

# **IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS**



**Indiana Public Defender Council  
309 West Washington Street, Suite 401  
Indianapolis IN 46204  
317-232-2490  
[www.in.gov/ipdc](http://www.in.gov/ipdc)**

**Maria Baldini-Potermín**

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See also “Defending Non-citizens in Illinois, Indiana and Wisconsin (7th Circuit Manual)”, by Maria Baldini-Pottermin, available as a free PDF download at the [National Immigrant Justice Center](#) website.

## **ACKNOWLEDGMENTS**

Thanks to former IPDC Staff Attorney Andrew Krull for organizing the original version of this pamphlet, published in 2007. He began a chart identifying Indiana criminal offenses triggering immigration consequences after attending an NLADA conference, and I expanded it significantly. Because the law has grown increasingly complex and because of the many factors involved in determining whether a particular offense is an aggravated felony, a crime involving moral turpitude, etc., I have not included a chart of this type in this third edition. I have, however, updated my article, “Defending Noncitizens: The ABCs that Criminal Defense Attorneys Need to Know About Immigration Law,” which provides the text for this pamphlet.

Thanks also go to the NLADA’s Defending Immigrants Partnership, with their conference being the impetus for getting this pamphlet completed as well as Arizona Federal Public Defender Robert J. McWhirter for providing materials included within this pamphlet.

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## ABOUT THE AUTHOR

Maria T. Baldini-Potermin is the founding attorney at Maria Baldini-Potermin & Associates, P.C., 1 N. LaSalle Street, Suite 2150, Chicago, IL 60602, ph: 312-368-8200, fax: 312-368-9400, [maria@baldini-potermin.com](mailto:maria@baldini-potermin.com). Her practice focuses on deportation defense, asylum, and immigration consequences of criminal convictions. She represents noncitizens before the Immigration Court, Board of Immigration Appeals, several federal Circuit Courts of Appeals, and the Supreme Court of the United States. She is a recipient of the 2010 Edith Lowenstein Award for Excellence in Advancing the Practice of Immigration Law from the American Immigration Lawyers Association (AILA) and a 2013 Presidential Commendation from AILA. Since 2004, she has been recognized as a Leading Lawyer in Illinois in the area of immigration law. She is also a frequent lecturer at national and local conferences. Prior to private practice, she was a staff attorney and National Association for Public Interest Law Equal Justice Fellow at the Immigrant Law Center of Minnesota, St. Paul, MN and the Midwest Immigrant and Human Rights Center (now the National Immigration Justice Center) in Chicago, IL. She served as an adjunct clinical professor in the Immigration Law Clinic at the University of Minnesota Law School from 1997 to 1999. Before attending law school, she worked in south Texas from 1990-94, which included representing and assisting detained noncitizens as an accredited representative at the South Texas Pro Bono Asylum Project (ProBAR) in Harlingen, Texas. Ms. Baldini-Potermin serves as the update editor to *Immigration Law and Crimes*, the author of *Immigration Trial Handbook*, and the author of numerous articles in *Interpreter Releases* and *Immigration Briefings*, all published by Thompson Reuters/West. She is the author of additional criminal immigration publications, including *Defending Non-citizens in Minnesota Courts: A Summary of Provisions of Immigration Law and Client Scenarios*, of “Chapter 4: The Meaning of Conviction for Immigration Purposes, Advisements, Pleas and Sentences” in *A Judge’s Guide to Immigration Law in Criminal Proceedings* by the American Bar Association, and *Defending Noncitizens in Illinois Courts*, *Defending Non-citizens in Illinois, Indiana and Wisconsin*, available as a free PDF download at <https://www.immigrantjustice.org/defendersmanual>. She serves on the Board of Directors of the National Immigration Project of the National Lawyers Guild. Ms. Baldini-Potermin obtained her J.D. *cum laude* from the University of Minnesota Law School in 1997 and her B.A. *magna cum laude* from the University of Dayton in 1990.

## DISCLAIMER

All information in this pamphlet is subject to change, and should only be used as a starting point for further investigation and study of current law and practice.



## TABLE OF CONTENTS

<b>PREFACE.....</b>	<b>1</b>
<b>Defending Noncitizens: The ABCs That Criminal Defense Attorneys Need to Know About Immigration Law .....</b>	<b>3</b>
I. INTRODUCTION .....	3
II. AUTHORITIES .....	4
Statutes .....	4
III. EVALUATING YOUR NONCITIZEN CLIENT'S CASE.....	9
Step One: Is Your Client a U.S. Citizen?.....	9
Step Two: Will a Plea or Admission of Facts Result in a "Conviction" for Your Noncitizen Client? .....	10
Step Three: Will a Proposed Disposition of Your Client's Case Render Her Deportable or Inadmissible for Immigration Purposes? .....	12
Step Four: If the Charge Cannot be Amended to Avoid Immigration Consequences, What Arguments Can be Made at the Sentencing Stage? Alternatively, What are the Possibilities for Post-Conviction Relief? .....	18
IV. JUVENILE ISSUES .....	22
V. CONCLUSION.....	25
<b>Appendix A .....</b>	<b>27</b>
IMMIGRATION CONSEQUENCES CHECKLIST* .....	27
Appendix B.....	29
QUESTIONS FOR CALLS REGARDING IMMIGRATION CONSEQUENCES FOR NONCITIZENS IN CRIMINAL PROCEEDINGS .....	29
Appendix C.....	31
IMMIGRATION ATTORNEYS .....	31
Appendix D .....	37
Appendix E.....	39
CONSULATE INFORMATION .....	39
Appendix F .....	47
INDIANA SUPREME COURT CERTIFIED INTERPRETERS .....	47
Appendix G. ....	57
COMMON IMMIGRATION TERMS .....	57
Appendix H .....	63
ADDITIONAL RESOURCES.....	63





## PREFACE

Due to changes in immigration law and an increasing number of immigrant clients in Indiana's criminal courts, the Indiana Public Defender Council first published this pamphlet in 2007 to provide our membership with some direction on what the immigration consequences are in relation to criminal convictions for noncitizen clients. The term "noncitizen" is used in this pamphlet to define a person who is not a U.S. citizen and instead is an "alien" under 8 U.S.C. § 1101 *et seq.*

The U.S. Supreme Court held in *Padilla vs. Kentucky* (hereafter referred to as "*Padilla*") that an ineffective assistance of counsel claim under the Sixth Amendment could be based on the failure to inform a criminal defendant of the immigration consequences of a criminal conviction before entering into a plea agreement. *See Padilla vs. Kentucky*, 559 U.S. 356 (2010). Through common law, Indiana developed the *Padilla*-like duty long before *Padilla* was decided by the U.S. Supreme Court. The Indiana Supreme Court has held that in some circumstances, failure to advise of consequences of deportation can constitute deficient performance. *Segura v. State*, 749 N.E.2d 496 (Ind. 2001).

A deportation may result in loss of both property and life; or all that makes life worth living. *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). In an article entitled "Tips on Immigration Consequences of Criminal Convictions," Robert McWhirter, a federal public defender in Arizona, noted, "For many an alien, the criminal punishment pales in comparison to exile. You can work out a great plea seemingly giving the defendant a break only to later find out that he will be back with an ineffective assistance of counsel claim because the deal ruined his life."

In light of recent U.S. Supreme Court, federal circuit court of appeals, and Board of Immigration Appeals decisions, top tips on immigration consequences include:

1. Obtain current copies of the following statutes:
  - a. 8 U.S.C. § 1101(a)(48), defining a "conviction" for purposes of federal immigration law;
  - b. 8 U.S.C. § 1227, listing the grounds of deportation;
  - c. 8 U.S.C. § 1182, listing the grounds of inadmissibility/exclusion; and
  - d. 8 U.S.C. § 1101(a)(43), defining the term "aggravated felony," which includes many misdemeanor offenses as well as offenses for which no jail time is ordered by a court.
  - e. 8 U.S.C. § 1101(f), defining the term "good moral character" which is required for naturalization (citizenship) applications as well as applications for relief from removal/deportation.

Whenever possible, avoid a conviction for any of the crimes listed in the grounds of deportability and inadmissibility.

2. For certain offenses, criminal acts alone can get a noncitizen deported or result in the denial of an application for naturalization. If the noncitizen is an alcoholic, addict, gambler, prostitute, or polygamist, the government can deport him even without a conviction. Prior addiction, prostitution, and polygamy may also form the basis of removal, depending upon the noncitizen's circumstances.
3. A conviction under Indiana law for a Class A misdemeanor offense which is a crime of moral turpitude (CIMT) can result in the removal (deportation) of a noncitizen. If two or more CIMT convictions do not arise from a single scheme or if the noncitizen was convicted of a single crime involving moral turpitude punishable by imprisonment of one year or more within 5 years of admission into the U.S., then the noncitizen is deportable.

**Note:** For a listing of published CIMT decisions updated every six months, see Chapter 6 and Appendix D, NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYER'S GUILD, IMMIGRATION LAW AND CRIMES (2015), (C) THOMSON REUTERS.

4. Convictions for controlled substances and/or drug paraphernalia may render a noncitizen deportable and/or inadmissible as well as result in the denial of an application for naturalization. There is an exception to the ground of deportation for noncitizens who have been a single conviction for simple possession of 30 grams or less of marijuana for personal use or possession of drug paraphernalia relating to simple possession of 30 grams or less of marijuana.

**Note:** There is NO exception for the ground of inadmissibility relating to possession of marijuana or marijuana paraphernalia.

**Note:** Under the grounds of inadmissibility, a noncitizen may be found inadmissible as a drug trafficker where the Attorney General has “reason to believe” that the noncitizen has been involved in illicit trafficking of a controlled substance. Where a trafficking offense is initially charged, additional care must be taken in the plea agreement regarding the facts admitted and the evidence that is entered into the criminal court record, including the pre-sentence investigation report (PSI/PSR).

5. A misdemeanor conviction for unlawful possession of a firearm is a deportable offense. This ground of deportability includes any conviction under any law for purchasing, selling, offering for sale, exchanging, using, owning, possession, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry any weapon, part or accessory defined as a firearm or destructive device as defined under 8 U.S.C. § 921(a).

**Note:** Some firearms offenses are defined as aggravated felony offenses. *See* 8 U.S.C. §1101(a)(43)(C) (including offenses under 18 U.S.C. §§ 922(g)(1), (g)(5), (j) or analogous state provisions).

6. A conviction for domestic violence, stalking, child abuse, child neglect, or child abandonment entered on or after September 30, 1996 is a deportable offense. A violation of a protective order, also renders a noncitizen deportable.

**Note:** For a violation of a protective order, only a civil or criminal court’s finding of the violation is required, not a conviction.

9. A conviction for an aggravated felony as defined under 8 U.S.C. § 1101(a)(43) may guarantee deportation of a noncitizen, depending upon his or her individual circumstances.

**Note:** A conviction for an aggravated felony after November 30, 1990 is a permanent bar to naturalization for a lawful permanent resident.

8. Convictions for alien smuggling and immigration fraud are deportable offenses. The act of voting in a local, state, or federal election in which only U.S. citizens can register and vote will render a noncitizen deportable, even without a conviction.

These tips, like this booklet, can only provide an introduction to this ever evolving and complex area of the law. If defense counsel has any questions about the immigration consequences of a criminal conviction, counsel should contact an attorney who specializes in immigration law.

At the end of this text, as Appendix A, you will find a helpful summary checklist regarding possible immigration consequences. As Appendix B, you will find a list of questions to answer in preparation for consulting with an immigration attorney. Appendix C is a list of attorneys practicing in this area. Appendix D is a sample letter for contacting the appropriate consulate office on behalf of your client, and Appendix E is a list of consulates. Appendix F is a list of Indiana court-certified interpreters. Finally, Appendix G is a list of additional resources.

# DEFENDING NONCITIZENS: THE ABCS THAT CRIMINAL DEFENSE ATTORNEYS NEED TO KNOW ABOUT IMMIGRATION LAW<sup>1</sup>

By

Maria T. Baldini-Potermín

## I. INTRODUCTION

"If only I had known .... "

For better or for worse, most of us are not fortune tellers, nor do we hold degrees in forecasting the winds of political change in Congress. Noncitizens who encounter the criminal justice system are at great risk of deportation or removal, even those who encountered the criminal justice system years ago and were not deportable at that time. Many immigration practitioners shy away from understanding the criminal grounds for removal and inadmissibility. However, neither immigration attorneys nor criminal defense attorneys can avoid this topic any longer. In addition to educating ourselves, we need to educate the other attorneys in our states to try to avoid and, in some cases, minimize the immigration consequences for criminal convictions and for pleas that are now considered to be "convictions" for immigration purposes.

At least 29 states as well as the District of Columbia and Puerto Rico, have enacted statutes or directives requiring that a noncitizen defendant be advised that he or she may suffer immigration consequences as a result of a plea bargain or a conviction, and others have case law allowing post-conviction relief for immigrants where they were not advised.<sup>2</sup> Other states, however, do not require that the defendant be advised of potential immigration consequences prior to entering a plea. Some state courts have even gone so far as to say that no duty is owed by the criminal defense counsel to advise the noncitizen defendant that there could be immigration consequences, holding immigration consequences to be merely collateral consequences for which a lack of an advisal does not prejudice the noncitizen defendant.<sup>3</sup>

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<sup>1</sup> Revised December 2015. A prior version of this article appeared in the American Immigration Lawyers Association *Annual Handbook*, vol. 2, 1999, © American Immigration Lawyers Association. This article is updated with permission of the American Immigration Lawyers Association.

<sup>2</sup> See Alaska R. Crim. P. 11(c)(3)(C); Ariz. R. Crim. P. 17.2(f); Cal. Penal Code § 1016.5; Conn. Gen. Stat. 54-1j; D.C. Code Ann. § 16-713; Fla. R. Crim. P. 3.172(c)(8); *In re Amendments to Florida Rules*, 536 So.2d 992 (Fl. 1988); Ga. Code Ann. § 17-7-93(c); Haw. Rev. Stat. §§ 802E-1, 802E-2, 802E-3; 725 ILCS 5/113-8 (Illinois); Idaho Crim. R. 11(d)(1); Iowa R. Crim. P. 2.8(2)(b)(3); Me. R. Crim. P. 11(h) (Maine); Md. Rules of Court § 4-242(e); Mass. Gen. L. Ch. 278, § 29D; Minn. R. Crim. P. § 15.01, para. (6)(l) for felonies and gross misdemeanors and § 15.02, para. (3) for misdemeanors; Mont. Code Ann. § 46-12-210(f); Neb. Rev. Stat. § 29-1819.02(1); N.J. Supreme Court Directive #05-11; N.M. Dist. Ct. R. Crim. P. 5-303(F)(5); N.Y. Crim. Proc. Law § 220.50(7) [deemed repealed Sept. 1, 2015, pursuant to L. 1995, c. 3, § 74, subd. D.]; N.C. Gen. Stat. § 15A-1022(a)(7); Ohio Rev. Code Ann. § 2943.031; Or. Rev. Stat. § 135.385(2)(d); P.R. Law Ann. Tit. 34, Ap. II, Rule 70 and Rule 72; R.I. Gen. Law § 12-12-22; Tex. Code Crim. Pro. Art. § 26.13(a)(4); Vt. Stat. Ann. Tit. 13 § 6565(c); Wash. Rev. Code § 10.40.200; Wis. Stat. § 971.08(1)(c), (2).

<sup>3</sup> See e.g., *Alanis v. Minnesota*, 583 N.W. 2d 573 (Minn. 1998); *Berkow v. Minnesota*, 583 N.W.2d 562 (Minn. 1998); *People v. Correa*, 485 N.E.2d 307 (Ill. 1985). However, where the consequences of a guilty plea could

Certain provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) specifically made changes in the immigration law retroactive, rendering noncitizens who have convictions from ten, twenty or thirty years ago now deportable and potentially barred from any relief from deportation or removal. In the last 19 years since IIRAIRA was passed, more than 45 federal statutes have been enacted to amend the Immigration and Nationality Act (INA) and the availability of relief to noncitizens who have been charged with and convicted of criminal offenses. On March 1, 2003, the U.S. Department of Homeland Security (DHS) was created and replaced the former Immigration and Naturalization Service (INS).<sup>4</sup> This article will give a brief overview of the changes in the immigration law and provide practice pointers for public defenders and criminal defense attorneys, as a basis from which to begin their analysis about the immigration consequences of criminal convictions under state law.

## ***II. AUTHORITIES***

### **Statutes**

- 1. Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, 66 Stat. 163** (codified as amended at 8 U.S.C §§ 1101- *et seq.*) (hereinafter INA); INA § 101(a)(48), 8 U.S.C. § 1101(a)(48): Conviction

The definition of a "conviction" has been expanded to include guilty pleas, *nolo contendere* pleas, Alford pleas, and certain state circumstances where an adjudication of guilt has been withheld. Where adjudication of guilt has been withheld, a "conviction" for immigration purposes will be found where:

- (1) a noncitizen pleads guilty, pleads *nolo contendere*, or admits sufficient facts to warrant a finding of guilt; and
- (2) a judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed.

The definition of conviction was made retroactive in 1996 by IIRAIRA. Under this federal definition, state dispositions for which a conviction does not exist under state law, such as state dispositions for first offender probation and supervision, still result in a

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easily be determined by reading the removal statute to involve mandatory deportation, failure to advise a defendant that his plea of guilty to an offense that subjects him to automatic deportation results in deficient performance by counsel. *See Padilla v. Kentucky*, 559 U.S. at 368-369 (2010).

