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 Defintion 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