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Professor Margulies Plays Role in Key SCOTUS Case

Posted by David Logan on 04/19/2010 at 12:00 AM

One of the most important decisions by the Supreme Court of the United States so far this term is *Padilla v. Kentucky*, in which the Supreme Court ruled, 7-2, that a criminal defense attorney's failure to advise a client about the immigration consequences of a guilty plea constitutes ineffective assistance of counsel. The Court reasoned that as our immigration laws have imposed increasingly harsh consequences for criminal convictions, defense counsel cannot hide behind the notion that deportation is merely a "collateral" consequence of a criminal conviction; rather, defense attorneys fall below prevailing professional norms if they do not advise clients about the risk of deportation. The decision will assist lawful permanent residents who face separation from their loved ones and mistreatment in their country of origin if they unknowingly plead guilty to an offense that leads to deportation. The decision may also influence the standard for legal advice about other consequences of convictions, such as termination of parental rights.

I asked the Director of our Immigration Law Clinic, Professor Mary Holper, to share her thoughts on the decision from her perspective:



“The Court’s language describing deportation as an “integral part - indeed, sometimes the most important part” of the penalty imposed on noncitizens indicates an important shift away from the centuries-old notion that “deportation is not punishment.” Because deportation has always been labeled as civil, not criminal, noncitizens in deportation proceedings lack procedural rights such as appointed counsel, the application of the rules of evidence, and the prohibition against ex post facto laws.”

“Also important: The Court held that Mr. Padilla’s counsel was obligated to advise him about deportation because he faced drug charges; thus, any lawyer could easily read the immigration statute requiring deportation for a “crime relating to a controlled substance.” However, the Padilla decision may not control when defense counsel confronts whether a clients’ criminal charges may lead to deportation for an “aggravated felony” or “crime involving moral turpitude,” two nebulous and counterintuitive immigration law terms that require volumes of immigration law treatises to understand.”

Additional perspective on the importance of the case was provided by a member of the School of Law's Board of Directors, Robin Steinberg, the innovative leader of the Bronx Defenders. Click here for [her op-ed from the Huffington Post](#).



RWU Law played a role in this successful outcome (successful from a civil liberties perspective, anyway). Our own Peter Margulies helped write the amicus brief submitted by the American Bar Association, whose Criminal Justice Standards were cited by the Court majority. In addition, Prof. Margulies helped out on the amicus brief filed by professors of legal ethics and criminal law, which Justice Stevens cited in his opinion. For Professor Margulies, the victory in Padilla was a high point in a career focused on fairness and access to justice. If you would like to read the two briefs that Prof. Margulies worked on, [click here](#) and [here](#).