LANCE KENNEDY LAW

The Non-Citizen’s Guide

Texas criminal charges and your immigration status

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Read This First

If you are not a United States citizen and you have been arrested in Texas, the most important sentence in this book is this one: do not plead to anything, not even a deal that sounds like a dismissal, until someone has analyzed what that plea does to your immigration status. Not deferred adjudication. Not a "time served" misdemeanor. Not a ticket-level offense you can pay off at the window. Nothing.

Here is why. The criminal case against you is run by the State of Texas, but your right to remain in this country is governed by federal immigration law, and the two systems use completely different rulebooks. Texas can call an outcome a dismissal while federal law calls the same outcome a conviction. Texas can classify an offense as a misdemeanor while federal law classifies it as an "aggravated felony." A plea that looks like a victory in a Travis County courtroom can quietly end a green card, a DACA grant, or a citizenship application, and by the time anyone notices, the plea is done and the options have narrowed.

The one rule that protects everything else. In a non-citizen's case, the disposition matters more than the sentence. Before you accept any plea, the exact statute, the exact subsection, the exact plea papers, and the exact sentence need to be checked against federal immigration law. That check has to happen before the plea, because afterward it is usually too late to undo.

Now the honest reassurance, because you need that too. An arrest is not a conviction, and for most of the immigration consequences described in this book, it is the conviction that does the damage. Charges get reduced. Charges get dismissed. Cases get won. Pleas can be structured, sometimes down to the exact number of days in a sentence, to avoid the worst federal categories. People in your position get through this every week with their status intact, and the ones who do almost always share one habit: they got advice early, before their first plea offer, not after.

One thing to be clear about from the start, because honesty is the point of this book: Lance Kennedy Law is a criminal defense firm. We defend Texas criminal cases and we coordinate with immigration counsel so that plea decisions are made with the federal consequences in full view. We do not practice immigration law, and this book is not immigration legal advice. What this book can do is show you how the two systems collide, where the traps are, and what to do in the critical early days. If your next court date is coming, call a criminal defense lawyer who takes immigration consequences seriously. Ours is (737) 324-7540, and the case review is free.

Two Systems, One Arrest

The night you were arrested, one event created two problems. The first problem is the criminal charge: the State of Texas accusing you of an offense, in a state courtroom, with a prosecutor, a judge, and, if it comes to it, a jury. The second problem is what that charge might mean for your immigration status, and that problem lives in an entirely different world: federal statutes, federal agencies, and federal immigration courts.

Two systems that do not speak the same language

The criminal system and the immigration system differ in almost every way that matters.

- **Different governments.** Your criminal case belongs to Texas. Your immigration status belongs to the federal government, under the Immigration and Nationality Act, codified in Title 8 of the United States Code. Nothing a Texas judge or prosecutor says about immigration binds the federal system.
- **Different standards.** A criminal conviction requires proof beyond a reasonable doubt. Removal proceedings are civil, the burdens are lower, and many protections you have in criminal court simply do not exist there.
- **Different lawyers.** If you cannot afford a lawyer in your criminal case, the court appoints one. In immigration court there is no appointed counsel. You have the right to a lawyer only at your own expense.
- **Different vocabularies.** This is the deadly one. Words like "conviction," "sentence," and "felony" have federal definitions that ignore the Texas labels. The whole middle of this book is about that vocabulary gap.

Why the immigration consequence can outweigh the criminal penalty

Think about what each system can actually take from you. The criminal system, for most misdemeanors and many felonies, is threatening a fine, probation, or a term of confinement measured in days, months, or years. The immigration system is threatening your home. Removal means leaving the country where your job, your family, your children, and your life are, possibly with a bar on lawful return that runs for years, or in the worst categories, permanently. For many clients, six months in a county jail would be a lighter consequence than removal, and the law itself recognizes the stakes: the United States Supreme Court has called deportation a particularly severe penalty and has held that it is intimately connected to the criminal process.

That is why the standard advice given to citizens, take the quick plea and move on, can be catastrophic advice for a non-citizen. A citizen who pleads to a Class A misdemeanor for time served walks out and starts rebuilding. A non-citizen who enters the same plea may have just handed the federal government the exact document it needs.

The two doors: deportability and inadmissibility

Federal law sorts criminal consequences through two different doors, and which door applies to you depends on your situation.

- **Deportability**, under 8 U.S.C. 1227(a)(2), applies to people who were lawfully admitted and are now inside the country: green card holders and visa holders, most commonly. A deportable offense makes a lawfully admitted person removable.
- **Inadmissibility**, under 8 U.S.C. 1182(a)(2), applies to people asking the government for something: admission at the border, a green card, adjustment of status, sometimes reentry after a trip abroad. An inadmissible person can be refused the benefit, and someone present without admission can be charged as inadmissible in removal proceedings.

The two lists overlap but are not identical, and a single case can implicate both. A green card holder worries first about deportability, and about inadmissibility every time they travel and return. An undocumented person or an applicant for a green card worries first about inadmissibility. A skilled defense has to know which door matters for this particular client, because a plea that is survivable through one door can be fatal through the other.

The four charges that do the most damage

Four federal categories account for most of the criminal-immigration disasters, and each gets its own chapter in this book:

- **Crimes involving moral turpitude**, a judge-made category built around fraud, theft, and intent to harm.
- **Aggravated felonies**, a federal list under 8 U.S.C. 1101(a)(43) that has almost nothing to do with what Texas calls aggravated or a felony.
- **Controlled substance offenses**, the closest thing immigration law has to an absolute bar.
- **Domestic violence offenses**, including protective order violations, under their own deportability ground.

