

**THE CONSEQUENCES OF
CRIMINAL MISCONDUCT UNDER
THE IMMIGRATION AND
NATIONALITY ACT**

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The Consequences of Criminal Misconduct Under the Immigration and Nationality Act

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Hon. Juan Osuna, Chairman, Board of Immigration Appeals

After this session, you should be able to:

1. Explain common immigration consequences of criminal misconduct.
2. Define the terms "conviction" and "sentence" as used in the Immigration and Nationality Act.
3. Summarize the effectiveness of common post-conviction reliefs in removing the immigration consequences of criminal convictions.
4. Determine whether a conviction is an "aggravated felony" or "crime involving moral turpitude."
5. Apply the categorical and modified categorical approach to determine the immigration consequences of a criminal conviction.

I. Consequences of Criminal Misconduct

A. Grounds of Inadmissibility or Deportability.

Aliens who have engaged in criminal activity face expulsion from the United States as inadmissible or deportable aliens. With some exceptions, a determination of whether an alien is inadmissible or deportable is typically made in the context of removal proceedings.

1. Inadmissibility. See INA § 212(a)(2).

a. Applies to persons seeking admission to the United States.

- (1) at a port of entry.
- (2) when applying for a visa at a United States consulate.
- (3) to aliens in proceedings after entering without inspection.
- (4) when applying for adjustment of status. See INA § 245(a).

b. Can apply to long term permanent residents returning from

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abroad. *Sandoval-Loffredo v. Gonzalez*, 414 F.3d 892 (8th Cir. 2005).

c. A conviction is not always required. *See, e.g.*, INA § 212(a)(2)(A)(i).

d. Grounds of inadmissibility under INA § 212(a)(2)(A).

- (1) aliens who have committed crimes involving moral turpitude or controlled substance violations.
- (2) aliens who have multiple criminal convictions.
- (3) controlled substance traffickers.
- (4) aliens involved in prostitution and commercialized vice.
- (5) aliens involved in serious criminal activity asserting immunity.
- (6) foreign officials who have violated religious freedom.
- (7) aliens involved in human trafficking.
- (8) aliens involved in money laundering.

e. Certain waivers may apply. *See, e.g.*, INA § 212(a)(2)(F).

2. Deportability. *See* INA § 237(a)(2).

a. Applies to persons already admitted to the United States.

b. DHS burden to show deportability by clear and convincing evidence.

c. Grounds of deportability under INA § 237(a)(2).

- (1) aliens convicted of a crime involving moral turpitude or a crime for which a sentence of one year or more may be imposed.
- (2) aliens with multiple criminal convictions.
- (3) aliens convicted of aggravated felonies.
- (4) aliens convicted of high speed flight violations.
- (5) aliens convicted of controlled substance violations.
- (6) drug abusers and addicts.
- (7) aliens convicted of firearms offenses.
- (8) aliens convicted of espionage, sedition, and similar offenses.
- (9) aliens convicted of domestic violence, stalking and similar offenses.

d. Certain waivers may apply. *See, e.g.*, INA § 237(a)(2)(A)(v).

B. Disqualification for Privileges and Benefits.

In addition to subjecting an alien to removal from the United States, criminal activity has other consequences in the context of application for certain benefits and privileges under the immigration laws.

1. Particularly Serious Crimes as Grounds for Disqualification.

a. Asylum.

- (1) aliens who have been convicted of a particularly serious crime are not eligible for asylum. INA § 208(b)(2)(A)(ii).
- (2) aggravated felonies are deemed particularly serious crimes. INA § 208(b)(2)(B)(i).
- (3) however, a particularly serious crime need not be an aggravated felony; where the elements of a lesser offense are found to potentially meet the definition, all reliable information may then be considered. *Matter of N-A-M-*, 24 Int. Dec. 336 (BIA 2007); *Ali v. Achim*, 468 F. 3d 462 (7th Cir. 2006), *cert. dismissed*, 128 S. Ct. 828 (mem) (2007).

b. Withholding of removal based on fear of persecution or torture.

- (1) aliens who have been convicted of an aggravated felony and who were sentenced to a prison sentence of at least five years have committed a particularly serious crime and are ineligible for withholding. INA § 241(b)(3)(B)(ii); 8 CFR § 1208.16(d)(2).
- (2) drug trafficking crimes are presumptively particularly serious crimes which bar eligibility for withholding, absent extenuating circumstances. *Matter of Y-L-, A-G- and R-S-R-*, 23 I&N Dec. 270 (A.G. 2002), disapproved on other grounds by *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. 2003).

2. Other Consequences for Aggravated Felons.

- a. Aliens who have previously been admitted for lawful permanent residence and who are convicted of an aggravated felony are not eligible for a waiver under section 212(h). INA § 212(h); *Matter of Yeung*, 21 I&N Dec. 610 (BIA 1997).

- b. Aliens with an aggravated felony conviction cannot meet the good moral character requirement of INA § 316(a) for naturalization. See INA § 101(f)(8).
- c. Aliens with an aggravated felony conviction are not eligible for the privilege of voluntary departure. INA § 240B(a) and (b).
- d. Aliens with an aggravated felony conviction cannot demonstrate eligibility for cancellation of removal. INA § 240A(a) and (b).
- e. With few exceptions, aliens with an aggravated felony conviction are not eligible for release on bond. INA § 236(c); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
- f. Aliens removed as aggravated felons are not eligible for reentry for 20 years. INA § 212(a)(9).

II. Convictions, Appeals and Sentences

A. Definition of Conviction.

A conviction exists for immigration purposes if there has been a formal judgment of guilt entered by a court or, if an adjudication of guilt has been withheld, there has been a finding of guilt, a guilty plea or a plea of nolo contendere or an admission of sufficient facts to support a finding of guilt made in conjunction with some form of punishment, penalty or restraint on liberty imposed. INA § 101(a)(48)(A).

The statutory definition of "conviction" applies to convictions entered before, on or after the effective date of the amendments (September 30, 1996). *Matter of Punu*, 22 I&N Dec. 224 (BIA 1998).

A judgment of guilt that has been entered by a general court-martial of the United States Armed Forces is a conviction under the Act. *Matter of Rivera-Valencia*, 24 I&N Dec. 484 (BIA 2008).

