



Immigration Basics for Criminal Defense: The Ten Most Common Myths about Representing Non-Citizen Clients

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If you are not a citizen of the U.S.A., you are advised that your plea of guilty or no contest for the offense with which you are charged may result in deportation, the exclusion from admission into this county or the denial of naturalization under federal law.¹

Any Wisconsin criminal defense attorney will recognize this language from a plea questionnaire or colloquy. Unfortunately, many criminal defense attorneys fail to go beyond advising their clients that a criminal conviction *may* result in negative immigration consequences. Far too often, criminal defense attorneys fail to even ask their clients whether or not they are United States citizens.

To be fair, most criminal defense attorneys are not immigration practitioners, and it is not the intent of this article to suggest that they become so. Yet a troubling fact remains: for non-citizens, the immigration consequences of a criminal conviction usually far exceed any punishment in criminal court, with deportation often resulting in lifetime banishment from family, home and career and possibly even a return to war, famine and persecution. Given the draconian state of immigration law, it is essential for criminal defense attorneys to have a basic understanding of the immigration consequences of criminal convictions when representing non-citizen defendants.

Unfortunately, immigration law, with its dizzying array of statutes, regulations and administrative court decisions, provides a less than clear path. Even more frustrating is that many of the basic definitions, concepts and principles of criminal law do not translate into the immigration arena. As a result, the criminal defense attorney is frequently left with a result on the immigration side that is perplexing and paradoxical. Focusing on these contradictions, the following is a discussion of the ten most common myths regarding the immigration consequences of criminal convictions.

Myth No. 1 – You do not need to ask about a client’s immigration status.

As stated earlier, many criminal defense attorneys fail to ask the most basic question: are you a U.S. citizen? In our multicultural society, factors such as an accent or race simply are not reliable indicators of citizenship. The easiest, most non-offensive way to start the inquiry is to ask for the

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client's place of birth as a part of the basic biographical questions in an initial client interview. If the client was not born in the U.S., then further inquiry is necessary.

There are four common ways to obtain United States citizenship. The first, and most common, is by birth in the U.S. or a U.S. territory. The second is acquired, which applies to a person born abroad to a U.S. citizen parent. The third is naturalization, which occurs when an immigrant meets certain statutory requirements and applies with the U.S. Citizenship and Immigration Service (USCIS). The fourth is derived, which may occur based on a parent's birth in the U.S. or naturalization.

The rules of citizenship are complex and best sorted out by an experienced immigration attorney. Amazingly, there are clients who have acquired or derived U.S. citizenship and are completely unaware of it. Conversely, there are clients who were brought to the U.S. as very young children and are under the misimpression that they were born in the U.S. or that they are U.S. citizens because they don't remember living anywhere else. In such cases, it may be necessary to expand the client interview to parents or other family members who have better knowledge or memory of the client's immigration history. Careful inquiry is essential, because the non-citizen is subject to deportation and the U.S. citizen is not. *The following basic rule can be helpful: if you have a non-citizen client who has a parent or grandparent who is a U.S. citizen or lived in the U.S., the client could be a U.S. citizen.*

If the client is not a U.S. citizen, then further inquiry is necessary to determine the exact immigration status. ([See sample immigration questionnaire on Page 10.](#)) Non-citizens fall into four main categories: (1) lawful permanent residents; (2) undocumented and out-of-status aliens; (3) refugees, asylum applicants and asylees; and (4) non-immigrants.

Lawful permanent residents (LPRs) are commonly referred to as "green card holders." They are authorized to live and work in the U.S. indefinitely. Many have lived in the U.S. for decades, yet they are still deportable if they are convicted of certain crimes. In addition to deportation, a criminal conviction may also affect their ability to travel abroad or apply for naturalization.

Undocumented aliens are generally persons who cross the border illegally or without a visa. Out-of-status aliens usually enter the U.S. on a tourist, student or other temporary visa and stay beyond the time authorized by their visa. Both undocumented and out-of-status aliens risk deportation whenever they come into contact with law enforcement, irrespective of an actual conviction. In addition to staying "off the radar," avoiding problematic convictions may be important to someone in this classification because he or she may be eligible at a future date to become a LPR.

