

Family Separation Deserves an Explanation

Kerry v. Din

The Case of Kerry v. Din and Due Process for
Families of U.S. Citizens Abroad



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The wind blew my hood off and I shuffled my feet to keep warm, but the cold was only a small portion of what was on my mind. It was a frigid Monday in February and I stood on the steps of the Supreme Court, anxiously awaiting the chance to observe my first hearing of this magnitude. While visiting the Supreme Court had been on my DC bucket list since I moved in September 2014, the visit meant more than the grandeur of the highest court in our nation, it resonated with me because of the work I do with CAIR Coalition.

As an AVODAH Service Corp member, I have the privilege of providing an overview of immigration court processes and common defenses to detained immigrants on CAIR Coalition detention visits. It is on these visits where I often hear from people the notion that one is required to have representation to defend one's case in immigration court. Noncitizens in detention do not have the right to appointed counsel in immigration court, as in criminal court, even when deportation

causes devastating ripple effects, including the permanent separation of families and the deterioration of communities.

The hearing I attended at the Supreme Court *Kerry v. Din*, addressed the scope of judicial review. At the heart of the case was the question of whether a consular officer's refusal of a visa to a U.S. citizen's spouse impinges on her constitutionally protected interests, her marriage and family reunification.

In 2009, Fauzia Din filed a petition for her husband, who was denied a visa by a consular officer under a broad inadmissibility provision of the Immigration and Nationality Act, but was not provided a specific reason for the denial. The couple made numerous efforts to understand the reason for the denial, but to no avail.

Mrs. Din pursued the matter, arguing that she was not given notice for the reasons underlying her husband's visa rejection, persisting all the way to the Supreme Court.

Walking into that court room, I was excited for two reasons: First, for the obvious reason of the pleasure of hearing some of the greatest legal minds of our time, but second, because of the immigration law context. You see, most of the detainees I talk to while on detention visits with CAIR Coalition are fighting their cases pro se, without immigration representation. To be able to sit in on an immigration case in which there was representation before nine Supreme Court justices was as good as it got for me on that Monday morning.

During arguments, Justice Sotomayor posed a hypothetical based on historical facts to challenge the attorney for the federal government. She referenced September 11, and those persons kept for months, who had been erroneously held under suspicion of involvement of terrorist activities, further proffering "I'm questioning how someone caught up in an administrative nightmare," like Mrs. Din, could have no interest in her marriage rights nor in a judicial review of the government's exclusion of her husband.

Justice Kennedy followed,
“ it seems to me that the wife here has the right to demand a reason. ”

To which the attorney for the federal government responded that “there is no judicial review.” Breyer further pressed the absoluteness of the government's position, asking “So is it really no matter what?”

I find it hard to wrap my head around the idea that the consular processing system does not have room for judicial review. People are complex, as communities are intricate. People deserve a second look when denied entry into the U.S. and they are worthy of explanation, particularly when families face permanent separation.

On jail visits we stress immigrants' rights to fight their cases even if it means fighting it without legal knowledge or background. I shudder to think how Mrs. Din's husband would have fought this argument all the way to the Supreme Court without the support of a major law firm such as Sidley Austin. Almost all indigent, detained immigrants I talk with on visits are unrepresented and limited in the resources and emotional resilience required to challenge their removal, let alone, a blanket denial of a spousal petition.



Immigrants and their families deserve an explanation for denials, the stakes are too high:
Permanent family separation.

If you want to learn more about CAIR Coalition's jail visit program, other volunteer opportunities, or more about what a person in deportation proceedings is going through, check out our website. If you want to learn more about the case, check back around June, when the decision on Kerry v. Din will be out! In the meantime check out the Supreme Court yourself and sit in on an oral argument. Piece of advice: try to do so in the warmer months. Then again, great arguments do not answer to any particular season!