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MEMORANDUM

Date: November 4, 2018

Client: [NAME], Esq.

From Daniel E. Jackson

Re: Immigration Law Analysis of Criminality for NACARA & Non-LPR Cx Application

INTRODUCTION AND OVERVIEW

1. This memorandum is prepared for the use of [NAME], Esq. in her representation of her client in immigration proceedings. Ms. [NAME] has free and full permission to use the information provided within this memorandum as she pleases, however, the author accepts no liability beyond its intended recipient, Ms. [NAME].

CASE INFORMATION

I. YOU ARE

- [NAME]
- _____
- _____
- _____

II. YOUR CLIENT

- Nicaraguan citizen
- Client entered EWI from El Salvador on _____when he was 13 years old. He was born on _____.
- At the time his mother was granted LPR status in 2003 he was under 21. He was 20 years old.
- Ordered removed from the United States on 05/18/2005 he came back to the US the same month (he was not stopped at the border) He admitted he paid a coyote.
- He was removed a second time on 02/29/2012 his previous order was reinstated he came back to the US the same month (he was not stopped at the border) He admitted he paid a coyote.
- In 2018 he was again submitted to ICE due to the reinstatement order. You applied for withholding and asylum for him. He failed his credible fear interview. He was referred to see a judge. You argued he was eligible for NACARA. The reinstatement order was withdrawn by Immigration and a new NTA was issued last year 2018. You were able to get him out with a bond.

REQUIREMENTS FOR NACARA DERIVATIVE ELIGIBILITY

I. NO STOP TIME RULE APPLIES

2. Time does not stop with the service of an NTA (or order to show cause) or with the commission of a crime; an application for NACARA is a continuing one. IRAIRA § 309(f)(1), added by NACARA § 203(b). See also, Matter of Garcia 24 I&N Dec. 179 (BIA 2007) But see, *Cuadra v. Gonzales*, 417 F.3d 947 (8th Cir. 2005) Aragon-Salazar v. Holder, 10/2/2014 (9th Cir).

3. I highly recommend reading *Matter of Garcia* in full, as it is really helpful.

4. Applicants need to prove that they have been physically present in the US and have been a person of good moral character for at least 7 years at the time of adjudication.[1]

II. HIS PRIOR DEPORTATION IS NO PROBLEM

5. An executed an order of removal or deportation – even if they have departed the US and subsequently reentered illegally is no bar to NACARA.[2]

III. BARS TO NACARA THAT ARE NOT APPLICABLE TO YOUR CLIENT BASED ON STATED INFORMATION

6. False testimony for an immigration benefit and fraud, including marriage fraud, do not bar an applicant from NACARA eligibility but will render them unable to show good moral character during the statutory period.[3]

7. Crewman, nonimmigrant exchange aliens, applicants inadmissible or deportable under security grounds and those previously granted suspension of deportation are ineligible for NACARA.[4]

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[1] IRAIRA § 309(f)(1), added by NACARA § 203(b); 8 CFR § 240.66(b)

[2] New section 309(h) of IRAIRA, added by Section 1505 of the LIFE Amendments. **See also**, Memo of Joseph Langlois, Director, Asylum Division: Implementation of Amendment of the Legal Immigration Family Equity Act (LIFE) regarding applicability of INA section 241(a)(5) (reinstatement) to NACARA 203 beneficiaries (2/22/01).

[3] INA § 101(f)(6)

[4] 8 CFR 240.66(a)

8. Applicants who fail to appear at a removal hearing or fail to comply with a voluntary departure order are ineligible for NACARA.[5]

9. Applicants who have been habitual drunkards and those otherwise precluded from establishing good moral character are unable to demonstrate eligibility for NACARA until seven years have passed since the event(s) which render them unable to establish good moral character.[6]

10. Drug addicts and drug traffickers are not eligible for NACARA but former drug addicts and drug traffickers may be able to demonstrate eligibility for heightened standard NACARA.[7]

11. Applicants who have provided material support to a terrorist group or have participated in the persecution of others are not eligible for NACARA benefits.[8]

IV. NACARA AND CRIMINALITY

12. Under 8 CFR 240.65(b)(1)-(2), you must establish that you are a person of good moral character for the 7 years preceding the date the application was "filed" (which actually means 7 years preceding the determination date, per Matter of Garcia 24 I&N Dec. 179 (BIA 2007).

