Removal Defense Toolkit

Catholic Legal Immigration Network, Inc.

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Meet the Presenters

Speakers

- Shaila Rahman, FSC (CLINIC)
- Ambar Tovar, Directing Attorney (UFWF)

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Objectives

- Help organizations prepare to provide future or improve current removal defense services
- Introduce basic principles of program management for removal defense
- Share best practice tips

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- Removal defense vs. affirmative practice
- Immigration court protocols and etiquette
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Afternoon Session

- Self-care strategies
- Caseload balance issues
- Case selection best practices
- Working with clients in detention (introduction)
- Resources, open forum/Q&A, closing activity

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Meet Each Other

Management challenge activity

- Your name and your role
- Your organization's name
- Your organization's location
- Size of your immigration program
- What's you management challenge?

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Removal Defense vs. Affirmative Practice

What makes removal defense different from the affirmative practice of immigration law?

- Adversarial nature of the proceedings
- More time-consuming/more preparation
- Emotional toll on staff (i.e. vicarious trauma)
- High stakes of proceedings / tolerance for risk

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Removal Defense vs. Affirmative Practice

How do you prepare for your first experiences in immigration court? (court etiquette/procedures)

- Observe and shadow
- Practice tips from the field
- Immigration Court Practice Manual
- Substantive removal defense trainings

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Recommended Infrastructure/Logistics

What kind of infrastructure is recommended to provide removal defense services?

- Space, equipment, and tools
- Case management forms
- Policies and procedures

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Recommended Infrastructure/Logistics

What space, equipment, and tools are recommended for removal defense practice?

- Office supplies especially printer/copier/scanner
- Adequate space for client and staff meetings
- Cloud-based case management system
- Inviting waiting room and toys for kids

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Recommended Infrastructure/Logistics

What kinds of policies and procedures are recommended for removal defense practice?

- Timely filing cases
- Client communications
- Travel and mileage reimbursement
- Case file opening and case file closing
- Case file maintenance, storage, and retention

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Recommended Infrastructure/Logistics

What types of case management forms are recommended for removal defense practice?

- Checklists
- Intake/screening
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- Case closing letters (various forms of relief)

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Scope of Representation

Why is scope of representation important?

- Potential legal and ethical issues
- Withdrawal or substitution of counsel
- See EOIR Immigration Court Practice Manual sections on scope of representation: https://www.justice.gov/eoir/page/file/1284746/download

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Scope of Representation

Limited Representation Options

- Appearing in court on "on behalf of"
- Bond redetermination hearings
- See EOIR Immigration Court Practice Manual sections on appearing "on behalf of" and bond redetermination hearings (bond proceedings): https://www.justice.gov/eoir/page/file/1284746/download

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- Caseload balance issues
- Case selection best practices
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- Resources, open forum/Q&A, closing activity

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- Mental health
- Helps retain staff
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Caseload Balance and Composition

Case Selection Best Practices – How to select cases?

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Caseload Balance and Composition

How do you assess the level of difficulty of a case?
What do you think?

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Caseload Balance and Composition

How do you assess the level of difficulty of a case?

- Type of case
- Criminal history
- Immigration history
- Client's ability to cooperate
- Family and friend involvement
- Urgency of case and agency calendar

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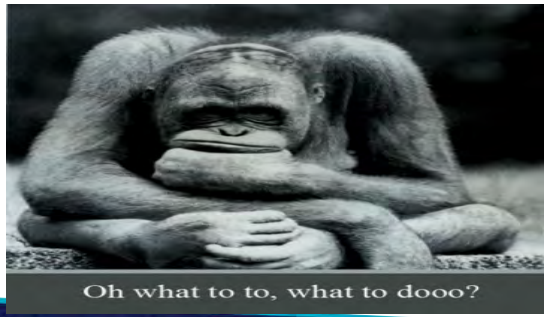
Questions?



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Working with Clients in Detention

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- Documents related to representation and access to the facility
- Things to work on or read while waiting
- Food and water in case your visit ends up being longer than expected

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Resources

- Managing an Immigration Program Manual: https://cliniclegal.org/resources/guides-reports-publications/managing-immigration-program-steps-creating-and-increasing
- Case Management Toolkit: https://cliniclegal.org/clinic_toolkit/694
- OCIJ Practice Manual (Immigration Court Manual): https://www.justice.gov/eoir/eoir-policy-manual/part-ii-ocij-practice-manual
- ICE Detention Standards: https://www.ice.gov/factsheets/facilities-pbnds

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Management challenge activity

- How will you tackle your management challenge when you return to work?

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Program Considerations for Providing Removal Defense

Most of the immigration benefits you file on behalf of your clients are with U.S. Citizenship and Immigration Services. On occasion individuals may need defense from removal in immigration court. If your organization is thinking of, or are already, providing removal defense, you will soon realize removal cases are highly complex, can quickly consume staff time, and can become resource draining for immigration programs. Yet, the work is very important in the immigrant community and affirming legal justice in our immigration court system. Advanced planning for its impact on staff and other program resources can mitigate unexpected surprises, potential liability issues, and staff burnout.

The following are suggestions for immigration programs to consider when planning for and providing removal defense representation.

Preliminary Assessment of Immigration Program's Capacity

Before your immigration program decides to handle removal defense cases, you may want to conduct a preliminary assessment of your staff resources and caseload. Some questions to consider are:

- What is the current caseload in your immigration program?

- Is the current caseload manageable for your staff? If it is not manageable, what changes can you make in your case selection and overall case management process?

- What are your current staff resources and how will removal defense work affect them? Will you dedicate a full-time staff to removal defense or will you split staff time between removal defense and other types of immigration benefits? Will you hire new staff or train existing staff on removal defense? These staffing decisions will depend on your agency's financial resources and staff interest, skills, and time.

  If you decide to hire new and less-experienced staff, what qualifications do they need for this position? They should probably at a minimum possess immigration court experience. If you decide to re-train existing staff whether it is a staff attorney or partial accredited representative looking to obtain full accreditation, you should create a training plan that includes advocacy and court skills, writing motions and briefs, and experience observing master calendar and individual hearings in immigration court.

- What proportion of your program's caseload will be allocated to removal defense? This decision again will hinge on staff and financial resources. If you have a grant for removal defense, this analysis may be easier since it will be dictated by the

terms of the grant. However, if removal defense will be fee-for-service, then you may need to be more selective in which removal cases you accept considering the availability of your staff and your program's budget.

- After assessing your program's capacity, you will need to determine how much your immigration program will need to charge for removal defense services. Keep in mind that time is uncertain in most defense cases due to their complexity, especially when staff are less experienced. When determining a fee schedule structure, it is helpful to survey local nonprofit organizations and private attorneys and conduct a program cost analysis of how much a case might cost to the agency. Some state and local government agencies have started to fund removal defense work. You should check to see if this is the case in your state or locality.

Managing Your Staff Resources

Whether or not your immigration program decides to hire new staff or re-train existing staff on removal defense, program directors and managers need to ensure staff competency and compliance with immigration court processes and procedures. Below are some suggestions to consider:

- When developing your annual program budget, advocate for and build in staff training expenses for courses relevant to removal defense and other areas of immigration law.

- Consider developing a training plan with staff for the year. Attorneys may need to take legal trainings to fulfill their Continuing Legal Education requirements for their state bar license while full accredited representatives need trainings to renew their accreditation every three years.

- It is important that program directors and managers allow time for staff to participate in learning and networking opportunities with government agencies and other local immigration providers. ICE, local law enforcement, and private detention corporations sometimes conduct stakeholder relations meetings in the immigration court or detention facility. In addition, many local immigration courts have one or more pro bono liaison judges who serve as a point person to nonprofit immigration legal service agencies and private attorneys engaged in pro bono work. Many cities and counties also have working groups of immigration practitioners who focus on removal defense or certain niches within removal defense such as asylum.

  These types of engagement activities are essential for programs to connect with local immigration attorneys and providers that practice in immigration court. They will be a good source of referral for cases you can't accept, as well as, possibly cover for your staff attorney or full accredited representatives during planned or

unplanned absences. We will discuss this in more detail in the section, "Maintaining Removal Defense Cases".

- When appearing in the immigration court, all legal representatives need to be familiar with immigration court processes and procedures set forth by the Executive Office for Immigration Review (EOIR), Office of the Chief Immigration Judge. This information is published in the Immigration Court Practice Manual.[1] This manual can change periodically "in response to changes in law and policy"[2] so it is recommended legal representatives review this information prior to a master calendar or individual hearing. In the beginning of 2021, EOIR published a comprehensive policy manual which includes the OCIJ and BIA practice manuals. The EOIR policy manual is available here: https://www.justice.gov/eoir/eoir-policy-manual/part-ii-ocij-practice-manual.

- Attorneys and full accredited representatives who plan to practice before the Immigration Court or Board of Immigration Appeals need to register with EOIR prior to the court appearance or submission of any court documents. The registration process "consists of an online registration and an identity validation. Both steps must be completed in order for an attorney or accredited representative to be registered before EOIR" [3] and receive an EOIR identification number.

Revising Your Case Management Policies and Procedures

Managing Removal Defense Cases

Removal defense work is highly complex and involves multiple deadlines that often cannot be extended. It is important that your program has policies and procedures for receiving clients, handling client files, tracking deadlines, and a backup plan when there are planned or unplanned staff absences.

- What are your policies and procedures for front-line staff when they receive clients who need removal defense services? If front-line staff conducts the preliminary screening and intake, ensure they are trained with the intake process. They should ask only the information contained on the screening or intake form and to refer the clients to the removal defense attorney or full accredited representative for a complete screening and consultation.

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[1] U.S. Department of Justice, Executive Office for Immigration Review, Office of Chief Immigration Judge, *Immigration Court Practice Manual*, at https://www.justice.gov/sites/default/files/pages/attachments/2017/11/02/practicemanual.pdf

[2] *Id.*

[3] For more information refer to "Frequently Asked Questions" at https://www.justice.gov/eoir/i-cubed-faqs/download and "General Instructions" at https://www.justice.gov/sites/default/files/eoir/legacy/2013/05/14/instructions-eRegistry.pdf

- Removal defense attorneys and full accredited representative should include important case deadlines and court dates on the same shared calendar as the rest of the immigration program staff. This information is especially important for supervisors when anticipating planned or unplanned absences.

- Removal defense case files will be periodically taken out of the office for court hearings. If you don't have one already, develop an office policy for handling client confidential information and case files outside of the office. Ensure staff acknowledges such policy by having him or her sign it. It is recommended that you have a backup case file in the office should something happen to the original copy. If you use a case management database for back up, make sure staff is consistent with entering case information and deadlines.

- Each removal defense case may involve multiple proceedings such as a bond hearing and individual hearing for cancellation of removal. Each proceeding requires its own supporting evidence. You may need to modify the way removal defense case files are organized to prevent confusion and misplacement of documents. For instance, you could create a general folder for the client and sub-folders for the different proceedings in that case. Each sub-folder will have its court notices, attorney work product, supporting evidence and other case management documents such as retainer agreement, case notes, case closing, etc.

- Once your case is pending before an Immigration Judge, you are committed to the case unless you file a motion to withdraw or motion to substitute and is approved by the Immigration Court. Therefore, make sure you have a backup plan in case the attorney or accredited representative of record is unavailable. Missing a court hearing or deadline is detrimental to both your client and your program. If you don't have another attorney or full accredited representative on staff, consider utilizing a contract or volunteer attorney to assist, or engage with another local organization that provides removal defense that may also need back-up for their attorney or full accredited representative.

- You may want to notify your insurance carrier that your program will provide court representation for the first time or significantly expand its liability exposure, even if the cost of insurance increases so the agency and staff are adequately covered. You may need or want a higher coverage depending on the type and number of removal cases you assume.

Case Management Forms

There are a few important case management forms and documents you may want to create or update for removal defense such as:

- *Intake form*: Removal defense attorneys and full accredited representatives will need to conduct a full screening for client's eligibility. You may need to update your general intake form to include additional questions to assist with that process. This may include more detailed information on prior criminal and immigration history (such as prior removal orders), eligibility for various forms of relief in immigration court (such as cancellation of removal), and current custody status.

- *Client Services Agreement*: Ensure your agreement clearly defines the scope of representation. You should also include a statement that there is no guarantee of outcome and that if client loses in immigration court, the client agreement does not include an appeal to the Board of Immigration Appeals, the Circuit Court, or the Supreme Court of the United States. Also, you may want to include a statement that if the client moves or is transferred to another detention facility outside of your geographic service area, you may need to terminate representation.

- *Letter or document educating the client about the removal proceedings:* This letter or document can include information about the immigration court process and etiquette. It should be translated into the client's native language. This can be given at the onset of representation and re-visited when the legal representative is preparing the client for the court hearing.

- *Document checklist*: The checklist provides clients a list of supporting documentation they need to gather for the immigration benefit they are seeking in court. This is usually given at the onset of representation.

- *Sample questions for direct and cross-examination*: When preparing clients and witnesses for direct and cross examination, provide them with a list of questions you will ask during direct examination and questions the government may ask during cross examination. Adequate preparation for direct and cross-examination can make or break a case in immigration court.

- *Case closing letter*: Clients should receive a case closing letter at the end of the case which explains the outcome of the case and implications thereof. If the immigration judge denies the case, the letter should include appeal rights, options, and deadlines and information about other possibilities for representation if your agency cannot represent the client in the appeal. If the case is approved, the letter should include an explanation of the immigration benefit the client received as well as next steps (especially if client will be eligible to adjust status or petition for family in the future) and consequences of any future illegal activity (especially criminal and immigration law violations).

- *"Know Your Rights", safety planning and other informational materials for the clients and their family*: It is important to educate your clients and their family

about their rights in case they or their family members get stopped by the police, ICE officers, or get detained. You should prepare your client for the worst-case scenario and inform them how they should contact you if they are detained.

Outreach and Obtaining Clients

After you assessed your caseload capacity, staff resources, and modified your case management policies and procedures, your immigration program may be ready to conduct outreach and market your removal defense services.

- It is important to have an outreach strategy that is tailored to your program goals. If your program plans to start slow in the beginning, it might be best to target your outreach to local organizations and private attorneys for referrals only. After your program capacity increases, you may want to expand your outreach to the rest of the community with "Know Your Rights" presentations and other outreach methods listed below.

- There are various methods and opportunities for you to establish a client base. Here are some suggestions:

  - The Executive Office of Immigration Review maintains a "List of Pro Bono Legal Service Providers" on their website. Non-profit organizations and attorneys who wish to be included on the list will need to submit an application to EOIR, Office of Legal Access Program. [4] Organizations on the list may need to commit to a certain number of pro bono hours on removal defense work.

  - Coordinate a "Know Your Rights" presentation to the community and make information available about your removal defense services.

  - Connect with local organizations that conduct rapid response work or have Legal Orientation Programs (LOPs) through EOIR.

  - Be involved with coalitions that focus on removal defense and detention.

  - Connect with your local detention facility. The information below discusses how to best connect with your local detention facility.

  Tips for connecting to and working with detained clients

  - If you have never visited a detention facility, contact the facility and schedule a tour. This is an opportunity for you to engage with the staff at

[4] For further information or to submit an application refer to https://www.justice.gov/eoir/list-pro-bono-legal-service-providers

the facility, ask any questions you may have, and understand the policies and procedures for admission as a legal representative.

- Connect with other local nonprofit agencies and pro bono-oriented immigration attorneys who work in the detention center. Ask them for information about the detention center's policies and procedures.

- Become familiar with ICE Detention Standards, commonly referred as "ICE Performance Based National Detention Standards"[5] prescribes practices and standards of program operations and management in detention facilities.

- EOIR has a program called the Legal Orientation Program (LOP), which provides free legal orientation to immigrants in detention in select cities across the United States. Check to see if your local detention center has an LOP program and connect with LOP staff to collaborate on removal defense services.

- Whether you are an attorney or full accredited representative, individuals often need to be pre-approved by the detention facility to enter the detention center. Check out the detention center's website to see their visitation guidelines or contact the facility and find out who you need to contact to gain admission. Most detention centers have a Field Office Director (FOD), an Assistant Field Office Director (AFOD), and Supervisory Detention and Deportation Officers (SDDOs) who manage the detention centers and supervise the Deportation Officers (DOs) while others are jointly managed by local law enforcement or a private detention company and Immigration and Customs Enforcement. Since each detention center has different visitation policies and procedures, it is important to contact the detention facility on how to gain access to the center.

- Full accredited representative should be prepared to explain to detention officers their authorization to practice law. Many, if not most, detention officers are not familiar with the recognition and accreditation process and may deny the full accredited representative entry into the facility even if he or she received clearance in advance. It is a good idea to bring the letter of approval for full accreditation in case there are issues to entry.

- Legal representative should limit case discussions with detained clients over the phone. Detained clients should be aware their conversations could be recorded over the phone. In person meetings should be the preferred method of contact with detained clients.

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[5] ICE Detention Standards can be accessed at https://www.ice.gov/factsheets/facilities-pbnds

- Be patient. The detention system can be confusing and frustrating and policies and procedures can change suddenly. It is Important to check in regularly with detention center management to obtain updates on local policies and procedures.

Conclusion

The need to provide affordable removal defense services in the immigrant community remains great. As more nonprofit organizations and pro bono attorneys step up to provide removal defense, this ensures everyone has equal access to the legal system and affirms the importance of our immigration court system. We hope you continue to critically think about the provision of your immigration services to ensure efficiency and quality for all those needing assistance.

Policy & Procedures for Removal Representation

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A. POLICY PURPOSE

To develop a uniformed process to better assist our community who find themselves in Removal Proceedings before the Dallas Immigration Court.

B. POLICY SCOPE

This policy applies to all members of ILS staff providing Removal Representation in Dallas Immigration Court.

C. POLICY

In order to assist our community and ensure the ethical handling of Removal Representation cases, all legal representatives of ILS will follow the procedures here forth to each foreign national seeking removal representation with ILS. This representation will be provided following the values of Catholic Charities Dallas; Service, Compassion, Integrity, Respect, and Commitment.

D. ETHICAL REPRESENTATION AND RESPONSIBILITIES

Attorneys at Catholic Charities Dallas, Immigration Legal Services must be licensed by a State Bar, of any State or Territory of the United States of America. Each attorney must adhere to the rules of their respective State Bar, the Texas State Bar, and the Immigration Court rules of ethics, described in the Immigration Court Practice Manual[1].

Accredited Representatives are not licensed by the State Bar and are not explicitly bound by the TDRPC. Instead, they may practice immigration law by consent of the Department of Justice, which requires that they do so ethically. 8 CFR 1003.102. In practice, this means that accredited representatives should follow the ethics rules for the jurisdiction where they practice. Therefore, all the issues below apply equally to attorneys and accredited representatives.

1 https://www.justice.gov/sites/default/files/pages/attachments/2017/11/02/practicemanual.pdf

Catholic Charities Dallas Legal Representatives will represent clients in Removal Proceedings while upholding our values, which are: Service, Compassion, Integrity, Respect, and Commitment. Also, these values are necessary to evaluate the facts of the case.

Retainer Agreements:

Retainer agreements are to be signed by the client before a case is opened. The retainer agreement includes the name of the client; the type of case being submitted; the fee paid by the client, if any, or if the client is under a grant; the rights and responsibilities of the client; the reasons for termination of representation; the grievance process for the client. It should be signed by the case manager or attorney representing the client as well as the client. The original is to be kept in the file and the copy should be provided to the client when opening a case. The contract is available in both English and Spanish.

Declining Representation of a Potential Client (PC)

When a client is ineligible to receive our services, you must make this clear to the person seeking counsel. Provide foreign national with a clear and precise understanding of the policies for acceptance or decline of representation.

Competence

If you accept a case, you must ensure that you have the level of knowledge about the law and process necessary to advise the client adequately regarding the immigration issues. You are expected to know the well-settled principles of law. When you encounter an issue that is not well settled, you are expected to conduct legal research to discover the rules. This includes researching relevant cases (BIA, Supreme Court, and 5th Circuit), statutes, regulations, and policy memos.

Diligence

You are expected to carry out the representation without neglecting any legal matters or failing to carry out your obligations to the client until the end of the representation. Provide Potential Clients with a clear understanding of the Removal process in Immigration Court. This encompasses things like meeting filing deadlines and preparing for court and interviews. It is important to be clear with Potential Clients regarding the scope of representation at the beginning and when the representation will end. Thus, you should make sure to review the engagement contract thoroughly at the beginning and send a nonengagement letter to clarify when the representation ends.

Communication

You must keep your client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. This often requires that you speak the client's language with fluency or use an interpreter. If you communicate with the client through a family member over the phone, you should follow up any significant information with a letter in the client's language.

You must also explain matters to the client so that they can make informed decisions about the case. This means that you should explain all the client's options along with their risks and let the client decide what he/she wants to do. You must be sufficiently educated in the law to be able to give advice about the options. Resist the temptation to make the decision for the client.

Confidentiality

You must not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation, it's necessary to prevent death/harm, or a court orders it.

Conflict of Interest

You must screen clients for potential conflicts of interest. Special attention to criminal charges and the victims. CCD ILS represents a large number of victims of crimes, and we need to ensure that our clients are not in contact with their victims and that we are not violating ethical rules.

E. INITIAL PROCEDURES

Intake & Initial Consultation

All Potential Clients in Removal Proceedings must attend the Removal Proceedings Workshop at our office, which will be presented on a weekly basis. After the Potential client receives the orientation, they will have a consult with an attorney or Fully Accredited Representative. This consultation will be a short 15 to 30 minutes consultation, in which the basic information of the case will be gathered and entered in our online case management software, LawLogix, this includes, but is not limited to:

- Biographic information;
- Alien Number and next Court date; and
- Any petitions or application filed.

Any important information regarding the client or their immigration history should also be included in Lawlogix as a case note, as well as their grant classification, if any. This case note should be entered during the consult, or the day of the consult to assure accuracy of the information.

At this Initial Consultation the Legal Representative will inform the Potential Clients (PC) of our policies and procedures as follows: PC needs to meet the income qualification criteria for services to be rendered under a grant, and that after these initial consultations are done, the team will meet to discuss the consultations, and will proceed to call the Potential Clients that are going to be accepted for representation, if they do not receive a call within 3 weeks, ILS will not be able to represent them. After such, Potential Clients that have been accepted for representation will have a follow up consultation at which Potential Clients are given full assessments of their possible immigration benefit and are given a checklist with the necessary documents to open a case with ILS.

Qualifications for Accepting Representation in Dallas Immigration Court:

CCD Legal Representatives will adhere to the following guidelines for accepting representation of individuals in Removal Proceedings.

