

# Categorical Analysis of Criminal Convictions Flowchart

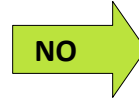
**Does the disposition meet the INA definition of a conviction?**  
Conviction = Judgment of guilt *or* withheld judgment with guilty or no contest plea or sufficient admission of guilt + judge-ordered punishment/penalty/restraint on liberty. See INA § 101(a)(48)(A).



Yay! Not a conviction.



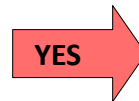
**Is the conviction “final”?** The BIA presumes finality after the initial time for appeal has passed, research applicable circuit case law.



Yay! Not a conviction yet.



**Do the elements of the statute of conviction match—or are they narrower than—the elements of the generic offense under consideration (aggravated felony, controlled substance offense, CIMT, crime of domestic violence, etc.)?** “Elements are the ‘constituent parts’ of a crime’s legal definition—the things the ‘prosecution must prove to sustain a conviction.’” *Mathis v. U.S.*, 136 S. Ct. 2243, 2248 (2016). Ignore the facts of the case. See *id.*



Boo! The conviction is a categorical match to the generic definition, so the immigration consequence applies.



**Is the language of the statute phrased in the alternative to establish multiple, discrete offenses?**



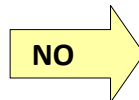
**Is at least one of the statutory alternatives a match to—or narrower than—the generic definition?**



**Would a jury need to unanimously agree upon one of the statutory alternatives in order to convict?** See *Mathis v. U.S.*, 136 S. Ct. 2243, 2249 (2016).



**Do the permissible record of conviction documents establish which of the statutory alternatives the person was convicted of?**



**Is the statutory alternative that the person was convicted of a match to—or narrower than—the generic offense?**

Yay! The overbroad conviction is not divisible and the immigration consequence doesn't apply.

The party that bears the burden of proof (DHS for removal, the immigrant for relief/benefit eligibility) loses with an inconclusive record for a divisible statute. See *Pereida v. Wilkinson*, 141 S. Ct. 754, 763 (2021).



Yay! The conviction doesn't incur the immigration consequence.



Boo! The conviction incurs the immigration consequence.