Understanding the Criminal Bars to the Deferred Action for Childhood Arrivals

**Criminal Bars to Deferred Action**

**Felony**
Any federal, state, or local offense that is punishable by imprisonment of more than one year.

**Significant Misdemeanor**
Any federal, state, or local offense that is punishable by imprisonment of one year or less but more than five days and is an offense of...
- Domestic violence
- Sexual abuse or exploitation
- Unlawful possession or use of a firearm
- Drug sales (distribution or trafficking)
- Burglary
- Driving under the influence of alcohol or drugs

Or any other misdemeanor not listed above for which the person received a jail sentence of more than 90 days. Suspended sentences do not count towards the 90 days.

**Three Non-Significant Misdemeanors**
Three or more non-significant misdemeanors that do not occur on the same day nor arise from the same act or scheme of misconduct.

Includes only federal, state, or local offenses punishable by imprisonment of one year or less but more than five days.

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If a person falls in one of the criminal bars above (and not one of the listed exceptions below) he or she may still be able to qualify for deferred action if he or she can show *exceptional circumstances*. Such approvals are likely to be very rare.

**Offenses That Do Not Lead to Automatic Disqualification**

**State Immigration Offenses**
Any state immigration-related felony or misdemeanor will not automatically disqualify a person from deferred action.

**Traffic Offenses**
Minor traffic offenses, such as driving without a license, will not be considered a non-significant misdemeanor.

**Juvenile Delinquency**
Juvenile delinquencies do not automatically disqualify an individual from deferred action.

**Expunged Convictions**
Expunged convictions do not automatically disqualify an individual from deferred action.

**NOTE:** Even though these offenses do not trigger the “automatic” criminal bars, DHS can consider them under the discretionary *public safety threat and totality of circumstances* analysis, described below.

**Any Criminal History Can Result in a Discretionary Denial**

**Threat to Public Safety**
DHS may deny any application if it finds a threat to public safety. This includes gang membership or participation in criminal activities.

An individual may receive deferred action only after showing "exceptional circumstances."

**Threat to National Security**
DHS may deny any application if it finds the applicant has participated in activities that are a threat to national security.

An individual may receive deferred action only after showing "exceptional circumstances."

**Any Criminal History**
Even where no criminal bar is present, an individual is not guaranteed a grant of deferred action. DHS may consider an individual’s total criminal history, including non-significant misdemeanor convictions, juvenile delinquency, and expunged convictions. DHS will determine under the "totality of circumstances" of the individual’s application whether to grant deferred action.