- General qualifications for all Removal Representation:
  - Potential Clients need to qualify for an income maximum Grant, if they are to be represented under a Grant; and
  - Potential Clients must live in the jurisdiction of Dallas Immigration Court. If Potential Clients live more than an hour away from our office, they must have the means to meet at the office regularly if needed.

- General Qualifications for Non-Detained Removal Representation:
  - Next *Master Hearing* should be 2 months or more in the future; and
  - *Individual Hearing* must be 8 months or more in the future.

- General Qualifications for Detained Removal Representation:
  - Client needs to be detained in the Prairieland Detention Center in Alvarado, Texas;
  - Client must attend the Legal Orientation Program (LOP) provided by staff members of ILS in the Detention Center; and
  - ILS will not represent a client that already has an Individual Hearing Date Set.

- For Potential Clients Seeking Asylum either Detained or Non-detained:
  - Need to have basic requirements for asylum:
    a) protective category,
    b) fear to return;
    c) harm is by government or group the government can't or won't control; and
    d) one-year deadline has not passed.
  - Corroboratory evidence (newspaper articles, country condition reports, witness statement, government documents, amongst others);
  - In cases regarding Domestic & Gang violence Potential Clients must have:
    a) a cognizable Particular Social Group that can be formulated, and
    b) evidence that the harm is extreme and persistent.

- Family based asylums will not be accepted to represent by ILS, for example: *I'm afraid to return because my cousin or brother was killed.* We will need more corroborating evidence about the harm Potential client will suffer.
- Potential Client needs to have a basic understanding of why they were being targeted specifically.
- Potential Client needs to understand that Asylum is not an easy process and we will have many appointments which they must be able and willing to attend to all appointments in our office, as needed. Also, that, in many cases psychological evaluations will be needed.

- For Potential Clients seeking SIJS Relief
  - Family Court Representation will only be provided if a waiver of servicer can be signed or is not needed.
  - Potential Client will need to bring evidence or testimony of child that corroborates claim basis for SIJS.
  - PC's need to be under 18 years of age. We will not accept cases of Potential Clients that are 5 months away to turn 18 years

- For Potential Clients seeking Non-LPR Cancellation of Removal (42B)
  - Needs to meet criteria for 42B:
    a) Good Moral Character;
    b) Qualifying relatives (spouse, child, parent); and
    c) No disqualifying crimes.
  - If PC has a domestic violence charge against them, it can only be one and ILS legal representative must verify the police report to see if representation is aligned with CCD values, and there is no conflict of interest.
  - PC needs to have evidence of 10 years of continuous presence, ideally for each month; and
  - must have a strong support system to gather all the evidence needed.

- For Potential Clients seeking Bond Redetermination Representation:
  - PC must be detained in Alvarado or Johnson County;
  - PC must have minor criminal activity, if criminal activity is present evidence to contrast it must be obtained by family member;
  - PC must have a relative that is able to access CCD offices and provide information necessary in short period of time;
  - PC must have a place to live after detention; and

- PC must have an LPR or USC willing to be sponsor and pay bond.

- *For Potential Clients seeking other reliefs in court such as 42a, waivers, and Deferred Actions, the team will examine them in a case by case basis, depending on the workload and complexity of the case.*

Open

Once a potential client has all primary documents to open a case, they are asked to call our office to make an appointment. This appointment should be done with the ILS staff member that did the initial consultation. If a client brings all documents necessary to open a case during that second consultation (check docs), the case should be opened that same day. The clients existing consultation in Lawlogix should be renamed to the process being done and all derivatives must be linked to the primary case to ensure all family information is linked to the main beneficiary. (if you need training with LawLogix please contact your direct supervisor). It should be noted that for some cases, like asylum cases, clients will need to come to the office on multiple times before the final form is ready to be filed.

F. GUIDELINES FOR OPENING AND FILING NEW CASES

Cases are not to be opened unless all the following requirements are completed, and a case note is included:

1. Financial Screening completed;
2. Money order provided by client for filing fees, made out to the appropriate entity; and
3. ALL necessary documents and information to accompany case filing provided by client.
4. All forms should be completed using Lawlogix, all forms are to be reviewed by the client, and all signatures should be affixed to the appropriate forms before the client departs the office.
5. All clients must sign the ILS agreement and communication policy.

Case Open - Flow Chart

Follow Up Consultation after Removal Workshop

Complete Financial Assessment, determine any conflicts of interest, & enter in Lawlogix. Make sure that the miscellaneous tab in Lawlogix includes the information for the appropriate grant, that it is a removal case, and whether or not we are going to accept the case. If case is under TAJF, must update the service outcome in the drop-down menu.

Follow Up Consultation (after Attorney Meeting re: acceptance of case)

Review previous consultation notes, discuss case with Potential Client, gather any additional information, complete red flags and provide checklist to Potential Client.

Open Consultation

Obtain case number and enter in case log. Rename consultation to Removal Defense - (relief). Write a detailed case note with case facts and strategy; add case number of any cases linked to the FN. Add Court Date to Court Day Calendar in Outlook, excel and square.

File is passed to Technical Review (TR)

Program Manager or assigned case manager/attorney completes TR of file. If TR requires corrections, file is returned to case manager/ attorney to complete corrections. Once corrections are completed, file is to be returned to the same TR person. Once TR passes return to attorney/ caseworker for copies and to be mailed. All removal cases should be reviewed by a second person to assure all information is accurate, all documents are included, and all forms are completed properly. TR can be done by a program supervisor, attorney, or fully accredited representative

Application is filed

File is placed in certified mail rack to await receipt notice / biometric notice, if filed with USCIS. Once notice is received, activities are updated, case notes are entered, and file is returned to main file cabinet to await next steps.

Cases are to be passed to Technical Review

1. Each ILS staff member is responsible for managing his/her own caseload and accordingly is responsible for filing his/her cases within the time period needed for each case.
2. Each staff member should complete all work related to a given case during the time slot given for each case opening.
3. If unusual circumstances occur and it will not be possible to finish a case and submit it to TR on the day it is opened, it is the staff member's responsibility to call this to the attention of his or her supervisor immediately.
4. All ILS staff members who see clients, will have a specific blocked day each week in which they do not see clients. This would allow them to file cases within the given timeline.
5. Once technical review is completed, each attorney or caseworker is responsible for making copies of their own case, placing packet in the mail basket, and placing file in the certified mail rack to wait receipt notices. All activities must be updated after a case is copied and sent.

To ensure that our workload does not become backlogged and that cases are filed promptly, all ILS case managers are expected to follow these guidelines. *If you get behind on your cases, work with your supervisor to catch up.*

Master and Individual Hearings

Each hearing date must be entered on Lawlogix, Outlook calendar, and Square, every Legal Representative must review their personal EOIR online portal to update the calendars in ILS. For Master Calendar Hearings one attorney will be assigned per day, unless otherwise necessary, to attend the ILS docket of the day. For Individual Hearings two or more ILS Legal Representative will assist to the Immigration Court. In preparation for an Individual Hearing a Mock Hearing will be done by the Legal Representatives in the Removal Proceedings team. After each Hearing, is the responsibility of the Legal Representative that assisted to Court that day to enter in case notes all important and pertinent information for the case.

Case Notes

It is very important that case notes be written to document all client encounters, all actions taken in each case, and all attempts to contact clients. Case notes should be clear and concise. All case notes should be entered in LawLogix immediately after a consultation, phone call, or conversation with client. Because many immigration cases remain open for many years, it is essential that case notes tell the full story of the case, in language that future

case managers will understand. All relevant facts about a case should be clearly recorded and all actions taken in the case clearly stated.

The case note is not intended to be transcript of the client encounter or event, but rather a concise summary of the key points that need to be recorded for future reference. Each case note should end with a stated individual service plan for the client. The plan should indicate the case manager's updated strategy for the case and the location of the file.

Cases Opened Log

An ongoing chronological log is maintained of all cases as they are opened each fiscal year. The case number begins with the 2-digit fiscal year and followed by a chronological number. (18-0001, 18-0002, etc.). Such a log provides an easy reference to the number of cases opened during a given month, and an easy reference to locate cases. The log is kept in the One Drive for easy access of all case managers from their offices.

Each staff member is responsible for entering the information for the case opened in the case log. This should be done the day the case is opened when the case number is taken. You are not to assign a case number to a case until the client has signed a contract and the client provided all the needed documentation for the case. This information is necessary to complete the Daily Case Opened Breakdown, required for monthly statistics. The log includes the name of the client, type of case, date case opened, and name of the case manager/ attorney responsible for the case. A copy of each new case entry is printed out, directly from the Cases Opened Log, to make the insert for the pocket on the outside of each client folder.

The Cases Opened Log serves as the tracking system for all new cases opened from the time they are opened and assures that cases are passed to technical review on a timely manner. Once a case is passed to technical review, the staff member enters the date the file was passed. After TR is completed, the person responsible of TR will enter date TR is completed and passed for mailing.

Weekly Case Management Report

As a case manager or attorney at ILS, you are required to have accountability with the cases you have opened and have a duty to our clients to make sure their case is being processed in a timely manner. Each case manager / attorney is required to run a weekly report in Lawlogix to view status of open cases and determine if a specific case requires follow up. The report is saved under reports in the "case management log" folder. Each case

manager is to create their own copy of this report and update it before their weekly meetings with their manager.

Financial Screening

All clients who we represent in Immigration Court must do an income eligibility for ILS services. Different sources of funding for ILS have different income eligibility guidelines, so this screening device must be maintained in each client folder to document the client's eligibility for services.

Our main priority is to assist those clients who are not able to afford a private attorney. If a client does not qualify under any of our grants and is unable to pay for services, please discuss with your individual program manager of with the director to determine if fees can be waived or reduced.

After each case open, a grant sheet that corresponds to the service provided is to be filled out, a copy kept in the file, and the original, with the required proof of income or documentation, returned to the staff member assigned to keep a record of the grant sheets. If required, a sticker to identify the type of case and/or the grant designation is to be placed outside the file for easy identification.

G. CLIENT FILE FOLDERS

Client files must be maintained in a standardized and organized fashion in recognition of the important and confidential contents of each file. The following are general guidelines which all staff are expected to follow regarding case management and file organization.

1. Clearly written case notes − Case notes should be entered as described previously for all cases. Case notes should be done immediately after client contact.

2. Activities Updated − It is important to update activities at the different stages of your case for easy review of file location and filing stage. You must update the activities of the case on LawLogix and in the Case Monitoring Sheet of the file. The activities are updated by the case manager on the day the case is opened and date it is passed to TR. The technical reviewer is to update activities once TR is completed. Program Assistants are to update activities once mail is received or the case is closed.

3. File Organization − all materials in the file are to be evenly hole

punched and fastened to the folder. Detail on file organization is found below.

4. Mail Received – all mail received is to be marked on the Case Monitoring Sheet and to be hole punched and placed on the appropriate side of the file, please see below.

5. Electronic certified mail receipts - If the application is submitted by mail, the certified mail receipt number should appear in the cover letter. This allows us to review delivery of case is receipt notice is not received in a timely manner.

6. Filing cases inactive – once our client representation has terminated, the case should be filed inactive. The following steps are to be followed on each inactive case:
   a. Case Manager establishes that case is ready to be filed inactive. The case manager enters a "final action" activity and case note, identifying reason why file is ready to be filed inactive, date, and initials of person making determination.
   b. Case is placed in inactive rack.
   c. Program Assistants prepare case to be filed inactive and scans file.
   d. Administrative Assistant sends a closing letter to client.
   e. File is scanned and uploaded into Lawlogix.
   f. Case is closed in Lawlogix.

Case File Folder Organization

1st division:

Left Side *(Internal, administrative-related items)*	Right Side *(EOIR, ICE and USCIS Notices)*
Item (From top to bottom)	Item (From top to bottom)
Client address labels	Case Monitoring Sheet
Change of address form & fee record	Court Notices
money order receipt form	Receipt Notices, Biometric Appointments
Copies of money orders	ICE Notices
Critical Intake Information Sheet	
Checklists	
Red Flags	
Technical review forms	

2nd Division:

Left Side *(Client provided Evidence & Extra Forms)*	Right Side *(Motions & applications submitted)*
Item (From top to bottom)	Item (From top to bottom)
Extra G-28 updated	In chronological order
Extra E-28 updated	Motions
Extra Change of Adress form	Applications submitted
Client evidence not submitted to court	Evidence Packets

H. TECHNICAL REVIEW

For quality control purposes, all cases prepared must go through a process called Technical Review (TR). Technical review is completed by either a Supervisor or by an assigned case manager. A TR sheet has been created for each different type of case opened at ILS. If a TR sheet does not exist, a miscellaneous TR sheet is available. TR sheets that need to be updated or changed are to be given to the Associate Director to update as needed.

Once a case is completed, the most current version of the corresponding Technical Review sheet should be attached to the work prepared. Technical Review sheets should be printed directly from the computer to ensure that the latest version is used. TR sheets are saved digitally in the S:\ drive on the network.

Once the case is ready for technical review, it should be placed in the appropriate TR rack based on the program manager or case manager on duty assigned. The supervisor or assigned case manager conducting technical review should review the case. All cases submitted for TR should be reviewed and returned to case manager or attorney for mailing as soon as possible. If a case requires corrections, these corrections will be explained in detail in the case notes and the file is to be returned to the case manager /attorney that opened the case to complete these corrections. Any case that does not pass TR for any reason should not be filed until it has gone through the Technical Review process and passed. Once TR is completed, the file is to be returned to the ILS staff member that opened the case for copies and mailing. Once copies are done, the file should be placed in the certified mail cabinet.

Removal Defense Program
Procedures Manual

Cases that fall under the CDSS funding would be accepted at no cost to the client. The client has to meet the income and other grant requirements to receive representation at **no cost through CDSS. CDSS's income requirements are 250% below the poverty rate (see income reporting sheet).** Clients that do not meet the income requirements under CDSS funding are required to pay a low fee for RDP services (see CCDSD's Fee Service List). The client is always responsible to pay for any required government filing fees. CCDSD does not have funds to cover government filing fees.

Fee Schedule: See CCDSD's Fee Service List for specific fees.

CDSS Funding:
CCDSD Fees: $0
Filing Fees: client's responsibility (filing fees depend on type of immigration benefit)

Non-CDSS:
Catholic Charities Fees: See CCDSD fee list.
Filing Fees: client's responsibility (fee depends on type of immigration benefit)

No Outcome Guarantee:

Catholic Charities, Diocese of San Diego, its staff and volunteers **CANNOT** guarantee an outcome on any case.

Type of RDP Services Provided:

CCDSDs RDP services are offered to both detained and non-detained clients in San Diego and Imperial Counties..

Detained/Non-Detained Cases:

- ☐ Asylum, Withholding, CAT
- ☐ Bond Hearings
- ☐ LPR Cancellation of Removal
- ☐ Non-LPR Cancellation of Removal
- ☐ VAWA Cancellation of Removal
- ☐ Special Rule Cancellation
- ☐ Other Removal Cases:
  - Examples of other removal cases: people with pending applications (I-130s, VAWA, U Visa, etc.)

Appeal Services: Appeal services are only available for CCDSD clients (individuals that we assisted with initial filings). At this moment we cannot take appeal cases for non-CCDSD clients

(individuals that had removal cases filed by private bar attorneys or other nonprofit legal service providers). We will review any appeal case from current client on a case to case basis. We cannot guarantee anyone (current or prospective clients) that we are going to take an appeal case.

- BIA* (see fee list)
- 9th Circuit* (see fee list)

*Appeal services would not be considered until the IJ makes a decision on a case. CCDSD will make a determination in regards to whether we can file an appeal. The client will have to sign a new service agreement if both, CCDSD and client, decide to appeal the case. If the case has to be appealed to the 9th circuit, we have to repeat the same process. We cannot guarantee clients representation with appeals.

Services are limited to San Diego and Imperial Counties:

Applicants for services need to reside or have a case pending in the immigration courts of San Diego or Imperial Counties. If the client moves outside of the San Diego and Imperial Counties, we will no longer be able to represent them. If we are the attorney of record, we will ask the court to allow us to withdraw. Prospective clients should always know this before they sign an agreement for services. Services for detained individuals are limited to individuals detained at the Otay Mesa Detention Center and the Imperial Regional Detention Facility.

Screening Process:

Applicants who call the office will have to provide some basic information to the clerk (internal referral sheet). The clerk will place those sheets in the Removal Defense Program's inbox or send via email to the Removal Defense team, Luis Gonzalez and/or Kara Watkins.

Phone Pre-screenings

The removal defense team will conduct a phone pre-screening after receiving the "internal referral sheet." If it is determined that an in-person screening is required, then an appointment will be scheduled for the individual to come in to one of our offices for a full screening with a member of the removal defense team. In-person screenings for non-detained clients are to be requested if the RDP team has indications that the individual might be eligible for relief and/or if additional information is required in order to make that determination. All screenings for detained clients are to be made in-person at the detention center.

Clinic Pre-screenings

Applicants at legal clinics where CCDSD participates will be pre-screened by a member of the removal defense team. If it is determined that an applicant requires a full screening, then an appointment will be scheduled for the applicant to come in to one of our offices to meet with a member of the removal defense team.

Walk-ins at a CCDSD Office

Individuals who walk-in to any of our offices will have to provide her or his information to the clerk (complete internal referral sheet). A member of the removal defense team will call the applicant to do a pre-screening over the phone. If it is determined that an applicant needs a full screening, then an appointment will be scheduled for the applicant to come in to one of our offices for a full screening with a member of the removal defense team.

Screenings by Volunteers

Any non-attorney or non-DOJ fully accredited representative that screens an applicant must consult with the removal defense attorney or DOJ full accredited representative when she or he completes a screening. Volunteers who are **NOT** attorneys or fully accredited representatives cannot provide legal advice to applicants at any stage of the process. When a volunteer screens a case, the removal defense attorney, DOJ full accredited representative, and/or the Department Director will make the decision about accepting, denying, or referring the case.

Detained Individuals: Otay Mesa Detention Center and Imperial Detention Facility Only

Detained individuals will call or mail a request for assistance to CCDSD (letter via mail, etc.).

Phone Calls from Detained Applicants: If the detained individual calls, the person answering the phone should complete the "**internal referral sheet**." That form should be placed in the Removal Defense Program's inbox, or sent via email to the removal defense team, Luis and/or Kara.

Request for Services via Mail from Detained Applicants: Sometimes detained individuals mail requests for services. All requests should be forwarded to the removal defense team.

Detained applicants will be visited by a member of the removal defense team. The applicant will be screened at the detention facility.

Denials/Referrals

Denials: If the removal defense attorney, DOJ fully accredited representative or the Department Director determines that we cannot take the case, the individual requesting services will receive such decision during the screening. In some circumstances, the decision will not be made during the screening process and the person will be notified after, in a timely manner. That may happen if legal research or the opinion of the rest of the removal defense team and/or Department Director is needed. Individuals that need to wait for a decision should receive a decision in 1-2 weeks. The decision can be in person, via phone call or through a letter sent to the address provided during the screening or as listed on the application for services.

Referrals: CCDSD does not have the capacity to represent all individuals that seek services and that have viable claims for relief. When this occurs, a qualified referral to other CDSS funded legal service providers in San Diego County will be made. The individual will be asked to sign a

document giving CCDSD permission to make such referral. Referrals will be made on a case by case basis. CCDSD does not guarantee that another legal service provider is going to be able to provide representation. The individual will be encouraged to continue looking for legal representation while she or he awaits a decision from the referral agency.

Direct Referrals from Staff: Staff can make direct referrals by emailing the internal referral sheet to the removal defense team. Referrals will follow the same procedure as listed above. A phone pre-screening will be conducted and a full screening, if needed. In addition, Case Managers that have cases that may or will end up in removal proceedings can send a request for assistance to the removal defense team via email or during any office hours established by the removal defense attorney.

Accepted Cases

When a case is accepted for representation, the case will be assigned to an attorney or a DOJ fully accredited representative. The client will have to sign the following documents (all clients):

- Service Agreement
- G-28
- Consent to Release Information
- Conflict of interest Statement (if applicable)

Signing the **G-28 is particularly important for detained clients since we have limited access to them. ICE will not provide any information if a G-28 is not on file.**

Decision to Accept Cases:

Only the removal defense attorney, DOJ fully accredited representative, and the Department Director can make the final decision about accepting a case. The DOJ fully accredited representative should consult with the removal defense attorney or Department Director before making a final decision.

Capacity to Accept Cases:

CDSS funding is limited; CCDSD was funded to file a specific number of cases and to conduct a limited amount of consultations. Once CCDSD meets all of its CDSS deliverables, CCDSD can decide to stop accepting *pro bono* cases under such funding. When this occurs, individuals will be required to pay office fee as listed on the fee service list.

At times the RDP team may demy services based on inability to take on new cases due to capacity. The RDP team's capacity will be assessed weekly during case review and will be discussed with the Department Director. Internal capacity to take on new cases is important as it will ensure that CCDSD is providing the best service and representation to those it is assisting. CCDSD can decide to temporarily stop taking cases for an indicated period of time. Any caps will be immediately communicated with all CCDSD Immigrant Services staff. During temporary pauses in RDP services, internal referral sheets for RD services will still be collected from

individuals and phone pre-screenings will still be conducted. Referrals to other agencies will be made.

Terminating Representation:

Client will receive a letter from CCDSD when representation is terminated. *Who can terminate representation? When?*

Termination by Client:

- A client can terminate representation at any time during representation. If the case is pending before an immigration judge, CCDSD needs to file a motion to withdraw or the client can have the new attorney file a motion to substitute. It is very important to know that when we are the attorney of record in removal proceedings, we will continue to be the attorney of record until a motion to withdraw or substitute is filed and granted by the immigration judge. The motion can be in writing or oral at a court hearing.

Termination by CCDSD:

- When the Immigration Judge or USCIS makes a decision on the case.
- When a conflict of interest arises.
- When client lies or provides inaccurate information to CCDSD's staff or volunteers.
- When client does not cooperate, meaning that client cannot be located or is not providing the information or evidence needed to move forward with her or his case.

Opening Removal Defense Cases:

All cases should have a physical file and an electronic file in e-Immigration.

Physical File:

The physical file should be on a hanging file folder. The hanging file folder should have a tab with the client's name and e-Immigration case number. The hanging folder should have sub-file folders. One for attorney work product (AWP) and one for any type of relief we are seeking. For example, if there is a case for cancellation of removal and bond, we should have a file for cancellation of removal and one for bond. It is important to keep documents separate because proceedings are separate. Mixing documents could lead to confusion in regards to what has been file in a case. It is important to note that the immigration judge will not take into consideration evidence filed in a bond hearing during the merits hearing for cancellation of removal or any other type of relief.

