



IMMIGRATION CONSEQUENCES OF DRIVING UNDER THE INFLUENCE

California DUI and Reckless Driving Statutes

By Kathy Brady, ILRC

A conviction for driving under the influence (“DUI”), California Vehicle Code § 23152 and § 23153, can have adverse immigration consequences, depending on the individual’s situation. The conviction can be a damaging factor in discretionary decisions, including whether the person will be released from immigration detention on bond, or found to be of good moral character. It is a bar to Deferred Action for Childhood Arrivals (DACA). Simply being charged with a DUI can cause revocation of a non-immigrant visa. And combined with other factors, DUI arrests or convictions can lead to inadmissibility or deportability, for example under the alcoholic or drug abuse grounds.

Fortunately, under current law a California DUI conviction is not a *per se* ground of removability: it is not an aggravated felony, a crime involving moral turpitude, or other inadmissible or deportable conviction. However, that could change in the future.

This practice advisory will walk through all of the ways that a DUI can affect an immigrant, and review possible changes to the law. It also will discuss reckless driving as an alternative to DUI.

- First, we will discuss how DUI charges or convictions affect immigrants under current law, in terms of grounds of inadmissibility and deportability, bars to relief, and good moral character determinations. See Part A, below.
- Second, in the future Congress might change the law so that some DUI convictions will be an aggravated felony or a deportable and inadmissible offense. Part B addresses the potential future ramifications of a DUI conviction.
- Third, for all of these potential immigration consequences, reckless driving, Cal. Veh. Code § 23103 or § 23103.5, generally is a better disposition than a DUI. Part C discusses reckless driving and its potential consequences, including that reckless driving causing injury, Cal. Veh. Code § 23104, might be held a crime involving moral turpitude or even a crime of violence.

I. Current Consequences of a Charge or Conviction for Driving under the Influence

A. Inadmissibility

A DUI conviction has some limited, but important, adverse effects on admissibility. This section first will review which non-citizens need to be admissible, and then discuss how a DUI can affect admissibility. The grounds of inadmissibility, which are a list of categories of persons who are not admissible, is found at INA § 212(a), 8 USC § 1182(a).

Who needs to be admissible? Undocumented persons, as well as lawful permanent residents (LPRs) who already have a deportable conviction, can be deported (“removed”) unless they apply for and are granted some immigration status or benefit. We will refer to all the possible immigration applications as “relief.” (For a summary of different forms of immigration relief, see §N.17 *Relief Toolkit* at www.ilrc.org/chart.) A noncitizen must be “admissible” in order to qualify for many forms of relief. For example, the person must be admissible in order to become an LPR through a family-based visa, the Violence Against Women Act (VAWA), or refugee or asylee status; or to apply for non-LPR cancellation of removal or U non-immigrant status. In some cases, an inadmissible immigrant will be eligible for and granted a discretionary “waiver”¹ that forgives the inadmissibility ground, so that the application can be approved. A few immigration benefits do not require the person to be inadmissible, for example, asylum and Deferred Action for Childhood Arrivals (DACA).

In addition, most noncitizens who seek admission into the United States must be admissible. The rule is that an LPR who takes a trip outside the country can re-enter the United States even if she is inadmissible – *unless* she comes within certain statutory exceptions. See INA § 101(a)(13)(C), 8 USC § 1101(a)(13)(C). If the government can establish that the LPR comes within one of the exceptions – for example, that she was outside the United States for more than six months, or is inadmissible under the crimes grounds – then she will be treated like other noncitizens: she will be admitted into the United States only if she can prove that she is admissible, or if she is inadmissible, that she merits a waiver to forgive that. And if the LPR (or any noncitizen) ought to have been stopped at the border, but instead was mistakenly allowed in, she still will be in trouble: she will be deportable for having been inadmissible at last entry.²

How can a DUI cause inadmissibility? A DUI conviction is not a ground of inadmissibility *per se*. A DUI charge or conviction nevertheless might cause inadmissibility in the following ways.

