

REMOVAL OF ALIENS FROM THE UNITED STATES--
CONVICTED CRIMINAL ALIENS

A Guide for Prosecutors

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INTRODUCTION

Historically, convictions for certain criminal offenses have served as the basis for the exclusion or deportation of aliens from the United States.¹ However, our immigration laws traditionally have provided various forms of discretionary relief from removal that would enable many criminal aliens, particularly long-time lawful permanent residents, to avoid removal.

Recently, Congress enacted several statutes amending the Immigration and Nationality Act in ways that have dramatically changed the landscape for criminal aliens. In the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (April 24, 1996) (AEDPA), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3546 (September 30, 1996) (IIRIRA), Congress greatly expanded the categories of crimes for which a conviction may result in removal. At the same time, Congress drastically restricted the forms of discretionary relief available to convicted criminal aliens. The result of these recent amendments is that many criminal aliens, who previously might have been able to avoid removal, now may face certain, and quite possibly permanent, removal from the United States.

Whether or not immigration consequences result from a particular conviction, and the severity of any such consequences, frequently depends on the nature of the crime and the length of sentence imposed. For example, there may be substantial immigration differences between a conviction for first degree assault and second degree assault, or between voluntary and involuntary manslaughter, between simple possession of a controlled substance and possession with intent to distribute, or between a sentence of 364 days and a sentence of one year.

¹ Prior to the revision of the Immigration Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, INS could seek the removal of an alien by instituting deportation or exclusion proceedings, as appropriate. After IIRIRA, there is only one form of proceedings--removal proceedings--with different charges of removability.

The field of immigration law and procedure is somewhat like the field of taxation in that it is extremely complex and not at all intuitive. Particularly in the wake of the recent amendments to the Immigration and Nationality Act, the immigration consequences of criminal conduct may not be easy to discern, and may appear to be disproportionate to the severity of the criminal offense pursuant to state law. For example, an alien convicted of shoplifting or of driving while intoxicated may face certain deportation, even though he or she has been a lawful permanent resident for many years.

There are many bases on which the Immigration and Naturalization Service can seek the removal of an alien from the United States. Though the focus of this outline is on the criminal grounds of removal, there may also be alternate, non-criminal grounds of removal lodged against a particular alien. The applicable immigration statutes (criminal grounds) are attached for ready reference. Precedent decisions of the Board of Immigration Appeals (binding on all immigration judges and INS personnel) and of the federal courts, as well as various state and federal statutes are not attached, but full citations are provided.

The analysis provided in this outline is general in nature and is not intended to exhaustively cover every aspect of immigration law. The outline focuses on offenses prosecuted under state law and excludes crimes that are exclusively federal, such as espionage or treason. Questions regarding specific cases or crimes should be directed to INS counsel so that a complete analysis can be conducted. In addition, since new cases are decided each day, this guide cannot replace specialized and current legal research. It is just a starting point.

ADMINISTRATION AND ENFORCEMENT OF IMMIGRATION LAW

Congress has delegated the responsibility for administering and enforcing our immigration laws primarily to the Attorney General (the Department of Justice) and the Secretary of State (the Department of State). Essentially, the Department of Justice is responsible for immigration matters within the United States, and the Department of State is responsible for immigration matters outside of the United States. Other federal agencies, including the Department of Labor and the Public Health Service, also are involved in immigration matters.

The Attorney General has delegated her immigration responsibilities under the Act primarily to the Immigration and Naturalization Service (INS), an agency within the Department of Justice. The INS performs two different, but highly interrelated functions: (1) the adjudication of applications for immigration benefits filed by or on behalf of aliens, and (2) the removal of aliens who are unlawfully in the United States.

Although there are many exceptions to this procedure, generally before the INS can remove an alien from the United States, it is necessary to obtain a removal order. There are several ways to obtain a removal order, including an immigration court order, an administrative removal order, or, in some cases, a federal court order. To obtain an immigration court order, the INS appears before an Immigration Judge in one of the Immigration Courts which are located around the country. Proceedings before the Immigration Court are civil proceedings and are conducted much like any civil litigation in a state trial court or a United States District Court. There is one level of administrative appeal from a decision of the Immigration Judge. An administrative appeal is taken to the Board of Immigration Appeals located in Falls Church, Virginia. Both the Immigration Court

and the Board of Immigration Appeals are part of the Executive Office for Immigration Review, an agency within the Department of Justice, but separate and independent from the INS.

In both the immigration court and administrative removal contexts, proceedings are commenced when the INS issues a charging document to an alien and serves it on the immigration court. The charging document lists the allegations of fact and charges of law for which the INS seeks removal. The charges of law are either grounds of inadmissibility or removability, depending on the alien's immigration status.

The basic body of immigration law is contained in the Immigration and Nationality Act ("Act"), 8 U.S.C. §§ 1101 *et seq.* Companion regulations applicable to the INS, the Immigration Court, and the Board of Immigration Appeals are found at Title 8 of the Code of Federal Regulations.

Bound, published administrative decisions of the Board of Immigration Appeals are found in the Administrative Decisions Under Immigration and Nationality Laws of the United States. Unbound, published decisions are found in the Interim Decisions. Both the bound decisions and the Interim Decisions are available through Westlaw and Lexis. Several treatises covering all aspects of immigration law and procedure are available, including Immigration Law and Procedure by Gordon and Mailman, and the Immigration Law Service.

