Helping Immigrant Clients with Proposition 47 and Other Post-Conviction Legal Options

APPENDIX

CALIFORNIANS FOR SAFETY AND JUSTICE

IMMIGRANT LEGAL RESOURCE CENTER ilrc

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA

APPENDIX A

Kathy Brady
Senior Staff Attorney

Kathy Brady has served with the Immigrant Legal Resource Center since 1987. Her expertise includes the immigration consequences of criminal convictions; issues affecting immigrant children and mixed families; immigration consultant and consumer fraud; naturalization; family immigration; legal status for immigrant victims of domestic violence through the Violence Against Women Act provisions (VAWA); and trial skills. She is the primary author of *Defending Immigrants in the Ninth Circuit*, which in its current form and as the former *California Criminal Law and Immigration* has been a publication since 1990. With Norton Tooby, she is the co-author of the 2014 CEB publication *California Criminal Defense of Immigrants*, and for many years was co-author of the section on defending noncitizens in the CEB manual *California Criminal Law: Procedure and Practice*. She also is a co-author of the ILRC's *Special Immigrant Juvenile Status* and the *Immigration Benchbook for Juvenile and Family Courts*. She has helped found coalitions and projects to address these issues, including serving as a co-founder of the Defending Immigrants Partnership and the Immigrant Justice Network. She authored briefs in key Ninth Circuit cases on immigration and crimes. In 2007, she received the Carol King award for advocacy from the National Immigration Project of the National Lawyers Guild, and she served as a Commissioner to the ABA Commission on Immigration from 2009-2012. Before serving at ILRC, Kathy was in private practice with the immigration firm of Park and Associates. She is conversant in Spanish.

APPENDIX B

Rose Cahn
Senior Soros Justice Fellow

Rose Cahn is one of the chief advocates and educators in the field of post-conviction relief for immigrants. She joined the Lawyers' Committee for Civil Rights as a Senior Soros Justice Fellow in 2014 to launch the country's first pro bono post-conviction relief project for noncitizens. There she works closely with legal reentry services providers throughout California to eliminate the immigration consequences of criminal convictions by the use of criminal record remedies. Rose also engages in community outreach and education, policy advocacy, and impact litigation to promote reforms in the field of criminal and immigration law. Prior to joining the Lawyers' Committee, she worked at the Law Office of Norton Tooby, where she litigated hundreds of post-conviction relief cases in federal and state courts and authored and edited numerous treaties, including *California Post-Conviction Relief for Immigrants*, along with nationally circulated criminal-immigration law practice advisories and articles. Rose clerked for the Hon. Warren J. Ferguson, Ninth Circuit Court of Appeals. She received her JD *cum laude* from New York University School of Law where she was a Root-Tilden-Kern scholar.

APPENDIX C

Table of Prop. 47 Offenses

SENTENCING UNDER PROPOSITION 47, *Effective 11-5-14.*
Document changes, 11-13-14

The offenses below, except for Penal Code §666(a), are misdemeanors, unless the defendant has suffered one or more designated prior convictions. (See Appendix C.) *Except for H&S C §11350*, if there is a designated prior, the defendant *may* be sentenced to 16 months, 2 or 3 years, pursuant to Penal Code § 1170(h). *H&S C §11350(a), requires a 16-2-3 (h) sentence when there is a designated prior conviction.*

Offense Penal Code §	*Description*	*Maximum Punishment Without Designated Prior*	*Punishment with Designated Prior*
459** (to shoplift), is now the crime of *shoplifting*, §459.5(a)[m]	Shoplifting, entering a commercial establishment during regular business hours where the property taken or intended to be taken, is $950 or less. Can't charge with burglary (459**) or theft (484-490.5) of the same property, *Pen C. §459.5(b.)*	6 months, and/or fine up to $1,000. (See, Pen C §19.)	16-2-3[w] (h)
473(b)	Forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, where the value is $950 or less. This subdivision does not apply if the defendant is convicted of both forgery and identity theft (Pen C §530.5).	1 year.*	16-2-3[w] (h)
476a(b)	If total of all NSF checks is $950 or less. 476a(b)[m] does not apply if the defendant has suffered 3 or more prior convictions for Section 470, 475, 476, 476a, or petty theft which was also a violation of 470, 475, 476, or 476a. Foreign priors with all the elements qualify.	1 year.*	16-2-3[w] (h)
484 with prior	See, 666, below		
484(a)	Theft	6 months when loss does not exceed $950. See Pen C §490.2	16-2-3[w] (h)
484b	Diversion of construction funds		
484c	Obtaining construction funds by false voucher		
484e(a); (b); (d)	Theft of access cards		
487(b)(1); (b)(2)	Theft of fowl, fruits, nuts… Theft of shell fish…		
487(c)	Theft from the person		
487(d)(1); (d)(2)	Theft of an automobile or designated animal; Theft of a firearm		
487a	Stealing a carcass		
487b	Converting real estate into personal property by severance. The maximum punishment for misdemeanor conversion remains at 1 year. Pen C §487c,		
487d	Theft from a mining claim		

Offense Penal Code §	*Description*	*Maximum Punishment Without Designated Prior*	*Punishment with Designated Prior*
487g	Stealing an animal for medical research…		
487i	Public housing fraud		
490.2(a)[m]	*Any* theft $950 or less is petty theft, punished as a *misdemeanor*. (Pen C §19, sets the maximum punishment at 6 months unless a different punishment is prescribed.)		
Pen C §490.2(a): "Notwithstanding Section 487 *or any other provision of law* defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor,…" Pen C §503, et.al, is in this list. No effort was made to include every conceivable offense which may be classified as theft.			
496(a)	Possession of stolen property with a value of $950 or less is a misdemeanor.	1 year.*	16-2-3[w] (h)
503; 504; 504a; 504b; 505; 506; 506a	Embezzlement is punishable as a theft. (See, Pen C §§490a, 514	See 490.2	16-2-3[w] (h)
664/496	Attempt to receive stolen property, in excess of $950.	1 year [8]	16-2-3[w] (h)
666(a)[w]	Petty theft by: ► a sex registrant (*not limited to 290(c)*), ► or one who has a prior designated in Table 2, ► or who has served time for a prior conviction for: robbery (*Pen C §211)*; carjacking, (*Pen C § 215*); 368(d), (*theft from an elder by a non-caretaker)*, 368((e) (*theft from an elder by a caretaker)*; burglary (Pen C §459); petty theft (*Pen C §484*); grand theft (*Pen C § 487* (*probably as defined by Prop 47*); ►or a felony violation of Pen C §496, ►or auto theft under Veh C §10851. This section does not preclude prosecution under 667((b-i) or 1170.12. (Pen C §666(c).)	Up to 1 year * as a misdemeanor, or 16-2-3 ~~(h)~~.[sp]	16-2-3[w sp]
Health & Safety Code			
11350(a)	Possession of a narcotic. H&S §11054(e), [*mecloqualone, methaqualone & GHB*], has been added to H&S §11350(a)	1 year * It is either a misdemeanor or a felony.	16-2-3[†] (h)
11350(b)	Former 11350(b), a wobbler, is now included in 11350(a), above.		
11357	Possession of concentrated cannabis.	1 year *, $500.	16-2-3[w] (h)
11377	Possession of a controlled substance.	1 year *.	16-2-3[w] (h)

* 1 year is 364 days, *effective 1-1-15*. (Pen C §18.5

NOTE: This table was prepared by Hon. John "Jack" Ryan, Orange County Superior Court (Ret.) as Appendix III of *PROPOSITION 47: The Safe Neighborhoods and Schools Act*, by J. Richard Couzens, Judge of the Superior Court, County of Placer (Ret.) and Tricia A. Bigelow, Presiding Justice, Court of Appeal, 2nd Appellate, District, Div. 8 (August 2015), available at http://www.courts.ca.gov/documents/Prop-47-Information.pdf.

APPENDIX D

Table of Disqualifying Prior Convictions

Prior Conviction	*Description*	*Authority Pen C Sections*
Any Serious or Violent Felony punishable in California by life imprisonment or death.		667(e)(2)C)(iv)(VIII)
182(a)	Conspiracy to commit any mandatory sex registration offense	Pen C §290(c)
187	Murder or attempt. (Any homicide or attempt from 187 to 191.5	667(e)(2)C)(iv)(IV)
187	Murder in perpetration or attempt: 261, 286, 288, 288(a), 289.	Pen C §290(c)
191.5	Vehicular manslaughter while intoxicated or attempt.	667(e)(2)C)(iv)(IV)
207	Kidnap to ... §261, 262, 264.1, 286, 288, 288a, or 289. (Kidnap, as defined in Pen C §207 does not include attempts to commit a defined sex offense.)	667(e)(2)C)(iv)(I)
207	Kidnap to 261, 286, 288, 288(a), 289, 220 sex	Pen C §290(c)
207(b)	Kidnap to child molest (*eff. 1-1-95 to 1-1-98*)	Pen C §290(c)
208(d)	Kidnap to rape/oral cop./sodomy/foreign object (*eff. 1-1-96 to 1-1-98*)	Pen C §290(c)
209	Kidnap to violate §261, 262, 264.1, 286, 288, 288a, or 289.	667(e)(2)C)(iv)(I)
209	Aggravated Kidnap to 261, 286, 288, 288(a), 289, 220 sex	Pen C §290(c)
220	Assault to violate 261, 262, 264.1, 286, 288, 288a, or 289. (Pen C § 220 specifies *rape* as a designated offense. It does not use a section number, 261 (rape) or 262 (spousal rape).	667(e)(2)C)(iv)(I)
220	Assault to commit sex crime.	Pen C §290(c)
236.1(b)	Human trafficking with intent to effect a designated crime	Pen C §290(c)
236.1(c)	Human trafficking Inducing a minor to engage in …	Pen C §290(c)
243.4	Sexual Battery[5]	Pen C §290(c)
245(d)(3)	Assault with a machine gun on a peace officer or firefighter	667(e)(2)C)(iv)(VI)
261	Rape	Pen C §290(c)
261(a)(2)	Rape by force.	667(e)(2)C)(iv)(I)
261(a)(6)	Rape by threat to retaliate.	667(e)(2)C)(iv)(I)
262(a)(1)	Spousal rape w/force and a prison sentence	Pen C §290(c)
262(a)(2)	Spousal rape by force.	667(e)(2)C)(iv)(I)
262(a)(4)	Spousal rape by threat to retaliate.	667(e)(2)C)(iv)(I)
264.1	Rape in concert by force or violence	667(e)(2)C)(iv)(I)
264.1	Rape or 289(a) in concert	Pen C §290(c)
266	Enticing an unmarried child for purpose of prostitution	Pen C §290(c)
266c	Inducing consent by fraud	Pen C §290(c)
266h(b)	Pimping, prostitute < 16	Pen C §290(c)
266i(b)	Pandering, prostitute < 16	Pen C §290(c)
266j	Procurement of child	Pen C §290(c)
267	Abducting a child for prostitution	Pen C §290(c)
269	Aggravated sexual assault of a child.	667(e)(2)C)(iv)(I)
269	Aggravated sexual assault of a child < 14	Pen C §290(c)
272	Contributing…involving a lewd act	Pen C §290(c)
285	Incest	Pen C §290(c)

Prior Conviction	*Description*	*Authority Pen C Sections*
286	Sodomy	Pen C §290(c)
286(c)(1)	Sodomy with child <14 + 10 years age differential.	667(e)(2)C)(iv)(II)
286(c)(2)(A)	Sodomy by force.	667(e)(2)C)(iv)(I)
286(c)(2)(B)	Sodomy by force upon child <14	667(e)(2)C)(iv)(I)
286(c)(2)(C)	Sodomy by force upon child >14	667(e)(2)C)(iv)(I)
286(c)(3)	Sodomy with threat to retaliate	667(e)(2)C)(iv)(I)
286(d)(1)	Sodomy in concert by force…., threat to retaliate.	667(e)(2)C)(iv)(I)
286(d)(2)	Sodomy in concert by force upon child <14	667(e)(2)C)(iv)(I)
286(d)(3)	Sodomy in concert by force upon child >14	667(e)(2)C)(iv)(I)
288	Lewd act upon a child	Pen C §290(c)
288(a)	Lewd act upon a child under the age of 14	667(e)(2)C)(iv)(III)
288(b)(1)	Lewd act upon a child by force…	667(e)(2)C)(iv)(I)
288(b)(2)	Lewd act by caretaker by force…	667(e)(2)C)(iv)(I)
288a	Oral Copulation	Pen C §290(c)
288a(b)(1)	Oral copulation with a person under the age of 18	Pen C §290(c)
288a(b)(2)	Oral copulation with a person under the age of 16	Pen C §290(c)
288a(c)(1)	Oral copulation upon a child <14 + 10 years…	667(e)(2)C)(iv)(III)
288a(c)(2)(A)	Oral copulation by force	667(e)(2)C)(iv)(I)
288a(c)(2)(B)	Oral copulation by force… force upon child <14.	667(e)(2)C)(iv)(I)
288a(c)(2)(C)	Oral copulation by force… force upon child >14.	667(e)(2)C)(iv)(I)
288a(d)	Oral copulation in concert by force.	667(e)(2)C)(iv)(I)
288.2(a)	Felony distribution of harmful matter/minor(*eff. 1-1-90*)	Pen C §290(c)
288.2(b)	Felony distribution of harmful matter/minor by e-mail, etc	Pen C §290(c)
288.3	Arranging meeting with a minor for a lewd act. etc.	Pen C §290(c)
288.5	Continuous sexual abuse	Pen C §290(c)
288.5(a)	Continuous sexual abuse of a child with force…	667(e)(2)C)(iv)(I)
288.7(a)	Intercourse or sodomy with a child less aged 10 or younger.	Pen C §290(c)
288.7(b)	Oral copulation, or sexual penetration /child 10 or younger	Pen C §290(c)
289	Sexual Penetration.	Pen C §290(c)
289(a)(1)(A)	Sexual penetration by force, etc.	667(e)(2)C)(iv)(I)
289(a)(1)(B)	Sexual penetration upon a child <14 by force…	667(e)(2)C)(iv)(I)
289(a)(1)(C)	Sexual penetration upon a child >14 by force…	667(e)(2)C)(iv)(I)
289(a)(2)(C)	Sexual penetration by threat to retaliate.	667(e)(2)C)(iv)(I)
289(d)	Sexual penetration with an unconscious person.	Pen C §290(c)
289(h)	Sexual penetration with a child under the age of 18	Pen C §290(c)
289(j)	Sexual penetration upon a child <14 + 10 years…	667(e)(2)C)(iv)(II)
311.1	Material depicting a child in sexual conduct	Pen C §290(c)
311.2(b)	Distribution, etc., of obscene matter for commercial purposes	Pen C §290(c)
311.2(c)	Distribution, etc., of obscene matter to someone 18 or older	Pen C §290(c)
311.2(d)	Distribution, etc., of obscene matter to a minor	Pen C §290(c)
311.3	Sexual exploitation/child	Pen C §290(c)
311.4	Use of minor in distribution of obscene matter	Pen C §290(c)
311.10	Advertising obscene matter depicting minors	Pen C §290(c)
311.11	Possession of child pornography	Pen C §290(c)
314.1	Indecent exposure	Pen C §290(c)
314.2	Indecent exposure	Pen C §290(c)
647(a), *former*	Loitering at toilet to solicit a lewd act	Pen C §290(c)
647.6	Child annoyance	Pen C §290(c)
653f	Solicitation to commit murder.	667(e)(2)C)(iv)(V)

Prior Conviction	*Description*	*Authority Pen C Sections*
653f(c)	Solicit another to commit forcible rape /288(a)(c) /264.1 /288 /289	Pen C §290(c)
664/191.5	Attempt vehicular manslaughter while intoxicated	667(e)(2)C)(iv)(IV)
664/187	Attempt murder	667(e)(2)C)(iv)(IV)
664/any 290(c)	Any attempt on a mandatory sex registerable offense	Pen C §290(c)
11418(a)(1)	Possession of a weapon of mass destruction	667(e)(2)C)(iv)(VII)

► There are many strike felonies which are not included Pen C §667(e)(2)(C)(iv). Gang crimes, robberies, residential burglaries, etc. i.e., an 11350 with three 211 priors is a misdemeanor!

NOTE: This table was prepared by Hon. John "Jack" Ryan, Orange County Superior Court (Ret.) as Appendix II of *PROPOSITION 47: The Safe Neighborhoods and Schools Act*, by J. Richard Couzens, Judge of the Superior Court, County of Placer (Ret.) and Tricia A. Bigelow, Presiding Justice, Court of Appeal, 2nd Appellate, District, Div. 8 (August 2015), available at http://www.courts.ca.gov/documents/Prop-47-Information.pdf.

APPENDIX E

Client Disclaimer About Immigration Consequences of a Criminal Conviction

I am not an expert in the immigration consequences of criminal convictions. I am not permitted to give you any advice about how your conviction might affect your immigration status. The immigration consequences of criminal convictions can be complex, and they may not make sense. Sometimes even a small misdemeanor causes serious problems, and sometimes even a felony does not cause any problems. Every person's case is different, depending on their immigration situation and criminal record.

You must consult with a trained immigration expert before pursuing any immigration benefit or contact with immigration officials. I strongly encourage you to get immigration advice from an expert before doing any of these things:

- *I advise you not to **travel outside of the country** until you consult with an expert. When you return to the United States, immigration may perform a background check. It is possible that your conviction would cause them to take away your lawful status and bar you from re-entering the U.S. See an expert first, to make sure it is safe to travel.*

- *I advise you not to **apply for any immigration paper or benefit** for which you might be eligible – for example, for a family visa or Deferred Action for Childhood Arrivals – until you speak with an expert. When you apply, immigration authorities will run your fingerprints to obtain your criminal record. It is possible that your conviction would cause your application to be denied, and cause you to be placed in deportation proceedings or even arrested and detained. See an expert first, to make sure it is safe to apply.*

- *If you have a green card that has expired, I advise you not to **apply to renew your green card** until you consult with an expert. When you apply, immigration authorities will run your fingerprints to obtain your criminal record. It is possible that your conviction would cause your application to be denied, and cause you to be placed in deportation proceedings or even arrested and detained. See an expert first, to make sure it is safe to apply.*

- *I advise you not to **apply for naturalization** until you consult with an expert. When you apply, immigration authorities will run your fingerprints to obtain your criminal record. It is possible that your conviction would cause your application to be denied, and cause you to be placed in deportation proceedings or even arrested and detained. See an expert first, to make sure it is safe to apply.*

APPENDIX F

Statewide List of Organizations That Provide Pro Bono Prop. 47 and Clean Slate Services

Alameda County

- Alameda County Clean Slate Clinic at OAKLAND PUBLIC DEFENDER
  545 4th St., Oakland, CA 94607 / (510) 548-4040 x 390
  http://www.ebclc.org/crc.php
  Clean Slate Clinic every Thursday, 9 am to 11 am, at Oakland Public Defender's Office (in partnership with East Bay Community Law Center).

- Alameda County Clean Slate Clinic at HAYWARD PUBLIC DEFENDER
  24085 Amador St., 2nd Floor, Hayward, CA 94544 / (510) 548-4040 x 390
  http://www.ebclc.org/crc.php
  Clean Slate Clinic every Wednesday, 2 pm to 4 pm, at Hayward Public Defender's Office (in partnership with East Bay Community Law Center).

Amador County

- Amador County Superior Court, Office of the Family Law Facilitator & Self-Help Attorney
  500 Argonaut Lane, Room C, Jackson, CA 95642 / (209) 754-1443
  http://www.amadorcourt.org/sh-localResources.aspx
  Facilitator is on-site Mondays and Thursdays, 9 am to 3 pm, and is available by appointment and limited drop in. Paralegal is on-site Tuesdays, 9 am to 1 pm, and is available by appointment and limited drop in.

Butte County

- Butte County Law Library
  1675 Montgomery St., Oroville, CA 95965 / (530) 538-7122
  http://www.buttecountylawlibrary.org/index.html
  Call Law Library at (530) 538-7122 to request a Prop. 47 form packet via email, or pick up forms in person.

Calaveras County

- Amador County Superior Court, Office of the Family Law Facilitator & Self-Help Attorney
  500 Argonaut Lane, Room C, Jackson, CA 95642 / (209) 754-1443
  http://www.amadorcourt.org/sh-localResources.aspx
  Facilitator is on-site Mondays and Thursdays, 9 am to 3 pm, and is available by appointment and limited drop in. Paralegal is on-site Tuesdays, 9 am to 1 pm, and is available by appointment and limited drop in.

- Calaveras County Public Defender
  692-B Marshall St., San Andreas, CA 95249 / (209) 754-4321
  https://www.freelegalaid.com/nav/california/dui-and-criminal/resource/calaveras-county-public-defender
  Contact the Public Defender's Office at (209) 754-4321 to determine Prop. 47 eligibility.

Contra Costa County

- Contra Costa County Public Defender
  800 Ferry St., Martinez, CA 94553 / (925) 335-8075
  http://co.contra-costa.ca.us/1555/Public-Defender
  Assistance with Prop. 47 documents is available Monday through Friday, 8 am to 5 pm. Call (925) 335-8075 or send email to prop47@pd.cccounty.us.

- Reentry Center
  912 McDonald Ave., Richmond, CA 94801 / (510) 412-4900
  Prop. 47 assistance is available every Wednesday from 8 am to 12 pm. Call (510) 412-4900 and ask for the Reentry Center.

Del Norte County

- Del Norte Superior Court Self-Help Center
  450 H St. (Law Library), Crescent City, CA 95531 / (707) 464-8115
  http://www.delnorte.courts.ca.gov/self-help
  The Self-Help Assistant is available Wednesdays, Thursdays, and Fridays from 8 am to 5 pm to assist with forms and questions.

El Dorado County

- El Dorado County Public Defender
  630 Main St., Placerville, CA 95667 / (530) 621-6440
  https://www.edcgov.us/Public-Defender/
  Call (530) 621-6440 to ask about Prop. 47 services.

- El Dorado County Superior Court, Placerville Building, C Branch, Department 7
  2850 Fairlane Court, Suite 120, Placerville, CA 95667 / (530) 621-7464
  Call (530) 621-7464 on Fridays between 8 am and 1 pm to ask about P47 services.

Fresno County

- Fresno County Public Defender
  2220 Tulare St., Suite 300, Fresno, CA 93721 / (559) 600-3546
  http://www.co.fresno.ca.us/DepartmentPage.aspx?id=64150
  Call the Fresno County Public Defender's Office at (559) 600-3546 to determine Prop. 47 eligibility.

Glenn County

- Self Help Assistance and Referral Program (SHARP)
  119 N. Butte St., Willows, CA 95988 / (530) 934-6416
  http://www.glenncourt.ca.gov/court_info/self_help.html
  The Self-Help Center provides assistance on a first-come, first-served basis on Wednesdays and Thursdays, from 8 am to 12 noon and from 1 pm to 4:30 pm.

Humboldt County

- Humboldt County Public Defender
  1001 4th St., Eureka, CA 95501 / (707) 445-7634
  http://humboldtgov.org/1345/Public-Defender
  Contact the Public Defender's Office at (707) 445-7634 Monday through Thursday, 10 am to 12 Noon or 1 pm to 4 pm, to determine Prop. 47 eligibility.

Imperial County

- Imperial County Public Defender
  895 Broadway, El Centro, CA 92243 / (442) 265-1705
  http://www.co.imperial.ca.us/PublicDefender/Contact/ContactUs.htm
  Contact the Public Defender's Office at (442) 265-1705 Monday through Friday, 8 am to 12 Noon or 1 pm to 4 pm, to determine Prop. 47 eligibility.

Kern County

- Kern County Public Defender
  1315 Truxtun Ave., Bakersfield, CA 93301 / (661) 868-4799
  http://www.co.kern.ca.us/pubdef/
  Contact the Public Defender's Office at (661) 868-4799 or pubdef-web@co.kern.ca.us
  Monday through Friday, 8 am to 12 Noon or 1 pm to 4 pm, to determine Prop. 47 eligibility.

- Kern County Superior Court - Self Help Center
  1415 Truxtun Ave., 3rd Floor (Law Library), Bakersfield, CA 93301 / (661) 868-5320
  http://www.kern.courts.ca.gov/home.aspx?p=SelfHelp&p1=Top
  Walk-In assistance is provided Monday through Friday, 8 am to 12:30 pm and 1:30 to 4 pm.

Kings County

- Kings County Superior Court - Self Help Resource Center - AVENAL COURTHOUSE
  501 E. Kings St., Avenal, CA 93204 / (559) 582-1010 x 4095
  http://www.kings.courts.ca.gov/depts/family/Family_Law_Facilitator.asp
  Call the Self-Help Resource Center at (559) 582-1010 x 4095 Monday through Friday, 8 am to 4 pm, or Friday, 8 to 11 am.

- Kings County Superior Court - Self Help Resource Center - CORCORAN COURTHOUSE
  1000 Chittenden Ave., Corcoran, CA 93212 / (559) 992-5193
  http://www.kings.courts.ca.gov/depts/family/Family_Law_Facilitator.asp
  Call the Self-Help Resource Center at (559) 992-5193 Monday through Friday, 8 am to 4 pm, or Friday, 8 to 11 am.

- Kings County Superior Court - Self Help Resource Center - HANFORD COURTHOUSE
  1426 South Dr., Building C, Hanford, CA 93230 / (559) 582-1010
  http://www.kings.courts.ca.gov/depts/family/Family_Law_Facilitator.asp
  Call the Self-Help Resource Center at (559) 582-1010 Monday through Friday, 8 am to 4 pm, or Friday, 8 to 11 am.

Lake County

- Self Help Assistance and Referral Program (SHARP)
  380 N. Main St., Suite J, Lakeport, CA 95453 / (707) 263-9024
  http://tehamacourt.ca.gov/sharp.htm#Facil
  Assistance is provided through workshops and individual appointments. Call (707) 263-9024 for an appointment.

Lassen County

- Lassen County Public Defender
  220 S. Lassen St., Suite 1, Susanville, CA 96130 / (530) 251-8312
  Contact the Public Defender's Office at (530) 251-8312 to determine Prop. 47 eligibility.

- Lassen County Superior Court, Self-Help/Access to Justice Center
  2610 Riverside Dr., Susanville, CA 96130 / (530) 251-8205
  http://www.lassencourt.ca.gov/self_help/index.shtml
  Call the Access to Justice Center Monday through Friday, 8 am to 12 pm or 1 to 5 pm.

Los Angeles County

- A New Way of Life (ANWOL) Reentry Project - LONG BEACH WALK-IN CLINIC
  Long Beach Coalition for Good Jobs & a Healthy Community, 920 Atlantic Ave., Suite 101, Long Beach, CA 90813 / (323) 572-4341
  Prop. 47 Record Change Wednesday Walk-In Clinic: Every Wednesday from 10 am to 4 pm in Long Beach.
  *This is a Prop. 47 Record Change Only Clinic – no expungements or other clean slate services are available. No appointment necessary, but participants must bring their RAP Sheet or Court Dockets. For questions, contact (323) 572-4341.

- A New Way of Life (ANWOL) Reentry Project & UCLA School of Law - WATTS
  Call (323) 563-3575 to register and for location information.
  Prop. 47/Expungement Legal Clinic on the 2nd Saturday of every month from 10 am to 2 pm in Watts.
  *By Appointment Only: Call (323) 563-3575 to register and for location information. Participants must bring their RAP Sheet or Court Dockets to the appointment, and must arrive no later than 11 am.

- Legal Aid Foundation of Los Angeles (LAFLA) - DOWNTOWN L.A.
  Call (323) 801-7950 to register and for location information.
  Prop. 47/Expungement Clinic on the 2nd Tuesday of every month at 5:30 pm in Downtown Los Angeles.
  *By Appointment Only: Call (323) 801-7950 to register and for location information. Participants must bring their RAP Sheet or Court Dockets to the appointment.

- Neighborhood Legal Services of Los Angeles County (NLSLA) - EL MONTE
  Call (800) 433-6251 to register and for location information.
  Prop. 47/Expungement Legal Clinic on the 1st and 3rd Wednesday of every month at 5 pm in El Monte.
  *By Appointment Only: Call (800) 433-6251 to register and for location information. Participants must bring their RAP Sheet or Court Dockets to the appointment.

- Neighborhood Legal Services of Los Angeles County (NLSLA) - PACOIMA
  13327 Van Nuys Blvd., Pacoima, CA 91331 / (800) 433-6251
  Prop. 47/Expungement Walk-In Clinic on the 2nd and 4th Saturday of every month at 9 am in Pacoima.
  *No appointment necessary but participants must bring their RAP Sheet or Court Dockets to the clinic, and should arrive by 9 am. For questions, call (800) 433-6251.

- Pepperdine School of Law/Union Rescue Mission Legal Aid Clinic
  545 S. San Pedro St., Los Angeles, CA 90013 / (213) 347-6300 x 4413
  http://law.pepperdine.edu/experiential-learning/clinical-education/clinics/legal-aid-clinic/
  The Clinic represent clients who are homeless on Skid Row in downtown Los Angeles. For further information, contact Professor Brittany Stringfellow Otey at (213) 347-6300 x 4413 or e-mail her at Brittany.Stringfellow@pepperdine.edu.

- Los Angeles County Public Defender Offices

  - Airport Courthouse Office
    11701 S. La Cienega, Room 530, Los Angeles, CA 90045 / (310) 727-6200

  - Alhambra Courthouse Office
    150 West Commonwealth, 1st Floor, Alhambra, CA 91801 / (626) 308-5324

  - Appellate Branch Office
    590 Hall of Records, 320 West Temple St., Los Angeles, CA 90012 / (213) 974-3002

  - Bellflower Courthouse Office
    10025 East Flower St., Room 470, Bellflower, CA 90706 / (562) 804-8083

  - Burbank Courthouse Office
    300 E. Olive Ave., Suite 105, Burbank, CA 91502 / (818) 557-3537

  - Chatsworth Courthouse Office
    9425 Penfield Ave., Chatsworth, CA 91311 / (818) 576-8850

  - Clara Shortridge Foltz Criminal Justice Center – Headquarters
    210 West Temple St., 19th Floor, Los Angeles, CA 90012 / (213) 974-2811

  - Central Civil West Courthouse Office
    600 S. Commonwealth Ave., Suite 511, Los Angeles, CA 90005 / (213) 351-8225

  - Compton Courthouse Office
    200 West Compton Blvd., Suite 800, Compton, CA 90220 / (310) 603-7271

  - Downey Courthouse Office
    7500 Imperial Highway, Suite 224, Downey, CA 90242 / (562) 803-7130

  - East Los Angeles Courthouse Office
    4848 E. Civic Center Way, Los Angeles, CA 90022 / (323) 780-2064

  - El Monte Courthouse Office
    11234 East Valley Blvd., Suite 113, El Monte, CA 91731 / (626) 575-4174

  - Glendale Courthouse Office
    600 East Broadway, Suite 170, Glendale, CA 91206 / (818) 500-3561

- Inglewood Courthouse Office
  One Regent St., Suite 304, Inglewood, CA 90301 / (310) 419-5249

- Lancaster Courthouse Office
  42011 4th St. West, Suite 2570, Lancaster, CA 93534 / (661) 974-7400

- Lomita Branch Office
  24340 Narbonne Ave., Lomita, CA 90717 / (310) 534-6228

- Long Beach Courthouse Office
  275 Magnolia Ave., Suite 2195, Long Beach, CA 90802 / (562) 247-2500

- Mental Health Courthouse Office
  1150 North San Fernando Rd., 2nd Floor, Los Angeles, CA 90065 / (323) 226-2932

- Metropolitan Courthouse Office
  1945 South Hill St., Suite 200, Los Angeles, CA 90007 / (213) 744-4121

- Norwalk Courthouse Office
  12720 Norwalk Blvd., Suite 109, Norwalk, CA 90650 / (562) 651-2500

- Pasadena Courthouse Office
  300 East Walnut St., Suite 311, Pasadena, CA 91101 / (626) 356-5464

- Pomona Branch Office
  300 S. Park Ave., Suite 900, Pomona, CA 91766 / (909) 868-6400

- San Fernando Courthouse Office
  900 Third St., San Fernando, CA 91340 / (818) 898-2440

- Santa Clarita Courthouse Office
  23747 West Valencia Blvd., Valencia, CA 91355 / (661) 253-7262

- Torrance Branch Office
  3655 Torrance Blvd., Torrance, CA 90503 / (310) 543-4300

- Van Nuys Courthouse West Office
  14400 Erwin Street Mall, 10th Floor, Van Nuys, CA 91401 / (818) 374-2350

- West Covina Courthouse Office
  1427 West Covina Parkway, West Covina, CA 91790 / (626) 813-3460

- UCLA Law School Reentry Legal Clinic – LONG BEACH
  First Lutheran Church, 905 S. Atlantic Ave., Long Beach, CA 90813 / (323) 357-8431
  http://www.reentrylegalclinic.org/about-us.html
  Re-Entry Legal Clinic on the 2nd Saturday of each month, from 10 am to 12 pm, in even numbered months (February, April, June, August, October & December).
  Call (323) 357-8431 to register for clinic with Intake Specialist.

- UCLA Law School Reentry Legal Clinic - SOUTH L.A.
  WLCAC Bernice Watkins Vision Complex, 10957 S. Central Ave., Los Angeles, CA 9005 / (323) 357-8431 / http://www.reentrylegalclinic.org/about-us.html
  Re-Entry Legal Clinic on the 2nd Saturday of each month, from 10 am to 12 pm, in odd numbered months (January, March, May, July, September & November).
  Call (323) 357-8431 to register for clinic with Intake Specialist.

Marin County

- Marin County Public Defender
  3501 Civic Center Dr., Suite 139, San Rafael, CA 94903 / (415) 473-6345
  http://www.marincounty.org/depts/pd/prop-47
  Call the Proposition 47 Unit at the Marin County Public Defender's Office at (415) 473-6345.

Mariposa County

- Mariposa Self-Help Center
  5092 Jones St., Mariposa, CA 95338 / (209) 742-5322
  http://www.mariposacourt.org/MariposaSelfHelp.htm
  Assistance is provided on a first-come, first-served basis on Mondays (12 to 5 pm), Wednesdays (1 to 5 pm), Thursdays (12 to 5 pm), and Fridays (8 am to 12 pm). For questions, contact the Self-Help Facilitator at (209) 742-5322 or selfhelpcenter@mariposacourt.org.

Mendocino County

- Mendocino County Public Defender - MAIN OFFICE
  175 S. School St., Ukiah, CA 95482 / (707) 234-6950
  https://www.co.mendocino.ca.us/pubdef/
  Contact the Public Defender's Office at (707) 234-6950 to determine Prop. 47 eligibility.

- Mendocino County Public Defender - COAST BRANCH OFFICE
  700 S. Franklin, Suite E, Ft. Bragg, CA 95437 / (707) 964-0606
  https://www.co.mendocino.ca.us/pubdef/
  Contact the Public Defender's Office at (707) 964-0606 to determine Prop. 47 eligibility.

- Mendocino County Clean Slate Project – UKIAH COURTHOUSE
  100 N. State St., Room 304, Ukiah, CA 95482 / (707) 463-5690
  http://www.mendocino.courts.ca.gov/general_info/media/Clean%20Slate%20Project.pdf
  Call (707) 463-5690 to schedule an appointment. Drop-ins are seen on a first-come, first-served basis on Tuesdays and Thursdays from 9 am to 12 noon.

- Mendocino County Clean Slate Project – TEN MILE BRANCH COURTHOUSE
  700 South Franklin St., Fort Bragg, CA 95437 / (707) 463-5690
  http://www.mendocino.courts.ca.gov/general_info/media/Clean%20Slate%20Project.pdf
  Services available 2nd Friday of each month. Call (707) 463-5690 to confirm clinic time.

Merced County

- Merced County Public Defender - MERCED OFFICE
  2150 M St., Merced, CA 95340 / (209) 385-7692
  http://www.co.merced.ca.us/index.aspx?NID=2031
  Contact the Public Defender's Office at (209) 385-7692 Monday through Friday, 9 am to 12 Noon or 1 pm to 4 pm, to determine Prop. 47 eligibility.

- Merced County Public Defender - LOS BANOS OFFICE
  445 I St., Los Banos, CA 93635 / (209) 710-6030
  http://www.co.merced.ca.us/index.aspx?NID=2031
  Contact the Public Defender's Office at (209) 710-6030 Monday, Wednesday, Thursday, and Friday, 8 am to 1 pm, to determine Prop. 47 eligibility.

Modoc County

- Modoc County Superior Court Self-Help Center
  205 South East St., Alturas, CA 96101 / (530) 233-6516
  http://lawhelpca.org/organization/modoc-county-superior-court-self-help-center/expungement-and-record-clearing/criminal-record-clearing?ref=GiEO6
  Prop. 47 and expungement assistance is available Monday through Friday, 8:30 am to 4 pm. Call for an appointment with the Self Help Center Attorney at (530) 233 - 2008.

Monterey County

- Monterey County Public Defender
  111 W. Alisal St., Salinas, CA 93901 / (831) 755-5058
  http://www.co.monterey.ca.us/government/departments-i-z/public-defender
  Contact the Public Defender's Office at (831) 755-5058 to determine Prop. 47 eligibility.

- Watsonville Law Center
  315 Main St., # 207, Watsonville, CA 95076 / (831) 722-2845
  http://www.watsonvillelawcenter.org/
  To make an appointment, call (831) 722-2845 Tuesday from 9 am to 12 pm and 1 pm to 3 pm or Wednesday from 1 pm to 4 pm. WLC provides free services to low-income individuals in Monterey, San Benito, and Santa Cruz counties.

Napa County

- Napa County Public Defender
  1127 First St., Suite 265, Napa, CA 94559 / (707) 253-4442
  http://www.countyofnapa.org/PublicDefender/
  Contact the Public Defender's Office at (707) 253-4442 or NapaDefender@countyofnapa.org to determine Prop. 47 eligibility.

Nevada County

- Nevada County Public Defender
  224 Main St., Nevada City, CA 95959 / (530) 265-1400
  https://www.mynevadacounty.com/nc/publicdefender/Pages/Home.aspx
  Contact the Public Defender's Office at (530) 265-1400 or publicdefender@co.nevada.ca.us to determine Prop. 47 eligibility.

Orange County

- Orange County Public Defender
  14 Civic Center Plaza, Santa Ana, CA 92701 / (714) 834-2144
  http://www.pubdef.ocgov.com/programs/prop_47.htm
  Call (714) 834-2144 Monday through Friday after 9 am and ask to speak with a Public Defender handling Prop. 47.

Placer County

- Placer County Public Defender
  11760 Atwood Rd., Suite 4, Auburn, CA 95603 / (530) 889-0280
  http://www.placer.ca.gov/departments/defender
  Call (530) 889-0280 and ask to speak with a Public Defender handling Prop. 47.

Riverside County

- All of Us or None - Prop. 47 Clinic at Universalist Unitarian Church of Riverside
  3657 Lemon St., Riverside, CA 92501 / (951) 898-0862
  https://www.eventbrite.com/e/monthly-prop-47-clinics-in-riverside-tickets-20194060980?aff=es2
  Prop. 47/Clean Slate Clinics on the 2nd Friday of every month at 7 pm.

- Inland Empire Latino Lawyers Assoc., Inc. - MAIN OFFICE
  Cesar Chavez Community Center, 2060 University Ave., #103, Riverside, CA 92507 / (951) 369-3009
  http://www.iella.org/index.php?option=com_content&view=article&id=40&Itemid=150&lang=en
  Prop. 47/Clean Slate Clinics on the 4th Friday of each month, from 3:30 pm to 6 pm.
  *Open to San Bernardino County & Riverside County residents only.

- Inland Empire Latino Lawyers Assoc., Inc. - RIVERSIDE CLINIC
  Riverside Superior Court Self-Help Center, 3535 - 10th St., 2nd Floor, Riverside, CA 92501 / (951) 369-3009
  http://www.iella.org/index.php?option=com_content&view=article&id=40&Itemid=150&lang=en
  Prop. 47/Clean Slate Clinics on the 1st Friday of each month, from 10 am to 11:30 am.
  *Open to San Bernardino County & Riverside County residents only.

- Riverside County Public Defender Relief Program - INDIO OFFICE
  82675 US Hwy 111, # 314, Indio, CA 92201 / (760) 863-8231
  http://publicdef.co.riverside.ca.us/opencms/relief.html
  Contact the Public Defender's Office at (760) 863-8231 or reliefprogram@co.riverside.ca.us to determine Prop. 47 eligibility.

- Riverside County Public Defender Relief Program - MURRIETA OFFICE
  30755 Auld Rd., # D, Murrieta, CA 92563 / (951) 304-5600
  http://publicdef.co.riverside.ca.us/opencms/relief.html
  Contact the Public Defender's Office at (951) 304-5600 or reliefprogram@co.riverside.ca.us to determine Prop. 47 eligibility.

- Riverside County Public Defender Relief Program - RIVERSIDE OFFICE
  4200 Orange St., Riverside, CA 92501 / (951) 955-6000
  http://publicdef.co.riverside.ca.us/opencms/relief.html
  Contact the Public Defender's Office at (951) 955-6000 or reliefprogram@co.riverside.ca.us to determine Prop. 47 eligibility.

Sacramento County

- Sacramento County Public Defender
  700 H St., Suite 0270, Sacramento, CA 95814 / (916) 874-6411
  http://www.publicdefender.saccounty.net/Pages/OurServices.aspx
  Individuals must first complete a Prop. 47 Information Form
  [http://www.publicdefender.saccounty.net/Documents/Prop-47-Information-Form.pdf]
  and return it to the Public Defender's office.

- Voluntary Legal Services Program of Northern California
  Broadway Career Center, 915 Broadway, Sacramento, CA 95814 / (916) 551-2155
  http://www.vlsp.org/criminal.asp
  Expungement Clinic on Tuesdays, Wednesdays, and Thursdays from 10 am to 4 pm.

San Benito County

- San Benito Superior Court Self Help Center
  450 4th St., Hollister, CA 95023 / (831) 636-4057 x 104
  http://www.sanbenito.courts.ca.gov/Court_FLSelfHelp.htm
  The Self-Help Center is open every Monday, from 8 am to 1 pm. Questions are answered by phone at (831) 636-4057, extension 104, on Mondays only or by email: selfhelp.information@santacruz.org.

- Watsonville Law Center
  315 Main St., # 207, Watsonville, CA 95076 / (831) 722-2845
  http://www.watsonvillelawcenter.org/
  To make an appointment, call (831) 722-2845 Tuesday from 9 am to 12 pm and 1 pm to 3 pm or Wednesday from 1 pm to 4 pm. WLC provides free services to low-income individuals in Monterey, San Benito, and Santa Cruz counties.

San Bernardino County

- San Bernardino County Public Defender Offices

  - Central Division
    364 Mountain View Ave., San Bernardino, CA 92415-0008 / (909) 387-8373

  - Fontana Office
    17830 Arrow Blvd., Fontana, CA 92335 / (909) 356-6420

  - Joshua Tree Office
    6527 White Feather Rd., Joshua Tree, CA 92252 / (760) 366-5789

  - Rancho Cucamonga Office
    8303 N. Haven Ave., Rancho Cucamonga, CA 91730 / (909) 948-4669

- Victorville Division
  14455 Civic Dr., Suite 600, Victorville, CA 92392 / (760) 241-0413

- Inland Empire Latino Lawyers Assoc., Inc. - SAN BERNARDINO CLINIC
  San Bernardino Law Library , 402 N. "D" St., San Bernardino, CA 92408 / (951) 369-3009
  http://www.iella.org/index.php?option=com_content&view=article&id=40&Itemid=150&lang=en
  Prop. 47/Clean Slate Clinics on the 3rd Friday of each month, from 10 am to 11:30 am.
  *Open to San Bernardino County & Riverside County residents only.

San Diego County

- San Diego County Public Defender Offices

  - Main Office
    450 B St., Suite 900, San Diego, CA 92101 / (619) 338-4700

  - East County Office
    250 E. Main St., Sixth Floor, El Cajon, CA 92020 / (619) 579-3316

  - North County Office
    400 S. Melrose Dr., Suite 200, Vista, CA 92081 / (760) 945-4000

  - South Bay Office
    303 H St., Suite 400, Chula Vista, CA 91910 / (619) 498-2001

- San Diego Clean Slate Clinic
  South Metro Career Center, 4389 Imperial Ave., San Diego, CA 92113
  http://www.sd-csc.org/about-sd-csc.html
  Prop. 47/Expungement Clinic on the 1st Saturday of every month from 10 am to 2 pm.
  Walk-Ins accepted until 11 am. For questions, email the Clinic at: info@sd-csc.org.

San Francisco County

- Lawyers Committee for Civil Rights: Second Chance Legal Clinic
  Goodwill Industries, 1500 Mission St., San Francisco, CA 94103 / (415) 814-7610
  http://www.lccr.com/programs/racial-justice/direct-services/second-chance-legal-clinic/
  Clinic on the 2nd Tuesday of every month, 3 to 5 pm. Must call Intake Hotline at (415) 814-7610 before attending clinic.

- Lawyers Committee for Civil Rights: Second Chance Legal Clinic
  Mo'Magic, West Bay Conference Center, 1290 Fillmore St., San Francisco, CA 94115 / (415) 814-7610
  http://www.lccr.com/programs/racial-justice/direct-services/second-chance-legal-clinic/
  Clinic on the last Tuesday of every month, 6 to 8 pm. Must call Intake Hotline (415) 814-7610 before attending clinic.

- San Francisco County Public Defender Offices – Free Walk-in Clinics
  http://sfpublicdefender.org/wp-content/uploads/sites/2/2014/12/Prop_47_Application_and_FAQs.pdf

    - Office of the Public Defender
      555 Seventh St., San Francisco, CA 94103 / (415) 734-3014
      Free Walk-In Clinic every Tuesday 9 am to 11 am.

    - Community Justice Center
      555 Polk St., 2nd Floor, San Francisco, CA 94102 / (415) 734-3014
      Free Walk-In Clinic on the 1st and 3rd Monday of every month from 10 am to 11 am.

    - Arriba Juntos (Se Habla Español)
      1850 Mission St., San Francisco, CA 94103 / (415) 734-3014
      Free Walk-In Clinic on the 2nd and 4th Monday of every month from 10:30 am to 12:30 pm.

    - Village Community Center
      1099 Sunnydale Ave., San Francisco, CA 94134 / (415) 734-3014
      Free Walk-In Clinic on the 4th Wednesday of every month from 3 pm to 5 pm.

    - Ella Hill Hutch Community Center
      1050 McAllister St., San Francisco, CA 94115 / (415) 734-3014
      Free Walk-In Clinic on the 1st Thursday of every month from 9 am to 11 am.

    - Southeast Community College
      1800 Oakdale Ave., San Francisco, CA 94124 / (415) 734-3014
      Free Walk-In Clinic on the 1st and 3rd Thursday of every month from 9 am to 11 am.

San Joaquin County

- San Joaquin County Public Defender
  102 S. San Joaquin St., Room 1, Stockton, CA 95202 / (209) 468-2730
  http://www.sjgov.org/PubDefender/dynamic.aspx?id=2548
  Contact the Public Defender's Office at (209) 468-2730 to determine Prop. 47 eligibility.

Santa Barbara County

- Santa Barbara County Public Defender
  1100 Anacapa St., 3rd Floor, Santa Barbara, CA 93101 / (805) 568-3470
  http://cosb.countyofsb.org/defender/default.aspx
  Contact the Public Defender's Office at (805) 568-3470 to determine Prop. 47 eligibility.

- Santa Barbara County Legal Resource Center - LOMPOC
  Santa Barbara County Superior Court, Jury Deliberation Room, 115 Civic Center Plaza, Lompoc, CA 93436 / http://www.lafsbc.org/services
  Assistance is available on a first-come, first-served basis on Wednesdays and Thursdays from 9 am to 12 noon and 1:30 to 4 pm.

- Santa Barbara County Legal Resource Center - SANTA BARBARA
  Santa Barbara County Superior Court, McMahon Law Library, 1100 Anacapa St., 2nd Floor, Santa Barbara, CA 93101 / (805) 568-3303 / http://www.lafsbc.org/services
  Assistance is available on a first-come, first-served basis Monday through Friday from 9 am to 12 noon and 1:30 to 4 pm.

- Santa Barbara County Legal Resource Center - SANTA MARIA
  Santa Barbara County Superior Court, Santa Maria Law Library, 312 E. Cook St., Santa Maria, CA 93456 / (805) 349-1289 / http://www.lafsbc.org/services
  Assistance is available on a first-come, first-served basis on Mondays, Tuesdays, and Fridays, from 9 am to 12 noon and 1:30 to 4 pm.

Santa Clara County

- Community Legal Services in East Palo Alto
  1861 Bay Rd., East Palo Alto, CA 94303 / 650) 326-6440
  http://www.clsepa.org/reentry/
  Contact the main office at (650) 326-6440 or info@clsepa.org to make an appointment for the Record Clearance Workshop.

- Santa Clara County Public Defender Offices

  - Main Office
    120 West Mission St., San Jose, CA 95110 / (408) 299-7700

  - South County Office
    17275 Butterfield Blvd., Suite B, Morgan Hill, CA 95037 / (408) 201-0500

  - Palo Alto Office
    231 Grant Ave., Palo Alto, CA 94306 / (408) 918-7740

- Stanford Law School - Community Law Clinic
  2117 University Ave., Suite A, East Palo Alto, CA 94303 / (650) 725-9200
  https://law.stanford.edu/community-law-clinic/#slsnav-our-work
  Call the Clinic at (650) 725-9200 for Intake and to make an appointment.

Santa Cruz County

- Santa Cruz Public Defender
  2103 North Pacific Ave., Santa Cruz, CA 95060 / (831) 429-1311
  http://www.scdefenders.com/prop-47/
  For questions or assistance with Prop. 47 forms, contact the Santa Cruz Public Defender at (831) 429-1311 or jmcmiilin@scdefenders.com.

- Watsonville Law Center
  315 Main St., # 207, Watsonville, CA 95076 / (831) 722-2845
  http://www.watsonvillelawcenter.org/
  To make an appointment, call (831) 722-2845 Tuesday from 9 am to 12 pm and 1 pm to 3 pm or Wednesday from 1 pm to 4 pm. WLC provides free services to low-income individuals in Monterey, San Benito, and Santa Cruz counties.

Shasta County

- Shasta County Public Defender
  1815 Yuba St., Redding, CA 96001 / (530) 245-7598
  http://www.co.shasta.ca.us/index/pd_index.aspx
  Contact the Public Defender's Office at (530) 245-7598 or public_defender@co.shasta.ca.us to determine Prop. 47 eligibility.

Siskiyou County

- Siskiyou County Public Defender
  322-1/2 West Center St., Yreka, CA 96097 / (530) 842-8105
  http://www.co.siskiyou.ca.us/page/public-defenders-office
  Contact the Public Defender's Office at (530) 842-8105 or pd@co.siskiyou.ca.us Monday through Friday, 8 am to 12 noon and 1 pm to 5 pm, to determine Prop. 47 eligibility.

Solano County

- Solano County Public Defender Offices
  - Main Office – Solano County Government Center - Fairfield
    675 Texas St., Suite 3500, Fairfield, CA 94533 / (707) 784-6700
  - Vallejo Office – Social Services Building
    355 Tuolumne St., Suite 2200, Vallejo, CA 94590 / (707) 553-5241

Sonoma County

- Sonoma County Public Defender
  600 Administration Dr., Rm. 111, Santa Rosa, CA 95403 / (707) 565-2791
  http://sonomacounty.ca.gov/Public-Defender/
  Contact the Public Defender's Office at (707) 565-2791 Monday through Friday, 8 am to 5 pm, to determine Prop. 47 eligibility.

Stanislaus County

- Stanislaus County Public Defender
  1021 I St., Suite 201, Modesto, CA 95353 / (209) 525-4200
  http://www.stancounty.com/publicdefender/contact.shtm
  Contact the Public Defender's Office at (209) 525-4200 to determine Prop. 47 eligibility.

- Stanislaus County Superior Court - Self Help Center
  800 - 11th St., Room 220, Modesto, CA 95354
  https://www.stanct.org/self-help-center
  Assistance provided Monday through Thursday on a walk-in, first-come, first-served basis from 8 am to 12 noon and 1 pm to 3 pm.

Sutter County

- Sutter County Public Defender
  604 B St., Suite 1, Yuba City, CA 95991 / (530) 822-7355
  https://www.co.sutter.ca.us/doc/government/depts/pd/pd_home
  Contact the Public Defender's Office at (530) 822-7355 to determine Prop. 47 eligibility.

Tehama County

- Tehama County Superior Court - Self Help and Referral Program (SHARP)
  633 Washington St., 2nd Fl., Red Bluff, CA 96080 / (530) 527-8649
  http://tehamacourt.ca.gov/sharp.htm#Facil
  Assistance is provided through workshops and individual appointments. Call (530) 527-8649 for an appointment.

Tulare County

- Tulare County Public Defender
  221 S. Mooney Blvd., Courthouse RM G35, Visalia, CA 93291 / (559) 636-4500
  http://tularecountypublicdefender.com/publicdefender/index.cfm/headlines/proposition-47-faq/
  Call Public Defender's Office at (559) 636-4500 and ask to speak to someone about Proposition 47. The Office will assist you, even if you had an attorney from the Office of the Alternate Public Defender, a court appointed panel attorney, or you retained an attorney and now cannot afford to pay the attorney for assistance.

Tuolumne County

- Tuolumne County Public Defender
  99 N. Washington St., Sonora, CA 95370 / (209) 533-6370
  http://www.tuolumnecounty.ca.gov/index.aspx?NID=432
  Contact the Public Defender's Office at (209) 533-6370 Monday through Friday, 8 am to 12 noon or 1 pm to 5 pm, to determine Prop. 47 eligibility.

Ventura County

- Ventura County Public Defender
  800 S. Victoria Ave., Room # 207, Ventura, CA 93009 / (805) 662-6528
  http://www.pubdef.countyofventura.org/page61.html
  Call a Prop. 47 Law Clerk at (805) 654-3033 or (805) 662-6528 to request Prop. 47 assistance.

Yolo County

- Yolo County Public Defender
  814 North St., Woodland, CA 95695 / (530) 666-8165
  http://www.yolocounty.org/law-justice/public-defender/contact-us
  Contact the Public Defender's Office at (530) 666-8165 Monday through Thursday 8 am to 12 noon and 1 pm to 5 pm or Friday 8 am to 12 noon, to determine Prop. 47 eligibility.

Yuba County

- Yuba County Public Defender
  303 Sixth St., Marysville, CA 95901 / (530) 741-2331
  Contact the Public Defender's Office at (530) 741-2331 to determine Prop. 47 eligibility.

APPENDIX G

Statewide List of Nonprofit Immigration Service Providers

ABA Immigration Justice Project of San Diego

Areas of legal assistance: Removal hearings
Types of legal assistance: Help completing forms
Location: 401 B St, Suite 1700, San Diego, CA 92101
Contact: (619) 699-2932, http://www.americanbar.org/ijp

Access California Services

Areas of legal assistance:	Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Board of Immigration Appeals (BIA)
Location:	631 S. Brookhurst St, Suite 107, Anaheim, CA 92804
Contact:	(714) 917-0440, http://www.accesscal.org , info@accesscal.org

Access, Inc. - Immigration Services

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Filings with USCIS
Location:	2612 Daniel Ave, San Diego, CA 92111
Contact:	(858) 560-0871, http://www.access2jobs.org , info@access2jobs.org

AIDS Legal Referral Panel - Immigrant HIV Assistance Project

Areas of legal assistance:	Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court
Location:	1663 Mission St, Suite 500, San Francisco, CA 94103
Contact:	(415) 701-1200, http://www.alrp.org

Alameda County Bar Association Volunteer Legal Services

Areas of legal assistance:	Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms
Location:	1000 Broadway, Suite 480, Oakland, CA 94607
Contact:	(510) 302-2222, http://www.acbanet.org/

Alliance for African Assistance

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	5952 El Cajon Blvd, San Diego, CA 92115
Contact:	(619) 286-9052 ext. 248, http://www.alliance-for-africa.org , alexa@alliance-for-africa.org

Arab Resource and Organizing Center

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	522 Valencia St, San Francisco, CA 94110
Contact:	(415) 861-7444, http://www.araborganizing.org , info@araborganizing.org

Asian Americans Advancing Justice-LA

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Family-based petitions, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court
Location:	1145 Wilshire Blvd, 2nd Floor, Los Angeles, CA 90017
Contact:	(213) 977-7500, http://www.advancingjustice-la.org , info@advancingjustice-la.org

Asian Law Alliance

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	991 W. Hedding St, Suite 202, San Jose, CA 95126
Contact:	(408) 287-9710, http://www.asianlawalliance.org/ , sccala@pacbell.net

Asian Law Caucus

Areas of legal assistance:	Habeas Corpus, Removal hearings
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	55 Columbus Ave, San Francisco, CA 94111
Contact:	(415) 896-1701, http://www.asianlawcaucus.org/alc , alc@asianlawcaucus.org

Asian Pacific Islander Legal Outreach (Oakland Office)

Areas of legal assistance:	Consular Processing, Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court
Location:	1305 Franklin St, Suite 410, Oakland, CA 94612
Contact:	(510) 251-2846, http://www.apilegaloutreach.org , info@apilegaloutreach.org

Asian Pacific Islander Legal Outreach (San Francisco Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Habeas Corpus, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court
Location:	1121 Mission St, San Francisco, CA 94103
Contact:	(415) 567-6255, http://www.apilegaloutreach.org , info@apilegaloutreach.org

Bay Area Legal Aid

Areas of legal assistance:	U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court
Location:	Central Support Office, 1735 Telegraph Ave, Oakland, CA 94612
Contact:	1-888-330-1930, http://www.baylegal.org/ , cseitz@baylegal.org

Brazilian Alliance

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	4340 Redwood Highway, Suite D-320, San Rafael, CA 94903
Contact:	(415) 283-6320, http://www.brazilianalliance.org , contato@brazilianalliance.org

California Human Development Corporation (Santa Rosa Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), U visas
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	3315 Airway Dr, Santa Rosa, CA 95403
Contact:	(707) 521-4721, http://www.californiahumandevelopment.org , kathy.differding@cahumandevelopment.org

California Rural Legal Assistance (Coachella Office)

Areas of legal assistance:	T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1460 6th St, Coachella, CA 92236
Contact:	(760) 398-7261, http://www.crla.org/

California Rural Legal Assistance (Fresno Office)

Areas of legal assistance: T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance: Help completing forms, Filings with USCIS
Location: 2115 Kern St, Suite 370, Fresno, CA 93721
Contact: (559) 441-8721, http://www.crla.org/

California Rural Legal Assistance (Modesto Office)

Areas of legal assistance: T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance: Help completing forms, Filings with USCIS
Location: 1111 I Street, Suite 310, Modesto, CA 95354
Contact: (209) 577-3811, http://www.crla.org/

California Rural Legal Assistance (Oxnard Office)

Areas of legal assistance: T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance: Help completing forms, Filings with USCIS
Location: 338 S. A St, Oxnard, CA 93030
Contact: (805) 483-8083, http://www.crla.org/

California Rural Legal Assistance (Salinas Office)

Areas of legal assistance: T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance: Help completing forms, Filings with USCIS
Location: 3 Williams Rd, Suite D, Salinas, CA 93905
Contact: (831) 757-5221, http://www.crla.org/

California Rural Legal Assistance (Santa Maria Office)

Areas of legal assistance: T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance: Help completing forms, Filings with USCIS
Location: 2050 G S. Broadway, Santa Maria, CA 93454
Contact: (805) 922-4563, http://www.crla.org/

California Rural Legal Assistance (Stockton Office)

Areas of legal assistance: T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance: Help completing forms, Filings with USCIS, Representation before the Immigration Court
Location: 145 E. Weber Ave, Stockton, CA 95202

Contact: (209) 946-0605, http://www.crla.org/

California Rural Legal Assistance (Vista Office)

Areas of legal assistance: T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance: Help completing forms, Filings with USCIS
Location: 640 Civic Center Drive, Suite 180, Vista, CA 92804
Contact: (760) 966-0511, http://www.crla.org/

California Rural Legal Assistance Foundation, Inc. (Fresno Office)

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	814 N. Van Ness, Fresno, CA 93728
Contact:	(559) 486-6278, http://www.crlaf.org

California Rural Legal Assistance Foundation, Inc. (Sacramento Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	2210 K St., Suite 201, Sacramento, CA 95816
Contact:	(916) 446-7904, http://www.crlaf.org

California Rural Legal Assistance, Inc. (Marysville Office)

Areas of legal assistance: T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance: Help completing forms, Filings with USCIS
Location: 511 D Street, Marysville, CA 95901
Contact: (530) 742-5191, http://www.crla.org/

Canal Alliance

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Special Immigrant Juvenile

	Status, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	91 Larkspur St, San Rafael, CA 94901
Contact:	(415) 454-2640, http://www.canalalliance.org , contact@canalalliance.org

Casa Cornelia Law Center

Areas of legal assistance:	Asylum applications, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	2760 5th Ave, Suite 200, San Diego, CA 92103
Contact:	(619) 231-7788, http://www.casacornelia.org , lawcenter@casacornelia.org

Catholic Charities - Refugee & Immigrant Services (San Francisco Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	990 Eddy Street, San Francisco, CA 94109
Contact:	(415) 972-1200, http://www.catholiccharitiessf.org , moreinfo@catholiccharitiessf.org

Catholic Charities - Refugee & Immigrant Services (San Mateo Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	36 37th Avenue, San Mateo, CA 94403

Contact:	(650) 295-2160 ext. 185, http://catholiccharitiessf.org/learn-more-refugee-and-immigrant-services/

Catholic Charities of Los Angeles - Esperanza Immigrant Rights Project

Areas of legal assistance:	Asylum applications, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	1530 James Wood Blvd, Los Angeles, CA 90015
Contact:	(213) 251-3505, http://esperanza-la.org

Catholic Charities of Los Angeles - Immigration & Refugee Services (Los Angeles Office)

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1530 James M. Wood Blvd, Los Angeles, CA 90015
Contact:	(213) 251-3411, http://www.catholiccharitiesla.org

Catholic Charities of Los Angeles - St. Margaret Center (Inglewood Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS)
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	10217 Inglewood Ave, Lennox, CA 90304
Contact:	(310) 672-2208, http://www.catholiccharitiesla.org

Catholic Charities of Monterey - Support Services: Immigration & Citizenship (Salinas Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, U visas, Violence Against Women Act (VAWA) petitions
Types of legal	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the

assistance:	Board of Immigration Appeals (BIA)
Location:	1705 2nd Ave, Salinas, CA 93905
Contact:	(831) 422-0602, http://ministries.dioceseofmonterey.org/ministries/index.asp?id=21337 , jsifuentes@catholiccharitiescentralcoast.org

Catholic Charities of Monterey - Support Services: Immigration & Citizenship (San Luis Obispo Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Board of Immigration Appeals (BIA)
Location:	3592 Broad St, Suite 104, San Luis Obispo, CA 93401
Contact:	(805) 541-9110, http://ministries.dioceseofmonterey.org/ministries/index.asp?id=21340 , jsifuentes@catholiccharitiescentralcoast.org

Catholic Charities of Monterey - Support Services: Immigration & Citizenship (Watsonville Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Board of Immigration Appeals (BIA)
Location:	656 Main Street , Watsonville, CA 95076
Contact:	(831) 722-2675 ext. 4235, http://ministries.dioceseofmonterey.org/ministries/index.asp?id=21338 , jsifuentes@catholiccharitiescentralcoast.org

Catholic Charities of Orange County - Resettlement, Immigration, Citizenship Program

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS)
Types of legal	Help completing forms, Filings with USCIS, Representation before the Board of Immigration Appeals (BIA)

assistance:	
Location:	1820 E. 16th St, Santa Ana, CA 92701
Contact:	(714) 347-9610, http://www.ccoc.org

Catholic Charities of Sacramento, Inc. – Sacramento Food Bank & Family Services

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court
Location:	2469 Rio Linda Blvd., Sacramento, CA 95815
Contact:	(916) 648-8733, http://sacramentofoodbank.org/services/immigration-legal-services.html , immigration@sacramentofoodbank.org

Catholic Charities of San Bernardino - Refugee & Immigration Services (Moreno Valley Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	23623 Sunnymead Blvd, Suite 3, Moreno Valley, CA 92553
Contact:	(909) 388-1243, http://www.ccsbriv.org , info@ccsbriv.org

Catholic Charities of San Bernardino - Refugee & Immigration Services (San Bernardino Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1450 N. D St, San Bernardino, CA 92405
Contact:	(909) 388-1239, http://www.ccsbriv.org , info@ccsbriv.org

Catholic Charities of San Diego - Immigrant Services (Chula Vista Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	293 H Street, Chula Vista, CA 91910
Contact:	(619) 498-0722, http://www.ccdsd.org

Catholic Charities of Santa Clara County - Immigration Legal Services

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	2625 Zanker Road, Suite 201, San Jose, CA 95134
Contact:	(408) 944-0691, http://www.catholiccharitiesscc.org

Catholic Charities of Santa Rosa - Immigration/Resettlement Program

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS), U visas
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	987 Airway Ct, Santa Rosa, CA 95403
Contact:	(707) 578-6000, http://www.srcharities.org/ , info@srcharities.org

Catholic Charities of Stockton - Immigration Legal Services

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS)
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Board of Immigration Appeals (BIA)
Location:	1106 N. El Dorado St, Stockton, CA 95202

Contact: (209) 444-5910, http://ccstockton.org

Catholic Charities of the East Bay - Immigration Program (Concord Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	3540 Chestnut Ave, Concord, CA 94519
Contact:	(925) 825-3099, http://www.cceb.org , lsturgis@cceb.org

Catholic Charities of the East Bay - Immigration Program (Richmond Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews)
Location:	217 Harbour Way, Richmond, CA 94801
Contact:	(510) 439-4265, http://www.cceb.org , hwolf@cceb.org

Catholic Charities of the East Bay - Immigration Project (Oakland)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court
Location:	433 Jefferson St, Oakland, CA 94607
Contact:	(510) 768-3100, http://www.cceb.org , immreform@cceb.org

Catholic Charities, Diocese of San Diego - Immigration Services (El Centro Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act

	(VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	250 W. Orange St, El Centro, CA 92243
Contact:	(760) 353-6822, http://www.ccdsd.org/immigration.php

Catholic Charities, Diocese of San Diego - Immigration Services (San Diego Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	4575 Mission Gorge Pl, San Diego, CA 92120
Contact:	(619) 287-1270, http://www.ccdsd.org

Catholic Social Services of Solano County (Vacaville Office)

Areas of legal assistance:	Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	40 Eldridge St, Suite 9C, Vacaville, CA 95688
Contact:	(707) 644-8909, http://www.csssolano.org

Catholic Social Services of Solano County (Vallejo Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Filings with USCIS
Location:	125 Corporate Pl, Suite A, Vallejo, CA 94590
Contact:	(707) 644-8909, http://www.diocese-sacramento.org/social_service_ministry/catholic_charities.html , admin@csssolano.org

Center for Employment Training - Immigration & Citizenship Program (San Jose Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	701 Vine St, Suite 115, San Jose, CA 95110
Contact:	(408) 534-5451, http://www.cetweb.org/immigration

Central American Resource Center (Los Angeles Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	2845 W. 7th St, Los Angeles, CA 90005
Contact:	(213) 385-7800, http://carecen-la.org/ , info@carecen-la.org

Central American Resource Center (San Francisco Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	3101 Mission St, Suite 101, San Francisco, CA 94110
Contact:	(415) 642-4400, http://www.carecensf.org , info@carecensf.org

Central California Legal Services

Areas of legal assistance:	Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	2115 Kern St, Suite 1, Fresno, CA 93721

Contact: (559) 570-1200, http://www.centralcallegal.org

Centro de Ayuda Legal para Inmigrantes (CALI)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Habeas Corpus, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Filings with USCIS
Location:	1125 Benton St., Santa Clara, CA 95050
Contact:	(650) 938-4041, http://www.cali-immigration.org , info@cali-immigration.org

Centro Legal de La Raza

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	3022 International Blvd, Suite 410, Oakland, CA 94601
Contact:	(510) 437-1554, http://www.centrolegal.org , info@centrolegal.org

Coachella Valley Immigration Service and Assistance, Inc.

