



# COMPARISON OF CRIMINAL AND INADMISSIBILITY GROUNDS FOR AMERICAN DREAM AND PROMISE ACT OF 2019, DACA, AND TPS

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In March of 2019, Congresswoman Lucille Roybal-Allard (D-CA) introduced the American Dream and Promise Act of 2019, H.R. 6, in the 116<sup>th</sup> Congress, which would provide relief to immigrant youth (including Deferred Action for Childhood Arrivals (DACA) recipients), Temporary Protected Status (TPS) holders, and Deferred Enforced Departure (DED) holders. The bill would provide relief to upwards of 2.3 million individuals, allowing them to obtain lawful permanent resident status (LPR) and, after five years, naturalize and become citizens under existing law.<sup>1</sup> This resource provides an in-depth, technical overview of the criminal background and inadmissibility ground requirements of H.R. 6, by comparing the eligibility criteria for DACA with H.R. 6’s Dream Act title; and the eligibility criteria for TPS with H.R. 6’s TPS and DED Title.<sup>1</sup> DED generally follows the criteria for TPS and thus is included under the TPS comparison.<sup>2</sup> The National Immigration Law Center created resources generally comparing the provisions of [various Dream Act bills](#) and [TPS-related bills](#), which serve as complements to this chart.

	Deferred Action for Childhood Arrivals <sup>3</sup>	American Dream and Promise Act of 2019 <sup>4</sup>		Temporary Protected Status Statute <sup>5</sup> INA 244
		H.R.6		
		Title I – Dream Act of 2019	Title II – American Promise Act of 2019	
<b>Minor Traffic Convictions</b>	<p>Not a bar for relief under the misdemeanor bar.</p> <p>Potential bar for relief under the felony bar.</p> <p><b>Commentary.</b> A minor traffic offense is not considered a misdemeanor for purposes of the bar to DACA based on three misdemeanor convictions.</p> <p>Regarding the bar to DACA based on one felony conviction, because there is no explicit exclusion for minor traffic offenses, individuals may be barred if they are convicted of a minor traffic offense, such as driving on an expired</p>	<p>Not a bar for relief.</p> <p><b>Commentary.</b> The bill excludes “any minor traffic offense” from both the misdemeanor and felony bar.</p>	<p>Potential bar for relief under misdemeanor and felony bars.</p> <p><b>Commentary.</b> Under the bill, an individual must have “had or was otherwise eligible for” TPS or DED as of September 28, 2016. Thus, if an individual was disqualified for a misdemeanor or felony traffic offense as of that date (and therefore ineligible for TPS or DED), they would be ineligible for relief under this bill.</p>	<p>Potential bar for relief under misdemeanor and felony bars.</p> <p><b>Commentary.</b> Under the statute, individuals convicted of “any felony or 2 or more misdemeanors” are ineligible for relief. There are no exceptions for traffic-based misdemeanors.</p>

This chart was drafted in collaboration with [United We Dream](#) by the Immigrant Legal Resource Center (ILRC) and represents an update of the ILRC’s August 2017 resource *Criminal and Inadmissibility Bars for 2017 Dream Act and Related Legislation*, which compared various legislation that would provide relief to immigrant youth. For questions regarding this document, please contact Sameera Hafiz at [shafiz@ilrc.org](mailto:shafiz@ilrc.org) or Sanaa Abrar at [sanaa@unitedwedream.org](mailto:sanaa@unitedwedream.org). For the latest version of this chart, visit <http://www.ilrc.org>.

