
The Court’s decision in Padilla imposes an important duty upon criminal defense attorneys to inform their clients who are noncitizens of the immigration consequences they may face as a result of pleading guilty to criminal charges.

**Facts:** The defendant, Jose Padilla, was born in Honduras and has lived in the United States for over forty years as a noncitizen, “lawful permanent resident” (Padilla, 130 S. Ct. at 1477). Padilla was indicted for drug-related offenses in the Commonwealth of Kentucky for transporting marijuana in his tractor-trailer and pled guilty to such charges, based on advice from his lawyer. Upon learning that the offenses to which he pled guilty are deportable offenses, Padilla pursued postconviction relief in the Kentucky courts, seeking to have his sentence overturned due to ineffective assistance of counsel. Padilla contended that his lawyer “not only failed to advise him of this consequence [deportation] prior to entering his plea, but also told him he ‘did not have to worry about immigration status since he had been in the country so long’” (Id. at 1478).

**Procedural History:** Following his indictment by the grand jury in Kentucky for drug-trafficking charges, Padilla—on the advice of his lawyer—pled guilty in exchange for a five year sentence in prison and five years probation. When Padilla learned that he faced deportation proceedings as a result of his guilty plea to the drug charges, he filed a motion for postconviction relief, seeking to set aside his guilty plea on the ground that his lawyer had not informed him of the deportation consequences. Padilla was denied postconviction relief in the Kentucky courts, so he filed a petition for a writ of certiorari to the United States Supreme Court, which granted certiorari to hear this case.

**Issue:** Whether it constitutes ineffective assistance of counsel in violation of the Sixth Amendment for an attorney to fail to advise a client who is a noncitizen criminal defendant of the immigration consequences of pleading guilty to a deportable offense.
**Holding:** Yes, the failure of counsel to advise a client who is a noncitizen criminal defendant of the immigration consequences of a guilty plea constitutes ineffective assistance of counsel in violation of the Sixth Amendment. “Constitutionally competent counsel would have advised [Padilla] that his conviction for drug distribution made him subject to automatic deportation” *(Id.*). Padilla’s counsel failed to satisfy the first prong of the *Strickland* ineffective assistance of counsel standard in that his “representation fell below an objective standard of reasonableness” as compared to the norm set by the criminal defense bar *(Id. at 1482)*. The Court reversed the decision of the Supreme Court of Kentucky and remanded the case for further proceedings to determine whether Padilla suffered prejudice as a result of his counsel’s advice (the second prong of the *Strickland* test). If so, he would be entitled to postconviction relief.

**Court’s Reasoning:** The Court put a great deal of emphasis on the fact that “the ‘drastic measure’ of deportation...is now virtually inevitable for a vast number of noncitizens convicted of crimes” *(Id. at 1478)*. As a result of changes to the immigration laws over the years, deportation has become “an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes,” especially for drug trafficking offenses as in Padilla’s case *(Id.)*. While deportation is not technically a “criminal sanction,” the Court has “long recognized that deportation is a particularly severe ‘penalty,’ which has become practically an ‘automatic result for a broad class of noncitizen offenders”’ *(Id.)*. Because deportation has become a concomitant component of criminal sentencing for noncitizen criminal defendants, the Court held that advice regarding potential deportation is within the scope of the Sixth Amendment right to the effective assistance of counsel.

The Court then applied a two-part *Strickland* test, which is used to determine whether a defendant was deprived of his or her Sixth Amendment right to the effective assistance of counsel. Under the first prong of *Strickland*, the Court determines “whether counsel’s representation ‘fell below an objective standard of reasonableness’ and if so, the second prong asks whether the defendant suffered prejudice as a result, meaning that but for the subpar advice from counsel, ‘the result of the proceeding would have been different.’” *(Id. at 1482)*. The Court determined that Padilla’s counsel failed the first prong of the *Strickland* test, given that the prevailing norm in the profession is that defense attorneys have an obligation to advise their noncitizen clients regarding potential deportation consequences of pleading guilty. The Court pointed out that the immigration statute relevant to Padilla’s offense set forth the deportation consequences so clearly that counsel “could have easily determined...simply from reading the text of the statute,” that Padilla’s plea would render him subject to deportation *(Id. at 1483)*. Instead of taking the time to read the relevant statute and make this assessment
however, Padilla’s counsel gave “false assurance” to Padilla that his guilty plea would not result in deportation (Id.) After determining that Padilla’s counsel’s clear constitutional deficiency met the first prong of the *Strickland* standard, the Court remanded the case to the Kentucky courts to consider whether the second prong is met by determining whether Padilla suffered prejudice as a result of his counsel’s erroneous advice.

The Court in *Padilla* emphasized its “responsibility under the Constitution to ensure that no criminal defendant—whether a citizen or not—is left to the mercies of incompetent counsel” and upheld such responsibility by requiring counsel to “inform her client whether his plea carries a risk of deportation” (Id. at 1486).

**Aftermath of Padilla:**

The Court’s reasoning in *Padilla* is likely to be extended in future cases to require counsel to advise their clients of other adverse consequences of pleading guilty, such as “loss of licenses, ineligibility for public housing,” and the loss of other benefits such as food stamps and federal and state health care programs (Chin and Love, 2010). Given the potential implications of this holding, “*Padilla* may turn out to be the most important right to counsel case since *Gideon*, and the ‘*Padilla* advisory’ may become as familiar a fixture of a criminal case as a *Miranda* warning (Chin and Love, 2010).

In February, 2013, the U.S. Supreme Court decided in *Chaidez v. United States*, 133 S. Ct. 1103 (2013) that *Padilla* did not apply retroactively to criminal defendants whose attorneys had failed to warn them of the immigration consequences of their guilty pleas.

**References:**


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