1. Inadmissible for convictions for 2 or more offenses of any type, with a total sentence imposed of 5 years or more.³ Conviction of two or more offenses over one’s lifetime, where in total a sentence of five years or more was imposed (including suspended sentences) causes inadmissibility. This ground applies to any type of conviction, not just DUIs, but it is often triggered by a long history of DUI convictions. If a person has several DUI convictions, check to see if all of the sentences total five years.

¹ A full discussion of waivers is beyond the scope of this advisory, but examples include INA §§ 212(h), 212(i), and 240A [8 USC §§ 1182(h), 1182(i), or 1229b].

² See INA § 237(a)(1)(A).

³ INA § 212(a)(2)(B), 8 USC § 1182(a)(2)(B).

Specific Concerns for a DUI Involving Alcohol:

2. DUI's involving alcohol: Inadmissible as an alcoholic, which is a physical or mental disorder.⁴ A person who suffers from a disorder, including alcoholism, that poses a *current* threat to self or others is inadmissible. If the person is applying for permanent residency, especially through consular processing, then a single DUI arrest in the last 5 years, or two or more DUI's in the last 10 years, will result in a referral to a panel physician to determine whether the person is an alcoholic. This is true even if there was not a conviction.⁵ This is a medical determination and the person can submit evidence to show that she never was, or at least currently is not, an alcoholic who poses a threat to self or others. The person should only be found inadmissible if a panel physician or civil surgeon has made two findings: (1) that there is a diagnosis of mental disorder (alcohol abuse) and (2) that there is current harmful behavior or a history of harmful behavior related to the disorder that is likely to recur in the future, such as drunk driving or domestic violence.

Specific Concerns for a DUI Involving Drugs (see also § N.8 Controlled Substances at www.ilrc.org/chart)

3. California conviction should not cause inadmissibility as a controlled substance offense, but watch for admissions. Along with alcohol, California law penalizes driving under the influence of a “drug” (Cal. Veh. Code § 23152(f) and § 23153(f)) and driving while addicted to a “drug” (Cal. Veh. Code VC § 23152(c)). This raises the question of whether DUI charges or convictions will trigger removal grounds relating to controlled substances.

A person is inadmissible who is convicted of an offense relating to a *federally-defined* controlled substance.⁶ The California DUI laws relating to “drugs” never should qualify as an inadmissible controlled substance conviction. This is because the strict categorical approach⁷ applies in determining whether a drug conviction triggers this ground. Under that analysis, the term “drug” in the California statutes is overbroad (because it includes substances that are not found on the federal drug schedules⁸) and should be found indivisible (because it is not phrased in the alternative, citing federal and non-federal substances⁹). This analysis also applies to the deportation ground based on conviction of a federally-defined controlled substance.

⁴ INA § 212(a)(1)(A)(iii)(I)-(II), 8 USC § 1182(a)(1)(A)(iii)(I)-(II).

⁵ See Foreign Affairs Manual of the Department of State, 9 FAM 302.2-7

⁶ INA 212(a)(2)(A)(i)(II), 8 USC § 1182(a)(2)(A)(i)(II) (inadmissibility); INA 237(a)(2)(B)(i), 8 USC 1227(a)(2)(B)(i) (deportability).

⁷ Under the federal categorical approach, an adjudicator must compare the least criminalized act that is likely to be prosecuted under a criminal statute with the technical, federal definition of the crime listed in the removal ground (the “generic” definition of the removal ground offense). If these are not an exact match, then the adjudicator may look to the person’s individual conviction record only in very limited circumstances, when the statute is “truly” divisible. For more on this, see Brady, “How to Use the Categorical Approach Now” (2017) at www.ilrc.org/crimes.

⁸ See Cal. Veh. Code § 312 defining “drug” as “substance or combination of substances, other than alcohol, which could so affect the nervous system, brain, or muscles of a person as to impair, to an appreciable degree, his ability to drive a vehicle.” See also *Byrd v. Municipal Court*, 125 Cal.App.3d 1054, 1058 (Ct.App.3d 1981) (noting that drug as used in Cal. Veh. Code § 23102(a) includes more substances than “controlled substance” in the Health and Safety Code and that the prosecution need not prove the substance); *People v. Olive*, 92 Cal.App.4th Supp. 21, 25 (2001) (conviction upheld for driving under the influence of kava, which is not a federal or California controlled substance).

