Welcome! The webinar will be starting shortly.
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A project of the American Bar Association, funded by the Vera Institute of Justice.
Common Texas Crime-Based Inadmissibility Grounds for SIJs

JORDAN POLLOCK, DALLAS COUNTY PUBLIC DEFENDER’S OFFICE
KARLA GARCIA, TRAVIS COUNTY PUBLIC DEFENDER’S OFFICE
How and When to Work with a Criminal Defense Attorney?

- As soon as possible!
  - Ask about pre-trial diversion programs (where guilty or no contest pleas are not required) in your first conversation with criminal defense attorney as there are enrollment deadlines.
  - Reach out to Padilla experts if you need help identifying possible alternate/safe pleas.

- Set your expectations
  - Just because a conviction is bad for immigration doesn’t mean it will be reduced or dismissed.
  - Non-detained criminal cases move slowly so you will often not have a disposition right away.
  - Going to trial can be a very big risk, particularly on felony cases where the sentencing range is so broad.
How a Case Moves in Criminal Court

1. **Arrest**

2. **Booking**

3. **Magistration**

4. **Court Appoints an Attorney**

5. **Case filed**

6. **Grand Jury for felonies (Unless Waiver)**

7. **Plea Negotiations / Wait for Discovery**

8. **If Probation: PSI**

9. **Start probation or prison/jail Potential revocations**

10. **Plea or Trial**
Adjudication of Delinquency as a Juvenile


- Texas Juvenile Law
  - Who is a juvenile? A person who is at least 10 years old and under the age of 17 can be charged as a juvenile. TFC § 51.02(2).
  - Watch out for treatment of egregious conduct!
  - Adult treatment post-adjudication = Juvenile Delinquency
    - Deterninate sentence – juvenile’s punishment may ultimately be transferred to adult court or adult prison.
  - Adult treatment pre-adjudication ≠ Juvenile Delinquency
    - Certification as an adult – court waives its jurisdiction over the juvenile and certifies the juvenile as an adult.
    - “Over-18” certifications – court certifies a criminal incident that occurred when the offender was a minor even if the offender is currently age 18 or older.
Adjudication of Delinquency as a Juvenile

- Admission by an adult or minor of conduct committed while a minor is not a formal “admission” for purposes of certain criminal conduct grounds of the INA triggering inadmissibility. Matter of M-U-, 2 I & N Dec. 92 (BIA 1944).

- Advocates must determine whether the conduct at issue was or would have been treated in delinquency proceedings or adult criminal proceedings.

- Where could the admission come from?
  - ORR record
  - I-485
  - ICE/CBP interview
  - Social Media
Delinquency Findings that Trigger Conduct-based Inadmissibility Grounds

- Drug Trafficking – INA § 212(a)(2)(C).
- Drug Abuse or Addiction – INA § 212(a)(1)(A)(vi).
- Behavior Showing a Physical or Mental Condition That Poses a Current Threat to Self or Others – INA § 212(a)(1)(A)(iii).
- Prostitution – INA § 212(a)(2)(D).
- False Claim to U.S. Citizenship – INA § 212(a)(6)(C)(ii), (F).
Importance of Discretion

- Be aware that gang membership, affiliation, association, and activity, violent offenses, and sex offenses will likely cause problems for noncitizen youth including targeted immigration enforcement action, secure detention placement, denial of immigration applications as a matter of discretion, and the initiation of removal proceedings for affirmative applications that are denied.
Confidentiality of Juvenile Records

- **TFC § 58.005 Confidentiality of Facility Records (Texas Juvenile Justice Department or contractor)**
  - (a) Proceedings under this title may be inspected or copied only by:
    - (1) the professional staff or consultants of the agency or institution;
    - (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
    - (3) an attorney for the child;
    - **(4) a governmental agency if the disclosure is required or authorized by law**;
    - (5) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child’s release or discharge from a juvenile facility;
    - (6) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;
    - (7) a prosecuting attorney;
    - (8) a parent, guardian, or custodian with whom a child will reside after the child’s release or discharge from a juvenile facility;
    - **(9) a governmental agency or court if the record is necessary for an administrative or legal proceeding and the personally identifiable information about the child is redacted before the record is disclosed; or**
    - **(10) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court.**
  - (b) This section does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B or D-1.
  - (c) An individual or entity that receives confidential information under this section may not disclose the information unless otherwise authorized by law.
Confidentiality of Juvenile Records

TFC § 58.007 Confidentiality of Probation Department, Prosecutor, and Court Records

(a) Proceedings under this title may be inspected or copied only by:
   (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
   (2) a juvenile justice agency as that term is defined by Section 58.101;
   (3) an attorney representing the child's parent in a proceeding under this title;
   (4) an attorney representing the child;
   (5) a prosecuting attorney;
   (6) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;
   (7) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
   (8) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b-1) A person who is the subject of the records is entitled to access the records for the purpose of preparing and presenting a motion or application to seal the records.

