

## U.S. Citizenship

If your client's parents or grandparents are U.S. citizens, it is possible that your client acquired citizenship automatically, but may be unaware of it. If you represent a defendant who may fit into this category and who has alienage as an element of the charged offense, you should consult with an immigration attorney before accepting any guilty pleas.

## Clarifying Misconceptions About Crimes and Immigration Law

**1 Misdemeanor convictions CAN be aggravated felonies.** Under immigration law, misdemeanor offenses under state or federal law can be classified as aggravated felonies (as some aggravated felonies are categorical).

**2 Driving Under the Influence (DUI) IS NOT a deportable offense.** Under current law, a "simple" DUI does not constitute a removable offense. However, a conviction for aggravated DUI may make a client removable. An immigration judge can consider such offenses, in the exercise of discretion, in deciding whether to grant or deny a benefit requested by a non-citizen.

**3 A suspended sentence DOES count for immigration purposes.** Suspended jail time counts precisely the same as jail time as when the client actually goes to jail. Moreover, if your client receives a suspended sentence of imprisonment for one year or more, many offenses can become aggravated felonies, as if an actual term of imprisonment had been imposed.

**4 410 probation and expungements are NOT effective for immigration purposes.**

## You Can Help Your Client Avoid Immigration Consequences

As a criminal defense attorney, you can meet your duties to your client,\* at the same time helping a non-citizen avoid the negative consequences of a conviction. This may involve crafting plea agreements in a creative way to avoid charges, admissions, and/or sentences that will be problematic for your client in the future. It may involve going to trial if your client wishes to avoid removal from the United States. NIJC attorneys are available to advise you on potential consequences of certain charges and convictions and possible strategies to avoid them.

### *\*Your Obligation Under Padilla v. Kentucky:*

*Under Padilla v. Kentucky, 559 U.S. \_\_\_\_ (2010), attorneys have a duty under the 6th Amendment to advise non-citizen clients on the specific immigration consequences of accepting a plea bargain.*

**Contact the Defenders Initiative:**  
**[defenders@heartlandalliance.org](mailto:defenders@heartlandalliance.org)**  
**(312)660-1610**



**National Immigrant Justice Center**  
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**Disclaimer:** *This brochure provides a brief overview of the potential immigration consequences of criminal convictions for non-citizens in the United States. This is not a substitute for consultation with knowledgeable immigration attorneys. NIJC encourages inquiries by e-mail in order to more thoroughly respond to potential case scenarios.*

NIJC 7/2010



National Immigrant Justice Center

# Defenders Initiative

**Reliable immigration legal advice for criminal defense attorneys**

**Criminal convictions are the primary reason immigrants are deported from the United States.**

The National Immigrant Justice Center (NIJC), a partner of Heartland Alliance, is one of the largest and most comprehensive immigrant legal service agencies in the nation. NIJC is committed to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers through direct legal services, policy reform, impact litigation, and public education.

Through a grant from the Chicago Area Foundation for Legal Services, the National Immigrant Justice Center launched the Defenders Initiative to provide trainings and respond to e-mail and telephone inquiries from criminal defense attorneys who have questions regarding potential immigration issues for their clients. If you are interested in a training or have a question about how a criminal conviction can impact the immigration case for your client, please e-mail NIJC at **[defenders@heartlandalliance.org](mailto:defenders@heartlandalliance.org)** or call **(312)660-1610**.

## Immigration Status Classifications

With the exception of U.S. citizens, all of the following categories of immigrants may be subject to removal for criminal activity:

- ◆ Lawful Permanent Resident (“LPR” or “greencard” holder)
- ◆ Asylee/Refugee (Someone who has suffered persecution or fears persecution in their country of origin and has been granted protection in the United States)
- ◆ Lawfully admitted non-immigrant (visitor, temporary worker)
- ◆ Undocumented

## Definition of a Conviction and Jail Sentence for Immigration Purposes

Immigration law defines "conviction" at 8 U.S.C. § 1101(a)(48) as a formal judgment of guilt entered by the court, or if adjudication of guilt has been withheld where the alien has entered a plea of guilty or nolo contendere or has admitted facts sufficient for a finding of guilt and the judge has ordered some sort of punishment, penalty, or restraint on liberty. Thus, suspended sentences and other criminal law procedures such as deferred adjudications, sealing, vacatur, and “410 probation” will not avoid convictions for purposes of immigration law. *Gill v. Ashcroft*, 333 F.3d 574 (7th Cir. 2003). A diversion that does not require a guilty plea, such as “drug school” may not constitute a conviction for immigration purposes.

