

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 8th 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

Sophie Feal

716.853.9555 ext. 269
sfeal@labbuffalo.org
290 Main Street
Buffalo, NY 14202

Wedade Abdallah

716.416.7561
wabdallah@labbuffalo.org
20 Ontario Street
Canandaigua, NY 14424

FREE IN-PERSON CLE

Basic Crimmigration Law & Policy Under the Current Administration

Presented by Sophie Feal, Esq.

March 31st, 2025

Genesee County Grand Jury Room
1 West Main Street
Batavia, NY 14020
12:30PM - 3:00PM

[PLEASE REGISTER HERE](#)

2 CLE credits will be provided in the Professional Practice Category and .5 CLE credit in the Ethics category. This program is appropriate for both newly admitted and experienced attorneys.

Please feel free to bring lunch.



The WNY Regional Immigration Assistance Center

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

NAVIGATING CRIMMIGRATION TODAY

By Sophie Feal, Managing Attorney, WNYRIAC, Legal Aid Bureau of Buffalo, Inc.

Rather than providing a traditional article this month, we'd like to offer some bullet points of advice* and up-to-date information to assist defense attorneys in navigating the current Administration's intensified enforcement efforts against non-citizens involved in state court proceedings. We are happy to offer further guidance on any of these issues and/or provide your offices with training. Things change daily. Please share this newsletter with colleagues. These bullet points should never replace reaching out to the RIAC for advice on the specific facts of your case.

All offices must have protocols in place for identifying clients who were not born in the U.S. and for making sure all attorneys with such client contact the RIAC prior to taking a plea or entering into a disposition. Immigration law and policy is changing daily and what was once a good plea may no longer be good today or tomorrow.

LAW ENFORCEMENT UPDATES

- ⇒ As covered in last month's newsletter, the new Laken Riley Act extends mandatory immigration detention (no bond/bail available) to noncitizens who are present without being admitted or paroled, have committed an immigration-related misrepresentation, or lack a valid entry document. This applies if they are merely arrested for burglary, theft, larceny, shoplifting, or assault on a law enforcement officer, or any crime resulting in death or serious bodily injury. This law could even affect those applying for asylum if they meet the above criteria.
- ⇒ In Buffalo, the use of immigration detainers has increased in the past few weeks, and we are aware of at least one instance in which the Buffalo Police Department contacted ICE after an arrest. The Ontario County Sheriff has stated that local law enforcement does not have the authority to enforce federal immigration laws: <https://tinyurl.com/ycm2vhba>. The Wayne County Sheriff has announced, "We do not stop anyone based upon suspicion of illegal status in this country. We do not detain anyone based upon immigration status in this country. Only federal authorities have the jurisdiction to enforce civil immigration violations."
- ⇒ A recent article from *New York Focus* stated, "Governor Kathy Hochul sparked confusion about New York's role in deportation operations this week when her office released a list of four broad circumstances under which state officials can collaborate with federal immigration enforcement." The list includes categories far broader than Hochul's past

* This guidance was developed with assistance from written materials created by the Central New York RIAC

comments, which suggested that the state would only assist the new presidential administration deport people convicted of ‘serious offenses.’ Experts are unsure whether to interpret the list as a change in state policy.” The governor’s spokesperson elaborated that state law enforcement can cooperate with federal immigration officials in the following circumstances: when an individual is suspected of an immigration crime; when coordination with federal immigration authorities is relevant to the investigation of a crime committed in New York State; and when an individual is suspected of a crime with potential multinational dimensions, such as participation in international drug cartels or gangs.

