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Padilla Unfulfilled

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I. Introduction

285. Rami came to the United States when he was twelve to escape gang recruitment and severe persecution in his country of origin. He obtained Deferred Action for Childhood Arrivals (DACA) after his asylum application was denied. In 2013, he was arrested for simple possession of marijuana. Three years before Rami's arrest, the United States Supreme Court held in *Padilla v. Kentucky ("Padilla")* that criminal defense attorneys must advise their noncitizen clients of the immigration consequences of a criminal conviction because those defendants have a right to such advice under the Sixth Amendment.[2] Rami's criminal defense attorney should have advised him of the clearly defined criminal bars to DACA and warned him that just two more convictions for most misdemeanors could lead to termination of his DACA.[3] Had Rami been advised of the criminal-immigration consequences of a series of three simple possession marijuana convictions, he may have been DACA-eligible today. Unfortunately, Rami's attorneys never advised him of the immigration consequences of pleading guilty to marijuana possession after

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2 *Padilla v. Kentucky*, 559 U.S. 356 (2010).

3 8 C.F.R. § 245a.1(o).

any of his three arrests. They missed a crucial opportunity to advise and potentially alter his life and immigration course, and importantly, likely violated Rami's Sixth Amendment rights. Given the high legal standards, deadlines to submit claims, the cost, and the lack of legal representation, the reality of obtaining post-conviction relief for ineffective assistance of counsel is unlikely.[4] As a result of his marijuana convictions, Rami was in Immigration and Customs Enforcement (ICE) detention for more than a year, enduring harassment from prison officers, solitary confinement, and the COVID-19 pandemic, while fighting to remain in the U.S. to support his mother and child.

286. The Court recognized the high stakes that noncitizens, such as Rami, face in criminal cases. Acknowledging the broad expansion of deportability grounds in 1996 under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA), the Court observed, "... deportation 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." Further grounding its decision in "prevailing professional norms," the Court found that when the immigration consequences are clear, "counsel must advise her client regarding the risk of deportation." *Padilla* serves as a reminder to criminal defense attorneys of what effective representation requires and the critical role they play in their noncitizen clients' decision-making. For many defense attorneys and public defender offices, *Padilla* appeared to impose an added layer of responsibility, asking them to do more without the benefit of additional resources nor substantive knowledge of immigration law.[5] However, others believe that *Padilla* actually presented an opportunity to obtain more resources and improve criminal defense practice in a way that would enhance the representation of every client.[6]

287. Now, fifteen years since *Padilla* was decided, it is time to take stock of *Padilla*'s implementation and what it has and has not accomplished to inform future advocacy and litigation on behalf of noncitizens caught in the increasing entanglement of criminal and immigration law. This article asserts that *Padilla* has failed to reach across the United States as demonstrated by the lack of in-house immigration units in public defender offices and the ratio of immigration attorneys to criminal defense counsel (including public defenders), among several other indicators. Section II of this article provides an overview of the Court's decision in *Padilla* and the evolving interpretation of its mandate for criminal defense attorneys. Section III provides an overview of the current state of

4 Adina Appelbaum, *Practice Advisory: Post-Conviction Relief in Virginia*, AMICA CTR. 2 (February 27, 2017) (advising that a Writ of Habeas Corpus must be filed within two years of guilty plea and that the petitioner must be in legal custody of Virginia).

5 Maureen A. Sweeney, *Where Do We Go from Padilla v. Kentucky? Thoughts on Implementation and Future Directions*, 45 NEW ENGLAND L.R. 353(2011).

6 McGregor Smyth, *"Collateral" No More: The Practical Imperative for Holistic Defense in a Post-Padilla World: Or, How to Achieve Consistently Better Results for Clients*, 31 ST. LOUIS U. PUB. L. REV. 139, 167 (2011).

Padilla and argues that it has not achieved widespread acceptance. Section IV explores reasons for *Padilla*'s insufficient implementation and discusses the implications of the lack of fulfillment.

II. Background

A. Defense Attorney Obligations Under Padilla

288. Although the Supreme Court in Padilla unequivocally recognized that defense attorneys have a duty to advise their noncitizen clients of immigration consequences, the Court did not instruct how an attorney would meet their duty.[7] For instance, the Court held that "counsel must inform [a] client whether his plea carries a risk of deportation." It then noted, however, that counsel did not have to advise with certainty when the risk of deportation was not obvious. The Court reasoned that defense attorneys could not be expected to have in-depth knowledge of immigration law, but offered that if the consequences are not clear or uncertain, counsel should at least advise that the pending charges "may carry a risk of adverse immigration consequences."[8]

289. In *Padilla*, the Court examined *Strickland v. Washington*, a 1984 SCOTUS case establishing standards for Ineffective Assistance of Counsel claims (IAC). Under *Strickland*, IAC is found when (1) counsel's performance fails to meet reasonable professional standards, and (2) the deficient performance prejudices the client.[9] Ultimately, the Court cited *Strickland* to hold that Mr. Padilla's defense counsel was ineffective such that he incorrectly advised Mr. Padilla that his guilty plea would not lead to deportation, when in fact, it clearly did render him deportable and ineligible for a defense to deportation. The Supreme Court of Kentucky had previously found that Mr. Padilla's counsel's performance was not deficient because it deemed deportation to be a "collateral" issue. The Court's viewpoint aligned with immigrants' advocates who argued that deportation was not a mere "collateral" consequence. The Court failed to distinguish between "collateral" and direct consequences, reasoning that it had never used it to define what "constitutionally 'reasonable professional assistance' required under Strickland."[10]

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7 Malia Brink, *A Gauntlet Thrown: The Transformative Potential of Padilla v. Kentucky*, 39 FORDHAM URB, L. J. 39, 42 (2011); *Padilla v. Kentucky*, 559 U.S. 356, 375(2010).

8 *Padilla v. Kentucky*, 559 U.S. 356, 369, 374-375 (2010).

9 *Strickland v. Washington*, 466 U.S. 668 (1984).

10 *Padilla v. Kentucky*, 559 U.S. 356, 357, 364, 369 (2010).