How the federal system reads your Texas case

One more foundation before the chapters ahead. Immigration authorities generally do not retry the facts of your case. They apply what is called the categorical approach: they look at the statute you were convicted under, its elements, and a narrow stack of documents called the record of conviction, which includes things like the charging instrument, the plea papers, and the judgment. What actually happened on the street matters far less than what the paperwork says you pleaded to. That is a strange rule, but it is also an opportunity. It means the defense can sometimes steer a case toward a statute, a subsection, or a plea record that does not fit any removal category, even when a closely related plea would. The paperwork is the battlefield, and every word on it matters.

The judge's warning is not advice. Before accepting a guilty plea in a felony case, Texas law requires the court, under Article 26.13(a)(4) of the Code of Criminal Procedure, to warn the defendant that if you are not a citizen, the plea may result in deportation, exclusion from admission, or denial of naturalization. Many misdemeanor courts deliver a similar warning even though the statute is written for felony pleas. Either way, the warning is generic. It tells you nothing about whether your particular plea, to your particular charge, actually will trigger those consequences. Do not mistake the court's boilerplate for an analysis of your case.

Crimes Involving Moral Turpitude

The phrase sounds like it escaped from a Victorian novel, and in a sense it did. "Crime involving moral turpitude," or CIMT, has been part of American immigration law for more than a century, and Congress has never defined it. Courts have filled the gap with a working concept: conduct that is inherently base, vile, or depraved, contrary to the accepted rules of morality. In practice, the category is built around three pillars: fraud, theft, and the intent to cause serious harm.

What tends to count, and what tends not to

Because the category is judge-made, the boundaries are drawn case by case, and they shift. But some patterns are stable enough to describe. Offenses that are commonly treated as CIMTs include theft, fraud, forgery, credit and debit card abuse, robbery, and assaultive offenses committed with intent to cause serious injury or against protected victims. Offenses that are often held not to be CIMTs include simple assault by offensive contact, criminal trespass, disorderly conduct, driving while intoxicated without more, and many regulatory offenses that require no wrongful intent.

Do not treat those lists as promises. Whether a specific Texas statute is a CIMT depends on its exact elements and on the current state of the case law, which is exactly the kind of question that gets answered before a plea, not after. The point of the lists is strategic: within one set of facts, there is often a CIMT charge and a non-CIMT charge sitting near each other, and which one ends up on the plea papers can decide whether the immigration system ever gets involved.

When a CIMT makes a lawfully admitted person deportable

Under 8 U.S.C. 1227(a)(2)(A), a single CIMT makes an admitted non-citizen deportable only when two things line up:

- the crime was committed within **five years after admission** (a ten-year window applies to a narrow category of lawful permanent residents who adjusted under a special statute), and
- the offense is one for which a sentence of **one year or longer may be imposed**.

Read that second requirement against the Texas misdemeanor ladder and something useful appears. A Class A misdemeanor in Texas is punishable by up to one year, so it can satisfy the sentence test. A Class B misdemeanor tops out at 180 days, so it cannot. The gap between a Class A theft and a Class B theft, which a citizen might shrug at, can be the entire difference between deportable and not deportable for a recently admitted non-citizen.

Separately, **two CIMTs** not arising out of a single scheme of criminal misconduct make an admitted non-citizen deportable at any time, no matter how long ago the admission, and regardless of the sentences. This is the rule that turns a second shoplifting case from a nuisance into an emergency.

When a CIMT makes a person inadmissible

The inadmissibility door, 8 U.S.C. 1182(a)(2)(A), is wider. A single CIMT conviction, at any time, can bar admission, a green card, or adjustment of status. It gets worse: even **admitting** the essential elements of a CIMT, without any conviction, can trigger this ground. That is one of several reasons this book will keep repeating the advice to stay quiet and let your lawyer do the talking.

There is a genuine escape hatch, and it is worth understanding precisely because it can be engineered. The **petty offense exception** applies when all three of these are true:

- you have committed only one CIMT, ever;
- the offense's maximum possible penalty did not exceed one year; and
- the sentence actually imposed was six months or less, counting a suspended sentence as imposed.

Fit inside all three limits and the single CIMT does not make you inadmissible. Notice how much control the defense can have over the second and third limits: the level of the charge sets the maximum penalty, and the plea bargain sets the sentence. A Class A misdemeanor CIMT with a sentence of six months or less can fit the exception. The same plea with a nine-month sentence does not. Days on a plea sheet become years of a life.

> **The same plea can be safe through one door and fatal through the other.** A Class A misdemeanor CIMT with a five-month sentence might fit the petty offense exception for inadmissibility, yet still make a recently admitted green card holder deportable, because the deportability test asks what sentence could have been imposed, not what was. This is why no one should ever reason from a friend's case, or from a general rule, to their own. The analysis has to be run on your status, your dates, and your exact charge.

What this means for your defense

In a CIMT case, defense strategy has three dials: the offense, the level, and the sentence. Sometimes the answer is a plea to a nearby non-CIMT offense. Sometimes it is holding the charge at Class B instead of Class A. Sometimes it is a sentence capped at six months to preserve the petty offense exception. And sometimes, when the State's evidence is weak, the answer is to fight, because an acquittal or a clean dismissal beats every managed plea ever negotiated. Which dial to turn is a judgment call that requires both the criminal file and the immigration analysis on the same desk at the same time.

Aggravated Felonies: The Federal List with the Misleading Name

If immigration law has a doomsday category, this is it. The term "aggravated felony" appears in 8 U.S.C. 1101(a)(43), and the first thing to understand is that the name is a lie twice over. An offense does not need to be aggravated to qualify, and it does not need to be a felony. A Texas Class A misdemeanor theft with the wrong sentence can be an aggravated felony. The term is a federal label for a list, nothing more, and the list has grown for decades.

