TEXAS YOUNG LAWYERS ASSOCIATION

# LAWYERS PASSPORT FOR BASIC IMMIGRATION LAW

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# BASIC IMMIGRATION LAW


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# I. INTRODUCTION TO BASIC IMMIGRATION LAW

Immigration law, which sets forth the rules on when and how a non-U.S. citizen may enter the country, is an integral part of our society. In recent years, immigration laws and policies have been thrust into the forefront of our national consciousness. Increased enforcement and changing policies have affected the lives of citizens and non-citizens in many ways. Although the immigration process is complex, this guide is intended to be a passport to give Texas lawyers a basic understanding of immigration law and current immigration-related issues.

# II. THE IMMIGRATION SELECTION SYSTEM

## a. Qualifying as an Immigrant

A person is considered an immigrant if they come to the United States with the intent to live there on a permanent basis. A lawful permanent resident (LPR) or legal immigrant is an individual who has been granted an immigrant visa (also known as a "green card"). A person may live and work in the United States indefinitely, or until their visa expires, as long as they do not commit an offense that leads to removal proceedings.

A person may become an LPR or a legal immigrant in one of three ways: (1) family-based sponsorship (for individuals sponsored by certain relatives who are U.S. citizens or legal permanent residents), (2) employment-based sponsorship, or (3) or through certain humanitarian programs.

## b. Entering as a Non-immigrant

A foreign national who is permitted to enter the United States for a limited time is considered a non-immigrant. Non-immigrants may enter the United States for a variety of reasons, including travel, school, temporary employment, or business investment.

The purpose and length of time a non-immigrant can stay is limited by the status under which they are admitted or remain in the United States. Not all non-immigrants are required to obtain a visa before entering the United States. Whether a person is required to have a visa depends on their country of origin, among other factors.

# III. ADMISSION PROCEDURES

"Admission" refers to the lawful entry of an alien[1] into the United States after inspection and authorization by U.S. Customs and Border Protection (CBP) officers. CBP conducts the immigration, customs, and agriculture components of the inspection process at the ports-of-entry, which is either an airport, seaport, or land border. Generally, shortly prior to or upon arrival at a port-of-entry, an alien will be given a Customs Declaration form. After arrival, aliens are queued in an inspection line to speak with a CBP officer. With some exceptions, each alien is required to present a passport and valid visa issued by a U.S. consular official. In addition to ensuring that each alien has the proper documents, the CBP officer will verify why each alien is coming to the United States and determine how long the alien should be permitted to stay in the United States. This is typically a very brief process, and, if the alien is permitted to enter the United States, the CBP officer will place an admission stamp in the alien's passport and on the Customs Declaration form. The alien may and should retrieve Form I-94 (the electronic arrival/departure record), which contains the date of admission, class of admission, and how long the alien is allowed to stay in the United States.

## a. Executive Order 13780 & Presidential Proclamation 9645

On March 6, 2017, President Trump signed Executive Order 13780, which placed limits on travel to the United States from Iran, Libya, Syria, Yemen, Somalia, North Korea, and Venezuela. The executive order also bars entry for all refugees who do not possess either a visa or valid documents. This executive order superseded Executive Order 13769, commonly referred to as the "Muslim Ban" or "travel ban." The most recent revision, which was upheld by the U.S. Supreme Court, bans travel on tourist or business visas for nationals of Libya and Yemen and some government officials of Venezuela; all travel, except for student and exchange visitor visas, for nationals of Iran; on immigrant visas for nationals of Somalia; and for all travel for nationals of North Korea and Syria. Chad, which was included on the original version of the ban, had travel limits lifted on April 10, 2018.

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1. We use the term "alien" in this guide as defined by the Immigration & Naturalization Act: Any person not a citizen or national of the United States.

# IV. VISA APPLICATIONS

In most cases entry to the United States requires a valid visa. There are two types of visas: immigrant visas and non-immigrant visas.

## a. Immigrant Visas

Immigrant visas are divided into three main categories. In order to be eligible to apply, the alien must be sponsored by a U.S. citizen, U.S. lawful permanent resident, or prospective employer. To obtain a visa, a petition must be filed with the U.S. Citizenship & Immigration Services (USCIS) naming the immigrant as a beneficiary.

### i. Family-Based Visas

Family-Based Visas are divided into two general categories: Immediate Relatives and Family-Based Preference. To obtain a family based petition, a sponsor must submit Form I-130.

