CAIR Coalition
Capital Area Immigrants' Rights

Working to ensure all immigrants are treated with fairness, dignity and respect for their human and civil rights.

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PRACTICE ADVISORY[1]
THE IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY ADJUDICATIONS

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Delinquency adjudications for juvenile defendants generally carry fewer and less severe immigration consequences than adult criminal court dispositions because delinquency adjudications are not considered "convictions" or "admissions" under federal immigration law. Accordingly, with regard to potential immigration consequences, the top priority for a criminal defense attorney representing a noncitizen juvenile in delinquency proceedings will often be to ensure that the case remains in delinquency court and is not transferred to regular criminal court.

However, defense attorneys should keep in mind that delinquency adjudications—and the record created during a delinquency proceeding—can lead to conduct-based grounds of inadmissibility and deportability. Additionally, delinquency adjudications can be considered in response to an application for an immigration benefit or defense to removal that has a discretionary component. Defense attorneys may minimize negative immigration consequences, therefore, by keeping aggravating factors out of the record of delinquency.

A JUVENILE ADJUDICATION DOES NOT INVOKE CONVICTION- OR ADMISSION-BASED GROUNDS OF INADMISSIBILITY AND DEPORTABILITY

Under the Immigration and Nationality Act (INA), delinquency adjudications are not considered "convictions," and admissions to delinquent conduct are not considered "admissions." Case law holds that, for immigration purposes, a delinquency adjudication is a civil status determination rather than a criminal conviction.[2] Moreover, because delinquency is not a crime, a guilty plea made as part of a delinquency adjudication is not considered a criminal admission for immigration purposes.[3] Delinquency adjudications therefore do not raise conviction- or admission-based grounds of inadmissibility and deportability.[4]

The distinction between delinquency adjudications and criminal convictions is important because convictions and admissions frequently have serious immigration consequences under the INA. For example, under 8 U.S.C. § 1182(a)(2)(A)(i), "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of" a "crime of moral turpitude" or a

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[1] This practice advisory does not constitute legal advice. It is intended for the use of legal professionals and is not meant to serve as a substitute for a lawyer's obligation to conduct independent analysis and provide legal advice tailored to the facts and circumstances of a client's case.

[2] *Matter of Devison*, 22 I&N Dec. 1362, 1366 (BIA 2000) (*en banc*).

[3] *Matter of Seda*, 17 I&N Dec. 550, 554 (BIA 1980).

[4] Grounds of *inadmissibility* prevent a noncitizen from being admitted to the U.S., whether traveling abroad or present in the U.S. without having been lawfully admitted. *See* 8 U.S.C. § 1182. Grounds of *deportability* lead to the deportation of a noncitizen who was previously lawfully admitted. *See* 8 U.S.C. § 1227.

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violation of any controlled substance law, is inadmissible. And, under 8 U.S.C. § 1227(a)(2)(A)(iii), "any alien convicted of an aggravated felony at any time after admission is deportable." Delinquency adjudications will not trigger these grounds of deportability or inadmissibility, but, as noted below, delinquency adjudications and the record created during delinquency proceedings can still carry other immigration consequences.

JUVENILE DELINQUENCY ADJUDICATIONS CAN LEAD TO CONDUCT-BASED GROUNDS OF INADMISSIBILITY AND DEPORTABILITY

Some grounds of inadmissibility and deportability depend on evidence of certain bad acts rather than on criminal convictions. The chart below lists the most significant conduct-based grounds of inadmissibility and deportability and describes the immigration penalty for each ground.

