IN THE SUPREME COURT OF FLORIDA

CASE NO: SC11-941/SC11-1357 (Consolidated)
THIRD DCA NO: 3D10-2462

GABRIEL A. HERNANDEZ,
Petitioner/Appellant,

-vs-

STATE OF FLORIDA,
Respondent/Appellee.

BRIEF OF *AMICUS CURIAE* AMERICAN IMMIGRATION LAWYERS ASSOCIATION, SOUTH FLORIDA AND CENTRAL FLORIDA CHAPTERS IN SUPPORT OF APPELLANT

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INTEREST OF AMICUS CURIAE

The South Florida and Central Florida Chapters of the American Immigration Lawyers Association ("AILA") are local chapters of the national organization of AILA, the leading association of immigration lawyers and law school professors in the country. AILA has over 11,000 members, with over 650 members in South Florida and approximately 300 in Central Florida. AILA's members practice regularly before the Department of Homeland Security and the Executive Office for Immigration Review (immigration courts and the Board of Immigration Appeals), as well as before the United States District Courts, Courts of Appeals, and the United States Supreme Court. AILA members also appear in postconviction proceedings in state courts on behalf of noncitizen defendants.

INTRODUCTION

This case raises issues of vital concern to the clients of AILA-member attorneys and to families and communities across Florida. As recognized by the United States Supreme Court in *Padilla v. Kentucky*, decades-old professional norms regarding effective assistance of counsel require that defense counsel advise their clients about the immigration consequences that flow from plea agreements. 130 S. Ct. 1473, 1482-83 (2010); *see, e.g.*, Maryellen Fullerton & Noah Kinigstein, *Strategies for Ameliorating the Immigration Consequences of Criminal Convictions: A Guide for Defense Attorneys*, 23 Am. Crim. L. Rev. 425, 445

(1986) ("Defense attorneys must educate themselves about the immigration consequences [of a plea] . . . [o]therwise, the results could be drastic."); ABA Standards for Criminal Justice, Pleas of Guilty, 14-3.2 (2d ed. 1980 & Supp. 1986) (instructing defense counsel to advise clients about collateral consequences of a guilty plea, including deportation).

When noncitizen defendants accept guilty pleas in Florida courts, their fates in our nation's immigration system are often sealed. As recognized in *Padilla* and illustrated by the cases of Gabriel Hernandez, Claudia Vergara Castano,[1] and Leduan Diaz,[2] and the other stories below, deportation has become a virtually automatic consequence for a broad range of criminal convictions, including relatively minor ones. These real-life examples include simple misdemeanors and other offenses that carried no jail or prison time.[3]

The failure to provide immigration advice can be devastating, tearing noncitizens away from their families, their jobs, their homes, and their communities – "all that makes life worth living." *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). The impact of these automatic deportations is particularly severe in the cases of noncitizens who, like Mr. Hernandez, Ms. Castano, and Mr. Diaz,

[1] *Castano v. State*, No. SC11-1571 (Fla.).
[2] *Diaz v. State*, No. SC11-1281 (Fla.).
[3]Unless otherwise indicated by citation, counsel for *Amicus Curiae* obtained information regarding some individuals profiled in this brief by reference to filed *Padilla* motions and interviews with counsel. The names of some individuals have been omitted to protect their privacy.

have resided in Florida for many years and have convictions that predate the *Padilla* decision. As discussed below, the impact of automatic deportation has a ripple effect on our nation as a whole, especially the United States citizen children who remain behind.

A. AILA's Position on the Two Certified Questions

This case, like *Castano* and *Diaz*, presents two questions: (1) whether a noncitizen defendant who received ineffective assistance of counsel under prevailing professional norms at the time of his or her plea agreement can bring a postconviction motion if the plea occurred before *Padilla*; and (2) whether a generic judicial warning about possible immigration consequences can *per se* cure the prejudice of ineffective assistance, even when deportation is not merely possible but "practically inevitable." *See Padilla*, 130 S. Ct. at 1478.

AILA supports the positions of Mr. Hernandez, Ms. Castano, and Mr. Diaz, that *Padilla* – a case that arose in a state postconviction proceeding – applies to all pending and future state postconviction proceedings. *Padilla's* holding is not a new rule, but a fact-specific application of *Strickland v. Washington,* 466 U.S. 688 (1984), to the question of what constitutes effective assistance of counsel under the Sixth Amendment.[4]

[4] If, however, this Court finds that *Padilla* announces a new rule, the rule should apply retroactively to Mr. Hernandez, Ms. Castano, Mr. Diaz and those similarly situated, as argued by Mr. Hernandez.

