Immigration Consequences of Criminal Convictions in Michigan

ACLU Michigan

AILA Michigan Chapter

SBM State Bar of Michigan | Immigration Law Section

Table of Contents

Prepared in 2020 by the American Civil Liberties Union of Michigan, the American Immigration Lawyers Association-Michigan Chapter, and the State Bar of Michigan's Immigration Law Section.

This publication was adapted from and contains substantial portions of a similar publication prepared for Massachusetts practitioners by the Immigration Impact Unit of the Committee for Public Counsel Services, https://www.publiccounsel.net/iiu/wp-content/uploads/sites/15/IIU-Guide-May-2018.pdf.

We also thank Abril Valdes Siewert, Russell Abrutyn, Ruby Robinson, and Samantha Kulhanek for adapting the information in this publication for Michigan practitioners.

Introduction

Removal of noncitizens from the United States due to criminal convictions has skyrocketed in recent years because of changes in U.S. immigration law and a dramatic increase in immigration enforcement. Convictions for minor criminal offenses can have disastrous and irrevocable consequences for noncitizens; dispositions that appear innocuous or even favorable in terms of incarceration or criminal penalty may cause far worse immigration consequences. In 2010, the U.S. Supreme Court in *Padilla v. Kentucky* acknowledged that deportation "is a particularly severe 'penalty'" and so "intimately related to the criminal process" that defense attorneys are required under the Sixth Amendment to advise their noncitizen clients of potential immigration consequences prior to resolving criminal cases. The Court thus held that the failure to properly advise noncitizen clients of immigration consequences constitutes ineffective assistance of counsel.[1] As a result, criminal defense practitioners must either develop a sufficient understanding of the immigration consequences of criminal convictions so as to be able to properly advise their clients, or they must consult with an immigration law expert who can analyze and advise on the potential consequences. Immigration law is complex and ever-changing, so defense counsel should consider consulting with someone who understands the interplay between criminal and immigration law.

In Michigan, resources available to criminal defense practitioners include the State Bar of Michigan's Immigration Law Section, American Immigration Lawyers Association-Michigan Chapter, and the Michigan Immigrant Rights Center.

The following discussion and appendices are designed to assist criminal defense attorneys in analyzing the potential immigration consequences of criminal conduct. They are a starting point and should not be used in place of individual research. Moreover, because these documents are meant for criminal defense attorneys, they present the most conservative analysis of the ramifications of criminal conduct; therefore, the conclusions are not intended for use by immigration attorneys or judges in determining the consequences of criminal conduct. Diligent and skilled immigration counsel should always explore defenses to removal charges and should rarely, if ever, concede a criminal ground of removability.

1 *Padilla v. Kentucky*, 559 U.S. 356 (2010).

Governing Law

The primary statutory authority is the Immigration and Nationality Act of June 27, 1952, as amended ("INA"). The Act in its current form is codified at 8 U.S.C. § 1101 *et seq*. Most immigration practitioners tend to refer to the INA by its more informal section numbers, rather than by citation to the United States Code (*e.g.*, INA § 208 instead of 8 U.S.C. § 1158); however, for ease of reference this document will use the U.S. Code citations. Most regulations pertaining to immigration law are found at Title 8 of the Code of Federal Regulations (8 C.F.R.), though some matters are also covered in titles 20, 22, 28, and 42 of the C.F.R. and elsewhere. Effective March 1, 2003, the responsibilities of the former Immigration and Naturalization Service ("INS") were divided among three new agencies within the Department of Homeland Security ("DHS"): 1) U.S. Citizenship and Immigration Services ("USCIS") administers visa petitions, work authorizations, and other forms of immigrant and nonimmigrant status; 2) U.S. Immigration and Customs Enforcement ("ICE") oversees immigration and customs investigations and enforcement (including detention and removal); and 3) U.S. Customs and Border Protection ("CBP") oversees border regions and ports of entry. The Immigration Court remained under the control of the Department of Justice, and it oversees most removal proceedings.

In addition to statutory law, immigration case law is developed by the federal courts, the Attorney General, and the Board of Immigration Appeals ("BIA"). The BIA issues appellate administrative decisions that are binding nationwide on all Immigration Judges unless modified or overruled by the Attorney General or a federal court. Some BIA decisions are subject to judicial review in the federal courts.[2] Administrative decisions designated as precedential by the BIA are referred to by a citation such as *Matter of Ozkok*, 19 I. & N. Dec. 546 (BIA 1988). These decisions are published and are available on Lexis, Westlaw, and on the BIA's website at http://www.justice.gov/eoir/vll/intdec/lib_indecitnet.html.

U.S. Citizens and Noncitizens: Types of Immigration Status

Citizens

With only a few exceptions, such as some children of diplomats, citizenship is obtained automatically by birth on U.S. soil pursuant to the 14th Amendment to the U.S. Constitution. Thus, if your client was born in the United States, she is probably a U.S. citizen. This would be true even if she left the United States soon after birth and has lived abroad for many years.[3] Since the late eighteenth century, U.S. statutes have also provided for the grant of U.S. citizenship to the children of U.S. citizens born abroad. The rules, however, have changed dramatically over the years, and such cases

2 Judicial review is governed by 8 U.S.C. § 1252.

3 It is possible, however, that a client who was born in the United States has lost citizenship through voluntary expatriation. *See* 8 U.S.C. § 1481(a); *see also Vance v. Terrazas*, 444 U.S. 252 (1980) (finding that intent to relinquish citizenship must be proven by preponderance of the evidence).

are notoriously complex. If your client had even one U.S. citizen parent or grandparent or was adopted by a U.S. citizen it is very important to research this question thoroughly. The law in force at the time of birth will generally control.[4]

Citizenship may also be conferred by the government through "naturalization proceedings."[5] Generally, in order to be naturalized, the noncitizen must have been a lawful permanent resident continuously for the five years preceding her application, physically present in the United States for at least half that time, and in a particular state or region for at least three months.[6] A client who is a naturalized U.S. citizen will have been given a certificate evidencing this fact. Naturalization records may be verified by checking with the clerk of the United States district court where the swearing-in ceremony took place. The minor children of a person who naturalizes may automatically derive citizenship. This may be true even if the child becomes aware that his or her parent naturalized many years ago.[7] Children who derived U.S. citizenship will not have documentation of that fact unless they affirmatively applied for a U.S. passport or citizenship certificate. In addition to the client's own immigration history, every client should therefore be asked about the complete immigration history of his/her parents and grandparents.

With a very few, extremely rare exceptions, a U.S. citizen client will not face any immigration consequences as a result of criminal proceedings. However, a naturalized U.S. citizen who is convicted of a crime, where the offense occurred before they naturalized, can become subject to denaturalization. Moreover, a U.S. citizen who is convicted of an offense designated under the Adam Walsh Act, including certain crimes against children, can be permanently barred from sponsoring any family member for lawful permanent resident status.[8]

A naturalization applicant, however, may be denied naturalization on the basis of a criminal conviction. Immigration law requires applicants for naturalization to be of "good moral character" for the five years preceding the date of application.[9] Convictions, or even dismissed or uncharged conduct can delay or prevent naturalization. Issues surrounding citizenship and good moral character will be discussed in more detail below.

---

4 The current rules are set forth in 8 U.S.C. §§ 1401, 1408, and 1409. Some immigration treatises include charts setting forth the statutory requirements according to birthdate. *See, e.g.*, Ira J. Kurzban, *Kurzban's Immigration Law Sourcebook* (16th ed. 2018).

5 *See* 8 U.S.C. § 1421 *et seq*.

6 *See* 8 U.S.C. § 1427. The statute requires only three years of permanent residence if the applicant is married to a U.S. citizen, under certain circumstances. *See* 8 U.S.C. § 1430; 8 C.F.R. § 319.1(a). Note also that there are a wide variety of exceptions to these rules. For example, a person who served honorably in the U.S. military may apply for naturalization without becoming a permanent resident. *See* 8 U.S.C. § 1440(a).

7 See 8 U.S.C. § 1431, which codifies the Child Citizenship Act of 2000. The Act came into effect on February 27, 2001, and persons 18 or over on that date are subject to prior versions of the law. *See also* 8 U.S.C. § 1433 (setting forth procedure for naturalization of children on application of U.S. citizen parent).

8 Adam Walsh Child Protection and Safety Act of 2006.

9 8 U.S.C. § 1427(a).

Lawful Permanent Residents

Noncitizens who attain the status of U.S. legal permanent residents (so-called "LPR" status) can lose that status and be deported as a result of criminal proceedings in the United States. (Unfortunately, many people are unaware of this fact and believe incorrectly that long-term legal residents will not be deported for minor crimes such as simple possession of marijuana or petty larceny.) Most such persons will likely be aware of their status as LPRs and will have in their possession a so-called "green card" (technically known as a "Permanent Resident Card"), which, in keeping with the anomalous nature of much of immigration practice, is not necessarily green.[10] While legal permanent residence status does not expire,[11] a green card is only valid for ten years at a time, and should be renewed. The main concern for an LPR in criminal proceedings should be whether he will be deported as a result of actions taken in the criminal case. As discussed more fully below, grounds of deportability are described quite specifically in the INA. It is also crucial, however, to advise the client that each time he leaves the United States he may be subject, as a noncitizen, to all grounds of "inadmissibility" as well.[12]

Though there are similarities, the grounds of deportation and those for inadmissibility differ in significant and subtle ways.[13] Thus, it is not uncommon that a criminal disposition is structured in such a way that it avoids deportation but renders the client subject to inadmissibility upon re-entry. The consequences of the failure to advise one's client of this fact could be truly disastrous. A client may be permitted to live in the United States but may be denied re-entry and could very well be arrested at an airport or border and subject to long- term incarceration upon her return from a trip abroad.

Lawful Non-Immigrants

All noncitizens who enter the United States are presumed to be "immigrants," which means that the government presumes that they are entering with the intention of living permanently in the United States.[14] So called "non-immigrants" are those noncitizens who are admitted within one of a number of specifically defined categories in the INA.[15] Each category has a letter designation. In general, the noncitizen who enters in one of these categories must have demonstrated both a specific non-

---

10 It is also possible for a person to be a permanent resident and not to have a green card. Sometimes these cards take a long time to process. In the interim, most permanent residents will have a stamp in their passports as evidence of their status. The card is evidence of status, not a precondition of status, so a person remains a permanent resident even after the card expires.

