

Chart of Suggested Approaches for Representing a Noncitizen Client in a New York Criminal Case

If your client is a **LAWFUL PERMANENT RESIDENT (LPR):**

- First and foremost, try to avoid a disposition that triggers deportability (see IDP Manual *Representing Immigrant Defendants in New York*, §3.2.B)
- Second, try to avoid a disposition that triggers inadmissibility if your client was arrested returning from a trip abroad or if your client may travel abroad in the future (see IDP Manual §§3.2.C and E(1)).
- If you cannot avoid deportability or inadmissibility, but your client has resided in the United States for more than seven years prior to commission of the alleged offense (or, in some cases, will have seven years before being placed in removal proceedings), try at least to avoid conviction of an “aggravated felony.” This may preserve possible eligibility for the relief of cancellation of removal (see IDP Manual §3.2.D(1)).
- If you cannot avoid conviction of an aggravated felony but your client adjusted to LPR status in the United States, try at least to avoid conviction of a controlled substance offense (other than a single offense of simple possession of 30 grams or less of marijuana) or conviction of a “violent or dangerous crime.” This may preserve possible eligibility for the INA §212(h) waiver (§3.2.D(2)).
- If you cannot do that, but your client’s life or freedom would be threatened if removed, try to avoid conviction of a “particularly serious crime” in order to preserve possible eligibility for the relief of withholding of removal (see IDP Manual §3.4.C(2)).
- If your client will be able to avoid removal, your client may also wish that you seek a disposition of the criminal case that will not bar the finding of good moral character necessary for citizenship (see IDP Manual §3.2.E(2)).

If your client is a **REFUGEE or **PERSON GRANTED ASYLUM****

- For a refugee, first and foremost, try to avoid a disposition that triggers deportability (see Matter of D-K, 25 I&N Dec. 761 (BIA 2012))
- For an asylee or a refugee, try to avoid a disposition that triggers inadmissibility (see IDP Manual §§3.3.B and D(1)).
- If you cannot do that, but your client has been physically present in the United States for at least one year, try at least to avoid a disposition relating to illicit trafficking in drugs or a violent or dangerous crime in order to preserve eligibility for the so-called 209(c) waiver of inadmissibility for refugees and asylees (see IDP Manual §3.3.D(1)).
- If you cannot do that, for an asylee, try to avoid a conviction of a “particularly serious crime” in order to avoid termination of asylum status (see Matter of V-X-, 26 I&N Dec. 147 (BIA 2013)), or, for a refugee, to preserve eligibility for the relief of withholding of removal if your client’s life or freedom would be threatened if removed (see IDP Manual §3.3.D(2)).

If your client is **NOT AN LPR, REFUGEE OR ASYLEE but:**

Your client has some prospect of becoming a LPR based on having a U.S. citizen or LPR spouse, parent, or child, or having an employer sponsor; or being in foster care status;

- First and foremost, try to avoid a disposition that triggers inadmissibility (§3.4.B(1)).
- If you cannot do that, but your client may be able to show extreme hardship to a citizen or lawful resident spouse, parent, or child, try at least to avoid a controlled substance disposition to preserve possible eligibility for the INA §212(h) waiver of inadmissibility (see IDP Manual §§3.4.B(2),(3) and(4)).

Your client has a fear of persecution in the country of removal:

- First and foremost, try to avoid any disposition that might constitute conviction of a “particularly serious crime” (PSC) (deemed here to include any aggravated felony), or a violent or dangerous crime, in order to preserve eligibility for asylum (see IDP Manual §3.4.C(1)).
- If you cannot do that, but your client’s life or freedom would be threatened if removed, try to avoid conviction of a PSC (deemed here to include an aggravated felony with a prison sentence of at least five years), or an aggravated felony involving unlawful trafficking in a controlled substance (regardless of sentence), in order to preserve eligibility for the relief of withholding of removal (see IDP Manual §3.4.C(2)).

Your client has been continuously physically present in the U.S. for at least 10 years and may be able to demonstrate that removal would cause “exceptional and extremely unusual hardship” to a U.S. citizen or LPR spouse, parent or child:

- Try to avoid conviction of any offense described under the criminal inadmissibility or deportability grounds, regardless of whether or not the ground would apply to the person (see INA §240A(b)(C)).

Your client is a national of a country designated by the Attorney General as suffering extraordinary and temporary conditions preventing nationals from returning there in safety (as of July 2016, included **El Salvador, Guinea, Haiti, Honduras, Liberia, Nepal, Nicaragua, Sierra Leone, Somalia, Sudan, South Sudan, Syria and Yemen**):

- Try to avoid one felony or two misdemeanors, which would cause ineligibility for the relief of Temporary Protected Status (TPS) (see IDP Manual §3.4.C(4)).

Your client entered the U.S. as a child or is a parent of a U.S. citizen or LPR and may be eligible now or in the future for Deferred Action for Childhood Arrivals (DACA) or Deferred Action for Parental Accountability (DAPA) or other similar status:

- Try to avoid one felony, or a “significant misdemeanor,” or three misdemeanors (may include certain NY violations and traffic infractions), which would cause ineligibility for such temporary administrative protection from removal (see IDP’s Immigration Consequences of Convictions Summary Checklist – DACA and DAPA Supplement).