

## **6.6 Cases Involving Domestic Violence**

- A. Offense That Is Not a Crime of Violence
  - B. Offense That Is Not Against a Person
  - C. Offense That Is Not Against a Protected Person
- 

## **6.6 Cases Involving Domestic Violence**

Domestic violence offenses may make your lawfully admitted client deportable based on the domestic violence ground of deportability. The elements of the offense must establish that the offense is a “crime of violence” as defined in 18 U.S.C. § 16. *See supra* § 3.4B, Specific Types of Aggravated Felonies. The offense also must be against a person in a domestic relationship with the defendant. *See supra* § 3.4F, Conviction of a Crime of Domestic Violence, Stalking, Child Abuse, Child Neglect, or Child Abandonment, or a Violation of a Protective Order. Actual or potential length of sentence of imprisonment is irrelevant for the domestic violence ground of deportability.

There is no domestic violence ground of inadmissibility. If, however, the domestic violence offense constitutes a crime involving moral turpitude, which is one of the grounds of inadmissibility, the offense would render the person inadmissible.

If your client is charged with a domestic violence offense, the following options may mitigate the adverse immigration consequences.

### **A. Offense That Is Not a Crime of Violence**

Some of the offenses charged, their lesser included offenses, or related offenses may not be considered a “crime of violence.” For example, a conviction of domestic criminal trespass is generally not considered a “crime of violence” and therefore is not a crime of domestic violence for immigration purposes. However, the same sort of conduct may result in adverse immigration consequences if the defendant is convicted of violating a protective order based on that conduct. *See supra* § 3.4F, Conviction of a Crime of Domestic Violence, Stalking, Child Abuse, Child Neglect, or Child Abandonment, or a Violation of a Protective Order.

Under Fourth Circuit law, assault on a female does not satisfy the “crime of violence” definition. The Board of Immigration Appeals in an unpublished case has also found that assault on a female is not a crime of domestic violence for immigration purposes. *See infra* Appendix B, Relevant Immigration Decisions; *see also supra* § 3.4F, Conviction of a Crime of Domestic Violence, Stalking, Child Abuse, Child Neglect, or Child Abandonment, or a Violation of a Protective Order.

For assistance in determining whether an offense is considered a crime of domestic violence, see Appendix A, Selected Immigration Consequences of North Carolina Offenses, or contact an immigration attorney.

**B. Offense That Is Not Against a Person**

A crime of domestic violence must be against a *person*, not property. Thus, a conviction of an offense involving the destruction of property should not be considered a crime of domestic violence (although if the court finds a violation of certain portions of a protective order in the process, the conduct would be a ground of deportability, as discussed *supra* in § 3.4F, Conviction of a Crime of Domestic Violence, Stalking, Child Abuse, Child Neglect, or Child Abandonment, or a Violation of a Protective Order.

**C. Offense That Is Not Against a Protected Person**

A crime of domestic violence must be against a protected person. Thus, a conviction of an offense involving a neighbor or a former spouse's current partner should not be considered a crime of domestic violence.