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Habeas Corpus, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	934 Vella Rd, Palm Springs, CA 92264
Contact:	(760) 327-1579, http://www.cvisa.org , legal@cvisa.org

Coalition for Humane Immigrant Rights of Los Angeles

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	2533 W. 3rd St, Suite 101, Los Angeles, CA 90057
Contact:	(213) 353-1333, http://www.chirla.org/ , info@chirla.org

Coalition to Abolish Slavery & Trafficking

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	5042 Wilshire Blvd, Suite 586, Los Angeles, CA 90026
Contact:	(213) 365-1906, http://www.castla.org , info@castla.org

Coastside Hope

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Board of Immigration Appeals (BIA)
Location:	99 Avenue Alhambra, #1089, El Granada, CA 94018
Contact:	(650) 726-9071, http://www.coastsidehope.org , lorena@coastsidehope.org

Community Lawyers Inc.

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS)
Types of legal assistance:	Help completing forms
Location:	1216 E. Compton Blvd, Compton, CA 90706

Contact: (310) 635-8181, http://community-lawyers.org , daca@community-lawyers.org

Community Legal Services of East Palo Alto

Areas of legal assistance:	Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	2117 University Ave, Suite B, East Palo Alto, CA 94303
Contact:	(650) 326-6440, http://www.clsepa.org , info@clsepa.org

Council for the Spanish Speaking (Stockton Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	224 S. Sutter St, Stockton, CA 95203
Contact:	(209) 644-2600, http://www.elconcilio.org

Council on American-Islamic Relations - Immigrants' Rights Center

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court
Location:	2180 West Crescent Ave., Suite F, Anaheim, CA 92801
Contact:	(714) 776-1177, https://ca.cair.com/losangeles , ircla@cair.com

Dolores Street Community Services

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), Removal hearings
Types of legal assistance:	Representation before the Immigration Court
Location:	938 Valencia St, San Francisco, CA 94110

Contact:	(415) 282-6209, http://www.dscs.org , immigration@dscs.org

East Bay Community Law Center

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	2921 Adeline St, Berkeley, CA 94703
Contact:	(510) 548-4040, http://www.ebclc.org , webinquiry@ebclc.org

East Bay Sanctuary Covenant

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews)
Location:	2362 Bancroft Way, Berkeley, CA 94704
Contact:	(510) 540-5296, http://eastbaysanctuary.org , admin@eastbaysanctuary.org

Educators for Fair Consideration (E4FC)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Habeas Corpus, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Location:	354 Pine St, Suite 700, San Francisco, CA 94104
Contact:	(415) 787-3432, http://www.e4fc.org , legalservices@e4fc.org

El Concilio Family Services

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Family-based petitions, Naturalization/Citizenship

Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	301 South C Street, Oxnard, CA 93030
Contact:	(805) 486-9777, http://www.elconciliofs.org , reception@elconciliofs.org

El Rescate Legal Services

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court
Location:	1501 W. 8th St, Suite 100, Los Angeles, CA 90017
Contact:	(213) 387-3284, http://www.elrescate.org , ssanabria@elrescate.org

Employee Rights Center - Immigration Program

Areas of legal assistance:	Naturalization/Citizenship
Types of legal assistance:	Filings with USCIS
Location:	4265 Fairmount Ave, Suite 210, San Diego, CA 92105
Contact:	(619) 521-1372, http://www.weberc.net

Episcopal Diocese of Los Angeles - Interfaith Refugee & Immigration Service

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS)
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	3621 Brunswick Ave, Los Angeles, CA 90039
Contact:	(323) 667-0489, http://www.iris-la.org , mtumilty@ladiocese.org

Filipino Advocates for Justice (Oakland Office)

Areas of legal assistance:	Adjustment of Status, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	310 8th St, Suite 308, Oakland, CA 94607
Contact:	(510) 465-9876, http://www.filipinos4justice.org/

Greater Bakersfield Legal Assistance

Areas of legal assistance:	Adjustment of Status, U visas, Violence Against Women Act (VAWA) petitions
Location:	615 California Ave, Bakersfield, CA 93304
Contact:	(661) 325-5943, http://www.gbla.org

Horizon Cross Cultural Center

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	3707 W. Garden Grove Blvd., Orange, CA 92868
Contact:	(714) 537-0608, http://www.horizonccc.org , info@horizonccc.org

Human Rights Project

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Habeas Corpus, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	201 S. Santa Fe Ave, Suite 101, Los Angeles, CA 90012
Contact:	(213) 680-7801, http://www.hrproject.org , judy@igc.org

Immigrant Hope Santa Barbara

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	935 San Andres St., Santa Barbara, CA 93101
Contact:	(805) 963-0166, http://www.immigranthope.org/santabarbara , diane.martinez@immigranthope.org

Immigration Center for Women and Children (Los Angeles Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court
Location:	634 S. Spring St., Suite 727, Los Angeles, CA 90014
Contact:	(213) 614-1165, http://icwclaw.org , info@icwclaw.org

Immigration Center for Women and Children (San Diego Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Naturalization/Citizenship, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	427 C St, Suite 208, San Diego, CA 92101
Contact:	(619) 515-2200, http://icwclaw.org/ , info@icwclaw.org

Immigration Center for Women and Children (San Francisco Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	3543 18th St, #32, San Francisco, CA 94110
Contact:	(415) 861-1449, http://icwclaw.org/ , info@icwclaw.org

Immigration Resource Center of San Gabriel Valley

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	303 W. Colorado Blvd., Monrovia, CA 91016
Contact:	(626) 509-9472, http://www.ircsgv.org , info@ircsgv.org

Immigration Services of Mountain View

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1058 W Evelyn Ave, Suite 30, Sunnyvale, CA 94086
Contact:	(650) 938-4911, http://www.ismv.org/ , info@ismv.org

Institute for Children's Aid

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	41745 Rider Way, Suite 2, Temecula, CA 92590
Contact:	(951) 695-3336, http://www.4achild.org/bia-immigration , info@4achild.org

International Institute of the Bay Area (Antioch Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court
Location:	3240 Lone Tree Way, Suite 202, Antioch, CA 94509
Contact:	(925) 237-8582, http://www.iibayarea.org , antioch@iibayarea.org

International Institute of the Bay Area (Fremont Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	39155 Liberty Street, D450, Fremont, CA 94538

Contact:	(510) 894-3639, http://www.iibayarea.org , fremont@iibayarea.org

International Institute of the Bay Area (Napa Office)

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1820 Jefferson Street, Napa, CA 94559
Contact:	(707) 266-1568, http://www.iibayarea.org , mfeldon@iibayarea.org

International Institute of the Bay Area (Oakland Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court
Location:	405 14th St, Suite 500, Oakland, CA 94612
Contact:	(510) 451-2846, http://www.iibayarea.org

International Institute of the Bay Area (Redwood City Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	2600 Middlefield Rd, Redwood City, CA 94063
Contact:	(650) 780-7530, http://www.iibayarea.org , redwoodcity@iibayarea.org

International Institute of the Bay Area (San Francisco Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions,

	Naturalization/Citizenship, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	657 Mission Street, Suite 301, San Francisco, CA 94105
Contact:	(415) 538-8100 ext. 206, http://www.iibayarea.org , sfinfo@iibayarea.org

International Rescue Committee (Los Angeles Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Board of Immigration Appeals (BIA)
Location:	625 N. Maryland Ave., Glendale, CA 91206
Contact:	(818) 550-6220, http://www.rescue.org , LosAngeles@rescue.org

International Rescue Committee (Oakland Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS), Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	405 14th St, Suite 1415, Oakland, CA 94612
Contact:	(510) 452-8222, http://www.rescue.org

International Rescue Committee (Sacramento Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	2020 Hurley Way, Suite 395, Sacramento, CA 95825
Contact:	(916) 482-0120, http://www.rescue.org

International Rescue Committee (San Diego Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based

	petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	5348 University Ave, Suite 205 A, San Diego, CA 92105
Contact:	(619) 641-7510 ext. 250, http://www.rescue.org , SanDiego@theIRC.org

International Rescue Committee (San Jose Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Filings with USCIS
Location:	1210 South Bascom Avenue, Suite 227, San Jose, CA 95128
Contact:	(408) 277-0255, http://www.rescue.org , SanJose@rescue.org

Jewish Family & Children's Services - Emigres

Areas of legal assistance:	Adjustment of Status, Consular Processing, Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	2534 Judah St, San Francisco, CA 94122
Contact:	(415) 449-2900, http://www.jfcs.org , legalservices@jfcs.org

Jewish Family & Children's Services of the East Bay (JFCS/East Bay)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1855 Olympic Blvd., Suite 200, Walnut Creek, CA 94596
Contact:	(925) 927-2000 ext. 606, http://www.jfcs-eastbay.org , immigration@jfcs-eastbay.org

Jewish Family Service of San Diego

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Temporary Protected Status (TPS)
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court
Location:	8804 Balboa Ave, San Diego, CA 92123
Contact:	(858) 637-3030, http://www.jfssd.org/site/PageServer?pagename=programs_refugee_main

Jewish Family Services of Los Angeles - Immigration Program

Areas of legal assistance:	Adjustment of Status, Consular Processing, Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	4311 Wilshire Blvd, Suite 211, Los Angeles, CA 90010
Contact:	(323) 935-5303, http://www.jfsla.org , jfsircp@jfsla.org

Kids in Need of Defense (Los Angeles Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas
Types of legal assistance:	Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court
Location:	350 South Grand Avenue, 32nd Floor, Chadbourne & Parke LLP, KIND-LA, Los Angeles, CA 90071
Contact:	(213) 896-2071, http://www.supportkind.org , cneblina@supportkind.org

Korean Community Center of the East Bay

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Board of Immigration Appeals (BIA)
Location:	1700 Broadway, Suite 400, Oakland, CA 94612
Contact:	(510) 547-2662, http://www.kcceb.org , general@kcceb.org

Korean Resource Center (Los Angeles Office)

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), Naturalization/Citizenship, T visas

Types of legal assistance:	Help completing forms
Location:	3660 Wilshire Blvd, #408, Los Angeles, CA 90010
Contact:	(323) 937-3718, http://www.krcla.org , krcla@krcla.org

La Raza Centro Legal

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	474 Valencia St, Suite 295, San Francisco, CA 94103
Contact:	(415) 575-3500, http://www.lrcl.org , appt@lrcl.org

Law Foundation of Silicon Valley

Areas of legal assistance:	Special Immigrant Juvenile Status
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	153 North 3rd Street, 3rd Floor, San Jose, CA 95112
Contact:	(408) 293-4790, http://www.lawfoundation.org

Legal Aid Foundation of Los Angeles (East Los Angeles Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	5228 Whittier Blvd, Los Angeles, CA 90022
Contact:	(213) 640-3883, http://www.lafla.org

Legal Aid Foundation of Los Angeles (Long Beach Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant

	Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	601 Pacific Ave, Long Beach, CA 90802
Contact:	(562) 435-3501, http://www.lafla.org

Legal Aid Foundation of Los Angeles (Santa Monica Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	1640 5th St, Suite 124, Santa Monica, CA 90401
Contact:	(310) 899-6200, http://www.lafla.org

Legal Aid Foundation of Los Angeles (South Los Angeles Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	7000 S. Broadway, Los Angeles, CA 90003
Contact:	(213) 640-3950, http://www.lafla.org

Legal Aid Foundation of Los Angeles (West Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals

Location: 1102 Crenshaw Blvd, Los Angeles, CA 90019

Contact: (323) 801-7989, http://www.lafla.org

Legal Aid of Napa Valley

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Habeas Corpus, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	575 Lincoln Avenue , Suite 210, Napa, CA 94558
Contact:	(707) 259-0579, http://www.legalaidnapa.org , srivera@legalaidnapa.org

Legal Aid Society of San Diego (Main Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	110 S. Euclid Ave., San Diego, CA 92114
Contact:	(877) 534-2524, http://www.lassd.org

Legal Aid Society of San Diego (North County Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Employment authorization, Family-based petitions, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	216 S. Tremont St., Oceanside, CA 92054
Contact:	(877) 534-2524, http://www.lassd.org

Legal Assistance for Seniors

Areas of legal assistance: Naturalization/Citizenship

Types of legal assistance: Help completing forms, Filings with USCIS

Location: 1970 Broadway, Suite 300, Oakland, CA 94612

Contact:	(510) 832-3040, http://www.lashicap.org , las@lashicap.org

Legal Services for Children, Inc.

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), Special Immigrant Juvenile Status, U visas
Types of legal assistance:	Filings with USCIS, Representation before the Immigration Court
Location:	1254 Market St, 3rd Floor, San Francisco, CA 94102
Contact:	(415) 863-3762, http://www.lsc-sf.org/

Libreria del Pueblo, Inc. (Carousel Mall Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	251 Carousel Mall, San Bernardino, CA 92401
Contact:	(909) 888-1800, http://www.libreriadelpueblo.org , morales6391@hotmail.com

Los Angeles Center for Law and Justice

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1241 S. Soto St, Suite 102, Los Angeles, CA 90023
Contact:	(323) 980-3500, http://www.laclj.org , info@laclj.org

McGeorge School of Law -Immigration Clinic

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	3200 5th Ave, Sacramento, CA 95817

Contact: (916) 340-6080, http://www.mcgeorge.edu , bnordahl@pacific.edu

My Sister's House

Areas of legal assistance:	Adjustment of Status, Employment authorization, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	3053 Freeport Blvd., No. 120, Sacramento, CA 95818
Contact:	(916) 930-0626, http://www.my-sisters-house.org , info@my-sisters-house.org

Neighborhood Legal Services of Los Angeles County (Pacoima Office)

Areas of legal assistance:	Adjustment of Status, Family-based petitions, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	13327 Van Nuys Blvd, Pacoima, CA 91331
Contact:	1-800-433-6251, http://www.nlsla.org , nls@nlsla.org

Opening Doors, Inc.

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Family-based petitions, Naturalization/Citizenship, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1111 Howe Ave, Ste. 125, Sacramento, CA 95825
Contact:	(916) 492-2591, http://www.openingdoorsinc.org , info@openingdoorsinc.org

Pangea Legal Services

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	350 Sansome St, Suite 650, San Francisco, CA 94104

Contact:	(415) 254-0475, http://www.pangealegal.org/ , welcome@pangealegal.org

Peace Over Violence - Legal Advocacy Project

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Employment authorization, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	892 N. Fair Oaks Ave., Suite D, Pasadena, CA 91103
Contact:	(626) 584-6191, http://www.peaceoverviolence.org , info@peaceoverviolence.org

Public Counsel - Immigrants' Rights Project

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	610 S. Ardmore Ave., Los Angeles, CA 90005
Contact:	(213) 385-2977 x 296, http://www.publiccounsel.org , aperez@publiccounsel.org

Public Law Center

Areas of legal assistance:	Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	601 Civic Center Dr W., Santa Ana, CA 92701
Contact:	(714) 541-1010, http://www.publiclawcenter.org , info@publiclawcenter.org

San Bernardino Community Service Center, Inc

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions

Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	560 N. Arrowhead Ave, Suite 8A, San Bernardino, CA 92401
Contact:	(909) 885-1992

San Diego Volunteer Lawyer Program, Inc. - Immigration Program

Areas of legal assistance:	Special Immigrant Juvenile Status
Types of legal assistance:	Filings with USCIS
Location:	707 Broadway, Suite 1400, San Diego, CA 92101
Contact:	(619) 235-5656, http://sdvlp.org , info@sdvlp.org

Santa Clara University, Katharine and George Alexander Community Law Center - Clinical Programs

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Family-based petitions, T visas, U visas, Violence Against Women Act (VAWA) petitions
Location:	1030 The Alameda, San Jose, CA 95126
Contact:	(408) 288-7030, http://law.scu.edu/kgaclc/index.cfm

Santa Cruz County Immigration Project

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Special Immigrant Juvenile Status, Temporary Protected Status (TPS), Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	406 Main St, Suite 217, Watsonville, CA 95076
Contact:	(831) 724-5667, http://www.cabinc.org/SCCIP/SCCIP_Main.htm , Doug@cabinc.org

SEACM, A Ministry to Refugees and Immigrants

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	2315 Placer St., Redding, CA 96001

Contact:	(530) 241-5802, seacm@snowcrest.net

Services, Immigrant Rights, and Education Network

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	1425 Koll Cir, Suite 109, San Jose, CA 95112
Contact:	(408) 453-3003 ext. 107, http://www.siren-bayarea.org/ , vanessa@siren-bayarea.org

Social Justice Collaborative

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Habeas Corpus, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	420 3rd Street, Suite 130, Oakland, CA 94607
Contact:	(510) 992-3764, http://www.socialjusticecollaborative.org , office@socialjusticecollaborative.org

Southwestern Law School - Immigration Law Clinic

Areas of legal assistance:	Adjustment of Status, Special Immigrant Juvenile Status, U visas
Types of legal assistance:	Filings with USCIS
Location:	3050 Wilshire Blvd, Los Angeles, CA 90010
Contact:	(213) 738-5574, http://www.swlaw.edu/academics/clinic/immigrationclinic , immigrationclinic@swlaw.edu

Stanford Law School - Immigrants' Rights Clinic

Areas of legal	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent

assistance:	Residents (DAPA), Habeas Corpus, NACARA, Removal hearings, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Filings with USCIS, Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	559 Nathan Abbott Way, Crown Quadrangle, Stanford, CA 94305
Contact:	(650) 724-9068, http://www.law.stanford.edu/program/clinics/immigrantsrights/ , immigrants.rights@law.stanford.edu

The Association of Salvadorans of Los Angeles

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, Temporary Protected Status (TPS), U visas
Types of legal assistance:	Help completing forms
Location:	660 S. Bonnie Brae St., Los Angeles, CA 90057
Contact:	(213) 483-1244, http://www.asosal.org , ttejada@asosal.org

TODEC Legal Center

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Board of Immigration Appeals (BIA)
Location:	234 South D St., Perris, CA 92570
Contact:	(951) 943-1955, http://www.todec.org , info@todec.org

Unitarian Universalist Refugee and Immigrant Services and Education, Inc.

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, NACARA, Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)

Location:	1600 Buena Vista Dr, Vista , CA 92081
Contact:	(760) 477-7537, http://www.uurise.org , appts@uurise.org

United Farm Workers Foundation (Bakersfield Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Employment authorization, Family-based petitions, Naturalization/Citizenship, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	220 18th St, Bakersfield, CA 93301
Contact:	(661) 324-2500, http://www.ufwfoundation.org

United Farm Workers Foundation (Fresno Office)

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Family-based petitions, Naturalization/Citizenship
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation before the Board of Immigration Appeals (BIA)
Location:	2409 Merced St, Suite 103, Fresno, CA 93721
Contact:	(559) 496-0700, http://www.sisepuede.org , slugo@ufwfoundation.org

United Farm Workers Foundation (Salinas Office)

Areas of legal assistance:	Adjustment of Status, Consular Processing, Employment authorization, Family-based petitions, NACARA, Naturalization/Citizenship, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	427 Pajaro St., Suite 3, Salinas, CA 93901
Contact:	(831) 758-2611, http://www.ufwfoundation.org

University of California, Davis School of Law - Immigration Law Clinic

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Naturalization/Citizenship, Removal hearings
Types of legal assistance:	Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA)
Location:	One Shields Ave, Building TB30, Davis, CA 95616

Contact:	(530) 752-6942, http://www.law.ucdavis.edu/academics-clinicals/immigration-law-clinic.html

University of San Diego School of Law - Immigration Law Clinic

Areas of legal assistance:	Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Family-based petitions, Naturalization/Citizenship, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Help completing forms, Filings with USCIS, Representation at Asylum Interviews (Credible Fear Interviews, Reasonable Fear Interviews), Representation before the Immigration Court
Location:	5998 Alcalá Park, Barcelona 305, San Diego, CA 92110
Contact:	(619) 260-7470, http://www.sandiego.edu/law/free-legal-assistance/index.php

University of Southern California Gould School of Law - Immigration Clinic

Areas of legal assistance:	Asylum applications, Removal hearings
Types of legal assistance:	Representation before the Immigration Court, Representation before the Board of Immigration Appeals (BIA), Federal court appeals
Location:	699 Exposition Blvd, Los Angeles, CA 90089
Contact:	(213) 821-5987, http://lawweb.usc.edu/ , nfrenzen@law.usc.edu

Western State College of Law, Immigration Clinic

Areas of legal assistance:	Adjustment of Status, Asylum applications, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Naturalization/Citizenship, Removal hearings, Special Immigrant Juvenile Status, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of legal assistance:	Filings with USCIS, Representation before the Immigration Court
Location:	1111 N. State College Blvd, Fullerton, CA 92831
Contact:	(714) 459-1157, http://www.wsulaw.edu/academics-and-programs/legal-clinic.aspx , jkoh@wsulaw.edu

World Relief (Garden Grove/Southern California Office)

Areas of legal assistance:	Adjustment of Status, Asylum applications, Consular Processing, Deferred Action for Childhood Arrivals (DACA), Employment authorization, Employment-based immigrant and non-immigrant petitions, Family-based petitions, Naturalization/Citizenship, Removal hearings, T visas, U visas, Violence Against Women Act (VAWA) petitions
Types of	Help completing forms, Filings with USCIS

legal assistance:	
Location:	13121 Brookhurst Street, Suite G, Garden Grove, CA 92843
Contact:	(714) 210-4730, http://www.worldreliefgardengrove.org/ , gpeterson@worldrelief.org

World Relief (Sacramento Office)

Areas of legal assistance:	Adjustment of Status, Deferred Action for Childhood Arrivals (DACA), Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), Family-based petitions
Types of legal assistance:	Help completing forms, Filings with USCIS
Location:	3750 Auburn Blvd, Suite B, Sacramento, CA 95821
Contact:	(916) 978-3410, http://www.worldreliefsacramento.org , sgreed@wr.org

Appendix H

§ N.17 Immigration Relief Toolkit For Criminal Defenders

How to Quickly Spot
Possible Immigration Relief
For Noncitizen Defendants

Immigrant Legal Resource Center
www.ilrc.org

The Immigrant Legal Resource Center (www.ilrc.org) created this toolkit on behalf of the Defending Immigrants Partnership, a national consortium that supports criminal defenders in their task of competently representing noncitizen clients. Defenders can register for free additional resources at www.defendingimmigrants.org. Katherine Brady of the ILRC wrote this Toolkit in 2014 and updated it in 2015.

The Defending Immigrant Partnership national partners are the Immigrant Legal Resource Center, the Immigrant Defense Project (www.immigrantdefense.org) and the National Immigration Project of the National Lawyers Guild (www.nipnlg.org). The national defender partners are the National Association of Criminal Defense Lawyers (www.nacdl.org) and the National Legal Aid and Defender Association (www.nlada.org).

Table of Contents

§17.1. How and Why Should I Use This Toolkit?

Why Should I Use This Toolkit?

Many of your noncitizen clients are already deportable ("removable"). This includes all undocumented people, as well as lawful permanent residents (green card-holders) who have become deportable because of a conviction. If immigration authorities find these clients – which is very likely to happen – they will be deported *unless* they are granted some kind of immigration relief.

For these defendants, staying eligible to apply for immigration relief is their most important immigration goal, and may be their highest priority in the criminal defense. It can mean the difference between remaining in the U.S. with their family, and being deported to another country for the rest of their lives. The Supreme Court has recognized that preserving eligibility for relief from removal is "one of the principal benefits sought by defendants deciding whether to accept a plea offer or instead to proceed to trial." *Padilla v. Kentucky*, 559 U.S. 356, 357 (2010), citing *INS v. St. Cyr,* 533 U.S. 289, 323 (2001).

The purpose of this Toolkit is to help defenders or paralegals to spot a defendant's *possible* immigration relief *relatively quickly.* If you determine that your client might be eligible for specific relief, this will help inform your criminal defense goals, and you can tell your client that it is especially important for him or her to get immigration counsel.

How Can I Use This Toolkit to Represent My Client?

For a review of the steps needed to represent any noncitizen defendant, see materials such as *§N.1 Overview* in the *California Quick Reference Chart and Notes* at www.ilrc.org/crimes, or see similar materials at www.defendingimmigrants.org.

Regarding relief, first confirm that the defendant really is a removable noncitizen. Might the client unknowingly be a U.S. citizen – despite multiple past deportations? See § 17.3. Is the permanent resident client really deportable? Use immigration analysis tools cited above to analyze the permanent resident's past conviction/s and current plea proposal/s. If the person might not be deportable yet, one of your goals is to not make her deportable now.

Second, if the client is or might be removable, work with her to complete the ***Client Screening Questionnaire*** that appears at § 17.2. Answering these questions will identify *possible* relief. It will let you know if the client is even in the ballpark to qualify for some immigration application. A paralegal or attorney may be able to complete the form with the defendant in 10-20 minutes. (The questionnaire also appears at *§N.16 Client Questionnaire*, in the *California Quick Reference Chart and Notes* at www.ilrc.org/crimes.)

Third, if the client answers "yes" to any question, the form will direct you to an ***Eligibility/Information*** sheet about the particular form of relief. See §§ 17.3-17.26. If you and the client review this short (usually two pages) material, you should get a real sense of whether the person may be eligible. If the client *might* be eligible for any relief, advise her to try hard to obtain expert immigration counsel on the case. Advise the client that in some cases – for example citizenship or family visa matters – a nonprofit immigration agency may be a good free or low-cost option. Where a private immigration office is needed, often the attorney will agree to do an analysis of eligibility for relief for a few hundred dollars, or will work out a fee payment schedule to take the whole case. (Note that not all immigration attorneys are experts in crimes. A resource center may be able to provide local recommendations to keep on file; see

www.defendingimmigrants.org.) The client (and where appropriate, the client's family) should be fully involved in these important discussions, and receive copies of the relevant materials.

Regarding the criminal defense, the *Eligibility/Information* sheet will describe the type of convictions that destroy eligibility for that form of relief. Now use your criminal defense skills to identify a realistic plea that will not destroy eligibility, and try to get the disposition. Of course, in some cases it will not be possible to negotiate a plea that maintains the client's eligibility for relief – but at least you will have advised your client of the real cost of the proposed disposition, and the client can make an informed choice. As you know, some noncitizen clients would do almost anything, including take a risky case to trial or accept additional criminal penalties, to remain in the U.S. with their families. Other noncitizen clients will only be interested in getting the least criminal penalty.

If the client will need to leave the U.S., advise him or her of the significant benefits of departing under voluntary departure rather than removal, and the serious consequences to illegal re-entry into the U.S. after removal. See § 17.26. Document your efforts in your file.

As with any criminal case involving a noncitizen, the best practice is to have an expert in crimes and immigration consult to confirm the immigration case analysis and defense goals. This could be expert immigration counsel retained by the client, "crim/imm" experts used by your office, or your own research, if you are willing and able to put in the time. Extensive free resources are available to defenders from www.defendingimmigrants.org. Along with state-specific legal analysis and training materials, the site provides information about additional books, websites, and expert consultants, as well as descriptions of different protocols that indigent defender offices have used to get the resources in place needed to address immigration issues.

§17.2. CLIENT QUESTIONNAIRE -- BASIC

Interviewer's name	Phone number	Email address

Defendant's Name	A# (if possible)	Next hearing date
Def's Country of Birth	Def's Date of Birth	Immigration Hold:
		___Yes ___No

1. ENTRY:

Date first entered U.S.	Visa Type (or 'none')	Significant Departures (approximate OK; append list)
		Dates: Length of departures:

2. IMMIGRATION STATUS:

Lawful permanent resident?	Other Current Immigration status? (check one)
___Yes ___No Date Obtained?_____. On what basis (e.g. family visa, refugee):	__ Undocumented ___Doesn't know ___Has work permit (is there a pending application for status or relief?) ___Refugee ___Asylee ___Temporary Protected Status ___ Deferred Action for Childhood Arrivals (DACA) Other: _____
Screen for possible US citizenship if:	
____Grandparent or parents were US citizen at time of Def's birth; OR ____Parent(s) became naturalized US citizens while Def was under age 18; Def became LPR while under age 18	
Photocopy <u>all</u> immigration documents!	

3. PRIOR REMOVAL/DEPORTATION/VOLUNTARY DEPARTURE:

Was Defendant ever deported?	Describe what happened, to extent possible (e.g., saw an imm. judge, just signed form before leaving U.S., etc.)	Where? When?
___Yes ___No		

4. DEFENSE GOALS & CRIMINAL HISTORY

Defendant's Goals Re: Immigration Consequences	Criminal History & Current Charges
___Avoid conviction that triggers deportation ___Preserve eligibility to apply for immigration status or relief from removal (see *Questionnaire* on next page for all undocumented or otherwise deportable defendants) ___Get out of jail ASAP ___Immigration consequences/deportation not a priority ___Other goals re: imm consequences:	*Append separate sheet to:* **<u>List Criminal History</u>** (include offense name and cite, date of conviction, sentence even if suspended for each conviction. Include expunged convictions, juvie, and other resolutions) **<u>List Current Charge/s, Plea Offer/s</u>**

CLIENT RELIEF QUESTIONNAIRE

If the answer to any question is "yes," the client might be eligible for the relief indicated. Be sure to photocopy any immigration document. See referenced sections for more information.

"USC" stands for U.S. Citizen and "LPR" stands for lawful permanent resident (green card)

1. Might client already be a USC – and not know it? ☐ **Yes** ☐ **No**

If the answer to *any* question is yes, investigate whether client is a USC or national. *See §17.3.*

1 Was the client born in the United States or its territories (almost always a citizen or national)? Or,
2 At time of birth abroad, did client have a USC parent or grandparent? Or,
3 Before age of 18, in either order: did client become an LPR, and did one of client's parents get U.S. citizenship? Or, was client adopted by a USC before the age of 16 and became an LPR before age 18?

2. Is your client eligible for, and wants to apply for U.S. Citizenship? ☐ **Yes** ☐ **No**

A LPR can apply for naturalization after five years LPR status, or three years of marriage to a USC while an LPR; must establish good moral character and should not be deportable. Some current or past military personnel can naturalize without being LPRs and while in removal proceedings. *See §17.4 Naturalization.*

3. Is your client a LPR who has lived in the U.S. at least seven years? ☐ **Yes** ☐ **No**

To apply for a special waiver in deportation proceedings, your client must be a LPR who (a) does not have an aggravated felony; (b) has been a LPR for at least five years; and (c) has lived in the U.S. for at least seven years since being admitted in any status (e.g. as a tourist, LPR, border crossing card). *See §17.5 LPR Cancellation.*

4. Is your client a LPR with deportable convictions pre-April 24, 1996? ☐ **Yes** ☐ **No**

Your client must a LPR, deportable for offenses that occurred before April 24, 1996, even if an aggravated felony. But deportable offense after this date may disqualify client. *See §17.6 § 212(c) Relief.*

5. Can your client apply for a green card through USC or LPR parent, spouse, child, or sibling? ☐ **Yes** ☐ **No**

Client must have a USC spouse; USC child at least age 21; or USC parent if client is unmarried and under age 21 ("immediate relative" visa). Or, an LPR spouse; an LPR parent if client is unmarried; a USC parent if client is at least age 21 and/or married; or a USC sibling ("preference system" visa). *See §17.7 Family Visas.*

6. Has your client been abused and is now eligible for VAWA Relief? ☐ **Yes** ☐ **No**

Client or certain family member/s has been abused (including emotional abuse) by a USC or LPR spouse, parent, or adult child. *See §17.8 VAWA Relief. (If abuser is not a USC or LPR, consider U Visa, below.)*

7. Is client juvenile and a victim of abuse, neglect of abandonment? ☐ **Yes** ☐ **No**

Client must be in delinquency, dependency, probate, etc. proceedings and can't be returned to at least one parent due to abuse, neglect or abandonment. *See §17.9 Special Immigrant Juvenile.*

8. Is your client eligible for inadmissibility waiver INA 212(h)? ☐ **Yes** ☐ **No**

Client is a LPR now, or is eligible to apply for LPR on a family or VAWA visa (see # 4, 5 above), and is inadmissible for: crimes involving moral turpitude, prostitution (even if these are aggravated felonies, in some cases), and/or single conviction for use or simple possession of 30 grams or of less marijuana or the equivalent in hashish. *See §17.10 Section 212(h) Waiver.*

9. Is your client eligible for a Domestic Violence Waiver? ☐ **Yes** ☐ **No**

Client was convicted of a deportable DV or stalking offense, but in fact client is the victim in the relationship. *See §17.11 Domestic Violence Waiver.*

10. Is your client eligible for expanded Deferred Action for Childhood Arrivals (DACA)? ☐ **Yes** ☐ **No**
Client entered U.S. under age 16 and (for applications filed after late February 2015) on or before 1/1/2010, and meets other requirements. *See §17.12 DACA.*

11. Is your client eligible for Deferred Action for Parents of Americans and LPRs (DAPA)? ☐ **Yes** ☐ **No**
As of November 20, 2014, client was undocumented and had a USC or LPR son or daughter of any age, married or unmarried. Client has continuously resided in the U.S. since Jan. 1, 2010. *See §17.13 DAPA.*

12. Has your client lived in the U.S. for ten years? ☐ **Yes** ☐ **No**
To be eligible for a special waiver in deportation proceedings, client must have lived in U.S. at least ten years and have a USC or LPR parent, spouse or child. Strict criminal bars. *See §17.14 Non-LPR Cancellation.*

13. Has your client lived in the U.S. for ten years with convictions before 4/1/97? ☐ **Yes** ☐ **No**
If all deportable convictions pre-date April 1, 1997, client may qualify for relief even with deportable convictions, e.g. for drugs, and even without a USC or LPR relative. An aggravated felony conviction after Nov. 29, 1990 is a bar. *See §17.15 Former Suspension of Deportation.*

14. Has your client been a victim of a crime? ☐ **Yes** ☐ **No**
To be eligible for a U Visa, client must have been a victim of a crime, such as incest DV, assault, false imprisonment, extortion, obstruction of justice, or sexual assault/abuse, and is or was willing to cooperate in investigation or prosecution of the crime. *See §17.16 The "U" Visa.*

15. Has your client been a victim of 'severe' alien trafficking? ☐ **Yes** ☐ **No**
To be eligible for a T Visa, client must have been victim of (a) sex trafficking of persons under age 18, or (b) trafficking and indentured servitude of persons by use of force, fraud, etc. *See §17.17 The "T" Visa.*

16. Can your client provide valuable information about organized crime or terrorism? ☐ **Yes** ☐ **No**
The person must provide key information about organized crime or terrorism in order to obtain one of the very small number of S visas given each year to informants. *See §17.18 The "S" Visa.*

17. Is your client afraid to return to his or her home country? ☐ **Yes** ☐ **No**
Answer yes if (a) client fears persecution or even torture if returned to the home country *(see §§ 17.19 Asylum and Withholding, and 17.20. Convention Against Torture)*; (b) if Client already is an asylee or refugee (*see §17.21 Refugees and Asylees)*; or (c) if client is from a country that the U.S. designated for TPS status, based on natural disaster, war (*see §17.22 Temporary Protected Status)*.

18. Is your client from the former Soviet Bloc, El Salvador, Guatemala, or Haiti? ☐ **Yes** ☐ **No**
Your client might be eligible for NACARA if he/she (a) is from the above countries; *and* (b) applied for asylum or similar relief in the 1990's, or is a dependent of such a person. *See §17.23 NACARA for Central Americans,* and *§17.24 HRIFA for Haitians and Dependents.*

19. Does your client have an imm case from 1980's amnesty programs or Family Unity? ☐ **Yes** ☐ **No**
The applications for amnesty recipients and their family members possibly are still viable. *See §17.25.*

20. Client is not eligible for any relief and will go home. Client seeks "voluntary departure" instead of removal. ☐ **Yes** ☐ **No**
Numerous benefits, and the only requirement is no aggravated felony. *See §17.26 Voluntary Departure.*

§17.3. MIGHT YOUR CLIENT ALREADY BE A U.S. CITIZEN?

Some people who believe that they are undocumented in fact may be U.S. citizens – including people who have been repeatedly deported. If the answer to any of the "QUICK TEST" questions is "yes", refer the client for immigration counseling or research the issue yourself. Many immigration non-profits can help with this kind of case.

See further discussion at Part B, and in the *USCIS Official Policy Manual* (hereafter *USCIS Manual*) at http://www.uscis.gov/policymanual/HTML/PolicyManual.html at Volume 12: Citizenship and Naturalization, Part H. For in-depth information see books such as Immigrant Legal Resource Center, *Naturalization and U.S. Citizenship: The Essential Legal Guide* (www.ilrc.org).

A. QUICK TEST: Might the Client Be a U.S. Citizen or National?

1. Was the client born in the United States or its territories or possessions?

If so, the person is almost surely a U.S. citizen or national. See Part B.

2. At the time of the client's birth in another country, did he or she have a parent or grandparent who was a U.S. citizen (not including stepparents)?

If so, it is possible that the client acquired U.S. citizenship at birth. See Part B.

3. Did the following events occur, in either order, before the client's 18th birthday: the client became a permanent resident, and a parent (not including stepparents) with custody of the client became a naturalized citizen or was a citizen through other means?

Or, in the case of an adopted child, did these events occur in any order: (1) the child became a permanent resident before age 18, and (2) the child was legally adopted by a U.S. citizen before reaching the age of 16, and resided at any time in the legal custody of the citizen for two years?

If the answer to either question is "yes", the client may have obtained citizenship automatically through his or her parents. See Part B.

B. ADDITIONAL FACTS About U.S. Citizenship

Overview. These categories identify persons who already are U.S. citizens. They became U.S. citizens automatically by operation of law, when certain events occurred. They do not need to submit an application for naturalization, establish good moral character, or meet any other requirements. They will benefit from obtaining documentation from the government that *confirms* their U.S. citizenship, however. If the client is out of criminal and immigration custody, the best way to do this is to apply to the U.S. Passport Agency for a passport. A client in custody may have to apply to DHS for a certificate of citizenship by filing an N-600 application, and/or raise the citizenship issue before an immigration judge. A passport and a certificate of citizenship are equally valid documentation that the person is a U.S. citizen. See *USCIS Manual, supra,* Vol. 12, Part H for further explanation.

Effect of U.S. Citizenship. U.S. citizenship is a complete bar to removal from or denial of admission to the U.S. This is true even if the person has been deported in the past. See, e.g., *Rivera v. Ashcroft,* 394 F.3d 1129, 1136 (9th Cir. 2005) (partly overruled on other grounds). It is a complete defense to any crime for which alienage is an element, for example illegal re-entry into the U.S. after removal, 8 USC § 1326.

Born in the U.S. or its territories. Any person born in the United States is a U.S. citizen, except for certain children of foreign diplomats. Persons born in Puerto Rico, Guam and U.S. Virgin Islands, as well as those born after November 4, 1988, and in many cases before, in the Northern Mariana Islands also are U.S. citizens. INA §§ 301-308, 8 USC § 1401-1407.

Persons born in American Samoa and Swains Islands are U.S. nationals. INA §§ 101(a)(29), 308(1), 8 USC §§ 1101(a)(29), 1408(1). A national is not a U.S. citizen, but cannot be deported.

U.S. citizen parents at time of client's birth abroad (acquisition of citizenship). Some children born outside of the United States to a U.S. citizen acquired U.S. citizenship at birth. 8 USC § 1401. Whether the individual became a U.S. citizen depends upon several factors, such as date of birth (because different rules have applied at different periods), how long the citizen parent has resided in the U.S., whether the child was born in wedlock, etc. Whether a grandparent was a U.S. citizen is relevant because the grandparent might have unknowingly passed on citizenship to the parent, who in turn might have passed it on to the child. In that case counsel must analyze whether both the parent and the child acquired citizenship.

To determine whether a client actually did acquire citizenship at birth, refer the client to a competent immigration attorney or non-profit organization. Or, consult charts summarizing the rules at different time periods at www.ilrc.org/resources/naturalization-quick-reference-charts.

Before client's 18th birthday, at least one parent was a U.S. citizen and client was an permanent resident (derivation of citizenship). Different rules apply depending on the person's date of birth. A person born on or after February 28, 1983 automatically becomes a U.S. citizen if before her 18th birthday, the following events occur in either order: (a) at least one parent who has legal and physical custody of the child is a U.S. citizen by birth or naturalization, and (b) the child is an lawful permanent resident (LPR). See, e.g., *Hughes v. Ashcroft*, 255 F.3d 752 (9th Cir. 2001), discussing the Child Citizenship Act of 2000 and 8 USC § 1431, INA § 320. A person automatically becomes a U.S. citizen through adoptive parents if she was born on or after February 28, 1983 and (a) she was legally adopted by a U.S. citizen before age 16, and (b) he or she became an LPR, and resided in the legal custody of the citizen parent for two years, before age 18. *Ibid.*

Slightly different versions of the law apply to persons born before February 28, 1983, depending on the period in which the child became an LPR and/or the parents naturalized. Generally, both parents had to naturalize to U.S. citizenship, or the child had to be in the legal custody of the citizen parent if there had been divorce or separation. See additional information on these rules at http://www.ilrc.org/files/documents/ilrc-natz_cit_chart_c_0.pdf.

Stepchildren and Adopted Children. For this purpose, an adoptive relationship is recognized if the adoption was legally concluded by the child's 16th birthday and the child lived in the physical and legal custody of the parent for two years at any time. A step relationship is not recognized under any of these rules, so that children never derive or acquire citizenship through a stepparent. (A step relationship is recognized in many other immigration contexts, however, including family immigration. See §17.7.)

PRACTICE TIP FOR JUVENILE DEFENDERS: ***Help your delinquent client to become a U.S. citizen, before it's too late.*** When representing a permanent resident who is under the age of 18, counsel can advise the family that the minor will automatically become a citizen—and therefore be immune to deportation—if one parent with lawful custody naturalizes to U.S. citizenship before the minor's 18th birthday. See discussion of derivation of citizenship, above. This is true regardless of the client's juvenile or adult criminal record. Timing is crucial: the parent should file the application early because the naturalization process might take several months or more. See §17.4 on naturalization.

§17.4. NATURALIZATION TO U.S. CITIZENSHIP

For official statements and information on naturalization, see the *USCIS Official Policy Manual* at www.uscis.gov/policymanual/HTML/PolicyManual.html (hereafter *USCIS Manual*), at Volume 12: Citizenship and Naturalization. For further information, see books such as Immigrant Legal Resource Center, *Naturalization and Citizenship: The Essential Legal Guide* (www.ilrc.org).

A. QUICK TEST: Is the Person Eligible?

1. Is the person serving in the military or reserves, or a military spouse, or a veteran?

Veterans of U.S. armed forces during certain armed conflicts (which include World War II, the Korean, Vietnam, and Gulf Wars, and the period from September 11, 2001 to the present), and who if separated from the armed forces were honorably discharged, enjoy benefits in naturalizing. Good moral character need be shown only for a "reasonable period of time," and the person can be deportable. A person who enlisted while within the United States may not even need to be an LPR. Some benefits also apply to spouses. See 8 USC §1440. The rest of the "Quick Test" questions apply to persons who do not come within this category.

A person who ever has served in the military for an aggregate one year, and who has not been less than honorably discharged, also has some advantages including the ability to naturalize while deportable. See 8 USC § 1439. But if the person qualifies for the armed conflict category described in the above paragraph, that is preferable. See *USCIS Manual*, *supra,* Vol. 12, Part I for more information.

2. Has the person been an LPR for five years, or been an LPR married to a USC for three years?

The person can file a naturalization application up to three months before reaching the five- or three-year mark. For the three-year category, the person must both have been an LPR and married to a USC for the entire three-year period. See 8 USC §§ 1427, 1430.

3. Can the person establish good moral character during this time period?

A naturalization applicant must demonstrate good moral character for the same five years or three years as permanent residence. Military applicants must show a "reasonable period" of good moral character. Conviction of an aggravated felony after November 29, 1990 is a permanent bar to establishing good moral character and a bar to naturalization. See Part B.

4. Is the person deportable?

While being deportable is not technically a bar to citizenship, as a practical matter it is likely to prevent it. With the exception of some military personnel, one cannot naturalize while in removal proceedings. It is possible that the immigration judge and ICE will agree to terminate removal proceedings for an LPR who, while deportable for an older offense, can establish the requisite, recent good moral character required for naturalization, but the person must have very strong humanitarian equities. See Part B.

B. ADDITIONAL FACTS About Naturalization to U.S. Citizenship

Naturalization is complex, and ideally cases should be referred to an immigration attorney or non-profit. For comprehensive information on naturalization, see works such as Immigrant Legal Resource Center, *Naturalization: A Guide for Legal Practitioners and Other Community Advocates* (www.ilrc.org).

Establishing Good Moral Character (GMC). A naturalization applicant must have been a person of "good moral character" ("GMC") during the required period (i.e., five or three years, or a "reasonable period") that immediately precedes the date of the filing of the application, and continuing up to the time of taking the oath of allegiance for citizenship. 8 USC § 1427(a)(3).

To establish GMC the applicant must show that she does not come within one of the statutory bars at 8 USC 1101(f). In addition, the applicant must persuade the authorities to find as a matter of discretion that she really has shown good moral character during the required time. See discussion of GMC in general at §17.26.

Some additional GMC requirements apply only to naturalization applicants. A person cannot be granted naturalization while he or she is still on probation or parole in a criminal case. 8 CFR 316.10(c)(1). The applicant may apply to naturalize while on probation or parole, so long as it has ended by the time of the naturalization interview. However, authorities might decline to count the period of probation or parole following commission of a barring offense toward the required period of GMC. In addition, willful failure to pay child support, failure to file taxes, or commission of immoral unlawful acts (such as adultery that destroys a marriage, prostitution, or incest) may prevent a finding of GMC. 8 CFR 316.10(b). Males who knowingly and willfully failed to register for selective service while between the ages of 18-26 years of age may not be able to establish good moral character during that period. In that case the person must start accruing the GMC period beginning from the last date he could have registered, so that, e.g. a person who needs five years of GMC would not have it until age 31. In some cases an applicant who now is over 26 years old and failed to register can demonstrate that he was not aware of the requirement. See information in *USCIS Manual*, Vol. 12, Chapter 7, Part D.

Some classes of persons are permanently barred from naturalization. These include subversives (8 USC §1424); some noncitizens who deserted the military or fled the country to avoid wartime service (8 USC § 1425, but violators from most wars have been pardoned; see INS Interpretation 314.2); and noncitizens who received an exemption or discharge from U.S. military service based on alienage (8 USC §1426).

Application for naturalization by an LPR who is deportable. A noncitizen who is in removal proceedings, or who has an outstanding final finding of deportability pursuant to a warrant of arrest, may not naturalize. 8 USC §1429. As described in Part A.1, there is an exception for certain persons who served honorably in the U.S. military during periods of conflict, including since September 11, 2011 (8 USC §1440) or persons who have honorable military service aggregating one year at any time (8 USC §1439).

Apart from the military exception, in order to naturalize the LPR must either avoid, or be released from, removal proceedings. An LPR who is deportable for a crime but not yet in removal proceedings needs extensive counseling from a local, experienced immigration attorney before deciding to go to DHS to affirmatively apply for naturalization. Depending on the crime, DHS may or may not choose to put the naturalization applicant in removal proceedings. Some naturalization applicants with more serious convictions have been arrested and detained from the naturalization interview.

An LPR who is in removal proceedings can ask the immigration judge to terminate the proceedings to permit her to pursue a filed naturalization application. 8 CFR § 1239.2(f). The person should have extremely strong humanitarian equities, and must have the required good moral character and be eligible to apply for naturalization but for the deportable offense. *Id*. For example, an LPR who is deportable for an offense based on a ten-year-old conviction, who has shown good moral character for the past five years, and who is supporting U.S. citizen dependents, especially if any have special needs or illness, is a likely candidate. Significantly, the immigration judge only may terminate proceedings on this basis if ICE (the immigration prosecutors) agrees to it. See, e.g., *Hernandez v. Gonzales*, 497 F.3d 927, 933-34 (9th Cir. 2007).

§17.5. LPR CANCELLATION OF REMOVAL, 8 USC § 1229b(a)

A. QUICK TEST: Is the LPR Defendant Eligible?

1. ***Has the lawful permanent resident (LPR) ever been convicted of an aggravated felony?*** If so, she is not eligible for LPR cancellation. (But if the conviction was before 4/1/97, see §17.6 Former §212(c).)

2. ***Has the person been a lawful permanent resident (LPR, green card-holder) for five years, or fairly close to it?*** When, or about when, did the person become an LPR? _____

She will need to reach five years as an LPR during her removal case. But because she will continue to accrue the five years while in jail and immigration detention, four years or even less may be enough.

➢ ***The remaining questions determine whether the defendant has the required seven years "continuous residence."*** You will need the person's criminal history and some immigration information.

3. ***Start-date for the seven years***: The seven-year period starts on the date the person was first admitted to the U.S. with any kind of visa (e.g. tourist, refugee, and even if the person went out of status later), ***or*** on the date the person became a lawful permanent resident -- whichever came first. Date: _____

4. ***End-date for the seven years:*** Does the person come within any of the below *inadmissibility* grounds? If so, the seven years cease to accrue on the date the person committed the offense in question.

a. Conviction of an offense relating to a controlled substance

b. Conviction of one crime involving moral turpitude (CIMT)

Exception: If a single CIMT conviction comes within the petty offense or youthful offender exceptions,[1] it will not stop the seven-year clock. A subsequent CIMT conviction will stop the clock, but as of the date of commission of the second, not the first, CIMT.[2]

c. Conviction of two or more offenses of any type with an aggregate sentence imposed of five years

d. Evidence of or conviction for engaging in prostitution, meaning sexual intercourse for a fee

e. Probative evidence of drug trafficking (this category might not apply; consult an expert)

If the LPR avoids all of these, the seven years continue to accrue until removal proceedings are started (sometime after the LPR completes jail). In the Ninth Circuit only, no conviction from before April 1, 1997 stops the seven-year clock.[3] Note that coming within a *deportation* ground alone does not stop the seven years – only the above inadmissibility grounds.[4]

5. *Calculate the seven years.* Take the start date from Question 3 and the stop date, if any, from Question 4. Client needs at least seven years between these two dates. See also Case Example, next page.

B. ADDITIONAL FACTS about Cancellation of Removal For LPRs, 8 USC §1229b(a)

What are the benefits of winning LPR Cancellation? Do many applicants actually win? Winning a cancellation case allows a lawful permanent resident (LPR or "green card" holder) who is in removal proceedings to keep his LPR status and end the proceedings. If the LPR is eligible to apply for cancellation,

[1] To qualify for these exceptions to the CIMT inadmissibility ground, the person must have committed just one CIMT.
[2] *Matter of Deando-Roma*, 23 I&N Dec. 597 (BIA 2003).
[3] *Sinotes-Cruz v. Gonzalez*, 468 F.3d 1190 (9th Cir. 2006).
[4] See 8 USC § 1229b(d)(1)(B), INA 240A. While the statutory language is more convoluted, the above is the rule.

there is a real chance that the immigration judge will grant it, based on factors such as the person's remorse and rehabilitation, or potential for it. It may well be worth applying even if the person must wait months or more in immigration detention for the full hearing. The person should try hard to retain immigration counsel.

What are the bars to eligibility for LPR Cancellation? A lawful permanent resident is not eligible to apply for LPR Cancellation if she:

- Ever was convicted of an *aggravated felony;*
- Received a prior grant of cancellation of removal, suspension of deportation, or § 212(c) relief;
- Persecuted others or comes within the terrorism bars to immigration; or
- Fails to reach the required seven years of "continuous residence" after admission, or five years of lawful permanent resident status. See "Is the Defendant Eligible?" at Part A, above.

Case example: Calculating John's five and seven years. To understand this example, refer to the eligibility rules in Part A, above. Assume it is 2014. John was admitted to the U.S. on a tourist visa in July 2006. He overstayed the permitted time and lived in the U.S. in unlawful status until 2009, when he was able to adjust status to become an LPR (lawful permanent resident).

In 2010 John was convicted of possessing a revolver. This made him deportable under the firearms ground, but it is not a crime involving moral turpitude (CIMT). Now he is charged with Cal. P.C. § 273.5, domestic violence with injury, based on an incident in June 2013. Section 273.5 is a CIMT, a deportable crime of domestic violence, and, if a sentence of a year or more is imposed, an aggravated felony. The DA demands eight months jail time.

-- *Is John deportable?* Yes, he is deportable under the firearms ground, based on the 2010 conviction.

-- *Will he be convicted of an aggravated felony (and thus barred from cancellation)?* No, not with the proposed eight-month sentence. With a year or more, §273.5 would be an aggravated felony.

-- *Has John had a green card for five years?* If not yet, he will soon, since it is 2014 and he became an LPR in 2009. The five-year period keeps accruing during jail and removal proceedings; see A.2, above.

-- *Does he have the seven years lawful continuous residence*? See Parts A.3 – A.5, above.

When did John's seven-year period start? On the date of his admission as a tourist in July 2006.

Did it end when he was convicted of the firearms offense? No. Being deportable under the firearms ground, without more, does not stop the seven-year clock. The same is true for the child abuse, domestic violence, and drug addict deportation grounds. See categories in Part A.4, above.

Will it end if he is convicted of the current charge? If this conviction brings John within one of the categories in Part A.4, his seven years will cease to accrue as of June 2013, when he committed the offense -- a month short of the seven years he needs. This is where informed pleading can save the day.

We are told P.C. §273.5 is a crime involving moral turpitude (CIMT). A single CIMT will not stop the clock if it comes within the petty offense exception: a potential sentence of one year or less, with no more than a six-month sentence imposed. See A.4(b), above. John needs the § 273.5 conviction to be designated a misdemeanor (potential one-year sentence). He also needs to get a sentence imposed of six months or less. One strategy for that is to defer sentencing until John has spent two or more months in jail, then bargain to waive credit for time served and be sentenced to six months rather than eight. Or, he could try to plead to a non-CIMT (e.g., spousal battery Cal P.C. § 243(e)), and take a longer sentence.

§17.6. FORMER § 212(c) RELIEF -- LPRs WITH OLDER CONVICTIONS

A lawful permanent resident (LPR) whose convictions pre-date April 24, 1996 might be eligible for the former 8 USC § 1182(c), INA § 212(c), even if the conviction(s) are aggravated felonies.

A. QUICK TEST: Is the Client Eligible?

1. Is the client an LPR who is deportable based on one or more convictions for an aggravated felony, or other deportable offense, that occurred before April 24, 1996?

If so, the person might be eligible to apply for a waiver under § 212(c). This is true for convictions by trial as well as by plea. *Cardenas-Delgado v. Holder*, 720 F.3d 1111 (9th Cir. 2013).

2. But, is the client also deportable based on conviction(s) that occurred after April 24, 1996?

If so, the § 212(c) case might be difficult or impossible. An applicant who applies for § 212(c) to waive the pre-1996 conviction(s) cannot also apply for cancellation of removal to waive the post-1996 conviction(s). 8 USC § 1229b(c)(6). A good scenario would be if the person also is eligible to apply for adjustment of status through a family member, if needed with a §212(h) waiver, at the same time as § 212(c). Consult an immigration attorney, and see also discussion of family immigration at § 17.7. Finally, §212(c) might be available for a conviction occurring between April 24, 1996 and April 1, 1997.

3. Was the client convicted of one or more aggravated felonies after November 29, 1990, for which he or she served an aggregate sentence of five or more years?

This is a bar to § 212(c) relief. See, e.g., *Toia v. Fasano*, 334 F.3d 917 (9th Cir. 2003).

