

The Judge Advocate's Guide to Immigration Consequences for Military Adverse Actions

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*It is our responsibility under the Constitution to ensure that no criminal defendant—whether a citizen or not—is left to the “mercies of incompetent counsel.” . . . To satisfy this responsibility, we now hold that counsel must inform her client whether his plea carries a risk of deportation. Our longstanding Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less.*¹

I. Introduction

A criminal conviction carries many consequences, and immigration consequences can be some of the most extreme. Despite acknowledging the complexity of immigration law, the U.S. Supreme Court in *Padilla v. Kentucky* ruled that the Sixth Amendment requires defense counsel to advise noncitizen clients of the immigration consequences when pleading guilty.² In response, the Army Trial Judiciary has undertaken steps to ensure that the noncitizen accused is aware of potential immigration consequences of a plea of guilty.³ Unfortunately, this change overlooks another class of servicemembers who may suffer immigration consequences by pleading guilty—U.S. citizens naturalized through the military.⁴ In addition, other military adverse actions may impact noncitizen and military-naturalized⁵

servicemembers' immigration statuses. This is often overlooked by judge advocates.⁶

This primer introduces judge advocates to the fundamentals of immigration law as it relates to servicemembers, specifically immigration consequences of military adverse actions. Whether acting as a defense counsel representing Soldiers or a trial counsel prosecuting them, it is important to be familiar with how military adverse actions can affect noncitizen and naturalized servicemembers' abilities to remain in the country they serve. Part II discusses immigration law fundamentals, covering the legal framework of how one immigrates to and is naturalized in the United States and how one may suffer immigration consequences for misconduct or undesirable acts. Part III explains potential immigration consequences that a noncitizen or naturalized servicemember may face based on military adverse actions. Lastly, Part IV guides judge advocates in how to handle military adverse actions with regard to immigration consequences.

II. Immigration Law Fundamentals

To appreciate the significance of servicemembers' immigration issues, one must understand how the United States regulates the entry and stay of noncitizens: what laws and regulations govern the immigration processes; what agencies implement and enforce them; and how one enters, immigrates, naturalizes, or is deported.

A. Historical Background and Legal Framework

Known as “a nation of immigrants,”⁷ the United States began its nationhood with an open border; however, it

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¹ *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010) (citation omitted) (holding that defense counsel violated a noncitizen's Sixth Amendment right to counsel by not advising the immigration consequences for pleading guilty).

² *Id.* at 365–66, 369. “We conclude that advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel.” *Id.*

³ See U.S. Army Trial Judiciary, Approved Change #10-03 (Effect of Guilty Plea on Immigration Status) to U.S. DEP'T OF ARMY, PAM. 27-9, MILITARY JUDGES' BENCHBOOK (1 Jan. 2010). This interim change requires military judges to inquire into noncitizen accused's understanding of potential immigration consequences and to verify the existence of defense counsel's written advisement regarding such consequence. *Id.*

⁴ See MARGARET D. STOCK, IMMIGRATION LAW & THE MILITARY 31 (2012); see *infra* Part III.A.3.

⁵ This article addresses U.S. citizens who were naturalized based on military service as “military-naturalized” citizens, distinguishing them from other U.S. citizens who were naturalized under the regular process. See Immigration and Nationality Act (INA) §§ 328–329, 8 U.S.C. §§ 1439–1440 (2012). These military naturalizations “waive . . . age, continuous

residence, physical presence, and state residence requirements of the civilian naturalization” STOCK, *supra* note 4, 33–34.

⁶ Currently, Army judge advocates only receive familiarization of immigration law for legal assistance purposes at The Judge Advocate General's Legal Center and School and typically rely on civilian attorneys and paralegals in the field to handle most immigration matters. This assertion is based on the author's recent professional experience teaching immigration law for the 190th Officer Basic Course, The Judge Advocate General's School in April 2013.

⁷ See JOHN F. KENNEDY, A NATION OF IMMIGRANTS (1964).

gradually restricted the immigration of certain people considered undesirable, reflecting the “xenophobia” of the time as well as concern for the potential drain on the U.S. economy.⁸ In 1952, Congress overhauled the immigration system by passing the Immigration and Nationality Act (INA) of 1952, codified in Title 8 of the U.S. Code.⁹ Since its passage, the INA has been amended numerous times but still provides the basic legal framework for the immigration process.¹⁰

Like other statutes, the INA is implemented and enforced through executive agencies that issue corresponding regulations. The main regulation implementing federal immigration law is Title 8 of the Code of Federal Regulations (CFR).¹¹ It promulgates the day-to-day functions and responsibilities of the various federal immigration agencies and provides regulatory guidance in interpreting the INA.¹²

These laws and regulations mandate civil procedural due process for immigration beneficiaries, but also possess quasi-criminal legal characteristics with regard to detaining and deporting immigration violators.¹³ This mixed administrative and quasi-criminal nature is further complicated by the involvement of multiple federal departments and agencies.

B. Agencies

Historically, federal immigration authority, with the

⁸ RICHARD D. STEEL, *STEEL ON IMMIGRATION* § 1.1 (2013).

⁹ *Id.* § 1.2. Despite being codified under the U.S. Code, federal immigration agencies and immigration practitioners still cite to the sections in the INA, rather than the U.S. Code. See *Laws: Immigration and Nationality Act*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/laws/immigration-and-nationality-act> (last updated Sept. 13, 2013). To be consistent with prevailing immigration practice, this article provides citations to both. For example, section 329 of the INA is cited as “INA § 329, 8 U.S.C. § 1439 (2012).”

¹⁰ STEEL, *supra* note 8, §§ 1:2–1:3. See generally INA, tits. I–V, 8 U.S.C. subchs. I–V (2012).

¹¹ See generally 8 C.F.R. ch. I (Department of Homeland Security), ch. V (Executive Office of Immigration Review, Department of Justice) (2013).

¹² E.g., compare INA § 329, 8 U.S.C. § 1440 (providing the statutory requirements for wartime military naturalization), with 8 C.F.R. pt. 329 (providing the regulatory requirements for wartime military naturalization). In addition, the State Department’s regulation governs the issuance of U.S. passports and visas abroad. 22 C.F.R. pts. 22, 40–42, 45–46, 50–53, 62, 97, 99, 104 (2013).

¹³ See STEEL, *supra* note 8, § 1:8; STEPHEN H. LEGOMSKY & CRISTINA M. RODRÍGUEZ, *IMMIGRATION AND REFUGEE LAW AND POLICY* 2–3 (5th ed. 2009); Yafang Deng, *When Procedure Equals Justice: Facing the Pressing Constitutional Needs of a Criminalized Immigration System*, 42 COLUM. J.L. & SOC. PROBS. 261, 261 (2008) (pointing out that immigration law has not developed the procedural due process to match the increasingly quasi-criminal process of immigration enforcement).

exception of visa and passport issuance authority, belonged to the Department of Justice’s Immigration and Naturalization Service (INS): it provided immigration benefits, conducted border inspections, detained noncitizens for status violations, and deported them when appropriate.¹⁴ In 2002, to strengthen the nation’s security against terrorism, Congress abolished the INS and distributed the federal immigration authority across three different departments: the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Department of State (DOS).¹⁵

The DHS inherited most of the INS’s functions—now separated between immigration benefit services and immigration enforcement.¹⁶ The U.S. Citizenship and Immigration Services (USCIS), a DHS bureau, performs the service function, processing all immigration benefits such as permanent residency and naturalization.¹⁷ The enforcement function is divided between two DHS agencies: the U.S. Customs and Border Protection (CBP), which inherited the INS Border Patrol’s role of enforcing immigration law at the border; and the U.S. Immigration and Customs Enforcement (ICE), which investigates and enforces immigration and customs laws within U.S. borders.¹⁸

Though stripped of most immigration functions, the DOJ retained some. Its Executive Office for Immigration Review (EOIR) “interprets and administers federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings” through its immigration judges and the Board of Immigration Appeals.¹⁹ The DOJ also retained the enforcement function to initiate action to revoke U.S. citizenship in federal courts.²⁰

The DOS, through its consulates abroad and the Office of Visa Services in D.C., holds the immigration function of issuing visas to noncitizens and passports to U.S. citizens;

¹⁴ LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 2.

¹⁵ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002) §§ 428 (visa issuance), 441–46 (immigration enforcement functions), 451–62 (citizenship and immigration functions), 471–78 (general immigration provisions).

¹⁶ LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 3.

¹⁷ See *About Us*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/aboutus> (last updated Sept. 12, 2009).

¹⁸ *Timeline*, U.S. CUSTOMS & BORDER PROTECTION, http://nemo.cbp.gov/opa/timeLine_04212011.swf (last visited Nov. 26, 2013); *About ICE: Overview*, ICE, <http://www.ice.gov/about/overview/> (last visited Nov. 26, 2013).

¹⁹ Exec. Office of Immigration Review, *About the Office*, U.S. DEP’T OF JUSTICE, <http://www.justice.gov/eoir/orginfo.htm> (last updated Oct. 2013); LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 3–4, 504.

²⁰ See *infra* Part II.D.6.

however, as a consequence of the 2001 Terrorist Attacks on September 11th, the DHS now oversees the DOS's consular visa processing at consulates.²¹

Working together, the three departments collaborate to enforce immigration law by administering immigration statuses. The following explains how these agencies classify people.

C. Classes of Immigration Status in the United States

To comprehend immigration law, one must also know the different immigration statuses.²² The three²³ main categories are (1) U.S. citizens or nationals,²⁴ (2) immigrants, commonly referred to as lawful permanent residents (LPRs),²⁵ and (3) nonimmigrants.²⁶ Citizens of the United States are either born or naturalized.²⁷ Immigrants

are noncitizens who are admitted to the United States with a privilege to permanently reside and work, and nonimmigrants are noncitizens temporarily admitted to the United States “for a specific purpose.”²⁸ It is possible to change from one status to another.²⁹

Outside of these categories are “illegal immigrants” or “illegal aliens,” who do not have formal statuses—they are simply “unlawfully present,” either by overstaying on an expired status or entering the United States without inspection and becomes an “immigration violator.”³⁰ Immigration violators are either “inadmissible aliens,” who are not qualified to enter the United States, or “deportable aliens,” who are removable from the United States.³¹ The United States denies entry to inadmissible aliens and removes deportable aliens, as it considers them to have potential “adverse impact on the nation’s health and welfare.”³²

D. Immigration and Naturalization Process³³

With this understanding of the immigration classifications, a judge advocate may now turn to how the United States enforces immigration law. To illustrate, this article follows a typical scenario of a foreigner seeking to enter the United States as a nonimmigrant.³⁴

²¹ LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 4.

²² One must be aware that “status” and “visa” are two separate authorizations. “Visa” is a U.S. consular endorsement on a passport permitting the holder to apply for admission into the United States in a particular immigration category and duration; whereas, “status” is a U.S. Customs and Border Protection (CBP) issued authorization to enter and remain in the United States in a particular classification and for an applicable period of time. See *Visa*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/tools/glossary/visa> (last visited Jan. 22, 2014); BLACK’S LAW DICTIONARY 1706 (9th ed. 2009) (“visa”).

²³ There are several other statuses such as “refugee,” “asylee,” and “temporary protective status:” however, they will not be discussed as they are in-between nonimmigrant and immigrant status.

²⁴ The INA differentiates U.S. nationals from U.S. citizens, defining “U.S. national” as being either “U.S. citizen” or “a [noncitizen] who . . . owes permanent allegiance to the United States.” INA § 101(a)(22), 8 U.S.C. § 1101(a)(22) (2012). Thus, some U.S. nationals are “born in outlying possessions” but are not citizens. INA § 308, 8 U.S.C. § 1408. U.S. nationals must naturalize to gain citizenship. See STOCK, *supra* note 4, at 10 n.6 (listing examples of U.S. noncitizen nationals born in American Samoa and Swain’s Island). People from Micronesia, the Marshall Islands, and Palau are not U.S. nationals but are permitted to join the U.S. military. E-mail from Ms. Margaret D. Stock, Esq., to author, subj: Footnotes Requested (Oct. 22, 2014, 12:40PM EST), cmt. MDS2 [hereinafter Stock e-mail].

²⁵ *Lawful Permanent Resident (LPR)*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/tools/glossary/lawful-permanent-resident-lpr> (last visited Jan. 22, 2014). There are also conditional permanent residents (CPRs) who receive permanent residency on a two-year conditional basis—by marriage or for entrepreneurship. *Conditional Permanent Residence*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/green-card/after-green-card-granted/conditional-permanent-residence> (last visited Feb. 27, 2014). Many of these CPRs do serve in the military. Stock e-mail, *supra* note 24, cmt. MDS3.

²⁶ INA § 101(a)(15), 8 U.S.C. § 1101(a)(15) (listing categories of nonimmigrant statuses for foreigners who are temporarily present in the United States).

²⁷ INA § 301, 8 U.S.C. § 1401. There are also “derivative” citizens who obtain their citizenship as a child due to parents’ naturalization or a foreign-born child adopted by U.S. citizens. *Derivative Citizenship*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/tools/glossary/derivative-citizenship> (last visited, Oct. 22, 2014).

²⁸ INA § 101(a)(20), 8 U.S.C. § 1101(a)(20) (definition of “lawfully admitted for permanent residence”); INA § 101(a)(15)(A)–(V), 8 U.S.C. § 1101(a)(15)(A)–(V) (providing various nonimmigrant status for specific purpose and period of time); RUTH E. WASEM, CONG. RESEARCH SERV., RS20916, IMMIGRATION AND NATURALIZATION FUNDAMENTALS 1 (2003).

²⁹ A nonimmigrant can become a lawful permanent resident (LPR) based on her U.S. employment or familial relationship, and a LPR can seek to be naturalized once she meets the citizenship requirements. INA §§ 245 (status change from nonimmigrant to LPR), 310 (U.S. authority to naturalize foreigners), 8 U.S.C. §§ 1255, 1421. Though rare, U.S. citizens can also renounce citizenship by naturalizing in another country, joining a foreign military, accepting a foreign government position, or committing treason. INA § 349, 8 U.S.C. § 1481.

³⁰ INA § 212(a), 8 U.S.C. § 1182(a), *cited in* ROBERT C. DIVINE, IMMIGRATION PRACTICE: 2010–2011 EDITION § 10-6(f), at 10-79 (2010); LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 1140 (referring to aliens who enter without inspection as “undocumented immigrants”).

³¹ See *infra* Appendices B (Inadmissibility Grounds) & C (Deportability Grounds).

³² LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 420, 431. See generally, INA §§ 212 (“inadmissible alien”), 237 (“deportable alien”), 8 U.S.C. §§ 1182, 1227. Though “substantially similar,” inadmissibility grounds and deportable grounds are slightly different so one must be careful to review the actual statute and corresponding regulation. DIVINE, *supra* note 30, § 10-6, at 10-8.

³³ See Appendix A (Immigration and Naturalization Process) (providing graphic illustration).

³⁴ A foreigner may also immediately qualify for LPR status based on employment or family sponsorship. See *infra* Part II.D.3 discussion.

1. Issuance of U.S. Visa

Before a foreign national can be issued a visa, the U.S. consulate abroad must vet her visa eligibility and admissibility. Visa eligibility depends on the type of visa sought: some visas require USCIS's pre-approval, while others may be issued at the consulate's discretion.³⁵ To determine the admissibility of an applicant, the consulate checks the applicant's information against the Consular Lookout and Support System to see if she has committed acts that constitute inadmissible grounds under the INA.³⁶ If the individual is both eligible and admissible, the consulate will issue the nonimmigrant visa.

