

CONFERENCE ON IMMIGRATION AND NATIONALITY LAW

Texas Crimmigration

 The University of Texas at Austin
School of Law

UTLAW | CLE

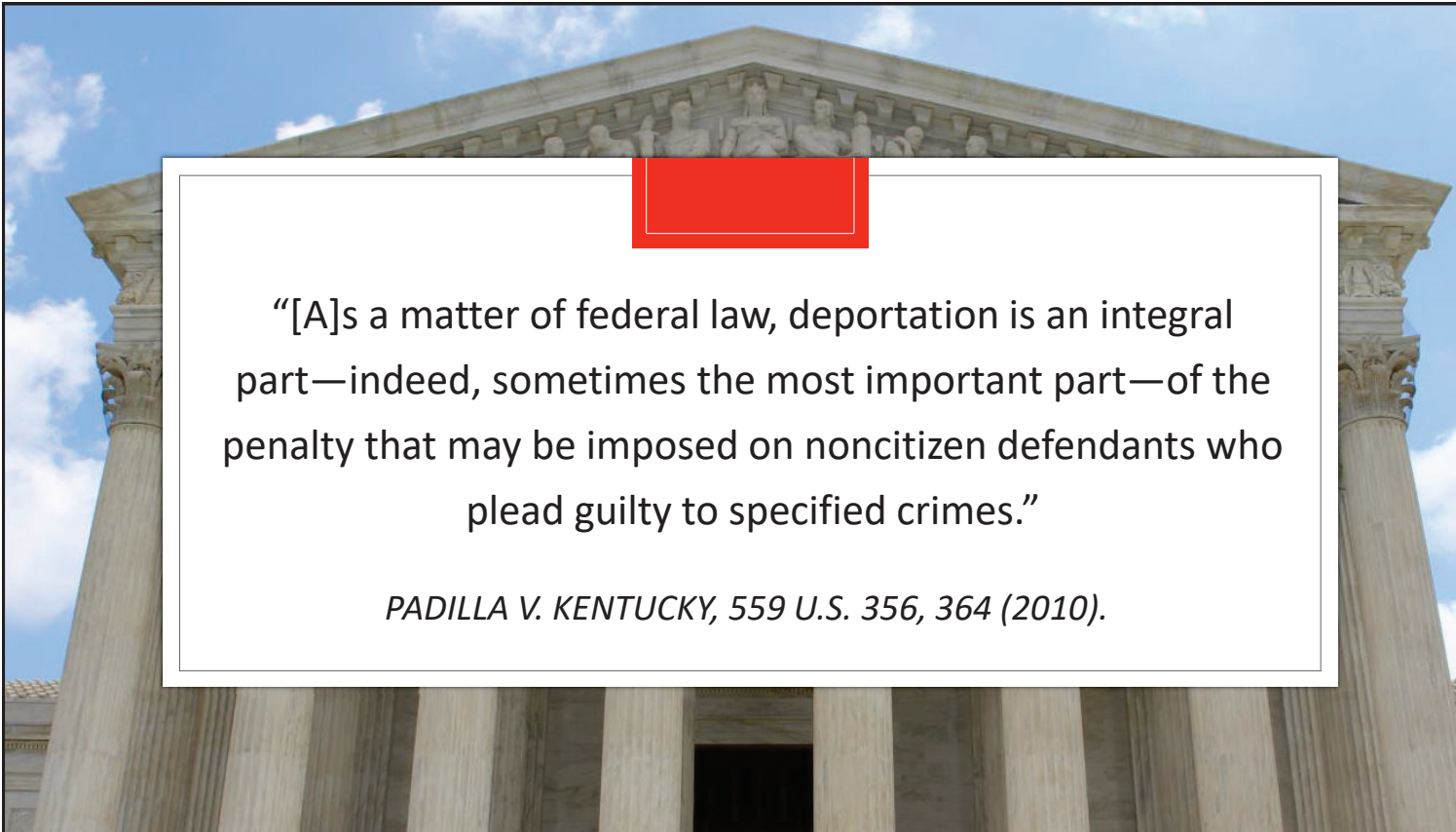


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“[A]s a matter of federal law, deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.”

PADILLA V. KENTUCKY, 559 U.S. 356, 364 (2010).

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Our Duties in “Crimmigration” Matters

- Collaborate with defense counsel
- Understand State and Federal Laws
- Offer guidance
- Advocate for client’s future
 - Bond, relief, benefits, natz, etc



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What Immigration Lawyers Look For...

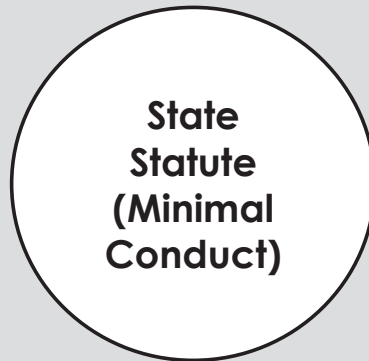
Type of Crime?
Immigration Status?
Winnable Case?
Plea Offers?
History?



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Categorical Approach

- **Step 1.** Identify the federal deportation offense. Federal statute or generic definition
- **Step 2.** Identify minimum conduct as proscribed by the state statute
- **Step 3.** Compare statute elements with federal definition



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Step 4? Realistic Probability Test

- *Gonzales v. Duenas-Alvares*, 549 U.S. 183 (2007) – requiring a “realistic probability” – not theoretical possibility – that a certain state statute falls outside the federal generic definition.
- If the minimum conduct is clearly not a categorical match, the inquiry should end.
- BUT not so in the Fifth Circuit (as it relates to agfels and controlled substances)
- CA5 requires a showing of an actual case that has been prosecuted for conduct outside the federal definition.
- But how do you meet the “actual case” requirement with the CA5???

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First appeared as part of the conference materials for the
48th Annual Conference on Immigration and Nationality Law session
"Texas Crimmigration"