

# WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

RIAC Monthly Newsletter

Issue 26 / January 2023

## 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.

**Sophie Feal, Esq.**  
290 Main Street  
Buffalo, NY 14202  
716.853.9555 ext.269  
sfeal@legalaiddbuffalo.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.

### Introducing Social Work to the WNYRIAC

This fall, we hired a full-time social worker to join the WNY RIAC team. Her name is Melissa Peña, she is a licensed MSW and is fluent in Spanish. She has four years of professional live interpreting experience here in Buffalo with a refugee resettlement agency. Our goal in adding a social worker is to address the unique needs of noncitizens in the criminal justice system.

Melissa can assist with mitigation reports, help clients to overcome the barriers they may have to complying with court-ordered treatment, and locate services they need to help clients avoid the system in the future. Melissa can take the time to explore clients' social norms, values, or perspectives. Gaining this understanding is essential to explaining how their worldview might differ from practices in the U.S.

Using motivational interviewing techniques, a trauma-informed perspective, and cultural responsiveness, Melissa can help clients overcome barriers to compliance with treatment, debunk mental health stigmas that impede progress, as well as link and refer clients to appropriate community resources. For example, these resources include housing, addiction, mental health and medical needs, amongst others. We know not all of the counties we serve in the 7<sup>th</sup> and 8<sup>th</sup> judicial districts have social...

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



## **SEEKING INFORMATION ABOUT OUR FOREIGN-BORN CLIENTS**

Attorneys who do not regularly practice immigration law are often frustrated that they cannot find out information about a client who is in the custody of Immigration and Customs Enforcement (ICE), or obtain documentation from Citizenship and Immigration Service (CIS) about a permanent resident, a naturalized citizen or a noncitizen's status. Ideally, when our client is not responsive or cannot locate the necessary paperwork, we want the option to pick up the phone or send an email and receive the information we need from the government to best assist our client. Unfortunately, this is not possible due to the Privacy Act of 1974. This is actually a good thing since, as one may imagine, not all who inquire about an immigrant have good intentions, and an immigrant deserves having their personal information protected.

According to the CIS website, the "Privacy Act provides that federal agencies must protect against the unauthorized disclosure of personally identifiable information (PII) that it collects, disseminates, uses, or maintains. The Privacy Act requires that personal information belonging to U.S. citizens and lawful permanent residents (LPRs) be protected from unauthorized disclosure. Violations of these requirements may result in civil and criminal penalties."

Two forms of information are generally available to the public. You can find out where a noncitizen client is being detained by ICE by using the detainee locator system at <https://locator.ice.gov/odls/#/index>. This system can be used without knowing the person's alien (A) number. You can also call the Executive Office for Immigration Review's toll free number at 1-800-898-7180 to learn whether your client is or has been in removal proceedings and what order(s) was issued by the Immigration Court or the Board of Immigration Appeals. For this to succeed, however, an A# is indispensable. Moreover, information about a pending asylum or domestic violence-related application is kept confidential for obvious safety reasons.

Any information besides that mentioned above will require a a FOIA request found at <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act> and a Notice of Appearance as Attorney (G-28) at <https://www.uscis.gov/g-28> (so the file is sent to you and not the client). The problem is that in the past it could take months to receive the documentation sought, though the website specifies that if only one document versus the entire file is requested, the FOIA may be processed more quickly.

It appears this problem may be resolved and that it may now be easier way to obtain information about your client's status when you need it. In *Nightingale v. USCIS*, a federal district court issued a permanent injunction ordering the Department of Homeland Security, USCIS and ICE to cease violating FOIA deadlines and to eliminate the backlog of FOIA requests for files.

A requestor seeking a client's file, or some information from the client's file, like a copy of any green card or naturalization certificate, may submit such request through FIRST, USCIS' online portal for FOIAs. The inconvenience is that one must first set up an online "My USCIS" account. As a third party requestor, one will have to obtain consent from the client to gain access to these private records. This may be done by filing the form G-28, as specified above, which can be downloaded on the USCIS website under "forms." You will also need a signed consent from the client. Alternatively, one may use the form G-639 mentioned above since it has a line for the client to sign to give required consent.

Also, when completing the online form to obtain a record, a requestor should pay special attention to Step 2: Nature of the Records Requested, and limit your request to what you actually need for the purpose of ascertaining status. Though FOIA's may be expedited, it appears that they will be only if the client is in removal proceedings before an immigration judge and has a scheduled hearing, but not if they are in criminal proceedings in a state or local court.

Of course, one may still send a G-639 by U.S. mail as stated earlier. The good news is that perhaps it won't take months to obtain a response. Please see [here](#) for more information on the process.

If only a simple oral response, and not documentation, is needed, then it *may* be possible to obtain it quickly with a G-28. All of the branches of the Department of Homeland Security (ICE, CIS or Customs and Border Protection (CBP)), if you can actually reach them, will require the inquiring lawyer to have a G-28 to gain the requested information, and the G-28 must be signed by the person on whose behalf you are acting or inquiring. This, of course, may prove impractical.

If it is possible to obtain an immigrant client's signed consent, you can complete the G-28 in Part 3 by limiting the agency from whom you want information (ICE, CBP or CIS), and the specific information you seek. For example, if you simply want to know whether your client has been ordered deported, mark the box that indicates you want contact with ICE and that this is the specific information you want. Since you are not the client's immigration attorney you will not want to know whether applications have been received or adjudicated, nor the decisions made by the agency on those application, copies of notices, etc., and you need not request that kind of access to the file, as set forth in Part 4.

Before undertaking these steps, however, it may be wise to first check with the client to see if an immigration attorney has ever represented them in the past. Contacting the immigration lawyer may be the simplest way to get the information you want.

*Introducing Social Work to the WNYRIAC, cont'd...*

...workers on their PD or ACP staff. In such cases, our social worker is available if it helps to obtain the pleas we suggest to avoid potential immigration consequences. Melissa can be contacted at: [mpena@legalaidbuffalo.org](mailto:mpena@legalaidbuffalo.org) or (716)853-9555 x 279.

## IMPORTANT NEWS

On December 21st, 2022, Governor Kathy Hochul granted 9 pardons to immigrants who have made significant contributions to New York, yet face severe immigration consequences because of their convictions.

Read the full press release [here](#).

Happy  
New  
Year!