

CRIMINAL-IMMIGRATION LAW PRIMER SERIES

CAIR Coalition Virginia Justice Program
www.caircoalition.org/vjp
January 19, 2016

“CRIME INVOLVING MORAL TURPITUDE”

What is a “crime involving moral turpitude” for immigration purposes?

“Crime involving moral turpitude” (CIME) is a term of art used in federal immigration law. It has no statutory definition. Courts have interpreted the term CIME broadly to require two essential elements: (1) reprehensible conduct and (2) some degree of scienter higher than negligence, whether specific, knowing, deliberate, willful, or reckless intent.¹ Generally, the Department of Homeland Security (DHS) considers the following to be CIME offenses: offenses that involve an element of fraud or intent to defraud;² offenses that involve theft or larceny with intent to permanently deprive;³ offenses with intent to inflict serious bodily harm or commit a lewd sexual act; offenses previously found by courts to be of morally offensive character such as murder, rape, incest, and prostitution; offenses with malice as an element; and attempt⁴ and aiding and abetting⁵ offenses that involve underlying CIME conduct.

Why do CIMEs matter?

Negative immigration consequences triggered by a CIME disposition may include: deportation;⁶ detention during the pendency of removal proceedings, often mandatorily without the opportunity to seek bond;⁷ inadmissibility – rendering a lawful permanent resident unable to travel internationally and undocumented persons unable to obtain lawful status in the future;⁸ ineligibility for certain defenses to deportation such as “cancellation of removal” for undocumented persons in the United States ten years or longer;⁹ and ineligibility to naturalize.¹⁰

When does a CIME trigger deportability or inadmissibility?¹¹

Understanding the immigration impact of a CIME requires a full understanding of your client’s criminal history and immigration history, including the date(s) she first and has since entered the United States and the date she obtained lawful status if applicable. Having obtained this information, consider the following guide to determine when a Virginia CIME disposition will trigger the grounds of deportability or inadmissibility. This guide assumes your client has no prior CIMEs or other removable convictions.

- Non-citizen’s first class 2, 3, or 4 misdemeanor CIME:
 - Does not trigger statutory immigration consequences.
- Non-citizen’s first class 1 misdemeanor CIME:
 - Triggers the grounds of deportability regardless of sentence if the date of the *commission* of the offense is within five years of the non-citizen’s lawful “admission” to the United States.¹² Determining the relevant date of admission is complex, be sure to identify dates of all entries to the United States.¹³
 - Triggers the grounds of inadmissibility if the sentence imposed – including suspended time – is greater than six months. This disposition will fall within the so-called “petty offense exception” to the CIME grounds of inadmissibility if the sentence is six months or less.¹⁴
- Non-citizen’s first felony CIME:
 - Like the first class 1 misdemeanor, triggers the grounds of deportability if the *commission* of the offense is within five years of the non-citizen’s lawful “admission” to the United States.
 - Always triggers the grounds of inadmissibility.
- Non-citizen’s second or subsequent CIME, regardless of whether a misdemeanor or felony:
 - Always triggers the grounds of deportability and inadmissibility because it will fall outside the “petty offense exception” to the grounds of inadmissibility and trigger the two-CIME ground of deportability. Note the “single scheme exception” to the two-CIME ground of deportability.¹⁵

VIRGINIA PRACTICE TIPS – CRIMES INVOLVING MORAL TURPITUDE

- ✓ In order to avoid a CIMT disposition, consider regulatory offenses such as Virginia Code § 18.2-119 trespass or § 18.2-416 using abusive language.
- ✓ A minor modification to the sentence imposed may mitigate the negative immigration consequences of a CIMT disposition. A plea to a class 2, 3, or 4 misdemeanor offense may avoid the CIMT grounds of deportability and inadmissibility entirely if it is the non-citizen's first CIMT disposition. A sentence of six months or less (including suspended time) on a non-citizen's first class 1 misdemeanor CIMT disposition will keep the offense within the "petty offense" exception to the grounds of inadmissibility, critical for lawful permanent residents intending to travel outside the United States and undocumented persons hoping to obtain lawful status in the United States. For lawful permanent residents or others lawfully present in the United States, obtaining a sentence of less than one year on a CIMT disposition may preserve eligibility for bond in immigration detention. (See n. 8.)
- ✓ Your client's immigration and criminal histories are particularly important when analyzing the impact of a CIMT. Be sure to ask your client when she first entered the United States and when she obtained lawful status, if any. Also remember that the date of the *commission* of the instant offense is necessary to determine if the CIMT grounds of deportability apply. Finally, identify if your client has any prior convictions that could be considered CIMTs. If your client has one prior CIMT, a conviction for one additional CIMT will make him or her deportable and inadmissible, regardless of the sentence.
- ✓ Remember that whether or not a conviction constitutes a CIMT, it may still trigger a variety of separate grounds of removal such as the grounds for aggravated felonies ([see Aggravated Felony Primer](#)), controlled substance offenses, crimes of domestic violence, firearm offenses, and more.

¹ See *Matter of Ortega-Lopez*, 26 I&N Dec. 99, 100 (BIA 2013). Generally, offenses involving negligence, strict liability, general intent, or intent to break the law are *not* CIMTs. See *id.*; *Matter of Perez-Contreras*, 20 I&N Dec. 615, 619 (BIA 1992).

² See *Jordan v. De George*, 341 U.S. 223, 227-32 (1951); *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992).

³ See *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006); *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973).

⁴ See *Matter of Vo*, 25 I&N Dec. 426, 427, 2011 WL 796044 (BIA 2011).

⁵ See *Matter of Short*, 20 I&N Dec. 136 (BIA 1989); *Matter of F-*, 6 I&N Dec. 783 (BIA 1955).

⁶ 8 USC § 1227(a)(2)(A)(i).

⁷ 8 USC § 1226(a) and (c). A CIMT disposition that triggers the CIMT grounds of inadmissibility or deportability will also trigger mandatory immigration detention with no opportunity to seek bond while removal proceedings are pending. The only exception to this is a CIMT disposition for a non-citizen facing only the grounds of deportability where the sentence imposed – including suspended time – is less than one year. 8 USC § 1226(c)(1)(C).

⁸ 8 USC § 1182(a)(2)(A)(i)(I).

⁹ See, e.g., 8 USC § 1229b(b)(C).

¹⁰ 8 CFR § 316.2(a)(7).

¹¹ The grounds of deportability at 8 USC § 1227(a)(2) apply to those who have been lawfully admitted to the United States, such as lawful permanent residents. The grounds of inadmissibility at 8 USC § 1182(a)(2) apply to those "seeking admission" to the United States, including those attempting to adjust their status to lawful permanent residence and lawful permanent residents seeking to return to the United States after traveling abroad.

¹² 8 USC § 1227(a)(2)(A)(i)(I)-(II).

¹³ For example, for a noncitizen who entered on a visa and then obtained lawful permanent residence here, the date of admission is the first lawful entry, not the date the green card was obtained. *Matter of Alyazji*, 25 I&N Dec. 397 (BIA 2011).

¹⁴ 8 USC § 1182(a)(2)(A)(ii)(II).

¹⁵ 8 USC § 1227(a)(2)(A)(ii).