Refugees are persons who were granted refugee status abroad by a U.S. official. Asylum applicants are persons who apply to stay in the U.S. because of a well-founded fear of persecution based upon race, religion, nationality, membership in a social group, or political opinion. Asylees are persons who have been granted asylum by the USCIS or an Immigration Judge. Generally, a person must apply for asylum within one year of entry into the U.S. One year after being admitted as a refugee or being granted asylum, a person is eligible to apply to become a LPR. Certain convictions can disqualify a person from being admitted as a refugee or applying for asylum and can also subject a person to deportation.

Non-immigrants are most commonly business travelers, tourists, students and temporary workers. Like the other categories, non-immigrants may be subject to deportation based on a criminal conviction. Many non-immigrants may seek to renew their visas or become LPRs, so it is important to understand the immigration consequences of any conviction in order to preserve future eligibility for immigration benefits.

Myth No. 2 – You do not need to consult with an immigration attorney from the very beginning of the criminal case.

While some criminal defense attorneys understand that their non-citizen clients face immigration issues, they often make the mistake of assuming that such issues can be handled after sentencing. Such an approach is problematic for two reasons. First, if the non-citizen defendant does not fully grasp the ramifications of the conviction, then from a practical standpoint, the plea is not knowing, voluntary and intelligent. Second, an immigration attorney can be most effective prior to the entry of a plea. Immigration law changed significantly in 1996 when most forms of discretionary relief from deportation were either eliminated or severely curtailed for persons with criminal convictions. For this reason, it is essential that an immigration attorney participate in plea negotiations to reach a criminal disposition that will either avoid deportation or permit the non-citizen some form of immigration relief. Even in a case where the state is unwilling to make such an offer, understanding the exact immigration consequences allows the client to make an informed decision about whether to go to trial.

When searching for an immigration attorney, one of the best sources is the American Immigration Lawyers Association. (AILA). AILA has an excellent web site at <http://www.aila.org> which includes an immigration lawyer referral service. While membership in AILA is not a guarantee of competence, almost all members practice immigration law exclusively or devote a very significant portion of their practice to this area. It is also important to recognize that immigration law, like most areas of law, has specialties. The broader categories of immigration law include business, family, asylum and deportation defense. Many immigration practitioners do not have extensive experience with the immigration consequences of criminal convictions. When searching for an immigration attorney, the criminal defense lawyer usually is best served to seek someone who has an active litigation practice in deportation defense.

Myth No. 3 – A dismissal or expungement results in no immigration consequences.

In many instances, a dismissal can still be considered a conviction under immigration law. The problem lies in the rather expansive definition of “conviction” under the Immigration and Nationality Act (INA).² Not surprisingly, under the INA, an actual finding of guilt by a judge or jury qualifies as a conviction. More troubling is that a conviction can be triggered simply upon a plea of guilty or no contest as well as the mere admission of facts sufficient to support a finding of guilt.

This definition can have a particularly devastating effect when the non-citizen enters into a deferred prosecution agreement. Prosecutors routinely require defendants to enter a guilty or no contest plea as a condition precedent to the deal, and most defendants and their attorneys willingly oblige because dismissal is guaranteed upon successful completion of the terms. Under immigration law, such a plea will constitute a conviction irrespective of any later dismissal by the court. Similarly, when a defendant is required to plead guilty or no contest to an original charge in order to obtain a

later amendment, the original charge will be considered the conviction. Even when the court grants expungement under Wis. Stat. §973.015, the original plea and judgment will still constitute a conviction for immigration purposes.³ When representing a non-citizen client it is essential that a criminal defense attorney understand that a plea or admission on the record will be deemed the equivalent of an actual finding of guilt by a judge or jury.

Myth No. 4 - Perfunctorily stipulating to the criminal complaint as the factual basis of plea will not affect the non-citizen.

