

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
AUGUST 9-10, 2010

RECOMMENDATION

RESOLVED, That the American Bar Association urges federal, state, territorial, tribal and local governments to provide funding to state and federal public defender offices and legal aid programs specifically for the provision of advice about the immigration consequences of criminal proceedings to indigent non-U.S. citizen defendants, and about any available relief from such consequences.

FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and local bar associations to provide training to prosecutors, judges, criminal defense lawyers, and legal aid lawyers in the immigration consequences of criminal proceedings and available relief, and in the duty of defense attorneys to advise defendants about such consequences, as set forth by the Supreme Court of the United States in *Padilla v. Kentucky*.

FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and local bar associations to provide pro bono or reduced fee support services to public defender and legal aid organizations in counseling indigent defendants as to the immigration consequences of criminal convictions.

REPORT
(Revised)

Every year, hundreds of thousands of individuals are processed through the state and federal criminal justice systems. While exact numbers are not available, it is likely that nearly one out of ten defendants is not a U.S. citizen.¹ In areas of high immigrant population, this will be a far greater percent of a criminal defender's caseload.²

Noncitizens convicted of crimes are subject to a punishment beyond the criminal penalty in the form of immigration consequences. In many cases the immigration penalty is grossly disproportionate to the crimes themselves, because of the sometimes irrational nature of the intersection between immigration and criminal law. For example, a misdemeanor conviction for shoplifting, with a suspended sentence of one year and no custody time ordered, is routinely classed as an "aggravated felony" for immigration purposes.³ In almost all cases, the misdemeanant is subject to mandatory and extended immigration detention, mandatory deportation, and permanent separation from family and community in the United States. In addition, the misdemeanant will be deported ("removed") to the country of origin without being permitted to apply for asylum, even if there is evidence that he or she may be persecuted or killed for religious or political reasons upon return. These consequences apply not only to undocumented persons, but to long-time lawful permanent residents.

Noncitizens who are accused of crimes are entitled to the same rights and protections in the criminal justice system as are citizens. For this group, immigration consequences may be more severe than the sentence imposed by the criminal court. This is exactly the point addressed by the United States Supreme Court in its decision in *Padilla v. Kentucky*, 559 U.S. ___, 130 S. Ct. 1473 (2010).

Despite these challenges, in many cases a criminal defender armed with an analysis can obtain a criminal disposition that will satisfy the prosecution, while creating no or at least less severe adverse immigration consequences. In *Padilla* the Supreme Court noted that immigration factors may be an aid in the process of plea bargaining.

Finally, informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining

¹ This is an approximation. According to the 2005 census, 12.5% of the United States population is foreign-born. See Camarota, "Immigrants at Mid-Decade," analysis of the U.S. census by the Center for Immigration Studies, at <http://www.cis.org/articles/2005/back1405.html>. Experts approximate that up to one third of this group may have naturalized to U.S. citizens, or otherwise acquired citizenship. See, e.g., http://www.urban.org/UploadedPDF/310847_trends_in_naturalization.pdf. The non-citizen population is proportionally represented as criminal defendants. See Rumbaugh and Ewing, "The Myth of Immigrant Criminality," <http://www.americanimmigrationcouncil.org/special-reports/myth-immigrant-criminality-and-paradox-assimilation>.

² For example, statewide, in an immigrant-rich state such as California, one out of every four persons residing in the state is foreign-born. See Camarota, *supra*.

³ See, e.g., *United States v. Graham*, 169 F.3d 787 (3d Cir. 1999), cert. denied, 120 S.Ct. 116 (1999) (theft with 12-month suspended sentence held aggravated felony); *United States v. Gonzalez-Tamariz*, 310 F.3d 1168 (9th Cir. 2003) (misdemeanor battery with one-year suspended sentence held aggravated felony), and similar cases..

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process. By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties. As in this case, a criminal episode may provide the basis for multiple charges, of which only a subset mandate deportation following conviction. Counsel who possess the most rudimentary understanding of the deportation consequences of a particular criminal offense may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation, as by avoiding a conviction for an offense that automatically triggers the removal consequence. At the same time, the threat of deportation may provide the defendant with a powerful incentive to plead guilty to an offense that does not mandate that penalty in exchange for a dismissal of a charge that does.