Immediate Relatives (IR) are based on a close family relationship with a U.S. citizen. There are no numerical limitations for IRs and they include the following categories:

**IR-1:** Spouse of a U.S. Citizen

**IR-2:** Unmarried Child Under 21 Years of Age of a U.S. Citizen

**IR-3:** Orphan adopted abroad by a U.S. Citizen

**IR-4:** Orphan to be adopted in the U.S. by a U.S. citizen

**IR-5:** Parent of a U.S. Citizen who is at least 21 years old

Family-Based Preference categories are specifically for more distant family relationships with a U.S. citizen and in some cases with a Lawful Permanent Resident (LPR). There are limits on the number of family-based preference immigrants allowed into the United States each year, and these are shown at the end of each category.

The family-based preference categories are:

- **Family Based First Preference (FB1):** Unmarried sons or daughters of U.S. citizens, and their minor children, if any. (*23,400*)
- **Family Based Second Preference (FB2):** Spouses, minor children, and unmarried sons and daughters (age 21 and over) of LPRs. At least 77% of all visas available for this category will go to the spouses and children; the remainder is allocated to unmarried sons and daughters. (*114,200*)
- **Family Based Third Preference (FB3):** Married sons and daughters of U.S. citizens, and their spouses and minor children. (*23,400*)
- **Family Based Fourth Preference (FB4):** Brothers and sisters of U.S. citizens, and their spouses and minor children, provided the U.S. citizens are at least 21 years of age. (*65,000*)

**Note:** Grandparents, aunts, uncles, in-laws, and cousins cannot sponsor a relative for immigration. Same-sex spouses of U.S. citizens and LPRs, along with their minor children, are now eligible for the same immigration benefits as opposite-sex spouses.

### ii. Employment-Based Visas

Employment-Based Visas are made available to qualified applicants under certain provisions of U.S. immigration law. Employment-based immigrant visas are divided into five preference categories. Certain spouses and children may accompany or follow-to-join employment-based immigrants.

- **EB1:** A First Preference applicant must be the beneficiary of an approved Immigrant Petition for Foreign Worker, Form I-140, filed with USCIS and labor certification is not required for any of the Priority Worker subgroups. There are three sub-groups within this category:
    (1) Persons with extraordinary ability in the sciences, arts, education, business, or athletics;

    (2) Outstanding professors and researchers with at least three years' experience in teaching or research, who are recognized internationally; and

(3) Multinational managers or executives who have been employed for at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the U.S. employer.

- **EB2:** A Second Preference applicant must generally have a labor certification approved by the Department of Labor. A job offer is required before application and the U.S. employer must file an Immigrant Petition for Foreign Worker, Form I-140, with USCIS and the applicant must apply for an exemption from the job offer and labor certification if the exemption would be in the national interest. There are two subgroups within this category:

  (1) Professionals holding an advanced degree or a baccalaureate degree and at least five years' progressive experience in the profession; and

  (2) Persons with exceptional ability in the sciences, arts, or business. Exceptional ability means having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

- **EB3:** A Third Preference applicant must have an approved Immigrant Petition for Foreign Worker, Form I-140, filed with USCIS and generally requires labor certification approved by the Department of Labor. There are three subgroups within this category:

  (1) Skilled workers are person whose jobs require a minimum of 2 years' training or work experience that are not temporary or seasonal;

  (2) Professionals are members of a profession whose job requires at least a baccalaureate degree from a U.S. university or college or its foreign equivalent degree; and

  (3) Unskilled workers (other workers) are persons capable of filling positions that require less than two years' training or experience that are not temporary or seasonal.

- **EB4:** A Fourth Preference applicant must be the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, filed with USCIS and a labor certification is not required. There are many subgroups within this category. For a complete list please visit the USCIS website.

- **EB5:** A Fifth Preference applicant is known as the "Investor Visa." An Investor Visa generally requires that the person invest $1 million in a new commercial enterprise in the United States and employ at least 10 people not including the investor's family. The person making the investment must be coming in for day-to-day management or in some sort of executive-type position.

### iii. Diversity Visa Program

The Diversity Visa Program is used to promote diversity in immigration by selecting immigrants from underrepresented countries for visas. Visas provided are drawn from countries with low rates of immigration to the United States. Unlike other immigration types, Diversity Visas (DV) do not require a U.S. sponsor, and therefore a petition is not needed.