Prior to *Padilla*, this Court's decision in *State v. Ginebra*, 511 So. 2d 960 (Fla. 1987), had precluded all ineffective assistance of counsel claims based on counsel's failure to provide accurate advice regarding deportation. AILA agrees with the petitioners that the two-year deadline provided in Florida Rule of Criminal Procedure 3.850 should not bar noncitizens from seeking relief now that *Padilla* has shown that the *Ginebra* bar was inconsistent with the Sixth Amendment.[5]

Finally, AILA supports the positions of Mr. Hernandez, Ms. Castano, and Mr. Diaz regarding the generic judicial warning required by Florida Rule of Criminal Procedure 3.172(c)(8) (requiring judges to tell both citizen and noncitizen defendants that pleading guilty or no contest "may subject" them to deportation). As the Third District Court of Appeal recognized, this one-size-fits-all warning is not a *per se* bar to showing prejudice by the ineffective assistance of counsel. *Hernandez v. State*, 61 So. 3d 1144, 1147-48 (Fla. 3d DCA 2011). *Strickland* requires an individualized, fact-based determination of prejudice. 466 U.S. at 693-96.

[5] If *Padilla* announced a retroactive new rule, Rule 3.850(b) straightforwardly permits motions to be filed outside the two-year window. Fla. R. Crim. P. 3.850(b)(2) (authorizing a motion filed beyond the two-year limitation period if "the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively").

SUMMARY OF THE ARGUMENT

AILA, as an organization of immigration attorneys and law professors, writes to share the experiences of members' clients who will be affected by the Court's decision and to place in context the two certified questions before the Court. In the 1990s, Congress greatly expanded the list of crimes that lead to deportation and virtually eliminated the discretion of judges to stop deportations on humanitarian grounds. As recognized in *Padilla*, deportation has become a near-automatic result of a wide range of convictions. 130 S. Ct. at 1478. In the absence of competent advice from defense counsel, and despite longstanding professional norms that have recognized the duty of defense counsel to provide immigration advice, AILA's clients have entered guilty pleas that virtually assure their deportations.

Low-level crimes such as certain misdemeanor theft and marijuana possession offenses trigger deportation. Without effective advice of counsel, the decision to plead guilty to such charges often seems easy and obvious, as they are likely to carry little or no jail time. The real, unspoken penalty of such convictions for noncitizens, however, is permanent separation from family, friends, and community.

No statute of limitations prevents immigration authorities from initiating deportation for old crimes. Many AILA members have clients who have provided

years of labor or military service to the United States without realizing that an old, ill-advised guilty plea would one day be the cause of their deportation.

When the clients of AILA members are deported due to uninformed guilty pleas, many leave behind U.S. citizen children, spouses, parents, family, and friends. Social scientists and human rights organizations have documented the devastating psychological, emotional, educational, and financial effects of deportation on children. Our nation as a whole bears the costs of these deportations, as many children are forced into foster care due to the deportation of their parents and as families left behind often must rely on public assistance to survive.

ARGUMENT

I. IMMIGRATION LAW MANDATES THE SEVERE PENALTY OF DEPORTATION FOR MANY OFFENSES, INCLUDING OLD AND LOW-LEVEL CRIMES.

Any person who is not a United States citizen is subject to deportation if he or she is convicted of a crime that falls within a removal ground in the Immigration and Nationality Act. *Padilla*, 130 S. Ct. at 1480. Under federal law, even an adjudication that has been withheld, or a guilty plea that has been sealed or expunged under a rehabilitative statute, has been found to be a conviction for

immigration purposes.[6] Starting in the 1990s, Congress amended immigration law to expand the list of crimes that lead to deportation and made these amendments retroactive to include prior offenses. *See INS v. St. Cyr*, 533 U.S. 289, 296 n.6 (2001) (explaining that the 1996 law "expanded the definition of 'aggravated felony' substantially – and retroactively"). As recognized in *Padilla*, deportation is "practically inevitable" for anyone convicted of an offense now included in a removal ground. *Padilla*, 130 S. Ct. at 1480.

