

ETHICAL OBLIGATIONS TO IMMIGRANT CLIENTS PART II: DETERMINING IMMIGRATION CONSEQUENCES

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PRESENTATION ROADMAP

- **Immigration Law Basics**
- **Consequences of Specific Crimes**
- **Review of Best Practices**

Appendix A: Resources for Clients

Appendix B: Types of Immigration Status

RECALL: STEPS FOR EFFECTIVE REPRESENTATION

1. Intake: **Gather** critical info from client.
2. **Consult** WDA to determine immigration consequences.
3. **Advise** client of potential consequences.
4. **Negotiate** the best outcome based on goals.



Step 2:
Determine
consequences
and options

IMMIGRATION LAW BASICS



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- *Any noncitizen faces possible immigration consequences for any involvement with the criminal justice system.*
- Removal Grounds:
 - Convictions for certain crimes
 - Undesirable Conduct

TYPES OF IMM. CONSEQUENCES

Consequences of criminal offenses will vary based on your client's status:

Status	Consequences
Undocumented Person (UP)	<ul style="list-style-type: none">• ICE apprehension and placement in removal proceedings. (Current stated DHS policy is to go after all UPs in criminal justice system, even if not convicted.)• Trigger bars to obtaining lawful status (many UPs have avenues for obtaining lawful status).

CONSEQUENCES, CONT.

Lawful Permanent Resident, Refugee and COFA resident	<ul style="list-style-type: none">• Trigger deportation grounds.• Trigger inadmissibility if they depart the United States and return.• Trigger bars to naturalization.
Visa Holder (e.g. student, work & tourist visa)	<ul style="list-style-type: none">• If current, consequences = LPRs & refugees/asylees.• If expired, consequences = UPs. See above.
Other (TPS, DACA, Deferred Action)	<ul style="list-style-type: none">• Trigger bars specific to their type of protection.

IMMIGRATION LAW PROVISIONS

Inadmissibility Grounds

(Keep you out)

- Subjects anyone who entered US illegally to removal (deportation)
- Bars lawfully [re-] entry to the US
- Prevents Refugees and UPs from becoming LPRs (getting greencards)
- Precludes LPRs from getting US citizenship

Deportation Grounds

(Kick you out)

- Subjects anyone *lawfully* admitted to US to removal (deportation)
 - LPRs & Refugees
 - Non-immigrant visa holders (tourists, students)
- Bar to avenues to be granted relief from removal by immigration judge
 - Cancellation of removal
- Usually conviction-based



COMMON REMOVAL GROUNDS

Inadmissibility Grounds

- Crimes Involving Moral Turpitude (CIMT)
- Drug Crimes
- “Reason to Believe” drug trafficker
- Mental health/drug abuse
- Lifetime sentence total

Deportation Grounds

- Crimes Involving Moral Turpitude (CIMT)
- Drug Crimes
- DV & VNCO crimes
- Crimes of Child Abuse
- Aggravated Felonies

REMOVAL GROUNDS, CONT.

- **Conduct-based** removal grounds can be triggered by admissions or judicial findings in criminal or civil courts.
- Examples:
 - Judicial findings of engagement in conduct that violated a DV-NCO
 - Evidence supporting a “reason to believe” they are a drug trafficker
 - Evidence of *current* drug or alcohol abuse/addiction
 - Evidence of a “physical or mental disorder with associated harmful behavior”
 - Evidence of engagement in prostitution



Deferred Action for Childhood Arrivals (DACA) Revocation

- Any felony
- Any three or more misdemeanors
- Any “Significant misdemeanor”
 - **DUI**
 - DV offenses
 - Burglary
 - Sexual abuse or exploitation
 - Unlawful possession or use of a firearm
 - Drug sales
- Sentenced to serve more than 90 days in jail

“GOOD MORAL CHARACTER”

- If lack GMC during required period, barred from some waivers, and from becoming US citizen.
- GMC is barred by:
 - Incarceration for 180 days (total - all crimes)
 - Conviction of offenses under 212 or 237
 - Engaged in prostitution
 - Being a “habitual drunkard”
 - Aggregate Sentence of Five Years or More Imposed
 - Aggravated felony (lifetime bar)
 - “Unlawful acts”

But Wait,
THERE'S MORE!