B. Appeals.

1. Direct Appeals.

- a. A conviction that is on direct appeal has traditionally been treated as not final. *Matter of Ozkok*, 19 I&N Dec. 546 (BIA

1988); *Matter of Gabryelsky*, 20 I&N Dec. 750 (1993); *Marino v. INS*, 537 F.2d 686 (2d Cir. 1976); *Martinez-Montoya v. INS*, 904 F.2d 1018 (5th Cir. 1990); *Wilson v. INS*, 43 F.3d 211 (5th Cir.), cert. denied, 516 U.S. 811 (1985).

- b. Some federal courts have, in dicta, have cast doubt on whether the finality requirement survived the changes to the definition of conviction made by the Illegal Immigration reform and Immigrant Responsibility Act of 1996. See *United States v. Saenz-Gomez*, 472 F.3d 791 (10th Cir. 2007); *Montenegro v. Ashcroft*, 355 F.3d 1035 (7th Cir. 2004) (per curiam).

2. Collateral Appeals.

- a. A conviction that is the subject of a collateral appeal is a final conviction for immigration purposes. See, e.g., *Grageda v. USINS*, 12 F.3d 919 (9th Cir. 1993) (declaring a decision of an Immigration Judge to deny a continuance for adjudication of petition for coram nobis to be valid in light of the collateral attack on a conviction).
- b. A successful coram nobis petition renders a conviction void ab initio. *Matter of Sirhan* 13 I&N Dec. 592 (BIA 1970).

C. Expunged and Vacated Convictions.

1. Expunged Convictions.

- a. Under *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), an expungement of a conviction pursuant to a state rehabilitative statute has no effect for immigration purposes. The Ninth Circuit Court of Appeals does not agree with regard to certain offenses. See *Lujan Armandariz v. INS*, 222 F.3d 728 (9th 2000)(addressing the validity of expungement in the context of state convictions that are equivalent to convictions under the Federal First Offender Act). The Board reaffirmed its position in *Roldan* and applies those principles to cases arising outside of the Ninth Circuit. *Matter of Salazar*, 23 I&N Dec. 223 (BIA 2002).
- b. Deferred adjudications are convictions for immigration purposes. *Matter of Salazar*, 23 I&N Dec. 223 (BIA 2002).

2. Vacated Convictions.

- a. *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2000). As long as a conviction is not vacated under the terms of a state rehabilitative statute, there is no conviction for immigration purposes.
- b. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003). A conviction vacated strictly for purposes of avoiding the immigration consequences of the conviction rather than due to substantive or procedural defects in the underlying criminal proceedings is not recognized for immigration purposes. This decision was reversed in part on the issue of who bears the burden of proof. *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006) (if alien establishes conviction was vacated, burden shifts to government to prove conviction vacated solely for rehabilitative purposes); *but see Rumierz v. Gonzales*, 456 F.3d 31 (1st Cir. 2006). This includes convictions vacated because of the procedural defect that the trial court did not advise the defendant of the immigration consequences of the plea. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). Only the Fifth Circuit declines to recognize vacatur for any reason. *Discipio v. Ashcroft*, 369 F.3d 472 (5th Cir. 2004).
- c. *Matter of Chavez*, 24 I&N Dec. 272 (BIA 2007). Noting a split among the circuits as to who bears the burden of proof, the Board held that in the context of a motion to reopen, the burden of proving why the conviction was vacated is placed on the respondent seeking reopening. Where no evidence was offered as to the reason the conviction was vacated, the respondent failed to meet his burden.

D. Sentences.

1. Suspended Sentences

- a. A sentence remains a sentence for immigration purposes, even if imposition or execution of it has been suspended. See INA § 101(a)(48)(B); *Matter of S-S-*, 21 I&N Dec. 900 (BIA 1997) (an alien's term of imprisonment or sentence is determined for immigration purposes by the period of incarceration or confinement ordered by a court of law, irrespective of

whether the sentencing court suspended the imposition or execution of the sentence in whole or in part).

2. Probation

- a. A sentence of probation only is not equivalent to a sentence of confinement. *Matter of Martin*, 18 I&N Dec. 226 (BIA 1982)

3. Indeterminate, Aggregate, Concurrent and Consecutive Sentences

- a. Where a judge in criminal proceedings imposes concurrent sentences, the defendant's "aggregate sentence" is equal to the length of the longest concurrent sentence. The reasoning adopted by the BIA is that if a trial judge intended criminal sentences to be added in the aggregate, consecutive sentences would have been imposed. *Matter of Aldabesheh*, 22 I&N Dec. 983 (BIA 1999).
- b. An indeterminate sentence is deemed the equivalent to the maximum sentence that could be imposed. *Matter of D-*, 20 I&N Dec. 827 (BIA 1994).

4. Vacated, Modified or Reduced Sentences

- a. *Matter of Song*, 23 I&N Dec. 173 (BIA 2001) (where a one-year criminal sentence was vacated and revised to 360 days, there is no aggravated felony conviction under 101(a)(43)(G), which requires a sentence of at least one year).
- b. *Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005) (a nunc pro tunc modification or reduction of a sentence is recognized as valid for immigration purposes regardless of the trial court's reasons for the reduction or modification).

5. Costs and Assessments

- a. *Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008) (costs and assessments imposed following a plea of guilty under Florida law constitute "punishment" such that the alien has suffered a conviction).

III. Aggravated Felonies

A. Consequences

1. Any alien who is convicted of an aggravated felony at any time after admission is deportable. INA § 237(a)(2)(A)(iii).
2. Any alien who is conviction of an aggravated felony is ineligible for most immigration benefits and privileges. See Section I, B, 2, above).

B. Brief History

1. The "aggravated felony" category was added by Anti-Drug Abuse Act of 1988.

- a. This amendment to the Act specifically made murder, drug trafficking and weapons trafficking deportable offenses.
- b. Since its enactment, Congress has expanded the range of crimes included in the "aggravated felony" category. It now includes a broad range of offenses, some of which are clearly misdemeanors under state law.