Padilla v. Kentucky, 130 S. Ct. at 1486..

All individuals accused of a crime have the right to the effective assistance of counsel, including the appointment of counsel in any state or federal criminal prosecution that, regardless of whether misdemeanor or felony, leads or may lead to imprisonment for any period of time.⁴ Most states and the federal system attempt to comply with this constitutional requirement through the establishment of public defender officers, court appointed counsel, and contract systems.⁵ In recent years, challenges have been mounted regarding the growing and often unmanageable caseloads within public defender offices.⁶ Now, tasked with the requirement of advising as to immigration consequences, the public defender or court appointed attorney will see their workload increase, especially in jurisdictions where a large number of those represented are non-citizens.

In *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), the United States Supreme Court held:

[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries From the very

⁴ See generally, *Alabama v. Shelton*, 535 U.S. 654, 662 (2002); *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984); *Scott v. Illinois*, 440 U.S. 367, 373-74 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 30-31 (1972); *Gideon v. Wainwright*, 372 U.S. 335, 342-45 (1963); *Johnson v. Zerbst*, 304 U.S. 458, 462-63 (1938).

⁵ See The Spangenberg Group, "Statewide Indigent Defense Systems: 2005," available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/statewideindddefsystems2005.pdf> (last visited April 6, 2010).

⁶ See "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," prepared by the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants 29 (ABA 2004), available at <http://www.abanet.org/legalservices/sclaid/defender/brokenpromise/fullreport.pdf> (last visited April 6, 2010).

beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

The Model Rules of Professional Conduct 1.1, 1.2(a), 1.3, and 1.4 require lawyers to provide competent representation, abide by client decisions, exercise diligence, and communicate with the client regarding the representation. These obligations include the responsibility to monitor changes in the law, investigate and prepare cases, act promptly on the client's behalf, and, if a lawyer is not experienced with or knowledgeable about a specific area of the law, either associate with counsel who is knowledgeable in the area or educate him/herself about that area of law. No exception exists for lawyers who represent indigent persons charged with crimes.

Over the last ten years, increasingly harsh immigration laws and increasingly focused enforcement by the Department of Homeland Security, coupled with no right to assigned counsel in immigration removal proceedings, have resulted in a dramatic increase in the number of persons detained and deported for crimes, including misdemeanors. In fiscal year 2008, DHS officers detained 378,582 noncitizens;⁷ and effected the expedited removal of 113,462 noncitizens.⁸ A recently released ABA study found that there was a “dramatic expansion of the grounds for removing noncitizens based on ‘aggravated felony’ convictions”; “the removal of lawful permanent residents based upon misdemeanor convictions for offenses found to be crimes involving moral turpitude, even where no jail sentence was imposed;” and “increasing reliance by DHS, without oversight by immigration courts, on administrative proceedings to remove noncitizens who are not lawful permanent residents on the ground of alleged ‘aggravated felony’ convictions and expedited removal proceedings for persons apprehended at the border or within the United States.”

One reason for the increase in the number of individuals in removal proceedings is the increasing focus on apprehending and removing all criminal noncitizens, including such actions taken in coordination with state and local law enforcement agencies under section 287(g) of IIRIRA (in which local law enforcement officers participate in immigration enforcement efforts); the Criminal Alien Program (in which local law enforcement agencies notify DHS of foreign-born detainees in their custody); and the Secure Communities initiative (in which foreign-born persons detained by local law enforcement agencies are identified by DHS when such agencies run their detainees' fingerprints through the Federal Bureau of Investigation's and DHS's databases as part of the typical booking process). DHS is planning to significantly expand the scope of Secure Communities, with the goal of having the immigration status checked for virtually every person booked into every local jail in the United States, using a biometric identification system. This makes it even more important for the immigration advice to begin during the criminal case.

⁷ OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., 2008 YEARBOOK OF IMMIGRATION STATISTICS 91 (2009), *available at* http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/oi_yb_2008.pdf.

