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Immigration Law: The Immigration Consequences of Criminal Activity

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Recommended Citation

Genevieve Hebert-Fajardo, Immigration Law: The Immigration Consequences of Criminal Activity, 4 Jailhouse Law. Manual 785 (1995–1996).

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CHAPTER 26

IMMIGRATION LAW: THE IMMIGRATION CONSEQUENCES OF CRIMINAL ACTIVITY*

A. Introduction

The U.S. government may try to deport you¹ if you are an alien with a criminal record or if you are in the country unlawfully. Keep in mind that some but not all convicted criminals who are aliens are subject to deportation. The government must prove by a fairly strict standard (clear, unequivocal and convincing evidence²) that you fall into a deportable category. If the government finds that you are deportable, you may have legal remedies to avoid being deported. If you are or become a U.S. citizen³ then you cannot be deported, so naturalization (the process of becoming a citizen) is recommended before you face a deportation hearing.

This Chapter is a brief explanation of how the laws of immigration in the United States may affect prisoners. Keep in mind that in order to make the laws easier to understand, we may oversimplify some legal issues. Make sure to check the actual laws that seem to apply to you. The appendices at the end of the Chapter contain some helpful information and resources you can use to find complete coverage of the issues.

Section B of this Chapter describes the various categories of immigrants. Find the category which describes you to determine if you are subject to deportation and, if you are deportable, if you can

* This Chapter was written by Genevieve Hebert and Lorelei Ritchie and is based in part on earlier versions Carin Reynolds, Gary Chodorow, David Rizzo and Andrew Cameron.

1. Being deported means you have to leave the U.S.
2. See *Woodby v. INS*, 385 U.S. 276, 286, 87 S. Ct. 483, 488, 17 L. Ed. 2d 362 (1966).
3. You are a citizen if you were born in the United States or if you acquired citizenship through naturalization. You may gain citizenship through your parents if one of them became or married a U.S. citizen before you turned 18. See section E(2) of this Chapter for requirements of naturalization.

postpone your deportation or avoid being deported altogether. Section C explains the deportation process. Section D discusses the grounds for deportation. Section E describes the procedure and types of deportation proceedings. Section F explains what relief you may have from deportation. In other words, how you can try to persuade officials to slow down or prevent your deportation. Section G discusses legal remedies that may prevent your deportation. Throughout the Chapter we refer to sections of the United States Code (U.S.C.). Be sure that you have a current copy which includes the latest changes, published in 1994.⁴ In addition, since immigration law changes quickly, check if this Chapter has been amended through a JLM supplement, and definitely read the supplement Chapter if there is one.

Immigration proceedings are not considered to be criminal proceedings, so you have different rights than you would in a criminal proceeding. For example, an immigration hearing is much less formal than a criminal trial and it is easier for the government to get in evidence against you. The U.S. government agency that handles immigration matters is the Immigration and Naturalization Service (INS).

The following is a table of contents for this Chapter, listing the different sections. It is meant to enable you to find the rules that apply to you as quickly as possible.

B. Types of Immigrants

1. What is my immigration status?

C. Deportation Proceedings

1. What does it mean to have "entered" the U.S.?
2. What are my rights when they tell me I may be deportable?
3. What are my rights at a deportation hearing?

D. Procedure and Types of Deportation Hearings

1. Who can order my deportation?
2. Must I be held in custody before and after my deportation hearing?
3. What types of hearings should I expect?
4. Can I appeal an order of deportation against me?
5. What if my conviction was for an aggravated felony?
6. Do aggravated felons get a different type of hearing?

E. Grounds for Deportation

1. Do I have a final conviction on my criminal charges?
2. What makes me deportable?

4. There may also be major changes to immigration law in 1996 or any following year. Check through 8 U.S.C. §§ 1101 through 1524 which should include the entire Immigration and Nationality Act, for any new developments. Pay particular attention to § 1251 — grounds for deportation, § 1182 — grounds for exclusion, and any changes in §§ 1252 through 1254 — deportation procedure.

3. Criminal Grounds for Deportation

F. Relief from Deportation

1. Availability
2. Naturalization
3. Prosecutorial Discretion
4. Voluntary Departure
5. Suspension of Deportation
6. 212(c) waivers
7. 212(h) waivers
8. Political Asylum
9. Withholding of Deportation
10. Adjustment of Status

G. Legal Remedies

1. Motion to withdraw a plea of guilty
2. Statutory Attacks on your trial conviction or sentence
3. Common-law Writs
4. State Expungement Laws

B. Types of Immigrants

1. What is my immigration status?

Anyone in the United States who is not a U.S. citizen is considered to be an alien. If you have a visa stamp in your passport or any entry document (called an I-94), you can check them to find your immigration status.

a. Legal Permanent Resident (LPR):

You are a permanent resident (LPR) if you have a valid and unexpired green card. Keep in mind that the word “permanent” does not really mean what it says. Whether your admission as an LPR was conditional or not, you are still subject to deportation grounds (see section E of this Chapter). On the other hand, you may be eligible for some forms of relief from deportation that are not available to non-LPR’s.

b. Entered Without Inspection (EWI):

If you entered the U.S. without passing through the U.S. government checkpoints and were never officially received, then you fall into this category.

c. *Out of Status:*

You fit into this category if you entered the U.S. legally but overstayed your period of admission, or if you violated the terms of your admission (for example, if you work without government authorization, or if you do not work and your visa category requires employment.)

d. *Other:*

All legally admitted “nonimmigrant” aliens are lumped together for deportation purposes. In other words, if you entered the United States legally and have maintained a legal immigration status but you are NOT a legal permanent resident, then it does not matter for purposes of deportation or exclusion action what the exact nature of your visa and I-94 is, for example, student visa F or nonimmigrant worker H.

C. Deportation Proceedings

1. What does it mean to have “entered” the U.S.?

You can only be placed in deportation proceedings if you have officially “entered” the U.S. “Entering the U.S.” has an official definition for immigration purposes, which requires more than just physically walking onto U.S. territory.⁵ The following two conditions must be met for official “entry”:

- a) You entered the U.S. physically, either legally or illegally *and*
- b) As a result of that entry, you were released from (or you managed to avoid) the government’s restraints — which include official detention for questioning or for holding purposes.⁶

Almost all alien prisoners in the U.S. will satisfy these requirements and will be subject only to deportation proceedings. If, however, you were brought into the U.S. by the government for the sole reason that you would serve time in a U.S. prison (being “paroled”

5. See 8 U.S.C. § 1101(a)(13) (1994) for a description of official “entry” into the U.S.

6. See Matter of G-, Int. Dec. 3215 (B.I.A. 1993).

into the U.S.), then you are subject to exclusion rather than deportation proceedings. It is called "exclusion" because the government is seeking to officially *keep* you out (not kick you out). An example of why you might be placed in exclusion proceedings is if the INS found you *at the airport* trying to *enter* the U.S. with drugs.

There are procedural reasons why you might prefer a deportation rather than an exclusion hearing. An alien who has "entered" is given more protection for purposes of appeals in the federal courts. Also there are certain remedies available in deportation hearings that are not available in exclusion hearings.⁷ Finally, an alien in exclusion proceedings cannot have bond determined by the immigration judge, while an alien in deportation proceedings generally is entitled to a bond hearing to avoid being detained.

If the government initiates proceedings against you, they will tell you whether the proceedings are for deportation or for exclusion.

2. What are my rights when they tell me I may be deportable?

The government will let you know if you are subject to deportation. Even if you think that you are deportable, you are not obligated to inform the immigration authorities. The government must issue an Order to Show Cause (OSC),⁸ in both English and Spanish⁹ if it wants to deport you.¹⁰ If you are not already in custody, the government may take you into custody for up to twenty-four hours prior to issuing an OSC.¹¹ The OSC must specify, among other points, the nature of the deportation proceedings against you,¹² the immigration law or laws that the INS thinks you violated¹³ and what

7. Some cases hold that if the government states that you are subject to exclusion from the U.S. and you claim that you are entitled to a deportation rather than an exclusion hearing (for example because you have officially entered U.S. territory without government inspection), the government must prove that you never really "entered." According to those cases, the government must prove that you did not intend to evade inspection, and that you were free from official restraint. *See* *Xin-Chang v. Slattery*, 859 F. Supp. 708, 714 (S.D.N.Y. 1994), *rev'd on other grounds*, *Zhang v. Slattery*, 55 F.3d 732 (2d Cir. 1995).

8. 8 U.S.C. § 1252B(a)(1) (1994).

9. 8 U.S.C. § 1252B(a)(3)(A) (1994).

10. The OSC may be issued in person, through certified mail or through your counsel of record (your registered lawyer).

11. *Cf.* 8 U.S.C. § 1357(a)(2)) (1994).

12. 8 U.S.C. § 1252B(a)(1)(A) (1994).

13. 8 U.S.C. § 1252B(a)(1)(D) (1994).

they think you did that violated that law.¹⁴ The OSC must advise you of the time and place of the deportation proceedings — which cannot be earlier than fourteen days from the date of the OSC unless you consent to an earlier date¹⁵ — and of your right to obtain counsel for defense.¹⁶

3. What are my rights at a deportation hearing?

Unlike a criminal trial, the government will not pay for your lawyer at a deportation hearing; but they must tell you about any free legal services in your area that handle immigration cases.¹⁷ You have a right to an interpreter at your hearing if you do not understand English. The government must establish by “clear, unequivocal, and convincing” evidence that you are deportable.¹⁸ You have a right to remain silent as you would in a criminal hearing. Your silence may, however, be used by the immigration judge at a hearing as evidence to support the charges of the INS trial attorney.¹⁹ Also, although you have in immigration proceedings a right against unlawful search and seizure under the Fourth Amendment, as at a criminal trial, most evidence taken as a result may still be admitted in the hearing.²⁰ If the government commits an egregious violation of your Fourth Amendment rights, you may be able to keep out of your hearing any information gathered as a result of the violation. Finally, keep in mind that anything you say at an immigration hearing may later be used against you in a criminal proceeding — for example, if you admit to a crime. On the other hand, if you have already had your criminal trial and served a sentence, it is probably still a good idea for you to admit to the crime of which you were found guilty and declare that you have been “rehabilitated.” The judge will generally look upon that favorably when he or she considers any relief for which you may be eligible (see section F of this Chapter — Relief from Deportation).

