COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK COUNTY SJC NO. 10888

COMMONWEALTH

V.

MICHAEL CLARKE

BRIEF AND ADDENDUM FOR AMICUS CURIAE COMMITTEE FOR PUBLIC COUNSEL SERVICES

WENDY S. WAYNE
BBO # 555665
wwayne@publiccounsel.net

JEANETTE KAIN
BBO # 661089
jkain@publiccounsel.net

JENNIFER KLEIN
BBO # 678858
jklein@publiccounsel.net

COMMITTEE FOR PUBLIC COUNSEL SERVICES
Immigration Impact Unit
21 McGrath Highway
Somerville, MA 02143
617-623-0591

March, 2011

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

United States Constitution

Massachusetts Declaration of Rights

Other Authorities

ISSUES PRESENTED

1. Whether the decision announced in Padilla v. Kentucky, obligating a criminal defense attorney, consistent with the Sixth Amendment, to advise a defendant of the immigration consequences of a criminal conviction, has retroactive application; and if so,
2. Whether the defendant's prior conviction should be vacated if he has sufficiently demonstrated that his attorney unreasonably failed to properly advise the defendant of the potential immigration consequences of his plea, and where that failure prejudiced the defendant.

INTEREST OF THE AMICUS CURIAE

The Immigration Impact Unit (IIU) of the Committee for Public Counsel Services (CPCS) provides training and case-specific consultation for indigent persons regarding the immigration consequences of criminal conduct with which they have been charged. CPCS is statutorily mandated to provide counsel for indigent defendants in criminal proceedings in Massachusetts State courts. A significant percentage

of CPCS's clients are noncitizens potentially affected by the recent decision of the Supreme Court of the United States, Padilla v. Kentucky, ___ U.S. ___, 130 S. Ct. 1473 (2010), in which the Supreme Court held that the Sixth Amendment right to counsel includes advice about immigration consequences resulting from a guilty plea and that failure of counsel to so advise can constitute ineffective assistance of counsel. Id. at 1486-1487. The IIU actively advises the nearly 3,000 public defenders and private, court-appointed attorneys in Massachusetts who represent indigent defendants.

This appeal raises issues of tremendous public importance concerning the retroactive application of the Padilla decision. It also presents this Court with an opportunity to clarify what kind of provided or omitted advice constitutes ineffective assistance of counsel, and the level of prejudice that a defendant must show in order to prevail on a motion for new trial under Padilla.

STATEMENT OF THE CASE

Amicus adopts the statement of the case as set forth in the defendant's brief.[1]

STATEMENT OF THE FACTS

Amicus adopts the statement of the facts as set forth in the defendant's brief.

SUMMARY OF THE ARGUMENT

1. In 2008, the Supreme Court held in Danforth v. Minnesota that its Teague v. Lane formulation for retroactive application of new rules of criminal procedure to habeas corpus challenges was not mandatory upon the States, and that a State could choose to give broader effect to new rules of criminal procedure to State collateral challenges than is required by Teague. The Court reasoned that Teague was intended for the unique finality concerns relevant to federal habeas law, and noted that State courts "almost universally understood" the Teague rule as binding only federal habeas courts, not State courts,

---

[1]The Defendant's Record Appendix will be cited as "(R.App.)" and the Commonwealth's Appendix (*sic*) as "(C.App.)". The Amicus Addendum shall be signaled as "(A.A.)". All citations to Federal statutory laws in this Brief are reproduced in the Amicus Addendum at 52-53 (selected sections of 8 U.S.C. § 1101 et seq.).

leaving States free to "determine whether to follow the federal courts' rulings on retroactivity or to fashion rules which respond to the unique concerns of that state." (pp. 13-15)

In 1990, this Court lacked the benefit of Danforth's guidance concerning Teague's exclusive application to federal habeas jurisprudence when it adopted the Teague retroactivity analysis in Commonwealth v. Bray. Amicus suggests that Bray's stringence, developed from Teague's alliance with the purpose and limitations of habeas review, is not well-suited to the potential retroactivity of new law concerning the right to effective assistance of counsel, because that right holds an extraordinarily cherished place in our State's history and its "unique concerns," as Danforth noted. Since the mid-seventeenth century to the present day, the right to counsel -- synonymous with the right to *effective* counsel -- has held a position of nearly unparalleled importance in our State's jurisprudence. (pp. 15-19)

Given the "unique concerns" for the right to counsel in Massachusetts, the analytical standard to be applied by this Court in determining whether new

Sixth Amendment rules ought to have retroactive effect to collateral claims of ineffective assistance of counsel at guilty pleas, such as the Padilla v. Kentucky ruling, should be identical to the retroactivity of such new rules to cases upon direct review. Two important authorities provide support for this proposition. First, in Commonwealth v. De La Zerda, this Court noted that "a [R]ule 30 motion challenging a guilty plea or, as in this case, its equivalent for lack of voluntariness ... might be seen as a direct appeal, in that such a motion provides the only avenue for appellate review of the validity of the guilty plea." Second, in the postconviction challenge brought in Arsenault v. Massachusetts, the Supreme Court expressed the unanimous view that a new Sixth Amendment decision had retroactive application upon the petitioner's case because "only the aid of counsel could have enabled the accused to know all the defenses available to him and to plead intelligently." The Court concluded that the right to counsel at trial, on appeal, and at the other "critical" stages of the criminal proceedings "have all been made

retroactive, since the 'denial of the right must almost invariably deny a fair trial.'" (pp.20-23)

2. If this Court continues to adhere to the Teague formulation in reviewing Rule 30 postconviction motions, Padilla can only apply retroactively if it is an old rule or a new rule subject to either of Teague's exceptions, and neither exception is relevant here. However, Padilla should apply retroactively to Clarke's postconviction challenge, because rather than announcing or applying a new rule, Padilla simply extended the precedent of Strickland v. Washington to Padilla's circumstances. Likewise, many courts have found that Padilla is simply the application of an old rule, and that its holding applies retroactively because it is merely an application of Strickland's recognition that the Sixth Amendment commands effective assistance of counsel. Although the Supreme Court has defined the "new rule" standard in a variety of ways over the last twenty years, the Strickland test requires a case-by-case examination of the evidence. Thus, novel *facts* subject to a Strickland analysis would not, *a fortiori*, result in the creation of a novel *rule* for purposes of Teague. (pp. 23-27)

Padilla itself offers two clear, strong indications that the Supreme Court fully expected its holding to be retroactive. First, the Court provided detailed reasoning why the decision would not "open the floodgates" of postconviction motions. Any discussion of "the floodgates" would be superfluous if the Court did not intend its decision to be retroactive. Second, the Court stated that it found unlikely the prospect of its decision "hav[ing] a significant effect on those convictions already obtained as the result of plea bargains." This, too, would be meaningless if the Court's intent was not retroactive. (pp.27-33).

