IMMIGRATION CONSEQUENCES OF TENNESSEE CONVICTIONS

Prepared and Presented by
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I. CRIMINAL DEFENSE LAWYERS' NEW OBLIGATIONS

In Padilla v. Kentucky, 130 S. Ct. 1473 (2010), the Supreme Court changed the duties that a criminal defense lawyer owes to his immigrant clients.

The Court held that the Sixth Amendment requires criminal defense counsel to advise a noncitizen client of the risk of deportation arising from a guilty plea.

Defense counsel's failure to so advise, or defense counsel's misadvise regarding the immigration consequences of the plea, may constitute ineffective assistance of counsel.

A. Risk of Removal

1. When the risk of removal resulting from a guilty plea is "***clear***," counsel must advise his or her client that "deportation is presumptively mandatory."

2. When the risk of removal is ***less clear***, counsel need only advise the defendant that "pending criminal charges may carry a risk of adverse immigration consequences."

B. Affirmative, Competent Advice Required

1. Defense counsel is required to provide affirmative, competent advice regarding the immigration consequences of a guilty plea.

2. Non-advice (i.e., silence) is insufficient.

C. Duties of Criminal Defense Counsel

1. Duty to inquire about citizenship/immigration status of client.

2. Duty to investigate and advise about immigration consequences of plea alternatives.

3. Duty to investigate and advise about immigration consequences of sentencing alternatives.

II. Convictions That Render an Alien Deportable

8 U.S.C. § 1227(a)(2) sets forth the criminal grounds that render an alien deportable.

Generally, these grounds apply to any alien who has had a lawful admission into the United States. The most common example is a lawful permanent resident.

A. Controlled Substances Offenses

1. Any conviction for a controlled substance offense renders an immigrant deportable. 8 U.S.C. § 1227(a)(2)(B)(i).

2. Convictions for a conspiracy or attempt to violate a controlled substance offense also render an alien deportable. 8 U.S.C. § 1227(a)(2)(B)(i).

3. A conviction for a drug paraphernalia offense may also qualify.

4. ***Exception:*** The only exception is for possession of less than 30 grams of marijuana for personal use.

B. *Crimes Involving Moral Turpitude*

1. Any lawfully admitted alien convicted of a "crime involving moral turpitude" is deportable, when the potential term of imprisonment is one year or longer, and the offense was committed within five years of the alien's admission to the United States. 8 U.S.C. § 1227(a)(2)(A)(i).

2. Crimes involving moral turpitude are not statutorily defined, but are generally understood to be acts that are inherently evil or wrong.

3. Courts have recognized that moral turpitude generally refers to conduct that is inherently dishonest, base, vile or depraved, and contrary to the accepted rules of morality.

4. **Common Examples:** Crimes such as shoplifting, theft, fraud, robbery, bribery, aggravated assault, child abuse, rape, arson, burglary, extortion, and embezzlement are crimes involving moral turpitude.

Tennessee Examples of Crimes Involving Moral Turpitude

The following table is a list of some of the Tennessee crimes that have either been found to be crimes involving moral turpitude or are likely to be found to be crimes involving moral turpitude.

