



Common Tools of Statutory Construction for Criminal Removal Grounds

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I. Introduction¹

This practice advisory describes some of the common tools of statutory construction to assist practitioners in advocating for narrow definitions of generic criminal removal grounds before the Board of Immigration Appeals (BIA) and the U.S. courts of appeals. To determine whether a criminal conviction renders a noncitizen removable under federal immigration law, federal courts and the BIA generally employ the categorical approach. Under this approach, adjudicators consider whether the elements of the statute of conviction fall within—or “categorically match”—the “generic” federal definition of the corresponding removal ground.² Identifying the elements of the generic definition generally requires construing the relevant text of the Immigration and Nationality Act (INA).³ To do this, adjudicators employ “the traditional tools of statutory interpretation.”⁴

While the focus of this advisory is construing criminal removal grounds, most of these statutory construction tools can be used when interpreting state and federal criminal statutes and other, non-criminal, provisions of the INA and other civil statutes.

The advisory discusses statutory construction and the Supreme Court’s *Chevron* decision (Part II); traditional statutory construction tools that can be used when construing “generic” criminal

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² *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013) (“Under [the categorical] approach we look ‘not to the facts of the particular prior case,’ but instead to whether ‘the state statute defining the crime of conviction’ categorically fits within the ‘generic’ federal definition of a corresponding aggravated felony.”) (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 186 (2007)).

This practice advisory only addresses one specific—and critical—part of the inquiry: determining the generic definition of the removal ground. Practitioners should refer to other resources for guidance on other aspects of applying the categorical approach. *See, e.g.*, Kathy Brady, Immigrant Legal Resource Center, *How to Use the Categorical Approach Now*, (Oct. 2021), https://www.ilrc.org/sites/default/files/resources/2021_categorical_approach_oct_final2.pdf.

³ Where the INA expressly incorporates a federal criminal statute it is necessary to construe that statute. *See, e.g.*, 8 U.S.C. § 1101(a)(43)(D), (E), (H). However, the tools described in this practice advisory can also be used when interpreting criminal provisions.

⁴ *Pugin v. Garland*, 599 U.S. 600, 610 (2023).

removal grounds (Part III); and how to respond to government arguments that a proposed definition will not lead to enough deportations (Part IV).

II. Statutory Construction and *Chevron*

Under *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984), courts defer to an agency’s reasonable interpretation of ambiguous statutes that it administers. Despite its prominent role in shaping administrative law over the past four decades, *Chevron*’s influence may soon end or change significantly. In 2023, the Supreme Court granted certiorari on the question of whether it should overrule or narrow *Chevron*.⁵ As a result, practitioners should consider preserving the argument, at the circuit level, that *Chevron* deference is invalid.

Under the current *Chevron* framework, however, the Supreme Court has held that, at least in some contexts, published BIA decisions may warrant deference. When faced with an agency’s interpretation of a statute, the threshold question, referred to as *Chevron* “Step Zero,” is “whether the *Chevron* framework applies at all”—in other words, whether deference to the agency is even at play or the courts need not consider the agency’s views at all.⁶ This threshold inquiry depends upon whether Congress “expect[s] the agency to be able to speak with the force of law when it addresses ambiguity in the statute or fills a space in the enacted law.”⁷

While the Supreme Court has held that published BIA decisions may be entitled to deference,⁸ there is room to argue that *Chevron* is inapplicable in certain circumstances. For instance, when it comes to crime-based grounds of removal, there are well-developed arguments practitioners can raise that the BIA lacks particular expertise in criminal law and general statutory construction, such that deference to the agency is never appropriate when construing a criminal statute.⁹ Practitioners may also argue that when construing removal provisions (like aggravated

⁵ *Loper Bright Enterprises, Inc. v. Raimondo*, 45 F.4th 359 (D.C. Cir. 2022), cert. granted in part sub nom. *Loper Bright Enterprises v. Raimondo*, 143 S. Ct. 2429 (2023).

⁶ *Ali v. Barr*, 951 F.3d 275, 279 (5th Cir. 2020) (quoting Cass R. Sunstein, *Chevron Step Zero*, 92 VA. L. REV. 187, 191 (2006)).

⁷ *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001); see also *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1157 (10th Cir. 2016) (Gorsuch, J., concurring) (“[W]e once thought *Chevron*’s presumption of delegation for ambiguous statutes applied uniformly Then we learned it doesn’t apply to criminal statutes. Now we know it doesn’t always apply even when it comes to purely civil statutes.”).

⁸ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987) (holding that the BIA was entitled to deference when construing “well-founded fear” on a case-by-case basis).

⁹ See, e.g., Brief for Petitioner at 51-53, *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021) (No. 19-863), https://www.supremecourt.gov/DocketPDF/19/19-863/149627/20200806174015155_Niz-Chavez%20Brief%20with%20Statutory%20Appendix%20-%20FINAL.pdf; Shoba Sivaprasad Wadhia & Christopher J. Walker, *The Case Against Chevron Deference in Immigration Adjudication*, 70 DUKE L.J. 1197, 1214-43 (2021); Rebecca Sharpless, *Zone of Nondeference: Chevron and Deportation for a Crime*, 9 DREXEL L. REV. 323, 341-52 (2017).

felonies) that have criminal as well as civil applications, the rule of lenity displaces *Chevron* deference. *See* Part III.H. Notably, the Supreme Court has never applied *Chevron* deference when interpreting aggravated felony provisions.¹⁰ When determining the meaning of a criminal statute, in turn, the Supreme Court has been even more explicit in stating that an agency’s interpretation is irrelevant; in other words, the *Chevron* framework does not apply at all.¹¹ As such, when addressing an issue of first impression in a particular circuit (or in order to preserve the issue for further review), practitioners should consider first arguing that *Chevron* is entirely irrelevant in determining the scope of the statutory provision at issue.

If the *Chevron* framework applies, courts use a two-step process to determine whether an agency’s interpretation of a statute that it administers is entitled to deference. Deference is only implicated if there is statutory ambiguity. As such, at *Chevron* “Step One,” a court must utilize the ordinary tools of statutory interpretation to decide whether the statute is genuinely ambiguous. In recent years, the Supreme Court has cautioned against “reflexive deference” to agency interpretations, even in the immigration context.¹² Instead, it has repeatedly admonished courts to rigorously apply all tools of statutory construction before concluding a statute (or regulation) is genuinely ambiguous.¹³ In *Niz-Chavez v. Garland*, for instance, without specifically identifying *Chevron*, the majority reiterated that courts must “exhaust ‘all the textual and structural clues’” to resolve disputes over statutory meaning, not “defer to some conflicting reading the government might advance.”¹⁴ This practice advisory provides practitioners with a

¹⁰ *See, e.g., Pugin*, 599 U.S. at 610; *Esquivel-Quintana*, 581 U.S. at 397-98; *Kawashima v. Holder*, 565 U.S. 478, 489 (2012); *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 581 (2010); *Torres v. Lynch*, 578 U.S. 452 (2016); *Lopez v. Gonzales*, 549 U.S. 47 (2006); *see also Mellouli v. Lynch*, 575 U.S. 798, 809-10 (2015) (refusing to grant *Chevron* deference to BIA’s interpretation of conviction “relating to a controlled substance” because it was unsupported by the statutory text, lead to consequences Congress could not have intended and made “scant sense”).

¹¹ *See, e.g., Abramski v. United States*, 573 U.S. 169, 191 (2014) (finding Bureau of Alcohol, Tobacco, Firearms, and Explosives’ interpretation of criminal statute “not relevant at all” because “criminal laws are for courts, not for the Government, to construe”); *United States v. Apel*, 571 U.S. 359, 369 (2014) (“[W]e have never held that the Government’s reading of a criminal statute is entitled to any deference.”).

¹² *Pereira v. Sessions*, 138 S. Ct. 2105, 2120-21 (2018) (Kennedy, J., concurring).

¹³ *See Pereira*, 138 S. Ct. at 2113-14 (finding no need “to resort to *Chevron* deference, as some lower courts have done, for Congress . . . supplied a clear and unambiguous answer” to what constitutes a Notice to Appear under § 1229(a)); *Niz-Chavez*, 141 S. Ct. at 1480 (2021) (“The people who come before us are entitled, as well, to have independent judges exhaust all the textual and structural clues bearing on [a statute’s ordinary] meaning.”) (internal quotation marks omitted); *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (“[B]efore concluding that a rule is genuinely ambiguous, a court must exhaust all the ‘traditional tools’ of construction.”) (quoting *Chevron*, 467 U.S. at 843 n.9).

¹⁴ 141 S. Ct. at 1480 (quoting *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067 (2018)); *see also Debique v. Garland*, 58 F.4th 676, 685-86 (2d Cir. 2023) (Park, J., concurring)

panoply of statutory construction tools that can be used to argue that the meaning of a removal provision is unambiguous—and favors the noncitizen—at Step One.

If, however, after exhausting the “traditional tools” of construction, a court finds that ambiguity persists, *Chevron* requires deference to the agency’s *reasonable* reading of the statute.¹⁵ Thus, at Step Two, courts consider whether the agency’s interpretation is permissible through a variety of tools, including examining the agency’s reasoning and whether its construction is rationally related to the purpose of the statute.¹⁶ The Supreme Court has also indicated that the *Chevron* Step Two analysis asks whether an agency’s interpretation is “arbitrary and capricious in substance.”¹⁷ While most of the tools described in this practice advisory are most naturally deployed at *Chevron* Step One, practitioners may also argue that the BIA’s failure to consider or properly apply relevant statutory construction tools renders its interpretation of a statute unreasonable at Step Two.¹⁸

Chevron’s impact on immigrants has been significant, given the role of the circuit courts of appeals in developing the law in this area and those courts’ tendency to defer to the BIA.¹⁹ Yet, the doctrine’s resonance is less clear at the Supreme Court. While the Court has previously held that published BIA decisions are entitled to *Chevron* deference, it has rarely deferred to the BIA.²⁰

(criticizing “reflexive deference” to BIA on statutory interpretation in determining meaning of sexual abuse of a minor); *Bastias v. U.S. Att’y Gen.*, 42 F.4th 1266, 1276-78 (11th Cir. 2022) (Newsom, J., concurring) (arguing in case about definition of “crime . . . of child neglect” that Eleventh Circuit’s “perfunctory” approach to *Chevron*’s step one analysis is at odds with Supreme Court precedent).

¹⁵ *Chevron*, 467 U.S. at 843 n.9.

¹⁶ *See, e.g., Mayo Found. For Med. Educ. & Rsch. v. United States*, 562 U.S. 44, 59-60 (2011) (upholding agency’s decisions at step two because they furthered the purposes of the Social Security Act).

¹⁷ *Judulang v. Holder*, 565 U.S. 42, 52 n.7 (2011) (quoting *Mayo*, 562 U.S. at 53).

¹⁸ *See Bell Atl. Tel. Companies v. F.C.C.*, 131 F.3d 1044, 1048-49 (D.C. Cir. 1997) (“Under step one [of *Chevron*] we consider text, history, and purpose to determine whether these convey a plain meaning that *requires* a certain interpretation; under step two we consider text, history, and purpose to determine whether these *permit* the interpretation chosen by the agency.”).

¹⁹ *See Pereira*, 138 S. Ct. at 2120-21 (Kennedy, J., concurring) (criticizing circuit courts’ “cursory analysis” before deferring to BIA); Shoba Wadhia & Christopher Walker, *The Case Against Chevron Deference in Immigration Adjudication*, 70 DUKE L.J. 1197, 1214 (2020) (noting study finding circuit courts upheld BIA’s statutory interpretation in 70 percent of 386 cases).

²⁰ *See Cardoza-Fonseca*, 480 U.S. at 446-48 (holding that the BIA was entitled to deference when applying “well-founded fear” on a case-by-case basis but concluding that its interpretation was foreclosed by the statutory text); *see also Judulang*, 565 U.S. at 64 (rejecting BIA’s rule for determining eligibility for § 212(c) relief as “unmoored from the purposes and concerns of the immigration laws” and “not supported by text”); *cf. Holder v. Martinez Gutierrez*, 566 U.S. 583,

The current Supreme Court’s disdain for *Chevron* deference has put the continuing viability of the doctrine into question and the Court’s decision in *Loper Bright* may result in a seismic shift in how courts decide immigration cases. At the time of publication of this practice advisory, that case remains pending. If *Chevron* remains controlling precedent, practitioners can argue that courts should grant deference only as a very last resort, after employing all available canons, presumptions, and other tools of statutory construction.

III. Construing “Generic” Criminal Removal Grounds

A. Introduction: How to Use this Guide/These Tools

As with every interpretive task, construing “generic” criminal removal grounds must “begin . . . with the text.”²¹ This section describes some of “the normal tools of statutory interpretation,” including canons of construction, that practitioners should use to interpret the text of a criminal removal ground and advance a particular “generic” definition that favors the noncitizen.

Practitioners can follow certain rules of thumb in applying the tools contained in this section. First, practitioners should be mindful that the Supreme Court has recently tended toward a statutory analysis proceeding in this order: plain text (using, *e.g.*, dictionary definitions, surveys of state and federal laws, and the Model Penal Code), statutory structure, pertinent statutory and legislative history, and policy or “common sense” considerations.²² Nevertheless, and second, practitioners should always start with their strongest arguments. Finally, practitioners should

598 (2012) (deferring to BIA’s construction of the cancellation of removal statute); *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424-25 (1999) (according *Chevron* deference to BIA’s interpretation of the “serious nonpolitical crime” bar to withholding of removal).

Notably, courts of appeals have generally held that *unpublished* BIA decisions do not have “the force of law” under *Mead* and are not entitled to *Chevron* deference—though some circuits will defer to unpublished decisions under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), depending on the opinion’s persuasiveness. *See, e.g., Ruiz v. U.S. Att’y Gen.*, 73 F.4th 852, 857-59 (11th Cir. 2023); *Velázquez v. Garland*, 82 F.4th 909, 913 (10th Cir. 2023); *Quintero v. Garland*, 998 F.3d 612, 621 (4th Cir. 2021); *Bakor v. Barr*, 958 F.3d 732, 735 (8th Cir. 2020); *Tula Rubio v. Lynch*, 787 F.3d 288, 290-91 (5th Cir. 2015); *Mahn v. Att’y Gen. of U.S.*, 767 F.3d 170, 173 (3d Cir. 2014); *Huo Qiang Chen v. Holder*, 773 F.3d 396, 403 (2d Cir. 2014); *Ruiz-Del-Cid v. Holder*, 765 F.3d 635, 639 (6th Cir. 2014); *Marmolejo-Campos v. Holder*, 558 F.3d 903, 909 (9th Cir. 2009). Frequently unpublished BIA decisions rely on published decisions, which themselves may be entitled to *Chevron* deference. *See Silva v. Garland*, 27 F.4th 95, 112 (1st Cir. 2022), *cert. denied*, 143 S. Ct. 2689 (2023) (“Once the BIA formally interprets a statute, we may defer to subsequent informal applications of the interpretation.”).

²¹ *Esquivel-Quintana*, 581 U.S. at 391.

²² *See, e.g., Niz-Chavez*, 141 S. Ct. at 1482 (considering plain text first, followed by “statutory structure and history,” and then refuting the government’s policy arguments); *Esquivel-Quintana*, 581 U.S. at 391-95 (analyzing text first, followed by structure).

anticipate and resolve any conflicts or tensions that may arise when different statutory interpretation tools lead to different conclusions.

This practice advisory presents interpretive tools in the following order. First, it presents what are sometimes called “linguistic canons” that aid in “the basic goal of interpretation: finding the ordinary meaning of statutory text.”²³ These text-based canons include tools to determine the “ordinary” meaning of statutory standalone words—for example, by utilizing “[d]ictionary definitions, federal laws, state laws, and the Model Penal Code.”²⁴ They also encompass “interpretive principle(s) that reflect[] accepted notions of diction, grammar, and syntax” that should be used to interpret statutes as a whole.²⁵ These canons include, for example, the negative implication canon and the associated words canon.

Second, this practice advisory presents tools sometimes referred to as “[c]anons based on legislative practice rather than linguistics.”²⁶ These canons should be leveraged to reinforce the practitioner’s reading of the statute’s text, by relying on the “presum[ption] that the legislature intends to follow its typical patterns of behavior.”²⁷ Some examples are the canon of imputed common-law meaning and the prior construction canon. The practice advisory explores how statutory history more broadly can inform statutory construction. Finally, this section describes how legislative history, and other miscellaneous canons, such as the rule of lenity, can be used to argue for a particular federal definition.

Practitioners litigating in the U.S. courts of appeals should be mindful that at least the last two canons described in this practice advisory—the constitutional avoidance canon and the rule of lenity—arguably only apply once the statute has been found ambiguous after applying other tools of statutory construction.²⁸

It is important to note that a single canon will rarely be determinative. Practitioners should thus utilize any applicable canons in a complementary way. For example, most recently, in *Pugin v. Garland* and *Esquivel-Quintana v. Sessions*, the Supreme Court began its analysis by looking to

²³ *Arangure v. Whitaker*, 911 F.3d 333, 340 (6th Cir. 2018).

²⁴ *Pugin*, 599 U.S. at 604.

²⁵ *Canon*, *Black’s Law Dictionary* (11th ed. 2019); see *Arangure*, 911 F.3d at 340.

²⁶ *Arangure*, 911 F.3d at 341.

²⁷ *Arangure*, 911 F.3d at 341.

²⁸ See *United States v. Palomar-Santiago*, 141 S. Ct. 1615, 1622 (2021) (holding that the canon of constitutional avoidance “has no application in the absence of ambiguity”) (quoting *United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483, 494 (2001)).

Whether canons that require an initial finding of ambiguity should be considered at Step One or Step Two of the *Chevron* framework, where applicable, is the subject of dispute. Compare, e.g., *Valenzuela Gallardo v. Lynch*, 818 F.3d 808, 816 (9th Cir. 2016) (“[T]he canon of constitutional avoidance is highly relevant at *Chevron* step one.” (internal quotation marks omitted)), with *Olmos v. Holder*, 780 F.3d 1313, 1321 (10th Cir. 2015) (“[T]he canon of constitutional avoidance does not bear on our inquiry at [*Chevron*] step one.”).

the “everyday understanding” of the generic terms at issue—obstruction of justice and sexual abuse of a minor, respectively—but then considered other tools (statutory context, related federal statutes, state criminal codes) before choosing a generic meaning.²⁹ Thus, it is important to present all arguments that support a proposed generic definition.