⁹ A full discussion of divisibility is beyond the scope of this Advisory. See “How to Use the Categorical Approach Now,” cited above, for more information.

Note that the controlled substance inadmissibility ground also reaches a person who formally admits having committed all of the elements of a controlled substance offense, even without a conviction. An immigrant with a drug-related DUI should seek immigration counseling and be warned not to *admit* to any DHS officer that she *possessed* a federally-defined controlled substance, in order to avoid a possible charge of being inadmissible for having admitted committing a controlled substance offense. (In contrast, the controlled substance deportation ground is not triggered by admission of an offense; it requires a conviction.)

4. Current drug addict or abuser.¹⁰ One or more DUI convictions relating to “drugs” rather than alcohol may alert the government to investigate whether the person is inadmissible as a *current* drug addict or abuser. The person is inadmissible on this basis only if the drug is a federally-defined controlled substance, and if the use was “non-medical,” meaning that a doctor did not prescribe the drug for the person.¹¹ Therefore, a person addicted to opioids prescribed by a physician, or to a substance that is not on the federal lists, is not inadmissible under this ground.

In California, persons can be found guilty of Cal. Veh. Code § 23152(c) if they drive while addicted to a “drug,” and guilty of Cal. Veh. Code § 23152(f) or § 23153(f) if they drive while under the influence of a “drug.” California DUI laws define “drug” to include substances that are not state or federal controlled substances (see discussion of controlled substance conviction at Part 3, above). Therefore, conviction of any of the above offenses by itself does not automatically make the person inadmissible under this ground.¹² Instead, the risk is that the charge or conviction may trigger an investigation that leads to evidence of abuse or addiction relating to a federal controlled substance (or that if the person refuses to answer questions about addiction or abuse, the application for relief will be denied for failure to prosecute).

The standard is supposed to be whether the person meets “current DSM diagnostic criteria for substance-related disorder...”¹³ However, advocates report that some U.S. consulates apply a different, older standard, where drug abuse can be found if the person admits engaging in more than “one-time experimentation” within the last three years.

Note that the controlled substance inadmissibility ground also reaches a person who formally admits having committed all of the elements of a controlled substance offense, even without a conviction. An immigrant with a drug-related DUI should seek immigration counseling and be warned not to *admit* to any DHS officer that she *possessed* a federally-defined controlled substance.

¹⁰ INA § 212(a)(1)(A)(iv), 8 USC § 1182(a)(1)(A)(iv).

¹¹ CDC Immigration Requirements: Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, U.S. Dept. of Health and Human Services, December 18, 2013, p. 6-7. Available at <http://www.cdc.gov/immigrantrefugeehealth/pdf/mental-health-pp-ti.pdf>.

¹² Where a conviction is the only evidence of a conduct-based ground of removal, then the conviction can prove only that the person engaged in the minimum conduct required for guilt. *Kepilino v. Gonzales*, 454 F.3d 1057 (9th Cir. 2006). As discussed in this section and Part A(3) above, because these offenses reach prescribed drugs and drugs not included in federal schedules, the minimum conduct does not meet the immigration definition of drug abuse and addiction. See Part A(3).

¹³ See, e.g., Foreign Affairs Manual at 9 FAM 302.2-8, available online at https://fam.state.gov/fam/09FAM/09FAM030202.html#M302_2_8. Once addiction or abuse is identified, remission is defined as a 12-month period without use.

B. Good Moral Character

An applicant must establish that she has been a person of “good moral character” (GMC) for a set period of time (for example, the preceding five years) in order to qualify for naturalization to U.S. citizenship, as well as several forms of relief such as cancellation of removal for non-lawful permanent residents under INA § 240A(b), benefits under the Violence Against Women Act (VAWA), one of the forms of voluntary departure, and registry.

To do this, first the person must show that she does not come within any of the bars to establishing GMC.¹⁴ Second, she must show that in fact she has been a person of good moral character during the required period. The adjudicator has discretion to decide the second question, using a balancing test to compare positive and negative factors. See discussion of “good moral character” at N.17 Relief Toolkit at www.ilrc.org/chart.

