

# WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

MONTHLY NEWSLETTER

ISSUE 46 | SEPTEMBER 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 8<sup>th</sup> 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

**Sophie Feal**

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

**Wedade Abdallah**

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

**WE CHANGED OUR EMAIL ADDRESS!**

**The RIAC email domain changed from [legalaidbuffalo.org](mailto:legalaidbuffalo.org) to [labbuffalo.org](mailto:labbuffalo.org).**

**Please change our email address in your databases accordingly so that we can continue to communicate with you effectively about your crim-imm cases:**

[sfeal@labbuffalo.org](mailto:sfeal@labbuffalo.org)  
[wabdallah@labbuffalo.org](mailto:wabdallah@labbuffalo.org)

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**PLEASE FOLLOW US ON INSTAGRAM**

Follow the WNYRIAC at  
[@labw\\_wnyriac](https://www.instagram.com/labw_wnyriac)

for weekly "crimmigration" knowledge and tips for defense attorneys!

# **UNDERSTANDING THE “KEEPING FAMILIES TOGETHER” IMMIGRATION POLICY: ELIGIBILITY, CRIMINAL BARS, AND ASSISTANCE FOR NONCITIZENS**

By Sophie Feal and Wedade Abdallah, Managing Attorneys, WNYRIAC, Legal Aid Bureau of Buffalo, Inc.

On June 18, 2024, President Biden announced a new immigration policy called “Keeping Families Together”. The policy, once implemented, will provide a path to lawful immigration status for qualifying spouses and stepchildren of U.S. citizens. On August 19, 2024, USCIS provided guidelines for eligibility, but most recently, following a lawsuit filed by sixteen States, the policy is now enjoined for two weeks. According to USCIS, applications may still be filed, but will not be adjudicated for at least 14 days.

There are significant criminal bars that will keep many individuals with criminal convictions from benefiting from this extraordinary program. First, any person convicted of a felony is barred from this relief. Second, certain crimes, listed below, will bar eligibility whether they are charged as a misdemeanor or felony. Third, all other convictions carry a rebuttable presumption of ineligibility.

If your client was not born in the United States, please reach out to the Western New York Regional Immigration Assistance Center. We can assist you in advising your client on the immigration consequences of their pending criminal or family court matter and potential eligibility for relief under this new policy. Please be sure to ask all of your noncitizen clients if they are married to a U.S. citizen or are the stepchild of a U.S. citizen.

Briefly, the guidelines are as follows, but more information is available at [Frequently Asked Questions About Keeping Families Together | USCIS](#) :

## **Q. What are the eligibility criteria for Keeping Families Together?**

A. To be considered for this process as a noncitizen spouse of a U.S. citizen, you must:

- Be present in the United States without admission or parole;
- Have been continuously physically present in the United States since at least June 17, 2014, through the date of filing your request;
- Have a legally valid marriage to a U.S. citizen on or before June 17, 2024
- **Have no disqualifying criminal history and otherwise not deemed to be a threat to**

**public safety, national security, or border security; and**

- **Submit biometrics and undergo required background checks and national security and public safety vetting (see below for more specific information).**

B. To be considered for this process as a noncitizen stepchild of a U.S. citizen, you must:

- Have been under the age of 21 and unmarried on June 17, 2024;
- Be present in the United States without admission or parole;
- Have been continuously physically present in the United States since at least June 17, 2024, through the date of filing your request;
- Have a noncitizen parent who entered into a legally valid marriage with a U.S. citizen on or before June 17, 2024, and before your 18th birthday;
- Have no disqualifying criminal history and otherwise not deemed to be a threat to public safety, national security, or border security\*; and
- Submit biometrics and undergo required background checks and national security and public safety vetting.

### **What impact does having a criminal conviction have on eligibility for this process?**

A. All felony offenses will be disqualifying under this process. Convictions for the following offenses are also disqualifying regardless of whether the conviction was a felony or misdemeanor. DHS reserves its discretion to determine that other offenses are disqualifying, even if not listed.

