



Defending the Rights of Immigrants: the Power of *Padilla* is Tied to the Strength of Public Defense

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Prior to becoming a public defender, I understood that the immigration consequences of a noncitizen's interaction with the criminal justice system were unjustly harsh. However, I really didn't fully understand that "crim-imm" melds two, deeply flawed systems into a national web of oppression and control. As immigration lawyers, we know all too well that the immigration system is broken. However, it is important we also recognize that the criminal justice system is in crisis.

A growing body of evidence shows that law enforcement reserves its most aggressive enforcement for the poor and people of color. This disparity is the civil rights issue of our day. Michael Brown, Eric Garner, Walter Scott, and Freddie Gray are scratched into our national conscience. We, as immigration lawyers, have to recognize that immigrants are a target of flawed, criminal enforcement policies.

The country is talking about bad police tactics – now is the time to tell the story of immigrants who suffer from police brutality. Last month, I worked with a Liberian client who went with her sister to get their makeup done for a wedding. My client went to add money to the meter. A cop stopped her about the car. The car belonged to the client's sister and the client had the sister's purse with the car's keys and the sister's id. The client was accused of giving the officer a false name. She was arrested and thrown into a police van to transport to the jail for identification. The cop didn't take time to strap my client. The van took off and my client was thrown about, and by the time she arrived at the jail, my client's neck was broken.

The country is talking about overly harsh drug penalties – now is the time to tell the story of refugee clients who are struggling to heal. Daily I work with refugees and asylees, who are charged with a controlled substance offense. Repeatedly, clients have told me that they are using to quiet their mind. They struggle with flashbacks, anxiety, and forgetfulness. Some cannot sleep because of nightmares. One Ethiopian client I met in jail sat at the small table in the holding area where he told me his story as he tried to cradle his head in his hands. At the conclusion, tears trickled down his face as he said, "it just hurts so bad." Deporting someone who is using to self-medicate the untreated trauma that is a result of the very persecution that led them to flee their home and obtain protection in a new land - is a cruel and unjustly harsh penalty.

The country is talking about racial disparity in the enforcement of criminal laws – now is the time to tell the story of Hispanic drivers who are profiled for driving violations during which they risk criminal charges, such as false info, obstruction, or DUI, which land them in jail and result in ICE notification. I worked with one young couple who pulled into a Chinese Restaurant parking lot to pick up some food on the way home from Children’s Hospital. Their infant daughter had just had open heart surgery. A cop standing in the parking lot, watched as my client exited his car. The cop stopped my client to ask for a driver’s license, and when he didn’t have one or a state ID, he was taken to jail for identification and ICE was called.

These oppressive, and sometimes illegal, tactics violate the civil rights of immigrants. Unfortunately, they are not the only crisis within the criminal justice system that immigrant defendants face.

A crisis in criminal law that isn’t often talked about is the state of public defense. While we must advocate against the melding of the criminal and immigration systems, we must also realize that as long as crim-imm is in place, public defenders will be the front line of defense against a non-citizen’s removal from the U.S. The power of *Padilla* is inherently tied to the strength of public defense.

I work with an amazing group of individuals who day in and day out fight for their clients. We have had some heartwarming successes as well as heartbreaking losses.

The Liberian client? False info charge dismissed.

We work hard to pursue options that avoid deportability for a controlled substance conviction - a refugee who recently completed an intensive program in mental health court, a specialty court that provides some flexibility on charge resolution, said that he hadn’t thought that he would ever be able to respect himself. He thanked the court for allowing him to live like a man.

The young father stopped in the Chinese Restaurant? My colleagues on the misdemeanor team noticed a spike in such arrests. We met on weekends to run databases to identify the arresting officers, the people stopped, and develop strategies to challenge the stops. It wasn’t long before the worst officer was taken off the beat. Lindquist and Venum, a local firm, agreed to explore the civil rights issues on a pro bono basis. That work became part of the ACLU’s recent report *Picking Up the Pieces: Policing in America – A Minneapolis Case Study*.

I am proud and honored to be part of an office that daily fights for the rights of immigrant defendants and I am thankful for NIPNLG’s support of our work. When *Padilla* came out, NIPNLG conducted a training that my boss Mary Moriarty and I attended. That training was pivotal. Mary returned from it with a blue print of our program. It is a team

base approach – I work alongside each lawyer in the office in our defense of noncitizens. In addition to meeting the core of *Padilla*, Mary used info from NIPNLG’s training to address systemic issues. She successfully advocated with the Court to keep immigration questions off the record, thus protecting a defendant’s rights. She’s risked going to jail for contempt of court over a judge’s refusal to provide a defendant a translator, and she convinced the Sheriff that Joe Arpaio’s pink shorts and slippers had no place hanging in the jail’s holding area.

While I am thankful for NIPNLG’s support, and proud of my amazing colleagues at the Hennepin County PDs, it is important to note that we struggle with huge caseloads and the compelling needs of clients. Meeting the needs of immigrant defendants would be a daunting task even if my office were fully staffed and funded. We are not.

Nationwide public defense is notoriously underfunded. In preparing these remarks, I could not identify a single state PD system that has the resources necessary to meet the ABA’s guidelines. On May 19, 2015, the National Association for Public Defense wrote to Sens. Grassley and Leahy about the crisis – a few of the statistics reported – in the City of St. Louis, Missouri, there are no lawyers provided for 70% of persons charged with misdemeanors. In Kentucky, approx. 68% of the people charged with misdemeanor violations are unrepresented and either engage in plea agreements with the prosecutor before waiving their right to counsel, or enter a naked plea to the court unaware of the consequences. As immigration lawyers, we know that misdemeanors can have devastating immigration consequences which include banishment from home, family, and - as the Supreme Court has recognized - all that makes life worth living.

The 6th amendment right to counsel, including the right to competent immigration advice, is denied when legislatures refuse to adequately fund public defense. The denial of right to counsel means a defendant is stripped of the opportunity to challenge a stop, negotiate for a better charge, or make a categorical argument. Rights are meaningless if they are unknown and unexercised. Daily the civil rights of immigrants are curbed or violated because of the crisis in public defense.

My home is Minneapolis, the place where Hubert Humphrey launched his fight for civil rights. Over the years, I’ve heard stories about him from his colleagues and family. Repeatedly folks have said that when they complained about a rights violation, Mr. Humphrey’s response was “what are YOU going to do about it?” I know what I am going to do to ensure the rights of immigrant defendants: I am going to give voice to my clients’ stories, and I am going to continue to support public defense and the National Immigration Project of the National Lawyers Guild. I encourage you to do so also.

Now is the time for us to emerge from the shadows of crim-imm and walk forthrightly into the bright sunshine of human rights.