

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant,

v.

ARTEM L. FELDMAN,

Defendant-Appellee.

\* Case No. 2009-1987  
\*  
\* On Appeal from the  
\* Lake County Court of Appeals  
\* Eleventh Appellate District  
\*  
\* Court of Appeals Case No. 2009-L-052  
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MERIT BRIEF OF AMICUS CURIAE MARGARET WONG & ASSOCIATES  
CO., LPA IN SUPPORT OF THE DEFENDANT-APPELLEE

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## STATEMENT OF THE INTEREST OF AMICUS CURIAE

Margaret Wong & Associates Co., LPA is a law firm that focuses its practice on all aspects immigration law. The law firm also handles criminal cases of non-citizens. Margaret Wong & Associates has its main office in Cleveland, Ohio and offices in New York, Atlanta, Columbus, and Detroit.

Margaret Wong & Associates strives to protect the rights of immigrants in the United States. Through its national practice, the attorneys at Margaret Wong & Associates have observed the devastating impact of criminal convictions on the immigration status of their clients. The impact includes not only deportation but also denial of admission to the United States and denial of naturalization.

The issue raised in the case is extremely important to immigrants with criminal cases in Ohio. Ohio Revised Code § 2943.031 sets forth three distinct immigration consequences that occur when a non-citizen is convicted of a criminal offense. As will be set forth herein, each of these is different and has importance to a non-citizen. The interest of a criminal defendant goes beyond just the possibility of deportation. It also encompasses naturalization and admission to the United States. Due to the importance of the issue raised, Margaret Wong and Associates offers this *amicus* brief to assist the Court in resolving this case.

*Amicus* urges the Court to uphold the decision of the Eleventh District Court of Appeals and find that substantial compliance with Ohio Revised Code § 2943.031

mandates reference to each of the three distinct immigration consequences set forth in the statute.

## STATEMENT OF THE CASE AND FACTS

*Amicus Curiae* adopts the Statement of the Case and Facts set forth in the brief of the Appellee.

## ARGUMENT

### PROPOSITION OF LAW:

**Substantial compliance with Ohio Revised Code Section 2943.031 mandates reference to each of the three distinct immigration consequences set forth in the statute.**

At issue in the instant case is what constitutes substantial compliance with Ohio Revised Code § 2943.031. *Amicus* contends that in order for there to be substantial compliance with R.C. § 2943.031, the trial court must make reference to each of the three distinct immigration consequences before accepting a guilty or no contest plea.

*A. Ohio Revised Code Section § 2943.031 and substantial compliance*

Ohio Revised Code Section § 2943.031 requires a Court to give an advisement with respect to the potential immigration consequences of a guilty or no contest plea. Subsection (A) states:

Except as provided in division (B) of this section, prior to accepting a plea of guilty or a plea of no contest to an indictment, information, or complaint charging a felony or a misdemeanor other than a minor misdemeanor if the defendant has not previously been convicted of or pleaded guilty to a minor misdemeanor, the court **SHALL** address the defendant personally, provide the following advisement to the defendant that **SHALL** be entered in the record of the court, and determine that the defendant understands the advisement.

“If you are not a citizen of the United States, you are hereby advised that conviction of the offense to which you are pleading guilty (or no

contest, when applicable) may have the consequences of **deportation, exclusion from admission to the United States, or denial of naturalization** pursuant to the laws of the United States.”

(Emphasis added.) The required advisement appears in quotation marks in the statute.

The Ohio Supreme Court has held that a trial court is not required to read the statutory advisement verbatim. *State v. Francis*, 104 Ohio St.3d 490, 499, 2004-OHIO-6894, ¶ 46. The key question is whether there was substantial compliance. *Id.* “Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of the plea and the rights he is waiving . . . The test is whether the plea would have otherwise been made.” *Id.*

The Ohio General Assembly clearly understood the significance of a criminal conviction to a non-citizen defendant’s decision whether to enter a guilty or no contest plea. The statute sets forth three distinct consequences and the advisement required is in quotation marks. By laying out three potential consequences in the statute, the General Assembly recognized that potential deportation is just one consequence that a defendant must have knowledge of prior to entering a plea. The fact that the three consequences are specifically listed is significant. This was a key consideration in the Eleventh Circuit’s decision in the Feldman case. *State v. Feldman*, 11<sup>th</sup> Dist. No. 2009-L-052, 2009-OHIO-5765.

