

ISSUES IN IMMIGRATION

U.S. MARSHALL'S

Have been deputized by the Department of Homeland Security to
enforce immigration law

IMMIGRATION CLASSIFICATIONS

- Unlawful Aliens
- Deferred Action Recipient
- Non-Immigrants
- Parolee
- Temporary Protected Status
- Asylee or Refugee
- Lawful Permanent Residents
- U.S. Citizens

Unlawful Aliens

Entered the country clandestinely

DEFERRED ACTION

DACA – government knows they are here but have chosen to exercise prosecutorial discretion and are not taking any action against them.

Non-Immigrants

People here on a Visa

- Tourist visa
- Student visa
- Fiance visa

PAROLEE

Someone who is lawfully allowed to be here for a specific purpose and for a limited time

- Humanitarian parole for medical purposes or family reunification

TEMPORARY PROTECTED STATUS

It is a temporary immigration status due to certain conditions that make the person's return to their country unsafe

It is not permanent residency, but it can lead to protection from removal and for work authorization.

ASYLEE AND REFUGEE

Granted Asylum or Refugee Status

Difference:

- Asylum is done in the country
- Refugee status is done outside the country

Lawful Permanent Resident

Green Card Holders

U.S. Citizens

- U.S. Citizen by birth
- U.S Citizen by Naturalization

Can A Guilty Plea Affect My Client

- Yes, a guilty plea can affect your client's immigration status and forms of relief.
- Two types of crimes will affect your client
 - Aggravated Felony
 - Crime Involving Moral Turpitude

Aggravated Felony

8 U.S.C. 101(a)(43)

- Murder, Rape, Sexual Abuse of a Minor
- Trafficking a controlled substance
- Money laundering
- Possessing, selling, transporting explosives
- Possessing and transporting firearms
- Obstruction of Justice
- Theft/Burglary Offense
- RICO

Crime Involving Moral Turpitude

- What is it?
 - “It depends”

Crime Involving Moral Turpitude

- Definition
 - Moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. Matter of Danesh, 19 I&N Dec. 669 (BIA 1988)
- Moral turpitude is a crime that requires two essential elements: reprehensible conduct and a culpable mental state
 - Vicious motive or a corrupt mind
 - Evil intent
 - Acting recklessly
 - Intending to defraud or deceive

Examples

- Client was arrested and pled guilty to 21 U.S.C. 841(a) knowingly or intentionally possessing cocaine with the intent to distribute
 - Punishable for up to 10 years
 - Knowledge or intent requires a culpable mental state - *Matter of Khourn*, 21 I&N Dec. 1041
- Client was arrested for and pled guilty to Miss. Code Ann. 97-17-43(1) taking, stealing, carrying away any personal property of another under the value of \$1,000.00
 - Misdemeanor punishable up to six months in prison
 - Crime Involving Moral Turpitude – *Matter of Leyva*, 16 I&N Dec. 118
- Client was arrested and pled guilty to 26 USC 7203 willfully failing to file tax return
 - Misdemeanor punishable for up to 1 year
 - “Wilfully” connotes an evil intent – *Matter of W-*, 5 I&N Dec. 759

How Will A Conviction Impact My Client's Status

Depending on the conviction, your client can be deemed inadmissible and/or deportable

Deportable vs Inadmissible

What's the difference

- **Deportable:** Government is trying to kick you out of the country
 - You will be placed in immigration court
- **Inadmissible:** You are trying to enter into the country
 - Person is at the border and seeks to enter into the country
 - The person is in the country (entered illegally)
 - Person applies to become a permanent resident

