

COUNSEL MUST ADVISE THEIR CLIENTS WHEN CRIMINAL
CONVICTION WOULD RESULT IN DEPORTATION: *PADILLA V.*
KENTUCKY

UNITED STATES—CRIMINAL LAW—IMMIGRATION— The Supreme Court held that a non-resident defendant’s counsel was ineffective when counsel failed to advise him that entering into a guilty plea on drug-related charges would get him deported.

Padilla v. Kentucky, 130 S. Ct. 1473 (2010).

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I. THE *PADILLA* DECISION

Jose Padilla, a Honduras native, who had lived in the United States for over 40 years and served in Vietnam, pled guilty to transporting a significant amount of marijuana in Kentucky.¹ This guilty plea made his deportation virtually automatic.² Padilla alleged that his counsel did not advise or warn him of the consequences of a guilty plea.³

Based on allegations that defense counsel did not provide him with adequate information to make an informed decision regarding the consequences of his plea, Padilla filed a motion for post-conviction relief in the Kentucky Circuit Court, which was denied.⁴ Padilla appealed and the Kentucky Court of Appeals reversed and remanded.⁵ The government appealed and the

1. *Padilla v. Kentucky*, 130 S. Ct. 1473, 1477 (2010).

2. *Padilla*, 130 S. Ct. at 1477. The applicable statute states:

Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

8 U.S.C. § 1227(a)(2)(B)(i) (2008).

3. *Id.* at 1478.

4. *Id.*

5. *Id.*

Kentucky Supreme Court reversed.⁶ The court did not accept Padilla's ineffective assistance of counsel claim under the Sixth Amendment, reasoning that his chance of deportation was only a collateral matter to his drug-related offense.⁷ Thus, in effect, deportation was outside the scope of the state trial court's sentencing power.⁸ The Kentucky Supreme Court reasoned that collateral matters are not within what is required by the Sixth Amendment, and thus an ineffective counsel claim must fail.⁹

The United States Supreme Court granted certiorari.¹⁰ The issue before the Court was whether, as a matter of federal law, Padilla's counsel had a duty to advise Padilla that entering a guilty plea for transporting marijuana could lead to his deportation.¹¹ Justice Stevens wrote the majority opinion of the Court, which rejected the Kentucky Supreme Court's distinction between direct and collateral consequences.¹² The Court reasoned that these distinctions had no effect on proper adjudication of this case.¹³ In cases involving the possibility of deporting a non-resident defendant arising from a criminal conviction, an attorney must, at a minimum, advise his client that conviction carries the risk of detrimental immigration penalties.¹⁴ The Court applied the two-prong Sixth Amendment right to counsel analysis set forth in *Strickland v. Washington*.¹⁵

6. *Id.* at 1481.

7. *Commonwealth v. Padilla*, 253 S.W.3d 482, 483 (Ky. 2008).

8. *Id.* (citing *Commonwealth v. Fuartado*, 170 S.W.3d 384 (Ky. 2005)).

9. *Padilla*, 253 S.W.3d at 483.

10. *Padilla*, 130 S. Ct. at 1473.

11. *Id.* at 1478.

12. *Id.* at 1481. The Court further explained that deportation was so enmeshed within the criminal process and so unique of a penalty, that it could not be classified as a direct or collateral consequence. *Id.* at 1482.

13. *Id.* at 1481. The Court explained that such a distinction was not necessary to "define the scope of constitutionally 'reasonable professional assistance' required under [*Strickland v. Washington*, 104 S. Ct. 2052 (1984)]." *Id.*

14. *Id.* at 1481.

15. *Padilla*, 130 S. Ct. at 1482. In *Strickland*, the Supreme Court established a two-prong analysis to determine whether a defendant's alleged ineffective counsel was in violation of his/her Sixth Amendment right to counsel. *Strickland*, 104 S. Ct. at 2052.

