DEFENDING IMMIGRANTS IN THE NINTH CIRCUIT: Impact of Crimes Under California and Other State Laws 10th Edition (released June 2008)

CHAPTER 1 Introduction and Overview

- § 1.1 Criminal Defense: Special Factors in Representing Non-Citizen Clients
- § 1.2 Definitions: The DHS, the INA, Legislation, Grounds of Inadmissibility, Grounds of Deportability, Good Moral Character, Waivers
 - A. Grounds of Inadmissibility, Good Moral Character, Grounds of Deportation, Aggravated Felonies
 - 1. Grounds of inadmissibility (formerly grounds of exclusion)
 - 2. Good Moral Character
 - 3. Grounds of deportation
 - 4. Aggravated Felonies
 - B. Waivers of Inadmissibility and Deportability
 - C. When Do the Grounds Apply? Deportability, Inadmissibility, Dinner Parties, and the ADIR Analysis
- § 1.3 Removal Proceedings and the Definition of Admission
 - A. Removal Proceedings: Admission and the Burden of Proof
 - B. Adjustment of Status as an Admission or Entry
 - C. When the Commission or Conviction Must Occur after Admission
 - D. The Government Bears the Burden of Proving that a Conviction under a Divisible Statute is a Bar to Relief of Admission
- § 1.4 Rules for Lawful Permanent Residents who Travel Abroad: Admission, Entry, Re-Entry, and the Fleuti Exception
 - A. When Does a Permanent Resident Seek Admission to the United States?
 - B. The Continuing Validity of Entry, Re-Entry and the Fleuti Exception
- § 1.5 Immigration Status
- § 1.6 Verifying Immigration Status, Immigration and Criminal Records
 - A. Freedom of Information Act (FOIA) Requests
 - B. Obtaining Criminal Records
- § 1.7 Overview of Immigration Procedure
- § 1.8 How to Use This Book
- § 1.9 Historical Background: Effect of Legislation of 1986, 1990, 1996
 - A. Immigration Legislation of 1986 and 1990
 - B. 1996 Legislation: Exclusion and Deportation Proceedings before April 1, 1997, the Definition of Entry

CHAPTER 2 Definition of Conviction, and the Elements of the Offense of Conviction

PART ONE: WHAT CONSTITUTES A CONVICTION FOR IMMIGRATION PURPOSES

- § 2.1 Overview and History of the Definition of Conviction
 - A. Overview of the Current Definition of Conviction
 - B. Historical Background
- § 2.2 Juvenile Delinquency Dispositions
- § 2.3 Appeal and Issues of Finality
- § 2.4 Infractions
- § 2.5 Effect of Alternate Dispositions: Deferred Prosecution, Pre-Plea Dispositions, Deferred Entry of Judgment and Rehabilitative "Expungements," Treatment Programs
 - A. Deferred Prosecution or Sentence, Formal or Informal
 - B. Pre-Plea Drug Court
 - C. Other Pre-Plea Diversion Programs
 - D. Deferred Entry of Judgment, Expungements, and Other Rehabilitative Schemes Following a Plea
 - E. State Laws that Require Treatment Rather than Incarceration for Drug or Alcohol Offenses
 - F. Alternative Placements: Mental Hospital, Youthful Offenders
 - G. Nolo Contendere, Alford or West Pleas
- § 2.6 Vacation of Judgment for Cause
- § 2.7 Pardon
- § 2.8 Foreign Convictions and Post-Conviction Relief
- § 2.9 Proof of Conviction
 - A. Documents That Can Be Submitted to Prove that a Conviction Occurred
 - B. Compare: Proof that a Conviction Occurred versus Proof of the Elements of the Offense of Conviction
- § 2.10 Caution: Some Grounds Punish Bad Acts, Not Convictions

PART TWO: ELEMENTS OF THE OFFENSE OF CONVICTION

- § 2.11 The Categorical Analysis, Divisible Statutes and the Record of Conviction
 - A. Overview: The Categorical and Modified Categorical Analysis
 - 1. Summary and Example
 - 2. Supreme Court Cases on the Categorical Analysis
 - B. The Categorical Analysis
 - 1. Step One: Establish the Elements That Constitute the "Generic" Definition of the Immigration Law Provision
 - a. Generic definition of offenses defined by reference to statute
 - b. Generic definition of offenses defined by common law or general terms
 - 2. Who Determines the Generic Definition? Federal Courts and Chevron Deference to the BIA
 - a. The issue
 - b. The Chevron test for when a federal court defers to an agency

- c. Challenging deference to BIA interpretations
 - i. Chevron deference where an offense is defined in reference to a federal statute
 - ii. Chevron deference where an offense is defined by a general law term
 - iii. Chevron deference in the application of the categorical analysis
 - iv. Some bases for challenging Chevron deference
- 3. Step Two: Compare the Elements of the "Generic" Immigration Definition to the Elements of the Statute of Conviction
 - a. Overview
 - b. Examining the statute of conviction; Duenas-Alvarez and the legal imagination
 - c. Sentence enhancements as elements of the conviction
- C. The Modified Categorical Analysis: Taylor's "Narrow Range of Cases" That Permit Reviewing Authorities to Consult the Reviewable Record of Conviction to Determine Elements of the Offense of Conviction
 - 1. What is a Divisible or "Categorically Overbroad" Statute? When May the Court Go on to Consult the Record of Conviction?
 - a. Examples of divisible or categorically overbroad statutes
 - b. When may the court go on to consult the record of conviction?
 - 2. Recent BIA Opinions Asserting That the Categorical Analysis Does Not Apply to "Extra Elements"
 - 3. Overview: What Documents Can Be Consulted to Determine the Elements of the Offense of Conviction, Using the Modified Categorical Analysis?
 - 4. Documents to Be Consulted: Charging Papers, Dropped Charges and Summary Documents such as Abstracts of Conviction and Minute Orders
 - a. For information in a criminal charge to be considered in a modified categorical analysis, there must be proof that the defendant admitted or was found guilty of the factual allegations "as charged" in the complaint
 - b. Information from dropped charges cannot be used
 - c. Notations on a summary document, such as a California abstract of judgment or minute order, cannot be used to characterize the offense of conviction in a modified categorical analysis
 - 5. Documents to Be Consulted: Plea agreements, charges phrased in the conjunctive, boilerplate language, charges phrased to the statute, jury instructions
 - a. Plea agreements are a definitive source of information and an opportunity for criminal defense counsel to control the record
 - b. Charging documents phrased in the conjunctive; pleas and/or statutes phrased in the disjunctive
 - c. Boilerplate indictments, misleading statutory language
 - d. A charging paper charging the offense in the language of the statute is proper and often beneficial to the noncitizen
 - e. Jury trials and jury instructions
 - 6. Creating a Safer Factual Basis; Dangers of Stipulating to a Police Report or Other Document as a Factual Basis; Use of Alford or West Plea to Avoid Stipulation
 - a. Overview

- b. Unless the record of plea proceedings reflects that a defendant admitted to facts, a plea pursuant to North Carolina v. Alford or People v. West does not admit a factual basis for the plea; persuade the court not to require a stipulation to a factual basis
- c. Other practice tips for creating a safer factual basis
- d. Rules governing use of stipulated police reports and other documents in a modified categorical analysis
- 7. Nolo-Contendere, Alford and West Pleas
 - a. The Ninth Circuit held that where an Alford plea is accompanied by a signed plea agreement, information in the plea agreement is part of the reviewable record of conviction under the modified categorical analysis
 - b. An Alford or West plea presents an opportunity to decline to admit facts or stipulate to a factual basis. Without an admission that the defendant is pleading "as charged" and without a stipulated factual basis, the record of conviction does not establish facts beyond the elements of the statute
- 8. Sentence and Domestic Violence Cases: Stay-Away Orders, Counseling Requirement as Proof of Domestic Relationship
- D. The Categorical Analysis as a Defense Tool in Removal Proceedings
- E. Asserting Eligibility for Relief and Admissibility at the Border: Burden of Production of Documents and the Modified Categorical Analysis

PART THREE: AUXILIARY AND INCHOATE OFFENSES

- § 2.12 Accessory after the Fact-Type Offenses: Accessory, Misprision, Hindering Prosecution, Tampering Evidence, Etc.
 - A. Controlled Substances
 - B. Accessory as a Crime Involving Moral Turpitude
 - C. Accessory as an Aggravated Felony
- § 2.12 Conspiracy, Attempt
- § 2.13 Solicitation, Offering
- § 2.14 Aiding and Abetting

CHAPTER 2A Defending Noncitizen Juveniles

- § 2A.1 Overview of Defense Strategies. Using This Chapter
 - A. When Representing Minors in Any Type of Proceeding, Screen for Citizenship or Immigration Relief
 - B. Representing Minors in Juvenile Delinquency and Adult Criminal Proceedings
 - C. Representing Minors in Removal Proceedings
- § 2A.2 Immigration Effect of Juvenile Court Dispositions
 - A. A Juvenile Court Disposition Is Not a Conviction
 - B. Unsafe Pleas: Delinquency Findings Still Can Create Immigration Problems under the "Conduct" Grounds
 - C. Certain Juvenile Dispositions Can Bar Family Unity
 - D. Certain Juvenile Dispositions Can Bar a U.S. Citizen or LPR from Petitioning a Family Member

