

WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

MONTHLY NEWSLETTER

ISSUE 41 | APRIL 2024

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

USCIS Streamlines Process for Refugee Employment Authorization Documents

USCIS has revamped the process for refugees to obtain Employment Authorization Documents (EADs), significantly cutting down the wait time to about 30 days from several months. Starting from Dec. 10, 2023, this new, automated system eliminates the need for refugees to apply for an EAD, streamlining the submission of Form I-765 as soon as they arrive in the U.S. This means refugees can expect to receive their EAD within one to two weeks post-approval, with the documents being dispatched through Priority Mail. Additionally, this process will ensure that refugees are also assigned a Social Security number and receive a Social Security card without delay. This improvement is a step towards more efficient government processes and aims at easing the integration of refugees into the U.S. workforce and society. Note that this streamlined process does not apply to refugees entering the U.S. through the Form I-730, Refugee/Asylee Relative Petition, or those seeking EAD renewals or replacements.

Sophie Feal

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

Wedade Abdallah

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

A VISIT TO JFK INTERNATIONAL OPERATIONS

In February, colleagues at the Immigrant Defense Project (a fellow RIAC) took a tour of the Customs and Border Protection (CBP) operations at JFK Airport. We thank them for these insightful notes of their visit.

CBP officers are those who inspect the people and goods that pass through ports-of entry to the US. JFK is largest international airport in the country with five international terminals. Eighteen million international travelers are estimated to have passed through in 2023, an increase from 16 million pre-COVID. In addition, close to 150 billion of air cargo in trade pass through JFK, and 250 million small packages in e-commerce. There are 1500 CBP agents at JFK and their job is to determine whether people are admissible to the country under the Immigration and Nationality law. The grounds of inadmissibility are broader than the grounds of deportability, and not all require convictions. See our August 2022 article on Deportability and Inadmissibility here: https://www.ils.ny.gov/files/WNYRIAC%20August%202022_0.pdf

The screening process at JFK begins with a review of travelers on each manifest. Biometric exit photos are taken when people board a flight to or from the U.S. such that CBP can track who is on board. Only the photos for non-US citizens are retained, not those of citizens. Video and audio recordings are taken at all arrival and departure gates and are held for 90 days.

Less than 2% of travelers go to secondary inspection after a primary inspection; that is 986 people daily or 2% of travelers annually. Some of the referrals to secondary are “administrative.” These include anyone entering with asylum or refugee documents, DACA recipients or those with a pending application for permanent residence who are traveling on an advance parole document. Other secondary inspection referrals involve narcotic trafficking into the US. If narcotics are found in luggage, for example, CBP will contact the federal government first to see if they want to arrest. If they are not interested, then the NYPD will be called. CBP considers a high priority to stop fentanyl and meth trafficking into and out of the US. including the chemical ingredients and mechanisms to make them. Attorneys are not permitted at a port of entry, though CBP may allow a person to call an attorney after they have held in secondary inspection someone for at least 4 hours.

In addition, and most relevant for defense attorneys, is that there are automatic secondary inspections referrals for people who have an open criminal case or a conviction. A criminal history from all over the US is available to agents. As well, if there is an open order of protection, the person will be sent to secondary. If someone is traveling with a protected party in violation of an OP, then CBP will call Port Authority and provide a statement affirming that they witnessed the violation. The Queens DA will then prosecute the criminal contempt. If there is a criminal warrant against a traveler, CPB will contact the law enforcement agency with the warrant. The person will be paroled into the country for purposes of the criminal prosecution, and CBP will then lodge a detainer for the person to be returned to CBP at the end of criminal case for a determination on admissibility and removability.

Any decision made at secondary inspection about whether someone is admissible to the US will go to a Supervisor and then to the Deputy Chief. There is a special team that addresses criminal inadmissibility and the CBP Office of Chief Counsel (OCC) is involved. That office makes the decision whether to commence removal proceedings against the individual. ICE's Office of the

Principle Legal Advisor determines whether such a person will be detained during the pendency of the removal proceedings. Of particular interest is the fact that even where a permanent resident has a conviction on direct appeal, but the offense triggers inadmissibility, the person may still be placed in removal proceedings by CBP. Therefore, if a client's conviction has been vacated or they prevailed on their appeal, they should carry this proof while traveling to show CBP and avoid removal proceedings.

Frequently Requested Statistics on Immigrants and Immigration in the United States

The Migration Policy Institute released its *Frequently Requested Statistics on Immigrants and Immigration in the United States*. It states that, "Worldwide, the United States is home to more international migrants than any other country, and more than the next four countries—Germany, Saudi Arabia, Russia, and the United Kingdom—combined, according to the most recent UN Population Division data, from mid-2020. While the U.S. population represents about 5 percent of the total world population, close to 20 percent of all global migrants reside in the United States. This Spotlight offers information about the approximately 46.2 million immigrants in the United States as of 2022, more than three-quarters of whom are in the country legally. Drawing from the most authoritative and current data available, this article offers an overview of historic immigration trends in the United States, sociodemographic information about who is immigrating, and the channels through which they arrive. It also provides data on the government's enforcement actions and visa processing. <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states?eType=EmailBlastContent&eId=834d1f86-4e09-42d3-b4dc-7c2c9f782782>

The WNY Regional Immigration Assistance Center

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