- ⇒ The federal government has directed ICE officers to conduct immigration enforcement in or near courthouses “where such action is not precluded by laws imposed by the jurisdiction in which the enforcement action will take place.” New York’s Protect Our Courts Act (“POCA”) prohibits arrests for civil violations in, or while traveling to or from, scheduled appearances in New York courthouses without a judicial warrant. N.Y. A.G. James has reiterated her commitment to enforcing and protecting POCA. The position of the New York Office on Court Administration can be found here: <https://tinyurl.com/4zh8w7kv>. The USDOT has allocated resources to challenge state policies like POCA, raising concerns that ICE may simply choose to violate state law.
- ⇒ The USDOT has been instructed to prioritize the prosecution of federal firearm possession offenses by individuals unlawfully present in the U.S. and gang members. A newly issued list of terrorist organization issued from USDOS includes several gangs and cartels. DOT law enforcement officials have also been authorized to investigate, locate, and apprehend noncitizens alongside DHS/ICE agents. These officials include personnel from the U.S. Marshals Service (USMS), Drug Enforcement Administration (DEA),

Guidance for Private and Nonprofit Organizations on Immigration Enforcement

This document provides guidance on how private and nonprofit organizations should handle federal immigration enforcement requests. It explains when compliance is required, how to protect client privacy, and the legal rights of organizations and individuals. It also includes sample immigration documents and references to relevant policies to help entities navigate these situations while safeguarding their communities.

NYCLU Advisory on Limits of Local Immigration Enforcement

This practice advisory from the NYCLU reminds us of the 2018 decision from the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, in *The People, ex rel. Wells v. DeMarco*, 168 A.D.3d 31 (2d Dept 2018), which sets the limitations of local and state law enforcement to be involved in immigration enforcement. Because there remains no contrary holding from another appellate court in New York State, this decision is applicable statewide.

Federal Bureau of Prisons (BOP), and the Bureau of Alcohol, Tobacco, Firearms and Explosive (ATF). In a January 21, 2025 memo, the DOJ instructed these agencies to review their files within 60 days and provide to DHS all identifying information and/or biometrics data in their custody related to noncitizens living in the U.S. for the purpose of effectuating removals, enforcement actions and immigration-related prosecutions.

- ⇒ According to news sources, noncitizens whose home countries will not repatriate them have been sent to Panama, and Costa Rica has also agreed to accept some of these individuals.
- ⇒ If you believe that your client has been taken into ICE custody and is detained, you may use the ICE Detainee Locator System to determine where they are held. However, this system is **not** always accurate, and detainees are frequently moved: <https://locator.ice.gov/odls/#/search>.

ADVICE FOR REPRESENTING NONCITIZENS

- ⇒ It is critical to determine your client's exact immigration status. Many of the executive orders issued by the president affect noncitizens with different types of status, and some benefits, such as "parole" and Temporary Protected Status (TPS) are being eliminated. Please gather evidence of your client's status at your first meeting with them. For immigration purposes, an ACD is **usually** the best disposition (short of a dismissal based on factual innocence or legal insufficiency). The default rule is that you can assume the RIAC will advise you to accept an ACD if offered. Nevertheless, an ACD could have **some** immigration consequences and therefore, knowing the client's exact status is key.
- ⇒ An ACD does not require a guilty plea or any admission to the charges. Therefore, an ACD alone is not considered a conviction for immigration purposes. However, during the adjournment period (while the case is adjourned but not yet dismissed), immigration courts and agencies will consider the case "open," which could pose issues, particularly if the client has a pending application for immigration benefits or intends to travel. Additionally, as noted above, if the client is subject to the Laken Riley Act, an ACD disposition will make no difference.
- ⇒ Given a recent Second Circuit decision involving the denaturalization of a foreign-born individual, if your client claims to be a U.S. citizen, you may need to conduct further inquiries unless they can establish that they were born in the U.S. It is also critical to verify the dates of any criminal offenses committed by the client and determine whether the arrests were properly disclosed during the naturalization process. Failure to disclose such information could subject the client to denaturalization.