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	license or without a license, if the state categorizes the offense as a felony, (such as Florida, Georgia, Illinois, Indiana, Kentucky and Missouri). <sup>6</sup>			
<b>State Immigration Convictions</b>	<p>Not a bar for relief.</p> <p><b>Commentary.</b> A state or local offense that has immigration status as an element is not considered a significant misdemeanor.</p>	<p>Not a bar for relief.</p> <p><b>Commentary.</b> The bill explicitly excludes offenses under “State law for which an essential element is the alien’s immigration status.”</p>	<p>Not excluded.</p> <p><b>Commentary.</b> Under the bill, an individual must have “had or was otherwise eligible for” TPS or DED as of September 28, 2016. Thus, if an individual was disqualified for a misdemeanor or felony state-based offense on that date (and therefore ineligible for TPS or DED), they would be ineligible for relief under this bill.</p>	<p>Not excluded.</p> <p><b>Commentary.</b> Under the statute, to be ineligible for relief, individuals must be convicted of “any felony or 2 or more misdemeanors.” There are no exceptions for state-based immigration convictions.</p>
<p><b>Juvenile Adjudications</b></p> <p>Also known as “Delinquency Adjudications.”<sup>7</sup></p> <p>Even if there is no disqualification based on juvenile adjudications, certain grounds of inadmissibility may be triggered by conduct even when there is no conviction, e.g. INA § 212(a)(2)(C) (reason to believe an individual is a drug trafficker).</p>	<p>Not a bar for relief.</p> <p><b>Commentary.</b> While a delinquency adjudication will not automatically disqualify an individual, they may still be denied on discretion upon review of the underlying conduct that gave rise to the adjudication.</p> <p>(The conduct-based inadmissibility grounds are not a bar to DACA, because DACA does not require the person to be admissible.)</p>	<p>Not a bar for relief.</p> <p><b>Commentary.</b> Juvenile adjudications do not trigger the misdemeanor bar, felony bar, or grounds of inadmissibility that require a conviction, but might trigger conduct-based grounds of inadmissibility.</p> <p>While this bill does not discuss juvenile adjudications, under BIA case law, a juvenile adjudication is not a conviction for immigration purposes.<sup>8</sup></p>	<p>Not a bar for relief.</p> <p><b>Commentary.</b> Under the bill, an individual must have “had or was otherwise eligible for” TPS or DED as of September 28, 2016. Juvenile adjudications are not convictions that disqualify individuals from TPS or DED under the statute. Therefore, unless they triggered conduct-based grounds of inadmissibility, juvenile adjudications will not disqualify an individual from relief.</p> <p>While this bill does not discuss juvenile adjudications, under BIA case law, a juvenile adjudication is not a conviction for immigration purposes.<sup>9</sup></p>	<p>Not a bar for relief.</p> <p><b>Commentary.</b> Juvenile adjudications are not convictions that trigger the misdemeanor bar, felony bar, or grounds of inadmissibility. Therefore, unless they trigger conduct-based grounds of inadmissibility, juvenile adjudications will not disqualify an individual from relief.</p> <p>While the statute does not discuss juvenile adjudications, under BIA case law, a juvenile adjudication is not a conviction for immigration purposes.<sup>10</sup></p>

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<b>Misdemeanor Convictions</b>	<p>Conviction of three or more misdemeanors, where conduct did not occur on the same date and did not arise out of the same scheme, disqualify an individual. (But see below on Expunged Convictions).</p> <p><b>Text.</b> “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 of misconduct, you will not be considered for” DACA.</p> <p>For purposes of DACA, a misdemeanor is defined as an offense that has a potential sentence that is greater than five days but is not greater than one year.</p>	<p>Conviction of “3 or more offenses under Federal or State law”, where the convictions were on different dates, and where the individual was imprisoned for an aggregate of 90 days or more, disqualify an individual.</p> <p><b>Commentary.</b> Note that an “offense” is not specifically defined. Also, the “aggregate of 90 days or more” refers to days actually incarcerated, not sentence imposed.</p>	<p>Conviction of two or more misdemeanors disqualify an individual.</p> <p><b>Commentary.</b> Under the bill, an individual must have “had or was otherwise eligible for” TPS or DED as of September 28, 2016. Thus, if an individual was convicted of two or more misdemeanors as of that date (and therefore ineligible for TPS or DED), they would be ineligible for relief under this bill.</p>	<p>Conviction of two or more misdemeanors disqualifies an individual.</p> <p><b>Commentary:</b> Misdemeanor is not specifically defined.</p>
<p><b>Significant Misdemeanor Convictions; Crime of Domestic Violence</b></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>	<p>One or more significant misdemeanors disqualifies an individual.</p> <p><b>Commentary.</b> A significant misdemeanor is 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</p>	<p>Significant misdemeanors are not a bar, but bill includes a “crime of domestic violence” bar.</p> <p><b>Commentary.</b> The bill does not have a significant misdemeanor bar, but does have a bar for any offense that is a “crime of domestic violence.”</p> <p>There are exceptions for individuals who are survivors of domestic violence or related crimes; individuals who have been battered or subject to extreme cruelty; and survivors of U nonimmigrant qualifying offenses.</p> <p>There is also a waiver available for humanitarian purposes, family unity or if</p>	<p>Not a bar for relief.</p>	<p>Not a bar for relief.</p>

