

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.

SAVE THE DATE — FREE CLE

For Monroe County Mandated Representatives

Co-hosted by Monroe County Public Defender's Office & the WNYRIAC

Immigration Issues in Criminal and Family Court Proceedings

Speaker: Sophie Feal, Esq.,
Managing Attorney, WNYRIAC

Date & Time: August 4th, 12PM-2PM

Where: The Ebenezer Watts Building

CLE Credit: .5 for Ethics and 1.5 for Professional Practice

Please look for registration information in next month's newsletter. To be added to our newsletter, please email: abrown@legalaidbuffalo.org



WNY Regional Immigration Assistance Center

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

“Catching a Charge” as an Asylee or Refugee

By Brittany Triggs, Staff Attorney, WNYRIAC, Legal Aid Bureau of Buffalo, Inc.

There is a common misconception that refugees and asylees cannot be deported to the country they fled. This is simply not true. While there are many privileges to having refugee or asylee status, criminal activity can lead to removal for them just like it can for any noncitizen.

First, it is important to understand the difference between an asylee and a refugee. The most significant difference between the two is where the status is granted. Refugees are given that status outside of the United States and enter as a refugee with a pathway to lawful permanent residency and then citizenship. The United Nations makes the initial qualification determination of refugee status for millions of displaced people around the world. Then the United States Department of Homeland Security, in conjunction with the Department of State, Department of Health and Human Services, Federal Bureau of Investigations, the Department of Defense, and

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other intelligence agencies will initiate the security screenings and vetting process to determine who is a refugee, and who among those will be allowed to come to the US. The President sets the limit on refugees for every fiscal year. The current Administration has set a goal of 150,000 refugees.

On the other hand, asylees have to come to the United States and apply for status here. The method of entry to the country does not affect asylum eligibility. They might have their claims adjudicated in an immigration court or through the United States Immigration and Customs Enforcement (USCIS). They have one year after entry to apply for asylum, or else they are generally ineligible to apply. If an immigration judge or USCIS officer determines they have met their high burden of proof to be granted asylum, then they will be an asylee with a pathway to residency and citizenship, like refugees. There is no limit to the number of people who can be granted asylum. Both asylees and refugees must meet the Immigration and Nationality Act (INA) definition of refugee:

“any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” (Section 101(a)(42)(A)).

Additionally, there are asylum-specific statutory criminal bars. If an immigrant has an aggravated felony, such as convictions for murder, rape, sexual abuse of a minor, and drug trafficking, they will be barred from being granted asylum. There is another immigration term of art, the “particularly serious crime” which would also bar asylum. There is a specific analysis for determining if a crime is one that is particularly serious.

If someone is seeking asylum in the immigration court and is determined to have a criminal bar, it doesn't matter if they have met their burden of proving asylum based on their fear. They might still be eligible to apply for something called withholding of removal or cancellation of removal, but these have much higher burdens of proof and do not offer a pathway to citizenship. If all applications are denied by an immigration judge, the immigrant is ordered removed to the country they claim to fear.

Until the point at which these immigrants become lawful permanent residents (green card holders), they will be subject to the grounds of inadmissibility under INA §212. This includes upon their initial entry to the US, when applying for asylum, and when applying for adjustment of status (the application that grants permanent residency and a green card). There are waivers available for criminal grounds of inadmissibility for asylees and refugees, and those waivers are more encompassing than other waivers for other immigrants, but they are discretionary. The USCIS policy manual recognizes that the "established past or well-founded fear of future persecution" is "an extremely strong positive discretionary factor." See USCIS Policy Manual Volume 7 Part L Chapter 3 and Part M Chapter 3. However, a grant of lawful permanent residency is still discretionary, and these adjudicators can look at the charges, as well as the final conviction in making their determination. Should a waiver be denied, an immigrant will be unable to adjust and will be placed in removal proceedings. If they were already in removal proceedings, then they will be ordered removed on that ground of inadmissibility unless another form of relief is available to them.

Once an immigrant becomes a lawful permanent resident (LPR), they are subject to the grounds of deportability under INA §237. As discussed in the May newsletter, a conviction as "minor" as a harassment violation may be a deportable offense, no matter how one became an LPR. While there are more forms of relief that might be available to avoid deportation, a refugee who gained residency could be ordered removed to the country they fled.