11 Conditional residence expires after two years, unless it is extended. *See* 8 U.S.C. § 1186a. This status is most typically conferred on spouses of U.S. Citizens in situations in which the marriage was less than two years old at the time of approval of the residence. Conditional residents can petition to remove the conditions on their residence after two years. *See* 8 U.S.C. § 1186a(c).

12 *See* 8 U.S.C. §§ 1101(a)(13)(C), 1182. An exception to this rule was the so-called *Fleuti* doctrine which provided that an "innocent, casual, and brief" departure which is not "meaningfully interruptive" of permanent resident status will not subject a permanent resident to the entry doctrine upon return to the United States. *Rosenberg v. Fleuti*, 374 U.S. 449, 462-63 (1963). The U.S. Supreme Court has upheld the *Fleuti* doctrine for lawful permanent residents convicted of offenses prior to the 1996 changes in the immigration laws. *Vartelas v. Holder*, 566 U.S. 257 (2012).

13 *See* Appendix 2.

14 8 U.S.C. § 1101(a)(15).

15 *Id.*

immigrant purpose for entry and an intention not to remain in the United States permanently.[16] The most common categories of non-immigrants are business visitors and tourists (B-1 and B-2), students and exchange visitors (F, M, or J), and temporary workers (H). Non-immigrants will generally have a visa stamp in their passports evidencing their status as well as an I-94 card (a white card about the size of an index card that is often stapled into the person's passport). This card shows that they were admitted in the proper category. (Noncitizen visitors from certain countries may be admitted for ninety days under the "Visa Waiver" program in which case they will not have a visa in their passports but will have a green I-94W card.)

Apart from being subject to removal if they violate the conditions of their nonimmigrant status (e.g., tourists are not permitted to work in the United States), non-immigrants are also subject to the grounds of deportability for criminal convictions. In addition, any non-immigrant who is convicted[17] of a crime of violence (as defined under 18 U.S.C. §16) for which a sentence of one year or longer *may be imposed* is removable for failure to maintain status.[18] As non-immigrants are likely to leave the United States with the intention of returning in the future, it is important also to consider the grounds of inadmissibility. The grounds of inadmissibility and deportability are discussed below in detail.

Refugees and Asylum-Seekers

One of the most poignant and significant consequences of a criminal conviction or admission to sufficient facts can be the denial of an application for asylum[19] or for "withholding of removal,"[20] an asylum-like status available to qualified refugees who are ineligible for asylum. If there is *any possibility* that your client has applied or may ever apply for one of these forms of relief due to political or other persecution, it is critically important that you evaluate any action taken in the criminal case with this in mind. A noncitizen convicted of a so-called "aggravated felony" is ineligible for asylum.[21] Similarly, withholding of removal may be denied to those convicted of a "particularly serious crime."[22]

16 In some categories, such as the H-1B category for professional workers ("specialty occupations") the concept of "dual intent" is recognized. "Dual intent" means that the noncitizen can still be recognized and treated as a nonimmigrant without being penalized even though the noncitizen may also have the intention to remain in the United States and become an immigrant.

17 Note that "conviction" is an immigration term of art. *See* 8 U.S.C. § 1101(a)(48)(A).

18 8 C.F.R. § 214.1(g).

19 *See* 8 U.S.C. § 1158(b)(2)(A)(ii) & (b)(2)(B).

20 *See* 8 U.S.C. § 1231(b)(3)(B)(ii).

21 8 U.S.C. § 1158(b)(2)(B)(i).

22 An aggravated felony (or felonies) for which a noncitizen has been sentenced to an aggregate term of at least five years is automatically considered to be a "particularly serious crime." 8 U.S.C. § 1231(b)(3)(B). With respect to aggravated felony convictions for which a lesser sentence has been imposed, Congress explicitly empowered the Attorney General to determine what constitutes a "particularly serious crime." *Id*. In the absence of a decision by the Attorney General, the BIA has made this determination on a case by case basis. In *Matter of Y-L-, A-G- & R-S- R-,* the Attorney General spoke for the first time on the issue of what constitutes a "particularly serious crime." 23 I. & N. Dec. 270 (A.G. 2002) (holding that aggravated felonies involving unlawful trafficking in controlled substances constitute "particularly serious crimes" and only the most extenuating circumstances that are both extraordinary and compelling would permit departure from this interpretation). Another important BIA decision on "particularly serious crimes" is *Matter of N-A-M-*, 24 I. & N. Dec. 336 (BIA 2007) (holding that an offense need not be an aggravated felony to be a particularly serious crime, and that the court may examine any reliable evidence to determine whether a crime is particularly serious).

As of this writing, the Trump administration has proposed regulations that would make a wide range of convictions a bar to asylum, including any felony, certain alcohol-related driving offenses, and acts of domestic violence.[23] The proposed rule has not yet been adopted.

Temporary Protected Status (TPS)

The Secretary of Homeland Security may designate a country for TPS based upon ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions. Noncitizens present in the United States without documentation, whose home country is designated as a TPS nation, may apply to remain in the United States legally, but only for the duration of the TPS designation. Currently, the nations designated as TPS countries are El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, Syria, and Yemen. Aside from the criminal grounds of inadmissibility, additional criminal grounds exist that bar an individual from TPS eligibility.[24] A noncitizen who is granted TPS must re-apply for this status periodically and must meet the eligibility requirements at each renewal.

Deferred Action for Childhood Arrivals (DACA)

In 2012, DHS announced that it would defer the removal of certain undocumented individuals brought to the United States as children. Such individuals will be allowed to remain in the United States and work lawfully for two years, with the possibility of renewal. There are numerous eligibility requirements for DACA, including specific criminal bars. For more information, see www.uscis.gov/childhoodarrivals.

U and T Visas

Individuals who have been victims of crime and cooperate in the prosecution of the offenses may be eligible for U visas. *See* 8 U.S.C. §1101(a)(15)(U). Individuals who have been subject to human trafficking may be eligible for T visas. *See* 8 U.S.C. §1101(a)(15)(T).

Undocumented and Out-of-Status Individuals

Noncitizens who overstay their periods of legal admission, violate the terms of admission, or enter the United States without documentation or with false documentation are subject to removal as soon as they come to the attention of immigration officials.[25] This does not mean, however, that criminal

23 84 Fed. Reg. 69640 (Proposed Rule, Dec. 19, 2019).

24 An applicant is ineligible for TPS if he has been convicted of one felony, 8 U.S.C. §1254a(c)(2)(B)(i); one misdemeanor, as defined under Michigan law, if the sentence actually imposed is more than one year of incarceration, either suspended or committed, 8 C.F.R. §244.1; two misdemeanors, if the sentences actually imposed are one year or less, 8 U.S.C. §1254a(c)(2)(B)(i); or a "particularly serious crime" that makes him a danger to the community, 8 U.S.C. §§ 1254a(c)(2)(B)(ii); 208(b)(2)(A)(ii). For a discussion of the types of offenses that constitute particularly serious crimes, see *Matter of N-A-M-*, 24 I. & N. Dec. 336 (BIA 2007), and *Matters of Y-L-, A-G*, and R-S-R-, 23 I. & N. Dec. 270 (A.G. 2002).

25 They usually have the right to a removal hearing, though certain classes of immigrants are subject to expedited removal without an immigration court hearing. *See* 8 U.S.C. § 1225(b)(1).

proceedings are irrelevant to their immigration status. Such noncitizens must be "admissible" in order to obtain lawful status; therefore, they are subject to the criminal grounds of inadmissibility, discussed below. Moreover, most defenses to removal or waivers for which they may be eligible are barred or made significantly more difficult by certain types of criminal convictions.[26]

Terminology

Removal

A noncitizen may be subject to an order of removal due to either grounds of inadmissibility or grounds of deportability. Proceedings in immigration court to remove a noncitizen from the United States are referred to as removal proceedings. A noncitizen who is removed by virtue of a criminal conviction will also be excluded from admission to the United States for at least five years, and for life in the case of a noncitizen convicted of a so-called "aggravated felony."[27]

Deportability

A noncitizen who is in the United States subsequent to a lawful admission is subject to the grounds of deportability. These grounds, described in detail below, apply no matter how long the noncitizen has been in the United States and even if her lawful status has expired.

Inadmissibility

A noncitizen seeking physical entry or re-entry into the United States may be subject to the grounds of inadmissibility, discussed below. Noncitizens already present in the United States may also seek immigration benefits that require them to be "admissible."[28] Note that "admission," as defined by 8 U.SC. 1101(a)(13), is a term of art under immigration law and that determining the date of a noncitizen's last admission and understanding its significance may be quite complex.[29]

For some noncitizens, both the grounds of inadmissibility and deportability may be relevant to their ability to lawfully remain in the United States.

Good Moral Character

Naturalization, as well as a number of forms of relief from removal or exclusion from the United States, require a finding of "good moral character." The statutory definition[30] specifically *precludes* a

26 These include relief formerly known as "INA § 212(c) relief" and suspension of deportation, now both subsumed and substantially restricted under 8 U.S.C. § 1229b (setting forth the requirements for "cancellation of removal").

27 8 U.S.C. §1182(a)(9).

28 Any adjustment of status is treated as if it were an "admission." Thus, a noncitizen cannot adjust status if convicted of a crime that would render her inadmissible, unless a waiver is available.

29 *See Matter of Alyazji*, 25 I. & N. Dec. 397 (BIA 2011).

30 8 U.S.C. § 1101(f).

finding of good moral character for a person who, during the relevant period,[31] is or has been:

1. a habitual drunkard;
2. a member of the class of persons described in 8 U.S.C. § 1182(a)(2)(D) (prostitution and commercialized vice); (6)(E) (alien smugglers); (10)(A) (polygamy) or (2)(A) (crime of moral turpitude or controlled substance offense, except for single offense of simple possession of 30 grams or less of marijuana); or (B) (multiple criminal convictions); or (C) (controlled substance trafficker, including a person who the "immigration officer has reason to believe" is or was an "illicit trafficker in a controlled substance");[32]
3. one whose income is derived principally from illegal gambling activities, or who has been convicted of two or more gambling offenses;
4. found to have given false testimony to gain any immigration benefits;
5. confined to a penal institution, as a result of a conviction, for an aggregate period of 180 days or more; or
6. convicted of an aggravated felony after November 29, 1990.

