What Every Journalist Should Know About
IMMIGRATION AND CRIMES©

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- ***Please Note**: This outline is intended to give very basic information about the general tenets of immigration policies and procedures. It is by no means a complete analysis of the subject matter, and should not be relied on to make legal or procedural decisions about specific cases. This information is current to December 2005.*

1) CONVICTIONS UNDER THE INA. INA § 101(A)(48)(A); 8 U.S.C. § 1101(A)(48)(A).

2) DEFINITION OF CONVICTION:

a) For purposes of immigration law, a conviction is defined as the following:

i) [A] formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

ii) A judge or jury has found the alien guilty or the alien has entered a plea of *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and

iii) The judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

iv) Any reference to a term of imprisonment of 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.*

b) The controlling factor in finding a conviction under the immigration law is an admission of the essential elements of the offense charged, followed by some form of restraint on the defendant's liberty.

i) Probation counts as a restraint of liberty.

3) DEFERRED JUDGMENTS

a) Deferred judgments in Colorado are considered convictions because the individual must plead guilty to receive the deferred judgment. *Matter of Chairez-Castaneda,* 21 I&N Dec. 44 (BIA 1995).

4) EXPUNGEMENTS, WITHDRAWALS OF PLEAS AND OTHER REHABILITATIVE RELIEF

a) Expungements under state rehabilitative statutes, withdrawals of pleas, and deferred judgments pursuant to state rehabilitative statutes do not serve to erase convictions for purposes of immigration law, unless there is a constitutional basis for the withdrawal of plea, dismissal or expungement. *In re Roldan-Santoyo,* Int. Dec. 3377 (BIA 1999)(*Matter of Manrique*, Int. Dec. 3250 (BIA 1995), superseded).

i) Ninth Circuit has withdrawn from this somewhat for those who obtain expungements of drug offenses under a state first offender statute. *Lujan-Armendariz v. ICE ,* 222 F.3d 728 (9th Cir. 2000).

(1) The case was limited to expungements of drug offenses that would have qualified for federal first offender treatment under federal law and was not

extended to crimes involving moral turpitude or expungements of other types of crimes.

(2) Further, the decision of the 9th circuit is persuasive only, and not binding on immigration judges in our jurisdiction. Therefore the holding, although promising, has limited applicability in Colorado.

b) This means that to withdraw a plea or conviction, you must show that the reason for the withdrawal is ineffective assistance of counsel, invalid waiver of counsel or some similar due process issue. A simple desire to avoid immigration consequences is insufficient to eradicate a prior plea. *Matter of Pickering,* 23 I&N Dec. 621 (BIA 2003).

c) A gubernatorial or presidential pardon will eliminate a conviction for immigration purposes if it is for a crime specifically listed in INA section 237(a)(2)(A)(i), (ii), (iii), or (iv). *Matter of Suh,* 23 I&N Dec. 626 (BIA 2003). It will not eliminate a conviction for domestic violence.

d) A Motion to Reduce a Sentence need not be for Constitutional purposes or to cure legal invalidity. *Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005)

5) DEFERRED PROSECUTIONS

a) Deferred Prosecutions may be okay because the non-citizen defendant never admits guilt unless probation is violated. *Matter of Grulon,* 20 I&N Dec. 12 (BIA 1989).

6) JUVENILE ADJUDICATIONS

a) Juvenile adjudications are not convictions for purposes of immigration law. *Matter of Ramirez-Rivero,* 18 I&N Dec. 135 (BIA 1981); *Matter of Devison,* 22 I&N Dec. 1362 (BIA 2000).

b) However, if the juvenile commits more than one offense, then the person can be rendered inadmissible. U.S. State Department regulations specify that "[a]n alien convicted of a crime involving moral turpitude or admitting the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude shall be ineligible [for admission to the U.S.] even though the crimes were committed while the alien was under the age of 18 years." 22 C.F.R. § 40.21(a)(3).

c) The above does not apply if the juvenile is charged and convicted as an adult.

d) Despite the fact that a juvenile adjudication does not render a non-citizen deportable, the same adjudication may be a discretionary factor that is used by the ICE or the Immigration Judge to deny any relief or benefits for which discretion is a factor. These include applications for permanent residency, relief from deportation and applications for citizenship.

