



FLOWCHART ON CRIMES INVOLVING MORAL TURPITUDE

By Haley Millner, Law Office of Helen Lawrence
and Kathy Brady, ILRC

A “crime involving moral turpitude” (“CIMT”) is a technical term for a category of criminal offenses that can make a noncitizen deportable, inadmissible, barred from relief, and/or subject to mandatory detention.

Whether a CIMT actually triggers each penalty depends on a number of factors set out in the Immigration and Nationality Act, such as the number of CIMTs, date of commission, imposed and/or potential sentence, and whether there was a conviction versus a formal admission of the conduct.

To help make the CIMT analysis easier and more accurate, this advisory takes some common rules about CIMTs and presents them in the form of four flow charts. You can enter your client’s information to determine whether the person is:

- 1) Inadmissible, and barred from establishing good moral character, under the CIMT ground;
- 2) Deportable under the CIMT ground;
- 3) Ineligible to apply for non-LPR cancellation due to one or more CIMTs; and
- 4) Subject to mandatory detention based on one or more CIMTs.

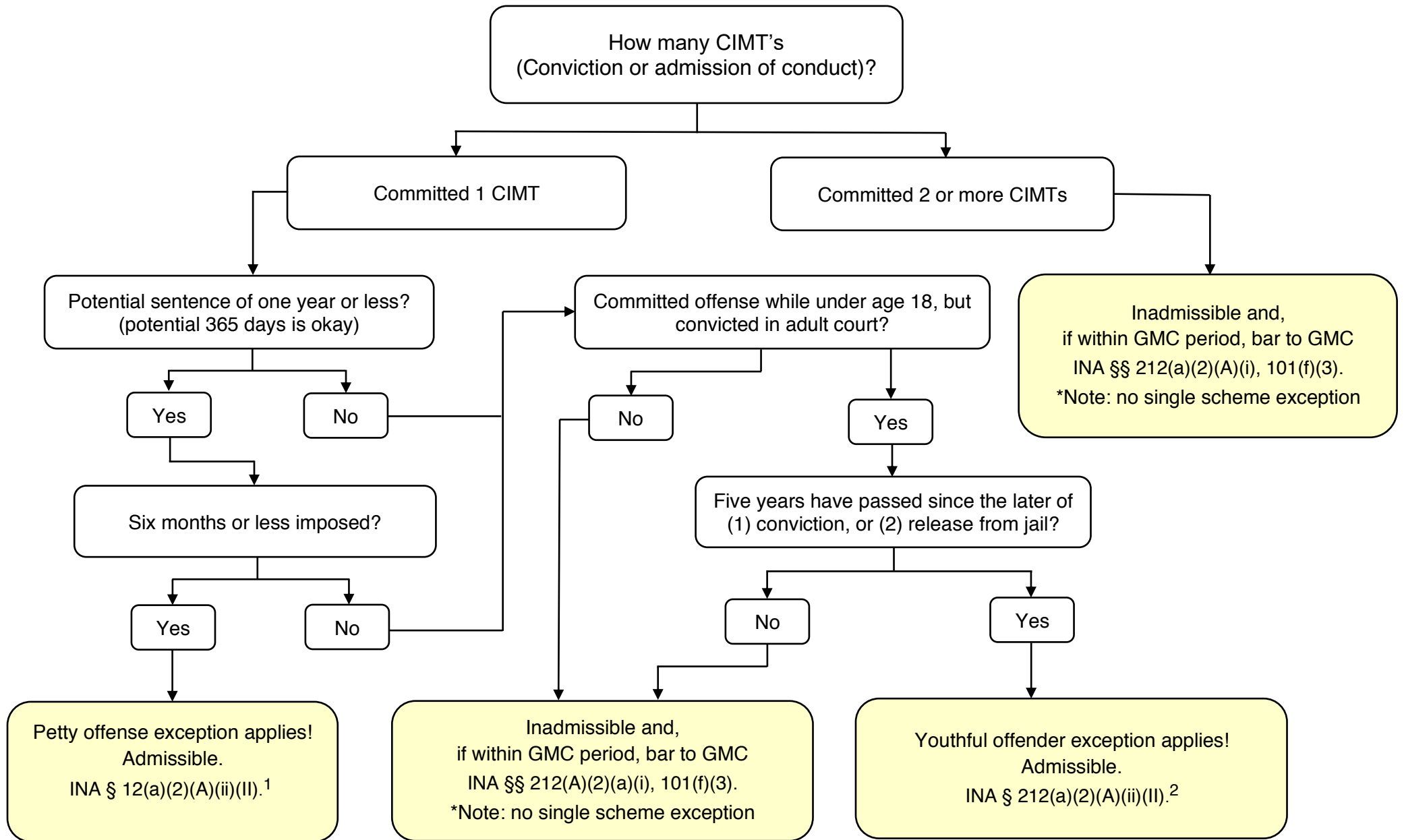
Additional resource:

