

STATE OF NEW YORK
COUNTY COURT

COUNTY OF _____

THE PEOPLE OF THE STATE OF NEW
YORK

Attorney Affirmation of
DANIEL E. JACKSON

-against-

[DEFENDANT],

Ind. No. _____

Index No: _____

Defendant.

I, Daniel E. Jackson, Esq., an attorney admitted to the practice of law before the courts of the State of New York, and not a party to the above-entitled cause, affirm the following to be true under the penalties of perjury pursuant to CPLR 2106:

1. I am an Immigration Staff Attorney with the Erie County Bar Association's Volunteer Lawyers Project ("VLP"). In this position, I direct the Western New York Regional Immigration Assistance Center ("RIAC").
2. The RIAC is funded by the New York State Office of Indigent Legal Services to provide expert advice and consultations on the immigration consequences of criminal cases for all mandated providers in Western New York. These are commonly referred to as 'Padilla advisals' after the eponymous case, *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010).
3. VLP also acts as the public defender of the Batavia Immigration Court through the New York Immigrant Family Unity Project ("NYIFUP"). Through NYIFUP, my colleague, Grace Zaiman, Esq. represents Mr. [DEFENDANT] in immigration removal proceedings.
4. As part of my work for the RIAC, I regularly review criminal convictions for NYIFUP Immigration clients, analyzing their impact on individuals' immigration status. In the case of Mr. [DEFENDANT], I had cause to review the above-captioned criminal conviction.
5. Having reviewed the certificate of conviction in the above-captioned case, it was immediately apparent that:

- a. it constituted an aggravated felony in immigration law under 8 U.S.C. § 1101(a)(43)(F); and
 - b. if Mr. [DEFENDANT] had been convicted of a different crime – or sentenced to just *24 fewer hours of incarceration* – not only would it have avoided the aggravated felony designation, but he would not have been deportable at all.
6. In some cases, the immigration consequences of a conviction are not clear; there may be some ambiguity in the law, or a particular penal law provision has not directly been ruled on by an immigration court. This is *not* one of those cases: Mr. [DEFENDANT]’s conviction, coupled with 365 days of incarceration constitutes an aggravated felony on the face of the statute (a “a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment is at least one year”). There is no ambiguity in this case.
7. As such, it is my opinion that in order to provide accurate and detailed representation to Mr. [DEFENDANT], criminal defense counsel should have:
 - a. Advised Mr. [DEFENDANT] in very *very* succinct terms that this conviction is an aggravated felony.
 - b. Advised Mr. [DEFENDANT] that sustaining an aggravated felony would result in almost guaranteed deportation from the United States.
 - c. Made a plea offer to try and avoid a conviction which would constitute an aggravated felony
 - d. Advocated in the strongest terms to the court to reduce sentence by even one day to avoid the designation of an aggravated felony.
 - e. In the alternative, obtained informed consent to take a plea to a known aggravated felony;
8. In my opinion, ineffective assistance was evident in the record itself, through a failure to advocate for 364 days instead of 365 days.
9. When faced with a possible plea to Assault in the 2nd Degree, sub section 1, there are a number of similar alternatives which may have had drastically different immigration consequences; but may not have made much difference in criminal law, including but not limited to:

- a. Criminal Trespass in the First Degree, contrary to NYPL § 140.17 (D Felony)
 - b. Attempted Assault in the 2nd Degree, sub 4, contrary to NYPL § 110-120.05 (E Felony)
 - c. The existing charge with 364 day sentence instead of the agreed 365 days.
10. I can confirm that at the time this plea was taken, the statewide network of RIACs did not exist. As a result, mandated providers did not have access to expert advice on the immigration consequences of criminal cases. It is clear that this is the reason Mr. [ORIGINAL ATTORNEY]'s otherwise excellent representation of Mr. [DEFENDANT] missed this very important aspect in the case. As a result, I believe that the representation unfortunately fell below the standard required, namely to provide detailed, accurate advice on immigration consequences.

Dated: 03/18/19

Daniel E. Jackson
ECBA Volunteer Lawyers Project, Inc.
438 Main Street, Floor 7
Buffalo, NY 14202

Tel: 716-847-0662
Fax: 716-847-0307