

NYSDA Immigrant Defense Project
Immigration Consequences of Convictions Summary Checklist*

GROUNDS OF DEPORTABILITY (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR)—greencard holder)	GROUNDS OF INADMISSIBILITY (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)	INELIGIBILITY FOR US CITIZENSHIP
<p>Aggravated Felony Conviction</p> <p>➤ <i>Consequences</i> (in addition to deportability):</p> <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Ineligibility for voluntary departure ◆ Permanent inadmissibility after removal ◆ Subjects client to up to 20 years of prison if s/he illegally reenters the US after removal <p>➤ <i>Crimes covered</i> (possibly even if not a felony):</p> <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (may include, whether felony or misdemeanor, any sale or intent to sell offense, second or subsequent possession offense, or possession of more than 5 grams of crack or any amount of flunitrazepam) ◆ Firearm Trafficking ◆ Crime of Violence + 1 year sentence** ◆ Theft or Burglary + 1 year sentence** ◆ Fraud or tax evasion + loss to victim(s) > \$10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + 1 year sentence** ◆ Obstruction of justice or perjury + 1 year sentence** ◆ Certain bail-jumping offenses ◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ◆ Attempt or conspiracy to commit any of the above 	<p>Conviction or <i>admitted commission</i> of a Controlled Substance Offense, or DHS has reason to believe individual is a drug trafficker</p> <p>➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)</p> <hr/> <p>Conviction or <i>admitted commission</i> of a Crime Involving Moral Turpitude (CIMT)</p> <p>➤ Crimes in this category cover a broad range of crimes, including:</p> <ul style="list-style-type: none"> ◆ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery) ◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes) ◆ Most sex offenses <p>➤ <i>Petty Offense Exception</i>—for one CIMT if the client has no other CIMT + the offense is not punishable > 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months</p> <hr/> <p style="text-align: center;">Prostitution and Commercialized Vice</p> <hr/> <p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p>	<p>Conviction or admission of the following crimes bars a finding of good moral character for up to 5 years:</p> <p>➤ Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana)</p> <p>➤ 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)</p> <p>➤ 2 or more offenses of any type + aggregate prison sentence of 5 years</p> <p>➤ 2 gambling offenses</p> <p>➤ Confinement to a jail for an aggregate period of 180 days</p> <hr/> <p>Aggravated felony conviction on or after Nov. 29, 1990 (and murder conviction at any time) <i>permanently</i> bars a finding of moral character and thus citizenship eligibility</p>
<p>Controlled Substance Conviction</p> <p>➤ EXCEPT a single offense of simple possession of 30g or less of marijuana</p>	<p style="text-align: center;">CONVICTION DEFINED</p> <p>A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where:</p> <p>(i) 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</p> <p>(ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed.</p> <p>THUS:</p> <p>➤ 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)</p> <p>➤ A deferred adjudication disposition without a guilty plea (e.g., NY ACD) is NOT a conviction</p> <p>➤ A youthful offender adjudication (e.g., NY YO) is NOT a conviction</p>	
<p>Crime Involving Moral Turpitude (CIMT) Conviction</p> <p>➤ For crimes included, see Grounds of Inadmissibility</p> <p>➤ One CIMT committed within 5 years of admission into the US and for which a sentence of 1 year or longer may be imposed (e.g., in New York, may be a Class A misdemeanor)</p> <p>➤ Two CIMTs committed at any time “not arising out of a single scheme”</p>		
<p>Firearm or Destructive Device Conviction</p>		
<p>Domestic Violence Conviction or other domestic offenses, including:</p> <p>➤ Crime of Domestic Violence</p> <p>➤ Stalking</p> <p>➤ Child abuse, neglect or abandonment</p> <p>➤ Violation of order of protection (criminal or civil)</p>		
INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL		
<p>➤ Aggravated felony conviction</p> <p>➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the United States</p>		
INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL		
<p>“Particularly serious crimes” make noncitizens ineligible for asylum and withholding. They include:</p> <p>➤ Aggravated felonies</p> <ul style="list-style-type: none"> ◆ All will bar asylum ◆ Aggravated felonies with aggregate 5 year sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding <p>➤ Other serious crimes—no statutory definition (for sample case law determination, see Appendix F)</p>		

*For the most up-to-date version of this checklist, please visit us at <http://www.immigrantdefenseproject.org>.

**The 1-year requirement refers to an actual or suspended prison sentence of 1 year or more. [A New York straight probation or conditional discharge without a suspended sentence is not considered a part of the prison sentence for immigration purposes.]