

## **Defending Immigrants Partnership California Seminar, Day 2**

### **Exercise 1: Crime of Violence, Burglary and \$10,000 Offenses**

Stella got into her neighbor's car and took some drugs and a watch. She was arrested after making a hand-to-hand drug sale to an undercover officer. She tried to slap and scratch the police officer when he arrested her, but was quickly subdued. The arrest led to the discovery that over the last two years she had received \$15,000 in fraudulently obtained welfare benefits.

Stella has no prior arrest record and has been a lawful permanent resident for several years.

1. As a permanent resident, is it more important for Stella to avoid becoming deportable or inadmissible? Why?
2. Stella is charged with auto burglary with intent to commit theft under PC § 459. The DA wants a sentence of one year. Is this an aggravated felony? What are two ways to ensure that this is not an aggravated felony?
3. Stella is charged with sale under H & S 11360. The DA wants three months custody as a condition of probation. How would you try to fashion a disposition that was not an aggravated felony? Would it help to plead to possession for sale?
4. Stella is charged in a 3-count indictment with welfare fraud of \$4,000, \$5,000 and \$6,000 for a total of \$15,000. The DA wants a sentence of two years. How would you try to fashion a disposition that was not an aggravated felony?
5. Stella is charged with misdemeanor assault on a police officer. The DA wants six months for this, to run concurrent with other sentences. Is this an aggravated felony?

**Exercise 2: Sex Offenses, Relief for Aggravated Felon**

Martin is 20. He and his girlfriend Marietta have never lived together, but Marietta gives birth to their child on her own 18<sup>th</sup> birthday. She applies for welfare, and Martin is identified as the father. He is arrested and charged with statutory rape. He is offered a suspended sentence of one year, with payment of child support as a condition of probation.

Martin entered the U.S. on a tourist visa several years ago. Marietta is a U.S. citizen. Martin mentions that he believes his grandmother was a U.S. citizen.

1. If Martin pleads to statutory rape, will that constitute the aggravated felony sexual abuse of a minor? Will it help if he pleads to a misdemeanor? What if he gets a suspended sentence of one year?
2. If Martin pleads to simple battery against Marietta, will that constitute sexual abuse of a minor? What if he gets a suspended sentence of one year?
3. If Martin pleads to misdemeanor false imprisonment or persuading a person not to file a police report under P.C. § 136.1(b), will that constitute sexual abuse of a minor? What if he gets a suspended sentence of one year?
4. Martin fears persecution if he returns to his home country. Can he apply for asylum?
5. Martin and Marietta marry. Marietta files an adjustment of status petition for Martin. Since this aggravated felony is not a drug offense, is there some chance that despite his conviction Martin could be judged “admissible” and therefore be able to become a permanent resident through the marriage? Does Martin have any other possible immigration relief?

**Exercise 3: Crimes Involving Moral Turpitude: Bonnie and Clyde**

In 1991 Clyde was admitted to the U.S. on a tourist visa and overstayed. That same year Bonnie entered the U.S. without inspection, i.e. she was not “admitted.”

1. They met, fell in love, got married, and in 1993 committed and were convicted of misdemeanor grand theft. This offense has a one-year maximum possible sentence. Imposition of sentence was suspended and they each were ordered to spend four months in jail as a condition of probation, and sentenced to three years probation. It was the first time either of them had committed a moral turpitude offense.

Do these convictions make Bonnie inadmissible? Do they make Clyde inadmissible or deportable? Is either conviction an aggravated felony?

2. In 1998 Bonnie and Clyde immigrated through Bonnie's naturalized U.S. citizen mother. In 1999 they committed another theft. Clyde was again convicted of misdemeanor grand theft, which has a one-year maximum possible sentence. Bonnie pled to petty theft with a prior, which has a six month sentence plus more than a year possible sentence enhancement. In both cases, imposition of sentence was suspended and they were ordered to spend four months in jail as a condition of probation.

Do these convictions make Bonnie inadmissible or deportable? Clyde? Is either conviction an aggravated felony?