⁸ [see exec summary endnote 4]

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I. Immigration Consequences of Criminal Convictions

Analyzing the immigration consequences of an offense presents many challenges. First, a large number of state and federal criminal offenses potentially have immigration consequences and require this analysis. The elements of the offense must be identified and compared to the immigration provision at issue, e.g. the aggravated felony definition. The immigration provision at issue might be interpreted differently in different federal circuits, and this area is frequently litigated so that counsel must keep up with recent developments. Further, the immigration consequence of a conviction depends upon the individual circumstances of the case, including the defendant's current immigration status or potential application, the presence of factors such as lawful relatives in the United States, and the immigration effect of any past criminal record. A plea that might be safe for an undocumented person could be very harmful to a lawful permanent resident, and vice versa. Once an alternative immigration-safe plea is identified, it may be difficult to persuade the prosecutor and judge to accept the alternative.

In addition, immigrant defendants contend with the fact that state alternative dispositions that were not intended to be a "conviction" under state law may be held a "conviction" for immigration purposes. The definition of "conviction" for immigration purposes is different than what is used in the criminal justice system and for other purposes. *See* 8 U.S.C. § 1101(a)(48). A "conviction" is a formal judgment of guilt of the noncitizen entered by a court, or if adjudication of guilt has been withheld, where a judge or jury has found noncitizen guilty or plea of guilty or nolo contendere entered or admission of sufficient facts to warrant finding of guilt and the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty. For example, a "withhold of adjudication" or suspended entry of sentence, while not considered a conviction for most purposes, will be considered to be a conviction for immigration. A conviction also includes court-ordered drug treatment, values, anger management or domestic violence counseling alternative to incarceration disposition is a conviction if a guilty plea is taken (even if later vacated). Deferred adjudication dispositions without a guilty plea and youthful offender adjudications are not considered "convictions" for immigration purposes.

In fact, in many cases it is possible to identify a plea -- to a felony or misdemeanor offense -- that is roughly equivalent to the one charged but is safer for immigration purposes. This sort of plea may permit the person to prove she should not be in removal proceedings at all, or to avoid mandatory immigration detention, or to preserve eligibility for lawful status or some relief from removal.

There are many examples of basic immigration strategies that are designed to give the prosecution what is required, while avoiding making the defendant removable or ineligible for relief from removal. For example, certain offenses become aggravated felonies only if a sentence of a year or more is imposed. In that case, defense counsel can avoid an aggravated felony conviction by negotiating a sentence of 364 days rather than 365. Or, counsel handling a probation violation can plead to a new offense and take time on that conviction, rather than admit

the violation and add time to the original conviction so as to bring the sentence to 365 days.⁹ In a domestic violence context, if a defendant pleads guilty to a charge that is not technically of a “crime of violence” the defendant will be able to accept jail time as well as probation conditions such as domestic violence counseling or a stay-away order, without becoming deportable. In many cases this is the strong wish of the victim, who wants the protections afforded in a domestic violence, but does not want the abuser deported because of a need for continuing child support or a desire to try to salvage a parent-child or couple relationship.

Even if the defender cannot negotiate a plea that will avoid an adverse consequence, at the least he or she will be able to advise the defendant of the real consequences of accepting a plea bargain, so that the defendant may make an informed choice regarding trial or other defense options.

II. *Padilla v. Kentucky*

Under current immigration laws, even misdemeanor offenses and some diversionary programs can still subject a noncitizen to deportation. In the recent decision of *Padilla v. Kentucky*, the United States Supreme Court addressed the question of whether an alien was denied effective assistance of counsel, and thus entitled to reversal of the conviction, based on the failure to warn or advise of the immigration consequences of a conviction. The Court held that deportation is uniquely severe and that the immigration consequences of criminal convictions are inextricably linked to criminal proceedings. The Court held further that the Sixth Amendment requires defense counsel to competently advise a non-citizen defendant regarding the immigration consequences of a guilty plea; to remain silent or to provide inaccurate advice constitutes ineffective assistance of counsel.

After *Padilla*, defense counsel should be familiar with basic immigration consequences that flow from different types of pleas to different offenses, the immigration consequences of sentencing alternatives (length of prison sentence), as well as the availability of diversion programs and whether they require a plea or admission of guilt. Similarly to a “pure” criminal defense, defense in light immigration penalties requires counsel to gather facts, analyze the consequences of a plea or other proposed action, advise the defendant of the consequences, and as possible conduct the defense in accordance with the defendant’s wishes.

