

Padilla Advisory Checklist

Six Steps to Advising Every Noncitizen Client under *Padilla v. Kentucky*,

1. **Determine if your client is a noncitizen** (sample questions)
 - a. Where were you born? If US or Puerto Rico, stop, otherwise continue
 - b. Are you a U.S. citizen? (If yes, when and how did you become a US citizen? Do you have a US passport?)
 - c. If no, continue to Step 2
2. **Determine your client's immigration status**
 - a. Request and copy immigration documents, e.g., green card, EAD (work authorization doc), temporary visa, I-94 card
 - b. Consult Chapter 2 of Immigration Consequences Manual to determine client's immigration status or consult with an immigration attorney
3. **Obtain client's criminal record** – this is essential to determine the immigration consequences of the pending criminal charges
4. **Determine immigration consequences of criminal charges** (based on immigration status and criminal record)
 - a. Is there a “conviction” for immigration purposes? See Chapter 4 of Manual for definition. (The following are probably “convictions” – PJC, 90-96 deferral, expungements, and deferred prosecution or drug treatment court disposition *with* admission of guilt *and* court-ordered restraints)
 - b. If yes, the disposition may have adverse immigration consequences. See Chapter 3 of the Manual. Beware of the Big Nasties:
 - **Drug offenses** – all result in deportability and inadmissibility (can't get a green card or enter the US, including permanent residents traveling abroad), except 1 offense of possession of 30 grams (roughly 1 oz) or less of marijuana if no drug priors. *Plead to the dope not pipe!*
 - **Crimes involving moral turpitude** – generally include offenses with an intent to steal or defraud (e.g., theft), involving physical injury, and sex offenses. One misd CMT in NC will not make a client deportable or inadmissible. Two CMTs (not arising out of the same scheme) and your client is deportable and inadmissible.
 - **Firearm or destructive device offenses** result in deportability
 - **Crimes of domestic violence, crimes against children, stalking or violation of a (criminal or civil) protective order** result in deportability
 - ***Aggravated felony*** – worst category for noncitizen clients with lawful status because it makes them ineligible for almost all forms of relief from removal. Covers long list of

crimes including rape, drug trafficking (including possession with intent to sell crimes), crime of violence + 1 yr sentence, theft or burglary + 1 year sentence.

- ✓ For certain AFs, arrange for less than 1 year sentence (refers to sentence ordered, max term, including suspended sentence). Okay to stack counts as long as none exceed 12 month max
- ✓ Plead to simple drug possession instead of sale or possession with intent to sell

5. Provide *specific* advice to client of immigration consequences of criminal charges

- a. a failure to provide any advice *at all* (i.e., remaining silent) is clearly constitutionally deficient representation
- b. a failure to provide *specific* advice if the immigration consequences are clear may result in constitutionally deficient representation

6. Ascertain client's goals in the case

- a. In some cases clients may have to choose whether to prioritize getting a good immigration result versus a lesser criminal penalty.
- b. For clients with lawful status who want to avoid adverse immigration consequences, try to plead to alternate offenses that do not carry adverse immigration consequences or at least try to avoid aggravated felonies. See Chapter 6 of Manual for other options/strategies.

Do it early, like first interview! This stuff is complicated and consulting attorneys may not be available if you wait until the last minute.

Resources

- Immigration Consequences manual
<http://www.ncids.org/Other%20Manuals/Immigration%20Manual/Text.htm>
- Immigration Consequences Summary Checklist
<http://www.ncids.org/Other%20Manuals/Immigration%20Manual/SummaryChecklist.pdf>
- Contact **Sejal Zota** at UNC School of Gov't: 919.843.8404, szota@sog.unc.edu
- Call a consulting immigration attorney, e.g.:
 - **Cynthia A. Aziz**, Aziz Law Firm, Charlotte, 704.347.1808, cynthia@azizimmigrationlaw.com
 - **Lynn Calder**, Allen & Pinnix, Raleigh, 919.755.0505, lcalder@allen-pinnix.com
 - **Jennifer Foster**, Asheville, 828.707.3159, jnfoster@mindspring.com
 - **Hans C. Linnartz**, Duke Law School, 919.613.7203, Linnartz@law.duke.edu
 - **George Miller**, Dozier, Miller, Pollard & Murphy, Charlotte, 704.372.6373, gmiller@dmpm.com
- Call on or develop an in-house immigration expert