- (1) Categories of crimes that constitute aggravated felonies have expanded.
- (2) Lowering of sentencing thresholds for crimes of violence and theft offenses.
- (3) Lowering of dollar amount thresholds for designation of crimes as aggravated felonies.
- (4) Examples:

* In 1990 a crime of violence or theft offense required the imposition of a prison term of at least five years to qualify as an aggravated felony. Under the 1996 amendments, only a one year term is required.

* A money laundering offense that previously required loss to the victim of over \$100,000 now qualifies as an aggravated felony upon demonstration of a loss of over \$10,000.

* A fraud or tax offense involving loss to the victim of over \$200,000, under the 1996 statute, now qualifies as an aggravated felony if the loss is over \$10,000.

C. Aggravated Felonies Defined

1. There are twenty-one categories of offenses designated as aggravated felonies in section 101(a)(43) of the INA. The term "aggravated felony" covers offenses which include:

- a. Murder, rape, or sexual abuse of a minor. *See Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999); *Matter of Crammond*, 23 I&N Dec. 179 (BIA 2001); *Matter of Small*, 23 I&N Dec. 448 (BIA 2002); *Matter of V-F-D-*, 23 I&N Dec. 859 (BIA 2006).
- b. Illicit trafficking in a controlled substance. *See Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002); *Matter of Carachuri-Rosendo*, 24 I&N Dec. 382 (BIA 2007); *Matter of Thomas*, 24 I&N Dec. 416 (BIA 2007).
- c. Illicit trafficking in firearms or destructive devices or in explosive materials.
- d. Offenses relating to money laundering.
- e. Offenses relating to firearms or explosives. *See Matter of Vasquez-Muniz*, 23 I&N Dec. 207 (BIA 2002).
- f. Crimes of violence. *See Matter of B-*, 21 I&N Dec. 287 (BIA 1996); *Matter of Ramos*, 23 I&N Dec. 336 (BIA 2002); *Matter of Martin*, 23 I&N Dec. 491 (BIA 2002); *Matter of Vargas*, 23 I&N Dec. 651 (BIA 2004).
- g. Theft offenses. *See Matter of V-Z-S-*, 22 I&N Dec. 1338 (BIA 2000); *Matter of Bahta*, 22 I&N Dec. 1381 (BIA 2000); *Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008); *Matter of Perez*, 22 I&N Dec. 1325 (BIA 2000).
- h. Offenses relating to demands for or receipt of ransom.
- i. Offenses relating to child pornography.
- j. Racketeering and gambling offenses.
- k. Offenses that relate to the business of prostitution or offenses that relate to peonage, slavery, and involuntary servitude. *See Matter of Gertsenshteyn*, 24 I&N 111 Dec. (BIA 2007)

(*vacated Gertsenshteyn v. Mukasey*, 544 F.3d 137 (2d Cir. 2008)).

- l. Offenses relating to disclosure of national defense information.
- m. Offenses relating to fraud or deceit involving more than \$10,000. *See Matter of Babaisakov*, 24 I&N Dec. 306 (BIA 2007).
- n. Alien smuggling offenses. *Matter of Alvarado-Alvino*, 22 I&N Dec. 718 (BIA 1999).
- o. Certain offenses by previously deported aliens.
- p. Offenses relating to forgery or counterfeiting of passports and other instruments, and document fraud offenses.
- q. Offenses relating to failure to appear for sentencing.
- r. Offenses relating to bribery, counterfeiting or trafficking in vehicles. *Matter of Aldabeshed*, 22 I&N Dec. 983 (BIA 1999).
- s. Offenses relating to obstruction of justice or perjury. *See Matter of Espinoza*, 22 I&N Dec. 889 (BIA 1999) (accorded *Chevron* deference, *Renteria-Morales v. Mukasey*, 2008 WL 5192056 (9th Cir. 2008)).
- t. Offenses relating to failure to respond to court order.
- u. An attempt or conspiracy to commit any of the above offenses. *See Matter of Onyido*, 22 I&N Dec. 552 (BIA 1999); *Matter of S-I-K-*, 24 I&N Dec. 324 (BIA 2007).

2. Scope of the Term

The term "aggravated felony" applies to an offense described above 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.

3. Effective Date

The revised definition of the term "aggravated felony" applies regardless

of whether the conviction was entered before, on, or after September 30, 1996. *Matter of Truong*, 22 I&N Dec. 1090 (BIA 1999).

4. Evidence to be Considered

In determining whether a conviction supports removability under a specific aggravated felony ground, the courts and the Board look at the elements and nature of the offense of conviction, rather than the facts of the crime. This is called the categorical approach. *Taylor v. United States*, 495 U.S. 575 (1990).

If the elements of the offense prohibit conduct that falls within the parameters of a removable offense as well as conduct that does not, the statute is divisible. See *Matter of Sweetser*, 22 I&N Dec. 709 (BIA 1999); *Bazan-Reyes v. INS*, 256 F.3d 600 (7th Cir. 2001).

If the statute is divisible, a modified categorical approach may be employed. This permits the adjudicator to look at the record of conviction - including the charging document, written plea agreement, transcript of a plea colloquy, and any explicit factual findings by the trial judge to which the defendant assented. *Shepard v. United States*, 544 U.S. 13 (2005). The BIA has found that under the modified categorical approach, or *Shepard/Taylor* approach, a police report may not be used. *Matter of Teixeira*, 21 I&N Dec. 316 (BIA 1996); see also *Matter of Rodriguez-Cortes*, 20 I&N Dec. 587 (BIA 1992); *Matter of Short*, 20 I&N Dec. 136 (BIA 1989).

Certain aggravated felony offenses require proof of additional fact or facts that are not tied to the statutory elements of an offense. The Board has held that non-element facts (such as loss to the victim under section 101(a)(43)(M)(i) of the Act), may be determined by means of evidence beyond the "record of conviction" considered in categorical/modified categorical approaches or in a comparable divisibility analysis. See *Matter of Babaisakov*, 24 I&N Dec. 306 (BIA 2007).

Some courts do not agree with this approach, and will not find that an aggravated felony has been established when the crime of conviction is missing an element of the generic offense altogether (such as amount of loss in 101(a)(43)(M)(i)). See e.g., *Kawashima v. Mukasey*, 530 F.3d 1111 (9th Cir. 2008).

