

Deportation Grounds Checklist

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Deportation Grounds Checklist

By Norton Tooby

This is a complete list of all grounds of deportation, prepared on January 10, 2005.

Most, but not all, of the grounds of deportation are listed under INA § 237(a), 8 U.S.C. § 1227(a).¹ These grounds apply only to a noncitizen “in and admitted to the United States.” *Ibid.* Therefore, if the noncitizen has not been admitted to the United States, s/he is not subject to removal on these grounds. The statute also provides the noncitizen shall be removed only “upon the order of the Attorney General” *Ibid.* Therefore, if the Attorney General does not choose to order him or her removed, s/he is not removable on account of these grounds of deportation. The remaining grounds of deportation are listed under Title 50 of the United States Code.

This checklist is a complete list of all grounds of deportation. It has been organized into four categories: (I) Criminal grounds; (II) Immigration Grounds, including smuggling and fraud; (III) Immigration Status Violations; and (IV) Security Grounds, including espionage, genocide, and terrorist acts. Each category includes both conduct-based grounds of deportation, which are based not on a criminal conviction or other court order, but on some behavior or status exhibited by a noncitizen, and conviction-based grounds of deportation, which require a final criminal conviction that meets a certain definition before deportation will be ordered, as well as other grounds of deportation that are based on a court or administrative tribunal’s order (other than a criminal conviction).

Where applicable, the existence of any exceptions or waivers that specifically apply to the ground of deportation will be indicated. This checklist will not discuss more generally applicable exceptions or waivers such as cancellation of removal under INA § 240A, 8 U.S.C. § 1229b, or

¹ 8 U.S.C. § 1227(a) provides: “An alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:”.

waivers under INA § 212(c), 8 U.S.C. § 1182(c), or INA § 212(h), 8 U.S.C. § 1182(h).

I. Criminal Grounds

[1] *Aggravated felony conviction.* Conviction of aggravated felony, as defined by INA § 101(a)(43), 8 U.S.C. § 1101(a)(43), at any time after admission. INA § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii).

Waiver: Full and unconditional pardon granted by U.S. President or a state governor. INA § 237(a)(2)(A)(v), 8 U.S.C. § 1227(a)(2)(A)(v).

[2] *Controlled substances abuser or addict.* Noncitizen who is or at any time after admission has been a drug abuser or addict. INA § 237(a)(2)(B)(ii), 8 U.S.C. § 1227(a)(2)(B)(ii). NOTE: This ground of deportation does not require a conviction.

[3] *Controlled substances conviction.* Conviction after admission of violation, conspiracy, or attempt to violate any state, federal, or foreign law relating to a controlled substance, as defined in 21 U.S.C. § 802, other than a single offense involving possession for one's own use of 30 grams or less of marijuana. INA § 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i).

[4] *Crime of moral turpitude – one conviction.* Conviction of a CMT offense committed within five years (or 10 years where noncitizen obtained LPR status under 8 U.S.C. § 1255(j)) after the date of admission, and for which a sentence of one year or more may be imposed. INA § 237(a)(2)(A)(i), 8 U.S.C. § 1227(a)(2)(A)(i).

Waiver: Full and unconditional pardon granted by U.S. President or a state governor. INA § 237(a)(2)(A)(iv), 8 U.S.C. § 1227(a)(2)(A)(iv).

[5] *Crime of moral turpitude – multiple convictions.* Conviction after admission of two or more CMT offenses not arising out of a single scheme of criminal misconduct. INA § 237(a)(2)(A)(ii), 8 U.S.C. § 1227(a)(2)(A)(ii).

Waiver: Full and unconditional pardon granted by U.S. President or a state governor. INA § 237(a)(2)(A)(iv), 8 U.S.C. § 1227(a)(2)(A)(iv).

[6] *Domestic violence/stalking/child abuse convictions.* Conviction after admission and after September 30, 1996,² of

Any crime of violence, as defined in 18 U.S.C. § 16, 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.” INA § 237(a)(2)(E)(i), 8 U.S.C. § 1227(a)(2)(E)(i).

A crime of stalking. INA § 237(a)(2)(E)(i), 8 U.S.C. § 1227(a)(2)(E)(i).

A crime of child abuse, neglect, or abandonment. INA § 237(a)(2)(E)(i), 8 U.S.C. § 1227(a)(2)(E)(i).

Waiver: The Attorney General may waive the domestic-violence deportation ground “(with respect to crimes of domestic violence and crimes of stalking)”³ in the case of a noncitizen who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship, “upon a determination that (I) the noncitizen was acting in self defense, or (II) the noncitizen was found to have violated a protection order intended to protect the noncitizen, or (III) the noncitizen committed, was arrested for, was convicted of, or plead guilty to committing a crime (aa) that did not result in serious bodily injury, and (bb) where there was a connection between the crime and the noncitizen’s having been

² IIRAIRA § 350.

³ There is a question whether this waiver applies to convictions of child abuse, neglect, or abandonment, under (a)(2)(E)(i), since they are not specifically named in the waiver provision. But see N. TOOBY, CRIMINAL DEFENSE OF IMMIGRANTS (2001), Chapter V, Parentheticals.

battered or subjected to extreme cruelty.” INA § 237(a)(7)(A), 8 U.S.C. § 1227(a)(7)(A).

[7] *Domestic violence protection order violation court finding.* A court finding of a violation of the portion of a protection order that protects against “credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued” The violation must have occurred after September 30, 1996.⁴ “Protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.” INA § 237(a)(2)(E)(ii), 8 U.S.C. § 1227(a)(2)(E)(ii). NOTE: This deportation ground, strictly speaking, does not require a criminal conviction. A court finding of a violation of the portion of a domestic-violence protection order is sufficient. A criminal conviction that encompasses the elements of this deportation ground, however, is also sufficient to require deportation.

