

08-651 PADILLA V. KENTUCKY

DECISION BELOW: 253 S.W.3d 482

LOWER COURT CASE NUMBER: 2006-SC-000321-DG

QUESTION PRESENTED:

Petitioner, who has lived in this country for nearly 40 years and served in the United States Army, is a legal permanent resident of this country, not a citizen. In 2001 Petitioner was indicted for trafficking in marijuana - an offense designated as an "aggravated felony" under the Immigration and Naturalization Act (INA). Prior to entering a plea of guilty to that offense, Petitioner was incorrectly advised by his counsel that the plea would not affect his immigration status. Unfortunately, because the offense was an aggravated felony, Petitioner's deportation is mandatory. Upon discovery of this fact, Petitioner sought post conviction relief in Kentucky's state courts arguing that his attorney had improperly advised him. The Supreme Court of Kentucky denied post conviction relief holding the Petitioner was not entitled to accurate advice from his attorney on immigration consequences because he had no Sixth Amendment right to counsel in that proceeding. Petitioner now seeks certiorari to review the following questions:

1. Whether the mandatory deportation consequences that stem from a plea to trafficking in marijuana, an "aggravated felony" under the INA, is a "collateral consequence" of a criminal conviction which relieves counsel from any affirmative duty to investigate and advise; and
2. Assuming immigration consequences are "collateral", whether counsel's gross misadvice as to the collateral consequence of deportation can constitute a ground for setting aside a guilty plea which was induced by that faulty advice.

CERT. GRANTED 2/23/2009