How Do I Know If My Client Is Deportable or Inadmissible

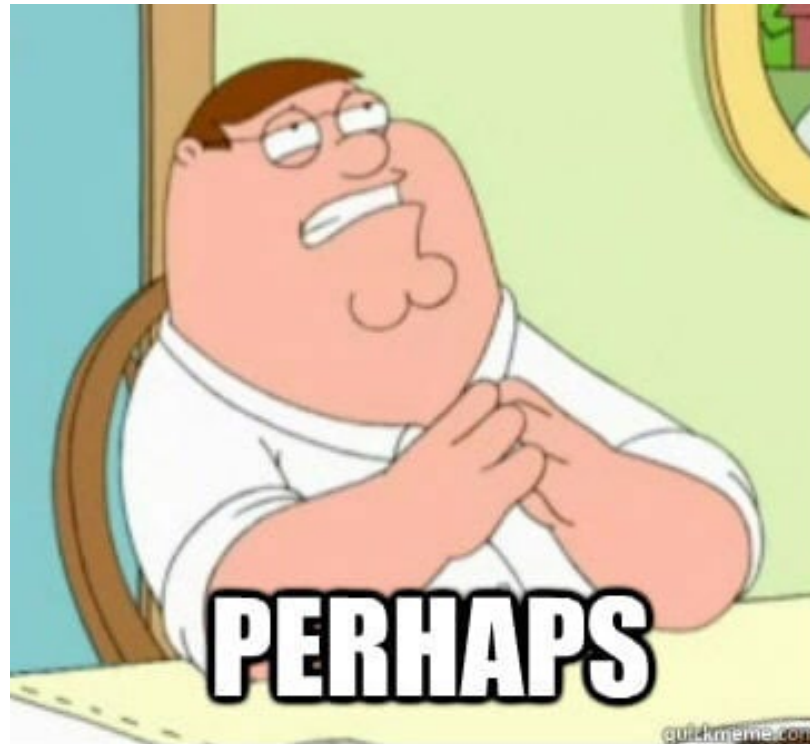
INA 212(a)(2) - Inadmissibility

- Crime of Moral Turpitude
- Multiple criminal convictions
 - Total sentence is 5 years
- Controlled Substance Trafficker
- Prostitution
- Money Laundering
- Terrorism

INA 237(a)(2) – Deportable

- Crime of Moral Turpitude
 - If conviction was within 5 years of “admission”
- Aggravated Felony
- High Speed Flight
- Controlled Substances
- Firearm Offenses
 - Selling, purchasing, possessing

Will A Conviction Affect My Client in Immigration Court?



Lawful Permanent Residents

Are they barred from the following forms of relief from removal

Cancellation of Removal INA 240A(a)	Withholding of Removal	Convention Against Torture
Aggravated Felony • Yes	Aggravated Felony • Yes • INA 241(b)(3)(B)(ii)	Aggravated Felony • No
Crime of Moral Turpitude • No, unless it qualifies as an aggravated felony	Crime of Moral Turpitude • Only if it is a “particularly serious crime • INA 241(b)(3)(B)	Crime of Moral Turpitude • No

Everyone Else

Cancellation of Removal	Asylum	Withholding of Removal	Convention Against Torture
Aggravated Felony • Yes • INA § 240A(b)(1)(C)	Aggravated Felony • Yes • INA § 208(b)(2)(B)(i)	Aggravated Felony • Yes, if sentence of 5 years or more is imposed	Aggravated Felony • No
Crime Involving Moral Turpitude • Yes, if punishable by 1 year and w/in 5 years of admission • INA § 240A(b)(1)(C)	Crime Involving Moral Turpitude • Yes, if “particularly serious crime” or inadmissible or deportable • INA § 208(b)(2)(A)(ii) and (A)(i)	Crime Involving Moral Turpitude • Yes if it is a “particularly serious crime” • INA § 241(b)(3)(B)(ii)	Deportable/ Inadmissible Crime • No

How do I know if ICE will detain my client?

They will

Priorities

Everyone is a priority

- Unlawful aliens
- Nonimmigrants
- Residents
- Even citizens have been detained

Mandatory Detention

INA 236(c)

- Inadmissible and Deportable aliens are subject to mandatory detention
 - “When the alien is released”
 - Without regard to whether the alien is released on parole, supervised release, or probation

Padilla v. Kentucky

Defendants have a right to be advised as to the immigration consequences of their guilty plea

Requirements Under Padilla

- If the law is unambiguous, attorneys must advise their criminal clients that deportation will result from a conviction.
- If the immigration consequences of a conviction are unclear or uncertain, attorneys must advise that deportation "may" result.

Best Practices Tips

- Ask your client if they are a US citizen
 - If “no,” get their actual status
 - Having a work permit or being in immigration court proceedings is not a lawful status
- Assume that, at the very least, the crime is a crime involving moral turpitude
- Look at the statute, if it is clear that your client is deportable or inadmissible, tell them that
- If they have zero status, they are here unlawfully, ask them if they have ever been before an immigration judge
 - If “Yes,” ask if they have a deportation order.
 - If “Yes,” they will be deported by ICE
 - If “No,” they will go in front of an immigration judge and will have to fight to stay in the country
- Prepare a separate letter stating that you have spoken with them and that they understand that you are not an immigration attorney

Example

- Christian entered into the country clandestinely 20 years ago and married a USC.
- In December of 2024, he engages in prostitution
- Caught and charge with violating Miss. Code § 97-29-49
- You recommend he take a plea because, since it is a misdemeanor he will not face any jail time
- He asks how will this affect his process
- Ineligible for cancellation or asylum INA § 212(a)(2)(D) (inadmissible)
- His USC wife is applying for him to get a green card
- If he pleas and goes back to Mexico, will a guilty plea affect his green card case?
- No – He can apply for an I-601 waiver and get his green card...in about two years

More Importantly

Just ask for help