13. Under 8 USC 1101(f)(3) [INA 101(f)(3)], if you are a person who falls within the following classes, ***even if it does not technically make you inadmissible***, you are barred from GMC

> "a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D) [anything to do with ***prostitution and commercialized vice in the prior 10 years***], (6)(E) [***alien smugglers at any time***], and (10)(A) [***practicing polygamists***] of section 1182(a) of this title; or subparagraphs (A) [***1 x CIMT or 1 x CSO***] and (B) [***5 year aggregate incarceration***] of section 1182(a)(2) of this title and subparagraph (C) [***reason to believe drug trafficker***] thereof of such

[5] 8 CFR 240.66(a)

[6] **See**, INA § 101(f). Alcoholics and those with DWI convictions are not necessarily "habitual drunkards". *See, Matter of H*, 6 I&N Dec. 614 (BIA 1955).

[7] 8 CFR §240.65(c)

[8] INA § 241(b)(3)(B)(I); INA § 212(a)(3)(B). Recent the government provided an exemption from the material support bar to applicants who provided certain types of support to the FMLN during the civil war in El Salvador and those who provided an "insignificant" amount of material support to a terrorist organization. 78 Fed. Reg 24225 4/24/13 and 79 Fed. Reg 6913 (2/5/14)

> section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

14. NACARA spouses and children are eligible to apply for heightened standard NACARA (i.e. exceptional and extremely unusual hardship) once ten years has passed since the event or commission of the crime which renders them inadmissible or removable.[9]

15. Applicants who enter without inspection are subject to the grounds of inadmissibility at Section 212 of the INA and applicants who enter with inspection are subject to the grounds of removability at Section 237 of the INA.[10]

[9] IRAIRA § 309(c)(5)(C), amended by NACARA § 203(a); 8 CFR §240.65(c)

[10] 8 CFR 240.66(b)(1); **See also**, Memo from Joseph Langlois, Chief Asylum Division: Changes to NACARA Lesson Plan and Quality Assurance Review Categories (9/6/07), *See also, Reyes v. Holder* 714 F.3d 731 (2nd Circuit, 2013)

IMMIGRATION ANALYSIS

I. GENERAL CONCERNS; YOUR BURDEN OF PROOF

16. Under 8 USC 1361, your client has a burden of proof to establish eligibility for all forms of relief. As such, regardless of any criminal disposition, we still need to be concerned with the grounds of admissibility triggered by conduct or admission.

17. Because DHS is already aware of the arrests, it is inevitable that you will need to address it; including your client providing an account of what actually happened.

18. Whether he admits to all material elements would be governed by *Matter of C, 1* I&N Dec. 14 (BIA AG 1940), but they would have to be very specific about the mental elements of the offense for admissibility to be triggered. For example: Q "Did you assault her" A: "yes" would probably not be enough; it would need to be an exchange more like a detailed plea colloquy, going through the specific mens rea and actus reus.

19. However, he can definitely expect to be asked; the arrest and charges (which do not necessarily count as a *conviction* for a CIMT) have already made their way to the NCIC database, which DHS has access to, as shown by the fact that they have produced the RAP sheet as evidence.

20. As such, he will be required to answer ***any*** questions if asked about the ***details*** of what happened. The concern is then that, even though he has a good disposition that is not a ***conviction*** for a CSO or CIMT, that he:

1) Is asked questions about what happened and refuses to answer (he will therefore be denied entry on the basis that he failed to meet his burden). Even if he is too vague about what actually happened, the IJ could rightfully hold that he simply failed to meet his burden;

2) He answers and admits to the material elements of a CSO, even though he was not convicted of one (and then he has made himself criminally inadmissible); or

3) He lies, which is both a federal crime and will make him separately inadmissible for immigration fraud.

21. We will go through each criminal episode in turn:

II. FALSE PERSONATION – [DATE] ARREST

A. CHARGES & DISPOSITION

- Charged with PL 190.23 (B Misd) False Personation.

- Case Dismissed [DATE] pursuant to NYPL 170.30(f) which states that:

> After arraignment upon an information, a simplified information, a prosecutor's information or a misdemeanor complaint, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that:
>
> […]
>
> (f) There exists some other jurisdictional or legal impediment to conviction of the defendant for the offense charged."