E-Immigration File:

Every case requires detailed notes that are documented in E-Immigration. This is to include all communications with the client, family members, the trial attorney, etc. This is important

because removal cases have time sensitive deadlines that cannot be extended. If a person that is working on a case is sick or out of the office for other reasons, having detailed case notes will allow another person to easily see the status of the case.

All consultations need to also be added into e-Immigration. When conducting a consultation for a new CCDSD client, a client profile will be created. For all RD consultations, a consultation case will be created. A copy of the completed intake and/or screening tool will be added in the documents section. Case notes are to also be added in the logs section. Case notes will include the following:

- Where the consultation was conducted
- A brief summary of the individual's request
- A brief summary of what was discussed
- Relief identified, if any
- Next steps

Removal Defense Program Case List:

All CCDSD staff or probono attorneys working on removal cases must maintain an updated case list at all times. The case list has two tabs for open cases. One is for detained cases and the other for non-detained cases. The CCDSD staff or probono attorney assigned to the case is responsible for updating that case list. It is important to keep the list up to date as it is another tool that can be used to get a quick update about a case status.

The case list also has a consultation tab. All consultations are to be included in the case list It is a way for us to keep track of the number of consultations being conducted and billed to the CDSS grant, but also to have an understanding of the need for potentially expanding the RD program, if applicable.

The RD attorney and/or the Department Director will be provided with a copy of the case list as any given time for case review and quality assurance purposes.

Closed Cases:

All cases that are closed for any reason should be closed on e-Immigration. The physical file should be moved the closed filing cabinet, and to the case information needs to be listed on the closed tab on the case list. Closing case notes should be included on e-Immigration. The client needs to sign a letter stating that her or his case is now closed with CCDSD Immigrant Services and that CCDSD is no longer representing her or him in any immigration matter.

*****If you have any questions about this "Procedures Manual," please contact the removal defense attorney or the Department Director. *****

***** This "Procedures Manual" will be regularly updated. *****

SAMPLE REMOVAL DEFENSE DOCUMENT CHECKLIST (GENERAL)

1. Court Documents (these can be obtained from client or court)
    a. □ Copy of master calendar, bond, and or merits hearing notices
    b. □ Copy of NTA and I-213
2. Representation Documents
    a. □ Intake/screening Form
    b. □ Agreement for Legal Representation
    c. □ E-28 (can be filed online, keep copy in physical file)
    d. □ G-28 (if filing affirmative applications with USCIS)
3. Records Requests
    a. □ Authorization for Release of Confidential Information
    b. □ HIPAA Privacy Authorization Form (medical or mental health records)
    c. □ FOIA request
    d. □ FBI request
    e. □ State criminal record request
    f. □ Court dispositions for each criminal issue
4. Closing Documents
    a. □ Case close letter

SAMPLE FILE REVIEW CHECKLIST

I. Case opening-related documents
   A. □ Intake/screening form
   B. □ Agreement for legal representation
   C. □ G-28 (if filing affirmative applications with USCIS)
   D. □ E-28 (if representing client in removal proceedings)

II. Application-related documents
   A. □ Application form(s)
   B. □ Supporting documents

III. Fee-related documents
   A. Check for fee for service provided by organization, made out to organization
   B. Check for fee for filing application, made out to appropriate government agency

IV. Records requests
   A. □ Authorization for release of confidential information
   B. □ HIPAA privacy authorization form (for medical or mental health records)
   C. □ FOIA request(s) from all relevant agencies
   D. □ FBI request (check personal review box)
   E. □ State criminal record request
   F. □ Court dispositions for each criminal issue

V. Case closing-related documents
   A. □ Case close letter

VI. Court-related documents (if applicable)
   A. □ Copy of master calendar, bond, and or merits hearing notice0
   B. □ Copy of NTA and I-213

SAMPLE INTAKE/SCREENING FORM

CLIENT'S BIOGRAPHICAL INFORMATION

NAME **AKA NAMES/ALIASES**	**COB/NATIONALITY** **RACE/ETHNICITY**	**DOB** **AKA DOBs**	**A NUMBER** **SS NUMBER** **BKG NUMBER** **(if applicable)**	**PREFERRED LANGUAGES (in order of preference)**

Marital Status	never married / married / separated / divorced / widowed	**Gender**	M / F

Client's Home Address, Phone Number, and E-mail (or last known if detained or missing)	**If Detained, Detention Center Name, Address, Phone Number**

CLIENT'S IMMIGRATION HISTORY

CLIENT'S CURRENT IMMIGRATION STATUS	LPR / visa / undocumented / other: If in status, date client received status:

1ST ENTRY	**MANNER OF ENTRY TO U.S.**	**LIST OF DEPARTURES FROM U.S.**	
		Date departed U.S. **Manner of departure** **Date returned to U.S.** **Manner of return**	
LAST ENTRY	**MANNER OF ENTRY TO U.S.**		
		Date departed U.S. **Manner of departure** **Date returned to U.S.** **Manner of return**	

Is client in removal proceedings?	Y/N/?	**Date departed U.S.** **Manner of departure** **Date returned to U.S.** **Manner of return**	
Have you ever been in any type of proceedings before an immigration judge?	Y/N/?		
Have you ever been ordered removed by an immigration judge?	Y/N/?		
Have you ever been granted voluntary departure by an immigration judge?	Y/N/?	**Date departed U.S.** **Manner of departure** **Date returned to U.S.** **Manner of return**	
Have you ever been returned at the border by officials?	Y/N/?		
If so, were you fingerprinted?	Y/N/?	**Date departed U.S.** **Manner of departure** **Date returned to U.S.** **Manner of return**	
Have you ever made a false claim to U.S. citizenship?	Y/N/?		

If in removal proceedings, list court hearing dates:	**If in bond proceedings, list bond hearing dates:**
1st MCH: **2nd MCH**: **3rd MCH**: **4th MCH**:	**1st BND**: **2nd BND**: **3rd BND**: **4th BND**:

CLIENT'S FAMILY INFORMATION

Name	Relationship	Immigration Status	Contact Information Address Phone E-mail
	SPOUSE		
	MOTHER		
	FATHER		
	MATERNAL GRANDMOTHER		
	PATERNAL GRANDMOTHER		
	MATERNAL GRANDFATHER		
	PATERNAL GRANDFATHER		
	CHILD		
	CHILD		
	CHILD		
	CHILD		
	CHILD		
	CHILD		
	SIBLING		
	SIBLING		
	SIBLING		
	SIBLING		
	SIBLING		
	SIBLING		
	SIBLING		
	OTHER		
	OTHER		
	OTHER		

POTENTIAL BARS TO RELIEF (NON-EXHAUSTIVE SCREENING)

CLIENT'S CRIMINAL HISTORY

Have you ever been arrested (if applying for naturalization, include traffic citations):		Y/N/?
Arrest Date	**Penal Code Section Allegedly Violated Name of Crime Alleged of Committing**	**Convicted? (Y/N) Plea? (guilty/not guilty/no contest) Sentence? (time sentenced by judge & time served)**

OTHER POTENTIAL BARS TO RELIEF

Preliminary questions to flag relief. More research needed.	YES	NO
Have you ever been accused of or been arrested for being in a gang or any gang-related activity? If yes, when and under what circumstances?		
Have you ever been accused of trafficking drugs or people to the United States? Note potential T Visa implications. If yes, when and under what circumstances?		
Have you ever claimed you are a citizen to the U.S.? If yes, when and under what circumstances?		
Have you ever used false documents? If yes, when and under what circumstances?		
Have you ever been accused or been involved with espionage, terrorism or related activities, or the communist party? If yes, when and under what circumstances?		
Did you fail to register for selective service? If yes, when and under what circumstances?		

RELIEF

ASYLUM/WOR/CAT

Preliminary questions to flag relief. More research needed.	YES	NO
Are you scared to return to your home country?		
Has anyone physically hurt you in your home country?		
Has anyone physically hurt any friends or family in your home country?		
Why are you scared to return to your home country? What would happen if you had to return to your home country? NOTES		

U VISA

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Have you ever been the victim of a crime in the U.S.?		
Has anyone ever physically hurt you since you have been living in the United States?		
Has any of your family members ever been the victim of a crime or physically hurt while in the U.S.?		
If any of the above, was a police report filed?		
If any of the above and a police report was not filed, are you willing to cooperate in the investigation of the crime?		
NOTES		

T VISA

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Did you travel to the United States with a guide or a coyote?		
Did the guide or coyote ever mistreat you or force you to work?		
Have you ever been forced to work or commit sexual acts against your will?		
NOTES		

S VISA

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Do you have information related to terrorism or organized crime?		
Is a federal or state law enforcement authority willing to help you pursue immigration relief?		
NOTES		

VAWA Self-Petition or Cancellation

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Have you been abused or mistreated by your parent, spouse, or adult child?		
Is your parent or spouse a USC or LPR? If abused by an adult child, is that adult child a USC?		
Has your USC or LPR spouse abused your child? (self-petition)		
Has your parent or child been abused by a USC or LPR? (cancellation)		
NOTES		

TPS / NACARA / HRIFA

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Are you a national of a country that has been designated for TPS?		
Do you meet the TPS entry and registration requirements?		
Are you from El Salvador, Guatemala, or the former Soviet Bloc and do you meet the NACARA requirements?		
Are you from Haiti?		
NOTES		

U.S. CITIZENSHIP

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Were you born in the United States?		
Are your any of your parents or grandparents USCs or were any of them born in the U.S.?		
Will you need a disability exemption waiver or other type of accommodation?		
NOTES		

FAMILY PETITION / ADJUSTMENT OF STATUS / READJUSTMENT OF STATUS

Preliminary questions to flag relief. More research needed. Refer to family chart for family's immigration status.	**YES**	**NO**
Do you have a qualifying family member who is a USC or LPR?		
Do you have an immediate relative (spouse, parent, or adult child) relative who could petition for you right now?		
Did you enter the United States lawfully?		
Do you have a visa petition pending based on family or employment?		
If so, when did your family member or employer petition for you?	**Date:**	
NOTES		

LPR CANCELLATION

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Have you been convicted of an aggravated felony?		
Have you ever been granted cancellation of removal, suspension of deportation, or 212(c) before?		
Have you been an LPR for five years?		
Have you continuously resided in the U.S. for seven years after being lawfully admitted and before becoming inadmissible or service of the NTA (whichever came first)?		
NOTES		

NLPR CANCELLATION

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Have you been convicted of a crime that disqualifies you?		
Have you lived in the U.S. for 10 years?		
Do you have a USC or LPR spouse who will suffer exception, unusual hardship you are deported?		
NOTES		

212(C)

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Have you been convicted of an aggravated felony or other deportable offense before April 24, 1996?		
Are you deportable based on conviction(s) that occurred after April 24, 1996?		
NOTES		

REGISTRY

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Have you continuously resided in the U.S. since January 1, 1972?		
Have you done anything or committed any crimes that would disqualify you?		
NOTES		

SIJS (CLIENTS COULD ONLY QUALIFY IF UNDER 21)

Preliminary questions to flag relief. More research needed.	**MOM**	**DAD**
Who were you living with before you were detained?	**YES / NO**	**YES / NO**
Who did you live with in your home country?	**YES / NO**	**YES / NO**
How was your relationship with your parents?		
Did your mom and dad ever hit you?	**YES / NO**	**YES / NO**
Did your mom and dad ever use drugs or alcohol?	**YES / NO**	**YES / NO**
Were you ever scared of your mom or dad?	**YES / NO**	**YES / NO**
Did your mom and dad financially support you?	**YES / NO**	**YES / NO**
Were you enrolled in school in your home country right before you left?	**YES / NO**	**YES / NO**
If you were not enrolled in school right before you left your home country, at what age did you leave school? Why did you leave school?		

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) [Note new requirements for expanded DACA ("exDACA")]

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Have you lived in the U.S. continuously since June 15, 2007? (Note, exDACA requires continuous presence since Jan, 1,2010)		
Were you under age 31 as of June 15, 2012? (Note, not a bar to eligibility under exDACA)		
Did you come to the U.S. before age 16?		
Are you over age 15?		
Are you in school, completed high school/GED?		
Have you ever been convicted of a crime? If yes, see criminal history section above and get criminal documents.		
NOTES		

VOLUNTARY DEPARTURE (PRE CONCLUSION / POST CONCLUSION)

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Do you have a passport or travel document to return to your home country?		
If you had to return to your home country, would you have the money to pay for your travel?		
Are you deportable under aggravated felony or terrorist grounds?		
Can you establish five years of good moral character? (post conclusion VD only)		
Have you been present in U.S. for at least one year before removal proceedings began? (post conclusion VD only)		
Can you post a bond? (post conclusion VD only)		
NOTES		

EMPOYMENT/OTHER

Preliminary questions to flag relief. More research needed.	**YES**	**NO**
Do you have a job skill or special talent that might qualify you for an employment-based visa?		
Do you have an employer who may be willing to assist you with an employment-based visa?		
Do you have a spouse, parent, or child who is in active duty in the U.S. armed force? If so, list family members:		
NOTES		

CLIENT'S MEDICAL HISTORY & OTHER HUMANITARIAN FACTORS

Have you ever been hospitalized for a significant medical or mental health condition? If so, what conditions have you had? Name and dates of hospital/institution(s):	Y/N/?
Have you ever been prescribed medication for anything or are you currently taking any medication? If so, what medications have you been prescribed and when? Name and dates of medication(a):	Y/N/?
Are you seeing a psychologist, psychiatrist, or therapist? If so, who are you seeing?	Y/N/?
Have you ever seen a psychologist, psychiatrist, or therapist in the past? If so, who have you seen? Name (s): Contact info: Dates seen:	Y/N/?
Have you had a social worker or caseworker? If so, who? Name(s): Contact info: Dates seen:	Y/N/?
Other humanitarian factors? (E.g. pregnant, nursing, family members with significant mental/physical health issues, etc.):	

OTHER NOTES/NEXT STEPS

	Action Plan:

SAMPLE AGREEMENT FOR LEGAL REPRESENTION

My full name is: _____. I retain XXXXX. [hereinafter XXXXX] to represent me under the terms specified in this Agreement for Legal Representation.

SCOPE AND NATURE OF REPRESENTATION

I understand that XXXXX will assist me **only with the following matters that have been checked:**

- ❑ Asylum, Withholding, and/or CAT
- ❑ Special Immigrant Juvenile Status
- ❑ LPR Cancellation of Removal
- ❑ Non-LPR Cancellation of Removal
- ❑ Adjustment of Status
- ❑ U Visa
- ❑ T Visa
- ❑ VAWA
- ❑ Master calendar hearings (immigration)
- ❑ Bond hearing before Immigration Judge
- ❑ Merits hearing before Immigration Judge
- ❑ Other: _____

XXXXX will not represent me in any other matters, including any appellate matter related to my case, unless XXXXX and I sign another written agreement.

MY RESPONSIBILITIES:

By signing this agreement below, I agree to:

- Cooperate with my XXXXX attorney and always tell the truth.
- Tell XXXXX of any change in my address or telephone number.
- Tell XXXXX if I no longer want XXXXX to be my attorney. I understand that I can fire XXXXX at any time and for any reason.

I understand that XXXXX may stop helping me with my case for reasons including, but not limited to:

- If I do not cooperate with my attorney.
- If I am not honest with my attorney.
- If I miss more than 2 appointments with my attorney without calling 24 hours in advance to cancel.

COSTS AND FEES:

XXXXX has agreed to represent me with the following agreement regarding payment for legal service:

- ❑ I agree to pay XXXXX a fee of $_____ and have signed a separate fee agreement detailing the terms of payment.
- ❑ XXXXX has agreed to represent me *pro bono* and I understand that I will not be charged any fees for the legal services provided in my case.
- ❑ XXXXX has agreed to seek funding for my case from the Mexican Consulate and I have signed a separate agreement detailing this funding arrangement.
- ❑ My case is being funded by a third party. I understand that I will not be responsible for paying for my representation, and that the third party who is arranging the payment will not be able to interfere with the decisions made by my attorney and I.

XXXXX'S RESPONSIBILITIES:

I understand that XXXXX, as my attorney, will:

- Try its best to win my case. I understand that XXXXX **cannot guarantee** that I will win my case.
- Tell me about important developments in my case. XXXXX will not make any significant decisions about my case without my permission.
- Assign one attorney to my case. If that attorney is not available or is unable to continue with my case, another XXXXX attorney or XXXXX-supervised volunteer attorney will be assigned to my case.
- Keep a copy of my file for 7 years. XXXXX will give me one copy of my file if I ask for it.

ACKNOWLEDGEMENTS

I UNDERSTAND THAT XXXXX CANNOT GUARANTEE THAT I WILL WIN MY CASE.

I UNDERSTAND THAT IF I AM NOT HONEST WITH MY XXXXX ATTORNEY OR DO NOT REVEAL ALL OF MY CRIMINAL ARRESTS, DETENTIONS, AND CONVICTIONS, THAT THIS IS GROUNDS FOR XXXXX TO WITHDRAW AS MY ATTORNEY AND/OR MAY REQUIRE ME TO PAY ADDITIONAL FEES FOR THEIR SERVICES. XXXXX ATTORNEYS ARE NOT RESPONSIBLE FOR THE CONSEQUENCES THAT ARISE IF I FAIL TO INFORM THEM OF ALL OF MY CRIMINAL BACKGROUND.

I UNDERSTAND AND FREELY ACCEPT THE RISK THAT IF I AM NOT ALREADY IN REMOVAL PROCEEDINGS, THAT I MIGHT BE PLACED IN REMOVAL PROCEEDINGS IF AN APPLICATION THAT IS FILED ON MY BEHALF IS DENIED. IF I AM PLACED IN REMOVAL PROCEEDINGS BECAUSE AN APPLICATION FILED ON MY BEHALF IS DENIED, I UNDERSTAND THAT XXXXX WILL NOT REPRESENT ME IN COURT UNLESS XXXXX AND I SIGN A NEW RETAINER AGREEMENT AT THAT TIME.

BY SIGNING THIS AGREEMENT, I INDICATE MY UNDERSTANDING AND AGREEMENT WITH ITS ENTIRE CONTENTS.

_____ _____

Signature of Client Date

_____ _____

Signature of XXXXX Attorney Date

_____

Name of XXXXX Attorney

ENGLISH

By First Class Mail

DATE

POTENTIAL CLIENT'S NAME
POTENTIAL CLIENT'S ADDRESS

Dear POTENTIAL CLIENT'S NAME:

You have an immigration intake appointment with NAME on DATE AND TIME OF APPOINTMENT. Please come to your appointment on time. If you are more than 15/20/30 minutes late we will not be able to see you.

When you come to this appointment, you must bring with you:

- A photo identification, like a driver's license or passport (even if it is expired);
- All immigration papers you have filed or have received from any US immigration agency;
- Certificates of Dispositions for any and all arrests. You could obtain a copy of your certificates of disposition by going to PLACE WHERE CLIENT CAN OBTAIN A CERTIFICATE OF DISPOSITION; &
- A money order for $ INTAKE FEE for the intake consultation fee.

NAME office is located at OFFICE ADDRESS. To get to our office, DIRECTIONS TO OFFICE.

We look forward to meeting with you.

Very Truly Yours,

STAFF MEMBER'S NAME
STAFF MEMBER'S TITLE

AUTHORIZATION FOR RELEASE OF CONFIDENTIAL INFORMATION

Client Name:
A#:
Date of Birth:

You are hereby authorized and requested to disclose and give copies to XXX or any of its duly authorized representatives, including _____, any and all records and information concerning the undersigned which you may have in your possession, including but not limited to the following:

__ Psychological evaluation
__ Psychological history
__ Case Summary
__ Medical records
__ Ongoing communication
__ Discharge Summary
__ Telephone conversations
__ Case management plan
__ Legal information and records
__ Substance abuse treatment summaries
__ School education summaries/records
__ General information
__ Police Reports
__Other: _____

Nature and Extent of Information to be Disclosed:_____
_____

Purpose for the Disclosure:_____
_____

This consent form will expire on *(date)*_____ or _____ days from the date of service recipient signature, whichever date comes sooner.

I understand that this information is protected by law and cannot be released/requested without my written consent unless otherwise provided by law. I further understand that this consent may be revoked by me, in writing at any time, except if the information has already been released or obtained.

Service Recipient Signature: _____ Effective Date: _____

Witness/ Parent/Legal Guardian Signature (if applicable): _____

IF I DO NOT READ AND UNDERSTAND ENGLISH, THIS AGREEMENT HAS BEEN READ TO ME IN THE _____ LANGUAGE BY _____ (print name) AND I UNDERSTAND AND AGREE WITH ITS ENTIRE CONTENTS.

_____ _____
Client Signature Date

HIPAA Privacy Authorization Form

Authorization for Use or Disclosure of Protected Health Information
(Required by the Health Insurance Portability and Accountability Act – 45 CFR Parts 160 and 164)

1. I hereby authorize _____ to use and/or disclose the
[Name of Health Care Provider]
protected health information described below to _____
[Name of Individual]

2. Authorization for Release of Information. Covering the period of health care from

☐ _____ to _____ **OR** ☐ all past, present and future periods:

a. ☐ I hereby **authorize the release of my complete health record** (including records relating to mental health care, communicable diseases, HIV or AIDS, and treatment of alcohol/drug abuse).

OR

b. ☐ I hereby **authorize the release of my complete health record with the exception of the following information**:

☐ Mental health records

☐ Communicable diseases (including HIV and AIDS)

☐ Alcohol/drug abuse treatment

☐ Other (please specify): _____

3. This medical information may be used by the person I authorize to receive this information for medical treatment or consultation, billing or claims payment, or other purposes as I may direct.

4. This authorization shall be in force and effect until _____, at which time this authorization expires.
[Date or Event]

5. I understand that I have the right to revoke this authorization, in writing, at any time. I understand that a revocation is not effective to the extent that any person or entity has already acted in reliance on my authorization or if my authorization was obtained as a condition of obtaining insurance coverage and the insurer has a legal right to contest a claim.

6. I understand that my treatment, payment, enrollment or eligibility for benefits will not be conditioned on whether I sign this authorization.

7. I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

_____ _____
Signature of Patient or Personal Representative Date

_____ _____
Print Name of Patient or Personal Representative Relationship to Patient

687955.03

R E L E A S E O F I N F O R M A T I O N

To Whom It May Concern:

This letter is to certify that I, _____, authorize and request that the following individual(s) be given access to all legal or other files, records, or information about me, from your office.

I authorize them to receive a copy of all information in your possession about me, and I authorize you to speak with them about my case and to share with them any and all information you have.

Individual(s) authorized to receive records or information:
Name_____
Organization or Firm_____
Address_____
E-mail_____
Phone Number_____
Fax Number_____

Signed: _____ Date ____/____/_____
c/o *Name of Detention Center* DOB: _____
Address: _____ A#: _____
_____ SSN: _____

Esta carta es confirmación que yo autorizo y pido que el abogado mencionado tenga acceso a todos los archivos legales u otra información que su oficina tenga sobre mi caso.

