

## Criminal attorneys must warn immigrants of deportation risk

By Janell Ross • THE TENNESSEAN • April 9, 2010

Nashville's criminal attorneys are taking note of a U.S. Supreme Court ruling that makes them responsible for advising clients who aren't citizens that criminal convictions, even for minor offenses, can lead to deportation.

In a 7 to 2 ruling, the court decided that an immigrant's guilty plea must be reconsidered because he received faulty information from his lawyer. Among other things, the U.S. Constitution's Sixth Amendment guarantees every defendant in a criminal case an attorney and an effective defense, regardless of citizenship status.

In the Supreme Court case, Jose Padilla, a Honduran national and Vietnam veteran, said he pleaded guilty to drug charges in Kentucky because his lawyer told him he wouldn't be deported or serve jail time. Padilla did not have a criminal history and had lived in the United States for more than four decades as a legal permanent resident.

David Raybin, a Nashville criminal lawyer, called the decision "the immigrant's Miranda rule."

"Not only do you have the right to remain silent, but you have to be told about the impact of your decisions," he said.

Miranda — recited to anyone who is under arrest — became a reality in 1966 when the U.S. Supreme Court ruled people must be informed of their Fifth Amendment right not to answer self-incriminating questions.

Just after the court's ruling last week, Raybin submitted a request to a state committee that sets rules for Tennessee courts. He wants to see judges offer non-citizens — legal and illegal immigrants — a final warning about the impact of a guilty plea or conviction, he said.

Judges in more than a dozen states, including North Carolina, Georgia, Arizona and California, are already required to do so. Tennessee judges aren't required to give warnings about deportation, but they do offer all defendants pleading guilty to driving under the influence a final warning about the potential consequences.

Any non-citizen convicted of a any crime — including speeding — within the first five years of entering the country can be deported, said Sean Lewis, a Nashville immigration lawyer. Deportation is mandatory if an immigrant is convicted of most felonies — no matter how long he's lived in the U.S. without becoming a citizen.

"If you have ever gone up and watched the noon (court session) docket, there will be a mass pleading of sometimes 20 people who don't speak English," Lewis said. "The translators are there. The people get asked a question or two, they shake their heads, and it's done."

Lewis is putting together a Web-based seminar for the Tennessee Bar Association. The April 19 seminar will outline the Padilla case, the court's ruling and what offenses can get a person deported or barred from re-entering the United States.

The court's ruling eventually may lead Tennessee courts to overturn some convictions, Lewis said. Some defendants may spend more time in jail while their attorneys research whether a plea or conviction could lead to deportation.

In Nashville and most jurisdictions around the country, thousands of cases are resolved each year when prosecutors offer reduced jail time, charges or probation in exchange for a guilty plea. Metro public defender Dawn Deaner said defendants pleaded guilty in 95 percent of her office's new cases last year, but she isn't sure how many were not citizens.

"I think the general tenor is, 'Oh great, now I have got to become an immigration attorney, too,' " Deaner said. "But the reality is, I think the court did what had to be done.

"There are all kinds of collateral consequences of criminal conviction ... but what the court said is, deportation is different. It's devastating and really comes down to people's humanity. The fact is, a parent could be separated from their child."