7) WHAT CAN ICE USE TO PROVE THE CONVICTION?:

a) For most crimes, the immigration judge will employ the "categorical approach" to determine if the crime renders the non-citizen deportable. Under this approach, the judge is limited to the elements of the offense as defined by the statute under which the non-citizen was convicted to determine if the offense renders the individual deportable.

i) The statute must be taken at its minimum unless its provisions are divisible or vague, and if divisible or vague—one or more of its provisions involving a deportable offenses, and others describing non-deportable the charge as shown by the record of conviction is controlling as to the portion of the statute involved. *Matter of T-,* 2 I&N Dec. 22 (citing *Zafarano v. Corsi,* 63 F.2d 757 (2d Cir. 1933).

(1) The record is broadly construed. It includes, e.g., the charge or indictment, the plea, the verdict and the sentence, and "any document or record prepared by, or under the direction of the court in which the conviction was entered that indicates the existence of a conviction. INA § 240(c)(3)(A); 8 U.S.C. § 1229a(c)(3)(A); *Matter of Mena*, 7 I&N Dec. 30 (BIA 1979). 8 C.F.R. §1003.41

8) DIRECT APPEAL AND COLLATERAL ATTACKS ON CONVICTIONS:

a) Generally, a case that is on direct appeal will not be considered final, and therefore cannot be relied upon by the ICE to initiate or continue deportation proceedings. *Pino v. Landon,* 349 U.S. 901 (1955).

b) However, a case on direct appeal can be used to deny any relief or benefit for which discretion plays a factor. *Matter of Thomas,* Int. Dec. 3245 (BIA 1995).

i) Such decisions include applications for permanent residency, relief from deportation, and applications for citizenship.

c) Collateral attacks on convictions by way of post-conviction motions such as 35(c) and the like are considered collateral, and will not stop deportation proceedings. *Matter of Espinoza,* 15 I&N Dec. 328 (BIA 1975).

i) The immigration court and the ICE have the authority, and most often do initiate and proceed with deportation proceedings despite a timely filed post-conviction motion.

ii) If successful on the collateral attack, the non-citizen is forced to reopen deportation proceedings and have the deportation order reconsidered.

(1) A non-citizen only has one opportunity to reopen and reconsider a final order of deportation.

(a) Leaving the country under an order of deportation forecloses a later opportunity to reopen the case if the collateral attack is successful.

9) CRIME CATEGORIES THAT RENDER AN INDIVIDUAL REMOVABLE

a) Most criminal aliens are removable pursuant to §237 of the Immigration and Nationality Act (Act) (8 U.S.C. 1227).[1] This section of the Act applies to "(a)ny alien in and admitted to the United States" and is of primary concern to those aliens who have been "admitted" on a visa or admitted as permanent residents.[2]

While that section of the Act includes a variety of removal grounds, the most common conviction-related grounds are discussed below:

b) AGGRAVATED FELONIES (INA §237(A)(2)(A)(III)):

Any alien who is convicted of an aggravated felony at any time after admission is removable.

i) Aggravated felonies for immigration purposes are enumerated at INA section 101(a)(43); 8 U.S.C. § 1101(a)(43).[i]

ii) Do not have to be felonies. Misdemeanors, and some municipal or petty offenses can be aggravated felonies. *United States v. Saenz-Mendoza,* 287 F.3d 1011 (10th Cir. 2002), *cert. denied Saenz-Mendoza v. United States,* 123 S.Ct. 315 (2002) ("offense need not be classified as a felony to qualify as an aggravated felony.").

iii) Aggravated felonies are significant in that they render a non-citizen deportable from this country, and in almost all cases they preclude most forms of relief from deportation.

(1) Even long-term lawful permanent residents are for the most part ineligible for relief from deportation with an aggravated felony conviction.

iv) Deportable if committed anytime after admission. INA § 237(a)(2)(A)(iii); 8 U.S.C. § 1227(a)(2)(A)(iii), regardless of when the conviction occurred. *United States v. Soto-Ornelas,* 312 F.3d 1167 (10th Cir. 2002), *cert. denied Soto-Ornelas v. United States,* 123 S.Ct. 1813 (2003); *Matter of Truong,* 22 I&N Dec. 1090 (BIA 1999).

v) Although aggravated felonies are grounds of deportation, they are not grounds of inadmissibility (see below), unless otherwise classified so as to render the crime a ground of inadmissibility. Example a theft crime with a one year

[1] Other criminal aliens may be removed under provisions which authorize expedited removals, e.g. §238(b) of the Act (8 U.S.C. 1228(b)), which provides for expedited removal of non-permanent resident aliens with aggravated felony convictions; §241(a)(5) of the Act (8 U.S.C. 1231(a)(5)), which provides for the reinstatement of previously executed removal orders.

