McDowell Foundation
Semi-Annual Report
March 29, 2019

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Moreno v. Nielsen, No. 1:18-cv-01135 (E.D.N.Y.), challenges a U.S. Citizenship and Immigration Services' (USCIS) policy that unlawfully blocks otherwise eligible noncitizens with Temporary Protected Status (TPS) from gaining lawful permanent (LPR) status. The case was filed on behalf of a class of TPS holders who, but for this policy, are eligible to become lawful permanent residents (LPR) because of a close family relationship with a U.S. citizen or through their U.S. employer.

TPS provides a temporary haven for noncitizens living in the United States when natural disasters or civil strife in their home countries render it unsafe for them to return. While holding TPS, a noncitizen is in a lawful, though non-permanent status; authorized to work; and protected from deportation. Most TPS holders have held this status for upwards of two decades and consequently, have established deep roots in the United States. Because TPS is not a permanent status, many of these individuals take steps to gain LPR status (a "green card") through relationships they have established during their long years in the United States.

Hundreds, if not thousands, of TPS holders are blocked from becoming LPRs solely due to USCIS's unlawful policy, challenged in this lawsuit. This policy states that TPS holders who entered the United States without inspection cannot demonstrate that they were "inspected and admitted or paroled" into the United States, a requirement to adjust to LPR status. However, as the Sixth and Ninth Circuits have both held, the plain language of the TPS statute itself deems a grant of TPS to be an inspection and admission for purposes of adjustment of status. The Eleventh Circuit has held the opposite. USCIS applies its policy everywhere but within the Sixth and Ninth Circuits. As a result, whether these TPS holders will be able to remain with family and community depends on the arbitrariness of where they reside. The suit seeks to overturn the policy as applied in the jurisdiction of the nine courts of appeals that have not ruled on the issue.

Since receipt of this grant on October 1, 2018, Plaintiffs' motion for class certification and cross motion for summary judgment had been pending for a number of months. Because the court had not ruled on these yet, and because plaintiffs and many putative class members were facing termination of their TPS status, Plaintiffs filed a motion for a preliminary injunction with supporting brief and, after the government's response, reply brief.

In January 2019, we learned that lead Plaintiff, Amado Moreno, would be laid off of his job of 17 years at the end of March 2019 when his employer ceased operations. Because his application to adjust to LPR status was based upon the visa petition filed by this employer, we filed a motion for a temporary restraining order or in the alternative, a preliminary injunction, asking for

immediate relief on his behalf due to the upcoming loss of his job. On February 15, prior to completion of briefing on our emergency motion, the court denied our request for a temporary restraining order, finding that the TRO would expire prior to March 30 and thus would not serve any purpose. The court also raised the issue of Mr. Moreno's standing to sue—an issue that Defendants had not raised—and instructed the parties to brief this issue. We then filed a final brief addressing all of the concerns raised by the court in its February 15 Order.

To date, we have received no decision on any of the still-pending motions: the motion for a preliminary injunction filed on behalf of Mr. Moreno, the motion for a preliminary injunction filed on behalf of all plaintiffs and putative class members, the cross motion for summary judgment, or the motion for class certification. We are frustrated by how long the case has been pending without decisions on these motions.

Within the next six months, we expect that there will be a decision on the merits. Regardless of the outcome, we also expect that any decision will be appealed to the Second Circuit. We know that if we were to lose on the merits, we would appeal. Similarly, there is a strong likelihood that the government would appeal were we to win.