LEGAL NEWS

Marylander facing deportation files appeal with Supreme Court

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Saying he received bad legal advice, a Mexican national living in Maryland has urged the U.S. Supreme Court to let him withdraw his no-contest plea to a sex offense that resulted in federal deportation proceedings against him.

In papers filed with the justices last week, Hugo Reyes-Morales said his trial attorneys told him he could be deported for the serious-crime conviction but qualified their warning by saying the risk was "very low" because the plea deal of less than a year in prison was "immigration friendly."

That advice was proven wrong when the federal government initiated deportation proceedings because the third-degree sex offense was a deportable crime of "moral turpitude" punishable by more than one year in prison, Reyes-Morales' appellate attorneys Robert C. Bonsib and Megan E. Coleman wrote in their client's pending petition for Supreme Court review.

The issue presented to the high court addresses the scope of its 2010 decision in *Padilla v. Kentucky* that requires attorneys to "do no more than advise a non-citizen client that pending criminal charges may carry a risk of adverse immigration consequences," such as deportation.

Reyes-Morales' trial attorneys essentially did less by saying more when they told him of the risk but erroneously added that the chance of deportation was low based on the plea, wrote Bonsib and Coleman, of MarcusBonsib LLC in Greenbelt.

AP FILE PHOTO

The Supreme Court has not stated when it will vote on Hugo Reyes-Morales' request for its review.

Reyes-Morales is seeking Supreme Court review of what his appellate counsel called the Maryland Court of Special Appeals' incorrect decision that his guilty plea was valid because the warning that he could be deported had "by itself" satisfied the advice required under *Padilla* regardless of what else he might have been told.

"The Padilla court cautioned defense counsel to "do no more" than advise about the risk of immigration consequences when those consequences are unclear," Bonsib and Coleman wrote.

"But where an attorney does do more, he does so at his own peril," they added. "The *Padilla* court could not have intended that a general advisement about the risk of immigration consequences would 'by itself' be sufficient to satisfy constitutional guarantees, regardless of the contemporaneous misadvice given by defense counsel, as was upheld by the Maryland Court of Special Appeals in (this) case."

The Maryland Attorney General's Office has waived the state's right to respond to the petition for Supreme Court review unless the justices request a response.

The high court has not stated when it will vote on Reyes-Morales' request for its review. The case is docketed at the Supreme Court as *Hugo Reyes-Morales v. State of Maryland*, No. 21-619.

Reyes-Morales, a legal U.S. resident, was facing four counts of third-degree sex offense and one count of sexual solicitation of a minor when he chose to forgo a trial and enter an Alford plea in Prince George's County Circuit Court on July 10, 2013, to one count of third-degree sex offense. He was sentenced to 364 days in jail, with all but the two days he had served in jail suspended, and 364 days of supervised probation.

The federal government sought Reyes-Morales' deportation six months later, prompting him to seek withdrawal of his plea based on ineffective assistance of counsel and proceed to trial in hope of being found not guilty and staving off deportation.

Prince George's County Circuit Judge Beverly J. Woodard granted his withdrawal request on Oct.19, 2015, concluding that the assurances that his plea was "immigration friendly" weakened his attorneys' prior warning that he could be deported.

But the intermediate Court of Special Appeals reinstated the plea on Feb. 5, 2021, agreeing with the state that the attorneys' warning that he could be deported satisfied the advice requirement set by the Supreme Court in *Padilla*. The Court of Appeals declined to hear Reyes-Morales' appeal on May 28, 2021, prompting his to seek review by the Supreme Court.

New rule on information blocking

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Commentary

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Commentary

When relying on a variety of different health care providers for care, patients frequently encounter challenges accessing their medical records or transferring information from one provider to another.

Health care professionals encounter the same roadblocks when their practices transition to a new electronic health record (EHR) platform or they try to send information from their EHR platform to other providers, clinical databases, or local health information exchanges that do not use compatible software.

A new rule from the U.S. Department of Health and Human Services' Office of the National Coordination for Health IT went into effect April 5, 2021, to facilitate increased patient and systemic access to electronic health information by encouraging EHR interoperability and by limiting information blocking practices.

Interoperability is the seamless sharing of information between different systems. In this case, because HHS acknowledges that providers choose from a variety of EHR systems to meet their needs, the new rule is designed to encourage technical practices and innovation to facilitate the transfer of information between different EHR platforms.

Information blocking is any action that a provider knows will hinder or even just discourage a patient, other providers, or payors from accessing EHI. The new rule prohibits it, unless the provider with the EHI is required to withhold the information by law or meets one of several exceptions outlined in the rule.

Information blocking exceptions or safe harbors include blocking the release of EHI to prevent harm to the patient or another person, to protect the patient's privacy, to protect the security of the EHI, or when access is technically infeasible or temporarily unavailable because of events such as system maintenance.

If a provider's actions fail to meet a specific exception, that does not automatically mean a provider is information blocking, though it may prompt a fact-driven inquiry into the provider's intent, ability to control the interoperability of the data, and the effect of the action.

In addition to prohibiting providers from stopping or delaying the flow of data, the rule contains affirmative rights for patients. For example, patients can request that their doctor send their EHI to a third-party app of the patient's choosing free of charge.

The U.S. Office of Inspector General has proposed that information blocking could result in fines of up to $1 million, though the total would depend on the specific facts of the case.

In addition to the new information-blocking rule, HHS is considering additional steps to increase ease of patient access to medical records. Under proposed rules relating to the Health Insurance Portability and Accountability Act, HHS would require providers to respond to patient requests for medical records in 15 days, instead of 30 days.

As a result of the new information-blocking rule, providers should review their existing EHI policies, coordinate with IT platforms and other providers to increase system interoperability, and review agreements to make sure that data sharing is not overly burdensome or restricted.

The rule also contains more detail about the parameters of each exception outlined above, so before denying or delaying a request for EHI, providers may want to consult their health care attorney to determine if the provider's actions meet a safe harbor's requirements.

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