

# WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

MONTHLY NEWSLETTER

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## Everything You Need to Know for Your Noncitizen Clients

**If your noncitizen client is facing criminal charges or adverse findings in Family Court, please contact the WNY Regional Immigration Assistance Center.**

We are funded by the New York State Office of Indigent Legal Services (ILS) to assist mandated representatives in the 7th and 8<sup>th</sup> Judicial Districts in their representation of noncitizens accused of crimes or facing findings in Family Court following the Supreme Court ruling in *Padilla v. Kentucky*, 559 U.S. 356 (2010), which requires criminal defense attorneys to specifically advise noncitizen clients as to the potential immigration consequences of a criminal conviction before taking a plea. There is no fee for our service. Please consider contacting us, whether you are a criminal defense, appellate or family defense attorney, for any of the following services:

- To receive advisals on plea offers and other dispositions to reduce and alleviate the immigration consequences on a noncitizen's status
- To join you in communicating to your client the aforementioned advisal we have provided
- To assist you by providing language access to communicate with a client who does not speak English when your office does not have such capacity, or provide you with a list of referrals to interpretation/translation services
- To assist you in determining the status of a noncitizen who does not have documentation of that status available
- To communicate our advisal concerning your noncitizen client in writing or orally to opposing counsel or to a court
- To provide CLEs on the immigration consequences of crimes to your defender community
- To participate in case conferences with you and others in your office to discuss noncitizen cases in the criminal justice system
- To refer you to deportation defense services and counsel

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## IMPORTANT NOTICE

Given the daily changes in the enforcement of U.S. immigration law, **it is more important than ever for defense attorneys to know their client's EXACT immigration status when they contact the RIAC for advice.** To the extent possible, please attach copies of any documents or paperwork that will help us discern the client's status.

These new laws and policies affect noncitizens differently and we cannot give a precise advisal without knowing your client's status. Thank you for your cooperation.



**The WNY Regional Immigration  
Assistance Center**

A partnership between  
the Ontario County Public Defender's  
Office and the Legal Aid Bureau of  
Buffalo, Inc.

# **MANDATORY DETENTION, EXPANDED ICE AUTHORITY AND REMOVAL RISKS**

**By Wedade Abdallah, Managing Attorney, WNYRIAC, Legal Aid Bureau of Buffalo, Inc.**

## **THE LAKEN RILEY ACT: MANDATORY DETENTION**

On January 29, 2025, the Laken Riley Act was signed into law by President Trump. The law requires the Department of Homeland Security (DHS) to detain individuals accused of certain crimes. It applies to those who are unlawfully present in the United States or who did not possess the necessary documents when applying for admission. It may also apply to individuals seeking asylum or other immigration benefits if they were not initially "admitted" to the U.S. "Admitted" is a legal term with a specific definition under immigration law. The enumerated offenses that trigger enforcement include any person who is charged, arrested, convicted of, or who admits to committing acts that constitute the essential elements of any of the following crimes: burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime resulting in death or serious bodily injury to another person. A conviction is not necessary.

The crimes set forth in the Laken Riley Act do not share a uniform definition. Instead, DHS will solely rely on the states' definitions of crimes when enforcing this law. Noncitizens are subject to mandatory detention even if they were not convicted and without the opportunity for a bond hearing. This means that ICE will hold a person until the conclusion of immigration proceedings or until they are removed from the United States. Because detention is triggered by an arrest, those held in criminal custody will have immigration detainers lodged against them. If a person is released, local law enforcement may alert DHS to their next court date or address for enforcement purposes.

When a noncitizen appears before a court, they should not be asked or forced to reveal their immigration status. Noncitizens should not be compelled to disclose their immigration status on the record, as doing so may expose them to prosecution for immigration crimes. All individuals present in the U.S. are protected by the U.S. Constitution regardless of their immigration status. A person has the right to remain silent, the right to an attorney, and the right to refuse to consent to any search of their property without a warrant. If a court insists on a response or pushes back, the individual may invoke their Fifth Amendment right against self-incrimination.