<sup>4</sup> The Homeland Security Act of 2002 (HSA), Pub. L. 107-296, 116 Stat. 2135 (Nov. 25, 2002) abolished the INS and transferred its responsibilities to three bureaus within the DHS which is headed by the Secretary of Homeland Security. The current Secretary of DHS is Jeh Johnson, who oversees three bureaus, ICE, CIS and CBP. Immigration and Customs Enforcement (ICE) is responsible for the detention and removal of noncitizens; Citizenship and Immigration Services (CIS) is responsible for adjudications of applications for immigration and citizenship benefits; and Customs and Border Protection (CBP) is responsible for immigration and customs inspections and border patrol functions. *See* 8 C.F.R 1.1. Unlike the INS, the DHS has its own Secretary and is not under the authority of the Attorney General of the Department of Justice. The Executive Office for Immigration Review (EOIR), which includes the Board of Immigration Appeals (BIA) and the immigration courts, remains under the direction of the Attorney General of the Department of Justice. *See* 8 U.S.C § 1103; 8 C.F.R. §§ 1001.1, 1003, 1003.1, 1003.9.

conviction for immigration purposes.<sup>5</sup>

## **2. INA § 237(a)(2), 8 U.S.C. § 1227(a)(2): Criminal Offenses as Grounds of Removal**

A noncitizen may be deported for a myriad of criminal offenses, including one or more crimes involving moral turpitude, an aggravated felony, a controlled substance offense, a firearm or destructive device offense, domestic violence, stalking, child abuse, child neglect, or child abandonment. He may also be found deportable for a civil or criminal court finding of a violation of a protection order. Drug addiction may also be the basis for rendering a noncitizen deportable.

## **3. INA § 101(a)(43), 8 U.S.C. § 1101(a)(43): Aggravated Felony**

The Immigration and Nationality Act defines an aggravated felony to include more than fifty types of crimes, such as theft with a stayed jail sentence of one year or statutory rape with a suspension of imposition of sentence, meaning no jail time imposed.

The 1996 amendment to the definition of aggravated felony is retroactive. For convictions entered before November 18, 1988, however, those now deemed to be aggravated felony convictions do not render noncitizens deportable within the jurisdictions of the Seventh and Ninth Circuit Courts of Appeals.<sup>6</sup>

Certain misdemeanor offenses can be aggravated felonies, such as sexual contact with a minor (statutory rape)<sup>7</sup> or a theft offense for which a one year term of imprisonment is imposed, even if the execution of the jail term is stayed. Such convictions will place the noncitizen in the category of having been convicted of an aggravated felony.

The ground of deportability for an aggravated felony applies to noncitizens who have been inspected and admitted to the U.S. *See* 8 U.S.C. § 1227(a)(2)(A)(iii). A conviction for an aggravated felony can also render a noncitizen inadmissible under 8 U.S.C. § 1182(a) if the crime also constitutes a crime involving moral turpitude, a controlled substance-related offense, or another offense within this statute.

An aggravated felony conviction also bars a noncitizen from almost forms of immigration relief, absent a probability of persecution or torture in the home country or a willingness to

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<sup>5</sup> One exception to retroactivity exists. *See Siddiqui v. Holder*, 670 F.3d 736 (7th Cir. 2012) (holding that the definition of conviction as defined by the Board during the amnesty registration period applies to applicants who fall within the provisions of the class action settlement and the LIFE Act, not the 1996 definition of conviction now contained at 8 U.S.C. § 1101(a)(48)(A)).

<sup>6</sup> *See Zivkovic v. Holder*, 724 F.3d 894 (7th Cir. 2013); *Ledezma-Galicia v. Holder*, 636 F.3d 1059 (9th Cir. 2010).

<sup>7</sup> *See Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (holding that for a statutory rape offense involving a minor age 16 or 17 to be categorically considered an aggravated felony for “sexual abuse of a minor” under 8 U.S.C. § 1101(a)(43)(A), the statute must require the element of a meaningful age differential between the victim and the perpetrator; finding that a statutory requirement of an age difference of more than three years for the California offense of unlawful intercourse with a minor categorically constitutes an aggravated felony under 8 U.S.C. § 1101(a)(43)(A)).

work as an informant or “snitch”.<sup>8</sup> An asylee or person who entered as a refugee may be eligible for a waiver and adjustment of status, except for convictions involving murder and drug trafficking.<sup>9</sup> Where a noncitizen adjusted his or her status within the U.S. to become a lawful permanent resident and is subsequently convicted of an aggravated felony, he or she may be eligible to readjust her status with a waiver under 8 U.S.C. § 1182(h), depending upon the type of offense(s) for which he or she has been convicted.<sup>10</sup>

Where a noncitizen entered the U.S. without inspection by an immigration official or is a conditional resident, an aggravated felony conviction will render him or her subject to summary removal (deportation) by the DHS under 8 U.S.C. § 1228(b) without a right to a hearing before an immigration judge.

#### **4. INA § 212(a)(2), 8 U.S.C. § 1182(a)(2): Criminal Offenses as Grounds of Inadmissibility**

Grounds of inadmissibility, if not waived, bar noncitizens from becoming lawful permanent residents or obtaining nonimmigrant status. They may also prevent a lawful permanent resident from being admitted to the United States after a visit abroad. Criminal grounds of inadmissibility include crimes involving moral turpitude (with a petty offense exception), prostitution and commercialized vice, controlled substance trafficking, and terrorist activities. Select waivers of the grounds of inadmissibility may be available.

#### **5. INA § 101(f), 8 U.S.C. § 1101(f): Good Moral Character**

Certain convictions will bar a noncitizen from establishing that he or she has good moral character. Proof of good moral character is a required element for naturalization and certain forms of relief from deportation and removal, such as cancellation of removal for non-permanent residents, suspension of deportation, and voluntary departure at the end of a removal or deportation proceeding.<sup>11</sup>

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<sup>8</sup> Three exceptions exist: (1) withholding of removal where the noncitizen has not been sentenced to 5 years, has not been convicted of a particularly serious crime, and can prove a probability of persecution; (2) relief under the Convention against Torture where the noncitizen can demonstrate a probability of torture in his or her country of origin or other country to which removal or deportation may be sought by the DHS; and (3) a waiver in conjunction with a U or T nonimmigrant visa petition. See INA § 241(b)(3), 8 U.S.C. § 1231(b)(3); INA § 212(h), 8 U.S.C. § 1182(h); United Nations Convention against Torture and Other Crimes, Inhumane or Degrading Treatment or Punishment, Article 3, G.A. Res. 39/46, 39 UN GAOR Supp. No. 51 at 197, U.N. Doc. A/Res/39/708 (1984), see 136 Cong. Rec. S 17486-92 (daily ed. Oct. 27, 1990); Section 242(a) of Pub. L. No. 105-227, reprinted in 144 Cong. Rec. H11265 (daily ed. Oct. 19, 1998); U.N. Doc. 571 Leg./SER.E/13.IV.9 (1995); 8 C.F.R. §208.16(c)(3); 8 C.F.R. § 208.18. For S visas which require a law enforcement agency to apply for the visa and the approval of the DHS, see 8 U.S.C. § 1101(a)(15)(S), 8 C.F.R. §§ 212.4(i), 212.1, 214.2, 245.11, 248.3(h), 1212.1, 1212.4(i); 1245.1, 60 Fed. Reg. 44258, 44260 (Aug. 25, 1995); 22 C.F.R. § 41.83. For U and T visas, see 8 U.S.C. §§ 1101(a)(15)(U), (T), 8 U.S.C. § 1182(d)(3) (U visa waiver), 8 U.S.C. § 1182(d)(14) (T visa waiver).

<sup>9</sup> 8 U.S.C. § 209; *Matter of K-A-*, 23 I&N Dec. 661 (BIA 2004); *Matter of H-N-*, 22 I&N Dec. 1039 (BIA 1999); 8 C.F.R. §§ 209.2(c), 1209.2(c), 1240.11(a)(2).

<sup>10</sup> See *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015) (withdrawing *Matter of E.W. Rodriguez*, 25 I&N Dec. 784 (BIA 2012), and *Matter of Koljenovic*, 25 I&N Dec. 219 (BIA 2010)); *Papazoglou v. Holder*, 725 F.3d 790 (7<sup>th</sup> Cir. 2013).

<sup>11</sup> Confinement, as a result of a conviction, to a penal institution for an aggregate period of 180 days or more

## **6. INA § 240A, 8 U.S.C. § 1229b: Cancellation of Removal**

Cancellation of removal for certain permanent residents may be available to lawful permanent residents who have resided continuously in the United States for seven (7) years after having been lawfully admitted in any status before committing the offense which renders them deportable or inadmissible, have been lawful permanent residents for not less than five (5) years, and have not been convicted of an aggravated felony. A lawful permanent resident must demonstrate that he or she merits a favorable exercise of discretion by an immigration judge.

## **7. INA § 212(c), 8 U.S.C. § 1182(c): § 212(c) Waiver**

Certain lawful permanent residents may be eligible for a § 212(c) waiver of a ground of inadmissibility. A 212(c) waiver is available to a lawful permanent resident who has accrued seven years of lawful unrelinquished domicile in the U.S. and who: 1. pled guilty to certain offense(s) prior to April 24, 1996 and did not serve five years or longer for one or more aggravated felony offenses for which the conviction(s) were entered between November 19, 1990 and April 24, 1996; or 2. has pled guilty to an offense for which the conviction renders him or her removable or inadmissible unless the conviction(s) is enumerated under § 440(d) of the Anti-Terrorism and Effective Death Penalty Act of 1996. A lawful permanent resident who is subject to the grounds of inadmissibility under 8 U.S.C. §§ 1182(a)(3)(A), (B), (C), or (E), or (10)(C) is ineligible for a § 212(c) waiver.<sup>12</sup>

## **8. INA § 212(h), 8 U.S.C. § 1182(h): § 212(h) Waiver**

A noncitizen may be eligible for a discretionary § 212(h) waiver of one or more crimes involving moral turpitude, a single possession offense of 30 grams or less of marijuana for one's own use or possession of drug paraphernalia related to the possession of 30 grams or less of marijuana, prostitution, commercialized vice, and/or involvement in serious criminal activity where immunity has been asserted for which he or she is inadmissible: 1. where the criminal activity took place more than fifteen years before the date of application for a visa or admission; 2. where the applicant is the spouse, parent, son, or daughter of a United States citizen or an noncitizen lawfully admitted for permanent residence, and the noncitizen can establish that a denial of the application for admission and the waiver would result in extreme hardship to her qualifying family member; or 3. the noncitizen is a self-petitioner under the Violence Against Women Act (VAWA). This waiver is not available to noncitizens who have been convicted of or admit committing acts that constitute an attempt, conspiracy, or the crimes of murder or criminal acts involving torture. In addition, this waiver is not available to a lawful permanent resident who was inspected as an immigrant at a port of entry and admitted as a lawful permanent resident and thereafter has been convicted of an aggravated felony or has not resided lawfully in the United States for not less than seven (7) years immediately preceding the date of initiation of proceedings to remove him from the United States.<sup>13</sup>

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precludes a finding of good moral character. Please also note that pre-sentence confinement counts towards the period of 180 days confinement. *See Matter of Valdovinos*, 18 I. & N. Dec. 343 (BIA 1982).

<sup>12</sup> *INS v. St. Cyr*, 533 U.S. 289, 321-324 (2001); *Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014); 8 C.F.R. §1212.3(f); 8 C.F.R. § 1003.44.

<sup>13</sup> *See Lara-Ruiz v. INS*, 241 F.3d 934, 946-48 (7<sup>th</sup> Cir. 2001); *Matter of Michel*, 21 I&N Dec. 1101 (BIA 1998); *Matter*

## **9. INA § 208, 8 U.S.C. § 1158: Asylum**

Asylum may be a form of relief available to noncitizens who can show a well-founded fear of persecution based on their race, religion, nationality, political opinion, and/or membership in a particular social group if returned to their country of origin or last habitual residence, if stateless. Noncitizens who have been convicted by a final judgment of a particularly serious crime, which may include certain misdemeanors and gross misdemeanors as well as felonies and terrorist activities, are barred from asylum. Noncitizens who have been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime and are barred from asylum. In addition, a serious non-political crime committed outside of the U.S. will bar a noncitizen from being eligible to apply for asylum. With limited exceptions, a noncitizen must apply for asylum within one year of his or her entry to the U.S. A person who is granted asylum by the DHS or an immigration judge is called as asylee and is eligible to apply for adjustment of status with a waiver under 8 U.S.C. § 1159(c) (if needed) one year after being granted asylum.<sup>14</sup>

## **10. INA § 241(b)(3), 8 U.S.C. 1251(b)(3): Withholding of Removal**

Withholding of deportation or removal may be a form of relief available to noncitizens who can show a clear probability of persecution based on their race, religion, nationality, political opinion, and/or membership in a particular social group if returned to their country of origin or last habitual residence, if stateless. A noncitizen who has been convicted by a final judgment of a particularly serious crime is barred from withholding of removal.<sup>15</sup> Under the statute, a noncitizen who has been convicted of an aggravated felony (or felonies) for which the noncitizen has been sentenced to an aggregate term of imprisonment of at least five (5) years shall be considered to have committed a particularly serious crime. A noncitizen convicted of an aggravated felony with a sentence of less than five years and who is in deportation proceedings will need to rebut the presumption that he has been convicted of a particularly serious crime.<sup>16</sup> For a noncitizen who has been convicted of an aggravated felony and who is in removal proceedings, the burden is on the DHS to prove that a noncitizen has been convicted of a particularly serious crime.<sup>17</sup>

## **11. Pub. L. No. 105-277, § 242(a): Convention Against Torture**

Noncitizens who face probable torture if returned to their country of origin may be eligible for

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*of Pineda*, 21 I&N Dec. 1017 (BIA 1997); *Matter of Yeung*, 21 I&N Dec. 610 (BIA 1996); *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015) (withdrawing *Matter of E.W. Rodriguez*, 25 I&N Dec. 784 (BIA 2012), and *Matter of Koljenovic*, 25 I&N Dec. 219 (BIA 2010)); *Papazoglou v. Holder*, 725 F.3d 790 (7<sup>th</sup> Cir. 2013).

<sup>14</sup> See fn. 8.

<sup>15</sup> A noncitizen's mental health as a factor in the commission of a crime is not a factor that can be considered by an immigration judge to determine whether the noncitizen has been convicted of a particularly serious crime. See *Matter of G-G-S-*, 26 I&N Dec. 339 (BIA 2014).

<sup>16</sup> See *Matter of Q-T-M-T-*, 21 I&N Dec. 639 (BIA 1996).

<sup>17</sup> See *Matter of S-S-*, 22 I&N Dec. 458 (BIA 1999).



withholding of removal or deferral of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the U.S. is a party.<sup>18</sup> Under Article 3 of the CAT, the U.S. is prohibited from removing a noncitizen to a country where there are substantial grounds for believing that she would be in danger of being subjected to mental or physical torture.<sup>19</sup> A noncitizen who is ineligible for asylum or withholding of removal may be eligible to have his removal deferred to a specific country until the time that he does not face the probability of torture in that country. Similar to withholding of removal, a grant of deferral of removal will not lead to legal permanent residency. A grant of deferral of removal may not lead to release from DHS custody until six months after the order becomes final as the DHS can attempt to obtain the agreement of a country to accept the noncitizen's removal other than that from which removal has been deferred.<sup>20</sup>

### **III. EVALUATING YOUR NONCITIZEN CLIENT'S CASE**

Due to the complexity of the 1996 and subsequent changes in the immigration statute and case law along with the elimination and restrictions of discretionary waivers for noncitizens, the simple question, "Do you have a green card?" is no longer sufficient. The last physical entry of your client into the U.S., any change of status granted to your client, current immigration status, immediate relatives of your client, and all prior arrests, pleas, and stays of adjudication of guilt are now essential to any analysis of your client's case. A questionnaire is included as Appendix B at the end of this text for your convenience.

#### **Step One: Is Your Client a U.S. Citizen?**

The first question a defense attorney should ask a client regardless of English ability or physical appearance is, "Where were you born?"<sup>21</sup>

In general, a U.S. citizen is a person who is born in the U.S., a person born to one or both U.S. citizen parents living outside the U.S., or a person who has been naturalized as a U.S. citizen.<sup>22</sup> There may

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<sup>18</sup> Convention Against Torture, *supra* at fn. 8.

<sup>19</sup> 8 C.F.R. §208.16(c)(3); 8 C.F.R. § 208.18.

<sup>20</sup> For a discussion regarding the six months for mandatory detention post-final order of exclusion, deportation, or removal, see *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Clark v. Martinez*, 543 U.S. 371 (2005). The Ninth Circuit and Third Circuit have extensive case law on the right to a bond hearing pre-final order of removal and post-final order of removal. For a summary of the case law, see American Civil Liberties Union Immigrants' Rights Project website with multiple and updated practice advisories, available at <https://www.aclu.org/feature/immigration-detention-resources?redirect=node/28841>. The First Circuit recently issued an *en banc* decision regarding the right to a bond hearing involving mandatory detention. See *Castenada v. Souza*, 810 F.3d 15 (1<sup>st</sup> Cir. 2015).

<sup>21</sup> At times, Canadians have constituted one of the five largest "illegal" populations in the U.S. according to the Immigration and Naturalization Service (INS). See, e.g., "INS releases estimates of undocumented population, announces new removal tracking system," 74 *Interpreter Releases* 298-99 (Feb. 24, 1997) (citing Mexico, El Salvador, Guatemala, Canada, and Haiti as the five countries from which the largest illegal populations have come).

<sup>22</sup> Whether a person has acquired or derived U.S. citizenship is an incredibly complex area of the law and the laws that were in effect at the time of the person's birth will apply. Some of these laws no longer appear in the current version of the INA but may be applicable to your client's case. See generally 8 U.S.C. § 1401 et al. A person born in Puerto Rico on or after January 13, 1941 and subject to the jurisdiction of the U.S. is a U.S. citizen at birth. See 8

be situations where a person has derived U.S. citizenship based on the birth of one parent as a U.S. citizen or on the naturalization of one parent, provided that she was under the age of 18 and was residing as a lawful permanent resident in the physical and legal custody of the citizen parent on February 27, 2001.<sup>23</sup> Anyone who is not a U.S. citizen is considered a noncitizen or an alien who is covered by the deportation and/or inadmissibility provisions of the INA. Such persons include legal permanent residents ("green card" holders), noncitizens with temporary protected status (TPS), asylees, refugees, asylum applicants, foreign students with F-1 visas and their dependents, business or pleasure visitors, noncitizens who enter the U.S. without inspection, and noncitizens with other types of non-immigrant visas.

### **Step Two: Will a Plea or Admission of Facts Result in a "Conviction" for Your Noncitizen Client?**

Each state has its own pre-trial diversion program and other statutes or procedures which allow courts to stay adjudication of guilt of criminal defendants. Such state dispositions, while falling short of a conviction under state law, may nonetheless result in a conviction for immigration purposes. Care must be taken to analyze the requirements of each program as they differ from state to state and often from county to county. Different strategies and plea bargains may lead to or avoid deportation consequences.

