

# DEFERRED ACTION FOR CHILDHOOD ARRIVALS CRIMINAL BARS

## (WITH NOTES FOR NEW YORK OFFENSES)



IMMIGRANT  
DEFENSE  
PROJECT

## CRIMINAL BARS TO DEFERRED ACTION

### FELONY

Any federal, state, or local offense that is punishable by imprisonment of more than one year.

**INCLUDES ANY NEW YORK FELONY**

### SIGNIFICANT MISDEMEANOR

Any federal, state, or local offense that is punishable by imprisonment of one year or less but greater than five days and is an offense of...

- Domestic violence
- Sexual abuse or exploitation
- Unlawful possession or use of a firearm
- Drug sales (distribution or trafficking)
- Burglary
- Driving under the influence of alcohol or drugs

**CERTAIN SINGLE NY MISDEMEANORS OR VIOLATIONS (e.g., NY PL 240.26) OR TRAFFIC INFRACTIONS (e.g., NY VTL 1192-1) FITTING INTO ONE OF THE ABOVE CATEGORIES**

Or any other misdemeanor not listed above for which the person received a jail sentence of more than 90 days. Suspended sentences do not count towards the 90 days.

**ANY NY CLASS A MISDEMEANOR WITH A JAIL SENTENCE > 90 DAYS**

### THREE NON-SIGNIFICANT MISDEMEANORS

Three or more non-significant misdemeanors that do not occur on the same day nor arise from the same act or scheme of misconduct.

Includes only federal, state, or local offenses punishable by imprisonment of one year or less but greater than five days and the person is sentenced to 90 days or less in jail, including a sentence of time served.

**ANY THREE NY CLASS A, CLASS B OR OTHER MISDEMEANORS (AS WELL AS CERTAIN NY VIOLATIONS OR TRAFFIC INFRACTIONS THAT HAVE A POSSIBLE JAIL SENTENCE > 5 DAYS)**

## OFFENSES THAT DO NOT LEAD TO AUTOMATIC DISQUALIFICATION

### STATE IMMIGRATION OFFENSES

Any state **immigration-related** felony or misdemeanor will not automatically disqualify a person from deferred action.

### TRAFFIC OFFENSES

Minor traffic offenses, such as driving without a license will not be considered a non-significant misdemeanor.

(e.g., NY VTL 509 UNLICENSED DRIVING TRAFFIC INFRACTIONS).

### JUVENILE DELINQUENCIES

Juvenile delinquencies do not automatically disqualify an individual from deferred action

(e.g., NY FAMILY CT DISPOSITIONS).

### EXPUNGED CONVICTIONS

Expunged convictions do not automatically disqualify an individual from deferred action.

(e.g., MAYBE CONVICTIONS FOR WHICH A NY CERT. OF RELIEF FROM CIVIL DISABILITIES HAS BEEN GRANTED).

**NOTE:** Even though these offenses do not trigger the “automatic” criminal bars, DHS can consider them under the **discretionary public safety threat** and **totality of circumstances analysis**, described below. If you think you fall into any of these categories, please call the IDP hotline at 212-725-6422

## ANY CRIMINAL HISTORY CAN RESULT IN A DISCRETIONARY DENIAL

### THREAT TO PUBLIC SAFETY

DHS may deny any application if it claims a public safety threat. This includes gang membership or participation in criminal activities (e.g., annotation on NY rap sheet that person is on a gang watchlist).

An individual may receive deferred action only after showing “exceptional circumstances.”

### THREAT TO NATIONAL SECURITY

DHS may deny any application if it claims the applicant has participated in activities that are a threat to national security (e.g., annotation on NY rap sheet that person is on a terrorist watchlist).

An individual may receive deferred action only after showing “exceptional circumstances.”

### ANY CRIMINAL HISTORY

Even where no criminal bar is present, an individual is not guaranteed a grant of deferred action. DHS may consider an individual’s total criminal history, including non-significant misdemeanor convictions, juvenile delinquency, and expunged convictions. DHS will determine under the “**totality of circumstances**” of the individual’s application whether to grant deferred action.

Call the IDP Hotline at 212-725-6422 for individual case support.