

Immigration Consequences of DUI Convictions in Illinois



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Helpful Definitions

Removal/Deportation

These terms are used interchangeably to describe the action taken when a noncitizen is determined to no longer be allowed to stay in the United States unlawfully. Removal or deportation is an immigration process that is not associated with the criminal justice system.

Conviction

A conviction, for purposes of immigration, means a formal judgment of a guilty plea entered by the court. A conviction will also result when a noncitizen pleads to the facts of the offense and punishment is implemented even if a formal judgment of guilt is not entered by the court. 8 U.S.C. § 1101(a)(48)(A) (2006).

DUI

A common abbreviation for the offense of driving under the influence of alcohol, drugs, or other controlled substances.

Immigration Purposes

This phrase is used to make distinctions from the criminal justice system.

Board of Immigration Appeals (BIA)

This is the administrative court where decisions of immigration judges are appealed to. It is part of the Department of Justice (DOJ) and Exclusive Office for Immigration Review (EOIR).

Criminal Justice System

This term is used to describe the actors, events, and rules in a criminal court as being separate from immigration services.

Offense / Criminal offense

This is another term for a crime. When you are convicted of a crime it is because you have committed a criminal offense. In this case, the criminal offense is driving under the influence of the impairing substance.

Felony

Is a term used in the criminal justice system to describe the more serious crimes often involving imprisonment for longer than one year but not always.

Misdemeanor

This is a term used in the criminal justice system to describe the less serious crimes often punishable by fines, probation, or less than one year imprisonment.

Noncitizen

Noncitizen for purposes of this packet refers to any person not a citizen or national of the United States. The Immigration and Nationality Act defines this person as an alien. 8 U.S.C. § 1101(a)(3) (2006).

Elements of Offense or Crime

This phrase is used to describe the different factors listed in a law that must be met in order to convict a person of violating that law.

Simple DUI

This is a phrase used to distinguish a DUI with no aggravating factors from those that do involve such factors.

Plea of Guilty

In the criminal justice system, after being charged with a crime you are given the opportunity to tell the court you are guilty or innocent of the charges. A plea of guilty indicates to the court that you admit that you committed the acts charged against you.

Immigration Consequences of a DUI Conviction in Illinois

This packet explains under what circumstances a DUI conviction in Illinois may lead to the removal of a non U.S. citizen.

How can committing a crime lead to my removal from the United States?

Generally speaking, noncitizens may be deported due to a conviction of a crime involving moral turpitude or an aggravated felony. There are also several other specific grounds such as drug offenses and domestic violence abuse that often lead to deportation of a noncitizen.

What is a crime of moral turpitude?

In order to be deported for a conviction of a crime involving moral turpitude, the offense must have been committed within five years of your admission to the United States. The crime also must be one in which a sentence of 1 year or longer could potentially be imposed. In addition, if at any time after admission, you are convicted of two or more crimes involving moral turpitude you may also be subject to deportation. Once you have committed more than one crime involving moral turpitude, the crimes do not have to occur within five years of your admission to the United States. *You may be deported whether you committed the crimes after you were here for two years or twenty years.*

What is an aggravated felony?

An aggravated felony is a term of art in immigration law and has a different meaning than in the criminal justice system. Section 101(a)(43) of the Immigration and Nationality Act defines aggravated felony. 8 U.S.C. § 1101(a)(43) (2008). An aggravated felony can be murder, rape, or sexual abuse of a minor. However, this offense is not limited to the three listed crimes. A crime does not have to be considered an aggravated felony or even a felony by criminal law standards to be considered an aggravated felony for immigration purposes. It is important to remember that even if you are convicted of a misdemeanor in a state court, you may still face removal from the United States if by immigration law standards it is an aggravated felony.

The immigration statute's definition of an aggravated felony includes a crime of violence for which the term of imprisonment is at least one year. A crime of violence is an offense that involves either the use, attempted use, or threatened use of physical force against another person or his or her property. A crime of violence may also include offenses that by their nature involve a substantial risk for physical force to be used against a person or property.

If I am charged with a first time, simple DUI in Illinois, will I be removed from the United States?

The answer to this question depends on the facts of your situation. When an immigration judge considers whether you should be removed, the judge must look to the elements of the offense when you are convicted. There has not been a case in which the Board of Immigration Appeals have interpreted the elements of the Illinois DUI laws to determine whether a conviction under the Illinois law will lead to deportation.

While there is no definite answer as to whether you will be removed because of your conviction under the Illinois DUI laws, by looking to what immigration judges have determined in removal proceedings for other noncitizens convicted of similar statutes in other states you may be able to predict whether your conviction will lead to removal from the United States. It is also important to remember that even if you are found removable you may be eligible for a waiver or a cancellation of removal under section 240A of the Immigration and Nationality Act. 8 U.S.C. § 1229b (2008).

What am I really being convicted of?

Immigration judges will look to the elements of the offense you are convicted of in determining whether it should lead to your removal and it is very important to understand what statute your conviction rests on. The statute will list the essential elements of the offense which the immigration judge will examine.

My conviction is for a simple Driving Under the Influence, how do I know whether I will be removed from the United States?

If you have been convicted of driving while under the influence of alcohol, drugs, or some combination of intoxicating substances you are charged with a simple DUI. This conviction is not considered one involving moral turpitude or an aggravated felony by the Board of Immigration Appeals. In *Matter of Torres-Varela*, 23 I & N Dec. 78 (BIA 2001)(en banc), the BIA determined that a simple DUI is not a crime involving moral turpitude. However, In *Matter of Lopez-Meza*, 22 I & N Dec. 1188 (BIA 1999), the BIA determined that committing a DUI with knowledge that your license is revoked or suspended is a crime involving moral turpitude. Additionally, in *Marmolejo-Campos v. Gonzales*, 503 F.3d 922 (2007), the U.S. Court of Appeals for the Ninth Circuit decided that driving under the influence with knowledge that you do not have a valid license to drive is a crime of moral turpitude and can make you deportable.