Criminal Attempt, T.C.A. § 39-12-101	**Rape**, T.C.A. § 39-13-503	**Bribery of a Public Servant**, T.C.A. § 39-16-102
Criminal Conspiracy, T.C.A. § 39-12-103	**Aggravated Sexual Battery**, T.C.A. § 39-13-504	**Bribery of a Witness**, T.C.A. § 39-16-107
Aggravated Assault, T.C.A. § 39-13-102(a) and (b)	**Sexual Battery**, T.C.A. § 39-13-505	**Bribery of a Juror**, T.C.A. § 39-16-108
Reckless Endangerment, T.C.A. § 39-13-103	**Public Indecency – indecent exposure**, T.C.A. § 39-13-511	**Criminal Impersonation**, T.C.A. § 39-16-301
Vehicular Assault, T.C.A. § 39-13-106	**Statutory Rape**, T.C.A. § 39-13-506	**False Reports**, T.C.A. § 39-16-502
First Degree Murder, T.C.A. § 39-13-202	**Rape of a Child**, T.C.A. § 39-13-523	**Tampering with or Fabricating Evidence**, T.C.A. § 39-16-503
Second Degree Murder, T.C.A. § 39-13-210	**Sexual Battery by an authority figure**, T.C.A. § 39-13-527	**Destruction of and Tampering with Governmental Records**, T.C.A. § 39-16-504
Voluntary Manslaughter, T.C.A. § 39-13-211	**Solicitation of a Minor**, T.C.A. § 39-13-528	**Coercion of a Witness**, T.C.A. § 39-16-507
Vehicular Homicide T.C.A. § 39-13-213	**Sexual Activity Involving a Minor**, T.C.A. § 39-13-529	**Coercion of a Juror**, T.C.A. § 39-16-508
Reckless Homicide, T.C.A. § 39-13-215	**Theft of Property** , T.C.A. § 39-14-103	**Retaliation for Past Action**, T.C.A. § 39-16-510
Aggravated Vehicular Homicide, T.C.A. § 39-13-218	**Theft of Services** , T.C.A. § 39-14-104	**Escape from a Penal Institution**, T.C.A. § 39-16-605
Aggravated Kidnapping, T.C.A. § 39-13-304	**Extortion**, T.C.A. § 39-14-112;	**Perjury**, T.C.A. § 39-16-702
	Forgery, T.C.A. § 39-14-114	**Aggravated Perjury**, T.C.A. § 39-

Especially Aggravated Kidnapping, T.C.A. § 39-13-305 **Robbery**, T.C.A. § 39-13-401 **Aggravated Robbery**, T.C.A. § 39-13-402, 403 **Carjacking**, T.C.A. § 39-13-404 **Aggravated Rape**, T.C.A. § 39-13-502	**Illegal Possession or Fraudulent use of Credit or Debit Card**, T.C.A. § 39-14-118(b) **Arson**, T.C.A. § 39-14-301 **Aggravated Arson**, T.C.A. § 39-14-302 **Penalties for Money Laundering**, T.C.A. § 39-14-903 **Bigamy**, T.C.A. § 39-15-301	16-703 **Subornation of Perjury**, T.C.A. § 39-16-705 **Manufacture, Distribute, or Possess with Intent to Distribute a Controlled Substance**, T.C.A. § 39-17-417

C. *Multiple Convictions for Crimes Involving Moral Turpitude*

1. Any alien who at any time after admission is convicted of **two (2) or more** "crimes involving moral turpitude" is deportable if the offenses do not arise out of a single scheme or criminal misconduct. 8 U.S.C. § 1227(a)(2)(A)(ii).

2. This ground of deportability does not require the imposition of a sentence of confinement.

D. *Aggravated Felonies*

1. Any alien who is convicted of an aggravated felony at any time after admission is deportable. 8 U.S.C. § 1227(a)(2)(A)(iii).

2. Please see the section entitled " Aggravated Felonies" at Roman Numeral "IV" of this outline for a discussion of what constitutes an "aggravated felony" for immigration purposes.

E. *Firearm and Destructive Device Convictions*

Any alien who at any time after admission is convicted of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying any weapon, part, or accessory is deportable. 8 U.S.C. § 1227(a)(2)(C).

F. Espionage, Sabotage, Treason, and Other Crimes

An alien convicted of committing (or conspiring or attempting to commit) espionage, sabotage, treason, sedition, violating 18 U.S.C. § 871 (threatening the President), violating 18 U.S.C. § 960 (expedition against friendly nation), violating the Military Selective Service Act, violating the Trading With the Enemy Act, or violating 8 U.S.C. § 1328 (travel control of citizens and aliens entering or departing the United States) or violating 8 U.S.C. § 1328 (importation of an alien for prostitution or other immoral purposes) is deportable. 8 U.S.C. § 1227(a)(2)(D).

G. *Crimes of Domestic Violence, Stalking, Child Abuse, Child Abandonment, or Neglect*

An alien lawfully admitted to the U.S. is deportable for most domestic violence crimes including domestic assaults, stalking, child abuse, child neglect, and child abandonment. 8 U.S.C. § 1227(a)(2)(E)(i).

H. Failure to Register as a Sex Offender

Any alien who is convicted of knowingly failing to register or update a registration as required by the Sex Offender Registration and Notification Act, in violation of 18 U.S.C. § 2250 is deportable. 8 U.S.C. § 1227(a)(2)(A)(v).