CRIMINAL GROUNDS OF REMOVAL

Convicted criminal aliens² may be subject to removal based on the following grounds:

1. Grounds of Inadmissibility
 - A. **Crimes Involving Moral Turpitude (CIMT)**, including both convictions for a CIMT and CIMT offenses for which the alien admits the essential elements of such an offense. There are exceptions for certain crimes committed while the offender was under the age of eighteen, crimes committed more than five years prior to the application for admission, certain petty offenses, and purely political offenses. 8 U.S.C. § 1182(a)(2)(A).
 - B. **Drug Offenses**, including both convictions and offenses for which the alien admits to the essential elements of any state or foreign law relating to a controlled substance. 8 U.S.C. § 1182(a)(2)(C). This provision also bars any alien that the US knows or has reason to believe is a drug trafficker. 8 U.S.C. § 1182(a)(2)(A)(i)(II). A waiver is available for simple possession of 30 grams or less of marijuana, but only under limited circumstances. 8 U.S.C. § 1182(h).
 - C. **Convictions for Two or More Offenses** for which the aggregate sentences to confinement were five years or more. 8 U.S.C. § 1182(a)(2)(B).
 - D. **Prostitutes** or persons who have engaged in prostitution within the past ten years. 8 U.S.C. § 1182(a)(2)(D)(i)-(ii).
 - E. **Diplomats or Others Involved in Serious Criminal Offenses Granted Immunity from Prosecution.** 8 U.S.C. § 1182(a)(2)(E). Serious criminal offenses are defined by 8 U.S.C. § 1101(h).
2. Grounds of Removal
 - A. **Crimes Involving Moral Turpitude.** This provision includes single convictions occurring within five (or ten) years of entry and for which a sentence of one year or more could be imposed; or two or more convictions at any time not arising out of a single scheme of misconduct. 8 U.S.C. § 1227(a)(2)(A).
 - B. **Aggravated Felony.** Aggravated felonies encompass a multitude of offenses as defined at 8 U.S.C. § 1101(a)(43). 8 U.S.C. § 1227(a)(2)(A)(iii).

² There are also several inadmissibility grounds relating to convictions for immigration-related offenses, such as returning to the United States without having obtained advance permission to do so. 8 U.S.C. § 1182(a)(9). These grounds have been omitted since the crimes are federal offenses.

- C. **Drug Offenses**, except for a single conviction for simple possession for personal use of 30 grams or less of marijuana. 8 U.S.C. § 1227(a)(2)(B).
- D. **Convictions Firearms or Destructive Devices**. The statutory term includes “purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) . . .” 8 U.S.C. § 1227(a)(2)(C).
- E. **Convictions for Domestic Violence, Stalking and Protective Order Violations after September 30, 1996**. 8 U.S.C. § 1227(a)(2)(E).

WHAT IS A CONVICTION?

It is important to remember that terms may have different meanings for immigration purposes than they do under state law. For instance, for immigration purposes, an “aggravated felony” need not be aggravated or a felony. Although under the law of most states, a crime is “aggravated” only if a weapon is used or serious injury results, a weapon is not necessary at all for immigration purposes. Thus, a theft offense is an aggravated felony for immigration purposes if a sentence of one year or more is imposed. Moreover, as noted below, a state misdemeanor can be an aggravated felony if the crime falls within the federal definition found at 8 U.S.C. § 1101(a)(43).

In 1996, Congress added a statutory definition of the term "conviction" to the Immigration and Nationality Act. This provision states:

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where--

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

8 U.S.C. § 1101(a)(48)(A). This definition applies to all convictions entered on, before, or after September 30, 1996. *See Matter of Roldan*, Interim Decision 3377 (BIA 1999), *rev'd Lujan-Armendariz v. INS*, 2000 WL 1051858 (9th Cir. 2000).

If the criminal statute under which the alien was convicted is divisible and encompasses crimes that would render an alien removable and those that would not, a close examination of the statute and the conviction records is required to determine whether or not the conviction renders the alien removable. *See Matter of Sweetser*, Interim Decision 3390 (BIA 1999). If the conviction record does not indicate that the alien was convicted under a section of the divisible statute which encompasses a crime that would render the alien removable, the alien's removability will not be established. A police report cannot be used by INS to prove removability. *Matter of Teixeira*, 21 I&N Dec. 316 (BIA 1996).

FINALITY OF A CONVICTION

As a matter of policy, INS requires that all direct criminal appeals be exhausted before a conviction is used to initiate removal proceedings. However, under the new statutory definition of "conviction," an argument can be made that direct appeals need not be exhausted before the conviction can affect an alien's immigration status. *See e.g., Moosa v. INS*, 171 F.3d 994, 1008-9 (5th Cir. 1999). INS has not yet chosen to change its policy position, but it may do so in the future.

Where an alien has filed a direct appeal of the sentence length only, the conviction may be used for immigration purposes prior to its resolution, unless the length of sentence is a precondition of the statutory ground of removal. *Compare* 8 U.S.C. § 1101(a)(43)(A) *with* 8 U.S.C. § 1101(a)(43)(F). Collateral appeals do not affect the use of a conviction.

CRIMES INVOLVING MORAL TURPITUDE

Aliens who have been convicted of crimes involving moral turpitude are subject to removal from the United States. 8 U.S.C. §§ 1182(a)(2)(A)(i) and 1227(a)(2)(A)(i). Attempts and conspiracies to commit crimes involving moral turpitude also subject an alien to removal. 8 U.S.C. § 1182(a)(2)(A)(i)(I). The term "crime involving moral turpitude" is not defined by statute, but has been developed in the case law. A CIMT:

refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general . . . Moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, or *malum in se* so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude.

Matter of Franklin, 20 I&N Dec. 867, 868 (BIA 1994), *aff'd*, 72 F.3d 571 (8th Cir. 1995).

Generally, crimes against the person involve moral turpitude when criminal intent is an element of the offense. Such criminal intent may be inferred from the presence of unjustified violence or the use of a dangerous weapon. Often, lesser related offenses or lesser degrees of the same offenses might not involve moral turpitude absent criminal intent, unjustified violence, or the use of a dangerous weapon as elements of the offense.

Moral turpitude attaches to any crime against property which involves "fraud," whether the fraud is directed against the Government or an individual. The major crimes against property that involve an evil or predatory intent likewise involve moral turpitude. Certain crimes against property may require guilty knowledge or an intent to permanently take property.