B. Text-Based Interpretive Tools

The following canons focus on the words of the relevant provision at issue.

1. **Fixed Meaning Canon**

Under the fixed meaning, or original meaning, canon, a term is given the meaning it had at the time the relevant statutory text was adopted.³⁰ The doctrine derives from the principle that when construing a statute, the goal is to understand Congress’ intended meaning when drafting.³¹ Consequently, when courts and the BIA interpret a generic removal ground, they look to the meaning at the time the particular provision was enacted.³² Therefore, courts consider dictionary definitions, *see infra* Part III.B.2, and survey state criminal law, *see infra* Part III.B.3.ii, in effect at the time of enactment, not current definitions, to divine a term’s original understanding.³³

Congress has amended the INA numerous times since 1952, considerably expanding the criminal grounds of removal over the decades. Practitioners should confirm the date of enactment of the particular provision at issue before making certain statutory construction arguments.³⁴ The Appendix to this practice advisory lists the dates of enactment for common criminal removal grounds.

²⁹ *Pugin*, 599 U.S. at 604-07; *Esquivel-Quintana*, 581 U.S. at 391-97; *see Diaz-Rodriguez v. Garland*, 55 F.4th 695, 711-23 (9th Cir. 2022) (plurality opinion) (applying the methodology in *Esquivel-Quintana* to find the meaning of “child abuse, child neglect, or child abandonment” at 8 U.S.C. § 1227(a)(2)(E)(i) ambiguous); *Cabeda v. Att’y Gen. of United States*, 971 F.3d 165, 171-74 (3d Cir. 2020) (employing the tools from *Esquivel-Quintana* to determine the mens rea of “sexual abuse of a minor” at 8 U.S.C. § 1101(a)(43)(A)).

³⁰ *See United States v. Rabinowitz*, 339 U.S. 56, 70 (1950) (Frankfurter, J., dissenting) (“Words must be read with the gloss of the experience of those who framed them.”).

³¹ *See Chevron*, 467 U.S. at 842-43.

³² *Taylor v. United States*, 495 U.S. 575, 593-98 (1990) (looking to the “contemporary” meaning of burglary in 1986); *Matter of Sanchez-Lopez*, 27 I&N Dec. 256, 260-61 (BIA 2018) (looking to the generic definition “at the time the statute was enacted”).

³³ *Pugin*, 599 U.S. at 604; *Esquivel-Quintana*, 581 U.S. at 394-96.

³⁴ *See Appendix*, listing the dates of enactment for common criminal removal grounds.

2. Plain Text: Ordinary Meaning Canon and Terms of Art

The ordinary meaning canon directs courts to “give words their ‘ordinary or natural’ meaning.”³⁵ Sometimes courts resort to their own common understanding of language. For example, in *Leocal v. Ashcroft*, the Supreme Court considered whether “use . . . of physical force against the person or property of another” in the crime of violence definition at 18 U.S.C. § 16 included negligent conduct.³⁶ In concluding that it did not, the Court did not cite technical definitions but instead observed that it would be “less natural to say that a person actively employs physical force against another person by accident.”³⁷

More frequently, however, courts rely on dictionary definitions—often, but not always, contemporary to the enactment of the provision. *See infra* Part III.B.1 (fixed meaning canon). For example, in *Lopez v. Gonzales*, the Supreme Court relied on the definition of “trafficking” in Black’s Law Dictionary to support its conclusion that a state controlled substance possession offense without an element of “commercial dealing” did not fall within the aggravated felony “drug trafficking crime” at 8 U.S.C. § 1101(a)(43)(B).³⁸ Commonly cited dictionaries include: Black’s Law Dictionary, Merriam-Webster’s Dictionary of Law, A Dictionary of Modern Legal Usage, Oxford English Dictionary, and Webster’s Third New International Dictionary.³⁹ This list is not exhaustive.⁴⁰ Practitioners looking to rely on the ordinary meaning canon would benefit

³⁵ *See Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004) (quoting *Smith v. United States*, 508 U.S. 223, 228 (1993)); *Cardoza-Fonseca*, 480 U.S. at 431 (courts are “bound to assume that the legislative purpose is expressed by the ordinary meaning of the words used”) (internal quotation omitted).

³⁶ *Leocal*, 543 U.S. at 8-9.

³⁷ *Id.* at 9.

³⁸ 549 U.S. 47, 53-54 (2006).

³⁹ *Pugin*, 599 U.S. at 604 (citing Merriam-Webster’s Dictionary of Law, Black’s Law Dictionary, and B. Garner, A Dictionary of Modern Legal Usage from year statutory provision enacted); *Pereira*, 138 S. Ct. at 2117 (citing Oxford English Dictionary and Black’s Law Dictionary from enactment year); *Esquivel-Quintana*, 581 U.S. at 391-92 (citing Merriam-Webster’s Dictionary of Law, Black’s Law Dictionary, and B. Garner, A Dictionary of Modern Legal Usage from enactment year); *Kawashima*, 565 U.S. at 484 (citing Webster’s Third New International Dictionary from enactment year); *see also Bastias v. U.S. Att’y Gen.*, 42 F.4th 1266, 1275 (11th Cir. 2022); *Nunez v. Att’y Gen. of United States*, 35 F.4th 134, 139-40 (3d Cir. 2022); *Chacon v. Wilkinson*, 988 F.3d 1131, 1133-133 (9th Cir. 2021).

⁴⁰ *See, e.g., Doyduk v. Att’y Gen. U.S.*, 66 F.4th 132, 136 (3d Cir. 2023) (citing Max Radin, Law Dictionary); *Diaz-Rodriguez*, 55 F.4th at 713-15 (citing multiple contemporary dictionaries including Ballentine’s Legal Dictionary and Thesaurus and Webster’s II New College Dictionary); *Zepeda-Lopez v. Garland*, 38 F.4th 315, 321 (2d Cir. 2022) (citing the contemporary and historical version of The American Heritage Dictionary); *Takwi v. Garland*, 22 F.4th 1180, 1187 (10th Cir. 2022) (citing contemporary American Heritage Dictionary); *Simpson v. U.S. Att’y Gen.*, 7 F.4th 1046, 1051 (11th Cir. 2021) (citing Webster’s New World College Dictionary when construing a state criminal statute).

from surveying a wide range of contemporary dictionary definitions and lead their arguments with the dictionary that most clearly supports a favorable reading of the statute.

Similarly, courts rely on established grammatical rules to determine the common understanding of words. In *Niz-Chavez v. Garland*, the Supreme Court cited multiple grammar treatises to support its conclusion that the indefinite article “a” indicated that “a notice to appear” is a single document.⁴¹

The ordinary meaning of a term is generally distinguished from a term of art.⁴² A term of art is a technical, specialized term that departs from the common understanding.⁴³ For example, in *United States v. Hansen*, the Supreme Court rejected the ordinary broad reading of “encourage” in the federal statute making it a crime to “encourage” illegal immigration, finding instead that Congress had incorporated a narrower, “specialized, criminal-law” meaning of the term.⁴⁴

3. Additional Authorities for Interpreting Generic Definitions

The Supreme Court has identified certain other authorities, beyond traditional tools of statutory interpretation, that it considers relevant to ascertaining the generic definition of offenses for purposes of the categorical approach. The Supreme Court has consistently considered related federal statutes, surveys of relevant state criminal statutes, and the Model Penal Code (MPC) as additional evidence about the generic meaning of offenses.⁴⁵

i. “Closely Related” Federal Statutes

The Supreme Court has turned to other, “closely related federal statutes” as “further evidence” of the generic definitions of criminal removal grounds.⁴⁶ Identifying and analyzing “closely related federal statutes” requires consideration of statutory provisions outside the INA. The “closely related federal statutes” are typically provisions defining federal criminal offenses. For example, in *Esquivel-Quintana*, the Court considered 18 U.S.C. § 2243, a federal statute criminalizing “[s]exual abuse of a minor or ward” as additional evidence that the generic definition of sexual abuse of a minor in 8 U.S.C. § 1101(a)(43)(A) incorporates an age of consent of 16.⁴⁷ More recently, the Supreme Court concluded that multiple provisions in Title 18 of the U.S. Code were

⁴¹ *Niz-Chavez*, 141 S. Ct. at 1481; see *Nielsen v. Preap*, 139 S. Ct. 954, 964-65 (2019) (pointing to “the” as a definite article giving “the [noncitizen]” a fixed meaning for purposes of mandatory detention under 8 U.S.C. § 1226(c)).

⁴² See *W. Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 91 n.5 (1991) (observing that terms of art “depart from ordinary meaning”) (emphasis in original).

⁴³ *United States v. Hansen*, 599 U.S. 762 (2023) (rejecting the common understanding of “encourage” in favor of the “specialized, criminal law-sense”); *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1201-02 (9th Cir. 2022) (rejecting the common-law understanding of a word for its technical or specialized meaning).

⁴⁴ *Hansen*, 599 U.S. at 774.

⁴⁵ See *Esquivel-Quintana*, 581 U.S. at 394-96; *Pugin*, 599 U.S. at 604-07.

⁴⁶ *Esquivel-Quintana*, 581 U.S. at 393-94 .

⁴⁷ *Esquivel-Quintana*, 581 U.S. at 394.

“[i]n accord with dictionary definitions” supporting its holding that an offense “relating to obstruction of justice” does not require a pending investigation or proceeding for purposes of 8 U.S.C. § 1101(a)(43)(S).⁴⁸ However, federal *civil* statutes are sometimes also considered relevant as additional evidence to the meaning of a generic offense.⁴⁹

Practitioners should keep in mind that identifying and relying on other federal statutes for evidence of the generic definition of an offense generally comes after other, traditional textual tools of statutory interpretation have been utilized. The one exception is where the INA explicitly incorporates a federal criminal statute.⁵⁰

ii. Fifty-State Surveys of Relevant Criminal State Statutes

The Supreme Court has consistently referred to surveys of relevant criminal state statutes as “additional evidence about the generic meaning” of federal removal offenses.⁵¹ To be relevant, a state statute must have been in effect when the INA provision at issue was enacted.⁵² Note that state offenses that are labeled differently from the federal provision in question may need to be included in this type of survey.⁵³

For example, in *Esquivel-Quintana*, the Supreme Court surveyed state criminal codes for additional evidence about the generic definition of “sexual abuse of a minor.”⁵⁴ The Court observed that when “sexual abuse of a minor” was added to the INA in 1996, “31 States and the District of Columbia set the age of consent at sixteen for statutory rape offenses that hinged solely on the age of participants.”⁵⁵ It therefore concluded that “the general consensus from state criminal codes” pointed to the same generic definition as dictionaries and federal law: for statutory rape offenses, the age of consent must no more than sixteen.⁵⁶

⁴⁸ *Pugin*, 599 U.S. at 605-06 (citing 18 U.S.C. §§ 1512(a)(1)(A), (b)(1) and 1518).

⁴⁹ *See Diaz-Rodriguez*, 55 F.4th at 717 (considering the National Child Protection Act of 1993 for evidence of the meaning of a “crime of child abuse, child neglect, or child abandonment” in 8 U.S.C. § 1227(a)(2)(E)(i)).

⁵⁰ *See, e.g., Leocal*, 543 U.S. at 4 (looking to the meaning of 18 U.S.C. § 16 to determine whether a DUI conviction is a crime of violence aggravated felony at 8 U.S.C. § 1101(a)(43)(F)).

⁵¹ *Esquivel-Quintana*, 581 U.S. at 395 (citing *Taylor*, 495 U.S. at 598; *Duenas-Alvarez*, 549 U.S. at 189-90; *see Pugin*, 599 U.S. at 605-06; *Nijhawan v. Holder*, 557 U.S. 29, 39-40 (2009)).

⁵² *See, e.g., Esquivel-Quintana*, 581 U.S. at 395-96. *See also* Part III.B.1 for a discussion of the fixed-meaning canon.

⁵³ *See, e.g., Taylor*, 495 U.S. at 591-92 (noting some state burglary statutes are labeled as “breaking and entering”).

⁵⁴ 581 U.S. at 395-97.

⁵⁵ *Id.* at 395. The Court attached tables of the state criminal offenses in an appendix. *Id.* at 398-401.

⁵⁶ *Id.* at 397.

Conducting a survey of historical state statutes is time and labor intensive. To identify potential state statutory provisions, it is helpful to refer first to Wayne R. LaFave’s treatises on criminal law and comments to the MPC.⁵⁷ Relevant state statutes can also be found by searching prior or historical versions of statutes in online legal databases.

While this type of “multijurisdictional analysis can be useful insofar as it helps shed light on the common understanding and meaning of the federal provision being interpreted,” the Supreme Court has indicated that it is not always required.⁵⁸

iii. *Model Penal Code*

Courts frequently consult the MPC for additional evidence of the elements of generic removal grounds.⁵⁹ Like closely related federal statutes, and surveys of state criminal offense provisions, courts consult the MPC for additional support regarding the interpretation of a generic offense only after employing other traditional tools of statutory interpretation.⁶⁰

C. Statutory Context

When interpreting a particular removal ground, courts do not consider words or phrases in isolation. Rather, courts determine meaning in relation to the statute as a whole.⁶¹ Courts use the following text-based canons to arrive at a generic definition based on a term’s role within the larger statutory scheme.

⁵⁷ See *Duenas-Alvarez*, 549 U.S. at 191 (consulting LaFave).

⁵⁸ *Esquivel-Quintana*, 581 U.S. at 396 n.3 (cleaned up).

⁵⁹ See, e.g., *Pugin*, 599 U.S. at 606 (citing various MPC definitions of obstruction offenses); *Esquivel-Quintana*, 581 U.S. at 395-96 (citing MPC definition of “[c]orruption of minors and seduction”); *Taylor*, 495 U.S. at 598 n.8 (citing MPC definition of “burglary”); *Silva*, 27 F.4th at 108 (using the MPC to support that an offense relating to obstruction of justice includes accessory after the fact); *Alfred v. Garland*, 64 F.4th 1025, 1037 (9th Cir. 2023) (surveying the MPC along with state statutes and federal laws to determine the generic definition in the context of accomplice liability); *Keeley v. Whitaker*, 910 F.3d 878, 881 (6th Cir. 2018) (consulting the MPC to determine the elements of the generic crime intended by Congress); *Ming Lam Sui v. INS*, 250 F.3d 105, 115 (2d Cir. 2001) (using the MPC definition in the absence of a general federal definition of attempt).

⁶⁰ But see *Pugin*, 599 U.S. at 627 (Sotomayor, J., dissenting) (“Although the MPC sometimes can provide supplemental evidence of generic meaning . . . it is critical to bear in mind that the MPC is fundamentally a ‘reform movemen[t].’” (cleaned up)).

⁶¹ *Torres*, 578 U.S. at 459 (“In considering [the generic definition], we must, as usual, ‘interpret the relevant words not in a vacuum, but with reference to the statutory context.’”) (quoting *Abramski v. United States*, 573 U.S. 169, 179 (2014)); *Esquivel-Quintana*, 581 U.S. at 393-94 (looking to the “structure of the INA” when construing “sexual abuse of a minor”).

1. Negative Implication Canon (*Expressio Unius Est Exclusio Alterius*)

Under the negative implication canon, “expressing one item of [an] associated group or series excludes another left unmentioned.”⁶² As the Supreme Court explained: “If a sign at the entrance to a zoo says ‘come see the elephant, lion, hippo, and giraffe,’ and a temporary sign is added saying ‘the giraffe is sick,’ you would reasonably assume that the others are in good health.”⁶³ The doctrine is sometimes referred to by the Latin phrase, *expressio unius est exclusio alterius*, meaning “[t]he expression of one thing implies the exclusion of others.”⁶⁴

Whether the canon applies, however, depends on context.⁶⁵ Courts often point to Congress’ decision to use a related term in one section of a statute, but exclude it in another section of the same statute, to support a negative inference.⁶⁶ For example, in *Lopez v. Gonzalez*, the Supreme Court emphasized Congress’ explicit mention of the federal Controlled Substances Act, without reference to state crimes, when concluding that Congress intended to exclude state felony convictions that were not federal felonies from the aggravated felony “drug trafficking crime.”⁶⁷ The Court found this omission carried particular weight because elsewhere in the same statute, Congress had “expressly refer[red] to guilt under state law.”⁶⁸

⁶² *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017) (quoting *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002)).

⁶³ *Id.*

⁶⁴ *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (quoting A. Scalia & B. Garner, *Reading Law* 107 (2012)).

⁶⁵ *Marx v. General Revenue Corp.*, 568 U.S. 371, 381 (2013) (“We have long held that the *expressio unius* canon does not apply ‘unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it,’ and that the canon can be overcome by ‘contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion.’”) (internal citations omitted) (quoting *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) and *United States v. Vonn*, 535 U.S. 55, 65 (2002)).

⁶⁶ “[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)); *Nken v. Holder*, 556 U.S. 418, 430 (2009).

⁶⁷ *Lopez*, 549 U.S. at 55-57.