Waiver: The Attorney General may waive the domestic-violence deportation ground “(with respect to crimes of domestic violence and crimes of stalking)”⁵ in the case of a noncitizen who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship, “upon a determination that (I) the noncitizen was acting in self defense, or (II) the noncitizen was found to have violated a protection order intended to protect the noncitizen, or (III) the noncitizen committed, was arrested for, was convicted of, or plead guilty to committing a crime (aa) that did not result in serious bodily injury, and (bb) where there was a connection between the crime and the noncitizen’s having been battered or subjected to extreme cruelty.” INA § 237(a)(7)(A), 8 U.S.C. § 1227(a)(7)(A).

[8] *Export violation conduct.* Any noncitizen who “has engaged, is engaged, or at any time after admission engages in” any activity to violate or evade any law prohibiting the export from the United States of goods,

⁴ IIRAIRA § 350(b).

⁵ See FN 3, *supra*.

technology, or sensitive information. INA § 237(a)(4)(A)(i), 8 U.S.C. § 1227(a)(4)(A)(i). NOTE: No conviction is required to establish this ground of deportation.

This includes any activity to violate or evade the following laws:

22 U.S.C. § 2778(c) (exporting defense articles or services without a license or making a material false statement or omission in a related document, punishable by up to 10 years in custody).

22 U.S.C. § 2280(j) (exporting munitions to countries supporting acts of international terrorism, punishable by up to 10 years in custody).

50 U.S.C. App. § 2410(a) (knowingly violating, attempting or conspiring to violate 50 U.S.C. App. §§ 2401-2420 or any regulation thereunder, punishable by five years and fine).

50 U.S.C. App. § 2410(b)(1) (willfully violating, attempting or conspiring to violate 50 U.S.C. App. §§ 2401-2420 or any regulation thereunder, with knowledge that exports involved will be used for the benefit of any country to which exports are controlled for foreign policy purposes, punishable by 10 years and fine).

50 U.S.C. App. § 2410(b)(2) (licensee willfully failing to report use of export in violation of conditions of license, punishable by five years and fine).

50 U.S.C. App. § 2410(b)(3) (possessing any goods or technology with intent to export them in violation of an export control imposed under 50 U.S.C. App. § 2404 or any regulation issued with respect to it, or knowing or having reason to believe the goods or technology would be so exported, punishable by 10 years and fine).

50 U.S.C. App. § 2410(b)(3) (possessing any goods or technology with intent to export them in violation of an export control imposed under 50 U.S.C. App. § 2405 or any regulation issued with

respect to it, or knowing or having reason to believe the goods or technology would be so exported, punishable by five years and fine).

50 U.S.C. App. § 2410(b)(4) (acting with intent to evade 50 U.S.C. App. §§ 2401-2420 or any regulation thereunder, punishable by five years and fine, except to evade an export control imposed under §§ 2404-2405 is punishable by 10 years and fine).

[9] *Firearms or destructive device conviction.* Conviction after admission of violation of “any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of 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). INA § 237(a)(2)(C), 8 U.S.C. § 1227(a)(2)(C).

II. Immigration Grounds

[10] *Border crossing conviction.* A noncitizen is deportable if convicted of a violation of INA § 215, 8 U.S.C. § 1185, making it illegal for any noncitizen or citizen to commit various acts related to entry to or departure from the United States in violation of law. INA § 237(a)(2)(D)(iv), 8 U.S.C. § 1237(a)(2)(D)(iv). NOTE: The subsection of INA § 215 that prescribed sanctions for violations of this statute was repealed in 1978. Act of Oct. 7, 1978, § 707, Pub. L. No. 95-426, 92 Stat. 992. It is unclear how anyone could be convicted of violating this section in the absence of any provision for criminal penalties, unless there is some catch-all statute that prescribes penalties for violation of this statute.

[11] *Failure to file change of address conduct.* A noncitizen required to register with the immigration authorities⁶ is deportable if s/he fails to comply with INA § 265, 8 U.S.C. § 1305, which requires him or her to notify the INS of a change of address within 10 days. INA § 237(a)(3)(A), 8 U.S.C. §

⁶ Every noncitizen in the U.S. who is 14 years or older, has not been registered and fingerprinted under 8 U.S.C. § 1291(b) or Alien Registration Act, 1940, §§ 30-31 [repealed effective December 24, 1952, 66 Stat. 280], and remains in the U.S. for 30 days or longer, must apply for registration and be fingerprinted prior to the expiration of the 30 days. 8 U.S.C. § 1302(a).

1227(a)(3)(A). NOTE: A conviction is not required for this ground of deportation.

Exception: The noncitizen is not deportable if the Attorney General finds the failure was reasonably excusable or not willful. INA § 237(a)(3)(A), 8 U.S.C. § 1227(a)(3)(A).

Waiver: This deportation ground shall not apply to a special immigrant juvenile⁷ based upon circumstances that existed before the date s/he was granted that status. INA § 237(c), 8 U.S.C. § 1227(c).

[12] *False claim to U.S. citizenship conduct.* Any noncitizen who falsely represents himself or herself to be a citizen of the United States for any purpose or benefit under immigration laws or any state or federal law. INA § 237(a)(3)(D)(i), 8 U.S.C. § 1227(a)(3)(D)(i). NOTE: No conviction is required to establish this ground of deportation.

Exception: If each natural or adoptive parent of the noncitizen is or was a citizen, the noncitizen permanently resided in the U.S. before turning 16, and s/he reasonably believed at the time of making the representation that s/he was a citizen, the noncitizen “shall not be considered to be deportable under any provision of this subsection [INA § 237(a), 8 U.S.C. § 1227(a)]⁸ based on such representation.” INA § 237(a)(3)(D)(ii), 8 U.S.C. § 1227(a)(3)(D)(ii).

