

UNDERSTANDING THE IMMIGRATION CONSEQUENCES OF YOUR CRIMINAL CHARGES

*Prepared by the New York State Defenders Association Immigrant Defense Project
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*This handout is for information purposes only and is not a substitute for legal advice.
The information here may no longer be up-to-date.
You should talk to a qualified immigration expert before agreeing to enter any plea or program.*

As an immigrant, one day you may want to become a lawful permanent resident (LPR) or a citizen. Being charged with a crime can hurt your chances of becoming an LPR or a citizen, and may put you at risk of deportation – even if you have lived here for a long time and/or have legal status. This handout briefly explains what the risks are, and lists some organizations that can help you.

(1) What kinds of criminal charges lead to immigration problems?

If you plead guilty or are convicted of a crime or offense, you may have immigration problems, including possible detention, deportation, and/or ineligibility to become an LPR or a citizen. Many felonies, misdemeanors, and even some “violations” or other non-criminal offenses can cause these problems. This may be true even if you don’t spend any time in jail or only pay a fine.

But not all pleas and convictions lead to negative immigration consequences. Immigration law is very complex, so you should talk to an immigration lawyer to find out whether your specific criminal case will have immigration consequences. You can call one of the organizations listed at the end of this handout to get advice. The Immigrant Defense Project website – www.immigrantdefenseproject.org – also has some helpful information and resources.

(2) What if my criminal charges were dismissed?

If you never pled guilty or admitted guilt to an offense and your charges were dismissed, the Department of Homeland Security generally cannot use those criminal charges to deport you or bar you from applying to become an LPR or citizen.

If you never pled guilty or admitted guilt to an offense and were given an “Adjournment in Contemplation of Dismissal,” then the Department of Homeland Security also generally cannot use those charges to deport you or bar you from applying to become an LPR or citizen once the case is dismissed.

But until your case is actually dismissed, any contact with Department of Homeland Security officials (for example, if you travel outside the country, renew your greencard, or apply to become an LPR or citizen) may cause problems because the government might treat your case as still “open” until the actual date of dismissal.

If you do plead guilty to an offense but are able to get your charges dismissed by completing a court-ordered program (for example, drug treatment), that will probably still be considered a “conviction” for immigration purposes and could lead to deportation. Generally, when you plead guilty or admit guilt in court and then are given some kind of sentence or court-ordered requirement, you can face negative immigration consequences.

(3) I’m a lawful permanent resident – can I still be deported?

Yes. Generally anyone who is not a citizen of the United States can be deported based on some types of criminal pleas and convictions. You might be able to apply for certain types of “relief” from deportation

depending on how long you've been in the country, how long you've been an LPR, and the types of crimes and offenses in your case. You should talk to an immigration lawyer to figure out the risks.

(4) I'm undocumented – how do criminal pleas and convictions affect my status?

Even though you are undocumented, you might have an opportunity to “adjust your status” under current law to become an LPR. Pleas and convictions may hurt your chances of becoming an LPR through this type of “adjustment.” In addition, the United States Congress has considered the possibility of creating a new legalization program for undocumented immigrants. Congress has not created a new legalization program yet. Depending on if and how any new laws are written, pleas and convictions might hurt your chances of becoming an LPR under these future laws, too.

Also, any time you spend in jail, even if you are not eventually convicted, puts you in danger of being placed in deportation proceedings. The Department of Homeland Security often questions people in jails and prison about immigration issues. Anyone who is undocumented can be deported just because he or she is here without valid legal documents. Avoiding criminal charges helps you preserve your ability to stay in the country and maybe adjust your status to become an LPR in the future.

(5) What should I do to protect my immigration status in this country?

If your criminal case is still going on, you should talk to an immigration lawyer right away, ideally before you accept any plea, go to trial, or are sentenced. Also, be sure to tell your criminal defense lawyer about the need to talk to an immigration lawyer. An immigration lawyer may be able to help you and your criminal defense lawyer figure out a plea or sentence or another outcome that will prevent negative immigration consequences in your case.

If your criminal case is over, or you have old convictions, you should talk to an immigration lawyer about whether your pleas or convictions will create immigration problems.

Until you know the consequences of your criminal history, you should be aware that traveling outside the United States, renewing your greencard, or applying to become an LPR or citizen could put you at risk of being placed into deportation proceedings. You should be very careful to obey all criminal laws since any further arrests or interaction with the government might also put you at risk of being put in deportation proceedings.

(6) What organizations and resources are out there to help me?

There are some free, non-profit organizations that can help you figure out the immigration consequences of your criminal charges, including but not limited to:

NYSDA Immigrant Defense Project
www.immigrantdefenseproject.org
(212) 725-6422

Families for Freedom
www.familiesforfreedom.org
(646) 290-5551

Legal Aid Society
www.legal-aid.org
(212) 577-3300