I have been convicted more than once, am I going to be removed now?

While multiple convictions for this offense may lead to harsher penalties in the criminal justice system, the elements of the crime will not change. If you are being charged under the same statute, the immigration effects will not change. If the conviction is not one of moral turpitude or aggravated felony the first time you committed it, it cannot be the second time you commit it. However, if it was a crime of moral turpitude or an aggravated felony the first time it will be the second time, and can lead to removal from the United States.

Also, if your second conviction involved more elements than that of the first offense, it may lead to removal, so it is important to determine what your latest conviction was for. Many times your license will be revoked or suspended when you are convicted of your first DUI. If you are convicted of a second DUI while your license is revoked or suspended, the essential elements of the criminal offense have changed and under the Ninth Circuit precedent, you can be subject to deportation.

I am convicted of aggravated driving under the influence, is this different from a simple DUI?

You may be charged with an aggravated DUI under Illinois law if this is your third or more time being convicted of a DUI. An immigration judge may determine that this conviction involves a new element and may determine it to involve moral turpitude or be an aggravated felony. However, since your conviction has been for the same actions as a simple DUI, an immigration judge may determine that just because you have continuously violated the law, the nature of the conviction has not changed and cannot lead to your removal.

You may also be convicted of an aggravated DUI if in committing the DUI you were involved in a motor vehicle accident that resulted in bodily harm, permanent disability, or disfigurement to another, or if you were involved in a motor vehicle, snowmobile, all-terrain vehicle, or watercraft accident that resulted in the death of another person.

An aggravated DUI is a felony in Illinois. A simple DUI is only a misdemeanor. Immigration judges may be more likely to determine a conviction of aggravated DUI to lead to removal. However, recently an aggravated DUI in the state of Florida was determined by the U.S. Supreme Court in *Leocal v. Ashcroft*, 543 U.S. 1 (2004), not to meet the required “crime of violence” standard. It was not considered an aggravated felony for immigration purposes because it did not require any intent by the noncitizen committing the crime.

I have been charged with a DUI and I want to plead guilty, what should I know?

First, it is important to remember that the exact law you are charged with violating will have a large impact on whether you will be removed from the United States. If you have an attorney, you should notify him or her of your noncitizen status and ask for advice on how best to avoid removal. Your attorney may be able to bargain for a plea of guilty to an offense that will not lead to removal. If you proceed without an attorney, you should closely examine what the charges against you are and whether they consist of simple DUI, aggravated DUI, or include other offenses that may affect your ability to stay in the United States.

Illinois requires judges to warn all noncitizen defendants before pleading guilty to a criminal offense that their plea may lead to deportation, exclusion, or denial of naturalization. While this may give you some reassurance to know that you will be reminded of the risks before pleading guilty, it is important to remember that the judge is not required to tell you what YOUR consequences will be if you plead guilty to the offense. The judge may not even be sure what the consequences will be and it is important for you to ask an attorney if you are not sure what they are.

Bibliography

The following sources were used to write this article and are additional sites that the reader can refer to for helpful information about the ramifications of a DUI on immigration status.

1. Illinois Legal Aid

This website allows you to search for information of different areas of the law. Searching under DUI and Immigrant will lead to links for thorough explanations of how contact with the criminal justice system may affect your immigration status.

Illinois Legal Aid, <http://illinoislegalaid.org>, (last visited Sept. 14, 2009).

2. Illinois State Police

This provides a list of consequences for DUI charges. This includes a listing of punishments for first or second offenses and details when a DUI becomes a felony. This may be an easier way to determine what the elements of your conviction are without having to look at the actual law.

Illinois State Police, <http://www.isp.state.il.us/traffic/drnkdriving.cfm> (last visited July 09, 2009).

3. Maria-Teresa Davenport, *Deportation and Driving: Felony DUI and Reckless Driving as crimes of Violence Following Leocal v. Ashcroft*, 96 J.Crim. L. & Criminology 849, (2006).

This article discusses the recent decision by the Supreme Court determining that a DUI involving serious bodily injury is not an aggravated felony for immigration purposes. This article gives some good background on the immigration laws and cases interpreting them.

4. The National Immigration Project

This website describes different resources available for noncitizens through the National Immigration Project. It also provides advice on certain legal issues by giving links to important immigration decisions and articles.

The National Immigration Project, <http://www.nationalimmigrationproject.org/CrimPage/CrimPage.html>, (last visited July 8, 2009).

5. Secretary of State, *Cyber Drive Illinois, DIU Factbook*,

This website provides basic information on what constitutes driving under the influence.

http://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a118.pdf, (last visited July 8, 2009).

6. United States Department of Homeland Security

This website provides links to activities, programs, information, and local offices that may provide noncitizens with support.

United States Department of Homeland Security, *Immigration*, <http://www.dhs.gov/ximgtn/> , (last visited July 8, 2007).

7. United States Citizenship and Immigration Services.

This website provides information for noncitizens regarding their immigration status. There are many links to different helpful materials such as decisions by the Board of Immigration Appeals. United States Citizenship and Immigration Services, <http://www.uscis.gov/portal/site/uscis>, (last visited July 8, 2009).

8. Illinois DUI Statute: This is the Illinois DUI statute.

It may be helpful in determining the elements of a conviction. 625 Ill. Comp. Stat. § 5/11-501 (2009).