

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.*

We give you more in the category of “aggravated felonies”...

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

We are skipping categories (H) Kidnapping offenses; (I) Child Pornography; (J) Racketeering and Gambling offenses; (K) Prostitution business and Trafficking (Sex/Labor); and (L) gathering/transmitting national defense information, disclosure of classified information, sabotage, treason and protection of the identity of undercover agents/intelligence agents. We have never been referred 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!

Moving on.....

INA(101(a)(43)(M):

(M) an offense that—

- (i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or
- (ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000.

What NY offenses fall into this category?

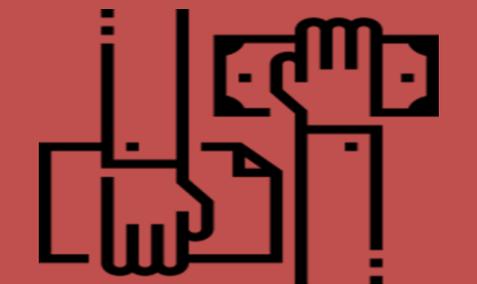
- PL Article 158 offenses (Welfare fraud)
- PL 165.17 (Unlawful Use of credit/debit card or public benefit card)
- PL 165.20 (Fraudulently obtaining a signature)
- PL 165.30 (Fraudulent Accosting)
- PL 165.71, 165.72, 165.73 (Trademark Counterfeiting)
- PL Article 170 offenses (Forgery), with some exceptions
- PL Article 175 offenses (False Written Statements), with some exceptions
- PL Article 176 (Insurance Fraud)
- PL Article 177 (Health Care Fraud)

In This Issue:

**Aggravated Felonies:
Fraud offenses**

UPCOMING EVENTS:

Stay tuned. . .



FAKE



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

We will provide CLE credit!

PL Article 185 (Frauds on Creditors)

PL Article 187 (Residential Mortgage Fraud)

PL Article 190 (Other Frauds): 190.25, 190.26, 190.30, 190.55, 190.60, 190.65, 190.70, 190.78, 190.79, 190.80, 190.80-A, 190.83, 190.85, 190.86, 190.87, 190.90

For brevity's sake, we cannot list the above offenses individually. (That's what our advisals are for!)

Important considerations:

- Subdivisions matter! (e.g., PL 170.40 - Criminal Poss. of Forgery Device - sub (1) is probably not a fraud AF but sub (2) probably is!)
- It is important to distinguish between a "fraud" AF and a "theft" AF. The use of the words "fraud" or "larceny" in the title of the offense is **not** dispositive.(e.g. PL 170.47 Criminal Poss. of an Anti-Security Item is listed under Article 170 Fraud offenses, but the statute involves the intent to steal, so this would more likely be a "theft" offense.)
- 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.

Strategies to Avoid these Aggravated Felony Grounds of Removal:

- Get a restitution amount, reflected in the plea colloquy, of LESS THAN \$10,000.
- 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 felony plea, client could plead to a "theft" felony with less than one year (to avoid the "theft" AF ground) with restitution less than \$10k (to avoid any possible "fraud" AF ground), again, being mindful of the CIMT ground of removal.
- Make sure there is nothing in the record (including restitution) that indicates a loss over \$10,000, including payment up front of any restitution, as part of the disposition.

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