck stop or rest area	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 854(a)	Investment of illicit drug profits	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 856	Establishment of manufacturing operations	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 859	Distribution to persons under age twenty-one	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 860	Distribution or manufacturing in or near schools and colleges	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 860(c)	Employing children to distribute drugs near schools or	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
21 U.S.C. § 861	playgrounds Employment or use of persons under 18 years of age in drug operations	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 861(a)(3)	Receipt of a controlled substance from a person under 18 years of age.	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 861(f)	Distribution of controlled substance to pregnant individual	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 863(a)	Trafficking in drug paraphernalia	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 952(a)	Importation of controlled substances	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Probably.	Yes, under controlled substance ground.	
21 U.S.C. § 953(a)	Exportation of controlled substances	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 959(a)	Possession, manufacture, or distribution of controlled substance	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes, if offense involves distribution.	Yes, under controlled substance ground.	
26 U.S.C. § 2803(a)	Conspiracy to transport spirits without tax stamps	No.	No.	No.	
26 U.S.C. § 5861	Firearm offenses	Yes, under 8 U.S.C. § 1101(a)(43)(E)(iii).	Probably not.	Yes, under firearm ground.	
26 U.S.C. § 7206 (1)	Willfully making and	Yes, under 8 U.S.C. §	Yes.	n/a	In the Third Circuit,

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
26 U.S.C. § 7206 (2)	subscribing to a false statement on a tax return. Aiding and assisting in the preparation of a false tax return	1101(a)(43)(M)(ii) where the loss to the government exceeds \$10,000. Yes, under 8 U.S.C. § 1101(a)(43)(M)(ii) where the loss to the government exceeds \$10,000.	Yes.	n/a	this offense is not an aggravated felony. In the Third Circuit, this offense is not an aggravated felony.
31 U.S.C. § 5322	Criminal violation of banking regulations	No.	No.	n/a	
31 U.S.C. § 5324	Structuring financial transactions to evade reporting requirement and related offenses	Unlikely.	No.	n/a	
42 U.S.C. § 408	Reporting false Social Security number	Yes, as a fraud or deceit crime under 8 U.S.C. § 1101(a)(43)(M)(i) when the loss to the victim exceeds \$10,000.	Possibly. (See comment column).	n/a	A plea to possession 42 U.S.C. § 408(a)(7)(C) for “knowingly possesses a social security card with intent to alter for any purpose” reduces possibility that the offense will be a crime involving moral turpitude. Under Supreme

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	Offense	aggravated felony?	crime involving moral turpitude?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
50 U.S.C. § 421	Revealing identity of certain United States undercover intelligence officers, agents, informants, and sources	Yes, under 8 U.S.C. §§ 1101(a)(43)(L)(ii), (iii).	Probably.	n/a	Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
50 U.S.C. App. § 462	Evading draft	No.	Not a crime involving moral turpitude.	n/a	
50 U.S.C.A. § 1705	Unlawful export of technology	No.	Yes.		

¹ *Matter of Ruiz-Romero*, 22 I & N Dec. 486 (BIA 1999) (holding that parenthetical reference limiting aggravated felony to only smuggling is “merely descriptive” rather than limiting); *United States v. Galindo-Gallegos*, 244 F.3d 1154 (9th Cir. 2001); *Gavilan-Cuate v. Yetter*, 276 F.3d 418 (8th Cir. 2002); *Patel v. Ashcroft*, 294 F.3d 465 (3d Cir. 2002) (ignoring parenthetical and treating harboring conviction as an aggravated felony); *Castro-Espinoza v. Ashcroft*, 257 F.3d 1130 (9th Cir. 2001) (same).

APPENDIX

CHECKLISTS

FOR

REPRESENTING

NONCITIZEN

CLIENTS

NYSDA Immigrant Defense Project

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 Noncitizen Criminal 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 a special 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 (TPS) 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.

**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> <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 ◆ 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 ➤ <i>Crimes covered</i> (possibly even if not a felony): <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> <ul style="list-style-type: none"> ➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana) <hr/> <p>Conviction or <i>admitted commission</i> of a Crime Involving Moral Turpitude (CIMT)</p> <ul style="list-style-type: none"> ➤ Crimes in this category cover 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 (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months <hr/> <p>Prostitution and Commercialized Vice</p>	<p>Conviction or admission of the following crimes bars a finding of good moral character 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 (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 <hr/> <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>Controlled Substance Conviction</p> <ul style="list-style-type: none"> ➤ EXCEPT a single offense of simple possession of 30g or less of marijuana 	<p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p>	
<p>Crime Involving Moral Turpitude (CIMT) Conviction</p> <ul style="list-style-type: none"> ➤ For crimes included, see Grounds of Inadmissibility ➤ 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) ➤ Two CIMTs committed at any time "not arising out of a single scheme" 	<p>CONVICTION DEFINED</p> <p>A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where:</p> <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 nolo contendere 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>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>Firearm or Destructive Device Conviction</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) 		
INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL		
<ul style="list-style-type: none"> ➤ Aggravated felony conviction ➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the United States 		
INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL		
<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 <http://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 ➤