3. Deportation is intimately related to the criminal process and removal from the United States is now nearly an automatic result for a broad class of noncitizen offenders. Because deportation is an integral part -- indeed, sometimes the most important part -- of the penalty that may be imposed on noncitizen defendants, the Sixth Amendment right to counsel includes advice about immigration consequences of a plea. Under Padilla, the two-prong Strickland test for determining ineffective assistance of counsel

applies to the question of whether counsel properly advised a criminal defendant about the immigration consequences of a change of plea. (pp. 34-35)

Providing effective assistance of counsel to a defendant during the plea process entails diverse responsibilities. Padilla recognized that professional standards of the legal community are highly relevant in determining whether an attorney's representation fell below an objective standard of reasonableness. Under national and local professional standards promulgated by bar associations and CPCS, competent counsel must interview a defendant and gather significant personal information about the client in order to properly represent him. This responsibility necessarily includes determining the defendant's immigration status. In the present matter, it was objectively unreasonably for trial counsel to fail to inquire about or investigate the immigration status of the defendant, as well as to fail to advise him of immigration consequences resulting from his plea. (pp. 36-41)

Showing that the defendant would have insisted on going to trial is not the only way to establish

prejudice under the second prong of Strickland. The instant defendant's pleas of guilty to the offenses at issue in this matter, i.e., possession of cocaine and marijuana with intent to distribute, were pleas to "aggravated felonies" as defined by federal immigration law. This subjected the defendant to mandatory deportation. Even if a person has lived legally in the United States for most of his life, an aggravated felony conviction virtually guarantees his removal and permanent exile from this country. Had trial counsel known this, she could have made reasonable efforts, in plea negotiations, to seek conviction of the lesser included offenses of possession of cocaine and marijuana pursuant to G.L. c. 94C, § 34. Although this would have caused the defendant to be deportable, he might have been eligible for some form of relief from deportation, such as "cancellation of removal." He is not eligible for such relief under the present convictions. Had trial counsel been unable to negotiate a plea to lesser included offenses, the defendant may have chosen to go to trial in the hopes of an acquittal or

conviction on the lesser included offenses. (pp. 41-46).

The general, non-specific warnings provided to the defendant by the trial judge and in the written waiver of rights form did not cure the prejudice to the defendant of trial counsel's failure to advise him of the specific immigration consequences resulting from the guilty pleas in this matter. Because the defendant was prejudiced by the constitutionally deficient representation of trial counsel, the defendant's motion for a new trial should have been allowed. (pp. 46-48).

ARGUMENT

I.

DANFORTH V. MINNESOTA REFLECTS THAT THE TEAGUE FORMULATION WAS SPECIFICALLY INTENDED TO ADDRESS FEDERAL HABEAS CHALLENGES, AND THAT STATE COURTS MAY FASHION MORE PERMISSIVE RULES OF RETROACTIVITY UNDER THEIR OWN LAWS FOR CHALLENGES OF "UNIQUE CONCERN". GIVEN THE HISTORIC IMPORTANCE OF THE RIGHT TO EFFECTIVE COUNSEL IN MASSACHUSETTS, THIS COURT SHOULD PERMIT BROADER COLLATERAL RELIEF UNDER DANFORTH FOR PADILLA POSTCONVICTION MOTIONS.

In the case at bar, the defendant appeals the denial of a motion for new trial in which he claims that his trial counsel's failure to properly advise him of immigration consequences resulting from his guilty plea denied him effective assistance of counsel as required by the Sixth Amendment. The defendant relies on the recent decision of the Supreme Court in Padilla v. Kentucky, 130 S.Ct. at 1473.

Before this Court can reach the merits of Mr. Clarke's ineffective assistance of counsel claim, it must address the threshold question of whether the decision in Padilla applies retroactively. See Penry v. Lynaugh, 492 U.S. 302 (1989), citing Teague v. Lane, 489 U.S. 288 (1989). When "issues of both retroactivity and application of constitutional doctrine are raised," the retroactivity issue should

be decided first. Bowen v. United States, 422 U.S. 916, 920 (1975).

As shall be discussed herein at length, in Teague v. Lane, the Supreme Court dealt exclusively with the question of retroactivity in the context of federal habeas review. Opining that "[r]etroactivity is properly treated as a threshold question," the Court held that if a "case announces a new rule...[in that] the result was not dictated by precedent existing at the time the defendant's conviction became final...[,]" it will not be applied retroactively to cases on collateral (i.e. habeas) review unless it falls into one of two exceptions not relevant to the case at bar.[2]

---

[2] In Commonwealth v. Bray, 407 Mass. 296 (1990), this Court determined to follow the rule of Teague for determining the retroactive application of a new criminal rule to cases on State collateral review, as distinguished from cases on direct review, which enjoy retroactive application of new rules. Id. at 299-303. See also Griffith v. Kentucky, 479 U.S. 314, 328 (1987) ("a new rule ...is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past"). Clarke's case is before this Court on collateral review of the denial of a new trial motion; thus, Padilla's retroactivity is the crucial procedural question.

A. *Danforth v. Minnesota* establishes that *Teague* applies only to federal habeas cases; accordingly, this Court may choose to provide broader retroactive relief to collateral challenges than *Teague*'s formula for new rules of criminal procedure.

In Danforth v. Minnesota, 552 U.S. 264 (2008), the Supreme Court held that "[w]e have never suggested" that the strict constraints upon retroactivity under Teague should "constrain[] the authority of state courts to give broader effect to new rules of criminal procedure than is required by that opinion[,] ... and [we] now hold that it does not." 552 U.S. at 266. The Court explained that "[a] close reading of the Teague opinion makes clear that the rule it established was *tailored to the unique context of federal habeas*, and therefore had no bearing on whether States could provide broader relief in their own postconviction proceedings than required by that opinion." Id. at 277 (emphasis added).