[13] *Fraud – document fraud administrative finding.* A noncitizen who is the subject of a “final order” for violation of INA § 274C, 8 U.S.C. § 1324c (document fraud prohibited by this section includes (1) knowingly forging any document for the purpose of satisfying an immigration requirement, or

⁷ 8 U.S.C. § 1101(a)(27)(J) provides that an immigrant, present in the United States, (i) who has been declared dependent on a juvenile court located in the United States as eligible for long-term foster care due to abuse, neglect, or abandonment, (ii) for whom the court has determined it would not be in his or her best interests to be returned to their previous country of nationality or habitual residence, and (iii) in whose care the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status.

⁸ Under the nomenclature used in the INA, “section” refers to the entire statute, e.g., 8 U.S.C. § 1182, “subsection” refers to the lettered subdivision, e.g., 8 U.S.C. § 1182(a), and paragraph can refer to any lesser division of a statute, e.g., 8 U.S.C. § 1182(a)(1) and 8 U.S.C. § 1182(a)(1)(A). See 8 U.S.C. § 1227(c).

obtaining an immigration benefit, (2) knowingly possessing any false document for the same purposes, (3) using or providing valid document to someone other than the person authorized for the same purposes, (4) receiving or accepting any valid document with respect to an improper person for the same purposes, (5) preparing any immigration application or evidence with knowledge or reckless disregard for the fact it was falsely made or does not apply to the person referred to, or (6) presenting to an airline an entry document and failing to present it to an immigration officer upon arrival in the U.S.). INA § 237(a)(3)(C)(i), 8 U.S.C. § 1227(a)(3)(C)(i). NOTE: The referenced statute provides for a hearing, followed by a cease and desist order with civil monetary penalty, followed by administrative appellate review, and finally judicial review in the federal court of appeals.⁹ After judicial review, the order would be final, and deportation proceedings could be initiated on this basis. NOTE: No conviction is required to establish this ground of deportation.

Waiver: The Attorney General may waive deportability on this ground for a lawful permanent resident if no previous civil money penalty was imposed under this statute, and the offense was committed solely to assist the person's spouse or child. No court may review a decision to grant or deny this waiver. INA § 237(a)(3)(C)(ii), 8 U.S.C. § 1227(a)(3)(C)(ii).

Waiver: The Attorney General may also waive the penalties imposed by violation of INA § 274C(a)(6), 8 U.S.C. § 1324c(a)(6) (failure to present documents showing eligibility to enter United States to common carrier or immigration official), if the noncitizen is granted asylum or withholding of removal under the INA. INA § 274C(d)(7), 8 U.S.C. § 1324c(d)(7).

[14] *Fraud – marriage fraud conduct.* A noncitizen is deportable for visa fraud, and as being present in violation of law if:

The noncitizen has obtained any admission on the basis of a marriage entered into less than two years prior to the admission, which within two years after any admission is judicially annulled or terminated, unless the noncitizen establishes to the satisfaction of the Attorney General that the marriage was not contracted for the purpose of evading immigration law.

⁹ 8 U.S.C. § 1324c(d)(2)-(5).

INA § 237(a)(1)(G)(i), 8 U.S.C. § 1227(a)(1)(G)(i). NOTE: No conviction is required to establish this ground of deportation.

The Attorney General finds that the noncitizen has failed or refused to fulfill his or her marital agreement, which the Attorney General believes was made for the purpose of procuring the noncitizen's admission as an immigrant. INA § 237(a)(1)(G)(ii), 8 U.S.C. § 1227(a)(1)(G)(ii). NOTE: No conviction is required to establish this ground of deportation.

[15] *Fraud – registration document fraud conviction.* A conviction at any time for

False statement in alien registration process. INA § 266(c), 8 U.S.C. § 1306(c) (knowingly make a false statement in application for registration or attempt to procure registration through fraud; “any [noncitizen] so convicted shall, upon the warrant of the Attorney General, be taken into custody and be removed in the manner provided in part IV of this subchapter.”). INA § 237(a)(3)(B)(i), 8 U.S.C. § 1227(a)(3)(B)(i).

False statement in former alien registration process. Alien Registration Act, 1940, § 36(c). INA § 237(a)(3)(B)(i), 8 U.S.C. § 1227(a)(3)(B)(i). NOTE: This provision was formerly codified at 8 U.S.C. § 457. (Acts June 28, 1940, c. 439, Title III, § 36, 54 Stat. 675.) This provision was repealed, effective, December 24, 1952. (Acts June 27, 1952, c. 477, Title IV, § 403(a)(39), 66 Stat. 280.) The substance is now covered by 8 U.S.C. § 1306. (See 8 U.S.C.A. § 451 ff., Historical and Statutory Notes, p. 32.) The new provision cannot be described as “Alien Registration Act, 1940, § 36(c).” Therefore, this provision should render deportable only convictions that occurred before its repeal in 1952.

[16] *Fraud – visa fraud conviction.* A conviction of a violation of, or attempt or conspiracy to violate, 18 U.S.C. § 1546, “(relating to fraud and misuse of visas, permits, and other admission documents).” INA § 237(a)(3)(B)(iii), 8 U.S.C. § 1227(a)(3)(B)(iii). NOTE: Section 1546(a) of the United States Code penalizes knowingly forging, altering, or possessing any visa or other entry document or evidence of authorized stay or

employment, or impersonating another when applying for a permit or entry, or knowingly making under oath any false statement with respect to a material fact in any document required by the immigration laws by a maximum of 25 years if committed to facilitate terrorism,¹⁰ 20 years if committed to facilitate a drug trafficking crime,¹¹ 10 years for a first or second offense, or 15 years for any other offense. The statute also prohibits knowingly and improperly using an identification document or a false document for the purpose of satisfying a requirement of INA § 274A(b), 8 U.S.C. § 1324a (unlawful employment of noncitizens), and punishes the offense by up to five years. 18 U.S.C. § 1546(b).

[17] *High speed flight from immigration checkpoint conviction.* Conviction of a violation of 18 U.S.C. § 758 (relating to high speed flight from an immigration checkpoint). INA § 237(a)(2)(A)(iv), 8 U.S.C. § 1227(a)(2)(A)(iv).