14. 8 U.S.C. § 1252B(a)(1)(C) (1994).

15. 8 U.S.C. § 1252B(b)(1) (1994).

16. 8 U.S.C. § 1252B(1)(E) (1994).

17. 8 U.S.C. § 1252B(b)(2) (1994).

18. *See* *Woodby v. INS*, 385 U.S. 276, 286, 87 S. Ct. 483, 488, 17 L. Ed. 2d 362 (1966).

19. *See* *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-154, 44 S. Ct. 54, 56, 68 L. Ed. 221 (1923) (judge could interpret defendant's silence on question of whether or not he was a U.S. citizen as evidence that he was an alien).

20. *See* *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1042, 104 S. Ct. 3479, 3485, 82 L. Ed. 2d 778 (1984) (balancing test adopted, weighing social benefit of excluding evidence versus the social cost).

You may challenge deprivation of any of these rights as unconstitutional, in violation of your right to “due process” and in violation of your right to a “fundamentally fair” hearing.

D. Procedure and Types of Deportation Hearings

1. Who can order my deportation?

In both exclusion and deportation proceedings, you have a right to a “fundamentally fair” trial. Generally, an immigration judge — known as a “special inquiry officer” — (and for some aggravated felons, an INS administrator) — will be the one who orders your deportation. Under some circumstances, your sentencing judge may order your deportation if you are deportable for a criminal offense (see section E of this Chapter — Grounds for deportation).²¹ A deportation order can only be given by your sentencing judge if he or she is a federal district court judge. The deportation must be requested by the INS and the judge must consider any relief from deportation that you may deserve.²² You may appeal a deportation determination from a federal district judge to the Circuit Court of Appeals.²³

2. Must I be held in custody before and after my deportation hearing?

You may be held at an INS detention center while waiting for your deportation hearing. In most cases, however, you may be released on bond from the custody of the INS while you are waiting for your deportation hearing (there is no such provision for exclusion hearings). You may request a release on bond if the judge determines that you are not a threat to national security or a poor bail risk.²⁴ If you have been convicted of an aggravated felony, see subsection 5 below. Your bond amount will be set no lower than \$500.²⁵

In determining your bond amount, the court may consider your ties with family in the community, employment history, length of time spent in the United States, record of appearance at previous court

21. 8 U.S.C. § 1252a(d) (1994).

22. 8 U.S.C. § 1252a(d)(2)(C) (1994). *See* section F of this Chapter — Relief from Deportation.

23. 8 U.S.C. § 1252a(d)(3)(A)(i).

24. *See* *Matter of Patel*, 15 I. & N. Dec. 666 (B.I.A. 1976).

25. 8 U.S.C. § 1252(a)(1)(B) (1988).

hearings and previous criminal or immigration law violations.²⁶ The hearing is informal and you should stress all positive factors in your background. You may appeal the bond decision to the Board of Immigration Appeals (BIA). Ultimately, you may seek *habeas corpus* relief from a federal court if you are unfairly denied bond or if your bond is set too high.²⁷

If you are ordered to be deported, the government must then act to carry out the order. During this time, you may be held in detention or released on bond or on other conditions.²⁸ Note that if you are held in detention for more than six months after a final order of deportation is issued, the INS must release you under its supervision (similar to criminal parole).²⁹ If the INS is moving too slowly regarding your deportation during those six months, you may appeal to the federal courts for *habeas corpus* relief.³⁰

3. What types of hearings should I expect?

First, you will probably be given a Master Calendar Hearing which is a preliminary hearing for the immigration judge to evaluate your situation. The judge may evaluate the cases of several aliens at once in a Master Calendar Hearing.

You can either admit or deny the charges in the OSC. You should deny the charges if they are incorrect. For example, if the OSC says you are deportable for a conviction of an aggravated felony, when in fact you do not have such a conviction. If, on the other hand, you admit to the charges of deportability, you may then apply for relief from deportation.

Remember that the government must show by "clear, unequivocal and convincing" evidence why you are deportable, such as because you have been convicted of selling drugs. If you do not admit to being deportable, the judge will set a date for an individual hearing for your case.

26. See *Matter of Sugay*, 17 I. & N. Dec. 637, 639 (B.I.A. 1981); 8 C.F.R. § 242.2(h) (1995).

27. 8 U.S.C. § 1252(a)(1) (1994). You may also seek *habeas corpus* relief if the INS is "not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability." *Id.*

28. 8 U.S.C. § 1252(c) (1994).

29. 8 U.S.C. § 1252(d) (1994).

30. 8 U.S.C. § 1252(c) (1994), if the INS "is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case . . ."

At the individual hearing, the government will be represented by a trial attorney who may present evidence and ask you questions. You or your lawyer may present your own evidence. The judge will hear all the testimony and review all documents to decide whether to grant the relief requested.

It is important that you show up for your deportation hearing. If you do not, then the judge may order you deported in your absence and you will not be eligible to receive any relief from deportation for a number of years (twenty years if you are being deported as an aggravated felon and five years otherwise) unless you show, within six months³¹ of being ordered deported, that you were absent from the hearing because: i) you were in state or federal custody, ii) you did not receive adequate notice of the hearing, or iii) you had "exceptional circumstances" such as serious illness or a death in your family.³²

4. Can I appeal an order of deportation against me?

If the judge rules against you, you may appeal to the Board of Immigration Appeals (BIA) within ten days. Be sure to ask your judge for the proper forms. You must include your reason for appeal and you may later include a legal brief if you want, although it is not necessary. Note that if you leave the United States while your appeal is pending, the court will assume that you no longer wish to continue the appeal. If the BIA rules against you also then you may make another appeal, to the Federal Circuit Court.³³ Although the BIA is supposed to review all the evidence presented for your case independently to decide whether the immigration judge's decision is unreasonable and should be reversed, generally the BIA gives a lot of weight to the immigration judge's decision. The federal court reviews the BIA's decision to determine whether there was an "abuse of discretion" requiring reversal of the BIA's decision or remanding the case back to the BIA to be reconsidered.³⁴

On another note, if a final order of deportation has been issued, you may request a "stay of deportation" from the INS District Director, which means that the INS will allow you to remain in the U.S. for a

31. 8 U.S.C. § 1252b(c)(3)(A) (180 days).

32. See 8 U.S.C. § 1252b(f)(2) (1994).

33. Or in Washington, D.C., to the D.C. Court of Appeals.

34. "Abuse of discretion" can be defined as "any unreasonable, unconscionable and arbitrary action taken without proper consideration of facts and law. . . ." Black's Law Dictionary 10 (5th ed. 1979).

specified amount of time even though the judge has already ordered you to be deported.³⁵

5. What if my conviction was for an aggravated felony?

Convicted aggravated felons are subject to somewhat different deportation proceedings. The immigration laws require that the INS begin deportation proceedings as soon as possible after you are convicted of an aggravated felony.³⁶ In fact the INS may bring deportation charges and carry through the deportation hearing while you are still in prison. In that case, you will be deported as soon as you are released from prison.³⁷ Keep in mind that getting an order of deportation against you may not shorten your prison term. You will not be deported until you are released from your criminal imprisonment.³⁸ If you are a convicted aggravated felon, the INS may take you into custody after your prison sentence ends if they have not yet given you a deportation hearing or if you have been ordered deported.³⁹ The INS may release you on bond only if you show that:

- a) You have entered the U.S. legally *and*
- b) You are not a threat to the community if you are released on bond *and*
- c) You are likely to appear for any scheduled hearings.⁴⁰

The same conditions apply to convicted aggravated felons who seek release on bond after an order of deportation has already been issued. Remember that the lowest possible bond amount is \$500⁴¹ and you may appeal the amount to the BIA if the immigration judge's bond decision is unreasonable.

6. Do aggravated felons get a different type of hearing?

The INS has set up a system for deporting aggravated felons that avoids bringing you before the immigration court judges. This is called an "administrative deportation hearing" because you are heard

35. 8 C.F.R. § 243.4 (1995).
36. 8 U.S.C. § 1252(i) (1994).
37. 8 U.S.C. § 1252a(3)(A) (1994).
38. 8 U.S.C. § 1252a(3)(B) (1994).
39. 8 U.S.C. § 1252(a)(2)(A) (1994).
40. 8 U.S.C. § 1252(a)(2)(B) (1994).
41. 8 U.S.C. § 1252(a)(1)(B) (1994).

by an INS administrator instead of an immigration judge.⁴² You may only be given an administrative deportation hearing if you are *not* an LPR *and* you have no deportation relief — such as Adjustment of Status — available⁴³ (see section F of this Chapter — Relief from Deportation). Everyone else must see an immigration judge for a hearing. An administrative deportation hearing may take place while you are in prison. The administrator may **ONLY** rule on your deportability as an aggravated felon⁴⁴ — not on any other ground of deportability such as possession of false documentation or drug addiction. You at all times must have access to a lawyer and you must be given a fair trial.⁴⁵ The INS must not actually deport you until you have had thirty days to appeal an administrative deportation order to the federal district courts.⁴⁶ Currently, the INS is using administrative deportation only by consent of the alien. This may change at any time. The provision for administrative deportation may not be constitutional however and you may be able to challenge it on grounds of constitutional equal protection.

