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FOR IMMEDIATE RELEASE

Supreme Court Upholds Integrity of Criminal Justice System for Immigrants

Washington, DC (March 31, 2010) – The Supreme Court today issued a key decision in [Padilla v. Kentucky](#), holding that defense lawyers must give correct advice to clients about the immigration consequences of pleading guilty. Immigrant rights groups and criminal justice advocates alike praised the Court’s holding.

“Even though most immigrants’ primary concern is their ability to stay in the U.S., they often plead guilty unaware that the result would be permanent exile from their families and communities,” said Michelle Fei, Co-Director of the [Immigrant Defense Project](#). “We’re thrilled that the Supreme Court has recognized that deportation is an extreme penalty and that noncitizens have a constitutional right to legal advice about the consequences of pleading guilty.”

Cynthia Hujar Orr, President of the [National Association of Criminal Defense Lawyers](#), explained that today’s decision assures the integrity of the plea bargaining process, particularly in minor drug cases.

“Today the Court also heard oral arguments in another case in which a legal resident alien pleaded guilty to possession of a single tranquilizer pill and was deported as a result,” Orr noted. “Perfunctory processing of low-level drug possession charges is rooted in the belief that most defendants face few consequences – a fine, perhaps, or some drug treatment. Essentially duped into believing that simple charges can be resolved with a quick plea, many non-citizens, including permanent legal residents, subsequently find themselves subject to deportation. Today’s decision in *Padilla* directs counsel to ensure that decisions to plead guilty will be intelligent and voluntary, and that negotiation of charges that will avoid immigration complications will be part of the plea bargaining process.”

This case centered around Mr. Jose Padilla, a lawful permanent resident (green card holder) who has lived in the United States for four decades and who served in the U.S. military during the Vietnam War. His criminal defense attorney erroneously advised him that pleading guilty to a drug charge would not lead to deportation. This advice was patently wrong. As a result of his guilty plea, Mr. Padilla faced automatic and lifelong exile from his family and community in the U.S.

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Upon learning of the consequences, Mr. Padilla tried to withdraw his plea, arguing that his defense attorney's bad advice about deportation consequences amounted to ineffective assistance of counsel.

The Kentucky Supreme Court disagreed, ruling that Mr. Padilla's Sixth Amendment right to effective assistance of counsel was not violated by his lawyer's substandard performance.

That court's position represents a clear outlier. The overwhelming majority of courts have found that a defense attorney's wrong advice about the deportation consequences of a guilty plea does constitute ineffective assistance of counsel. Thirty jurisdictions affirmatively require some advisory that a criminal defendant might face deportation as a result of a guilty plea.

IDP, along with NACDL, the National Legal Aid and Defender Association, and public defender offices from across the country, had [filed an amicus brief](#) urging the Court to rule in favor of Mr. Padilla. According to this "friend of the court" brief, a growing number of criminal defense attorneys report that, as professional responsibilities require, they can and do advise their clients about deportation consequences and mitigate those risks when possible. Even with heavy workloads and decreased budgets, many public defender offices train staff on immigration consequences and turn to a variety of available print and online resources and a network of experts across the country dedicated to providing on-the-spot "criminal-immigration" advice. IDP itself has responded to more than 12,000 inquiries from attorneys and immigrants about immigration consequences of criminal dispositions.

Since Congress passed the harsh 1996 amendments to the Immigration and Nationality Act, even low-level offenses, such as one-time shoplifting or marijuana possession, can lead to deportation for all types of immigrants, including longtime lawful permanent residents. In many of these cases, immigration judges are not allowed to consider immigrants' length of time in the country, U.S. citizen spouses and children, military service, church or volunteer work, or any other equities. The lack of options available to many immigrants during deportation proceedings, criminal justice and immigration advocates say, underscores the importance of having defense attorneys provide reliable information to noncitizens to help them understand what might lie ahead and how to make appropriate decisions during their criminal proceedings.

"Unfortunately, many immigrants have few options available to fight deportation because of the harshness of our current laws," said Benita Jain, Co-Director of IDP. "Today the Supreme Court has clearly held that providing advice on deportation to noncitizens accused of crimes has never been more important."

The National Association of Criminal Defense Lawyers is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's 11,000-plus direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling more than 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

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