

No. 08-651

IN THE
Supreme Court of the United States

JOSE PADILLA,

Petitioner,

v.

COMMONWEALTH OF KENTUCKY,

Respondent.

On Writ of Certiorari to the
Supreme Court of Kentucky

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, NATIONAL LEGAL AID & DEFENDER ASSOCIATION, KENTUCKY ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, COLORADO CRIMINAL DEFENSE BAR, IMMIGRATION IMPACT UNIT OF THE MASSACHUSETTS COMMITTEE FOR PUBLIC COUNSEL SERVICES, NEW MEXICO CRIMINAL DEFENSE LAWYERS ASSOCIATION, NEW YORK STATE DEFENDERS ASSOCIATION, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION, TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION, WASHINGTON DEFENDER ASSOCIATION, LEGAL AID SOCIETY OF THE CITY OF NEW YORK, NEIGHBORHOOD DEFENDER SERVICE OF HARLEM, DEFENDER ASSOCIATION OF PHILADELPHIA, FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT, IMMIGRANT DEFENSE PROJECT, IMMIGRANT LEGAL RESOURCE CENTER, AND NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*¹

Amici are associations of public and private criminal defense lawyers who have represented or counseled thousands of immigrants accused of crimes over the years. *Amici* also include immigration advocacy and service organizations from around the country who have special expertise concerning the immigration consequences of criminal convictions and who provide resources to the criminal defense bar. *Amici* and their member practitioners confront on a daily basis the unique circumstances faced by non-citizen criminal defendants and are well aware of the harsh impact that immigration status can have, both in terms of penal and immigration law consequences. *Amici* have also worked through the years to develop proper standards of conduct for defense counsel in this area and are well aware of the real-world implications of these standards for defense attorneys who must abide by them on the front lines every day.

Many of the *amici* to this brief were signatories to the *amicus* brief filed by the National Association of Criminal Defense Lawyers and others in *INS v. St. Cyr*, 533 U.S. 289 (2001). See Brief of *Amici Curiae* National Association of Criminal Defense Lawyers et al. in No. 00-767 [hereinafter *St. Cyr Amicus*]. The *St. Cyr* majority specifically relied on that brief in recognizing that, given the importance of

¹ Letters of consent have been filed with the Clerk. Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored any part of the brief, and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief.

immigration consequences to non-citizen defendants, “competent defense counsel” would advise a non-citizen defendant about those consequences. 533 U.S. at 323 n.50. We are concerned that the Court not retreat from such an understanding today.²

SUMMARY OF ARGUMENT

The criminal defense function includes advising the client of every important consequence of a plea. This is important for all criminal defendants but it is especially so for non-U.S. citizens. Competent defense attorneys know that when it comes to non-citizen defendants, the distinction between direct and so-called “collateral” consequences is illusory. Immigration status will affect a defendant’s prospects at every stage of the criminal process, from the likelihood of obtaining bail to the outcome of plea bargaining and sentencing to the conditions of post-conviction confinement. Most importantly, the non-citizen faces the harsh consequence of deportation — the potential “loss of both property and life, or of all that makes life worth living,” *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) — with a single ill-considered plea. A defense attorney who negotiates a plea resulting in the defendant’s effective exile, without so much as investigating that possibility or asking whether it matters to the defendant, has not fulfilled that attorney’s duty to the bar, to the Constitution, or, most of all, to the client.

Although not all criminal defense attorneys comply with their obligations in this area — as

² Separate statements of interest for each of the *amici* organizations are included in Appendix A.

Petitioner's unfortunate situation shows — this duty is recognized in standards established by the nation's leading criminal defense organizations, many of whom are *amici* here. *E.g.*, National Legal Aid & Defender Association, *Performance Guidelines for Criminal Defense Representation* 6.2 and commentary (1995) [hereinafter *NLADA Guideline*]. These guidelines are not a one-size-fits-all standard but merely reflect the fundamentally client-centered principle at the heart of all competent representation, namely that defense attorneys must recognize and investigate those issues that are important to their clients. In the case of plea bargains, that means investigating the most important consequences of a plea for each particular client — including the harsh potential consequence of deportation — before that plea is entered. This principle is recognized by defense attorneys throughout the nation, including the leading organization for criminal defenders in Kentucky, which is a signatory to this brief.

Finally, there is little risk that a decision for Petitioner will impose an undue burden on defense counsel. *Amici* are as sensitive as anyone to the need to ensure that defense counsel's obligations not unreasonably exceed their capacities and resources. Yet any burden of advising about immigration consequences is greatly mitigated by the considerable resources available to defense counsel. These resources (many of which are available for free on the internet) include written treatises and practice guides; trainings, consultations, and other expert resources provided by immigrant advocacy

and service organizations; and, in a growing number of public defender organizations, in-house expertise. Investigating these issues is not effortless, but it is more than within reach for competent defense counsel.

ARGUMENT

A criminal defendant's immigration status affects every stage of the criminal process, from pre-trial proceedings through post-conviction confinement. The non-citizen also faces the potential consequence of deportation — permanent exile from perhaps the only country he has ever really known — with a single ill-advised plea. These twin sets of consequences give rise to the defense attorney obligations at issue here. We begin by summarizing the many ways in which immigration and penal consequences alike arise from a defendant's non-citizen status. *Infra* Part I. We then set forth the basic standards that require criminal defenders to take their client's immigration status into account — guidelines that arise from the fundamentally client-centered approach that is at the core of all forms of representation. *Infra* Part II. Finally, we discuss the many resources available to criminal defenders throughout the nation who seek to comply with this obligation. *Infra* Part III.

I. A Criminal Defendant's Non-Citizen Status Affects Nearly Every Stage of the Penal Process.

The mandatory deportation that awaits many non-citizens as a result of their guilty pleas — including, potentially, the Petitioner in this case — is a harsh consequence of immigration status, but it is

not the only one. Competent defense lawyers know that when it comes to non-citizen defendants, the line between so-called “direct” and “collateral” consequences is an illusory one. In fact, a defendant’s immigration status has an impact on nearly every phase of the criminal process:

Pre-Trial Release. A non-citizen will often spend more time in pre-trial detention prior to trial than other defendants. Immigration authorities may issue an immigration “hold” or “detainer” to notify criminal authorities of their interest in investigating whether a defendant is deportable and to request that any release from custody be delayed. 8 C.F.R. § 287.7. Such “detainers” often lead to unduly prolonged criminal custody both before and after trial. Even in the absence of a detainer, some courts consider a defendant’s non-citizen status as a factor against pretrial release. *See* 1 Norton Tooby & Joseph Justin Rollin, *Criminal Defense of Immigrants* §§ 6.8-6.9 (4th ed. 2007) [hereinafter *Tooby & Rollin*]; *see also United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985) (“factor of alienage . . . may be taken into account”).

Plea Bargaining. Immigration status also plays a key role in plea bargaining — where 95 percent of cases are resolved. Of course, when defendants are improperly counseled, bad plea bargains can have devastating immigration consequences. But immigration status also affects the *penal* outcome of plea bargaining. Many non-citizens charged with deportable offenses will seek to avoid the risk of trial and negotiate a plea that enables them to remain in the country — even if they have strong defenses to

the charges. *See North Carolina v. Alford*, 400 U.S. 25, 33 (1970) (“reasons other than the fact that he is guilty may induce a defendant to so plead”) (quotation marks omitted). Often, that means accepting greater penal consequences in return — such as by pleading to a harsher offense or one that carries other consequences (perhaps constituting a “strike” for purposes of three-strikes laws); pleading to additional counts of a different crime; or forgoing credit for time served. *See Tooby & Rollin* § 8.22. On occasion, a prosecutor may agree to reduce a charge or replace it with a lesser one to avoid triggering mandatory deportation. *See United States v. Gonzalez*, 58 F.3d 459, 462 (9th Cir. 1995) (given prosecutor’s duty “to do justice,” dismissal of deportable offense in exchange for sentencing enhancement was “proper and appropriate”).

The harsh interplay of penal and immigration consequences that can befall a non-citizen who is improperly counseled at the plea bargaining stage is illustrated by the case of Bruce McDonald, a Jamaican national with an American wife and four children who has lived in the United States for over 30 years. *See John Caher, Tag Team of Lawyers Drawn to Alien’s Plight*, N.Y. L.J., Apr. 11, 2005, at 1. Mr. McDonald, a cook at Cornell University, pleaded guilty in 1999 to felony drug charges after his attorney advised him that the plea would not result in deportation. *Id.* He was promptly served with a deportation order, but due to his counsel’s misadvice — the same type of misadvice Petitioner received — succeeded in vacating the plea. At a

retrial, Mr. McDonald was acquitted of all felony charges. *Id.*

Sentencing. The sentencing phase, too, is affected by immigration status. Competent defense attorneys use every fact at their disposal to ensure the fairest possible sentence. Yet the improperly counseled non-citizen defendant loses that opportunity. For some, this can make the difference between a sentence that results in deportation and one that does not. *E.g.*, Cal. Rules of the Court, Rule 4.414(b)(6) (in deciding on probation, sentencing judges consider “adverse collateral consequences on the defendant’s life”); *see also* N.Y. Crim. Proc. Law § 216.05(4)(b) (effective Oct. 7, 2009) (judge may consider “severe collateral consequences” in deciding whether to authorize substance abuse treatment in lieu of confinement). Even if deportation cannot be avoided, the fact that deportable immigrants will face far harsher conditions of confinement than similarly situated citizens, *infra* at 7-8, may influence the resulting sentence. *See United States v. Smith*, 27 F.3d 649, 650 (D.C. Cir. 1994) (downward departures permissible where defendant “faces . . . more severe prison conditions than he would otherwise” as “deportable alien”); *but cf. United States v. Restrepo*, 999 F.2d 640, 644 (2d Cir. 1993).

Conditions of Confinement. A non-citizen convicted of a deportable offense will likely spend more time in prison under more restrictive conditions than other defendants. Prisoners subject to immigration detainers are treated as higher security risks, and are prohibited from serving their sentences in minimum security facilities or

community treatment centers. *Tooby & Rollin* § 6.19. Non-citizens typically also find themselves ineligible for halfway houses, early release programs, out-patient drug rehabilitation programs, work release, literacy programs, or probation. *Id.* Once their sentence is completed — and sometimes even before — many non-citizens convicted of deportable crimes will go straight to immigration detention, awaiting deportation proceedings under often harsh conditions. *Id.* §§ 6.33-6.37.

Mandatory Deportation. Finally, immigration status may expose non-citizen defendants to what many will feel is the harshest consequence of all — mandatory deportation. As Petitioner describes, the immigration consequences of convictions have grown increasingly severe since 1990. *See* Pet’r Br 3-8. For example, the “aggravated felony” category of deportable offenses — once limited to crimes such as murder, drug trafficking, and gun trafficking — has expanded dramatically and now includes many non-violent crimes as well as certain misdemeanors and first offenses. *E.g., United States v. Christopher*, 239 F.3d 1191, 1192 (11th Cir. 2001) (misdemeanor shoplifting offense qualifies as “aggravated felony”). And where many non-citizens previously could obtain relief from deportation where the equities warranted it, *see St. Cyr*, 533 U.S. at 294-96, the class of non-citizens eligible for such relief has been greatly reduced. Today, “[e]ven a long-term permanent resident who is convicted of an aggravated felony will almost certainly be quickly deported, permanently banished, disqualified from all immigration benefits, subjected to mandatory

detention, and penalized by a sentence of up to twenty years in prison for illegal reentry after deportation.” Dan Kesselbrenner & Lory D. Rosenberg, *Immigration Law and Crimes* § 1:7 (2008) [hereinafter *Kesselbrenner & Rosenberg*].

