

Challenging Crime-based Removability

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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*

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Myths– Immigration Consequences

- The client did not plea to a felony; it was just a misdemeanor.
- The client served probation (or jail time for less than 6 months).
- The client was not convicted (or the conviction doesn't count under state law).
- The 5th Circuit, or the BIA, already held that the conviction was not a deportable offense.

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

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

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

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"Challenging Crime-Based Grounds of Deportability"