



CRIMINAL AND INADMISSIBILITY BARS FOR 2017 DREAM ACT AND RELATED LEGISLATION

By Jose Magaña-Salgado

Criminal Bar, Ground of Inadmissibility, Ground of Deportability, or Other	DREAM Act of 2017 ¹ S.1615 & H.R.3440	Recognizing America's Children Act (2017) ² H.R.1468	SUCCEED Act (2017) ³ S.1852	American Hope Act of 2017 ⁴ H.R.3591	BRIDGE Act (2017) ⁵ S.128 & H.R.496	Deferred Action for Childhood Arrivals ⁶
Minor Traffic Misdemeanor Convictions	Not a bar (functionally). Commentary. While there is no statutory exclusion for “minor traffic offenses” (or similar) the requirement that an applicant must not be convicted of three misdemeanors <i>and</i> imprisoned for an aggregate of 90 days or more (see “Misdemeanors”) functionally means that minor traffic misdemeanors are excluded.	Not a bar.	Not a bar (functionally). Commentary. While there is no statutory exclusion for “minor traffic offenses” (or similar), such an offense is not a bar as a significant misdemeanor and is not listed in the grounds of inadmissibility or deportability. But if a jail sentence is imposed, it would count toward the bars based on receiving (a) a total sentence of at least one year, or (b) a sentence of 90 days or more, excluding suspended sentence, for one misdemeanor.	Not a bar (functionally). Commentary. While there is no statutory exclusion for “minor traffic offenses” (or similar), the requirement that an applicant need only not be inadmissible under certain grounds (see “Grounds of Inadmissibility”) functionally means that minor traffic misdemeanors are excluded.	Not a bar.	Not a bar.
State Immigration Misdemeanor and Felony Convictions	Not a bar.	Not a bar.	State and federal immigration convictions may disqualify applicants under misdemeanor and felony bars.	Waiver Available. Commentary. Waiver is available if a state immigration misdemeanor or felony	Not a bar. Commentary. Significant misdemeanors where the offense was a state or	Not a bar. Commentary. Significant misdemeanors where the offense was a state or

¹ For questions regarding this document, please contact Lena Graber at lgraber@ilrc.org.

				triggers a ground of inadmissibility.	local immigration offense are also excluded.	local immigration offense are also excluded.
<p>Juvenile Adjudications</p> <p>Also known as “Delinquency Adjudications.”</p>	<p>Do not trigger the misdemeanor bar, felony bar, or grounds of inadmissibility triggered by convictions (but not conduct).</p> <p>Commentary. While this bill does not discuss juvenile adjudications, under BIA case law, a juvenile adjudication is not a conviction for immigration purposes.⁷</p> <p>However, certain grounds of inadmissibility may be triggered by conduct and not a conviction, e.g. INA § 212(a)(2)(C) (reason to believe drug trafficker).</p>	<p>Do not trigger the misdemeanor bar, felony bar, and grounds of inadmissibility triggered by convictions (but not conduct).</p> <p>Commentary. While this bill does not discuss juvenile adjudications, under BIA case law, a juvenile adjudication is not a conviction for immigration purposes.</p> <p>However, certain grounds of inadmissibility may be triggered by conduct and not a conviction, e.g. INA § 212(a)(2)(C) (reason to believe drug trafficker).</p>	<p>Do not trigger the misdemeanor bar, significant misdemeanor, felony bar, and grounds of inadmissibility triggered by convictions (but not conduct).</p> <p>Commentary. While this bill does not discuss juvenile adjudications, under BIA case law, a juvenile adjudication is not a conviction for immigration purposes.</p> <p>However, certain removal grounds may be triggered by conduct and not a conviction, e.g. INA § 212(a)(1)(A)(iv) (drug abuser/addict), 212(a)(2)(C) (reason to believe drug trafficker).</p>	<p>Do not trigger grounds of inadmissibility triggered by convictions (but not conduct).</p> <p>Commentary. While this bill does not discuss juvenile adjudications, under BIA case law, a juvenile adjudication is not a conviction for immigration purposes.</p> <p>However, certain grounds of inadmissibility may be triggered by conduct and not a conviction, e.g. INA § 212(a)(2)(C) (reason to believe drug trafficker).</p>	<p>Not a bar.</p> <p>Commentary. While this bill does not discuss juvenile adjudications, under BIA case law, a juvenile adjudication is not a conviction for immigration purposes.</p> <p>Moreover, because there is no provision to deny an applicant based on an exercise of discretion, unlike DACA, a broader population of applicants may receive relief (e.g. individuals with juvenile adjudications that would be or were denied on discretion in the DACA context).</p>	<p>Not a bar.</p> <p>Commentary. While a delinquency adjudication will not automatically disqualify an applicant, she may still be denied on discretion upon review of the underlying conduct that gave rise to the adjudication.</p>
<p>Conviction of One or More Misdemeanors</p> <p>A misdemeanor is a federal, state, or local offense where the maximum term of imprisonment is one year or less but greater than five days.</p>	<p>Ineligible if convicted of three or more misdemeanors, convicted on different dates, and imprisoned for an aggregate of 90 days or more.</p> <p>Text. “3 or more offenses . . . for which the alien was convicted on different dates for each of the 3 offenses and imprisoned for an</p>	<p>Ineligible if convicted one or more misdemeanors where an applicant was sentenced to a total of more than one year (waiver available).</p> <p>Text. “[A]ny combination of offenses . . . for which the alien was sentenced to imprisonment for a total of more than 1 year.”</p>	<p>Ineligible if convicted one or more offenses where an applicant was sentenced to a total of more than one year.</p> <p>Text. “[A]ny combination of offenses . . . for which the alien was sentenced to imprisonment for a total of more than 1 year.”</p>	<p>Not a bar.</p> <p>Commentary. While this bill does not have a per se (or “automatic”) misdemeanor bar, certain conduct or convictions could disqualify an applicant if they touch upon one of the grounds of inadmissibility contained in this bill.</p>	<p>Ineligible if convicted of three or more misdemeanors, where conduct did not occur on the same date and did not arise out of the same scheme.</p> <p>Text. “[T]hree or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct.”</p>	<p>Ineligible if convicted of three or more misdemeanors, where conduct did not occur on the same date and did not arise out of the same scheme.</p> <p>Text. “If you have been convicted of . . . three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme</p>

