

Advising Non-U.S. Citizens about Marihuana Violation Convictions

A plea to a marihuana offense, even a violation like N.Y. Pen. Law §§ 221.05 or 221.10, can result in devastating immigration consequences. Immigrants convicted of marihuana offenses may become deportable or ineligible for immigration status, will be unable to return to the U.S. after a trip abroad, and may face mandatory immigration detention. It is best practice to get individualized advice using an expert for each client. The below resource was developed for educational purposes only. It is not a substitute for individualized legal advice.



Step 1: Ask all clients: Where were you born?

<input type="checkbox"/> U.S. or U.S. territory (Puerto Rico, Guam, U.S. Virgin Islands) People born in the U.S. are citizens who do not need immigration advice	<input type="checkbox"/> A place outside the U.S. Your client may suffer negative consequences as a result of a plea. This chart may be able to help you determine some immigration consequences of a plea to N.Y. Pen. Law §§ 221.05 or 221.10. Move on to step 2.
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Step 2: Ask clients born outside the U.S. and its territories:

Do you have any pending immigration applications, including renewal applications?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you have a pending Immigration Court case?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you have any prior convictions (including convictions for NY violations or convictions that were sealed, vacated, or expunged)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If your client answers yes to any of these questions, **call an immigration expert** to ensure your client gets accurate, complete advice before taking a plea. This resource cannot help you because the type of application, posture of the immigration case, and/or criminal records will impact the advice.

If the answer to all three questions is no, **move on to step 3.**

Step 3: For clients born outside of the U.S. and its territories, who answer no to three questions above, ask: What is your immigration status?

Naturalized Citizen <i>*Ask your client: When did you take the oath of citizenship?</i>	The citizenship oath ceremony was before the alleged offense date.	A plea will not impact your naturalized citizen client's immigration status because your client was a citizen at the time of the alleged offense.
	The citizenship oath ceremony was after the alleged offense date.	This resource cannot provide advice about the impact of a plea in this case. You should get time to call an immigration expert by adjourning the case or asking for a second call.
Lawful permanent resident (also referred to as "LPR" or "greencard holder")	A lawful permanent resident who pleads guilty to a marihuana N.Y. Pen. Law §§ 221.05 or 221.10 may become deportable, will be unable return to the U.S. after a trip abroad, and will face barriers to becoming a U.S. citizen for five years from the date of the conviction. The following is the minimum general advice about deportability, travel, and citizenship that should be conveyed to lawful permanent resident clients: Deportability: This conviction will make your lawful permanent resident client deportable if the government can prove that they possessed more than 30g of marihuana or have more than one simple possession conviction. (Note, by law, the maximum amount of marihuana possessed in connection with a N.Y. Pen. Law § 221.10 conviction is less than 30g. This is not the case with a N. Y. Pen Law §§221.05 conviction.)	

	<p>Travel: The 30g exception explained above does not apply to your lawful permanent resident client returning from a trip abroad. On return from a trip abroad, lawful permanent residents with any controlled substance conviction including a N.Y. Pen. Law §§ 221.05 or 221.10 can be placed in deportation proceedings and subject to mandatory detention. In proceedings your client’s ability to fight their deportation will depend on the amount of time they've been in the U.S., their family in the U.S. and their status, and other individual factors. An immigration expert can provide more advice about what might happen in removal proceedings.</p> <p>Citizenship: Your lawful permanent resident client who has a conviction for N.Y. Pen. Law §§ 221.05 or 221.10 should speak to an immigration expert before submitting any application for citizenship. If your client applies for citizenship in the next five years, they will have to affirmatively prove that this conviction was related to less than 30g of marihuana (in addition to the normal citizenship requirements). An immigration expert can provide more advice on how to do this successfully.</p>	
<p>DACA (Deferred Action for Childhood Arrivals)</p>	<p>A conviction for N.Y. Pen. Law §§ 221.05 or 221.10 does not disqualify your client from DACA. However, DACA is a discretionary benefit and may be denied as a result of even a minor conviction. If your DACA recipient clients is convicted of any offense, including N.Y. Pen. Law §§ 221.05 or 221.10, they should consult with a trusted immigration expert before submitting a renewal application. In addition, this plea can negatively impact DACA recipients in the future (see panel to the right with advice about future applications and travel).</p>	<p>Future applications: If your client becomes otherwise eligible for lawful permanent resident status in the future, a conviction under N.Y. Pen. Law §§ 221.05 or 221.10 will be considered a controlled substance offense conviction which will make them ineligible for lawful permanent resident status and could limit their ability to fight their deportation. A waiver is available for individuals whose criminal history consists of a single offense who can prove that the conviction involved less than 30g of marihuana. (Note, by law, the maximum amount of marihuana possessed in connection with a N.Y. Pen. Law § 221.10 conviction is less than 30g. This is not the case with a N. Y. Pen Law § 221.05 conviction.) The waiver is only available to those who can prove their deportation will result in hardship to an LPR or U.S. citizen spouse, parent, or child or their conviction was more than 15 years ago. The waiver is difficult to obtain. In addition, a conviction under N.Y. Pen. Law §§ 221.05 or 221.10 will make your client subject to mandatory detention.</p>
<p>TPS (Temporary Protected Status)</p>	<p>Your client with TPS does not risk losing their status as a result of a N.Y. violation conviction, including a conviction for N.Y. Pen. Law §§ 221.05 or 221.10. In addition, TPS is not a discretionary benefit so a plea to N.Y. Pen. Law §§ 221.05 or 221.10 cannot lawfully result in a denial. However this plea can still negatively impact people with TPS (see panel to the right with advice about future applications and travel).</p>	
<p>Undocumented</p>	<p>Your undocumented client is already vulnerable to deportation. But they can still face negative consequences from criminal matters and they should be advised about these consequences.</p> <p>A guilty plea to any controlled substance offense, including N.Y. Pen. Law §§ 221.05 or 221.10 will make your undocumented client ineligible for lawful permanent resident status in the future (see panel to the right with advice about future applications). In addition, if your client was fingerprinted in connection with this offense, they are at increased risk of being targeted for ICE enforcement using the information provided at the time of fingerprinting.</p> <p>Travel: If your client with DACA or TPS is granted permission and does travels internationally after being convicted of N.Y. Pen. Law §§ 221.05 or 221.10, on return from a trip abroad, they can be placed in deportation proceedings and subject to mandatory detention. Note that approval by an immigration agency of advanced permission to travel is not a guarantee they will be permitted to re-enter the U.S. DACA and TPS recipients can still be placed in deportation proceedings and subject to mandatory detention if they have any controlled substance conviction including a N.Y. Pen. Law §§ 221.05 or 221.10 conviction.</p>	
<p>None of the Above</p>	<p>You should get time to call an immigration expert by adjourning the case or asking for a second call.</p>	