Statutory or Regulatory Bars. Although a DUI itself is not an automatic bar to GMC, it might serve as one when combined with other factors. The person is barred if the following occurs within the period for which GMC must be shown.

1. **Habitual Drunkard.** Being a “habitual drunkard” is a statutory bar to establishing GMC.¹⁵ Multiple convictions for a DUI might lead to a finding that one is a habitual drunkard.
2. **Convictions for 2 or more offenses of any type, with a total sentence imposed of 5 years or more** Becoming inadmissible under this or any crimes ground is a statutory bar to establishing GMC.¹⁶ See Part A(1), above.
3. **Confined to a Penal Institution for 180 Days or More.** A person who, as a result of a conviction, has been in jail or prison for 180 days or more during the statutory period is barred from establishing GMC.¹⁷ This bar is triggered by how much time the person has actually been confined, not by what the official criminal “sentence” was. The conviction could be for a DUI or any other offense.
4. **On Probation or Parole.** This is not a statutory bar to establishing GMC in general. However, federal regulation prohibits naturalizing someone who is currently on probation or parole for any offense.¹⁸ This means that someone who is on probation or parole on the date of the interview cannot be granted naturalization. They can apply for naturalization while on probation or parole (although this may be treated as a negative factor; see next section), as long as probation or parole ends by the interview date.

GMC and Discretion. A person who is not barred from establishing GMC still must establish that she in fact has been of good moral character during the required period. Because a DUI conviction can be a serious negative factor in this determination, anyone with a recent DUI should consult with an expert advocate before applying for naturalization, or for immigration relief requiring GMC. If she does go forward, she should provide evidence that she is rehabilitated, along with all possible evidence of positive GMC factors, such as community service. The adjudicator must weigh the positive factors against negative ones in making the decision. Some regional offices, individual officers, and immigration judges, treat DUI’s more harshly than others do – so gathering information about local practices can be very valuable.

¹⁴ See statutory bars at INA § 101(f), 8 USC § 1101(f).

¹⁵ INA § 101(f)(1), 8 USC § 1101(f)(1). While this ground was previously held unconstitutional in the Ninth Circuit, the decision was reversed and the habitual drunkard ground continues to apply. *Ledezma-Cosino v. Lynch*, 857 F.3d 1042 (9th Cir. 2017) (en banc).

¹⁶ INA § 101(f)(3), 8 USC § 1101(f)(3).

¹⁷ INA § 101(f)(7), 8 USC § 1101(f)(7).

¹⁸ 8 CFR § 316.10(c)(1).

C. Eligibility for Other Benefits or Relief

A DUI conviction may make a person ineligible to apply for, or at risk of losing, some other relief or benefits, regardless of whether or not the person is inadmissible or has good moral character.

