

## Immigration Consequences of Misdemeanors

Hans Christian Linnartz  
PO Box 1847  
Durham, NC 27702-1847  
919-688-1788  
Hans@LinnartzLaw.com

### I. “Know Your Alien”

See “Immigration Status Questionnaire”

### II. Counterintuitive Definitions

- A. When is a conviction not a conviction?
- B. When is a non-conviction a conviction?

See “Definition of Conviction”

- 1. Nolo/*Alford* pleas?
- 2. Deferred Prosecution? (NCGS §90-96)
- 3. Expungements?

### III. Yes, we’ve got trouble! What kinds of trouble?

See Attachment B

#### A. Crimes involving moral turpitude

- 1. Scope:
- 2. Gets you:
- 3. Remedies

#### B. Drug crimes

- 1. Scope:
- 2. Levels
- 3. Remedies

#### C. Family crimes

- 1. def.
- 2. Types
- 3. Remedies

D. Ag felonies See Attachment C

E. Misc.:

1. Firearms
2. Espionage or terrorism
3. Falsely claiming citizenship, voting

#### **IV. Practice and Procedure Tips**

A. Bond problem: INS Detainers.

B. Potential boon: INS search, arrest standards

#### **V. Solving the Mess Later**

A. MAR

B. Clemency

## Immigration Status Questionnaire

Documents: Photocopy all immigration documents & passport

Criminal History: Supply rap sheet and current citations, indictments, or plea bargain proposals.

Name: \_\_\_\_\_

Currently detained? \_\_\_\_\_ Place: \_\_\_\_\_ INS hold? \_\_\_\_\_

Birthdate: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Alien Number: \_\_\_\_\_ Nationality: \_\_\_\_\_

Passport no.: \_\_\_\_\_ (Country: \_\_\_\_\_)

US immigration status: \_\_\_\_\_ Lawful Permanent Resident? \_\_\_\_\_

Other special immigration status (asylum, temporary protected status, etc.):

Has anybody ever filed a visa petition for you? Who? When? Was it granted?

Previous deportations: Where? When? Did you see a judge?

Do you have an immigration Court date pending? (Call 1-800-898-7180)

### **Status:**

- Native citizen
- Naturalized citizen
- Legal permanent resident
- Legal non-immigrant in status (with visa)
- Legally admitted non-immigrant out of status
- Illegal entrant (not inspected or admitted)
- Re-entry after removal

## **Attachment A - How the Immigration and Naturalization Act defines “conviction”**

### INA § 101 – DEFINITIONS

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

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

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

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

## **Attachment B - Criminal Grounds for Deportation**

### INA § 237 (a)

(2) Criminal offenses.-

(A) General crimes.-

(i) Crimes of moral turpitude.<sup>1</sup>-Any alien who-

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section [245\(i\)](#)) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed.

(ii) Multiple criminal convictions.-Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) Aggravated felony.-Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) High Speed Flight.-Any alien who is convicted of a violation of section 758 of title 18, United States Code, (relating to high speed flight from an immigration checkpoint) is deportable.

(v) Waiver authorized.-Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances.-

---

<sup>1</sup> Generally, moral turpitude involves fraud, dishonesty, or malicious intent, including threatening behavior, but not including involuntary manslaughter, simple assault or regulatory violations. Cases discussing this include DUIs, reckless endangerment, and indecent acts in public.

i) Conviction.-Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) Drug abusers and addicts.-Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses.-Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is deportable.

(D) Miscellaneous crimes.-Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate-

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18, United States Code;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 215 [relating to illegal travel and trafficking of aliens] or 278 [relating to trafficking of aliens for immoral purposes] of this Act, is deportable.

(E) Crimes of Domestic violence, stalking, or violation of protection order, crimes against children and.-

(i) Domestic violence, stalking, and child abuse.-Any alien who at any time after entry is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) Violators of protection orders.-Any alien who at any time after entry is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final

orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

## **Attachment C - How the Immigration and Naturalization Act defines “aggravated felony”**

### INA § 101 (8 USC §1101) – DEFINITIONS

(43) The term "aggravated felony" means-

- (A) murder, rape, or sexual abuse of a minor;
- (B) illicit trafficking in controlled substance (as described in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);
- (C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);
- (D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
- (E) an offense described in-
  - (i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
  - (ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or
  - (iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);
- (F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment at least 1 year;
- (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least 1 year;
- (H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);
- (I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);
- (J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations, or an offense described in section 1084 (if it is the second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of 1 year imprisonment or more may be imposed;
- (K) an offense that-
  - (i) relates to the owning, controlling, managing, or supervising of a prostitution business; or
  - (ii) is described in section 2421, 2422, 2423, of Title 18, United States Code (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588 of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

(L) an offense described in-

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code;

(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents); or

(iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);

(M) an offense that-

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or

(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act ;

(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense

(i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and

(ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act ;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more; and

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year ;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year ;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.