



“The Silent Consequence: Immigration Risks Hiding in Youth Court Cases”

OSPD 2025 FALL FAMILY DEFENDER
CERTIFICATION TRAINING
GOLDEN NUGGET HOTEL AND CASINO
BILOXI, MISSISSIPPI
SEPTEMBER 17-19, 2025

Introduction

- Purpose: Why youth court attorneys need immigration awareness?
- Even 'non-criminal' youth cases can trigger immigration consequences
- Goal: Spot issues, protect clients, and know when to refer

Identifying Clients with Immigration Issues

- Indicators: foreign birth, documents, family history, hesitant guardians
- Understand various immigration positions (i.e. non-immigrant visitor, intending immigrant, EWI, Asylee/Refugee)
- Ask intake questions carefully and respectfully
- Confidentiality: protect sensitive disclosures

Questions that can arise for Immigrants

- ▶ What constitutes an arrest? What is a crime? Are youth treated differently than adults for purposes of criminal activity?” “Does my client have to admit conduct for which they were never arrested? What if the information is confidential under state law?”
- ▶ These and other related questions arise as a result of questions in United States Citizenship and Immigration Services (USCIS) applications and petitions, such as the I-485 (adjustment of status), I-918 (U Visa), I-589 (asylum), I-914 (T Visa), and others.
- ▶ Clients who are adults now, but who had contact with the juvenile justice system when they were minors, also must decide how to respond to these questions. This may come up in the above applications as well as the N-400 (application for naturalization).

Examples of Impact

- ▶ For example, the I-485, adjustment of status application, asks in Part 8, Questions 26 and 30:
 - ▶ “Have you EVER committed a crime of any kind (even if you were not arrested, cited, charged with, or tried for that crime)?
 - ▶ “Have you EVER violated (or attempted or conspired to violate) any controlled substance law or regulation of a state, the United States, or a foreign country?”
- ▶ In the course of interviewing your clients during the intake process, you may come across scenarios like the following:
 - ▶ Your client Antonio was trespassing with some friends in a schoolyard after hours. They saw headlights and a person identified himself as a police officer, walked towards the group, and ordered them to stay where they were. Antonio ran and got away. Must he answer “yes” to the question asking about commission of “a crime of any kind”?
 - ▶ Your client Joshua tells you that he was found with marijuana in his backpack at school. The school resource officer wrote him a ticket, he attended traffic court, and paid a fine. All of this occurred in California while he was a minor. Has he “violated a controlled substance law or regulation”?
 - ▶ Your client Sandra informs you that she tried meth once at a party in high school but was never arrested. Has she “violated a controlled substance law or regulation”?

Immigration Consequences of Delinquency

- ▶ A juvenile delinquency adjudication does not constitute a conviction for immigration purposes, regardless of the nature of the offense.
- ▶ In *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000) the Board of Immigration Appeals (BIA) reaffirmed its longstanding rule “that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.” It relied on Congress’ recognition that adjudications for juvenile delinquency are separate from criminal convictions. The BIA likened delinquency proceedings to removal proceedings and found that delinquency is not criminal, but civil in nature.

Immigration Consequences of Delinquency, continued ...

- ▶ Importantly, admitting to juvenile delinquency also does not constitute an “admission” under the Immigration and Nationality Act (INA) because the person has to admit to a crime in order to trigger certain inadmissibility grounds requiring an admission, and delinquency is not considered a crime under immigration law.

Specific Actions with Consequences

- ▶ While most immigration consequences triggered by violations of criminal law require a criminal conviction, under some provisions of the INA, a formal admission to certain conduct alone is sufficient to trigger inadmissibility.⁷ INA § 212(a)(2)(A)(i)(I) and (II), specifically, creates grounds of inadmissibility for any person convicted of, or who admits committing, or admits to conduct comprising the essential elements of:
 - ▶ (I) a crime involving moral turpitude...or
 - ▶ (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)
- ▶ Under these provisions, in order for either ground of inadmissibility to be triggered, a person must admit to the essential elements of a crime which meets the definition of a crime involving moral turpitude or a controlled substance offense. Because a person who has only committed an act of delinquency has not committed a crime, these provisions would not apply to them.

