

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

February 20, 2017

Honorable Carol Bagley Amon
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Darweesh v. Trump*,
No. 1:17-cv-00480-CBA

Dear Judge Amon,

Petitioners respectfully move this Court to reconsider its order denying their Motion for Leave to File Student Appearances. EDNY Local Rule 6.3. The Court denied the request due to the “complexities of the case.” Dkt. Text for Order re ECF 55 (Feb. 10, 2017). It is undisputed that the law students satisfy the requirements of the Eastern District Student Practice Rule. Counsel for intervenor consent to this motion, and counsel for respondents take no position.

This case is indeed complex. Nevertheless, law student interns working under the supervision of Professors Michael Wishnie and Muneer Ahmad, who co-direct the Worker and Immigrant Rights Advocacy Clinic of the Jerome N. Frank Legal Services Organization at Yale Law School (LSO), have supervised these students and many others in complex cases before district and appellate courts. Three of the law students who are the subject of this motion have already argued and taken deposition testimony in complicated federal matters, and others have previously handled federal and administrative court litigation. *See, e.g., Reid v. Donelan*, No. 3:13-cv-30125-MAP (D. Mass.) (Ponsor, J.) (law student My Khanh Ngo argued motion to compel and took deposition of senior government official in Washington, DC in habeas class action in which LSO certified as class counsel); *Batalla Vidal v. Baran*, No. 1:16-cv-04576 (E.D.N.Y.) (Garaufis, J.) (law student Will Bloom handled initial status conference in suit seeking declaratory and injunctive relief that nationwide injunction entered by district court in Texas against President Obama’s 2014 immigration relief does not apply in New York); *Giammarco v. Kerlikowske*, No. 16-1109 (2d Cir) (law student Aaron Korthuis argued appeal of dismissal of habeas corpus *ad testificandum* on behalf of deported U.S. Army veteran).

Several experienced counsel in this case, whose presence ensures that the matter will be conducted in a competent and professional manner, first appeared in complicated federal cases as law students under the supervision of Wishnie or Ahmad. *See* ECF Nos. 59 (Omar Jadwat), 29 (Cody Wofsy), 119 (Rebecca Heller). Wishnie himself first defended depositions and examined a witness at trial as a law student intern in *Haitian Centers Council v. Sale*, No. 92-cv-1258 (SJ) (E.D.N.Y.) (ordering release of HIV+ Haitian refugees detained at Guantanamo). Notably, in the past decade, Judges Reena Raggi (2d Cir.) and Mark Kravitz (D.Conn.) hired law students Saurabh Sanghvi and Justin Cox shortly after they presented argument in complex matters under Wishnie’s supervision.

Wishnie signed the law student appearances in this case, ECF No. 55-1, and the *pro hac vice* motion of Ahmad is pending. ECF No. 138. Over the past twenty years, as a clinical professor at NYU and Yale, Wishnie has supervised students in dozens of federal matters. One

sensitive and complex case is illustrative of the high quality, professional representation provided by law student interns even in complicated matters. In *Doe v. Hagenbeck*, No. 1:13-cv-2802 AKH (S.D.N.Y.), students under Wishnie's supervision represent a young woman raped while a cadet at West Point in her suit against senior military leaders. The case was originally filed under seal and Judge Hellerstein indicated reservations about permitting students to appear. Upon review of a submission similar to this, however, Judge Hellerstein reconsidered, allowing the students to appear and argue the motion to dismiss, which he denied in part. 98 F.Supp.3d 672 (S.D.N.Y. 2015). On defendants' appeal, one student argued a motion to transfer and two others argued the merits of the appeal. No. 15-1890 (2d. Cir.) (decision pending).

A few other cases demonstrate the ability of law student interns to appear and handle complex matters under the supervision of Wishnie and Ahmad:

1. *Badrawi v. United States*, No. 3:07-cv-1074 (D. Conn.) (Hall, J.). Students represented a Lebanese-Egyptian national in a damages action against federal immigration agents and state correction officials challenging his wrongful arrest, detention, and deportation. The client alleged *Bivens*, Federal Tort Claims Act, and § 1983 claims. The national security aspects of the case made it highly sensitive, prompting entry of an attorney-eyes-only protective order (an order that included the students), and discovery led into the White House itself. Students argued all of the dispositive and non-dispositive motions, *see, e.g., El Badrawi v. DHS*, 579 F.Supp.2d 249 (D. Conn. 2008) (denying motions to dismiss in part); *El Badrawi v. United States*, 787 F.Supp.2d 204 (D. Conn. 2011) (denying summary judgment motion of United States and granting plaintiff's cross-motion in part); *El Badrawi v. DHS*, 258 F.R.D. 198 (D. Conn. 2009) (ordering government to produce sensitive documents); took and defended depositions; conducted judicial mediations; and secured a favorable settlement.

