

# 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.*

As we welcome summer, hitting the road for a vacation comes to mind, things continue to open up after the pandemic! In this issue, we explain the immigration consequences of VTL convictions for noncitizen clients.

## In This Issue:

### Immigration and VTL Convictions

#### UPCOMING EVENTS:

**June 3, 2021: 3:00 – 4:30 PM**  
2021 PADILLA UPDATE:  
FAMILY LAW. Online via  
Webex. To register:  
[mmarcello@ocgov.net](mailto:mmarcello@ocgov.net)

**June 24, 2021: 2:00 – 4:30 PM**  
2021 PADILLA UPDATE:  
CRIMINAL AND FAMILY LAW  
Online via Webex. To register:  
[mmarcello@ocgov.net](mailto:mmarcello@ocgov.net)



### **AVOIDING THE NEGATIVE IMMIGRATION CONSEQUENCES OF VTL CONVICTIONS (other than DWI and other alcohol-related offenses)**

Many of our referrals include violations of various provisions of the Vehicle and Traffic Law. Will a VTL conviction land your client in removal proceedings? The answer, of course, is that it depends (the answer to just about every immigration question).

#### Traffic Infractions:

**Basic** traffic infractions, other than DWAI (VTL §1192.1), have no direct immigration consequences (e.g. Unlicensed Operation (509-1), equipment violations, parking, and infraction-level moving violations such as Speeding, Unsafe Lane change, etc.)

Because infractions are not Aggravated Felonies, the concern is whether the offense constitutes a Crime Involving Moral Turpitude (CIMT). The other grounds of removability, other than a Controlled Substance Offense, do not find themselves in the VTL. (Generally speaking, though not an absolute rule, offenses that are regulatory in nature (*malum prohibitum*), such as an inspection violation, are not CIMTs, and those that involve inherently bad conduct (*malum in se*), such as leaving the scene of a personal injury accident, are CIMTs.) The majority of the traffic infractions we encounter do not have any adverse immigration consequences for removability purposes. But, see below under Other Considerations.

#### Misdemeanors:

-Aggravated Unlicensed Operation 3d (VTL §511(1)): No direct adverse immigration consequences, but see below under Other Considerations.



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**Chief Defenders &  
Assigned Counsel  
Administrators:**

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

**We will provide CLE credit!**

-Aggravated Unlicensed Operation 2d (VTL §511(2)): This may be a CIMT. See discussion below under AUO 1<sup>st</sup>.

-Reckless Driving (VTL §1212): No direct immigration consequences, but see below under Other Considerations.

-Leaving the Scene of an Accident (VTL §600):

- 600(1)(a): Property Damage Accident – no direct immigration consequences, but see below under Other Considerations.
- 600(2)(a): Personal Injury Accident – could be a CIMT, especially at felony levels, depending on facts and circumstances.

-Driving with Suspended Registration (VTL §512): No adverse direct immigration consequences.

### Felonies:

-Aggravated Unlicensed Operation 1st (VTL §511.3(a)(1)): is categorically a CIMT. See, *Matter of Vucetic*, 28 I. & N. Dec. 276 (BIA 2021) *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999).

-Leaving the Scene of a Personal Injury Accident **involving death or serious physical injury** (VTL §600.3(i) & (ii)): could be CIMT depending on the facts of the case. For example, did your client simply leave the scene and fail to provide insurance or personal information, or did they actually leave the scene with clear evidence that they knew someone was injured?

### Other Considerations:

Infractions: If your client is in the process of applying for an immigration benefit, such as a waiver, citizenship or DACA, some offenses could be the basis for denial of that application on discretionary grounds (e.g., AUO charges involve a pattern of suspensions for failure to appear in courts and/or pay fines). This depends on the facts and circumstances of your client's case and, for example, whether the client has taken any action to cure suspensions.

Misdemeanors and Felonies: These offenses have much more of a negative impact in discretionary decisions. For example, a client who has DACA or TPS (temporary protected status) must renew their "status" every 2 years (DACA) or 18 months (TPS). Conviction for two or more "significant misdemeanors" will make the client ineligible to renew their status, resulting in possible removal proceedings. In DACA and TPS situations, especially, your client will have been in the U.S. for many years, so it is critical to preserve eligibility for renewal of their status. Leaving the Scene of a Personal Injury Accident (VTL §600.2) and Aggravated AUO (VTL §511-D) could certainly fall into this category. A citizenship application may be denied because your client lacks the required "good moral character" based on one or more CIMTs, including traffic convictions.

Unfortunately, traffic stops are fertile ground for ICE enforcement. While it seems easy to dismiss a VTL violation as insignificant, for immigration purposes, that may not always be the case. Better to be safe than sorry. Contact the RIAC!

We will be taking a Summer break from the Newsletters. See you in the Fall!