The first prong of a *Strickland* analysis establishes whether an attorney's representation was beneath an objectively reasonable standard.¹⁶ The majority explained that this standard is measured by examining the established professional customs within the legal community.¹⁷ Justice Stevens cited various sources supporting the proposition that an attorney must warn his or her client about the possibility of deportation.¹⁸ The majority noted that if an attorney was not sure whether a particular conviction could result in deportation, the attorney should review practice guides to aid in that determination.¹⁹

The majority noted it is not always clear whether a particular immigration statute carries the possibility of deportation.²⁰ However, the Court explained that in such instances, an attorney need only advise his client that conviction of the crime in question may possibly have undesirable immigration penalties.²¹ An attorney has a duty to advise his or her client that conviction will result in deportation only when the law is free from ambiguity.²² In *Padilla's* case, the majority explained that the cost of a guilty plea was inherently clear: *Padilla* would be deported.²³ The Court, relying on the assumption that *Padilla's* accusations were truthful, concluded that *Padilla* satisfied the first prong of a *Strickland* analysis.²⁴

16. *Padilla*, 130 S. Ct. at 1482 (citing *Strickland*, 104 S. Ct. at 2064).

17. *Id.*

18. *Id.* (citing National Legal Aid and Defender Assn., Performance Guidelines for Criminal Representation § 6.2 (1995); G. Herman, Plea Bargaining § 3.03, pp. 20-21 (1997); CHIN & HOLMES, EFFECTIVE ASSISTANCE OF COUNSEL AND THE CONSEQUENCES OF GUILTY PLEAS, 87 CORNELL L.REV. 697, 713-718 (2002); A. Campbell, Law of Sentencing § 13:23, pp. 555, 560 (3d ed. 2004); Dept. of Justice, Office of Justice Programs, 2 Compendium of Standards for Indigent Defense Systems, Standards for Attorney Performance, pp. D10, H8-H9, J8 (2000); ABA Standards for Criminal Justice, Prosecution Function and Defense Function 4-5-1(a), p. 197 (3d ed. 1993); ABA Standards for Criminal Justice, Pleas of Guilty 14-3.2(f), p. 116 (3d ed. 1999)).

19. *Id.* at 1483.

20. *Id.*

21. *Padilla*, 130 S. Ct. at 1483.

22. *Id.*

23. *Id.* See 8 U.S.C. § 1227(a)(2)(B)(i) (2008).

24. *Padilla*, 130 S. Ct. at 1483.

The second prong of a *Strickland* analysis asks whether it is reasonable to believe that but for the attorney's incompetence, a different result would have been reached in the case.²⁵ The majority did not address whether this prong was satisfied in its opinion, ultimately leaving the fate of Padilla's claim to be determined by the Kentucky courts on remand.²⁶

Justice Alito wrote a concurring opinion, with Chief Justice Roberts joining.²⁷ Justice Alito agreed with the majority that counsel must abstain from unreasonably giving wrong information to a client, and must also warn that a criminal might have undesirable immigration penalties.²⁸ However, Justice Alito wrote separately to note his belief that counsel should inform their client to seek advice from an immigration attorney in regard to possible penalties.²⁹ According to Alito, a criminal defense attorney should not attempt to provide detailed advice about immigration law because of its intricacies.³⁰ He suggests that a criminal defense attorney may not fall short of established professional standards when such an attorney chooses not to give advice in an area he or she is not well-versed in, such as immigration law.³¹ Further, Justice Alito views the majority's approach as problematic for four distinct reasons.³²

First, it is not always clear-cut when a criminal law will definitively subject a defendant to adverse immigration consequences.³³ Second, if an attorney is required to give instruction on only one of numerous penalties for a criminal conviction, it is possible that many defendants will be misguided.³⁴ This is so because a defendant may believe the penalty that he or she is advised

25. *Id.* at 1482 (citing *Strickland*, 104 S. Ct. at 2068).

26. *Id.* at 1483-84.

27. *Id.* at 1487.

28. *Id.*

29. *Padilla*, 130 S. Ct. at 1487.

30. *Id.* at 1487-1488.

31. *Id.* at 1488.

32. *Id.* at 1490.

