

Challenging Crime-based Removability

ERICA SCHOMMER

ST. MARY'S UNIVERSITY IMMIGRATION AND
HUMAN RIGHTS CLINIC

1

Criminal Defense of Immigrants

Pre-*Padilla v. Kentucky*

- Immigration a collateral consequence, or
- Affirmative mis-advice considered ineffective assistance

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

- Recognized dramatic changes in immigration law
- Sixth Amendment right to be informed whether “plea carries risk of deportation”.
- Applied standards set in *Strickland v. Washington*

2

What are the consequences?

- Long term and mandatory detention
- Removal (deportation)
- Inadmissibility (exclusion)
- Bar to any relief from removal and/or inadmissibility
- Bar to naturalization

3

Six General Categories of Crimes with Immigration Consequences

- Crimes of moral turpitude, prostitution, vice
- Controlled substances offenses
- Firearms convictions
- Crimes relating to immigration enforcement
- Convictions for domestic violence, stalking & crimes against children
- Convictions for aggravated felonies

4

Legal Residents Traveling Abroad

Legal residents are subject to grounds of inadmissibility (and detention) if-

- Abandonment of status
- Absent more than 180 days
- Committed illegal activity abroad
- Departed U.S. during legal proceedings
- **Prior to departure committed offense listed in INA §212(a)(2) (crime of moral turpitude, drugs, prostitution)**
- Entry without inspection

5

“Conviction” for Immigration

- INA §101(a)(48)(A)
 - Formal judgment of guilt
- OR
- Plea of guilt, nolo, or admission of facts, **and**
- Court has ordered punishment, penalty or restraint on liberty

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Challenging Crime-Based Grounds of Removability

Also available as part of the eCourse

[2019 A Practical Guide to Immigration Removal Proceedings eConference](#)

First appeared as part of the conference materials for the
2019 A Practical Guide to Immigration Removal Proceedings session
"Challenging Crime-Based Grounds of Deportability"