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No: _____ OFFICE OF THE CLERK
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*In the
Supreme Court of the United States*

Jose Padilla,
Petitioner,

v.

Commonwealth of Kentucky,
Respondent.

On Petition for a Writ of Certiorari to the Supreme
Court of Kentucky

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS 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.

LIST OF PARTIES

Pursuant to Supreme Court Rule 24.1(b), the following list identifies all of the parties before the Supreme Court of Kentucky.

Jose Padilla was the Appellee below and he is the Petitioner in this action. The Commonwealth of Kentucky was the Appellant below and is the Respondent in this action.

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OPINIONS BELOW

The opinion of the Kentucky Supreme Court is reported in *Commonwealth v. Padilla*, 253 S.W.3d 482 (Ky. 2008) and reprinted to the Appendix hereto, pp. 19-27. The Order denying rehearing was not reported and is reprinted to the Appendix hereto pp. 28. The opinion of the Kentucky Court of Appeals was initially designated as "To be Published" but was never reported. It is attached to the Appendix hereto, pp. 29-40. The Order by the Circuit Court was not reported and is reprinted to the Appendix hereto, pp. 41-44.

JURISDICTION

28 U.S.C. § 1257(a) gives this court jurisdiction to review "Final judgments or decrees rendered by the highest court of a State in which a decision could be had . . ." In this case, Kentucky's highest court has been presented with these issues and rendered an opinion on January 24, 2008. It then denied a "Petition for Rehearing" on the matters contained in this Petition on June 19, 2008. A timely application for an extension of time within to file a petition for writ of certiorari was filed with this Court. On September 16, 2008 Justice Stevens extended the time for filing the writ to and including November 16, 2008.

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution, Amendment VI, provides in pertinent part that:

In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.

The United States Constitution, Amendment XIV, § 1, provides in pertinent part that:

No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Petitioner, Jose Padilla, is a native of Honduras who served in the United States Armed Forces during the Vietnam conflict, but never became a United States Citizen, though he remained in the country as a legal permanent resident. In 2001 Petitioner was issued a valid Commercial Drivers License by the State of Nevada, which he used to haul freight in a truck he owned and operated.

In September 2001, Petitioner allegedly agreed to haul almost 1000 pounds of marijuana – a process that took him through Hardin County, Kentucky. His cargo was discovered at a weigh station in Kentucky and he was arrested.

After Petitioner was arrested, the Immigration and Naturalization Service (INS)

lodged a detainer against him stating, "investigation has been initiated to determine whether this person is subject to removal from the United States." This was apparently interpreted to mean that the INS regarded Petitioner as an illegal alien, and on that basis, the district court held him without bond. Bond was reinstated when Petitioner was indicted, and his immigration status was never discussed in the circuit court proceedings in the case.

Petitioner was indicted by the Hardin County Grand Jury for misdemeanor possession of marijuana; misdemeanor possession of drug paraphernalia; felony trafficking in marijuana, more than five pounds; and failing to have a weight and distance tax number (i.e., KYU number) on his truck. Petitioner, represented by counsel, moved to enter a guilty plea to the three drug charges for a sentence of five years incarceration followed by five years probated. The tax violation charge was dismissed as part of the plea. During the course of the discussions on the plea, Petitioner's attorney advised him that he "did not have to worry about immigration status since he had been in this country so long." The language of the agreed upon plea and sentence did nothing to dispel Petitioner's belief that his immigration status would not be effected by the plea. In fact, one of the conditions of the probated sentence was that Petitioner "Remain within the County and State specifically approved by the Probation and Parole office in Hardin County, Kentucky, in their sole discretion, subject to modification by subsequent order of this Court."