(c) An individual or entity that receives confidential information under this section may not disclose the information unless otherwise authorized by law.
Confidentiality of Juvenile Records

- TFC § 58.008 Confidentiality of Law Enforcement Records
  - (a) Proceedings under this title may be inspected or copied only by:
    - (1) a juvenile justice agency, as defined by Section 58.101;
    - (2) a criminal justice agency, as defined by Section 411.082, Government Code;
    - (3) the child;
    - (4) the child’s parent or guardian; or
    - (5) the chief executive officer or the officer’s designee of a primary or secondary school where the child is enrolled only for the purpose of conducting a threat assessment or preparing a safety plan related to the child.

- Does not include immigration attorneys or other government agencies.
Dissemination of Juvenile Records

- TFC § 58.009 Dissemination of Juvenile Justice Information by the Texas Juvenile Justice Department
  - The Texas Juvenile Justice Department may grant the following entities access to juvenile justice information for research and statistical purposes or for any other purpose approved by the department:
    - (1) criminal justice agencies as defined by Section 411.082, Government Code;
    - (2) the Texas Education Agency, as authorized under Section 37.084, Education Code;
    - (3) any agency under the authority of the Health and Human Services Commission;
    - (4) the Department of Family and Protective Services; or
    - (5) a public or private university.
Juvenile delinquency is not a secret – it appears in most state and FBI criminal background checks.

You will have to address the arrest/adjudication in your application for adjustment.

- Be candid but give only the information that is required – i.e. disposition.
- First, submit a brief written statement explaining the disposition.
- Then, submit a certified letter of the disposition, if possible.
- If this is still insufficient, only then, submit an order of the disposition.
  - Need Juvenile Court’s approval for this.
- ICE may be treated as law enforcement and given records without court order.
  - Challenge with suppression.
Kevin is applying for Adjustment of Status based on Special Immigrant Juvenile Status. He is currently 19 years old. When he was 16, he was arrested for shoplifting a T-shirt from Target. He was adjudicated for shoplifting under Penal Code Section 31.03 by a Juvenile Justice Court. He completed the terms of probation and his case was closed when he turned 18. In completing the I-485, Kevin comes across the question that asks: “Have you ever in or outside the United States been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?” How should Kevin respond?
Practice Tip

Under Section 58 of the Texas Family Code, Kevin’s juvenile records, and information relating to the content of the file are confidential. However, there is also no known legal exception allowing nondisclosure of an arrest, even as a juvenile.

Assuming that Kevin has not received juvenile court permission to disseminate his juvenile records, he could respond to the question in the following way: I was arrested as a juvenile for theft. I successfully completed probation for this incident. My case was handled in juvenile court, and the records from the proceedings are confidential under Texas law.
DHS may try to use confidential information or documents against your client in removal proceedings including:

- Using evidence of alienage obtained from documents or information in the juvenile court file,
- Submitting juvenile court minute orders or probation reports as negative evidence bearing on statutory bars or discretion to the immigration court without juvenile court approval, or
- A USCIS officer relying upon these documents in an A file to deny a client a benefit like Special Immigrant Juvenile Status based adjustment of status or asylum.
Practice Tips

- Even individuals who have automatic access to juvenile case files are prohibited from disseminating the records or information contained in those records absent a juvenile court order.

- File a motion to suppress if necessary. If you can demonstrate that DHS obtained the juvenile court records or information without having gone through the juvenile court petitioning process, argue against the admission of this evidence.
  - Argue that the violation of state law results in a Fifth Amendment due process violation, because proceedings are fundamentally unfair when ICE uses evidence that was obtained unlawfully in disregard of state laws designed to protect children.

- In the case of a USCIS officer relying upon unlawfully obtained documents, it may not be possible to file a formal motion to suppress.
  - Options in this situation include filing a motion to suppress with the IJ that asks for an order requiring no one at DHS to rely on the documents, or filing a letter brief with USCIS warning them that they have the documents in violation of Texas law and thus should not use them in the adjudication of the application/s.
Disclosing Juvenile Records can be Problematic

- It may jeopardize future cases where an advocate might want to keep information from being disclosed.

