



# April 2010 Immigration Update



BY KATHRYN CARMICHAEL & ALYSON FICKENSCHER

**USCIS Still Accepting H-1B Petitions as of April 8, 2010.** USCIS has received 13,500 H-1B visa petitions of the 65,000 available for the fiscal year 2011 cap and about 5,600 petitions for aliens with advanced degrees, who are subject to a separate 20,000 cap. USCIS will continue to accept both cap-subject petitions and advanced degree petitions until a sufficient number have been received.



Kathryn Carmichael

## The Brave New World for Criminal Defense Counsel.

*Padilla v. Kentucky* changes the rules for counsel to follow when advising foreign clients whether to plead guilty to a criminal offense. In the landmark March 31, 2010 decision in *Padilla v. Kentucky*, the Supreme Court ruled that defense counsel must inform a client whether a guilty plea will result in deportation. The Sixth Amendment right to “effective assistance of competent counsel...the seriousness of an immigration consequence of a criminal plea, and concomitant impact of deportation on families living lawfully in this country demand no less.” This sweeping holding settled the long-running debate and split in the circuit courts over whether the Sixth Amendment applied to advice on removal (deportation) which is a civil proceeding arising out of a guilty plea by a non U.S. citizen and is often classified as merely a “collateral consequence” of criminal proceedings. For more detail on this impactful decision, [click here](#).



Alyson Fickenscher

**Greece Designated as Member of Visa Waiver Program.** U.S. Department of Homeland Security Secretary Napolitano announced on March 9 that Greece is now designated as a member of the Visa Waiver Program (VWP). Greece joins 35 nations already participating in VWP which will allow Greek citizens to travel to the United States without a visa for up to 90 days for permissible tourism or business visitor purposes after applying for an Electronic System Travel Authorization (ESTA) through the web-based system.

**Immigration-Related Unfair Employment Practices of E-Verify Users to be Directly Reported to Department of Justice by USCIS Verification Division.** USCIS and DOJ’s Office of Special Counsel (OSC) signed a Memorandum of Agreement (MOU) on March 17 governing information and case referrals with the civil rights office relating to immigration-related unfair employment practices. The MOU mandates that USCIS Verification Division will refer to OSC all discrimination matters within OSC and EEOC’s jurisdiction. In particular, all matters will be referred that may involve an individual act or pattern or practice of employment discrimination on the basis of national origin or citizenship status; document abuse; or retaliation as well as any matters that may involve the misuse, abuse, or fraudulent use of E-Verify that can result in the adverse treatment of employees.

*For more information on these and other immigration developments, contact Kathryn Carmichael at [kcarmichael@williamsmullen.com](mailto:kcarmichael@williamsmullen.com) or Alyson Fickenscher at [afickenscher@williamsmullen.com](mailto:afickenscher@williamsmullen.com).*

## Williams Mullen Immigration Team

**William J. Benos, Chair**  
804.783.6402  
[bbenos@williamsmullen.com](mailto:bbenos@williamsmullen.com)

**Ellot Norman**  
804.783.6482  
[enorman@williamsmullen.com](mailto:enorman@williamsmullen.com)

**D. Earl Baggett IV**  
804.783.6478  
[ebaggett@williamsmullen.com](mailto:ebaggett@williamsmullen.com)

**Kathryn M. Carmichael**  
434.951.5701  
[kcarmichael@williamsmullen.com](mailto:kcarmichael@williamsmullen.com)

**Alyson E. Fickenscher**  
804.783.6495  
[afickenscher@williamsmullen.com](mailto:afickenscher@williamsmullen.com)

Williams Mullen Immigration Update. Copyright 2010. Editorial inquiries should be directed to Kathryn M. Carmichael, Two James Center, 1021 E. Cary Street, Richmond, VA 23219, 804.643.1991.

This information is provided as an educational service and is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

Please visit [www.williamsmullen.com/immigration](http://www.williamsmullen.com/immigration) for more information about the Williams Mullen Immigration Team.