For information about all the ways that a CIMT can affect your client, see a companion advisory:

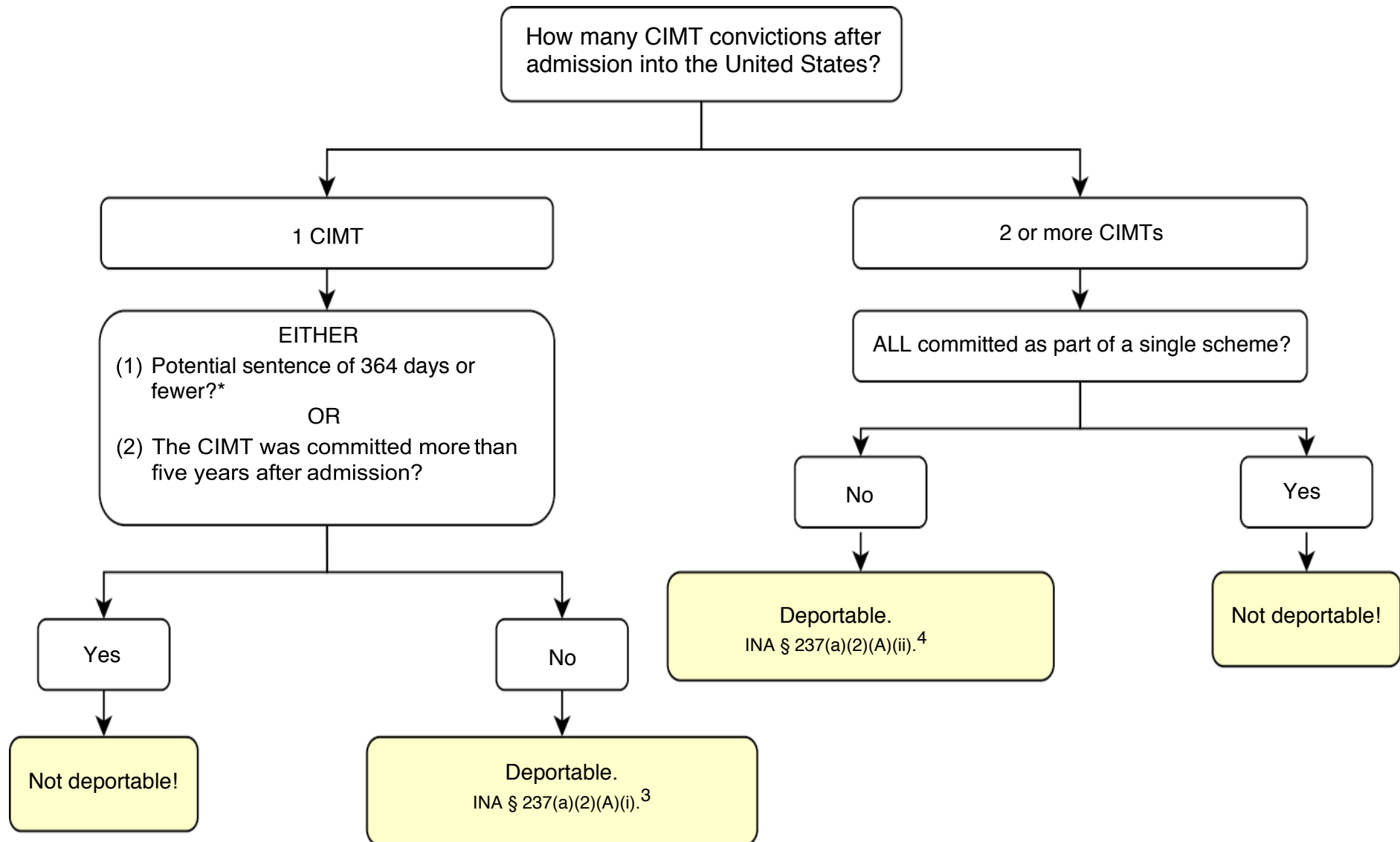
ILRC, *Practice Advisory: All Those Rules About Crimes Involving Moral Turpitude* (June 2020) available at <https://www.ilrc.org/all-those-rules-about-crimes-involving-moral-turpitude>. This advisory covers thirteen major rules regarding CIMT penalties and defenses, and includes an analysis of relevant recent cases, such as *Barton v. Barr*, 140 S.Ct. 1442 (2020).