- It can set expectations within USCIS or other relevant agencies that these records should be provided on a regular basis.

- It undermines the important work advocates are doing to ensure that DHS does not obtain confidential juvenile court information without going through proper state court channels.

- It may also work against the advocacy being done with DHS to treat juveniles differently than adults and stop requesting juvenile records to begin with.
Don’t Over Disclose

- Obtain a letter stating the client has successfully completed the terms of his adjudication (probation) and that the matter is closed/dismissed. If you must release juvenile documents, stick to the judgment order only.***
  - Administrative agencies lack authority to look behind a conviction to reassess the applicant's guilt or innocence. See Matter of Rodriguez-Currillo, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine guilt or innocence).
- Don’t get sucked into a discussion about a criminal case’s particular facts, circumstances, motives, etc.
- The Juvenile Justice Court is specialized in adjudicating juvenile delinquencies – USCIS officers and Immigration Judges are not. (Same goes for adults!)
Sample Motion to Release Records

- Client may be asked to get a court order to release their own records if applying for discretionary relief with immigration.
  - Need Court’s permission to obtain records
  - Need Court’s permission to re-release.
  - If releasing, use judgment order only.
- There may be a negative inference in not handing over records. Discretion, remember?
- Good news – Don’t forget you can get a predicate order in delinquency proceedings.
Inadmissibility Grounds that Do Not Apply to SIJs

- Public Charge – INA 212(a)(4)
- Labor Certification – INA 212(a)(5)(A)
- Present without Admission or Parole – INA 212(a)(6)(A)
- Misrepresentation – INA 212(a)(6)(C)
- Stowaways – INA 212(a)(6)(D)
- Documentation Requirements for Immigrants – INA 212(a)(7)(A)
- Unlawful Presence – INA 212(a)(9)(B)
Waivers of Inadmissibility under INA § 245(h)(2)(B)

- Special Waiver for SIJS-Based Adjustment of Status Applicants Under INA § 245(h)(2)(B)
  - USCIS and the immigration court are authorized to waive the designated grounds for “humanitarian purposes, family unity, or when it is otherwise in the public interest.”
  - Form I-601
Inadmissibility Grounds that Apply to SIJs but are Waivable under INA § 245(h)(2)(B)

- Health Related – INA § 212(a)(1)
- Conviction of certain crimes– INA § 212(a)(2)(A) but ONLY as related to a single offense of simple possession of 30 grams or less of marijuana
- Prostitution and commercialized vice – INA § 212(a)(2)(D)
- Serious criminal activity – INA § 212(a)(2)(E)
- Foreign government officials who have committed particularly severe violations of religious freedom – INA § 212(a)(2)(G)
- Significant traffickers in persons – INA § 212(a)(2)(H)
- Money laundering – INA § 212(a)(2)(I)
- Immigrant membership in totalitarian group – INA § 212(a)(3)(D)
- Association with terrorist organization – INA § 212(a)(3)(F)
- Unqualified physicians – INA § 212(a)(5)(B)
- Uncertified foreign healthcare workers – INA § 212(a)(5)(C)
- Failure to attend removal proceedings – INA § 212(a)(6)(B)
- Smugglers – INA § 212(a)(6)(E)
- Subject to civil penalty – INA § 212(a)(6)(F)
- Student visa abusers – INA § 212(a)(6)(G)
- Nonimmigrants– INA § 212(a)(7)(B)
- Ineligible for citizenship – INA § 212(a)(8)
- Certain Individuals previously removed – INA § 212(a)(9)(A)
- Individuals unlawfully present after previous immigration violations – INA § 212(a)(9)(C)
- Practicing polygamists, guardians required to accompany helpless persons, international child abductors, unlawful voters, and former citizens who renounced citizenship to avoid taxation – INA § 212(a)(10)
Inadmissibility Grounds that Cannot be Waived under INA § 245(h)(2)(B) but may Qualify for Higher Waiver Standard under 212(h)

- **Crime Related – INA § 212(a)(2)**
  - Conviction of Certain Crimes – INA § 212(a)(2)(A)
    - CIMTs may fall into an exception for inadmissibility, or if not, may be waivable under INA § 212(h).
    - SIJS applicants cannot waive a controlled substance conviction or admission other than a single offense of simple possession of 30 grams or less of marijuana.
  - Multiple Criminal Convictions – INA § 212(a)(2)(B) – INA § 212(h)
  - Controlled Substance Traffickers – INA § 212(a)(2)(C) – No waiver

