

WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

MONTHLY NEWSLETTER

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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

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FREE TRAINING

“Traumatic Stress in Migrant Populations: Best Practices for Mitigation”

When: Friday, November 1st, 2024, from 11:30am - 1:30pm

Where: Via Zoom

Presented by:

Bijoux Bahati, MSW

Jewish Family Services of
Western New York—Manager,
RICH TST-R

Alaina Guzman, MSW

Legal Aid Bureau of Buffalo
Holistic Representation Program

Sophie Feal, Esq.

Legal Aid Bureau of Buffalo
Managing Attorney, WNYRIAC

This training is most relevant for mitigation specialists, social workers, client advocates, and investigators, but we highly encourage anyone who prepares mitigation reports for noncitizens to attend.

**PLEASE NOTE:
This is not a CLE**

[Please sign up
by clicking here.](#)

THINK DWI IS A SAFE PLEA?

ISSUES TO CONSIDER WHEN REPRESENTING A CLIENT ON CHARGES OF DRIVING WHILE INTOXICATED OR WHILE ABILITY IMPAIRED

By Sophie Feal, Managing Attorney, WNYRIAC, Legal Aid Bureau of Buffalo, Inc.

When we receive calls for advice on safe immigration pleas, it is a concern to us if an attorney has not inquired about a client's exact immigration status because the consequences of crimes on non-citizens are not alike. The implications of a DWI or a DWAI plea differ depending on one's status in the U.S., and serve as a key example of why it is important to have a clear understanding of a client's immigration status. Here are some examples:

- ⇒ DWI and DWAI are not currently grounds of removal though they may become so in any new immigration legislation. This means that, for example, a person with a "green card" (lawful permanent resident) may not be charged as removable from the U.S. after such a conviction.
- ⇒ DWAI by drugs is not the same as DWI or DWAI by alcohol. The fact that a controlled substance is involved may render the offense a controlled substances ground of removal. One such conviction may make a noncitizen deportable and bar them from admission to the U.S. if they travel abroad. It may also disqualify a person who seeks to obtain a "green card" in the future, say through a marriage to a U.S. citizen or asylum.
- ⇒ DWI with a child in the vehicle (per Leandra's Law) may render the offense a deportable crime against a child. One such conviction can make a noncitizen deportable.
- ⇒ DWIs and DWAI's related to both alcohol or drugs may serve as a ground of inadmissibility under the health grounds of inadmissibility (i.e. an addiction that may pose a danger to safety, property or welfare of another) for someone seeking to enter the U.S. This means a noncitizen could be denied admission to the U.S. or permanent residence. This is true whether the green card is sought through a U.S. employer or a relationship with a close family member who is a U.S. citizen or permanent resident.
- ⇒ An asylum seeker will be barred from gaining asylum if they have spent five years incarcerated in the aggregate, including for DWIs.
- ⇒ A person here on a student visa may have their visa revoked simply for a DWI arrest.
- ⇒ A DWI is deemed a "significant misdemeanor" which will disqualify an applicant for DACA (Deferred Action for Childhood Arrivals), the Obama era program which froze the deportation of people brought to the U.S. as children and authorized them to work lawfully in the U.S. Some of these people are still renewing their status, although new applications are no longer adjudicated due to a pending injunction.

- ⇒ One felony or two misdemeanors, including DWIs, will disqualify an applicant for TPS (Temporary Protected Status), a valuable benefit given to people who are considered unable to return to their home country due to war, environmental devastation, civil strife or other dangerous situations. Currently, Venezuelans, Sudanese, Ukrainians, Haitians, Afghans, Hondurans, among other nationalities, have TPS protection in the U.S. and as such, are legally authorized to work.
- ⇒ Two DWI convictions or being a “habitual drunkard” is deemed to indicate a lack of “good moral character” where that is statutorily required for an immigration benefit. This would affect a permanent resident seeking to naturalize, for example.
- ⇒ A noncitizen who spends 180 days incarcerated for any offense, including DWI, will be deemed to lack “good moral character” (see above).
- ⇒ A DWI or a DWAI may be deemed a “danger to the community” when a noncitizen is detained for removal by immigration authorities and seeks release from detention.
- ⇒ Not all grounds of inadmissibility require a conviction. A noncitizen may be deemed inadmissible to the U.S. if there is a “reason to believe” they are a drug abuser. DWIs by drugs (as well as any controlled substances charge and conviction) may lead to this conclusion.
- ⇒ The failure to disclose an arrest in an immigration application may be deemed a willful failure to disclose a material fact, and lead to the denial of immigration benefits, including naturalization. Even arrests for violation level offenses, such a DWAI, should always be admitted and clients should be aware of this requirement. Immigration regulations define a crime as an offense that carries a penalty of five days incarceration.
- ⇒ Most forms of immigration benefits allow an adjudicator to determine whether the applicant merits the benefit as a matter of discretion, and applicants have the burden of proving both statutory and discretionary eligibility for relief, such as asylum or permanent residence, and are required to provide relevant records. The underlying facts of a “bad act” may be the subject of questioning and any arrest may lead to an adverse exercise of discretion.

'Rape is Rape' Act Redefines Criminal Liability and Alters Deportation Implications

On September 1, 2024, the New York “Rape is Rape” Act signed by the Governor in February took effect. While the Act expands criminal liability for New York rape and sexual misconduct offenses, this expansion also means that these New York offenses criminalize acts that may no longer fall within the generic federal definition of “rape” in the Immigration and Nationality Act.

Therefore, such state offenses committed on September 1, 2024 or later should no longer be treated as “rape” aggravated felonies.

Never assume that an offense is so serious that deportation is inevitable. Talk to us at the WNYRIAC first!

[Click here for IDP's Practice Advisory](#)

Expunged and Sealed Records

Under New York State Law individuals may have certain criminal records expunged or sealed. CPL 160.50 orders that a record of a crime be sealed when the case is resolved in favor of the accused, this includes 440 vacatur. CPL 160.59 also allows an individual to request that the state seal convictions due to the passage of time and good behavior. Some New York State marijuana convictions were automatically expunged by operation of law. Those representing non-citizens must be aware that sealing or expungement does not erase the conviction or arrest for immigration purposes. The federal government may still have access to these records in their criminal databases. Attorneys and noncitizens should not assume sealed or expunged records are unavailable as they may still be accessed by ICE for purposes of immigration enforcement.

**HAVE A HAPPY
THANKSGIVING!**

The WNY Regional Immigration Assistance Center
A partnership between the Ontario County Public Defender's Office
and the Legal Aid Bureau of Buffalo, Inc.