Waiver: Full and unconditional pardon granted by U.S. President. INA § 237(a)(2)(A)(v), 8 U.S.C. § 1227(a)(2)(A)(v).

[18] *Public charge conduct.* Any noncitizen who has become a public charge within five years after entry from causes not affirmatively shown to have arisen since entry. INA § 237(a)(5), 8 U.S.C. § 1227(a)(5). NOTE: No conviction is required to establish this ground of deportation.

[19] *Smuggling – alien smuggling conduct.* Any noncitizen who: before, at or within five years after any entry, knowingly encouraged, induced, assisted, abetted, or aided any other noncitizen to enter or try to enter the United States in violation of law. INA § 237(a)(1)(E)(i), 8 U.S.C. § 1227(a)(1)(E)(i). NOTE: No conviction is required to establish this ground of deportation.

Exception: Noncitizens eligible for benefits under the Family Unity Program are not deportable under this section if: (1) they were present in the United States prior to May 5, 1988; (2) committed the act prior to that date; (3) aided only one who at that time was the person's spouse, parent or child;

¹⁰ 18 U.S.C. § 2331.

¹¹ 18 U.S.C. § 929(a).

and (4) they are seeking to adjust status through an immediate or second preference relative, or to otherwise apply for benefits under the family unity program. INA § 237(a)(1)(E)(ii), 8 U.S.C. § 1227(a)(1)(E)(ii).

RECENT UPDATE:

GROUND OF DEPORTATION – ALIEN SMUGGLING – EXCEPTION
Moran v. Ashcroft, ___ F.3d ___, 2005 WL 107079 (9th Cir. Jan. 20, 2005) (with respect to acts of smuggling noncitizens into the United States occurring after May 5, 1988, the "family member" exception to the smuggling provision does not apply to a spouse who was not a spouse at the time of the smuggling).

<http://caselaw.lp.findlaw.com/data2/circs/9th/0273551p.pdf>

Waiver: Humanitarian or public interest waiver for lawful permanent residents who aided only one who at that time was the applicant's spouse, parent or child. INA § 237(a)(1)(E)(iii), 8 U.S.C. § 1227(a)(1)(E)(iii).

[20] *Smuggling – importation for immoral purpose conviction.* Conviction for violation of INA § 278, 8 U.S.C. § 1328 (importing, holding, or harboring noncitizen for prostitution or any other immoral purpose punishable by up to 10 years). INA § 237(a)(2)(D)(iv), 8 U.S.C. § 1227(a)(2)(D)(iv).

[21] *Unlawful voting conduct.* A noncitizen who has voted in violation of any Federal, State, or local law or regulation. INA § 237(a)(6)(A), 8 U.S.C. § 1227(a)(6)(A). NOTE: No conviction is required to establish this ground of deportation.

Exception: If each natural or adoptive parent is or was a citizen, the noncitizen permanently resided in the United States before reaching 16, and s/he reasonably believed at the time that s/he was a U.S. citizen, s/he shall not be deportable under any provision of this subsection [INA § 237(a), 8 U.S.C. § 1227(a)]¹² based on this violation. INA § 237(a)(6)(B), 8 U.S.C. § 1227(a)(6)(B).

¹² Under the nomenclature used in the INA, "section" refers to the entire statute, e.g., 8 U.S.C. § 1182, "subsection" refers to the lettered subdivision, e.g., 8 U.S.C. § 1182(a), and paragraph can refer to any lesser division of a statute, e.g., 8 U.S.C. § 1182(a)(1) and 8 U.S.C. § 1182(a)(1)(A). See 8 U.S.C. § 1227(c).

III. Immigration Status Violation Grounds

[22] *Conditional permanent residence termination conduct.* Noncitizen deportable upon termination of conditional permanent resident status under INA § 216, 8 U.S.C. § 1186a (marriage-based) or INA § 216A, 8 U.S.C. § 1186b (based on entrepreneur status). INA § 237(a)(1)(D)(ii), 8 U.S.C. § 1227(a)(1)(D)(i). NOTE: No conviction is required to establish this ground of deportation.

Exception: This ground does not apply if (1) termination of status would result in extreme hardship, (2) the marriage was entered in good faith, but the marriage was terminated (other than through death of the spouse), and the noncitizen was not at fault in failing to meet the requirements to have the conditional status removed, or (3) the noncitizen, or the noncitizen's child was subject to abuse by the petitioning spouse, and the noncitizen was not at fault for failure to meet the requirements to have the conditional status removed. INA § 237(a)(1)(D)(ii), 8 U.S.C. § 1227 (a)(1)(D)(ii); INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4).

Waiver: This deportation ground shall not apply to a special immigrant juvenile¹³ based upon circumstances that existed before the date s/he was granted that status. INA § 237(c), 8 U.S.C. § 1227(c).

[23] *Health entry conditions violation conduct.* Any noncitizen whom the Secretary of Health & Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under INA § 212(g), 8 U.S.C. § 1182(g) (limitations on bond and admission of the mentally handicapped or ill, and those with tuberculosis). INA § 237(a)(1)(C)(ii), 8 U.S.C. § 1227(a)(1)(C)(ii). NOTE: No conviction is required to establish this ground of deportation.

Waiver: This deportation ground shall not apply to a special immigrant juvenile¹⁴ based upon circumstances that existed before the date s/he was granted that status. INA § 237(c), 8 U.S.C. § 1227(c).

¹³ See FN 7, *supra*.

¹⁴ See FN 7, *supra*.

[24] *Inadmissibility at adjustment of status conduct.* Any noncitizen who, at the time of adjustment of status, was within one or more classes of noncitizens inadmissible under the law at the time of entry. INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A). NOTE: Grounds of inadmissibility should be consulted here. See INA § 212, 8 U.S.C. § 1182. NOTE: No conviction is required to establish this ground of deportation.

Waiver: Visa fraud discretionary waiver available for a noncitizen who is the spouse, parent, or child of USC or LPR and was admissible except for labor certification requirements or documentation requirements which were a direct result of the misrepresentation. INA § 237(a)(1)(H)(i), 8 U.S.C. § 1227(a)(1)(H)(i).

