

### Advisory Memorandum #3

**To:** Chief Administrative Judge Lawrence Marks

**From:** Advisory Council on Immigration Issues in Family Court

**Re:** Adverse Consequences to Family Court Dispositions

**Date:** October 27, 2017

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The Advisory Council on Immigration Issues in Family Court, co-chaired by Hon. Ruben Martino, Supervising Judge, Family Court, Bronx County, and Theo Liebmann, Clinical Professor and Director of Clinical Programs, Hofstra Law School, was appointed by Chief Administrative Judge Lawrence Marks in 2015. The Council has prepared this memorandum as the third in a series of memoranda, bench aids and other documents to address the variety of immigration issues arising from Family Court proceedings. A list of the Council's members, including the Subcommittee on Adverse Consequences, is attached as Appendix A to this memorandum.

The goal of this Advisory Memorandum is to provide guidance to New York Family Court practitioners and jurists in understanding possible adverse immigration consequences resulting from dispositions, rulings, findings and orders that are commonly issued in family court matters. The Memorandum provides an overview of the content and intended use of the Adverse Consequences Chart (Appendix B). The Memorandum also details how immigration authorities obtain access to family court case information and adjudications that can cause adverse immigration consequences for participants in family court matters.

#### **Content and Intended Use of Adverse Consequences Chart**

The Chart describes the adverse immigration consequences related to adjudications issued in many common family court proceedings, including guardianship and custody, family offense, child support, abuse and neglect and juvenile delinquency. The Chart also highlights potential adverse consequences to fingerprinting practices in family courts, and to incarcerations that result from family court contempt findings. It places adverse consequences into the following four broad categories:

**(1) Deportability:** a person is rendered “deportable” if he/she was lawfully admitted to the United States or currently maintains valid U.S. immigration status (e.g. a green card holder, or a holder of a temporary student or worker visa), and is subsequently found to be in violation of a statutory ground of deportability and subject to removal from the United States.<sup>1</sup>

**(2) Inadmissibility:** a person is deemed “inadmissible” if he/she is denied the opportunity to obtain valid immigration status, or is denied permission to re-enter the U.S. following travel abroad, or is deemed to have entered the U.S. in violation of a statutory ground of exclusion (i.e., inadmissibility) and is subject to removal from the U.S.<sup>2</sup>

**(3) Mandatory bars to immigration benefits or relief from removal:** a person may be permanently barred from obtaining or maintaining valid immigration status or prohibited from seeking an immigration benefit to prevent his/her removal from the U.S. if s/he has

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<sup>1</sup> Grounds of deportability are specified in 8 U.S.C. §1227 or section 237 of the U.S. Immigration and Nationality Act.

<sup>2</sup> Grounds of inadmissibility are specified in 8 U.S.C. §1182 or section 212 of the U.S. Immigration and Nationality Act.

admitted to certain conduct, including conduct related to alcohol abuse, controlled substances and prostitution, or has been convicted of certain crimes.

**(4) Discretionary denials of immigration benefits or relief from removal:** a person who is statutorily eligible to seek an immigration benefit or waiver to prevent his/her removal from the U.S. may be discretionarily denied the benefit or waiver based on conduct or convictions.<sup>3</sup>

In using the Chart, it is important to note that the adverse consequences discussed can vary depending on the individual's immigration status; the policies and practices across different jurisdictions; and the policies and priorities adopted by the current federal government administration. *Individuals should always consult with a competent immigration attorney to determine the potential for adverse immigration consequences and to identify any available options that may pertain to his or her specific case.*

*For attorneys,* the Chart provides an overview of immigration consequences that should be considered when non-citizen clients are assessing their options in family court matters.<sup>4</sup> If an attorney does not have sufficient expertise to competently provide the level of advice required, an attorney with that expertise should be consulted.<sup>5</sup>

*For jurists,* the Chart provides a general educational framework to understand immigration-related issues that may be raised by counsel or individual litigants during a family court proceeding. Since it is the role of attorneys to provide individualized legal advice to their clients, it is best practice for jurists to avoid independently engaging in any immigration-based analysis or issuing any type of warning or notification of immigration consequences.<sup>6</sup> For those jurists who wish to provide general information pertaining to potential immigration consequences, a general allocution should be adopted for universal use and offered at a litigant's initial appearance.<sup>7</sup> If a general allocution is adopted, universal language should be given in all cases, and to all parties, regardless of the known or suspected immigration status of a litigant. Upon request by a litigant or the litigant's attorney, a jurist should consider providing additional time and opportunity for the litigant or litigant's counsel to consult with an immigration expert.

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<sup>3</sup> The Adverse Consequences Glossary (Appendix C) defines these and other immigration terms used in the Chart.

<sup>4</sup> For more explicit information on the role of family court lawyers to advise clients of immigration consequences, see NEW YORK STATE INDIGENT LEGAL SERVICE STANDARDS – PARENTAL REPRESENTATION IN STATE INTERVENTION MATTERS, STANDARD H-1; NEW YORK STATE BAR ASSOCIATION STANDARDS OF MANDATED REPRESENTATION, STANDARD I-9; NEW YORK STATE BAR ASSOCIATION STANDARDS FOR ATTORNEYS REPRESENTING CHILDREN IN NEW YORK CHILD PROTECTIVE, FOSTER CARE, AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS, STANDARD D-12; AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, STANDARDS 2, 5; AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILD WELFARE AGENCIES, STANDARD 4.

<sup>5</sup> The New York State Office of Indigent Legal Services has created six Regional Immigration Assistance Centers (RIACs) responsible for providing immigration-related support to counsel providing mandated representation in criminal and family court matters throughout New York State. More information, including the location of the RIACs, is available at <https://www.ils.ny.gov/content/regional-immigration-assistance-centers>.

<sup>6</sup> Judicial warnings of any type may interfere with the attorney client relationship by appearing to contradict an attorney's individualized assessment of a client's immigration risks. They may also call attention to a litigant's immigration status. Requiring or eliciting the disclosure of a litigant's immigration status may impose a chilling effect on securing the presence or cooperation of non-citizen litigants and witnesses. Required disclosure of the immigration status of a litigant in open court may also trigger unintended immigration consequences. Jurists should consider options (e.g., permitting an off-the-record discussion between litigants, counsel and the court at the bench, or closing the courtroom to the public and non-court law enforcement), to limit public disclosure of immigration-related matters if and when requested to do so and when it is deemed appropriate.

<sup>7</sup> The following language can be considered by jurists for use at all initial appearances: *I am not asking you whether or not you are a United States citizen, but if you are not, then you may wish to consider consulting with a lawyer to discuss whether this case presents any immigration-related or other type of consequence that you should be aware of before proceeding in this case. Do you understand this?*

## **Immigration Agency Access to Family Court Case Information and Adjudications**

It is not uncommon for immigration authorities to obtain family court information by requiring individuals who are applying for immigration benefits or relief from removal to produce their family court records. Individuals are frequently compelled to produce records regardless of the privacy protections afforded by the New York Family Court Act and other state regulations. In other cases, immigration authorities discover family court information automatically through data-sharing agreements between state, local and federal agencies.<sup>8</sup> Descriptions of the primary methods by which immigration authorities obtain family court case information are provided below.

