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Supreme Court Decision Protects Right to Immigration Advice, and Right to Counsel for Noncitizens Charged with Committing a Crime **By: Adrien Medvei, Esq.**

In March 2010 the Supreme Court issued a seminal decision in *Padilla v. Kentucky* as it applies to the constitutional rights of all immigrants. The case, *Padilla v. Kentucky*, involved a Vietnam War veteran who has resided lawfully in the U.S. for over 40 years. His criminal defense lawyer told him not to worry about the immigration consequences of pleading guilty to a crime, but that advice was wrong. In fact, the guilty plea made Mr. Padilla subject to mandatory deportation from the United States. The state of Kentucky said that Mr. Padilla had no right to withdraw his plea when he learned of the deportation consequence. The Supreme Court's decision reverses the Kentucky court. The Supreme Court held that "the right to counsel is at the very core of our criminal justice system," and stated that immigrants should not be held accountable when they rely on incorrect advice regarding immigration consequences of a plea from their criminal lawyers.

In *Padilla v. Kentucky*, the court expressed, at least in summary, its dismay at the increasing difficulties caused by today's immigration laws, and they stated that "*changes to immigration law have dramatically raised the stakes of a noncitizen's criminal conviction.*" While before there were only a few offenses that resulted in deportation of an alien, with recent immigration reforms the class of deportable offenses increased, while the immigration judge's authority to alleviate deportation has been decreasing. Hence, the Supreme Court found that due to the harsh consequences of a criminal conviction for an alien, accuracy of the legal advice these noncitizens receive from their criminal lawyers is very important. The court felt that "*as a matter of federal law, deportation is an integral part of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.*"

Criminal Defense lawyers around the country should now seek training in the immigration consequences of a plea, or do what some of the best criminal defense lawyers already do--retain competent immigration counsel to assist in the defense of their clients. *Padilla v. Kentucky* will most likely lead to a surge in Motions to Reopen removal proceedings when criminal plea is involved in the noncitizen's case.

An important signal coming out of this decision is that the Supreme Court may be laying the groundwork for immigration reform as it relates to the extraordinarily harsh and some failed policies of removal that were established as part of the Illegal Immigration Reform Act and Immigrant Responsibility Act of 1996. This decision sends a clear signal to Congress that it is time to get to work on the Reform.

If you were placed in removal proceedings based on a criminal plea agreement or if you need independent evaluation of your immigration case, please contact our office in confidence at (213)984-4013.

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