At the commencement of work on a criminal case, a lawyer should determine the current immigration status of the client (e.g. no status, pending application, non-immigrant visa, lawful permanent resident, temporary protected status, or U.S. Citizen). This initial inquiry is vital, as it will guide the remainder of the representation. An individual’s status strictly determines what immigration penalties will result from a conviction. Part of this inquiry also involves discussion of the individual’s family in the United States, as the presence of a lawful permanent resident or U.S. Citizen family member may allow an individual to gain lawful status, or make an individual

⁹ See, e.g., *Matter of Perez-Ramirez*, 25 I&N Dec. 203 (BIA 2010) (by bringing the sentence imposed to 365 days or more, time added to the original conviction pursuant to a probation violation made the offense an aggravated felony)

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eligible for a waiver, should the criminal case result in a conviction. Counsel also must obtain the individual's complete criminal record, which is required to make an analysis.

Based on this information, counsel should investigate the specific immigration consequences that the plea would impose on the defendant. Under *Padilla*, counsel must consider both avoiding deportability, and maintaining eligibility for relief from deportation ("removal").¹⁰ As with other aspects of defense strategy, in some cases counsel will be able to advise that a plea clearly will carry a particular immigration consequence, while in other cases counsel will advise that the plea carries a risk of a particular immigration consequence, but that it is not clear whether the consequence will adhere.

While *Padilla* concerned plea bargaining, this analysis and advice also must take place before a defendant decides to go to trial, enters a diversion or drug treatment program, handles a charge of violating the terms of probation or of a protection order, admits an addiction, or handles a sentencing or delinquency hearing – all of which can carry adverse immigration consequences.

In some cases the defendant may have to choose whether to prioritize getting a good immigration result versus a lesser criminal penalty. Some immigrant defendants care only about getting the smallest jail or prison term. Other immigrant defendants would trade any concern in order to avoid removal so that they can remain in the United States with their families. A defendant can only make this crucial decision if he or she understands the potential criminal and immigration penalties.

If the client states that immigration consequences are the highest priority, the defense should be conducted with this in mind.¹¹ In that case the defense goals may be quite different than they would if just criminal penalties were at stake. For example, certain minor misdemeanors carry severe immigration penalties. In *Padilla* the Court indicated that the prosecution also should take immigration consequences into account.¹²

Because attorneys are now required to give affirmative advice regarding immigration consequences, it is important that they keep on hand some basic resources. The ABA amicus brief and the decision in *Padilla* list books, online sources, and even state-specific guides to help determine whether a conviction for a particular offense will lead to deportation. These guides can instantly alert the defense attorney that there may be immigration consequences. At this point, it is the duty of the attorney to investigate further, either with continued research or by obtaining consultation.

¹⁰ *Padilla*, 130 S. Ct. at 1483.: "Likewise, we have recognized that "preserving the possibility of" discretionary relief from deportation under §212(c) of the 1952 INA, 66 Stat. 187, repealed by Congress in 1996, "would have been one of the principal benefits sought by defendants deciding whether to accept a plea offer or instead to proceed to trial." *St. Cyr*, 533 U. S., at 323 xxCITE xxx. We expected that counsel who were unaware of the discretionary relief measures would "follo[w] the advice of numerous practice guides" to advise themselves of the importance of this particular form of discretionary relief. *Ibid.*"

¹¹ *Ibid.*

¹² *Id.* at 1486.

Where practicable, defense counsel may seek to hire an immigration attorney who is expert in this sub-specialty to evaluate the case and render an opinion. Many immigration attorneys are willing to work on an hourly or fixed fee basis to evaluate a client's immigration status, the nature of the criminal charges, and develop an opinion and strategy as to how to proceed and advise the client as to possible outcomes. In areas where there are no local experts in this specialty, counsel may contact a national resource center or other expert for advice. Currently many organizations are developing new resources to further help guide criminal defense attorneys in meeting their obligations under *Padilla*, and protecting the vital right to the effective assistance of counsel.

The American Bar Association's Standards include many provisions that are consistent with the requirements under *Padilla*, and support the need for funding for public defender offices to hire immigration attorneys who can either act "in-house" or be hired as outside experts to advise on the immigration consequences of various outcomes of a criminal case. The current resolution builds upon existing policy and seeks to assure that sufficient resources are available to defense counsel to comply with *Padilla*.