- B. *Deportation, exclusion from admission to the United States, and denial of naturalization are three distinct immigration consequences that must be addressed by a trial court for a non-citizen to truly understand the immigration implications of his or her guilty or no contest plea.*

It cannot be disputed that the impact of a criminal conviction is a significant factor in the decision of whether to enter a guilty or no contest plea. However, it is also clear that deportation is only one of the significant adverse consequences that can flow from a criminal conviction.

As pointed out by the State in its brief, the term deportation was replaced in 1996 by the term removal. (*Appellant's Brief, pp. 13-14*) However, it still refers to proceedings to deport someone from the United States. These proceedings are governed by Immigration and Nationality Act ("INA") § 237. That section sets forth various criminal grounds for removal based on convictions, including: (1) a conviction for a crime involving moral turpitude committed within five years of admission; (2) convictions for two or more crimes involving moral turpitude; (3) a conviction for an aggravated felony; (4) a controlled substance conviction other than for possession of 30 grams or less of marijuana for one's own personal use; (5) a conviction for certain firearms offenses; (6) a conviction for an espionage, sabotage, or treason offense that could carry a term of imprisonment of five or more years; (7) a conviction for domestic violence, stalking, violation of protection order, or child abuse; and (8) trafficking in persons. INA § 237(a)(2). Many seemingly minor crimes can result in removal.

The second significant immigration consequence addressed in R.C. § 2943.031 is exclusion from admission to the United States. A criminal conviction can bar a non-citizen from entering the United States or from adjusting to lawful permanent resident status. These grounds of inadmissibility are set forth in INA § 212(a). They include: (1) a crime involving moral turpitude other than one crime that falls within the petty offense exception; (2) multiple criminal convictions for which the aggregate sentences of imprisonment were five years or more; (3) any controlled substance offense; (4) prostitution and commercialized vice; (5) serious criminal offenses as defined in 8 U.S.C.A. § 1101(h) when the alien has asserted immunity from prosecution; (6) severe violations of religious freedom as defined in 22 U.S.C. § 6402 committed by a foreign government official; (7) trafficking in persons as defined in Section 7102 of Title 22; and (8) money laundering. INA § 212(a)(2).

The criminal grounds of inadmissibility differ from the grounds of removal. For example, a person who is convicted of a misdemeanor domestic violence offense under Ohio law will fall within the ground of removal for domestic violence if it is considered a crime of violence under 18 U.S.C. § 16. INA § 237(a)(2)(E). However, that person would not be inadmissible to the United States because the maximum sentence for the offense is one year or less and the sentence imposed could not be more than six months. INA § 212(a)(2)(A)(ii) (providing

petty offense exception to crimes where the maximum sentence is not more than one year and the alien was not sentenced to more than six months of imprisonment).

Another example of how the removal/deportation and admissibility grounds differ is the case where a person is convicted of a fourth-degree felony that is a crime involving moral turpitude and was committed more than five years after admission. That person would not be subject to removal if the crime is not an aggravated felony because it was committed outside of the requisite five year period. INA § 237(a)(2)(A)(i)(I) (“Any alien who . . . is convicted of a crime involving moral turpitude *committed within five years . . . after the date of admission . . .* is deportable). However, the person would be barred from admission to the United States as the offense does not fall within the petty offense exception. INA § 212(a)(2)(A)(i) (providing no time period during which alien must have committed a crime involving moral turpitude in order for the alien to be inadmissible). In this situation, a non-citizen in the United States could not be deported as long as the non-citizen remains in the United States. However, upon leaving the United States, he or she would be precluded from admission to the United States.

