



Protecting Immigrant New Yorkers through a Gubernatorial Presumptive Pardon FAQ

How can a gubernatorial pardon help protect noncitizens from detention and deportation?

A gubernatorial pardon for any type of conviction could help a noncitizen in a variety of ways. In some cases, a full and unconditional pardon can eliminate the grounds for deportation completely and eliminate the permanent bar to citizenship. This will most impact those who have lawful status, such as green card holders. For those who have a conviction that cannot be fully waived by a pardon for immigration purposes, a pardon could create the possibility of eligibility for immigration relief for someone who otherwise would be subject to mandatory deportation. While the benefits are less clear for undocumented individuals, a pardon is a favorable factor that may influence federal immigration authorities not to initiate removal proceedings.

What types of convictions will a governor's pardon impact the most?

A subsection of the Immigration & Nationality Act (INA)¹ establishing grounds of deportability provides that a full and unconditional governor's pardon waives deportability for four categories of offenses:

- Crime Involving Moral Turpitude (CIMT) conviction
- Multiple criminal convictions
- "Aggravated felony" conviction
- Conviction for high speed flight from an immigration checkpoint

What kinds of New York offenses are included in these categories?

These categories are immigration law terms that cover a broad variety of offenses. The federal government routinely charges many common New York offenses as CIMTs, such as petty theft, theft of services (i.e. turnstyle jumping), possession of stolen property, and trademark counterfeiting (i.e. selling unlicensed handbags). "Aggravated felony" convictions need be neither "aggravated" nor "felonies" and lead to mandatory detention and deportation. For example, the federal government routinely charges misdemeanor sale of marijuana and misdemeanor theft offenses as "aggravated felonies".

Will a gubernatorial pardon help someone with an offense not listed above, such as a controlled substance offense?

It depends. Courts have found that a state pardon will not prevent deportation for an individual whose conviction also falls under a deportation ground not listed above, most notably a conviction that may be deemed a controlled substance, firearm, domestic violence, or child abuse offense.² However, if the offense is also considered an "aggravated felony," which is the case for many controlled substance offenses, a pardon may prevent mandatory deportation and leave the person eligible for discretionary relief from an immigration judge.

¹ Immigration and Nationality Act § 237(a)(2)(A)(vi), 8 U.S.C. § 1227(a)(2)(A)(vi) (2008).

² See, e.g., *Matter of Suh*, 23 I. & N. Dec. 626 (BIA 2003) (child abuse offense); *Eskite v. District Director*, 901 F.Supp. 530 (E.D.N.Y. 1995) (drug offense).

Can an immigration judge just decide to ignore a gubernatorial pardon?

No. A full and unconditional gubernatorial pardon waives the categories of offenses discussed above as a matter of law, and the person should not be deported based on the offense. However, if the offense falls into one of the non-covered deportation grounds, deportation may rest on a discretionary decision of the immigration judge if the person is eligible for immigration relief.

How could the governor pardon people quickly enough to help their immigration cases while ensuring public safety?

The governor could initiate a fast-track presumptive pardon process for individuals who meet certain criteria. This could be based on length of time since the offense and/or include cover categories of offenses. Other applications could be determined on a case-by-case basis. While those in removal proceedings will have the most time-sensitive applications, one benefit of the pardon is that individuals can apply before they are ever put in proceedings and may be able to avoid becoming a target of detention and deportation in the first place.

How will people find out about the pardon and apply?

Immigrant Defense Project will work through our hotlines and with our partners in the reentry community, community based organizations, legal service and public defender offices, law firms, and law school clinics to screen individuals, assess the immigration impact of a pardon, and assist in submitting applications. While numbers are difficult to estimate and depend on the contours of the program, we expect that thousands of New Yorkers could be protected.

For questions or further discussion, please contact Executive Director Alisa Wellek at alisa@immdefense.org or 212-725-6421.