



HOW TO ANALYZE A CRIM-IMM CASE

Four Questions to Identify Case Goals

By Kathy Brady, ILRC

Table of Contents

I. Part One: Gather Key Information, Provide Client Warnings, and Decide who will Take the Case.....	2
1. <i>Collect documents about the criminal record: FBI and state rap sheets and all available court records on each conviction.</i>	2
2. <i>Work together with the client to complete a good immigration questionnaire or intake form.</i>	2
3. <i>Give client basic safety warnings, orally and in writing.</i>	2
4. <i>Don't share any guesses or opinions about the case.</i>	3
5. <i>Decide who will take the immigration case; help the client get to them.</i>	3
II. Part Two: Use Four Questions to Analyze a Crim-Imm Case.....	3
A. <i>Lo and Miranda—Sample Chronologies.</i>	4
B. <i>Question One: Might the Client Already be a U.S. Citizen?</i>	4
C. <i>Question Two: Is Your Client a Lawful Permanent Resident (LPR)?</i>	6
D. <i>Question 3: Is Your Client Undocumented or Otherwise Removable (For example, a Deportable LPR)?</i>	8
E. <i>Question 4: Does the Client Have Some Immigration Status or Benefit, But Less Than LPR?</i>	11
Appendix I: Sample Handout on Client Warnings	12
Appendix II: One-Page Summary: Four Questions to Analyze a Crim-Imm Case	13

Immigration and crimes, or “crim-imm,” can be challenging. Immigration and criminal law are both difficult on their own. To do crim-imm work, advocates who are expert in one area must learn at least something about law and procedure in the other. With so many factors to consider—removal grounds and eligibility for relief, elements of an offense and sentencing issues—it can seem unmanageable.

This advisory provides tools to help analyze a case and identify goals for immigrant clients who are in, or have had contact with, the criminal law system. It highlights resources to assist in this, many of which are available online. It can be used by immigration advocates, criminal defense counsel, or post-conviction relief counsel.

This advisory is not a substitute for getting expert crim-imm assistance. Our goal is to help newer practitioners to become more expert, or at least conversant, in crim-imm. Being conversant is useful. Even if an expert creates the analysis, you want to be comfortable

communicating it since you are the person who will discuss it with the client, argue it to the judge or official, or use it to negotiate with the other side.

Part One of this advisory sets out short suggestions for how to take care of the basics, such as collecting critical information and advising the client on how to protect themselves during the investigation. This is a great service to the client, regardless of whether you will go on to represent them in immigration proceedings.

Part Two discusses how to analyze a crim-imm case, based on the client's individual immigration situation and criminal record. We use the analysis to identify the client's immigration goals; which criminal record issues, if any, cause problems with the goals; whether post-conviction relief could help; and what to do next in immigration or criminal proceedings.

I. Part One: Gather Key Information, Provide Client Warnings, and Decide who will Take the Case

Accomplishing these tasks can help the client regardless of whether or not you will decide to take the whole case. Consider five steps.

1. Collect documents about the criminal record: FBI and state rap sheets¹ and all available court records on each conviction.

Your client's memory of what happened in criminal court is important, but we never rely on it for the technical information we will need for this analysis. That will include information such as the date the alleged offense was committed, date of conviction or other disposition, code sections for the offenses, offense level (e.g., felony, misdemeanor), details of the sentencing, and probation violation dispositions, if any.

2. Work together with the client to complete a good immigration questionnaire or intake form.

The form you use must capture the information needed to form a crim-imm analysis. This includes biographical data as well as open-ended questions to spot possible eligibility for immigration relief. ILRC provides a free sample questionnaire.²

PRACTICE TIP: Once you have the criminal record documents and completed immigration questionnaire, use this information to create an integrated **chronology** for the case that puts life events (entry/admission into the U.S., marriage, travel, etc.) in chronological order with criminal record events (arrested, convicted, etc.). See sample client chronologies for Lo and Miranda in **Part II.A**, below.

3. Give client basic safety warnings, orally and in writing.

Without unnecessarily scaring the client, let them know that they should take some precautions until you or another party can determine whether their criminal record poses a threat to their immigration situation. They should not travel outside the United States. (Some clients should

¹ See ILRC, *How To Check if You Have a Criminal Record* (Nov. 2019), <https://www.ilrc.org/resources/how-check-if-you-have-criminal-record>.