For immigration purposes, whether the disposition of a criminal matter constitutes a "conviction" is a two-part test under 8 U.S.C. § 1101(a)(48)(A). The term "conviction" means:

A formal judgment of guilt entered by a court; *OR*

If adjudication of guilt has been withheld, where:

- (a) A judge or jury has found the alien guilty *or* the alien has entered a plea of guilty or nolo contendere *or* has admitted sufficient facts to warrant a finding of guilt,

***AND***

- (b) The judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

A stay of adjudication or deferred adjudication of guilt will be a "conviction" for immigration purposes where both prongs (a) and (b) are met, even though there is no conviction under state law where the criminal plea is later vacated and the criminal case is dismissed.<sup>24</sup> Under the statutory definition of "conviction," no effect is to be given in immigration proceedings to a state action

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U.S.C. § 1402. A person born in an outlying U.S. possession is a U.S. national but not a U.S. citizen at birth. See 8 U.S.C. § 1407.

<sup>23</sup> See Child Citizenship Act of 2000, P.L. 106-395 § 101, 114 Stat. 1631 (2000); 8 U.S.C. § 1431.

<sup>24</sup> See 8 U.S.C. § 1101(a)(48); *Gill v. Ashcroft*, 335 F.3d 574 (7<sup>th</sup> Cir. 2003) (holding that an Illinois first offender disposition for a controlled substances offense is a conviction for immigration purposes); *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999); *Matter of Punu*, 22 I&N Dec. 224 (BIA 1998).

which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.<sup>25</sup> In addition, the policy exception which accorded federal first offender treatment to certain drug offenders who had received state rehabilitative treatment no longer applies to immigration proceedings,<sup>26</sup> with the exception of a first offender disposition entered before July 14, 2011 within the jurisdiction of the Ninth Circuit.<sup>27</sup>

Two case scenarios illustrate the definition of conviction applied to noncitizens:

David pled guilty to a theft offense in state criminal court and the adjudication of guilt was stayed. The state court judge ordered David to complete the terms of one year of probation. David successfully completed his year of probation and the theft case was dismissed. Nonetheless, David has a theft conviction for immigration purposes even though under state law he has not been convicted of theft.

In the second scenario, a noncitizen defendant, Teresa, neither pled guilty nor admitted any facts on the record for a shoplifting charge. The state court judge imposed one year of probation and a \$150 fine. Teresa paid the fine and completed her year of probation. The shoplifting case was dismissed. Teresa does not have a conviction for immigration purposes because the first prong of the definition of conviction, admission of guilt or sufficient facts to warrant a finding of guilt, has not been met.

Only a limited number of dispositions are not "convictions" under the revised definition of conviction. These are: (1) a state conviction reversed on direct appeal on the merits; (2) a state conviction reversed on direct appeal relating to a violation of a fundamental statutory or constitutional right in the underlying criminal proceeding (not as the result of the operation of a state rehabilitative statute); and (3) a federal disposition under 18 U.S.C. § 3607, a provision for special probation and expungement procedures for first time drug possession offenses.

Also critical to the analysis of a criminal disposition is the definition of a "term of imprisonment." Congress amended the definition of "term of imprisonment" to mean:

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<sup>25</sup> See *id.* Cf. *Lujan-Armendariz v. INS*, 222 F.3d 728 (9<sup>th</sup> Cir. 2000), *vacating Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999), modified by *Nunez-Reyes v. Holder*, 646 F.3d 684 (9<sup>th</sup> Cir. 2011) (en banc); see also Immigrant Legal Resource Center, "WARNING: Immigrant Defendants with a First Minor Drug Offense: 'Rehabilitative relief' will no longer eliminate a first conviction for simple possession for immigration purposes, unless the conviction occurred before 7/14/11," available at <http://www.ilrc.org/resources/practice-advisory-lujan-nunez-july-14-2011>. This decision only applies to cases arising within the jurisdiction of the Ninth Circuit Court of Appeals.

<sup>26</sup> See *id.*; *Resendiz-Alcaraz v. U.S. Atty. Gen.*, 383 F.3d 1262 (11<sup>th</sup> Cir. 2004); *Madriz-Alvarado v. Ashcroft*, 383 F.3d 321 (5<sup>th</sup> Cir. 2004); *Gill v. Ashcroft*, 335 F.3d 574 (7<sup>th</sup> Cir. 2003); *Acosta v. Ashcroft*, 341 F.3d 218 (3<sup>d</sup> Cir. 2003); *Vasquez-Velezmoro v. U.S. I.N.S.*, 281 F.3d 693 (8<sup>th</sup> Cir. 2002).

<sup>27</sup> *Lujan-Armendariz v. I.N.S.*, 222 F.3d 728 (9<sup>th</sup> Cir. 2000), modified by *Nunez-Reyes v. Holder*, 646 F.3d 684 (9<sup>th</sup> Cir. 2011) (en banc); see also Immigrant Legal Resource Center, "WARNING: Immigrant Defendants with a First Minor Drug Offense: 'Rehabilitative relief' will no longer eliminate a first conviction for simple possession for immigration purposes, unless the conviction occurred before 7/14/11," available at <http://www.ilrc.org/resources/practice-advisory-lujan-nunez-july-14-2011%20%20%20>.

Any reference to a term of imprisonment of a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.<sup>28</sup>

The Board of Immigration Appeals has held that a term of confinement in a substance abuse treatment facility imposed as a condition of probation under Texas criminal procedure is a "term of confinement" for purposes of 8 U.S.C. 1101(a)(48)(B).<sup>29</sup>

Sentencing schemes vary by state and include both indeterminate and determinate sentencing schemes. In general, an indeterminate sentence which has been suspended will be considered to be a sentence of the maximum potential term.<sup>30</sup> In a determinate sentencing scheme, a stay of imposition of sentence, however, still qualifies as a sentence imposed but will not be considered to be sentence of the maximum potential term. A stay of execution of sentence, or a suspension of execution of sentence, does result in a sentence being imposed and the number of days of the sentence is critical in later determining whether a person is considered to have been convicted of an aggravated felony.

Prior to the 1996 legislation, the Supreme Court held that a conviction must be final under state or federal court procedure in order to be a conviction for immigration purposes. However, in light of a decision by the Board of Immigration Appeals and what may be seen as dicta in a Seventh Circuit Court of Appeals decision interpreting the 1996 definition of conviction, whether finality of a conviction is required under state or federal procedure may be in question.<sup>31</sup>

To prove that a noncitizen has a conviction for immigration purposes, the DHS may offer the following documents or records: a certified copy of: an official record of judgment and conviction; an official record or plea, verdict, and sentence; a docket entry from court records that indicates the existence of the conviction; or the official minutes of a court proceeding or a transcript of a court hearing in which the court takes notice of the existence of the conviction.<sup>32</sup> As noted above, care in the plea process should be taken as the plea agreement may be offered to establish deportability and/or inadmissibility of a noncitizen.

### **Step Three: Will a Proposed Disposition of Your Client's Case Render Her Deportable or Inadmissible for Immigration Purposes?**

The grounds of deportability and inadmissibility are numerous. The grounds listed and discussed below are only some of the most commonly charged. For a complete listing, *see* INA § 237, 8 U.S.C. § 1227, grounds of deportability, and INA § 212(a), 8 U.S.C. § 1182(a), grounds of inadmissibility.

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<sup>28</sup> See 8 U.S.C. § 1101(a)(48)(B).

<sup>29</sup> See *Matter of Calvillo Garcia*, 26 I&N Dec. 697 (BIA 2015).

<sup>30</sup> See *Matter of S-S*, 21 I&N Dec. 900 (BIA 1997).

<sup>31</sup> See *Dave v. Ashcroft*, 363 F.3d 649 (7<sup>th</sup> Cir. 2004); *Matter of Roldan-Santoyo*, *supra*; *Matter of Punu*, *supra*.

<sup>32</sup> See 8 U.S.C. § 1229a(c)(3)(B).

## 1. A Single Crime Involving Moral Turpitude

A noncitizen is deportable for a crime involving moral turpitude where she:

- a. has been convicted of a crime involving moral turpitude committed *within five years* (or ten years in the case of an alien provided lawful permanent resident status under § 245(j) of this title) *after the date of admission* AND
- b. has been convicted of a crime for which *a sentence of one year or longer may be imposed*.<sup>33</sup>

Under the first prong of this test, whether your client may be deportable for a crime involving moral turpitude literally depends on when your client physically entered into the United States or was "admitted" through an adjustment of status process, a grant of asylum, or a grant of cancellation or suspension. Thus, it is critical to question your client carefully about the very last time that she entered the United States or was admitted to a status by the legacy INS or DHS.

Under the second prong, a noncitizen who pleads guilty to theft under a gross misdemeanor, a misdemeanor, or a felony statute within 5 years of admission may be deportable if the maximum possible sentence is one year or longer, regardless of the length of the term of imprisonment imposed, if any, by the sentencing court. Dispositions for crimes involving moral turpitude under city ordinances will be considered to be convictions for immigration purposes where the disposition meets the definition of "conviction" even though the city ordinance violations are not considered crimes under state law.<sup>34</sup>

A noncitizen may also be inadmissible for a single crime involving moral turpitude if she has been convicted of, admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude.<sup>35</sup> An exception to a finding of inadmissibility exists for a single crime involving moral turpitude committed while under 18 years of age, known as the "petty offense exception". Another exception exists where the maximum possible term of imprisonment does not exceed one year and the noncitizen was not sentenced to a term of imprisonment in excess of 6 months.<sup>36</sup>

**NOTE:** How and whether a crime is determined to involve moral turpitude have been the subject of much litigation. On April 10, 2015, Attorney General Holder vacated a prior

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<sup>33</sup> See 8 U.S.C. § 1227(a)(2)(A)(i).

<sup>34</sup> See *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967) (holding that an adjudication for a violation of a Phoenix ordinance was a conviction for a crime involving moral turpitude); cf. *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004) (holding that a finding of guilt of third degree theft under Oregon law in a proceeding conducted under Or. Rev. Stat. § 153.076 that allows for a conviction by preponderance of the evidence and no right to counsel or jury trial is not a judgment of guilt for purposes of establishing a conviction under 8 U.S.C § 1101(a)(48)).

<sup>35</sup> See 8 U.S.C. § 1182(a)(2)(A)(i)(I).

<sup>36</sup> See 8 U.S.C. § 1182(a)(2)(A)(ii).

precedent decision by Attorney General Mukasey.<sup>37</sup> In his decision, Attorney General Holder ordered the Board of Immigration Appeals to decide the following issues:

1. How adjudicators are to determine whether a particular criminal offense is a crime involving moral turpitude under the Act;
2. When, and to what extent, adjudicators may use a modified categorical approach and consider a record of conviction in determining whether an alien has been “convicted of . . . a crime involving moral turpitude” in applying section 212(a)(2) of the Act and similar provisions.<sup>38</sup>

As of December 31, 2015, the issues are still pending before the Board of Immigration Appeals.

## **2. Multiple Crimes Involving Moral Turpitude**

A noncitizen who, at any time after admission, is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, is also deportable.<sup>39</sup> For example, a noncitizen who is convicted of two counts of shoplifting in 1988 and 1999 under a misdemeanor statute or city ordinance is deportable. Under the new mandatory detention policies, this client is subject to detention without bond by the DHS. *See* Mandatory Detention, *infra*. A noncitizen convicted of two or more crimes involving moral turpitude is inadmissible.<sup>40</sup>

## **3. An Aggravated Felony**

A noncitizen who is convicted of an aggravated felony at any time after admission is deportable.<sup>41</sup> There are two general types of aggravated felonies listed at INA § 101(a)(43): (1) sentence-based crimes; and (2) category crimes. Sentence-based crimes are those aggravated felonies that require an imposed sentence of at least one year and include crimes of violence,<sup>42</sup>

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<sup>37</sup> *See Matter of Silva-Trevino*, 26 I&N Dec. 550 (A.G. 2015) (vacating *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)).

<sup>38</sup> *See id.*

<sup>39</sup> *See* 8 U.S.C. § 1227(a)(2)(A)(ii).

<sup>40</sup> *See* 8 U.S.C. § 1182(a)(2)(A)(i)(I).

<sup>41</sup> *See* 8 U.S.C. § 1227(a)(2)(A)(iii).

<sup>42</sup> A crime of violence is defined as: an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. *See* 18 U.S.C. § 16; *see also Leocal v. Ashcroft*, 543 U.S. 1 (2004) (term “force” in both sections of 18 USC § 16 means active purposeful, and violent force); *Johnson v. U.S.*, 130 S. Ct. 1265 (2010) (to qualify as “violent felony” the level of “physical force” required for conviction must be “violent force – that is, force capable of causing physical pain or injury to another person”).

theft, burglary, forgery, an offense relating to the obstruction of justice, and perjury.<sup>43</sup> For example, a noncitizen who has been convicted of misdemeanor theft and sentenced to one year has been convicted of an aggravated felony under 8 U.S.C. § 1101(a)(43)(G). If the sentence imposed were only 364 days, however, then he would not be convicted of an aggravated felony.

Category crimes are considered aggravated felonies regardless of the length of the term of imprisonment imposed.<sup>44</sup> These include murder, rape, sexual abuse of a minor, drug trafficking, weapons trafficking, and an offense involving fraud or deceit where the loss to the victim or victims exceeds \$10,000.<sup>45</sup> For example, a noncitizen who pleads guilty to rape and receives a stay of imposition of sentence will be considered to have been convicted of an aggravated felony for the sexual abuse of a minor.<sup>46</sup> Thus, even though this noncitizen may successfully complete probation without ever having to serve jail time or prison time, he will nonetheless have been convicted of an aggravated felony.

You will need to consider whether a disposition under the criminal statute with which your noncitizen client is charged may lead to an aggravated felony conviction. For sentence-based crimes, you will also need to consider whether a gross misdemeanor statute in your state allows sentencing up to one year or 365 days. Arguments may convince a court or a prosecutor to agree to a sentence of 364 days instead of a one year sentence or the typical one year and a day sentence. For category crimes, such as statutory rape charges, you should consider discussing with the prosecutor whether the charge can be reduced to, for example, disorderly

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**NOTE:** The Seventh and Ninth Circuits recently have held that 18 U.S.C. § 16(b) is unconstitutionally vague, relying on the U.S. Supreme Court's decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015.) See *Dimaya v. Lynch*, 803 F.3d 1110, 1119 (9th Cir. 2015) (finding that 18 U.S.C. § 16(b) is unconstitutionally vague in the removal (deportation) context); *U.S. v. Vivas-Ceja*, --- F.3d ---, 2015 WL 9301373, 2015 U.S. App. LEXIS 22438 (7th Cir. 12/22/2015) (holding that 18 U.S.C. § 16(b) is unconstitutional in the criminal context). With this major development in the interpretation of a crime of violence under 18 U.S.C. § 16(b) within the jurisdiction of two circuits, other circuits may follow or reject the void for vagueness challenges, resulting in the issue reaching the U.S. Supreme Court. The analysis of a crime of violence under 18 U.S.C. § 16 is relevant to determine whether an offense constitutes a deportable offense for a crime of domestic violence under 8 U.S.C. § 1227(a)(2)(E)(i) and an aggravated felony under 8 U.S.C. § 1101(a)(43)(F).

<sup>43</sup> See e.g. 8 U.S.C. § 1101(a)(43)(F), (G), (R), (S), (U); see also 8 U.S.C. §§ 1101(a)(43)(O), (P).

<sup>44</sup> See e.g. 8 U.S.C. §§ 1101(a)(43)(A), (B), (C), (M); see also 8 U.S.C. §§ 1101(a)(43)(D), (E), (H), (I), (K), (L), (N), & (U).

<sup>45</sup> An attempt to commit an aggravated felony will also be considered to be an aggravated felony. See, e.g., *Matter of Onyido*, 22 I&N Dec. 552 (BIA 1999) (attempt to commit insurance fraud in excess of \$10,000 under Indiana statute is an aggravated felony, even though no funds were actually obtained by the noncitizen defendant). Also note that the words "fraud" or "deceit" need not be formal elements of the crime, and the "victim" can be the Government. See *Kawashima v. Holder*, 132 S.Ct. 166 (2012) (holding that convictions under 26 U.S.C. §§ 7206(1) and (2), willfully making and subscribing a false tax return and aiding and assisting in the preparation of a false tax return, respectively, in which the Government's revenue loss exceeds \$10,000 qualify as aggravated felonies pursuant to 8 U.S.C. 1101(a)(43)).

<sup>46</sup> See *Guerrero-Perez v. INS*, 242 F.3d 727 (7<sup>th</sup> Cir. 2001), *reh'g denied*, 256 F.3d 546 (7<sup>th</sup> Cir. 2001).

conduct, interference with parental rights, or contributing to the delinquency of a minor. In negotiating an alternative plea, you will need to consider your client's past record, if any, for crimes involving moral turpitude and her last entry into the U.S. or admission to an immigration status.

\*An important note regarding controlled substance offenses: A noncitizen who is convicted of one or two crimes of simple possession of a controlled substance or substances is deportable under 8 U.S.C. § 1227(a)(2)(B) with the exception of a single possession offense for 30 grams of marijuana or less or possession of drug paraphernalia related to a single possession of 30 grams of marijuana or less. A single state felony offense for possession of a controlled substance which constitutes a federal misdemeanor under 21 U.S.C. § 844(a) is not an aggravated felony.<sup>47</sup> This means that a state felony conviction for possession of cocaine, heroin, or a controlled substance other than crack cocaine or flunitrazepam will not be an aggravated felony. Moreover, a second or subsequent simple possession offense are not aggravated felonies under I.N.A. § 101(a)(43), 8 U.S.C. 1101(a)(43) when the state conviction is not based on the fact of a prior conviction.<sup>48</sup>

A state conviction for possession of a controlled substance with intent to deliver, sell or distribute is an aggravated felony for immigration purposes if the proscribed conduct is punishable as a felony under the Controlled Substances Act.<sup>49</sup> Specifically, the Supreme Court of the United States held in *Moncrieffe v. Holder* that where a noncitizen's conviction for a marijuana distribution offense does not include either remuneration or more than a small amount of marijuana, then it is not an aggravated felony under the INA.<sup>50</sup> Although any marijuana distribution offense will render the noncitizen deportable as a controlled substances offender<sup>51</sup>, avoiding the aggravated felony classification for the conviction may allow the noncitizen to seek forms of relief from removal, such as lawful permanent resident cancellation of removal and asylum. It will also not render a lawful permanent resident to be permanently barred from naturalization under 8 U.S.C. § 1101(f).

