

# **§ N.17 Immigration Relief Toolkit For Criminal Defenders**

*How to Quickly Spot  
Possible Immigration Relief  
For Noncitizen Defendants*

**Immigrant Legal Resource Center**  
**[www.ilrc.org](http://www.ilrc.org)**

The Immigrant Legal Resource Center ([www.ilrc.org](http://www.ilrc.org)) created this toolkit on behalf of the Defending Immigrants Partnership, a national consortium that supports criminal defenders in their task of competently representing noncitizen clients. Defenders can register for free additional resources at [www.defendingimmigrants.org](http://www.defendingimmigrants.org). Katherine Brady of the ILRC wrote this Toolkit in 2014 and updated it in 2015, 2016.

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The Defending Immigrant Partnership national partners are the Immigrant Legal Resource Center, the Immigrant Defense Project ([www.immigrantdefense.org](http://www.immigrantdefense.org)) and the National Immigration Project of the National Lawyers Guild ([www.nipnlg.org](http://www.nipnlg.org)). The national defender partners are the National Association of Criminal Defense Lawyers ([www.nacdl.org](http://www.nacdl.org)) and the National Legal Aid and Defender Association ([www.nlada.org](http://www.nlada.org)).

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## §17.1. How and Why Should I Use This Toolkit?

### **Why Should I Use This Toolkit?**

Many of your noncitizen clients are already deportable (“removable”). This includes all undocumented people, as well as lawful permanent residents (green card-holders) who have become deportable because of a conviction. If immigration authorities find these clients – which is very likely to happen – they will be deported *unless* they are granted some kind of immigration relief.

For these defendants, staying eligible to apply for immigration relief is their most important immigration goal, and may be their highest priority in the criminal defense. It can mean the difference between remaining in the U.S. with their family, and being deported to another country for the rest of their lives. The Supreme Court has recognized that preserving eligibility for relief from removal is “one of the principal benefits sought by defendants deciding whether to accept a plea offer or instead to proceed to trial.” *Padilla v. Kentucky*, 559 U.S. 356, 357 (2010), citing *INS v. St. Cyr*, 533 U.S. 289, 323 (2001).

The purpose of this Toolkit is to help defenders or paralegals to spot a defendant’s *possible* immigration relief *relatively quickly*. If you determine that your client might be eligible for specific relief, this will help inform your criminal defense goals, and you can tell your client that it is especially important for him or her to get immigration counsel.

### **How Can I Use This Toolkit to Represent My Client?**

For a review of the steps needed to represent any noncitizen defendant, see materials such as §N.1 Overview in the *California Quick Reference Chart and Notes* at [www.ilrc.org/crimes](http://www.ilrc.org/crimes), or see similar materials at [www.defendingimmigrants.org](http://www.defendingimmigrants.org).

Regarding relief, first confirm that the defendant really is a removable noncitizen. Might the client unknowingly be a U.S. citizen – despite multiple past deportations? See § 17.3. Is the permanent resident client really deportable? Use immigration analysis tools cited above to analyze the permanent resident’s past conviction/s and current plea proposal/s. If the person might not be deportable yet, one of your goals is to not make her deportable now.

Second, if the client is or might be removable, work with her to complete the *Client Screening Questionnaire* that appears at § 17.2. Answering these questions will identify *possible* relief. It will let you know if the client is even in the ballpark to qualify for some immigration application. A paralegal or attorney may be able to complete the form with the defendant in 10-20 minutes. (The questionnaire also appears at §N.16 *Client Questionnaire*, in the *California Quick Reference Chart and Notes* at [www.ilrc.org/crimes](http://www.ilrc.org/crimes).)

Third, if the client answers “yes” to any question, the form will direct you to an *Eligibility/Information* sheet about the particular form of relief. See §§ 17.3-17.26. If you and the client review this short (usually two pages) material, you should get a real sense of whether the person may be eligible. If the client *might* be eligible for any relief, advise her to try hard to obtain expert immigration counsel on the case. Advise the client that in some cases – for example citizenship or family visa matters – a nonprofit immigration agency may be a good free or low-cost option. Where a private immigration office is needed, often the attorney will agree to do an analysis of eligibility for relief for a few hundred dollars, or will work out a fee payment schedule to take the whole case. (Note that not all immigration attorneys are experts in crimes. A resource center may be able to provide local recommendations to keep on file; see

[www.defendingimmigrants.org](http://www.defendingimmigrants.org).) The client (and where appropriate, the client's family) should be fully involved in these important discussions, and receive copies of the relevant materials.

Regarding the criminal defense, the *Eligibility/Information* sheet will describe the type of convictions that destroy eligibility for that form of relief. Now use your criminal defense skills to identify a realistic plea that will not destroy eligibility, and try to get the disposition. Of course, in some cases it will not be possible to negotiate a plea that maintains the client's eligibility for relief – but at least you will have advised your client of the real cost of the proposed disposition, and the client can make an informed choice. As you know, some noncitizen clients would do almost anything, including take a risky case to trial or accept additional criminal penalties, to remain in the U.S. with their families. Other noncitizen clients will only be interested in getting the least criminal penalty.