### **1. *Immigration Applications***

Immigration applications are the most common trigger of adverse immigration consequences. When an immigrant applies for an immigration benefit or status, such as green card or naturalization, s/he has the burden to demonstrate that s/he is admissible to the U.S. and has good moral character. Immigration adjudicators often compel applicants to divulge information about their family court cases when, for example, proof of materially supporting a child is relevant to the relief being sought; when a child does not reside with the applicant; when an applicant has had an order of protection issued against him or her; or where an applicant has been arrested for a crime involving endangering the welfare of a minor (even if the charge was dismissed). When immigrants face removal, they are also sometimes eligible to apply for relief, which will allow them to remain in the U.S. In both contexts, immigrants must answer a litany of questions under penalty of perjury about their family history and past conduct. The discretion to deny an application for a benefit or relief is extremely broad and subject to limited judicial review. Therefore, while individual immigrants may argue that family court records are private and may even refuse to present the requested information, immigration authorities will often reject these arguments and use the refusal as a basis to deny relief and support removal.

Among the questions that immigration authorities regularly require immigrants to answer, under penalty of perjury, during the course of applying for benefits or relief, are many that can prompt disclosures about an individual's family court history, including:

- Have you ever willfully failed to pay child support?
- Have you ever been in jail?
- Have you ever knowingly committed a drug-related offense for which you have not been arrested?
- Have you ever committed, assisted in committing, or attempted to commit, a crime or offense for which you were not arrested?
- Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor, including incidents handled in juvenile court?

In response to information that is disclosed on immigration applications, immigration authorities can also make requests for further evidence, and may require immigrants to submit records from

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<sup>8</sup> Under the Trump administration's executive orders, access to family court information can bear special risks because undocumented immigrants who were not previously targeted for immigration enforcement are now priorities whenever they engage in conduct that "constitutes a criminal offense" or is deemed by any individual immigration officer to "pose a risk to public safety." This wide discretion and broadly worded language suggests that any arrest or other conduct deemed "a risk" may prompt Immigration and Customs Enforcement ("ICE") to apprehend a noncitizen, regardless of whether the conduct results in criminal prosecution and conviction.

family courts. State confidentiality and sealing laws do not prevent federal immigration authorities from asking about family court cases and requiring immigrant applicants to provide those records.

## ***2. New York Order of Protection Registry***

Harmful immigration consequences can also be triggered when an Order of Protection is issued by the Family Court and entered into the New York State Order of Protection Registry (“OP Registry”).<sup>9</sup> As mandated by The Family Protection and Domestic Violence Intervention Act of 1994, the New York State Police maintain an OP Registry, a computerized database of active orders of protection issued by state courts for the purpose of protecting victims of domestic violence.<sup>10</sup> When a protective order is created using the WebDVS software, or a protective order pursuant to Articles Four, Five, Six, Eight, or Ten of the Family Court Act is created in the Family Court UCMS computer system, data elements from the order are automatically sent to the OP registry, which is in turn linked to the FBI’s National Crime Information Center (NCIC),<sup>11</sup> an electronic clearinghouse of crime data that is accessible by virtually every federal, state, and local law enforcement agency in the country including federal immigration agencies.<sup>12</sup> Since federal immigration agents can access information from New York’s OP Registry via the FBI’s NCIC, immigration officers can readily determine whether an individual has an order of protection by searching their name and date of birth, or other identifying information.

When immigration officers search for protective order information through the FBI’s NCIC, they can, at a minimum, determine the name, race, and sex of the party against whom the order is brought; whether the order is temporary or final; dates of issuance and expiration; conditions of the

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<sup>9</sup> As noted in the Chart, information from orders of protection are immigration-related triggers for several reasons. A family court finding that an individual has violated an order of protection, even a temporary one, is grounds for deportation. Even if an order is not violated, the existence of a temporary or permanent protective order can be grounds for denying an individual an immigration benefit or relief from removal. An order of protection may also prompt questions about the underlying conduct, and additional requests for family court records.

<sup>10</sup> Per N.Y. Executive Law 221-a, the registry includes all orders of protection issued “pursuant to articles four, five, six, eight and ten of the family court act, section 530.12 of the criminal procedure law and, insofar as they involve victims of domestic violence as defined by section four hundred fifty-nine-a of the social services law, section 530.13 of the criminal procedure law and sections two hundred forty and two hundred fifty-two of the domestic relations law.”

<sup>11</sup> The FBI’s NCIC has included a “protection order file” since 1994 when Congress first required that all States, territories, and Indian tribal governments give “full faith and credit” to valid protection orders issued by other jurisdictions. *See* 18 U.S.C. §2265(a). Protection orders included in the database include both temporary and final civil and criminal court orders issued for “the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person.” 28 U.S.C. §534.

<sup>12</sup> Congress has given the FBI broad authority to collect and exchange information via the NCIC with authorized Federal officials and the States. 28 U.S.C. §534(a). It has also expressly granted the immigration agencies that fall under the Dep’t of Homeland Security access to information contained in the NCIC. 8 U.S.C. §1105. The various immigration agencies have had access to NCIC since the 1970s and are “indisputably NCIC’s largest customer.” Michael D. Kirkpatrick, Assistant Director in Charge, FBI, Before the United States Senate Subcommittee on Immigration, Border Security (Nov. 13, 2003) *available at* <https://archives.fbi.gov/archives/news/testimony/the-fbis-national-crime-information-center>.

order; and the agency that issued the order.<sup>13</sup> Immigration authorities can access information from New York protection orders up to five years after they expire or are cancelled.<sup>14</sup>

Requests for protective order information can come from any of the numerous immigration agencies, including United States Citizenship and Immigration Services (“USCIS”), the agency that adjudicates applications for immigration benefits, Immigration and Customs Enforcement (“ICE”), the agency that detains and deports immigrants, and Customs and Border Protection (“CBP”), the agency that, among other things, screens individuals entering the U.S. These requests may be prompted by international travel, applications for immigration status or benefits (including Special Immigrant Juvenile Status, U nonimmigrant status, lawful permanent residence, and citizenship); or removal proceedings.

The discovery of an active or expired order of protection may prompt immigration officials to question noncitizens, request additional evidence (including family court records) from noncitizens, and cause adjudicators to deny an a noncitizen’s application for a benefit or relief from removal.<sup>15</sup> If immigration officers learn that a court has determined an immigrant has violated a protective order, they may initiate removal proceedings.<sup>16</sup>

### 3. *Fingerprinting*

There are three types of fingerprinting that can prompt an immigration authority or adjudicator to demand access to family court information and adjudications: a) fingerprints taken at the time of booking into a local jail; b) fingerprints taken for purposes of conducting both criminal and civil background checks; and c) fingerprints taken for purposes of adjudicating immigration applications.

