

# Immigration Consequences of Domestic Violence & Related Offenses

Presented by NACDL & the  
**DEFENDING IMMIGRANTS PARTNERSHIP**  
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# Presenters

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# Topics of Discussion

Overview of Immigration Consequences of DV

Aggravated Felony Crime of Violence

Domestic Violence, Child Abuse, & Violation of a TRO

Other: Crimes Involving Moral Turpitude & Firearms

# Overview: Possible Immigration Consequences of DV Related Offenses

Conviction of Aggravated Felony Crime of Violence	Ground of Deportability
Conviction of Domestic Violence on or after Sept 30, 1996	Ground of Deportability
Conviction of Child Abuse, Neglect, Abandonment or Stalking on or after Sept 30, 1996	Ground of Deportability
Conviction of a Firearms Offense	Ground of Deportability
Conviction and/or Admission of Crime Involving Moral Turpitude	Ground of Inadmissibility & Deportability

# Review: Defense Priorities

- Generally, most people want to avoid an aggravated felony.
- Generally, LPRs care most about avoiding grounds of deportability.
- Undocumented care most about avoiding grounds of inadmissibility.
- Everyone wants to preserve eligibility for discretionary relief.

# Key Defense to Avoiding Immigration Consequences

**Sanitize the record of conviction from bad facts!**

**The record of conviction includes:**

- Elements of offense (statute & case law)
- Criminal charge (information, complaint, etc. **if incorporated into plea – i.e. pled as charged**)
- Written plea agreement
- Transcript of plea hearing
- Transcript of judgment
- Sentence
- Jury instructions

# More on the Record of Conviction

The ROC does NOT include:

- Police reports, probation or pre-sentence reports
- Statements by non-citizen outside of judgment and sentence transcript (to police for example)
- Information from co-defendant's case

**WARNING:** Stipulating to facts in a document not otherwise part of the ROC incorporates them by reference into the ROC (i.e., stipulation to police reports)

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# Aggravated Felony Crime of Violence



8 USC § 1101(a)(43)(F)

# Aggravated Felony

## Consequences

- Nearly automatic deportation
- Permanent exile from the U.S.
- Bar to almost every form of relief from deportation
- Mandatory detention.

# COV Definition at 18 USC § 16

- 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.

# Elements of 18 USC § 16(a)

- **Has as an element**
- Intentional
- Use, attempted use, or threatened use
- Of violent physical force
- Against person or property of another
- Court orders imprisonment of 1 year or more

# Elements of 18 USC § 16(b)

- **Felony**

- Elements of offense by its nature
- Involve a substantial risk
- That violent physical force
- May intentionally be used
- Against the person or property of another
- Court orders imprisonment of 1 year or more

# Comparing §16(a) and §16(b)

<b>18 USC §16(a)</b>	<b>18 USC § 16(b)</b>
May be felony or misdemeanor	Requires felony conviction
Requires element of use of force	Covers offenses with no element of use of force if substantial risk that defendant will use violent force in the commission of the offense

# Defenses Against COV

- Force must be **intentional** – 16(a)
- Force must be **violent** – 16(a) and (b)
- Conviction must be felony – 16(b) only
- Risk of intentional use of violent force must be **substantial** – 16(b) only
- Imprisonment ordered must be 1 year or more – 16(a) and (b)

# Intent Requirement

- Use of violent force must be intentional (§ 16(a))
- Insufficient intent:
  - Strict Liability
  - Negligence
  - Recklessness (where risk that violence will be used is not recognized by the defendant)
- BUT if FELONY offense (§ 16(b)):
  - nature of offense carries *substantial risk that intentional force* + mens rea above negligence (e.g. intentional, willful and malicious, recklessness)

# Sentence

Under immigration law, a “sentence” includes any term of imprisonment whether committed or suspended.