² Download fillable PDF questionnaire from *N. 16 Client Questionnaire* (2020), www.ilrc.org/chart.

not leave Ninth Circuit states, because this is the only region where their legal defense may be accepted.) They should not submit any immigration application or have contact with immigration officials. Undocumented clients should learn “Know Your Rights” skills,³ including their right to decline to speak with ICE officers. See a sample hand-out for clients listing these precautions at **Appendix I**.

4. Don’t share any guesses or opinions about the case.

In this field there is no guessing. For one thing, the legal results often don’t make sense. A felony and even some California “strikes” can be harmless for immigration purposes, while a misdemeanor can be catastrophic, depending on the elements of each offense. Unless you are an expert and know the answer now, just tell the client that you need to investigate.

5. Decide who will take the immigration case; help the client get to them.

Will your office take the case, and if so, who at your office? What is your own role in cases like the client’s? If you’re not an expert, can you take the case if you consult with an expert? If you will refer the case to an expert, can you create a “warm handoff” by calling the other office to describe the case and help the person set up an appointment?

II. Part Two: Use Four Questions to Analyze a Crim-Imm Case

Armed with information from the client, their completed questionnaire, and their criminal record documents, we can start the analysis. We will ask four basic questions to identify goals of the case, and identify resources to help at each step. Some of the resources discussed here are specific to California; if you are dealing with a conviction from another jurisdiction, see if you can identify resources there. The first question checks whether the client might be a United States citizen and not know it. The other questions are based on the client’s current immigration situation.

For a one-page summary of the four questions and online resources, see **Appendix II**.

WARNING: If you are not an expert, get an expert. Don’t do this alone! This material is meant to help advocates organize the steps of a crim-imm analysis and become familiar with legal concepts and resources. But unless you are an expert in crim-imm, you must be supervised by or closely consult with an expert. Do not skip this step: the stakes are high and the law is full of surprises.

To help illustrate the process, we will apply each of the four questions to hypothetical clients, Lo and Miranda. Below is a brief chronology for each of them.

³ For materials in multiple languages about asserting one’s rights and declining to speak to immigration agents see <https://www.ilrc.org/red-cards>.

A. Lo and Miranda—Sample Chronologies

Lo from Laos	Miranda from Honduras
<ul style="list-style-type: none"> • DOB—July 4, 1990 • 2000—immigrated with mom as LPR when he was age 10 • 8/1/2010 Plea to misd possession of 28.5 gm or less marijuana (arrested 7/15/2010) • 2/5/14 expunge mj conviction, PC 1203.4 • 12/10/15 marry USC • 12/12/15 honeymoon Belize 3 weeks • 1/1/2021: conviction misd PC 273.5, sentence 3 days jail, 3 years' probation, one year DV classes. No stay-away order, couple is together 	<ul style="list-style-type: none"> • DOB—July 4, 1995 • Undoc, fled here alone in 2010. Afraid to return. Has not left US. • Thinks Father (deceased) was born in Houston TX • USC daughter born 6/12/2017 • 8/2019 conviction: PC 273a(a) misdemeanor endangerment, probation, parent classes • Says was being abused by BF/father of child • 3/8/2021 shoplifting PC 459.5 conviction, which has a 6-month maximum sentence (kid clothes from Target). Probation, \$70 restitution. • 2/2/2023 charged with another shoplifting PC 459.5

B. Question One: Might the Client Already be a U.S. Citizen?

Some people who were born outside the United States and its territories⁴ are United States Citizens (USCs). If the answer to either of the following two questions may be yes, then your client who was born in another country *might* already be a USC.

At the time you were born, did you have a parent or grandparent⁵ who may have been a USC? (The person may have “acquired” U.S. citizenship at birth.)

or

Before your 18th birthday, were you a lawful permanent resident (“green card” holder), *and* was at least one parent with custody of you a USC? (The person may have “derived” U.S. citizenship as of the moment that both requirements were met.)

All clients should be asked these two questions, which should appear on any immigration questionnaire or intake form. If the answer to either question *might* be yes, then more investigation is needed to see if the client actually is a USC.

Many people who automatically derived or acquired citizenship in this way do not know it. Some may have been deported multiple times, only to discover that they always were a USC and have an absolute right to be in the United States. A USC is not subject to immigration laws

⁴ For information about U.S. territories and further discussion of citizen or national status for people born outside the United States, see § 17.3 at ILRC, *Immigration Relief Toolkit* (2018), https://www.ilrc.org/sites/default/files/resources/relief_toolkit-20180827.pdf.