E. Grounds for Deportation

We have left out some categories in order to keep the list fairly clear. See 8 U.S.C. § 1251 for a full list of deportable offenses. Keep in mind that you may be deportable for acts that were not considered to be grounds for deportation at the time that you committed them, if Congress or the courts later decide that those acts should make you deportable and that the laws should apply to past behavior.⁴⁷

1. Do I have a final conviction on my criminal charges?

Remember that only some, not all, convicted criminals are subject to deportation. Also, while Congress decides what makes someone deportable, the courts actually rule on individual cases. The courts will only deport you if it is clear that Congress meant for

42. 8 U.S.C. § 1252a (1994).

43. 8 U.S.C. § 1252a(b)(2)(A), (B) (1994).

44. 8 U.S.C. § 1252a(b) (1994).

45. 8 U.S.C. § 1252a(b)(4) (1994).

46. 8 U.S.C. § 1252a(b)(3) (1994).

47. See *Harisiades v. Shaughnessy*, 342 U.S. 580, 594, 72 S. Ct. 512, 521, 96 L. Ed. 586 (1952) (*ex post facto* laws, which make an act illegal after it has already been committed, are not allowed for criminal proceedings but are allowed for civil proceedings — including immigration — although retroactivity is disfavored).

someone in your situation to be deported.⁴⁸ First, the INS must prove that you have been convicted of a deportable crime. Next, there must be a final criminal conviction entered by a judge for you to be deported for a crime you committed. There are two aspects to a "final conviction." First, the conviction is not "final" until all opportunities for direct appeal have been used or have been left unused during the period of appeal. This includes appeals of right but not necessarily discretionary appeals that courts do not have to grant, such as *habeas corpus* relief of your immigration case. Second, the following three elements must be present for you to have a "conviction" for immigration purposes:

a) You have entered a plea of "guilty" or "nolo contendere" *OR* you have been found to be guilty by a judge or jury *OR* you have admitted to facts that would lead one to believe that you have committed the crime, *AND*

b) You have been punished or somehow have had your liberty restrained because of the finding (this includes imprisonment, probation, fines, mandatory drug rehabilitation or a sentence that was ordered but then suspended) *AND*

c) A formal entry of "guilty" has been given or is ready to be given by a judge.⁴⁹

If you are serving time in prison for a crime that you committed, then you probably have a "final conviction" for deportation purposes.

Keep in mind that you may challenge even this defined standard as to what a "final conviction" means through the immigration appeals process. The government cannot deport you while you are waiting for an appeal of your deportation order.⁵⁰

2. What makes me deportable?

The following is a list of crimes and other acts that may make you deportable:

48. See *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10, 68 S. Ct. 374, 376, 92 L. Ed. 433 (1948).

49. See *Matter of Ozkok*, 19 I. & N. Dec. 546, 551-52 (B.I.A. 1988).

50. See *Martinez-Montoya v. INS*, 904 F.2d 1018, 1022 (5th Cir. 1990) (standard for "final conviction" in *Ozkok* may be inconsistent with congressional intent).

a. *Entered Without Inspection (EWI):*

You are deportable if you are EWI, that is, if you entered the U.S. without officially being inspected by government officials.⁵¹ This is the most common deportation category. Most people who are deportable for EWI leave through “voluntary departure” (see section F of this Chapter — Relief from Deportation) instead of being officially deported. This deportation relief is not available to aggravated felons.

b. *Violation of Status:*

You are deportable if you do not comply with the terms of your admission into the U.S.⁵² That is, you are deportable if you work and are not authorized to do so,⁵³ if you do not work although you were admitted solely for that purpose,⁵⁴ if you have been determined by the government officials to have illegally entered into a marriage for the purpose of obtaining immigrant status.⁵⁵

c. *Drug Abuse:*

Note that you are deportable if, at any time after entry, if it is determined that you are a drug abuser or addict. Do not volunteer to the government that you have used drugs; let them prove their case.⁵⁶

d. *Public Charge:*

Similarly, without being convicted of a crime, you are deportable if within five years of entering the U.S. you become a “public charge” for reasons that already existed at the time you entered the U.S.⁵⁷ Being a “public charge” means that you rely on any public assistance including welfare, food stamps and social security. If you are charged with deportability on this ground and the government shows that you have been a “public charge,” you may show that you became a “public charge” unexpectedly. It is up to you to prove that the

51. 8 U.S.C. § 1251(a)(1)(B) (1994).

52. 8 U.S.C. § 1251(a)(1)(C) (1994).

53. See *Olaniyan v. District Director*, 796 F.2d 373, 375 (10th Cir. 1986).

54. 8 U.S.C. § 1251(a)(1)(C)(i) (1994).

55. 8 U.S.C. § 1251(a)(1)(G) (1994).

56. 8 U.S.C. § 1251(a)(2)(B)(ii) (1994).

57. 8 U.S.C. § 1251(a)(5) (1994).

reasons why you became a “public charge” have come up since you entered the U.S. For example, that you lost your job unexpectedly or got divorced and lost income because of it. The statute requires that the reasons occur unexpectedly after you entered the U.S., because being likely to become a “public charge” is grounds for exclusion.⁵⁸

3. Criminal Grounds for Deportation:

a. *Moral Turpitude:*

You are deportable if you are convicted of a crime involving moral turpitude that you committed within five years of entry⁵⁹ into the United States AND you are sentenced to (or actually confined for) one or more years in prison.⁶⁰

You are deportable for a crime of moral turpitude after the first five years of entry only if you have been convicted of two or more unrelated crimes of moral turpitude. This is true even if you have not served any time for any of the convictions.⁶¹

The term “moral turpitude” is not defined in the immigration statute that makes it grounds for deportation. Instead, the term has been given meaning by the courts who have heard immigration cases.⁶² A basic definition of “moral turpitude” is a crime that is “morally wrong”⁶³ or “[a]nything done contrary to justice, honesty,

58. 8 U.S.C. § 1182(a)(4) (1994).

59. The requirement is 10 years if you got LPR status under 8 U.S.C. § 1255(i), Adjustment of Status. 8 U.S.C. § 1251(a)(2)(A)(i) (1994).

60. 8 U.S.C. § 1251(a)(2)(A)(i) (1994).

61. 8 U.S.C. § 1251(a)(2)(A)(ii) (1994). Unrelated crimes are crimes not arising out of a single scheme of conduct; two or more crimes tried in a single trial can be unrelated if they did not result from a single scheme of conduct.

62. The concept of “moral turpitude” is defined by courts in contexts other than immigration cases, but the way it is defined for immigration purposes may differ from the way it is defined for other purposes; see *Gonzales v. Barber*, 207 F.2d 398 (9th Cir. 1953), *aff'd*, 347 U.S. 637, 74 S. Ct. 822, 98 L. Ed. 2d 1009 (1954) (assault with deadly weapon involves “moral turpitude” for immigration purposes but not for attorney disbarment); *Matter of R*, 4 I. & N. Dec. 644, 647 (B.I.A. 1952) (unlawful disposal of narcotic drug does not involve moral turpitude in immigration since intent is not required — although it does involve moral turpitude for nonimmigration cases).

63. See *Tillinghast v. Edmead*, 31 F.2d 81, 83 (1st Cir. 1929) (theft of \$15 constitutes moral turpitude).

principle or good morals.”⁶⁴ Crimes with an element of fraud are generally found to involve “moral turpitude.” A crime is generally not found to involve “moral turpitude” unless evil intent is necessary for conviction of the crime. Occasionally, however, the courts will find the act itself was somehow morally evil.⁶⁵

Some examples of crimes involving “moral turpitude” may include: voluntary manslaughter,⁶⁶ involuntary manslaughter,⁶⁷ tax evasion,⁶⁸ possessing stolen property,⁶⁹ consensual heterosexual anal intercourse,⁷⁰ misrepresentation on federal student aid forms⁷¹ and breaking and entering.⁷²

b. Aggravated felony:

You are deportable if you have been convicted of an aggravated felony at any time after entering the United States.⁷³

Examples of “aggravated felonies” are listed in 8 U.S.C. § 1101(a)(43). These include acts or attempts or conspiracy to commit: illegal drug trafficking, illegal trafficking of firearms or other destructive devices, some other offenses related to firearms and explosive materials, any theft offense for which the term of imprisonment imposed is at least five years, some types of money laundering in

64. See *Guarneri v. Kessler*, 98 F.2d 580, 581 (5th Cir. 1938) (conspiracy to smuggle alcohol is crime of moral turpitude). Another definition appears in *Black's Law Dictionary*: “an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” *United States v. Smith*, 420 F.2d 428, 431 (5th Cir. 1970) (quoting *Black's Law Dictionary* 1160 (4th ed. 1957)).

65. See, e.g., *Velez-Lozano v. INS*, 463 F.2d 1305 (D.C. Cir. 1972) (per curiam).

66. See *Matter of Rosario*, 15 I. & N. Dec. 416 (B.I.A. 1975) (intentional killing even without malice involves “moral turpitude”).

67. See *Matter of Franklin*, Int. Dec. 3228 (B.I.A. 1994).

68. See *Tseung Chu v. Cornell*, 247 F.2d 929 (9th Cir. 1957) *cert. denied*, 355 U.S. 892 (1957); *but cf.*, *Matter of S.*, 9 I. & N. Dec. 688 (B.I.A. 1962) (no “moral turpitude” is involved in failure to file tax return in absence of fraud or evil intent).

69. See *Okoroha v. INS*, 715 F.2d 380 (8th Cir. 1983); *Wadman v. INS*, 329 F.2d 812 (9th Cir. 1964).

70. See *Velez-Lozano v. INS*, 463 F.2d 1305 (D.C. Cir. 1972) (per curiam).

71. See *Kabongo v. INS*, 837 F.2d 753 (6th Cir.), *cert. denied*, 488 U.S. 982, 109 S. Ct. 533, 102 L. Ed. 2d 564 (1988).

72. Compare *Matter of M.*, 2 I. & N. Dec. 721 (A.G. 1946) (no moral turpitude where evidence does not indicate that alien intended to permanently deny owner possession of property) with *Matter of Moore*, 13 I. & N. Dec. 711 (B.I.A. 1971) (breaking and entering with intent to commit larceny involves moral turpitude).

