

Crimmigration

2025 Misdemeanor Defender Training

UNC School of Government

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What is the purpose of this presentation?

To help you develop a strategy to effectively advise all immigrant defendants of the immigration consequences for their criminal prosecution (when the consequences are known)

Padilla v. Kentucky, 559 U.S. 356 (2010)

- HELD: When immigration consequences are CLEAR, the criminal defense attorney has a DUTY to give correct advice regarding those consequences.
- Failure to do so is INEFFECTIVE ASSISTANCE OF COUNSEL to be analyzed under Strickland v. Washington, 466 U.S. 668 (1984).
- Silence is not an option.
- Wishy washy advice is not an option.
- Telling client “you should consult with an immigration attorney” is not an option.

Lee v. United States, 137 S.Ct. 1958 (2017)

- Whether an immigrant can demonstrate prejudice under Strickland v. Washington analysis when the case against them is very strong.
(Answer: YES)
- HELD: “but for his attorney’s incompetence, Lee would have known that accepting the plea agreement would certainly lead to deportation. Going to trial? *Almost* certainly. If deportation were the ‘determinative issue’ for an individual in plea discussions, as it was for Lee; if that individual had strong connections to this country and no other, as did Lee; and if the consequences of taking a chance at trial were not markedly harsher than pleading, as in this case, **that ‘almost’ could make all the difference.**”

State v. Nkiam, 778 S.E.2d 863 (2016)

- NC first case applying Padilla
- HELD: when the consequence of deportation is clear, counsel is required by Padilla to give **correct advice** and not just advise defendant that his pending criminal charges *may* carry a risk of adverse immigration consequences
- *The judge cannot “cure” the failure to advise. The duty is that of defense counsel alone.*

Juvenile Clients

- UNLESS A CASE IS REMOVED TO SUPERIOR COURT (or is going to be), Juvenile Defenders do not need to advise under Padilla
- Padilla does not apply because adjudications in juvenile court are NOT convictions
- **Special Immigrant Juvenile Status (SIJS)** : an immigration classification that applies to children present in the US w/o status, in need of humanitarian protection b/c they have been abused, abandoned, or neglected by a parent

Important Definitions:

- a. Admission: lawful entry into US after inspection and authorization by an immigration officer
- b. Inadmissibility: cannot lawfully enter US and/or gain lawful status. *I.E. an inadmissible LPR cannot (w/o relief) become a USC and will be turned away at the border if travels abroad and seeks to return to US.*
- c. Removable: able to be removed from US according to US code
- d. Deportation: the act of removing someone who was previously lawfully admitted to the US

Our Process (Durham Co. Office of Public Defender)

- APD meets with client → “Where were you born?”
- APD completely fills out Non-Citizen Defendant Worksheet (included in written materials)
- APD gives me the form
- I analyze
 - Including contacting immigration attorneys when needed
- I email APD w/ information and advice (example included in written materials)
 - APD accounts for my time in their client file
- I keep form w/ advice email, notes, correspondence attached
- APD informs me when/how the case is resolved
- I return the original form and all advice emails to APD for closed file

Tips for Success during your client interview

- Find a way to ask... (i.e. social security number does not equal citizen)
- Tip: A work permit IS NOT a status...it is a BENEFIT OF lawful status
- Tip: There are MANY types of visas...find out what kind...copy the card!
- Tip: If client has/had help of an immigration attorney, get a release to talk to the attorney if they or you are unclear about their status

My analysis, Part I

- What are the goals of the immigrant, based on his/her status?
 - Undocumented, permanent residency, asylum, refugee, TPS, DACA, U Visa, T Visa
- What position do I believe the immigrant to be in based on prior record? (*including prior convictions and dismissals*)
 - i.e. is client removable? Inadmissible? Are there forms of relief for which s/he is ineligible?
- What are the consequences of the current charges for the immigrant?
- What suggestions can I make regarding case outcome?

My analysis, Part II

- When I am looking at the charges pending against an immigrant, I need to know whether they carry any of the following potential **criminal grounds for removal or inadmissibility**:
 - Aggravated Felony
 - Crime of Moral Turpitude
 - Substance Abuse Grounds
 - Firearm/Destructive Device Grounds
 - DV Grounds
 - Stalking Grounds
 - Child Abuse/Neglect/Abandonment Grounds
 - Violation of a Protective Order Grounds
 - Prostitution
 - Human Trafficking
 - Money Laundering
 - Gambling

N.C.G.S. § 162-62: Legal Status of Prisoners

- Took effect 10/1/25
- Establishes the process by which jails must cooperate with ICE to identify and hold persons who may be in the US w/o permission
- In some cases, upon arrest, the jail is required to “determine legal residency”

N.C.G.S. § 162-62: What offenses?

- *September 2nd Criminal Law Blog Post: Brittany Bromell*
- Any Felony
- Class A1 DV related misdemeanor
- Any violation of G.S. 50B-4.1 (DVPO violation)
- Class A1 misdemeanor related to unborn victims, sex offenses, assault
- Any offense involving impaired driving

N.C.G.S. § 162-62: The process

- Step 1(jail): determine residency
- Step 2(jail): if unable to determine, send inquiry to ICE (jail administrator) *hold arrestee for 2 hours to see if ICE responds*
 - Detainer and Administrative Warrant
- Step 3(jail):if a detainer/administrative warrant is sent, take arrestee before state judicial official
- Step 4(state judicial official) compare detainer/administrative warrant to arrestee
- Step 5(state judicial official) if detainer/administrative warrant is determined to belongs to the arrestee.

N.C.G.S. § 162-62: ICE notification

- If the detainer and judicial warrant are determined to “belong to” the arrestee,
- Order directing person be held in custody for up to 48 hours after they would otherwise be free to leave. For example:
 - Bond posted or unsecured
 - Case dismissed
 - Sentence completed
- ICE must be notified within 2 hours of the triggering event

Resources I Use

- **Immigration Consequences of a Criminal Conviction in North Carolina by Sejal Zota and John Rubin (2017) FREE on School of Government Website**
- IDS Expert: www.ncids.org/immigration-consultations/
- Local friendly immigration attorneys
- Kurzban's Immigration Law Sourcebook by Ira J. Kurzban
- Immigration Consequences of Criminal Activity by Mary E. Kramer

Additional Online Resources

- NAPD: National Association of Public Defenders
 - My Gideon, archived in “Sentencing and Collateral Consequences” section
 - FREE “Padilla in Perspective” Webinars by Jessica Stern
- ILRC: Immigrant Legal Resource Center www.ilrc.org
- National Immigration Project of the National Lawyers Guild
www.nipnlg.org
- Immigrant Defense Project www.immigrantdefenseproject.org