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	<p>90 days or more in custody, excluding suspended sentences.</p> <p><b>Commentary.</b> USCIS defines these terms through guidance and FAQs. For more information, see <a href="https://www.ilrc.org/crimes-related-bars-dapa-daca">https://www.ilrc.org/crimes-related-bars-dapa-daca</a>. The significant misdemeanors are not defined according to specific elements. For example, a range of offenses have been held a domestic violence offense.</p>	<p>the waiver is otherwise in the public interest.</p> <p><b>Text.</b> A “crime of domestic violence” is defined as . . . “any offense that has as an element the use, attempted use, or threatened use of physical force against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by 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 by 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.” This tracks the current definition of a deportable “crime of domestic violence.”<sup>11</sup></p>		
<b>Felony Convictions</b>	<p>Conviction of one or more felonies disqualifies an individual.</p> <p><b>Commentary.</b> For DACA purposes, a felony is defined as a federal, state, or local offense that has a potential sentence that is greater than one year.</p>	<p>Conviction of one or more felonies disqualifies an individual.</p> <p><b>Commentary.</b> Felony is not specifically defined.</p>	<p>Conviction of one or more felonies disqualifies an individual.</p> <p><b>Commentary.</b> Under the bill, an individual must have “had or was otherwise eligible for” TPS or DED as of September 28, 2016. Thus, if an individual was disqualified for a felony offense on that date, and therefore ineligible for TPS or DED, they would be ineligible for relief under this bill. Felony is not specifically defined.</p>	<p>Conviction of one or more felonies disqualifies an individual.</p> <p><b>Commentary.</b> The definition of felony does not include an offense that has a potential sentence of more than a year, if it is defined by the state as a misdemeanor, and if the sentence actually imposed is one year or less.<sup>12</sup></p>

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<p><b>Expunged Convictions</b></p> <p>Generally 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>Reviewed on case-by-case basis.</p> <p><b>Commentary.</b> Misdemeanor, significant misdemeanor, and felony convictions that have been “expunged” (meaning, eliminated pursuant to some form of rehabilitative relief) do not automatically disqualify an individual, but instead are reviewed one case-by-case basis.</p>	<p>Expunged convictions are not a bar for relief under the misdemeanor and felony bars; or grounds of inadmissibility.</p> <p><b>Text.</b> “[T]he term ‘conviction’ does not include a judgment that has been expunged or set aside, that resulted in a rehabilitative disposition, or the equivalent.”</p> <p><b>Commentary.</b> Although the definition lists only expungements and set-asides, by stating that it includes “rehabilitative disposition” or “the equivalent,” it appears to indicate that all forms are included.</p>	<p>Expunged convictions are not “convictions” for this purpose. (But see Commentary.)</p> <p><b>Text.</b> “[T]he term ‘conviction’ does not include a judgment that has been expunged or set aside, that resulted in a rehabilitative disposition, or the equivalent.”</p> <p><b>Commentary.</b> Under the bill, an individual must have “had or was otherwise eligible for” TPS or DED as of September 28, 2016. The bill also excludes expunged convictions. These two requirements may raise questions. Are individuals who received an expungement after September 28, 2016 eligible, since they were not eligible as of September 28, 2016? Are individuals who received an expungement on or before September 28, 2016 eligible, given that as of that date the expungement had no immigration effect?</p>	<p>An expungement does not prevent a conviction from serving as a bar.</p> <p><b>Commentary.</b> Under existing case law, expunged convictions are still convictions for immigration purposes. Conviction of an inadmissible offense, two misdemeanors, or a felony would remain a bar even after expungement.</p>
<p><b>Suspended Sentences</b></p> <p>Under immigration law generally, a suspended sentence is still considered a term of</p>	<p>The significant misdemeanor bar based on a sentence of more 90 days does not include suspended sentences.</p>	<p>No exclusion for suspended sentences.</p> <p><b>Commentary.</b> Under immigration law generally, a sentence that is imposed but suspended will be considered for purposes of inadmissibility grounds.</p>	<p>No exclusion for suspended sentences.</p> <p><b>Commentary.</b> Under the bill, an individual must have “had or was</p>	<p>No exclusion for suspended sentences.</p> <p><b>Commentary.</b> Under immigration law generally, a sentence that is imposed but suspended will be considered for</p>