B. ADDITIONAL FACTS About § 212(c) Waivers

The former INA § 212(c), 8 USC §1182(c), permitted an LPR with seven years of lawful domicile to waive most crimes grounds of inadmissibility and deportability, including aggravated felonies. As of April 24, 1996 Congress reduced the reach of § 212(c), so that it would waive deportability for only certain moral turpitude offenses (although it still waived all inadmissibility grounds). As of April 1, 1997 Congress abolished §212(c) altogether, and substituted LPR Cancellation of Removal for it. 8 USC § 1229b(a). Unlike §212(c), LPR Cancellation cannot be used to waive an aggravated felony conviction. See § 17.5.

Section 212(c) is not dead, however. The Supreme Court held that an LPR can apply today for § 212(c) to waive one or more qualifying convictions that occurred before the 1996 or 1997 dates. *INS v St. Cyr,* 533 U.S. 289 (2001); *Judulang v Holder,* 132 S. Ct. 476, 479 (2011). Thus, a qualifying LPR who is put into removal proceedings in 2014 may be able to apply for the former § 212(c) waiver to waive a deportable aggravated felony conviction from before April 24, 1996, and perhaps from before April 1, 1997. In the Ninth Circuit, this is true whether the conviction was by plea or trial. The applicant did not have to have the seven years' residence by 1997, but only when the application is filed (now). 8 CFR §1212.3(f)(2).

The complex rules governing § 212(c) go beyond this overview. If your client might be eligible, consult an immigration lawyer before entering a plea to a deportable offense. For a detailed discussion of current § 212(c) eligibility requirements, see *Defending Immigrants in the Ninth Circuit*, § 11.1(B) (www.ilrc.org), or see information at the websites of the National Immigration Project of the National Lawyers Guild (www.nipnlg.org) and the American Immigration Law Foundation (www.ailf.org).

§17.7. IMMIGRATION THROUGH FAMILY
Is the Defendant Eligible? Is it a Defense Against Deportation?

Some noncitizens may be able to get a green card through a
U.S. citizen or lawful permanent resident parent, spouse or child (or very rarely, a USC sibling)

1. *What kind of status does one obtain from immigrating through a family member?*
2. *What crimes destroy eligibility for family immigration?*
3. *Which spousal and parent/child relationships qualify for immigration benefits?*
4. *Which noncitizens can "adjust status" through a family visa, and thereby avoid deportation?*
5. *If my client can't adjust status, is a family visa petition still worth anything?*
6. *What will happen next to my client? How long will family immigration take?*
7. *How can I keep my client admissible, or if inadmissible at least eligible for a waiver? (Table)*

Family visas are complex, and the defendant should get immigration help to complete the process. If the criminal issues are not complex, or they have expert staff, a non-profit agency may be able to handle the case. Criminal defense counsel will provide a tremendous service and might prevent a family from being destroyed if they can spot this potential relief, avoid pleading the defendant to a disqualifying offense, and provide some basic advice. For further information, go to www.uscis.gov and click on "Green Card Through Family" or "Family," or see manuals like *Families & Immigration: A Practical Guide* (www.ilrc.org).

1. What kind of status does one obtain from immigrating through a family member?

Lawful permanent resident status (LPR, a green card). To "immigrate" means to become an LPR.

2. What crimes destroy eligibility for family immigration?

To immigrate through family the person must be "admissible." That means either she must not come within any of the grounds of inadmissibility at 8 USC § 1182(a), or *if* she comes within one or more inadmissibility grounds, she must qualify for and be granted a waiver of the ground(s). To determine whether your client is inadmissible, see the table at Question #7 below, and see other detailed materials. Note that any conviction relating to a federally defined controlled substance is an absolute bar to family immigration. The exception is that in some cases one can apply for a waiver of a first conviction for simple possession of 30 grams or less of, or being under the influence of, marijuana.

If your client *might* be eligible for family immigration and you can avoid making her inadmissible, you have done a great job. If possible, use the following to further help her by determining if she really is eligible, and if so whether she can use this to fight deportation ("removal").

3. Which spousal, parent/child, or sibling relationships qualify for immigration law benefits?

All family visas, and all other immigration benefits based on family, require a qualifying spousal or parent/child relationship as defined under immigration law. In some cases, family members can still benefit from a filed petition after the petitioner dies. Widows and widowers benefit from special provisions that allow them to file a new petition on their own for up to two years after the death of the spouse.

Spouse. See 8 CFR § 204.2. The only requirement is that the marriage was legally valid in the jurisdiction in which it was performed. This now includes same-sex marriages that were legal where they were performed. (Note that the definition of "spouse" is slightly broader for persons applying for VAWA relief due to abuse by a USC or LPR spouse; see § 17.8.)

Parent, child, son, daughter. See 8 USC § 1101(b)(1). A parent/child relationship for immigration purposes includes a child born in wedlock, a biological child of a mother, and in some cases a father's biological child born out of wedlock. A stepparent relationship is recognized if the parents married before the child's 18th birthday. An adoptive relationship is recognized if the adoption was finalized before the child's 16th birthday (or the child's 18th birthday, if a sibling was adopted by age 16) and the child has resided in lawful custody with the parent for two years at any time. If the biological parent's rights were terminated, then that parent/child relationship is no longer recognized for immigration purposes.

A "child" is defined as a person with a relationship described above, who is under age 21 and unmarried. "Unmarried" includes persons whose marriage ended in death, divorce or annulment. A "son or daughter" is a person who once was a child under the above definition but no longer is, because the person is age 21 or older, or under age 21 and married.

Sibling. Siblings are two people who have or had the same "parent," according to the definition above.

4. <u>Which noncitizens can "adjust status" through a family visa, and thereby avoid deportation?</u>

To use a technical term, to avoid deportation the defendant must be eligible for family immigration through ***adjustment of status.*** "Adjustment of status" means that the person can process the green card application in a local DHS office, without having to leave the U.S. A person who doesn't qualify to adjust status still can apply for a family visa, but he must go back to the home country to process through a U.S. consulate there – and that trip alone can create other legal problems. If instead the defendant can adjust status, he will become an LPR, the removal proceedings will end, and he will not have to leave the U.S.

A person who is undocumented or has almost any immigration status can apply for adjustment of status through a family visa as a defense to removal (deportation), if she meets the following requirements:

a. The defendant has a U.S. citizen (USC) spouse, or a USC son or daughter age 21 or older, or the defendant is an unmarried child under the age of 21 of a USC parent, *and*

   The defendant was inspected and admitted into the U.S. on any kind of visa, border-crossing card, lawful permanent resident card, or other document, even if later he was in unlawful status. This is called a regular adjustment or "245(a) adjustment." See INA § 245(a), 8 USC § 1255(a).

OR

b. A family visa petition for her was submitted before April 30, 2001; and the defendant is the subject of an approved visa petition that can be used immediately, based on any qualifying family relationship (see # 4, below.) Other conditions may be required. This is called "245(i) adjustment." See INA § 245(i), 8 USC § 1255(i).

With a few technical exceptions, any noncitizen in any status (e.g., undocumented, Temporary Protected Status, student visa, etc.) who meets the above requirements can apply for adjustment. In particular, a qualifying ***LPR who has become deportable for crimes*** can apply for adjustment of status as a defense to removal. The deportable LPR must have the USC relatives described in the first bullet point above, and must either be admissible or be granted a waiver of the inadmissibility ground.[5] In this process, the LPR loses her current green card and then applies to adjust status and get a new green card, all in the same hearing. She is not ordered removed, and does not leave the U.S. (Note that some LPRs are not eligible for a waiver of inadmissibility under § 212(h). See §17.10 regarding the §212(h) waiver.)

[5] *Matter of Rainford,* 20 I&N Dec. 598 (BIA 1992); *Matter of Gabryelsky*, 20 I&N Dec. 750 (BIA 1993).

5. If the client cannot adjust status, is a family visa petition still worth anything?

Yes! The person will have to leave the U.S., but might be able to return as an LPR pursuant to the family visa. Depending on various factors, this could take a few weeks or some years; the person should consult with a community agency or immigration attorney. You have two defense goals. First, avoid a conviction that makes the defendant inadmissible (or if inadmissible, at least not disqualified from requesting a waiver). See #7, below. If the defendant can *avoid being inadmissible and has an immediate relative visa petition*, he might qualify for a "provisional stateside waiver" of bars based on unlawful presence, which would cut down time he must spend abroad.[6] Second, avoid conviction of an aggravated felony so that if needed the person can request voluntary departure instead of removal, and advise him to consult an attorney. See §17.26.

6. What will happen to my client? How long will this all take?

What happens now? The client may be detained. If she can adjust status through a family visa petition, her family should get help to get the papers filed. If she is not subject to "mandatory detention" (see discussion in *§ N.1 Overview*), she might win release from detention. If not, she will apply for adjustment in removal proceedings held in the detention facility.

If she can immigrate through family but is not eligible to adjust status, or the judge denies adjustment as a matter of discretion, she must request voluntary departure and go through consular processing in the home country. Before leaving she needs legal counseling about the consequences of leaving the U.S., and the waivers she will need to apply for if she is ever to return on the family visa.

How long will it take to immigrate (get the green card)? This depends on the noncitizen's country of birth, when the application for a family visa petition was filed, and especially on the type of family visa. There are two types of family visas: **immediate relative** visas, which have *no* legally mandated waiting period (although processing the application may take some months), and **preference visas**, which may require a wait of months or years before the person can legally immigrate, because only a certain number of these types of visas are made available to each country each year. The categories are:

1. Immediate relative: Noncitizen is the spouse of a USC; the unmarried child under 21 years of age of a USC; or the parent of a USC who is at least 21 years old.
2. First preference: Noncitizen is the unmarried son or daughter (at least 21 years old) of a USC.
3. Second preference: Noncitizen is the spouse or unmarried son or daughter (any age) of an LPR.
4. Third preference: Noncitizen is the married son or daughter (any age) of a USC.
5. Fourth preference: Noncitizen is the brother or sister of an adult USC. A sibling relationship exists for immigration purposes if the two people each have been the "child" of the same parent. This category may have a legally mandated waiting period of 15 years or more.[7]

How can one tell how long the wait is for a preference visa? The online "Visa Bulletin" provides some help. See the Visa Bulletin and instructions at http://travel.state.gov (select "Visas" and then "Visa Bulletin). To read it, you will need the client's "priority date" (the date that their relative first filed the visa petition), to compare with the current date for their preference category (see above), and country of origin. When the person's priority date comes up on the chart in their category, the visa is available and the person can apply for the green card. Note, however, that the Bulletin categories do *not* progress on real time. In next month's Bulletin, the priority date in the client's category will not necessarily have advanced by one month: it might

[6] See information at www.uscis.gov.
[7] See 8 USC §§ 1151(b), 1153(a) [INA §§ 201(b), 203(a)].

have leapt ahead three months, stayed the same, or even regressed to an earlier date. Consult an immigration lawyer to get a realistic time estimate for when the client might immigrate.

7. How can I keep my client from becoming inadmissible, or at least eligible for a waiver?

This a big question, and this section will just list the basic categories of inadmissibility. For more information on individual inadmissibility grounds, see *§§ N.1 Overview, N.7 Crimes Involving Moral Turpitude, N.8 Controlled Substances,* and *N.10 Sex Offenses* (for prostitution).

Also, see §17.10 for more information on the inadmissibility crimes waiver, the so-called § 212(h) relief [8 USC §1182(h)]. Note that a "dangerous or violent" crime only rarely can be waived under § 212(h), and some LPRs cannot submit a § 212(h) waiver at all.

Ground of Inadmissibility – 8 USC § 1182(a)(2)	**Family Visa Waiver?**
Convicted of/admitted first simple possession 30 gms or less marijuana	See § 212(h) waiver
Convicted or admitted any other offense relating to federally defined controlled substance	No waiver
Immigration authorities have "reason to believe" person was involved in drug trafficking at any time	No waiver
Current drug abuser or addict (§1182(a)(1))	No waiver
Convicted of/admitted one crime involving moral turpitude (CIMT) Client is not inadmissible and § 212(h) waiver is not needed if: ✓ Petty offense exception (only one CIMT, maximum possible sentence = 1 yr or less, sentence imposed = 6 months or less) ✓ Youthful offender exception (convicted as adult of one CIMT, committed while under age 18, conviction and any imprisonment ended at least 5 years before this application)	See § 212(h) waiver
Engaged in ongoing prostitution, meaning sexual intercourse for hire (no conviction required)	See § 212(h) waiver
Conviction of 2 or more offenses of any type with aggregate sentence imposed of at least 5 years	See § 212(h) waiver
An aggravated felony conviction is not a ground of inadmissibility *per se*, but the conviction might cause inadmissibility under the CIMT or drug grounds.	Aggravated felony conviction bars some LPRs from § 212(h)
Prior deportation or removal. Emergency! Client probably *illegally re-entered* after being removed. Client is at high risk for referral for federal prosecution for 8 USC § 1326. If no ICE hold yet, get client out of jail. Family visa or other relief is *not* an option while client is in the U.S.	No waiver for illegal re-entry while in the U.S.; very limited waiver once outside the U.S.

§17.8. RELIEF UNDER VAWA -- ABUSED BY USC OR LPR FAMILY MEMBER

Under the Violence Against Women Act (VAWA), if a noncitizen or his or her child or parent is the victim of abuse (including emotional abuse) by a U.S. citizen or permanent resident family member, the noncitizen and victims may be able to apply for lawful permanent residence (green card) under VAWA. VAWA benefits are available to male and female victims.

Extensive resources exist to help VAWA applicants. Some Legal Aid offices and non-profit immigration agencies have funding to handle indigent persons' applications. The government provides a good summary of basic information at www.uscis.gov/batteredspouseschildrenandparents. See also materials at websites such as www.ilrc.org/info-on-immigration-law/vawa and www.nipnlg.org, and for comprehensive information, see Immigrant Legal Resource Center, *The VAWA Manual* (www.ilrc.org).

A. QUICK TEST: Is the Client Eligible?

1. Is the client either the spouse or the child (including stepchild or adopted child) of a lawful permanent resident (LPR) or U.S. citizen (USC) who has abused hi or her? Or, is the client abused by an adult USC son or daughter?

These relationships are eligible for VAWA. In addition, if the noncitizen's child or parent, rather than the noncitizen, was the victim, the noncitizen still may qualify for VAWA.

2. Is the family relationship with the abuser one that is recognized for immigration purposes?

Immigration law recognizes only certain marital or parent/child relationships. See Part B.

3. Does the USC or LPR relative's action amount to "extreme cruelty" for this purpose? Did the abuse take place during the marriage and in the United States?

For VAWA purposes, extreme cruelty is broadly defined to include physical and/or psychological abuse. Various forms of evidence may establish extreme cruelty, and a police or hospital record is not required. See 8 CFR § 204.2(c)(1)(i)(H)(vi), (c)(2)(v).

4. If your client is a victim of domestic violence who does not qualify for VAWA, consider the "U" Visa

Unlike VAWA, the U visa does not require that the abuser was a USC or LPR, or that a family relationship was legally valid or existed at all. See discussion of U Visas at §17.6, *infra.*

B. ADDITIONAL FACTS About the Violence Against Women Act (VAWA)

The VAWA immigration provisions were enacted to prevent abusive U.S. citizens (USCs) and lawful permanent residents (LPRs) from using their immigration status as a means of holding their spouse, child, or parent (of an adult) hostage, e.g., by refusing to help them immigrate, or threatening to call ICE on them if they try to leave. VAWA gives the noncitizen a means of becoming an LPR that is independent of the abuser, through either of two methods: VAWA self-petitioning or VAWA cancellation of removal.

VAWA Self-Petitioning. An immigrant abused spouse, child or parent can "self-petition," meaning file a visa petition for him or herself, without sponsorship by his USC or LPR relative. The self-petitioner must meet the definition of a "spouse," "child" or "parent" of the USC or LPR under immigration law, but some expanded definitions apply for VAWA self-petitioners. Regarding a spouse, the marriage must be legal in the

jurisdiction where it was performed. This now includes same-sex marriages that meet that requirement. For VAWA only, a marriage can include one that is legally invalid because the USC or LPR spouse did not divulge the existence of a prior marriage. "Spouse" can include a spouse who was divorced within the last two years if there is a connection between the divorce and the abuse, or a spouse whose abusive USC spouse died within the last two years, or a spouse whose abusive LPR spouse lost their status within two years of self-petitioning due to an incident of domestic violence. If the noncitizen's USC or LPR spouse abused the noncitizen's child, the noncitizen may self-petition even if she was not abuse. An abused spouse can include in her self-petition any of her children, even if the children were not abused, are not related to the abuser and do not reside in the U.S. See 8 CFR § 204.2(c).

For children, an adoptive relationship is recognized if the adoption was finalized before the child's 16th birthday (or the child's 18th birthday, if a sibling was adopted by age 16) and the child has resided in lawful custody with the parent for two years at any time. A stepparent relationship is recognized if the parents married before the child's 18th birthday. See 8 USC § 1101(b)(1) and family visas at § 17.7. Children who qualify for VAWA while under age 21 will not lose benefits after they turn 21 years old, and some children may petition for VAWA up to age 25 if they can show that the abuse was one reason for not filing before turning 21. See 8 CFR §204.2(e).

The self-petitioner must establish that the abuser is or was a USC or LPR; that the self-petitioner has been subject to battery or "extreme cruelty" during the marriage; and that the self-petitioner resided with the abuser in the U.S. Extreme cruelty is broadly defined to include emotional abuse, isolating the person, etc. A fairly wide range of evidence, including affidavits, will be considered. 8 CFR § 204.2(c).

The person must prove good moral character for some period of time, and must submit police reports for the last three years. 8 CFR § 204.2(c)(1)(i)(F), (c)(2)(v). See discussion of good moral character at § 17.26. The rules are relaxed somewhat for VAWA self-petitioners: if a bar to good moral character is an offense that also could be waived under INA § 212(h) – for example, if it is one or more convictions of a crime involving moral turpitude – and the offense was connected to the abuse, the bar may be forgiven. INA § 204(a)(1)(C), 8 USC § 1154(a)(1)(C). See also Novak, Dir., Vermont Services Center, "Determinations of Good Moral Character in VAWA Applications," January 19, 2005 (go to to www.uscis.gov and search for "VAWA good moral character").

Once the self-petition is granted and it is time for the self-petitioner to adjust status to LPR, he or she must not be inadmissible under the crimes-based grounds, or if inadmissible, must obtain a waiver. Special VAWA provisions eliminate the need to show hardship to an LPR or USC family member as a requirement for certain waivers. See, e.g., INA § 212(h)(1)(C), 8 USC § 1182(h)(1)(C).

VAWA Cancellation. Noncitizens who have been battered or subjected to extreme cruelty by a USC or LPR spouse or parent also may apply for VAWA cancellation, a form of non-LPR cancellation. INA § 240A(b)(2), 8 USC § 1229b(b)(2). This relief extends to children of abused parents as well as parents of abused children. 8 USC §1229b(b)(4). The VAWA applicant must have three years of physical presence in the United States and three years of good moral character, immediately preceding the application. The person must not be inadmissible under grounds relating to crimes or terrorism/national security (8 USC §§1182(a)(2) or (3)), and must not be deportable under grounds relating to crimes, marriage fraud, failure to register, document fraud, false claim to U.S. citizenship, security and related grounds (8 USC §§1227(a)(1)(G), (2), (3), or (4)). However, a client who receives a waiver of the domestic violence deportation ground is not barred from VAWA cancellation. See discussion of 8 USC § 1227(a)(7)(A) at § 17.11. A noncitizen convicted of an aggravated felony is not eligible for VAWA cancellation. 8 USC §1229b(b)(2)(A)(iv).

§17.9. SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

Children who are under the jurisdiction of almost any court may qualify to apply for lawful permanent resident status as a "special immigrant juvenile," if the court makes certain findings concerning abuse, neglect or abandonment. While the application is pending, the child will gain employment authorization and a government-issued ID card.

A. QUICK TEST: Is the Client Eligible?

1. ***Is the client unmarried (including divorced) and under age 21? Is he or she under the jurisdiction of a delinquency, dependency, family, probate, or other "juvenile" court?***

2. ***Would the judge find that the child cannot be returned to at least one parent due to abuse, neglect or abandonment, and that it is not in the child's best interest to be returned to the home country?***

   If the answer to both questions is "yes," counsel should investigate special immigrant juvenile status.

B. ADDITIONAL FACTS About Special Immigrant Juvenile Status (SIJS)

SIJS came into being in 1990, but it was substantially broadened and clarified by the Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA). Because the regulation still has not been updated (8 CFR § 204.11), at this point accurate information comes from the text of the statute and practice advisories. See INA § 101(a)(27)(J), 8 USC § 1101(a)(27)(J), as amended by TVPRA. See advisories and materials at www.ilrc.org/info-on-immigration-law/remedies-for-immigrant-children-and-youth, and for a comprehensive manual, see Immigrant Legal Resource Center, *Special Immigrant Juvenile Status and Other Remedies for Children and Youth* (www.ilrc.org). See also basic information at www.uscis.gov (search for "special immigrant juvenile").

What order must the court make? The court must make a finding, and sign an order to be submitted with the SIJS petition, that (a) the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis under state law, and (b) it is not in the child's best interests to be returned to the home country.

What kind of court can make this order? A juvenile court, broadly defined to include any court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles, makes the order. Depending on the state, the court might be called family, delinquency, dependency, probate, orphans', or other. A child who has been legally committed by the court to the custody of a state agency, department, entity, or individual by such a court also is eligible.

Can the child be in a parent or guardian's custody? Yes, the court may legally commit the child to the custody of an individual, for example to the non-abusive parent, or a guardian.

What requirements must the child meet? The child must be under age 21 on the date of filing, and must be single. To get permanent residency, the child must be admissible. There are discretionary SIJS waivers for many grounds of inadmissibility. INA § 245(h), 8 USC § 1255(h). However, if the child is inadmissible because the government may have "reason to believe" he or she trafficked in drugs, this is a dangerous situation and counsel should not proceed without expert counseling. The same is true for youth with convictions in adult court that may cause inadmissibility. See chart on inadmissibility and SIJS at www.ilrc.org/files/inadmissibility_2009.pdf.

§17.10. § 212(h) WAIVER OF INADMISSIBILITY

A. QUICK TEST: Is the Defendant Eligible for INA §212(h), 8 USC §1182(h)?

1. Which immigrants can apply for a § 212(h) waiver?

The person must be an LPR already, or must be applying to become an LPR based on a family visa, VAWA (see below), or an employment visa. Second, the person must either:

a. Be the spouse, parent, or child of a U.S. citizen or lawful permanent resident (USC or LPR) who would suffer extreme hardship if the person was deported, *or*

b. Have been convicted (or engaged in the conduct) at least 15 years ago, *or*

c. Be inadmissible only for prostitution, *or*

d. Be applying for VAWA relief due to abuse by a USC or LPR family member; see §17.8.

2. Which inadmissibility grounds can be waived under § 212(h)?[8]

a. Conviction of one or more crimes involving moral turpitude (CIMT). But the person is not inadmissible and the waiver is not needed if there is only one CIMT conviction that comes within:

- The petty offense exception. The person must have committed just one CIMT, which carries a maximum possible sentence of a year or less (including a misdemeanor wobbler in California), where the sentence imposed was six months or less; *or*
- The youthful offender exception. The person was convicted as an adult of one CIMT, committed while under age 18, and conviction/jail will have ended at least 5 years before the current application is filed.

b. Two convictions of any type of offense, with aggregate sentence imposed of at least five years

c. Engaging in prostitution (sexual intercourse for a fee, with or without a conviction).

d. No drug crimes can be waived, except a first simple possession of 30 grams or less of marijuana.

- This also includes possession of an amount of hashish comparable to 30 gm or less of marijuana, under the influence of marijuana or hash, possession of paraphernalia for use with 30 grams or less of marijuana, and in the Ninth Circuit attempt to be under the influence of THC.[9]

3. How likely is it that the waiver will be granted? The waiver is granted as a matter of discretion. It is crucial to get immigration counsel. Winning can be difficult if the person must show "extreme hardship" to a family member (see #1.a., above). Conviction of a "violent or dangerous" offense cannot be waived absent "exceptional and extremely unusual hardship" or national security concerns.[10] Thus, it will be far easier to waive a conviction for theft or fraud than one for robbery or serious assault.

B. ADDITIONAL FACTS About the § 212(h) Crimes Waiver

Some aspects of § 212(h) may seem especially complex to criminal defenders. Do not hesitate to seek expert advice. Additional articles on § 212(h) are available at www.ilrc.org/crimes.

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[8] See 8 USC § 1182(h)(1) referring to certain grounds at 8 USC § 1182(a)(2), INA § 212(a)(2).
[9] See, e.g., *Flores-Arellano v. INS*, 5 F.3d 360 (9th Cir. 1993) (use); INS General Counsel Legal Opinion 96-3 (April 23, 1996) (comparable amount of hashish); *Medina v. Ashcroft*, 393 F.3d 1063 (9th Cir. 2005) (THC).
[10] 8 CFR § 1212.7(d). See discussion of same standard in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002).

When is the § 212(h) waiver usually used? Usually with an application for a family visa, a VAWA self-petition, or to help an inadmissible LPR get back into the U.S. after a trip abroad.

> **Example:** Erin was admitted to the U.S. on a tourist visa and overstayed. Now she wants to become an LPR through her U.S. citizen husband, but she is inadmissible because of a CIMT conviction. She can submit an application for adjustment of status along with a § 212(h) application to waive the CIMT. If she wins she will become an LPR and will not be removed.
>
> **Example:** Tim became an LPR in 1998, but later was convicted of a CIMT that made him inadmissible. In 2001 he took a trip outside the U.S. Upon his return he was stopped at the airport and charged with being an arriving alien who was inadmissible for CIMT. He can apply for a §212(h) waiver. If he wins, he can keep his green card and be re-admitted into the U.S.
>
> Note: The BIA held that if Tim had been (wrongly) admitted, and later was charged with being deportable for having been inadmissible at last entry, he could not apply for § 212(h) *nunc pro tunc* (retroactively) as a defense to removal. *Matter of Rivas*, 26 I&N Dec. 130 (BIA 2013). Advocates will fight this ruling.

Sometimes § 212(h) can waive an aggravated felony conviction. Some crimes involving moral turpitude (CIMTs) also qualify as aggravated felonies, e.g. fraud where the loss to the victim exceeds $10,000, or theft with a sentence imposed of a year or more. Except for some LPRs (see below), the fact that the CIMT also is an aggravated felony is not a statutory bar to applying for § 212(h), although it might make it somewhat harder to win the case. (Conviction of a "dangerous or violent" crime will be very difficult to waive regardless of whether it is an aggravated felony. See A.3., above.)

Special restrictions apply to some LPRs. The statute sets out two bars to § 212(h), which apply only to certain LPRs. These LPRs cannot apply for § 212(h) if they (a) have been convicted of an aggravated felony since becoming an LPR, or (b) failed to complete a continuous seven years in the U.S. in some lawful status before removal proceedings were started against them. These bars do not apply to all LPRs, however. As of January 2015, in immigration cases arising within the Third, Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits, the bars apply only if the person previously was *physically admitted as an LPR (or conditional permanent resident[11]) at a U.S. border or other port of entry.* If instead the person became an LPR through adjustment of status, the bars do not apply.[12] Other Circuit Courts of Appeals have not yet ruled on the issue, and in cases arising there immigration authorities will apply the bars to *all* LPRs permanent residents– unless and until a federal court forbids it. See *Matter of Rodriguez*, 25 I&N Dec. 784 (BIA 2012).

> **Example:** Three years after Herman became an LPR, he is convicted of theft with a one-year suspended sentence. This conviction makes him deportable and inadmissible under the moral turpitude grounds, and also is an aggravated felony. Herman is put in removal proceedings in San Jose, California. As a defense to removal, he will apply to re-adjust status through his USC wife. He will need a § 212(h) waiver for this, since he is inadmissible under the moral turpitude ground.
>
> Because his conviction is an aggravated felony, Herman can only submit a §212(h) waiver if the LPR bars don't apply to him. That will be determined by how he got his green card. All courts agree that if Herman was admitted at the border as an LPR, the LPR bars apply. But in some Circuits, including the Ninth Circuit where San Jose is located, if Herman received his green card through adjustment of status, he is not subject to the bars and he may apply for §212(h).

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[11] *Matter of Paek,* 26 I&N Dec. 403 (BIA 2014) (bar applies to conditional residents).
[12] *Hanif v. Holder*, 694 F.3d 497 (3rd Cir. 2012), *Bracamontes v. Holder*, 675 F.3d 380 (4th Cir. 2012), *Leiba v. Holder*, 699 F.3d 346 (4th Cir. 2012), *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008), *Stanovsek v. Holder*, 768 F.3d 515 (6th Cir. 2014), *Papazoglou v. Holder*, 725 F.3d 790 (7th Cir. 2013), *Negrete-Ramirez v. Holder*, 741 F.3d 1047 (9th Cir. 2014), *Lanier v. USAG*, 631 F.3d 1361, 1366-67 (11th Cir. 2011).

§17.11. WAIVER OF DOMESTIC VIOLENCE AND STALKING

A noncitizen is deportable if convicted of stalking or of a "crime of domestic violence," or if found in criminal or civil court to have violated certain provisions of a domestic violence protection order. INA §237(a)(2)(E), 8 USC §1227(a)(2)(E). Sometimes a person who actually is the victim of domestic violence in the relationship ends up being cross-charged and gets one of these deportable dispositions. The purpose of this waiver is to help that type of person. If the person makes certain showings, an immigration judge may waive deportability under this ground. The waiver also can preserve eligibility for non-LPR cancellation. See below. The waiver appears at INA § 237(a)(7)(A), 8 USC § 1227(a)(7)(A).

A. QUICK TEST: Is the Client Eligible?

1. Is the client someone who needs to avoid deportability, e.g., a permanent resident, refugee, or an undocumented applicant for non-LPR cancellation (including VAWA cancellation)?

This waiver protects against a deportable offense. If granted, it will prevent an LPR, refugee, or other person with lawful status from being deported for domestic violence or stalking.

This waiver also will prevent an applicant for either "ten year" or VAWA cancellation for non-LPRs. Without the waiver, a conviction that triggers deportability under the domestic violence ground is a bar to eligibility for non-LPR cancellation. See §§17.3, 17.8 and see INA § 240A(b)(5), 8 USC §1229b(b)(5).

> ***Example:*** Marta is an LPR who is being abused by her boyfriend. After one altercation, she is convicted of a deportable crime of domestic violence. In removal proceedings she applies for the domestic violence waiver and shows that she is primarily the victim in the relationship, and that her offense was connected to the abuse and did not result in serious bodily injury. (See other possible showings in #3.) If the waiver is granted, she can keep her green card and not be deported. If instead Marta were undocumented and applying for "ten year" cancellation, she could apply for the same waiver. If she won, she would not be disqualified from non-LPR cancellation by having a deportable conviction.

2. Is the client deportable for a conviction of a "crime of domestic violence" or "stalking," or a finding of violation of a domestic violence protection order provision such as a stay-away order?

The waiver will excuse deportability under the domestic violence ground based on these offenses. It will not excuse deportability under the domestic violence ground based on conviction of a crime of child abuse, neglect or abandonment. Also, it does not excuse deportability under other grounds, e.g. if the offense also is a crime involving moral turpitude or aggravated felony.

3. Is the client not the primary perpetrator of violence in the relationship, and can the client make certain showings?

The client must be someone "who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship." INA § 237(a)(7)(A), 8 USC § 1227(a)(7)(A). In addition, the client must show one of the following: (1) that the client was acting in self-defense; (2) that the client was found to have violated a protection order intended to protect him or her; *or* (3) that the client committed, was arrested for or convicted of a crime that did not result in serious bodily injury, and that was connected to him or her having been battered or subjected to extreme cruelty. *Ibid.* In making this determination, an immigration judge can look at any relevant, credible evidence, and is not limited to the reviewable record of conviction. INA § 237(a)(7)(B), 8 USC § 1227(a)(7)(B).

§17.12. DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Deferred Action for Childhood Arrivals ("DACA") grants work authorization and protection from removal to certain young people who came to the United States as children. On November 20, 2014 President Obama expanded the DACA program and launched the Deferred Action for Parents of Americans and Lawful Permanent Residents program ("DAPA"; see § 17.13). See DHS memo on DACA and DAPA dated November 20, 2014. For more information and updates, see www.uscis.gov/childhoodarrivals (government), www.ilrc.org/daca (ILRC), www.unitedwedream.org, and www.adminrelief.org.

A. QUICK TEST: Is the Client Eligible?

1. Does the client meet the basic eligibility requirements for DACA? Beginning in late February 2015, an undocumented person may apply under the more lenient, expanded DACA if he or she:

a. Is at least 15 years old at the time of filing his or her request. However, a youth who is currently in removal proceedings, or has a final order of removal or voluntary departure, can request DACA while under the age of 15.

b. Came to the United States before his or her 16th birthday;

c. Has continuously resided in the United States since January 1, 2010 to the present time, and was physically in the U.S. and undocumented as of June 15, 2012;

d. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and

e. Has not been convicted (as an adult) of a felony, significant misdemeanor, or three or more other misdemeanors, and does not pose a threat to national security or public safety. See Part B.

Applications filed before late February 2015, under original DACA: The same, except applicant must have been under the age of 31, undocumented, and physically present in the U.S. as of June 15, 2012, and must have entered the U.S. while under age 16 by, and resided in the U.S. since, June 15, 2007.

2. Can a client who has an immigration hold or is in removal proceedings apply for DACA?

Yes. If detained by immigration, the person can request deferred action from ICE or ask to be released based on prima facie DACA eligibility so that he or she can apply through USCIS. See *Frequently Asked Questions ("FAQ")* document referenced in Part B, at "Filing Process."

3. What happens if the DACA application is denied?

The person might be referred to removal proceedings, depending upon the type of criminal convictions or charges. See policy at www.uscis.gov/NTA and discussion at § 17.13 (DAPA). People with a criminal record or any history of gang involvement should get counseling before applying.

B. ADDITIONAL INFORMATION About DACA: Crimes Bars

For a detailed discussion of the criminal bars to DACA as well as a chart of the bars, go to www.ilrc.org/daca and scroll down.

The "National Security, Public Safety" section of the government's DACA *Frequently Asked Questions,* updated January 18, 2013, from the USCIS website[13] (hereafter "*FAQ")* provides official information about DACA requirements. Bars to DACA include:

One felony conviction. A felony is defined as any local, state or federal offense that has a potential jail sentence of over one year. *FAQ,* Question 61.

One "significant misdemeanor" conviction. For DACA, a significant misdemeanor must meet the federal definition of misdemeanor, which is an offense punishable by imprisonment for more than five days but not more than one year. It also must be (a) a misdemeanor conviction, regardless of sentence imposed, of domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence; *or* (b) any other misdemeanor conviction if the person was sentenced to more than 90 days, excluding suspended sentences or time spent pursuant to an immigration hold. *FAQ,* Question 62.

Three "non-significant" misdemeanor convictions. A non-significant misdemeanor conviction must meet the federal definition of misdemeanor (punishable by imprisonment for more than five days but not more than one year) but not be a "significant" misdemeanor. Multiple misdemeanor convictions that occur on the same day and arise out of the same act, omission, or scheme of misconduct may be treated as only one offense for the purpose of calculating the three misdemeanors. Minor traffic offenses such as driving without a license, and convictions of state immigration offenses, will not be considered in calculating the three misdemeanors. *FAQ,* Questions 63-64, 66.

Note: Misdemeanor possession or under the influence of a controlled substance. This offense might not render an alien ineligible for DACA. It will, however, make the person inadmissible and ineligible to get permanent residency in the future, should that option become available.

Juvenile adjudications and expunged convictions. Juvenile delinquency adjudications are not convictions and are not criminal bars to DACA. A juvenile convicted in adult court will have an adult conviction for DACA purposes. *FAQ,* Question 67. In contrast to the rest of immigration law, DACA recognizes to some extent a withdrawal of plea pursuant to expungement, deferred adjudication, etc. "Expunged convictions and juvenile convictions will not automatically disqualify you. Your request will be assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable exercise of prosecutorial discretion is warranted." *Ibid*.

Discretionary denials, gang membership. Even if the person avoids all of the above, CIS retains the right to deny the DACA application as a matter of discretion, based on the totality of the circumstances. "[T]he absence of the criminal history outlined above, or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion." *FAQ*, Question 62. In addition, CIS will not grant DACA if it determines that the applicant poses a threat to national security or public safety. "Indicators that [someone] pose[s] such a threat include, but are not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the United States." *FAQ*, Question 65. In practice DACA has been denied based on controvertible evidence of tenuous gang associations. Any person with any record of gang associations should get expert counseling before applying. Note that DAPA, which makes gang-related convictions or participation in gang activities an official bar, provides that gang participation while under the age of 16 is not necessarily a bar; this might indicate that similar lenience could be applied to DACA applicants as well.

[13] At www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions

§17.13. DEFERRED ACTION FOR PARENTS OF AMERICANS AND LAWFUL PERMANENT RESIDENTS (DAPA)

On November 20, 2014 President Obama launched the Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") program. See the November 20, 2014 DHS memo on DACA and DAPA. DAPA grants work authorization and protection from removal to certain parents of USC's or LPRs. For more information see www.ilrc.org/policy-advocacy/executive-actionadministrative-relief (ILRC), www.adminrelief.org.

A. QUICK TEST: Is the Client Eligible?

1. Does the client meet the basic eligibility requirements for DAPA?

- As of November 20, 2014, the person was the parent of a USC or LPR son or daughter;
- The person has resided continuously in the U.S. since January 1, 2010, and as of November 20, 2014 was in the U.S. and in undocumented status;
- The person has not been convicted of an aggravated felony, a felony, a significant misdemeanor, or three or more other misdemeanors arising from separate incidents; has not been convicted of or participated in certain gang-related activities; is not suspected of terrorism. See Part B.
- The person was not apprehended attempting to enter the U.S. unlawfully after January 5, 2015; has not received a removal order since January 1, 2014; and has not significantly abused the visa or visa waiver programs.

2. Can a client who has an immigration hold or is in removal proceedings apply for DAPA?

Yes. If detained by immigration, the person can request deferred action from ICE or ask to be released based on prima facie DAPA eligibility so that he or she can apply through USCIS.

3. *What happens if the DAPA application is denied?*

DAPA applications have some limited confidentiality, but there are exceptions for persons with criminal convictions. USCIS will refer to directives in a memo on when to issue Notices to Appear for removal proceedings (www.uscis.gov/nta) (the "NTA Memo").

Under the NTA Memo, if the applicant is an "Egregious Public Safety" (EPS) the information will be sent to U.S. Immigration and Customs Enforcement ("ICE," the immigration police and prosecutor), which will decide whether to issue an NTA. This includes persons who are under investigation for murder; rape; sexual abuse of a minor; firearms offenses; crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year; ransom, child pornography, peonage, slavery, involuntary servitude, trafficking in persons; human rights violators; or known or suspected street gang members. In addition, if the applicant merely is inadmissible or deportable for crimes, USCIS may refer the person to ICE even if the person is not in the EPS category. Advocates will seek clarification on this point.

B. ADDITIONAL INFORMATION About DAPA: Crimes Bars

The crimes bars to DAPA are the same as the newly defined enforcement priorities that were announced on November 20, 2014. See the DHS enforcement priorities memo, and see advocates' analysis of the memo and material on DAPA bars at www.ilrc.org/policy-advocacy/executive-actionadministrative-relief.

One felony conviction. DAPA defines a felony as an offense that the convicting jurisdiction (e.g., the state) designates as a felony, regardless of maximum possible sentence. (Compare to DACA, which defines felony as an offense with a potential sentence of more than one year.)

One "significant misdemeanor" conviction. A significant misdemeanor is (a) a misdemeanor conviction, regardless of sentence imposed, of domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence; *or* (b) any other misdemeanor conviction if the person was sentenced to 90 days or more in custody, excluding suspended sentences or time spent pursuant to an immigration hold. This differs from the DACA bars in two ways: DACA defines a misdemeanor as having a potential sentence of more than five days but not more than a year, while DAPA does not; and under DACA a sentence of *more than* 90 days creates a significant misdemeanor, while DAPA requires a sentence of *90 days or more*.

Three "non-significant" misdemeanor convictions that arise from separate incidents. Conviction of three misdemeanors that do not meet the "significant misdemeanor" definition are a bar but only if they arise from three separate incidents. Minor traffic offenses such as driving without a license, and convictions of state offenses that have immigration status as an element, will not be counted as part of the three.

Note: Misdemeanor possession or under the influence of a controlled substance. This offense is not an automatic bar to DAPA or DACA. It will, however, make the person inadmissible and ineligible to get permanent residency in the future, should that option become available.

Juvenile adjudications and expunged convictions. While DACA recognizes expungements, at this writing (January 2015) authorities have not stated whether expungements will be accepted for DAPA. It appears likely that they will be. It appears very unlikely that DAPA authorities would hold that a juvenile disposition is a "conviction" for DAPA purposes. We await a clear announcement on both points.

Gang conviction or conduct. This is a very broad bar, and persons with any kind of documented history of gang involvement must get expert advice before applying for DAPA or DACA, or risk being put in removal proceedings. See resources at www.ilrc.org/policy-advocacy/executive-actionadministrative-relief for further discussion of this complex topic. Conviction of an offense for which an element was active participation in a criminal street gang (defined at 18 USC § 521(a) is a bar to DAPA. Assume that any offense or sentence enhancement that has gang participation as an element is a potential bar. Even absent a conviction, "aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang" also are barred from DAPA. The treatment of gangs in DACA provides some insight. In DACA, gang convictions or membership was not an official bar, but DACA applications have been denied based on small evidence of minor gang involvement, including reports from local police departments, school gang contacts, arrest records, tattoos, and dropped charges.

Aggravated felony conviction. Aggravated felony is a term of art that includes some non-"significant" misdemeanors, for example theft, forgery, perjury, obstruction of justice (which may include accessory after the fact), or a "crime of violence" where a *suspended* sentence of a year or more was imposed. (In contrast, the 90-day sentence for significant misdemeanors excludes suspended sentences). Examples of aggravated felonies regardless of sentence are fraud or deceit causing a loss exceeding $10,000, in some regions consensual sex with a person under age 18; and failure to appear to face felony charges (regardless of whether there was a later felony conviction). If the conviction occurred before September 30, 1996, consult an expert. It is possible that an older, better definition of "aggravated felony" will apply for DAPA purposes. Aggravated felony is defined at USC § 1101(a)(43). For more on aggravated felonies, see online overview.[14]

[14] See *Note: Aggravated Felonies* at www.ilrc.org/files/documents/n.6-aggravated_felonies.pdf

§17.14. "10-YEAR" CANCELLATION FOR NON-LPR's

Undocumented persons or others who have lived in the U.S. for at least ten years, and are not deportable or inadmissible for crimes, might be able to apply for a green card. 8 USC §1229b(b)(1).

A. QUICK TEST: Is the Defendant Eligible?

1. Has the defendant lived in the U.S. for ten years, or nearly that?

Entry date_____. *See Part B for more information on calculating the ten-year period.*

2. Does defendant have a U.S. citizen or lawful permanent resident parent, spouse, or unmarried child under 21? If yes, note the name/s and relationship/s of qualifying relative/s:

3. If time permits, get brief answers from the defendant to these questions regarding hardship; use additional sheet as needed. If you don't have much time, skip this question.

- Do these relative/s suffer from any medical or psychological condition; if so, what is it?

- Is there any other reason that the defendant's deportation would cause these relative/s to suffer exceptional, unusual hardship if the defendant were deported?

4. Crimes disqualifiers. The defendant will be barred if he or she comes within any of the following categories. *Check any bars that apply and give date of conviction and code section. Be sure to indicate if the threat is based on a current charge that defense counsel could try to avoid.*

Convicted at any time of, or currently charged with:

- An aggravated felony;
- An offense relating to a federally-defined controlled substance;
- A firearms offense;
- A crime involving moral turpitude (CIMT), unless it has a maximum possible sentence of *less* than one year, sentence imposed is six months or less, and the person committed just one CIMT;
- Two or more offenses of any type with an aggregate sentence imposed of at least five years;
- Prostitution (sexual intercourse for a fee);
- High speed flight from checkpoint, some federal immigration offenses, federal failure to file as a sex offender; *or*
- Stalking, a crime of domestic violence, violation of a DV protective order prohibiting violent threats or repeat harassment, or a crime of child abuse, neglect or abandonment (but not if these convictions occurred before September 30, 1996).

Event within about the last ten years, including now (see next page regarding exact time):

- Defendant engaged in prostitution, regardless of conviction;
- DHS has "reason to believe" that the person is or helped a drug trafficker;
- Defendant spent or will spend more than 180 days physically in jail as a penalty for a conviction;
- Defendant engaged in alien smuggling or lied under oath to get a visa or immigration benefit; or
- Defendant was a 'habitual drunkard' (e.g., multiple DUI's) or convicted of gambling offenses.

B. ADDITIONAL FACTS About Cancellation Of Removal For Non-LPRs

What status does the client get if she is granted non-LPR Cancellation? An undocumented person (or an applicant of any status) who wins cancellation for non-LPRs will become a lawful permanent resident (LPR or "green card" holder). See 8 USC §1229b(b)(1), INA § 240A(b)(1).

Do many applicants actually win? Only a limited number do. An applicant must convince the immigration judge that a U.S. citizen or LPR parent, spouse, or unmarried child under age 21 will suffer "exceptional and extremely unusual hardship" if the applicant is deported. Hardship to the applicant him- or herself does not count. This is a high standard and most grants are based upon a qualifying relative's significant physical or mental health problems, although other situations also can support a grant.[15] (Compare this to LPR cancellation, which generally is easier to win.)

What if the person got cancellation or other relief before? The applicant must not have received a prior grant of cancellation, suspension of deportation or § 212(c) relief, nor have a J-1 visa.

When does the ten-year period run? The required ten years of continuous physical presence will stop when the person is served with a notice to appear in immigration court. (It also stops with the commission of certain crimes, but usually a person who has such a conviction already comes within the other crime bars; see below.) The person must also show good moral character for ten years up to the time the judge makes a final decision in the case. The exact ten-year periods can be complex in rare situations, so if there is any question criminal defense counsel should consult with immigration counsel or urge the family to do so.

What are the crimes bars to eligibility for non-LPR Cancellation? There are two. First, the applicant cannot have been *convicted at any time* of an offense that is described in the crimes inadmissibility or deportability grounds.[16] See list at Part A, Question 4, "Convicted at any time." Note that a single conviction for a crime involving moral turpitude (CIMT) is a bar unless a sentence of no more than six months was imposed, and the offense carries a *maximum possible sentence of less than one year*, e.g. carries a maximum six-month sentence. (This standard is slightly different from the CIMT "petty offense exception," which requires a maximum possible sentence of one year or less, not less than one year.[17]) In some states a plea to "attempt" to commit a one-year misdemeanor will result in a maximum possible sentence of less than a year. Conviction of a deportable crime of domestic violence, stalking, or violation of certain provisions of a domestic violence protection order will disqualify an applicant, unless the applicant qualifies for a special waiver because he or she actually is the victim in the relationship. See §17.11.

If the applicant does not come within this bar, she must consider a second bar: within the ten years leading up to the date the judge decides the case, she must not have come within any of the statutory bars to establishing good moral character. See Part A, Question 4, "Event within the last ten years."

Ninth Circuit relief for persons with pre-April 1, 1997 conviction(s). In immigration proceedings arising within Ninth Circuit states, an undocumented person whose only convictions pre-date April 1, 1997 might qualify for a much better form of relief, suspension of deportation, despite being deportable or inadmissible.[18] See *§17.15 Suspension of Deportation.*

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[15] See, e.g., discussion of hardship in *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001).
[16] See 8 USC §§ 1182(a)(2), 1227(a)(2) [INA §§ 212(a)(2), 237(a)(2)]. Usually an undocumented person is not affected by the grounds of deportability, but under the specific language of the non-LPR cancellation bars even a person who entered without inspection will be barred if convicted of an offense described in the deportation grounds.
[17] 8 USC § 1182(a)(2)(A).
[18] See *Lopez-Castellanos v. Gonzales,* 437 F.3d 848 (9th Cir. 2006) and discussion in *Defending Immigrants in the Ninth Circuit*, § 11.4 (www.ilrc.org).

§17.15. UNDOCUMENTED CLIENTS WITH OLDER CONVICTIONS – SUSPENSION OF DEPORTATION

This relief might permit an undocumented person with old convictions – even old drug convictions – to become a lawful permanent resident. This is a defense to removal that has been upheld in immigration in the ***Ninth Circuit Court of Appeals*** but may not have been considered elsewhere. An applicant should get expert immigration counsel. For further discussion of this relief, see Brady et al., *Defending Immigrants in the Ninth Circuit*, §11.4(B) (www.ilrc.org).

A. QUICK TEST: Is the Client Eligible?

1. ***Are the client's deportable convictions all from before April 1, 1997? If the client was convicted of an aggravated felony, did the conviction occur before November 29, 1990? and***

2. ***Since receiving the above conviction(s), has the client maintained good moral character?***

If so, the client may be able to apply for the former "suspension of deportation." See discussion of good moral character at §17.26.

B. ADDITIONAL FACTS About the Former Suspension of Deportation

Suspension of Deportation and Cancellation of Removal. Before April 1, 1997 an immigration judge had the discretion to "suspend the deportation" of certain undocumented persons who had resided illegally in the U.S. for several years. If the judge did grant suspension, the person could adjust to lawful permanent residence. This included "ten-year" suspension of deportation, where the person became deportable for a crime, but then had established ten years of good moral character immediately after. The person had to demonstrate exceptional hardship to himself, and/or to a USC or LPR family member. See former INA § 244(a)(2), 8 USC §1254(a)(2).

As of April 1, 1997, Congress eliminated suspension of deportation and replaced it with cancellation of removal for non-permanent residents (see §17.14). Many noncitizens are barred from cancellation because they are inadmissible or deportable for crimes, or they do not have a USC or LPR family member. However, the Ninth Circuit indicated that a noncitizen still may apply for suspension of deportation today in removal proceedings, if he was convicted of a deportable offense before April 1, 1997. The court used the same reliance analysis on eligibility for suspension that the U.S. Supreme Court used in considering the former § 212(c) relief, in *INS v. St. Cyr,* 533 U.S. 289, 316 (2001). See *Lopez-Castellanos v. Gonzales,* 437 F.3d 848, 853 (9th Cir. 2006), *Hernandez De Anderson v. Gonzales*, 497 F.3d 927, 935 (9th Cir. 2007).

Specific convictions. Under the former ten-year suspension, a person who is deportable under one of the crime-related grounds of deportation, such as the moral turpitude, controlled substances, or aggravated felony grounds, must show ten years of continuous physical presence and good moral character immediately following the event that rendered him or her deportable. Former 8 USC §1254(a)(2). Thus, even clients who have a serious conviction in the distant past may still be eligible for this form of suspension, if they are able to establish the required good moral character beginning after that. Because the last conviction that would qualify for relief would have happened on March 31, 1997, today's clients will have had the ten years to try to establish good moral character.

Conviction of an aggravated felony is a *permanent* bar to establishing good moral character if it occurred after November 29, 1990. Murder is a permanent bar to establishing good moral character in all cases. See *Lopez-Castellanos, supra* at 851, and see *§17.26 Good Moral Character*, below.

§17.16. VICTIMS OF ALIEN TRAFFICKERS -- THE "T" VISA

The "T" visa provides temporary and potentially permanent lawful status to victims of "a severe form of alien trafficking." The person must be in the U.S. because of the trafficking, and must show he or she would suffer "extreme hardship involving unusual and severe harm" if removed form the United States. A "T" visa applicant who is 18 years old or older must also show compliance with any reasonable law enforcement agency request for assistance in the investigation or prosecution of acts of trafficking. See INA § 101(a)(15)(T), 8 USC § 1101(a)(15)(T), and 8 CFR §§ 212.16, 214.11, and 245.23.

A. QUICK TEST: Is the Client Eligible?

1. Has the client been a victim of traffickers and essentially been enslaved?

Severe trafficking includes recruiting or obtaining persons for labor or services through the use of force, fraud, or coercion "for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." 22 USC § 7102(8). This would include, e.g., the involuntary sweatshop worker or maid.

2. Or, is the client a victim of sex trafficking of persons under age 18?

Severe trafficking also includes "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act." See definition at 22 USC § 7102(9).

3. Is the client a parent, spouse or child of someone who is eligible for, or has, a T visa?

This person also may be eligible for relief. See 8 CFR § 214.11(a), (o).

B. ADDITIONAL INFORMATION about T Visas

The "T" visa is a nonimmigrant visa that allows the noncitizen to work and live legally in the United States for four years. After three years in this status, the "T" visa-holder can apply to obtain lawful permanent residency (a "green card"). The person must comply with any reasonable request for assistance in the investigation or prosecution of trafficking, or be less than 15 years of age, and must show that if removed, he or she would suffer "extreme hardship involving unusual and severe harm." 8 CFR § 214.11(b).

Other than the national security (terrorist, etc.) grounds, all grounds of inadmissibility, including criminal acts and convictions, are waivable. The CIS regulation, however, imposes a difficult standard for waiver of inadmissible convictions. It will only exercise its discretion in exceptional cases, unless the criminal activities rendering the alien inadmissible were caused by or were incident to the victimization. 8 CFR § 212.16(b)(2). If the offense can be linked to the victimization, it might be helpful for defense counsel to put a statement explaining that in the record.

Help in filing the T visa application may be availabe. For more resources, see materials by the Legal Aid Foundation of Los Angeles at http://www.lafla.org/service.php?sect=immigrate&sub=traffic, and see www.nipnlg.org, Trafficking Documents, under VAWA Resources. See government materials at www.uscis.gov ("Humanitarian" category). Contact these or other non-profit organizations or bar associations to see if it may be possible to obtain pro bono assistance for your client, for example in Los Angeles by LAFLA and in San Francisco by the Immigrant Center for Women and Children at www.icwclaw.org. A large firm also might like to take the case.

§17.17. CRIME VICTIM WHO MAY ASSIST PROSECUTION -- THE "U" VISA

The "U" visa provides temporary and potentially permanent lawful status to victims of certain crimes who are, or were, willing to cooperate in investigation or prosecution of the offense. See INA §§ 101(a)(15)(U), 245(m), 8 USC §§ 1101(a)(15)(U), 1255(m), and 8 CFR §§ 212.17, 214.14, and 245.24.

A. QUICK TEST: Is the Client Eligible?

1. Did the person suffer "substantial physical or mental abuse" as a result of having been the victim of certain types of crimes, committed in the United States?

Physical or mental abuse means "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim." 8 CFR § 214.14(a)(8).

The abuse must be as a result of certain offenses. "Qualifying crime or qualifying criminal activity includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term 'any similar activity' refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." See 8 CFR § 214.14(a)(9). Regarding offenses such as witness tampering or obstruction, see § 214.14(a)(14)(ii).

2. Can the person obtain certification from authorities that she has been, is being, or is likely to be helpful to federal, state, or local authorities investigating or prosecuting the criminal activity?

The person must obtain a certificate completed by a certifying agency confirming that the person is helping officials already, or is willing and likely to be helpful in the future. A certifying agency is broadly defined to include "a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor." 8 CFR § 214.14(a). The certification may be made by an employee empowered to take such action.

If the victim is a child under the age of 16, then the parent, guardian or next friend of the child victim may possess the information and indicate the willingness to be helpful. 8 CFR § 214.14.

3. *Or, is the client a relative of a victim eligible for a U visa?*

A qualifying family member who was not a victim of the crime may be able to get a derivative U visa. If the victim eligible for a U visa is age 21 or older, the spouse or child(ren) may qualify. If the victim eligible for a U visa is under age 21, the spouse, child(ren), parents, or unmarried siblings under the age of 18 may qualify. 8 CFR § 214.14(f). At the time that the U visa recipient adjusts status to permanent residence, qualifying family members may be able to adjust, regardless of whether they received a derivative U visa. See Part B.

B. ADDITIONAL INFORMATION about U Visas

Procedure and Benefits. The "U" visa begins as an application for a temporary, non-immigrant visa that allows the noncitizen to work and live legally in the United States for four years. Qualifying family members (defined in Part A, above) also may apply for a U visa. See 8 CFR §214.14(c) and resource materials cited below for information on application procedure for the U visa.

After three years in this status, U visa-holders can apply to obtain lawful permanent residency (a "green card"). Permanent residency will be granted for humanitarian, family unity or public interest purposes. The applicant must have maintained continuous presence in the U.S. during that time, and must not have unreasonably refused to participate in an investigation or prosecution. The spouse and children of the crime victim (and parents of a child victim) may be granted permanent residency if authorities consider it necessary to avoid extreme hardship, even if these parties did not obtain a nonimmigrant U visa. 8 CFR § 245.24.

Crimes bars. When applying for a U visa, all grounds of inadmissibility except the national security grounds are potentially waivable. INA § 212(d)(14), 8 USC § 1182(d)(14). However, in the case of U-visa applicants inadmissible on criminal grounds, the regulation states that discretionary waivers for those convicted of "violent and dangerous crimes" will only be granted "in extraordinary circumstances," and that waiver denials are both revocable and administratively unappealable. 8 CFR § 212.17(b), (c). Immigration counsel will argue that this *a priori* limitation on discretion should be restricted to the type of lethally dangerous crimes discussed in *Matter of Jean,* 23 I&N Dec. 373 (A.G. 2002).

Resources. See government information at www.uscis.gov, at "Humanitarian" and then "Victim of Trafficking and Other Crimes." For more resources, go to the Immigrant Legal Resource Center at www.ilrc.org/info-on-immigration-law/u-visas. Among other resources, this provides downloadable materials in English and Spanish to give to clients, including clients in detention; information in other languages might be found online. For a comprehensive manual, see Immigrant Legal Resource Center, *The U Visa: Obtaining Status for Immigrant Victims of Crime* (www.ilrc.org). Search online, or contact non-profit organizations, bar associations, or resource centers, to see if it may be possible to obtain pro bono assistance for your client, for example in Los Angeles by the Legal Aid Foundation of Los Angeles (www.lafla.org), in San Francisco by the Immigrant Center for Women and Children (www.icwclaw.org), and in San Diego by various organizations.

§17.18. KEY INFORMANTS – THE "S" VISA

Certain informants or witnesses who supply "critical reliable information" or other critical help relating to terrorism or organized crime may qualify for a non-immigrant "S" visa. Only 250 of these visas potentially can be distributed each year, and they are difficult to win. 8 USC §§ 1101(a)(15)(S), 1184(k), 8 CFR §§ 214.2(t), 236.4.

A. QUICK TEST: Is the Client Eligible?

1. ***Does the client have critical, reliable information relating to terrorism or organized crime (even if the client herself has committed serious crimes)?***

2. ***Is an interested federal or state law enforcement authority willing to support the application?***

If the answer to both questions is "yes," consider the possibility of applying for an "S" Visa. Understand, however, that this may be a long process and a long shot, as the applications go through an extensive vetting procedure and few are available. See generally 8 CFR § 214.2(t).

B. ADDITIONAL INFORMATION About "S" Visas

Criteria. Regarding information about organized crime, an alien may receive an"S-5" non-immigrant visa if "in the exercise of discretion pursuant to an application on Form I-854 by an interested federal or state law enforcement authority ("LEA"), it is determined by the Commissioner that the alien: (i) Possesses critical reliable information concerning a criminal organization or enterprise; (ii) Is willing to supply, or has supplied, such information to federal or state LEA; and (iii) Is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise." 8 CFR § 214.2(t)(i).

Regarding information about terrorism, an alien may receive an "S-6" non-immigrant visa if "it is determined by the Secretary of State and the Commissioner acting jointly, in the exercise of their discretion, pursuant to an application on Form I-854 by an interested federal LEA, that the alien: (i) Possesses critical reliable information concerning a terrorist organization, enterprise, or operation; (ii) Is willing to supply or has supplied such information to a federal LEA; (iii) Is in danger or has been placed in danger as a result of providing such information; and (iv) Is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. 2708(a).

Benefits. An "S" visa is a non-immigrant visa providing temporary lawful status, admission into the U.S. if needed, and employment authorization. Similar visas may be available to the recipient's spouse, married or unmarried children, and parents. 8 CFR § 214.2(t)(3). All grounds of inadmissibility, except Nazis and genocide, can be waived. 8 USC § 1182(d)(1). Under some circumstances the S visa holder and family can adjust status to permanent residence. 8 CFR § 245.11.

A noncitizen who adjusted on an S visa is subject to strict removal conditions. 8 CFR §§ 236.4, 208.22(b). The person will be found deportable for one moral turpitude conviction if the offense was committed within 10 years after admission. 8 USC §1227(a)(2)(A)(i). If you represent such a person, consult an expert before entering a plea.

§17.19. APPLYING FOR ASYLUM OR WITHHOLDING OF REMOVAL

An individual who establishes a fear of persecution if returned to the home country may gain potentially permanent lawful status if granted asylum (INA § 208, 8 USC §1158) or temporary lawful status if granted withholding of removal (INA § 243(b)(3), 8 USC § 1231(b)(3)).

These applications are legally challenging and require expert immigration counsel. Criminal defense counsel can perform a vital service, however, by spotting possible cases. If your client is from a country where there are human rights abuses, you could ask if the person would like to have a *confidential* conversation about any worries they might have about returning. Note that it may take some time to gain the client's trust and get the whole story. In some areas, non-profits or bar association groups represent asylum applicants pro bono, and might be willing to interview a defendant. Or, an attorney or non-attorney staff person from your office who is fluent in the client's language might work with the client. The client's story also might assist in the criminal case: in some instances, evidence of persecution may help persuade a judge or prosecutor to be flexible. Note: if you are representing a person who *already* has been granted asylum or refugee status, see *§17.21 Refugees and Asylees.*

A. QUICK TEST: Is the Client Eligible for Asylum or Withholding of Removal?

1. Does the client reasonably fear that if returned to the home country, he or she will be persecuted based on race, religion, national origin, political views, or social group?

