

Defending Immigrants in the Ninth Circuit
10th Edition, 2009 - 2013 Consolidated Update

Update Table of Contents

Annotated Table of Contents Table of Contents 1

Chapter 1 Overview

§ 1.1 Criminal Defense: Special Factors in Representing Noncitizens 1
 § 1.3 Removal Proceedings and the Definition of Admission 2
 § 1.4 Rules for Permanent Residents Who Travel Abroad 6
 § 1.6 Verifying Immigration Status; Immigration and Criminal Records 7

Chapter 2 Definition of Conviction, Categorical Analysis

§ 2.2 Juvenile Delinquency Dispositions 9
 § 2.3 Appeal and Issues of Finality 9
 § 2.4 Infractions 10
 § 2.5 Alternate Dispositions and the Definition of Conviction 12
 § 2.9 Proof of Conviction 13
 § 2.11 The Categorical Approach, Divisible Statutes and the Record of Conviction 14
 A. Overview: The Categorical Approach in Four Steps 14
 B. Elements of the Generic Definition 18
 C. The Rule of Lenity 24
 D. Defeating a Categorical Match by Identifying Punishable Conduct That Does Not Come within the Generic Definition: *Duenas-Alvarez* and the Likelihood of Prosecution 25
 E. When May the Court Consult the Record of Conviction? The “Missing Element” Rule, *Aguila-Montes de Oca* and the Coming Supreme Court Decision in *Descamps* 28
 F. Modified Categorical Approach, Documents to be Consulted: Pleas, Charges, Abstracts, Minute Order, Conjunctive Language, Documents Stipulated to as a Factual Basis 44
 G. Crimes of Domestic Violence: Proving the Domestic Relationship 62
 H. When Does the Categorical Approach Not Fully Apply: “Circumstance-Specific” Provisions under *Nijhawan v. Holder* 63
 I. When Does the Categorical Approach Not Fully Apply: Crimes Involving Moral Turpitude under *Matter of Silva-Trevino* 66
 J. Who Decides? Federal Court Deference to the BIA’s Interpretation under *Chevron* and *Brand X* 75
 K. Burden of Proof in Deportability and Applications for Relief: Ninth Circuit Reverses the Burden of Proof in *Young v. Holder* 96
 § 2.12 Accessory after the Fact and Misprision of Felony 102
 § 2.12 Attempt, Conspiracy 104

§ 2.13	Solicitation, Offering	105
§ 2.14	Aiding and Abetting.....	106
Chapter 2A	Representing Juveniles	
§ 2A.1	Overview of Defense Strategies, Using This Chapter	107
§ 2A.3	Youth Convicted as Adults	107
§ 2A.4	Representing Minors in Immigration Proceedings and § 2A.6 Checklist: Immigration Relief Available to Immigrant Youth	107
§ 2A.7	Immigration Enforcement and Screening in the Juvenile Justice System	108
Chapter 3	Controlled Substances	
§ 3.2	Eligibility for Relief in Immigration Proceedings	110
§ 3.4	Safe Havens	110
§ 3.5	Controlled Substance Aggravated Felonies	121
§ 3.6	Eliminating pre-July 15, 2011 Convictions Using Rehabilitative Relief under the Overruled <i>Lujan-Armendariz</i> Decision.....	126
§ 3.10	Inadmissible if DHS or IJ Has “Reason to Believe” That the Noncitizen Has Been, or Assisted, a Drug Trafficker	132
Chapter 4	Crimes Involving Moral Turpitude	
§ 4.2	The Petty Offense Exception	135
§ 4.5	Crime Involving Moral Turpitude Deportation Ground	137
§ 4.8	What Constitutes a Crime Involving Moral Turpitude	138
Chapter 5	Sentences	
§ 5.3	The Immigration Effect of Sentences	174
§ 5.4	Reduction of Sentence	176
§ 5.6	Aggravated Felonies: Offenses That Are Aggravated Felonies Based on Sentence; Bar to Withholding of Removal, and Bar to the Former § 212(c) Relief	176
Chapter 6	Other Offenses, including Firearms, Prostitution, Domestic Violence, Child Abuse	
§ 6.1	Offenses Involving Firearms, Destructive Devices and Arson.....	178
§ 6.2	Prostitution	181
§ 6.3	HIV Positive.....	183
§ 6.5	Mental or Physical Condition Posing a Threat	184
§ 6.7	Security Grounds	184
§ 6.8	Failure to Register as an Alien; Conviction of Falsification of Documents	184
§ 6.12	Alien Smuggling	185
§ 6.15	Domestic Violence, Child Abuse.....	186
§ 6.16	False Claim to Citizenship	204
§ 6.18	High Speed Chase	205
§ 6.21	Gang Activity.....	206
§ 6.22	New Deportation Ground for Failure to Register as a Sex Offender.....	207

