

MISDEMEANOR DV CONVICTION & IMMIGRATION

Is my client deportable because he was convicted of “a crime of domestic violence?” 8 USC 1227(a)(2)(E)(i)

	Intentional Assault	All Other Simple Assaults	Contributing to Delinquency	Disorderly Conduct	Criminal Damage
Is it Domestic?	<p>1. Immigration “domestic relationship” definition includes all persons protected under state and local law</p> <p>2. Immigration Court limited to the “record of conviction.” <i>Tokatly v. Ashcroft</i>, 371 F.3d 613 (9th Cir.2004).</p> <p>Bottom line: if convicted w/ DV Designation, It’s domestic. Record of conviction might also reveal DV.</p>				
Is it a Crime of Violence?	<p>1. Limited to State Record of Conviction – are the <u>elements</u> of the state crime a categorical fit? If the statute is too broad, do the plea agreement or other judicially noticeable documents show that the crime fits?</p> <p>2. Intentional use of force. Reckless or lesser <i>mens rea</i> insufficient. <i>Fernandez-Ruiz v. Gonzales</i>, 466 F.3d 1121 (9th Cir. 2006)</p> <p>3. Person or property</p> <p>4. Must be violent in nature, non-de minimus touching. <i>Ortega-Mendez v. Gonzales</i>, 450 F.3d 1010 (9th Cir. 2006).</p>				
<i>Mens Rea?</i>	Yes	(a)(1) Knowing – possible (a)(1) Reckless – no (a)(2) intentional – yes (a)(3) knowing touch - unclear	Probably No - “Specific Intent” to cause delinquency not required.	Possible - “intent/knowledge to disturb” and “fighting, violent behavior	No - recklessness
<i>Violence?</i>	Yes	(a)(1) – yes (a)(2) – apprehension of physical injury: perhaps [attempt/threat] (A)(3) rude touch - no	Possible, but improbable. Omission sufficient to convict Record of conviction show assault?	Possible for “violent disruptive behavior”, though overbroad -	Possible.

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