2. Admission to the United States

When a foreigner travels to the United States using a properly issued visa, the CBP inspection officer at the border determines whether the foreigner is "clearly and beyond a doubt entitled to be admitted."³⁷ At this stage, the officer ensures the traveler has the right documents and determines admissibility by checking the names against the Interagency Border Inspection System (IBIS)³⁸ "lookout" list.³⁹ If the officer finds the foreigner inadmissible, she may be asked to voluntarily return or be detained for removal proceeding.⁴⁰ If no issue exists, the individual is admitted to the United States as a nonimmigrant.⁴¹

³⁵ See INA §§ 214(c) (certain employment-related visas requiring U.S. Citizenship and Immigration Services (USCIS) pre-approval before applying for visa), 221 (consular officer's responsibility to issue visa), 8 U.S.C. §§ 1184(c), 1201.

³⁶ DIVINE, *supra* note 30, § 10-2(a), at 10-3 to 10-4. The system includes checks against the FBI's National Crime Information Center criminal history information and against other U.S. law enforcement and intelligence agencies' databases. *Id.*

³⁷ INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A).

³⁸ *IBIS-General Information*, U.S. CUSTOMS & BORDER PROTECTION (July 31, 2013, 3:46 PM), https://help.cbp.gov/app/answers/detail/a_id/151/~/ibis--general-information. It provides DHS inspectors access to interagency law enforcement database, including FBI National Crime Information Center and the National Law Enforcement Telecommunications Systems, which connects with all fifty states' law enforcement agencies. *Id.*

³⁹ U.S. CUSTOMS & BORDER PROTECTION, CUSTOMS AND BORDER PROTECTION (CBP) INSPECTOR'S FIELD MANUAL (FM) ch. 15.2 (Feb. 10, 2006) [hereinafter, CBP INSPECTOR'S FM] (redacted for Public Release); see also LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 503.

⁴⁰ INA §§ 239–240, 8 U.S.C. §§ 1229–1229a; see LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 504. For details on removal proceedings, see *infra* Part II.D.5 discussion.

⁴¹ In 2011, 1.9 million nonimmigrants lived in the United States. Bryan Baker, Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Estimates of the Size and Characteristics of the Resident Nonimmigrant Population in the United States: January 2011*, POPULATION ESTIMATE 1 (Sept. 2012).

3. Becoming a Lawful Permanent Resident

A nonimmigrant who wants to remain in the United States indefinitely will need to become a LPR.⁴² However, she cannot simply receive a permanent residency solely by her intent to immigrate; an employer or family member must first sponsor the nonimmigrant for LPR status.⁴³ The USCIS adjudicates the U.S. sponsor's petition. Once approved, the nonimmigrant can ask the U.S. consulate to issue an immigrant visa abroad⁴⁴ (if they are not currently located within the United States) or the USCIS to adjust her status from nonimmigrant to LPR while still in the United States.⁴⁵ Then, either upon her re-entry to the United States with an immigrant visa or when the USCIS approves the adjustment, the nonimmigrant officially becomes a LPR.⁴⁶

4. Becoming a Naturalized U.S. Citizen

A LPR can live and work in the United States permanently; however, she remains subject to removal and cannot vote, sit on jury, or take a federal job (with very few exceptions).⁴⁷ To fully enjoy all the benefits of living in the

⁴² Nonimmigrants find their statuses too tenuous because most cannot be extended indefinitely and any change in circumstances (e.g., graduation or loss of job) requires a new nonimmigrant petition. See, e.g., 8 C.F.R. § 214.2(h) (2013).

⁴³ INA §§ 203(a) (family sponsored immigration), 203(b) (employment-based immigration), 8 U.S.C. §§ 1153(a), 1153(b). Though most obtain LPR status through family- or employment-based immigration, there are several other ways to obtain LPR such as diversity visa, special immigrant juvenile status, battered spouse/child, and etc. *Other Ways to Get a Green Card*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/green-card/other-ways-get-green-card> (last updated Jan. 8, 2014).

⁴⁴ This process subjects the foreigner to examination by U.S. consulate abroad and then by the CBP at the border. See *supra* Part II.D.1–2.

⁴⁵ The USCIS examines her adjustment application for inadmissibility and deportability because the bureau deems her "adjustment" as a new "admission" and reviews for deportability. See DIVINE, *supra* note 30, § 10-4, at 10-7. If denied for other than inadmissibility or deportable grounds, the applicant must seek reopening or reconsideration of the case or seek an immigrant visa from the consulate. See 8 C.F.R. § 103.5 (2013). If the denial is based on inadmissibility or deportable grounds, the USCIS can initiate removal proceeding. INA §§ 239–240, 8 U.S.C. §§ 1229–1229a. See *infra* Part II.D.5 discussion.

⁴⁶ In 2012, there were 13.3 million LPRs residing in the United States. Nancy Rytina, Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Estimates of the Lawful Permanent Resident Population in 2012*, POPULATION ESTIMATE 1 (July 2013).

⁴⁷ *Compare Rights and Responsibilities of a Green Card Holder (Permanent Resident)*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/green-card/after-green-card-granted/rights-and-responsibilities-permanent-resident/rights-and-responsibilities-green-card-holder-permanent-resident> (last visited May 13, 2014) (listing a LPR's rights to live and work in the United States permanently and be protected by the laws of the United States and responsibility to pay taxes and register for selective service), and *Maintaining Permanent Residence*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/green-card/after-green-card-granted/maintaining-permanent-residence> (last visited May 13, 2014) (listing conditions in which a LPR can lose the LPR status), *with*

United States, a LPR must become a U.S. citizen.

Generally, to naturalize, a LPR must (1) be a LPR for at least five years; (2) have been physically present in the United States at least half of that time as a LPR; (3) be a person of “good moral character”⁴⁸ for five years prior to applying for naturalization; (4) have requisite knowledge of the English language and U.S. civics; and (5) be attached to the U.S. constitutional principles.⁴⁹ Noncitizens⁵⁰ with qualifying military service are eligible for military naturalization without meeting the time or residence requirements.⁵¹ The USCIS adjudicates naturalization by conducting a background investigation, interviewing the applicant under oath, and testing the applicant’s English and civics knowledge.⁵² For military naturalization, the USCIS requires a service’s certification that the noncitizen is

Citizenship Rights and Responsibilities, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities> (last visited May 13, 2014) (listing U.S. citizen’s rights to vote, serve on a jury, and gain federal employment).

⁴⁸ The review of good moral character is critical as it triggers potential referral to removal proceedings based on inadmissibility or deportable grounds. See DIVINE, *supra* note 30, § 12-3(C)(1)(iv), at 12-16. The INA defines “good moral character” in the negative, enumerating what acts would render one a person not of good moral character. INA §101(f), 8 U.S.C. §1101(f). See Appendix F (Definition of “Good Moral Character”) (providing the full text). Furthermore, there are other statutory bars against naturalization, such as being a member of or affiliated with anarchist, communist, or totalitarian principles, advocating overthrow of the U.S. government, avoiding the draft, deserting the armed forces during wartime, and being discharged from the armed forces based on alienage. INA §§ 313–315, 8 U.S.C. §§ 1424–1426.

⁴⁹ INA §§ 312 (English and civics requirement), 316 (requirements for residence, good moral character, and attachment to U.S. Constitution), 8 U.S.C. §§ 1423, 1427. The spouse of a U.S. citizen has a shorter time in residence and physical presence requirements. INA § 319 (U.S. citizen spouse exceptions), 8 U.S.C. § 1430.

⁵⁰ Under a pilot military exception, a qualified nonimmigrant may also be naturalized through the Military Accessions Vital to the National Interest (MAVNI) program, now available until May 2015. See Fact Sheet, U.S. Dep’t of Def., Military Accessions Vital to the National Interest (MANVI) Recruitment Pilot (May 2012), available at <http://www.defense.gov/news/mavni-fact-sheet.pdf>; *MAVNI Program: Direct U.S. Citizenship Without Green Card*, Int’l STUDENT VOICE MAG. (May 5, 2014), <http://www.isvmag.com/05/05/mavni-program-direct-u-s-citizenship-without-green-card/5366>. On 25 September 2014, The Department of Defense further announced that it would also allow qualified undocumented aliens to enlist under this program. See Julia Preston, *Military Path Opened for Young Immigrants*, N.Y. TIMES, Sept. 25, 2014, http://www.nytimes.com/2014/09/26/us/military-path-opened-for-young-immigrants.html?_r=0.

⁵¹ INA §§ 328–329, 8 U.S.C. §§ 1439–1440; see also *supra* note 5.

⁵² Investigation includes (1) the FBI criminal background check, (2) a name check against the FBI’s Universal Index, and (3) “other inter-agency criminal background and security checks.” U.S. CITIZENSHIP & IMMIGRATION SERVS., 12 USCIS POLICY MANUAL pt. B, ch. 2, at 110 (Sept. 30, 2013) [hereinafter, USCIS POLICY MANUAL VOL. 12], available at <http://www.uscis.gov/policymanual/PDF/PolicyManual.pdf>. Though not named in the policy manual, the author suspects that IBIS is also queried in this investigation. See *supra* note 38.

“serving or has served “under honorable conditions.”⁵³ If the USCIS determines that the applicant is fit for naturalization, she takes an oath of allegiance⁵⁴ similar to an enlistment oath and is naturalized.

5. Removal (Deportation) of a Noncitizen

When the USCIS, ICE, or CBP⁵⁵ determines a noncitizen inadmissible or deportable during any of the processes outlined above, they can initiate a proceeding to remove⁵⁶ the noncitizen from the United States.⁵⁷ The proceeding is “quasi-judicial [and] adversarial”⁵⁸ where both the DHS and the alien may be represented by counsel, and an immigration judge presides over the hearing.⁵⁹ Much like a criminal trial, a DHS agency serves a notice to the noncitizen alleging her inadmissible or deportable act(s), notifying the specific grounds for removal, and advising of the right to representation.⁶⁰ Unlike a criminal trial,

⁵³ INA §§ 238(e), 239(a), 8 U.S.C. §§ 1439(e), 1440(a). See *infra* Part III.B.3.

⁵⁴ 8 C.F.R. § 337.1 (2013) (the naturalization oath).

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

Id.

⁵⁵ For arriving noncitizens who lack proper documents or misrepresent information to a border inspection officer, the CBP can remove such noncitizens without a removal proceeding. See INA § 235(b), 8 U.S.C. § 1225(b).

⁵⁶ In 1996, the term “remove” replaced the terms “exclude,” which only applied to aliens denied admission, and “deport,” which only applied to aliens already admitted but found deportable. LEGOMSKY & RODRÍGUEZ, *supra* note 13, at 421. Due to familiarity, however, the term “deport” is still interchangeably used with “remove.” *Id.*

⁵⁷ INA § 239, 8 U.S.C. § 1229.

⁵⁸ DIVINE, *supra* note 30, § 11-1, at 11-2.

⁵⁹ *Id.* Though aliens may be represented by counsel, Ms. Stocks notes that most do not. Stock e-mail, *supra* note 24, cmt. MDS6.

⁶⁰ CHARLES A. WIEGAND III, EXEC. OFFICE OF IMMIGRATION REV., U.S. DEP’T OF JUSTICE, FUNDAMENTALS OF IMMIGRATION LAW 69 (Oct. 2011); INA § 240(b)(4), 8 U.S.C. § 1229a(b)(4).

however, the burden of proof depends on the noncitizen's immigration status. If the noncitizen has not been admitted (i.e., the noncitizen evades CBP inspection and enters the United States or CBP did not grant admission upon inspection), the noncitizen must prove that she is "clearly and beyond a doubt entitled to be admitted . . ." ⁶¹ If the noncitizen has been admitted, the DHS must prove the noncitizen is removable by "clear and convincing evidence." ⁶²

During the proceeding, the immigration judge decides whether the noncitizen is removable, considers any relief from removal, and orders removal, if appropriate. ⁶³ Either party can appeal the judge's decision to the Board of Immigration Appeals (BIA). ⁶⁴ The BIA addresses both findings of fact and questions of law, providing authoritative interpretation of immigration law unless overruled by federal courts. ⁶⁵ Judicial review of BIA decisions is possible, but very limited. ⁶⁶

For noncitizen criminals, the government expedites their removal in two ways—administrative removal of aggravated felons by DHS and judicial removal by federal courts. The administrative removal applies to non-LPRs and conditional permanent residents convicted of an aggravated felony; ⁶⁷ the DHS can summarily deport these noncitizens without a removal proceeding upon their release from incarceration. ⁶⁸ Federal judges, however, can order removal of all noncitizen criminal defendants, including LPRs, as a part of an adjudged sentence. ⁶⁹ To invoke this procedure, the

prosecuting U.S. Attorney must provide notice of the intent to seek judicial removal, and both the U.S. Attorney and the DHS must jointly file the grounds of deportation prior to sentencing. ⁷⁰

6. Denaturalization: Revocation of U.S. Citizenship

Though a naturalized citizen enjoys the unfettered rights of citizenship and is no longer subject to removal, she is not completely immune from immigration consequences. ⁷¹ The U.S. government can revoke naturalization, known as "denaturalization," through civil or criminal judicial revocation processes. ⁷² For both civil and criminal processes, the U.S. Attorney must file a revocation action with the federal district court. ⁷³ The difference between the civil and criminal denaturalization is the required burden of proof—the U.S. Attorney must provide "clear, convincing, and unequivocal evidence" ⁷⁴ for a civil revocation and evidence beyond a reasonable doubt for a criminal revocation. ⁷⁵ Before the local U.S. Attorney initiates a revocation, she must consult the DOJ Civil Division's Office of Immigration Litigation. ⁷⁶ Once initiated, DOJ Criminal Division's Office of Special Investigations prepares, initiates, and prosecutes the case. ⁷⁷

⁶¹ INA § 240(c)(2), 8 U.S.C. § 1229a(c)(2) (burden on arriving aliens and aliens present in the United States without being inspected or paroled); DIVINE, *supra* note 30, §11-1, at 11-3.

⁶² INA § 240(c)(3)(A), 8 U.S.C. § 1229a(c)(3)(A); 8 C.F.R. § 1240.8 (2014) ("Burdens of Proof in removal proceedings").

⁶³ INA § 240(c), 8 U.S.C. § 1229a(c). The immigration judge may terminate the proceeding, adjust the noncitizen's status to LPR if eligible, cancel the removal of certain LPRs and nonimmigrants, or waive certain deportability grounds. DIVINE, *supra* note 30, § 11-5(c), (d), (f), (g).

⁶⁴ 8 C.F.R. § 1003.1.

⁶⁵ *Id.* § 1003.3(b); *see* DIVINE, *supra* note 30, § 11-6(a), at 11-100.

⁶⁶ DIVINE, *supra* note 30, § 11-6(b), at 11-101. Due to the complexity of federal courts' jurisdiction over immigration matters, this article does not address federal appeal processes. *See id.* § 2-2(a)(1)(I), at 2-24 to 2-32.

⁶⁷ INA § 238(c), 8 U.S.C. § 1228(c); *see infra* Appendix E (Definition of "Aggravated Felony" in the INA). Conditional permanent residents are those immigrants who receive permanent residency on a two-year conditional basis—by marriage or for entrepreneurship. *See supra* note 25. By written policy, however, the DHS does not utilize expedited removal of CPRs. Stock e-mail, *supra* note 24, cmt. GR10.

⁶⁸ INA § 238(b), 8 U.S.C. § 1228(b); DIVINE, *supra* note 30, § 11-4(h), at 11-56.

⁶⁹ INA § 238(c), 8 U.S.C. § 1228(c). This subsection was erroneously renumbered; it is supposed to be subsection (d). DIVINE, *supra* note 30, at 11-58, n.267.

⁷⁰ INA § 238(c), 8 U.S.C. § 1228(c). DIVINE, *supra* note 30, § 11-4(i), at 11-57. Often, the noncitizen defendants will agree to judicial removal as a part of the plea bargain. *Id.*

⁷¹ DIVINE, *supra* note 30, § 12-5, at 12-46.