The Diversity Immigrant Visa Program is congressionally mandated to make available up to 55,000 diversity visas annually, drawn from random selection among all entries to people who meet strict eligibility requirements from countries with low rates of immigration to the United States. These visas are commonly known as the "lottery" and several million people participate each year. Recently, several attempts have been made to do away with the lottery system, but it remains intact.

## b. Non-Immigrant Visas

Non-Immigrants are those persons who have a permanent home outside of the United States, have no intention to abandon their home country, and are coming to the United States only for a temporary visit and particular purpose, such as temporary employment sponsored by a U.S. employer. Applicants must submit their application and have a valid passport that will remain valid for six months beyond the date of stay in the United States. Visas are issued by the Department of State. There are 32 different available visas and what visa is required under immigration law depends on the purpose of intended travel and other facts. For a complete list of requirements and types of visas, please visit the U.S. Department of State website.

# V. PROCEEDINGS

## a. Immigrations Proceedings

Immigration Proceedings are any hearings dealing with the exclusion or deportation of an alien from the United States and are typically held in special courts called "administrative courts" by an immigration judge. All administrative immigration hearings are initiated by the U.S. Department of Homeland Security (DHS) through a written document called a Notice to Appear (NTA). This notice is required to inform the alien of: (1) the nature of the proceedings, (2) the legal authority for the hearing, (3) the conduct or acts of the alien that allegedly violated the law, (4) the charges against the alien, (5) the alien's right to legal representation, and (6) the requirement that the alien provide the attorney general with their address and telephone number. A removal hearing is then conducted to determine whether an alien is removable from the country, and if so, whether they are entitled to any relief from removal. Please be aware that other potential charging documents can initiate removal proceedings, but those are rarely used.

## b. Removal Proceedings

The two grounds for initiating removal proceedings against an alien are "inadmissibility" or "deportability." Charges of inadmissibility and deportability are generally referred to simply as charges of removal. Although an alien in a removal proceeding does not have the same rights as a defendant in a criminal trial, the alien has the right to an interpreter during the hearings, to contact an attorney or legal representative, to have legal representation at no expense to the government, and to contact a consular official from their home country.

If an alien denies the charge of removal, then an immigration judge must determine whether the alien is removable as charged. If an alien is subsequently found to be removable as charged, then the proceedings shift to the relief phase and an alien is given the opportunity to present one or more applications for relief.

If applications are submitted, then the alien will receive a merits hearing to determine whether the alien is entitled to relief. During the merits hearing, an alien may testify as to their eligibility for the relief sought, present witnesses, and introduce documentary evidence. Once the merits hearing has concluded,

the immigration judge will then make either a written or oral decision on the case. Both the alien and the government may appeal the decision to the Board of Immigration Appeals (BIA) within 30 days.

### c. Expedited Removal

Certain aliens are not entitled to a full hearing before an immigration judge and may be removed administratively.

First, an "arriving" or "recently-arrived" alien (i.e.: (1) an alien who did not arrive by sea, who is encountered anywhere in the U.S. more than 100 air miles from a U.S. international land border, and who has been continuously present in the U.S. for less than two years; or (2) an alien who did not arrive by sea, who is encountered within 100 air miles from a U.S. international land border, and who has been continuously present in the U.S. for at least 14 days but for less than two years from has been in the U.S. less than two weeks and is encountered within 100 miles of the border) who has not been admitted to the United States and who lacks a valid immigration document or who is inadmissible because of a fraudulent or willful misrepresentation, is subject to an expedited removal by a designated DHS official. DHS officials also may administratively remove an alien who has not been admitted to the United States and who has been convicted of an aggravated felony.

Aliens who are admitted into the United States through a visa waiver program may also be administratively removed. Beginning in 1986, aliens from certain countries have been allowed to enter the United States for a short period of time without first having to obtain a tourist visa. However, other than asylum, those aliens are required to waive any right they may have to contest removal from the United States. It should also be noted that not every alien who enters the United States from these countries does so pursuant to the visa waiver program. If an alien who is permitted entry through the visa waiver program fails to depart, then that alien may also be removed through an administrative order.

An alien may also be subject to administrative removal when a prior removal action is reaffirmed through a reinstatement of a prior removal. DHS can reinstate the previous removal order and enforce it against the individual, in which case they will not be entitled to a hearing before an immigration judge.