73. 8 U.S.C. § 1251(a)(2)(A)(iii) (1994).

excess of \$100,000, murder, and any crime of violence for which the term of imprisonment imposed is at least five years. See the statute for other examples of "aggravated felonies."

A "crime of violence" is defined as:

i) an offense that involves the use, attempted use, or threatened use of physical force against someone else or his or her property, or

ii) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.⁷⁴

c. *Controlled substances:*

You are deportable if at any time after entry into the U.S. you are convicted of any violation of any law relating to controlled substances.⁷⁵ The conviction may be for conspiracy or attempt to violate a controlled substances law (without any actual violation) and may be a conviction by any state or country.

The exception to this statute is that you are not deportable if your controlled substance conviction is a single conviction for possession of 30 grams or less of marijuana.

d. *Firearms:*

You are deportable if at any time after entry into the U.S. you are convicted under any law of buying, selling, using, owning or carrying any firearm or destructive device.⁷⁶

74. See 18 U.S.C. § 16 (1988).

75. 8 U.S.C. § 1251(a)(2)(B)(i) (1994).

76. 8 U.S.C. § 1251(a)(2)(C) (1994) prohibits "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." See *Lopez-Amaro v. INS*, 25 F.3d 986, 988 (11th Cir. 1994) (allowed retroactivity for the deportation ground of firearms and includes any crime for which use of a firearm is an element of the offense).

e. *Immigration offenses:*

You are deportable if you are convicted of an immigration offense (or conspiracy or attempt to violate an immigration law), including illegal entry into or departure from the U.S., illegal transport of another alien or any fraud in an immigration application to enter or depart from the U.S.⁷⁷

You are deportable if before entry or within five years of entering the U.S. you help another alien enter the U.S. illegally.⁷⁸ There are some exceptions for aliens who have only helped their own family members enter the U.S. illegally.⁷⁹

You are deportable if you engage in any document fraud with regard to your immigration status in violation of 8 U.S.C. § 1324c.⁸⁰ The government must only prove by a “preponderance of the evidence” — which means that it is more likely than not — that you committed the fraud. You must request a hearing if you are accused of an immigration fraud violation since the government will not give you a hearing for this automatically. You may have to pay monetary damages if you are found to be guilty of violation of the statute.

f. *National Security:*

You are deportable if you have engaged in any criminal activity which endangers public safety or national security.⁸¹ You are deportable if you have engaged in any activity to overthrow the U.S. government by force or other illegal means.⁸² You are deportable if you have ever engaged in terrorist activity.⁸³ You are deportable if the U.S. government⁸⁴ finds your presence in the U.S. to be a foreign policy risk.⁸⁵

77. The statute covers more actions than are mentioned in this paragraph. See 8 U.S.C. § 1185(a) (1994).

78. 8 U.S.C. § 1251(a)(E)(i) (1994).

79. 8 U.S.C. § 1251(a)(E)(ii) (1994). There is an exception for certain aliens who aided illegal admission of family members before 1988. Furthermore, clause (iii) allows the INS to grant you a waiver — which is not automatic — if you are a permanent resident and you aided only your spouse, parent or son or daughter to enter the U.S. illegally after 1988. 8 U.S.C. § 1251(a)(E)(iii) (1994).

80. 8 U.S.C. § 1251(a)(3)(C) (1994).

81. 8 U.S.C. § 1251(a)(4)(A)(ii) (1994).

82. 8 U.S.C. § 1251(a)(4)(A)(iii) (1994).

83. See 8 U.S.C. § 1251(a)(4)(B) (1994).

84. In this case the Secretary of State or his/her consular officers.

85. 8 U.S.C. § 1251(a)(4)(C) (1994).

g. Excludable:

You are deportable if you were excludable at the time you entered the U.S. or adjusted your status to that of a legal permanent resident.⁸⁶ Many of the exclusion grounds are similar to deportation grounds. Read through 8 U.S.C. § 1182 for a full list of exclusion grounds. Note that several of the grounds have waivers.

Note also that you are subject to exclusion grounds every time you enter the United States. There is one exception — an LPR who leaves the U.S. for a “brief, casual and innocent” trip is not subject to exclusion on re-entry since the trip is then not considered to be a “meaningful departure.”⁸⁷ After you have entered, the government can only make you leave through deportation proceedings. If you are an LPR returning to the U.S. after a “brief, casual and innocent” departure, you should make what is called a “Fleuti motion” (see 212(c) hearings in section F(6) — Relief from Deportation) and prove to the judge that your trip was only brief, casual, and innocent.⁸⁸

F. Relief from Deportation

1. Availability

We should note at the outset that these forms of relief from deportation (either postponing or avoiding deportation) are only available to some aliens convicted of crimes. Most aliens who are convicted of crimes have a difficult time obtaining relief because many of these options are discretionary, meaning that the Attorney General, immigration judge or INS officer decides whether they feel you deserve the relief. Criminal aliens are a top deportation priority, and so in all cases you will have to show special circumstances when requesting the relief.⁸⁹

86. 8 U.S.C. § 1251(a)(1)(A) (1994).

87. See *Rosenberg v. Fleuti*, 374 U.S. 449, 83 S. Ct. 1804, 10 L. Ed. 2d 1000 (1963). See also 8 U.S.C. § 1254(b)(2) (1994) (LPR's who have departed for a “brief, casual, and innocent” trip are considered to have remained in the U.S. for purposes of length of U.S. residence requirements).

88. Entry into the “United States” actually means entry into any territory or water controlled by the United States government including all of the states, Puerto Rico, Guam and the Virgin Islands of the United States. 8 U.S.C. § 1101(a)(38) (1994).

89. As an aside, the authors want to warn you that several of these remedies are extremely hard to get. That does not mean that you will not get them or that you should not try. There are some cases that will receive legal relief. Without knowing the facts of

a. *The appropriate form of relief*

There are two questions you should always ask yourself:

- i) whether this form of relief applies to people in cases like yours, and
- ii) how the remedy will help you if it is granted. Try to find the remedy that is made for cases like yours.

b. *Why you deserve relief*

No remedy will be given to you unless you can convince the judge or government official that you deserve it. You need to think of reasons why your case deserves this relief, especially if you do not have a lawyer. Some common arguments include:

- i) you have been rehabilitated;
- ii) your deportation would cause you hardship;
- iii) your deportation would cause hardship to your family in the U.S., especially U.S. citizen spouses and children; and
- iv) you have led a positive, productive life while in this country.

c. *The special case of aggravated felons*

Aggravated felons face a greater challenge in deportation or exclusion. An alien convicted of an aggravated felony cannot apply for any of the following: i) 212(c) if you served five years or more in prison for an aggravated felony conviction;⁹⁰ ii) asylum; iii) withholding of deportation; iv) suspension of deportation; v) voluntary departure. If you are subject to deportation because of an aggravated felony conviction, you should focus on subsections 6 and 10.

d. *Other aliens convicted of crimes*

Voluntary departure and suspension of deportation are also unavailable if the conviction occurred within ten years of the application of relief.

your case, the authors cannot decide which, if any, form of relief would be best for you.

90. See subsection 6, *infra*, for a discussion of 212(c) waivers.

e. *What is "good moral character?"*

One of the most important concepts for you to understand for several forms of relief is what constitutes "good moral character." There is no exact definition. 8 U.S.C. § 1101(f) does not spell out who *can* show good moral character, but it identifies those who *cannot* show good moral character. Section 1101(f) includes:

- i) if you are a habitual drunkard;
- ii) if you engage or engaged in prostitution or commercialized vice, alien smuggling, polygamy, if you are convicted of certain crimes and multiple criminal convictions,⁹¹ if the crime was committed during the time for which you are required to show good moral character;
- iii) if you make your living by illegal gambling;
- iv) if you have been convicted of two or more gambling offenses during the period for which you must show good moral character;
- v) if you gave false testimony to obtain immigration benefits;
- vi) if you were incarcerated for 180 days or more during the period for which you must establish good moral character, regardless of the offense;
- vii) if you have ever been convicted of an aggravated felony.

2. Naturalization — 8 U.S.C. § 1427

Applying to become a U.S. citizen⁹² (naturalization) is strongly advisable since it is the only way that an alien can avoid all possible future immigration consequences of criminal activity.⁹³ Congress has determined that an applicant for naturalization must show lawful permanent residence in the U.S. for a specified period of time

91. To find out if your crime fits under this definition, read 8 U.S.C. § 1182(a)(2)(A), (B), and (C) (1994). Section 1101(f) makes an exception if your conviction is for simple possession of 30 grams or less of marijuana.

92. It is possible that you may be a citizen of the U.S. without knowing it. For example, if you were born in Panama and your mother or father was a U.S. citizen at the time of your birth, you are also a U.S. citizen under 8 U.S.C. § 1403 (1994). *See generally* 8 U.S.C. §§ 1401-1441 for other provisions relating to citizenship and naturalization.