⁵ Biological parents and adoptive parents (if the adoption occurred before age 16 and meets other requirements) can be “parents” for this analysis. Stepparents cannot serve as parents in this analysis, although they can serve as parents for other immigration purposes. See discussion below of ILRC citizenship charts, <https://www.ilrc.org/acquisition-derivation-quick-reference-charts>.

or guilty of any federal criminal law that has “alienage” (non-USC status) as an element, such as illegal entry into the United States.⁶

Examples: Lo and Miranda Chronologies. We see in the above chronology that Lo was admitted to the United States with his mother as a lawful permanent resident (LPR) when he was 10 years old. Whenever a client became an LPR as a child, that is a signal to check if a parent may have naturalized before the client’s 18th birthday. If Lo’s mother did this, he may well have become a USC. Or, if a USC stepfather adopted Lo by Lo’s 16th birthday, that also could have made him a USC.

Miranda is undocumented, but she believes that her father was born in Texas. If that is true, she may have been a USC since the time of her birth in Honduras.

Next steps. Now that we know the client *might* be a USC, someone needs to investigate the case. Many immigration nonprofits⁷ and private offices handle this kind of citizenship case. See *Resources*, below, for online materials that set out the specific requirements.

The ultimate goal is to obtain government documentation affirming that the client is a USC. When we have sufficient evidence, we either will submit an N-600 application to United States Citizenship and Immigration Services (USCIS), or apply for a U.S. passport at a United States passport agency. Note that the client’s criminal record is irrelevant to the application. The client is not asking to be granted new status based on good behavior, but is asking the government to recognize their already-existing status as a USC.

It might take the federal agency weeks, months, or in some cases longer to decide the citizenship claim. If you are defending a client in criminal proceedings, you may not be able to wait for the results of the citizenship case before you need to resolve the criminal case. You will need to conduct the defense as if the client is a non-USC. For example, in the above hypothetical Miranda is facing a shoplifting charge. Until she is granted a passport or citizenship certificate, defense counsel must assume that she is undocumented and, assuming Miranda agrees, conduct the case to avoid adverse immigration consequences.

The client might be able to use the pending citizenship claim to stop removal proceedings, or federal prosecution for a crime that requires the government to prove “alienage.” Regarding removal proceedings, you can offer evidence that the client is a USC and ask the immigration judge to terminate the case or grant a continuance until the passport or N-600 application is adjudicated. In many cases, the judge will do this. If the judge refuses, the person should present any defense they may have against removal. In particular, if they need to vacate a prior conviction in order to avoid removal, this process should start as soon as possible. But if the client does not face immigration deadlines, together you may decide to put off PCR or other actions until the citizenship claim is decided.

Resources for Citizenship Cases. Different rules govern acquisition and derivation of citizenship cases, depending upon when the person was born and other factors. To determine the requirements that apply to your client, see the ILRC *Quick Reference Charts on Acquisition*

⁶ See 8 USC §§ 1325, 1326.

⁷ To locate a nonprofit that accepts clients from your county, see Immigrant Advocates Network, *National Immigration Legal Services Directory*, <https://www.immigrationadvocates.org/legaldirectory/>.

and Derivation (updated frequently).⁸ For further information on all aspects of naturalization and citizenship, see online resources⁹ and manuals,¹⁰ and/or consult with experts.

C. Question Two: Is Your Client a Lawful Permanent Resident (LPR)?

A lawful permanent resident (LPR, person with a “green card”) can live and work permanently in the United States, *unless* they become “removable.” If they become removable, the LPR can be detained, put in removal proceedings, stripped of their LPR status, and removed (deported).

PRACTICE TIP: If your client says that they are an LPR, *ask to see a copy of their permanent resident card.* Some people think that they are LPRs, but actually have other status. We need to know the client’s actual status in order to correctly analyze the case. Some people will not have access to their card, but it is worth trying hard to get it. Then, make a photocopy.

If the client is an LPR, our first task in the crim-imm analysis is to determine whether their prior conviction/s or conduct already have made them removable. We ask:

1. Is the LPR client removable for crimes because either:
 - a. The client was convicted of a deportable offense, or is deportable because they were found by a judge to have violated a domestic violence “stay-away” order?¹¹
or
 - b. The client became inadmissible for crimes, and then took a trip outside the U.S.?¹²

To determine whether a California conviction made the client deportable or inadmissible, start by looking the offense up in the ILRC *California Quick Reference Chart*.¹³ See also books or practice advisories (especially if an offense is an immigration “crime involving moral turpitude”).¹⁴ With that start, you can go on to do more research to confirm the analysis, and/or discuss the case with your crim-imm expert.

⁸ See the citizenship charts at <https://www.ilrc.org/acquisition-derivation-quick-reference-charts>.