A non-citizen’s ability to depart and re-enter the United States is extremely important. In many cases, a non-citizen has family outside the country. Therefore,

it is crucial that the non-citizen be able to visit family outside the United States. In other situations, non-citizens need to be able to travel internationally for their work. Thus, whether a criminal conviction results in a permanent bar to admissibility is an important consequence that is distinct from deportation/removal. This possibility is something that a non-citizen defendant must be made aware of in order to understand the implications of a plea.

The last adverse immigration consequence set forth by the Ohio Revised Code is the possibility that a no contest or guilty plea will result in the denial of naturalization. An applicant for naturalization must show good moral character for a set period of time prior to the filing of the application up until the time the application is granted. 8 C.F.R. § 316.10(a). The time period is generally five years but can be shortened in certain cases such as three years when the person is married to a United States citizen. INA § 316(e). Criminal convictions can constitute a bar to naturalization if committed during the statutory good moral character period or act as a permanent bar. 8 C.F.R. § 316.10(b). Even convictions not specifically listed can warrant a finding of lack of good moral character. 8 C.F.R. §316.10(b)(3). United States Citizenship and Immigration Services (“USCIS”) can also go beyond the good moral character period in making a determination that an applicant lacks good moral character. Thus, a criminal

conviction may cause a problem for a naturalization applicant regardless of when the person was convicted.

A person whose conviction does not subject him to removal may still be denied naturalization as a result of the conviction. An example is a DUI. A person convicted of a DUI is not subject to removal. It also does not render the non-citizen inadmissible. However, if committed during the statutory good moral character period, this will almost certainly result in the denial of naturalization.

Another example is a conviction for felony theft under Ohio law that is committed more than five years after a non-citizen's admission to the United States. If this crime is committed within the statutory good moral character period, it acts as a bar to naturalization. 8 C.F.R. § 316.10(b)(2)(i). However, it would not be an offense that subjects the person to removal.

The possibility of naturalization is clearly a key consideration to a non-citizen. Many lawful permanent residents want to become United States citizens as quickly as possible so they can sponsor their spouse and other family members. Spouses and children of United States citizens are considered immediate relatives and are in a much more advantageous position than if the relative was only a permanent resident. INA § 201(b) (providing that immediate relatives are not subject to the worldwide levels or numerical limitations for obtaining immigrant

visas).<sup>1</sup> Moreover, in many cases the sponsor must become a U.S. citizen in order to allow the family members to come to or remain in the United States and obtain lawful permanent resident status. For example, in order to sponsor a married son or daughter who is over the age of twenty one, the sponsor must be a U.S. Citizen. INA § 203(a)(3) A person also must be a U.S. citizen in order to sponsor his or her sibling. INA § 203(a)(4).

A person may also want to become a United States citizen for many other reasons, including the right to vote. It may also make it easier to obtain employment. To be sure, the ability of one to naturalize is an important consideration when weighing whether to accept a plea deal. It is distinct from deportation.

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<sup>1</sup> Immigration based on a family relationship with a citizen or lawful permanent resident of the United States is one of the primary ways for foreign nationals to immigrate to the United States. The family-sponsored immigration categories are subject to a maximum allotment of 480,000 visas each year. 8 U.S.C. §1151(c). However, immediate relatives are not subject to this numerical cap. Immediate relatives include children of United States citizens, spouses of United States citizens, and parents of United States citizens who are at least 21 years old. 8 U.S.C. §1151(b)(2)(A)(i). There is no similar provision for lawful permanent residents. A lawful permanent resident petitioned by a qualifying family member (parent of unmarried child or child over 21 or spouse) faces a long wait for a visa to become available. 8 U.S.C. §1153(a)(1)-(2). Unlike with United States citizens, as a lawful permanent resident, that person cannot petition for his or her sibling or married child over 21. 8 U.S.C. §1153(a)(1)-(4). Additionally, an immediate relative petition has other advantages including the fact that the beneficiary can adjust status in the United States to a lawful permanent resident if the beneficiary was lawfully inspected and admitted to the United States or paroled. INA §245(a). This is true even where the person failed to maintain status after coming to the United States or worked without authorization. INA §245(a). There is no similar provision for those who are not immediate relatives. Thus, a lawful permanent resident who wants to petition for family members has a significant interest in becoming a United States citizen.