- **Security Related – INA § 212(a)(3) – No waiver, but INA § 212(d)(3)(B)(i) authorizes the Secretary of State or Homeland Security to exempt certain people or groups from the terrorism-related grounds of inadmissibility.**
  - Security and Related Grounds – INA § 212(a)(3)(A)
  - Terrorist Activities – INA § 212(a)(3)(B)
  - Foreign Policy Related – INA § 212(a)(3)(C)
  - Participants in Nazi Persecution, Genocide, or the Commission of Any Act of Torture or Extrajudicial Killing – INA § 212(a)(3)(E)
Waivers of Inadmissibility under INA § 212(h)

- Waiver for Offenses Under INA § 212(h)
  - There are two ways to get this waiver.
    - The person must be the spouse, parent, or child of a U.S. citizen or lawful permanent resident, and establish that denial of the person’s admission would result in extreme hardship to that relative, or
    - The person must have committed the crime at least 15 years ago (or at any time, if the person is only inadmissible for prostitution), must be able to show that granting their admission would not hurt the national welfare or safety; and must be able to show that they are rehabilitated.

- Form I-601
Exceptions to Crime Related Inadmissibility Grounds

- Crime Related Exception to ONE CIMT only – INA § 212(a)(2)(A)(ii)
    - Crime committed when under 18 years of age and
    - Crime committed (and individual released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for status.
  - Petty Offense – INA § 212(a)(2)(A)(ii)(II)
    - Sentence imposed for the offense was 6 months or less and
    - Maximum possible sentence for the offense does not exceed one year.
# Grounds of Inadmissibility v. Deportability

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<th><strong>Inadmissibility (INA 212)</strong></th>
<th><strong>Deportability (INA 237)</strong></th>
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</thead>
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<td>Crimes involving moral turpitude</td>
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<tr>
<td>Controlled Substance Offense</td>
<td>Controlled Substance Offense</td>
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<td>Reason to Believe Drug Trafficker</td>
<td>Crime of Violence (DV), VPO</td>
</tr>
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<td>Prostitution/Commercialized Vice/Money Laundering</td>
<td>Aggravated Felonies</td>
</tr>
</tbody>
</table>

Dallas County Public Defender
Multiple Offenses with 5 years

- Crimes do not need to be CIMTs or any other inadmissible offense
- Sentences are combined between all cases to total 5 years or more
- Remember suspended sentences count as sentences
  - “Straight Probation” in Texas is a sentence suspended over probation (ie 3/10 is a three-year sentence)
  - “Deferred Adjudication” in Texas is a conviction but there is no sentence (unless ordered to SAFP)
Inadmissibility Issues with Common Criminal Offenses

- Driving While Intoxicated
  - Mental Health
  - Drug Abuser or Drug Addict
- Controlled Substance Offenses
  - Drug Trafficking
- Human Trafficking
- Assault
  - Family Violence
  - Aggravated Assault
  - Injury to protected groups
- Violations of Protective Orders
- Burglary
- Theft
TEXAS DWI and Admissibility

- Simple DWI is NOT a CIMT
- Multiple DWI offenses are NOT CIMTs because in Texas no new mens rea
- No good case law on whether TX DWI with child is CIMT
  - May be a Crime of Child Abuse for deportability
Mental Health Inadmissibility

- Mental Health Condition AND associated harmful behavior
  - Harmful behavior is one that poses risk to people or property
  - Alcoholism is a mental health condition
- Determination must be made by a Civil Surgeon
  - Can be in the past but if doctor thinks it will re-appear it will be a bar
- Drug Abuser or Drug Addict
  - Looking at current generally
  - Also determined by a Civil Surgeon
- These grounds apply to juveniles
DWI and DACA

DWI and Non-immigrant Visas

- DWI is a bar to DACA
  - Only way to avoid is a reduction or dismissal of DWI offense
- DWI could lead to revocation of non-immigrant visas under the Dept. of State’s “prudential” or discretionary grounds
  - Lot of variation in consulates
  - Technically arrest is enough
Case Example DWI

Roberta was arrested for DWI on her 18th birthday. She was granted SIJS but she is waiting for adjustment.

What do you do?

