

## IMMIGRATION CONSEQUENCES OF CONVICTIONS SUMMARY CHECKLIST (FEB. 2008)\*

<b>GROUND OF DEPORTATION</b> (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR) – green card holder)	<b>GROUND OF INADMISSIBILITY</b> (apply to noncitizens seeking a green card or seeking lawful admission, including LPRs who travel out of U.S.)	<b>INELIGIBILITY FOR U.S. CITIZENSHIP</b>
<b>Aggravated Felony Conviction</b> ➤ <i>Consequences</i> <ul style="list-style-type: none"> <li>◆ Deportability</li> <li>◆ Ineligibility for most forms of relief from 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> ➤ <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 (includes, whether felony or misdemeanor, any sale or intent to sell offense, maybe a subsequent possession offense, or possession of &gt; 5 grams of crack or any amount of flunitrazepam (date rape drug))</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>◆ 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>	Conviction (or admitted commission) of a <b>Controlled Substance Offense</b> , or ICE has reason to believe individual is a drug trafficker <ul style="list-style-type: none"> <li>➤ No possibility of 212(h) relief (except for simple possession of 30g or less of marijuana, if no prior drug convictions)</li> </ul> Conviction (or admitted commission) of a <b>Crime Involving Moral Turpitude (CMT)</b> <ul style="list-style-type: none"> <li>➤ Crimes in this category cover 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 by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., manslaughter, assault crimes)</li> <li>◆ Most sex offenses</li> </ul> </li> <li>➤ <i>Petty Offense Exception</i> – for one CMT if                             <ul style="list-style-type: none"> <li>◆ the client has no other CMTs;</li> <li>◆ the offense is not punishable &gt; 1 year; &amp;</li> <li>◆ the actual sentence, active or suspended, is &lt; 6 months (all NC non-DWI misdemeanors fit)</li> </ul> </li> </ul>	Conviction or admission of the following crimes bars a finding of good moral character for up to 5 years: <ul style="list-style-type: none"> <li>➤ <b>Controlled Substance Offense</b> (unless single offense of simple possession of 30g or less of marijuana)</li> <li>➤ <b>Crime Involving Moral Turpitude</b> (unless single CMT and the offense is not punishable &gt; 1 year + does not involve a prison sentence &gt; 6 months)</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 jail for an aggregate period of <b>180 days</b></li> </ul>
<b>Controlled Substance conviction</b> ➤ EXCEPT an offense of simple possession of 30g or less of marijuana, if no prior drug convictions	Conviction of <b>2 or more offenses</b> of any type + <b>aggregate prison sentence of ≥ 5 years</b>	<b>Aggravated felony conviction</b> on or after Nov. 29, 1990 (and murder conviction at any time) <i>permanently</i> bar a finding of moral character and thus citizenship eligibility
<b>Crime Involving Moral Turpitude (CMT) conviction</b> ➤ For crimes included, see Grounds of Inadmissibility ➤ An LPR is deportable for 1 CMT committed within 5 years of admission into the U.S. and punishable by at least 1 year in prison ➤ An LPR is deportable for 2 CMTs committed at any time “not arising out of a single scheme”	<b>INELIGIBILITY FOR RELIEF OF CANCELLATION OF REMOVAL FOR AN LPR</b> ➤ Aggravated felony conviction ➤ Offense covered under Ground of Inadmissibility when committed within first 7 years of residence after admission into the U.S.	
<b>Firearm or Destructive Device conviction</b>	<b>INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL</b> “Particularly serious crimes” make noncitizens ineligible for asylum and withholding. They include:	
<b>Domestic Violence conviction</b> or certain other domestic offenses, including: <ul style="list-style-type: none"> <li>➤ Crime of Domestic Violence</li> <li>➤ Stalking</li> <li>➤ Child abuse, neglect, or abandonment</li> <li>➤ Violation (criminal or civil) of protective order</li> </ul>	<ul style="list-style-type: none"> <li>➤ Aggravated felonies                             <ul style="list-style-type: none"> <li>- All bar asylum</li> <li>- Aggravated felonies with aggregate 5 year sentence of imprisonment bar withholding</li> <li>- Aggravated felonies involving trafficking in controlled substance presumptively bar withholding</li> </ul> </li> <li>➤ Other serious crimes – no statutory definition</li> </ul>	
<b>CONVICTION DEFINED</b>		
A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where: <ol style="list-style-type: none"> <li>(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</li> <li>(ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed.</li> </ol>		
<b>THUS:</b> <ul style="list-style-type: none"> <li>➤ A PJC, 90-96 deferral, and expungement are probably convictions</li> <li>➤ A deferred prosecution or drug treatment court disposition with an admission of guilt and court-ordered restraints is a conviction (even if later dismissed)</li> <li>➤ A deferred prosecution without an admission of guilt is probably NOT a conviction</li> <li>➤ A juvenile delinquency adjudication is NOT a conviction</li> </ul>		

\*This checklist was originally created by the New York State Defenders Association Immigrant Defense (NYSDA) Project and was revised in light of NC law as part of IMMIGRATION CONSEQUENCES OF A CRIMINAL CONVICTION IN NORTH CAROLINA (UNC School of Government, 2008), online at [www.ncids.org](http://www.ncids.org).

\*\*The 1-year requirement refers to an active or suspended sentence of imprisonment of 1 year or more.