⁹ See, e.g., materials at <https://www.ilrc.org/citizenship-and-naturalization> and see the USCIS *Policy Manual* chapter on naturalization and citizenship, <https://www.uscis.gov/policy-manual/volume-12>.

¹⁰ See ILRC, *Naturalization and U.S. Citizenship: The Essential Legal Guide* (2022) and the comprehensive manual *A Guide for Immigration Advocates* (2022), both at www.ilrc.org/publications, and see hornbooks such as *Kurzban’s Immigration Law Sourcebook*, available at <https://nlpnl.org/memberdiscounts.html>.

¹¹ See crimes-based grounds of deportability at INA § 237(a)(2), 8 USC § 1227(a)(2). For more on being deportable based on a court finding of violation of a protective order, see ILRC, *2022 Case Update: Domestic Violence Deportation Ground* (March 2022), <https://www.ilrc.org/2022-case-update-domestic-violence-deportation-ground>.

¹² An LPR who travels outside the United States usually can re-enter even if they are inadmissible. But if certain exceptions apply—including that they are inadmissible for crimes—they are held to be seeking a new admission. If they were mistakenly permitted to re-enter the U.S., they will be deportable for having been inadmissible at least entry. INA §§ 101(a)(13)(C), 237(a)(1); 8 USC §§ 1101(a)(13)(C), 1227(a)(1). For further discussion of this issue, see the manuals cited above or see Part I.A of ILRC, *Practice Advisory: All Those Rules About Crimes Involving Moral Turpitude* (June 2021), <https://www.ilrc.org/all-those-rules-about-crimes-involving-moral-turpitude>.

¹³ Advocates can register for this free resource at <https://calchart.ilrc.org/registration/>.

¹⁴ See advisories at www.ilrc.org/crimes and “Notes” (short articles on different grounds) at www.ilrc.org/chart. In particular, note that the crimes involving moral turpitude removal grounds have special

For non-California offenses, or California offenses not in the Chart, see if the offense has been analyzed elsewhere and/or work with your crim-imm expert to analyze it.

If your LPR client is removable, then in order to stay lawfully in the United States they will need to apply for and be granted some form of immigration “relief” (e.g., a waiver or new lawful status).

2. Might the LPR client be eligible to apply for any form/s of relief? If they are eligible for relief, what are the criminal record bars to that relief? Would their conviction/s bar them?

Go to **Part D** below to see how to answer these questions.

3. Could post-conviction relief (PCR) be used to vacate the conviction/s that make the LPR client removable (or barred from relief)?

See *Resources*, below. The best outcome is to vacate the conviction/s that make the person removable so that they don’t have to apply for relief. If that is not possible, vacate conviction/s that bar relief.

If your LPR client is not removable, or was removable but PCR fixed the problem, that is great news. This person cannot be placed in removal proceedings and can continue living in lawful status in the United States. But they do need two pieces of advice.

- The client should not travel outside the U.S. without first getting an expert consultation in case their record might trigger removal grounds if they travel. Because the law changes frequently, they should get expert advice before each trip.
- If the LPR client wishes to naturalize to U.S. citizenship, they will have to establish good moral character¹⁵ for the preceding 5 (or 3) years. They should get expert advice before applying.

Example: LPR Lo’s chronology. In 2010, Lo was convicted of possession of 28.5 grams or less of marijuana, California Health and Safety Code § 11357(a) (pre-Prop 64 statute). In 2021, Lo was convicted of misdemeanor California Penal Code § 273.5. To see if these convictions may make Lo removable, we look up each offense in the *California Chart*.

We see that Lo’s 2010 conviction for possessing 28.5 grams of marijuana did not make him deportable, because the controlled substances deportation ground contains an exception for a single incident involving simple possession of 30 grams or less of marijuana. However, the conviction made him *inadmissible* because the inadmissibility ground has no marijuana exception. Because Lo took a trip to Belize *after* his conviction, he appears to be deportable under INA § 237(a)(1), for having been inadmissible at last entry.¹⁶

Lo’s 2021 conviction for PC § 273.5 is a deportable crime of domestic violence. (It also might be a CIMT, but does not make him deportable or inadmissible under the CIMT ground.)

rules so that a single CIMT conviction might or might not cause immigration consequences. See ILRC, *All Those Rules About Crimes Involving Moral Turpitude*, cited above.

¹⁵ Some convictions are at least temporary bars to establishing the “good moral character” required for naturalization. See INA § 101(f), 8 USC § 1101(f). Post-conviction relief may help. See resources on eligibility for naturalization at <https://www.ilrc.org/citizenship-and-naturalization>.