As a non-expert, your threshold question is simply, are there human rights abuses in the country and might the client have a serious problem or subjective concern about harm? For defenders interested in more information: the case will depend upon the client's ability to prove that he or she comes within the technical terms in the above question. He or she must show possible persecution due to membership in one of the above groups. The client can prove the case by evidence of past persecution and/or fear of future persecution. The client must support his or her story with some documentation of human rights abuses. Along with more traditional asylum claims, some claims based upon domestic violence or violence against LGBT's have been recognized, with evidence that the government is not willing to intervene. Some persons have won asylum from Mexico based on threats from the drug cartels that the government is unable or unwilling to control.

2. Can the client qualify for asylum, or just for withholding of removal?

Asylum is preferable, because after one year the person can apply for lawful permanent residence. INA § 209(b), 8 USC § 1159(b). An asylum applicant (a) must submit the application within one year of entering the U.S., absent extenuating or changed circumstances, (b) faces stricter bars based upon criminal convictions, (c) can be denied asylum as a matter of discretion, and (d) only needs to prove a "well-founded fear" of persecution (interpreted as a 10% likelihood).

A person granted withholding receives permission to live and work in the U.S., but it can be revoked if country conditions change and it does not enable the person to apply for permanent residence. A withholding applicant (a) may apply at any time, (b) has somewhat less strict criminal bars, (c) cannot be denied withholding as a matter of discretion, if the person qualifies under the statute, and (d) must prove a "reasonable probability" of persecution (interpreted as more than a 50% likelihood).

B. ADDITIONAL INFORMATION: Crimes That Bar Eligibility

Conviction of a "particularly serious crime" ("PSC"): Aggravated felony. Both asylum and withholding are barred if the person is convicted of a broadly defined "particularly serious crime" ("PSC").

Aggravated felonies are treated differently as PSC's in asylum than in withholding. For asylum purposes, any aggravated felony conviction, including, e.g. a nonviolent theft offense with a one year suspended sentence, automatically is a PSC and therefore a bar to asylum. 8 CFR 208.13(c)(2)(D). For withholding purposes, while there is a presumption that an aggravated felony is a PSC, it is not automatically one unless the client was sentenced to at least five years in the aggregate for one or more aggravated felonies. 8 CFR 208.16(d)(3). Thus, a person barred from applying for asylum by an aggravated felony still may be able to apply for withholding.

Conviction of a PSC: Other offenses. Other than the aggravated felony bars, determining whether an offense is a PSC is done on a case-by-case basis. The adjudicator may look beyond the record of conviction, at least to some extent. Factors include, e.g., whether the offense involved violence against people, the extent of injury, the length of sentence. See *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007), *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982). Generally, a misdemeanor that is not an aggravated felony is not a PSC. *Matter of Juarez*, 19 I&N Dec. 664 (BIA 1988).

In almost all cases, a conviction for drug trafficking is a PSC. There is a narrow exception for an immigrant who was peripherally involved in a transaction involving only a small amount of drugs and money, where violence did not occur and minors were not affected. *Matter of Y-L-,* 23 I&N Dec. 270 (A.G. 2002). The Ninth Circuit has held that this standard may be applied only to convictions received on or after May 5, 2002. *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 947 (9th Cir. 2007).

Based on the individual circumstances of the case, the Board of Immigration Appeals found the following convictions were not of PSCs: burglary with intent to commit theft of an unoccupied house (*Frentescu*, *supra),* and alien smuggling with a three-month sentence (an aggravated felony) (*Matter of L-S-*, 22 I&N Dec. 645,651 (BIA 1999)). The following were held to be PSCs: residential burglary with aggravating factors (*Matter of Garcia Garrocho*, 19 I&N Dec. 423 (BIA 1986)); robbery and assault with a deadly weapon (*Matter of Rodriguez-Coto*, 19 I&N Dec. 208 (BIA 1985), (*Matter of L-S-J-*, 21 I&N Dec. 973 (BIA 1997)), a nonconsensual sexual act involving threat with a knife (*Matter of N-A-M-*, *supra*), and possession of child pornography (*Matter of R-A-M-,* 25 I&N Dec. 657 (BIA 2012)). The Ninth Circuit found that a conviction of mail fraud to defraud victims of two million dollars was a PSC. *Arbid v. Holder*, 700 F.3d 379 (9th Cir. 2012). The Ninth Circuit remanded a case to the BIA to provide more justification for its unpublished finding that driving under the influence is a PSC. *Delgado v. Holder,* 648 F.3d 1095 (9th Cir. 2011)(en banc), see Reinhardt, J*, concurring* at 1111-1112.

Discretionary denials of asylum; "dangerous and violent" offenses. An application for asylum can be denied as a matter of discretion for various reasons, including criminal convictions that are less serious than a PSC. In addition, absent extraordinary circumstances asylum will be denied as a matter of discretion if the applicant was convicted of a "violent or dangerous" offense. *Matter of Jean*, 23 I&N .Dec. 373, 383 (A.G. 2002). There is no more specific definition of this term, but wherever possible counsel should plead to an alternate offense that does not involve serious violence against persons. In discretionary findings, however, a judge is not limited to the record of conviction.

Additional bars to asylum and withholding. Under 8 USC §§1158(b)(2)(A) and 1231(b)(3)(B), immigration authorities may deny asylum or withholding to an applicant based on the following: the applicant ordered or participated in the persecution of another person; there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the U.S.; there are reasonable grounds to believe that the alien is a danger to the security of the United States; or the applicant is inadmissible or removable for terrorist activities (see 8 USC §§1182(a)(3)(B)(i), 1227(a)(4)(B)).

§17.20. CONVENTION AGAINST TORTURE (CAT)

A. QUICK TEST: Is the Client Eligible for Relief under CAT?

1. Does the client fear that he or she will be tortured if returned to the home country?

The U.S. implemented the international Convention Against Torture (CAT), which prohibits a nation from sending a noncitizen to a country where he or she will be tortured. See 8 CFR §§ 208.16–208.17.

An applicant for CAT must establish that it is more likely than not that he or she will be tortured upon return to the home country. 8 CFR § 208.16(c). The definition of torture is severe pain, whether emotional or physical, intentionally inflicted upon a person for any of various reasons, such as to obtain information, punish, or coerce. 8 CFR § 208.18(a). There is no requirement that the torture be on account of the person's race, religion, or other categories required for asylum or withholding. In fact, CAT was granted to an Iranian Christian who submitted extensive evidence that he would be tortured partly due to his U.S. conviction for drug trafficking. *Matter of G-A-*, 23 I&N 366 (BIA 2002) (en banc). But see *Matter of M-B-A-*, 23 I&N 474 (BIA 2002) (en banc) where this argument failed for a Nigerian who was held to have submitted insufficient documentary evidence that traffickers would be tortured. See also #4 below, regarding the limited relief available to applicants convicted of a particularly serious crime.

2. Is the threat that either the government itself will torture the person, or that the government will turn a blind eye to a third party who will torture the person?

According to the Ninth Circuit, either of these options will suffice. Under 8 CFR § 208.18(a)(1), the feared torture must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." This does not mean, however, that a government official must agree with or support the torture. It is enough that the official is aware of the practice and turns a "blind eye" to it, due to a lack of ability or will to intervene. *Zheng v. Ashcroft*, 332 F.3d 1186, 1196 (9th Cir. 2003) (informant's reasonable fear that Chinese "snakehead" smugglers would torture him is sufficient for CAT, without proof that Chinese officials approve of the torture), disapproving *Matter of S-V-*, 22 I&N 1306 (BIA 2000) (although the guerrillas controlled a significant part of Colombia, torture by the guerilla forces did not qualify for protection under the CAT because the government did not support the torture).

3. Can the person document the practice of torture in the home country?

While legally an applicant's consistent and credible testimony can be sufficient (8 CFR § 208.16(c)), in practice it will be crucial to present documentary evidence of the practice of torture of similarly situated persons, from e.g., human rights reports, news articles, scholarly articles, expert affidavits, etc.

4. What is the effect of conviction of a particularly serious crime ("PSC")?

A conviction will not bar relief under the CAT, which is why the CAT is a good alternative when asylum or withholding is barred by a conviction. See *§17.19 Asylum and Withholding.* However, a conviction may severely limit relief. There are two different forms of status under the CAT. A noncitizen who has not been convicted of a PSC and does not come within the other bars to withholding may seek CAT *withholding of removal*. The person will be released from detention and provided with employment authorization. 8 CFR § 208.16(b)(2). In contrast, a noncitizen who is convicted of a PSC may only apply for CAT *deferral of removal*. This person might not be released from immigration detention, and could be removed to a third country if one would accept him or her. 8 CFR § 208.17(a), (b). For CAT purposes, the definition of PSC includes one or more aggravated felony convictions for which an aggregate sentence of five years or more was imposed. 8 CFR § 208.17(a).

§17.21. DEFENDING ASYLEES AND REFUGEES

Asylees and refugees were granted lawful status because they showed that they would be persecuted if returned to the home country. They want to keep this lawful status. They also want to apply to adjust their status to lawful permanent residence. For more information on asylum, see §17.19, *supra*, online resources, or manuals such as Immigrant Legal Resource Center, *Essentials of Asylum Law* (www.ilrc.org).

A. QUICK TEST: Can Client Keep Asylee/Refugee Status? Apply for Adjustment to LPR?

1. Confirm: Is the defendant really an asylee or refugee?

Photocopy any document. Note that some people may think they have asylee status when they only have a pending asylum application plus employment authorization. Did the person have an interview, and/or a hearing before a judge? What happened?

→ KEEP DEFENDANT OUT OF REMOVAL PROCEEDINGS. While the law is complex, assume that to stay out of removal proceedings refugees and asylees need to avoid a conviction of a "particularly serious crime," and refugees also need to avoid a deportable conviction.

2. Is an asylee already, or about to be, convicted of a "particularly serious crime"?

If "yes," the person can be put in removal proceedings.

A particularly serious crime (PSC) includes conviction of any aggravated felony, or of any drug trafficking offense, or other offenses on a case-by-case basis (usually those involving threat or force against persons, and not a single misdemeanor). See next page.

3. Is a refugee already, or about to be, convicted of an offense that will make him or her deportable? YES NO If "yes," it appears that the person can be put in removal proceedings.

4. List, or attach sheet with prior convictions and current charges that may be deportable offenses or PSC's. Include code section and sentence.

→ KEEP DEFENDANT ELIGIBLE FOR ADJUSTMENT OF STATUS. A year after the person was admitted to the U.S. as a refugee or granted asylum in the U.S., she can apply for adjustment of status to a lawful permanent resident. To do this she must be admissible, or if inadmissible she must be eligible for a special waiver – meaning she should not come within Question 6 or 7, below. Qualifying for adjustment of status is a top priority; among other things, it is a defense to removal. See next page.

5. Is the person inadmissible? **YES NO**

6. Does ICE have "reason to believe" that she ever participated in drug trafficking?
If "yes," she cannot get the waiver and cannot adjust status to LPR as a refugee or asylee. However, if she was not *convicted* for drug trafficking, and she is not otherwise convicted of a PSC (and, if a refugee, also is not deportable) she might be able to keep her asylee or refugee status.

7. Was the person convicted of a "violent or dangerous" offense?
If "yes," the waiver of inadmissibility will not be granted *unless* she shows exceptional equities. See next page.

B. ADDITIONAL FACTS About Asylee And Refugee Status

1. How does a person become an asylee or refugee?

A refugee is a person from a *country designated by the U.S.* who was granted refugee status after showing a reasonable fear of persecution in the home country due to race, religion, national origin, political opinion or social group. She was admitted into the U.S. as a refugee.

An asylee is a person who entered the U.S. from *any* country, legally or illegally, and was granted asylee status here after making the same showing of fear of persecution. The person may have made this showing to an asylum officer in an affirmative application, or to an immigration judge as a defense to removal. The person had to submit the application for asylum within one year of entering the U.S., unless there were extenuating circumstances.

2. How long can the person remain in that status? What puts them in removal proceedings?

Asylee or refugee status remains good until it is terminated; it can last for years. Conviction of a "particularly serious crime" is a basis for termination of asylee status and institution of removal proceedings. The BIA held that refugees can be placed in removal proceedings for a deportable offense.[19] In some cases a change in conditions in the home country is a basis for termination of status.

3. What is a particularly serious crime (PSC)?

A PSC includes conviction of any aggravated felony, or of any drug trafficking offense (with the exception of a very small drug transaction in which the person was peripherally involved[20]). Other offenses are evaluated as PSC's on a case-by-case basis depending on whether people were harmed/ threatened, length of sentence, and other factors; in many cases the adjudicator may look beyond the record of conviction.[21] Conviction of major mail fraud and of possession of child pornography have been held to be PSCs. Generally, a misdemeanor that is not an aggravated felony is not a PSC.[22] See further discussion in *§17.19 Asylum and Withholding*, above.

4. In an application to adjust status as an asylee or refugee, what convictions can be waived?

A year after either admission as a refugee or a grant of asylum, the person can apply to adjust status to lawful permanent residence. Even an asylee or refugee who is in removal proceedings and subject to termination of status can apply for adjustment, as a defense to removal. The adjustment applicant must be "admissible," or if inadmissible must be eligible for and granted a discretionary, humanitarian waiver created for asylees and refugees, at INA §209(c), 8 USC §1159(c). This waiver can forgive *any* inadmissible crime, with two exceptions. First, it cannot waive inadmissibility based upon the government having "reason to believe" the person has participated in drug trafficking.[23] Second, the waiver will not be granted if the person was convicted of a "violent or dangerous" crime, unless the person shows "exceptional and extremely unusual hardship" or foreign policy concerns.[24] None of these terms has been specifically defined. In some cases medical hardship for family or applicant has been sufficient hardship for a waiver. Apart from those two exceptions, the waiver can forgive any offense, including an inadmissible conviction that also is an aggravated felony, for example for theft or fraud, or a non-trafficking drug offense.

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[19] See 8 USC § 1158(c)(2)(B) (asylee), Matter of D-K-, 25 I&N 761 (BIA 2012) (refugee).
[20] See *Matter of Y-L-*, 23 I&N Dec. 270 276-77 (AG 2002). Try to put such positive facts in the criminal record.
[21] *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007), *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982).
[22] *Matter of Juarez*, 19 I&N Dec. 664 (BIA 1988) (absent extraordinary circumstances, misdemeanor is not PSC).
[23] 8 USC § 1182(a)(2)(C), INA § 212(a)(2)(C).
[24] See *Matter of Jean*, 23 I&N Dec. 373, 383-84 (A.G. 2002).

§17.22. TEMPORARY PROTECTED STATUS (TPS)

A. QUICK TEST: Is the Defendant Eligible?

Noncitizens from certain countries that have experienced a devastating natural disaster, civil war or other unstable circumstances may be able to obtain Temporary Protected Status (TPS).
For more information, see online resources or see A Guide for Immigration Advocates (www.ilrc.org).

1. *Is the client a national of a country that the U.S. has designated for TPS?*

In what country was the client born? _____

To see which countries currently are designated for TPS, go to www.uscis.gov. Under "Humanitarian," click on "Temporary Protected Status." If the person is not from one of those few designated countries, then TPS is not an option. This country list can change at any time, but see the list as of January 2013, next page.

2. *If YES: Did, or can, the client meet the TPS requirements for nationals of his or her country, in terms of date of entry into the U.S. and date of registration for TPS?*

Required date of entry into U.S.: _____ Client's date of entry _____

Deadline for registration/re-registration: _____ Client's reg. date, if any_____

It may be difficult to tell what dates apply to the client by looking at the USCIS on-line materials. A nonprofit immigration agency or an immigration attorney can help with this. See next page.

3. *Can the client avoid convictions that are bars to eligibility for TPS?*

Try to avoid the following automatic disqualifiers. Circle if client has a prior or is charged with:

- ✓ Any felony conviction (an offense with a potential sentence of more than a year).[25]
- ✓ Any two misdemeanor convictions (offenses with a potential sentence of a year or less).[26]
- ✓ Conviction of an offense relating to a controlled substance.
- ✓ Immigration authorities have substantial evidence that the person ever has been or helped a drug trafficker, even if no conviction.
- ✓ Evidence that the person was a prostitute (sexual intercourse for a fee), even if no conviction.
- ✓ Conviction of a crime involving moral turpitude (CIMT), *unless* it comes within the petty offense or youthful offender exceptions.
  - Petty offense exception: client committed only one CIMT, which carries a potential sentence of a year or less, and a sentence of no more than six months was imposed
  - Youthful offender exception: client committed only one CIMT while under age of 18 and conviction and resulting jail ended at least five years ago.

[25] In California, a "wobbler" felony/misdemeanor conviction will be a misdemeanor for this purpose if it is designated as or reduced to a misdemeanor. See, e.g., *LaFarga v. INS*, 170 F.3d 1213 (9th Cir 1999).
[26] A conviction of an offense classed as an "infraction" or other offense that is less than a misdemeanor should not be considered a misdemeanor for this purpose.

B. ADDITIONAL Facts About Temporary Protected Status (TPS)

1. What is Temporary Protected Status? What benefits does the client get from it?

The Secretary of Homeland Security may designate Temporary Protected Status (TPS) for any foreign country encountering catastrophic events such as ongoing armed conflict, earthquake, flood, drought, or other extraordinary and temporary conditions.

Nationals of that country who are granted TPS will be permitted to stay legally in the U.S. for a designated period of time, and will receive employment authorization.[27] TPS is usually granted for about a year, but it can be renewed multiple times. TPS is not permanent resident status (green card).

2. What are the requirements for Temporary Protected Status?

- National of a country that was designated for TPS;
- Continuous presence in U.S. since the date required for nationals of that country;
- Registered and/or re-registered on time, or eligible to late-register;
- Admissible (not inadmissible for crimes);
- Not convicted of a felony or two or more misdemeanors; and
- Not barred from "withholding of removal" (has not persecuted others, not convicted of "particularly serious crime").

3. Which countries currently are designated for TPS?

The list changes frequently. To see which countries currently are designated for TPS and special requirements for each country's nationals, consult www.uscis.gov.[28] **As of December 2013, El Salvador, Haiti, Honduras, Nicaragua, Somalia, Sudan, South Sudan, and Syria** were designated for TPS. Usually the designation is for just a year at a time, but several renewals are possible.

4. What are the "physical residence" and "registration" requirements?

When it announces the TPS designation of a country, the U.S. will set a date by which the nationals of the country must have resided in the U.S. in order to qualify. The U.S. also will set a deadline for nationals of that country to "register" (apply for TPS). If TPS is extended again past the first period, the person must re-register by a certain date. In some cases late registration is permitted, for example where the person had a pending immigration case, or for some relatives of persons granted TPS. See discussion at www.uscis.gov. Lawsuits may provide more opportunity for late registration.

5. What is the downside and the upside to applying for TPS?

The downside is that an applicant for TPS is giving DHS her contact information and telling them that she is here without lawful status. While we are not aware of cases where people were put in removal proceedings simply because TPS was ended for their country, it could happen.

The upside is that in some cases, TPS has resulted in lawful status for a few years to well over a decade, allowing the person to remain in the U.S. lawfully with employment authorization.

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[27] INA § 244A, 8 USC § 1254a, added by IA90 § 302(b)(1).
[28] Go to www.uscis.gov and click on "Humanitarian" and then "Temporary Protected Status."

§17.23. NACARA FOR NATIONALS OF EL SALVADOR, GUATEMALA, AND THE FORMER SOVIET BLOC

Certain nationals from El Salvador, Guatemala, or former Soviet bloc countries who applied for asylum or similar relief in the early 1990's are eligible to apply for lawful permanent resident status (a green card) under the 1997 Nicaraguan Adjustment and Central American Relief Act (NACARA). See 8 CFR § 240.60-65. They can apply for a special form of suspension or cancellation of removal now, under the more lenient suspension of deportation standards that were in effect before April 1, 1997. Persons who became deportable or inadmissible for a criminal offense more than ten years before applying for NACARA can apply under the lenient rules governing the former "ten-year" suspension (see §17.15), except that an aggravated felony conviction is an absolute bar to NACARA. See 8 CFR §§ 240.60-61, 65. Family members of these persons also may be eligible to apply. For more information, go to www.uscis.gov and search for "NACARA eligibility" and other NACARA topics.

Specifically, the following persons may be eligible for NACARA. Salvadoran nationals are eligible if they (1) first entered the U.S. on or before September 19, 1990 and registered for benefits under the *ABC v. Thornburgh,* 60 F. Supp. 796 (N.D. Cal. 1991), settlement agreement on or before October 31, 1991 (either by submitting an *ABC* registration or by applying for temporary protected status (TPS)), unless apprehended at the time of entry after December 19, 1990, or (2) filed an application for asylum with the INS on or before April 1, 1990. Guatemalan nationals are eligible if they (1) first entered the U.S. on or before October 1, 1990 and registered for *ABC* benefits on or before December 31, 1991, unless apprehended at the time of entry after December 19, 1990, or (2) filed an application for asylum with the INS on or before April 1, 1990. Regarding the former Soviet Union, noncitizens are eligible if they entered the U.S. on or before December 31, 1990, applied for asylum on or before December 31, 1991, and at the time of application were nationals of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia or any state of the former Yugoslavia.

§17.24. HRIFA RELIEF FOR HAITIANS AND DEPENDENTS

Before 2000, about 50,000 Haitian nationals in the U.S. were granted relief under HRIFA, the Haitian Refugee and Immigrant Fairness Act (1998). Today, some dependents of these HRIFA grantees still can apply for lawful permanent resident status (a green card). A person who is the spouse or unmarried child under 21 of a grantee may be eligible, as well as an unmarried son or daughter over age 21 who has lived in the U.S. since December 31, 1995. The applicant must be admissible, but waivers are available. See 8 CFR § 245.14(d), (e), and for more information go to www.uscis.gov and search for HRIFA. See also Temporary Protected Status at § 17.21, which more recently provided some relief to Haitians.

§17.25. THE AMNESTY PROGRAMS OF THE 1980's *and* FAMILY UNITY

In the 1980's and 1990's, a few million persons became lawful permanent residents through two amnesty programs under the 1986 IRCA. In the Legalization Program, persons who had lived in the U.S. from 1982 to 1986 applied first for lawful temporary residency, and then for lawful permanent residency. INA § 245A, 8 USC § 1255a; 8 CFR § 245a. In the Special Agricultural Worker (SAW) program, persons who had worked as farmworkers for certain time periods applied for lawful temporary residence, and automatically became lawful permanent residents as of December 1, 1989 or December 1, 1990. INA § 210, 8 USC § 1160; 8 CFR § 210.

Some spouses and children of amnesty recipients did not qualify for amnesty, but did qualify for the Family Unity program, as the spouse or the child under 21 years old (as of May 5, 1988) of a noncitizen legalized through amnesty, who entered the U.S. (and in case of a spouse, married) by May 5, 1988. See 8 CFR §§ 236.10-236.18. Family Unity provided temporary lawful status and work authorization, as a bridge until the recipient could immigrate through the relative who had become an LPR under amnesty. Today most people have moved on from these programs, but you may encounter some clients who either still are processing old amnesty applications, or still have Family Unity status.

QUICK TEST: Is the Client Still Processing an Amnesty Application?

1. ***Does the client have, or believe he had, a "Lawful Temporary Resident" card?***

2. ***Does the client believe he is participating in a class action suit arising from the Legalization and SAW programs of the 1980's?***

If the answer to either question is "yes," refer the client to immigration counsel. For information on the amnesty class actions, see, e.g., www.nationalimmigrationreform.org/Late%20Amnesty.html.

Goal: Try to avoid a plea to one felony or three misdemeanors (any offense), or an offense that will make the person inadmissible. These are bars to continuing in the Legalization program.

QUICK TEST: Does the Client Still Have Family Unity Status?

1. ***Does the client have a current or recent Family Unity employment authorization card? Or, does the client state that he or she has Family Unity status?***

2. ***Regardless of Family Unity, the client might be eligible for regular family immigration if the marriage still exists. Complete the Relief Questionnaire with this in mind.***

Photocopy the person's employment authorization card and consult with an immigration attorney. Consider the possibility of family immigration.

Goal: To avoid bars to Family Unity, try to avoid a plea to one felony or three misdemeanors, a "particularly serious crime" (see Withholding at §17.19, below), or a deportable offense. If while a minor the person pled guilty to "an act of juvenile delinquency which if committed by an adult" would be a felony involving violence or the threat of physical force, Family Unity can be terminated. 8 CFR §§ 236.13, 236.18. Try to avoid an inadmissible conviction, or at least remain eligible for a waiver, in case family immigration is possible.

§17.26. VOLUNTARY DEPARTURE INSTEAD OF REMOVAL

If your client is detained and must leave the United States, he or she may gain crucial benefits from leaving under a grant of voluntary departure rather than under a removal order. Leaving under voluntary departure will make it more likely that a client can return legally. In addition, it will make it less likely that a client who returns illegally will be federally prosecuted for that. A detained client may need to advocate vigorously for him or herself to get voluntary departure; see "Practice Tip for Clients" at the end of this section. A non-detained client should consult an immigration lawyer before applying for voluntary departure.

The client may apply for a grant of voluntary departure from an immigration judge (8 CFR § 1240.26) or, if not in removal proceedings, from a DHS official (8 CFR § 240.25).

1. Pre-Hearing Voluntary Departure: Aggravated Felony Bar

If the client has no possible relief from, or defense against, removal, he or she may decide to skip the full removal hearing and go home. The client should consider applying for "pre-hearing" voluntary departure. Authorities may grant voluntary departure "in lieu of being subject to [removal proceedings] or prior to the completion of such proceedings."[29]

To qualify, the person must be willing and able to depart, and must not be deportable under the aggravated felony ground (8 USC §1227(a)(2)(A)(iii)) or under the terrorist grounds (8 USC §1227(a)(4)(B)). He or she may need to pay for transportation to the home country. Even a person who meets all of these requirements may be denied voluntary departure as a matter of discretion, however.

Argument that even an aggravated felony is not a bar for some immigrants. The voluntary departure regulation, created by DHS, bars persons who are "convicted of" an aggravated felony. However, the voluntary departure statute, created by Congress, only bars persons who are "deportable under" the aggravated felony ground.[30] The difference is that a person who has not been admitted to the U.S., for example who entered without inspection, cannot be found "deportable" for a crime.[31] Therefore, despite the regulation, a person who entered without inspection ought to be eligible for pre-hearing voluntary departure even with an aggravated felony conviction. In practical terms, a noncitizen would have to litigate this point to federal court, while in detention.

2. Post-Hearing Voluntary Departure Has Several Requirements

Voluntary departure also is useful for clients will be able to apply for relief in removal hearing (e.g., adjustment of status, cancellation, or VAWA), or contest that they are deportable. They can apply for voluntary departure "in the alternative," in case the primary case loses. Whether a non-detained person should apply for voluntary departure in the alternative can be a complex question in immigration practice, but as a criminal defense attorney it is best to preserve the alternative for the client if possible.

The client must meet several requirements. As for pre-hearing voluntary departure, the person must not be deportable under the aggravated felony or terrorist grounds, and must be willing and able to depart voluntarily. In addition, the person must establish five years of good moral character, must establish at least one year of presence in the U.S. before removal proceedings were begun, and must post a bond.[32]

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[29] See INA § 240B(a)(1), 8 USC § 1229c(a)(1).
[30] Compare 8 CFR § 1240.26(b)(1)(i)(E) with 8 USC § 1229c(a)(1).
[31] See INA § 237(a)(2), 8 USC § 1227(a)(2).
[32] INA § 240B(b)(2), 8 USC § 1229c(a)(1), 8 CFR § 1240.26(b).

3. Advantages of Voluntary Departure Instead of Removal

There are several benefits. If the person is not in immigration detention, he or she may be granted a period of some months before leaving under voluntary departure, which will provide time to wind up affairs. Detained persons benefit from voluntary departure as well.

A noncitizen who re-enters the U.S. illegally after being removed has committed a federal felony. See 8 USC § 1326(b). This is a very commonly prosecuted federal felony, and sentences for the illegal re-entry commonly run to 30 months. In contrast, a first conviction for illegal re-entry not after removal is a federal misdemeanor with a maximum six-month sentence. 8 USC § 1325.

In other words, if the client is likely to return to the U.S. illegally, obtaining voluntary departure rather than removal now may prevent him or her from spending a few years in federal prison later on.

Voluntary departure also is valuable because a person who is ordered removed may not re-enter the United States legally for a period of 10 years, without obtaining a discretionary waiver of inadmissibility. See INA § 212(a)(9)(A)(ii), (iii), 8 USC § 1182(a)(9)(A)(ii), (iii). Therefore someone who hopes to return, for example on a family visa, will benefit from not having been "removed," but having left voluntarily.

Finally, voluntary departure allows the person to go to any country that will permit him or her to enter, whereas removal is to a designated country.

4. Practice Tip for Clients: How to Get Voluntary Departure While in Detention

Immigration officers at detention facilities are authorized to grant pre-hearing voluntary departure. 8 CFR § 240.25. Unfortunately, in some areas officers commonly offer detainees the opportunity to sign a paper agreeing to "voluntary *removal*," while leaving detainees with the impression that this is a "voluntary *departure*." Voluntary removal counts as a "removal," and carries none of the advantages of voluntary departure discussed in #3, above. The one advantage it carries, which may be very tempting for detainees, is that they can get out of detention faster by just signing the paper, rather than fighting to get voluntary departure. However, if they intend to return to the U.S. (legally or legally), they may bitterly regret the decision.

The only sure ways for motivated detainees to take voluntary departure is to request it and refuse to sign anything else. The detainee must read an offered paper very carefully, get assistance from a lawyer or other advocate in evaluating the paper, or wait to see an immigration judge for a master calendar hearing – which could take as long as a few weeks.

Since you, the criminal defense attorney, are likely to be the last lawyer a detainee ever sees, try to help the client to understand how to obtain voluntary departure, and why it may be important.

§17.27. ESTABLISHING "GOOD MORAL CHARACTER" (GMC)

A. Overview

Several forms of immigration relief, as well as naturalization to U.S. citizenship, require the applicant to establish that he or she has been a person of "good moral character" during a certain period of time leading up to making the application. This section will discuss good moral character ("GMC"). Bars to establishing GMC appear at INA § 101(f), 8 USC § 1101(f); see also 8 CFR § 316.10.

What forms of relief require good moral character? An applicant must establish that he or she has been a person of good moral character for the preceding five years, three years, or a "reasonable time" in order to apply for naturalization (see §17.4); the preceding ten years to apply for cancellation of removal for non-lawful permanent residents (§17.14); the preceding seven or ten years for NACARA or the former suspension of deportation (§§ 17.15, 17.23), the preceding three years or some reasonable period to apply for relief under VAWA (§17.8); or the preceding five years to apply for voluntary departure *after* removal proceedings (§17.26).

Immigration benefits that do not require good moral character include family immigration; adjustment of status; asylum, withholding and the Convention Against Torture; Temporary Protected Status; LPR cancellation; the former § 212(c) relief; Special Immigrant Juvenile status; DACA; the T, U, and S visas; and voluntary departure *before* removal proceedings are concluded.

What is the difference between statutory bars to, and discretionary findings of, GMC? The immigration statute defines good moral character in the negative, by setting out factors that will bar a finding, rather than setting out factors that establish good moral character. See list at 8 USC § 1101(f), discussed below. The task of criminal defense counsel is to keep the client from coming within one of these statutory bars. That is the focus of these materials.

Note, however, that if you and the client succeed in avoiding the statutory bars, the client still has a second job: he will need to convince the immigration judge to make a discretionary, affirmative finding that he actually was of good moral character during the period. In that determination, the judge must consider all positive factors relevant to the evaluation of the person's character, as well as negative factors (including criminal history and underlying facts). *Matter of Sanchez-Linn*, 20 I&N Dec. 362, 365 (BIA 1991). In practice, positive statements by probation officers, sentencing judge, or even defense counsel may be quite helpful in winning a discretionary case.

Calculating the time for which good moral character must be established. Good moral character need only be established for a certain period of time for each remedy, e.g. the preceding five years for naturalization. Usually one counts backwards from the date of filing the application. A new period of GMC starts the day after the event that is a bar. If a conviction is a bar, the period starts the day after commission of the offense, not conviction.[33]

> **Example:** Elsa pled guilty on January 14, 2009, to an allegation that she committed a moral turpitude offense on January 1, 2009. The conviction made her inadmissible and was a bar to establishing good moral character. She may establish five years of good moral character starting on January 2, 2014, five years after the date she committed the offense. At that time, even if the conviction still exists and she still is inadmissible, she will not be statutorily barred from establishing good moral character. (She still will need to persuade the judge to find as a matter of discretion that she actually showed good moral character.)

[33] See, e.g., *Matter of Awaijane*, 14 I&N Dec. 117 (BIA 1972), 8 CFR § 316.10(b)(2).

B. Statutory Bars to Establishing Good Moral Character

Bars based on inadmissibility grounds. Some of the bars to establishing good moral character reference crimes grounds of inadmissibility.[34] A person is barred who is described in these grounds:

- crimes involving moral turpitude (except for an offense that comes within the petty offense or youthful offender exception);
- conviction or admission of a drug offense (except for a single conviction of simple possession of 30 grams or less of marijuana);
- immigration authorities' "reason to believe" the person is a drug trafficker;
- five years sentence to confinement imposed for two or more convictions;
- engaging in prostitution (sexual intercourse for a fee) or commercialized vice;
- alien smuggling, and
- polygamy.

Bars Unique to the Good Moral Character Statute. Other bars to establishing GMC don't refer to inadmissibility grounds, and only appear at 8 USC § 1101(f), parts (4)-(7). The bars apply to a person:

- whose income is derived principally from illegal gambling, or who has been convicted of two or more gambling offenses during such period;
- who has given false testimony to obtain any benefits under this chapter;
- who has during the GMC period been confined as a result of conviction to a penal institution for an aggregate period of 180 days or more, regardless when the offense was committed;

The bar based on 180 days confinement refers to actual time served in jail. This is different from the definition of sentence imposed at 8 USC § 1101(a)(48)(B). It does not count suspended sentences of any kind. If a one-year sentence is imposed but the person is released after 170 days, the person has not been confined for 180 days. The nature of the offense does not matter, and it does not matter when the offense(s) were committed, as long as the time in jail occurs during the GMC period.[35] However, the confinement must be as a result of a "conviction" under the immigration definition, e.g. not as a result of a delinquency disposition. The 180 days does not include pre-hearing detention *unless* that is claimed as credit for time served.

Permanent Bars: Aggravated Felony after November 29, 1990, and Murder. A conviction of murder at any time, and a conviction of an aggravated felony after November 29, 1990, will permanently bar a finding of GMC.[36] For example, an LPR – including a military veteran -- who was convicted of an aggravated felony in 1991 never will be permitted to naturalize, because she never will be able to establish good moral character. Some additional permanent bars to establishing good moral character apply only to naturalization, for example, desertion from military duty. See § 17.4.

Other Bars. Federal regulation and instructions pertaining to naturalization provide that, absent extenuating circumstances, failure to support dependents, having an extramarital affair that destroys a marriage, or "committing unlawful acts" that adversely reflect on his character, may bar good moral character. Being on ***probation or parole*** during the GMC period might or might not prevent a finding of GMC. See 8 CFR § 316.10(b)(3), (c), and further discussion at § 17.4, above. While these bars technically apply to naturalization, officials may apply them to other applications.

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[34] 8 USC § 1101(f)(3), referencing inadmissibility grounds at 8 USC § 1182(a)(2), (6)(E), (9)(A).
[35] See, e.g., *Matter of Piroglu,* 17 I&N Dec. 578, 580 (BIA 1980).
[36] 8 USC § 1101(f)(8); 8 CFR § 316.10(b)(1)(ii); *U.S. v. Hovsepian,* 359 F.3d 1144 (9th Cir. 2004) (*en banc*).

§17.28 Eligibility for Immigration Relief Despite Criminal Record, Including Ninth Circuit-Only Rules[1]

RELIEF	AGG FELONY	DEPORTABLE/ INADMISSIBLE CRIME	STOP TIME RULE and OTHER TIME REQUIREMENTS
LPR CANCELLATION **For Long-Time Lawful Permanent Residents** **INA § 240A(a), 8 USC § 1129b(a)**	AUTOMATIC BAR	NOT A BAR	7 YRS RESIDENCE since admission in any status; periods of unlawful status count.[2] Clock stops at issuance of NTA, *or* a drug offense, CIMT (except petty offense, youthful offender exception[3]), prostitution, or 2 or more convictions with 5 yr aggregate sentence.[4] 9th Cir. only: Conviction before 4/1/97 does *not* stop clock.[5] 5 YRS LPR STATUS. Clock stops only with final decision in removal case.[6]
FORMER § 212(c) RELIEF **For Long-Time Lawful Permanent Residents with pre-1997 Convictions** **Former INA § 212(c), 8 USC § 1182(c)**	Pre-4/24/96 agg felony conviction is not a bar to waiving DEPORTATION charge if the conviction also would cause inadmissibility; see *Judulang v. Holder*[7] Pre-4/1/97 agg felony conviction is not a bar to waiving INADMISSIBILITY, e.g. in an application for adjustment or admission.[8] An agg felony with 5 yrs served is a BAR to 212(c) unless the plea was before 11/29/90.[9]	DEPORT. CHARGE Not a bar if convicted before 4/24/96, or in some cases before 4/1/97[10] FIREARMS deport ground should be waivable if conviction also would cause inadmissibility[11] INADMISSIBILITY (apply for adjustment or admission) Not a bar if convicted before 4/1/97	NEED 7 YEARS LPR STATUS AT TIME OF APPLICATION; But don't need 7 yrs before conviction or before 4/1/97 WON'T WAIVE CONVICTIONS RECEIVED AFTER 4/1/97, or in many cases 4/24/96; Can be applied for with § 212(h) or an adjustment application, but not with cancellation
§ 212(h) WAIVES INADMISSIBILITY[12] for: **Moral Turpitude; Prostitution; Possession of 30 Gms or Less Marijuana; & 2 or More Convictions w/ 5 Yrs Aggregate Sentence Imposed** **INA § 212(h), 8 USC § 1182(h)**	*IF* the 212(h)-type conviction (CMT, prostitution, etc.) *also* is an aggravated felony, can be waived unless LPR bar applies LPR Bar: § 212(h) is barred if the AF conviction occurred after applicant became LPR. But in 3rd, 4th, 5th, 7th, & 11th Circuits this bar applies only to persons admitted *at the border* as LPRs, not those who adjusted status to LPR.[13] Watch for cases in other Circuits.	§ 212(h) waives inadmiss. grounds listed to the left; in some contexts waives deport charges based on these convictions Very tough standard for discretionary grant of § 212(h) if a "dangerous or violent" offense.[14]	NO STOP-TIME RULE EXCEPT FOR LPR BAR *IF* LPR BAR APPLIES: Must have acquired 7 years lawful continuous status before NTA was issued. But at least in the 3rd, 4th, 5th, and 11th Circuits, the bar does not apply to persons who became LPRs thru adjustment of status and who were not admitted at US border as LPRs.[15]

RELIEF	**AGGRAVATED FELONY (AF)**	**DEPORTABLE/ INADMISSIBLE CRIME**	**STOP TIME RULE and OTHER TIME REQUIREMENTS**
ADJUST or RE-ADJUST STATUS TO LPR **Based on family or employment visa** **INA § 245(a), (i)** **8 USC § 1255(a), (i)**	Not a *per se* bar, because there is no AF inadmissibility ground; but see agg felony bar to § 212(h) for LPR's	Must not be inadmissible, or if inadmissible must qualify for a waiver[16]	NONE, but see 7 yr requirement for § 212(h) for LPR's
NON-LPR CANCELLATION **INA § 240A(b)(1)** **8 USC § 1229b(b)(1)**	AUTOMATIC BAR	BARRED by conviction of offense described in crimes deportability or inadmissibility grounds.[17] Special rule CIMTs[18]	Must have ten years physical presence and good moral character[19]; show extraordinary hardship to USC or LPR relative.
-Ninth Circuit only- **FORMER 10-YEAR SUSPENSION** **Former INA § 244(a)(2), 8 USC § 1254(a)(2)[20]**	AGG FELONY IS NOT A BAR IF CONVICTION WAS BEFORE 11/29/90[21]	CONVICTION BEFORE 4/1/97 CAN BE WAIVED	Good for undocumented or documented persons. Only waives pleas from before 4/1/97; need 10 years good moral character immediately following conviction
ASYLUM **Based on fear of persecution** INA § 208 8 USC § 1154	AUTOMATIC BAR	BARRED by "particularly serious crime."[22] Very tough to win if convicted of a "dangerous or violent" crime[23]	Must show likelihood of persecution; Must apply within one year of reaching U.S., unless changed or exigent circumstances
ADJUST to LPR for ASYLEE OR REFUGEE Waiver at INA § 209(c), 8 USC § 1159(c)	Not a per se bar, because no agg fel ground of inadmissibility	§ 209(c) waives any inadmissibility ground except "reason to believe" trafficking, but see tough standard, *supra,* if "dangerous or violent" crime	Can apply within one year of admission as refugee or grant of asylee status, but in reality greater wait
WITHHOLDING INA § 241(b)(3), 8 USC § 1231(b)(3)	BARRED only if five year sentence imposed for one or more AF's	Barred by conviction of "particularly serious crime," includes almost any drug trafficking[24]	Must show clear probability of persecution; No time requirement
CONVENTION AGAINST TORTURE[25]	AGG FELONY NOT A BAR	OTHER GROUNDS NOT A BAR	Must show likely to be tortured by gov't or groups it will not control; No time requirements

TEMPORARY PROTECTED STATUS (TPS) INA § 244A, 8 USC § 1254a	AGG FELONY is not technically a bar	INADMISSIBLE; or convicted of two misdos or one felony or a particularly serious crime.	Must be national of a country declared TPS, and have been present in U.S. and registered for TPS as of specific dates. Go to www.uscis.gov to see what countries currently are TPS and what dates apply.
VOLUNTARY DEPARTURE INA § 240B(a)(1) 8 USC 1229c(a)(1)	AGG FELONY IS A BAR (but question whether AF conviction should bar an EWI applicant for pre-hearing voluntary departure)[26]	No other bars to *pre-hearing* voluntary departure Post-hearing VD requires 5 yrs good moral character	Post-hearing voluntary departure requires one year presence in U.S. and five years good moral character
NATURALI-ZATION (Affirmative or with Request to Terminate Removal Proceedings)	AGG FELONY IS A BAR *UNLESS* CONVICTION IS BEFORE 11/29/90[27]	DEPORTABLE applicants may be referred to removal proceedings	Requires certain period (e.g., three or five years) of good moral character. GMC bars includes several crimes-grounds of inadmissibility[28]
IS THE PERSON A U.S. CITIZEN ALREADY? **Derived or acquired citizenship**	If the client answers yes to either of the following two threshold questions, investigate further. She *might* have become a U.S. citizen automatically, without knowing it. 1. At the time of her birth, did she have a parent or grandparent who was a U.S. citizen? OR 2. Did the following two events happen, in either order, before her 18th birthday? She became an LPR, and a parent with custody of her naturalized to U.S. citizenship.		
VAWA Cancellation[29]	VAWA is for victims of abuse by a USC or LPR spouse or parent. VAWA cancellation is barred if inadmissible or deportable for crimes; also need 3 yrs good moral character.		
VAWA Self-Petition[30]	Good moral character is required for I-360. Section 212(h) waiver can cure bar to GMC where offense is related to abuse. Adjustment requires admissibility or waiver to cure inadmissibility.		
Domestic Violence Deportability[31] Waiver for Victims	Waiver of deportability for persons convicted of DV offense who primarily are DV victims.		
Special Immigrant Juvenile[32]	Minor in delinquency or dependency proceedings whom court won't return to parent/s due to abuse, neglect, or abandonment can apply to adjust to LPR. Adjustment requires admissibility; some waivers available, but none for "reason to believe" trafficking.		
T Visa[33]	Victim/witness of "severe alien trafficking" (but not if person also becomes trafficker)		
U Visa[34]	Victim/witness of certain types of crime (assault, DV-type offenses, etc). For T and U Visas, all convictions, including aggravated felonies, are potentially waivable.		
DACA – Deferred Action for Childhood Arrivals	Temporary work authorization and protection against removal. Under recent expansion of DACA, effective late February 2015, must have arrived in U.S. while under age 16 and by January 1, 2010, resided here since then, and been present and in unlawful status as of July 15,		

	2012. Have pursued or now pursuing education or military. Stricter requirements for applications filed before February 20, 2015. Crimes bars are one felony, three misdos, or one "significant" misdemeanor. Several online sources provide more information and assistance.[35]
DAPA – Deferred Action for Parents of Americans and LPRs	Temporary work authorization and protection against removal. As of November 20, 2014, must be undocumented, present in the U.S., and the parent of a USC or LPR of any age, married or unmarried. Must have resided continuously in U.S. since January 1, 2010. Crimes bars are one felony, three misdemeanors, one "significant" misdemeanor, gang conviction or participation, or aggravated felony. See online sources for info and assistance.[36]

[1] This chart was prepared by Katherine Brady of the Immigrant Legal Resource Center, updated January 2015. For additional free resources, defenders can register at www.defendingimmigrants.org. For extensive discussion of forms of relief affected by criminal convictions, see Kesselbrenner and Rosenberg, *Immigration Law and Crimes* (www.thomsonreuters.com 2012), and within the Ninth Circuit, see Brady, Tooby, Mehr & Junck, *Defending Immigrants in the Ninth Circuit: Consequences of Crimes under California and Other State Laws* (www.ilrc.org 2013). For discussion of all aspects of relief for permanent residents, see Brady, Tooby, Mehr & Junck, *Defending Immigrants in the Ninth Circuit: Avoiding Adverse Immigration Consequences in Criminal Cases* (www.ilrc.org 2013).

[2] This includes, e.g., admission on a tourist visa followed by 5 years of unlawful residence. Where there was no actual admission at the border, the "admission" clock can start with adjustment of status. According to the Ninth Circuit it also can start with grant of Family Unity (*Garcia-Quintero v. Gonzales*, 455 F.3d 1006, 1015-16 (9th Cir. 2006)) but BIA disagrees and possible Ninth will reverse.

[3] The exceptions apply if the person has committed only one crime involving moral turpitude (CIMT). For the petty offense exception, the offense must have a maximum possible sentence of a year or less, and a sentence imposed of six months or less. For the youthful offender exception, the person must have committed the CIMT while under age 18, been convicted in adult court, and the conviction and resulting imprisonment must have occurred at least five years before the date of filing the application. 8 USC §1182(a)(2)(A). If after a first CIMT that comes within one of these exceptions, the person is convicted of a second CIMT, the seven years cease to accrue as of the date that the person committed the second CIMT. *Matter of Deando-Roma*, 23 I&N Dec. 597 (BIA 2003).

[4] Clock stops on date of commission if offense makes person inadmissible. This includes crimes involving moral turpitude, prostitution, drug convictions, "reason to believe" drug trafficking, and two convictions with an aggregate sentence imposed of at least five years. It does not, however, include several other grounds of inadmissibility or any grounds of deportability. Therefore offenses that trigger *only*, e.g., the domestic violence, firearms, drug addiction and abuse, or alien smuggling grounds do not stop the clock. *Matter of Campos-Torres*, 22 I&N Dec. 1289 (BIA 2000).

[5] *Sinotes-Cruz v. Gonzales*, 468 F.3d 1190 (9th Cir. 2006). The Fifth Circuit came to the opposite conclusion at about the same time in *Heaven v. Gonzales*, 473 F.3d 167 (5th Cir. 2006). The BIA will not apply the *Sinotes-Cruz* rule outside the Ninth Circuit. *Matter of Jurado*, 24 I&N Dec. 29 (BIA 2006).

[6] Time continues to accrue until the decision is administratively final (BIA appeal waived or exhausted) or, where deportability was contested, through federal court appeal.

[7] Section 212(c) was eliminated in the 1990's, but it remains available in removal proceedings today to waive convictions from before operative dates in 1996 and 1997, under *INS v. St. Cyr*, 121 S.Ct. 2271 (2001). In *Judulang v. Holder*, 132 S.Ct. 476 (2011) the Supreme Court further supported the present-day application of § 212(c) when it overruled *Matter of Blake*, 23 I&N Dec. 722 (BIA 2005) and the several federal cases that had followed it. In *Matter of Blake* the BIA had held that while the former § 212(c) can waive deportation grounds that have an analogous ground of inadmissibility, it will *not* waive a charge of deportability under the aggravated felony ground unless there is a very similar ground of inadmissibility. An offense such as sexual abuse of a minor was not similar enough to, e.g., crimes involving moral turpitude for § 212(c) to apply. In practice only the drug trafficking aggravated felony qualified. The Supreme Court rejected the Board's reasoning, and that of the great majority of Circuit Courts of Appeal that had deferred to it, as an irrational reading of the law. It remanded the *Judulang* case to the Ninth Circuit to resolve. See Vargas et al, "Implications of *Judulang v. Holder*" at www.nationalimmigrationproject.org/legalresources/ practice_advisories/pa_Implications_%20of_Judalang_v_Holder.pdf. The aggravated felony conviction must have occurred before April 24, 1996, because as of that date Congress ruled that § 212(c) no longer can waive certain deportation grounds, including the aggravated felony ground. See chart by M. Baldini-Poterman at http://www.nipnlg.org/legalresources/practice_advisories/cd_pa_Chart_on_212c_After_Judulang.pdf

[8] Different and better rules apply where § 212(c) is used to waive an inadmissibility ground, as in an application for adjustment of status (affirmatively or as a defense to removal) or for admission. First, § 212(c) can waive *inadmissibility* for any type of conviction, including drug crimes and aggravated felonies, that was received up until April 1, 1997. In contrast, § 212(c) can waive only a few grounds of *deportability* if the conviction was received between April 24, 1996 and April 1, 1997. See next footnote. Second, the fact that an offense also is an aggravated felony or a firearms offense has no effect on

waiving inadmissibility grounds with § 212(c). This was true even under *Matter of Blake*. See *Matter of Azurin,* 23 I&N Dec. 695 (BIA 2005) (aggravated felony conviction not related to drugs can be waived in the context of an application for adjustment). As discussed above, we hope that *Judulang* has taken care of this problem for deportation grounds – but in the inadmissibility context, the issue does not even come up.

[9] See discussion in *Toia v. Fasano*, 334 F.3d 917 (9th Cir. 2003).

[10] A charge of deportability based upon conviction by plea taken between April 24, 1996 and April 1, 1997 comes under the AEDPA rules governing § 212(c) for that period. Deportation grounds that cannot be waived under AEDPA § 212(c) include conviction of an aggravated felony, conviction of controlled substance offense, and the "miscellaneous" deportation ground that includes conviction of espionage, sabotage, treason, certain military service problems, etc. In addition, AEDPA § 212(c) will not waive conviction of two moral turpitude offenses, *both* of which carry a potential sentence of a year or more. AEDPA did not limit *inadmissibility* grounds that can be waved under § 212(c), however.

[11] The firearms deportation ground was treated like the aggravated felony deportation ground, and so the firearms ground may benefit under the reasoning of *Judulang*. Authorities had held that deportability based on the firearms ground cannot be waived under § 212(c), because there is no sufficiently analogous inadmissibility ground. Similar to *Blake*, this problem can be averted by applying for adjustment of status so that the applicant is attempting to waive a ground of inadmissibility (e.g., if the firearms offense also is a crime involving moral turpitude) and not deportability. See, e.g., *Matter of Gabryelsky*, 20 I&N Dec. 750 (BIA 1993). Now, a charge of deportability under the firearms ground also might be waived under § 212(c), if the conviction also would cause inadmissibility.

[12] For more information in general see Brady, "Update on § 212(h) Strategies" (2011) at www.ilrc.org/crimes (scroll down) and *Bender Immigration Bulletin* (September 15, 2011). See also newer articles on 212(h) on that web-page.

[13] For more information see Brady, "LPR Bars to 212(h) – To Whom Do They Apply?" (Sept. 2012), and "Update on § 212(h)" (2011), *supra*, at www.ilrc.org/crimes. See *Hanif v. Holder*, 694 F.3d 497 (3rd Cir. 2012), *Bracamontes v. Holder*, 675 F.3d 380 (4th Cir. 2012), *Leiba v. Holder*, 699 F.3d 346 (4th Cir. 2012), *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008), *Papazoglou v. Holder*, 725 F.3d 790 (7th Cir. 2013), *Lanier v. United States AG*, 631 F.3d 1361, 1366-67 (11th Cir. 2011), finding that adjustment to LPR status does not trigger the LPR bars to eligibility for § 212(h). Arguably the Ninth Circuit made the same holding in *Sum v. Holder,* 602 F.3d 1092 (9th Cir. 2010), but the BIA failed to acknowledge that in *Matter of Rodriguez*, 25 I&N Dec. 784 (BIA 2012).

[14] See requirement of extraordinary positive equities required for conviction of a dangerous or violent offense, at 8 CFR § 212.7(d); see also *Matter of Jean*, 23 I&N 373 (A.G. 2002), similar standard for asylum and asylee/refugee adjustment.

[15] See Brady, "LPR Bars to § 212(h)," *supra.*

[16] An applicant who is deportable still may apply for adjustment (or "re-adjustment") of status if she or he is not inadmissible. *Matter of Rainford*, 20 I&N Dec. 598 (BIA 1992). Or, a deportable *and* inadmissible applicant may apply if she or he is eligible for a waiver of inadmissibility. See, e.g., adjustment with a § 212(c) waiver discussed in *Matter of Azurin*, 23 I&N Dec. 695 (BIA 2005) (waiver of an offense that also is an aggravated felony in connection with adjustment does not conflict with the holding in *Matter of Blake, supra*); *Matter of Gabryelsky*, 20 I&N Dec. 750 (BIA 1993); adjustment with a § 212(h) waiver discussed in *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008) (§ 212(h) waiver).

[17] See 8 USC §§ 1182(a)(2), 1227(a)(2); INA §§ 212(a)(2), 237(a)(2). A person who entered without inspection (EWI), and therefore is not subject to the grounds of deportation because she has not been admitted, still is barred if convicted of an offense described in the deportation grounds. *Gonzalez-Gonzalez v. Ashcroft*, 390 F.3d 649 (9th Cir. 2004). The effective date of a deportation ground applies, however, so that a person convicted of a domestic violence or child abuse offense from before 9/30/96 is not barred. *Matter of Gonzalez-Silva*, 24 I&N 218 (BIA 2007).

[18] The Board held that a single conviction of a crime involving moral turpitude that comes within the petty offense exception to the CMT ground of inadmissibility is a bar to non-LPR cancellation if it carries a potential sentence of a year or more, but is not a bar if it carries a potential sentence of less than one year. *Matter of Cortez,* 25 I&N Dec. 301 (BIA 2010); *Matter of Pedroza*, 25 I&N Dec. 312 (BIA 2010). This will be appealed to circuit courts. It continues the controversy started with *Matter of Almanza-Arenas*, 24 I&N Dec. 771 (BIA 2009). See discussion of that case in Brady, "*Matter of Almanza-Arenas*: Defense Strategies" at www.ilrc.org/crimes.

[19] See 8 USC § 1101(f), INA § 101(f) for statutory bars to establishing good moral character. These include the inadmissibility grounds relating to drugs, prostitution, moral turpitude (unless it comes within the petty offense or youthful offender exceptions), and two convictions of any type of offense with a sentence of five years or more imposed. They also include other bars, such as spending 180 days in jail for a conviction during the time for which good moral character must be shown. See § 17.26 for more information.

[20] A documented or undocumented immigrant can apply in removal proceedings arising in Ninth Circuit states for the former 10-year suspension of deportation, in order to waive a conviction by plea from before 4/1/97, the date the former

suspension was eliminated. *Lopez-Castellanos v. Gonzales*, 437 F.3d 848 (9th Cir. 2006). Because good moral character is required, the person cannot have an aggravated felony conviction from on or after 11/29/90. See discussion in *Defending Immigrants in the Ninth Circuit*, § 11.4 (2011, www.ilrc.org).

[21] Suspension requires a showing of good moral character, and an aggravated felony conviction on or after 11/29/90 is a permanent bar to establishing good moral character. IMMACT 1990 § 509(a), and *Lopez-Castellanos, supra.*

[22] The general definition of a particularly serious crime appears in *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982) and cases following. This determination is not subject to the categorical approach. See discussion in *Defending Immigrants in the Ninth Circuit*, §§ 11.14, 11.15 (2011, www.ilrc.org). In asylum, but not in withholding, an aggravated felony is automatically a particularly serious crime.

[23] See *Matter of Jean, supra.*

[24] The general definition of a particularly serious crime appears in *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982) and cases following. This determination is not subject to the categorical approach. See discussion in *Defending Immigrants in the Ninth Circuit*, §§ 11.14, 11.15 (2011, www.ilrc.org). When the Attorney General held that virtually any drug trafficking offense is a "particularly serious crime," the Ninth Circuit upheld his right to make the ruling, but found that it could not be applied retroactively to plea bargains before May 2, 2002. *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 950-51 (9th Cir. 2007).

[25] See 8 CFR §§ 208.16 – 208.18.

[26] The statute states the pre-hearing voluntary departure is barred to persons who are "deportable" under the aggravated felony bar, meaning who were convicted of an aggravated felony after admission. But the regulation bars persons who merely were "convicted" of an aggravated felony, which also applies to persons who never were admitted. In a situation where it is beneficial to the client, immigration counsel may want to appeal this issue on the grounds that the regulation is *ultra vires*. Compare INA § 240B(a)(1), 8 USC § 1229c(a)(1) with 8 CFR § 1240.26(b)(1)(i)(E), and see discussion in *Defending Immigrants in the Ninth Circuit*, § 11.22 (2011 www.ilrc.org).

[27] An aggravated felony conviction on or after 11/29/90 is a permanent bar to good moral character; see n. 17.

[28] See n. 18, *supra.*

[29] VAWA cancellation is at INA § 240A(b)(2), 8 USC § 1229b(b)(2). For further information on self-petitioning and cancellation, see www.ilrc.org/immigration_law/vawa_and_u-visas.php and see Abriel & Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants* (www.ilrc.org).

[30] See VAWA information, *supra.*

[31] A person who essentially is the victim of domestic violence but was "cross-charged" and found guilty of domestic violence may qualify for a waiver of the domestic violence deportation ground under INA § 237(a)(7), 8 USC § 1227(a)(7).

[32] See information and resources on special immigrant juvenile status at www.ilrc.org under remedies for children and youth, and see Kinoshita, Junck and Brady, *Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth* (www.ilrc.org).

[33] INA § 101(a)(15)(T), 8 USC § 1101(a)(15)(T). For information on T visas, see Lee & Parker, *Representing Survivors of Human Trafficking* (ILRC 2011) at www.ilrc.org, and several websites including www.uscis.gov.

[34] INA § 101(a)(15)(U), 8 USC § 1101(a)(15)(U). For information on U visas, see free material at www.ilrc.org/immigration_law/vawa_and_u-visas.php and see Kinoshita, Bowyer & Ward-Seitz, *The U Visa: Obtaining Status for Victims of Crime* (ILRC).

[35] See, e.g., www.unitedwedream.org and www.ilrc.org/daca and government information at www.uscis.gov. A "significant misdemeanor" is a federal, state, or local misdemeanor that (a) relates to domestic violence, sexual abuse or exploitation, firearms, drug sales, burglary, or DUI, or (b) any other misdemeanor for which the jail sentence was more than 90 days, excluding suspended sentences. A misdemeanor is an offense with a potential sentence of more than 5 days but not more than 365 days.

[36] See, e.g., http://www.ilrc.org/policy-advocacy/executive-actionadministrative-relief, www.AdminRelief.org, and government DACA/DAPA memo at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf. Significant misdemeanor is defined similarly to DACA, except a sentence of 90 days or more is a significant misdemeanor, and felony and misdemeanor are defined according to how the state categorizes the offense.

Appendix I

§ N.1 Overview

Establishing Defense Goals; Immigration Status; Deportability, Inadmissibility, and an Aggravated Felony; The Problem of Illegal Re-entry; and The Ten-Step Checklist for Defending a Non-Citizen

(For more information, see Defending Immigrants in the Ninth Circuit, Chapter 1, www.ilrc.org/criminal.php)

By Katherine Brady, Ann Benson and Jonathan Moore[1]

A. Introduction; Gathering Facts, Using Resources

The Quick Reference Chart details which California offenses may make a noncitizen inadmissible, deportable or an aggravated felon. These three categories cover *most* of the ways that a conviction can hurt immigration status. (They don't cover all, however. For example, a TPS applicant must not be inadmissible and *also* cannot be convicted of two misdemeanors or one felony. See Part C.5 below.)

This section discusses how criminal defense counsel can use the analysis you get from the Chart, combined with information about the client's particular immigration status and history to

[1] This Note has been re-organized and rewritten to provide more specific advice to defenders. Parts of the Note borrow liberally from the public defender manual *Immigration and Washington State Criminal Law*, found at www.defensenet.org. We are grateful to Ann Benson, Jonathan Moore and the Washington Defender Association Immigration Project for their kind permission to use the materials.

establish defense goals for individual noncitizen clients. The more information that you have about the client's immigration and criminal history, the better the advice you will be able to give.

Gather the Client's Entire Criminal Record. To correctly identify a noncitizen's defense goals in terms of immigration, defense counsel must have a complete record of all past convictions in the United States and sentences imposed. (Foreign convictions are relevant as well, but gathering information on these may be beyond your resources.)

Copy Immigration Documents, Complete an Immigration Questionnaire. If the client has any type of card, letter, or document pertaining to immigration status, photocopy it. This will provide immigration counsel with a treasure trove of information. Also, have the client complete an immigration intake form. See *§ N.16 Client Immigration Questionnaire*. Assistance from paralegal staff or law clerks could expedite the fact gathering process. Even if the client is not able or willing to answer all of the questions, any information that you gain will be of help.