III. The Need For Immigration Advice or "Experts" in State and Federal Public Defenders Offices

Providing competent representation vis a vis immigration consequences will be especially challenging to indigent defender offices. These offices often do not have the benefit of attorneys skilled or trained in immigration law, nor are the clients able to hire outside counsel. If they did, they would not be eligible for public defender services.

Furthermore, many of the cases handled by public defender offices are plead out at arraignment or other early proceeding, primarily because an individual is either financially unable to bond out, or because immigration has placed a hold or detainer on the individual. Attorneys will frequently have only a few minutes, in a busy courtroom, to discuss a plea with a client. Many defendants solely wish to be released from jail, and thus enter a quick plea. The public defender often has no time to conduct an in-depth interview as to a client's immigration status or potential consequences.

Additionally, many public defenders are young lawyers, often one or two years out of law school. Their training is in criminal law, and the ability of offices to train or educate lawyers as to all of the intricacies of both criminal and immigration law is nearly impossible.

The task of providing competent representation after *Padilla* may seem especially daunting to indigent defender offices that already are grappling with limited budgets and staff time. These offices often do not have the benefit of attorneys skilled or trained in immigration law, nor are their low-income clients able to hire outside immigration counsel. Many public defenders are young lawyers, still attempting to master basic aspects of criminal defense apart from immigration consequences.

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Indigent defender offices are short on time. Along with the fact that many offices are understaffed, many of their low-income clients want to plead out at arraignment or other early proceeding as the only way they can leave jail, primarily because they are financially unable to bond out, or because immigration has placed a hold or detainer on the individual.

While some state and county defender agencies have been able to allocate a share of financial or staff resources to this area, many other localities must seek separate funding to provide adequate services under *Padilla*. It is important that funds provided to satisfy *Padilla* be in addition to funds that have been provided for the basic defense of criminal cases. *Padilla* adds to the pre-existing responsibilities and cries out for additional funding. In addition to government assistance to criminal defense programs, attorneys, law schools, and bar associations can help to fill the resource gap that may exist after *Padilla* by working to provide pro bono or low cost assistance to defender organizations, as well as to sponsor basic training sessions for defenders.

While government assistance to criminal defense programs must be the key source of help, attorneys, law schools, and bar associations also can work to fill the resource gap that may exist after *Padilla* by working to provide pro bono or low cost assistance to defender organizations, as well as to sponsor basic training sessions for defenders. Another critical component for indigent or private defenders is access to training. While training opportunities in the field have greatly increased over the last ten years, there still is a great need for training. State and local bar associations may assist in sponsoring and accrediting these.

Defender offices that are beginning now will have the benefit of experience from offices that already provide this service. These offices have identified, and in many instances helped to create, a growing body of national and state-specific written resources that are available to assist criminal defenders in this task.

Although print resources and training are important, it is vital to allow for the possibility of obtaining expert consultation on individual cases, and/or mentoring for criminal defense counsel who wish to become experts in the field. Defender offices obtain expert advice under a range of different methods, so that not every attorney on staff needs to understand the immigration component. At some point this requires funding, either to allocate staff time to create expertise at the indigent defender office, or to arrange for an outside expert office.

Indigent offices have had success with a variety of methods. Experts in this area have come from both the immigration and criminal law side. Some examples are:

- A state organization or local office may appoint a research criminal defense attorney to devote part-time to becoming an in-house expert, initially with intensive mentorship by an established expert in the field.
- A state defender organization may obtain funding to house an expert staff person or persons; this unit will create written resources and advise and train defenders statewide.

- A non-profit immigration organization may advise defenders nationally, or in a given state or county. This may be funded by government, foundation, or local bar association grants.
- Where statewide funding is not available, a non-profit or for-profit immigration offices with expertise in the field can work on a contract system with individual indigent defender offices. At the same time, the expert can mentor criminal defenders who will become future in-house experts.
- Courts may be willing to appoint an expert witness in a particularly complex or compelling case.

See further discussion of various immigrant service plan models in “Protocol for the Development of a Public Defender Immigrant Service Plan” at www.immigrantdefenseproject.org/webPages/crimJustice.html. There are also existing and planned list serves so that defenders grappling with these issues may discuss common challenges.