93. One benefit of citizenship is that U.S. citizens convicted of crimes will not be deported from the U.S. Citizenship can only be taken away if it has been obtained illegally by concealment of a material fact or by willful misrepresentation. 8 U.S.C. § 1451 (1994).

preceding his or her application.⁹⁴ Applicants must show “good moral character” throughout that specified period and until the date of the final naturalization proceeding, show “attachment to the principles of the Constitution,” display an ability to read, write and speak English, and demonstrate knowledge of the basic history, principles and form of government of the U.S.⁹⁵

3. Prosecutorial Discretion

Decisions that are subject to “prosecutorial discretion” are decisions that are up to the individual judgment of the Attorney General (or another official) and are not as permanent as rulings by a court. There are two forms of prosecutorial discretion: “deferred action status” and “stay of deportation.”

a. *Deferred action status*

Deferred action status means that the Attorney General might choose to place your deportation on a low priority because of compelling humanitarian reasons. The Attorney General will consider several factors, such as the likelihood that you may soon qualify for some form of relief which would prevent or delay deportation.⁹⁶ You can ask for deferred action status before your immigration hearing. Deferred action status can be permanent, but it is rarely granted to criminal aliens because they are a high deportation priority.

b. *Stay of deportation*

The second form of prosecutorial discretion is a stay of deportation, which the Attorney General may grant you while you await the outcome of a motion, such as an application for a writ of habeas corpus or a motion to reopen your case.⁹⁷ A motion for a stay of deportation can be granted by the INS (usually by the District Director), your immigration judge, or the BIA. A stay of deportation is just a way to delay your deportation, and you will probably have to

94. 8 U.S.C. § 1427(a)(1) (1994) (five years); *see also* 8 C.F.R. § 319.1 (1995) (three years when residence is based on alien’s marriage to a U.S. citizen).

95. 8 U.S.C. §§ 1423(a), 1427(a)(3) (1994).

96. *See* INS Operations Instructions, 242.1a(22).

97. No deportation order may be enforced against you while you still have time to file an appeal to the BIA, or while an appeal to the BIA is pending. 8 C.F.R. § 3.6(a) (1995).

leave the country as soon as your administrative remedies are completed.

If you think you qualify for these forms of relief, you should ask for them before or during your immigration hearing. Be ready to offer reasons why your case is deserving of prosecutorial discretion (for example, because you are still appealing your conviction, or because there is a civil war going on in your home country).

Because prosecutorial discretion can be terminated, if you think you are eligible for any of the forms of relief discussed below, it may be in your best interest to urge the court to grant you those remedies before you urge prosecutorial discretion. For example, if a judge granted you a 212(c) waiver, you could stay in the country indefinitely as a permanent resident alien unless you are placed in deportation proceedings for later convictions. Most aliens would prefer permanent resident status to the indefinite and revocable prosecutorial discretion.

4. Voluntary Departure — 8 U.S.C. §§ 1252(b) & 1254(e)(1)

Voluntary departure may be granted by the INS District Director before the beginning of immigration proceedings or after you make a request for it during immigration proceedings.

Most people would prefer this type of discretionary relief over deportation for several reasons. First, while an alien who is deported cannot re-enter the U.S. for five years, or twenty years in the case of an aggravated felon, an alien who leaves under voluntary departure may be able to re-enter at any time as long as he or she has a visa.⁹⁸ Second, you can choose which country you want to go to provided you have a valid entry document to that country. You must have enough money to purchase your plane ticket out of the U.S. At the time of the application, you must only show that you can get the money to leave the country; you need not have the money in hand.⁹⁹

There are two forms of voluntary departure: 8 U.S.C. §§ 1252(b) & 1254(e). Under § 1252(b), district directors and other local INS officials can grant voluntary departure to an alien instead of holding her over for a deportation hearing. Relief under § 1254(e), on

98. A word of caution: After voluntary departure, you may *not* be excludable under 8 U.S.C. § 1182(a)(6)(B) (1994) as an alien who has been previously removed. However, you may still be excludable under many other provisions, including for the crime you committed and served time for in the U.S.

99. *Diric v. INS*, 400 F.2d 658 (9th Cir. 1968), *cert. denied*, 394 U.S. 1015 (1969) (alien not entitled to voluntary departure when she had no money to pay for her transportation back to her country of citizenship).

the other hand, is granted during the deportation hearing by an immigration judge. This section focuses on § 1254(e) because deportable criminal aliens will almost always have deportation hearings after their incarceration.

Under § 1254(e), with several exceptions, an alien may be allowed to depart voluntarily from the U.S.: i) “at his own expense” and ii) “if such an alien shall establish . . . that he is, and has been, a person of good moral character for at least five years” immediately before the application for voluntary departure. You should note that showing good moral character for five years is a minimum requirement, but not always enough to convince the judge to give you voluntary departure.¹⁰⁰

If you are deportable for committing any of the crimes listed in 8 U.S.C. § 1251(a)(2)-(4),¹⁰¹ you must satisfy further requirements. You must show that you have at least ten years continuous physical presence¹⁰² in the U.S. before your application, and good moral character during those ten years.¹⁰³ You can look at the Order to Show Cause to find your criminal conviction as well as the deportation ground or legal charge. Under § 1254(e)(2), aggravated felons are never eligible for voluntary departure.

5. Suspension of Deportation — 8 U.S.C. § 1254(a)

This remedy is a process by which any alien can gain permanent resident status. One of two provisions will apply to your case. Section 1254(a)(1) applies to deportable aliens who are *not* deportable because of criminal offenses, falsification of documents, or security grounds. Section 1254(a)(2) applies to aliens deportable for

100. See *Hibbert v. INS*, 554 F.2d 17 (2d Cir. 1977) (five-year requirement is merely a threshold requirement, not a statute of limitations).

101. See section E, subsection 3, “criminal grounds for deportation,” *supra*.

102. A statute that requires continuous physical presence for a number of years within the U.S. simply means that you cannot have left the U.S. during that period for any significant amount of time. 8 U.S.C. § 1254(b)(2) (1994) provides that an alien whose departure from the U.S. is “brief, casual, and innocent” still maintains continuous physical presence. For example, if you cross into Mexico for an afternoon shopping trip and return the same day, this does not affect your continuous physical presence in the U.S. See *Rosenberg v. Fleuti*, 374 U.S. 449, 83 S. Ct. 1804, 10 L. Ed. 2d 1000 (1963).

103. Section 1254(e) refers you to § 1254(a)(2) for these extra requirements. Section 1254(a)(2) has several requirements but only two are important for § 1254(e) purposes: ten years of continuous physical presence and good moral character. 8 U.S.C. § 1254(a)(2), (e) (1994).

these criminal offenses, so we will focus on opportunities for relief under this section.

Section 1254(a) requires:

a) the criminal offender must have a minimum of ten years of continuous presence¹⁰⁴ in the United States immediately after committing the criminal act;¹⁰⁵ *and*

b) during this ten year period the alien must demonstrate good moral character; *and*

c) it must be shown that the deportation of the offender "would . . . result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence."¹⁰⁶

"Exceptional and extremely unusual hardship" is very restrictive. You must be able to show that deportation will bring you or your immediate family hardships substantially more severe than those faced by other deportable aliens.¹⁰⁷

6. 212(c) Waivers — 8 U.S.C. § 1182(c)

For permanent resident aliens who are subject to deportation because of a criminal conviction, the most common relief available is a 212(c) waiver. This waiver refers to section 212(c) of the INA that allows certain permanent resident aliens to apply for relief from

104. See *supra* note 102.

105. INA § 1254(a)(2). In non-criminal cases, the requirement is seven years of continuous presence. INA § 1254(a)(1). You should note that the date of commission (when you actually committed the crime), not the date of conviction, is the date that begins the statutory period.

106. The Supreme Court ruled that "spouse, parent, or child" does not include relatives who are emotionally just as close to the alien. See *INS v. Hector*, 479 U.S. 85, 90-91, 107 S. Ct. 379, 383, 93 L. Ed. 2d 326 (1986) (teenage nieces, dependent on petitioner, were not considered "family/children").

107. See, e.g., *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985) (alien not entitled to relief because "general allegations of emotional hardship caused by severing family and community ties are a common result of deportation").

deportation.¹⁰⁸ You apply for this relief at the deportation hearing and the judge will decide whether to grant it.

You are eligible for a 212(c) waiver if you are currently a permanent resident with a "lawful unrelinquished domicile" for at least seven years¹⁰⁹ at the time you file your application with the immigration judge, and were convicted of a crime listed in 8 U.S.C. § 1182(a)(2).¹¹⁰ The seven year lawful residence requirement can be very complicated. You may have "lawful unrelinquished domicile" during periods when you were not a permanent resident alien.¹¹¹ You also must know when your lawful permanent residence ended.¹¹²

There are some crimes that make you ineligible for 212(c) relief. First, a 212(c) waiver is unavailable if you were convicted of an aggravated felony *and* were in prison for five years or more.¹¹³

108. If you read the statute closely, it says that this section only applies to those who left the U.S. temporarily and now want to return to the U.S. But courts have ruled that this section also applies to permanent resident aliens who have *never* left the U.S. and are in deportation proceedings. *See Francis v. INS*, 532 F.2d 268 (2d Cir. 1976); *Matter of Silva*, 16 I. & N. Dec. 26 (B.I.A. 1976).

109. One important exception is *Matter of Rosario*, 962 F.2d 220 (2d Cir. 1992) (minor alien's "domicile" in U.S. can be established through parent if minor had significant relationship with parent during time in question). If your parent or parents came to the U.S. without you when you were under 18, and you maintained a close relationship with them while you were separated, you may be able to tack on their years of residence to meet the seven year requirement.

110. These crimes are: i) crimes of moral turpitude; ii) a violation of or conspiracy to violate any controlled substance law; iii) two or more crimes of any kind for which you were sentenced to a total of five years or more; iv) controlled substance trafficking; v) prostitution or other commercialized vices. 8 U.S.C. § 1182(a)(2) (1994).

111. *See Lok v. INS*, 548 F.2d 37 (2d Cir. 1977). For example, parolees and refugees under 8 U.S.C. §§ 1157-1158 (1994), or aliens with temporary resident status under IRCA legalization programs. The BIA and the Fourth and Ninth Circuits agree that you can only be a lawful domiciliary after you obtain lawful permanent residence. *See Chiravacharadhikul v. INS*, 645 F.2d 248 (4th Cir.), *cert. denied*, 454 U.S. 893 (1981); *Castillo-Felix v. INS*, 601 F.2d 459 (9th Cir. 1979). The Third, Fifth and Eleventh Circuits have not adopted either position.