**Note:** The Seventh Circuit has recently held that 18 U.S.C. § 16(b) (defining a crime of violence) is unconstitutionally vague.<sup>52</sup> This is relevant to an analysis regarding whether a crime constitutes an aggravated felony under 8 U.S.C. § 1101(a)(43)(F) as well as a crime of domestic violence under 8 U.S.C. § 1227(a)(2)(E)(i). Challenges to the Seventh Circuit decision may be forthcoming through a petition for a writ of certiorari

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<sup>47</sup> See *Lopez v. Gonzales*, 549 U.S. 47, (2006). State felony offenses for possession of crack cocaine and flunitrazepam are federal felony offenses under 21 U.S.C. § 844(a) and therefore aggravated felonies for purposes of immigration law.

<sup>48</sup> See *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 130 S.Ct. 2577 (2010).

<sup>49</sup> See *Lopez v. Gonzalez*, *supra*; see also, *In re L-G-*, 21 I&N Dec. 89 (BIA 1995).

<sup>50</sup> See *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013); 21 U.S.C. § 841(b)(4).

<sup>51</sup> See 8 U.S.C. § 1227(a)(2)(B)(i).

<sup>52</sup> See *United States v. Vivas-Ceja*, 808 F.3d 719 (7th Cir. 2015); see also *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015); *U.S. v. Gonzalez-Longoria*, ---F.3d---, 2016 WL 537612 (5th Cir. 2016), reh'g en banc on court motion, ---F.3d---, 2016 WL 766980 (5th Cir. 2/26/2016).



#### 4. Controlled Substance Violations

A noncitizen who is convicted under state or federal law for a controlled substances violation is deportable and inadmissible unless the conviction was for one offense involving simple possession of 30 grams or less of marijuana.<sup>53</sup> Where a noncitizen has been admitted to the U.S. and convicted of possession of 30 grams or less of marijuana, he will not be deportable; however, he will be inadmissible and may be eligible for a waiver of inadmissibility.<sup>54</sup>

Thus, it is critical that if a client is being charged with possession of marijuana, you need to consider bargaining the amount and stating on the record that the conviction is for simple possession of marijuana of 30 grams or less. If the record does not reflect that the amount was 30 grams or less of marijuana, then the immigration court may assume that your client was convicted of possessing the maximum amount of marijuana stated in the statute. Additionally, research whether remuneration is required as an element for conviction and, if not, be sure to state on the record that the offense did not involve remuneration to potentially avoid an adverse aggravated felony conviction and “reason to believe” that the noncitizen has been involved in illicit trafficking under 8 U.S.C. § 1182(a)(2)(C).<sup>55</sup>

**Note:** On June 1, 2015, the U.S. Supreme Court reaffirmed the categorical approach and held that a noncitizen who has been convicted of a state drug paraphernalia offense is not deportable under 8 U.S.C. § 1227(a)(2)(B) where the DHS has not shown that the conviction related to a substance listed in the federal controlled substance schedules.<sup>56</sup> The Supreme Court held that where a state statute containing the schedule of controlled substances is broader than the federal controlled substance schedule, the noncitizen is not deportable.<sup>57</sup>

#### 5. Crimes of Domestic Violence, Stalking, Child Abuse, Child Neglect, Child Abandonment, and Violation of a Protection Order

In 1996 as part of IIRAIRA, Congress added domestic violence<sup>58</sup> and related offenses as a

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<sup>53</sup> See 8 U.S.C. § 1227(a)(2)(B); 8 U.S.C. § 1182(a)(2)(A)(i)(II); *Lopez v. Gonzales*, 549 U.S. 47, (2006).

<sup>54</sup> See *id.*; see also, 8 U.S.C. § 1182(h); *Escobar Barraza v. Mukasey*, 519 F.3d 388, 391 (7th Cir. 2008).

<sup>55</sup> See *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1685-1687 (2013) (holding that when mere social sharing of marijuana is punishable under a state statute as “possession with intent to distribute,” no convictions under such a statute would constitute an aggravated felony).

<sup>56</sup> See *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (holding that *Matter of Paulus*, 11 I&N Dec. 274 (BIA 1965) extends to paraphernalia offenses and overruling *Matter of Espinoza*, 25 I&N Dec. 118 (BIA 2009)); see also National Immigration Project of the National Lawyers Guild and Immigrant Defense Project, “Practice Advisory: *Mellouli v. Lynch*: Further Support For A Strict Categorical Approach For Determining Removability Under Drug Deportation And Other Conviction-Based Removal Grounds,” Jun. 8, 2015, available at [https://nationalimmigrationproject.org/PDFs/practitioners/practice\\_advisories/crim/2015\\_08Jun\\_mellouli.pdf](https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/2015_08Jun_mellouli.pdf).

<sup>57</sup> See *Mellouli v. Lynch*, *supra*.

<sup>58</sup> See fn. 42 regarding recent developments to the interpretation of 18 U.S.C. § 16(b).

new ground of deportation. A noncitizen may now be deportable for a misdemeanor domestic assault conviction entered on or after September 30, 1996.<sup>59</sup> In addition, a crime involving domestic violence may also be considered a crime involving moral turpitude or an aggravated felony, separate grounds for deportation, depending on the statutory elements of the crime statutory. Where a noncitizen client is convicted of a gross misdemeanor, misdemeanor, or felony level domestic assault, a term of imprisonment of one year or more may result in your client being convicted of an aggravated felony under the crime of violence provision.<sup>60</sup>

In order to avoid a conviction for domestic violence that is a deportable offense, work with the prosecution to negotiate the domestic charge to a charge of disorderly conduct or simple assault and to keep the facts of the domestic relationship out of the factual basis for the complaint and the plea. A conviction for disorderly conduct where the domestic relationship is not mentioned in the plea should protect your noncitizen client from being found deportable. Similarly, a conviction for a simple assault without the factual basis of the underlying domestic assault charge should prevent deportability from being established. Where it is possible, the original complaint should be dismissed and a new complaint charging disorderly conduct or simple assault or battery should be issued.

A noncitizen can be rendered deportable where a civil or criminal court has made a finding of a violation of a protection order. No conviction is required.

#### **Step Four: If the Charge Cannot be Amended to Avoid Immigration Consequences, What Arguments Can be Made at the Sentencing Stage? Alternatively, What are the Possibilities for Post-Conviction Relief?**

Several arguments can be advanced to plead for leniency in your noncitizen client's case. Such arguments could be based on the possibility of mandatory detention by the DHS, the likely increase of the number of families on the county welfare rolls, the trauma that his or her U.S. citizen or lawful permanent resident children and spouse will suffer as a result of the deportation consequences, the client's lack of knowledge about the mechanics of federal or state laws, or post-traumatic stress disorder. Often victims will want the charges dismissed once they learn about the immigration consequences, particularly in domestic cases. Immigration practitioners in your area may be available to assist you with advice and expert testimony on the immigration consequences of certain dispositions and sentences for your noncitizen client.

##### **1. Mandatory Detention: Elimination of Liberty at its Best**

As of October 9, 1998, the DHS must detain many categories of noncitizens without bond, regardless of whether or not they are a flight risk or pose a danger to the local community. Noncitizens who are subject to mandatory detention include those who have been convicted of a crime involving moral turpitude for which they have been sentenced to one year or

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<sup>59</sup> See IIRAIRA § 350; 8 U.S.C. § 1227(a)(2)(E); see also *Flores v. Ashcroft*, 350 F.3d 666 (7<sup>th</sup> Cir. 2003) (analyzing the Indiana battery statute and a conviction for battery against a spouse); *LaGuerre v. Mukasey*, 526 F.3d 1037 (holding that domestic battery, which may be committed by intentionally causing harm or by knowingly causing harm, satisfies 18 U.S.C. § 16(a)).

<sup>60</sup> See 8 U.S.C. § 1101(a)(43)(F); 8 U.S.C. § 1227(a)(2)(A)(iii).

more, convicted of an aggravated felony, convicted of possession or sale of a controlled substance other than one simple possession of 30 grams or less of marijuana, and convicted of two or more crimes involving moral turpitude.<sup>61</sup> Thus, a noncitizen with two misdemeanor shoplifting convictions can be held in detention without bond.

The U.S. Supreme Court has upheld the constitutionality of the mandatory provisions pending the completion of removal proceedings, including for long-term permanent residents.<sup>62</sup> Challenges to mandatory detention continue to be brought.<sup>63</sup>

Thus, it is *critical* that you investigate your client's past history, including supervision, stay of adjudication or deferred adjudication cases. A noncitizen who has been convicted of one misdemeanor crime involving moral turpitude and who is charged with and pleads guilty to a second misdemeanor crime involving moral turpitude may find himself subject to mandatory detention by the DHS. In order to avoid mandatory detention by the DHS, you may be able to convince a judge or a prosecutor to allow your client to plead to a crime which does not subject him to these provisions.

In statutory rape cases where the relations were consensual, it is critical that the noncitizen plead to a provision which will not result in an aggravated felony conviction. For example, an eighteen year old lawful permanent resident who marries a sixteen year old in a traditional Hmong clan marriage can be convicted for statutory rape in Minnesota, because Minnesota does not recognize common law marriage where the relationship arises within the state of Minnesota. In this case, the male noncitizen will have an aggravated felony conviction and will be subject to mandatory detention even though he is a valedictorian of his class and is working to support his wife.

## **2. Has Your Client Been Informed of His Right to Contact His or Her Consulate?**

Under the Vienna Convention on Consular Relations, a noncitizen who is detained and/or charged with a crime has the right to speak with a consular officer from his or her country.<sup>64</sup> Police departments or other law enforcement agencies may need to be educated about the Vienna Convention on Consular Relations. Practitioners should be aware that foreign consulates have an interest in ensuring that the rights of their citizens be respected and can appear in criminal cases as *amicus curiae*.

In addition, the lack of an advisal regarding the right to contact a consulate officer may be a ground under which you may be able to convince a court to vacate a conviction. For example, one

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<sup>61</sup> See 8 U.S.C. § 1226(c).

<sup>62</sup> See *Demore v. Kim*, 538 U.S. 510 (2003).

<sup>63</sup> The First Circuit recently issued an *en banc* decision regarding the right to a bond hearing involving mandatory detention. See *Castenada v. Souza*, 810 F.3d 15 (1<sup>st</sup> Cir. 12/23/2015). For a summary of the emerging case law, see American Civil Liberties Union Immigrants' Rights Project website with multiple and updated practice advisories, available at <https://www.aclu.org/feature/immigration-detention-resources?redirect=node/28841>.

<sup>64</sup> See Art. 36, Vienna Convention on Consular Relations and Optional Protocols, 596 U.N.T.S. 262-512 (Apr. 24, 1963).

state court held that where a noncitizen was not advised of his right to contact his consular officer upon his arrest and charge in state court, the conviction must be withdrawn due to a manifest injustice which arose from the denial of his right.<sup>65</sup>

### 3. Post-Conviction Relief: The Wave of the Future or an Event of the Past?

On March 3, 1999, the Board of Immigration Appeals issued a broad decision which appears to eliminate relief for many noncitizens who have received the benefit of a state rehabilitative statute.<sup>66</sup> The Board held that under the statutory definition of conviction, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.<sup>67</sup>

Different standards apply to motions for post-conviction relief related to vacatur of a plea and a change in a sentence. In *Matter of Pickering*, the Board held that where an alien's conviction is vacated for reasons solely related to rehabilitation or immigration hardship, rather than on the basis of a procedural or substantive effect in the underlying criminal proceedings, then the conviction is not eliminated for immigration purposes.<sup>68</sup> In *Matter of Adamiak*, the Board held that an alien was not convicted for immigration purposes where a state court granted a motion to vacate a plea based on the failure of the state court to advise a noncitizen defendant of the immigration consequences of his plea as required by state statute.<sup>69</sup> The Board found that the vacatur was granted as a result of a "defect in the underlying criminal proceedings."<sup>70</sup> Ineffective assistance of counsel may constitute a violation of statutory and/or state or federal constitutional rights, for which the vacation of a plea will be valid for immigration purposes.<sup>71</sup>

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<sup>65</sup> See e.g. *Ademodi v. State of Minnesota*, No. 90063152 (Henn. Co., 4th Jud. Dist., Minn. Dec. 21, 1998).

<sup>66</sup> See *Matter of Roldan-Santoyo*, *supra*.

<sup>67</sup> See *id.*

<sup>68</sup> See *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); see also, *Ali v. Ashcroft*, 395 F.3d 722 (7<sup>th</sup> Cir. 2005) (affirming the holding in *Matter of Pickering* and finding that the conviction was vacated for immigration purposes, not based on a procedural or substantive defect in the underlying proceedings); *Estrada-Ramos v. Holder*, 611 F.3d 318 (7<sup>th</sup> Cir. 2010) (holding that the noncitizen was ineligible for cancellation of removal based on prior conviction that remained effective for immigration purposes despite expungement which was granted for ameliorative purposes); cf. with *Sandoval v. INS*, 240 F.3d 577 (7<sup>th</sup> Cir. 2001) (finding that the conviction had been vacated on constitutional grounds).

<sup>69</sup> See *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

<sup>70</sup> See *id.*

<sup>71</sup> See e.g. *Segura v. State of Indiana*, 749 N.E.2d 496 (Ind. 2001); *People v. Correa*, 108 Ill.2d 541, 485 N.E.2d 307 (Ill. 1985) (holding post-conviction relief may be granted where affirmative misadvice regarding the immigration consequences of a criminal conviction by defense counsel constitutes ineffective assistance of counsel and renders a guilty plea by an alien to not be knowing, intelligent or voluntary as required by the U.S. Constitution); *People v. Huante*, 571 N.E.2d 736 (Ill. 1991) (holding that defense counsel has no affirmative duty to advise a noncitizen defendant of immigration consequences for a plea to a criminal offense).

Thus, for a vacatur of a plea to be valid for immigration purposes, the plea must be vacated for a procedural or substantive defect in the underlying criminal proceedings, not for reasons related solely to post-conviction events, such as rehabilitation or immigration hardships.

The Indiana Court of Appeals has held that Indiana Trial Rule 56(C) and (I) should apply to post-conviction proceedings.<sup>72</sup> Thus, the state is held to the 30-day time restraint to file a response to motions for summary judgment in a post-conviction setting.<sup>73</sup>

You will also want to consider whether a sentence reduction can be requested for your noncitizen client. Sentence modifications granted for any reason will be valid and respected for immigration purposes.<sup>74</sup> In many states, it is often easier to ask a court to reduce a probationer's sentence by one or two days for a conviction while the noncitizen is still on probation without having to state on the record that the reduction is for immigration purposes. For example, under a motion by counsel, a state court could reduce a sentence for a year (365 days) to 364 days with a stay or suspension of execution of sentence. With a 364 day sentence, your client will no longer be convicted of an aggravated felony, although he may still be deportable if the crime involves moral turpitude or another ground of deportation. This action may allow him to remain eligible for relief from removal or deportation.

Additionally, the U.S. Sentencing Guidelines instruct federal courts to determine a single offense level to encompass all counts of conviction against him, including counts “contained in the same indictment or information,” or “contained in different indictments or informations” for which sentences are to be imposed at the same time or in a consolidated proceeding.<sup>75</sup>

Until a Board decision is overruled in your particular federal circuit, the Board's decision is binding on the local immigration judge and the DHS.<sup>76</sup> Where the Board's decision is not overruled by the federal courts, post-conviction relief may be possible under state statute or through the legal powers of state courts to avoid or minimize immigration consequences for noncitizen defendants.

Another option is to consider requesting a pardon from the governor for a state conviction or

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<sup>72</sup> See *State v. Gonzalez-Vazquez*, 984 N.E.2d 704 (Ind. Ct. App. 2013).

<sup>73</sup> See *id.*; Indiana Trial Rule 56(C), (I).

<sup>74</sup> See *Matter of Cota*, 23 I&N Dec. 849 (BIA 2005) (holding that where a sentence was modified *nunc pro tunc* expressly to avoid deportation as an aggravated felon, the Immigration Court and the Board must recognize the modified sentence; *Matter of Pickering* distinguished); *Matter of Song*, 23 I&N Dec. 173 (BIA 2001) (same); *Matter of Martin*, 18 I&N Dec. 226 (BIA 1982) (sentence of confinement was reduced to sentence of probation). Cf. *State v. Dawson*, 2004 WI App. 173 (Wis. App. 2004) (holding that that a trial court does not have the authority to “re-open and amend” a prior conviction).

<sup>75</sup> See U.S.S.G. Ch. 3, pt. D, introductory commentary (2015); *U.S. v. Tovar-Pina*, 713 F.3d 1143 (7<sup>th</sup> Cir. 2013) (vacating sentence when district court imposed a sentence for two indictments at the same time in a consolidated proceeding).

<sup>76</sup> See *Matter of Robles*, 24 I&N Dec. 22 (BIA 2006).

from the President of the United States for a federal conviction. A pardon will waive a ground of deportability for conviction for the specific grounds listed in the immigration statute, those grounds being a crime involving moral turpitude, an aggravated felony, and high speed flight from an immigration checkpoint.<sup>77</sup> A pardon will not, however, eliminate the grounds of deportability for crimes of domestic violence, stalking, child abuse, child abandonment, child neglect, firearm offenses, controlled substance offenses, or other offenses listed under the grounds of deportability, even though the offenses may fall under grounds of deportability which may be waived by a pardon.<sup>78</sup> For example, in the case of a conviction for trafficking of 1 gram of cocaine, a pardon will waive the aggravated felony ground but will not waive the controlled substance ground. In this case, the noncitizen will remain deportable for having been convicted of a controlled substance offense but may be eligible for discretionary relief from removal, such as cancellation of removal. A pardon may also waive a ground of inadmissibility. One circuit court of appeals has held that the effect of a pardon on immigration consequences only applies to noncitizens subject to the grounds of deportability and not to the grounds of inadmissibility.<sup>79</sup>

#### **IV. JUVENILE ISSUES**

Juvenile noncitizens present special concerns for practitioners. Unless affirmative steps are taken to naturalize juveniles as U.S. citizens, however, they are not U.S. citizens and remain subject to the immigration laws. Noncitizen juveniles may face immigration consequences for criminal acts, depending on whether they are in juvenile delinquency proceedings, extended juvenile jurisdiction or similar proceedings, or adult criminal court, having been certified to stand trial as an adult. Many juvenile noncitizens have been resettled in the U.S. as refugees or have come to the U.S. with their families seeking refuge due to chaos or civil war in their home country. Unfortunately, they may act out some of the aggression they have witnessed in a classroom. Under the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (1997), and state statute, it may be possible to move to dismiss a juvenile court petition where the noncitizen youth's behavior on school premises or a school bus is based on a disability and his special education needs have not been sufficiently addressed by the school.