- § 2A.3 Strategies for Youth Convicted as Adults or in Youthful Offender Settings
 - A. Exception for Youth Convicted as Adults of Crimes Involving Moral Turpitude
 - B. Immigration and Criminal Defense Strategies for Youth Convicted in Adult or Youthful Offender Proceedings
 - 1. Juveniles Transferred to Adult Court Should Not Be Held to Suffer Convictions unless Such Transfer Would Have Been Possible under the FJDA
 - 2. What Offenses Do Not Merit Transfer to Adult Court under the Federal Juvenile Delinquency Act
- § 2A.4 Representing Minors in Immigration Proceedings
 - A. Rights of Minors in Removal and Deportation Hearings
 - B. Rights of Minor Asylum Applicants
 - C. Admission by an Adult or Minor of Conduct Committed While a Minor Is Not a Formal "Admission" for Purposes of the Controlled Substance or Moral Turpitude Grounds of Inadmissibility
- § 2A.5 An Adoption Must Be Complete by the Child's 16th Birthday in Order to Have Immigration Effect
- § 2A.6 Checklist: Immigration Relief Available to Immigrant Youth
 - A. Is the Youth already Unknowingly a U.S. Citizen, or Could She Become a Citizen if a Parent Naturalized?
 - B. Was the Youth a Victim of Family Violence or Abuse? (SIJS and VAWA Relief)
 - C. Was the Child a Victim of Human Trafficking, or of a Serious Crime? (T and U Visas)
 - D. Does the Youth Have a Willing Citizen or Permanent Resident Spouse or Biological, Step- or Adoptive Parent? (Family immigration)
 - E. Does the Child Fear Return to the Home Country Based on Political, Economic or Other Factors? (Asylum and similar relief, Temporary Protected Status)
 - F. Is the Youth a Long-Term Permanent Resident? (Cancellation for Permanent Residents)
 - G. Does an Undocumented Youth Have a Long History in the U.S. and Close Citizen or Permanent Resident Relatives? (Cancellation for Non-Permanent Residents)
- § 2A.7 Immigration Enforcement and Screening in the Juvenile Justice System
 - A. Combating Immigration Enforcement in the Juvenile Justice System
 - B. Referring Juveniles to Immigration Authorities for "Screening"
- § 2A.8 Incarceration by Delinquency Authorities on an Immigration Hold or Detainer

Appendix 2A-A Screening Sheet for Immigration Relief for Minors

CHAPTER 3 Drug Convictions, Admissions, Trafficking, Addiction and Abuse

- § 3.1 Overview of Penalties and Defense Strategies
 - A. Overview of Penalties for Drug Offenses
 - B. Overview of Defense Strategies
- § 3.2 Eligibility for Relief in Immigration Proceedings

PART ONE: DRUG CONVICTIONS

- § 3.3 Conviction of an Offense "Relating to a Controlled Substance" -- The Grounds of Deportability and Inadmissibility
 - A. The Deportability and Inadmissibility Grounds
 - B. Conviction of Even Minor Offenses, e.g. Possession, Use, Paraphernalia, Can Cause Deportability and Inadmissibility
 - 1. "Rehabilitative relief" will eliminate a first conviction for simple possession, for a less serious drug offense with no federal analogue, or for giving away a small amount of marijuana for free.
 - 2. Simple possession
 - 3. Use, Under the Influence
 - 4. Paraphernalia
- § 3.4 Safe Havens that Avoid Deportability, Inadmissibility and Aggravated Felon Status
 - A. "Relating to" a Controlled Substance: Accessory After The Fact and Other Offenses Not Primarily Directed at Controlling Drugs
 - 1. Accessory After the Fact and Similar Crimes
 - 2. Other Offenses Not Relating to Drug Law Enforcement, e.g. Firearms, Money Laundering
 - B. Disposition That Does Not Identify a Federally-Defined Controlled Substance
 - C. Rehabilitative Relief Eliminates a First Conviction of Simple Possession, a Less Serious Offense with no Federal Analogue, or Giving Away a Small Amount of Marijuana
 - D. Dispositions That Are Not "Convictions": Juvenile Delinquency, Cases on Appeal, Pre-Plea and Deferred Prosecution Dispositions, and Infractions
 - E. Vacation of Judgment for Cause
 - F. Possession of Thirty Grams or Less, or Being under the Influence of, Marijuana or Hashish
 - G. Solicitation Offenses, Including "Offering"
 - 1. The Ninth Circuit Held That Conviction under a "Generic" Solicitation Statute (for Possession or Trafficking) Does Not Trigger Deportation as a Controlled Substance Violation or as an Aggravated Felony.
 - 2. Conviction for Offering to Sell Under California's "Specific" Solicitation Statutes Is Not an Aggravated Felony and Should Not Be Held a Deportable Controlled Substance Conviction.
 - 3. Solicitation Convictions and The "Reason to Believe" Ground of Inadmissibility
 - 4. Solicitation Convictions and Crimes of Moral Turpitude
 - 5. Summary of Deportability and Inadmissibility Based on Solicitation Convictions
- § 3.5 Controlled Substance Convictions That Are Aggravated Felonies
 - A. "Illicit Trafficking" Offenses:
 - 1. Definition, Relation to Federal Offenses, Attempt and Conspiracy
 - 2. Sale, Transportation, Offering (Solicitation), Possession for Sale under California law
 - 3. The Advantages of Transportation for Personal Use
 - 4. Generic Solicitation
 - 5. Possession for Sale
 - 6. Felony/Misdemeanor Classification

- 7. Penalties for Conviction of an Aggravated Felony and Certain "Drug Trafficking" Offenses under the United States Sentencing Guidelines
- B. "Federal Analogues": Simple Possession and Other Offenses That Do Not Involve Trafficking
 - 1. Summary and Examples: When is a state conviction for an offense such as simple possession an aggravated felony?
 - 2. Cases and History: First Conviction for Simple Offense and Lopez v. Gonzales
 - 3. Questions Unanswered after Lopez: Possession Conviction with a Controlled Substance Prior Conviction, and Effect in Federal Criminal Proceedings
 - 4. Evaluating other offenses as federal analogues: use, DUI, paraphernalia, being in a place where drugs are used, giving drugs away, fraudulent prescriptions
- § 3.6 Eliminating a Conviction for Simple Possession or Less under Lujan-Armendariz v. INS
 - A. Overview and History of Lujan-Armendariz and Matter of Roldan
 - B. Requirements of the Federal First Offender Act
 - C. What types of offenses come within Lujan-Armendariz protection?
 - D. What kinds of state rehabilitative relief will eliminate the conviction?
 - E. A prior expungement, deferred adjudication, or pre-plea diversion will destroy eligibility for the Lujan benefit for a subsequent conviction
 - F. Can the Disposition Make the Noncitizen Inadmissible Or Otherwise Harm Her?
 - G. Under Some State Statutes, the Conviction Will Continue to Exist for Immigration Purposes Until the Time It Is Erased Pursuant to State Rehabilitative Relief
 - H. Foreign Rehabilitative Relief Will Eliminate the Immigration Consequences of a Foreign Conviction for a First Offense of Simple Possession
 - I. Additional Benefits if the Person Committed the Offense While Under the Age of 21
 - J. Immigration Proceedings Held Outside the Jurisdiction of the Ninth Circuit; Obtaining a Period of Probation of Less Than One Year
- § 3.7 When Courts Must Order Treatment Rather Than Incarceration

PART TWO: PENALTIES BASED ON CONDUCT AS OPPOSED TO CONVICTION

- § 3.8 Admission of an Offense Relating to Controlled Substances
- § 3.9 Drug Addiction and Drug Abuse
- § 3.10 Inadmissible if DHS has "reason to believe" the noncitizen is or ever has been a drug trafficker or knowingly assisted one
 - A. Overview of Inadmissibility Ground and Effect
 - B. Definition of "Reason to Believe" Trafficking
 - 1. Statutory definition
 - 2. Definition under Case Law; Evidentiary Standards
 - 3. Findings Based on Convictions, Delinquency or Youth Offender Dispositions
 - C. Inadmissible for Being a "Benefiting" Spouse or Child

Chart: Immigration Effect of Offenses under Lopez v. Gonzales

Appendix 3-A: Checklist of Federal Drug Offenses

CHAPTER 4 Crimes Involving Moral Turpitude

- § 4.1 The Moral Turpitude Ground of Inadmissibility: Conviction or Admission of One Crime Involving Moral Turpitude.
- § 4.2 The Petty Offense Exception to the Inadmissibility Ground
 - A. Strategy: Qualifying for the Petty Offense Exception
- § 4.3 Relief for Youthful Offenders
- § 4.4 Admission of Committing a Crime Involving Moral Turpitude
- § 4.5 Deportation Ground: Two Convictions after Admission, or One Conviction within Five Years after Admission of an Offense Carrying a Potential One Year Sentence
 - A. Overview
 - B. Persons in Removal Proceedings Convicted of One Moral Turpitude Offense
 - 1. Convicted of One Crime Involving Moral Turpitude
 - 2. Committed within five years after last admission into the United States
 - 3. Maximum possible sentence of one year.
 - C. Conviction of Two or More Crimes Involving Moral Turpitude
 - D. Noncitizens Still in Deportation Proceedings and Convicted of One Moral Turpitude Offense
- § 4.6 Deportable but Not Inadmissible for Moral Turpitude
- § 4.7 Vacation of Judgment; Rehabilitative Relief; Waivers; the former JRAD
- § 4.8 What Constitutes a Crime Involving Moral Turpitude?
 - A. Definitions and Overview
 - B. Other Examples of Moral Turpitude Classification.
- § 4.9 The Categorical Analysis: Minimum Conduct Required to Violate the Statute
- § 4.10 Modified Categorical Analysis: Divisible Statutes and the Record of Conviction
- § 4.12 Defense Strategy
 - A. In Criminal Court
 - B. In Immigration Court

Appendix 4-A Annotations and Chart of Crimes Involving Moral Turpitude under California Law

CHAPTER 5 Sentences and Incarceration

- § 5.1 Statutory Definition of Sentence; Overview of Effect
 - A. Statutory Definition
 - B. Overview of Effect
- § 5.2 Checklist of Immigration Provisions Involving Sentence Imposed, Maximum Possible Sentence, and Time Actually Incarcerated
 - A. Inadmissible For Two Convictions Resulting In Five Years Sentence
 - B. Petty Offense Exception to the Moral Turpitude Inadmissibility Ground
 - C. Deportable for One Conviction of a Crime Involving Moral Turpitude
 - D. Certain Offenses are Aggravated Felonies Only if a Sentence of One Year or More Is Imposed
 - E. Some Aggravated Felonies Depend upon Potential Sentence
 - F. Five-Year Sentence Imposed for One or More Aggravated Felony Convictions Is a Bar to Withholding