The primary determining factor in assessing whether offenses committed against the Government or Governmental authorities involve moral turpitude has usually been the presence of fraud as an element of the offense. Fraud against the Government has been found to be a CIMT in all cases where intent to cause pecuniary loss to the Government is an element.

In sexual and family crimes, it is particularly difficult to discern a distinguishing set of principles which the courts apply to determine whether the particular offense involved moral turpitude for immigration purposes. In some cases, the presence or absence of violence seems to be the important factor; in others, the courts consider whether the offense is "malum in se" or "malum prohibitum;" in still others, the presence or absence of criminal intent is considered determinative.

AGGRAVATED FELONIES

The term "aggravated felony" is a term of art, like "crime involving moral turpitude." It applies to both misdemeanors and felony crimes matching the description of crimes listed in 8 U.S.C. § 1101(a)(43). *See U.S. v. Graham*, 169 F.3d 787 (3rd Cir. 1999). A state's designation of a crime as a felony or misdemeanor is not conclusive for immigration purposes. *See Matter of L-G-*, 21 I&N Dec. 89 (BIA 1995); *Matter of K-V-D-*, Interim Decision 3422 (BIA 1999). Note that many portions of the statute require minimum sentence lengths, minimum possible sentences, or minimum dollar amounts before a conviction for a particular type of offense will subject an alien to removal.

The following crimes are defined as aggravated felonies for immigration purposes:

- A. **Murder, rape, or sexual abuse of a minor;**
- B. **Illicit trafficking in a controlled substance** (as described in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);
- C. **Illicit trafficking in firearms or destructive devices** (as defined in section 921 of title 18, United States Code) or in **explosive materials** (as defined in section 841(c) of that title);
- D. An offense described in section 1956 of title 18, United States Code (relating to **laundering of monetary instruments**) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
- E. An offense described in—
 - 1. Section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to **explosive materials** offenses);
 - 2. Section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to **firearms offenses**); or
 - 3. Section 5861 of the Internal Revenue Code of 1986 (relating to **firearms offenses**);

- F. A **crime of violence** (as defined in section 16 of title 18, United States Code, but not including a purely political offense) **for which the term of imprisonment imposed is at least 1 year**;

18 U.S.C. § 16 defines "crime of violence" as: (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

- G. A **theft** offense (including receipt of stolen property) or **burglary** offense **for which the term of imprisonment imposed is at least 1 year**;
- H. An offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of **ransom**);
- I. An offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to **child pornography**);
- J. An offense described in section 1962 of title 18, United States Code (relating to **racketeer influenced corrupt organizations**, or an offense described in section 1084 (if it is the second or subsequent offense) or 1955 of that title (relating to **gambling offenses**), **for which a sentence of 1 year imprisonment or more may be imposed**;
- K. An offense that—
1. relates to the owning, controlling, managing, or supervising of a **prostitution** business;
 2. is described in section 2421, 2422, 2423, of Title 18, United States Code (relating to transportation for the purpose of **prostitution**) if committed for commercial advantage; or
 3. is described in section 1581, 1582, 1583, 1584, 1585, or 1588 of title 18, United States Code (relating to **peonage, slavery, and involuntary servitude**);
- L. An offense described in—
1. section 793 (relating to gathering or transmitting **national defense information**), 798 (relating to **disclosure of classified information**), 2153 (relating to sabotage) or 2381 or 2382 (relating to **treason**) of title 18, United States Code;

2. section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of **undercover intelligence agents**); or
3. section 601 of the National Security Act of 1947 (relating to protecting the identity of **undercover agents**);

M. An offense that—

1. involves **fraud or deceit in which the loss** to the victim or victims **exceeds \$10,000**; or
2. is described in section 7201 of the Internal Revenue Code of 1986 (relating to **tax evasion**) **in which the revenue loss** to the Government **exceeds \$10,000**;

N. An offense described in paragraph (1)(A) or (2) of section 274(a) [1324] (relating to **alien smuggling**), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

O. An **offense** described in section 275(a) or 276 [1325 or 1326] **committed by an alien who was previously deported** on the basis of a conviction for an offense described in another subparagraph of this paragraph;

P. An offense (1) which either is **falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument** in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (2) **for which the term of imprisonment is at least 12 months**, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

Q. An offense relating to a **failure to appear** by a defendant **for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more**;

R. An offense relating to **commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year**;

- S. An offense relating to **obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;**
- T. An offense relating to a **failure to appear before a court** pursuant to a court order **to answer to or dispose of a charge of a felony for which a sentence of 2 years imprisonment or more may be imposed;** and
- U. An **attempt** or **conspiracy** to commit any aggravated felony.

Note that the crimes described in 8 U.S.C. § 1101(a)(43) apply to offenses in violation of Federal or State law, as well as to certain offenses in violation of foreign law, and include attempts and conspiracies to commit those offenses.

DRUG OFFENSES

Certain drug offenses may subject an alien to removal under 8 U.S.C. § 1227(a)(2)(B), under the applicable aggravated felony provision, or both. This provision renders an alien subject to removal for having been convicted of an offense relating to a controlled substance (as defined in 21 U.S.C. § 802) in violation of the law or regulation of a state, the United States, or a foreign country. This includes a conviction for being under the influence of a controlled substance, regardless of any specific intent. *Matter of Esqueda*, 20 I&N Dec. 850 (BIA 1994).

FIREARMS OFFENSES

This provision covers convictions under any law for purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying a weapon, part, or accessory which constitutes a firearm or destructive device as defined in 18 U.S.C. § 921(a). That statute defines the term “firearm” to mean any weapon which could readily expel a projectile by the action of an explosive; the frame or receiver of such a weapon; any firearm muffler or firearm silencer; or any destructive device, not including an antique firearm. The term “destructive device” as defined in 18 U.S.C. § 921(a) refers to the following items which are explosive, incendiary, or poison gas: a grenade; a rocket having a propellant charge of more than four ounces; a missile having an explosive or incendiary charge of more than one-quarter ounce; a mine; or a similar device.