Noncitizen juveniles placed in juvenile delinquency proceedings are generally not subject to deportation or exclusion proceedings under case law. An act of juvenile delinquency is not considered a crime under deportation or exclusion law.<sup>80</sup> The standards established in the Federal Juvenile Delinquency Act, 18 U.S.C. § 5031-50 govern whether an offense by a youth offender is considered to be an act of delinquency or a crime.<sup>81</sup>

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<sup>77</sup> See 8 U.S.C. § 1227(a)(2)(A)(v).

<sup>78</sup> See *Matter of Suh*, 23 I&N Dec. 626 (BIA 2003) (for child abuse conviction, pardon waived aggravated felony ground of deportability but not the deportability ground of child abuse).

<sup>79</sup> *Balogun v. U.S. Attorney General*, 425 F.3d 1356, 1362-63 (11<sup>th</sup> Cir. 2005).

<sup>80</sup> *Matter of Devison*, 22 I&N Dec. 1362, 1365-66 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981); 22 C.F.R. § 40.21(a)(2).

<sup>81</sup> See *Matter of Devison*, 22 I&N Dec. 1362, 1366 (holding that an adjudication under § 720 of the New York youthful offender procedures was equivalent to the Federal Juvenile Delinquency Act and therefore not a conviction for immigration purposes); *cf. Uritsky v. Gonzales*, 399 F.3d 728 (6<sup>th</sup> Cir. 2005) (holding that a sentence to probation under Michigan's Youthful Trainee Act was a conviction for immigration purposes).

Certain dispositions for juvenile delinquency, however, bar applicants from adjusting to become legal permanent residents through the Family Unity Act under the 1986 Amnesty and 1988 Special Agricultural Worker (SAW) Programs. If an act of juvenile delinquency which if committed by an adult would be a felony involving violence or the threat of physical force against another person, then the juvenile disposition is a bar to family unity benefits granted or extended after September 30, 1996.<sup>82</sup>

A noncitizen juvenile is inadmissible for an adjudication or for admissions involving controlled substances other than minor drug offenses relating to simple possession or use of controlled substances which occur under age 18.<sup>83</sup> He is inadmissible if the DHS has reason to believe that he is or has been a drug trafficker, drug abuser, or drug addict.<sup>84</sup> A noncitizen juvenile may also be deportable and inadmissible for having knowingly encouraged, induced, assisted, abetted, or aided another noncitizen to enter the U.S.<sup>85</sup> A noncitizen juvenile may be inadmissible if involved in prostitution within ten years of the date of his application for adjustment of status to become a legal permanent resident.<sup>86</sup> Even though the juvenile disposition is not a "conviction" for immigration purposes, a juvenile noncitizen may still be found to be inadmissible which may result in the juvenile being ineligible for relief and subsequently deported or removed from the U.S.

Many states have passed legislation which creates a hybrid of juvenile delinquency proceedings and adult criminal court. A juvenile noncitizen who is certified to stand trial as an adult and convicted in an adult criminal court will be treated as an adult for immigration purposes. A juvenile who is in the hybrid proceedings may initially be treated as having a juvenile adjudication for delinquency with an adult sentence that has been stayed. If the adult sentence is executed due to a revocation of the juvenile court jurisdiction, then the noncitizen juvenile will be considered to have an adult conviction. Where a noncitizen juvenile is in a hybrid proceeding, you should analyze the charge as if the juvenile were in adult court due to the possibility that the juvenile court jurisdiction may be revoked. A noncitizen juvenile who is certified to stand trial as an adult will have an adult conviction and be subject to the same consequences as an adult noncitizen.<sup>87</sup>

In Indiana, a juvenile age 14 or older who has been charged with a heinous or aggravated act or an act that is part of a repetitive pattern of delinquent acts may be charged as an adult.<sup>88</sup> The juvenile delinquency court may also waive its jurisdiction to allow any juvenile to be charged as an adult if he is charged with an act that would be a felony if committed by an adult and he has been previously

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<sup>82</sup> See Immigration and Nationality Act of 1990, § 301(e)(3) as amended by IIRAIRA § 383.

<sup>83</sup> See *Foreign Affairs Manual*, 9 FAM § 40.21(b), Note 2.1.

<sup>84</sup> See 8 U.S.C. § 1182(a)(2)(C); 9 FAM § 40.21(b) Note 2.1.

<sup>85</sup> See 8 U.S.C. § 1227(a)(1)(E); 8 U.S.C. § 1182(a)(6)(E).

<sup>86</sup> See 8 U.S.C. § 1182(a)(2)(D).

<sup>87</sup> See *e.g.*, Minn. Stat. § 260.126; Minn. Stat. § 260.125, subd. 5 regarding extended juvenile jurisdiction proceedings; for Illinois extended juvenile jurisdiction proceedings, see 705 ILCS 405/5-810(4); 705 ILCS 405/5-710 (a); 705 ILCS 405/5-715(1).

<sup>88</sup> See IC 31-30-3-2.

convicted of a felony or a non-traffic misdemeanor.<sup>89</sup> A juvenile age 16 or older may be charged as an adult for a controlled substance offense or for other specified felony offenses.<sup>90</sup> A juvenile age ten and older may be prosecuted as an adult for murder.<sup>91</sup> Under the Individuals with Disabilities Education Act,<sup>92</sup> it may be possible for defense counsel to move for dismissal of a juvenile court petition where the noncitizen youth's behavior on school premises or a school bus is based on a disability and his special education needs have not been sufficiently addressed by the school.<sup>93</sup>

Defense counsel may want to consider restorative justice and court diversion programs when evaluating the immigration consequences of offenses by juvenile noncitizens. Due to a decrease in recidivism for youth who participate in these programs, and a significant decrease in costs to the juvenile court system, they are becoming a much more common alternative to entering the criminal court system.<sup>94</sup>

Indiana offers the Indianapolis Restorative Justice Program that works with first time youth offenders under the age of 14 who face charges of assault, criminal mischief, disorderly conduct, trespassing, shoplifting and felony theft.<sup>95</sup> An experiment conducted by the program established statistics that confirm a significant decrease in recidivism and increase in community development.

Indiana has also joined the Juvenile Detention Alternatives Initiative (JDAI), a nationwide program for juvenile detention reform sponsored by The Annie E. Casey Foundation.<sup>96</sup> Currently,

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<sup>89</sup> See IC 31-30-3-6.

<sup>90</sup> See IC 31-30-3-3; IC 31-30-3-5.

<sup>91</sup> See IC 31-30-3-4.

<sup>92</sup> See 20 U.S.C. § 1400 et seq. (1997).

<sup>93</sup> The Pacer Center, Inc., a non-profit parent training center in Minneapolis, Minnesota has a special project entitled the Juvenile Justice Project which works with juveniles with disabilities in the juvenile justice system. The staff can provide training and assistance to public defenders as well as coordinate with other agencies. The Juvenile Justice Project has published a useful resource entitled *Unique Challenges, Hopeful Responses: A Handbook for Professionals Working with Youth with Disabilities in the Juvenile Justice System*, 1999, 2nd edition, updated 2003. The Pacer Center, Inc. is located at 8161 Normandale Blvd., Minneapolis, MN 55437, (952) 838-9000. To contact the Juvenile Justice Project, call (952) 838-9000 or visit <http://www.pacer.org/jj/index.asp>. The Council of State Governments initiated a criminal justice and mental health consensus project that works to aid state and federal policymakers and criminal justice professionals improve the relationship between people with mental illnesses and the criminal justice system. Their website supports a local programs database wherein projects and trainings are listed by state; see <http://consensusproject.org>. The Indiana Public Defender Council webpage provides a manual entitled, "Representing Clients with Mental Illness." The website is accessible for free to Indiana public defenders, and by subscription for private criminal defense attorneys. <http://www.in.gov/ipdc>.

<sup>94</sup> Other states that offer Juvenile Alternative Justice programs include Texas, California, Ohio and Pennsylvania. See Juvenile Justice Initiative, at <http://jjjustice.org>.

<sup>95</sup> For more information, see Indianapolis Restorative Justice Program at [www.hudson.org/files/publications/Indianapolis\\_Juvenile\\_Restorative\\_Justice\\_Experiment.pdf](http://www.hudson.org/files/publications/Indianapolis_Juvenile_Restorative_Justice_Experiment.pdf).

<sup>96</sup> See Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, available at



nineteen counties within Indiana participate in the project.<sup>97</sup> The initiative focuses on community-based alternatives to detention.<sup>98</sup>

## ***V. CONCLUSION***

Juvenile and adult noncitizens are at risk of deportation now more than ever in the past. In order to avoid the draconian penalties, it is critical for criminal defense attorneys to work with local immigration attorneys to seek advice regarding the immigration consequences resulting from criminal offenses for noncitizens. Many immigration attorneys and non-profit immigration law offices are willing to consult at no cost with criminal defense and public defenders to help avoid and/or minimize the immigration consequences to noncitizen defendants. By working together, you and your client will be aware of the immigration consequences for state court proceedings. One five minute call to an immigration attorney may mean the difference between life and death for your noncitizen client.

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<http://www.aecf.org/work/juvenile-justice/jdai/>.

<sup>97</sup> The nineteen Indiana JDAI expansion sites include Allen County, Bartholomew County, Boone County, Clark County, Delaware County, Elkhart County, Henry County, Howard County, Johnson County, LaGrange County, Lake County, LaGrange County, LaPorte County, Madison County, Marion County, Porter County, St. Joseph County, Tippecanoe County, Vanderburgh County, and Wayne County. For more information on Indiana's JDAI <http://www.in.gov/judiciary/center/2823.htm>.

<sup>98</sup> A summary of the revised JDAI detention facility standards is available at <http://www.aecf.org/resources/juvenile-detention-facility-assessment/>.



## ***Appendix A***

### ***IMMIGRATION CONSEQUENCES CHECKLIST***

- ☐ Entered U.S. without inspection by an immigration officer and does not have a “green card”
  - ☐ Obtained green card less than 5 years ago and has resided in the U.S. for less than 7 continuous years
  - ☐ Has been arrested and/or deported by the former Immigration and Naturalization Service or the Department of Homeland Security
  - ☐ Has prior misdemeanor arrests, charges, and/or convictions for crimes involving moral turpitude (shoplifting, theft, forgery, burglary, fraud, etc.)
  - ☐ Has prior criminal sexual conduct arrests, charges, and/or convictions
  - ☐ Has prior DUI related arrests, charges, and/or convictions
  - ☐ Has prior controlled substance offense or drug paraphernalia arrests, charges, and/or convictions
  - ☐ Has prior domestic assault arrests, charges, and/or convictions or has violated any order of protection or no-contact order
  - ☐ Has prior felony arrests, charges, and/or convictions for any other type of offense
  - ☐ Is charged with or faces potential charges for:
    - ☐ Controlled substance violation(s)
    - ☐ Crime involving moral turpitude
    - ☐ Criminal sexual conduct
    - ☐ Assault, battery, or a crime of violence
    - ☐ Domestic assault or battery, stalking, child abuse, child neglect, child abandonment, or violation of a protection order
    - ☐ Prostitution or soliciting a prostitute
    - ☐ DUI or related offense(s)
    - ☐ Firearms offense
- ☐ Is a juvenile charged with a controlled substance violation, prostitution, or a crime of violence in delinquency or EJJ proceedings
- ☐ Is a juvenile facing prosecution as an adult for any of the offenses listed above



## *Appendix B*

# QUESTIONS FOR CALLS REGARDING IMMIGRATION CONSEQUENCES FOR NONCITIZENS IN CRIMINAL PROCEEDINGS

### Noncitizen Information

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Immigration Status: (Choose one)

Legal Permanent Resident	Refugee	
Asylee	Asylum Applicant	Amnesty/Family Unity
J-1/F-1/M-1 Student	Visitor	Naturalization Applicant
Undocumented	Temporary Protected Status	Stay of Removal Granted
Nonimmigrant Visa Overstay	Deferred Action for Childhood Arrivals (DACA)	H1-B
Violence Against Women Act (VAWA) self-petitioner	Deferred Action (i.e. pending visa number for U or T visa)	Deferral of Removal Granted (Convention against Torture)
U Visa or T Visa	Withholding of Removal Granted	Other:

Country of Citizenship: \_\_\_\_\_ Date, place and manner of first entry into U.S.: \_\_\_\_\_

Date, place, and manner of last entry into U.S.: \_\_\_\_\_

Manner of entry = Inspected OR Not inspected by U.S. Customs. Please note if there was a claim to U.S. citizenship for any entry \_\_\_\_\_

Family Members and Their Immigration Status in U.S.: \_\_\_\_\_

\_\_\_\_\_

If U.S. citizen parent, defendant's age when parent naturalized: \_\_\_\_\_

Date of Current Arrest: \_\_\_\_\_

Current Charges: \_\_\_\_\_

\_\_\_\_\_

Prior arrests & results, including dates, dispositions, and any sentences imposed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Defense Attorney's Name and Contact Information: \_\_\_\_\_

Next Hearing Date for Noncitizen: \_\_\_\_\_



## *Appendix C*

### **IMMIGRATION ATTORNEYS**

#### **Non-Profit Legal Services**

##### Neighborhood Christian Legal Clinic

3333 N Meridian St.  
Indianapolis, IN 46208  
Tel. (317) 429-4131 Fax (312) 819-2626  
<http://www.nclegalclinic.org>

##### Indiana Legal Services/Immigrants & Language Rights Center

151 North Delaware Street Suite 1800  
Indianapolis, IN 46204  
Tel. (317) 631-9410 Fax (312) 819-2626  
<http://indianalegalservices.org>

##### Catholic Charities of Fort Wayne-South Bend

915 S Clinton St.  
Fort Wayne, IN 46802  
Tel. (260) 422-5625 Fax (312) 819-2626  
<http://www.ccfwsb.org/our-services/immigration-services/>

**Immigration attorneys who consult regarding immigration consequences** (for current list, see Expert Database on IPDC website):

Angela Adams  
Indiana University  
University Hall 5030  
301 University Blvd.  
Indianapolis, IN 46202  
(317) 274-7460  
FAX (317) 231-2124

Maria Baldini-Potermin  
Maria Baldini-Potermin & Associates, P.C.  
1 North LaSalle  
Suite 2150  
Chicago, IL 60602  
(312) 368-8200  
FAX (312) 368-9400  
[maria@baldini-potermin.com](mailto:maria@baldini-potermin.com)

John A. Broyles  
Broyles, Kight & Ricafort, LLP  
8250 Haverstick Road  
Indianapolis, IN 46240  
(317) 571-3600  
FAX (317) 571-3610  
[jbroyles@bkrlaw.com](mailto:jbroyles@bkrlaw.com)

Juan Garcia  
Garcia & Crawford LLC  
525 W. Lexington Ave.  
Elkhart, IN 46516  
(574) 295-8112

Michelle Gutierrez  
5703 South East Street, Suite B  
Indianapolis, IN 46227  
(317) 780-0983  
FAX (317) 780-0985

Rudy Monterrosa  
430 East LaSalle Avenue  
South Bend, IN 46617  
(574) 236-2953  
FAX (574) 234-3363

Marco A. Moreno  
Moreno & Villarrubia LLP  
120 E. Market Street, Suite 900  
Indianapolis, IN 46204  
(317) 822-9900  
Fax (317) 759-5646  
[marco@mv-lawfirm.com](mailto:marco@mv-lawfirm.com)

Thomas R. Ruge  
Lewis & Kappes  
One American Square, Suite 2500  
Indianapolis, IN 46282  
(317) 639-1210  
FAX (317) 639-4882

David P. Wilson  
Wilson Law, LLC  
932 Meridian Street  
Anderson, IN 46016  
(765) 356-4506



**Indiana attorneys listed in the members directory of the American Immigration Lawyers Association.**

**Anderson**

Wilson, David P. (765) 356-4506

**Bloomington**

Popp, Christine (812) 323-3339

**Carmel**

Haran, Lalita (317) 660-6174

**Elkhart**

Meza, Rosy M (574) 304-9601

**Evansville**

Barron, Robert F. (812) 423-3183

Guerrettaz, David A. (812) 424-7575

**Fort Wayne**

Bloom, Mark E. (260) 425-1648

Mead, Jerri L. (260) 436-1700

Patel, Apexa (260) 403-9736

**Goshen**

Kamalakanth, Thushanthi (574) 387-3001

Pontius, Laura (812) 269-6415

Rivera, Rose Marie (574) 537-8592

**Greenwood**

Krasutsky, Alexei Paul (317) 610-3295

**Indianapolis**

Adams, Angela D. (317) 639-1210

Bolin, Zadora M. (317) 639-1210

Brown, Jenifer M. (317) 236-2242

Broyles, John A. (317) 571-3600

Budzenski, Alexander (317) 487-4652

Campbell, Courtney L. (317) 713-2928

Fecht, Jeffrey (317) 490-2482

Fillenwarth, Charlotte (317) 977-1476

Finkelmeier, Alison (317) 413-6622

Flora, Jason A (317) 487-4652

Fortino, Vicki (317) 908-5393

Glier, Christl (317) 236-2314

Gutierrez, A. Michelle (317) 780-0983

Hocker, Janet D (317) 371-5108

**Indianapolis (contd.)**

Homma, Michiharu	(317) 916-2139
Johnson, Fatima T.	(317) 455-6829
Jun, Hong	(317) 577-8372
Kelley, Kristin	(317) 236-2284
Kelly Hill, Linda	(317) 278-4793
Kight, Megan J.	(317) 571-3600
Kim, Michael	(317) 633-4884
Krishnayya, Raio G.	(317) 610-3427
Lieb, James M.	(317) 786-5008
Lydon-Lam, Bobby Y.	(317) 572-8132
Lykins, Dallin David	(317) 221-0814
McCarthy, Rachael	(317) 237-7911
Marques, Ryan	(317) 639-1210
Mendoza Calix, Christian	(317) 674-3775
Menyhart, Russell	(317) 713-9423
Moreno, Marco A.	(317) 822-9900
Moshe, Sarah L.	(317) 639-1210
Munoz, Kevin Cooper	(317) 345-5138
Paarlberg, Afshan	(317) 236-8406
Panyard, Lacy	(317) 755-1278
Pieper, Lun Kham	(317) 782-5693
Ramsey, Lindsay	(317) 417-7172
Richmond, Mariana	(317) 231-7476
Riggins, Wandini B	(317) 566-8873
Ripani, Philip J.	(317) 684-5280
Robbin, Thomas G.	(317) 637-0207
Robbins, Jeffrey L.	(317) 639-1210
Ruge, Thomas R.	(317) 639-1210
Rund, Robert W.	(317) 639-1210
Seif, Abigail	(317) 639-1326
Shah, Jatin D.	(317) 624-7424
Shepard, Laura	(317) 237-7911
Shomo, Edward	(317) 217-8548
Singleton, Catherine A.	(317) 237-7911
Sunkara, Kiran Kumar	(317) 682-1200
Tuchman, Steven L.	(317) 639-1210
Ty, Claire M.	(317) 508-0800
Van Tyle, Rachel E	(317) 407-3090
Villarrubia, Tabitha	(317) 822-9900
Wang, Hao	(317) 701-4544
Welsh, Gary R.	(317) 684-0099
Wheat, Blair	(317) 315-3111
Yankey, Lisa	(317) 635-8628