	aggregate of 90 days or more.”					of misconduct, you will not be considered for” DACA.
<p>Significant Misdemeanor Bar</p> <p>Significant misdemeanors are a non-statutory class of offenses originally created by the Obama Administration that are misdemeanors but deemed serious enough to warrant exclusion in certain types of relief.</p>	Not a bar.	Not a bar.	<p>Ineligible if convicted of one or more significant misdemeanors.</p> <p>Commentary. Significant misdemeanor is defined as a misdemeanor that involves (a) domestic violence (no reference to collateral INA provisions); (b) sexual abuse or exploitation, including sexually explicit conduct with a person under age 18, as defined in 18 U.S.C. 2256; (c) burglary; (d) unlawful possession or use of a firearm; (e) drug distribution or trafficking; (f) driving under the influence (no further definition or explicit allowances for impairment, BAC, or operation of a motor vehicle); or</p> <p>as any single misdemeanor for which the individual was sentenced 90 days or more in custody, excluding suspended sentences.</p>	Not a bar.	<p>Ineligible if convicted of one or more significant misdemeanors.</p> <p>Commentary. Significant misdemeanor is defined as one or more misdemeanors involving: (a) domestic violence (defined as INA 237(a)(2)(E)(i)); (b) sexual abuse or exploitation; (c) burglary; (d) unlawful possession or use of a firearm; (e) drug distribution or trafficking; (f) driving under the influence where there was operation of a motor vehicle and finding of impairment or a minimum .08 BAC; or (g) an offense for which the individual was sentenced 90 days or more in custody, excluding suspended sentences.</p> <p>Commentary. As USCIS defined these terms through guidance for DACA, some of these offenses were defined by their analogues in federal law or had that guidance codified.</p>	<p>Ineligible if convicted of one or more significant misdemeanors.</p> <p>Commentary. Significant misdemeanor defined as one or more misdemeanors involving: (a) domestic violence; (b) sexual abuse or exploitation; (c) burglary; (d) unlawful possession or use of a firearm; (e) drug distribution or trafficking; (f) driving under the influence where there was operation of a motor vehicle and finding of impairment or a minimum .08 BAC); or (g) an offense for which the individual was sentenced 90 days or more in custody, excluding suspended sentences.</p> <p>Commentary. USCIS defines these terms through guidance and FAQs. For more information, see https://www.ilrc.org/crimes-related-bars-daca-daca.</p>

