

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

December 2020

Volume 4, Number 10



In This Issue:

**Aggravated Felonies:
Commercial bribery, Forgery,
Selling cars with erased VIN**

UPCOMING EVENTS:

The Other Side of
“Crimmigration”: What
happens in Immigration
Court

Onondaga Co. VLP,
ACP and HLAS

Monday, 12/21/2020
11:00 a.m.
Via Webex



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.*

As we thankfully say goodbye (and good riddance) to 2020, alas, the Aggravated Felonies are here to stay...

AGGRAVATED FELONIES: “THE LIST” INA 101(a)(43) The term “aggravated felony” means—

We are skipping categories (N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), ... ; (O) an offense described in section 1325(a) or 1326 of this title (illegal entry/re-entry committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph; (P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) ...; and, (Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more.

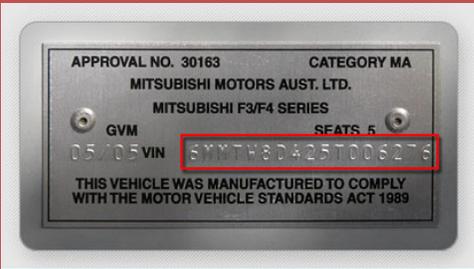
We have never received a referral for any of these types of cases as they are usually prosecuted in federal court. If you happen to be assigned to one, or have any burning questions about these categories, please contact us!

We pick up with the category: (R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

What NY offenses are “related to” commercial bribery, counterfeiting, forgery and trafficking in vehicles with altered VINs?

Commercial Bribery:

- PL §180.03 Commercial Bribing 1st
- PL §180.08 Commercial Bribe Receiving 1st
- PL §180.15 Bribing a Labor Official
- PL §180.25 Bribe Receiving by a Labor Official



CONTACT US!

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**Chief Defenders & Assigned
Counsel Administrators:**

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

PL §180.40 Sports Bribing
PL §180.45 Sports Bribe Receiving
Counterfeiting
PL §165.72 Trademark Counterfeiting 2d
PL §165.73 Trademark Counterfeiting 1st

Forgery:

PL §170.10 Forgery 2d
PL §170.15 Forgery 1st
PL §170.25 Criminal Possession of a Forged Instrument 2d
PL §170.30 Criminal Possession of a Forged Instrument 1st
PL §170.40 Criminal Possession of Forgery Devices
PL §170.65 Forgery of a Vehicle Identification Number
PL §175.10 Falsifying a Business Record 1st
PL §175.35 Offering a False Statement for Filing 1st
PL §175.40 Issuing a False Certificate
Trafficking in Vehicles with Altered VIN
PL §170.65 Forgery of a Vehicle Identification Number
PL §170.70 Illegal Possession of a Vehicle Identification Number

Important considerations:

- The sentence imposed must be 365 days or longer to be an AF.
- This ground encompasses offenses “*relating to*” commercial bribery, forgery and auto trafficking with altered VINs, meaning a crime that is outside the generic definition of these offenses may still be an AF. (See, e.g. *Richards v. Ashcroft*, 400 F.3d 125 (2d Cir. 2005)(*relating to* forgery) and *Kamagate v. Ashcroft*, 385 F.3d 144(2d Cir. 2004) (conspiracy/possession of counterfeit securities))
- Most, if not all, of these offenses are also CIMTs (Crimes Involving Moral Turpitude) which will also determine whether your client is removable, depending on your client’s circumstances.
- Some of these offenses could also be Theft or Fraud AFs depending on the circumstances and the amount of loss to the victim.
- As with all AFs, this ground includes attempts and conspiracies.
- There is little, if any, caselaw directly addressing most of these specific offenses. We will always advise avoiding a plea to a charge if there is any doubt about the immigration consequences.

Strategies to Avoid these Aggravated Felony Grounds of Removal:

- Plead to an immigration safe offense, such as Criminal Trespass 2d, Jostling or any safe class A misdemeanor. Again, however, beware of the CIMT if your client has a prior CIMT!
- Get a sentence of 364 days or less, or plead to the A Misdemeanor level offense, being mindful of the other grounds of removability.
- If the record of conviction also indicates a possible fraud offense, get a restitution amount, reflected in the plea colloquy, of LESS THAN \$10,000.
- Contact the RIAC at the earliest possible moment in your client’s case!

HAVE A SAFE AND WONDERFUL HOLIDAY SEASON!