I. Violation of a Protective Order

Any alien who after admission violates that portion of an order of protection that involves protection against credible threats of violence, repeated harassment, or bodily injury is deportable. 8 U.S.C. § 1227(a)(2)(E)(ii).

J. High Speed Flight from an Immigration Checkpoint

Any alien convicted of violating 18 U.S.C. § 758 (relating to high speed flight from an immigration checkpoint) is deportable. 8 U.S.C. § 1227(a)(2)(A)(iv).

K. Failure to Register or Falsification of Documents

1. A conviction for violating 8 U.S.C. § 1306(c) (relating to filing or procuring a registration application with false information or through fraud), violating

section 36(c) of the Alien Registration Act, violating, violating the Foreign Agents registration Act of 1938, or violating 18 U.S.C. § 1546 (relating to fraud and misuse of visas, permits, and other admission documents) is deportable. 8 U.S.C. § 1227(a)(3)(B).

2. Attempting or conspiring to commit many of the above-referenced offenses generally renders an alien deportable as well.

III. Convictions That Render an Alien Inadmissible

8 U.S.C. § 1182(a)(2) sets forth the criminal grounds that render an alien inadmissible.

From a criminal defense lawyer's perspective, these grounds apply to anyone who is ***illegally*** present in the United States.

A. Crimes Involving Moral Turpitude

1. An alien is inadmissible if he or she has been convicted of committing, attempting or conspiring to commit a "crime involving moral turpitude." 8 U.S.C. § 1182(a)(2)(A)(i)(I).

2. There are two exceptions:

   a. First Exception: The first exception applies if the alien committed the offenses when he or she was under 18 and the offense was committed more than 5 years before alien's application for admission. 8 U.S.C. § 1182(a)(2)(A)(ii)(I).

   b. Second Exception: The second exception applies if the conviction is for an offense for which the maximum possible term of imprisonment was one year or less ***AND*** the alien was not sentenced to more than six months in prison. 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

3. *PRACTICE TIP*: Whenever you are attempting to resolve a case that may involve a crime involving moral turpitude, try to resolve it to where the conviction is for one (1) misdemeanor and the sentence (whether actual or suspended) is for less than six months.

B. Controlled Substance Offenses

1. A conviction for violating any controlled substance law or regulation (federal, state or foreign) renders an alien inadmissible. See 8 U.S.C. § 1182(a)(2)(A)(i)(II).

2. ***WAIVER*** *:* It is possible to get a waiver for this ground of inadmissibility in the case of a single offense of simple possession of 30 grams or less of marijuana. See 8 U.S.C. § 1182(h).

C. *Multiple Criminal Convictions*

1. Any alien convicted of two (2) or more offenses for which the aggregate sentences of confinement were 5 years or more is inadmissible. 8 U.S.C. § 1182(a)(2)(B).

2. ***WAIVER:*** A limited waiver for this ground of inadmissibility may be granted by the Attorney General in certain circumstances. 8 U.S.C. § 1182(h).

IV. AGGRAVATED FELONIES

A conviction for an "aggravated felony" leads to almost automatic deportation for an immigrant.

A. Definition of "Aggravated Felony"

1. The term "aggravated felony" is a defined term in the Immigration and Nationality Act. 8 U.S.C. § 1101(a)(43) (A) – (U).

2. 8 U.S.C. § 1101(a)(43) delineates categories of crimes that are "aggravated felonies" under immigration law.

   a. Some aggravated felonies are categorical such as: murder, rape, alien smuggling, trafficking in drugs, and most firearm offenses.
   b. Other aggravated felonies require a sentence of at least a year of imprisonment.

      (1) Examples of "sentence-based" aggravated felonies are: burglary, theft, obstruction of justice, perjury, and/or crimes of violence.

(2) Don't forget that suspended sentences count for immigration purposes, so a suspended sentence of more than a year is the same as an actual term of imprisonment of more than a year.

c. Tennessee misdemeanor convictions **CAN** be "aggravated felonies" under immigration law.

B. Categories of Crimes That are "Aggravated Felonies"

1. *Rape, Murder, or Sexual Abuse of a Minor*

a. A conviction for murder or rape is an aggravated felony. 8 U.S.C. § 1101(a)(43)(A).

b. A conviction for sexual abuse of a minor is an aggravated felony. 8 U.S.C. § 1101(a)(43)(A).