¹⁶ See footnote 12 (to question 1.b), above, for a discussion of why this is so under INA §§ 101(a)(13)(C), 237(a)(1).

If Lo is not a USC already (see **Part B**), he will need **post-conviction relief (PCR)** to eliminate the convictions for both Penal Code § 273.5 and marijuana possession so that he can avoid being deportable. We will talk with a PCR expert. (Just by reading an advisory, we think it is possible that the marijuana conviction already is eliminated by the expungement.¹⁷)

We also will look at **eligibility for relief** (see **Part D**).

Resources for LPR cases. As discussed above, the ILRC *California Quick Reference Chart* can indicate if the person’s California conviction/s may make them deportable or inadmissible.¹⁸ To identify possible relief for a removable client and the convictions that might bar that relief, see the ILRC *Immigration Questionnaire* and the *Immigration Relief Toolkit or Immigration Relief Chart*.¹⁹ See further discussion of relief at **Part D**.

Regarding California post-conviction relief, see ILRC’s PCR practice advisory; the ILRC manual, *California Post-Conviction Relief for Immigrants* (2023); and other online resources.²⁰

D. Question 3: Is Your Client Undocumented or Otherwise Removable (For example, a Deportable LPR)?

An “undocumented” person refers to a non-United States citizen (non-USC) who is in the United States and who does not have lawful status under immigration laws. The person may have surreptitiously entered without inspection (“EWI”) at the border, or they may have been admitted with some visa or border crossing card and “overstayed” their permitted time. Most important for our purposes, all undocumented people are *removable* because they currently lack lawful immigration status. If ICE encounters them, it can place them in removal proceedings and remove them, *unless* they qualify for and are granted some immigration “relief.” Eligibility for relief is the core question.

A lawful permanent resident who has become removable also can be placed in removal proceedings and removed unless they qualify for and are granted some type of immigration relief. For this reason, we take a removable LPR client through the same relief analysis as an undocumented person. (Unsurprisingly, a removable LPR has advantages compared to an

¹⁷ Looking at ILRC, *Practice Advisory: Overview of California Post-Conviction Relief* (see *Resources*, below) we see that while rehabilitative relief usually is not effective for immigration purposes, it is possible that the § 1203.4(a) “expungement” that Lo obtained in 2014 eliminated the simple possession conviction for all purposes under the *Lujan-Armendariz* exception, since his conviction occurred on or before July 14, 2011.

¹⁸ Immigration and criminal defense advocates can register for this free resource at <https://calchart.ilrc.org/registration/>. Note the “crimes involving moral turpitude” removal grounds have their own rules as to when conviction/s make the person removable. See ILRC, *All Those Rules About Crimes Involving Moral Turpitude*, cited above.

¹⁹ See these resources at www.ilrc.org/chart. They are § N.16 *Immigration Questionnaire* (2020); § N.17 *Immigration Relief Toolkit* (2018); and § 17A *Chart on Immigration Relief* (Nov. 2021). See also pages at www.ilrc.org about specific forms of relief, listed at <https://www.ilrc.org/areas-of-expertise>.

²⁰ See ILRC, *Practice Advisory: Overview of California Post-Conviction Relief for Immigrants* (July 2022), <https://www.ilrc.org/resources/overview-california-post-conviction-relief-immigrants> and see the ILRC manual, *California Post-Conviction Relief for Immigrants* (January 2023), www.ilrc.org/store. See also materials at <https://www.ilrc.org/immigrant-post-conviction-relief>.

undocumented person. They may be eligible for more lenient relief, and if the removable conviction can be vacated they may automatically return to being an LPR in good standing.)

For any removable non-USC, the only way to stay legally in the United States is to be granted some kind of lawful immigration status or protection, called immigration “relief.” Our goal is to identify whether the client might be eligible for one or more forms of relief. If we can, we will vacate any conviction that would destroy eligibility for that relief.

Is the undocumented person, deportable LPR, or otherwise removable client eligible to apply for some form/s of immigration relief?

1. First, work with the client to complete an Intake Sheet or Questionnaire²¹ to identify *possible* eligibility for immigration relief. The client’s answers to these basic questions can provide a ballpark idea of which forms of relief to consider. It may take time to establish enough trust with the client so that they feel they can answer the questions truthfully.
2. Next, look further into eligibility for these potential form/s of relief, and identify criminal convictions that may be a bar.
 - You can use online aids to obtain basic information about different forms of relief, including the legal requirements for each form of relief and their criminal bars. See the ILRC *Immigration Relief Toolkit* (two-page summaries of each form of relief) and the updated *Chart on Immigration Relief*.²² This provides a basic orientation.
 - Then do further research and/or consult your expert to determine whether the client actually is eligible for one or more forms of relief and if their criminal record may be a bar to that relief.
3. If one or more convictions is a bar to relief, can we vacate those conviction/s?