33. *Id.*

34. *Padilla*, 130 S. Ct. at 1490.

about is the only penalty to which he or she could be subjected.³⁵ Third, Justice Alito sees the majority's hard-nosed constitutional rule as precluding other more promising methods of reform.³⁶ Lastly, the Justice sees the majority's opinion as inconsistent with Sixth Amendment jurisprudence.³⁷ Notably, Justice Alito explains that every federal court has rejected the view that an attorney's failure to advise his client of adverse immigration consequences is a violation of that client's Sixth Amendment rights.³⁸

Justice Scalia, joined by Justice Thomas, wrote a dissenting opinion.³⁹ In Justice Scalia's view, the Sixth Amendment provides a constitutional guarantee that a defendant will have counsel to assist in his defense, not a constitutional guarantee that a defendant will be advised of the collateral consequences of his conviction.⁴⁰ Furthermore, Justice Scalia does not join the majority opinion because of the complexities and ambiguities set forth in Justice Alito's concurrence.⁴¹ In his view, the problem addressed by the majority's holding can better be resolved by statute.⁴²

35. *Id.* Justice Alito gives the example of a non-resident convicted criminal who does not get deported for his crime, but leaves the country for a funeral, and then finds he cannot return. *Id.*

36. *Id.* Justice Alito gives the example where it would be a requirement for judges to inform defendants that a guilty plea may result in deportation. *Id.* Additionally, Justice Alito believes a constitutional rule would also preclude effective legislation and appropriate administrative action. *Id.*

37. *Id.* at 1491.

38. *Id.*

39. *Padilla*, 130 S. Ct. at 1491.

40. *Id.* at 1494. The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST. amend. VI.

41. *Padilla*, 130 S. Ct. at 1494.

42. *Id.* at 1495.

II. THE HISTORY BEHIND THE *PADILLA* DECISION

Under the English common law, a defendant charged with treason or felony was not permitted the assistance of legal counsel.⁴³ This prohibition continued until the Revolution of 1688, after which those charged with treason were permitted assistance.⁴⁴ Then, in 1836, Parliament issued a statute that would also allow legal counsel to those charged with a felony.⁴⁵ The Sixth Amendment of the United States Constitution, unlike the English common law, gave defendants in all criminal prosecutions the right to be represented by counsel.⁴⁶

In *Powell v. Alabama*, the issue before the United States Supreme Court was whether several young and poor African-American defendants accused of rape were substantively denied the right to be represented by counsel, and if so, whether their Fourteenth Amendment due process rights had been violated.⁴⁷ Rape was a capital offense in 1932, and the defendants had no representation, nor were they asked if they had any representation during their indictment, arraignment, and pleadings.⁴⁸ Trial began only six days after the defendants pled not guilty.⁴⁹ Counsel was present at trial, but was unprepared because of time restraints and unfamiliarity with the case.⁵⁰ The *Powell* Court held the defendants had not been afforded the Sixth Amendment right to counsel in any significant manner and therefore, their Fourteenth Amendment due process rights had been violated.⁵¹ Thus, in state cases involving capital

43. *Powell v. Alabama*, 287 U.S. 45, 60 (1932).

44. *Powell*, 287 U.S. at 60 (citing 1 Cooley's Constitutional Limitations 698 et seq. (8th Ed.)).

45. *Id.*

46. CHIN & HOLMES, EFFECTIVE ASSISTANCE OF COUNSEL AND THE CONSEQUENCES OF GUILTY PLEAS, 87 CORNELL L.REV. 697, 709 (2002). *See also* U.S. CONST. amend. VI.

47. *Powell*, 287 U.S. at 52.

48. *Id.*

49. *Id.* at 58.

50. *Id.*

51. *Id.* at 65. *See also* U.S. CONST. amend. XIV.

crimes, the Sixth and Fourteenth Amendments require an indigent defendant to be represented by counsel.⁵²

In *Gideon v. Wainwright*, the Supreme Court extended the right to be represented by counsel to all indigent defendants charged with non-capital crimes.⁵³ Following *Gideon*, the Supreme Court held in *Argersinger v. Hamlin*, that without a knowing and intelligent waiver, a defendant could not be imprisoned for any criminal offense unless represented by an attorney during his trial.⁵⁴ While the requirement of a defendant in a criminal proceeding to be represented by counsel has been broadened since *Powell*, the *Powell* decision also impliedly recognized a defendant's right to be represented effectively by counsel.⁵⁵ The Supreme Court did not revisit the Sixth Amendment right to effective counsel argument until 1984 in *Strickland v. Washington*.⁵⁶

In *Strickland*, the Court established a two-prong test to determine whether a defendant has been represented effectively by counsel.⁵⁷ First, the test requires a defendant to show that an attorney's representation was deficient.⁵⁸ The Court explained that federal circuit courts have correctly interpreted the attorney representation standard as one of reasonably effective

52. Chin & Holmes, *supra* note 46. The Court explained that “in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.” *Powell*, 287 U.S. at 65.

