



Introduction to the Illegal Entry/ Reentry Screening Instrument¹

Since the early 1990s, immigration related crimes are among the most charged Federal crimes. Immigration related criminal offenses include, but are not limited to: noncitizens entering contrary to regulation under 8 U.S.C § 1185(a)(1), willful failure to depart under 8 U.S.C. § 1253, as well as illegal entry or reentry by a noncitizen under 8 U.S.C. §§ 1325 and 1326 (hereinafter Entry and Reentry, respectively).

Entry and Reentry prosecutions allow the Government to bring criminal charges against noncitizens found present or entering the United States unlawfully, on top of the ability to deport such noncitizens via administrative proceedings. Noncitizens who enter or attempt to enter the United States unlawfully for the first time may be subject to criminal and civil fines and/or imprisonment under the Entry statute.² Further, noncitizens who reenter or attempt to reenter the United States after having previously been removed, excluded from or denied admission, are subject to heightened criminal fines and/or imprisonment under the Reentry statute.³ In the immigration context, these crimes have serious and far-reaching consequences, including ineligibility for administrative relief and classification as a high priority for apprehension and removal.

In addition to the legal consequences of entry and reentry charges, significant humanitarian concerns exist. Many people who are prosecuted for entry or reentry come to the United States for at least one of three reasons: 1) “to seek work;” 2) “to reunite with family;” or 3) “to flee violence or sometimes persecution abroad.”⁴ 49.5% of those sentenced with reentry in 2013 had at least one child in the United States.⁵

Taking into consideration the consequences of Entry and Reentry convictions, the Screening Instrument that follows strives to bring to light mitigating information which may lead a U.S. Attorney to reconsider the initiation of a prosecution. A U.S. Attorney’s decision of “when, whom, how and even whether” to

¹ This Screening Instrument was designed by Lauren Holzer '16, William Brennan '17 and Lauren Picciallo '17, law students in the Center for Immigrants' Rights, under the supervision of Shoba Sivaprasad Wadhia. The Center for Immigrants' Rights (Center) is an in-house clinic at the Pennsylvania State University Law School whose mission is to represent immigrants' interests through legal excellence, advocacy, education and collaboration with key stakeholders and the community. The Center wishes to thank both the US Attorney's and Federal Public Defender's Offices for the Middle District of Pennsylvania for their feedback during the drafting process for the Instrument.

² See 8 U.S.C. § 1325.

³ See 8 U.S.C. § 1326.

⁴ Human Rights Watch, *Turning Migrants into Criminals*, 43, (May 2013)
http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_2.pdf.

⁵ US Sentencing Commission, *Illegal Reentry Offenses*, 29, (Sept. 2015) (analyzing a random sample of 2013 convictions in a special coding project) http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/immigration/2015_Illegal-Reentry-Report.pdf.

prosecute is referred to as prosecutorial discretion.⁶ According to the United States Attorneys' Manual, U.S. Attorneys should consider whether a "substantial federal interest" exists before initiating prosecution.⁷ U.S. Attorneys should be informed about mitigating information such as: family information, health status, employment, military service, ties to the United States, education, and history of abuse and fear.⁸ We hope the Screening Instrument can be used to identify mitigating information leading to a more effective use of prosecutorial discretion.

⁶ U.S. Dept. of Justice, *United States Attorneys' Manual*, § 9-27.110 (1997), <https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution#9-27.001>.

⁷ See U.S. Dept. of Justice, *United States Attorneys' Manual*, §§ 9-27.220-9-27.230 (1997), <https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution#9-27.001>, (setting forth a U.S. Attorney should consider whether a "substantial federal interest" and describing factors that should be considered in the determination of whether a "substantial federal interest" exists).

⁸ Importantly, noncitizens subject to an entry or reentry charge will also be subject to removal, unless Department of Homeland Security (DHS) personnel exercise a favorable grant of prosecutorial discretion. The mitigating information in the Screening Instrument may also prompt the DHS to exercise prosecutorial discretion when deciding whether to initiate removal proceedings.⁸ Additionally, other more formal types of immigration relief *may* be available for the noncitizen, depending upon the noncitizen's criminal and other biographic information. Forms of relief which the information elicited from the Screening Instrument may indicate as available include, but are not limited to: (1) *obtaining a lawful status through a family member* (INA § 203(a); 8 U.S.C. § 1153) *or employer* (INA § 203(b); 8 U.S.C. 1153(b); INA § 101(a)(15)(H); INA 1101(a)(15)(H)); (2) *cancellation of removal for undocumented persons* (INA § 240A(b); 8 U.S.C. § 1229b(b)), (3) *Temporary Protected Status* (INA § 244A; 8 U.S.C. § 1254a), (4) *relief based on fear of persecution or torture* (INA § 208; 8 U.S.C. § 1158; INA § 241(b)(3); 8 U.S.C. § 1231(b)(3); Convention Against Torture and other Cruel, inhuman or Degrading Treatment or Punishment, Dec.10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) *available at* <https://treaties.un.org/doc/Publication/UNTS/Volume%201465/v1465.pdf>); (5) *relief for victims of trafficking* (INA § 101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(T); and (6) *relief for victims of crime* (INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U)).