If the client will need to leave the U.S., advise him or her of the significant benefits of departing under voluntary departure rather than removal, and the serious consequences to illegal re-entry into the U.S. after removal. See § 17.26. Document your efforts in your file.

As with any criminal case involving a noncitizen, the best practice is to have an expert in crimes and immigration consult to confirm the immigration case analysis and defense goals. This could be expert immigration counsel retained by the client, "crim/imm" experts used by your office, or your own research, if you are willing and able to put in the time. Extensive free resources are available to defenders from [www.defendingimmigrants.org](http://www.defendingimmigrants.org). Along with state-specific legal analysis and training materials, the site provides information about additional books, websites, and expert consultants, as well as descriptions of different protocols that indigent defender offices have used to get the resources in place needed to address immigration issues.

## § N.16 CLIENT QUESTIONNAIRE Part 1 -- BASIC

Your name	Phone number	Email address

Defendant's Name	A# (if possible)	Next hearing date
Def's Country of Birth	Def's Date of Birth	ICE Contact or Interview:
		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know

### 1. ENTRY:

Date first entered U.S.	Visa Type (or 'none')	Departures from U.S. (approximate OK; append list)
		Date/s: Length of departure/s:

### 2. IMMIGRATION STATUS:

Lawful permanent resident ("green card")?	Other Current Immigration status?
<input type="checkbox"/> Yes <input type="checkbox"/> No Date Obtained? On what basis (e.g. family visa, refugee): Check one. To obtain LPR status, D: --Went to an interview in the home country <input type="checkbox"/> --Processed ("adjusted status") here in U.S. <input type="checkbox"/> Screen for possible US citizenship if: <input type="checkbox"/> Grandparent or parents were US citizen at time of D's birth; OR <input type="checkbox"/> Parent(s) became USCs while D was under age 18; D became LPR while under age 18 (Even if parents or grandparents now are deceased)	<input type="checkbox"/> Undocumented <input type="checkbox"/> Doesn't know <input type="checkbox"/> Has work permit but unsure of status (scan and send copy of permit) <input type="checkbox"/> Refugee <input type="checkbox"/> Asylee <input type="checkbox"/> Temporary Protected Status <input type="checkbox"/> Deferred Action for Childhood Arrivals (DACA) or Parents of Americans (DAPA) Other:
<b>Photocopy, scan, and email us <u>all</u> available immigration documents!</b>	

### 3. PRIOR REMOVAL/DEPORTATION/VOLUNTARY DEPARTURE:

Was D ever deported or got "voluntary" departure?	Describe what happened, to extent possible (e.g., saw imm. judge, just signed form before leaving U.S., etc.)	Where? When? For each deport/voluntary departure
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know	_____	

### 4. DEFENSE GOALS & CRIMINAL HISTORY

Defendant's Goals Re: Immigration Consequences	Criminal History & Current Charges
<input type="checkbox"/> Avoid conviction that triggers deportation <input type="checkbox"/> Preserve eligibility to apply for immigration status or relief from removal (see <i>Questionnaire Part 3 Relief</i> , below, for all undocumented or otherwise deportable D's) <input type="checkbox"/> Get out of jail ASAP <input type="checkbox"/> Other goals re: imm consequences: <input type="checkbox"/> Immigration consequences/avoid deport is <u>not</u> a priority	Use next page to: <b>List Criminal History</b> (include offense name and cite, date of conviction, sentence even if suspended for each conviction. Include expunged convictions, juvie, and other resolutions) <b>List Current Charge/s, Plea Offer/s</b>

**CLIENT QUESTIONNAIRE Part 2 – PRIORS, CHARGES, COMMENTS**

**Prior Conviction/s: Offense, Date Committed and Convicted, Sentence, Post-Conviction Dispositions like PC 17, Expungement, Prop 47**

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**Current Charge/s, Plea Offer/s**

--

**Other Facts or Comments**

--

### CLIENT QUESTIONNAIRE Part 3 – RELIEF

If the answer to any question is “yes,” the client might be eligible for the relief indicated. Be sure to photocopy any immigration document. References are to the Relief Toolkit for Defenders, available free online. “USC” stands for U.S. Citizen and “LPR” stands for lawful permanent resident (green card)

#### Questions for LPR Clients (green card holders):

**1. Has your LPR client lived in the U.S. for at least seven years?**

☐ Yes ☐ No

To apply for a special waiver in deportation proceedings, your client must be a LPR who (a) is not convicted of an aggravated felony; (b) has been a LPR for at least five years; and (c) has lived in the U.S. for at least seven years since being admitted in any status (e.g. as a tourist, LPR, border crossing card). See §17.5 LPR Cancellation.

**2. Is your client eligible to apply for U.S. Citizenship?**

☐ Yes ☐ No

An LPR can apply for U.S. citizenship after five years LPR status, or three years of marriage to a USC while an LPR; must establish good moral character and should not be deportable. But some current and former military personnel can naturalize without being LPRs and while in removal proceedings. See §17.4 Naturalization

#### Questions for All Immigrant Clients

**3. Might your client already be a USC – and not know it?**

☐ Yes ☐ No

If the answer to any question is yes, client could be a USC or national. See §17.3.