Even if a criminal disposition can be structured to avoid the enumerated grounds, DHS may, in its discretion, find a person not to be of good moral character based upon convictions or even admissions to criminal conduct.[33] Some guidance on this question may be found in the INS Interpretations.[34] The BIA has held, however, that "good moral character does not mean moral excellence" and that it is not necessarily destroyed by a single incident.[35]

Evidence of two or more convictions for driving under the influence during the relevant good moral character period establishes a presumption that the noncitizen lacks good moral character.[36] This also creates a presumption that any discretionary relief should be denied.

Conviction

Most criminal grounds of deportability require a conviction. What constitutes a conviction for immigration purposes is a question of federal law, and the definition differs from what is considered a conviction under Michigan state law.

The INA contains the statutory definition of conviction.[37] 8 U.S.C. § 1101(a)(48)(A) states as follows:

---

31 The relevant period for which the petitioner must be found to have good moral character is generally five years for naturalization, five years for voluntary departure, and either seven or ten years for cancellation of removal depending upon the client's legal status, period of residence in the United States, basis of removal and other factors.

32 Note that 8 U.S.C. § 1182(a) does not require a conviction. An "admission" may be enough.

33 *See, e.g., Matter of Turcotte*, 12 I. & N. Dec. 206 (BIA 1967).

34 *See* INS Interpretations § 316.1(e)-(g), *available at* https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-2.

35 *Matter of Sanchez-Linn*, 20 I. & N. Dec. 362 (BIA 1991).

36 *Matter of Castillo-Perez*, 27 I. & N. Dec. 664 (A.G. 2019).

37 Prior to enactment of 8 U.S.C. § 1101(a)(48)(A) in 1996, this question was controlled by *Matter of Ozkok*, 19 I. & N. Dec. 546 (BIA 1988). Under *Matter of Ozkok*, a conviction existed if:

(1) There has been a formal adjudication of guilt or entry of a judgment of guilt or;

(2) An adjudication of guilt has been withheld, but

> The term "conviction" means, 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 –
> 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.

The INA's definition of conviction is considerably broader than most state definitions and thus includes dispositions that would not otherwise be regarded as a conviction under state law. For example, a plea of *nolo contendere* which included a probationary term was a conviction for immigration purposes even though it was not considered a conviction under state law after successful completion of probation.[38]

The following Michigan alternative sentencing schemes have been found to be convictions under the INA: Holmes Youthful Trainee Act ("HYTA"); M.C.L. § 769.4a domestic violence deferral; M.C.L. § 333.7411 possession or use of controlled substance deferral, drug court, and expungement; no contest/nolo contendre pleas; and pleas taken under advisement when the defendant has to plead guilty or no contest or is found guilty by the court and the court imposes some form of punishment or "restraint on liberty."[39]

For example, in *Matter of Ali Mohamed Mohamed*,[40] the BIA determined that a pretrial intervention agreement, which imposed community service, restitution fees, program costs, and 24 months of supervision, was a "conviction" for immigration purposes under the meaning of § 101(a)(48)(A). The BIA reasoned that this case met the definition of "conviction" because the defendant "agreed that if he violated the terms of the agreement during the 24-month period of community supervision, he would appear in court; enter a plea of guilty to the charged offense; allow the 'stipulation of evidence' to be admitted into evidence without objection"[41] and agreed to enter into the pretrial intervention program.

Another consideration of whether a disposition is a "conviction" is the issue of finality. In addition to the factors listed in the statute, the BIA and many courts have historically held that a disposition

> (a) There has been a finding of guilt by a judge or jury, or an entry of a plea of guilty or nolo contendere, or an admission to sufficient facts;
>
> (b) The judge has ordered some form of punishment, penalty, or restraint on the person's liberty, and
>
> (c) A judgment or adjudication of guilt may be entered if the person violates the terms of probation or fails to comply with the requirements of the court's order, without further proceedings regarding the person's guilt or innocence of the original charge.

See Matter of Ozkok, 19 I. & N. Dec. at 551-52.

38 *See Molina v. INS*, 981 F.2d 14, 16, 18 (1st Cir. 1992) (finding that a "'nolo plea plus probation'" under Rhode Island law amounts to a "'conviction'").

39 *See Matter of Punu*, 22 I. & N. Dec. 224 (BIA 1998); *Moosa v. INS*, 171 F.3d 994 (5th Cir. 1999); *Uritsky v. Gonzales*, 399 F.3d 728 (6th Cir. 2005); *cf. Griffiths v. INS*, 243 F.3d 45 (1st Cir. 2001).

40 *Matter of Ali Mohamed Mohamed*, 27 I & N Dec. 92 (BIA 2017).

41 *Id.*

must attain "finality" in order to be a conviction.[42] Thus, the rule in immigration court in Detroit has long been that a criminal conviction cannot be used as a ground of deportability until the direct appeal of the conviction is exhausted.[43]

Crime Involving Moral Turpitude (CIMT)

Under 8 U.S.C. § 1227(a)(2)(A)(i), an alien is deportable if he: –

a. is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j) of this title) after the date of admission, and
b. is convicted of a crime for which a sentence of one year or longer *may be* imposed.

In addition, 8 U.S.C. § 1227(a)(2)(A)(ii) provides that:

> Any alien 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, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable [emphasis added].

This section of the INA raises the same issues of conviction and moral turpitude as does 8 U.S.C.§ 1227(a)(2)(A)(i). Another important issue in cases under this section, however, may be whether the convictions arose out of a "single scheme of criminal misconduct." There is a fairly extensive and rather fact-specific body of case law on this point.[44] The BIA held that convictions for multiple charges of possession of a stolen credit card and forgery stemming from purchasing goods with the credit card at multiple stores on the same day do not constitute a "single scheme." Acts occur in a "single scheme" when they are performed "in furtherance of a single criminal episode, such as where one crime constitutes a lesser offense of another or where two crimes flow from and are the natural consequence of a single act of criminal misconduct."[45]

An extensive and complicated body of case law has developed as to whether a particular offense is one of moral turpitude. One common, if somewhat florid, definition is "conduct that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general."[46] It has also been articulated as "reprehensible conduct and some

---

42 In *Matter of Polanco*, 20 I. & N. Dec. 894, 896 (BIA 1994), the BIA held that "an alien who has either waived or exhausted his right to a direct appeal of his conviction is subject to deportation, and that the potential for discretionary review on direct appeal will not prevent the conviction from being considered final for immigration purposes." *See also Matter of Thomas*, 21 I. & N. Dec. 20, 21 n.1, 23 (BIA 1993) (observing that a non-final conviction can neither support a charge of deportability nor trigger a statutory bar to relief under a section of the INA premised on the existence of a conviction, but even a non-final conviction may be considered relevant to certain forms of discretionary relief); *but see Moosa v. INS*, 171 F.3d 994, 1009 (5th Cir. 1999) (holding that the new statutory definition of conviction eliminated the requirement of finality).

43 *But see Matter of Abreu*, 24 I. & N. Dec. 795 (BIA 2009) (pending late-reinstated appeal does not undo finality of conviction). Note also that collateral attacks on a conviction – such as motions for new trial – do not have the same effect. *See Matter of Onyido*, 22 I. & N. Dec. 552, 555 (BIA 1999).

44 *See, e.g.*, *Nguyen v. INS*, 991 F.2d 621, 623-25 (10th Cir. 1993).

45 *Matter of Islam,* 25 I. & N. Dec. 637 (BIA 2011); *Matter of Adetiba*, 20 I. & N. Dec. 506 (BIA 1992).

46 *Matter of Torres-Varela*, 23 I. & N. Dec. 78, 83 (BIA 2001); *see also Matter of Sejas*, 24 I. & N. Dec. 236, 237 (BIA 2007).

degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness."[47]

Given this broad and ill-defined category, it is not surprising that what is or is not turpitudinous can vary and change over time. The following are some examples of crimes that have already been considered by the BIA and federal courts:

Examples of Crimes Involving Moral Turpitude:[48]

- Serious crimes against the person such as murder, manslaughter, kidnapping, attempted murder, assault with intent to rob or kill, assault with a deadly weapon, and aggravated assault are generally considered CIMTs.[49] In Michigan, M.C.L. **§** 750.82, assault with a dangerous weapon, was found not to be a CIMT.[50]
- Most sex offenses, including rape, and prostitution, are likely CIMTs. Failure to register as a sex offender is also considered a CIMT.[51]
- Michigan's armed and unarmed robbery statutes, M.C.L. §§ 750.29 and 750.30, are likely CIMTs.[52]
- Michigan's simple assault/assault & battery, M.C.L. **§** 780.81(1), is unlikely a CIMT.[53]
- Crimes involving theft or fraud as an essential element are almost always held to be CIMTs (e.g., larceny, shoplifting).[54]
- Weapons offenses generally are sometimes CIMTs. However, simple gun possession (M.C.L. **§** 750.227(1**)** and (2), carrying a concealed weapon - dangerous weapon, and carrying a concealed weapon - pistol) are not likely not a crimes of moral turpitude because they do not require an evil intent, although they may trigger a separate ground of deportability.[55]
- Violations of regulatory laws and laws that involve strict liability or negligence generally do not involve moral turpitude. For example, operating while intoxicated (OWI), high blood alcohol level, or conviction for a second or subsequent OWI, are not CIMTs.[56]

---

47 *Matter of Silva-Trevino*, 24 I. & N. Dec. 687, 689 n.1 (BIA 2008).

48 *See* Appendix 3, *Immigration Consequences of Certain Michigan Offenses*.

49 *See, e.g.*, *Matter of Medina*, 15 I. & N. Dec. 611, 614 (BIA 1976) (finding that an Illinois aggravated assault offense was a crime involving moral turpitude); *Matter of Sanchez-Marin*, 11 I. & N. Dec. 264, 266, 267 (BIA 1965) (finding that Massachusetts convictions for voluntary manslaughter and accessory after the fact to manslaughter were crimes involving moral turpitude).

50 *Hernandez v. Whitaker*, 914 F.3d 430 (6th Cir. 2019) (6th Cir. 2019), held that M.C.L. § 750.82 is not divisible, and categorically not a CIMT.

51 *See Matter of Tobar-Lobo*, 24 I. & N. Dec. 143 (2007); 8 U.S.C. § 1227(a)(2)(A)(v).

