



Posted on March 31, 2010 by [Robert A. Kraft](#)

## [Supreme Court Decision Protects Right to Immigration Advice](#)

This press release was issued today by the American Immigration Council:

The American Immigration Council applauds today's Supreme Court [decision](#) on the right to counsel for noncitizens charged with committing a crime. The Court held that criminal defense lawyers must advise their noncitizen clients about the risk of deportation if they accept a guilty plea. The Court recognized that current immigration laws impose harsh and mandatory deportation consequences onto criminal convictions, and that Congress eliminated from these laws the Attorney General's discretionary authority to cancel removal in meritorious cases. The Court said, "These changes to our immigration law have dramatically raised the stakes of a noncitizen's criminal conviction. The importance of accurate legal advice for noncitizens accused of crimes has never been more important."

The case, *Padilla v. Kentucky*, involved a Vietnam War veteran who has resided lawfully in the U.S. for over 40 years. His criminal defense lawyer told him not to worry about the immigration consequences of pleading guilty to a crime, but that advice was wrong. In fact, the guilty plea made Mr. Padilla subject to mandatory deportation from the United States. The state of Kentucky said that Mr. Padilla had no right to withdraw his plea when he learned of the deportation consequence. Today's decision reverses the Kentucky court. It also rejected the federal government's position (which had been adopted by several courts) that a noncitizen is protected only from "affirmative misadvice" and not from a lawyer's failure to provide any advice about the immigration consequences of a plea.

"The right to counsel is at the very core of our criminal justice system. The Court affirms that immigrants should not be held accountable when they rely on incorrect advice from their lawyers or where counsel fails to provide any immigration advice at all," said Beth Werlin, an attorney at the American Immigration Council's Legal Action Center. "Today's decision also reminds us that ultimately, the increased criminalization of immigration law and lack of flexibility has resulted in harsh results. Congress should do its part to restore immigration judges' discretion to consider the particular circumstances in a person's case, thus affording each person facing deportation an individualized and fair opportunity to be heard."

Kraft & Associates  
2777 Stemmons Freeway  
Suite 1300  
Dallas, Texas 75207  
Toll Free: (800) 989-9999  
FAX: (214) 637-2118  
E-mail: [info@kraftlaw.com](mailto:info@kraftlaw.com)

For more background on this Supreme Court's decision, read the Legal Action Center's [blog post](#).

Kraft & Associates  
2777 Stemmons Freeway  
Suite 1300  
Dallas, Texas 75207  
Toll Free: (800) 989-9999  
FAX: (214) 637-2118  
E-mail: [info@kraftlaw.com](mailto:info@kraftlaw.com)