

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.

FREE IN-PERSON CLE

Immigration Issues in Criminal and Family Court Proceedings

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

Date & Time: June 16, 2023; 1PM-3PM

Where: The Old County Courthouse
7 Main Street, Batavia, NY 14020

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

To register, email:
abrown@legalaidbuffalo.org

This CLE will introduce both the family law and criminal defense practitioner to the consequences on immigration status of criminal pleas and adverse Family Court findings, and review attorneys' ethical obligations to advise their noncitizen clients of such consequences.

Appropriate for both newly admitted and experienced attorneys.



WNY Regional Immigration Assistance Center

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

IDP Workshop Recap: Demystifying ICE Operations and Noncitizen's Rights

By Abbey Brown, Legal Assistant, WNYRIAC, Legal Aid Bureau of Buffalo*

In March and April 2023, the Immigrant Defense Project (IDP) and the Surveillance Resistance Lab hosted a two-part workshop series titled "Be Informed: What is ICE? How Do They Operate?" This workshop aimed to provide crucial knowledge about U.S. Immigration and Customs Enforcement (ICE), its operations, and the rights of immigrants. Throughout the workshops, prominent speakers such as Genia Blaser, Supervising Attorney at IDP, and Alli Finn, Senior Researcher & Organizer at the Surveillance Resistance Lab, shared their expertise.

The IDP is committed to safeguarding and expanding the rights of all immigrants, with a particular focus on those accused or convicted of crimes. Over the past decade, they have closely monitored ICE policing and community arrests in the New York City area. The Surveillance Resistance Lab actively confronts state and corporate surveillance as a significant threat to migrant justice, racial equity, economic justice, and democracy. Their collaborations with grassroots movements seek to combat the expansion of control and punishment systems in various domains.

"ICE relies on local police and the criminal legal system to identify and target noncitizens for arrest. It is alleged that ICE uses ruses and deceptive tactics to gain access to individuals' homes or workplaces. In public places, individuals have the right to remain silent and walk away, the right to refuse consent to a search, and the right to ask if they are free to leave..."

The first session of the workshop series, held on March 28, focused on the fundamentals of ICE policing and delved into the political history of the Department of Homeland Security (DHS), ICE's modus operandi and information gathering techniques, recent trends in ICE policing and surveillance, as well as strategies to engage in the fight against these practices.

The establishment of DHS in 2002 with the mandate to "protect the homeland" laid the foundation for ICE's operations. Since then, the budgets of Customs and Border Protection (CBP) and ICE have significantly increased, particularly in border policing. The expansion of border fencing and the surge in the number of border patrol agents illustrate this growth.

According to the speakers, ICE heavily relies on the racially biased and classist criminal legal system to carry out its operations. The number of deportations has dramatically increased over the years, with each Administration contributing to a rise in deportations. While the Biden Administration has rolled back policies from the Trump era, certain practices persist, such as electronic monitoring, asylum processing limitations, and family detention.

Understanding how ICE obtains information about immigrants is crucial. All immigration agencies under DHS contribute to identifying individuals for ICE deportation. Information sharing between agencies such as CBP, U.S. Citizenship and Immigration Services, and local law enforcement facilitates the identification and targeting of individuals for enforcement actions.

*Thank you to IDP for hosting the workshops that provided the information upon which this article is based.

Participants in this part of the training were encouraged to connect with local organizers, advocacy groups, and immigrant rights organizations in their region. These grassroots initiatives offer resources, training materials, and ongoing support to individuals facing immigration-related challenges. Staying updated on policy changes, legal developments, and community initiatives is vital for effective advocacy.

The second part of the workshop series, titled "Know Your Rights with ICE," was held on April 4, and focused on understanding individuals' rights during ICE raids. Presenters delved into specific rights individuals have in public places and at home, as well as what to do if witnessing an ICE raid.

ICE relies on local police and the criminal legal system to identify and target noncitizens for arrest. It is alleged that ICE uses ruses and deceptive tactics to gain access to individuals' homes or workplaces. In public places, individuals have the right to remain silent and walk away, the right to refuse consent to a search, and the right to ask if they are free to leave. However, it is important to note that ICE agents may target individuals based on racial profiling, making it essential to document the encounter and seek legal assistance. Evidence of one's immigration status that has been unlawfully gathered may be suppressed in removal proceedings.