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imprisonment or sentence for the purposes of immigration law.			otherwise eligible for” TPS or DED as of September 28, 2016.	purposes of inadmissibility grounds. There is no requirement relating to suspended sentences for the bar based on conviction of one felony or two misdemeanors.
<b>Public Safety</b>	Ineligible if deemed a threat to public safety. <b>Commentary/Text.</b> Indicators that an individual 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.	Not a bar for relief.	Not a bar for relief.	Not a bar for relief.
<b>National Security</b>	Ineligible if deemed a threat to national security. <b>Commentary/Text.</b> Indicators that an individual 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.	Ineligible if inadmissible under INA 212(a)(3) ( <b>security-related grounds</b> ).	Ineligible if inadmissible under INA 212(a)(3) ( <b>security-related grounds</b> ).	Ineligible if inadmissible under INA 212(a)(3) ( <b>security-related grounds</b> ).
<b>Denial on Discretionary Grounds</b>	Yes. <b>Commentary.</b> An individual’s entire criminal history may be reviewed and, even if there are no disqualifying convictions, USCIS may still deny relief on discretionary grounds.	No denial based on discretion.	No denial based on discretion.	<b>No denial based on discretion.</b>

GROUPS OF INADMISSIBILITY

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<b>Waivers for Criminal History or Grounds of Inadmissibility</b>	Waiver for criminal history available for convictions where there are “exceptional circumstances.”	Waiver available for certain grounds of inadmissibility, and for conviction of a crime of domestic violence, for humanitarian purposes, family unity, or otherwise in the public interest.  <b>Commentary.</b> Existing exceptions and waivers for grounds of inadmissibility (e.g. petty offense and youthful offense exceptions; and 212(h) waiver) continue to apply to grounds of inadmissibility but <i>do not</i> affect the misdemeanor or felony bars.	Waiver available for certain grounds of inadmissibility, for humanitarian purposes, family unity, or otherwise in the public interest.  <b>Commentary.</b> Existing exceptions and waivers for grounds of inadmissibility (e.g. petty offense and youthful offense exceptions; and 212(h) waiver) continue to apply to grounds of inadmissibility but <i>do not</i> affect the misdemeanor or felony bars.	Waiver available for certain grounds of inadmissibility, for humanitarian purposes, family unity, or otherwise in the public interest.  <b>Commentary.</b> Existing exceptions and waivers for grounds of inadmissibility (e.g. petty offense and youthful offense exceptions; and 212(h) waiver) continue to apply to grounds of inadmissibility but <i>do not</i> affect the misdemeanor or felony bars.
INA 212(a)(1) (Health-related reasons)	Not applicable.	Not applicable.	<b>This ground applies.</b>	This ground applies (waiver available).
INA 212(a)(2) (Criminal and Related Grounds) Including crimes involving moral turpitude, controlled substance violations, two or more offenses with aggregate sentences of more than five years.	Not applicable.	This ground applies. Waiver available for humanitarian purposes, family unity or otherwise in the public interest.	This ground applies. Waiver available for humanitarian purposes, family unity or otherwise in the public interest.	This ground applies.  Waiver available for simple possession of 30 grams or less of marijuana under (2)(C).
INA 212(a)(3) (Security and Related Grounds)	Not applicable.	This ground applies	This ground applies	This ground applies
INA 212(a)(4) (Public Charge)	Not applicable.	Not applicable.	Not applicable.	This ground applies (waiver available).
INA 212(a)(6)(C) (Misrepresentation and False Claims)	Not applicable.	Not applicable.	Not applicable.	This ground applies (waiver available)

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INA 212(a)(6)(E) (Smuggling)	Not applicable.	This ground applies. Waiver available for humanitarian purposes, family unity or otherwise in the public interest.	This ground applies. Waiver available for humanitarian purposes, family unity or otherwise in the public interest.	This ground applies (waiver available)
INA 212(a)(6)(G) (Student Visa Abusers)	Not applicable.	This ground applies. Waiver available for humanitarian purposes, family unity or otherwise in the public interest.	This ground applies. Waiver available for humanitarian purposes, family unity or otherwise in the public interest.	This ground applies (waiver available)
INA 212(a)(8) (Ineligible for Citizenship)	Not applicable.	This ground applies	This ground applies	This ground applies (waiver available)
INA 212(a)(9)(A) (Certain Aliens Previously Removed)	Not applicable.	Not applicable.	Not applicable.	This ground applies (waiver available)
INA 212(a)(9)(C) (Permanent bar)	Not applicable.	Not applicable.	This ground applies.	This ground applies (waiver available)
INA 212(a)(10) (entire section) (Miscellaneous)	No.	No.	No.	Yes (waiver available)
INA 212(a)(10)(A) (Practicing Polygamists)	Not applicable.	This ground applies	This ground applies	This ground applies (waiver available)
INA 212(a)(10)(C) (International Child Abduction)	Not applicable.	This ground applies	This ground applies	This ground applies (waiver available)
INA 212(a)(10)(D) (Unlawful Voting)	Not applicable.	This ground applies. Waiver available for humanitarian purposes, family unity or otherwise in the public interest.	This ground applies. Waiver available for humanitarian purposes, family unity or otherwise in the public interest.	This ground applies (waiver available)