1. *A DUI conviction is a bar to Deferred Action for Childhood Arrivals (“DACA”).* A misdemeanor DUI conviction under Cal. Veh. Code § 23152 or §23153 is a “significant misdemeanor” and a bar to eligibility for DACA. Conservatively assume that a conviction under Cal. Veh. Code § 23136 (DUI for persons under 21 years old) is also a significant misdemeanor. A DUI conviction that has been expunged or vacated, or a DUI disposition from juvenile court, is not a *per se* bar to DACA, but USCIS may still consider an arrest for a DUI offense as a negative discretionary factor in evaluating whether to grant or deny DACA. (Other than for DACA applications, and certain minor drug convictions from before July 15, 2011,¹⁹ an “expungement” such as Cal. Penal Code § 1203.4 has no immigration effect.) If possible, try to plead to reckless driving or “wet reckless” to avoid the DUI bar to DACA; or if the person already has a DUI conviction, try to get the conviction expunged. See Part C, below.
2. *A DUI charge, even without a conviction, can trigger revocation of a non-immigrant visa such as an F-1 student or H-1 employment visa.* Under recent policy guidance, a U.S. consulate may revoke a non-immigrant visa based on evidence that the person was charged with a DUI offense, even if there was no conviction.²⁰ The consulate might send a letter to the person stating that the visa has been revoked and that she should return to the home country to meet with consular officials there. Noncitizens should not do this without speaking to an expert immigration advocate. Even if the consulate revokes the visa, the person’s current period of permission to be lawfully in the United States might remain in place, unless and until the person leaves the United States.
3. *Possible Bar to Asylum or Withholding of Removal.* Conviction of a “particularly serious crime” (“PSC”) is a bar to asylum and withholding of removal. Whether any given conviction is a PSC depends upon a number of factors, including the nature of the offense, the underlying facts, and the sentence imposed. Depending on the circumstances of the offense, a single DUI or multiple DUI convictions might be charged as a PSC barring eligibility for asylum or withholding of removal.²¹
4. *Enforcement priority.* The Obama Administration created a list of offenses, which included any DUI, that would make the person an enforcement priority. The Trump Administration has abandoned the list approach and states that any undocumented person, especially one who may have committed any crime, is a priority. However, in practice a DUI conviction still makes the person a special target. In 2017, ICE agents have continued to go to the last known address to arrest and detain some undocumented persons with DUI convictions, including DUI convictions that are many years old.
5. *Discretionary Denial of Immigration Bond.* A DUI conviction often will result in a discretionary denial of bond and release from ICE detention. A reckless driving conviction is an adverse factor in bond and release determinations, but it appears to be significantly less damaging than a DUI. See Part C.

¹⁹ See *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011) (en banc).

²⁰ See Foreign Affairs Manual, U.S. Department of State, 9 FAM 403.11-3(A)(5).

²¹ See *Delgado v. Holder*, 648 F.3d 1095, 1107 (9th Cir. 2011) (en banc) (finding that an immigration judge may determine on a case-by-case basis whether a conviction of a DUI offense is a PSC, but remanding because there was insufficient explanation of the decision at issue to provide a basis for review).

D. Deportability

A lawful permanent resident (LPR), refugee, or other person who was admitted to the United States and has lawful status wants to avoid becoming deportable. See INA § 237(a), 8 USC § 1227(a). An LPR or refugee who is deportable can be put in removal proceedings, stripped of lawful status, and deported (“removed”) – unless the person is eligible to apply for some kind of relief to stop the deportation. (If your client is an LPR or other person with lawful status who already is deportable, please see Parts A-C above, relating to inadmissibility and eligibility for relief.) In contrast, an undocumented person might not be particularly hurt by a deportable conviction, since she has no lawful status to lose. The exception is that a deportable conviction can bar eligibility for various forms of non-LPR cancellation. (If your client is undocumented and is not applying for non-LPR cancellation, see Parts A-C above, relating to inadmissibility and eligibility for relief.)

There are just a few ways that a DUI might lead to a charge of deportability.

1. Deportable crime of child abuse.²² A conviction under Cal. Veh. Code § 23572 for a DUI with a child in the car might be charged as a deportable crime of child abuse.
2. Deportable drug addict or abuser.²³ A conviction under Cal. Veh. Code § 23152(c), prohibiting persons addicted to drugs from driving, should not itself be sufficient to make the person deportable, but it may lead to the person being charged as a deportable drug addict or abuser. To prove deportability, DHS must prove: that the person meets or used to meet the medical definition of abuser or addict; that the abuse or addiction occurred at any time after admission to the United States (it need not be current); that it involves or involved a federally-listed controlled substance; and that a doctor did not prescribe the substance for the person. A conviction under § 23152(c) does not, by itself, serve as proof that the person is deportable (because the drug might not be on the federal list or might have been prescribed). The risk is that based on the conviction, DHS may investigate and discover evidence to prove that the person is deportable. Similarly, multiple charges or convictions of driving under the influence of drugs, § 23152(f) and/or §23152(f), also might elicit an investigation into addiction and abuse. See further discussion of addiction/abuse at Part A(4), above.
3. Travel after conviction of two or more offenses with aggregate sentence of at least five years. A permanent resident may be deportable if the person (1) first became inadmissible due to being convicted of two or more offenses of any type (including DUIs) with a lifetime aggregate sentence of five years or more imposed; (2) subsequently traveled outside the United States; and (3) was then (wrongly) permitted to re-enter without applying for a waiver.²⁴ If someone has the five years’ sentence imposed, warn the person not to leave the United States and advise her to see an immigration lawyer.