What is on the list

The statute enumerates dozens of categories. The ones that most often reach Texas cases:

Category	Where it appears in 1101(a)(43)	What to notice
Murder, rape, or sexual abuse of a minor	(A)	No minimum sentence required; some misdemeanor-level offenses involving minors have been swept in
Illicit trafficking in a controlled substance	(B)	Includes many state delivery and possession-with-intent offenses
Illicit trafficking in firearms	(C)	A separate firearms deportability ground also exists
Crime of violence with a term of imprisonment of at least one year	(F)	Uses the federal definition in 18 U.S.C. 16; the sentence, not the offense grade, is often the trigger
Theft or burglary with a term of imprisonment of at least one year	(G)	A one-year sentence on a Texas misdemeanor theft can qualify
Fraud or deceit with loss to the victim over $10,000	(M)	The loss amount, not the sentence, is the trigger
Obstruction of justice, perjury, or bribery of a witness with a one-year term	(S)	Reaches conduct connected to other cases

Two structural points about the list. First, several categories turn on whether a **term of imprisonment of at least one year** was imposed, and federal law counts a suspended sentence as imposed. A one-year sentence, probated so that you never spend a night in jail, still crosses the line. Second, the crime of violence category uses the federal definition: an offense with the use, attempted use, or threatened use of physical force against a person or property as an element. The Supreme Court struck down a vaguer companion definition in 2018, which narrowed the category, and it separately held years earlier that ordinary drunk driving is not a crime of violence. The boundaries here are litigated constantly, which is precisely why current, case-specific analysis matters.

What an aggravated felony conviction costs

This category earns its reputation through what it forecloses:

- **Near-automatic removal.** An aggravated felony conviction makes an admitted non-citizen deportable, and it strips away most defenses to removal, including cancellation of removal for lawful permanent residents and asylum.
- **Permanent exclusion.** After removal, a person with an aggravated felony conviction is inadmissible under 8 U.S.C. 1182(a)(9)(A) not for ten or twenty years but for life. The only exit is a discretionary federal permission to reapply for admission, which is rarely sought and rarely granted. For planning purposes, treat it as forever.
- **A permanent citizenship bar.** A conviction for an aggravated felony on or after November 29, 1990 permanently prevents a finding of good moral character, which permanently bars naturalization. More on that in the chapter on benefits.
- **Fast-track removal and heavier reentry punishment.** Non-permanent residents with aggravated felony convictions can face streamlined administrative removal, and returning illegally after removal for an aggravated felony is itself a serious federal felony with enhanced penalties.

The 364-day principle

Here is the single most concrete piece of strategy in this entire book. Because the theft, crime of violence, and several other categories require a term of imprisonment of at least one year, the difference between a 365-day sentence and a 364-day sentence can be the difference between an aggravated felony and not. Both sentences sound identical in a Texas courtroom. In immigration law they are different universes. A defense lawyer who understands this asks for 364 days, or eleven months, or 180 days, and a prosecutor often has no reason to care. The same logic applies to the fraud category's $10,000 loss line: what the plea papers say about the loss amount can decide the category, so stipulations get drafted with surgical care.

Do not assume your charge is safe because Texas calls it minor. The aggravated felony list is federal, technical, and counterintuitive. Misdemeanors have qualified. Probated sentences have qualified. Offenses with no violence in them have qualified. The only way to know is to run your exact statute and your exact proposed sentence against the current case law, before the plea. That is not a scare tactic. It is the literal method by which these cases are saved.

Drug Charges: The Nearest Thing to an Absolute Bar

Every category in this book has exceptions, waivers, and angles. The controlled substance grounds have almost none. If this book could put one chapter in front of every non-citizen in Texas before their first court date, it would be this one.

The two-sided trap

A conviction for violating any law relating to a federally controlled substance is both a **deportability** ground under 8 U.S.C. 1227(a)(2)(B) and an **inadmissibility** ground under 8 U.S.C. 1182(a)(2)(A). That covers essentially the whole Texas drug ladder under Chapter 481 of the Health and Safety Code: possession, possession with intent to deliver, delivery, manufacture. It does not matter whether the case was a felony or a misdemeanor. It does not matter whether you got probation. And because deferred adjudication is a conviction for immigration purposes, as the deferred adjudication chapter explains, it does not matter that Texas eventually dismissed the case.

The one recognized exception is deliberately narrow: a **single** offense involving possession for one's own use of **30 grams or less of marijuana**. That is the whole exception. A second marijuana case is outside it. A THC concentrate case may fall outside it. Any other drug is outside it.

It gets worse: no conviction required

The inadmissibility ground does not even require a conviction. A person who **admits** committing a controlled substance offense, in the statutory sense, can be found inadmissible. Separately, 8 U.S.C. 1182(a)(2)(C) makes a person inadmissible if immigration authorities have **reason to believe** they have participated in drug trafficking, a standard that requires no conviction at all. This is why casual honesty about drug use, to a consular officer, a border officer, or on a government form, has ended green card applications with no criminal case anywhere in sight. Questions about drug use, from anyone in any uniform, are questions to answer only after talking to a lawyer.

Trafficking, and the aggravated felony overlap

Drug offenses that qualify as illicit trafficking are aggravated felonies under 1101(a)(43)(B), which stacks the doomsday consequences from the previous chapter on top of the drug grounds. Texas delivery and possession-with-intent offenses commonly qualify. The Supreme Court has pushed back at the edges, holding for example that sharing a small amount of marijuana for no money does not automatically qualify, but the safe assumption for planning purposes is simple: any drug charge above simple possession must be treated as a potential aggravated felony until a careful analysis says otherwise.

