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Court: Defendants entitled to immigration advice

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Immigrants have a constitutional right to be told by their lawyers whether pleading guilty to a crime could lead to their deportation, the Supreme Court said Wednesday.

The high court's ruling extends the Constitution's Sixth Amendment guarantee of "effective assistance of counsel" in criminal cases to immigration advice, especially in cases that involve deportation.

"The severity of deportation _ the equivalent of banishment or exile _ only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation," said Justice John Paul Stevens, who wrote the opinion for the court.

The decision puts a new burden on lawyers to advise immigrant clients about the consequences of a guilty plea, although more than 20 states already require some degree of notification. Twenty-seven states also say the cost of providing lawyers for poor immigrant defendants will skyrocket because the states could also have to pay for immigration advice.

The ruling came in the case of Jose Padilla, who was born in Honduras. Padilla asked the high court to throw out his 2001 guilty plea to drug charges in Kentucky, which made his deportation virtually mandatory.

Padilla, who has lived in the United States for more than 40 years as a legal permanent resident, said he asked his lawyer at the time whether a guilty plea would affect his immigration status and was told it wouldn't. Padilla's trial lawyer was wrong, and he now faces deportation.

The justices also heard arguments Wednesday in a case that raises other aspects of the same provision of immigration law that affected Padilla.

The court is considering an appeal from a Mexican who had lived legally in the United States for more than 20 years before he was deported. Jose Angel Carachuri-Rosendo was sent to Mexico after pleading no contest to possessing one tablet of the anti-anxiety drug Xanax without a prescription in Texas. A year earlier, Carachuri-Rosendo had pleaded guilty to possessing less than two ounces of marijuana.

The justices appeared to struggle with how to view the virtually automatic deportation that follows a second drug offense, however minor.

The Obama administration, defending the law, said Carachuri-Rosendo's second conviction could have been treated as a serious crime under federal law.

In Padilla's case, his lawyer for the appeal told the Supreme Court that the incorrect information given Padilla was a violation of the Sixth Amendment right to "effective assistance of counsel."

The Supreme Court's majority agreed.

"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,'" Stevens said in writing for the court.

"To satisfy this responsibility, we now hold that counsel must inform her client whether his plea carries a risk of deportation," Stevens wrote. "Our long-standing Sixth Amendment precedents, the seriousness of the deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less."

The court sent the case back to the Supreme Court of Kentucky, which will decide whether Padilla's guilty plea should be thrown out.

Stephen Kinnaird, who argued the case for Padilla to the Supreme Court, said the decision recognizes "the increased intertwining of criminal and immigration law."

"This should avert many of the tragedies that occur when lawful permanent residents are not advised that a guilty plea, even to minor criminal offenses, would result in their immediate deportation," he said.

Stevens said he doubted the decision will affect old plea bargains for immigrants. Twenty-one states and the District of Columbia already require their trial courts to advise defendants of possible immigration consequences of guilty pleas, Stevens said.

Justice Samuel Alito and Chief Justice John Roberts concurred but said it was wrong to force criminal lawyers to attempt to explain what immigration consequence a criminal plea might bring. "A criminal defense attorney should not be required to provide advice on immigration law, a complex specialty that generally lies outside the scope of a criminal defense attorney's expertise," Alito said.

Justices Antonin Scalia and Clarence Thomas dissented, saying the immigration consequences of a guilty plea were beyond the reach of the Sixth Amendment.

"The Sixth Amendment guarantees the accused a lawyer 'for his defense' against a 'criminal prosecution' _ not for sound advice about the collateral consequences of conviction," Scalia said.

Though his name is the same, Padilla is not the same person as convicted terrorism plotter Jose Padilla.

The court also ruled in another case that a federal judge should not have thrown out a class action lawsuit against Allstate Insurance Co. over the company's refusal to pay interest accrued on overdue benefits.

The cases are Padilla v. Kentucky, 08-651 and Shady Grove Orthopedics v. Allstate, 08-1008.