First you want to talk to her criminal defense attorney and explain you are representing on the immigration side and what Roberta’s status is:

- Under the new Biden Admin priorities, she will likely not have an ICE hold
- Even if she pleads to the DWI, it is not a statutory bar to her getting residence via SIJS but it is negative for discretion
- It would bar her from DACA, even if she meets the other requirements
- Dismissal on a DWI is unlikely unless the stop violated the Fourth Amendment

Hopefully, you can build a case for the favorable exercise of discretion on the immigration side
Case Example DWI – New Facts

- Same facts as before but now I tell you she was also arrested as a juvenile on DWI and has some juvenile public intoxication adjudications.
- Those charges cannot bar Roberta under the crimes ground as not crimes and not even CIMTs.
- But now we should be concerned about the mental health inadmissibility.
- Really want to make sure those juvenile records are sealed up tight.
- Your client needs to get sober.
## Controlled Substance Offenses

<table>
<thead>
<tr>
<th>Inadmissibility</th>
<th>Deportability</th>
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<tbody>
<tr>
<td><strong>Conviction or Admission</strong></td>
<td><strong>Conviction</strong></td>
</tr>
<tr>
<td>Any offense relating to a drug on the federal list of controlled substances</td>
<td>Any offense relating to a drug on the federal list of controlled substances</td>
</tr>
<tr>
<td>Waiver for single possession of 30g or less MJ available for SIJS or via some USC/LPR family but not guaranteed</td>
<td>Exception for 30 g or less MJ</td>
</tr>
<tr>
<td>Paraphernalia is better but not necessarily safe</td>
<td>Paraphernalia is safe if no drug name on ticket</td>
</tr>
<tr>
<td>Pre-trial diversion safe if no admission or plea AND no admission to CIS/ICE</td>
<td>Pre-trial diversion safe if no admission or plea</td>
</tr>
</tbody>
</table>
Categorical Arguments on Drugs

- The key is that if the drug charged in on the federal list of controlled substances
  - TMFPP, Etizolam, Salvia Divinorum only on Texas list not federal list
  - Position isomers of cocaine make Texas cocaine broader than the federal definition of cocaine
  - Big new case on Penalty Group 2A of the Texas Health and Safety Code
- Realistic Probability
  - Contact me if need documents for Position Isomers, PG2 or PG3
Drug Trafficking Inadmissibility

- Simple Possession is not Drug Trafficking
- Better to plead to simple possession
- Conviction not required
  - Only requires reason to believe
  - Drug trafficker in the past or currently
  - Reasonable, substantial and probative proof required
- This applies to juveniles too

- Also note there is a deportability ground, for an Aggravated Felony for drug trafficking but it requires a conviction and there are good statutory arguments that Texas Manufacture/Delivery/Possession with Intent does not qualify
- DACA has a bar for drug trafficking convictions too
Case Example: Drug Possession I

- Francis’s application for SIJS is still pending. He is 17 years old and was arrested for Possession of Methamphetamine and Failure to Identify (giving the cops the wrong name - a CIMT)

- What can you do?
  - Again, call the criminal defense attorney and let them know you are working on the immigration side and Francis’s current immigration status
  - Find out if there are pre-trial drug diversion programs
  - Would the DA allow an informal conditional plea where Francis does classes and community service, and they dismiss the felony if he pleads to 179 days on the Failure to Identify?
  - Don’t expect a dismissal, but the client may want a trial if no other option
Marcus was recently granted SIJS and was arrested with both cocaine and marijuana.

What can you do?

- Call the defense attorney and make sure they understand the immigration situation
- See if there is pre-trial diversion available
- Less than 30 grams of MJ is subject to a waiver, so make sure plea reflects it was less than 30 grams
- There are categorical arguments relating to cocaine, but very hard to do when seeking relief. Client would probably need to plead to position isomers of cocaine and even then tough with new SCOTUS case law
- Paraphernalia is better than cocaine but still a tough for seeking relief
A note on Crimes against the person

- Inadmissibility
  - Simple Assault not a CIMT
  - Assault + Weapon or against a special group = CIMT

- Deportability:
  - Crime of Violence Aggravated Felony if sentence of 1 year +
  - Crime of Domestic Violence if a family-member (unless Class C)
  - Crime of Child Abuse
CIMT for Assaultive Offenses

- Simple Assault (Class A) is no longer a Crime Involving Moral Turpitude
  - Gomez-Perez v. Lynch (5th Cir. 2016)
    - Even with FV, arguably still not a CIMT as FV not an element
- Class C Assault FV is not a CIMT
- Threats of violence are CIMTs
Aggravated Assaults are CIMTs
Example: Felony Assault Impede