Inside one's home, individuals have increased privacy protections. ICE should produce a judicial warrant to enter a home without consent. A document created by DHS is not a judicial warrant, including ICE detainers and Notices to Appear. Again, individuals have the right to remain silent, to not sign any documents without understanding them, and to speak to an attorney before answering any questions.

If you witness an ICE raid in progress, it is crucial to prioritize safety while documenting the incident. It is recommended to maintain a safe distance, record any identifying information, and document the actions of ICE agents. Reporting the raid to local community organizations and legal hotlines can help ensure that affected individuals receive the necessary support and legal assistance.

JERS & WNYRIAC Legal Orientations for Refugees

When refugees are first resettled in the United States, the resettlement agency is required to give orientation presentations to help the new arrivals get acclimated to life in the United States. One of those presentations is a legal presentation where someone reviews immigration, criminal, and general legal systems in the US. In collaboration with Journey's End Refugee Services and the Criminal Defense Unit at the Legal Aid Bureau of Buffalo, WNY RIAC has been presenting at the Jewish Family Services Legal Orientations. In a small room at the West Side Community Center, newly arrived immigrants are taught their legal responsibilities and rights and the severe consequences of breaking certain laws, which can be expensive and lead to deportation. The feedback has been overwhelmingly positive. One person was impressed that attorneys took the time to come in and present on the issues, and another was surprised to learn how much money it can cost to get a driving while intoxicated conviction. We are scheduled to present at all future legal orientations with Jewish Family Services, and we hope to expand to other resettlement agencies in the area.

The conclusion of the workshop series focused on community defense strategies and ways to support individuals targeted by ICE. Presenters emphasized the importance of community organizing, rapid response networks, and legal resources to protect and empower immigrant communities and create sanctuary spaces. These networks can help mobilize quickly in case of an ICE raid, connect affected individuals with legal representation, and raise awareness about their rights.

In addition, conducting "Know Your Rights" trainings in schools, workplaces, and community centers can empower individuals with knowledge about their rights during encounters with ICE. By educating community members about their rights and available resources, these trainings aim to mitigate fear and increase preparedness.

Establishing rapid response networks is a proactive approach to supporting individuals targeted by ICE. These networks consist of trained volunteers who can respond swiftly in the event of an immigration enforcement action. Their tasks may include documenting incidents, offering legal support, and providing emotional assistance to affected individuals and their families.

Furthermore, access to legal support is crucial for individuals facing immigration enforcement. Connecting affected individuals with immigration attorneys or legal organizations specializing in immigration defense can significantly increase their chances of navigating the complex legal system successfully. Additionally, supporting efforts to fund legal representation for those who cannot afford it is essential.

Overall, the workshop provided a comprehensive understanding of ICE operations, surveillance tactics, and community defense strategies. By arming community members with knowledge about their rights and providing legal support, it is possible to create a more resilient and supportive environment for immigrants facing the threat of ICE enforcement. In cases where noncitizen clients face the risk of immigration consequences due to their criminal history, defense counsel plays a vital role in ensuring a fair and just legal process. If you are a member of defense counsel and are facing challenges or need assistance in effectively representing your noncitizen clients, please reach out to the WNYRIAC so that we can offer this crucial support and guidance.

NEW CASE LAW

The Board of Immigration Appeals has issued a decision in *Matter of Pougatchev*, 28 I&N Dec. 719 (BIA 2023). The Case holds that:

- (1) A conviction for burglary of a building under section 140.25(1)(d) of the New York Penal Law is not categorically an aggravated felony burglary offense under section 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(G) (2018), because the statute is overbroad and indivisible with respect to the definition of "building" under New York law.
- (2) A conviction for displaying what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm while committing burglary under section 140.25(1)(d) of the New York Penal Law necessarily involves the use, attempted use, or threatened use of physical force against the person or property of another and therefore constitutes an aggravated felony crime of violence under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F).