B. Subsequent Court Decisions Interpreting Defense Attorney Obligations Under Padilla

290. Since *Padilla*, noncitizens have had some opportunity to raise IAC claims in state courts and have obtained a variety of outcomes because of ranging interpretations of *Padilla* and the underlying *Strickland* standard. Whether broad or narrow, lower courts' interpretations of *Padilla* have addressed matters such as the specificity of advice, the extent to which defense counsel must investigate a client's particular immigration situation, when a client is prejudiced by the failure to advise, and the function of judicial warnings.

291. Addressing the issue of specificity of advice, the Ninth Circuit stated, "[a] criminal defendant who faces almost certain deportation is entitled to know more than that it is possible that a guilty plea could lead to removal; he is entitled to know that it is a virtual certainty."[11] Bonilla's defense attorney did not provide any advice, even after Bonilla's wife inquired. Along these lines, in *Commonwealth v. DeJesus*, the Supreme Judicial Court of Massachusetts found that the Sixth Amendment requires defense counsel to provide specific advice regarding the immigration consequences of a conviction in a manner that the defendant can comprehend. The court found that merely stating that the client is "eligible for deportation" is inadequate because a plea to possession with intent to distribute cocaine would lead to a "presumptively mandatory" removal.[12] In this case, the federal immigration statute, the Immigration and Nationality Act (INA), was clear regarding the consequences of the conviction.[13]

292. Contrary to *Bonilla* and *DeJesus*, in *State v. Aduka*, the Supreme Court of Georgia reversed a lower court's habeas grant for Mr. Aduka who claimed that his attorney's advice that he "could be deported" for a counterfeiting conviction with a sentence of 5 years "of confinement to be served entirely on probation," was inadequate advice.[14] Such a conviction, Mr. Aduka argued, was clearly an aggravated felony based on the plain reading of the federal immigration statute.[15] An aggravated felony is a term of art used to classify a long list of offenses that would make a noncitizen deportable and ineligible for a defense to deportation if convicted. The relevant aggravated felony was INA § 101(a)(43)(R): "an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year." The Georgia court disagreed with Mr. Aduka and rested its decision on the INA's definition of a "term of imprisonment." The

11 *United States v. Bonilla*, 637 F.3d 980, 984 (9th Cir. 2011).

12 *Commonwealth v. DeJesus*, 9 N.E.3d 789, 789, 794 (2014).

13 INA § 101(a)(43)(B).

14 *State v. Aduka*, 812 S.E.2d 266, 267–70 (2018).

15 8 USC § 1101(a)(43)(R) (2011).

court noted that because the word "suspended" was not defined in the federal statute, the effect of serving a sentence on "probation" was not clear, and therefore, the attorney could not have reasonably determined, with certainty, that his client's removal would be mandatory.[16]

293. Similarly, in 2015, the Wisconsin Supreme Court in *State v. Ortiz-Mondragon*, held that Mr. Ortiz-Mondragon's counsel was not deficient because the consequences of a Crime Involving Moral Turpitude (CIMT) were not clear. Thus counsel did not need to specify the adverse immigration consequences of his plea to substantial battery, domestic abuse.[17] In 2019, the U.S. District Court for the Eastern District of Wisconsin affirmed the Wisconsin Supreme Court's decision finding that the unspecified advice did not amount to ineffective assistance of counsel in violation of the Sixth Amendment." It found that the duty to advise is required only where the immigration statute clearly and explicitly defines the removal consequence.[18] Also, in *State v. Sanmartin Prado*, the Court of Appeals of Maryland held that *Padilla* doesn't require defense counsel to make "an unequivocal statement that [one] would be deported if convicted."[19] Phrases like "Deportable offense," "possibly deported," and "could be deported" were sufficient to meet the standard.[20]

294. In yet another decision regarding the required nature and scope of advice, in 2021, the Supreme Court of New York State, Second Judicial Department of the Appellate Division, held that an attorney's failure to advise on exclusion or inadmissibility (relevant to eligibility for visas and future admission to the U.S.) is not conduct that falls below the reasonableness standard. Here, the New York court refused to accept that exclusion or inadmissibility was a direct or deportation consequence of pleading guilty.[21] The court narrowly interpreted that advice regarding the risk of deportation is a direct consequence of *Padilla* and that it is the only advice needed to meet the objective standard of reasonableness prong under Strickland.

295. Another ambiguity under *Padilla* is the extent of intake defense counsel must conduct to effectively advise on immigration consequences. Several state court decisions have sought to clarify the obligations of counsel. In *Commonwealth v. Lavrinenko*, the Supreme Judicial Court of Massachusetts found that defense counsel is required to make a "reasonable inquiry" into a defendant's immigration status and must provide advice about the possibility of a conviction barring relief from removal.[22] The court also held

16 *State v. Aduka*, 812 S.E.2d 266, 268 (2018).

17 *State v. Ortiz-Mondragon*, 866 N.W.2d 717, 725 (Wis. 2015).

18 *Ortiz-Mondragon v. Smydon*, No. 15-CV-01412, 2019 WL 330528, 8–10 (2019).

19 *State v. Sanmartin Prado*, 141 A.3d 99, 108 (2016).

20 *State v. Sanmartin Prado*, 141 A.3d 99, 128 (2016).

21 *People v. Terrero*, 198 A.D.3d 930, 932 (N.Y. App. Div. 2d Dep't 2021).

22 *Commonwealth v. Lavrinenko*, 38 N.E.3d 278, 289–290 (2015).

that in the prejudice analysis, a defendant's refugee or asylee status constitutes a special circumstance that is entitled to "particularly substantial weight."[23] In *Zemene v. Clarke*, the Virginia Supreme Court held that Zemene's attorney was ineffective and prejudiced him by not inquiring further about his immigration status and informing him of immigration consequences, despite knowing that he was not a U.S. citizen. The defense attorney "undertook no effort to learn the precise nature of Zemene's immigration status."[24]

296. The question of whether a criminal defendant is prejudiced by not being able to go to trial arose in both *Denisyuk v. State* and *Jae Lee v. U.S.* In *Denisyuk v. State*, the Court of Appeals of Maryland (now the Maryland Supreme Court), stated that "[t]he appropriate determination is not whether Petitioner ultimately would have been convicted following a trial, but rather whether there 'is a reasonable probability that, but for counsel's errors, Petitioner would not have pleaded guilty and would have insisted on going to trial."[25] In *Jae Lee*, Lee's attorney incorrectly advised him that pleading guilty to possession of a controlled substance with intent to distribute would not make him deportable.[26] Lee argued that, but for his counsel's errors, he would not have pleaded guilty and would have gone to trial. The U.S. Supreme Court reversed the Court of Appeal's decision and found that given Lee's interest in avoiding deportation, Lee demonstrated a reasonable probability that he would insist on going to trial. Not having the opportunity to go to trial satisfied the prejudice prong.[27]

