

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

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Discretion Denial Upheld by Second Circuit

We often warn attorneys that the adjudication of many immigration benefits calls for an exercise of discretion, and therefore, even if an offense is not a statutory ground of removal, it could have immigration consequences. A Second Circuit Court of Appeals case illustrates this fact. The court ruled in *Xia v. Bondi*, No. 24-2304 (2d Cir. May 19, 2025) that, like the District Court, it had no jurisdiction to review the decision of U.S. Citizenship and Immigration Services denying the applicant permanent residency as a matter of discretion. The facts of the case indicate that USCIS made the following adverse findings against the “green card” applicant despite having lived in the U.S. for 30 years while raising two U.S. born children into adulthood: 1) ignoring an order of removal for some 20 years after losing her asylum claim; 2) working without authorization during that time; and 3) three convictions for disorderly conduct. The government reasoned that these convictions showed a “disregard for criminal laws.”

OBTAINING THE BEST INFORMATION ABOUT A FOREIGN-BORN CLIENT'S STATUS

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

Given the current Administration's focus on deporting noncitizens for any kind of law enforcement contact and even alleged gang affiliation, defense attorneys may find themselves on the frontline during these confusing times. At the RIAC, we are aware that defense lawyers already have an enormous burden to represent clients faced with criminal charges, as well as abuse and neglect allegations, and that addressing the immigration component of the case may seem overwhelming.

Interviewing foreign born clients in today's atmosphere, to obtain the detail we need to properly assess immigration consequences, may prove challenging. Clients may be afraid of divulging information about their immigration status, may not understand why you need to know, not fully understand their own status, or may face mental challenges that make discerning their status difficult. It is not uncommon for some to have lost all relevant documentation. However, it is more important today than ever for us to know the client's exact status in the U.S. so we can accurately advise them of the implications of law enforcement contact and a possible plea. Our intake will guide you on the relevant questions to ask and we urge you to use it to the extent possible (you can obtain our intake form by emailing our legal assistant, Abbey, at aalexander@labbuffalo.org). If the client is unable to answer the questions and has absolutely no documents that can confirm their status, reach out and we can assist you with the immigration-related part of the interview.

When representing a foreign-born client, keep in mind that they may not fully comprehend the attorney-client privilege and the confidentiality that attaches on account of the legal dynamics in their country of origin, especially if they are from repressive countries. Foreign-born clients, even more than Americans, may believe you are sympathetic to or work as an ally with the prosecutor and/or government entities. They may be suspicious of your motives for asking questions about where they are from. To that extent, an attorney may want to spend time explaining confidentiality and that the client's immigration status will be protected by the attorney, especially when in court. You may advise a client that there is caselaw indicating a judge should not ask about a client's status, and that a client may invoke the 5th Amendment if they risk incrimination by being in the U.S. unlawfully.

If a client remains reluctant to respond to questions about their status even after a careful explanation of confidentiality, then a brief overview of the current climate for all noncitizens exposed to potentially criminal activity may be warranted. While we may read the paper, watch the news, and well understand the current political stance towards immigrants, our clients may not. Immigrant communities can be insulated, and susceptible to rumors about immigration laws that are not wholly accurate. It can be hard to dissuade them that what they've heard from

friends and family is inaccurate. And the longer a person has been in this country, the more likely they may believe current policies and Executive Orders don't apply to them. Any such conversation about current conditions should not instill fear, but a solid understanding of the reality, and should include a clear explanation that defense counsel is attempting to help the client avoid these consequences to the extent possible. If counsel involves the RIAC in a dialogue with a client, then our role as part of the legal team needs to be fully explained since we will inevitably ask pointed questions about the person's immigration history.

As we have often stated, the first immigration related question to ask clients is, "where were you born?" and not "are you a U.S. citizen?" This is because clients may not be able to offer accurate information about their status. Citizenship laws for the foreign born are complex and sometimes they are simplified by clients. They may believe they are citizens just because a parent is or was a citizen, or because they served in the U.S. Armed Forces, and these are not necessarily correct conclusions. When a foreign-born client states they are a U.S. citizen, you should ask for a copy of a U.S. passport, a naturalization or a citizenship certificate as evidence to be sure. Also, even naturalized citizens are at risk of denaturalization if they were not candid in disclosing all existing arrests in their naturalization application. These days, we cannot afford to make a mistake about someone's citizenship given the possible consequences.

With lawful permanent residents ("green card" holders), it is important to obtain a copy of the card so we may ascertain the legal date of admission. Admission is a legal term in immigration law. The date of admission might not be the same as when they came to the U.S. and the difference can have an impact on what are safe pleas and other dispositions. It is also important to ask permanent resident clients if they have a naturalization application pending since this may affect the plea

Trump Admin Offers 'Exit Bonus' for Voluntary Departures

The Trump Administration has announced that it will "provide financial incentives in the form of an 'exit bonus' for each illegal alien who voluntarily and permanently departs the United States." *See more, <https://public-inspection.federalregister.gov/2025-08673.pdf>*. Individuals who are interested in this incentive should first consult with an immigration attorney to fully understand the consequences of departing the United States since it is very likely they may be unable to ever return lawfully. If you would like a list of area immigration lawyers to share with a client, please contact aalexander@labbuffalo.org.

ICE Deportations Before Criminal Case Resolution & Laken Riley Detentions

Please see the linked article regarding the impact of removal before conclusion of criminal case and Laken Riley detentions:

<https://www.usatoday.com/story/news/nation/2025/05/18/ice-tactic-deport-before-court-immigration/83515061007/>

recommendation. For example, an ACD may not be a good plea for someone with an application pending or for someone who wants to travel outside the U.S. A disorderly conduct might be better. If the green card holder does not have an application for naturalization pending at the time of an arrest, they should not file one while criminal proceedings are pending since the outcome may render them ineligible and even expose them to removal.

Obtaining documentation of a client's status is essential to getting the most accurate advice about immigration consequences. Merely applying for an immigration benefit is very different than actually having the benefit and could affect the advice we give. In addition, some benefits have been or are being eliminated by the government, such as temporary protected status (TPS). A person may actually no longer have status and be subject to removal for that reason alone. We then may have to assess the implications of a plea on eligibility for relief from removal.

Clients who have fled war or persecution and come to the U.S. may incorrectly refer to themselves as "refugees," although they are not legally refugees. A person with refugee status, who has been lawfully admitted to the U.S., is different from a person who came here and is applying for asylum. If a client has work authorization, obtaining a copy of that card may help us identify the client's status more precisely and advise more accurately. This will become even more critical if the government erodes the rights of asylum seekers as it has stated it will do.

Discerning the various statuses that your client can have can be complicated. We hope to lighten that burden and are available to assist you. Just ask.

Legal Protections in Third Country Deportations

Class counsel has issued a [Practice Alert](#) that covers the present state of the law surrounding third country deportations and explains the procedural protections afforded by the preliminary injunction in *D.V.D. v. DHS.*, issued on May 27, 2025.

The WNY Regional Immigration Assistance Center

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