#### *a. Fingerprinting at Booking in Criminal Matters*

Any time an immigrant litigant is arrested on a family court warrant or confined in connection with a contempt order, the immigrant becomes vulnerable to detection and apprehension by ICE. Fingerprints taken by local jails at booking are automatically shared with ICE via federal data-sharing

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<sup>13</sup> The FBI’s NCIC requires this data before accepting an order of protection record from the NY OP Registry into its database. However, for any given order of protection, the NCIC may also contain other non-mandatory information including the protected party’s name, date of birth, social security number, race, and sex; the party against’s license plate, license number and vehicle identification number; physical descriptors of the party against; the citizenship and ethnicity of the party against; and service of process of information. NCIC 2000 Operation Manual, Protection Order File, 1.7 Message Field Codes and Edits. According to the New York State Police Office of Counsel, a small percentage of files are not shared with the NCIC because they do not conform to the NCIC’s data entry requirements. For a complete list of the data fields contained in the OP Registry, see NYSPIN Support Services, NYSPIN Manual, Chapter 2 Section 22 Orders of Protection File.

<sup>14</sup> While NY Executive Law 221-a(6) requires the New York State Police to promptly remove expired orders from the OP Registry, the FBI’s NCIC maintains these orders as “inactive records” for up to five years after expiration. See NCIC 2000 Operating Manual 1.4 Record Retention Period.

<sup>15</sup> For example, individuals applying for U nonimmigrant status and lawful permanent residence can be required to submit family court records when immigration authorities discover that the individual applicant has had an order of protection. Individuals who seek waivers of deportation before an Immigration Judge may be questioned about active orders of protection issued against them and denied relief from deportation based on their answers. At the border and other ports of entry, lawful permanent residents can also be questioned about active orders of protection. CBP agents can interrogate individuals without the presence of counsel, presenting particular risks for noncitizen travelers because admissions made to CBP agents can be used to initiate a removal proceeding or to deny re-entry into the U.S. altogether.

<sup>16</sup> See 8 U.S.C. 1227(a)(2)(E)(ii) (“ Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.”)

networks.<sup>17</sup> If ICE gets a “match” and identifies someone who they believe is removable, the agency can notify the local jail and ask that the jail hold the individual until ICE retrieves the individual for potential civil immigration detention. This is often referred to as an ICE “detainer” or “hold.”

Fingerprint-sharing occurs in every local jail, regardless of whether or not a locality has self-identified sanctuary policies in place. In New York City, for example, local laws prevent local jails from honoring ICE “detainers” or “holds” issued by ICE. However, the information is still automatically provided to ICE, and the local policy does not prevent ICE from apprehending an immigrant once that person is released from criminal custody. In New York City and other self-identified sanctuary jurisdictions, ICE raids on homes and other areas are often triggered by an arrest and subsequent fingerprinting.

*b. Fingerprinting for Background Checks in Family Court*

When individuals are fingerprinted for family court related background checks, the print checks are done by New York State’s Division of Criminal Justice Services (DCJS). DCJS currently has a policy of contacting ICE whenever it runs fingerprints and discovers that an individual has a prior conviction for any misdemeanor, felony, or other offense under New York law for which they were fingerprinted, and has been previously deported from the United States. When an immigrant who falls into this category submits fingerprints to DCJS for a background check, DCJS contacts ICE. ICE can then apprehend, detain and deport the individual. Federal prosecutors can also bring criminal charges against the individual for illegal reentry into the U.S.

*c. Fingerprinting for Immigration Applications*

For many types of immigration benefits, including those that relate to protecting unaccompanied minors and victims of domestic violence and other crimes, USCIS requires that the immigrant applicant undergo a “biometric screening” that includes both fingerprints and digitized photographs. USCIS uses the fingerprints to check an individual’s immigration and criminal history. Fingerprints are run through immigration databases that include information about immigrants who have previously violated immigration laws. Fingerprints are also run through the FBI’s criminal database, which includes information about past arrests, criminal convictions, and any active orders of protection. The FBI database includes information about active orders of protection issued by both family and criminal courts, which it obtains through a data sharing agreement with the New York State Police. As a result, any time an immigrant applies for an immigration benefit, USCIS can access information about active family court orders of protection. Immigrant applicants are often questioned about orders of protection that surface through biometric screening, and can be denied benefits after disclosure of information about arrests that do not result in prosecution.

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<sup>17</sup> Fingerprints taken at booking are automatically shared with NCIC. The FBI then forwards the fingerprints to ICE, which cross checks every individual’s fingerprints against its own immigration databases.

Appendix A:  
Advisory Council Members and Consultants

## APPENDIX A

### **Advisory Council on Immigration Issues in Family Court (Oct. 2017)<sup>1</sup>**

Co-Chair: Professor Theo Liebmann, Clinical Professor of Law and Director of Clinical Programs, Maurice A. Dean School of Law at Hofstra Univ.

Co-Chair: Hon. Ruben Martino, Supervising Judge, Family Court, Bronx County

Counsel to the Advisory Council: Janet Fink, Esq., Deputy Counsel, NYS Unified Court System

#### MEMBERS:

1. Hon. Lisa Bloch-Rodwin, Judge of the Family Court, Erie County
2. Margaret Burt, Esq., Attorney, Pittsford, NY
3. Myra Elgabry, Esq., Director, Immigrant Rights Project, Lawyers for Children, New York, NY
4. Anne Erickson, President and CEO, Empire Justice Center, Albany, NY
5. Hon. Alison Hamanjian, Judge of the Criminal Court, Kings County
6. Terry Lawson, Esq., Director, Family and Immigration Unit, Bronx Legal Services, Bronx, NY
7. \* Joanne Macri, Esq., Director of Regional Initiatives, NYS Office of Indigent Legal Services, Albany, NY
8. Hon. Edwina Mendelson, Deputy Chief Administrative Judge for Justice Initiatives and Acting Supreme Court Justice, New York, NY (emeritus status)
9. \* Andrea Panjwani, Esq., Managing Attorney, My Sister's Place, White Plains, NY
10. Carmen Rey, Esq., Deputy Director, Immigration Intervention Project, Sanctuary for Families, New York, NY
11. Professor Sara Rogerson, Esq., Director, Immigration law Clinic and Law Clinic and Justice Center, Albany Law School
12. Wedade Abdallah, Esq., Assistant Public Defender, Legal Aid Society of Rochester
13. Maureen Schad, Esq., Pro Bono Counsel, Norton Rose Fulbright, L.L.P.
14. Amelia T. R. Starr, Esq., Partner, Davis Polk and Wardwell, L.L.P.
15. Eve Stotland, Esq., Director, Legal Services Center, The Door, New York, NY
16. \* Lee Wang, Esq., Staff Attorney, Immigrant Defense Project, New York, NY

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<sup>1</sup> Affiliations are listed for identification purposes only. Members whose names are marked with an asterisk (\*), participated in the Adverse Consequences Subcommittee, which was primarily responsible for the preparation of this guidance document.



Appendix B:  
Adverse Consequences Chart

# Adverse Immigration Consequences to New York Family Court Dispositions

This chart provides a general framework for understanding the range of immigration consequences that immigrant litigants may face in Family Court. The application of these consequences to specific litigants depends on individual circumstances. Since it is the role of attorneys to provide individualized advice to their clients on immigration consequences, it is best practice for jurists to avoid making any type of warning or notification of immigration consequences. The chart focuses on four categories of adverse immigration consequences: 1) Deportability; 2) Inadmissibility; 3) Statutory Bar on Immigration Benefit or Relief from Removal; and 4) Discretionary Denial of Immigration Benefit or Relief from Removal. The chart is meant to be used in conjunction with the attached Glossary and Memorandum. Note that immigration policies and practices are subject to change, especially during a new federal administration. This chart is subject to revision to reflect those changes. In addition, adverse consequences can depend upon an individual's immigration status, and immigration agency practices can vary across different jurisdictions. Individuals should always consult with a competent immigration attorney to determine the possible adverse consequences in his or her specific case.