⁶⁸ *Id.*; see also *Silva*, 27 F.4th at 103-04 (finding Congress’ decision not to include a cross-reference to the federal criminal code in the aggravated felony “obstruction of justice” provision indicated obstruction of justice not limited to federal obstruction offenses, where elsewhere in the INA Congress did include a cross-reference); *Germain v. U.S. Att’y Gen.*, 9 F.4th 1319, 1325 (11th Cir. 2021) (finding the parenthetical “(relating to document fraud)” did not limit the aggravated felony at 8 U.S.C. § 1101(a)(43)(P) because Congress did not include express limiting language, as it did in the crime of violence aggravated felony definition at § 1101(a)(43)(F)); *Silva-Trevino v. Holder*, 742 F.3d 197, 200-01 (5th Cir. 2014) (holding that

Practitioners may use the negative implication canon to support a narrow construction of an INA provision by pointing to another related term within the INA where Congress used express language to adopt a broader construction. For example, in *Silva-Trevino v. Holder*, the Fifth Circuit rejected the BIA’s conclusion that adjudicators could consider evidence extrinsic to the record of conviction when determining if a person had been convicted of a CIMT.⁶⁹ The court of appeals relied on the fact that a different provision, the domestic violence removal ground at 8 U.S.C. § 1227(a)(7)(B), explicitly permitted the consideration of “any credible evidence,” whereas the definition of conviction before the court, 8 U.S.C. § 1229a(c)(3)(B), did not.⁷⁰

2. Associated Words Canon (*Noscitur a Sociis*)

The associated words canon provides that “words grouped in a list should be given related meaning.”⁷¹ Thus, “[u]nder the familiar interpretive canon *noscitur a sociis*, ‘a word is known by the company it keeps.’”⁷² Courts apply the principle “to ‘avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.’”⁷³ The doctrine only applies, however, if the terms are sufficiently related.⁷⁴ In other words, if there is no “common attribute connect[ing] the specific items,” each phrase retains its “independent and ordinary significance.”⁷⁵

In *Esquivel-Quintana*, the Supreme Court considered the especially heinous nature of “rape” and “murder” when interpreting the meaning of “sexual abuse of a minor,” because the three are listed together in the same aggravated felony provision.⁷⁶ Based on this and the phrase

“convicted of . . . a crime involving moral turpitude” at 8 U.S.C. § 1182(a)(2)(A)(i)(I) precluded consideration of extrinsic evidence beyond the record of conviction, because elsewhere in the INA Congress explicitly authorized such consideration, but omitted it with respect to CIMTs).

⁶⁹ *Silva-Trevino*, 742 F.3d at 200-01.

⁷⁰ *Id.*

⁷¹ *S.D. Warren Co. v. Maine Bd. of Env’l. Prot.*, 547 U.S. 370, 378 (2006) (quoting *Dole v. Steelworkers*, 494 U.S. 26, 36 (1990)).

⁷² *Dubin v. United States*, 509 U.S. 110, 124 (2023) (quoting *McDonnell v. United States*, 579 U.S. 550, 568-69 (2016)).

⁷³ *Yates v. United States*, 574 U.S. 528, 543 (2015) (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995)).

⁷⁴ *See Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 288-89 (2010) (finding the doctrine “unpersuasive” when considering “[a] list of three items, each quite distinct from the other”).

⁷⁵ *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 225-26 (2008); *Graham Cnty.*, 559 U.S. at 288; *see Russell Motor Car Co. v. United States*, 261 U.S. 514, 519 (1923) (“That a word may be known by the company it keeps is, however, not an invariable rule, for the word may have a character of its own not to be submerged by its association.”).

⁷⁶ 581 U.S. at 394.

“aggravated felony” the Court concluded that “sexual abuse of a minor encompasses only especially egregious felonies.”⁷⁷ Federal courts of appeals have similarly used the doctrine to narrow terms that might otherwise be very broad.⁷⁸ Occasionally, however, courts of appeals do the reverse—find support for a more expansive meaning because of the broader meaning of surrounding terms.⁷⁹

Where a provision is listed with other terms that courts have already construed narrowly, the associated words canon may be helpful. In *Singh v. Ashcroft*, for example, the Third Circuit found support for concluding that “sexual abuse of a minor” requires application of the categorical approach because it is “listed in the same subsection as ‘murder’ and ‘rape,’ two terms that share the common law pedigree of ‘burglary,’” which the Supreme Court found subject to the categorical approach.⁸⁰

3. Presumption of Consistent Usage

Under the presumption of consistent usage, “identical words used in different parts of the same statute are generally presumed to have the same meaning.”⁸¹ The presumption can be rebutted. When the same term is used in sufficiently different contexts within the same act, a court may conclude that Congress intended different meanings.⁸² “A given term in the same statute may

⁷⁷ *Id.* at 393-94.

⁷⁸ See *Marquez-Reyes*, 36 F.4th at 1202 (finding “encouraged” in 8 U.S.C. § 1182(a)(6)(E)(i) to have a narrow, criminal-law definition in part because “[t]he verbs that accompany ‘encouraged’—namely, ‘induced, assisted, abetted, or aided’—connote complicity in a specific criminal act”); *Jimenez-Aguilar v. Barr*, 977 F.3d 603, 606 (7th Cir. 2020) (interpreting “harm” in 8 C.F.R. § 1240.11(c)(1) to require some nexus to asylum or withholding of removal, because of its proximity to the term “persecution”).

⁷⁹ *Diaz-Rodriguez*, 55 F.4th at 716 (holding that because “the term ‘child abandonment,’ . . . does not necessarily involve an injury to the child” this “undercuts the argument that ‘child abuse’ and ‘child neglect’ necessarily requires an injury”).

⁸⁰ *Singh v. Ashcroft*, 383 F.3d 144, 164 (3d Cir. 2004) The Supreme Court has subsequently made clear that, with few exceptions, the categorical approach applies to all aggravated felony provisions and that the INA’s use of the term “conviction” is the “statutory hook.” *Moncrieffe*, 569 U.S. at 190-91 (quoting *Carachuri-Rosendo*, 560 U.S. at 580).

⁸¹ *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005); *Nijhawan*, 557 U.S. at 39 (“Where, as here, Congress uses similar statutory language and similar statutory structure in two adjoining provisions, it normally intends similar interpretations.”).

⁸² *Env’tl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 574 (2007) (quoting *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932)) (The “natural presumption that identical words used in different parts of the same act are intended to have the same meaning . . . is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent.”).

take on distinct characters from association with distinct statutory objects calling for different implementation strategies.”⁸³

Congress repeats numerous terms within the INA, often within the same section, and courts frequently find that they carry the same meaning throughout. For example, in *Nijhawan v. Holder*, the Supreme Court considered whether the categorical approach must be used to determine the amount of loss necessary for the fraud aggravated felony at 8 U.S.C. § 1101(a)(43)(M)(i) (defining a fraud offense “in which the loss to the victim or victims exceeds \$10,000”).⁸⁴ The Court determined that Congress did not intend the categorical approach to apply to similar language in § 1101(a)(43)(M)(ii)—“in which the revenue loss to the Government exceeds \$10,000”—and applied the presumption of consistent usage to support its conclusion that the categorical approach likewise did not apply to the similarly-worded loss requirement in § 1101(a)(43)(M)(i).⁸⁵

Practitioners can employ the presumption of consistent usage when interpreting a word or phrase that appears elsewhere in the INA with a limited construction. Federal courts of appeals have applied the presumption to the terms “trafficking” as used in 8 U.S.C. § 1101(a)(43)(B) and (C)⁸⁶ and “prostitution” as it appears in 8 U.S.C. § 1101(a)(43)(K)(i) and § 1182(a)(2)(D).⁸⁷ However, other terms that appear repeatedly in the INA, like “judgment” and “order of removal” may have different meanings based on context and modifiers (e.g. “discretionary” and “final” and “any”).⁸⁸

4. Surplusage Canon

The rule against surplusage, also referred to as the canon or presumption against superfluity, requires courts to give each word and clause of a statute operative effect where possible.⁸⁹ This involves interpreting a statutory provision in a way that avoids rendering it or another part of the statute redundant. Courts often apply this canon when considering a statute that has a list of terms.⁹⁰ For example, in *Leocal*, the Supreme Court found Congress’ listing of driving under the influence (DUI) offenses and crimes of violence in separate subsections of 8 U.S.C. § 1101(h) to support the conclusion that crimes of violence could not entirely subsume DUI offenses, as that would leave Congress’ separate mention of DUI offenses “practically devoid of significance.”⁹¹

⁸³

Id.

⁸⁴

Nijhawan, 557 U.S. at 32.

⁸⁵

Id. at 39.

⁸⁶

Chacon, 988 F.3d at 1134-35; *Soto-Hernandez v. Holder*, 729 F.3d 1, 4 (1st Cir. 2013).

⁸⁷

Prus v. Holder, 660 F.3d 144, 146-47 (2d Cir. 2011).

⁸⁸

See Patel v. Garland, 596 U.S. 328, 341-42 (2022) (distinguishing between “any judgment” at 8 U.S.C. § 1252(a)(2)(B)(i) and “discretionary judgment” elsewhere in the INA); *Arostegui-Maldonado v. Garland*, 75 F.4th 1132, 1142-43 (10th Cir. 2023) (holding a removal order may be “final” for purposes of 8 U.S.C. § 1252 but not § 1231).

⁸⁹

See Duncan v. Walker, 533 U.S. 167, 174 (2001).

⁹⁰

See, e.g., McDonnell, 579 U.S. at 569.

⁹¹

543 U.S. at 12.

Similarly, in *McDonnell v. United States*, a criminal case against the former governor of Virginia, the Court held that a “more bounded” interpretation of terms in a federal criminal statute comported with the presumption against superfluity by preserving a specific role for different terms that were listed later in the statute.⁹²

The rule can be helpful in arguing for a narrow reading of a statutory term in a removal ground, in order to avoid overlap with other provisions.⁹³ However, the Supreme Court has cautioned against “overstat[ing] the significance of statutory surplusage or redundancy.”⁹⁴ And in several immigration cases, the Court has reiterated that “[s]ometimes the better overall reading of the statute contains some redundancy.”⁹⁵ In *Pugin*, the Court specifically noted that 8 U.S.C. § 1101(a)(43), which lists the aggravated felony provisions, illustrates that redundancies are common in statutory drafting: “Congress listed a large number of offenses that would qualify [], likely to avoid unintended gaps. So it is not surprising to find some overlap.”⁹⁶ Nonetheless, the canon against surplusage remains a viable tool to limit the scope of criminal definitions and grounds of removal.⁹⁷

D. Legislative Practice Canons

1. **Canon of Imputed Common-Law Meaning**

The canon of imputed common-law meaning posits that “absent other indication, Congress intends to incorporate the well-settled meaning of the common-law terms it uses.”⁹⁸ This canon is based in the idea that “where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word[.]”⁹⁹ The canon of imputed common-law

⁹² *McDonnell*, 579 U.S. at 567, 569.

⁹³ *See, e.g., Kawashima*, 565 U.S. at 486-87 (noncitizens argued unsuccessfully that interpreting subsection (i) of aggravated felony provision at § 1101(a)(43)(M) to include tax crimes violated rule against superfluities by rendering subsection (ii) “completely redundant” to subsection (i)); *Pugin*, 599 U.S. at 609 (noncitizens argued unsuccessfully that offenses “relating to obstruction of justice” must have a nexus to a pending proceeding to avoid redundancies with perjury and bribery offenses, which are also listed in § 1101(a)(43)(S)).

⁹⁴ *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 881 (2019).

⁹⁵ *Barton v. Barr*, 140 S. Ct. 1442, 1453 (2020); *accord Pugin*, 599 U.S. at 609; *see also Marquez-Reyes*, 36 F.4th at 1204 (concluding that “under any interpretation of section 1182(a)(6)(E)(i) [the smuggling ground of inadmissibility], some degree of redundancy is inevitable”).

⁹⁶ 599 U.S. at 609.

⁹⁷ *See Borden v. United States*, 141 S. Ct. 1817, 1827-28 (2021) (criticizing government’s broad reading of “violent felony” in 18 U.S.C. § 924(e) for rendering a statutory term surplusage).

⁹⁸ *Sekhar v. United States*, 570 U.S. 729, 732 (2013) (cleaned up).

⁹⁹ *Morissette v. United States*, 342 U.S. 246, 263 (1952).

meaning does not apply if “Congress simply describes an offense analogous to a common-law crime without using common-law terms.”¹⁰⁰ The canon of imputed common-law meaning should not be confused with the common-law presumption canon, which considers whether general common-law principles (such as *res judicata*) apply to a statute more broadly.¹⁰¹

The Supreme Court has previously employed this canon when interpreting federal criminal statutes.¹⁰² However, it has declined to use this canon when it has concluded that the meaning of the term has changed sufficiently over time that the common-law definition is no longer commonly understood to apply.¹⁰³ The Supreme Court also appears to be reluctant to employ this canon when it would restrict the reach of a criminal statute.¹⁰⁴

This canon can be useful where the INA does not define a term relevant to a criminal removal ground, and where the common-law meaning of the term is narrower than the common understanding of the term when Congress enacted the statute at issue. For example, in *Keeley v. Whitaker*, the Sixth Circuit rejected the BIA’s conclusion in *Matter of Keeley*, 27 I&N Dec. 146 (BIA 2017), that aggravated felony “rape” under 8 U.S.C. § 1101(a)(43)(A) includes acts of digital penetration.¹⁰⁵ The court did not invoke the canon of imputed common-law meaning, but observed that “the common-law crime of rape required intercourse” and that this was a “controlling data point[] . . . show[ing] that the generic definition of rape does not include digital penetration[.]”¹⁰⁶

¹⁰⁰ *Carter v. United States*, 530 U.S. 255, 265 (2000) (concluding canon of imputed common-law meaning did not apply where statute at issue did not use the common law terms “robbery” and “larceny”).

¹⁰¹ The common-law presumption canon “presumes that the existing common law still applies unless the statute clearly indicates otherwise.” *Arangure*, 911 F.3d at 342-43 (holding the common law presumption canon makes the INA unambiguous on the question of whether the common law doctrine of *res judicata* applies in removal proceedings).

¹⁰² See *Neder v. United States*, 527 U.S. 1, 20-22 (1999) (inferring requirement of materiality for federal statutes punishing a “scheme or artifice to defraud” based on common-law meaning of “defraud”); *Evans v. United States*, 504 U.S. 255, 261-64 (1992) (observing “extortion” in 18 U.S.C. § 1951 was a common-law term and interpreting it by reference to its common law meaning).

¹⁰³ See *Voisine v. United States*, 579 U.S. 686, 697 (2016) (concluding Congress did not intend the common law mens rea for assault and battery to be incorporated into the use of force element in misdemeanor crime of domestic violence, as codified at 18 U.S.C. § 921(a)(33)(A)); *Taylor*, 495 U.S. at 592-95 (declining to apply the common law meaning of “burglary” to 18 U.S.C. § 924(e)).

¹⁰⁴ See, e.g., *Taylor*, 495 U.S. at 593 (observing application of common law definition “would not comport with the purposes of the [18 U.S.C. § 924(e) sentencing] enhancement statute”).

¹⁰⁵ 910 F.3d 878, 883-84 (6th Cir. 2018).

¹⁰⁶ *Id.* at 883.

Be wary of arguments the government may make that the common-law meaning of a statutory term is more expansive. For example, the government argued in *United States v. Garcia-Santana* that the Ninth Circuit should apply the common-law presumption canon to the word “conspiracy” in 8 U.S.C. § 1101(a)(43)(U).¹⁰⁷ The court rejected this argument, holding that the canon did not apply because the contemporary understanding of that term was sufficiently different from (and narrower than) the common-law meaning.¹⁰⁸ The Supreme Court has rejected similar arguments in the context of the Armed Career Criminal Act.¹⁰⁹

2. Reenactment Canon

The reenactment canon applies when Congress reenacts a statute without significant change to the statutory language, and there is an authoritative judicial interpretation of the prior statute.¹¹⁰ Unless clearly indicated otherwise in the reenacted statute, courts presume that Congress was aware of the authoritative interpretation and intended for that interpretation to be used.¹¹¹ Courts also employ the reenactment canon for an inverse presumption: “if Congress amends or reenacts a provision, a significant change in language is presumed to entail a change in meaning.”¹¹² What constitutes an authoritative interpretation is subject to some debate, though the Supreme Court has indicated that dicta in a prior Supreme Court decision is insufficient.¹¹³

¹⁰⁷ 774 F.3d 528, 537 (9th Cir. 2014).

¹⁰⁸ *Id.* at 543 (holding “conspiracy” in 8 U.S.C. § 1101(a)(43)(U) to require an overt act, departing from the common-law definition); *see also Quinteros v. Att’y Gen.*, 945 F.3d 772, 784-85 (3d Cir. 2019) (same).

¹⁰⁹ *Johnson v. United States*, 559 U.S. 133, 139 (2010) (“The question is whether the term ‘force’ in 18 U.S.C. § 924(e)(2)(B)(i) has the specialized meaning that it bore in the common-law definition of battery. The Government asserts that it does. We disagree.”).

¹¹⁰ *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change”); *United States v. Davis*, 139 S. Ct. 2319, 2331 (2019) (holding a federal statute “had not acquired such well-settled judicial construction . . . that the reenactment of its language” in a new statutory provision “should be presumed to have incorporated the same construction”); *Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 349 (2005) (conditions not met as statute not reenacted without change and no evidence of “broad and unquestioned” decisions).

¹¹¹ *See Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1762 (2018) (Congress was presumed to be aware of longstanding judicial interpretation of a phrase when it used “the materially same language” when amending and later recodifying a statutory provision).

¹¹² *Arangure*, 911 F.3d at 341; *see also Jackson Nat’l Life Ins. Co. v. Crum*, 54 F.4th 1312, 1322 (11th Cir. 2022) (“[W]e must presume that the significant changes to this statutory language connote a change in meaning.”).

¹¹³ *See Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2498 (2022) (“[T]he [reenactment] canon does not apply to dicta.”); *see also Jama*, 543 U.S. at 349, 352 (“petitioner’s Circuit authority is too flimsy to justify presuming Congress endorsed it” as required for the reenactment canon).

The Supreme Court has not always found this canon to be persuasive, even when it would seem to apply. For example, in *Taylor v. United States*, the Supreme Court declined to infer that Congress' deletion of the statutory definition for "burglary" in a later reenactment of a federal criminal sentencing enhancement statute meant Congress intended to reject that definition.¹¹⁴

Practitioners should consider using this canon if there is helpful agency or judicial precedent interpreting language in an INA provision, where Congress later reenacts or amends that provision.¹¹⁵ Effective use of this canon will require researching both the amendment history of the statutory provision at issue, as well as looking for authoritative interpretations of relevant language. This canon is unhelpful for statutory provisions that have never been subsequently reenacted.

For additional discussion of the use of statutory history in statutory construction, see *infra* Part III.E. For a list of enactment dates for common criminal removal grounds, please refer to Appendix.

3. Prior Construction Canon

The prior construction canon states that, when Congress has adopted language from authoritative decisional law, courts presume that Congress intended to import the judicial and administrative interpretations of that language, unless there is clear indication to the contrary.¹¹⁶ Unlike the reenactment canon, the prior construction canon applies in the absence of prior legislation.