Expert Assistance. To complete the analysis, ideally defense counsel should look at more comprehensive works and/or consult with an expert on crimes and immigration. See *§ N.18 Resources.* See especially consultation services offered by the Immigrant Legal Resource Center (on a contract basis), the U.C. Davis Law School Immigration Clinic (limited free consultation for public defenders), special free consultation for Los Angeles Public Defenders, and the National Immigration Project of the National Lawyers Guild. A comprehensive manual on this subject, *Defending Immigrants in the Ninth Circuit,* is published by the group that writes this Chart and Notes. It contains extensive discussion of California offenses, immigration status and applications for relief, and other topics. See www.ilrc.org/crimes.

B. What is the Meaning of "Inadmissible," "Deportable," and "Aggravated Felony"?

1. Overview

The Immigration and Nationality Act (INA) contains three main lists of offenses that damage immigration status or potential status. These are:

- ***Grounds of deportability***, at 8 USC § 1227(a). A noncitizen who has been admitted to the United States but is convicted of an offense that makes her **deportable** can lose her lawful status and be "removed" (deported), unless she can apply for some relief from removal.

  Lawful permanent residents and others who have *secure lawful immigration status* that they might lose fear becoming deportable. In contrast, a deportable conviction usually[2] does not affect an undocumented person, who has no lawful status to lose.

  Example: Lila is a lawful permanent resident and Uma is an undocumented person. Both are charged with possession of an unregistered firearm, which is a deportable offense under 8 USC § 1227(a)(2)(c), but is not an inadmissible offense (see definition of "inadmissibility" below).

[2] The exception is that such a conviction will prevent an undocumented person from applying for some type of non-permanent resident "cancellation of removal," as under 8 USC § 1229b(b)(1). See *§ N. 17 Relief.*

Lila wants to avoid this plea, because a deportable conviction like this could cause her to be put in removal proceedings, stripped of her LPR status, and removed. In contrast, this is not a bad plea for Uma, since she has no lawful status to lose.

- ***Grounds of inadmissibility***, at 8 USC § 1182(a). A noncitizen who is **inadmissible** for crimes may be unable to get any *new* status, admission to the U.S., waiver of a crime, or other new benefit you apply for from the government. However, being inadmissible will not take away the lawful status that one already has. The only exception is if the person with lawful status *leaves* the United States after becoming inadmissible for crimes. In that case the person can be denied admission back into the U.S. for being inadmissible.

  Example: Assume that instead of the firearms offense, Lila and Uma are charged with misdemeanor engaging in prostitution, a six-month maximum offense and the first criminal offense for each of them. This conviction would make them both inadmissible under the "engaging in prostitution" ground of inadmissibility, but would not make them deportable.

  Uma wants to avoid this plea, because as an undocumented person she may want to apply for lawful status now or in the future, and for that she needs to avoid inadmissibility. In contrast, Lila could take the plea if necessary. The conviction would mean that she would have to delay any application for naturalization, and that she should not travel outside the U.S. until she became a citizen. But at least she would not be deportable, and therefore she is not at risk of being put in removal proceedings and removed from the U.S. so long as she remains in the U.S.

- The multi-part definition of ***aggravated felony,*** at 8 USC § 1101(a)(43). Aggravated felony convictions bring the most severe immigration consequences. Everyone wants to avoid this type of conviction. The conviction is a ground of deportability and also a bar to almost every application or relief. "Aggravated felony" is a misnomer; currently the category includes many misdemeanors and other offenses that are not particularly "aggravated."

These three categories comprise the most common, but not all, of the adverse immigration consequences that flow from convictions. In particular, see Part C Asylee and Refugee Status, and Temporary Protected Status.

2. Offenses Listed in the Grounds of Inadmissibility and Deportability

The following chart shows the types of convictions or evidence of criminal activity that come up in state court proceedings that can make a noncitizen deportable or inadmissible. The third list of offenses, aggravated felonies, is discussed separately below.

Grounds of Deportability Based on Crimes, 8 USC § 1227(a)(2) (Conviction or conduct must be after admission to U.S.)	**Grounds of Inadmissibility Based on Crimes, 8 USC § 1182(a)(2)** (Offenses committed anytime)
Conviction of crime of domestic violence, child abuse/neglect, or stalking; judicial finding of a violation of certain DV protection orders. Conviction or violation must occur after 9/30/96	No per se domestic violence, child abuse, or stalking inadmissibility ground. (But check to see if the offense also constitutes a crime involving moral turpitude ("CIMT"), which can cause inadmissibility)
Firearms offense	No per se firearms ground (But see if offense is also a CIMT)
Conviction/s of a crime involving moral turpitude (CIMT): --Two convictions after admission, unless they were part of a single scheme; or --One conviction with maximum sentence of at least 1 yr, committed within 5 years after first admission	One conviction of a crime involving moral turpitude (CIMT), except automatically *not* inadmissible if it comes within: --Petty Offense Exception (only CIMT ever committed, has a maximum possible sentence of one year or less, sentence imposed was 6 months or less) or --Youthful Offender Exception (convicted as an adult of only one CIMT, committed while under 18, conviction or resulting imprisonment occurred at least five years ago)
N/A	Formally admit committing a CIMT, even with no conviction
Conviction of offense relating to a controlled substance, with automatic exception for single conviction 30 gms marijuana	Conviction of offense relating to a controlled substance, with possible discretionary waiver in certain cases for single conviction 30 gms marijuana, under INA § 212(h) (but do *not* rely on the client winning this waiver)
N/A	Formally admit committing a controlled substance offense, even with no conviction
Drug addict or abuser at any time after admission	Current drug addict or abuser (8 USC § 1182(a)(1))
N/A	Government has "reason to believe" person was or helped a trafficker; conviction not required
N/A	5 yr aggregate sentence for two or more convictions of any type
Conviction for running non-USC prostitution business	Engaging in prostitution (conviction not required)
Convicted of an aggravated felony	No per se aggravated felony bar (but many AF offenses also are a CIMT, drug offense, or other inadmissibility category)

Comparing the offenses in grounds of deportability and inadmissibility. The lists of offenses in the grounds of deportability and inadmissibility are not identical. Certain types of convictions appear on both lists, while others will make a noncitizen deportable but not inadmissible, or vice versa. In many cases it is crucial for counsel to understand the immigration situation and identify priorities. You don't want to use all your resources to avoid a plea to a deportable offense, when in fact that won't affect the defendant, whose key goal is to avoid conviction of an inadmissible offense. Here are some differences between the two lists:

- **There are different rules for when a moral turpitude conviction makes a noncitizen deportable versus inadmissible.** Check the person's entire criminal record against the formulae discussed above and in *§ N.7 Crimes Involving Moral Turpitude*, and discussed in greater detail at *Defending Immigrants in the Ninth Circuit*, Chapter 4.

- **Key "conduct-based" grounds make a noncitizen inadmissible, but not deportable.** These include engaging in a pattern and practice of **prostitution**, and where the government has **"reason to believe"** (but no conviction) that the person aided in drug trafficking.

- **There is no inadmissibility ground based on conviction of a domestic violence, child abuse, or firearms offense, *per se*.** If a defendant's primary goal is to avoid *deportability*, she must avoid conviction even for minor offenses that come within these grounds, such as possession of an unregistered firearm. In contrast, if a defendant only needs to avoid *inadmissibility*, an unregistered firearm conviction is not harmful.

Note, however, that if the firearms or domestic violence offense *also* is a crime involving moral turpitude—e.g., if the firearms offense is not possession of an unregistered weapon, but assault with a firearm—counsel also must analyze whether the plea according to the moral turpitude grounds, where the conviction might cause inadmissibility.

> **Example:** Sam, a noncitizen, is facing tough charges and is offered a chance to plead to possession of an unregistered firearm. His defender must understand his immigration status to competently deal with the offer. If Sam must avoid becoming deportable, he has to refuse this plea, which will make him deportable under the firearms ground. If instead he only must avoid becoming inadmissible, he can safely accept the firearm plea. This is because there is no "firearms" ground of inadmissibility. (Possessing a firearm is not a moral turpitude offense, so he doesn't have to worry about that ground of inadmissibility.)

- **Conviction of an aggravated felony is not a *per se* ground of inadmissibility.** In limited situations, and where the conviction also does not come within the controlled substance or perhaps moral turpitude grounds, this can aid a defendant who is eligible to immigrate through a relative. See Chapter 9, § 9.2, *Defending Immigrants in the Ninth Circuit*.

3. Aggravated Felonies

Aggravated felonies are discussed in detail at § N.6, *infra*. Defense counsel must become very familiar with the list, which includes dozens of categories and is not limited to felonies or

aggravated offenses. ***A few examples*** of commonly charged offenses that are also aggravated felonies include:

- Misdemeanor theft with a sentence imposed of one year, even if the entire sentence is suspended; burglary or a crime of violence with a suspended one-year sentence;
- Any drug trafficking offense, e.g. possession for sale of a small amount of marijuana;
- "Sexual abuse of a minor," which includes some convictions under P.C. § 261.5 and all convictions under § 288(a);
- Felon in possession of a firearm; failure to appear to face a felony charge or sentence.

Conviction of an aggravated felony has three major immigration consequences. First, it is a deportable offense, and therefore grounds to remove lawful status for those who have it.

Second, aggravated felonies are worse than other triggers of deportability because they bar most forms of relief from removal. An aggravated felony conviction therefore results in virtually **mandatory deportation** in the great majority of cases. If a person is "merely" deportable based on a ground of deportability that is not an aggravated felony, she might be able to seek a waiver of deportability and remain in the United States. If a person is convicted of an aggravated felony, however, almost all forms of relief are barred, including asylum and the waiver for long-time permanent residents, cancellation of removal. In some cases, some noncitizens with a non-drug aggravated felony will be able to adjust, or re-adjust, their status to lawful permanent residency with a § 212(h) waiver, or apply for a "U" or "T" visa as

Third, a noncitizen who is deported ("removed") and who re-enters illegally has committed a federal offense. If the noncitizen was convicted of an aggravated felony before being removed, he or she is subject to a greatly enhanced sentence for the re-entry. 8 USC § 1326(b)(2). In northern California, a federal defendant with a prior aggravated felony conviction, but not of a highly serious crime, typically may serve 2 ½ years in federal prison just for the illegal re-entry. Federal officials troll the jails looking for aggravated felons who have illegally re-entered. Note, however, that conviction of certain offenses that are less serious than aggravated felonies can cause an even greater sentence enhancement. See discussion at Part D, below, "The Problem of Illegal Re-entry."

C. Determining Your Client's Immigration Status and Particular Defense Goals

The term "immigration status" refers to a person's classification under United States immigration laws. Criminal convictions affect noncitizens differently depending on their status, as noted in the above discussion of deportability versus inadmissibility. Therefore, to determine defense goals for a noncitizen, you must find out, if possible, the client's immigration status. This section explains the possible classifications of immigration status under U.S. immigration law, and discusses defense priorities based on the classification.

A person who is not a U.S. citizen and falls within one of the categories listed below is a noncitizen. While a U.S. citizen never can be deported/removed, ***anyone who is not a U.S. citizen is always subject to the possibility of removal, regardless of her circumstances.*** This includes, for example, a person who is married to a U.S. citizen and has had a green card for twenty years.

For in-depth information about any of these categories, see resources such as Chapter 1, *Defending Immigrants in the Ninth Circuit* (www.ilrc.org).

Note: In choosing defense strategies, remember that a vague record of conviction will not help an immigrant who must apply for status or relief from removal. *See Young v. Holder,* 697 F.3d 976 (9th Cir. 2012) (*en banc*) discussed at *§ N.3 Record of Conviction*

1. The United States Citizen ("USC") or United States National Defendant

a. Who is a U.S. Citizen?

Citizenship by Birth in the United States or Other Areas. Any person born in the United States is a U.S. citizen, except for certain children of foreign diplomats. Persons born in Puerto Rico, Guam and U.S. Virgin Islands, as well as those born after November 4, 1988, and in many cases before, in the Northern Mariana Islands also are U.S. citizens.

Naturalization to U.S. Citizenship. A noncitizen may apply to become a U.S. citizen through naturalization. A naturalization applicant must establish that he or she has been of "good moral character" for a certain period; often the period is three or five years, but certain military personnel require less. In almost every case, except for certain Armed Services members, an applicant for naturalization must be a lawful permanent resident.

Most crimes that trigger the *inadmissibility grounds* also statutorily bar the person from establishing good moral character. This is not so dangerous: the noncitizen simply must wait for the, e.g., three or five years to pass since the conviction before filing the naturalization application, and take care not to travel outside the U.S. until she is a citizen. It is far more damaging for a noncitizen who is *deportable* for a crime to apply for naturalization. It is likely that the naturalization application will be denied and the person quickly will be referred to removal/deportation proceedings, and no passage of time will eliminate the deportability. For further discussion of naturalization, see books such as *Defending Immigrants in the Ninth Circuit*, Chapter 11 or *Naturalization: A Guide for Advocates* (www.ilrc.org).

Derivative or Acquired Citizenship. Your client might be a U.S. citizen and not know it. Many persons born in other countries unknowingly inherit U.S. citizenship from their parents under one of a few provisions of nationality law. In this case, criminal convictions are not a bar and good moral character is not a requirement; the person received the status automatically and is already a citizen.

There are two threshold questions. If the answer to either question is yes, more research needs to be done to determine whether the person actually is a U.S. citizen, based on date of birth and other factors. As the law of derivative and acquired citizenship is quite technical, it would be best to consult a non-profit agency or immigration lawyer. The threshold questions are:

- At the time of his or her birth in another country, did your client have a grandparent or parent who was a U.S. citizen? If so, your client might have inherited U.S. citizenship at birth, called "acquired citizenship."

- Might your client have been under the age of 18 when, in either order, she became a permanent resident and a parent naturalized to U.S. citizenship? If so, your client might have automatically become a citizen at the moment the second condition was met, in a process called "derivative citizenship."

Regarding the second question, 8 USC § 1431 provides that a person automatically acquires citizenship regardless of any criminal convictions (or other considerations) if the following four conditions are met:

- At least one parent becomes a U.S. citizen by naturalization;
- The child is under 18;
- The child is a lawful permanent resident; and
- The child is in the legal and physical custody of the citizen parent.

This version of the law only applies to those who were under 18 as of February 27, 2000.[3] Those who were over 18 as of that date are subject to a prior version of this provision[4] that required *both* parents to become U.S. citizens, or proof that the child was in the legal custody of the citizen parent if there had been divorce or separation

Because a person with derivative or acquired citizenship is already automatically a USC, there is no need to apply for naturalization. The derivative or acquired USC will benefit, however from obtaining *proof* that he or she is a citizen. The best, most efficient way to obtain proof of U.S. citizenship is to apply for a U.S. passport. See http://travel.state.gov/passport/passport_1738.html for an application and information on how to do this.

b. Who is a U.S. National?

Persons born in an outlying possession of the United States, for example in American Samoa and Swains Islands, are U.S. nationals.[5] A national of the United States is not a U.S. citizen, but cannot be deported based upon a conviction.

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[3] *Hughes v. Ashcroft*, 255 F.3d 752 (9th Cir. 2001); *Matter of Rodrigues-Tejedor*, 23 I. & N. Dec. 153 (BIA 2001).
[4] 8 USC 1432; INA 321 [repealed].
[5] See INA §§ 308, 8 USC § 1408 and INA § 101(a)(29), 8 USC § 1101(a)(29). For a complete description of who can be non-citizen nationals, please see INA § 308, 8 USC § 1408 and Chapter 3, Noncitizen Nationals, Daniel Levy, *U.S. Citizenship and Naturalization Handbook* (West Group).

c. Defense Goals for U.S. Citizens and Nationals

Cannot be deported. A U.S. citizen or national never can be legally deported or excluded ("removed"), held in immigration detention, or otherwise come under the jurisdiction of immigration enforcement procedures, regardless of their criminal history.

However, U.S. citizens still can be hurt by a badly formed criminal plea: they can lose the ability to submit a family visa petition for an immigrant relative. Part of the Adam Walsh Act passed in 2006 imposes immigration penalties on *U.S. citizens and permanent residents* who are convicted of certain crimes relating to minors, by preventing them from filing a visa petition on behalf of a close family member. The specified offenses include relatively minor crimes such as false imprisonment or solicitation of any sexual conduct, where the victim is a minor. See Note 11, *infra*.

> **Example:** Harry is a U.S. citizen who is charged with soliciting a 17-year-old girl to engage in sexual conduct. If he pleads guilty, he may not be permitted to file a visa petition for an immigrant relative, unless he is able to obtain a waiver.

2. The Lawful Permanent Resident or "Green Card" Holder Defendant

a. What is Lawful Permanent Residency?

A Lawful Permanent Resident (LPR) is not a U.S. citizen but is permitted to live and work legally in the U.S. permanently. However, LPRs are still subject to removal at any time if they violate the immigration laws. There are two types of permanent residents: Lawful Permanent Residents (LPR's) and Conditional Permanent Residents (CPR's).[6] Permanent residents are given "green cards" which state "Resident Alien" across the top of the card. Green cards actually are pink or white in color, not green. **LPR status does not expire, although the green card itself must be renewed**. LPR status can only be revoked by an immigration judge or by leaving the U.S. for such a long period of time that it is deemed abandoned.

b. Defense Priorities for Lawful Permanent Residents

Consider the following five steps in determining defense priorities.

1. ***Is my LPR client already deportable?*** Obtain and analyze the LPR client's entire criminal record to determine if the client is already deportable based on a past conviction. If so, investigate what waivers or relief, if any, are available. If the LPR is already deportable, the first priority is to avoid a conviction that would be a bar to eligibility for some waiver or relief from removal. See Step 3. If the LPR is not yet deportable for a conviction, counsel must attempt to avoid a plea that will make the LPR deportable.

[6] A conditional permanent resident (CPR) is a lawful permanent resident who gains status through marriage to a U.S. citizen where the marriage is less than 24 months old at the time of adjudication of the application for residence. CPR status expires after two years and an additional petition must be filed to become a regular permanent resident. 8 USC § 1186a and INA § 216.

2. ***Highest priority: avoid an aggravated felony conviction.*** The highest defense goal for a lawful permanent resident is to avoid a conviction for an aggravated felony, because this will not only subject him/her to removal proceedings, but will eliminate eligibility for virtually all forms of relief from removal, resulting in virtually mandatory deportation for most clients.

3. ***Next priority for non-deportable LPR: avoid deportability under any other ground.*** After avoiding deportation for aggravated felony, an LPR's next highest priority is to avoid becoming deportable under some other ground (and, in particular, under a ground relating to controlled substances).

4. ***Goals for LPR client who is or will become deportable.*** If, due to the current charges or past convictions, the LPR will be deportable for a conviction, the LPR is in a very serious situation. A permanent resident who becomes deportable can be placed in removal proceedings, where an immigration judge can take away the person's status and order her deported ("removed") from the United States. If the deportable LPR has not been convicted of an aggravated felony, she might be able to apply for some relief that would allow her to keep her green card and remain in the United States.

   Criminal defense counsel must understand what, if any defenses against removal exist for the individual, and how to preserve eligibility for the defense. This may require consultation with an immigration expert; see N. 17: Resources, and see Chapter 11, *Defending Immigrants in the Ninth Circuit* (www.ilrc.org). A common form of relief for deportable permanent residents who have lived in the U.S. for several years and have not been convicted of an aggravated felony is "cancellation of removal."[7] Or, if not deportable for a drug offense, the resident might be able to "re-immigrate" through a U.S. citizen or LPR family member.

5. ***Avoiding inadmissibility***. An LPR also has an interest in avoiding a conviction that would make him **inadmissible**. An LPR who is deportable might be able to apply for some waiver or relief – for example, to "re-immigrate" through a family member -- as long as he remains admissible. Also, if an LPR who is inadmissible for crimes leaves the U.S. even for a short period, he can be barred from re-entry into the U.S. Even if he manages to re-enter, he can be found deportable for having been inadmissible at his last admission. However, an LPR who is inadmissible but *not* deportable based on a conviction is safe**, as long as he does not leave the United States**. Inadmissible LPR clients need to be warned of the consequences of leaving the United States.

6. ***The LPR client who appears to be mandatorily deportable should avoid custody time.*** If the LPR is deportable and has no possible form of relief from removal at this time, her biggest priority is to avoid encountering immigration authorities, and that is best done by getting out of jail before an immigration hold is placed, or by avoiding jail time if the client is already out of custody. You should advise the person that once she is out of jail, she must avoid any contact with immigration authorities. She should not travel outside the U.S., apply to renew a

[7] For more information, please see Part II, Section C of this manual – Quick Guide to Cancellation of Removal for Legal Permanent Residents.

10-year green card, apply for naturalization, or make other contact with authorities. See "The Absolutely Removable Defendant," below.

7. Finally, certain convictions where the victim is a minor will bar a permanent resident (or U.S. citizen) from being able to file papers for an immigrant family member in the future. The specified offenses include relatively minor crimes such as false imprisonment or solicitation of any sexual conduct. For more information see Note 11 on the Adam Walsh Act, *infra.*

3. The Undocumented or "Illegal Alien" Defendant

a. Who are undocumented persons?

An undocumented person is someone who does not have legal status under the immigration laws to be present in the U.S. There are two[8] main categories of undocumented persons. The first is a "visa overstay," meaning a nonimmigrant visa holder whose visa has expired or been terminated, e.g., a foreign student who drops out of school or a tourist who overstays a visa. The second is someone who "entered without inspection" ("EWI"), meaning a noncitizen who entered the United States without permission and has never had lawful immigration status**.**

There are technical legal differences between the two groups,[9] but they have important similarities. Both are in the United States unlawfully and can be removed on that basis even without a criminal conviction. Both will have to apply for some sort of relief or status if they are to remain in the United States. Note that millions of persons are presently undocumented but may be eligible to apply for lawful status, such as someone who is married to a U.S. citizen.[10] If the undocumented person has a U.S. citizen or permanent resident parent, spouse, and/or child over 21, see

b. Defense Goals for an Undocumented Client

Undocumented person who may be eligible for relief now or in the near future. An undocumented person is already subject to removal because she has no lawful status. However, she might be able to acquire lawful status and remain in the U.S. is if she is entitled to request immigration status through one of several legal avenues (e.g., marriage to a U.S. Citizen, asylum, non-permanent resident cancellation, or some other form of relief from removal).[11] Usually, to

[8] People who used to have status, but who now have a final order of removal (and are not under an "order of supervision") are also undocumented.

[9] Technically, a visa overstay is removed for being deportable, while an EWI is removed for being inadmissible. This makes a difference in the crimes analysis in only a few cases, however. More importantly, a visa overstay who will immigrate through a close U.S. citizen relative may "adjust status" in the United States, while an EWI must go to a U.S. consulate in the home country to do so.

[10] Marriage to a U.S. citizen does not automatically confer any lawful status on someone. It simply entitles a person to apply for lawful permanent resident status. This is a complex process involving numerous applications where in the noncitizen must prove, inter alia, that he is not subject to any of the grounds of inadmissibility at 8 USC § 1182, including the crime related grounds at 8 USC § 1182(a)(2).

[11] For a summary of avenues of "relief from removal" and avenues for obtaining lawful status, please see the section on "Relief from Removal" at the "online resources" link of the WDA's Immigration Project website at www.defensenet.org.

qualify for such relief the applicant must not be **inadmissible**. Thus for undocumented noncitizens, avoiding a conviction that creates grounds of inadmissibility is the highest priority.

In the majority of cases, the grounds of **deportability** are irrelevant to an undocumented person. The main exception is if the person will apply for non-permanent resident cancellation of some kind, for example based upon 10-years residence in the U.S. and exceptional hardship to citizen or permanent resident relatives, or cancellation under the Violence Against Women Act. See 8 USC § 1229b(b).

The person will want to avoid conviction of an **aggravated felony.** Such a conviction is likely to bar him from applying for lawful status or relief. If he is deported/removed and then tries to re-enter the U.S. illegally, having an aggravated felony is one of the types of prior convictions that will trigger a severe sentence enhancement. Other kinds of priors will enhance this sentence as well; see important information the problem of illegal re-entry at Part D, below.

Staying or getting ***out of jail*** is also a priority to avoid detection by immigration authorities. However, counsel should be careful to advise this group of clients not to accept a plea to a conviction that would eliminate their options for lawful status just to get out of jail without clearly understanding the long-term consequences.

> **Example:** Tamara is a Canadian citizen who entered the U.S. as a tourist and later married a U.S. citizen. They have not yet filed papers to apply for Tamara's lawful permanent resident (LPR) status based upon her marriage, but she is eligible to apply immediately. Because she is eligible for relief, her highest priority – even higher than avoiding immigration authorities -- is to avoid a conviction that is a ground of inadmissibility and thus will interfere with her application for LPR status.

Undocumented with no current options for obtaining lawful immigration status, who are likely to be removed/deported. Undocumented persons who don't have any way to defend against removal or apply for lawful status have a priority that may at times compete with the defense of a criminal case: they may decide that they need *to avoid contact with immigration authorities at any cost* – even to the point of accepting any plea just to get out of jail immediately. This may be a complex decision that requires accurate immigration advice. See "The Absolutely Removable Defendant," below.

Where a client has not yet been removed, but will or might be, counsel must consider the possibility that the person will attempt to re-enter illegally. Counsel must (a) warn about the severe federal penalties for illegal re-entry after removal; (b) attempt to avoid an aggravated felony, which would bar the person from voluntary departure which is an alternative to removal, and (c) attempt to avoid an aggravated felony or other conviction that would cause an enhanced sentence should the client be prosecuted for an illegal re-entry. See Part D, The Immigration "Strike," below.

Undocumented with a Prior Order of Deportation or Removal. A person who was deported/removed and then re-entered the United States illegally is in an extremely dangerous situation. The key goal is to avoid contact with immigration officials, or with federal criminal

officials. In immigration proceedings, the person's prior order of removal will be immediately reinstated without opportunity to apply for relief. Further, he faces the very real risk of being prosecuted for the federal crime of illegal reentry after deportation/removal.[12] Worse yet are the severe sentence enhancements for an illegal reentry conviction when the defendant has prior convictions of certain crimes.

Note that a person who accepted voluntary departure is not in the same situation with regard to illegal re-entry. It is a far less serious crime to illegally re-enter after a voluntary departure than after a deportation/removal. Sometimes it is difficult to discern from the client's memory whether he was deported or received voluntary departure, and consultation with an immigration expert is required.

4. The Refugee or Asylee Defendant, or the Applicant for Asylum

a. Who is a Refugee or Asylee, or an Asylum Applicant?

Refugees and asylees have been granted lawful immigration status because they have established that they would suffer or have suffered persecution in their country of origin.[13] Refugees receive refugee status abroad before relocating to the U.S. An asylee is someone who came to the U.S. and received a grant of asylum here.

An asylum *applicant* is a person who has entered the United States, whether admitted or not, and who has applied for asylum. With some exceptions for exigent or changed circumstances, an asylum applicant must file the application within one year of entering the United States. The person may apply affirmatively by filing an application, or apply as a defense to removal. If the one-year deadline is passed or the person has been convicted of an aggravated felony or certain other offenses (see below), the person instead may apply for ***withholding of removal***, which requires a higher showing regarding persecution, and which does not lead to a green card.[14]

b. What Are Defense Priorities?

Refugees and asylees who are not yet permanent residents. The law governing crimes and asylees and refugees is unstable. If the defendant is a refugee or asylee and the charge is potentially dangerous based on the criteria discussed below, we recommend that you consult with a local, expert immigration attorney or a resource center. See also *§ N.17 Relief*, materials on asylees and refugees.

Refugees are directed, and asylees are permitted, to apply for lawful permanent resident status (LPR status, a green card) beginning one year after they were admitted as a refugee or granted asylum. But both are vulnerable to being placed in removal proceedings based on certain convictions.

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[12] 8 USC § 1326; INA § 276.
[13] INA § 101(a)(42)(A), 8 USC § 1101(a)(42)(A) requires a well-founded fear of persecution based upon race, religion, national origin, political opinion, or social group.
[14] INA § 241(b)(3), 8 USC § 1231(b)(3) requires a "clear probability" of persecution based on the above grounds.

Avoiding removal proceedings. An asylee can be placed in removal proceedings if convicted of a ***"particularly serious crime"*** ("PSC"). This includes any aggravated felony conviction, as well as any conviction for drug trafficking unless it was a very small transaction with which the defendant was only peripherally involved. (If that is the case, put these good facts in the record of conviction, but note that a plea to trafficking will mean that the person never will become an LPR. See next section.). Other offenses also will be classed as PSC's on a case-by-case basis, based upon sentence, circumstances, whether the offense involves a threat to persons, etc.[15] For example, robbery is almost certain to be held a PSC, whereas theft usually is not. However, non-violent offenses such as mail fraud for two million dollars, and possession of child pornography, have been held PSC's, and it is possible that a DUI would be. Absent unusual circumstances, a single conviction of a misdemeanor offense is not a PSC.[16]

Under current law a refugee, but not an asylee, can be placed in removal proceedings if she becomes ***deportable*** for crimes.[17]

An asylee or refugee in removal proceedings can apply for adjustment of status to permanent residence as a defense to removal, if not barred by crimes. See next section. If the person is not granted adjustment or some other form of relief, he or she can be removed to the home country.

Refugee and asylee adjustment to permanent residency. In order to be granted LPR status, refugees and asylees must prove that they are not inadmissible, or if they are they must be granted a waiver of the inadmissibility ground. The available waiver is very liberal, but there is no guarantee of a grant. It can waive any inadmissibility ground, including convictions that are aggravated felonies, with two exceptions. First, it will not waive inadmissibility where the government has probative and substantial "reason to believe" that the person as participated in drug trafficking.[18] Second, if a conviction involves a "violent or dangerous" offense, the waiver will be denied absent "exceptional and extremely unusual hardship" or pressing foreign policy reasons.[19]

Undocumented persons or others who have applied, or may want to apply, for asylum or withholding. An applicant for asylum is barred if convicted of a "particularly serious crime" ("PSC"). See discussion of PSC definition, above. For asylum, a PSC includes any aggravated felony conviction. For withholding, it includes an aggravated felony for which a sentence of five years was imposed. It also includes drug trafficking, and other offenses on a case-by-case basis, as discussed in the asylee-refugee section above. In addition, an application for asylum will be denied as a matter of discretion if the applicant is convicted of a "violent or dangerous offense"[20]

Alternatives: Withholding of Removal, the Convention Against Torture. If the person cannot apply for asylum due to criminal record or the one-year deadline, she may want to apply for withholding of removal, a remedy that requires a higher level of proof that the person will be

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[15] See *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982).
[16] *Matter of Juarez*, 19 I&N Dec. 664 (BIA 1988) (misdemeanor assault with a deadly weapon).
[17] *Matter of D-K-*, 25 I&N Dec. 761 (BIA 2012).
[18] See waiver of inadmissibility in application for refugee or asylee adjustment at INA § 209(c), 8 USC § 1159(c). The "reason to believe" drug trafficking inadmissibility ground appears at 8 USC 1182(a)(2)(C), INA § 212(c).
[19] See *Matter of Jean*, *supra*.
[20] See *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002).

persecuted and does not lead to a green card, but which has a less strict criminal record requirement and no one-year deadline.[21] Or, the person can apply for protection under the Convention Against Torture, which has no criminal record bars. The person must prove that the government or a government-like group in the home country will torture her *for any reason*, or is unwilling or unable to intervene in another group torturing her.[22] See §§ 11.14, 11.15 in *Defending Immigrants in the Ninth Circuit.*

5. The Defendant who has or will apply for Temporary Protected Status (TPS)

a. What is Temporary Protected Status?

The U.S. government may designate Temporary Protected Status (TPS) for any foreign country encountering catastrophic events such as ongoing armed conflict, earthquake, flood or other disasters, or other extraordinary and temporary conditions. Nationals of that country will not be forced to return there from the U.S. for a designated period of time, can travel outside the U.S. with special permission, and will receive employment authorization.[23]

The applicant must have been in the United States as of a designated date. TPS usually is granted for only a year at a time, but often with several renewals. Generally the national must have filed during the initial registration period in order to benefit from TPS.

Example: The Department of Homeland Security Secretary determined that an 18-month designation of TPS for Haiti is warranted because of the devastating earthquake which occurred on January 12, 2010. The TPS applicant must be a national of Haiti, or a person without nationality who last habitually resided in Haiti; must have continuously resided in the U.S. since January 12, 2010; and must meet criminal record and other requirements. The person must apply within a 180-day period beginning January 21, 2010.

Since TPS is a temporary designation, the list of countries granted TPS changes frequently. For up to date information about which countries currently are designated for TPS, and specific requirements for each country's nationals, go to www.uscis.gov, and click on Temporary Protected Status in the "Humanitarian" box. As of January 2010, the following countries have an ongoing TPS program: Haiti (where registration to join TPS is open at least through July 21, 2010), El Salvador, Nicaragua, Honduras, Somalia and Sudan.

b. What Are Defense Priorities for a person who already has, or hopes to apply for, Temporary Protected Status?

An applicant will be denied a grant of TPS, or may lose the TPS status he or she already has, [24] if he or she has the following criminal record[25]:

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[21] INA § 241(b)(3), 8 USC § 1231(b)(3) requires a "clear probability" of persecution based on the above grounds. It is barred by conviction of a PSC, but for withholding, as opposed to asylum, purposes not every aggravated felony is a PSC.
[22] See, e.g., discussion in *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. 2003).
[23] INA § 244A, 8 USC § 1254a, added by IA90 § 302(b)(1).
[24] See 8 CFR 244.14(a)(1), (b)(2).

- is *inadmissible* under the crimes grounds
- Has been convicted of *any two misdemeanors or one felony*.
- Has been convicted of a "particularly serious crime" (determined on a case by case basis depending on sentence, violence to persons, etc.; includes all drug trafficking offenses)

For further discussion see "Advisory for Haitian Nationals Considering Applying for TPS" (Jan. 20, 2010) at www.immigrantdefenseproject.org.

6. The Defendant with Close U.S. Citizen or Permanent Resident Relatives

Some, but by no means all, noncitizens who have close U.S. citizen or permanent resident family members are able to get a green card based on the relationship, either by making an affirmative application or by asserting this as a defense to being removed. See Part a below, on family immigration. In addition, if a family member could submit such a petition, but refuses to do so and further has abused the immigrant, see Part b below regarding VAWA relief for victims of domestic abuse.

a. Regular Family Immigration

Family immigration is a complex field, and the following is only basic information. However, help may be available, because many local immigration non-profit agencies or private attorneys have expertise in handling family visa petitions and adjustment of status. Or, an immigration attorney or a backup center like the Immigrant Legal Resource Center may be able to quickly evaluate a case to see if family immigration is a possibility. See resources and books on the subject at *§ N.18 Resources,* and see materials on Family Immigration at *§ N.17 Relief.*

There are two basic categories of family members who may be able to submit a family visa petition for the defendant.

- A U.S. citizen who is (a) the parent of an unmarried person under the age of 21, (b) the spouse, or (c) the child over the age of 21 of the person, can file an "immediate relative" family visa petition for their relative. This is the best type of petition, which has no legally mandated waiting period before the person can apply for a green card based upon it.

- A lawful permanent resident spouse or a parent of an unmarried child, or a U.S. citizen parent of a child over 21, can file a "preference" family visa petition for their relative. However, the relative can't use this petition to get a green card until at least a few years after it was filed with the government, so unless it was filed years ago it is not useful as an immediate defense to removal.

If the defendant was admitted to the U.S. in any status -- even including, e.g., admission years ago on a tourist visa, followed by years of living here illegally – *and* if he or she has

[25] In addition, an applicant for TPS may be denied based on actions in the home country (persecution of others, conviction of a "serious non-political offense").

willing relatives who can submit an "immediate relative" visa petition, it is likely that the defendant could apply for adjustment of status to lawful permanent residency as a defense to removal. A permanent resident who is deportable for a crime but eligible to get an immediate relative visa petition also can file for adjustment as a defense to removal. In all cases, the defendant must be ***admissible***, or if inadmissible, eligible to apply for a ***waiver*** of inadmissibility.

If instead the defendant entered the U.S. without inspection, *and/or* only has the possibility of someone filing a new "preference" family visa petition, with some exceptions the person will not be able to adjust status.

b. Where the Citizen or Permanent Resident Family Member is Abusive: VAWA

If the defendant or the defendant's child has been subject to physical or emotional abuse by a U.S. citizen or lawful permanent resident parent or spouse, the defendant may be eligible to apply for status under the Violence Against Women Act ("VAWA"). This law was passed to address the situation where a citizen or permanent resident family member could file a visa petition for the noncitizen, but is an abuser and is essentially using immigration status as a weapon. For other requirements and information on VAWA see books and resources at *§ N.18 Resources*, and basic info at www.ilrc.org/info-on-immigration-law/vawa.

Despite its name, this VAWA relief is available to men and women. Where abuse was by a parent, it must have taken place when the child was under 21. VAWA is better than regular family visa petitions, as it can work as a defense to removal regardless of whether the defendant was admitted or not, and regardless of whether the defendant would have qualified for a "preference" versus an "immediate relative" visa petition. There also is a VAWA cancellation of removal.

In terms of criminal record requirements, the applicant must be ***admissible*** or eligible for a ***waiver of inadmissibility***, and must be able to show ***good moral character***. Special provisions for VAWA applicants relax some of the rules pertaining to these requirements.

7. The Defendant with a Nonimmigrant Visa

A nonimmigrant visa holder is a person who obtained a temporary visa allowing them to enter and remain in the United States legally for a specific period of time under specific conditions. Some examples of nonimmigrant visas are: tourist visas, student visas, temporary work visas (e.g., H1-B) and diplomatic visas.

Nonimmigrant visa holders who violate the terms of their visa (e.g., students who drop out of school or visitors who stay longer than permitted) become "undocumented," meaning they no longer have lawful status in the U.S. As such, they are subject to removal from the country. They also are subject to the criminal grounds of deportability.

8. The Defendant with an Employment Authorization Document (Work Permit)

Immigration authorities issue work permits, or employment authorization documents (EAD), of temporary duration to certain categories of noncitizens. Clients may be confused on this point, but *a "work permit" is **not** an immigration status*; *work permits do not confer lawful status*. They do mean that the government temporarily is not moving to remove the person. Some examples of noncitizen categories for which work permits are issued include: (1) persons who are in the process of applying for some status, for example adjustment through a family visa petition, or an asylum application, and (2) persons who have some lawful temporary status, such as certain nationals of countries designated for "temporary protected status" or TPS (e.g., persons from Haiti following the 2010 earthquake, or from Honduras following Hurricane Mitch).

A work permit means that the person may be in the process of acquiring status, and counsel must proceed carefully to try to avoid a plea that will destroy the application. *If a person has a work permit, photocopy it and immediately contact an expert immigration attorney or resource center.* Note that in many cases, no one has explained the meaning of the employment document to the immigrant. He or she may believe that it is a lawful permanent resident card or some other secure status instead of just a permit.

9. The Mystery Status Defendant

Some clients may think that they have, or are in the process of getting, some kind of immigration status, but do not know what it is. In this case, photocopy any documentation they do have, and try to obtain as much immigration history as possible. See § N.16 Client Immigration Intake Questionnaire. Contact an immigration expert to assist in determining the client's status. In some cases, unscrupulous immigration consultants ("notaries") or attorneys have provided clients with "letters" and told them that this is an immigration document, when it is not.

Until you understand the immigration case you should continue the criminal case, or, if forced to plead, try to avoid a conviction that will trigger any of the grounds of inadmissibility, deportability, or constitute an aggravated felony. The most important of these three is to avoid a conviction for an aggravated felony offense.

10. The Absolutely Removable Defendant: Avoid Custody Time

Some clients are deportable with no possibility of relief, for example an undocumented person with no possible application to stop removal, or a permanent resident with a conviction that bars any possible relief. If they come in contact with immigration authorities, these persons will be deported ("removed"), or at best, permitted to depart the U.S. voluntarily (see below).

If they wish to avoid this, their goal is to avoid contact with immigration authorities. The best way to do this is to avoid being in jail, where an immigration hold is likely to be placed on the person, who is then likely to be taken into immigration custody upon release from jail. After informed consideration, such a defendant with no defenses may decide that it is in her best interest to accept a plea that gets or keeps her out of jail before she encounters immigration officials, even if the plea has adverse immigration consequences. The defendant must make the decision after understanding the long and short-term life consequences (e.g., that such a conviction is likely to render her permanently ineligible to ever obtain lawful status).

A permanent resident who is removable must continue to avoid any contact with immigration authorities. The person must not travel outside the U.S., apply to renew a 10-year green card, apply for naturalization, submit a visa petition for a family member, or make any other contact with authorities.

An absolutely removable person may want to apply for immediate **"voluntary departure"** to avoid formal removal. For one thing, ***illegal entry*** into the U.S. following a voluntary departure is a far less serious offense than illegal re-entry following a removal. Federal regulation provides that an aggravated felony conviction will bar a request for pre-hearing voluntary departure.[26] Therefore ***counsel should attempt to avoid a plea to an aggravated felony, and should advise the defendant to attempt to obtain voluntary departure rather than removal.*** Unfortunately, immigration officers commonly offer detainees the opportunity to sign a paper agreeing to "voluntary *removal*," while leaving detainees with the impression that this is a "voluntary *departure*." The only sure ways for detainees to take voluntary departure is to read the paper very carefully, get assistance from a lawyer or other advocate, or wait to see an immigration judge for a master calendar hearing – which could take as long as a few weeks. Since you, the criminal defense attorney, are likely to be the last lawyer a detainee ever sees, if you can get this advice across you may prevent the detainee from spending a few years in federal prison later on. See below and Part D, *infra.*

Many persons who are deported/removed re-enter the U.S. illegally. This is especially true if they have close family here. Counsel must warn the defendant that this "illegal re-entry," especially where there are prior convictions, is a very commonly prosecuted federal offense, which can result in years in federal prison. See Section D.

The client with a prior deportation or removal order. You may have a client who has already been ordered deported, or even already deported. A person who has previously departed the United States under a removal order is subject to *reinstatement of removal*, in which ICE reinstates the prior removal order and removes the person pursuant to that. In this process, the client does not have the right to appear before an immigration judge and contest deportation. Moreover, this client will be subject to federal prosecution for illegal reentry. As with other absolutely removable clients, the person wishes to avoid immigration authorities.

Clients who have been ordered removed, but who cannot be removed. Some clients who are deportable or even have prior removal orders cannot physically be removed, because United States and that client's home country do not have a repatriation agreement in effect. For example, persons from Cuba, or from Vietnam if they entered the United States prior to July 12, 1995, cannot be removed. Several other countries, including Iran, Iraq, Somalia and Liberia,

[26] 8 CFR 240.25. This is "voluntary departure prior to completion of hearing," meaning that the noncitizen does not request any relief other than the departure. (In fact, under the statute a noncitizen who entered without inspection is eligible for this type of voluntary departure despite conviction of an aggravated felony, and the regulation appears to be *ultra vires.* 8 USC § 1229c(a) provides that a noncitizen who is *deportable* for an aggravated felony is barred from pre-hearing voluntary departure. A person who entered without inspection is not "deportable." See discussion at Chapter 11, § 11.22, *Defending Immigrants in the Ninth Circuit.)*

either issue documents very slowly or impose requirements that often cannot be met at all.[27] Once ordered removed, these people may still be detained by ICE for up to 6 months, are subject to re-detention any time they have a new criminal case, and are on something akin to an indefinite probation with the Department of Homeland Security.

11. The Defendant who has previously received relief from removal

You may encounter a client who has been through removal proceedings in the past and received some form of relief from removal, such as Cancellation of Removal for Lawful Permanent Residents. While this person may be an LPR, the analysis of that person's immigration consequences will often differ from other LPRs. Some applications are no longer available, and the prior convictions will be considered waived for some immigration purposes but not for others. It is advisable to consult an immigration expert or a more in-depth resource such as *Defending Immigrants in the Ninth Circuit* or other treatises on immigration law and crimes.

D. The Immigration Strike: Avoiding a conviction that will cause a severe sentence enhancement if the defendant re-enters the U.S. illegally after being deported/removed.

Many persons who are deported/removed re-enter the U.S. illegally in order to join family members here or other connections. If the re-entrant is caught at the border, or picked up for any reason once inside, it is very likely that he or she will be prosecuted for a serious federal offense. ***Illegal re-entry following removal is the number one federal charge brought today, comprising roughly 30% of all new criminal charges brought in federal court nationally.***[28] Federal agents troll county jails looking for "foreigners" or persons with Spanish surnames, especially if the person was convicted of certain priors. To assist the defendant, counsel must do two things:

- ***Warn the defendant***, before he or she is removed, of the danger of illegal re-entry and the real possibility of doing federal prison time;

- Where possible ***avoid an aggravated felony conviction*** for a defendant who has not been deported before, so that the defendant may be able to obtain voluntary departure rather than removal (see discussion at Part C.9, *supra*); and

- ***Attempt to avoid conviction of one of the several particular offenses*** that will constitute priors causing a seriously enhanced sentence in any prosecution for a future illegal-re-entry. See below.

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[27] See, e.g., discussion from the Immigration Customs and Enforcement (ICE) point of view in Statement to House Judiciary Committee by Gary Meade of ICE, May 24, 2011, at www.ice.gov/doclib/news/library/speeches/110524mead.pdf

[28] When other immigration-related charges are added in, such as simple illegal entry and alien smuggling, immigration crimes constitute over 50% of new criminal charges in federal court. See, e.g., statistics at http://trac.syr.edu/tracreports/bulletins/overall/monthlynov09/fil/.

Illegal re-entry after removal (deportation) is a more serious and more commonly prosecuted offense than illegal re-entry when there was no removal, for example when there was voluntary departure. As discussed in Part C.9, *supra*, a noncitizen who has not been convicted of an aggravated felony can apply for voluntary departure rather than removal, although this may require effort and sacrifice on the part of a detained noncitizen.

Assuming that there is a charge of illegal re-entry following removal, two types of prior convictions cause the most serious sentence enhancement: conviction of an aggravated felony, and conviction of certain other felony offenses.[29] Federal law employs a complex sentencing system under the "advisory" U.S. Sentencing Guidelines. Guidelines provide for an increase in the length of sentence as levels determined by prior convictions increase. To give a general idea of the seriousness of a prior conviction, consider that the base level for an illegal reentry sentence is eight. That will be increased between four and sixteen levels for prior convictions. In California prosecutions, a typical sentence for illegal re-entry plus a prior is around *30 months* in federal prison. See story of "Luis" at the end of this section.

Crimes That Mandate an Enhanced Sentence for Illegal Reentry

Certain Felonies: Increase by 16 levels:

- Drug trafficking, and the sentence is more that 13 months;
- Crime of violence (see definition below);
- Firearms offense;
- Child pornography offense;
- National security of terrorism offense;
- Alien smuggling offense.[30]

A crime of violence is defined in the federal sentencing guidelines as including the following felony offenses:

> Murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, statutory rape, sexual abuse of a minor, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, any offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.[31]

Note that the USSG "crime of violence" definition used here is different from the definition of "crime of violence" under 18 USC §16, used to define an aggravated felony. Note also that while a "crime of violence" under 18 USC § 16 is an aggravated felony (bringing an 8 level increase) only if a sentence of a year or more imposed, under this "crime of violence" definition (bringing a 16-level increase), there is ***no sentence requirement***; the only requirement is that the offense is a felony.

[29] 8 USC § 1326; INA § 276. Section 1326(b)(1) penalizes re-entry after "any felony" conviction, which is the section under which the "felony crime of violence" and other offenses discussed here are charged. Section 1326(b)(2) penalizes re-entry after an aggravated felony.
[30] U.S. Sentencing Commission Guidelines Manual, USSG § 2L1.2(b)(1)(A)(2004).
[31] USSG § 2L1.2, comment (n.1)(B)(iii) (2004).

Increase by 12 levels: Drug trafficking if the sentence is less than 13 months.

Increase by 8 levels: Aggravated felony

Increase by 4 levels: Any other felony; or three or more misdemeanors that are crimes of violence (see definition above) or drug trafficking offenses.

The following example, based on a real case, shows how a conviction for a "violent offense" that is not an aggravated felony will affect a client later charged with illegal reentry.

Example: Luis is an undocumented worker who has lived in the U.S. for some years and has two U.S. citizen children. He has no current means of getting lawful immigration status. He has been convicted of his first offense, felony assault, and is sentenced to one month in jail and placed on three years' probation. This is not an aggravated felony. Immigration authorities pick up Luis once his jail term is over, and he is removed to Mexico based on his unlawful status.

Luis immediately re-enters the United States to return to his family. He is detected by authorities and charged in federal proceedings with illegal re-entry after removal and a prior conviction, not of an aggravated felony, but of a separately defined "felony crime of violence." While an aggravated felony (e.g., his assault if a one-year sentence *had* been imposed) would only have rated a sentence increase of 8 levels, under the felony "crime of violence" category he receives an increase of 16 levels. Luis is sentenced to *forty-one months of federal prison* for the illegal re-entry.[32]

E. Checklist: Ten Steps in Representing a Non-Citizen Defendant, from Interview through Appeal

1. ***If there is no immigration hold, get the noncitizen out of jail.*** The first defense task is to try to get the defendant out of jail before an immigration detainer or hold is placed. Advise the defendant not to speak to anyone but defense counsel about any matter, whether the criminal case, or immigration status, the home country (even place of birth), or family history.

2. ***If there is already a hold, stop and analyze whether or not you should obtain release from criminal custody.*** If an immigration hold has been placed, do not attempt to bond or O.R. the defendant out of jail without analyzing the situation. The defendant might end up in immigration detention, which could be worse. Consult §N.5 Immigration Holds and Detainers, *infra*, and Chapter 12, *Defending Immigrants in the Ninth Circuit*.

If your client has signed a "voluntary departure" request (agreement to leave the country without being removed) you can revoke it, but you should consult an immigration attorney before doing this. (For example, if the client has no relief and an aggravated felony conviction, voluntary departure instead of removal may be a very good option.)

[32] See discussion of similar facts, *U.S. v. Pimentel-Flores*, 339 F.3d 959 (9th Cir. 2003).

3. ***Gather facts about the defendant's criminal record history and immigration situation.*** See if the defendant's family can retain expert immigration counsel with whom you can confer. Many immigration attorneys will set up monthly payment plans. Determine whether special translation is needed, and if competent translation is available.

4. ***Analyze the immigration consequences of the criminal case and determine defense priorities,*** using all resources available including consultation with experts. What is the defendant's immigration status now? What would cause her to lose her current status? What new status or application might she be eligible for? Is the biggest priority to get release from jail under any circumstances? What effect would the proposed plea have on the above, and what are better alternatives? Don't forget to warn a removable defendant about the dangers of illegal re-entry; try to avoid a plea that would serve as a severe sentence enhancement in the event of an illegal re-entry prosecution.

5. ***Try to obtain a disposition that is not a conviction***, such as juvenile delinquency disposition, pre-plea disposition, and possibly infraction. See further discussion at *§ N.8 Drug Charges*, Part II.A. A conviction that is on direct appeal of right is a final conviction for immigration purposes, at least in the Ninth Circuit.

6. ***Thoroughly advise the defendant*** of the specific criminal and immigration penalties involved in various defense options. Immigration penalties may include

   - extended detention (*even for persons accepting the deportation*, if they do not already have identifying documentation sufficient for travel to the home country),
   - loss of current lawful status (by becoming "deportable")
   - loss of ability to get lawful status in the future (by becoming "inadmissible," or coming within some other bar to status or relief)
   - extra penalties for an aggravated felony conviction (deportable and permanently barred from status, immigration detention until removal, extra penalty for illegal re-entry)
   - in some cases certain removal, in others being put into removal proceedings but with a possibility of obtaining a discretionary waiver or application
   - *federal prison sentence if after removal the person re-enters the U.S. illegally*. If the person *already* has re-entered illegally and remains in jail, he or she is likely to be detected by immigration authorities and transferred for federal prosecution.

7. ***If trade-offs must be made between immigration and criminal case concerns, ascertain the defendant's priorities.*** Is this a case where the defendant would sacrifice the criminal outcome to get a better immigration outcome? Is this a case where the defendant only is worried about amount of jail time? (But advise the client that immigration detention may follow criminal custody.) Once you and the client have identified the priorities and specific defense goals, defend the case accordingly.

8. If you obtain a good immigration outcome in criminal court, don't let it go to waste! Give the defendant or immigration counsel, if any, the "Legal Summaries for Defendant" that are provided in these materials. Check court documents to make sure that they accurately reflect the changes you made to create a safe record. If a court document proves something beneficial to the client, give him or her a copy of it.

Most immigrants are unrepresented in removal proceedings, and many immigration judges are not expert in this area. Make sure that they realize that your client has a defense. If the defendant has an immigration hold, give the defendant, and either the defendant's attorney or a friend/relative, a statement of how the disposition avoids an immigration consequence. ***Pre-written summaries of various defenses, which you can photocopy and give to defendants, can be found at the end of the relevant Note.***

If your client does *not* have an immigration hold and does not appear to be going into immigration custody, it may be better to mail such a statement to the defendant's address. Advise him to take it to an immigration lawyer at the first opportunity.

Review the *charging document including any written amendments, written plea agreement, the minute order (e.g., showing charge was amended) and the abstract of judgment.* Make sure that these records correctly reflect the disposition you worked out, and do not contain any inconsistent information. In particular, ensure that the plea to a Charge refers to the charge as amended, if applicable, and not to the original charge. If a document will be helpful in immigration proceedings, *give a copy to the client* and to the client's immigration counsel, or friend or relative.

Document in your file the advice given to the defendant. In particular, note that the defendant relied on a particular understanding of the law in taking the plea. This may provide evidence later on, if immigration laws change (which they often do), that your client justifiability relied on the law in agreeing to take the plea.

9. Give the defendant specific warning about future risks. A noncitizen who is removed and returns illegally to the United States faces a significant federal prison sentence if apprehended (see Part D, *supra*). A noncitizen with a conviction who is not removed should not leave the U.S. without expert advice, because she might be inadmissible and may lose her status. A noncitizen who might be deportable should avoid any contact with the immigration authorities, including renewing a green card, applying for a citizenship, and pursuing a pending application, until an expert immigration practitioner advises him.

10. A conviction remains in existence for immigration purposes while on direct appeal, but is eliminated if the appeal is sustained. Unfortunately, the Ninth Circuit held that a conviction remains a final "conviction" for immigration purposes while pending on direct appeal, unless or until that conviction is actually reversed.[33] Because of the possibility that this decision would be withdrawn in the future, and because of the possibility that the appeal

[33] *Planes v. Holder*, 652 F.3d 991(9th Cir. 2011).

would be sustained, it still is important for immigration purposes to file a direct appeal of the conviction in appropriate cases.

APPENDIX J

Prop. 47 Petition and Order, San Francisco County

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO	
Attorneys for Petitioner	*(COURT USE ONLY)*
PEOPLE OF THE STATE OF CALIFORNIA Last Name, First Name **PETITIONER**	**SUPERIOR COURT CASE NUMBER** Court#
PETITION FOR RESENTENCING – RESPONSE AND ORDER **PETITION FOR RECLASSIFICATION – RESPONSE AND ORDER PENAL CODE §1170.18**	**DATE** **TIME** **DEPARTMENT #**

Petitioner in the above-entitled case hereby files a petition for ☐ resentencing ☐ reclassification of the felony count(s) of _____ pursuant to Penal Code §1170.18. Petitioner does not request a hearing unless the court intends to deny the relief sought.

Petitioner:

☐Has completed his/her sentence and petitions to have the felony count(s) designated as a misdemeanor(s).

☐Has a pending case and/or is still serving a sentence on the felony count(s) and petitions for resentencing.

Executed on: Click here to enter a date.

_____
SIGNATURE OF ATTORNEY

District Attorney Response:

☐ Petitioner has completed his/her sentence and is entitled to have the felony count/s designated as misdemeanors.

☐ Petitioner has a pending case and/or is still serving a sentence and is entitled to resentencing.

☐ Petitioner is not entitled to the relief requested. Reason: _____

☐ A Hearing should be held to determine whether petitioner poses an unreasonable risk of danger to public safety.

Executed on: _____

_____
SIGNATURE OF ASSISTANT DISTRICT ATTORNEY

ORDER

☐ The court denies the petition.

☐The court grants the petition. The court finds that the petitioner is eligible for the following relief:☐ The court reduces count/s_____ a felony offense of _____ to a misdemeanor.

☐ Formal probation is converted to court probation, same terms and conditions.

☐ Formal probation is converted to court probation, modified as follows:_____

☐ Formal probation continues as ordered, same terms and conditions.

☐ Formal probation is modified as follows: _____

☐ Petitioner faces a maximum potential sentence of 364 days as prescribed by Penal Code **§** 18.5. ☐ Petitioner has completed a sentence of 364 days or less. ☐ Petitioner is sentenced to a misdemeanor with a six-month maximum.

☐ Probation is hereby terminated ☐successful ☐unsuccessful.

☐ The restitution fine is reduced to $150.

☐ Other: _____

☐ Having been convicted of a misdemeanor, and having completed the sentence for this conviction, Petitioner is therefore not subject to supervision by the California Department of Corrections and Rehabilitation.

☐ The matter is ordered set for hearing on _____ at _____ in Dept. _____

This Order shall be set aside upon request of Petitioner.

Any felony conviction that is recalled and resentenced under **§**1170.18 subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

Executed on: _____ **JUDGE OF THE SUPERIOR COURT** _____

CLERK'S CERTIFICATE

The foregoing document, consisting of _____ page(s), is a full, true and correct copy of the ☐ original ☐copy on file in this office.

Date:_____ Clerk of the Superior Court

By _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO	
Attorneys for Petitioner	*(COURT USE ONLY)*
PEOPLE OF THE STATE OF CALIFORNIA Last Name, First Name **PETITIONER**	**SUPERIOR COURT CASE NUMBER** Court#
PETITION FOR RESENTENCING – RESPONSE AND ORDER **PETITION FOR RECLASSIFICATION – RESPONSE AND ORDER PENAL CODE §1170.18**	**DATE** **TIME** **DEPARTMENT #**

Petitioner in the above-entitled case hereby files a petition for ☐ resentencing ☐ reclassification of the felony count(s) of _____ pursuant to Penal Code §1170.18. Petitioner does not request a hearing unless the court intends to deny the relief sought.

Petitioner:

☐Has completed his/her sentence and petitions to have the felony count(s) designated as a misdemeanor(s).

☐Has a pending case and/or is still serving a sentence on the felony count(s) and petitions for resentencing.

Executed on: Click here to enter a date.

_____
SIGNATURE OF ATTORNEY

District Attorney Response:

☐ Petitioner has completed his/her sentence and is entitled to have the felony count/s designated as misdemeanors.

☐ Petitioner has a pending case and/or is still serving a sentence and is entitled to resentencing.

☐ Petitioner is not entitled to the relief requested. Reason: _____

☐ A Hearing should be held to determine whether petitioner poses an unreasonable risk of danger to public safety.

Executed on: _____

_____
SIGNATURE OF ASSISTANT DISTRICT ATTORNEY

ORDER

☐ The court denies the petition.

☐The court grants the petition. The court finds that the petitioner is eligible for the following relief:☐ The court reduces count/s_____ a felony offense of _____ to a misdemeanor.

☐ Formal probation is converted to court probation, same terms and conditions.

☐ Formal probation is converted to court probation, modified as follows:_____

☐ Formal probation continues as ordered, same terms and conditions.

☐ Formal probation is modified as follows: _____

☐ Petitioner faces a maximum potential sentence of 364 days as prescribed by Penal Code **§** 18.5. ☐ Petitioner has completed a sentence of 364 days or less. ☐ Petitioner is sentenced to a misdemeanor with a six-month maximum.

☐ Probation is hereby terminated ☐successful ☐unsuccessful.

☐ The restitution fine is reduced to $150.

☐ Other: _____

☐ Having been convicted of a misdemeanor, and having completed the sentence for this conviction, Petitioner is therefore not subject to supervision by the California Department of Corrections and Rehabilitation.

☐ The matter is ordered set for hearing on _____ at _____ in Dept. _____

This Order shall be set aside upon request of Petitioner.

Any felony conviction that is recalled and resentenced under **§**1170.18 subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

Executed on: _____ **JUDGE OF THE SUPERIOR COURT** _____

CLERK'S CERTIFICATE

The foregoing document, consisting of _____ page(s), is a full, true and correct copy of the ☐ original ☐copy on file in this office.

Date:_____ Clerk of the Superior Court

By _____

APPENDIX K

§ 17(b) Order for Dismissal with § 18.5 Language

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, State Bar number, and address)*	***FOR COURT USE ONLY***
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL **Penal Code § 17(b)**	CASE NUMBER:

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner (*the defendant in the above-entitled criminal action*) is eligible for the following requested relief:

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors that, **pursuant to Penal Code section 18.5, carry a maximum potential sentence of 364 days:**

- ☐ ALL FELONY CONVICTIONS in the above-entitled actions; or
- ☐ Only the following convictions in the above-entitled action (*specify charges and date of conviction*):

2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) for:

- ☐ ALL FELONY CONVICTIONS in the above-entitled actions; or
- ☐ Only the following convictions in the above-entitled action (*specify charges and date of conviction*):

APPENDIX L

Quick Reference Chart, Crimes Involving Moral Turpitude (CIMT)

Immigrant Legal Resource Center
QUICK REFERENCE CHART & NOTES FOR DETERMINING KEY IMMIGRATION CONSEQUENCES OF SELECTED CALIFORNIA OFFENSES
January 2013

Table of Contents

How to Use the

Quick Reference Chart for Determining Selected Immigration Consequences of Selected California Offenses, *and the*

California Notes

Katherine Brady
Immigrant Legal Resource Center

The Chart and Notes. The *California Chart* analyzes some key adverse immigration consequences (deportability, inadmissibility, and aggravated felon status) that flow from conviction of over 150 California offenses. The Advice column on the right suggests how to avoid these consequences by working with the record or seeking an alternate plea.