- G. Time Incarcerated: 180-Day Bar to Good Moral Character
- H. Time Incarcerated: Five-Year Bar to the Former § 212(c) Relief
- I. House Arrest, Electronic Home Detention as a Period of Incarceration or Confinement
- § 5.3 The Immigration Effect of Suspension of Imposition or Execution of Sentence, Probation, Conditional Sentence, Concurrent and Indeterminate Sentences, Reduction from Felony to Misdemeanor
 - A. Suspended Imposition and Suspended Execution of Sentence, Probation
 - 1. Effect of suspended imposition or execution of sentence and probation
 - 2. For Immigration Counsel: What Is Suspended Imposition and Execution of Sentence?
 - 3. Suspended Imposition of Sentence and Suspended Execution of Sentence in Washington
 - 4. Historical Background: The Former Rule Governing Suspended Imposition of Sentence
 - B. Other Sentences and Dispositions
 - C. The Ninth Circuit Does Not Consider a Recidivist Sentence Enhancement to Affect the Measure of Potential Sentence or Sentence Imposed; However, This Issue Is before the Supreme Court
- § 5.4 Reduction of Sentence, Alternative Dispositions
 - A. Reduction or commutation of a sentence
 - 1. A Sentence Modified for Any Reason Will Be Accepted by Immigration Authorities
 - 2. Obtaining Modification of Sentence in Criminal Court
 - B. Other Types of Dispositions
- § 5.5 180 Days Confinement as a Bar to Establishing "Good Moral Character"
- § 5.6 Aggravated Felonies: Offenses That Are Aggravated Felonies Based on Sentence; Bar to Withholding of Removal, and Bar to the Former § 212(c) Relief
 - A. Offenses Defined as Aggravated Felonies Based on Sentence
 - 1. Sentence Imposed of One Year or More
 - 2. Failure to Appear and RICO Offenses
 - B. Withholding of Removal Is Barred by a Five Year Sentence Imposed for One or More Aggravated Felonies
 - C. Relief under Former Section 212(c)
- § 5.7 Strategy in Sentence Bargaining
 - A. Goals for avoiding a sentence imposed (aggravated felonies that require a sentence of a year or more; petty offense exception to the moral turpitude ground of inadmissibility; inadmissibility ground based on five years sentence for one or more convictions; bar to withholding based on five years sentence for one or more aggravated felonies)
 - B. Potential Sentence
 - C. 180 Days Served: The Good Moral Character Requirement
- § 5.8 Apprendi, Blakely, Booker and Evaluating Substantive Sentence Enhancements
 - A. Substantive Sentence Enhancements as an Element of the Offense
- B. Length of Potential Sentence
- Appendix 5-A Tips on How to Avoid a Sentence in Criminal Court that will Result in Deportation

- CHAPTER 6 Other Grounds: Firearms, Prostitution, HIV Virus, Alcohol, Physical and Mental Disorders, National Security, Alien Smuggling, Import and Technology, Gambling, Selective Service, Assassins, Warships, Aggravated Felons, Document Fraud, Domestic Violence, False Claim U.S. Citizenship, Custody Decree, Illegal Voting, High Speed Chase, Sexual Orientation, Polygamy, Gang Activity and Affiliation, Family Immigration Petition Bar for Conviction of Specified Sex Offenses, Failure to Register as a Sex Offender
- § 6.1 Offenses Involving Firearms or Destructive Devices
 - A. Definition of a Firearms Offense, Ground of Deportation
 - B. Conspiracy, Attempt, Solicitation, Accessory
 - C. If a Statute Is "Divisible" because It Contains Firearms and Non-Firearms Offenses, Keep the Record of Conviction Clear of Information That a Firearm Was Used
 - D. Some Firearms Offenses Are Aggravated Felonies
 - E. Immigration Relief: Adjustment of Status and Consular Processing
 - 1. Adjustment of Status May Be Available Despite Deportability under the Firearms Ground.
 - 2. A Qualifying Permanent Resident Can "Re-Adjust" Status Despite Being Deportable
 - 3. Inadmissible for a Crime Involving Moral Turpitude
 - F. Immigration Relief: Cancellation of Removal and the Former INA § 212(c)
 - G. Firearms Sentence Enhancements
 - H. Immigration Defense Argument: Antique Firearms
 - I. Immigration Defense Argument: New Year's Eve Celebrations and Other "Sporting, Recreational or Cultural Purposes"
 - 1. Rifles as Destructive Devices
 - 2. "Cultural" Use of a Gun
 - J. Effect of Post-Conviction Relief
 - K. Other Immigration Consequences: Domestic Violence, Moral Turpitude, Aggravated Felony as a Crime of Violence with One-Year Sentence Imposed, "Particularly Serious Crime"
- § 6.2 Prostitution and Commercialized Vice
 - A. Inadmissible for Engaging in Prostitution
 - B. Aggravated Felonies Related to Prostitution and Commercialized Vice
 - C. Deportation Ground Based on Conviction as a Procurer
- § 6.3 HIV Virus
- § 6.4 Alcoholism and "Habitual Drunkards"
- § 6.5 Physical or Mental Disorder
- § 6.6 Gambling
- § 6.7 Security Grounds: Terrorists, Communists, Totalitarians, Nazis, Adverse Foreign Policy Effect, Espionage, Export and Technology, "Any Other Unlawful Activity," Violent Overthrow
 - A. The Security Grounds of Deportability and Inadmissibility
 - B. Post-9/11 Terrorism Measures
 - 1. The Patriot Act
 - 2. The Real ID Act of 2005
- § 6.8 Failure to Register as an Alien; Conviction of Falsification of Documents
 - A. Failure to Register

- B. Conviction of Document Fraud under 18 USC § 1546
 - 1. Ground of Deportability
 - 2. Conviction under 18 USC § 1546(a) Can Be an Aggravated Felony
 - 3. Illegally Completing an I-9 Form and False Attestation of Social Security Card Are Not Crimes Involving Moral Turpitude
- § 6.9 Selective Service Violations Dealers of Warships, Assassins
- § 6.10 Diplomats Who Requested Immunity
- § 6.11 Removing a Child from the United States in Violation of Custody Decree
- § 6.12 Alien Smuggling
 - A. The Alien Smuggling Grounds of Deportability and Inadmissibility
 - B. Automatic Exceptions and Waivers of Deportability and Inadmissibility
 - C. Conviction of Alien Smuggling Is an Aggravated Felony
 - D. Practice Suggestions for Clients with Older Smuggling Convictions
 - E. Conviction of Alien Smuggling Is Not Necessarily a Bar to Withholding of Removal
- § 6.13 Aggravated Felonies
- § 6.14 Document Fraud
 - A. Definition of Document Fraud
 - B. Falsely Completing an Application for an Immigration Benefit; Presenting a Document to a Common Carrier, But Not to an Immigration Officer Is Document Fraud
 - C. Waiving Document Fraud with the INA § 212(I) Visa Fraud Waiver
 - D. Waivers Specifically for § 274C Document Fraud
 - 1. Waiver of Inadmissibility
 - 2. Waiver of Deportability
 - 3. Other Waivers
 - E. Walters v. Reno Litigation
 - F. Conviction of Document Fraud Is an Aggravated Felony
 - G. Conviction of Falsely Completing an I-9 or Social Security Form is Not a Crime Involving Moral Turpitude
- § 6.15 Domestic Violence, Stalking, and Child Abuse, Abandonment or Neglect
 - A. Conviction of a "Crime of Domestic Violence"
 - 1. Definition under the statute
 - 2. Defense strategy and the role of the record of conviction: The "Categorical Analysis"
 - a. Categorical analysis: Comparing the offense as defined in the statute to the "Generic Definition"
 - b. Modified categorical analysis: Looking to the record of conviction
 - 3. What is a "Crime of Violence" under 18 USC § 16?
 - a. Misdemeanors that are not "crimes of violence" and therefore are not crimes of domestic violence
 - i. Unrelated to, or can be accomplished without, violence or use of force
 - ii. Mere offensive touching and other de minimus actions
 - iii. Reckless or negligent infliction of injury
 - iv. Threat of use of force is a crime of violence
 - b. Felony offenses as crimes of violence
 - c. Offenses against property, not persons
 - 4. Who are the prohibited victims?
 - a. Persons listed in the deportation ground

- b. The relationship must be established in the record of conviction
- 5. Defense strategies relating to a "Crime of Domestic Violence"
- B. Conviction of Stalking
- C. Conviction of a Crime of Child Abuse, Neglect or Abandonment
- D. Violation of Civil or Criminal Protective Order
- E. Other Immigration Consequences of Domestic Violence Convictions
 - 1. Aggravated felony
 - 2. Crime involving moral turpitude
 - 3. Bar to cancellation of removal for non-permanent residents, VAWA
 - 4. Particularly serious crime barring asylum or withholding; violent or dangerous offense barring grant of asylum of asylee adjustment
- F. Solutions in Immigration Proceedings
 - 1. Immigration relief: Adjustment of status and consular processing
 - a. Adjustment of status may be available despite deportability under the domestic violence ground
 - b. A qualifying permanent resident can "re-adjust" status despite being deportable
 - c. Inadmissible or deportable for a crime involving moral turpitude
 - 2. Immigration relief: cancellation of removal and the former INA § 212(c)
 - 3. Other immigration relief
 - 4. Effect of post-conviction relief
- § 6.16 False Claim to U.S. Citizenship
- § 6.17 Illegal Voting
- § 6.18 High Speed Chase Near Border Checkpoint
- § 6.19 Sexual Orientation
- § 6.20 Polygamy
- § 6.21 Gang Activity and Affiliation
- § 6.22 Adam Walsh Child Protection and Safety Act of 2006
 - A. Persons Convicted of Certain Offenses Against a Minor Cannot Immigrate Family Members
 - B. New Deportation Ground for Failure to Register as a Sex Offender