⁷² The three civil grounds for denaturalization are (1) "illegal procurement of naturalization," (2) "concealment of a material fact or willful misrepresentation," and (3) for military-naturalized citizen, being "discharged [from service] under other than honorable conditions before serving honorably for five years." USCIS POLICY MANUAL VOL. 12, *supra* note 52, pt. L, ch. 1, at 291. Under the criminal process, one's conviction of the federal offense of procuring naturalization unlawfully results in revocation. *Id.*; 18 U.S.C. § 1425 (Procurement of citizenship or naturalization unlawfully). The USCIS has an administrative authority to reopen the naturalization "to correct, reopen, alter, modify, or vacate" a naturalization order. INA § 340(h), 8 U.S.C. § 1451(h). However, this article focuses only on the revocation.

⁷³ USCIS POLICY MANUAL VOL. 12, *supra* note 52, pt. L, ch. 1, at 291.

⁷⁴ *Kungys v. United States*, 485 U.S. 759, 767 (1988), *cited in* USCIS POLICY MANUAL VOL. 12, *supra* note 52, pt. L, ch. 1, at 291.

⁷⁵ USCIS POLICY MANUAL VOL. 12, *supra* note 52, pt. L, ch. 1, at 291.

⁷⁶ OFFICE OF THE U.S. ATTORNEYS, U.S. DEP'T OF JUSTICE, 9 UNITED STATES ATTORNEYS MANUAL § 9-73.801 (May 2010) [hereinafter 9 U.S. ATTORNEYS MANUAL], available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/73mcrm.htm#9-73. In practice, Office of Immigration Litigation (OIL) initiates and prosecutes civil denaturalization cases. Stock e-mail, *supra* note 24, cmt. MDS13.

⁷⁷ 9 U.S. ATTORNEYS MANUAL, *supra* note 76. Beginning in 2010, the DHS reviews all proposed civil denaturalization actions prior to being presented to OIL and U.S. attorney's office. Stock e-mail, *supra* note 24, cmt. GR14.

Though cursory, these six agency actions provide the basics of U.S. immigration framework. With this foundation, the next part discusses how LPR and military-naturalized⁷⁸ servicemembers can suffer consequences from military adverse actions.

III. Immigration Law and Servicemembers

Except in very rare situations,⁷⁹ all servicemembers must be either U.S. citizens or LPRs due to the military's enlistment or commissioning requirements.⁸⁰ Among U.S. citizens, there are three categories: (1) citizens at birth and child citizens, (2) regular-naturalized, and (3) military-naturalized.⁸¹ Military adverse actions bear no immigration consequences to the first two citizen types.⁸² As such, this section of the article focuses on the potential immigration consequences to LPR and military-naturalized servicemembers military adverse actions.

A. Servicemembers' Immigration Consequences

Though special immigration benefits for military service exist, there is very little special protection for servicemembers from immigration consequences.⁸³ Military-naturalized and LPR servicemembers face the same immigration consequences as civilians: a LPR

⁷⁸ See *supra* note 5 (explanation of "military-naturalized").

⁷⁹ Prior to 2004, there were a few cases of illegal aliens joining the service with fraudulent documents. Mary D. Stock, *Essential to the Fight: Immigrants in the Military Eight Years After 9/11*, IMMIGRATION POL'Y CTR. SPECIAL REP. 9 n.13 (Nov. 2009), available at http://www.immigrationpolicy.org/sites/default/files/docs/Immigrants_in_the_Military_-_Stock_110909_0.pdf (citing Douglas Gillison, *The Few, the Proud, the Guilty: Marines Recruiter Convicted of Providing Fake Documents to Enlist Illegal Aliens*, VILLAGE VOICE, Oct. 11, 2005, <http://www.village-voice.com/2005-10-11/news/the-few-the-proud-the-guilty/>). Since 2004, the armed services verify a noncitizen recruit's status via the USCIS database. STOCK, *supra* note 4, at 15 n.33.

⁸⁰ 10 U.S.C. §§ 504 (requiring U.S. citizenship, LPR, or U.S. nationality for enlistment in the armed forces), 532 (requiring U.S. citizenship for receiving regular commission in the armed forces unless Secretary of Defense waives for LPRs and U.S. nationals) (2012).

⁸¹ See *supra* Part II.D.4 and notes 5 & 24.

⁸² Again, U.S. citizens, regardless of whether by birth or by regular naturalization, can lose their citizenship by certain acts such as formal renunciation or foreign naturalization. See *supra* note 72. For regular-naturalized citizens, it may be possible that a military adverse action may reveal one's illegal procurement or willful misrepresentation to procure naturalization; however, the underlying conduct is not military-specific. Therefore, these topics are beyond the scope of this article.

⁸³ STOCK, *supra* note 4, at 81; Stock e-mail, *supra* note 24, cmt. MDS9 ("There are some limited protections such as military naturalization and the [Servicemembers'] Civil Relief Act."). There is, however, a limited protection for noncitizen servicemembers from removal when traveling in and out of the United States while on official military orders. 8 C.F.R. § 235.1(c) (2013).

servicemember may be removed based on deportable grounds or be denied naturalization for lack of good moral character or other statutory bar, and a military-naturalized servicemember may be denaturalized for receiving an other than honorable (OTH) discharge.⁸⁴

One should note that military adverse actions do not automatically result in these immigration consequences.⁸⁵ Removal, naturalization denial, and denaturalization require federal immigration authorities to affirmatively pursue these actions.

A military adverse action may trigger these consequences when it evidences the grounds for them. Therefore, to identify the military adverse actions with immigration consequences, a judge advocate must first examine the criteria for the three consequences.

1. Removal of LPR Servicemembers

As pointed out by the Supreme Court, removal is the gravest immigration consequence a LPR servicemember can suffer.⁸⁶ A LPR servicemember becomes removable when she commits an act that constitutes a ground for removal under one of six categories.⁸⁷ Among these grounds, two grounds warrant discussion because they are the most common deportable category is used to remove foreigners⁸⁸ and military adverse actions are likely to trigger them: (a) conviction-based removal grounds; and (b) conduct-based removal grounds.⁸⁹

a. Conviction-Based Removal Grounds

A LPR servicemember becomes removable when her qualifying criminal conviction matches an enumerated criminal offense in the INA. There are twelve enumerated offense types: crimes involving moral turpitude (CIMT); multiple CIMTs; multiple convictions resulting in more than

⁸⁴ See *supra* note 72 and Part II.D.4.-6.

⁸⁵ STOCK, *supra* note 4, at 87.

⁸⁶ See *supra* note 1 and accompanying text.

⁸⁷ INA § 237(a), 8 U.S.C. § 1227(a) (2012); see *infra* Appendix C (Deportability Grounds). The six categories are (1) immigration law violation; (2) deportable criminal offenses; (3) security related grounds; (4) failure to comply with immigration registration requirements or falsely claiming citizenship; (5) public charge; and (6) unlawful voter. *Id.*

⁸⁸ In 2012, 47.6 percent of total removal were based on criminal grounds. John F. Simanski & Lesley M. Sapp, Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Immigration Enforcement Action: 2012*, ANNUAL REPORT tbl.7, at 6 (Dec. 2013).

⁸⁹ OFFICE OF IMMIGRATION LITIG., U.S. DEP'T OF JUSTICE, IMMIGRATION CONSEQUENCES FOR CRIMINAL CONVICTIONS: PADILLA V. KENTUCKY 7-18 (2010) [hereinafter USDOJ-OIL MONOGRAPH].

five years sentence; aggravated felonies; drug offenses; firearm-related offenses; espionage, treason, or related security offenses; domestic violence offenses (including stalking and child abuse); sex offender registration failures; protective order violations; high speed flights from border checkpoint; and alien registration violations.⁹⁰

Determining whether a conviction triggers removal is a complex task due to ambiguous statutory definitions, resulting in a wide breadth of case law with diverse circuit rulings.⁹¹ Research of case law is necessary to determine whether the military adverse action is a conviction for immigration purposes.⁹² If it is a conviction for immigration purposes, then one must decide whether the conviction (1) contains an element of moral turpitude, (2) matches elements of generic crimes listed as an aggravated felony, or (3) matches the other enumerated crimes in the INA.⁹³ If the adverse action does not qualify as a conviction, then it may still trigger conduct-based removal grounds.

b. Conduct-Based Removal Grounds

This ground for removal is triggered solely by the LPR's conduct—it is triggered when the LPR servicemember admits to conduct constituting an enumerated crime or when DHS reasonably finds that the LPR servicemember committed such a crime. Under this category, there are fourteen types of prohibited conduct: CIMT; drug abuse and trafficking; prostitution; fraud or misrepresentation; falsely claiming U.S. citizenship; alien smuggling; marriage fraud; human trafficking; money laundering; espionage, sabotage or treason; terrorism; unlawful voting; polygamy; and international child abduction. Similar to conviction-based removal, analysis of the elements of the prohibited conduct is required to determine whether the adverse action evidences the LPR

servicemember having committed them.⁹⁴

2. Naturalization Denial of LPR Servicemembers

Unlike removal, a naturalization denial does not seem as dire a consequence given that the LPR servicemember is not being removed (unless the basis of denial also triggers the removal grounds); however, due to the U.S. citizenship requirement in order to obtain a security clearance⁹⁵ and other benefits as a U.S. citizen,⁹⁶ such a consequence is detrimental. The DHS has broad authority to deny naturalization for lack of “good moral character,” which is evidenced either by enumerated conduct or by the agency's discretion.⁹⁷ There are also statutory bars to naturalization: desertion from the military permanently bars one's naturalization; an OTH or punitive discharge bars one from receiving military naturalization; discharge from service due to being an alien permanently bars one from naturalizing later, and a conscientious objector discharge, even an honorable one, bars one from receiving wartime military naturalization.⁹⁸

3. Denaturalization of Military-Naturalized Servicemembers

Like civilians or servicemembers who naturalized under regular processes, military-naturalized servicemembers can be denaturalized for illegally procuring or willfully misrepresenting facts to obtain naturalization.⁹⁹ Interestingly, there is an additional ground to denaturalize a military-naturalized servicemember—being separated from the service “under other than honorable conditions before the person has served honorably for a period or periods aggregating five years.”¹⁰⁰ The DHS does not make an independent determination of one's service but relies on the armed force's characterization of service from the DD Form 214 to determine whether one served honorably for naturalization purposes.¹⁰¹ Hence, a military-naturalized servicemember who receives a punitive discharge at a court-

⁹⁰ *Id.* at 7–11. Technically, these crimes are divided between deportable and inadmissible criminal convictions; however, for the purpose of determining removability, they are applied equally. Hence, this article does not distinguish them. For the definition of a crime of moral turpitude, see Appendix D of this article.

⁹¹ Major Richard D. Belliss, *Consequences of a Court-Martial Conviction for United States Service Members Who Are Not United States Citizens*, 51 NAVAL L. REV. 53, 57 (2005); USDOJ-OIL MONOGRAPH, *supra* note 89, at 6–25, app. D.

⁹² Belliss, *supra* note 91, at 56–57.

⁹³ *Id.* at 57–63 (explaining how to determine whether a crime is a crime involving moral turpitude, aggravated felony, and other deportable offenses); USDOJ-OIL MONOGRAPH, *supra* note 89, app. D (providing excellent summary of the two-step process called “categorical” and “modified categorical” approaches used by federal courts and Board of Immigration Appeals (BIA) to determine whether a particular federal or state conviction matches the generic definition of criminal grounds for removal as well as a “circumstance-specific” approach for non-generic criminal grounds for removal). See *infra* note 151 (explaining these approaches).

⁹⁴ USDOJ-OIL MONOGRAPH, *supra* note 89, at 7, 11–18.

⁹⁵ U.S. DEP'T OF ARMY, REG. 380-67, PERSONNEL SECURITY PROGRAM para. 3-22a (14 Jan. 2014).

⁹⁶ See *supra* note 47 and accompanying text.

⁹⁷ INA §§ 212(f), 316, 8 U.S.C. §§ 1101(f), 1427 (2012); see *supra* note 48 and *infra* Appendix F.

⁹⁸ INA §§ 314–315, 328–329, 8 U.S.C. §§ 1425–1426, 1439–1440 (2012). See also *supra* note 5 and accompanying text.

⁹⁹ See *supra* Part II.D.6.

¹⁰⁰ INA §§ 328–329, 8 U.S.C. §§ 1439–1440; see also STOCK, *supra* note 4, at 57.

¹⁰¹ See 8 C.F.R. §§ 328.1, 329.1 (2013).

martial or is separated with an OTH discharge may face denaturalization; however, such instance is extremely rare as there have only been two reported cases with only one resulting in denaturalization.¹⁰²

B. Military Adverse Actions with Immigration Consequences

Given the above criteria, the following military adverse actions may have immigration consequences: (1) conviction at a general or special court-martial; (2) non-judicial punishment; and (3) administrative separation.¹⁰³

1. Court-Martial Convictions

Just like civilian convictions, court-martial convictions may result in removal, naturalization denial, or denaturalization. Whether a court-martial conviction triggers such consequence depends on (a) the level of court-martial, (b) the substance of the crime, and (c) the possible and adjudged punishment for the crime.¹⁰⁴

a. The Level of Court-Martial

For immigration purposes, a “conviction” is defined as a “formal judgment of guilt . . . entered by a court”¹⁰⁵ and must be a result of “a trial . . . whose purpose is to determine whether the accused committed a crime and which provides the constitutional safeguards normally attendant upon a criminal.”¹⁰⁶ It is accepted that general and special court-martial convictions qualify as a “conviction” for immigration purposes.¹⁰⁷

¹⁰² There are only two denaturalization cases based on other than honorable discharge from the armed forces, and only one resulted in denaturalization. See *United States v. Sommerfeld*, 211 F. Supp. 493, 495 (E.D. Pa. 1962) (denaturalizing an Air Force veteran who received dishonorable discharge); see also *United States v. Tarantino*, 122 F. Supp. 929, 932 (E.D.N.Y. 1954) (denying denaturalization of an Army veteran who received dishonorable discharge).

¹⁰³ STOCK, *supra* note 4, at 59–60, 80. There are other adverse actions such as administrative reprimand or counseling that may create an official document that evidences servicemember’s misconduct; however, they are unlikely to trigger immigration consequences unless they become a matter of public record. *Id.* at 59–60.

¹⁰⁴ See *id.* at 60–65.

¹⁰⁵ INA § 101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A); see STOCK, *supra* note 4, at 57.

¹⁰⁶ *In re Eslamizar*, 23 I. & N. Dec. 684, 687 (BIA 2004) (holding that conviction at an Oregon violation proceedings without counsel is not a conviction for immigration purposes).

¹⁰⁷ See *In re Rivera-Valencia*, 241 I. & N. Dec. 484 (BIA 2008) (holding that the alien’s general court-martial conviction for carnal knowledge is conviction for immigration purposes); see also Gregory E. Fehlings, *Deportation as a Consequence of a Court-Martial Conviction*, 7 GEO.

The Supreme Court has ruled that a summary court martial (SCM) is not a criminal proceeding; therefore, SCM convictions do not qualify as convictions for immigration purposes.¹⁰⁸ Nevertheless, SCM convictions resulting from military law enforcement investigations may raise a conduct-based removal issue or impact a naturalization because such conviction is reportable to the FBI as a criminal record.¹⁰⁹ The DHS may seek removal for the underlying conduct or deny naturalization for lack of good moral character based on a LPR servicemember’s criminal record entry stating “[s]ubject found guilty by [SCM].”¹¹⁰

b. Substance of the Crime

As stated in Part III.A.1.a., to trigger immigration consequences, a court-martial conviction must be for certain crimes, as enumerated in the INA.¹¹¹ The elements of crimes under Uniform Code of Military Justice (UCMJ) must be evaluated to determine whether they match those of enumerated crimes.¹¹² As a starting point, a judge advocate can refer to Appendix G of this article (UCMJ Offenses and Potential Immigration Consequences) for UCMJ offenses with potential immigration consequences.

c. The Possible or Adjudged Punishment

Lastly, a court-martial conviction can trigger immigration consequences based on the maximum allowable

IMMIGR. L.J. 295 (June 1993) (explaining that the additional constitutional safeguards for the military accused have made general and special court-martial convictions qualifying under the INA).

