

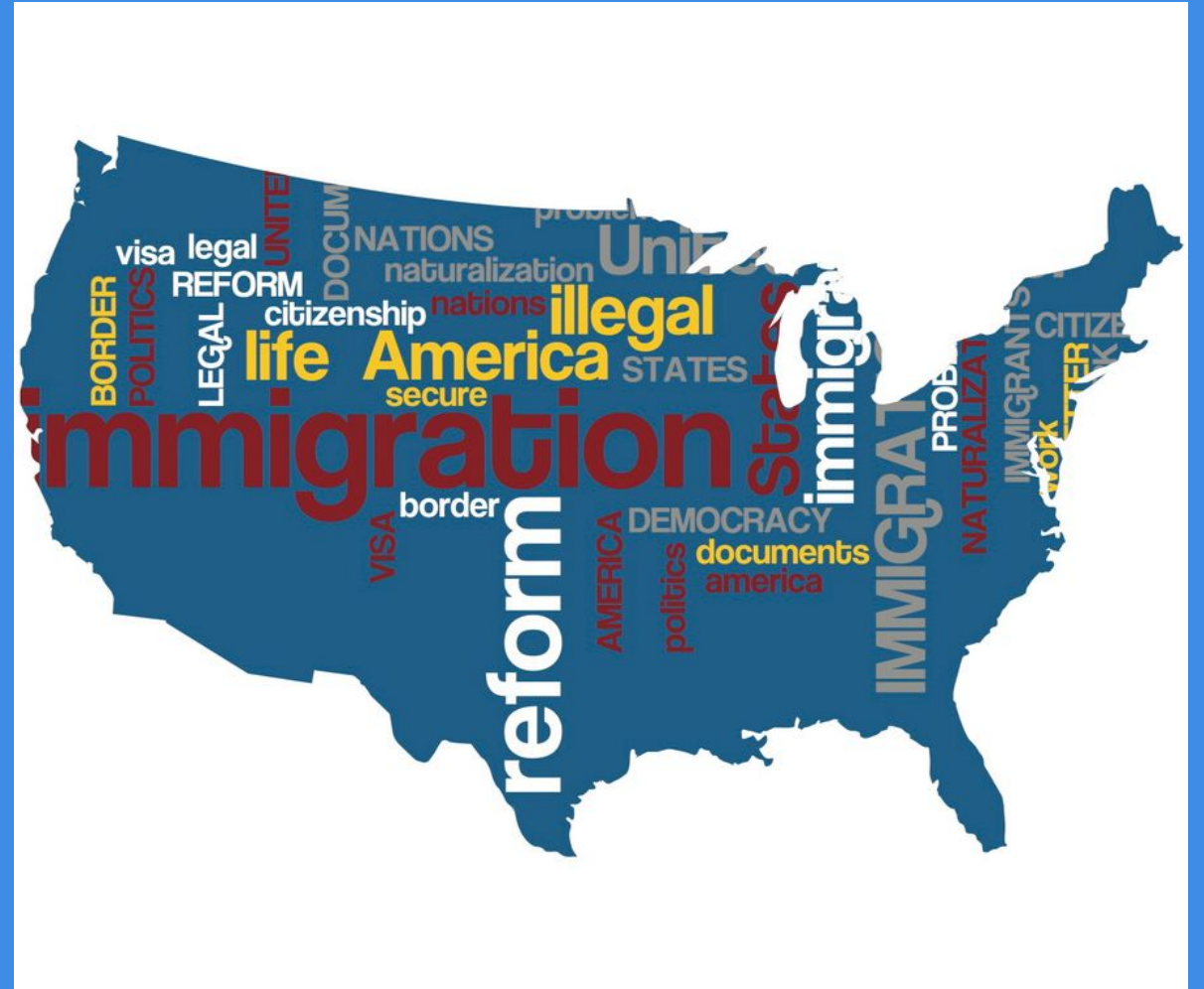


REPRESENTING NON-CITIZEN CLIENTS WITH CRIMINAL CHARGES

Marco T. Torres
Torres Law Firm, PA

Topics to Be Discussed

- I. Overview
- II. Deportation and Inadmissibility
- III. Detention and Bonds
- IV. Overall Strategies for Defense Counsel