3. Assume that removal proceedings are started against Clyde in 2003, based on his being deportable for a moral turpitude offense. If Clyde's citizen mother is willing to petition for him again so he can “re-immigrate,” would he be eligible to apply for “212(h) relief” to waive his moral turpitude convictions?

**Exercise 4: Crime of Violence, Domestic Violence, Firearms, Theft**

George is a British citizen who has been a lawful permanent resident since 1990.

- C 1994 – George was convicted of misdemeanor assault against Carolina, his live-in girlfriend. He was sentenced to 30 days in jail.
- C (1996 – George marries Carolina. She entered the U.S. without inspection in 1993 and has no lawful immigration status.)
- C 1997 – George was convicted of petty theft and sentenced to probation.
- C 2002 – George slapped Carolina, threatened her with a gun, and went into her car and took her purse that was lying there. He later came back to their apartment and found that the police were already there. Carolina attacked him with her fists as soon as he walked in.

Based on the 2002 incident, George faces the following charges and proposed sentences:

- C Petty theft with a prior, with a sentence of 16 months
- C Burglary of an auto, sentence of one year
- C Spousal abuse under P.C. 273.5, sentence of one year
- C Assault with a firearm, sentence of six months

Carolina faces a charge of misdemeanor spousal abuse because of her attack on George, with a sentence of probation and counseling.

**QUESTIONS:**

In answering the following questions, consider whether the conviction would be

- C **an aggravated felony (i.e., theft, burglary or a crime of violence with a one-year sentence imposed),**
  - C **a basis for deportability under the domestic violence or firearms ground.**
  - C **A basis for deportability and/or inadmissibility under the moral turpitude ground.**
1. If George pleads as charged, what would be the immigration effect of each of these convictions? What alternate individual plea or general sentencing scheme might you propose to avoid this?
  2. What is the effect of George's 1994 conviction?
  3. Do the grounds of deportability – including the domestic violence ground – apply to Carolina, who has never been admitted? Extra credit: Is there any way that conviction of spousal abuse still would have impact on her immigration situation?

**Exercise 5: Eligibility for Relief in Immigration Proceedings**

What immigration application/s would you at least want to investigate if your clients were in the situations below?

1. Steve has had a green card for 10 years. He has a drug conviction that is not an aggravated felony.
2. Elisa has lived in the U.S. illegally for 15 years. She has twin daughters who are U.S. citizens who have a rare blood disease.
3. Mona and Monique are mother and daughter. They have been severely abused by Mona's permanent resident spouse.
4. Alfredo is in delinquency proceedings. He's undocumented and has a disposition of drug trafficking, but basically is a good kid. He has been severely beaten by gang members.
5. Jamal is from Somalia, a visa overstay. He fears that if he goes back he will be killed, like the rest of his politically active family was. Jamal believes that no one can survive in Somalia at this time because there is no government at all in many areas. (Two possibilities.)
6. Sara has had a green card for many years. She is facing her first criminal charge ever, for a small theft. She had hoped to apply for U.S. citizenship.
7. Emile is in delinquency proceedings. He has a prostitution disposition. Because of the sexual abuse Emile endured at his home, the judge orders him to be placed in a group foster care home following completion of probation.

## Defending Immigrants Partnership California Seminar, Day 2

### ANSWERS TO EXERCISES

#### Exercise 1: Crime of Violence, Burglary and \$10,000 Offenses

Stella got into her neighbor's car and took some drugs and a watch. She was arrested after making a hand-to-hand sale to an undercover officer. She tried to slap and scratch the police officer when he arrested her, but was quickly subdued. The arrest led to the discovery that over the last two years she had received \$15,000 in fraudulently obtained welfare benefits under two names.

Stella has no prior arrest record and has been a lawful permanent resident for several years.

1. As a permanent resident, is it more important for Stella to avoid becoming deportable or inadmissible? Why?

**It's more important to avoid becoming deportable, because that will cause her to lose status where inadmissibility will just restrict her ability to travel outside the U.S.**

2. Stella is charged with auto burglary with intent to commit theft under PC § 459. The DA wants a sentence of one year. Is this an aggravated felony?