Shortly after the plea was entered, Petitioner was served with an immigration detainer which had

been lodged by the prison. Subsequently, Petitioner filed a *pro se* motion to vacate his plea, based upon his attorney's gross misadvice to him about the immigration consequences of pleading guilty. He also filed a motion for an evidentiary hearing and for appointment of counsel. The trial court denied the motion, noting that in light of the district court's denial of bond:

. . . from the very beginning of this case Padilla would have been aware of the possibility of deportation. In his own motion, Padilla does not state that his counsel did not discuss this issue with him. Padilla affirmatively states that his attorney commented on the matter and indicated that Padilla 'did not have to worry about immigration status since he had been in the country so long.'

Padilla's counsel does not make a deportation decision, and neither does this Court. This record indicates that Padilla was aware of the possibility that he could be deported. Padilla cannot show ineffective assistance of counsel merely because of a statement of opinion on whether the Immigration and Naturalization Service would choose to deport Padilla given his length of time in the United States.

Appendix pp. 43-44. Accordingly, Petitioner's motion was denied.

Petitioner appealed the Circuit Court's decision to the Kentucky Court of Appeals.

While Petitioner's appeal was pending in the Kentucky Court of Appeals, the Supreme Court of Kentucky decided *Fuortado v. Commonwealth*, 170 S.W.3d 384 (Ky. 2005) holding that an attorney had no duty to advise their client about the immigration consequences of a guilty plea. The Court of Appeals, however, distinguished Petitioner's case from *Fuortado* on the grounds that Petitioner's case involved affirmative misadvice with regard to the consequences of the plea. Noting the clear consensus among other jurisdictions that an affirmative misstatement regarding deportation may constitute ineffective assistance of counsel, the Court of Appeals found:

The record does not refute [Padilla's] allegation that counsel affirmatively assured him he would not be deported as a result of pleading guilty; nor does it refute his claim that but for counsel's mistaken advice, he would not have pled guilty. We are persuaded that counsel's wrong advice regarding deportation could constitute ineffective assistance of counsel pursuant to *Sparks [v. Sowders]*, 852 F.2d 882, 885 (6th Cir. 1988)]. Thus, as there are relevant and substantial issues of fact that cannot be resolved by an examination of the record, we conclude that Padilla is entitled to an evidentiary hearing on his motion. *See*,

Fraser v. Commonwealth, 59 S.W.3d
448 (Ky. 2001).

Appendix pp. 36. Accordingly, the Court of Appeals reversed the decision of the Circuit Court and remanded the claim back to the Circuit Court for an evidentiary hearing.

The Commonwealth sought discretionary review before the Supreme Court of Kentucky, which was granted. Briefs were filed wherein Petitioner argued that the concept of “flagrant misadvice” had been widely accepted across the nation as a grounds for setting aside a guilty plea where an attorney’s misstatement on a collateral matter induced the defendant to plead guilty in error, and that Kentucky’s lower courts had long adhered to that concept. Petitioner further argued that *Fuortado* should not apply to cases involving an aggravated felony, when the consequence of the plea was mandatory deportation, noting that some jurisdictions had concluded that deportation consequences should no longer be regarded as “collateral” to the plea.

Without hearing arguments, the Supreme Court of Kentucky rendered a brief decision concluding that,

. . . our unequivocal holding in *Fuortado* leaves [Padilla] without a remedy [in Kentucky post-conviction procedures.] As collateral consequences are outside the scope of the guarantee of the Sixth Amendment right to counsel, it follows that

counsel's failure to advise [Padilla] of such collateral issue or his act of advising [Padilla] incorrectly provides no basis for relief. In neither instance is the matter required to be addressed by counsel, and so an attorney's failure in that regard cannot constitute ineffectiveness entitling a criminal defendant to relief under *Strickland v. Washington*.

Commonwealth v. Padilla, 253 S.W.3d 482 (Ky. 2008); Appendix pp. 23.

