

March 30, 2015

The Barbara McDowell and Gerald S. Hartman Foundation Progress Report

The American Immigration Council (“Immigration Council”) is grateful to the Barbara McDowell and Gerald S. Hartman Foundation for your support of our pending litigation to challenge the government’s unjust treatment of children facing deportation. Each year, the government initiates removal proceedings against thousands of children, but does not guarantee that they have legal representation. The Immigration Council and our partners (the American Civil Liberties Union, Northwest Immigrant Rights Project, Public Counsel, and K&L Gates LLP) filed a nationwide class action lawsuit in July 2014 on behalf of children who are challenging the federal government’s failure to provide them with legal representation in these proceedings. We argue that current practice violates the Immigration and Nationality Act and the Constitution’s due process protections. We have asked the court to find that without representation, children facing deportation are deprived of a full and fair hearing.

1) *Case developments over the last six months*

Since the Immigration Council and our partners filed the case, *J.E.F.M. v. Holder*, No. 2:14-cv-01026 (W.D. Wash.) on July 9, 2014, the need for legal representation of children in removal proceedings has become even more urgent. In an effort to “prioritize” cases of children and families who have recently arrived in the United States, the government has placed children on expedited “rocket dockets,” giving them even less time to find attorneys before their cases move forward. Children who cannot afford to hire an attorney or find pro bono counsel have long been forced to represent themselves in immigration court against the government, which is always represented by a trained attorney. However, “rocket dockets” have further exacerbated the shortage of attorneys for children in removal proceedings.

In late July, the Immigration Council and our partners moved for a preliminary injunction for several of the named plaintiffs—asking that the government either continue these children’s cases or provide them with attorneys. While the court ultimately denied the motion on ripeness grounds in September 2014, the court recognized that the case-in-chief posed “an important constitutional question” that has yet to be resolved.

Following this decision, the Immigration Council and our partners sought to amend the complaint to include several new named plaintiffs, including children who had not received adequate notice of their removal hearings and had thus become subject to *in absentia* removal orders. On November 26, 2014, the district court judge granted our motion to amend the complaint. At that time, he also struck the plaintiffs’ motion for class certification from the record without prejudice, stating that he would set a deadline, if appropriate, for a renewed motion to certify the class after ruling on the motion to dismiss. Currently, the plaintiffs in the lawsuit are eight children between the ages of 3 and 17, including:

- A 3-year-old-boy who was brought to the United States to join his mother, a lawful permanent

resident, when his family feared for his safety in El Salvador. The boy was conceived as the result of a rape his mother suffered when she was only 15 years old. He is awaiting his first court date in Los Angeles, California.

- A 14-year-old girl from El Salvador who fled gang harassment after a friend who refused gang members' advances was killed. After arriving in the United States, the girl was not told when her first court date would be and by the time she and her family learned the date of her hearing, she had already been ordered deported.
- A 17-year-old boy from El Salvador who was ordered removed by an immigration court in Texas even though he had never received notice of his hearing.

The government also has filed a motion to dismiss the case, which the parties have briefed extensively. In essence, the government argues that the court does not have jurisdiction to hear the case. We have countered with strong arguments that the children's claims are ripe and that the district court is the appropriate forum to hear their claims. We supported the briefing with declarations from legal service providers and court observers documenting the devastating impact of children's "rocket docket" in immigration courts around the country. Oral argument on the motion took place on March 6, 2015. Currently, the parties are awaiting the district court's decision on the motion.

In an effort to learn more about the treatment of unrepresented children in immigration proceedings, the Immigration Council and its partners have developed a network of individuals working on or observing immigration court juvenile dockets. This network has proven to be an invaluable resource for the lawsuit. In turn, we have ensured that legal service providers who are part of this network are aware of the government's claims in briefing and at oral argument to assist them in advocating for better procedures in immigration court.

2) Anticipated progress in the next six months

The Immigration Council anticipates the court will issue a decision on the government's motion to dismiss in the coming weeks or months. Subsequently, it may be necessary to appeal the decision to the Ninth Circuit Court of Appeals or respond to an appeal by the government. Alternatively, the case may proceed before the district court, in which case the Immigration Council and our partners would again seek class certification. We do not anticipate a swift resolution to the case and likely will engage in briefing and/or discovery over the remainder of the grant period and in 2016.

3) Attorney Contact Information

For additional information about this case, please contact:

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