**Probably not. Auto burglary has been held not to constitute "burglary" or a crime of violence for AF purposes. Ye v. INS. It is possible, however, that the INS would charge that entry with intent to commit theft is similar to attempted theft.**

What are two ways to make sure it's not an aggravated felony?

**Obtain a sentence of 364 days or less. If this is not possible, prevent auto burglary from being held an attempted theft offense by making sure the record of conviction shows only a plea to auto burglary with intent to commit "any felony" or "theft or any felony."**

3. Stella is charged with sale of a controlled substance under H & S § 11360. The DA wants three months custody as a condition of probation. How would you try to fashion a disposition that was not an aggravated felony? Would it work to plead to possession for sale?

**If the DA can be persuaded to accept a plea to accessory after the fact to the sale,**

**that would be the safest alternative. This is neither an aggravated felony (unless a sentence of a year or more is imposed) nor a drug conviction triggering deportability.**

**Or one may plead to § 11360 and avoid an aggravated felony if it is possible to create a record of conviction that does not demonstrate whether the offense pleaded to was sale or offer to sell (or transportation). This would not be an aggravated felony, and arguably not even a drug conviction triggering deportability. Rivera-Sanchez. Sentence imposed is not relevant.**

**A plea to possession for sale is no option for immigration purposes. In fact, persons to whom immigration considerations are paramount may plead up from possession for sale to sale/offer to sell. Possession for sale is an aggravated felony, because “offering” is not punished under that statute. It is also a basis for deportability and inadmissibility.**

4. Stella is charged in a 3-count indictment with welfare fraud of \$4,000, \$5,000 and \$6,000 for a total of \$15,000. The DA wants a sentence of two years. How would you try to fashion a disposition that was not an aggravated felony?

**Stella needs to avoid a conviction of fraud with a \$10,000 loss to the victim. A reasonable option would be for Stella to plead to the \$4,000 and \$5,000 counts only, and make it explicit in the plea agreement that the loss to the victim was \$9,000. This should not be an aggravated felony of fraud with a \$10,000 loss to the victim even if Stella ultimately is ordered to pay restitution of over \$10,000. Chang v INS. It would be even more advantageous if Stella were able to delay sentencing or plea until a time when she can have paid back the other \$6,000, so that even the restitution order will reflect \$9,000.**

**The two-year sentence would pose a problem if the INS successfully argued that welfare fraud is a theft offense, since a theft conviction with a one-year sentence imposed is an aggravated felony. Stella could accept a 364-day sentence on each of the two counts, to run consecutively.**

5. Stella is charged with misdemeanor assault on a police officer. The DA wants six months for this, to run concurrent with other sentences. Is this an aggravated felony?

**No. While California assault, on a police officer or other individual, is a crime of violence, a one-year sentence must be imposed in order for the offense to be an aggravated felony.**

### **Exercise 2: Sex Offenses**

Martin is 20. He and his girlfriend Marietta have never lived together, but Marietta

becomes pregnant and has their child on her own 18<sup>th</sup> birthday. She applies for welfare, and Martin is identified as the father. He is arrested and charged with statutory rape. He is offered a suspended sentence of one year, with payment of child support as a condition of probation.

Martin entered the U.S. on a tourist visa many years ago and now has no status. Marietta is a U.S. citizen. Martin mentions that he believes his father's mother was a U.S. citizen.

1. If Martin pleads to statutory rape, will that constitute the aggravated felony sexual abuse of a minor?

**It will be considered an aggravated felony, unless the Ninth Circuit reverses the BIA and goes against the trend in other federal courts.**

Will it help if he pleads to a misdemeanor?

**No. The BIA reversed its earlier ruling to hold that a misdemeanor sex offense can be an aggravated felony as sexual abuse of a minor. See Matter of Small in outline. The Seventh and Eleventh Circuits have ruled that misdemeanor statutory rape is an aggravated felony, and it is not clear how the Ninth Circuit will rule.**

What if he gets a suspended sentence of one year?

