

# Criminal Records and Immigration Consequences

A comprehensive guide from EB5 Attorneys

---

A criminal record can disqualify a person from receiving a visa, green card, or U.S. citizenship, or can trigger deportation for those already in the United States. The immigration consequences of criminal conduct are governed by INA sections 212(a)(2) (inadmissibility) and 237(a)(2) (deportability). The legal analysis is complex because immigration law uses its own definitions of criminal categories, and a conviction that seems minor under state law can carry severe immigration consequences.

## Contents

---

1. How Immigration Law Defines a Conviction
2. Crimes Involving Moral Turpitude (CIMT)
3. Aggravated Felonies
4. Drug Offenses
5. Domestic Violence and Firearms Offenses
6. Disclosure Requirements and the Consequences of Concealment
7. Frequently Asked Questions

## How Immigration Law Defines a Conviction

---

Immigration law uses a federal definition of "conviction" under INA section 101(a)(48)(A) that is broader than many state law definitions. A conviction exists when: a judge or jury has found the person guilty, the person has entered a plea of guilty or nolo contendere, or the person has admitted sufficient facts to warrant a finding of guilt; AND a judge has ordered some form of punishment, penalty, or restraint on the person's liberty.

This definition captures many dispositions that may not count as convictions under state law. Deferred adjudication where the defendant serves probation and the charge is later dismissed may still be a conviction for immigration purposes if any form of punishment was imposed during the deferral period. Expungements and post conviction relief obtained for rehabilitative purposes generally do not eliminate a conviction for immigration purposes (Matter of Roldan, 22 I&N Dec. 512 (BIA 1999)). Only vacatur based on a procedural or substantive defect in the underlying proceedings, not rehabilitation, removes a conviction.

This distinction means a person who was told by a criminal defense attorney that their case was "dismissed" or "expunged" may still have an immigration conviction. Anyone with any criminal history, including arrests without conviction, should have their record reviewed by an immigration attorney before filing any immigration application or traveling internationally.

## Crimes Involving Moral Turpitude (CIMT)

---

A crime involving moral turpitude is conduct that is inherently base, vile, or depraved, involving an intentional mental state and harm to a person, property, or government (Matter of Silva Trevino, 26 I&N Dec. 826 (BIA 2016)). Common CIMTs include: theft offenses (larceny, burglary, robbery, shoplifting with intent to steal), fraud offenses (forgery, identity theft, tax evasion, welfare fraud), assault with intent to cause serious bodily harm, domestic violence, drug sales, sexual offenses, and child abuse.

A single CIMT conviction makes a person inadmissible under INA section 212(a)(2)(A)(i), blocking visa issuance and green card approval. The petty offense exception applies when the maximum possible sentence for the offense was one year or less and the sentence actually imposed was six months or less (INA section 212(a)(2)(A)(ii)(II)). The youthful offender exception applies when the crime was committed under age 18 and the individual was released from confinement more than five years before the immigration application.

Two or more CIMT convictions, regardless of whether they arise from a single scheme of misconduct, render a person inadmissible without the petty offense exception.

For deportability, a single CIMT conviction within five years of admission, for which a sentence of one year or more may be imposed, makes an LPR deportable under INA section 237(a)(2)(A)(i). Two CIMT convictions at any time after admission, not arising from a single scheme, trigger deportability under INA section 237(a)(2)(A)(ii).

## Aggravated Felonies

---

The aggravated felony category, defined at INA section 101(a)(43), carries the most severe immigration consequences. Despite the name, many "aggravated felonies" under immigration law are neither aggravated nor felonies under state law. The definition includes over 20 categories of offenses, including: murder, rape, sexual abuse of a minor, drug trafficking, firearms trafficking, money laundering (over \$10,000), fraud or tax evasion (loss exceeding \$10,000), theft offenses (with a sentence of one year or more imposed), crimes of violence (with a sentence of one year or more imposed), and certain offenses relating to bribery, counterfeiting, obstruction of justice, and perjury.

An aggravated felony conviction bars virtually all forms of immigration relief. An LPR convicted of an aggravated felony is deportable under INA section 237(a)(2)(A)(iii) and ineligible for cancellation of removal, voluntary departure, and most waivers. Asylum is barred for particularly serious crimes, and aggravated felonies are presumptively particularly serious. Naturalization is permanently barred because an aggravated felony conviction after November 29, 1990 is a permanent bar to good moral character under INA section 101(f).

The "sentence imposed" element is critical. For theft offenses and crimes of violence, the offense qualifies as an aggravated felony only if the sentence imposed was one year or more. A plea bargain that reduces a sentence to 364 days instead of one year can mean the difference between a deportable aggravated felony and a less severe immigration classification. Criminal defense attorneys handling cases for noncitizen clients must understand these immigration sentencing thresholds.

## Drug Offenses

---

Any violation of federal, state, or foreign law relating to a controlled substance makes a person inadmissible under INA section 212(a)(2)(A)(i)(II) and deportable under INA section 237(a)(2)(B)(i). There is no exception for the type of drug, the quantity, or whether the offense was a misdemeanor.

The sole statutory exception for inadmissibility is a single offense of simple possession of 30 grams or less of marijuana (INA section 212(h)). This exception does not apply to any other drug, to distribution offenses, or to possession of more than 30 grams.

Drug trafficking is classified as an aggravated felony under INA section 101(a)(43)(B), triggering the full range of aggravated felony consequences. Federal courts have broadly interpreted drug trafficking to include offenses that are classified as felonies under the Controlled Substances Act, even if they were misdemeanors under state law.

USCIS and consular officers also have authority to deny admissibility to anyone they have "reason to believe" is or has been a drug trafficker, even without a conviction (INA section 212(a)(2)(C)). This provision has been used against individuals associated with drug trafficking organizations even when no formal charges were brought.

