



9th Circ. Hands Setback To Immigrant Kids Seeking Attys

By Allissa Wickham

Law360, New York (September 20, 2016, 9:33 PM EDT) -- The Ninth Circuit on Tuesday ruled that a federal district court doesn't have jurisdiction regarding a claim that immigrant children have a right to attorneys in deportation cases, saying the children can't skip immigration court and head straight to district court.

In the latest development in the fight over securing attorneys for immigrant kids, the Ninth Circuit ruled that since the children's claims over the right to an attorney stemmed from their deportation cases, they could only raise the claims through the "petition for review" process, which involves going through the immigration court system first.

"Despite the gravity of their claims, the minors cannot bypass the immigration courts and proceed directly to district court," Circuit Judge M. Margaret McKeown wrote for the panel. "Instead, they must exhaust the administrative process before they can access the federal courts."

The interlocutory appeal springs from a proposed class action seeking lawyers for immigrant children facing removal proceedings. The suit initially alleged that forcing kids to appear before immigration judges without lawyers violates both the Immigration and Nationality Act and the due process clause of the Constitution.

However, while the lower court judge asserted his jurisdiction over the constitutional claim, he ruled immigration courts are the proper jurisdiction for the plaintiffs' INA claims to be heard. The judge therefore dismissed their INA violation claim for lack of jurisdiction.

The government submitted an appeal fighting the court's finding that it possessed jurisdiction regarding the constitutional claims, while the children cross-appealed, challenging the nixing of the statutory claims, according to the Ninth Circuit.

On Tuesday, the Ninth Circuit panel ruled the lower court lacked jurisdiction over the children's claims, with the panel affirming regarding the statutory claim and reversing when it came to the constitutional claim. The court emphasized it was only addressing the jurisdictional issue, and not the claims' merits.

Circuit Judge McKeown also wrote a concurring opinion, saying she "cannot let the occasion pass without highlighting the plight of unrepresented children who find themselves in immigration proceedings." The judge said she wrote to emphasize that the executive branch and Congress have the power to tackle this "crisis" without the intervention of the courts.

“What is missing here? Money and resolve — political solutions that fall outside the purview of the courts,” McKeown said.

Senior Circuit Judge Andrew Kleinfeld also weighed in with a concurring opinion, saying he agreed with his colleagues that a kid is “unlikely to be able to protect all his rights in a deportation proceeding unless he has a lawyer.” However, he added that the fix to the representation issue is a “highly controversial political matter” and that the matter “is better left to the political process.”

Having a lawyer is perhaps the most important factor regarding whether an unaccompanied child will be ordered deported, according to a report from the Migration Policy Institute. It found that in recent immigration cases, more than 90 percent of unrepresented kids were ordered deported while only 18 percent of kids with legal representation were.

Matt Adams of the Northwest Immigrant Rights Project, who represents the plaintiffs, told Law360 that although “it may be theoretically possible to present the constitutional claim at some point in the future, hundreds if not thousands more children will be removed without ever having an opportunity for a fair hearing.”

“We believe more than a theoretical possibility is required, there must be a meaningful opportunity to present this claim,” Adams said. He noted that his team is “going to focus on a petition for rehearing en banc.”

Nicole Navas, a spokeswoman with the [U.S. Department of Justice](#), told Law360 the department is looking over the ruling and had no additional comment.

The plaintiffs are represented by Ahilan Arulanantham, Stephen Kang and Cecillia Wang of the ACLU Immigrants' Rights Project, Theodore J. Angelis, Todd Nunn and Heidi Craig Garcia of [K&L Gates LLP](#), Matt Adams and Glenda M. Aldana Madrid of the Northwest Immigrant Rights Project, and others.

The federal government is represented by Erez Reuveni, Leon Fresco, William Charles Peachey and Sarah Stevens Wilson of the U.S. Department of Justice.

The case is J.E.F.M. et al. v. Lynch et al., case numbers [15-35738](#) and [15-35739](#), in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Aaron Pelc.

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