

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

J.E.F.M., a minor, by and through his Next Friend, Bob Ekblad; J.F.M., a minor, by and through his Next Friend Bob Ekblad; D.G.F.M., a minor, by and through her Next Friend, Bob Ekblad; F.L.B., a minor, by and through his Next Friend, Casey Trupin; G.D.S., a minor, by and through his mother and Next Friend, Ana Maria Ruvalcaba; M.A.M., a minor, by and through his mother and Next Friend, Rosa Pedro; S.R.I.C., a minor, by and through his father and Next Friend, Hector Rolando Ixcoy; G.M.G.C., a minor, by and through her father and Next Friend, Juan Guerrero Diaz; on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

Eric H. HOLDER, Attorney General, United States; Juan P. OSUNA, Director, Executive Office for Immigration Review, Jeh C. JOHNSON, Secretary, Homeland Security; Thomas S. WINDOWSKI, Principal Deputy Assistant Secretary, U.S. Immigration and Customs Enforcement; Nathalie R. ASHER, Field Office Director, ICE ERO; Kenneth HAMILTON, AAFOD, ERO; Sylvia M. BURWELL, Secretary, Health and Human Services; Eskinder NEGASH, Director, Office of Refugee Resettlement,

Defendants.

NO. 2:14-cv-01026-TSZ

STATE OF WASHINGTON'S
AMICUS BRIEF IN SUPPORT OF
PRELIMINARY INJUNCTION

Note on Motion Calendar:
August 29, 2014

I. INTRODUCTION

The plaintiff children risked their lives to come to the United States, escaping violence and other conditions in their home countries that made that risk worth taking. To legally remain here, these children must navigate proceedings that are incredibly complex. Evidence shows that when children are forced to face their immigration proceedings alone, they have a much slimmer chance of succeeding, and the potential consequences of deportation are dire. The State of Washington therefore supports the plaintiffs' motion for an order from the Court that would ensure that these children will not be forced to represent themselves in removal proceedings.

II. ARGUMENT

The State of Washington is deeply concerned that unaccompanied minors now residing within its borders, some of them very young, will be forced to represent themselves in immigration removal proceedings. Immigration proceedings are unusual in that no other party to the proceeding is aligned with the child, and there is no other party arguing on behalf of the child's best interest. (In fact, the child's best interest is expressly not an issue that can dictate the outcome of a federal immigration proceeding. Wendy Young & Megan McKenna, *The Measure of a Society: The Treatment of Unaccompanied Refugee and Immigrant Children in the United States*, 45 Harv. C.R.-C.L. Law Review 247, 249 n.14. (2010)). As a result, immigration proceedings require some children to face the court entirely alone.

Moreover, immigration proceedings have been characterized as second only to federal tax cases in complexity. *Baltazar-Alcazar v. I.N.S.*, 386 F.3d 940, 948 (9th Cir. 2004); *see also Padilla v. Kentucky*, 559 U.S. 356, 369 (2010). Cases specifically involving Special

1 Immigrant Juvenile Status, an underutilized option, are especially complex because they
2 involve both federal and state court proceedings. Young & McKenna, 45 Harv. C.R.-C.L. Law
3 Review at 255. There are several steps a child must take in order to obtain this status. *See*
4 *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 253 (2008). First, if in federal custody, the child
5 must seek consent to state court jurisdiction from Immigration and Customs Enforcement, a
6 bureau of the Department of Homeland Security. *Id.* The child must then obtain a state court
7 predicate order finding: “1) that the child is dependent on the court or a state agency; 2) that
8 the child is eligible for long-term foster care due to abuse, neglect or abandonment; and 3) that
9 it would not be in the child’s best interest to be returned to his or her home country.” *Id.* After
10 obtaining the state court order, the child can petition U.S. Immigration and Citizenship
11 Services for Special Immigrant Juvenile Status. *Id.* If granted, the child may apply for
12 adjustment to lawful permanent resident status. *Id.* If the child is already in removal
13 proceedings, then either the Board of Immigration Appeals or an immigration judge must
14 determine the adjustment of status. *Id.* at 254. Moreover, there are regulations regarding aging
15 out that must be considered for older children. *Id.* at 253. It is highly unlikely that a child
16 could evaluate Special Immigrant Juvenile Status or satisfy all of the many prerequisites
17 without some assistance.