Paraphernalia, and why the record matters

Even a paraphernalia conviction can be a deportable controlled substance offense. But in *Mellouli v. Lynch*, 575 U.S. 798 (2015), the Supreme Court held that such a conviction counts only where the record of conviction connects the offense to a substance controlled under **federal** law. That case is a perfect miniature of how these fights are won and lost: not on the street facts, but on what the conviction documents do and do not establish. A record kept clean of any federal drug reference has saved cases. A careless recitation in plea papers has sunk them.

What defense looks like in a drug case

- **Fight for outcomes with no plea in them.** Because the conviction definition turns on a plea or admission plus court-ordered penalty, a pretrial diversion program that requires no guilty plea, or an outright dismissal, can leave a non-citizen clean where deferred adjudication would not. The difference between two programs that both end in dismissal can be everything.
- **Litigate the stop and the search.** Drug cases are search cases. A suppressed search can take the entire case down, and a dismissal after suppression is the best immigration outcome there is.
- **Mind the substance and the record.** Which substance, in which penalty group, described how in the charging papers, can decide whether the federal grounds attach at all.
- **Do not chase a lighter sentence at the cost of a worse category.** A quick plea to possession for time served can be a far worse outcome than a slower fight that ends in diversion or dismissal.

Marijuana is not safe just because other states sell it. Marijuana remains a federally controlled substance. Conduct that is legal under some state's law can still trigger federal immigration consequences, and admissions about marijuana use have created inadmissibility problems even without any arrest. If you are not a citizen, treat every marijuana question from any government official as a legal matter, not small talk.

The Domestic Violence Ground

In 1996, Congress added a deportability ground aimed specifically at domestic violence, and it reaches further than most people expect. Under 8 U.S.C. 1227(a)(2)(E), an admitted non-citizen is deportable after a conviction for a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment, and also, separately, after a court finds a violation of certain portions of a protective order. In Texas, where family violence allegations are charged aggressively and protective orders are routine, this ground shows up constantly.

What counts as a crime of domestic violence

The federal definition has two parts, and both must be met. First, the offense must be a **crime of violence** under the federal definition, meaning the use, attempted use, or threatened use of physical force is an element. Second, the victim must stand in a **protected domestic relationship** to the defendant: a current or former spouse, a person with whom the defendant shares a child, a cohabitant, or someone similarly situated under domestic violence laws.

Map that onto Texas practice. An assault causing bodily injury to a family member, the everyday Class A "assault family violence" charge under Penal Code Section 22.01, is the classic candidate. Felony assault family violence charges, strangulation allegations, and continuous violence charges raise the same issues at higher stakes, and can implicate the crime of violence aggravated felony category when the sentence reaches one year. On the other end, a Class C assault by offensive contact, which involves no bodily injury element, presents a very different federal analysis. Once again, offenses that sit close together on the Texas ladder land far apart in the federal system, and where your case comes to rest on that ladder is exactly what a defense is for.

The protective order trap

The second half of the ground surprises people. A non-citizen is deportable when a court, civil or criminal, finds that they violated the portion of a protective order that protects against credible threats of violence, repeated harassment, or bodily injury. Notice what that means: this piece does not require a criminal conviction at all. A finding in a civil protective order proceeding can be enough. In Texas, violating a protective order is also its own crime under Penal Code Section 25.07, and prosecutors file it readily.

The practical lesson is blunt. If you are a non-citizen and any protective order or bond condition names you, treat perfect compliance as part of your immigration defense. No contact means no contact: no texts, no messages passed through friends, no responding when the protected person reaches out to you first. People talk themselves into contact because the relationship is complicated and the other person initiated. The order binds you, not them, and a single documented violation can hand the government a deportability ground that the entire criminal defense was structured to avoid.

The stakes stack up

A family violence case rarely presents just one immigration issue. Depending on the elements and the facts, the same case can raise the domestic violence ground, a CIMT problem, and, with a one-year sentence, an aggravated felony problem. A conviction for a misdemeanor crime of domestic violence also triggers a federal firearms ban that applies regardless of immigration status. And Texas law layers on its own consequences, including an affirmative family violence finding that follows you and blocks later record sealing. All of that is on the table at the plea negotiation, which is why these cases deserve slow, deliberate handling even when the offer sounds easy.

An accusation is not a conviction, here more than anywhere. Family violence cases are also the cases most likely to involve recanting witnesses, missing witnesses, mutual-combat facts, and provable false accusations. Prosecutors know this, and these cases get dismissed, reduced, and won at trial regularly. Because the deportability ground generally requires a qualifying conviction or a protective order finding, a fought-and-won family violence case can leave a non-citizen exactly where they started. That fight is often worth having, and it is a decision to make with counsel, not with a plea form.

The Deferred Adjudication Trap

This chapter exists because of a single collision between two statutes, and that collision has ended more Texas immigration stories than any other rule in this book. If you remember one technical thing from these pages, make it this one.

What Texas says

Under Article 42A.101 of the Texas Code of Criminal Procedure, a judge can accept your plea of guilty or no contest and then **defer** any finding of guilt. You go onto community supervision. If you complete it, the judge dismisses the case. Under Texas law, you were never convicted. Defense lawyers describe it to clients exactly that way, and for a citizen, that description is basically fair.