Attempts and conspiracies to commit a firearms offense are covered by 8 U.S.C. § 1227(a)(2)(C). *Matter of Saint John*, 21 I&N Dec. 593 (BIA 1996). Enhancement of a sentence because of the use of a firearm does not, however, render that conviction a firearms offense. *See Matter of Rodriguez-Cortes*, 20 I&N Dec. 587 (BIA 1992); *but see Matter of K-L-*, 20 I&N Dec. 654 (BIA 1993) (holding that a conviction under 18 U.S.C. § 924(c)(1) for use of a firearm during a drug trafficking crime or a crime of violence is a firearms conviction because the statute creates distinct offenses rather than simply enhancing the penalty for the underlying offenses). In addition, a conviction for assault is not a firearms offense where the use of a firearm is not an element of the offense. *Matter of Perez-Contreras*, 20 I&N Dec. 615 (BIA 1992).

DOMESTIC VIOLENCE, STALKING, OR PROTECTION ORDER VIOLATIONS

There is a ground of removability, but not inadmissibility, for convictions for domestic violence, stalking, or violations of protection orders. Added in 1996, this provision reflects the intention of Congress to take a strong stand on these domestic crimes. Few cases have arisen under this provision, and thus there remain many legal issues to resolve.

An important issue is whether or not the conviction must occur under a state's domestic violence statute (if one exists), or whether a conviction can occur under a general assault statute if the victim was a spouse, domestic partner, sibling, parent, or child. There is no precedential decision interpreting this issue and it remains unresolved.

CRIMES INVOLVING MORAL TURPITUDE

CRIMES AGAINST THE PERSON

The following crimes against the person have been found to be CIMTs:

- ✓ Murder with a firearm
Fla. Stat. Ann. §§ 782.04 and 775.087 (West 1993)
Matter of Lopez-Amaro, 20 I&N Dec. 668 (BIA 1993), *aff'd*, *Lopez-Amaro v. INS*, 25 F.3d 986 (11th Cir. 1994), *cert. denied*, 513 U.S. 1146 (1995)
- ✓ Accessory after the fact to murder
Mass. Gen. Laws ch. 274, § 4 (1990)
Cabral v. INS, 15 F.3d 193 (1st Cir. 1994)
- ✓ Voluntary manslaughter
Mich. Comp. Laws § 750.321 (1948)
Matter of Pataki, 15 I&N Dec. 324 (BIA 1975)
- ✓ Aggravated assault
Ill. Rev. Stat. Ch. 38, section 12-2(a)(1)
Matter of Medina, 15 I&N Dec. 611 (BIA 1976)
- ✓ Involuntary manslaughter
Mo. Rev. Stat. § 565.024(1)
Matter of Franklin, 20 I&N Dec. 867 (BIA 1994)
- ✓ Kidnapping
18 U.S.C. § 1201
Matter of Nakoi, 14 I&N Dec. 208 (BIA 1972)
- ✓ Indecent assault
Conn. Gen. Stat. § 6240 (1930)
Matter of Z-, 7 I&N Dec. 253 (BIA 1956)
- ✓ Carrying a concealed and deadly weapon with intent to use against the person of another
Minn. Stat. Ann. § 616.41 (1957)
Matter of S-, 8 I&N Dec. 344 (BIA 1959)
- ✓ Assault in the second degree (by the use of a knife)
N.Y. Penal Law § 242(4)
Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967)

- ✓ Interfering with a law enforcement officer
Ark. Code Ann. § 41-2804
Matter of Logan, 17 I&N Dec. 367 (BIA 1980)
- ✓ Aggravated assault against a police officer
Tex. Penal Code Ann. § 22.02(a)(2)(A) (Vernon 1979)
Matter of Danesh, 19 I&N Dec. 669 (BIA 1988)
- ✓ Terrorism
Iowa Code Ann. § 708.6
Matter of S-S-, 21 I&N Dec. 900 (BIA 1997)
- ✓ Aggravated stalking
Mich. Comp. Laws Ann. § 750.411i (West 1996)
Matter of Ajami, Interim Decision 3405 (BIA 1999)
- ✓ Aggravated driving under the influence
Ariz. Rev. Stat. Ann. §§ 28-692(A)(1) and 28-697(A)(1)
Matter of Lopez-Meza, Interim Decision 3423 (BIA 1999)

The following crimes against the person have been found NOT to be CIMTs:

- ✗ Manslaughter (statute encompasses both voluntary and involuntary manslaughter)
Alaska Stat. § 11.15.040
Matter of Lopez, 13 I&N Dec. 725 (BIA 1971)
- ✗ Possession of an unregistered sawed-off shotgun
26 U.S.C. §§ 5861(d) and 5871
Matter of Granados, 16 I&N Dec. 726 (BIA 1979)
- ✗ Assault in the third degree
Wash. Rev. Code Ann. § 9A.36.031(1)(f)
Matter of Perez-Contreras, 20 I&N Dec. 615 (BIA 1992)
- ✗ Assault in the third degree
Haw. Rev. Stat. § 707-712 (1992)
Matter of Fualaau, 21 I&N Dec. 475 (BIA 1996)

CRIMES INVOLVING MORAL TURPITUDE

CRIMES AGAINST PROPERTY

The following crimes against property have been found to be CIMTs:

- ✓ Attempted arson
Criminal Code of Canada, section 512
Matter of S-, 3 I&N Dec. 617 (BIA 1949)

- ✓ Blackmail
Ohio law
Lehmann v. U.S. ex rel. Carson, 353 U.S. 685 (1957)

