



PADILLA V. KENTUCKY

A Major Victory for Immigrant Rights

by Jerry Grzeca and John Sesini, May 2010

Immigrants who plead guilty to criminal charges in the United States could face extreme consequences because of the harshness of our current immigration laws, but as of March 31, 2010, immigrants have some hope.

On this day, the Supreme Court issued a landmark decision in *Padilla v. Kentucky*, holding that criminal defense lawyers must advise noncitizen defendants of the immigration consequences of their plea. Immigrant rights groups and criminal justice advocates alike have celebrated this victory.

Jose Padilla, a native of Honduras and a decorated Vietnam War veteran, has been a permanent resident of the United States for 40 years. Padilla, a truck driver, was stopped at a weigh station in Kentucky and gave law enforcement officers permission to search his truck. Police arrested Padilla for possession and distribution of marijuana. On advice from his lawyer, Padilla entered a guilty plea to the drug charges in exchange for a lesser sentence. His lawyer assured him that his plea would not affect his immigration status, but his lawyer was wrong.

Padilla claimed that prior to entering his plea, his attorney failed to advise him about the possibility of deportation; in fact, he told Padilla that he, "did not have to worry about [his] immigration status since he had been in the country so long." Once Padilla learned of the deportation mandate, he tried to withdraw the plea, contending he'd been denied "effective assistance of counsel." The Kentucky Supreme Court ruled against him, concluding that the constitutional right to counsel does not extend to matters that fall outside the criminal case at hand. But on March 31, 2010, Padilla received good news: the U.S. Supreme Court disagreed in a 7-2 vote.

Without proper legal advice, the estimated 13 million immigrants who are currently living legally in the United States may face deportation if ever convicted of a crime. Even individuals charged with low-level offenses could be deported to countries where they have no family or where they may not even speak the native language.



They could be forced to leave their families behind forever.

Padilla reasoned that deportation is an extreme penalty, and noncitizens have a constitutional right to legal advice regarding the immigration consequences of pleading guilty. All criminal defense attorneys must be held to higher standards to provide competent advice regarding potential immigration consequences of criminal convictions. Criminal defense attorneys must work closely with immigration attorneys in their jurisdictions to carefully consider immigration issues at the same time that they are preparing their clients' cases for resolution.

The holding in *Padilla* represents a major victory for immigrant rights in the United States; the Supreme Court has finally recognized the effects that criminal convictions can have on noncitizens, their families and their communities.

While we celebrate this victory, let's continue to work together to ensure immigrants are protected and well advised on the legal nuances of criminal convictions. For more information on this case or other immigration issues, please contact Grzeca Law Group at (414) 342-3000 or visit our website at www.grzecalaw.com.

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