



Immigration Consequences of Drug Charges for International Students

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Where we are

The culture



“Weed” is cool. And available. But still illegal in most states and under federal law.

Who we are



International students. Young and naïve.

Who we are



DSOs. Experienced and knowledgeable. Just not about “crimmigration” issues.

So what is a DSO to do?

YOU DO NOT HAVE TO BE THE EXPERT!

1. Identify and explain the issues.
2. Identify the people who can help.



Minor crime, major consequences

Certain crimes are punished in the criminal-justice system by little more than a slap on the wrist:

- No actual jail time;
- Fines;
- Community Service;
- Suspended license.

The immigration system is far more draconian.



Simple marijuana possession

The immigration consequences of the most minor “simple possession” conviction are dire:

1. Barred from reentering U.S. after foreign travel without waiver
2. Ineligibility to change to another status (like H-1B)
3. Possible deportation from the U.S. (if > 30 grams)
4. If simple possession of more than 30 grams of marijuana, permanent ineligibility for green card or U.S. citizenship
5. If possession of 30 grams or less, ineligible for green card for 15 years without waiver

Other drug offenses

Beyond simple possession of marijuana, it only gets worse:

1. Simple possession of a drug besides marijuana:
 - Permanently inadmissible to the U.S. (only temporary waiver available);
 - Can be deported if already here;
 - Permanently disqualified from green card.
2. Distribution or attempted distribution (“dealing”):
 - All of the above, plus
 - “Aggravated felony”: near-certain deportation and permanent bar to any immigration benefits.



Other unwelcome surprises

1. A “suspended” jail sentence is treated the same as an actual sentence.
2. If the charges are ultimately dismissed, it could still count as a “conviction” under immigration law.
3. Expunged charges live on forever. And they may make it more difficult down the line.



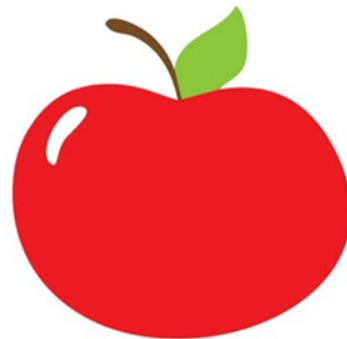
Developing a school policy

1. Must update SEVIS within 21 days with “[a]ny disciplinary action taken by the school against the student as a result of the student being convicted of a crime.” 8 C.F.R. § 214.3(g)(2)(ii)(D).
2. Some flexibility: what if student isn’t convicted? General counsel must consider a number of factors: liability to other students/faculty, honor codes, etc.
3. If expelled and terminated in SEVIS, student is **immediately out of status and subject to removal on that basis alone.**



An ounce of prevention

1. Warn students during orientation of these nightmares. Inform them of school policy.
2. Tell them to immediately contact the DSO as soon as they have been charged with a crime, regardless whether they consider it to be “minor.”



HELPING STUDENTS ONCE TROUBLE ARISES



The “heart-to-heart”

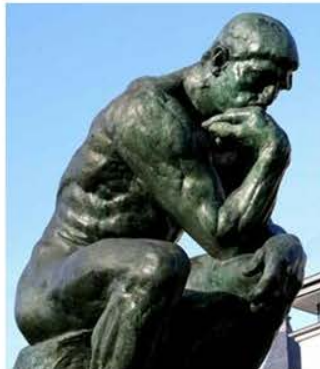
- Explain the seriousness of the situation
- Explain difficulties in traveling outside U.S.
- Urge student to contact two lawyers:
 1. An immigration attorney specializing in the immigration consequences of criminal convictions and
 2. A local criminal-defense attorney.

WHY TWO?

The immigration attorney

Role: Master strategist

- Reviews student's current immigration situation (Immigration is federal practice, so an immigration attorney in another state can handle)
- Develops strategies for reducing or eliminating immigration consequences



The criminal-defense attorney

Role: Boots on the ground

- Strategizes with immigration attorney on what's doable (criminal-defense attorney should be local because this involves state-specific law and procedure)
- Implements the strategy (i.e., plea deal, trial)



What can this dynamic duo do?

- Engineer a disposition that does not count as a “conviction” under immigration law.
- Convince prosecutor to accept plea to a different statute that does not relate to drugs.



Travel after case is over

- Students should have an immigration attorney review papers before travel.
- If travel is advisable, students must bring:
 - Official, original disposition from the court;
 - Letter prepared by an immigration attorney explaining why the student is eligible to reenter.
- Any arrests must be disclosed on the visa application form!

Travel while the case is pending

- Not advisable. Discuss with an immigration attorney.
- If travel cannot be avoided, students must bring:
 - Original documents from court showing status;
 - Letter from an immigration lawyer explaining why the student is eligible to reenter.
- Any arrests must be disclosed on the visa application form!
- Of course, if student is expelled, no reentry on F-1!

The moment of truth . . .

BUT NOT TOO MUCH!!

- Merely admitting to a drug crime can lead to a permanent trip home. A conviction isn't needed!
- Students should say no more than is necessary.
- Let the documents speak for themselves.



Example One

Nancy hails from Liechtenstein. She comes into your office Monday morning and tells you she was arrested over the weekend for having a marijuana joint in her pocket. Her court date is on Friday. What to do?

1. Tell her how serious this could be for her immigration status. Recommend contacting a criminal-defense and immigration attorney. This is not something to cheap-out on!
2. Recommend not traveling until the case is resolved.
3. Counsel on potential expulsion issues.

Example Two

Bob is from Bhutan. Campus police found a big stash of pot in his room, but he swears it belongs to his roommate. Winter break starts next week, and he wants to go home. Court date is in early January. What to do?

1. Recommend contacting criminal-defense and immigration attorneys. Immediately.
2. Recommend putting off travel until the case is resolved. The criminal-defense lawyer may be able to advance court date.
3. If travel is unavoidable, tell Bob to bring official court documentation of case status and letter from immigration attorney. **Do not admit to anything if questioned!**

Conclusion

- Immigration law is full of scary surprises.
- Students should know the danger up front, and take things seriously once problems arise.
- **DSOs are not expected to know everything! Just be sure to identify the problem and refer to the right people!**





Questions???

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