

# CRIMMIGRATION COMMUNICATION



## WHAT IS INADMISSIBILITY?

What is “inadmissibility,” a term of art used in the immigration law? Deportation, which Justice Brandeis described in *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922), as the “loss of all that makes life worth living,” is easily understood. When a person is physically removed from the US, she may be detained, separated from loved ones, unable to work, and deprived of her property.

But the concept of inadmissibility is less intuitive. It does not conjure visions of family separation, incarceration, or loss. Inadmissible non-citizens are, metaphorically, “knocking on the door,” seeking admission to the US. Nevertheless, some inadmissible non-citizens are physically present in the US. Any inadmissibility ground is also a basis for removal, 8 USC §1227(a)(1)(A), so inadmissible non-citizens may be physically deported. Inadmissibility also results in a prohibition on lawful entry to the United States, even for long term lawful permanent residents. 8 U.S.C. §1101(a)(13)(A). The consequences of inadmissibility can be devastating.

Inadmissibility will be triggered by conviction for certain crimes, 8 USC 1101(a)(13)(C)(v). Thus, some lawful permanent residents may be left stranded outside the United States after international travel and unable to re-enter to join their families and work after a brief vacation abroad. Other immigrants who may have lived and worked in the United States for a long time will be prevented from accessing immigration benefits for which they are otherwise eligible, including as a defense to charges of removal before deportation. Triggering inadmissibility carries serious consequences under immigration law.

The Appellate Division of the Second Department misunderstood the serious consequences of triggering inadmissibility in *People v. Terrero*, 198 AD3d 930 (2021)(app. denied, 37 NY3d. 1165 (2022)).

Defendant Terrero, a lawful permanent resident, plead guilty to NYPL §220.16, triggering both inadmissibility and deportability. Defense counsel had informed the defendant that his guilty plea would trigger deportability, but neglected to advise that defendant would also become inadmissible by his conviction for this offense. Defendant moved pursuant to NYCPL §440.10 to vacate his conviction because he had not been informed by the Court or his counsel about the immigration consequences of his plea.

In denying his motion, the Appellate Division took a narrow view of *Padilla v. Kentucky’s*, 559 US 356, 356 (2010) effective assistance of counsel rule. According to the court, *Padilla* requires advice about “direct or deportation consequence[s] of pleading guilty” only. The Appellate Division determined that triggering inadmissibility was not a “direct consequence” of pleading guilty to the charge. Certainly, triggering inadmissibility is as direct a consequence of a guilty plea as triggering deportability, if less dramatic.

To best protect immigrant clients’ interests in avoiding negative immigration consequences, criminal defense counsel should understand and explain all known ramifications under the immigration laws of any conviction, including where a conviction will trigger inadmissibility. Specific consequences of inadmissibility, such as limitations on return to the US after international travel, inability to access lawful immigration status, and potential for drawing the attention of ICE for enforcement, detention, and removal are important to share with clients before resolving a charge.

Advice from the Long Island Regional Immigration Assistance Center will include this information where relevant in a particular case. For a consultation and advice, please contact us.

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