

CRIMINAL-IMMIGRATION LAW PRIMER SERIES

CAIR Coalition Virginia Justice Program
www.caircoalition.org/vjp
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THE DEFINITION OF “CONVICTION”

Why does the definition of “conviction” matter?

Many of the most severe immigration consequences arise only when an immigrant has a “conviction” as a result of a criminal case. For example, nearly all controlled substance convictions will lead to mandatory immigration detention and a deportation proceeding, as will most convictions for “aggravated felonies” or “crimes involving moral turpitude.” However, the circumstances when a criminal case disposition constitutes a conviction for immigration purposes are often counterintuitive and contrary to the way convictions are understood for the purposes of criminal law.

What is a “conviction” for immigration purposes?

The immigration definition of conviction has two components.¹ First, there must be a finding or admission of guilt, which can result from: (a) a guilty verdict by judge or jury; (b) entry of a guilty plea, including an *Alford* plea; (c) entry of a *nolo contendere* plea; or (d) an admission of sufficient facts by the defendant to warrant a finding of guilt. Second, the judge must order “some form of punishment, penalty, or restraint on the alien’s liberty.” The second portion of the definition has been interpreted very broadly and can include judicial orders to attend alcohol treatment programs or partake in community service.

Most notably, the definition of conviction does not require any finding of guilt. Rather, an admission of sufficient facts to *warrant* a finding of guilt is enough so long as the admission is accompanied by some restraint on liberty. The definition of conviction also includes situations in which a plea is entered but later withdrawn as a result of successful completion of probation; the withdrawal is not sufficient to take away the conviction under immigration law. Only a vacatur on the basis of legal or constitutional defect will invalidate a conviction for immigration purposes.

Are deferred dispositions or pre-plea diversion programs pleas convictions?

While many criminal case dispositions will be considered convictions for immigration purposes, there are a handful of important exceptions. First, pre-plea diversion programs (e.g., a drug court program) do not result in convictions for immigration purposes if they require no finding or admission of guilt prior to a defendant’s entry into the program. Second, in some circumstances, a deferred disposition will not be considered a conviction. For example, Virginia’s first-time drug offender deferred disposition statute² will not result in a conviction if the defendant pleads *not guilty* (as permitted by the statute) and the judge then finds facts justifying guilt *without an admission or stipulation to such facts by the defendant*. The Fourth Circuit has confirmed that a deferred disposition structured in that way (whether under the first-time drug offender statute or another deferred disposition statute) will not be deemed a conviction, making it a highly favorable outcome of a case for an immigrant defendant.³

Is a juvenile delinquency adjudication a conviction?

Juvenile delinquencies adjudications will not be considered convictions for immigration purposes. Rather, delinquency adjudications are considered civil status determinations.⁴ Thus, even a severe delinquency adjudication will not lead to any of the conviction-based grounds of removability, including those relating to aggravated felonies and crimes involving moral turpitude.

VIRGINIA PRACTICE TIPS – DEFINITION OF CONVICTION

- ✓ Recognize that convictions can result from circumstances in which a defendant has “admitted sufficient facts to warrant a finding of guilt” and avoid such admissions in the course of a court proceeding.
- ✓ Whenever possible, seek a deferred disposition of a case with a *not guilty* plea up front and with no admission of facts by the defendant. (*See, e.g.*, Va. Code 18.2-251 and 19.2-303.2).
- ✓ If seeking entry into a diversion program, ensure that client does so prior to entering a plea.
- ✓ When representing a juvenile defendant facing a delinquency adjudication, accept more serious delinquency over transfer to criminal court (see [CAIR Coalition juvenile delinquency advisory](#) for more information).

¹ 8 U.S.C. § 1101(a)(48)(A).

² Va. Code § 18.2-251.

³ *Crespo v. Holder*, 631 F.3d 130 (4th 2011). Virginia has several other statutes that allow for pleas structured similar to Va. Code 18.2-251, including Va. Code § 19.2-303.2 (first offender probation statute for property crime misdemeanors).

⁴ *Matter of Devison*, 22 I&N De. 1362 (BIA 2000) (*en banc*).