Type of Order or Ruling	Adverse Immigration Consequence	Deportability	Inadmissibility	Statutory Bar on Immigration Benefit or Relief from Removal	Discretionary Denial of Immigration Benefit or Relief from Removal
<b>ARTICLE 3 – JUVENILE DELINQUENCY</b>					
Drug Related Adjudications		Admission to acts that constitute drug abuse or addiction is a ground for deportation.	Admission or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker can trigger inadmissibility.	Admissions or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker can be a bar to immigration benefits. In most cases the bar is permanent.	Adjudications related to drugs can be a significant factor in discretionary denial.
Prostitution Related Adjudications		None.	Admission or finding related to acts that constitute prostitution or other "commercialized vice" can trigger inadmissibility.	Admission or finding related to acts that constitute prostitution or other "commercialized vice" can bar an individual from receiving certain immigration benefits.	Admission to acts that constitute prostitution or other "commercialized vice" can be a significant factor in discretionary denial.
Gang Related Adjudications		None.	None.	Evidence of gang membership or gang-related conduct can bar an individual from receiving certain immigration benefits.	Evidence of gang membership or gang-related conduct can be a significant factor in discretionary denial.
Other Adjudications		None.	Admission to acts that constitute a "crime involving moral turpitude" can trigger inadmissibility.	Admission to acts that constitute a "crime involving moral turpitude" can bar an individual from receiving certain immigration benefits.	Admission to acts that constitute a "crime involving moral turpitude" can be a significant factor in discretionary denial.
Order of Protection (O/P)		None.	Admission or finding related to acts prompting the issuance of a protective order can be considered a "crime involving moral turpitude" and trigger inadmissibility.	Admission or finding related to acts underlying the issuance of a protective order can bar an individual from receiving certain immigration benefits.	Admission to acts prompting the issuance of a protective order can be a significant factor in discretionary denial.
Violation of Order of Protection		An Article 3 court finding that a juvenile has violated a temporary or permanent O/P is a ground for deportation.	Admission or finding related to acts underlying the violation can be considered a "crime involving moral turpitude" and trigger inadmissibility.	Admission or finding related to acts underlying the violation can bar an individual from receiving certain immigration benefits.	Admission to acts underlying the violation can be a significant factor in discretionary denial.
<b>ARTICLE 4 – CHILD SUPPORT</b>					
Willful Failure to Support		None.	None.	The willful failure to provide child support is a statutory bar to naturalization if it occurs in the five years leading up to the naturalization application.	Regardless of when the willful failure to provide child support occurs, it can be a significant factor in discretionary denial.

Use of Falsified Documents	None.	Admission or finding related to acts that constitute making false statements to a governmental authority can trigger inadmissibility.	Admission or finding related to acts that constitute making false statements to a governmental authority can bar an individual from receiving certain benefits.	Admission or finding related to acts that constitute making false statements to a governmental authority can be a significant factor in discretionary denial.
<b>ARTICLE 6 – CUSTODY, GUARDIANSHIP, ADOPTION, TPR</b>	<b>Deportability</b>	<b>Inadmissibility</b>	<b>Statutory Bar on Immigration Benefit or Relief from Removal</b>	<b>Discretionary Denial of Immigration Benefit or Relief from Removal</b>
Termination of Parental Rights	None.	None.	Children cannot derive immigration benefits through a parent once parental rights are terminated. Similarly, parents cannot derive benefits from their children once rights are terminated.	Immigration benefits can be denied in discretion to a parent based on a termination of parental rights, particularly if the underlying reason for the termination is abuse or neglect of a child.
<b>ARTICLE 8 – FAMILY OFFENSE</b>	<b>Deportability</b>	<b>Inadmissibility</b>	<b>Statutory Bar on Immigration Benefit or Relief from Removal</b>	<b>Discretionary Denial of Immigration Benefit or Relief from Removal</b>
Temporary O/P	None.	Statements or testimony made about conduct underlying an O/P may be deemed admissions for immigration purposes and can trigger inadmissibility. Customs and Border Patrol agents question non-citizens reentering the U.S. who have active O/Ps.	The existence of an active O/P between spouses can bar either party from obtaining benefits based on the marital relationship (with the exception of benefits for survivors of domestic violence)	The existence of an active O/P can be a significant factor in discretionary denial. An expired O/P may also be considered.
Permanent O/P	None.	Statements or testimony made about conduct underlying an O/P can be deemed admissions for immigration purposes and can trigger inadmissibility. Customs and Border Patrol agents question non-citizens reentering the U.S. who have active O/Ps.	The existence of an active O/P between spouses can bar either party from obtaining benefits based on the marital relationship (with the exception of benefits for survivors of domestic violence)	The existence of an active O/P is likely to be a significant factor in discretionary denial. An expired O/P may also be considered.
Consent to O/P without Admissions	None.	An O/P issued on consent is unlikely to trigger inadmissibility; however, a respondent may still be questioned about underlying conduct by immigration authorities and any admissions made can serve as the basis for inadmissibility.	The existence of an active O/P on consent can also bar benefits (with the exception of benefits for survivors of domestic violence.	The issuance of a permanent O/P on consent can have the same potential consequences as one entered after trial. See above.
Violation of O/P	A court determination that a non- U.S. citizen violated a temporary or permanent O/P will make that person deportable. This applies to the violation of nearly any condition of an Article 8 O/P including (but not limited to) the violation of no contact provisions.	Statements or testimony made about violating an O/P can be deemed admissions for immigration purposes and can trigger inadmissibility.	A court finding that an individual violated an O/P between spouses will bar either party from receiving an immigration benefits that depends on the spousal relationship.	A court finding that an individual violated an O/P can be a significant factor in discretionary denial even if the violation occurred in the past and the O/P is expired.
Concurrent Criminal Case	If an admission made in the Article 8 case is used to support a criminal prosecution, any resulting conviction can serve as grounds for deportation. Convictions for most New York family offenses, as defined in Family Court Act §812, can serve as grounds for deportation.	If a conviction for a family offense results from a concurrent criminal case it can trigger inadmissibility.	If a conviction for a family offense results from a concurrent criminal case it can bar an individual from benefits.	If a conviction for a family offense results from a concurrent criminal case it can be a significant factor in discretionary denial, if not an outright bar.