As early as the nineteenth century, the Supreme Court recognized that deportation is a particularly severe penalty, "at times the equivalent of banishment or exile." *Padilla*, 130 S. Ct. at 1478-81 (citing *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893); *Delgadillo v. Carmichael*, 332 U.S. 388, 390 (1947)). During the plea bargaining stage of a criminal case, defense counsel and their clients must weigh every option carefully. Often clients accept a plea to avoid the risk of serving an extended jail or prison sentence. As recognized by the United

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[6] Under the INA, the term "conviction" includes incidences where a noncitizen's "adjudication of guilt has been withheld." 8 U.S.C. § 1101(a)(48)(A) (2006). *See Garces v. U.S. Att'y Gen*, 611 F.3d 1337, 1344 (11th Cir. 2010) ("A vacatur or expungement obtained under a rehabilitative statute . . . has no effect for immigration law purposes.") (citing *In re Adamiak*, 23 I. & N. Dec. 878, 879-80 (BIA 2006)). *See also Matter of Cabrera*, 24 I. & N. Dec. 459, 462 (BIA 2008) (Florida withhold of adjudication falls within definition of a conviction in immigration law).

States Supreme Court, however, "[p]reserving the client's right to remain in the United States may be more important to the client than any potential jail sentence." *St. Cyr*, 533 U.S. at 322 (internal citation omitted); *see also Padilla*, 130 S. Ct. at 1480 ("[D]eportation is an integral part – indeed, sometimes the most important part – of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes."). When the actual penalty for a crime is that the noncitizen will never see his or her spouse, child, or other family members again, clients may prefer a longer jail term over a plea that results in deportation.

It is particularly important that defense counsel be aware of immigration consequences because low-level criminal offenses may trigger deportation. Crimes that are neither aggravated nor felonies have been held to be "aggravated felonies" for immigration purposes. 8 U.S.C. § 1101(a)(43).[7] The offenses below all led to severe immigration consequences:

- Misdemeanor attempted theft of tire rims with a suspended sentence of more than one year is an "aggravated felony" for purposes of deportation. *Vieira Garcia v. INS*, 239 F.3d 409, 411 (1st Cir. 2001).

- Possession of fewer than 35 grams of marijuana – a misdemeanor under state law – considered a conviction and led to deportation, even though the

[7] The list of crimes that qualify as aggravated felonies is lengthy. *See* Rob A. Justman, *The Effects of AEDPA and IIRIRA on Ineffective Assistance of Counsel Claims for Failure to Advise Alien Defendants of Deportation Consequences of Pleading Guilty to an "Aggravated Felony,"* 2004 Utah L. Rev. 701, 706 (2004) (noting that "it might be briefer to list all crimes *not* aggravated felonies than to list the aggravated felonies") (emphasis added).

conviction had been expunged after one year of probation. *Resendiz-Alcara v. U.S. Att'y Gen*., 383 F.3d 1262, 1265 (11th Cir. 2004).

- Conviction for "failure to appear" under Florida Statute § 843.15 was considered an "aggravated felony" for immigration purposes. *In re Woramalee*, No. A041921909, 2010 WL 3536706 (BIA. Aug. 24, 2010).

- An assault in violation of a municipal ordinance that carried a one-year suspended sentence was considered an "aggravated felony" for purposes of deportation. *United States v. Holguin-Enriquez*, 120 F. Supp. 2d 969, 973 (D. Kan. 2000).

- Misdemeanor convictions for jumping a subway turnstile triggered deportation proceedings. *See Johnson v. Holder*, 413 F. App'x 435 (3d Cir. 2010), *vacated in part as moot*, No. 09-3478, 2011 U.S. App. LEXIS 2593 (3d Cir. Feb. 9, 2011).

- Construction crew supervisor was deported for two misdemeanor convictions for urinating at a construction site with no bathroom facilities. *See* Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy* 54 (2007).[8]

- Conviction for exposing buttocks, or "mooning," was considered a deportable offense. *Ferguson v. Att'y Gen. of U.S.*, 216 F. App'x 217, 218 (3d Cir. 2007).

Virtually any drug offense, with the exception of a single offense of marijuana possession for one's own use, triggers deportation. *See* 8 U.S.C. § 1227(a)(2)(B)(i) (2008) ("Any alien who at any time after admission has been

[8] This report is available at hrw.org/sites/default/files/reports/us0707_web.pdf.

convicted of a violation . . . relating to a controlled substance . . . other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable."). This includes convictions for misdemeanor possession of drug paraphernalia. *See Alvarez Acosta v. U.S. Att'y Gen.*, 524 F.3d 1191, 1193-94 (11th Cir. 2008) (noting that immigration judge found petitioner removable based on a Florida conviction for misdemeanor possession of drug paraphernalia); *Flores v. State*, 57 So. 3d 218, 218 (Fla. 4th DCA 2010), *reh'g denied* (Apr. 13, 2011) (adjudicating postconviction *Padilla* motion based on deportation for Florida drug paraphernalia offense for which appellant had been sentenced to time served).