### d. Judicial Removal

Judicial removal is another form of removal and typically coincides with a federal criminal prosecution. At the request of the U.S. Attorney and with the concurrence of DHS, a federal district court may order the removal of an alien at the time of sentencing for a criminal offense.

### e. Relief from Removal

Once an immigration judge has determined that an alien is removable, the judge must then determine whether the alien is entitled to any form of relief. Several different types of relief are available depending on each alien's circumstances, but the most common are detailed below. In addition, an individual can apply for many of these forms of relief if they are not in removal proceedings.

#### i. Asylum & Migrant Protection Protocols (MPP)

An alien may be entitled to asylum in the United States if they are able to show they qualify as a refugee. In order to make this showing, an alien must show a well-founded fear of persecution if deported back to their country of origin. Persecution may be on account of race, religion, nationality, political opinion, or membership among a particular social group. If asylum is granted, then the alien will be allowed to remain in the United States and may apply for a permanent resident status after one year.

Starting in 2019, the Trump administration has begun implementing the Migrant Protection Protocols (MPP) policy, commonly known as the "Remain-in-Mexico" policy. The policy requires most aliens, including asylum seekers, to wait for in Mexico for their immigration hearings, instead of being admitted to the United States. Unaccompanied minors and "those who have been assessed to be more likely than not to face persecution or torture in Mexico" are excluded from this policy. MPP is currently in effect in Texas at the Eagle Pass, El Paso, Laredo, and Brownsville ports of entry.

#### ii. Special Immigrant Juvenile System

Alien youth who have been abused, abandoned, or neglected may be eligible for Special Immigrant Juvenile Status (SIJS) and protection from removal. In order to apply for SIJS, the young person must be under 21 and unmarried.

The young person must have been adjudicated dependent on a juvenile court or placed in the custody of an individual or state agency/department. In addition, a court must have determined that the youth is unable to reunify with one or both parents due to abuse, abandonment, neglect, or other similar basis under state law and that it is not in the youth's best interest to return to his or her country or parent's country of origin or last habitual residence. Once approved for SIJS, the young person may be eligible to immediately apply for lawful permanent residence.

### iii. Protection for Survivors of Domestic Violence

The Violence Against Women Act (VAWA) provides protection from removal and a path to permanent residence for spouses and children of abusive U.S. citizens and LPRs. VAWA recognizes that an abuser may use immigration status as a tool to silence or intimidate their victims. An abuse victim who is married to a U.S. citizen or an LPR and was subject to abuse or extreme cruelty from that spouse, may "self-petition" for an adjustment of status. Children of the petitioner who are under 21 and unmarried may be included as a derivative applicant by the main petitioner. This protection also extends to parents of abusive U.S. citizens and spouses of U.S. citizens or LPRs whose children were abused by the U.S. citizen or LPR. The abuse may be physical, threatened, or psychological in nature. Once approved for protection under VAWA, an individual may be eligible to apply for permanent residence.

### iv. U-Visa: Survivors of Certain Crime

Survivors of certain crimes in the United States may apply for a U nonimmigrant visa. The individual must possess information about the crime and have assisted the prosecuting or investigating agency in the investigation or prosecution of the crime. In addition, the applicant must show he or she has suffered substantial physical or mental abuse as a result of the crime. Any alien applying for a U nonimmigrant visa must be certified as cooperative by a law enforcement agency, a prosecutor, or a judge involved in the investigation and prosecution of the qualifying crime. The U nonimmigrant visa is valid for four years and can benefit certain family members of the recipient. After three years, U visa recipients can apply for permanent residence. USCIS is legislatively capped at approving 10,000 primary U nonimmigrant visa applications per fiscal year.

As deportation fears have risen in the immigrant community, many jurisdictions have seen the volume of U nonimmigrant visas skyrocket in the last few years. Due to the legislative cap on the amount of visas that can be issued per fiscal year, a backlog of over 145,000 applications has developed. This backlog has contributed to alien victims waiting several years for approval of their U nonimmigrant visa application. Current wait time estimates are eight years before the application is approved or denied.