ARTICLE 10 – ABUSE/NEGLECT	Deportability	Inadmissibility	Statutory Bar on Immigration Benefit or Relief from Removal	Discretionary Denial of Immigration Benefit or Relief from Removal
Temporary Order of Protection	None.	Admission to conduct underlying an O/P can trigger inadmissibility. Customs and Border Patrol agents question non-citizens reentering the U.S. who have active O/Ps.	Admission to conduct underlying an O/P can be grounds for denying a benefit.	The issuance of a temporary O/P at any point in an Article 10 proceeding can be a significant factor in discretionary denial.
Permanent Order of Protection	None.	Admission to conduct underlying an O/P can trigger inadmissibility. Customs and Border Patrol agents question non-citizens reentering the U.S. who have active O/Ps.	Admission to conduct underlying an O/P can be grounds for denying a benefit.	The issuance of a permanent O/P can be a significant factor in discretionary denial.
Violation of Order of Protection (Temporary or Permanent)	A court determination that a non- U.S. citizen violated a temporary or permanent O/P will make that person deportable. This applies to the violation of nearly any condition of an Article 10 O/P including (but not limited to) the violation of no contact provisions.	If an individual admits to violating an O/P, the admission can be used to trigger inadmissibility.	Admission to violating an O/P can be grounds for denying a benefit.	The disclosure that a non- U.S. citizen violated an O/P (temporary or permanent) can be a significant factor in discretionary denial.
Finding of Abuse or Neglect	None.	Admission or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker, or to acts constituting prostitution or other "commercialized vice", or to acts constituting a "crime involving moral turpitude" can trigger inadmissibility.	Admission or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker, or to acts constituting prostitution or other "commercialized vice", or to acts constituting a "crime involving moral turpitude" can bar an individual from receiving certain immigration benefits.	Admission or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker, or to acts constituting prostitution or other "commercialized vice", or to acts constituting a "crime involving moral turpitude" can be a significant factor in discretionary denial.
1051(a) Submission	None.	Immigration authorities may consider a 1051(a) submission an admission to wrongdoing and can use a 1051(a) submission to deny admission.	Immigration authorities may consider a 1051(a) submission an admission to wrongdoing and can use it as a ground for denying benefits.	A finding that an individual has abused or neglected a child, even if entered pursuant to 1051(a), can be a significant factor in discretionary denial.
Adjournment in Contemplation of Dismissal	None.	None.	None.	None.
Suspended Judgment	None.	A court finding may prompt questions from immigration authorities and requests for court documents. Any admission made during trial can be used to deny admission.	Immigration authorities may question individuals about vacated judgments and compel individuals to produce documents related to the case. Any admissions made in the course of the application can be used to bar an individual from receiving benefits.	Immigration authorities may question individuals about vacated judgments and compel individuals to produce documents related to the case. Any admissions made in the course of the application can be used as significant factors in discretionary denial.
Concurrent Criminal Case	If an admission made in the Article 10 case is used to support criminal prosecution, any resulting conviction can serve as grounds for deportation. Criminal convictions for most New York family offenses can serve as grounds for deportation.	If an admission made in the Article 10 case is used to support criminal prosecution, the resulting conviction can trigger inadmissibility.	If an admission made in the Article 10 case is used to support criminal prosecution, the resulting conviction can bar an individual from receiving benefits.	If an admission made in the Article 10 case is used to support criminal prosecution, the resulting conviction(s) can be a significant factor in discretionary denial

SPECIAL IMMIGRANT JUVENILE STATUS	Deportability	Inadmissibility	Statutory Bar on Immigration Benefit or Relief from Removal	Discretionary Denial of Immigration Benefit or Relief from Removal
Special Findings Order (Consequences to Parents)	None.	None.	Parents cannot receive immigration benefits through the child. However, the issuance of a SIJ visa to a child does not bar parents from applying for or receiving immigration benefits independent of their children.	A child's SIJ visa application lists the name of the parent with whom reunification is not viable. There is currently no evidence that a parent's application for an immigration benefit or relief from removal has been negatively impacted by being named in a SIJ order.
<b>OTHER FAMILY COURT ACTIONS</b>				
Fingerprinting	If an individual has a conviction record and was previously deported, a request for a fingerprint check with the NYS Department of Criminal Justice Services can trigger immigration enforcement measures.			
Contempt and Incarceration	The incarceration of an individual who is otherwise subject to removal from the U.S. may trigger immigration enforcement measures. In addition, any period of incarceration for contempt may be a factor in discretionary denial.			

Appendix C:  
Adverse Consequences Glossary

## Adverse Immigration Consequences Glossary

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### **GENERAL TERMINOLOGY**

#### **Adjustment of Immigration Status**

Adjustment of status is the process that allows a noncitizen to apply for and to obtain lawful permanent resident status from within the U.S.

#### **Change of Immigration Status**

Change of status is the process that allows a noncitizen to apply to change his/her nonimmigrant (i.e., temporary) status to that of another nonimmigrant (i.e., temporary) immigration status from within the U.S.

#### **Customs and Border Protection (CBP)**

CBP is an agency within the U.S. Dept. of Homeland Security that is charged with enforcing trade, customs, and immigration regulations at the border and ports of entry. CBP is responsible for apprehending individuals attempting to enter the U.S. illegally and has approximately 60,000 Border Patrol agents working along the land borders, seaports and airports across the nation.

#### **Data-sharing Agreements**

Data-sharing agreements refer to formal and informal agreements, policies or practices between certain local, state and federal agencies to exchange gathered information.

#### **Department of Homeland Security (DHS)**

Created in 2003, the U.S. Department of Homeland Security brought together 22 government agencies, including the former Immigration and Naturalization Service. Among its many responsibilities, DHS oversees enforcement of U.S. immigration laws.

#### **Executive Office of Immigration Review (EOIR)**

EOIR is an agency within the jurisdiction of the U.S. Dept. of Justice. EOIR is responsible for the administration of the immigration courts nationwide, the appointment of immigration court judges, immigration court hearings and review of immigration appeals. The EOIR includes the Board of Immigration Appeals (BIA) which has jurisdiction to review the decisions of the local immigration courts. The BIA consists of a panel of administrative law judges who are appointed by the EOIR.

#### **Good Moral Character**

“Good moral character” is an assessment during the course of an application for an immigration benefit of whether the conduct of the applicant measures up to the standards of average citizens of the community in which the applicant resides. Good moral character is a common statutory requirement that applies to many types of immigration benefits (e.g. VAWA, T Visa, Green Card,

Cancellation of Removal and Voluntary Departure). Bars to a finding of good moral character include a determination or admission that the immigrant applicant is an alcoholic; has been convicted of or admitted to acts which constitute the essential elements of a crime involving moral turpitude or a crime related to a controlled substance; or has been found to have failed to pay court-ordered child support or alimony. 8 U.S.C. §1101(f); INA §101(f).

### **Immigration and Customs Enforcement (ICE)**

ICE is the agency within DHS that is responsible for enforcing federal immigration law within the interior of the U.S. The agency is tasked with identifying, arresting, detaining and, when applicable, removing any noncitizen found in violation of U.S. immigration laws and ordered removed from the U.S. ICE maintains at least two units: Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO) that are significantly involved in immigration enforcement measures. HSI conducts investigations to prevent national security from being compromised such as drug, weapons and human trafficking. Sometimes referred to as the “immigration police,” ERO identifies, arrests, detains and physically departs removable immigrants from the U.S.

### **Immigration Benefit**

A status or permission granted by an agency within the federal government that allows a noncitizen to temporarily or permanently reside, and in many cases to work, in the U.S. Examples of temporary immigration benefits include work visas, student visas, Deferred Action for Childhood Arrivals, T Visas, U Visas and Temporary Protected Status. Examples of longer-term or permanent immigration benefits include a grant of asylum status, issuance of a green card, citizenship, a grant of withholding of removal, Special Immigrant Juvenile Status, and immigration benefits based on VAWA relief.