- As such, this disposition is ***potentially*** consistent with your client being guilty as charged, but some procedural error prevented his conviction. **As such, you will have an (informally) heightened burden to disprove the conduct.**

B. ADMISSIBILITY

1. ADMISSIBILITY BASED ON DISPOSITION

22. A dismissal on any grounds does not constitute a "conviction" under INA 101(a)(48)(A); there has been neither a formal adjudication of guilt, nor a withholding of an adjudication of guilt.

2. ADMISSIBILITY BASED ON *POTENTIAL* TESTIMONY

23. You have relayed that your client's account is essentially that he was in possession of a real passport which was found during a criminal search of his property, but that due to a clerical error on the part of his government, his passport misstated his year of birth by one year. As such when he was stating that he was born in one year, but the police who were reviewing the passport thought it was another, it made sense that they thought he was lying to them. It was instead, a simple misunderstanding.

24. ***Assuming this is a truthful account, not subject to impeachment***, this incident would not constitute turpitudinous conduct; it is simply a (realistic), explainable error.

a) <u>If He Really Did Commit the Crime of False Personation…</u>

25. You can argue that the minimum conduct of the offense (which again, is subject to a categorical approach analysis) still does not constitute a CIMT.

26. In particular, the statute does not require that defendant intend to hinder performance of official duties or impair government function. *See In re Travis S.*, 685 N.Y.S.2d 886, 889 (N.Y. Fam. Ct. 1999) ("[T]he statute itself contains no limiting language in regard to the purpose for which an inquiry about a person's name, address or date of birth can be made. There is no language in the statute which restricts an officer's inquiry about a person's name, address or date of birth to situations affording him or her a lawful right to inquire"), aff'd, 96 N.Y.2d 818 (2001).

27. In contradistinction, the BIA has held *Matter of Jurado*, 24 I&N Dec. 29 (BIA 2006) that only because "the perpetrator must make misleading statements ***with an intention to disrupt the performance of a public servant's official duties***." (emphasis added) was the crime in question a CIMT. *Ibid* at 35.

28. Basically, in NY law, you can knowingly misrepresent your address with the intent to prevent the police from ascertaining that information. There is no requirement that you must do it with an intent to disrupt their duties.

C. GOOD MORAL CHARACTER

1. GMC BASED ON DISPOSITION OF CRIMINAL CASE

29. Just like admissibility, the disposition would not trigger the statutory or discretionary bars to GMC. The arrest, and the incident at large can (and thus forms another basis why evidence of what really happened is necessary for your client to meet their burden for relief).

2. GMC BASED ON POTENTIAL TESTIMONY

1. The identical considerations to admissibility apply to GMC; as such, see above.

2. In addition, any suggestion that he lied about his date of birth, or intentionally procured a foreign passport with an incorrect DOB could absolutely be used against him in a discretionary GMC determination. This is even if it specifically does not disclose a crime or other ground of inadmissibility.

3. Your client's narrative – because it both accords with the arrest report, ***and*** believable provides an innocent explanation as to why he has a passport with the wrong DoB should not pose a problem.

III. CRIMINAL POSSESSION OF A WEAPON & MENACING

A. CHARGES & DISPOSITION

- Arrested [DATE]. Charged with:
    - PL 265.02(01) Criminal Possession Weapon 3rd [Committing CPW 3rd having previously been convicted of a crime]
    - PL 120.14(01) Menacing-2nd [intentionally places or attempts to place another person in reasonable fear of physical injury by deadly weapon or dangerous instrument]
    - PL 265.01 Criminal Possession of a Weapon 4th **[UNKNOWN SUBSECTION PER THE CERT OF DISPOSITION]**
- Case Dismissed [DATE] ***and*** [DATE] pursuant to NYPL 170.30(e) which states that:

> After arraignment upon an information, a simplified information, a prosecutor's information or a misdemeanor complaint, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that:
>
> […]
>
> (e) The defendant has been denied the right to a speedy trial;"

- As such, this disposition is ***potentially*** consistent with your client being guilty as charged, but some procedural error prevented his conviction. **As such, you will have an (informally) heightened burden to disprove the conduct.**

B. ADMISSIBILITY

1. ADMISSIBILITY BASED ON DISPOSITION

30. A dismissal on any grounds does not constitute a "conviction" under INA 101(a)(48)(A); there has been neither a formal adjudication of guilt, nor a withholding of an adjudication of guilt.

31. ***HOWEVER***, I do not understand the certificate of conviction, and you should expect to get questions about this. Specifically, how Count 1 [CPW 3rd] could have been disposed of on [DATE] by reducing it to Count 3 [CPW 4th] when that was dismissed on a 30.30 speedy trial motion in July 2018 – 3 months later.