Chapter 7	Good Moral Character	
§ 7.1	Good Moral Character and Discretion	208
§ 7.2	Grounds of Inadmissibility That Are Bars to Establishing Good Moral Character	208
Chapter 8	Post-Conviction Relief	
§ 8.9	Verifying Exact Criminal History: Criminal Records and “Rap Sheets”	210
§ 8.20	Overview of Forms of Relief; Immigration Effect	210
§ 8.23	Motion to Withdraw Guilty Plea under Penal Code § 1018	211
§ 8.24	Direct Appeal from Conviction	212
§ 8.25	Ineffective Assistance of Counsel	213
§ 8.26	Ineffective Assistance of Counsel: Attacking the Conviction	216
§ 8.27	-- Ineffective Assistance of Counsel -- Attacking the Sentence	219
§ 8.28	-- Arguing Prejudice	219
§ 8.29	The Requirement of Custody	220
§ 8.30	Ineffective Assistance: Interviewing Original Defense Counsel	222
§ 8.32	Other Grounds for <i>Habeas corpus</i>	222
§ 8.33	Motion to Vacate on Constitutional Grounds	224
§ 8.34	Statutory Motion to Vacate Based on Judge’s Failure to Provide PC § 1016.5 Warning of Possible Adverse Immigration Consequences	225
§ 8.35	Writ of Error <i>Coram Nobis</i>	227
§ 8.42	Forms of Post-Conviction Relief from Sentence	230
§ 8.44	Grounds for Invalidating Sentences	232
§ 8.45	Outcomes that Minimize Adverse Immigration Consequences after the Conviction Has Been Vacated	233
§ 8.47	Dismissal of Charges under Penal Code § 1385	234
§ 8.48	Plea Negotiations -- the Defense Position	234
§ 8.49	Expungements under PC §§ 1203.4 and 1203.4a -- Requirements and Immigration Effect	235
§ 8.54	Post-Conviction Reduction from Felony to Misdemeanor under Penal Code § 17	238
§ 8.59	Executive Pardons	238
Chapter 9	Aggravated Felonies	
§ 9.4	Aiding and Abetting, Attempt, Solicitation, Conspiracy	240
§ 9.5	Standards Used to Determine Which Offenses Are Aggravated Felonies	242
§ 9.6	Effective Dates, Retroactivity	243
§ 9.7	Aggravated Felonies Defined by Sentence	244
§ 9.9	Bribery of a Witness, Commercial Bribery	245
§ 9.10	Burglary	246
§ 9.11	Child Pornography	249
§ 9.12	Counterfeiting	250
§ 9.13	Crime of Violence	251
§ 9.17	Failure to Appear	276
§ 9.18	Firearms, Explosives and Arson Offenses as Aggravated Felonies	277
§ 9.20	Fraud or Deceit with a Loss of \$10,000	282

§ 9.22	Murder.....	287
§ 9.24	Obstruction of Justice	287
§ 9.28	Rape	291
§ 9.32	Sexual Abuse of a Minor	292
§ 9.35	Theft.....	308
§ 9.42	§ 212(h) Waivers and Aggravated Felonies.....	314
§ 9.50	Criminal Penalties under 8 USC § 1326(b) for Illegal Re-entry	315

Chapter 11 Eligibility for Relief

§ 11.0	Burden of Proof.....	317
§ 11.1	LPR Cancellation of Removal under INA § 240A(a) and the Former § 212(c) Relief	320
§ 11.2	Section 212(h) Relief	330
§ 11.4	Cancellation of Removal for Non-Permanent Residents; Former Suspension of Deportation INA § 240A(b)(1), 8 USC § 1229b(b)(1)	342
§ 11.5	Creation of a Record of Admission (Registry)	347
§ 11.7	Immigration through a Family Visa Petition	348
§ 11.8	Immigration through Employment	348
§ 11.10	Relief under the Violence Against Women Act	349
§ 11.14	Asylum and Refugee Status.....	349
§ 11.15	Withholding of Removal.....	349
§ 11.15	Convention Against Torture (CAT).....	352
§ 11.17	Temporary Protected Status (TPS)	353
§ 11.18	U Visas.....	354
§ 11.19	Special Immigrant Juveniles	354
§ 11.21	Naturalization.....	355
§ 11.22	Voluntary Departure	355
§ 11.23	The Legalization Programs of the 1980's.....	355
§ 11.25	Deferred Action Status and Prosecutorial Discretion	356
§ 11.26	Private Bills.....	356
§ 11.28	Detention.....	357
§ 11.30	Deferred Action for Childhood Arrivals.....	372

Chapter 12 State Enforcement

§ 12.3	Reporting Arrests and Convictions.....	379
§ 12.5	Immigration Holds and Detainers.....	379
§ 12.8	Detention of Juveniles.....	380

APPENDICES

Appendix I: The Quick Reference Guide to California Convictions

Appendix II: Practice Advisories and Tools

Appendix III: Government Documents

Appendix IV: Table of Cases

RESOURCES

Sample Defendant Immigration Questionnaire: Basic Information

Defendant Immigration Questionnaire: Possible Relief