In plea colloquies, it is very common for the judge to ask the parties to stipulate to the criminal complaint as a factual basis for the acceptance of a guilty or no contest plea. Even when the client denies some of the factual allegations, many criminal defense attorneys stipulate to the complaint simply as a matter of routine or to avoid giving the judge the impression that the client “is not fully accepting responsibility.” Whether habit or strategy, such a stipulation can have extremely negative consequences under immigration law because the admission of facts sufficient to support a finding of guilt is deemed the equivalent of a conviction. With a domestic violence battery charge, for example, prosecutors will often offer to resolve the case with a plea to the lesser charge of disorderly conduct. If the client stipulates to a complaint containing factual allegations of a battery, the disorderly conduct conviction can still result in deportation as a crime of domestic violence. Alternatively, if the client admits to engaging in a verbal disturbance that does not involve a threat of violence, disorderly conduct would not be considered a domestic violence crime.

Given such subtleties, it is crucial that criminal defense counsel never stipulate to a factual basis for a plea without understanding the exact consequences of the conduct the client is about to admit. Careful management of “the record of conviction” in criminal court is essential to avoid adverse immigration consequences. In Immigration Court, the record of conviction can be established by (1) a complaint, information or indictment; (2) a verdict; (3) a judgment of conviction; and (4) a transcript of the plea or sentencing hearing.⁴ In Wisconsin, the most problematic of these documents is the criminal complaint, which typically contains an overabundance of hearsay as well as the factual and legal conclusions of law enforcement officers. When the complaint contains such damaging information, criminal defense counsel should “correct” the record by explicitly denying the conduct and/or reaching a stipulated factual basis that avoids immigration consequences.

Although not a part of the formal record of conviction, the government will sometimes try to rely on police reports, probation reports, pre-sentence investigation reports and prison records to establish factual admissions. While the contents of such reports and records are often beyond the control of criminal defense counsel, sometimes proactive measures can limit damaging information.

Myth No 5. – Any felony will result in deportation.

Often criminal defense attorneys operate under the misconception that *any* felony conviction will result in deportation. Under immigration law, it is an “aggravated felony” that triggers the most extreme consequences for the non-citizens, and not every felony is *per se* an aggravated felony. An aggravated felony is the death knell in Immigration Court and in almost all cases will result in deportation⁵ and lifetime exclusion. In 1996, Congress created a laundry list of the crimes that expanded the definition of aggravated felony. While the list includes many uniquely federal offenses with precise statutory references to the U.S. Code, it also includes offenses that reach a large

majority of criminal felonies under state, federal and foreign criminal codes. A listed crime as well as an attempt or conspiracy to commit a listed crime will qualify. This article focuses on common criminal conduct that may be deemed an aggravated felony under Wisconsin law.

There are a handful of serious crimes, such as murder, rape, sexual abuse of a minor, drug trafficking, gun trafficking and child pornography, that simply require a conviction to be deemed an aggravated felony. However, many of the other crimes listed in 8 U.S.C. §1101(a)(43) are an aggravated felony only if certain conditions are fulfilled beyond the conviction itself. A crime involving fraud or deceit, for example, requires that the actual or intended loss to the victim exceeds \$10,000.⁶ Similarly, money laundering is an aggravated felony only when the amount of funds involved exceeds \$10,000.⁷ Where the amount of loss or funds is problematic, upfront payment of restitution and careful management of the record can avoid an aggravated felony designation.

Sometimes rather innocuous crimes such as bail jumping or failure to report for a sentence can be deemed to be aggravated felonies. A conviction for failure to appear in court can result in an aggravated felony designation if the underlying charge is a felony for which a sentence of imprisonment of two years or more may be imposed.⁸ Failure to report for a sentence can be deemed an aggravated felony if the underlying offense is punishable by imprisonment of five years or more.⁹ While the charge of bail jumping is often viewed by a prosecutor as a “bargaining chip” to be negotiated away as a part of a plea agreement, some prosecutors take a tougher line and insist on a plea or a “read-in.” Given the latter circumstance, the non-citizen can avoid the possibility of an aggravated felony if the factual basis of the bail jumping is conduct other than failure to appear in court.