D. Frequently Lodged Aggravated Felony Charges

1. Drug Trafficking Crimes

a. Definitions

- (1) The term "aggravated felony" means: 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). INA § 101(a)(43)(B).

* Section 102 of the Controlled Substances Act (CSA): Title 21 section 812

Schedule I (includes heroin, LSD, and marijuana)

Schedule II (includes morphine, used as a pain-killer, and cocaine, used as a topical anesthetic)

Schedule III (includes anabolic steroids and Marinol)

Schedule IV (includes Valium and other tranquilizers)

Schedule V (includes codeine-containing analgesics)

- (2) "Drug trafficking crime" means any felony punishable under any one of three statutes: the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.). 18 U.S.C. § 924(c)(2).

- (3) "Felony" defined

* Title 21 section 802 (13): The term "felony" means any federal or state offense classified by applicable federal or state law as a felony.

* Title 18 section 3559(a)(5): an offense which carries a term of imprisonment of more than one year.

b. State Drug Convictions As Aggravated Felonies

- (1) *Lopez v. Gonzales*, 127 S.Ct. 625 (2006), resolved a major circuit split and found that conduct made a felony under state law but a misdemeanor under the CSA is not a "felony punishable under the Controlled Substances Act" for immigration purposes. A state offense comes within the quoted phrase only if it proscribes conduct punishable as a felony under the CSA. Generally this means first time possession offenses are not aggravated felonies.
- (2) Previously, the First, Fourth, Fifth, Eighth, Tenth and Eleventh Circuits had found that a state drug conviction is a "drug trafficking crime" if the offense is punishable under the CSA and if it is a felony under either state or federal law. See *United States v. Wilson*, 316 F.3d 506 (4th Cir. 2003); *United States v. Hernandez-Avalos*, 251 F.3d 505 (5th Cir. 2001) (a drug trafficking crime encompasses state offenses that are punishable under the CSA and which are prosecuted as felonies). See also *United States v. Ibarra-Galindo*, 206 F.3d 1337 (9th Cir.2000); *United States v. Simon*, 168 F.3d 1271 (11th Cir.1999); *United States v. Briones-Mata*, 116 F.3d 308 (8th Cir.1997); *United States v. Cabrera-Sosa*, 81 F.3d 998 (10th Cir.1996); *United States v. Restrepo-Aguilar*, 74 F.3d 361 (1st Cir.1996); *United States v. Polanco*, 29 F.3d 35 (2d. Cir.1994).
- (3) The Second, Third, Sixth and Ninth Circuits determined that a crime was a drug trafficking crime only if it is punishable as a felony under federal law. See *Aguirre v. INS*, 79 F.3d 315 (2d Cir. 1996) (state drug offense is an aggravated felony if it is punishable as a felony under federal law or if it contains a "trafficking element"); but see *United States v. Pomes*, 173 F.3d 142 (2d Cir. 1999) (adopting the majority rule for sentencing in criminal cases); *Gerbier v. Holmes*, 280 F.3d 297 (3d Cir.2002) (a crime categorized as a felony under state law that involves drug "trafficking" is an aggravated felony and if a state drug violation, regardless of categorization, would be punishable as a felony under an analogous federal statute, then it also constitutes an aggravated felony); *United States v. Palacios-Suarez*, 418 F.3d 692 (6th Cir. 2005) (the "hypothetical federal felony approach" is the proper

interpretation of an "aggravated felony" under the INA); *Cazarez-Gutierrez v. Ashcroft*, F.3d 905 (9th Cir.2004) (a state drug offense is not an aggravated felony for immigration purposes unless it is punishable as a felony under the CSA or other federal drug laws named in the definition of "drug trafficking crime"); *But see United States v. Ibarra-Galindo*, 206 F.3d 1337(9th Cir. 2000) (majority rule is applied in the context of criminal sentencing cases).

- (4) The BIA has determined that whether a crime is an aggravated felony shall be made by reference to applicable circuit law. *Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002).
- (5) Recidivist possession convictions under state law may constitute aggravated felonies as they correspond to felonies under the CSA. *Lopez v. Gonzales*, *supra*, at 630, n.6. However, the Board has held that absent controlling authority, a repeat state conviction for simple possession of marijuana will not be considered an aggravated felony on the basis of recidivism unless such recidivist status was admitted or determined by a judge or jury at trial. *Matter of Thomas*, 24 I&N Dec. 416 (BIA 2007); *Matter of Carachuri-Rosendo*, 24 I&N Dec. 382 (BIA 2007) (upheld in some courts, see e.g. *Alsol v. Mukasey*, 548 F.3d 207 (2d Cir. 2008); disagreed with in others, see e.g., *Fernandez v. Mukasey*, 544 F.3d 862 (7th Cir. 2008)). See also *Matter of Aruna*, 24 I&N Dec. 452 (BIA 2008)(some courts follow a different analysis - see e.g., *Evanson v. Attorney General of the United States*, 2008 WL 5264700 (3d Cir. 2008)).

2. Crimes of violence

a. Definitions.

- (1) The term "aggravated felony" means 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 is at least one year. INA § 101(a)(43)(F).
- (2) A crime of violence is:

* an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another (18 U.S.C. § 16(a)), or

* any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense (18 U.S.C. §16(b)).

b. Intent

(1) Negligence.

Circuit splits on the issue of whether DUI convictions obtained under statutes that lack a mens rea requirement or which require only a demonstration of negligence were resolved by the Supreme Court's decision in *Leocal v. Ashcroft*, 543 U.S. 1 (2004). In analyzing a Florida DUI statute the Court held that a conviction under the statute did not constitute a crime of violence either under 18 U.S.C. § 16(a) or (b). The Court determined that both sections require a "higher mens rea than the merely accidental or negligent conduct involved in a DUI offense." The Supreme Court expressly declined to rule on whether a mens rea of recklessness or gross negligence would suffice. Several circuits have subsequently found that a mens rea of recklessness does not suffice for a crime of violence. *Fernandez-Ruiz v. Gonzales*, 466 F.3d 112 (9th Cir. 2006); *Tran v. Gonzales*, 414 F.3d 464 (3d Cir. 2005); *Bejarano-Urrutia v. Gonzales*, 413 F.3d 444 (4th Cir. 2005).

