



### In This Issue:

## INADMISSIBILITY ISSUES - CRIMES INVOLVING MORAL TURPITUDE

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*The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.*

*\*RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

## ANATOMY OF AN ADVISAL: PART 11 INADMISSIBILITY ISSUES – CRIMES INVOLVING MORAL TURPITUDE

Review of inadmissibility: As we already know, there are two sets of rules applying to foreign nationals in the U.S. or seeking to enter the U.S.: deportability and inadmissibility. The rules of inadmissibility are set forth in INA §212. Inadmissibility governs non-citizens at a port of entry who are seeking admission to the U.S. It also includes those who entered without inspection (EWI) and those who are applying for a green card. Although the laws of deportability and inadmissibility substantially overlap, there are differences. For example, there is no “petty offense” exception (see below) for deportability.

Review of CIMTs: There is no statutory definition of “crime involving moral turpitude.” In order to be designated a CIMT, the statute must contain BOTH “reprehensible” conduct coupled with a “culpable mental state” to commit the act. *Matter of Silva-Trevino*, 26 I&N Dec. 826, 828(BIA 2016). Without both of those elements, the offense cannot be held to be a CIMT.

How do we know what offenses are CIMTs? There is an entire body of case law devoted to this issue. Sometimes it is easy to determine, as the BIA, 2d Circuit or SCOTUS may have ruled the offense is a CIMT(or not!) for a NY statute or a similar/identical statute from another state. See, e.g. *Matter of Solon*, 24 I. & N. Dec. 239 (BIA 2007); *Guevara v. Holder*, 533 Fed.Appx. 23 (2d Cir. 2013) (Assault 3d, NY Penal Law §120.00(1) is a CIMT.) Other times, where there is no case law referencing the particular



## UPCOMING EVENTS

**Sept. 5, 2018:** 5<sup>th</sup> Judicial District Annual Conference, Clayton, NY: (City Court Judges Training).

**September 14, 2018:** CLE : "Hot Topics and Updates in Immigrant Defense Practice," Onondaga County Bar Association and NYSDA, 4 Clinton St, Syracuse, NY.

**September 24-25, 2018:** NYS City Court Judges' Annual Conference, Lake George, NY.

**October 24, 2018:** Family Court Training, Hiscock Legal Aid, Syracuse, NY.

## Chief Defenders & Assigned Counsel Administrators:

Contact the RIAC2 to schedule a training, lunch hour or other session in your office/county. We will provide CLE credit!

statute, we must employ the "categorical" or "modified categorical" approach to determine whether the offense is a CIMT. (We will discuss each of those approaches in separate, future newsletters.)

One can never make assumptions about what is a CIMT (e.g. DWI based solely on BAC, is *not* a CIMT, no matter how high the test or the number of previous DWI convictions).

**Inadmissibility and CIMTs:** Anyone who is convicted of, *or who admits having committed, or who admits committing acts which constitute the essential elements of* a "crime involving moral turpitude (other than a purely political offense) or an *attempt or conspiracy* to commit such a crime" is inadmissible. INA §212(a)(2)(A)(i)(I). However, this does not apply to someone who has a SINGLE CONVICTION for an "A" MISDEMEANOR OR LESS with a sentence of LESS THAN 180 DAYS. This is known as the "petty offense" exception to inadmissibility.

It is therefore critical to know what your client's criminal history is before consenting to enter a plea to a CIMT, so you must get a copy of the client's rap sheet. Note, again, that no conviction is necessary if your client, under questioning by an immigration official, admits to conduct that constitutes a CIMT. This can happen at a port of entry when your client seeks admission after travel abroad (even to Canada for the day), or at an interview for a green card. Although there are procedural requirements for immigration officials seeking to elicit admissions to CIMTs, your client should be warned of this, as the possibility of inadmissibility may be a significant factor in whether your client decides to enter a plea or go to trial.

## Inadmissibility and what this can mean for a client with a CIMT conviction:

- CANNOT travel outside the U.S.
- CANNOT get a green card.
- CANNOT get a bond in removal proceeding.
- CANNOT apply for non-LPR cancellation of removal in removal proceeding.

**This is a very brief summary of the laws of inadmissibility and CIMTs. Regardless of your client's immigration status, it is imperative that he or she get the proper advice regarding the consequences of all arrests. CALL THE RIAC!**