Petitioner filed a petition for rehearing, which was denied by summary order (Appendix pp. 11)

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT REVIEW TO RESOLVE A NATIONWIDE SPLIT OF AUTHORITY AS TO THE DUTY, IF ANY, OF COUNSEL TO CORRECTLY ADVISE A NON-CITIZEN DEFENDANT ON THE IMMIGRATION CONSEQUENCES ASSOCIATED WITH A CRIMINAL CONVICTION

The decision by the Supreme Court of Kentucky created further conflict of authority on critical issues of federal law, namely (1) whether the mandatory deportation associated with a plea to an "aggravated felony" under the Immigration and Nationalization Act (INA) can still be described as a "collateral consequence" of a criminal conviction which relieves counsel from any affirmative duty to advise; and (2) whether an attorney's "flagrant" or

“gross” misadvice on a collateral matter, such as mandatory deportation, can constitute grounds for setting aside the guilty plea. These are issues of significant importance both to the immigrant community and the defense bar. Both issues have been thoroughly developed and litigated in the lower courts for many years, and are ripe for a final resolution by this Court.

A. **Due to Significant Changes in Immigration Law, Proper Advice on the Impact of a Criminal Conviction on a Defendant’s Legal Status is a Matter of Great Importance to Non-Citizen Defendants.**

For most of the history of immigration law, deportation was a possible but not an inevitable consequence of a criminal conviction. As early as 1917, Congress stated its belief that deportation was an additional punishment for a crime, and gave sentencing courts the power to prohibit deportation in order “to make the total penalty for the crime less harsh and less severe when deportation would appear to be unjust.”¹ Some Courts during this period even found that the Sixth Amendment right to counsel applied the hearing to determine whether or not to make such a recommendation.²

Congress eliminated the power of the court to recommend against deportation in 1990.³ In 1996,

¹ See, former 8 U.S.C. § 1251(b)(1988)(finding that deportation provisions shall not apply if “the court sentencing such alien for such crimes shall make . . . a recommendation to the Attorney General that such alien not be deported); 53 Cong.Rec. 5169-74 (1917).

² See, e.g., *Janvier v. United States*, 793 F.2d 449, 455 (2nd Cir. 1986).

³ Pub. L. 101-649 § 505.

the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Anti-terrorism and Effective Death Penalty Act (AEDPA) together imposed a requirement of mandatory deportation for certain “aggravated felony” offenses. Said requirement could not be cancelled by the Attorney General for any reason – even if the immigrant could make a compelling case for asylum.⁴

These new consequences often turn on highly technical distinctions which an untrained attorney or *pro se* defendant would probably not be aware. For example, a plea to a drug possession charge in Kentucky is not treated as an “aggravated felony” under federal law.⁵ However, a plea in state court to a trafficking charge is an “aggravated felony” under immigration law.⁶

In the instant case, Petitioner’s counsel failed to appreciate the fact that Petitioner was pleading guilty to an aggravated felony for which deportation was mandatory, and misadvised Petitioner as to the deportation consequences of his plea. As a consequence, by pleading guilty to the offense of trafficking in marijuana, Petitioner was also unwittingly sentencing himself to a lifetime exile from this country.

Unfortunately, Petitioner is not alone in making this mistake. The result of the changes in

⁴ *Lopez v. Gonzalez*, 549 U.S. 47 (2006).

⁵ *United States v. Palacios-Suarez*, 418 F.3d 692 (6th Cir. 2005).

⁶ *Lopez v. Gonzales*, *supra*

immigration law has created something of a humanitarian crisis within the criminal justice system. One commentator has noted that from 1984 to 2002 there was a 71-fold increase in the number of deportations, so that today “over eighty thousand [non-citizens] plead guilty to deportable offenses.”⁷ These cases often involve individuals who moved to this country when they were extremely young, and may have had no idea that by pleading guilty they were sentencing themselves to permanent exile.⁸

As noted below, this crisis has provoked a number of different responses in the state and federal courts. Given the significance of this issue, it is important for this court to accept review and resolve the question of whether there is any duty on the part of counsel to ensure that non-citizen defendants are aware of the possibility (or in many cases, certainty) of deportation when they enter a plea in a criminal case.