CHAPTER 7 Good Moral Character

- § 7.1 Good Moral Character: Definition and Applications
 - A. When Good Moral Character Is Required
 - B. Good Moral Character is Required Only for a Limited Time Period
 - C. Statutory Bars Compared with Discretionary Findings
- § 7.2 Grounds of Inadmissibility That Are Bars to Establishing Good Moral Character
 - A. Grounds of Inadmissibility That Are Bars
 - B. Could A Waiver of Inadmissibility Cure the Bar?
- § 7.3 Other Bars to Establishing Good Moral Character: 180 Days Confinement, Aggravated Felony or Murder Conviction, Drunkards, Gamblers, and False Testimony
- § 7.4 Additional Good Moral Character Requirements for Naturalization
- § 7.5 Good Moral Character and Misstatements Made in Applying for Naturalization or Other Relief
 - A. Overview

- B. An Adverse Credibility Finding is Not Conclusive Proof of False Testimony to Obtain Immigration Benefits
- C. False Testimony Only Encompasses Misrepresentations Made with a Subjective Intent to Deceive and Not Those Made for Other Reasons such as Mistake, Embarrassment, or Fear
- D. False Testimony May Be Retracted
- § 7.6 Text and Explanation of the Statutory Bars to Establishing Good Moral Character INA § 101(f), 8 USC § 1101(f)

CHAPTER 8 Post-Conviction Relief, by Norton Tooby

- § 8.1 Introduction and Overview of Chapter
- § 8.2 Overview of Relief Available under California Law

PART ONE: INTERVIEWING THE CLIENT

- § 8.3 Obtaining Information about the Criminal Case
- § 8.4 Obtaining Information about Immigration Status
- § 8.5 Obtaining Information on "Equities" or Reasons Client Should be Allowed to Remain in the U.S.
- § 8.6 Screening Questions for Common Grounds for Post-Conviction Relief
- § 8.7 Non-English-Speaking Clients

PART TWO: INVESTIGATING THE CASE

- § 8.8 Verifying the Immigration Situation: DHS Records, FOIA Requests, and Analysis
- § 8.9 Verifying Exact Criminal History: Criminal Records and "Rap Sheets"
- § 8.10 Correcting Errors in Criminal Histories
- § 8.11 Official Destruction of Records Does Not Remove the Convictions Themselves
- § 8.12 Obtaining Conviction Records and Transcripts from the Rendering Court
- § 8.13 Obtaining Case File From Original Defense Counsel

PART THREE: CASE STRATEGY AND PREPARATION

- § 8.14 Developing a Strategy
- § 8.15 Advice Concerning Possible Adverse Consequences of Vacating the Conviction
- § 8.16 Effect of Changes in the Law
- § 8.17 Obtaining the Relief: General Procedure and Approach
- § 8.18 Dealing with Bias against Non-Citizens
- § 8.19 Avoiding Admission of Crime-Related Factors Having Adverse Immigration Consequences Even without a Conviction

PART FOUR: VACATING THE CONVICTION

- § 8.20 Overview of Forms of Relief; Immigration Effect
- § 8.21 Handling the Defense so as to Avoid Adverse Immigration Consequences the Second Time Around

8	8 22	The	Timing	of	the	Case
8	0.22	1110	1 1111111112	OI.	uic	Casc

- § 8.23 Motion to Withdraw Guilty Plea under Penal Code § 1018
- § 8.24 Direct Appeal from Conviction
- § 8.25 Writ of Habeas Corpus -- Outline
- § 8.26 -- Ineffective Assistance of Counsel: Attacking the Conviction
- § 8.27 -- Ineffective Assistance: Attacking the Sentence
- § 8.28 -- Arguing Prejudice
- § 8.29 -- The Requirement of Custody
- § 8.30 -- Ineffective Assistance: Interviewing Original Defense Counsel
- § 8.31 -- Waiver of Attorney-Client and Work-Product Privileges
- § 8.32 -- Other Grounds for Habeas Corpus
- § 8.33 Motion to Vacate on Constitutional Grounds
- § 8.34 Statutory Motion to Vacate Based on Judge's Failure to Provide PC § 1016.5 Warning of Possible Adverse Immigration Consequences
- § 8.35 Petition for Writ of Error Coram Nobis
- § 8.36 -- Waiver of Constitutional Rights Required for Valid Plea
- § 8.37 -- Invalid Waiver of Counsel
- § 8.38 -- Non-English-Speaking Clients
- § 8.39 -- Other Direct Consequences of the Plea
- § 8.40 -- Attacking Misdemeanor Convictions
- § 8.41 Appointment of Counsel in Writ Proceedings
- § 8.42 Forms of Post-Conviction Relief from Sentence
- § 8.43 Immigration Effects of Sentence
- § 8.44 Grounds for Invalidating Sentence

PART FIVE: AFTER THE CONVICTION HAS BEEN VACATED: AVOIDING CONSEQUENCES THE SECOND TIME AROUND

- § 8.45 Outcomes that Minimize Adverse Immigration Consequences after the Conviction has been Vacated
- § 8.46 Pre-Plea Diversion Programs Do Not Result in Convictions; Deferred Entry of Judgment Does Result in a Conviction
- § 8.47 Dismissal of Charges under Penal Code § 1385
- § 8.48 Plea Negotiations -- the Defense Position

PART SIX: EXPUNGEMENTS AND OTHER MEANS OF TREATING EXISTING CONVICTIONS

- § 8.49 Expungements under Penal Code §§ 1203.4 and 1203.4a -- Requirements and Immigration Effect
- § 8.50 -- Procedure
- § 8.51 -- Motions to Shorten Probation in Order to become Eligible for Expungement
- § 8.52 -- Expungements After Client Has Picked Up New Charges
- § 8.53 -- Where Criminal Records Have Been Purged
- § 8.54 Post-Conviction Reduction from a Felony to a Misdemeanor under Penal Code § 17
- § 8.55 Post-Conviction Reduction of a Misdemeanor to an Infraction under PC § 17(d)
- § 8.56 Commutation or Correction of Sentence under Penal Code § 1170
- § 8.57 Relief for Youthful Offenders: PC § 1203.45 and Welf. & Inst. Code §§ 1772 and 1179

- § 8.58 Marijuana Arrest Record Destruction under Health & Safety Code §§ 11361.5(b)
- § 8.59 Executive Pardons
- § 8.60 The Immigrant Should Receive the Benefit of All Reasonable Doubts
- § 8.61 Burden of Proof that Conviction Exists
- § 8.62 Conclusion

CHAPTER 9 Aggravated Felonies, by Katherine Brady and Norton Tooby

PART ONE: IN GENERAL

- § 9.1 Overview
- § 9.2 Checklist of Immigration Relief for Persons Convicted of an Aggravated Felony Conviction
- § 9.3 Summary of Offenses
- § 9.4 State and Foreign Convictions, Attempt and Conspiracy, Solicitation, Offering, Accessory after the Fact, Misprision of Felony
 - A. State Convictions
 - B. Foreign Convictions
 - C. Attempt and Conspiracy
 - D. Solicitation, Offering (see also § 2.13, supra)
 - E. Accessory After the Fact and Similar Offenses (see also § 2.12, supra)
 - 1. An Accessory after the Fact-Type Offense Does Not Take on the Character of the Underlying Offense
 - 2. Accessory with a Sentence Imposed of One Year or More Has Been Held to Be an Aggravated Felony as "Obstruction of Justice"
 - 3. Misprision of Felony is Not an Aggravated Felony.
 - F. Aiding and Abetting (see also § 2.15, supra)
- § 9.5 Standards Used to Determine Which Offenses Are Aggravated Felonies
 - A. Aggravated Felony Offenses Expressed in General or Common Law Terms
 - 1. Generic Definition of the Offense under Taylor v. United States
 - 2. "Relating to" the Named Offense
 - B. The Categorical Analysis, Divisible Statute, Record of Conviction; the BIA and "Nonelement Facts"
 - C. Aggravated Felonies Defined in Reference to Federal Statutes
 - D. Misdemeanors as Aggravated Felonies
 - 1. Offenses with One-Year Sentence Imposed
 - 2. Sexual Abuse of a Minor; Adjustment of Status.
 - 3. Offenses "Punishable" as a Drug Trafficking Offense
 - 4. Recidivist Sentence Enhancements: When a Felony is Not a Felony
 - 5. Warning: Many Felony Convictions, Even with No Sentence Imposed, Cause Severe Sentence Enhancement in Illegal-Re-entry Cases
 - E. Using Sentencing Guidelines Cases to Define Aggravated Felonies
 - 1. Aggravated Felony Definition Used in Immigration Proceedings
 - 2. Aggravated Felony Definition Used as a Sentence Enhancement in Federal Criminal Proceedings under U.S. Sentencing Guidelines § 2B1.2