The *California Notes* are a series of articles for criminal defenders that are organized by topic, e.g. how to plead to drug charges or theft charges, or what to do in response to an immigration hold. See Table of Contents at the end of this document. The Notes provide more detailed plea instructions, as well as basic information on applicable crim/imm law.

Most Notes are followed by Appendices, which are defender aids specifically geared to the topic of the Note. Check them out! They may include:

- ***Topic-specific charts and checklists***. Some Notes provide a chart or checklist about the Note's topic, which is more detailed than the main California Chart. It may summarize information and plea instructions from the Note in a quick-access format. For example *§N.9 Domestic Violence, Child Abuse* has as an Appendix a detailed chart on dealing with charges that may flow from a domestic violence incident.
- ***Legal Summaries for the Defendant***. Because the great majority of noncitizens are unrepresented in removal proceedings, and because many immigration judges are not intimately familiar with crim/imm issues, we face the risk that your good work will go to waste because no one in immigration court will recognize the defense you have created. For this reason, many Notes include an Appendix that sets out legal summaries of the defenses described in the Note. We ask you to identify the relevant summary (easy to do) and literally print the page, cut out the summary, and hand it to your client. Tell the person to give it to his or her immigration attorney if any, or else directly to the immigration judge. Further, because immigration detention center authorities often confiscate detainees' documents, if your client will be detained we ask you to mail or give a second copy to a friend or relative of the client. See each Appendix for further information and instructions.

Navigating the Chart and Notes. Two tools will help you to get around this large document. First, on the California Chart you will see directions to certain Notes printed in red, e.g. "See Note: Drugs." These are hyperlinks; click on them to go to the Note.

Second, if you download the chart in PDF form you will see that there are booknote and table of contents functions that will take you around the document.

To send comments or suggestions about the Chart or Notes, write chart@ilrc.org.

Need for Individual Analysis. The Chart and Notes can be consulted on-line or printed out and carried to courtrooms and client meetings for quick reference. However, competent defense advice requires an *individual* analysis of a defendant's immigration situation. For example, the defense goals for representing a permanent resident are different from those for an undocumented person; even within these categories, the goals will change based on the individual's priors and/or possible relief. See *§N.1 Overview.*

To capture the needed information, an attorney or paralegal should complete the form at *§N.16 Immigration Questionnaire* for each noncitizen defendant. (For a "write-on" PDF version of the form, go to www.ilrc.org/crimes.) See also *§N.17 Relief Toolkit*.

Disclaimer, Additional Resources. Using this guide and other works cited in *§N.18 Resources* will help defenders to give noncitizen defendants a greater chance to preserve or obtain lawful status in the United States – for many defendants, a goal that is even more important than avoiding criminal penalties. However, these are quick-reference resources with real limits. While federal courts have specifically affirmed the analysis presented for some offenses, in other cases these materials represent only the authors' opinion as to how courts are likely to rule. In addition, this area of the law is volatile. Each month new decisions come out that may change immigration consequences. And in 2013, with immigration reform on the table, it is possible that Congress will put in additional crim/imm provisions and apply the change retroactively to past pleas.

Defender offices should check accuracy of pleas and obtain up-to-date information. Tell the defendant that while you will provide the best advice possible now, you cannot guarantee what may happen in the future. The best option is to use the Chart and Notes in consultation with an immigration expert, or if that is not possible with in-depth resource works such as Brady et al., *Defending Immigrants in the Ninth Circuit* (www.ilrc.org) or Tooby, *Criminal Defense of Immigrants* (and other works, see www.nortontooby.com). See especially www.defendingimmigrants.org for defender resources, and see information on other books, websites, trainings, and consultation at *§N.18 Resources*.

Be sure that your defender office has a representative on the ***free Cal-DIP listserve***, by which we circulate updates and announcements. Contact suyon@ilrc.org for information.

Important Note to Immigration Attorneys. While these materials may provide a useful shortcut to current information, it is crucial to note that they are written for criminal defense counsel, not immigration counsel. They represent a conservative view of the law, meant to guide criminal defense counsel away from potentially dangerous options and toward safer ones. Thus immigration counsel should not rely on the chart in deciding

whether to pursue defense against removal. An offense may be listed as an aggravated felony or other adverse category here even if there are very strong arguments (or in some cases even precedent) to the contrary that ought to prevail in immigration proceedings.

Immigration attorneys should see *Defending Immigrants in the Ninth Circuit* (www.ilrc.org, 2013). This provides a detailed analysis of defense strategies and arguments for immigration proceedings. See also other ILRC publications there, and see resources at www.nortontooby.com and at *§N.17 Resources.*

Acknowledgements. Katherine Brady of the Immigrant Legal Resource Center (San Francisco) is the principal author of the California Chart and Notes. Many thanks to Su Yon Yi and Angie Junck of the ILRC, 2013 Update Editors, and to Ann Benson, Holly Cooper, Raha Jorjani, Kara Hartzler, Dan Kesselbrenner, Chris Gauger, Graciela Martinez, Michael Mehr, Jonathan Moore, Norton Tooby, and other defenders and advisors of the California Defending Immigrants Partnership for their many significant contributions to this research, and the staff at the Immigrant Legal Resource Center for their support. We are grateful to our colleagues in the national Defending Immigrants Partnership, and to the Gideon Project of the Open Society Foundation, the Ford Foundation, and the former JEHT Foundation for funding this national project.

California Chart and Notes: Table of Contents

Immigrant Legal Resource Center

QUICK REFERENCE CHART
For Determining Key Immigration Consequences
Of Selected California Offenses[1]

January 2013

CALIF. CODE SECTION	OFFENSE	AGGRAVATED FELONY	CRIMES INVOLVING MORAL TURPITUDE ("CIMT")	OTHER DEPORTABLE, INADMISSIBLE GROUNDS	ADVICE AND COMMENTS
Business & Prof C §4324	Forgery of prescription, possession of any drugs	Might be AF as: -Analogue to 21 USC 843(a)(3) -Forgery, *if* 1 yr. Avoid 1 yr imposed on any single count. See Note: Sentence. See Advice	Might be divisible: forgery is CIMT but poss of the drug might not be.	Deportable for CS conviction if the ROC ID's a specific CS. Inadmissible and barred from relief for CS conviction regardless of whether ROC ID's specific CS.	AF: To avoid CS AF, and deportability & inadmissibility under CS ground, plead to straight forgery, false personation, PC 32, or other non-CS alternative. To avoid AF, plead to straight poss plus straight forgery. Deportable, Inadmissible CS: See other strategies in Note: Drugs.
Business & Prof C §25658(a)	Selling, giving liquor to a minor	Not AF.	Shd not be CIMT.	No.	If obtainable, great alternate to providing drugs to a minor. Keep ROC clear of mention of drugs
Business & Prof C §25662	Possession, purchase, or consumption of liquor by a minor	Not AF.	Not CIMT	No, except see Advice re inadmissible for alcoholism	Multiple convictions might be evidence of alcoholism, which is an inadmissibility grnd and a bar to "good moral character."
Health & Safety C § 11173(a)	Prescription for CS by fraud	See B&P C §4324	CIMT, except maybe (b) false statement, if not material	See B&P C §4324	See B&P C §4324

H&S C §11350(a), (b)	Possession of controlled substance	Poss (with no drug prior) is not AF unless it's flunitrazepam. Poss of over 5 grams of crack, no longer is AF, regardless of date of conviction. If D has prior drug conviction, avoid AF by not letting prior be pled or proved for recidivism.[2] Instead take the time on another offense or plead to 11365 or 11550, which can take a recidivist sentence without being an agg felony. See Advice column for additional defense strategies	Not CIMT.	Not *deportable* if a specific CS is not ID'd on ROC. See Note: Drugs. But still *inadmissible and barred from relief* even with no specified CS. See Advice re: effect of DEJ, 1203.4, etc. on a FIRST simple poss. for conviction prior to 7/15/2011.	If this is first CS offense, and client could get lawful status, do everything possible to plead to a non-CS offense. This is highest priority. See Note: Drugs for further discussion of all strategies. If you must plead to this, then: 1. If a specific CS is not identified in the ROC (poss of a "controlled substance" rather than cocaine) there is no deportable CS conviction,[3] i.e. an LPR who is not otherwise deportable won't become deportable. (H&S 11377 might be a better option for this strategy). But conviction is inadmissible CS and bar to relief as CS even with no specified CS. If D will have to apply for lawful status or relief, use a different strategy. 2. Older plea and *Lujan* benefit: If plea to a first conviction for simple poss, or poss of paraphernalia, occurred before 7/15/2011, conviction can be eliminated for immigration purposes by withdrawal of plea under DEJ, Prop 36, or PC 1203.4, as long as there was no (a) probation violation or (b) prior grant of pre-plea diversion. (Those two bars may not apply to a person who was under 21 during these events.) For convictions entered on or after 7/15/2011, withdrawing plea per DEJ, Prop 36 and 1203.4 will not work for imm purposes[4] (except see DEJ with suspended fine, below). This *Lujan* benefit does *not* work in imm proceedings outside the Ninth Circuit. 3. DEJ with suspended fine. Ninth Circuit held that where fine was unconditionally suspended, withdrawal of plea under DEJ is not a conviction for imm purposes.[5] 4. Consider other dispo that is not a conviction, e.g. formal or informal deferred plea. See Note: Drugs

H&S C §11351	Possession for sale	Yes AF as CS trafficking; 11352 is much better option. See Advice for other options.	Yes CIMT, like any CS trafficking offense, regardless of whether specific CS is identified on ROC.	Not *deportable* for CS conviction or CS AF if no specific CS is ID'd on ROC. This wd benefit an LPR who is not already deportable. Yes *inadmissible and bar to relief* even if ROC does not ID a specific CS. See Advice for 11350.	To avoid AF try to plead down to simple poss (see H&S 11350), or H&S 11365, 11550; or plead up to transportation for personal use or offer to sell (see H&S 11352). Or plead to PC 32 with less than 1 yr or any other non-drug offense. If the ROC does not specify the CS, it is not a *deportable* AF or CS conviction, but is a bar to relief To avoid CS conviction, see 11350 Advice. See Note: Drugs for further advice.
H&S C §11351.5	Possession for sale of cocaine base	Yes AF	Yes CIMT	Deportable, inadmissible for CS conviction	See Advice on H&S 11351 and Note: Drugs. 11351.5 is worse than 11351 in that a specific CS is ID'd. Far better to plead up to 11352.
H&S C §11352(a)	-Transport CS for personal use, -Sell, -Distribute, -Offer to do any of above	Divisible as AF: -Not AF: transport for personal use or, in 9th Cir only, offer to commit any 11352 offense -Yes AF: Sell, distribute, but see Advice	Sale is CIMT. Transport for personal use, distribute, probably are not.	Yes, deportable and inadmissible CS, except see Advice on unspecified CS.	See Note: Drugs. Not *deportable* AF or CS offense if specific CS is not ID'd on the ROC, i.e. an LPR who is not already deportable will not be. This dispo still will be AF and CS conviction as a *bar to relief and inadmissible offense,* however. See 11350 Advice.
H&S C §11357(a)	Marijuana, possession	Not AF (unless a prior possession pled or proved.)	Not CIMT	*Deportable* for CS conviction, unless a 1st poss. 30 gms or less mj or hash. See next box. *Inadmissible* for CS in all cases, but 212(h) waiver might be available for 1st poss 30 gm or less mj or hash. If no drug priors bargain hard for non-drug offense, e.g. PC 32. See Advice.	If D is an LPR who is not already *deportable*, a *single* conviction for 11357(b), or for (a) where the record indicates 30 gms or less, will not create deportability. But if possible plead to non-drug offense, in case D violates again. Any plea to 11357 is *inadmissible* offense (unless 11357(b) is held not a conviction; see below). If first drug conviction and ROC shows 30 gms or less, some D's can try for highly discretionary 212(h) waiver – but this is risky. Where no drug priors, try to avoid this plea! Plead to non-CS offense or get a dispo that is not a conviction. See 11350, supra, and Note: Drugs.

H&S C §11357(b)	Marijuana, possession of 28.5 gms or less (Infraction)	Not AF.	Not CIMT	An 11357(b) conviction with no drug priors automatically gets the 30 gms mj benefits discussed in 11357(a). Further, infraction may not be a conviction at all; see Advice.	See 11350 Advice for pre-7.11.15 pleas, and dispos that are not a conviction. Also, there is a strong argument that a Cal. infraction is not a "conviction" for imm purposes. See Note: Drugs. *If* this is not a conviction, 11357 will have no immigration effect. Still, due to various risks, where no drug priors try to avoid any CS plea and get a non-drug conviction.
H&S C §11358	Marijuana, Cultivate	Yes, controlled substance AF. This is a bad plea; see Advice for other options.	CIMT if ROC shows, or IJ finds evidence of, intent to sell. If intent is for personal use, not CIMT.	Yes, deportable and inadmissible for CS conviction. With or without a conviction, warn D she may be inadmissible for "reason to believe" trafficking if there is strong evidence of intent to sell.	To avoid AF: Plead down to simple possession (see 11350, 11377); up to transportation or offer to sell (see 11352(a), 11360(a) or (b), 11379(a)); or best option, a non-drug offense, including PC 32 w/ less than 1 yr imposed. If this would be 30 gms or less mj, try hard to get 11357; otherwise, state small amount in ROC. See Note: Drugs.
H&S C §11359	Possession for sale marijuana	Yes, controlled substance AF. This is a bad plea; see Advice for other options.	Yes CIMT.	See 11359	Avoid this plea. Plead down or up per 11351, 11358 instructions. See Note: Drugs.
H&S C §11360	Marijuana – (a) sell, transport, give away, offer to; (b) same for 28.5 gms or less	Divisible as AF: -Not AF: transport for personal use or, in 9th Cir only, offer to commit an 11360 offense - Not AF if ROC shows give a small amount of mj away for free.[6] See Advice -Yes AF: Sell, or distribute more than a "small amount"	Yes CIMT as CS trafficking offense, except transport for personal use and giving away.	Yes, deportable & inadmissible CS. A pre -7/15/2011 plea to giving away small amount of mj may qualify for *Lujan* benefit if plea withdrawn. See 11350, supra, and Note: Drugs. Sale, offer to sell will make D inadmissible for "reason to believe" trafficking	See Note: Drugs Best options: try to plead to -Non-drug offense -11357 if no drug priors -Transportation for personal use (not an AF) -Give away under (b) (not an AF) -Give away specified small amount (if possible, 30 grams) under (a) (very likely not AF) - Offer to do any 11360 (not AF in 9th Cir)
H&S C §11364	Possession of drug parapher-nalia	Not AF. (Sale of drug paraphernalia may be AF, however.)	Not CIMT	Yes deportable, inadmissible as CS conviction, even if specific CS is not ID'd in the ROC. But see Advice re use with marijuana.	If no drug priors, and ROC shows paraph. was for use with 30 gms or less of mj, conviction is not deportable, is inadmissible, and212(h) waiver might be available.[7] See H&S 11357. Any poss paraph plea before 7/15/2011 eligible for *Lujan* benefit; see 11350. See Note: Drugs.

H&S C §11365	Presence where CS is used	Not AF	Not CIMT	Assume deportable, inadmissible for CS conviction even if specific CS is not ID'd on ROC. See Advice.	See Advice on H&S 11364 and 11350, and Note: Drugs. Plea from before 7/15/11, with no drug priors, may be eligible for *Lujan* benefit; see 11350, supra. Plea to presence where 30 gms or less of mj used might get those benefits; see 11357
H&S C §11366.5	Maintain place where drugs are sold	Yes AF	Yes CIMT	Assume deportable and inadmissible for CS conviction even if ROC does not ID specific CS	Avoid this plea. See H&S 11379, public nuisance offenses. See Note: Drugs
H&S C §11368	Forged prescription to obtain narcotic drug	Yes AF potential, see H&S 11173.	Yes CIMT except might not be if specific plea to no fraud. intent.	See H&S 11173	See Advice for H&S 11173.
H&S C §11377	Possession of controlled substance	Divisible; see H&S 11350	Not CIMT	Divisible; see 11350	See 11350 and see Note: Drugs
H&S C §11378	Possession for sale CS	Yes AF, but see Advice re un-specified CS, and see H&S 11351	Yes CIMT	Yes CS, but see Advice re unspecified CS and see H&S 11351	This is a bad plea; better to plead up to 11379. Unspecified CS gives some help to LPRs who are not already deportable. See 11351 Advice and see Note: Drugs.
H&S C §11379(a)	Sale, give, transport, offer to, CS	Divisible: see H&S 11352 and Advice.	Divisible, see H&S 11352	Divisible; see H&S 11352.	See 11350, 11352 Advice and see Note: Drugs
H&S C §11550	Under the influence controlled substance (CS)	Not AF, *except*: Felony 11550(e) 'with firearm' might be charged as COV, so avoid 1 yr on any on count, or plead to misdemeanor.	Not CIMT	Deportable, inadmissible as CS; See Advice for unspecified CS H&S 11550(e) also deportable for firearms offense.	See Note: Drugs. 11550(a)-(c) is not AF even with a drug prior. No *Lujan* benefit even if pled prior to 7/15/2011.[8] Shd not be *deportable* CS if specific CS is not ID'd in ROC,[9] but gov't might oppose this. Unspecified CS will not prevent offense from being bar to relief.
P.C. §31	Aid and abet	Yes AF if underlying offense is.	Yes CIMT if underlying offense is	Yes if underlying offense is	No immigration benefit beyond principal offense. However see accessory after the fact, PC 32.
P.C. §32	Accessory after the fact	Yes AF *if* 1 yr imposed on any one count (as obstruction of justice).[10]	Yes CIMT if principal offense is, no CIMT if not.[11]	Good plea: PC 32 does not take on character of principal offense, e.g. CS, violence	Excellent plea to avoid e.g. CS, violence, firearms conviction if avoid 1 yr imposed on any single count. See Note: Drugs and Note: Sentence

P.C. §69	Resisting an executive officer	Yes AF as COV *if* 1 yr imposed on any one count, *unless* plea to offensive touching.[12]	Not CIMT if plead to offensive touching	No.	Plead specifically to de minimus violence ("offensive touching") in order to avoid COV and CIMT. See Note: Violence, Child Abuse. Avoid AF by avoiding 1 yr imposed; see Note: Sentence
P.C. §92	Bribery	Yes AF *if* 1-yr on any one count.	Yes CIMT.	No.	Avoid AF by avoiding 1 yr imposed; see Note: Sentence.
P.C. §118	Perjury	Yes AF *if* 1-yr on any one count.	Yes CIMT	No.	Avoid AF by avoiding 1 yr imposed; see Note: Sentence.
P.C. §136.1 (b)(1)	Nonviolently try to persuade a witness not to file police report, complaint	Shd not be AF as obstruction of justice,[13] but try hard to get less than 1 yr on any single count. Not COV, but plead to no threat, force.	Shd not be CIMT; lacks knowing, malicious conduct[14] or specific intent If possible plead to good intent toward V or Witness	Deportable DV crime *if* it is COV and ROC shows DV-type victim. Possible deportable crime of child abuse if minor V.	May be a good substitute plea with no imm consequences. Felony is a strike w/ high exposure; can substitute for more serious charges. While AF shd not be obstruction of justice, since there is no precedent decision try hard to avoid 1 yr on any single count. See also PC 32, 236, 243(e), not a strike.
P.C. §140	Threat against witness	Yes assume AF *if* 1-yr sentence imposed, as COV	Yes CIMT	Deportable crime of child abuse if ROC shows minor V. Deportable DV crime if it is COV and ROC shows DV-type victim.	To avoid AF avoid 1-yr sentence for any one count; see Note: Sentence. To avoid AF and DV deportability ground see PC 136.1(b)(1), 236, 241(a).
P.C. §148	Resisting arrest	Divisible as COV: 148(a)(1) is not, but felony 148 (b)-(d) might be. To avoid AF avoid 1-yr on any single count. Consider PC 69	148(a)(1) is not CIMT, 148(b)-(c) are at least divisible ("reasonably should have known" police)	Sections involving removal of firearm from officer may incur deportability under firearms ground. See Note: Firearms	AF: Plead to 148(a)(1). If plea to (b)-(d), avoid possible AF as a crime of violence by obtaining sentence less than 1 yr; see Note: "Sentence or plead to misdo (b) or (d) with the record sanitized of force.[15]
P.C. §148.9	False ID to peace officer	Not AF	Not CIMT, but see Advice.	No.	CIMT. 9th Cir. held 148.9 not CIMT because no intent to get benefit.[16] Even if BIA disagreed, a first conviction of 6 mo CIMT has no effect. See Note: CMT.
P.C. §166(a)(1) – (4) (Note: 166 (b)-(c) is a bad plea)	Violation of court order	Shd not be AF, but get sentence of less than one yr and/or keep any mention of threat or violence out of ROC.	Unclear CIMT: (1)-(3) has no intent but court may find CIMT. (4) may depend on violative conduct.	Deportable if court finds vio is of section of DV protective order that prohibits use or threat of force, or repeat harass. See Advice.	Good alternative to 273.6 to avoid DV deport ground. *Do not let record show even minor vio of DV stay away order.* Keep record vague, or plead to vio related to custody, support, etc. See further discussion in Note: Violence, Child Abuse.

P.C. §182	Conspiracy	Yes AF if principal offense is AF.	CIMT if principal offense is CIMT	Conspiracy takes on character of principal offense, e.g. CS, firearm. Exception *might* be DV ground. See Advice	Imm counsel can argue that the DV deport ground does not include conspiracy to commit a misd COV, or child abuse, because neither 18 USC 16(a) nor the deportation ground (8 USC 1227(a)(2)(E)(i)) include attempt or conspiracy.
P.C. §186.22(a)	Gang member	Not AF	Assume will be charged as CIMT, but see Advice.	Not a basis for deportability or inadmissibility but Congress might add it in future.	Gang conviction is a basis to deny discretionary relief, release on bond. Shd not be CIMT but no guarantees.
P.C. §186.22(b)	Gang benefit enhance-ment	Assume will be charged as AF if underlying conduct is AF (e.g., a COV with 1 yr imposed)	See above.	Deportable DV if underlying conduct is COV and DV-type victim. Deportable child abuse if minor V.	See Advice above. Try to avoid this by instead pleading to underlying conduct, 136.1, etc.
P.C. §187	Murder (first or second degree)	Yes AF	Yes CIMT	Potential deportable crime of DV or crime of child abuse	See manslaughter.
P.C. §192(a)	Man-slaughter, Voluntary	Yes AF as COV, only if 1-yr or more imposed on single count.	Yes CIMT	Deportable crime of DV if committed against a victim protected under state DV laws. Deportable crime of child abuse if ROC shows V under age 18	To avoid AF, avoid 1-yr sentence imposed; see Note: Sentence. To avoid CIMT see PC 192(b).
P.C. §192(b), (c)(1), (2)	Man-slaughter, Involuntary or vehicular	Not COV altho as always, if possible avoid of 1 yr on any single count.	Not CIMT.[17]	Deportable crime of child abuse if ROC shows V under age 18	Not a COV because can be committed by recklessness[18] and/or non-violent conduct.
P.C. §203	Mayhem	Yes AF as COV if 1-yr or more sentence imposed. To avoid an AF as a COV, avoid 1-yr sentence on any single count. See Note: Sentence.	Yes CIMT	Deportable crime of DV is a COV committed against a V protected under state DV laws. (Assume law may change to let evidence from outside the ROC show this relationship.) See Advice for further information. Deportable crime of child abuse if ROC shows a victim under 18.	To try to avoid COV and deportable crime of DV, see PC 69, 136.1(b), 236, 243(a), (d), (e), misd 243.4. Some of these offenses might be able to take a sentence of a year or more. See Note: Violence, Child Abuse for more on violent crimes. To avoid deportable crime of DV where there is or may be a COV: don't let ROC show the domestic relationship. Best is to plead to specific non-DV-type victim (e.g., new boyfriend, neighbor, police officer); less secure is to keep the ROC clear of a victim who would be protected under state DV laws.

					If victim is under 18, this may block a citizen or LPR's ability to immigrate family members in the future. See Note: Adam Walsh Act.
P.C. §207	Kidnapping	Yes AF as COV if 1-yr or more imposed on any one count.	Ninth Circuit says divisible CIMT; it's possible BIA will disagree. See Advice	See PC 203 re deportable crime of domestic violence or child abuse	CIMT: Plea to moving the person with good intentions is not CIMT, says Ninth Circuit.[19] Plead to this specifically if other plea is not available, but warn client the law might change at some point.
P.C. §211	Robbery by means of force or fear	Yes AF as COV or Theft if 1-yr or more imposed on any one count	Yes CIMT	See PC 203 re deportable crime of DV or child abuse	See Advice for PC 203.
P.C. §220	Assault, with intent to commit rape, mayhem, etc.	Yes AF as COV if 1-yr or more on any one count See Advice re intent to rape	Yes CIMT	See PC 203 re deportable crime of domestic violence or child abuse	See Advice for PC 203 Note that assault to commit rape may be treated as attempted rape, which is an AF regardless of sentence.
P.C. §236, 237(a)	False imprison-ment (felony)	Divisible: To avoid a COV, plead specifically to fraud or deceit, not threat or force. Even then, as always try to avoid 1 yr on any one count.	Yes CIMT, except possibly if committed by deceit.	See PC 203. In addition, a plea to fraud or deceit shd prevent a COV and therefore a crime of DV.	See Advice for PC 203 ROC showing deceit/fraud shd not be a COV. A vague ROC will prevent a COV for deportability purposes only: it will protect an LPR who is not already deportable from becoming deportable under the DV and AF grounds, but will not preserve eligibility for relief. Re CIMT: See misdo PC 236, or e.g. 243.
P.C. §236, 237(a)	False imprison-ment (misdo)	Not an AF, but avoid 1 yr sentence and sanitize ROC of info re intent to use force or threat	Shd not be CIMT,[20] but sanitize ROC of info re intent to harm, defraud, etc.	Not a COV (but sanitize the record), therefore not a domestic violence offense. *Might* charge as deportable child abuse if ROC showed minor V.	This is a good substitute plea to avoid crime of violence in DV cases If victim is under 18, conviction may block a citizen or LPR's ability to immigrate family members, even if no violence. See Note: Adam Walsh Act.
P.C. §241(a)	Assault	Not an AF as COV because no 1-year sentence	CIMT divisible: To avoid CIMT, plead to attempted offensive touching. See Advice re 243.	To avoid COV and crime of DV, plead to offense involving offensive touching. See Advice re 243. Deportable crime of child abuse if ROC proves that V is a minor.	This is a good alternate plea, but because there is clear case law on it in immigration context, a better plea may be to battery or attempted battery, with an ROC that shows de minimus touching. See 243 and Note: Violence, Child Abuse. If V is under 18, see PC 203 re Adam Walsh Act.

P.C. §243(a)	Battery, Simple	Not an AF because no 1-year sentence	Shd not be CIMT, but ensure this w/ specific plea to offensive touching - or immigration judge may hold hrg on facts	To avoid COV and crime of DV, plead offensive touching. See Advice re vague ROC. Deportable crime of child abuse if ROC proves that V is a minor.	Good plea for immigration. A vague ROC will prevent a COV for deportability purposes only: it will protect an LPR who is not already deportable from becoming deportable under the DV grounds, but will not protect applicant for non-LPR cancellation. See Note: Violence, Child Abuse. If V is under 18, see PC 203 re Adam Walsh Act.
P.C. §243(b), (c)	Battery on a peace officer, fireman etc.	Can avoid AF. To surely avoid AF as COV, avoid 1 yr or more on any one count, and/or plead to misdo (b) with offensive touching. See Advice.	243(b) not CIMT if specific plea to offensive touching. See Advice for 243(c)	No.	Possible that 243(c) (injury) wd be (wrongly) charged as COV, CIMT despite offensive touching plea. See 243(d) and its endnotes. Plea to misdo might help.
P.C. §243(d)	Battery with serious bodily injury	Shd not be COV if specific plea to offensive touching – at least if offense is misdo. More secure: avoid 1 yr or more on any single count. Note: Sentence. Generally, see Note: Violence, Child Abuse	Shd not be CIMT if plea to offensive touching.[21] But if ROC is vague, imm judge may hold hearing on underlying facts to determine CIMT.	If V has dom relationship, to avoid COV and crime of DV plead to offensive touching and try to designate misdo. See PC 203. Deportable crime of child abuse if ROC proves that V is a minor.	This may be a good substitute plea for a more dangerous offense. A vague ROC (not ID'ing offensive touching) may prevent offense from being a COV as an AF or crime of DV for deportability purposes, and so protect an LPR who is not already deportable. It will not prevent the conviction from serving as a bar to relief, however. See also PC 236, 243(a), (e). If V is under 18, see PC 203 re Adam Walsh Act.
P.C. §243(e)(1)	Battery against spouse	To avoid AF as COV: -Plead to offensive touching, and/or -Avoid 1 yr on any single count. See Note: Sentence. Generally, see Note: Violence, Child Abuse	To avoid CIMT, plead to offensive touching. With vague ROC, imm judge will look into underlying facts.	To avoid COV and crime of DV plead to offensive touching. See Advice re vague ROC. Deportable crime of child abuse if ROC proves that V is a minor.	Excellent immigration plea, if specifically to offensive touching! A vague ROC may prevent offense from being a COV as an AF or crime of DV for deportability purposes, and so protect an LPR who is not already deportable. It will not prevent the conviction from serving as an AF or crime of DV as a bar to relief, however. If V is under 18, see PC 203 re Adam Walsh Act.

P.C. §243.4	Sexual battery	Felony is AF as COV if 1-yr imposed on any one count. Misdo is divisible as COV; avoid 1 yr and/or plead to restraint not by use of force or threat.[22] See Advice. If ROC shows penetration, might be held AF as rape regardless of sentence	Yes CIMT	See PC 203 re deportable crime of domestic violence or child abuse	See Note: Sex Offenses. This is good substitute plea to avoid AFs sexual abuse of a minor or rape, or deportable child abuse, but see better alternatives listed at 261.5. Misdo is not COV with plea to restraint "not by use of force or threat." A vague ROC may prevent it from being a COV as an AF or crime of DV for *deportability* purposes, to prevent an LPR who is not otherwise deportable from becoming deportable. It will not prevent the conviction from serving as an AF or crime of DV as a *bar to relief*. See Note: Record of Conviction. See also PC 243(d), (e), 136.1(b)(1), 236. 261.5. If V is under 18, see PC 203 re Adam Walsh Act
P.C. §245(a)(1)-(4) (Jan 1, 2012)	Assault with a deadly weapon (firearms or other) or with force likely to produce great bodily harm	Yes AF as COV if 1-yr or more on any one count.	Yes CIMT, unless perhaps if ROC states D intoxicated or otherwise mentally incapacitated, with no intent to harm.[23]	See PC 203 re deportable crime of domestic violence or of child abuse Section 245(a)(2) and (3) are deportable firearms offenses.	To avoid firearms grnd, keep ROC of conviction clear of evidence that offense was 245(a)(2); see also PC 17500, 236, 243(d) and 136.1(b)(1) and Note: Firearms and see Note: Violence, Child Abuse. If V is under 18, see PC 203 re Adam Walsh Act.
P.C. § 246	Willfully discharge firearm at inhabited building, etc w/ reckless disregard	Never shd be COV, but to be safe plead to reckless disregard[24] and better, avoid 1 yr or more on any single count. Try to get misdo. See Advice.	Yes CIMT.[25]	Deportable firearm offense. See PC 203 re deportable crime of domestic violence or of child abuse, although not clear that 246 has "victims".	COV: Keep ROC clear of any mention of threat or intent to harm. To surely avoid an AF, get 364 or less on any single count. See Note: Sentence. Reduction to misdo may help further, b/c more limited definition of COV applies.
P.C. §246.3(a), (b)	Willfully discharge firearm or BB device with gross negligence	Not AF as COV,[26] but see Advice re PC § 246	Shd not be CIMT because of gross negligence, but may be so charged	Divisible as firearm offense. See Advice. See PC 203 re deportable crime of domestic violence or of child abuse.	To avoid firearm offense, plead to (b) (BB device). Or vague ROC with plea to "firearm or BB device" or to 246.3 in entirety will prevent offense serving as *deportation* ground, but will not prevent it from serving as bar to non-LPR cancellation. See Note: Firearms.
P.C. §§ 261, 262	Rape	Yes AF, regardless of sentence.	Yes CIMT	See PC 203 re deportable DV or child abuse crime.	See PC 243(d), 243.4, 236, 136.1(b)(1). See Note: Violence and Note: Sex Crimes.
P.C.	Sex with a minor under	Not AF as sexual abuse of a minor	Assume it is a CIMT, unless	It will be charged as deportable	See Note (and Chart): Sex Crimes.

§261.5(c)	age 18 and three years younger than Defendant	(SAM) in the 9th Circuit, whether §261.5(c) or (d), if ROC shows minor was at least age 15 [27] (or *possibly* age 14, but avoid this if at all possible). More secure is a plea to an age-neutral offense such as 236, 243, 314, 647, or for 14 or 15-yr-old specific non-explicit conduct in 288(c), or 647.6. See Advice. Not COV if D is at least 14, but still try to avoid 1 yr, in case D is transferred to a Circuit where that is a COV.[28]	ROC shows that D reasonably believed the minor was at least age 16 (or perhaps 18).[29]	crime of child abuse. If minor was an older teen, imm counsel have arguments against this, but no guarantee of winning.	To avoid SAM under 9th Cir law,[30] a plea to minor age 16-17 is better than age 15. If plea is to age 15, try not to let ROC show D is 4 years older (9th Cir has held this is *not* SAM, but still good to avoid), or else see 288a(b)(1). Note that if U.S. Supreme Court decides as expected in *Descamps v. U.S.* (expected before June 2013), *no* conviction under 261.5(c) or (d) shd held be SAM in Ninth Circuit states, because a prior conviction will be judged by its least adjudicated elements. If this wd greatly help the D, consider delaying plea hrg for some time, to get closer to Court's decision. If D will be removed and is likely to return illegally, and minor is age 15, do the following to prevent creating a prior that would be a severe sentence enhancement: get any 261.5 misdo, or 261.5(c) where the ROC does not specify age of minor. If that is not possible, see felony 288a(b)(1) or (2).[31]
P.C. §261.5(d)	Sex where minor under age 16, D at least age 21	See §261.5(c)	See §261.5(c)	See §261.5(c).	See 261.5(c). See Note (and Chart): Sex Crimes.
P.C. §266	Pimping and pandering	To prevent AF, see Advice	Yes CIMT	Deportable child abuse if prostitute under age 18.	AF: To prevent AF, plead to activity with persons age 18 or over, and to offering lewd conduct, not intercourse, for a fee.[32]
P.C. §270	Failure to provide for child	Not AF.	Not CIMT, at least if ROC states child not destitute or harmed.	Appears not crime of child abuse, at least if child not destitute, harmed. See Advice	This conduct does not appear to come within child abuse/neglect ground as defined by BIA. Try to include in ROC that child was not at risk of being harmed/deprived.
P.C. §272	Contributing to the delinquency of a minor	Not AF as SAM, but keep ROC free of lewd act	Divisible: may be CIMT if lewdness, try to plead to specific, innocuous facts	Might be charged under DV ground for child abuse, especially if lewd act.	Deportable child abuse. Currently imm authorities are broadly charging child abuse. However, 272 requires only a possible, mild harm. See Advice 273a(b). Try to specify extremely low risk of harm, or seek age-neutral plea.

P.C. §273a(a), (b)	Child injury, endanger-ment	To avoid COV, plead specifically to negligently placing child where may be endangered, as opposed to inflicting pain. To surely avoid AF, avoid 1 yr or more on any single count. See Note: Sentence.	Divisible CIMT: Assume (a) is CIMT. For (b), plead specifically to negligently risking child's health, as opposed to inflicting pain[33]	§ 273a(a) is deportable crime of child abuse. Conservatively assume (b) is as well, altho plea that specifies exposure to mild risk may well not be.[34] See Advice.	See Note: Violence, Child Abuse To avoid CIMT and/or deportable child abuse, plead to age-neutral offense, e.g. 243(a) where ROC does not specify minor age. If this arose from traffic situation (lack of seatbelts, child unattended etc.), seek traffic offense and take counseling and other requirements as probation condition. COV: This plea will likely make an LPR deportable for child abuse. To keep the LPR eligible for relief, avoid AF by *specific* plea to not violent conduct, and/or avoid 1 yr or more on any single count.
P.C. §273d	Child, Corporal Punishment	Yes AF as COV if 1-yr sentence imposed. See Note: Sentence.	Yes CIMT	Deportable under child abuse. See Advice	To avoid child abuse, get age-neutral plea with no minor age in the ROC: 243, 245, 136.1(b)(1), etc. (with less than 1 yr as needed)
P.C. §273.5	Spousal Injury	Yes, AF as a COV *if* 1-yr or more sentence imposed.	Yes CIMT, unless plead to minor injury + attenuated relationship like past cohabitant.[35]	Deportable crime of DV. If ROC shows V is a minor, deportable crime of child abuse.	See Note: Violence, Child Abuse. To avoid COV, DV and CIMT see PC 243(d), (e), 236, 136.1(b)(1); can accept batterer's program probation conditions on these.
P.C. §273.6	Violation of protective order	Not AF, but get 364 days and/or keep violence out of ROC.	CIMT unclear; might depend upon the nature of the violative conduct	Deportable as a violation of a DV protection order, at least if pursuant to Cal Fam C 6320, 6389.[36] See Advice	See Note: Violence, Child Abuse. DV: Automatic deportable DV, unless pursuant to statute other than FC 6320, 6389. Instead, plead to new offense that is not DV (e.g., 243(e), 653m) or see 166.
P.C. §281	Bigamy	Not AF	Yes CIMT	No	Case law added element of guilty knowledge so it is a CIMT
P.C. §§ 286(b), 288a(b), 289(h), (i)	Sexual conduct with a minor	See 261.5(c), (d)	See 261.5	See 261.5	See 261.5. If D will be removed, felony 288a(b) with 15-yr-old is better than the same on 261.5.
P.C. §288(a)	Lewd act with minor under 14	Yes AF as sexual abuse of a minor regardless of sentence imposed	Yes CIMT unless IJ finds D reasonably believed V was age 16 or perhaps 18; see 261.5(c)	Deportable for crime of child abuse. To avoid, plead to age-neutral offense where ROC does not show minor V.	See Note: Sex Offenses. Very bad plea. See age-neutral offenses such as 32, 136.1(b), 236, 243, 243.4, 245, 314, 647, or else see 288(c), 647.6, or even 261.5, 288a -- with no reference to specific age under 15.

P.C. §288(c)	Lewd act with minor age 14-15 and 10 yrs younger than D	Divisible as AF as sexual abuse of a minor (SAM).[37] Plead to innocuous behavior. While 15 is better than 14, 14 shd be safe. See Advice.	Yes CIMT if IJ finds D knew or had reason to know V was under age 16; see 261.5(c)	Will be charged as deportable crime of child abuse, but create best record possible. This arguably does not fit the definition because can involve no harm or risk of harm and no explicit behavior.	SAM: Good alternative to more explicit sexual charge. 288 includes "innocuous" touching, "innocently and warmly received"; child need not be aware of lewd intent.[38] But warn D this could become AF as SAM in future, or if D is taken outside 9th Cir. Try instead for age-neutral offense, PC 32, 236, 243, 243.4, 136.1(b), 314, 647, etc. where ROC sanitized of V's age. See Note: Sex Offenses
P.C. §290	Failure to register as a sex offender	Not AF	May be charged as CIMT, but this appears incorrect and might change. See Advice	Can be charged with a new federal offense, 18 USC 2250, for state conviction for failing to register; 2250 conviction is basis for removal.	Avoid if possible. Deportable if convicted in federal court of 18 USC §2250 for failure to register as a sex offender under state law.[39] Re CIMT: there is a conflict between the Ninth Circuit, other Circuits (not CIMT) and BIA (CIMT) published opinions[40]. Ninth Circuit might refuse to defer.
P.C. §311.11(a)	Child Pornography	Yes, AF[41]	Yes CIMT.[42]	No.	Avoid this plea if at all possible. Plea to generic porn is not an AF.[43]
P.C. §313.1	Distributing obscene materials to minors	Not AF, unless conceivably if ROC shows young child.	Perhaps divisible as CIMT, see Advice.	Might be charged as deportable crime of child abuse, if ROC shows given to young child?	To avoid CIMT, plead to failure to exercise reasonable care to ascertain the minor's true age. If minor is older, put age in the ROC. Mild conduct such as giving a magazine to an older teen shd not be CMT, but no guarantees.
P.C. §314(1)	Indecent exposure	Not AF even if minor's age in ROC,[44] but as always keep age out if possible.	Yes CIMT, with possible exception of plea to erotic act for willing audience.[45]	Keep any reference to minor V out of ROC to avoid charge of deportable crime of child abuse	Good alternative to sexual abuse of a minor AF charges such as 288(a). To avoid CIMT, see disturb peace, trespass, loiter
P.C. §315	Keeping or living in a place of prostitution or lewdness	Divisible as the AF of owning or controlling a prostitution business.[46] Specific plea to *residing* in place of prostitution (or lewdness), or keeping a place of *lewdness*, shd not be AF. See Advice.	Assume CIMT, except specific plea to just living and paying rent in a place of prostitution or lewdness ought not to be.[47]	Deportable as child abuse if minor involved. Importing noncitizens for prostitution or immoral purpose is deportable conviction. See Advice for prostitution inadmissibility	Prostitution is defined as offering sexual intercourse for a fee, not lewd act for a fee. Thus a specific plea to lewd act will prevent the prostitution AF and inadmissibility ground.[48] Lewd act is sufficient for CIMT, deportable child abuse, or deportable for importing noncitizen prostitutes, however. Inadmissible for prostitution if engaged in or received proceeds from prostitution; no conviction required.
P.C. §368(b), (c)	Elder abuse: Injure, Endanger	To avoid COV, See Advice. To surely avoid AF, avoid 1 yr on	CIMT divisible; specific plea to negligent acts shd not	No	To avoid AF as COV: Plead specifically to negligent, reckless, or non-violent endangerment or infliction of injury. (Or, get less than 1 year on any single count)

		any single count.	be CIMT.		
P.C. § 368(d)	Elder abuse: Theft, Fraud, Forgery	Yes AF danger: see Advice. Generally see Note: Burglary, Theft, Fraud	Yes CIMT	No	To avoid AF: Plead to fraud where loss to victim does not exceed $10,000; can take a sentence of over a year. Plead to theft, forgery where loss to victim exceeds $10,000; need to avoid 1 yr on any one count. See Note.
P.C. §403	Disturbance of public assembly	Not AF.	Not CIMT; see Advice	No.	This does not have CIMT elements, but keep ROC free of very bad conduct or violence.
P.C. §415	Disturbing the peace	Not AF.	Probably not CIMT	No.	
P.C. §416	Failure to disperse	Not AF	Not CIMT	No.	
P.C. §417(a)(1)(2)	Brandishing deadly weapon (firearm and other)	Not COV, but to be safe get 364 or less and plead to "rude." See Advice, and see Note: Firearms	Not CIMT.[49]	Deportable firearms offense if 417(a)(2). See Advice if V is a minor or has domestic relationship	To make sure not COV, and thus not DV offense if DV-type victim, plead to rude not threatening conduct To make sure not deportable crime of child abuse, keep record free of minor victim.
P.C. §422	Criminal threats (formerly terrorist threats)	Yes AF as COV if 1-yr sentence imposed.[50] See Note: Sentence. See Advice.	Yes CIMT[51]	Deportable crime of child abuse if ROC shows minor victim. Deportable DV crime if DV-type victim. If conviction is for multiple threats, deportable for stalking.	To try to avoid COV and therefore avoid a deportable crime of DV, see PC 69, 136.1(b), 236, 243(a), (d), (e), misd 243.4. Some of these offenses might take a sentence of a year or more. See Note: Violence, Child Abuse for more on violent crimes. If victim is under 18, this may block a citizen or LPR's ability to immigrate family members in the future. See Note: Adam Walsh Act.
P.C. §§ 451, 452	Arson, Burning: Malicious or Reckless	Assume both 451 and 452 are AF's regardless of sentence.[52] See Advice.	Yes, assume CIMT	No.	To maybe avoid AF, plead to PC 453 with less than 1 yr on any one count. If that is not possible, imm counsel at least will investigate grounds to argue that PC 452 w/ 364 days is not AF.
P.C. §453	Possess flammable material with intent to burn	Specific plea to "flammable material," with less than 1 yr or recklessness, may avoid AF; see Advice.	Yes CIMT	No	AF: Good alternative to 451, 452, if possession or disposal of flammable materials is not analogous to relevant federal offenses.[53] To avoid AF as COV, avoid 1 yr on any one count and/or plead to reckless. See Note: Sentence.

P.C. §460(a)	Burglary, Residential	Yes, as COV if 1 yr imposed for any single count. See Advice and Note: Burglary for further instructions.	Yes CIMT – unless plead specifically to permissive entry & intent to commit a non-CIMT.	No (unless conceivably charged as a DV offense if it is the home of person protected under state DV laws)	To avoid AF: (1) Avoid 1 yr or more on any one count (see Note: Sentence) and (2) Do not let ROC show admission of entry with intent to commit an offense that is an AF regardless of sentence (e.g., drug trafficking) and a substantial step toward commission, which could be an AF as "attempted" drug trafficking.[54] See Note.
P.C. §460(b)	Burglary, non-residential	Avoid AF by avoiding sentence of 1 yr or more on any one count and/or by carefully crafting plea. See Advice and see Note: Burglary.	Yes CIMT – unless plead to intent to commit a specific offense that is not a CIMT.	No.	To avoid AF: if you have 1 yr imposed on a single burglary count, avoid pleading to any of the following: unlicensed entry into building or structure; entry by violent force; or intent to commit larceny (or other agg felony), where ROC shows substantial step.[55] See also Advice for 460(a) regarding intent to commit an offense that is an AF regardless of sentence.
P.C. §466	Poss burglar tools, intent to enter	Not AF (lacks the elements, and 6 mo max misd).	May not be CMT. B&E alone is not. See Advice	No.	Shd avoid CIMT with specific plea to "Poss of a ____ with intent to break and enter ___ , but without intent to commit further crime."
P.C. §470	Forgery	Yes AF as forgery or counterfeiting.[56] To avoid AF, avoid 1 yr or more on any one count. See Note: Sentence. Or, see § 529(3). See Advice if this also is fraud with loss to victim/s of over $10,000	Yes CIMT. See 529(3) to try to avoid CIMT.	No.	AF: A fraud/deceit offense is an AF if loss to victim/s exceeds $10k.[57] Plead to one count with loss under $10k, in which case can pay more than $10k restitution; if possible add Harvey waiver. See Note: Burglary, Theft, Fraud. If must plead to both fraud *and* forgery, counterfeit, or theft, then make sure no fraud plea exceeds $10k loss, and no forgery etc. plea takes 1 yr or more on a single count.
P.C. §476(a)	Bad check with intent to defraud	Yes AF if loss to the victim/s was $10,000 or more. Yes AF if forgery, counterfeit with 1 yr imposed.	Yes CIMT. See 529(3) to try to avoid CIMT.	No	See Note: Burglary, Theft, Fraud To avoid an AF, see Advice for §470
P.C. §§ 484 et seq., 487	Theft (petty or grand)	To avoid AF as theft: avoid 1 yr on any one count of property theft (taking without consent), *or* theft of labor, even if 1 yr or more, *or* embezzlement or fraud (taking with	Yes CIMT, all of § 484. See Advice	No	To avoid CIMT, and if 1-yr sentence is not imposed on any single count, see PC 496(a) or VC 10851, with intent to temporarily deprive. If plea is to §484 and this is a first CIMT conviction: Can qualify for petty offense exception to inadmissibility grnd, with 1 yr maximum possible sentence

		deceit) with less than $10,000 loss to victim/s.[58] See Note: Burglary, Theft, Fraud			(wobbler misdo qualifies) and 6 mo or less imposed. To avoid being deportable for one CIMT committed within 5 yrs of admission, get a 6 month possible max: either petty theft or attempted misd grand theft; this also avoid a bar to non-LPR cancellation. See Note: CIMT.
P.C. §490.1	Petty theft (infraction)	Not AF.	Yes CIMT, but infraction might not be a conviction. See Note: Definition of Conviction.	No.	CIMT: Even if a conviction, if this is first CIMT then D will not be inadmissible or deportable for CIMT because of 6 month max. See Note: CIMT. Or t o avoid a CIMT, see PC 496, VC 10851
P.C. §§ 496, 496d	Receiving stolen property, or receiving stolen vehicle	Yes AF if 1-yr on any single count. If must take 1 yr consider a fraud offense. See Note: Burglary, Theft	To avoid CIMT: plead specifically to intent to temporarily deprive. See Advice.	No.	CIMT: Ninth Cir held 496(a) includes intent to deprive owner temporarily, which is not a CIMT.[59] See Note: CIMT To avoid 1 yr sentence on any single count and thus avoid AF, see Note: Sentence.
P.C. §§ 499, 499b	Joyriding; Joyriding with Priors	Yes AF as theft if 1 yr-sentence imposed on any single count. See Note: Sentence.	Not CIMT (because temporary intent)	No.	Note that the AF "theft" includes intent to temporarily deprive, while CIMT does not. If 1 yr will be imposed, see suggestions to avoid AF at Note: Burglary, Theft.
P.C. §528.5	Impersonate by electronic means, to harm, intimidate, defraud	AF as fraud if loss exceeds $10k. See Note: Burglary, Theft Fraud. Possible COV if ROC shows violent threat; if so, avoid 1 yr on any one count.	Divisible as CIMT. "Harm" may not be CIMT and need not be by unlawful act (see 530.5). See Advice	If a COV could be a DV offense if V is protected under state laws. If ROC shows minor V, perhaps charged child abuse.	Substitute for ID theft or other, in sympathetic case? CIMT: Plead to specific mild harm, e.g. can be committed by, e.g., impersonating a blogger, or sending an email purporting to be from another, to their embarrassment.[60] Does not require the person to have obtained a password or other private information.
P.C. §529(3)	False personation	AF depends. -If conduct involved forgery, counterfeit, avoid 1 yr for any single count. -If it involved deceit with loss to victim/s exceeding $10,000, see Advice. -Otherwise, not an agg felony.	Divisible as CIMT. See Advice.	No.	CIMT. A plea to impersonation specifically without intent to gain a benefit or cause liability shd prevent a CIMT.[61] If that is not possible, in the future it *might* be that no conviction under 529(3) will cause *deportability* for CIMT, altho it cd cause inadmissibility or bar to relief.[62] See Note: CIMT. If $10k loss, see Advice for § 470 and see Note: Burglary, Fraud. Forgery or counterfeit with 1 yr imposed on a single count is an agg felony. Plead to specific conduct that is not forgery

P.C. §532a(1)	False financial statements	Yes AF if fraud of more than $10k; Yes AF if forgery with 1 yr on any one count	Yes CIMT because fraudulent intent. See 529(3)	No.	If $10k loss, see Advice for § 470 and see Note: Burglary, Fraud. Forgery, counterfeit with 1 yr is an AF. Plead to specific conduct that is not forgery or get less than 1 yr
P.C. §550(a)	Insurance fraud	See §532a(1)	See §532a(1)	No.	See §532a(1)
P.C. §591	Tampering w/ phone lines, malicious	Not AF: Not COV. (But safer always to get 364 or less on any one count and keep ROC clear of any violent threat)	Shd not be CIMT. Plead to specific mild offense. See Advice	Not deportable DV offense, but keep ROC clear of any violence, threats. Keep ROC clear of V under age 18.	Good DV alternative because not COV, not stalking CIMT. "Obstruct" includes e.g. leaving phone off the hook to prevent incoming calls.[63] Malicious includes intent to annoy. Specific plea to mild behavior with intent to annoy shd avoid CIMT.
P.C. §591.5	Tamper w/ cell phone to prevent contact w/ law enforcement	Not AF: Not COV and has 6 month max. sentence	Assume CIMT, although unclear. See Advice.	Not deportable DV offense b/c not COV, but to be safe keep ROC clear of violence or threats. Keep ROC clear of minor age of V.	Good DV alternative because not COV, not stalking CIMT: If this is first CIMT it will have no immigration effect because 6 month max. If this is not a first CIMT, consider careful plea to 591; has a higher potential sentence but may not be CIMT
P.C. §594	Vandalism	Possible AF as COV if violence employed and 1 yr imposed on any single count. See Note: Sentence	Divisible as CIMT? Ninth Circuit held not CIMT, at least where damage not costly.[64] See Advice.	No. Even if a COV, deportable DV ground requires violence toward person not property.	Re DV. Good DV alternative because not COV to person. Re CIMT. Plead specifically to causing less than $400 damage, even if greater amount in restitution, or paid before plea, or separate civil agreement. Plead to intent to annoy.
P.C. §602	Trespass (6 mo)	Not AF (for one thing, 6 mo max sentence)	Shd not be CIMT See Advice.	See PC 594. (l)(4) is deportable firearm offense.	See PC 602.5, below. Some malicious destruction of prop offenses might be CIMT; see cases in Advice to PC 594.
P.C. §602.5	Trespass (residence) (1 yr)	Not AF, but avoid conceivable burglary charge by avoiding 1 yr.	Not CIMT, but see Advice	No.	CIMT. Avoid admitting intent to commit other crime upon entry; if possible plead to, e.g., intent to shelter, sleep; or incapacitated.
P.C. §646.9	Stalking	Avoid AF as COV by avoiding 1 yr on any one count. If can't avoid 1 yr, see Advice.	Assume CIMT, and look to 236, 240, 243, 136.1(b)(1)	Always deportable under DV ground as "stalking." See pleas suggested in CIMT column.	To avoid a COV, plead to harassment from long-distance or jail, or to recklessness. See case cited in endnote. But outside 9th Cir, § 646.9 is always COV.[65]

P.C. §647(a)	Disorderly: lewd or dissolute conduct in public	Not AF even if ROC shows minor involved[66] (but still, don't let ROC show this)	Yes held CIMT, altho imm counsel will argue against this. See Advice.	To avoid possible deportable child abuse charge, don't let ROC show minor involved.	AF: Good alternative to sexual conduct near/with minor CIMT Older BIA decisions finding CIMT were based on anti-gay bias and shd be discredited,[67] so at risk for CIMT. See 647(c), (e), (h).
P.C. §647(b)	Disorderly: Prostitution	Not AF.	Yes CIMT, whether prostitute or customer, lewd act or intercourse.[68]	Prostitution inadmissibility grnd requires offer of intercourse for a fee; plead to offer of specific lewd act for a fee. Does not include johns. See Advice.	Inadmissibility for engaging in prost can be proved by conduct and does not require a conviction, but the specific plea described provides some protection. John included in CIMT offense, but not prostitution inadmissibility ground. See 647(c), (e) and (h). See Note: Sex Offenses
P.C. §647(c), (e), (h)	Disorderly: Begging, loitering	Not AF.	Not CIMT.	No.	Good alternate plea. Do not include extraneous admissions re, e.g., minors, prostitution, further intended crime, firearms, etc.
P.C. §647(f)	Disorderly: Under the influence of drug, alcohol	Not AF.	Not CIMT.	Possible CS offense; see Advice	Plead specifically to alcohol to avoid possible drug charge.
P.C. §647(i)	Disorderly: "Peeping Tom"	Not AF but keep ROC clear of minor target	CIMT danger, see Advice	Might be charged as child abuse if V is minor; keep age out of ROC	CIMT: Offense requires no intent to commit a crime; it is completed by peeking.[69] However, imm judge might make broad inquiry to see if any lewd intent for CIMT purposes. Specific plea to "peeking without lewd intent"?
P.C. §647.6(a)	Annoy, molest child	Divisible as SAM (sexual abuse of a minor). Plead to specific less onerous conduct; see examples at this endnote.[70] See Advice, and See Note: Sex Offenses	Divisible as CIMT. See Advice and prior endnote.	Assume charged as deportable crime of child abuse, altho some conduct shd not be. ID in the ROC non-sexual, non-harmful conduct, or keep ROC vague. See Advice	CIMT. If ROC states D's reasonable belief that minor was age 18 or perhaps 16, not CIMT. *Perhaps* same result if ROC specifically ID's non-egregious behavior and intent regardless of belief re age. AF and deportable Child Abuse: The sure way to avoid SAM and child abuse is a plea to age-neutral offense like 243, 236, 314, 647 etc. with ROC clear of minor victim. A good Supreme Court decision in *Descamps* (due by June 2013)[71] wd mean that no conviction under 647.6(a) would be SAM in 9th Cir. If you cannot create a good specific plea, consider delaying plea hearing; consult with imm atty.
P.C. §653f(a), (c)	Solicitation to commit variety of offenses	Divisible: 653f(a) and (c) are AF as COV's if one-year sentence is imposed;	Soliciting violence is a CIMT.	653f(a) and (c) are COV's, and therefore DV if DV-type victim.	653f(a) and (c) are COV.[72]

P.C. §653f(d)	Solicitation to commit drug offense	Solicitation to possess a drug is not AF as drug trafficking. (In the Ninth Circuit only, even solicitation to sell is not an AF.)	Not CIMT if D is buyer for personal use, yes CIMT if D is otherwise participating in distribution or sale.	Ninth Cir. stated in dicta this is not a deportable CS offense because it is generic solicitation. Statute.[73] See Advice.	Deportable/Inadmissible. This may be a better plea than possession, in that there is dicta and a strong argument that this is not a deportable/inadmissible CS offense in the Ninth Cir.
P.C. §653k (repealed)	Possession of illegal knife	Not AF	Not CIMT	Not deportable offense	Good plea
P.C. §653m(a), (b)	Electronic contact with (a) obscenity or threats of injury with intent to annoy; or (b) repeated annoying or harassing calls.	Not AF. (While (a) using threats of injury might be charged as COV, it has 6 month max sentence.)	To avoid CIMT plead to (a) an obscene call with intent to annoy, or (b) two calls with intent to annoy	Deportable child abuse: To avoid possible charge, do not let ROC show victim was a minor. See Advice for how to avoid other DV deportation grounds. For more info in general, see Note: Violence, Child Abuse.	Good plea in a DV or other context. Deportable DV crime: If DV-type victim, plead under (a) to obscene call with intent to annoy, or (b) two phone calls intent to annoy. State on the record that calls did not involve any threat of injury. Or if possible plead to other victim, e.g. repeat calls to the new boyfriend, (no threats, intent to annoy). Deportable violation of DV protective order. Do not admit to violating a stay-away order in this or any other manner; or see § 166. Try to plead to new 653m offense rather than vio of an order. Deportable stalking: Stalking requires a threat, altho does not require a DV relationship. Plead to conduct described above. See also PC 591
P.C. §666	Petty theft with a prior	AF as theft unless (a) avoid 1 yr on any one count and/or (b) ROC shows theft of labor	Yes CIMT. With the prior, this makes a dangerous two CIMTs. See Note: CIMT.	No.	See Note: Burglary, Theft, Fraud. CIMT: Receipt stolen property 496(a) is divisible for CIMT (but is an AF w/ 1 yr imposed); plead to temporary intent. This cd prevent second CIMT.
P.C. §1320(a)	Failure to appear for misde-meanor	Not AF as obstruction because that requires 1 yr sentence	Unclear; Might be charged as CIMT.[74]	No	AF:

P.C. §§ 1320(b), 1320.5	Failure to appear for a felony	Dangerous plea; seek a different offense. Can be AF regardless of sentence imposed; see Advice Always is AF if a 1-yr is imposed, as obstruction of justice.[75]	See 1320(a)	No.	1320(b), 1320.5 are AF as obstruction of justice, if a sentence of 1 yr or more is imposed. See endnote for 1320(a), supra. Even without a 1 yr sentence, they may be the AF "Failure to Appear." FTA to answer a felony charge with a potential 2-year sentence, or to serve a sentence if the offense is punishable by 5 years or more, is an AF regardless of the sentence imposed for the FTA itself.[76]
Former P.C. §12020 *(pre-Jan. 1, 2012)*	Possession, manufac-ture, sale of prohibited weapons; carrying concealed dagger	Trafficking in firearms or explosives is AF regardless of sentence;; see Advice	Weapon possession is not CIMT.[77] Sale shd not be CIMT but not secure.	Offenses relating to firearms cause deportability under that grnd unless ROC specifies antique firearm (see PC 25400). Plead to other weapons, e.g. brass knuckles dagger	With careful ROC, this was good alternate plea to avoid deportable or agg felony conviction relating to firearms and destructive devices (explosives).
P.C. §12021(a), (b) *(Repealed 1/1/12)*	Possession of firearm by drug addict or felon	Divisible as Firearms AF: Felon in poss is, but poss by misdemeanant is not, and felon who *owns* ammo or firearm shd not be AF.	Probably not CIMT.	Deportable under the firearms ground, except for offenses relating to ammo, e.g. felon owning ammo	See discussion at PC §§ 29800, 30305. Can be a firearms AF as analogue to federal "felon in possession" offense. There is authority that owning firearm is different from possessing one such that owning is no AF. Felon who owns ammo is even better.
P.C. §12022 (a) (1), (b)(1)	Use firearm or other weapon during attempt or commission of a felony	Yes AF as COV (unless there is some unusual fact scenario that could escape being a COV). See Advice.	Likely to be held CIMT unless underlying felony is not.	Deportable under the firearms ground if (a), but not if (b) and record does not show firearm. Exception for antique firearms (see PC 25400).	Avoid AF: This enhancement creates a single COV count w/ 1 yr. Instead try to plead to poss or use of a firearm or weapon plus the other felony, in multiple counts, and spread time among counts. See Note: Sentence.
P.C.§§ 12025(a)1 12031(a)1 *(Repealed 1/1/12)*	Carrying firearm	Not AF.	Not CIMT.	Deportable under the firearms ground unless ROC specifies antique (see PC 25400).	To avoid deportable for firearms, see PC 12020 and Note: Firearms.

