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Warning to Noncitizens Pleading to Solicitation of Drug Offenses, RCW § 9A.28.030

- Solicitation to commit a drug crime under RCW § 69.50.401 is not a deportable drug crime or drug-trafficking crime **in the Ninth Circuit only. The Board of Immigration Appeals will still apply its specific, contrary decision everywhere else.**

- A lawful permanent resident (LPR) who has a conviction for solicitation to possess with intent *must not* leave the United States and attempt to re-enter without first getting expert immigration advice. Solicitation may still trigger the "reason to believe" a person is a drug trafficker ground of inadmissibility. In addition, if the person attempts to re-enter the U.S. outside the Ninth Circuit, the person will be subject to the law of that circuit.

- An LPR with a solicitation conviction should not travel outside of the nine states of the Ninth Circuit; in any other circuit a solicitation conviction will be a drug or drug trafficking crime.[1]

- Because there is a circuit split, and the solicitation exception could be eliminated either legislatively or judicially, counsel should make a record of the client's reliance on current case law—*Coronado-Durazo v. INS*, 123 F.3d 1322 (9th Cir. 1997), and *Leyva-Licea v. INS,* 187 F.3d 1147 (9th Cir. 1999)—in taking a plea.

- A solicitation conviction does not prevent the person from being subject to the **"reason to believe" a person was involved with trafficking** ground of inadmissibility if the original charge is more than simple possession or the police report indicates trafficking. This ground is conduct based and does not require a conviction.[2]

- No case has extended *Coronado-Durazo* to the drug ground of *inadmissibility.* A noncitizen applying for legal status, or for admission into the U.S., will be subject to this ground of inadmissibility.[3]

- Since a drug-trafficking offense is a crime involving moral turpitude (CIMT), solicitation to commit such an offense will also be charged as a CIMT.[4] *Solicitation to possess is not a CIMT.*

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[1] Unfortunately, even noncitizens residing within the Ninth Circuit are not completely safe, since once a person is detained by ICE (DHS), the venue is set by the government's decision where to file the charging document, and people are often shipped to detention centers far from home.

[2] 8 U.S.C. § 1182(a)(2)(C). Any credible evidence may be considered under this ground of inadmissibility. Thus, to the extent possible, limit any evidence of dealing/trafficking in the record and in the factual basis.

[3] The language of the drug inadmissibility ground mirrors that of the deportation ground in that it omits the anticipatory offense of solicitation. *Compare* 8 U.S.C. § 1182(a)(2)(A)(i)(ii) with 8 U.S.C. § 1227(a)(2)(B)(i). Local immigration judges have applied *Coronado* to the drug inadmissibility ground; however, there is no binding precedent.

[4] *Barragan-Lopez v. Mukasey,* 508 F.3d 899, 903 (9th Cir. 2007); *Matter of Khanh Hoang Vo*, 25 I. & N. Dec. 426, 426 (BIA 2011). If the underlying offense is delivery or PWID, ideally, specify the drug as marijuana and that no remuneration was involved, since there is now an argument this offense is not categorically a CIMT.