

CAIR COALITION **Crim - Imm**  
**Pro Bono Project**

ONE-YEAR ANNIVERSARY  
NEWSLETTER

Spring/Summer 2017

The Crim-Imm Pro Bono Project is CAIR Coalition's initiative to expand impact litigation and increase access to counsel to defend detained immigrants facing deportation due to the disproportionate immigration consequences of criminal convictions.

**Crim-Imm Pro Bono Project Celebrates its  
One Year Anniversary**

It has been one year since CAIR Coalition launched the Crim-Imm Pro Bono Project and we could not be happier with its growth and its impact on immigrant rights. Launched through the Arnold & Porter Foundation's sponsorship of an [Equal Justice Works Fellowship Project](#), the project now includes pro bono teams from Wiley Rein, Mayer Brown, Arnold & Porter Kaye Scholer, Hogan Lovells, and Perkins Coie.

Thanks to the leadership of these firms, we have been able to disprove the prior assumption in the pro bono immigration community that it would be near impossible to engage pro bono firms in the representation of detained immigrants facing deportation with a focus on criminal convictions. There are now numerous

pro bono attorneys trained in the intersection of criminal and immigration law who can represent impact cases in the immigration courts and on appeal to the Board of Immigration Appeals and the Fourth Circuit.

Although these types of impact cases most often require going to the Fourth Circuit over a period of years, the Crim-Imm Pro Bono Project has already seen many cutting-edge successes in its first year, including:

- The **Mayer Brown** team saved their nineteen-year old long-time green card holder client from deportation, triggered by a single, first-time drug possession conviction, to a country where he faced imminent death at the hands of gangs. The team helped CAIR Coalition conduct its first ever post-conviction relief in Virginia state Circuit Court due to ineffective assistance of counsel under *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), and successfully [vacated their client's conviction](#), allowing him to maintain his green card and remain united with his almost entirely U.S. citizen family in Virginia.
- Alongside continuing to steadfastly argue on appeal that the legal basis for their client's deportation relating to his conviction is [unconstitutional](#), the team at **Wiley Rein** [won the second ever habeas petition in the Eastern District of Virginia](#) on the issue of prolonged immigration detention prior to a final order of removal. This successful and novel constitutional argument has the potential to benefit countless detained immigrants who face protracted immigration detention with no right to a bond hearing, an issue currently being addressed by the Supreme Court in *Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016).

**With New Added Teams, Crim-Imm  
Pro Bono Project is Officially**

## Staffed Up

We are thrilled to share that Arnold & Porter Kaye Scholer, Hogan Lovells, and Perkins Coie have all recently formed new teams to take on cases and projects in the Crim-Imm Pro Bono Project.

On appeal to the Board of Immigration Appeals, the team at **Arnold & Porter Kaye Scholer** successfully won a new hearing and chance at due process for a detained woman who was wrongfully ordered deported due to her convictions while unrepresented by counsel at her very first immigration court hearing. The team argued that their client, a long-time lawful permanent resident and mother of two young U.S. citizen children, does not have an “aggravated felony”, a category of offenses under federal immigration law that would bar her from all defenses to deportation. The team presented such strong crim-imm legal arguments on appeal that, after remand and even before setting a new hearing and briefing schedule, the immigration judge issued an unprecedented decision agreeing with the team that their client’s theft-related convictions are not aggravated felonies. Their client is now permitted to apply for a defense to deportation to keep her green card and remain united with her U.S. citizen children and family.

**Hogan Lovells** has taken on the Project’s first-ever challenge to the designation of a state offense as a “crime involving moral turpitude”, an extremely broadly defined category of offenses under federal immigration law that would make their client subject to mandatory detention without the possibility of bond and barred from obtaining lawful status through her husband. This is the Project’s first crim-imm challenge within the unique procedural posture of a bond eligibility case. The team is arguing that their client, a mother with three young U.S. citizen children, should not be mandatorily detained and foreclosed from asking for release from immigration detention on bond due to her single Maryland conviction because the offense only involves negligent intent.

The **Perkins Coie** team is developing a crim-imm resource that is in particularly high demand: a chart outlining the immigration consequences of D.C. criminal offenses. CAIR Coalition maintains a live-updated [chart](#) of the immigration consequences of Virginia criminal offenses and the University of Maryland Francis King Carey School of Law similarly publishes a [chart](#) of the immigration consequences of Maryland offenses. However, there is no chart that exists for D.C. These charts provide a pivotal resource to help guide resourced-strapped, indigent criminal defense attorneys in defending noncitizen defendants facing potential immigration consequences, as required of all defense attorneys under *Padilla v. Kentucky*. Thanks to the brave attorneys at Perkins Coie, defense attorneys with clients facing criminal charges in D.C. will have access to a similar chart in the near future.

