

In *State v. Diallo* (16-0279), the Iowa Court of Appeals held that a generic immigration advisory in a written guilty plea “substantially complie[d] with a court’s obligation to inform a defendant and ensure he understands that the conviction could result in adverse immigration consequences.” Importantly, however, this holding was limited to the *court’s* obligation to inform a defendant that a conviction may have adverse immigration consequences, and did not speak to *defense counsel’s* obligation to advise the defendant of those consequences. A generic advisory in a written guilty plea provides adequate basis for the court to accept the plea, but that advisory does not constitute adequate *Padilla* advice.

Diallo challenged his plea under Iowa Rule of Criminal Procedure 2.8(2)(b)(3), which requires the court to “determine that the defendant understands . . . [t]hat a criminal conviction, deferred judgment, or deferred sentence may affect a defendant’s status under federal immigration laws” before accepting a plea of guilty. This rule stems from the court’s basic obligation to ensure that defendants “receive due process of law, including verifying that a defendant is aware of all her Sixth Amendment rights and that counsel is performing effectively.”¹ In the context of a written guilty plea, a statement that the defendant understands the possibility of adverse immigration consequences assures the court that the defendant’s rights in that area have been adequately protected, just as a statement that the defendant is making his guilty plea of his own free will adequately assures the court that the plea is voluntary.

A statement that is adequate for the purpose of allowing the court to accept a guilty plea, however, does not meet defense counsel’s obligation under *Padilla* to provide accurate advice about the specific immigration consequences of a particular plea. For one, the court should never inquire into an individual defendant’s immigration status *sua sponte*, meaning that the only possible advisory under Rule 2.8(2)(b)(3) is a generic one. By contrast, adequate *Padilla* advice requires a full and detailed understanding of the defendant’s immigration status and history. This information is protected by attorney-client confidentiality, and in the wide majority of cases should not be disclosed on the record.

The adequacy of defense counsel’s immigration advice was not at issue in *State v. Diallo*. The holding in that case is limited to the adequacy of a generic advisory in meeting the *court’s* obligation to inform a defendant that a guilty plea may have adverse immigration consequences. The court’s obligation is distinct from defense counsel’s obligation under *Padilla*, and serves an entirely different purpose. Because defense counsel’s obligation is to accurately advise an individual defendant of the specific immigration consequences of a their guilty plea, a generic advisory is inadequate.

¹ Rahel & Shilhanek, Informing Criminal Defendants of the Immigration Consequences of Their Convictions: The Trial Judge’s Duty, available at https://ailp.law.uiowa.edu/sites/ailp.law.uiowa.edu/files/wysiwyg_uploads/CR50-4Rahel%281%29.pdf.