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Local

# Va. judges to advise immigrants that guilty pleas could mean deportations

By **Tom Jackman** November 8 at 5:59 PM

When immigrants enter the criminal justice system, they are often unaware that a guilty plea to a misdemeanor can be a ticket to deportation, even for those who have legal permanent resident status. The confusion has resulted in many families broken up over a drunken-driving or petty drug conviction, immigration experts say, accompanied by the added costs to society of families suddenly deprived of their chief wage-earner.

But now the Virginia Supreme Court has issued a directive to trial judges, advising them to warn non-citizen defendants to consider the possible impact a conviction could have on their immigration status. The amended rule came about after a three-year campaign by an Alexandria civil rights attorney who, failing to get any response from judges in Prince William County, found a sympathetic ear in a new Virginia chief justice.

Still, immigration experts say that many states are not doing enough to ensure a fair legal process. Some are training criminal defense lawyers in immigration law, and some are hiring permanent immigration advisers, but they said that simply advising a defendant at the end of his case of possible unseen consequences is not enough.

"I don't think the American public has any idea," said Heidi Altman, legal director of the Capital Area Immigrants' Rights Coalition, "how non-citizens are disproportionately impacted by the criminal justice system, and how that's hurting American families." She said cases such as a years-old DUI arrest or a small marijuana deal being used to deport an immigrant in Virginia are not unusual.

The issue took on national prominence in 2010, when the U.S. Supreme Court ruled in [Padilla v. Kentucky](#) that if an attorney failed to inform a client about the possible immigration consequences of a guilty plea, that may constitute ineffective assistance of counsel, requiring a new trial.

That same year in Virginia, county prosecutors began taking the cost-saving step of waiving jail time for certain misdemeanors, which also thereby removed a defendant's right to a lawyer. That left many immigrants with no one to advise them of the consequences of a minor conviction.

In Prince William, attorney Victor M. Glasberg repeatedly pointed out to the chief judges of the district and circuit courts that prosecutors were offering no-jail plea bargains to defendants without lawyers, sometimes knowing that an immigration detainer and deportation awaited — a far more serious penalty than a misdemeanor conviction. He noted that defendants might not plead guilty, or might seek a sentence which wouldn't lead to deportation, if they were aware of the collateral danger.

"I believe that the court is complicit in grievous, and in fact actionable, injustice," Glasberg wrote in August 2012. The judges — then-Chief District Judge Peter W. Stetekee, now retired, and Chief Circuit Judge Mary Grace O'Brien, now on the court of appeals -- ignored him. The Virginia attorney general's office, then headed by Ken Cuccinelli II, said it could not intervene.

Letters to the Virginia Supreme Court by Glasberg, with the threat of a federal lawsuit, resulted in a warning added to the forms signed by defendants who waive their right to a lawyer. But when Glasberg continued to push the state's high court for an oral warning from the trial judge, in the same period when judges advise defendants of their right to a trial and counsel, he said he was met with more silence.

When Virginia Supreme Court Justice Donald W. Lemons took over the chief justice spot in January, Glasberg found a sympathetic ear.

On Oct. 30, the Supreme Court issued a revised rule for trial judges that advises them to ask all defendants pleading guilty:

"Do you understand that if you are not a citizen of the United States and if you plead guilty or are found to be guilty, there may be consequences of deportation, exclusion of admission into the United States, or denial of naturalization pursuant to the laws of the United States?"

Lemons said in an e-mail that the amended rule was "simply the most recent institutional response by the Court" to the Padilla decision, and that the court "thought it would be wise for judges to make inquiries on the subject when a guilty plea is being made."

Even though Padilla put the onus on defense lawyers to advise their immigrant clients, “The courts have a critical role here,” Glasberg said. “It is quintessentially the job of a judge to ensure that justice is done in his or her court. That obligation cannot be delegated to anyone, including lawyers.”

But numerous experts said more is needed. “We’re pleased that the Virginia Supreme Court is looking at this issue now,” said Ofelia Calderon, past president of the Hispanic Bar Association of Virginia. “I’m just not certain that it’s going to solve the problem.”

Calderon and others said that many criminal defense lawyers still aren’t well versed in the complex areas of immigration law, particularly what does and doesn’t qualify as a deportable offense. “The truth is immigration consequences are very case-specific and fact-specific,” she said.

Altman’s group has begun training public defenders in Virginia in immigration law, and David Johnson, executive director of the Virginia Indigent Defense Commission, said he has begun advertising for a full-time lawyer “who is continually available to review plea agreements and be a resource” for public defenders. “This is important.”

Maryland’s public defenders have a full-time immigration lawyer, Johnson said. And in New York state, regional centers have been set up with immigration lawyers to serve as advisers in criminal cases, according to Dawn Seibert of the Immigrant Defense Project in New York.

Seibert and others noted that simply telling a defendant, at the end of his case, that his conviction could have consequences is too little, too late, for someone unlikely to demand a last-second delay and legal consult.

Having a judge give a warning “is quick and easy, but it’s not meaningful,” Seibert said. “If the goal is to implement *Padilla*, what states need to do is fund *Padilla* representation” as New York state has.

Tom Jackman is a native of Northern Virginia and has been covering the region for The Post since 1998.