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Kirkland team wins migrants' bid to remain

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A team of attorneys from Kirkland & Ellis LLP scored a victory before an immigration judge in Texas — and they say it may be a first among immigration cases brought during President Donald Trump's administration.

The lawyers represented a Guatemalan immigrant separated from his 6-year-old son by authorities at the Mexican border in May. Last month, he was granted protection under an international anti-torture treaty.

Since December, the Kirkland lawyers from Chicago and other offices have represented the man, identified only as John Doe, in the administrative proceedings.

Asylum protections allow immigrants to permanently live in the U.S if they can demonstrate fear of persecution. But it's not the only avenue for relief for them.

Last month, Doe's attorneys convinced Immigration Judge Michael S. Pleters that Doe was entitled to protection under the United Nations Convention Against Torture, a treaty the U.S. ratified in 1994.

"That is a provision that allows for folks who are more likely than not, if they return to their home country, are going to be subjected to torture, here in the form of death, with the acquiescence or participation of the government," said Ashley Neglia, a litigation associate at Kirkland's Los Angeles office who represented Doe. "The judge here agreed that the government of

Guatemala, the local government in particular, would either turn a blind eye or actively participate in his torture."

The treaty protection has higher standards than asylum does because it requires a preponderance of evidence that torture will happen upon a migrant's return home. Unlike asylum, though, the anti-torture treaty protection is not subject to an immigration judge's discretion — it must be granted to anyone who proves they are qualified.

The Kirkland lawyers said they believe Doe could be the first immigrant to gain treaty protections since the Justice Department began tightening asylum rules under Trump's direction.

Neglia said the Kirkland group is working to get Doe reunited with his son, whom he hasn't seen in almost a year.

The federal government has not appealed Pleters' ruling to the Board of Immigration Appeals.

Under the treaty's protection, U.S. Immigrations & Customs Enforcement retains the ability to remove migrants with the treaty protection to a safe third country.

But that won't fly, said Emily Nicklin, of counsel at Kirkland's Chicago office, because Doe has no ties to other countries and doesn't speak Spanish — he's a member of the Achi people, an indigenous Maya group that faced thousands of violent murders by the Guatemalan government during the country's 36-year civil war and still suffers "systematic discrimination" today, Neglia said.

Pleters noted in his ruling that relocating Doe to a different part of Guatemala is not an option.

Doe is currently detained at the West Texas Detention Facility in Sierra Blanca, about 88 miles from El Paso, where his son is in Office of Refugee Resettlement custody. Although they haven't seen each other in a year, they have brief weekly phone conversations.

Doe's son, who is surrounded by people who only speak Spanish and English, no longer speaks Achi, Neglia said, and he's stopped referring to Doe using a term for father.

"He's really lost his indigenous language. Our client can speak some small amount of Spanish," Neglia said. "But his mother, who is still in Guatemala and in hiding, speaks absolutely no Spanish. He's 100 percent unable to communicate with his mother at all."

Doe was a bus driver who for years, received threats of violence and extortion from local gangs and government officials.

In April 2018, members of the 18th Street Gang gave Doe an ultimatum: Either kill three other people who were also resisting extortion demands or the gang would kill him and his family.

Neglia said Doe didn't have enough money for the whole family's escape, so his wife and eldest son stayed behind.

An immigrant with treaty protection can get a work permit, but is not eligible for permanent residency, Neglia said. Doe cannot request asylum for his wife and son.

"The path forward for his family will have to be for them somehow making their way to the United States to seek asylum in their own right, and we hope they're able to do so," Neglia said.

Kirkland & Ellis takes referrals from Annunciation House, an El Paso social services nonprofit.

"We're the guys who get called when it's hopeless," Nicklin said. "Even when we achieve a victory, it's not necessarily the sort of thing where everything is a bed of roses. But it is still deeply satisfying to save someone from very deep trouble, even if you can't open all the doors and get a solution for every problem."

Nicklin is one of three Kirkland attorneys spearheading the firm's pro bono immigration work. Nicklin estimated they have helped about a dozen people since last fall. Her team includes lawyers in Kirkland's Chicago, Dallas, Houston, Los Angeles and Washington, D.C., offices.

Last year, the firm recorded 26,350 pro bono hours working on immigration- and refugee-related cases, according to a Kirkland spokeswoman.

The other Kirkland lawyers who worked on Doe's case were Christina L. Briesacher in Chicago and Maisie Allison in Los Angeles.

They were assisted by Taylor Levy, of Annunciation House; Adriana Zambrano of the Catholic Legal Immigration Network Inc.; and Tanaz Moghadam and Ilana Greenstein from the Immigration Justice Campaign.