

U.S. Supreme Court Ruling: Padilla Is Not Retroactive

Author : Jessica Smith

Categories : [Procedure](#), [Uncategorized](#)

Tagged as : [chaidez](#), [immigration consequences](#), [ineffective assistance of counsel](#), [padilla](#), [retroactivity](#)

Date : February 21, 2013

The U.S. Supreme Court recently decided [Chaidez v. United States](#), 568 U.S. ___ (Feb. 20, 2013), holding that *Padilla v. Kentucky*, 559 U. S. ___ (2010), isn't retroactive. *Padilla* held that criminal defense attorneys must inform non-citizen clients of the risks of deportation arising from guilty pleas. As I noted in a post [here](#), *Padilla* generated a lot of post-conviction litigation in North Carolina and across the nation. The primary issue in those cases is whether defendants whose convictions became final prior to *Padilla* could benefit from the *Padilla* rule. Put another way, the question is whether *Padilla* applies retroactively.

But back to the recent decision. Chaidez, originally from Mexico, became a lawful permanent resident of the United States in 1977. About 20 years later she pleaded guilty to two counts of federal mail fraud. That conviction became final in 2004. Under federal immigration law these offenses are "aggravated felonies," subjecting Chaidez to mandatory removal from the country. In 2009, federal authorities initiated removal proceedings against Chaidez. She then filed a motion to overturn the federal convictions, arguing that her lawyer never told her that she'd be subject to mandatory removal and that this failure constituted ineffective assistance of counsel. While her petition was pending, the U.S. Supreme Court handed down its *Padilla* decision, agreeing that a failure to inform a non-citizen of mandatory deportation was ineffective assistance of counsel. However, Chaidez's fraud convictions had become final five years earlier. Thus, Chaidez could only benefit from the decision if it applied retroactively to her convictions. The trial court held that *Padilla* did not announce a new rule and therefore should apply to Chaidez's case. It went on to find that her counsel had performed deficiently under *Padilla* and that she suffered prejudice. As a result it vacated her convictions. The Seventh Circuit reversed. When the case came before the U.S. Supreme Court the only issue was whether *Padilla* announced a new rule.

The high Court found that *Padilla* announced a new rule that did not apply retroactively to Chaidez's case. Chaidez didn't argue that *Padilla* fell into one of the two narrow exceptions to the non-retroactivity rule. The first exception to the non-retroactivity rule applies to new substantive—as opposed to procedural—rules. The second applies to watershed rules of criminal procedure. Because the issue of whether *Padilla* fell into one of those exceptions wasn't raised, the Court didn't address it. But defense lawyers shouldn't hold out much hope on that issue. I can pretty much argue anything (ask my husband of 20 years!) but even I can't think of a way to frame *Padilla* as a substantive rule. And as for the watershed rule of criminal procedure exception, don't place any bets there—the U.S. Supreme Court has *never* held any new rule to be a watershed rule of criminal procedure. And it has opined that given how developed the criminal law is, such rules are unlikely to emerge.

In any event, our court of appeals gets a gold star. As I discussed [here](#), about a year ago the N.C. Court of Appeals weighed in, concluding that *Padilla* was a new rule that did not apply retroactively. In *Chaidez* the U.S. Supreme Court agreed.