The most common condition found in 8 U.S.C. §1101(a)(43) is a sentence of imprisonment of 365 days or more. Such a sentence results in an aggravated felony for a crime of violence, theft, receipt of stolen property, burglary, commercial bribery, counterfeiting, forgery, obstruction of justice, perjury or subornation of perjury, and bribery of a witness. Even if a conviction for one of these crimes is inevitable, an aggravated felony may still be avoided with a sentence of less than one year. For cases involving theft and forgery, obtaining a sentence of 364 days or less may not be enough. The government may attempt to categorize theft or forgery as crimes involving fraud or deceit, so an actual or intended loss to the victim of more than of \$10,000 should likewise be avoided.

Myth No. 6 – “Sentence of imprisonment” is the equivalent of the actual jail time served by the client.

Like the definition of a conviction, the definition of a sentence is much more expansive under immigration law. “Term of imprisonment or sentence” is defined “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.*” (Italics added).¹⁰ This definition is particularly problematic with probationary dispositions where the criminal court will usually impose and stay, rather than withhold, a lengthy sentence of imprisonment. Most judges favor such a sentencing structure because it eliminates the need for another hearing if probation is later revoked. The criminal defense attorney, pleased with the grant of probation, rarely argues for an alternative. Unfortunately, for the non-citizen, any imposed and stayed time will count as the term of imprisonment under immigration law. For example, a non-citizen convicted of theft who receives probation with an imposed and stayed sentence of five years of imprisonment will be deemed an

aggravated felon. Even if the non-citizen successfully completes probation and never serves a single day in jail, the imposed and stayed sentence will trigger the 365 day condition for an aggravated felony.

By being aware of the definition of imprisonment under immigration law, a criminal defense attorney can usually avoid the problems associated with an imposed and stayed sentence. As previously stated, a court usually structures a probationary sentence in this way for purposes of judicial economy. When given a valid reason such as adverse immigration consequences, the court is often willing to withhold sentence for a defendant, particularly when the judge has already determined that the defendant warrants probation rather than prison.

Myth No. 7 – A misdemeanor cannot be deemed an aggravated felony.

Apples cannot be oranges, and oranges cannot be apples. This logic applies in every discipline except for immigration law, where, shockingly, a misdemeanor *can* be found to be an aggravated felony. Even more vexing, rather than coming from politicians or bureaucrats, this twisted principle actually stems from a decision by the Seventh Circuit Court of Appeals. In *Guerrero-Perez v. I.N.S.*,¹¹ the Seventh Circuit concluded that a misdemeanor conviction for statutory rape constitutes an aggravated felony as sexual abuse of a minor.¹² The reasoning of *Guerrero-Perez* has been adopted by every other Circuit that has examined the issue and presents a daunting challenge for any non-citizen charged with a sexual assault involving a minor, including statutory rape. For statutory rape cases in Wisconsin, the most common amendment to a lesser charge—fourth degree sexual assault—will still result in an aggravated felony designation if the record contains evidence of the age of the victim.

Under other state statutory schemes, misdemeanor offenses for drug and firearms trafficking have been found to be aggravated felonies. While there are no similar misdemeanors under Wisconsin law, an *attempt* to commit an offense listed under 8 U.S.C. §1101(a)(43) can be deemed an aggravated felony, even if it is a misdemeanor. Prior to Truth in Sentencing (TIS), the lowest felony classification in Wisconsin carried a maximum two year sentence, so an attempt to commit a felony was almost always a felony itself. Under TIS, an attempt to commit a Class I felony is a misdemeanor,¹³ so there now exists a pool of misdemeanors that could be found to be aggravated felonies.

Myth No. 8 – Unless a misdemeanor qualifies as an aggravated felony, then it will not result in deportation.

