



***IMMIGRATION LAW 101 FOR A COUNTY COURT/JP/MUNICIPAL COURT AND  
FAMILY/JUVENILE DISTRICT COURT PRACTICE***

**Steve Monks, Monks Law Firm, PLLC, offices in North Carolina and Texas**

**I. TERM AND DEFINITIONS**

**A. IMMIGRATION AND NATIONALITY ACT (INA):** This is our set of federal immigration laws. Although the INA is incorporated in the United States Code, most immigration practitioners make reference to a statute section in the INA. For example, whereas mandatory detention is located at 8 USC § 1226, it is more commonly referred to as INA § 236.

**B. DEPARTMENT OF HOMELAND SECURITY (DHS):** This is a cabinet-level department created to consolidate functions previously split among different agencies such as the Immigration and Naturalization Service, Customs, and Federal Emergency Management Relief (FEMA).

**C. IMMIGRATION AND NATURALIZATION SERVICE (INS):** This agency no longer exists! It was taken from the Department of Justice (except for the Immigration Courts), placed into the DHS, and split into three “bureaus”—USCIS, ICE, and CBP.

**D. VISA:** This is permission to travel to a port-of-entry. There is no guarantee that the holder of a visa will be admitted! At the port-of-entry, there is an “inspection.” The CBP officer will examine the visa, ask questions, and, if satisfied, “admit” the foreign national into the United States in a particular immigration “status.” Once admitted in the United States, a foreign national who needs additional time can look into extending, changing, or adjusting status.

**E. LAWFUL PERMANENT RESIDENT (LPR):** A person who has permission to permanently reside in the United States. A person in this “status” possesses a Resident Alien Card (I-551), nicknamed “green card.”

**F. REMOVAL PROCEEDINGS:** This is the name for “deportation” proceedings (where an alien has made an “entry” into the United States and the government is trying to kick them out) and “exclusion” hearings (where an alien is trying to make an “entry” into the United States and the government is trying to keep them out.)

**G. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE):** These are the agents who investigate and enforce our immigration laws.

**H. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS):** These are the officers who adjudicate application for immigration benefits such as family petitions, naturalization, and asylum.

**I. EXECUTIVE OFFICE OF IMMIGRATION REVIEW (EOIR):** This is the name for our system of Immigration Courts. The trial court is called “Immigration Court.” The appellate body is the Board of Immigration Appeals (BIA). All of it is subject to the authority of the Attorney General, who can review and overrule any decision of the EOIR.

**J. RESPONDENT:** That is what the noncitizen is called in Immigration Court.

**K. OFFICE OF CHIEF COUNSEL (OCC):** The “prosecutor” in Immigration Court. The Chief Counsel’s Office represents ICE in removal proceedings. The attorney in Court is typically an Assistant Chief Counsel.

## **II. WHAT YOU SHOULD KNOW IN CRIMINAL MUNICIPAL/JP/COUNTY COURT.**

**A. ANY NONCITIZEN CAN BE REMOVED FROM THE UNITED STATES!** It does not matter whether the person is here “legally” or whether the person has a “green card.” Many misdemeanors can and will result in the initiation of removal proceedings.

**B. THE INA’S DEFINITION OF *CONVICTION* IS DIFFERENT FROM YOURS!**

**1. Statutory Definition:** INA § 101(a)(48) [8 USC § 1101(a)(48)] defines *conviction* as follows:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

(iii) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

**2. WHAT CRIMINAL “NON-CONVICTION” WILL PROBABLY CREATE IMMIGRATION CONSEQUENCES?**

a. **Drug Diversion Programs:** A prerequisite to using such programs is ordinarily, pleading guilty or being found guilty. When this plea or finding is combined with the required “drug education program,” the elements of a “conviction for immigration purposes” is satisfied.

b. **EXPUNGED CONVICTIONS:** The above rules apply even if the conviction was later expunged. **Best practices:** when securing an expunction, get a copy of the entire file so that if immigration benefits are requested later, the client has proof of the underlying offense which, even though expunged, must be disclosed when requesting immigration benefits. Having “the file” will eliminate having to secure other proof, like an affidavit from the attorney who represented the client...YOU.

