

FEDERAL DISTRICT COURT

***Almazo v Decker*, 11/13/18 – HABE JURISDICTION / DISTRICT OF CONFINEMENT**

The petitioner filed a habeas corpus petition in NY's Southern District against the ICE Field Office Director and other respondents to challenge his detention at a Correction Facility in Kearny, New Jersey. The respondents' application to transfer the case to the District of New Jersey was granted. Outside of the immigration context, in habeas corpus petitions challenging present physical confinement, jurisdiction lies in the district of confinement. The *Padilla* court reserved on the question of whether these principles apply when the petitioner is an alien pending deportation. The U.S. Supreme Court and Second Circuit have not addressed this issue. However, many District Courts have found that jurisdiction lies in the district of confinement. Such approach was adopted here.

***Roy v USA*, 11/13/18 – INEFFECTIVE ASSISTANCE / ONE-YEAR SENTENCE**

The non-citizen petitioner entered the U.S. from Bangladesh in 2008 with a diversity visa. In 2016, he was charged with certain crimes and pleaded guilty to conspiracy and theft of government funds. Because of his conviction and sentence, he was subject to mandatory removal. He filed a habeas corpus petition alleging ineffective assistance. NY's Southern District held that effective counsel would have accounted for the possibility that the crimes might be theft offenses; advised the Court that the petitioner could be mandatorily deportable if given a one-year sentence; and requested a one-day reduction in home confinement. But for trial counsel's ineffectiveness, the petitioner would have received a one-day shorter sentence and might not be subject to mandatory removal. The sentence was vacated; the defendant would be resentenced. Labe Richman represented the appellant.

APPELLATE DIVISION

***People ex rel. Wells v DeMarco*, 11/4/18 – NY OFFICERS / NO IMMIGRATION ARRESTS**

New York law does not permit state and local law enforcement officers to effectuate civil immigration arrests, the **Second Department** held. The court thus rejected the Suffolk County Sheriff's policy of keeping inmates who are subjects of ICE detention or deportation orders for up to 48 hours after they would normally have been released. ICE warrants and detainers do not fall within CPL definitions of warrants, which do not apply to immigration violations. Since such warrants and detainers are not issued by courts and are administrative in nature, they are unenforceable by state and local agencies in NY.

http://nycourts.gov/reporter/3dseries/2018/2018_07740.htm

Plea Cases – Immigration Issues

***People v Ghingoree*, 11/14/18 – IMMIGRATION CONSEQUENCES / PLEA VACATED**

The non-citizen defendant appealed from a judgment of Suffolk County Court convicting him of a drug possession charge. The Second Department reversed and vacated the plea. When the plea court asked the defendant whether counsel had explained that he would be deported as a result of the plea, counsel interrupted before the defendant could answer, stating that the defendant was already the subject of deportation proceedings as a result of a prior deportable offense. In a motion to withdraw the plea, the defendant said that counsel failed to inform him of the immigration consequences. Defense counsel revealed that the immigration case as to the prior conviction was terminated in the defendant's favor. But counsel believed that a pending reargument motion would be granted, whereas the defendant believed the matter would be resolved in his favor. The appellate court held that the defendant had not received effective assistance, and there was a reasonable probability that, if properly advised, he would not have pleaded guilty. He had lived in the U.S. since age four and had significant family ties here, including a wife and three children, as well as parents and siblings. Alfred Cicale represented the appellant.

http://nycourts.gov/reporter/3dseries/2018/2018_07748.htm

***People v Tariq*, 11/15/18 – INEFFECTIVE ASSISTANCE / 440 NEEDED**

The defendant appealed from a judgment of Rensselaer County Court convicting him of 5th degree criminal possession of a controlled substance. During plea proceedings, County Court advised the defendant that, because he was not a U.S. citizen, if he pleaded guilty, he would likely be deported and not permitted to return to the U.S. The defendant then entered a guilty plea. The **Third Department** rejected the defendant's *Peque* claim, given the court's statement during the plea allocution, as well as the potential deportation consequences clearly set forth in the written waiver of the right to appeal. As to the ineffective assistance claim, to the extent that omissions by counsel were based on facts outside the record, a CPL Article 440 motion was needed.

http://nycourts.gov/reporter/3dseries/2018/2018_07776.htm

Plea Cases – Other Issues

***People v Vasquez*, 11/13/18 – NO PRS NOTICE / PLEA VACATED**

The defendant appealed from a judgment of New York County Supreme Court convicting him of 2nd degree robbery. The **First Department** reversed. At no time before sentencing did the trial court inform the defendant that post-release supervision would be included in the enhanced sentence to be imposed if he violated plea agreement conditions. The ADA's and defense counsel's references to PRS, made immediately before sentence was imposed, did not provide notice that would require the defendant to preserve this claim. *See People v Louree*, 8 NY3d 541. The Office of the Appellate Defender (Victorien Wu, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2018/2018_07658.htm