Danforth noted three important distinctions between the mandate of Teague's retroactivity formulation upon federal habeas corpus review, and the nonmandatory reliance by state courts upon Teague in devising their own standards of retroactivity. First, Danforth noted

that "not a word in Justice O'Connor's discussion ... asserts or even intimates that her definition of the class eligible for relief under a new rule should inhibit the authority of any ... state court to extend the benefit of a new rule to a broader class than she defined." Id. at 277-278.[3] Second, "Justice O'Connor's opinion clearly indicates that Teague's general rule of nonretroactivity was an exercise of this Court's power to interpret the federal habeas statute." Id. at 278. "Teague is plainly grounded in this authority, as the opinion *expressly situated* the rule it announced in [the] line of cases adjusting the scope of federal habeas relief in accordance with equitable and prudential considerations." Id. at 278, and cases cited (emphasis added).

Finally, "the text and reasoning" of the Teague decision "also illustrate that the rule was meant to apply only to federal courts considering habeas corpus petitions challenging state-court criminal

---

[3] O'Connor's opinion in Teague defined two exceptions: rules that render types of primary conduct "beyond the power of the criminal law-making authority to proscribe," 489 U.S. at 311, and "watershed" rules that "implicate the fundamental fairness of the trial." Id. at 311, 312, 313.

convictions." Id. at 279. Teague "was intended to limit the authority of federal courts to overturn state convictions—*not to limit a state court's authority to grant relief for violations of new rules of constitutional law when reviewing its own State's convictions.*" Id. at 280-281 (emphasis added).

Following these points of distinction, the Court in Danforth offered two important observations:

> It is also noteworthy that for many years following Teague, state courts almost universally understood the Teague rule as binding only federal habeas courts, not state courts. [internal citations omitted] ... Commentators were similarly confident that Teague's "restrictions appl[ied] only to federal habeas cases," leaving States free to "determine whether to follow the federal courts' rulings on retroactivity or to fashion rules which respond to the unique concerns of that state." Hutton, Retroactivity in the States: The Impact of Teague v. Lane on State Postconviction Remedies, 44 Ala. L. Rev. 421, 423-424, 422-423 (1993).
>
> Id. at 281-282.

B. Ineffective Assistance of Counsel claims are the kind of claims of "unique concern" that neither *Teague* nor *Bray* is well-suited to redress.

In 1990, this Court lacked the benefit of Danforth's guidance concerning Teague's exclusive nexus with federal habeas jurisprudence when it decided to adopt the Teague analysis for retroactivity

in Commonwealth v. Bray, 407 Mass. at 299-303. Rather, Bray wholly adopted Teague's analytical framework without entertaining the possibility that Teague's unique connection to federal habeas review might be inconsistent with the essential flexibility generally afforded trial courts in state postconviction review - that is, that postconviction review in Massachusetts is not the product of closely regulated, codified law such as habeas corpus jurisprudence, but rather, is premised upon the rule-based exercise of discretion. See Mass. R. Crim. P. 30, 378 Mass. 900 (1979); Commonwealth v. Nikas, 431 Mass. 453, 456 (2001) (postsentence motion to withdraw guilty plea treated as motion for new trial pursuant to Rule 30, and should be granted "only 'if it appears that justice may not have been done,' ... [and only] if the defendant comes forward with a credible reason which outweighs the risk of prejudice to the Commonwealth") (internal citations omitted).

Bray's stringence, developed from Teague's alliance with the purpose and limitations of habeas review, 489 U.S. at 306, is not well-suited to the potential retroactivity of new law concerning the right to

effective assistance of counsel, because that right -- the efflorescence of the Sixth Amendment's Assistance of Counsel clause -- holds an extraordinarily cherished place in our State's history, and its "unique concerns[.]" Danforth, 552 U.S. at 282.

By 1641, the Massachusetts settlement authorized counsel by unpaid attorneys in Article 26 of *The Body of Liberties*, the settlement's code. Edgar J. McManus, Law and Liberty in Early New England: Criminal Justice and Due Process, 1620-1692, at 95 (1993). Our Commonwealth's earliest history, presaging the language of article 12 of our Declaration of Rights, reflects the poignance of John Adams's defense of the British soldiers charged with murder in the Boston Massacre. Morris L. Ernst & Alan O. Schwartz, *The Right to Counsel and the "Unpopular Cause"*, 20 U. Pitt. L. Rev. 727, 728 (1959); see also David McCullough, JOHN ADAMS 66 (2001) (noting John Adams's belief that "no man in a free country should be denied the right to counsel and a fair trial"). By 1807, this Court was assigning counsel for indigent defendants charged with murder, Commonwealth v. Hardy, 2 Mass. (Tyng) 303, 314, 316 (1807), well before the

Legislature formally authorized that practice. See St. 1820, c.14, s. 8.

In fact, the right to effective counsel is of such "unique concern" in our Commonwealth's jurisprudence that its command, under article 12, has been extended comprehensively to safeguard litigants before our State courts in a variety of circumstances. See, e.g., Care and Protection of Stephen, 401 Mass. 144, 149 (1987) (reasoning that "[t]he right to counsel is of little value unless there is an expectation that counsel's assistance will be effective," and holding that parents, who have an express statutory right to counsel in care and protection proceedings, are entitled to effective assistance of counsel); Commonwealth v. Ferreira, 67 Mass. App. Ct. 109, 115 (2006) ("the right to counsel in G.L. c.123A proceedings would be of little value if there were no expectation that counsel's assistance will be effective"); Commonwealth v. Patton, 458 Mass. 119, 120 (2010) (effective assistance of counsel at a probation violation hearing where "liberty is palpably at risk").

Teague states that retroactivity should "'be responsibly determined only by focusing ... on the nature, function, and scope of the adjudicatory process[,]'" 489 U.S. at 305-306, quoting Mackey v. United States, 401 U.S. 667, 682 (1971) (Harlan, J., concurring). Ordinarily, given the "public interest in the finality of judgments," a motion for a new trial should not be granted when the issues therein could have been addressed during the trial. Commonwealth v. Tucceri, 412 Mass. 401, 406 (1992). But where, as here, an ineffectiveness claim arises from the alleged involuntariness of a guilty plea, and in light of the unique position in our State's jurisprudence and history occupied by the right to effective assistance of counsel, the concern about finality "is a matter that States should be free to evaluate and weigh the importance of ... ." Danforth, 552 U.S. at 280.

