

Immigration Consequences of Crimes Summary Checklist

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CRIMINAL INADMISSIBILITY GROUNDS

Will or may prevent a noncitizen from being able to obtain lawful admission status in the U.S. May also prevent a noncitizen who already has lawful admission status from being able to return to the U.S. from a future trip abroad.

Conviction or admission of a **Controlled Substance Offense**, or DHS reason to believe that the individual is a drug trafficker

Conviction or admission of a **Crime Involving Moral Turpitude (CIMT)**, including:

- Offenses with an *intent to steal or defraud* as an element (e.g., theft, forgery)
- Offenses in which *bodily harm* is caused or threatened by an intentional act or *serious bodily harm* is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault offenses)
- Most sex offenses
- *Petty Offense Exception* – for one CIMT if the client has no other CIMT + the offense is not punishable >1 year + does not involve a prison sentence > 6 mos.

Prostitution (e.g., conviction, admission, or intent to engage in U.S.) and other unlawful **Commercialized Vice**

Conviction of **two or more offenses** of any type + **aggregate prison sentence of 5 yrs.**

CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter

- Conviction or admission of a **Controlled Substance Offense** other than a single offense of simple possession of 30 g or less of marijuana
- Conviction or admission of a **violent or dangerous crime** is a presumptive bar.
- In the case of an LPR (except one who adjusted to LPR status inside U.S. and who has not entered as an LPR from outside U.S.), conviction of an **Aggravated Felony** [see Criminal Deportability Gds], or any **Criminally Inadmissible offense** if removal proceedings initiated before 7 yrs of lawful residence in U.S.

CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal

Conviction of a "**Particularly Serious Crime**" (PSC), including the following:

- **Aggravated Felony** [see Criminal Deportability Gds]
 - ◆ All aggravated felonies will bar asylum
 - ◆ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding, & aggravated felonies involving unlawful trafficking in controlled substances are a presumptive bar to withholding of removal
- **Violent or dangerous crime** will presumptively bar asylum
- **Other PSCs** – no statutory definition; see case law

CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)

- DHS reason to believe that the individual is a **drug trafficker**
- **Violent or dangerous crime** is a presumptive bar

CRIMINAL BARS ON NON-LPR CANCELLATION OF REMOVAL based on continuous physical presence in U.S. for 10+ years; and "exceptional and extremely unusual" hardship to USC or LPR spouse, parent or child

- Conviction of an offense described under the criminal inadmissibility or deportability grounds, regardless of whether or not the ground would apply to the person, e.g., one CIMT with a potential sentence of 1 year or longer [see Criminal Deportability Gds] even if the offense was not w/n five years of an admission to the US
- Conviction or admission of crimes barring required finding of good moral character during 10 year period [see Criminal Bars on Obtaining U.S. Citizenship]

CRIMINAL DEPORTABILITY GROUNDS

Will or may result in deportation of a noncitizen who already has lawful admission status, such as a lawful permanent resident (LPR) green card holder or a refugee.

Conviction of a **Controlled Substance Offense** EXCEPT a single offense of simple possession of 30g or less of marijuana

Conviction of a **Crime Involving Moral Turpitude (CIMT)** [see Criminal Inadmissibility Gds]

- One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed
- Two CIMTs committed at any time after admission and "not arising out of a single scheme"

Conviction of a **Firearm or Destructive Device Offense**

Conviction of a **Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order** (criminal or civil)

Conviction of an **Aggravated Felony**

- *Consequences*, in addition to deportability:
 - ◆ Ineligibility for most waivers of removal
 - ◆ Permanent inadmissibility after removal
 - ◆ Enhanced prison sentence for illegal reentry
- *Crimes included*, probably even if not a felony:
 - ◆ **Murder**
 - ◆ **Rape**
 - ◆ **Sexual Abuse of a Minor**
 - ◆ **Drug Trafficking** (including most sale or intent to sell offenses, but also including possession of any amount of flunitrazepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism)
 - ◆ **Firearm Trafficking**
 - ◆ **Crime of Violence + at least 1 year prison sentence***
 - ◆ **Theft or Burglary + at least 1 year prison sentence***
 - ◆ **Fraud or tax evasion + loss to victim(s) >10,000**
 - ◆ **Prostitution business offenses**
 - ◆ **Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence***
 - ◆ **Obstruction of justice or perjury + at least 1 year prison sentence***
 - ◆ **Various federal offenses** and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, etc.)
 - ◆ **Other offenses listed at 8 USC 1101(a)(43)**
 - ◆ **Attempt or conspiracy** to commit any of the above

* The "at least 1 year" prison sentence requirement includes a suspended prison sentence of 1 year or more.

CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)

- Conviction of an **Aggravated Felony**
- **Offense** triggering removability referred to in **Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in U.S.**

CRIMINAL BARS ON OBTAINING U.S. CITIZENSHIP – Will prevent an LPR from being able to obtain U.S. citizenship.

Conviction or admission of the following crimes bars the finding of good moral character required for citizenship for up to 5 years:

- **Controlled Substance Offense** (unless single offense of simple possession of 30g or less of marijuana)
- **Crime Involving Moral Turpitude** (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months)
- 2 or more offenses of any type + aggregate prison sentence of 5 years
- 2 gambling offenses
- **Confinement** to a jail for an aggregate period of 180 days

Conviction of an **Aggravated Felony** on or after Nov. 29, 1990 (and conviction of murder at any time) permanently bars the finding of moral character required for citizenship

"CONVICTION" as defined for immigration purposes

A formal judgment of guilt of the noncitizen entered by a court, **OR**, if adjudication of guilt has been withheld, where:

- A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- The judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed

THUS:

- A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)
- A deferred adjudication without a guilty plea IS **NOT** a conviction
- **NOTE:** A youthful offender adjudication IS **NOT** a conviction if analogous to a federal juvenile delinquency adjudication



IMMIGRATION CONSEQUENCES OF CONVICTIONS SUMMARY CHECKLIST – DACA and DAPA Supplement

Criminal bars relating to DACA and DAPA temporary administrative status programs as announced by DHS on 11/20/14

(Last updated December 4, 2014. Note: DACA/DAPA program specifics are likely to be interpreted further and clarified as these programs are implemented.)