2. ADMISSIBILITY BASED ON *POTENTIAL* TESTIMONY

32. As discussed, your client has a burden to show that they are not inadmissible.

33. The felony complaint states alleges that he committed CPW 3rd (i.e. CPW 4th but you have previously been convicted of a crime). CPW 3rd is ***not*** necessarily turpitudinous – it only requires strict liability, simple possession of a knife, having previously been convicted of any crime.

34. ***However***, the felony complaint alleges he:

- Used an 8 foot railing to strike the victim in the face
- Stuck the victim in the face with a closed fist
- Yelled at the victim making her fear for her safety

35. Each of these, if he admitted to them, could be the material elements of a CIMT (such as intentional assault).

36. Additionally, he is alleged to have committed Menacing 2nd, which – if admitted – is ***very very likely to be a CIMT*** (intentionally placing someone in fear of physical injury by displaying a deadly weapon etc.)

37. You have informed me that his account is essentially:

- He was very unreasonable/loud/unpleasant during this incident (which explains why the police got called)
- His partner made accusations against him (which were understandable because he was being horrible/unreasonable) which were not true
- The police believed his partner (which is understandable because he really was being unpleasant) and consequently charged him; ***BUT***

- He did not actually commit any of the violent acts alleged, as shown by the fact that his partner (1) did not press charges, and (2) is in court with you today.

38. Assuming you survive cross examination, an account like this should be good enough to navigate admissibility, but be aware that you will be met with a heavy dose of skepticism. Unlike the false personation charge, his explanation for this arrest is that the complaining witness was incorrect/not telling the truth.

C. GOOD MORAL CHARACTER

1. GMC BASED ON DISPOSITION OF CRIMINAL CASE

39. Because everything appears to have been dismissed, no GMC triggers based on the disposition.

2. GMC BASED ON POTENTIAL TESTIMONY

40. Both menacing ***and*** CPW 3rd *could* give rise to a GMC bar.

41. You are helped in this instance by the fact that the only evidence submitted is (1) your client's partner, who, through her presence in support is essentially recanting her testimony and (2) unlike the false personation charge, the information in support is all hearsay because it recounts only the girlfriend's account, not the officer's independently witnessed conduct.

42. ***BUT***, in order to prevail, your client will have to essentially convince the IJ that nothing turpitudinous happened. This is problematic based on the complaint and criminal information, which clearly talk about him pushing her to the ground, causing her knee to be scratched (which sounds an awful lot like assault 3rd, sub 1 – a CIMT).

43. This will be a fact intensive inquiry, but any failure to rebut a suggestion that he committed violent acts against her would cause his application for relief to fail.

IV. ROBBERY & PETIT LARCENY

A. CHARGES & DISPOSITION

- Arrested on [DATE]. Charged with
    - Robbery 2nd sub 2 NYPL 160.10(2) [forcibly steals property causes injury ~~or displays firearm~~]

- Petit Larceny NYPL 155.25 [stole beer from a beer store]

- Pled guilty to Petit Larceny on [DATE].

- Sentenced to time served plus 3 years probation on [DATE]

- ***Resentenced*** to 8 months on [DATE] based on a violation of probation

B. ADMISSIBILITY

1. ADMISSIBILITY BASED ON DISPOSITION

a) Petit Larceny – Conviction Disposition

44. In short, the BIA changed the rules on what counts as a CIMT regarding theft offenses in 2016. Before 2016, crimes used to require intent to permanently deprive as an element. After 2016, it changed to a "substantial erosion" of property rights as being sufficient.

45. NY petit larceny does not require the intent to permanently deprive. As such, petit larceny's before 2016 should not be a problem. ***HOWEVER***, DHS' position regarding petit larceny NYPL 155.25 after the 2nd Circuit's March 2018 decision in *Obeya v. Sessions*, 884 F.3d 442 ***can be super aggressive***.