Waiver: Visa fraud discretionary waiver available for certain noncitizens and their children who have been subject to battery or extreme cruelty by a spouse. INA § 237(a)(1)(H)(ii), 8 U.S.C. § 1227(a)(1)(H)(ii).

Waiver: This deportation ground shall not apply to a special immigrant juvenile¹⁵ based upon circumstances that existed before the date s/he was granted that status, unless the noncitizen is inadmissible on the basis of a ground of inadmissibility described in INA § 212(a)(2), 8 U.S.C. § 1182(a)(2) [crime-related grounds of inadmissibility] or (3) [security and related grounds of inadmissibility]. INA § 237(c), 8 U.S.C. § 1227(c).

[25] *Inadmissibility at entry conduct.* Any noncitizen who, at the time of entry, was within one or more classes of noncitizens inadmissible under the law at the time of entry. INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A). NOTE: Grounds of inadmissibility should be consulted here. See INA § 212, 8 U.S.C. § 1182. NOTE: No conviction is required to establish this ground of deportation.

Waiver: Visa fraud discretionary waiver available for a noncitizen who is the spouse, parent, or child of USC or LPR and was admissible except for labor certification requirements or documentation requirements

¹⁵ See FN 7, *supra*.

which were a direct result of the misrepresentation. INA § 237(a)(1)(H)(i), 8 U.S.C. § 1227(a)(1)(H)(i).

Waiver: Visa fraud discretionary waiver available for certain noncitizens and their children who have been subject to battery or extreme cruelty by a spouse. INA § 237(a)(1)(H)(ii), 8 U.S.C. § 1227(a)(1)(H)(ii).

Waiver: This deportation ground shall not apply to a special immigrant juvenile¹⁶ based upon circumstances that existed before the date s/he was granted that status, unless the noncitizen is inadmissible on the basis of a ground of inadmissibility described in INA § 212(a)(2), 8 U.S.C. § 1182(a)(2) [crime-related grounds of inadmissibility] or (3) [security and related grounds of inadmissibility]). INA § 237(c), 8 U.S.C. § 1227(c).

[26] *Nonimmigrant status violation conduct.* Any noncitizen admitted as a nonimmigrant, who has failed to maintain status under, or meet conditions of, nonimmigrant visa. INA § 237(a)(1)(C)(i), 8 U.S.C. § 1227(a)(1)(C)(i). NOTE: No conviction is required to establish this ground of deportation.

Waiver: This deportation ground shall not apply to a special immigrant juvenile¹⁷ based upon circumstances that existed before the date s/he was granted that status. INA § 237(c), 8 U.S.C. § 1227(c).

Waiver: Accredited diplomats and members of their immediate families,¹⁸ who fail to maintain status, shall not be required to depart from the United States without the approval of the Secretary of State unless they are subject to deportation under INA § 237(a)(4), 8 U.S.C. § 1227(a)(4), for espionage, sabotage, exporting goods or sensitive information, any other criminal activity that endangers public safety or national security, or acting in opposition to the U.S. government by force, terrorist activities, causing adverse foreign policy consequences, or participation in Nazi persecution or genocide. INA § 237(b), 8 U.S.C. § 1227(b).

[27] *Present in the United States in violation of law conduct.* Any noncitizen present in the United States in violation of law. INA §

¹⁶ See FN 7, *supra*.

¹⁷ See FN 7, *supra*.

¹⁸ 8 U.S.C. §§ 1101(a)(15)(A)(1), 1101(a)(15)(G)(i).

237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B). NOTE: No conviction is required to establish this ground of deportation.

Waiver: This deportation ground shall not apply to a special immigrant juvenile¹⁹ based upon circumstances that existed before the date s/he was granted that status. INA § 237(c), 8 U.S.C. § 1227(c).

[28] *Visa revocation conduct.* Any noncitizen is deportable if the visa or other documentation authorizing the noncitizen's admission into the United States as a nonimmigrant has been revoked under INA § 221(i), 8 U.S.C. § 1201(i) (revocation of visas). INA § 237(a)(1)(B), 8 U.S.C. § 1237(a)(1)(B), as amended by Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), § 5304, Pub. L. No. 108-458; S. 2845, 108th Congress (effective Dec. 17, 2004, the date of enactment, "and shall apply to revocations under sections 205 and 221(i) of the Immigration and Nationality Act (8 U.S.C. 1155, 1201(i)) made before, on, or after such date."). NOTE: No conviction is required to establish this ground of deportation.

Waiver: This deportation ground shall not apply to a special immigrant juvenile²⁰ based upon circumstances that existed before the date s/he was granted that status. INA § 237(c), 8 U.S.C. § 1227(c).

IV. Security Grounds

[29] *Enemy citizens during wartime conduct.* When war is declared between the United States and any foreign country or government, or any foreign nation or government threatens, attempts, or perpetrates any invasion of the United States, and the President makes a public proclamation of the event, all noncitizens who are citizens of a hostile nation or government, 14 years of age and older, who are in the United States, are liable to be removed as noncitizen enemies. 50 U.S.C. § 21. NOTE: This ground of deportation is not listed in INA § 237, 8 U.S.C. § 1227. NOTE: No conviction is required to establish this ground of deportation.

¹⁹ See FN 7, *supra*.

²⁰ See FN 7, *supra*.

[30] *Espionage conduct.* Any noncitizen who “has engaged, is engaged, or at any time after admission engages in” any activity to violate any law of the U.S. relating to espionage (18 U.S.C., Chapter 37, §§ 792-799, consists of the chapter on “Espionage and Censorship”). INA § 237(a)(4)(A)(i), 8 U.S.C. § 1227(a)(4)(A)(i). NOTE: No conviction is required to establish this ground of deportation.

