



# **IMMIGRATION CONSEQUENCES FOR DEFENDANTS**



- **U.S. Citizens:** permitted to remain in the U.S. permanently and can't be deported for crimes, though CAN be denaturalized
- **Immigrants:** (“green card” or “permanent resident”) Permitted to remain in the U.S. permanently and CAN be deported for crimes
- **Non-Immigrants:** Permitted to remain in the U.S. for a temporary and defined period, then must leave the U.S.
  - Ex: Student (F-1), International Organization Employees (G-4)
- **Undocumented:** Entered with a non-immigrant status and stayed beyond the period permitted or entered without inspection



**GROUND OF REMOVAL:** INA § 237; 8 USC § 1227

**GROUND OF INADMISSIBILITY:** INA § 212; 8 USC § 1182

**EXPEDITED REMOVAL:** INA § 235; 8 USC § 1225

## **Removal Grounds: INA § 237; 8 USC § 1227**

### **General:**

- Inadmissible aliens
- Present in violation of law
- Violated nonimmigrant status or condition of entry
- Termination of conditional permanent residence
- Smuggling
- Marriage fraud

## **Removal Grounds: INA § 237; 8 USC § 1227**

### **Criminal Grounds:**

- Crimes of moral turpitude
- Multiple convictions
- Aggravated felonies
- High speed flight
- Failure to register as a sex offender

## Removal Grounds: INA § 237; 8 USC § 1227

### Criminal Grounds:

- Controlled substances
- Drug abusers and addicts
- Certain firearms
- Miscellaneous crimes
- Domestic violence
- Stalking violation of protection order crimes against children
- Trafficking

## **Removal Grounds: INA § 237; 8 USC § 1227**

### **Criminal Grounds:**

- Failure to register and falsification of documents
- Document fraud
- Falsely claiming U.S citizenship
- Security grounds
- Public charge
- Unlawful voters

## **Inadmissibility Grounds: INA § 212; 8 USC § 1182**

- General grounds
- Prostitution and commercialized vice
- Certain aliens involved in serious criminal activity who have asserted immunity from prosecution
- Foreign government officials who have committed particularly severe violations of religious freedom
- Significant traffickers in persons
- Money laundering



## Inadmissibility Grounds: INA § 212; 8 USC § 1182

- Security and related grounds
- Terrorist Activity (defined in Matter of S-K-)
- Recruitment or use of child soldiers
- Public charge (VAWA special rules)
- Labor certification for certain immigrants
- Illegal entrants and immigration violators:
  - Present without admission or parole
  - Failure to attend removal proceedings
  - Aliens unlawfully present

## **Inadmissibility Grounds: INA § 212; 8 USC § 1182**

- Misrepresentations (includes falsely claiming US citizenship)
- Stowaways
- Smugglers
- Student visa abusers
- Documentation requirements
- Ineligible for citizenship
- Aliens previously removed
- Miscellaneous

INA § 101(a)(48); 8 USC § 1101(a)(48)

(A) 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

**Definition of Conviction**

## Expungements, Juvenile and Foreign Convictions:

INA § 101(a)(48); 8 USC § 1101(a)(48)

- *Matter of Roldan* – Expungements are still convictions
- *Matter of Devison* – Juvenile Offenses are not convictions
- *Matter of Mohamed* – Pretrial Intervention Program including community supervision, service, fees, is a conviction
- *Matter of Adamiak* – Vacatur on Constitutional Grounds not a conviction
- *Dillingham v. INS* – Foreign convictions are convictions

## **Inadmissibility Grounds Criminal 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,

**Crime Involving Moral Turpitude (CIMT)**

## Inadmissibility grounds

### Criminal:

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

**Crime Involving Moral Turpitude (CIMT)**

## **Inadmissibility Grounds**

### **Criminal:**

(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)

**Crime Involving Moral Turpitude (CIMT)**

## Removal Grounds

### Criminal:

Aliens convicted of a crime involving moral turpitude (committed within ten years of admission in the case of an LPR, or five years after admission for other categories of aliens) for which a sentence of imprisonment for one year or longer may be imposed