II. Standards of Conduct Long Accepted by Defense Counsel Require an Investigation Into Both the Penal and Immigration Consequences of Conviction.

In light of the harsh consequences that await the non-citizen defendant, both penal and immigration-related, criminal defense organizations have promulgated an extensive series of standards to govern the performance of counsel in this area. These standards are set out in the *NLADA Guidelines*, performance standards from the American Bar Association and local bar organizations, and numerous well-established practice guides. *E.g.*, *NLADA Guideline* 6.2 and commentary. These standards all have at their core the “fundamental principle that attorneys must inform themselves of material legal principles that may significantly impact the particular circumstances of their clients.” *People v. Pozo*, 746 P.2d 523, 529 (Colo. 1987).

A. Defense Counsel Must Investigate the Penal Consequences of a Defendant’s Non-Citizen Status.

As a threshold matter, even if the immigration consequences of the plea are disregarded as “collateral” consequences — and they should not be — a defense attorney’s failure to investigate the

implications of his client's non-citizen status falls short of professional standards because it leaves him unable to properly advise the client about *penal* consequences. Even attorneys who are unaware of immigration issues know that they must "attempt to secure the pretrial release of the client," *NLADA Guideline* 2.1; familiarize themselves with the "benefits the client might obtain from a negotiated settlement," *id.* 6.2(b); present the sentencing court with "all reasonably available mitigating and favorable information," *id.* 8.1(a)(3); and be familiar with the "place of confinement and level of security and classification," *id.* 8.2(b)(4). The attorney who advises the non-citizen client at all of these stages without pausing to consider the role of immigration status falls short of long-accepted duties in the most elemental of ways.

B. Defense Counsel Must Investigate the Immigration Consequences of Conviction.

In addition to core requirements about penal consequences, the defense community has long endorsed standards requiring investigation and advice about the immigration consequence of pleas.

NLADA Standards. Foremost among these are the Performance Guidelines for Criminal Defense Representation of *amicus* National Legal Aid & Defender Association (NLADA). *See NLADA Guidelines.* At the time the *Guidelines* were first adopted by the NLADA Board of Directors in 1994, NLADA had nearly fifty years of experience in the advocacy of quality defense representation, including extensive experience with "training attorneys

(especially those who directly represent poor defendants), filing amicus briefs in cases affecting the right to counsel, pooling information from defender officers and assigned counsel programs and disseminating it, educating public officials and the public at large about criminal justice issues that have an impact on the poor, and promulgating standards relating to the provision of counsel.” *Id.* at xi. The *Guidelines* “reflect the knowledge and experience NLADA has gained in these endeavors, and represent the collective effort of experienced attorneys and law school professors.” *Id.*

Many of the *Guidelines* underscore that competent defense counsel must take into account so-called “collateral” consequences such as deportation at all stages of the process. For example:

- At the *initial interview* stage, NLADA Guideline 2.2(b)(2)(A) makes clear that an attorney should determine his client’s “immigration status.”
- At the *plea bargaining* stage, NLADA Guideline 6.2(a) specifies that as part of an “overall negotiation plan” prior to plea discussions, counsel should make sure the client is fully aware of not only the maximum term of imprisonment but also a number of additional possible consequences of conviction, including “deportation”; *id.* 6.3(a) requires that counsel explain to the client “the full content” of any “agreement,” including “the advantages and disadvantages and potential consequences”; and *id.* 6.4(a) requires that

prior to entry of the plea, counsel make certain the client “fully and completely” understands “the maximum punishment, sanctions, and other consequences” of the plea.

- Finally, at the *sentencing* stage, NLADA Guideline 8.2(b) requires that counsel be “familiar with direct and collateral consequences of the sentence and judgment, including . . . deportation”; and *id.* 8.3(a) requires the client be informed of “the likely and possible consequences of sentencing alternatives.”

Other Standards. Many other professional defense standards emphasize similar themes. Most prominently, the Standards for Criminal Justice of the American Bar Association state: “[t]o the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.” *ABA Standards for Criminal Justice, Pleas of Guilty*, Standard 14-3.2(f) at 9 (3d ed. 1999). With respect to deportation, the ABA commentary emphasizes that “counsel should be familiar with the basic immigration consequences that flow from different types of guilty pleas, and should keep this in mind in investigating law and fact and advising the client.” *Id.* at 127.

Several state and local bars have promulgated similar standards. For example, the New York State Bar Association requires public defenders to work to “avoid[], if at all possible, collateral consequences

including . . . deportation.” New York State Bar Association, *Standards for Providing Mandated Representation*, Standard I-7(a)(v) (2005); *see also* New York State Defenders Association (NYSDA), *Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York*, Standard VIII(A)(7) (2004); Massachusetts Committee for Public Counsel Services, *Performance Guidelines Governing the Representation of Indigent Persons in Criminal Cases*, Standard 5.4 (1999) (“Counsel must . . . advise the client . . . of the consequences of a conviction, including . . . possible immigration consequences”); *People v. Soriano*, 240 Cal. Rptr. 328, 333 (Ct. App. 1987) (as early as the 1980s, San Francisco public defender office “impose[d] on its staff attorneys . . . the duty to ascertain what the impact of the case may have on [the client]’s immigration status in this country”) (internal quotation marks omitted; second bracket in original).

Practice Guides. Finally, practice guides and treatises for criminal defense have long reflected defense counsel’s responsibility to investigate immigration consequences of plea bargains. One leading treatise advises that “[an] attorney who suspects that his client is an alien has a duty to inquire and to protect his client’s immigration status.” 3 *Criminal Defense Techniques* § 60A.01 (Scott Daniels & Ellen Smolinsky Pall eds., 2002). Similarly, a widely cited criminal defense treatise in use in the mid-1980’s noted that “[n]o intelligent plea decision can be made by either lawyer or client without full understanding of the possible

consequences of a conviction . . . [including] [l]iability to deportation if the defendant is an alien.” 1 Anthony G. Amsterdam, *Trial Manual 5 for the Defense of Criminal Cases* § 204 (1988).

C. These Standards Arise Out of Longstanding Ethical Rules That Emphasize the Lawyer’s Obligation to Investigate the Issues Most Important to the Client in a Particular Representation.

The above standards emerge from the fundamental client-centered approach at the heart of defense counsel’s role. Competent defenders recognize that proper representation begins with a firm understanding of the client’s individual situation and overall objectives, and the “material legal principles that may significantly impact the particular circumstances” of that client. *Pozo*, 746 P.2d at 529. That requires a thorough exploration with the client of all important consequences of a client’s decision to plead, regardless of whether those consequences are labeled “direct” or “collateral.”

Such an approach inheres in all forms of competent legal representation. “Real estate lawyers protect their clients against tax disasters, even though they are not tax lawyers. Family lawyers protect their clients against criminal or tax liability, even though they are not criminal or tax lawyers. Civil lawyers protect their clients against criminal exposure, even though they are not criminal lawyers. Workers’ compensation counsel must advise their clients of possible tort claims.” *Tooby & Rollin* § 2.24 (footnote omitted).

The same core principles govern criminal defense. As two widely-cited commentators write:

Consider this hypothetical “war story” of an applicant for a position at a public defender’s office:

I represented someone charged with DUI, and due to my excellent advocacy the prosecutor accepted a guilty plea with a one-day sentence instead of the three days imposed in almost every similar case. As an interesting aside, my client and his family were then deported based on the conviction; I have no idea whether I could have negotiated a deal resulting in conviction of a non-deportable offense; status as an alien does not affect the fine or length of incarceration, so I never considered it. The results of this case demonstrate my remarkable legal abilities.

Obviously, lawyers who ignore collateral consequences of legal actions are, to that extent, bad lawyers.

Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 Cornell L. Rev. 697, 718 (2002).

These principles arise out of three core ethical duties:

First, lawyers of all stripes recognize that their principal duty is to determine the client’s goals and priorities in a particular representation. “Perhaps the most fundamental legal skill consists of

determining what kind of legal problems a situation may involve.” American Bar Association, *Annotated Model Rules of Professional Conduct* 1.1 comment 2 (6th ed. 2007); *see also* Ky. Sup. Ct. R. 3.130, Rule of Prof. Conduct 1.1 comment 2 (same). In the context of criminal pleas, this may require an investigation into a number of potential consequences that could be important to the client. *See generally NLADA Guideline* 6.2 and commentary. Of course, “different clients will have different concerns as to the civil disabilities that may be incurred as a result of a criminal conviction,” and no single “comprehensive checklist” could suffice. *Id.* at 6.2 commentary. But for the vast majority of non-citizens charged with crimes, the consequence of deportation — potentially the “loss of both property and life, or of all that makes life worth living,” *Ng Fung Ho*, 259 U.S. at 284 — will be overwhelming. Often, as this Court has noted, “[p]reserving the client’s right to remain in the United States may be more important to the client than any potential jail sentence.” *St. Cyr*, 533 U.S. at 322 (quotation marks omitted).

Second, competent defense attorneys recognize that it is essential not only to recognize the key legal issues in the case, but also to have the necessary legal skills to properly advise about those issues. “Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” ABA Model Rule 1.1; *see also id.* comment 6 (“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice.”); Kentucky Rule 3.130(1.1) (same). With respect to

the consequence of deportation, that means the attorney must understand which offenses are deportable and which are not. *See United States v. Kwan*, 407 F.3d 1005, 1016 (9th Cir. 2005) (attorney who wrongly advises client about immigration consequences violates “basic rule of professional conduct that a lawyer must maintain competence by keeping abreast of changes in the law and its practice”).

Third, once the client’s overall objectives for the representation are identified, competent criminal defense attorneys recognize that a client must be given the information needed to make sound choices about the representation. *See* ABA Model Rule 1.4(a) (“A lawyer shall . . . (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter”); *id.* comment 5 (“The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.”); *see also* Kentucky Rule 3.130(1.4(a)). If the potential consequence of deportation is important to the client, an attorney who fails to advise about this consequence falls short on this fundamental duty.

D. This Evolving Legal Duty Has Been Increasingly Accepted by Actors Throughout the Judicial System.

Further support for the foregoing standards comes from state and federal courts, prosecutors, and

state legislatures and rulemaking committees, all of whom have increasingly acknowledged the significance of immigration consequences in the plea bargaining context.

Courts. Many courts agree that lawyers should advise their clients about immigration consequences. Indeed, that principle formed the basis for this Court’s ruling in *St. Cyr*, which barred the retroactive application of legislation limiting relief from deportation under Section 212(c) of the Immigration and Nationality Act on the grounds that non-citizen defendants who had already pleaded to crimes would have done so in reliance on their right to such relief. 533 U.S. at 322-23. The Court, relying on the amicus brief put forward by many of the signatories here, concluded that “[e]ven if the defendant were not initially aware of § 212(c), *competent defense counsel, following the advice of numerous practice guides, would have advised him* concerning the provision’s importance.” *Id.* at 323 n.50 (emphasis added).