### **Immigration Detainers (Immigration “Holds”)**

Immigration detainers (often referred to as immigration “holds”) are administrative notices issued by ICE agents to advise local, state and federal law enforcement agencies (LEA’s) that ICE, “seeks custody of the alien” who is being detained by the LEA “for the purpose of arresting and removing the alien.” 8 CFR 287.7(a). An LEA may voluntarily agree to maintain custody of a noncitizen for “a period not to exceed 48 hours” (excluding weekends and holidays), beyond the time that release of the noncitizen defendant from any custody or supervision is mandated by law. An ICE detainer is not a judicial warrant; it is “merely an administrative mechanism to assure that a person is subject to confinement will not be released from custody until the party requesting the detainer has an opportunity to act.” See *Matter of Sanchez*, 20 I&N Dec. 223, 225 (BIA 1990), citing *Moody v. Daggett*, 429 U.S. 78, 80 n. 2 (1976). See also *Roldan v. Racette*, 984 F.2d 85, 88 (2d Cir.1993) (concluding that an immigration detainer solely constitutes “a notice that future INS custody will be sought at the conclusion of a prisoner’s pending confinement by another jurisdiction, and ... a request for prior notice regarding the termination of that confinement.” [*emphasis added*]).

### **Immigration Detention**

ICE has administrative authority to arrest and detain aliens during the removal process. 8 U.S.C §1226, 1231; INA §236, §241. Immigration detention is intended to ensure the ability to enforce U.S. immigration laws against those noncitizens found subject to removal from the U.S. and is not intended to be applied as a form of punishment against noncitizens. In other limited instances, immigration detention may be used to establish a person’s identity, facilitate an immigration or other protection claim, and to effectuate a noncitizen’s removal from the U.S.



## **Immigration and Nationality Act (“INA”)**

The INA is the federal statute which contains all U.S. immigration laws. This statute, which has been modified by a number of subsequently enacted federal amendments and acts, establishes the grounds and procedures for removal from the U.S., as well as eligibility for each type of immigration benefit and relief. It also outlines the jurisdiction of federal immigration authorities. This federal statute is found at Title 8 of the U.S. Code, and the relevant regulations are codified in Volume 8 of the Code of Federal Regulations, entitled “Aliens and Nationality.”

## **Immigration-related Waivers**

The INA and other U.S. immigration-related laws contain provisions that provide conditions and requirements for lawful admission to the U.S. or status within the U.S. The INA also provides exceptions to the provisions and waivers with specified statutory conditions that must be met in order to waive the specific statutory basis for ineligibility. Any waiver that is sought by an individual must first meet the prima facie statutory eligibility criteria to be considered. Once statutory eligibility is determined, each waiver will then be decided based on discretionary factors on a case-by-case basis. Waivers may be issued to overcome certain enumerated grounds of removal including waivers for certain criminal activity, health-related issues, and fraud-related concerns.

## **Immigration Status**

Immigration status denotes the type of legal or non-legal status of a non-citizen. Lawful immigration status may be obtained based on an application process that can be initiated either inside or, for some types of status, outside of the U.S.

## **Lawful Admission**

Lawful admission occurs when an individual is inspected by U.S. immigration authorities who determine that the individual is entitled to enter the U.S. on the basis of a temporary non-immigrant status, such as tourist visa or humanitarian parole, or on the basis of a permanent or indefinite immigrant status such as lawful permanent residence or refugee. 8 U.S.C §1101(a)(13); INA §101(a)(13). This assessment includes a determination of whether the non-citizen is subject to any statutory bars. 8 U.S.C §1182; INA §212.

## **Mandatory Detention**

Mandatory immigration detention for certain noncitizens subject to removal is triggered by conditions such as prior convictions for certain crimes, including “aggravated felony” offenses. 8 U.S.C §1226(c); INA §236(c). Mandatory detention severely limits a noncitizen’s ability to secure release while awaiting immigration proceedings or removal from the U.S. Incarceration following a criminal arrest may trigger an immigration detainer resulting in civil mandatory immigration detention pending removal proceedings.

## **Removal Proceedings**

Removal proceedings are immigration court proceedings adjudicated by an administrative law immigration judge or a tribunal of administrative law judges (e.g., Board of Immigration Appeals) for the purposes of determining whether a noncitizen is subject to removal based on statutory grounds of deportation. 8 U.S.C §1229a; INA §240. Removal proceedings are conducted to determine whether a noncitizen is subject to removal from the U.S. and to adjudicate any requests for relief from removal.

### **Sanctuary Jurisdiction or Policy**

Local jurisdictions may formally implement policies of non-cooperation with ICE deportation within legal limits. Sanctuary jurisdictions and policies can be set expressly in law or observed in practice. These policies typically cite to the value that immigrants bring to communities, and concern for public safety generally if immigrants are afraid to report crime and cooperate with law enforcement. They policies do not prevent ICE from executing immigration enforcement actions in sanctuary jurisdictions; they simply limit cooperation with ICE.

### **U.S. Citizenship and Immigration Services (USCIS)**

U.S. Citizenship and Immigration Services (USCIS) is an agency within DHS. It consists of multiple district offices and regional service centers throughout the U.S. USCIS is responsible for overseeing the adjudication of a variety of immigration applications for status and other immigration benefits and waivers.

### **Visa**

A citizen of a foreign country who seeks to enter the U.S. must first obtain formal permission in the form of a visa before s/he may enter the U.S., unless s/he is coming from a designated “visa waiver” country. Visas are given to non-citizens who do not intend to immigrate to the U.S. but who seek to reside in the U.S. temporarily for the purpose of tourism or work or study. Visa holders are considered “non-immigrants”. While having a visa does not guarantee entry to the U.S., it does indicate a consular officer at a U.S. Embassy or Consulate abroad has determined you are eligible to seek entry for a specific purpose. Visa holders are subject to removal if they are deemed to be in violation of the INA.

## **CATEGORIES OF IMMIGRATION STATUS**

### **Alien**

An alien, also referred to as a “noncitizen,” is any person who is not a U.S. citizen or national of the U.S. 8 U.S.C §1101(a)(3); INA §101(a)(3).

### **Conditional Resident**

A conditional resident is a non-citizen who obtains a two-year green card through marriage or the entrepreneur program. Conditional residents must petition to remove the conditions 90 days prior to the expiration of the conditional green card, and submit to an interview with USCIS before receiving a permanent green card that gives them permanent resident status.

### **Derivative/Acquired U.S. Citizenship**

A person with derivative or acquired U.S. citizenship has obtained U.S. citizenship outside of the naturalization application process. Examples include deriving U.S. citizenship after birth as a result of the naturalization of parents prior to a child’s 18<sup>th</sup> birthday or acquiring U.S. citizenship based on the citizenship of a parent/grandparent.

### **Immigrant**

An immigrant is an individual who enters the U.S. with an intention to reside here permanently. 8 U.S.C §1101(a)(20); INA §101(a)(20). An immigrant includes lawful permanent residents (“LPR”), as well as non-citizens who are allowed to reside indefinitely in the U.S., such as refugees and

asylees. LPR status is required of any person who is seeking to obtain U.S. citizenship through the naturalization application process.