### 3. WHAT CRIMINAL “NON-CONVICTION” WILL NOT CREATE IMMIGRATION CONSEQUENCES?

a. **JUVENILE CONVICTIONS:** Do not confuse this with the situation where a juvenile (say someone 16 or 17 years old) is convicted in adult court—that is still a conviction for immigration purposes. A person who is placed in “delinquency proceedings” under FAMILY CODE, TITLE 3. JUVENILE JUSTICE CODE CHAPTER 51. will not face any immigration consequences unless the case is transferred to adult court.

b. **DEFERRED PROSECUTION AGREEMENTS NOT REQUIRING A GUILTY PLEA:** This is a situation where the defense attorney and district attorney reach an agreement outside of the court. For example, Defendant A agrees to perform 40 hours of community service in exchange for a dismissal. Defendant A does *NOT* plead guilty or acknowledge guilt to the Judge. In fact, the entire case is simply continued while Defendant A performs the community service. Upon completion, the entire case is voluntarily dismissed by the State. This occurrence would not pose any immigration consequence. See attached proposed language for such an agreement which will not have immigration consequences for your clients.

c. **DEFERRED ADJUDICATION:** Many times, a person may be granted a Deferred Adjudication after a person pleads guilty or is found guilty. The Board of Immigration Appeals (BIA) had concluded that courts costs constitute a “penalty.” *Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008). However, the Fourth Circuit recently reached the opposite conclusion. *Guzman Gonzalez v. Sessions*, 894 F.3d 131 (4th Cir. 2018).

### C. YOU HAVE A RESPONSIBILITY TO PROVIDE ADVICE TO YOUR CLIENT REGARDING THE RISKS OF DEPORTATION ARISING FROM ANY GUILTY PLEA!

1. **PADILLA:** The United States Supreme Court ruled that criminal defense might not be effective if a criminal defendant is not counseled as to whether a plea carries a risk of deportation. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).

#### 2. HOW MUCH ADVICE?

**a. SAY SOMETHING AND SAY IT CORRECTLY!** It is important to note that seven of the nine Supreme Court Justices concluded that incorrect advice regarding immigration consequences could constitute ineffective assistance of counsel. These same seven Justices also provide that defense counsel should provide some advice.

**b. WHEN THE RISK IS CLEAR, GIVE SPECIFIC ADVICE!** The Supreme Court concluded where “the terms of the relevant immigration statute” are “succinct, clear, and explicit in defining the removal consequence,” the attorney must advise the criminal defendant of the specific immigration consequence in taking a plea. See attached “cheat-sheet”.

What in immigration law is succinct, clear, and explicit? That remains to be seen based on developing case law. However, here are a few district court crimes where the risk of deportation could be characterized as clear:

- any drug offense,
- any sex offense,
- any theft or burglary offense,
- any fraud offense,
- any firearms offense, or
- any crime of domestic violence, stalking, or child abuse.

**c. IF THE RISK IS UNCLEAR, GIVE GENERAL ADVICE!** If the risk is not clear (examples include strict liability/negligent/reckless crimes like drunk driving or involuntary manslaughter) it remains an attorney’s duty to warn a client that there could be adverse immigration consequences to taking a plea, including removal from the United States, and the client may want to seek specialized advice from an immigration attorney prior to accepting a plea offer. If you are court-appointed, funds may be available to associate immigration counsel. To locate a qualified immigration attorney, the American Immigration Lawyers Association (AILA) at [www.ailalawyer.com](http://www.ailalawyer.com).

## **D. REMEMBER A FEW BRIGHT LINE RULES!**

**1. AVOID “CRIMES INVOLVING MORAL TURPITUDE (CIMT)”:** This is “a nebulous concept that refers generally to conduct that is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between persons or to society in general.” Put another way: A finding of moral turpitude under the Act requires a perpetrator commit (1) a reprehensible act (2) with some form of scienter.

- a. CLEAR CIMT:** fraud and theft.
- b. NOT-SO-CLEAR CIMT:** aggravated assault or crimes with a reckless *mens rea*.
- c. ALTERNATIVES:** regulatory crimes like trespass or simple assault.

**2. AVOID ANY CRIME RELATED TO SEXUAL ASSAULT!** Certain sex crimes, including North Carolina's misdemeanor sexual battery and lewd conduct, could trigger drastic immigration consequences such as mandatory detention and the label "aggravated felony," (even if it's not aggravated or a felony).

