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A CRIMINAL conviction for a firearm offense may affect an alien's immigration status or his eligibility for relief. The immigration consequences of a firearm conviction would depend on the status of the alien.

If an alien is applying for a visa or for lawful permanent resident (LPR) status, a firearm conviction would not necessarily disqualify the alien because this conviction is not a ground for inadmissibility under INA 212(a), unless it is also classified as a crime involving moral turpitude (CIMT). If an alien is applying for LPR status through adjustment, a firearm conviction may be considered, not as a ground for inadmissibility under INA 212(a), but as a factor to be weighed in the exercise of the adjudicating officer's discretion due to the nature of adjustment as a discretionary form of relief.

If an alien is already an LPR, a firearm conviction may trigger his removal. A firearm conviction may fall into three possible grounds for removal: (1) aggravated felony under INA 237(a)(2)(A)(iii); (2) certain firearm offenses under INA 237(a)(2)(C); or (3) CIMT under INA 237(a)(2)(A)(i).

Let's start with aggravated felony. INA 101(a)(43) identifies several offenses that would constitute aggravated felonies. A firearm conviction may fall into three possible categories of aggravated felonies under the following provisions: (1) INA 101(a)(43)(C) for illicit trafficking in firearms; (2) INA 101(a)(43)(E) for offenses described in certain sections of 18 USC 922, 18 USC 924 or 26 USC 5861; or (3) INA 101(a)(43)(F) for a crime of violence with a prison term of at least one year.

Examples of aggravated felony firearm offenses under INA 101(a)(43)(E), include, among others: (1) the possession of a firearm by a convicted felon,

Immigration consequences of firearms convictions

fugitive, drug addict, mentally ill person, or illegal alien, which is punishable 18 USC 922(g)(1-5); or (2) the transfer of a firearm with knowledge that it will be used to commit a crime of violence or a drug trafficking crime, which is punishable under 18 USC 924(h)

A firearm conviction with a prison term of at least one year may also constitute an aggravated felony crime of violence under INA 101(a)(43)(F). 18 USC 16 defines a crime of violence as: (a) an offense that has as an element the use, attempted or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

In *Bolanos v. Holder*, 734 F.3d 875 (9th Cir. 2013), the Ninth Circuit held that a conviction for brandishing a firearm in the presence of the occupant of a motor vehicle in violation of California Penal Code (PC) 417.3 is a crime of violence under 18 USC 16(a) and thus an aggravated felony. The Court found that PC 417.3 has an element of the threatened use of physical force against another person because a conviction under this provision requires the intentional display of a firearm in a threatening manner, proximity of the armed person to the victim, and the creation of a reasonable fear of bodily injury.

Aside from aggravated felony, a firearm conviction may also constitute a ground for removal under INA 237(a)(2)(C). This provision states that an alien is deportable if convicted under any law that punishes the purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, any firearm or destructive device. In *Valerio-Ochoa v. INS*, 241 F.3d 1092 (9th Cir. 2001), the Court interpreted INA 237(a)(2)(C) as broad enough to

include a whole range of firearm offenses. It held that a conviction under PC 246.3 for willfully discharging a firearm in a grossly negligent manner was a removable offense because "discharging" a firearm qualified as "using" a firearm under INA 237(a)(2)(C).

However, in *US v. Aguilera-Rios*, 769 F.3d 626 (9th Cir. 2014), the Court held that a conviction under PC 12021(c)(1) is not a removable offense under INA 237(a)(2)(C). When a state criminal conviction is used as basis for removal, the courts often compare the elements of the state statute with the federal statute. If the two statutes match, then the state offense may be used as basis for removal. PC 12021(c)(1) punishes anyone who owns, purchases, receives, or has in possession or under custody or control, any firearm within ten years of a prior conviction for certain misdemeanors. INA 237(a)(2)(C) refers to similar conduct but exempts offenses involving antique firearms. PC 12021(c)(1) does not recognize an exception for antique firearms and California actually prosecutes such cases. Thus, since California prosecutes antique firearm offenses under PC 12021(c)(1), this state offense does not match INA 237(a)(2)(C).

Lastly, a firearm offense might constitute a CIMT but, in *Navarro-Lopez v. Gonzales*, 503 F.3d

1063 (9th Cir. 2007), the Ninth Circuit observed that no court has ever found possession of a weapon to be a CIMT. A crime that does not involve fraud would be a CIMT if it involved intent to injure, actual injury, or a protected class of victims.

Charles Medina practices immigration law. Visit his website at medinalawgroup.net for more details. This article provides general information only and does not provide legal advice on any specific matter or predict the outcome of any legal matter. It does not invite or create an attorney-client relationship.

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