

CRIMINAL LAW AND IMMIGRATION LAW: DEFINING THE OUTSIDER

INTRODUCTION

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Each year, the UCLA Law Review hosts a Symposium featuring cutting-edge scholarship by leading specialists in an emerging legal field. On January 28, 2011, thirteen scholars engaged in a stimulating and productive conversation on contemporary interplay of criminal law and immigration law. Dean Moran opened the Symposium by welcoming the participants and highlighting the key issues and challenges to be discussed throughout the day. She has graciously agreed to provide her remarks as the Introduction to this Symposium issue.

It is a pleasure to welcome you to this year's Law Review Symposium on "Criminal Law and Immigration Law: Defining the Outsider." The Symposium brings together leading thinkers in the field to address the challenges to our sense of basic decency and fair play that arise when immigrants must confront the realities of the American criminal justice system. This Symposium would not be possible without the generous support of Skadden Arps Slate Meagher & Flom, LLP, as well as Morrison & Foerster, McGuire Woods, and Proskauer Rose. In addition, the UCLA Campus Programs Committee of the Program Activities Board and the UCLA Graduate Students Association provided funding for this event.

The law often compartmentalizes different fields; doctrinal development happens on parallel tracks that are not seen as intersecting. This has certainly been true in the areas of criminal law and immigration law. Early on, the U.S. Supreme Court concluded that deportation was not a form of punishment that merited the kind of procedural protections associated with the criminal process. The result has been streamlined procedures in immigration proceedings, even though noncitizens may view deportation as a harsher outcome than a criminal sentence. In the Court's recent decision in *Padilla v.*

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Kentucky,¹ the justices appear to recognize that for many immigrant defendants, the decision to enter a guilty plea will rest not just on sentencing penalties but also on the prospect of being expelled from the country. The first panel—with Professors Darryl Brown, Jack Chin, Daniel Kanstroom, and Ronald Wright—reviews the decision and its implications for both criminal law and immigration law.

The *Padilla* decision recognizes the dual vulnerabilities of individuals who are charged with a crime and who lack American citizenship. As a formal matter, constitutional protections in the criminal process are afforded to persons, not just citizens, but as an informal matter, these defendants may be marginalized by race and ethnicity, national origin, poverty, cultural differences, lack of education, and limited English proficiency. Certainly, there is research on how race can shape the imposition of criminal sanctions, but far less information is available on the impact of immigration status, language and culture, and socioeconomic status. The second panel of this Symposium—presented by Professors Linda Bosniak, Devon Carbado, Scott Cummings, Cheryl Harris, and Juliet Stumpf—puts *Padilla* in context by exploring the ways in which the criminal justice system and immigration enforcement combine to define the terms of belonging in the United States.

Because criminal law and immigration law have been compartmentalized, each area has developed its own system of implementation and enforcement. Immigration law has been seen as a prerogative of the federal government, a device for defining the boundaries of the polity and an integral part of the nation-building project. For that reason, Congress has enjoyed plenary power over immigration policy, much as it has a unique power to declare war and so defend the country's borders. By contrast, most criminal law has been the province of state governments. Precisely because the power to enact penal codes and to enforce their requirements is far-flung, the power of the government has been fragmented and diluted—a phenomenon that many have seen as a desirable way to avoid the tyranny of a police state. But the interplay of criminal law and immigration law has complicated this picture, as discussed by the third and final panel of the Symposium, featuring Professors Adam Cox, Ingrid Eagly, Hiroshi Motomura, and Cristina Rodríguez. States and the federal government are engaged in a contentious dialogue about who is in charge with allegations that the United States has been weak on border enforcement, requiring the states and even municipalities and private citizens to take decisive action to deter unauthorized entry. These measures in turn have led to charges of unconstitutional overreaching and discrimination.

1. 130 S. Ct. 1473 (2010).

This Symposium tackles some of the toughest issues that face us as a nation. Indeed, many of the questions go to the heart of what constitutes our identity as a people. That identity is being tested by migration in a global economy and crime in a society marked by a growing divide in wealth and opportunity. How we answer questions about defining the outsider in the end will also determine how we define ourselves.