

Virginia Immigration Consequences of Criminal Offenses



This document is a reference guide, is not a complete statement of the law, and should be used in conjunction with training and other resource materials available at: www.caircoalition.org/vjp/vjp-immigration-consequences-resources.



WHAT IS AT STAKE?

A non-citizen charged under the federal grounds of deportability or inadmissibility faces detention and removal from the United States. Criminal dispositions may also preclude a non-citizen from seeking a defense to deportation if already removable and/or from seeking lawful status in the future if currently undocumented. Many Virginia offenses may trigger the grounds of deportability or inadmissibility. Remember: Ask EVERY client where they were born to begin your inquiry.

WHAT CONVICTIONS MAKE A PERSON DEPORTABLE OR INADMISSIBLE?

Grounds of Deportability

8 USC § 1227(a)(2), apply to those already lawfully admitted

Crime Involving Moral Turpitude (CIMT)

Any 1 felony or class 1 misdemeanor committed within 5 years of admission to U.S.; or
Any 2 CIMTs

Any Aggravated Felony

Any Controlled Substance Offense

Except for 1 simple possession of marijuana (30 grams or less)

Any Firearms Offense

Any Crime of Child Abuse, Neglect, or Abandonment

Any Crime of Domestic Violence (must meet definition of "crime of violence" at 18 U.S.C. 16), Stalking Offense, or any violation of Domestic Violence Protection Order (civil or criminal)

Grounds of Inadmissibility

8 USC § 1182(a)(2), apply to those seeking admission or adjustment of status

Crime Involving Moral Turpitude (CIMT)

"Petty offense exception" for one misdemeanor with sentence imposed of 6 months or less, including suspended time

Any 2 or more offenses with aggregate sentence of confinement 5 years or more

Any Controlled Substance Offense (no exceptions)

"Reason to Believe" Drug Trafficker

Prostitution-related Offenses

WHICH GROUNDS OF REMOVAL APPLY?

Without Current Lawful Status

Entered without Inspection or Overstayed on Visa

- ✓ Already removable, for lack of lawful status
- ✓ Grounds of deportability apply if previously lawfully admitted (i.e. on a visa)
- ✓ Grounds of inadmissibility apply if seeking to or may subsequently seek to adjust to lawful permanent residence
- ✓ Criminal bars to relief from removal are relevant if eligible for relief from removal
- ✓ Enforcement priorities may impact likelihood of apprehension by immigration authorities

In Lawful Status

Lawful Permanent Resident (LPR), Asylee, Refugee, In-status Visa Holder, etc.

- ✓ Grounds of deportability apply
- ✓ Grounds of inadmissibility apply if returning from travel outside of U.S.
- ✓ Criminal bars to relief from removal are relevant if already removable

Bars to Relief from Removal

There are various defenses to removal, or "relief from removal," available in the federal immigration law (e.g., asylum, cancellation of removal, waivers). Each carry their own criminal bars, often cross-referencing the grounds of deportability and inadmissibility. An aggravated felony conviction precludes eligibility for nearly all relief from removal, including Asylum and Cancellation of Removal for long time Lawful Permanent Residents.

COMMONLY USED TERMS

Crime Involving Moral Turpitude (CIMT)

Defined by case law, not by statute.

To be a CIMT, offense must involve: (1) reprehensible conduct; and (2) mens rea higher than negligence.

Example:

Petit larceny VA 18.2-96 is a CIMT.
Trespass 18.2-119 is not a CIMT.

Conviction

What is a conviction in the immigration context? 8 USC § 1101(a)(48)(A) defines:

(1) Formal judgment of guilt; or plea of guilt or nolo contendere or admission of facts sufficient to warrant finding of guilt

PLUS

(2) judicially ordered punishment, penalty, or restraint on liberty.

What is NOT a conviction for immigration purposes?

A juvenile delinquency adjudication.

A Virginia first offender deferred disposition if:
(1) defendant pleads not guilty; and
(2) defendant does not admit, proffer, or stipulate to facts sufficient to warrant finding of guilt.

See *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011).

Aggravated Felony

Defined at 8 USC 1101(a)(43) as a list of generic offenses including:

Murder, Rape, or Sexual Abuse of a Minor

Certain Firearm Offenses

Drug Trafficking (including most controlled substance offenses involving sale or intent to sell)

Crime of Violence with at least 1 year sentence imposed

Theft with at least 1 year sentence imposed

Burglary with at least 1 year sentence imposed

Fraud with loss to victim of more than \$10,000

Prostitution business offenses

Commercial bribery, counterfeiting, or forgery with at least 1 year sentence imposed

Obstruction of justice or perjury with at least 1 year sentence imposed

Failure to appear in court for felony charge with sentence of 2 years or more

Attempt or conspiracy to commit any of the above

**** Sentence imposed includes time suspended ****

Enforcement Priorities and Deferred Action Programs

Pursuant to 2014 Executive Action, immigration officers are instructed to prioritize the detention and removal of individuals with the following convictions:

- ⚠ Any felony
- ⚠ Any Class 1 or 2 misdemeanor that involves: driving under the influence, domestic violence, sexual abuse or exploitation, burglary, unlawful possession of a firearm, drug distribution or trafficking
- ⚠ Any Class 1 or 2 misdemeanor with active jail time of 90 days or more imposed, excluding unlicensed driving
- ⚠ Any three Class 1 or 2 misdemeanors, excluding unlicensed driving

Depending on the outcome of pending litigation, these offenses may also render undocumented individuals ineligible for certain "deferred action" programs offering temporary relief from removal including Deferred Action for Childhood Arrivals and Deferred Action for Parents of Americans.