### v. T-Visa: Survivors of Human Trafficking

Survivors of human trafficking may apply for a T nonimmigrant visa. Human trafficking is a form of modern day slavery and includes exploitation for the purposes of labor or sex trade. Labor trafficking involves the use of force, fraud, or coercion to recruit, harbor, transport, obtain, or employ a person for labor or services in involuntary servitude, peonage, debt bondage, or slavery. Sex trafficking is a commercial sex act that is a) induced by fraud, force, or coercion, or b) performed by a person under 18. An alien victim of human trafficking can apply for a T nonimmigrant visa using Form I-914. The alien also has an ongoing duty to cooperate with law enforcement while applying for the visa and law enforcement must submit certification showing that cooperation. The T nonimmigrant visa is valid for three years and can benefit certain family members of the recipient under derivative applications. After three years, T visa recipients can apply for permanent residence. The amount of T nonimmigrant visas that can be granted per fiscal year is not legislatively capped and applicants will receive much quicker application decisions than U nonimmigrant visa petitioners.

### vi. Cancellation of Removal for Non-Permanent Residents

Certain individuals who have been continuously physically present in the United States at least 10 years prior to the issuance of their notice to appear in immigration court may be eligible to request their removal be canceled if they can show that their U.S. citizen or LPR spouse, parent, or child would suffer exceptional and unusual hardship upon their removal from the United States. These individuals must also show that they have good moral character. A person who successfully presents the defense of cancellation in their removal proceeding in immigration court is issued a green card. Because cancellation

is a "defensive" application, it can only be used by a person who is already in removal proceedings and aliens may not independently apply for it.

### vii. Registry

An immigration judge may grant an alien lawful admission for permanent residence if the alien: (1) can establish entry into the United States prior to January 1, 1972; (2) can show continuous residence since entry; (3) can demonstrate good moral character; (4) is eligible for citizenship; and (5) can show that they are not otherwise deportable or inadmissible.

### viii. Voluntary Departure

Voluntary departure may be granted in lieu of deportation if, (A) prior to the conclusion of proceedings an alien can show that a favorable exercise of discretion is warranted, or (B) at the conclusion of proceedings an alien can additionally show that: (1) they are ready, willing, and financially able to depart the United States at their own expense; and (2) they have been of good moral character for the past five years. An alien who is granted a voluntary departure but subsequently fails to depart the United States will become ineligible for certain other forms of discretionary relief.

# VI. DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

## a. What is DACA?

DACA is a DHS policy designed to allow the government to exercise discretion to defer the removal proceedings of certain eligible undocumented youths for up to two years. In addition, petitioners are given authorization to legally work in the United States. The policy was enacted on June 15, 2012. The policy was subsequently rescinded on September 5, 2017, and DHS is not accepting new applications for DACA at this time. However, due to a January 2018 injunction, renewals for previous DACA recipients are still being accepted.

## b. Requirements

To be eligible for DACA, an individual must meet the following requirements:

1. Under the age of 31 as of June 15, 2012;
2. Entered the United States before the age of 16;
3. Had continuous residence in the United States from June 15, 2007, through the present;
4. Were physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action with USCIS;
5. Entered without inspection before June 15, 2012, or their lawful immigration status expired as of June 15, 2012;
6. Be currently in school, have graduated from high school, have obtained a GED, or be an honorably discharged veteran of the Coast Guard or U.S. Armed Forces; and
7. Have not been convicted of a felony offense, a significant misdemeanor offense, three or more misdemeanor offenses, and/or pose a threat to national security or public safety.

Additionally, the individual must be 15 years or older unless the individual is in removal proceedings or has a final order of removal or voluntary departure. The individual must also pass a background check and be able to show that he or she meets the above requirements through verifiable documentation.

The issue of the termination of the DACA program will be before the U.S. Supreme Court in November 2019 and may be subject to change. Please check the USCIS website for updates.

### c. How to Re-Apply

In order to re-apply, the individual must submit the following to USCIS:

1. Completed Forms I-821D Consideration of Deferred Action, I-765 Application for Employment Authorization, and I-765WS Work Authorization Worksheet (all of these forms can be downloaded here);
2. Any new removal proceeding or criminal history documents not submitted with your previous application.

### d. Effect and Limitations of DACA

When a noncitizen is granted deferred action, the Department of Homeland Security is deciding not to take enforcement action against the individual for a specific period of time. However, deferred action has the following limitations: (1) it only provides temporary relief; (2) it can be terminated at any time at the option of the DHS; and (3) it does not give a permanent legal immigration status to noncitizens.

# VII. CRIMMIGRATION

## a. What is Crimmigration?

The term "crimmigration" describes the increasing intersection of immigration and criminal law. Beginning in the 1980s, new legislative acts that addressed crime and immigration began to intertwine the two areas of law and lead to an overlap in the roles of law enforcement and immigration agencies. One of the primary focuses of crimmigration is when a criminal case can make an alien collaterally inadmissible or deportable. .

