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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

[REDACTED]) Post-Conviction Case No. [REDACTED]
Petitioner,)
v.) Clackamas County Case No. [REDACTED]
)
)
) **AMENDED PETITION FOR**
STATE OF OREGON,) **POST-CONVICTION RELIEF**
Respondent.)

COMES NOW the Petitioner, [REDACTED], by and through his attorney, Brian Patrick Conry, and alleges:

1.

Respondent, State of Oregon, caused Petitioner to suffer an illegal, unconstitutional conviction for Possession of Methamphetamine, in violation of ORS 475.894 The judgment was entered on or about June 23, 2015

2.

Petitioner was restrained of liberty by the above-named Respondent pursuant to an unlawful conviction and is still suffering restraint and legally required immigration consequences caused by said conviction, including that at this time Petitioner is

1 inadmissible into the United States and deportable therefrom as legally required by
2 the Immigration and Nationality Act (hereafter INA) § 212(a)(2)(A)(i)(I) and INA §
3 237 (a)(2)(A)(i)(I), having been convicted of Possession of methamphetamine. He
4 is currently in immigration proceedings and facing required deportation at this time.
5 His only opportunity to prevent his deportation is to successfully obtain a grant of
6 post-conviction relief (hereafter PCR).
7

8 The conviction Petitioner is attacking is by virtue of a judgment and sentence
9 by the Clackamas County Circuit Court in the criminal case of State of Oregon v.
10 [REDACTED], Case No. [REDACTED]. Petitioner was facing one
11 count of Possession of Methamphetamine and one count of Criminal Trespass in the
12 First Degree (Exhibit 1, pg. 1). Petitioner was known or should have been known
13 by criminal defense counsel (hereafter counsel) to not be a citizen of the United
14 States. Counsel should have known prior to the plea entry and advised the petitioner
15 prior to plea entry, that a guilty plea to PCS would be virtually certain to legally
16 require his deportation from the United States.
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20 Petitioner's date of birth is [REDACTED]. Petitioner entered the United States
21 from Mexico in approximately Dec 1, 1990 and became a legal permanent resident of
22 the United States at that time. On January 11, 1999, petitioner was granted cancellation
23 of removal under Immigration and Nationality Act 240(a). This occurred after his
24 convictions on or about March 19, 1997, October 24, 1997 and January 8, 1998 of
25 Assault for Domestic Abuse and/or Harassment convictions. The convictions were in
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1 the State of Oregon arising out of Salem (Oregon Judicial Information Network record
2 of convictions attached).

3 Petitioner is legally required to be deported as a legal consequence of his plea
4 to possession of methamphetamine.
5

6 Petitioner was not advised that Possession of Methamphetamine is “virtually
7 certain” to require his deportation under the immigration law. The likelihood of
8 deportation was understated by criminal defense counsel. He was not advised a PCS
9 conviction is also a ground of inadmissibility into the U.S. and that he would be
10 virtually certain to be physically deported from the United States if he entered into
11 the plea “bargain”.
12

13 Moreover, if a plea bargain that did not require his deportation from and
14 inadmissibility into the United States was not provided, Petitioner reasonably would
15 have insisted on a jury trial. Petitioner was hallucinating and hearing voices at the
16 time of the incident that gave rise to this unconstitutionally obtained conviction.
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19 3.

20 Petitioner was “prejudiced” by his guilty plea to Possession of
21 Methamphetamine because he would not have entered into the plea had he known
22 that this conviction, as a well-established matter of immigration law, would be
23 virtually certain to require his deportation and inadmissibility and would be virtually
24 certain to result in his physical deportation from the United States, he would have
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1 insisted on a jury trial if a plea offer could not be obtained that would not be virtually
2 certain to result in his deportation.

3 4.

4 Counsel did not know and/or did not clearly advise petitioner that petitioner
5 would be virtually certain to be deported from the United States as a legal
6 consequence of his plea to Possession of Methamphetamine. Petitioner was
7 sentenced by the Circuit Court following his plea of guilty on one count of
8 Possession of methamphetamine to 18 months supervised probation, 40 days jail,
9 undergo drug and alcohol treatment, and fines and assessments totaling \$1240. The
10 judgment was entered on or about June 23rd, 2015.

