

Module 4: Criminal Removability with the Categorical and Modified Categorical Approach

A Very Simplified Flowchart of Analysis

Figure 1.

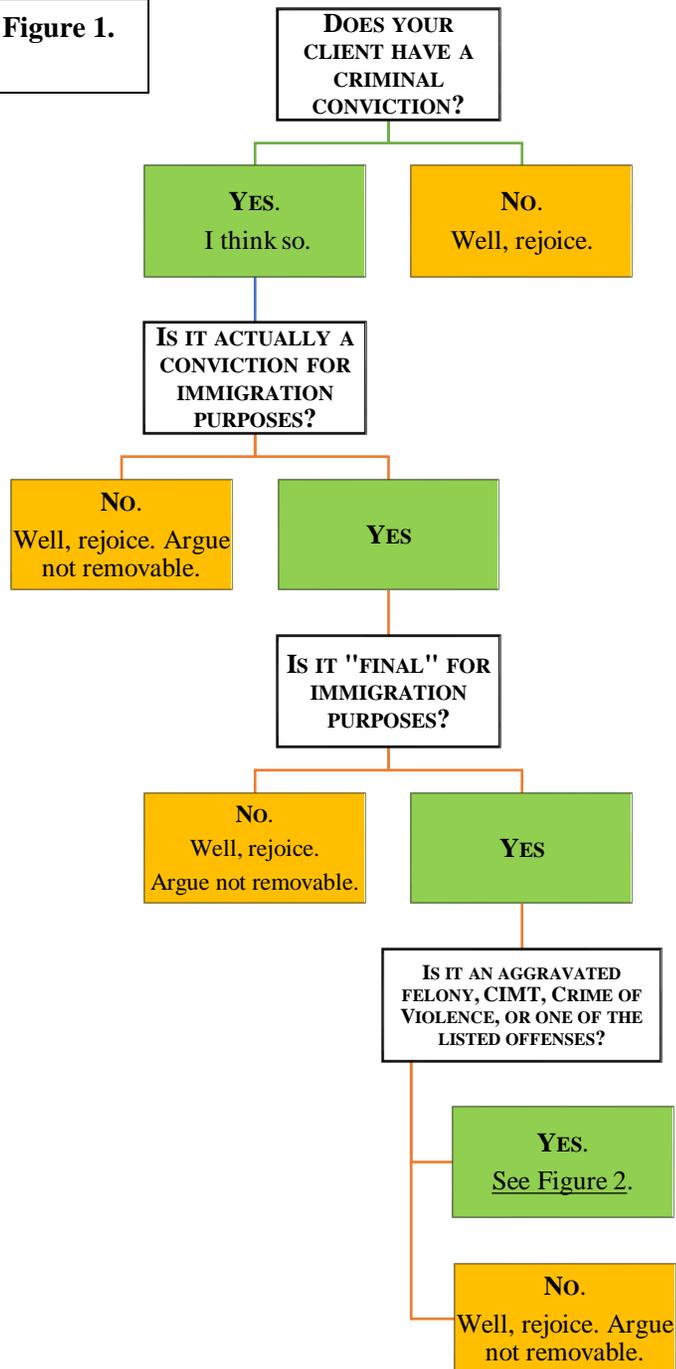
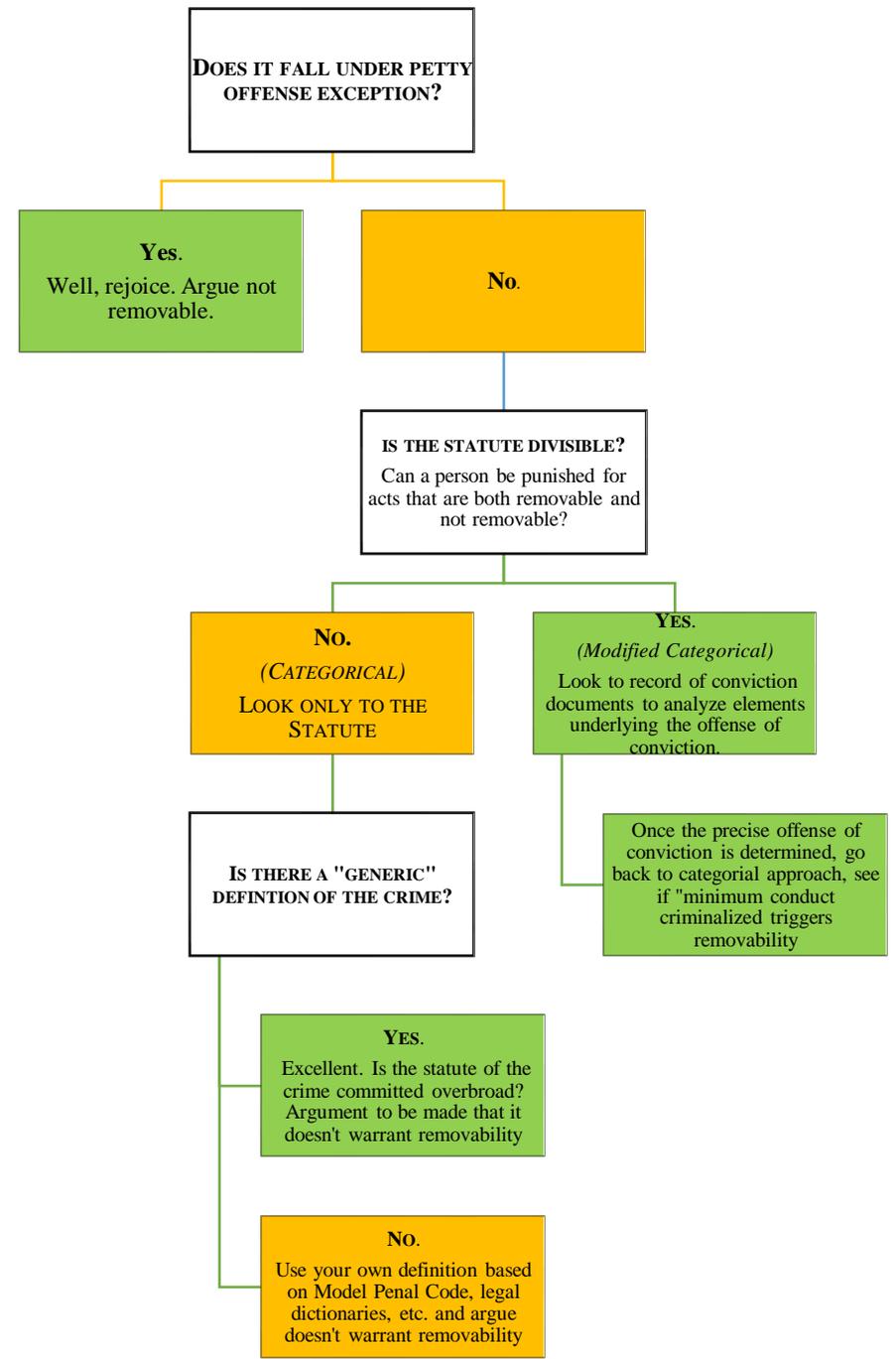


