



Advising Non-U.S. Citizen Clients about Pleas to N.Y.C. Admin Code 10-179 in Summons Court

I. Introduction

New York City Summons Court cases often conclude with New Yorkers pleading to a non-criminal violation and paying a fine. Upon first impression, cases concluding with a non-criminal violation appear inconsequential. However, even pleas to non-criminal violations taken in Summons Court can lead to devastating consequences for non-citizen clients in the immigration context. These non-criminal violation dispositions in Summons Court are treated as convictions for immigration purposes.¹ Consequences for non-citizen clients vary depending on the client's immigration status and history, criminal history, and the statute of conviction.

The risk that a plea to a violation will have negative immigration consequences is heightened for individuals seeking to renew their Deferred Action for Childhood Arrival (DACA) status. DACA protects millions of young people who were brought into this country as infants and children from deportation. New York has approximately 105,000 DREAMers (undocumented immigrants who were brought into the U.S as children and are without status)² and the fourth highest number of DACA recipients (undocumented immigrants who were brought into the U.S. as children who qualified and were granted DACA) in the nation.³

Most New York City non-criminal violations qualify as misdemeanors. Under a federal definition used to determine eligibility for those with DACA, a **misdemeanor** is as any offense “**with a maximum term of imprisonment greater than five days but not more than one year.**”⁴ Many New York City non-criminal violations carry a potential maximum term of imprisonment between 10-15 days and would therefore be misdemeanors for DACA purposes. An individual convicted of more than two such offenses is barred from DACA and may become at risk of deportation.⁵ Therefore, it is imperative that immigration consequences are understood and known to all non-citizen individuals appearing in Summons Court.

¹ INA § 101(a)(48)(A), 8 USC § 1101(a)(48)(A).

² New York, Map the Impact of Immigration Across the Nation: A Project of the Partnership for a New American Economy (2012), <http://www.maptheimpact.org/state/new-york/>; See also, <https://www.adl.org/education/educator-resources/lesson-plans/what-is-the-dream-act-and-who-are-the-dreamers>.

³ Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012-2015 (June 30), U.S. Citizenship and Immigration Services.

⁴ Frequently Asked Questions, Consideration of Deferred Action for Childhood Arrivals Process, available at: <https://www.uscis.gov/archive/frequently-asked-questions>.

⁵ IDP has records with examples of individuals whose DACA renewals were denied because of having three non-criminal violation dispositions leaving those individuals without status and at risk of deportation.

II. Public Health Law § 229 (N.Y. Pub. Health § 229) Presents Problems for DACA recipients

Section 229 of the New York Public Health Law (N.Y. Pub. Health § 229) has been one of the most common dispositions in Summons Court. For many individuals, the consequences of pleading to N.Y. Pub. Health § 229 will be minimal. However, that is not true for non-citizens, and specifically DACA recipients. N.Y. Pub. Health § 229 is punishable by a fine not to exceed two hundred fifty dollars or **imprisonment not to exceed fifteen days**; and for any subsequent convictions, punishable by a fine not exceeding five hundred dollars or **by imprisonment for not exceeding fifteen days**. Because N.Y. Pub. Health § 229 carries a potential maximum custodial sentence exceeding five days, convictions are considered misdemeanors under the DACA guidelines and can render individuals ineligible for DACA.

In analyzing the immigration impact of a plea to a violation for a DACA recipient, one key consideration is whether the potential punishment carries a maximum term of imprisonment greater than five days but not more than one year.⁶ For example, a plea to N.Y.C. Admin. Code § 16-118 Littering Prohibited qualifies as a misdemeanor for DACA purposes because the statute carries a potential maximum term of imprisonment of 10 days.⁷ The immigration consequences are triggered by the potential term of imprisonment, regardless of the sentence imposed. As a result, plea to N.Y.C. Admin. Code § 16-118 can render a client ineligible for DACA because the conviction is considered a misdemeanor under the federal definition used to determine eligibility for DACA.

III. N.Y.C. Admin. Code § 10-179 as an Alternative Disposition in Summons Court

a. Legislative Intent and Background of N.Y.C. Admin. Code § 10-179 Disorderly Behavior

Criminal legal system reforms in recent years have addressed the mismatch between New York State law and immigration law. Legal service providers around the city expressed their support for a non-criminal disposition that would not render DACA recipients ineligible for DACA.⁸ Their

⁶ USCIS guidelines lay out additional disqualifying convictions for DACA that are not relevant to the analyses discussed in this advisory. DACA recipients must show they “[h]ave not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety” as defined in the Frequently Asked Questions, Consideration of Deferred Action for Childhood Arrivals Process, available at: <https://www.uscis.gov/archive/frequently-asked-questions>.