Overview: Intersection of Criminal Law and Immigration Law



Immigration Status of Client

- **Lawful Permanent Resident**

- “Green Card” Holders

- **Non-immigrant Visa**

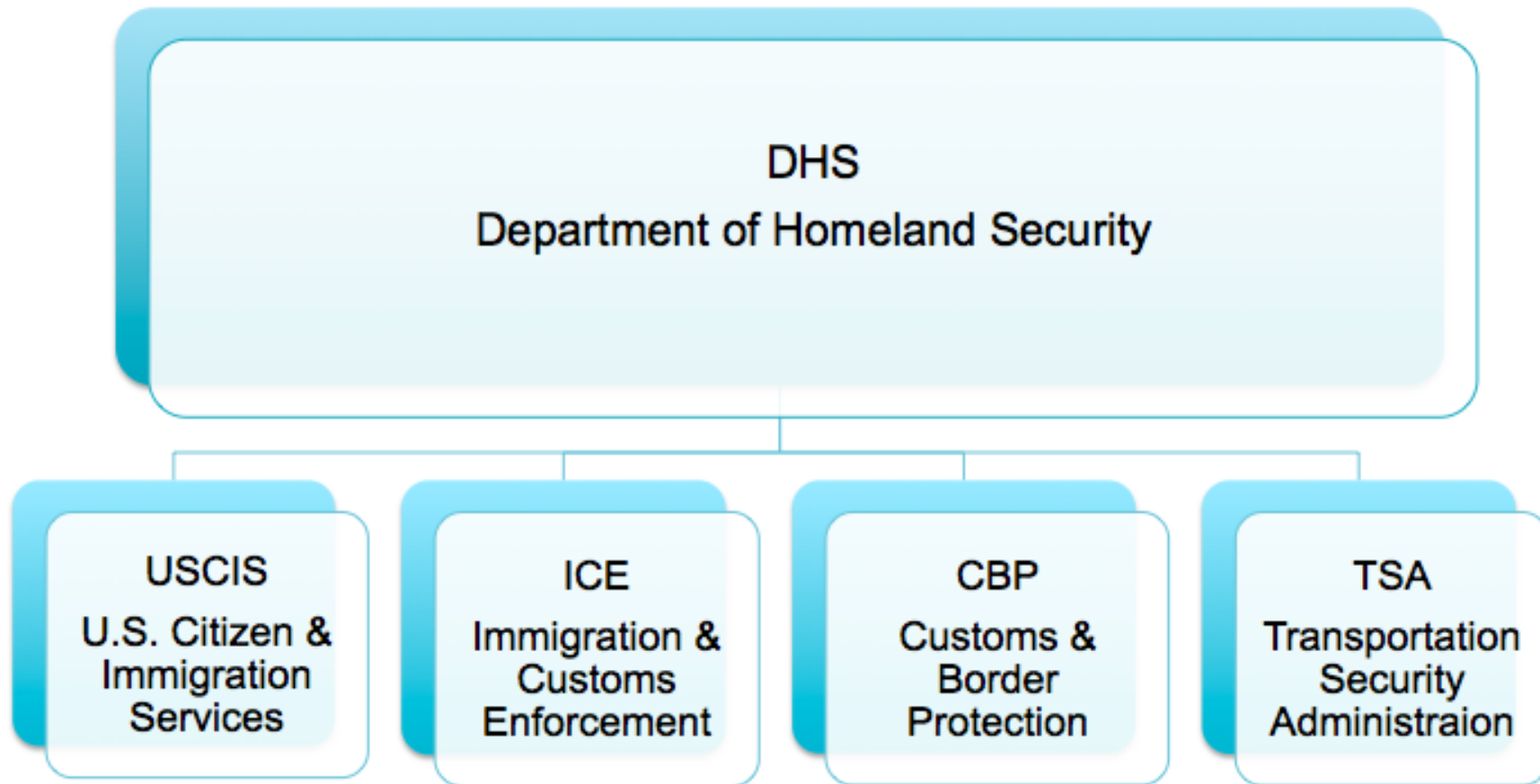
- H-1B Professionals
 - Students
 - Intra-Company Transferees
 - Doctors
 - Business and Tourist Visitors