CRIMES INVOLVING MORAL TURPITUDE

Inadmissibility and Bars to Good Moral Character

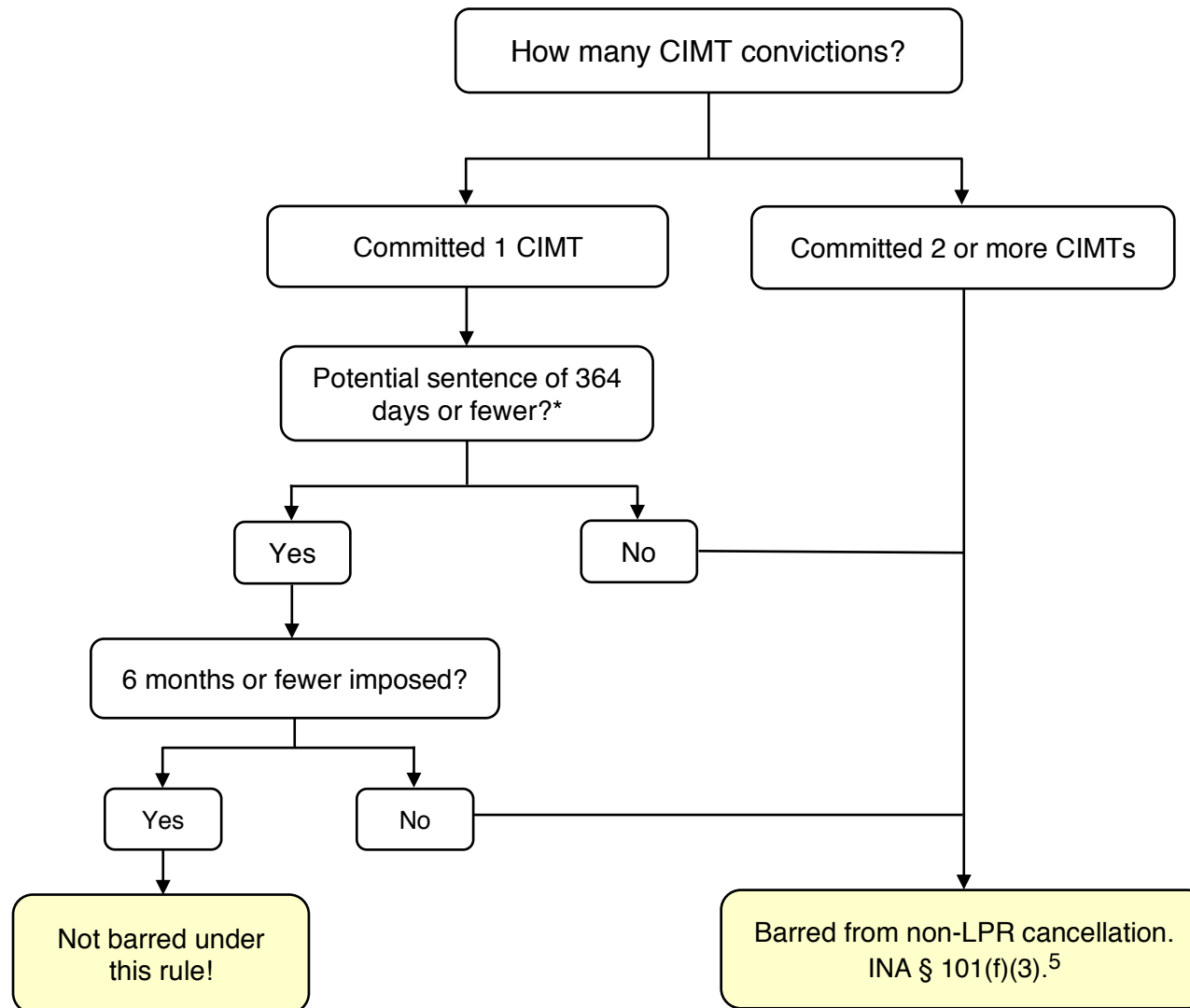


Deportability



*For now, as the BIA has interpreted PC § 18.5(a), a California "one-year" misdemeanor conviction is considered to have a potential sentence of 364 days or fewer *if* it occurred on or after 1/1/2015.