- Texas enhances a Class A Assault to a 3rd degree felony if the alleged victim is a family member or partner AND the alleged conduct includes impeding breath
  - This is a CIMT because
    - Family member is an element
    - Higher level of harm
- The key things that often raise an assault to a CIMT
  - Protected Group
  - Higher Harm
  - Weapon
- Again, remember once they have status even more vulnerable when it comes to assaultive offenses because of DV deportability ground
Assaults against children can be CIMTs

Abandoning/Endangering a Child

• A lot of different subsections to this statute
• Best plea is Abandon with Intent to Return

Injury to a Child

• Technically also encompasses injury to an elderly person or a disabled person
• Best plea is for a Criminally Negligent causation of injury, which is a state jail felony

Note:
Remember once granted residence any conviction for an offense with a child victim is a ground of deportability
DACA bars that relate to assaults

Convictions for:
• Domestic violence
• Sexual abuse or exploitation
• Any offense with a sentence of 90 days or more
• More than two misdemeanors
  • Misdemeanor for DACA does not include a Class C
• Any felony

• DACA has other bars for membership in a gang (no conviction required so applies to juveniles) as well as for convictions for burglary, drug trafficking, DWI and firearms
Case Example: Assault Family Violence

Floyd was arrested for Aggravated Assault Impede against his live-in partner and he is waiting for his residence to be granted.

What can you do?

- Contact the criminal defense attorney and explain your role and the client’s immigration status
- Client needs to do whatever it takes (classes, community service etc.) to get the DA to agree to take down to a Class A simple Assault
- Any conviction on an Assault Family Violence is likely to be a bar to DACA unless goes all the way down to a Class C
Deportability: Violation of Protection Order (but applies to juveniles)

- Deportable if civil or criminal court finds violation of the portion of DV court order protecting against:
  - credible threats of violence
  - repeated harassment
  - bodily injury
- No conviction required
- DV ct order = injunction to prevent violent or threatening acts of domestic violence
- This would apply to juveniles
Burglary

- Burglary of a Habitation – CIMT
  - Alternate Pleas – Burglary of a Building § 30.02(c)(1) or Criminal Trespass § 30.05
  - Obtain a sentence of confinement of less than 1 year (otherwise aggravated felony). United States v. Herrold, 941 F.3d 173 (5th Cir. 2019).

- Burglary of a Building – Not a CIMT
  - Unpublished decision. Alejandro De Leon Gonzalez, A044 564 165 (BIA April 15, 2020) (burglary of building under Texas Pen. Code 30.02 not a CIMT because the target offense is not an element and could include simple assault).
  - Alternate Plea – Criminal Trespass § 30.05
  - Obtain a sentence of confinement of less than 1 year (otherwise aggravated felony). United States v. Herrold, 941 F.3d 173 (5th Cir. 2019).
Burglary of a Vehicle

- Burglary of a Vehicle – Not a CIMT
  - Unpublished decision. Edgar William Perez Ayala, A029 308 742 (BIA June 29, 2018) (burglary of a vehicle under Tex. Penal Code 30.04(a) with intent to commit theft or any felony is not a CIMT).
Theft

- CIMT (if conviction is after Diaz-Lizarraga)
- Obtain a sentence of confinement of less than 1 year (otherwise aggravated felony). INA § (a)(43)(G); United States v. Rodriguez-Salazar, 768 F.3d 437, 438 (5th Cir. 2014).
Remember all of this is different if it is a juvenile adjudication

- JUVENILE ADJUDICATIONS ARE NOT CONVICTIONS
- ADMISSION TO JUVENILE OFFENSES ARE NOT ADMISSIONS TO CRIMES
- ONLY WORRY ABOUT MENTAL HEALTH/ADDICT GROUNDS AND TRAFFICKING WHEN DEALING WITH JUVENILES IN THE ABOVE TYPE CASES
Particularly Serious Crimes that relate to drugs or assault

- Aggravated Felony conviction is a bar to PSC for Asylum only
  - Any assaultive offense with a sentence of a year or more
- Drug trafficking is a PSC
- Really bad facts can make any felony a PSC
- AgFel with a sentence of 5 years or more would be a PSC for Withholding of Removal
- If convicted of a PSC can only seek relief under the Convention Against Torture
Questions?
We are here to help

- Jordan Pollock
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- Karla Garcia
  Travis County Public Defender’s Office
  karla.garcia@traviscountytx.gov
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