- **Other Status**

- DACA
 - Deferred Action
 - TPS
 - Asylum

- **Undocumented Alien**

AGENCIES INVOLVED



Statutes and Regulations



Relevant Statutes, Regulations, and Laws

Immigration and Nationality Act

The Immigration and Nationality Act, or INA, was created in 1952. Before the INA, a variety of statutes governed immigration law but were not organized in one location. The INA collected and codified many existing provisions and reorganized the structure of immigration law

U.S. Code

Although the INA stands alone as a body of law, the Act is also contained in the United States Code (U.S.C.). The code, as you know, is a collection of all the laws of the United States.

Federal and State Criminal Statutes

A state and/or federal plea and conviction, even an admission to a crime without a conviction in many cases, may affect a noncitizen in many ways in the immigration context, including but not limited to loss of lawful legal status, denial of citizenship, and deportation.

Relevant Statutes, Regulations, and Laws

Federal and State Court Decision

U.S. Immigration courts often look to state case law to interpret a state criminal law or statute in dispute.

Decisions issued by U.S. immigration courts can be appealed in certain instances to federal courts of appeal.

Board of Immigration Appeals (BIA) Decisions

The BIA is an administrative appellate body within the Executive Office for Immigration Review of the U.S. Department of Justice.

The BIA reviews decisions by U.S. immigration courts, some decisions of USCIS, and immigration violation arrests by CBP and ICE.

Deportation and Inadmissibility



INA Sec. 212(a)(2)--Criminal Grounds of Inadmissibility

- INA Sec. 212(a)(2)(A)(i)--Crimes involving moral turpitude
- INA (a)(2)(A)(ii)--violations of (or a conspiracy or attempt to violate) any law or regulations of a State, the United States, or a foreign country relating to a controlled substance (as defined in sec. 102 of the Controlled Substance Act (21 U.S.C. 802))
- INA (a)(2)(B)--Multiple criminal convictions. Any alien convicted of 2 or more offenses...for which the aggregate sentence to confinement were 5 years or more
- INA (a)(2)(C)--Controlled substance traffickers. Applies to any alien who the consular officer or the AG knows or has reason to know is or has been a trafficker in any controlled substance or is the spouse, son or daughter of a trafficker and has obtained any financial benefit in last 5 years.

INA Sec. 212(a)(2)--Criminal Grounds of Inadmissibility

- INA Sec. 212(a)(2)(D)--Prostitution and Commercialized vice. Applies to aliens coming into the U.S. to engage in prostitution or procures or imports prostitutes or coming to engage in commercialized vices.
- INA (a)(2)(H)-Human traffickers
- INA (a)(2)(I)--Money Laundering. Applies to any alien who has engaged in or is coming to the U.S. to launder money.

Crimes Involving Moral Turpitude

In general, crimes of moral turpitude fall into the following categories: i) crimes in which an intent to steal or defraud is an element; ii) crimes in which bodily harm is caused or threatened, by an intentional or willful act; iii) crimes in which serious bodily harm is caused or threatened by a reckless act; or iv) sex offenses.