P.C. §17500	Possession of weapon with intent to assault	Not AF (6 month max sentence, plus arguably not COV) For further discussion of this offense, see Note: Firearms	To probably avoid CIMT, plead to intent to commit offensive touching, and to possession but not use or threaten with a dangerous weapon. If that is not possible, plead to statutory language and see Advice re *Descamps*	To avoid deportable crime of child abuse: keep minor age of victim out of ROC. See Advice re other deportation grounds.	Good alternative plea; may have no consequences: Deportable firearms: Plead to a non-firearms weapon or antique firearm, or if deportability is all that is at stake (as opposed to eligibility for non-LPR cancellation), an ROC vague as to weapon will suffice.[78] Deportable crime of DV: Arguably not a COV with a plea to offensive touching, but to avoid DV plead to specific non-DV-type victim or keep domestic relationship out of ROC; see PC 203. Effect of Descamps: In spring 2013 S.Ct. may hold that a prior conviction can be evaluated only by its least adjudicated elements. In that case §17500 would not be a deportable firearms offense or a COV regardless of the plea, altho absent the "offensive touching" it might be a CIMT.
P.C. §§ 21310, 22210, 21710, etc.	Possession of weapon (not firearm), e.g. dagger, blackjack.	Not COV[79] or AF But just to be safe, sanitize the ROC of any threat, violence.	Not CIMT.	No. (Not deportable firearms offense)	Good alternate plea to firearms charge, if D had an additional weapon or could plead to one.
P.C. §§ 25400(a), 26350	Possession of concealed or unloaded firearm	Not an AF, but as always try to avoid 1 yr on any one count.	Not CIMT.	Yes deportable firearm offense – unless the ROC specifies an antique firearm, in which case it is not a "firearm" for any immigration purpose. See Advice.	Antique firearm exception: Antique firearms are excluded from the federal definition of firearms used in imm law. 18 USC 921(a)(3). An antique is defined as a firearm manufactured before 1899, or certain replicas of such antiques.18 USC 921(a)(16). Immigrant must prove the firearm was an antique, so need specific plea to this.
P.C. §27500	Sell, supply, deliver, give possession of firearm to prohibited person	Sale is AF (fire-arms trafficking), but give should not be AF as trafficking.	Unclear on CIMT. See Advice	Yes, deportable firearm offense, unless ROC specifies antique (see PC 25400).	CIMT: Don't know. Might not be CIMT if mere "reason to know" person was in prohibited class, or if give rather than sell - or not.
P.C. §29800	Possession, ownership of firearm by felon, drug addict, etc.	AF as a federal analogue unless careful pleading. To avoid AF, plead to possession by misdemeanant. (See also 29805, 29815(a), 29825) Or plead to felon or drug addict who *owns rather*	Shd not be CIMT but no guarantee. Owning might be better than possessing	Yes deportable firearms offense unless ROC specifies antique (see PC 25400). To avoid firearms deportation ground, plead to offense involving ammunition such as PC 30305, or offense involving a	Avoid AF: Felon in possession of a firearm is an AF.[80] Very strong support, altho no guarantee, that a felon who *own*s firearm is distinct from felon who possesses, such that the offense is not an AF.[81] Plead specifically to ownership and sanitize the ROC of facts showing control, access or possession. Plea cd be, e.g., "On December 12, 2012 I knowingly owned a firearm after a prior conviction for a felony,

		than possesses a firearm. See Advice and see Note: Firearms.		weapon other than a firearm. See Advice.	to wit: __." A better plea is PC 30305, felon who owns *ammunition,* for person who also need to avoid a deportable firearms offense.
P.C. §30305	Possession, ownership of ammunition by persons described in 29800	See 29800, supra. See Advice	See 29800	No. Firearms deport ground does not include ammunition.[82] Note that being an addict can be deportable, inadmissible. See Note: Drugs	To avoid AF, see Advice for 29800. Why ammo? Felon owning ammo may avoid an AF like 29800, *and* avoid the firearms deport grnd. See Note: Firearms
P.C. §33215	Possess, give, lend, keep for sale short-barreled shotgun or rifle	Sale is an AF as trafficking. Avoid 1 yr on any one felony count. See Note: Sentence and see Advice.	Possession is not a CIMT. Sale might be, giving would not be.	Yes, deportable firearms offense unless ROC shows antique (see PC 25400).	Older decisions held felony possession of these weapons is a COV. While arguably these decisions were overturned by the Supreme Court,[83] try hard to avoid 1 yr on any one count. Try to avoid this conviction regardless of sentence imposed.
P.C. §§ 32625, 33410	Possession of silencer; possession or sale of machinegun	See 33215	See 33215	See 33215.	See 33215
Veh. C. Code §20	False statement to DMV	Not AF	Shd not be CIMT. See Advice	No.	To avoid CIMT plead to specific false fact (if possible, one that is not material), not to gain a benefit.
Veh. C. §31	False info to officer	Not AF	See VC § 20	No.	See VC § 20
Veh. C. §2800.1	Flight from peace officer	Not AF	Probably not CIMT	No.	
Veh. C. §2800.2	Flight from peace officer with wanton disregard for safety	Shd not be COV, but because of bad older caselaw, avoid 1 yr on any single count or see Advice.	Divisible as CIMT: 3 prior violations not necessarily CIMT, but other wanton disregard is CIMT.[84]	No.	Avoid AF: 1) Wanton by plea to 3 prior violations is not per se COV.[85] 2) Wanton/reckless disregard also is not COV because recklessness is not COV. There is older caselaw to the contrary but it shd be considered overruled.[86] Most secure is to avoid 1 yr on any single count, and/or plead or reduce to a misdemeanor.
Veh. C. §4462.5	Display improper reg w/ intent to avoid vehicle registration	No.	No.	No.	

Veh. C. §10801-10803	Operate Chop Shop; Traffic in vehicles with altered VINs,	To avoid AF, avoid 1 yr on any single count. Otherwise, divisible as a theft AF and a vehicle with altered number offense AF. See Advice.	Yes CIMT	No.	AF: 10801 is divisible for theft because it can involve fraud rather than theft.[87] If must take a 1-yr sentence on a single count, but loss to victim/s less than $10k, plead to fraud. 10801 appears divisible for VIN because activity is not limited to VIN. If must take a 1-yr sentence on a single count, plead to 10801 leaving open possibility that car obtained by fraud and that altering VIN was not the chop shop activity. 10802, 10803 may not be divisible for VIN; avoid 1 yr sentence.
Veh. C. §10851	Vehicle taking, temporary or permanent	To avoid AF, avoid 1 yr on any single count.[88] See Note: Sentence.	Divisible as CIMT. See Advice.	No.	CIMT: CIMT if permanent intent, not CIMT if temporary intent.[89] Plead specifically to temporary intent, or else imm judge may hold fact-finding hrg on actual intent.
Veh. C. §10852	Tampering with a vehicle	Not AF but see Advice.	Appears not CIMT.	No.	To avoid possible AF charge, don't let ROC show that tampering involved altering VIN.
Veh. C. §10853	Malicious mischief to a vehicle	Not AF (misdo with 6 months maximum)	May be divisible as CIMT. See Advice	No.	CIMT: To avoid possible CIMT, plead to intent to commit specific non-CIMT, e.g., intent to trespass, temporarily deprive owner, commit small non-costly vandalism
Veh. C. §12500	Driving without license	Not AF.	Not CIMT.	No.	
Veh. C. 14601.1 14601.2 14601.5	Driving on suspended license with knowledge	Not AF	Not CIMT - but see Advice if DUI involved and warn client it is conceivable that a CIMT would be charged.	No	CMT: Neither DUI nor driving on a suspended license separately is a CIMT, but a single offense that contains both of those elements has been held a CIMT.[90] No single Cal offense combines DUI and driving on a suspended license, and the gov't may not combine two offenses to try to make a CIMT.[91] However to avoid any confusion, where possible do not plead to both DUI and driving on suspended license at same time, or if one must, keep the factual basis for both offenses separate.[92]
Veh. C. §15620	Leaving child in vehicle	No.	No.	Caution: May be charged as deportable crime of child abuse. See Advice	Child abuse: Arguably an infraction is not a "conviction" for imm purposes. See Note: Definition of Conviction. If a conviction, it may be charged as deportable offense.

Veh. C. §§20001, 20003	Hit and run (felony)	Not AF	Divisible as CIMT. See Advice	No.	To avoid CIMT, plead specifically to providing ID info but not registration info[93] or similar offense. See Note: CIMTs.
Veh. C. §20002(a)	Hit and run (misd)	Not AF.	See § 20001	No.	See Veh. C. 20001
Veh. C. §23103	Reckless driving	Not AF. (Recklessness is not a COV)	Not CIMT, but see Advice.	No.	CIMT: Best plea is recklessness re the safety of property. ROC shd set out relatively mild conduct.[94]
Veh. C. §23103.5	Reckless driving & use of alcohol or drugs	Not AF.	See 23103.5	Plead to alcohol or a non-CS, to avoid possible CS charge.	See 23103.5. Note voluntary intoxication is not a defense against a CIMT finding.
Veh. C. §23104	Reckless driving injury	Not AF	See Advice re CIMT		CIMT: Assume (b) is, and (a) shd not be, CIMT. See §23103 endnote.
Veh. C. §23110(a), (b)	Throw object into traffic	(a) not AF (b) assume is AF as COV if 1-yr on any single count	(a) is not CIMT; see Advice (b) is CIMT	No.	CIMT: Best plea to (a) is throwing something at a car parked on a street or similar mild conduct.
Veh. C. §23152	Driving under the influence (felony)	Not AF - but in future a third DUI with 1 yr or more might become an AF. Avoid 1 yr	Not CIMT, including multiple offenses.[95]	No, except see Advice for multiple DUI's	Multiple DUI's may demonstrate alcoholism, an inadmissibility ground.[96] Also 5-years or more aggregate sentence imposed for two or more convictions of any kind is an inadmissibility ground.[97]
Veh. C. §23153	DUI causing bodily injury	See VC 23152	See VC 23152	See VC 23152	See VC 23152
W & I §10980(c)	Welfare fraud	Yes AF if loss to gov't exceeds $10,000. See Note: Burglary, Theft, Fraud and see Advice.	Yes CIMT.	No.	AF: If possible, plead to offense that does not involve deceit along with this offense, and put loss on the second offense. Or plead to one count (e.g., one month) with loss less than $10k, and make separate civil agreement to repay more. This offense is not theft and therefore OK to take 1 yr sentence, unless offense constituted perjury or counterfeit. To avoid CIMT, see possible PC 529(3).

ENDNOTES

[1] This annotated chart is written by Katherine Brady of the Immigrant Legal Resource Center (www.ilrc.org). Many, many thanks to Su Yon Yi of ILRC, 2013 co-editor, Angie Junck and other ILRC attorneys, and Ann Benson, Holly Cooper, Raha Jorjani, Kara Hartzler, Dan Kesselbrenner, Chris Gauger, Graciela Martinez, Michael Mehr, Jonathan Moore, and Norton Tooby for their invaluable leadership and support. For a more comprehensive discussion, immigration and criminal defenders

should see Brady, Tooby, Mehr and Junck, *Defending Immigrants in the Ninth Circuit* (www.ilrc.org, 2013). See also the *California Notes* that accompany this chart, which together make up a free on-line resource for criminal defenders who are shaping plea bargains; go to www.ilrc.org/crimes.

This chart does not constitute legal advice and is not a substitute for individual case consultation and research. Please address comments to chart@ilrc.org. The chart addresses only selected California offenses; the fact that the chart does not analyze an offense does not mean that the offense has no adverse immigration consequences. Immigration practitioners reading the chart should note that it represents a *conservative analysis* meant to warn criminal defenders away from pleas that *might* have adverse immigration consequences, or that might be wrongly charged with having these consequences. The fact that an offense is called out as, e.g., being an aggravated felony or crime involving moral turpitude on the chart, does not mean that this would be the result in a contested removal hearing.

[2] *Carachuri-Rosendo v. Holder,* 130 S.Ct 2577 (2010), *Matter of Carachuri-Rosendo,* 24 I&N Dec. 382 (BIA 2007).

[3] *Ruiz-Vidal v. Gonzales,* 473 F.3d 1072 (9th Cir. 2007) (H&S 11377); *Esquivel-Garcia v. Holder,* 593 F.3d 1025 (9th Cir. 2010) (H&S 11350).

[4] See *Nunez-Reyes v. Holder,* 646 F.3d 684 (9th Cir. 2011) (*en banc*).

[5] *Retuta v. Holder*, 594 F.3d 1181 (9th Cir. 2010).

[6] Generally, 30 grams or less of marijuana is a guidepost to evaluate whether the amount is "small." See *Matter of Castro Rodriguez,* 25 I&N Dec. 698 (BIA 2012). However, distribution in some contexts, such as in prison or perhaps near a school, 30 grams will not be considered a small amount. See *Id.* at 703 (citing Seventh Circuit case finding that 17.5 grams was not "small" when distributed in prison). The immigration court must look at the amount that was pled to in the record of conviction even if evidence outside the record shows that a different amount.

[7] *Matter of Martinez –Espinoza*, 25 I&N Dec. 118 (BIA 2009).

[8] *See Nunez-Reyes,* 646 F.3d 684 (9th Cir. 2011) (*en banc*).

[9] See *Medina v. Ashcroft*, 393 F.3d 1063 (9th Cir. 2005) (immigrant is not deportable because ICE failed to prove that Nevada conviction for under the influence did not involve marijuana). In 2013 the U.S. Supreme Court will consider burden of proof and evidence standards for the 30-gram exception in *Moncrieffe v. Holder.*

[10] *Matter of Valenzuela Gallardo,* 25 I&N Dec. 838 (BIA 2012).

[11] *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011).

[12] See *Flores-Lopez v. Holder*, 685 F.3d 857 (9th Cir. 2012).

[13] PC 32 was held to be obstruction of justice because it includes a specific intent to prevent apprehension or punishment, while misprision of felony is not obstruction because it has no such specific intent. See discussion in, e.g., *Matter of Valenzuela Gallardo,* 25 I&N Dec. 838 (BIA 2012). Section 136.1(b) is more like misprision, and has no requirement of knowing or malicious conduct (see *Usher, supra*), or intent for the perpetrator to avoid justice. The motivation can be that the victim or witness avoids the rigors of the process, gang reprisals, or other. (Of course, it is best if the defendant can plead to trying to persuade the V or W not to call the police on a person other than the D. Under a good Supreme Court decision in *Descamps v. U.S.,* however, it may be that 136.1(b) categorically is not obstruction of justice. See discussion at *§ N.3 Record of Conviction* and in endnote to § 647.6, *infra.)*

[14] While §136.1(a) and (c) require knowing and malicious action with specific intent, (b) does not. See, e.g., *People v. Upsher*, 115 Cal.App.4th 1311, 1320 (Cal. App. 4th Dist. 2007).

[15] See *People v. Matthew,* 70 Cal.App.4th 164, 173-74 (Ct App 4th Dist. 1999) (noting that removal of weapon from officer could include picking up the weapon after it has been dropped, which does not require violent force).

[16] *Blanco v. Mukasey,* 518 F.3d 714 (9th Cir. 2008). Because the offense lacks specific intent to evade arrest or prosecution, it seems unlikely the BIA would assert that it is a CIMT, but that is always possible.

[17] Involuntary manslaughter under § 192(b) and (c)(1), (2) is not a CIMT because the underlying conduct that leads to death could result from the commission of misdemeanor offense or other lawful conduct that

poses high risk of death or great bodily injury, which would not necessarily be "reprehensible conduct" under *Silva-Trevino*. See CalJur § 8.45. It can be committed with criminal negligence ("without due caution and circumspection") or less, and not with "the conscious disregard of a substantial and unjustifiable risk." See e.g., *Matter of Franklin*, 20 I&N Dec. 867, 870-71 (BIA 1994). California criminal negligence is similar to the statute at issue in *Perez-Contreras,* 20 I&N Dec. 615 (BIA 1992) that was found not to be a CIMT, in that it only requires an objective disregard by a showing that a reasonable person would have been aware of the risk.

[18] *Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121 (9th Cir. 2006)(en banc) (recklessness is not sufficient to find a crime of violence).

[19] See *Castrijon-Garcia v. Holder,* --F.3d--, 2013 WL 85971, No. 09-73756 (9th Cir. Jan. 9, 2013) (holding that a conviction for kidnapping under P.C. § 207 is not categorically a crime involving moral turpitude because it could be committed with good or innocent intent where the defendant uses verbal orders to move a person, who obeys for fear of harm or injury if he doesn't comply). A risk is that if the BIA publishes an opinion to the contrary in the future, the Ninth Circuit may defer to the BIA and withdraw from this opinion.

[20] *Saavedra-Figueroa v. Holder,* 625 F.3d 621 (9th Cir. 2010).

[21] *Matter of Muceros*, A42 998 610 (BIA 2000) Indexed Decision, www.usdoj.gov/eoir/vll/intdec/indexnet.html (P.C. § 243(d) is not a CIMT if committed with offensive touching); *Uppal v. Holder*, 605 F.3d 712 (9th Cir. 2010) (similar Canadian statute).

[22] *U.S. v. Espinoza-Morales*, 621 F.3d 1141 (9th Cir. 2010), *U.S. v. Lopez-Montanez*, 421 F.3d 926 (9th Cir. 2005).

[23] *Carr v. INS*, 86 F.3d 949, 951 (9th Cir. 1996) cited in *Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1073 (9th Cir. 2007) (en banc) (noting that PC 245(a)(2) is not a crime involving moral turpitude). Section § 245(a) is a general intent crime that requires no intent to harm and reaches conduct committed while intoxicated or otherwise incapacitated. *See, e.g., People v. Rocha,* 3 Cal.3d 893, 896-99 (Cal. 1971).

[24] *Covarrubias-Teposte v. Holder,* 632 F.3d 1049 (9th Cir. 2011).

[25] See *Matter of Muceros*, (BIA 2000), Indexed Decision, *supra.*

[26] See *U.S. v. Coronado*, 603 F.3d 706 (9th Cir. 2010) (negligent rather than violent, purposeful, aggressive act).

[27] See Note: Sex Crimes, and see *Pelayo-Garcia v. Holder*, 589 F.3d 1010 (9th Cir. 2009), holding that 261.5(d) is not categorically (automatically) sexual abuse of a minor (SAM) because consensual sex with a 15-year-old ("just under age 16") is not necessarily abusive or harmful. The Ninth Circuit has not held specifically whether sex with a 14-year-old is necessarily abusive, but counsel should conservatively assume that it will be held SAM. See endnote below.

[28] The Ninth Circuit has held that consensual sex with a person age 15 or even age 14 is not a crime of violence (COV). See discussion in *United States v. Christensen*, 558 F.3d 1092 (9th Cir. 2009) (finding that the offense is not likely to involve aggressive, purposeful violent behavior, under a similar COV definition, and questioning *United States v. Asberry*, 394 F.3d 712 (9th Cir. 2005)); see also *Valencia-Alvarez v. Gonzales*, 439 F.3d 1046 (9th Cir. 2006) (sex with a 17-year-old is not a crime of violence under 18 USC § 16(b)). If the person is transferred outside the Ninth Circuit, however, a more stringent definition of crime of violence may apply, so it is far safer to get 364 days.

[29] See *Matter of Guevara-Alfaro*, 25 I&N Dec. 417 (BIA 2011) (261.5 is a CIMT unless person reasonably believed that the minor was not under age 16), following *Matter of Silva-Trevino*, 24 I&N Dec. 687 (AG 2008). The Ninth Circuit has held otherwise, that regardless of knowledge of age, consensual sex with a person age 15 or older is not necessarily a CIMT because it is not necessarily harmful. *Quintero-Salazar v. Keisler*, 506 F.3d 688 (9th Cir. 2007). But because Ninth Circuit might defer to BIA, conservatively assume the BIA's standard will prevail.

[30] See discussion in Note: Sex Offenses, Part C (www.ilrc.org/crimes). The Ninth Circuit held that a conviction for consensual sex will constitute sexual abuse of a minor ("SAM") if it comes within either of the following two definitions: (1) "knowingly engaging in sexual conduct" with a minor under age 16 and at least four years younger than the defendant, as under 21 USC § 2243; or (2) sexual conduct or lewd

intent that is inherently harmful to the victim due to the victim's young age (certainly age 13, sometimes age 14, not age 15). The Ninth Circuit held that even with a 15-year-old minor and a 21-year-old defendant, a § 261.5(d) conviction never comes within the first definition as an analogue to § 2243, because § 261.5 lacks the element of "knowingly" (as in not being too drunk or otherwise incapacitated to understand) engaging in sexual conduct. *Pelayo-Garcia v. Holder*, 589 F.3d 1010 (9th Cir. 2009) (§ 261.5(d) with 15-year-old cannot be SAM under this definition). Therefore while a minor of at least age 16 is preferred, § 261.5 is a very reasonable plea even where the elements or the ROC show the minor was age 15 and the defendant is four years older.

Despite *Pelayo-Garcia* there is some risk to a plea to § 261.5(d), or to (c) where the ROC shows that the victim is age 15 and the defendant at least four years older. The Ninth Circuit or Supreme Court en banc might make a new rule, an immigration judge might not understand or might refuse to follow this rule, or the defendant could leave the Ninth Circuit (voluntarily or in immigration detention) and come into removal proceedings in a Circuit that has a more encompassing rule. If an age-neutral offense is not available, § 288(c) (lewd act with 14 or 15 year old) may be better, or even § 288a(b)(1). As opposed to § 261.5, § 288a(b)(1) and has no element relating to age differences or age of the defendant. It is clear that an immigration judge may not take notice of evidence in the record showing the defendant's age, and therefore the element of "four years younger than the defendant" cannot be established. Second, if the person will be removed, felony 288a is better than felony 261.5, with 15-year-old. See next endnote.

[31] In a federal prosecution for illegal re-entry, a prior felony conviction for "statutory rape" will result in a 16-level increase in sentence. Statutory rape has been defined as unlawful sexual intercourse with a person under age 16. *U.S. v. Gomez-Mendez,* 486 F.3d 599 (9th Cir. 2007). A misdo 261.5 conviction does not meet this definition because it is not a felony. Conviction of felony 261.5(c) with a record of conviction that is vague as to the age of the minor will not meet the definition, because the federal prosecutor cannot prove the victim was age 15 or younger. Section 288a(b) is safe to the extent that the definition of statutory rape would not be expanded to include oral sex, an issue that appears not to have been adjudicated yet. While conviction of sexual abuse of a minor results in a 16- or 8-level increase, 261.5, 288a(b) with a 15-year-old is not that under Ninth Circuit standards; see preceding endnote. For more information see 8 USC §1326, USSG § 2L1.2(b)(1)(C), and see Note: Sex Offenses.

[32] For immigration purposes prostitution is defined as "engaging in promiscuous sexual intercourse for hire," not lewd conduct for hire. 22 C.F.R. § 40.24(b). Courts have applied this restriction to the aggravated felony 8 USC § 1101(a)(43)(K)(i). See, e.g., *Depasquale v. Gonzales,* 196 Fed.Appx. 580, 582 (9th Cir. 2006) (unpublished) (prostitution under Hawaiian law); *Prus v. Holder,* 660 F.3d 144, 146-147 (2d Cir. 2011) (New York offense); see also *Familia Rosario v. Holder,* 655 F.3d 739, 745-46 (7th Cir. 2011)(government, IJ and BIA agree that importation of persons for purposes of prostitution is an aggravated felony under 8 USC § 1101(a)(43)(K)(i), while importation for other immoral purposes is not). California law defines prostitution as engaging in sexual intercourse *or* any lewd acts with another person for money or other consideration. See CalJIC 10.71, 16.420. Lewd acts includes touching of genitals, buttocks or female breast with the intent to sexually arouse or gratify. CalJIC 16.420.

[33] See discussion in *People v. Sanders* (1992) 10 Cal.App.4th 1268 (as state CIMT case, not controlling but informative).

[34] *Matter of Soram*, 25 I&N Dec. 378 (BIA 2010); see also *Fregozo v. Holder,* 576 F.3d 1030, 1037-38 (9th Cir. 2009).

[35] *Morales-Garcia v. Holder*, 567 F.3d 1058, 1064-1065 (9th Cir. 2009) ("Section 273.5(a) includes in its list of covered victims a 'former cohabitant.' This factor alone makes the offense virtually indistinguishable from the run-of-the-mill assault. Few would argue that former cohabitants -- however transitory that cohabitation -- are in a special relationship of trust such as to make an assault by one on the other a CIMT. Our past decisions make clear that assault and battery, without more, do not qualify as CIMTs.")

[36] A conviction under P.C. § 273.6 for violating a protective order issued pursuant to Calif. Family Code §§ 6320 and 6389 automatically causes deportability as a violation of a DV protective order. *Alanis-Alvarado v. Holder,* 558 F.3d 833, 835, 839-40 (9th Cir. 2009) amending with same result, 541 F.3d 966 (9th Cir. 2008). However, a conviction under P.C. § 273.6 for violating a protective order issued under Cal.Civ.Proc. Code § 527.6(c) (temporary restraining order against any person) would not be deportable as a violation of a DV protective order. *Id.* at 837.

[37] *United States v. Castro*, 607 F.3d 566 (9th Cir. 2010) (288(c) is not SAM because it is not necessarily physically or psychologically abusive). *Castro* stated that a court could look to the record of conviction to evaluate this behavior. However, a good decision in *Descamps* in 2013, to the effect that a prior conviction is considered to be for its least adjudicated elements, may mean that no offense under § 288(c) is SAM. Still, plead to specific, innocuous conduct, however. For more on Descamps see *§ N.3 Record of Conviction*, and endnote to § 647.6, *infra.*

[38] See *United States v. Baron-Medina*, 187 F.3d 1144, 1147 (9th Cir. Cal. 1999) (examples of innocent-appearing behavior that is abusive solely because victim is under age 14, in the case of PC § 288(a)).

[39] See new deportation ground 8 USC §1227(a)(2)(A)(v) and Note: Adam Walsh Act. See also *Defending Immigrants in the Ninth Circuit*, Chapter 6, § 6.22 (www.ilrc.org/crimes).

[40] E.g., compare *Pannu v. Holder,* 639 F.3d 1225 (9th Cir. 2011) with *Matter of Tobar-Lobo,* 24 I&N Dec. (BIA 2007).

[41] *Matter of R-A-M-,* 25 I&N Dec. 657 (BIA 2012) (Cal. P.C. 311.11 is aggravated felony and particularly serious crime). Immigration counsel may explore arguments that P.C. 311.11(a) is not categorically an aggravated felony under 8 USC § 1101(a)(43)(I), which references federal statutes, 18 USC §§ 2251, 2251A, and 2252. See discussion of federal elements in *Aguilar-Turcios v. Holder,* 691 F.3d 1025, 1040-41 (9th Cir. 2012).

[42] *Matter of Olquin-Rufino,* 23 I&N Dec. 896 (BIA 2006).

[43] Because this offense has no element relating to child pornography, the conviction would not be an aggravated felony even if that did appear in the record. See *Aguilar-Turcios v. Holder,* 691 F.3d 1025, 1038-39 (9th Cir. 2012). However, it should stay out of the record if possible.

[44] See discussion in *Sanchez-Avalos v. Holder*, 693 F.3d 1011 (9th Cir. 2012) and see Note: Sex Offenses.

[45] In *Ocegueda-Nunez v. Holder*, 594 F.3d 1124 (9th Cir. 2010) the court held that because 314(1) can be used to prosecute exotic dance performances that the audience wishes to see, it is not necessarily a CIMT. In *Matter of Cortes Medina*, 26 I&N Dec. 79 (BIA 2013), the BIA countered that PC 314 no longer can be used to prosecute such performances. While Ninth Circuit held this offense includes erotic dance, which is not a CIMT, BIA held erotic dance no longer punishable under 314(1).

[46] See 8 USC 1101(a)(a)(43)(K)(i).

[47] In *Matter of P--,* 3 I&N Dec. 20 (BIA 1947), the BIA held that a conviction under PC 315 for keeping a house of ill fame is a CIMT. Immigration counsel may have arguments that a conviction for residing in a house of ill-fame and paying rental income is not a CIMT. See, e.g., *Cartwright v. Board of Chiropractic Examiners*, 16 Cal.3d 762, 768 (Cal. 1976)(although state case holding not moral turpitude is not controlling, it is informative).

[48] The State Department defines prostitution for the inadmissibility ground as "engaging in promiscuous sexual intercourse for hire." 22 C.F.R. § 40.24(b), discussing 8 USC § 1182(a)(2)(D)(i). Courts have adopted that definition for the inadmissibility ground (see *Kepilino v. Gonzales*, 454 F.3d 1057 (9th Cir. 2006)), and also applied it to the aggravated felonies that involve prostitution, e.g. 8 USC § 1101(a)(43)(K)(i). See, e.g., *Depasquale v. Gonzales,* 196 Fed.Appx. 580, 582 (9th Cir. 2006) (unpublished) (prostitution under Hawaiian law divisible because includes lewd acts); *Prus v. Holder,* 660 F.3d 144, 146-147 (2d Cir. 2011) (same for New York offense of promoting prostitution in the third degree); see also *Familia Rosario v. Holder,* 655 F.3d 739, 745-46 (government, IJ and BIA agreeing that under 8 USC § 1328 importation of persons for the purposes of prostitution is an aggravated felony while importation for other immoral purposes is not under 8 USC § 1101(a)(43)(K)(i)). California law broadly defines prostitution as engaging in sexual intercourse *or* any lewd acts with another person for money or other consideration. Lewd acts includes touching of genitals, buttocks or female breast with the intent to sexually arouse or gratify. CalJIC 16.420.

[49] *Matter of G.R.*, 2 I&N Dec. 733, 738-39 (1946), citing *People v. Sylva*, 143 Cal. 62, 76 P. 814 (1904).

[50] *Rosales-Rosales v. Ashcroft*, 347 F.3d 714 (9th Cir. 2003)

[51] *Latter-Singh v. Holder*, 668 F.3d 1156 (9th Cir. 2012).

[52] In *Matter of Bautista,* 25 I&N Dec. 616 (BIA 2011) the BIA held that conviction for attempted arson under NY law that requires intentionally damaging property by fire or explosive is an aggravated felony as an offense described in 8 USC § 1101(a)(43)(E)(i)). Under 8 USC § 1101(a)(43)(E)(i), offenses analogous to federal offenses described in 18 USC §§ 842(h), (i), or 844(d), (e), (f), (g), (h), (i) are aggravated felonies. The BIA held that malicious intent requirement under 844(i) was met if the statute requires intentional or willful disregard of the likelihood of damage or injury. This was based on the Third Circuit's definition of malicious in 844(f). Immigration counsel should explore whether the Ninth Circuit defines malicious to preclude recklessness. If so, immigration counsel can argue that PC 452 is not analogous to 844(i). Note that arson can constitute an aggravated felony under other grounds such as crime of violence if a sentence of one year or more is imposed.

[53] See 8 USC § 1101(a)(43)(E)(i), listing federal offenses related to explosive devices.

[54] See *Note: Burglary.* Burglary of a residence is a COV, regardless of manner of entry. *Lopez-Cardona v. Holder,* 662 F.3d 1110 (9th Cir. 2011); *Kwong v. Holder*, 671 F.3d 872 (9th Cir. 2011). Therefore one must obtain a sentence of no more than 364 days on any single count. Under current law, burglary with intent to commit an offense that is an aggravated felony is itself an aggravated felony as attempt, if the ROC shows a substantial step toward committing the offense. *Hernandez-Cruz v. Holder*, 651 F.3d 1094 (9th Cir. 2011). Therefore, in an unusual case such as e.g., entry into a house with intent to commit drug trafficking, with a 364 day sentence imposed, the conviction would not be an aggravated felony as a COV or burglary (because less than 1 yr), but might be one as "attempted" drug trafficking (because drug trafficking does not require a sentence to be an aggravated felony). This risk ought to end if the Supreme Court decides as expected in *Descamps v. U.S*. that a prior conviction should be evaluated solely on the least adjudicated elements, since it has no element of a substantial step to commit the attempted offense. See more discussion of Descamps in the endnote to § 647.6, *infra,* and in Note: Record of Conviction. Note that burglary of a residence with an unpermitted entry is a CIMT (*Matter of Louissaint*, 24 I&N Dec. 754 (BIA 2009)), as is *any* burglary with intent to commit an offense that is a CIMT, e.g. commercial burglary with intent to commit larceny. See Note: Burglary.

[55] Non-residential burglary may be "burglary" if it is an unlicensed entry or remaining in a building or structure with intent to commit a crime; attempted "theft" or attempted other aggravated felony if the ROC shows a substantial step toward completion; and perhaps a "crime of violence" if violent force was used to effect the burglary. In all cases you can avoid an aggravated felony by avoiding 1 yr or more imposed on any single count. See Note: Burglary.

[56] Conviction for forgery or for counterfeiting is an aggravated felony if a sentence of a year or more is imposed on any single count. See 8 USC § 1101(a)(43)(R), INA § 101(a)(43)(R) and see Note: Aggravated Felonies.

[57] See 8 USC § 1101(a)(43)(M), INA § 101(a)(43)(M) and see Note: Burglary, Theft, Fraud.

[58] See *U.S. v. Rivera*, 658 F.3d 1073, 1077 (9th Cir. 2011)(noting that PC 484(a) and 666 is not categorically a theft aggravated felony because it covers offenses that do not come within generic theft, such as theft of labor, false credit reporting, and theft by false pretenses).

[59] *Castillo-Cruz v. Holder*, 581 F.3d 1154 (9th Cir. 2009) (PC 496(a)); *Alvarez-Reynaga v. Holder*, 596 F.3d 534 (9th Cir. 2010) (PC 496d(a)).

[60] See discussion *In re Rolando S.*, 197 Cal. App. 4th 936 (Cal. App. 5th Dist. 2011).

[61] See *People v. Rathert* (2000) 24 Cal.4th 200, 206 (concluding that PC 529(3) does not require specific intent to gain a benefit, noting that "the Legislature sought to deter and to punish all acts by an impersonator that might result in a liability or a benefit, whether or not such a consequence was intended or even foreseen... The impersonator's act, moreover, is criminal provided it might result in any such consequence; no higher degree of probability is required."). See also *Paulo v. Holder,* 669 F.3d 911 (9th Cir. 2011) (stating that PC 529(3) for false personation is not a crime involving moral turpitude).

[62] Currently a special rule applies in moral turpitude cases, in which an immigration judge confronted with a vague record of conviction (ROC) may hold a hearing on the facts to see if the underlying conduct involved moral turpitude. *Matter of Silva-Trevino, supra.* This is true regardless of whether the CIMT inadmissibility or deportability ground applies. If the Ninth Circuit overturns *Silva-Trevino, supra,* as some

other circuits have, then the regular rule will apply: a vague record is sufficient to prevent a conviction from causing deportability, but not inadmissibility.

[63] See *Kreiling v. Field*, 431 F.2d 502, 504 (9th Cir. Cal. 1970).

[64] See, e.g., *Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (malicious mischief, where malice involves wish or design to vex, annoy, or injure another person, was not a CIMT under Wash. Rev. Stat. 9A.48.080, which at the time required damage of at least $250 and now requires damage of $750.) and *U.S. v. Landeros-Gonzales*, 262 F.3d 424 (5th Cir 2001) (graffiti not COV).

[65] See *Malta-Espinoza v. Gonzales*, 478 F.3d 1080 (9th Cir. 2007) (§ 646.9 is divisible as a COV); but see *Matter of U. Singh,* 25 I&N Dec. 670 (BIA 2012) (in cases arising outside the Ninth Circuit, § 646.9 is categorically a COV).

[66] An age-neutral offense never is the aggravated felony sexual abuse of a minor. See, e.g., discussion in *Sanchez-Avalos v. Holder*, 693 F.3d 1011 (9th Cir. 2012), and see Note: Sex Offenses.

[67] However, *Nunez-Garcia*, 262 F. Supp. 2d 1073 (CD Cal 2003) re-affirmed these cases without comment; see cites in that opinion.

[68] *Rohit v. Holder,* 670 F.3d 1085 (9th Cir. 2012).

[69] *In re Joshua M.*, 91 Cal. App. 4th 743 (Cal. App. 4th Dist. 2001).

[70] See *U.S. v. Pallares-Galan*, 359 F.3d 1088, 1101 (9th 2004). The court noted that mild conduct held to violate § 647.6 that is not SAM includes urinating in public, offering minor females a ride home, driving in the opposite direction; repeatedly driving past a young girl, looking at her, and making hand and facial gestures at her (in that case, "although the conduct was not particularly lewd," the "behavior would place a normal person in a state of being unhesitatingly irritated, if not also fearful") and unsuccessfully soliciting a sex act. In another case the Ninth Circuit detailed mild behavior that violates § 647.6 that is not a CIMT, which also could provide plea guidance: brief touching of a child's shoulder, photographing children in public with no focus on sexual parts of the body so long as the manner of photographing is objectively "annoying"; hand and facial gestures or words alone*;* words need not be lewd or obscene so long as they, or the manner in which they are spoken, are objectively irritating to someone under the age of eighteen; it is not necessary that the act[s or conduct] actually disturb or irritate the child (see *Nicanor-Romero v. Mukasey*, 523 F.3d 992, 1000-1001 (9th Cir. 2008).

[71] In *Descamps v. United States,* a case concerning Cal. P.C. § 459, the U.S. Supreme Court is likely to hold that in general a prior conviction should be evaluated based on its least adjudicated elements, and not on additional facts that do or do not appear in the individual's record. Under that rule P.C. §647.6 would likely be found not to be SAM, since the Ninth Circuit already has found that its least adjudicated elements are not SAM. Offenses such as P.C. §§ 243, 236, 261.5, and others may be similarly affected. After the *Descamps* holding there may be time-consuming legal fights about how and when to apply the rule, but it will be a much better landscape for immigrants and defendants. Delaying the plea hearing will in turn delay the start of the removal hearing, to get closer to the time when *Descamps* may provide this beneficial rule. Thus especially if there is not a downside – e.g., defendant is not in custody, or is in pre-hearing custody that will be credited toward completion of an expected sentence -- delaying the plea hearing might be a good strategy.

[72] *Prakash v. Holder*, 579 F.3d 1033 (9th Cir. 2009).

[73] See *Mielewczyk v. Holder*, 575 F.3d 992, 998 (9th Cir. 2009), stating in discussion that because § 653f is a generic solicitation statute that pertains to different types of offenses, as opposed to a statute passed primarily to restrict controlled substances, it is not an offense "relating to" a controlled substance.

[74] See, e.g., *People v. McCaughey*, 261 Cal. App. 2d 131, 136 (Cal. App. 2d Dist. 1968), construing definition of willfully in this context.

[75] In *Renteria-Morales v. Mukasey*, 2008 U.S. App. LEXIS 27382 (9th Cir. Dec. 12, 2008), replacing 551 F.3d 1076 (9th Cir. 2008).

[76] See 8 USC 1101(a)(43)(Q), (T) and *Renteria-Morales, supra* regarding the aggravated felony, failure to appear.

[77] Possession of sawed-off shotgun has been held not to be a CIMT. See, e.g., *Matter of Hernandez-Casillas,* 20 I&N Dec. 262, 278 (BIA 1990); *Matter of Granados,* 16 I&N Dec. 726 (BIA 1979).

[78] ICE (immigration prosecution) has the burden of proving that a permanent resident is deportable; with a vague record of conviction, ICE cannot prove that the offense involved a firearm. The immigrant must prove that a conviction is not a bar to applications for lawful status or relief, and with a vague record he or she cannot do that. The only relief that a deportable firearms offense will serve as a bar to is the various kinds of non-LPR cancellation, e.g. for persons who have been here for ten years. A person who might apply for non-LPR cancellation needs a specific record of conviction showing a weapon that is not a firearm.

[79] *United States v. Medina-Anicacio*, 325 F.3d 638 (5th Cir. 2003).

[80] The definition of aggravated felony includes a state offense with the same elements (absent the federal jurisdictional element) of certain federal firearms offenses. See 8 USC § 1101(a)(43)(E)(ii), INA § 101(a)(43)(E)(ii), referencing federal offenses described in 18 USC § 922(g)(1)-(5), which prohibit among other things shipping, transporting, possessing or receiving a firearms or ammunition by felon (convicted of an offense with a potential sentence of more than one year), fugitive, persons adjudicated mentally defective or institutionalized, users and addicts of a federally listed controlled substance, and undocumented persons. Note that simply being an undocumented person at time of conviction for possessing a firearm is not an aggravated felony; the conviction must be under a statute that has as an element that the person is undocumented while possessing a firearm.

[81] *U.S. v. Pargas-Gonzalez,* 2012 WL 424360, No. 11CR03120 (S.D. Cal. Feb. 9, 2012) (concluding that former § 12021(a) is not categorically an aggravated felony as an analog to 18 USC § 922(g)(1) (felon in possession) because California is broader in that it covers mere ownership of guns by felons). *Pargas-Gonzalez* cites *U.S. v. Casterline,* 103 F.3d 76, 78 (9th Cir. 1996) in which the court reversed conviction under § 922(g)(1) where defendant owned a firearm but was not in possession at the alleged time. Like the former § 12021(a), the current § 29800 prohibits owning a firearm.

[82] The deportation ground at 8 USC § 1226(a)(2)(C) includes possession, carrying, selling etc. "firearms or destructive devices" as defined at 18 USC 921(c), (d). Those sections do not include ammunition in the definition. In contrast, some offenses are aggravated felonies because they are analogous to certain federal felonies, some of which do include ammunition. That is why being a felon in possession of ammunition is an aggravated felony, although it would not be a deportable firearms offense.

[83] Some cases found possession of a sawed-off shotgun is a crime of violence under 18 USC § 16(b) because this kind of weapon could only be intended for use in a violent crime, even if years in the future. See, e.g., *United States v. Dunn*, 946 F.2d 615, 621 (9th Cir. Cal. 1991) (possession of a sawed-off shotgun comes within 18 USC § 16(b). Arguably the U.S. Supreme Court overturned these cases when it held in *Leocal v. Ashcroft*, 543 U.S. 1 (2004) that the violence must occur in the course of committing the offense. See, e.g., discussion in *U.S. v. Reyes* 2012 WL 5389697, 8 (N.D.Cal.) (N.D.Cal.,2012) (opining that *Leocal* has overturned *Dunn*); see also *Covarrubias-Teposte v. Holder*, 632 F.3d 1049, 1054-55 (9th Cir. 2011).

[84] See *Matter of Ruiz-Lopez*, 25 I&N Dec. 551 (BIA 2011).

[85] *Penuliar v. Mukasey*, 528 F.3d 603 (9th Cir 2008).

[86] Recklessness is not sufficient for COV. *Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1129-30 (9th Cir. 2006) (*en banc*). A prior decision held that 2800.2 is a COV because of the high degree of recklessness, but it relied on a case that was specifically overturned by *Fernandez-Ruiz.* See *United States v. Campos-Fuerte*, 357 F.3d 956, 960 (9th Cir. Cal. 2004), relying on *U.S. v. Ceron-Sanchez*, 222 F.3d 1169, 1171 (9th Cir. 2000), overturned by *Fernandez-Ruiz, supra*. Still, to avoid any litigation it is best to plead to less than one year for any single count.

[87] See *Carrillo-Jaime v. Holder*, 572 F.3d 747 (9th Cir. 2009)

[88] Earlier advice on § 10851 was to avoid an aggravated felony by pleading to accessory after the fact, which is included in § 10851. *US v. Vidal,* 504 F.3d 1072 (9th Cir. 2007) (*en banc*). However the BIA has held that accessory after the fact is an AF with a year's sentence imposed, as obstruction of justice. See PC § 32.

[89] Taking with intent to temporarily deprive is not a CIMT. See, e.g., discussion at *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160-61 (9th Cir. 2009), *Matter of Jurado-Delgado,* 24 I. & N. Dec. 29, 33 (B.I.A. 2006).

[90] *Marmolejo-Campos v. Holder,* 558 F.3d 903 (9th Cir. 2009) (*en banc*).

[91] See, e.g., *Matter of Short*, 20 I&N Dec.136, 139 (BIA 1989) ("Moral turpitude cannot be viewed to arise from some undefined synergism by which two offenses are combined to create a crime involving moral turpitude, where each crime individually does not involve moral turpitude.")

[92] The Ninth Circuit has held that the factual basis for one offense cannot be used to characterize a separate and distinct offense. See *Aguilar-Turcios v. Holder*, 691 F.3d 1025 (9th Cir. 2012), substituted for 582 F.3d 1093 (9th Cir. 2009).

[93] *Cerezo v. Mukasey*, 512 F.3d 1163 (9th Cir. 2008).

[94] Section 23103 involves the "conscious disregard of a substantial and unjustifiable risk," which is sufficient scienter for moral turpitude, if the conduct is sufficiently "reprehensible." Moral turpitude has been found to inhere in this level of recklessness when it causes, or creates the "imminent risk" of causing, death or very serious bodily injury. See e.g., *Matter of Franklin*, 20 I&N Dec. 867, 870-71 (BIA 1994) (conscious disregard resulting in manslaughter), *Matter of Leal*, 26 I&N Dec. 20, 24-26 (BIA 2012) (conscious disregard causing a "substantial risk of imminent death"). But this level of recklessness has been held insufficient when less serious bodily injury was involved. See *Matter of Fualaau,* 21 I. & N. Dec. 475 (BIA 1996) (assault causing bodily injury by conscious disregard is not a CIMT). Section 23103 requires only a disregard for the safety of people or property. (A different offense, Veh. C. § 23104(b), involves serious bodily injury to a person; counsel should assume it is a CIMT.)

[95] *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001).

[96] Having a physical or mental disorder (including alcoholism) that poses a current risk to self or others is a basis for inadmissibility under the health grounds. 8 USC § 1182(a)(1)(A)(iii).

[97] 8 USC § 1182(a)(2), INA § 212(a)(2).

APPENDIX M

Legal Memo Regarding Why § 18.5 Should Apply to Newly Reduced Misdemeanors

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA

Legal Analysis:
Why a Reduction to Misdemeanor under Penal Code § 17(b) and Prop 47 is Governed by Penal Code § 18.5

Under both Penal Code § 17(b) and Prop 47, individuals who have certain felony convictions may petition the court to reduce or reclassify the convictions as misdemeanors. For individuals who secure these reductions or reclassifications after January 1, 2015, the new statutory misdemeanor maximum of 364 days should apply.

After January 1, 2015, any offense sentenced as a misdemeanor carries a maximum potential sentence of 364 days. *See* Pen. C. § 18.5.[1] The purpose of this change was to "reduce the maximum possible misdemeanor sentence from one year to 364 days, so that deportation eligibility will not be triggered for a legal immigrant who commits a misdemeanor punishable by imprisonment for one year." *See* Sen. Rules Com., Off. of Sen. Floor Analyses, Bill No. SB 1310, p.3.; Sen Com. on Public Safety Analysis, SB 1310, p. 5. "This small change will ensure, consistent with federal law and intent, legal residents are not deported from the state and torn away from their families for minor crimes." Assem. Com. on Public Safety, Analysis on SB 1310, p. 2.

Accordingly, after January 1, 2015, all felonies reduced to misdemeanors also carry a maximum possible sentence of 364 days pursuant to Penal Code § 18.5. This is true regardless of whether the felony was reduced pursuant to Penal Code § 17(b) or reclassified under Prop. 47. *See, e.g.*, Prop 47 reclassification/resentence orders from San Francisco, San Mateo, Los Angeles, and Alameda counties, all of which specify that the misdemeanor carries a maximum possible sentence of 364 days. When assessing the potential sentence for any misdemeanor, the court must look to the current definition at Cal. Penal Code § 18.5.

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[1] Penal Code § 18.5 states: "Every offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days."

Penal Code § 18.5 clearly applies to "[e]very offense which is prescribed by any law of the state" to be punishable by "imprisonment in a county jail up to or not exceeding one year." Notably, the statute does not apply solely prospectively to new convictions entered after the date of enactment. *Compare with* Cal. Penal Code § 1170(h)(6) ("The sentencing changes made by the act that added this subdivision shall be applied *prospectively to any person sentenced on or after October 1, 2011*.") (emphasis added). The state legislature's failure to include expressly prospective language in § 18.5, when it clearly knew how to do so in § 1170(h)(6), indicates its intent to apply the statute to all convictions, including reduced misdemeanors. *See generally Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("We presume that Congress says in a statute what it means and means in a statute what it says there."). The Legislature's application of Californian Penal Code § 18.5 to "every offense" indicates an intent to apply the current definition of the statute to reduced and resentenced misdemeanors.

The statute must be read to include the Legislature's intent. *Younger v. Superior Court*, 21 Cal. 3d 102, 113 (1978). The intent of Penal Code § 18.5 was to ameliorate the immigration consequences of misdemeanor sentences so that noncitizens are not removed for offenses which were not intended for removal under federal law (which defines a misdemeanor as a period of less than one year). *See* 18 U.S.C. § 3581(b) (defining a Class A misdemeanor as "not more than one year," a Class B misdemeanor as not more than six months, and a Class C misdemeanor as not more than thirty days). Hence, the intent of Penal Code § 18.5 was to maintain uniformity with the federal definition of a misdemeanor and to ameliorate the immigration consequences of misdemeanor offenses.

To the extent that the court finds that the statute is ambiguous regarding retroactivity, California law states that "[i]n the absence of an express declaration, a statute may apply retroactively if there is a clear and compelling implication that the Legislature intended such a result." *In re Chavez*, 114 Cal. App. 4th 989, 993, 8 Cal. Rptr. 3d 395, 399 (2004). "When the Legislature amends a statute for the purpose of lessening the punishment, in the absence of clear legislative intent to the contrary, a criminal defendant should be accorded the benefit of a mitigation of punishment adopted before his criminal conviction became final." *Id*. at 999; *see also People v. California Community Release Board* 96 Cal.App.3d 792, 799 (1979) quoting *In re Estrada* (1965) 63 Cal.2d 740, 745 ("When the Legislature amends a statute so as to lessen the punishment . . . . [i]t is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter

penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply.")

Hence, to the extent that the statute is ambiguous, *In re Chavez* controls, because California Senate Bill 1310, enacting Penal Code § 18.5, was an ameliorative measure intended to mitigate the effects of punishment. 114 Cal. App. 4th at 999. When a statute is silent as to retroactivity, as is Penal Code § 18.5, courts must look to the legislative intent. *Younger v. Superior Court*, 21 Cal. 3d 102, 113 (1978).

APPENDIX N

Prop. 47 Resentencing Frequently Asked Questions

Proposition 47 is retroactive. People currently serving a sentence in jail, prison or on probation or parole for offenses affected by Proposition 47 may qualify for resentencing. The process for getting resentenced (if an individual is in custody) is different than changing your record (click here to learn about the record change process, also known as reclassification). There generally will be a hearing, and an attorney will represent you. If you think you are eligible for resentencing, contact the Public Defender's office or attorney who represented you during your original case, and he or she can file the petition for you. Here are answers to a few frequently asked questions about resentencing under Proposition 47.

What offenses can I be resentenced for?

If you are serving a sentence for one or more of the following low-level, nonviolent felonies, you may be eligible for resentencing: drug possession (HS §§ 11357(a), 11350, 11377); petty theft of $950 or less (PC §§ 484, 666); shoplifting $950 or less (PC § 459); forgery- $950 or less (PC §§ 470); writing a bad check worth$950 or less (PC §§ 476); or receiving stolen property of $950 or less (PC § 496). If you have a previous conviction for crimes such as rape, murder or child molestation or are in the sex offender registry, you will not be eligible for resentencing. Also, if the judge determines that you pose an unreasonable risk of danger to public safety, he or she may deny your petition for resentencing.

I am currently incarcerated. Can I be resentenced?

Yes, if you are currently serving a sentence for one of the above offenses, you may be eligible for resentencing and release. Individuals with specific prior convictions and people registered as sex offenders are excluded. You must petition a judge who has the discretion to resentence and release you, as long as they find there is no unreasonable risk of danger to public safety.

How do I get resentenced?

Call the Public Defender's office or the lawyer who represented you so that they can file a petition for you.

If I'm in jail and my case is reduced from a felony to a misdemeanor, will I get out of jail?

The maximum jail time for most misdemeanors is 364 days in county jail. If you have already served more than the maximum term of confinement, you should be released. If you have not served the maximum term of confinement for the misdemeanor charge(s), the court may hold a hearing to determine if your sentence should be reduced. If you have other cases or charges that are holding you in custody, you will not be released even if you receive a reduction on one or more charges. However, you should still seek to have all eligible offenses reduced to a misdemeanor, so there are less felony convictions on your record.

If I'm in state prison and my case is reduced from a felony to a misdemeanor, will I get out of prison?

If you have no other charges keeping you in state prison, you may be released from prison or you may be transferred to county jail. If your case is reduced to a misdemeanor, your maximum sentence is no more than 364 days in county jail per charge. If you are also serving a sentence for other felonies that do not qualify for resentencing under Proposition 47, you may still serve your reduced misdemeanor sentence, along with your felony sentence, in state prison. Even if you will not be released after resentencing, you should still seek to have all eligible offenses reduced to a misdemeanor, so there are less felony convictions on your record.

If my case is reduced from a felony to a misdemeanor, will I be on probation or parole when I am released from jail or prison?

This will depend on the type of sentence that you previously received, and the judge who resentences you will make the decision. If you are resentenced, you should receive a Minute Order from the court before you are released, which will tell you if you have been ordered to report to county probation or state parole upon released. Please comply with any terms and conditions ordered by the court. If you think there has been a mistake or have any questions about any of the new terms and condition of your sentence after resentencing, call the Office of the Public Defender in your county.

If my case is reduced to a misdemeanor, will I still have to pay restitution?

Yes. Even if your case is reduced to a misdemeanor, any restitution orders will remain in full force and effect. However, your court fines and fees will likely be decreased if your case is reduced from a felony to a misdemeanor. Please check your Minute Order when you are released to see how much you owe.

*Please note that the information provided here does not constitute legal advice.

APPENDIX O

Sample Prop. 47 Resentencing Petitions from San Francisco and Los Angeles Counties

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO	
Attorneys for Petitioner	*(COURT USE ONLY)*
PEOPLE OF THE STATE OF CALIFORNIA Last Name, First Name **PETITIONER**	**SUPERIOR COURT CASE NUMBER** Court#
PETITION FOR RESENTENCING – RESPONSE AND ORDER **PETITION FOR RECLASSIFICATION – RESPONSE AND ORDER PENAL CODE §1170.18**	**DATE** **TIME** **DEPARTMENT #**

Petitioner in the above-entitled case hereby files a petition for ☐ resentencing ☐ reclassification of the felony count(s) of _____ pursuant to Penal Code §1170.18. Petitioner does not request a hearing unless the court intends to deny the relief sought.

Petitioner:

☐Has completed his/her sentence and petitions to have the felony count(s) designated as a misdemeanor(s).

☐Has a pending case and/or is still serving a sentence on the felony count(s) and petitions for resentencing.

Executed on: Click here to enter a date. _____

SIGNATURE OF ATTORNEY

District Attorney Response:

☐ Petitioner has completed his/her sentence and is entitled to have the felony count/s designated as misdemeanors.

☐ Petitioner has a pending case and/or is still serving a sentence and is entitled to resentencing.

☐ Petitioner is not entitled to the relief requested. Reason: _____

☐ A Hearing should be held to determine whether petitioner poses an unreasonable risk of danger to public safety.

Executed on: _____ _____

SIGNATURE OF ASSISTANT DISTRICT ATTORNEY

ORDER

☐ The court denies the petition.

☐The court grants the petition. The court finds that the petitioner is eligible for the following relief:☐ The court reduces count/s_____ a felony offense of _____ to a misdemeanor.

☐ Formal probation is converted to court probation, same terms and conditions.

☐ Formal probation is converted to court probation, modified as follows:_____

☐ Formal probation continues as ordered, same terms and conditions.

☐ Formal probation is modified as follows: _____

☐ Petitioner faces a maximum potential sentence of 364 days as prescribed by Penal Code **§** 18.5. ☐ Petitioner has completed a sentence of 364 days or less. ☐ Petitioner is sentenced to a misdemeanor with a six-month maximum.

☐ Probation is hereby terminated ☐successful ☐unsuccessful.

☐ The restitution fine is reduced to $150.

☐ Other: _____

☐ Having been convicted of a misdemeanor, and having completed the sentence for this conviction, Petitioner is therefore not subject to supervision by the California Department of Corrections and Rehabilitation.

☐ The matter is ordered set for hearing on _____ at _____ in Dept. _____

This Order shall be set aside upon request of Petitioner.

Any felony conviction that is recalled and resentenced under **§**1170.18 subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

Executed on: _____ **JUDGE OF THE SUPERIOR COURT** _____

CLERK'S CERTIFICATE

The foregoing document, consisting of _____ page(s), is a full, true and correct copy of the original copy on file in this office.

Date:_____ Clerk of the Superior Court

By _____

RONALD L. BROWN, PUBLIC DEFENDER
_____
_____
Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

_____, Applicant, v. **PEOPLE OF THE STATE OF CALIFORNIA** Respondent.	**Case No. _____** **APPLICATION TO DESIGNATE FELONY CONVICTION AS MISDEMEANOR CONVICTION** **[Pen. Code §1170.18, subd. (f)]**

TO: HONORABLE JUDGE_____ OF THE SUPERIOR COURT; AND JACKIE LACEY, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES:

Applicant, _____, submits to this court his application to designate his felony conviction to be a misdemeanor conviction. Applicant was convicted of a felony violation of:

☐A Shoplifting crime, punished under Penal Code §459 or Penal Code §_____

☐A Grand Theft crime, defined in Penal Code §_____

☐A Forgery crime related to a check, bond, bank bill, note, cashier's check, traveler's check, or money order punished under Penal Code §473, defined in Penal Code §_____

☐Penal Code §476a ☐Penal Code §496(a)

☐Penal Code §666 ☐Health & Safety Code §11350

☐Health & Safety Code §11357(a) ☐Health & Safety Code§ 11377(a)

The crime applicant was convicted of is now a misdemeanor. Applicant is no longer in custody and completed his felony sentence. For Penal Code offenses, the value of the stolen property was less than $950.00. Applicant has no prior convictions for an offense specified in Penal Code §667, subd.(e)(2)(C)(iv) or for an offense requiring registration pursuant to (c) of Penal Code §290, subd.(c). Applicant was sentenced by Judge_____ of the Los Angeles County Superior Court, _____ Courthouse.

Applicant qualifies for a misdemeanor designation under Penal Code §1170.18, subd. (f)-(i). Applicant is entitled to a hearing under Penal Code §1170.18, subd. (h). Applicant does not request a hearing unless the court intends to deny the relief sought. Applicant applies to designate the conviction as the following misdemeanor:

☐ Penal Code §459.5 (Shoplifting), punishable by a maximum possible sentence of six months

☐ Penal Code §490.2 (Petty Theft), punishable by a maximum possible sentence of six months

☐Penal Code §473(b) (Forgery), punishable by a maximum possible sentence of 364 days

☐Penal Code §476a(b) (Insufficient Funds), punishable by a maximum possible sentence of 364 days

☐Penal Code § 496(a) (Receipt of Stolen Property), punishable by a maximum possible sentence of 364 days

☐Health & Safety Code §§ 11350(a), 11357(a), or § 11377(a) (Possession of a Controlled Substance or Concentrated Cannabis), punishable by a maximum possible sentence of 364 days

Dated:_____

RONALD L. BROWN, PUBLIC DEFENDER

By: _____

Deputy Public Defender

ORDER

Defendant's application to designate the ☐ PC or ☐H&S C §_____ conviction to be a misdemeanor conviction with a maximum possible sentence of ☐six months or ☐364 days is:

☐ Granted.

☐ Denied.

Dated this_____ day of_____, 201_.

_____

(Seal of Court) Judge of the Los Angeles Superior Court

PROOF OF SERVICE

I, the undersigned, declare that on _____, I served this Application on the Los Angeles County District Attorney, by:

☐ Hand delivering a copy to the attorney of record, OR

☐ Depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the City of Los Angeles, addressed as follows:

_____

_____

_____

_____

I declare under penalty of perjury that the foregoing is true and correct. Executed on_____ _____ in Los Angeles, California.

_____

_____

Declarant

APPENDIX P

Reclassification Infographic

HOW TO RECLASSIFY YOUR FELONY UNDER PROP. 47

ARE YOU ELIGIBLE?

A CONVICTION FOR ONE OF THE FOLLOWING

- ✓ Simple drug possession
- ✓ Petty theft, including commercial burglary $950 or less
- ✓ Shoplifting $950 or less
- ✓ Writing a bad check $950 or less
- ✓ Forgery $950 or less
- ✓ Receipt of stolen property $950 or less

&

NONE OF THE FOLLOWING PRIOR CONVICTIONS

- ✓ Prior conviction for rape, child molestation or other violent crimes
- ✓ Sex offender registrant
- ✓ Identity theft
- ✓ Currently serving a sentence or on probation*

*You may be eligible for resentencing. See www.MyProp47.org for more information.

YES!
GO TO STEP 1

STEP 1

GET A COPY OF YOUR CRIMINAL RECORD

Go to the Superior Court where you were convicted or contact the California Department of Justice (best option if you have convictions in multiple counties).

STEP 2

COMPLETE PROP 47 FORMS

Download the appropriate forms from the website of the Superior Court where you were convicted.

CHECK WWW.MYPROP47.ORG TO FIND THESE FORMS

STEP 3

MAKE YOUR RECLASSIFICATION PACKET(S)

Your Reclassification Forms + Your Criminal Record = Your Packet.

1. Copy for Superior Court
2. Copy for District Attorney
3. Original for your files

MAKE 3 COPIES OF EACH PACKET!

