

Wiley's Pro Bono Program Achieves 'Significant Result' on Behalf of Immigration Client

December 13, 2023

In a victory for Wiley's Pro Bono Program, Pro Bono Partner Theodore A. Howard and attorneys Nick Peterson and Paul A. Devamithran with assistance from legal assistant Kara Szabo, were able to secure the release of noncitizen Marco Molina Santana from the U.S.

Immigration and Customs Enforcement's (ICE) Alternatives to Detention Program and the removal of his ankle monitor.

Mr. Molina, who entered the United States unlawfully, was in federal custody at the Farmville, Virginia Detention Center awaiting deportation when he requested and obtained a "credible fear" interview with a U.S. Citizenship and Immigration Services (USCIS) Officer. The officer determined that Mr. Molina had a reasonable belief that he would be subject to persecution - within the meaning of the US immigration laws - if he was returned to his home country of El Salvador due to outward behavioral manifestations of his documented mental health problems. To challenge the credible fear determination, ICE initiated a removal case against Mr. Molina in Immigration Court, but in October 2020, the Immigration Judge (IJ) determined that Mr. Molina was entitled to remain in the United States under the provisions of the UN Convention Against Torture. Although ICE appealed the IJ's decision to the Board of Immigration Appeals (BIA), it decided to release Mr. Molina from detention in March of 2021 while the appeal was pending, subject to his obligation to wear an ankle monitor, which ultimately caused him extreme discomfort, aggravated his mental health problems, and kept him from obtaining or maintaining employment. In February 2022, the BIA reversed the lower court's decision in Mr. Molina's favor

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and remanded the case to the Immigration Court for consideration of Mr. Molina's other arguments as to why he should not be deported. On remand, a different IJ issued a ruling in June 2023, again holding, on alternative grounds, that Mr. Molina had a valid legal basis to avoid removal and lawfully stay in the US. ICE did not appeal the second decision, which is now administratively final in Mr. Molina's favor.

Working with CAIR Coalition and the National Immigration Project, Wiley filed a petition on Mr. Molina's behalf in the U.S. District Court for the Eastern District of Virginia, Alexandria Division, on November 13 alleging that ICE's disregard of Mr. Molina's requests and its failure to remove the ankle monitor, despite having no legitimate continuing interest in surveilling Mr. Molina, denied him procedural due process under the Fifth Amendment and that, as a separate matter, ICE disregarded its own internal policies and procedures by imposing ankle monitoring on Mr. Molina in the first place, given his known serious mental illness in violation of the Administrative Procedures Act.

On November 21, Federal District Judge Michael Nachmanoff issued an order requiring ICE to "SHOW CAUSE within fourteen (14) days of this Order why the Petition should not be granted[.]" Eight days later, on November 29, Wiley was advised that ICE would remove Mr. Molina from its Alternatives to Detention Program and remove his ankle monitor. On December 1, Mr. Molina confirmed that the ankle monitor had been removed, and thus Wiley filed a notice on December 4 regarding the voluntary dismissal of the case.

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