

SCOTUS Opinion: Failure of criminal defense counsel to warn his client about collateral immigration consequences of plea constitutes ineffective assistance of counsel

31. March 2010

On Wednesday, March 31, 2010, the United States Supreme Court issued its opinion in *Padilla v. Kentucky*. In a 7-2 opinion which will undoubtedly have significant ramifications within the criminal defense bar, the Court held that defendant's trial counsel's failure to warn his client that the client's guilty plea would subject him to mandatory deportation satisfied the first prong of the ineffective-assistance-of-counsel test articulated in *Strickland v. Washington*. Specifically, the Court held that where "the deportation consequence is truly clear, as it was here, the duty to give correct advice is equally clear." Criminal-defense counsel must now inform their clients whether a plea carries with it a risk of deportation. This case was remanded to the Kentucky courts to consider the second *Strickland* prong—whether in this specific case Mr. Padilla had been prejudiced by his lawyer's failure to give that advice.

Justice Alito authored a concurring opinion joined by Chief Justice Roberts. Justice Scalia wrote the dissenting opinion, in which Justice Thomas joined.

A copy of the majority, concurring, and dissenting opinions can be found [here](#).