Reconozco que estoy renunciando mi derecho de mantener esta información privada bajo cualquier regla que mantiene privada información sobre mi persona, para permitir que esta información sea compartida con el abogado mencionado.

Yo autorizo que su oficina les dé una copia de cualquier documento que tengan sobre mi caso, y también de hablar con los trabajadores de la oficina del abogado sobre cualquier información que tengan en cuanto a mi caso.

SAMPLE CLOSING LETTER FOR RETAINED CLIENT

DATE

CLIENT'S NAME
CLIENT'S ADDRESS

Dear **CLIENT'S NAME**:

Thank you for entrusting **OFFICE'S NAME** with your immigration case. We were happy to assist you in seeking an immigration benefit. Since we have completed our services in this matter, our office is closing your immigration case.

If you have any questions or concerns, please do not hesitate to contact us at **OFFICE'S PHONE NUMBER**. We will be happy to answer any questions and to assist with any future immigration needs you may have.

It was a pleasure to work with you and thanks again for working with **OFFICE'S NAME**.

Very Truly Yours,

STAFF MEMBER'S NAME
STAFF MEMBER'S TITLE

Sample Case Declination Letter

DATE

POTENTIAL CLIENT'S NAME
POTENTIAL CLIENT'S ADDRESS

Dear **POTENTIAL CLIENT'S NAME**:

On DATE you came to **OFFICE'S NAME** for an intake appointment to evaluate your immigration case. Unfortunately, we are unable to represent you at this time. However, if your situation changes or you would like to ask about a different immigration matter, please feel free to call us to schedule another intake appointment.

Below are the names and contact information for other legal service providers that may be able to assist you in your immigration matter:

1. **REFERRAL ONE ORGANIZATION'S NAME**
   REFERRAL ONE ORGANIZATION'S ADDRESS
   REFERRAL ONE ORGANIZATION'S PHONE NUMBER
2. **REFERRAL TWO ORGANIZATION'S NAME**
   REFERRAL TWO ORGANIZATION'S ADDRESS
   REFERRAL TWO ORGANIZATION'S PHONE NUMBER
3. **REFERRAL THREE ORGANIZATION'S NAME**
   REFERRAL THREE ORGANIZATION'S ADDRESS
   REFERRAL THREE ORGANIZATION'S PHONE NUMBER

Very Truly Yours,

STAFF MEMBER'S NAME
STAFF MEMBER'S TITLE

SAMPLE LETTER REQUESTING CLIENT CONTACT OFFICE

DATE

CLIENT'S NAME
CLIENT'S ADDRESS

Dear **CLIENT'S NAME**:

On DATE you came to **OFFICE'S NAME** for an initial consultation on your immigration matter. At the meeting I requested additional documents and information to proceed with your case. As of this date, I have not received the requested documentation/information or heard from you.

Please provide the documentation by dropping off or mailing the documents to my attention at OFFICE ADDRESS or please call me at **PHONE NUMBER** to discuss this matter.

Please be informed that if I do not hear from you within 10 days of the date of this letter, I will close your case with **NAME**. This letter will then serve as notification that your case with **OFFICE'S NAME** is closed.

Very Truly Yours,

STAFF MEMBER'S NAME
STAFF MEMBER'S TITLE

UFW FOUNDATION
La Fundación de la Unión de Campesinos

Legal Services Caseload Matrix Chart

Monitoring:

- Individual Caseload Matrix must be updated by corresponding staff member 24 hours prior to meeting with supervisor. Matrix will be reviewed and agreed together with supervisor at each supervision meeting.

Case Points By Position:

- Legal Assistant:
- Service Provider: 50-60
- Lead Service Provider: 60-70
- Senior Service Provider: 70-80
- Affirmative Attorney: 80-90
- RDP Law Fellow: 125 (within 6 months of starting at UFWF)
- RDP Staff Attorney Year 1 at UFWF: 150
- RDP Staff/Coord Attorney After Year 2 at UFWF: 200
- RDP Staff Attorney Year 3+: 225
- RDP Senior Attorney: 250
- RDP Supervising Attorney: 150-175

General Set Point Modifications (unless specified below):

Detained Cases	+4 points
U Visa Derivative	+2 points (for each derivative)
Asylum Derivatives	+1 point (for each derivative)
NQRP Case	+6 points while detained / once released +2
RFE/NOID	+2 points (per person who receives RFE/NOID)
Additional forms of relief actively working on	+2 points
Consults (workshops per month)	+5 points (not reflected in QB)
Education and Outreach	+4 points (not reflected in QB)

Protection Based Cases:

Case Type	Base Points	Points Subtracted	Points Added
Adult Affirmative Asylum	10	• Post Skeletal I-589 Filing -6 • Post Interview -6	• Interview notice +3 • Referred to court +2 • Within 3 months of Ind. Hearing +10

Adult Defensive Asylum, Withholding or CAT	12	• Post Filing(s) -10 • Post Completed Merits Hearing – point value is 1 regardless of number of derivatives	• Within 3 Months of Ind. Hearing +10
UAC Asylum	10	• Post I-589 Filing -2 • Post Internal prep of declaration -4 • Post Docs Filing -2 • Post Interview -1	• Once receive interview notice +3 • Referred to court +2 • Within 3 months of Ind. Hearing +10
SIJS	10	• Post State Court Filing -4 • Post Grant of Predicate Order -4 • Post filing I-360 -2 • Post filing I-485 -3	• Interview notice +3 • PRD current (can file I-485) +3 • Within 3 months of Ind Hearing +6 (if AOS in court)

Additional Removal Defense Case Types:

Case Type	Base Points	Points Subtracted	Points Added
Bond	5	• Post Release -4 until MTW granted	
Contested Removal (MTS/MTT)	4	• Post Filing -2	• Within 3 months of Evidentiary hearing +6
Prosecutorial Discretion	4	• Post Filing -1	
LPR Cancellation/212(c) Or Non-LPR cancellation (VAWA and 10 year)	8	• Post Filing -2	• Within 3 months of Ind. Hearing +6
AOS in Court	6	• Post Filing -2	• Within 3 months of Ind. Hearing +6
Motion to Reconsider or Reopen	12	• Post Filing -10	• If granted, assign new case points based on primary relief seeking

U Visa/ VAWA Cases:

Case Type	Base Points	Points Subtracted	Points Added
VAWA	6	• Post Filing point value is 1 (even if derivatives, once filed, total is 1 point)	• If in proceedings +2 • AOS included +2
U or T Visa	6	• Post Filing (and if needed admin closure) point value is 1 (even if derivatives, once filed, total is 1 point) • Status Docket placement total is 1 point	• If in proceedings +2
U visa Sup B only	1		

Other Cases:

Case Type	Base Points	Points Subtracted	Points Added
I-130-Family	2	• Post filing-1	• Interview notice +2
I-130-Spouse	3	• Post filing point value is 1	• Bona Fide Marriage +1 • Interview notice +2
I-130 +485	5	• Post Interview point value is 1	• Interview notice +2
AOS	3	• Post filing/interview point value is 1	• Interview notice +3
U AOS	4	• Post filing point value is 1	•
I-601A	6	• Post filing point value is 1	•
CP	4	• Post filing point value 1	• Interview notice +3
CP+Waiver	10	• Post filing point value 2	• Interview notice +3
Parole in Place	2	• Post Filing -1	• Interview notice +2
Asylee/SIJS AOS	2	• Post Filing -1	• Interview notice +2

I-730	2	• Post filing -1	• Interview notice +2
DACA Renewal	1	•	•
DACA	2	• Post filing -1	
Doc Review	1	•	
Advanced Parole	2	• Post filing -1	
EADs	1	• Post filing point value 1	
I-90	1	• Post filing point value 0	
I-751	2	• Post filing point value 1	Interview notice +2
FOIA/Prints	1	• Post filing point value 0	
Acquired/Derived Citizenship	2	• Post filing point value 1	
Pro Se Natz	1	•	
Natz	2	• Post Filing-1	•
N-565 (Certificate Replacement)	1	•	•

Appellate/District Court / Court of Appeals Cases:

Case Type	Base Points	Points Subtracted	Points Added
Habeas Petition	12	• Post filing petition and briefing- 10	• If supplemental or additional briefing +5 • If you are doing oral argument +10
9th Circuit Appeal	12	• Post PFR and Stay supplement filing – 6 • Post Briefing -6 • (note: if case placed with PB, then 1 point)	• If you are doing oral argument +10

BIA Appeal	12	• Post filing brief-11	
AAO Appeal	10	• Post filing brief -9	

CASE PROGRESS SHEET

Name and A#: Next Hearing:

One-year Deadline: Individual Filing Deadline:

Preliminary Case Assessment	Task Owner	Due Date	Description
1st Client Meeting			
Representation Signatures			
Waiver and FOIA Signatures			
Application and Declaration Signatures			
Gather Additional Facts			
Enter Representation			
*Contact Family/Sponsor Regarding Ability to Pay			
Records Requests	**Task Owner**	**Due Date**	**Description**
FOIAs			
Criminal Records			
Medical Records			
Other Corroborating Records			
*Identity Documents from Sponsor			
Complete Records Checklist			
Legal Analysis	**Task Owner**	**Due Date**	**Description**
Criminal Hx Chart			
Legal Theory of Case			
Witness and Experts Identified and Contacted			
Case Preparation	**Task Owner**	**Due Date**	**Description**
*Preparation of Bond/Parole Filing			
County Condition Research and TOC			
Declarations			
Translations			
Brief			
Expert Affidavit			
Complete EOIR/USCSIS Forms			
MCH/Bond Motions			
Merits Preparation	**Task Owner**	**Due Date**	**Description**
Motions			
Testimony Prep			
Trial Binder			
Closing Argument/Closing Brief			
Amended Applications			
Prepare and Organize File for Court			
Post Decision	**Task Owner**	**Due Date**	**Description**
*Post Release Instructions			
Appeal Due			
Closing Letter			
Closing Case Note			
Closing Reports			

* Bond/Parole Representation cases

NATIONAL IMMIGRANT JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

ILLINOIS ACCESS TO JUSTICE

A Brief Guide to Representing Noncitizen Criminal Defendants in Illinois

Updated September 2021

Prepared by the Immigrants' Rights Clinic, the Edwin F. Mandel Legal Aid Clinic, University of Chicago Law School and the National Immigrant Justice Center. *Publication of this guide was made possible by a capacity-building grant from the Illinois Access to Justice Program.*

Disclaimer: This brief guide is intended as an introductory tool for criminal defense attorneys representing noncitizen defendants in Illinois. This guide does not purport to provide legal advice or to give an opinion as to the immigration consequences that might result from a criminal disposition in a particular case. Defense practitioners are advised to consult an attorney who specializes in this area of law and to conduct their own research on the possible immigration consequences in particular cases. In addition, this is a rapidly changing area of law, so practitioners are cautioned to keep abreast of changes in federal and state law since this guide was last revised.

Table of Contents

Reminder: *Guide contains only informed predictions; individualized analysis must be done in every case.*

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Introduction

The criminal justice and immigration enforcement systems are more intertwined than ever before. Whereas previously the two systems operated mostly in parallel, today federal immigration law imposes severe consequences on non-citizens with criminal histories. Even convictions for relatively minor offenses can lead to deportation, including for lawful permanent residents who have lived in the United States for decades. Although non-citizens can also face deportation after being convicted on federal charges, most non-citizens who are deported on criminal grounds, are deported because of state criminal convictions. Because of this, defense attorneys must have a basic knowledge of immigration law to advise their non-citizen clients of the immigration consequences of certain criminal convictions.

This manual is by no means a comprehensive overview of the complex and amorphous minefield that is immigration law. But it will provide Illinois defense attorneys with some of the tools they need to zealously advocate for their non-citizen clients in criminal court. It also serves as a guide for immigration attorneys who are representing non-citizen clients in removal proceedings. Referencing this manual should be the first, not the only, step that attorneys take when representing non-citizen clients in criminal or removal proceedings.

The first section will introduce the ethical and legal duties that defense attorneys have to non-citizen clients and detail best practices to ensure they are carrying out their professional obligations. The second section will introduce the categories of deportable offenses that defense attorneys must be aware of in order to identify offenses that could lead to deportation. The third section will explain the categorical and modified approach, which determine whether convictions for state offenses will render a non-citizen removable. The fourth section contains tips that defense attorneys should follow during criminal proceedings to mitigate immigration consequences. Finally, the fifth section contains charts of the most commonly charged Illinois offenses and analyzes whether those offenses fall within one or more categories of deportable crimes.

Padilla v. Kentucky

In 2010, the Supreme Court held that effective counsel includes advising non-citizen clients on potential immigration consequences of pleading guilty to criminal charges. *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010). The Supreme Court clarified that there was no "distinction between direct and collateral consequences" when defining the scope of what is required under the Fifth and Sixth Amendments, and that effective counsel required for criminal defendants must include advising on potential immigration consequences because deportation is "intimately related to

the criminal process." *Id*. The Illinois Constitution requires a similar right to effective counsel. *People v. Correa*, 108 IL2d 541, 553 (IL 1985) (holding that constitutionally deficient immigration advice renders a guilty plea involuntary).

Padilla adopted the two-prong *Strickland* test for determining when counsel's immigration advice is deficient. *Strickland v. Washington*, 466 U.S. 669 (1984). Under the first prong, the court determines whether the counsel's representation "fell below an objective standard of reasonableness" *Id*. at 688. The Seventh Circuit has held that effective counsel under *Padilla* includes the attorney transparently sharing the potential immigration consequences and the likelihood of success of any applications for relief from deportation with their client. *United States v. Chezan*, 829 F.3d 785, 787 (7th Cir. 2016).

The second prong requires that the defendant show "there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694. In the context of a guilty plea, *Strickland* requires that the defendant show that they would have proceeded to trial if they had received effective counsel. *See Hill v. Lockhart*, 474 U.S. 52, 59 (1985). A defendant can show prejudice if he shows he would have proceeded to trial had they known about the immigration consequences. *United States v. Delhorno*, 915 F.3d 449, 454 (7th Cir. 2019). In the context of deportation, the Supreme Court has held that deportation is such a serious consequence that a defendant may prove prejudice even if he would have probably lost at trial. "When those consequences [of a plea] are, from the defendant's perspective, similarly dire, even the smallest chance of success at trial may look attractive." *Lee v. United States*, 137 S. Ct. 1958, 1968-69 (2017).

However, *Padilla* does not apply retroactively and only applies to pleadings entered in 2010 or after. *Chaidez v. United States*, 568 U.S. 342, 344 (2013); *see also Chavarria v. United States*, 739 F.3d 360, 364 (7th Cir. 2014).

Categories of Removable Offenses

The Immigration and Nationality Act is a highly complex statute that, among other things, determines when a non-citizen is removable from the United States. There are two statutory provisions that determine removability. A non-citizen seeking admission to the United States, either at the border or when applying for immigration status form within the country, is subject to the inadmissibility grounds in 8 U.S.C. § 1182. A non-citizen who has already been admitted to the United States with lawful immigration status is subject to the deportability grounds in 8 U.S.C. § 1227. Removability is an umbrella term that refers to both inadmissibility and deportability. A non-citizen who is either

inadmissible or deportable is removable. Both Section 1182 and 1227 contains various distinct but overlapping criminal grounds of removability.

If a non-citizen is found removable, then the non-citizen may be able to apply for forms of relief from removal. Common forms of relief from removal include asylum and cancellation of removal. Each form of relief from removal includes eligibility criteria that often include bars for individuals convicted of certain criminal offenses. Thus, a criminal conviction can render a non-citizen removable and may also bar the non-citizen from applying for certain forms of relief. There are also other non-criminal removability grounds and bars to relief that are outside the scope of this guide.

Although all criminal conduct can result in immigration consequences, given the discretionary nature of immigration benefits like asylum and adjustment of status, convictions for certain types of crimes render an immigrant automatically removable or ineligible for relief. Convictions, whether or not they render a non-citizen removable, may also be relevant to determinations of "good moral character," which is one of the eligibility requirements for naturalization and some forms of relief such as cancellation of removal.

A "conviction" under the Immigration and Nationality Act is defined as "a formal judgment of guilt of the [non-citizen] entered by a court" or if no judgment was entered, where

> (i) a judge or jury has found the [non-citizen] guilty or the [non-citizen] has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
>
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the [non-citizen]'s liberty to be imposed.

8 U.S.C. § 1101(a)(48). Thus, some dispositions that are not considered convictions under state law may nevertheless be considered convictions for immigration purposes. For example, in *Gill v. Ashcroft*, 335 F.3d 574 (2003), the Seventh Circuit held that a disposition of probation under Illinois law, wherein if the offender successfully completes probation, the charge is dismissed, still counts as a conviction under the Immigration and Nationality Act.

With some exceptions, the categorical approach, discussed in Section Three, dictates how to determine whether a state offense falls within one of the categories of removable crimes. For now, it suffices that you understand that some convictions under state law trigger removability if their elements fall within the generic categories of deportable or inadmissible crimes.

Aggravated Felonies ("AF")

"Any alien who is convicted of an aggravated felony at any time after admission is deportable." 8 U.S.C. § 1227(a)(2)(A)(iii). "Aggravated Felony" is a term of art that refers to a set list of offenses enumerated at 8 U.S.C. § 1101(a)(43). Because it is a term of art, convictions under state law need not be "aggravated" nor a "felony" under state law, to trigger an "aggravated felony" charge. Case law must be analyzed to determine whether a particular state offense is a categorical match for one of the aggravated felony offenses listed at Section 1101(a)(43).

Non-citizens convicted of aggravated felony offenses are ineligible for cancellation of removal and most other forms of relief. 8 U.S.C. § 1229b(a)(3). In addition, undocumented immigrants convicted of an aggravated felony can be issued a "Final Administrative Removal Order" (FARO) and removed without a hearing. 8 U.S.C. § 1228(b). Because of the severe consequences of aggravated felonies, defense attorneys should avoid a conviction for an aggravated felony wherever possible. Indeed, failure to counsel one's client on the immigration consequences of an aggravated felony is the clearest example of ineffective assistance of law under *Padilla*.

The most commonly charged AFs are as follows:

- Murder;
- Rape;
- Sexual assault of a minor;
- Illicit trafficking of a controlled substance;
- A "crime of violence" if the term of imprisonment is one year or more;
- A "theft offense" (including burglary and receipt of stolen property) if the term of imprisonment is one year or more;
- Illicit trafficking in firearms, destructive devices, or explosive materials;
- Fraud, money laundering, or tax evasion offenses where the amount in question exceeds $10,000;
- Certain firearms, prostitution, kidnapping, gambling, espionage, smuggling, and child pornography offenses;
- Attempt or conspiracy to commit any of the above offenses.

Importantly, some offenses can trigger multiple grounds of removability. For instance, certain types of firearm offenses may qualify as both an illicit trafficking of firearms aggravated felony, 8 U.S.C. § 1101(a)(43)(C), and a deportable firearm offense, 8 U.S.C. § 1227(a)(2)(C)(i).

Crimes Involving Moral Turpitude ("CIMT")

A non-citizen convicted of a crime involving moral turpitude that is punishable by a maximum sentence of at least one-year imprisonment is deportable. 8 U.S.C. § 1227(a)(2)(A)(i). However, the underlying crime must have been committed within five years of admission. *Id.* Alternatively, an immigrant convicted of more than one crime involving moral turpitude, regardless of associated sentence length or date of admission, is deportable so long as the crimes do not arise from a "single scheme of criminal misconduct." 8 U.S.C. § 1227(a)(2)(A)(ii).

A crime involving moral turpitude can also render a non-citizen inadmissible, unless the offense occurred when the non-citizen was a minor or if the offense qualifies as a petty offense. 8 U.S.C. § 1182(a)(2)(A)(ii). A petty offense is an offense for which the maximum sentence is one year or less and the non-citizen was sentenced to six months or less. 8 U.S.C. § 1182(a)(2)(A)(ii)(II). Multiple convictions for crimes involving moral turpitude with an aggregate sentence of five years or more render a non-citizen inadmissible without exception, regardless of whether the offenses arose from a single course of conduct. 8 U.S.C. § 1182(a)(2)(B).

Like "aggravated felony," "crime involving moral turpitude" is a term of art. However, where AFs are discrete and listed in statute, CIMTs are elastic and defined in case law. The Board of Immigration Appeals defines CIMT as acts that are "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between [persons or to] society in general." *Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988). Courts often use one of two heuristics to decide whether a crime involves moral turpitude. First, the court may determine whether the crime was "*malum in se* (inherently wrong), as opposed to *malum prohibitum* (wrong only because prohibited). *Arias v. Lynch*, 834 F.3d 823, 827 (7th Cir. 2016). Second, other courts "focus[] on the presence of a 'vicious motive' or an 'evil intent' to find moral turpitude. *Id.*

Courts have attempted to define crimes involving moral turpitude for over a century, and this issue is still litigated extensively. However, the Seventh Circuit has found the following types of crimes to be CIMTS:

- Theft offenses, *see Hashish v. Gonzales*, 442 F.3d 572, 576 (7th Cir. 2006) ("This court, and other courts of appeals, repeatedly have held that 'theft' is a crime of moral turpitude."). However, theft offenses must have the requisite intent. "De minimis" takings are not theft offenses;

- Crimes involving fraud or intent to deceive, *see Lagunas-Salgado v. Holder*, 584 F.3d 707, 711 (7th Cir. 2009) ("Cases such as these led us to call it "settled" that crimes with fraud as an element involve moral turpitude."); *Padilla v. Gonzales*, 397 F.3d 1016, 1020 (7th Cir. 2005) (holding that obstruction of justice is a CIMT);
- Vehicular flight from a police officer, *see Cano-Oyarzabal v. Holder*, 774 F.3d 914, 919 (7th Cir. 2014) (holding that a Wisconsin statute criminalizing the knowing attempt to allude a police vehicle "categorically qualifies as a crime involving moral turpitude").
- For a complete list, *see Arias*, 834 F.3d at 833 (Posner, J., concurring).

The categorical approach is utilized to determine whether a state offense matches a CIMT according to existing case law. *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016). The case law attorneys should look to will depend on the jurisdiction they are in. The charts below will provide educated predictions of which Illinois convictions constitute crimes of moral turpitude.

Controlled Substance Offenses ("CSO")

A non-citizen who, "at any time after admission," is convicted of an offense "relating to a controlled substance" other than "a single offense involving possession for one's own use of 30 grams or less of marijuana" is deportable. 8 U.S.C. § 1227(a)(2)(B)(i). A non-citizen who commits a controlled substance offense is inadmissible. 8 U.S.C. § 1182(a)(2)(A)(i)(II). There is no inadmissibility exception for simple marijuana possession, though a waiver may be available.

