

## Dangers of Plea Bargaining

Criminal charges can pose serious immigration consequences for the unwary. Many, including some criminal defense attorneys, do not realize that a plea arrangement can result in the deportation of not only an illegal alien, but also those aliens legally present in the U.S. with a green card.

Aliens become subject to deportation if they are convicted of a crime involving moral turpitude (CIMT). Green card holders risk being deported from the U.S. if they are convicted of a CIMT within 5 years of admission or are convicted of two unrelated CIMT's at any time. Green card holders may also be deported if at any time they are convicted of an aggravated felony (AF). To constitute an AF, a sentence of 1 year or more must be imposed. However, for a CIMT the length of sentencing is not relevant (unless the maximum punishment does not exceed 6 months in prison, in which case the crime falls under the "petty offense" exception to the CIMT rule).

A common misconception is that a continuance without a finding (CWOF) with less than 1 year of probation will not result in any negative immigration consequences. This is simply not so. A "conviction" for immigration purposes is any formal adjudication of guilt where a judge has ordered some form of punishment such as a fine, probation (regardless of duration), or a suspended sentence. Thus an admission of sufficient facts or "nolo contendere" which ultimately results in a dismissal may constitute a conviction for immigration purposes.

Once a non-U.S. citizen has been convicted of a CIMT or AF, the only way to avoid deportation in most cases is to vacate the conviction on the ground that an "alien warning" was not given. However, judges in Massachusetts are becoming more and more diligent with respect to ensuring that the "alien warning" is both given and acknowledged on the record in writing.

Thus, the best solution for non-U.S. citizen criminal defendants is to avoid pleading guilty to any crime that may constitute a CIMT or AF. Pleading to a lesser offense that would fall under the "petty" offense exception should be considered, as should pre-trial probation. As a last resort, it may be best to take a case to trial where there may be a chance, no matter how remote, that the defendant may be found not guilty.

When in doubt it is always advisable to consult with competent immigration counsel before entering into a plea arrangement.

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