## LEGAL UPDATES & AREAS OF GROWTH

***Esquivel-Quintana v. Sessions: Supreme Court Stands By Strict Application of the Categorical Approach*** – In a [case decided this May 30](#), the Justices chose yet again to require a strict interpretation of the categorical approach, reminding us that the higher courts are consistently providing favorable crim-imm decisions that limit DHS's broad power to deport people due to criminal convictions. In a unanimous decision, the Court held that a victim has to be younger than 16 years old for a statutory rape violation to count as an aggravated felony "sexual abuse of a minor" deportable offense under immigration law. The Court rejected the government's arguments, acknowledging that aggravated felonies are only "the most heinous crimes", and stating that "The Government's definitions turns the categorical approach on its head...Under the Government's preferred approach, there is no "generic" definition at all." Slip op. at \*7. This case follows the Supreme Court's strong precedent in recent years doubling down on the categorical approach in seminal cases including *Moncrieffe*, *Descamps*, *Mellouli*, *Mathis*, and now, *Esquivel-Quintana*.

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***New Partnership with Greenspun Shapiro & Washington and Lee*** – CAIR Coalition has recently teamed up with one of the most well-respected criminal defense attorneys in Virginia -- Jonathan Shapiro of Greenspun Shapiro, now a Visiting Professor at Washington and Lee University Law School which supports this work as well -- to develop its Virginia post-conviction relief practice.

Under *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) and *Zemene v. Clarke*, 289 Va. 303 (2015), immigrants have the ability to vacate a conviction that is triggering their deportation when their criminal defense attorney in the case failed to advise them of the immigration consequences of their offense. However, in Virginia there is no pro bono resource available to bring forward these claims. Mr. Shapiro recently co-counseled with CAIR Coalition in two post-conviction relief cases, helping CAIR Coalition build its experience and paving the way for increased cases in this novel area.

***Supreme Court to Decide Constitutionality of Aggravated Felony Category this Month*** – By the end of June, the Supreme Court will address a circuit split to decide in [\*Sessions v. Dimaya\*](#), 137 S. Ct. 31 (2016), whether the second part of the aggravated felony crime of violence category of removable offenses, 18 U.S.C. § 16(b), is unconstitutionally void for vagueness. If the Court knocks down this subsection, several Crim-Imm Pro Bono Project clients with cases on appeal pending *Dimaya*, including the [Wiley Rein team's litigation](#), several in-house cases, and a new case co-counseled with Mike Ward at Alston & Bird, will win their long fight against deportation. If *Dimaya* upholds § 16(b), there may be prospects to continue to litigate in this area at the Fourth Circuit.

***Supreme Court Will Also Decide Constitutionality of Immigrants' Prolonged Immigration Detention Before a Final Order of Deportation*** – The Supreme Court will also decide by the end of June in *Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016), whether there are constitutional limits to the prolonged detention of immigrants facing deportation who have not yet been given a final order of removal while they fight their deportation. This is an issue that the [Wiley Rein team had a recent success](#) in the Eastern District of Virginia. Depending on the decision in this

case, increased opportunities for habeas relief to challenge immigrants' detention may become available.

## New Practice Advisory

The impact litigation brought under the Crim-Imm Pro Bono Project is being used to develop practice advisories and resources to support practitioners and coordinate crim-imm litigation in our region. Click [here](#) to read our new practice advisory, based off of ongoing impact litigation, on how to vacate a conviction in Virginia through post-conviction relief when a noncitizen's criminal defense attorney failed to advise of immigration consequences of her charges in violation of *Padilla v. Kentucky*.

## Relevant Reads

- [Gibson Dunn & Crutcher wins](#) in CAIR Coalition pro bono case, securing holding that Virginia statutory burglary is categorically not an aggravated felony theft/burglary offense [crim-imm argument at Fourth Circuit](#).
- Washington Post article describing how the [Fourth Circuit Court of Appeals has become more liberal](#) in recent years, reminding us why it's worth fighting to hold out for the Fourth to improve the law for all immigrant detainees.
- [Report on access to counsel](#) for detained immigrants in the D.C. metropolitan area featuring case study of CAIR Coalition, finding that:
  - 81% of detained immigrants in the Arlington Immigration Court and 71% of detained immigrants in the Baltimore Immigration Court had no lawyer (including many with crim-imm challenges available);
  - Detained immigrants who had a lawyer were at least 4x more likely to win their case in Baltimore and 2x more likely to win in Arlington compared to unrepresented detainees;

- See also corresponding [Washington Post](#) and [Baltimore Sun](#) articles
- Vignettes of [individuals impacted by the immigration detention system](#) at the 20<sup>th</sup> anniversary of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the law that created the harshest immigration consequences of state criminal convictions including aggravated felonies and statutorily-mandated immigration detention
- [New podcast "Indefensible"](#) by the Immigrant Defense Project, a national organization that does incredible crim-imm work, about immigrants caught in the intersection of the criminal and immigration systems.

## Resisting the Administration's Criminalization of Immigrants Through Impact Litigation

The immigrant population of the United States faces [unheard of threats](#) of mass apprehension, detention, and deportation as the current administration has taken steps to ramp up its deportation machine. There has never been a more urgent time to disrupt this drastically expanding pipeline and challenge the dehumanization and criminalization of immigrant communities. By taking a case in our [Crim-Imm Pro Bono Project](#), firms can litigate impact cases to defend detained immigrants and challenge which state crimes fall in the category of offenses that trigger deportation.

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**For more information on the Crim-Imm Pro Bono Project, contact Adina Appelbaum: [adina@caircoalition.org](mailto:adina@caircoalition.org) or (202) 899-1412**