**A conviction for sexual abuse of a minor does not need to have any particular sentence imposed in order to be an aggravated felony.**

**A suspended sentence of one year is a one-year sentence for immigration purposes, and if the offense is characterized another way, e.g. as a crime of violence, the sentence would make it an aggravated felony under that category.**

2. If Martin pleads to simple battery against Marietta, will that constitute sexual abuse of a minor?

**It will not be sexual abuse of a minor. There is no element of either age or sexual intent in battery, so the offense cannot be construed to be sexual abuse of a minor no matter what the underlying facts.**

What if he gets a suspended sentence of one year?

**Battery is a crime of violence, and with a sentence of one year it would become an aggravated felony.**

3. If Martin pleads to misdemeanor false imprisonment or persuading a person not to file a police report under P.C. § 136.1(b), will that constitute sexual abuse of a minor?  
**No. The offense has no element of sex or age.**

What is he gets a suspended sentence of one year? **That would not make the offense an aggravated felony, because it does not fit the definition of a crime of violence or other category.**

4. Martin fears persecution if he returns to his home country. Can he apply for asylum? No, asylum is barred by AF conviction. **If he has a very strong case he might be able to apply for withholding or the CAT.**

In addition he is being abused by his U.S. citizen stepfather. Can he apply for VAWA relief? **No that too is barred by AF conviction.**

5. Martin and Marietta marry. Marietta files an adjustment of status petition for Martin. Since this aggravated felony is not a drug offense, do you think that there is a possibility that despite this conviction, Martin could be judged “admissible” and therefore be able to become a permanent resident through the marriage?

**Yes. If Martin’s goal is to be admissible, his problem is not that the conviction is an aggravated felony but that the conviction could make him inadmissible under the “crimes involving moral turpitude” ground. It is important to know that even though misdemeanor statutory rape is an aggravated felony, it still may be possible to immigrate through a relative’s visa petition.**

**The technical answer, which we will study in the next sections, is that Martin might be eligible to immigrate in one of two ways, despite his moral turpitude conviction. If he has only one moral turpitude conviction and it carries a maximum sentence of a year or less and a sentence of six months or less was imposed, he still is admissible. Or, since he was not a permanent resident at the time of conviction, even if he did not come within the petty offense exception he still could apply for a “212(h) waiver under 8 USC § 1182(h).**

Does Martin have any other possible immigration options?

**Martin’s grandparent may have been a U.S. citizen. It is possible that Martin unknowingly inherited citizenship through his grandparent and father. This should be checked out. The best thing would be to establish this before Martin has to make a plea. If he is a citizen he can accept the less serious (in terms of criminal law consequences) statutory rape charge, even though it is an aggravated felony for immigration purposes. Otherwise he may attempt to plead to a more serious charge like false imprisonment or offer to do additional time just to escape immigration consequences.**

**Exercise 3: Crimes Involving Moral Turpitude: Bonnie and Clyde**

**In 1991 Clyde was admitted to the U.S. on a tourist visa and overstayed. That same year Bonnie entered the U.S. without inspection, i.e. she was not “admitted.”**

1. They met, fell in love, got married, and in 1993 committed and were convicted of misdemeanor grand theft. This offense has a one-year maximum possible sentence. Imposition of sentence was suspended and they each were ordered to spend four months in jail as a condition of probation, and sentenced to three years probation. It was the first time either of them had committed a moral turpitude offense.

Does this conviction make Bonnie inadmissible? (Are the grounds of deportability relevant to her case?) Does his conviction make Clyde inadmissible or deportable? Is either conviction an aggravated felony?