<p>Conviction of a Felony</p> <p>A felony is a federal, state, or local offense where the maximum term of imprisonment is greater than one year.</p>	<p>One or more felonies disqualifies an applicant.</p>	<p>One or more felonies disqualifies an applicant (waiver available).</p>	<p>One or more felonies disqualifies an applicant.</p>	<p>Not a bar.</p>	<p>One or more felonies disqualifies an applicant.</p>	<p>One or more felonies disqualifies an applicant.</p>
<p>Expunged Convictions</p> <p>Under immigration law, post-conviction relief based on rehabilitative factors such as successfully completing probation (colloquially known as “expungement” or similar) does not erase a conviction for the purposes of immigration law.</p>	<p>Not automatically treated as a disqualifying offense, reviewed on case-by-case basis.</p> <p>Commentary. Expunged misdemeanor convictions, felony convictions, and convictions triggering grounds of inadmissibility do not automatically disqualify an applicant, but instead are reviewed on a case-by-case basis.</p>	<p>Not considered convictions for misdemeanor and felony bars.</p> <p>Commentary/Text. Bill defines these types of convictions as “any adjudication or judgment of guilt that has been dismissed, expunged, deferred, annulled, invalidated, withheld, or vacated, an order of probation without entry of judgement, or any similar disposition.”</p>	<p>Reviewed on case-by-case basis.</p> <p>Commentary. Expunged misdemeanor convictions, felony convictions, and convictions triggering grounds of inadmissibility or deportability are reviewed on a case-by-case basis, for purposes of conditional residence and adjustment to permanent residence.</p>	<p>Considered convictions but waivable.</p> <p>Commentary. Expunged convictions can still function as a ground of inadmissibility, but a waiver is available.</p>	<p>Reviewed on case-by-case basis.</p> <p>Commentary. Expunged misdemeanor, significant misdemeanor, and felony convictions do not automatically disqualify an applicant, but instead are reviewed one case-by-case basis.</p>	<p>Reviewed on case-by-case basis.</p> <p>Commentary. Expunged misdemeanor, significant misdemeanor, and felony convictions do not automatically disqualify an applicant, but instead are reviewed one case-by-case basis.</p>
<p>Suspended Sentences</p> <p>Under existing law, a sentence where part of all of the sentence is suspended is still considered a term of imprisonment or sentence for the purposes of immigration law.</p>	<p>N/A</p>	<p>8 U.S.C. 1101(48)(B) does not apply to misdemeanor and felony convictions, which means that suspended sentences are not considered a term of imprisonment or sentence for the purposes of immigration law.</p>	<p>The significant misdemeanor bar based on a sentence of more than 90 days does not include suspended sentences.</p>	<p>N/A.</p>	<p>The significant misdemeanor bar based on a sentence of more than 90 days does not include suspended sentences.</p>	<p>The significant misdemeanor bar based on a sentence of more than 90 days does not include suspended sentences.</p>
<p>Public Safety</p>	<p>Excluded.</p>	<p>Excluded.</p>	<p>Individuals who are a “public safety risk” (not defined) are ineligible for waiver that allows</p>	<p>Excluded.</p>	<p>Applicants cannot have been convicted of an offense that had as an element participating in a</p>	<p>Ineligible if deemed a threat to public safety.</p> <p>Commentary/Text. Indicators that you pose</p>

			individuals who violate certain terms of CPR status (not including crimes) to nevertheless apply for relief from removal.		criminal street gang (18 U.S.C. 521(a) or engaging in a continuing criminal enterprise (21 U.S.C. 848(c)). As USCIS defined “threat to public safety” through guidance for DACA, this reference to existing federal law represents the codification of that guidance.	such a threat include, but are not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the United States.
National Security	Ineligible if inadmissible under INA 212(a)(3) (security-related grounds).	Ineligible if inadmissible under INA 212(a)(3) (security-related grounds).	Ineligible if inadmissible under INA 212(a)(3) (security-related grounds). Individuals who are a “national security risk” (not defined) are ineligible for waiver that allows individuals who violate terms of CPR status to nevertheless apply for relief from removal.	Ineligible if inadmissible under INA 212(a)(3) (security-related grounds).	Ineligible if inadmissible under INA 212(a)(2) (criminal or related grounds) or 237(a)(3) (security-related grounds). Commentary: Applicants are ineligible for relief if they are a national security threat. Threat to national security is defined by inadmissibility under INA 212(a)(3) or deportability under 237(a)(4). As USCIS defined “threat to national security” through guidance for DACA, this inadmissibility and deportability ground represent the codification of that guidance.	Ineligible if a national security or public safety threat. Commentary/Text. Indicators that the person poses such a threat include, but are not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the United States.