A misdemeanor can still result in deportation if the conviction constitutes a “crime involving moral turpitude” (CIMT). Unlike an aggravated felony, a CIMT is not neatly delineated by statute. Instead, the term has been somewhat amorphously defined by more than fifty years of administrative and federal court case law. The Board of Immigration Appeals (BIA) has described “moral turpitude” as “conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.”¹⁴ While this definition is less than precise, it has survived all challenges for being unconstitutionally vague.

Any non-citizen, including a LPR, can be deported for a CIMT that is punishable by a year or more of imprisonment and was committed within five years of admission to the U.S.¹⁵ Two or more

CIMTs, irrespective of whether they are misdemeanors or felonies, can result in deportation if the convictions do not arise out of “a single scheme of criminal misconduct.”¹⁶ “Single scheme” has been very rigidly defined as “no substantial interruption that would allow the participant to disassociate himself from his enterprise and reflect on what he has done.”¹⁷ A series of crimes, even with the same *modus operandi*, generally have been found not to constitute a single scheme where there is any significant period of time between the crimes.

In addition to a CIMT, there are independent statutory grounds of deportation for drug,¹⁸ gun,¹⁹ and domestic violence crimes, as well as violations of protection orders.²⁰ Since a misdemeanor or felony conviction will trigger these provisions, common crimes such as carrying a concealed weapon, simple possession of cocaine and domestic violence battery can result in deportation. For violations of protection orders, a criminal conviction is not necessary: a temporary or final order by a civil court is sufficient to trigger deportation. For drug crimes, there is a statutory exception that allows the non-citizen to avoid deportation for a single conviction of simple possession of 30 grams or less of marijuana.²¹

In determining whether a conviction constitutes a CIMT, the inquiry should focus on the elements of the offense. All CIMTs require a *mens rea* element. In Wisconsin, for example, operating while intoxicated is not a CIMT because the offense does not require proof of the defendant’s knowledge or intent. However, while the focus will usually be on the presence or absence of *mens rea*, there are crimes that contain a knowledge or intent element that are not considered CIMTs. A simple misdemeanor battery in Wisconsin, for example, is not a CIMT.²² On the other hand, the BIA has found that domestic violence battery²³ and battery to a law enforcement officer²⁴ are CIMTs.

In my opinion, the most concise, practical summary of CIMT offenses has been developed by Attorney Norton Tooby in his book, *Criminal Defense of Immigrants*, 3rd Edition, 2003. Tooby describes CIMTs as largely falling into the following four *mens rea* categories: (1) fraud or theft; (2) intentional or reckless conduct causing great bodily harm; (3) a lewd act such as a sex offense; and, (4) a crime with malicious intent. While this summary is an extremely valuable guide, a complete analysis should also include an evaluation of the elements of the particular offense, criminal case law further defining those elements, and immigration case law analyzing whether the offense or similar offenses constitute a CIMT.

Myth No. 9 – As long as a conviction that results in deportation is avoided, the non-citizen should not worry about being removed from the U.S.

In addition to deportation, a criminal conviction can result in a non-citizen being excludable or inadmissible from the United States.²⁵ In order to avoid removal based on inadmissibility, the non-citizen generally must be eligible to remain in the U.S. and qualify for a waiver of the conviction. For example, while a non-citizen can avoid deportation for a single conviction of simple possession of 30 grams or less of marijuana, the same disposition will be a bar to re-admission unless the non-citizen is eligible for and granted a waiver.²⁶ It is critical that the non-citizen client be advised of the possibility of both deportation and inadmissibility. Even where a LPR or visa holder avoids deportation, inadmissibility can still result in removal if the individual is seeking to reenter the U.S. after traveling abroad. Many non-citizens who initially avoid deportation are surprised to find themselves facing removal at a later date because they visited family or vacationed outside of the

U.S. A non-citizen who has been arrested at any time in the past should **never** travel abroad without carefully consulting with an immigration attorney.