¹⁰⁸ INA § 101(a)(48), 8 U.S.C. § 1101(a)(48); see Fehlings, *supra* note 107, at 300 (citing *Middendorf v. Henry*, 425 U.S. 25, 34 (1976)).

¹⁰⁹ U.S. DEP’T OF ARMY, REG. 190-45, LAW ENFORCEMENT REPORTING para. 4-10 (30 Mar. 2007) [hereinafter AR 190-45]; U.S. DEP’T OF DEF., INSTR. 5505.11, FINGERPRINTING CARD AND FINAL DISPOSITION REPORT SUBMISSION REQUIREMENTS enclosures 2, 3 ¶ 2.b.(1) (9 July 2010) (C1, 3 May 2011) [hereinafter DODI 5505.11] (requiring reporting of summary court-martial convictions when resulting from a Department of Defense (DOD) law enforcement investigation); see STOCK, *supra* note 4, at 63.

¹¹⁰ DODI 5505.11, *supra* note 109, enclosure 4, para. 2.d.(1)–(2). *E.g.*, a summary court-martial conviction for wrongful use of controlled substance may trigger the deportable ground of being a “drug abuser or addict” without having a criminal conviction. INA § 237(a)(2)(B)(ii), 8 U.S.C. § 1227(a)(2)(B)(ii).

¹¹¹ See *infra* Appendices B, C, F. For denaturalization, the substance of the crime is irrelevant so long as one receives a punitive discharge—a discharge worse than under other than honorable conditions. See *supra* Part III.A.3.

¹¹² See Belliss, *supra* note 91, at 57–63 (explaining how to determine whether a crime is a crime involving moral turpitude, aggravated felony, and other deportable offenses); USDOJ-OIL MONOGRAPH, *supra* note 89, app. D (providing a two-step process used to determine immigration consequences of a conviction).

sentence or the actual sentence adjudged.¹¹³ Researching the specific grounds for removal is essential to determine whether the ground is triggered by the possible sentence or the sentence actually adjudged.¹¹⁴ Furthermore, a punitive discharge may result in a servicemember's denaturalization (though improbable).¹¹⁵

Court-martial convictions are reported to the ICE under its Criminal Alien Program.¹¹⁶ The ICE routinely seeks out noncitizens with deportable crimes while they are incarcerated in federal, state, and local prisons, and arranges to remove them upon release from incarceration.¹¹⁷ Noncitizen servicemembers in military correctional facilities fall under this program—military correctional facilities cooperate with ICE by forwarding information on noncitizen prisoners who may be deportable.¹¹⁸

2. Non-Judicial Punishment

Unlike court-martial convictions, non-judicial punishment (NJP)¹¹⁹ is not a “conviction” for immigration purposes and is not deemed a criminal conviction.¹²⁰ Like the SCM conviction, however, all field-grade NJPs resulting from military law enforcement investigations are reportable to the FBI.¹²¹ The DHS may find a conduct-based removal basis or make a negative good moral character determination based on such criminal record.¹²²

¹¹³ Compare INA § 212(a)(2)(B) (stating that an alien is inadmissible when he is “convicted of two or more offenses . . . for which the aggregate sentences to confinement were 5 years or more”), with *id.* § 237(a)(2)(A)(i)(II) (stating that an alien is deportable when he is “convicted of a crime for which a sentence of one year or longer may be imposed”).

¹¹⁴ For a good research starting point, the readers should review USDOJ-OIL MONOGRAPH, *supra* note 89.

¹¹⁵ See *supra* Part III.A.3 & note 101.

¹¹⁶ U.S. DEP’T OF DEF., INSTR. 1325.07, ADMINISTRATION OF MILITARY CORRECTIONAL FACILITIES AND CLEMENCY AND PAROLE AUTHORITIES enclosures 2, ¶ 2.d. (11 Mar. 2013) [hereinafter DODI 1325.07].

¹¹⁷ *Criminal Alien Program*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, <http://www.ice.gov/criminal-alien-program/> (last visited Jan. 30, 2014).

¹¹⁸ DODI 1325.07, *supra* note 116, enclosures 2, ¶ 2.d.

¹¹⁹ UCMJ art. 15 (2012).

¹²⁰ See *supra* note 105 and accompanying text; see also STOCK, *supra* note 4, 58–59.

¹²¹ AR 190-45, *supra* note 109, para. 4-10; DODI 5505.11, *supra* note 109, enclosures 2, 3 ¶ 2.b.(1).

¹²² STOCK, *supra* note 4, at 59 n.5. “[Nonjudicial punishment] can affect a good moral character determination not because they are convictions, but because U.S. Citizenship and Immigration Services (USCIS) is permitted to use its discretion when deciding whether someone has good moral character.” *Id.*

3. Administrative Separation

An administrative separation may result in immigration consequence depending on the characterization of service upon discharge, the underlying conduct, or a statutory requirement that bars certain immigration benefits for certain types of military discharges: An OTH discharge is a basis for denaturalization of military naturalized servicemembers;¹²³ a noncitizen servicemember's underlying conduct may evidence a conduct-based removal ground or a lack of good moral character;¹²⁴ and a conscientious objector discharge bars wartime military naturalization.¹²⁵

IV. Guidance to Judge Advocates

When handling military adverse actions, judge advocates must identify these immigration consequences and competently advise their respective clients. The following provides counsel with guidelines for determining a servicemember's immigration status and more specific guidance for defense and trial counsel.

A. General Guidance

For every military adverse action, judge advocates must first ascertain the servicemember's immigration status to determine whether there are potential immigration consequences. A noncitizen servicemember is easily identified due her personnel records listing her country of citizenship (though, with any military records, subject to error).¹²⁶ To ensure accuracy, one should review the enlistment contract, which also contains citizenship information.¹²⁷ The harder task is identifying whether a person is a born or naturalized U.S. citizen, and if she is naturalized, whether naturalized under regular naturalization process or military naturalization process.

¹²³ INA §§ 328(f), 329(c), 8 U.S.C. §§ 1439(f), 1440(c) (2012) (denaturalization for OTH discharge). One should note that there is no reported case of denaturalization solely based on an OTH characterization of service; however, it remains a potential consequence to a military naturalized servicemember.

¹²⁴ STOCK, *supra* note 4, at 67; see *supra* Parts III.A.1.b and III.A.2.

¹²⁵ INA § 329(a), 8 U.S.C. § 1440(a) (conscientious objector bar to wartime naturalization); see *supra* Part III.A.2.

¹²⁶ For example in the Army, section IV of the Enlisted or Officer Record Brief provides the country of citizenship. Ms. Stock points out that these records often have errors, listing derivative citizens as non-U.S. citizens and listing noncitizens as U.S. citizens. Stock e-mail, *supra* note 24, cmt. MDS13.

¹²⁷ U.S. Dep’t of Def., DD Form 1966/1, Record of Military Processing—Armed Forces of the United States sec. I, box 5 (Aug. 2011), available at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1966.pdf>.

Short of asking the individual, one can distinguish U.S. citizens by using the following methods. First, the service records may contain a U.S. birth certificate (indicating U.S.-born citizenship) or naturalization certificate (indicating naturalization). Second, service records may contain certification for honorable service, indicating military naturalization.¹²⁸ Lastly, if the servicemember joined under the Military Accessions Vital to the National Interest program, the individual is a military-naturalized citizen.¹²⁹

As immigration practice is complex, one should find an immigration law expert for consultation. In some cases, it is helpful to establish a relationship with the DHS agencies (USCIS, CBP, or ICE) and, the local U.S. Attorney's office.¹³⁰ The American Immigration Lawyers Association also has a military assistance program that assists judge advocates and servicemembers dealing with complex immigration matters.¹³¹ Within each service's legal assistance division, there are subject matter experts as well.¹³²

B. Defense Counsel

After *Padilla*, defense counsel are aware of the need to counsel a noncitizen accused of potential immigration consequences.¹³³ The fix created by the trial judiciary, however, is under-inclusive as it only applies to courts-martial and noncitizen servicemembers. Defense counsel must also advise military-naturalized servicemembers with less than five years of honorable service of the potential for denaturalization when pleading guilty to offenses with a punitive discharge potential or when being administratively separated with an OTH.¹³⁴

For LPR servicemembers, defense counsel should not only be concerned with the conviction but also the resulting documentation of misconduct through SCM, NJP, or

¹²⁸ U.S. Citizenship & Immigration Services, Form N-426, Request for Certification of Military or Naval Service (Apr. 30, 2013), available at <http://www.uscis.gov/sites/default/files/files/form/n-426.pdf>.

¹²⁹ See *supra* note 50.

¹³⁰ STOCK, *supra* note 4, at 72; Belliss, *supra* note 91, at 88–89. Ms. Stocks does warn that the DHS agencies are not necessarily well-versed in military immigration benefits. Stock e-mail, *supra* note 24, cmt. MDS15.

¹³¹ AILA Military Assistance Program, AM. IMMIGR. LAW. ASS'N (Dec. 19, 2007), <http://www.aila.org/content/default.aspx?docid=24108>. For more information on AILA Military Assistance Program contact, Ms. Michelle Singleton, at msingleton@aila.org. *Id.*

¹³² E.g., Mr. Terry Spearman, XVIII Airborne Corps Legal Assistance Office, is such an expert within the Army legal community.

¹³³ See *supra* note 3 and accompanying text.

¹³⁴ INA §§ 328–329, 8 U.S.C. §§ 1439–1440 (2012); see also STOCK, *supra* note 4, at 57.

administrative separations that may trigger conduct-based removal.¹³⁵ By using the appendices and the statutes cited therein, counsel can identify potential immigration consequences. Also, defense counsel should tailor pretrial agreements to avoid immigration consequences.¹³⁶

C. Government Counsel

For the government, the immigration consequences provide “significant advantage” in negotiating pretrial agreements with affected accused.¹³⁷ The accused is more likely to be cooperative to avoid possible removal.¹³⁸ When facing a LPR accused, trial counsel should review whether any of the UCMJ offenses may constitute removable grounds. For a military-naturalized accused, trial counsel should ensure that the accused is provident of potential denaturalization when pleading guilty to offenses that carry the possibility of a punitive discharge. Lastly, counsel must advise commanders to notify the ICE and DOJ Civil Division's Office of Immigration Litigation when a military-naturalized servicemember is discharged under other than honorable conditions and seek denaturalization through the local U.S. Attorney's office when warranted.¹³⁹ For the Army, regulation requires commanders to report qualifying instances to the federal immigration authorities.¹⁴⁰

¹³⁵ See STOCK, *supra* note 4, at 58–59, 63, 67.

¹³⁶ Belliss, *supra* note 91, at 84. Though one may seek post-trial relief under Article 60, UCMJ to alleviate the conviction sentence, the DHS may still pursue removal based on the conviction, regardless of suspension of a sentence. USDOJ-OIL MONOGRAPH, *supra* note 89, app. C; UCMJ art. 60 (2012).

¹³⁷ Vivian Chang, *Where Do We Go from Here: Plea Colloquy Warnings and Immigration Consequences Post-Padilla*, 45 U. MICH. J.L. REFORM 189, 194 (2011) (“Prosecutors in particular have utilized this relationship between criminal and immigration law, often to their significant advantage. If a prosecutor is aware of a defendant's noncitizen status, he or she is able to start off plea negotiations in a particularly powerful position, because noncitizen defendants may be interested in serving longer sentences in order to avoid adverse immigration consequences, or vice versa.”).

¹³⁸ *Id.* at 194.

¹³⁹ U.S. DEP'T OF ARMY, REG. 635-200, ACTIVE DUTY ENLISTED ADMINISTRATIVE SEPARATIONS para. 1-39 (6 June 2005) (RAR 6 June 2011) [hereinafter AR 635-200]. One should note that the regulation still refers to the obsolete Immigration & Naturalization Service, which were dismantled when the DHS immigration agencies were created. See *supra* Part II.B. Hence, until the regulation is updated with a new point of contact, the author recommends sending the notice to the ICE, DOJ's Office of Immigration Litigation, and the local U.S. Attorney's office for action.

¹⁴⁰ AR 635-200, *supra* note 139, para. 1-39.

V. Conclusion

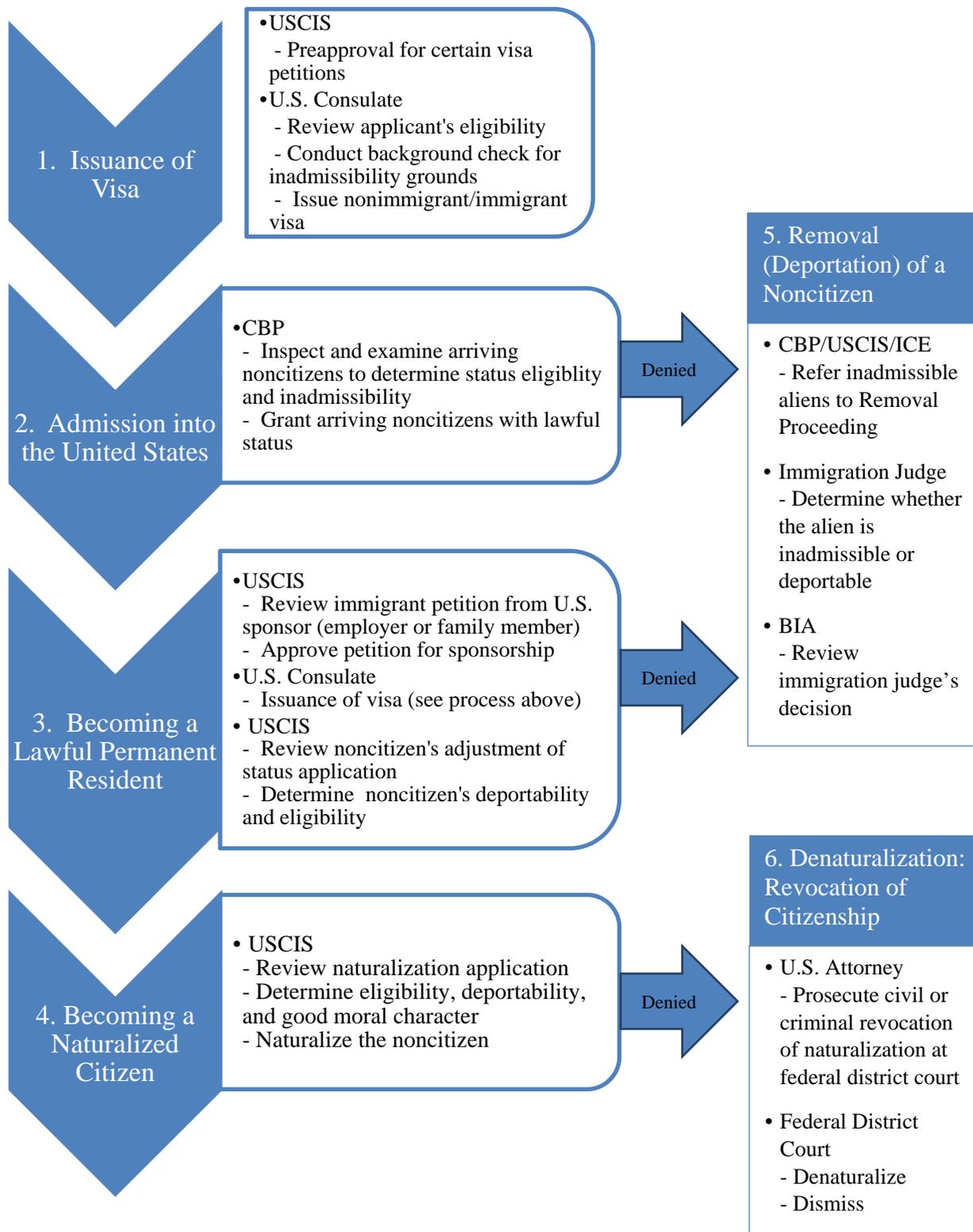
Likened to a Greek mythological maze, immigration law is extremely complex.¹⁴¹ But in light of *Padilla* and the potentially devastating consequences of failing to understand the nuances in immigration law, judge advocates must be aware of the potential immigration consequences of military adverse actions. Defense counsel can no longer fail to advise LPR and military-naturalized clients of the impact an adverse action may have on their immigration status. Trial counsel must also take care to know the accused's status and

the potential immigration consequences. Justice requires servicemembers be given fair notice of the consequences of their actions, but also demands such consequences be carried out when they commit acts deserving removal or denaturalization.