C. State collateral challenges to guilty pleas based on ineffective assistance of counsel claims should be treated similarly to cases on direct review, and new rules concerning the Sixth Amendment right to counsel should be retroactively applied.

Given the "unique concerns" for the right to counsel in Massachusetts, the question remains concerning the analytical *standard* to be applied by this Court in determining whether new Sixth Amendment rules will have retroactive effect to collateral challenges if Teague is not the proper formulation.

In Commonwealth v. De La Zerda, 416 Mass. 247 (1993), this Court held that "a motion for a new trial under Mass. R. Crim. P. 30 has been treated as collateral for the purposes of determining the retroactive application of a new rule of criminal law," citing Teague and Bray. 416 Mass. at 250. "However, a [R]ule 30 motion challenging a guilty plea or, as in this case, its equivalent for lack of voluntariness ... might be seen as a direct appeal, in that such a motion provides the only avenue for appellate review of the validity of the guilty plea." Id. (internal citations omitted). Tollett v. Henderson, 411 U.S. 258, 266-267 (1973) (guilty plea

may be deemed involuntary if defendant was incompetently advised). This suggests that retroactivity may be enjoyed by this narrow class of collateral challenges identically to those cases in the posture of direct review.

There is precedential Supreme Court authority for this proposition. In Arsenault v. Massachusetts, 393 U.S. 5 (1968), the petitioner brought a postconviction "writ of error" asserting that under the supervening rule of White v. Maryland, 373 U.S. 59 (1963), "the judge in the Superior Court 'erred in receiving in evidence the fact that . . . [Arsenault] had pleaded guilty to the charge on trial in the Newton District Court while unrepresented by counsel.'" Arsenault v. Commonwealth, 353 Mass. 575, 575 (1968), rev'd sub nom. Arsenault v. Massachusetts, 393 U.S. at 6. Following final judgment of this Court, affirming his conviction of first degree murder and holding that a supervening decision of the Supreme Court pertaining to the petitioner's right to counsel did not apply retroactively, Arsenault petitioned for a writ of certiorari. The Supreme Court granted the petition. 393 U.S. at 5. In a terse *per curiam* opinion,

expressing the unanimous view of the justices, the Supreme Court reversed the judgment of this Court, holding that the supervening decision in White v. Maryland *did* apply retroactively because "only the aid of counsel could have enabled the accused to know all the defenses available to him *and to plead intelligently*." Arsenault, 393 U.S. at 6 (emphasis added). Arsenault went on to declare:

> "The right to counsel at trial [citation omitted]; on appeal [citation omitted]; and at the other "critical" stages of the criminal proceedings [citation omitted] have all been made retroactive, since the "denial of the right must almost invariably deny a fair trial."
>
> 393 U.S. at 6.[4]

Accordingly, because the right to effective assistance of counsel is sacrosanct in Massachusetts, the importance of finality ought rarely, if ever, to outweigh the right to challenge the effectiveness of one's representation. Given these considerations, and in view of the authorities of Arsenault and De La Zerda, Amicus urges this Court to hold that, at a minimum, where State collateral challenges to the

---

[4] *Sentencing is a "critical stage" of the criminal* proceeding for which the right to counsel extends. Commonwealth v. Osborne, 378 Mass. 104 (1979).

voluntariness of guilty pleas are based upon claims of ineffective assistance of counsel, Rule 30 motions should be treated identically to claims on direct review for purposes of retroactivity, and new rules involving the Sixth Amendment Assistance of Counsel Clause should apply in all such cases.

II.

SHOULD THIS COURT ELECT TO ADHERE TO TEAGUE'S RETROACTIVITY ANALYSIS FOR ALL COLLATERAL CHALLENGES, PADILLA MUST NONETHELESS BE RETROACTIVELY APPLIED BECAUSE IT MERELY RELATES THE PRECEDENTIAL RULE OF STRICKLAND TO A PARTICULAR FACTUAL SETTING, AND THEREFORE DOES NOT ANNOUNCE A "NEW RULE."

Even were this Court to reject the opportunity presented by Danforth for this Court to modify its strict adherence to the analytical model of Teague as adopted in Bray, Amicus urges this Court to hold that Padilla should apply retroactively to Mr. Clarke's postconviction challenge. This is because rather than announcing or applying a new rule, the Supreme Court simply extended the precedent of Strickland v. Washington, 466 U.S. 668 (1984), to the particular factual circumstances in Padilla that required an analysis of whether trial counsel had been

constitutionally effective. Padilla, 130 S.Ct. at 1480-1482.

In Teague v. Lane, the Supreme Court laid out a framework for newly-announced rules of criminal procedure: "an old rule applies both on direct and collateral review, but a new rule is generally applicable only to cases that are still on direct review." Whorton v. Bockting, 549 U.S. 406, 416 (2007). There are only two exceptions by which a "new" rule may apply to cases on collateral (i.e., federal habeas) review: first, where "it places certain kinds of primary, private individual conduct beyond the power of the criminal lawmaking authority to proscribe"; and second, where "it requires the observance of those procedures that are implicit in the concept of ordered liberty." Teague, 489 U.S. at 310. Thus, if this Court continues to adhere to the Teague formulation in reviewing Rule 30 postconviction motions, Padilla can only apply retroactively if it is an old rule or a new rule subject to either exception.

The Supreme Court has acknowledged that it is difficult to determine when a case announces a new rule, but it has consistently stated that "[a] holding

constitutes a 'new rule' within the meaning of Teague if it 'breaks new ground,' 'imposes a new obligation on the States or the Federal Government,' or was not '*dictated* by precedent existing at the time the defendant's conviction became final.'" Graham v. Collins, 506 U.S. 461, 467 (1993), quoting Teague, 489 U.S. at 301 (emphasis in original).

The Supreme Court has defined the "new rule" standard in a variety of ways over the last twenty years. For example, it has held that a case announces a new rule if it applies a prior decision in a "novel setting, thereby extending the precedent." Stringer v. Black, 503 U.S. 222, 228 (1992) (where petitioner challenged jury instruction, Court cites Butler v. McKellar, 494 U.S. 407, 414-415 [1990] for proposition that even decision falling within "logical compass" or "control" of precedent may nonetheless be "new" under Teague). The Court has also held that unless a decision would be "apparent to all reasonable jurists," it has announced a new rule. Lambrix v. Singletary, 520 U.S. 518, 528 (1997) (new rule announced if reasonable jurists could have previously reached different conclusion); see also O'Dell v.