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21 Furthermore, there is evidence that where a child is represented, the chances of the
22 child being able to remain in this country increase significantly, both in Washington and
23 nationwide. Since 2005, approximately 41 percent of unaccompanied children who are
24 represented in Washington have had their cases resolved in a way that permits them to remain
25 in this country. TRAC Immigration, *Juveniles—Immigration Court Deportation Proceedings*,

1 <http://trac.syr.edu/phptools/immigration/juvenile> (Chart: Washington—All-Initial Filing); *see*
2 *also* TRAC Immigration, *About the Data*, [http://trac.syr.edu/immigration/reports/359/](http://trac.syr.edu/immigration/reports/359/include/about_data.html)
3 [include/about_data.html](http://trac.syr.edu/immigration/reports/359/include/about_data.html).¹ In contrast, less than four percent of unrepresented children in
4 Washington have had their cases resolved in a way that permits them to stay. *Id.*

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6 There is a similar disparity in immigration outcomes nationwide between children who
7 are represented and children who are not. Between 2005 and June 2014, approximately 47
8 percent of children who were represented in their juvenile immigration proceedings were
9 permitted to remain in the United States, while only 10 percent who were unrepresented have
10 been permitted to stay. TRAC Immigration, *New Data on Unaccompanied Children in*
11 *Immigration Court*, Table 4, <http://trac.syr.edu/immigration/reports/359/>. In 2013 alone, 78
12 percent of children who were represented in immigration proceedings were permitted to
13 remain, while only 25 percent of unrepresented children obtained this outcome. *Id.* Thus,
14 while the number of unrepresented children permitted to remain in the United States has risen,
15 the disparity in outcome between represented and unrepresented children remains stark.

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17 These data call into serious question whether unaccompanied children who are forced
18 to represent themselves in immigration proceedings can receive the full and fair hearing
19 required by federal law. *See, e.g., Jacinto v. I.N.S.*, 208 F.3d 725, 727-28 (9th Cir. 2000). This
20 court has previously recognized a strong public interest in “the orderly and fair treatment of
21 persons subject to the laws of this land, citizens and non-citizens alike.” *E.g., Abdur-Rahman*
22 *v. Napolitano*, 814 F. Supp. 2d 1087, 1097 (W.D. Wash. 2010). As the plaintiffs have aptly
23 argued, forcing young children, many of whom do not speak English, to represent themselves
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25 ¹ Only the “Removal Order” and “Voluntary Departure” categories reflect children who were not
26 permitted to remain in the country. TRAC Immigration, *About the Data*, [http://trac.syr.edu/immigration/](http://trac.syr.edu/immigration/reports/359/include/about_data.html)
[reports/359/include/about_data.html](http://trac.syr.edu/immigration/reports/359/include/about_data.html)

1 in immigration proceedings necessarily deprives them of a full and fair hearing. Forcing
2 children to represent themselves in inherently complex immigration proceedings, in which
3 their lives may be at stake, does not give them an adequate opportunity to be heard. Like the
4 plaintiffs, Washington seeks assurance that unaccompanied children residing in this state will
5 enjoy the full protection of the rule of law.
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7 Finally, deprivation of a full and fair hearing risks dire consequences for children who
8 must return to their home countries. To give just one example, in 2004 Edgar Chocoy, an
9 unrepresented fifteen-year-old boy, insisted that gangs would kill him if he were returned to
10 Guatemala. Young & McKenna, 45 Harv. C.R.-C.L. Law Review at 254-55; *see also*
11 Jaqueline Bhabha, “*Not a Sack of Potatoes*”: *Moving and Re-Moving Children Across*
12 *Borders*, 15 B.U. Pub. Int. L.J. 197, 203 (2006) (indicating Chocoy was unrepresented).
13 Asylum was denied and Chocoy was deported. Young & McKenna at 254. He was murdered
14 in less than a month. *Id.*
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16 III. CONCLUSION

17 Washington supports the plaintiff children’s motion for preliminary injunction. This
18 Court should enter an order that ensures that unaccompanied immigrant children residing in
19 Washington will not be forced to represent themselves in their removal hearings.
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21 DATED this 14th day of August 2014.

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