"Controlled substance" is defined at Section 802(6) of Title 21 to the exclusion of certain liquors and tobacco. *See* 21 U.S.C. § 802(6). INA likewise precludes removal for "a single offense involving the possession for one's own use of 30 grams or less of marijuana." 8 U.S.C. § 1227(a)(2)(B)(i). Beyond theses exemptions, "relating to a controlled substance" is far-reaching standard that sweeps in most federal drug offenses. However, there is ongoing litigation across the country on the issue of whether certain state drug laws categorically match the federal controlled substance definition, such that they should trigger deportability under this ground. Many state drug laws sweep more broadly than federal law. The categorical approach determines which state crimes are CSOs for immigration purposes.

Firearm Offenses ("FO")

Any post-admission conviction for "purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying," a firearm or destructive device, or conspiring or attempting to do so, renders a non-citizen

deportable. 8 U.S.C. § 1227(a)(2)(C)(i). As with CSOs, most federal firearm related offenses are FOs for immigration purposes due to the breadth of the statutory language.

"Firearm" and "destructive device" are defined at 18 U.S.C.A. § 921(a)(3–4). Notably, the definition of "firearm" at Section 921(a)(3) requires the expulsion of a projectile "by the action of an explosion." By contrast, Illinois' definition of "firearm" includes projectile expulsion by means of "expansion … or escape of gas" as well as explosion. 430 ILCS 65/1.1. The FO chart below will provide examples of how Illinois' overbroad definition of "firearm" prevents certain state offenses from rendering an immigrant deportable. The consequences of the asymmetric definitions will become clearer after learning about the categorical approach in the subsequent section.

Crimes of Domestic Violence ("CDV")

A non-citizen who is convicted of a crime of domestic violence after being admitted into the United States is deportable. 8 U.S.C. § 1227(a)(2)(E)(i). "Crime of domestic violence" is defined as any "crime of violence" against a protected class of personal relations. *Id*. For its part, a crime of violence[1] is defined at 18 U.S.C. § 16:

> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

However, the Court held that subsection (b), the residual clause of Section 16, was unconstitutionally vague as incorporated into the INA's definition of aggravated felony, *see Sessions v. Dimaya*, 138 S. Ct. 1204, 1223 (2018), so a court is unlikely to find a CDV unless the offense qualifies under Section 16(a).

It is also important to note that it is unlikely that a *mens rea* of recklessness suffices to establish a crime of violence. *See Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004) (holding negligent conduct could not constitute a crime of violence but not reaching the issue of reckless conduct). Recently, the Court held that reckless crimes could not be treated as "violent felonies," which the ACCA defines in "near-identical" language to "crimes of violence" under Section 16(a). *See Borden v. United States*, No. 19-5410, 2021 WL 2367312, at *5 (June 10, 2021) ("[W]e reach the

[1] Notably, a crime of violence is also an aggravated felony under 8 U.S.C. § 1101(a)(43)(F) if and only if the term of imprisonment for a conviction is at least one year. CDVs do not have the same term length requirements.

question we reserved in [*Leocal*].”). Therefore, where an immigrant is convicted under an indivisible statute for which recklessness suffices, a conviction for this crime likely is not a categorical match to a crime of violence for the purposes of AFs and CDVs.

The class of relations that transform a crime of violence into a CDV is detailed at 8 U.S.C. § 1227(a)(2)(E)(i):

> [A crime of violence 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.

While the threshold issue of whether a crime of violence has occurred warrants the use of the categorical approach, the existence of the requisite domestic relationship is determined by circumstances of the case, requiring application of the so-called “circumstance-specific” approach, an exception to the categorical approach that allows adjudicators to consult the facts of the conviction. *See Matter of H. Estrada*, 26 I&N Dec. 749 (BIA 2016). For instance, the court will look at the record of conviction along with extrinsic evidence like police reports and sworn testimony for evidence of domestic relationship. In this way, the of relationship between the victim and perpetrator need not be charged as an element of the underlying state crime so long as there is probative evidence of such a relation. *See Id.* (holding that a conviction for simple battery constituted a CDV because the victim was protected against the offender by Georgia domestic violence law).

Crimes Against Children (“CAC”)

Any conviction for the crimes “of child abuse, child neglect, or child abandonment” renders a non-citizen deportable. 8 U.S.C. § 1227(a)(2)(E)(i). Although distinct on their face, courts treat abuse, neglect, and abandonment of a child as a “unitary concept,” stylized as “crimes against children” for the purposes of this manual. *Matter of Soram*, 25 I&N Dec. 378, 381 (BIA 2010). Examples of crimes against children include assault, reckless endangerment, and kidnapping when a minor is the victim.

Crimes against children are not defined by statute but have been interpreted 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." *Matter of Velazquez-Herrera*, 24 I&N Dec. 503, 503 (BIA 2008). The categorical approach is used to determine whether a state offense satisfies these elements and is a CAC for immigration purposes.

The definition of CAC remains controversial since it permits removal for crimes where a child suffered no injury. *Compare Soram*, 25 I&N Dec. at 381 ("[We] find no convincing reason to limit offenses under section 237(a)(2)(E) of the Act to those requiring proof of actual harm or injury to the child."), *with Ibarra v. Holder*, 736 F.3d 903 (10th Cir. 2013) (rejecting BIA's conclusion in *Soram* that "criminally negligent conduct with no resulting injury to a child" constitutes a CAC).

Defense attorneys may be able to avoid a CAC classification by pleading down to an age-neutral offense, or otherwise preventing a victim's minor status or actual injury from appearing on the record of conviction.

Prostitution Offenses ("PO")

Unlike the previous categories of deportable offenses, prostitution crimes are not addressed separately in Section 1227(a)(2) of Title 8. Instead, certain prostitution offenses may render an immigrant deportable as an AF or a CIMT. For the first two, the categorical approach is used to determine if a state offense matches the elements of generic federal POs.

A prostitution offense is an aggravated felony when the crime "relates to the owning, controlling, managing, or supervising of a prostitution business;" is "described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution);" and is undertaken for "commercial advantage." 8 U.S.C. § 1101(a)(43)(K). As previously mentioned, aggravated felonies yield harsher immigration consequences relative to the other categories of deportable offenses, so defense attorneys should try to avoid a record of conviction that satisfies the aforementioned elements as best they can.

A prostitution offense is a crime involving moral turpitude when it is "intrinsically wrong." *Mendoza v. Holder*, 623 F.3d 1299, 1302 (9th Cir.2010) (citing *Uppal v. Holder*, 605 F.3d 712, 716 n. 2 (9th Cir. 2010)). However, as with other CIMTs, this definition is too subjective and vague to provide any meaningful insight in the particular case. "Therefore, it is often helpful to 'determine whether a state crime involves moral turpitude by comparing it with crimes

that have previously been found to involve moral turpitude.'" *Rohit v. Holder*, 670 F.3d 1085, 1089 (9th Cir. 2012) (quoting *Mendoza,* 623 F.3d at 1302) (holding that solicitation of a prostitute, like the act of prostitution itself, is a CIMT). Note that the BIA has issued precedential decisions that have found the following offenses to be CIMTs: "any act of prostitution," *Matter of W-*, 4 I&N Dec. 401, 401–402, 404 (BIA 1951); renting a room with knowledge that it will be used for prostitution, *Matter of Lambert*, 11 I&N Dec. 340, 342 (BIA 1965); and "keeping a house of ill-fame resorted to for the purposes of prostitution," *In the Matter of P-----*, 3 I&N Dec. 20, 20 (BIA 1947). Reasoning from these cases is a good starting point, but further study of case law is required to ascertain whether a prostitution-related state crime constitutes a CIMT.

Importantly, many state crimes for prostitution do not meet the one-year term of imprisonment requirement to render a non-citizen deportable for a single CIMT, so removal for a prostitution CIMT is often based on repeat offenses pursuant to 8 U.S.C. § 1227(a)(2)(A)(ii). *See, e.g., Reyes v. Lynch*, 835 F.3d 556, 558, 561 (6th Cir. 2016) (holding that a non-citizen was deportable because of their conviction for the CIMTs of solicitation of prostitution and passing bad checks).

Violations of Protective Orders

A non-citizen who "at any time after admission … engage[s] in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury" is deportable. 8 U.S.C. § 1227(a)(2)(E)(ii). "Protection order" is defined as "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)." *Id.*

Because the language of (E)(ii) does not require a conviction and only entails a court determination that conduct violated a protective order, courts have held that the categorical approach does not apply. *See Rodriguez v. Sessions*, 876 F.3d 280, 284 (7th Cir. 2017) ("When a statute does not make itself contingent on a conviction, the categorical approach is unnecessary."). Therefore, courts will look to the immigrant's actual conduct in relation to the protective order and not an offense for which they were convicted in deciding deportability. *See Matter of Obshatko*, 27 I&N Dec. 173, 173 (BIA 2017) (holding that judges are not constrained by the categorical approach when determining whether there was a violation of a protection order, "even if a conviction underlies the charge").

Drug Abuse and Addiction

In addition to being rendered deportable for a CSO conviction, immigrants are deportable solely for being drug "abuser[s] or addict[s]." 8 U.S.C. § 1227(a)(2)(B)(ii). "Addict" is defined at Section 802(1) of Title 21 and covers those whose habitual narcotic use "endangers" the public or whose addiction has overcome their "power of self-control." 21 U.S.C. § 802(1). Therefore, defense attorneys are advised to avoid a specific admission or any other item on the record that characterizes their client as an addict according to this definition. Again, the categorical approach is not applicable here because a conviction is not necessary to be deportable on these grounds.

Human Trafficking Offenses

An immigrant is deportable if they would be inadmissible under Section 1182(a)(2)(H) of Title 8. 8 U.S.C. § 1227(a)(2)(F). The categories of deportable people under this statute are delineated below.

Section 1182(a)(2)(H)(i) contemplates non-citizens who "commits or conspires to commit human trafficking offenses in the United States or outside the United States" and those who "the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons." "Severe forms of trafficking in persons" is defined by statute at 22 U.S.C. 7102(9).

Section 1182(a)(2)(H)(ii) covers immigrants who "the Attorney General knows or has reason to believe is the spouse, son, or daughter of" a trafficker or collaborator as described in (H)(i), who has "benefited from the illicit activity" within the previous five years, "and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity." 8 U.S.C. § 1182(a)(2)(H). However, Section 1182(a)(2)(H)(iii) exempts a son or daughter "who was a child at the time he or she received the benefit" from this class of inadmissible and therefore deportable aliens.

Because no conviction is required for inadmissibility under Section 1182(a)(2)(H)(ii), the categorical approach does not apply. The court will look to the actual conduct of the non-citizen and their engagement or complicity in human trafficking.

Miscellaneous Offenses

Section 1227 also contains several miscellaneous deportability grounds that require a conviction under federal law (relating to treason and espionage, for example) and that state practitioners are unlikely to encounter in their representation of non-citizens.

Categorical and Modified Categorical Approach

Because immigration consequences are based on federal law, courts need a way to translate various state offenses to the federal definitions of crimes. That translation is done using something called the categorical approach. The approach requires attorneys to compare the state offense to the federal categories described in section two. Criminal defense attorneys and immigration attorneys both must learn how to navigate the categorical approach in order to represent their non-citizen clients effectively.

The stakes of these cases are high and in general, it is better to be conservative when using the approach and advising clients of their potential immigration consequences. Additionally, always be sure to check the most up-to-date case law. The three steps for applying the modified categorical approach are detailed below.

Step One: The Categorical Approach

For a state offense to be a ground of removability (i.e., be an offense that could lead to a client's deportation), the offense needs to be what is called "a categorical match" to the equivalent federal offense. The categorical approach helps attorneys assess whether the offense their client has been charged with is a categorical match to the federal offense. Within the categorical approach, there are three sub-steps.

When using the categorical approach, first ask: is the state statute a categorical match to the generic federal definition? Crucial to the categorical approach is that rather than focusing on the facts of the individual case, the court should look **only** at the conduct punishable by the state statute (how to do this is discussed later). This process focuses on the statutory elements of the state offense and what they require, and compares them to the elements of the federal generic offense.

The reason that courts look at the conduct punished under the statute rather than to the circumstances of individual cases is that the INA links immigration consequences to having certain *convictions* for generic categories, not on committing certain conduct, for many of the criminal grounds of removability.

The first sub-step of the categorical approach is simply to find the equivalent federal offense and establish its elements. Sometimes, federal immigration law defines a removable offense by reference to an offense in the U.S. code. In these cases, the process of determining the definition is usually straightforward because the elements of the federal crime are easily ascertainable. Sometimes, federal immigration law refers to a category of crime such as "burglary,"

"theft," or "crimes involving moral turpitude." The generic definition of these crimes is determined by case law and is referred to as the generic definition of the crime.

The second sub-step is to determine the minimum conduct punishable by the state statute. Remember that the categorical approach disregards particularized facts of individual cases so instead of focusing on the specificities of the client's conduct, consider what, at a base level, the state statute would penalize. There must be a "realistic probability" that the state would punish the minimum conduct, *Gonzales v. Duenas–Alvarez*, 549 U.S. 183 (2007), but there is a circuit split as to how courts determine whether a realistic probability exists. Some circuits have held that no additional showing of realistic probability is required where the statute of conviction expressly includes the minimum conduct. Other circuits have held that the non-citizen must find an actual case in which the state prosecuted the minimum conduct in order for there to be a realistic probability of the offense being interpreted to include the minimum conduct.

The Seventh Circuit has not clearly adopted either test. *United States v. Walker*, 931 F.3d 576, 579 (7th Cir. 2019); *Familia Rosario v. Holder*, 655 F.3d 739, 748-50 (7th Cir. 2011). The BIA, on the contrary, has adopted the "actual case" requirement, but does not apply the rule in circuits that have rejected it. *Matter of Navarro Guadarrama*, 27 I. & N. Dec. 560, 564 (BIA 2019). The safest bet is always to try to locate an actual case.

The third sub-step is to determine whether the minimum conduct punishable by the state statute and the generic definition of the federal offense are a match. To do this, the attorney should assess whether the elements of the state statute are narrower or broader than the federal offense. One way to judge whether the state statute is broader is seeing whether there is conduct that could be punished by the state statute that would not be punished by the federal offense. If that is the case, the state statute is overbroad and is not a categorical match.

Alternatively, if all the minimum conduct punishable by the state statute would be punished by the federal offense, the state statute is narrower (or as narrow) as the federal offense and is thus a match. Essentially, the attorney should determine if the generalized or abstracted conduct of any noncitizen client charged under the state statute would give rise to prosecution under the federal statute. If it could give rise to such prosecution, there is a match.

If the state statute is coterminous with or narrower than the federal statute, then the offense is a ground of removability. If state statute is broader than the generic federal offense, the attorney will then determine if the statute is divisible and if it is, will turn to the modified categorical approach (discussed later). However, if the state statute is

broader and is not divisible, it does not fit into the federal statute (it is not a "categorical match") and thus is not a ground of removability.

Note: if the entire state statute is a categorical match, it does not matter whether the statute is divisible.

Example:

Your client is convicted of theft under 720 ILCS 5/16-1 for obtaining control over property known to be stolen valued at $200.

Sub-step one: Find the federal definition of theft. There are three groups of removable offenses, and you should determine which group or groups the offense falls under. Offenses can be an aggravated felony, a crime involving moral turpitude (CIMT), and/or in a grouping of its own (a controlled substances offense, firearms offense, crime of domestic violence, or prostitution offense, among others). For details about how to determine what is an aggravated felony, see the section above on Categories of Removable Offenses.

Theft is not in a category of its own but can be both an aggravated felony and CIMT. The federal statute for aggravated felony includes a description of theft or burglary offense "for which the term of imprisonment is at least one year." *See* 8 U.S.C. § 1101(a)(43)(G). Here, the amount stolen is less than $500, which means the punishment cannot be more than 364 days and cannot be an aggravated felony. If the client is charged with an offense that is punishable by more than a year, defense attorneys should ensure that any sentence, including a suspended sentence, is less than one year.

If the conviction was for one year or greater, then you would need to determine whether the state offense was a categorical match for a "theft offense." You would also need to determine whether the offense is a CIMT. To determine whether your client's offense is a CIMT or a theft offense aggravated felony, you will look at case law. The Seventh Circuit has clarified for an offense to be a theft offense or a CIMT involving theft, the elements of the offense must include 1. "Exercise of control over property without the owner's consent" and 2. "Intent to deprive the owner permanently or temporarily of the use and enjoyment of property." *Vaca-Tellez v. Mukasey*, 540 F.3d 665, 670 (7th Cir. 2008).

Sub-step two: Find the conduct punishable by the state statute. The minimum conduct punishable would be found through case law or could be exemplified through your client's case. In this example, the state is punishing your

client for having $200 worth of property known to be stolen. There may be other cases in which the conduct punished is even more *de minimis*.

Sub-step three: Determine whether that conduct would be punishable under the generic definition of the offense. In this sub-step, assess whether the state statute is overbroad when compared to the federal definition. The Seventh Circuit has found conduct under 720 ILCS 5/16-1(a) to be a categorical match for a CIMT. *See Vaca-Tellez*, 540 F.3d at 670. The case law for theft is straightforward because the Seventh Circuit has found 720 ILCS 5/16-1(a) to be a complete categorical match with the generic federal definition. Unfortunately, this means your client will be in danger of deportation if they plead guilty to this offense, unless they were convicted of an offense punishable by less than a year or they are convicted more than five years after entry as a lawful permanent resident.

Note: For CIMT offenses, there is a *de minimis* exception for conduct such as "joyriding." *See Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 850 (BIA 2016*)*. For more details, see case law and theft chart below.

Step Two: Divisibility

If the state statute is broader than the federal statute there is a second question to ask: is the state statute divisible? A statute that is indivisible, which is to say that it cannot be divided into different charges or offenses, means that the whole statute is either a categorical match or it is not. This is determined by the categorical approach outlined in step one. For some clients, an overbroad statute that is indivisible means their offense is not a ground of deportability even if the particular conduct they were convicted of would be.

Divisibility adds an additional wrinkle to the question of whether a conviction has immigration consequences. If a statute is divisible, the part of the statute that is overbroad may not be the part of the statute that a client was convicted of. When a statute is divisible, the attorney will have to use the modified categorical approach to ascertain whether that part of the statute is a ground of removability, and will not be able to rely on the fact that the statute as a whole is overbroad.

There are a couple of steps to take in order to determine whether the statute is divisible. Divisibility is determined by whether the statute in question delineates different elements or different means. The focus of the attorney then is to ascertain whether the parts of the statute are elements or means (different ways of committing an offense). Offenses that have different elements are divisible, but a single offense that can be committed through different means is not. *See Mathis v. U.S.*, 136 S. Ct. 2243, 2248 (2016). Elements are the "constituent parts" of an offense that a

prosecutor will need to prove whereas means do not need to be agreed upon by the jury in order to sustain a conviction. *Id*. (quoting Black's Law Dictionary 634 (10th ed. 2014)).

To distinguish elements from means, an attorney should look to state law. First, the attorney should look directly at the state statute. A state statute may clearly state what must be charged (and thus must be proved by a prosecutor for a conviction) and what does not need to be charged. *Id*. at 2249. In that case, the parts that must be charged and unanimously agreed upon by the jury are essential elements whereas the parts that do not need to be charged are means. Statutes are not always that clear, so there are alternative ways of assessing whether something is an element or means through the state statute. For example, if the state statute gives "multiple, alternate versions of the crime." then those alternate versions are elements and the statute is divisible. *Descamps v. U.S.*, 133 S. Ct. 2276, 2284 (2013). Additionally, if subsections of the statute receive different punishments, those are elements and thus divisible. *Mathis*, 136 S. Ct. at 2256. Alternatively, if the state statute details illustrative examples, those examples are means and are not divisible. *Id*. Similarly, if there are simply multiple ways to accomplish the one offense, it is not divisible. *Id*. at 2249. If the statute is ambiguous, the attorney should also look to decisions of the Illinois Supreme Court and other case law to flesh out which parts of the statute are elements and which are means. *See Mathis*, 136 S. Ct. at 2256. *See also*, *Parzych v. Garland*, 2 F.4th 1013, 1016 (7th Cir. 2021).

Once in court, if neither the statute nor the case law can distinguish between elements and means, the court can look at the record of conviction to determine what the prosecutor does or does not have to show. *Mathis*, 136 S. Ct. at 2256. *See also Parzych*, 2 F.4th at 1016. The Supreme Court described this look at the record of conviction as a "peek" only to determine whether the statute is divisible. *Mathis*, 136 S. Ct 2257 (quoting *Rendon v. Holder*, 782 F.3d 466, 473). The record of conviction includes only the charging document, a plea agreement, and/or the colloquy between judge and defendant or other court record that establishes the truth of the factual basis of the conviction. *See Shepard v. U.S.*, 125 St. C. 1254, 1263 (2005). The fact that the look into the record of conviction is a "peek" and a final step demonstrates the ultimate value placed on the generic statute rather than the facts at hand. Still, the ability to look into the record of conviction highlights the importance of keeping clients' records of conviction clean.

Reminder: If the whole statute (despite being divisible) is a categorical match, it does not matter that it is divisible. (Consider the example under Step One: the theft statute is likely divisible, but the court has held that the entire statute is a match).

Example:

Your client is convicted of burglary under 720 ILCS 5/19-1(a).[2] The Seventh Circuit, after certification to the Illinois Supreme Court, has already found that this statute is not a burglary offense. *United States v. Glispie*, 978 F.3d 502, 503 (7th Cir. 2020). The question is whether the statute separately matches the generic definition of a "theft offense." The state burglary statute criminalizes entering with an intent to commit a "felony or theft." Entering with intent to commit a theft would be a theft offense, while entering with intent to commit a non-theft felony would not be. The question is whether the statute is divisible.

Elements are the parts of the statute that the prosecution has to prove for conviction. *Mathis*, 136 S. Ct. at 2248. First, you would look to the state law. For burglary, the Seventh Circuit has clarified that the punishment for the alternatives under 720 ILCS 5/19-1 are punished identically. *Parzych*, 2 F.4th at 1017. Illinois courts have held that intent to commit a felony or theft is not an element of a statute, but rather a means. *Id.* at 1018; *see also People v. Alexander*, 546 N.E.2d 1032, 1035 (Ill. App. Ct. 1989); *see also People v. Johnson*, 192 N.E.2d 864, 866 (Ill. 1963).

Because the prosecution only has to prove one element for conviction under the statute, the statute is not divisible as to felony or theft, and thus is overbroad. Your client cannot be removed on these grounds.

