

HOW YOUR CRIMES MAY AFFECT YOUR IMMIGRATION CASE

If you are not a U.S. citizen and you have been convicted of certain crimes, you can be removed (deported) from the U.S. even if you have lived in the U.S. for many years, have permanent residency and your whole family is here. This sheet will only give a brief general overview of how your crimes may affect your immigration case. Immigration law is very complex, so you may want to **consult with an immigration attorney to get more information about your case.**

The government can only deport people who are not U.S. citizens. If your parents or grandparents are U.S. citizens by birth, or your parents naturalized before you turned 18, you may be a citizen. However, the citizenship laws are very complicated, so you should consult with an attorney to see whether you might be able to claim citizenship.

The first thing to understand is that IMMIGRATION LAW IS DIFFERENT FROM CRIMINAL LAW

Immigration proceedings are civil, not criminal proceedings. However, the government can try to have you removed because of your criminal convictions. One of the most confusing things about immigration law is that it has different definitions and names for the crimes you were convicted of. Even though you may think your crime is not serious, immigration law may consider your crime to be very serious such that you can be removed from the U.S. because of your crime. Immigration law may give your crime a different name. Keep reading to learn more...

Why are they trying to deport me? Look at your Notice to Appear (NTA)!

The NTA is the charging document that describes the reasons that the government is trying to deport you. If the government believes that the crimes you committed violate immigration law, it will list these crimes on the NTA. The NTA will also tell you the immigration name for the crime you have committed, for instance your drug conviction might be called an "an aggravated felony" or your theft conviction might be labeled as a "crime involving moral turpitude". Sometimes the judge or government attorney may change the charges on your NTA or add new charges when you go to immigration court.

What is an aggravated felony?

An aggravated felony is the name that immigration law gives to the crimes that it considers to be the most serious. If you are charged with an aggravated felony, this will have **serious consequences** for your immigration case and will make it extremely difficult for you to stay in the U.S. or return to the U.S. Examples of aggravated felonies include such crimes as murder, sexual abuse of a minor, or drug trafficking, but also include crimes of violence or theft crimes where the sentence imposed was at least one year, and other crimes. If you are convicted of an aggravated felony:

- You are **ineligible for bond** – therefore you must stay in detention during your immigration proceedings
- You are **ineligible for MOST forms of immigration relief** to stay in the U.S.
- You are **permanently barred** from returning to the U.S. if deported
- You may be charged with a **federal crime** and sentenced to up to twenty years in federal prison if you return to the U.S. illegally after being deported.

Let's clarify some areas of confusion about aggravated felonies:

- Even if your crime was non-violent, it can be an aggravated felony
- Even if you don't think your crime was serious, it can be an aggravated felony
- A misdemeanor under state law can be an aggravated felony
- For some aggravated felonies, it does not matter whether or not you served any prison time or if you only received probation.

What are my options if I have an aggravated felony?

- Your aggravated felony *may* prevent you from obtaining relief from removal in order to stay in the United States. However, before deciding that you have no options for relief from removal, consider the following:
- **You Must Have a Conviction:** In order for you to be charged with an aggravated felony, you had to have been **convicted** of the criminal offense, so make sure you were actually convicted.
- **Aggravated Felony Definition:** There are different types of aggravated felonies and each has a different definition. For example, in order for a **drug crime** to be an aggravated felony, it has to have involved some kind of trafficking, sale, or intent to distribute and that crime must be punishable as a felony under federal law. Simple possession is usually not an aggravated felony (there are certain exceptions). Make sure that the act that you were convicted of matches the definition of the aggravated felony you are being charged with.
- **Post Conviction Relief:** If your crime is clearly an aggravated felony and is preventing you from applying for a certain form of relief, you may want to consider **post-conviction relief**. This is when you go back to **criminal court** and try to have your offense dismissed, your sentence reduced, or get a lesser charge. *Even if your*

conviction was expunged, immigration can **still** charge you with that crime! For post-conviction relief you will need both an immigration attorney and a criminal defense attorney, as this is a very complicated process.

