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Final Report to the McDowell Foundation: August 1, 2019

Adjudication of Ms. A.B.'s claims for relief

Ms. A.B.'s case remains pending before the Board of Immigration Appeals (BIA or Board). Although we filed a notice of appeal to the Board in November 2018, we have yet to receive our briefing schedule. However, we have begun preparing our brief and lining up support from *amicus* parties. We recently confirmed *amicus* participation from the Harvard Immigration and Refugee Clinic, Tahirih Justice Center, a group of former immigration judges and BIA members, and a group of immigration law professors. We expect to soon confirm participation from the UN High Commissioner for Refugees (UNHCR) as well. While the Board has been slow to move on Ms. A.B.'s case, we anticipate that they will issue a briefing schedule within the next six months. Because we are preparing our briefing and coordinating *amicus* support well in advance, we expect that we will be able to move swiftly once the briefing schedule is issued.

In the meantime, we are continuing to pursue other avenues to reverse former Attorney General Jeff Sessions' erroneous ruling in Ms. A.B.'s case. In early 2019, we initiated representation in *O.L.B.D. v. Barr*, an asylum case involving a young Salvadoran woman that presents an opportunity to challenge *Matter of A-B-* in the First Circuit. We submitted briefing on behalf of our client Ms. B.D. in early March. Then in May, CGRS Co-Legal Director Eunice Lee appeared as *amicus* in another First Circuit case, *De Pena Paniagua v. Barr*. Last fall the BIA relied on *Matter of A-B-* to deny asylum to the petitioner in that case, Ms. De Pena, without conducting a meaningful examination of her claim. Sharing argument time with Ms. De Pena's attorney, Eunice called on the First Circuit to overturn *A-B-* and remand Ms. De Pena's case to the Board for proper individualized consideration. In August we plan to file another *amicus* brief in a similar case, *Fuentes Reyes v. Barr*, involving a domestic violence survivor from El Salvador.

FOIA lawsuit on behalf of Ms. A.B.

In March 2019, CGRS and pro bono counsel at Riley Safer Holmes & Cancila filed suit against the U.S. Department of Justice (DoJ), challenging the agency's failure to release information about former Attorney General Sessions' involvement in *Matter of A-B-*. The lawsuit was brought under the Freedom of Information Act (FOIA) and filed on behalf of Ms. A.B. Ms. A.B. had filed a FOIA request back in March 2018 seeking all records and communications pertaining to Sessions' decision to certify her case. After DoJ failed to respond to the FOIA request by the legal deadline, Ms. A.B. filed an administrative appeal asking for prompt production of records. To this day, however, DoJ has failed to disclose the requested information.

The goal of our current lawsuit is to compel DoJ to provide records that might shed light on the troubling procedural irregularities experienced by Ms. A.B., which implicate her due process rights to a fair and impartial agency proceeding. However, the government has failed to respond to the complaint in a timely manner. At the end of May, the government requested relief from a default judgment, which the D.C. District Court granted, and the case has since been reassigned to a new judge.

University of California Hastings College of the Law

200 McAllister Street | San Francisco, CA 94102 | <http://cgrs.uchastings.edu>

Additional FOIA request

CGRS filed an additional FOIA request in March, requesting a statistical dataset of all cases heard by Judge V. Stuart Couch related to applications for asylum, withholding of removal, and Convention Against Torture (CAT) relief since June of 2017. Judge Couch denied Ms. A.B. relief when her case first came before the Charlotte Immigration Court, and then again after Sessions sent her case back. Through this FOIA request we are seeking information that illuminates how asylum cases have been adjudicated at the Charlotte Immigration Court pre- and post-*Matter of A-B*-. We hope to learn whether Judge Couch has been analyzing claims on an individualized, case-by-case basis, as required under U.S. law. As mentioned in previous updates to the Foundation, after Sessions remanded Ms. A.B.'s case to the Charlotte Immigration Court we filed a motion to recuse Couch, alleging bias, which he unsurprisingly denied.

This request has been placed on a complex track, and we have not yet received the records we are seeking. In the meantime, we are collecting and analyzing the limited public data that does exist on asylum adjudication trends in Charlotte, and we are reaching out to local attorneys to request additional anecdotal data to supplement it. We expect that the data we obtain – through our FOIA request and these other efforts – will bolster our arguments that Judge Couch has not been appropriately analyzing claims on a case-by-case basis, and that he prejudged Ms. A.B.'s claims in violation of her due process rights.

The following attorneys may be contacted for further information:

Moira Duvernay, CGRS Deputy Director (duvernaym@uchastings.edu)

Blaine Bookey, CGRS Co-Legal Director (bookeybl@uchastings.edu)