Note: You will need one packet for each felony conviction that you want reclassified to a misdemeanor. Some counties may require additional forms.

CHECK WWW.MYPROP47.ORG FOR MORE INFORMATION ON EACH COUNTY.

STEP 4

FILE YOUR PAPERS

1. One packet to the District Attorney's Office where convicted. Your county may require you to serve this packet in person.
2. One packet to the Superior Court where convicted.
3. Keep the other packet for your files.

CHECK WWW.MYPROP47.ORG FOR YOUR COUNTY'S SPECIFIC FILING REQUIREMENTS.

STEP 5

WAIT FOR YOUR APPROVAL

In most counties,the Superior Court will notify you by mail when your application is approved. Some counties may require that you return to the Court for the results of your application. You are entitled to a hearing if there is a dispute.

STEP 6

ACCESS NEW OPPORTUNITIES

You may be eligible for new benefits now that your felony has been reclassified.

MYPROP47

CALIFORNIANS FOR SAFETY AND JUSTICE

MYPROP47.ORG

CÓMO CAMBIAR SU DELITO BAJO LA PROP. 47

ES USTED ELEGIBLE?

UNA CONDENA POR UNO DE LOS SIGUIENTES

- ✓ Posesión simple de drogas
- ✓ Hurto menor de $950 o menos
- ✓ Robo por $950 o menos
- ✓ Fraude de cheque por $950 o menos
- ✓ Falsificación por $950 o menos
- ✓ Recibo de propiedad robada por $950 o menos

Y

NINGUNA DE LAS SIGUIENTES CONDENAS ANTERIORES

- ✓ Condena anterior por violación, asesinato o abuso de menores
- ✓ Registrado en la lista de delincuentes sexuales
- ✓ El robo de identidad
- ✓ Actualmente cumpliendo una condena o en libertad condicional*

*Usted puede ser elegible para una nueva sentencia. Para más información visite www.MyProp47.org .

SI!
VAYA AL PASO 1

PASO 1

OBTENGA UNA COPIA DE SU EXPEDIENTE PENAL

Ir a la Corte Superior donde lo condenaron o comuníquese con el Departamento de Justicia de California (la mejor opción si tiene condenas en varios condados).

PASO 2

COMPLETE LAS FORMAS DE LA PROP 47

Descargue las formas correspondientes en el sitio web de la Corte Superior donde lo condenaron.

VISITE WWW.MIPROP47.ORG PARA ENCONTRAR ESTAS FORMAS

PASO 3

HAGA SU PAQUETE DE RECLASIFICACIÓN (S)

Sus Formas de Reclasificación + Sus Antecedentes Penales = Su Paquete.

1. Copia para la Corte Superior
2. Copia para el Fiscal de Distrito
3. Original para sus archivos

HAGA 3 COPIAS DE CADA PAQUETE!

Usted necesitará un paquete para cada condena por delito que desea reclasificar a un delito menor.

VISITE WWW.MIPROP47.ORG PARA MÁS INFORMACÍON SOBRE CADA CONDADO

PASO 4

PRESENTE SUS DOCUMENTOS

1. Un paquete a la Oficina del Fiscal de Distrito donde fue condenado. Su condado puede requerir que presente este paquete en persona.
2. Un paquete a la Corte Superior donde fue condenado.
3. Mantenga el otro paquete para sus archivos.

VISITE WWW.MIPROP47.ORG PARA REQUISITOS DE PRESENTACÍON ESPECÍFICOS DE SU CONDADO

PASO 5

ESPERE SU APROBACIÓN

En la mayoría de los condados, el Tribunal Superior le notificará por correo cuando su solicitud sea aprobada. Algunos condados pueden exigir que regrese a la Corte por los resultados de su aplicación. Usted tiene derecho a una audiencia si hay una disputa.

PASO 6

ACCESO A NUEVAS OPORTUNIDADES

Usted puede ser elegible para nuevos beneficios ahora que su delito ha sido reclasificado.

MIPROP47.ORG

CALIFORNIANS FOR SAFETY AND JUSTICE

APPENDIX Q

Instructions on How to Get Your Department of Justice RAP Sheet and Fingerprint Live Scan and Forms for Request for DOJ Fee Waiver

INSTRUCTIONS ON HOW TO GET YOUR DEPARTMENT OF JUSTICE (DOJ) RAP SHEET AND FINGERPRINT LIVE SCAN

YOU WILL NEED A FINGERPRINT LIVE SCAN TO OBTAIN YOUR RAP SHEET (COST IS APPROXIMATELY $20 LIVE SCAN/FINGERPRINT FEE + $25 DOJ FEE). THE $25 DOJ FEE CAN BE WAIVED IF YOU ARE ELIGIBLE FOR A FEE WAIVER.

INSTRUCTIONS IF YOU ARE ELIGIBLE FOR FEE WAIVER	INSTRUCTIONS IF YOU ARE NOT ELIGIBLE FOR A FEE WAIVER OR YOU CAN PAY BOTH FEES
STEP 1: If your family receives food stamps, CalWORKs, Medi-Cal, or similar government benefits or is very low income (e.g., you are on disability, SSI, unemployment, etc.) you may be eligible to have the **$25 DOJ fee** waived. **You must still pay the Live Scan provider's fingerprint fee.** Requesting the DOJ fee waiver will add approximately 2 weeks to the process of obtaining your RAP sheet.	**STEP 1:** Fill out the **"Request for Live Scan Service"** form and make 2 copies. The original is for the Department of Justice (DOJ) and the copies are for you and the Live Scan agency. The DOJ will charge $25.00 for a copy of your RAP sheet**.** You must also pay the Live Scan provider's fingerprint fee (approximately $20.00).
STEP 2: Fill out the **DOJ Fee Waiver**, provided below, ***attach your proof of income or government assistance***, and prepare a brief letter addressed to: **Bureau of Criminal Identification and Information** **Attention: Record Review Unit** **P.O. Box 903417** **Sacramento, CA 94201-4170** **FAX NO: (916) 227-1964** State in your letter that you are requesting a copy of your RAP sheet because you want to expunge your convictions, that you are requesting a waiver of the $25 DOJ fee, and state the public assistance you receive that makes you eligible (food stamps, Medi-Cal, SSI, disability, unemployment, etc.) ➢ **Fax this request to Fax No. (916) 227-1964.**	**STEP 2:** Present your "**Request for Live Scan Service**" form and copies AND a valid California driver's license, ID or passport to a local Live Scan site. A list of Live Scan locations in California, by County, is available at the State of California Department of Justice, Office of the Attorney General at: https://oag.ca.gov/fingerprints/locations. You should call the site you plan to visit in advance to verify hours of operation, fees and acceptable forms of payment.
STEP 3: If your **Fee Waiver** is approved, the **DOJ** will send you a preprinted **"Request for Live Scan Service" form** about 2 weeks later. Fill out the remainder of the **"Request for Live Scan Service"** and make 2 copies. The original is for the DOJ; the copies are for you and the Live Scan agency.	**STEP 3:** The DOJ will process your "Request for Live Scan Service" form and fees, and will scan your fingerprints.

INSTRUCTIONS ON HOW TO GET YOUR DEPARTMENT OF JUSTICE (DOJ) RAP SHEET AND FINGERPRINT LIVE SCAN

YOU WILL NEED A FINGERPRINT LIVE SCAN TO OBTAIN YOUR RAP SHEET (COST IS APPROXIMATELY $20 LIVE SCAN/FINGERPRINT FEE + $25 DOJ FEE). THE $25 DOJ FEE CAN BE WAIVED IF YOU ARE ELIGIBLE FOR A FEE WAIVER.

INSTRUCTIONS IF YOU ARE ELIGIBLE FOR FEE WAIVER	INSTRUCTIONS IF YOU ARE NOT ELIGIBLE FOR A FEE WAIVER OR YOU CAN PAY BOTH FEES
STEP 1: If your family receives food stamps, CalWORKs, Medi-Cal, or similar government benefits or is very low income (e.g., you are on disability, SSI, unemployment, etc.) you may be eligible to have the **$25 DOJ fee** waived. **You must still pay the Live Scan provider's fingerprint fee.** Requesting the DOJ fee waiver will add approximately 2 weeks to the process of obtaining your RAP sheet.	**STEP 1:** Fill out the **"Request for Live Scan Service"** form and make 2 copies. The original is for the Department of Justice (DOJ) and the copies are for you and the Live Scan agency. The DOJ will charge $25.00 for a copy of your RAP sheet**.** You must also pay the Live Scan provider's fingerprint fee (approximately $20.00).
STEP 2: Fill out the **DOJ Fee Waiver**, provided below, ***attach your proof of income or government assistance***, and prepare a brief letter addressed to: **Bureau of Criminal Identification and Information** **Attention: Record Review Unit** **P.O. Box 903417** **Sacramento, CA 94201-4170** **FAX NO: (916) 227-1964** State in your letter that you are requesting a copy of your RAP sheet because you want to expunge your convictions, that you are requesting a waiver of the $25 DOJ fee, and state the public assistance you receive that makes you eligible (food stamps, Medi-Cal, SSI, disability, unemployment, etc.) ➢ **Fax this request to Fax No. (916) 227-1964.**	**STEP 2:** Present your "**Request for Live Scan Service**" form and copies AND a valid California driver's license, ID or passport to a local Live Scan site. A list of Live Scan locations in California, by County, is available at the State of California Department of Justice, Office of the Attorney General at: https://oag.ca.gov/fingerprints/locations. You should call the site you plan to visit in advance to verify hours of operation, fees and acceptable forms of payment.
STEP 3: If your **Fee Waiver** is approved, the **DOJ** will send you a preprinted **"Request for Live Scan Service" form** about 2 weeks later. Fill out the remainder of the **"Request for Live Scan Service"** and make 2 copies. The original is for the DOJ; the copies are for you and the Live Scan agency.	**STEP 3:** The DOJ will process your "Request for Live Scan Service" form and fees, and will scan your fingerprints.

STEP 4: Take the preprinted "**Request for Live Scan Service"** forms and copies AND a valid California driver's license, ID or passport to a local **Live Scan** site. A list of Live Scan locations in California, by County, is available at the State of California Department of Justice, Office of the Attorney General at: https://oag.ca.gov/fingerprints/locations. You should call the site you plan to visit in advance to verify hours of operation, fees and acceptable forms of payment.	You should receive your **RAP sheet** in approximately 2 weeks, but it can take up to 4 weeks if there is additional follow-up needed or if there are administrative delays. If you have not received your RAP sheet after 2 weeks, you can check the status of your fingerprint submission by calling the **DOJ's 24-hour Automated Telephone service at (916) 227-4557**. You will need the following information before placing the call: • Your date of birth (i.e. 01/01/1975); and • The 10-digit **Automated Transaction Identifier (ATI)** number that appears at the bottom of the DOJ form requesting your Live Scan fingerprint background checks. The ATI number always appears in the following sequence: 1 LETTER; 3 NUMBERS; 3 LETTERS and 3 NUMBERS. This number will allow the DOJ's automated telephone service to check on the status of your fingerprints.
STEP 5: The DOJ will process your "Request for Live Scan Service" form and fees, and will scan your fingerprints. You should receive your RAP Sheet in approximately 2 weeks, but it can take up to 4 weeks if there is additional follow-up needed or if there are administrative delays. If you have not received your RAP sheet after 2 weeks, you can check the status of your fingerprint submission by calling the **DOJ's 24-hour Automated Telephone service at (916) 227-4557**. You will need the following information before placing the call: • Your date of birth (i.e. 01/01/1975); and • The 10-digit **Automated Transaction Identifier (ATI)** number that appears at the bottom of the DOJ form requesting your Live Scan fingerprint background checks. The ATI number always appears in the following sequence: 1 LETTER; 3 NUMBERS; 3 LETTERS and 3 NUMBERS. This number will allow the DOJ's automated telephone service to check on the status of your fingerprints.	

Fax

To:	Record Review Unit, California Dept. of Justice	From:	
Fax:	916-227-1964	Pages:	4 (including cover)
Re:	**Request for DOJ Fee Waiver**	Date:	

Attention: Record Review Unit

Bureau of Criminal Identification and Information
Attention: Record Review Unit
P.O. Box 903417
Sacramento, CA 94201-4170

Dear Record Review Unit,

Enclosed with this letter, please find my proof of public benefits and a request for waiver of the DOJ fee for criminal history record.

Please send the Request for Live Scan form to the following address:

_____
Name

_____
Street Address

_____
City State Zip Code

Sincerely,

_____

Edmund G. Brown Jr.
Attorney General

State of California
DEPARMENT OF JUSTICE

BUREAU OF CRIMINAL IDENTIFICATION AND INFORMATION
P.O.BOX 903417
SACRAMENTO, CA 94203-4170

APPLICATION AND DECLARATION FOR WAIVER OF FEE
FOR OBTAINING CRIMINAL HISTORY RECORD

I, the undersigned, declare that I am unable to pay the fee to obtain a copy of my criminal history record without impairing my obligation to meet the common necessities of life.

I declare under penalty of perjury that the foregoing is true and correct and was signed at _____, California on_____20_____.

Attached is verification of proof of indigence as required by Penal Code Section 11123.

_____
DECLARANT SIGNATURE

_____
DECLARANT PRINTED NAME

In order to have the $25 processing fee waived, you must provide proof of indigence, such as:

Letter from SSI or Social Security, showing amount of your grant **or**

Letter from Unemployment or Disability, showing amount of your grant **or**

Copy of a Medi-Cal card or Food Stamp card **or**

Copy of AFDC or General Assistance letter showing your monthly grant

and a signed Declaration of Indigence

APPENDIX R

Judicial Council Form CR180, Petition for Dismissal

CR-180

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
PETITION FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)**	FOR COURT USE ONLY Date: Time: Department:

1. On *(date):* _____, the petitioner *(the defendant in the above-entitled criminal action)* was convicted of a violation of the following offenses:

Code	Section	Type of offense: *(Felony; Misdemeanor; Infraction)*	Eligible for reduction to misdemeanor under Penal Code § 17(b) *(Yes or No)*	Eligible for reduction to infraction under Penal Code § 17(d)(2) *(Yes or No)*

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2. ☐ **Felony or misdemeanor with probation granted *(Pen. Code, § 1203.4)***

Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (*check all that apply*):

a. ☐ has fulfilled the conditions of probation for the entire period thereof;

b. ☐ has been discharged from probation prior to the termination of the period thereof;

c. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

3. ☐ **Misdemeanor or infraction with sentence other than probation *(Pen. Code, § 1203.4a)***

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner *(check one)*:

a. ☐ has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; ***or***

b. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

4. ☐ **Misdemeanor conviction under Penal Code section 647(b) *(Pen. Code, § 1203.49)***

The petitioner has completed a term of probation for a conviction under Penal Code section 647(b).

The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. *(Please note: You may complete and attach the Attached* Declaration *(form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)*

5. ☐ **Felony county jail sentence under Penal Code section 1170(h)(5) *(Pen. Code, § 1203.41)***

The petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on probation for, or charged with the commission of any offense, and should be granted relief in the interests of justice, and *(check one)*:

a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); ***or***

b. ☐ more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

(*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

Petitioner requests that he/she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section:

☐ 1203.4, ☐ 1203.4a, ☐ 1203.41, or ☐ 1203.49 of the Penal Code.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: _____ ▶ _____
(DATE) (SIGNATURE OF PETITIONER OR ATTORNEY)

_____ _____ _____ _____
(ADDRESS, PETITIONER) (CITY) (STATE) (ZIP CODE)

APPENDIX S

Sample Letter of Support for Dismissal Petition

Sample Letter of Support

Date

To Whom It May Concern,

First paragraph
Explain how you know this person.

Second paragraph
Describe positive qualities about this person. Think about the following questions in describing this person.

- ✓ Does he or she make positive contributions to family/community?
- ✓ Has he or she achieved any academic or professional goals?
- ✓ Has he or she demonstrated good qualities or character?
- ✓ Over the course of your relationship with this person, how has he or she changed and grown into the person he or she is today?

Sincerely,
Signature
Printed Name
Phone Number

April 22, 2015

To Whom It May Concern,

Hello name is [redacted], as the program coordinator for the EOPS/CARE Programs at Ohlone College in Fremont, CA., it is my pleasure to provide this character reference for [redacted]. Every once in a while a jewel is found that shines brighter than any other stone. [redacted] embodies this kind of radiance.

The Extended Opportunities Programs and Services (EOPS) was established to meet the educational needs of students hindered by language, social, and economic disadvantages. We do this by providing students with additional care, support and guidance in college to help motivate and foster their academic success.

The Cooperative Agency Resources for Education (CARE) program was established to assist EOP&S students who are single head of household, recipients of CalWORKs, receiving cash aid, with at least one child under the age of 14. This was intended to break the welfare-dependency cycle by completing college level coursework. This would ultimately lead this population to become employable and economically self-sufficient.

While a student at Ohlone, I worked with [redacted] by providing academic support and personal enrichment opportunities to help her attain higher education. I feel confident in saying that she was committed to following through with her Student Education Plan, which outlined all of the specific courses required to accomplish her specific educational goal(s).

[redacted] embraced the challenge of returning to school to create a better life for herself and her children. Though she faced a myriad of obstacles, she refused to give up on pursuing her dream. Her passion and enthusiasm for life and impacting the lives of others was exhibited in her every day activities and interaction with her family, friends, and peers.

Changing one's life can be an arduous undertaking that requires an exuberant amount of energy, tenacity, commitment, and discipline, which [redacted] wholeheartedly embraced. I believe, if given the opportunity she will continue to create extraordinary possibilities for herself that will lead to greatness. “You don’t have to be great to get started, but you have to get started to be great! ~ Les Brown.

Sincerely,

[redacted]
EOPS/CARE Coordinator
Ohlone College
(510) 659-6152

APPENDIX T

Judicial Council Form CR181, Order for Dismissal

CR-181

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)**	CASE NUMBER:

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner *(the defendant in the above-entitled criminal action)* is eligible for the following requested relief:

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces the following convictions:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action;
   - ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action; OR
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action;
   - ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action; OR
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code ☐ § 1203.4, or ☐ § 1203.4a, or ☐ § 1203.41, or ☐ § 1203.49, and it is ordered that the pleas, verdicts, or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed for:
   - ☐ ALL CONVICTIONS in the above-entitled action; or
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

4. The court **DENIES** the petition for dismissal regarding the following convictions under Penal Code ☐ § 1203.4, or ☐ § 1203.4a, or ☐ § 1203.41, or ☐ § 1203.49 for:
   - ☐ ALL CONVICTIONS in the above-entitled action; or
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

5. In granting this order under the provisions of Penal Code section 1203.49:
   a. The court finds that the petitioner was a victim of human trafficking when he or she committed the crime.
   b. ☐ The court orders the relief described in section 1203.4, or
      ☐ The court orders the relief described in section 1203.4, with the following exceptions *(specify)*:

Form Approved for Optional Use
Judicial Council of California
CR-181 [Rev. January 1, 2016]

Penal Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, and 1203.49
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v DEFENDANT:	CASE NUMBER:

6. If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41:
   a. The petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
   b. Dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)

7. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime, and the relief ordered.

8. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, or 1203.49 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

FOR COURT USE ONLY

Date:

_____

(JUDICIAL OFFICER)

APPENDIX U

Sample Motion in Support of Petition Under Penal Code § 1203.4

Lawyers' Committee for Civil Rights
of the San Francisco Bay Area
131 Steuart Street, Suite 400
San Francisco, CA 94105
(415) 543-9444

SUPERIOR COURT OF CALIFORNIA
COUNTY OF XXXXX

PEOPLE OF THE STATE OF CALIFORNIA, Respondent, VS. XXXX XXXXX, Petitioner.	Docket No.: xxx Date: Dept.:

PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION UNDER P.C. § 1203.4

STATEMENT OF THE CASE

This petition for dismissal under California Penal Code § 1203.4 arises from a conviction on [DATE], which resulted in probation. [CLIENT] is eligible for a dismissal under § 1203.4 because [HE/SHE] is no longer on probation and has no pending charges. The interests of justice demand that the court grant relief in this case, as the [CLIENT] has taken a number of substantial steps to move past the conviction and demonstrate rehabilitation.

STATEMENT OF THE FACTS

[CLIENT'S] record of arrest and prosecution (RAP) sheet indicates that [HE/SHE] was convicted of [OFFENSE] under section [NUMBER] of the [TITLE] Code. In [HIS/HER] sworn declaration, [CLIENT] attests to the following facts.

[DESCRIBE CIRCUMSTANCES AT TIME OF CONVICTION – Drug or alcohol abuse, relationship problems, etc.]

[DESCRIBE CIRCUMSTANCES SINCE CONVICTION – Drug or alcohol rehabilitation, education, job, children, etc.]

[DESCRIBE AND EXPLAIN ANY PROBATION VIOLATION]

[DESCRIBE HOW CONVICTION IS PROBLEM FOR CLIENT – Job, license, housing, etc.]

[***OPTIONAL***: *DESCRIBE OUTSTANDING FEES AND COSTS*]

[CLIENT'S] balance due is $1764.55, representing the following fees:

Public Defender:	$ 156.90
Court security:	73.22
Probation:	
Pre-sentence	235.41
Cost of probation	1205.04
Processing	26.14
Booking	67.84

See Statement from Department of Revenue in Supplemental Attachment.

[DESCRIBE REASON FOR OUTSTANDING FEES AND COSTS]

ARGUMENT

I. Where the interests of justice warrant relief, the court retains discretion to grant a dismissal under § 1203.4, even if the defendant did not satisfy all of the terms of probation for the entire period of probation.

There are three situations in which a defendant who has been convicted of a crime and granted probation is eligible to have the conviction dismissed under § 1203.4. *See People v. Butler*, 105 Cal. App. 3d 585 (1980); *People v. Morrison*, 162 Cal. App. 3d 995 (1984); *People v. McLernon*, 174 Cal. App. 4th 569 (2009). The defendant is entitled to relief as a matter of right if he "fulfilled the conditions of probation for the entire period of probation" or if he "was discharged prior to the period of probation." § 1203.4(a). If the defendant does not fall into one of those two categories, the court has discretion to grant a dismissal in the "interests of justice." *Id*.

II. Outstanding court ordered fees and costs should not bar relief under § 1203.4.

Where the petitioner is entitled to relief as a matter of right, outstanding court ordered fees and costs do not bar relief under § 1203.4, as the court cannot impose such fees and costs as conditions of probation. *People v. Bradus*, 149 Cal. App. 4th 636 (2007). Although California courts have not had occasion to consider this issue where the petitioner is seeking relief in the "interests of justice," the court's reasoning in *Bradus* applies in this context as well. In *Bradus*, the court recognized that the statutes allowing the imposition of fees and costs on defendants reveal that the legislature favors "shifting costs arising from criminal acts back to convicted defendants." *Id*. at 643. Nevertheless, pointing to § 1203.4(d), the court found that the legislature did not intend nonpayment of fees and costs to stand as a barrier to relief under § 1203.4. Under § 1203.4(d), the court can order the petitioner to pay the costs associated with the petition, but cannot impose payment of the costs as a prerequisite to relief under § 1203.4(a).

[CLIENT] does not dispute that [HE/SHE] owes court ordered fees and costs. Without stable employment, however, [CLIENT] cannot afford to pay the fees and costs at this time. EXPALIN HOW granting relief under § 1203.4 will expand [CLIENT'S] employment opportunities, putting [HIM/HER] in a better position to pay the fees and costs.

Thus, granting the dismissal would serve the public interest in recouping the public expenditures associated with the conviction.

III. Waiving Fees is an Appropriate Exercise of Discretion [OPTIONAL SECTION-SEE FACTUAL EXAMPLE BELOW]

Mr. R- has requested the court waive the fees remaining. In support of his request, Mr. R- notes the progress he has made in turning his life around.

Since filing his previous petition for the May hearing, Mr. R- has completed the Green Cadre Program. He has graduated from Eastside Union High School. Mr. R- wanted to be involved in more community service in the past month, as the Court indicated it was interested in seeing at the May 12 hearing. He has contacted and is eager to volunteer with Our City Forest, a community service site where he worked during a portion of his training with the City of San José's Green Cadre program. However, his grandmother, who helped raise him, has been on life-support for the past month, and Mr. R- has spent substantial time with her during her final days.

Besides successfully completing probation and making substantial progress in building a new life, Mr. R- repaid $1863.70 – over half of the balance due – when he was employed. Currently his expenses for rent, utilities and necessities of living leave no money at the end of the month. In the interest of accelerating Mr. R-' ability to contribute to society, the court should dismiss the remaining fees due. (It is possible for the court to deny Mr. R-' motion to waive fees, and still dismiss the conviction.)

IV. The interests of justice demand that the court grant relief in this case.

The "interests of justice" standard encompasses all relevant circumstances, including the petitioner's post-probation conduct. *McLernon*, 174 Cal. App. 4th at 577. Although the court has not had occasion to further explain the "interests of justice" standard, the circumstances that led the legislature to amend § 1203.4 to include the standard are instructive. The amendment was proposed after a petitioner was denied relief under § 1203.4 despite his impressive efforts to move past his conviction. *Id.* at 577. After a probation violation, the petitioner completed

probation without incident, raised his child alone, went to college, volunteered for the State Parole Board, and was working to become a social worker. *Id*. The trial court expressed a desire to grant the dismissal, but determined that it did not have discretion to do so because of the probation violation. *Id*. It is clear from *McLernon* that when a petitioner's post-probation conduct demonstrates clear rehabilitation, warranting a dismissal of the conviction, the court has discretion to grant the dismissal.

Like the petitioner McLernon, who moved the legislature to act, [CLIENT] deserves relief under § 1203.4. [CLIENT] has taken considerable steps to move past [HIS/HER] conviction. [INCLUDE CIRCUMSTANCES SINCE CONVICTION, HOW THE DISMISSAL WILL HELP THE CLIENT MOVE FORWARD]

In addition to benefiting the petitioner, granting relief under § 1203.4 to individuals who have turned their lives around benefits the public as well. Individuals with prior convictions face substantial barriers to obtaining employment, occupational licenses, and housing. Although a dismissal under § 1203.4 does not wipe out prior convictions, it does provide significant evidence of rehabilitation, making it easier for individuals to obtain employment and housing, and providing an important first step towards future occupational licensing. Research shows that individuals who have access to stable housing and employment face a lower risk of recidivism.[1] As a result, supporting individuals' efforts to provide for themselves and their families promotes productive, safe communities.

CONCLUSION

Since the conviction, the client has [INCLUDE STRONGEST FACTS]. The client should be granted relief under § 1203.4 because it is in the interests of justice.

[1] *See, e.g.*, Christy A. Visher and Shannon M.E. Courtney, The Urban Inst., One Year Out: Experiences of Prisoners Returning to Cleveland 11 (2007); American Correctional Assoc., 135thCongress of Correction, Presentation by Dr. Art Lurigio (Loyola University) Safer Foundation Recidivism Study (August 8, 2005).

APPENDIX V

Sample Motion in Support of Petition Under Penal Code § 1203.43

_____, PUBLIC DEFENDER

_____

_____

_____

_____

Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____

PEOPLE OF THE STATE OF CALIFORNIA, v. _____, Defendant.	**Case No. _____** **MOTION TO WITHDRAW GUILTY OR NOLO CONTENDERE PLEA, ENTER NOT GUILTY PLEA, AND DISMISS THE COMPLAINT OR INFORMATION PURSUANT TO PENAL CODE SECTION 1203.43**

TO: HONORABLE JUDGE_____ OF THE SUPERIOR COURT:

Defendant, _____, pled guilty or nolo contendere, and was granted deferred entry of judgment pursuant to Penal Code section 1000 *et seq*., for a violation of Section(s):

☐ Health and Safety Code §_____

☐ _____ Code §_____

Penal Code section 1203.43 states "that the statement in Section 1000.4, that 'successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate' constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences… [B]ased on this misinformation and the potential harm, the defendant's prior plea is rendered invalid." (Pen. Code § 1203.43, subd. (a).)

Penal Code Section 1203.43 further provides that "[f]or the above-specified reason, in any case in which a defendant was granted deferred entry of judgment on or after January 1, 1997, has performed satisfactorily during the period in which deferred entry of judgment was granted, and for whom the criminal charge or charges were dismissed pursuant to Section 1000.3, the court shall, upon request of the defendant, permit the defendant to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty, and the court shall dismiss the complaint or information against the defendant. If court records showing the case resolution are no longer available, the defendant's declaration, under penalty of perjury, that the charges were dismissed after he or she completed the requirements for deferred entry of judgment, shall be presumed to be true if the defendant has submitted a copy of his or her state summary criminal history information maintained by the Department of Justice that either shows that the defendant successfully completed the deferred entry of judgment program or that the record is incomplete in that it does not show a final disposition. For purposes of this section, a final disposition means that the state summary criminal history information shows either a dismissal after completion of the program or a sentence after termination of the program." (Pen. Code § 1203.43, subd. (b).)

During the period in which deferred entry of judgment was granted, defendant performed satisfactorily and the criminal charges or charges were dismissed pursuant to Penal Code section 1000.3. Therefore, pursuant to newly enacted Penal Code section 1203.43, effective January 1, 2016, the defendant respectfully requests permission to withdraw the plea of guilty or nolo contendere, enter a plea of not guilty, and also requests that this court dismiss the complaint or information.

Dated:_____

_____, PUBLIC DEFENDER

By: _____
Deputy Public Defender

ORDER

Pursuant to Penal Code section 1203.43, the court hereby permits the defendant to withdraw his or her plea of guilty or nolo contendere, enter a plea of not guilty, and dismisses the complaint or information against the defendant.

Dated this_____ day of_____, 201__.

_____

(Seal of Court) Judge of the _____ Superior Court

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)	*(COURT USE ONLY)*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PLAINTIFF **PEOPLE OF THE STATE OF CALIFORNIA**	
DEFENDANT	CASE NUMBER
☐ **PETITION TO WITHDRAW DEJ PLEA UNDER P.C. § 1000 AND DISMISS COMPLAINT OR INFORMATION (PENAL CODE § 1203.43)**	

☐ Defendant was granted deferred entry of judgment on or after 01/01/1997 on the below charge or charges. The below charge or charges were dismissed pursuant to Penal Code Section 1000.3.

Code	*Section*
Code	*Section*
Code	*Section*

PETITION TO WITHDRAW PLEA OF GUILTY OR NOLO CONTENDERE AND DISMISS CHARGE OR CHARGES

☐ Defendant completed the requirements for deferred entry of judgment and the charge or charges were dismissed pursuant to Penal Code section 1000.3. Defendant hereby petitions to have the plea of guilty or nolo contendere withdrawn, a plea of not guilty entered, and the charge or charges dismissed. ☐ A hearing is requested if the petition is opposed.

☐ Court records are available showing the case resolution. [Optional] ☐ Court records showing a dismissal are attached.

Or

☐ Court records are no longer available. Attached is a state summary of criminal history maintained by the CA Department of Justice that either shows that the defendant successfully completed the deferred entry of judgment program or that the record is incomplete in that it does not show a final disposition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief, and that this petition is executed on (date) _____, 20_____.

_____
Defendant or Attorney for Defendant

(COURT USE ONLY)

DISTRICT ATTORNEY RESPONSE (*must be filed within 30 days of service of the petition*)

☐ The District Attorney requests that the petition be GRANTED.

☐ The District Attorney requests that the petition be DENIED for the following reason(s):

☐ The court record does not show that the case was dismissed pursuant to Penal Code section 1000.3

☐ The court record is no longer available and the Defendant did not submit a summary of criminal history showing either that the defendant successfully completed the deferred entry of judgment program or that the record is incomplete in that it does not show a final disposition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this response is executed on (date) _____, 20_____.

_____ D# _____
Deputy / Assistant District Attorney

COURT ORDERS

☐ The petition is DENIED.

☐ The petition is GRANTED. Pursuant to Pen C § 1203.43 the plea of guilty or nolo contendere is withdrawn and the charge or charges are dismissed because the information given to the defendant pursuant to Pen C § 1000.4 "constitutes misinformation about the actual consequences of making a plea in the case" and "based on this misinformation and the potential harm, the defendant's prior plea is invalid."

Dated:

_____
Judge of the Superior Court

APPENDIX W

ILRC Central Valley DACA Project Screening Form

INTERVIEWER (VOLUNTEER): _____ ORGANIZATION: _____

PARTICIPANT NAME: _____

Please note the issues in the boxes below – they should be referred to an attorney.
Volunteers: Please return completed forms to ILRC

Client Eligibility for DACA ***Please circle Yes or No***

1. Were you born after June 15, 1981? Yes No
   If not, they may still be eligible for DACA expansion announced in November. Not available yet

2. Are you at least 15 years old? Yes No

If no, are you in removal proceedings or do you have an order of removal?	**Yes**	**No**

3. Were you in the United States unlawfully as of June 15, 2012? Yes No
   (Either by entering the U.S. unlawfully prior to June 15, 2012 or because your lawful immigration status such as your I-94 or border crossing card expired on or before June 15, 2012)

4. Were you under the age of 16 when you first entered the U.S.? Yes No

If yes, did you ever leave the U.S. before turning 16?	**Yes**	**No**

5. Which of the following best describes your situation? (Mark all that apply)
   ☐ still in middle school ☐ still in high school ☐ graduated from high school
   ☐ obtained a GED ☐ finished vocational program ☐ went or currently in college
   ☐ enrolled in ESL or vocational program ☐ left high school before graduating and not in school now
   ☐ was in the U.S. military ☐ never attended school in the U.S. ☐ Other: _____

6. Were you physically present in the U.S. on June 15, 2012? Yes No
   (You must also be physically present in the U.S. on the date you apply for DACA.)

7. Have you continuously lived in the United States since June 15, 2007? Yes No
   If not, have you continuously lived in the U.S. since January 1, 2010? Yes No

If the answer to any of the questions in this section is "Yes," please list complete details on this sheet or on a separate sheet and seek advice from a qualified immigration attorney before applying for DACA.

8. Have you ever left the United States? Yes No

9. Have you ever been arrested? Yes No

10. Have you ever been convicted of a crime as an adult or juvenile? Yes No

11. Have you ever received a ticket for a traffic offense, such as driving without a license or DUI (driving under the influence)? Yes No

12. Have you ever had any contact with any immigration official or been in immigration court? Yes No

ILRC Central Valley DACA Project Screening Form

Eligibility for Other Immigration Benefits

If the answer to any of the questions in this section is "Yes," please refer the person to an immigration attorney for evaluation of their other immigration options.

13. Have you ever filed any immigration applications or has someone filed an immigration petition for you?
    Yes No

14. Are any of your relatives (parents, children, brothers, sisters, grandparents, or spouse) legal permanent residents of the United States? (have a "green card")?
    Yes No

15. Are any of your relatives (parents, children, brothers, sisters, aunts, uncles, grandparents, or spouse) United States Citizens?
    Yes No

16. Have you or any of your family members ever been the victim of a serious crime in the United States, or been the witness to a serious crime in the United States? (Examples of serious crimes include domestic violence, sexual abuse, physical attack, rape, kidnapping, etc.)
    Yes No

17. Are you afraid of returning to your home country because you have been, or will be, persecuted or harmed there? Yes No

18. Are you in the foster care system, or has a court ever taken you away from your parents?
    Yes No

19. **Do you have any children who are U.S. citizens or permanent residents?**
    If yes, they may be eligible for DAPA and should come back in May. **Yes No**

Volunteer: please answer AND RETURN COMPLETED FORM TO ILRC/WORKSHOP COORDINATOR:

WORKSHOP REFERRALS (Mark all that apply)
Application completed today? Yes No

If no, explain reasons:

Referred to: ☐ Application Preparation ☐ Doc Review ☐ Final Review ☐ Attorney Consultation

POST-WORKSHOP REFERRALS
Client referred to partner agency:_____

Client referred to attorney (name):_____

Client referred to upcoming workshop: Location:_____ Date:_____

Client referred to adult/vocational school:_____

APPENDIX X

DAPA Criminal Defense Advisory

Practice Advisory for Criminal Defenders: New "Deferred Action for Parental Accountability" (DAPA) Immigration Program Announced by President Obama

What Is Deferred Action for Parental Accountability (DAPA)?

On November 20, 2014, the Obama Administration announced that it would not deport certain undocumented persons who are the parents of U.S. citizens or lawful permanent residents, if they qualify for Deferred Action for Parental Accountability (DAPA). See Department of Homeland Security (DHS) Memorandum, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents" (November 20, 2014)[1] hereafter referred to as the DAPA/DACA Memo.

The Administration also announced that it has established new priorities for enforcement, many of which are based on criminal conduct or convictions. It stated that *these priorities will serve as the bars to the new DAPA program*. See DHS Memorandum, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum" (November 20, 2014)[2] hereafter referred to as the Enforcement Memo.

DAPA offers benefits similar to the Deferred Action for Childhood Arrivals (DACA) program that has existed since 2012. It provides "deferred action," which means that, even though the individual is undocumented and subject to deportation, the government agrees to "defer" any actions to remove him or her. While deferred action does not provide a pathway to lawful permanent resident status (a green card) or citizenship, it will allow recipients to remain in the U.S. and obtain an employment authorization document that will entitle them to work here legally. Deferred Action status will be for three-year periods. Because the program is a change in policy and not in law, it can be withdrawn at any time and without the procedural protections associated with a person's visa or immigration status. In the DACA context, DHS has indicated that it may, at its discretion, terminate deferred action at any time.[3]

This advisory outlines (a) basic requirements for DAPA and (b) criminal defense strategies to preserve a defendant's possible eligibility for DAPA. For more information, see additional materials as they appear at www.AdminRelief.org and websites such as www.nipnlg.org and www.ilrc.org.

Does This Practice Advisory Also Address Crimes Bars to Deferred Action for Child Arrivals (DACA)?

Not really. DAPA is subject to the above-cited Enforcement Memo, while DACA is not. The most accurate resources on crime bars for DACA are the existing DACA materials, which can be found online.[4]

The DAPA and DACA crimes bars are very similar in some ways. Both DAPA and DACA are barred by conviction of any felony, a "significant" misdemeanor, or three misdemeanors. However, even here there are differences, for example in the definition of what constitutes a felony and misdemeanor. Also it is clear that an expungement removes a conviction as an absolute bar to DACA, but this has not yet been clarified for DAPA.

How are the crimes bars to DAPA and DACA different? The Enforcement Memo includes bars that apply to DAPA but not to DACA, such as conviction of an aggravated felony and certain convictions and conduct relating to gangs. (Of course, while such conduct or convictions are not absolute bars to DACA, they may serve as negative discretionary or public safety factors in cases.)

Note that on November 20, 2014, President Obama expanded the DACA program to enable more people to qualify. While under the 2012 announcement, persons must have entered the U.S. while under age 16 before June 15, 2007 to qualify for DACA, now persons can have entered the U.S. while under age 16 before January 1, 2010. While originally the person must have been under age 31 as of June 15, 2012, now there is no age cap. For more information on the extension to DACA, see the DAPA/DACA Memo cited above and see materials at www.adminrelief.org.

How Can Criminal Defenders Help Noncitizen Defendants Who Might Be Eligible for DAPA?

First, inform the defendant about DAPA and conduct a quick screening to see if the person might be eligible to seek DAPA. Just giving correct information may provide an enormous service. There may be a lot of misinformation in the community about DAPA, and you may be the defendant's only source of good information. Be aware that some people may be eligible for a more permanent legal solution and you should also screen for other forms of immigration relief. For a quick checklist for defendants, see the free Relief Toolkit online.[5]

Second, work to resolve the criminal charges to preserve a potential applicant's eligibility for DAPA. This memo and other resources will provide strategies for that.

Who Qualifies for DAPA?

To qualify, the individual must:

- be without lawful immigration status and be the parent of a U.S. citizen or permanent resident (of any age, married or unmarried) on November 20, 2014;
- have continuously resided in the United States since January 1, 2010;
- be physically present in the U.S. on November 20, 2014, and at the time of applying for DAPA;
- not be an enforcement priority as reflected in the November 20, 2014 **Enforcement Memo** cited above; and
- present no other factors that, in the exercise of discretion, make the grant of deferred action inappropriate.

Overview of Criminal Bars to DAPA

The DHS Enforcement Memo cited above sets out factors that make certain removable immigrants a priority target for arrest and removal. These factors also act as bars to eligibility for DAPA.

The bars are discussed in more detail below, but basically they include being a terrorist or national security threat, certain convictions or conduct relating to gangs, conviction of an "aggravated felony" (an immigration law term of art that includes a wide range of offenses, including some misdemeanors), conviction of any felony, convictions of three or more misdemeanors that arise from three separate incidents, or conviction of one "significant misdemeanor." There are exceptions for convictions of state or local offenses that have immigration status as an element, and for minor traffic convictions.

Juvenile dispositions and expungements. Neither the DAPA/DACA Memo nor the Enforcement Memo discusses how a juvenile disposition or an "expunged" conviction (a conviction eliminated under state law based on the defendant's completion of probation or other conditions, rather than legal defect) will be treated in DAPA applications. Under DACA, a juvenile disposition or an expunged conviction cannot be

treated as a bar, although either can be considered as a factor to support a discretionary denial. We hope to get clarification from DHS on these issues.

Criminal Bars: "One Felony, Three Misdemeanors, or a Significant Misdemeanor"

Defenders who are familiar with the Deferred Action for Childhood Arrivals (DACA) criminal bars will find this part familiar, because this part of the DAPA bars is very similar (although not identical).

Felony. For purposes of DAPA, a felony is "an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status." Enforcement Memo, p. 3.

Some states, such as Maryland and Massachusetts, define misdemeanors to include certain convictions that have a potential sentence of more than a year, for example 18 months or two years. Under the above definition, these should not be "felonies" for DAPA purposes, because the convicting jurisdiction does not classify them as felonies. (The result is different under DACA, which defines a felony as an offense with a potential sentence of more than a year.)

The Enforcement Memo provides that a state conviction for which immigration status is an essential element of the offense is not a disqualifying "felony."

However, a *federal* felony conviction relating to immigration law – for example, illegal re-entry – is likely to be a bar to DAPA and have additional penalties. Warn any undocumented person with such a conviction not to submit any application to immigration authorities without first getting expert consultation, because he or she might be referred for removal and further federal criminal prosecution.

Three Misdemeanor Convictions. DAPA can be barred by convictions of "three or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element is the alien's immigration status, provided the offenses arise out of three separate incidents." Enforcement Memo, pp. 3-4. Minor traffic convictions might include driving without a license, speeding, or driving without insurance.

Some offenses, often called "infractions" or "offenses," are considered to be less than misdemeanors. As of November 24, 2014 it is not clear whether or not these will constitute one of the three misdemeanors for DAPA. If this is important, get expert assistance to evaluate whether the following will be treated as less than a misdemeanor for DAPA purposes: (1) an offense that is punishable by five days in jail or less (this was not a misdemeanor under DACA rules), or (2) the proceeding lacked key constitutional protections for a criminal case, such as the availability at some point of a jury trial, the requirement that guilt be established beyond a reasonable doubt, or other factors (some state dispositions created without these protections have been held not to be a "conviction" for immigration purposes).[6]

Note that any misdemeanor will become a "significant misdemeanor" if it is for certain types of offenses, or if the person was sentenced to 90 days or more (not including suspended sentences) on any single count. See next section.

Conviction of One "Significant Misdemeanor." A "significant misdemeanor" is a standard that applies to both DACA and DAPA. It appears not to be subject to the categorical approach (the federal standard for comparing elements of a prior conviction to a generic definition), and there is not strict uniformity or court review of the definition of the term.

The Enforcement Memo defines a significant misdemeanor as a federal, state, or local misdemeanor that is an offense of:

- Domestic violence
    - A conviction of simple battery against a spouse, which in many states is a good immigration plea to avoid various removal grounds, may not be a safe plea for DAPA.
    - Warning: Some persons were denied DACA for conviction of a crime that is not domestic violence, for example disturbing the peace or disorderly conduct, where the offense originally was charged as domestic violence. That might happen in DAPA cases as well. Check with experts.
    - The Enforcement Memo states that if the convicted person was also a victim of domestic violence, this should be a mitigating factor. See p. 4, n. 1.
- Sexual abuse or exploitation
    - It is not clear exactly which offenses this covers or if it goes beyond serious crimes. See also "sexual abuse of a minor" at the aggravated felony section below.
    - Note that ICE is likely to seek out any person on a state sex offender registry who may be a noncitizen, whether the person applies for relief or not.
- Unlawful possession or use of a firearm
- Drug sales (distribution or trafficking)
    - A misdemeanor conviction for drug *possession* is not necessarily a bar to DAPA. However, in some DACA cases some more egregious possession cases were used as a basis for discretionary denial, even though it was not a bar.
    - The downside of a single misdemeanor drug possession conviction is that, with some exceptions, it will prevent the person from gaining lawful permanent resident status (a green card) through family members.
- Burglary
    - Even in those states where a "burglary" statute includes conduct as minor as shoplifting (lawful entry with intent to commit larceny), the conviction may serve as a bar. Try to plead to a different misdemeanor, such as theft, trespass, or receipt of stolen property.
- Driving under the influence of alcohol or drugs
    - Because a DUI is an automatic significant misdemeanor, defense counsel should seek a different plea. Reckless driving is not automatically a significant misdemeanor, so is a better plea for purposes of DAPA. Try to keep alcohol out of the factual basis of the plea; however, even reckless driving with alcohol as an element is better than DUI.
    - Note, however, that in some states reckless driving might be a "crime involving moral turpitude" which, depending upon various factors, could hurt the person's ability to become a legal resident (get a green card) in the future. Get advice on how to structure the plea to avoid this.
- Sentence of 90 Days or More, Excluding Suspended Sentences. A significant misdemeanor includes any misdemeanor not listed above, "for which the individual was sentenced to time in custody of 90 days or more (the sentence must involve time to be served in custody, and does not include a suspended sentence)." Enforcement Memo, p. 4.
    - The evaluation of what is a "sentence" is different here than in other immigration law contexts, because a suspended sentence does not count. To the best of our knowledge, the following examples illustrate the rule:
        - Sentenced to a year, execution wholly suspended (so the person never goes to jail) is not a sentence to 90 days or more
        - Sentenced to 100 days, released at 50 days for good behavior, appears to be a sentence of 90 days or more.

        - Imposition of sentence suspended, 90 days jail time ordered as a condition of probation, credit for time served, appears to be a sentence of 90 days or more.
    - Sentencing Practice Tip: If a defendant must take a sentence of 90 days or more for an offense that otherwise is not a significant misdemeanor, it may be possible to preserve DAPA eligibility by pleading to two misdemeanor offenses arising from the same incident, each with a sentence of less than 90 days, to run consecutively. While the person might be denied as a matter of discretion, it is not technically a bar. (Also, for purposes of the DAPA bar based on conviction of any three misdemeanors, multiple offenses arising from the same incident only count as one of the three; see above.)

Criminal bars: Conviction of an Aggravated Felony (Which Includes Some Misdemeanors)

The Enforcement Memo states that a person who is "convicted of an 'aggravated felony,' as that term is defined in [INA 101(a)(43), 8 USC 1101(a)(43)] at the time of the conviction" is barred from DAPA.

See online materials and books relating to the definition of aggravated felony.[7]

Any felony conviction is a bar to DAPA, so why do we need to discuss "aggravated" felonies? Unfortunately, an aggravated felony is a much-litigated federal law term of art that includes some misdemeanors – even ones that do not qualify as "significant" misdemeanors!

One reason for this is that "significant" misdemeanors and "aggravated felonies" use different definitions of sentence. Any misdemeanor is a "significant" misdemeanor if a sentence of 90 days or more is imposed, *excluding* suspended sentences. Some misdemeanors are aggravated felonies if a sentence of a year or more is imposed, *including* suspended sentences.

> **Example:** Herman is convicted of misdemeanor theft and receives a suspended one-year sentence. This conviction does not come within the DAPA definition of a "significant" misdemeanor, defined as any misdemeanor where sentence of 90 days or more was imposed, because that definition does not count suspended sentences. For purposes of the 90 days, Herman has no sentence.
>
> However, the definition of aggravated felony includes certain theft convictions if a sentence of a year or more has been imposed, *including* suspended sentences. If the state theft crime of which Herman was convicted meets the federal definition of "theft," then his conviction is an aggravated felony due to the one-year suspended sentence. In that case, the aggravated felony conviction will bar Herman from DAPA, plus a lot of other immigration applications.

Here are some common offenses punished as misdemeanors that may be aggravated felonies. (To avoid repetition, we will not list aggravated felony categories here if they also are DAPA significant misdemeanors, e.g. burglary, drug trafficking.)

- If and only if a sentence of a year or more has been imposed, including a suspended sentence, certain misdemeanors that meet the immigration definition of theft, receipt of stolen property, perjury, forgery, obstruction of justice (which may include accessory after the fact), or a "crime of violence" as defined under 18 USC § 16.
- Regardless of sentence imposed, other misdemeanors that meet the immigration definition of "sexual abuse of a minor," (which is defined differently in different jurisdictions, and in some areas might include consensual sex with a person under the age of 18); any crime involving deceit or fraud where the loss to the victim exceeds $10,000; or failure to appear to face a felony charge, regardless of how the charge was resolved.

Practice Tip: Whether a specific offense is an aggravated felony usually depends upon the *elements of the offense as defined by state law*. Immigration law uses the *federal* definition of "theft," "obstruction of justice," and other terms, and some state laws have slightly different definitions. If the definitions are different enough, the state conviction might not qualify as an aggravated felony. This is another reason that it is important to consult state-specific resources and/or a criminal-immigration law expert, where an important decision must be made. Note that this strict, elements-based analysis, called the "categorical approach,"[8] applies in determining whether an offense is an aggravated felony, but presumably does not apply to analyzing whether an offense comes within the other DAPA crimes bars.

Practice Tip: If the aggravated felony conviction occurred before September 30, 1996, consult an expert. It is possible that an older, better definition of "aggravated felony" will apply to the conviction.

Criminal Bars: Certain Convictions or Conduct Relating to Organized Gangs

Persons convicted of an offense that includes as an element "active participation in a criminal street gang, as defined in 18 USC § 521(a)" will be barred from DAPA. See Enforcement Memo. In 18 USC § 521(a), "criminal street gang" is defined as an ongoing group, club, organization, or association of five or more persons—**(A)** that has as one of its primary purposes the commission of one or more of the criminal offenses described in subsection (C); **(B)** the members of which engage, or have engaged within the past five years, in a continuing series of offenses described in subsection (C); and **(C)** the activities of which affect interstate or foreign commerce. The continuing series of offenses include felony drug offenses, some felonies involving violence against a person, and a conspiracy of the above.

DAPA includes an additional, conduct-based bar relating to gang participation. Persons age 16 or older who intentionally participated in an organized criminal gang to further the illegal activity of the gang will also be barred from DAPA. See enforcement memo. Convictions and conduct related to gangs were previously not an express bar for DACA applicants, though suspected gang membership did make certain DACA applicants ineligible as a risk to public safety. In the DACA context, USCIS has relied on reports from local police departments, school gang contracts, or arrest records to determine gang membership. The addition of the conduct prongs marginally improves the gang disqualification bar.

Practice Tip: Consider disputing any allegation of gang membership.

> **Example:** Juanita, who is 22, was convicted of misdemeanor vandalism and received a 30-day suspended sentence. Arrest records show that her co-defendants were members of the gang MS-13. Juanita might not be eligible under the conduct-based prong.

Warning: DAPA adjudicators will be instructed to refer "known or suspected street gang members" to ICE, to see if removal proceedings should be started against them. See "If the DACA Application is Denied," below.

Terrorism and Espionage

A disqualifying bar also exists for noncitizens "engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security." Little is known about this bar in the DACA context. If an individual encounters this bar, it will be critical to consult with an immigration expert.

Possible Defense Strategies in Light of DAPA and DACA[9]

Informally defer the plea. Ask the prosecution to agree to defer the plea hearing so the defendant can voluntarily meet specified goals, e.g., perform community service, and then make an alternative plea or no plea after the goals are completed.

Seek "pre-plea diversion," or any deferred adjudication disposition where a plea of guilty is not required. If the offense at issue will — or could — be characterized as a "significant misdemeanor," or a non-significant misdemeanor offer is not on the table, pursue negotiations to resolve the case through a deferred adjudication process (e.g. stipulated order of continuance, diversion) that does not require the defendant to admit guilt or admit to facts sufficient to warrant a finding of guilt. If a plea of guilty is entered, even if the case is later dismissed, it will not be "immigration safe."

Avoid the 90 Day Sentence. For example, if the defendant is charged with simple possession of a controlled substance, the strategy to preserve eligibility for deferred action should be (1) if possible, to plead to a lesser (misdemeanor) charge and preferably a non-controlled substance offense and (2) if not, plead to simple possession only if it is a misdemeanor and carries a jail sentence of less than 90 days.[10]

Plead to two misdemeanors, if possible from the same incident, with less than 90 days custody each. If a sentence of more than 90 days is required, it may be possible to preserve DAPA eligibility by pleading to two misdemeanor offenses, each with a sentence of less than 90 days, to run consecutively. While this may be a negative discretionary factor, it does not trigger the bar. If possible, plead to two offenses arising from the same incident; multiple misdemeanor convictions arising from the same incident only count as one conviction, for purposes of the bar based on three misdemeanor convictions.

Plead to a misdemeanor that is a routine traffic offense or immigration offense. Routine traffic violations are safe. If a case can be reduced to a minor traffic offense, even as a misdemeanor, this should be pursued. A DUI is a significant misdemeanor, so attempt to plead to another offense. Defense counsel can consider offering, in exchange for a reduced charge, a more severe non-jail sentence such as additional hours of community service, counseling, or work release, or can offer to waive credit for time served, as long as the jail sentence does not exceed 90 days, excluding suspended sentence.

Explore reducing a felony to a misdemeanor, where that is permitted under state law. Some states have alternate felony/misdemeanor offenses. See, e.g. California P.C. § 17.

Unknown: Expungement or other "rehabilitative" relief that eliminates a conviction based on successful completion of probation or other conditions. Under DACA an expunged conviction may be a negative discretionary factor, but cannot serve as an automatic bar. DHS has not yet clarified if this will apply in DAPA. (Other than these programs, expungements have little effect in immigration proceedings.)

Explore vacating a conviction on the basis of legal error. Different states have different legal vehicles for this. Investigate possibilities of vacating the plea based on ineffective assistance of counsel or failure of the court to administer a statutory advisal on the immigration consequences.[11]

In some states it is easier to vacate a plea that was recently made. For example, in California, under Cal. P.C. § 1018 a court may allow a defendant to withdraw his or her plea "for good cause" before judgment is entered or within six months after the defendant is placed on probation if imposition of sentence is suspended.

Consider taking the case to trial. If deferred action is the only way your client will have security against deportation, she may be want to take her case to trial if a plea will clearly make her ineligible for deferred

action. The biggest risk of losing at trial would be an increased likelihood of actually spending time in jail (as opposed to a plea that would avoid this). If she spends time in jail, she may be apprehended by ICE.

Defenders should note that some of the strategies described above will only protect a noncitizen defendant's potential eligibility for DAPA and DACA, and not for other immigration benefits. In particular, Defenders should continue to flag other forms of relief for clients and defend the case accordingly. To identify other possible immigration application for your clients, use the quick checklist from the *Immigration Relief Toolkit.*[12]

If the DAPA Application is Denied, Will the Applicant Be Put in Removal (Deportation) Proceedings?

DAPA applications generally are confidential, so that a denial should not result in removal proceedings -- *with exceptions for certain arrests and convictions*. This section will describe the exceptions.

The bottom line is that defenders should advise immigrant defendants who come within the below categories -- and ideally, any immigrant with a criminal record -- to get competent immigration counseling before applying for DAPA or DACA. Even if the applicant is not placed in removal proceedings, he or she could encounter extensive delays in processing, a wrongfully issued Notice of Intent to Deny, or other problems. Many DAPA and DACA applicants will not require counsel, but applicants with criminal record should get help.

Confidentiality is discussed in the DHS Executive Actions on Immigration FAQs.[13] This indicates that information from DAPA applications can be referred to law enforcement agencies for use in investigating or prosecuting a criminal case. Moreover, the DAPA/DACA memo provides that the programs will be implemented in accordance with existing DHS policy on Notices to Appear (similar to a criminal complaint.) Under the DHS Notice to Appear memo,[14] if the applicant is an "Egregious Public Safety" (EPS) case who meets certain criteria, the DAPA information will be sent to the United States Immigration and Customs Enforcement (or "ICE", which is the immigration police and prosecutor). ICE then will decide whether to issue an NTA and/or to detain the person.

The EPS category includes individuals who are under investigation for or have been arrested for (including without disposition) murder; rape; sexual abuse of a minor; Illicit trafficking in firearms or destructive devices; offenses relating to explosive materials or firearms; crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year; offense relating to ransom, child pornography, peonage, slavery, involuntary servitude, trafficking in persons; and human rights violators, or known or suspected street gang members.

Finally, it is possible that if the DAPA application is denied, and the applicant is inadmissible or deportable for crimes, USCIS could refer the person to ICE for consideration of removal proceedings even if the person is not in the EPS category. This depends upon whether USCIS will apply a different part of the government memo on Notices to Appear.[15] Advocates will seek clarification on this point.

Immigration Enforcement & Advising Your Client of His or Her Rights

Qualifying persons in criminal custody with ICE detainers/holds may contact ICE directly at the ICE Law Enforcement Support Center at the following toll-free number (855) 448-6903.

For undocumented persons who are ineligible for the program, the defense priority may be to try to avoid contact with ICE by staying out of jail. However, counsel should be careful to advise this group of clients

not to hastily accept a plea that would eliminate their options for lawful status without understanding the long-term consequences. Although a person may not be eligible for deferred action, try to plead to an offense that would not bar him/her from getting legal status in the future and is a low enforcement priority to preserve his/her eligibility for prosecutorial discretion.

Note that the enforcement priorities apply to convictions and not to arrests. As a result, a defendant who has no prior convictions generally would not be a DHS enforcement priority, which may be a useful bond argument if the judge is concerned about whether the defendant is a flight risk or apt to be deported out from under the criminal judge's jurisdiction.

Generally, warn your client not to apply for deferred action without getting his or her complete criminal history (including any juvenile history) reviewed first by an immigration lawyer.

For persons already in ICE custody, DHS will conduct a thorough criminal background check and may interview them.[16] If the person qualifies for the program, the person should be released from immigration custody and his/her immigration case should be closed or terminated. These individuals should contact the ICE ERO Detention Reporting and Information Line, toll-free, at 1-888-351-4024 to make such as a request. If removal proceedings are pending, one may also contact his/her local ICE attorney office, called the Office of the Principal Legal Advisor (OPLA).[17] For more information about steps an individual can take to be released, please check a detention alert available at www.nipnlg.org and see documents at www.ilrc.org/enforcement.

For more information on defending noncitizens in criminal proceedings visit www.defendingimmigrants.org (a defender site offered for free, but registration is required), as well as sites such as www.nipnlg.org, www.ilrc.org/crimes, www.immigrantdefenseproject.org, and www.nortontooby.com.

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[1] See www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.
[2] See www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
[3] See Q27 in DACA FAQ available at: www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions.
[4] See ILRC's DACA resources including: "DACA Criminal Bars Chart", available at www.ilrc.org/resources/daca-criminal-bars-chart; "Understanding the Criminal Bars to the Deferred Action Policy for Childhood Arrivals Program", available at: www.ilrc.org/files/documents/ilrc-understanding_criminal_bars_to_deferred_action_5.pdf; "Practice Advisory for Criminal Defenders on Deferred Action" available at: www.ilrc.org/resources/practice-advisory-for-criminal-defenders-certain-criminal-offenses-may-bar-persons-from-ap; "DACA and Juvenile Delinquency Adjudications FAQs" available at www.ilrc.org/resources/daca-and-juvenile-delinquency-adjudications-records-faqs. See generally www.ilrc.org/daca.
[5] Go to www.ilrc.org/files/documents/natl_relief_toolkit_jan_2014_final_0.pdf. The Relief Toolkit does not yet include information on DAPA or the extension of DACA.
[6] See, e.g., *Matter of Cuellar*, 25 I&N Dec. 850 (BIA 2012), *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004) and Advisory at www.ilrc.org/files/documents/ilrc-cal_infraction_not_conviction-2012-10_15.pdf.
[7] A basic overview of aggravated felonies is found at www.ilrc.org/files/documents/n.6-aggravated_felonies.pdf. Criminal defenders can see additional resources posted at www.defendingimmigrants.org (free resource, registration required).
[8] For more information on the categorical approach, see Practice Advisories found at www.ilrc.org/crimes and www.nipnlg.org. For an overview, see Brady, "How to Use the Categorical Approach Now," at www.ilrc.org/crimes.
[9] The criminal bars to deferred action are defined such that the defense strategy of carefully crafting the record of conviction to avoid a deportable or inadmissible offense may not be sufficient to protect your client. Furthermore, it is unclear at this time what kinds of evidence may be considered to determine if the offense falls within one of the criminal bars.

[10] But, in this example, if the defendant pled to simple possession or another controlled substance offense he would be ineligible to obtain a green card in the future through a family or business visa because a controlled substance conviction is a ground of inadmissibility unless it is for possession of 30 grams or less of marijuana and waiver is applied for and received.
[11] See D. Wilkes, State Post-conviction Remedies and Relief Handbook (2009) for a state-by-state summary of post-conviction vehicles and procedures.
[12] The Immigration Relief Toolkit appears at www.ilrc.org/resources/immigration-relief-toolkit-for-criminal-defenders.
[13] See Questions 8 and 10 at www.uscis.gov/immigrationaction.
[14]See 2011 USCIS "Policy Memorandum" on issuance of NTA's (November 7, 2011), Part IV.A.1, at: www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf.
[15] See USCIS NTA Memo, above, at Part IV.A.2.
[16] See www.ice.gov/immigrationaction.
[17] See OPLA field offices contact information at www.ice.gov/contact/legal.