(2) Force vs. Injury

In *Leocal*, the Supreme Court also said that the intent required by § 16 "relates not to the general conduct or the possibility that harm will result from a person's conduct, but to the risk that the use of physical force against another might be required in committing a crime." The Court explained that § 16(b) does not include all offenses that create a substantial risk that injury will result.

c. The § 16(a) prong of 18 U.S.C.

- (1) To be a crime of violence under §16(a), the crime may be a misdemeanor or a felony. Post *Leocal*, courts have found the following offenses to be 16(a) crimes of violence: Massachusetts assault and battery (with a violation of a domestic abuse protective order) - *Andrade v. Gonzales*, 459 F.3d 538 (5th Cir. 2006); aggravated discharge of a firearm - *Quezada-Luna v. Gonzales*, 439 F.3d 403 (7th Cir. 2006); simple assault requiring attempt by physical menace to put another in fear of imminent serious bodily injury - *Singh v. Gonzales*, 432 F.3d 533 (3d Cir. 2006).
- (2) Examples of statutes courts have found not to be a § 16(a) crime of violence: reckless burning or exploding - *Tran v. Gonzales*, 414 F.3d 464 (3d Cir. 2005); simple assault if it includes recklessness mens rea - *Popal v. Gonzales*, 416 F.3d 249 (3rd Cir. 2005); Reckless endangerment - *Singh v. Gonzales*, 432 F.3d 533 (3d Cir. 2006).

d. The § 16(b) prong of 18 U.S.C.

(1) Crimes of Violence and Divisible Statutes

In determining whether a statute or divisible statute is a crime of violence, courts apply the *Taylor/Shepard* approach outlined above.

(2) Post-*Leocal* Crimes of Violence

a. Here are some offenses held to be §16(b) crimes of violence: sexual battery - *Lisbey v. Gonzales*, 420 F.3d 930 (9th Cir. 2005); *United States v. Wilson*, 406 F.3d 1074 (8th Cir. 2005)(theft of an operable vehicle is a crime of violence); first degree manslaughter - *Vargas-Sarmiento v. U.S. Dep't of Justice*, 448 F.3d 159 (2d Cir. 2006); assault on a police officer - *Canada v. Gonzales*, 448 F.3d 560 (2d Cir. 2006); Statutory Rape - *Aguiar v. Gonzales*, 438 F.3d 86 (1st Cir. 2006)(case provides useful list of circuit split on statutory rape crime of violence cases); use of interstate commerce facilities in commission of murder for hire - *Ng. v. Attorney*

General, 436 F.3d 392 (3d Cir. 2006); aggravated criminal sexual abuse - *Patel v. Ashcroft*, 401 F.3d 400 (6th Cir. 2005).

b. Here are some offenses found not to be crimes of violence: *Bejarano-Urrutia v. Gonzales*, 413 F.3d 444 (4th Cir. 2005)(conviction for involuntary manslaughter, under Virginia law, is not a "crime of violence"); aggravated battery - *Larin-Ulloa v. Gonzales*, 462 F.3d 456 (5th Cir. 2006)(divisible statute - record of conviction did not support crime of violence finding); statutory rape - *Valencia v. Gonzales*, 439 F.3d 1046 (9th Cir. 2005); vehicular homicide - *Oyebanji v. Gonzales*, 418 F.3d 260 (3d Cir. 2005); simple assault (misdemeanor) - *Popal v. Gonzales*, 416 F.3d 249 (3d Cir. 2005); Texas unauthorized use of motorized vehicle - *De La Paz Sanchez v. Gonzales*, 473 F.3d 133 (5th Cir. 2006) .

(3) "Crimes of Violence" BIA Decisions

Matter of B-P-, 23 I&N Dec. 766 (BIA 2005) (analyzing unauthorized use of a motor vehicle under Texas Penal Code as a crime of violence); *Matter of Malta-Espinoza*, 23 I&N Dec. 656 (BIA 2004)(stalking under a section of the California penal code is a crime of violence under section 16(b) 18 U.S.C.); *Matter of Vargas-Sarmiento*, 23 I&N Dec. 651 (BIA 2004)(manslaughter in the first degree in violation of section 125.20 of the New York Penal Law is a crime of violence under 18 U.S.C. §16(b)); *Matter of Martin* 23 I&N Dec. 491 (BIA 2002)(conviction under Connecticut General Statutes involving the intentional infliction of physical injury upon another is a crime of violence under 18 U.S.C. § 16(a)); *Matter of Aldabesheh*, 22 I&N Dec. 983 (BIA 1999)(analyzing criminal contempt under New York law as a crime of violence); *Matter of Palacios-Pinera*, 22 I&N Dec. 434 (BIA 1998)(arson in the first degree under the law of Alaska and sentenced to 7 years' imprisonment with 3 years suspended was convicted of a "crime of violence").

3. Sexual abuse of a minor

a. Defined and Applied

(1) The term "sexual abuse of a minor" is neither defined nor described by the statute. See INA § 101(a)(43)(A). Guidance comes from BIA and Circuit law. In *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999) the Board looked to the definition in Black's Law Dictionary and to the definition found in 18 U.S.C. § 3509(a) as a guide.

(2) 18 U.S.C. § 3509(a)(8) defines the term "sexual abuse" to include the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.

(3) The circuit courts have generally given deference to the BIA's interpretation. See, e.g. *Santos v. Gonzales*, 436 F.3d 323 (2d Cir. 2006), but see *Singh v. Ashcroft*, 383 F.3d 144 (3d Cir. 2004) (unlawful sexual contact in the third degree is not sexual abuse of a minor). Some offenses found to be sexual abuse of a minor include: *Bahar v. Ashcroft*, 264 F.3d 1309 (11th Cir. 2001) (taking indecent liberties with a child, the elements of which did not require physical contact); *United States v. Padilla-Reyes*, 247 F.3d 1158 (11th Cir. 2001) (lewd assault on a child); *Afrindi v. Gonzales*, 442 F.3d 1212 (9th Cir. 2006) (unlawful sexual intercourse with a minor more than 3 years younger); *Hernandez-Alvarez v. Gonzales*, 432 F.3d 763 (7th Cir. 2005) (Illinois conviction for indecent solicitation of a child (chatroom predator)).