NEW CASE LAW

The U.S. Supreme Court issued an adverse decision in *Pugin v. Garland* No. 22-23 (June 22, 2023). The Court held that the generic definition of the obstruction of justice aggravated felony ground (8 U.S.C. § 1101(a)(43)(S)), which renders deportable any offense "relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year," encompasses offenses that do not require that an investigation or proceeding be pending. In the matters under consideration, one defendant was convicted of several California offenses, including dissuading a witness from reporting a crime. The second was convicted of the Virginia offense of being an accessory after the fact to a felony. An aggravated felony conviction has the most serious immigration consequences for noncitizens since it makes them ineligible for most forms of relief from removal. This decision reverses good law in the Ninth and Third Circuits. *Valenzuela Gallardo v. Barr*, 968 F.3d 1053 (9th Cir. 2020); *Flores v. Att'y Gen. United States*, 856 F.3d 280 (3d Cir. 2017). The law is unchanged in other circuits.

On June 23, 2023, the U.S. Supreme Court issued a decision in *United States v. Texas*, 599 U.S. (2023), a case brought by Texas and Louisiana challenging the Biden Administration's immigration enforcement priorities. The Court held that the States lacked Article III standing to challenge the priorities. All of the Justices, except Alito, agreed with the outcome. [This practice alert breaks down the decision.](#)

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As this article demonstrates, immigration law is complex. Let the RIAC experts help you determine your client's status and the real consequences of any pleas they may take so you don't have an ineffective assistance of counsel claim against you.

What is a CMT? The analysis of *Giron-Medina v. Garland* (No. 22-6243 June 20, 2023)

A new decision on what constitutes a crime involving moral turpitude (CMT) was issued by the Court of Appeals for the 2d Circuit in a case that was initially litigated before the Immigration Court in Buffalo. The case involved a noncitizen convicted of "abuse of a corpse" under Arkansas law. She had concealed her child's body in a closet after the child was murdered by another person. The Court first found that historically a CMT requires: 1) reprehensible conduct, and 2) a culpable state of mind. It then analyzed the particular provision in the Arkansas statute of which the noncitizen was convicted, and found that it was divisible. This means that a tribunal is permitted to review a limited part of the record of conviction to determine exactly what acts a person was convicted of in determining whether the offense is a CMT. However, in this case the Court could not determine from the indictment which subsection of the statute the noncitizen was charged with violating since, interestingly, the indictment reflected that she was indicted under the statute "as a whole" rather than under one of its two subsections. Therefore, the Court reasoned that it had to decide whether all of the conduct specified in the provision criminalizing abuse of a corpse constitutes a CMT. They held that the statutory provision was broad and that some of the criminalized conduct was not "reprehensible," or more specifically, "base, vile or depraved." For example, the Court noted, someone could be charged with a violation of the Arkansas law if they disinterred a loved-one's body from a cemetery and reburied it in a family plot without completing the paperwork required by state law. As such, the offense in this case was not categorically a CMT that rendered the noncitizen ineligible for the relief she sought in removal proceedings. The decision may be found [here](#).

(cont'd)

The Guidelines prioritize the arrest and removal from the United States of noncitizens who are suspected terrorists or dangerous criminals, or who have unlawfully entered the country only recently, for example.

For a practice guide on what the decision means to criminal defense attorneys, see [here](#).

Upcoming Consulate Visits: Passport Renewal, Health Screenings, and More!

The Cornell Farmworker Program has announced the upcoming visits of the Guatemalan Mobile Consulate to Lansing on July 21 and 22, 2023, and the Mexican Mobile Consulate to various locations. This initiative aims to provide farmworkers with essential services and support. During these visits, farmworkers can renew their passports, receive free health screenings and vaccinations, consult pro-bono immigration and family law attorneys, and access USDA COVID support funds. Employers and workers interested in benefiting from these services are encouraged to spread the word.

Find more information in the flyers below:

•Guatemalan Consulate Flyer: (<https://cornell.app.box.com/file/1180285171366>)

•Mexican Consulate Flyer: <https://cornell.app.box.com/file/1216567466896>