

THE NEW YORK TIMES

March 31, 2010

Court Requires Warning About Deportation Risk

By [ADAM LIPTAK](#)

WASHINGTON — The [Supreme Court ruled](#) on Wednesday that lawyers for people thinking of pleading guilty to a crime must advise their clients who are not citizens about the possibility that they will be deported.

Likening deportation to the punishments of banishment and exile, Justice [John Paul Stevens](#), writing for five justices, said the Constitution guaranteed competent legal advice on at least some collateral consequences of guilty pleas.

“It is our responsibility under the Constitution to ensure that no criminal defendant — whether a citizen or not — is left to the mercies of incompetent counsel,” Justice Stevens wrote.

The vote was 7 to 2, though two justices in the majority would have required only that criminal defense lawyers not say anything false and tell their clients to consult an [immigration](#) lawyer if they had questions.

The case involved Jose Padilla, a native of Honduras who has lived in the United States for 40 years, served in the Vietnam War and is a legal permanent resident. Mr. Padilla, a commercial truck driver, was arrested in 2001 after the authorities in Kentucky found more than 1,000 pounds of [marijuana](#) in his truck.

Mr. Padilla pleaded guilty to marijuana trafficking, a felony, and received a five-year sentence. He later said he had agreed to the plea based on his lawyer’s incorrect advice that it would not affect his immigration status. In fact, the plea made it all but certain that Mr. Padilla would be deported once he served his time.

The question in the case, *Padilla v. Kentucky*, No. 08-651, was whether bad legal advice about a collateral consequence of a guilty plea could amount to ineffective assistance of counsel under the Sixth Amendment.

Justice Stevens said the answer was yes. Where the relevant immigration law is “succinct and straightforward,” he said, the defense lawyer must explain the consequences of a guilty plea. Otherwise, the lawyer “need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences.”

“The importance of accurate legal advice for noncitizens accused of crimes has never been more important,” he wrote. “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.”

Justices [Anthony M. Kennedy](#), [Ruth Bader Ginsburg](#), [Stephen G. Breyer](#) and [Sonia Sotomayor](#) joined Justice Stevens' opinion.

Justice [Samuel A. Alito Jr.](#), writing for himself and Chief Justice [John G. Roberts Jr.](#), agreed that the Constitution had a role to play where deportation might be a consequence of guilty plea. But Justice Alito said that role was a limited one. The majority’s “vague, halfway test will lead to much confusion and needless litigation,” he wrote.

In Justice Alito’s view, criminal defense lawyers need only “refrain from unreasonably providing incorrect advice” and tell their clients that their pleas may have negative immigration consequences about which “the alien should consult an immigration attorney.”

“I do not agree with the court,” Justice Alito added, “that the attorney must attempt to explain what those consequences may be.”

He added that criminal defense lawyers could not be expected to provide advice about all areas of the law.

“Criminal convictions can carry a wide variety of consequences other than conviction and sentencing,” Justice Alito wrote, “including civil commitment, civil forfeiture, the loss of the right to vote, disqualification from public benefits, ineligibility to possess firearms, dishonorable discharge from the armed forces, and loss of business or professional licenses.”

“All of those consequences are serious,” he went on, “but this court has never held that a criminal defense attorney’s Sixth Amendment duties extend to providing advice about such matters.”

Justice [Antonin Scalia](#), writing for himself and Justice [Clarence Thomas](#), dissented.

“In the best of all possible worlds,” Justice Scalia wrote, “criminal defendants contemplating a guilty plea ought to be advised of all serious collateral consequences of conviction, and surely ought not to be misadvised.” But the Constitution does not guarantee a perfect world, Justice Scalia added.

He said that addressing situations like Mr. Padilla’s should be left to legislatures. “Statutory provisions can remedy these concerns in a more targeted fashion,” he wrote, “and without producing permanent, and legislatively irreparable, overkill.”