Example: Lo and Miranda Chronologies. Putting aside the possibility that Lo and Miranda each might have a claim to U.S. citizenship, we look at possible relief. For Lo, we reviewed his questionnaire answers and chronology. Based just on that, it seems that LPR cancellation and/or family immigration (he is still with his USC wife) might be possible. Next, we consulted the ILRC *Relief Toolkit* for more information. Based on that, if these facts all are correct, and based on our earlier analysis of his convictions, he appears to be eligible for LPR cancellation of removal despite his criminal record. He was admitted to the U.S. far more than seven years ago, he did not have any “clock stopping” issue before the seven-year mark (the marijuana conviction was at Year 10) and he does not have an aggravated felony conviction. It appears that he also could apply to adjust status based on his USC wife, although he would need a waiver for the marijuana conviction, which seems difficult to obtain.

Miranda is potentially eligible for a few forms of relief, based on her questionnaire. She might be able to apply for asylum, or for a U visa based on abuse by her co-parent. However, she will want to make that decision carefully and with expert advice, as these forms of relief are not a safe bet and they would expose her to immigration authorities as an undocumented person.

²¹ See ILRC, § N.16 *Immigration Questionnaire*, cited above.

²² See ILRC, § N.17 *Immigration Relief Toolkit* and § 17A *Immigration Relief Chart*, cited above and at www.ilrc.org/chart.

If someday she is placed in removal proceedings, she may be eligible for non-LPR cancellation, based on her more than 10 years in the United States and her USC child.

What about crimes bars to these forms of relief? Miranda was convicted of two misdemeanors: Penal Code § 273a(a) (child endangerment) and Penal Code § 459.5 (shoplifting). She is facing an additional charge of § 459.5. Looking at the *Relief Toolkit* and other materials, it appears that none of these convictions would be a bar to asylum or withholding of removal as a “particularly serious crime” —unless there are especially egregious facts for the child endangerment offense. The PC § 459.5 shoplifting may or may not be a CIMT. But even if it is, the current conviction does not make her inadmissible (because of the petty offense exception), nor bar her from non-LPR cancellation (it has maximum possible 364 days) as a CIMT.²³ But conviction of a second CIMT would be a problem, so defense should find a different disposition in the current case. Further, in 2022 the Ninth Circuit held that PC § 273a(a) is a deportable crime of child abuse. That is a bar to non-LPR cancellation. Finally, in U visa applications people with even very minor offenses are being denied as a matter of discretion. The team decides that we should try to vacate at least the child endangerment conviction and perhaps the prior shoplifting. (In fact, just reviewing the ILRC *Practice Advisory* on PCR, we wonder if one or both might come under a special vacatur provision for people whose crimes resulted from their being victims of intimate partner violence.²⁴)

In addition, Miranda needs to learn “Know Your Rights” skills in case she comes in contact with ICE officials.²⁵ That alone might keep her out of removal proceedings.

Resources for Cases Involving Relief. As discussed above, to first get a ballpark idea of *possible* relief, complete a good questionnaire or intake form, e.g., the ILRC *Immigration Questionnaire*.²⁶ Based on those answers, review short summaries of different types of relief and their criminal record bars, and citations to cases and statutes, using the ILRC *Immigration Relief Toolkit* or *Immigration Relief Chart*.²⁷ This should orient you so that you are able to do more extensive research—for example, in manuals dedicated just to that form of relief, or comprehensive resources like Kurzban. Also consult with your expert to see if the person actually would be eligible and if filing would be a good idea.

If the person’s criminal record is a bar, research whether we can solve the problem by going to criminal court to vacate one or more conviction/s.²⁸

²³ See ILRC, *Practice Advisory: All Those Rules About Crimes Involving Moral Turpitude* (June 2021), <https://www.ilrc.org/all-those-rules-about-crimes-involving-moral-turpitude>.

²⁴ See ILRC, *Practice Advisory: Overview of California Post-Conviction Relief for Immigrants* (July 2022) and other resources cited below, and see ILRC, *Practice Advisory: New Options for Survivors of Trafficking and Domestic Violence* (Nov. 2022), <https://www.ilrc.org/resources/new-options-survivors-trafficking-and-domestic-violence>.

