

# CRIMMIGRATION COMMUNICATION

LONG ISLAND  
REGIONAL IMMIGRATION ASSISTANCE CENTER

## Impact of DWI Convictions Upon Noncitizen Clients

Driving While Intoxicated arrests and convictions [NYVTL§§ 1192.1, 1192.2, 1192.3] can devastate a non-citizen. Even a conviction for the infraction-level offense will negatively impact immigration status. Effective assistance of counsel demands an understanding of the likely immigration consequences of a DWI arrest or conviction. This newsletter discusses the implications of these charges and some strategies for mitigating their negative consequences.

First, Congress has not legislated a removal (deportation) ground based on a DWI conviction. A Lawful Permanent Resident will not be *deported* for a single DWI conviction alone. The same is true for *most* other immigrants (with notable exceptions discussed below): a DWI conviction does not cause inadmissibility. **However, we have recently observed Immigration and Customs Enforcement (ICE) basing enforcement decisions (like who to detain and when to initiate removal proceedings) on DWI charges and convictions.**

A recent decision of the Attorney General establishes that any *second* DWI conviction will cause a rebuttable presumption that the offender is a “habitual drunkard,” and thus lacks “good moral character.” *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019). Since “good moral character” is required to become a naturalized US citizen, a second DWI conviction will result in the denial of citizenship for five years (the good moral character lookback period) if not rebutted by strong evidence of positive equities. *Castillo-Perez* also prevents an undocumented non-citizen from establishing eligibility for Cancellation of Removal (a defense to removal if a person can show “extreme and unusual hardship” to a citizen or LPR relative) for ten years (the lookback period) from the date of the offense, without strong evidence to overcome the presumption.

A DWI conviction also carries other negative consequences. The Department of State may cancel a student, tourist, or other temporary visa for a non-citizen arrested on DWI charges, even before resolution of the charges. An immigration judge may exercise discretion to deny an immigration benefit to a person with one or more DWI convictions. Further, depending on case-specific facts, a DWI conviction may be considered a “particularly serious crime,” preventing eligibility for asylum or withholding of removal.

USCIS, the immigration-benefits agency, also takes DWI convictions very seriously. A DWI conviction of any level, including the infraction (VTL 1192.1), is a “significant misdemeanor,” which will prevent eligibility for (or cause termination of) Deferred Action for Childhood Arrivals. A DWI conviction will also be counted towards the two-conviction bar for Temporary Protected Status, which helps non-citizens from certain countries temporarily impacted by war or natural disaster to remain in the US.

Please reach out to the Long Island Regional Immigration Assistance Center when you have been appointed to represent a non-citizen facing DWI charges of any kind. We will discuss mitigating the negative immigration impact of these charges and convictions to help your client remain in the United States. We will discuss seeking courtesy bail under NYCPL §510.10(5), to control the timing of release from custody. We will discuss advising your client about the timing of applications for Naturalization and other immigration benefits, and help you identify a client’s equities and plan effective strategies to rebuild good moral character.

NASSAU 18(b)

Phone: (929) 279-3628  
LIRIAC@sclas.org or  
[Jsaavedraarizaga@sclas.org](mailto:Jsaavedraarizaga@sclas.org)

VISIT OUR WEBSITE:

[www.longislandriac.com](http://www.longislandriac.com)

SUFFOLK 18(b)

Phone: (516) 408-2440 or  
(631) 533-2122  
SuffolkLIRIAC@nclas.org or  
mcalderra-kopf@nclas.org