The students also litigated related federal and state Freedom of Information Act (FOIA) cases. In the state case, the United States intervened and the matter reached the Connecticut Supreme Court, where a student argued. *Commissioner of Correction v. Freedom of Info. Com'n*, 307 Conn. 52 (2012). In one federal FOIA case, students argued before Judge Mark Kravitz and the Second Circuit appeal. *Lowenstein v. DHS*, 603 F.Supp.2d 354 (D.Conn. 2009), *aff'd* 626 F.3d 678 (2d Cir. 2010). It was after this Second Circuit argument that Judge Raggi hired the student as a law clerk. Students also argued multiple motions and took depositions in the second related federal FOIA case. *El Badrawi v. DHS*, 583 F.Supp.2d 285 (D.Conn. 2008) (Hall, J.).

2. *Diaz-Bernal v. Myers*, No. 3:09-cv-1734 (D. Conn.) (Underhill, J.). In 2007, federal agents conducted the largest immigration raid in New Haven's history. Students represented thirty of those arrested in Immigration Court, where eighteen cases went to evidentiary hearings conducted by students. In addition, students represented eleven of the arrestees in a complicated damages action against nearly a dozen federal defendants, including senior government officials. The clinic served as lead counsel, and students and law firm pro bono lawyers divided the arguments on the defendants' three motions to dismiss. *Diaz-Bernal v. Myers*, 758 F.Supp.2d 106 (D. Conn. 2010). Students also conducted discovery and led negotiations that resulted in a \$350,000 settlement plus immigration relief for all plaintiffs.

3. *Reid v. Donelan*, No. 3:13-cv-30125-MAP (D. Mass.) (Ponsor, J.). The clinic filed a habeas class action to challenge the mandatory detention without bond of immigrants convicted of certain criminal offenses. Judge Ponsor granted the writ to the named petitioner, certified the class, appointed LSO class counsel pursuant to Fed.R.Civ.P. 23(g), and granted class-wide relief. 991 F. Supp. 2d 275 (D. Mass. 2014); 297 F.R.D. 185 (D. Mass. 2014); 22 F. Supp. 3d 84 (D. Mass. 2014). The clinic serves as lead counsel and students have been actively involved in all the briefing and arguments at the District Court, and on appeal at the First Circuit. *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016) (affirming in part and vacating and remanding in part).

4. *Giammarco v. Beers*, No. 3:16-MC-00099-VLB (D.Conn.) (Bryant, J.) The clinic sued on behalf of a deported U.S. Army veteran seeking to compel adjudication of his 1982 naturalization application, which was never decided by the government. Judge Bryant ordered the agency to adjudicate the client's application. *Giammarco v. Beers*, 170 F.Supp.3d 320 (D. Conn. 2016). In a related case, the Judiciary Committee of the Connecticut General Assembly issued a legislative subpoena commanding the in-person testimony of this client and a second clinic client, the deported wife of a Vietnam veteran. When the government refused to let the clients return to the U.S. so as to comply with the subpoena, students filed a petition for writ of habeas corpus *ad testificandum* and briefed and argued the case in district court and before the Second Circuit on appeal. *Milardo v. Kerlikowske*, 2016 WL 1305120 (D. Conn. Apr. 1, 2016), *aff'd*, --- Fed.Appx. ---- 2016 WL 6427242 16-1109-PR (2d. Cir. Oct. 31, 2016).

5. *Monk v. McDonald*, No. 15-1280 (Vet. App.), *notice of appeal pending sub nom Monk v. Shulkin*, No.15-7092 (Fed. Cir.). Students represent a proposed nation-wide class of disabled veterans challenging extreme delays in VA adjudication of their disability benefits applications. The U.S. Court of Appeals for Veterans' Claims held that it lacks jurisdiction ever to aggregate veterans' claims, as that court has held in numerous cases since Congress established it in 1989. On appeal, two students argued before the U.S. Court of Appeals for the Federal Circuit, where the panel's questions led the Justice Department lawyer to concede that a "lack of authority to aggregate under any circumstances would be reversible error." Tr. at 19.