**Lafayette**

Mandeville, Kyle B. (765) 742-9068

**LaPorte**

Nelson G. Pichardo (219) 326-1264

**Merrillville**

Arshad, Sophia J. (219) 736-6500

Nchekwube, Ngozi Emeka (219) 985-6005

**Noblesville**

Benner, Thomas H. (317) 774-8203

**Notre Dame**

Wagner, Sharlet (574) 284-5565

**South Bend**

Durham, Michael E. (574) 246-1530

Merino, Felipe (574) 807-0512

Monterrosa, Rodolfo (574) 236-2953

**Valparaiso**

Heeren, Geoffrey (219) 465-7933



## ***Appendix D***

TO: CONSULATE OF \_\_\_\_\_

FROM: MARION COUNTY PUBLIC DEFENDER AGENCY

151 N. DELAWARE ST. SUITE 200

INDIANAPOLIS, IN 46204

Ph: (317) 327-4100

Fax: (317) 327-3799

SUBJECT: NOTIFICATION OF ARREST/DETENTION OF A NATIONAL OF YOUR COUNTRY

WE HAVE BEEN APPOINTED BY THE COURT TO REPRESENT MR/MS \_\_\_\_\_

\_\_\_\_\_

WHOM WE BELIEVE TO BE A NATIONAL OF YOUR COUNTRY AND WHO IS PRESENTLY IN

CUSTODY AT: \_\_\_\_\_

DATE OF BIRTH \_\_\_\_\_

PLACE OF BIRTH \_\_\_\_\_

PASSPORT NUMBER \_\_\_\_\_

OTHER DOCUMENTS \_\_\_\_\_

If you have any questions, please feel free to contact our office. This notification is being made per our client's request. His/Her signed request is below.

Por la presente solicito a la Defensoria Publica del Condado de Marion que notifique al Consulado de mi pais la dirección de la institucion adonde me hallo arrestado.

Firma: \_\_\_\_\_ Fecha: \_\_\_\_\_



## *Appendix E*

### **CONSULATE INFORMATION**

#### General Consulate of Argentina in Chicago

Marcelo Suarez Salvia  
205 N. Michigan Ave., Suite 4208/4209  
Chicago, IL 60601-5968  
Tel. (312) 819-2620 Fax (312) 819-2626  
Email: [argcchic@sbcglobal.net](mailto:argcchic@sbcglobal.net)  
<http://cchic.mrecic.gov.ar/>

#### Australian Consulate-General in Chicago

Roger Price  
123 N. Wacker Dr., Suite 1330  
Chicago, IL 60606  
Tel. (312) 419-1480 Fax (312) 419-1499  
Email: [chicago@dfat.gov.au](mailto:chicago@dfat.gov.au)  
<http://www.usa.embassy.gov.au/whwh/ChicagoCG.html>

#### Honorary Consulate of Belize

Debbie Schell  
780 Lee St., Suite 102  
Des Plaines, IL 60016  
Tel. (847) 759-9833 Fax (847) 759-9834  
[dschell@bzconsulchicago.org](mailto:dschell@bzconsulchicago.org)<http://www.consulateofbelize.org/contact.htm>

#### Honorary Consulate of Bolivia in Chicago

Mario Rodriguez  
4129 N. Broadway  
Chicago, IL 60613  
Tel. (312) 473-4138 Fax (312) 650-8997  
Email: [mrodriguez@chicagobolivianconsulate.org](mailto:mrodriguez@chicagobolivianconsulate.org)

#### British Consulate General, Chicago

Stephen Bridges  
625 N. Michigan Ave., Suite 2200  
Chicago, IL 60611  
Tel. (312) 970-3800 Fax (312) 970-3852  
<http://ukinusa.fco.gov.uk/en/about-us/other-locations/chicago/>

Consulate General of Canada

Roy B. Norton  
Two Prudential Plaza  
180 N. Stetson Ave., Suite 2400  
Chicago, IL 60601  
Tel. (312) 616-1860 Fax (312) 616-1877  
[chcgo@international.gc.ca](mailto:chcgo@international.gc.ca)  
<http://can-am.gc.ca/chicago/index.aspx?lang=eng>

General Consulate of Chile in Chicago

Jose Miguel Gonzalez Serrano  
1415 N. Dayton Street, 2<sup>nd</sup> Floor  
Chicago, IL 60642  
Tel. (312) 654-8780 Fax (312) 654-8948  
Email: [info@cgchicago.com](mailto:info@cgchicago.com)  
<http://cgchicago.com/>

Consulate General of the People's Republic of China in Chicago

Zhao Weiping  
100 West Erie Street  
Chicago, IL 60610  
Tel. (312) 803-0095 Fax (312) 803-0110  
Email: [chinaconsul\\_chi\\_us@mfa.gov.cn](mailto:chinaconsul_chi_us@mfa.gov.cn)  
<http://www.chinaconsulatechicago.org/eng/qzhz/qz/default.htm>

General Consulate of Colombia in Chicago

Sandra Liliana Sanchez Ku  
500 N. Michigan Ave., Suite 2040  
Chicago, IL 60611  
Tel. (312) 923-1196 Fax (312) 923-1197  
Email: [cchicago@cancillera.gov.go](mailto:cchicago@cancillera.gov.go)  
<http://chicago.consulado.gov.co/>

Consulate of Costa Rica in Chicago

Javier Gerardo Rojas Viquez  
30 N. Michigan Avenue, Ste. 1922  
Chicago, IL 60602  
Tel. (312) (312) 470-0282 Fax (312) 577-4271  
Email: [concr-us-il@rree.go.cr](mailto:concr-us-il@rree.go.cr)

Embassy of Cuba in Washington, D.C.

2630 16th St. NW  
Washington, D.C. 20009  
Tel. (202) 797-8518  
<http://www.cubadiplomatica.cu/sicw/EN/ConsularServices.aspx>



Consulate General of the Dominican Republic in Chicago

Dr. Gisselle Castillo-Veremis  
8770 West Bryn Mawr Ave, Triangle Plaza, Suite 1300  
Chicago, IL 60631  
Tel. (773) 714-4924 Fax (773) 714-4926  
Email: [daiana@drchicagoconsulate.com](mailto:daiana@drchicagoconsulate.com)  
<http://dominicanrepublic-consulategeneral-chicago.com/en/9-2/>

Consulate of Ecuador in Chicago

Carlos Lenin Housse Davalos  
30 S Michigan Ave., Suite 204  
Chicago, IL 60603  
Tel. (312) 338-1002 Fax (312) 338-1004  
Email: [cecuchicago@mmrree.gov.ec](mailto:cecuchicago@mmrree.gov.ec)  
<http://chicago.consulado.gob.ec/>

General Consulate of El Salvador in Chicago

Patricia Maza-pittsford  
177 N. State St., 2nd Floor-Mezzanine  
Chicago, IL 60601  
Tel. (312) 332-1393 Fax (312) 332-1393  
<http://consuladochicago.rree.gob.sv>

Ghana Consulate General in New York

19 East 47<sup>th</sup> Street  
New York, NY 10017  
Tel. (212) 832-1300 Fax (212) 751-6743  
Email: [ghanaconsulate.aol.com](mailto:ghanaconsulate.aol.com)  
<http://www.ghanaconsulatenewyork.org/>

Consulate General of Guatemala in Chicago

Hugo Haroldo Hun  
5559 N. Elston Ave., Suite #100  
Chicago, IL 60630  
Tel. (312) 540-0781 Fax (312) 540-0897  
Email: [conschicago@minex.gob.gt](mailto:conschicago@minex.gob.gt)  
<http://www.conschicago.minex.gob.gt/Home/Home.aspx>

Consulate of Haiti in Chicago

Leslie Louis Conde  
11 E. Adams St., Suite 1400  
Chicago, IL 60603  
Tel. (312) 922-4004 Fax (312) 922-7122  
[Chicago@haitianconsulate.org](mailto:Chicago@haitianconsulate.org)  
<http://www.haitianconsulate.org/>

General Consulate of Honduras in Chicago

Pablo Ordoñez  
4439 W. Fullerton Avenue  
Chicago, IL 60639  
Tel. (773) 342-8281/8289 Fax (773) 342-8293  
Email: [consulchicago@yahoo.com](mailto:consulchicago@yahoo.com)  
<http://hondurasemb.org/>

Consulate-General of India, Chicago

Dr. Ausaf Sayeed  
455 N. City Front Plaza, Suite 850,  
NBC Tower  
Chicago, IL 60611  
Tel. (312) 595-0405 Fax (312) 595-0417  
Email: [info@indianconsulate.com](mailto:info@indianconsulate.com)  
<http://indianconsulate.com/>

Consulate General of Ireland

Orla McBreen  
1 E. Wacker Dr., Suite 1820  
Chicago, IL 60601  
Tel. (312) 337-2700 Fax (312) 836-1267  
<http://www.dfa.ie/irish-consulate/chicago/>

Consulate General of Jordan

Ihssan Sweiss  
12559 S. Holiday Drive  
Alsip, IL 60803  
Tel. (708) 272-6666 Fax (708) 385-5894  
Email: [jordan@jordanembassy.org.au](mailto:jordan@jordanembassy.org.au)  
<http://www.jordanembassyus.org/page/honorary-consuls>

Consulate General of Kenya in New York

866 UN Plaza, Ste. 4016  
New York, NY 10017  
Tel: (212) 421-4741 Fax (212) 486-1985  
<http://kenya.embassy-online.net/Kenya-Consulate-General-New-York.php>

General Consulate of Mexico in Indianapolis

Javier Abud Osuna  
331 S. East St.  
Indianapolis, IN, 46204  
Tel. (317) 761-7600 Fax (317) 761-7610  
<http://consulmex.sre.gob.mx/indianapolis/>

Consulate of Nigeria in New York  
828 Second Ave.  
New York, NY 10017  
Tel. (212) 808-0301 Fax (212) 682-4789  
Email: [cgny@nigeriahouse.com](mailto:cgny@nigeriahouse.com)  
<http://www.nigeriahouse.com>

General Consulate of Nicaragua in New York  
820 Second Ave., Ste. 802  
New York, NY 10017  
Tel. (212) 490-7997 Fax (212) 983-2646  
Email: [mercado@cancilleria.gob.ni](mailto:mercado@cancilleria.gob.ni)

Consulate General of Pakistan in Chicago  
Faisal Niaz Tirmizi  
333 N. Michigan Ave., Suite 728  
Chicago, IL 60601  
Tel. (312) 781-1831/1833 Fax (312) 781-1839  
Email: [info@cgpkchicago.org](mailto:info@cgpkchicago.org)  
<http://www.cgpkchicago.org/>

Consulate of Panama in Washington DC  
2862 McGill Terrance NW  
Washington, D.C. 20008  
Tel. (202) 483-1407 ext. 130 Fax (202) 387-6141  
Email: [consular@embassyofpanama.org](mailto:consular@embassyofpanama.org)

Paraguay General Consulate in New York  
Ministro Armando Fernández Galté  
801 2<sup>nd</sup> Avenue, Suite 600  
New York, NY 10017  
Tel. (212) 682-9440 Fax (212) 682-9443  
Email: [info@consulparny.com](mailto:info@consulparny.com)  
<http://www.consulparny.com/>

Consulate General of Peru in Chicago  
Agustin De Madalengoitia  
180 N. Michigan Ave., Suite 1830  
Chicago, IL 60601  
Tel. (312) 782-1599 Fax (312) 704-6969  
Email: [sipan@ameritech.net](mailto:sipan@ameritech.net)  
<http://consuladoperu.com/>

The Philippine Consulate General in Chicago  
Generoso D. G. Calonge  
122 S. Michigan Ave., Ste. 1600

Chicago, IL, 60603  
Tel. (312) 583-0621 Fax (312) 583-0647  
Email: [chicagopcg@sbcglobal.net](mailto:chicagopcg@sbcglobal.net)  
<http://www.chicagopcg.com/>

Consulate-General of Poland in Chicago  
Paulina Kapuscinska  
1530 N. Lake Shore Dr.  
Chicago, IL 60610  
Tel. (312) 337-8166 Fax (312) 337-7841  
Email: [chicago.kg.sekretariat@msz.gov.pl](mailto:chicago.kg.sekretariat@msz.gov.pl)  
<http://www.chicago.mfa.gov.pl/en/>

Embassy of Sierra Leone  
1701 19th Street, NW  
Washington, D.C. 20009  
Tel. (202) 939-9261/ 62/ 63 Fax (202) 483-1798  
Email: [info@embassyofsierraleone.net](mailto:info@embassyofsierraleone.net)  
<http://www.embassyofsierraleone.net>

General Consulate of Spain in Chicago  
Carmen Fontes Munoz  
180 N. Michigan Ave., Suite 1500  
Chicago, IL 60601  
Tel. (312) 782-4588/4589 Fax (312) 728-1635  
Email: [cog.chicago@maec.es](mailto:cog.chicago@maec.es)  
<http://www.exteriores.gob.es/consulados/chicago/en/Pages/inicio.aspx>

Taipei Economic and Cultural Office in Chicago  
Calvin Ho  
180 N. Stetson Ave., Suite 5701  
Chicago, IL 60601  
Tel. (312) 616-0100 Fax (312) 616-1486  
Email: [consular@tecochicago.org](mailto:consular@tecochicago.org)  
<http://www.roc-taiwan.org/US/CHI/mp.asp?mp=27>

General Consulate in Uruguay in Chicago  
Dr. Nury Bauzan de Senes  
875 N. Michigan Ave., Suite 1318  
Chicago, IL 60611  
Tel. (312) 642-3430 FAX (312) 642-3470  
<http://www.embajadadeuruguay.org/pages/contacto/norteamerica/estados-unidos.php>

General Consulate of Venezuela in Chicago  
Jesus Rodriguez-Espinoza  
20 N. Wacker Dr., Suite 1925  
Chicago, IL 60606

Tel. (312) 236-9659 Fax (312) 236-9655  
Email: [ven.chicago@gmail.com](mailto:ven.chicago@gmail.com)  
[http://embavenez-us.org/\\_chicago/](http://embavenez-us.org/_chicago/)



## ***Appendix F***

### **INDIANA SUPREME COURT CERTIFIED INTERPRETERS**

Following is a list of court interpreters who have successfully completed the Indiana Supreme Court Interpreter Certification Program requirements and evaluation and are officially certified by the Court as qualified court interpreters.

The list below is provided by the Division of State Court Administration, and is available at: <http://www.in.gov/judiciary/interpreter/2358.htm>. This list was last updated 12/23/2015. Follow the link above to check for more recent versions.

Public defenders are encouraged to use certified interpreters for reasons of accuracy and also not to rely on court-appointed interpreters where conflicts of interest and access to outside evidence may influence interpretations.

Most interpreters on the registry are willing to travel for assignments outside their district. Interpreters with an asterisk (\*) at the end of their names are also federally certified.