Non-LPR Cancellation

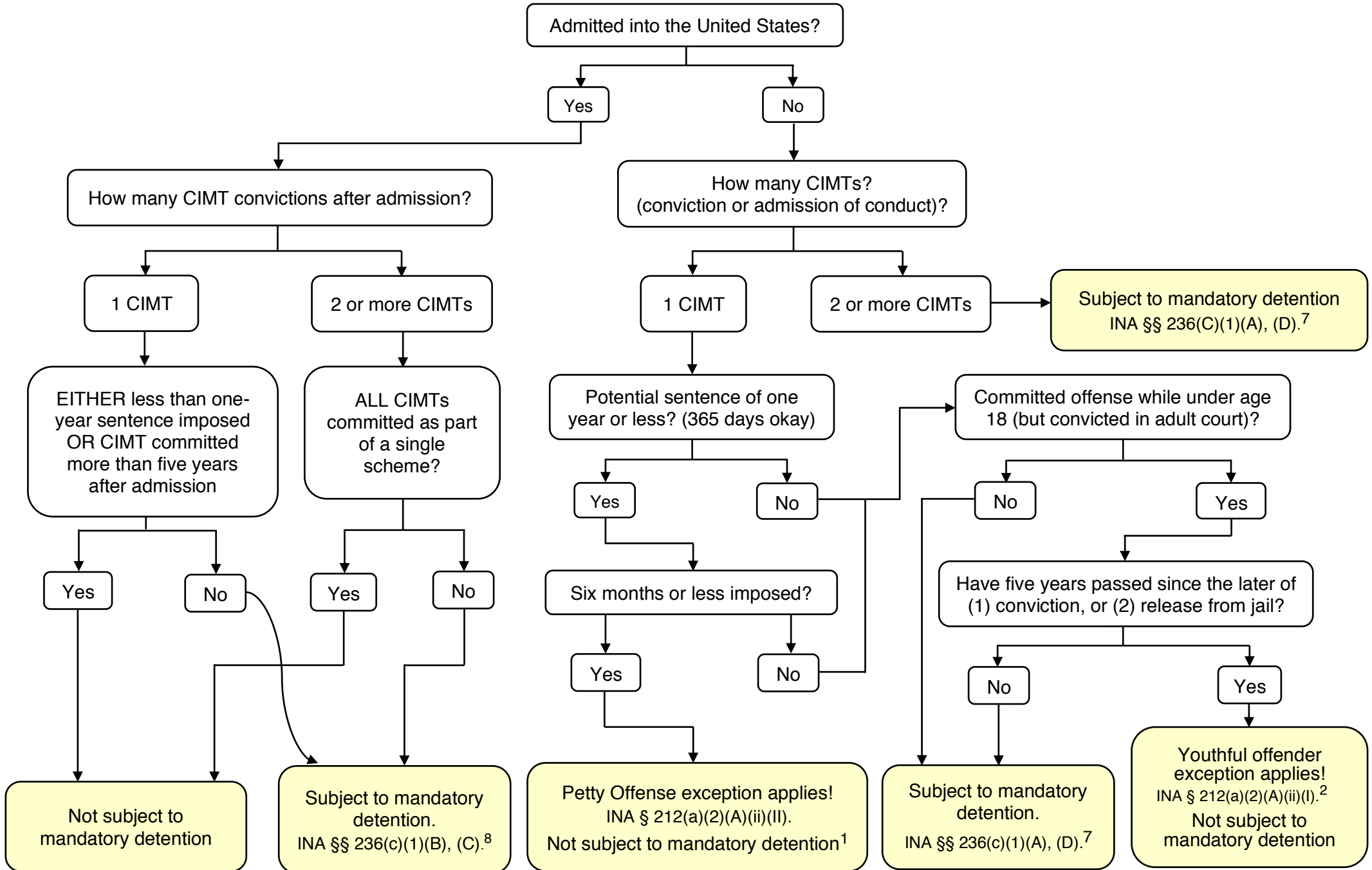


Also must not be described in the CIMT inadmissibility ground, for clock-stopping purposes. A conviction or an admission of a CIMT is a bar, unless it comes within the petty offense or youthful offender exceptions (see p.1).
 INA § 240A(d).⁶

Also requires 10 years GMC (see p.1).

*For now, as the BIA has interpreted PC § 18.5(a), a California "one-year" misdemeanor conviction is considered to have a potential sentence of 364 days or fewer *if* it occurred on or after 1/1/2015.

Mandatory Detention



Endnotes

For further discussion of these and other CIMT provisions, see ILRC, *Practice Advisory: All Those Rules About Crimes Involving Moral Turpitude* (June 2020) at <https://www.ilrc.org/all-those-rules-about-crimes-involving-moral-turpitude>

1. The petty offense exception applies to the inadmissibility, but not the deportability, ground based on crimes involving moral turpitude ("CIMT"), and also to the bar to establishing good moral character based on CIMTs. Immigration and Nationality Act ("INA") §§ 212(a)(2)(A)(i)(II), 101(f)(3). The petty offense exception requires a potential sentence that does not "exceed" one year; therefore, one can qualify for this exception even without California P.C. § 18.5(a), which lowers a California misdemeanor's potential sentence from a year to 364 days. See endnote 4. The potential sentence must be one year or less, the sentence imposed must be six months or less, and the person must have committed just one CIMT.
2. Like the petty offense exception, the youthful offender exception applies to the inadmissibility, but not the deportability, ground based on CIMTs, and also to the bar to establishing good moral character based on CIMTs. See INA §§ 212(a)(2)(A)(i)(I), 101(f)(3). The youthful offender exception applies to a person who committed a single CIMT, while under age 18, and was convicted in adult court, if the conviction and release from any resulting imprisonment occurred at least five years before the current application. (Note that if the youth's case had been handled in delinquency rather than adult criminal proceedings, they would not need this exception, because they would not have a conviction or admission for immigration purposes.)