⁷ N.Y.C. Admin. Code §16-118(8) (stating, The violation of any provision of this section shall constitute an offense punishable by a fine of not less than fifty dollars nor more than two hundred fifty dollars, or by imprisonment not to exceed ten days or both.

⁸ The New York City Council, "Hearing Testimony 4/26/17," <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3028942&GUID=1058179C-1264-44A8-A9D0-D3B4A3C66B59&Options=ID%7cText%7c&Search=disorderly>

support helped pass what ultimately became N.Y.C. Admin. Code § 10-179.⁹ Section 10-179 will not render non-citizens convicted of a misdemeanor for DACA purposes. It was created with the intention of providing individuals in Summons Court and Criminal Court the opportunity to plead to a lesser offense that does not disproportionately harm non-citizens. Section 10-179 provides a non-criminal, catch-all violation similar to N.Y. Penal § 240.20 allowing DACA recipients to avoid disastrous consequences in the immigration context.

b. Impact of plea to N.Y.C. Admin. Code § 10-179 Disorderly Behavior for DACA recipients

N.Y.C. Admin. Code § 10-179 is similar in language to N.Y. Penal § 240.20 (Disorderly Conduct). N.Y. Penal § 240.20 is a non-criminal violation that does not fit within any of the statutory definitions of crimes that trigger immigration consequences (i.e. crimes of moral turpitude, or controlled substance offenses). However, where N.Y. Penal § 240.20 carries a potential maximum custodial sentence of fifteen days N.Y.C. Admin. Code § 10-179 only carries **a maximum potential sentence of five days**.¹⁰ Therefore, DACA recipient convicted of N.Y.C. Admin. Code §§ 10-179 will not be considered to be convicted of a misdemeanor for DACA purposes and the conviction will not render clients automatically ineligible for DACA.

c. Impact of plea to N.Y.C. Admin. Code § 10-179 Disorderly Behavior for all other non-U.S. citizens

A plea to N.Y.C. Admin. Code § 10-179 will still be considered a "conviction" under the immigration law for the purpose of obtaining other immigration benefits (such as applying for residency or citizenship). As noted above, it is very similar to N.Y. Penal § 240.20 (but includes the possibility that a person may be convicted for negligent conduct). And, just like N.Y. Penal § 240.20, a conviction under N.Y.C. Admin. Code § 10-179 does not fit within any of the statutory definitions of crimes that trigger immigration consequences (for example, it would not be considered a "crime involving moral turpitude" or a "controlled substance offenses" regardless of the original charge).

In general, practitioners should consider pleading non-citizen clients to the statute as a whole rather than a random subsection of the statute that is unrelated to the charged conduct. If that is not possible, a general guideline is to allocute clients to the least culpable conduct under the statute - which allows the impact of any conviction be minimized in the immigration setting.

⁹ *Id.*


¹⁰ N.Y.C. Admin. Code § 10-179(b)

IV. Conclusion: Advising Clients about the Impact of N.Y.C. Admin. Code § 10-179 Convictions

In Summons Court, pleading non-citizen clients to N.Y.C. Admin. Code § 10-179 may be preferable to N.Y. Pub Health § 229 and other violations whose potential punishment is accompanied by a maximum term of imprisonment exceeding five days. It is not possible to lay out the specific consequences of a plea to N.Y.C. Admin. Code § 10-179 in every case. This requires an individualized analysis. Attorneys should advise their clients about the impact of a plea to N.Y.C. Admin. Code § 10-179 keeping in mind that clients may be asked about the plea in the future while under oath, during an immigration interview or court proceeding in which they are not represented by a lawyer.

Some general advice to provide to clients pleading to N.Y.C. Admin. Code § 10-179 without any sentence of imprisonment¹¹ is below.

- A plea to N.Y.C. Admin. Code § 10-179 will be considered a conviction for immigration purposes. However, it is not a crime that triggers statutory immigration consequences (for example, it would not be considered a "crime involving moral turpitude" or a "controlled substance offenses" regardless of the original charge).
- A plea to N.Y.C. Admin. Code § 10-179 is not a "misdemeanor conviction" for DACA purposes. It cannot be used to show someone is ineligible for DACA based on the criminal bars. Immigration denies DACA status, including renewal applications, for people convicted of three or more misdemeanors or a significant misdemeanor.
- A plea to N.Y.C. Admin. Code § 10-179 may be used against your client in discretion in an application renew DACA status, get citizenship, or any other discretionary immigration benefit. Clients should consult with a trusted immigration attorney about how to answer any questions about this conviction.

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¹¹ In the rare case that a client may plead guilty to an offense and be sentenced to time in jail, the advice may be different and you should get individualized advice from an immigration attorney.