53. *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963).

54. *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972).

55. Chin & Holmes, *supra* note 46 (explaining that the appointed counsel in *Powell* had not done much to help defendant and thus concluding that defendant's right to counsel was not satisfied) (citing *Powell*, 287 U.S. at 56-58).

56. *Id.* See also *Strickland v. Washington* 466 U.S. 668 (1984).

57. *Strickland*, 466 U.S. at 687.

58. *Id.* The Court further stated that “[t]his requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.*

assistance.⁵⁹ Thus, only when an attorney's representation falls below an objectively reasonable standard measured by established professional norms within the legal community will an ineffective counsel claim lie.⁶⁰

The Court further explained that there exists a strong presumption that representation did not fall below an objectively reasonable standard.⁶¹ This is because the overarching purpose of counsel is to safeguard a defendant's rights by properly using the adversarial process inherent to the justice system.⁶² The Court also noted the first prong of the ineffectiveness test must be viewed on a case-by-case basis.⁶³

Next, the *Strickland* test requires a defendant to show that the substandard performance unfairly prejudiced the defense.⁶⁴ The Court explained that the Sixth Amendment's function is to make sure an accused has the representation necessary to ensure a fair trial and reliance on the outcome of the trial.⁶⁵ Only when there is a reasonable likelihood that, without counsel's errors, the judge or jury would have had a reasonable doubt about the defendant's guilt will this prong be met.⁶⁶

In *Hill v. Lockhart*, the Supreme Court extended the *Strickland* analysis to ineffectiveness arguments stemming from the pleading stage.⁶⁷ The Court further explained that the second prong of a *Strickland* analysis, in this particular context, requires a showing that a reasonable likelihood existed that but for the ineffective counsel, the defendant would not have pled guilty

59. *Id.* (citing *Trapnell v. U.S.*, 725 F.2d 149, 151-52 (2d Cir. 1983)). Thus, “[w]hen a defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness.” *Id.* at 687-88.

60. *Id.* at 688.

61. *Id.* at 690.

62. *Strickland*, 466 U.S. at 690.

63. *Id.*

64. *Id.* at 687. The Court explained that “[t]his requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.*

65. *Id.* at 692.

66. *Id.* at 694.

67. *Hill v. Lockhart*, 474 U.S. 52, 57 (1985).

to the charges.⁶⁸ The Court also noted that in numerous cases involving guilty pleas, the second prong of a *Strickland* analysis will be virtually identical to ineffective counsel claims.⁶⁹

After *Strickland* and *Hill*, a number of defendants in immigration cases began to argue that their convictions should be reversed because counsel had not advised their clients that a guilty plea would make them subject to virtually automatic deportation.⁷⁰ State and federal courts almost universally rejected such arguments.⁷¹ The majority of these courts reasoned that defendants' ineffective counsel claims must fail because deportation is a collateral, rather than a direct, consequence of making a guilty plea.⁷²

The distinction between collateral and direct consequences appears to have stemmed from the Supreme Court's decision in *Brady v. U.S.*⁷³ In *Brady*, the Supreme Court held that a defendant's guilty plea was valid when voluntarily and intelligently made.⁷⁴ The Court further explained that a defendant must have been aware of the direct consequences of such a guilty plea.⁷⁵ Courts have interpreted direct consequences as those that have a near instantaneous effect on the defendant's sentencing.⁷⁶ In contrast, courts have interpreted collateral consequences as those that the sentencing court has no power to impose.⁷⁷ This distinction between direct and

68. *Id.* at 58.

69. *Id.* at 59.