- ✓ Uttering a forged instrument
Penal Code of Guanajuato, Mexico, Article 203
Matter of S-C-, 3 I&N Dec. 350 (BIA 1949)

- ✓ Possession of forgery devices with intent to commit forgery
New York law
Matter of Jimenez, 14 I&N Dec. 442 (BIA 1973)

- ✓ Forgery
Georgia law
Matter of Seda, 17 I&N Dec. 550 (BIA 1980)

- ✓ Aggravated robbery
Colorado law
Matter of Martin, 18 I&N Dec. 226 (BIA 1982)

- ✓ Conspiracy to embezzle and misapply funds, monies, and securities
18 U.S.C. § 656
Matter of Batten, 11 I&N Dec. 271 (BIA 1965)

- ✓ Petty larceny
Ohio law
Matter of Garcia, 11 I&N Dec. 521 (BIA 1966)

- ✓ Criminal possession of stolen property in the 5th degree
N.Y. Penal Law § 165.40 (McKinney 1999)
Michel v. INS, 206 F.3d 253 (2d Cir. 2000)

- ✓ Burglary
D.C. Code § 22-1801(b)

Matter of De La Nues, 18 I&N Dec. 140 (BIA 1981)

- ✓ Extortion (demanding property with menaces)
Criminal Code of Canada, section 451
Matter of F-, 3 I&N Dec. 361 (BIA 1949)
- ✓ Encumbering mortgaged property with intent to defraud
California law
U.S. ex rel. Millard v. Tuttle, 46 F.2d 342 (5th Cir. 1930)
- ✓ Illegal use of credit card
Mich. Stat. Ann. § 28.416(1)
Matter of Chouinard, 11 I&N Dec. 839 (BIA 1966)
- ✓ Passing forged instruments
Texas law
Matter of Yanez-Yaquez, 13 I&N Dec. 449 (BIA 1970)
- ✓ Attempted fraud
Greek Penal Code of 1950, Article 386
Matter of Katsanis, 14 I&N Dec. 266 (BIA 1973)
- ✓ Securities fraud
Canadian Criminal Code, Section 338(2)
Matter of McNaughton, 16 I&N Dec. 569 (BIA 1978)
- ✓ Issuing check without sufficient funds
Mich. Comp. Laws Ann., section 750.131
Matter of Khalik, 17 I&N Dec. 518 (BIA 1980)
- ✓ Welfare fraud
New Jersey law
Miller v. INS, 762 F.2d 21 (3d Cir. 1985)
- ✓ Grand theft
Cal. Penal Code § 487
Matter of Chen, 10 I&N Dec. 671 (BIA 1964)
- ✓ Transporting forged securities
18 U.S.C. § 2314
Matter of Fernandez, 14 I&N Dec. 24 (BIA 1972)
- ✓ Malicious and wanton injury to property
Oregon Penal Code Article 6, section 23-576
Matter of M-, 3 I&N Dec. 272 (BIA 1948)

The following crimes against property have been found NOT to be CIMTs:

- ✘ Burglary in the third degree
N.Y. Penal Law, section 404
Matter of M-, 2 I&N Dec. 721 (BIA 1946)

- ✘ Malicious mischief
Wash. Rev. Code § 9A.48.080
Rodriguez-Herrera v. INS, 52 F.3d 238 (9th Cir. 1995)

- ✘ Passing check without sufficient funds
The Virgin Islands Code, Title 14, section 835(a)
Matter of Colbourne, 13 I&N Dec. 319 (BIA 1969)

CRIMES INVOLVING MORAL TURPITUDE

SEXUAL AND FAMILY CRIMES

The following sexual and family crimes have been found to be CIMTs:

- ✓ Attempted assault, second degree (with intent to commit carnal abuse and rape)
N.Y. Penal Code § 242(5)
Matter of Beato, 10 I&N Dec. 730 (BIA 1964)

- ✓ Sexual assault in the first degree
Neb. Rev. Stat. § 28-319(1)(c)
Matter of Mendez-Morales, 21 I&N Dec. 296 (BIA 1996)

- ✓ Indecent assault
Conn. Gen. Stat. § 53-217
Marinelli v. Ryan, 285 F.2d 474 (2d Cir. 1961)

- ✓ Spousal abuse
Cal. Penal Code § 273.5(a)
Grageda v. INS, 12 F.3d 919 (9th Cir. 1993)
Matter of Tran, 21 I&N Dec. 291 (BIA 1996)

- ✓ Securing another for prostitution
City of Tampa Code § 26-42 and Fla. Stat. § 796.07
Matter of Lambert, 11 I&N Dec. 340 (BIA 1965)

- ✓ Taking indecent liberties with a child
Mich. Penal Code § 336 (1931)
Matter of Garcia, 11 I&N Dec. 521 (BIA 1966)

- ✓ Indecent liberties
Washington law
Morales-Alvarado v. INS, 655 F.2d 172 (9th Cir. 1981)

- ✓ Child abuse
Cal. Penal Code § 273(d)
Guerrero de Nodahl v. INS, 407 F.2d 1405 (9th Cir. 1969)

- ✓ First degree incest
Wash. Rev. Code § 9A.64.020
Gonzalez-Alvarado v. INS, 39 F.3d 245 (9th Cir. 1994)

- ✓ Statutory rape
Cal. Penal Code § 261
Matter of M-C-, 9 I&N Dec. 280 (BIA 1961)

- ✓ Carnal knowledge of a 15 year old female
Md. Ann. Code, art. 27 § 464 (1957)
Castle v. INS, 541 F.2d 1064 (4th Cir. 1976)

The following sexual and family crimes have been found NOT to be CIMTs:

- ✗ Mailing an obscene letter
18 U.S.C. § 211
Matter of D-, 1 I&N Dec. 190 (BIA 1942)