297. Lower courts have also cited *Padilla* to support the need for judicial warnings to all defendants who plead guilty. For example, in *People v. Peque*, the New York Court of Appeals found that the court should notify defendants of the possibility of deportation before accepting a defendants' plea.[28] This judicial warning, though well intentioned, has the potential to undermine *Padilla* and claims of ineffective assistance of counsel. In *Swaby*, the court held that although defense counsel's advice was ineffective, the deficient performance did not prejudice the defendant because the court gave its judicial warning.[29] The court still held that the generic warnings during the plea colloquy did not cure defense counsel's deficiency.[30]

23 *Commonwealth v. Lavrinenko*, 38 N.E.3d 278, 294 (2015).

24 *Zemene v. Clarke*, 768 S.E.2d 684, 690 (2015).

25 *Denisyuk v. State*, 30 A.3d 914, 929 (2011).

26 *Lee v. United States*, 582 U.S. 357, 361 (2017).

27 *Lee v. United States*, 582 U.S. 357, 371 (2017).

28 *People v. Peque*, 3 N.E.3d 617, 632 (2013).

29 *Swaby v. United States*, No. CIV. WDQ-15-857, 2015 WL 5038464, 8 (D. Md. Aug. 24, 2015), rev'd and remanded, 855 F.3d 233 (4th Cir. 2017).

30 *United States v. Swaby*, 855 F.3d 233, 240 (4th Cir. 2017).

C. Reactions to Padilla *from the Criminal Defense Bar*

298. When the Court issued its decision in *Padilla*, immigrant advocates rejoiced while some criminal defense attorneys understandably expressed concern over their ability to satisfy the new. It seemed like a daunting task for appointed counsel and defense organizations with little funding and bandwidth, to advise every noncitizen client they encountered. Nonetheless, there were also criminal defense attorneys who believed that others in the defense bar "[were] not going to be scared into doing more." Seen as a tall order for already overburdened defense attorneys, immigration advocates, defense attorneys, scholars and professors began meeting with each other to analyze the decision; discuss the challenges in getting defense attorney "buy-in"; and brainstorm on how to live up to the mandate. In June 2011, such a group gathered for the *Padilla* and the Future of the Defense Function Conference.[31]

299. Many practitioners and scholars saw the decision as "constitutional leverage for promoting institutional change, increasing resources, and improving individual advocacy." However, they understood that *Padilla* could only be successful "if properly internalized." The Bronx Defenders — an institutional public defender office that provides holistic representation to people charged with crimes in Bronx, NY — had already begun to internalize many contours of *Padilla*'s mandate before *Padilla* was decided. In 2011, the Bronx Defenders quantified the benefits of giving immigration plea consults — it found that 87% of the hundreds of immigration consults given in the past year, resulted in positive outcomes in the criminal case. Moreover, as described in Section III of this paper, to some extent, *Padilla* did provide a stepping stone for increased state and city funding for criminal public defense and transformed the daily practice of some defense attorneys and organizations, nationwide.[32]

300. Understandably, some practitioners and scholars were skeptical of *Padilla*'s potential effectiveness in achieving justice. The most common negative responses were about lack of funding for resources to implement *Padilla*; the doubt that an IAC claim would incentivize attorneys to actually comply with *Padilla*'s mandate; defense attorneys having the responsibility to advise; and the limited scope of when to advise with certainty. As an unfunded mandate, practitioners predicted that *Padilla* would have little impact and provides no mechanism for compliance.[33] Law Professor Steven Zeidman wrote in 2012: "[i]f indigent defense attorneys caseloads are not addressed, *Padilla* will be

31 See Joel M. Schumm, *Conference Report: Padilla and the Future of the Defense Function*, 39 Fordham Urb. L. J. 3, 4 (2016).

32 McGregor Smyth, *"Collateral" No More: The Practical Imperative for Holistic Defense in a Post-Padilla World: Or, How to Achieve Consistently Better Results for Clients*, 31 St. Louis U. Pub. L. Rev. 139, 146 (2011).

33 Darryl Brown, *Why Padilla Doesn't Matter (Much)*, 58 UCLA L. Rev. 1393–97 (2011).

consigned to the same as *Gideon* — a lofty but unrealized ideal."[34]

D. Advising on Immigration Consequences, In Practice

301. To some extent both the optimists and skeptics were right about the challenges and opportunities presented by *Padilla*'s mandate. Different responses and models of representation developed among public defender offices across the country in the first few years after *Padilla* was decided. For instance, in California, obligations to advise noncitizens prompted a few county public defender offices to hire in-house immigration attorneys who would provide immigration consequences advice to defense attorneys and clients and in some instances, represent the clients in immigration matters. By 2016, eight public defender offices had an immigration attorney on staff.[35]

302. In New York City, Brooklyn Defender Services (BDS) and Bronx Defenders (BXD) also implemented *Padilla*'s mandate through hiring in-house immigration attorneys. BDS' Immigration Unit began providing *Padilla* advice to both the criminal defense and family defense attorneys.[36] Immigration attorneys at BDS were trained to gather immigration history, criminal history, understand current charges, and several other data points. In some cases, defense attorneys obtained a client's immigration history and shared it in their referral requests, or the *Padilla* attorneys directly interviewed the client. *Padilla* attorneys would also attend arraignments or conduct jail visits to interview clients and were also on-call for evening arraignments. The staff attorneys also provided affirmative immigration application assistance and non-detained immigrant representation, however, most of these processes could not be set in motion if the defense attorney failed to make a referral or communicate with a *Padilla* attorney.

