

Federal Deportable Convictions Checklist

By Norton Tooby & Joseph Justin Rollin¹

This is a checklist of all of the federal statutes that will trigger a conviction-based ground of deportation that can be sustained *only* upon a violation of that specific federal statute. Except for certain convictions for violation of 18 U.S.C. §§ 1543, 1546(a) (passport fraud), which may trigger deportability as an aggravated felony, this checklist does *not* include federal convictions that may trigger deportability as an aggravated felony, crime of moral turpitude, or a domestic violence, controlled substance, or firearms conviction, since those grounds (although often referring to federal law) do not *depend* upon a conviction under a specific federal statute. There may be additional grounds of deportation that, in effect, rely solely on federal convictions, but are worded broadly in the INA. This checklist does not include conduct-based grounds of deportability. See Deportation Grounds Checklist 2, *supra*, for any possible waivers or exceptions.

¹ This checklist was originally published as Appendix B to N. TOOBY & J. ROLLIN, SAFE HAVENS: HOW TO IDENTIFY AND CONSTRUCT NON-DEPORTABLE CONVICTIONS 869 (2005).

Checklist of Miscellaneous Deportable Federal Convictions:

8 U.S.C. § 1185	18 U.S.C. § 2155
8 U.S.C. § 1306(c)	18 U.S.C. § 2156
8 U.S.C. § 1328	18 U.S.C. § 2250
18 U.S.C. § 457 (1951)	18 U.S.C. § 2381
18 U.S.C. § 758	18 U.S.C. § 2382
18 U.S.C. § 792	18 U.S.C. § 2383
18 U.S.C. § 793	18 U.S.C. § 2384
18 U.S.C. § 794	18 U.S.C. § 2385
18 U.S.C. § 798	18 U.S.C. § 2386
18 U.S.C. § 871	18 U.S.C. § 2387
18 U.S.C. § 960	18 U.S.C. § 2388
18 U.S.C. § 1543	18 U.S.C. § 2389
18 U.S.C. § 1546	22 U.S.C. §§ 611-621
18 U.S.C. § 2152	50 U.S.C. §§ 851, <i>et seq.</i>
18 U.S.C. § 2153	50 U.S.C. App. §§ 1-6, 7-39, 41-44
18 U.S.C. § 2154	50 U.S.C. App. §§ 451-471a

Description of Miscellaneous Deportable Federal Convictions:

8 U.S.C. § 1185 (travel restriction violation by entering into or departing from U.S. in violation of Presidential regulations, or aiding another to do so, or making a false statement in application for permission to enter or leave with intent to secure granting of permission for himself or another, or furnishing entry or exit permit to another not issued for another's use, or falsifying entry or exit permit, or attempting to use or furnish false entry or exit permit). NOTE: Since this statute does not specify a punishment, it may be argued it does not define a criminal offense and a person may therefore not be convicted of its violation. INA § 237(a)(2)(D)(iv), 8 U.S.C. § 1227(a)(2)(D)(iv) (deportation ground for conviction). See also, 8 U.S.C. §§ 1321-1324, 1325, 1327 (relating to illegal entry). Checklist 2, § [10].

8 U.S.C. § 1306(c) (knowingly making false statement in application for registration or attempt to procure registration through fraud). INA § 237(a)(3)(B)(i), 8 U.S.C. § 1227(a)(3)(B)(i) (deportation ground for conviction). Checklist 2, § [15].

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) (deportation ground for conviction). Checklist 2, § [20].

18 U.S.C. § 457 (false statement in former alien registration process); Alien Registration Act of 1940, c. 439, Title III, § 36(c), 54 Stat. 675 (June 28, 1940), formerly codified at 8 U.S.C. § 457. NOTE: 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, however, be described as “Alien Registration Act, 1940, § 36(c).” INA § 237(a)(3)(B)(i), 8 U.S.C. § 1227(a)(3)(B)(i) (deportation ground for conviction under former 18 U.S.C. § 457 that occurred before its repeal on Dec. 24, 1952). Checklist 2, § [15].