112. Lawful permanent residence ends at different times depending on the circuit. Some possibilities are: i) when the order to show cause is issued; ii) when there is an administratively final deportation order; and iii) when judicial review is final. A bill pending in Congress may require the courts to follow (i). S.269, 104th Cong., 1st Sess. (1995). An important point is to remember to ask for 212(c) relief before you receive a final deportation order. At that time, most circuits will consider you to no longer be a permanent resident and thus not eligible for 212(c) relief.

113. *Matter of A-A-*, Int. Dec. 3176 (B.I.A. 1992). To be ineligible for 212(c) relief, you must have actually served five years or more at the time of the deportation hearing. *Id.* In *Matter of Remarries-Samaria*, Int. Dec. 3185 (B.I.A. 1992), the INS started deportation proceedings against the aliens before he had served 5 years of a 15-year

Second, firearms violations¹¹⁴ and entry without inspection (for example, crossing the border illegally) are not covered by a 212(c) waiver of deportation. However, adjustment of status (see subsection 10 of this section) would enable you to avoid deportation on these grounds. Some crimes make your request for 212(c) relief very difficult, even though you are technically eligible. Your chances of relief are slim if you were convicted of a serious crime, especially one involving narcotics.

The judge must take all favorable factors about your case into account. *Matter of Marin*¹¹⁵ lists some of these factors: i) family ties within the U.S.; ii) long term residence, especially if you came here at a young age; iii) evidence of hardship to you or your family; iv) service in the U.S. Armed Forces; v) a history of employment;¹¹⁶ vi) property or business ties; vi) value or service to the community; and vii) genuine rehabilitation for your crime.¹¹⁷ Do not rely on the INS to bring these factors to the attention of the judge. You should give the judge any records or information about your time in prison that show a good record, as well as statements from your parole officer, social worker, counsellor or any other person within law enforcement who will speak well of you. If possible, you should urge family members, priests or other religious figures, responsible members of the community, and former employers to testify on your behalf.

If the immigration judge denies your request for 212(c) relief, you can appeal that decision to the BIA.

sentence. The BIA ruled that if the INS starts a deportation hearing against you before you have served five years, *regardless of how long you are scheduled to be incarcerated*, you are eligible for 212(c) relief. *Id.*

114. "Firearm" is defined at 18 U.S.C. § 921(a)(3) (1994). Several cases hold that aliens convicted of firearms offenses are not eligible for 212(c) relief. *See, e.g.,* Campos v. INS, 961 F.2d 309 (1st Cir. 1992); Cabasug v. INS, 847 F.2d 1321 (9th Cir. 1988).

115. 16 I & N Dec. 581, 584-85 (B.I.A. 1978).

116. You want to show a history of employment, even if the employment is "off the books."

117. Insisting during the deportation hearing that you are not guilty of the crime that makes you deportable may suggest to the judge that you are not rehabilitated. *See* Gonzalez v. INS, 996 F.2d 804 (6th Cir. 1993). An immigration judge cannot review your guilt or innocence during a deportation hearing. *Matter of Roberts*, Int. Dec. 3148 (B.I.A. 1991). It is strongly advisable that you focus on other factors that *can* make a difference and show an acceptance of responsibility for your actions and some acknowledgement of wrongdoing.

7. 212(h) Waivers — 8 U.S.C. § 1182(h)

You are eligible for this discretionary waiver if:

a) the crime occurred more than 15 years before you apply for relief, *and* you can show you are rehabilitated and cannot hurt the national welfare or security; *OR*

b) you are the spouse, parent or child of a U.S. citizen or permanent resident *and* your deportation would result in extreme hardship to that person or persons.

You are not eligible if your conviction was for murder, torture, or any drug offense other than a single offense of simple possession of 30 grams or less of marijuana.¹¹⁸ Aliens excludable under the drug trafficking provision, 8 U.S.C. § 1182(a)(2)(C) are also not eligible for 212(h) waivers.

The same kinds of information and documents, and the same considerations that are important in the 212(c) waiver application are also important for 212(h).

8. Political Asylum — 8 U.S.C. §1158

If you have not been convicted of an aggravated felony or a particularly serious crime constituting a danger to the community, you may be granted asylum provided that you qualify as a “refugee.” A refugee is defined in 8 U.S.C. § 1101(a)(42) as a person who has “a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion” if they returned to their home country, or, in the case of those without nationality, to their place of last residence. You should realize that bad economic conditions or instability in your home country are not enough to make you a refugee under U.S. law. You should be able to show that you will be singled out for persecution or that you are part of a group singled out for persecution (for example, if you would be imprisoned for speaking against the government at a political rally). This waiver is discretionary: The immigration judge will compare the harm to you if you were deported (as well as the positive factors in your remaining in the U.S.) with the seriousness of your criminal history.

118. 8 U.S.C. § 1182(h) (1994).

There are several requirements you must meet in order to qualify for asylum. First, you must be “physically present in the United States,” which means you can apply for asylum at your exclusion or deportation hearing. Second, you must be a refugee as described above.

Asylum and immigration officers will deny political asylum to those who were convicted of a “particularly serious crime.”¹¹⁹ Aggravated felons are not eligible for asylum. You should note that this statute (8 U.S.C. § 1101) does *not* require you to show good moral character.

A request for asylum results in temporary residence and employment authorization; it does not guarantee that you can remain permanently in the U.S. Following the grant of asylum, the alien is admitted as a refugee for one year. After one year, if the alien's admission has not been terminated by the Attorney General, he or she must report to the INS for inspection. After inspection and a hearing in front of an immigration judge, the alien may be admitted as a lawful permanent resident.

9. Withholding of Deportation — 8 U.S.C. § 1253(h)

The effects and purpose of this type of relief are similar to political asylum. However, withholding of deportation may be only temporary and for so long as your life or freedom is threatened in the country to which you will be deported. Although this is called “discretionary relief,” the Attorney General *must* withhold your deportation if you meet all the requirements.¹²⁰ This is different from the granting of asylum, which *is* discretionary.

To get relief under this section, you must show by a “clear probability”¹²¹ that your “life or freedom would be threatened in [the country to which you will be returned or deported] on account of race, religion, nationality, membership in a particular group, or political opinion.” These standards can be very difficult to prove for most aliens.

119. 8 C.F.R. § 208.14(d)(1) (1995).

120. *See, e.g.,* Doherty v. INS, 908 F.2d 1108 (2d Cir. 1990), *rev'd on other grounds*, 498 U.S. 1081, 111 S. Ct. 950, 112 L. Ed. 2d 1039 (1991); Duran v. INS, 756 F.2d 1338 (9th Cir. 1985).

121. “Clear probability” is defined as “more likely than not” that the alien will be subject to persecution. *See* INS v. Stevic, 467 U.S. 407, 424, 104 S. Ct. 2489, 2497, 81 L. Ed. 2d 321 (1984).

You are *not* eligible to apply for withholding of deportation if:

- a) you participated in persecution;
- b) you were convicted of a particularly serious crime;
- c) there are serious reasons to believe you committed a serious nonpolitical crime before you arrived in the U.S.;
- d) there are reasonable grounds to believe you are a security risk.¹²² Aggravated felons are always considered to have committed a particularly serious crime.¹²³

10. Adjustment of Status — 8 U.S.C. § 1255

If you are not eligible for 212(c) relief, you may be eligible for adjustment of status if you meet the requirements of this section.¹²⁴

The statute provides that the status of an alien who was “inspected and admitted or paroled into the United States” may be adjusted to “an alien lawfully admitted for permanent residence” at the discretion of the Attorney General.¹²⁵ There are three requirements for this kind of relief: i) you must make an application for adjustment; ii) you must be eligible to receive an immigrant visa and be “admissible to the United States for permanent residence”; and iii) an immigrant visa must be immediately available. An alien in deportation proceedings can apply for adjustment of status even if she is already a lawful permanent resident.¹²⁶

This section provides relief for aliens convicted of firearms offenses who are deportable under 8 U.S.C. § 1251(a)(2)(C).¹²⁷ New regulations allow you to apply for adjustment of status under 1255(a) at the same time you apply for 212(c).¹²⁸ Thus, if you are deportable because of a firearms conviction *and* some other grounds that make you eligible for relief under 212(c), you can apply for both forms of relief at your deportation hearing. Under such circumstances, the INS

122. 8 U.S.C. § 1253(h)(2)(D) (1994).

123. 8 U.S.C. § 1253(h)(2) (1994).

124. Remember from the discussion of 212(c) relief that if you were convicted of a firearms offense, 212(c) relief is not available.

125. If you were not inspected, you need to pay an additional fee of \$650 which is not waivable.

126. See *Tibke v. INS*, 335 F.2d 42 (2d Cir. 1964); *Matter of Parodi*, 17 I & N Dec. 608, 611 (B.I.A. 1980).

127. *Matter of Rainford*, Int. Dec. 3191 (B.I.A. 1992) (Rainford still admissible to U.S. because his firearms offense made him deportable but not excludable).

128. 8 C.F.R. § 241.1(e) (1993). See *Matter of Gabryelsky*, Int. Dec. 3213 (B.I.A. 1993). See subsection 6 of this section for a discussion of 212(c).

cannot prevent you from receiving 212(c) waivers merely by adding your weapons charge as a reason for your deportation.

It may not be possible to “bootstrap” your eligibility for 212(c) based on a successful application for 1255(a). That is, you may not be able to qualify for adjustment of status to “lawful permanent resident alien” via 1255(a), and then use your lawful status to qualify for 212(c) relief.

G. Legal Remedies

There are several ways of avoiding deportation that were not explained above. These are remedies that you have in the court system that are separate from the INS and deportation proceedings. In fact, you may be familiar with these forms of relief if you appealed your conviction. You *must* seek these forms of relief before a final order of deportation. We advise you to read closely the JLM Chapters on habeas corpus (Chapter 10 and 11), appealing your conviction (Chapter 8), and New York Article 440 (Chapter 9), for a full discussion of these procedures.