²² INA § 237(a)(2)(E)(i), 8 USC § 1227(a)(2)(E)(i).

²³ INA § 237(a)(2)(B)(ii), 8 USC § 1227(a)(2)(B)(ii).

²⁴ The person would be deportable for having been inadmissible at last entry, INA § 237(a)(1), 8 USC § 1227(a)(1). See Part A, above, at “Who needs to be admissible?”.

A conviction for a DUI **does not (or at least should not)** have the following immigration consequences:

1. ***Aggravated Felony***: The Supreme Court held that a DUI conviction is not an aggravated felony as a crime of violence.²⁵ That has been the only possible aggravated felony category for a DUI. (However, in the future Congress might change the aggravated felony definition to specifically include DUI's. See Part II.)
2. ***Deportable Controlled Substance Conviction***: A conviction relating to a *federally listed* controlled substance is a deportable and inadmissible offense.²⁶ No conviction for driving under the influence of, or while addicted to, a "drug" under California statutes²⁷ should trigger this removal ground, because under the categorical approach the statute is overbroad and indivisible for this purpose. See discussion of inadmissibility ground at Part A(3), above. Best practice, however, is to avoid specifying a controlled substance in the record of conviction for these offenses to avoid a possible erroneous charge of deportability as a controlled substance offense.
3. ***Crime Involving Moral Turpitude***: A simple DUI, or more than one, is not a crime involving moral turpitude.²⁸ A DUI offense that has as elements driving under the influence while knowing that the license was suspended may be considered a CIMT,²⁹ but California does not have such a statute.

II. Possible Future Penalties for DUI Convictions

In past years, and again in 2017, bills have been introduced in Congress that would drastically increase the immigration consequences of DUI convictions. A common proposal to make a conviction of a DUI a *per se* deportable offense, and conviction of three DUI's an aggravated felony if a sentence of a year or more was imposed on the third DUI. None of these provisions has become law yet, but one might in the future.

Hopefully if such a law were to pass, it would not apply retroactively to DUI convictions that occurred before the effective date of the new law – but there are no guarantees. Noncitizens who have a DUI conviction should keep in touch with legal services providers in case a law passes that imposes new consequences. The new law might cause permanent residents to become deportable based on a DUI conviction, when they were not deportable before.

III. Reckless Driving as an Alternative

Reckless driving is penalized under Cal. Veh. Code § 23103, § 23103.5 ("wet reckless"), and § 23104. In general, a conviction for reckless driving is preferable to a DUI conviction because of all of the current, and potential future, DUI consequences discussed in this advisory. Nevertheless, practitioners should be aware of the following possible consequences of wet reckless convictions:

²⁵ *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (holding driving under the influence involving criminal negligence or strict liability is not an aggravated felony as crime of violence under 18 USC § 16).

²⁶ 8 USC §§ 1182(a)(2)(B)(i), 1227(a)(2)(B)(i).

²⁷ California Vehicle Code §§ 23152(c), 23152(f), 23153(f)

²⁸ *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001) (*en banc*).

²⁹ The BIA found that driving under the influence while either knowingly on a suspended license, or while on a license suspended for a prior DUI, in violation of Ariz. Rev. Stat. § 28-692(a)(1), is a crime involving moral turpitude. *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999). The Ninth Circuit deferred to the BIA on that holding, except that it noted that the Arizona statute also includes being "in control of the vehicle" and not driving, and it suggested that this conduct is not a CIMT. *Marmolejo-Campos v. Holder*, 558 F.3d 903 (9th Cir. 2009) (*en banc*).

