

# CRIMMIGRATION COMMUNICATION



## *People v. Saunders*

Dear Colleagues,

Earlier this spring a criminal attorney in Nassau County was found ineffective by the Second Department after misadvising on the immigration consequences of a 2<sup>nd</sup> degree criminal contempt NYPL 215.50(3) conviction – which is a deportable<sup>1</sup> offense for noncitizens who have been lawfully admitted into the U.S. *See, Matter of Obshatko*, 27 I&N Dec. 173 (BIA 2017).

The People had appealed from an order of the Nassau County Supreme Court granting the defendant's CPL 440.10 motion to vacate his 2<sup>nd</sup> degree criminal contempt conviction, but the Second Department affirmed. *People v Saunders*, 2021 N.Y. App. Div. LEXIS 2285 (App. Div. 2<sup>nd</sup> Dep't 2021). The defendant was a Jamaican lawful permanent resident and his guilty plea rendered him deportable, which his counsel had failed to advise him. *Id.* The appellate court rejected the People's contention that prejudice was not shown; the defendant could rationally have decided to go to trial as he had resided in the U.S. since 1988 and had five children here. *Id.* Vacatur was proper based on ineffective assistance. *Id.*

**REMINDER:** The fact that your noncitizen client has an immigration attorney does not absolve you of your obligation under *Padilla v. Kentucky* - **you are solely responsible to provide this critical advice.** Further, telling noncitizen clients to retain an immigration attorney in order to acquire this advice is a violation of *Padilla* and its progeny. *See, People v. Garcia*, 907 N.Y.S.2d 398 (Sup. Ct. Kings County 2010)(attorney was found ineffective for acknowledging ignorance as to immigration law and, declining to research the issue, advising defendant to seek outside immigration counsel).

The best way to avoid being found ineffective is to contact the LIRIAC, we are here to provide you with free immigration advice for all your assigned noncitizen cases!

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<sup>1</sup> This ground of deportability does not require a conviction, only a finding by a criminal or family court judge that the noncitizen violated an order of protection that was designed to protect against violence. *See*, INA § 237(a)(2)(E)(ii).