- ✗ Lewd and lascivious conduct (by public and indecent exposure)
Wis. Stat. § 944.20(2)
Matter of Mueller, 11 I&N Dec. 268 (BIA 1965)

- ✗ Indecent act
Canadian Criminal Code § 173(1)(a)
Toutounjian v. INS, 959 F.Supp. 598 (W.D.N.Y. 1997)

CRIMES INVOLVING MORAL TURPITUDE

CRIMES AGAINST THE AUTHORITY OF GOVERNMENT

The following crimes against the authority of government have been found to be CIMTs:

- ✓ Uttering a counterfeit obligation with intent to defraud
18 U.S.C. § 476
Matter of Lethbridge, 11 I&N Dec. 444 (BIA 1965)
- ✓ Impersonating a federal officer
18 U.S.C. §§ 912 and 2
Matter of Gonzalez, 16 I&N Dec. 134 (BIA 1977)
- ✓ False statement in the acquisition of a firearm from a licensed dealer
18 U.S.C. § 922(a)(6)
Matter of Acosta, 14 I&N Dec. 338 (BIA 1973)
- ✓ Harboring a fugitive from justice
18 U.S.C. § 1071
Matter of Sloan, 12 I&N Dec. 840 (BIA 1966, A.G. 1968)
- ✓ Influencing or injuring an officer, juror, or witness
18 U.S.C. § 1503
Knoetze v. U.S., 634 F.2d 207 (5th Cir. 1981)
- ✓ Perjury
18 U.S.C. § 1621
U.S. ex rel. Flores v. Savoretti, 205 F.2d 544 (5th Cir. 1953)
- ✓ Transporting or receiving stolen vehicles
18 U.S.C. §§ 2312, 2313
U.S. v. Castro, 26 F.3d 557 (5th Cir. 1994)
- ✓ Obtaining government funds by fraud and false pretenses
20 U.S.C. § 1097(a)
Izedonmwun v. INS, 37 F.3d 416 (8th Cir. 1994)
- ✓ Trafficking in narcotic drugs
21 U.S.C. § 174
U.S. ex rel. DeLuca v. O'Rourke, 213 F.2d 759 (8th Cir. 1954)
- ✓ Distribution of cocaine
21 U.S.C. § 841

Matter of Khourn, 21 I&N Dec. 1041 (BIA 1997)

- ✓ Receipt of kickbacks on government contracts
41 U.S.C. §§ 51 and 54
Matter of Alarcon, 20 I&N Dec. 557 (BIA 1992)
- ✓ Attempted bribery
German Criminal Code, Section 333
Matter of V-, 4 I&N Dec. 100 (BIA 1950)
- ✓ Tax evasion
N.M. Stat. Ann. § 7-1-72
Wittgenstein v. INS, 124 F.3d 1244 (10th Cir. 1997)

The following crimes against the authority of the government have been found NOT to be CIMTs:

- ✗ Possession of unregistered sawed-off shotgun
26 U.S.C. §§ 5861(d), 5871
Matter of Granados, 16 I&N Dec. 726 (BIA 1979)
- ✗ Possession of counterfeit securities
18 U.S.C. § 474
Matter of Lethbridge, 11 I&N Dec. 444 (BIA 1965)
- ✗ Escape from prison
Mass. Ann. Laws ch. 268, § 16
Matter of B-, 5 I&N Dec. 538 (BIA 1953)
- ✗ Structuring currency transactions to evade reporting requirements
31 U.S.C. §§ 5324(1) and (3) (1998)
Matter of L-V-C-, Interim Decision 3382 (BIA 1999)

AGGRAVATED FELONIES

The following crimes have been found to be aggravated felonies:

MURDER, RAPE, SEXUAL ABUSE OF A MINOR

- ✓ Conspiracy to commit 2nd degree murder
New Mexico law
U.S. v. Solano-Ramos, 203 F.3d 836 (10th Cir. 2000)
- ✓ Second degree rape
Md. Ann. Code art. 27, § 463(a)(3) (1995)
Matter of B-, 21 I&N Dec. 287 (BIA 1996)
- ✓ Indecency with a child by exposure
Tex. Penal Code Ann. § 21.11(a) (West 1993)
Matter of Rodriguez-Rodriguez, Interim Decision 3411 (BIA 1999)
- ✓ Rape
Cal. Penal Code § 261(a)(3)
Castro-Baez v. Reno, 217 F.3d 1057 (9th Cir. 2000)

CRIMES OF VIOLENCE

- ✓ Assault with a deadly weapon
California law
Aragon-Ayon v. INS, 206 F.3d 847 (9th Cir. 2000)
- ✓ Driving while intoxicated (felony)
Tex. Penal Code Ann. § 49.04
Matter of Puente, Interim Decision 3412 (BIA 1999)
- ✓ Unauthorized use of a motor vehicle
Tex. Penal Code § 31.07
U.S. v. Jackson, 2000 WL 1028991 (5th Cir. 2000)
- ✓ Criminal trespass
Colo. Rev. Stat. Ann. § 18-4-502 (West 1991)
U.S. v. Delgado-Enriquez, 188 F.3d 592 (5th Cir. 1999)
- ✓ Robbery (second degree)
California law

Matter of Truong, Interim Decision 3416 (BIA 1999)

- ✓ Criminal contempt
N. Y. Penal Law § 215.51(b)(i) (McKinney 1996)
Matter of Aldabesheh, Interim Decision 3410 (BIA 1999)
- ✓ Arson
Alaska Stat. § 11.46.400(a) (Michie 1994)
Matter of Palacios, Interim Decision 3373 (BIA 1998)
- ✓ Involuntary manslaughter
Ill. Rev. Stat. ch. 38, para. 9-3(a)
Matter of Alcantar, 20 I&N Dec. 801 (BIA 1994)

BURGLARY (These burglary offenses have been found NOT to constitute aggravated felonies.)