[2] The term "admission" is defined at §101(a)(13)(A)(8 U.S.C. 1101(a)(13)(A)).

sentence would not be an inadmissible offense as an aggravated felony, but could be classified as a crime involving moral turpitude which would render the offense an inadmissible offense.

vi) Inchoate offenses qualify if they are preparatory in nature. (Attempt, solicitation, facilitation, accessory before the fact, aiding and abetting). Conspiracies take on the same nature as the completed crime. INA section 101(a)(43)(U); 8 U.S.C. §1101(a)(43)(U). Offenses that related to an individual's behavior after the fact, however, have been held to not involve immigration consequences. For example, misprision of a felony has been held not to constitute obstruction of justice, and therefore has been held to not constitute an aggravated felony. *Matter of Espinoza,* 22 I&N Dec. 889 (BIA 1999). The crime of accessory after the fact does not assume the nature of the original offense, but may separately constitute an aggravated felony as obstruction of justice as defined at INA §101(a)(43)(S). *Matter of Batista-Hernandez,* 21 I&N Dec. 955 (BIA 1997).

vii) Term of imprisonment includes suspended sentences. An indeterminate sentence is considered to be a sentence for the maximum period. *United States v. Reyes-Castro,* 13 F.3d 377, 389 (10th Cir. 1993).

viii) Major categories include:

(1) Murder, rape and sexual abuse of a minor. INA §101(a)(43)(A)

(a) Sexual abuse of a minor does not have to be a felony. *Matter of Small,* 23 I&N Dec. 448 (BIA 2002).

(i) Includes indecency with a child by exposure—regardless of the sentence imposed. *In re. Rodriguez-Rodriquez,* Int. Dec. 3411 (BIA 1999).

(2) Any felony punishable under the Controlled Substances Act. 21 U.S.C. § 801 *et seq.* INA §101(a)(43)(B)

(a) Includes all drug trafficking crimes.

(b) State felony drug possession may also constitute an aggravated felony. The BIA will look to the law of the Circuit in which the non-citizen is being removed to determine whether the possession offense constitutes an aggravated felony. A state drug conviction will be considered an aggravated felony if (1). It is analogous to an offense punishable under one of the three acts referred to in 924(c); and (2). Is a felony, even if classified by the states as a felony but only punishable as a misdemeanor under federal law. *Matter of Yanez,* 23 I&N Dec. 390 (BIA 2002); *United States v. Castro-Rocha,* 323 F.3d 846 (10th Cir. 2003). Other Circuit Courts have filed for *cert* to the Supreme Court on this issue.

(3) Crimes of violence for which the term of imprisonment imposed is at least one year. INA §101(a)(43)(F)

(a) Crime must meet the federal definition of crime of violence at 18 U.S.C. § 16

(i) Any crime (felony, misdemeanor or petty offense) that has as an actual element of the offense the use, attempted use, or threatened use of force against the person or property of another, or

(ii) Any felony that, by its nature, involves a substantial risk that physical force may be used in the course of committing the offense.

(b) The proper analysis is the "use of force" during the commission of the offense, NOT the risk of injury. *Leocal v. Ashcroft,* 543 U.S. 1 (2004).

(i) Examples:

1. Arson: *In re Palacios-Pinera*, Interim Decision 3373 (BIA 1998).

2. Statutory Rape: *In re B-*, 21 I & N Dec. 287 (BIA 1996).

3. Trespass to dwelling under Colorado law. *United States v. Venegas-Ornelas,* 348 F.3d 1273 (10th Cir. 2003).

4. DUI is not a crime of violence. *U.S. v. Lucio-Lucio,* 347 F.3d 1202 (10th Cir. 2003).

5. Negligence crimes do not count. *Leocal v. Ashcroft,* 543 U.S. 1 (2004).

(4) Theft offenses including receipt of stolen property, or burglary offenses for which the term of imprisonment imposed is at least one year.