If a court overturns your conviction, the INS cannot use the conviction against you as a ground for deportation. This section tries to show some particular immigration consequences that may arise when a court vacates (that is, throws out) your conviction (or takes other action that affects your immigration status).¹²⁹

1. Motion to Withdraw a Plea of Guilty

If you pleaded guilty or *nolo contendere* to the criminal charges, you may ask the court to withdraw that plea (if you pleaded innocent and were tried and convicted, this does not apply to you). If a motion to withdraw a plea of guilty is granted, your conviction, in most cases, may not be used to sustain a finding of deportability against you in INS proceedings.¹³⁰

129. Some types of court remedies do not vacate the judgment against you; they may only decrease your sentence or simply not let your conviction be a factor in your deportation proceedings. These lesser forms of relief are still useful as they may prevent harmful immigration status changes. This distinction is important and is pointed out when necessary.

130. *Matter of Kaneda*, 16 I. & N. Dec. 677, 679-680 (B.I.A. 1979); *Matter of Sirhan*, 13 I. & N. Dec. 592 (B.I.A. 1970). *See also* *Matter of Carrillo*, 19 I. & N. Dec. 77, 78 (1984). The court order vacating your guilty plea, however, *must* occur prior to a deportation order. *Ramirez-Juarez v. INS*, 633 F.2d 174 (9th Cir. 1980).

In order to convince a judge that he or she should withdraw your guilty plea, you must show that your plea was made i) involuntarily; or ii) without knowledge; or iii) that your defense counsel was so bad that you were denied effective representation by an attorney at your plea hearing.

Involuntary plea. Your plea was “involuntary” if the trial court judge failed to advise you of certain consequences of your plea as required by law (for example, in some state courts, the judge is required to tell you that a finding of guilty will result in deportation) or failed to make sure you understood the nature of the charge against you, as required by law. You might want to look through the record of your trial to see if the judge told you everything listed below.

a. *Federal Court*

If your plea took place in federal court, the judge was required to follow Federal Rules of Criminal Procedure 11 and 32(d). You can read Rule 11 for all the requirements. Rule 11 requires, among other things, that the judge provided you with an understanding of the charges and the consequences of your plea,¹³¹ and that the judge listed the maximum sentence which could be imposed.

The judge need not have told you any immigration consequences of your pleading guilty.¹³² Also, even if the judge did not follow all the requirements of Rule 11, your plea will not automatically be considered involuntary. In order to be considered involuntary, the judge’s error must be more than “harmless error.”¹³³ In other words, the judge’s error must have caused you significant harm. For example, a court may decide that your plea was not voluntary because you did not understand English, and so did not understand when the judge explained your plea to you.¹³⁴

b. *State Court*

If your plea took place in state court, you must research the law of that state to determine what the judge was required to tell you and ask you in regard to your plea. For example, California,

131. Santobello v. New York, 404 U.S. 257, 261 (1971).

132. See, e.g., United States v. Sambro, 454 F.2d 918, 920 (D.C. Cir. 1971); Michael v. United States, 507 F.2d 461 (2d Cir. 1974).

133. See Fed. R. Crim. Proc. 32(d).

134. See United States v. Aleman, 417 F. Supp. 117, 119-20 (S.D. Tex. 1976).

Connecticut, Massachusetts, Montana, North Carolina, Ohio, Oregon, Texas and Washington have passed laws that require the trial court judge to inform you of the potential immigration consequences of a conviction *before* accepting your guilty plea.¹³⁵ These laws may not guarantee that your guilty plea will be deemed involuntary, but they are a strong argument in favor of it.

Lack of effective counsel. You have a constitutional right under the Sixth Amendment to be represented by a reasonably competent lawyer at your plea hearing.¹³⁶ The U.S. Supreme Court has set out a two-part test for courts to use to determine whether a defendant has effective counsel.¹³⁷ In order for you to prove that your counsel was ineffective, you must show that:

- i) considering all the circumstances, the assistance provided to you “fell below an objective standard of reasonableness;” and
- ii) you were harmed as a result of your counsel’s performance.¹³⁸

Most federal courts have held that your attorney’s failure to warn you of the immigration consequences of your guilty plea is *not* grounds by itself for a successful “ineffective counsel” claim.¹³⁹ Some state courts, interpreting their own state constitutions, however, have held that such a failure is a violation of your right to counsel.¹⁴⁰ If defense counsel misinformed you that if you pled guilty you could not be deported, you probably have a good claim of ineffective assistance of

135. Cal. Penal Code § 1016.5; Or. Rev. Stat. § 135.385(d); Mass. Gen. Laws Ann. ch. 278, § 29D; Conn. Gen. Stat. Ann. § 54-1j; Wash Rev. Code § 10.40.200; Tex. Code. Crim. Proc. art. 26.13; Rev. Code of Ohio § 2943.031; N.C. Gen. Stat. § 15A-1022(a).

136. *McMann v. Richardson*, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449, 25 L. Ed. 2d 763 (1970).

137. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

138. *See Dyer v. Crisp*, 613 F.2d 275 (10th Cir.), *cert. denied*, 445 U.S. 945, 100 S. Ct. 1342 (1980); *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 303 (1985).

139. *See, e.g., United States v. Gavilan*, 761 F.2d 226 (5th Cir. 1985); *United States v. Campbell*, 778 F.2d 764 (11th Cir. 1985).

140. *See, e.g., People v. Wiedersperg*, 44 Cal. App. 3d 550, 118 Cal. Rptr. 755 (1975). *But see, Florida v. Ginebra*, 511 So.2d 960 (Fla. 1987) (collateral relief not available on basis that counsel failed to advise inmate that he would be subject to deportation proceedings as a result of guilty plea).

counsel or that your plea was involuntary.¹⁴¹ You must research the law in your state to determine whether you have a potential claim.

2. Statutory Attacks on Your Trial Conviction or Sentence

If you pleaded innocent and were subsequently convicted and sentenced, you can attack your conviction or sentence by appealing the judgment to a higher court¹⁴² or, if you have exhausted your appeals, by using another post-conviction remedy. If you think your conviction or sentence violates federal law or the U.S. Constitution, you may file a petition for federal habeas corpus in federal court.¹⁴³ If your conviction is vacated as a result of your habeas petition, the conviction cannot be used against you in deportation proceedings.¹⁴⁴ If you are a state prisoner, and you think your conviction violates your rights under state law,¹⁴⁵ you should use that state's primary post-conviction remedy to attack your conviction.

The fact that you petitioned for some form of post-conviction relief will not protect you from the immigration consequences of your conviction. Only when the relief you seek *is granted* will you receive any immigration benefits.

3. Common-law Writs

Common-law writs are a type of court order that courts have developed and used over the years to prevent or remedy injustices. Writs are frequently used when a court cannot find a statute that fits the particular situation at hand and answers the problem to the satisfaction of the court. The writ of habeas corpus, discussed in Chapters 10 and 11 of this manual, is the most famous writ. Two other writs merit discussion.

141. See, e.g., *People v. Correa*, 485 N.E.2d 307 (Ill. 1985).

142. Chapters 8 and 9 of this manual discuss how to appeal or attack your conviction or sentence.

143. Chapter 10 of this manual discusses federal habeas corpus, which is available to both federal and state prisoners. Federal prisoners generally apply for habeas corpus using 28 U.S.C. § 2255. State prisoners generally apply for habeas corpus using 28 U.S.C. § 2254.

144. *United States ex rel. Freislinger on Behalf of Kappel v. Smith*, 41 F.2d 707 (7th Cir. 1930).

145. You will have to research your state's laws to find out exactly what your rights are under state law. Chapter 2 of this manual, which explains how to do legal research, may be useful.

a. *Coram Nobis*

This writ is described in depth in Chapter 9 of this manual (New York Article 440), but there are a few immigration-related points to consider. This type of relief is “designed to bring before the court matters of fact unknown at the time of conviction, which, had they been known, would have prevented the rendering of the judgment.”¹⁴⁶ A petitioner for coram nobis relief must show that i) a factual matter was unknown to the court at the time of judgment; and ii) the lack of knowledge was not defendant’s fault; and iii) this knowledge would have prevented the judge from making this judgment.¹⁴⁷ Coram nobis relief may be available in cases where the defendant did not understand the proceedings because of a language barrier or inadequate translations.¹⁴⁸ If the court grants your petition, your conviction will be voided and generally will not be allowed to be used against you in deportation proceedings.¹⁴⁹

b. *Audita Querela*

Unlike most post-conviction remedies, this writ does not focus on the legality of the conviction against you. Rather, it seeks to protect you from unjust or unfair consequences that stem from valid convictions. You may petition for this writ only in extraordinary circumstances, where no other avenues of judicial post-conviction relief are available. This writ is likely to be granted only when you have been lawfully convicted but some set of facts or circumstances persuade the court that it would be unfair for you to suffer the consequences of your conviction. For example, in *Salgado v. United States*,¹⁵⁰ the court issued the writ to a defendant who, as a result of a 20-year old marijuana conviction, was about to lose lawful resident status. The court in *Salgado* pointed out that the consequences of the conviction were unknowable before the judgment. However, in several cases, the

146. *United States v. Morgan*, 346 U.S. 502, 507, 74 S. Ct. 247, 250, 98 L. Ed. 248 (1954). *See also* Dan Kesselbrenner, *Immigration Law and Crimes* § 4.2(b)(1), at 4-24 (1995).

147. *See Matter of Sirhan* 131 I. & N. Dec. 592, 597 (B.I.A. 1970), *People v. Wiedersperg*, 44 Cal. App. 3d 550, 118 Cal. Rptr. 755 (1975).

148. *See United States v. Aleman*, 417 F. Supp. 117 (S.D. Tex. 1976). *But see United States v. Timmreck*, 441 U.S. 780, 99 S. Ct. 2085, 60 L. Ed. 2d 634 (1979).