IMMIGRATION CONSIDERATIONS *BEYOND* THE OFFENSE OF CONVICTION: DISCRETION

- Nearly all immigration applications have a discretionary component.
- Thus, important to at least *TRY* to control the record of conviction (judgment and sentence, plea statement and colloquy, factual basis for the plea, and amended complaint).
- **Best practice is always to *plead to the minimum culpable conduct* under the statute of conviction and keep “bad” facts out of the record.**



IMMIGRATION CONSEQUENCES OF SPECIFIC CRIMES

**DRIVING AND DRUG CRIMES; CRIMES
AGAINST PERSONS, PROPERTY, AND
THE STATE**

Possible consequences at issue:

- Revocation of DACA (DUI and negligent driving)
- Drug-related grounds of removal
- CIMT
- Crime of Child Abuse (COCA)


DRIVING CRIMES



DUI – IMMIGRATION CONSEQUENCES



- DUI (still) does not *directly* trigger deportation or inadmissibility grounds (unless THC/drug or child passenger)
- LPR: 5-yr probation delays citizenship
- Student, visitor, work-visas => State Dept. revocation of visa
- UP: Can trigger 'mental health' ground of inadmissibility at consulate
- UP: Bars Deferred Action for Childhood Arrivals (DACA)
- UP: Triggers ICE enforcement priority

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- Drug-related DUI
 - Marijuana DUI
 - DUI passenger under 16
 - Attempting to Elude
 - Reckless Endangerment

DRIVING CRIMES TO
AVOID
(NOT AN EXHAUSTIVE LIST)

DRIVING CRIMES – BEST ALTERNATIVES

Traffic infractions/citations

NVOL

DWLS

Failure to Obey

- Malicious Mischief
- Hit and Run Un/Attended
- Reckless Driving
- Negligent Driving (avoid for undocumented)

DRUG CRIMES

Possible Removal Grounds:

- Drug trafficking
Aggravated Felony
- Drug ground of removal
- “Reason to believe” drug trafficker
- “Drug abuser or addict”



DRUG CRIMES TO AVOID

(NOT AN EXHAUSTIVE LIST)

- PWID, Delivery, Manufac.
- Any drug trafficking
- Drug possession (unless <30g of marijuana)
- Paraphernalia = possession



DRUG CRIMES – BEST ALTERNATIVES

- Solicitation to possess, deliver
(but only in 9th Cir.)
- Rendering Criminal Assistance
- Immigration-safe Drug Court
- *Barr* plea to non-drug charge—for LPRs

Possible Removal Grounds:

- Crime of Violence (COV)
- Crime of Domestic Violence (CODV)
- Stalking
- Violation of DV-NCO
- Crime of Child Abuse (COCA)
- Crime Involving Moral Turpitude (CIMT)

CRIMES AGAINST PERSONS



WA Assault Offenses

Assault 4

WA's Simple battery statute – not a CIMT

Assault 3 - negligence

***Matter of Perez-Contreras* (BIA) – not a CIMT, ag fel, crime of DV**

Assault 2

Almost all prongs add an aggravating factor (strangulation, poison, substantial bodily harm) which make them CIMTs

EXCEPT! A2(e) - With intent to commit a felony, assaults another.
New developments make A2 not “divisible” and not a COV- but is it still a CIMT??

Best Practice for Defenders

Assault 4

- ✓ Plea language: Assault only by an "unconsented" or "offensive" touching

Assault 3

- ✓ Best felony crime against a person (use for sex crimes w/ SM enhancement and for DV crimes)

Assault 2(e)

- ✓ Don't name the felony
- ✓ If you must, state that the intended felony was MM2
 - ✓ Avoid a 12 month sentence

**We have advisories on Misdemeanor and Felony Assault, and Sexual Mot.*

DV VNCOs = Risky

RESTRAINING ORDER

Violate an order issued under 10.99 or 26.50

- Don't mention statute in plea statement or stipulate to a factual basis that connects to originating DV order; can't have a court "determination" of DV order violation.

Violate an order issued under other statute

- Mention the statute (eg. 9A.46) in plea statement.

