

Ruling Denying Immigrant Minor Right to Counsel Conflicts with Precedent

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Winston & Strawn Partner John Schreiber and Immigration Pro Bono Supervisory Attorney Nareeneh Sohbati, along with Immigrant Legal Resource Center (ILRC) Staff Attorney Rachel Prandini, co-authored an article titled “Ruling Denying Immigrant Minor Right to Counsel Conflicts with Precedent,” published in the *Daily Journal* on February 7, 2018. The article examines the Ninth Circuit’s January 29, 2018 denial of a petition for review of a deportation order filed on behalf of a minor who presented his claim for asylum without counsel. *C.J.L.G. v. Sessions*. Winston represented the ILRC as amicus in support of C.J.L.G.’s petition for review before the 9th Circuit.

The authors argue that the decision was erroneous in that it conflicts with both Supreme Court and Ninth Circuit precedent and perpetuates a process that is flawed and inequitable. “Unrepresented children cannot be expected to articulate their claims for protection or to adequately counter the arguments of seasoned government attorneys,” they proffer.

The article describes a 2014 class action lawsuit brought by groups including the ACLU and another law firm on behalf of minors without court-appointed counsel in immigration removal proceedings. The Ninth Circuit halted that district court litigation, *J.E.F.M. v. Lynch*, by holding federal courts lack jurisdiction to hear the constitutional claim as well as the claim under the Immigration and Nationality Act (INA). Further, the court ordered the government to hand over to plaintiffs’ attorneys details on any children who were going through that process. Of those individuals, C.J.L.G. was the one minor whose removal order was still not final; plaintiffs’ counsel contacted him and filed a petition with the Ninth Circuit to review his removal order, which was denied on January 29.

The authors describe how Honduras native C.J.L.G. fled his home country with his mother, seeking safety in the United States after being threatened at gunpoint by gang members. The authors state that C.J.L.G. was unable to secure counsel and the U.S. immigration judge failed to inform him of his possible eligibility for a special defense known as Special Immigrant Juvenile (SIJ) status. Furthermore, while the judge found his story believable, C.J.L.G. was nonetheless denied asylum. The judge found the minor failed to meet the “nexus” requirement that would have shown that gang members meant to harm him because of his membership with a “qualifying social group,” a claim which C.J.L.G. had to articulate without representation.

The Ninth Circuit’s denial of the petition holds that neither due process nor the INA provides minors seeking protection from deportation the right to court-appointed representation. The authors dispute this ruling, specifically

its conclusions relating to SIJ status.

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