

Daily Journal

www.dailyjournal.com

THURSDAY, DECEMBER 27, 2018

Keker attorneys get Guatemalan teen immigrant released

By Chase DiFeliciano
Daily Journal Staff Writer

The teenager was a long way from home.

Identified only as B.D.A.C. in court papers, he came to the U.S. illegally from Guatemala along with his older sisters and their families to try to find his mother, who was already here.

The 17-year-old said he was fleeing persecution by gangs in his home country but the U.S. government suspected him of being a gang member since they said he had admitted to it.

He ended up being held in a juvenile detention center that he wrote was a “real prison” for unaccompanied immigrant minors in Yolo County.

His detention was also a case study in potential problems encountered by non-profit attorneys who represent detained minors like B.D.A.C. and illustrates how changes to immigration law and policy under the Trump administration affect individuals and families who enter the U.S. illegally.

However, because of the efforts of associate Travis Silva and partner Simona Agnolucci of Keker, Van Nest & Peters LLP who took the case pro bono, B.D.A.C. was released just before Thanksgiving shortly after they challenged his detention in a San Francisco federal court. *A.C. v. Lloyd*, 18-CV06791 (N.D. Cal., filed Nov. 8, 2018).

Silva said in an interview before the teen was released that the government had not given his client and his family “an explanation of what the process is and why the government is keeping the family separated.”

Silva also said his client was repeatedly sexually abused as a child and suffers from post-traumatic stress syndrome and adjustment disorder.

Silva said an independent clinical psychologist who reviewed the boy’s file said he had been given psychotropic drugs while in government custody but could not find who prescribed them, when they were given or why.

Silva said that according to Guatemalan police records, B.D.A.C. was kidnapped by gangs in his home country.

While the U.S. government has stated that he admitted to gang affiliation last December, Silva argued there was no material proof of that and the trauma he had undergone was so severe it made him



Courtesy of Keker, Van Nest & Peters LLP

Travis Silva of Keker, Van Nest & Peters LLP

an unreliable narrator of his own life.

The Office of Refugee Resettlement, part of the U.S. Department of Health and Human Services, is the government agency responsible for caring for detained immigrant minors like Silva’s client. The attorney said he tried for months to determine why the teen was being held and was given little to no information before the suit was filed.

“The government has a responsibility to provide adequate health care to anyone that it’s detaining,” including mental health services, Silva argued. “If the government had followed its obligations under the law in that way, it probably could have avoided the needless 10-month-long detention of this child in locked juvenile halls.”

A Justice Department spokesperson reached by email referred requests for comment on the case to the Health and Human Services Department. That department declined to comment on ongoing litigation in an emailed statement, although the case is no longer being fought by the Justice Department on its behalf.

Silva said he repeatedly emailed and called the boy’s refugee resettlement office case manager, asking what steps he could take to expedite the release process and what information the government needed. He said he repeatedly received the same response, that a decision was pending.

He also worked with the boy’s mother and found a nonprofit charity that was

willing to provide the teen proper medical treatment upon his release after a social worker studied her home to see if it was fit for him to live in.

Despite everything seeming ready, the teenager remained in government custody. Silva said he could not speculate on the delay in the refugee resettlement decision making process.

The outgoing head of the agency, Scott Lloyd, instituted a policy that has been repeatedly ordered moot by federal courts whereby he made himself the sole decision-maker on all minor detention determinations.

The 21-year-old *Flores* settlement agreement, which the Trump administration has tried to change and regulate around this year, determines how immigrant families and children in government custody are to be treated and was interpreted by U.S. District Judge Dolly Gee in Los Angeles to bar Lloyd from making the determinations.

“It’s exhausting and it is terrifying to see what the government does to children like B.D.,” Silva said of the experience handling the case.

He said he also did not know why the government had released his client so suddenly before the litigation could proceed but he speculated “that they didn’t have a tenable litigation position.”

“When litigation actually occurs, lawyers who litigate cases begin to look at them and I don’t know if a lawyer had looked at this case before and realized

how atrociously the government had infringed upon this child’s constitutional rights,” Silva commented.

While B.D.A.C. and his mother, Liliana Cotto Yoc, are reunited and living in Ohio, they still face deportation back to Guatemala and are both pursuing asylum claims and other forms of relief, Silva said.

But that might not be as easy as it once was.

The Trump administration earlier this year narrowed the grounds on which someone can claim asylum, reasoning that the law had been designed to protect people from governments and not private actors like domestic abusers or gangs.

Silva was confident, however, that his client would be able to remain in the U.S. regardless of the change, which he described as unlawful. His client is also likely eligible for Special Immigrant Juvenile Status, Silva said.

That is an immigration benefit whereby minors who have been abused, abandoned or neglected can remain in the U.S. and potentially pursue permanent residency and citizenship.

In many ways, B.D.A.C. is lucky to have had the help of lawyers like Silva, and might still be in custody if he had not.

By law, immigrant minors in federal custody are supposed to get legal help paid for by the government “to the greatest extent practicable” and the refugee resettlement office contracts most of that work out to 35 legal service providers in 19 states.

Court filings by immigrants’ attorneys allege the agency specifically directs the lawyers it pays to represent the children not to challenge their determinations about detention or risk losing funding, a problem B.D.A.C. did not face since he had private attorneys take the case pro bono.

Pennsylvania-based immigration attorney Justin Mixon said, according to court documents he filed in a separate case in California’s Central District, “I was instructed that I could not assist detained children challenge ORR’s release or placement decisions, no matter how arbitrary or otherwise unlawful ORR’s decisions appeared.”

Silva said, “It’s critically important for these children to have independent lawyers. They don’t all have lawyers and they don’t all have independent lawyers who don’t have these funding restrictions.”