The controlled substance ground is one of the most unforgiving in immigration law. Even decades old convictions, for minor amounts, of substances that have since been legalized under state law (such as marijuana in many states), continue to carry immigration consequences because immigration law is federal and the Controlled Substances Act still classifies marijuana as a Schedule I substance.

## Domestic Violence and Firearms Offenses

---

Domestic violence convictions make an LPR deportable under INA section 237(a)(2)(E)(i). The provision covers crimes of domestic violence as defined under 18 U.S.C. 16, stalking, child abuse, child neglect, and child abandonment. Violation of a protection order also triggers deportability under INA section 237(a)(2)(E)(ii).

These grounds apply regardless of the sentence imposed and regardless of whether the offense would otherwise qualify as a CIMT or aggravated felony. A misdemeanor domestic violence conviction with no jail time can render an LPR deportable.

Firearms offenses trigger deportability under INA section 237(a)(2)(C). This includes any conviction for purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying any weapon, part, or accessory that is a firearm or destructive device, in violation of any law. The provision is broadly written and covers offenses that may be minor under state law, such as carrying a concealed weapon without a permit.

There is no waiver specifically designed for the domestic violence or firearms deportability grounds. LPRs charged with deportability on these grounds face removal proceedings with limited options for relief.

## Disclosure Requirements and the Consequences of Concealment

---

Every immigration application requires full disclosure of criminal history. The USCIS forms (I 485, I 130, N 400, and others) ask about all arrests, citations, charges, convictions, and encounters with law enforcement, including those that were dismissed, expunged, sealed, or occurred as a juvenile. Failure to disclose is itself a basis for denial under the fraud and misrepresentation ground (INA section 212(a)(6)(C)) and may constitute a permanent bar to immigration benefits.

USCIS has access to FBI criminal databases through the biometrics (fingerprint) process. When an applicant submits biometrics, USCIS runs a check against the FBI's Integrated Automated Fingerprint Identification System (IAFIS) and the National Crime Information Center (NCIC). Any records in these databases will surface during adjudication. Attempting to conceal a criminal record that appears in these checks results in a finding of fraud or misrepresentation, which is often worse than the underlying criminal issue.

The disclosure obligation extends to foreign arrests and convictions, military justice proceedings, and juvenile adjudications. Even if the records have been sealed or expunged under state or foreign law, the applicant must disclose them on immigration forms. An attorney can advise on how to present the information and what mitigating evidence to include.

# Frequently Asked Questions

---

## 1. Will a misdemeanor affect my immigration case?

It depends on the specific offense. Immigration law does not distinguish between felonies and misdemeanors in the same way state law does. A misdemeanor theft conviction with a sentence of one year or more is an aggravated felony for immigration purposes. A misdemeanor domestic violence conviction triggers deportability regardless of sentence. A misdemeanor drug possession conviction renders the applicant inadmissible. The key factors are the nature of the offense, the sentence imposed, and whether the offense falls within a specific immigration category (CIMT, aggravated felony, drug offense, domestic violence, or firearms offense).

## 2. I had my case dismissed after completing probation. Am I safe?

Not necessarily. Under INA section 101(a)(48)(A), a conviction exists if a judge or jury found you guilty or you entered a plea, and any form of punishment, penalty, or restraint on liberty was imposed. If you served probation as part of a deferred adjudication, the probation itself may constitute a restraint on liberty sufficient to establish a conviction for immigration purposes, even if the criminal court later dismissed the charges. Have an immigration attorney review your specific disposition.

## 3. Is marijuana use a problem for immigration even in states where it is legal?

Yes. Immigration law is federal, and marijuana remains a Schedule I controlled substance under the Controlled Substances Act (21 U.S.C. 812). USCIS considers any marijuana use, possession, or involvement in the marijuana industry to be a violation of federal law, regardless of state legalization. Admission of marijuana use to a USCIS officer (even without a conviction) can be a basis for inadmissibility. Applicants should not volunteer information about marijuana use and should consult an attorney before any interview.

## 4. Can a criminal record prevent me from becoming a U.S. citizen?

Yes. Naturalization requires good moral character for the statutory period (five years or three years for spouse of citizen). Aggravated felony convictions after November 29, 1990 are a permanent bar to good moral character. Other criminal conduct (CIMTs, drug offenses, incarceration for 180+ days, false testimony) may be conditional bars during the statutory period. Even conduct that occurred before the statutory period may be considered if it reflects on present character.

## 5. Should I tell my criminal defense lawyer about my immigration status?

Absolutely. Under *Padilla v. Kentucky*, 559 U.S. 356 (2010), the Supreme Court held that criminal defense attorneys have a constitutional duty to advise noncitizen clients about the immigration consequences of a guilty plea. A defense attorney who understands immigration law may be able to negotiate a plea that avoids the most severe immigration consequences (for example, a 364 day sentence instead of one year, or a plea to a different statute that does not qualify as a CIMT or aggravated felony). This advice can be the difference between keeping your green card and being deported.

## 6. Can I get a waiver for a criminal conviction?

Some criminal inadmissibility grounds are waivable under INA section 212(h). The waiver requires demonstrating extreme hardship to a qualifying U.S. citizen or LPR spouse or parent, or (for crimes committed more than 15 years ago) demonstrating rehabilitation and that admission would not be contrary to national welfare. Aggravated felonies, murder, torture, and drug trafficking are generally not waivable. The deportability grounds (INA section 237) have fewer waiver options than the inadmissibility grounds. An attorney should evaluate the specific offense and its immigration classification before advising on waiver eligibility.

---

**Disclaimer:** This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

© 2026 EB5 Attorneys. All rights reserved.

Source: <https://eb5attorneys.com/guides/immigration-criminal-record>