303. In addition to growing and molding a *Padilla*-specific cohort of attorneys, BDS, BXD, and the Legal Aid Society of New York City collaborated with the Vera Institute of Justice to launch the New York Immigrant Family Unity Project (NYIFUP), a universal representation pilot project aimed at providing legal representation for detained immigrants facing deportation in New York.[37] The added attorney positions for immigration units within BDS and BXD and the creation of NYIFUP were possible because of funding from the New York City Council and New York State Assembly.[38]

34 Steven Zeidman, *Padilla v. Kentucky: Sound a Fury, or Transformative Impact*, 39 FORDHAM URB. L. J. 203, 211 (2012).

35 Ingrid Eagly et al., *Restructuring Public Defense After Padilla*, 74 STAN. L. REV. 1, 31 (2022).

36 See Brooklyn Defenders, *Immigration*, BROOKLYN DEFENDERS (last visited July 28, 2026).

37 Nina Siulc, *Evaluation of the New York Immigrant Family Unity Project, Assessing the Impact of Legal Representation on Family and Community Unity*, VERA INST. OF JUST. (Nov. 2017).

38 *New York Immigrant Family Unity Project lays groundwork for constitutional victory*,VERA INST. OF JUST. (Dec. 2015).

304. The Maryland Office of the Public Defender (MOPD), a centralized statewide institution, has employed one to three *Padilla* attorneys to advise approximately four hundred and twenty attorneys in twelve Trial District Offices and a handful of specialized divisions.[39] For the first six years of *Padilla*'s mandate, MOPD had one in-house immigration attorney advising all of its attorneys and clients. In 2016, they added a second immigration attorney to advise on immigration consequences. In addition to providing advice on a case-by-case basis, they conducted *Padilla* trainings and presented at office-wide conferences. To further manage the need for *Padilla* advice, the immigration attorneys also wrote practice advisories for non-complex criminal-immigration consequences and to explain changes in the law. One criminal defense staff attorney in each county volunteered to be an immigration consequences liaison with the immigration unit and a point person for attorneys in their immediate offices when criminal-immigration issues arose in their cases.[40]

305. Drawing on these examples, we see a spectrum of responses to *Padilla* and practices. The reasons for this range will be further addressed below.

III. The Current State of *Padilla*

306. The present-day status of *Padilla* is mixed. There have been several positive outcomes, such as increased funding for PD offices and local and national development of resources for criminal defense attorneys. Its mandate remains unfulfilled. Some of the models described above persist while others have evolved. With certainty, non-citizens facing criminal charges, in certain parts of the country, are better served today by their defense attorneys than before *Padilla*.[41] However, in 2025, defense attorney obligations under *Padilla* are still an afterthought in most of the United States. In what looks to be the first empirical study of *Padilla*'s implementation in public defender offices, Restructuring Public Defense after *Padilla* examined whether California defense attorneys are meeting their Sixth Amendment obligations to noncitizen clients, more than ten years after *Padilla* was decided. The findings of the study and my research regarding other public defender offices and programs around the country confirm that, unfortunately, public defender organizations with immigration units are the exception and not the rule.[42]

307. The majority of states, counties, and municipalities do not have robust criminal-immigration advice programs or public defender offices with such programs. California

39 *2021 Annual Report*, MD. OFF. PUB. DEF. (2021).

40 Based on the author's experience as a former MOPD employee.

41 See Elvia Malagón, *Cook County Program Providing Legal Help for Immigrants Starts Taking Cases*, CHI. SUN TIMES (May 2022).

42 See generally Ingrid Eagly et al., *Restructuring Public Defense After Padilla*, 74 STAN. L. REV. 1 (2022).

is often recognized as a pro-immigrant state, yet even there, noncitizen defendants do not have guarantees of being advised under *Padilla*.[43] Out of fifty-eight counties in California, only sixteen of them had in-house *Padilla* attorneys.[44] Of the sixteen counties, eleven of them had only one *Padilla* expert on staff. Along these lines, over the last six years, the MOPD, has employed one to three *Padilla* attorneys to advise approximately four hundred and twenty attorneys in twelve Trial District Offices and a handful of specialized divisions.[45] Typically, *Padilla* support for panel attorneys in Maryland is outsourced to local immigration attorneys.[46]

308. Dozens of public defender offices appear to rely on criminal-immigration consequence charts, practice advisories, manuals, or training slides written by non-profits, professors, and law school clinics.[47] Nevertheless, offices in Ohio, and many other states have these written resources posted on their webpages. Though undoubtedly a helpful resource, practice advisories are not a comparable substitute for robust criminal-immigration advice programs.

IV. Underlying Causes of Non-Compliance

A. Why is Padilla*'s Mandate Unfulfilled?*

309. The failure to fully implement *Padilla* can be attributed to a range of causes. As a threshold matter, however, *Padilla* seems to be suffering the same fate as other broad Constitutional mandates articulated by the U.S. Supreme Court: the right to counsel as declared in *Gideon v. Wainwright* in 1963.[48] Other reasons worthy of discussion include the absence of systems to incentivize and support attorneys, lack of reporting and transparency, attorney accountability, and the *Padilla* mandate itself. We can also point to insufficient funding as an underlying issue for all of the above.

(a) *Padilla*'s mandate within a broken criminal justice system

310. In 1963, *Gideon v. Wainwright* addressed an access to justice issue grounded in the Sixth Amendment of the U.S. Constitution: the right to defense counsel in a crimi-

43 Based on the author's experience as a former MOPD employee.

44 See Ingrid Eagly et al., *Restructuring Public Defense After Padilla*, 74 Stan. L. Rev. 1, 53 (2022).

45 *2021 Annual Report*, Md. Off. Pub. Def. (2021).

46 Based on the author's experience as a former MOPD employee.

47 See e.g., Kevin Ruser, *The Nebraska Criminal Law Practitioner's Guide to Representing Non-Citizens in State Court Proceedings*, DigitalCommons at Univ. of Nebraska–LincolnDigitalCommons at Univ. of Nebraska–Lincoln, i (ed. 2021).

48 *Gideon v. Wainwright*, 372 U.S. 335 (1963).

nal case.[49] Since 1963, defendants in state criminal cases are promised court-appointed counsel if they cannot afford to hire one to represent them. The Supreme Court reasoned that any poor person facing criminal charges could not have a fair trial without counsel and, therefore, even for non-capital criminal proceedings at the state level, free legal representation was a right that should be protected.[50] Now, almost sixty years later, *Gideon* has not fully achieved the goal of providing access to justice, through the appointment of legal counsel.[51] The result, as most criminal law reform activists would put it, is a broken system.[52] Thus, it must be acknowledged that the aspirations stemming from *Padilla*'s mandate are being realized (or unrealized) within this same broken criminal justice system.