For example, this canon counsels that courts should interpret the INA "conviction" definition at 8 U.S.C. § 1101(a)(48)(A) to exclude vacated or expunged convictions. BIA precedent gave effect to state law dispositions on post-conviction relief for decades prior to Congress enactment of the "conviction" definition through IIRIRA. In 1988, the BIA published *Matter of Ozkok*, reaffirming that the disposition of a criminal case generally qualifies as a conviction only where "the court has adjudicated [the noncitizen] guilty or has entered a formal judgment of guilt."¹¹⁷ The only exception it identified was for certain withheld adjudications. Significantly, Congress adopted the language and specific terms of art used in *Ozkok*, almost verbatim, changing only

¹¹⁴ 495 U.S. 575, 590 (1990).

¹¹⁵ While the reenactment canon "has its most obvious application when a 'court of last resort' interprets a statute," it "applies as well to uniform holdings of lower courts and even to well-established agency interpretations." *Minerva Surgical, Inc. v. Hologic, Inc.*, 141 S. Ct. 2298, 2315 n.3 (2021) (J. Barrett, dissenting) (quoting Antonin Scalia & Bryan Garner, *Reading Law: The Interpretations of Legal Texts* 323-24 (2012)).

¹¹⁶ See, e.g., *Williams v. Taylor*, 529 U.S. 420, 434 (2000) (explaining that "[w]hen the words of the Court are used in a later statute governing the same subject matter," courts should "give the words the same meaning in the absence of specific direction to the contrary"); see also *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 144-46 (2000) (discussing Congress' incorporation of prior agency action by Food and Drug Administration into subsequently codified statute).

¹¹⁷ 19 I&N Dec. 546, 551 (BIA 1988).

part of the BIA’s definition as to certain withheld adjudications. Therefore, the argument goes, Congress intended to preserve the pre-existing meaning of “conviction” developed by the BIA, which excluded vacated and expunged state court convictions.¹¹⁸

For a list of enactment dates for common criminal removal grounds, please refer to Appendix.

E. Statutory History

Statutory history is “the record of *enacted* changes Congress made to the relevant statutory text over time[.]”¹¹⁹ It should not be confused with *legislative* history, which looks at the record of congressional deliberations. *See supra* Part III.F. While the use of legislative history in statutory construction is controversial, *statutory* history is a commonly used tool for understanding a statute.¹²⁰

For example, in *Niz-Chavez* the Supreme Court looked to the evolution of the notice requirements in the INA to find support for its conclusion that a Notice to Appear (NTA) must be a single document. It determined that Congress’ decision to amend the INA to remove language that had expressly authorized the government to include the time and place for a hearing in a separate document from the Order to Show Cause (the predecessor to the NTA) was evidence that Congress intended for the time and place to be included in a single NTA.¹²¹ Similarly, in *Kucana v. Holder*, the Court found that “[t]he history of the relevant statutory provisions”—namely, Congress’ choice to codify certain pre-existing regulations and not others—corroborated the Court’s conclusion that the jurisdictional bar at 8 U.S.C. § 1252(a)(2)(B)(ii) does not apply to determinations made discretionary by regulation but not statute.¹²²

The reenactment canon, discussed *supra* at Part III.D.2, is another example of the role statutory history plays in statutory construction.

¹¹⁸ For an in-depth guide to this and other arguments about litigating the “conviction” definition, consult Immigration Defense Project, *Beyond Roldan and Pickering*, <https://www.immigrantdefenseproject.org/wp-content/uploads/Beyond-Roldan-and-Pickering.pdf>.

¹¹⁹ *BNSF Ry. Co. v. Loos*, 139 S. Ct. 893, 906 (2019) (Gorsuch, J., dissenting) (emphasis in original).

¹²⁰ *Id.* (noting that statutory history is “the sort of textual evidence everyone agrees can sometimes shed light on meaning.”). The addendum to this practice advisory includes several tables detailing the textual changes to the criminal grounds of removability in the INA since 1988. *See* Appendix. Another useful resource is the Library of Congress’ collection of prior versions of the U.S. Code dating back to 1940. *See* Library of Congress, Digital Collections, U.S. Code, <https://www.loc.gov/collections/united-states-code/?sp=6> (last accessed Nov. 13, 2023).

¹²¹ 141 S. Ct. at 1484.

¹²² 558 U.S. 233, 250 (2010); *see also* *Esquivel-Quintana*, 581 U.S. at 394 (considering statutory history of the aggravated felony “sexual abuse of a minor” and the federal criminal offense “sexual abuse of a minor,” enacted within the same omnibus law, to support narrow construction of the aggravated felony); *Leocal*, 543 U.S. at 12 n.9 (reviewing Congress’ use of 18 U.S.C. § 16 in a different statute to support reading of “crime of violence” within the INA).

F. Legislative History

Legislative history refers to the documents and records generated as part of the legislative process, reflecting the deliberations that went into the final statutory text. Committee reports are generally considered to be more persuasive than other materials.¹²³ Courts differ on whether and when to consult legislative history when interpreting a statute.¹²⁴ Practitioners should therefore conduct circuit-specific research when formulating legislative history arguments.¹²⁵ Despite its detractors, however, many courts consider legislative history to discern legislative intent.¹²⁶

When formulating arguments about criminal removal grounds, practitioners should consider whether the legislative history of the INA provisions in question may be useful for interpreting a criminal removal ground.¹²⁷ The legislative history for state statutes governing criminal offenses can also be persuasive.¹²⁸

¹²³ See, e.g., *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395-96 (1951) (Jackson, J., concurring) (“Resort to legislative history is only justified where the face of the Act is inescapably ambiguous, and then I think we should not go beyond Committee reports, which presumably are well considered and carefully prepared. . . . [T]o select casual statements from floor debates, not always distinguished for candor or accuracy, as a basis for making up our minds what law Congress intended to enact is to substitute ourselves for the Congress in one of its important functions.”); *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (“Yet we can all agree that excerpts from committee hearings are among the least illuminating forms of legislative history.”) (internal quotation marks omitted).

¹²⁴ Compare *Chevron*, 467 U.S. at 851-53 (examining legislative history at step one); *Nat’l Elec. Mfrs. Ass’n v. U.S. Dep’t of Energy*, 654 F.3d 496, 504-05 (4th Cir. 2011) (“[W]e have described legislative history as one of the traditional tools of interpretation to be consulted at *Chevron*’s step one.”) with *Fournier v. Sebellius*, 718 F.3d 1110, 1123 (9th Cir. 2013) (holding that “legislative history permissibly may be considered” only after a statute is determined to be ambiguous); *Village of Barrington, Ill. v. Surface Transp. Bd.*, 636 F.3d 650, 666 (D.C. Cir. 2011) (“Although we would be uncomfortable relying on such legislative history at *Chevron* step one, we think it may appropriately guide an agency in interpreting an ambiguous statute . . .”).

¹²⁵ Some circuits highly disfavor legislative history arguments. See, e.g., *Thomas v. Reeves*, 961 F.3d 800, 817 n.45 (5th Cir. 2020).

¹²⁶ See, e.g., *Cardoza-Fonseca*, 480 U.S. at 434-36 (analyzing legislative history to show Congressional intent); *Osorio v. INS*, 18 F.3d 1017, 1022 (2d Cir. 1994) (“[W]e will reverse the BIA’s interpretation of statutory law where ‘it appears from the statute or its legislative history’ that the interpretation is contrary to Congress’ intent.”); *Almanza-Arenas v. Lynch*, 815 F.3d 469, 475-76 (9th Cir. 2016) (referencing legislative history as a tool for statutory interpretation but not needing to reach that stage of analysis) (en banc).

¹²⁷ Cf. *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1072 (2020) (consulting a relevant House Conference Report and concluding the legislative history supported the Court’s interpretation of the statutory text in question).

¹²⁸ See *United States v. Minter*, 80 F.4th 406, 411-12 (2d Cir. 2023) (reviewing legislative history for New York’s cocaine definition and holding a conviction under NYPL § 220.39(1) for sale of cocaine is categorically broader than its federal counterpart).

To find the legislative history for a statutory provision, search legal databases like WestLaw by a statute's Public Law number (e.g., P.L. 202-135) and citation to the Statute at Large (e.g., 50 Stat. 4026). Both citations can be found at the end of each statutory provision in the U.S. Code.¹²⁹ Legislative history from each congressional year since the 1993-1994 term is also searchable by on public government websites such as Congress.gov and GovInfo.gov. These websites may be especially helpful for tracking information on recently enacted public laws or congressional hearings by year.¹³⁰

G. Constitutional Avoidance Canon

The constitutional avoidance canon is a substantive canon that provides “when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead [] adopt an alternative that avoids those problems.”¹³¹ Courts may settle on a reading that is merely “fairly possible,” even if that is not “the most natural interpretation” of the statute because “every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.”¹³² Importantly, for the canon to apply, there must be “statutory ambiguity.”¹³³ However, in *Zadvydas v. Davis*, the Court applied constitutional avoidance when deciding whether 8 U.S.C. § 1231(a)(6), the post-removal-period detention statute, authorized indefinite detention.¹³⁴ Noting that a statute permitting such detention of noncitizens “would raise a serious constitutional problem,” the majority “read an implicit limitation into” § 1231(a)(6).¹³⁵ More recently, however, the Supreme Court has criticized *Zadvydas* as a “notably generous application of the constitutional-avoidance canon.”¹³⁶

Courts have reached different conclusions about whether the canon of constitutional avoidance applies within the *Chevron* analysis, and if so, at what step.¹³⁷ Practitioners may consider arguing

¹²⁹ Versions of the U.S. Code from 1994 to present can be accessed from <https://www.govinfo.gov/app/collection/uscode>.

¹³⁰ For further guidance, see the Georgetown Law Library's Legislative Research History Guide, https://guides.ll.georgetown.edu/legislative_history, and a Beginner's Guide created by the Library of Congress, <https://guides.loc.gov/legislative-history>.

¹³¹ *Jennings*, 583 U.S. 286.

¹³² *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 562 (2012) (internal quotation marks omitted); see also *Bond v. United States*, 572 U.S. 844, 860 (2014) (reading federal statute criminalizing use of “any chemical weapon” to exclude “purely local” simple assault because broader interpretation created federalism concerns by intruding on States' police power).

¹³³ *United States v. Palomar-Santiago*, 141 S. Ct. 1615, 1622 (2021) (internal quotation marks omitted).

¹³⁴ *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

¹³⁵ *Id.* at 689-90.

¹³⁶ *Jennings*, 583 U.S. at 299.

¹³⁷ See *Arangure*, 911 F.3d at 340-42 (finding that Supreme Court precedent supports applying constitutional avoidance canon at Step One); *Valenzuela Gallardo*, 818 F.3d at 816

that Congress would not “casually authorize administrative agencies to interpret a statute to push the limit of congressional authority” such that BIA interpretations that raise constitutional questions should be foreclosed altogether.¹³⁸

Although well established, the constitutional avoidance canon has had little success at the Supreme Court in recent immigration cases.¹³⁹ Therefore practitioners may want to highlight other tools supporting their interpretation of a statute. However, should the Supreme Court decide that *Chevron* should be overruled or narrowed in *Loper Bright*, the constitutional avoidance doctrine may have increased salience when statutory meaning is ambiguous.

H. Rules of Lenity

The criminal rule of lenity requires that ambiguities in criminal laws be construed in favor of the accused.¹⁴⁰ While the Court has more recently instructed that the rule of lenity applies “after” other traditional tools,¹⁴¹ it has also referred to the criminal rule of lenity as “a time-honored interpretive guideline.”¹⁴² The Supreme Court has found the rule applicable in several cases when determining the meaning of ambiguous aggravated felony provisions that cross-reference criminal statutes—even where the statutory text is encountered in the immigration context.¹⁴³

Even where the INA does not directly reference federal criminal statutes, there is Supreme Court case law that supports application of the rule of lenity where the immigration determination

(“The canon of constitutional avoidance is highly relevant at *Chevron* step one.”) (internal quotation marks omitted); *Olmos v. Holder*, 780 F.3d 1313, 1321, 1322-23 (10th Cir. 2015) (applying constitutional avoidance at Step Two).

¹³⁸ *Valenzuela Gallardo*, 818 F. 3d at 816 (quoting *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Engineers*, 531 U.S. 159, 172–73 (2001)).

¹³⁹ See, e.g., *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022) (finding canon of constitutional avoidance inapplicable because there “is no plausible construction” of § 1231(a)(6) that requires bond hearings); *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2291 n.9 (2021) (rejecting application of canon where statutory text required finding § 1231, not § 1226, governed detention of individuals with reinstated orders of removal); *Palomar-Santiago*, 141 S. Ct. at 1622 (holding that text of illegal reentry statute, 8 U.S.C. § 1326(d), unambiguously foreclosed noncitizen’s proposed interpretation and thus canon had no application); *Jennings*, 583 U.S. at 286 (criticizing court below for applying canon because its statutory interpretations were “implausible”).

¹⁴⁰ See *United States v. Davis*, 139 S. Ct. 2319, 2333 (2019).

¹⁴¹ See, e.g., *Shular v. United States*, 140 S. Ct. 779, 787 (2020) (quoting *U.S. v. Shabani*, 513 U.S. 10, 17 (1994)).

¹⁴² *Crandon v. United States*, 494 U.S. 152, 158 (1990) (quoting *Liparota v. United States*, 471 U.S. 419, 427 (1985)).

¹⁴³ See *Leocal*, 543 U.S. at 11 n.8; *Carachuri-Rosendo*, 560 U.S. at 581; *Moncrieffe*, 569 U.S. at 205.

could have downstream criminal consequences, as with aggravated felony charges.¹⁴⁴ An aggravated felony determination carries severe sentencing enhancements as well as criminal liability.¹⁴⁵ Thus, even where an offense does not involve a term expressly defined in the federal criminal code, practitioners can argue that because of the dual applications of the aggravated felony provisions, the statute must be “consistently” interpreted regardless of whether a court is applying it in the criminal or immigration context.¹⁴⁶ In *Leocal*, the Court recognized that under the criminal rule of lenity any ambiguity in the definition had to be interpreted in the noncitizen’s favor because the statute “has both criminal and noncriminal applications,” and held that a conviction for driving under the influence of alcohol was not a crime of violence aggravated felony.¹⁴⁷ In *Carachuri-Rosendo* and *Moncrieffe*, subsequent cases regarding the scope of the illicit trafficking aggravated felony, the Court again concluded that the principle of lenity weighed in favor of a narrower reading than that urged by the government.¹⁴⁸ Even in cases where the Court has found the statute unambiguous, it has emphasized that lenity *could have* applied had the aggravated felony provision at issue been ambiguous.¹⁴⁹

The immigration (or civil) rule of lenity is a related tool of statutory construction.¹⁵⁰ The doctrine arises from the understanding that deportation is a “drastic measure”—often even more drastic

¹⁴⁴ See *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517-18 (1992) (plurality opinion) (applying lenity in construing “a tax statute [] in a civil setting” because the statute “has criminal applications” even though criminal liability was only a hypothetical possibility); *id.* at 519 (Scalia, J., concurring); see also *Bittner v. United States*, 598 U.S. 85, 103 (2023) (opinion of Gorsuch, J., joined by Jackson, J.) (discussing applicability of lenity where government’s interpretation of a provision of the Bank Secrecy Act that levies only a civil penalty would give rise to additional criminal liability under a related provision); *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 729-36 (6th Cir. 2013) (Sutton, J., concurring) (in-depth discussion of the application of lenity to a “hybrid statute” that imposes civil and criminal penalties).

¹⁴⁵ See 8 U.S.C. §§ 1326(b)(2) (authorizing 20-year sentence for federal conviction for “illegal reentry”); 1327 (criminalizing as a felony aiding or assisting a noncitizen who “has been convicted of an aggravated felony” to enter the United States).

¹⁴⁶ *Leocal*, 543 U.S. at 11 n.8.

¹⁴⁷ *Id.* at 11-12.

¹⁴⁸ See *Carachuri-Rosendo*, 560 U.S. at 581 (lenity weighed against broad reading of “illicit trafficking” aggravated felony provision); *Moncrieffe*, 569 U.S. at 205 (erring “on the side of underinclusiveness” to find that conviction for marijuana possession did not qualify as illicit trafficking aggravated felony).

¹⁴⁹ See, e.g., *Kawashima*, 565 U.S. at 489 (acknowledging that “we have, in the past, construed ambiguities in deportation statutes in the alien’s favor” but finding that the fraud aggravated felony clearly encompassed tax crimes that involved fraudulent conduct).

¹⁵⁰ See *Cardoza-Fonseca*, 480 U.S. at 449 (concluding that noncitizen need not provide that persecution is “more likely than not” to establish eligibility for asylum); see *INS v. St. Cyr*, 533 U.S. 289, 320 (2001); *INS v. Errico*, 385 U.S. 214, 225 (1966); *Costello v. INS*, 376 U.S. 120, 128-29 (1964); *Bonetti v. Rogers*, 356 U.S. 691, 699 (1958); *Fong Haw Tan v. Phelan*, 333 U.S. 6, 9-10 (1948); see also *Pugin*, 599 U.S. at 631-32 (Sotomayor, J., dissenting).

than a criminal sentence.¹⁵¹ While this “longstanding principle” is not commonly the deciding factor in circuit courts’ analysis of removal provisions, courts have cited the presumption against deportation in support of outcomes that permit greater judicial review over noncitizens’ claims¹⁵² and narrow the scope of aggravated felony definitions.¹⁵³

Both the criminal and civil rules of lenity are useful interpretive tools where either the Immigration Judge or BIA or courts of appeals have deemed a statutory provision of the INA to be ambiguous. At the agency level, it can be useful to remind adjudicators that the Supreme Court has frequently noted that the consequences of removal proceedings are “drastic” and “harsh” and that the immigration rule of lenity is therefore an important tool in interpreting removal grounds and the scope of available relief.¹⁵⁴ Practitioners can point to *Matter of Deang*, where the BIA itself found lenity to be a relevant tool of construction in interpreting the aggravated felony statute.¹⁵⁵ Consider also arguing that the rule of lenity is applicable when deciding the scope of statutorily-defined relief from removal, as some circuit courts have found.¹⁵⁶

On a petition for review, the argument is complicated by the fact that both rules of lenity appear at odds with *Chevron* deference, as they provide an interpretive guideline for ambiguous statutes that does not involve deferring to the BIA’s construction.¹⁵⁷ However, some circuit courts have applied lenity at Step One of the *Chevron* analysis to resolve statutory ambiguity and reject the agency’s interpretation of a statute.¹⁵⁸ Moreover, when the meaning of criminal statutes is in

¹⁵¹ See *Dalton v. Ashcroft*, 257 F.3d 200, 208 (2d Cir. 2001) (quoting *Fong Haw Tan*, 333 U.S. at 10).