- ✗ Vehicular burglary
720 Ill. Comp. States. 5/19-1(a)
Solorzano-Patlan v. INS, 207 F.3d 869 (7th Cir. 2000)
- ✗ Burglary of a vehicle
Tex. Penal Code Ann. § 30.04(a)
Matter of Perez, Interim Decision 3432 (BIA 2000)

THEFT

- ✓ Theft (for which prison term is at least 1 year)
California
U.S. v. Inzunza-Gil, 2000 WL 158502 (9th Cir. 2000)
- ✓ Larceny
North Carolina law
Matter of Kanga, Interim Decision 3424 (BIA 2000)
- ✓ Theft by receiving
Texas
Max-George v. Reno, 205 F.3d 194 (5th Cir. 2000)
- ✓ Unlawful driving or taking of a vehicle
Cal. Vehicle Code § 10851(A) (West 1995)
Matter of V-Z-S-, Interim Decision 3434 (BIA 2000)

DRUG OFFENSES

- ✓ Transportation of drugs
Cal. Health & Safety Code 11352(a)
Ochoa-Manzo v. INS, 2000 WL 96601 (9th Cir. 2000)
- ✓ Delivery of a controlled substance
Or. Rev. Stat. § 475.992 (1998)
U.S. v. Alvarez-Ramirez, 2000 WL 127233 (9th Cir. 2000)
- ✓ Solicitation to deliver cocaine
Washington
U.S. v. Vargas-Gomez, 2000 WL 27859 (9th Cir. 2000)

FRAUD CRIMES WHERE THE LOSS EXCEEDS \$10,000

- ✓ Insurance fraud
Ind. Code Ann. § 35-43-5-4(10) (West 1995)
Matter of Onyido, Interim Decision 3379 (BIA 1999)

RICO OFFENSES

- ✓ Conspiracy to participate in a racketeering enterprise
18 U.S.C. § 1962(d)
Alfarache v. Cravener, 203 F.3d 381 (5th Cir. 2000)

FORGERY

- ✓ Forgery
North Carolina law
Matter of Kanga, Interim Decision 3424 (BIA 2000)
- ✓ Forgery
N.Y. Penal Law § 170.10(2) (McKinney 1996)
Matter of Aldabesheh, Interim Decision 3410 (BIA 1999)
- ✓ Possession of counterfeit obligations of the U.S.
18 U.S.C. § 472
Albillo-Figueroa V. INS, 2000 WL 1070730 (9th Cir. 2000)

DRUG OFFENSES

The following crimes have been found to be drug offenses:

- ✓ Being under the influence of a drug
Cal. Health & Safety Code § 11550(a) (West 1993)
Matter of Esqueda, 20 I&N Dec. 850 (BIA 1994)

- ✓ Being under the influence of amphetamines
Cal. Health & Safety Code § 11550
Flores-Arellano v. INS, 5 F.3d 360 (9th Cir. 1993)

- ✓ Travel Act violating/transporting drugs in interstate commerce
18 U.S.C. § 1952
Johnson v. INS, 971 F.2d 340 (9th Cir. 1992)

- ✓ Solicitation to possess narcotic drugs
Ariz. Rev. Stat. Ann. §§ 13-1002 and 13-3408 (1989)
Matter of Beltran, 20 I&N Dec. 521 (BIA 1992)

- ✓ Attempted illicit possession
Cal. Health & Safety Code § 11173(a)
Abudu v. INS, 802 F.2d 1096 (9th Cir. 1986), *rev'd on other grounds*, 485 U.S. 94 (1988)

- ✓ Facilitation of unlawful sale of cocaine
Ariz. Rev. Stat. Ann. § 13-1004.A
Matter of Del Risco, 20 I&N Dec. 109 (BIA 1989)

- ✓ Possession of a controlled substance (cocaine)
Tex. Health & Safety Code Ann. § 481.115(d) (West 1997)
Matter of K-V-D-, Interim Decision 3422 (BIA 1999)

The following crimes have been found NOT to be drug offenses:

- ✘ Misprision of a felony (conspiracy to possess heroin)
18 U.S.C. § 4
Castaneda de Esper v. INS, 557 F.2d 79 (6th Cir. 1977)

- ✘ Solicitation to possess cocaine
Ariz. Rev. Stat. Ann. § 113-1002 (West 1989)
Coronado-Durazo v. INS, 123 F.3d 1322 (9th Cir. 1997)

- ✘ Unlawfully carrying a firearm while committing a felony
18 U.S.C. § 924(c)
Matter of Carrillo, 16 I&N Dec. 625 (BIA 1978)

- ✘ Accessory after the fact to a drug crime
18 U.S.C. § 3 (Supp. V 1993)
Matter of Batista-Hernandez, 21 I&N Dec. 955 (BIA 1997)

FIREARMS OFFENSES

The following crimes have been found to be firearms violations:

- ✓ Unlawful use of a weapon
Illinois Compiled Statutes Annotated, ch.38, section 24-1(a)(7)
Matter of Campos-Torres, Interim Decision 3428 (BIA 2000)

- ✓ Use of a firearm during a drug trafficking crime or crime of violence
18 U.S.C. § 924(c)(1)
Matter of K-L-, 20 I&N Dec. 654 (BIA 1993)

- ✓ Burglary with a firearm
Fla. Stat. Ann. § 810.02 (West 1992)
Matter of P-F-, 20 I&N Dec. 661 (BIA 1993)

- ✓ Murder with a firearm
Fla. Stat. Ann. §§ 782.04 and 775.087 (West 1993)
Matter of Lopez-Amaro, 20 I&N Dec. 668 (BIA 1993), *aff'd*, *Lopez-Amaro v. INS*, 25 F.3d 986 (11th Cir. 1994), *cert. denied*, 513 U.S. 1146 (1995).