An office could also select a list of reputable, experienced, immigration attorneys in the community who would work at an agreed upon reduced rate. This set up would be similar to the already existing program of hiring experts in criminal cases utilized by some offices. Few defender offices have had sufficient resources to satisfy their responsibilities in a pre-*Padilla* world. *Padilla* adds to the pre-existing responsibilities and cries out for additional funding.

Respectfully Submitted,
Charles Joseph Hynes, Chair
Criminal Justice Section
August 2010

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GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Criminal Justice Section

Submitted By: Charles Joseph Hynes, Chair

1. Summary of Recommendation(s).
This Recommendation urges local, state, territorial, tribal and federal governments to provide funding to state and federal public defender offices and or other criminal defense legal aid programs specifically for the provision of advice concerning immigration consequences in criminal cases for indigent non-U.S. citizen defendants.
2. Approval by Submitting Entity.
The recommendation was approved by the Criminal Justice Section Council on April 10, 2010.
3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?
The ABA has on many occasions called for funding for indigent defense and training of public defenders. These include the 1990 approval of the ABA Criminal Justice Standards on *Providing Defense Services*, a Midyear 1991 resolution calling for Anti-Drug Abuse Act funding for training of indigent defense systems, a Midyear 2002 resolution reaffirming ten principles of a public defense delivery system that include ensuring that “defense counsel’s ability, training, and experience match the complexity of the case,” and a Midyear 2005 resolution calling for adequate resources and training for defense counsel. The ABA has also adopted a number of policies calling on attorneys to provide information to their clients about the collateral consequences of decisions in the case (e.g., Annual 1997 approved *Pleas of Guilty Standards*, Standard 14.3.2(f); *Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, Standard 19-2.3; and Midyear 1991 *Defense Function Standards*, Standard 4-6.2. At the 2007 Midyear Meeting, the Association approved a resolution calling on governments to assist defense counsel in advising clients of the collateral consequences of criminal convictions. At the Midyear 2006 and Midyear 2010 meetings, the Association passed resolutions calling for greater safeguards against automatic and unwarranted deportation of immigrants convicted of certain crimes.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?
None that we are aware of at this time.
5. What urgency exists which requires action at this meeting of the House?
With the recent decision of *Padilla v. Kentucky*, providing competent representation vis a vis immigration consequences will be especially challenging to indigent defender offices. These offices often do not have the benefit of attorneys skilled or trained in immigration law, nor are the clients able to hire outside counsel. This policy would help to confront

and provide assistance on this problematic situation by providing training/advice concerning immigration consequences in criminal cases for indigent non-U.S. citizen defendants.

6. Status of Legislation. (If applicable.)
Not applicable
7. Cost to the Association. (Both direct and indirect costs.)
None
8. Disclosure of Interest. (If applicable.)
No known conflict of interest.
9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)
Concurrently with the submission of this report to the ABA Policy Administration Office for calendaring on the August 2010 House of Delegates agenda it is being circulated to the following:
Standing Committee on Legal Aid and Indigent Defendants
Judicial Division
Litigation Section
Individual Rights and Responsibilities Section
Coalition for Justice
Commission on Immigration
Council on Ethnic and Racial Justice
Young Lawyers Division
Government and Public Sector Lawyers Division
Standing Committee on Ethics and Responsibility
Standing Committee on Lawyers' Professional Responsibility
Standing Committee on Professional Discipline
State and Local Government Law
Administrative Law
Standing Committee on Federal Judicial Improvements
Commission on Homelessness and Poverty
10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)
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11. Contact Person. (Who will present the report to the House)

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EXECUTIVE SUMMARY**A. Summary of Recommendation.**

This Recommendation urges federal, state, territorial, tribal and local governments to provide funding to state and federal public defender offices and or other criminal defense legal aid programs specifically for the provision of immigration advice for indigent non-U.S. citizen defendants.

B. Issue Recommendation Addresses.

It addresses the need for entities of all levels to provide training in the immigration consequences of criminal convictions, and in the duty of defense attorneys to counsel defendants about the immigration consequences according to the United States Supreme Court decision in *Padilla v. Kentucky* and to provide pro bono or reduced fee support services to public defender organizations in counseling indigent defendants as to the immigration consequences in a particular case.

C. How Proposed Policy Will Address the Issue.

This policy would help by providing training/advice concerning immigration consequences in criminal cases for indigent non-U.S. citizen defendants.

D. Minority Views or Opposition.

None.