311. The criminal justice system is said to be broken because of a lack of funding and resources. The lack of funding and resources for criminal public defense, which has affected the implementation of Gideon, is similarly a national concern in the context of *Padilla*.[53] The quantity and quality of resources available to public defenders are arguably indicative of how a state manages or delegates the provision of services and what is the source of funding.[54] Workloads are untenable. A study completed in 2023, referenced the National Advisory Commission on Criminal Justice Standards and Goals (NAC) that were set in 1973 and have been in place as the "default maximum" ever since. Those standards allow for an attorney to handle, per year, 150 felonies; 400 misdemeanors; 200 mental health cases; 200 juvenile cases; and 25 appeals.[55] State bar associations, indigent defense commissions, public defender offices and the judiciary rely upon these figures for laws and policies and implement resources accordingly.

(b) Absence of support systems

312. Due to a general lack of resources, criminal defense counsel often don't have the structures and oversight mechanisms needed to incentivize compliance with *Padilla*. For instance, many indigent defense attorneys are not part of state-centralized or institu-

49 *Gideon v. Wainwright*, 372 U.S. 335, 338 (1963).

50 *Gideon v. Wainwright*, 372 U.S. 335, 344–45 (1963).

51 Margaret A. Costello, *Fulfilling the Unfulfilled Promise of Gideon: Litigation as a Viable Strategic Tool*, 99 Iowa L. Rev. 1951, 1953 (2014); Steven Zeidman, *Padilla v. Kentucky: Sound a Fury, or Transformative Impact*, 39 Fordham Urb. L.J. 203, 211 (2012).

52 Eve Brensike Primus, Defense Counsel and Public Defense, in Reforming Criminal Justice: Pretrial and Trial Processes 121, 3 (Erik Luna ed., 2017).

53 See e.g., Margaret A. Costello, *Fulfilling the Unfulfilled Promise of Gideon: Litigation as a Viable Strategic Tool*, 99 Iowa L. Rev. 1951, 1956–57 (2014).

54 David Carroll, *Right to Counsel Services in the 50 States: An Indigent Defense Reference Guide for Policymakers*, In.gov: Sixth Amend. Ctr 100-02 (March 2017).

55 Nicholas M. Pace et al., *National Public Defense Workload Study*, Rand viii (July 2023).

tional public defender organizations.[56] They are often solo practitioners or are part of private for-profit law firms and paid flat fees.[57] Such a public defense structure is not conducive to proper oversight by state or local administrators of public defense. In 2017, the Sixth Amendment Center ("6AC") published a guide on every state's public defense models and concluded that there is a direct correlation between the quality of representation and the level to which states delegate authority to commissions and do not set up a state-entity to oversee the commissions. Ideally, "there needs to be a state-entity that has the authority to evaluate indigent defense services against the parameters for effective representation."[58] The Idaho State Public Defense Commission (ISPDC), created through Idaho legislation, in 2014 is an example of such an state-entity. The law authorized the ISPDC to promulgate standards consistent with the ABA, requires all counties in the state to comply and compel compliance with threat of intervention and withholding of funds.

313. In Oregon, the Oregon Public Defender Services Commission oversees state-wide provision of public defense services through contracts with private not-for-profit law firms, small firms, and individual private attorneys. The contracts include "performance criteria," which if unmet will lead to no contract renewal. The commission has a central office which manages the funding and the day-to-day of the public defense system. Although these examples may not be foolproof, they provide greater structure and accountability.[59]

314. On the other end of the spectrum, as of 2017, there were no state-wide indigent defense oversight commissions in sixteen states (such as Alabama, Florida, California, and Delaware). In other words, the state delegates to counties the decisions on how to meet Sixth Amendment right to counsel. In Arizona, indigent defense funding allocation and organization is left to the counties and there is no statewide oversight of quality of services provided. There is a statewide public defender association that provides training to county offices but there is no requirement to participate. Some counties have a full-time staff of public defenders but others are entirely reliant on private contract attorneys.[60]

315. With this patchwork of public defense in the U.S., it is not surprising that *Padilla*'s mandate has failed to filter through as a criminal defense practice routine and priority.

56 *North Carolina General Assembly Recognizes 50 Years of Public Defense in North Carolina*, N. C. JUD. BRANCH (Sept. 2020).

57 See Ingrid Eagly et al., *Restructuring Public Defense After Padilla*, 74 STAN. L. REV. 1, 27–28 (2022).

58 David Carroll, *Right to Counsel Services in the 50 States: An Indigent Defense Reference Guide for Policymakers*, IN.GOV: SIXTH AMEND. CTR 75 (March 2017).

59 David Carroll, *Right to Counsel Services in the 50 States: An Indigent Defense Reference Guide for Policymakers*, IN.GOV: SIXTH AMEND. CTR 75 (March 2017).

60 David Carroll, *Right to Counsel Services in the 50 States: An Indigent Defense Reference Guide for Policymakers*, IN.GOV: SIXTH AMEND. CTR 75 (March 2017).

However, not all patchwork systems fail to make the effort to fulfill *Padilla*'s mandate. The Committee for Public Counsel Services (CPCS) in Massachusetts provides a noteworthy structure where it manages both an assigned counsel model and an institutional public defender model.[61] CPCS requires attorneys seeking to work as appointed counsel to be certified.[62] As part of seeking certification, they must sign up for trainings and review the "Assigned Counsel Manual." The manual mentions immigration consequences six times, in several sections of the manual, specifically, under the Performance Standards chapter.[63] CPCS has an established immigration division that is also a resource to assigned counsel.[64] In contrast, though the Oregon public defender commission exists and functions via contracts that intend to uphold Sixth Amendment standards, the Contract for Public Defense Services does not contain any language relating to immigration consequences or even collateral consequences.[65] The commission's own standards and policies also lack reference to immigration consequences.[66] There is an immigration referral form, but it is in the Appellate division section of the state website and the referral is made to an outside organization, the Immigrant Rights Project at the Oregon Justice Resource Center.[67] Interestingly, the Oregon State Bar Association mentions immigration consequences in a 2014 best practices report.[68]

316. These findings indicate that compliance with *Padilla* is not priority for states, counties, and even commissions. Referral for immigration advice should be a requirement under the contract and it should be front and center on public defense office or commission webpages. *Padilla* advice should not be a question for concern at only the appellate phase of a case. With rare exceptions like CPCS, these findings indicate that compliance with *Padilla* is not priority for states, counties, and even commissions.