## b. Why does Crimmigration matter?

In 2010, the Supreme Court decided in *Padilla v. Commonwealth of Kentucky*, 559 U.S. 536, that criminal defense attorneys are duty-bound to inform clients of their risk of deportation. The Supreme Court specifically addressed three different circumstances where they are duty-bound to advise their clients:

1. If the immigration consequences of a conviction are clear, attorneys **must** advise their criminal clients that deportation *will* result.
2. If the immigration consequences of a conviction are unclear, attorneys **must** advise that deportation *may* result.
3. Attorneys **must** give their clients some advice about deportation—they cannot remain silent about immigration consequences.

In an atmosphere of increased immigration enforcement and deportation fears, it is important for not only defense attorneys but also prosecutors and law enforcement to have a basic understanding about how criminal and immigration law intersect. Below is a basic overview of current immigration law and its intersection with criminal law, but if you have any unanswered questions on a client's immigration consequences following a conviction, it is important you contact an immigration practitioner.

## c. Basic Crimmigration Guide

### i. Applicable Terminology

Immigration and criminal law use the same terms, but depending on which field you are in, these terms can have completely different meanings. In this guide, we use the following definitions for these terms:

| | |
|---|---|
| Conviction | A formal judgment of guilt entered by a court, or, if adjudication is withheld, where 1) 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 2) the judge has ordered some form of punishment, penalty, or restraint to the alien's liberty to be imposed.<br><br>(**NOTE:** Under this definition, some alternative dispute resolutions or pre-trial diversion agreements can be considered a conviction for immigration purposes. This is dependent on the requirements to enter into these agreements with the local district and/or county attorney's office. Any requirement of a written confession/admission of guilt filed with the court or an admission of guilt on the record will likely be considered a conviction.) |
| Imprisonment | 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 in whole or in part.<br><br>(**NOTE:** This means that in Texas, if a client accepts a plea offer of one year county jail suspended and probated for two years, their applicable term of imprisonment in immigration law would be one year. Deferred probations do not count as terms of imprisonment, but will count as convictions in the immigration system.) |

| | |
|---|---|
| Aggravated Felony | Refers to a particularly serious crime. For a list of applicable crimes, see 8 U.S.C. §1101(a)(43). Any crime of violence with a term of imprisonment of at least one year can also qualify as an aggravated felony.<br><br>(**NOTE:** Under *United States v. Gracia-Cantu*, 920 F.3d 252 (5th Cir. 2019), Texas' Assault Family Violence statute was found to be an aggravated felony under immigration law if the term of imprisonment was at least one year.) |
| Crime of Violence | An offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.<br><br>(**NOTE:** Under *United States v. Gracia-Cantu*, 920 F.3d 252 (5th Cir. 2019), the Fifth Circuit indicated even the use of unintentional force could be a crime of violence under immigration law.) |
| Crime Involving Moral Turpitude (CIMT) | No statutory definition, but usually refers to conduct which is inherently base, vile, or depraved and contrary to the accepted rules of morality and the duties owed between persons or society in general. Even reckless conduct can be considered a CIMT. Whether a crime is a CIMT is decided on a statute-by-statute basis. For a full list of offenses that qualify as CIMTs, see 8 U.S.C. § 1251(a)(2)(A)(i). |
| Inadmissibility | Grounds that make an alien inadmissible are found in §212(a) of the Immigration & Naturalization Act (INA). An alien who is inadmissible is not allowed to enter the United States and will not be granted a visa. If the alien was already in the United States on a previous visa and has since become inadmissible, the visa will not be renewed and the alien will be subject to removal proceedings. In some cases, this can keep green card holders from returning to the United States after foreign travel. |

| | |
|---|---|
| Deportability | Grounds for deportability are found in INA §237. These grounds make an alien with legal status eligible for deportation and state any alien who is illegally in the United States shall be deported.<br><br>(**NOTE:** Due to the deportability provisions, even if an alien client avoids collateral consequences from a criminal charge, they may still be deported if they are in the United States illegally and have no valid application for relief.) |