In general, any CIMT or controlled substance conviction will result in inadmissibility or exclusion from the U.S.²⁷ The mere admission of conduct constituting a CIMT will trigger inadmissibility,²⁸ which is particularly significant given that non-citizens who are inspected by a Customs and Border Patrol Officer at a port of entry do not enjoy basic legal protections such as the right to counsel. Inadmissibility will also result for two or more convictions where the aggregate sentence is five years or more of imprisonment, irrespective of whether the convictions were CIMTs or resulted from a single scheme.²⁹

There are two statutory exceptions for inadmissibility based on a CIMT. First, the youthful offender exception allows for a non-citizen to avoid inadmissibility for a single crime committed when the non-citizen was younger than 18 years of age and more than five years have passed since the commission of the offense and release from any imprisonment.³⁰ Second, the petty offense exception applies if the non-citizen was convicted of a CIMT that was not punishable by more than one year of imprisonment and the actual sentence imposed was not more than six months of incarceration.³¹

Myth No. 10 – If a conviction that results in deportation is unavoidable, the non-citizen should just plead guilty and waive appeal so that he or she can “get it over with” and at least get the minimum amount of incarceration.

Under immigration law, most convictions that trigger removal will result in mandatory detention for the non-citizen. The constitutionality of mandatory detention was upheld by the United States Supreme Court in *Demore v. Kim*.³² It is important that the non-citizen client understand that a court battle against removal will likely be waged behind bars, in some cases for two to three years. In the hopeless criminal case, a guilty plea that minimizes imprisonment may still be the best option for a client who is willing to return to his or her country of origin and not contest removal proceedings. On the other hand, criminal defendants often make poor, short-term decisions because the fear of incarceration is so overwhelming. While the choice to plead guilty ultimately rests with the client, it is critical that the non-citizen understand that, due to mandatory detention, the goal of minimizing incarceration at all costs may not be compatible with the goal of fighting removal at all costs.

While the prospects for a successful criminal appeal often appear dim, pursuing an appeal can provide valuable time for the non-citizen defendant. Under immigration law, a conviction on direct appeal is not final and cannot be used as a basis for deportation.³³ The government often takes the position that a conviction is final irrespective of appeal, and unfortunately, the Seventh Circuit Court of Appeals recently adopted this position in an unreported, *per curiam* decision.³⁴ It remains to be seen whether this decision is an oddity or the indication of a change in precedent. For now, there remains a body of case law indicating that a conviction on direct appeal is not final, and criminal defense counsel should consult carefully with the client and immigration counsel before waiving what is often a very useful tool in deportation proceedings.

Conclusion

By working with an immigration attorney, criminal defense counsel can help the non-citizen ameliorate, and in some cases, even avoid the devastating immigration consequences of a criminal

conviction. Sometimes relatively simple measures such as obtaining a sentence of 364 days incarceration, instead of 365 days, or seeking a sentence that is withheld, rather than imposed and stayed, can determine whether or not the non-citizen will be banished from the U.S. for life. Even in a case where a conviction resulting in deportation seems unavoidable, the non-citizen should fully understand the exact immigration consequences before making critical decisions regarding the criminal case.