52 *Matter of Guillermo Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016), held that a theft offense is a CIMT if it involves an intent to deprive the owner of his property either permanently or under circumstances where the owner's property rights are substantially eroded.

53 The BIA has held that "simple assault and battery -- i.e., the offensive touching or threatened offensive touching of another person, committed with general intent and not resulting in serious bodily harm -- is not a CIMT." *In re Maurilio Flores Ventura* (BIA unpub. 2018) (citing *Matter of Ahortalejo-Guzman*, 25 I. & N. Dec. 465 (BIA 2011)). Conversely, an assault statute requiring both the specific intent to injure and the actual infliction of bodily harm is a CIMT. *See Matter of Solon*, 24 I. & N. Dec. 239 (BIA 2007). In Michigan, one can be convicted for assault and battery without actually injuring the victim.

54 *Jordan v. DeGeorge*, 341 U.S. 223 (1951) (holding that any offense that has fraud as an element is a crime involving moral turpitude).

55 *Matter of Rainford*, 20 I. & N. Dec. 598 (BIA 1992) (stating that firearms possession is not a ground of inadmissibility); 8 U.S.C. § 1227(a)(2)(C) (listing firearms possession as a ground of deportability).

56 *See Matter of Torres-Varela*, 23 I. & N. Dec. 78, 86 (BIA 2001). *But see Matter of Lopez-Meza*, 22 I. & N. Dec. 1188, 1195-96 (BIA

Please note that this list is not conclusive and that this is a constantly evolving and shifting area of law.

Before advising a noncitizen about the immigration consequences of an offense, it is essential to research the question of moral turpitude thoroughly.[57] Further, even if a federal court or the BIA previously found that a statute is not a CIMT, a subsequent court or agency could reach the opposite conclusion.

Grounds of Deportability

Aggravated Felonies[58]

Any alien who is convicted of an aggravated felony at any time after admission is deportable.[59] "Aggravated felony" is a ground of deportability which results in virtually automatic deportation, mandatory detention and permanent exile from the United States. Though the category was originally quite limited, it has expanded tremendously to the point where virtually any crime may be an aggravated felony.[60] Some categories of offenses require merely a conviction to constitute an aggravated felony. Others require a conviction *and* a sentence of imprisonment of one year or more, or a conviction involving a certain amount of monetary loss, to be considered an aggravated felony. The definition of aggravated felonies is retroactive.[61]

Some controlled substance offenses are considered aggravated felonies, in addition to being an independent ground of deportability, as discussed below.[62] Under 8 U.S.C. § 1101(a)(43)(B), "illicit trafficking" in controlled substances and "drug trafficking" crimes are both aggravated felonies. Generally speaking, "illicit trafficking" refers to offenses involving remuneration, such as distribution or possession with intent to distribute, both of which are considered aggravated felonies.[63] Two Supreme Court cases have clarified which crimes meet the definition of the more disputed category

1999) (involving Arizona offense for aggravated driving under the influence in which the aggravating factor is that the driver's license had been suspended due to a prior DUI; offense found to be a CIMT because of the driver's knowledge that he was prohibited from driving).

57 A conviction *or an admission* to the commission of a crime of moral turpitude is a ground of inadmissibility, while the deportability grounds are triggered only by a conviction. *Compare* 8 U.S.C. § 1182(a)(2)(A)(i) *with* 8 U.S.C. § 1227(a)(2)(A)(i) & (ii).

58 IIRIRA, Division C of Pub. L. No. 104-208, 110 Stat. 3009; the Anti-terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, "7 ("AEDPA"); and the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305, 4311 ("INTAC"), substantially broadened the definition of an aggravated felony. The current statutory definition is at 8 U.S.C. § 1101(a)(43).

59 8 U.S.C. § 1227(a)(2)(A)(iii).

60 The definition of an aggravated felony, found at 8 U.S.C. § 1101(a)(43), includes 21 broad subcategories. *See Matter of Small*, 23 I. & N. Dec. 448, 450 (BIA 2002).

61 *See Matter of Lettman*, 22 I. & N. Dec. 365, 378 (BIA 1998), *aff'd*, 207 F.3d 1368 (11th Cir. 2000) (finding that a noncitizen convicted of an aggravated felony is deportable regardless of the date of conviction); *Matter of Truong*, 22 I. & N. Dec. 1090, 1094-96 (BIA 1999) (holding that the aggravated felony definition is retroactive).

62 *See* 8 U.S.C. §§ 1227(a)(2)(B) (controlled substance ground); 1101(a)(43)(B) (aggravated felonydefinition).

63 *See Matter of Davis*, 20 I. & N. Dec. 536, 541 (BIA 1992). However, the BIA has held that possession with intent to distribute a small amount of marijuana for no remuneration is not an aggravated felony. *Matter of Castro- Rodriguez*, 25 I. & N. Dec. 698 (BIA 2012).

of "drug trafficking" offenses. In *Lopez v. Gonzales*, the Supreme Court held that simple possession of a controlled substance is *not* a "drug trafficking" crime unless it would be treated as a felony if prosecuted under federal law.[64] Flunitrazepam (commonly referred to as "roofies" or a "date rape" drug) along with possession of more than 5 grams of crack cocaine and certain recidivists possession offenses are federal felonies. *It is important to note that not all state recidivist statutes contain all the elements of the federal recidivist statute*. Therefore, simple possession of all other controlled substances are not considered aggravated felonies. In *Carachuri-Rosendo v. Holder*, the Supreme Court held that a second conviction for drug possession is not a drug trafficking crime, and therefore not an aggravated felony, unless the record of conviction establishes that it was prosecuted as a "subsequent offense," with notice to the defendant and an opportunity to be heard on the fact of the prior conviction.[65] A conviction for subsequent possession is treated as a felony under federal law; thus, it would qualify as a drug trafficking aggravated felony. This ruling followed a First Circuit case with the same holding.[66]

The practitioner representing a noncitizen should attempt to avoid a conviction for an aggravated felony, because the consequences are devastating. Noncitizens convicted of aggravated felonies may be detained without bond[67] and will be deported as expeditiously as possible. An aggravated felon is conclusively presumed to be deportable and is also rendered ineligible for virtually all forms of relief from removal, including naturalization, asylum, cancellation of removal, and, sometimes, a waiver of the criminal grounds of inadmissibility. A person deported as an aggravated felon is inadmissible to the United States for life.[68] Carefully constructing the plea and sentence can sometimes avoid classification as an aggravated felon.

Controlled Substance Offenses

A noncitizen is deportable under 8 U.S.C. § 1227(a)(2)(B) who:

> . . . at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)), *other than a single offense involving possession for one's own use of thirty grams or less of marijuana* [.] [emphasis added]

Inchoate offenses generally will be considered controlled substance offenses when the underlying substantive crime involves a drug offense.[69] However, a conviction for accessory after the fact to a drug offense is probably not a deportable offense, at least under this section of the statute as it is a

64 *See Lopez v. Gonzales*, 549 U.S. 47 (2006).

65 *Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577 (2010).

66 *See Berhe v. Gonzales*, 464 F.3d 74, 85-86 (1st Cir. 2006).

67 The subject of mandatory detention is beyond the scope of this work. However, there are exceptions to the general rule of which the practitioner should be aware. In particular, most respondents (other than those who have traveled abroad and are charged with inadmissibility on criminal grounds) who were released from criminal custody prior to October 9, 1998 are not subject to mandatory detention. *See, e.g., Matter of Rojas*, 23 I. & N. Dec. 117, 120 (BIA 2001), *Saysana v. Gillen*, 590 F.3d 7 (1st Cir. 2009). The Supreme Court upheld the constitutionality of mandatory detention under 8 U.S.C. § 1226(c) in *Demore v. Kim*, 538 U.S. 510 (2003).

68 *See* 8 U.S.C. § 1182 (a)(9)(A)(ii).

69 *See, e.g.*, *Matter of Beltran*, 20 I. & N. Dec. 521, 527 (BIA 1992) (solicitation); *Matter of Del Risco*, 20 I. & N. Dec. 109, 110 (BIA 1989) (facilitation); 8 U.S.C. § 1227(a)(2)(B)(i) (attempt and conspiracy).

separate and distinct crime from the substantive offense.[70]

It is worth noting that a conviction under state law for a substance that is not on the federal drug schedules might not be a deportable offense. This involves a comparison of the state and federal drug schedules, a determination as to whether the state statute is divisible as to the identity of the substance, and consideration as to whether the substance is identified in the record of conviction.

Controlled substance offenses that were expunged or vacated under various state and federal rehabilitative statutes are still considered convictions under immigration laws.[71] Even if it is possible to avoid a conviction for a controlled substance violation, the practitioner must also avoid the consequences of 8 U.S.C. § 1227(a)(2)(B)(ii) which renders an alien deportable if, at any time after admission, she becomes a drug addict or drug abuser.

Firearm Violations

8 U.S.C. § 1227(a)(2)(C) provides for the deportation of:

> [a]ny alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law[.]

It is important to note this section's breadth (virtually any firearms offense will qualify) and the inclusion of attempt and conspiracy offenses.[72] Decisions of the BIA have further broadened offenses covered by this section to include those in which possession or use of a firearm is an essential element of another charge.[73] However, possession of ammunition probably does not fall under this ground of deportability.[74]

Note further that because federal law includes an exception for an antique firearm, 18 U.S.C. § 921(a)(3), a state conviction for a firearm that would fall outside of the federal definition, or potentially under a state statute that is broader than the federal definition and is not divisible, might not be a removable offense.

Certain firearms and weapons-related offenses can also be aggravated felonies:

---

70 *See Matter of Batista*, 21 I. & N. Dec. 955, 960 (BIA1997).

71 *See Matter of Roldan*, 22 I. & N. Dec. 512, 528 (BIA1999).

72 For cases interpreting this deportation ground, see *Matter of Chow*, 20 I. & N. Dec. 647 (BIA 1993), *aff'd*, 12 F.3d 34 (5th Cir. 1993); *Matter of K-L-*, 20 I. & N. Dec. 654 (BIA 1993); *Matter of P-F-*, 20 I. & N. Dec. 661 (BIA 1993).