**Bonnie is not inadmissible. This is her first CMT offense, it has a one year maximum possible sentence, and she was sentenced to less than six months, so she comes within the petty offense exception. Note that the grounds of deportability are not relevant to Bonnie at this time, because they do not apply to a person who never has been “admitted” to the United States. She is not an aggravated felon. That would require a sentence imposed of one year for a theft offense.**

**The conviction does not make Clyde inadmissible or an aggravated felon for the same reasons that Bonnie is not. However, the conviction does come within a ground of deportability. Clyde was admitted on a tourist visa in 1991. He committed a CMT offense within five years of admission (in 1993) and the offense carries a potential sentence of a year or more.**

2. In 1998 Bonnie and Clyde immigrated through Bonnie's naturalized U.S. citizen mother. In 1999 they committed another theft. Clyde was again convicted of misdemeanor grand theft, which has a one-year maximum possible sentence. Bonnie pled to petty theft with a prior, which has a six-month maximum sentence plus more than a year possible sentence enhancement. In both cases, imposition of sentence was suspended and they were ordered to spend four months in jail as a condition of probation.

Do these convictions make Bonnie or Clyde inadmissible or deportable? Is either conviction an aggravated felony?

**Both Bonnie and Clyde are now inadmissible. They have been convicted of two CMT's, so they no longer can qualify for the petty offense exception to the ground of inadmissibility.**

**Neither Bonnie nor Clyde is an aggravated felon. Neither has been sentenced to**

**one year for a single theft offense. Note that we do not add the four months from the 1991 offense to the four months from the 1998 offense to calculate the time; it must be a year imposed for a single conviction.**

**Clyde is deportable. He has been convicted of two offenses since his admission in 1991, which were not in a “single scheme of criminal misconduct.”**

**Bonnie ought not to be held deportable. She has not been convicted of two offenses since admission (she committed the first offense in 1993, before she was admitted). And she ought not to be held deportable for conviction of one CMT within five years of admission with a potential sentence of a year. She committed her 1999 petty theft offense within five years of admission, but California petty theft has only a maximum possible six-month sentence. The fact that an additional sentence enhancement can be added for “petty theft with a prior” does not change this. The Ninth Circuit en banc held that a person sentenced to a few years on a “petty theft with a prior” conviction did not have an aggravated felony as a theft with a one-year sentence imposed, because the additional time imposed by the sentence enhancement did not alter the fact that the offense of petty theft has only a potential six month sentence. See US v Corona-Sanchez in Note Guide. That same reasoning should apply here.**

3. Assume that removal proceedings are started against Clyde in 2003, based on his being deportable for a moral turpitude offense. If Clyde’s mother is willing to petition for him again so he can “re-immigrate,” would he be eligible to apply for “212(h) relief” to waive his moral turpitude convictions?

**No, he would be barred by the limits put on LPR applications for 212(h) relief. See 8 USC § 1182(h). Clyde must establish (a) that the offense is not an aggravated felony (he can establish this) and (b) that seven years passed between the date he became a permanent resident and the date removal proceedings were begun against him. That is the problem: there are only five years between his becoming an LPR in 1998 and the institution of removal proceedings in 2003.**

**Exercise 4: Crime of Violence, Theft, Domestic Violence, Firearms**

George is a British citizen who has been a lawful permanent resident since 1990. This is his pertinent history.

- C 1994 – George was convicted of misdemeanor assault against Carolina, his live-in girlfriend. He was sentenced to 30 days in jail.
- C 1996 – George marries Carolina. She entered the U.S. without inspection in 1993 and has no lawful immigration status.
- C 1997 – George was convicted of petty theft and sentenced to probation.
- C 2002 – George slapped Carolina, threatened her with a gun, and went into her car and took her purse that was lying there. He later came back to their apartment and found that the police were already there. Carolina attacked him with her fists as soon as he walked in.

Based on the 2002 incident, George faces the following charges and proposed sentences:

- C Petty theft with a prior, with a sentence of 16 months
- C Burglary of an auto, sentence of one year
- C Spousal abuse under P.C. 273.5, sentence of one year
- C Assault with a firearm, sentence of six months

Carolina faces a charge of misdemeanor spousal abuse because of her attack on George, with a sentence of probation and counseling.