Step Three: Modified Categorical Approach

Courts only apply the modified categorical approach if the statute is divisible. It is essentially the same as the categorical approach; however, the comparison between the federal offense and state statute is done for each individual subsection of the statute rather than the entire statute. There is a match if the minimal conduct punishable of the offense under which the client is *charged* is punishable under the generic federal statute. In that case, the offense is deportable.

The modified categorical approach also limits what courts can look at to see what the client is charged with. The goal of the modified categorical approach is still to avoid the facts of the particular case, so the courts only look at the "record of conviction" (including the charging document, a plea agreement, and/or the colloquy between judge and defendant or other court record that establishes the truth of the factual basis of the conviction). *See Shepard*, 125 St. C. at 1263. Importantly, police reports are <u>not</u> included in the "record of conviction," and therefore cannot be considered by

[2] This example is stylized from *Parzych v. Garland*, 2 F.4th 1013 (7th Cir. 2021).

courts under the modified categorical approach. The purpose of limiting which documents the court can look at is to keep the focus on the abstracted conduct rather than on any particularity of the case at hand.

The attorney should use the same assessment of the breadth or narrowness of the subsection that is used for the whole statute under the categorical approach. Thus, if the subsection of the statute is broader than the definition of the generic federal offense, there is still no categorical match and the client is not in danger of deportation. If the subsection is coterminous with or narrower than the definition of the generic federal offense, then it is a match and the client could be deported.

Example:

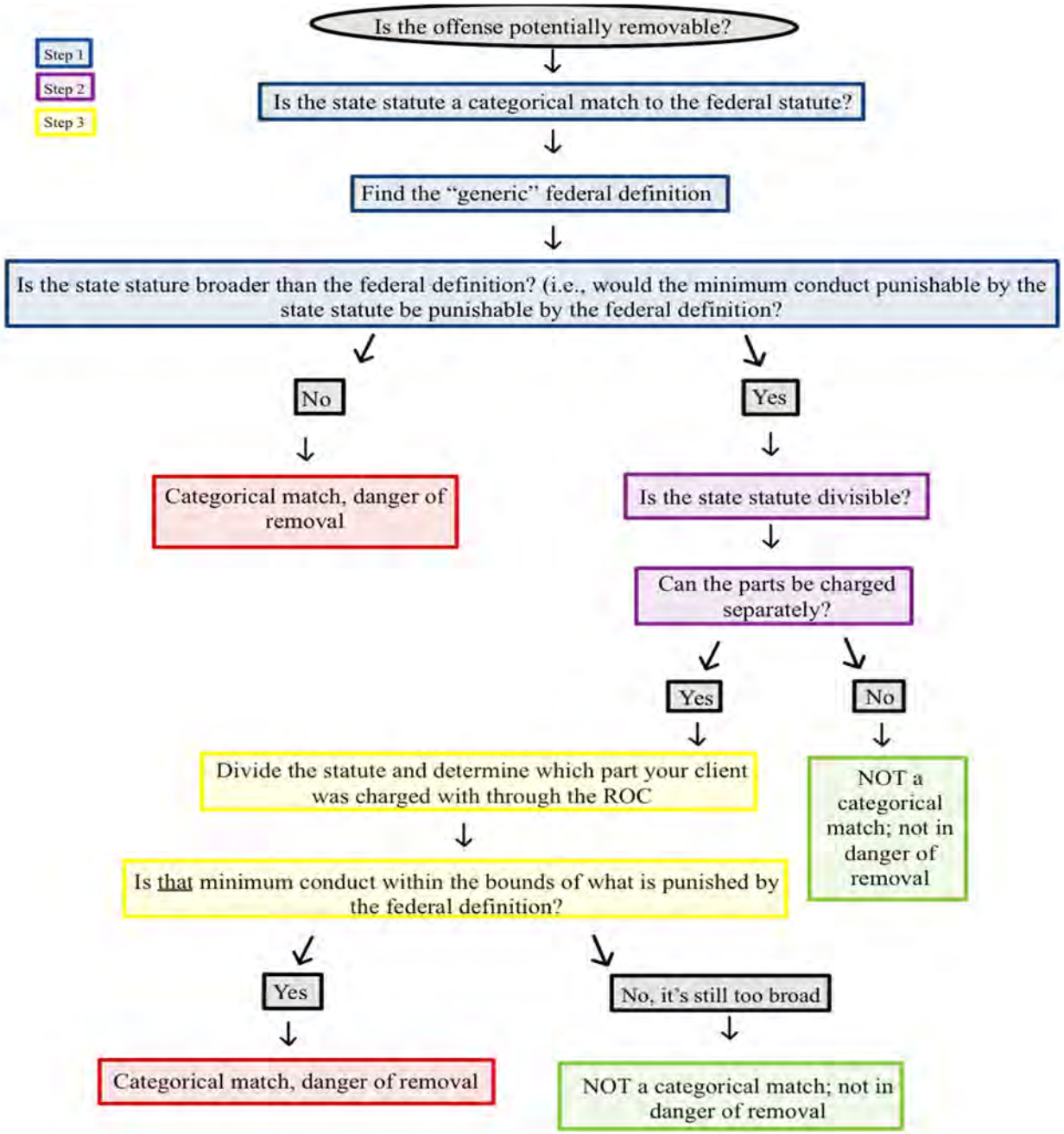
Your client is convicted for possession of a controlled substance under 720 ILCS 570/402(c) for possessing several pills of Xanax.[3] Question: is this a controlled substance offense under the INA? The Illinois state statute under 402 is divisible because the subsections are alternative offenses. There are four subsections ((a) – (d)) and the preamble to the statute actually specifies that each subsection can be charged as a separate offense. Once you have determined that the statute is divisible, you will need to look specifically at the subsection your client was charged under (looking solely at the "record of conviction") and apply the approach from the first step.

First, you need to identify the definition of the potential ground of removability. A state controlled substance offense is considered a controlled substance under the INA, if it is related to a federally controlled substance, as defined by 21 U.S.C. § 802. *See* 8 U.S.C. § 1182(a)(2)(A)(i)(II); 8 U.S.C. § 1227(a)(2)(B)(i). *See Mellouli v. Lynch*, 575 U.S. 798 (2015).

Next, you should find the minimum possible conduct punishable by the subsection of state statute that your client was charged under. The text of 720 ILCS 570/402(c) states "Any person who violates this Section with regard to an amount of a controlled substance other than methamphetamine or counterfeit substance not set forth in subsection (a) or (d) is guilty of a Class 4 felony." The statute in turn refers to controlled substances as defined by Schedules I and II. By reviewing the state schedules you determine that they include salvinorin A and salvia divinorum, substances not covered by the federal controlled substances schedules. Because the state statute covers controlled substances not covered by federal law, it is overbroad. Your client is not in danger of removal for having been convicted of a controlled substance offense unless the 402(c) is divisible by the particular substance in the schedules. If and only if the statute is divisible can the court review the record of conviction to determine that he was in fact convicted of possessing Xanax, a federally controlled substance.

[3] This example is stylized after *Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019).

In order to determine if 402(c) is further divisible you need to ask if the identity of the substance itself is an essential element of the offense or merely a means of committing the offense. Applying the divisibility analysis step by step as outlined in *Mathis*, you determine that neither the text of the statute, state court decisions, nor jury instructions clearly indicate that the particular substance is an element of the offense. *See Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019). Because the statute is not further divisible, the court cannot apply the modified categorical approach to review the record of conviction and thus cannot consider that your client was actually convicted of a federally controlled substance. Therefore, your client is not removable for a controlled substance offense.


Step 1
Step 2
Step 3
Is the offense potentially removable?
Is the state statute a categorical match to the federal statute?
Find the "generic" federal definition
Is the state stature broader than the federal definition? (i.e., would the minimum conduct punishable by the state statute be punishable by the federal definition?
No
Yes
Categorical match, danger of removal
Is the state statute divisible?
Can the parts be charged separately?
Yes
No
Divide the statute and determine which part your client was charged with through the ROC
NOT a categorical match; not in danger of removal
Is that minimum conduct within the bounds of what is punished by the federal definition?
Yes
No, it's still too broad
Categorical match, danger of removal
NOT a categorical match; not in danger of removal

Tips for Defense Attorneys

Attorneys should be prepared to advise clients on potential immigration consequences. Here are a few best practices that defense attorneys should follow:

1. **Know your client's immigration status and history**

   Ask your client whether they are a non-citizen. Do not fall prey to stereotypes about who "appears" or "sounds" American. Many non-citizens have been living in the U.S. since they were small children and do not have obvious accents. Many non-citizens are white. Any person, regardless of race, ethnicity or accent, could be a non-citizen, and so attorneys should have a practice of asking every client about their citizenship.

   If the client does not know their immigration status, ask the client to seek verification from relatives or from public records.

   If the client is a non-citizen, ask for the client's immigration history to determine what kind of status they have (lawful permanent resident, another legal status, or undocumented). The legal advice may differ depending on the client's immigration status.

2. **Avoid a Conviction that Triggers Removability**

   Consult the Categories of Removable Crimes Section to familiarize yourself with the types of offenses that may render your client deportable

   Consult the charts that follow this section to determine if your client is at risk of a conviction under a state law that matches a deportable federal crime

   After checking the chart, contact someone within your office who specializes in immigration or an outside immigration attorney to work out the specifics of the case at hand.

   If your client is at risk to be convicted of a deportable crime, plead down to an offense that is not a categorical match. This is particularly important for lawful permanent residents because they may be able to avoid immigration consequences altogether with the right plea. Even if the client is not a lawful permanent resident, you should try to minimize the risk that a conviction will lead to deportation by utilizing the charts.

3. **Avoid Aggravated Felonies**

Because non-citizens convicted of aggravated felony offenses are ineligible for cancellation of removal and most other forms of relief, defense attorneys should avoid a conviction for an aggravated felony wherever possible. U.S.C. § 1229b(a)(3).

Many state offenses are only aggravated felonies if the court orders a term of imprisonment of at least one year, regardless of whether any portion of that sentence is suspended. Defense attorneys are advised to negotiate for a shorter sentence length to prevent their client from being rendered deportable on account of a conviction for an aggravated felony

Even if you cannot avoid a conviction for a deportable offense, plead down to one that does not constitute an aggravated felony to preserve greater possibility of discretionary relief

Failure to counsel one's client on the immigration consequences of an aggravated felony is likely ineffective assistance of law under *Padilla*.

4. Keep the Record of Conviction "Clean"

"Record of conviction" (ROC) for immigration purposes is a term of art that signifies the materials courts may use to determine if a conviction "under a nongeneric statute necessarily admitted elements of the generic [deportable] offense." *Shepard v. United States*, 544 U.S. 13, 13 (2005). In other words, the ROC is the evidence courts may use when employing the modified categorical approach.

- In cases where a defendant pled guilty, the ROC consists of "the charging document, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record of this information." *Id.* at 26.
- In cases where a defendant was found guilty at trial, the ROC also includes "findings of fact and conclusions of law from a bench trial, and jury instructions and verdict forms" as well. *Johnson v. United States*, 559 U.S. 133, 144 (2010).

Keep facts out of these documents that may worsen the immigration consequences for your client

- Examples of facts that should be avoided include the presence, possession, or use of a firearm; the identity of the controlled substance; the domestic relationship with the victim; the minor status of the victim; and any actual injury sustained by a minor.

5. Seek Alternative Dispositions

Explore non-conviction dispositions like pretrial diversion programs, *nolle prosequi*, etc.

Reminder: *Guide contains only informed predictions; individualized analysis must be done in every case.*

Remember that Alford and nolo *contendere* pleas, sealed and expunged convictions, and diversion programs where a finding of guilty is entered are considered convictions under immigration law.

Quick Reference Chart for Determining Immigration Consequences of Common Illinois Offenses

Homicide Offenses

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
First degree murder, 720 ILCS 5/9-1(a)	(a)(1): Yes (a)(2): Yes (a)(3) (felony murder): Possibly no	(a)(1): Yes (a)(2): Yes (a)(3): Possibly no	N/A	If the victim was a current or former spouse or similarly situated individual, conviction would likely be a CODV.	If client is facing felony murder charges under (a)(3), try to have the record of conviction fail to specify the underlying felony offense.	For clients convicted under (a)(3), it may be argued that felony murder is not a categorical match for any AF category. The statute criminalizes killing that occurs during the commission or attempt of a "forcible felony," defined by 720 ILCS 5/2-8. It almost certainly does not meet the standard for aggravated felony murder under *Matter of M-W-*, 25 I&N Dec. 748 (BIA 2012), which centers on *mens rea* with respect to the act that causes death. The test then is whether all of the enumerated offenses under that statute are matches an AF category. For most of them, the most likely category is "crime of violence" under 8 U.S.C. § 1101(a)(43)(F); *see Matter of Guzman-Polanco*, 26 I&N 713 (BIA 2016) (holding that 18 U.S.C. § 16(a) defines an AF crime of violence. However, the statute contains a catch-all that follows closely the federal definition of a crime of violence under 18 U.S.C. § 16. See elsewhere in this guide for analyses of some of these offenses.

Reminder: *Guide contains only informed predictions; individualized analysis must be done in every case.*

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Second degree murder, 720 ILCS 5/9-2	(a)(1): Yes (a)(2): Yes	(a)(1): Yes (a)(2): Yes	N/A	If the victim was a current or former spouse or similarly situated individual, conviction would likely be a CODV.		There may be a viable argument that the mitigating factors of both portions of this statute diverge sufficiently from the generic murder offense defined by *M-W-* that they are not a categorical match. However, it is likely that even in this case they are both still an AF crimes of violence.
Involuntary manslaughter and reckless homicide, 720 ILCS 5/9-3(a)	Involuntary manslaughter: Likely yes Reckless homicide: Possibly no	Involuntary manslaughter: Likely yes Reckless homicide: Likely yes	N/A		Try to have the record of conviction state only that client is guilty of a homicide offense under 5/9-3(a) rather than involuntary manslaughter.	A challenge to the general vehicle-related provision of the reckless homicide statute should argue that this offense is distinct from the aggravated felony involving "extreme recklessness" described in *Matter of M-W-*, 25 I&N Dec. 748 (BIA 2012). Since *M-W-* itself involved a homicide involving a vehicle, this suggests the BIA intended for an AF to involve something more than recklessness driving that results in death.

Major Sex Offenses

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Criminal sexual assault, 720 ILCS 5/11-1.20	(a)(1): Likely yes (a)(2): Possibly no (a)(3): Likely yes (a)(4): Possibly yes	(a)(1): Likely yes (a)(2): Likely yes (a)(3): Likely yes (a)(4): Likely yes	N/A	Since (a)(1) is likely a categorical crime of violence, it is likely a CODV if the victim was a current or former spouse or similarly situated individual. (a)(3)-(4): Likely CAC	For this and all offenses below, an offense that involves the use or threat of force is very likely an AF.	See comment below for § 11-1.50(a)(2).
Aggravated criminal sexual assault, 720 ILCS 5/11-1.30(a)	Underlying offense stems from 1.20(a)(1), (3): Likely yes Underlying offense stems from 1.20(a)(2) or (4), and aggravating factor stems from 1.30(a)(1)-(3), (9)-(10): Likely yes Underlying offense stems from 1.20(a)(2) or	Likely yes	Aggravating factor under 1.30(a)(7): not likely a controlled substance offense because of overbreadth of IL drug schedules. *See Najera-Rodriguez v. Barr*, 926F.3d 343 (7th Cir. 2019).	If the underlying offense stems from 1.20(a)(1), and/or the aggravating factor stems from 1.30(1)-(2), (9)-(10), and the victim was a current or former spouse or similarly situated individual, then this is likely a CODV.	Avoid specifying which subsection is at issue to avoid an AF, unless 1.20(a)(2) clearly applies to your client's case. In this case, aim to plead down to criminal sexual assault under 1.20(b).	See analysis below of aggravating factors for 11-1.60(a). If the underlying offense of 1.20(a)(2) or (4) is not an AF, the aggravating factor under 1.30(a)(8) does not likely make the offense an AF, since the fact of being "armed with a firearm" does not appear to make the offense a categorical crime of violence under 18 U.S.C. § 16(a).

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	(4), and aggravating factor stems from 1.30(a)(4)-(7): Likely yes Underlying offense stems from 1.20(a)(2) or (4), and aggravating factor stems from 1.30(a)(8): Likely yes		Aggravating factors under 1.30(a)(8)-(10): not likely a firearms offense because IL firearms definition is overbroad. *See Rodriguez-Contreras v. Sessions*, 873 F.3d 579 (7th Cir. 2017).			
Aggravated criminal sexual assault, 720 ILCS 5/11-1.30(b)-(c)	(b): Likely yes (c): Likely no	(b): Likely yes (c): Possibly no	N/A	(b): Likely CAC (c): N/A	Try to have the record of conviction not specify which subsection is at issue if (b) is at issue.	
Predatory criminal sexual assault of a child, 720 ILCS 5/11-1.40	Likely yes	Likely yes	N/A	Likely CAC		The sexual contact and age range requirements are likely sufficient for the individual to be aware that the victim is a minor for purposes of a CIMT. *See*

Reminder: *Guide contains only informed predictions; individualized analysis must be done in every case.*

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						Matter of Silva-Trevino, 26 I&N Dec. 826, 834-35 (BIA 2016).
Criminal sexual abuse, 720 ILCS 11-1.50(a)	(a)(1): Likely yes (a)(2): Likely no	(a)(1): Likely yes (a)(2): Likely yes	N/A	Since 11-1.50(a)(1) is likely a categorical crime of violence, it is likely a CODV if the victim was a current or former spouse or similarly situated individual.		11-1.50(a)(2)'s "knowing consent" element likely does not fall within the generic definition of "rape" because it departs from the traditional common-law understanding of consent. *See Keeley v. Whitaker*, 910 F.3d 878, 882-884 (6th Cir. 2018). Nor does it incorporate the traditional common-law element of "force or fear." *See Castro-Baez v. Reno*, 217 F.3d 1057, 1059 (9th Cir. 2000) (*quoting* Black's Law Dictionary (6th Ed. 1990)). For similar reasons, it most likely falls outside the statutory definition of a "crime of violence." *See* 18 U.S.C. § 16; *Matter of Guzman-Polanco*, 26 I&N 713 (BIA 2016) (holding that 18 U.S.C. § 16(a) defines an AF crime of violence); *Matter of Francisco-Alonzo*, 26 I&N Dec. 594 (BIA 2015). Similarly, the main issue to litigate in the case of 11-1.50(a)(2) is whether sexual conduct with a person the offender "knows … the victim is unable to understand the nature of the act or is unable to give knowing consent" is

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						morally turpitudinous. Circuit law appears to follow the BIA's decision in *Matter in R-*, 6 I&N Dec. 444 (BIA 1954), which distinguished sexual crimes between consenting adults (e.g. adultery) from morally turpitudinous offenses that include the element of lack of consent or the use of force. *See Pinzon v. Gonzales*, 175 Fed.Appx. 911, 913-914 (9th Cir. 2006); *Maghsoudi v. I.N.S.*, 181 F.3d 8, 14-15 (1st Cir. 1999).
Criminal sexual abuse, 720 ILCS 11-1.50(b)-(c)	No. *See Esquivel-Quintana v. Sessions*, 137 S.Ct. 1562 (2017).	Likely no	N/A	Likely CAC. *See Matter of Velazquez-Herrera*, 24 I&N Dec. 503, 512-513 (BIA 2008); *Matter of Aguilar-Barajas*, 28 I&N Dec. 354 (BIA 2021).	If facing aggravated CSA charges in a case involving a minor victim, aim to plead down to CSA under these provisions to avoid an AF.	The Seventh Circuit does not have any case law discussing the BIA's standard in *Velazquez-Herrera*, but Courts of Appeals generally agree that sexual conduct with a child causes "harm" to a child under *Matter of Velazquez-Herrera*, and in fact consider many instances of less harmful conduct to meet this standard. *See, e.g. Garcia v. Barr*, 969 F.3d 129 (5th Cir. 2020) (rejecting argument that sexual conduct with a child is not harm under the INA); *see also Matthews v. Barr*, 927 F.3d 606 (2d Cir. 2019) (child endangerment statute criminalizing conduct "likely" to cause harm is a categorical match);

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						Hackshaw v. Attorney General of U.S., 458 Fed.Appx 137 (3d Cir. 2012) (statute criminalizing exposure of genitals to a child is a categorical match). Because the minimum conduct punishable includes 16-year-old victim, and many states do not criminalize this conduct, there is no agreement as a society that this is morally reprehensible conduct/conduct that should be criminally punished. *See Esquivel-Quintana v. Sessions*, 137 S.Ct. 1562 (2017).
Aggravated criminal sexual abuse, 720 ILCS 11-1.60(a)	CSA charge stems from 11-1.50(a)(1): Likely yes CSA charge stems from §§ 11-1.50(a)(2), (b)-(c) and aggravating factor stems from §§ 11-1.60(a)(1), (2), or (5): Likely yes	CSA charge stems from 11-1.50(a)(1): Likely yes Aggravating factor stems from 11-1.60(a)(1), (2), (7): Likely yes CSA charge stems from 11-1.50(a)(2), and aggravating factor	N/A	Likely a CODV if charge stems from 11-1.50(a)(1) and victim was a current or former spouse or similarly situated individual.	Try to have the record of conviction not specify which aggravating factor is at issue.	Aggravating factors 11-1.60(a)(3)-(4), like 11-1.60(e), likely fall outside the rape category of aggravated felonies because they are beyond the scope of the common-law notion of consent (see above). Aggravating factors 11-1.60(a)(6)-(7) are likely too broad to constitute the use or threat of force under the AF analysis. Aggravating factor 11-1.60(a)(5), is likely an AF crime of violence under 18 U.S.C. § 16(a). It may be necessary to argue that the risk of force against another

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	CSA charge stems from 11-1.50(a)(2), (b)-(c), and aggravating factor stems from 11-1.60(a)(3)-(4), or (6)-(7): Likely no	stems from 11-1.60(a)(3), (4), (5), (6): Possibly no CSA charge stems from 11-1.50(b)-(c), and aggravating factor stems from 11-1.60(a)(3), (4), (5), (6): Possibly no				person is insufficiently substantial in the cases of 11-1.60(a)(6)-(7). In contrast, the CIMT analysis is arguably broader in scope, because it specifically includes the element of consent. 11-1.60(a)(7) likely qualifies as a CIMT. However, 11-1.60(a)(5) may not qualify as "force" under this analysis.