The story of a deported 81-year-old grandfather illustrates the harsh consequences of drug-related offenses. Mr. G came to the United States at age 10 and was a lawful permanent resident for 50 years.[9] He was arrested when he was about 61 years old, when police found drugs in his grandson's room. After spending 90 days in jail, he followed his defense counsel's advice and pled guilty to drug possession. He was sentenced only to probation. Twenty years later, however, immigration authorities deported him based upon this conviction.

The case of Darren Jarrett, a client of an AILA member, illustrates the severe consequences that result when a misdemeanor drug offense falls within the

[9] *See* Catholic Legal Immigration Network, Inc., *supra*, at 41.

broad deportation ground. As an 11-year-old child, Mr. Jarrett arrived in Florida with his family under his father's treaty-investor visa, which is designed for certain individuals intending to carry on substantial trade or other business in the United States. Shortly after turning 18, Mr. Jarrett pled guilty to two counts of misdemeanor possession of drug paraphernalia. He received no jail time. Counsel did not warn Mr. Jarrett that his pleas would make his deportation practically inevitable, and he went on building his life. In 2008, he married a United States citizen. It was not until 2010 that Mr. Jarrett learned of the drastic consequences those pleas. Mr. Jarrett appeared at an immigration interview in central Florida for "review" of his immigration status. There, immigration officers seized and transported him to a detention center many miles away from his wife and family. He was eventually deported.

Like Mr. Jarrett, Petitioner Gabriel Hernandez was unaware that he could be deported for a sentence that involved no jail time. *See Hernandez*, 61 So. 3d at 1146. Ms. Castano, who was sentenced to one day in jail and three years of probation, now also faces deportation without being aware of this consequence. Initial Brief for Petitioner on the Merits at 3-4, *Castano v. State*, 65 So. 3d 546 (Fla. 5th DCA 2011) (No. 5D10-2032). Mr. Diaz accepted a plea that involved no jail time, without being advised that his plea would trigger the much harsher penalty of deportation. *Diaz v. State*, 65 So. 3d 1079, 1080 (Fla. 3d DCA 2011).

II. BECAUSE OLD, LOW-LEVEL CONVICTIONS OFTEN TRIGGER DEPORTATION, MANY OF THE PEOPLE WHO WILL BE AFFECTED BY THIS CASE HAVE PROVIDED YEARS OF SERVICE TO THEIR COMMUNITIES IN THE UNITED STATES.

Many of the people seeking *Padilla* postconviction relief have old or minor convictions and have become valuable members of our community. Because Congress has largely stripped immigration judges of the power to stop deportations, they cannot consider the impact on local communities or the value of an individual's contributions. *Padilla,* 130 S. Ct. at 1478 (explaining that current immigration law has "limited the authority of judges to alleviate the harsh consequences of deportation"); *see also Smith v. United States*, Case 12.562, Inter-Am. Comm'n H.R., Report No. 81/10, OEA/Ser.L./V/II., doc. 5, rev. 1 ¶ 59 (2010) (finding that the United States has violated international human rights law by denying immigrants the "opportunity to present a humanitarian defense to deportation."). Those facing automatic deportation include veterans, business owners, health care professionals, and teachers, as well as students who will make future contributions to our country. For example:

- University graduate and lawful permanent resident Ramiro Oseguera, Jr. was deported because of a decade-old misdemeanor theft offense. Stephen Dark, *In Immigration Court, Few Find Second Chances*, Salt Lake City News (Feb. 1, 2012).[10]

[10] This article is available at www.cityweekly.net/utah/article-15397-deportation-factory.html.

- 30-year resident and small business owner Earle Munroe was placed in deportation proceedings based upon ten-year-old convictions for drug possession and having a weapon in a motor vehicle. Eric Rich, *Deportations Soar Under Rigid Law*, Hartford Courant (Oct. 8, 2000).

