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SCOTUS: Criminal Defense Attorneys Must Advise Clients of Deportation Risks

As a native speaker of Spanish, my [practice](#) often involves the representation of individuals who face significant immigration consequences of entering a guilty plea – and sometimes, those consequences are more important to them than the possibility of any punishment the criminal courts can possibly impose. What may be a “good deal” to a U.S. Citizen could completely destroy a non-citizen’s life here, even individuals who have lived here for most of their lives.

Today, the Supreme Court issued a significant decision in *Padilla v. Kentucky*. Padilla, a lawful permanent resident of the United States, faced deportation after pleading guilty to drug distribution charges. Padilla alleged that his attorney had not advised him of any potential immigration consequences of entering a guilty plea, and later advised him that an individual with his length of residency in the United States certainly would not face deportation (an outright falsehood). Padilla’s allegation was that his attorney’s failure to properly advise him constituted ineffective assistance of counsel. The Supreme Court agreed.

Where the deportation consequences of a plea are not immediately clear, a criminal defense attorney is effective so long as he advises his noncitizen client that the pending criminal charges “may carry adverse immigration consequences”. If, as in Padilla’s case, “the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequences [of a conviction]”, the attorney has a clear duty to give “correct advice” because the correct advice could easily be determined from reading the text of the pertinent statute.

What this means for criminal defense attorneys, in practical terms, is that if their practice involves the representation of non-citizens, they must take it upon themselves to read and become familiar with those aspects of immigration law that are succinct and straightforward. The Supreme Court does not expect criminal defense attorneys to also be immigration law experts – but it does expect them to, at a minimum, know those immigration laws which are succinct and straightforward.