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- **Assault 1 (Aggravated felony)**
 - **Assault 2 (CIMT and AF with 12 mo sentence)**
 - **DV-VNCO**
 - **Felony Harassment**
 - **Communicating with a Minor for Immoral Purposes**
 - **Rape, Rape of a Child**
 - **Child Molestation**
 - **Assault of a Child**
 - **Any crime involving harm to a child**

CRIMES AGAINST PERSONS - BEST ALTERNATIVES

Misdemeanors

- Criminal Trespass
- DisCon
- MM3
- A4 (“offensive touching”)
- Non-DV Anti-Harassment order

Felonies (even with DV or S/M)

- Assault 3(f)
- MM2

Possible Removal Grounds or Bars at Issue:

- Bar to DACA (Burglary)
- CIMT
- Theft AF
- Fraud AF

CRIMES AGAINST PROPERTY



PROPERTY CRIMES TO AVOID (NOT AN EXHAUSTIVE LIST)

CIMTs:

- Any crime w/fraud as an element, welfare fraud
- Taking Motor Vehicle I
- Forgery
- ID Theft I
- Burglary I
- Trafficking in Stolen Property I & 2
- Arson

Aggravated Felonies:

- Any property crime with a 12 mo or more sentence
- Any fraud crime with a loss of \$10,000

PROPERTY CRIMES – BEST ALTERNATIVES



- Disorderly conduct
- Criminal Trespass
- Mal. Mischief
- Poss. ID of Another
- Theft??
- Vehicle Prowl
- Burg 2
- Reckless burning 2?

Possible Removal Grounds:

- CIMT
- Obstruction of Justice AF
- Fraud AF

CRIMES AGAINST THE STATE



CRIMES AGAINST STATE TO AVOID

(NOT AN EXHAUSTIVE LIST)

- Patronizing a prostitute/sexual exploitation
- Interfering w/911 call
- Bail jumping (on any felony)
- Crimes related to interfering with ongoing judicial proceedings if sentence is 12+ months (e.g. witness tampering)
- Welfare fraud

BEST ALTERNATIVES

(NOT AN EXHAUSTIVE LIST)

- Obstructing a law enforcement officer
 - Disorderly conduct
 - Malicious mischief

THE 5-YR TOTAL SENTENCE *INADMISSIBILITY* GROUND

- A non-citizen is inadmissible if she has been sentenced to a total of 5 years of confinement (or 1,825 days) for two or more offenses.
 - Sentence to confinement *imposed* is what counts (so incl. suspended time). Doesn't matter if less time actually served.
- Affects LPRs once they depart the US; deportable upon return;
 - Bars the key form of relief for UPs (cancellation);
 - Applies to anyone subject to the grounds of inadmissibility.
 - No washout or time limits.



REVIEW OF BEST PRACTICES

BEST PRACTICES

- ✓ Identify non-U.S. citizen clients early in the case.
- ✓ Consult WDA to assess immigration consequences.
- ✓ Advise clients of potential consequences in a meaningful way.
- ✓ Negotiate for best outcome as per client's goals.

ADDITIONAL BEST PRACTICES

- Plead only to minimum conduct
- Keep harmful records out of the “record of conviction” to prevent them from being used against the client.
- Make records available for clients
- Notify NWIRP if client is detained: (253) 383-0519 or email Tacoma at tacoma@nwirp.org.
- Coordinate with immigration counsel, if any

CONTACT US

For Technical Case Assistance: <http://www.defensenet.org/immigration-project/case-assistance>

Resources: <http://www.defensenet.org/immigration-project>

Become a member: <https://defensenet.org/about/renew-your-membership-or-become-a-wda-member/>



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APPENDIX A: RESOURCES FOR CLIENTS

RESOURCES FOR CLIENTS

- [Guide to Immigration Proceedings for Criminal Defendants \(English & Spanish\)](#)
- [Your Rights When Questioned by Immigration Agents in Jail \(English & Spanish\)](#)
- [NWIRP: A Guide to the Northwest Detention Center](#)
- [NWIRP: Una Guía al Centro de Detención](#)
- [NWIRP: Guide for Detained Immigrants \(English & Spanish\)](#)
- [Protect Yourself From Immigration Raids \(English & Spanish\)](#)
- [ILRC: Family Preparedness Plan \(English & Spanish\)](#)
- [IDP: Emergency Preparedness \(English and Spanish\)](#)

For advisories on immigration consequences of specific crimes and other resources, visit: <https://defensenet.org/resource-category/immigration-resources/>



APPENDIX B: TYPES OF IMMIGRATION STATUS

UNDOCUMENTED PERSONS (UP)



Entered unlawfully



Entered on a visa that has expired

Any UP who has been arrested is deportable and an enforcement priority.