2. *Drug Trafficking Offenses*

a. Illicit trafficking in a controlled in a controlled substance (as defined in 21 U.S.C. § 801) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(B).

b. A conviction for a drug trafficking crime (as defined in 18 U.S.C. § 924(c)) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(B).

3. *Trafficking in Firearms or Destructive Device Offenses*

a. Illicit trafficking in firearms or destructive devices (as defined in 18 U.S.C. § 921) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(C).

b. Illicit trafficking in explosive materials (as defined in 18 U.S.C. § 841(c)) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(C).

c. Convictions for an offense described in 18 U.S.C. § 842 (h-i) or 844(d),(e),(f),(g),(h), or (i) (relating to explosive materials offenses) or an offense described in 18 U.S.C. § 922(g)(1-5), 18 U.S.C. 922(j), (n), (o), (p), (r), 924(b) or (h), or 26 U.S.C. § 5861 (relating to firearms

offenses) are also aggravated felonies. See 8 U.S.C. § 1101(a)(43)(E).

4. *Money Laundering Offenses*

a. A conviction for an offense described in 18 U.S.C. § 1956 (relating to laundering of monetary instruments) is an aggravated felony *if* the amount of funds exceeded over $10,000. 8 U.S.C. § 1101(a)(43)(D).

b. A conviction for an offense described in 18 U.S.C. § 1957 (relating to engaging in money transactions in property derived from specific unlawful activity) is an aggravated felony *if* the amount of funds exceeded over $10,000. 8 U.S.C. § 1101(a)(43)(D).

5. Crimes of Violence

a. A crime of violence (as defined in 18 U.S.C. § 16) **for which the term of imprisonment of at least one (1) year has been imposed** is an aggravated felony. See 8 U.S.C. § 1101(a)(43)(F).

b. A crime of violence that is a purely political offense is specifically excluded from this definition. See 8 U.S.C. § 1101(a)(43)(F).

6. Theft and Burglary Offenses

a. A theft offense (including receipt of stolen property) **for which a term of imprisonment of at least one (1) year has been imposed** is an aggravated felony. See 8 U.S.C. § 1101(a)(43)(G).

b. A burglary offense **for which a term of imprisonment of at least one (1) year has been imposed** is an aggravated felony. See 8 U.S.C. § 1101(a)(43)(G).

7. Demands for Ransom

An offense described in 18 U.S.C. §§ 875, 876, 877 or 1202 (offenses relating to ransom or demand for receipt of ransom) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(H).

8. Child Pornography

A conviction for an offense described in 18 U.S.C. § 2251, 2251A or 2252 (offense relating to child pornography) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(I).

9. RICO and Gambling Offenses

a. A conviction for an offense described in 18 U.S.C. § 1962 (RICO) for which a sentence of one year imprisonment or more may be imposed is an aggravated felony. 8 U.S.C. § 1101(a)(43)(J).

b. A conviction for offenses described in 18 U.S.C. § 1084 (second or subsequent offense) or § 1955 (gambling offenses), for which a sentence of one year imprisonment or more *may be imposed* is an aggravated felony. See 8 U.S.C. § 1101(a)(43)(J).

10. Prostitution and Slavery Offenses

a. A conviction for owning, controlling, managing, or supervising prostitution is an aggravated felony. 8 U.S.C. § 1101(a)(43)(K).

b. A conviction for an offense described in 18 U.S.C. § 2421, 2422, or 2423 (relating to transportation for the purposes of prostitution) if committed for commercial advantage is an aggravated felony. 8 U.S.C. § 1101(a)(43)(K).

c. A conviction for an offense described in 18 U.S.C. § 1581 – 1585, 1588 (relating to slavery, and/or involuntary servitude) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(K).

11. Offenses Related to National Defense, Sabotage, Treason, or Revealing the Identity of Undercover Agents

a. A conviction for an offense described in18 U.S.C. §§ 793, 798, 2153, or 2381 or 2382 (relating to gathering or transmitting national defense information; disclosure of classified information; sabotage; treason) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(L).

b. A conviction for an offense describe 50 U.S.C. § 421 (protecting identity of intelligence agents) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(L).

12. Fraud or Deceit

A conviction for an offense that involves fraud or deceit in which loss to victim exceeds $10,000 is an aggravated felony. 8 U.S.C. § 1101(a)(43)(M).