B. State and Federal Courts Have Split on the Issue of What Advice Counsel Must Give to a Non-Citizen Defendant in a Criminal Case.

As this Court is well aware, where a defendant challenges a guilty plea based on ineffective assistance of counsel, he must display that his counsel made errors outside the wide range of professionally competent assistance, and that the deficient performance so seriously affected the outcome of the plea process that, but for the errors

⁷ Molina, Sarah Keefe, *Rejecting the Collateral Consequence Doctrine: Silence About Deportation May or May Not Violate Strickland's Performance Prong*, 51 St.Louis U.L.J. 267, 269 (2006).

⁸ *Id.*

of counsel, there is a reasonable probability that the defendant would not have pled guilty, but would have insisted on going to trial.⁹ Generally speaking, failure to advise a client of an indirect or "collateral" consequence of the plea will not constitute ineffective assistance of counsel. The problem arises where, as here, counsel volunteers advice – often in response to questioning by the client – which turns out to be incorrect. In the context of immigration cases, the responses of the lower courts can be divided into three groups: those which find that flagrant misadvice is a basis for vacating a guilty plea; those which find that deportation consequences are not collateral, and therefore proper advice is required as part of the plea; and Kentucky, which is apparently content to affirm a plea based on flagrantly incorrect advice, so long as the advice does not touch directly on the sentence imposed.

Some Jurisdictions Will Only Reach the Issue if the Attorney Has Volunteered Incorrect Advice: In *Strader v. Garrison*,¹⁰ the Fourth Circuit considered a case where the defendant was induced by his own attorney to accept a plea based on misinformation with regard to parole eligibility. The Fourth Circuit refused to hold that the defendant was bound to the plea merely because the issue of parole eligibility – which was clearly of importance to the defendant – was deemed "collateral." Rather, the Fourth Circuit held:

⁹ *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970); *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 208 (1985).

¹⁰ *Strader v. Garrison*, 611 F.2d 61 (4th Cir. 1979)

Here, though parole eligibility dates are collateral consequences of the entry of a guilty plea of which a defendant need not be informed if he does not inquire, when he is grossly misinformed about it by his lawyer, and relies upon that misinformation, he is deprived of his constitutional right to counsel. When the erroneous advice induces the plea, permitting him to start over again is the imperative remedy for the constitutional deprivation.¹¹

From the time of *Strader*, until the present case, all jurisdictions that have considered the question have also concluded that even though the subject was a “collateral” matter for which the defendant was not entitled to representation – such as deportation, parole eligibility, suspension of driving privileges, etc. – flagrant misadvice by counsel may constitute ineffective assistance which renders the plea involuntary.¹² This is not an

¹¹ *Id.*, at 65.

¹² *Patterson v. State*, 879 So.2d 1208, 1210 (Ala.Crim.App. 2003); *People v. Soriano*, 194 Cal.App.3d 1470, 240 Cal.Rptr. 328 (1987); *People v. Garcia*, 815 P.2d 937 (Colo. 1991); *Hernandez v. Commissioner of Correction*, 846 A.2d 889 (Conn.Ct.App. 2004); *Roberti v. State*, 782 So.2d 919, 920 (Fla.Dist.Ct.App. 2001); *Rollins v. State*, 591 S.E.2d 796 (Ga. 2004); *People v. Correa*, 485 N.E.2d 307 (Ill.1985); *Meier v. State*, 337 N.W.2d 204, 207 (Iowa 1983); *Aldus v. State*, 748 A.3d 463 (Me. 2000); *Yoswick v. State*, 700 A.2d 251, 256, 347 Md. 228, 240 (Md. 1997); *Bronson v. State*, 786 So.2d 1083 (Miss.Ct.App. 2001); *Pettis v. State*, 212 S.W.3d 189, 194 (Mo.Ct.App. 2007); *State v. Sharkey*, 155 N.H. 638, 927 A.2d 519 (N.H. 2007); *State v. Viera*, 760 A.2d 840 (N.J.Super.Ct. 2000); *People v. Ping Cheung*, 186 Misc.2d 507, 718 N.Y.S.2d

isolated ruling, but is apparently the rule in every Federal circuit, the District of Columbia, and twenty-one states.