¹⁴¹ *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (“This case vividly illustrates the labyrinthine character of modern immigration law—a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike.”).

Appendix A

Immigration and Naturalization Process¹⁴²



¹⁴² See *supra* Part II (explaining the immigration process).

Appendix B

Inadmissibility Grounds

Health-related grounds (INA § 212(a)(1), 8 U.S.C. § 1182(a)(1))

- Possessing communicable disease of public health significance
- Failing to present documentation of having received vaccination against vaccine-preventable diseases
- Having or had a physical or mental disorder and behavior associated with the disorder that may pose, or has posed
- Being a drug abuser or addict

Criminal and related grounds (INA § 212(a)(2), 8 U.S.C. § 1182(a)(2))

- Being convicted of or admits having committed/committing acts constituting the essential elements of “a crime involving moral turpitude” or drug offense
- Being convicted of two or more offenses resulting in the aggregate sentence of five years or more
- Being or having been a drug trafficker
- Having engaged in or procured prostitution (within ten years)
- Coming to engage in unlawful commercialized vice
- Having previously asserted immunity for a serious criminal offense in the United States
- Having violated religious freedom as a foreign government official
- Committing human trafficking offenses inside or outside the United States
- Engaging in money laundering

Security and related grounds (INA § 212(a)(3), 8 U.S.C. § 1182(a)(3))

- Being a national security threat such as espionage, sabotage, export control violation, and overthrow of U.S. Government
- Engaging in or having engaged in “terrorist activity” including representing organizations promoting terrorism
- Potentially causing serious adverse consequences to U.S. foreign policy
- Having a present or past voluntary membership in Communist or totalitarian party
- Participating in Nazi persecution, genocide, torture, or extrajudicial killing
- Recruiting child soldiers

Public charge (INA § 212(a)(4), 8 U.S.C. § 1182(a)(4))

- Being likely to “become primarily dependent on government for subsistence”¹⁴³

Labor certification and qualifications for certain immigrants (INA § 212(a)(5), 8 U.S.C. § 1182(a)(5))

- Lacking Department of Labor certification that there are no qualifying U.S. residents to perform the labor that the alien seeks to fill (for employment based immigrants)

Illegal entrants and immigration violators (INA § 212(a)(6), 8 U.S.C. § 1182(a)(6))

- Being present in the United States without being admitted or paroled
- Failing to attend removal proceeding
- Procuring immigration benefits through willful misrepresentation or fraud
- Falsely claiming U.S. citizenship
- Being a stowaway
- Smuggling other aliens into the United States illegally
- Abusing student visa status

Documentation requirements (INA § 212(a)(7), 8 U.S.C. § 1182(a)(7))

- For immigrants, not possessing valid documents for admission (e.g., unexpired immigrant visa, reentry permit, border

¹⁴³ See *Public Charge*, U.S. CITIZENSHIP & IMMIGRATION SERVS. (Sept. 3, 2009), <http://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

crossing ID card, or other documents)

- For nonimmigrants, not possessing passport valid for at least six months or the proposed duration of the stay in the United States or not possessing an unexpired nonimmigrant visa

Ineligible for citizenship (INA § 212(a)(8), 8 U.S.C. § 1182(a)(8))

- Having evaded training or service in the armed forces during wartime

Aliens previously removed (INA § 212(a)(9), 8 U.S.C. § 1182(a)(9))

- Having been ordered removed under removal proceedings within five (for first time removal) or twenty years (for subsequent removal) of entry
- Having been unlawfully present in the United States within three (if unlawfully present more than 180 days but less than one year) or ten years (if unlawfully present one year or more)

Miscellaneous (INA § 212(a)(10), 8 U.S.C. § 1182(a)(10))

- Practicing polygamy
- Being a guardian to an inadmissible alien who is certified as helpless
- Abducting or supporting an abduction of a child whose custody belongs to a U.S. citizen
- Unlawfully voting in a U.S. federal, state, or local election, initiative, recall, or referendum
- Having renounced U.S. citizenship to avoid taxation

Appendix C

Deportability Grounds

Violation of Immigration Law (INA § 237(a)(1), 8 U.S.C. §1227(a)(1))

- Being inadmissible at the time of entry or adjustment of status
- Being present in the United States unlawfully
- Violating or failing to maintain one's nonimmigrant status or condition of entry
- Being terminated of conditional permanent residence
- Smuggling aliens
- Procuring one's visa through marriage fraud

Criminal offenses (INA § 237(a)(2), 8 U.S.C. §1227(a)(2))

(A) General crimes.

- Being convicted of a "crime of moral turpitude" with a possible sentence of one year confinement or more within five years of admission
- Being convicted of "two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefore and regardless of whether the convictions were in a single trial"
- Being convicted of an "aggravated felony at any time after admission"
- Being convicted of a federal offense "relating to high speed flight from an immigration checkpoint"
- Being convicted of a federal offense for failing to register as a sex offender

(B) Controlled substances.

- Being convicted of a drug offense (federal, state, or foreign), except single possession of marijuana (less than 30 grams), any time after admission
- Being a drug abuser or addict any time after admission

(C) Certain firearm offenses.

- Being convicted of a firearms or explosives offense at any time after admission

(D) Miscellaneous crimes.

- Being convicted of any federal criminal offense relating to espionage (18 U.S.C. ch. 37), sabotage (18 U.S.C. ch. 105), treason or sedition(18 U.S.C. ch. 115) with a maximum penalty of five years or more confinement
- Being convicted of threatening the President (or his successor)(18 U.S.C. § 871) or invading a friendly nation (18 U.S.C. § 960)
- Being convicted of violating the Military Selective Service Act¹⁴⁴ or the Trading with the Enemy Act¹⁴⁵
- Being convicted of violating travel document fraud (INA §215) or importing "aliens for [an] immoral purpose" (INA § 278)

(E) Domestic violence crimes.

- Being convicted of "a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment"
- Violating a court-ordered protection order

(F) Human traffickers.

- Committing a human trafficking offense whether inside or outside the United States

¹⁴⁴ 50 U.S.C. app. §§ 451–473 (2012).

¹⁴⁵ *Id.* app. §§ 1–44.

Failure to register and falsification of documents (INA § 237(a)(3), 8 U.S.C. §1227(a)(3))

- Failing to file change of address with USCIS
- Being convicted of falsifying registration information, violating the Alien Registration Act of 1940, the Foreign Agents Registration Act of 1938, or any federal offense relating to fraud and misuse of visas, permits, or other entry documents (18 U.S.C. § 1546)
- Being ordered deportable for document fraud
- Falsely claiming U.S. citizenship for any purpose or benefit

Security and related grounds (INA § 237(a)(4), 8 U.S.C. § 1227(a)(4))

- Having engaged or engaging in unlawful acts involving espionage, sabotage, export control violation, endangering public safety/national security, or overthrowing the U.S. government
- Having engaged or engaging in “terrorist activity,” including representing organizations promoting terrorism
- Potentially causing serious adverse consequences to U.S. foreign policy
- Participating in Nazi persecution, genocide, torture, or extrajudicial killing
- Having violated religious freedom as a foreign government official
- Recruiting child soldiers

Public charge (INA § 237(a)(5), 8 U.S.C. § 1227(a)(5))

- Being likely to “become primarily dependent on government for subsistence”¹⁴⁶

Unlawful voters (INA § 237(a)(6), 8 U.S.C. § 1227(a)(6))

- Unlawfully voting in a U.S. federal, state, or local election, initiatives, recall, or referendum

¹⁴⁶ *Public Charge*, U.S. CITIZENSHIP & IMMIGRATION SERVS. (Sept. 3, 2009), <http://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

Appendix D

Definition of “Crime Involving Moral Turpitude” (CIMT)

The Immigration and Nationality Act (Title 8, U.S. Code) does not define CIMT; hence, following are excerpts from relevant agencies defining CIMT for their adjudication purposes.

U.S. Department of Justice, Immigration Judge Benchbook

“[] Crimes Involving Moral Turpitude

An alien convicted of, or who admits having committed, or who admits committing acts which constitutes 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. Section 212(a)(2)(A)(i)(I) of the [INA].

Moral turpitude refers generally to conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between persons or society in general. *See In re Franklin*, 20 I. & N. Dec. 867, 868 (BIA 1994). Moral turpitude also has been defined as an act which is *per se* morally reprehensible and intrinsically wrong, or *malum in se*, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude. *See In re Torres-Varela*, 23 I. & N. Dec. 78, 85 (BIA 2001); *see also In re Franklin*, 20 I. & N. Dec. at 868; *In re Fualaau*, 21 I. & N. Dec. 475 (BIA 1996). The seriousness of a criminal offense, the severity of the sentence imposed, or the particular circumstances of the crime's commission do not determine whether the crime involves moral turpitude. *In re Serna*, 20 I. & N. Dec. 579, 581 (BIA 1992); *In re Short*, 20 I. & N. Dec. 136, 137 (BIA 1989).

To determine whether a specific crime constitutes a crime involving moral turpitude, the immigration judge may look to the language of the statute defining the crime, the specific elements of the offense, and the record of conviction. *See In re Torres-Varela*, 23 I. & N. Dec. at 84; *In re L-V-C-*, 22 I. & N. Dec. 594 (BIA 1999); *In re Y-*, 1 I. & N. Dec. 137 (BIA 1941). This approach is analogous to the categorical approach set forth in *Taylor v. United States*, 495 U.S. 575 (1990).

When a statute is divisible, that is, some of the prohibited conduct involves moral turpitude and some does not, then the judgment of conviction may be consulted to determine the nature of the underlying offense (*In re Vargas*, 23 I. & N. Dec. 651 (BIA 2004)) and if necessary, to authoritative court decisions in the convicting jurisdiction that elucidate the meaning of equivocal statutory language. *See In re Olquin*, 23 I. & N. Dec. 896, 897 n.1 (BIA 2006). A probation report cannot be considered in making the determination. *See In re Y-*, 1 I. & N. Dec. 137 (BIA 1941).”¹⁴⁷

¹⁴⁷ Exec. Office of Immigration Rev., *Immigration Judge Benchbook*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/eoir/vll/benchbook/templates/benchbook%20law%20on%20inadmissibility%20and%20removability.htm> (last visited Jan. 29, 2014).

“9 FAM 40.21(a) N2.1 Evaluating Moral Turpitude Based Upon Statutory Definition of Offense and U.S. Standards

To render an alien inadmissible under INA 212(a)(2)(A)(i)(I) (8 U.S.C. 1182(a)(2)(A)(i)(I)), the conviction must be for a statutory offense which involves moral turpitude. The presence of moral turpitude is determined by the nature of the statutory offense for which the alien was convicted, and not by the acts underlying the conviction. Therefore, evidence relating to the underlying act, including the testimony of the applicant, is not relevant to a determination of whether the conviction involved moral turpitude except when the statute is divisible (see 9 FAM 40.21(a) N6.2) or a political offense (see 9 FAM 40.21(a) N10). The presence of moral turpitude in a statutory offense is determined according to United States law.

9 FAM 40.21(a) N2.2 Defining ‘Moral Turpitude’

Statutory definitions of crimes in the United States consist of various elements, which must be met before a conviction can be supported. Some of these elements have been determined in judicial or administrative decisions to involve moral turpitude. A conviction for a statutory offense will involve moral turpitude if one or more of the elements of that offense have been determined to involve moral turpitude. The most common elements involving moral turpitude are:

- (1) Fraud;
- (2) Larceny; and
- (3) Intent to harm persons or things.

9 FAM 40.21(a) N2.3 Common Crimes Involving Moral Turpitude

Categorized below are some of the more common crimes, which are considered to involve moral turpitude. Each category is followed by a separate list of related crimes, which are held not to involve moral turpitude. . . .”¹⁴⁸

¹⁴⁸ U.S. DEP’T OF STATE, 9 FOREIGN AFF. MANUAL sec. 40.21(a) n.2 (Oct. 06, 2011), *available at* <http://www.state.gov/documents/organization/86942.pdf>.

Appendix E

Definition of “Aggravated Felony” in the INA

“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 [is] at least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at 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

(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.”¹⁴⁹

¹⁴⁹ INA § 101(a)(43), 8 U.S.C. § 1101(a)(43) (2012).

Appendix F

Definition of “Good Moral Character”

“(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) a habitual drunkard;

(2) Repealed.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D) [**prostitution (procured or engaged in) and commercialized vice**], (6)(E) [**smuggler of unlawful immigrants**], and (10)(A) [**practicing polygamists**] of section 1182(a) of this title; or subparagraphs (A) [**convicted of or admits to committing crime involving moral turpitude or controlled substance offense**] and (B) [**multiple criminal convictions: convicted of two or more offenses, resulting in a sentence of five years or more confinement**] of section 1182(a)(2) of this title and subparagraph (C) [**controlled substance traffickers**] thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marijuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from **illegal gambling activities**;

(5) one who has been **convicted of two or more gambling offenses** committed during such period;

(6) one who has given **false testimony** for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of **one hundred and eighty days or more**, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an **aggravated felony** (as defined in subsection (a)(43) of this section);¹⁵⁰ or

(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in **Nazi** persecution, participation in **genocide**, or commission of acts of **torture** or **extrajudicial killings**) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.”¹⁵¹

¹⁵⁰ See Appendix E (Definition of “Aggravated Felony” in the INA).

¹⁵¹ INA § 101(f), 8 U.S.C. § 1101(f) (2012) (emphasis added).

Appendix G

UCMJ Offenses and Potential Immigration Consequences

Due to lack of case laws in determining the immigration consequences of UCMJ offenses,¹⁵² the following chart provides the potential immigration consequences based on the statutory elements of UCMJ offenses compared to the INA's inadmissible and deportable grounds.¹⁵³ The potential immigration consequences are (1) removal, (2) naturalization denial,¹⁵⁴ or (3) both.¹⁵⁵ It should be noted that any UCMJ offense will result in naturalization denial due to lack of good moral character when the accused serves an aggregate of 180 days or more confinement within five years of naturalization application.¹⁵⁶ Italicized consequences are the author's opinion based on the author's application of "categorical" and "modified categorical approaches" in determining whether an offense matches the INA removal grounds.¹⁵⁷ Readers should consider this as a starting point to conduct full analysis before rendering legal advice on immigration consequences.

Art.	UCMJ Offense	Potential Immigration Consequences	Authority Citations
78	Accessory after the fact	Depends on underlying offense	<i>In re Rivens</i> , 25 I. & N. Dec. 623 (BIA Oct. 19, 2011) (holding that offense of accessory after the fact is a crime involving moral turpitude (CIMT) only if the underlying offense is CIMT).
80	Attempts	Depends on underlying offense	8 U.S.C. §§ 1101(a)(43)(U), 1182(a)(2)(A)(i)(I) (2012) (covering attempt of Aggravated Felony and other enumerated crimes).
81	Conspiracy	Depends on underlying offense	8 U.S.C. §§ 1101(a)(43)(U), 1182(a)(2)(A)(i)(I) (covering conspiracy of Aggravated Felony and enumerated crimes); <i>In re Richardson</i> , 25 I. & N. Dec. 226 (BIA Apr. 22, 2010) (holding that conspiracy does not require overt act). <i>Contra United States v. Gracia-Santana</i> , No. 12-10471, 2014 WL 667083 (9th Cir. Feb. 20, 2014) (holding that generic conspiracy requires overt act).