**3. AVOID CONVICTIONS RELATED TO CONTROLLED SUBSTANCES (CRCS).** A "violation of (or a conspiracy or attempt to violate) any law or regulation...relating to a controlled substance." If this is not possible, consider the following:

**a. IF YOUR CLIENT WAS LEGALLY ADMITTED AND IS HERE LAWFULLY, A PERSON WHO IS CONVICTED OF ANY CRCS IS DEPORTABLE EXCEPT FOR AN OFFENSE RELATING TO SIMPLE POSSESSION OF 30 GRAMS OR LESS OF MARIJUANA (30 GRAMS EQUALS 1.05822 OUNCES).** Thus, you have room for a plea to one count of simple marijuana possession. If the crime is ½ to 1 ½ ounce, make sure the Court makes a finding of fact that the marijuana was less than one ounce. **If your client entered without inspection or is applying for a benefit that requires, he/she show admissibility, any CRCS conviction makes your client inadmissible!**

**b. DON'T PLEAD TO THE POT AND THE PIPE!** For years, this office has advised other attorneys that if a client gets caught with less than one ounce of marijuana and drug paraphernalia, and your client has to plead to something, plead to the marijuana and not the drug paraphernalia. The BIA held a drug paraphernalia offense may "relate[] to a single offense of simple possession of 30 grams or less of marijuana." *Matter of Martinez Espinoza*, 25 I&N Dec. 118 (BIA 2009). Note the use of the word *may*. Any inadmissibility or deportability in this area remains contingent on a SINGLE OFFENSE. Don't plead to both.

**4. AVOID CRIMES OF DOMESTIC VIOLENCE OR CHILD ABUSE!** A person becomes deportable upon conviction of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment.

**a. BROAD DEFINITION AND INTERPRETATION!** The definition is extremely broad and has been interpreted even more broadly. *See, e.g., Matter of Soram*, 25 I&N Dec. 378 (BIA 2010) (crime of unreasonably placing a child in a situation that poses a threat of injury to the child's life or health is categorically a crime of child abuse, even though no proof of actual harm or injury to the child is required).

**b. CONSIDER ALTERNATIVES.** Is a plea to Trespass or a Property Crime available?

**5. AVOID WEAPONS OFFENSES!** The term *weapons offense* means "any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18) in violation of any law."

### III. WHAT YOU SHOULD KNOW IN *CIVIL* DISTRICT COURT.

**A. EMERGENCY PROTECTIVE ORDER (EPO):** A noncitizen become deportable if he or she “violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person(s) for whom the protection order was entered.” INA § 237(a)(2)(E)(ii). An EPO is any injunction issued for the purpose of preventing violence or threatening acts of domestic violence (other than support or child custody orders or provisions). This would include restraining orders arising from 50B-style allegations of domestic violence.

**1. CONTACT VIOLATIONS:** A *contact* violation may not render a person deportable. *See Matter of Ramirez-Mendoza*, 2006 WL 2427915 (BIA 2006) (unpublished). But this is not an absolute. *See Matter of Strydom*, 25 I&N Dec. 507 (BIA 2011). Your client needs more specialized immigration advice before admitting to any violation of an EPO.

**2. IT IS ABOUT A VIOLATION; NOT THE ENTRY.** The entry of the restraining order itself does not make an individual deportable. The violation of such an order may result in deportability.

### B. CIVIL DOMESTIC COURT

**1. KNOW THAT YOUR CLIENT HAS RIGHTS, REGARDLESS OF IMMIGRATION STATUS!**

**a. RIGHT TO DUE PROCESS AND EQUAL PROTECTION.** “The Fourteenth Amendment provides that ‘[n]o State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...’ Whatever his status under the immigration laws, an alien is surely a *person* in ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as *persons* guaranteed due process of law by the Fifth and Fourteenth Amendments.” *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

**b. ICE ONLY REMOVES THE BODY; PROPERTY RIGHTS DO NOT CHANGE!** In negotiating the distribution of marital property, treat the settlement like any other. Immigration status or physical presence in the United States does not impact property ownership.

**2. VICTIMS OF DOMESTIC VIOLENCE HAVE ADDITIONAL PROTECTIONS!** Don’t allow your client’s lack of legal status to result in bullying by the other side where domestic violence is involved. Your client has options.

**a. SELF-PETITION INA § 204(a)(1)(A)(iii):** One of the ways a person can gain residency is through a family sponsor (spouse, child, parent, or sibling). However, a person can self-petition for residency where (1) the noncitizen resided with USC/LPR spouse, (2) was battered (or subjected to extreme cruelty) during marriage, (3) marriage was entered into in good faith, (4) the noncitizen is otherwise eligible for the benefit, and (5) has good moral character.