73 *See, e.g., Matter of Lanferman*, 25 I. & N. Dec. 721 (BIA 2012) (holding that the New York offense of menacing is a firearm offense where an element of the offense involves use of a firearm); *Matter of Lopez-Amaro*, 20 I. & N. Dec. 668, 672-73 (BIA 1993) (finding that enhancement provision for firearm possession in murder statute is possession conviction for deportation purposes), *aff'd*, 25 F.3d 986, 990 (11th Cir. 1994); *Matter of Perez-Contreras*, 20 I. & N. Dec. 615, 617 (BIA 1992) (finding that an assault conviction was not a firearms offense where use of the firearm was not an element of the offense).

74 *See Dulal-Whiteway v. DHS*, 501 F.3d 116, 123 (2d Cir. 2007).

8 U.S.C. § 1101(a)(43)(C): illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

8 U.S.C. § 1101(a)(43)(E): an offense described in:

i. section 842(h) or (i) of title 18, United States Code, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
ii. section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of title 18, United States Code (relating to firearms offenses); or
iii. section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

Domestic Violence

8 U.S.C. § 1227(a)(2)(E) provides for the deportation of noncitizens who are convicted of crimes of domestic violence, stalking, child abuse, child neglect, child abandonment, or certain violations of protective orders. Its full text should, however, be read very closely as it applies to a very wide variety of cases. *It is important to note that this category of deportable offenses encompasses both domestic and non-domestic crimes*:

i. Domestic violence, stalking, and child abuse – Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.
ii. Violators of protection orders – Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

The BIA and at least some federal courts have held that the domestic or family relationship does not have to be an element of the predicate offense to qualify as a crime of domestic violence under 8 U.S.C. § 1227(a)(2)(E)(i).[75]

75 *Matter of Velasquez*, 25 I. & N. Dec. 278 n.1 (BIA2010).

The BIA set forth a definition of "child abuse" in *Matter of Velazquez-Herrera*.[76] Based on the policies behind the provision, the BIA interpreted the term "broadly to mean any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child's physical or mental well-being, including sexual abuse or exploitation."[77] Additionally, in *Matter of Mendoza Osorio*,[78] the BIA further stated that this definition includes offenses that do not require proof of harm or injury to the child and also includes child neglect or child abandonment offenses.

Other Grounds of Deportability

The grounds discussed above do not provide an exhaustive list of all bases for deportation. Less common grounds involving criminal conduct include smuggling (of aliens), marriage fraud, espionage, sabotage, treason, sedition, Selective Service violations, falsification of documents and "terrorist activities."

Grounds of Inadmissibility

Crimes Involving Moral Turpitude (CIMT)

8 U.S.C. § 1182 (a)(2)(A)(i) states in pertinent part that any alien is inadmissible to the United States who has been:

> convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime[.]

Note first that *a conviction is not required under this section of the statute*. A voluntary and knowing admission to the essential elements of a crime involving moral turpitude alone may well suffice to render a person inadmissible to the United States.[79]

It is also important to note that the statute itself provides that this inadmissibility section will not apply if:

- The alien committed only one crime;
- The crime was committed when the alien was under 18 years of age; and
- The crime was committed (and the alien was released from any confinement) more than five years before the date of applying for admission to the US.[80]

---

76 *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 513 (BIA 2008).

77 *Id. See also Matter of Soram*, 25 I. & N. Dec. 378 (BIA 2010) (holding that an offense involving reckless endangerment to a child constitutes child abuse).

78 *Matter of Mendoza Osorio*, 26 I. & N. Dec. 703 (BIA 2016).

79 *See* Gordon, Mailman & Yale-Loehr, 5-63 Immigration Law and Procedure § 63.03 (Matthew Bender 2012).

80 *See* 8 U.S.C. § 1182(a)(2)(A)(ii)(I).

Similarly, an alien will not be inadmissible under this section if:

- The maximum penalty possible for the crime did not exceed imprisonment for one year; and
- The alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).[81]

Controlled Substances

Inadmissibility for controlled substance violations is governed by 8 U.S.C. § 1182(a)(2)(A)(i)(II) which renders inadmissible any alien:

> . . . convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21U.S.C. § 802))[.]

This section is very broadly construed and will include virtually any controlled substance offense the practitioner is likely to encounter. Further, 8 U.S.C. § 1182 (a)(2)(C) excludes from the United States any person whom the government knows or *has reason to believe* is an illicit trafficker in any controlled substance or is or has been a "knowing aider, abettor, assister, conspirator or colluder" in such trafficking. Thus, a conviction is not necessary to trigger this ground of inadmissibility.

Multiple Offenses

8 U.S.C. § 1182 (a)(2)(B) renders inadmissible any alien:

> convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more[.].

Note that for this section to apply a "conviction" is required, but moral turpitude is not.

Prostitution

8 U.S.C. § 1182 (a)(2)(D) bans from the United States any noncitizen

> who . . . is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status, [or who] directly or indirectly procures or attempts to procure, or [within that period] procured or attempted to procure or to import, prostitutes or . . . received . . . the proceeds of prostitution, or . . . is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution[.]

---

81 *See* 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

Both the federal regulations and the BIA have stated that this ground of inadmissibility is for a pattern of continuous conduct; isolated acts of prostitution or solicitation of a prostitute are not enough to make a noncitizen inadmissible.[82]

Other Grounds of Inadmissibility

8 U.S.C. § 1182 contains a number of other grounds of inadmissibility, which should be consulted if they appear even potentially applicable. For example, 8 U.S.C. § 1182 (a)(3), entitled "Security and Related Grounds," contains very broad bases of inadmissibility including "any other unlawful activity" and "terrorist activities" which are defined rather loosely. 8 U.S.C. § 1182 (a)(2)(E) relates to certain aliens who have asserted immunity from criminal prosecution.

Juvenile Offenses

A finding of delinquency in a juvenile proceeding is not considered a conviction for immigration purposes.[83] A finding of delinquency may, however, preclude a finding of good moral character. A delinquent act also might fall under a ground of inadmissibility or deportability that is based on conduct rather than convictions – for example, prostitution, drug abuse, or "reason to believe" that a noncitizen is a drug trafficker.[84] Similarly, violation of a restraining order is a deportable offense that does not require a conviction, and a determination by a civil court may trigger deportability.[85]

If a juvenile is tried and convicted as an adult, then she would most likely be treated as having an adult conviction in immigration proceedings.[86] The Sixth Circuit has held that Michigan's "youthful trainee" (HYTA) designation amounted to a conviction because the procedure was more similar to a deferred adjudication than a delinquency finding.[87]

Changes to a Conviction or Sentence

A conviction that is expunged, vacated or dismissed for rehabilitative purposes or to help the defendant avoid deportation remains a conviction for immigration purposes under 8 U.S.C. § 1101(a)(48)(A).[88] In order for a benefit to accrue under immigration law, the conviction must set aside or vacated because of a substantive or procedural legal defect in the underlying proceeding.[89]

Until recently, the BIA would respect any valid state court action modifying a sentence, regardless of

82 22 C.F.R. § 40.24 ("A finding that an alien has 'engaged' in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts."). *See also Matter of T-*, 6 I. & N. Dec. 474 (BIA 1955); *Matter of Gonzalez-Zoquiapan*, 24 I. & N. Dec. 549 (BIA 2008).

83 *See Matter of C-M-*, 5 I. & N. Dec. 327 (BIA 1953); *Matter of Ramirez-Rivero*, 18 I. & N. Dec. 135 (1981).

84 *See* 8 U.S.C. § 1182(a)(2)(C) (controlled substance traffickers) & (D) (prostitution); 8 U.S.C. § 1227(a)(2)(B)(ii) (drug abuse).

85 *See* 8 U.S.C. § 1227(a)(2)(E)(ii).

86 *See Viera Garcia v. INS*, 239 F.3d 409 (1st Cir. 2001) (holding that 17 year old charged and convicted in Rhode Island as an adult was not entitled to have his offense treated as one of juvenile delinquency for purposes of INS proceedings).

87 *Uritsky v. Gonzales*, 399 F.3d 728 (7th Cir. 2005).

88 *See Matter of Pickering*, 23 I. & N. Dec. 621 (BIA 2013).

89 *Id.*

the reasons given.[90] In 2019 the Attorney General overruled that precedent; no longer will sentence modifications automatically receive full faith and credit in immigration proceedings. Instead, as with changes to convictions, the changes to a sentence must be based on a procedural or substantive defect in the underlying criminal proceeding.[91]

It is likely that vacaturs and modifications of convictions and sentences will be more closely scrutinized in immigration proceedings, making it even more crucial to have the reasons for seeking these changes, and the reasons a court grants these changes, well documented in the entire record. This includes the motions, responses, transcripts, and orders.

Ineffective Assistance of Counsel

One way to establish a legal defect in the underlying proceeding is to obtain relief based on counsel's failure to properly advise a client of the immigration consequences of a conviction. The Supreme Court held in *Padilla v. Kentucky* that defense counsel has a duty under the Sixth Amendment to advise a client of the immigration consequences of pleading guilty.[92] The Court held that *Strickland v. Washington* applied to such cases; thus, a defendant must prove that:

- his attorney's "representation fell below an objective standard of reasonableness;" and
- he was prejudiced as a result of defense counsel's performance.[93]

Failure to warn about the immigration consequences of a guilty plea, or misadvising a client about those immigration consequences, constitutes ineffective assistance of counsel and can form the basis for a motion to vacate the plea. The Court held that if the immigration consequences are "succinct, clear and explicit," defense counsel has a duty to provide substantive advice to her client about those consequences.[94] Even if the consequences are "not succinct and straightforward," the attorney still has an obligation to notify a client that a plea may result in immigration consequences.[95] Once a client is able to prove that his counsel failed to warn or misadvised of immigration consequences, he must also prove that the outcome of his criminal case would have been different.[96]

Expungement

The use of expungements to ameliorate deportation consequences of a criminal conviction evolved from case law. An expungement has been defined in this manner:

> It is not simply the lifting of disabilities attendant upon conviction and a restoration of civil rights, though this is a significant part of its effect. It is rather a redefinition of status, a process of erasing the legal event of conviction or adjudication and thereby restoring to the regenerative offender his original status ante.[97]

---

90 *Matter of Thomas*, 27 I. & N. Dec. 674 (A.G. 2019)

91 *Id.*

92 *Padilla v. Kentucky*, 559 U.S. 356 (2010).

93 *Strickland v. Washington*, 466 U.S. 668, 688, 692 (1984); *Padilla*, 559 U.S. at 366.

94 *Padilla*, 559 U.S. at 368.

