

A federal court denied the application of a defendant who sought, among other things, to vacate his conviction because of erroneous advice given to him about the possibility of his being deported based on his conviction. The court stated that petitioner had not met his threshold burden under the standard set forth in *Hill v. Lockhart*, which provides the test for ineffective assistance of counsel for claims arising from guilty pleas. The defendant must make a showing that (1) counsel's representation fell below than objective standard of reasonableness, and (2) "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and insisted on going to trial." The petitioner failed to show that, while immigration consequences may have been a factor in his decision, he would not have pleaded guilty to the charge due to the daunting alternative of facing a jury on a 23-count indictment. The 3rd circuit has yet to address the issue of whether "misadvice" (as opposed to non advice) constitutes ineffective assistance of counsel, and the court declined to make a per se ruling on the issue.