# Certified/Qualified Interpreter Registry

Updated 12/23/2015

Language	Interpreter	Credential	Phone	Email	County of Residence	Notes
American Sign Language (ASL)	Charlene D. Santiago	Qualified	(317) 985-9397	<a href="mailto:charlenesantiago@comcast.net">charlenesantiago@comcast.net</a>	Hancock	
American Sign Language (ASL)	Lena Van Manen	Qualified	(317) 840-9611	<a href="mailto:lenavm@me.com">lenavm@me.com</a>	Marion	
American Sign Language (ASL)–	Rebecca Buchan	Qualified	(765) 425-2012	<a href="mailto:rebecca@luna360.com">rebecca@luna360.com</a>	Marion	Available throughout Indiana
Arabic	Elsadig Hag-Elagib	Certified	(517) 279-0480	<a href="mailto:hagx2@yahoo.com">hagx2@yahoo.com</a>	Out-of-state Michigan	Available throughout Indiana
			(517) 677-1011			
Arabic	Rana F. Raad	Certified	(513) 252-8906	<a href="mailto:ranaraad@gmail.com">ranaraad@gmail.com</a>	Out-of-state (Hamilton, Ohio)	Available throughout Indiana
Bosnian/Serbian / Croatian	Janja Pavetic-Dickey	Certified	(785) 843-2456	<a href="mailto:jpdickey@att.net">jpdickey@att.net</a>	Out-of-state (Lawrence, Kansas)	
			or			
Certified Deaf Interpreter (CDI)	Jay Krieger	Qualified	(317) 660-2044	<a href="mailto:Jkrieger1@gmail.com">Jkrieger1@gmail.com</a>	Hamilton	Available throughout Indiana
Chinese (Mandarin)	Wei C. Ralph	Certified	(615) 498-6539	<a href="mailto:ralphfamily@comcast.net">ralphfamily@comcast.net</a>	Out-of-state (Summer, Tennessee)	Available throughout Indiana
Chinese (Mandarin)	Yi-An “Ann” Yang	Certified & Professionally Qualified Federal Interpreter	(773) 865-2079	<a href="mailto:Wordweaver123@gmail.com">Wordweaver123@gmail.com</a>	Out-of-state (Cook County, Illinois)	Available throughout Indiana
French	Anne-Mieke Klok	Certified	(513) 965-1618	<a href="mailto:Miekeklok@yahoo.com">Miekeklok@yahoo.com</a>	Out-of-state (Washington)	Available throughout Indiana



Language	Interpreter	Credential	Phone	Email	County of Residence	Notes
French	Patricia Rebac	Certified	(502) 494-7731	<a href="mailto:Prebac77@gmail.com">Prebac77@gmail.com</a>	Out-of-state (Jefferson, Kentucky)	Available throughout Indiana
Polish	Malgorzata Petr	Certified	(312) 804-2866	<a href="mailto:mlgpetr@yahoo.com">mlgpetr@yahoo.com</a>	Out-of-state (Cook County, Illinois)	Available throughout Indiana
Polish	Pawl Smal	Certified	(773) 858-1252	<a href="mailto:psmal@earthlink.net">psmal@earthlink.net</a>	Out-of-state (Cook County, Illinois)	Available throughout Indiana
Spanish	Abiel Gonzalez	Certified	(773) 581-9738		Out-of –State (Cook County, Illinois)	
Spanish	Adrian Aguilar	Certified	(574) 536-7186	<a href="mailto:adrian.aguilar82@gmail.com">adrian.aguilar82@gmail.com</a>	Elkhart	
Spanish	Adriana Fonseca	Certified	(614) 893-1299	<a href="mailto:langbridges@sbcglobal.net">langbridges@sbcglobal.net</a>	Out-of-state Ohio	Freelance interpreter
Spanish	Adriana Vowels	Certified	Work: (502) 296-3032 Home: (502) 933-0082	<a href="mailto:advow@insightbb.com">advow@insightbb.com</a>	Out-of-state Kentucky	
Spanish	Amy Ramirez	Certified	(317) 679-9419	<a href="mailto:ramirez.amy@gmail.com">ramirez.amy@gmail.com</a>	Marion	
Spanish	Amy Shrock	Certified	(765) 259-1485	<a href="mailto:amy77@alumni.kzoo.edu">amy77@alumni.kzoo.edu</a>	Wayne	Available throughout Indiana
Spanish	Ana Maria Grandlienard	Certified	Home: (765) 807-0701 Cell: (765) 543-7149	<a href="mailto:anagrandleinard@hotmail.com">anagrandleinard@hotmail.com</a>	Tippecanoe	Freelance interpreter but requests prior notice
Spanish	Ana Vincente	Certified	(317) 997-7783	<a href="mailto:Anavicentez@yahoo.com">Anavicentez@yahoo.com</a>	Marion	
Spanish	Anthony Flora	Certified	(574) 354-1864	<a href="mailto:anthony.m.flora@gmail.com">anthony.m.flora@gmail.com</a>	Lake County	Available in Lake and Cook County, IL
Spanish	Azalea DeFord Parnell	Certified	(317) 908-9802	<a href="mailto:azaleadeford@hotmail.com">azaleadeford@hotmail.com</a>	Marion	Available for interpreting after business hours in Hendricks County (criminal & civil) and Marion County (civil only)
Spanish	Bill Hargis	Certified	Cell: (513) 382-1486 Office: 513-988-6182	<a href="mailto:hargisbc@gmail.com">hargisbc@gmail.com</a>	Butler County, Ohio	Available throughout Indiana
Spanish	Blanca Gaona	Certified	(317) 918-3145	<a href="mailto:bgaona1@gmail.com">bgaona1@gmail.com</a>		

Language	Interpreter	Credential	Phone	Email	County of Residence	Notes
Spanish	Brenda Lee Enamor	Certified	(219) 325-9354	<a href="mailto:brendaenamorado@hotmail.com">brendaenamorado@hotmail.com</a>	LaPorte	Freelance interpreter, by appointment on the weekends and after 5:00 p.m.
Spanish	Carina Julian	Certified	(708) 903-2234	<a href="mailto:carinajulian@sbcglobal.net">carinajulian@sbcglobal.net</a>	Lake	
Spanish	Carlos A. Trincado	Certified	(317) 361-9862	<a href="mailto:crtinterpreter@gmail.com">crtinterpreter@gmail.com</a>	Boone	
Spanish	Carlos I. Carrillo, Attorney at Law	Certified	(765) 420-8056	<a href="mailto:carlos@ccarrillolaw.com">carlos@ccarrillolaw.com</a>	Tippecanoe	
Spanish	Carolina Salter	Certified	(765) 366-5700	<a href="mailto:ac5salter@aol.com">ac5salter@aol.com</a>	Montgomery	Freelance interpreter; Available throughout Indiana
Spanish	Catherine Kruck	Certified		<a href="mailto:cathkruck@yahoo.com">cathkruck@yahoo.com</a>	Hancock,	Available in Hancock, Hamilton & Marion counties
Spanish	Christina Courtright	Federally Certified	(812) 369-7176	<a href="mailto:christina@yourgoodwords.com">christina@yourgoodwords.com</a>	Monroe	Freelance interpreter and translator; Also available in Marion County
Spanish	Christopher G. Concepcion Santiago	Certified	(317) 296-4316	<a href="mailto:Krisgpr78@gmail.com">Krisgpr78@gmail.com</a>	Marion	
Spanish	Claudia Samulowitz	Federally & Indiana Certified	Cell: (765) 532-0617	<a href="mailto:schedule@TheLanguageConnection.us">schedule@TheLanguageConnection.us</a>	Tippecanoe	Freelance interpreter and translator; Owner of The Language Connection; Available throughout Indiana
Spanish	Daniela Guanipa Suarez	Certified	(317) 418-6166	<a href="mailto:daniela.guanipa@gmail.com">daniela.guanipa@gmail.com</a>	Hamilton	Available for document translation and for interpreting after business hours
Spanish	David Araujo	Certified	(574)349-0811	<a href="mailto:daraujo4@live.com">daraujo4@live.com</a>	Elkhart	Available in Districts 2 & 3 Law firms and private sector
Spanish	Dawn Ramey	Certified	(317) 965-0255	<a href="mailto:solramey@gmail.com">solramey@gmail.com</a>	Marion	Freelance interpreter and translator; Available to travel throughout Indiana
Spanish	Diana Vegas	Certified	(260) 749-2568	<a href="mailto:dianavegas@msn.com">dianavegas@msn.com</a>	Allen	Freelance interpreter but requests 5-7 days prior notice
Spanish	Eileen M. Ervesun	Certified	(317) 585-9392	<a href="mailto:eileenervesun@yahoo.com">eileenervesun@yahoo.com</a>	Hamilton	Only available during weekends
Spanish	Elena Caloca-Norman	Certified	(773) 317-1788	<a href="mailto:paul-norman@sbcglobal.net">paul-norman@sbcglobal.net</a>	Out-of-State (Cook County, Illinois)	

Language	Interpreter	Credential	Phone	Email	County of Residence	Notes
Spanish	Elizabeth Essary	Certified	(317) 332-3144	<a href="mailto:lizessary@aol.com">lizessary@aol.com</a>	Marion	
Spanish	Elizabeth Sanchez	Federally Certified	(310) 291-7317	<a href="mailto:elizabethsanchez7@yahoo.com">elizabethsanchez7@yahoo.com</a>	Vigo	
Spanish	Emily Schwartz Keirns	Certified	(260) 705-7174	<a href="mailto:eskeirns@hotmail.com">eskeirns@hotmail.com</a>	Allen	Freelance Interpreter; Available in Northeast Indiana
Spanish	Enrica J. Ardemagni	Certified	(317) 313-6605	<a href="mailto:eardema@iupui.edu">eardema@iupui.edu</a>	Marion	Freelance interpreting and willing to travel
Spanish	Francisco Cespedes	Certified	(812) 266-5738	<a href="mailto:and_ces@msn.com">and_ces@msn.com</a>	Greene	Available throughout Indiana
Spanish	Gema Aparicio	Certified	(260) 750-6783	<a href="mailto:aparicio4@gmail.com">aparicio4@gmail.com</a>	Allen	Freelance interpreter; Available throughout Indiana and willing to travel
Spanish	Gina Haro	Certified	(773) 430-1355	<a href="mailto:ginajharo@yahoo.com">ginajharo@yahoo.com</a>		
Spanish	Gladys Gonzalez Matthews	Certified	(317) 385-6538	<a href="mailto:Linguamerica@gmail.com">Linguamerica@gmail.com</a>	Marion	Freelance interpreter and translator; Available for interpreting for family mediation cases in Marion County
Spanish	Gloria Torres-Lupo	Certified	(219) 512-3038		Lake	Freelance interpreter, by appointment on weekdays after 5:00 p.m. & Saturdays; Available in Lake, Porter, Portage and La Porte Counties
Spanish	Greta Payne	Certified	(270) 702-0236	<a href="mailto:graytak@aol.com">graytak@aol.com</a>	Daviess	Available in Indiana and Kentucky
Spanish	Guillermo Romo	Certified	(219) 381-1217	<a href="mailto:guillermoromo@sbcglobal.net">guillermoromo@sbcglobal.net</a>	Lake	Freelance interpreter
Spanish	Heather Bridger	Certified	(408) 507-9115	<a href="mailto:hbrocita1@aol.com">hbrocita1@aol.com</a>	Elkhart	Freelance interpreter and translator; available in Elkhart, St. Joseph and Kosciusko Counties with advanced notice
Spanish	Irene Bublik	Certified	(317) 372-8846	<a href="mailto:irenebublik@yahoo.com">irenebublik@yahoo.com</a>	Hamilton	Freelance interpreting; available throughout Indiana

Language	Interpreter	Credential	Phone	Email	County of Residence	Notes
Spanish	Ivan J. M. Villasboa	Certified	(317) 319-2473	<a href="mailto:ivantravel@icloud.com">ivantravel@icloud.com</a>	Johnson	Freelance interpreter; Also available in Marion County
Spanish	Jaime Mendez	Certified	(317) 448-5270	<a href="mailto:jaime@luna360.com">jaime@luna360.com</a>	Marion	
Spanish	Javier H. Quinones	Certified	(773) 520-3757	<a href="mailto:jgandcompany@comcast.net">jgandcompany@comcast.net</a>	Out -of -State (Cook County, Illinois)	
Spanish	Jose I. Guerra	Certified		<a href="mailto:chela49@msn.com">chela49@msn.com</a>	Out-of-state (Cook County, Illinois)	
Spanish	Joshua C. Elliott	Federally Certified	(502) 235-4152	<a href="mailto:josweejce@yahoo.com">josweejce@yahoo.com</a>	Out-of-State Kentucky	Available to travel throughout the State of Indiana; particularly southern Indiana Counties
Spanish	Jouhanna Vasquez	Certified	(270) 929-1550	<a href="mailto:mail@jouhanna.com">mail@jouhanna.com</a>	Daviess	Certified in Kentucky
Spanish	Judith Kenigson Kristy	Federally Certified	(615) 948-5444	<a href="mailto:jkinterp@gmail.com">jkinterp@gmail.com</a>	Out-of-State Tennessee	Translator & Interpreter; Specialized in transcription & translation of forensic recording.
Spanish	Julio Gonzalez	Certified	(317) 373-1425	<a href="mailto:jucepe1@juno.com">jucepe1@juno.com</a>	Marion	
Spanish	Karina Marcelo	Certified	(317) 418-9194	<a href="mailto:kmarcelo1@yahoo.com">kmarcelo1@yahoo.com</a>	Marion	Freelance interpreter; Available throughout Indiana
Spanish	Karla Hoelscher	Certified	(260) 415-2756 Fax: (260) 436-0890	<a href="mailto:karla@k-certified.com">karla@k-certified.com</a>	Allen	"K-Certified Interpreters President and Founder"; Freelance interpreter and translator
Spanish	Katherine Leiva	Certified	(812) 250-9242	<a href="mailto:kleivareile@gmail.com">kleivareile@gmail.com</a>	Vanderburgh	Freelance interpreter; Available throughout Southwest Indiana
Spanish	Keith Ellis	Certified	(812) 254-5603 or (812) 444-9965	<a href="mailto:westendian@sbcglobal.net">westendian@sbcglobal.net</a>	Daviess	
Spanish	Kimberly Perez	Certified	(219) 863-6605	<a href="mailto:kimhayesperez@yahoo.com">kimhayesperez@yahoo.com</a>	Cass	Freelance interpreter
Spanish	L. Adriana Deck	Certified	(765) 376-9500	<a href="mailto:adrianadeck67@yahoo.com">adrianadeck67@yahoo.com</a>	Montgomery	

Language	Interpreter	Credential	Phone	Email	County of Residence	Notes
Spanish	Laura Garcia Hein	Federally and Indiana Certified	Cell: (402) 510-4564 Phone: (402) 661-7307	<a href="mailto:lauraGarcia-hein@ned.uscourts.gov">lauraGarcia-hein@ned.uscourts.gov</a>	Out-of-State Nebraska	Federally Certified
Spanish	Lina Drew	Certified	Work: (765) 973-9288 Cell: (765) 960-2401	<a href="mailto:ldrew@co.wayne.in.us">ldrew@co.wayne.in.us</a>	Wayne/Union	Some freelance interpreting but requests 48-72 hours of prior notice
Spanish	Lisa Hernandez	Certified	Cell: (812) 821-1398	<a href="mailto:czlover@yahoo.com">czlover@yahoo.com</a>	Monroe	Freelance interpreter; Available in Monroe, Owen, Greene and Lawrence counties
Spanish	Lorena P. Martin	Certified	(361) 549-8497	<a href="mailto:lpm@lorenamartin.com">lpm@lorenamartin.com</a>	Out-of-State Texas	Federally certified
Spanish	Lorie Gutierrez	Certified	(502) 356-4166	<a href="mailto:loriegutierrez@hotmail.com">loriegutierrez@hotmail.com</a>	Clark	Freelance interpreter
Spanish	Lourdes R. Daily-Pendón	Certified	(317) 372-9173	<a href="mailto:lpendon@aol.com">lpendon@aol.com</a>	Marion	Freelance interpreter and translator; Available throughout the state
Spanish	Lucia Flores	Certified		<a href="mailto:Luvic60@aol.com">Luvic60@aol.com</a>	Lake	Available in Cook County, IL
Spanish	Lucy Hernandez	Certified	(708) 849-7904		Out-of-State Illinois (central)	Freelance interpreter
Spanish	Marcia Loebick	Certified	(216) 476-0594	<a href="mailto:laromera@cruzio.com">laromera@cruzio.com</a>	Out-of-State Ohio	
Spanish	Maria Conde-Barwise	Certified	(915) 875-5632	<a href="mailto:ququitaconde@gmail.com">ququitaconde@gmail.com</a>	Marion	Available throughout Indiana
Spanish	Maria Del Carmen L. Weaver	Certified	(804) 691-8437	<a href="mailto:54ilovelife@gmail.com">54ilovelife@gmail.com</a>	Out-of-State Virginia	
Spanish	Maria Wildridge	Certified	(317) 260-1999	<a href="mailto:m_wildridge@yahoo.com">m_wildridge@yahoo.com</a>		
Spanish	Maria O. Zavala	Certified	(708) 351-4541	<a href="mailto:zavalam013@live.com">zavalam013@live.com</a>	Out of State of Indiana Illinois (Cook, County)	
Spanish	Marta G. McCoy	Certified	(317) 985-9215	<a href="mailto:mgmccoy317@aol.com">mgmccoy317@aol.com</a>	Hamilton	Freelance interpreter and translator; Available throughout the State of Indiana

Language	Interpreter	Credential	Phone	Email	County of Residence	Notes
Spanish	Marta Rainero Birge	Certified	(317) 340-7988	<a href="mailto:martabirge@att.net">martabirge@att.net</a>	Marion	Freelance interpreter; Also available in Hamilton County
Spanish	Massiel Krall	Certified	(317) 645-8130	<a href="mailto:massiekrall@comcast.net">massiekrall@comcast.net</a>	Hamilton	Willing to travel to Howard, Marion and Carroll counties with advance notice
Spanish	Melania Scheinel	Certified	(309) 698-5488	<a href="mailto:scheibel@mchsi.com">scheibel@mchsi.com</a>	Out-of-State Illinois (central)	
Spanish	Michael Cadavid	Certified	(219) 292-4343	<a href="mailto:michaelcadavid@gmail.com">michaelcadavid@gmail.com</a>	Lake	Freelance interpreter and translator; available throughout the State of Indiana
Spanish	Montserrat Zuckerman	Certified	Work: (781) 648-4347 Cell: (317) 372-2843	<a href="mailto:mzukerman51@gmail.com">mzukerman51@gmail.com</a>	Out-of-State Massachusetts	Available in Marion County
Spanish	Olivia Bernal	Certified	(317) 748-1655	<a href="mailto:oliviabernal@gmail.com">oliviabernal@gmail.com</a>	Out-of-State Texas	Freelance interpreter
Spanish	Patricia A. Dyess	Certified	(773) 615-4515	<a href="mailto:pady512@sbcglobal.net">pady512@sbcglobal.net</a>	Out-of-State Illinois	Requests prior notice/Federally Certified
Spanish	Patricia Manzon	Certified	(765) 376-6657	<a href="mailto:panzon@gmail.com">panzon@gmail.com</a>	Montgomery	
Spanish	Patrick Moore	Certified	(706) 380-5447	<a href="mailto:pkmoore@gmail.com">pkmoore@gmail.com</a>	Monroe	
Spanish	Rafael Mendez	Certified	(317) 652-7387	<a href="mailto:tatimitchell@hotmail.com">tatimitchell@hotmail.com</a>	Marion	
Spanish	Ramona Sharp	Certified	Phone: (812) 256-7032 Cell: (502) 609-5606	<a href="mailto:Sharpinterp@gmail.com">Sharpinterp@gmail.com</a>	Clark	Sharp Interpreting & Translating Services, LLC Freelance interpreter
Spanish	Randy Santillan	Certified	(312) 213-4921	<a href="mailto:rsntilln@aol.com">rsntilln@aol.com</a>		
Spanish	Raquel Gonzalez	Certified			Kosciusko	
Spanish	Rebecca Viezel Ortega	Certified	(360) 982-0270 (360) 419-9821	<a href="mailto:rebeccathelinguist@gmail.com">rebeccathelinguist@gmail.com</a>	Clark	Available for telephonic interpreting only and translations

Language	Interpreter	Credential	Phone	Email	County of Residence	Notes
Spanish	Rosalba Covey	Certified	(260) 241-2279	<a href="mailto:rosacovey@yahoo.com">rosacovey@yahoo.com</a>	Allen	Freelance interpreter and willing to travel
Spanish	Samuel E. Melo	Certified	(260) 494-7134	<a href="mailto:semelo@spanicus.com">semelo@spanicus.com</a> <a href="http://www.spanicus.com/">http://www.spanicus.com/</a>	Allen	Available throughout Indiana
Spanish	Santos L. Alemán	Certified	(574) 309-7058	<a href="mailto:aleman_santos@excite.com">aleman_santos@excite.com</a>	St. Joseph	
Spanish	Susannah M. Bueno	Certified	(574) 291-2875 or (574) 2868931	<a href="mailto:fbuenojr@sbcglobal.net">fbuenojr@sbcglobal.net</a>	St. Joseph	Freelance interpreter
Spanish	Trent Phillip Taylor	Certified	(574) 596-3540	<a href="mailto:trent.taylor@gmail.com">trent.taylor@gmail.com</a>	Marion	Available in Elkhart County
Spanish	Victor Krebs	Certified	(317) 916-1009	<a href="mailto:vekrebs@earthlink.net">vekrebs@earthlink.net</a>	Marion	
Spanish	Vivian Kurzendoerfer	Certified	(317) 694-3696	<a href="mailto:vivkurz@comcast.net">vivkurz@comcast.net</a>	Marion	Available throughout Indiana
Spanish	Viviana Delgado	Certified	Phone: (270) 862-3038 Cell: (270) 401-5710	<a href="mailto:vivanadelgado@alltel.net">vivanadelgado@alltel.net</a>	Out-of-State Kentucky	Willing to travel to southern Indiana counties – including Harrison, Crawford, Perry, Floyd and Spencer
Thai	Pornsiri Techapat	Qualified	(317) 407-7943	<a href="mailto:stanakit@comcast.net">stanakit@comcast.net</a>	Marion	Available throughout Indiana





## *Appendix G*

### **COMMON IMMIGRATION TERMS**

**Adjustment of Status.** A procedure allowing certain aliens in the United States to apply for lawful permanent resident status (Green Card) without having to depart the United States and appear at an American consulate in a foreign country. See 8 U.S.C. § 1255(a) & (i).