Netherland, 521 U.S. 151, 164 (1997) (finding that because "a reasonable jurist ... would not have felt *compelled*" to adopt subsequent rule, court announced a new rule) (emphasis added); Butler v. McKellar, 494 U.S. at 415 (when "reasonable minds" could differ about outcome of case, court announces a new rule). However, none of these cases involved an ineffectiveness-of-counsel claim under Strickland, which appears to enjoy a broader compass under Teague with respect to whether the rule was dictated by precedent existing at the time the defendant's conviction became final.

Indeed, the Court has acknowledged that "[i]t is past question that the rule set forth in Strickland qualifies as []clearly established Federal law, as determined by the Supreme Court of the United States.[] That the Strickland test 'of necessity requires a case-by-case examination of the evidence,' Wright v. West, 505 U.S. 277, 308 (1992) (Kennedy, J., concurring), obviates neither the clarity of the rule nor the extent to which the rule must be seen as 'established' by this Court." Williams v. Taylor, 529 U.S. 362, 391 (2000). See also Sears v. Upton, ___

U.S. ___, 130 S.Ct. 3259, 3266 (2010) (Supreme Court has "consistently explained that the Strickland inquiry requires ... [a] probing and fact-specific analysis ..."). Novel *facts* subject to a Strickland analysis would not, *a fortiori*, result in the creation of a novel *rule* for purposes of Teague. See Wright v. West, 505 U.S. at 308-309 ("If the rule in question is one which of necessity requires a case-by-case examination of the evidence, then we can tolerate a number of specific applications without saying that those applications themselves create a new rule . . . Where the beginning point is a rule of this general application, a rule designed for the specific purpose of evaluating a myriad of factual contexts, it will be the infrequent case that yields a result so novel that it forges a new rule, one not dictated by precedent") (Kennedy, J., concurring). Thus, in light of the fact that the Strickland rule is one of general application, requiring an examination of the factual circumstances of each case, it should be rare that cases applying Strickland would announce new rules.

The Padilla decision offers two clear, strong indications that the Supreme Court fully expected

retroactive application of its holding. First, in addressing the Solicitor General's specific concerns regarding the finality of convictions, the Court provided detailed reasoning why the decision would not "open the floodgates" of postconviction motions. Padilla at 1484-85. Certainly, any discussion of "the floodgates" would be superfluous if the Court did not intend its decision to be retroactive. Second, the Court stated that it found unlikely the prospect of its decision "hav[ing] a significant effect on those convictions *already obtained* as the result of plea bargains." Padilla at 1485 (emphasis added).

This Court has also indicated that it believes Padilla may be applied retroactively. See Commonwealth v. Gautreaux, 458 Mass 741, 753 (2011)(suggesting defendant raise claim of ineffective assistance of counsel based on Padilla for conviction that became final prior to Padilla decision). The language in Padilla itself and this Court's recognition of Padilla's application in Gautreaux would be rendered meaningless if Padilla was not retroactive. A "majority of courts have found that Padilla is simply the application of an old rule, concluding that

Padilla's holding applies retroactively, because it is merely an extension of the rule in Strickland v. Washington, requiring effective assistance of counsel." Marroquin v. United States, 2011 U.S. Dist. LEXIS 11406, *6 (S.D. Tex. February 4, 2011). See also United States v. Hubenig, 2010 U.S. Dist. LEXIS 80179 (E.D. Cal. July 1, 2010)(Padilla was merely application of Strickland and did not announce new rule); United States v. Chaidez, 730 F.Supp.2d 896 (N.D.Ill. 2010)(Strickland collateral claims resemble direct appeals and are thus retroactive); People v. Bennett, 903 N.Y.S.2d 696 (2010)(Padilla did not announce new rule, "but merely applied the well-settled rule in Strickland to a particular set of facts"). But see, e.g., Miller v. Maryland, 2010 Md. App. LEXIS 191 (Dec. 29, 2010)(holding that Padilla was not retroactive).[5]

In highlighting the importance of deportation in the criminal process, the Supreme Court rejected Kentucky's view that Padilla's ineffectiveness claim

[5] Overall, few courts have had an opportunity to consider Padilla's application to collateral challenges of cases that have become final before the Supreme Court's decision was announced. To date, no Circuit Court of Appeals has considered the issue.

regarding "the advice [Padilla] sought about the risk of deportation concerned only collateral matters, *i.e.*, those matters not within the sentencing authority of the state trial court." 130 S.Ct. at 1481. The Court unequivocally asserted that it did not break new ground in so holding: "We ... have *never* applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under Strickland, 466 U.S. at 689 ... [and] [w]hether that distinction is appropriate is a question we need not consider in this case *because of the unique nature of deportation*." Id. at 1481 (emphases added).[6]

---

[6]As the Commonwealth has argued, the Padilla decision inferentially overrules many cases that have held that ineffective assistance of counsel claims under the Sixth Amendment do not apply to collateral consequences of sentencing, such as deportability. See Commonwealth Br. at 9-10. Padilla's ruling invalidates previous rulings by courts of the Commonwealth on this point. See, e.g. Commonwealth v. Fraire, 55 Mass. App. Ct. 916 (2002)(immigration consequences of guilty plea were collateral and defendant need not be informed of such consequences); Commonwealth v. Monteiro, 56 Mass. App. Ct. 913 (2002)(defendant not permitted to withdraw guilty plea where counsel failed to inform him of potential collateral consequences such as deportation). See also United States v. Gonzalez, 202 F.3d 20 (1st Cir. 2000)(defendant not entitled to withdraw guilty plea

The Supreme Court determined that the lower courts' distinction between "direct" and "collateral" consequences impermissibly removed advice regarding deportation from "the ambit of the Sixth Amendment right to counsel." Padilla, 130 S.Ct. at 1482.[7] The Court then held, by considering "[t]he weight of

---

where failure to advise about immigration consequences did not amount to ineffective assistance of counsel). But significantly, Padilla does not conflict with any Supreme Court precedent on the reach of Strickland claims to involuntary sentencing procedures, and as the Court pointed out in Williams v. Taylor:

> [T]he most important point is that an unreasonable application of federal law is different from an incorrect application of federal law … a state court's incorrect legal determination has never been allowed to stand because it was reasonable. We have always held that federal courts, even on habeas, have an independent obligation to say what the law is.

