Immigrant Defense Project
Second Quarter Report: January - March 2023

A-J- v. Garland, a Ninth Circuit case, challenges federal administrative precedents that discriminate against noncitizens by refusing to give effect to certain post-conviction relief and criminal justice reform laws for noncitizens. The case was designated by the Ninth Circuit as the lead case on this issue. Several other cases were held in abeyance pending its resolution. This designation was particularly important for three related reasons: 1) there is a statutory bar to class action in cases of this nature, 2) a precedential decision by the Ninth Circuit would bind all immigration judges and agency adjudications within its vast jurisdiction, and 3) federal rules strictly limit certain access to information about immigration appeals on Public Access to Court Electronic Records, the federal judiciary's centralized program for making federal court cases accessible to the public.

Consequently, as part of *A-J-*, we negotiated with government counsel for us to be notified of all pending Ninth Circuit cases presenting these issues. During the prior quarter, the government requested to submit the case to mediation before the Ninth Circuit. In March 2023, mediation resolved in favor of Mr. A-J-, with the government granting him full and complete immigration relief. While this was ongoing, and following this mediation settlement, we have done broad outreach to counsel in the approximately 15 other cases currently pending at the Ninth Circuit, have engaged the court itself, and have continued discussions with government counsel, all to identify cases that will move forward and to arrange for full and fair presentation of these issues before the court.

Our negotiations with the government on this point are ongoing and we are working with the group of *amici curiae* who filed briefs in *A-J-* to organize this continued litigation. In the next quarter, we are planning for further court filings in the cases that will soon be released from abeyance. In addition, we are drafting another brief before the immigration agency in support of a noncitizen's motion to have their post-conviction relief remedies recognized by immigration authorities; the individual's case involves a question of "exceptional and extremely unusual hardship" to U.S. citizen children and family members if deported.

P-V- v. Garland is a Second Circuit challenge to a Trump-era federal agency precedent that declines to give effect to a New York misdemeanor sentencing reform law in immigration cases. The appeal was argued before a three-judge panel in September 2022 and is awaiting decision. IDP has been monitoring potentially relevant federal court decisions to see if any give rise to post-argument supplemental letter briefing. We also continue to work with and support the criminal defense bar that files resentencing motions for noncitizens in state court, in light of the currently precarious state of the law in the Second Circuit until *P-V-* is decided.

We continue to engage the media over these issues, and most recently spent hours with an NPR radio reporter to provide the legal and historical background for a longform radio piece about California's post-conviction laws in light of the immigration agency precedents we are challenging in *A-V-* and its related cases, and *P-V-* : https://www.kqed.org/news/11940089/her-murder-conviction-was-overturned-ice-still-wants-to-deport-her.

Finally, in a case before the Eleventh Circuit (*Edwards v. Att'y Gen.*) regarding a Trump-era agency precedent that changed federal rules for treatment of sentences in immigration cases, the court has ordered the government to respond to the Petition for Rehearing or Rehearing En Banc and supporting *amicus curiae* brief, all filed by IDP and partners. The court has stayed issuance of the mandate in *Edwards*, pending the government's reply. The *Edwards* decision is a direct split from a decision of the Seventh Circuit on a question of retroactivity, creating the possibility of Supreme Court review.