11 Possession of methamphetamine is obviously a drug crime. INA § 212(a)(2),
12 provides, in pertinent part:

13 “(a) Classes of Aliens Ineligible for Visas or Admission.-Except as otherwise
14 provided in this Act, aliens who are inadmissible under the following
15 paragraphs are ineligible to receive visas and ineligible to be admitted to the
16 United States:

17 (2)Criminal and related grounds.-

18 (A) *Conviction of certain crimes.-*

19 (i) In general.-Except as provided in clause (ii), any alien
20 convicted of, or who admits having committed, or who
21 admits committing acts which constitute the essential
22 elements of-

23 Also, deportability grounds under INA § 237(B) provides:

24 “Controlled Substances.—

25 (i) Conviction—Any alien who at any time after admission has been convicted
26 of a violation of (or a conspiracy or attempt to violate) any law or regulation
of a State, the United States, or a foreign country relating to a controlled

1 substance (as defined in section 102 of the Controlled Substances Act (21
2 U.S.C. 802)), other than a single offense involving possession for one's own
3 use of 30 grams or less of marijuana, is deportable.”

4 5.

5 Petitioner has taken no prior post-conviction proceedings with respect to the
6 above-referenced case. The conviction has not been the subject of appellate
7 proceedings nor does petitioner intend to file an appeal.
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10 **Violation of Right to Counsel Under the 6th and 14th Amendment**

11 Criminal defense counsel has a duty under the 6th Amendment right to counsel
12 to advise his client accurately of the clear, legally required immigration consequence
13 of a conviction, pre-plea. Padilla further holds that silence and/or “errors of omission”
14 are cognizable “ineffective assistance” claims.
15

16 Here, Petitioner was not advised and/or did not clearly understand he was
17 “virtually certain” to be deported from the United States if he entered a plea to
18 possession of methamphetamine.
19

20 Petitioner's conviction should be set aside due to the ineffective assistance of
21 counsel under the Sixth Amendment right to counsel, which is applicable in the State
22 of Oregon through application of the Fourteenth Amendment of the U.S. Constitution
23 due process clause.
24

25 Padilla holds that an immigrant defendant's right to effective assistance of
26 counsel under the Sixth and Fourteenth Amendments of the U.S. Constitution is

1 violated when counsel fails to accurately advise the immigrant of the “advantages
2 and disadvantages” of the immigrant’s plea to a criminal charge.

3 It is unambiguously clear and/or readily ascertainable by reasonably
4 competent counsel that, as a matter of the plain language of the applicable
5 immigration statutes, Petitioner was virtually certain to be deported for possession
6 of methamphetamine. Counsel failed to accurately advise his client of this
7 presumptively mandatory immigration penalty required by the law. The failure to
8 provide this advice prior to plea is a clear violation of Petitioner’s right to counsel
9 as guaranteed by the Sixth and Fourteenth Amendments of the US Constitution.
10 Counsel was clearly ineffective for failure to advise this Petitioner, pre-plea, that the
11 key immigration consequence of his plea to Possession of methamphetamine.
12 Counsel understated the likelihood of Petitioner’s deportation by advising him
13 merely he could be (from plea petition) and/or that there would be a “significant
14 likelihood” of deportation from the United States following a plea to Possession of
15 a Controlled Substance.
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20 **The Plea Was Unknowingly and Involuntarily Entered**
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1 There was a violation of the Fifth Amendment due process clause, applicable to
2 the States through the Fourteenth Amendment of the United States Constitution, and a
3 violation of Article I, Section 10 of the Oregon Constitution¹.

4 Petitioner's plea was unknowingly and involuntarily entered into. Petitioner was
5 misinformed and/or not informed of the effect the required immigration penalty for the
6 Possession of methamphetamine would have on his life; to wit, that his conviction
7 would require his deportation from the United States as a clear legal consequence of
8 his plea. Moreover, Petitioner may have been incompetent at the time of his plea as
9 he had been suffering from schizophrenia over the last 15 years.
10

11
12 Petitioner's conviction should be set aside as unknowingly and involuntarily
13 entered as a matter of law under both the Oregon Constitution and the Due Process
14 Clause of the US Constitution. This is a basis for relief in addition to the claim of
15 ineffective assistance of counsel. An unknowing and involuntary plea is a substantial
16 denial in the proceedings, which requires the conviction be set aside.
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19 **Violation of Right to Counsel under Article 1, Section 11 of the Oregon**
20 **Constitution**