529 U.S. at 410. Thus, the Supreme Court can correct the lower courts on a long-held principle without announcing a whole new rule. In noting that it has never made a distinction between direct and collateral consequences in this context, the Court suggests in Padilla that it is providing such correction.

[7] As the Court explained, "[t]here is some disagreement among the [lower] courts over how to distinguish between direct and collateral consequences. ... [internal citation omitted]. The disagreement over how to apply the direct/collateral distinction has no bearing on the disposition of this case because, as even Justice Alito agrees, counsel must, at the very least, advise a noncitizen 'defendant that a criminal conviction may have adverse immigration consequences[.]'" Padilla, 130 S.Ct. at 1481, n.8.

prevailing professional norms"[8] and applying Strickland to the set of facts, that the failure to advise a noncitizen defendant of the immigration consequences of a criminal conviction is *per se* constitutionally deficient representation. Id. at 1482, 1483.

In deciding that Strickland applied to Padilla's claims, the Court noted its own 2001 decision in INS v. St. Cyr, 533 U.S. 289, 323 (2001), recognizing the importance to a defendant of immigration advice in choosing to plead guilty, as well as similar advice-of-counsel standards codified within a long list of documents confirming the prevailing professional norms relating to immigration advice for criminal defendants. Padilla, 130 S.Ct. at 1483. The Court then stated,

---

[8]The Supreme Court has routinely looked to prevailing professional norms in determining when and how Strickland should apply to particular factual circumstances. See, e.g., Rompilla v. Beard, 545 U.S. 374, 387 (2005) (failure to investigate trial court's prior conviction file when preparing mitigation arguments for sentencing was ineffective); Wiggins v. Smith, 539 U.S. 510, 522 (2003) (failure to investigate and present mitigating evidence of a troubled life at sentencing was ineffective); Williams v. Taylor, 529 U.S. at 396 (considering ABA Standards for Criminal Justice in determining whether counsel's performance was effective).

> We expected that counsel who were unaware of the discretionary relief measures would 'follo[w] the advice of numerous practice guides' to advise themselves of the importance of this particular form of discretionary relief.

Id., quoting St. Cyr, 533 U.S. at 323, n. 50.

Likewise, this Court must recognize that in addition to all the documents cited in Padilla, the Committee for Public Counsel Services Performance Standards Governing Representation of Indigents in Criminal Cases, § 5.10 (1988) (hereafter, "CPCS Performance Guidelines, § ___") has required all staff attorneys and bar advocates in Massachusetts to advise a defendant client of the immigration consequences of her criminal case since 1988. Moreover, CPCS has provided all Massachusetts public counsel with an immigration law specialist to advise them on the immigration consequences of criminal behavior since 1999. These are just other examples of the fact that, even if jurisprudence in our State distinguished between direct and collateral consequences and did not previously require this advice, immigration advice has been nonetheless a tenet of reasonably effective criminal defense representation for many years. Padilla merely confirms what effective attorneys have

recognized in practice for years.[9] It did not announce a new rule.

III.

THE FAILURE OF COUNSEL TO ADVISE THE DEFENDANT ABOUT IMMIGRATION CONSEQUENCES THAT WOULD RESULT FROM HIS GUILTY PLEA, AND TO NEGOTIATE FOR A PLEA WITH LESS SEVERE CONSEQUENCES, CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL. ACCORDINGLY, THE DEFENDANT'S MOTION FOR A NEW TRIAL SHOULD HAVE BEEN ALLOWED.

In Padilla v. Kentucky, the Supreme Court held that a criminal defense attorney has a duty under the Sixth Amendment to advise her client about immigration consequences resulting from a guilty plea, and that failure to advise a defendant of such consequences can

---

[9]At oral argument in the case at bar, this Court asked counsel how far back in time Padilla should apply; or in other words, at what date it could be said that Padilla was not breaking new ground. The Padilla decision provides guidance for this Court on that issue. It indicates that the prevailing professional norms present today have been in effect for at least the last fifteen years, when the groundbreaking 1996 immigration laws were passed. Padilla, 130 S.Ct. at 1485; see also St. Cyr, 533 U.S. at 293-298 (discussing the various changes contained in these laws). Amicus submits that this Court should apply the Padilla decision to criminal cases dating at least to April 24, 1996, the date of passage of the Antiterrorism and Effective Death Penalty Act of 1996, the first of these two laws. Certainly, if a new rule was announced in regard to effective assistance of representation, it was not in 2010 with the Padilla decision, but rather in 1996 with these two landmark laws.

constitute ineffective assistance of counsel. 130 S.Ct. at 1473.

Because "deportation is an integral part - indeed, sometimes the most important part - of the penalty that may be imposed on noncitizen defendants," id. at 1480, the Sixth Amendment right to counsel includes advice about immigration consequences of a plea. Deportation is "intimately related to the criminal process" and removal from the United States is now "nearly an automatic result for a broad class of noncitizen offenders." Id. at 1481. The Padilla Court held that the two-prong test for determining ineffective assistance of counsel, as set forth in Strickland v. Washington, 466 U.S. at 668, applies to the question of whether counsel properly advised a criminal defendant about the immigration consequences of a change of plea.

A. Failure of trial counsel to investigate the immigration consequences stemming from the instant defendant's plea, to advise him of such consequences, and to negotiate a plea with knowledge of such consequences "fell below an objective standard of reasonableness".

Under Strickland, a defendant must show that his counsel's representation "fell below an objective standard of reasonableness", 466 U.S. at 688, and that, but for such deficient representation, "the result of the proceeding would have been different." Id. at 694; Commonwealth v. Saferian, 366 Mass. 89, 96-97 (1974) (test is whether "behavior of counsel [fell] measurably below that which might be expected from an ordinary fallible lawyer --- and ... whether it has likely deprived the defendant of an otherwise available, substantial ground of defence").[10]

The Strickland case involved a claim of ineffective assistance of counsel at trial; however, its test applies to cases that resulted in guilty pleas as well. Padilla v. Kentucky, 130 S.Ct. at 1486

[10] When claims of ineffective assistance of counsel are based on both the Massachusetts Declaration of Rights and the United States Constitution, "if the Saferian test is met, then the requirements of the Federal Constitution are necessarily satisfied as well." Commonwealth v. Montanez, 410 Mass. 290, 295 n.7 (1991).