## ii. Alien Inadmissibility & Deportability

As previously stated, this is a complex area of law. If you have any questions or concerns about whether a plea deal will affect your client, you should consult an immigration attorney. Below are some common issues a criminal practitioner might see when working with an alien defendant in a criminal case and consequences that will trigger inadmissibility/deportability:

| Inadmissibility | Deportability |
|---|---|
| **212(a)(2)(A)(i):** Any alien convicted or who admits having committed, or who admits committing acts which constitute the essential elements of (1) a CIMT or attempt or conspiracy to commit a CIMT OR (2) a violation of a controlled substance.[2.] | **237(a)(2)(A)(i):** Any alien convicted of CIMT within five years of admission AND convicted of a crime for which a sentence of one year **may** be imposed. |
| **212(a)(2)(B):** Any alien convicted of two or more offenses—with aggregate sentences of confinement of five years or more (regardless of whether it is a CIMT). | **237(a)(2)(A)(ii):** Any alien who any time after admission is convicted of two or more CIMTs not arising out of the same transaction—regardless of confinement. |
| **212(a)(1)(iv):** Any alien who is a "drug abuser" or an "addict". | **237(a)(2)(A)(iii):** Any alien who is convicted of an aggravated felony at any time after admission. |
| | **237(a)(2)(B)(i):** Any alien who any time after admission is convicted of a controlled substance charge other than a single offense of possession of marijuana of 30 grams or less. |

[2.] Some petty and juvenile offense exceptions exist here.

# VIII. FREQUENTLY ASKED QUESTIONS

## a. What is the difference between an ICE warrant and a search warrant?

ICE has the ability to issue arrest warrants for aliens, but they do not have the authority to issue search warrants. A valid search warrant must be issued by a court of law. The ICE arrest warrant does not give the law enforcement officers executing the warrant the ability to enter a residence or business absent the consent of the property owner. If a client or potential new client reports that ICE has a warrant for them, please advise them as to the difference between the warrants.

## b. Am I allowed to exclude ICE from my office if they show up looking for my client?

Absent a search warrant or your consent, they can be excluded from your office.

## c. What rights does an alien or potential new client alien have under the Constitution?

Aliens are afforded several of the same constitutional rights that citizens enjoy, with some notable exceptions. For a full breakdown of these rights and their current applications, please see here.

## d. What should I do if I lose contact with my alien client and they fail to appear for a court date?

If you are dealing with an alien client, it is important to have an alternative contact in case you lose contact with them or they are placed into custody. If you do not have an alternate contact or that contact does not know where they are, you can contact the consulate of their country of origin for assistance in locating them. The consulate can help determine if they have been placed into immigration custody or been returned to their country of origin.

# IX. CONCLUSION

Immigration law can be complex and challenging to understand. As the national conversation on immigration grows and immigration policies begin to affect different practice areas of the law, we hope this guide will give you a basic understanding of immigration law and how it may impact your clients. As always, the Texas Young Lawyers Association seeks to serve members of our profession and help them become the effective and well-informed advocates for their clients.

# IMMIGRATION RESOURCE GUIDE

Below please find helpful resources that can help you and your clients navigate current immigration law:

**United States Citizenship & Immigration Services:**
uscis.gov

**ICE's Toolkit for Prosecutors:**
ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf

**Immigration Consequences of Selected Texas Offenses-Quick Reference Chart:**
projectcitizenship.org/wp-content/uploads/2017/04/Texas-Crimes-Chart.pdf
(please note, this was compiled before the decision in *US v. Gracia-Cantu*)

**American Immigration Council:** americanimmigrationcouncil.org

**Foreign Affairs Manual-CIMTs** (does not consider individual Texas statutes): fam.state.gov/FAM/09FAM/09FAM030203.html

**Texas Specific CIMTs:**
versustexas.com/criminal/crimes-of-moral-turpitude-texas

**Aggravated Felonies** (does not consider individual Texas statutes; starts on page 11 of 480):
govinfo.gov/content/pkg/USCODE-2011-title8/pdf/USCODE-2011-title8-chap12.pdf

**RAICES:** raicestexas.org

**Houston Volunteer Lawyers Program:** makejusticehappen.org

**Catholic Charities Immigration and Refugee Services:**
catholiccharitiesusa.org/our-ministry/immigration-refugee-services

**United States Citizenship and Immigration Services:** uscis.gov

**Texas RioGrande Legal Aid:** trla.org

**Lone Star Legal Aid:** lonestarlegal.blog

**Legal Aid of NorthWest Texas:** internet.lanwt.org/home

**Texas Civil Rights Project:**
texascivilrightsproject.org/our-work/racial-economic-justice

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