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CRIMINAL BARS ON DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Will generally prevent a noncitizen from being able to obtain DACA status, which is based in part on:

- ◆ entry into the U.S. as a child under age 16 before 1/1/10
- ◆ continuous residence in the U.S. since before 1/1/10
- ◆ currently in school, high school degree or GED, or honorably discharged veteran

One felony conviction

- Any federal, state or local offense that is punishable by imprisonment for a term exceeding one year
 - ◆ Does not include state immigration-related offenses

One “significant misdemeanor” conviction, including:

- An offense punishable by imprisonment of one year or less but greater than five days (regardless of sentence actually imposed) that is:
 - ◆ Domestic violence
 - ◆ Sexual abuse or exploitation
 - ◆ Burglary
 - ◆ Unlawful possession or use of a firearm
 - ◆ Drug distribution or trafficking
 - ◆ Driving under the influence

NOTE: The above list may include certain offenses that are not classified as misdemeanors in the convicting jurisdiction, e.g. domestic violations or driving under the influence traffic infractions, if punishable by more than five days in prison

- Any other offense punishable by imprisonment of one year or less for which the person received a **sentence of time in custody of more than 90 days**
 - ◆ Suspended sentences do not count towards the 90 days

Three misdemeanor convictions

- Three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct
 - ◆ Includes only federal, state, or local offenses punishable by imprisonment of one year or less but greater than five days (thus, may include certain low level offenses not classified as misdemeanors if punishable by more than five days in prison)
 - ◆ Does not include minor traffic offenses (such as driving without a license)
 - ◆ Does not include state immigration-related offenses

SOME OTHER OFFENSES/CONDUCT THAT CAN LEAD TO A DENIAL OF PROSECUTORIAL DISCRETION TO GRANT DACA OR DAPA STATUS

- DACA -- Convictions or other information indicating that the applicant is a threat to national security or public safety, such as convictions/information that indicate gang membership, participation in criminal activities, or participation in other activities that threaten the U.S.

DISPOSITIONS THAT AVOID AUTOMATIC DISQUALIFICATION (at least for DACA)

- Juvenile dispositions do not bar DACA (but adult convictions of juveniles may do so)
- Expunged convictions do not bar DACA

CRIMINAL BARS ON DEFERRED ACTION FOR PARENTAL ACCOUNTABILITY (DAPA)

Will generally prevent a noncitizen from being able to obtain DAPA status, which is based in part on:

- ◆ being the parent on 11/20/14 of a son or daughter who is a U.S. citizen or LPR
- ◆ continuous residence in the U.S. since before 1/1/10
- ◆ physical presence in the U.S. on 11/20/14 and at the time of application for DAPA status

One felony conviction

- Any offense classified as a felony in the convicting jurisdiction, regardless of whether the offense is punishable by imprisonment of more than one year
 - ◆ Does not include state/local offenses for which an essential element is one's immigration status

One “significant misdemeanor” conviction, including:

- A misdemeanor that is:
 - ◆ Domestic violence (but may be mitigated if convicted person also victim of domestic violence)
 - ◆ Sexual abuse or exploitation
 - ◆ Burglary
 - ◆ Unlawful possession or use of a firearm
 - ◆ Drug distribution or trafficking
 - ◆ Driving under the influence
 - ◆ NOTE: DHS initial 11/20/14 guidance memos are unclear on whether the offense must be classified as a misdemeanor in the convicting jurisdiction or be punishable by more than five days in prison as for DACA.
- Any other misdemeanor for which the person is **sentenced to time in custody of 90 days or more**
 - ◆ Suspended sentences do not count towards the 90 days

One misdemeanor conviction constituting an “aggravated felony” (even though not a felony) under the law at the time of conviction – For a list of offenses deemed aggravated felonies under the law in effect since 9/30/96, see “Aggravated Felony” crimes listed under “Criminal Deportability Grounds” on the reverse side of this Checklist.

Three misdemeanor convictions

- Three or more misdemeanors, provided the offenses arise out of three separate incidents
 - ◆ See NOTE above re: uncertainty over applicable definition of misdemeanor for DAPA purposes
 - ◆ Does not include minor traffic offenses (such as driving without a license)
 - ◆ Does not include state/local offenses for which an essential element is one's immigration status

Gang offense conviction

- Offense for which an element was active participation in a criminal street gang (as defined in 18 U.S.C. §521(a))

- DAPA -- Convictions or other information indicating that the applicant is engaged in or suspected of terrorism or espionage or otherwise poses a danger to the national security, has unlawfully entered or reentered the U.S., or has intentionally participated while age 16 or older in an organized criminal gang

DHS, in its initial 11/20/14 guidance memos, did not say anything on the effect of juvenile dispositions or expunged convictions on eligibility for DAPA -- guidance on this is expected later

IMPORTANT: Potential DACA/DAPA applicants who may wish to seek LPR or other formal lawful admission status in the future should also consider the Criminal Inadmissibility Grounds on the reverse side because a conviction triggering inadmissibility, even if it does not bar DACA/DAPA, could affect the person's future ability to obtain formal lawful status.