¹⁵² *Aguilar-Turcious v. Holder*, 740 F.3d 1294, 1300 n.8 (9th Cir. 2014) ("We have found no other case from our circuit or our sister circuits discussing the application of the categorical and modified categorical approaches to convictions under the UCMJ, although clearly the federal government does rely on UCMJ convictions to remove citizens.").

¹⁵³ This chart is inspired by and relies on the works by Margret D. Stock and Richard D. Belliss as a basis. STOCK, *supra* note 4, at 75–76; Belliss, *supra* note 91, at 57–63.

¹⁵⁴ Because of the DHS's broad discretionary authority to determine whether one lacks good moral character, this chart will only mention naturalization denial when it is specifically enumerated as evidencing lack of good moral character. See *supra* Appendix F.

¹⁵⁵ Because the denaturalization ground for military-naturalized servicemember depends solely on the characterization of service, it will not be discussed in this chart.

¹⁵⁶ 8 U.S.C. § 1101(f)(8) (2012).

¹⁵⁷ See USDOJ-OIL MONOGRAPH, *supra* note 89, app. D, at 6–25. Federal courts and BIA use the two-step method, "categorical" and then "modified categorical," to determine whether a federal/state criminal conviction constitutes a criminal ground for removal under the INA. *Id.* app. D. In the first step, "categorical" approach (or analysis), the court determines whether the elements of the criminal conviction matches the elements of the "generic definition" of the criminal removal ground. *Id.* at D-1 to D-2. If the elements matches or is narrower than the generic definition of the INA's removal ground, the court will find the conviction alone is sufficient to find the removal ground triggered without looking at the underlying conduct resulting in the conviction; however, if the elements is broader than the generic definition, it will go to the second step of "modified categorical" approach. *Id.* at D-2 to D-3. Under the "modified categorical" approach, the court will look to the underlying conduct of the criminal conviction and determine whether the generic definition of the INA's criminal grounds are triggered by the actual conduct, not the elements of the conviction. *Id.* at D-3 to D-4. If the INA criminal ground of removal is a specific act or circumstances and does not have a generic definition, the courts apply the "circumstance-specific" approach, which is to look at the underlying conduct without regard to the elements of the conviction. *Id.* at D-5 to D7. Readers are recommended to review the DOJ's monograph, which provides excellent explanation. See *id.*

82	Solicitation of desertion (art. 85), mutiny (art. 94), misbehavior before enemy (art. 99), sedition (art. 94)	Depends on underlying offense—see underlying offenses below	<i>Cf. Barrage-Lopez v. Mukasey</i> , 507 F.3d 899, 903 (9th Cir. 2007) (holding that CIMT determination for inchoate crimes depends on the underlying offense); <i>cf. Rohit v. Holder</i> , 670 F.3d. 1085, 1089–90 (9th Cir. 2012) (holding that California’s conviction of solicitation for prostitution is CIMT because prostitution is CIMT).
83	Fraudulent enlistment, appointment, separation	Removal (CIMT; not Aggravated Felony); Naturalization Denial (lack of good moral character)	Belliss, <i>supra</i> note 91, at 58 (“crimes involving a level of fraud”); <i>cf. Kariuki v. Tarango</i> , 709 F.3d. 495 (5th Cir. 2013) (fraudulent enlistment as prior bad acts for lack of good moral character); no corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
84	Effecting unlawful enlistment, appointment, separation	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
85	Desertion	Not CIMT; Not Aggravated Felony; Naturalization Denial (statutory bar to naturalization)	<i>In re S----- B-----</i> , 4 I. & N. Dec. 682, 683 (BIA July 21, 1952) (holding desertion under Articles of War is not CIMT); 8 U.S.C. § 1425 (barring naturalization of deserters from armed forces); <i>Polanski v. INS</i> , No. 96 Civ. 9007, 2000 WL 869487 (S.D.N.Y. June 29, 2000) (permanently barring a Marine deserter from naturalization).
86	Absence without leave	Not CIMT; Not Aggravated Felony	<i>In re Garza-Garcia</i> , No. A77-697-333, 2007 WL 3301468 (BIA Oct. 2, 2007) (“The elements of Article 86 of the [UCMJ], which include failing to appear for duty, leaving a place of duty, or absenting oneself from one’s unit, similarly do not evince a manifestation of baseness and depravity.”); no corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
87	Missing movement	<i>Not CIMT; Not Aggravated Felony</i>	Akin to UCMJ art. 86, the offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
88	Contempt toward officials	<i>Not CIMT; Not Aggravated Felony</i>	<i>Cf. Fernandez-Ruiz v. Gonzales</i> , 468 F.3d 1159 (9th Cir. 2006) (holding the act of insulting or provoking as “undesirable or unacceptable but . . . [does] not constitute ‘baseness or depravity contrary to accepted moral standard’”). The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).

89	Disrespect toward superior commissioned officer	<i>Not CIMT; Not Aggravated Felony</i>	<i>Cf. Fernandez-Ruiz v. Gonzales</i> , 468 F.3d 1159 (9th Cir. 2006) (holding the act of insulting or provoking as “undesirable or unacceptable but . . . [does] not constitute ‘baseness or depravity contrary to accepted moral standard’”). The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
90	Assaulting or striking a superior commissioned officer	<i>Removal (Possible CIMT and Aggravated Felony)</i>	<i>Belliss, supra</i> note 91, at 59 (crimes against the person as CIMT). <i>Contra Uppal v. Holder</i> , 605 F.3d 712 (9th Cir. 2010) (holding Canadian’s aggravated assault not CIMT); <i>Partyka v. U.S. Attorney Gen.</i> , 417 F.3d 408 (3d Cir. 2005) (holding NJ’s offense of aggravated assault against police officer not CIMT). 8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (“a crime of violence” with possible confinement more than one year as Aggravated Felony).
	Disobeying superior commissioned officer	<i>Depends on the underlying lawful order</i>	<i>Cf. Aguilar-Turcios v. Holder</i> , 740 F.3d 1294 (9th Cir. 2014) (holding order violation depends on the underlying order.).
91	Strike or assault a warrant, noncommissioned, petty officer	<i>Removal (Possible CIMT and Aggravated Felony)</i>	<i>Belliss, supra</i> note 91, at 59 (crimes against the person as CIMT). <i>Contra Uppal v. Holder</i> , 605 F.3d 712 (9th Cir. 2010) (holding Canadian’s aggravated assault not CIMT); <i>Partyka v. U.S. Attorney Gen.</i> , 417 F.3d 408 (3d Cir. 2005) (holding NJ’s offense of aggravated assault against police officer not CIMT). 8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (“a crime of violence” with possible confinement more than one year as Aggravated Felony).
	Willfully disobey the lawful order of a warrant, noncommissioned, petty officer	<i>Depends on the underlying lawful order</i>	<i>Belliss, supra</i> note 91, at 59 (crimes against the person as CIMT). <i>Contra Uppal v. Holder</i> , 605 F.3d 712 (9th Cir. 2010) (holding Canadian offense of aggravated assault not CIMT); <i>Partyka v. U.S. Attorney Gen.</i> , 417 F.3d 408 (3d Cir. 2005) (holding NJ’s aggravated assault against police officer not CIMT). 8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (“a crime of violence” with possible confinement more than one year as Aggravated Felony).
	Contempt or disrespect in language or deportment toward a warrant, noncommissioned, petty officer	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year. <i>Cf. Fernandez-Ruiz v. Gonzales</i> , 468 F.3d 1159 (9th Cir. 2006) (holding the act of insulting or provoking as “undesirable or unacceptable but . . . [does] not constitute ‘baseness or depravity contrary to accepted moral standard’”).
92	Failure to obey order, regulation	Depends on the underlying lawful general order	<i>Aguilar-Turcios v. Holder</i> , 740 F.3d 1294 (9th Cir. 2014) (holding access to child porn on government computer in violation of UCMJ art. 92 is not aggravated felony because the general order prohibited pornography in general).
93	Cruelty and maltreatment of subordinates	<i>Removal (Possible CIMT, Not Aggravated Felony)</i>	<i>Belliss, supra</i> note 91, at 59 (crimes against the person as CIMT); no corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43) (not “crime of violence” as no element of violence in the art. 93, UCMJ).

94	Mutiny by creating violence or disturbance	<i>Removal (Aggravated Felony, Miscellaneous Crime, Security related grounds)</i>	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (“a crime of violence” with possible confinement more than one year as Aggravated Felony); § 1227(a)(2)(D)(i) (violating 18 U.S.C. §§ 2383 (Rebellion and Insurrection), 2384 (Seditious Conspiracy), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war)); § 1227(a)(4)(A)(ii) (“any other criminal activity which endangers public safety or national security”); § 1227(a)(4)(A)(iii) (“any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.).
	Mutiny by refusing to obey orders or perform duty	<i>Removal (Security related grounds)</i>	8 U.S.C. § 1227(a)(4)(A)(ii) (“any other criminal activity which endangers public safety or national security”); § 1227(a)(4)(A)(iii) (“any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.).
	Sedition	<i>Removal (Aggravated Felony, Miscellaneous Crime, Security related grounds)</i>	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (“a crime of violence” with possible confinement more than one year as Aggravated Felony); § 1227(a)(2)(D)(i) (violating 18 U.S.C. §§ 2383 (Rebellion and Insurrection), 2384 (Seditious Conspiracy), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war)); § 1227(a)(4)(A)(ii) (“any other criminal activity which endangers public safety or national security”); § 1227(a)(4)(A)(iii) (“any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.).
	Failure to prevent and suppress a mutiny or sedition	<i>Not CIMT; Not Security Related ground; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT or a security related offense. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
	Failure to report a mutiny or sedition	<i>Not CIMT; Not Security Related ground; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT or a security related offense. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
	Attempted mutiny	<i>Removal (Miscellaneous Crime)</i>	8 U.S.C. § 1227(a)(2)(D)(i) (attempting to violate 18 U.S.C. §§ 2383 (Rebellion and Insurrection), 2384 (Seditious Conspiracy), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war)).

95	Resisting apprehension	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43). <i>Cf. United States v. Aparicio-Soria</i> , 740 F.3d 152 (4th Cir. 2013) (resisting arrest not a “crime of violence” for U.S. sentence guidelines).
	Flight from apprehension	<i>Not CIMT; Not High Speed Flight; Not Aggravated Felony</i>	Elements lack the moral turpitude element for CIMT and UCMJ art. 95 elements are too broad for High Speed Flight; not aggravated felony because not “crime of violence.” <i>Cf. United States v. Aparicio-Soria</i> , 740 F.3d 152 (4th Cir. 2013) (resisting arrest not a “crime of violence” for U.S. sentence guidelines).
	Breaking arrest	<i>Not CIMT; Not Aggravated Felony</i>	Elements lack the moral turpitude element for CIMT and UCMJ art. 95 elements are too broad for High Speed Flight; not aggravated felony because less than one year confinement.
	Escape from custody or confinement	<i>Removal (Possible Aggravated Felony for obstruction but not for crime of violence)</i>	8 U.S.C. §§ 1101(a)(43)(S), 1227(a)(2)(A)(iii) (obstructing justice as Aggravated Felony); <i>United States v. Draper</i> , 996 F.2d 982 (9th Cir. 1993) (holding escape from custody as obstruction of justice for U.S. sentence guidelines). <i>Contra In re Duran-Morales</i> , No. A41-777-177, 2008 WL 1924674 (BIA Apr. 10, 2008) (holding escape not obstruction of justice under Aggravated Felony); <i>Addo v. U.S. Attorney Gen.</i> , 355 F.App’x. 672 (3d Cir. 2009) (holding escape conviction was not “crime of violence” and not Aggravated Felony).
96	Releasing a prisoner without authority	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
97	Unlawful detention	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
98	Noncompliance with procedural rules, etc.	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
99	Misbehavior before enemy	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
100	Subordinate compelling surrender	<i>Not CIMT; Not security related ground; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT or a security related offense. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).

101	Improper use of countersign	<i>Not CIMT; Not security related ground; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT or a security related offense. <i>See</i> Belliss, <i>supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
102	Forcing safeguard	<i>Removal (Security related ground)</i>	8 U.S.C. § 1227(a)(4)(A)(ii) (“any other criminal activity which endangers public safety or national security”).
103	Failing to secure public property taken from the enemy	<i>Not CIMT; Not Aggravated Felony if less than \$500.</i>	The offense lacks the moral turpitude element for CIMT. <i>See</i> Belliss, <i>supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
	Failing to report and turn over captured or abandoned property	<i>Not CIMT; Not Aggravated Felony if less than \$500.</i>	The offense lacks the moral turpitude element for CIMT. <i>See</i> Belliss, <i>supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
	Dealing in captured or abandoned property	<i>Removal (CIMT, Aggravated Felony)</i>	Belliss, <i>supra</i> note 91, at 58 (“crimes against property” as CIMT and “theft crimes” as aggravated felony); 8 U.S.C. § 1101(a)(43)(G) (a theft offense with imprisonment of one year or more as Aggravated Felony).
	Looting and Pillaging	<i>Removal (CIMT, Aggravated Felony)</i>	Belliss, <i>supra</i> note 91, at 58 (“crimes against property” as CIMT and “theft crimes” as aggravated felony); 8 U.S.C. § 1101(a)(43)(G) (a theft offense with imprisonment of one year or more as Aggravated Felony).
104	Aiding the enemy	<i>Removal (Miscellaneous crime ground; Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(L)(i), 1227(a)(2)(A)(iii) (violating treason, 18 U.S.C. § 2382, as Aggravated Felony); § 1227(a)(3)(D)(i) (violating treason under chapter 115 of Title 18).
	Attempting to aid the enemy	<i>Removal (Miscellaneous crime ground; Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(U), 1227(a)(2)(A)(iii) (covering attempts of Aggravated Felony).
	Harboring or protecting the enemy	<i>Removal (Miscellaneous crime ground)</i>	8 U.S.C. § 1227(a)(3)(D)(i) (violating Harboring or concealing person, 18 U.S.C. § 792, under chapter 37 of Title 18).
	Giving intelligence to the enemy	<i>Removal (Miscellaneous crime ground; Aggravated Felony; Security related ground)</i>	8 U.S.C. §§ 1101(a)(43)(L)(i), 1227(a)(2)(A)(iii) (violating 18 U.S.C. § 793 (gathering, transmitting or losing defense information) as Aggravated Felony); § 1227(a)(3)(D)(i) (violating § 793 under chapter 37 of Title 18); § 1227(a)(4)(A)(i) (“any activity to violate any law of the United States relating to espionage”).
	Communicating with the enemy	<i>Removal (Security related ground)</i>	8 U.S.C. § 1227(a)(4)(A)(i) (“any activity to violate any law of the United States relating to espionage”).
105	Misconduct as prisoner	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See</i> Belliss, <i>supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).