(a) Theft is the taking of property where there is criminal intent to deprive the owner of the benefits and rights of ownership, notwithstanding that the deprivation may be less than total or permanent. *Matter of V-S-Z-,* 22 I&N Dec. 1338 (BIA 2000). Joyriding, may count.

(5) Fraud or deceit offenses for which the loss to the victim exceeds $10,000.00.

(6) Trafficking in firearms or interstate offenses in firearms or unlawful possession of certain firearms prohibited by federal statute

(7) convictions for alien smuggling/harboring/transportation

(8) Forgery offenses for which the term of imprisonment imposed is at least one year.

(9) Obstruction of justice, perjury, or bribery of a witness for which the sentence imposed is at least one year.

c) CRIMES OF MORAL TURPITUDE. INA §237(A)(2)(A)(I) AND (II).

i) Definition of crime involving moral turpitude:

The term "crime of moral turpitude" is not defined in the statute, but there is case law, which gives some guidance. The words "moral turpitude" refer to conduct which is inherently base, vile, or depraved, contrary to accepted rules of morality." *Matter of T-*, 2 I&N Dec. 22 (BIA 1944)(citing *Coykendall v. Skrmetta,* 22 F.2d 12 (C.C.A. 2 1927).

(1) Whether a crime involves moral turpitude is determined by the prevailing standards in the United States. *Matter of T-* 2 I&N Dec. 22 (BIA 1944)(Citing 39 Ops. Atty. Gen. 95, 96).

ii) Larceny and theft, whether petty or grand, has uniformly been held to involve moral turpitude. *Matter of T-* 2 I&N Dec. 22 (BIA 1944)(citing *Tillinghas v. Edmead,* 31 F.2d 81 (C.C.A. 1 1929); *United States ex rel. Rizzio v. Kenney,* 50 F.2d 418 (D.C. Conn. 1931).

iii) Evil intent crimes involve moral turpitude. *Matter of Serna,* 20 I&N Dec. 579, 582 (BIA 1992).

iv) Knowledge or intent crimes most often involve moral turpitude. *Matter of Khourn,* 21 I&N Dec. 1041 (BIA 1997).

v) Reckless conduct can constitute moral turpitude. *Matter of Franklin,* 20 I&N Dec. 867 (BIA 1994)(involuntary manslaughter).

vi) Fraud crimes involve moral turpitude. *Jordan v. DeGeorge,* 341 U.S. 223 (1951).

vii) Other crimes held to involve moral turpitude: murder, manslaughter, kidnapping, rape (including statutory rape), aggravated assault, assault with a deadly weapon likely to produce bodily harm, adultery, sexual assault, incest, willful infliction of corporal injury on a spouse, forgery, issuing bad checks with guilty knowledge, robbery, theft, shoplifting, arson, prostitution, securing another for prostitution, distribution of drugs with knowledge or intent, and burglary with intent to commit a crime involving moral turpitude.

viii) Crimes held NOT to involve moral turpitude: alien smuggling, reentry after deportation, drug possession offenses, simple assault, escape, breaking and entering, some weapons possession offenses, joyriding, and disorderly conduct. DUI (if driving on a valid license)

ix) Conspiracy or attempt to commit a crime involving moral turpitude qualify as convictions for a CIMT. *Matter of Short,* 20 I&N Dec. 136, 138 n.1 (BIA 1989).

d) REMOVABLE FOR ONE CRIME INVOLVING MORAL TURPITUDE. INA §237(A)(2)(A)(I)

Non-citizens may be removed from the country if they are "convicted of a crime involving moral turpitude committed within five years . . . after the date of admission, and [are] convicted of a crime for which a sentence of one year or longer **may be** imposed." INA § 237(a)(2)(A)(I); 8 U.S.C. § 1227(a)(2)(A)(I).

i) OR within 10 years if the person obtained lawful permanent residence under section 245(i) by paying the $1000.00 penalty (See discussion under Adjustment of Status Chapter).

e) REMOVABILITY FOR MORE THAN ONE CRIME OF MORAL TURPITUDE. INA §237(A)(2)(A)(II).