- A 20-year-old college student and lawful permanent resident living in the United States since the age of 18 months faced deportation for pleading to possession of 31 grams of marijuana. Yolanda Vazquez, *Advising Noncitizen Defendants on the Immigration Consequences of Criminal Convictions: The Ethical Answer for the Criminal Defense Lawyer, the Court, and the Sixth Amendment*, 20 Berkeley La Raza L.J. 31 (2010).

Mr. L, another client of an AILA member, is a decorated military veteran, has worked the same job for 17 years, and has raised four U.S. citizen children. However, the immigration consequences of a poorly-advised, decades-old guilty plea place his family's future at risk. Mr. L, a Cuban national and longtime resident of Florida, arrived in the United States over forty years ago, at the age of 11. He joined the military in the late 1970s and served honorably. During the Cold War, Mr. L was given top-security clearance and trained military units in other countries. His service earned him numerous honors, including a letter of commendation from Florida Governor Bob Graham**.**

In the ensuing years, and following his military service, Mr. L remained a well-respected member of his community. His pastor, friends, church community, and former military colleagues describe him as loyal, committed, and a man of integrity. Mr. L's wife, an elementary school teacher, and their four daughters – an honors nursing student at a local college, a police officer, a police department

spokesperson, and a veterinary clinic manager – all serve their communities in the United States.

Mr. L, now in his 50s, was charged with a one-time sale of cocaine, a second-degree felony, twenty-five years ago. The charge stands as the only one on an otherwise clean record. Mr. L accepted a plea offer that promised a reasonable sentence without jail time – six-months' house arrest and payment of a fine. He continued to serve his country in the military after taking this plea. Had his criminal defense lawyer explained that his plea would subject him to mandatory deportation in the future, Mr. L could have made an informed decision and bargained with an eye toward the true consequences of his plea. Instead, he went on with his life for many years before realizing that his plea had put his family at risk of separation.

In 2010, Mr. L filed for postconviction relief in *Padilla*'s wake. Perhaps recognizing the injustice inherent in Mr. L's story, the trial court expressed concern for Mr. L's predicament and thanked him for his service to the United States. The case has been stayed pending the outcome of this Court's decision.

III. THE FAILURE OF DEFENSE COUNSEL TO PROVIDE ADVICE ON IMMIGRATION CONSEQUENCES HARMS U.S. CITIZEN CHILDREN, OTHER FAMILY MEMBERS, AND OUR NATION AS A WHOLE.

Defense counsel's failure to warn noncitizens that a guilty plea will automatically result in deportation inflicts grave emotional and financial harm on families, especially dependent United States citizen children, and imposes heavy costs on our society as a whole. *See* Jonathan Baum et al., *In the Child's Best Interest?: The Consequences of Losing a Lawful Immigrant Parent to Deportation* 4-5 (2010) (documenting the "immense secondary social and economic effects" of deporting the parents of U.S. citizen children).[11] The impact can be particularly severe when immigration authorities deport noncitizens who have long resided and built lives in the United States.

Our nation's children bear the brunt of deportation. Immigration authorities removed 46,486 parents of U.S. citizen children from the United States in the six-month period between January and June 2011 alone. *See* Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* 11 (2011).[12] Approximately 5,100 children in foster care have parents who have been deported or detained. *Id*. at 22. The children of these shattered families face insurmountable barriers to reunification with their

[11] This report is available at http://www.law.berkely.edu/files/Human_Rights_report.pdf.

[12] This report is available at http://www.arc.org/shatteredfamilies.

parents. *See id.* at 44. Moreover, most child welfare departments – including Florida's – lack clear protocols for reunifying children with deported parents. *Id.*

The removal of noncitizen parents "increases the likelihood of poor education outcomes" for children. Baum, *supra*, at 5; *see also* Kalina M. Brabeck & Qingwen Xu, *The Impact of Detention and Deportation on Latino Immigrant Children and Families: A Quantitative Exploration* 350-56 (2010) (analyzing children's poor academic performance after parents are deported).[13]

The story of Luis Espinosa, a Florida resident and single father of four, illustrates the impact of deportation on American families.[14] After Mr. Espinosa was convicted of possession of marijuana, the lives of his children and infant grandchild were turned upside down. Immigration authorities detained and deported Mr. Espinosa, leaving his children and grandchild to fend for themselves. Mr. Espinosa's eldest daughter dropped out of high school to care for the younger children. The second daughter graduated from high school, but was forced to drop out of technical school to care for the two younger children. One of the youngest children is repeating a grade, fails to complete his school work, and is disruptive in class. *Id.* Without a proper education, each of these children faces a dismal future.