Further, in many jurisdictions, the “flagrant misadvice” theory may provide a basis for vacating a plea when the subject of the misadvice is deportation resulting from the guilty plea.¹³ The basis for the exception is that while counsel has the option of simply refusing to answer a defendant’s inquiries on collateral matters, he has a duty to refrain from offering mistaken advice on those matters.¹⁴

578 (N.Y.Sup. 2000); *State v. Goforth*, 503 S.E.2d 676, 678, 130 N.C.App. 603, 604 (N.C.App. 1998); *Gonzalez v. Oregon*, 83 P.3d 921 (Or. 2004); *Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989); *King v. State*, 2007 WL 3052854 (Tenn.Crim.App. 2007); *State v. Rojas-Martinez*, 125 P.3d 930 (Utah, 2005); *Commonwealth v. Tahmas*, 2005 WL 2249587 (Va.Cir.Ct., 2005); *Matter of Peters*, 50 Wash.App. 702, 750 P.2d 643 (1988); *Goodall v. United States*, 759 A.2d 1077 (D.C. 2000); *Cepulonis v. Ponte*, 699 F.2d 573, 577 (1st Cir. 1983); *United States v. Cuoto*, 311 F.3d 179 (2nd Cir. 2002); *Meyers v. Gillis*, 142 F.3d 664 (3rd Cir. 1998); *O’Tuel v. Osborne*, 706 F.2d 498, 500-01 (4th Cir. 1983); *Czere v. Butler*, 833 F.2d 59, 63 n. 6 (5th Cir. 1987); *Sparks v. Sowders*, 852 F.2d 882, 885 (6th Cir. 1988); *Hill v. Lockhart*, 894 F.2d 1009 (8th Cir. 1990); *United States v. Kwan*, 407 F.3d 1005 (9th Cir. 2005); *Beavers v. Saffle*, 216 F.3d 918 (10th Cir. 2000); *Downs-Morgan v. United States*, 765 F.2d 1534 (11th Cir. 1985).

¹³ *State v. Rojas-Marinez*, 125 P.3d 930 (Utah, 2005); *United States v. Kwan*, 407 F.3d 1005 (9th Cir. 2005); *Gonzalez v. Oregon*, 83 P.3d 921 (Or. 2004), *United States v. Cuoto*, 311 F.3d 179 (2nd Cir. 2002); *Roberti v. State*, 782 So.2d 919, 920 (Fla.Dist.Ct.App. 2001); *United States v. Mora-Gomez*, 875 F.Supp. 1208 (E.D.Va., 1995); *People v. Soriano*, 194 Cal.App.3d 1470, 240 Cal.Rptr. 328 (1987); *Downs-Morgan v. United States*, 765 F.2d 1534 (11th Cir. 1985); *People v. Correa*, 485 N.E.2d 307 (Ill.1985)

¹⁴ *Kwan, supra* at 1015.

Some Jurisdictions Require that Attorneys Affirmatively Advise Their Clients on the Immigration Consequences of a Guilty Plea: Recent changes to immigration law have prompted at least one commentator to note that characterizing immigration consequences as merely “collateral” is a simply a “judicially created myth.”¹⁵ Further, several courts have required advice on the immigration consequences of a guilty plea.¹⁶ Federal circuits apparently have begun to speculate about whether they should do the same, noting that “[o]n its face, [the] argument [that automatic deportation is a direct rather than a collateral consequence] is persuasive, and we believe that it deserves careful consideration.”¹⁷ Indeed, commentators have observed that the harsh reality of deportation has led some courts to construe the “flagrant misadvice” exception so broadly that it amounts to rejection of the collateral consequence doctrine.¹⁸

¹⁵ Taylor, Margaret H., and Wright, Ronald F., *The Sentencing Judge as Immigration Judge*, 51 Emory L.J. 1131, 1137 (2002).