If the non-citizen criminal defendant has more than one conviction for a crime involving moral turpitude, he or she is removable from this country based on convictions for "two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefore and regardless of whether the convictions were in a single trial . . . " INA § 237(a)(2)(A)(II); 8 U.S.C. § 1227(a)(2)(A)(II).

i) This ground of deportability for multiple convictions does not have a requirement that the crimes have been committed at any particular time after admission to the United States.

f) REMOVABILITY FOR CONTROLLED SUBSTANCE VIOLATIONS. INA §237(A)(2)(B)(I)

A conviction at any time after admission for the violation of the laws of any 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 a deportable offense. INA § 237(a)(2)(B); 8 U.S.C. § 1227(a)(2)(B).

i) Exception for a single offense of simple possession of 30 grams or less of marijuana for one's own use.

ii) Includes conspiracy or attempt offenses.

iii) Includes paraphernalia offenses. *Luu-Le v. INS,* 224 F.3d 911 (9th Cir. 2000).

iv) Includes convictions for being under the influence of, use of, possession of, and distribution of a controlled substance.

v) There is a circuit split on whether solicitation to possess may be okay since the plain language of the statute enumerates only attempt and conspiracy. *Coronado-*

Durazo v. ICE , 123 F.3d 1322 (9th Cir. 1997), but see *Peters v. Ashcroft* 383 F3d 302 (5th 2004)

vi) The drug involved must be included on the federal controlled substances list. *Argaw v. Ashcroft,* 395 F.3d 521 (4th Cir. 2005)(Khat is not a controlled substance as defined in the controlled substances act).

g) REMOVABILITY FOR FIREARMS OFFENSES. INA §237(A)(2)(C).

A conviction at any time after admission for any law for purchasing, selling, offering for sale, exchanging, using, owning, possessing, carrying, or 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 18 U.S.C. § 921(a)) render an individual deportable.

i) Convictions under any statute in which the use or possession of a firearm is an element of the offense (as opposed to a sentencing enhancement) will qualify.

ii) If the individual is convicted of a "weapons' offense, but the weapon is not established in the record of conviction as a firearm, then ICE does not meet the burden of establishing removability. *Matter of Teixeira,* 21 I&N Dec. 316 (BIA 1996).

iii) Although a ground of deportation, firearms offense are not a ground of inadmissibility.

h) REMOVABILITY FOR DOMESTIC VIOLENCE OFFENSES INCLUDING STALKING, VIOLATION OF PROTECTION ORDERS AND CRIMES AGAINST CHILDREN. INA §237(A)(2)(E).

Any conviction after September 30, 1996 for a crime of domestic violence, stalking, child abuse, child neglect or abandonment is a deportable offense. INA § 237(a)(2)(E).

i) To qualify as a domestic violence offense, the crime must meet the federal definition of crime of violence at 18 U.S.C. §16:

(1) Any crime (felony, misdemeanor or petty offense) that has as an actual element of the offense the use, attempted use, or threatened use of force against the person (but not the property) of another, or

(2) Any felony that, by its nature, involves a substantial risk that physical force may be used in the course of committing the offense.

ii) Must be a crime committed against a person by:

(1) a current or former spouse of the person

(2) an individual with whom the person shares a child in common,

(3) an individual who is cohabitating with or has cohabitated with the person as a spouse,

(4) 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

(5) 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.

(a) Does not include third degree assault. *United States v. Perez-Vargas,* 414 F.3d 1282 (10th Cir. 2005).

iii) Child abuse and neglect is broadly defined to include "any form of cruelty to a child's physical, moral, or mental well-being." *Matter of Rodriguez-Rodriguez,* 22 I&N Dec. 991 (BIA 1999).

iv) Violation of protection orders: Covers court orders at any time after entry (committed after September 30, 1996) for those who are 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 who the protection order was issued.

