STATE OF NEW YORK   **COUNTY OF ALBANY**
ALBANY COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

                                        AFFIDAVIT

     -against-

[DEFENDANT],

           Defendant.

_____, being duly sworn deposes and says:

1. I. I am over the age of 18 years old and currently reside at _____, New York.

2. I am the defendant in the above-entitled proceeding. I make this affidavit in support of a motion pursuant to Section 440.10(1)(h) of the Criminal Procedure Law to vacate the judgment of my conviction herein, upon the ground that the judgment was obtained in violation of my rights under the Constitution of this State and/or of the United States. More specifically, I was deprived of my 4th, 5th and 6th Amendment Constitutional rights in this case at the time of my [PLEA / TRIAL] because I was not correctly informed by my attorney of the serious and direct consequences the [PLEA / CONVICTION] would have; including with regard to my immigration status.

3. On [DATE], I pled guilty to Petit Larceny in violation of Section 155.25 of the Penal Law, a Class A Misdemeanor. I was sentenced to three years' probation. When I pled guilty, I did so based on the advice I received from my attorney as to the consequences of such a plea, including those related to my immigration status. This included advice that the plea offered would not make me deportable or convict me of an "Aggravated Felony" under federal law.

4. I chose to plead guilty to this specific charge because 1) I agreed that I had committed an offense and 2) I accepted that the level of punishment was roughly appropriate in the circumstances. Based on the incorrect advice I received about the consequences of this plea, however, I did not understand that the exact provision I was pleading guilty to was important, and thus, I did not dispute it. Had I received correct legal advice, I would have disputed the charge (even though I agreed that I was guilty of *something*).

5. If I had been provided affirmative, competent and most importantly, accurate legal advice regarding the collateral consequences this plea would have, I would have rejected the plea, taken the case to trial and/or requested my attorney to pursue a different plea bargain.

6. A rejection of the plea and pursuit of a plea to another penal law section would have been rational under the circumstances as there were significant issues of proof with respect to the alleged incident.

> **Commented [DJ2]:** This is based on a *Padilla* violation.
>
> If the IAC is based on failure to plea bargain / advocate, swap out these paragraphs to explicitly confirm the defendant would have been happy to plead guilty to the immigration safe / safer plea if it had been brought to their attention.

7. The grounds for relief described have not previously been determined on the merits upon a prior motion or proceeding in a court of this state, or upon an appeal from the judgment, or upon a prior motion or proceeding in federal court.

8. As a result, I respectfully request that the conviction be vacated pursuant to NY CPL 440.10(1)(h) and dismissed on the basis that the judgment was obtained in violation of a right of rights under the Constitution of this State and/or of the United States or that a hearing be held to determine the facts alleged in this affidavit and motion.

Respectfully Submitted,

_____

Sworn to before me this _____ day of _____, 20__.

_____
Notary Public. My commission expires: _____.