What federal law says

Federal immigration law wrote its own definition of "conviction" in 1996, at 8 U.S.C. 1101(a)(48)(A), and it was written to capture exactly this arrangement. For immigration purposes, a conviction exists whenever either of two things happens:

- a court enters a formal judgment of guilt; **or**
- adjudication is withheld, but the person pleaded guilty or no contest (or admitted facts sufficient for a finding of guilt), **and** a judge ordered some form of punishment, penalty, or restraint on liberty.

Now run Texas deferred adjudication through that second prong. Plea of guilty or no contest? Required by the statute. Court-ordered punishment or restraint? Community supervision is precisely that, and the fees, conditions, classes, and testing all reinforce it. The federal definition closes around Texas deferred adjudication like a lock. The Board of Immigration Appeals held exactly that, about Texas deferred adjudication specifically, in a 1998 decision called *Matter of Punu*, and the rule has been settled ever since.

> **The day you accept deferred adjudication, you are convicted for immigration purposes.** Not when you violate. Not if you fail to complete it. That day. The dismissal you earn years later does not undo it, because the federal definition looks at the plea and the supervision, not at how the case ends. Texas is telling you the truth about Texas law, and that truth is irrelevant in the only courtroom that decides whether you stay in this country.

Why this trap catches so many people

Deferred adjudication is the workhorse of Texas plea bargaining. Prosecutors offer it constantly, judges grant it routinely, and for citizens it is often genuinely good: no conviction, a path to sealing the record, a way out. So the offer arrives sounding like mercy, and everyone in the room, sometimes including defense counsel, treats it that way. For a non-citizen charged with a CIMT, a drug offense, or a family violence offense, that mercy is a conviction in federal clothing, and it can be a deportable one. The people most likely to accept it are the people trying hardest to do the responsible thing: resolve the case, avoid risk, get back to work. That is what makes it a trap rather than merely a rule.

What deferred adjudication does and does not trigger

Precision matters here, because deferred adjudication is not maximally bad in every direction, and the differences create strategy. It counts as a conviction, so it can trigger the conviction-based grounds: CIMT, controlled substances, domestic violence. But several aggravated felony categories require a **term of imprisonment of at least one year**, and a deferred adjudication order, standing alone, assesses no prison sentence. Whether a particular deferred outcome crosses a sentence-based line is a technical question that turns on the exact orders in the case, which is one more reason the criminal file needs immigration eyes before anything is signed. Sometimes a carefully structured deferred is still the least bad available outcome. Sometimes it is the worst one on the table. No one can tell which without doing the analysis.

How the outcomes really rank

How the Texas case ends	What Texas calls it	What federal immigration law generally sees
Acquittal at trial	Not guilty	No conviction
Dismissal with no plea ever entered	Dismissed	No conviction
Pretrial diversion completed without a guilty plea	Dismissed	Generally no conviction, if the program required no qualifying plea or admission and the structure is right
Deferred adjudication completed	Dismissed, no conviction	Conviction under 1101(a)(48)(A)
Straight probation	Conviction	Conviction, with the probated sentence counting as imposed
Jail or prison sentence	Conviction	Conviction, with the sentence length driving the aggravated felony analysis

Study the third and fourth rows. Two paths, both ending in dismissal, on opposite sides of the most important line in immigration law. When your lawyer fights for pretrial diversion instead of deferred adjudication, or negotiates the terms of a diversion program so that no qualifying plea is entered, that is not paperwork fussiness. That is the whole case.

One more warning: cleanup rarely works afterward

People ask whether a later expunction, nondisclosure, or early dismissal can fix an immigration conviction. As a general rule, state relief granted for rehabilitative reasons does not erase a conviction for immigration purposes. What can work is a vacatur based on a genuine legal defect in the original proceedings, such as the constitutional violation described in the next chapter. That is a narrow door, it requires litigation, and nothing about it is guaranteed. It exists, and it has saved people, but the plan should never be to plead now and fix it later. The plan should be to get it right now.

Padilla v. Kentucky: Your Right to Accurate Advice

Jose Padilla was a lawful permanent resident who had lived in the United States for more than 40 years. He was a Vietnam-era veteran who worked as a commercial truck driver. Arrested in Kentucky with marijuana in his truck, he asked his criminal defense lawyer the question this entire book is about: what would a guilty plea do to his status? His lawyer told him not to worry about it, since he had been in the country so long. That advice was flatly wrong. The plea made him deportable, essentially automatically.

What the Supreme Court held

In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the United States Supreme Court held that the Sixth Amendment right to effective counsel includes the right to advice about the deportation consequences of a guilty plea. The Court drew a two-level rule:

- When the immigration consequence is **truly clear**, as it was for Mr. Padilla's drug charge, counsel must give correct, specific advice: this plea will make you deportable.
- When the law is **unclear or uncertain**, counsel must at least warn that the plea may carry a risk of adverse immigration consequences.

Silence is not an option, and neither is a wrong answer. The Court recognized what this book's first chapter argued: deportation is so severe, and so tightly connected to the criminal process, that advice about it is part of the defense itself, not an optional extra.

What Padilla means for you right now

If your case is still open, *Padilla* is a standard to hold your lawyer to. You are entitled to more than the judge's generic courtroom warning. You are entitled to an analysis of your actual charge against your actual status, and to specific advice when the law gives a specific answer. A lawyer who waves the question off, or answers it from memory in the hallway, is not meeting the standard the Constitution sets. Ask directly: what does this exact plea do to my status, and how do you know? A good lawyer welcomes that question. The answer should reference your charge, your record, and your status, not a general impression.