("[competent]counsel must inform her client whether his plea carries a risk of deportation."); Hill v. Lockhart, 474 U.S. 52, 58 (1985) (Strickland applies to "ineffective-assistance claims arising out of the plea process."); Commonwealth v. Mahar, 442 Mass. 11, 14 (2004)(right to effective assistance of counsel includes "defendant's decision whether to accept or reject a plea bargain offer made by the Commonwealth.").

Providing effective assistance of counsel to a defendant during the plea process entails diverse responsibilities. Competent counsel must investigate mitigating factors relevant to sentencing. Rompilla v. Beard, 545 U.S. at 387-388. She also has a duty to explain plea negotiations and to advocate for the defendant at sentencing. Commonwealth v. Rancourt, 399 Mass. 269, 278 (1987), and cases cited. Failure to investigate, advise about plea negotiations or advocate at sentencing can constitute ineffective assistance of counsel. United States v. Colon-Torres, 382 F.3d 76 (1st Cir. 2004) (remanded for evidentiary hearing). See Commonwealth v. Montanez, 410 Mass. at 298-299 (failure to present mitigating factors or ask

for concurrent sentences can constitute ineffective assistance of counsel, but claim is time-barred); Tse v. United States, 290 F.3d 462 (1st Cir. 2002) (incorrect assurance that defendant could not be sentenced for more than ten years can constitute ineffective assistance of counsel; remanded for evidentiary hearing).

The Supreme Court recognized in Padilla that professional standards of the legal community are highly relevant in determining whether an attorney's representation "fell below an objective standard of reasonableness." Strickland v. Washington, 466 U.S. at 688. Indeed, the Court observed that "these standards may be valuable measures of the prevailing professional norms of effective representation, especially as these standards have been adapted to deal with the intersection of modern criminal prosecutions and immigration law." 130 S.Ct. at 1482. Under the National Legal Aid and Defender Assn., Performance Guidelines for Criminal Representation §2.2(b)(2)(1995), the CPCS Performance Guidelines, §§

2.2, 4.1, 5.10 (1988)[11], and the ABA Standards for Criminal Justice, Prosecution and Defense Function 4-4.1(a)(3d ed. 1993), competent counsel must interview a defendant and gather significant personal information about the client in order to properly represent him.[12] These standards make clear that it is imperative that counsel gather detailed information about the defendant's ties to the community, family, employment history, prior criminal record, history of any mental illness and any other information that may be relevant to defend against the charges, or that provide mitigating factors for sentencing. This responsibility necessarily includes determining the defendant's immigration status. See Rampal v. State, 2010 R.I. Super. LEXIS 76, 24 (April 30, 2010) (counsel failed to inquire about immigration status of defendant; "failure of former counsel to investigate

---

[11] These standards have been subsequently amended in 1995, 1999, 2008 and 2010; however, every version has contained requirements that counsel inquire of defendant and investigate facts relevant to representation at trial and sentencing, and that counsel advise a client about immigration consequences prior to resolution of a case.

[12] The national and local performance standards are reproduced at A.A. 59-61.

or even ask about Petitioner's status as a citizen fell below the duty imposed upon counsel").

In the present matter, counsel acknowledges that she did not inquire about or investigate the immigration status of the defendant, nor did she advise him of immigration consequences resulting from his plea. (R.App. 10). The defendant asserts that he was not advised that his plea was to an "aggravated felony" that would cause his deportation. (R.App. 9). The Court in Padilla found constitutionally deficient representation of counsel based on a similar showing by that defendant. 130 S.Ct. at 1486-1487 ("Taking as true the basis for his motion for postconviction relief, we have little difficulty concluding that Padilla has sufficiently alleged that his counsel was constitutionally deficient.")[13]; 2008 U.S. Briefs 651, 71-78 (Joint Appendix containing pro se motion and affidavit of defendant alleging counsel improperly advised him that plea would not result in deportation) (A.A. 62-65). Such failure of counsel is objectively

[13] The Court remanded the case back to the Kentucky courts to determine whether the defendant was prejudiced by trial counsel's deficient performance, as required under the second prong of Strickland. 130 S.Ct. at 1487.

unreasonable, and the showing by the defendant in this matter is sufficient to satisfy the first prong of Strickland.

B. The defendant was prejudiced by trial counsel's failure to properly advise him that a plea to the crimes with which he was charged would result in mandatory deportation. Accordingly, the defendant was deprived of an opportunity to negotiate a plea with less severe immigration consequences, and the general warnings given him by the court, as well as the written waiver forms, did not cure these deficiencies or their prejudicial effect.

In order to prevail on a claim of ineffective assistance of counsel, the defendant must show that he was prejudiced by counsel's deficient representation. One way to establish such prejudice is for the defendant to show that, had he been properly advised, "he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 472 U.S. at 59.

Showing that the defendant would have insisted on going to trial, however, is not the only way to establish prejudice. The prejudice requirement "focuses on whether counsel's constitutionally ineffective performance affected the *outcome* of the plea process." Id. (emphasis added). Prejudice can be established by showing a "'reasonable probability'

that 'but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Commonwealth v. Mahar, 442 Mass. at 15, quoting Strickland, 466 U.S. at 694.

In the case at bar, the defendant was born in 1986 and came to the United States in 1993, when he was six years old. (R.App. 31). Twelve years following his arrival, after having lived in the United States for two-thirds of his life, he pled guilty to the offenses at issue in this matter, i.e., possession of cocaine and marijuana with intent to distribute. (C.App. 1). These offenses constitute "aggravated felonies" as defined by 8 U.S.C. 1101(a)(43)(B), and subject the defendant to mandatory deportation pursuant to 8 U.S.C. 1227(a)(2)(A)(iii). (R.App. 31-32).

An aggravated felony conviction causes the most severe immigration consequences to a noncitizen. Even if a person has lived legally in the United States for most of his life, an aggravated felony conviction virtually guarantees his removal and permanent exile *from* this country. Both judicial discretion to consider mitigating circumstances, and the

availability of waivers or relief from removal were severely curtailed by the 1996 changes in immigration law, especially for those with aggravated felony convictions. AEDPA, 110 Stat. 1277-1278; IIRIRA, 110 Stat. 3009-594, 597, 607-608. See also INS v. St. Cyr, 533 U.S. at 293-299.