- 3. "Felony Offenses" That Cause a 16-Level Sentence Enhancement Pursuant to USSG § 2L1.1.(2001, 2003) May Be Defined Differently than Aggravated Felonies
- F. Legal Standards: Ambiguous Statutes Should be Resolved in Favor of the Immigrant; Rule of Lenity; The INS Has the Burden of Proof of Deportability and Production
- § 9.6 Effective Dates, Retroactivity, Application of Beneficial Former Law
 - A. History and Generally
 - B. Conviction of an Aggravated Felony That Occurred before November 29, 1990 Is Not a Permanent Bar to Establishing Good Moral Character
 - C. Relief for Older Aggravated Felony Convictions: Permanent Resident Relief under § 212(c) and INS v. St. Cyr; Ten-Year Suspension for Undocumented Persons under Lopez-Castellanos
 - 1. Relief for Permanent Residents under the Former INA § 212(c)
 - 2. An Undocumented (or Documented) Person Can Waive an Aggravated Felony Conviction from before November 29, 1990 (or a Non-Aggravated Felony Conviction from before April 1, 1997) in an Application in Removal Proceedings for the Former "Ten-Year Suspension of Deportation"
 - 3. Attorney General, BIA and DHS Actions
 - D. When is a Person Not Deportable under the Aggravated Felony Ground, and When Does It Matter?
 - 1. The November 18, 1988 Effective Date for Aggravated Felony Deportation Ground; Matter of Lettman
 - 2. Not Deportable unless Offense Committed after Admission or Adjustment
 - 3. Advantage to Not Being Deportable under the Aggravated Felony Ground: Qualifying for Pre-Hearing Voluntary Departure.
 - 4. Advantage to Not Being Deportable under the Aggravated Felony Ground: Avoiding Deportation or Removal
 - E. Conviction of an Aggravated Felony Is Not a Bar to Asylum ff the Asylum Application Was Filed Before November 29, 1990
 - F. Remedy for Egregious Ineffective Assistance of Counsel or Meritless Government Appeal: Apply the Former, Beneficial Legal Standard and/or Toll Limits on Motions to Reopen
- § 9.7 Aggravated Felony and Sentence
 - A. Sentence Imposed of One Year or More
 - B. A Controlled Substance Offense Must Have a Potential Sentence of More than a Year to be an Aggravated Felony
 - C. Other Aggravated Felony Definitions Linked to Sentence

PART TWO: DEFINITION OF OFFENSES

- § 9.8 Alien Smuggling, Transporting, Harboring -- INA § 101(a)(43)(N)
 - A. The Alien Smuggling, Harboring and Transporting Aggravated Felony Ground
 - B. Strategies for Clients with Older Smuggling Convictions.
- § 9.9 Bribery of a Witness, Commercial Bribery, with a Sentence Imposed of One Year -- INA § 101(a)(43)(R), (S)
- § 9.10 Burglary with a Sentence Imposed of at Least One Year -- INA § 101(a)(43)(G)
 - A. Summary

- B. A Burglary Is an Illegal or Unprivileged Entry
- C. A "Burglary" Is of a Structure: Cars, Boats, Trains and Yards
- D. Burglary as a Crime of Violence: Burglary of a Dwelling, a Dwelling that Is Not a Building, and an Automobile
- E. Burglary as Attempted Theft
- F. How to Plead to a Burglary Offense to Avoid Conviction of an Aggravated Felony or a Crime Involving Moral Turpitude
 - 1. Avoid an Aggravated Felony Conviction
 - 2. Avoid a Conviction of a Crime Involving Moral Turpitude
- § 9.11 Child Pornography -- INA § 101(a)(43)(I)
- § 9.12 Counterfeiting, with a Sentence Imposed of One Year -- INA § 101(a)(43)(R)
- § 9.13 Crimes of Violence -- INA § 101(a)(43)(F)
 - A. Overview
 - 1. Statutory Definition
 - 2. Felony and Misdemeanor Classification: § 16(a) and (b)
 - 3. Sentence of a Year or More Must Be Imposed
 - 4. The U.S. Sentencing Guidelines Definitions Compared to 18 USC § 16
 - B. Elements of a Crime of Violence under 18 USC § 16
 - 1. The Force Must Amount to Actual Violence (Battery, Spousal Battery, Auto Burglary)
 - 2. Neither Negligent nor Reckless Causation of Injury Is a Crime of Violence
 - a. Leocal v. Ashcroft: Negligent infliction of injury is not a crime of violence
 - b. Fernandez-Ruiz v. Gonzales: A crime of violence must involve intentional use of force; recklessness is insufficient
 - 3. Drunk Driving, Failure to Act, Intentional Infliction of Injury
 - a. Driving under the influence
 - b. Failure to act; boilerplate charging papers
 - c. Intentional infliction of injury
 - 4. Sex with a Minor as a Crime of Violence
 - 5. Burglary as a Crime of Violence
 - 6. List of Decisions
- § 9.14 Document Fraud with Twelve Month Sentence Imposed -- INA § 101(a)(43)(P)
 - A. In General
 - B. California Offense
- § 9.15 Drug Trafficking -- INA § 101 (a)(43)(B)
- § 9.16 Illegal Re-Entry after Conviction of an Aggravated Felony -- INA § 101(a)(43)(O)
- § 9.17 Failure to Appear -- INA § 101(a)(43)(Q), (T)
- § 9.18 Firearms and Destructive Devices -- INA § 101(a)(43)(C) and (E)
 - A. "Trafficking" in Firearms or Destructive Devices
 - B. Other Firearms Offenses
 - 1. Which State Firearms Offenses Are Aggravated Felonies as Federal Analogues?
 - 2. What Federal Firearms Offenses Are Aggravated Felonies?
- § 9.19 Forgery with a Sentence Imposed of One Year -- INA § 101(a)(43)(R)
- § 9.20 Fraud or Deceit in Which the Loss to the Victim/s Exceeds \$10,000 -- INA § 101(a)(43)(M)(i)
 - A. Offense that Involves Fraud or Deceit; Compare Theft
 - B. The \$10,000 Loss
 - 1. \$10,000 Loss to Victim Compared to "Amount of Funds"

- 2. Unintentional Loss and Attempted or Potential Loss
- 3. Restitution and Creating a Record That Does Not Establish \$10,000 Loss.
- 4. Additional Defense Strategies
- C. Crossover between \$10,000 Fraud and Theft with a One-Year Sentence
- D. The Board of Immigration Appeals Approach in Matter of Babaisakov
- § 9.21 Money Laundering and Transactions Involving Unlawfully Derived Property Exceeding \$10,000 -- INA § 101(a)(43)(E)
- § 9.22 Murder -- INA § 101(a)(43)(A)
- § 9.23 National Security, Treason, Sabotage -- INA § 101(a)(43)(L)
- § 9.24 Obstruction of Justice with One Year Sentence Imposed -- INA § 101(a)(43)(S)
 - A. Overview and Strategy
 - B. The BIA's Generic Definition of Obstruction of Justice and Decisions in Matter of Batista and Matter of Espinoza
 - C. Federal Statutes Relating to Obstruction of Justice
 - D. Obstruction of Justice under the California Penal Code
- $\$ 9.25 Perjury or Subornation of Perjury with One Year Sentence Imposed -- INA $\$ 101(a)(43)(S)
- § 9.26 Prostitution -- INA § 101(a)(43)(K)
- § 9.27 Ransom Demand -- INA § 101(a)(43)(H)
- § 9.28 Rape -- INA § 101(a)(43)(A)
 - A. Rape by Force, Intoxication, Disability
 - B. Consensual Sex with a Minor as "Rape": Rivas-Gomez v. Gonzales
- § 9.29 Receiving Stolen Property -- INA § 101(a)(43)(G)
- § 9.30 Revealing Identity of Undercover Agent -- INA § 101(a)(43)(L)
- § 9.31 RICO, Gambling Offenses -- INA § 101(a)(43)(J)
- § 9.32 Sexual Abuse of a Minor and Rape -- INA § 101(a)(43)(A)
 - A. Overview
 - B. Definitions: Misdemeanor Convictions Qualify as Aggravated Felonies; a Minor is a Person under the Age of 18
 - C. BIA and Ninth Circuit Decisions Defining Sexual Abuse of a Minor
 - 1. Sexual Abuse of a Minor as Defined by the Board of Immigration Appeals
 - 2. Ninth Circuit law defining Sexual Abuse of a Minor
 - a. Ninth Circuit law definition in general: "harm to the victim"
 - b. Ninth Circuit decisions in cases involving consensual sex with a minor
 - c. Should the Ninth Circuit defer to the BIA in creating a generic definition of a crime listed as an aggravated felony?
 - 3. Caution: Sexual Offenses without an Element of Age Where the Age Is Revealed on the Record
 - 4. Attempt to Commit Sexual Abuse of a Minor (or Any Offense)
 - D. Rape
 - 1. Rape by Force, Incapacity, Disability
 - 2. Consensual Sex with a Minor as "Rape"
 - E. Defense Strategies in Immigration Proceedings
 - 1. Moral Turpitude, Particularly Serious Crime and Other Immigration Consequences of Offenses involving Lewd Intent with a Minor
 - a. Moral turpitude
 - b. Particularly serious crime: Asylum and withholding
 - c. Violent or dangerous offense: Asylum and § 212(h)

- d. Deportable conviction of child abuse
- 2. Relief in Removal Proceedings
 - a. Adjustment of status, inadmissibility, waivers: Sexual offenses as crimes involving moral turpitude.
 - b. Voluntary departure before hearing
 - c. Asylum and withholding
- 3. Additional Facts and Arguments about Consensual Sex with a Minor and Older Teenagers
 - a. Statistics show that older teenagers have a high level of sexual experience and "understand the nature of the act"
 - b. The fact that fewer than 25% of the states as well as the federal government do not criminalize consensual sex with a 17-year-old means that this offense does not meet the "common, contemporary and ordinary" meaning of "sexual abuse" as an aggravated felony
- F. Defense Strategies in Criminal Proceedings
 - 1. Overview of Immigration Effect
 - 2. California Offenses
- G. Sex with a Minor as a Crime of Violence; Cases under U.S. Sentencing Guidelines
- H. Detention and "Operation Predator"
- § 9.33 Slavery, Peonage, Involuntary Servitude -- INA § 101(a)(43)(K)
- § 9.34 Tax Evasion that Involves a Loss to the Government of \$10,000 -- INA § 101(a)(43)(M)(ii)
- § 9.35 Theft Offense with a Sentence Imposed of One Year -- INA § 101(a)(43)(G)
 - A. Definition of Theft
 - B. The Ninth Circuit Has Held That a Recidivist Sentence Enhancement Such as Used in Petty with a Prior Is Not a "Sentence Imposed" or Potential Sentence; but Supreme Court Ruling Expected
 - C. Crossover between Theft and Fraud
- § 9.36 Vehicles with Identification Numbers Removed -- Trafficking