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Aggravated criminal sexual abuse, 720 ILCS 11-1.60(b)-(f)	(b): Likely yes (c): Likely yes (d): No. *See Esquivel-Quintana v. Sessions*, 137 S.Ct. 1562 (2017). (e): Likely no (f): Possibly yes	(b): Yes. *See United States v. Valenzuela*, 931 F.3d 605 (7th Cir. 2019) (c)(1)(i): Possibly no (c)(2)(i): Likely yes (c)(1)(ii), (2)(ii): Likely yes (d): No (e): Possibly no (f): Likely yes	N/A	(b)-(d), (f): Likely CAC. *See Matter of Velazquez-Herrera*, 24 I&N Dec. 503, 512-513 (BIA 2008); *Matter of Aguilar-Barajas*, 28 I&N Dec. 354 (BIA 2021). (b), (f): Likely not CDV (e): N/A	Try to have the record of conviction not specify which subsection is at issue, except for subsections (d)-(e).	The Seventh Circuit has stated that it takes a "broad view" of the "sexual abuse of a minor" AF category when the age of the victim is not the only factor in the criminal statute. *See Gaiskov v. Holder*, 567 F.3d 832, 836 (7th Cir. 2009); *Correa-Diaz v. Sessions*, 881 F.3d 525, 529 (7th Cir. 2018). The court's interpretation of *In re Rodriguez-Rodriguez*, 22 I&N Dec 991, 993-996 (BIA 1999) likely includes § 11-1.60(b) because this provision likely encompasses "incest," but § 11-1.60(f) is a less clear-cut case. *Esquivel-Quintana* leaves open the possibility that some statutes that specify a particular age difference between offender and victim may be categorically not aggravated felonies. The Seventh Circuit in *Correa-Diaz*, however, suggested that it is not sympathetic to this argument.

Prostitution Offenses

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Prostitution, 720 ILCS 5/11-14	No. *See* 8 U.S.C. § 1101(a)(43)(K)(i) (requires "owning, controlling, managing, or supervising of a prostitution business").	Yes	N/A	Prostitution: Likely no	Avoid this offense if possible. *See Matter of W-*, 4 I&N Dec. 401, 402 (BIA 1951) ("It is well established that the crime of practicing prostitution involves moral turpitude.").	To avoid inadmissibility for prostitution under section 212(a)(2)(D)(ii), argue that since 720 ILCS 5/11-14 covers acts in addition to "sexual intercourse" it is overbroad under *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 549 (BIA 2008). However, the BIA recently broadened the definition of "prostitution" under 101(a)(43)(K)(i). *See Matter of Ding*, 27 I&N Dec. 295, 299 (BIA 2018).
Solicitation of a sexual act, 720 ILCS 5/11-14.1	No. *See* 8 U.S.C. § 1101(a)(43)(K)(i) (requires "owning, controlling, managing, or supervising of a prostitution business").	Yes	N/A	Prostitution: Likely no	Avoid this offense if possible. *See In Re: Chun Ok Eifert A.K.A. Chun O. Crispino*, No. : AXXX XX6 958 - PHI, 2017 WL 4118941, at *3 (DCBABR June 16, 2017) ("Solicitation of prostitution categorically involves moral turpitude.").	*See* above. In addition to limiting the definition of prostitution to "sexual intercourse," *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 549 (BIA 2008) also held that "A single act of soliciting prostitution on one's own behalf does not fall within section 212(a)(2)(D)(ii))." *Id.*

Child Pornography, Public Indecency and Disorderly Conduct

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Child pornography, 720 ILCS 5/11-20.1	Likely no	Yes (all)	No	CAC: Likely yes		Argue that this is not an aggravated felony under 8 U.S.C. §1101(a)(43)(A) because it does not involve performing acts upon a child. *See Mero v. Barr,* 957 F.3d 1021 (9th Cir 2020) and because Illinois defines a minor as someone as younger than 18. Additionally, ILCS 5/11-20.1 also applies to "any person with a severe or profound intellectual disability." Under the categorical approach, this likely renders it overbroad for both AF offenses relating to child pornography and crimes against children. *See In Re: Miguel Alexander Franco-Lara*, No. : AXXX XX8 474 - EL, 2016 WL 6137082, at *2 (DCBABR Aug. 4, 2016). ("An 'aggravated felony' under section 101(a)(43)(I) of the Act, is defined as 'an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography).' A conviction in violation of any of the referenced statutes of Title 18, necessarily includes an 'actual minor' as a required substantive element of the offense."); *Matter of Velazquez-Herrera*, 24 I&N Dec. 503, 516 (BIA 2008) (finding that because a Washington assault statute did not

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						"contain any element requiring proof that an assault be committed against a person under 18 years old . . . the offense did not correspond categorically to the generic definition of a "crime of child abuse" that [the BIA] set forth").
Public Indecency, 720 ILCS 5/11-30	No	(a)(1): Likely no – subsection lacks a mens rea requirement (a)(2): Likely yes	No	No	Plead to (a)(1)	For (a)(1), argue that the subsection lacks the needed mens rea. *See Matter of Medina*, 26 I. & N. Dec. 79, 82 (BIA 2013) ("We have long held that indecent exposure is not inherently turpitudinous in the absence of lewd or lascivious intent").
Disorderly conduct, 720 ILCS 5/26-1	(a)(1): No – class C misdemeanor (max 30 days) (a)(2): Possibly yes, if loss to public authority exceeds $10,000 (a)(3): Possibly yes, if loss to public authority exceeds $10,000	(a)(1): Likely no (a) (2) Possibly yes; knowing false alarm to public authority (a) (3) Possibly yes; knowing false alarm to public authority	No	No	Plead to less than $10,000 in losses	For the false alarm/reporting offenses, argue that they are distinguished from *Matter of Jurado-Delgado,* 24 I&N Dec. 29 (BIA 2006) because they do not require intent to disrupt public duties and are therefore not CIMTs. *See Flores-Molina v. Sessions*, 850 F.3d 1150, 1171 (10th Cir. 2017) (holding that a similar false reporting crime in Colorado was not a CIMT, and noting similar decisions in several other circuits); *cf*. *Arias v. Lynch,* 834 F.3d 823, 829 (7th Cir. 2016) ("A rule that all

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	(a)(3.5): Possibly yes, if loss to public authority exceeds $10,000 (a)(4): Possibly yes, if loss to public authority exceeds $10,000 (a)(5): No – class A misdemeanor (max 364 days) (a)(6): Possibly yes, if loss to public authority exceeds $10,000 (a)(7): Possibly yes, if loss to public authority exceeds $10,000 (a)(8) No; class B misdemeanor (max sentence 180 days) (a)(9) Possibly yes, if loss to	(a)(3.5): Possibly yes; knowing false alarm to public authority (a)(4): Possibly yes; knowing false alarm to public authority (a)(5): Possibly yes; knowing false alarm to public authority (a)(6): Possibly yes; knowing false alarm to public authority (a)(7); Possibly yes; knowing false report to public authority (a)(8) Possibly yes; knowing false alarm to public authority (a)(9) Possibly yes; knowing				crimes that involve any element of deception categorically involve moral turpitude would produce results at odds with the accepted definition of moral turpitude as conduct that is 'inherently base, vile, or depraved.' At the same time, there is significant precedent indicating that deceptive conduct is morally turpitudinous.”).

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	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	public authority exceeds $10,000 (a)(10)) No, class B misdemeanor (max sentence 180 days) (a)(11): No, class A misdemeanor (max 364 days); unless third or subsequent offence, then possibly, if loss to public authority exceeds $10,000 (a)(12) First offense: No, "Business Offense"; subsequent offenses, possibly yes, if loss to public authority exceeds $10,000	false request to public authority (a)(10) Possibly yes; knowing false report to public authority (a)(11) Likely not (a)(12) No				

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Assault Offenses

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Assault, 720 ILCS 5/12-1	No. *See Matter of Guzman-Polanco*, 26 I&N Dec. 713 (BIA 2016).	No. *See In re Sejas*, 24 I&N Dec. 236 (BIA 2007); *Garcia-Martinez v. Barr*, 921 F.3d 674, 676 (7th Cir. 2019) ("there is near universal agreement that simple assault is not [a CIMT].").	N/A	CODV: Likely no. However, assault based on (a)(1) battery could be a CODV	Plead down to simple assault under this provision if possible. Avoid references to threats of causing bodily harm in the record of conviction.	
Aggravated assault, 720 ILCS 5/12-2(a) (Offense based on location of conduct)	No	No	N/A	CODV: Likely no	Plead down to simple assault if possible. Avoid references to threats of causing bodily harm in the record of conviction. If client is charged under § 12-2(a), make sure this is stated in the record of conviction. Avoid sentences of more than 364 days imprisonment.	Sections of § 12-2 that are not categorical AF crimes of violence should not be subject to the CODV exception to the categorical approach. However, there is Seventh Circuit caselaw outside of the immigration context that classifies § 12-2 as a whole as a crime of violence under federal sentencing guidelines, U.S.S.G. § 4B1.2(a), which has an almost identical definition to crime of violence under 18 U.S.C. § 16. *See United States v. Vesey*, 966 F.3d 694 (7th Cir. 2020). If a client is charged as having

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						committed a CODV based on the specific circumstances of the aggravated assault offense, practitioners should argue that *Vesey* does not apply in the immigration context, and that only divisible provisions of § 12-2 that are categorical AF crimes of violence are subject to case-specific CODV analysis.
Aggravated assault, 720 ILCS 5/12-2(b) (Offense based on status of victim)	(b)(1)-(4), (7)-(9): No (b)(5), (6), (10), and (4) with weapons enhancement: Likely yes	No, so long as battery is based on (a)(2). *See Garcia-Meza v. Mukasey*, 516 F.3d 535 (7th Cir. 2008).	No	CODV: Likely no	Plead down to simple assault if possible. Avoid sentences of more than 364 days imprisonment	*See* CODV advice above.
Aggravated assault, 720 ILCS 5/12-2(c) (Offense based on use of firearm, device, or motor vehicle)	(c)(1), (4), (9): No (c)(2), (5), (6), (7), (8): Likely yes. *See Matter of Chairez-Castrejon*, 26 I&N Dec. 819, 824 (BIA 2016).	(c)(1)-(3), (6): Likely yes. *See Matter of Medina*, 15 I&N Dec. 611 (BIA 1976). (c)(4), (9): Likely no	No. Definition of "firearm" under Illinois law is overbroad and indivisible. *See Rodriguez Contreras v. Sessions*, 873	If the victim was a current or former spouse or similarly situated individual, conviction may be considered a CODV. If client is convicted under sections that	Plead down to simple assault if possible. Unless your client's case clearly fits the elements of (c)(4) or (9), try to have the record of conviction fail to specify which sub-section of (c) applies.	*See* CODV advice above. Absent arguments against *Vesey*, a felony aggravated assault is likely going to be considered a COV unless it is linked to the offensive touching subsection of IL battery. Otherwise, it's clear that the (a)(1) causes bodily harm subsection of battery is sufficient for a COV in other contexts. *See De Leon*

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
		(c)(5): Likely yes. *See Coquico v. Lynch*, 789 F.3d 1049 (9th Cir. 2015). (c)(7)-(8): Likely no	F.3d 579 (7th Cir. 2017)	qualify as an AF, then the conviction would likely be considered a CODV in this circumstance. All other sections: Likely no.	Avoid sentences of more than 364 days imprisonment.	*Castellanos v. Holder,* 652 F.3d 762 (7th Cir. 2016); *LaGuerre v. Mukasey*, 526 F.3d 1037 (7th Cir. 2008).

Battery Offenses

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Battery, 720 ILCS 5/12-3	No	(a)(1): Yes (a)(2): No. *See Garcia-Meza v. Mukasey*, 516 F.3d 535, 537 (7th Cir. 2008)	N/A	N/A	Plead to (a)(2) instead (a)(1) to avoid a CIMT. Though neither provision of § 5/12-3(a) is an aggravated felony, if a client is facing charges of aggravated and/or domestic battery under the provisions below, it would be advantageous to plead to (a)(2).	The Seventh Circuit's interpretation of what constitutes a CIMT in this context differs slightly from the BIA's approach. It may be possible to argue that by including conduct that results in mere "bodily injury," the Seventh Circuit improperly stretches the CIMT category too far beyond the requirement that there be "*intentional* infliction of *serious* bodily injury." *In re Sejas*, 24 I&N Dec. 236, 237 (BIA 2007) (internal citation omitted).
Aggravated battery, 720 ILCS 5/12-3.05(a) (Offense based on injury)	(a)(1)-(5): Likely yes. S*ee De Leon Castellanos v. Holder*, 652 F.3d 762, 765-67 (7th Cir. 2011) (a)(5): Possibly no	(a)(1)-(5): Likely yes	N/A	If the victim was a current or former spouse or similarly situated individual, conviction may be considered a CODV.	Plead down to 5/12-3(a)(2).	*Guzman-Polanco* recognizes a circuit split on whether a statute that allows for conviction when bodily injury is caused by "indirect force" is categorically a crime of violence aggravated felony. *Matter of Guzman-Polanco*, 26 I&N Dec. 806, 807 (BIA 2016). The Seventh Circuit appears to take the position that any battery offense that causes bodily harm is a crime of violence. Practitioners should argue that §§ 5/12-3.05(a)(1)-(4) are not aggravated felonies under other circuits' approaches. *See Whyte v. Lynch*, 807 F.3d 463, 469 (1st Cir. 2015); *United States v. Torres-Miguel*, 701 F.3d 165, 168-69 (4th Cir. 2012); *United States v.*

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	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						Cruz-Rodriguez, 625 F.3d 274, 276 (5th Cir. 2010).
Aggravated battery, 720 ILCS 5/12-3.05(b) (Offense based on injury to a child or person with an intellectual disability)	(b)(1)-(2): Likely yes	(b)(1)-(2): Likely yes	N/A	(b)(1)-(2): Likely CAC. *See Matter of Velazquez-Herrera*, 24 I&N Dec. 503, 512-513 (BIA 2008).	Plead down to 5/12-3(a)(2). Avoid a 365-day sentence.	For cases involving charges under § 5/12-3.05(b)(2), see above considerations regarding the Seventh Circuit's treatment of battery involving mere "bodily harm," as well as the possibility of causing harm by "indirect" means.
Aggravated battery, 720 ILCS 5/12-3.05(c) (Offense based on location of conduct)	Underlying battery conduct stems from § 5/12-3(a)(1): Likely yes Underlying battery conduct stems from § 5/12-3(a)(2): Likely no	Underlying battery conduct stems from § 5/12-3(a)(1): Likely yes Underlying battery conduct stems from § 5/12-3(a)(2): Likely no	N/A	If the underlying battery conduct stems from § 5/12-3(a)(1), and the victim was a current or former spouse or similarly situated individual, conviction is likely a CODV.	Plead down to 5/12-3(a)(2). If underlying battery conduct arises under § 5/12-3(a)(1), have the record of conviction fail to state charge arises under § 5/12-3(a)(1) or (2). Avoid a 365-day sentence.	A case where a client was convicted of aggravated battery under § 5/12-3.05(c) would be a good opportunity to challenge Seventh Circuit case law characterizing any offense that requires inflicting "bodily harm," no matter how slight and by no matter what means, as both an AF and a CIMT.
Aggravated battery, 720 ILCS 5/12-3.05(d) (Offense based on status of victim)	(d)(1)-(12), where underlying battery conduct stems from § 5/12-3(a)(1): Likely yes (d)(1)-(12), where underlying battery conduct stems	(d)(1)-(12), where underlying battery conduct stems from § 5/12-3(a)(1): Likely yes (d)(1)-(12), where underlying battery conduct stems	N/A	If the underlying battery conduct stems from § 5/12-3(a)(1), and the victim was a current or former spouse or similarly situated individual, conviction may be	If underlying battery conduct arises under § 5/12-3(a)(1), have the record of conviction fail to state charge arises under § 5/12-3(a)(1) or (2).	

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	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	from § 5/12-3(a)(2): Likely no	from § 5/12-3(a)(2): No. See Garcia-Meza v. Mukasey, 516 F.3d 535 (7th Cir. 2008)		considered a CODV.		
Aggravated battery, 720 ILCS 5/12-3.05(e) (Offense based on use of a firearm)	(e)(1)-(8): Likely yes	(e)(1)-(8): Likely yes	(e)(1)-(8): No Firearm Offense. *See Rodriguez-Contreras v. Sessions*, 873 F.3d 579 (7th Cir. 2017).	If the victim was a current or former spouse or similarly situated individual, conviction is likely a CODV.	Plead down to simple battery if possible. Avoid a 365-day sentence.	
Aggravated battery, 720 ILCS 5/12-3.05(f) (Offense based on use of a weapon or device)	(f)(1)-(4), where underlying battery stems from § 5/12-3(a)(1): Likely yes (f)(1), where underlying battery stems from § 5/12-3(a)(2): Likely yes (f)(2), (3), (4), where underlying battery stems from § 5/12-3(a)(2): Likely no	(f)(1)-(4), where underlying battery stems from § 5/12-3(a)(1): Likely yes (f)(1), where underlying battery stems from § 5/12-3(a)(2): Likely yes (f)(2), (3), (4), where underlying battery stems from § 5/12-3(a)(2): Likely no	N/A	If the victim was a current or former spouse or similarly situated individual, conviction may be considered a CODV, except in cases of (f)(2) or (4) where underlying battery stems from § 5/12-3(a)(2).	Have the record reflect that the charge arises out of 720 ILCS 5/12-3(a) (2).	

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	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Aggravated battery, 720 ILCS 5/12-3.05(g) (Offense based on certain conduct)	(g)(1): Likely yes (g)(2)-(3), where underlying battery stems from § 5/12-3(a)(1): Likely yes (g)(2)-(3), where underlying battery stems from § 5/12-3(a)(2): Likely no	(g)(1): Likely yes (g)(2)-(3), where underlying battery stems from § 5/12-3(a)(1): Likely yes (g)(2)-(3), where underlying battery stems from § 5/12-3(a)(2): Likely no	(g)(1): Likely not Controlled Substance Offenses. *See Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019).	If the underlying battery conduct stems from § 5/12-3(a)(1), and the victim was a current or former spouse or similarly situated individual, conviction is likely a CODV.	Have the record reflect that the charge arises out of 720 ILCS 5/12-3(a)(2).	§ 5/12-3.05(g)(2) does not require that the victim experience bodily harm, only that the offender administer certain substances. For only some of the substances listed does the statute require that they be "intended to cause physical injury if eaten." This provision is likely not divisible between two distinct crimes, and therefore does not categorically require an intent to cause bodily harm. Even if the statute is divisible, it may be possible to prevail on the argument that even under Seventh Circuit case law, intent to cause bodily harm is not enough to constitute a crime of violence if there is no requirement that the harm actually occur.
Domestic battery, 720 ILCS 5/12-3.2	(a)(1): Yes, if sentence of a year or more. *See LaGuerre v. Mukasey*, 526 F.3d 1037 (7th Cir. 2008). (a)(2): No. *See De Leon Castellanos v. Holder*, 652 F.3d 762, 766 (7th Cir. 2011) ("Battery under section	(a)(1): Yes (a)(2): Likely no	N/A	(a)(1): Yes CODV (a)(2): No CODV Sentencing enhancement under (c): Likely not CAC (likely does not require the necessary	Plead down to 5/12-3.2(a)(2).	*LaGuerre* holds that § 5/12-3.2(a)(1) is an aggravated felony, but the defendant in that case had a prior domestic battery conviction and was sentenced to two years. If a client was convicted under § (a)(1) without any of the sentencing enhancements listed in § § 5/12-3.2(b), then the offense is a Class A Misdemeanor punishable by only up to 364 days, and therefore not an AF COV, but could still be a CODV.

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	5/12-3.2(a)(2) may be offensive, but it does not require violent physical force as an element").			*mens rea* or harm to child under *Matter of Velazquez-Herrera*, 24 I&N Dec. 503 (BIA 2008))		
Aggravated domestic battery, 720 ILCS 5/12-3.3	(a): Likely yes (a-5): Likely yes	(a): Likely yes (a-5): Likely Yes	N/A	(a): Yes CODV (a-5): Yes CODV		

Violations of Protection Orders

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Violation of an order of protection, 720 ILCS 5/12-3.4	(a)(1)(i)-(iii): Likely no	Likely no	N/A	Likely yes as violators of protection orders	For (a)(1)(i)-(ii), Have record of conviction specify if client's conviction stems from a violation of an order issued under 750 ILCS § 60/214(b)(2).	The Seventh Circuit held in *Garcia-Hernandez* that the categorical approach does not apply to the protective order category of deportability under 8 U.S.C. § 1227(a)(2)(E)(ii). This means that the relevant inquiry is whether "the court determin[ed]" the alien's conduct violated § 237(a)(2)(E)(ii). *Garcia Hernandez*, 847 F.3d at 872. To answer this question, the immigration court looks at the relevant portion of the protective order, not the statute, and asks whether that portion "involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued." 8 U.S.C. § 1227(a)(2)(E)(ii). *See also In re Strydom*, 25 I&N Dec. 507 (BIA 2011); *Matter of Obshatko*, 27 I&N Dec. 173 (BIA 2017).

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Violation of a civil no contact order, 720 ILCS 5/12-3.8	(a)(1)(A)-(B): Likely no	(a)(1)(A)-(B): Likely no	N/A	Possibly yes a violators of protection orders, if the purpose of the order tis to protect against violence, harassment, or injury.	If the protective order was issued for a reason other than to prevent against violence, harassment, or injury, have this stated in the record of conviction.	See above.

Offenses Involving Harm to Children

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Endangering the life or health of a child, 720 ILCS 5/12C-5	(a)(1): No, unless it is charged as a class 3 felony for causing the death of a child (a)(2) No	(a)(1): Yes (a)(2) Possibly yes	N/A	(a)(1): Yes as a CAC (a)(2) Possibly yes as CAC		(a)(2) Argue overbreadth: Leaving two children (ages 1 and 2) alone in a car with the engine running, windows up, and doors locked while going in a store for 3-6 minutes was sufficient for a conviction. *See People v. Gibson*, 2020 IL App (5th) 170287-U, ¶ 5.
Child abandonment, 720 ILCS 5/12C-10	No	Possibly yes	N/A	Likely no as a CAC		
Contributing to the dependency and neglect of a minor, 720 ILCS 5/12C-25	No (Class A misdemeanor)	(a)(1)-(a)(3): Possibly no	N/A	Possibly yes as a CAC	Attempt to leave the record vague if result to the child is more problematic. Attempt to specify (a)(3) if possible, otherwise do not specify.	Argue overbreadth: The statutory definition of "dependent and neglected minor" includes "any child who while under the age of 10 years is found . . . singing or playing any musical instrument for gain upon the street or giving any public entertainments or accompanies or is used in aid of any person so doing."