²⁵ See materials in multiple languages to help noncitizens understand and claim their legal right to decline to speak with immigration authorities, at <https://www.ilrc.org/red-cards>.

²⁶ See ILRC, § N.16 *Client Questionnaire*, cited above and at www.ilrc.org/chart.

²⁷ See these resources cited above and at www.ilrc.org/chart.

²⁸ For California PCR, see ILRC, *Practice Advisory: Overview of California Post-Conviction Relief for Immigrants* (July 2022), <https://www.ilrc.org/resources/overview-california-post-conviction-relief-immigrants> and see the ILRC manual, *California Post-Conviction Relief for Immigrants* (January 2023), www.ilrc.org/store. See also materials at <https://www.ilrc.org/immigrant-post-conviction-relief>.

Beyond the aids mentioned above, ILRC has online resources as well as webinars and manuals that provide in-depth information about specific forms of relief. Explore www.ilrc.org.

E. Question 4: Does the Client Have Some Immigration Status or Benefit, But Less Than LPR?

This is a catch-all category for clients who have some kind of status or protection, but less than lawful permanent resident (LPR) status. Examples are clients who have Deferred Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS), non-immigrant visas such as current student or work visas, a non-immigrant U or T visa, or asylees or refugees who are not yet LPRs. Some clients may have employment authorization but may not know technical information about the basis for it; an immigration lawyer may be able to help decipher this.

These cases can be complex because (a) the person may not be sure of their current status or other protection and (b) the person likely has a dual goal: to maintain their current benefit and also to remain eligible to apply for LPR status in the future. It may be important to get expert help from an immigration attorney. Our goal is to identify conviction/s that harm the client's current status, as well as those that may bar them from becoming an LPR in the future. If all of this isn't possible, there may be some strategic decisions as to what goal is most realistic.

Resources. As with undocumented people, we look to resources to find out what benefit the person has now, what convictions would cause them to lose it, and what they might apply for in the future and the convictions that would bar that. The ILRC *Immigration Questionnaire* and the *Immigration Relief Toolkit* or *Relief Chart* (see **Part D**) are good resources to start with. Then do more in-depth research and/or consult with an expert.



San Francisco
1458 Howard Street
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792

ilrc@ilrc.org
www.ilrc.org

Washington D.C.
1015 15th Street, NW
Suite 600
Washington, DC 20005
t: 202.777.8999
f: 202.293.2849

Austin
6633 East Hwy 290
Suite 102
Austin, TX 78723
t: 512.879.1616

San Antonio
10127 Morocco
Street
Suite 149
San Antonio, TX
78216

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

Appendix I: Sample Handout on Client Warnings

**Please Follow These Recommendations During This Period of Time
Please Help Us to Gather Facts About Your Case**

To: _____ (client)

From: _____ (staff)

Date: _____

You *might* have a criminal record that could cause problems with your immigration case. We need your help to gather your records and understand them, so that we can all make sure that it is safe for you to apply for naturalization.

Please help us by doing the following:

- Please talk with _____ before you leave today, so we can start working together to get these records.
- Please make an appointment with _____ to get further counseling and make plans.
- Until we receive all the records, we will not know whether you might be at risk from immigration authorities. To be sure to protect yourself during this waiting period, please:
 - Do NOT travel outside the U.S.
 - Do NOT renew your green card.
 - Do NOT apply for any immigration benefit or for naturalization.
 - Do NOT file a visa petition for a relative.
 - For legal reasons, some people also should not travel outside certain western states that are in the Ninth Circuit Court of Appeals. We do not know if this applies to you, but to be safe please contact us *before* you travel to any states other than the following: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

Appendix II:

One-Page Summary

How to Analyze a Crim-Imm Case: Four Questions to Identify Case Goals

1. Might your client be a United States citizen (USC) and not know it?

All clients should be asked the following two questions. If the answer to either question *might* be yes, more investigation is needed to see if the client actually is a USC.ⁱ

- a. At the time you were born, did you have a parentⁱⁱ or grandparent who may have been a USC? (The person may have “acquired” U.S. citizenship at birth.) *or*
- b. Before your 18th birthday, were you a lawful permanent resident (had a “green card”), *and* was at least one parent with custody of you a USC? (The person may have “derived” U.S. citizenship as of the moment that both requirements were met.)