Some UPs have paths to lawful status; crimes can bar these paths.

Main Goals (if client wants to stay in U.S.):

- Avoid ICE apprehension and placement in removal proceedings.
- Avoid triggering crime-based bar to obtaining lawful status.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

- **Benefits:**

- Defers deportation
- Work permit available



- **Current DACA news:**

- Policy was rescinded by Trump in 2017, but cts. enjoined.
- Ongoing federal litigation pending...

- **For more info:** <https://defensenet.org/update-deferred-action-for-childhood-arrivals/>

TEMPORARY STATUS [“NON-IMMIGRANTS”]

- Visa can be revoked by Dept. of State after even just an arrest.
- Students also have to worry if school expels them => revocation
- Revocation of visa not same as deportable; can stay until date on I-94 (unless issued Notice to Appear/placed in removal proceedings)

Main Goals (if client wants to stay in U.S.):

- Avoid triggering crime-based ground for losing lawful status.
- Avoid triggering crime-based bar to gaining permanent status.
- Avoid revocation of visa (connect client w/imm atty).

LPR, REFUGEE, COFA RESIDENT

(admitted in lawful status)



Has a “Green Card”



COFA resident (I-94)



Came to the U.S. as a Refugee (I-94)

Main Goals:

- Avoid conviction triggering crime-based deportation grounds.
- Avoid triggering inadmissibility grounds.
- Preserve paths to keep lawful status.

COMPACT OF FREE ASSOCIATION

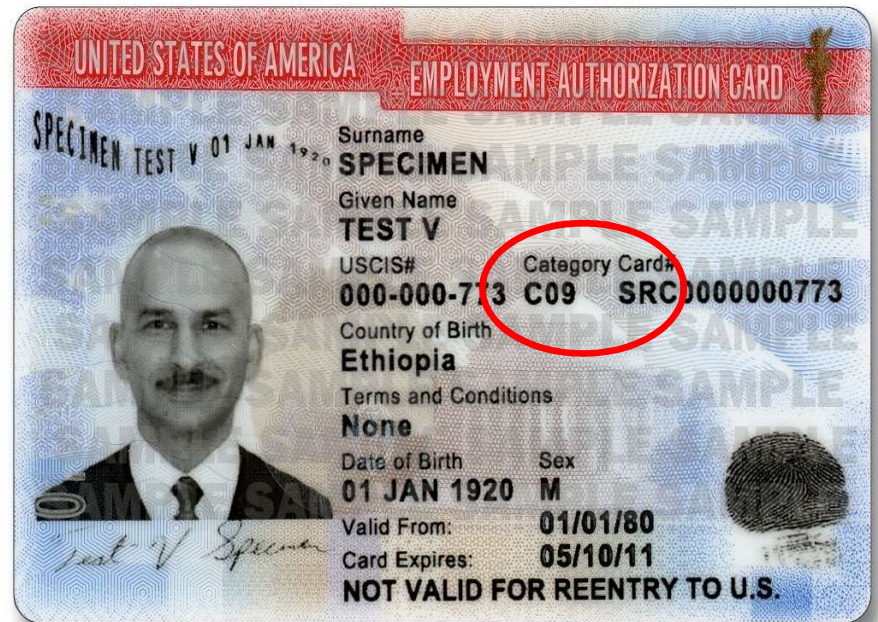
- Citizens of the **Free Associated States** (Marshall Islands, Federated States of Micronesia, and Palau) are allowed to **live, work and study** in the U.S. **indefinitely and without visas**, under the Compact of Free Association.
- They are subject to removal under the criminal grounds of **deportability**, just like lawful permanent residents (LPRs).
 - Unlike LPRs, they cannot waive deportation if they trigger a ground.
- If they travel outside the U.S. and seek to return here, they will be subject to the criminal grounds of **inadmissibility**.

“GREEN CARD” VS “EAD”

PERMANENT RESIDENT CARD (I-551)



EMPLOYMENT AUTHORIZATION DOCUMENT



EMPLOYMENT AUTHORIZATION

- Legal Permanent Residents (LPRs) and COFA are authorized to work.
- Some temporary status permit Employment Authorization Document (aka “work permit”) Valid for a certain period of time
- Sometimes get Employment Authorization while application pending.
- If Employment Authorization can get Social Security Number.
- If no legal status and no application pending, then usually no work permit.