(4) A misdemeanor conviction can constitute the aggravated felony offense of sexual abuse of a minor. *Matter of Small*, 23 I&N Dec. 449 (BIA 2002).

(5) The BIA has determined that the relevant age for determining whether a victim is a "minor" for purposes of INA § 101(a)(43)(A) is age 18. *Matter of V-F-D-*, 23 I&N Dec. 859 (BIA 2006).

- b. This provision is distinguished from "child abuse," which, under INA § 237(a)(E)(i) is a separate and distinct ground of removability.

4. Theft (or receipt of stolen property) and Burglary Offenses

a. Defined and Applied

(1) The statute does not specifically define the term "theft" or "burglary." See INA § 101(a)(43)G).

(2) The courts and the BIA have relied on the interpretation given by the Supreme Court. See *Taylor v. United States*, 495 U.S. 575 (1990) (burglary is the "unlawful or unprivileged entry into, or remaining in, a building or structure, with the intent to commit a crime."); See also, *Matter of Perez*, 22 I&N Dec. 1325 (BIA 2000) (applying the Supreme Court's analysis in determining that burglary under Texas law is not an aggravated felony theft offense).

(3) There must be a criminal intent to deprive the owner of property, if only on a temporary basis. *Matter of V-Z-S-*, 22 I&N Dec. 1338 (BIA 2000); *Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008).

(4) The "receipt of stolen property" language covers offenses which include "knowing receipt and possession or retention of property from its rightful owner." *Matter of Bahta*, 22 I&N Dec. 1381 (BIA 2000).

(5) The Supreme Court has found that theft includes accessory or accomplice liability, overturning Ninth Circuit cases to the contrary. *Gonzales v. Duenas-Alvarez*, 127 S. Ct. 815 (2007).

IV. Crimes Involving Moral Turpitude

A. Definition

1. Moral turpitude has been described as a "nebulous concept." See *Matter of Short*, 20 I&N Dec. 136 (BIA 1989) ("moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience.").

2. A crime involving moral turpitude refers generally to conduct that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. See *Jordan v. DeGeorge*, 341 U.S. 223 (1951); see also *Matter of L-V-C-*, 22 I&N Dec. 594 (BIA 1999); *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988); *Medina v. United States*, 259 F.3d 220, 227 n. 5 (4th Cir. 2001).

See also *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001)(describing morally turpitudinous conduct as acts which are "per se morally reprehensible and intrinsically wrong, or malum in se").

B. Statutory Provisions

1. Any alien convicted of, or who admits having committed, or admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. INA § 212(a)(2)(A)(i)(I). The INA excepts crimes committed when the alien was under 18, and the crime was committed more than 5 years before the date of application for a visa or for admission, or, maximum penalty possible for the crime is not more than 1 year, and if convicted, alien not sentenced to more than 6 months. INA §§ 212(a)(2)(A)(ii)(I) and (II).
2. Any alien who is convicted of a crime involving moral turpitude committed within 5 years. . . after the date of admission, and is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable. INA § 237(a)(2)(A)(i)(II).
3. Any alien who at any time after admission 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. INA § 237(a)(2)(ii).

C. As an Impediment to Relief From Removal

1. Aliens, whether inadmissible or not, who admit the commission of a crime involving moral turpitude, cannot be regarded as persons of good moral character. Section 101(f)(3) of the INA.
 - a. Many immigration benefits require a demonstration of good moral character. See INA §§ 240A(b)(1)(B) and 240B(b)(1)(B) (cancellation of removal); INA § 240B (voluntary departure).

D. Interpretation

1. Criminal intent is usually an element of the offense. Among the tests to determine whether a crime involves moral turpitude is whether the act criminalized by the statute is accompanied by a vicious motive or a corrupt

mind. *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996); *Matter of Franklin*, 20 I&N Dec. 867 (BIA 1994).

2. In determining whether a crime involves moral turpitude, the specific statute under which the conviction occurred is controlling. *Matter of Khourm*, 21 I&N Dec. 1041 (BIA 1997); *Matter of Franklin*, 20 I&N Dec. 867 (BIA 1994).

3. Evil intent has been read into state statutes which require a showing of recklessness. The BIA has held that "moral turpitude can lie in criminally reckless conduct." *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976), aff'd sub. nom. *Medina-Luna v. INS*, 547 F.2d 1171 (7th Cir. 1977). See also *Matter of Wojtkow*, 18 I&N Dec. 111 (BIA 1981) (holding that manslaughter in the second degree under the New York Penal Law, which requires a person to "recklessly" cause the death of another person, is a crime involving moral turpitude). But see *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996) (holding that third degree assault with a criminally reckless state of mind under Hawaii law is not a crime involving moral turpitude without infliction of serious bodily injury); *Matter of B-*, 2 I&N Dec. 867 (BIA 1947) (Canadian conviction for malicious mischief wherein intent may have been negligent or reckless did not involve moral turpitude).

4. Crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. *Jordan v. DeGeorge*, 341 U.S. 223 (1951). Fraud is usually a required element in any crime against property as is guilty knowledge or an intent to permanently deprive someone of property. *Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966).

5. Neither the seriousness of a criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992). See also *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974) (it is the nature of the crime as statutorily defined and as interpreted by the BIA and the courts and as described by the record of conviction which determines whether a crime involves moral turpitude).

6. If an offense is morally turpitudinous, an attempt to commit the offense is as well, as is a conspiracy to commit that offense. *Matter of Bader*, 17 I&N Dec. 525 (BIA 1980).

7. Traditionally it was permissible to apply a modified categorical approach and go beyond the statutory language to look at the record of conviction to determine if the statute under which the respondent was convicted is divisible. See *Matter of Sweetser*, 22 I&N Dec. 709 (BIA

1999); *Matter of Short*, 20 I&N Dec. 136 (BIA 1989). The Attorney General has expanded the CIMT analysis in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), holding that if the record of conviction is inconclusive as to whether the crime is a CIMT, the Board and the Immigration Judges may go outside of the record of conviction where "necessary or appropriate."

