

**THE ROLE OF THE
CRIMINAL DEFENSE ATTORNEY:
SPECIAL CONSIDERATIONS IN REPRESENTING
NON-CITIZENS**

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Due Process Considerations

Non-citizens in the United States

Correct advice by criminal defense counsel vital to due process in immigration removal proceedings.

No right to appointed counsel in Immigration Proceedings.

Padilla v. Kentucky, 559 U.S. ____ (2010)

Defense counsel duty under Sixth Amendment to advise non-citizen clients of the immigration consequences of their pleas.

Deportation

- *Not a collateral consequence - integral part of the penalty.
- *Your duty to analyze immigration consequences of plea.

Key Factors to Consider in Non-Citizen Cases

- *Current immigration status (3 basic categories)
- *Immigration history (date of entry, lawful or unlawful entry, prior deportation)
- *Criminal history, including arrests

Immigration Definition of “Conviction”

- *entry a guilty plea or judge/jury finding of guilt
- *a plea of “nolo contendere”
- *admission of sufficient facts to warrant finding of guilt

Three Major Consequences of Criminal Convictions

- *Removal (deportation) from the United States
- *Ineligible for immigration bond, “mandatory custody” in removal proceedings
- *Ineligible for immigration waivers or relief