**Admission/Admitted.** With respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer. 8 U.S.C. § 1101(a)(13)(A).

**Aggravated Felony.** A select group of offenses for which conviction entails significant additional immigration consequences. The INA bars aliens convicted of aggravated felonies from obtaining certain forms of discretionary relief, such as asylum, cancellation of removal, and voluntary departure. Such aliens generally are precluded from obtaining judicial review to the greatest extent permitted under the Constitution. See 8 U.S.C. § 1252(a)(2)(C). The definition of “aggravated felony” is found at 8 U.S.C. § 1101(a)(43).

**Alien.** Any person not a citizen or national of the United States. 8 U.S.C. § 1101(a)(3). This includes immigrants (Lawful Permanent Residents) and non-immigrants.

**Alien File/A-File.** A file maintained by the Department of Homeland Security (“DHS”) containing an alien’s biographical information, applications for immigration benefits, documentation from any prior immigration proceedings, a photograph, and fingerprints.

**Alien Number/A-Number.** A registration number assigned by DHS to each alien and used for identification and tracking by DHS, the immigration courts, and the Board of Immigration Appeals. Currently, A-numbers consist of the letter “A” followed by nine digits. For example: A012-345- 678.

**Anti-Drug Abuse Act of 1988 (“ADAA”), Pub. L. 100-690, 102 Stat. 4181 (Nov. 18, 1988).** Section 7342 of the ADAA added the definition of “aggravated felony” to the Immigration and Nationality Act (“INA”).

**Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. No. 132, 110 Stat. 1273 (Apr. 24, 1996).** Amended the Immigration and Nationality Act to provide for expedited removal of criminal and terrorist aliens.

**Asylee.** An alien within the United States who has been granted the protection of the United States asylum laws because of persecution or a well-founded fear of persecution in his or her home country.

**Board of Immigration Appeals (“Board” or “BIA”).** The appellate body within the Department of Justice’s Executive Office For Immigration Review (“EOIR”) that hears

administrative appeals from decisions of Immigration Judges and from certain decisions made by the United States Citizen and Immigration Services and by Customs and Border Protection.

**Cancellation of Removal.** A form of relief from removal for permanent residents and non-permanent residents. See 8 U.S.C. § 1229b(a) & (b).

**Child.** For immigration purposes, an unmarried person under the age of 21 years. 8 U.S.C. § 1101(b)(1). There are specific provisions regarding children born out of wedlock, stepchildren, and adopted children, which can be found in the comprehensive definition at 8 U.S.C. § 1101(b)(1)(A)-(F).

**Conviction.** With respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where: (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. 8 U.S.C. § 1101(a)(48)(A). Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part. 8 U.S.C. § 1101(a)(48)(B).

**Crime Involving Moral Turpitude ("CIMT").** A ground of deportability and inadmissibility under the INA. See 8 U.S.C. §§ 1182(a)(2)(A) and 1227(a)(2)(A). "Moral turpitude" is not defined in the INA, but various courts have recognized that moral turpitude generally refers to conduct that involves fraud or is inherently base, vile, and depraved, and contrary to the accepted rules of morality and the duties owed between persons and to society in general.

**Department of Homeland Security ("DHS").** The department created by the Homeland Security Act, and to which the functions of the former Immigration and Naturalization Service ("INS") were transferred.

**Deportation.** The term used prior to April 1, 1997, to refer to the formal removal of an alien from the United States. It also refers to the type of immigration proceedings commenced prior to April 1, 1997, to remove an illegal or criminal alien who has made an entry into the United States.

**Entry Without Inspection ("EWI").** Formerly, aliens who entered without inspection by an immigration officer were considered deportable under 8 U.S.C. § 1251(a)(1)(B) (1990). Under the amended INA, they are now known as aliens present without admission or parole (and may alternatively be referred to as "PWI" or "PWAP"), and are considered to be inadmissible. See 8 U.S.C. § 1182(a)(6)(A). Aliens who entered at a place or time other than as designated by DHS may be criminally prosecuted. See 8 U.S.C. § 1325.

**Exclusion.** Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the formal denial of an alien's entry into the United States, or the formal removal of the alien from the United States following an exclusion hearing.

**Executive Office for Immigration Review (“EOIR”).** An office within the U.S. Department of Justice that oversees the activities of the Office of the Chief Immigration Judge (including the immigration court system) and the Board of Immigration Appeals.

**Good Moral Character.** An element aliens must demonstrate in order to be eligible for various immigration benefits. See, e.g., 8 U.S.C. §§ 1229a (cancellation of removal) and 1427(a) (naturalization). The INA does not define “good moral character,” but sets forth a non-exclusive list of circumstances that foreclose a finding of good moral character. 8 U.S.C. § 1101(f). A catchall provision makes clear that these per se rules are not exclusive: “The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.”

**Green Card.** Commonly used term to describe the Alien Registration Receipt Card (Form I-551) issued to lawful permanent residents in lieu of a visa. The first such cards were issued in 1946 and were green in color. Although the cards later ceased to be green, they are still commonly called “green cards.”

**Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (Sept. 30, 1996).** IIRIRA replaced “deportation” and “exclusion” proceedings with a single type of proceeding before immigration judges: “removal proceedings.” It also stripped courts of jurisdiction to review discretionary decisions by the Attorney General (i.e., the Board of Immigration Appeals), including immigration bond, parole, and certain relief from removal.

**Immigrant.** Every alien seeking to enter the U.S. is presumed to be an immigrant, that is intending to settle here permanently, unless he or she can prove that he or she is a non-immigrant as defined in 8 U.S.C. § 1101(a)(15)(A)-(V). 8 U.S.C. § 1184(b).

**Immigration Judge.** An attorney appointed by the Attorney General as an administrative judge to conduct removal proceedings. 8 U.S.C. § 1101(b)(4); 8 C.F.R. § 1003.10.

**Immigration Act of 1990 (“IMMACT90”), Pub. L. No. 101-649, 104 Stat. 5005 (Nov. 29, 1990).**

Effective as of November 29, 1990. Among other things, it added two types of crimes to the INA’s definition of “aggravated felony”: (1) crimes of violence for which the alien is sentenced to or confined for a period of five years, and (2) money laundering.

**Immigration and Nationality Act of 1952 (“INA”), Pub. L. No. 82-414, 66 Stat. 163 (June 27, 1952).** Establishes the basic structure of our immigration laws. The INA sometimes is referred to as the McCarran-Walter Act after the bill’s sponsors: Senator Pat McCarran (D-Nevada) and Congressman Francis Walter (D-Pennsylvania). Although it stands alone as a body of law, the INA is also codified at 8 U.S.C. § 1101 et seq. Congress has amended the INA numerous times, but it remains the basic statutory body of immigration law.

**Immigration and Nationality Technical Corrections Act of 1994 (“INTCA”), Pub. L. No. 103-416, 108 Stat. 4320 (Oct. 25, 1994).** Among other things, it expanded the class of aggravated felonies.

**Immigration Marriage Fraud Amendments of 1986 (“IMFA”), Pub. L. No. 99-639, 100 Stat. 3537 (1986).** These amendments impose strict conditions on any alien seeking to become a lawful permanent resident through marriage to a United States citizen or permanent resident, including conditional residency for a two-year period.

**Immigration Reform Control Act of 1986 (“IRCA”), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986).** Among other things, IRCA established the Criminal Alien Hearing Program, which allowed immigration authorities to place convicted criminal aliens in deportation proceedings while the alien was still in criminal detention as a means to expedite deportation.

**Institutional Hearing Program (“IHP”).** Refers to removal hearings held inside correctional institutions while the alien is serving his or her criminal sentence.

**Judicial Removal.** The procedure through which a United States District Judge may order the removal of a criminal alien during the sentencing phase of criminal proceedings. See 8 U.S.C. § 1228(c).

**Lawful Permanent Resident (“LPR”).** An alien who has been conferred permanent resident status, or an alien who has a “Green Card.” Upon meeting the statutory prerequisites for naturalization, an LPR may apply to become a naturalized citizen. 8 U.S.C. § 1427.

**Naturalization.** The process of conferring citizenship of a state on a person after birth. 8 U.S.C. § 1101(a)(23). See also 8 U.S.C. § 1400, et seq.

**Nicaraguan Adjustment and Central American Relief Act of 1997 (“NACARA”), Pub. L. No. 105-119, 111 Stat. 2193 (Nov. 19, 1997).** NACARA provided various forms of immigration benefits and relief from deportation to certain Nicaraguans, Cubans, Salvadorans, Guatemalans, nationals of former Soviet bloc countries and their dependents.

**Non-Immigrant.** An alien admitted to the United States for a temporary duration. 8 U.S.C. § 1101(a)(15)(A)-(V).

**Notice to Appear (“NTA”).** The NTA (Form I-862) is the charging document used by DHS to place an alien in removal proceedings. The charging document was formerly called an Order to Show Cause (“OSC”).

**Parolee.** An alien seeking admission at a port of entry who appears to DHS to be inadmissible, but for “urgent humanitarian reasons” or “significant public benefit” is allowed to come into the United States, provided the alien is not a security or flight risk. See 8 C.F.R. § 212.5(b).

**Particularly Serious Crime. Crime for which a conviction will render an alien ineligible for asylum or withholding of removal.** For purposes of asylum eligibility, all aggravated felony offenses are expressly declared by statute to be “particularly serious” crimes constituting a danger to the community. 8 U.S.C. § 1158(b)(2)(B)(i). Other crimes may also be determined to be “particularly serious” for asylum purposes. See 8 U.S.C. § 1158(b)(2)(A)(ii) & (B)(ii). For purposes of withholding of removal, a particularly serious crime includes an aggravated felony for which a five- year or longer sentence is ordered (whether imposed or suspended). 8 U.S.C. § 1231(b)(3)(B)(ii). Other crimes may also be determined to be “particularly serious” despite the length of sentence imposed. 8 U.S.C. § 1231(b)(3)(B).

**REAL ID Act, Pub. L. No. 109-13, 119 Stat. 302 (May 11, 2005).** Among other things, the REAL ID Act streamlined the piecemeal judicial review of orders of removal by channeling them all to the United States Courts of Appeals and tightened laws on applications for asylum and removal of aliens for terrorist activity.

**Refugee.** A person who is outside the country of his or her nationality who is unable or unwilling to return to that country because of past persecution or a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. 8 U.S.C. § 1101(a)(42).

**Removal. Following IIRIRA, the removal of an alien from the United States after a removal proceeding commenced on or after April 1, 1997.** Among other things, IIRIRA consolidated deportation and exclusion proceedings into unified “removal” proceedings in which an immigration judge determines (1) whether an alien is subject to removal from the United States based on charges of inadmissibility or deportability filed by DHS and (2) whether the alien is eligible for any relief or protection from removal.

**“S” Visa.** A limited number of non-immigrant visas granted to aliens who have crucial, reliable information concerning criminal or terrorist activity, and are willing to provide such information to United States law enforcement authorities in ongoing investigations or prosecutions. See 8 U.S.C. § 1101(a)(15)(S).

**Serious Criminal Offense.** For purposes of 8 U.S.C. § 1182(a)(2)(E) (certain aliens involved in serious criminal activity who assert immunity from prosecution): (1) any felony; (2) any crime of violence, as defined in section 18 U.S.C. § 16; or (3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another. 8 U.S.C. § 1101(h).

**U.S. Citizenship and Immigration Services (“CIS”).** The agency within DHS responsible for adjudicating applications for immigration benefits, including claims for refugee status and asylum.

**U.S. Customs and Border Protection (“CBP”).** An agency within DHS responsible for enforcing the immigration laws at our nation’s borders and ports of entry. The U.S. Border Patrol and the functions of the former INS inspectors have been transferred to this agency.

**U.S. Immigration and Customs Enforcement (“ICE”).** The agency within DHS principally responsible for enforcing the immigration laws in the interior of the United States.

**Voluntary Departure (“VD”).** The privilege of voluntarily departing the United States in lieu of being removed.

## *Appendix H*

### **ADDITIONAL RESOURCES**

Executive Office for Immigration Review

<http://www.justice.gov/eoir>

The EOIR offers access to published decisions of the Board of Immigration Appeals and the U.S. Attorney General by clicking on "Virtual Law Library" and then "AG/BIA Decisions".

Information about conditions in foreign countries can be obtained in the Virtual Law Library by clicking on "Country Conditions Research" and then clicking on the first letter of the country to be reviewed.

National Immigration Project of the National Lawyers Guild (NIP)

NIP offers practice advisories on criminal immigration topics as well as trainings on immigration law issues. NIP specializes in criminal immigration, U visas, Violence against Women Act (VAWA), and federal litigation.

<http://www.nationalimmigrationproject.org>

National Immigrant Justice Center

[www.immigrantjustice.org](http://www.immigrantjustice.org)

A variety of legal resources, including "Defending noncitizens in Illinois, Indiana and Wisconsin (7th Circuit Manual)", by Maria Baldini-Potermine, available as a free PDF download at

[www.immigrantjustice.org/defendersmanual](http://www.immigrantjustice.org/defendersmanual)

Immigrant Legal Resource Center

<http://www.ilrc.org>

Offers information and downloadable materials on a wide range of immigration issues, including quick reference charts for offenses in Arizona and California, a manual on immigration law affecting children in delinquency, and guides to immigration applications for asylum, persons abused by a U.S. citizen or lawful permanent resident spouse (VAWA), and persons cooperating with law enforcement in prosecution or investigation of a crime (U visa).

TRAC

<http://trac.syr.edu/tracdhs/http://trac.syr.edu/immigration/library/>

Online library of government oversight reports on immigration topics, including data on ICE enforcement of immigration laws, aggravated felonies, relief under the Convention Against Torture, and immigration consequences of criminal convictions.

National Legal Aid & Defender Association

The Defending Immigrants Partnership Website

[http://www.nlada.org/Defender/Defender\\_Immigrants](http://www.nlada.org/Defender/Defender_Immigrants)

Indiana Legal Services

Noncitizens - Immigration

(provides other immigration related internet links)

<http://www.indianalegalservices.org/library/68>

New York State Defenders Association Criminal Defense Immigration Project  
<http://www.nysda.org/index-3.html>

[Immigrant Defense Project](http://www.immigrantdefenseproject.org)  
[www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org)

U.S. Citizenship and Immigration Services  
<http://www.uscis.gov/>

Ninth Circuit Court of Appeals  
<http://www.ca9.uscourts.gov/>  
Created the manual *Immigration Law in the Ninth Circuit: Selected Topics* that provides a comprehensive review of the following topics: Jurisdiction over Immigration Petitions; Asylum, Withholding of Removal, and Relief under CAT; Cancellation of Removal, Suspension of Deportation, and Former Section 212(c) Relief; Motions to Reopen or Reconsider Immigration Proceedings; and Criminal Issues in Immigration Law. For more information or to download the manual, click on Guides and Legal Outlines and then click on Ninth Circuit Immigration Outline.

U.S. Census Bureau  
Immigration Data  
<http://www.census.gov/population/intmigration/>

The U.S. Immigration and Customs Enforcement (ERO) maintains a webpage with links to statistics, field offices, and policies at <https://www.ice.gov/>.

The ICE online detainee locator for noncitizens being detained pursuant to immigration laws is available: <https://locator.ice.gov/odls/homePage.do>

Cornell Law School  
Legal Information Institute - Immigration  
<http://www.law.cornell.edu/wex/Immigration>

U.S. Department of Homeland Security  
Immigration Statistics  
<http://www.dhs.gov/immigration-statistics>

Law Offices of Norton Tooby  
Popular topics in the field of criminal immigration law  
<http://nortontooby.com/topics>