## Consequences of Criminal Arrests, Charges, and Convictions

A person admitted to the United States as a lawful permanent resident (LPR) or in some other lawful status may be deported based on criminal convictions and barred from ever returning legally. For certain non-citizens without lawful status, convictions, especially anything relating to controlled substances, may prevent them from ever being able to obtain lawful status in the United States and can also draw them to the attention of immigration authorities.

### Questions?

[defenders@heartlandalliance.org](mailto:defenders@heartlandalliance.org) / (312) 660-1610

## Categories of Crimes for Immigration Purposes

### Aggravated Felonies

The classification "aggravated felony" is a term of art for immigration law as defined at 8 U.S.C. § 1101(a)(43). Aggravated felonies have dire consequences for non-citizens and should be avoided if at all possible. Admitted individuals with aggravated felony convictions will likely have no relief from deportation and if deported will be barred permanently from returning. If individuals illegally re-enter the United States after having been deported based on an aggravated felony, they face being sentenced to 20 years in prison. 8 U.S.C. § 1326(b)(2).

*Some aggravated felonies are categorical such as: murder, rape, alien smuggling, trafficking in drugs, and most firearm offenses. Even some misdemeanor offenses can constitute categorical aggravated felonies. For example, misdemeanor sexual abuse of a minor still constitutes an aggravated felony for immigration law purposes. Other aggravated felonies require a sentence to at least a year of imprisonment as defined at 8 U.S.C. § 1101(a)(48)(B). Examples of "sentence-based" aggravated felonies are: theft, burglary, obstruction of justice, perjury and/or crimes of violence.*

*Suspended sentences count for immigration purposes. A suspended sentence of more than a year can become an aggravated felony just as if an actual term of imprisonment had been imposed.*

### Crimes Involving Moral Turpitude

Crimes of moral turpitude are not statutorily defined, but are generally understood to be acts that are inherently evil or wrong. Examples are: robbery, theft, fraud, bribery, aggravated assault, child abuse, rape, arson, burglary, extortion, embezzlement, obstruction of justice, shoplifting, welfare fraud, and turnstile jumping.

*Moral turpitude offenses may render a lawfully present immigrant deportable and can also prevent others from obtaining lawful status in the future. Some crimes may be both aggravated felonies and crimes of moral turpitude*

## Controlled Substance Offenses

Any conviction for a controlled substance offense renders an immigrant deportable and potentially unable to immigrate in the future. The only exception is for possession of less than 30 grams of marijuana for personal use. A conviction for any drug trafficking offense, including possession with intent to deliver, is an aggravated felony.

## Firearms

An LPR or person otherwise lawfully admitted to the United States who is convicted of a firearms offense is deportable. Any offense that involves an element of the use of firearms subjects the immigrant to deportation. 8 USC § 1227(a)(2)(C). Further, some firearms convictions are aggravated felonies, which eliminate most forms of relief from deportation. *Matter of Vazquez-Muniz*, 23 I&N Dec. 207 (BIA 2002).

## Domestic Violence

An LPR or person otherwise lawfully admitted to the United States is deportable for many domestic violence crimes, including most assault crimes (called “crimes of domestic violence”), stalking, child abuse, child neglect, and child abandonment.

### Keep In Mind...

- ◆ “Expungement” of arrests or convictions is not effective for immigration purposes.
- ◆ Post-conviction relief for your client can be effective if your client's guilty plea is vacated due to a legal or constitutional defect in his original criminal proceedings, but not for immigration purposes.
- ◆ Although your client may be charged with a crime, he or she may actually be the victim of a crime. For example, individuals charged with prostitution may in fact have been victims of human trafficking. Special forms of immigration relief exist for victims of violent crimes, domestic abuse, or trafficking.