Although a number of courts have dismissed immigration consequences under the misguided “collateral consequences” rule, *see* Pet’r Br. 25-35, several courts — particularly since the harsh immigration law amendments of 1996 — have rejected this rule and acknowledged that “an evolving sense of the lawyer’s duty,” *State v. Creary*, No. 82767, 2004 WL 351878, at *2 (Ohio Ct. App. 2004), requires that lawyers adhere to a higher standard. *See State v. Paredes*, 101 P.3d 799, 805 (N.M. 2004) (“the attorney must advise . . . [a non-citizen] client of the specific immigration

consequences of pleading guilty, including whether deportation would be virtually certain”); *Creary*, 2004 WL 351878, at *2 (“such information should be given when it appears critical to the defendant’s situation”); *Segura v. State*, 749 N.E.2d 496, 500 (Ind. 2001) (“the failure to advise of the consequences of deportation can, under some circumstances, constitute deficient performance”); *United States v. Couto*, 311 F.3d 179, 188 (2d Cir. 2002) (open question whether “standards of attorney competence have evolved to the point that a failure to inform a defendant of the deportation consequences of a plea would by itself now be objectively unreasonable”); *see also Pozo*, 746 P.2d at 529; *Soriano*, 240 Cal. Rptr. at 335-36.

Moreover, many courts that dismiss deportation as a “collateral consequence” — and thus fail to meaningfully analyze the ineffectiveness standard — nonetheless acknowledge that competent lawyers *should* advise their clients regarding these consequences. These holdings, too, support the standards advanced by *amici* here. *See Rubio v. State*, 194 P.3d 1224, 1232 n.47 (Nev. 2008) (“advising a client considering a guilty of all foreseeable consequences, whether direct or collateral, makes for good practice”); *Gonzalez v. State*, 134 P.3d 955, 959 (Or. 2006) (“We recognize that it may be better practice for defense counsel to provide, to the extent possible, . . . specific advice about the likelihood of deportation”); *United States v. Banda*, 1 F.3d 354, 356 (5th Cir. 1993) (“This is not to say that [counsel] should not advise the client on possible deportation — he should.”); *United States v.*

DeFreitas, 865 F.2d 80, 82 (4th Cir. 1989) (“ideally, counsel will inform the client of the possible consequences”); *United States v. Campbell*, 778 F.2d 764, 769 (11th Cir. 1985) (“It is highly desirable that both state and federal counsel develop the practice of advising defendants of the collateral consequences of pleading guilty.”).

Legislatures and Rule-Making Bodies. State legislatures and drafters of criminal procedural rules have also recognized the significance that immigration consequences may have for a criminal defendant. Thirty jurisdictions including the District of Columbia and Puerto Rico have statutes, rules, or standard plea forms that require a defendant to receive notice of potential immigration consequences before the court will accept his guilty plea. *See* Appendix B (listing provisions). That the defendant receives the notice before entering a plea suggests that legislatures and rules drafters contemplated that defense counsel would respond to any questions the notice triggered for a defendant. Indeed, several of these provisions specifically require that the court ascertain whether the defendant has had a chance to discuss the matter with counsel. *See, e.g.*, Conn. Gen. Stat. Ann. § 54-1j (“If the defendant has not discussed these possible consequences with the defendant’s attorney, the court shall permit the defendant to do so prior to accepting the defendant’s plea.”); Md. Rule 4-242(e) (court must advise “that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequence of the plea”);

N.M. Dist. Ct. R. Cr. P. 5-303(F)(5) (“if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the immigration consequence of a plea”).

Prosecutors. Finally, prosecutors also recognize that so-called “collateral” consequences play a crucial role in plea negotiations. *See* Pet’r Br. 44-47. Prosecutors are not charged merely with the obligation to seek the maximum punishment in all cases, but with the broader obligation to “see that justice is accomplished.” National District Attorneys Association, *National Prosecution Standards* § 1.1 (2d ed. 1991). Prosecutors are thus trained to take these collateral consequences into account during the course of plea bargaining. *E.g.* U.S. Dep’t of Justice, *United States Attorneys Manual, Principles of Federal Prosecution*, § 9-27.420(A) (1997) (in determining whether to enter into a plea agreement, “the attorney for the government should weigh *all relevant considerations*, including . . . [t]he probable sentence *or other consequences* if the defendant is convicted”) (emphasis added); *see also* Robert M.A. Johnson, *Collateral Consequences, Message from the President of the National District Attorney’s Association*, May-June 2001 (“[a]s a prosecutor, you must comprehend the full range of consequences” flowing from conviction). Of course, if prosecutors are required to take these consequences into account, so too should defense attorneys. *See* Pet’r Br. 47.

III. Complying With This Duty Does Not Impose an Undue Burden Upon Defense Counsel.

The Court may be concerned that if defense counsel must advise their clients about immigration consequences of convictions, such a ruling would impose an undue burden on those attorneys — straining resources or detracting from other essential duties. *Amici* are as sensitive as anyone to the concerns that arise when new obligations are added to those we already have undertaken. Yet we are united in our belief that these obligations are not only appropriate, but essential. Indeed, we have long incorporated these obligations into the standards we demand of our members. We believe that these obligations also reflect appropriate constitutional standards of practice.

There are several reasons why this is so. First, although the burden of advising clients about immigration consequences is not inconsequential, it is also not insurmountable. We do not advocate a flat rule that requires defense attorneys to follow a “checklist” or inflexible set of rules in each case, only a commonsense approach that is tailored to our clients’ individual needs. For many clients this detailed investigation and advice regarding immigration consequences may be required. For others it will not. This approach recognizes that “[n]o particular set of detailed rules . . . can satisfactorily take account of the variety of

circumstances faced by defense counsel.” *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984).³

Nor will investigating immigration consequences require, in most cases, an undue amount of factual or legal research. We do not mean to minimize the complexities that immigration law can present in particular cases; but for most defendants, the determination as to whether a crime is a deportable one can be made with a straightforward inquiry into the immigration statute or caselaw. This is emphatically so in the area of drug laws — the laws applying to Petitioner — which are among the most straightforward in terms of their harsh, and typically mandatory, deportation consequences. *See Rollins v. Georgia*, 591 S.E.2d 796, 799 (Ga. 2004) (that non-citizen was deportable based on drug law violation is “a fact that would have been easily discovered through simple research”); *In re Resendiz*, 19 P.3d

³ In cases such as Petitioner’s, prejudice is shown where the defendant, as a result of counsel’s errors, accepted a plea rather than go to trial. But prejudice is not limited to this situation. *Strickland* requires “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U.S. at 694. This standard has been applied to a variety of scenarios, *see, e.g., Glover v. United States*, 531 U.S. 198, 202-03 (2001) (counsel’s errors resulted in higher sentence than would otherwise have been imposed); *Magana v. Hofbauer*, 263 F.3d 542, 550 (6th Cir. 2001) (counsel’s errors led defendant to reject plea and go to trial). Many non-citizens would take a different plea — even one carrying a longer prison term — to avoid deportation. *See St. Cyr*, 533 U.S. at 322. Thus, where counsel fails, as a result of professional errors, to obtain a plea bargain that would have avoided or mitigated immigration consequences, this also plainly satisfies *Strickland*.

1171, 1185 (Cal. 2001) (“Controlled substance violations are the most damning convictions in the Immigration and Nationality Act.”) (internal citation and quotation omitted).

More importantly, as we explain below, the defense counsel who wishes to provide appropriate advice to the non-citizen client does not do so in a vacuum. A considerable array of resources has long existed to help defense counsel fulfill these professional obligations. These resources include a wide range of written treatises, online practice manuals, convenient reference guides, and state-specific guides that work through the laws of many jurisdictions and explain the immigration implications of each one. Many of these publications are available online and free of charge to defense attorneys. Moreover, criminal and immigration law organizations have engaged in an extensive nationwide effort to train defense attorneys in immigration issues and also to establish and maintain nationwide, statewide and regional hotlines that defense attorneys can utilize to get case-specific advice — hotlines that Petitioner’s counsel could easily have called prior to misadvising his client. No competent practitioner can plausibly assert that it is an undue burden to make use of these readily-available resources.

A. There Is an Extensive Array of Resources Available at the National Level to Assist Criminal Defense Attorneys in Advising Their Non-citizen Clients.

A wide array of organizations has emerged in the past two decades to provide immigration assistance to criminal defense attorneys. The principal national organizations (now collaborating as the Defending Immigrants Partnership, *see infra*) are *amici* here.

National Immigration Project of the National Lawyers Guild (NIP/NLG). *Amicus* NIP/NLG is a national membership organization working to defend and expand the rights of immigrants in the United States. *See* www.nationalimmigrationproject.org. For nearly a quarter century, NIP/NLG has provided technical assistance to criminal defense practitioners seeking help in assessing the immigration consequences of criminal conduct. *See* Letter from Dan Kesselbrenner (May 14, 2009) [hereinafter *Kesselbrenner Letter*] (on file with NACDL).⁴

NIP/NLG provides many types of assistance to criminal defense practitioners. First, since 1986, NIP/NLG has provided direct technical assistance to practitioners who need advice with respect to a

⁴ In a letter dated June 1, 2009, *amici* alerted the Clerk of the Court that this brief would refer to several documents which are not publicly available. These documents are the types of materials of which the Court may take judicial notice, but in order to avoid any inconvenience to the Court, *amici* have not sought permission to lodge these materials with the Clerk of the Court at this time. As stated in the letter, *amici* are prepared to lodge copies of these materials should the Court wish.

particular case. These services are available free of charge and may be used by practitioners anywhere in the Nation, including Kentucky. *See* Letter from Margaret F. Case (Aug. 21, 2001) (on file with NACDL) (letter to Dan Kesselbrenner from Assistant Public Advocate at Kentucky Department of Public Advocacy acknowledging “your help last week” in advising regarding plea agreement for Laotian client). Since 2003, NIP has provided more than 3,000 instances of direct assistance to attorneys in all fifty states. *Kesselbrenner Letter* at 1. NIP/NLG also maintains an interactive listserv for practitioners to raise questions about individual cases and discuss legal developments. Since 2003 there have been nearly 10,000 posts to that listserv. *Id.* at 2.

NIP/NLG also has been providing trainings in the form of CLE seminars for lawyers since the year 1984. *Id.* at 2-3. These trainings have taken place in some 43 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, and attendees have participated from all fifty states, including Kentucky. *Id.* at 3. In total, NIP/NLG has trained more than 5,000 attorneys as well as hundreds of judges and law students. *Id.; see also St. Cyr Amicus* at App. 13-14 (partial list of pre-1996 NIP/NLG trainings). The purpose of these trainings is not merely to improve the skills of the attendees but also to “build an infrastructure of criminal defense attorneys who are experts on the immigration consequences of criminal conduct” so that those attorneys may, in turn, train others. *Kesselbrenner Letter* at 3.

