

# Challenging Crime-based Removability

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## Criminal Defense of Immigrants

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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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## What are the consequences?

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

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## Six General Categories of Crimes with Immigration Consequences

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- 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

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# Legal Residents Traveling Abroad

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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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## “Conviction” for Immigration

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- 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

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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"