In answering the following questions, consider *only* whether the conviction would be

- C **an aggravated felony (i.e., theft, burglary or a crime of violence with a one-year sentence imposed),**
  - C **a basis for deportability under the domestic violence or firearms ground, or**
  - C **a basis for deportability or inadmissibility under the moral turpitude ground.**
1. If George pleads as charged, what would be the immigration effect of each of these convictions in terms of the above categories. What alternate individual plea or general sentencing scheme might you propose to avoid this?

**A. Petty theft with a prior, with a sentence of 16 months**

**Petty theft with a prior with a sentence of 16 months is not an aggravated felony or a basis for deportation under the firearms or domestic violence grounds. The Ninth Circuit held that this offense is not an aggravated felony as a theft offense with a sentence imposed of a year or more, since under California law petty theft**

has a maximum possible sentence of only six months, and the additional sentence enhancement for recidivism is not added to come to a sentence of a year or more. US v. Corona-Sanchez (9<sup>th</sup> Cir. en banc 2002). If a 16-month sentence must be taken, this is not a bad choice. To be even safer, George might plead to two counts of theft with less than a one-year sentence on each, to run consecutively.

Theft is a crime involving moral turpitude. The new theft added to his 1997 theft offense would be two CMT's, which would make him deportable. To avoid this he would have to plead to some non-turpitudinous offense.

#### **B. Burglary of an auto, sentence of one year**

Burglary of an auto with a sentence of one year also might avoid the above-named penalties. Auto burglary is neither a crime of violence ( see Ye v. INS in Note Guide) nor a "burglary" offense (see U.S. v. Guerrero-Cruz in Guide). It is conceivable that a court would hold that auto burglary with intent to commit theft (as opposed to with intent to commit "any felony") is a "theft" aggravated felony if a one-year sentence is imposed. George should attempt to obtain a 364-day sentence or less rather than a year.

Burglary with intent to commit theft would be held to be a moral turpitude offense, but with intent to commit any other felony might not be. See Matter of Short, Int Dec 3125 (BIA 1989). However, see Baer v. Norene, 79 F.2d 340 (9<sup>th</sup> Cir. 1935). See discussion in *California Criminal Law and Immigration*, annotations regarding crimes involving moral turpitude.

#### **C. Spousal abuse under P.C. § 273.5, with a sentence of one year**

Spousal abuse is a domestic violence offense, and George will be deportable under that ground if convicted. See 8 USC § 1227(a)(2)(E), INA § 237(a)(2)(E). If he is not able to bargain the charge away (e.g., by taking more time on the burglary offense), he could offer to plead to an offense that does not involve violence such as misdemeanor false imprisonment or attempt to non-violently dissuade someone from filing a complaint under P.C. § 136.1(b)(1). As long as he does not plead to a crime of violence, he can accept domestic violence counseling as a condition of probation without turning the conviction into a "domestic violence offense" (e.g. accept it as a condition of the theft conviction).

Spousal abuse is a crime of violence. A sentence imposed of 364 days or less would avoid its becoming an aggravated felony. Spousal abuse is a crime involving moral turpitude, and added to his prior theft conviction will make George deportable.

#### **D. Assault with a firearm, sentence of six months**

A plea to assault with a firearm would make George deportable under the firearms ground. A plea to aggravated assault without a firearm under PC 245

**(a)(1) with a firearms enhancement would not make George deportable under that ground.**

**Because the victim was his wife, a conviction of assault with or without a firearm could be held to be a domestic violence offense, especially if the record of conviction showed that George and Carolina had that relationship. A domestic violence offense is a crime of violence committed against a current or ex-spouse, co-habitant, etc. Even if the record of conviction does not show the marriage relationship, in some cases immigration judges are permitting the INS to bring in other evidence to prove the relationship. George should attempt to have this charge dropped and plead to the auto burglary and theft charges instead.**

**California assault is a crime of violence, but without a one-year sentence imposed it would not be an aggravated felony. Assault with a firearm is likely to be held a crime involving moral turpitude and, joined with the prior theft conviction, make George deportable under that ground.**

2. What is the effect of George's 1994 conviction?

**George's 1994 conviction for assault against Carolina does not make him deportable under the domestic violence ground, because the conviction occurred before September 30, 1996. Otherwise, it might have been a basis for deportation under that ground depending upon the proof available that the victim was a cohabitating girlfriend. As a simple assault, it was not a crime involving moral turpitude.**

3. Do the grounds of deportability – including the domestic violence ground – apply to Carolina, who has never been admitted?