NIP/NLG is also responsible for publishing *Immigration Law and Crimes*, the leading treatise on the relationship between immigration law and the criminal justice system. *See Kesselbrenner & Rosenberg, supra*. The book is an analytic resource for criminal defense attorneys with non-citizen clients, providing an overview of the interaction between immigration and criminal laws, cataloging crime-related deportation grounds, explaining the various discretionary remedies and waivers available to convicted immigrants, and providing an introduction to many other immigration law concepts. *Id.* at xvii to xxxi. Originally published in 1984, *Immigration Law and Crimes* is updated twice yearly and is also available on Westlaw. *Kesselbrenner Letter* at 2.

Finally, NIP/NLG also provides several resources on its website, www.nationalimmigrationproject.org. Among these are downloadable “quick reference charts” geared to the specific criminal laws of various jurisdictions, including New York, Illinois, California, and New Jersey, as well as federal crimes. These charts give busy criminal defenders a fast and easy way to determine the immigration consequences of a particular charge and to evaluate the possibility of other charges that would have less drastic consequences.

Immigrant Defense Project (IDP). *Amicus* IDP defends the legal, constitutional and human rights of immigrants facing criminal or deportation charges. *See* www.immigrantdefenseproject.org/index.htm. Although IDP is located in New York, its activities have a national impact. IDP operates a free

nationally-available hotline, advertised on its webpage, providing criminal defense lawyers with “training, legal support or guidance on criminal/immigration law issues.” *Id.* That hotline has from the start accepted and encouraged calls from defense lawyers in not only New York but other states as well. Memorandum from Benita Jain (May 19, 2009), at 2 (on file with NACDL). Since its founding in 1997, IDP has provided individualized assistance in about 12,000 cases — nearly half of which were from criminal defense attorneys and advocates or their clients — and continues to respond to approximately 1,500 inquiries per year. *Id.* IDP also has trained dozens of in-house immigrant defense experts at local defender organizations in New York, New Jersey, Pennsylvania, and other states. *Id.*; *see also* www.immigrantdefenseproject.org/webPages/immigrationExperts.htm.

Like NIP/NLG, IDP maintains an extensive series of publications aimed at criminal defense practitioners. For example, visitors to the IDP’s online resource page can find a free one-page reference guide summarizing various criminal offenses with immigration consequences. *See* www.immigrantdefenseproject.org/docs/06_ImmigrationConsequencesChecklist.pdf. The IDP website also contains free publications focusing on other aspects of immigration law relevant to criminal defenders, such as aggravated felonies and other serious crimes, and provides “quick reference charts” discussing the immigration consequences of crimes in various New York area jurisdictions. In addition, IDP publishes a

treatise aimed specifically at New York practitioners. *See* Manuel D. Vargas, *Representing Immigrant Defendants in New York* (4th ed. 2006).

Immigrant Legal Resource Center (ILRC). Like IDP, *amicus* ILRC is a regionally-based organization with a national reach. Founded in California in 1979, ILRC provides legal trainings, educational materials, and advocacy to advance immigrant rights. *See* www.ilrc.org/about_ilrc/index.php. For thirty years ILRC has provided a nationwide consultation service called “Attorney of the Day” that “offer[s] consultations on many aspects of immigration law to attorneys, employees of non-profit organizations, public defenders, and others assisting immigrants,” including consultation on the immigration consequences of conviction. *See* www.ilrc.org/technical_assistance/index.php. ILRC’s consultation services are available for a fee, which can be in the form of an hourly rate or via an ongoing contract. *See id.* These fees are reduced for public defenders. Many public defender offices in California contract with the ILRC to answer their questions on the immigration consequences of crimes.

In addition to its nationwide activities, ILRC also provides trainings and specialty publications in the Ninth Circuit. Since 1990 ILRC has published a widely-used treatise for defense attorneys with non-citizen clients in states covered by that Circuit. *See* Katherine Brady et al., *Defending Immigrants in the Ninth Circuit: Impact of Crimes under California and Other State Laws* (10th ed. 2008). ILRC also provides subscribers with “quick reference” charts assessing the immigration consequences of

convictions in California and Arizona, and presents national webinars and full-day seminars to immigration and criminal defense attorneys throughout the states of the Ninth Circuit. *See* www.ilrc.org/immigration_law/criminal_and_immigration_law.php.

Defending Immigrants Partnership. Although the above organizations were all founded before 2002 — and hence were accessible to Petitioner’s counsel at the time of the plea in this case — the resources available to criminal defenders have since expanded further. An important recent development was the 2002 founding of the Defending Immigrants Partnership, a collaboration between the above organizations plus *amicus* National Legal Aid & Defender Association. The Partnership “coordinate[s] on a national level the necessary collaboration between public defense counsel and immigration law experts to ensure that indigent non-citizen defendants are provided effective criminal defense counsel to avoid or minimize the immigration consequences of their criminal dispositions.” www.defendingimmigrants.org.

In addition to its national-level coordination activities, the Partnership offers many other services. For example, the Partnership coordinates and participates in trainings at both the national and the regional levels — including, since 2002, some 220 training sessions for about 10,500 people. *See* Appendix C (partial list of Partnership training sessions). In addition, the Partnership provides free resources directly to criminal defense attorneys through its website. That website contains an

extensive resource library of materials, including a free national training manual for the representation of non-citizen criminal defendants, *see* Defending Immigrants Partnership, *Representing Noncitizen Defendants: A National Guide* (2005-2008), as well as jurisdiction-specific guides for Arizona, California, Connecticut, Florida, Illinois, Massachusetts, New Jersey, New York, New Mexico, North Carolina, Texas, Vermont, Virginia, and Washington, *see id.* at ix. (Guides for several other states are published locally or nearing completion with assistance from the Partnership.) In addition, the website contains various quick-reference guides, charts, and outlines, national training powerpoint presentations, several taped webcastings, a list of upcoming trainings, and relevant news items and reports.

Other Publications and Nationwide Resources.

There are many other resources available to criminal defense attorneys with non-citizen clients, including a wealth of books, treatises, law journal articles, and other publications which the competent practitioner can access. For example, California attorney Norton Tooby has published a number of widely-cited national practice manuals, including Norton Tooby, *Tooby's Guide to Criminal Immigration Law* (2008 ed.); Norton Tooby, *Tooby's Crimes of Moral Turpitude* (2007 ed.); Norton Tooby, *Criminal Defense of Immigrants* (4th ed. 2007); Norton Tooby & Joseph Justin Rollins, *Aggravated Felonies* (2006 ed.); and Norton Tooby & Joseph Justin Rollins, *Safe Havens* (2005 ed.). Many of these and other publications were available in 2002. *See, e.g.*, Norton Tooby & Katherine Brady, *Criminal Defense*

of Immigrants (2001); Tova Indritz, *Immigration Consequences of Criminal Convictions, in Cultural Issues in Criminal Defense* (James G. Connell II & Rene L. Valladares eds., 1st ed. 2000); later released as Tova Indritz & Jorge Baron, *Immigration Consequences of Criminal Convictions, in Cultural Issues in Criminal Defense* (Linda Friedman Ramirez ed., 2007).

In total, *amici* have identified almost 1,000 different publications and hundreds of training sessions for defenders throughout the nation on the immigration consequences of criminal convictions. A partial list of those publications and training sessions is included at Appendix C. A chart showing the resources available in each state is included at Appendix D.

B. These National Efforts Have Been Successfully Replicated on a Local Scale in Jurisdictions Throughout the Nation.

The efforts of the above organizations have filtered down to the local level in many jurisdictions — including Kentucky. First, as trainings carried out by the main national organizations have taken hold, many defender organizations have replicated these efforts internally, establishing in-house immigration experts to assist their defenders. Second, many local immigration organizations have established outreach with local defender organizations and private defense counsel, providing immigration advice either ad hoc or through formal structures.

Defender Organizations. Many defender organizations have established in-house immigration expertise. For example, *amicus* Legal Aid Society of the City of New York, which oversees public defender services in four of New York City's five boroughs, has an immigration unit which handles traditional immigration issues and also counsels attorneys in the criminal division. New York State Defenders Association & Immigrant Defense Project, *Protocol for the Development of a Public Defender Immigration Service Plan* 13 & n.25 (Working Draft May 2009), available online at www.immigrantdefenseproject.org/docs/095_Protocol_PD_Immigration_Plan.pdf [hereinafter *Protocol*]. Several other New York State defender offices maintain staff attorneys trained as immigration experts, including The Bronx Defenders, *amicus* Neighborhood Defender Service of Harlem, and the Monroe County Public Defenders Office. *Id.* at 10-11. These structures are the direct offshoot of efforts by groups such as *amicus* IDP, which has trained in-house immigration experts throughout New York and the nation. *See supra* at 27-29.

Public defender organizations elsewhere have found other ways to address this need. The California State Public Defender, for example, contracts with *amicus* ILRC to provide expert assistance to public defenders on a statewide basis, while the Los Angeles County Public Defender Office maintains immigration-trained counsel on its staff. *Protocol* at 12-13. *Amicus* Immigration Impact Unit of the Massachusetts Committee for Public Counsel Services provides trainings and consults on

individual cases regarding immigration consequences of criminal conduct for the nearly 3,000 public defenders and private, court-appointed criminal defense attorneys in Massachusetts. The Colorado State Public Defender Office also has a statewide program that ensures that public defenders within those states have access to immigration counsel where needed. *Id.* at 12, 15. Similar efforts have been implemented on a municipal level in other states. For example, *amicus* Defender Association of Philadelphia maintains two in-house immigration experts and also shares the services of an immigration expert with a local immigration provider. *Id.* at 12 & n.23.

The criminal defender and immigrant defense organizations with the longest track records in this area are also working to share their knowledge and experience with others. *Amici* NYSDA and IDP published the above-cited *Protocol* to show defender offices across the nation “how to get started implementing an Immigration Service Plan, and how an office with limited resources can phase in such a plan under realistic financial constraints.” *Id.* at 2. To that end, the *Protocol* surveys the various approaches that different defender organizations have taken, discusses considerations distinguishing those approaches, and provides contact information for key people in each organization.

Criminal-Immigration Networks. Outside of formal public defender structures, there are many other organizations that provide immigration advice to defenders on a regional basis, forming criminal-immigration (“crim-imm”) networks. To take just

one example, in 2007 the Arizona Foundation for Legal Services and Education launched the Arizona Defending Immigrants Partnership, “a highly successful and effective model for providing information to criminal defense attorneys on the immigration consequences of criminal convictions.” Letter from Kara Hartzler (May 14, 2009), at 1 (on file with NACDL). This Partnership created (and continually updates) a 185-page “Quick Reference Chart for Determining the Immigration Consequences of Selected Arizona Offenses” (which received 112,741 hits on its website between 2007-2008). *Id.* A position was also created at a local immigration service provider, *amicus* Florence Immigrant and Refugee Rights Project (FIRRP) to provide free trainings and individual consultations on the immigration consequences of Arizona crimes. In its first two years the Partnership has trained over 1,200 defense attorneys and provided over 1,000 individual consultations to both public and private defenders (consultations that identified pleas to avoid or mitigate immigration consequences over 60% of the time). *See id.* at 1-2.

Similarly, in Washington State, *amicus* Washington Defender Organization (WDA) established its Immigration Project in 1999 with a mission to “defend and advance the rights of non-citizens within the criminal justice system, non-citizens facing the immigration consequences of crimes, and non-citizens facing the detrimental impacts of increased state and federal immigration enforcement practices.” Memorandum from Ann Benson (Apr. 23, 2009), at 1 (on file with NACDL).