¹⁶ See *People v. Pozo*, 712 P.2d 1044, 1046-47 (Colo. App. 1985), *rev'd on other grounds*, (en banc), 746 P.2d 523 (1987); *Williams v. State*, 641 NE.2d 44, 48-49 (Ind. 1994)

¹⁷ See, e.g., *Cuoto*, *supra* at 189-191

¹⁸ Justman, Rob A., *The Effects of AEDPA and IIRIRA on Ineffective Assistance of Counsel Claims for Failure to Advise Alien Defendants of Deportation Consequences of Pleading Guilty to an “Aggravated Felony”* 2004 Utah L.R. 701 (2004); see also Molina, *supra*; Atkins, Taylor, *Immigration Consequences of Guilty Pleas, What State v. Paredes Means to New Mexico Criminal Defendants and Defense Attorneys* 36 N.M. L.Rev. 603 (2006); Francis, John J., *Failure to Advise Non-Citizens of Immigration Consequences of Criminal*

The Kentucky Rule – Erroneous Advice of Counsel with Regard to a Collateral Consequence of a Conviction is Never a Basis to Set Aside a Plea: In the Petitioner’s case, Kentucky created a new rule which has not been embraced by any jurisdiction of which the undersigned is aware; specifically, that misadvice on any issue deemed “collateral” to the plea – everything from mandatory deportation, as in this case, to parole consequences – cannot provide a basis for vacating a guilty plea. The basis for the Court’s conclusion is a hypertechnical reading of this Court’s ineffective assistance of counsel jurisprudence. In effect, the Supreme Court of Kentucky has ruled that where a defendant is induced to plead guilty by his attorney’s flagrantly incorrect advice, that plea will stand if the issue on which the attorney offered the advice is deemed “collateral.” The consequences of this rule are extraordinary: a Kentucky lawyer can induce his or her client to plead guilty through deception or outright incompetence related to a “collateral” matter without undermining the validity of the plea.

C. The Aforementioned Issues have been Thoroughly Litigated in the Lower Courts Resulting in Conflicts in Authority that are Squarely Presented by This Case

As noted and described in more detail above, 21 states and all the Federal Circuits have addressed the issues presented by this case, resulting several significant splits of authority. These courts require

Convictions: Should This Be Grounds to Withdraw a Guilty Plea, 36 U.Mich. J.L.Reform 691 (2003).

the guidance of this Court to finally resolve the important questions presented by this case.

II. REVIEW BY THIS COURT IS NEEDED BECAUSE THE STATE COURT OF LAST RESORT IN KENTUCKY HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH OTHER STATE COURTS OF LAST RESORT AND THE FEDERAL COURTS.

The Supreme Court of Kentucky has held that counsel's gross misadvice as to a collateral consequence of a guilty plea, in this case mandatory deportation, cannot constitute ineffective assistance of counsel entitling a defendant to relief under *Strickland v. Washington* since collateral consequences of a guilty plea are outside the scope of the guarantee of the Sixth Amendment right to counsel. The Supreme Court of Kentucky's holding stands in direct conflict with apparently all other jurisdictions that have addressed the issue. This Court has the authority to review and correct the Supreme Court of Kentucky's deeply flawed analysis of the Sixth Amendment right to Counsel. This Court should exercise that authority. The Petitioner in this case, due to the Supreme Court of Kentucky's clear misunderstanding of the parameters of the Sixth Amendment, faces certain deportation from the country he has served and has called home for almost 40 years. At a minimum, this case is ripe for, and this Court should consider, granting summary reversal of the decision of the Supreme Court of Kentucky.

CONCLUSION

For the foregoing reasons, this court should grant this writ of certiorari. The Court may wish to consider summary reversal of the decision by the Supreme Court of Kentucky.

Respectfully Submitted,

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