### **Lawful Permanent Resident (“LPR”) / “Green Card” Holder**

A lawful permanent resident is a non-citizen who has been granted authorization to live and work in the U.S. on a permanent basis. As proof of that status, a person is granted a permanent resident card, commonly called a "green card." LPRs can still be subject to removal from the U.S. for certain types of criminal-related grounds.

### **Naturalized U.S. Citizen**

A naturalized U.S. citizen is any person who has obtained U.S. citizenship through the “naturalization” application process. 8 U.S.C 1101(a)(23); INA §101(a)(23). A naturalized U.S. citizen has the right to U.S. citizenship equal to those who have obtained U.S. citizenship through birthright. However, U.S. citizenship through naturalization can be subject to rescission if citizenship was granted based on fraudulent or erroneous information.

### **Nonimmigrant**

A nonimmigrant is an individual who enters the U.S. without intending to reside here permanently, but rather to remain in the U.S. for a temporary period of time to fulfill certain conditions (i.e., such as a temporary visitor, worker, foreign student, etc.). 8 U.S.C §1101(a)(15); INA § 101(a)(15). There are 22 categories of nonimmigrants. 8 U.S.C §1101(a)(15); INA §101(a)(15).

### **Undocumented Immigrant**

For purposes of the Chart, any reference made to an “undocumented immigrant” means those immigrants who entered the U.S. without “lawful admission.”

## **ADVERSE IMMIGRATION GROUNDS AND OUTCOMES**

### **Aggravated Felony Offense**

An “aggravated felony” offense for immigration purposes includes serious felony offenses such as murder and rape, as well as numerous offenses that are not defined as “felony” offenses pursuant New York Penal Law (e.g., class A misdemeanor offenses related to theft, burglary and assault for which a term of one year or more than one year of imprisonment is imposed). 8 U.S.C §1101(a)(43)(a)-(u); INA §101(a)(43)(a)-(u). Interpretation of an “aggravated felony” offense is also shaped by judicial interpretation of federal felony offenses. If a noncitizen is convicted of an aggravated felony offense, s/he will likely be subjected to mandatory civil immigration detention. In addition, having been convicted of an aggravated felony offense will severely limit a noncitizen from seeking most forms of relief designed to prevent removal from the U.S.

### **Conduct-based “Admission” or “Finding”**

Grounds of inadmissibility/exclusion include conduct-based admissions/findings that may subject an individual to removal from the U.S. without having been found guilty or responsible for committing the conduct identified through an “admission” or “finding.” For purposes of the Chart, “admissions” refer to those statements that are made by an individual under penalty of perjury and available by transcription or recording. A “finding” of facts refers to conduct-based conclusions reached by a judge, magistrate or other adjudicator which is formally recorded or transcribed and may be subject to consideration by U.S. immigration authorities in regards to any immigration-

related matter involving the individual who made the admission or against whom the finding has been reached.

### **Conviction**

A “conviction” for immigration purposes includes (1) a formal judgement of guilt entered by a court; and (2) in a case where an adjudication of guilty has been withheld (e.g., in a “diversion” court), a “conviction” exists when (a) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt; and (b) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed (e.g., a mandatory treatment program). 8 U.S.C §1101(a)(48)(A); INA §101(a)(48)(A).

### **Crime Involving Moral Turpitude**

This is an immigration term that lacks any statutory definition, but is defined through case law as conduct that is “inherently base, vile, or depraved.” In New York, crimes of moral turpitude include some misdemeanors and violations and encompass offenses such as theft of services (e.g., turnstile jumping), petty theft, child endangerment, and simple assault between intimate partners and harassment. A crime involving moral turpitude will generally not include a range of regulatory offenses. While only a conviction for a crime involving moral turpitude can make a lawfully present immigrant deportable, the admission to the essential elements of a crime involving moral turpitude may also have adverse consequences. In Family Court, an admission or finding to conduct considered turpitudinous can thus result in the denial of an immigration benefit like a green card, citizenship, or a visa reserved for victims of crime or domestic violence. Admissions or findings may also result in the denial of admission to the U.S. following travel abroad.

### **Deportation / Removal**

A noncitizen who has been lawfully admitted to the U.S. is subject to removal from the U.S. if found to be in violation of a statutory ground of deportation. Noncitizens may be subjected to deportation proceedings and ordered removed from the U.S. if convicted of enumerated crimes or on the basis of certain conduct for which the noncitizen has not been convicted or even prosecuted, including, but not limited to, addiction to controlled substances and violation of certain U.S. immigration laws. INA §237(a); 8 U.S.C. §1227. There is no statute of limitations for deportation; noncitizens can be removed even decades after a conviction or objectionable conduct.

### **Discretionary Adjudication or Denial**

Applications for immigration status or to seek an immigration benefit may be determined by immigration officials (USCIS, CBO, ICE), U.S. State Department officials (e.g., consular or embassy officials) and immigration administrative law judges within the U.S. Department of Justice Executive Office for Immigration Review (EOIR). Even if a noncitizen applicant meets all the statutory eligibility criteria to obtain legal immigration status or to seek an immigration benefit and is not barred from doing so because of a determination of deportability or inadmissibility, s/he is not automatically entitled to the immigration status or benefit until s/he is found to be deserving of the status or benefit based on the discretionary review of such application by any of the above-referenced immigration-related authorities. Discretionary review may include factors such as personal character, family unity, length of time residing in the U.S., employment history, and prior arrests and convictions.

### **Criminal-Related Grounds of Removal – Generally**

Criminal-related grounds of removal are found in both statutory grounds of inadmissibility (8 U.S.C §1182; INA §212) and grounds of deportation (8 U.S.C §1227; INA §237). Although the criminal grounds of removal for inadmissibility and deportation are similar, they are not identical.

### **Inadmissibility**

An immigrant is ineligible to enter the U.S., or obtain any type of visa, humanitarian status or green card once in the U.S. if s/he is found to have violated any one of the grounds of inadmissibility. 8 U.S.C. §1182; INA §212. Common grounds of inadmissibility include, but are not limited to, being convicted of or admitting to the essential elements of acts that constitute a crime involving moral turpitude, conviction or admission to a controlled substance offense, having a history of certain immigration law violations, being without a source of financial support, or health-related grounds which include lack of certain vaccinations or being diagnosed suffering from certain communicable diseases.

### **Statutory Bar to Immigration Benefit or Relief from Removal**

A statutory bar is a violation of the Immigration and Nationality Act that renders a noncitizen ineligible, either temporarily or permanently, for an immigration visa, humanitarian status, a green card, naturalization or other immigration benefit as a matter of law. The discretion to consider or grant a specific immigration benefit or immigration relief may be deemed prohibited, despite any compelling or positive equities or circumstances presented, if the statutory bar to the benefit or relief is defined as “mandatory.”

## **HUMANITARIAN RELIEF AND PROTECTION**

### **Asylee**

An asylee is a person who, while seeking admission at a U.S. port of entry or while inside of the U.S., is seeking asylum after establishing that s/he qualifies as a “refugee.” 8 U.S.C §1158(b)(1)(A); INA §208(b)(1)(A). A refugee is a person displaced outside of his/her native country or country of nationality or origin who is unable to return to that country because of a well-founded fear of persecution on account of (1) race, (2) religion, (3) nationality, (4) political opinion, or (5) membership in a particular social group. 8 U.S.C §1101(a)(42); INA §101(a)(42). Asylum can provide relief from removal from the U.S. and may also lead to lawful permanent resident status in the U.S.