- ✓ Aggravated robbery with a weapon
Minn. Stat. Ann. § 609.245 (West 1991)
Vue v. INS, 92 F.3d 696 (8th Cir. 1996)

The following crimes have been found NOT to be firearms offenses:

- ✗ Enhancement of attempted murder sentence because one defendant had gun
Cal. Penal Code § 12022(a)(1) (West 1992)
Matter of Rodriguez-Cortes, 20 I&N Dec. 587 (BIA 1992)

- ✗ Assault in the 3rd degree
Wash. Rev. Code Ann. § 9A.36.031(1) (West 1992)
Matter of Perez-Contreras, 20 I&N Dec. 615 (BIA 1992)

SELECTED U.S. CODE PROVISIONS

8 U.S.C. § 1101(a)(43)

- (43) The term "aggravated felony" means -
 - (A) murder, rape, or sexual abuse of a minor;
 - (B) illicit trafficking in a controlled substance (as defined in section [802](#) of title 21), including a drug trafficking crime (as defined in section [924](#)(c) of title 18);
 - (C) illicit trafficking in firearms or destructive devices (as defined in section [921](#) of title 18) or in explosive materials (as defined in section [841](#)(c) of that title);
 - (D) an offense described in section [1956](#) of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
 - (E) an offense described in -
 - (i) section [842](#)(h) or (i) of title 18, or section [844](#)(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
 - (ii) section [922](#)(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or [®] or [924](#)(b) or (h) of title 18 (relating to firearms offenses); or
 - (iii) section [5861](#) of title 26 (relating to firearms offenses);
 - (F) a crime of violence (as defined in section [16](#) of title 18, but not including a purely political offense) for which the term of imprisonment [imposed is] at least one year;
 - (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [imposed is] at least one year;
 - (H) an offense described in section [875](#), [876](#), [877](#), or [1202](#) of title 18 (relating to the demand for or receipt of ransom);
 - (I) an offense described in section [2251](#), [2251A](#), or [2252](#) of title 18 (relating to child pornography);
 - (J) an offense described in section [1962](#) of title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section [1084](#) (if it is a second or subsequent offense) or [1955](#) of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
 - (K) an offense that -
 - (i) relates to the owning, controlling, managing, or supervising of a prostitution business;

- (ii) is described in section [2421](#), [2422](#), or 2423 of title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
 - (iii) is described in section [1581](#), [1582](#), 1583, 1584, 1585, or 1588 of title 18 (relating to peonage, slavery, and involuntary servitude);
- (L) an offense described in -
 - (i) section [793](#) (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18;
 - (ii) section [421](#) of title 50 (relating to protecting the identity of undercover intelligence agents); or
 - (iii) section [421](#) of title 50 (relating to protecting the identity of undercover agents);
- (M) an offense that -
 - (i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or
 - (ii) is described in section [7201](#) of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;
- (N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter
- (O) an offense described in section [1325](#)(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;
- (P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section [1543](#) of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;
- (Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;
- (R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of

which have been altered for which the term of imprisonment is at least one year;

- (S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;
- (T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and
- (U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

8 U.S.C. § 1227(a)(2)

(a) Classes of deportable aliens.--Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

. . .

- (2) Criminal offenses
 - (A) General crimes
 - (i) Crimes of moral turpitude
Any alien who -
 - (I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section [1255\(j\)](#) of this title) after the date of admission, and
 - (II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.
 - (ii) Multiple criminal convictions
Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.
 - (iii) Aggravated felony
Any alien who is convicted of an aggravated felony at any time after admission is deportable.
 - (iv) High speed flight
Any alien who is convicted of a violation of section 758 of title 18 (relating to high speed flight from an immigration checkpoint) is deportable.
 - (v) Waiver authorized
Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.
 - (B) Controlled substances
 - (i) Conviction
Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to

violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section [802](#) of title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

- (ii) Drug abusers and addicts
Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.
- (C) Certain firearm offenses
Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section [921](#)(a) of title 18) in violation of any law is deportable.
- (D) Miscellaneous crimes
Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate -
 - (i) any offense under chapter [37](#) (relating to espionage), chapter [105](#) (relating to sabotage), or chapter [115](#) (relating to treason and sedition) of title 18 for which a term of imprisonment of five or more years may be imposed;
 - (ii) any offense under section [871](#) or 960 of title 18;
 - (iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or
 - (iv) a violation of section [1185](#) or 1328 of this title, is deportable.
- (E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and
 - (i) Domestic violence, stalking, and child abuse
Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section [16](#) of title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that

individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) Violators of protection orders

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

8 U.S.C. § 1182(a)(2)

(a) Classes of aliens ineligible for visas or admission.--Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

. . . .

- (2) Criminal and related grounds
 - (A) Conviction of certain crimes
 - (i) In general
Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of -
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section [802](#) of title 21), is inadmissible.
 - (ii) Exception
Clause (i)(I) shall not apply to an alien who committed only one crime if -
 - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
 - (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).
 - (B) Multiple criminal convictions
Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single

scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

- (C) Controlled substance traffickers
Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.
- (D) Prostitution and commercialized vice
Any alien who -
 - (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,
 - (ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or
 - (iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.
- (E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution
Any alien -
 - (i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),
 - (ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,
 - (iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and
 - (iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.
- (F) Waiver authorized
For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h) of this section.
- (G) Foreign government officials who have engaged in particularly severe violations of religious freedom

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 6402 of title 22, and the spouse and children, if any, are inadmissible.

18 U.S.C. § 921(a)

- (3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.
- (4) The term "destructive device" means -
 - (A) any explosive, incendiary, or poison gas -
 - (i) bomb,
 - (ii) grenade,
 - (iii) rocket having a propellant charge of more than four ounces,
 - (iv) missile having an explosive or incendiary charge of more than one-quarter ounce,
 - (v) mine, or
 - (vi) device similar to any of the devices described in the preceding clauses;
 - (B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
 - (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section [4684\(2\)](#), [4685](#), or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.