**Crime Involving Moral Turpitude (CIMT)**



## Removal Grounds

### Criminal:

Matter of Silva-Trevino (2016)

“The term “moral turpitude” generally refers to conduct that 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.” To involve moral turpitude, a crime requires two essential elements: reprehensible conduct and a culpable mental state”

**Crime Involving Moral Turpitude (CIMT)**

## Removal Grounds

### Criminal:

Examples of Crimes Involving Moral Turpitude:

- Assault with a Dangerous/Deadly Weapon
- Robbery/Manslaughter/Murder
- Domestic Violence
- Burglary with Intent to Commit Theft/Larceny
- Receiving Stolen Property/Theft
- Bad Checks/Tax Evasion/Forgery/Money Laundering
- Perjury
- Lewdness/Statutory Rape
- Reckless Endangerment
- Distribution/Unlawful Sale of Drugs
- Accessory Before/After the Fact (if underlying crime is a CIMT)

**Crime Involving Moral Turpitude (CIMT)**

## Removal Grounds

### Criminal:

VA Code § 18.2-51.2:  
Aggravated malicious wounding

(A) If any person maliciously shoots, stabs, cuts or wounds any other person, . . . , with the intent to maim, disfigure, disable or kill, he shall be guilty . . . if the victim is thereby severely injured . . .

REPREHENSIBLE CONDUCT + CULPABLE MENTAL STATE = CIMT

**Crime Involving Moral Turpitude (CIMT)**

## Removal Grounds

### Criminal:

VA Code § 18.2-266:

Driving motor vehicle, engine, etc., while intoxicated, etc.

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of 0.08 percent . . . , (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug . . . to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely, (iv) while such person is under the combined influence of alcohol and any drug or (v) while such person has a blood concentration of . . . , or (d) 0.1 milligrams of 3,4- methylenedioxymethamphetamine per liter of blood.

Generally: No INTENT = NOT a CIMT

**Crime Involving Moral Turpitude (CIMT)**

## Removal Grounds

### Criminal:

A specific intent is not a prerequisite; it depends on whether the act is accompanied by a “vicious or corrupt mind.” *Matter of Torres- Varela*, 23 I&N Dec. 78 (BIA 2001).

Thus, crimes such as fraud are considered to involve moral turpitude. *Jordan v. De George*, 341 U.S. 223, 229 (1951).

## Removal Grounds

### Criminal:

VA Code § 18.2-174. Impersonating Officer:

Any person who shall falsely assume or exercise the functions, powers, duties and privileges incident to the office of sheriff, police . . . or who shall falsely pretend or assume to be such officer, shall be deemed guilty . . .

NO INTENT in the language of the statute, but the FRAUD REFLECTS a VICIOUS or CORRUPT MIND.

**Crime Involving Moral Turpitude (CIMT)**

## Removal Grounds

### Criminal:

VA Code § 18.2-51.4

Maiming, etc., of another resulting from driving while intoxicated  
(A) Any person who, as a result of driving while intoxicated in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty . . .

Reckless Behavior + Aggravating Factor = (?)

**Crime Involving Moral Turpitude (CIMT)**

## Removal Grounds

### Criminal:

#### GENERALLY:

“Crimes involving a reckless mental state will not be deemed to involve moral turpitude absent the presence of some aggravating factors, such as the death of a person or the infliction of bodily injury.”

See, e.g., *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996); *Matter of Wojtkow*, 18 I&N Dec. 111 (BIA 1981); *Matter of Medina*, 15 I&N Dec. 611, 613 (BIA 1976)



## Removal Grounds

### Criminal:

VA Code § 18.2-46.2(A)

Prohibited criminal street gang participation

Any person who actively participates in or is a member of a criminal street gang and who knowingly and willfully participates in any predicate criminal act committed for the benefit of, at the direction of, or in association with any criminal street gang shall be guilty of a Class 5 felony.