Denial on Discretionary Grounds	No denial based on discretion.	No denial based on discretion.	No denial based on discretion.	No denial based on discretion.	No denial based on discretion. Commentary. Unlike DACA, BRIDGE does not contain a discretionary component, which means that some applicants who did not qualify for DACA (because they were denied on discretionary grounds but still met the DACA criteria) may be able to obtain relief under BRIDGE.	Yes. Commentary. An applicant's entire criminal history may be reviewed and, even if there are no disqualifying convictions, USCIS may still deny relief on discretionary grounds.
Waivers for Criminal History or Grounds of Inadmissibility	Waiver available for certain grounds of inadmissibility for humanitarian purposes, family unity, or otherwise in the public interest.	Waiver available for certain grounds of inadmissibility and deportability for humanitarian purposes, family unity, or otherwise in the public interest. Waiver available for felony convictions or convictions where applicant was sentenced to imprisonment of more than one year.	No.	Waiver available for certain grounds of inadmissibility for humanitarian purposes, family unity, or otherwise in the public interest.	No.	Waiver for criminal history available for convictions where there are "exceptional circumstances."
Grounds of Inadmissibility						
INA 212(a)(1) (Health-related reasons)	No.	Yes (waiver available).	Yes (waiver available).	No.	No.	No.
INA 212(a)(2) (Criminal and Related Grounds) Including crimes involving moral turpitude, controlled substance	Yes (waiver available).	Yes.	Yes.	Yes (waiver available). Commentary. Any misdemeanor offense, any other offense that is not a crime of violence,		No.

violations, two or more offenses with aggregate sentences of more than five years.				and state/federal immigration-based offenses may be waived.		
INA 212(a)(3) (Security and Related Grounds)	Yes.	Yes.	Yes.	Yes.	Yes.	No.
INA 212(a)(4) (Public Charge)	No.	Yes.	Yes (waiver available).	No.	No.	No.
INA 212(a)(6)(C) (Misrepresentation and False Claims)	No.	No.	Yes.	No.	No.	No.
INA 212(a)(6)(E) (Smuggling)	Yes (waiver available).	Yes (waiver available).	Yes (waiver available).	No.	No.	No.
INA 212(a)(6)(G) (Student Visa Abusers)	Yes (waiver available).	No.	No.	No.	No.	No.
INA 212(a)(8) (Ineligible for Citizenship)	Yes.	Yes.	Yes.	Yes.	No.	No.
INA 212(a)(9)(A) (Certain Aliens Previously Removed)	No.	No.	Yes, but individuals who were previously removed based solely because they triggered three, ten, and permanent bars are not barred from applying.	No.	No.	No.
INA 212(a)(9)(C) (Permanent bar)	No.	No.	Yes.	No.	No.	No.
INA 212(a)(10) (entire section) (Miscellaneous)	No.	No.	Yes.	No.	No.	No.
INA 212(a)(10)(A) (Practicing Polygamists)	Yes.	Yes.	Yes.	Yes.	No.	No.

INA 212(a)(10)(C) (International Child Abduction)	Yes.	Yes.	Yes.	Yes.	No.	No.
INA 212(a)(10)(D) (Unlawful Voting)	Yes (waiver available).	Yes.	Yes.	No.	No.	No.
INA 212(a)(10)(E) (Renunciation of Citizenship to Avoid Taxes)	No.	No.	Yes.	Yes.	No.	No.
Grounds of Deportability	Not a bar.	Ineligible for relief of an applicant is deportable under INA 237(a): (1)(E) – Smuggling (waiver available) (1)(G) – Marriage Fraud (waiver available) (2) – General Crimes. (4) – Security and Related Grounds. (5) – Public Charge. (6) – Unlawful Voting.	Ineligible for relief of an applicant is deportable under INA 237(a): (1)(D) – Termination of CPR (1)(E) – Smuggling (waiver available) (1)(G) – Marriage Fraud (waiver available) (2) – General Crimes. (3) – Failure to Register and Falsification of Documents (4) – Security and Related Grounds. (5) – Public Charge. (6) – Unlawful Voting.	Not a bar.	Ineligible for relief of an applicant is deportable under INA 237(a): (4) – Security and Related Grounds.	Not a bar.
Persecution Bars	Applicants are ineligible for relief if they have ordered, incited, assisted, or otherwise participated in the	Applicants are ineligible for relief if they have ordered, incited, assisted, or otherwise participated in the	Applicants are ineligible for relief if they have ordered, incited, assisted, or otherwise participated in the	Not a bar.	Not a bar.	Not a bar.

	persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.	persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.	persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.			
Good Moral Character Requirement	No.	Good moral character required for conditional permanent resident status, extension, and adjustment of status.	Good moral character required for extension of conditional permanent resident status.	No.	No.	No.

¹ See Dream Act of 2017, S.1615, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/1615>.

² See Recognizing America’s Children Act of 2017, HR.1468, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/house-bill/1468>.

³ See Solution for Undocumented Children through Careers, Employment, Education, and Defending our Nation Act, S.1852, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/1852>.

⁴ See American Hope Act of 2017, HR.3591, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/house-bill/3591>.

⁵ See BRIDGE Act, S.128, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/128>.

⁶ See Memorandum from Janet Napolitano, Secretary, U.S. Department of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children, to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, et. al, (June 15, 2012), available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

⁷ *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000) (en banc).