

# Checklist of Federal Drug Offenses

By Norton Tooby & Joseph Justin Rollin\*

The aggravated felony definition includes:

(a) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802(6), and

(b) "a drug trafficking crime (as defined in section 924(c) of title 18, United States Code) . . . ." INA § 101(a)(43)(B), 8 U.S.C. § 1101(a)(43)(B).

18 U.S.C. § 924(c)(2) provides: "For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)."

The Controlled Substances Act is codified at 21 U.S.C. §§ 801-904. See §§ (a)-(t), *infra*.

The Controlled Substances Import and Export Act is codified at 21 U.S.C. §§ 951-971. See §§ (u)-(bb), *infra*.

The Maritime Drug Law Enforcement Act is codified at 46 U.S.C. App. §§ 1901-1904. See §§ (ff), (gg), *infra*.

*Excluded Drug Offenses.* There are three controlled substances related offenses contained in 18 U.S.C., which do not appear to be contained within the three acts specified above, and which should therefore not trigger deportation as an aggravated felony under INA § 101(a)(43)(B), 8 U.S.C. § 1101(a)(43)(B). They are:

(1) 18 U.S.C. § 924(b) (transportation or receipt of firearm or ammunition in interstate or foreign commerce with intent or knowledge that it will be used to commit a felony),

---

\* This checklist was published as Appendix C to N. TOOBY & J. ROLLIN, CRIMINAL DEFENSE OF IMMIGRANTS 1643 (2007).

(2) 18 U.S.C. § 924(g) (interstate or foreign travel to attempt to obtain a firearm with intent to commit RICO offense, crime of violence, or any state or federal controlled substance offense), and

(3) 18 U.S.C. § 924(h) (transfer of firearm with knowledge it will be used to commit a crime of violence or drug trafficking offense).

A conviction of violation of one of these statutes, however, would fall within the controlled substances conviction ground of deportation. INA § 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i).

***Offenses Included in the Aggravated Felony Drug Trafficking Definition:***

- (a) 21 U.S.C. § 841 (manufacture, distribution, or possession with intent to distribute a controlled or counterfeit substance),<sup>1</sup>
- (b) 21 U.S.C. § 841(c)(unauthorized possession of listed chemicals with intent to manufacture a controlled substance or knowledge it will be used to do so or structuring transactions to avoid reporting requirements);
- (c) 21 U.S.C. § 841(e)(placing boobytraps on federal property where controlled substance is being held);
- (d) 21 U.S.C. § 841(g)(1)(knowingly distributes a listed chemical in violation of law);
- (e) 21 U.S.C. § 841(g)(1)(possession of a listed chemical with knowledge reporting requirements have been violated);
- (f) 21 U.S.C. §§ 842(a), 843(a)(unauthorized distribution of a controlled substance);
- (g) 21 U.S.C. § 842(b)(unauthorized manufacture of a controlled substance);
- (h) 21 U.S.C. § 843(b)(use of communication facility to commit felony listed in 21 U.S.C. §§ 801-971);
- (i) 21 U.S.C. § 844 (unauthorized possession of any controlled substance);
- (j) 21 U.S.C. § 848(a)(continuing criminal enterprise);
- (k) 21 U.S.C. § 849(b)(distribution or possession for sale within 1,000 feet of a truck stop or rest area);
- (l) 21 U.S.C. § 854(a)(investment of illicit drug profits);

---

<sup>1</sup> 21 U.S.C. § 841(a) proscribes knowingly or intentionally (1) “to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;” or (2) “to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.”

- (m) 21 U.S.C. § 856(knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance);
- (n) 21 U.S.C. § 859(distribution to persons under age 21);
- (o) 21 U.S.C. § 860(distribution or manufacture in or near school);
- (p) 21 U.S.C. § 860(c)(employing children under 18 to distribute drugs near schools and playgrounds);
- (q) 21 U.S.C. § 861(employment of persons under 18 years of age to commit any offense defined in 21 U.S.C. §§ 801-971);
- (r) 21 U.S.C. § 861(a)(3)(receipt of controlled substance from person under 18 years of age, other than an immediate family member, in violation of 21 U.S.C. §§ 801-971);
- (s) 21 U.S.C. § 861(a)(3)(distribution of controlled substance to pregnant individual, in violation of 21 U.S.C. §§ 801-904);
- (t) 21 U.S.C. § 863(a) (sale, offer for sale, use of mails or interstate commerce to transport, or to import or export drug paraphernalia);
- (u) 21 U.S.C. § 952(a) (importation of controlled substances or, if they are listed in schedules III, IV, or V, narcotic drugs);<sup>2</sup>
- (v) 21 U.S.C. §§ 953(a) (export of narcotic drugs listed in schedules III, IV, or V), 953(c)(export of nonnarcotic drugs listed in schedules I or II), 953(e)(export of nonnarcotic controlled substances in schedules III, or IV and controlled substances in schedule V);
- (w) 21 U.S.C. §§ 954, 961 (transshipment of controlled substances for import or export);
- (x) 21 U.S.C. § 955 (possession of certain undeclared controlled substances or narcotic drugs on vessels or aircraft arriving in United States),<sup>3</sup>
- (y) 21 U.S.C. § 959 (a)(manufacture or distribution of certain chemicals with knowledge or intent that they be illegally imported into the United States);

---

<sup>2</sup> 21 U.S.C. § 952(a) provides: “It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV or V of subchapter I of this chapter” (with exceptions for medical, scientific, or other legitimate purposes). Note that unlawful importation offenses under § 952(b) are not listed as offenses for which a juvenile may be transferred to adult court. 21 U.S.C. § 952(b) pertains to importation of “nonnarcotic controlled substance[s] in schedule III, IV, or V . . . .”

<sup>3</sup> 21 U.S.C. § 955 provides it is unlawful “to bring or possess on board any vessel or aircraft . . . arriving in or departing from the United States . . . a controlled substance in schedule I or II or a narcotic drug in schedule III or IV” unless authorized. Note that this does not apply to substances listed in schedule V or nonnarcotic drugs listed in schedules III or IV.

- (z) 21 U.S.C. § 960(a)(1), (3)(illegal import or export, manufacture, or possession with intent to distribute a controlled substance);
- (aa) 21 U.S.C. § 960(a)(2)(knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance in violation of § 955);
- (bb) 21 U.S.C. § 963 (attempt and conspiracy to violate 21 U.S.C. §§ 802-904);
- (cc) 46 U.S.C. § 1903(a)(anyone on board a vessel subject to the jurisdiction of the United States, or who is a citizen of the United States or a resident alien of the United States on board any vessel, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance).
- (dd) 46 U.S.C. § 1903(j)(attempt or conspire to violate 46 U.S.C. § 1903(a)).