

# WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

RIAC Monthly Newsletter

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## What You Need to Know for Your Noncitizen Client

### If your noncitizen client is facing criminal charges or adverse findings in Family Court...

Please contact the WNY Regional Immigration Assistance Center. We provide legal support to attorneys who provide mandated representation to noncitizens in the 7th and 8th Judicial Districts of New York.

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We are funded by the New York State Office of Indigent Legal Services (ILS) to assist mandated representatives 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 also contacting us if you need assistance interviewing your client to determine their immigration status or communicating immigration consequences; or if you would like us to intercede with the DA or the judge to explain immigration consequences. We speak Spanish and French.

### NEW CASE LAW

On July 1st, 2022, in *People v. Go*, 2022 NY Slip Op 04258 (App. Div.), the Appellate Division for the 4th J.Dept. reversed an order denying a CPL § 440.10 motion to vacate a conviction due to constitutionally deficient advice. The defendant's attorney advised that attempted arson in the third degree (Penal Law §§ 110.150.10) was a crime involving moral turpitude but not an aggravated felony, which is a deportable offense that would render the defendant ineligible for a waiver from removal. The attorney also affirmatively misadvised that risk of deportation "diminish[ed]" because "the crime occurred beyond five years of him obtaining his green card," which is inaccurate for an aggravated felony.

NEW CASE LAW CONT'D ON PG. 3



### WNY Regional Immigration Assistance Center

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

# Deportability & Inadmissibility: What's the Difference and Why It Matters

A re-print of Central New York's (Region 2) RIAC November 2021 article  
RIAC 2 is administered by the Criminal Division of the Oneida County Public Defender \*

## Deportation, Exclusion and Removal

Prior to 1996, noncitizens were placed into separate Immigration Court proceedings for either being “deportable” (already in the U.S. whether or not through a lawful entry) or “excludable” (outside the U.S. or at a port of entry). After the passage of the Illegal Immigration Reform and Immigration Responsibility Act (IIRAIRA), in 1996, these “deportation” and “exclusion” parts of immigration law were merged into a single process of “removal.” However, the two basic underlying concepts for removal remained, so that a person in Immigration Court proceedings is charged as being “removable” under either the laws of “deportability” (INA §237) or the laws of “inadmissibility” (INA §212).

## Why is Inadmissibility so Important?

While the term “deportation” is generally used to refer to someone’s **physical** removal from the country, in Immigration law, it is a term of art that refers only to removal under the laws of “deportability.” You will hear judges, attorneys and others talk about avoiding “deportation” for the client. What they are referring to is the client being **physically** removed from the U.S. Keep in mind, your client’s disposition is not just a matter of whether a certain conviction will make your client “deportable.” It is also a matter of whether a conviction will make your client “inadmissible.” Because your client can be “*removed*” for criminal convictions under the laws of deportation AND the laws of inadmissibility, it is therefore critical that you receive information on BOTH sets of consequences.

## Why Else is Inadmissibility Important?

The RIAC also advises about the “inadmissibility” consequences of a conviction because inadmissibility laws apply to *future applications* and *relief from removal*. Denial of these applications can leave your client without legal status or any type of relief from removal, resulting in the government taking further action to “remove” (deport) your client. For example:

- 1) Adjustment of Status (the process for becoming a LPR while in the U.S. without having to return to the home country);
- 2) A waiver of inadmissibility that may be necessary to obtain or maintain legal status;
- 3) Cancellation of Removal, in a removal proceeding;

\* The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of *Padilla v. Kentucky*, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

- 4) Visa renewal at a U.S. Embassy abroad; and/or
- 5) “Applying” for (seeking) admission to the U.S. when the client presents him/herself at a port of entry after any travel abroad

The bottom line, for all of these inadmissibility considerations, is that if your client becomes inadmissible, s/he might be subject to removal and/or unable to return to the U.S. whether they leave of their own accord, or are removed by the government.

### **NEW CASE LAW**

On July 21st, the U.S. Supreme Court declined to reinstate President Joe Biden’s policy to focus immigration enforcement on individuals who present a threat to national security, public safety, and border security. Instead, the Court scheduled a hearing for December to address legal challenges against the President’s guidelines. See <https://www.reuters.com/world/us/us-supreme-court-declines-allow-bidens-shift-immigration-enforcement-2022-07-21/>.

### **Who is subject to the laws of Inadmissibility?**

- Those who entered the U.S. unlawfully (i.e., without being inspected and admitted by an immigration officer);
- Those seeking to come here on a temporary basis (visitor/tourists, students, workers, exchange visitors, athletes/artists/entertainers, etc.);
- Those admitted as refugees who must apply for LPR status; and
- Anyone other than a LPR seeking re-entry to the U.S. after a stay of any length.

### **What happens if a person is found to be “inadmissible?”**

- Removal from the U.S. if client entered the U.S. unlawfully;
- Inability to return to the U.S. after removal;
- Inability to return to the U.S. for studies or work;
- Inability to return to the U.S. after temporary travel abroad; and/or
- Ineligibility for certain types of relief from removal in Immigration Court.

**(The criminal grounds of inadmissibility are discussed in our trainings and contained in each written advisal that is sent on behalf of a client.)**

### **Strategies to avoid Inadmissibility:**

- Do a thorough intake so that it can be determined whether your client is subject to the laws of Deportability or Inadmissibility, what applications they may have pending, or what applications/relief the client might be eligible for to obtain or maintain legal status.
- Contact the RIAC!
- Negotiate for an immigration-safe plea.
- Use a mitigation expert, if necessary.