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) (deportation ground for conviction). Checklist 2, [17].

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]). INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction required of offense, including attempt or conspiracy, for which five years or more may be imposed; possible *Blakely* argument). Checklist 2, [31].

18 U.S.C. § 793 (gathering, transmitting, or losing defense information). INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction required of offense, including attempt or conspiracy, for which five years or more may be imposed; possible *Blakely* argument). Checklist 2, [31].

18 U.S.C. § 794 (gathering, transmitting, or losing defense information to aid a foreign government). INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction required of offense, including attempt or conspiracy, for which five years or more may be imposed; possible *Blakely* argument). Checklist 2, [31].

18 U.S.C. § 798 (disclosure of classified information).² INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction required of offense, including attempt or conspiracy, for which five years or more may be imposed; possible *Blakely* argument). Checklist 2, [31].

18 U.S.C. § 871 (mailing threats against the President and successors).³ INA § 237(a)(2)(D)(ii), 8 U.S.C. § 1227(a)(2)(D)(ii) (deportation ground for conviction). Checklist 2, § [48].

18 U.S.C. § 960 (Neutrality Act violation by aiding or participating in a military expedition from the United States against any foreign people with whom the United States is at peace). INA § 237(a)(2)(D)(ii), 8 U.S.C. § 1227(a)(2)(D)(ii) (deportation ground for conviction). Checklist 2, § [39].

18 U.S.C. § 1543 (“falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument . . . for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violation a provision of this Act.” INA § 101(a)(43)(P); 8 U.S.C. § 1101(a)(43)(P) NOTE: This also includes attempt or conspiracy to commit this violation. INA § 101(a)(43)(U); 8 U.S.C. § 1101(a)(43)(U)). INA § 237(a)(2)(A)(iii); 8 U.S.C. § 1227(a)(2)(A)(iii) (aggravated felony). Checklist 2, § [1].

18 U.S.C. § 1546 (visa fraud “(relating to fraud and misuse of visas, permits, and other admission documents)” including attempt and conspiracy (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, or 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)). INA § 237(a)(3)(B)(iii), 8 U.S.C. § 1227(a)(3)(B)(iii) (deportation ground for conviction); INA § 237(a)(2)(A)(iii); 8 U.S.C. § 1227(a)(2)(A)(iii) (aggravated felony), by reference to

² 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, & J. ROLLIN, *CRIMINAL DEFENSE OF IMMIGRANTS* (2007), Chapter 5, “Parentheticals.”

³ 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).

INA § 101(a)(43)(P); 8 U.S.C. § 1101(a)(43)(P) (aggravated felony passport fraud); INA § 101(a)(43)(U); 8 U.S.C. § 1101(a)(43)(U) (aggravated felony attempt or conspiracy). Checklist 2, §§ [1], [16].

18 U.S.C. § 2152 (willful trespassing on, injuring, or interfering with operation of any harbor-defense system or knowingly, willfully, or wantonly violating any Presidential regulation governing persons or vessels within defensive sea areas).⁴ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of sabotage offense, or attempt or conspiracy, for which a term of five or more years may be imposed; possible *Blakely* argument). Checklist 2, § [44].

18 U.S.C. § 2153 (destruction of war material, during war or national emergency, with intent to obstruct U.S. war efforts). INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of sabotage offense, or attempt or conspiracy, for which a term of five or more years may be imposed; possible *Blakely* argument). Checklist 2, § [44].

18 U.S.C. § 2154 (production of defective war material with intent to obstruct U.S. defense activities).⁵ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of sabotage offense, or attempt or conspiracy, for which a term of five or more years may be imposed; possible *Blakely* argument). Checklist 2, § [44].

18 U.S.C. § 2155 (destruction of national defense material with intent to obstruct U.S. national defense).⁶ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of sabotage offense, or attempt or conspiracy, for which a term of five or more years may be imposed; possible *Blakely* argument). Checklist 2, § [44].