The above matters are a few examples of the many complex federal cases handled by law students working under the supervision of Wishnie or Ahmad. *See also Families for Freedom v. Napolitano*, No. 08 Civ. 4056 (S.D.N.Y.) (Chin, J.) (judicial review of agency failure to adjudicate petition for rule-making); *Shepherd v. McHugh*, No. 3:1 l-cv- 641 (D. Conn.) (Thompson, C.J.) (proposed nation-wide class action for Vietnam veterans with PTSD); *Brizuela v. Feliciano*, No. 3:12-cv-226 (D. Conn.) (Arterton, J.) (proposed state-wide habeas class action for short-term immigration detainees); *Barrera v. Boughton*, No. 3:07-cv-1436 (D. Conn.) (Chatigny, J.) (representation in civil rights action on behalf of eight day-laborers arrested by local police); *Topo v. Dhir*, No. 01 Civ. 10881 (S.D.N.Y.) (Castel, J.) (representation of domestic worker in suit against former employers); *Manliguez v. Joseph*, No. 01-cv-7574 (E.D.N.Y.) (Garaufis, J.) (same); *Cardona v. Shinseki*, Vet. App. No. 11-3083 (Kasold, C.J.) (representation of disabled veteran in challenge to VA statute denying spousal benefits to same-sex partner); *Bourguignon v. MacDonald*, No. 3:09-cv-30068 (D. Mass.) (Ponsor, J.) (habeas petition challenging prolonged immigration detention without bond hearing); *Monk v. Mabus*, No. 3:14-cv-00260 (D. Conn.) (proposed nation-wide class action on behalf of

Vietnam veterans with PTSD and bad discharges); *Liberian Community Association of Connecticut v. Malloy*, No. 3:16-cv-00201 (D. Conn.) (Covello, J.) (proposed state-wide class action on behalf of persons subject to illegal state public health quarantine).

In the instant matter, many of the students who have sought leave to appear are third-year law students who would satisfy the requirements for student appearances before the Second Circuit. *See* Local Rules of the Second Circuit, Rule 46.1(e)(3). The others are second-year law students currently completing their fourth semester. These students have been closely involved in every aspect of this litigation, developing and researching legal claims and drafting a substantial portion of the first four court filings, including the habeas petition and the motions for class certification, to stay removal, and to compel or enforce. ECF Nos. 1, 4, 6, 52. But for the students' participation, it is unlikely that the petitioners would have been in a position to file suit on an emergency basis. The students began working on behalf of the named petitioners hours after the Executive Order was signed, laboring through the night with co-counsel to draft and file the petition and motion for class certification at 5:45 a.m. the next morning, and then the motion for a stay of removal filed later that day. These filings led Judge Donnelly to enter a nationwide stay. Since that time, law students have continued to play an integral role in all aspects of the case.

Finally, the named petitioners have expressly authorized these students to appear on their behalf. ECF No. 55. It is appropriate to respect the petitioners' choice of counsel. *See In re Methyl Tertiary Butyl Ether Products Liab. Litig.*, 438 F. Supp. 2d 305, 309-10 (S.D.N.Y. 2006) (noting the "strong public policy to allow persons to retain counsel of their choice") (internal quotations omitted); *Matter of Abrams*, 62 N.Y.2d 183, 196 (1984) ("An individual's right to select an attorney who he believes is most capable of providing competent representation implicates ... the First Amendment guarantees of freedom of association").

For the foregoing reasons, Petitioners respectfully request that this Court reconsider its denial of leave for law student interns to appear in this matter.

Respectfully submitted,

/s/ Michael J. Wishnie
Michael J. Wishnie (MW 1952)
Muneer I. Ahmad
JEROME N. FRANK LEGAL SERVICES ORG.
YALE LAW SCHOOL
P.O. Box 209090
New Haven, CT 06520-9090
Phone: (203) 432-4800
Fax: (203) 432-1426
michael.wishnie@yale.edu

cc: Counsel for Respondents (via ECF)
Counsel for Intervenor (via ECF)