**b. SPECIAL RULE OF CANCELLATION OF REMOVAL INA § 240A(b)(2):** Even if placed into removal proceedings, a victim of domestic violence may have his or her removal cancelled if (1) noncitizen was battered (or subjected to extreme cruelty) by USC/LPR spouse or parent, (2) noncitizen has been physically present in the United States for at least three (3) years, (3) has been a person of good moral character, (4) has no disqualifying criminal convictions, and (5) the noncitizen's removal would result in extreme hardship to noncitizen or his/her child/parents.

**c. WHERE THE ABUSER IS NOT A CITIZEN OR RESIDENT, CONSIDER U NONIMMIGRATION STATUS:** U nonimmigrant status is for those who (1) have suffered substantial physical or mental abuse resulting from a wide range of criminal activity, and (2) have been helpful, are being helpful, or are likely to be helpful with the investigation or prosecution of the crime. Designated crimes include domestic violence, sexual assault, abusive sexual contact, being held hostage, involuntary servitude, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or felonious assault. The list is even longer than given here.

#### **C. DSS COURT OR CIVIL DISTRICT COURT**

**1. SPECIAL IMMIGRATION JUVENILES.** Some abused, neglected, or abandoned minors can self-petition for permanent residency as a Special Immigrant Juvenile (SIJ). Basically, this process is reserved for those noncitizens under 21 years of age who (1) have been declared dependent on a juvenile court or placed under the custody of a government agency or individual, (2) who are eligible for long-term foster care, and (3) in whose best interest it is not to return to their home country.

**2. ROLE OF THE DISTRICT COURT JUDGE.** For favorable adjudication of a SIJ petition the elements of the SIJ petition must be established by an order from the District Court judge in DSS Court or in a private custody action.

**IV. CONCLUSION AND WARNING:** This outline is *NOT* comprehensive! If your criminal or civil client is not a citizen of the United States, don't rest on assumptions or judicial admonitions—make sure the client at least is aware of any immigration issues and encourage him or her to explore this *BEFORE* disposing of the county court/municipal or JP court.

Assistance and attribution: Jeremy L. McKinney, Attorney at Law, North Carolina

# Immigration Consequences of Crimes Summary Checklist

For more comprehensive legal resources, visit the Immigrant Defense Project website at [immdefense.org](http://immdefense.org) or call 212-725-6422 for individual case support.

## CRIMINAL INADMISSIBILITY GROUNDS

Will or may prevent a noncitizen from being able to obtain lawful admission status in the U.S. May also prevent a noncitizen who already has lawful admission status from being able to return to the U.S. from a future trip abroad.

Conviction or admission of a **Controlled Substance Offense**, or DHS reason to believe that the individual is a drug trafficker

Conviction or admission of a **Crime Involving Moral Turpitude (CIMT)**, including:

- Offenses with an *intent to steal or defraud* as an element (e.g., theft, forgery)
- Offenses in which *bodily harm* is caused or threatened by an intentional act or *serious bodily harm* is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault offenses)
- Most sex offenses
- **Petty Offense Exception** – for one CIMT if the client has no other CIMT + the offense is not punishable >1 year + does not involve a prison sentence > 6 mos.

**Prostitution** (e.g., conviction, admission, or intent to engage in U.S.) and other unlawful **Commercialized Vice**

Conviction of **two or more offenses** of any type + aggregate prison sentence of **5 yrs.**

## CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter

- Conviction or admission of a **Controlled Substance Offense** other than a single offense of simple possession of 30 g or less of marijuana
- Conviction or admission of a **violent or dangerous crime** is a presumptive bar.
- In the case of an LPR (except one who adjusted to LPR status inside U.S. and who has not entered as an LPR from outside U.S.), conviction of an **Aggravated Felony** (see Criminal Deportability Gds), or any **Criminally Inadmissible offense** if removal proceedings initiated before 7 yrs of lawful residence in U.S.

## CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal

Conviction of a **"Particularly Serious Crime" (PSC)**, including the following:

- **Aggravated Felony** (see Criminal Deportability Gds)
  - ◆ All aggravated felonies will bar asylum
  - ◆ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding, & aggravated felonies involving unlawful trafficking in controlled substances are a presumptive bar to withholding of removal
- **Violent or dangerous crime** will presumptively bar asylum
- **Other PSCs** – no statutory definition; see case law

## CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)

- DHS reason to believe that the individual is a **drug trafficker**
- **Violent or dangerous crime** is a presumptive bar

## CRIMINAL BARS ON NON-LPR CANCELLATION OF REMOVAL based on continuous physical presence in U.S. for 10+ years; and "exceptional and extremely unusual" hardship to USC or LPR spouse, parent or child

- Conviction of an offense described under the criminal inadmissibility or deportability grounds, regardless of whether or not the ground would apply to the person, e.g., one CIMT with a potential sentence of 1 year or longer (see Criminal Deportability Gds) even if the offense was not w/n five years of an admission to the US
- Conviction or admission of crimes barring required finding of good moral character during 10 year period [see Criminal Bars on Obtaining U.S. Citizenship]

## CRIMINAL DEPORTABILITY GROUNDS

Will or may result in deportation of a noncitizen who already has lawful admission status, such as a lawful permanent resident (LPR) green card holder or a refugee.

Conviction of a **Controlled Substance Offense** EXCEPT a single offense of simple possession of 30g or less of marijuana

Conviction of a **Crime Involving Moral Turpitude (CIMT)** (see Criminal Inadmissibility Gds)

- One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed
- Two CIMTs committed at any time after admission and "not arising out of a single scheme"

Conviction of a **Firearm or Destructive Device Offense**

Conviction of a **Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order** (criminal or civil)

Conviction of an **Aggravated Felony**

- **Consequences**, in addition to deportability:
  - ◆ Ineligibility for most waivers of removal
  - ◆ Permanent inadmissibility after removal
  - ◆ Enhanced prison sentence for illegal reentry
- **Crimes included**, probably even if not a felony:
  - ◆ Murder
  - ◆ Rape
  - ◆ **Sexual Abuse of a Minor**
  - ◆ **Drug Trafficking** (including most sale or intent to sell offenses, but also including possession of any amount of flunitrazepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism)
  - ◆ **Firearm Trafficking**
  - ◆ **Crime of Violence + at least 1 year prison sentence\***
  - ◆ **Theft or Burglary + at least 1 year prison sentence\***
  - ◆ **Fraud or tax evasion + loss to victim(s) >\$10,000**
  - ◆ **Prostitution business offenses**
  - ◆ **Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence\***
  - ◆ **Obstruction of justice or perjury + at least 1 year prison sentence\***
  - ◆ **Various federal offenses** – money laundering, certain firearms and explosive materials offenses (including arson), alien smuggling, etc. – and analogous state offenses
  - ◆ **Other offenses listed at 8 USC 1101(a)(43)**
  - ◆ **Attempt or conspiracy to commit any of the above**

\* The "at least 1 year" prison sentence requirement includes a suspended prison sentence of 1 year or more.

## CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)

- Conviction of an **Aggravated Felony**
- **Offense triggering removability referred to in Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in U.S.**

## CRIMINAL BARS ON OBTAINING U.S. CITIZENSHIP – Will prevent an LPR from being able to obtain U.S. citizenship.

Conviction or admission of the following crimes bars the finding of good moral character required for citizenship for up to 5 years:

- **Controlled Substance Offense** (unless single offense of simple possession of 30g or less of marijuana)
- **Crime Involving Moral Turpitude** (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months)
- 2 or more offenses of any type + aggregate prison sentence of 5 years
- 2 gambling offenses
- **Confinement to a jail** for an aggregate period of 180 days

Conviction of an **Aggravated Felony** on or after Nov. 29, 1990 (and conviction of murder at any time) permanently bars the finding of moral character required for citizenship

## "CONVICTION" as defined for immigration purposes

A formal judgment of guilt of the noncitizen entered by a court, OR, if adjudication of guilt has been withheld, where:

- (i) A judge or jury has found the noncitizen guilty or the noncitizen 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 noncitizen's liberty to be imposed

THUS:

- A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)
- A deferred adjudication without a guilty plea IS NOT a conviction
- **NOTE: A youthful offender adjudication IS NOT a conviction if analogous to a federal juvenile delinquency adjudication**



**IMMIGRANT  
DEFENSE  
PROJECT**



# IMMIGRATION CONSEQUENCES OF CONVICTIONS SUMMARY CHECKLIST – DACA Supplement

Criminal bars relating to DACA temporary administrative status program (Updated June 16, 2017).



