

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.

Interpretation and Translation Services in Western New York

Having access to interpreters and translators is very important when representing noncitizen clients. We have put together a list of services available to you in Western New York, including the contact information and the current cost for those services. Please see page 2, and click on the blue box to open the full PDF of resources.

Please also see page 2 for some key tips to consider when you are communicating through interpreters with limited English proficient clients.



WNY Regional Immigration Assistance Center

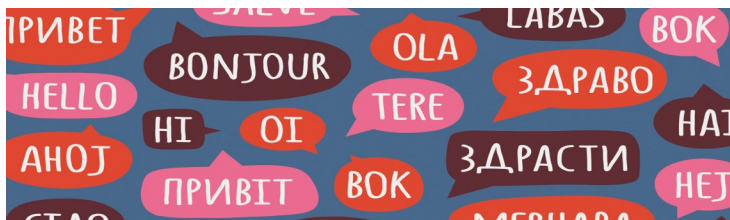
A partnership between the Ontario County Public Defender's Office and the Legal Aid Bureau of Buffalo, Inc.

Tips for Communicating with Clients through Interpreters

- Do not use family or friends as interpreters, especially children, unless the information is very basic and not sensitive.
- Even “professional” translators may have limited knowledge of legal terminology.
- Consider the English proficiency of the interpreter. One must have sophisticated language ability in both languages to properly interpret legal language.
- Be careful of dialects. Some languages, like Spanish and French, are standard; others, like Arabic, are not. In some countries, several languages are spoken, like Burma. Know which dialect your client speaks.
- Pause after a sentence or two so the interpreter remembers what was said and is able to fully translate.
- Make sure it is clear to the interpreter that language such as “may” and shall” are not the same. “May” is discretionary and “shall” is not. If the interpreter changes one word while interpreting, that would affect what the client understands in terms of what they have to do, versus what they can choose to do.
- Understand why your client may have an issue with an interpreter. If an interpreter is part of their community, they may believe that anything being said is going to circulate back to their community, despite the fact that an interpreter is supposed to be held to a high standard of confidentiality.

In order to access the PDF, please click on the blue box to the right. You will then see the full PDF on your computer screen, showing you all available interpretation and translation resources in Western New York.

If you are reading this on paper and want a copy of this PDF, you may request one by emailing: abrown@legalaidbuffalo.org



Language Interpretation & Translation Resources in Western New York

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NEW CASE LAW

In *Matter of Ortega-Quezada*, 28 I&N Dec. 598 (BIA 2022), the Board held that a conviction for unlawfully selling or otherwise disposing of a firearm or ammunition under 18 U.S.C. § 922(d) does not trigger the firearm related deportability ground in 8 U.S.C. § 1227(a)(2)(C). It found the statute to be overbroad and indivisible. The Board found that the statute is indivisible in two ways - (1) it criminalized conduct involving only ammunition and (2) criminalized gratuitous transfers without compensation, which are not covered under § 1227(a)(2)(C). The BIA relied heavily on double jeopardy cases to determine that the statute is indivisible. The case has some interesting language on that topic.

In *Matter of V-A-K-*, 28 I&N Dec. 630 (BIA 2022), the Board of Immigration Appeals, which sets precedent in immigration law, held that a NYS conviction for attempted burglary 2d, pursuant to PL 110.140.25 (2), is an aggravated felony when coupled with a sentence of incarceration of one year or more. The Board reasoned that since this provision requires the burglarizing of a “dwelling,” as defined at PL 140.00(3), the offense is categorically a generic burglary under federal law which includes the burglary of “a structure or vehicle that has been adapted or is customarily used for overnight accommodations.” *United States v. Stitt*, 139 S.Ct. 399, 403-404 (2018). Citing *People v. Carlucci*, 146 N.Y.S. 3d 785,785 (N.Y. App. Div. 2021), the Board further confirmed that under NY law, “second degree burglary must, at a minimum, involve the burglary of a building that is part of and accessible to an area usually occupied by a person lodging therein at night.” As an aggravated felony, such a conviction deprives a non-citizen of virtually all relief from deportation and should be avoided, where possible.

UPDATE ON Y.O.

The new Y-O- redetermination process under CPL § 720.20(5)(a) is likely not valid for immigration purposes, and will still constitute a conviction. This is addressed in this [practice advisory](#). Therefore, for non-citizens, a § 440.10 motion is recommended. One basis that should be raised for a vacatur would be that defense counsel did not effectively argue for Y-O- status at sentencing. That would be especially true if defense counsel “waived” youthful offender treatment as part of a plea deal, in violation of *People v. Rudolph*, 21 N.Y.3d 497 (2013).

