

WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

RIAC Monthly Newsletter

Issue 24 / November 2022

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.

Buffalo Office

Sophie Feal

290 Main Street

Buffalo, NY 14202

716.853.9555 ext.269

sfeal@legalaidbuffalo.org

Canandaigua Office

Brian Whitney

3010 County Complex Dr.

Canandaigua, NY 14424

585.919.2776

bwhitney@legalaidbuffalo.org

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.

Important Update

In a press release issued this month, ICE indicates that it has finished a national operation targeting noncitizens with multiple DWIs.

A “simple” DWI or DWAI related to alcohol is not a removal ground, though it has other immigration consequences (Note, however, that a drug-related DWAI could be a controlled substances ground of removal). Therefore, it is possible that those who are arrested by ICE, as reflected in the press release, are otherwise not in legal status (e.g. not permanent residents) and/or have a “crime of moral turpitude” offense attached to their DWI charge, such as a death, damage to property, leaving the scene of an accident, reckless driving, a 511 based on a prior DWI, etc. ICE also prioritizes detention for those noncitizens who are “threats to public safety,” as DWI is considered in the immigration field. Please be careful with these charges and see the WNYRIAC when you have a noncitizen charged with one. **Do not assume DWIs are safe pleas.** Those here on temporary visas, such as students, can have their visas revoked for a DWI/DWAI *arrest*.

More updates on pg. 4



**LEGAL
AID
BUREAU**
of Buffalo, Inc.



Detained Noncitizens in Removal Proceedings

A special thank you to Jill Nowak (PLS) and Brenda Cisneros (VLP) for sharing this information.

Volunteer Lawyers Project (VLP) and Prisoners' Legal Services (PLS) are funded by the New York Immigrant Family Unity Project (NYIFUP), the first and largest public defender program in the country for detained immigrants facing deportation. According to the Vera Institute of Justice, NYIFUP brings due process to immigration proceedings, by ensuring that no immigrants in the state are detained or deported simply because they do not have the resources to hire an attorney. Recently, the WNYRIAC spoke with two attorneys whose programs are funded by NYIFUP to bring you the following information.

Prisoners' Legal Services (PLS)

Prisoners' Legal Services of New York offers free legal representation to eligible unrepresented non-citizens at the following immigration courts:

Ulster, as long as the first court hearing is after July 13, 2017

Downstate (Fishkill), as long as the first court hearing is after November 1, 2017

Bedford, as long as the first court hearing is after November 1, 2017

Batavia, if detained at the Albany County Jail, as long as the first court hearing is after July 13, 2017

AND who have household incomes less than 200% of the federal poverty guidelines.

PLS receives notifications of all new cases filed in these courts, and conducts intakes via attorney phone call or legal visit. PLS is also notified and will conduct an intake for individuals detained at the Albany County Jail with pending Immigration Court dates at the Batavia Immigration Court.

Volunteer Lawyers Project (VLP)

Volunteer Lawyers Project offers free legal representation to eligible unrepresented non-citizens who are:

Detained at the Buffalo Federal Detention Facility in Batavia, New York *or* are a woman detained at a county jail in Western New York,

AND Have household incomes less than 200% of the federal poverty guidelines,

AND Have their immigration proceedings before the Batavia Immigration Court,

AND Don't have an attorney for their first appearances in Batavia Immigration Court

If someone has already been ordered removed and is detained for deportation at the Buffalo Federal Detention Facility, they may be eligible for representation with funding from NYIFUP if they meet the other requirements.

Please note:

VLP can **usually** consult with eligible individuals at least 3-4 days before their initial court appearance. However, sometimes VLP is notified shortly before the first court hearing, in which case intakes will occur shortly before court or after their first court appearance. Occasionally, VLP is not notified about a detained potential client until the same day as the first hearing. In this case, the person remains eligible for representation and a VLP attorney will contact the person shortly after their first hearing. VLP is automatically notified of eligible detained individuals. VLP need not be contacted in order to obtain representation.

Q & A with VLP and PLS

What is the process for a noncitizen client who is arrested, incarcerated, and put into removal proceedings – and what exactly is VLP’s and PLS’ role in that process?

“At VLP, it is most common that the noncitizen has just arrived to the U.S. from the northern or southern border and are encountered by Border Patrol or ICE. They are arrested and then detained in Batavia. VLP checks the courts calendar, we determine whether anyone is unrepresented, and if so, we offer our services, a universal representation program.”