*C. Reference to the three adverse immigration implications set forth by R.C. § 2943.031 is still required for substantial compliance even after the change in immigration law in 1996.*

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) made significant changes to the immigration law. The law became effective of April 1, 1997. Although IIRIRA made significant changes to the law, it did not “completely” revise federal immigration law as many of the former provisions were not changed or not materially changed.

At the time of the enactment of R.C. § 2943.031, there were exclusion proceedings and deportation proceedings. This changed with the enactment of IIRIRA. However, this does not change the necessity of the warnings of the three adverse immigration consequences. The three deal with deportation/removal, denial of admission to the United States, and denial of naturalization. As will be discussed, these are all still relevant today.

Exclusion proceedings were commenced against those who were applicants for admission to the United States and were found by the Legacy Immigration and Naturalization Service to be ineligible for admission to the United States. When a non-United States citizen comes to the United States at a port-of-entry, he or she is subject to inspection to determine admissibility to the United States. Exclusion proceedings were commenced to determine an applicant’s admissibility to the

United States when there was an issue as to the applicant's admissibility. This could arise where an applicant had not demonstrated his or her entitlement to enter based on the claimed status (i.e. visitor, student, work visa). It could also arise where there was an issue of fraud, abandonment of status, or a criminal record.

Upon a determination by Legacy INS that an applicant for admission has not demonstrated entitlement to admission to the United States, the immigration officer commenced exclusion proceedings by filing a "Notice to Applicant for Admission Detained for Hearing" (Form I-122) with the Immigration Court having jurisdiction over the place where the applicant attempted to enter the United States. The alien would be scheduled for a hearing before an Immigration Judge to determine his admissibility to the United States.

Prior to April 1, 1997, the other form of proceedings was deportation. This is the formal determination of whether an alien is subject to deportation. The deportation grounds were set forth in INA § 241. Deportation proceedings were applicable when an alien was present in the United States but subject to one of the statutory grounds for deportation. These included being present without admission or parole, violating nonimmigrant status, criminal grounds, false claim to United States citizenship, alien smuggling, terrorist grounds, and being inadmissible at the time of entry.

Deportation proceedings were commenced by the issuance of an Order to Show Cause (Form I-221). The Order to Show Cause set forth the factual allegations and the basis for INS believing the alien is subject to deportation. It was filed with the Immigration Court having jurisdiction over the case.

The exclusion and deportation proceedings have now been combined into one proceeding called “removal.” INA § 240. Removal proceedings apply to both applicants for admission, which are now classified as “arriving aliens” (8 C.F.R. § 1.1(q)) and those present in the United States in violation of the immigration laws. *See* INA § 240(a) (“An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien. . . . An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility...or any applicable ground of deportability.”) The grounds of removal are set forth in INA § 237(a). The grounds of inadmissibility are set forth in INA § 212(a).

Although the law has changed, the three distinct immigration consequences are still relevant today. As set forth in the previous section, each of the three terms still has a distinct meaning today.

### *1. Deportation*

R.C. § 2943.031 refers to deportation proceedings. Although now called removal proceedings, these proceedings are to deport someone from the United

States. Reference to deportation by a trial court is certainly still sufficient to make someone aware of the consequence that is now called removal proceedings as it is commonly still referred to as deportation. Indeed, the INA itself still refers to the “deportability” of an alien in removal proceedings. *See* INA § 240. Substantial compliance does not require exact terminology. *Francis*, 104 Ohio St.3d at 499. It requires that an alien be aware of each of the three potential adverse consequences. If a court says removal or deportation, it serves the same purpose. The fact that the terminology has been changed by IIRIRA does not support the position that an alien does not need to be advised of each of the three potential consequences.

