

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

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The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

ANATOMY OF A RIAC ADVISAL: Part 10 Firearms Offenses

A separate criminal ground of removal exists for those convicted of a “firearms offense.” (FO). See INA §237(a)(2)(C): “Certain firearm offenses.-Any alien who at **any time after admission** is convicted under **any law** of purchasing, selling, offering for sale, exchanging, using, owning, **possessing**, or carrying, or of **attempting or conspiring** to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a **firearm** or destructive device (as **defined in section 921(a) of title 18, United States Code**) in violation of any law is **deportable**.”

18 U.S.C. §921(a)(3) defines the term “firearm” as “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.”

The most common crimes charged under New York Law relating to firearms are Criminal Possession of a Weapon under Penal Law Article 265. However, there are other possible FO offenses set out in Articles 120 (Assault or related offenses with an element involving a weapon); 140 (Burglary or related offenses involving a weapon); and 160 (Robbery with a weapon element). See also, for example, Stalking 2d, PL §120.55(1) or Menacing 2d, PL §120.14(1). Care must be taken to avoid a conviction for any of these charges. As highlighted above, a firearms conviction makes someone deportable *regardless of how long they have been in the U.S. and regardless of the sentence.*



In This Issue:

ANATOMY OF AN ADVISAL :
Firearms Offenses



UPCOMING EVENTS

Oneida County Bar Association CLE:
May 19, 2019
9:00 am – 12:00 pm
Mohawk Valley Community College

Tompkins/Cortland County CLE:
May 30, 2018 Ithaca Public Library
12:00 – 2:30 pm
Immigration Issues in Criminal and
Family Court

CONTACT US!

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Chief Defenders & Assigned Counsel Administrators:

Contact the RIAC2 to schedule a
training, lunch hour or other
session in your office/county. We
will provide CLE credit!

Strategies to avoid a conviction for a FO include the following:

1. Negotiate a plea to an offense that does not specify the type of weapon involved and try to keep any reference to a firearm out of the Record of Conviction (ROC). See previous newsletters as to what constitutes the “ROC”.
2. Negotiate a plea that does not include a weapon as an element of the offense.
3. If a plea to a FO is unavoidable, have your client plead to possession rather than sale, and avoid a sentence of one year or longer. Your client may still be deportable, but in some cases he or she may have relief available in Immigration Court as long as there is no Aggravated Felony (AF) conviction.
4. Sometimes a plea to a weapons charge is the better choice. This depends on the immigration status of your client, what laws apply to his /her case (deportability or inadmissibility), and what your client’s goals are (length of incarceration v. ability to remain in the U.S.)

It is impossible to negotiate a disposition or weigh going to trial without an analysis of the criminal offense involved and your client’s particular immigration circumstances. Call the RIAC as soon as you are assigned the case!

Sharon and Tina will be conducting an Immigration training for the members of the judiciary in the 6th Judicial District on May 10, 2018, in Watkins Glen. If you practice in the 6th Judicial District and have any concerns about judicial practices or policies in any of the City, County and /or Family courts, please let us know so that we can address these issues in our training.
