



IMMIGRATION LAW



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

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

## Anatomy of a RIAC Advisory: Part 5

### DEPORTABILITY: CRIMES INVOLVING MORAL TURPITUDE (CIMTs)

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Anatomy of a RIAC Advisory:  
Part 5

DEPORTABILITY:  
Crimes Involving Moral Turpitude (CIMTs)

UPCOMING EVENTS

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The second major criminal ground of deportability involves “Crimes Involving Moral Turpitude.” Under INA §237(a)(2)(i)(I), a noncitizen is deportable if, within five years after the “date of admission” to the United States, he or she is convicted of a “crime involving moral turpitude” for which a sentence of one year or longer may be imposed. INA §237(a)(2)(i). This means that anyone convicted of a NY Class A Misdemeanor CIMT or higher, who was admitted to the U.S. less than five years before the commission of the crime is deportable. If the person has more than one CIMT conviction, he or she is deportable regardless of when the offenses occurred and regardless of the possible sentence. INA §237(a)(2)(i)(II).

What is a crime involving “moral turpitude”? There is no statutory definition of “crime involving moral turpitude”, resulting in an ever-changing landscape of federal litigation as to what is a CIMT, and how to determine whether an offense under any given statute, state or federal, is a CIMT. The Board of Immigration Appeals (“BIA”) has held that moral turpitude “refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.” *Matter of Danesh*, 19 I. & N. Dec. 669, 670 (BIA 1988); *Matter of Leal*, 26 I&N Dec. 20, 25(BIA 2012). In order to be designated a CIMT, there must be BOTH “reprehensible” conduct coupled with a “culpable mental state” to commit the act. *Matter of Silva-Trevino*, 26 I&N Dec. 826, 828(BIA 2016). Without both of those elements, the offense cannot be held to be a CIMT.

Examples of CIMTs are theft and fraud related offenses; offenses involving

## UPCOMING EVENTS:

September 6, 2017  
Training for City Court  
Judges of the 5<sup>th</sup> Judicial  
District training  
Clayton, NY

September 22, 2017  
"Crimmigration: Counsel's  
Duties to Noncitizen Clients"  
Part of Oswego County Bar  
Assoc. "Class & Clams"  
CLE, Oswego, NY

October 16, 2017  
Training for NYS Magistrates  
Association Annual  
Conference

October 20, 2017  
12:00 pm – 2:30 pm  
Delaware Co. CLE  
Delhi, NY  
Padilla Review:  
IMMIGRATION  
CONSEQUENCES IN  
CRIMINAL AND FAMILY  
COURT

### Chief Defenders & Assigned Counsel Administrators:

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

physical injury to another; and sex-related offenses. It is also helpful to think of conduct that is in and of itself (inherently) bad as opposed to conduct that is prohibited by a regulatory or licensing statute. (*Malum in se v. malum prohibitum*). In that context, for example, multiple DWI offenses under NY V&T law that involve simply the operation of a motor vehicle with a high BAC do not constitute CIMTs for immigration purposes, no matter how many prior DWI convictions a person may have. As with other grounds of criminal removal, inchoate offenses (attempt, conspiracy) are CIMTs if the underlying offense is a CIMT.

Consequences of having a CIMT conviction, in addition to deportability, include inadmissibility, ineligibility for a green card, ineligibility for cancellation of removal in immigration court proceedings and possible ineligibility for U.S. citizenship. A CIMT conviction can also negatively affect any discretionary grant of an immigration benefit regardless of whether the conviction results in deportability.

With regard to "inadmissibility," a noncitizen is "inadmissible" to the US if he or she is convicted, or *admits the elements of*, a CIMT. INA §212(a)(2)(A)(i)(I). If convicted of a CIMT, or if your client admits the elements of a CIMT in an interview, for example, your client will therefore be unable to enter or re-enter the U.S., and will be ineligible for a green card (as the laws of inadmissibility apply to applications for permanent residence). There is, however, a "petty offense" exception with respect to inadmissibility, that applies for ONE conviction for a CIMT, for an A misdemeanor or less, where the actual sentence received is less than six months. INA §212(a)(2)(A)(ii)(II).

Intake review and why this is important in the CIMT context:

1. Provide documentation to verify your client's immigration history so that we can determine the exact date of your client's "admission" to the U.S.
2. Provide a copy of your client's rap sheet so that we can verify if your client has a previous CIMT conviction.
3. Provide charging documents so that we can determine the level of offense, analyze "single scheme of conduct" issues, and look at possible sentences to fashion an immigration neutral disposition.
4. Provide information to help us determine your client's eligibility for a green card, citizenship, relief from removal, or other benefit that will be affected by a CIMT conviction.

It is not safe to make any assumptions in immigration law, and whether an offense constitutes a CIMT is no exception. Harrassment, for example, under 240.26, has been charged in Immigration Court as a CIMT. Theft of Services, a B Misdemeanor, has been charged as a CIMT. The seriousness of the charge and the possible length of the sentence do not determine whether an offense is a CIMT. *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992).

The best practice is to contact the RIAC so that we can provide a reliable answer and find the best possible disposition for your client.

