

STATE OF MICHIGAN
IN THE [REDACTED] CIRCUIT COURT FOR [REDACTED] COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No.: [REDACTED]

Vs.

HON. [REDACTED]

[REDACTED]
Defendant.

**MOTION TO WITHDRAW
PLEA PURSUANT TO MCR 6.310(C)**

Laurence H. Margolis (P69635)

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Attorney for Defendant

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NOW COMES the Defendant, [REDACTED] by and through his undersigned attorney, who, within six (6) months of his sentence pursuant to MCL 6.310(C), hereby moves this Honorable Court to permit withdrawal of his plea, based on the following:

1. On or about January [REDACTED], Defendant-Movant [REDACTED] [REDACTED], a citizen of the [REDACTED] and a lawful permanent resident of the United States since [REDACTED] pled guilty in this Honorable Court to Carrying a Concealed Weapon, contrary to MCL §750.227.¹

2. [REDACTED] was represented by [REDACTED] of the [REDACTED] County Public Defender's Office, and the People were represented by [REDACTED] of the [REDACTED] County Prosecuting Attorney's Office. The Honorable [REDACTED] [REDACTED] conducted the proceedings.

3. Prior to his plea, [REDACTED] counsel failed to advise him of the certain immigration consequences of pleading guilty to Carrying a Concealed Weapon, to wit: that he would be detained without bond and held pending a removal proceeding against him.²

4. As a direct consequence of his plea to the firearms charge, [REDACTED] was taken into custody by officials from Immigration and Customs Enforcement

A video of the plea and sentencing hearings is attached hereto and incorporated herein as Exhibit A. This case was [REDACTED] first lifetime arrest and criminal charge of any sort. He was sentenced to probation, fines, and costs.

[REDACTED] is being charged pursuant to 8 USC §1227(a)(2)(C), which states: " Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921 (a) of title 18) in violation of any law is deportable."

(ICE); he was given a Notice to Appear (NTA) from the Immigration Court, and charged with crimes of removability.³

5. [REDACTED] would not have agreed to the plea if he had known that it would result in his mandatory detention and likely deportation.

6. The failure to provide accurate immigration advice to [REDACTED] constitutes ineffective assistance of counsel under the United States Constitution. *Strickland v Washington*, 466 U.S. 668, 140 S. Ct. 2052; *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).

7. [REDACTED] is presently being detained at the following location:

[REDACTED]

8. Defendant brings this Motion to Withdraw his Guilty Plea alleging the following legal and factual issues:

A. [REDACTED] PLEA WAS NOT KNOWINGLY, VOLUNTARILY, OR INTELLIGENTLY ENTERED.

B. TRIAL COUNSEL'S ASSISTANCE WAS INEFFECTIVE AND VIOLATED [REDACTED] SIXTH AMENDMENT RIGHTS.

9. Due to the lack of any legal advice to [REDACTED] relative to his immigration status, his guilty plea must be vacated under *Padilla*, 130 S. Ct. 1473; 176 L. Ed. 2d 284 (2010).

10. Defendant requests that this Court rule on this motion as expeditiously as possible.

³A true and correct copy of ICE's bond determination, and the NTA are attached hereto and incorporated herein as Exhibit " B."

11. Defendant believes an evidentiary hearing may be necessary to support the allegations of an unknowing and involuntary plea, and his claims of ineffective assistance of counsel.

WHEREFORE, [REDACTED] prays this Honorable Court:

- (a) Hear this Motion, and allow the plea to be withdrawn;
- (b) Grant an evidentiary hearing, including a *Ginther* hearing, on the claims alleged;
- (c) Vacate the conviction and allow Defendant to tender a plea to a different offense, or resume plea negotiations;
- (d) Vacate Defendant's conviction and sentence and order a new trial in this matter; and/or
- (e) For such further relief as this Court deems just and equitable under the circumstances.

Date: June [REDACTED]

Respectfully submitted,



By: **Laurence H. Margolis (P69635)**
Attorney for [REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing
MOTION TO WITHDRAW PLEA PURSUANT TO MCR 6.310(C) upon Plaintiffs
attorney of record for this matter via hand delivery at:

[REDACTED]

Submitted this [REDACTED]

Respectfully submitted ,



Laurence H. Margolis (P69635)

Margolis Law, PC

Attorney for [REDACTED]

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