What Padilla means if the plea already happened

If you already pleaded, and you were never advised, or were advised wrongly, about clear immigration consequences, you may have a claim of ineffective assistance of counsel. In Texas, such claims are typically raised through post-conviction habeas procedures, including a specific vehicle for cases that ended in community supervision. Two honest cautions come with that sentence. First, you must show more than bad advice: you must show prejudice, meaning a reasonable probability that, properly advised, you would not have taken the plea. The Supreme Court has recognized that for a defendant whose entire life is in this country, rejecting a plea and risking trial can be rational even against long odds, but the showing still has to be made with facts. Second, *Padilla* is not retroactive to convictions that were already final before it was decided on March 31, 2010. These cases are winnable and they are fought regularly, but they are uphill, slow, and never guaranteed, which is exactly why the cheapest and most reliable version of this right is to enforce it before the plea, not after.

If you have an old Texas plea and a new immigration problem, get the file reviewed. Old deferred adjudications and quick misdemeanor pleas from years ago surface constantly in green card applications, naturalization interviews, and removal proceedings. Whether anything can be done about an old plea depends on what the record shows about the advice given, and that requires pulling the actual file. Do not assume it is hopeless, and do not assume it is fixable. Find out.

Green Cards, Citizenship, DACA, and TPS: What a Case Can Touch

Removal is the loudest consequence, but it is not the most common one. Far more often, a Texas criminal case quietly reaches forward and breaks something the person was counting on: the green card application next year, the citizenship interview after that, the DACA renewal, the TPS re-registration. This chapter maps those collisions, because a plea should be negotiated with all of them in view.

Adjustment of status: the green card application

Adjustment of status, the process of becoming a lawful permanent resident from inside the country, requires you to be admissible. That routes your entire criminal history through the inadmissibility grounds of 8 U.S.C. 1182(a)(2): any CIMT outside the petty offense exception, any controlled substance offense, and the conduct-based grounds that need no conviction at all. A waiver exists for some grounds, including CIMTs, in cases of extreme hardship to qualifying relatives, but for drug offenses it reaches only a single offense of simple possession of 30 grams or less of marijuana. In plain terms: for a future green card applicant, a drug plea is close to unforgivable, a CIMT plea is a serious wound that may or may not be treatable, and a clean disposition is worth almost any amount of extra fighting now.

Naturalization: good moral character

Citizenship requires a showing of good moral character, normally over the five years before applying, or three years for certain spouses of citizens. Criminal history hits this requirement three ways:

- **Permanent bars.** A murder conviction at any time, or an aggravated felony conviction on or after November 29, 1990, permanently bars good moral character. Permanently means permanently: the person can hold a green card forever and never naturalize.
- **Statutory-period bars.** A CIMT or controlled substance conviction inside the statutory period generally blocks a finding of good moral character, and so does spending 180 days or more in jail during the period. The usual practical remedy is waiting until the qualifying period runs clean, with counsel confirming the math.
- **Discretion.** Even outside the mandatory rules, officers weigh conduct. Two or more DWI convictions in the statutory period create a presumption against good moral character

under a 2019 Attorney General decision, and applicants overcome it only with substantial evidence.

One warning that belongs in bold in every non-citizen's mind: **a naturalization application is an audit**. Filing invites the government to review your entire record, and applicants with removable convictions in their history have filed for citizenship and ended up in removal proceedings instead. Before anyone with any criminal history applies, the whole record should be reviewed by immigration counsel. This is a place where hurrying can cost everything.

DACA: the significant misdemeanor problem

Deferred Action for Childhood Arrivals has criminal bars that are tighter than nearly anything else in this chapter, because they were written as policy criteria rather than statute. A DACA recipient or applicant is disqualified by:

- any **felony** conviction;
- any **significant misdemeanor**, a category that automatically includes offenses involving domestic violence, sexual abuse or exploitation, burglary, unlawful firearm possession or use, drug distribution or trafficking, and driving under the influence, regardless of the sentence, plus any other misdemeanor with an actual sentence of more than 90 days in custody; or
- **three or more misdemeanors** of any kind, from separate incidents.

Notice what that list does to the assumptions in the rest of this book. A first DWI, which is not a deportability ground by itself and is generally not a CIMT, is an automatic significant misdemeanor for DACA. For a DACA recipient, a routine Class B DWI is a status-ending event unless the case is beaten or reduced to something outside the list. And because DACA is discretionary, even arrests without convictions get weighed. DACA's own legal future has been in litigation for years, which is one more reason recipients cannot afford to add a criminal record to the uncertainty.

TPS: the two-misdemeanor rule

Temporary Protected Status has the bluntest criminal bar in immigration law: any felony conviction, or **any two misdemeanor convictions** committed in the United States, ends eligibility. There is no petty offense exception and no waiver for this bar. Two Class B misdemeanor cases handled carelessly, years apart, can end TPS. Fine-only Class C tickets generally sit outside the federal definition of a misdemeanor used here, which excludes offenses punishable by five days or less, but that is a technical line no one should walk without advice. For a TPS holder, there is no such thing as a minor criminal case, and every charge, down to the ticket level, deserves a lawyer's attention before any plea is entered.

What you have or want	What a criminal case can do to it
Green card (have one)	Deportability grounds apply; travel can trigger inadmissibility screening on return
Green card (applying)	Inadmissibility grounds apply; drug offenses nearly unwaivable; CIMTs need the petty offense exception or a hardship waiver
Citizenship	Good moral character review, permanent bars for aggravated felonies and murder, plus a full-record audit that can end in removal proceedings
DACA	Lost with any felony, one significant misdemeanor (including DUI), or three misdemeanors
TPS	Lost with any felony or any two misdemeanors

Detainers and ICE Holds in Texas Jails

For many families, the first contact with everything in this book is a phone call that says a loved one is in a county jail with an "ICE hold." This chapter explains what that actually is, what Texas law requires, and the one practical decision, posting bond, that families most often get wrong.