61 *Who We Are and How We Are Structured*, CPCS (last visited Sept. 12, 2025).

62 See Joel M. Schumm, *Conference Report: Padilla and the Future of the Defense Function*, 39 FORDHAM URB. L. J 3, 6-7 (2016).

63 See *Assigned Counsel Manual: Policies and Procedures*, COMM. PUB. COUNS. SERV. 4.1 (last visited Sept. 12, 2025).

64 *Immigration Impact Unit Homepage: What We Do*, COMM. PUB. COUNS. SERV. (last visited Sept. 12, 2025).

65 See *Current Draft: Oregon Public Defense Commission Contract for Public Defense Services*, OREGON.GOV (last visited Sept. 12, 2025).

66 *Oregon State Bar Policies*, OR. STATE BAR (last visited April 18, 2025).

67 *Immigration Referral*, Or. Pub. Def. Comm'n (last visited Sept. 12, 2025); *Immigrant Rights Project*, OR. JUST. RES. CTR. (last visited Sept. 12, 2025).

68 *Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases*, OR. STATE BAR 9-11, 30 (2014).

(c) Transparency and Reporting

317. There is a lack of transparency and reporting on cases that require *Padilla* advice, such as quantification of clients and cases referred to *Padilla* attorneys. For instance, the MOPD does not publish in their annual reports how many cases are referred for immigration advice or flagged as cases of non-citizens, despite the existence of an Immigration Division.[69] In its latest annual report, MOPD does not address the Immigration Division's workload; it provides data for the number of current open cases, their attorneys' workloads in Circuit, District and Juvenile Courts, and the workloads of other specialized divisions, administrative assistants, and social workers.[70] Improving transparency and reporting of cases that require criminal-immigration advice can give entities, like public defense commissions or bar associations, the data needed to advocate for legislation and public and private funding and to assess internal policies and structures for dealing with their clients' needs.[71]

(d) Attorney Accountability

318. If defense counsel is not held accountable for failing to comply with their constitutional duties, then the defense bar has no incentive to care. Thus, another likely reason for limited implementation of *Padilla*'s mandate is accountability. In part, the lack of accountability has to do with attitudes towards noncitizens. Sadly, some lawyers view noncitizens with indifference. An attorney overheard an immigration attorney saying: "I've never had to worry about being sued because my screwups get deported."[72] This statement reveals a flagrant disregard of professional responsibility and an attitude of indifference towards noncitizen clients. My hope is that this attorney does not represent the majority, but one attorney is enough to draw concern that others share the sentiment and that they don't fear discipline or sanction for "screwing up" just because their clients are noncitizens.

319. Unfortunately, these attitudes fit well in a culture of judicial efficiency that leads to less rigorous oversight. The criminal justice system's efficiency goals do not lend to holding attorneys accountable for their ethical indiscretions. In *Strickland v. Washington*, the Supreme Court noted that "[c]ourts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result."[73] This is a "floodgates" fear argument that favors judicial

69 See e.g. *2021 Annual Report*, MD. OFF. PUB. DEF. (2021).

70 *2023 Annual Report*, MD. OFF. PUB. DEF. (2023).

71 See *Who's Funding Policy Advocacy for Immigration Reform and Immigrant Rights?*, HAAS JR. (June 24, 2026).

72 G. M. Filisko, *Hot Zone: Immigration Law Raises a Unique Mix of Ethics Issues for Lawyers*, 98 ABA J. 22 (2012).

73 *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

efficiency over justice. It is a judicial concern that persists. One scholar has argued that the judiciary has interfered with *Gideon v. Wainwright*'s promise "to promote our adversarial system of constitutional criminal procedure" by using *Gideon* itself to restrict the"adversariness promised by the Sixth Amendment." As discussed above, the Sixth Amendment is central to *Padilla v. Kentucky*'s holding. Thus, if a noncitizen asserts that their attorney violated their fundamental right to be advised on immigration consequences, a court might apply a Strickland standard in the way it has done with other claims of ineffective assistance of counsel — with less bite.[74]

320. Moreover, pursuing post-conviction relief is generally difficult for a noncitizen who is in detained deportation proceedings or was removed to another country by the government because of diminished access to legal representation. Often, the relief comes too late, as it did for a young man in Indiana who lost his DACA status and obtained vacatur of his conviction after he was deported.[75] As such, raising claims of IAC from abroad is less likely and leaves the issue of IAC unaddressed.

V. The Implications of an Unfulfilled Mandate

321. A core implication of *Padilla* not being fulfilled is decreased access to justice for non-citizens. Specifically, upon closer examination of the current state of *Padilla*'s implementation, implications include acute geographic disparities, compounding disparities in immigration adjudication, and diminished attorney accountability for failing to properly advise under *Padilla*.

A. Geographic Disparities

322. There is a geographic disparity of accessibility to quality legal representation for noncitizens facing criminal charges that can be attributed to the unfulfilled *Padilla* mandate. The geographic disparity is typically between urban and rural areas. Legal resources are often concentrated in urban areas, which makes it a challenge for rural, low-income residents to have access to legal services and information.[76] The studies and legal scholarship on access to legal services in rural areas is growing and pronouncing that the situation is dire. There are demands for solutions that fit the needs of rural communities. A common problem is rural lawyer attrition and the lack of replacements.

74 Pamela R. Metzgar, *Fear of Adversariness: Using Gideon to Restrict Defendants' Invocation of Adversary Procedures* 122 Yale. L.J. 2550, 2552, 2570 (2013).

75 Thea Johnson & Emily Arvizu, *Proving Prejudice after Lee v. United States: Ineffective Assistance of Counsel in the Crimmigration Context*, 25 Harv. Latin Am. L. Rev. 11, 12–14 (2022).

76 Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 Harv. L. & Pol'y Rev. 15, 17–23 (2018).