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INA 212(a)(10)(E) (Renunciation of Citizenship to Avoid Taxes)	Not applicable.	This ground applies	This ground applies .	This ground applies (waiver available)
<b>DOMESTIC VIOLENCE, PERSECUTION, AND CONFIDENTIALITY</b>				
Conviction of a Crime of Domestic Violence	Bar as a significant misdemeanor	Bar as a crime of domestic violence (waiver available)	Not specifically addressed.	Not specifically addressed.
Persecution Bars	Not applicable.	Individuals are ineligible for relief if they have “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.”	Individuals are ineligible for relief if they have ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.	Not specifically addressed. <b>Commentary.</b> While there is no explicit bar for persecution, an individual must not be inadmissible under (a)(2)(E), participation in Nazi persecutions, participation in genocide, or participation in commission of acts or torture or extrajudicial killings.
Confidentiality	Information for individuals who apply for relief may not be shared with ICE or CBP unless the individual satisfies the criteria outlined in the 2011 Notice to Appear Guidance.  Information for individuals who are granted DACA may not be shared with federal security and law enforcement agencies unless disclosure is to identify or prevent fraud, for national security purposes, or for investigation or prosecution of a non-immigration offense. This policy includes family members and guardians, in addition to the requestor.	Information disclosed in applications or in DACA requests may not be used for immigration enforcement or be shared with federal security and law enforcement agencies unless disclosure is to identify or prevent fraud, for national security purposes, or for investigation or prosecution of a non-immigration felony prosecution.	Information disclosed in applications may not be used for immigration enforcement or be shared with federal security and law enforcement agencies unless disclosure is to identify or prevent fraud, for national security purposes, or for investigation or prosecution of a non-immigration felony prosecution.	Under the statute, “[t]he Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.”

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<sup>1</sup> Julia Gelatt, *More Than a DREAM (Act), Less Than a Promise*, Migration Policy Institute, March 2019, <https://www.migrationpolicy.org/news/more-dream-act-less-promise>.

<sup>2</sup> WHITE HOUSE, Presidential Memoranda, Memorandum on Extension of Deferred Enforced Departure for Liberians (March 28, 2019), available at <https://www.whitehouse.gov/presidential-actions/memorandum-extension-deferred-enforced-departure-liberians/>. (excluding “individuals who are ineligible for TPS for reasons set forth in section 244(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(2)(B));”).

<sup>3</sup> See Memorandum from Janet Napolitano, Secretary, U.S. Department of Homeland Security to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, et al. on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>; U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Frequently Asked Questions, March 8, 2018, <https://www.uscis.gov/archive/frequently-asked-questions>.

<sup>4</sup> Dream and Promise Act of 2019, H.R.6, 116<sup>th</sup> Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/6>.

<sup>5</sup> INA 244, 8 U.S.C. 1254a (West 2019).

<sup>6</sup> *Driving While Revoked, Suspended or Otherwise Unlicensed: Penalties by State*, National Conference of State Legislatures, Oct. 27, 2016, [www.ncsl.org/research/transportation/driving-while-revoked-suspended-or-otherwise-unli.aspx](http://www.ncsl.org/research/transportation/driving-while-revoked-suspended-or-otherwise-unli.aspx).

<sup>7</sup> In many states even if a minor commits an offense while under the age of 18, they can be transferred to adult court to face prosecution. If convicted in adult court, this generally will be a conviction for immigration purposes. See *Rangel-Zuazo v. Holder*, 678 F.3d 967 (9<sup>th</sup> Cir. 2012).

<sup>8</sup> *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000) (en banc).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See the definition of a crime of domestic violence at 8 USC § 1227(a)(2)(E)(i). A “crime of violence” is defined under 18 USC § 16(a) alone, because 18 USC 16(b) was held to be unconstitutionally vague. *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). The bill incorporates the definition at 18 USC 16(a).

<sup>12</sup> 8 CFR 244.1.