What a detainer is

An immigration detainer, usually on a federal form called an I-247A, is a notice from Immigration and Customs Enforcement to the jail. It asks the jail to notify ICE before releasing the person, and to hold the person for up to **48 hours beyond** the time they would otherwise be released so ICE can take custody. The 48-hour figure comes from a federal regulation, 8 CFR 287.7. The regulation's text excludes Saturdays, Sundays, and holidays from that count, but the current ICE detainer form asks for no more than 48 hours flat, and how a particular jail counts the clock can vary in practice. A detainer is not a criminal charge, not a conviction, and not a removal order. It is a transfer request with a short fuse attached to your release date.

In Texas, the jail will honor it

In some states, local jails decline detainer requests. Texas went the opposite direction and made compliance mandatory. Under the 2017 law known as SB 4, now carried in Article 2A.060 of the Code of Criminal Procedure after a 2025 recodification, a Texas law enforcement agency holding a person subject to an ICE detainer must comply with the request and must tell the person they are being held on it. A sheriff or jail administrator who refuses commits a criminal offense under Penal Code Section 39.07. The statute has a notable exception: the duties do not apply to a person who provides proof of United States citizenship or lawful immigration status, such as a Texas driver's license or similar government-issued identification. That exception matters, because detainers are sometimes lodged against citizens and lawful residents by mistake, and proof of status can lift them.

Texas has kept building in this direction. A 2025 law from the 89th Legislature, Senate Bill 8, effective January 1, 2026, requires sheriffs who operate county jails to seek formal agreements with ICE under Section 287(g) of the Immigration and Nationality Act, which place immigration screening functions inside the jails themselves. And at the federal level, the Laken Riley Act, signed in January 2025, requires federal immigration authorities to detain certain people without lawful status who are merely **arrested for or charged with** offenses like theft, shoplifting, burglary, or assault on an officer, before any conviction. The direction of travel is unmistakable: in a Texas jail, assume immigration status will be checked, assume a detainer will be honored, and plan accordingly.

The bond decision families get wrong

Here is the scenario that plays out every week. A family scrapes together money for the criminal bond, pays it, and expects their loved one to walk out. Instead, the jail holds the person for ICE, and ICE picks them up. The family has spent the bond money, lost the leverage, and accelerated the very transfer they feared, sometimes before a criminal defense strategy even exists.

> **Do not post bond on a case with a detainer until you have talked to counsel.** Sometimes posting quickly is right. Sometimes the wiser move is to resolve or advance the criminal case first, or to prepare for immigration custody and a possible immigration bond before triggering the transfer. Which is right depends on the charge, the person's status, and their immigration options, and it is a two-lawyer question: criminal counsel and immigration counsel, before the money moves. Ten minutes of coordination has saved families thousands of dollars and months of chaos.

If ICE takes custody

- **Find them.** ICE maintains an online detainee locator. You will need the person's full name and country of birth, or better, their A-number, the alien registration number of up to nine digits printed on any immigration paperwork. Write that number down now, while things are calm.
- **Sign nothing without counsel.** People in immigration custody are routinely offered paperwork that waives their right to a hearing, including stipulated removal orders and voluntary departure agreements. Some people have defenses to removal and sign them away in an afternoon because the paper was in front of them and the officer was waiting. No document, no signature, until a lawyer has read it.
- **Understand immigration bond.** Immigration custody has its own bond system, decided by ICE or an immigration judge, separate from the criminal bond. But certain criminal history, including many drug and CIMT convictions, triggers mandatory detention with no bond at all under 8 U.S.C. 1226(c). This is one more consequence that gets decided back in the criminal case: the plea your criminal lawyer negotiates today can determine whether you are even eligible to ask for an immigration bond tomorrow.
- **Keep the criminal case moving.** An open criminal case does not disappear because ICE has you. Missed settings can become warrants and bond forfeitures. Your criminal lawyer

needs to know about the transfer immediately so the court is informed and the case is protected.

Two Lawyers, One Strategy

By now the pattern of this book is obvious: every important question has a criminal law half and an immigration law half, and answering either half alone produces wrong answers. This chapter is about the fix, which is not complicated, but has to be deliberate: two lawyers, working the same case, before the decisions get made.

Said plainly

Lance Kennedy Law practices criminal defense. We do not practice immigration law. We do not file green card applications, represent clients in immigration court, or give immigration legal advice, and you should be skeptical of any lawyer who casually claims mastery of both systems. What we do, in every case involving a non-citizen client, is coordinate with immigration counsel, the client's own immigration lawyer or one we help the client find, so that every charging decision, every plea offer, and every sentencing detail is evaluated for its federal consequences before it becomes final. The criminal defense lawyer drives the criminal case. The immigration lawyer supplies the map of what each outcome means. The client makes the decisions with both sets of eyes open. That division of labor is not a limitation. It is the method that works, and *Padilla* effectively assumes it: accurate advice about clear consequences frequently requires someone who lives in the immigration case law.

What coordination actually looks like

- **Status intake at the start.** The first meeting covers immigration status in detail: how you entered, when, what documents exist, what applications are pending or planned, prior contacts with immigration authorities, and the A-number. This information shapes the entire defense, and it is protected by privilege.
- **A consequence analysis before any plea.** The proposed charge, subsection, and sentence go to immigration counsel with a simple question: what does this exact outcome do to this exact client? No plea is recommended until that answer is back.
- **Negotiation with the federal categories in mind.** Alternative charges that avoid a CIMT or a controlled substance element. Sentences capped at 364 days or under six months where a line matters. Loss amounts handled with care in fraud cases. Pretrial diversion structured without a qualifying plea instead of deferred adjudication. These are the moves the previous chapters explained, and they only happen when someone at the table knows to ask for them.