¹⁵² See *Alvarez-Santos v. INS*, 332 F.3d 1245, 1250 (9th Cir. 2003) (quoting *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1141 (2002)); *Mena-Flores v. Holder*, 776 F.3d 1152, 1159 (10th Cir. 2015).

¹⁵³ See, e.g., *Cazarez-Gutierrez v. Ashcroft*, 382 F.3d 905, 918 (9th Cir. 2004).

¹⁵⁴ See *Padilla v. Kentucky*, 559 U.S. 356, 360 (2010) (noting the “harsh consequences of deportation”); *Cardoza-Fonseca*, 480 U.S. at 449 (“Deportation is always a harsh measure”); *Gastelum-Quinones v. Kennedy*, 374 U.S. 469, 479 (1963) (“Deportation is a drastic sanction, one which can destroy lives and disrupt families . . .”).

¹⁵⁵ See *Deang*, 27 I&N Dec. 57, 63-64 (BIA 2017).

¹⁵⁶ See, e.g., *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (citing canon in interpreting meaning of “extreme cruelty” in relief under Violence Against Women Act”); *Rosario v. INS*, 962 F.2d 220, 225 (2d Cir. 1992) (applying lenity to interpret a statute governing the suspension of deportation).

¹⁵⁷ See *Esquivel-Quintana*, 581 U.S. at 397-98 (proper reading of sexual abuse of a minor aggravated felony provision “unambiguously forecloses the Board’s interpretation” such that there was “no need to resolve whether the rule of lenity or *Chevron* deference receives priority”).

¹⁵⁸ See *Okeke v. Gonzales*, 407 F.3d 585, 596-97 (3d Cir. 2005) (Ambro, J., concurring) (applying immigration rule of lenity to determine whether agency’s interpretation was permissible); *Padash v. INS*, 358 F.3d 1161, 1173 (9th Cir. 2004) (applying immigration rule of lenity to find deference not required because traditional tools rendered congressional intent

question, lenity should take precedence over deference because the BIA “has no particular expertise in construing federal and state criminal statutes.”¹⁵⁹ As such, practitioners may argue that lenity applies at Step One and, in the alternative, at Step Two. Further, in light of the possible overruling of *Chevron* in *Loper Bright*, practitioners may consider arguing that the rules of lenity take precedence over deference to the agency.

IV. A “Self-Defeating Statute”: Responding to Concerns that a Proposed Definition Will Not Lead to Enough Deportations

Adjudicators are wary of adopting a generic definition that will exclude too many criminal convictions. Often framed as an application of the presumption against ineffectiveness, courts presume that Congress intended criminal removal provisions to apply to some significant number of state criminal statutes.¹⁶⁰ To exclude too many convictions would, according to the Supreme Court, presume that “Congress enacted a self-defeating statute.”¹⁶¹ A related, underlying rationale that militates in favor of broader definitions, not always expressly stated by courts, is the government’s desire to deport so-called “criminal aliens” in the interests of public safety.¹⁶² There are a number of strategies practitioners may employ to address these concerns. Ultimately courts are bound by the text of the statute, even if the result conflicts with the government’s view of the policy considerations at issue.¹⁶³

A. Humanize

To begin, practitioners should humanize their client. Referring to the client by their name whenever possible and using the appropriate honorific (such as “Mr.” or “Ms.”), rather than merely “Petitioner” or “Respondent,” can help remind an adjudicator of the person at issue. Use the introduction and the statement of facts to highlight sympathetic facts relevant to the client’s case, including the length of time they have lived in the United States and their family ties. Facts that show that the client is more than their criminal conviction (or convictions) can remind the

regarding meaning Child Status Protection Act clear); *see also Carter*, 736 F.3d at 729-36 (Sutton, J., concurring) (analyzing whether lenity or *Chevron* deference should apply in resolving meaning of statute with both civil and criminal applications).

¹⁵⁹ *Cupete v. Garland*, 29 F.4th 53, 57 (2d Cir. 2022).

¹⁶⁰ *See Esquivel-Quintana*, 581 U.S. at 395; *Nijhawan*, 557 U.S. at 37-38.

¹⁶¹ *See Pugin*, 599 U.S. at 607 (quoting *Quarles v. United States*, 139 S. Ct. 1872, 1879 (2019)).

¹⁶² *Demore v. Kim*, 538 U.S. 510, 513 (2003).

¹⁶³ *Niz-Chavez*, 141 S. Ct. at 1486 (“[W]hen it comes to the policy arguments championed by the parties and the dissent alike, our points are simple: As usual, there are (at least) two sides to the policy questions before us; a rational Congress could reach the policy judgment the statutory text suggests it did; and no amount of policy-talk can overcome a plain statutory command. Our only job today is to give the law’s terms their ordinary meaning and, in that small way, ensure the federal government does not exceed its statutory license.”).

court of the human being whose fate is being decided and the negative impact their removal would have on others.

B. Use Caution When Discussing Relevant Criminal History

With a few exceptions, the facts underlying a conviction are not relevant to the legal question of whether an individual is subject to removal based on that conviction.¹⁶⁴ When and how to discuss those facts, as well as a client’s other criminal history that did not form the basis of the underlying immigration judge or BIA decision, is a strategic question that should be approached carefully. Experienced practitioners have different views on the best way to handle harmful record evidence; these decisions should be guided by the specific facts of each case. It is worth noting that courts generally resist arguments that dispute facts in the underlying police reports or other court records as improper collateral attacks on the conviction.

C. Identify Other Immigration Consequences, Where Relevant

When arguing for a narrow construction of an aggravated felony provision, it may be persuasive to explain that even if the underlying criminal conviction is determined not to qualify as an aggravated felony, it may still fall within one of the many other criminal removal grounds. By excluding a particular conviction from the aggravated felony definition, the court is not removing the possibility of deportation. Rather, it is merely preserving the immigration court’s ability to make a discretionary determination as to whether the noncitizen warrants relief. Practitioners could make similar arguments where the client is indisputably deportable (either because they lack status or because of another conviction), but a narrow construction would preserve eligibility for relief by, for example, avoiding the stop-time rule for cancellation of removal.¹⁶⁵

D. Point to the Continued Effectiveness of the Provision

When proposing a generic definition that excludes the conviction at issue, it may be helpful to point to other statutes in the same state and/or other states that likely do fall within the proposed definition. If a fifty-state survey produces results that support the proposed narrow definition, *see* Part III.B.3.ii, that is compelling evidence to address concerns regarding the effectiveness of the statute. But even if a state survey is not helpful, pointing to specific state offenses or categories of offenses that would remain within the removal ground even if the court adopts the narrow generic definition can alleviate concerns that such a reading would render the provision ineffective.

¹⁶⁴ The underlying facts may be relevant if addressing whether an offense constitutes a particularly serious crime or when applying the circumstance-specific approach. *See Matter of B-Z-R-*, 28 I&N Dec. 563, 564 (A.G. 2022) (noting that when considering whether an offense is a particularly serious crime at 8 U.S.C. §§ 1158(b)(2)(A)(ii), 1231(b)(3)(B)(i), the Board looks to “the circumstances and underlying facts of the conviction”) (internal quotation marks omitted); *Nijhawan*, 557 U.S. at 41-42 (discussing the circumstance-specific approach).

¹⁶⁵ *See* 8 U.S.C. § 1229b(d)(1)(B).

E. Show Minor Criminal Offenses that Would Fall Within the Government’s Proposed Broader Definition

In the inverse of showing the continued effectiveness of a narrow definition, practitioners may consider pointing to objectively minor criminal offenses that would fall within the broader generic definition proposed by the government.¹⁶⁶ Courts have identified operating an unlawful gambling business, possession of a firearm without a serial number, receiving stolen property, forging documents,¹⁶⁷ possession of a small amount of marijuana with intent to share,¹⁶⁸ and passing a bad check,¹⁶⁹ as relatively minor offenses that counseled for a narrow construction of an INA removal provision.

F. Highlight the Consequences

Practitioners may want to remind the adjudicator of what is at stake if the government’s construction of the statute is adopted. For example, a lawful permanent resident will be deported to a country they do not remember or a victim of gang violence will be returned to a country where their life is in danger. If the client is facing an aggravated felony charge, a practitioner may remind the court that an aggravated felony conviction not only makes the client deportable, but bars them from virtually all forms of relief.¹⁷⁰

¹⁶⁶ See Brief of Amici Curiae National Immigrant Justice Center, et al, in Support of Petitioners (Mar. 24, 2023) at 10-22, https://www.supremecourt.gov/DocketPDF/22/22-23/259882/20230324160910632_22-23%2022-331%20ac%20National%20Immigrant%20Justice%20Center.pdf.

¹⁶⁷ *Torres*, 578 U.S. at 463.

¹⁶⁸ *Moncrieffe*, 569 U.S. at 199.

¹⁶⁹ *Nugent v. Ashcroft*, 367 F.3d 162, 178-79 (3d Cir. 2004), *overruled by Al-Sharif v. U.S. Citizenship & Immigr. Servs.*, 734 F.3d 207 (3d Cir. 2013).

¹⁷⁰ See 8 U.S.C. §§ 1158(b)(2)(B)(i), 1229b(a)(3).

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Provision Changes Tables

Provision Change Tables – Tracking changes made by amendments over the years organized by provision of the current text of each statute. Includes summary of changes over the years and some notes about major impacts of these changes.

8 U.S.C. § 1101(a)(43)

Aggravated Felony Provisions

Current Text of 8 U.S.C. § 1101(a)(43)	Changes to Language	Summary of Changes
<p>(43) The term "aggravated felony" means-</p> <p>(A) murder, rape, or sexual abuse of a minor;</p>	<p>1988 - Amendment added “(43) The term ‘aggravated felony’ means <i>murder</i>...” Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, § 7342, 102 Stat. 4181, 4469 (Nov. 18, 1988).</p> <p>1996 - Inserted “, <i>rape, or sexual abuse of a minor</i>” after “<i>murder</i>[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as part of the Omnibus Consolidated Appropriations Act, 1997), Pub. L. No. 104-208, div. C, tit. I, § 104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)¹–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>The term ‘aggravated felony’ was added to the definitions section of 8 U.S.C. § 1101 by the Anti-Drug Abuse Act of 1988. It initially identified only a limited list of crimes qualifying as aggravated felonies (murder, drug trafficking crime, illicit trafficking in firearms or destructive devices).</p> <p>While this provision has always included murder, it was amended in 1996 by the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) (which was included as part of the</p>

¹ Where more than one section is listed, the quoted section is indicated in bold.

		Omnibus Consolidated Appropriations Act, 1997) to include rape and sexual abuse of a minor under § (43)(A).
(B) illicit trafficking in a controlled substance (as defined in section 802 of title 21), including a drug trafficking crime (as defined in section 924(c) of title 18);	<p>1988 - Amendment added “(43) <i>The term ‘aggravated felony’ means... any drug trafficking crime as defined in section 924(c)(2) of title 18, United States Code....</i>” Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, § 7342, 102 Stat. 4181, 4469 (Nov. 18, 1988).</p> <p>1990 - Amendment inserted “, <i>any illicit trafficking in any controlled substance (as defined in section 102 of the Controlled Substances Act), including</i>” after “<i>murder[.]</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 123, 151(a), 153(a), 162(f)(2)(A), tit. II, §§ 203(c), 204(a), (c), 205(c)(1), (d)–(e), 206(c), 207(a), 208, 209(a), tit. IV, § 407(a)(2), tit. V, §§ 501(a), 509(a), tit. VI, § 603(a)(1), 104 Stat. 4978, 4995–4996, 5004–5006, 5012, 5015–5020, 5022–5027, 5040, 5048, 5051, 5082 (Nov. 29, 1990).</p> <p>1994 - Amended to read “<i>illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code)[.]</i>” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p>	<p>Drug trafficking crimes were identified on the original list of aggravated felonies created by the Anti-Drug Abuse Act of 1988.</p> <p>The Immigration Act of 1990 updated this language to “any illicit trafficking in any controlled substance” and cross-referenced the definition of controlled substance in Title 21 of the U.S. Code (relating to “Food and Drugs”).</p> <p>Finally in 1994 with the Immigration and Nationality Technical Corrections Act of 1994, the provision reached its current form, tweaking some of the language related to controlled substances and adding drug trafficking crimes.</p>
(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18) or in	1988 - Amendment added “(43) <i>The term ‘aggravated felony’ means... any illicit trafficking in any firearms or destructive devices as defined in section 921 of such</i>	Illicit trafficking in firearms and destructive devices were also included in the original

<p>explosive materials (as defined in section 841(c) of that title);</p>	<p><i>title...</i>” Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, § 7342, 102 Stat. 4181, 4469–4470 (Nov. 18, 1988).</p> <p>1994 - Amended to read “(C) <i>illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title)</i>[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p>	<p>list of aggravated felonies created by the Anti-Drug Abuse Act of 1988. This was amended by the Immigration and Nationality Technical Corrections Act of 1994 to add explosive materials.</p>
<p>(D) an offense described in section 1956 of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;</p>	<p>1990 - Inserting “<i>any offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments).</i>” The Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 123, 151(a), 153(a), 162(f)(2)(A), tit. II, §§ 203(c), 204(a), (c), 205(c)(1), (d)–(e), 206(c), 207(a), 208, 209(a), tit. IV, § 407(a)(2), tit. V, §§ 501(a), 509(a), tit. VI, § 603(a)(1), 104 Stat. 4978, 4995–4996, 5004–5006, 5012, 5015–5020, 5022–5027, 5040, 5048, 5051, 5082 (Nov. 29, 1990).</p> <p>1994 - Amended to read “(D) <i>an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$100,000</i>:[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p>	<p>The Immigration Act of 1990 added the provision related to money laundering to the list of crimes constituting an aggravated felony, cross-referencing the relevant U.S. code provision for laundering.</p> <p>The Immigration and Nationality Technical Corrections Act of 1994 amended the language to emphasize property derived from unlawful activity and limit the offense to laundering of funds over \$100,000.</p> <p>In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (incorporated into the</p>

	<p>1996 - Struck “\$100,000” and replaced it with “\$10,000[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>Omnibus Consolidated Appropriations Act, 1997) Congress changed the minimum amount laundered for the offense from \$100,000 to \$10,000, broadening the scope of this provision and sweeping in certain crimes previously not considered aggravated felonies.</p>
<p>(E) an offense described in—</p> <p>(i) section 842(h) or (i) of title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);</p> <p>(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of title 18 (relating to firearms offenses); or</p> <p>(iii) section 5861 of title 26 (relating to firearms offenses);</p>	<p>1994 - Added “(E) an offense described in—</p> <p>“(i) section 842(h) or (i) of title 18, United States Code, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);</p> <p>“(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of title 18, United States Code (relating to firearms offenses); or</p> <p>“(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses)[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p>	<p>In the Immigration and Nationality Technical Corrections Act of 1994, Congress added the provision relating to explosive materials and firearms offenses, cross-referencing the relevant provisions in Title 18 and Title 26.</p>
<p>(F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at 5 least one year;</p>	<p>1990 - Inserted “or any crime of violence (as defined in section 16 of title 18, United States Code, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years[.]” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 123, 151(a), 153(a), 162(f)(2)(A), tit. II, §§ 203(c), 204(a), (c), 205(c)(1), (d)–</p>	<p>In the Immigration Act of 1990 Congress added crime of violence to the list of offenses constituting an aggravated felony if the term of imprisonment was at least five years.</p>

	<p>(e), 206(c), 207(a), 208, 209(a), tit. IV, § 407(a)(2), tit. V, §§ 501(a), 509(a), tit. VI, § 603(a)(1), 104 Stat. 4978, 4995–4996, 5004–5006, 5012, 5015–5020, 5022–5027, 5040, 5048, 5051, 5082 (Nov. 29, 1990).</p> <p>1994 - Amended to read “(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p> <p>1996 - Replaced “at least 5 years” with “at least one year.” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>In 1994 the Immigration and Nationality Technical Corrections Act made minor adjustments to the language, but it was left largely the same.</p> <p>In 1996, as part of IIRIRA, the requirement of a sentence of at least five years was reduced down to a sentence of at least one year. This aggressively broadened the scope of the provision and increased the number of convictions considered to be aggravated felonies.</p>
<p>(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year;</p>	<p>1994 - Added “(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p>	<p>The theft or burglary offense provision was added by the immigration and Nationality Technical Corrections Act of 1994 and limited its effects to those for whom the term of imprisonment was at least five years. As with subsection (F),</p>

	<p>1996 - Replaced “<i>at least 5 years</i>” with “<i>at least one year.</i>” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>this was changed in 1996 as part of IIRIRA to imprisonment of at least one year, radically expanding the impact of the provision.</p>
<p>(H) an offense described in section 875, 876, 877, or 1202 of title 18 (relating to the demand for or receipt of ransom);</p>	<p>1994 - Added “(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p>	<p>The provision relating to ransom was added by the Immigration and Nationality Technical Corrections Act of 1994 and has not been amended since.</p>
<p>(I) an offense described in section 2251, 2251A, or 2252 of title 18 (relating to child pornography);</p>	<p>1994 - Added “(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p>	<p>The provision related to child pornography was inserted by the Immigration and Nationality Technical Corrections Act of 1994 and has not been subsequently amended.</p>
<p>(J) an offense described in section 1962 of title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to</p>	<p>1994 - Added “(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations) for which a sentence of 5 years' imprisonment or more may be imposed;[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322</p>	<p>The racketeer influenced corrupt organization offense was added to the list of aggravated felonies by the Immigration and Nationality Technical Corrections Act of 1994 with a minimum term of</p>