106	Spying	<i>Removal (Miscellaneous crime ground; Aggravated Felony; Security related ground)</i>	8 U.S.C. §§ 1101(a)(43)(L)(i), 1227(a)(2)(A)(iii) (violating 18 U.S.C. § 793 (gathering, transmitting or losing defense information) as Aggravated Felony); § 1227(a)(3)(D)(i) (violating § 793 under chapter 37 of Title 18); § 1227(a)(4)(A)(i) (“any activity to violate any law of the United States relating to espionage”).
106a	Espionage	<i>Removal (Miscellaneous crime ground; Aggravated Felony; Security related ground)</i>	8 U.S.C. §§ 1101(a)(43)(L)(i), 1227(a)(2)(A)(iii) (violating 18 U.S.C. § 793 (gathering, transmitting or losing defense information) as Aggravated Felony); § 1227(a)(3)(D)(i) (violating § 793 and § 794 under chapter 37 of Title 18); § 1227(a)(4)(A)(i) (“any activity to violate any law of the United States relating to espionage”).
107	False Official Statement	Removal (CIMT)	<i>Cf. In re Chavez-Alvarez</i> , 26 I. & N. Dec. 274 (BIA Mar. 14, 2014) (noting in dicta that immigration judge found general court-martial conviction of UCMJ art. 107 as CIMT); <i>Itani v. Ashcroft</i> , 298 F.3d 1213 (11th Cir. 2002) (quoting <i>United States v. Gloria</i> , 494 F.2d 477, 481 (5th Cir. 1974) (“Generally, a crime involving dishonesty or false statement is considered to be one involving moral turpitude.”); <i>Belliss, supra</i> note 91, at 58 (crimes involving a level of fraud as CIMT).
108	Selling or otherwise disposing of military property	Removal (CIMT; Aggravated Felony; Certain firearms offenses)	<i>Belliss, supra</i> note 91, at 58 (“crimes against property” as CIMT and “theft crimes” as aggravated felony); 8 U.S.C. § 1227(a)(2)(C) (selling firearm or destructive device as deportable crime).
	Damaging, destroying, or losing military property	Removal (CIMT, Aggravated Felony for damaging and destroying if willful)	8 U.S.C. §§ 1101(a)(43)(L)(i), 1227(a)(2)(A)(iii) (violating 18 U.S.C. § 2153 (destruction of war materials, war premises, or war utilities) as Aggravated Felony); <i>cf. In re M-----</i> , 2 I. & N. 629 (BIA June 18, 1946) (holding that respondent damaging war supply ship in violation of 50 U.S.C. § 102 (impairing war material) (repealed 1948) as CIMT); <i>cf. In re Escobedo-Gutierrez</i> , No. A78-103-729, 2008 WL 3919068 (BIA July 24, 2008) (holding that GA’s offense of interference with government property as Aggravated Felony because of the use of physical force); <i>Belliss, supra</i> note 91, at 58 (“crimes against property” as CIMT and “theft crimes” as Aggravated Felony).
	Suffering military property to be lost, damaged, destroyed, sold, or wrongfully disposed of	Removal (CIMT, Aggravated Felony for damaging and destroying if willful)	8 U.S.C. §§ 1101(a)(43)(L)(i), 1227(a)(2)(A)(iii) (violating 18 U.S.C. § 2153 (destruction of war materials, war premises, or war utilities) as Aggravated Felony); <i>cf. In re M-----</i> , 2 I. & N. 629 (BIA June 18, 1946) (holding that respondent damaging war supply ship in violation of 50 U.S.C. § 102 (impairing war material) as CIMT); <i>Belliss, supra</i> note 91, at 58 (“crimes against property” as CIMT and “theft crimes” as aggravated felony).
109	Property other than U.S. military property: waste, spoilage, or destruction	Removal (CIMT, Aggravated Felony for damaging and destroying if willful)	<i>Belliss, supra</i> note 91, at 58 (“crimes against property” as CIMT and “theft crimes” as Aggravated Felony).
110	Improper hazarding of vessel	<i>Removal (CIMT, if willful)</i>	8 U.S.C. §§ 1101(a)(43)(L)(i), 1227(a)(2)(A)(iii) (violating 18 U.S.C. § 2153 (destruction of war materials, war premises, or war utilities) as Aggravated Felony); <i>cf. In re M-----</i> , 2 I. & N. 629 (BIA June 18, 1946) (holding that respondent damaging war supply ship in violation of 50 U.S.C. § 102 (impairing war material) as CIMT).

111	Wanton or reckless operation of vehicle, aircraft, or vessel	<i>Removal (CIMT if physical injury occurred)</i>	<i>Cf. Keunge v. U.S. Attorney Gen.</i> , 561 F.3d. 1281, 1285–86 (11th Cir. 2009) (quoting <i>Knapik v. Ashcroft</i> , 384 F.3d 84, 90 n.5 (3d Cir. 2004)) (“With regard to reckless acts, moral turpitude inheres in the conscious disregard of a substantial and unjustifiable risk of severe harm or death.”).
	Drunk or impaired operation of vehicle, aircraft, or vessel	<i>Not CIMT if no injury; however, possible CIMT if physical injury occurred.</i>	<i>Cf. In re Lopez-Meza</i> , 22 I. & N. Dec. 1188, 1194 (BIA 1999) (“Simple [driving under influence] is ordinarily a regulatory offense that involves no culpable mental state requirement, such as intent or knowledge [A] simple DUI offense does not inherently involve moral turpitude.”); <i>cf. Padilla v. Kentucky</i> , 559 U.S. 356, 379 (2010) (Alito, J., concurring) (citing R. MCWHIRTER, AM. BAR ASSOC., THE CRIMINAL LAWYER’S GUIDE TO IMMIGRATION LAW 136 (2d ed. 2006) (“[DUI] may be a CIMT if the DUI results in injury”).
	Operation of vehicle, aircraft, or vessel with blood alcohol concentration of 0.1	<i>Not CIMT if no injury; however, possible CIMT if physical injury occurred.</i>	<i>Cf. In re Lopez-Meza</i> , 22 I. & N. Dec. 1188, 1194 (BIA 1999) (“Simple [driving under influence] is ordinarily a regulatory offense that involves no culpable mental state requirement, such as intent or knowledge [A] simple DUI offense does not inherently involve moral turpitude.”); <i>cf. Padilla v. Kentucky</i> , 559 U.S. 356, 379 (Alito, J., concurring) (citing R. MCWHIRTER, AM. BAR ASSOC., THE CRIMINAL LAWYER’S GUIDE TO IMMIGRATION LAW 136 (2d ed. 2006) (“[DUI] may be a CIMT if the DUI results in injury”).
112	Drunk on duty	<i>Not CIMT; Not Aggravated Felony; however, potential naturalization (lack of good moral character)</i>	The offense lacks the moral turpitude element for CIMT; no corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43); lack of good moral character due to “habitual drunkard.” <i>Id.</i> § 1101(f)(1).
112a	Wrongful use, possession, manufacturing, or introduction of controlled substance	Removal (Controlled Substance Offense)	8 U.S.C. § 1227(a)(2)(B) (violating any law or regulation relating to controlled substance, other than single marijuana use (less than thirty grams), is deportable crime).
113	Misbehavior of sentinel or lookout	<i>Not CIMT; Not Aggravated Felony; however, possible removal (security related ground)</i>	The offense lacks the moral turpitude element for CIMT; no corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43); § 1227(a)(4)(A)(ii) (“any other criminal activity which endangers public safety or national security”).
114	Dueling	<i>Removal (Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony). 18 U.S.C. § 16 states, “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 . . . 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.”
115	Malingering	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT or security related offense. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).

116	Riot	<i>Removal (Aggravated Felony)</i>	<i>Cf. United States v. Hernandez-Rodriguez, 388 F.3d 779 (10th Cir. 2004) (holding Utah riot conviction as Aggravated Felony).</i>
	Breach of Peace	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
117	Provoking speech, gestures	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year. <i>Cf. Fernandez-Ruiz v. Gonzales, 468 F.3d 1159 (9th Cir. 2006) (holding the act of insulting or provoking as “undesirable or unacceptable but . . . [does] not constitute ‘baseness or depravity contrary to accepted moral standard’”).</i>
118	Murder	Removal (Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(A), 1227(a)(2)(A)(iii) (designating “murder” as Aggravated Felony).
119	Voluntary Manslaughter	Removal (Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony).
	Involuntary Manslaughter	<i>Removal (Possible CIMT)</i>	<i>Cf. Franklin v. INS, 72 F.3d 571 (8th Cir. 1995) (holding involuntary manslaughter as CIMT). But see In re Ghunaim, 15 I. & N. Dec. 269, 270 (BIA 1975) (quoting In re Lopez, 13 I. & N. Dec. 725 (BIA 1971) (“Murder and voluntary manslaughter are [CIMT]; involuntary manslaughter is not.”)).</i>
119a	Death or injury of an Unborn Child	<i>Depends on the underlying offense causing the death or injury of unborn child</i>	UCMJ art. 119a requires the proof of commission of certain UCMJ offenses causing the death or injury of the unborn child, or attempt thereof. 18 U.S.C. § 1841 recognizes unborn child as a human being.
120	Rape	Removal (CIMT, Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(A), 1227(a)(2)(A)(iii) (designating “rape” as Aggravated Felony); <i>Nunez v. Holder, 594 F.3d 1124 (9th Cir. 2010) (“[R]ape is categorically a crime of moral turpitude.”).</i>
	Sexual Assault	<i>Removal (CIMT; Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony); <i>Belliss, supra</i> note 91, at 58 (“crimes against person” as CIMT).
	Aggravated Sexual Contact	<i>Removal (CIMT, Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony); <i>Belliss, supra</i> note 91, at 58 (“crimes against person” as CIMT).
	Abusive Sexual Contact	<i>Removal (CIMT; Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony); <i>Belliss, supra</i> note 91, at 58 (“crimes against person” as CIMT).
120a	Stalking	Removal (Crime of Stalking)	8 U.S.C. § 1227(2)(E)(i) (designating stalking deportable crime).
120b	Rape of a Child	Removal (CIMT, Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(A), 1227(a)(2)(A)(iii) (designating “rape” as Aggravated Felony); <i>Belliss, supra</i> note 91, at 58 (“crimes against person” as CIMT).
	Sexual Assault of a Child	Removal (CIMT, Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(A), 1227(a)(2)(A)(iii) (designating “sexual abuse of a minor” as Aggravated Felony); <i>Belliss, supra</i> note 91, at 58 (“crimes against person” as CIMT).
	Aggravated Sexual Contact of a Child	Removal (CIMT, Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(A), 1227(a)(2)(A)(iii) (designating “sexual abuse of a minor” as Aggravated Felony); <i>Belliss, supra</i> note 91, at 58 (“crimes against person” as CIMT).
	Abusive Sexual Contact of a Child	Removal (CIMT, Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(A), 1227(a)(2)(A)(iii) (designating “sexual abuse of a minor” as Aggravated Felony); <i>Belliss, supra</i> note 91, at 58 (“crimes against person” as CIMT).

120c	Indecent Viewing, Visual Recording, or Broadcasting	Removal (CIMT)	Belliss, <i>supra</i> note 91, at 58 (“crimes against person” as CIMT).
	Forcible Pandering	Removal (CIMT; Aggravated Felony)	<i>Cf. Rohit v. Holder</i> , 670 F.3d 1085, 1089–90 (9th Cir. 2012) (holding solicitation of prostitution as CIMT because no less vile than engaging in prostitution which is CIMT); 8 U.S.C. §§ 1101(a)(43)(K(i)), 1227(a)(2)(A)(iii) (designating “offense that . . . relates to the owning, controlling, managing, or supervising of a prostitution business” as Aggravated Felony).
	Indecent Exposure	Not CIMT	<i>Cf. Nunez v. Holder</i> , 594 F.3d 1124 (9th Cir. 2010) (holding that California’s indecent exposure conviction is not “inherently base, vile, and depraved”).
121	Larceny	Removal (CIMT; Aggravated Felony) unless for non-military property worth \$500 or less	<i>Cf. Lecky v. Holder</i> , 723 F.3d 1 (1st Cir. 2013) (holding that Connecticut’s larceny conviction is Aggravated Felony under 8 U.S.C. § 1101(a)(43)(G) (“theft offense”).
	Wrongful Appropriation	Removal (Not CIMT; however, Aggravated Felony for appropriating motor vehicle, aircraft, and vessel; certain firearm offenses if appropriating firearm or explosive)	<i>Cf. Wala v. Mukasey</i> , 511 F.3d 102 (2d Cir. 2007) (remanding BIA’s ruling that larceny was CIMT because failed to determine whether the taking was permanent or temporary); <i>cf. In re Grazley</i> , 14 I. & N. Dec. 330, 333 (BIA 1973) (“[A] conviction for theft is considered to involve moral turpitude only when a permanent taking is intended.”); <i>cf. In re R-----</i> , 2 I. & N. Dec. 819, 828 (BIA 1947) (“It is settled law that the offense of taking property temporarily does not involve moral turpitude.”); <i>cf. Artega v. Mukasey</i> , 511 F.3d 940, 947 (9th Cir. 2007) (holding unlawfully taking a vehicle with the intent to either permanently or temporarily deprive the owner of possession is a theft offense and an Aggravated Felony); 8 U.S.C. § 1227(2)(C) (Certain firearm offense) (“Any alien who . . . is convicted under any law of . . . possessing . . . any weapon . . . which is a firearm . . . is deportable.”).
122	Robbery	Removal (CIMT; Aggravated Felony)	<i>Cf. Medonza v. Holder</i> , 623 F.3d 1299 (9th Cir. 2010) (holding that California’s robbery conviction is CIMT); 8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony).
123	Forgery	Removal (CIMT)	<i>Cf. Cetik v. Gonzales</i> , 181 F.App’x 117 (2d Cir. 2006) (holding that New York forgery conviction is CIMT).
123a	Making, drawing, or uttering check, draft, or order without sufficient funds	Removal (CIMT) when over \$500	<i>Cf. In re Haller</i> , 12 I. & N. Dec. 319 (BIA 1967) (holding issuing fraudulent check as CIMT).
124	Maiming	Removal (Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony); <i>cf. Singh v. Holder</i> , 568 F.3d 525 (5th Cir. 2009) (holding Virginia’s unlawful wounding conviction as “crime of violence” triggering Aggravated Felony).

125	Sodomy	Removal (CIMT)	<i>Cf. Velez-Lozano v. INS</i> , 463 F.2d 1305, 1307 (D.C. Cir. 1972) (holding that “sodomy is a crime of moral turpitude”); <i>cf. In re Morsy</i> , No. A77-043-593, 2007 WL 416704 (BIA Jan. 26, 2007) (holding that sodomy is CIMT).
126	Arson	Removal (CIMT; Aggravated Felony)	<i>Cf. Pretelet v. U.S. Attorney Gen.</i> , 370 F.App’x 338 (3d Cir. 2010) (holding New Jersey’s arson conviction as CIMT); <i>Cf. Santana v. Holder</i> , 714 F.3d 140 (holding New York’s attempted arson conviction as “crime of violence,” triggering Aggravated Felony).
127	Extortion	Removal (Aggravated Felony)	<i>Cf. In re Zeng</i> , No. A040-009-879, 2010 WL 2601513 (BIA June 8, 2010) (holding New York’s extortion conviction as “crime of violence,” triggering Aggravated Felony).
128	Simple Assault (without firearm); Assault consummated by battery; Assault upon noncommissioned or petty officer not in execution of office	<i>Not CIMT, Not Aggravated Felony</i>	Maximum allowable confinement is less than a year. <i>Cf. Popal v. Gonzales</i> , 416 F.3d 249 (3d Cir. 2005) (holding that misdemeanor simple assault is not Aggravated Felony).
	Other Assaults	Removal (Aggravated Felony; certain firearms offense if firearm used)	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony); 8 U.S.C. § 1227(2)(C) (Certain firearm offenses) (“Any alien who . . . is convicted under any law of . . . using . . . any weapon . . . which is a firearm . . . is deportable.”).
129	Burglary	Removal (Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(G), 1227(a)(2)(A)(iii) (designating “burglary” as Aggravated Felony).
130	Housebreaking	<i>Removal (CIMT)- Depends on underlying offense</i>	<i>Cf. In re E-----</i> , 2 I. & N. Dec. 134 (BIA 1944) (holding Ohio housebreaking with larceny intent conviction as CIMT).
131	Perjury	Removal (Aggravated Felony)	8 U.S.C. §§ 1101(a)(43)(S), 1227(a)(2)(A)(iii) (designating “perjury” as Aggravated Felony).
132	Frauds against the United States	Removal (CIMT; Aggravated Felony if over \$10,000)	<i>In re Antigua</i> , No. A75-401-302, 2003 WL 23269935 (BIA Oct. 22, 2003) (quoting <i>Jordan v. De George</i> , 341 U.S. 223, 229 (1951) (“Fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude.”); 8 U.S.C. §§ 1101(a)(43)(M), 1227(a)(2)(A)(iii) (designating fraud with \$10,000 loss as Aggravated Felony).
133	Conduct unbecoming officer	<i>Depends on the underlying misconduct—potential CIMT</i>	MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 59.c.(3) (2012) (listing examples of crimes, including “committing or attempting to commit a crime involving moral turpitude.”); 8 U.S.C. § 1227(2)(A)(i) (CIMT).