EX: A 2 year sentence of imprisonment, 6 months to serve, the balance suspended = a 2 year sentence

# Sentence Solutions

Take the time on a non-COV count

- Stack sentences, each 364 days or less. (3 conv. with sent. of 364 each = no sentences of 1 yr or more).
  - Consecutive sentences for separate counts are NOT combined
- Waive CTS. If D served 8 months before sentence and waives CTS, he can receive a formal sentence of under one year while serving same amount of time.
- Waive future conduct credits. Seek lower actual sentence but waive future conduct credits in exchange. Prosecutor gets time served that they wanted.
- When client facing additional sentence for probation violation (& additional sentence will make offense an Agg Fel), try for new conviction w/sentence of 364 or less.

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Deportable Offenses:

# Domestic Violence

Includes *conviction* for:

- Crime of domestic violence
- Stalking
- Child abuse
- Child neglect
- Child abandonment

or

Violation of criminal or civil protective orders

# Domestic Violence Deportation Ground



8 USC § 1227(a)(2)(E)(i)

# DV Solutions

## Crafting a Safe(r) Plea:

- Sanitize record by keeping out violence. In some Circuits sanitizing name of victim & relationship of victim to Defendant might help, but not a guaranteed defense.
- Plead to simple battery or assault or similar offenses that do not constitute COVs
  - Offensive or insulting touching
  - Negligent conduct
  - No specific intent to harm
  - No actual injury or no serious injury caused
- Violence must be against person, not property. Plead to trespass, theft (but may have other imm consequences)
- Plead to committing a COV against a non-listed victim such as former cohabitant, ex's new boyfriend, the neighbor

# Child Abuse, Neglect, & Abandonment Deportation Ground

Any offense involving an intentional, reckless, or criminally negligent act or omission that constitutes maltreatment of a person under 18 years old or that impairs such a person's physical or mental well-being, including sexual abuse or exploitation.

*Matter of Velasquez-Herrera*, 24 I&N Dec. 503 (BIA 2008);

*Matter of Soram*, 25 I&N Dec. 378 (BIA 2010) (Child abuse even with no injury is a deportable offense)

# Record of Conviction for Child Abuse Cases

- Conviction of a “crime of child abuse” does not have to have age of the victim as an element
- BUT record of conviction can be consulted to determine whether the victim is a child.

**PRACTICE TIP:** If possible, plead to an offense that does not involve a child. Sanitize the record of conviction so that there is no mention that the victim of the crime is a child.

# Violation of a Protective Order Deportation Ground

- Civil or criminal court finds violation of a DV court order protecting against
  - Credible threats of violence
  - Repeated harassment
  - Bodily injury
- No conviction required
- Ninth Circuit found if your protection order is *issued to prevent domestic violence*, doesn't matter *how* you violate it, you are deportable.

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# Crime Involving Moral Turpitude



Matter of Silva-Trevino, 24 I&N Dec. 687 (2008)

Inadmissible Offenses:

# Crime Involving Moral Turpitude

A person is inadmissible based on conviction or admission of one crime involving moral turpitude, UNLESS:

- One crime committed when under 18 years old and at least 5 years before admission
- or
- Maximum possible penalty is one year or less, sentence is less than 6 months, and first time committed a CIMT

Deportable Offenses:

## Crime Involving Moral Turpitude

- One CIMT conviction within 5 years of admission, where a sentence of at least one year *may* be imposed

OR

- Two CIMT convictions at any time, not arising out of a single scheme of criminal misconduct

Deportable Offenses:

# Firearm Offenses



- Includes a conviction for any crime of buying, selling, using, owning, possessing or carrying any firearm or destructive device
- Includes conspiracy and attempt
- Firearm does not necessarily have to be an element of the offense

# Most Important Things to Remember

- Determine client's immigration status
- Determine client's goals
- Consider client's prior record
- Avoid aggravated felony conviction
- Tell client not to talk to immigration official, apply for anything, or leave U.S. without talking to immigration attorney first
- Get help from expert if you need it

# RESOURCES

- Defending Immigrants Partnership:  
immigration resource library at  
[www.defendingimmigrants.org](http://www.defendingimmigrants.org)