Like its Arizona counterpart, the WDA project provides case-by-case technical assistance and offers ongoing training and education to criminal defenders, prosecutors, judges and other entities within the criminal justice system. *Id.* Since 1999, WDA's Immigration Project has provided individual assistance in over 10,000 cases, and has been able to offer solutions for avoiding or mitigating immigration consequences in approximately 70% of its consultations. *Id.* at 1-2. Most of those cases involve Washington defenders, but the Project does not refuse anyone and has provided assistance throughout the United States. *Id.* at 2. The Project has also trained more than 5,000 people and maintains on its website, www.defensenet.org, a free downloadable version of a guide to the immigration consequences of offenses under the Revised Code of Washington. *Id.*

Similarly, in New Mexico, *amicus* New Mexico Criminal Defense Lawyers Association (NMCDLA) actively assists defenders in that state concerning immigration issues. Both before and after the decision in *Paredes*, NMCDLA has presented several continuing legal education programs in various locations of the state on the immigration consequences of criminal convictions and the duty of criminal defense lawyers when the client is not a U.S. citizen. NMCDLA regularly publishes a newsletter in which one ongoing column in each issue is dedicated to immigration consequences. An NMCDLA member co-teaches a course at the University of New Mexico Law School on the immigration consequences of criminal convictions;

the students are both law students and state public defenders and part of the class involves the students working on the public defenders' cases of non-U.S. citizen clients. Some criminal defense lawyers and some immigration lawyers in New Mexico regularly advise criminal defense lawyers about such consequences. Moreover, the state public defender has taken steps to incorporate this information in the representation of clients. *See* Letters from Tova Indritz (May 22, 2009) (on file with NACDL).

Resources in Kentucky. The Kentucky Association of Criminal Defense Lawyers, *amicus* here, shares the belief that ethical norms require that advice as to the consequences of non-citizen status be provided where it is critically important to the particular client, and that doing so is fundamentally practicable. Defenders in Kentucky have devoted resources and effort to be able to do just this: provide adequate criminal defense counseling and advocacy to non-citizen defendants.

One leader in this area in Kentucky is the state public defender, known as the Department of Public Advocacy (DPA). The DPA has incorporated training regarding the consequences of immigration status for criminal defendants into its annual conferences. *See* Letter from Damon Preston (June 1, 2009) (on file with NACDL). This topic is also part of the training for all new defense attorney staff that is run by the centralized DPA training office. *Id.* The DPA website contains a link to NLADA's Resource Page for Immigration-Related Criminal Defense Issues. *See* Ky. Department of Public Advocacy, Defender Resources, <http://dpa.ky.gov/dr.htm>. The DPA

statewide magazine has published articles on the issues involved in representing immigrant defendants. *See, e.g.*, Jay Barrett, *Race and Immigration Issues*, *The Advocate*, May 2008, at 69-75 (discussing immigration implications of certain Kentucky laws); Dan Kesselbrenner & Sandy Lin, *Selected Immigration Consequences of Certain Federal Offenses*, *The Advocate*, May 2008, at 76-93; William Hilyard & Sora King, *Immigration Pathfinder*, *The Advocate*, Jan. 2002, at 52 (listing “DPA library’s resources on issues relating to the representation of Non-US citizens”).

Another example is the work of the Louisville-Jefferson County Public Defender’s office.⁵ The Louisville office incorporates instruction on the immigration consequences of a criminal conviction into its new attorney orientation and training, as well as in its ongoing in-house training program for all staff attorneys. *See* Letter from Daniel T. Goyette (June 1, 2009) (on file with NACDL). The office has also organized CLE events on the topic at which national experts such as Dan Kesselbrenner of the National Immigration Project have addressed the defender staff. Staff attorneys are directed to be alert to the issue in the representation of clients; and, if they are representing a non-citizen defendant, to bring that to the attention of their supervisor so that appropriate advice can be given and expert resources can be accessed if need be. The Louisville office also successfully lobbied to ensure that judges

⁵ The Louisville office is structurally distinct from the statewide DPA.

in that jurisdiction include a question regarding immigration status in their plea colloquies. *Id.*

Efforts to be attuned to these issues are not confined to the more urban areas. As an example, in the La Grange local defender office, one of the trial attorneys has worked diligently to obtain training from the Defending Immigrants Partnership on the issue and has come to be a local resource on the topic for other defenders in the counties in which she works, including by helping them connect with outside expert resources. Letter from Melanie Lowe (May 28, 2009), at 1 (on file with NACDL). During her nine years as a defender, this attorney has routinely handled cases involving non-citizen clients, has obtained information to advise her clients on those consequences where needed, including from non-profit organizations in Kentucky, and in a number of instances has been able to negotiate resolutions to avoid or mitigate immigration consequences. *Id.*

In attacking this issue, the DPA and Louisville defender have worked collaboratively with non-profit organizations in the state that provide training and consultation resources on the topic — the Maxwell Street Legal Clinic, in Lexington, KY, and the Catholic Charities of Louisville, Inc. These non-profit organizations do not limit their assistance to the public defender service, however, but are also available to Kentucky's private criminal defense bar.

CONCLUSION

The judgment of the Kentucky Supreme Court should be reversed.

Respectfully submitted,

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**APPENDIX A: SEPARATE STATEMENTS OF
INTEREST OF *AMICI CURIAE***

The **National Association of Criminal Defense Lawyers** (NACDL) is a non-profit corporation with more than 12,000 members nationwide, and 28,000 affiliate members in 50 states, including private criminal defense attorneys, public defenders, and law professors. The American Bar Association recognizes NACDL as an affiliate organization and awards it full representation in the ABA’s House of Delegates.

Founded in 1958, NACDL promotes criminal law research, advances and disseminates knowledge in the area of criminal practice, and encourages integrity, independence, and expertise among criminal defense counsel. NACDL is particularly dedicated to advancing the proper, efficient, and just administration of justice, including issues involving the constitutional standards for effective criminal defense counsel. NACDL has a particular interest in this case because the Supreme Court of Kentucky held that it is not ineffective assistance for a criminal defense attorney to misadvise a client about immigration consequences of a conviction because those consequences are “collateral” — a decision that would undermine the standards of effective attorney performance that NACDL and its members have repeatedly advocated.

The **National Legal Aid & Defender Association** (NLADA) is the nation’s leading advocate for front-line attorneys and other equal justice professionals — those who make a difference in the lives of low-income clients and their families and

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communities. Representing legal aid and defender programs, as well as individual advocates, NLADA is proud to be the oldest and largest national, nonprofit membership association devoting 100 percent of its resources to serving the broad equal justice community. NLADA and its members are keenly aware of the need to accurately advise a client of those consequences of a plea agreement that are significant to the client's ability to make an informed decision, such as the immigration consequences at issue in this lawsuit. Indeed, NLADA has developed performance guidelines for criminal defense representation that specifically call on defense attorneys to advise their clients about such collateral consequences. NLADA is also a founding partner of the Defending Immigrants Partnership, which was established in 2002 in order to assist individual defenders and defender organizations with immigration-related issues.

The **Kentucky Association of Criminal Defense Lawyers** (KACDL) is a statewide, voluntary professional association of lawyers, paralegals and law students, including both private criminal defense attorneys and public defenders. KACDL, which was founded in 1986, promotes the fair administration of justice, ensuring the rights of Kentucky citizens accused of crimes. Educating its members, the Kentucky General Assembly and the public is part of KACDL's mission. Recognizing KACDL's role in the justice system, the legislature has reserved a seat for the KACDL president or his designee on Kentucky's Criminal Justice Council, a body which conducts research and recommends legislative and policy

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changes on significant criminal justice issues. KACDL regularly files *amicus* briefs on important criminal law and procedure issues in the Kentucky appellate courts. The organization has a particular interest in the issue before this Court because of the extremely prejudicial consequences that resulted from the incorrect legal advice about the immigration consequences of a conviction provided by an uninformed, unprepared lawyer. A holding that such misrepresentation does not constitute ineffective assistance of counsel because those consequences are “collateral” is inconsistent with the standards of practice KACDL espouses.

The **Colorado Criminal Defense Bar (CCDB)**, founded in 1979, is a non-profit membership organization dedicated to protecting the rights of the criminally accused through training and resource development for criminal defense professionals, as well as legislative and other policy reform initiatives. Its membership consists of almost 1,000 criminal defense attorneys and support professionals, both in private practice and in Colorado’s state-wide public defender system.

The **Immigration Impact Unit of the Massachusetts Committee for Public Counsel Services** provides trainings and consults on individual cases regarding immigration consequences of criminal conduct for the nearly 3,000 public defenders and private, court-appointed, attorneys in Massachusetts who represent indigent defendants. The Committee for Public Counsel Services (CPCS) is statutorily mandated to provide counsel for indigent defendants in criminal

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proceedings in Massachusetts state courts. A significant percentage of CPCS' clients are non-citizens, many of whom came to the United States as children, have lived in this country for many years, and have spouses and dependents here. Standard 5.4 of the CPCS Performance Guidelines Governing the Representation of Indigent Persons in Criminal Cases mandates that attorneys advise their clients of any potential immigration consequences prior to changes of plea. The Immigration Impact Unit was established by CPCS in recognition of the significant impact of immigration consequences on its non-citizen clients. We have an interest in this case due to our belief that zealous, competent representation includes providing knowledgeable advice to our clients about potentially devastating immigration consequences.

The New Mexico Criminal Defense Lawyers Association (NMCDLA) is a statewide non-profit voluntary professional membership association of over 450 New Mexico attorneys, including both public and private criminal defense lawyers, with an interest in the constitutional guarantees of fairness in the criminal justice system. Dedicated to improvement of the criminal justice system, NMCDLA provides support, education and training for attorneys who represent persons accused of crime. NMCDLA also advocates fair and effective criminal justice in the courts, the legislature and in the community. NMCDLA endeavors to provide courts with its members' perspective on issues important to the criminal and juvenile justices systems, presents its views in the legislature and in

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the community for fair and effective criminal justice for all, and provides support to its members in the representation of their individual clients, including continuing legal education, and communication and assistance to its members. NMCDLA is affiliated with the National Association of Criminal Defense Lawyers.

The **New York State Defenders Association (NYSDA)** is a not-for-profit membership association of more than 1600 public defenders, legal aid attorneys, 18-B counsel, private practitioners and others throughout the state. With funds provided by the State of New York, NYSDA operates the Public Defense Backup Center, which offers legal consultation, research, and training to more than 5,000 lawyers who serve as public defense counsel in criminal cases in New York. The Backup Center also provides technical assistance to counties that are considering changes and improvements in their public defense systems. New York State contractually obligates NYSDA, through its Public Defense Backup Center, “to review, assess and analyze the public defense system in the state, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities.” In this capacity, the Association has issued numerous reports identifying problems in the state’s public defense system.

The **Oregon Criminal Defense Lawyers Association (“OCDLA”)** is a 1,281-member non-profit organization of private criminal defense attorneys, public defenders, investigators and others engaged in

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criminal and juvenile defense. OCDLA advocates for the interests of its members, the criminal defense bar, and criminal defendants, and provides education and training on criminal defense law and practice.