Aggravated felony. Under current Ninth Circuit law, upheld by the BIA, reckless driving offenses with or without injury (such as Cal. Veh. Code § 23103, § 23103.5, and § 23104) are not aggravated felony convictions even if a sentence of one year or more is imposed, because recklessness is held not to be a sufficient mens rea to be a “crime of violence” under 18 USC § 16.³⁰ But it is possible that ICE will argue in the future that recklessness should be included in this definition of crime of violence.³¹ Because of that risk, persons with a sentence of one year or more imposed for reckless driving – and in particular for a serious offense such as § 23104(b) – should consult an expert before traveling, renewing a green card, or otherwise initiating contact with immigration officials.

Eligibility for DACA. While conviction of a misdemeanor DUI is a bar to DACA as a “significant misdemeanor,” DACA authorities have not treated convictions of reckless driving, including “wet reckless” under Cal. Veh. C § 23103.5, as an automatic significant misdemeanor. Many persons with this conviction have received DACA. Nevertheless, a reckless conviction is still a negative discretionary factor and will be taken into consideration in the DACA adjudication.

Crime involving moral turpitude (CIMT). Conviction of a CIMT can be a ground of deportability or inadmissibility, or bar to establishing good moral character, depending on several factors.³² Offenses that include recklessness, defined as a conscious disregard of a substantial risk, have been held CIMTs where the offense had as an element that death or serious bodily injury occurred or was at imminent risk.³³ While in the past a reckless offense that resulted in less than serious bodily injury was held not to be a CIMT,³⁴ there are no guarantees. Advocates will argue that reckless driving under Vehicle Code §§ 23103 and 23103.5 should not be held a CIMT because they only require a disregard for the safety of persons or property.³⁵ However, counsel should conservatively assume that reckless driving causing bodily injury under Veh. Code § 23104 might be held a CIMT. Conviction of a CIMT can be a ground of deportability or inadmissibility, or bar to establishing good moral character, depending on several factors.³⁶

Consequences of an Arrest. If a person is arrested for a DUI and pleads down to a reckless driving conviction, any of the consequences discussed in Part I(A), Part I(B), and Part I(C) that are triggered by a DUI arrest still apply, such as an evaluation for alcoholism if the person is applying for a green card in certain situations, potential inquiries about drug use if the DUI was related to drugs, potential revocation of a nonimmigrant visa, and the use of the arrest as a negative discretionary factor in the determination.

³⁰ *Fernandez-Ruiz v. Gonzales*, 410 F.3d 585 (9th Cir. 2005). A conviction of a crime of violence, defined by 18 USC § 16, is an aggravated felony if a sentence of a year or more is imposed. INA § 101(a)(43)(F), 8 USC § 1101(a)(43)(F).

³¹ See discussion of *Voisine v. United States*, 136 S.Ct. 2272 (2016) regarding a different definition of crime of violence, in Practice Advisory at https://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/2016_1July_voisine-alert.pdf

³² See INA §§ 212(a)(2)(A), 237(a)(2)(A), and 101(f)(3) and see “All Those Rules About Crimes Involving Moral Turpitude” at www.ilrc.org/crimes

³³ See e.g., *Matter of Franklin*, 20 I&N Dec. 867, 870-71 (BIA 1994) (conscious disregard resulting in manslaughter), *Matter of Leal*, 26 I&N Dec. 20, 24-26 (BIA 2012) (conscious disregard causing a “substantial risk of imminent death”).

³⁴ See *Matter of Fualaau*, 21 I. & N. Dec. 475 (BIA 1996) (assault causing bodily injury by conscious disregard is not a CIMT); but see also *Matter of Ruiz-Lopez*, 25 I&N Dec. 551 (BIA 2011) (recklessly driving while attempting to elude a police officer held a CIMT).

³⁵ See also *Matter of C*, 2 I&N Dec. 716, (BIA 1946).

³⁶ See INA §§ 212(a)(2)(A), 237(a)(2)(A), and 101(f)(3) and see “All Those Rules About Crimes Involving Moral Turpitude” at www.ilrc.org/crimes



San Francisco

1663 Mission Street, Suite 602
San Francisco, CA 94103
t: 415.255.9499 f: 415.255.9792

ilrc@ilrc.org www.ilrc.org

Washington D.C.

1016 16th Street, NW, Suite 100
Washington, DC 20036
t: 202.777.8999 f: 202.293.2849

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.