2. *Exclusion from Admission to the United States*

The phrase “exclusion from admission to the United States” is also used in R.C. § 2943.031. The State argues that since exclusion proceedings no longer exist, the intent in enacting the statute can no longer be accomplished. (*Appellant brief, p. 14*) The State argues that the statute requires defendants to be advised of a consequence that no longer exists. However, the State’s argument is wholly without merit. This consequence clearly does still exist.

The statute does not refer only to exclusion proceedings. Exclusion from admission to the United States is not necessarily the same as exclusion proceedings. “Exclusion” is defined as “the act or an instance of excluding; the state of being excluded,” while “exclude” is defined as “to prevent or restrict the

entrance of ; to bar from participation, consideration, or inclusion; to expel or bar especially from a place or position previously occupied.” Merriam-Webster’s Online Dictionary, <http://www.merriam-webster.com/dictionary/>.

Upon a reading of the statute, Amicus contends that exclusion from admission clearly refers to whether a person is barred or prevented from being admitted to the United States. Thus, the admissibility of the non-citizen is relevant. While it is true that an alien who is an applicant for admission and was found to be inadmissible would be placed in exclusion proceedings, there are other instances where admissibility is relevant. If a non-citizen is convicted of a crime in the United States, departs, and then applies for a visa at a consulate abroad, the visa will not be issued unless the alien is admissible to the United States. In that situation, an alien could be excluded from admission to, or in other words, prevented entrance to the United States as a result of a criminal conviction without being placed in any formal proceedings.

A non-citizen applying for adjustment of status also must establish that he or she is admissible to the United States. The question was and still is whether there are any grounds of inadmissibility, including any criminal grounds of inadmissibility. A person may be eligible to adjust status even if he or she is subject to deportation/removal. Conversely, a person may be ineligible to adjust status even without being subject to deportation/removal. If found to be

inadmissible under INA § 212(a) the person would be barred from participating in or being considered for adjustment of status. In other words, the alien would be excluded from admission to the United States as a lawful permanent resident as a result of a criminal conviction.

Non-citizens who are deported also have an interest in potentially coming back to the United States in the future. A deportation or removal order may not be an absolute bar to returning to the United States. As set forth in the previous section, a person who is subject to a criminal ground of removal may or may not be inadmissible. Thus, it is important for the trial court to advise a defendant that a conviction may not only subject him to deportation, it may also bar him from admission in the future should he apply for admission at a consulate. This is accomplished by the trial court advising that the non-citizen's conviction may result in exclusion from admission to the United States.

The issue of admissibility also comes up as it did for Feldman where he departed the United States and returned. Upon his return, he was determined to be inadmissible based on his criminal record and was placed in removal proceedings.

In light of the foregoing, the phrase "exclusion from admission to the United States" is still extremely relevant and important. The terminology is still relevant because exclusion from admission means being excluded or prevented from admission which can occur in a number of different scenarios. It is a separate

consequence from deportation/removal. In order for a defendant to truly understand the potential adverse immigration consequences of his or her plea, the defendant must be advised of the potential he or she may be prevented from admission to the United States in the future.

### 3. Denial of Naturalization

The State's argument entirely overlooks the third relevant immigration consequence in R.C. § 2943.031. Naturalization proceedings remain the same after IIRIRA. The ability to naturalize remains an important consideration to a defendant in deciding whether to enter a plea. Thus, the advisement must include reference to naturalization.

*D. The holding in Feldman is not inconsistent with Francis nor does it change the standard to strict compliance*

The Eleventh District's decision in *Feldman* is not inconsistent with *Francis*. It also does not change the legal standard to strict compliance as argued by the State.

The Ohio Revised Code is crystal clear in stating what advisement must be given to a non-citizen criminal defendant. This Court in *Francis* held that when the trial court failed to give the advisement specifically set forth in R.C. §2943.031(A), the test is substantial compliance. The test looks at whether the

defendant subjectively understands the consequences of his plea and the rights he or she is giving up in entering the plea. *Francis*, 104 Ohio St.3d at 499-500.