<p>gambling offenses), for which a sentence of one year imprisonment or more may be imposed;</p>	<p>(Oct. 25, 1994).</p> <p>1996 - Inserted “, or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses),” after “corrupt organizations)[.]” Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).</p> <p>And struck “sentence of 5 years’ imprisonment” and replaced it with “sentence of one year imprisonment[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>imprisonment of five years.</p> <p>The Antiterrorism and Effective Death Penalty Act of 1996 added a cross-reference to gambling offenses.</p> <p>IIRIRA later in 1996 expanded the offense to include offenses where the term of imprisonment was at least one year, rather than five years.</p>
<p>(K) an offense that—</p> <p>(i) relates to the owning, controlling, managing, or supervising of a prostitution business;</p> <p>(ii) is described in section 2421, 2422, or 2423 of title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or</p>	<p>1994 - Added “(K) an offense that— “(i) relates to the owning, controlling, managing, or supervising of a prostitution business; or “(ii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p> <p>1996 - Struck “or” at the end of clause (i), Redesignated</p>	<p>The Immigration and Nationality Technical Corrections Act of 1994 added offenses that relate to ownership, control, management, or supervision of prostitution businesses or otherwise related to slavery. This was rearranged and renumbered again in 1996 as part of the Antiterrorism and Effective</p>

<p>(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);</p>	<p>clause (ii) as clause (iii), and inserted after clause (i) the following new clause: “(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage; or [.]”</p> <p>Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).</p> <p>Added “if committed” before “for commercial advantage[.]” (Apr. 24, 1996). Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>Death Penalty Act of 1996 and IIRIRA.</p>
<p>(L) an offense described in—</p> <p>(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18;</p> <p>(ii) section 3121 of title 50 (relating to protecting the</p>	<p>1994 - Added “(L) an offense described in— “(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code; or (ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents);[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p> <p>1996 - Struck “or” at the end of clause (i), inserted “or” at</p>	<p>The offense related to national defense and classified information was added by the Immigration and Nationality Technical Corrections Act of 1994 and slightly adjusted in 1996 by IIRIRA to add reference to the National Security Act of 1947.</p>

<p>identity of undercover intelligence agents); or</p> <p>(iii) section 3121 of title 50 (relating to protecting the identity of undercover agents);</p>	<p>the end of clause (ii), and added “(iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	
<p>(M) an offense that—</p> <p>(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or</p> <p>(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;</p>	<p>1994 - Added “(M) an offense that— “(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$200,000; or “(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds \$200,000;[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p> <p>1996 - Struck “\$200,000” each place it appeared and inserted “\$10,000[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-</p>	<p>In the Immigration and Nationality Technical Corrections Act of 1994 Congress added an offense involving fraud or deceit, involving losses of over \$200,000. This was amended in 1996 by IIRIRA to lower the amount of losses required to \$10,000. This increased the scope of the statute and expanded the number of convictions qualifying as an aggravated felony.</p>

	700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).	
<p>(N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter</p>	<p>1994 - Added “(N) an offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p> <p>1996 - Amended to read “(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;[.]” Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).</p> <p>Replaced “at least 5 years” with “at least one year.” Struck “for which the term” and all that follows and added “, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-</p>	<p>The alien smuggling subsection was added by the Immigration and Nationality Technical Corrections Act of 1994 and amended in 1996. The Antiterrorism and Effective Death Penalty Act of 1996 first added a minimum term of imprisonment of five years. Later in the same year IIRIRA lowered the term of imprisonment to one year. The same amendment also added an exception for aiding and abetting a spouse, child, or parent if it was the first offense.</p>

	700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).	
(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;	1996 - Added “(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;[.]” Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).	The Antiterrorism and Effective Death Penalty Act of 1996 added offenses committed by a noncitizen who was previously deported due to a conviction for an aggravated felony. It has not been subsequently amended.
(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;	1994 - Added “(O) an offense described in section 1546(a) of title 18, United States Code (relating to document fraud) which constitutes trafficking in the documents described in such section for which the term of imprisonment imposed (regardless of any suspicion of such imprisonment) is at least 5 years[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a) , 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994). 1996 - Amended to read “(O) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 18 months;[.]” Redesignated subparagraph (O) as subparagraph (P). Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§	The document fraud provision was added by the Immigration and Nationality Technical Corrections Act of 1994 and included offenses related to trafficking documents where the term of imprisonment was at least five years. This was amended significantly by the Antiterrorism and Effective Death Penalty Act of 1996 to include falsely making, forging, counterfeiting, and mutilating instruments or passports. This section had a minimum term of imprisonment of 18 months. This was again amended later in 1996 by IIRIRA to lower the minimum term of

	<p>440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).</p> <p>Struck “18 months” and inserted “12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>imprisonment to 12 months with an exception for assisting, aiding, and abetting certain family members.</p>
<p>(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;</p>	<p>1994 - Added “(P) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 15 years or more; and[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p> <p>1996 - Struck “15 years” and inserted “5 years.” Struck “and” at the end. Redesignated subparagraph (P) as subparagraphs (Q). Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).</p>	<p>Congress added the offense of failing to appear for service of a sentence to the list of aggravated felonies as part of the Immigration and Nationality Technical Corrections Act of 1994, though limited the term of imprisonment to at least 15 years. The Antiterrorism and Effective Death Penalty Act of 1996 lowered this to five years, expanding the scope of the provision.</p>

<p>(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;</p>	<p>1996 - Added “(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed[.]” Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).</p> <p>Struck “for which a sentence of 5 years' imprisonment or more may be imposed” and replaced it with “for which the term of imprisonment is at least one year[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>In the Antiterrorism and Effective Death Penalty Act of 1996, Congress added the offense related to commercial bribery, counterfeiting, forgery, or trafficking in vehicles when the term of imprisonment is at least five years. This was amended later that year by IIRIRA to lower the minimum term of imprisonment to one year, increasing the breadth of the provision.</p>
<p>(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;</p>	<p>1996 - Added “(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which a sentence of 5 years' imprisonment or more may be imposed;[.]” Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).</p> <p>Struck “for which a sentence of 5 years' imprisonment or more may be imposed” and inserted “for which the term of imprisonment is at least one year[.]” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a),</p>	<p>In the Antiterrorism and Effective Death Penalty Act of 1996 Congress added offenses relating to obstruction of justice, perjury, and bribery of a witness with a term of imprisonment of at least five years. Later that year IIRIRA lowered the minimum term of imprisonment to one year, increasing the number of</p>

	308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b) , 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629 , 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).	offenses qualifying as an aggravated felony under this provision.
(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and	1996 - Added “(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and[.]” Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).	The Antiterrorism and Effective Death Penalty Act of 1996 added offenses relating to a failure to appear before a court based on a court order. This also included failure to answer or dispose of a felony charge where a sentence of at least two years imprisonment could be imposed.
(U) an attempt or conspiracy to commit an offense described in this paragraph. The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other	1988 - Amendment added “(43) The term ‘aggravated felony’ means murder, any drug trafficking crime as defined in section 924(c)(2) of title 18, United States Code, or any illicit trafficking in any firearms or destructive devices as defined in section 921 of such title, or any attempt or conspiracy to commit any such act, committed within the United States.” Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, § 7342, 102 Stat. 4181, 4469–4470 (Nov. 18, 1988). 1990 - Struck “committed within the United States[.]” Adding “Such term applies to offenses described in the previous sentence whether in violation of Federal or State	In the original list of aggravated felonies created as part of the Anti-Drug Abuse Act of 1988, Congress included those attempting or conspiring to commit an aggravated felony within the United States. The Immigration Act of 1990 eliminated the requirement that the attempt or conspiracy occur within the United States.

<p>provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.</p>	<p><i>law.</i>”, and adding “<i>and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years[.]</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 123, 151(a), 153(a), 162(f)(2)(A), tit. II, §§ 203(c), 204(a), (c), 205(c)(1), (d)–(e), 206(c), 207(a), 208, 209(a), tit. IV, § 407(a)(2), tit. V, §§ 501(a), 509(a), tit. VI, § 603(a)(1), 104 Stat. 4978, 4995–4996, 5004–5006, 5012, 5015–5020, 5022–5027, 5040, 5048, 5051, 5082 (Nov. 29, 1990).</p> <p>1994 - Amended to read “<i>(Q) an attempt or conspiracy to commit an offense described in this paragraph. The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.</i>” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310–4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p> <p>1996 - Redesignated subparagraph (Q) as subparagraph (U). Pub. L. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1277 (Apr. 24, 1996). Added “<i>Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.</i>” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-</p>	<p>This amendment also added that it applied to violations of Federal <i>and</i> State laws <i>and</i> certain foreign laws when the term of imprisonment occurred within the previous 15 years.</p> <p>Congress amended this provision in the Immigration and Nationality Technical Corrections Act of 1994 to align with the organization scheme of § (43). In 1996 in IIRIRA the provision was reordered and added the effective date.</p>
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	555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629 , 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).	
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8 U.S.C. § 1101(a)(48)

Conviction and Sentence Definition

Current Text of 8 U.S.C. § 1101(a)(48)	Changes to Language	Summary of Changes
<p>(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—</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>1996 - Added “(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—</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) 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.” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>The Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) was passed in 1996 and was the first time that “conviction” was defined for the explicit purpose of determining inadmissibility and deportability. This defined conviction as a formal judgment of guilt and laid out the statutory requirements for a conviction to apply.</p>
<p>(B) Any reference to a term of</p>	<p>1996 - Added “(48)(A) The term ‘conviction’ means, with</p>	<p>IIRIRA in 1996 codified the</p>

<p>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.</p>	<p><i>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></p> <p><i>“(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</i></p> <p><i>“(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.</i></p> <p><i>“(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.”</i> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, §104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sep. 30, 1996) (effective Apr. 1, 1997).</p>	<p>definition of “term of imprisonment” and “sentence.”</p>
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8 U.S.C. § 1182(a)(2)

Criminal Grounds of Inadmissibility

Current Text of 8 U.S.C. § 1182(a)(2)	Changes to Language	Summary of Changes
<p>(a) Classes of aliens ineligible for visas or admission Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:</p>	<p>1952 - Created classes of ineligible noncitizens: “(a) <i>Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:</i>” Immigration and Nationality Act, Pub. L. No. 82-414, ch. 477, tit. II, ch. 2, § 212, 66 Stat. 163, 182–188 (June 27, 1952).</p> <p>1990 - Amended the language and structure to read, “(a) <i>CLASSES OF EXCLUDABLE ALIENS.—Except as otherwise provided in this Act, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States[.]</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 162(e)(1), (f)(2)(B), tit. II, §§ 202(b), 205(c)(3), tit. V, §§ 511(a), 514(a), tit. VI, §§ 601(a)–(b), (d), 104 Stat. 4978, 5011–5012, 5014, 5020–5022, 5052, 5053, 5067–5077 (Nov. 29, 1990).</p> <p>1996 - (A) Struck “<i>EXCLUDED FROM</i>” and inserted “<i>INELIGIBLE FOR</i>”; (B) in the matter in subsection (a) before paragraph (1), by striking all that follows “(a)” and inserting the following: “<i>CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act,</i></p>	<p>In 1952 the Immigration and Nationality Act created classes of ineligible noncitizens, identifying groups of noncitizens who would not be eligible for admission into the country. The Immigration Act of 1990 reorganized this, creating the structure we know today and renaming it.</p> <p>The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (which was included as part of the Omnibus Consolidated Appropriations Act, 1997) renamed the section again and changed “entry” to “admission” throughout the statute.</p>

	<p><i>aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:[.]” And amending by striking “entry” and inserting “admission” each place it appears. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as part of the Omnibus Consolidated Appropriations Act), 1997, Pub. L. No. 104-208, div. C, tit. I, § 124(b)(1), tit. III, §§ 301(b)(1), (c)(1), 304(b), 305(c), 306(d), 308(c)(2)(B), (d)(1), (e)(1)(B), (C), (2)(A), (6), (f)(1)(C)–(F), (3)(A), (g)(1), (4)(B), (10)(A), (H), 322(a)(2)(B), 341(a)–(b), 342(a), 343, 344(a), 345(a), 346(a), 347(a), 348(a), 349, 351(a), 352(a), 355, tit. V, § 531(a), tit. VI, §§ 602(a), 622(b), 624(a), 671(e)(3), 110 Stat. 3009, 3009-562, 3009-576 to 3009-579, 3009-597, 3009-607, 3009-612, 3009-616 to 3009-622, 3009-625, 3009-629, 3009-635 to 3009-641, 3009-644, 3009-674 to 3009-675, 3009-689, 3009-695, 3009-698 to 3009-699, 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).</i></p>	
<p>(2) Criminal and related grounds (A) Conviction of certain crimes</p> <p>(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—</p> <p>(I) a crime involving moral</p>	<p>1952 - Established that“(9) <i>Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime; except that aliens who have committed only one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of the application for a visa or other documentation, and more than five years prior to date of application for admission to the United States, unless the crime resulted in confinement in a prison or correctional institution, in which case such</i></p>	<p>The original 1952 Immigration and Nationality Act included language making certain noncitizens convicted of a crime inadmissible. This specifically named crimes involving moral turpitude.</p> <p>In 1961 Congress amended this section to include certain misdemeanors.</p> <p>In 1984 a Joint Resolution</p>

<p>turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or</p> <p>(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), is inadmissible.</p> <p>(ii) Exception Clause (i)(I) shall not apply to an alien who committed only one crime if—</p> <p>(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</p> <p>(II) the maximum penalty possible for the crime of which the alien</p>	<p><i>alien must have been released from such confinement more than five years prior to the date of the application for a visa or other documentation, and for admission, to the United States[.]” Immigration and Nationality Act, Pub. L. No. 82-414, ch. 477, tit. II, ch. 2, § 212, 66 Stat. 163, 182–188 (June 27, 1952).</i></p> <p>1961 - Amends section (a)(9) amended to change the semicolon at the end to a period, and adding thereafter the following: "<i>Any alien who would be excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of title 18, United States Code, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of title 18, United States Code, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: Provided that the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense.</i>" An Act to Amend the INA, Pub. L. No. 87-301, § 11–15, 75 Stat. 650, 654–655 (Sept. 26, 1961).</p> <p>1984 - Amended (a)(9) to read "<i>An alien who would be excludable because of the conviction of an offense for which the sentence actually imposed did not exceed a term of imprisonment in excess of six months, or who would be excludable as one who admits the commission of an offense for which a sentence not to exceed one year's imprisonment might have been imposed on him, may be</i></p>	<p>allowed for admission to be granted to a noncitizen with only one offense under certain conditions.</p> <p>The Immigration Act of 1990 reorganized the structure of the criminal grounds of inadmissibility provisions and consolidated that under (a)(2).</p> <p>The Immigration and Nationality Technical Corrections Act of 1994 added attempt and conspiracy.</p>
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<p>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).</p>	<p><i>granted a visa and admitted to the United States if otherwise admissible: Provided, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense.”</i></p> <p>(b) Section 242(h) (8 U.S.C. 1252(h)) is amended by adding “<i>supervised release,</i>” after “<i>parole[.]</i>” Joint Resolution, Pub. L. No. 98-473, tit. II, § 220(a)–(b), 98 Stat. 1837, 2028 (Oct. 12, 1984).</p> <p>1990 - Amended to read “(2) <i>CRIMINAL AND RELATED GROUNDS.— (A) 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 (II) a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is excludable.</i></p> <p><i>(ii) EXCEPTION.—Clause (i)(I) 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 (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</i></p>	
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	<p><i>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).”</i></p> <p>Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 162(e)(1), (f)(2)(B), tit. II, §§ 202(b), 205(c)(3), tit. V, §§ 511(a), 514(a), tit. VI, §§ 601(a)–(b), (d), 104 Stat. 4978, 5011–5012, 5014, 5020–5022, 5052, 5053, 5067–5077 (Nov. 29, 1990).</p> <p>1994 - Inserts “<i>or an attempt or conspiracy to commit such a crime</i>” after “<i>offense</i>[,]” and in subsection (a)(2)(A)(i)(II), by inserting “<i>or attempt</i>” after “<i>conspiracy</i>[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 203(a), 219(e), (z)(1), (5), 220(a), 108 Stat. 4305, 4311, 4316, 4318–4319 (Oct. 25, 1994).</p>	
<p>(B) 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.</p>	<p>1952 - Established “<i>(10) Aliens who have been convicted of two 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 actually imposed were five years or more.</i>” Immigration and Nationality Act, Pub. L. No. 82-414, ch. 477, tit. II, ch. 2, § 212, 66 Stat. 163, 182–188 (June 27, 1952).</p> <p>1990 - Added “<i>(B) MULTIPLE CRIMINAL CONVICTIONS.—Any alien convicted of 2 or more offenses (other than purely political</i></p>	<p>In 1952 the Immigration and Nationality Act identified that noncitizens with multiple convictions were not admissible. The Immigration Act of 1990 reorganized the structure of the provision but left it largely identical.</p> <p>In 1996 IIRIRA removed “<i>actually imposed</i>[,]” allowing the aggregate sentences of confinement, even if they are not fulfilled, to count towards a</p>

	<p><i>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 actually imposed were 5 years or more is excludable.” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 162(e)(1), (f)(2)(B), tit. II, §§ 202(b), 205(c)(3), tit. V, §§ 511(a), 514(a), tit. VI, §§ 601(a)–(b), (d), 104 Stat. 4978, 5011–5012, 5014, 5020–5022, 5052, 5053, 5067–5077 (Nov. 29, 1990).</i></p> <p>1996 - Strikes “<i>actually imposed[.]</i>” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, § 124(b)(1), tit. III, §§ 301(b)(1), (c)(1), 304(b), 305(c), 306(d), 308(c)(2)(B), (d)(1), (e)(1)(B), (C), (2)(A), (6), (f)(1)(C)–(F), (3)(A), (g)(1), (4)(B), (10)(A), (H), 322(a)(2)(B), 341(a)–(b), 342(a), 343, 344(a), 345(a), 346(a), 347(a), 348(a), 349, 351(a), 352(a), 355, tit. V, § 531(a), tit. VI, §§ 602(a), 622(b), 624(a), 671(e)(3), 110 Stat. 3009, 3009-562, 3009-576 to 3009-579, 3009-597, 3009-607, 3009-612, 3009-616 to 3009-622, 3009-625, 3009-629, 3009-635 to 3009-641, 3009-644, 3009-674 to 3009-675, 3009-689, 3009-695, 3009-698 to 3009-699, 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).</p>	<p>noncitizen’s exclusion.</p>
<p>(C) Controlled substance traffickers Any alien who the consular officer or the Attorney General knows or has reason to believe— (i) is or has been an illicit</p>	<p>1990 - Added “(C) <i>CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the</i></p>	<p>The Immigration Act of 1990 added controlled substance trafficking offenses to the list of offenses making a non-citizen inadmissible. The Intelligence Authorization Act for Fiscal Year 2000 organized and</p>

