

Amendment to 1547

The ACLU, Northwest Immigrants Rights Project, OneAmerica, the Washington Association of Criminal Defense Attorneys and the Washington Defender Association support proposed substitute language to ensure noncitizens' rights are protected.

This amendment WILL:

- **Ensure minimal due process protections for noncitizens subject to early release for deportation.**
 - In 2010 the U.S. Supreme Court held in *Padilla v. Kentucky* that defense counsel's 6th amendment duties required providing noncitizen defendants with affirmative, competent advice regarding immigration consequences of their convictions.
 - The amendment ensures that courts are safeguarding the constitutional rights of defendants, many of whom are longtime lawful residents and refugees.
 - The U.S. is a signatory to the Convention Against Torture and prevents ICE and immigration judges from deporting persons who will be subject to torture in their home country. This amendment allows courts to ensure that defense counsel has advised a noncitizen of her/his right to make a claim under this treaty if s/he fears torture.
 - WDA's Immigration Project provides defense counsel with individualized case assistance and a host of other resources to easily and efficiently comply with their obligations.
- **Ensure that no offender is released to ICE without confirmation that ICE can actually deport him or her.** Although someone may have a final order of deportation, if the U.S. does not have a repatriation agreement with their country (e.g. Cuba, Laos, Iran) deportation is not possible.

This amendment WILL NOT:

- **Interfere with DOC efforts to release qualifying offenders already in its custody to ICE for deportation.** DOC only will be required to certify to the court that they have given the offender the requisite notice and waited 30 days (so that offenders can have an opportunity to seek advice of immigration counsel). Once those two requirements are met, the court is required to enter a conditional release order – period. There will be no hearings back before the criminal court.
- **The amendment will not interfere with DOC efforts to release future qualifying offenders who come into DOC custody to ICE for deportation.** It will be mandatory for the sentencing court to enter an order for conditional release for deportation for ALL qualifying offenders. The amendment does not allow the court discretion to do otherwise. Thus, all qualifying offenders will arrive with appropriate orders for conditional release, at which time DOC can expeditiously proceed with transfer of custody to ICE for deportation.
- **The Amendment will not place any additional onerous burden on courts.** This amendment is ensures that courts do what is required of them, namely to ensure that defense counsel is providing adequate representation. Doing so can be accomplished by routine and brief colloquy with defense counsel at sentencing.

For further information, contact:

ACLU: Shankar Narayan, snarayan@aclu-wa.org, (206) 623-2184 x 281

Northwest Immigrant Rights Project: Jorge L. Barón, jorge@nwirp.org, (206) 957-8609

OneAmerica: Toby Guevin, toby@weareoneamerica.org, 206.723.2203 x202

WACDL/WDA: Bob Cooper: (206) 852-3616 or bob@EvergreenPublic.com