Mandatory Delinquency Considerations

- ▶ In *Matter of M-U-*, 2 I&N Dec. 92 (BIA 1944), the BIA held that an adult cannot admit the essential elements of a moral turpitude offense if the conduct required mandatory delinquency treatment. In that case, an admission by an adult of theft while a minor that resulted in a delinquency adjudication was held not to be an admission of commission of a crime involving moral turpitude. The same reasoning should apply to the issue of inadmissibility for a youth's admission of a controlled substance offense. Further, a person who has committed conduct which did not result in arrest or charges, may also not make an admission if it would have been mandatorily treated as delinquency.
- ▶ In *Matter of F-*, 4 I& N Dec. 726 (BIA 1952), the BIA held that an adult was not inadmissible for admitting a crime involving moral turpitude, in this case perjury, where the admission would have been treated as juvenile delinquency conduct, not criminal conduct.

Consequences Despite Delinquency Exceptions

- ▶ Even though juvenile delinquency dispositions are not criminal convictions, they can still have consequences for youth.
- ▶ Certain grounds of inadmissibility and deportability do not depend upon a conviction; mere “bad acts” or status can trigger the penalty. There are several conduct-based grounds where juvenile court dispositions might provide the government with evidence that the person comes within the ground. They include:
 - ▶ Inadmissible if immigration authorities have “reason to believe” that the person has ever assisted or participated in trafficking a controlled substance. INA § 212(a)(2)(C).

Consequences Despite Delinquency

Exceptions continued...

- ▶ Inadmissible or deportable based on drug abuse or addiction. INA § 212(a)(1)(A)(iv); INA § 237(a)(2)(B)(ii). A noncitizen is inadmissible if the drug addiction or abuse is current (within the last year), and deportable if the addiction or abuse occurred at any time after admission into the United States, even if they have overcome the problem
- ▶ Inadmissible based on behavior showing a physical or mental condition that poses a current threat to self or others. INA § 212(a)(1)(A)(iii). This ground might arise where there are multiple arrests or adjudications for driving under the influence; conduct suggesting sexual predation; or even suicide threats or attempts.

Consequences Despite Delinquency

Exceptions continued...

- ▶ Deportable based on a judicial finding of any violation of a domestic violence protective or “no-contact” order. INA § 237(a)(2)(E)(ii). Any noncitizen who violates the portion of a domestic violence protection order that “involves protection against credible threats of violence, repeated harassment, or bodily injury” if the order was “issued for the purpose of preventing violent or threatening acts of domestic violence” is deportable, but not inadmissible.
- ▶ Inadmissible for engaging in prostitution. INA § 212(a)(2)(D)(iii). A noncitizen is inadmissible, but not deportable, if they come to the United States to engage in prostitution or have “engaged in prostitution” within the last ten years.
- ▶ Inadmissible and deportable for making a false claim to U.S. citizenship. INA § 212(a)(6)(C)(ii); INA § 237(a)(3)(D). A person who falsely represents or has falsely represented themselves to be a U.S. citizen for any purpose or benefit under the INA or any other federal or state law is inadmissible and deportable.

Attorney's Ethical Duties & Padilla v. Kentucky

- Rule 1.1: Competence – must spot immigration issues
- Rule 1.4: Communication – explain risks clearly
- Padilla (2010): failure to advise = ineffective assistance
- Application: Even civil youth/CHINS cases need advisals & referrals

Padilla v. Kentucky considerations

- ▶ **Because immigration consequences have a serious and long-lasting adverse impact on a non-citizen defendant, the resulting penalty is disproportionate to the penalty other defendants receive for the same crime. In view of this, prosecutors shall attempt, wherever possible and appropriate, to agree to immigration neutral pleas and sentences which do not have adverse immigration consequences.**
- ▶ The Supreme Court in *Padilla v. Kentucky* recognized that immigration consequences are so intimately tied to the criminal process, that it is “uniquely difficult to classify as either a direct or a collateral consequence.”

Conclusion & Q&A

Questions?

► Email me at Brandon@RichesLawFirm.com