[31] *Espionage conviction.* Final conviction at any time of a violation of, or conspiracy or attempt to violate, any offense under chapter 37 of title 18 of the United States Code (relating to espionage),²¹ for which a term of five or more years may be imposed. INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i).

This includes convictions of violating 18 U.S.C. §§

792 (harboring or concealing person who has committed or is about to commit a violation of 18 U.S.C. §§ 793 (gathering, transmitting, or losing defense information), or 794 (same to aid a foreign government) is punishable by up to 10 years);

793 (gathering, transmitting, or losing defense information is punishable by up to 10 years);

794 (same to aid a foreign government punishable by death or life); and

798 (disclosure of classified information is punishable by up to 10 years).

[32] *Extrajudicial killing conduct.* Noncitizens are deportable who have, outside the United States, committed, ordered, incited, assisted, or otherwise participated in the commission of, under color of law of any foreign nation, any extrajudicial killing, as defined in Torture Victim Protection Act of

²¹ Chapter 37 is entitled “Espionage and Censorship,” suggesting it contains offenses related to those two topics. The deportation provision, however, specifies only those offenses contained in Chapter 37 “(relating to espionage).” This would seem to exclude offenses within the chapter relating to censorship but not espionage. But see N. TOOBY, *CRIMINAL DEFENSE OF IMMIGRANTS* (2001), Chapter 5, “Parentheticals.”

1991, § 3(a), 28 U.S.C. § 1350 note. INA § 237(a)(4)(D), 8 U.S.C. § 1237(a)(4)(D), referencing INA § 212(a)(3)(E)(iii)(II), 8 U.S.C. § 1182(a)(3)(E)(iii)(II), as amended Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), § 5501, Pub. L. No. 108-458; S. 2845, 108th Congress (Dec. 17, 2004) (covering offenses committed before, on, or after the date of enactment of this Act). NOTE: No conviction is required to establish this ground of deportation.

[33] *Foreign Agent Registration Act conviction.* A violation of, or attempt or conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 [22 U.S.C. §§ 611-621]. INA § 237(a)(3)(B)(ii), 8 U.S.C. § 1227(a)(3)(B)(ii). NOTE: The Foreign Agents Registration Act prohibits willful violation of “any provision of this subchapter [§§611-621] or any regulation thereunder” 22 U.S.C. § 618(a)(1). It also proscribes willfully making a false statement of a material fact, or omitting any material fact. 22 U.S.C. § 618(a)(2). The maximum penalty is five years and a fine of \$10,000, except that violations of §§ 614(b), (e), or (f), and 618(g), or (h) are punishable by a maximum of six months and a fine of \$5,000. *Id.* This statute also provides that: “Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provision of this subchapter [§§611-621] or any regulation thereunder shall be subject to removal pursuant to chapter 4 of title II of the Immigration and Nationality Act [8 U.S.C. § 1221 et seq.]” 22 U.S.C. § 618(c).

[34] *Foreign espionage trainee registration conviction.* Any noncitizen convicted of a violation of the Act of August 1, 1956, Ch 849, 70 Stat. 899 (50 U.S.C. §§ 851, *et seq.*), governing registration of certain persons trained in foreign espionage systems, or of a violation of any regulation under the Act, is subject to deportation. 50 U.S.C. § 855(b). NOTE: This ground of deportation is not listed in INA § 237, 8 U.S.C. § 1227.

[35] *Foreign policy conduct.* A noncitizen whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States. INA § 237(a)(4)(C)(i), 8 U.S.C. § 1227(a)(4)(C)(i). NOTE: No conviction is required to establish this ground of deportation.

Exception: A noncitizen who is an official of a foreign government or electoral candidate for such office during the period immediately preceding the election shall not be deported solely because his or her past, current, or expected beliefs, statements, or associations if they would be lawful within the United States. INA § 237(a)(4)(C)(ii), 8 U.S.C. § 1227(a)(4)(C)(ii), referring to INA § 212(a)(3)(C)(ii); 8 U.S.C. § 1182(a)(3)(C)(ii).

Exception: A noncitizen, not described in clause (ii), shall not be deportable because of his or her past, current, or expected beliefs, statements, or associations if they would be lawful within the United States, unless the Secretary of State personally determines that the person's deportation would compromise a compelling United States foreign policy interest. INA § 237(a)(4)(C)(ii), 8 U.S.C. § 1227(a)(4)(C)(ii), referring to INA § 212(a)(3)(C)(iii), 8 U.S.C. § 1182(a)(3)(C)(iii).

[36] *Genocide conduct.* Noncitizens are deportable who have, outside the United States, committed, ordered, incited, assisted, or otherwise participated in the commission of any act that would, if committed in the United States or by a United States national constitute genocide (as defined under 18 U.S.C. § 1091(a)). INA § 237(a)(4)(D), 8 U.S.C. § 1237(a)(4)(D), referencing INA § 212(a)(3)(E)(ii), 8 U.S.C. § 1182(a)(3)(E)(ii), as amended Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), § 5501, Pub. L. No. 108-458; S. 2845, 108th Congress (Dec. 17, 2004) (covering offenses committed before, on, or after the date of enactment of this Act). NOTE: No conviction is required to establish this ground of deportation.

[37] *National security violation conduct.* Any noncitizen who “has engaged, is engaged, or at any time after admission engages in” any criminal activity, other than that listed in INA § 237(a)(4)(A)(i), 8 U.S.C. § 1227(a)(4)(A)(i) [espionage, sabotage, export violations], which endangers public safety or national security. INA § 237(a)(4)(A)(ii), 8 U.S.C. § 1227(a)(4)(A)(ii). NOTE: No conviction is required to establish this ground of deportation.

[38] *Nazi persecutors conduct.* A noncitizen who from March 23, 1933 to May 8, 1945, in association with the Nazi government of Germany, or its allies or dependents, participated in the persecution of any person because of

race, religion, national origin, or political opinion. INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D), referring to INA § 212(a)(3)(E)(i), 8 U.S.C. § 1182(a)(3)(E)(i). NOTE: No conviction is required to establish this ground of deportation.