### **Cancellation of Removal – for Certain Lawful Permanent Residents**

Cancellation of Removal for lawful permanent residents is a form of relief only available for certain LPRs who have been found subject to grounds of removal. To be eligible for cancellation of removal, the LPR must establish that s/he has been “lawfully admitted to the U.S. for permanent resident status” for a minimum of five years; has resided in the U.S. continuously for a minimum of seven years after having been admitted to the U.S. in any lawful status and that s/he has not been convicted of an “aggravated felony” offense. Despite a noncitizen’s statutory eligibility for cancellation of removal relief, his/her application will be subjected to discretionary review by an immigration judge and will only be granted if the application warrants a favorable exercise of discretion.

### **Cancellation of Removal – for Certain Nonpermanent Residents**

Cancellation of Removal for certain noncitizens is a form of relief only available for certain nonpermanent residents who have been found subject to grounds of removal. If cancellation of removal is granted, the noncitizen will be permitted to seek “adjustment of status” resulting in a grant of U.S. lawful permanent resident status. To be eligible for such relief from removal, the noncitizen must establish that s/he has been physically present in the U.S. for a continuous period of not less than ten years immediately preceding the date of such application; has been a person of “good moral character” for 10 years; has not been convicted of certain offenses; and has established that his/her removal from the U.S. would result in exceptional and extremely unusual hardship to a U.S. citizen or U.S. lawful permanent resident spouse, parent or child. 8 U.S.C §1229b(b); INA §240A(b). Despite a noncitizen’s statutory eligibility for cancellation of removal relief, his/her application will be subjected to discretionary review by an immigration judge and will only be granted if the application warrants a favorable exercise of discretion.

### **Crime Victim Visa (U-Visa)**

A U visa is a four-year, temporary visa that allows a noncitizen to temporarily reside and work within the U.S. if s/he can establish that: 1) s/he has been a victim of an enumerated crime – including a crime of domestic violence; 2) has reported the crime and cooperated with law enforcement (including, but not limited to, federal, state and local law enforcement agencies, criminal and family court judges, local and federal prosecutors, Dept. of Labor, Human Rights Commission, etc.) in the investigation or prosecution of the offense; 3) is successful in obtaining a certification form signed by a judge or designated law enforcement officer that certifies cooperation; 4) s/he is able to establish that s/he suffered substantial harm as a result of the crime; and 5) is otherwise admissible or eligible for available waivers if deemed inadmissible. 8 U.S.C. §1101(a)(15)(U). U visa holders may apply for lawful permanent resident status prior to the expiration of their U visa.

### **Deferred Action for Childhood Arrivals (DACA)**

DACA is a program started in 2012 which has granted protection from deportation to many undocumented immigrants who came to the U.S. as children. Although DACA does not provide a pathway to lawful status, it provides work authorization, the ability to apply for a social security card, and opens the door to many educational and employment opportunities. In September of 2017, President Trump announced that DACA will be phased out by March 5, 2018. As of this writing, many questions remain about the termination of this program. Any questions should be directed to an immigration law expert.

### **Deferral of Removal under the Convention Against Torture (“CAT”) Treaty**

Under the CAT Treaty, deferral of removal may be granted to a noncitizen who establishes that s/he is more likely than not to be subjected to torture if ordered subject to removal to his/her country of origin or nationality. There are no bars to eligibility for relief under CAT. However, CAT relief does not confer upon the noncitizen any lawful or permanent immigration status in the U.S. and is only effective until and unless terminated by U.S. immigration officials or an immigration judge.

### **Human Trafficking Visa (T-Visa)**

A T visa is a temporary four-year visa that provides protection to a victim of human trafficking by allowing him/her to remain and work within the U.S. for four years if s/he: 1) is in the U.S. because s/he has been a subject of sex or labor trafficking; 2) has agreed to provide some level of

cooperation with law enforcement; 3) would suffer substantial hardship if returned to his/her country of origin or citizenship; and 4) is otherwise admissible or eligible for available waivers from being deemed inadmissible. 8 U.S.C. §1101(a)(15)(T). T visa holders may also be eligible to subsequently apply for U.S. lawful permanent resident status.

### **Refugee**

A refugee is a person displaced outside of his/her native country or country of nationality or origin who is unable to return to that country because of a well-founded fear of persecution on account of (1) race, (2) religion, (3) nationality, (4) political opinion, or (5) membership in a particular social group. 8 U.S.C §1101(a)(42); INA §101(a)(42). Refugees are resettled in the U.S. after seeking admission and approval to do so abroad. Once admitted to the U.S., refugees are expected to apply for and to obtain lawful permanent resident status following their first year of admission to the U.S.

### **Special Immigrant Juvenile (“SIJ”) Status**

SIJ status provides a basis for a noncitizen minor to apply for lawful permanent resident status. 8 U.S.C. 1101(a)(27)(J). To be eligible for a grant of SIJ status by USCIS, the minor must provide an order from a family court or other “juvenile court” finding that: (1) the minor is under 21; (2) the minor is unmarried; (3) the minor is “dependent” on a juvenile court, or committed to the custody of a state agency or court-appointed individual or entity; (4) reunification with one or both of the minor’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and (5) it is not in the best interests of the minor to return to their country of nationality or last habitual residence. The order must cite to specific New York law and facts on which the findings are based, rather than federal law, in order to be accepted by USCIS. A parent of a child who is granted SIJ status is statutorily prohibited from obtaining any immigration benefit based on his/her child’s immigration status. However, the issuance of SIJ status to a child does not bar his/her parent from applying for or receiving an immigration benefit independent of the child’s immigration status.

### **Temporary Protected Status (TPS)**

TPS is a temporary status designed to provide a temporary safe haven for individuals from a foreign country when conditions in the country prevent them from returning. Conditions that can justify a TPS designation include armed conflict, natural disasters, and other extraordinary conditions that prevent foreign nationals from safely returning to their home country. Foreign nationals and recent residents of a country that is given a TPS designation may apply for temporary status for 6-18 months. Temporary status may also be extended, and individuals may retain temporary status for many years. Currently, ten countries have TPS designation.

### **Violence Against Women Act (VAWA) Related Benefits**

A noncitizen who has been battered or subjected to extreme cruelty by a spouse, parent or child who is a U.S. citizen or legal permanent resident may file an immigrant visa petition or lawful permanent resident application on their own behalf, rather than having to rely on the abusive spouse, parent or child. 8 U.S.C. §1154(a) In order to prevail, abused spouses must provide evidence that they 1) married in good faith; 2) resided together with the abusive spouse; 3) were physically abused or subjected to extreme cruelty; and 4) have good moral character. (The requirements for abused children and parents differ).

**Withholding of Removal**

Withholding of removal, also called “non-refoulement” under the United Nations Convention Relating to the Status of Refugees, is a form of relief that prohibits a noncitizen’s removal from the U.S. to his/her country of origin or nationality based on fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. Unlike asylum, a grant of withholding of removal does not provide a pathway to U.S. lawful permanent resident status and may be issued on a permanent or temporary basis based on any significant changes of conditions in the noncitizen’s country of origin or nationality.