

Winston Wins New Bond Hearing for Detained LGBTQ Afghan Seeking Asylum

APRIL 14, 2020

A Winston & Strawn pro bono team led by Dallas Associate Chase Cooper recently secured habeas relief on behalf of an immigrant from Afghanistan before the U.S. District Court for the Western District of Texas.

Winston's client, who legally entered the United States on a K-1 fiancé visa and has no criminal history, has been detained for over 30 months while pursuing asylum and other immigration claims. Our client's estranged husband outed him as bisexual to his family and social network in his home country. He fears for his life if forced to return to Afghanistan, where homosexuality is punishable by imprisonment or death, and is subject to extreme social stigma.

Under U.S. immigration law, immigrants seeking asylum or other forms of relief from deportation can be held in prison-like detention while their claims are pending, unless they can demonstrate that they are not a flight risk or a danger to the community. In a case of first impression in the Fifth Circuit, Winston successfully argued that, under certain circumstances, the Due Process Clause of the Fifth Amendment requires the burden to shift to the government to prove—by clear and convincing evidence—that continued detention is justified.

After substantial briefing and an hour-long oral argument presented by Chase Cooper, Chief Judge Garcia granted our petition for habeas corpus. The judge ordered that our client be given a bond hearing at which the government must either justify his continued detention by clear and convincing evidence, or release him on bond.

"This case reinforces our important American tradition that immigrants, too, enjoy rights under our Constitution, and may use our judicial system to hold the government to account," Chase said.

Dallas Associate Dion Robbins also provided significant support on this case.

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