

On June 9, 2017, the Iowa Supreme Court issued a decision in *Roberto Morales Diaz v. State of Iowa* that, for the first time under Iowa law, clarified the scope of criminal defense counsel’s duty to advise noncitizen clients of the immigration consequences of their guilty pleas and convictions. In doing so, the Court noted the changes in immigration law that have “shifted the responsibility to protect immigrants . . . to criminal defense counsel” and recognized the “great, even overwhelming, importance” of immigration consequences to noncitizen defendants. *Morales Diaz*, No. 15-0862 at 7. Though the Court’s decision sets a higher bar than many previously assumed, it provides much-needed clarity on defense counsel’s responsibilities and sets a standard that will provide meaningful protection for vulnerable noncitizen defendants.

The Court’s decision has two important components. First, upon review of the “prevailing professional norms” in this area, the Court concluded that competent counsel must advise a noncitizen defendant of all “specific statutory consequences” associated with a plea and/or conviction, and that confining advice to the question of deportation is inadequate. *Morales Diaz*, No. 15-0862 at 14-15. The “statutory consequences” include removal, exclusion, ineligibility for relief from removal, mandatory detention during immigration proceedings, denial of naturalization, and consequences for immediate family. *Id.*, citing ABA Standards for Criminal Justice: Prosecution Function and Defense Function 4-5.5 (4th ed. 2015).

Second, the Court clarified the “clear” versus “unclear” consequences dichotomy established in *Padilla*, which had been understood by many attorneys to limit the scope of their duties. The Court held that the distinction “relates only to whether the crime charged is a crime covered under the immigration statute.” *Morales Diaz*, No. 15-0862 at 10. In other words, if adequate research reveals that a particular crime may or may not be, for example, a crime involving moral turpitude—making the consequences of conviction for that crime genuinely unclear, rather than unknown—counsel’s duty is only to advise that adverse immigration consequences *may* result. However, considering context of the rest of the decision, counsel should specifically advise *which* consequences may result. Certain consequences are likely to weigh much more heavily than others, and understanding the nature of the possible consequences is necessary for the client to make a fully-informed decision.

*Morales Diaz* requires defense counsel to “embrace his or her new role as a ‘cimmigration’ attorney.” *Morales Diaz*, No. 15-0862 at 8. This role requires defense counsel to gather detailed information relevant to the client’s immigration status, competently research and analyze the possible immigration consequences of the client’s case, and fully and accurately advise the defendant of those consequences so that they can make an informed decision.

The first step to adequately counseling a noncitizen defendant is to determine their immigration status, including both their current status and any facts pertinent to eligibility for relief from removal. Counsel must also determine the defendant's complete criminal history at this stage. Though to a certain extent counsel will have to rely on their client's accounting, it's also a good idea to verify the information provided where possible. For example, if a client reports that they are a lawful permanent resident (LPR) but cannot produce their LPR card, counsel should consider the possibility that the client is not an LPR when assessing the case.

Second, based on the information gathered about the defendant's immigration status and criminal history, counsel must analyze the immigration consequences of the potential plea and/or a conviction on the charges the defendant is facing. In some cases, this analysis will be straightforward, while in others it will be complex and may need to be reevaluated multiple times throughout the case as plea offers or other possible resolutions evolve. The analysis must incorporate all "specific statutory consequences" including removability, inadmissibility, ineligibility for relief from removal, mandatory detention during immigration proceedings, denial of naturalization, and consequences for immediate family. *Morales Diaz*, No. 15-0862 at 14-15.

Third, counsel must advise the defendant of these immigration consequences. Importantly, *Padilla* is clear that silence on this issue—in other words, failure to provide advice as well as affirmatively incorrect advice—constitutes ineffective assistance of counsel. *Padilla v. Kentucky*, 559 U.S. at 370. Merely advising a defendant to seek immigration counsel is effectively equivalent to silence and is inadequate, because that advisal does not inform the defendant of the potential immigration consequences they face.

Finally, after advising the defendant, counsel must ascertain the defendant's priorities in resolving the case and defend the case accordingly. *Padilla*, 559 U.S. at 373. If the defendant's priority is a good immigration result, they may be willing to accept a less-favorable resolution of the criminal case to achieve that goal. Defense counsel must therefore be aware of the options for resolving cases in an immigration-safe way. And because some of these resolutions may seem counterintuitive, defense counsel should be vigilant in protecting the defendant's priorities and explaining to judges and prosecutors why those priorities require a particular approach to resolving the case.