



ADVOCATE FAQ

September 10, 2023

Update on immigration consequences for New York “narcotic drug” convictions

On September 6, 2023, the Second Circuit issued a decision in *U.S. v. Minter*, No. 21-3102, 2023 WL 5730084 (2d Cir. Sept. 6, 2023) that could benefit immigrants who have New York convictions having to do with sale or possession of a “narcotic drug.” **As a result, thousands of immigrants targeted by the War on Drugs may be eligible for relief from the devastating immigration consequences of these convictions.**

The harsh penalties for drug use and sale have torn families and communities apart without providing the safety those communities deserve. This decision by the Court provides a glimmer of relief for immigrants, who are among the most harshly impacted by the War on Drugs. The below FAQ provides information for advocates who may interact with people who will benefit from the court’s decision.

What did the Court in *U.S. v. Minter* say?

The Court in *U.S. v. Minter* said that certain New York convictions for possession or sale of a “narcotic drug” will no longer be deportable or disqualifying drug crimes for immigration purposes. **This means that individuals with certain NY “narcotic drug” convictions may now be able to fight old deportation orders or fight current removal proceedings. In addition, people who were barred from getting a green card or citizenship because of a New York “narcotic drug” conviction may now be eligible.**

How can I help someone who may benefit from this decision?

You can explain and assist them in gathering documents that they will need to share with an immigration attorney for an individualized analysis of their situation. Some of these documents may require someone who is in the U.S. to go to the criminal courts to get documents.

Although this decision is a good one, not all people with New York drug convictions will benefit and there could be risks for people who assume they benefit and submit applications without getting an individualized analysis by a trusted immigration attorney.



Immigrants with convictions are vulnerable and can be exploited by people who make promises for an easy fix. For this kind of analysis, a trusted attorney will be an immigration attorney who has experience and understanding of the overlap between the criminal and immigration laws. They should already be familiar with the decision in *U.S. v. Minter* and should be able to provide detailed analysis as to how it impacts that individual. They should be able to talk about the risks and benefits of any motion or immigration application.

Advise community members to be wary of an immigration attorney who tells someone that they are eligible to apply for a benefit or to reopen a deportation order **without** knowing the specific statutes under which someone has been convicted or having full information about someone's immigration status and history. **An individualized and specific analysis will be needed for this decision.**

The risks of filling applications or motions if someone is not eligible include:

- Some motions can only be filled once and if they are filled for someone who is not eligible or not done completely, the person will lose their chance to file them in the future.
- They could put someone on the radar of Immigration and Customs Enforcement (ICE), meaning that they would be vulnerable to an ICE arrest, detention, and facing deportation. This could include people who have old deportation orders and are living in the United States. They could be detained for a period of time while ICE tries to get documents to deport them.

Special timelines for people who have deportation orders or were already deported for a New York “narcotic drug” conviction:

Some people who were ordered removed from Immigration Courts in New York and Connecticut due to a New York “narcotic drug” conviction may have an opportunity to ask an Immigration Judge or the BIA to reconsider whether the old removal order was appropriate and apply for a defense to deportation that was not previously available. **Doing this within the first 30 days after September 6, 2023 is highly recommended because after 30 days there may be additional obstacles of having their case reconsidered.**

For people in this situation, they should reach out to a trusted immigration attorney as soon as possible to start to explore their eligibility as they gather documents.

Below is more information about the decision, its impacts, and the information and documents needed to understand if someone can benefit. This information is available for immigrants with questions about the decision in our Community FAQ in [English](#) and [Spanish](#).



What is a “narcotic drug?” How will someone know if their conviction was for a “narcotic drug”?

“Narcotic drug” is a term used in New York law. It refers to a list of drugs that the state has designated as “narcotic drugs” (as opposed to “cannabis,” “stimulants,” “hallucinogens,” or another category of drug). Common drugs included on the list are cocaine and heroin.

The best way to identify if a conviction was for sale or possession of a “narcotic drug” is to identify exactly what criminal statute a person was convicted under. This requires information more specific than knowing whether it was a felony or the name of the statute. For example, people convicted of criminal possession of a controlled substance in the fourth degree have a “narcotic drug” conviction *only if* they are convicted under subsection one of the statute.

Who might benefit from this decision?

Immigrants who:

- Live in New York, Connecticut, or Vermont and have been told they are **ineligible for an immigration benefit**, like permanent residence (a green card) or citizenship, **based on a New York “narcotic drug” conviction; or**
- Are **currently in removal proceedings** in an Immigration Court in New York or Connecticut **based on a New York State “narcotic drug” conviction; or**
- Have a New York “narcotic drug” offense and were **ordered removed by an Immigration Court in New York or Connecticut.**

In order to determine whether someone can benefit from the Court’s decision, **they will need an individualized analysis. They should speak with a trusted immigration attorney about any questions around drug convictions in New York State.**

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What documents will a trusted immigration attorney need to review?

The type of documents needed are:

- **Criminal Court documents**
 - They need Certificates of Disposition for every arrest or time they had to go to criminal court.



- For arrests in New York City, [request Certificates of Disposition](#) at the court where they appeared.
 - For arrests outside of New York City: the person or a loved one will need to contact the court directly to request a copy of the court judgment or disposition.
 - Previous criminal defense attorney(s) may have the person's case file with these documents or be helpful locating documents.
 - If the person had an assigned attorney in NYC but doesn't remember their information, they can contact the public defense offices ([English](#) / [Spanish](#)).
 - An immigration attorney or advocate will need more than a RAP sheet to analyze someone's eligibility. But if they have it, a RAP sheet may be a useful document as it lists criminal history and location of cases.
- **Immigration case documents and decisions.**
 - Anyone who was previously in Immigration Court or ordered deported, they will need documents from their case including: the charging document ("Notice to Appear") and any orders or decisions from an Immigration Judge, Board of Immigration Appeals (BIA) or Circuit Courts.
 - If they were denied an immigration benefit like a green card or citizenship based on a New York "narcotic drug" conviction, they will need the denial notice.
 - If they previously were represented by an immigration attorney, the attorney may have copies of these documents. If they or a previous attorney do not have the documents, you may need to file a Freedom of Information Act (FOIA) request with [the Executive Office of Immigration Review \(EOIR\)](#) or [U.S. Citizenship and Immigration Services](#).

Once people gather the documents needed, they should speak with a trusted immigration attorney to determine if they could benefit from the decision.