

Though simple misdemeanors are generally considered minor offenses carrying few consequences, for noncitizen defendants the immigration consequences can be just as severe as more serious charges. And because indigent defendants charged with simple misdemeanors are often uncounseled, a noncitizen defendant charged with a simple misdemeanor may be at high risk of extremely serious immigration consequences resulting from their charge and conviction.

For example, conviction for possession of drug paraphernalia makes a noncitizen—even a long-term, lawful permanent resident of the United States—deportable. Possession of drug paraphernalia also may make a noncitizen ineligible for various forms of relief from removal. That conviction would also make a noncitizen permanently inadmissible to the United States, which for many undocumented people completely precludes the possibility of obtaining lawful status in the future. Even when a single simple misdemeanor conviction does not pose a threat, multiple convictions for simple misdemeanors may. For example, two convictions for theft in the fifth degree make a noncitizen—again, even a lawful permanent resident—deportable, inadmissible, and ineligible for many forms of relief.

Because some simple misdemeanor convictions carry extremely severe immigration consequences, it is critical to ensure that noncitizen defendants are advised of those consequences. An adequate advisal could be as follows:

This court will not inquire into your citizenship status during this criminal proceeding. You should know, however, that if you are not a citizen of the United States, a criminal conviction may have adverse immigration consequences, such as removal from the United States, exclusion from admission to the United States, or ineligibility for certain forms of immigration benefits or relief. A conviction in this court may also affect your immigration status and the ability for you to travel to other countries.

You have the right to understand the specific immigration consequences of your plea. If you do not understand those consequences, the court will grant you reasonable additional time to consult privately and confidentially with an

attorney. Do you understand the potential immigration consequences of your conviction?<sup>1</sup>

Perhaps more important, however, is identifying immigration-safe options and making those options available to noncitizen defendants where appropriate. A plea to simple possession of less than 30 grams of marijuana, for instance, has far fewer immigration consequences than a plea to possession of drug paraphernalia. And in other cases where the immigration consequences of a conviction would be vastly disproportionate to the severity of the offense, it may be possible and desirable for all parties to resolve the case in an immigration-safe way.

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<sup>1</sup> Adapted from Rahel & Shilhanek, Informing Criminal Defendants of the Immigration Consequences of Their Convictions: The Trial Judge's Duty, available at [https://ailp.law.uiowa.edu/sites/ailp.law.uiowa.edu/files/wysiwyg\\_uploads/CR50-4Rahel%281%29.pdf](https://ailp.law.uiowa.edu/sites/ailp.law.uiowa.edu/files/wysiwyg_uploads/CR50-4Rahel%281%29.pdf).