46. Even though *Obeya* essentially said that pre-2016 NY larcenies were not CIMT, their argument goes as follows:

- In 1996, whether or not petit larceny was a CIMT was controlled by *Matter of Grazley* 14 I&N Dec. 330 (BIA 1973). They say the implications of this case, (and thus the controlling law at the time) was as follows:
  - It is only a CIMT if permanent deprivation was intended;
  - The Canadian statute in Grazley said you commit a theft if you take something with intent to "to deprive, temporarily or absolutely"
  - Whereas *DesCamps*/*Moncrieffe*/*Mathis* would read that as indivisible, back in 1973, Grazley interpreted that as divisible and applied a modified categorical approach;
  - NY Petit Larceny is the same as the Canadian case at issue in Grazley

- As such, you can look behind the record – even potentially beyond what would later be known as *Shepard* documents to see whether the defendant's actual intent was for a permanent or temporary deprivation.

- In particular, the nature of the items stolen would be sufficient to show intent one way or another (e.g. cash/shoplifting = presumed intent to permanently deprive)

- As such, they say that for convictions before 2007, they can full on look at whether you had intent to permanently deprive or not.

- They agree that in 2007, the law was changed by *Wala v. Mukasey*, 511 F.3d 102, (2d Cir. 2007). They agree that it would NOT be a CIMT unless (in a *Shepard* document) you "admit to, [are] charged with, [or] required to plead to a permanent taking in order to be convicted" *Id*. At 109.

- HOWEVER, for cases between 2007 and 2013, they argue that if there is something in the Shepard documents showing there actually was intent to permanently deprive, it would be a CIMT.

- They seem to agree that for cases after 2013 but before November 16, 2016, that Descamps + Obeya (2018) = not a CIMT.

47. They argue that you cannot rely on the current version of categorical approach, because these were not retroactive. They cite to *Garfias-Rodriguez v. Holder*, 702 F.3d 504 (9th Cir. 2012) to argue that an alien cannot rely on later decisions that are favorable to him which did not exist at the time of the conviction. They also highlight the *Padilla* was not retroactive, so the categorical approach "created" in *Descamps/Moncrieffe/Mathis* cannot be either.

48. Obviously this argument fails to differentiate between the fact that *Padilla* was acknowledging a new substantive right in light of factual developments in the importance of deportation proceedings, whereas *Descamps/Moncrieffe/Mathis* are required methods for interpretation of existing laws.

b) Robbery - Dismissal Disposition

49. This count was dismissed. A dismissal on any grounds does not constitute a "conviction" under INA 101(a)(48)(A); there has been neither a formal adjudication of guilt, nor a withholding of an adjudication of guilt.

2. ADMISSIBILITY BASED ON *POTENTIAL* TESTIMONY

50. My guess is that they will try to (1) get your client to admit to acts which constitute robbery, and (2) get your client to admit to stealing ***fungible*** property.

51. If he admits to the crime he was charged with (robbery), he has pretty much definitely admitted to / the material elements of a CIMT. *Brett v. Immigration & Naturalization Serv*.[11], 386 F.2d 439 (2d Cir. 1967).

52. However, if he is able to (1) credibly testify / rebut what will be an informal presumption that he committed robbery and (2) avoid admitting he had the intent to permanently deprive the owner of whatever he stole (or otherwise show that the thing he stole was not in fact fungible/shoplifting, thus undermining a potential *Grazley* argument), then he can potentially avoid making himself inadmissible.

53. Otherwise, assuming theft/CIMT is your only issue, then because the superior court information – which is a *Shepard* document because he consented to it prior to his plea – states he stole "beer", an inherently fungible chattel, then it is likely you will have to argue against the government's legal premise.

C. GOOD MORAL CHARACTER

1. GMC BASED ON DISPOSITION OF CRIMINAL CASE

54. Same as above on admissibility; the government may argue *Grazley*, you should argue that the (contemporary) categorical approach applies.

2. GMC BASED ON POTENTIAL TESTIMONY

55. Basically the same, but you will need to be more careful not to accidentally admit to becoming a member of the class included within inadmissibility.

[11] I am just using this case as an example, there are a tonne of more recent ones.

V. LEAVING THE SCENE OF AN ACCIDENT

A. CHARGES & DISPOSITION

THE DOCUMENTS I RECEIVED ARE INSUFFICIENT TO DO A PROPER ANALYSIS. THIS IS CONSEQUENTLY LACKING IN DETAIL.