<p>trafficker in any controlled substance or in any listed chemical (as defined in section 802 of Title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or</p> <p>(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.</p>	<p><i>illicit trafficking in any such controlled substance, is excludable[.]”</i> Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 162(e)(1), (f)(2)(B), tit. II, §§ 202(b), 205(c)(3), tit. V, §§ 511(a), 514(a), tit. VI, §§ 601(a)–(b), (d), 104 Stat. 4978, 5011–5012, 5014, 5020–5022, 5052, 5053, 5067–5077 (Nov. 29, 1990).</p> <p>1999 - Amends language to“(C) <i>CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular officer or the Attorney General knows or has reason to believe.— (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or (ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.</i>” Intelligence Authorization Act for Fiscal Year 2000, Pub. L. No. 106-120, tit. VIII, § 809, 113 Stat. 1606, 1632–1633 (Dec. 3, 1999).</p>	<p>updated the section adding spouses, sons, or daughters who have obtained benefit from the illicit activities and should have known they were taking place.</p>
<p>(D) Prostitution and commercialized vice Any alien who—</p> <p>(i) is coming to the United States solely, principally, or incidentally</p>	<p>1990 - Added “(D) <i>PROSTITUTION AND COMMERCIALIZED VICE.—Any alien Who— (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, entry, or adjustment of status, (ii)</i></p>	<p>The Immigration Act of 1990 added prostitution and commercialized vice to the list of offenses making a noncitizen inadmissible. In 1996 IIRIRA tweaked the language to shift</p>

<p>to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,</p> <p>(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or</p> <p>(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,</p> <p>is inadmissible.</p>	<p><i>directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, entry, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or (iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is excludable[.]”</i></p> <p>Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 162(e)(1), (f)(2)(B), tit. II, §§ 202(b), 205(c)(3), tit. V, §§ 511(a), 514(a), tit. VI, §§ 601(a)–(b), (d), 104 Stat. 4978, 5011–5012, 5014, 5020–5022, 5052, 5053, 5067–5077 (Nov. 29, 1990).</p> <p>1996 - Amends by striking “<i>entry</i>” and inserting “<i>admission</i>” each place it appeared. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as part of the Omnibus Consolidated Appropriations Act), 1997, Pub. L. No. 104-208, div. C, tit. I, § 124(b)(1), tit. III, §§ 301(b)(1), (c)(1), 304(b), 305(c), 306(d), 308(c)(2)(B), (d)(1), (e)(1)(B), (C), (2)(A), (6), (f)(1)(C)–(F), (3)(A), (g)(1), (4)(B), (10)(A), (H), 322(a)(2)(B), 341(a)–(b), 342(a), 343, 344(a), 345(a), 346(a), 347(a), 348(a), 349, 351(a), 352(a), 355, tit. V, § 531(a), tit. VI, §§ 602(a), 622(b), 624(a), 671(e)(3), 110 Stat. 3009, 3009-562, 3009-576 to 3009-579, 3009-597, 3009-607, 3009-612, 3009-616 to 3009-622, 3009-625, 3009-629, 3009-635 to 3009-641, 3009-644, 3009-674 to 3009-675, 3009-689, 3009-695, 3009-698 to 3009-699, 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).</p>	<p>“entry” to “admission.”</p>
<p>(E) Certain aliens involved in</p>	<p>1990 - Added “(E) <i>CERTAIN ALIENS INVOLVED IN</i></p>	<p>The Immigration Act of 1990</p>

<p>serious criminal activity who have asserted immunity from prosecution Any alien—</p> <p>(i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),</p> <p>(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,</p> <p>(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and</p> <p>(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,</p> <p>is inadmissible.</p>	<p><i>SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien— (i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)), (ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense, (iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and (iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is excludable.</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 162(e)(1), (f)(2)(B), tit. II, §§ 202(b), 205(c)(3), tit. V, §§ 511(a), 514(a), tit. VI, §§ 601(a)–(b), (d), 104 Stat. 4978, 5011–5012, 5014, 5020–5022, 5052, 5053, 5067–5077 (Nov. 29, 1990).</p>	<p>added groups of noncitizens involved in serious activity who have asserted immunity from prosecution.</p>
<p>(F) Waiver authorized For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).</p>	<p>1990 - Added “(F) <i>WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 162(e)(1), (f)(2)(B), tit. II, §§ 202(b), 205(c)(3), tit. V, §§ 511(a), 514(a), tit. VI, §§ 601(a)–(b), (d), 104 Stat. 4978, 5011–5012, 5014,</p>	<p>The Immigration Act of 1990 added a cross-reference to subsection (h) discussing waiver.</p>

	5020–5022, 5052, 5053, 5067–5077 (Nov. 29, 1990).	
<p>(G) Foreign government officials who have committed particularly severe violations of religious freedom</p> <p>Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of title 22, is inadmissible.</p>	<p>1998 – Added “(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE ENGAGED IN PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998, and the spouse and children, if any, are inadmissible.” International Religious Freedom Act of 1998, Pub. L. No. 105-292, tit. VI, § 604(a), 112 Stat. 2787, 2814 (Oct. 27, 1998).</p> <p>2004 - Amended to read “(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.” Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, tit. V, §§ 5501(a), 5502(a), 5503, 118 Stat. 3638, 3740–3741 (Dec. 17, 2004).</p>	<p>The International Religious Freedom Act of 1998 added a category to make certain foreign government officials who severely violate religious freedom inadmissible. The Intelligence Reform and Terrorism Prevention Act of 2004 removed the 24-month time limit, instead allowing this exclusion for acts at any time.</p>
<p>(H) Significant traffickers in persons</p> <p>(i) In general</p>	<p>2000 - Inserted, “(H) SIGNIFICANT TRAFFICKERS IN PERSONS.— (i) IN GENERAL.—Any alien who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000, or who the</p>	<p>The Victims of Trafficking and Violence Protection Act of 2000 added human traffickers to the list of inadmissible offenses.</p>

<p>Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of title 22, is inadmissible.</p> <p>(ii) Beneficiaries of trafficking Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.</p> <p>(iii) Exception for certain sons</p>	<p><i>consular officer or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 103 of such Act, is inadmissible.</i></p> <p><i>(ii) BENEFICIARIES OF TRAFFICKING.—Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.</i></p> <p><i>(iii) EXCEPTION FOR CERTAIN SONS AND DAUGHTERS.—Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.”</i> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, div. A, §§ 107(e)(3), 111(d), div. B, tit. V, §§ 1505(a), (c)(1), (d)–(f), 1513(e), 114 Stat. 1464, 1478, 1485–1486, 1525–1526, 1536 (Oct. 28, 2000).</p> <p>2008 - Struck “<i>who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000</i>” and inserting “<i>who commits or conspires to commit human trafficking offenses in the United States or outside the United States[.]</i>” William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, tit. II, §§ 222(f)(1), 234, 122 Stat. 5044, 5071, 5074 (Dec. 23, 2008).</p>	<p>The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 removed the requirement that an individual be in a report, and it added the commitment or conspiracy to commit the offense as a requirement.</p>
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<p>and daughters Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.</p>		
<p>(I) Money laundering Any alien—</p> <p>(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18 (relating to laundering of monetary instruments); or</p> <p>(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;</p> <p>is inadmissible.</p>	<p>2001 - Added “(I) <i>MONEY LAUNDERING.—Any alien—</i> “(i) <i>who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or</i> “(ii) <i>who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section; is inadmissible.</i>” USA Patriot Act of 2001, Pub. L. No. 107-56, tit. IV, § 411(a), tit. X, §1006(a), 115 Stat. 272, 345–348, 394 (Oct. 26, 2001).</p>	<p>The USA Patriot Act of 2001 added money laundering to the list of inadmissible offenses.</p>

8 U.S.C. § 1227(a)(2)

Removability Based on Criminal Offense

Current Text of 8 U.S.C. § 1227(a)(2)	Changes to Language	Summary of Changes
<p>(a) Classes of deportable aliens Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:</p>	<p>1952 - Statute added “(a) <i>Any alien in the United States... shall, upon the order of the Attorney General, be deported who— [1] at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry.</i>” Immigration and Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, tit. II, ch. 4, § 237, formerly ch. 5, § 241, 66 Stat. 163, 204–208 (June 27, 1952).</p> <p>1990 - Amended language as “(a) <i>CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General, be deported if the alien is deportable as being within one or more of the following classes of aliens:[.]</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061, 5077–5081 (Nov. 29, 1990).</p>	<p>In 1952 Congress enacted the Immigration and Nationality Act, recodifying and reorganizing immigration-related statutes. In this section they include a section that determines the classes of nonimmigrants that were deportable.</p> <p>The Immigration Act of 1990 amended this language and created the structure used today for organizing the classes of deportable noncitizens.</p>
<p>(2) Criminal offenses (A) General crimes</p>	<p>1990 - Added “(2) <i>CRIMINAL OFFENSES.— (A) GENERAL CRIMES.— [.]</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061, 5077–5081 (Nov. 29, 1990).</p>	<p>The section for criminal offenses and subsection for general crimes was added as part of Immigration Act of 1990.</p>
<p>(i) Crimes of moral turpitude</p>	<p>1952 - Statute established that a noncitizen is deportable</p>	<p>The Immigration and</p>

<p>Any alien who—</p> <p>(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and</p> <p>(II) is convicted of a crime for which a sentence of one year or longer may be imposed,</p> <p>is deportable.</p>	<p>who “(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more...” Immigration and Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, tit. II, ch. 4, § 237, formerly ch. 5, § 241, 66 Stat. 163, 204–208 (June 27, 1952).</p> <p>1990 - Reorganized as “(i) <i>CRIMES OF MORAL TURPITUDE</i>.—Any alien who— (I) is convicted of a crime involving moral turpitude committed within five years after the date of entry, and (II) either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer, is deportable.” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061, 5077–5081 (Nov. 29, 1990).</p> <p>1996 - Added “(II) is convicted of a crime for which a sentence of one year or longer may be imposed[.]” Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 414(a), 435(a), 110 Stat. 1214, 1270, 1274 (Apr. 24, 1996).</p>	<p>Nationality Act of 1952 made a crime involving moral turpitude ground for deportation. This is limited to crimes committed within five years of entry and with a sentence of confinement for more than a year.</p> <p>In the Immigration Act of 1990 Congress reorganized the provision but largely kept the language the same.</p> <p>The Antiterrorism and Effective Death Penalty Act of 1996 added a provision clarifying cl. (II) that the conviction must be for a crime of which a sentence over a year can be imposed.</p>
<p>(ii) Multiple criminal convictions Any alien who at any time after admission is convicted of two or more crimes involving moral</p>	<p>1952 - Added “or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial[.]” Immigration and</p>	<p>Multiple criminal convictions involving moral turpitude have also been grounds for removal since the Immigration and Nationality Act of 1952.</p>

<p>turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.</p>	<p>Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, tit. II, ch. 4, § 237, formerly ch. 5, § 241, 66 Stat. 163, 204–208 (June 27, 1952).</p> <p>1990 - Reorganized as ““(ii) <i>MULTIPLE CRIMINAL CONVICTIONS.</i>—Any alien who at any time after entry is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061, 5077–5081 (Nov. 29, 1990).</p>	<p>Congress reorganized this language as part of the Immigration Act of 1990 to create a formal category of “multiple criminal convictions” but left the substantive language largely untouched.</p>
<p>(iii) Aggravated felony Any alien who is convicted of an aggravated felony at any time after admission is deportable.</p>	<p>1988 - Added “<i>SEC. 7344. GROUNDS OF DEPORTATION. (a) IN GENERAL. — Section 241(a)(4) (8 U.S.C. 1251(a)(4)) is amended — (2) by inserting after the semicolon the following: “or (B) is convicted of an aggravated felony at any time after entry;”.</i> (b) <i>APPLICABILITY. — The amendments made by subsection (a) shall apply to any alien who has been convicted, on or after the date of the enactment of this Act, of an aggravated felony.</i>” Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, § 7344(a), 102 Stat. 4181, 4470–4471 (Nov. 18, 1988).</p> <p>1990 - Reorganized and shorted by amending language to read ““(iii) <i>AGGRAVATED FELONY.</i>—Any alien who is convicted of an aggravated felony at any time after entry is deportable.” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061,</p>	<p>The Anti-Drug Abuse Act of 1988 introduced the term “aggravated felony” and made it a ground for deportation. This original language was later shortened and reorganized by the Immigration Act of 1990.</p>

	5077–5081 (Nov. 29, 1990).	
<p>(iv) High speed flight Any alien who is convicted of a violation of section 758 of Title 18 (relating to high speed flight from an immigration checkpoint) is deportable.</p>	<p>1996 - Added ““(iv) <i>HIGH SPEED FLIGHT.—Any alien who is convicted of a violation of section 758 of title 18, United States Code, (relating to high speed flight from an immigration checkpoint) is deportable.</i>” Renumbered ch. 4, § 237, and amended. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, § 108(c), tit. III, §§ 301(d), 305(a)(2), 308(d)(2), (3)(A), (e)(1)(E), (2)(C), (f)(1)(L)–(N), (5), 344(b), 345(b), 347(b), 350(a), 351(b), tit. VI, §§ 671(a)(4)(B), (d)(1)(C), 110 Stat. 3009, 3009-558, 3009-579, 3009-597 to 3009-598, 3009-617, 3009-619 to 3009-622, 3009-637 to 3009-640, 3009-721, 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).</p>	<p>In 1996 Congress added the category of high speed flight from an immigration checkpoint as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (which was included as part of the Omnibus Consolidated Appropriations Act, 1997).</p>
<p>(v) Failure to register as a sex offender Any alien who is convicted under section 2250 of Title 18 is deportable.</p>	<p>2006 - Added ““(v) <i>FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien who is convicted under section 2250 of title 18, United States Code, is deportable.</i>” Adam Walsh Child Protection and Safety Act, Pub. L. No. 109-248, tit. IV, § 401, 120 Stat. 587, 622 (July 27, 2006).</p>	<p>In 2006 as part of the Adam Walsh Child Protection and Safety Act Congress added failure to register as a sex offender as part of the Adam Walsh Child Protection and Safety Act.</p>
<p>(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</p>	<p>1990 - Established ““(iv) <i>WAIVER AUTHORIZED.—Clauses (i), (ii), and (iii) 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.</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061,</p>	<p>The Immigration Act of 1990 a waiver was authorized for those granted a pardon by the president of the United States.</p>

<p>by the Governor of any of the several States.</p>	<p>5077–5081 (Nov. 29, 1990).</p>	
<p>(B) Controlled substances (i) Conviction Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.</p> <p>(ii) Drug abusers and addicts Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.</p>	<p>1952 - Statute established “(11) <i>is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction sustaining opiate[.]</i>” Immigration and Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, tit. II, ch. 4, § 237, formerly ch. 5, § 241, 66 Stat. 163, 204–208 (June 27, 1952).</p> <p>1960 - Congress added "<i>or marihuana</i>" to "<i>narcotic drugs</i>" under (a)(11). Joint Resolution, Pub. L. No. 86-648, § 9, 74 Stat. 504, 505 (July 14, 1960).</p> <p>1986 - Struck “<i>any law or regulation relating to</i>” and all that follows through “<i>addiction-sustaining opiate</i>” and inserted “<i>any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))</i>” Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, tit. I, § 1751(b), 100 Stat.</p>	<p>The Immigration and Nationality Act of 1952 established that certain drug related offenses and drug addiction were grounds for deportation.</p> <p>In 1960 as part of a Joint Resolution, Congress added marihuana trafficking to the list.</p> <p>The Anti-Drug Abuse Act of 1986 simplified the language, cutting it down to violation of a law of any state, the federal government, or foreign country relating to a controlled substance.</p> <p>The Immigration Act of 1990 reorganize the structure and transitioned to “controlled substances” language consistent with other area of US Code. This included the same two sections originally defined in 1952 of those convicted of drug-related offenses and drug addiction,</p>

	<p>3207, 3207-47 (Oct. 27, 1986).</p> <p>1990 - Reorganized to read “(B) <i>CONTROLLED SUBSTANCES</i>.— “(i) <i>CONVICTION</i>.—Any alien who at any time after entry has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable. (ii) <i>DRUG ABUSERS AND ADDICTS</i>.—Any alien who is, or at any time after entry has been, a drug abuser or addict is deportable.” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061, 5077–5081 (Nov. 29, 1990).</p> <p>1994 - Added “an attempt or” before “a conspiracy” each place it appears in clauses (ii) and (iii). Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 203(b), 219(g), 108 Stat. 4305, 4311, 4317 (Oct. 25, 1994).</p>	<p>though introduced more detail to the statute.</p> <p>In 1994 the Immigration and Nationality Technical Corrections Act of 1994 added attempt to violate a law or regulation relating to controlled substances.</p>
<p>(C) Certain firearm offenses Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging,</p>	<p>1990 - Established “(C) <i>CERTAIN FIREARM OFFENSES</i>.—Any alien who at any time after entry is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying in violation of any law, any weapon, part, or</p>	<p>The Immigration Act of 1990 added certain firearm offenses to the list. This was later clarified by the Immigration and Nationality Technical</p>