3. A person is deportable under INA § 237(a)(2)(A)(i) for committing an offense within five years of "admission" (see *Matter of Alyazji*, 25 I&N Dec. 397 (BIA 2011)), if it results in a CIMT conviction with a potential sentence of *one year or more*. California Penal Code § 18.5(a) provides that California "one-year" misdemeanors have a potential sentence of 364 days or fewer, regardless of date of conviction. Thus, a misdemeanor conviction should not be able to trigger this ground. However, the Board of Immigration Appeals ("BIA") has refused to apply P.C. § 18.5(a) to convictions from *before* January 1, 2015; it holds that those convictions have a potential sentence of a year and thus can trigger the deportation ground. For example, under the BIA's current rule, a California misdemeanor conviction from February 2015 would avoid the one-year potential sentence problem, but one from November 2014 would not. See *Matter of Velasquez-Rios*, 27 I&N Dec. 470 (BIA 2018), and ILRC practice advisory at <https://www.ilrc.org/matter-velasquez-rios-and-364-day-misdemeanors>.
4. A person is deportable for two or more CIMT convictions after admission, unless the convictions arose from a "single scheme of criminal misconduct." INA § 237(a)(2)(A) (ii). The BIA defines single scheme to mean essentially from the same incident, where the perpetrator has no time to reconsider continuing with the criminal plan. *Matter of Islam*, 25 I&N Dec. 637, 638 (BIA 2011).
5. Regarding the conviction bar to non-LPR cancellation, INA § 240A(b)(1)(C), see *Matter of Cortez*, 25 I&N Dec. 301 (BIA 2010), *Matter of Pedroza*, 25 I&N Dec. 312 (BIA 2010). This rule is somewhat in flux, in that the Ninth Circuit questioned this interpretation because it does not address the deportation ground requirement that the offense was committed within five years; the BIA replied by affirming its interpretation, and the Ninth Circuit has not yet responded. See *Lozano-Arredondo v. Sessions*, 866 F.3d 1082, 1088-93 (9th Cir. 2017), *Matter of Ortega-Lopez*, 27 I&N Dec. 382 (BIA 2018). Advocates can expect the *Cortez* rule to be applied in immigration courts and the BIA, but can object and preserve the issue on appeal to the Ninth Circuit. At the same time, they should explore the possibility of obtaining post-conviction relief to eliminate the conviction.