- Arrested [DATE]. Charged with:
    - VTL 0600 02A [having cause to know that personal injury occurred] Leave Accident AM
    - VTL 0600 01 [give details after any accident] operator leaves scene of accident Infraction covered by 1
    - VTL 0509 01 License violation Infraction [No License; Strict Liability] Adjudicated YO-Imprisonment
- Sentence: Adjudicated YO (Conditional Discharge 1 year) (Time Served)

B. GENERAL CONSIDERATIONS: CRIMES OCCURRED MORE THAN 10 YEARS AGO

56. NACARA spouses and children are eligible to apply for heightened standard NACARA (i.e. exceptional and extremely unusual hardship) once ten years has passed since the event or

57. commission of the crime which renders them inadmissible or removable.[12] Likewise, this is outside the statutory lookback period for Non-LPR Cx.

C. ADMISSIBILITY

1. ADMISSIBILITY BASED ON DISPOSITION

58. A New York Youthful Offender disposition of any criminal charge does not constitute a conviction for immigration purposes. *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000). As such, provided all of these offenses were YO'd, he has not been *convicted* of a CIMT, regardless of the underlying offense.

[12] IRAIRA § 309(c)(5)(C), amended by NACARA § 203(a); 8 CFR §240.65(c)

2. ADMISSIBILITY BASED ON *POTENTIAL* TESTIMONY

59. If he committed the conduct in VTL 600(2)(a) [personal injury has been caused to another person; fails to stop] he ***could*** be inadmissible. But, there would be a very strong argument that – even if he did in fact admit all of the elements, it still would not constitute a CIMT:

60. Minimum conduct: failing to give insurance details (as opposed to taking a person you injured to the hospital). Inherently a regulatory / *malum prohibitum* offense, and not one of intentional reprehensible conduct.

61. In contradistinction, The Board has defined recklessness as "a conscious disregard for a substantial risk" but has held that this is a sufficient mental state for a CIMT only where "a crime resulting in injury to the victim already had occurred." *Matter of Torres-Varela*, 23 I & N Dec. 78, 89 (BIA 2001) (Rosenburg, concurring) (referencing *Matter of Wojtkow*, 18 I&N Dec. 111 (BIA 1981) (NY second degree manslaughter committed recklessly is a CIMT) and *Matter of Medina*, 15 I & N Dec. 611 (BIA 1976) (Illinois aggravated assault committed recklessly is a CIMT)); see also *In re Solon*, 24 I&N Dec 239, Interim Decision, (BIA 2007) ("…as the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude.").

62. While more recent Board precedent has expanded the instances where reckless conduct might qualify as a CIMT, those cases have involved statutes with language requiring a showing that the reckless behavior could result in substantial bodily harm or death. *See, e.g., Matter of Hernandez*, 26 I & N Dec. 464 (BIA 2015) (finding that the Texas crime of "deadly conduct" for "recklessly engag[ing] in conduct that places another in imminent danger of serious bodily injury" is a CIMT); *Matter of Leal*, 26 I & N Dec. 20 (BIA 2012) (finding that the Arizona offense of "recklessly endangering another person with substantial risk of imminent death" is a CIMT)).

63. Because failure to report does not require a showing of actual, intentional injury to a victim (only "cause to know that personal injury has been [accidentally] caused"), recklessness is not a sufficient *mens rea* to transform NY VTL § 600(2)(a) into a CIMT, even if they can get beyond the YO disposition.

OTHER CONSIDERATIONS

64. I spotted the following issues going through the documents you provided. I would recommend looking into them in more detail in preparation for trial:

I. RFI ANSWERS "NO" TO HAVE YOU COMMITTED CRIMES

65. E.g. p.7 of the RFI, he apparently states he has not committed crimes.

II. UNKNOWN AMOUNT OF TIME INCARCERATED

66. Careful of 212(a)(2)(B) - does he have 5+ years aggregate incarceration (which would render him inadmissible)?

III. CANNOT READ THE ORDER OF PROTECTION

67. Unsure who it is in favor of. Presumably there have been no breaches of an OOP found by a state judge? *Matter Of Strydom*, 25 I&N Dec. 507 (BIA 2011) deals with what is a sufficient breach (everything). *Matter Of Obshatko*, 27 I&N Dec. 173 (BIA 2017) discusses what analytical approach to take (basically, any evidence of what the state-law judge said).

IV. THIS ADVISAL IS PROVIDED FOR SPEED; IT IS NOT COMPLETE

68. For clarity, I have put as much together as I can to get it to you before the trial tomorrow. If the hearing goes over, or is otherwise continued, I would love to give you additional input because this is not a finished product. If you have any questions in the meantime though, please don't hesitate to give me a call! - Dan

Daniel Jackson