

### **1.3 How to Meet Your Obligations**

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### **1.3 How to Meet Your Obligations**

To satisfy your obligations under *Padilla v. Kentucky* and competently represent your noncitizen clients (and avoid potential ineffective assistance of counsel litigation in the future), criminal defense counsel should follow certain basic procedures in identifying, advising, and, where appropriate, negotiating alternative pleas that mitigate or do not carry the immigration consequences of concern to the client. At a minimum, defense counsel should take the following steps in each case involving a noncitizen client.

#### **A. Identify Your Client’s Citizenship and Immigration Status**

In every case, you must identify whether your client is a noncitizen. Chapter 2 of this manual, *Determining Your Client’s Citizenship and Immigration Status*, explains how to determine whether a particular client is a noncitizen and thus subject to the immigration laws. Once you have determined that a client is a noncitizen, Chapter 2 helps you identify the client’s particular immigration status and gather information on his or her immigration history. Identifying your client’s particular status and immigration history is necessary to understanding the possible adverse immigration consequences of the criminal case.

#### **B. Investigate Your Client’s Criminal History**

You need to gather your client’s entire criminal history as this information is essential to analyzing the potential immigration consequences.

#### **C. Analyze the Immigration Consequences of the Charged Offenses and Plea Offers and Advise your Client**

Using the client’s prior immigration and criminal history, you need to analyze the specific immigration consequences of the charged offense and plea offers. Important considerations include whether the proposed disposition would qualify as a “conviction” for immigration purposes. Chapter 4 of this manual, *Conviction and Sentence for Immigration Purposes*, assesses whether various North Carolina dispositions are considered convictions for immigration law purposes.

Another important consideration is whether the charges or proposed plea come within a ground of removal or a bar to relief from removal. Chapter 3 of this manual, *Criminal Grounds of Removal and Other Immigration Consequences*, presents detailed information about the types and categories of crimes that can result in adverse immigration consequences. Appendix A of the manual, *Selected Immigration Consequences of North Carolina Offenses*, presents in chart form the immigration consequences of specific North Carolina offenses.

Chapter 5, *Determining Possible Immigration Consequences Based on Your Client's Immigration Status*, lays out the possible immigration consequences of the criminal case based on your client's particular immigration status. The chapter analyzes the consequences separately for lawful permanent residents, refugees, asylees, individuals with temporary status, and noncitizens without status.

After analyzing the immigration consequences, you must advise your client about them. As discussed *supra* in § 1.2, Obligations of Defense Counsel, the advice will vary based on the “clarity” of immigration consequences. In some cases, you may be able to advise that the plea is nearly certain to carry or not carry a specific immigration consequence. In other cases, you may only be able to advise that there is a risk that the plea will have a specific immigration consequence but that the law is not clear.

#### **D. Ascertain Your Client's Goals in the Case and Defend the Case According to the Client's Priorities**

You should discuss with your client the relative importance of any immigration consequences of conviction. Not every noncitizen client will have the same priorities or options with regard to immigration consequences. Some noncitizen defendants will care most about minimizing jail time. Others would be willing to plead to a more serious offense, take additional time, or even go to trial and risk a significantly higher sentence, if it meant that they might be able to remain in the U.S. with loved ones. Of course, a defendant can only make this crucial decision if he or she understands the potential criminal and immigration penalties. Thus, it is necessary to gauge the immigration goals of the case, as it will inform your ultimate strategy in the criminal proceeding.

For options for avoiding or mitigating adverse immigration consequences, consult Chapter 6 of this manual, *Options for Minimizing Adverse Immigration Consequences*.

#### **E. Other Information**

Also included in this manual are Chapter 7, *Procedures Related to Removal*, and Chapter 8, *State Post-Conviction Relief*. These chapters provide information about procedures, in immigration and criminal court, following conviction.