Had the defendant been convicted of the lesser included offenses of possession of cocaine and marijuana pursuant to G.L. c. 94C, § 34, he would have been deportable pursuant to 8 U.S.C. 1227(a)(2)(B)(i). However, unlike the present circumstances, he may have been eligible for some form of relief from deportation, such as "cancellation of removal." 8 U.S.C. 1229b(a) (Attorney General may cancel removal of noncitizen who has been lawful permanent resident for at least five years, has resided continuously in the United States for at least seven years, and has not been convicted of an aggravated felony).

The Court in Padilla addressed the benefit of informed - that is, effective - counsel during plea negotiations, with respect to both noncitizen defendants and the Commonwealth. "Counsel...may be able to plea bargain creatively with the prosecutor in

order to craft a conviction and sentence that reduce the likelihood of deportation... At the same time, the threat of deportation may provide the defendant with a powerful incentive to plead guilty to an offense that does not mandate that penalty in exchange for a dismissal of a charge that does." 130 S.Ct. at 1486. "Negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." Id.

In the present matter, the defendant was prejudiced by the failure of counsel to negotiate a plea bargain that would reduce the likelihood of his deportation. He was sentenced to five months of incarceration for possession with intent to distribute cocaine and no incarceration for possession with intent to distribute marijuana. (R.App. 1). The maximum possible sentence for possession of cocaine is one year and the maximum sentence for possession of marijuana is six months of incarceration. G.L. c. 94C, § 34. Had counsel possessed "the most rudimentary understanding of the deportation consequences" of such offenses, Padilla, 130 S.Ct. at 1486, she could have negotiated for the defendant to serve a longer period

of incarceration in exchange for a reduction of the charges to simple possession. Counsel's ineffective representation prejudiced the defendant by denying him this opportunity. See United States v. Hubenig, 2010 U.S. Dist. LEXIS 80179, at 24-26 (prejudice found where counsel stated "he would have negotiated a different plea agreement if he had known the immigration consequences of Petitioner's second controlled substances conviction."); United States v. Kwan, 407 F.3d 1005, 1017-1018 (9th Cir. 2005) (prejudice found where defendant could have negotiated plea to lesser charge or for sentence of less than one year to avoid "aggravated felony" conviction).

Alternatively, had the defendant been unable to negotiate a plea in this matter that would have resulted in less severe immigration consequences, he may have chosen to go to trial had he been properly advised by counsel that his guilty plea to aggravated felonies virtually guaranteed his deportation and permanent exile from the United States. Although the defendant was found to have multiple bags of cocaine and marijuana and a significant sum of money in his pockets upon his arrest, there was no evidence of any

attempt to distribute the drugs. (C.App. 4). A jury could have acquitted him of the charges or found him guilty of the lesser included offenses of simple possession, which would have resulted in less severe immigration consequences, ante at p. 43. "[I]f deportation was the ultimate result in either case and the plea bargain did not reduce the charges against him, [the defendant] might well have chosen trial even if the chance of acquittal was small." State v. Limarco, 235 P.3d 1267, 2010 Kan.App.Unpub. LEXIS 542, 13 (Kan. Ct. App. 2010)(remanded for evidentiary hearing).

Finally, the Commonwealth argues that the general immigration warning provided by the court, see G.L. c. 278, § 29D, and the written waiver of rights form signed by the defendant cures any prejudice caused by counsel's deficient representation. Commonwealth Br. at 22. Padilla answers this unequivocally. The Supreme Court requires more than a general, nonspecific warning that a plea *may* have immigration consequences, especially if the consequences are "presumptively mandatory," as they are in the present case. 130 S.Ct. at 1483. See also Commonwealth v. Hilaire, 437 Mass.

809, 810 (2002) (defendant's mere signature on waiver of rights form does not cure erroneous omission of warning). Padilla noted the significance of judicial immigration warning statutes and advisals on plea forms not to supplant or substitute for the role of counsel, but rather to "underscore how critical it is for *counsel* to inform her noncitizen client that he faces a risk of deportation." Id. at 1486 & n.15 (emphasis added).

Moreover, Padilla's reasoning is based on the Sixth Amendment right to counsel. By contrast, general warnings provided by the court cannot substitute for or satisfy this fundamental right. People v. Garcia, 907 N.Y.S.2d 398, 407 (2010) (court's general warning does not cure counsel's deficient representation and resulting prejudice); see Commonwealth v. Hilaire, 437 Mass. at 818, n. 5 (judge must give oral warning per G.L. c. 278, § 29D; waiver of rights form signed by defendant, which includes similar immigration warnings, only provides record that warning was given and cannot substitute for oral warning); see also Commonwealth v. Jones, 60 Mass.App.Ct. 88, 90-91 (2003) (waiver of rights form

cannot establish that defendant had knowledge of elements of crime prior to plea).

In sum, the defendant in the case at bar was prejudiced by the failure of trial counsel to properly advise him that the charges in this matter would cause his mandatory and permanent deportation. With knowledge of the immigration consequences resulting from guilty pleas to the offenses, counsel could have negotiated with the prosecutor for a resolution of the matter with less severe consequences, or the defendant could have chosen to go to trial with hope of an outright acquittal, or convictions only on the lesser included offenses of simple possession. Without such knowledge and advice of counsel, however, the defendant was deprived of his constitutional right to effective assistance of counsel under the Sixth Amendment and article 12 of the Massachu8setts Declaration of Rights. Accordingly, the defendant's motion for a new trial should have been allowed.

CONCLUSION

Based upon the foregoing points and authorities, Amicus urges this Court to hold that the Padilla decision should retroactively apply to the defendant, and to reverse and vacate the trial court's denial of the defendant's Rule 30 motion for a new trial.

Respectfully submitted,

COMMITTEE FOR PUBLIC COUNSEL SERVICES
By its attorneys,

Wendy S. Wayne, BBO # 555665
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Immigration Impact Unit
21 McGrath Highway
Somerville, MA 02143
617-623-0591
wwayne@publiccounsel.net

Jeanette Kain, BBO # 661089
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Immigration Impact Unit
21 McGrath Highway
Somerville, MA 02143
617-623-0591
jkain@publiccounsel.net

Jennifer Klein, BBO # 678858
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Immigration Impact Unit
21 McGrath Highway
Somerville, MA 02143
617-623-0591
jklein@publiccounsel.net

March, 2011