6. An applicant for non-LPR cancellation must establish ten years of continuous physical presence in the United States, occurring immediately prior to filing the application. INA § 240A(b)(1)(A). Commission of certain offenses will stop the accrual of the ten years, sometimes referred to as “stopping the clock.” INA § 240A(d). The BIA has held that once the ten-year clock stops under INA § 240A(d) due to commission of an offense, the clock cannot re-start to accrue a new period of physical presence. Therefore, regardless of the date of commission of the offense, the non-LPR cancellation case may well be lost. *See Matter of Mendoza-Sandino*, 22 I&N Dec. 1236, 1239-42 (BIA 2000), *but see* dissent.

The Supreme Court held that under INA § 240A(d), the cancellation clock stops if the applicant is described in the crimes grounds of inadmissibility at INA § 212(a)(2); this applies to all applicants, even those who were admitted to the United States. *See Barton v. Barr*, 140 S.Ct. 1442 (2020) and see ILRC, *Practice Alert: The Impact of Barton v Barr on Eligibility for Cancellation of Removal* (May 2020) at <https://www.ilrc.org/practice-alert-impact-barton-v-barr-eligibility-cancellation-removal>. Applying this to CIMTs, if a person has been convicted of, or made a qualifying admission that they committed, a CIMT that does not come within the petty offense or youthful offender exceptions, their clock stops as of the date they committed the offense. *See* discussion of *Barton*, INA § 240A(d), and non-LPR cancellation at ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (June 2020), cited above.

7. INA §§ 236(c)(1)(A), (D) require mandatory detention of people who are subject to the grounds of inadmissibility (because, e.g., they are seeking admission at a border or entered without inspection) and are inadmissible under the crimes grounds. A person who comes within the petty offense or youthful offender exceptions to the CIMT inadmissibility ground is not inadmissible.
8. INA §§ 236(c)(1)(B), (C) require mandatory detention of people who are subject to the grounds of deportability (because, e.g., they were admitted or adjusted status), and are deportable under the crimes grounds, except: (a) the domestic violence ground, INA § 237(a)(2)(E), does not trigger mandatory detention; and (b) an altered form of the deportation ground based on one CIMT triggers mandatory detention: the CIMT conviction committed within five years of admission must have had a sentence *imposed* of a year or more (not just a *potential* sentence of a year or more, as in the deportation ground).