

IMMIGRATION/CRIMINAL PRACTICE ALERT

PRACTICAL TIPS TO AVOID AGGRAVATED FELONIES

As you know, aggravated felonies (“AF”) are one category of crime that may trigger deportation. While we should, of course, always strive to avoid convictions that may trigger deportation, it is particularly important to avoid AF convictions because, in most cases, these convictions render a client mandatorily deportable without any possibility of discretionary relief. AF’s also have all sorts of other nasty consequences including: a potential twenty-year prison term for illegal reentry and expedited removal procedures for non-permanent residents. While there are disadvantages for all non-citizens who are convicted of AF’s, it is particularly important to avoid AF convictions for Lawful Permanent Residents. There are twenty-one categories of AF’s, which you are free to read at your leisure. *See* 8 U.S.C. § 1101(a)(43). I wanted to quickly offer you some tips to avoid two common types of AF’s.

AGGRAVATED FELONIES TRIGGERED BY A ONE-YEAR TERM OF INCARCERATION

The following types of convictions will be considered AF’s if the client is sentenced to one year or more of incarceration “regardless of any suspension of the imposition or execution of that imprisonment”:

- Theft
- Violent Crimes (see previous practice alert on recent developments in Crime of Violence case law)
- Burglary
- Counterfeiting/Forgery
- Commercial Bribery
- Obstruction of Justice (possibly including Hindering Prosecution)
- Trafficking in Vehicle ID Numbers
- Receipt of Stolen Property
- Document Fraud
- Perjury/Bribery of a Witness/Subornation of Perjury

Below is a list of strategies designed to avoid triggering the AF grounds listed above. Since this list encompasses most felonies it is necessary to be mindful of the strategies below whenever a non-citizen client is facing a sentence of one year or more.

- *Stack counts to run consecutively* – as long as no individual count results in a sentence of a year or more, a total term of incarceration of more than a year will not trigger these AF grounds.
- *Waive presentence credits* – if a client has served time pre-sentence it may be possible to waive credit for that time in return for an actual sentence imposed of less than a year.
- *Waive future conduct credits* – it may be possible to waive future good conduct credits in return for an actual sentence imposed of less than a year.

AGGRAVATED FELONIES TRIGGERED BY A \$10,000 FINANCIAL INTEREST

The following types of convictions will be considered aggravated felonies if the record of conviction reveals that the financial interest in the crime exceeded \$10,000:

- Crimes Involving Fraud or Deceit (\$10K loss to victim)
- Money Laundering (involving \$10K)
- Tax Evasion (\$10K loss to Government)

Below is a list of strategies designed to avoid the AF with \$10,000 triggers.

- *Keep restitution under \$10,000*
- *During plea allocution contest any allegation in complaint involving \$10,000 or more.*
- *Have client pay a portion of the loss voluntarily pre-sentence to reduce restitution under \$10,000*
- *Make written plea agreement or oral stipulation that the loss to the victim is \$10,000 or less*
- *If all else fails, make sure that the fine is labeled as “Restitution” not “Reparation” PL § 60.27*

THESE STRATEGIES ARE DESIGNED TO GIVE CLIENTS A FIGHTING CHANCE IN SUBSEQUENT IMMIGRATION PROCEEDINGS. THEY DO NOT GUARANTEE PROTECTION FROM AN AF CHARGE