Name of Screener: _____

Case/File Number: _____

Date of Screening: _____

ILLEGAL ENTRY / REENTRY SCREENING INSTRUMENT

The purpose of this instrument is to allow screeners to more efficiently identify important factors relating to illegal entry/reentry charges that may not be apparent from an individual's existing file.

A. BIOGRAPHICAL INFORMATION

1. Client Name	
2. Other Name <i>(i.e. maiden or alias)</i>	
3. Date of Birth	
4. Country of Birth	
5. Citizenship	
6. Preferred Language	

B. FAMILY INFORMATION

1. Does Client have family living in the United States? <i>*If yes, list in the spaces provide below.</i>	YES () NO ()
2. Client's marital status. <i>(Married / Single / Divorced / Widowed / Separated / Other)</i>	
3. Is Client the primary breadwinner for his/her family?	YES () NO ()
4. Is Client the primary caretaker for any persons listed? <i>*If yes, note "yes" in appropriate column below.</i>	YES () NO ()

NAME	AGE	RELATION	Caretaker?	LPR or US Citizen?

NOTES ON BIOGRAPHICAL / FAMILY INFORMATION

C. EMPLOYMENT HISTORY

1. Is the Client currently working? **YES () NO ()**

2. If the Client is not authorized to work by the government, explain how the Client secured employment.

3. Please list employment history starting with most recent position.

POSITION	PERIOD OF EMPLOYMENT	PAY / BENEFITS	NATURE OF WORK

NOTES ON EMPLOYMENT HISTORY

D. MILITARY SERVICE

1. Has the Client ever served in the US Military? **YES () NO ()**
**If yes list branch(es) and date(s) of service.*

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2. Does the Client have a family member that is serving or has served in the US Military? **YES () NO ()**
**If yes, list family member's name, branch and date(s) of service.*

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NOTES ON MILITARY SERVICE

E. TIES TO THE UNITED STATES

1. How much time has the Client spent in United States during his or her lifetime?

2. Describe reasons the Client left his or her home country.

3. Was travel to the US arranged by someone other than the Client?

**If yes, explain.*

YES () NO ()

4. Did anyone arrange the Client's housing upon arrival to the US?

**If yes, explain.*

YES () NO ()

5. Does the Client identify with a particular religious group?

**If yes, explain.*

YES () NO ()

6. Did the Client receive any education while in the United States?

**If yes, explain grade level(s) completed (if any), with relevant dates and locations.*

YES () NO ()

NOTES ON TIES TO UNITED STATES

F. IMMIGRATION RELATED HISTORY AND STATUS

1. When was the Client's most recent entry into the United States?

**Include the date and place of entry.*

2. Has the Client ever been: denied admission to; ordered removed from; granted voluntary departure; or excluded/deported from the US?

**If yes, explain: including date/reason for denial, removal, exclusion or deportation.*

YES () NO ()

3. How many times has the Client entered the US?

**Include the known date(s) and place(s) of all entries.*

4. Has the Client been convicted of an aggravated felony?

**If yes, explain.*

YES () NO ()

5. Has the Client been convicted of any drug related crime(s), crime other than an aggravated felony, or "crime(s) against the person?"

**If yes, explain: including the type and date of the conviction(s).*

YES () NO ()

6. Was the Client deported prior to completion of a previous sentence of imprisonment?

**If yes, explain: including underlying conviction and time remaining in sentence.*

YES () NO ()

NOTES ON IMMIGRATION RELATED HISTORY AND STATUS

H. HEALTH STATUS

1. Is the Client, or could the Client be pregnant? <i>*If yes, explain stage of pregnancy, and any unique circumstances.</i>	YES () NO ()
2. Does the Client have any chronic illness or disease? <i>*If yes, explain condition.</i>	YES () NO ()
3. Does the Client have any mental health issues? <i>*If yes, explain.</i>	YES () NO ()
4. Is the Client physically disabled? <i>*If yes, explain.</i>	YES () NO ()
5. Has the Client been ill in the past year? <i>*If yes, explain.</i>	YES () NO ()
6. Is the Client currently taking any medication? <i>*If yes, explain what type and for what condition.</i>	YES () NO ()
7. Does the Client care for a family member with a serious medical condition? <i>If yes, explain whether the family member(s) is receiving treatment for the medical condition(s) in the United States.</i>	YES () NO ()

NOTES ON HEALTH STATUS