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Contributing to the delinquency or criminal delinquency of a minor, 720 ILCS 5/12C-30	(a): No (Class A misdemeanor) (b): Possibly yes (if the predicate crime falls into a 8 U.S.C. § 1101(a)(43) aggravated felony category)	(a) & (b): Likely yes, if the predicate crime is a CIMT	(a): Likely no (b): Possibly yes, if the predicate crime is a controlled substance/ firearm offence	(a): Likely no (b): Possibly yes, if the predicate crime involves domestic violence/crime against children/ prostitution	Try to plead to a predicate offense that is not a CIMT or aggravated felony.	If the record is vague, argue overbreadth

Offenses Against Property

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Theft, 720 ILCS 5/16-1	Yes (if sentence is a year or more)	(a)(1): Likely yes (a)(2): Likely yes (a)(3): Likely yes (a)(4): Possibly no (a)(5): Possibly no	N/A	N/A	Plead to (a)(4) as there are some arguments that it is neither an AF nor a CIMT.	The Seventh Circuit has indicated that it interprets all conduct under (a) to be a categorical match for the generic theft offense. See *Vaca-Tellez v. Mukasey*, 540 F.3d 665, 670 (7th Cir. 2008). However, the Seventh Circuit's definition may go too far by extending this category to cover acts done with intent to deprive the victim temporarily of their property. While the BIA has treated as aggravated felonies theft offenses where the offender intended to deprive the owner of property in a way that "is less than total or permanent," it also has clarified that this aggravated felony category is not meant to include takings that "entail a *de minimis* deprivation of ownership interests." *Matter of V-Z-S-*, 22 I&N Dec. 1338, 1346 (BIA 2000). Similarly, in the CIMT context, there is also a de minimis exception for statutes that include conduct such as "joyriding." *See Matter of Jurado–Delgado,* 24 I&N Dec. 29, 33 (BIA 2006); *Matter of Diaz-Lizarraga,* 26 I&N Dec. 847 (BIA 2016); *Matter of P,* 2 I&N Dec. 887 (BIA 1947).

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	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						Both AF and CIMT standards also exclude conduct done with a mere "reason to believe" the property was stolen. *Matter of Deang*, 27 I&N Dec. 57, 62-3 (BIA 2017); *Matter of Silva-Trevino*, 26 I&N Dec. 826, 834 (BIA 2016). Practitioners should argue that these theft offenses include de minimis temporary takings of property. In cases involving (a)(4) or (5), argue that the practitioners should argue statutes are overbroad because they criminalize obtaining property with a mere "reason to believe" the property is stolen.
Theft of labor or services or use of property, 720 ILCS 5/16-3	(a): No (b): Possibly no (c): No (c): Possibly no	(a): Likely no (b): Possibly no (c): Likely no (c): Possibly no	N/A	N/A	Plead to a misdemeanor under (a) or (c), preferably with a sentence of no more than 180 days.	At first glance, (b) appears to meet the elements of the Seventh Circuit's generic definition of aggravated felony theft. *See Vaca-Tellez v. Mukasey*, 540 F.3d 665, 670 (7th Cir. 2008). However, there is an argument that this subsection includes de minimis temporary takings of property: i.e. the late return of rented property. The same argument applies to (c) where it is classified as a felony due to the value of library material at issue, as

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						well as both offenses in the CIMT context.
Retail theft, 720 ILCS 5/16-25	(a)(1)-(8); (b): Yes, if sentence is more than 1 year	(a)(1)-(8); (b): Yes	N/A	N/A	Plead to a misdemeanor with a sentence of no more than 180 days.	Note that (a)(1) criminalizes certain conduct either "with the intention of *retaining* such merchandise" or "with the intention of *depriving* the merchant *permanently* of the possession, use or benefit of such merchandise." (emphasis added). "Retaining" does not appear to have a statutory definition. There may be arguments that it is overbroad for purposes of AF and CIMT as it may punish conduct that involves less than "depriving permanently" and does not appear to categorically require a substantial erosion of the owner's rights in the property. *See Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 853-53 (BIA 2016).
Burglary, 720 ILCS 5/19-1	No. *See Parzych v. Garland*, No. 20-2317, 2021 WL 2644221 (7th Cir. June 28, 2021) (holding that IL burglary is not divisible and	No. *See Parzych v. Garland*, No. 20-2317, 2021 WL 2644221 (7th Cir. June 28, 2021) (holding that IL burglary is not divisible and	N/A	N/A		The Seventh Circuit recently decided *Parzych v Garland* finding that IL burglary is neither an attempt theft aggravated felony nor a CIMT because the statute is not visible as to whether the defendant intended to commit a theft or any other felony. This case overruled prior Seventh Circuit

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	thus not an AF under the categorical approach).	thus not a CIMT under the categorical approach).				precedent in *Solorzano-Patlan v. I.N.S.*, 207 F.3d 869, 875 (7th Cir. 2000) and *Dominguez-Pulido v. Lynch*, 821 F.3d 837, 843 (7th Cir. 2016), which had held respectively held that IL burglary was an attempt theft AF and CIMT, by assuming the statute was divisible and applying the modified categorical approach. Note that the Seventh Circuit has held this does not qualify as a burglary offense under 8 U.S.C. § 1101(a)(43)(G) because it includes unlawful entry into motor vehicles and is therefore overbroad as compared to "generic burglary." *Solorzano-Patlan v. I.N.S.*, 207 F.3d 869, 875 (7th Cir. 2000). Additionally, practitioners should argue that this is not an AF burglary offense because IL courts apply the "limited-authority doctrine." Under this doctrine, the courts do not strictly require an "unlawful entry," as required by the generic burglary definition. *See United States v. Glispie*, 943 F.3d 358, 359–60 (7th Cir. 2019); *see also Parzych v. Garland*, No. 20-2317, 2021 WL 2644221 (7th Cir. June 28, 2021).

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Possession of burglary tools, 720 ILCS 5/19-2	No	Likely yes	N/A	N/A	Plead to an intent to commit a "felony" as it would likely not qualify a CIMT or aggravated felony.	Possession of burglary tools is a CIMT where the possession is with intent to commit a specific CIMT offense. *See Matter of S*, 6 I.&N. Dec. 769 (BIA 1955). If the intent was to commit a non-CIMT felony, then there is an argument that this may not as a CIMT.
Residential burglary, 720 ILSC 5/19-3	No. *See Parzych v. Garland*, No. 20-2317, 2021 WL 2644221 (7th Cir. June 28, 2021) (holding that IL burglary is not divisible and thus not an AF under the categorical approach).	Possibly no	N/A	N/A	Plead to 720 ILCS 5/19-1 as that statute is more definitely not a CIMT, in addition to not being an AF.	See above for analysis of Burglary, 720 ILCS 5/19-1, analysis supra. Additionally, under *Matter of J-G-D-F-*, 27 I&N Dec. 82 (BIA 2017) burglary of a dwelling is a CIMT provided that the dwelling is at least intermittently, occupied. However, there are arguments that this statute does not require that the dwelling be intermittently occupied. *See, e.g., People v. Benge*, 196 Ill. App. 3d 56, 58 (1990) (rejecting defendant's argument that he could not be convicted of residential burglary of a cabin in which the owner did not reside and spent only limited time there).

Interference with Public Officers

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Offenses relating to motor vehicles and other vehicles, 625 ILCS 5/4-103	(a)(1): Likely yes, if sentence is a year or more. *See Hernandez-Mancilla v. I.N.S.*, 246 F.3d 1002 (7th Cir. 2001)). (a)(2): Possibly yes (a)(3): Likely yes, if offense involves a loss to a victim exceeding $10,000. *See Nijhawan v. Holder*, 557 U.S. 29 (2009) (holding that the $10,000 component of the fraud and deceit AF category under 8 U.S.C. § 1101(a)(43)(M) is subject to case-specific analysis rather than the	(a)(1): Likely yes (a)(2): Possibly yes (a)(3): Likely yes	N/A N/A	N/A N/A	Avoid a sentence of a year or more in order to avoid an AF. If client is facing charges that are likely to constitute an AF then plead to 720 ILCS 5/16-1(a)(4) as there are strong arguments that it is neither an AF nor a CIMT. If the client is facing charges under (a)(2) have them plead to removing, rather than altering, defacing, destroying, falsifying or forging a VIN.	There may be arguments that it is neither under *Matter of Deang*. 27 I&N Dec. 57, 62-3 (BIA 2017). The "inference" of knowledge detailed in (a)(1)(A) has been treated in Illinois courts as an alternate *mens rea* of "reason to believe" that the vehicle was stolen, which falls short of the *mens rea* of at least recklessness for AF and CIMT analysis. *See People v. Mijoskov*, 140 Ill. App. 3d 473, 478 (1986); *Matter of Deang*, 27 I&N Dec. at 62-3; *Matter of Silva- Trevino*, 26 I&N Dec. 826, 834 (BIA 2016). Additionally, AF and CIMT theft offenses require an intent to deprive the owner permanently or substantially of property, and this offense very likely incorporates *de minimis* conduct such as "joyriding." *See Matter of Jurado-Delgado,* 24 I&N Dec. 29, 33 (BIA 2006); *Matter of Diaz-Lizarraga,* 26 I&N Dec. 847, 854 (BIA 2016). This statute criminalizes possession of "converted" property, which includes property taken temporarily. *See People v. Gengler*, 620 N.E.2d 1368, 1374 (Ill. App. Ct. 1993).

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	categorical approach)). (a)(4): Likely no (a)(5): Likely no (a)(6): Likely no	(a)(4): Likely no (a)(5): Likely no (a)(6): Likely yes				Similarly, practitioners should argue that the conduct element of (a)(2) is overbroad with respect to BIA decisions relating to the AF category relating to vehicles with altered identification numbers, as well as cases discussing trafficking in counterfeit goods. *See* 8 U.S.C. § 1101(a)(43)(R); *In re Kochlani*, 24 I&N Dec. 128 (BIA 2007). In both cases, conduct such as "removing" or "altering" an identification number does not fit categories such as "trafficking."
Driving while revoked, 625 ILCS 5/6-303	(a): No (a-3): No (a-5): No (a-7): No (b-5): No (c)(1), (2), (3): No (c-1): No (c-2): No (c-3): No (c-4): No	(a): No (a-3): No (a-5): No (a-7): No (b-5): No (c)(1), (2), (3): No (c-1): No (c-2): No (c-3): No (c-4): No	N/A	N/A	While a conviction under this statute does not constitute a removal offense, defense counsel should consider the effect of aggregate sentences and the sentence served, particularly for purposes of good moral character for relief such as cancellation of removal for nonlawful permanent residents and naturalization.	

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	(c-5): Likely no (d): No (d-1): No (d-2): No (d-2.5): No (d-3): No (d-3.5): No (d-4): No (d-5): No (e): No	(c-5): No (d): No (d-1): No (d-2): No (d-2.5): No (d-3): No (d-3.5): No (d-4): No (d-5): No (e): No				
Driving under the influence of alcohol, 625 ILCS 5/11-501	(a) (all subsections): No (d)(1)(A), (B), (D), (G), (H), (I), (K), (L): No (d)(1)(C), (E), (F), (J): No. *See Leocal v. Ashcroft*, 543 U.S. 1, 8 (2004)).	(a) (all subsections): No (*see In re Torres-Varela*, 23 I&N Dec. 78 (BIA 2001)) (d)(1)(A): No (d)(1)(B), (C), (E), (F), (J), (K), (L): Likely no	N/A	N/A	While not a removable offense in most cases, a DUI can have severe consequences for noncitizen, particularly for those who entered without inspection, including for immigration bond, showing good moral character and meriting relief as a discretionary matter. Notably, a DUI is also considered a "significant	Be prepared to argue that apart from (d)(1)(G) and (H), none of the aggravated DUI provisions of this statute are CIMT offenses. Under *In Re Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999) and *In re Torres-Varela*, 23 I&N Dec. 78 (BIA 2001), DUI offenses are not CIMT unless in addition to knowing that she is intoxicated, the defendant also knew she was ineligible for another reason such as having a suspended license. Past DUI

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	(d)(2)(B), (C), (D), (E): No	(d)(1)(G), (H): Likely yes (*see In Re Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999); *Banuelos-Torres v. Holder*, 461 Fed.Appx. 509, 512 (7th Cir. 2012)) (d)(1)(D), (I): Possibly yes (d)(2)(B), (C), (D), (E): Likely no			misdemeanor" and a bar to DACA eligibility. In many of these cases defense counsel should try to plead to reckless driving instead of DUI. Finally, if client is charged under (d), have the record of conviction fail to specify this subsection.	convictions generally should not constitute such reasons.

Controlled Substance Offenses

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Possession of cannabis, 720 ILCS 550/4	No	No	(a), (b): Yes under 8 U.S.C. § 1182(a)(2)(A)(i)(II); No under 8 U.S.C. § 1227(a)(2)(B) (c)-(g) Yes	N/A	Plea to 720 ILCS 570/402(c) instead. If not possible, try to keep record clear of amount if over 30 grams and of any evidence of remuneration or any facts that might go towards intent to distribute.	Emphasize the elements of this statute correspond to 21 U.S.C. § 844 "simple possession," a federal misdemeanor, and do not involve any elements of intent to distribute or sell.
Manufacture or delivery of cannabis, 720 ILCS 550/5	(a)-(c): No (d): No. *See Chen v. Sessions*, 864 F.3d 536, 537 (7th Cir. 2017) (e)-(g): Yes	(a): Possibly (a)-(c): Probably no (d): Probably no (e)-(g): Likely yes	Yes	N/A	Plea to 720 ILCS 570/402(c) instead. If not possible and over 30g, try to omit amount and any evidence of remuneration from record.	Distribution of a "small amount" without remuneration does not qualify as an aggravated felony, and the 7th Circuit has found that 720 ILCS 550/5(d) does not qualify as an aggravated felony. *Chen v. Sessions*, 864 F.3d 536, 537 (7th Cir. 2017). The BIA has held that the federal cocaine dealing offense is a CIMT. *See Matter of Khour*n, 21 I&N Dec. 1041 (BIA 1997). However, there are arguments against this given the legalization/decriminalization of marijuana in many states, and that controlled substance schedules

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	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
						change and therefore are not *malum in se*.
Manufacture or delivery, or possession with intent to manufacture or deliver, a controlled substance, a counterfeit substance, or controlled substance analog, 720 ILCS 570/401	Likely yes. Exceptions: (a)(2), (c)(2): No. *See United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020) (e): No. *See Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019); *see also Ruth.*	Likely yes	Likely yes. Exceptions: (a)(2), (c)(2): No. *See United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020) (e): No. *See Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019); *see also Ruth.*	N/A	Plea to overbroad schedules, including schedule I and II, or to 720 ILCS 570/402(c) instead.	The Seventh Circuit has found that some Illinois drug schedules are categorically overbroad and indivisible. *See Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019) (schedule I includes salvia, which is not federally controlled). The Illinois definition of "cocaine" is also overbroad because it includes more types of isomers than it does under federal law. *See United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020). The reasoning in *Ruth* may apply to other substances with overbroad isomers, including methamphetamine. *See United States v. De La Torre*, 940 F.3d 938 (7th Cir. 2019) (holding that "methamphetamine" under Indiana law includes more isomers than under federal law).
Possession unauthorized by	Likely yes. Exceptions:	No.	Likely yes. Exceptions:	N/A	Plea to 720 ILCS 570/402(c).	The Seventh Circuit has found that 402(c) is overbroad and indivisible as to controlled substance. *See Najera-*

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
this act, 720 ILCS 570/402	(a)(2), (c)(2): No. *See United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020) (c): No. *See Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019).		(a)(2), (c)(2): No. *See United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020). (c): No. *See Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019).			*Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019).
Look-alike substances; manufacture, distribution, advertisement or possession, 720 ILCS 570/404	(b) No (c) No	(b) Likely yes (c) No	Probably no.	N/A		The Seventh Circuit has held that look-alike are controlled substance offenses because the "related to" language in the INA sweeps broadly. *See Desai v. Mukasey*, 520 F.3d 762, 765 (7th Cir. 2008). However, this case is likely no longer good law given the look-alike definition applies to all controlled substances under IL law, which is broader than federal law. *See Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019). The Supreme Court has also since rejected similar arguments as to a broad interpretation of the "relating to" language. *See Mellouli v. Lynch*, 575 U.S. 798 (2015).

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Motor Vehicle and Driving Related Offenses

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
Offenses relating to motor vehicles and other vehicles, 625 ILCS 5/4-103	(a)(1): Likely yes, if sentence is a year or more. *See Hernandez-Mancilla v. I.N.S.*, 246 F.3d 1002 (7th Cir. 2001)). (a)(2): Possibly yes (a)(3): Likely yes, if offense involves a loss to a victim exceeding $10,000. *See Nijhawan v. Holder*, 557 U.S. 29 (2009) (holding that the $10,000 component of the "fraud and deceit "aggravated felony category under 8 U.S.C. § 1101(a)(43)(m) is subject to case-specific analysis rather than the	(a)(1): Likely yes (a)(2): Possibly yes (a)(3): Likely yes	N/A N/A	N/A N/A	Avoid a sentence of a year or more in order to avoid an AF. If client is facing charges that are likely to constitute an AF then plead to 720 ILCS 5/16-1(a)(4) as there are strong arguments that it is neither an AF nor a CIMT. If the client is facing charges under (a)(2) have them plead to removing, rather than altering, defacing, destroying, falsifying or forging a VIN.	There may be arguments that it is neither under *Matter of Deang*. 27 I&N Dec. 57, 62-3 (BIA 2017). The "inference" of knowledge detailed in (a)(1)(A) has been treated in Illinois courts as an alternate *mens rea* of "reason to believe" that the vehicle was stolen, which falls short of the *mens rea* of at least recklessness for AF and CIMT analysis. *See People v. Mijoskov*, 140 Ill. App. 3d 473, 478 (1986); *Matter of Deang*, 27 I&N Dec. at 62-3; *Matter of Silva- Trevino*, 26 I&N Dec. 826, 834 (BIA 2016). Additionally, AF and CIMT theft offenses require an intent to deprive the owner permanently or substantially of property, and this offense very likely incorporates *de minimis* conduct such as "joyriding." *See Matter of Jurado-Delgado,* 24 I&N Dec. 29, 33 (BIA 2006); *Matter of Diaz-Lizarraga,* 26 I&N Dec. 847, 854 (BIA 2016). This statute criminalizes possession of "converted" property, which includes property taken temporarily. *See People v. Gengler*, 620 N.E.2d 1368, 1374 (Ill. App. Ct. 1993). Similarly, practitioners should argue that the conduct element of (a)(2) is

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	categorical approach)). (a)(4): Likely no (a)(5): Likely no (a)(6): Likely no	(a)(4): Likely no (a)(5): Likely no (a)(6): Likely yes				overbroad with respect to BIA decisions relating to the AF category relating to vehicles with altered identification numbers, as well as cases discussing trafficking in counterfeit goods. 8 U.S.C. § 1101(a)(43)(R); *In re Kochlani*, 24 I&N Dec. 128 (BIA 2007). In both cases, conduct such as "removing" or "altering" an identification number does not fit categories such as "trafficking."
Driving while revoked, 625 ILCS 5/6-303	(a): No (a-3): No (a-5): No (a-7): No (b-5): No (c)(1), (2), (3): No (c-1): No (c-2): No (c-3): No (c-4): No (c-5): Likely no (d): No	(a): No (a-3): No (a-5): No (a-7): No (b-5): No (c)(1), (2), (3): No (c-1): No (c-2): No (c-3): No (c-4): No (c-5): No (d): No	N/A	N/A	While a conviction under this statute does not constitute a removal offense, defense counsel should consider the effect of aggregate sentences and the sentence served, particularly for purposes of good moral character for relief such as cancellation of removal for non-lawful permanent residents and naturalization.	

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	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
	(d-1): No (d-2): No (d-2.5): No (d-3): No (d-3.5): No (d-4): No (d-5): No (e): No	(d-1): No (d-2): No (d-2.5): No (d-3): No (d-3.5): No (d-4): No (d-5): No (e): No				
Driving under the influence of alcohol, 625 ILCS 5/11-501	(a) (all subsections): No (d)(1)(A), (B), (D), (G), (H), (I), (K), (L): No (d)(1)(C), (E), (F), (J): No. *See Leocal v. Ashcroft*, 543 U.S. 1, 8 (2004)). (d)(2)(B), (C), (D), (E): No	(a) (all subsections): No (*see In re Torres-Varela*, 23 I&N Dec. 78 (BIA 2001)) (d)(1)(A): No (d)(1)(B), (C), (E), (F), (J), (K), (L): Likely no (d)(1)(G), (H): Likely yes. *See In Re Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999);	N/A	N/A	While not a removable offense in most cases, a DUI can have severe consequences for noncitizen, particularly for those who entered without inspection, including for immigration bond, showing good moral character and meriting relief as a discretionary matter. Notably, a DUI is also considered a "significant misdemeanor" and a bar to DACA eligibility.	Be prepared to argue that apart from (d)(1)(G) and (H), none of the aggravated DUI provisions of this statute are CIMT offenses. Under *In Re Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999) and *In re Torres-Varela*, 23 I&N Dec. 78 (BIA 2001), DUI offenses are not CIMT unless in addition to knowing that she is intoxicated, the defendant also knew she was ineligible for another reason such as having a suspended license. Past DUI convictions generally should not constitute such reasons.

	Offense Analysis				Advice	
Offense	**Aggravated Felony**	**CIMT**	**Controlled Substance/ Firearm Offense**	**DV/Crime Against Children/ Prostitution**	**Criminal Defense Attorneys**	**Immigration Attorneys**
		Banuelos-Torres v. Holder, 461 Fed.Appx. 509, 512 (7th Cir. 2012)). (d)(1)(D), (I): Possibly yes (d)(2)(B), (C), (D), (E): Likely no			Defense counsel should try to plead to reckless driving instead of DUI. Finally, if client is charged under (d), have the record of conviction fail to specify this subsection.	

"Our strategy builds upon both the church's call to welcome newcomers and upon the U.S. history as a place where people from around the world are welcomed and given a chance to succeed. "

— Immigrant and Community Integration: Fulfilling Catholic Social Teaching and American Values (CLINIC Resource)

ABOUT THE CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

Grounded in Catholic social teaching, the Catholic Legal Immigration Network, Inc., is the largest network of community-based nonprofit immigration legal programs, with over 450 affiliates in 49 states and the District of Columbia. CLINIC's principal services include legal and management training for our affiliates, advocacy for humane immigration policies, representing foreign-born religious workers, and leading several national projects to protect the rights and promote the dignity of immigrants. We also provide some pro bono representation to detained individuals and families, and offer public education materials on immigrants' rights and Catholic teaching on migration.

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CATHOLIC LEGAL IMMIGRATION NETWORK, INC.