PART THREE: CONSEQUENCES OF CONVICTIONS

- § 9.37 Aggravated Felony Deportation Ground
- § 9.38 Ineligible for Asylum
- § 9.39 Withholding of Removal and Convention Against Torture
- § 9.40 Cancellation of Removal, the Former § 212(c) Relief for Permanent Residents and the Former Ten-Year Suspension for Undocumented Persons
 - A. Cancellation of Removal Is Barred by Conviction of an Aggravated Felony
 - B. Waiver for Aggravated Felony Convictions by Plea before April 24, 1996 under § 212(c) and INS v. St. Cyr
 - C. Undocumented Persons Convicted of an Aggravated Felony Before November 29, 1990 May Be Able to Apply for Relief in Removal Proceedings under the Former Ten-Year Suspension
- § 9.41 Inadmissibility in General and after Deportation; Ability to Adjust Status
- § 9.42 Eligibility for Waiver under INA § 212(h), 8 USC § 1182(h)
- § 9.43 Ineligible to Demonstrate "Good Moral Character"
- § 9.44 Detention and Bond
- § 9.45 Some Aggravated Felons May Take Removal Prior to Completing Prison Sentence

- § 9.46 Availability of Pardon
- § 9.47 Judicial Review in Federal Appeals Courts
- § 9.48 Administrative Removal for Non-Permanent Residents Convicted of an Aggravated Felony
 - A. Overview, 1996 Amendments
 - B. Defense Strategies
- § 9.49 "Judicial Removal Proceedings" in Federal Court
- § 9.50 Severe Federal Criminal Penalties under 8 USC § 1326 for Reentry after Deportation or Removal
 - A. Summary of the Problem and Case Example
 - B. What Offenses Can Trigger a 16-Level Increase Just by Virtue of Being a Felony, Regardless of Sentence Imposed?
 - C. What "Drug Trafficking Offenses" Can Trigger a 16-Level Increase?
 - D. Other Offenses That Trigger Enhancements for Illegal Re-Entry under the USSG
 - E. Text of the USSG and Application Notes, as Updated November 1, 2007
- § 9.51 A Judicial Recommendation against Deportation Signed before Nov. 29, 1990 Eliminates a Conviction as a Basis for Deportation under the Aggravated Felony and Crime Involving Moral Turpitude Grounds

Appendices Following this Chapter:

- Appendix 9-A: INA § 101(a)(43), 8 USC 1101(a)(43) and Summaries
- Appendix 9-B: Raising the Citizenship Defense in Federal Prosecutions
- Appendix 9-C: Effective Dates for Definition of Aggravated Felony before IIRIRA

CHAPTER 10 Outline of Immigration Consequences of Crimes

- § 10.1 Definition of Conviction and Sentence for Immigration Purposes (Chapter 2)
 - A. Dispositions That Are Not Convictions
 - B. Definition of Sentence (Chapter 5)
- § 10.2 Divisible Statues and Record of Conviction
 - A. Summary of the Analysis
 - B. What Documents Can the Reviewing Authority Consult?
- § 10.3 Controlled Substances (Chapter 3)
 - A. Conviction of Any Offense "Relating To" Controlled Substances as Defined under Federal Law Is a Basis for Being Deportable and Inadmissible
 - B. The Controlled Substance Aggravated Felony Definition (Chapter 3, § 3.5)
 - C. Formal, Knowing Admission of Drug Offense Triggers Inadmissibility (§ 3.3)
 - D. "Reason To Believe" Is or Was Drug Trafficker Triggers Inadmissibility without Conviction (See § 3.5)
 - E. Drug addiction or abuse is ground of deportability, inadmissibility (§ 3.4)
- § 10.4 Aggravated Felonies (Chapter 9)
 - A. Approaches to Fighting Aggravated Felony Designation
 - B. Summary of Aggravated Felonies, INA § 101(a)(43), 8 USC § 1101(a)(43)
- § 10.5 Crimes Involving Moral Turpitude (Chapter 4)
 - A. Crimes Involving Moral Turpitude (CMT) Are Defined by the Elements in the Criminal Statute Violated, Not What the Person Actually Did

- B. Inadmissible
- C. Deportable
- D. Some Moral Turpitude Crimes Are Aggravated Felonies
- § 10.6 Firearms and Explosive Device Convictions (See §§ 6.1, 9.9)
- § 10.7 Domestic Violence, Child Abuse, and Neglect (§ 6.15)
 - A. A Person Is Deportable if, on or after September 30, 1996, and after Admission to the United States, He or She:
 - B. Definition of Crime of Domestic Violence Offense
 - C. Violation of Restraining Order
 - D. Possible Relief for Abuser, Victim
 - 1. Relief for the Person Deportable under the Domestic Violence Ground
 - 2. Relief for the Victim
- § 10.8 Other Offenses

CHAPTER 11 Forms of Immigration Relief, Special Procedural Rules, and Requirements Related to Crimes

Introduction: Burden of Proof and Other Issues

§ 11.0 The Government Bears the Burden of Proving that a Conviction Is a Statutory Bar to Applications for Relief

Relief for Permanent Residents

- § 11.1 Waiver: Cancellation of Removal for Permanent Residents under INA § 240A(a) and the former § 212(c) Relief
 - A. Cancellation of Removal for Lawful Permanent Residents
 - 1. Requirements for Cancellation
 - 2. Eligibility for Cancellation
 - a. Status, former relief as a bar to ineligibility
 - b. Conviction of an aggravated felony, terrorist grounds, persecuted others; burden of proof
 - c. Seven years continuous residence: When does it start?
 - d. Seven years continuous residence: When does it stop?
 - i. The clock-stopping provision applies only to the seven years of continuous residence since lawful admission, and not for purposes of acquiring the five years of lawful permanent residence
 - ii. What types of offenses "stop the clock"?
 - iii. Convictions received before April 1, 1997 do not stop the seven-year clock
 - e. Five years lawful permanent residence; permanent residence obtained by fraud
 - B. Section 212(c) Relief for Cases Adjudicated under Pre-IIRIRA Law: The Supreme Court Decision INS v. St. Cyr
 - 1. Introduction: When is § 212(c) most useful?
 - 2. The Former § 212(c) Relief and the Holding in INS v. St. Cyr

- 3. Who Can Apply for § 212(c) under St. Cyr and Subsequent Rulings?
 - a. Permanent residents who before April 24, 1996 pled guilty to an offense that made them deportable and that was amenable to § 212(c) treatment at the time of plea can apply for § 212(c)
 - b. The person need not have accrued seven years of lawful unrelinquished domicile by the time of entering the plea agreement, and need not have been a permanent resident.
 - c. Permanent residents are not barred from § 212(c) by serving a sentence of five years or more for one or more aggravated felony convictions if the conviction was by plea before November 29, 1990
 - d. The Ninth Circuit will consider en banc whether to uphold the BIA decision in Matter of Blake that § 212(c) will not waive deportability based upon an aggravated felony conviction such as sexual abuse of a minor, or certain other non-drug aggravated felonies
 - e. Rules governing offenses that became aggravated felonies as of September 30, 1996, when the definition of aggravated felony was expanded and the expanded definition was retroactively applied to past convictions
 - f. Persons who were not deportable at the time of plea but now are, or who were made inadmissible but not deportable by the plea, should be held eligible for § 212(c) relief
 - g. The Ninth Circuit held under a different legal theory that a conviction between April 24, 1996 and September 30, 1996 that became a deportable offense only because the IIRIRA retroactively made it an aggravated felony would be amenable to § 212(c) relief
 - h. New arguments that § 212(c) can waive a conviction by jury trial as opposed to plea bargain
 - i. For purposes of determining whether a deportation hearing began before April 24, 1996, and therefore whether the former § 212(c) rules are in effect without the limitations on eligibility under St. Cyr, the relevant date is date of filing of the Order to Show Cause with the Court, and not the date the order was served on the respondent
 - j. People who pled guilty between September 30, 1996 and April 1, 1997 can apply for § 212(c) relief only under the harsh AEDPA restrictions, but (unless the conviction is of an aggravated felony) may be eligible for cancellation of removal despite the stop-time rule
 - k. The Ninth Circuit held that conduct grounds, which are not based on a criminal conviction, are not amenable to relief under § 212(c)
 - l. Convictions that occurred during lawful temporary residency before automatic adjustment under the SAW program
 - m. Persons wrongly deported without the opportunity to apply for § 212(c) relief, before St. Cyr and similar opinions were published
- 3. Waiving Non-Drug Aggravated Felonies under § 212(c); Matter of Blake
 - a. Overview
 - b. Where Blake does not apply: Admission and adjustment
 - c. Working within Blake: Assert a comparable ground of inadmissibility
 - d. Alternative to § 212(c) under Blake where the aggravated felony conviction is from before November 29, 1990