95 *Id*. at 369.

96 *Id*. at 366 (*citing Strickland*, 466 U.S. at 694).

97 Grough, *Expungement of Records*, 1966 Wash. U.L.Q. 147, 149 (1966).

Unfortunately, the BIA has precluded the use of expungements to defeat deportability.[98] The BIA reasoned that the 1996 federal definition of "conviction" redefined the term for immigration purposes, precluding the effectuation of any state rehabilitative actions which do not vacate a conviction on the merits or on any ground related to the violation of a statutory or constitutional right in the underlying criminal proceeding.[99]

Pardons

Only full and unconditional executive pardons may be used to defeat deportability, *although these will not assist narcotics offenders*. Legislative pardons may not be used. Pardons can waive a limited number of deportation grounds, including CIMT and aggravated felonies.[100] Pardons do not waive other deportation grounds – so a noncitizen convicted of a drug trafficking offense can use a pardon to avoid the aggravated felony deportation ground but she would still be deportable for the controlled substance conviction. They also may not reach the grounds of inadmissibility, though there are some conflicting agency interpretations. Moreover, the pardon waives the listed deportation grounds but not the existence of the conviction itself, so it can be used as a basis to deny relief. A noncitizen pardoned of a crime will not be precluded from showing good moral character.[101]

Additional Notes on Removal

When the Department of Homeland Security initiates removal proceedings against a noncitizen, it is not required to include all possible grounds of removability or all of the criminal offenses that make him removable.[102] Instead, DHS will list the minimum number of offenses that it needs to meet its burden of proving removability.[103] If the listed convictions are vacated, or if a judge finds that they are not removable offenses, DHS is free to amend its charging document to include additional offenses.[104] As long as a criminal offense makes a noncitizen removable, DHS is free to include it initially on the notice to appear, add it later, or even use it as a basis for reopening proceedings after the immigration judge has decided the case.[105]

Not all removability determinations are made by a judge. USCIS in adjudicating applications for naturalization or lawful permanent resident status, consular officers in adjudicating visa applications, CBP in adjudicating applications for admission to the United States, and ICE in considering whether to summarily remove a lawful permanent resident or lodge a removal charge in immigration court, all have to evaluate the immigration consequences of criminal conduct. These agencies may reach conclusions seemingly at odds with the BIA and federal courts or they may advocate for a change in

98 *See Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999); *see also Matter of Marroquin*, 23 I. & N. Dec. 705 (A.G. 2005); *Matter of Luviano*, 23 I. & N. Dec. 718 (A.G. 2005).

99 *See Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

100 *See* 8 U.S.C. § 1227(a)(2)(A)(vi); *see also Matter of Suh*, 23 I. & N. Dec. 626 (BIA 2003) (discussing what grounds of removability may be waived by presidential or gubernatorial pardons).

101 *See Matter of H-*, 7 I. & N. 249 (BIA 1956).

102 *See Magasouba v. Mukasey*, 543 F.3d 13, 16 (1st Cir. 2008).

103 8 U.S.C. § 1229a(c)(3) (DHS must establish removability by clear and convincing evidence).

104 8 C.F.R. § 1003.30; 8 C.F.R. § 1240.10(e).

105 *See De Faria v. INS*, 13 F.3d 422, 424 (1st Cir. 1993) (government motion to reopen proceedings allowed to amend charging document after criminal conviction listed on original charging document was vacated).

the law, and a noncitizen could be detained or have little or no recourse to federal courts.

Also, under principles of administrative law discussed in *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005), the BIA and Attorney General are not required to defer to federal court decisions analyzing ambiguous immigration statutes. The BIA can reject a federal court's construction of an ambiguous statute that it administers and provide its own reasonable interpretation. Although full discussion of the principles of administrative agency law, including *Chevron* and *Auer* deference, are beyond the scope of this publication, practitioners are reminded that agency policies and interpretations can change and federal court decisions interpreting ambiguous statutes and regulations are not always dispositive.[106]

106 *Brand X*, 545 U.S. at 981.

Appendix 1: Analyzing the Immigration Consequences

In each case in which a client is a noncitizen, defense counsel should consult the following "road map," to assist in determining the immigration consequences of criminal conduct:

1. Determine the immigration status of the client. If a U.S. citizen, stop – (**but verify**). If the U.S. citizen is naturalized, verify whether the charged conduct occurred before the naturalization. The immigration laws do not apply to U.S. Citizens, although citizens convicted of designated offenses under the Adam Walsh Act could be permanently barred from sponsoring family members (including parents and siblings) for lawful permanent resident status. If not a U.S. citizen:
2. Determine the client's exact immigration status and all potential routes to U.S. citizenship or any other immigration status;
3. Obtain the client's complete immigration history, including prior statuses held and dates of entry;
4. Obtain the client's complete prior criminal record, from every jurisdiction;
5. Make sure you are aware of and understand all pending charges;
6. Determine if any prior criminal charges, even if they did not result in conviction, could affect the client's current or potential immigration status; if so, consider all possible ways to vacate, withdraw pleas, appeal, attack collaterally, revise, revoke, etc.;
7. Analyze the potential effects of pending charges on immigration status, making sure to think about the specific threats of inadmissibility and removal from the United States as well as denial of future benefits like other noncitizen status and U.S. citizenship;
8. Consider a plea or otherwise structured disposition that would avoid immigration consequences. Some examples include: 1) Is there a possible disposition that is not a conviction (e.g., pretrial probation); 2) Can the complaint/indictment be amended to an offense that causes less severe immigration consequences; 3) Can the defendant negotiate a sentence with less drastic immigration consequences (e.g., less than a one year sentence on a theft offense or crime of violence, or consecutive (on and after) sentences of less than one year on multiple such offenses); or, 4) Are there multiple charges, only some of which cause immigration consequences? If so, can a disposition be negotiated in which convictions and/or sentences of one year or more are only received on the offenses that do not carry immigration consequences for such convictions and/or sentences;
9. Consider whether any waivers are or will be available to the client in immigration court to mitigate immigration consequences;
10. Consider all possible post-conviction strategies;
11. **Discuss the client's goals related to immigration** (e.g. does the client care more about the immigration consequences or more about avoiding jail time);
12. Advise the client not to leave the United States, apply for any immigration benefit or attempt naturalization without consulting with an immigration specialist.

Appendix 2: Summary Chart of Inadmissibility and Deportability

Grounds of Inadmissibility 8 U.S.C. §1182(a)(2)	**Grounds of Deportability** 8 U.S.C. §1227(a)(2)
CRIME INVOLVING MORAL TURPITUDE Conviction or admission of sufficient facts for one CIMT makes one inadmissible *unless* • 1 crime committed under 18 and at least 5 years before admission, OR • Maximum *possible* penalty is 1 year or less AND *sentence* is 6 months or less	CRIME INVOLVING MORAL TURPITUDE • Conviction for <u>one</u> CIMT makes one deportable if conviction is within 5 years of admission where a *sentence* of at least one year *may* be imposed • Conviction for <u>two</u> CIMTs at any time after admission, not arising out of a single scheme of criminal conduct makes person deportable NB: the definition of conviction for immigration law differs from state law.
CONTROLLED SUBSTANCES • Conviction or admission of any crime/ acts relating to a controlled substance as defined by 21 U.S.C. §802. • Reason to believe person is a drug trafficker • Currently a drug abuser or addict as found by a doctor	CONTROLLED SUBSTANCES • Conviction of any drug offense except 1 offense of 30 grams or less of marijuana • Includes conspiracy or attempt • If found to be a drug abuser or addict at ANY time after admission
MULTIPLE OFFENSES • One is inadmissible if CONVICTED of 2 or more crimes (of any type – even if in a common scheme) in which the aggregate sentence was 5 years or more.	MULTIPLE OFFENSES N/A

PROSTITUTION • *See* 8 USC 1182(a)(2)(D).	PROSTITUTION • Not separate deportable charge, but possible CIMT.
FIREARM OFFENSES • Not a separate ground of inadmissibility	FIREARM OFFENSES • Conviction for any crime of buying, selling, using, owning, possessing or carrying any firearm or destructive device (18 USC § 921). • Includes conspiracy and attempt • May include crimes for which possession or use is an element
DOMESTIC VIOLENCE • Not a separate ground of inadmissibility	DOMESTIC VIOLENCE Conviction for: • DV • Stalking • Child abuse • Child neglect • Child abandonment • Violation of criminal or civil protective orders (conviction not necessary) • Applies to spouses, household members, children, and others.

AGGRAVATED FELONY Not a separate ground of inadmissibility	AGGRAVATED FELONY 8 U.S.C. § 1227 (a)(2)(A)(iii) [Defined at 8 U.S.C. § 1101(a)(43)] Common Aggravated Felonies: <u>Requires only a conviction</u>: • murder, rape, sexual abuse of a minor • drug trafficking • firearms trafficking • running a prostitution business • fraud or tax evasion where the loss is • $10,000. • failure to appear by a defendant for service of sentence (underlying crime must be punishable by 5 years or more) • failure to appear in court to answer/ dispose of a felony charge. <u>Requires a conviction and a sentence of imprisonment for 1 year or more</u>: • crime of violence (as defined by 18 U.S.C. § 16) • theft offense • obstruction of justice • document (passport) fraud
MISC (8 U.S.C. §1182) • aliens involved in serious criminal activity who have asserted immunity from prosecution. • Human trafficking • Money laundering • Security related grounds • Terrorist activity • Aliens previously removed • Etc…	MISC (8 U.S.C. §1227) • Smuggling of aliens • Marriage fraud • Espionage, sabotage, treason, sedition. • Terrorist activities • Selective service violations • Falsification of docs

Appendix 3: Reference Chart for Selected Michigan Offenses

DISCLAIMER: This document is meant for ***criminal defense attorneys ONLY*** *and is not intended for use by immigration practitioners, government attorneys, or immigration judges. The analysis of offenses is deliberately conservative, because criminal defense practitioners must be conservative in their immigration advice to their noncitizen clients. For some offenses, viable arguments exist to contest removability in immigration proceedings that are contrary to our analysis, but it is beyond the scope and purpose of this chart. Immigration counsel should rarely, and probably never, concede a criminal ground of removability and should always research potential defenses. In order to protect defendants to the fullest extent, the most conservative analysis is required.*

Furthermore, this chart analyzes individual offenses in a vacuum. The actual impact of an offense will vary dramatically depending on the client's immigration status, prior criminal record, and other pending charges. Because immigration consequences of crimes is a complex and ever-evolving area of law, practitioners should use this chart only as a starting point. This chart is not a substitute for legal research or obtaining immigration counsel for your client.