- **Forms of Relief Available:** Depending on your immigration status and the crime you were charged with, you may still be eligible for some forms of relief, such as protection under the Convention Against Torture (CAT), and adjustment of status (for those who do not have permanent residency).
- **Old Convictions:** If your **criminal conviction is very old**, different immigration laws may apply to you. For example, if you were released from prison on or before October 8, 1998, you should not be subject to mandatory detention. If you have permanent residency and your conviction dates from before April 24, 1996, you may be eligible for a 212(c) waiver. The 212(c) waiver is the former version of cancellation of removal for green card holders – it is a form of relief that allows a green card holder to remain in the U.S. However, several requirements must be met in order for you to be eligible to apply for this waiver.

How other crimes on your NTA can affect your case

Even if your crime is not an aggravated felony, it may still impact your case and may prevent you from remaining in the U.S. If your NTA charges include any crimes, you should first make sure that those crimes actually make you deportable. You can do this by looking at the immigration definition of your crime and making sure that your conviction fits this definition. You can also try to use post-conviction relief to have your crime dismissed or reduce the sentence.

BOND

- Depending on your immigration status, certain crimes, such as drug crimes, will subject you to mandatory detention (this means you cannot get bond). Even if your crime does not subject you to mandatory detention, the judge can still use any of your crimes as a reason to deny you bond.

IMPACT OF CRIMES ON APPLICATIONS FOR RELIEF

If your crime falls under the immigration law definition of a “**crime involving moral turpitude**” (CIMT), or if you are being charged with any other criminal offense on your NTA, this can seriously impact your case. Here are some of the ways that criminal offenses on your NTA may affect your case:

- **Good moral character:** Some forms of immigration relief require you to show that you have had “good moral character” for a number of years. A CIMT or any criminal offense that makes you deportable will automatically disqualify you from showing good moral character.
- **Adjustment of Status** – If you are trying to get a *green card* (legal permanent residency) through a family member and you have crimes on your NTA, you may be able to get a 212(h) waiver for those crimes. However, this 212(h) waiver only applies to *certain crimes*, such as CIMTs, so if the waiver does not cover your crime, you will not be able to adjust your status.
- **Asylum/Withholding of Removal/CAT** – **If you are afraid to return to your country, you can apply to remain in the U.S. based on this fear. There are different forms of fear-based relief and the crimes listed on your NTA, as well as other factors, will determine which ones you are eligible to apply for. If your sole reason for being afraid to go back to your country is that you have no family or financial resources there, that will probably not be enough to win these forms of relief.**
- **Cancellation of Removal – the Stop-Time Rule:** For *certain forms of cancellation of removal* (a type of immigration relief), you will need to show that you have lived in the US for a specific number of years. However, the commission of a CIMT or any crime that makes you deportable will automatically **stop** the number of years counted towards your time in the U.S. Here is an example of how this rule works:

In order for a person with a **green card (residency)** to get “cancellation of removal” they must show that they have had their green card for 5 years, have lived in the US for 7 years without committing certain crimes, and have not committed an aggravated felony. John, a citizen of Trinidad, came to the US in 1990, committed a domestic violence crime in 1995, and was put into deportation proceedings in 2006. John’s NTA lists his domestic violence crime as the reason that the government is trying to deport him. Because John committed this offense after being in the US for 5 years only, he cannot apply for cancellation of removal. This crime *stops his time* in the U.S. Immigration law will not count the years after he committed the crime.

- **Exceptions to CIMTs** - if you **have only one CIMT** and your CIMT meets any of these exceptions, the government cannot use it as a basis to remove you from the US:
 - **Petty Offense Exception** - Where the maximum sentence for your crime cannot exceed one year & you were given a prison sentence of not more than 6 months. *This exception does not excuse drug crimes.*
 - **Juvenile Exception** - Where you committed this CIMT when you were under 18 and more than 5 years before applying for admission to the U.S.
- **Drug Conviction Exception** - Immigration law takes drug convictions very seriously. **All** drug convictions make a non-U.S. citizen deportable. The only exception to this rule is if you have a single conviction for simple possession of marijuana, 30 grams or less, for personal use.