**Carolina does not have to worry about being deportable under the domestic violence ground. She entered the U.S. without inspection and therefore was never "admitted." The grounds of deportability only apply to people who have been admitted, and the domestic violence ground specifically says that the conviction must have occurred since admission. The practical meaning of this is that, whereas if Carolina were a permanent resident her criminal defense attorney would have as a high priority avoiding a crime of domestic violence, since Carolina is an undocumented person this is not that important and the attorney can look to other defense goals. But see "extra credit" note below.**

Extra credit: Is there any way that conviction of spousal abuse still would have impact on her immigration situation?

**The offense still could have a negative impact. Spousal abuse is a crime involving moral turpitude, so her attorney must do that analysis. (If this is her first offense and she is convicted of a misdemeanor with six months or less sentence, she will come within the petty offense exception to the ground of inadmissibility.) Further,**

while Carolina cannot actually be found deportable because she entered without inspection, there is one situation in which it still would hurt her just to have been convicted of an offense that listed in the grounds of deportability: if she is going to apply for cancellation of removal for non-permanent residents under 8 USC § 1229b(b). As someone who was abused by a U.S. citizen spouse, Carolina might be able to qualify for a green card under VAWA provisions of the immigration laws. Carolina's attorney must investigate the intricacies of VAWA, cancellation, and domestic violence and moral turpitude deportation grounds. For more information see the following explanation and *California Criminal Law and Immigration*, § 11.19.

### **Exercise 5: Eligibility for Relief in Immigration Proceedings**

What immigration application/s would you at least want to investigate if your clients were in the situations below?

1. Steve has had a green card for 10 years. He has a drug conviction that is not an aggravated felony. **Investigate cancellation of removal for LPR's, which can waive any offense but an aggravated felony for long-term permanent residents.**
2. Elisa has lived in the U.S. illegally for 15 years. She has twin daughters who are U.S. citizens who have a rare blood disease. **Investigation cancellation of removal for non-LPR's, which requires 10 years illegal presence and USC or LPR relatives who would face hardship if removed. There are strict requirements about criminal record.**
3. Mona and Monique are mother and daughter. They have been severely abused by Mona's permanent resident spouse. **Investigate VAWA relief for persons abused by USC or LPR parent or spouse.**
4. Alfredo is in delinquency proceedings. He's undocumented and has a disposition of drug trafficking, but basically is a good kid. He has been severely beaten by gang members. **Investigate the "U" visa for crime victims who participate in prosecution. This is one of the few forms of relief where the inadmissibility ground based on evidence of drug trafficking can be waived.**
5. Jamal is from Somalia, a visa overstay. He fears that if he goes back he will be killed, like the rest of his politically active family was. (Two possibilities.) **Jamal believes that no one can survive in Somalia at this time because there is no government at all in many areas. Investigate asylum/withholding by connecting Jamal with experienced immigration practitioner to see if he can show fear of persecution. Since Somalia is described as a basket-case country, see if it is listed as TPS.**
8. Sara has had a green card for many years. She is facing her first criminal charge ever,

for a small theft. She had hoped to apply for U.S. citizenship.

**An LPR of five years can apply for naturalization if she can show good moral character. Maybe Sara can avoid the good moral character bars and get citizenship. Otherwise she might be eligible for cancellation.**

6. Emile is in delinquency proceedings. He has a prostitution disposition. Because of the sexual abuse Emile endured at his home, the judge orders him to be placed in a group foster care home following completion of probation. **Investigate special immigrant juvenile status for children under juvenile court jurisdiction whom a court finds cannot be reunited with parents due to abuse, neglect or abandonment.**