

## WHAT A CRIMINAL DEFENSE ATTORNEY NEEDS TO KNOW ABOUT THE DEFERRED ACTION MEMO

### Who is eligible to receive deferred action under the Department's new directive?

Pursuant to the Secretary's June 15, 2012 memorandum, in order to be eligible for deferred action, individuals must:

1. Have come to the United States under the age of sixteen;
2. Have continuously resided in the United States for at least five years preceding June 15, 2012 and are present in the United States on June 15, 2012;
3. Currently be in school, have graduated from high school, have obtained a general education development certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the United States;
4. Have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety;
5. Not be above the age of thirty.

Individuals must also complete a background check and, for those individuals who make a request to USCIS and are not subject to a final order of removal, must be 15 years old or older.

### Are individuals with a conviction for a felony offense, a significant misdemeanor offense, or multiple misdemeanors eligible for an exercise of prosecutorial discretion under this new process?

No. Individuals who have been convicted of a felony offense, a significant misdemeanor offense, or 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 are not eligible to be considered for deferred action under the new process.

### What offenses qualify as a felony?

A felony is a federal, state, or local criminal offense **punishable by imprisonment for a term exceeding one year.**

### What offenses qualify as a "significant misdemeanor"?

A significant misdemeanor is a federal, state, or local criminal offense punishable by no more than one year of imprisonment or even no imprisonment that involves: violence, threats, or **assault**, including domestic violence; sexual abuse or exploitation; burglary, larceny, or fraud; **driving under the influence of alcohol or drugs**; obstruction of justice or bribery; **unlawful flight from arrest, prosecution, or the scene of an accident**; unlawful possession or use of a firearm; drug distribution or trafficking; or **unlawful possession of drugs.**

### How many non-significant misdemeanors constitute "multiple misdemeanors" making an individual ineligible for an exercise of prosecutorial discretion under this new process?

An individual who is not convicted of a significant misdemeanor but is convicted of three or more other misdemeanors not occurring on the same day and not arising out of the same act, omission, or scheme of misconduct is not eligible to be considered for deferred action under this new process.

### What qualifies as a national security or public safety threat?

If the background check or other information uncovered during the review of an individual's request for deferred action indicates that the individual's presence in the United States threatens public safety or national security, he or she will be ineligible for an exercise of prosecutorial discretion. Indicia 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.

### What is a conviction?

A formal judgment of guilt entered by a court or, if adjudication of guilt has been withheld, where: (i) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, AND (ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed.

THUS:

- A deferred adjudication disposition without a guilty plea (e.g., drug or mental health treatment court) is NOT a conviction
- A PJC is a conviction in most cases
- An expungement is still a conviction
- A Motion for Appropriate Relief is ineffective if the grounds are immigration-related.

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