Also, access to computers, internet, and reliable cell phone service or data access exacerbate the disparities. Based on empirical evidence, the non-citizen population is growing in rural areas.[77]

323. Foundations, bar associations, and law schools have collaborated to help meet the need for legal resources in rural areas. For example, in 2017, the University of Maine Law School launched the Rural Law Fellowship to pair students with rural lawyers to expose them to rural legal practice and encourage them to practice in rural areas post-graduation.[78] Also in Maine, the Immigrant Legal Advocacy Project (ILAP) surveyed several areas of the state to assess the social and legal needs of immigrants. Through its Rural Maine Project, ILAP is working to give immigrants access to services through direct and virtual outreach initiatives.[79] Another example is The Immigration Law Clinic at The Edward P. Swyer Justice Center at Albany Law School which also aims to provide legal services to rural areas surrounding the city of Albany, New York.[80]

324. While such initiatives are laudable, most immigrants living in rural areas face formidable obstacles to securing adequate criminal defense representation. Add to that, the need for *Padilla* advice, language interpretation, and appellate counsel for IAC claims further complicates an immigrant's ability to obtain quality legal services.

325. In an ideal practice, public defenders in rural areas would have a systematic approach to *Padilla* advising and regular access to legal research tools, trainings (on in and out of state criminal law) and reliable professional networks, given the complex demands of a criminal-immigration analysis. This ideal practice is possible, and it exists. However, it currently exists only in public defender offices in cities like San Francisco, Los Angeles, and New York City. For instance, Brooklyn Defender Services (BDS), is one of two public defender offices in Brooklyn, New York that has the benefit of existing in a major metropolitan area with multiple sources of funding criminal and immigration legal services.[81] BDS is better poised to provide a noncitizen with thorough criminal-immigration consequences screening because it has a staff of about eleven immigration attorneys whose primary task is to screen for, analyze, and advise on criminal-immigration consequences. It is also able to meet many language needs by employing several Spanish-language proficient attorneys and staff.[82]

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77 See Michele Statz et. al., *"They Have Access, But They Didn't Get Justice": Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 28 GEO. J. ON POVERTY L. & POL'Y 321, 321, 326–27, 330-31(2021).

78 *Maine Law's Rural Lawyer Project Awarded Three-Year Grant from the Betterment Fund*, UNIV. ME. SCH. L. (Oct. 22, 2019).

79 *ILAP's Impact: Rural Maine*, ILAP ME. (last visited Sept. 14, 2025).

80 *Immigration Law Clinic*, ALB. L. (last visited Sept. 14, 2025).

81 *New York Immigrant Family Unity Project Lays Groundwork for Constitutional Victory*,VERA INST. OF JUST. (Dec. 2015).

82 Based on the author's experience as a former BDS employee.

326. With respect to the complexity of advice, *Padilla* attorneys often consult with each other and other criminal and immigration attorneys when analyzing state statutes in and outside of their usual jurisdiction of practice. For instance, some clients may have prior convictions or pending cases in other states. It would, arguably, be ineffective and negligent for a *Padilla* attorney to not analyze the consequences of prior or pending charges. Immigration laws, particularly criminal-based deportability grounds, present layers of analyses and are sometimes triggered by the aggregation of multiple criminal convictions and sentencing lengths.[83] Returning to Rami's situation described above, the accumulation of three convictions led to his denial of DACA. Thus, the attorney advising their client on immigration consequences needs time to research the impacts of prior offenses and those pending in and out of their jurisdiction. The attorney should, ideally, consult with practitioners in the other jurisdiction to understand the greater consequences. Moreover, the quality of *Padilla* advice depends on access to resources, such as professional networks, regular trainings, and access to technology.

327. Given these complexities, it is likely that an under-resourced rural pool of defense attorneys cannot meet these needs. The empirical study of *Padilla*'s implementation in California reveals that the state's small and rural counties lack systems to adequately deliver *Padilla* advice. For instance, the San Luis Obispo County public defender office — a "medium" "contract" public defender office located in a rural coastal area of California — does not have an in-house *Padilla* attorney or a contract with outside immigration counsel or legal resource organizations, such as Immigrant Legal Resource Center (ILRC), to meet their obligations to noncitizen clients. Rather, the office appears to do consultations with an "internal public defender." Another rural county, Calaveras, has contract arrangements with attorneys for public defense and have no known system to comply with *Padilla*. This set-up is inadequate and exemplifies how the typical overarching problem of little-to-no legal resources in rural locations leads to non-compliance with *Padilla*'s mandate. [84]

B. Compounding Disparities in Immigration Adjudication and Enforcement

328. The above geographic disparities are made worse by geographic disparities in the immigration adjudication and enforcement system. Immigrant advocacy organizations are increasingly studying and revealing geographic disparities in immigration adjudications.[85] First, the geographic disparities in *Padilla*'s implementation map onto similar disparities in immigration court adjudication. One such jurisdiction is North Carolina, where the Office of Indigent Defense Services (IDS) contracts with just one immigration

83 INA § 212(a)(2)(B).

84 Ingrid Eagly et al., *Restructuring Public Defense After Padilla*, 74 Stan. L. Rev. 1, 31 (2022).

85 *American Immigration Council v. U.S. Customs and Border Protection et. al.*, No. 1:19-cv-02965 (D.D.C. Oct. 2, 2019).

attorney.[86] Yet, in 2020, the North Carolina public defender offices, overseen by IDS, employed around 275 assistant public defenders who cover only a third of the indigent cases in the state.[87] All other cases are appointed to private lawyers. The noncitizen criminal defendants in North Carolina, who are likely receiving suboptimal representation, are being funneled into the Charlotte Immigration Court, which had a grant rate of just 38.4% in FY 2022. Indeed, except for FY 2021, the Charlotte immigration court has consistently had an under-50% grant rate since 2009.[88]

329. In contrast to North Carolina, in Washington State, the Office of Public Defense contracts with the Washington Defender Association (WDA) Immigration Project Resource Attorneys to provide immigration consultations to any attorney state-wide. WDA's website lists a team of four immigration resource attorneys and one immigration resource specialist. They provide individual case consultations, technical assistance and trainings, and collaborate with community stakeholders.[89] After passing through the Washington Courts with the support of this team, noncitizens may find themselves before the immigration courts in Washington (Seattle & Tacoma) which had a combined grant rate of 61.8 % in FY 2022.[90] These courts have had an upward trend of grant rate since 1998. In short, those jurisdictions with the strongest *Padilla* implementation tend to have the most noncitizen-friendly immigration courts, and vice versa.