[39] *Neutrality law conviction.* A noncitizen is deportable if convicted of a violation of the neutrality law, which forbids aiding or participating in a military expedition from the United States against any foreign people with whom the United States is at peace. 18 U.S.C. § 960. NOTE: A defendant convicted under this section shall be fined or imprisoned not more than three years. INA § 237(a)(2)(D)(ii); 8 U.S.C. § 1227(a)(2)(D)(ii).

[40] *Overthrow of the government conduct.* Any noncitizen who “has engaged, is engaged, or at any time after admission engages in” any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means. INA § 237(a)(4)(A)(iii), 8 U.S.C. § 1227(a)(4)(A)(iii). NOTE: No conviction is required to establish this ground of deportation.

[41] *Public safety conduct.* Any noncitizen who “has engaged, is engaged, or at any time after admission engages in” any criminal activity which endangers public safety or national security. INA § 237(a)(4)(A)(ii), 8 U.S.C. § 1227(a)(4)(A)(ii). NOTE: No conviction is required to establish this ground of deportation.

[42] *Religious freedom violation conduct.* Noncitizens are deportable who, while serving as foreign government officials, were "responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402)." INA § 237(a)(4)(E), 8 U.S.C. § 1237(a)(4)(E), added by the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), § 5502, Pub. L. No. 108-458; S. 2845, 108th Congress (Dec. 17, 2004). NOTE: There now appear to be two distinct statutes both numbered INA § 237(a)(4)(E), 8 U.S.C. § 1227(a)(4)(E). *Compare* IRTPA § 5502 [religious freedom violation], *with* IRTPA § 5402 [terrorist training recipient]. NOTE: No conviction is required to establish this ground of deportation.

[43] *Sabotage conduct.* Any noncitizen who “has engaged, is engaged, or at any time after admission engages in” any activity to violate any law of the U.S. relating to sabotage. INA § 237(a)(4)(A)(i), 8 U.S.C. § 1227(a)(4)(A)(i). NOTE: 18 U.S.C., Chapter 105, §§ 2151-2156, consists of the chapter on “Sabotage.” NOTE: No conviction is required to establish this ground of deportation.

[44] *Sabotage conviction.* Final conviction at any time of a violation of, or conspiracy or attempt to violate, any offense under 18 U.S.C., chapter 105 (relating to sabotage),²² for which a term of five or more years may be imposed. INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i).

This includes convictions of violating 18 U.S.C. §§

2152 (willful trespass on, injure, or interfere with operation of any harbor-defense system or knowingly, willfully, or wantonly violate any Presidential regulation governing persons or vessels within defensive sea areas is punishable by up to five years);

2153 (destruction of war material, during war or national emergency, with intent to obstruct U.S. war efforts is punishable by up to 30 years);

2154 (production of defective war material with intent to obstruct U.S. defense activities is punishable by up to 30 years);

2155 (destruction of national defense material with intent to obstruct U.S. national defense is punishable by up to 10 years);

²² Chapter 105 is entitled “Sabotage.” The deportation provision specifies only those offenses contained in Chapter 105 “(relating to sabotage).” This would seem to exclude offenses within the chapter that do not relate to sabotage. In particular, violation of certain provisions of 18 U.S.C. § 2152 can be committed merely by trespassing upon forbidden areas, or violating any Presidential regulation governing defensive sea areas, without actually committing or attempting sabotage and without any intent to interfere with U.S. defense efforts. Logically, these violations cannot be said to be “relating to sabotage,” and so should be excluded from this ground of deportation. But see N. TOOBY, *CRIMINAL DEFENSE OF IMMIGRANTS* (2001), Chapter 5, “Parentheticals.”

2156 (production of defective national defense material with intent to obstruct U.S. national defense activities is punishable by up to 10 years).

[45] *Selective Service conviction.* Conviction of violation of any provision of the Military Selective Service Act (50 U.S.C. App. §§ 451-471a). INA § 237(a)(2)(D)(iii), 8 U.S.C. § 1227(a)(2)(D)(iii). NOTE: Selective Service offenses are particularly defined in § 462. This statute prohibits knowingly (1) failing to carry out any duty provided by this Act or regulations, (2) making any false or improper decision or statement under the law or regulations, or (3) otherwise evading registration or service, or (4) interfering with the administration of the law, or attempting or conspiring to do so, and establishes a maximum penalty of five years and \$10,000 fine. (50 U.S.C. App. § 462(a).) It also penalizes knowingly (1) transferring false identification or Selective Service document for the purpose of aiding the making of any false identification or representation, (2) possesses any Selective Service certificate not issued to him for the purpose of false identification or representation, (3) changes any such certificate, (4) counterfeits any such certificate with intent that it be used for any purpose of false identification or representation, (5) knowingly possessing any counterfeit or false certificate, or (6) knowingly violates or evades any provision of this Act or regulations, and provides a maximum penalty of five years imprisonment and a \$10,000 fine. (50 U.S.C. App. § 462(b).) NOTE: It may be important to verify that the noncitizen has not received a pardon under the various Executive Orders relating to amnesty for draft offenders following the Vietnam War. See 50 U.S.C.A. App. § 462, pp. 394-398 (1990).

[46] *Terrorist conduct.* Any noncitizen who has engaged, is engaged, or at any time after admission engages in any terrorist activity (as defined in INA § 212(a)(3)(B)(iv); 8 U.S.C. § 1182(a)(3)(B)(iv)).²³ INA § 237(a)(4)(B), 8

²³ 8 U.S.C. § 1182(a)(3)(B)(iii) provides: “[T]he term ‘terrorist activity’ means any activity which is unlawful under the laws of the place where it is committed (or which, if committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following: (I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle). (II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained). (III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of Title 18) or upon the

U.S.C. § 1227(a)(4)(B). NOTE: No conviction is required to establish this ground of deportation.

