



We trust you will gladly receive this first issue of the Long Island Regional Immigration Center (LIRIAC) Newsletter! The purpose of the newsletter is to discuss relevant and emerging topics of criminal-immigration law that will assist assigned counsel in understanding how criminal and family court dispositions can impact their clients' immigration status.

## HOW CRIMINAL CONVICTIONS CAN AFFECT NONCITIZENS

### Your Client's Status Can Change Everything

As you well know, in the landmark decision *Padilla v. Kentucky*, 599 U.S. 356 (2010), the U.S. Supreme Court found that criminal defense counsel must inform clients about the immigration consequences of a plea. To avoid ineffective assistance of counsel claims, you must execute the three Padilla pillars: (1) Ask all clients about citizenship, (2) Advise about the immigration consequences of charges and offers, and (3) Negotiate dispositions according to your clients' priorities. At LIRIAC it is our job to make sure you successfully satisfy these obligations and thus shield yourself from ineffective assistance of counsel claims.

In order to better understand the various implications of convictions or findings (initiation of removal proceedings, inability to adjust or naturalize, or ineligibility for certain

forms of relief in immigration court), defenders should understand the difference between inadmissibility and deportability. Largely, deportability grounds apply to noncitizens who have been lawfully admitted into the United States with some form of status, such as legal permanent residents ("LPRs") or visa holders. Inadmissibility applies to everyone seeking entry from outside the U.S., whether for the first time or after international travel, and those attempting to adjust status within the U.S. Some classifications of crimes, such as Crimes Involving Moral Turpitude ("CIMTs") and Controlled Substance Offenses ("CSOs"), affect deportability and inadmissibility – but in vastly different ways. For this reason, confidentially procuring a client's status from the outset of representation is critical.

## A NOTE ON ICE HOLDS

The fact that your client has an ICE hold does not mean that deportation is inevitable, even if your client is undocumented! There are various forms of relief that your client might be eligible for in defense of removal, including adjustment of status, asylum, withholding of removal, protection under the Convention Against Torture or the Violence Against Women Act, Cancellation of Removal, U visas (for victims of a crime), and T visas (for trafficking victims) to name a few. Further, eligibility for these diverse benefits can be seriously impacted by criminal convictions or admissions in varying ways. Accordingly, regardless of your particular client's circumstances, be sure to contact the LIRIAC before assuming that the conviction is immaterial because the client lacks status or has an ICE hold.

## DEPORTABILITY

So what crimes trigger deportability? A conviction of any aggravated felony (“agg fel”), the definition of which includes, inter alia: murder, drug or firearm trafficking, fraud or deceit offenses where the loss to the victim exceeds \$10,000, and crimes of violence, theft, burglary, or obstruction of justice with a resulting sentence of 1 year or more.

Crimes involving moral turpitude generally include crimes containing an intent to defraud or to steal, crimes which include the threat of or actual physical harm and sex offenses. CIMT convictions within the first 5 years of lawful admission to the U.S. cause deportability unless it is a B misdemeanor or violation. A single CIMT

conviction after the 5 year period, regardless of severity, will not render a noncitizen deportable. At any time, however, two CIMT convictions not arising from a single scheme of conduct will render a noncitizen deportable.

Deportability is also prompted by a conviction of a federally controlled substance offense (including marijuana) and a firearm or destructive device offense. The only exception to CSOs is for one simple possession of 30 grams or less of marijuana. Lastly, convictions of domestic violence, stalking, child abuse, child neglect, or child abandonment, or a family or criminal court finding of a violation of an order of protection will all result in deportability.

### MANDATORY DETENTION

Sec. 236(c) of the Immigration and Nationality Act, or “INA” dictates that the attorney general “*shall* take into custody any alien who” is inadmissible or deportable under select grounds. These grounds include CIMT, drug, prostitution, firearm or aggravated felony convictions. **This is particularly important to note** because of a recent Supreme Court decision, *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), which held there is no right to periodic bond hearings for detained noncitizens. For our purposes, this means that under current federal precedent **any client subject to mandatory detention triggered by a conviction in New York could face indefinite ICE detention without the right to a bond hearing.**

## INADMISSIBILITY

What about inadmissibility? Inadmissibility is distinct from deportability as a mere admission of a crime can result in inadmissibility, whereas deportability requires a conviction – with limited exceptions including a court finding of a violation of an order of protection. Any CSO or CIMT, or admission thereof, will prompt inadmissibility. The only exception to this, termed the petty offense exception, is that one misdemeanor CIMT, for which the sentence was 6 months or less, does not result in criminal inadmissibility. Prostitution or commercialized vice will also result in inadmissibility. Lastly, two or more offenses where the aggregate jail sentence is 5 years or more will render a noncitizen criminally inadmissible.

The only way to properly determine whether your client is at risk for criminal inadmissibility or deportability is to verify their particular circumstances and status in the U.S. As discussed above, the rules of deportation or eligibility for immigration benefits are contingent upon status, or lack thereof, and therefore one of your first questions to a new client should be where were they born. This question is particularly useful because many clients may erroneously state or believe that they are U.S. citizens, even if they were born abroad. Once you have this information, you will know to contact LIRIAC for a free individualized advisal.

### Contact us!

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