8. BIA precedent decisions discussing "single scheme" of criminal misconduct: *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992) (interpreting "single scheme of criminal misconduct" language); *Matter of C-*, 9 I&N Dec. 524 (BIA 1962) (burden of proof); *Matter of S-*, 9 I&N Dec. 613 (BIA 1962) (discussing crimes not part of the same plan); *Matter of D-*, 5 I&N Dec. 728 (BIA 1954) (describing separate crimes and single wrongs); *Matter of J-*, 6 I&N Dec. 382 (BIA 1954) (multi-count indictment may be indicative of separate crimes). For discussion of circuit court treatment, see *Abdelqadar v. Gonzales*, 413 F.3d 668 (7th Cir. 2005).

E. Decisions on Crimes Involving Moral Turpitude

1. Crimes Against Property

a. Arson. See *Matter of S-* 3 I&N Dec. 617 (BIA 1949).

b. Blackmail. See *Lehmann v. Carson*, 353 US 685 (1957).

c. Burglary. See *Matter of M-*, 2 I&N Dec. 721 (BIA 1946)(burglary in the third degree under N.Y. Penal Law, section 404 is not a crime involving moral turpitude); *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982)(burglary with intent to commit theft is a crime involving moral turpitude).

d. Extortion. See *Matter of F-*, 3 I&N Dec. 361 (BIA 1949).

e. Embezzlement. See *Matter of Batten*, 11 I&N Dec. 271 (BIA 1965).

f. Larceny. See *Matter of Kim*, 17 I&N Dec. 144 (BIA 1979); *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973).

g. Receiving/Possession of Stolen Property. See *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992); *Matter of Salvail*, 17 I&N Dec. 19 (BIA 1979) (possession of stolen goods is a conviction for a crime involving moral turpitude where the statute under which the alien was convicted specifically requires knowledge of the stolen nature

of the goods).

h. Illegal use of a Credit Card. See *Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966).

i. Issuing bad checks. *Matter of Balao*, 20 I&N Dec. 440 (BIA 1992) (issuing bad checks under a Pennsylvania statute is not a crime involving moral turpitude); but see *Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980) (violation of a Michigan statute prohibiting issuance of a check without sufficient funds is a crime involving moral turpitude since it includes the element of intent to defraud).

2. Crimes Against The Person

a. Assault. May or may not involve moral turpitude. Simple assault is normally not considered to be a crime involving moral turpitude. *Matter of Short*, 20 I&N Dec. 136 (BIA 1989). See *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996); *Matter of Perez-Contreras*, 20 I&N Dec. 415 (BIA 1992) (simple assault not a crime involving moral turpitude); but see *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996) (finding that familial assault is a crime involving moral turpitude because such relationships are "likely to be one[s] of trust and possible dependency"); *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) (assault on peace officer is crime involving moral turpitude); *Matter of Solon*, 24 I&N Dec. 239 (BIA 2007) (assault in the third degree under NYPL 120.00(1), which requires both specific intent and injury, is a crime involving moral turpitude). Domestic battery is not categorically a crime involving moral turpitude under Cal. Penal Code 243(e). *Matter of Sanudo*, 23 I&N Dec. 968 (BIA 2006). Nor is domestic assault and battery under Virginia Code 18.2-57.2. *Matter of Sejas*, 24 I&N Dec. 236 (BIA 2007).

b. Murder/Intentional Homicide. See *Matter of Abi-Rached*, 10 I&N Dec. 551 (BIA 1996) (voluntary manslaughter is crime involving moral turpitude).

c. Manslaughter. See *Matter of Lopez*, 13 I&N Dec. 725 (BIA 1971) (crime found not to be crime involving moral turpitude where Alaska statute encompasses both voluntary and involuntary manslaughter); but see *Matter of Franklin*, 20 I&N Dec. 867 (BIA 1994) (*aff'd*, *Franklin v. INS*, 72 F. 3d 571 (8th Cir. 1995)) (involuntary manslaughter found to be a crime involving moral

turpitude where the statute requires a conscious disregard of substantial risk).

d. Kidnaping. See *Matter of Nakoi*, 14 I&N Dec. 208 (BIA 1972); *Matter of C-M-*, 9 I&N Dec. 487 (BIA 1961).

e. Aggravated Assault Against a Peace Officer. See *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988).

f. Indecent assault. See *Matter of S-*, 5 I&N Dec. 686 (BIA 1954).

g. Attempted Rape. See *Matter of Beato*, 10 I&N Dec. 730 (BIA 1964).

h. Statutory rape. See *Matter of Dingena*, 11 I&N Dec. 723 (BIA 1966).

i. Incest. See *Matter of Y-*, 3 I&N Dec. 544 (BIA 1949); Compare *Matter of B-*, 2 I&N Dec. 617 (BIA 1946).

j. Lewd and lascivious conduct. See *Matter of M-*, 7 I&N Dec. 144 (BIA 1956); *Matter of Mueller*, 11 I&N Dec. 288 (BIA 1965); *Matter of H-*, 7 I&N Dec. 616 (BIA 1957); *Matter of Olquin*, 23 I&N Dec. 968 (BIA 2006)(possession of child pornography is a crime involving moral turpitude).

k. Prostitution. See *Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965).

l. Soliciting. See *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967).

m. Taking Indecent Liberties with a child. See *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966).

n. Mailing an obscene letter. See *Matter of D-*, 1 I&N Dec. 190 (BIA 1942) (not a crime involving moral turpitude).