How to use this chart

For each criminal offense listed, the chart is divided into three categories: aggravated felony, crime involving moral turpitude (CIMT) and other grounds of inadmissibility or deportability. The chart then indicates the likelihood that an offense would be deemed to be an aggravated felony, CIMT, and/or some other specified crime-related ground of inadmissibility or deportability under immigration law.

To clarify the likelihood of an offense being an aggravated felony, CIMT or other ground, we will use the terminology as defined below:

1. **YES**—The immigration statute and/or case law clearly deem this offense to constitute an aggravated felony, CIMT and/or any additional grounds identified under column 5 and notes.
2. **LIKELY**—The immigration statute and/or case law may not be directly on point or clearly indicate that this offense is an aggravated felony, CIMT, etc. However, analyzed in the context of relevant immigration case law, the offense is likely to be deemed as such by immigration officials and/or the immigration courts.
3. **POSSIBLE**—The immigration statute and/or case law are unclear as to whether this offense would constitute an aggravated felony, CIMT, etc., and there are unresolved legal issues both for and against such classification. Such a finding may be avoidable, depending upon such factors as how defense counsel structures a plea agreement, or under which particular prong of the offense defendant is convicted.
4. **UNLIKELY**—The immigration statute and/or case law may not be directly on point or clearly indicate that this offense is *not* an aggravated felony, CIMT, etc. However, analyzed in the context of relevant immigration case law, the offense is not likely to be deemed as such by immigration officials and/or immigration courts.

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Accessory After the Fact	750.505	Likely, if the underlying offense is a CIMT	Likely, if sentence is at least 1 year	Can trigger other removal grounds depending on the underlying crime	*Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011); *Matter of Valenzuela Gallardo*, 27 I&N Dec. 449 (BIA 2018).
Aiding & Abetting	767.39	Likely, if the underlying offense is a CIMT	Likely, if the underlying offense is an aggravated felony & sentence is at least 1 year	Can trigger other removal grounds depending on the underlying crime	Jesus Ramon Garcia-Campos, 2018 WL 4611499 (BIA July 27, 2018) (unpublished); *Matter of Juan Delgado*, 27 I&N Dec. 100 (BIA 2017).
Arson	750.72-.76	Likely	Likely, if described in 8 USC 1101(a)(43)(E)/18 USC 844(d)-(i), OR if crime of violence under 18 USC 16(a) and sentence is at least 1 year		*Matter of S*, 31 I&N Dec. 617 (BIA 1949); In re Shanta Dargbeh, 2017 WL 4418334 (BIA Jul. 21, 2017) (unpublished); pending decision on remand in *Rosa Pena v. Sessions*, 882 F.3d 284 (1st Cir. 2018) which may affect the CIMT analysis.
Assault & Battery (Simple)	750.81(1)	Unlikely	Unlikely, but avoid a sentence of 1 year or more	If crime of violence, could be crime of domestic violence if victim is a protected person under 8 USC 1227(a)(2)(E)(i)	*Maurilio Flores Ventura,* 2018 WL 3416233 (BIA May 24, 2018) (unpublished); *Matter of Julio Cesar Ahortalejo-Guzman*, 25 I&N Dec. 465 (BIA 2011).
Domestic Assault	750.81(2), (4), (5)	Unlikely	Unlikely, but avoid a sentence of 1 year or more	If crime of violence, could be crime of domestic violence if victim is a protected person under 8 USC 1227(a)(2)(E)(i) Under proposed rules, could trigger bar to asylum. 84 Fed. Reg. 69640 (Proposed Rule, Dec. 19, 2019)	S-S-P, AXXX XXX 854 (BIA Aug. 4, 2017) (unpublished); *Shuti v. Lynch*, 828 F.3d 440 (6th Cir. 2016).
Assault (Aggravated)	750.81a(1)	Unlikely	Likely if sentence of 1 year or more.	If crime of violence, could be crime of domestic violence if victim is a protected person under 8 USC 1227(a)(2)(E)(i)	*Hernandez v. Whitaker*, 914 F.3d 430 (6th Cir. 2019); *US v. Harris*, 853 F.3d 318 (6th Cir. 2017); *US v. Burris*, 912 F.3d 386 (6th Cir. 2019).

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Felonious Assault (Assault with a Dangerous Weapon)	750.82	Unlikely	Likely if sentence of 1 year or more.	Unlikely to trigger removability as firearms offense under 8 USC 1227(a)(2)(C) because statute not divisible as to type of weapon; if crime of violence, could be crime of domestic violence if victim is a protected person under 8 USC 1227(a)(2)(E)(i)	*Hernandez v. Whitaker*, 914 F.3d 430 (6th Cir. 2019); *US v. Harris*, 853 F.3d 318 (6th Cir. 2017); *but see Matter of J-G-P-*, 27 I. & N. Dec. 642 (BIA 2019)
Assault with Intent to Murder	750.83	Likely	Likely if sentence of 1 year or more.	If crime of violence, could be crime of domestic violence if victim is a protected person under 8 USC 1227(a)(2)(E)(i)	
Assault with Intent to do Great Bodily Harm Less than Murder	750.84	Likely	Likely if sentence of 1 year or more.	If crime of violence, could be crime of domestic violence if victim is a protected person under 8 USC 1227(a)(2)(E)(i)	*In re Sanudo*, 23 I&N Dec. 968 (BIA 2006); Hassan Ibrahim Bazzi, 2007 WL 1125702 (BIA Feb. 23 2007) (unpublished); *Matter of Kwan Ho Kim*, 26 I&N Dec. 912 (BIA 2017).
Assault with Intent to Commit a Felony	750.87	Likely, if intended felony is a CIMT	Likely if sentence of 1 year or more.		
Assault with Intent to Rob and Steal; Unarmed	750.88	Likely	Likely if sentence of 1 year or more.		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).
Assault with Intent to Murder	750.83	Likely	Likely if sentence of 1 year or more.	If crime of violence, could be crime of domestic violence	
Assault with Intent to do Great Bodily Harm Less than Murder	750.84	Likely	Likely if sentence of 1 year or more.	If crime of violence, could be crime of domestic violence	*Matter of Sanudo*, 23 I&N Dec. 968 (BIA 2006); Hassan Ibrahim Bazzi, 2007 WL 1125702 (BIA Feb. 23 2007) (unpublished); *Matter of Kwan Ho Kim*, 26 I&N Dec. 912 (BIA 2017).

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Assault with Intent to Rob and Steal; Armed	750.89	Likely	Likely if sentence of 1 year or more.	Unlikely to trigger removability as firearms offense under 8 USC 1227(a)(2)(C) because statute not divisible as to the type of weapon.	*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016); US v. Harris, 853 F.3d 318 (6th Cir. 2017).
Assaulting, Resisting or Obstructing a Police Officer or Person Performing Duties	750.81d(1)	Unlikely	Unlikely, but avoid a sentence of 1 year or more.		Ronal Antonio Dominguez, 2017 WL 6555134 (BIA Oct. 3, 2017) (unpublished).
Leaving the Scene of an Accident	257.618	Unlikely	Unlikely		
Attempt (Generally)	750.92	Likely, if underlying offense is a CIMT	Likely, if underlying offense is an aggravated felony	Depends on underlying offense	
Carjacking	750.529a	Likely	Likely, if sentence is at least 1 year		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).
Carrying a Concealed Weapon (Dangerous Weapon)	750.227(1)	Unlikely	Unlikely		Cadren Everald Todd, 2006 WL 3485847 (BIA Oct. 26, 2006) (unpublished).
Carrying a Concealed Weapon (Pistol)	750.227(2)	Unlikely	Unlikely	Firearms offense, 8 USC 1227(a)(2)(C)	Cadren Everald Todd, 2006 WL 3485847 (BIA Oct. 26, 2006) (unpublished).
Carrying a Dangerous Weapon with Unlawful Intent	750.226	Likely	Unlikely, but avoid a sentence of 1 year	If record of conviction identifies weapon as a firearm, could trigger removability under 8 USC 1227(a)(2)(C)	Cadren Everald Todd, 2006 WL 3485847 (BIA Oct. 26, 2006) (unpublished).
Child Abuse (1st degree)	750.136b(2)	Likely	Possibly	Crime of child abuse, 8 USC 1227(a)(2)(E)(i)	*Matter of Velazquez-Herrera*, 24 I&N Dec. 503 (BIA 2008).

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Child Abuse (2nd, 3rd and 4th degree)	750.136b(3), (5), and (7)	Possibly	Unlikely	Crime of child abuse, 8 USC 1227(a)(2)(E)(i)	
Conspiracy (Generally)	750.157a	Likely, if underlying offense is a CIMT	Likely, if underlying offense is an aggravated felony	Depends on underlying offense	*Matter of Short*, 20 I&N Dec. 136 (BIA 1989).
Controlled Substance Obtained by Fraud	333.7407	Yes	Potentially	Could trigger controlled substance grounds	
Criminal Sexual Conduct	750.520b-.520e	Likely	Probably as crime of violence, rape, or sexual abuse of a minor depending on the specific subsection		*Esquivel-Quintana v. Sessions*, 137 S.Ct. 1562 (2017); *Matter of Keeley*, 27 I&N Dec. 146 (BIA 2017); *Keeley v. Whitaker*, 910 F.3d 878 (6th Cir. 2018)
Drug House, Keeping	333.7405	Possibly	Yes, if it would be regarded as federal felony drug offense.	Could trigger controlled substance grounds	
Embezzle-ment	750.174	Yes	Likely not fraud/ deceit or theft, but see comments. To be safe, avoid sentence of 1 year and keep amount of loss under $10,000 in record of conviction		*Akinsade v. Holder,* 678 F.3d 138 (2d Cir. 2012); V*alansi v. Ashcroft*, 278 F.3d 203 (3d Cir. 2002): Not aggravated felony fraud/deceit offense under 8 USC 1101(a)(43)(M)(i) if there is an intent to injure as opposed to an intent to defraud. To be safe, keep the amount of loss under $10,000. Could also be aggravated felony theft offense under 8 USC 1101(a)(43)(G), so keep sentence to less than one year.
Breaking, Escaping, or Leaving Jail	750.195	Yes	Yes		
Breaking, Escaping, or Attempting to Break or Escape from Prison	750.193	Yes	Yes		