⁴ 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 & J. ROLLIN, *CRIMINAL DEFENSE OF IMMIGRANTS* (2007), Chapter 5, “Parentheticals.”

⁵ See n. 4, *supra*.

⁶ See n. 4, *supra*.

18 U.S.C. § 2156 (production of defective national defense material with intent to obstruct U.S. national defense activities).⁷ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of sabotage offense, or attempt or conspiracy, for which a term of five or more years may be imposed; possible *Blakely* argument). Checklist 2, § [44].

18 U.S.C. § 2250 (failure to register as a sex offender). INA § 237(a)(2)(A)(v), 8 U.S.C. § 1227(a)(2)(A)(v)⁸ (effective July 27, 2006, Congress added a new deportation ground making deportable “[a]ny alien who is convicted under [18 U.S.C. § 2250 – failure to register as a sex offender] . . .”). Checklist 2, § [10].

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). INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

18 U.S.C. § 2382 (misprision of treason, i.e., knowing of treason and failing to disclose it).⁹ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

18 U.S.C. § 2383 (inciting any rebellion or insurrection against the authority of laws of the U.S., or giving aid or comfort thereto).¹⁰ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

18 U.S.C. § 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). INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a

⁷ See n. 4, *supra*.

⁸ INA § 237(a)(2)(A)(v), added by Adam Walsh Child Protection and Safety Act of 2006, HR 4472, PL 109-248, § 401 (July 27, 2006).

⁹ 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 & J. ROLLIN, *CRIMINAL DEFENSE OF IMMIGRANTS* (2007), Chapter 5, “Parentheticals.”

¹⁰ See n. 8, *supra*.

term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

18 U.S.C. § 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).¹¹ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

18 U.S.C. § 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).¹² INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

18 U.S.C. § 2387 (advising or causing insubordination in military with intent to reduce morale, or distributing such writings).¹³ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

18 U.S.C. § 2388 (during wartime, making a false statement with intent to interfere with U.S. military success or cause insubordination).¹⁴ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

18 U.S.C. § 2389 (recruiting soldiers to engage in armed hostilities against the United States).¹⁵ INA § 237(a)(2)(D)(i), 8 U.S.C. § 1227(a)(2)(D)(i) (deportation ground for final conviction of treason or sedition offense, including attempt or conspiracy, for which a term of five years or more may be imposed; possible *Blakely* argument). Checklist 2, § [51].

¹¹ See n. 8, *supra*.

¹² See n. 8, *supra*.

¹³ See n. 8, *supra*.

¹⁴ See n. 8, *supra*.

¹⁵ See n. 8, *supra*.

22 U.S.C. §§ 611-621 (violation of Foreign Agents Registration Act of 1938, including attempt, conspiracy, and violation of regulation issued thereunder). NOTE: The FARA 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).) 22 U.S.C. § 618(c); INA § 237(a)(3)(B)(ii), 8 U.S.C. § 1227(a)(3)(B)(ii) (deportation ground for violation, which presumably requires conviction). Checklist 2, § [33].

50 U.S.C. §§ 851, *et seq.* (Act of August 1, 1956, Ch 849, 70 Stat. 899) (failing to register by certain persons trained in foreign espionage systems, or violating any regulation under the Act). 50 U.S.C. § 855(b) (deportation ground for conviction). Checklist 2, § [34].

50 U.S.C. App. §§ 1-6, 7-39, 41-44 (Trading with the Enemy Act)((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). 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). INA § 237(a)(2)(D)(iii), 8 U.S.C. § 1227(a)(2)(D)(iii) (deportation ground for conviction). Checklist 2, § [50].

50 U.S.C. App. §§ 451-471a (conviction for violation of Selective Service Act). Selective Service offenses are particularly defined in § 462. NOTE: 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).) INA § 237(a)(2)(D)(iii), 8 U.S.C. § 1227(a)(2)(D)(iii) (deportation ground for conviction). Checklist 2, § [45].