Endnotes

- ¹ Wis. Stat. § 971.08(1)(c).
- ² 8 U.S.C. §1101(a)(48)(A).
- ³ *Matter of Roldan*, Int. Dec 3377 (BIA 1999)(*en banc*).
- ⁴ *Matter of Short*, 20 I.&N. Dec 136 (BIA 1989).
- ⁵ 8 U.S.C. §1227(a)(2)(A)(iii).
- ⁶ 8 U.S.C. §1101(a)(43)(M)(i).
- ⁷ 8 U.S.C. §1101(a)(43)(D).
- ⁸ 8 U.S.C. §1101(a)(43)(T).
- ⁹ 8 U.S.C. §1101(a)(43)(Q).
- ¹⁰ 8 U.S.C. §1101(a)(48)(B).
- ¹¹ 242 F.3rd 727 (7th Cir. 2001).
- ¹² 8 U.S.C. §1101(a)(43)(A).
- ¹³ Wis. Stat. §939.32(1)(bm).
- ¹⁴ *Franklin v. I.N.S.*, 72 F.3d 571 (8th Cir. 1995), citing, *Matter of Danesh*, I.&N. Dec. 669 (BIA 1988) and *Matter of Flores*, 17 I.&N. 225 (BIA 1980).
- ¹⁵ 8 U.S.C. §1227(a)(2)(A)(i).
- ¹⁶ 8 U.S.C. §1227(a)(2)(A)(ii).
- ¹⁷ *Matter of Adetiba*, 20 I.&N. Dec. 506 (BIA 1992).
- ¹⁸ 8 U.S.C. §1227(a)(2)(B)(i).
- ¹⁹ 8 U.S.C. §1227(a)(2)(C).
- ²⁰ 8 U.S.C. §1227(a)(2)(E).
- ²¹ 8 U.S.C. §1227(a)(2)(B)(i).
- ²² 9 U.S. Department of State, FOREIGN AFFAIRS MANUAL (FAM) § 40.21(a) N.2.3-3(b)(1).
- ²³ *Matter of Tran*, I.&N. Dec. 291 (BIA 1996).
- ²⁴ *Matter of Danesh*, I.&N. Dec. 669 (BIA 1988).
- ²⁵ Although Wis. Stat. §971.08(1)(c) still refers to “exclusion,” Congress replaced the term with “inadmissibility” in 1996.
- ²⁶ 8 U.S.C. §1182(h)
- ²⁷ 8 U.S.C. §1182(a)(2)(A)(i)(I) and (II).
- ²⁸ 8 U.S.C. §1182(a)(2)(A)(i).
- ²⁹ 8 U.S.C. §1182(a)(2)(B).
- ³⁰ 8 U.S.C. §1182(a)(2)(A)(ii)(I).
- ³¹ 8 U.S.C. §1182(a)(2)(A)(ii)(II).
- ³² 538 U.S. 510 (2003).
- ³³ *Will v. INS*, 447 F.2d 529, 533, (7th Cir. 1971)[citing, *Pino v. Landon*, 349 U.S. 901, (1955)]; *Matter of Ozkok*, 19 I & N 546 (BIA-1988).
- ³⁴ *Montenegro v. Ashcroft*, No. 03-1850 (7th Cir. January 22, 2004). ■

Immigration Status Questionnaire

Name: _____ Date: _____
 Date of Birth: _____ Place of Birth: _____
 Citizenship: _____

Most recent admission to the United States:

Date: _____ Port of Entry: _____

Type of Visa of Immigration Status (circle one):

- | | |
|---|---------------------|
| (a) Lawful permanent resident (green card) | (g) Tourist visa |
| (b) Temporary or conditional permanent resident | (h) Student visa |
| (c) Refugee | (i) Employment visa |
| (d) Asylee | (j) Undocumented |
| (e) Asylum applicant | (k) Other: _____ |
| (f) Business visa | |

If admitted on a visa, indicate the expiration date: _____.

Chronologically list all prior admissions and departures from the U.S.:

<u>Admission date</u>	<u>Port of Entry</u>	<u>Visa/Status</u>	<u>Departure date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Arrests and convictions:

<u>Date of arrest</u>	<u>Charge</u>	<u>Type and date of disposition</u>	<u>Sentence</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

List grandparents, parents, spouse, children or brothers and sisters who are lawful permanent residents or U.S. citizens. Indicate date of naturalization if applicable:

<u>Name</u>	<u>Date of Birth</u>	<u>Relationship</u>	<u>LPR or USC</u>	<u>Date/Natz.</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- Have you ever been arrested or detained by an Immigration or Customs and Boarder Patrol Officer, or have you ever been ordered to appear before an Immigration Judge? Yes: _____ No: _____
- Have you ever been the victim of domestic violence or a victim/witness to some other crime? Yes: _____ No: _____
- If you return to your home country, do you fear being persecuted on the basis of race, religion, nationality, political opinion, or membership in a social group? Yes: _____ No: _____
- Have you ever been the victim of torture, and if you return to your home country, do you fear being the victim of torture in the future? Yes: _____ No: _____

If your answer is "yes" to any of the above four questions, please explain.