2. Is your client a lawful permanent resident (LPR)?

A lawful permanent resident (LPR, “green card” holder) can live and work permanently in the United States, unless they become removable. We ask: Is the LPR client already removable under the crimes grounds based on past convictions or conduct, because either:

- a. They were convicted of a *deportable* offense, or a civil or criminal court judge found that they violated a domestic violence “stay-away” order?ⁱⁱⁱ *or*
- b. They became *inadmissible* for crimes and then traveled outside the United States?^{iv}

To see if a California conviction made the person deportable or inadmissible, look up the offense in the ILRC *California Quick Reference Chart*.^v Then do more research as needed.

If your LPR client is removable, go on to Question 3 and consider eligibility for relief. Also consider whether the problem can be solved by vacating the conviction in criminal court.

If your LPR client is *not* removable, this is great news. Advise them not to leave the United States without expert consultation, and refer them for consultation if they want to consider applying for naturalization.

If the client is in criminal proceedings, try to avoid getting a deportable conviction (even if they already have one).

3. If your client is undocumented, a deportable LPR, or otherwise removable, are they eligible to apply for immigration relief? Would vacating a prior conviction help the case?

“Immigration relief” refers to any application for a waiver, lawful status, or protection. To identify possible relief:

- a. First, work with the client to answer basic questions on an Immigration Questionnaire,^{vi} in order to identify *possible* eligibility for relief. This can provide a ballpark idea of which forms of relief to look into.

- b. Then use the ILRC *Immigration Relief Toolkit* or the *Immigration Relief Chart*^{vii} to get more information about requirements for and criminal record bars to that relief.
- c. With this orientation, do further research to see if the person actually is eligible and to identify next steps. If the client is in criminal proceedings, try to avoid a conviction that will bar eligibility for the possible relief.

Post-conviction relief (PCR). In some cases we can go to criminal court and vacate prior conviction/s that are bars to relief and/or bases for removal. See resources about PCR options under California law.^{viii}

4. Does the client have some immigration status or benefit, but less than LPR status?

The client may have DACA, TPS, a non-immigrant visa such as students, or a U or T visa, or asylee or refugee status – or have employment authorization but not be sure why. The client may have dual goals: to remain eligible for their current status or benefit, while also seeking eligibility for lawful permanent residence. This may be especially complex and require expert help. See resources in Question 3 regarding eligibility for relief and PCR.

ENDNOTES

ⁱ For a summary of the rules, based on date of birth and other factors, see ILRC, *Quick Reference Charts on Acquisition and Derivation* (2022), <https://www.ilrc.org/acquisition-derivation-quick-reference-charts>.

ⁱⁱ Biological parents and adoptive parents (if the adoption occurs before age 16 and meets other requirements) can be “parents” for this analysis. While stepparents are “parents” for other immigration purposes (if the marriage creating the step relationship occurred before the child’s 18th birthday), they are not for this purpose unless they adopt the child. See citizenship charts, cited above.

ⁱⁱⁱ See crimes-related grounds of deportability at INA § 237(a)(2), 8 USC § 1227(a)(2).

^{iv} See crimes-related grounds of inadmissibility at INA § 212(a)(2), 8 USC § 1182(as)(2). Generally, lawful permanent residents can travel outside the United States and return without making a new “admission” or facing the grounds of inadmissibility at the border. But this is not true if they come within certain exceptions, one of which is that immigration authorities can prove that they have committed an inadmissible offense. In that case, they are deemed to be seeking a new admission. If they are in fact inadmissible, they can be charged with being removable at the border, or if they are mistakenly permitted to re-enter they can be charged with being deportable for having been inadmissible at last entry. See INA §§ 101(a)(13)(C), 237(a)(1); 8 USC §§ 1101(a)(13)(C), 1227(a)(1).

^v Immigration and criminal defense advocates can register for this free resource at <https://calchart.ilrc.org/registration/>. If the offense is a crime involving moral turpitude, various rules govern whether the offense makes the person deportable, inadmissible, or barred from relief. See ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (June 2021), <https://www.ilrc.org/all-those-rules-about-crimes-involving-moral-turpitude>

^{vi} See ILRC, § N.16 *Immigration Questionnaire* (2020) at www.ilrc.org/chart.

^{vii} See ILRC, *N.17 Immigration Relief Toolkit* (2018) and/or *N.17A Updated Immigration Relief Chart* (Nov. 2021) at www.ilrc.org/chart.

^{viii} See ILRC, *Practice Advisory: Overview of California Post-Conviction Relief for Immigrants* (July 2022), <https://www.ilrc.org/resources/overview-california-post-conviction-relief-immigrants> and see the ILRC manual, *California Post-Conviction Relief for Immigrants* (January 2023), www.ilrc.org/store. See also materials at <https://www.ilrc.org/immigrant-post-conviction-relief>.