3. Crimes Against the Government

a. Altered immigration documents (possession of). See *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992) (not a crime involving moral turpitude absent demonstration of intention to use the documents unlawfully).

b. Counterfeiting. *See Matter of Flores*, 17 I&N Dec. 225 (BIA 1980) (conviction for uttering or selling counterfeit papers relating to registry of aliens required knowledge that papers were false or counterfeit, had fraud inextricably woven into statute, and was therefore crime involving moral turpitude). *See also Matter of Kochlani*, 24 I&N Dec. 128 (BIA 2007) (trafficking in counterfeit goods or services is a crime involving moral turpitude).

c. Desertion from the Armed Forces. *See Matter of S-B-*, 4 I&N Dec. 682 (BIA 1952) (holding that desertion offenses, although potentially punishable by death, is not a crime involving moral turpitude).

d. Escape from prison. *See Matter of B-*, 5 I&N Dec. 538 (BIA 1953).

e. Failure to register as a sex offender. *Matter of Tobar-Lobo*, 24 I&N Dec. 143 (BIA 2007) (willful failure to register as a sex offender who has been previously apprised of the obligation to register, in violation of section 290(g)(1) of the California penal Code, is a crime involving moral turpitude) (*declined to follow by Plasencia-Ayala v. Mukasey*, 516 F.3d 738 (9th Cir. 2008))

f. False statements. *See Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992) (false representation of social security number); *Matter of Acosta*, 14 I&N Dec. 338 (BIA 1973) (false statements on firearms application).

g. False Statements to Obtain a Passport. *Matter of Correa-Graces*, 20 I&N Dec. 451 (BIA 1992).

h. Forgery. *See Matter of A-*, 5 I&N Dec. 52 (BIA 1953).

i. Impersonating a federal officer. *See Matter of B-*, 3 I&N Dec. 270 (BIA 1948).

j. Money laundering. *Matter of Teiwani*, 24 I&N 97 (BIA 2007) (money laundering under New York Penal Law is a crime involving moral turpitude).

k. Perjury. *See Matter of H-*, 1 I&N Dec. 669 (BIA 1943).

l. Possession of counterfeit securities. *See Matter of Lethbridge*, 11 I&N Dec. 444 (BIA 1965).

APPENDIX

Excerpts -- Controlled Substances Act

**UNITED STATES CODE ANNOTATED
TITLE 21. FOOD AND DRUGS
CHAPTER 13--DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I--CONTROL AND ENFORCEMENT
PART D--OFFENSES AND PENALTIES**

§§ 841. Prohibited acts A

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Excerpts -- Controlled Substances Act

**UNITED STATES CODE ANNOTATED
TITLE 21. FOOD AND DRUGS
CHAPTER 13--DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I--CONTROL AND ENFORCEMENT
PART B--AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES**

§§ 812. Schedules of controlled substances

(a) Establishment

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

Schedule I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol. [FN2]
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.

- (13) Dextrorphan.
- (14) Diampromide.
- (15) Diethylthiambutene.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.
- (21) Ethylmethylthiambutene.
- (22) Etonitazene.
- (23) Etoxidine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacymorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.
- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.
- (37) Phenoperidine.

(38) Piritramide.

(39) Proheptazine.

(40) Properidine.

(41) Racemoramide.

(42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.

(2) Acetyldihydrocodeine.

(3) Benzylmorphine.

(4) Codeine methylbromide.

(5) Codeine-N-Oxide.

(6) Cyprenorphine.

(7) Desomorphine.

(8) Dihydromorphine.

(9) Etorphine.

(10) Heroin.

(11) Hydromorphenol.

(12) Methyldesorphine.

(13) Methylhydromorphine.

(14) Morphine methylbromide.

(15) Morphine methylsulfonate.

(16) Morphine-N-Oxide.

(17) Myrophine.

(18) Nicocodeine.

(19) Nicomorphine.

(20) Normorphine.

(21) Pholcodine.

(22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine.

(2) 5-methoxy-3,4-methylenedioxy amphetamine.

(3) 3,4,5-trimethoxy amphetamine.

(4) Bufotenine.

(5) Diethyltryptamine.

(6) Dimethyltryptamine.

(7) 4-methyl-2,5-dimethoxyamphetamine.

(8) Ibogaine.

(9) Lysergic acid diethylamide.

(10) Marihuana.

(11) Mescaline.

(12) Peyote.

(13) N-ethyl-3-piperidyl benzilate.

(14) N-methyl-3-piperidyl benzilate.

(15) Psilocybin.

(16) Psilocyn.

(17) Tetrahydrocannabinols.

Schedule II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) coca [FN3] leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine.

(2) Anileridine.

(3) Bezitramide.

(4) Dihydrocodeine

(5) Diphenoxylate.

(6) Fentanyl.

(7) Isomethadone.

(8) Levomethorphan.

(9) Levorphanol.

(10) Metazocine.

(11) Methadone.

(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

(13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

(14) Pethidine.

(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.

(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

(18) Phenazocine.

(19) Piminodine.

(20) Racemethorphan.

(21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

Schedule III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any

salt of a derivative of barbituric acid.

(2) Chorhexadol.

(3) Glutethimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Methypylon.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in

recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active,

nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Anabolic steroids.

Schedule IV

(1) Barbitol.

(2) Chloral betaine.

(3) Chloral hydrate.

(4) Ethchlorvynol.

(5) Ethinamate.

(6) Methohexital.

(7) Meprobamate.

(8) Methylphenobarbital.

(9) Paraldehyde.

(10) Petrichloral.

(11) Phenobarbital.

Schedule V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

Excerpt -- Maritime Drug Law Enforcement Act

UNITED STATES CODE ANNOTATED

TITLE 46 APPENDIX. SHIPPING

CHAPTER 38--MARITIME DRUG LAW ENFORCEMENT

§§ 1903. Manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels

(a) Vessels of United States or vessels subject to jurisdiction of United States

It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, or who is a citizen of the United States or a resident alien of the United States on board any vessel, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

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Excerpt -- Controlled Substances Import and Export Act

**UNITED STATES CODE ANNOTATED
TITLE 21. FOOD AND DRUGS
CHAPTER 13--DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER II--IMPORT AND EXPORT**

§§ 952. Importation of controlled substances

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter

Excerpts -- Felony Definitions/Classifications

UNITED STATES CODE ANNOTATED
TITLE 21. FOOD AND DRUGS
CHAPTER 13--DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I--CONTROL AND ENFORCEMENT
PART A--INTRODUCTORY PROVISIONS

§ 802. Definitions

As used in this subchapter:

(13) The term "felony" means any Federal or State offense classified by applicable Federal or State law as a felony.

18 U.S.C.A. §§ 3559

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART II--CRIMINAL PROCEDURE
CHAPTER 227--SENTENCES
SUBCHAPTER A--GENERAL PROVISIONS

§§ 3559. Sentencing classification of offenses

(a) **Classification.**--An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is--

(5) less than five years but more than one year, as a Class E felony;