70. *See, e.g.*, *U.S. v. Gonzalez*, 202 F.3d 20, 25 (1st Cir. 2000); *U.S. v. George*, 869 F.2d 333, 336-37 (7th Cir. 1989); *Commonwealth v. Fuartado*, 170 S.W.3d 384, 385 (Ky. 2005).

71. *See, e.g.*, *Fuartado*, 170 S.W.3d at 385 (citing *U.S. v. Fry*, 322 F.3d 1198, 1200 (9th Cir. 2003); *U.S. v. Couto*, 311 F.3d 179, 187 (2nd Cir. 2002); *Gonzalez*, 202 F.3d at 25; *U.S. v. DeFreitas*, 865 F.2d 80, 82 (4th Cir. 1989); *George* 869 F.2d at 336-337; *U.S. v. Campbell*, 778 F.2d 764, 768-69 (11th Cir. 1985); *Chukwurah v. U.S.*, 813 F.Supp. 161, 165 (E.D.N.Y. 1993)).

72. *See, e.g., id.* at 386. The Supreme Court of Kentucky explained that “[t]he reasoning . . . derives from the fact that a defendant's Sixth Amendment right to counsel encompasses *criminal* prosecutions only, and does not extend to requiring counsel on collateral consequences that may result from such proceedings.” *Id.*

73. *Chin & Holmes, supra* note 46, at 726.

74. *Brady v. U.S.* 397 U.S. 742, 747 (1970).

75. *Brady*, 397 U.S. at 747 (quoting *Shelton v. U.S.*, 246 F.2d 571, 572 n.2 (5th Cir.), *rev'd* for other reasons, 356 U.S. 26 (1958).

76. *See, e.g., U.S. v. Kikuyama*, 109 F.3d 536, 537 (9th Cir. 1997). Direct consequences are those that present “a definite, immediate and largely automatic effect” on the defendant's range of punishment. *Id.* (quoting *U.S. v. Wills*, 881 F.2d 823, 825 (9th Cir. 1989).

77. *See, e.g., Padilla*, 130 S. Ct. at 1487.

collateral consequences, likely stemming from *Brady*, has provided the underlying reasoning behind why courts have almost universally rejected ineffective counsel claims against attorneys who have not advised their clients about the possibility of deportation stemming from guilty pleas.⁷⁸

Brady also recognized that, at least in regard to the Due Process Clause, counsel has the duty to advise his or her client of the direct consequences of a guilty plea, but does not have the duty to advise his or her client of the collateral consequences of a guilty plea.⁷⁹ Federal and state courts have expanded *Brady*'s holding to effective counsel under the Sixth Amendment, but the Supreme Court never directly addressed this extension.⁸⁰

Courts generally reason that collateral consequences are irrelevant to whether a defendant is guilty or innocent of an alleged crime.⁸¹ As such, they are entirely outside the trial court's authority.⁸² Thus, because the Sixth Amendment only requires representation within the realm of the criminal proceeding itself—and any direct consequence stemming from it—any ineffective counsel argument regarding deportation as a result of criminal conviction must necessarily fail, for it is not within the scope of the Sixth Amendment.⁸³

III. AN ANALYSIS OF THE *PADILLA* DECISION

The Supreme Court's holding in *Padilla v. Kentucky*, that an attorney has a duty to warn his or her client whether a guilty plea carries with it the risk of deportation is,⁸⁴ in theory, a logically sound proposition. The Court rejected the distinction between direct and collateral

78. Chin & Holmes, *supra* note 46, at 727.

79. *Brady*, 397 U.S. at 755.

80. *See, e.g.*, *U.S. v. Quin*, 836 F.2d 654 (1st Cir. 1988); *Ray v. State*, 982 P.2d 931, 937 (Idaho 1999).

81. *See, e.g.*, *Fuortado*, 170 S.W.3d at 386.