134	Disorders and neglects to the prejudice of good order and discipline in the armed forces (clause 1)	<i>Depends on the underlying conduct</i>	MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 60.c.(2).
	Conduct of a nature to bring discredit upon the armed forces (clause 2)	<i>Depends on the underlying conduct</i>	MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 60.c.(3).
	Crimes and offenses not capital (clause 3)	<i>Depends on the underlying noncapital crimes and offenses prohibited by U.S. Code or state criminal laws</i>	MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 60.c.(4).
	Abusing public animal	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
	Adultery	<i>Possible CIMT; Not lack of good moral character</i>	<i>Cf. In re B-----</i> , 7 I. & N. Dec. 166 (BIA 1956) (holding adultery as CIMT). <i>Schmidt v. United States</i> , 177 F.2d 450 (2d Cir. 1949) (holding that adultery not evidence of lack of good moral character for naturalization).
	Assault with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking	<i>Removal (CIMT; Aggravated Felony)—based on underlying conduct</i>	Akin to attempt or conspiracy as the elements require the intent to commit the underlying offense. <i>Cf. Ceron v. Holder</i> , 712 F.3d 426 (9th Cir. 2013) (holding California’s assault with deadly weapon as CIMT).
	Bigamy	<i>Removal (CIMT)</i>	<i>Cf. Injeti v. USCIS</i> , 737 F.3d 311, 318 (4th Cir. 2013) (stating in dicta bigamy is CIMT). <i>But see Forbes v. Brownwell</i> , 149 F.Supp. 848 (D.D.C. 1957) (holding that Canadian bigamy not CIMT because it lacks mens rea).
	Bribery and Graft	<i>Removal (Potential Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(J), 1227(a)(2)(A)(iii) (2012) (designating racketeering activity, which includes bribery and graft under 18 U.S.C. § 201, as Aggravated Felony).
	Burning with intent to defraud	<i>Removal (CIMT)</i>	<i>Cf. In re Antigua</i> , No. A75-401-302, 2003 WL 23269935 (BIA Oct. 22, 2003) (quoting <i>Jordan v. De George</i> , 341 U.S. 223, 229 (1951) (“Fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude.”)).
	Check worthless, making and uttering	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
	Child endangerment	<i>Removal (CIMT; Crimes against children)</i>	<i>Cf. Hernandez-Perez v. Holder</i> , 569 F.3d 345 (8th Cir 2009) (holding Iowa’s child endangerment conviction as CIMT); 8 U.S.C. § 1227(a)(2)(i) (designating “child abuse, child neglect, and child abandonment” as deportable crimes).
	Child pornography	Removal (Aggravated Felony; Crimes against children)	8 U.S.C. §§ 1101(a)(43)(I), 1227(a)(2)(A)(iii) (2012) (designating child pornography related offenses under 18 U.S.C. §§ 2251, 2251A, 2252 as Aggravated Felony); 8 U.S.C. § 1227(a)(2)(i) (designating “child abuse, child neglect, and child abandonment” as deportable crimes).
	Cohabitation, wrongful	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
	Correctional custody, escape from	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year. <i>Cf. Salazar-Luviano v. Mukasey</i> , 551 F.3d 857 (9th Cir 2008) (holding escape from custody is not obstruction of justice under Aggravated Felony).

Correctional custody, breach of	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Debt, dishonorably failing to pay	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Disloyal statements	<i>Removal (Miscellaneous crimes—related to treason and sedition)</i>	8 U.S.C. § 1227(a)(2)(D)(i) (incorporating 18 U.S.C. § 2387 (activities affecting armed forces generally) as deportable crime).
Disorderly conduct	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Drunkenness aboard ship	<i>Not CIMT; Not Aggravated Felony; however, possible lack of good moral character</i>	Maximum allowable confinement is less than a year. 8 U.S.C. § 1101(f)(1) (“habitual drunkard”).
Drunk and disorderly	<i>Not CIMT; Not Aggravated Felony; however, possible lack of good moral character</i>	Maximum allowable confinement is less than a year. 8 U.S.C. § 1101(f)(1) (“habitual drunkard”).
Drinking liquor with prisoner	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Drunk prisoner	<i>Not CIMT; Not Aggravated Felony; however, possible lack of good moral character</i>	Maximum allowable confinement is less than a year. 8 U.S.C. § 1101(f)(1) (“habitual drunkard”).
Drunkenness-incapacitating oneself for performance of duties	<i>Not CIMT; Not Aggravated Felony; however, possible lack of good moral character</i>	Maximum allowable confinement is less than a year. 8 U.S.C. § 1101(f)(1) (“habitual drunkard”).
Possessing or using with intent to defraud or deceive, or making altering, counterfeiting, tampering with, or selling military or official pass, permit, discharge certificate and identification card	<i>Removal (CIMT; Aggravated Felony if over \$10,000)</i>	<i>Cf. In re Antigua</i> , No. A75-401-302, 2003 WL 23269935 (BIA Oct. 22, 2003) (quoting <i>Jordan v. De George</i> , 341 U.S. 223, 229 (1951) (“Fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude.”); 8 U.S.C. §§ 1101(a)(43)(M), 1227(a)(2)(A)(iii) (designating fraud with \$10,000 loss as Aggravated Felony).
All other cases	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
False pretenses, obtaining services over \$500	<i>Removal (CIMT; Aggravated Felony if over \$10,000)</i>	<i>Cf. In re Antigua</i> , No. A75-401-302, 2003 WL 23269935 (BIA Oct. 22, 2003) (quoting <i>Jordan v. De George</i> , 341 U.S. 223, 229 (1951) (“Fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude.”); 8 U.S.C. §§ 1101(a)(43)(M), 1227(a)(2)(A)(iii) (designating fraud with \$10,000 loss as Aggravated Felony).
False pretenses, obtaining services \$500 and under	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.

False swearing	<i>Removal (CIMT)</i>	<i>Cf. Grajales v. Mukasey</i> , 303 F.App'x 942 (2d Cir. 2008) (holding that offense making a false statement on passport application is CIMT even if the offense did not require the moral turpitude element as an element); <i>cf. Calvo-Ahumada v. Rinaldi</i> , 435 F.2d 544 (3d Cir. 1970) (holding federal conviction of false statement under oath for permanent residence application as CIMT).
Firearm, discharging through negligence	<i>Removal (Certain firearm offense); Not CIMT; Not Aggravated Felony</i>	8 U.S.C. § 1227(2)(C) (Certain firearm offense) (“Any alien who . . . is convicted under any law of . . . using . . . any weapon . . . which is a firearm . . . is deportable”). Not CIMT or Aggravated Felony because the maximum allowable confinement is less than a year. 8 U.S.C. § 1101(f)(1).
Firearm, discharging willfully, under such circumstances as to endanger human life	<i>Removal (Certain firearm offense; CIMT; Aggravated Felony)</i>	8 U.S.C. § 1227(2)(C) (Certain firearm offense) (“Any alien who . . . is convicted under any law of . . . using . . . any weapon . . . which is a firearm . . . is deportable.”); <i>cf. Keunge v. U.S. Attorney Gen.</i> , 561 F.3d 1281, 1285–86 (11th Cir. 2009) (quoting <i>Knapik v. Ashcroft</i> , 384 F.3d 84, 90 n.5(3d Cir. 2004)) (“With regard to reckless acts, moral turpitude inheres in the conscious disregard of a substantial and unjustifiable risk of severe harm or death.”); 8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony). 18 U.S.C. § 16 states, “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 . . . 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.” <i>Id.</i>
Fleeing scene of accident	<i>Removal (possible CIMT)</i>	<i>Cf. Garcia-Maldonado v. Gonzales</i> , 491 F.3d 284 (5th Cir. 2007) (holding Texas’s conviction of driver failing to stop and render aid in an accident resulting in death or injury as CIMT); <i>cf. Latu v. Mukasey</i> , 547 F.3d 1070 (9th Cir. 2008) (holding that Hawaii’s conviction of driver fleeing the accident resulting in injury as not CIMT).
Fraternization	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crimes in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
Gambling with subordinate	<i>Not CIMT; Not Aggravated Felony; however, Naturalization Denial (Lack of good moral character if more than two gambling offenses)</i>	Maximum allowable confinement is less than a year. 8 U.S.C. § 1101(f)(5) (lack of good moral character when convicted of two or more gambling offenses).
Homicide, negligent	<i>Not CIMT; Not Aggravated Felony</i>	Elements lack the moral turpitude element for CIMT. <i>Cf. States v. Dominguez-Ochoa</i> , 386 F.3d 639 (5th Cir. 2004) (holding that Texas’s conviction for criminal negligent homicide is not “crime of violence” for U.S. sentence guidelines); <i>cf. Leocal v. Ashcroft</i> , 543 U.S. 1, 1–2 (2004) (holding that state DUI offenses without a mens rea and only requiring negligence in operating a vehicle is not “crime of violence” under Aggravated Felony).

Impersonation with Intent to Defraud	<i>Removal (CIMT; Aggravated Felony if over \$10,000)</i>	<i>Cf. In re Antigua</i> , No. A75-401-302, 2003 WL 23269935 (BIA Oct. 22, 2003) (quoting <i>Jordan v. De George</i> , 341 U.S. 223, 229 (1951) (“Fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude.”); 8 U.S.C. §§ 1101(a)(43)(M), 1227(a)(2)(A)(iii) (designating fraud with \$10,000 loss as Aggravated Felony).
Impersonation	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Indecent language, communicated to child under the age of sixteen	<i>Removal (Crimes against children)</i>	8 U.S.C. § 1227(a)(2)(E)(i) (listing “child abuse” as deportable). The elements, however, may be too broad to trigger removal.
Indecent language	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Jumping from vessel into the water	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Kidnapping	<i>Removal (Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii) (incorporating “crime of violence” under 18 U.S.C. § 16 as Aggravated Felony); <i>cf. Delgado-Hernandez v. Holder</i> , 697 F.3d 1125 (9th Cir. 2012) (holding California’s ordinary kidnapping as Aggravated Felony).
Mail: taking, opening, secreting, destroying, or stealing	<i>Removal (Aggravated Felony if stealing)</i>	<i>Cf. Randhawa v. Ashcroft</i> , 298 F.3d 1148 (9th Cir. 2002) (holding possession of stolen mail as theft offense under Aggravated Felony).
Mails: depositing or causing to be deposited obscene matters in	<i>Not CIMT</i>	<i>Cf. In re D-----</i> , 1 I. & N. Dec. 190 (BIA 1942) (holding federal conviction for mailing obscene letter is not CIMT).
Misprision of serious offense	<i>Removal (Possible CIMT)</i>	<i>Cf. Itani v. Ashcroft</i> , 298 F.3d 1213 (11th Cir. 2002) (holding misprision of felony as CIMT). <i>But see Robles-Urrea v. Holder</i> , 678 F.3d 702 (9th Cir. 2012) (holding misprision of felony is not categorically a CIMT but may be under modified categorical match).
Obstructing justice	<i>Removal (Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(S), 1227(a)(2)(A)(iii) (designating obstruction of justice as Aggravated Felony).
Wrongful interference with an adverse administrative proceeding	<i>Depends on the underlying conduct resulting in the interference; potential Aggravated Felony.</i>	MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 96.c (2012). Potential Aggravated Felony for obstruction of justice for obstructing proceedings before agencies. 8 U.S.C. §§ 1101(a)(43)(S), 1227(a)(2)(A)(iii) (designating obstruction of justice as Aggravated Felony); 18 U.S.C. § 1505 (2012) (criminalizing “imped[ing] or endeavor[ing] to influence, obstruct, or imped[ing] the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States”).
Pandering	<i>Removal (CIMT; Aggravated Felony)</i>	<i>Cf. Rohit v. Holder</i> , 670 F.3d 1085, 1089–90 (9th Cir. 2012) (holding solicitation of prostitution as CIMT because no less vile than engaging in prostitution which is CIMT); 8 U.S.C. §§ 1101(a)(43)(K(i)), 1227(a)(2)(A)(iii) (designating an “offense that . . . relates to the owning, controlling, managing, or supervising of a prostitution business” as Aggravated Felony).
Prostitution and patronizing a prostitute	<i>Removal (CIMT)</i>	8 U.S.C. § 1182(2)(D) (prostitution and procurement of prostitution).
Parole, violation of	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Perjury, subornation of	<i>Removal (Aggravated Felony)</i>	8 U.S.C. §§ 1101(a)(43)(S), 1227(a)(2)(A)(iii) (designating “subornation of perjury” as Aggravated Felony).

Public record: altering, concealing, removing, mutilating, obliterating, or destroying	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
Quarantine, breaking	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Reckless endangerment	<i>Not CIMT</i>	<i>Cf. Knapik v. Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004) (holding New York’s conviction of attempted reckless endangerment as not CIMT); <i>But see Keunge v. U.S. Attorney Gen.</i> , 561 F.3d 1281, 1285–86 (11th Cir. 2009) (quoting <i>Knapik v. Ashcroft</i> , 384 F.3d 84, 90 n.5) (“With regard to reckless acts, moral turpitude inheres in the conscious disregard of a substantial and unjustifiable risk of severe harm or death.”).
Restriction, breaking	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Seizure: destruction, removal, or disposal of property to prevent	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused”). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
Self-injury without intent to avoid service	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
Sentinel or lookout, disrespect to	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Sentinel or lookout: Loitering or wrongfully sitting on post while receiving special pay	<i>Not CIMT; Not Aggravated Felony</i>	The offense lacks the moral turpitude element for CIMT. <i>See Belliss, supra</i> note 91, at 59 (“The key is to identify the existence of any knowledge or evil intent (<i>malum in se</i>) on the part of the accused). No corresponding crime in the definition of Aggravated Felony in 8 U.S.C. § 1101(a)(43).
Sentinel or lookout: Loitering or wrongfully sitting on post	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Soliciting another to commit an offense	Depends on the underlying offense	<i>Cf. Barrage-Lopez v. Mukasey</i> , 507 F.3d 899, 903 (9th Cir. 2007) (holding CIMT determination for inchoate crimes depends on the underlying offense); <i>see also Rohit v. Holder</i> , 670 F.3d 1085, 1089–90 (9th Cir. 2012).
Straggling	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
Testify, wrongfully refusing to	<i>Removal (Aggravated Felony)</i>	<i>Cf. Alwan v. Ashcroft</i> , 388 F.3d 507 (5th Cir. 2004) (holding federal contempt of court conviction of failing to testify at federal grand jury as Aggravated Felony for obstructing justice). 8 U.S.C. §§ 1101(a)(43)(S), 1227(a)(2)(A)(iii) (designating obstruction of justice as Aggravated Felony).
Threat, bomb or hoax	<i>Removal (Possible CIMT)</i>	<i>Cf. Latter-Singh v. Holder</i> , 663 F.3d 1156 (9th Cir. 2012) (holding that California’s conviction for making threats to terrorize is CIMT). <i>But see Abpikar v. Holder</i> , 544 F.App’x 719 (9th Cir. 2013) (holding that Ohio’s conviction of telephoning bomb threat is not CIMT).

	Unlawful entry	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.
	Weapon, concealed, carrying	Removal (Certain firearm offense)	8 U.S.C. § 1227(2)(C) (Certain firearm offense) (“Any alien who . . . is convicted under any law of . . . carrying . . . any weapon . . . which is a firearm . . . is deportable.”).
	Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button	<i>Not CIMT; Not Aggravated Felony</i>	Maximum allowable confinement is less than a year.