21 It's clear that Oregon's "right to counsel", Article 1, Section 11, decision
22 Gonzalez v. State of Oregon, 340 Or 452, 134 P.3d 955 (2006), which finds that
23 immigration consequences are "collateral consequences" of a criminal conviction,
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¹ The Oregon Constitution, Article I, Section 10. Administration of justice. No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.---

1 reasonably must be reversed. Accordingly, Petitioner, at this time, requests this court
2 to reverse Gonzalez v. State of Oregon based upon the logic and rationale of the
3 Padilla decision that immigration consequences of a conviction are not “collateral”
4 to the criminal court proceedings but are inextricably entangled therein. The last
5 Oregon Court of Appeals decision to address this issue, Saldana-Ramirez, decided
6 March 13, 2013, stated that Gonzalez has not been impliedly reversed by the US
7 Supreme Court decision in Padilla, and that Gonzalez remained the law of the land
8 and accurately recites the duties of counsel under the Oregon Constitution “right to
9 counsel” clause.
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12 **AFFIRMATIVE MISADVICE**

13 INS v. St. Cyr, 533 U.S. 289, at 325 (2001), held “[t]here is a clear difference
14 ... between facing possible deportation and facing certain deportation.”
15

16 Counsel affirmatively misadvised his client, the Petitioner, that, as a result of his
17 plea of guilty, there was a “significant likelihood” that he would be deported from the
18 United States. In fact, deportation is “presumptively mandatory”, “practically
19 inevitable”, and/or “virtually certain”. This affirmative misadvice is ineffective
20 assistance requiring Petitioner’s convictions be set aside. Long v. State of Oregon, 130
21 Or. App. 198, 880 P.2d 509 (1994) (Once counsel begins to advise on an area of law,
22 such as the immigration consequences of a conviction, counsel must do so accurately).
23 In Long, counsel had no obligation to offer advice about whether a conviction for
24 Sexual Abuse would become expungable, but because counsel did give such advice,
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1 and in the course thereof misadvise his client about when expungement would be
2 available, counsel was ineffective as a matter of law. Here, Counsel began to advise
3 on the immigration consequences, and understated these consequences. This is
4 ineffective affirmative misadvice under both the Oregon Constitution, Article I Section
5 11 and US Constitutional 6th Amendment as the Constitutional protections insuring the
6 right to counsel were violated.
7

8 **The Ineffective Assistance of Petitioner's Counsel Caused Prejudice and**
9 **Requires that the Conviction be Vacated**

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11 If Petitioner had been reasonably advised by counsel concerning the
12 immigration consequence of his conviction of Possession of Methamphetamine, he
13 would not have entered into a guilty plea to Possession of Methamphetamine. He
14 would have insisted on a jury trial, or in order to resolve the matter and if competent at
15 the time, enter into a plea, to one count of Criminal Trespass in the First Degree, with
16 a sentence of up to 179 days in jail.
17

18 **Conclusion**

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20 Petitioner's plea of guilty to Possession of Methamphetamine was caused by the
21 ineffective assistance of counsel, in violation of the Oregon and US Constitutions
22 right(s) to counsel.
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24 Petitioner's guilty plea was made unknowingly and involuntarily. Petitioner did
25 not make an informed decision to enter the guilty plea to Possession of
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1 Methamphetamine. Petitioner was not fully advised of the advantages and
2 disadvantages of his plea “bargain.”

3 Petitioner’s conviction for Possession of Methamphetamine must be vacated
4 due to the ineffectiveness of counsel, as well as due to a substantial denial in the
5 proceedings (due process error, unknowing and involuntary pleas).
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8 DATED this 11th day of April, 2017.

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10 Respectfully Submitted,

11 /s/Brian Conry
12 Brian Patrick Conry, OSB 822245
13 Attorney for Petitioner
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CERTIFICATE OF SERVICE

1
2 I, [REDACTED], hereby certify that on April 11, 2017, I made service
3 of Petitioner's AMENDED PETITION FOR POST-CONVICTION RELIEF with
4 attached exhibits, by causing to be sent via e-mail a true copy to the following:
5
6

7 [REDACTED]
8 Office of the District Attorney
9 807 Main Street
10 Oregon City, OR 97045

11
12 Respectfully submitted,

13 [REDACTED]
14 Law Office of Brian Patrick Conry
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