13. Tax Evasion

A conviction for an offense described in 26 U.S.C. § 7201 (relating to tax evasion) in which loss to government exceeds $10,000 is an aggravated felony. 8 U.S.C. § 1101(a)(43)(M).

14. Smuggling Aliens into the United States

a. A conviction for an offense described in 8 U.S.C. 1324(a)(1)(A) or 8 U.S.C. § 1324(a)(1)(A)(2) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(N).

b. **Exception:** There is an exception for a first offense for which the alien has shown that he/she committed the offense for the purpose of assisting, aiding, etc., on the alien's spouse, child, or parent. 8 U.S.C. § 1101(a)(43)(N).

15. Illegal Entry or Re-Entry into the United States

A conviction for an offense described in 8 U.S.C. § 1325(a) or 8 U.S.C. §1326 by an alien previously deported on the basis of a conviction for an offense listed in 8 U.S.C. § 1101(a)(43) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(O).

16. False Documents

a. A conviction for an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of 18 U.S.C. § 1543 or is described in 18

U.S.C. § 1546 (relating to document fraud) **AND** (ii) for which the term of imprisonment is at least 12 months is an aggravated felony. 8 U.S.C. § 1101(a)(43)(P).

b. **Exception:** There is an exception in the case of a first offense where the offense was committed to aid the alien's spouse, child, or parent. 8 U.S.C. § 1101(a)(43)(P).

17. Failure to Appear

a. A conviction for an offense relating to a defendant's failure to appear for service of sentence ***IF*** the underlying offense is punishable by imprisonment for at least five (5) years or more is an aggravated felony. 8 U.S.C. § 1101(a)(43)(Q).

b. A conviction for an offense relating to 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 two (2) years imprisonment or more may be imposed. 8 U.S.C. § 1101(a)(43)(T).

18. Commercial Bribery

An offense relating to commercial bribery, counterfeiting, or forgery, or trafficking in vehicles the identification numbers of which have been altered ***AND*** for which a term of imprisonment of at least one (1) year has been imposed is an aggravated felony. 8 U.S.C. § 1101(a)(43)(R).

19. Obstruction of Justice; Perjury; Bribery of a Witness

An offense relating to obstruction of justice, perjury, subornation of perjury, bribery of a witness for which a term of imprisonment of at least one (1) year has been imposed. 8 U.S.C. § 1101(a)(43)(S).

20. Conspiracies or Attempts

A conviction for an attempt or conspiracy to commit any of the offenses listed in 8 U.S.C. § 1101(a)(43) is an aggravated felony. 8 U.S.C. § 1101(a)(43)(U).

Facilitation of a Felony, T.C.A. §	Sexual Battery, T.C.A. § 39-13-	Bribery of a Public Servant,