149. *See, e.g., Matter of Sirhan*, 13 I. & N. 593 (B.I.A. 1970).

150. 692 F. Supp. 1265 (E.D. Wash. 1988).

court denied the writ because of lack of jurisdiction — essentially denying that the writ is even a valid form of relief.¹⁵¹

4. State Expungement Laws

If you have been convicted of a crime by a state court, there may be ways under that state's law to expunge your conviction. If you have a criminal lawyer, she should know about expungement, even if she is not familiar with immigration law. Generally, "expunge" means something like "void" or "set aside." Like *audita querela*, this writ does not focus on the legality of the conviction against you, but seeks to protect you from unjust or unfair consequences that stem from valid convictions.

If your conviction is expunged under state law, your conviction should not be used against you in deportation proceedings *unless the conviction was for a controlled substance crime*.¹⁵² An expunged conviction for a drug crime can also make you excludable if you ever try to re-enter the country.¹⁵³ However, the expungement of a controlled substances conviction could be considered favorably by the immigration judge when he or she is considering other forms of discretionary relief available to you.

Be sure to check if your state's expungement laws have changed recently. Also remember that even though state expungement laws might erase your conviction, it does not erase the underlying facts of the offense. For example, an expunged drug conviction might not subject you to deportation, but you may still be subject to exclusion on drug trafficking grounds, which do not require a formal conviction.¹⁵⁴

151. See *United States v. Ayala*, 894 F.2d 425 (D.C. Cir. 1990) (defendant could not rely on writ because he could attack his conviction collaterally); *United States v. Johnson*, 962 F.2d 579 (7th Cir. 1992) (writ does not provide equitable relief from valid criminal conviction).

152. *Matter of Ozkok*, 19 I. & N. Dec. 546 (B.I.A. 1988); *Matter of Tinajero*, 7 I & N 424 (B.I.A. 1988). *But see*, *Rehman v. INS*, 544 F.2d 71 (2d Cir. 1976) (a conviction for a controlled substance violation that was expunged could *not* be used against the alien in INS proceedings).

153. See *Castano v. INS*, 956 F.2d 236 (11th Cir. 1992) (INS could exclude alien seeking admission to U.S. because the INS knows or has reason to believe that he trafficked in illegal drugs by reference to the prior expunged conviction).

154. See 8 U.S.C. § 1182(a)(2)(C) (1994).

Appendix A — Conversion Chart

<i>INA § 8 U.S.C. §</i>		
1011101	2581288	3281439
1021102	2611301	3291440
1031103	2621302	329A1440-1
1041104	2631303	3301441
1051105	2641304	3311442
1061105a	2651305	3321443
2011151	2661306	3331444
2021152	2711321	3341445
2031153	2721322	3351446
2041154	2731323	3361447
2051155	2741324	3371448
2061156	274A1324a	3381449
2071157	274B1324b	3391450
2081158	2751325	3401451
2091159	2761326	3411452
2101160	2771327	3421453
2111181	2781328	3431454
2121182	2791329	3441455
2131183	2801330	3461457
2141184	2811351	3471458
2151185	2821352	3491481
2161186a	2831353	3511483
216A1186b	2841354	3561488
2171187	2851355	3571489
2181188	2861356	3581501
2211201	2871357	3591502
2221202	2881358	3601503
2231203	2891359	4111521
2241204	2901360	4121522
2311221	2911361	4131523
2321222	2921362	
2341224	2931363	
2351225	3011401	
2361226	3021402	
2371227	3031403	
2381228	3041404	
2391229	3051405	
2401230	3061406	
2411251	3071407	
2421252	3081408	
242A1252a	3091409	
2431253	3101421	
2441254	3111422	
244A1254a	3121423	
2451255	3131424	
245A1255a	3141425	
2461256	3151426	
2471247	3161427	
2481258	3171428	
2491259	3181429	
2501260	3191430	
2511281	3201431	
2521282	3211432	
2531283	3221433	
2541284	3241435	
2551285	3251436	
2561286	3261437	
2571287	3271438	

Appendix B

DOCUMENTS TO GET FOR YOUR IMMIGRATION HEARING:

1. Your greencard and the greencards of family members.
2. U.S. Passport of citizen family members.
3. Birth certificates of U.S. born family members.
4. Letter from your parole officer, preferably notarized, addressed to the "Immigration Judge," stating how long (s)he has been your parole officer and how you have complied with parole conditions.
5. Letters from your employers, preferably notarized, addressed to the "Immigration Judge," starting with words "I, [name], being duly sworn, hereby depose and say . . ." describing you as a worker and how long you worked there.
6. Letters from friends and family members who cannot testify in court, preferably notarized, starting with words "I, [name], being duly sworn, hereby depose and say" describing their relationship to you, what support you have provided them, whether and how they have seen you being rehabilitated and what hardship they'll suffer if you were deported.
7. Copies of federal and state tax returns or pay stubs.
8. Certificates of attendance at schools and other programs.
9. Certificates of programs completed in prison.
10. Certificate or letter describing any volunteer community work you have done.
11. Letter from your Church, religious organization or community group, addressed to the "Immigration Judge," starting with words, "I, [name], being duly sworn, hereby depose and say, . . ." describing how you are as a person and your activities in the organization.

12. Doctor's letter describing any serious medical condition of yourself or family members, describing the medical problem and which activities would be limited because of the health problem.

***** Remember you need to show rehabilitation for your crimes and hardship that would result to your family if you were deported.**

***** Think about witnesses who could testify about their relationship with you, how they feel you have been "rehabilitated," what support you have provided them and what hardship they would suffer if you were deported.**

***** Statements that cannot be notarized should not begin with the language given above, but should end as follows: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."**

***** All letters should include the date and the signature of the author and should be typed if possible.**

Appendix C

LEGAL AID ORGANIZATIONS OFFERING FREE LEGAL SERVICES IN NEW YORK (ASK YOUR DEPORTATION OFFICER FOR A LIST OF FREE LEGAL SERVICES IN YOUR AREA)

Comite Nuestra Senora de Loreto (Committee of the Lady of Loreto) 856 Pacific Street Brooklyn, NY 11238 (718) 783-4501, Father Robert Vitaglione	Languages: Spanish, Italian Representation: Deportation, Exclusion Representation.
The Legal Aid Society, Immigration Law Unit 166 Montague Street Brooklyn, NY 11201 (718) 722-3100, Manuel Vargas	Languages: Spanish, Creole, French, Chinese, Russian, Italian Representation: Deportation, Exclusion; especially LPR's.
The Legal Aid Society 11 Park Place New York, NY 10007 (212) 233-2639	Languages: Spanish, French, Creole, others by appointment.
Brooklyn Legal Services Corp. (Williamsburg Office) 260 Broadway Brooklyn, NY 11211 (718) 782-6195	Languages: Spanish, Portugese Representation: Asylum, LPR's.
Caribbean Women's Health Association 2275 Church Avenue Brooklyn, NY 11226 (718) 862-2942	Languages: Creole, French, Spanish.
Traveler's Aid Services 74-09 37th Avenue, Suite 412 Jackson Heights, NY 11372 (718) 899-1233	Languages: "All Major" Representation: Deportation and Exclusion.

Appendix D

1. PRIMARY SOURCE MATERIALS

Immigration and Nationality Laws of the United States (1995)
Selected Statutes, Regulations and Forms
T. Alexander Aleinikoff, David A. Martin and Hiroshi Motomura
One Volume
West Publishing Company
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-328-9352

2. GENERAL IMMIGRATION LAW: TREATISES AND OTHER SOURCES

Self-Representation in Deportation Proceedings for Aliens With
Criminal Convictions (1992)
Greater Boston Legal Services
68 Essex Street
Boston, MA 02111
617-357-5757

Kurzban's Immigration Law Sourcebook (1994, 4th ed.)
Ira J. Kurzban; American Immigration Law Foundation
1400 Eye Street, N.W., Suite 1200
Washington, DC 20005
202-371-9377

Immigration Law and Procedure (1988, revised edition)
C. Gordon and S. Mailman; Looseleaf, updated with supplements and
revisions
11 Volumes (with 3 months of supplements):
Matthew Bender and Co., Inc.
1275 Broadway
Albany, NY 12201
1-800-833-9844

Immigration Law and Procedure in a Nutshell (1992)
David Weissbrodt; One Volume (345 pp.): \$18
West Publishing Co.
P.O. Box 65426
St. Paul, MN 55164
1-800-328-9352

The Rights of Aliens and Refugees: The Basic ACLU Guide to Alien and Refugee Rights (1990, 2d ed.); David Carliner, Lucas Guttentag, Arthur C. Helton and Wade J. Henderson
One Volume (240 pp.)
Public Education Department; ACLU
132 West 43d Street
New York, NY 10036

3. CRIMES AND DEFENSE

Immigration Law and Defense
National Lawyer's Guild. National Immigration Project
Looseleaf, updated with supplements (two per year)
2 Volumes: \$185.00
Clark Boardman Company, Ltd.
375 Hudson Street
New York, NY 10014

In Defense of the Alien (Vol. 13, 1991)
Lydio F. Tamasi, Editor
Vols. 3, 8 & 9, 10 & 11 available; Price Per Volume: \$14.95
Center for Migration Studies
209 Flagg Place
Staten Island, NY 10304
718-351-8800

Immigration Law and Crimes
Dan Kesselbrenner and Lory D. Rosenberg, National Lawyer's Guild
One Volume, loose-leaf, with updates
Clark Boardman
375 Hudson Street
New York, NY 10014

Immigration Litigation Workshops Training Materials (1990)**Richard A. Boswell and Richard Prinz, Editors****Contains a partially-fictitious case transcript, supporting documents, relevant statutes, regulations, and excerpts from trial skill annuals on direct and cross examination and witness control.****One Volume (74 pp.): \$18.75****American Immigration Lawyers Association****1400 Eye Street, N.W., Suite 1200****Washington, DC 20005****202-371-9377**