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Law School News: Professor Gonzalez Is 2020 Rhode Island Lawyer Of The Year 01/11/21

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Rhode Island Lawyers Weekly

Roger Williams University School of Law

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January 11, 2021

Law School News

Professor Gonzalez is 2020 Rhode Island Lawyer of the Year

Lawyers Weekly has selected Professor Deborah Gonzalez as one of its 2020 Rhode Island Lawyers of the Year, citing her outstanding advocacy for the safety of immigrant detainees at Wyatt Detention Center.

January 11, 2021

Barry Bridges, Rhode Island Lawyers Weekly



RWU Law Professor Deborah Gonzalez

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While the past year has likely presented challenges in the daily lives of just about everyone, immigration lawyer and Roger Williams University School of Law [Distinguished Service](#)

Professor [Deborah S. Gonzalez](#) spent considerable energy in 2020 working on behalf of many whose congregate setting has prevented them from seeking safe haven: immigrant detainees at the Wyatt Detention Center in Central Falls.

In May, Gonzalez and a team of similarly committed public interest attorneys [filed a putative class action habeas petition in federal court](#), claiming the conditions in which the Wyatt ICE detainees were being confined violated their Fifth Amendment due process rights.

Those conditions, according to Gonzalez, include inescapably close social proximity, inadequate cleaning protocols, limited supplies of PPE, and guards who don't always take appropriate precautions.

U.S. District Court Judge Mary S. McElroy found the petition to present a “substantial claim of constitutional error” and granted class certification. In early June, at a time when Wyatt housed 58 ICE detainees, she ordered that each class member be afforded an individual bail hearing.

Gonzalez and her colleagues thus embarked on representing dozens in those hearings, a process that continues today with new detentions.

“The litigation is solely so that civil detainees’ due process rights aren’t being violated by being subjected to a substantial risk of harm to their health from the COVID virus at Wyatt,” Gonzalez says. “It has been a completely new experience for me, because I don’t have that much experience in federal court. Going into it, we didn’t know a lot about Judge McElroy, because she was fairly new to the bench. Although we haven’t won every bail petition, what we have gotten is a thoughtful consideration of each case, and that’s all I can ask for.”

Gonzalez recently talked with *Lawyers Weekly* about the ongoing litigation and changes to the immigration landscape that might be forthcoming with the changing of the guard in Washington.

Q: How did you become involved in the suit?

A: We actually filed two lawsuits. The first one was in March on behalf of only three plaintiffs who had reached out to the ACLU. They ended up being released by Judge [William E.] Smith.

As for the class action, I consider it a “lesson learned.” The COVID situation was new to all of us, and I couldn’t figure out how to get calls from my office transferred to my cellphone. So I gave my phone number to the wife of a plaintiff in the first suit. Big mistake. My number went wild at Wyatt and I was inundated with calls from the ICE detainees there. I emailed my team — Jared Goldstein here at RWU; Steve Brown, Morgan Russell and Lindsey Kaley, with the ACLU; and Natalie Bennett and Susan Manning, from Morgan Lewis — and we decided a class action was the best way to proceed.

These detainees are immigrants living in the United States who have been charged with violating some sort of immigration law. With our petition, you have to consider the government’s purpose

in detaining them. Their objective, if you will, is strictly to keep track of them. They are civil detainees, not criminal. Immigration has no jurisdiction to issue penalties or sentences; in a nutshell, their role is only to ensure that people coming to the United States have the proper documentation and have been granted authorization to live here through proper government channels.

Q: What kinds of issues are typically discussed in the bail hearings?

A: Judge McElroy put the burden on the government to show that the person would be a danger to the community or a flight risk. In large part, what we argue is the person's immigration history, personal history, and connections inside of the United States, particularly in Rhode Island or Massachusetts. And we discuss any criminal violations.

But we really hammer on the health risks, because the crux of our position is that you're violating the due process of these civil detainees without a legitimate objective.

Again, the government's objective is only to keep track of them, and there is no rational basis for allowing them to run the risk of contracting this very deadly disease.

Q: What success have you seen? Are most detainees released after their hearing?

A: If we were to do a survey of who Judge McElroy released, the majority are folks with non-violent crimes, perhaps drugs or stolen property or that sort of thing. Those accused of more serious crimes like sexual assault or domestic violence for the most part have not been released. I don't have the exact stats, but at a minimum we have assisted 15 to get released through the hearings. Others were released by ICE's own review, and still others have been deported.

As part of the hearing we present a release plan: where the person is going to go, what the health risks are, whether he'll be able to quarantine, how he will attend any criminal hearings. The majority of those granted bail have been released on ankle bracelets, which kind of begs the question: If you can release folks on ankle bracelets, why are you detaining them in the first place? Others have been ordered on home confinement depending on the crime that person is alleged to have committed.

Q: What is happening now with the suit?

A: We're revved up and still in the thick of it. Nine detainees came in last week, five had come in the week before that, and we had additional bail hearings in the second week of December.

Although the number is always changing, in mid-December there were 28 ICE detainees. That number is dramatically lower than when we became involved, in large part because ICE knows of this lawsuit and the judge's directive that it earnestly take a look at which detainees can be released without a hearing. That requirement is still in place, and I think ICE is taking a good look at the situation, at least consistent with what their definition of "good" is.

But there are still a lot of people in there with severe health conditions. This suit is still viable, and we've continued to ask Judge McElroy to review individual cases.

Q: Will the Wyatt population be among the first to receive the COVID-19 vaccine? Will that bring an end to the litigation?

A: As we're speaking today, vaccinations are beginning in nursing homes and state prisons, but because Wyatt is a quasi-private, quasi-government institution, I can't imagine they'll be first in line.

I would venture to say that once everybody is vaccinated, they'll file another motion to dismiss, and I can foresee a situation where at that point Judge McElroy might grant that. But I think one assurance I would want is that new detainees coming in are also being vaccinated.

Q: What immigration policy changes do you expect to see under the Biden administration?

A: I try not to have too many expectations because [I've been let down other times](#). DACA is back; that's great. And Biden says that, within his first 100 days, he's going to submit a bill for full immigration reform. I really hope he does that, because our system is broken. There are 1.1 million immigration cases pending in the immigration courts right now.

One thing I would really like to see is the next attorney general undoing every immigration decision that Attorneys General [William] Barr and [Jeff] Sessions ever made, because their decisions logically and legally made no sense and undid decades of immigration law precedent, particularly as it relates to asylum law. At a minimum, this new administration should be able to handle that low-hanging fruit easily.

The other problem is that immigration judges are administrative judges, falling under the auspices of the Department of Justice, which is directly under the leadership of the attorney general. Immigration judges can't possibly be impartial if their jobs are in jeopardy when they don't follow the attorney general's orders. It wasn't a secret under the Trump administration that if a judge decided cases in a way contrary to what Barr or Sessions was saying, that judge was fired or demoted. That's what has been happening in the immigration courts. It's a nightmare.