82. *Id.*

83. *Id.*

84. *Padilla*, 130 S. Ct. at 1486.

consequences.⁸⁵ This had been the underlying rationale for federal and state court decisions that held that an attorney does not have such a duty.⁸⁶ The Court is correct in its conclusion that direct and collateral consequences were never part of its Sixth Amendment jurisprudence, as those distinctions arose in the context of the Fifth and Fourteenth Amendments in *Brady v. U.S.*⁸⁷

The Court's decision here follows precedent by applying the *Strickland* test to a Sixth Amendment ineffective counsel claim.⁸⁸ However, as Justice Alito explains in his concurring opinion, immigration law is an inherently complex, specialized field.⁸⁹ While the majority opinion purports to limit its holding in *Padilla* to those cases where adverse immigration consequences are intrinsically clear, this will likely not be as easy as the majority appears to presume.⁹⁰ The majority further explains that in cases where such consequences are not so clear, an attorney has a duty to warn his client that a conviction could have negative immigration consequences.⁹¹ It is here where the logic of the majority opinion becomes, at the very least, suspect.

By imposing this affirmative duty on an attorney in a criminal defense context, there is a greater chance of justice being undermined rather than served. A criminal who has committed a crime and has either pled guilty, or been convicted, has yet another means to challenge his conviction by attacking his attorney's professional competence. Thus, it is quite possible that in

85. *Id.* at 1481. *See also* *Fuortado*, 170 S.W.3d at 385 (citing *U.S. v. Fry*, 322 F.3d 1198, 1200 (9th Cir. 2003); *U.S. v. Couto*, 311 F.3d 179, 187 (2nd Cir. 2002); *Gonzalez*, 202 F.3d at 25; *U.S. v. DeFreitas*, 865 F.2d 80, 82 (4th Cir. 1989); *George* 869 F.2d at 336-337; *U.S. v. Campbell*, 778 F.2d 764, 768-769 (11th Cir. 1985); *Chukwurah v. U.S.*, 813 F.Supp. 161, 165 (E.D.N.Y. 1993)).

86. *Padilla*, 130 S. Ct. at 1481.

87. *Brady*, 397 U.S. at 755.

88. *See, e.g.*, *Hill v. Lockhart*, 474 U.S. 52 (1985) (extending *Strickland* ineffective counsel test to guilty pleas); *Roe v. Flores-Ortega*, 528 U.S. 470 (2000) (applying *Strickland* test for ineffective counsel claim).

89. *Padilla*, 130 S. Ct. at 1487-88.

90. *Id.* at 1483.

91. *Id.*

the wake of *Padilla*, a flood of litigation will ensue challenging an attorney's competence in a difficult, and often unpredictable area of law.⁹²

The majority opinion vaguely discussed this issue, concluding that vast amounts of litigation will not ensue in the aftermath of *Padilla*.⁹³ The Court reasoned that this did not occur after *Hill v. Lockhart* because the second prong of a *Strickland* analysis is not easy to overcome, and thus will not occur in the aftermath of *Padilla*.⁹⁴ The majority explained that establishing prejudice is difficult because a defendant must show that rejecting a plea bargain in his or her particular circumstances would have been rational.⁹⁵ In its reasoning, the majority implies that because prejudice is difficult to overcome due to its rationality requirement, it will discourage defendants from attempting to show it.

However, *Hill* merely extended the *Strickland* analysis to arguments of ineffective counsel stemming from guilty pleas.⁹⁶ The Court's decision in *Padilla* goes a significant step farther by imposing an affirmative duty on defense counsel to warn his or her client of any potential adverse immigration consequences that *may* result from a guilty plea.⁹⁷ Thus, although the second prong of a *Strickland* ineffective counsel claim may still be difficult to prove, it does not necessarily follow that this will discourage defendants, who are armed with another weapon to challenge their convictions, from at least challenging more frequently than before *Padilla*.

Padilla simply goes too far by requiring defense counsel to warn his or her client of adverse immigration consequences that may stem from a guilty plea. This area of the law is

92. See Gary Ravitz, *Court Supervision After Padilla v. Kentucky*, 98 Ill. B.J. 362 (2010). "For now, *Padilla* opens the door wide to disgruntled former clients to litigate *your* competence." *Id.*

93. *Padilla*, 130 S. Ct. at 1484-85.

94. *Id.* at 1485.

95. *Id.*

96. *Hill v. Lockhart*, 474 U.S. 52, 57 (1985).

97. *Padilla* 130 S. Ct. at 1486.

difficult and specialized and a significant possibility exists that the floodgates of litigation will open as a result of this decision.

Joshua Gallo