The **Texas Criminal Defense Lawyers Association** (TCDLA) is a Texas non-profit corporation with a membership of more than 2900 attorneys practicing in the State of Texas. TCDLA was organized more than 37 years ago with the following purposes: (1) to protect and ensure by rule of law those individual rights guaranteed by the Texas and United States Constitutions in criminal cases, (2) to resist efforts to curtail such rights, (3) to encourage cooperation between lawyers engaged in the defense of citizens accused of crimes through educational programs and other assistance, and (4) through such cooperation, education, and assistance to promote justice and the common good.

Washington Defender Association (“WDA”) is a nonprofit training and resource center dedicated to criminal justice issues in Washington State. It has worked since 1983 to improve the quality of the criminal defense bar in Washington and improve funding for public defense. WDA provides members with access to the most recent developments in criminal law through training seminars, publications, and its resource assistance, and WDA represents public defense issues at the state level in Olympia. The WDA was instrumental in the establishment of the State Task Force on Indigent Defense and has established standards for public defense services which have been endorsed by the Washington State Bar and referenced in legislation.

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In 1999, WDA created the Immigration Project to defend and advance the rights of non-citizens within the Washington State criminal justice system and non-citizens facing the immigration consequences of crimes. Since its inception, WDA's Immigration Project has provided case-by-case technical assistance to defenders representing non-citizens in criminal proceedings, convened and participated in regular CLE programs on these issues, and worked with courts, prosecutors and defenders on policy issues impacting non-citizens in the criminal justice system. WDA's Immigration Project also provides extensive written resource materials on these issues.

The **Legal Aid Society of the City of New York** is the nation's oldest and largest provider of free legal services to low income persons in New York City. The Society provides a full range of legal services including criminal defense work, as well as civil legal services. The Society's Criminal Practice is one of the largest public defender programs in the country and serves as the primary provider of indigent defender services in New York City. The Civil Practice's Immigration Law Unit advises immigrants and criminal defense attorneys of the immigration consequences of criminal case dispositions and specializes in representing non-citizens with criminal convictions in removal proceedings in Immigration Court.

The **Neighborhood Defender Service of Harlem** is a lead innovator in holistic public defense practice. NDS represents clients using a team-based, client-centered, holistic defense model. A core aspect of holistic representation is the commitment

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to search for the underlying issues that bring clients into contact with the criminal justice system, and to work with clients to help to avoid or minimize future contact with the system. As a part of its holistic approach, NDS incorporates immigration defense and immigration services into the representation it provides its non-citizen clients.

The **Defender Association of Philadelphia** is an independent non-profit organization representing indigent criminal defendants in the City of Philadelphia. The Defender Immigration Project is housed by the Association. The Project provides advice and support to the Association's one-hundred plus staff attorneys regarding the immigration consequences of its non-citizen clients. The Project also provides developmental trainings to the bar and the bench, and provides resources for the criminal bar of the greater Philadelphia region.

The **Florence Immigrant and Refugee Rights Project** (FIRRP) provides free legal services to over 10,000 immigrants, refugees, and U.S. citizens a year detained in Arizona by Immigration and Customs Enforcement (ICE). Through its Know-Your-Rights presentations, workshops, legal representation, and targeted services, FIRRP regularly identifies persons who are held in detention while pursuing meritorious claims before an immigration judge, the Board of Immigration Appeals (BIA), and the Ninth Circuit Court of Appeals. A large percentage of FIRRP's clients are affected by the immigration consequences of criminal convictions and the advisals given to them by their criminal defense attorneys.

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The **Immigrant Defense Project** (“IDP”) is a not-for-profit legal resource and training center dedicated to defending the legal, constitutional and human rights of immigrants. A national expert on the intersection of criminal and immigration law, IDP supports, trains and advises both criminal defense and immigration lawyers, as well as immigrants themselves, on issues that involve the immigration consequences of criminal convictions. IDP seeks to improve the quality of justice for immigrants accused of crimes and therefore has a keen interest in ensuring that immigrants in the nation’s criminal justice system receive competent legal counsel regarding the immigration consequences of criminal convictions.

The **Immigrant Legal Resource Center** (ILRC), founded in 1979, is a national back-up center that provides technical assistance, training, publications, and assistance in advocacy to low-income immigrants and their advocates. Among its other areas of expertise, the ILRC is known nationally as a leading authority on the intersection between immigration and criminal law. Its publications include *Defending Immigrants in the Ninth Circuit* (formerly *California Criminal Law and Immigration*) (ILRC 2008), which has been cited by the Ninth Circuit Court of Appeals and the California Supreme Court, and a chapter entitled *Representing a Non-citizen Criminal Defendant in California Criminal Law Procedure and Practice* (Continuing Education of the Bar, 2009). The ILRC provides daily assistance to criminal and immigration defense counsel on issues relating to citizenship, immigration

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status and the immigration consequences of criminal convictions.

The **National Immigration Project of the National Lawyers Guild** (National Immigration Project) is a non-profit membership organization of immigration attorneys, legal workers, grassroots advocates, and others working to defend immigrants' rights and to secure a fair administration of the immigration and nationality laws. The National Immigration Project provides legal training to the bar and the bench on the immigration consequences of criminal conduct and is the author of *Immigration Law and Crimes* and three other treatises published by Thomson-West. The National Immigration Project has participated as *amicus curiae* in several significant immigration-related cases before this Court.

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**APPENDIX B: STATE STATUTES, RULES, OR
STANDARD PLEA FORMS REQUIRING ADVISAL
OF IMMIGRATION CONSEQUENCES**

Alaska:	Alaska R. Crim. P. 11(c)(3)
Arizona:	Ariz. R. Crim. P. 17.2(f)
California:	Cal. Penal Code § 1016.5
Connecticut:	Conn. Gen. Stat. Ann. § 54-1j
District of Columbia:	D.C. Code Ann. § 16-713
Florida:	Fla. R. Crim. P. 3.172(c)(8)
Georgia:	Ga. Code Ann. § 17-7-93(c)
Hawaii:	Haw. Rev. Stat. §§ 802E-1, 802E- 2, 802E-3
Idaho:	Idaho Crim. R. 11(d)(1)
Illinois:	725 ILCS 5/113-8
Iowa:	Iowa Code Ann. R. 2.8(2)(b)(3)
Kentucky:	Ky. Admin. Office of Courts, Form AOC-491 (Rev. 2/2003)
Maine:	Me. R. Crim. P. 11(h)
Maryland:	Md. Rule 4-242(e)
Massachusetts:	Mass. Gen. Laws Ann. ch. 278, § 29D
Minnesota:	Minn. R. Crim. P. 15.01 subd. 1(10)(d) (felony cases); Minn. R. Crim. P. 15.02(2) (misdemeanor cases)

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Montana:	Mont. Code Ann. § 46-12-210(1)(f)
Nebraska:	Neb. Rev. Stat. § 29-1819.02
New Jersey:	N.J. Directive # 14-08 (Oct. 8, 2008)
New Mexico:	N.M. Dist. Ct. R. Cr. P. 5-303(F)(5)
New York:	N.Y. Crim. Proc. Law § 220.50(7)
North Carolina:	N.C. Gen. Stat. § 15A-1022(a)(7)
Ohio:	Ohio Rev. Code Ann. § 2943.031
Oregon:	Or. Rev. Stat. § 135.385(2)(d)
Puerto Rico:	P.R. Laws Ann. tit. 34, App. II, Rule 70
Rhode Island:	R.I. Gen. Laws § 12-12-22
Texas:	Tex. Code Crim. Proc. Ann. art. § 26.13(a)(4)
Vermont:	Vt. Stat. Ann. tit. 13, § 6565(c)
Washington:	Wash. Rev. Code § 10.40.200
Wisconsin:	Wis. Stat. § 971.08(1)(c)

**APPENDIX C: SAMPLE RESOURCES ON THE
IMMIGRATION CONSEQUENCES OF CRIMINAL
DISPOSITIONS**

**1. National Trainings and Written Resources
(Chronological Order)**

Larry Ainbinder, *Special Considerations in Representing the Non-Citizen Defendant, in Defending a Federal Criminal Case* (1983 - 2000).

Dan Kesselbrenner & Lory Rosenberg, *Immigration Law & Crimes* (1984-2007).

Kari Converse, *Criminal Law Reforms: Defending Immigrants in Peril*, *The Champion* (NACDL, Aug. 1997).

Training: Immigration Consequences of Criminal Convictions, National Legal Aid & Defender Association (NLADA) (Dec. 12, 1998).

Ramirez, Capriotti, Kay & Unger, *Small-Time Crime, Big-Time Trouble: The New Immigration Laws*, 13 *Criminal Just.* 4 (1998).

Training: Immigration Consequences of Criminal Convictions, NLADA (1998).

B. John Ovink, *Why a Plea Bargain May No Longer Be a Bargain for Legal Permanent Resident Aliens*, 46 *Fed. Law* 49 (May, 1999).

William R. Maynard, *Deportation: An Immigration Law Primer for the Criminal Defense Lawyer*, *The Champion* (NACDL, June 1999).

Training: Immigration Consequences of Criminal Conduct, National Immigration Project (NIP) (Oct. 13, 1999).

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Training: Immigration Consequences of Criminal Convictions, National Association of Criminal Defense Lawyers (NACDL) (Aug. 4, 2000).

Training: Immigration Consequences of Criminal Conduct, NIP (Nov. 1, 2000).

Tova Indritz, *Immigration Consequences of Criminal Convictions, in Cultural Issues in Criminal Defense* (J. Connell & R. Valladares, eds. 2000).

Kari Converse, *Defending Aliens in Criminal Cases, in 3 Criminal Defense Techniques* (Scott Daniels & Ellen Smolosky Pall eds. 2000).

Anna Marie Gallagher, *Immigration Consequences of Criminal Convictions: Protecting Your Client's Immigration Interests in Criminal Proceedings*, 2001 Immig. Briefings 1 (April 2001).

Robert James McWhirter, *The Criminal Lawyer's Guide to Immigration Law: Questions and Answers* (A.B.A. 2001).

Norton Tooby & Katherine Brady, *Criminal Defense of Immigrants* (2001-2007).

Immigration Consequences of Convictions Checklist (Immigrant Defense Project, 2001-2008).

Tova Indritz, *Puzzling Out the Immigration Consequences of Various Criminal Convictions: Part I*, 26 *The Champion* 12 (Jan.-Feb., 2002); *Part II*, 26 *The Champion* 20 (Mar., 2002); *Part III*, 26 *The Champion* 22 (April, 2002).

Robert James McWhirter, *Immigration Law for Criminal Lawyers: Overview* (Winter, 2002).

Norton Tooby, Jennifer Foster & Joseph J. Rollin, *Crimes of Moral Turpitude* (2002-2008).

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Training: Immigration Consequences of Criminal Convictions, NLADA (Nov. 2003).

Norton Tooby & Joseph J. Rollin, *Aggravated Felonies* (2003-2006).

Peter Markowitz, *Practice Tips to Avoid Aggravated Felonies* (Oct. 1, 2003).

Jennifer Welch, *Defending Against Deportation: Equipping Public Defenders to Represent Non-citizens Effectively*, 92 Cal. L. Rev. 541 (2004).