- a) Was the client born in the United States or its territories? Or,
- b) At time of his or her birth abroad, did client have a USC parent or grandparent? Or,
- c) Before age of 18, in either order: did client become an LPR, and did one of client’s parents naturalize to U.S. citizenship? Or, was the client adopted by a USC before the age of 16 and became an LPR before age 18?

**4. Does your client have a USC or LPR parent, spouse, child, or sibling?**

☐ Yes ☐ No

Might apply for a green card if has: (a) USC spouse; USC child at least age 21; or USC parent if client is unmarried & under age 21 (“immediate relative”); or (b) LPR spouse; LPR parent if client is unmarried; USC parent if client is at least age 21 and/or married; or USC sibling (“preference”). See §17.7 Family Visas.

**5. Has your client been abused by a USC or LPR relative?**

☐ Yes ☐ No

Your client, or certain family member/s, have been abused (including emotional abuse) by a USC or LPR spouse, parent, or adult child. See §17.8 VAWA Relief. (If abuser is not a USC/LPR, consider U Visa, below.)

**5. Is your client a permanent resident, or someone who could apply for a family visa or VAWA, who is inadmissible for prostitution, crimes involving moral turpitude, or a minor marijuana conviction?**

☐ Yes ☐ No

Your client might be eligible to apply for discretionary waiver. See § 17.10, Section 212(h) Waiver

**6. Is your client a juvenile and a victim of abuse, neglect, or abandonment?**

☐ Yes ☐ No

Client must be in delinquency, dependency, probate, family court, etc. proceedings and can’t be returned to at least one parent due to abuse, neglect or abandonment. See §17.9 Special Immigrant Juvenile.

**7. Is your client a victim of abuse who also was convicted of domestic violence?** ☐ Yes ☐ No

Client was convicted of a deportable DV or stalking offense, but in fact client is the primary victim in the relationship. A waiver of the DV deportation ground, or the DV bar to non-LPR cancellation, might be available. See §17.11 *Domestic Violence Waiver*.

**8. Did your client enter the U.S. before his or her 16<sup>th</sup> birthday?** ☐ Yes ☐ No

Client entered U.S. before turning 16 and before 6/15/2007 (depending on a pending lawsuit, this date may become 1/1/2010), and is in or could enroll in certain educational programs or military. See §17.12 *DACA*.

**9. Is your client the parent of a U.S. citizen or a permanent resident?** ☐ Yes ☐ No

Program currently is stopped by a lawsuit, but application period might open later. Client (a) has continuously resided in the U.S. since January 1, 2010 and (b) as of November 20, 2014 was undocumented, and had a USC or LPR son or daughter of any age, married or unmarried. See §17.13 *DAPA*

**10. Has your client lived in the U.S. for at least ten years?** ☐ Yes ☐ No

To be eligible for this defense in removal proceedings, client must have lived in U.S. at least ten years and have a USC or LPR parent, spouse or child (see §17.14 *Non-LPR Cancellation of Removal*) or lived here at least ten years and all deportable convictions occurred before April 1, 1997 (see § 17.15 *Suspension of Deportation, available in Ninth Circuit states*).

**11. Has your client been a victim of a crime?** ☐ Yes ☐ No

Client must have been a victim of a crime such as incest, DV, assault, false imprisonment, extortion, obstruction of justice, or sexual abuse, and be or have been willing to cooperate in investigation or prosecution of the crime. See §17.16 *The "U" Visa*.

**12. Has your client been a victim of "severe" alien trafficking?** ☐ Yes ☐ No

Client must have been victim of (a) sex trafficking of persons (if under age 18, could have been consensual), or (b) labor trafficking, including being made to work by force, fraud, etc.. See §17.17 *"T" Visa*.

**13. Can your client provide valuable information about organized crime or terrorism?** ☐ Yes ☐ No

A very small number of these visas are given to key informants each year. See §17.18 *"S" Visa*.

**14. Is your client afraid to return to his or her home country?** ☐ Yes ☐ No

Mark "yes" if (a) Client fears persecution or even torture if returned to the home country, see §§ 17.19 *Asylum and Withholding* and 17.20. *Convention Against Torture*; or (b) **Client already is an asylee or refugee**, see §17.21 *Refugees and Asylees*; or (c) Client is from a country that the U.S. designated for TPS status, based on natural disaster, civil war, or the like, see §17.22 *Temporary Protected Status (TPS)*.

**15. Is your client from the former Soviet Bloc, El Salvador, Guatemala, or Haiti?** ☐ Yes ☐ No

Your client might be eligible for a program if he/she (a) is from the former Soviet bloc, El Salvador, Guatemala, or Haiti; and (b) applied for asylum or similar relief in the 1990's or is a dependent of such a person. See §17.23 *NACARA for Central Americans*, and see §17.24 *HRIFA for Haitians and Dependents*.

**16. Does your client have an imm case from 1980's "amnesty" programs or Family Unity?** ☐ Yes ☐ No

The application still might be pending and viable. See §17.25.