RECENT UPDATE:

TERRORISM - PROHIBITION ON FINANCIAL SUPPORT

United States v. Afshari, ___ F.3d ___ (9th Cir. Oct. 20, 2005) (8 U.S.C. § 1189, statute prohibiting financial support to organizations designated as "terrorist" is constitutional, despite fact that defendants are precluded from collaterally attacking the designation).

[47] *Terrorist training recipient conduct.* Noncitizens are deportable if they have received military-type training from, or on behalf of, an organization listed as a terrorist organization (as defined by INA § 212(a)(3)(B)(vi)(I) or (II), 8 U.S.C. § 1182(a)(3)(B)(vi) (I) or (II)) at the time of the training. INA § 237(a)(4)(E), 8 U.S.C. § 1237(a)(4)(E), added by Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), § 5402, Pub. L. No. 108-458; S. 2845, 108th Congress (Dec. 17, 2004). NOTE: Receiving military-type training from, or on behalf of a terrorist organization (as defined by INA § 212(a)(3)(B)(vi), 8 U.S.C. § 1182(a)(3)(B)(vi)), is a federal criminal offense, in violation of 18 U.S.C. § 2339D, punishable by up to 10 years in prison. NOTE: There now appear to be two distinct statutes both numbered INA § 237(a)(4)(E), 8 U.S.C. § 1227(a)(4)(E). *Compare* IRTPA § 5502 [religious freedom violation], *with* IRTPA § 5402 [terrorist training recipient]. NOTE: No conviction is required to establish this ground of deportation.

[48] *Threats against the President and successors conviction.* This includes conviction of any offense under 18 U.S.C. §§ 871 (mailing threats against the President and successors punishable by up to five years).²⁴ INA § 237(a)(2)(D)(ii), 8 U.S.C. § 1227(a)(2)(D)(ii).

[49] *Torture conduct.* Noncitizens are deportable who have, outside the United States, committed, ordered, incited, assisted, or otherwise

liberty of such a person. (IV) An assassination. (V) The use of any – (a) biological agent, chemical agent, or nuclear weapon or device, or (b) explosive or firearm (other than for mere personal monetary gain), [all of the above (I) through (V)] with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.”

²⁴ 18 U.S.C. § 871 (mailing any writing containing any threat to kill, kidnap, or inflict bodily harm on the President, President-elect, Vice President, or other officer next in succession to the President, Vice President-elect punishable by up to five years).

participated in the commission of any act of torture, as defined in 18 U.S.C. § 2340. INA § 237(a)(4)(D), 8 U.S.C. § 1237(a)(4)(D), referencing INA § 212(a)(3)(E)(iii)(I), 8 U.S.C. § 1182(a)(3)(E)(iii)(I), as amended Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), § 5501, Pub. L. No. 108-458; S. 2845, 108th Congress (Dec. 17, 2004) (covering offenses committed before, on, or after the date of enactment of this Act). NOTE: No conviction is required to establish this ground of deportation.

[50] *Trading with the enemy conviction.* Conviction of violation of any provision of the Trading With the Enemy Act (50 U.S.C. App. §§ 1-6, 7-39, 41-44). INA § 237(a)(2)(D)(iii), 8 U.S.C. § 1227(a)(2)(D)(iii). NOTE: These offenses are limited to a war which has been declared by Act of Congress. There has been no declared war in effect since 1952. See 50 U.S.C.A. App., § 1, p. 5 (1990). This act prohibits (a) trading with an enemy or its ally without a license, (b) transportation of enemy or ally’s citizens into or out of the United States, and U.S. vessels’ captains transporting them anywhere, (c) sending a writing into or out of the United States to an enemy or its ally except in the regular course of mail, and (d) willfully evading censorship or use of code to conceal a message’s intended meaning. 50 U.S.C. App. § 3. The maximum penalty is 10 years in custody and a fine of \$100,000. 50 U.S.C. App. § 16(a).

[51] *Treason or sedition conviction.* Final conviction at any time of a violation of, or conspiracy or attempt to violate, any offense under 18 U.S.C., chapter 115 (relating to treason and sedition),²⁵ for which a term of five or more years may be imposed. INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i).

This includes convictions of violating 18 U.S.C. §§

2381 (treason, which consists in levying war against the United States, or adhering to its enemies, giving them aid and comfort is punishable by death);

²⁵ Chapter 115 is entitled “Treason, Sedition, and Subversive Activities.” The deportation provision specifies only those offenses contained in Chapter 115 “(relating to treason and sedition).” This would seem to exclude offenses within the chapter that do not relate to treason or sedition. But see N. TOOBY, CRIMINAL DEFENSE OF IMMIGRANTS (2001), Chapter 5, “Parentheticals.”

2382 (misprision of treason, i.e., knowing of treason and failing to disclose it is punishable by up to seven years);

2383 (inciting any rebellion or insurrection against the authority of laws of the U.S., or giving aid or comfort thereto is punishable by up to 10 years);

2384 (seditious conspiracy to overthrow by force the U.S. government or to conspire by force to prevent, hinder or delay the execution of any law of the United States is punishable by up to 20 years);

2385 (advocacy of the violent overthrow of the U.S. government or assassination of any U.S. government officer, or publication of any writing advocating forcible overthrow of the government, or organizing any group that advocates the violent overthrow of the government is punishable by up to 20 years);

2386 (failing to register, or making a false statement in registration materials, of any organization (a) that proposes to overthrow the U.S. government and receives aid from a foreign government, or (b) that proposes to overthrow the U.S. government and engages in civilian military activity; or (c) that receives foreign support and engages in civilian military activity; or (d) one purpose of which is the forcible overthrow of the government, is punishable by up to five years);

2387 (advising or causing insubordination in military with intent to reduce morale, or distributing such writings is punishable by up to 10 years);

2388 (during wartime, making a false statement with intent to interfere with U.S. military success or cause insubordination is punishable by up to 20 years);

2389 (recruiting soldiers to engage in armed hostilities against the United States is punishable by up to five years).