© 2017 Immigrant Defense Project

## DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) IS BASED IN PART ON:

- ◆ entry into the U.S. as a child under age 16 before June 15, 2007
- ◆ continuous residence in the U.S. since June 15, 2007
- ◆ currently in school, high school degree or GED, or honorably discharged veteran

## But certain convictions will generally prevent non-citizens from obtaining DACA:

### One felony conviction

- Any federal, state or local offense that is punishable by imprisonment for a term exceeding one year
  - ◆ Does not include state immigration-related offenses

### One “significant misdemeanor” conviction, including:

- An offense punishable by imprisonment of one year or less but greater than five days (regardless of sentence actually imposed) that is:
  - ◆ Domestic violence
  - ◆ Sexual abuse or exploitation
  - ◆ Burglary
  - ◆ Unlawful possession or use of a firearm
  - ◆ Drug distribution or trafficking
  - ◆ Driving under the influence

**NOTE:** The above list may include certain offenses that are not classified as misdemeanors in the convicting jurisdiction, e.g. domestic violations or driving under the influence traffic infractions, if punishable by more than five days in prison

- Any other offense punishable by imprisonment of one year or less for which the person received a **sentence of time in custody of more than 90 days**
  - ◆ Suspended sentences do not count towards the 90 days

### Three misdemeanor convictions

- Three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct
  - ◆ Includes only federal, state, or local offenses punishable by imprisonment of one year or less but greater than five days (thus, may include certain low level offenses not classified as misdemeanors if punishable by more than five days in prison)
  - ◆ Does not include minor traffic offenses (such as driving without a license)
  - ◆ Does not include state immigration-related offenses

## SOME OTHER OFFENSES/CONDUCT THAT CAN LEAD TO A DENIAL OF PROSECUTORIAL DISCRETION TO GRANT DACA STATUS

- Convictions or other information indicating that the applicant is a threat to national security or public safety. DHS considers that such a threat includes, but is not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the U.S.

## DISPOSITIONS THAT AVOID AUTOMATIC DISQUALIFICATION

- Juvenile dispositions do not bar DACA (but adult convictions of juveniles may do so)
- Expunged convictions do not bar DACA

**IMPORTANT: Potential DACA applicants who may wish to seek LPR or other formal lawful admission status in the future should also consider the Criminal Inadmissibility Grounds on the reverse side because a conviction triggering inadmissibility, even if it does not bar DACA, could affect the person's future ability to obtain formal lawful status**

**Note:** Anyone who has had contact with the criminal legal system who is considering an application to initiate or renew DACA status should proceed with caution. There is uncertainty about how the DACA criminal bars will be applied under the Trump administration, and there are some preliminary indications that any contact with the criminal legal system may lead to heightened scrutiny of the application

**SAMPLE AGREEMENT**

**STIPULATIONS BY DEFENDANT CASE NO: \_\_\_\_\_**

I am the defendant in this case. I understand that I have been charged with the following crime(s): \_\_\_\_\_. I understand that I have a constitutional right to a jury trial in this matter to contest evidence presented against me, the right to hear and question witnesses against me, the right to present witnesses and evidence on my own behalf at no expense to me, the right to testify or not testify on my own behalf, the right to be presumed innocent, and the right to require the prosecution to prove the charge(s) beyond a reasonable doubt.

I understand that by entering into this Agreement, I am giving up my constitutional right to a jury trial in this matter to contest evidence presented against me, the right to hear and question witnesses against me, the right to present witnesses and evidence on my own behalf at no expense to me, the right to testify or not testify on my own behalf, and to object to the admissibility of evidence against me.

I understand that if I fail to comply with the conditions of this Agreement, a hearing will be held in the future at which evidence will be presented against me which the judge will review to determine whether I am guilty or not guilty beyond a reasonable doubt of the charge(s) specified above. I give up the right at any future hearing to contest the admissibility of any evidence presented against me and to present evidence on my own behalf.

I understand that the police report in this case has been marked as an exhibit for administrative efficiency but has not yet been admitted into evidence. I understand that this Agreement and the statements contained in this agreement are not an admission of guilt and are not sufficient by themselves to warrant a finding of guilt.

\_\_\_\_\_  
**DEFENDANT'S SIGNATURE**

\_\_\_\_\_  
**DATE**