

## IMMIGRATION CONSEQUENCES OF CONVICTIONS SUMMARY CHECKLIST\*

| <b>GROUND FOR DEPORTATION</b> [apply to lawfully admitted noncitizens, such as a lawful permanent resident [LPR] – greencard holder]   | <b>GROUND OF INADMISSIBILITY</b> [apply to noncitizens seeking lawful admission, including LPRs who travel out of US]  | <b>INELIGIBILITY FOR U.S. CITIZENSHIP</b>  |
|--|--|--|
| <p><b>Aggravated Felony</b> conviction</p> <ul style="list-style-type: none"> <li>➤ <i>Consequences</i> (in addition to deportability):                             <ul style="list-style-type: none"> <li>◆ Ineligibility for most waivers of removal</li> <li>◆ Ineligibility for voluntary departure</li> <li>◆ Permanent inadmissibility after removal</li> <li>◆ Subjects client to up to 20 years of prison if s/he illegally reenters the U.S. after removal</li> </ul> </li> <li>➤ <i>Crimes covered</i> (possibly even if not a felony):                             <ul style="list-style-type: none"> <li>◆ Murder</li> <li>◆ Rape</li> <li>◆ Sexual Abuse of a Minor</li> <li>◆ Drug Trafficking [probably includes any felony controlled substance offense; may include misdemeanor marijuana sale offenses and 2nd misdemeanor possession offenses]</li> <li>◆ Firearm Trafficking</li> <li>◆ Crime of Violence + 1 year sentence**</li> <li>◆ Theft or Burglary + 1 year sentence**</li> <li>◆ Fraud or tax evasion + loss to victim(s) &gt; \$10,000</li> <li>◆ Prostitution business offenses</li> <li>◆ Commercial bribery, counterfeiting, or forgery + 1 year sentence**</li> <li>◆ Obstruction of justice offenses + 1 year sentence**</li> <li>◆ Certain bail-jumping offenses</li> <li>◆ Various federal criminal offenses and possibly state analogues [money laundering, various federal firearms offenses, alien smuggling, etc.]</li> <li>◆ Attempt or conspiracy to commit any of the above</li> </ul> </li> </ul> | <p>Conviction or <i>admitted commission</i> of a <b>Controlled Substance Offense</b>, or DHS (formerly INS) has reason to believe individual is a drug trafficker</p> <ul style="list-style-type: none"> <li>➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)</li> </ul> <hr/> <p>Conviction or <i>admitted commission</i> of a <b>Crime Involving Moral Turpitude [CIMT]</b></p> <ul style="list-style-type: none"> <li>➤ This category covers a broad range of crimes, including:                             <ul style="list-style-type: none"> <li>◆ Crimes with an <i>intent to steal or defraud</i> as an element [e.g., theft, forgery]</li> <li>◆ 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]</li> <li>◆ Most sex offenses</li> </ul> </li> <li>➤ <i>Petty Offense Exception</i>—for one CIMT if the client has no other CIMT + the offense is not punishable &gt; 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence &gt; 6 months</li> </ul> <hr/> <p><b>Prostitution and Commercialized Vice</b></p> | <p>Certain convictions or admissions of crime will statutorily bar a finding of good moral character for up to 5 years:</p> <ul style="list-style-type: none"> <li>➤ <b>Controlled Substance Offense</b> [except in case 30g of marijuana]</li> <li>➤ <b>Crime Involving Moral Turpitude</b></li> <li>➤ <b>2 or more offenses</b> of any type + <b>aggregate prison sentence of 5 years</b></li> <li>➤ <b>2 gambling offenses</b></li> <li>➤ <b>Confinement</b> to a jail for an aggregate period of 180 days</li> </ul> <hr/> <p><b>Aggravated felony</b> may bar a finding of moral character forever, and thus may make your client <i>permanently</i> ineligible for citizenship</p>   |
| <p><b>Controlled Substance</b> conviction</p> <ul style="list-style-type: none"> <li>➤ EXCEPT a single offense of simple possession of 30g or less of marijuana</li> </ul>   | <p>Conviction of <b>2 or more offenses</b> of any type + <b>aggregate prison sentence of 5 years</b></p>   | <p style="text-align: center;"><b>INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL</b></p> <ul style="list-style-type: none"> <li>➤ Aggravated Felony Conviction</li> <li>➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the U.S.</li> </ul> <hr/> <p style="text-align: center;"><b>INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL</b></p> <p>"Particularly serious crimes" make noncitizens ineligible for asylum and withholding. They include:</p> <ul style="list-style-type: none"> <li>➤ Aggravated felonies                             <ul style="list-style-type: none"> <li>◆ All will bar asylum</li> <li>◆ Aggravated felonies with aggregate 5 year sentence of imprisonment will bar withholding</li> <li>◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding</li> </ul> </li> <li>➤ Other serious crimes—no statutory definition [For sample case law determinations, see Appendix F in NYSDA Immigration Manual]</li> </ul> |
| <p><b>Crime Involving Moral Turpitude [CIMT]</b> conviction</p> <ul style="list-style-type: none"> <li>➤ For crimes included, see Grounds of Inadmissibility</li> <li>➤ An LPR is deportable for 1 CIMT committed within 5 years of admission into the U.S. and for which a sentence of 1 year or longer may be imposed</li> <li>➤ An LPR is deportable for 2 CIMT committed at any time "not arising out of a single scheme"</li> </ul>   |  |  |
| <p><b>Firearm or Destructive Device</b> conviction</p>   |  |  |
| <p><b>Domestic Violence</b> conviction or other domestic offenses, including:</p> <ul style="list-style-type: none"> <li>➤ Crime of domestic violence</li> <li>➤ Stalking</li> <li>➤ Child abuse, neglect or abandonment</li> <li>➤ Violation of order of protection (criminal or civil)</li> </ul>  |  |  |
| <b>CONVICTION DEFINED</b>  |  |  |
| <p>"A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where:</p> <p>(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</p> <p>(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed."</p> <p><b>THUS:</b></p> <ul style="list-style-type: none"> <li>◆ A drug treatment or domestic violence counseling alternative to incarceration disposition could be considered a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)</li> <li>◆ A deferred adjudication disposition without a guilty plea (e.g., NY ACD) will not be considered a conviction</li> <li>◆ A youthful offender adjudication will not be considered a conviction if analogous to a federal juvenile delinquency disposition (e.g., NY YO)</li> </ul>   |  |  |

\*This summary checklist was originally prepared by former NYSDA Immigrant Defense Project Staff Attorney Sejal Zota. Because this checklist is frequently updated, please visit our Internet site at <<http://www.nysda.org>> (click on Immigrant Defense Project page) for the most up-to-date version.

\*\*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.]