“At PLS, the first line of defense is to fight the charges, not to apply for relief from removal. So we first make an argument that the client is not removable at all. We obtain our clients through the immigration court calendar, and the case appears on the docket only after the charging document, called a Notice to Appear (NTA) is filed with the court by the arresting agency (ICE or CPB). PLS is contractually obligated to provide representation to anyone who qualifies for our services, and usually everyone qualifies if they are incarcerated. We continue to represent our clients when they are on appeal at the Board of Immigrations Appeals as well. If someone wants to go the WDNY or the Court of Appeals for the 2d Circuit, we do not have to accept the case, though we have sizeable 2d Cir. and habeas docket.”

Do VLP and PLS help fight detainers?

“VLP does not fight detainers UNLESS the client is in ICE custody. VLP represents noncitizens in removal and custody proceedings in Batavia or Buffalo. If someone is released from Batavia, the case will automatically transfer to Buffalo and we will continue to represent them. If they are transferred elsewhere in the country, VLP helps them change the court venue to a location closer to where they will live, and then VLP withdraws from representation once venue is changed. If venue will be in NYC, we notify sister organizations to pick up the case.”

“PLS has tried to advocate with ICE about why somebody shouldn’t be detained after a period of state custody. And we have been successful with this in a couple of cases. PLS also monitors the time a person is held on a detainer. The prison cannot hold them for ICE for more than 48 hours.”

Do you welcome calls from public defenders? If so, when should they reach out and what number should they call to reach someone about a client (and if they have general questions)? What can PDs expect in the process and when do they get involved?

VLP: “We do welcome referrals from PDs. It may take a few weeks until a person is represented by us because of our capacity, but we like to know about upcoming hearings from PDs. We see few people who have been convicted in WNY, but work regularly with providers from Downstate and NJ. We want what is the best for the client and will coordinate and share information.”

PLS: “If a defense attorney has a particular client that they are worried about and they know they will be put in proceedings, the sooner that PLS can get the information about this potential client, the better. However, we don’t always have capacity to intake them at that point. We have to prioritize clients who are already in removal proceedings. But, it is still beneficial for PLS to have the information and to have that point of contact. In particular, if PLS can catch a person who might still be within the timeframe to take an appeal, we want that to happen. There’s a great need for that, and since the charging document that commences removal proceedings is filed so late, we don’t always catch them in time.”

Contact Information for PLS & VLP

Detained individuals are encouraged to contact Volunteer Lawyers Project via letter:

Volunteer Lawyers Project, Inc.
8 South Lyon Street
Batavia NY 14020

Family members can call VLP at:
(585) 524-1230

Detained individuals and family members may contact PLS at the following address and phone number:

Prisoners' Legal Services of New York
Attn: Immigration Unit
14 Lafayette Square, Suite 510
Buffalo, NY 14203
(716) 844-8266

Update on Temporary Protected Status (TPS)

DHS recently announced the expansion of a country-specific, temporary form of relief for certain individuals from Myanmar and designated Ethiopia for protection. To qualify for this Temporary Protected Status ("TPS"), nationals of these countries must be in the U.S. since no later than Sept 25, 2022 for Myanmar and Oct. 20, 2022 for Ethiopia, among other requirements.

Critically for Defense counsel, TPS has *stringent* criminal bars. Applicants and individuals renewing TPS protection cannot be convicted of a felony or two misdemeanors, nor can they be "inadmissible" under immigration law for a "controlled substance offense" or a "crime involving moral turpitude." The following countries are designated: Afghanistan, Burma (Myanmar), Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, Ukraine, Venezuela, and Yemen. For more information on TPS, see our [July 2021](#) newsletter.

For TPS updates and announcements, see <https://www.uscis.gov/humanitarian/temporary-protected-status>.

Russian Denied Resident Status Over Cannabis-Related Work

A California federal judge has affirmed a U.S. Citizenship and Immigration Services (USCIS) decision to deny a Russian national permanent resident status, ruling that by installing and maintaining a security camera system for a cannabis grower, the person had participated in the trafficking of a Schedule I drug.

According to the court record, the applicant was granted asylum and subsequently, as required, applied for permanent residency status one year later. While the application was pending, he started a part-time job for an unlicensed Los Angeles cannabis collective where his only job was to set up and maintain a surveillance system. He never grew or sold cannabis. The judge reasoned that it didn't matter if USCIS believed him to be an actual trafficker, since the agency's decision was based on the provision in the Immigration Nationality Act that says a person who is a "knowing aider, abettor, assister, conspirator or colluder with others in the illicit trafficking" is inadmissible to become a permanent resident.

WNY Regional Immigration Assistance Center

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