Padilla and Effective Assistance of Counsel

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

The U.S. Supreme Court held that counsel must inform their client whether his or her plea carries a risk of deportation:

"In the instant case, the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequence for Padilla's conviction. […] When the law is not succinct and straightforward…a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear." *Id*. at 369.

***State v. Nkiam*, ___ N.C.App. ___, 778 S.E. 2d 863 (2016)**

The NC Court of Appeals, following *Padilla*, held that when the consequence of deportation is truly clear, it is not sufficient for the attorney to advise the client only that there is a risk of deportation. *Id.* at 869. When the consequence of deportation is 'truly 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.'" *Id*. at 871 (citing *Padilla v. Kentucky*, 559 U.S. at 369).

In short, when the immigration consequences are clear, merely indicating that deportation is a possible consequence or risk is not enough.

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

The Court held that "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." 137 S.Ct. at 1968-69.