Manuel D. Vargas, *Tips on How to Work With an Immigration Lawyer to Best Protect Your Non-citizen Defendant Client* (2004).

Training: Immigration Consequences of State Criminal Convictions, Defending Immigrants Partnership (DIP) (July 14-15, 2005).

Norton Tooby & Joseph J. Rollin, *Safe Havens: How to Identify and Construct Non-Deportable Offenses* (2005).

Representing Non-citizen Criminal Defendants: A National Guide by the Defending Immigrant Partnership (2005-2008).

Training: Immigration Consequences of Criminal Convictions, DIP (July 13-14, 2006).

Training: Defending Against Immigration Consequences of Criminal Dispositions, NLADA (Nov. 9, 2006).

Training: Immigration Criminal Law, NLADA (Feb. 22, 2007).

Training: Immigration Consequences of State Criminal Convictions, Las Vegas, Nev. (Sept. 27-28, 2007)

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Training: Immigration Consequences of State Criminal Convictions, DIP (Sept. 2008).

Training: Immigration Consequences of Criminal Convictions, NLADA (Nov. 2008).

2. State Trainings and Written Resources

Alabama

Immigration Law and Crimes, Alaska State Bar, online seminar (Jan. 13, 2009).

Alaska

Training: Immigration Consequences of Criminal Convictions, Alaska Public Defender Agency (1999).

Training: Immigration Consequences of Criminal Convictions Alaska Public Defender Agency (2001).

Arizona

Kathy Brady *et al.*, *Quick Reference Chart & Annotations for Determining Immigration Consequences of Selected Arizona Offenses* (2008).

Kara Hartzler, Immigration Consequences of Your Client's Criminal Case (2008).

Training: Representing Criminal Aliens, State Bar of Arizona (March 10, 2006, Seminar on DVD).

Training: Immigration Consequences of Criminal Convictions, Arizona Public Defenders Association (June 2007).

Arkansas

Susan L. Pilcher, *Justice Without a Blindfold: Criminal Proceedings & the Alien Defendant*, 50 Ark. L. Rev. 269 (1997).

California

Katherine Brady, *Defending Immigrants in the Ninth Circuit (formerly California Criminal Law and Immigration)* (1999-2008).

Katherine Brady, *Quick Reference Chart to Determining Selected Immigration Consequences to Select California Offenses* (1999-2008).

Training: Representing Non-citizen Criminal Defendants, Cal. Public Defenders Association (Jan. 27, 2007).

Training: Immigration Consequences of Criminal Convictions, State Bar of California (March 24, 2008).

Colorado

Hans Meyer, *Plea & Sentencing Strategy Sheets for Colorado Felony Offenses & Misdemeanor Offenses* (Colo. State Public Defender 2009).

Training: Immigration Consequences of Criminal Convictions, Colorado Criminal Defense Bar, Denver, Colo. (Spring, 2006).

Training: Immigration Consequences of Criminal Convictions, Colorado Public Defender System (Fall, 2007).

Training: Immigration Consequences of Criminal Pleas & Convictions, Colorado Bar Association (March 26, 2008).

Connecticut

Jorge L. Baron, *A Brief Guide to Representing Non-Citizen Criminal Defendants in Connecticut* (2005-2007).

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Elisa L. Villa, *Immigration Issues in State Criminal Court: Effectively Dealing with Judges, Prosecutors, and Others* (Conn. Bar Inst., Inc., 2007).

Training: Immigration Consequences of Criminal Convictions, Connecticut Criminal Defense Lawyers Association (April 2004).

Training: Collateral Consequences of Arrest, Incarceration, & Conviction (Immigration Consequences), Connecticut Division of Public Defender Services, Hartford, Conn. (Oct. 23, 2008).

Delaware

Training: Immigration Consequences of Criminal Convictions, National Immigration Project, Wilmington, Del. (Oct. 22, 1999).

District of Columbia

Gwendolyn Washington, *PDS Immigrant Defense Project's Quick Reference Sheet* (Public Def. Serv., 2008).

Training: Immigration Consequences of Criminal Convictions, Public Defender Service, Washington, DC (June 11, 2002).

Training: Immigration Consequences of Criminal Proceedings, Public Defender Service, Washington, DC (July 11, 2006).

Florida

Eric Pinkard, *Representing the Foreign Nat'l in Criminal Court: Deportation Consequences of a Criminal Conviction and Overcoming Problems of Communication*, 73 Fla. B.J. 16 (June, 1999).

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Quick Reference Guide to the Basic Immigration Consequences of Select Florida Crimes (Fla. Imm. Advocacy Ctr. 2003).

Training: Immigration Consequences of Convictions, Defending Immigrants Partnership (Oct. 2003).

Training: Dealing with the Effects of Clients' Criminal Activity on their Immigration Status, Florida Bar (Feb. 8, 2008).

Georgia

Grace A. Sease & Socheat Chea, *The Consequences of Pleas in Immigration Law*, 6 Ga. B.J. 2 (Oct. 2000).

Christina Hendrix & Olivia Orza, *No Second Chances: Immigration Consequences of Criminal Charges*, 13 Ga. B.J. 4 (Dec. 2007).

Training: Immigration Consequences & Ethical & Professional Considerations, Georgia Public Defender Standards Council (Oct. 17, 2005).

Hawaii

Training: Immigration Consequences of Criminal Dispositions in Hawaii, Training by University of California Davis School of Law (2008).

Idaho

Training: Immigration Consequences of Criminal Convictions, Idaho Association of Criminal Defense Lawyers (2002).

Illinois

Maria Baldini-Poterman, *Defending Non-Citizens in Illinois Courts* (Midwest Imm. & Hum. Rts. Ctr., 2001).

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Selected Immigration Consequences of Certain Illinois Offenses (National Immigration Project, 2003).

Training: Immigration Consequences of Criminal Offenses, Illinois State Bar Association, Chicago, Ill. (May 1, 2009).

Indiana

Reference Pamphlet of the Immigration Consequences of Indiana Offenses (Indiana Public Defender Council, 2007).

Training: Immigration Consequences of Criminal Convictions, Marion County Public Defender Agency, Marion County, Ind. (May 22, 2002).

Training: Immigration Consequences of Criminal Convictions, Indiana Public Defender Council (2007).

Iowa

Jim Benzoni, *Defending Aliens in Criminal Cases CLE* (Training materials, 1994-1997).

Tom Goodman, *Immigration Consequences of Iowa Criminal Convictions Reference Chart*.

Trainings: Immigration Consequences of Criminal Convictions, Iowa State Public Defender (Biennial Seminars).

Kansas

Kathleen A. Harvey et al., *Disaster on the Horizon: It's Post-'Conviction' Time; Do You Know Where Your Alien Client Is?*, 73 J. Kan. B.A. 16 (Feb. 2004).

Kentucky

Kelly Kaiser, *A Lawyer's Guide: How to Avoid Pitfalls When Dealing With Alien Clients*, 86 Ky. L.J. 1183 (1997-1998).

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Training: The Criminal Defendant & Immigration Law: What Every Public Defender Should Know Before Undertaking Representation of an Illegal Alien, Kentucky Department of Public Advocacy, Lexington, Ky. (June 12, 2001).

Training: Collateral Consequences to Conviction, Kentucky DPA (June 12, 2002).

Training: Immigration and Criminal Law, Kentucky DPA , Louisville, Ky. (June 8, 2005).

Training: Immigration Consequences of Criminal Convictions, National Network to End Violence Against Immigrant Women, Lexington, Ky. (Nov. 4, 2005).

Training: Immigration Consequences of Crime, Kentucky DPA, Erlanger, Ky. (June 13, 2006).

Training: Immigration Consequences of Crime, Kentucky DPA, Louisville, Ky. (June 20, 2007).

Training: Representing the Non-English Speaking Client, Legislative Research Commission, Frankfurt, Ky. (June 29, 2005).

Training: How to Work with Immigrants in the Criminal Justice System, Kentucky DPA, Lexington, Ky. (2008).

Training: Help! I Have Aliens in My Office! Immigration Law Basics for a General Practice, Kentucky Bar Association, Covington, Ky. (June 10, 2009) (scheduled).

Louisiana

Training: The Rings of Immigration Hell: The Collateral Consequences of Criminal Conduct to Aliens, Louisiana Association of Criminal Defense Lawyers (April 28, 2007).

Maryland

Only a Misdemeanor? For Non-US Citizens Facing Criminal Charges, the Stakes Are Often Much Higher, Maryland Bar Bulletin, Immigration Law (Sept. 2004).

Abbreviated Chart for Criminal Defense Practitioners of the Immigration Consequences of Criminal Convictions Under Maryland State Law (Maryland Office of the Public Defender & University of Maryland School of Law Clinical Office, 2005-2008).

Training: Immigration Consequences of Criminal Convictions, Defending Immigrants Partnership, Baltimore, Md. (Nov. 2003).

Training: What Every Maryland Criminal Defense Attorney Should Know About Immigration, Maryland Office of the Public Defender *et al.* (Sept. 19-Oct. 24, 2007).

Massachusetts

Dan Kesselbrenner & Wendy Wayne, *Selected Immigration Consequences of Certain Massachusetts Offenses* (National Immigration Project, 2006).

Wendy Wayne, *Five Things You Must Know When Representing Immigrant Clients* (2008).

Training: Immigration Consequences of Criminal Convictions, Essex County Defenders, Essex County, Mass. (Oct. 1, 2005).

Training: Immigration Consequences of Criminal Conduct: Overview of Concepts & Discussion of Emerging Issues, Massachusetts Bar Association (Feb. 12, 2009).

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Michigan

David C. Koelsch, *Proceed with Caution: Immigration Consequences of Criminal Convictions*, 87 Mich. B.J. 44 (Nov. 2008).

David Koelsch, *Immigration Consequences of Criminal Convictions (Michigan Offenses)*, U. Det. Mercy School of Law (2008)

Training: Immigration Consequences of Criminal Convictions, Criminal Defense Attorneys of Michigan (Spring & Fall 2008)

Training: Immigration Consequences of Criminal Convictions, Michigan State Appellate Defender Office, Dearborn, Mich. (May 14, 2008)

Minnesota

Maria Baldini-Potermin, *Defending Non-Citizens in Minnesota Courts: A Practical Guide to Immigration Law and Client Cases*, 17 Law & Ineq. 567 (1999).

Dinesh Shenoy & Salima Oines Khakoo, *One Strike & You're Out! The Crumbling Distinction Between the Criminal & the Civil for Immigrants in the Twenty-First Century*, 35 Wm. Mitchell L. Rev. 135 (2008).

Training: Immigration and Criminal Defense Strategies: How to Keep Your Client from Being Deported (What Every Immigration Lawyer Needs to Know About Criminal Cases & “Visa” Versa), Minnesota State Bar Association (Dec. 14, 2006).

Montana

Training: Basics of Immigration Law for Criminal Defense Lawyers, Montana Association of Criminal Defense Lawyers (Aug. 10, 2007).

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Nebraska

Training: The Immigration Consequences of Criminal Convictions, Nebraska. State Bar Association (online seminar) (Mar. 19, 2004).

Nevada

Charles Bennion, *Important Immigration Issues*, 7 Nev. Law. 11 (Nov. 1999).