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[13] This study is available at http://hjb.sagepub.com/content/32/3/341.refs.

[14] *See* Catholic Legal Immigration Network, Inc. at 50-51 (2000), *available at* cliniclegal.org/sites/default/files/atrisk1.pdf; *see also* Bill Maxwell, *Deporting a Parent*, St. Petersburg Times, 1D (Nov. 29, 1998).

In addition, our society as a whole bears the costs for these family separations because dependents of deported parents often must rely on public assistance or other forms of government assistance. Baum, *supra*, at 5-6 (citing Ajay Chaudry et al., Urban Inst., *Facing Our Future: Children in the Aftermath of Immigration Enforcement* 27 (2010)[15] (study finding that more than half the families studied "rel[y] on private or public financial support" and that the vast majority receive some sort of assistance from family and friends)); *see* Brabeck & Xu, *supra*, at 345 (describing research that shows links between deportation and poverty). Many U.S. citizens depend on parents or spouses who are not citizens. Removing the "main breadwinner" in a household "imperil[s]" the "economic well-being" and "psychological health and stability" of U.S citizen children left behind. Catholic Legal Immigration Network, Inc., *The Impact of Our Immigration Laws and Policies on U.S. Families* 31 (2000).[16]

For example, Kathy McArdle lived with her partner of 10 years, Calvin James, and their six-year-old son. Ms. McArdle and the couple's son, both U.S. citizens, relied heavily on Mr. James because Ms. McArdle had health problems that prevented her from working full-time. When Mr. James was deported to Jamaica for a drug-related conviction, Ms. McArdle was forced to spend nearly

[15] This report is available at urban.org/UploadedPDF/412020_FacingOurFuture_final.pdf.

[16] This report is available at cliniclegal.org/sites/default/files/atrisk1.pdf.

two years living with friends and moving from place to place with their son. She and her son eventually moved to a shelter. Amy Lieberman, *Jump in U.S. Deportation Leaves Mom Stranded*, Womensenews.org (Nov. 16, 2011).[17]

Studies show that children and families experience feelings of abandonment, symptoms of trauma, fear, isolation, and depression in the wake of a parent's deportation. Brabeck & Xu, *supra*, at 345. One study found that in the six months after a parent's immigration arrest, approximately two-thirds of children "experienced changes in eating and sleeping habits," over half "cried more often and were more afraid," and over one third "were more anxious, withdrawn, clingy, angry, or aggressive." Chaudry, *supra*, at ix. For example, a 17-year-old boy committed suicide after his father, who had been a lawful permanent resident for 29 years, was deported to Colombia due to a $10 marijuana sale. Patrick J. McDonnell, *Deportation Shatters Family*, L.A. Times (Mar. 14, 1998). A second-grade boy returned from school one day to find his two-year-old brother home alone because his parents had been arrested by immigration authorities. He cared for his brother alone for a week before being discovered. After his parents' deportation, his teacher described his behavior as changing from "happy" to "catatonic." He went from being a good student to missing many days of school

[17] This news article is available at womensenews.org/story/immigration/111115/jump-in-us-deportations-leaves-moms-stranded (last viewed Feb. 17, 2012).

and was held back to repeat second grade. Dorsey & Whitney LLP, A Report to the Urban Institute, *Severing A Lifeline: The Neglect Of Citizen Children In America's Immigration Enforcement Policy* 10 (2009).[18]

CONCLUSION

People who agreed to a plea agreement without receiving the required immigration advice from their defense attorneys are entitled to a day in court on their Sixth Amendment claims. Prior to *Padilla*, *Ginebra* prevented such claims of ineffective assistance of counsel from proceeding in Florida. Unless the holding of *Padilla* is now applied to their cases, longtime residents of Florida will be separated from their spouses, children, businesses, and communities. These Florida residents and their families deserve a fair process to ensure that they have the opportunity to make fully informed decisions about the consequences of their criminal pleas.

[18] This report is available at dorsey.com/files/upload/DorseyProBono_SeveringLifeline_web.pdf

Dated: February 20, 2012

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[19] *Amicus Curiae* acknowledges the valuable contributions to this brief made by University of Miami School of Law students Gueter Aurelien and Tiffany Hawks, and Farrin Anello, supervising attorney.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Amicus Brief was mailed by placing a true and correct copy in a sealed envelope, postage prepaid, and deposited with the United States Postal Service to the following persons at the addresses set forth below.

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