330. This "double whammy" of inadequate *Padilla* compliance and a hostile immigration court environment affects many vulnerable groups. Asylum seekers, a particularly vulnerable group, are subject to a wide variation of application grants depending on the locations of immigration courts.[91] Another vulnerable group of noncitizens are unaccompanied children (UAC).[92] As UACs, eligibility for Special Immigrant Juvenile Status (SIJS) will depend on where they live.[93] As state institutions following state laws, family courts will only have jurisdiction if the UAC in question falls within the state's definition

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86 *Immigration Consultations*, OFF. INDIGENT DEF. SERV. (last visited Sept. 14, 2025).

87 *North Carolina General Assembly Recognizes 50 Years of Public Defense in North Carolina*, N. C. JUD. BRANCH (Sept. 2020).

88 *Outcomes of Deportation Proceedings in Immigration Court by Nationality, State, Court, Hearing, Location, and Type of Charge*, TRAC REPORTS, INC. (Jan. 2023).

89 *About WDA's Immigration Project*, WASH. DEF. ASS'N (last visited Sept. 14, 2025).

90 *Outcomes of Deportation Proceedings in Immigration Court by Nationality, State, Court, Hearing, Location, and Type of Charge*, TRAC REPORTS, INC. (Jan. 2023).

91 See generally, Jaya Ramji-Nogales et. al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007) (noting country of nationality, representation by attorneys, a judge's gender, and more as additional factors).

92 Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*,46 COLUM. HUM. RTS. L. REV. 266 (2014); Jaya Ramji-Nogales et. al., *Refugee Roulette: Disparities in Asylum Adjudication,* 60 STAN. L. REV. 295 (2007).

93 INA § 101(A)(27)(J).

of a child.[94] For instance, UACs in Maryland (MD) are allowed to seek special findings in Maryland Courts until the age of twenty-one; until recently UACs in Washington, D.C. could only do so until the age of eighteen.[95]

331. Moreover, the availability of adequate *Padilla* representation tends to coincide with jurisdictional policies that insulate noncitizens from apprehension by ICE – that is, with "sanctuary" policies. For example, in 2014, New York City Council passed a new detainer law further limiting when the New York Police Department (NYPD) and New York City Department of Corrections (DOC) could honor ICE detainers for people in their custody.[96] As noted above, most public defender offices in NYC have more than one in-house *Padilla* attorney, thus, it was feasible and expected of *Padilla* attorneys to add this to their advice. Conversely, jurisdictions that are hostile to immigrants and actively cooperate with ICE tend to also have a weaker showing with respect to *Padilla*'s implementation.

C. Attorney Accountability and Ethics Concerns

332. It is difficult to hold attorneys accountable if their clients are deported.

333. As explained in the sections above, noncitizens navigating the criminal and immigration legal systems are vulnerable to compounding disparities in access to justice by virtue of their noncitizen status. In the most obvious way, noncitizens are not afforded justice if they receive ineffective assistance of counsel in the instant case, from either or both their criminal defense and immigration attorneys. Ineffective assistance in a criminal case almost certainly leads to record of criminal conviction and immigration consequences which lead to deportation.

334. A non-citizen's access to justice is further compromised when they are physically removed from the U.S. Physical removal from the U.S. leaves many deported migrants with limited recourse for legal remedies and the ability to exercise their rights. For instance, if they had the misfortune of receiving ineffective assistance of counsel from their immigration attorneys, filing a bar complaint, and a *Matter of Lozada* claim,[97] will be difficult to do from abroad and if unrepresented. These physical and procedural obstacles create an environment or culture of impunity.[98] There is little consequence to the ineffective immigration attorney. Now, add the defense attorney who fails to advise under *Padilla*'s mandate and is not held accountable.

94 See *State-by-State Age-Out Database*, PROJECT LIFELINE (last visited Sept. 14, 2025).

95 MD CODE, FAMILY LAW § 1-201(A); DC CODE § 16–914(A-3)(2) (2022).

96 NYC ADMINISTRATIVE CODE § 9-131.

97 *Matter of Lozada,* 19 I&N Dec. 637 (BIA 1988).

98 G. M. Filisko, *Hot Zone: Immigration Law Raises a Unique Mix of Ethics Issues for Lawyers*, ABA J. (Mar. 2012).

335. As explained above, most public defense systems are structured in a way that do not provide sufficient oversight and accountability of appointed attorneys. Private attorneys make up most or half of appointed attorneys in most public defense systems. They are not accountable to an immediate supervisor or an institutional mission to provide zealous legal representation, such as in institutional public defender offices. As noted above, in Massachusetts, the Committee for Public Counsel Services (CPCS) explicitly state in their manuals that private appointed counsel to consider immigration consequences. Although, attorneys are governed by ethics rules and sworn to follow those rules before being admitted to practice in a state or jurisdiction, not all of the state's rules list immigration consequences or provide support systems such as in Massachusetts.

336. Some practitioners and scholars predicted that *Padilla* was not enough to compel defense attorneys to give any or even adequate *Padilla* advice. Some point to SCOTUS' "reasonable performance" standard set in Strickland v. Washington, as too "malleable" to expect any meaningful recourse for IAC claims based on *Padilla*.[99]

VI. Conclusion

337. Understanding the implications of not fulfilling *Padilla*'s mandate is crucial for improving noncitizens' access to justice. Though few states, cities, and municipalities have answered the call of *Padilla*'s mandate soon after March 2010, the ones that did respond used *Padilla*'s mandate as the impetus for the creation and expansion of immigration units within public defender offices. The models in those offices are slowly but surely reaching other public defender offices. However, these models are particular to institutional public defender offices in cities. Recognizing the geographic disparities of *Padilla*'s implementation will help develop future initiatives that will cater to noncitizens and defense attorneys both in urban and rural areas. In order to develop the initiatives, there should be surveys conducted, like ILAP's Rural Maine Project survey and the survey of *Padilla*'s implementation in California public defender officers. Such a survey could help identify the compounding geographic disparities in immigration adjudications. The data from those surveys can be used to pursue legislative advocacy and litigation. Finally, diminished accountability for failing to properly advise under *Padilla* should be seen as an affront to a defendant's constitutional rights.

338. There must be greater demand for accountability and oversight across all models of public defense. *Padilla* is a reminder that achieving quality legal representation is a work in progress. There is still hope for *Padilla*'s mandate.

99 Steven Zeidman, *Padilla v. Kentucky: Sound a Fury, or Transformative Impact*, 39 FORDHAM URB. L. J. 203 (2012).