

## Retroactivity of *Padilla* and Beyond: *Commonwealth v. Sylvain*

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### Is *Padilla* Retroactive?

- ***Commonwealth v. Clarke***, 460 Mass. 30 (2011) – *Padilla* is not a “new rule” and is retroactive under federal law to April 1, 1997
- ***Chaidez v. U.S.***, 133 S.Ct. 1103 (2013) – *Padilla* is a “new rule” and is not retroactive under federal law
- ***Commonwealth v. Sylvain***, 466 Mass. 422 (2013) - *Padilla* is not a “new rule” and is retroactive under Massachusetts common law

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### *Sylvain* and art. 12

- In addition to 6<sup>th</sup> Amendment right under *Padilla*, there exists a separate right under art. 12 to accurate advice about immigration consequences
- Article 12 right is retroactive

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### Retroactivity pre-Sylvain

- SJC adopted retroactivity formulation of *Teague v. Lane*, 489 U.S. 288 (1989) in *Commonwealth v. Bray*, 407 Mass. 296 (1990).
- Supreme Court said in *Danforth v. Minnesota*, 552 U.S. 264 (2008), that state can diverge from *Teague* under state law
- SJC declined to do so until *Sylvain*

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### Sylvain retroactivity framework

- Under *Teague*'s original formulation, decision is a new rule if the result was not dictated by precedent
- Supreme Court has expanded new rule definition to include decisions not apparent to all reasonable jurists
- SJC will follow *Teague*'s original formulation – case announces a “new rule” only if the result is contrary to precedent

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### Sylvain's impact on other issues

- Mandatory juvenile life without parole - *Diatchenko v. D.A. for the Suffolk District*, SJC-11453
- Public trial right during jury selection - *Commonwealth v. Alebord*, SJC-11354

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