

## **Will a Criminal Court Case Affect My Immigration Status?** **Issues to Consider for Immigrant Clients in Criminal Court**

A criminal case can negatively impact your immigration status. If you have some type of lawful immigration status, including a green card or DACA, it can cause you to lose your status or face deportation. If you are undocumented, a criminal case may impact your ability to get certain forms of lawful status, now or in the future. It might also cause Immigration and Customs Enforcement (“ICE”) to become aware that you are in the U.S. and have been arrested.

**It is important for you to speak with your criminal defense attorney and tell them that you are not a U.S. citizen.** If you have an immigration attorney, you should tell them about your pending criminal court case.

## **Read More to Learn About Making Immigration Decisions During and After a Criminal Court Case**

### **RIGHT TO IMMIGRATION ADVICE**

- Your criminal defense attorney has a Constitutional duty to give you immigration advice about your criminal case and any possible immigration consequences it could cause.
- If your attorney does not have immigration knowledge or expertise, the attorney is required to consult with an immigration expert as soon as possible in order to fulfill this duty. All publicly appointed defense attorneys in New York can get a free consultation from an immigration expert.

All attorneys appointed through the 18-b panel in NYC can contact the Immigrant Defense Project: <https://www.immigrantdefenseproject.org/what-we-do/padilla-support-center/>.

- Not all criminal cases will lead to immigration consequences, although many will. Your attorney should try to negotiate a plea that will not harm your status.
- If you do not fully understand how a criminal case will impact your status, you have the right to ask your criminal attorney to clearly explain what this means for your immigration situation. You also have the right to confirm whether your criminal attorney is confident about their advice and has consulted with an immigration expert.

- If you are currently in criminal custody, your criminal attorney can tell you if there is an ICE detainer lodged against you. A detainer form asks the arresting agency to hold you in criminal custody for 48 hours and to notify ICE before they release you. ICE can decide whether you should be transferred to federal custody rather than released from jail. Learn more about detainers [here](#).

### **BE AWARE THAT POLICE SHARE FINGERPRINTS WITH IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”)**

- Fingerprinting happens either at the precinct or when you are booked into a local jail. When police use your fingerprints to search your criminal history, ICE receives a notification that you have been arrested. ICE also learns your biographical information, including your current address. ICE receives this information whether or not you were arrested in a “sanctuary city.”
- ICE identifies immigrants in U.S. jails that might be deportable under immigration law. ICE can search government databases for your criminal and immigration history. If they find a potential immigration violation, ICE may start monitoring your criminal court case.
- In the past, ICE has arrested people at their homes or in the community while their criminal case is still pending or after it ends. This has happened even if the person did not serve time in jail or prison.
- In New York State it is against the law for ICE agents to arrest people on their way to, at, or leaving a courthouse, unless ICE has a judicial warrant. This law also protects anyone who is part of a court case, including family and household members. Because of this law, ICE agents do not arrest people for deportation at courthouses in New York State.

### **CONSIDER AVOIDING TRAVEL ABROAD**

- Everyone who returns to the United States after traveling to another country must be screened by Customs and Border Protection (“CBP”). CBP will take fingerprints of people who are not U.S. citizens and will look for past or pending criminal court cases in government databases.
- CBP officers at the airport might ask you questions about a past or pending criminal court case. CBP might ask you to come back to the airport at a future date with additional documents about your case for a “deferred inspection.” Immigration agencies could use any documents or your answers during questioning by CBP to try to take away your current immigration status or to prevent you from getting an

immigration benefit in the future. This is true even if your criminal case is minor or you did not receive a jail sentence.

- If CBP believes that you have not complied with an immigration law, they might start removal (deportation) proceedings against you in immigration court. You might be detained at the airport and transferred to immigration detention during this process.
- It is important to talk to your criminal defense attorney or an immigration attorney *before* traveling outside the United States. An immigration attorney can help you understand your personal risks.

### **DELAY SUBMITTING APPLICATIONS TO IMMIGRATION AGENCIES, IF POSSIBLE**

- Immigration agencies will know about your arrest and can ask you about a case in criminal court when deciding an application for an immigration benefit. This includes applications to get a green card (lawful permanent residence), to renew a green card, or for U.S. citizenship (naturalization).
- If you already filed an immigration application, make sure your immigration attorney knows about your pending criminal case. Your immigration attorney can help you decide how to explain your criminal court case to immigration officers. Your criminal defense attorney can incorporate your immigration goals into the strategy for your criminal court case.
- It is important to talk to an immigration attorney before submitting any application to an immigration agency, even if your criminal court case is finished and your lawyer says you will not have immigration consequences as a result.

### **TALK TO YOUR ATTORNEY ABOUT YOUR IMMIGRATION SITUATION!**

Every person's immigration situation is unique. If you are concerned about any of these issues, it is important to speak with your criminal defense attorney. You should also consult with a trusted immigration attorney or accredited representative to get advice specific to your immigration situation. If you don't have an immigration attorney, your criminal defense attorney might be able to help you look for an immigration attorney to give you advice.