

COA Opinion: The Constitutional Right To Be Advised That A Pleading Guilty Will Result In Automatic Deportation Does Not Apply Retroactively

February 15, 2012, by Gaetan Gerville-Reache

In *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), the United States Supreme Court held that illegal immigrants who are not advised that a guilty plea will subject them to automatic deportation have not received effective assistance of counsel. Today in *People v. Gomez*, the Michigan Court of Appeals held that *Padilla* does not apply to illegal immigrants who plead guilty and whose conviction was final before *Padilla* was decided—*Padilla*'s new rule of criminal constitutional procedure is prospective only.

Isaac Gomez, a citizen of Mexico and an “intelligent, hard-working individual,” pled no-contest to possession with intent to deliver marijuana under MCL 333.7401(2)(D)(3), tarnishing an “otherwise blemish-less life.” Four years later, the Department of Homeland Security notified defendant that his conviction subjected him to deportation. A year later, the Supreme Court issued the decision in *Padilla*. Gomez filed a motion for relief from judgment, claiming that neither defense counsel nor the trial court ever asked him about his citizenship status, and that if he had been told that his plea would affect his immigration status, he would have instead proceeded to trial on the charges.

The Court applied the federal analysis set forth in *Teague v. Lane*, 489 U.S. 288 (1989), which holds that a new rule of criminal procedure is not retroactive unless: (1) it “places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe,” or (2) it “requires the observance of those procedures that . . . are implicit in the concept of ordered liberty.” The Court held that neither exception applied here. “The requirement that criminal defense

counsel advise defendants of immigration consequences does not regulate private conduct, nor is the requirement so implicit in the structure of criminal proceedings that retroactivity is mandated.”

Though Michigan law allowed the Court to adopt a more expansive approach to retroactivity than that in *Teague*, the Michigan Court of Appeals declined to broaden the applicability of *Padilla* under state law analysis.