Figure 2.



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A Very Simplified Flowchart of Analysis

Removal Defense

Online Course

American Immigration Lawyers Association



Notes of Interest

- Is it actually a conviction?
 - a formal judgment of guilt entered by a court OR if adjudication of guilt has been withheld, a judge or jury found guilt or person entered a plea or admitted sufficient facts to warrant a finding of guilt AND judge ordered some kind of a punishment, penalty, or restraint of the person's liberty to be imposed (even if suspended or not executed); INA §101(a)(48)
 - each element of offense must be established beyond a reasonable doubt to qualify as conviction for immigration purposes versus a "violation" or "infraction" with a lesser standard. **Check BIA and Circuit Court case law.**
- Is it "final" for immigration purposes?
 - Conviction deemed effective for immigration purposes only when based on finality of a state or federal court procedure. *Pino v. Landon*, 349 U.S. 901 (1955), **Circuit Courts split on whether IIRIRA's addition to INA § 101(10)(48)(A) abrogated rule in terms of appeals**
 - If doing Post-Conviction relief, doesn't affect finality of conviction while pending.
- Is the statute divisible?
 - A statute is divisible if it punishes more than one distinct crime.
- Is there a "generic" definition of crime?
 - Look at federal law counterpart or commonly understood definition of the generic offense as determined by federal law, Model Pena Code, 50 states' statutes and common law. **Look at the "minimum" conduct criminalized**
 - Use "reasonable probability" test to establish what the minimum conduct covered by the statute