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New York Leads the Way on Immigrant Defense

Immigrants in criminal proceedings in the U.S. face the very real threat of deportation depending on how their cases come out, so it's imperative that they get effective legal representation. Last week, New York became the first state in the nation to set up a state-wide network of legal resource centers dedicated to ensuring that they do.

On July 6, the state's Office of Indigent Legal Services announced [\\$8.1 million in grants](#) to fund the development of six regional service centers across the state and in New York City. The centers will provide immigration legal support and training to public defense counsel throughout the state, a significant step toward realizing the promise of [Padilla v. Kentucky](#), a 2010 Supreme Court ruling that criminal defense attorneys must advise non-citizen clients about the deportation risks of a guilty plea.

After decades in which U.S. lawmakers have relentlessly ratcheted up the harsh immigration consequences of past criminal convictions, New York's initiative represents a glimmer of hope. Having worked for 27 years as an immigration lawyer in New York City, I've seen first-hand how these consequences can devastate families and communities, and so I'm especially pleased to see this initiative take off.

One former client's case in particular haunts me. Among the most difficult things I have ever had to do as a lawyer was to advise this client, outside an elevator door at in 26 Federal Plaza in New York City, that if she rode up to the 13th floor to appear for her immigration hearing, she would be taken into immigration custody and might never go home again.

It was 1996. Just days before, the U.S. Congress had passed [legislation](#) mandating detention and deportation for even long-time lawful permanent residents for a wide range of past criminal convictions, regardless of any mitigating or humanitarian factors. My client, a lawful resident with young children waiting for her at home, was facing the possibility of deportation based on a past criminal conviction. Before the new laws passed, immigration detention during proceedings was not required, and the judge had wide discretion to issue a "waiver" sparing her from

deportation. But now the judge's discretion was limited. Even so, desperate to preserve any possibility she might have to fight deportation, she stepped into that elevator.

My client's experience was a sign of things to come. In recent years the U.S. government has targeted immigrants on the basis of long-ago brushes with the law that often carried minor criminal consequences, and regardless of circumstances like family ties or contributions to the community. Nevertheless, government funders of indigent criminal defense services have generally not seen it as their responsibility to ensure competent advice and counsel on anything beyond the "direct" criminal law consequences of a criminal case, as opposed to so-called "collateral" consequences, such as deportation.

Consequently, many immigrants facing criminal charges had little or no awareness at the time of their criminal proceedings that they might face detention and deportation; few criminal defense lawyers were well enough versed in immigration law to supply that information. Indeed, many immigrants give up their right to a trial and plead guilty to criminal charges without receiving accurate (or any) advice regarding the possible adverse immigration consequences.

That's why, in 1997, I partnered with the New York State Defenders Association to start what is today known as the Immigrant Defense Project (IDP), to provide legal resources, training and support to criminal defense lawyers representing immigrants in New York criminal cases. Since then, IDP (now independent but still collaborating with NYSDA) has provided written resources for New York defense lawyers, such as the manual *Representing Immigrant Defendants in New York*, now in its fifth edition, hundreds of trainings, and thousands of individual case consults through IDP's criminal/immigration telephone hotline.

Our efforts got a major boost when U.S. Supreme Court, in *Padilla v. Kentucky*, recognized that the right to counsel as guaranteed by the U.S. Constitution must include advice regarding the deportation consequences of criminal convictions, and endorsed the notion that defense counsel has a responsibility to seek to minimize these consequences for a noncitizen client. As the Court aptly observed, "preserving the client's right to remain in the United States may be more important to the client than any potential jail sentence."

But more is needed. Most important, state and federal governments must take proactive responsibility in this area as part of their general constitutional duty to afford effective counsel to those accused of crimes in their jurisdictions.

New York State can be proud of leading the way in addressing this need of its vulnerable immigrant residents. Other governmental entities must follow the state's lead and supply the resources and support to public defenders and other indigent criminal defense service providers needed to hire and train the staffing required to properly serve their immigrant defendant clients.