## **EXECUTIVE ORDERS RELATED TO ENFORCEMENT, DETENTION AND REMOVAL OF NONCITIZENS**

On day one of his new administration, President Trump issued a number of executive orders related to immigration enforcement within the U.S. and at the border. Below is an explanation of the orders that will impact our noncitizen clients:

- **Expanded use of summary deportations, known as expedited removals.** Expedited removal allows for the removal of noncitizens without an immigration court hearing. This order applies to individuals anywhere in the U.S. who were not admitted or paroled and who cannot establish that they have been continuously physically present in the U.S. for at least two years. If a client meets this criterion and comes to the attention of ICE, they will be removed under this law.
- **Revocation of the Biden Administration's enforcement priorities.** The previous administration's policy focused enforcement efforts on those who posed a threat to the U.S. The rescission of Biden's enforcement priorities means that every undocumented individual, including those with final removal orders, is at risk for detention and removal, regardless of criminal history, family ties, or length of time in the U.S.
- **Revocation of policy prohibiting ICE from making arrests in certain locations.** Formerly protected spaces included schools, places of worship, hospitals, shelters, and public demonstrations. ICE is now authorized to arrest individuals anywhere, including inside state courthouses. Unless ICE officers have a judicial warrant, such arrests would contradict the NYS Protect Our Courts Act. ([See the WNYRIAC's alert here.](#))
- **Mandatory registration of undocumented individuals with the federal government.** This requirement includes children. The exact process has yet to be announced. The order also calls for civil and criminal penalties for those who fail to comply.
- **Expansion of agreements between DHS and local law enforcement.** DHS is directed to negotiate agreements with local and state law enforcement agencies to assist in the enforcement of immigration laws. Cooperating agencies may honor immigration detainers lodged at jails, notify ICE of a noncitizen's release, hold individuals for transfer into immigration custody, and inquire about immigration status during arrests or routine traffic stops.
- **Investigation into states' interference with federal immigration enforcement.** This order directs federal agencies to investigate and take legal action against state and local governments that do not use their resources to assist in enforcing immigration laws. The Department of Justice may pursue civil or criminal penalties against jurisdictions that obstruct federal enforcement efforts.
- **Sanctions against countries that refuse to accept repatriation of their nationals.** The U.S. government has announced harsher sanctions on countries that refuse to accept individuals deported from the U.S. These may include visa restrictions for nationals of those countries or economic measures such as tariffs. Currently, individuals whose home countries do not accept their return remain in the U.S. under an ICE order of supervision, which requires

regular check-ins with ICE and may grant work authorization. While this policy is expected to continue, repatriation efforts will likely become more aggressive. Individuals with existing removal orders who are under orders of supervision may be detained again in renewed efforts to deport them.

- **Denial of U.S. citizenship to certain children born in the U.S.** A new executive order directs federal agencies to refuse to recognize U.S. citizenship for children born on or after February 19, 2025, if:
  1. The mother was unlawfully present in the U.S. at the time of birth, and the father is not a U.S. citizen or lawful permanent resident, or;
  2. The mother was lawfully present in the U.S. on a temporary basis, and the father is not a U.S. citizen or lawful permanent resident.

As a result, affected children will be denied Social Security numbers and U.S. passports. This order is currently being challenged in court, and a temporary injunction has been issued preventing its enforcement. (See ["U.S. Judge Temporarily Blocks Trump's Order Limiting Birthright Citizenship," Reuters, January 23, 2025.](#))

We will continue to update you on any changes to immigration law. It is important that you continue to reach out to the RIAC for guidance on the immigration consequences of state court dispositions.

**From our colleagues at ILS, we think this may be an important decision for noncitizens facing DWI charges:**

*People v Martinez (2025 NY Slip Op 50015)(U)*

Martinez was charged in Bronx County Criminal Court with DWI, aggravated DWI, and driving while impaired. The court granted a motion to suppress Martinez's statement to police, finding it involuntary, but denied suppression of the results of the Intoxicated Driver Testing Unit video and the chemical test. Martinez moved to reargue, and the court granted suppression based on the prosecution's failure to introduce a translation of what information was imparted to Martinez, a non-English speaker, prior to his consenting to the test. The prosecution then moved to reargue, contending that the court improperly assigned a burden to demonstrate that Martinez voluntarily consented to the breathalyzer test. The court granted re-argument to the prosecution but adhered to its suppression rulings. The prosecution failed to present a full translation of the video recording of the testing, particularly the conversation in Spanish with the Intoxicated Driver Testing Unit officer. Martinez's consent to testing could not be deemed voluntary "where the record is void of any English translation of what information was imparted to him before his breathalyzer test was performed." Although motorists in New York are deemed to have given consent to chemical testing, "the manner in which the blood sample is obtained must still pass constitutional muster." Lack of an English language translation raised a "fundamental due process issue" because the voluntariness of Martinez's consent could not be determined. The Bronx Defenders (Matthew S. Bruno, of counsel) represented Martinez.