- Murder, torture, rape, or sexual abuse;

**Cont'd on page 4**

## **Keeping Families Together "Parole-in-Place" FAQ:**

The Immigrant Defense Project (IDP) has shared their new community-facing FAQ about the "Keeping Families Together" (KFT) parole-in-place process, also known as "PIP." Even though a lawsuit was recently filed against KFT parole, there is no current injunction, so the process continues.

This FAQ is designed to help you understand how interactions with the criminal legal system might affect a noncitizen's eligibility for KFT parole. While this process allows certain undocumented spouses and step-children of U.S. citizens to stay and work in the U.S., there are broad restrictions that unfairly penalize immigrants who have had contact with law enforcement.

IDP intends this FAQ to be a national resource, and a Spanish translation is in progress. Please feel free to share it widely with community members, advocates, and attorneys who may find it helpful.

Find the FAQ here:

[https://  
www.immigrantdefenseproject.  
org/wp-content/uploads/IDP-  
Community-FAQ -KFT-Parole-  
In-Place-ENGLISH.pdf](https://www.immigrantdefenseproject.org/wp-content/uploads/IDP-Community-FAQ-KFT-Parole-In-Place-ENGLISH.pdf)

Cont'd...

- Offenses involving firearms, explosive materials, or destructive devices;
- Engaging in activities relating to peonage, slavery, involuntary servitude, and trafficking in persons;
- Aggravated assault;
- Offenses relating to child pornography, sexual abuse or exploitation of minors, or solicitation of minors;
- Domestic violence, stalking, child abuse, child neglect, or child abandonment; and
- Controlled substance offenses (other than simple possession of 30 grams or less of marijuana).

B. All other criminal convictions not listed above, excluding minor traffic offenses, will result in a presumption of ineligibility for this process. To overcome the presumption of ineligibility, you must provide documentation demonstrating positive factors that can be considered in overcoming this presumption and showing that you warrant a favorable exercise of discretion. You should include copies of arrest records and certified court dispositions for each arrest or criminal charge, as well as evidence that you completed your sentence, if applicable.

Even if you establish that you have met all the criteria for eligibility, and have rebutted the presumption of ineligibility, USCIS will examine the totality of the circumstances to determine whether your request should be granted as a matter of discretion for significant public benefit or urgent humanitarian reasons.

## Addressing Racial Bias in Policing and Immigration Relief

A June 2024 report from the Stanford Law School Immigrants' Rights Clinic, titled "Bias in the Criminal Legal System," highlights the direct consequences of racially biased policing on the availability of immigration relief for Black and Latinx noncitizens. Immigration authorities routinely consider noncitizens' criminal history when exercising discretion for relief and determining eligibility for immigration benefits. Obtaining immigration advice for noncitizen clients and advocating for immigration safe dispositions is an effective way to mitigate against the immigration consequences of biased policing.

Here is a link to the report:  
[2024-Bias-Criminal-Legal-System.pdf](#)

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

## Legal Services for New Immigrants Across Western NY and Southern Tier

Journey's End Refugee Services is continuing their work as Office of New Americans (ONA) Legal Counsels in Western New York and the Southern Tier, in partnership with the Legal Aid Society of Rochester, the lead ONA Legal Counsel for the Finger Lakes Region.

Through this program, Journey's End will provide Know Your Rights presentations, respond to client and partner inquiries, offer direct representation, and host legal consultation days across the region. They serve clients in person in Buffalo, Rochester, Binghamton, and Ithaca, with remote services available as needed.

If your organization is interested in their services, please contact them at the region-specific numbers below:

Western New York (serving Niagara, Erie, Chautauqua, Cattaraugus, & Allegany counties)  
(716) 882-4963 x 203

Vive La Casa (Jericho Road)  
(716) 892-4354 x 604

Southern Tier (serving Steuben, Schuyler, Tompkins, Tioga, Broome, Chenango, Delaware, & Chemung counties)  
(716) 364-8386

Finger Lakes (serving Orleans, Genesee, Wyoming, Livingston, Monroe, Ontario, Seneca, Yates, and Wayne counties)  
(716) 435-8959

*The contact information for their partner agency in the Finger Lakes region is:*

Legal Aid Society of Rochester  
(585) 232-4099