- ⇒ During his first term, Trump surged resources for denaturalization, establishing a “Denaturalization Task Force” that created special units at U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice (DOJ) focused on taking away people’s U.S. citizenship and broadening the grounds for doing so. In addition, DOS devoted significant efforts toward revoking passports for a large number of individuals.
- ⇒ A noncitizen is deportable for violating a DV protective order. No conviction is required, only a court finding of a violation, including findings made in Family Court. Therefore, if a client receives an OP that is unrelated to domestic violence, it is advisable to ensure that the OP explicitly reflects this fact, as most OPs are ambiguous. Clarifying this distinction may help prevent immigration arrest, detention, and removal from the U.S.
- ⇒ DWAI by drugs is not the same as DWI or DWAI by alcohol. The involvement of a controlled substance may classify the offense as a controlled substances ground of removal. A single conviction for this offense may render a noncitizen deportable and bar them from re-admission to the U.S. if they travel abroad. Additionally, such a conviction may disqualify an individual from obtaining a green card in the future, including through marriage to a U.S. citizen or an asylum application. A DWI with a child in the vehicle (per Leandra’s Law) may be classified as a deportable crime against a child. A single conviction under this law can render a noncitizen deportable.
- ⇒ If a judge asks about the client’s immigration status, do NOT allow the client to respond. First, it is improper for a judge to ask about immigration status. *People v Williams*, 178 A.D.3d 1095 (2d Dept 2019). Second, responding may violate a defendant’s 5th amendment right against self-incrimination because, in certain circumstances, confirming any information relating to immigration matters could potentially involve an admission to a federal offense. The Trump administration has stated that it seeks to prosecute individuals who entered and are present in the U.S. illegally, which has not been the norm in the past. Under *People v. Peque*, a judge’s duty is only to warn **all** defendants that **if** they are noncitizens, their conviction may carry immigration consequences, and they should seek legal advice if appropriate. If judges do not issue this warning uniformly to **all** defendants, they risk treating some defendants differently based on a suspect classification, such as race or national origin.
- ⇒ Do not agree to a JDP or Treatment Court on behalf of a noncitizen if they must enter a plea without RIAC assistance. Once the plea is entered and the court orders the client to attend Treatment Court, the plea constitutes a conviction for immigration purposes. Any subsequent vacatur of the plea is not recognized under immigration law, meaning the client remains convicted of the original offense. In many cases, these are deportable offenses.

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PENDING CRIM-IMM LEGISLATION

- ⇒ The Police Act (H.R. 2492) adds a ground of deportability for conviction or admission to offense involving the assault of a law enforcement officer.
- ⇒ The Preventing Violence Against Women by Illegal Aliens Act (H.R. 30) adds a ground of inadmissibility for 1) an admission or conviction or conspiracy to commit sex offenses and 2) conviction or admission of DV offenses to include violation of a protection order. The bill also amends the section in the immigration act on DV to include sex offenses and a broadened definition of crimes of domestic violence, eliminating the requirement that they meet the federal definition of crime of violence which requires the use or attempted use of force.
- ⇒ The New York for All Act (S. 987 / A. 568) amends the Criminal Procedure Law, the Executive Law, the General Municipal Law, and the Correction Law to prohibit the use of state and local government resources for immigration enforcement; restrict the disclosure of sensitive information to U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP); prohibit 287(g) agreements, which deputize local law enforcement officers to enforce federal immigration law; require ICE and CBP to obtain a judicial warrant before accessing non-public areas of government property, and establish reporting requirements and oversight by the New York Attorney General to ensure compliance.

BIA's 2025 Decision Redefines "Single Scheme" in Deportable Crimes

Matter of Baeza-Galindo, 29 I&N Dec. 1 (BIA 2025).

The Board of Immigration Appeals' (BIA) first 2025 precedential decision will have serious impact on how we analyze deportable crimes of moral turpitude, one category of offense which make noncitizens deportable under U.S. immigration law.

If a noncitizen is convicted of two crimes involving moral turpitude (CMT) not arising out of a single scheme of criminal misconduct at any time after admission to the U.S., the person is deportable.

The Board's interpretation of "a single scheme" in this January 31, 2025 decision is very problematic. The noncitizen in this case, while driving under the influence of alcohol, struck a group of pedestrians, killing one of them and injuring others. He then drove away. He was convicted under Texas law for assault with a deadly weapon and failing to stop to render aid. Both were deemed CMTs. However, the argument was that they arose out of a single scheme of criminal misconduct due to their proximity in time. The Board disagreed.

The Board held that the absence of a substantial interruption between the two offenses was not dispositive. They reasoned that trying not to be caught for a completed crime is a separate moral wrong with a new criminal objective, not a subordinate act in service of the same criminal objective.