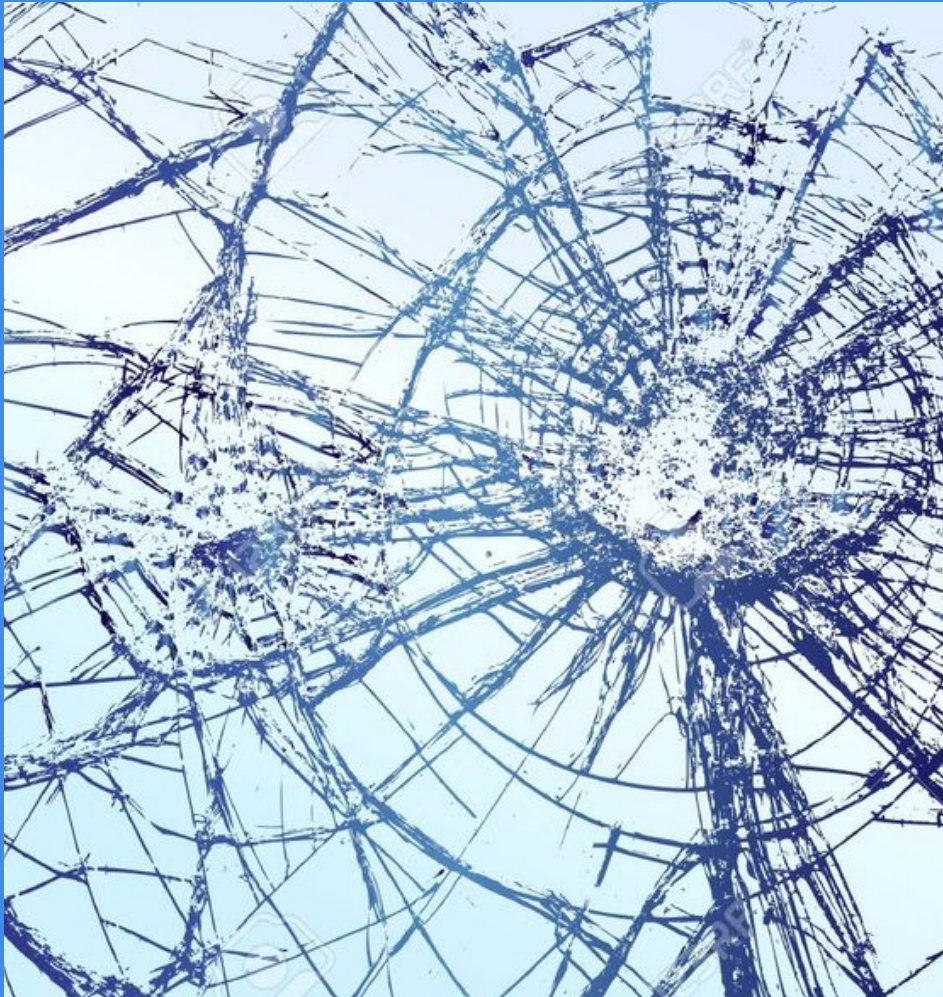
INA Sec. 237(a)(2)--Criminal Grounds of Deportability

- INA Sec. 237(a)(2)(A)(i)--Crimes involving moral turpitude. Applies to any alien who is convicted of a CIMT within 5 years of admission and for which the sentence of one year or longer may be imposed
- INA Sec. 237(a)(2)(A)(ii)--Multiple criminal convictions. Applies to aliens who convicted of 2 or more crimes involving moral turpitude, not arising out of a single scheme of criminal conduct.
- INA Sec. 237(a)(2)(A)(iii)--Aggravated Felony. Applies to any alien convicted of an aggravated felony at any time after admission.
- INA Sec. 237(a)(2)(B)--Controlled substances. Applies to any alien who at any time after admission has been convicted of a violating a controlled substance law or regulation, other than single offense involving 30 grams or less of marijuana for own use.

INA Sec. 237(a)(2)--Criminal Grounds of Deportability

- INA Sec. 237(a)(2)(C)--Certain firearm offenses. Applies to aliens convicted of laws prohibiting purchasing, selling, possessing, or carrying a firearm or destructive device.
- INA Sec. 237(a)(2)(E)--Crimes of Domestic violence, stalking, or violations of a protective order. Includes convictions for DV, stalking, child abuse, child neglect and abandonment, and violating a protective order.

Aggravated Felony



- “Aggravated felony” is a term of art used to describe a category of offenses carrying particularly harsh immigration consequences for noncitizens convicted of such crimes. Regardless of their immigration status, noncitizens who have been convicted of an “aggravated felony” are prohibited from receiving most forms of relief that would spare them from deportation, including asylum, and from being readmitted to the United States at any time in the future.

Aggravated Felony

Aggravated felonies are defined at 8 USC § 1101(a)(43), which is a list of dozens of common-law terms and references to federal statutes. Both federal and state offenses can be aggravated felonies.

Aggravated Felonies under 8 USC § 1101(a)(43)

- Alien smuggling
- Burglary- if the term of imprisonment is at least one year.
- Child pornography
- crime of violence as defined under 18 USC 16 resulting in a term of at least one year imprisonment, if it was not a “purely political offense.”