- **A clean record of conviction.** Because immigration adjudicators read the paperwork, the paperwork gets written with the reader in mind: what the charging document alleges, what the plea papers admit, and what the judgment recites are all part of the defense product.
- **Timing management.** Sometimes the right move is slowing a criminal case down so an immigration analysis, an application, or a changed circumstance can catch up. Sometimes it is the reverse. The calendars of the two cases are managed together, including the detainer and custody questions from the last chapter.

The honest version of what this costs and buys

Running a case this way takes more time and can involve two fees, and you deserve the straight version of that. You also deserve the straight version of the alternative: the most expensive legal outcome a non-citizen can buy in Texas is a cheap, fast plea. The money saved on the front end is spent many times over in removal proceedings, motions to undo old pleas, and applications that fail years later because of a case nobody analyzed. Weighed against what is actually at stake, a coordinated defense is not the premium option. It is the baseline of competence for a non-citizen's case, and you should insist on it from whoever you hire.

Questions to ask any criminal defense lawyer if you are not a citizen

- Will you analyze, or have analyzed, the immigration consequences of any plea before advising me to take it?
- Do you coordinate with immigration counsel, and will you talk to my immigration lawyer directly?
- What is your understanding of what deferred adjudication does to a non-citizen? (If the answer is that it is not a conviction, keep looking.)
- Have you negotiated pleas structured around immigration consequences: alternative charges, 364-day caps, diversion without a plea?
- What happens to my status if we win? If we lose at trial? If I take the offer?

A lawyer who answers those questions comfortably, specifically, and without promises is the kind of lawyer this kind of case needs. A lawyer who guarantees you an outcome, in either system, is telling you something important about their honesty, and you should believe it.

The First 72 Hours for a Non-Citizen Defendant

This final chapter is the whole book compressed into instructions. Screenshot it. Share it with the family member who is helping. Then act on it, in order.

Right now, today

- **Say nothing about your case or your status.** Do not discuss the facts of the arrest or your immigration history with anyone but your lawyer. Jail phone calls are recorded, and statements about status or entry can become evidence in both systems. If any officer, jailer, or federal agent asks about your immigration status or how you entered the country, you may say that you wish to remain silent and want to speak to a lawyer. Stay polite. Stay silent.
- **Sign nothing you have not read with counsel.** Not in the jail, not from ICE, not from anyone. This especially includes any document about leaving the country voluntarily or waiving a hearing.
- **Do not claim to be a U.S. citizen.** Ever, on any form, to any official, for any reason. A false claim of citizenship creates a separate and brutal immigration problem on top of everything else.
- **Locate your documents.** Family should gather every immigration document that exists: green card, work permit, visa, passport, I-94, any USCIS notices, and anything showing the A-number. Also gather proof of how long you have lived here: leases, pay stubs, school records, tax returns. Length and continuity of presence matter in immigration options.
- **If there is a detainer, stop before posting bond.** Read the detainer chapter again. Call a criminal defense lawyer, and if possible immigration counsel, before any money is paid. This is the decision of the first 72 hours that most often goes wrong.

This week

- **Hire a criminal defense lawyer who takes immigration consequences seriously,** and tell that lawyer your true status at the first meeting. The lawyer is on your side, the conversation is privileged, and a defense built on a wrong assumption about status is a defense pointed at the wrong target.
- **Get immigration counsel into the loop.** If you already have an immigration lawyer, connect the two lawyers immediately. If you do not, ask your criminal lawyer to help you find one. The coordination described in this book starts now, not at plea time.

- **Write down your immigration timeline.** Date and manner of entry, every departure and return, every application ever filed, every prior arrest anywhere, and every contact with immigration authorities. Your lawyers will need all of it, and memory does not improve under stress.
- **Comply perfectly with every bond condition and every protective order.** For a non-citizen, a bond violation or an order violation is not just a new criminal problem. It can be an independent immigration disaster. No contact means no contact.
- **Do not travel outside the United States.** Leaving with a pending case or a fresh disposition can convert a survivable situation into an inadmissibility problem at the border on the way back. No trip is worth it. Ask before you book anything.

Before your first court date

- **Make no decisions about any plea offer,** including deferred adjudication, until the immigration analysis is done and you have heard it explained in plain language: this outcome does this to your status, and here is the alternative.
- **Show up.** Every setting, on time, dressed like it matters. A missed court date creates a warrant, a bond forfeiture, and a custody event that can end with an ICE transfer. Nothing in this book survives a failure to appear.
- **Keep the long game in view.** The goal is not just to end the criminal case. It is to end it in a way that leaves your green card, your application, your DACA, your TPS, or your future citizenship intact. Sometimes that means patience while a better outcome is fought for. The fastest resolution and the best resolution are rarely the same one.

Last words, and they are honest ones. This area of law is harsh, technical, and unforgiving of casual handling, and nothing in this book can promise you a particular result. But the outcomes are not random. They track preparation. People who stay silent, keep their court dates, refuse quick pleas, and put a coordinated defense to work consistently end up with better endings than people who take the first deal to make the fear stop. An arrest started this. It does not get to decide how the story ends. The decisions you make in the next few weeks do, and you do not have to make them alone.

If you are not a citizen and you are facing a Texas criminal charge, call before your next court date. The case review is free, and the earlier the immigration stakes are on the table, the more ways there are to protect you.

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