<p>using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18) in violation of any law is deportable.</p>	<p><i>accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) is deportable.</i>” Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061, 5077–5081 (Nov. 29, 1990).</p> <p>1994 - Struck “in violation of any law,” and inserting “, <i>or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry,</i>”, and inserted “<i>in violation of any law</i>” after “Code)[.]” Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 203(b), 219(g), 108 Stat. 4305, 4311, 4317 (Oct. 25, 1994).</p>	<p>Corrections Act of 1994, changing from the more generic language of “in violation of any law” to more specific language regarding purchasing, sale, exchange, etc.</p>
<p>(D) Miscellaneous crimes Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate—</p> <p>(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of Title 18 for which a term of imprisonment of five or more years may be imposed;</p> <p>(ii) any offense under section 871 [threatening the president] or 960</p>	<p>1952 - Added “(12) <i>by reason of any conduct, behavior or activity at any time after entry became a member of any of the classes specified in paragraph (12) of section 212 (a) ; or is or at any time after entry has been the manager, or is or at any time after entry has been connected with the management, of a house of prostitution or any other immoral place; (13) prior to, or at the time of any entry, or at any time within five years after any entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law;[.]</i>” Immigration and Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, tit. II, ch. 4, § 237, formerly ch. 5, § 241, 66 Stat. 163, 204–208 (June 27, 1952).</p> <p>1990 - Amended to read “(D) MISCELLANEOUS CRIMES.—<i>Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or</i></p>	<p>The Immigration and Nationality Act of 1952 had some language regarding crimes related to management of prostitution or the aiding and abetting of other noncitizens entering the United States.</p> <p>This was expanded by the Immigration Act of 1990 to add those convicted of crimes related to espionage, sabotage, treason and sedition, threatening the President, expedition against friendly nations, violation of the Military Selective Service act,</p>

<p>of Title 18 [expedition against friendly nation];</p> <p>(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or</p> <p>(iv) a violation of section 1185 [departing without valid passport] or 1328 [importing aliens for illegal purposes] of this title, is deportable.</p>	<p><i>has been so convicted of a conspiracy to violate— (i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed; (ii) any offense under section 871 or 960 of title 18, United States Code; (iii) a violation of any provision of the Military Selective Service Act (50 U.S.C.App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C.App. 1 et seq.); or (iv) a violation of section 215 or 278 of this Act, is deportable.”</i> Immigration Act of 1990, Pub. L. No. 101-649, tit. VI, § 602(a), 104 Stat 4978, 5080 (Nov. 29, 1990).</p>	<p>departure without a valid passport, and importation of noncitizens for illegal purposes (including prostitution).</p>
<p>(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and</p> <p>(i) Domestic violence, stalking, and child abuse</p> <p>Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in section 16 of Title 18) against a person committed by a</p>	<p>1997 - Added “(E) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDER, CRIMES AGAINST CHILDREN AND.—</p> <p>“(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who at any time after entry is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term ‘crime of domestic violence’ means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that</p>	<p>In 1996 IIRIRA added crimes of domestic violence, stalking, child abuse, and violation of a protective order to the list of deportable offenses.</p>

<p>current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.</p> <p>(ii) Violators of protection orders Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.</p>	<p><i>individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government. (ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time after entry is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term ‘protection order’ means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.” Renumbered ch. 4, § 237, and amended. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, § 108(c), tit. III, §§ 301(d), 305(a)(2), 308(d)(2), (3)(A), (e)(1)(E), (2)(C), (f)(1)(L)–(N), (5), 344(b), 345(b), 347(b), 350(a), 351(b), tit. VI, §§ 671(a)(4)(B), (d)(1)(C), 110 Stat. 3009, 3009-558, 3009-579, 3009-597 to 3009-598, 3009-617, 3009-619 to 3009-622, 3009-637 to 3009-640, 3009-721, 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).</i></p>	
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<p>For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.</p>		
<p>(F) Trafficking Any alien described in section 1182(a)(2)(H) of this title is deportable.</p>	<p>2008 - Added “(F) <i>TRAFFICKING.—Any alien described in section 212(a)(2)(H) is deportable.</i>” Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, tit. II, §§ 204, 222(f)(2), 122 Stat. 5044, 5060, 5071 (Dec. 23, 2008).</p>	<p>In the 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act Congress added that traffickers and beneficiaries of traffickers are also deportable.</p>

Short Tables

Short Tables – Including only amendments relevant to the statute at issue. Big-picture summary of amendment and major changes to crimmigration provisions noted.

8 U.S.C. § 1101(a)(43)

Aggravated Felony Provisions

Public Law Number (Link embedded)	Summary of Changes
Immigration and Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, tit. I, § 101, 66 Stat. 163, 166–173 (June 27, 1952).	The 1952 Immigration and Nationality Act was the originating statute that set the foundation for the eventual creation of the list of crimes that constitute an aggravated felony. While Title I §101, the definitions section, was created in 1952 it did not yet include the definition of “aggravated felony.”
Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, §§ 7342, 7344 102 Stat. 4181, 4469–4471 (Nov. 18, 1988).	The Anti-Drug Abuse Act of 1988 § 7342 added par. (43). It defined “aggravated felony” as “murder, any drug trafficking crime as defined in section 924(c)(2) of title 18, United States Code, or any illicit trafficking in any firearms or destructive devices as defined in section 921 of such title, or any attempt or conspiracy to commit any such act, committed within the United States.” The amended text in § 7344 provided for the deportation of noncitizens convicted of an aggravated felony.
Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 123, 151(a), 153(a), 162(f)(2)(A), tit. II, §§ 203(c), 204(a), (c), 205(c)(1), (d)–(e), 206(c), 207(a), 208, 209(a), tit. IV, § 407(a)(2), tit. V, §§ 501(a), 509(a), tit. VI, § 603(a)(1), 104 Stat. 4978, 4995–4996, 5004–5006, 5012, 5018–5027, 5040, 5048, 5051, 5082	The Immigration Act of 1990 at §501(a)(6), expanded the definition of aggravated felony in (a)(43), adding "and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years" after "Federal or State law".

<p>(Nov. 29, 1990).</p>	<p>It also broadened the scope of the act, striking out "committed within the United States" after "to commit any such act,".</p> <p>Finally, the Act inserted "any offense described in section 1956 of title 18 (relating to laundering of monetary instruments), or any crime of violence (as defined in section 16 of title 18, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years," after "section 921 of such title,".</p> <p>All of these steps made it far easier for the government to show that an offense constituted an aggravated felony and expanded the potential impact of the provision.</p>
<p>Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4305, 4310, 4311, 4314, 4316, 4320–4322 (Oct. 25, 1994).</p>	<p>The Immigration and Nationality Technical Corrections Act of 1994 again massively expanded the definition of “aggravated felony.” Among the crimes added to the list were trafficking in certain destructive devices, theft and burglary with imprisonment of at least five years, certain ransom offenses, certain offenses related to child pornography and prostitution, certain offenses related to the RICO Act, certain income tax evasion offenses, and other national security related offenses.</p>
<p>Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, §§ 440(b), (e), 110 Stat. 1214, 1277–1278 (Apr. 24, 1996).</p>	<p>The Antiterrorism and Effective Death Penalty Act of 1996 once again expanded the definition of aggravated felony, adding certain: gambling offenses, transportation-related-to-prostitution events, the smuggling of noncitizens, offenses related to document fraud, failure-to-appear by a criminal defendant for service of a sentence, improper entry or concealment of facts, vehicle-related offenses, obstruction of justice, failure to appear pursuant to a court order, and conspiracy.</p>

Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, § 104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A)–(B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620 to 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).

The Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) was passed in 1996 which greatly expanded the list of crimes constituting an “aggravated felony” by including crimes with a possible sentence of one year. It also added crimes concerning: rape and sexual abuse of a minor and violation of anonymity of undercover agents. It reduced the amount of laundered funds required for a crime to constitute an aggravated felony, therefore broadening the application of the deportation statute.

8 U.S.C. § 1101(a)(48)

Conviction and Sentence Definition

Public Law Number (Link embedded)	Summary of Changes
Immigration and Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, tit. I, § 101, 66 Stat. 163, 166–173 (June 27, 1952).	The original statute, 1952 Immigration and Nationality Act, did not include a definition of “conviction” or “sentence” in Title I. § 101, the definitions section.
Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, § 104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A)–(B), 321(a)–(b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620 to 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).	The Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) was passed in 1996 and was the first time that “conviction” and “term of imprisonment or sentence” was defined for the explicit purpose of determining inadmissibility and deportability. Subsec. (a)(48). Pub. L. 104-208, § 322(a)(1), added par. (48) which includes the same language defining conviction that is used today.

8 U.S.C. § 1182(a)(2)

Criminal Grounds of Inadmissibility

Public Law Number (Link embedded)	Summary of Changes
Immigration and Nationality Act, Pub. L. No. 82-414, ch. 477, tit. II, ch. 2, § 212, 66 Stat. 163, 182–188 (June 27, 1952).	The Immigration and Nationality Act created classes of ineligible noncitizens who would be excluded from admission into the United States. It identified a number of criminal grounds that would make a noncitizen ineligible for entry. This included commission of crimes involving moral turpitude, multiple criminal offenses as reasons to deny entry.
An Act to Amend the INA, Pub. L. No. 87-301, § 11–15, 75 Stat. 650, 654–655 (Sept. 26, 1961).	In 1961 Congress passed an Act to Amend the INA that added certain misdemeanors to the list of grounds of inadmissibility.
Joint Resolution, Pub. L. No. 98-473, tit. II, § 220(a), 98 Stat. 1837, 2028 (Oct. 12, 1984).	In 1984 congress passed a Joint Resolution, which allowed for admission to be granted to a noncitizen with only one offense under certain conditions, such as if it the sentence would not exceed six months.
Immigration Act of 1990, Pub. L. No. 101-649, tit. I, §§ 162(e)(1), (f)(2)(B), tit. II, §§ 202(b), 205(c)(3), tit. V, §§ 511(a), 514(a), tit. VI, §§ 601(a)–(b), (d), 104 Stat. 4978, 5011–5012, 5014, 5020–5022, 5052–5053, 5067–5077 (Nov. 29, 1990).	The Immigration Act of 1990 reorganized the statute, creating the form now used in the current U.S. Code. This organized criminal grounds of inadmissibility under section (a)(2). This Act also added a provision for prostitution, a provision for controlled substance trafficking, a provision for those who committed serious criminal acts but are immune from prosecution, and a cross-reference referring to waiver.
Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 203(a), 219(e), (z)(1), (5), 220(a), 108 Stat. 4305, 4311, 4316, 4318–4319 (Oct. 25, 1994).	The Immigration and Nationality Technical Corrections Act of 1994 added attempt or conspiracy to commit a crime to the criminal grounds of inadmissibility.

<p>Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as part of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, div. C, tit. I, § 124(b)(1), tit. III, §§ 301(b)(1), (c)(1), 304(b), 305(c), 306(d), 308(c)(2)(B), (d)(1), (e)(1)(B), (C), (2)(A), (6), (f)(1)(C)–(F), (3)(A), (g)(1), (4)(B), (10)(A), (H), 322(a)(2)(B), 341(a)–(b), 342(a), 343, 344(a), 345(a), 346(a), 347(a), 348(a), 349, 351(a), 352(a), 355, tit. V, § 531(a), tit. VI, §§ 602(a), 622(b), 624(a), 671(e)(3), 110 Stat. 3009, 3009-562, 3009-576 to 3009-578, 3009-597, 3009-607, 3009-612, 3009-616, 3009-619 to 3009-622, 3009-625, 3009-629, 3009-635 to 3009-641, 3009-644, 3009-674 to 3009-675, 3009-689, 3009-695, 3009-698 to 3009-699, 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).</p>	<p>The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Critically, IIRIRA removed “actually imposed[,]” allowing the aggregate sentences of confinement, even if they are not fulfilled, to count towards a noncitizen’s exclusion.</p>
<p>International Religious Freedom Act of 1998, Pub. L. 105-292, tit. VI, § 604(a), 112 Stat. 2787, 2814 (Oct. 27, 1998).</p>	<p>The International Religious Freedom Act of 1998 added a category to make certain foreign government officials who severely violate religious freedom inadmissible. The Intelligence Reform and Terrorism Prevention Act of 2004 removed the 24-month time limit, instead allowing this exclusion for acts at any time.</p>
<p>Intelligence Authorization Act for Fiscal Year 2000, Pub. L. No. 106-120, tit. VIII, § 809, 113 Stat. 1606, 1632–1633 (Dec. 3, 1999).</p>	<p>The Intelligence Authorization Act for Fiscal Year 2000 organized and updated the section adding spouses, sons, or daughters who have obtained benefit from controlled substance trafficking and should have known it was taking place.</p>
<p>Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, div. A, §§ 107(e)(3), 111(d), div. B, tit. V, §§ 1505(a), (c)(1), (d)–(f), 1513(e), 114 Stat. 1464, 1478, 1485–1486, 1525,</p>	<p>The Victims of Trafficking and Violence Protection Act of 2000 added human traffickers to the list of inadmissible offenses.</p>

1526, 1536 (Oct. 28, 2000).	
USA Patriot Act of 2001, Pub. L. No. 107-56, tit. IV, § 411(a), tit. X, § 1006(a), 115 Stat. 272, 345–348, 394 (Oct. 26, 2001).	The USA Patriot Act of 2001 added money laundering to the list of inadmissible offenses.
Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, tit. V, §§ 5501(a), 5502(a), 5503, 118 Stat. 3638, 3740–3741 (Dec. 17, 2004).	The Intelligence Reform and Terrorism Prevention Act of 2004 removed the 24-month time limit on government officials’ activity seriously violating religious freedom, instead allowing this exclusion for acts at any time.
William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, tit. II, §§ 222(f)(1), 234, 122 Stat. 5044, 5071, 5074 (Dec. 23, 2008).	The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 removed the requirement that an individual be in a report, and it added the commitment or conspiracy to commit the offense as a requirement.

8 U.S.C. § 1227(a)(2)

Deportability Based on Criminal Offense

Public Law Number (Link embedded)	Summary of Changes
Immigration and Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, tit. II, ch. 5, § 241, 66 Stat. 163, 204–208 (June 27, 1952) (later moved to tit. II, ch. 4, § 237).	In 1952 Congress passed the Immigration and Nationality Act, re-codifying and reorganizing immigration-related statutes. Of particular relevance here, ch.5, tit. II, ch.5, § 241(a) contains language describing classes of deportable aliens. To highlight common immigration statutes, 241(a)(4) spells out the removability consequences related to commission of a crime of moral turpitude and multiple criminal convictions, 241(a)(11) pertains to drug use and trafficking, 241(a)(12) relates to managing a "house of prostitution," and 241(a)(14) concerns weapons possession and use. In IIRIRA, Congress moved this section to ch. 477, tit. II, ch. 4, § 237.
Narcotic Control Act of 1956, Pub. L. No. 84-728, ch. 629, tit. III, § 301(b)–(c), 70 Stat. 567, 575 (July 18, 1956).	The INA was amended in 1956, to include conspiracy to violate any narcotic law and the illicit possession of narcotics as grounds for deportation under (a)(11).
Joint Resolution, Pub. L. No. 86-648, § 9, 74 Stat. 504, 505 (July 14, 1960).	Congress added "or marihuana" to "narcotic drugs" under (a)(11).
Anti-Drug Abuse Act, Pub. L. No. 99-570, tit. I, § 1751(b), 100 Stat. 3207, 3207-47 (Oct. 27, 1986).	The Anti-Drug Abuse Act of 1986 substituted "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)" for "any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of

	opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate.”
Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, §§ 7344(a), 7348(a), 102 Stat. 4181, 4470–4471, 4473 (Nov. 18, 1988).	The Anti-Drug Abuse Act of 1988 at § 7344(a), inserted cl. (B) to add a noncitizen who "is convicted of an aggravated felony at any time after entry." At § 7348(a) Congress inserted language pertaining to firearms, adding "any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, or any revolver or" after "law.”
Immigration Act of 1990, Pub. L. No. 101-649, tit. I, § 153(b), tit. V, §§ 505(a), 508(a), 544(b), tit. VI, § 602(a)–(b), 104 Stat. 4978, 5006, 5050–5051, 5061, 5077–5081 (Nov. 29, 1990).	The Immigration Act of 1990 consolidated the criminal grounds of deportability in § 241 of the INA. § 602(a), amended § 241(a) generally, consolidating 20 categories of excludable aliens into 5 broader classes. This significantly revises the grounds for deportation and (a)(2) lays out Criminal Offenses laying out the format of the modern criminal removability statute. Includes crimes of moral turpitude (a)(2)(A)(i), multiple criminal convictions (a)(2)(A)(ii), aggravated felonies (a)(2)(A)(iii), waiver (a)(2)(A)(iv), controlled substance offenses (a)(2)(B), certain firearm offenses (a)(2)(C), and miscellaneous crimes (a)(2)(D). § 602(b) conforms the amendments to § 602(a) and § 602(b)(2)(B), redesignated subsec. (e) as (b).
Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, tit. II, §§ 203(b), 219(g), 108 Stat. 4305, 4311, 4317 (Oct. 25, 1994).	The Immigration and Nationality Technical Corrections Act of 1994 at § 203(b)(1), substituted ", or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry," for "in violation of any law," and inserted "in violation of any law" after "title 18". Subsec. (a)(3)(B)(ii), (iii). Pub. L. No. 103-416, § 203(b)(2) also inserted "an attempt or" before "a conspiracy".
Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, tit. I, § 104(a), tit. III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A)–(B), 321(a), (b), 322(a)(1), (2)(A), 361(a), 371(a), tit. VI,	The Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) was passed in 1996 and became effective in 1997. The act added domestic violence provisions and moved deportability grounds to § 237. In addition, IIRIRA got rid of the exclusion/deportability and replaced it with removal, inadmissibility, and deportability.

<p>§§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009, 3009-555 to 3009-556, 3009-575, 3009-617, 3009-620 to 3009-621, 3009-627 to 3009-629, 3009-644 to 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723 (Sept. 30, 1996) (effective Apr. 1, 1997).</p>	
<p>Antiterrorism and Effective Death Penalty Act of 1996 Pub. L. No. 104-132, tit. IV, §§ 414(a), 435(a), 110 Stat. 1213, 1270, 1274 (Apr. 24, 1996).</p>	<p>The Antiterrorism and Effective Death Penalty Act of 1996 at § 435(a), amended subcl. (II) generally, expanding the criteria for crimes of moral turpitude.</p>
<p>Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, tit. IV, § 401, 120 Stat. 587, 622 (July 27, 2006).</p>	<p>The Adam Walsh Child Protection and Safety Act of 2006 at Subsec. (a)(2)(A)(v), (vi). Pub. L. 109-248 added cl. (v) and redesignated former cl. (v) as (vi). This added failure to register as a sex offender to the list of deportable offenses.</p>