- C. Applying for § 212(c) Relief under AEDPA Restrictions
 - 1. What Grounds can be Waived under AEDPA and Pre-AEDPA § 212(c)
 - 2. The AEDPA Amendments and Applications for Relief in the Former Exclusion and Deportation Proceedings
- D. Discretionary Standards
- E. Other Relief: Adjustment of Status, § 212(h), Ten-Year Suspension for pre-November 29, 1990 Aggravated Felony, Termination of Removal Proceedings to Apply for Naturalization for pre-November 29, 1990 Aggravated Felony
 - 1. Adjustment of status to solve a Matter of Blake issue, or a conviction that causes deportability but not inadmissibility
 - 2. Section 212(h) relief when cancellation is barred by clock-stopping provisions
 - 3. Ten-Year Suspension to Waive a pre-November 29, 1990 Aggravated Felony That Is Blocked by Matter of Blake
 - 4. Termination of Removal to apply for naturalization to cure a pre-November 29, 1990 aggravated felony that is blocked by Matter of Blake
- § 11.2 Waiver: Section 212(h)
 - A. Requirements That Apply to All Applicants
 - B. Section 212(h) for Non-Permanent Residents
 - C. Restrictions on § 212(h) Relief for Lawful Permanent Residents
 - D. Effective Date, Judicial Review
 - E. Section 212(h) as a Defense to Deportation, Removal
 - F. Standards for Exercise of Discretion in § 212(h) Cases; Violent or Dangerous Crimes
 - 1. Discretion in general
 - 2. Waiving a "violent or dangerous crime"
- § 11.3 Other Immigration Waivers

Relief for Undocumented Persons

- § 11.4 Relief for Non-Permanent Residents: Cancellation of Removal under INA § 240A(b), 8 USC § 1229b(b) and the Former Suspension of Deportation
 - A. Cancellation of Removal under INA § 240A(b), 8 USC § 1229b(b)
 - 1. Convictions and Status that Block Eligibility
 - 2. Good Moral Character and Family Hardship
 - B. The Former Relief Suspension of Deportation
 - 1. Suspension of Deportation as It Existed before April 1, 1997
 - a. Suspension based on seven years continuous presence: INA § 244(a)(1)
 - b. Suspension based on ten years, waiving deportation for crimes: INA § 244(a)(2)
 - c. Special suspension for spouse or child abused by U.S. citizen or resident spouse or parent
 - 2. Applications for Suspension of Deportation in Removal Proceedings, under Lopez-Castellanos
 - 3. Hardship and Other Factors to Consider in Applying for Relief under Lopez-Castellanos
 - a. Exceptional and extremely unusual hardship
 - b. Good moral character
 - c. Cancellation, ten-year and seven-year suspension, persons without convictions

- d. When does the ten years physical presence stop?
- e. Conviction by trial, application for naturalization as reliance
- 4. Examples of Who Might Apply for 10-Year Suspension under Lopez-Castellanos
- C. Qualifying for Suspension in Removal Proceedings: Attorney or Governmental Misconduct Dating from Before 1997
- § 11.5 Creation of a Record of Admission (Registry)
- § 11.6 Diversity Visas

<u>Immigration Based on Family or Employment</u>

- § 11.7 Immigration through Family Visa Petition: Adjustment of Status and Consular Processing
 - A. The Family Immigration System
 - B. Permanent Residents Can "Re-Immigrate"
 - C. Adjustment of Status and Consular Processing
 - D. The "V" and "K" Visas
- § 11.8 Immigration through Employment

Victims of Domestic Violence, Child Abuse, Crime, Trafficking; Informants

- § 11.9 Special Relief for Persons under the Jurisdiction of a Juvenile Court: "Special Immigrant Juveniles"
- § 11.10 VAWA -- Relief for Battered Spouses and Children of U.S. Citizens or Residents, and Battered Parents of U.S. Citizen Sons and Daughters
 - A. VAWA Self-Petitioning
 - 1. In General
 - 2. Criminal Record Requirements for VAWA Self-Petitioner
 - B. VAWA Cancellation of Removal
 - 1. In General
 - 2. Criminal Record Requirements for VAWA Cancellation
 - C. Waivers that Assist VAWA Applicants
 - D. Continuing Problems with VAWA; "Reason to Believe" Drug Trafficking
 - E. Comparing VAWA Self-Petitioners and VAWA Cancellation Applicants
- § 11.11 Victims of Traffickers -- INA § 101(a)(15)(T)
 - A. Requirements under INA § 101(a)(15)(T)
 - B. Government Benefits for "T" Visa Applicants
 - C. Implementation
- § 11.12 Victim/Witness to Crimes INA § 101(a)(15)(U)
 - A. Who Can Apply
 - B. Application of Spouse, Child, Sibling or Parent of the Crime Victim
 - C. Inadmissibility, Adjustment of Status
- § 11.13 The "S" Visa -- Temporary or Permanent Status for Informants

Nationals of Countries Of Persecution, Civil War or Natural Disaster

- § 11.14 Asylum
 - A. Overview of Asylum
 - B. Crimes-Based Bars to Asylum
 - 1. Discretion in Granting Asylum and the § 209(c) Waiver in Asylum Adjustment; the "Violent or Dangerous Crime" Determination
 - a. Discretion in general

- b. Discretionary decisions where an applicant for asylum, or for asylee or refugee adjustment, was convicted of a "violent or dangerous" crime
- 2. Conviction of a "Particularly Serious Crime" Is a Bar to Asylum
- 3. An aggravated felony conviction is a per se bar to asylum as a "particularly serious crime"
- 4. Argument: An expungement may work to eliminate a conviction for purposes of asylum and withholding.
- 5. The government's "serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States" prior to arrival in the United States is a bar to asylum
- 6. If the government has reasonable grounds for regarding the alien as a danger to the security of the United States, or if the person is inadmissible or deportable under the terrorist grounds, the person is barred.
- C. The One-Year Filing Requirement and Post-Conviction Relief as a "Changed Circumstance"
- § 11.15 Withholding of Removal and the Convention Against Torture
 - A. Withholding of /Restriction on Removal
 - 1. Requirements for Relief
 - 2. Statutory History: Aggravated Felony as Particularly Serious Crime under IMMACT 90, the AEDPA and the IIRIRA
 - 3. Current Rule: Aggravated Felony as a "Particularly Serious Crime"
 - 4. How is a crime determined to be a Particularly Serious Crime?
 - a. Analytic approach of the board
 - b. Evidence that may be considered in determining whether the offense of conviction is a particularly serious crime
 - 5. Drug Trafficking as a Particularly Serious Crime
 - 6. "Particularly Serious Crime" and "Danger to the Community"
 - 7. Serious non-political crime; security threat
 - 8. Argument: Expungement eliminates a "final judgment of a conviction" of a particularly serious crime for purposes of asylum and withholding.
 - 9. Administrative removal proceedings for non-permanent residents
 - B. Convention Against Torture
 - 1. History and Overview
 - 2. Relief under CAT: Withholding or Deferral of Removal
 - 3. Determination of CAT Claims, Screening Process for Aggravated Felons
- § 11.16 The American Baptist Church (ABC) Court Settlement on Asylum
- § 11.17 Temporary Protected Status
- § 11.18 NACARA Relief for Salvadorans, Guatemalans, Nationals of former Soviet Bloc countries, Cubans and Nicaraguans
- § 11.19 Special Relief for Haitians

Citizenship and Naturalization

- § 11.20 Citizenship by Birth; Derivative and Acquired Citizenship
 - A. Automatic Citizenship by Birth in the United States or Other Areas
 - B. Automatic Citizenship for Those Born Outside the United States: Derivative and Acquired Citizenship, the Child Citizenship Act
 - 1. Acquired Citizenship
 - 2. Derived Citizenship; the Child Citizenship Act

C. Foundlings are Assumed to Be Citizens

§ 11.21 Naturalization to U.S. Citizenship

Section One: Requirements for Naturalization

- A. Good Moral Character Requirement: Length of Time
- B. Who Is Disqualified from Showing Good Moral Character for Naturalization?
 - 1. Statutory Bars to Establishing Good Moral Character
 - 2. False Statements at the Naturalization Interview
 - 3. Non-Statutory Bars to Deny Good Moral Character in Naturalization Proceedings
 - 4. Other Considerations in the Good Moral Character Determination.
- C. Lawfully Admitted for Permanent Residence
- D. Classes of Immigrants Barred from Naturalizing
- E. A Conviction of an Aggravated Felony—Except Murder—Dated before November 29, 1990 Does Not Create a Permanent Bar to Establishing Good Moral Character and Naturalization
- F. While the CIS May Consider Misconduct Predating the Five-Year (or Three-Year) Good Moral Character Period, It May Not Deny Naturalization Based Solely on Offenses Occurring Before that Period: Santamaria-Ames v. INS, United States v. Hovsepian
- G. The Effect of Immigration Waivers on Bars to Establishing Good Moral Character
- H. The DHS Should Not Delay Processing of an Application for Naturalization beyond the 120-Day Period to Await the Outcome of a Criminal Case against the Applicant
- I. "National" Status By Virtue of Applying for Naturalization
- J. Beneficial Rules Applicable to Veterans of U.S. Armed Services

Section Two: Termination of Removal or Deportation Proceedings to Apply for Naturalization; Naturalization Despite Pending Removal Proceedings

- A. Termination of Deportation or Removal Proceedings; Certifying Good Moral Character
 - 1. Authority to Request Termination of Deportation or Removal
 - 2. Limitations of Termination of Deportation or Removal Proceedings under Matter of Acosta Hidalgo and Hernandez de Anderson
- B. Whom This Benefits, When to Apply
- C. Federal Court Appeals in Termination of Removal Proceedings
- D. The INS May Not Deny Naturalization Based Solely on Offenses Occurring before that Period; The Applicant Must Have the Opportunity to Prove Good Moral Character during the Statutory Period
- E. Some Veterans May Naturalize Despite Ongoing Removal Proceedings

Voluntary Departure instead of Removal/Deportation

- 11.22 Voluntary Departure under INA § 240B, 8 USC § 1229c
 - A. Voluntary Departure Prior to the Completion of Removal Proceedings
 - 1. In General
 - 2. Voluntary Departure for EWI's Despite Aggravated Felony Conviction
 - B. Requests for Voluntary Departure at the Conclusion of Proceedings
 - C. Importance of Strategizing with your Client
 - D. Voluntary Departure under Former INA § 244(e) for Persons in Deportation or Removal Proceedings