DOES NOT NECESSARILY INVOLVE MORAL TURPITUDE AND SO IS NOT CATEGORICALLY A CIMT

**Crime Involving Moral Turpitude (CIMT)**

## Inadmissibility Grounds

### **Criminal:**

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

**Multiple Convictions**



## Removal Grounds

### Criminal:

Aliens convicted of two or more crimes involving moral turpitude that did not arise out of a single scheme of criminal misconduct

**Multiple Convictions**

## **Inadmissibility Grounds**

### **Criminal:**

An alien who has been convicted of, admitted to having committed, or admitted to committing acts that constitute the essential elements of a violation of any federal, state, or foreign controlled substance law substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) (or an attempt or conspiracy to commit such a crime)

**Controlled Substances**

## Removal Grounds

### Criminal:

Aliens convicted of violating any federal, state, or foreign controlled substance law or regulation (including a conspiracy or attempt to violate such law or regulation)

Does not apply if conviction is for a single offense of possessing for personal use 30 grams or less of marijuana

## Inadmissibility Grounds

### Criminal:

An alien who immigration authorities know, or have reason to believe, has been involved in drug trafficking (includes alien's spouse, son, or daughter if they have, within the previous five years, obtained any financial or other benefit from the drug trafficking activity and knew or reasonably should have known that the financial or other benefit resulted from such activity)

**Drug Trafficking**

## Removal Grounds

### Criminal:

- Aliens convicted of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment;
- Aliens who have violated a protective order related to harassment or domestic violence

## Removal Grounds

### Aggravated Felony (INA § 101); 8 U.S.C. § 1101:

- Murder, rape, sexual abuse of a minor
- Drug Trafficking: 21 USC § 802 & 18 USC § 924(c)
- Firearm Trafficking: as defined in 18 USC § 921
- Crime of Violence: 18 USC § 16(a) + at least 1 year prison sentence
- Theft or Burglary + at least 1 year prison sentence
- Fraud or Tax Evasion: 26 USC § 7201 + loss to victim >\$10,000
- Alien Smuggling: 8 USC 1324 (certain exceptions)

**Aggravated Felonies**



## Removal Grounds

### Aggravated Felony (INA § 101); 8 U.S.C. § 1101:

- 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 (e.g. money laundering, firearms, explosives, failure to appear in court of for sentencing, etc.)
- Attempt or Conspiracy to commit any of the above

## Pardons

INA § 237(a)(2)(A)(v), 8 U.S.C. § 1227(a)(2)(A)(v)

- (i) Crimes of moral turpitude
- (ii) Multiple criminal convictions
- (iii) Aggravated felony
- (iv) High speed flight
- (v) Failure to register as a sex offender
- (vi) 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

## Particularly Serious Crime:

- All aggravated felonies 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 of removal
- Violent or dangerous crimes will presumptively bar asylum

## Particularly Serious Crime

- Bars on adjustment of status waivers for humanitarian purposes, family unity, or public interest where:
- DHS has reason to believe the individual is a drug trafficker the individual has a Conviction of or has committed a violent or dangerous crime

## **Good Moral Character**

**If occurring at any time:**

- Murder
- Participation in genocide
- Acts of torture & extrajudicial killings
- Aggravated felonies on or after November 29, 1990

**Naturalization**

## Good Moral Character

### If occurring within the statutory period:

- Acts related to prostitution and other commercialized vices
- Crimes involving moral turpitude (other than a purely political offense), unless the crime falls within one of the enumerated exceptions
- Violations of any law or regulation relating to a controlled substance

## **Good Moral Character**

### **If occurring within the statutory period:**

- Two or more offenses for which the aggregate sentences of confinement were five years or more
- Engaging in, assisting in, or conspiring to commit a drug trafficking offense (except for simple possession of thirty grams or less of marijuana)
- Deriving income principally from illegal gambling activities

## **Good Moral Character**

### **If occurring within the statutory period:**

- Convictions for two or more gambling offenses
- Confinement for an aggregate period of 180 days or more in a corrections facility (regardless of whether offense was committed within statutory period)





**QUESTIONS ?**





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