The decision in *Feldman* does not require strict compliance with the statute nor is it inconsistent with *Francis*. The case holds that there must be some mention of each of the three adverse immigration consequences set forth in the statute. These consequences were included in the statute for a reason. The Eleventh District concluded that failing to require a trial court to allude to each of the three warnings would contravene the clear policy requiring notification of each of the three warnings specifically set forth in R.C. §2943.031(A). *Feldman* at ¶ 43. “The warning is not simply an academic obstacle which a court must overcome; rather, the purpose of the caveat is to ensure a non-citizen defendant *fundamentally appreciates* that a plea of guilty could eventuate in one of the three sanctions set forth in the statute.” *Id.* The Eleventh District concluded that in light of the substantial compliance standard set forth by this Court in *Francis*, “we fail to see how a non-citizen defendant can be charged with a subjective understanding of all three statutory consequences when he or she is not apprised, in some form, of each separate consequence.” *Id.* Without delineating each separate consequence, the Eleventh Circuit found that Feldman could not have subjectively understood the warning. *Id.* at ¶45.

The Eleventh District's decision correctly recognizes that a criminal defendant cannot subjectively understand the potential immigration consequences set forth in the statute where there is no mention of all three. In fact, there was only mention of one. As set forth herein, each of the three potential consequences is distinct and significant. The policy of the statute would clearly be undermined if mention of only one or two of the consequences constituted substantial compliance. A defendant cannot possibly fundamentally appreciate the potential adverse immigration consequences of his plea when he or she is only partially advised of those consequences. Substantial compliance with R.C. §2943.031 requires some mention of each of the consequences.

*E. The appellate courts in Ohio have taken differing positions on what constitutes substantial compliance with Ohio Revised Code §2943.031.*

A review of the case law addressing substantial compliance with R.C. §2943.031 after *Francis* shows that Ohio appellate courts have taken differing views on what constitutes substantial compliance. The Eighth, Tenth, and Eleventh Districts have required that all three consequences be mentioned in order to constitute substantial compliance. *Feldman*; *State v. Naoum*, 8<sup>th</sup> Dist. Nos. 91662 and 91663, 2009-OHIO-618; *State v. Ouch*, 10<sup>th</sup> Dist. No. 08AP-79, 2008-OHIO-4894. The Second District also held that an advisement that fails to

mention two out of the three potential consequences was not sufficient to comply with the statute. *State v. Hernandez-Medina*, 2<sup>nd</sup> Dist. No. 06CA0131, 2008-OHIO-418; *see also State v. Schlaf*, 8<sup>th</sup> Dist. No. 90825, 2008-OHIO-6151. Other courts have held that there can be substantial compliance where not all three warnings are given. *See e.g. State v. Lopez*, 6<sup>th</sup> Dist. No. OT-05-059, 2007-OHIO 202.

The proper rule is that set forth in *Naoum* and *Feldman*. In *Naoum*, the Eighth District Court of Appeals has addressed whether there was substantial compliance when two of the three adverse immigration consequences were mentioned during the plea hearing. *State v. Naoum*, 8<sup>th</sup> Dist. Nos. 91662 and 91663, 2009-OHIO-618. In that case, Naoum was advised that the plea may impact his citizenship and that it “could result in some ramifications by way of deportation.” *Id.* at ¶ ¶ 3-16. The Eighth District found that substantial compliance is not met when only 2/3 of the advisement is given. *Id.* at ¶ 23. “Although the trial court need not use the exact language set forth in the statute, the statute is clear that the trial court must advise the non-citizen defendant of three separate consequences that might result from a guilty plea: 1) deportation; 2) exclusion from admission into the United States; and 3) denial of naturalization. *Id.* The Eighth District found that there was not substantial compliance where the

Court failed to advise Naoum that he could be subject to exclusion from the United States. *Id.* at ¶ 24.

Reference to only one or two of the three potential consequences is simply not enough for substantial compliance. The only position that complies with the clear intent and language of the statute is that set forth by the Eleventh District in the instant case.