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Ethnic Intimidation	750.147b	Yes	No		
Failing to Register, Sex Offender	28.724	Yes	No		
False Report of a Felony	750.411a(1)(b)	Yes	No		
False Pretenses	750.218	Yes	No, but avoid a loss to the victim of $10,000 to avoid fraud/deceit aggravated felony		
Felon in Possession of a Firearm	750.224f	Yes	Yes	8 USC 1227(a)(2)(C)	
Stealing, Removing, or Hiding Another's Financial Transaction Device Without Consent	750.157n	Yes	No		
Possession of Another's Financial Transaction Device with Intent to Use, Deliver, Circulate, or Sell	750.157p	Yes, if sentence is at least 1 year.	No		
Felony Firearm	750.227b	Yes	Yes, if underlying felony and sentence would be aggravated felony	8 USC 1227(a)(2)(C)	
Fleeing & Eluding, 1st, 2nd, 3rd and 4th Degrees	257.602a(5), (4), (3), and (2)	Yes	No		

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Forgery	750.248	Yes	Yes, if sentence is at least 1 year		
Larceny from a Vehicle	750.356a(1)	Likely	Likely, if sentence is at least 1 year		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).
Breaking or Entering a Vehicle with Intent to Steal Property, Damaging the Vehicle	750.356a(3)	Likely	Likely, if sentence is at least 1 year		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016); Joao Maria Oliveira Pavao, 2009 WL 1653712 (BIA May 11, 2009) (unpublished).
Retail Fraud (1st degree - Price Switching)	750.356c(1)(a)	Likely	Likely, if loss to victim exceeds $10,000		*Kawashima v. Holder*, 565 U.S. 478 (2012); *Pilla v. Holder*, 458 Fed.Appx. 518 (6th Cir. 2012); Katherine Lim Miave Go, 2018 WL 1756892 (BIA Jan. 8, 2018) (unpublished).
Retail Fraud (1st degree - Theft)	750.356c(1)(b)	Likely	Likely, if sentence is at least 1 year		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).
Retail Fraud (1st degree - False Exchange)	750.356c(1)(c)	Likely	Likely, if loss to victim exceeds $10,000		
Retail Fraud (2nd/3rd degree - Price Switching)	750.356d(1)(a)	Likely	Unlikely, but avoid sentence of 1 year and loss to victim of $10,000		
Retail Fraud (2nd/3rd degree - Theft)	750.356d(1)(b)	Likely	Likely, if sentence is at least 1 year		
= Retail Fraud (2nd/3rd degree - False Exchange)	750.356d(1)(c)	Likely	Likely, if loss to victim exceeds $10,000		

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Larceny from a person	750.357	Likely	Yes, if sentence is at least 1 year		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).
Larceny in a Building	750.360_	Likely	Yes, if sentence is at least 1 year		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).
Larceny by Conversion	750.362	Likely	Likely, if loss to victim exceeds $10,000		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016); *Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008).
Stolen Property Receiving or Concealing	750.535	Unlikely, because of "reason to believe" mens rea	Unlikely, because of "reason to believe" mens rea		*Matter of Bepean Joseph Deang*, 27 I&N Dec. 57 (BIA 2017).
Fraudulent Receipt of Public Assistance Benefits (>$500)	400.60_	Likely	Likely, if loss to victim exceeds $10,000	Under proposed rules, could trigger bar to asylum. 84 Fed. Reg. 69640 (Proposed Rule, Dec. 19, 2019)	
Breaking and Entering	750.110_	If larceny, likely; if felony, see notes	Unlikely		CIMT: If D intended to commit a felony, IJ can see whether that target offense is a CIMT by using the modified categorical approach; check this chart to see if that felony is likely to be a CIMT. Agg. felony: *US v. Ritchey*, 840 F.3d 310 (6th Cir. 2016).
Home Invasion	750.110a(2)-(4)	Likely	Likely, if sentence is at least 1 year		CIMT: *Matter of J-G-D-F*, 27 I&N Dec. 82 (BIA 2017). Agg. felony: *Matter of Ramon Jasso Arangure*, 27 I&N Dec. 178 (BIA 2017, vacated & remanded on other grounds); *US v. Quarles*, 850 F.3d 836 (6th Cir. 2017), *aff'd*, *Quarles v. US*, 139 S. Ct. 1872 (2019).

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Entering Without Breaking	750.111	Maybe, see notes	Unlikely		IJ can see whether the target offense is a CIMT using the modified categorical approach; check this chart to see if that misdemeanor is likely to be a CIMT.
Entering Without Permission	750.115	Unlikely	Unlikely		Mykola Nykholat, A087 261 881 (BIA June 3, 2011) (unpublished).
Possession of Burglar's Tools	750.116	Unlikely	Unlikely		The CIMT analysis is tied to the CIMT analysis of breaking and entering (MCL 750.110), above; Manuel Agustin Plazaola Vargas, 2005 WL 1104252 (BIA Mar. 29, 2005) (unpublished).
Indecent Exposure	750.335a	Possibly	Unlikely		*Matter of Alfonso Cortes Medina*, 26 I&N Dec. 79 (BIA 2013); Juan Ramirez-Serna, 2018 WL 3007184 (BIA Apr. 17, 2018) (unpublished).
Involuntary Manslaughter	750.321	Yes, if harm was intentional or if gross negligence to perform a legal duty.	No		
Voluntary Manslaughter	750.321	Yes	Possibly, especially if sentence is at least 1 year		
Kidnapping	750.349	Yes	Yes		
Malicious Destruction of Property	750.377a	Likely	Likely if crime of violence under 18 USC 16(a) and sentence of at least one year.		Alain Patrana, 2014 WL 7691444 (BIA Dec. 22, 2014) (unpublished).
Malicious Threats to Extort Money	750.213	Yes	Yes, if sentence is at least 1 year.		

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Reckless Driving Causing Death	257.626(4)	Yes	Possibly, especially if sentence is at least 1 year		
Murder (1st degree, premeditated)	750.316	Likely	Likely		
Murder (2nd degree)	750.317	Likely	Likely		*Matter of M-W-*, 25 I&N Dec. 748 (BIA 2012).
Checks Without Sufficient Funds	750.131	Likely.	Possibly under 8 USC 1101(a)(43)(M)(i) if amount of loss exceeds $10,000.		
Drawing Check on Bank Without Account	750.131a(1)	Yes	Possibly under 8 USC 1101(a)(43)(M)(i) if amount of loss exceeds $10,000.		
Three Insufficient Fund Checks Within 10 Days	750.131a(2)	Yes	Possibly under 8 USC 1101(a)(43)(M)(i) if amount of loss exceeds $10,000.		
Operating While Intoxicated (OWI)	257.625	No	No	Alcohol-related driving offenses can lead to prudential revocation of visas and inadmissibility on medical/health-related grounds Under proposed rules, could trigger bar to asylum. 84 Fed. Reg. 69640 (Proposed Rule, Dec. 19, 2019) Could create presumption that noncitizen lacks required good moral character or is ineligible for discretionary relief.	*Matter of Castillo-Perez*, 27 I. & N. Dec. 664 (A.G. 2019).

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Driving While License Suspended or Revoked	257.904	No	No		
Perjury Committed in Courts	750.422	Yes	Yes, if sentence is at least 1 year.		
Perjury	750.423	Yes	Yes, if sentence is at least 1 year.		
Manufacture/ Possession with Intent to Deliver (anything but marijuana)	333.7401(2)(a)	Yes	Yes	Also a controlled substance offense, "reason to believe" a drug trafficker	
Manufacture/ Possession with Intent to Deliver (>5kg Marijuana)	333.7401(2)(d)(i)-(ii)	Yes	Likely because quantity is defined as more than 5kg	Also a controlled substance offense, "reason to believe" a drug trafficker	
Manufacture/ Possession with Intent to Deliver (<5kg Marijuana)	333.7401(2)(d)(iii)	Yes	Unlikely	A controlled substance offense, "reason to believe" a drug trafficker	
Possession of Controlled Substance (anything but marijuana)	333.7403(2)(a)(iv)	Unlikely	No, unless it would be a federal felony (more than a certain amount of crack, or certain recidivist offenses)	A controlled substance offense	
Possession of Marijuana	333.7403(2)(d)	Unlikely	No	A controlled substance offense (but not a deportable offense if a single conviction involving less than 30 grams for personal use).	
Robbery (Armed)	750.529	Likely	Likely, if sentence is at least 1 year		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Robbery (Unarmed)	750.530_	Likely	Likely, if sentence is at least 1 year		*Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).
Stalking	750.411h	Unlikely	No	Possibly under 8 USC 1227(A)(2)(E)	*Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999) (may no longer be good law); *Matter of U. Singh*, 25 I&N Dec. 670 (BIA 2012); *Matter of Sanchez-Lopez*, 27 I&N Dec. 256 (BIA 2018)
Aggravated Stalking	750.411i	Possibly		Possibly under 8 USC 1227(A)(2)(E)	*Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999) (may no longer be good law); *Matter of U. Singh*, 25 I&N Dec. 670 (BIA 2012); *Matter of Sanchez-Lopez*, 27 I&N Dec. 256 (BIA 2018)
Criminal Nonsupport (Spouse or Children)	750.165	Yes	No		
Unlawfully Driving Away an Automobile (UDAA)	750.413	Yes	Possibly if sentence is at least 1 year		
Unlawful Use of an Automobile (UUA)	750.414	No	No, but avoid a sentence of at least 1 year		
Unlawfully Accessing a Computer System	752.795(a)	It depends on which portion of the divisible statute individual convicted of	Unlikely		
Use of a Computer to Commit Specified Crimes	750.145d	Likely, if underlying crime is a CIMT	Likely, if underlying crime is an aggravated felony		

OFFENSE	STATUTE (M.C.L. §)	CIMT	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Possessing child sexual abusive material	750.145c(4)	Unlikely, but avoid	Unlikely, but avoid		Arturo Mandujano-Torres, A091 480 873 (BIA Jan. 4, 2017) (unpublished).
Uttering and Publishing	750.249	Likely	Likely, if loss to victim exceeds $10,000		*Yeremin v. Holder*, 738 F.3d 708 (6th Cir. 2013).