The Amnesty of the 1980's

- § 11.23 Legalization Programs
- § 11.24 Family Unity
 - A. Overview of Family Unity
 - B. Juvenile Delinquency Adjudications and Family Unity
 - C. Family Unity Benefits in Applications for Cancellation, § 212(h), and § 212(c), and Inadmissibility Based on Unlawful Presence

Last-Ditch Efforts

- § 11.25 Deferred Action Status and "Prosecutorial Discretion"
- § 11.26 Private Bill in Congress

The Vienna Convention

§ 11.27 Right to Consular Officer Notification under the Vienna Convention

Detention

- § 11.28 Release from Detention
 - A. Mandatory Detention of Noncitizen Criminal Offenders Awaiting Removal Proceedings
 - 1. Does mandatory detention under INA § 236(c) apply at all?
 - 2. Joseph Hearings
 - 3. Distinguishing your client from Kim
 - B. Discretionary Bond Hearings
 - 1. Eligibility for Release on Bond
 - 2. Automatic Stay Regulations
 - C. Detention of Persons with Final Administrative Orders of Removal
 - 1. Persons with Final Orders without Stavs of Removal
 - 2. Challenging Detention for Persons with a Final Order But Who Have Filed A Petition for Review and Stay in Federal Court
 - a. Noncitizens with a Stay of Removal from the Circuit Court Who Are Otherwise Subject to § 236(c) May Be Able to Challenge Their Detention through a Petition for Writ of Habeas Corpus once the Detention becomes Prolonged
 - Noncitizens with a Stay of Removal from the Circuit Court Who Would Not Be Subject to § 236(c) May Have a Right to Have the Immigration Judge Review Their Custody
 - D. Detention of Arriving Aliens
 - E. The Indefinite Detention of Unadjusted Refugees
- § 11.29 Early Release from Incarceration by Taking Removal
- Appendix 11-A Former Law Governing § 212(c) Relief
- Appendix 11-B Charts on Derivative and Acquired Citizenship
- Appendix 11-C Text of Former INA § 244, 8 USC § 1254, Suspension of Deportation

CHAPTER 12 State Enforcement of Immigration Laws, Immigration Holds and Detainers, and Detention of Juveniles by Michael K. Mehr

- § 12.1 Federal Policy on State Enforcement of Immigration Law.
- § 12.2 State Enforcement of Immigration Law in California.
- § 12.3 Reporting Arrests or Convictions.
- § 12.4 Remedies for Illegal State Enforcement of Immigration Law.
- § 12.5 Immigration Holds and Detainers.
- § 12.6 Strategies for Aliens Awaiting Trial
- § 12.7 Prisoners with Detainers Serving Sentences
- § 12.8 Detention of Juveniles

Appendix 12-A Petition for Writ of Habeas Corpus

CHAPTER 13 Quick Reference Chart and Notes for Determining Immigration Consequences of California Offenses

Introduction

Ouick Reference Chart for Selected California Offenses

Notes to Accompany Chart:

- § 13.1 Definition of Conviction and How to Avoid a Conviction for Immigration Purposes
 - A. Overview
 - B. Rehabilitative Relief such as Deferred Entry of Judgment, Prop. 36, Expungements; First Minor Drug Offenses and Rehabilitative Relief
 - C. Pre-Plea Dispositions
 - D. Juvenile Delinquency Dispositions
 - E. Infractions
 - F. Appeal and Issues of Finality
 - G. Vacation of Judgment for Cause
- § 13.2 Record of Conviction and Divisible Statutes
 - A. Overview: The Categorical and Modified Categorical Analysis
 - 1. The Categorical Analysis
 - 2. Divisible Statutes and the Record of Conviction: the Modified Categorical Analysis
 - 3. What Documents Can Be Consulted to Determine the Elements of the Offense of Conviction?
 - B. Handling Charging Papers, Plea Agreements and Stipulations to a Factual Basis
 - 1 Goals
 - 2. Strategies: Charging Papers and Pleas, Avoiding Stipulation to a Factual Basis
 - 3. Additional Strategies for Meeting the Factual Basis Requirement; Stipulation to a Police Report or Other Documents
 - a. Overview
- § 13.3 Sentence Solutions
 - A. Definition of Sentence: Getting to 364 Days
 - B. The Effect of Recidivist and Other Sentence Enhancements

- § 13.4 Using the Chart to Establish Defense Goals: Aggravated Felonies, Deportability, Inadmissibility, and Waivers
 - A. Overview of Immigration Consequences, Getting Expert Advice
 - B. Establishing Defense Goals: Is Avoiding Deportability or Inadmissibility the Highest Priority?
 - 1. Who needs primarily to avoid deportability, and who needs primarily to avoid inadmissibility?
 - a. The effect of becoming deportable
 - b. The effect of becoming inadmissible
 - c. The absolutely removable client
 - 2. Comparing the grounds of deportability and inadmissibility
 - 3. Cancellation of Removal and the "Section 212(h) Waiver"
 - C. Aggravated felonies
- § 13.5 Aggravated Felonies
 - A. Definition of Aggravated Felony.
 - B. Penalties for Conviction: Barred from Immigration Applications.
 - C. Penalties for Conviction: Federal Offense of Illegal Re-entry
 - D. List of Aggravated Felonies
- § 13.6 Crimes Involving Moral Turpitude
 - A. Overview
 - B. Deportation Ground, 8 USC § 1227(a)(2)(A)(i), (ii)
 - 1. Deportable for one conviction of a CMT, committed within five years of admission, that carries a maximum sentence of one year or more
 - 2. Conviction of two crimes involving moral turpitude after admission, that are not part of a single scheme
 - C. Ground of Inadmissibility, 8 USC § 1182(a)(2)(A)
- § 13.7 Drug Offenses
 - A. Overview of Penalties for Drug Offenses
 - B. Key Defense Strategies: Create a Record that Does Not Specify the Controlled Substance; Plead to Accessory After the Fact
 - 1. Create a Record that Does Not Specify the Controlled Substance
 - 2. Plead to Accessory after the Fact
 - C. Simple Possession or Less
 - D. Sale and Other Offenses beyond Possession
 - 1. Sale/Transport/Offering
 - 2. Forged or fraudulent prescriptions
 - 3. Post-conviction Relief
 - 4. Inadmissible for "reason to believe" trafficking
 - 5. Case Examples
- § 13.8 Domestic Violence, Child Abuse, Prostitution
 - A. Domestic Violence and Child Abuse Deportability Ground (see § 6.15)
 - 1. Conviction of a Crime of Domestic Violence
 - 2. Finding of Violation of a Domestic Violence Protective Order
 - 3. Crime of Child Abuse, Neglect or Abandonment
 - 4. Conviction for stalking
 - B. Prostitution (see § 6.2)
- § 13.9 Sex Offenses
 - A. Rape

- B. Sexual Abuse of a Minor
- C. Alternate Pleas
- § 13.10 Firearms Offenses
 - A. The Firearms Deportability Ground
 - B. Firearms Offenses as Aggravated Felonies
- § 13.11 Burglary, Theft and Fraud
 - A. Burglary
 - 1. Burglary as an aggravated felony.
 - 2. Burglary as a Crime Involving Moral Turpitude.
 - B. Theft
 - 1. Theft as a moral turpitude conviction
 - C. Fraud
- § 13.12 Analysis of Safer Alternatives: Alternate Pleas with Less Severe Immigration
 - Consequences
 - A. All-Purpose Substitute Pleas: Accessory after the Fact, Solicitation (but Not Aiding and Abetting)
 - 1. Accessory after the Fact
 - 2. Solicitation
 - 3. Aiding and Abetting is not a safe plea
 - B. Safer Pleas for Violent or Sexual Offenses
 - 1. Persuading a witness not to file a complaint, PC § 136.1(b)
 - 2. False imprisonment, PC § 236.
 - 3. Annoying or Molesting a Child
 - 4. Simple battery, spousal battery, PC §§ 243(a), 243(e)
 - 5. Battery with serious bodily injury, PC § 243(d)
 - 6. Consensual Sex with a Minor, PC § 261.5?
 - 7. Sexual battery under PC § 243.4
 - C. Safer Pleas for DUI and Negligence/Recklessness that Risks Injury
 - D. Safer Pleas for Offenses Related to Firearms or Explosives
 - 1. Manufacture, possession of firearm, other weapon, PC § 12020(a)
 - 2. Assault with a firearm or other weapon, PC § 245(a)
 - E. Safer pleas for offenses relating to fraud, theft or burglary
 - 1. False personation, PC § 529(3)
 - 2. Petty theft with a prior, PC §§ 484, 666; but CAUTION: pending Supreme Court case
 - 3. Joyriding, Veh. Code § 10851(a)
 - 4. Burglary of a Car or Other Non-Structure, PC § 460(b)
 - 5. A plea agreement that specifies less than a \$10,000 loss to the victim—plus other measures
 - F. Safer Pleas for Offenses Related to Drugs
 - G. Sentence of 364 Days or Less
 - H. Attempt, PC § 21a
 - I. Consider What You Can Do By Controlling the Record of Conviction
 - J. Is your client a U.S. citizen or national without knowing it?
- § 13.13 Client Immigration Questionnaire
- § 13.14 Other Resources: Books, Websites, Services

APPENDICES

Appendix I	Chart of Grounds of Inadmissibility and Deportability, Good Moral Character
	Bars and Waivers
Appendix II	Text of Grounds of Inadmissibility and Grounds of Deportability as Amended
Appendix III	Requesting Immigration Record under the Freedom of Information Act
	Instructions Form G-639, Certificate of Identity; Requesting Criminal Record
	from California and FBI
Appendix IV	DMV Court Code Numbers
Appendix V	State Bar Ethics Opinion
Appendix VI	Opinion of Daniel E. Lungren (No. 96-801)

INDEX

TABLE OF CASES