39-11-403 **Criminal Attempt**, T.C.A. § 39-12-101 **Criminal Conspiracy**, T.C.A. § 39-12-103 **Aggravated Assault**, T.C.A. 39-13-102(a) and (b) **Reckless Endangerment**, T.C.A. 39-13-103 **First Degree Murder**, T.C.A. § 39-13-202 **Second Degree Murder**, T.C.A. § 39-13-210 **Voluntary Manslaughter**, T.C.A. § 39-13-211 **Kidnapping**, T.C.A. § 39-13-303 **Aggravated Kidnapping**, T.C.A. § 39-13-304 **Especially Aggravated Kidnapping**, T.C.A. § 39-13-305 **Robbery**, T.C.A. § 39-13-401 **Aggravated Robbery**, T.C.A. § 39-13-402, 403 **Carjacking**, T.C.A. § 39-13-404 **Aggravated Rape**, T.C.A. § 39-13-502 **Rape**, T.C.A. § 39-13-503 **Aggravated Sexual Battery**, T.C.A. § 39-13-504	505 **Statutory Rape**, T.C.A. § 39-13-506 **Rape of a Child**, T.C.A. § 39-13-523 **Sexual Battery by an authority figure**, T.C.A. § 39-13-527 **Theft of Property** (only if the sentence imposed is one year or more), T.C.A. § 39-14-103 **Theft of Services** (if qualifies as a fraud or deceit offense where the amount of loss is $10,000 or more), T.C.A. § 39-14-104 **Extortion** (under certain circumstances), T.C.A. § 39-14-112; **Forgery** (if a sentence of at least one year was imposed), T.C.A. § 39-14-114 **Illegal Possession or Fraudulent use of Credit or Debit Card**, T.C.A. § 39-14-118(b) **Arson**, T.C.A. § 39-14-301 **Aggravated Arson**, T.C.A. § 39-14-302 **Penalties for Money Laundering**, T.C.A. § 39-14-903 **Bigamy**, T.C.A. § 39-15-301	T.C.A. § 39-16-102 **Bribery of a Witness**, T.C.A. § 39-16-107 **Bribery of a Juror**, T.C.A. § 39-16-108 **Criminal Impersonation**, T.C.A. § 39-16-301 **False Reports**, T.C.A. § 39-16-502 **Tampering with or Fabricating Evidence**, T.C.A. § 39-16-503 **Destruction of and Tampering with Governmental Records**, T.C.A. § 39-16-504 **Coercion of a Witness**, T.C.A. § 39-16-507 **Coercion of a Juror**, T.C.A. § 39-16-508 **Retaliation for Past Action**, T.C.A. § 39-16-510 **Escape from a Penal Institution**, T.C.A. § 39-16-605 **Perjury**, T.C.A. § 39-16-702 **Aggravated Perjury**, T.C.A. § 39-16-703 **Subornation of Perjury**, T.C.A. § 39-16-705 **Manufacture, Distribute, or Possess with Intent to Distribute a Controlled Substance**, T.C.A. § 39-17-417

Tennessee Examples of Aggravated Felonies

V. A "Conviction" Under Immigration Law is Not the Same as a Conviction Under Criminal Law

A. Statutory Definition – 8 U.S.C. § 1101(a)(48)

A "conviction" for immigration purposes is defined as follows:

(A) The term "conviction" means, with respect to an alien, a form judgment of guilty of the alien entered by a court or, if adjudication of guilty 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.

§ 8 U.S.C. § 1101(a)(48)

B. Two Types of Convictions for Immigration Purposes

There are two types of convictions under immigration law.

1. **First Type of Conviction:** Any "formal judgment of guilt" is a conviction for immigration purposes. This includes convictions after a trial by jury, bench trial convictions, and convictions by guilty plea.

2. **Second Type of Conviction:** The second type of conviction occurs whenever there is (1) a finding of guilt (whether by a judge or a jury), a guilty plea, a plea of nolo contendere, or admission of facts sufficient to warrant a finding of guilty **AND** (2) an imposition of punishment.

C. Finality of Conviction is NOT required

The statutory definition of "conviction" does not contain any requirement that the conviction be final before it results in immigration consequences. Immigration consequences can attach even if the alien has a pending challenge against the validity of the conviction.

D. Diversion

A disposition under a pre-plea diversion statute is not a conviction for immigration purposes. Matter of Grullon. 20 I&N Dec. 12 (BIA 1989).

1. Judicial Diversion in Tennessee ***IS a conviction*** for immigration purposes.

2. Attorney General Diversion in Tennessee ***is NOT a conviction*** for immigration purposes.

E. Expunged Convictions

1. Immigration law does not recognize when a conviction has been expunged or sealed.

2. A conviction that has been sealed or expunged ***is still a conviction*** for immigration purposes.

F. Suspended Sentence

1. For immigration purposes, a suspended sentence is the same as an actual term of imprisonment.

2. Suspended jail time counts precisely the same as if the defendant had actually gone to jail.

3. Therefore, if your client receives a suspended sentence of imprisonment for one year or more, many offenses can become aggravated felonies, as if an actual term of imprisonment for one year or more had been imposed.

G. Juvenile Court

A juvenile court disposition is ***NOT*** a conviction for immigration purposes. Matter of Devison, 22 I&N Dec. 1362 (BIA 2000).

H. Federal First Offender Act

1. A dismissal or expungement under the Federal First offender Act is not a conviction for "any purpose whatsoever", therefore, it ***is NOT a conviction*** for immigration purposes. 18 U.S.C. § 3607.

2. On the other hand, a disposition under a state counterpart to the Federal First Offender Act ***is a conviction*** for immigration purposes. Matter of Roldan, 22 I&N Dec. 512 (BIA 1999).