Aggravated Felonies under 8 USC § 1101(a)(43)

- drug offenses- any offense generally considered to be “drug trafficking,” plus cited federal drug offenses and analogous felony state offenses.
- firearms- trafficking in firearms, plus several federal crimes relating to firearms and state analogues.
- fraud or deceit offense if the loss to the victim exceeds \$10,000.
- Murder

Aggravated Felonies under 8 USC § 1101(a)(43)

- Money laundering- money laundering and monetary transactions from illegally derived funds if the amount of funds exceeds \$10,000.
- Sexual abuse of a minor-
- Theft crimes- if the term of imprisonment is at least one year

Crime of Violence

18 U.S.C. § 16, in turn, states:

The term “crime of violence” means—

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

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

Detention and Bonds



ICE Enforcement Programs

- ① **287(g) Jail Program--**
Agreements between ICE and local law enforcement to allow the local agency to enforce immigration Laws
- ② **Secure Communities--**
DHS program designed to identify immigrants in U.S. jails and prisons who are deportable under immigration law
- ③ **Criminal Alien Program--** ICE agreements to allow access to jails and prisons to identify removable noncitizens and initiate removal proceedings against them.

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: Event #:	File No: Date:
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TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)
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MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (check all that apply):

- has a prior a felony conviction or has been charged with a felony offense;
- has three or more prior misdemeanor convictions;
- has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
- has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- has illegally re-entered the country after a previous removal or return;
- has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
- otherwise poses a significant risk to national security, border security, or public safety; and/or
- other (specify): _____

Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date).

Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date).

Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, you are not authorized to hold the subject beyond these 48 hours. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-8020.

Provide a copy to the subject of this detainer.

Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.

Consider this request for a detainer operative only upon the subject's conviction.

Cancel the detainer previously placed by this Office on _____ (date).

(Name and title of Immigration Officer) (Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: _____ Latest criminal charge/conviction: _____ (date) Estimated release: _____ (date)

Last criminal charge/conviction: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-8020.

(Name and title of Officer) (Signature of Officer)

ICE Detainers

Immigration Bonds

- ① INA § 236—Allows for the detention and arrested of individuals believed to be removable. It also allows for the release of these same individuals under bond.
- ② INA §236(c)(2)-- ICE may release an individual unless there is a risk he will abscond, he poses a danger to persons or property, or he poses a risk to national security.
- ③ Certain people subject to mandatory detention under INA § 236A

Strategies for Defense Counsel



Strategies For Defense Counsel

- Ask detailed questions about client's current immigration status: This information is essential to an attorney's ability to provide specific and accurate immigration advice
- Avoid pleading client to an "Aggravated Felony". Think about length of sentence or amount of loss in question.
- Avoid a "Controlled Substance" Offense. Most drug offense will bar an alien from getting legal status and subject the person to deportation.

Strategies For Defense Counsel

- When possible, avoid a conviction for a CIMT with a maximum possible sentence of more than one year and obtain a maximum sentence imposed of six months or less.
- If the defendant is a LPR or other Alien lawfully admitted: avoid a conviction for 2 or more offenses for which the aggregate sentences to confinement were 5 years or more
- When possible, avoid “Crimes of Domestic Violence” “Firearm Offense” and by fashioning plea to less culpable charges, i.e., Simple Assault and Disorderly Conduct.

Strategies For Defense Counsel

- For offenses involving a child or domestic partner, try to negotiate a plea to a generic battery or assault statute that does not specify the victim.
- Always negotiate for the least culpable conduct described by statute.
- Finally, consider partnering with an immigration attorney experienced in criminal-immigration law.

What About PTI and Deferred Prosecutions?

- Avoid a “conviction” whenever possible. Obtaining a dismissal of the charges ideal.
- Meaning of Conviction Under INA § 101(a)(48)(A)
- Pre-trial diversion programs that do not require an admission of guilt are good. See *Matter of Mohamed*, 27 I&N Dec. 92 (BIA 2017).

QUESTIONS?

Marco T. Torres

Torres Law Firm, PA

✉ mtorres@torreslawfirm.net

☎ (843) 720-3732