Steve Brazelton, *Immigration Pitfalls of the Plea Bargain: Criminal Attorneys Beware*, 7 Nev. Law. 13 (Nov. 1999).

Training: Immigration Consequences of Criminal Convictions, Washoe County Public Defenders Office, Reno, Nev. (2007).

New Jersey

Joanne Gottesman, *Quick Reference Chart for Determining the Immigration Consequences of Selected New Jersey Criminal Offenses* (2003-2008).

William E. McAlvanah, *Strategies for Avoiding Adverse Immigration Consequences When Representing Foreign-Born Defendants*, 227 N.J. Law. 30 (Apr. 2004).

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Training: Immigration Consequences of N.J. Criminal Dispositions, New Jersey Office of the Public Defender et al., Trenton, N.J. (Jan. 29, 2008).

New Mexico

Jacqueline Cooper, *Reference Chart for Determining Immigration Consequences of Selected New Mexico*

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Criminal Offenses, New Mexico Criminal Defense Lawyers Association (July 2005).

Training: Immigration Consequences of Criminal Convictions, New Mexico Criminal Defense Lawyers, Las Cruces, N.M. (Sept. 13, 2002).

Training: Immigration Consequences of Criminal Convictions, New Mexico State Public Defender Seminar (Oct., 2003)

Training: Immigration Consequences: How to Keep a Minor Conviction from Triggering Lifelong Banishment to a Foreign Country, New Mexico Criminal Defense Lawyers (June 13, 2008)

New York

Criminal Immigration Practice Tips for Criminal Defense Attorneys (Immigrant Defense Project, 1997-2009).

Manuel D. Vargas, *Representing Immigrant Defendants in New York, including a Quick Reference Chart for New York Offenses* (Immigrant Defense Project et al, 1998-2006).

Training: Immigration Consequences of New York Criminal Dispositions, New York State Defenders Association, Albany, N.Y. (May 16-17, 2003).

Training: Immigration Consequences of Criminal Dispositions, New York State Association of Criminal Defense Lawyers (Sept. 2004).

North Carolina

Sejal Zota & John Rubin, *Immigration Consequences of a Criminal Conviction in North Carolina* (Office of Indigent Defense Services, 2008).

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Training: Immigration Consequences of Convictions, North Carolina Prisoner Legal Services (2002).

Training: Advising Non-citizen Defendants of the Immigration Consequences of Crime, Mecklenburg County Public Defender's Office, Charlotte, N.C. (Oct. 25, 2007).

North Dakota

Training: Immigration Consequences of Crimes, National Immigration Project, Grand Forks, N.D. (March 2, 2007).

Ohio

Karen D. Bradley, *Ten Things a Criminal Defense Attorney Should Know When Representing the Non-Citizen in Criminal Proceedings*, 34 U. Dayton L. Rev. 35 (2008).

Training: Immigration Consequences of State Criminal Convictions, Franklin County Public Defender, Columbus, Ohio (June 4, 2008).

Training: Immigration Consequences of Criminal Convictions & Removal (Deportation) & Inadmissibility, Ohio State Bar Association (March 17, 2009).

Oklahoma

Trainings: Immigration Consequences of Criminal Convictions, Oklahoma State Bar Association (Nov. 8, 2002, Oklahoma City, OK; April 20, 2006, Tulsa, OK; April 2, 2009, Tulsa, OK).

Oregon

Steve Manning, *Immigration Consequences of Common Criminal Prosecutions* (Oregon Chapter of American Immigration Lawyers Association, 2009).

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Training: Immigration Consequences of Criminal Convictions, Oregon AILA Chapter (Oct. 20, 2006).

Pennsylvania

Training: Dealing with Common Immigration Problems in Criminal Cases, Pennsylvania Bar Institute (available online) (June 8, 2007).

Training: Immigration Consequences of Criminal Convictions, Pennsylvania Association of Criminal Defense Lawyers (2008).

Rhode Island

Trainings: Food for Thought – The Immigration Consequences of Criminal Convictions, Rhode Island Bar Association (Sept. 26 & Oct. 11, 2007).

South Carolina

Allen C. Ladd, *Protecting Your Non-Citizen Client from Immigration Consequences of Criminal Activity*, 15 S. Carolina Law. 38 (May 2004).

Training: Representing Foreign Nationals in Family & Criminal Court, South Carolina Bar, Columbia, SC (live and webinar access) (July 25, 2008).

Tennessee

Michael C. Holley, *Guide to the Basic Immigration Consequences of Select Tennessee Offenses* (2008).

Michael C. Holley, *Immigration Consequences: How to Advise Your Client* (Tennessee Association of Criminal Defense Law).

Training: What Criminal Defense Attorneys Need to Know About Immigration, Tennessee Association of Criminal Defense Lawyers (Nov. 7, 2003).

Training: The Long Road for the Short and Quick Plea: How the Easy Plea in Criminal Court Can

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Permanently Ruin Your Immigrant Client's Life,
Tennessee Bar Association (Feb. 2009).

Texas

Brian Bates, *Good Ideas Gone Bad: Plea Bargains & Resident Aliens*, 66 Tex. Bar J. 878 (Nov. 2003)

Immigration Consequences of Selected Texas Offenses: A Quick Reference Chart (2004-2006).

Training: Immigration Consequences of Convictions & Sentences (Focus on Texas & Fifth Circuit),
Defending Immigrants Partnership, San Antonio,
Tex.(Sept. 24, 2004).

Training: Immigration Convictions & Collateral Consequences, Texas State Bar (July 2008).

Utah

Hakeem Ishola, *Of Convictions & Removal: The Impact of New Immigration Law on Criminal Aliens*, 10 Utah B.J. 18 (Aug. 1997).

Vermont

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Training: Immigration Consequences Session, State Defender Training, Burlington, Vt. (June 6, 2002).

Training: Preventing, Reducing or Eliminating The Immigration Consequences of Criminal Convictions,
Vermont Bar Association (Sept. 23, 2004).

Virginia

Mary Holper, *Reference Guide and Chart for Immigration Consequences of Select Virginia Criminal Offenses* (2007).

Training: Immigration Consequences of Criminal Convictions Training for Fairfax County Public Defenders, Fairfax, Va. (May 1, 2004).

Training: Immigration Consequences of Criminal Convictions in Virginia, Virginia State Bar (March 27, 2007).

Washington

Ann Benson et al., *Immigration & Washington State Criminal Law, including RCW Quick Reference Chart for Determining Immigration Consequences of Selected Washington State Offenses* (Washington Defender Association Immigration Project, 2001-2005).

Ann Benson *et al.*, *Crafting Pleas For Non-citizen Defendants: What Every Defender Needs To Know* (WDA Immigration Project, 2007).

Training: Immigration Law & Crimes, The Defender Association in Seattle, King County, WA (March 21, 1996).

Training: On Immigration Consequences of Criminal Convictions, Washington State Defender Association, Seattle, WA (March 10-11, 2005).

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Wisconsin

Wisconsin State Public Defender, *Quick Reference Chart – Immigration Consequences of Select Wisconsin Criminal Statutes*.

Training: Crimes & Immigration Law, State Bar of Wisconsin (available online) (Oct. 20, 2005).

Wyoming

Training: Crimes & Immigration: Preventing Removal and Preserving Relief Pre-and Post-Conviction, Wyoming State Bar (online seminar) (Jan. 12, 2008).

Training: Immigration Basics and New Developments – Immigration Consequences of Criminal Convictions, Wyoming State Bar (online seminar) (April 14, 2009).

Federal Resources

Dan Kesselbrenner & Sandy Lin, *Selected Immigration Consequences of Certain Federal Offenses* (National Immigration Project, 2005).

Trainings: Sample National and Regional Trainings on Immigration Consequences of Criminal Convictions, Administrative Office of the United States Courts (Savannah, Ga., Jun. 3-5, 1999; St. Thomas, V.I., Apr. 27, 2000; New Orleans, La., Jun. 6, 2000; Scottsdale, Ariz., Sept. 18-20, 2003; Los Angeles, Cal., Sept. 4-5, 2008).

**APPENDIX D: RESOURCES AVAILABLE TO
CRIMINAL DEFENSE ATTORNEYS IN THE 50
STATES AND D.C. SINCE 1996**

State	Written resources available (national or state) (See App. C)	Training in state (See App. C)	Nat'l training available (See App. C)	Free or low cost expert advice available (See Brief pp. 25-29)
AK	X	X	X	X
AL	X	X	X	X
AR	X (including state resources)		X	X
AZ	X (including state chart & resources)	X	X	X
CA	X (including state chart & resources)	X	X	X
CO	X (including state resources)	X	X	X
CT	X (including state chart & resources)	X	X	X
DC	X (including D.C. resources)	X	X	X
DE	X	X	X	X
FL	X (including state chart & resources)	X	X	X

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State	Written resources available (national or state) (See App. C)	Training in state (See App. C)	Nat'l training available (See App. C)	Free or low cost expert advice available (See Brief pp. 25-29)
GA	X (including state resources)	X	X	X
HI	X	X	X	X
IA	X (including state chart & resources)	X	X	X
ID	X	X	X	X
IL	X (including state chart)	X	X	X
IN	X (including state resources)	X	X	X
KS	X (including state resources)		X	X
KY	X (including state resources)	X	X	X
LA	X	X	X	X
MA	X (including state chart & resources)	X	X	X
MD	X (including state chart & resources)	X	X	X
ME	X		X	X

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State	Written resources available (national or state) (See App. C)	Training in state (See App. C)	Nat'l training available (See App. C)	Free or low cost expert advice available (See Brief pp. 25-29)
MI	X (including state chart & resources)	X	X	X
MN	X (including state resources)	X	X	X
MO	X		X	X
MS	X		X	X
MT	X	X	X	X
NC	X (including state chart & resources)	X	X	X
ND	X	X	X	X
NE	X	X	X	X
NH	X		X	X
NJ	X (including state chart & resources)	X	X	X
NM	X (including state chart & resources)	X	X	X
NV	X (including state resources)	X	X	X
NY	X (including state chart & resources)	X	X	X

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State	Written resources available (national or state) (See App. C)	Training in state (See App. C)	Nat'l training available (See App. C)	Free or low cost expert advice available (See Brief pp. 25-29)
OH	X (including state resources)	X	X	X
OK	X	X	X	X
OR	X (including state resources)	X	X	X
PA	X	X	X	X
RI	X	X	X	X
SC	X (including state resources)	X	X	X
SD	X		X	X
TN	X (including state resources)	X	X	X
TX	X (including state chart)	X	X	X
UT	X (including state resources)		X	X
VA	X (including state chart)	X	X	X
VT	X (including state chart)	X	X	X
WA	X (including state chart & resources)	X	X	X

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State	Written resources available (national or state) (See App. C)	Training in state (See App. C)	Nat'l training available (See App. C)	Free or low cost expert advice available (See Brief pp. 25-29)
WI	X (including state resources)	X	X	X
WV	X		X	X
WY	X	X	X	X
Total	50 (plus D.C.)	At least 41* (plus D.C.)	50 (plus D.C.)	50 (plus D.C.)

* The list of trainings in Appendix C is a partial list only and may not include trainings in additional states.