

BRIAN PATRICK CONRY
OSB #82224
534 SW THIRD AVE. SUITE 711
PORTLAND, OR 97204
TEL: 503-274-4430
FAX: 503-274-0414
bpconry@gmail.com

Immigration Consequences of Criminal Convictions
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I. NON-LPR CANCELLATION (UNDOCUMENTED)

a. INA 240(A)(b):

“(b) CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS.-

(1) IN GENERAL.-The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien-

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3), subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.”

b. DUII

1. Detainer and release, Bail on criminal charge, bond on immigration charge

2. Get diversion, if eligible.

c. Class A Misdemeanor Charge

1. Matter of Cortez 25 I&N Dec. 301 (BIA 2010)(A misd)

2. Matter of Pedroza 25 I&N Dec. 312 (BIA 2010)(C misd)

3. Civil Compromise

i. Violation and/or Deal to C Misdemeanor

C. Other “Relief”: U Visa, VAWA

d. Reason to believe Drug Trafficker is a ground of inadmissibility that may persist even if win a delivery charge.

e. Travel Warning.

f. INA 212 (a)(2): Criminal and related grounds

(A) Conviction of certain crimes

- (i) In general Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—
- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (II) 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 802 of title 21),

is inadmissible.

(ii) Exception Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

II. LPR CANCELLATION 240A(a) (DOCUMENTED)

- a. **INA 240A(a) provides:** Cancellation of Removal for Certain Permanent Residents.-The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien-
- (1) has been an alien lawfully admitted for permanent residence for not less than 5 years,
 - (2) has resided in the United States continuously for 7 years after having been admitted in any status, and
 - (3) has not been convicted of any aggravated felony.
- b. INA 237, 101a(43), 240

- c. Controlled substances – plead to Unspecified Controlled Substance in Schedule I through an information, CF Matter of Paulus 11 I&N Dec. 274 (BIA. 1965)

III. DRUG OFFENSES

- a. Residue problem. Controlled substances in Schedule I and II deportable and inadmissible. The kiss of death on admissibility.
- b. Exception: Possession of less than 30 grams of marijuana is not deportable
 - i. **INA § 237 (a)(2)(B)(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 foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 902)), other than a single offense involving possession for one’s own use of 30 grams or less of marijuana, is deportable.
 - ii. **INA § 212(h)** The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(1), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—
 - (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that –
(. . .)
 - (B) in the case of an immigrant who is the spouse, parent, son or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien’s denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.
- c. Constructive possession
- d. Possibly a possession and not delivery will help immensely RE: Cancellation of removal eligible
- e. Expungement (Federal First Offender Act), U.S.C. § 3607 (c).
 - 1. In September, the Ninth Circuit decided to re-hear en banc a case that involves the rule in Lujan-Armendariz v. INS, 222 F.3d 728 (9th Cir. 2000). The rehearing en banc means it is possible that the beneficial Lujan-Armendariz rule may be lost in the future. Nunes-Reyes v. Holder, 602 F.3d 1002 (9th Cir. 2010)
 - 2. Generally, expungement means that the immigration consequences of expunged conviction are still valid – still deportable.

IV. DEFENSES TO DEPORTABILITY

- a. Unspecified controlled substance in Schedule I is not deportable in Oregon as of April 16, 2010
- b. Solicitation is a non-deportable offense under Coronado Durazo v. INS, 123 F.3d 1322 (9th Cir. 1997) (however may be considered a CMT? E.g. Solicitation to do what?) CF. U.S. v. Taylor (categorical analysis) 495 U.S. 525 (1990)

V. POST-CONVICTION RELIEF: Prejudice

- a. Padilla v. Kentucky, 559 U.S. ____ (2010): Immigration consequences must be accurately relayed to an alien entering a plea.
- b. Illusory deals:
 1. Defense counsel advocates to get optional probation when will actually be deported.
 2. Misadvise “alien” may not get picked up by immigration when there is an ICE detainer on that individual, e.g. “Plead to this delivery charge and maybe they won’t get you.”
- c. Need prejudice, strong motions to suppress are one way to prove prejudice. Moore v. Czerniak 534 F.3d 1128, reprinted as amended at, 2009 U.S. App. LEXIS 16739 (9th Cir. Or. July 28, 2009) provides: “Because the confession was obtained in violation of the prisoner’s Fifth Amendment rights, the prisoner’s counsel was ineffective under the Sixth Amendment when he failed to file a motion to suppress the confession.”
 - i. Inventory search,
 - ii. Beyond scope of consent and/or reason for the stop
 - iii. Invasion of curtilage
 - iv. Search of passenger

VI. PROTECT CLIENT

- a. Do not conflate effect of immigration laws with execution of the laws. The status of the alien needs to be preserved and/or the eligibility for status needs to be preserved. Do not mislead as to immigration effect – will remain inadmissible or deportable, even if not immediately placed into proceedings. No statute of limitations on immigration status violations, or disabilities arising from convictions.

- b. Illegal re-entry reality
 - 1. Cop cars have deportation orders

VII. OTHER TOPICS

- a. Do not defend on basis that s/he will not be apprehended.
- b. Release to Immigration detainer and goes to Tacoma and back to Oregon so can defend criminal and immigration case out of custody. Immigration case will take years with client in Oregon.
- c. UUMV or FTA, which deal do you take?

VIII. AGGRAVATED FELONIES

a. **Aggravated felony INA 101a(43):**

(43) The term "aggravated felony" means—

- (A) murder, rape, or sexual abuse of a minor;
- (B) illicit trafficking in a controlled substance (as defined in section 802 of title 21), including a drug trafficking crime (as defined in section 924 (c) of title 18);
- (C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18) or in explosive materials (as defined in section 841(c) of that title);
- (D) an offense described in section 1956 of title 18 (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, 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 (relating to firearms offenses); or
 - (iii) section 5861 of title 26 (relating to firearms offenses);
- (F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at ^[51] least one year;
- (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at ^[51] least one year;
- (H) an offense described in section 875, 876, 877, or 1202 of title 18 (relating to the demand for or receipt of ransom);
- (I) an offense described in section 2251, 2251A, or 2252 of title 18 (relating to child pornography)
- (J) an offense described in section 1962 of title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
- (K) an offense that—

- (i) relates to the owning, controlling, managing, or supervising of a prostitution business;
 - (ii) is described in section 2421, 2422, or 2423 of title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
 - (iii) is described in any of sections 1581–1585 or 1588–1591 of title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);
- (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;
 - (ii) section 421 of title 50 (relating to protecting the identity of undercover Intelligence agents); or
 - (iii) section 421 of title 50 (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 title 26 (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 1324 (a) of this title (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 chapter ^[6]
- (O) an offense described in section 1325 (a) or 1326 of this title 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 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 chapter;
- (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;
- (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 an 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 September 30, 1996.

b. An aggravated felony is grounds for deportability but not inadmissibility

IX. CONCLUSION