*F. The United States Supreme Court's decision in Padilla does not support the State's position that informing a non-citizen only of potential deportation or removal is sufficient to comply with Ohio Revised Code §2943.031.*

The States contends that its position is supported by the United States Supreme Court's recent decision in *Padilla v. Kentucky* (2010), -- U.S. --, 130 S.Ct. 1473, 1478. However, this is not the case.

In *Padilla*, the issue presented was whether, as a matter of federal law, Padilla's counsel was required to advise him that the offense to which he was pleading guilty would result in his removal from the United States. *Id.* at 1478. The case did not involve a statute that required the trial court to inform the non-citizen defendant of any potential adverse immigration consequences. The case only addressed potential deportation since this was the only issue presented to the Court. Due to the importance of deportation to a non-citizen, the Court held that

counsel must inform a criminal defendant of the potential risk of deportation. *Id.* at 1486-87.

The State addresses language in *Padilla* regarding the complexity of the immigration laws and the difficulty in some cases of determining whether a criminal conviction will result in deportation. (*Appellant brief, pp. 18-20*) The State believes that the difficulty faced by trial counsel in advising a client of potential immigration consequences applies equally to a trial court. *Id.* However, this argument entirely overlooks R.C. §2943.031.

The Ohio Revised Code sets forth the duty of a trial judge prior to accepting a guilty or no contest plea from a non-citizen. The advisement is even in quotation marks. The General Assembly could not have made it any easier to comply with the statute. The trial judge is not required to be knowledgeable on immigration issues or law. The **only** responsibility of the trial court judge is to address the three potential consequences that are specifically set forth by statute. Without doing so, there cannot be substantial compliance.

The *Padilla* case addresses an entirely different situation as the question presented involved defense counsel's duty to advise of potential deportation. The question here is much different. The complexity of immigration law is not an issue because R.C. §2943.031 requires only mention of three distinct consequences. This is to put the defendant on notice that three possible severe consequences may

flow from the plea. R.C. §2943.031 does not require an explanation as to the likelihood of any of the consequences. Thus, the *Padilla* decision and the instant case involve different issues.

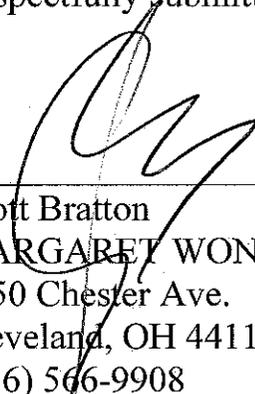
*G. This Court should uphold the decision of the Eleventh District and hold that in order to substantially comply with Ohio Revised Code §2943.031, the trial court must reference each of the three distinct adverse immigration consequences set forth in the statute.*

The decision of the Eleventh District is correct. It complies with the language and intent of R.C. § 2943.031. A criminal defendant cannot subjectively understand the implications of his or her plea when only one of those potential implications is conveyed. Simply stating that a defendant may be deported or may have immigration issues is not enough. A non-citizen defendant must be put on notice that as a result of the plea, he or she may be facing deportation, exclusion from admission to the United States and the denial of naturalization. In the instant case, only one out of three of the consequences was given. This is not substantial compliance with the statute.

## CONCLUSION

For the reasons set forth herein, this Court should uphold the decision of the Eleventh District Court of Appeals. Substantial compliance with R.C. § 2943.031 requires that the trial court advise a non-citizen defendant of all three potential adverse immigration consequences of the plea prior to accepting the plea.

Respectfully submitted,



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CERTIFICATE OF SERVICE

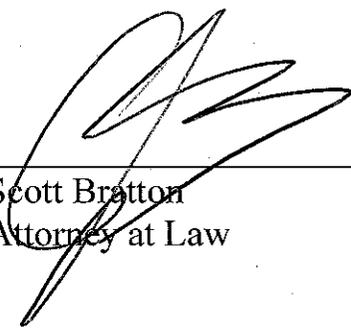
A copy of the foregoing Appeal brief was served by ordinary U.S. mail upon the following:

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