Conduct-Based Grounds of Inadmissibility and Deportability	**Immigration Penalty**[5]
Drug trafficking	• Inadmissible if immigration officials have "reason to believe" in participation in drug trafficking (8 U.S.C. § 1182(a)(2)(C)(i))
Drug abuse or addiction	• Inadmissible if addiction is current (8 U.S.C. § 1182(a)(1)(A)(iv)) • Deportable for addiction at any time since admission (8 U.S.C. § 1227(a)(2)(B)(ii))
Prostitution	• Inadmissible for engaging in prostitution (8 U.S.C. § 1182(a)(2)(D)(i)) or procuring prostitutes (8 U.S.C. § 1182(a)(2)(D)(ii))
Violations of domestic violence protective orders	• Deportable where civil or criminal court finds violation of domestic violence protective order designed to prevent repeated harassment, credible threats of violence, or bodily injury (8 U.S.C. § 1227(a)(2)(E)(ii))
False claim to U.S. citizenship	• Inadmissible (8 U.S.C. § 1182(a)(6)(C)(ii)(I)) • Deportable (8 U.S.C. § 1227(a)(2)(D)(i))
Alien smuggling	• Inadmissible (8 U.S.C. § 1182(a)(6)(E)(i)) • Deportable (8 U.S.C. § 1227(a)(1)(E)(i))
Behavior showing a physical or mental condition that poses a current threat to self or others	• Inadmissible for physical or mental disability posing threat to self or others (8 U.S.C. § 1182(a)(1)(A)(iii))

JUVENILE DELINQUENCY ADJUDICATIONS CAN IMPACT APPLICATIONS FOR DISCRETIONARY RELIEF, INCLUDING DEFERRED ACTION PROGRAMS

Many immigration benefits and forms of relief from removal have a discretionary element that can be exercised by immigration judges or U.S. Citizenship and Immigration Services examiners. Delinquency adjudications and the record of delinquency can be taken into consideration in these contexts. Among the types of relief that may be impacted by a juvenile delinquency are applications for lawful permanent residency and naturalization. Naturalization, for example, requires a finding that the applicant is of "good moral character," and regulations dictate that any "unlawful acts that adversely

[5] In limited circumstances, penalties may be avoided by obtaining a discretionary waiver.

reflect upon the applicant's moral character" may factor into the good moral character analysis. 8 C.F.R. § 316.10. Thus, attorneys with clients who may seek to apply for a future immigration benefit can assist their clients by creating a record that minimizes any references to aggravating factors.[6]

Notably, many noncitizens currently facing delinquency cases may qualify for deferred action programs recently announced by executive order, including Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA). Under DACA, delinquency adjudications are not an automatic bar to relief.[7] However, relief is discretionary and "bad acts" can be taken into account. The government has not yet clarified how delinquency adjudications will be treated for the purposes of DAPA eligibility but, like DACA, DAPA is discretionary and "bad acts" can be taken into account. Thus, defense attorneys with clients who may be eligible for DAPA and DACA should attempt to create a record consistent with the discretionary nature of those forms of relief.[8]

Practice Tips

- ***Avoid References to Gang-related Activity in the Record***

DHS has placed a ***high priority on targeting noncitizen gang members*** *for deportation. Any allegations of gang-related activity can therefore have a serious effect on a noncitizen's immigration case, and it is advisable to avoid a delinquency plea to an offense with a gang-related element (e.g., criminal street gang participation; Va. Code 18.2-46.2) and to keep any references to gang affiliation or gang-related conduct out of the record of delinquency.*

- ***Look for Juvenile Clients Eligible for Special Immigrant Juvenile Status***

Defense attorneys with noncitizen juvenile clients can provide a great benefit to their clients by evaluating whether they qualify for Special Immigrant Juvenile Status (SIJS). SIJS is a federal law that assists certain undocumented juveniles in obtaining lawful status. One requirement for SIJS is a dependency finding by a state court stating that a juvenile noncitizen cannot reunify with one or both parents due to ***abuse, neglect, abandonment or a similar basis****. If defense attorneys identify noncitizens who may qualify for SIJS, they should contact CAIR Coalition to discuss the process for seeking the relevant finding in delinquency court.*

For any questions about this advisory, please contact Heidi Altman at heidi@caircoalition.org.

[6] When applying for an immigration benefit, applicants are frequently required to produce evidence of the outcome of all previous arrests. For that reason, maintaining a complete record of delinquency proceedings is necessary. Accordingly, defense attorneys who seek expungement or sealing of a juvenile's records should continue to maintain a complete copy of the records in their files.

[7] *See* DACA FAQs *available at* http://www.uscis.gov/humanitarian/ consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions#backgoround checks.

[8] For more information concerning the criminal bars to DACA and DAPA, see CAIR Coalition's practice advisory on executive action, *available at http://www.caircoalition.org/wp-content/uploads/2014/12/CAIR-Coalition-Practice-Advisory-Immigration-Executive-Action-20141210.pdf.*