

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

October 2020

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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.*

From a safe distance, we give you more in the category of “aggravated felonies”...

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

Next up:

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year;

What NY offenses are “theft” Aggravated Felony offenses?

Aggravated Felonies that depend on a sentence of one year or longer (e.g. Theft Offenses, under INA §101(a)(43)(G)) **no longer** include misdemeanors, thanks to the One Day to Protect New Yorkers Act. We are, therefore, only referring to Felony offenses in this ground of Aggravated Felonies. The New York “theft” AF offenses include:

PL Article 140

- All Burglary offenses

PL Article 155

- All felony Grand Larceny offenses.

PL Article 160

- All Robbery offenses.

PL Article 165

- Felony Unauthorized Use MV offenses.
- Felony Criminal Possession of Stolen Property offenses.

In This Issue:

**Aggravated Felonies:
“Theft” Offenses**

UPCOMING EVENTS

Immigration Basics

NYSACDL series

“Law @ Lunch”

October 8, 2020

1:00 pm – 2:00 pm

Online

**Contact Jennifer Van Ort
to Register**

Onondaga County

Assigned Counsel

Program “NUTS N BOLTS”

Series

October 13, 2020

10:00 am – 12:00 pm

online

**Contact Joelle Dougherty
To register**



Other Considerations:

- The sentence **must be ONE YEAR OR LONGER**. *This includes re-sentencing on a Violation of Probation.*
- Subdivisions matter!
- Remember there are other grounds of removal! Most, if not all, of these offenses are also “crimes involving moral turpitude” (CIMT) and therefore could make your client deportable on CIMT grounds, depending on your client’s circumstances.
- Some offenses, such as Robbery and Burglary, can also be charged as “crime of violence” Aggravated Felonies.
- Larceny can also include **Fraud**. If the loss to the victim is over \$10k, the conviction could be a “fraud” Aggravated Felony (to be discussed in our next newsletter).
- While a probation sentence may be very appealing, if your client is likely to violate probation, the client could be re-sentenced to a year local time or state prison time, making the conviction now an AF.
- The original sentence, whether or not your client actually serves any time in jail, remains the sentence for immigration purposes, i.e. Client convicted of one of the above offenses is convicted of an AF if the sentence is one year or more, even where the sentence is “suspended.”

Strategies to Avoid these Aggravated Felony Grounds of Removal:

- Get a sentence of **364 days or less**;
- 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.
- If the prosecutor insists on a larceny plea, plead to Petit Larceny if client has no prior CIMTs and the client is not “otherwise removable.”
- Make sure there is nothing in the record (including restitution) that indicates a loss over \$10,000, to avoid a “fraud” AF conviction.

As always, contact the RIAC at the earliest possible moment in your client’s case!

CONTACT US!

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Chief Defenders & Assigned
Counsel Administrators:

Contact the RIAC2 to schedule
your 2020 training, lunch hour or
other session in your
office/county.

We will provide CLE credit!