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LLP

## **Not Guilty**

Getting verdicts your client can live  
with on *this* side of the border.



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# What impact?

1. Will the plea result in removal proceedings?
2. Will the plea disqualify your client from applying for relief in removal proceedings?
3. Will the plea result in your client being detained by ICE?
4. Will the plea affect your client's ability to travel outside of the US?
5. Will the plea affect your client's ability to naturalize?

# Different consequences



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# What is your client's status?

- Lawful Permanent Resident
- Nonimmigrant Visa Holder
- Temporary Protected Status (TPS)
- Refugees and Asylees
- Deferred Action for Childhood Arrivals (DACA)
- Noncitizens present in the US who have not been admitted or paroled after inspection





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# Basic Questions to Ask

- Where was the client born?
- When did the client enter the US?
- Any departures? For how long?
- Victim of a crime?
- Any family lawfully present in the US? Who? How did they acquire lawful status/presence?
- Any prior immigration petitions for client?
- If prior petitions, what happened?
- Any prior arrests? By what agency? What happened?  
Any prior convictions?
- In jail previously? how long?



# Will the client be placed into removal proceedings?

1. There are different types of removal proceedings. (INA § 240/Regular; INA § 238(b) administrative/expedited removal; reinstatement of removal).
2. If unlawfully present, they are going to be placed into removal proceedings. Will the conviction affect their eligibility for relief?
3. If lawfully present, whether they are placed into removal proceedings will mostly likely depend on the conviction. Relief is still an issue.



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# Why choose “Deferred”?

- Avoids a term of imprisonment
- Many aggravated felony provisions require a term of imprisonment of one year or more
  - Crime of violence (INA § 101(a)(43)(F))
  - Theft offense (INA § 101(a)(43)(G))
  - Passport and document fraud offenses (INA § 101(a)(43)(P) (12 months))
  - Obstruction of justice (INA § 101(a)(43)(S))



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# The problem with “Deferred”

- A plea + court imposed punishment = a conviction. INA § 101(a)(48) (8 U.S.C. § 1101(a)(48))
- A Texas Deferred Adjudication is a conviction for immigration purposes. *Moosa v. INS*, 171 F.3d 994 (5th Cir. 1999); *Matter of Punu*, 22 I. & N. Dec. 224 (BIA 1998).
- A Deferred Disposition *might* be a conviction. *Matter of Mohamed*, 27 I. & N. Dec. 92 (BIA 2017).
  - plea of guilty or nolo contendere or an admission of sufficient facts to warrant a finding of guilt, plus
  - Judge ordered punishment, penalty, or restraint on liberty

# Deferred Adjudication, Pretrial Diversion, Deferred Disposition



- Avoid a “conviction” by
  - Avoid entering a plea, admitting facts, or admitting guilt
  - Avoiding court imposed punishment and the court’s involvement in the supervision of punishment



# INA § 238(b) Administrative Removal



- A noncitizen who is not a lawful permanent resident convicted of an aggravated felony is subject to administrative removal. INA § 238(b). The only “relief” available is withholding of removal.
- Avoid the aggravated felony conviction.
  - A deferred adjudication avoids a 1yr sentence
  - Drug possession as opposed to drug trafficking
  - CIMT vs. Aggravated Felony?



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# Crime of Violence

- *United States v. Reyes-Contreras*, 910 F.3d 169 (5th Cir. 2018)
- *United States v. Gracia-Cantu*, No. 15-40227 (5th Cir. April 2, 2019).
  - “Consistent with our recent en banc decision in *United States v. Reyes-Contreras*, 910 F.3d 169 (5th Cir. 2018) (en banc), we hold that a conviction under Texas Penal Code §§ 22.01(a)(1) and (b)(2) falls within the definition of a crime of violence under 18 U.S.C. § 16(a).”
  - Rejected argument against retroactive application

# Crime of Violence and Assault



- Class B or higher Texas assault convictions are crimes of violence
  - Possibly disqualify client from non-Ipr cancellation of removal. INA §§ 240A(b)(1)(C) and 237(a)(2)(E)(i)
  - Retroactivity argument?
  - THE POINT? Aim for a class C assault (Texas Penal Code § 22.01(a)(3) “offensive contact”)



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# Good moral character

- Confinement as a result of conviction for 180+ days precludes your client from demonstrating GMC. INA § 101(f)(7)
- Aggravated felony
- CIMT
- Smuggling
- Drug convictions





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# Possession of Marijuana

- For noncitizens who are present without having been admitted or paroled, a conviction for possessing less than 30 grams of marijuana results in:
  - Inadmissibility. INA § 212(a)(2)(A)(i)(II).
  - Mandatory Detention. INA § 236(c)(1)(A)
  - Disqualified from non-LPR Cancellation of Removal. INA § 240A(b)(1)(B) and (C).



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# Put it in writing!

- Possession for personal use of less than 30 grams of marijuana
- The term of confinement
- The amount of loss involved
- Specify the conduct you want your client to admit to (element/means)





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# Nunc pro tunc

- Can be used in lieu of a vacatur or writ of habeas corpus when a modification is all that is needed
- Immigration Court is required to give full faith and credit
- Useful to modify
  - Sentence
  - Type of drug
  - Amount of drug
  - Amount of loss