(1) Does not include violations of a simple "no contact" order.

v) Although a ground of deportation, domestic violence and violations of restraining orders are not grounds of inadmissibility unless classified as a other ground of inadmissibility such as a crime involving moral turpitude

10) CRIME CATEGORIES THAT RENDER AN INDIVIDUAL INADMISSIBLE

Non-citizens who have not been "admitted" to the United States, such as those who have entered the United States without inspection, are subject to removal under the separate grounds of removal at INA section 212. 8 U.S.C. §1182. These grounds of removal are relevant, for example, for aliens who are not permanent residents but are seeking admission.

a) The fact that a person has been admitted in the past as a permanent resident does not shelter him or her from being subject to inadmissibility if he or she travels abroad.

i) A lawful permanent resident who travels abroad shall be considered as seeking admission if he or she has committed an inadmissible offense identified in section 212(a).

b) INADMISSIBILITY FOR ONE (OR MORE) CRIME(S) OF MORAL TURPITUDE. INA §212(A)(2)(A)(I)(I)

i) See section II. C. 1. Above.

ii) No temporal limitation. Even if the crime of moral turpitude does not render the non-citizen deportable, because, for example, it was not committed within five years of admission, commission of a crime of moral turpitude can render non-citizens inadmissible, no matter when it occurred.

iii) If the non-citizen who has pled to or admitted the essential elements of a crime of moral turpitude is ever to leave the country, and try to return, the ICE could prevent him or her from re-entering the United States because of the admission of the essential elements of a crime of moral turpitude, even if the person is a lawful permanent resident. INA § 212(a)(2)(A)(I); 8 U.S.C. § 1182(a)(2)(A)(I).

iv) For inadmissibility purposes, no conviction is necessary. Only an admission of the essential elements of the crime.

v) Similarly, because an application for lawful permanent residence is considered an application for "admission," the commission of, or admission of, the essential elements of a crime of moral turpitude may hinder or prevent any application for permanent residency.

vi) Exception for:

(1) Single crime, committed under the age of 18, and if confined, out of confinement for 5 years (juvenile offense exception).

(2) Single crime, with a maximum potential sentence that does not exceed one year, and any sentence served (even if suspended) did not exceed six months (petty offense exception).

c) INADMISSIBILITY FOR CONTROLLED SUBSTANCE VIOLATIONS. INA §212(A)(2)(A)(I)(II).

Any alien convicted of, or who admits committing acts which constitute the essential elements of a violation of (or 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)) is inadmissible.

i) Does not require a conviction.

ii) There is a waiver for a single offense of simple possession of 30 grams or less of marijuana for one's own use.

(1) Waiver based on an offense more than 15 years prior to the date of application for a visa, admission or adjustment of status, and evidence of rehabilitation, or

(2) Based on extreme hardship to a spouse, parent or son or daughter of a U.S. Citizen or Lawful Permanent Resident.

iii) Includes convictions for being under the influence of, use of, possession of, and distribution of a controlled substance.

iv) ICE has taken the position that convictions for possession of drug paraphernalia "relate to" a controlled substance and qualify.

v) Attempt and conspiracy to commit a controlled substance offense is a deportable offense. INA § 237(a)(2)(B); 8 U.S.C. §1227(a)(2)(B).

vi) Solicitation to possess may be okay since the plain language of the statute enumerates only attempt and conspiracy. *Coronado-Durazo v. ICE ,* 123 F.3d 1322 (9th Cir. 1997).

vii) The drug involved must be included on the federal controlled substances list.

d) MULTIPLE CRIMINAL CONVICTIONS. INA §212(A)(2)(B).

Noncitizens seeking admission to the United States, or present in the United States without admission who have been convicted of 2 or more offenses for which the aggregate sentences to confinement were 5 years or more, are inadmissible.

i) No exception for crimes arising out of a single scheme of misconduct

ii) Neither of the crimes need be a crime involving moral turpitude.

iii) Some DUIs can fit into this category.

iv) Exception for purely political offenses committed abroad.

e) INADMISSIBILITY FOR PROSTITUTION AND COMMERCIALIZED VICE. INA §212(A)(2)(D):

Noncitizens seeking admission to the United States, or present in the United States without admission who come to the United States and have had practically anything to do with prostitution within the preceding 10 year period are inadmissible. INA § 212(a)(2)(D); 8 U.S.C. § 1182(a)(2)(D).

i) Although a ground of inadmissibility, prostitution is not a ground of deportation unless reclassified as a crime involving moral turpitude.

ii) Does not require a conviction.

11) CONDUCT RELATED GROUNDS OF REMOVAL AND INADMISSIBILITY.

There are grounds of removal and inadmissibility that relate to criminal activity but do not require a conviction. For example, prostitution, alien smuggling, drug addiction or abuse, drug trafficking, false claims to U.S. citizenship, unlawful voting, fraud to procure immigration benefits and entering without inspection.