

THE BARBARA MCDOWELL
AND JERRY HARTMAN
FOUNDATION

SOCIAL JUSTICE THROUGH LEGAL ACTION

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**Description of the litigation as originally stated in the application to for support to
The Barbara McDowell and Jerry Hartman Foundation:**

ILCM began representing Ms. Sandoval in the fall of 2009. At age 16, while traveling alone, Ms. Sandoval presented her U.S. citizen sister's birth certificate to airport inspectors. Ms. Sandoval was an unaccompanied alien child at the time, she quickly admitted her true identity when questioned by inspectors, and she was then allowed to withdraw her application for admission. Even so, while subsequently pursuing an application for permanent residence, both the Immigration Judge and the BIA declared her permanently inadmissible for making a false claim of U.S. citizenship. The BIA twice refused to answer our arguments that (1) Congress could not have intended the harshest immigration penalty designed for adults to apply to vulnerable children given the special treatment it requires of children throughout the rest of the Immigration and Nationality Act, and, (2) at a minimum, a more lenient rule for timely recantation must be applied to unaccompanied children. ILCM's petition for review at the 8th Circuit was granted and our appeal brief is available on our website, www.ilcm.org.

The 8th Circuit, In *Sandoval v. Holder*, No. 09-3600, remanded the case to the Board of Immigration Appeals (BIA) following many of the arguments we raised. It instructed the BIA, for example, to address whether unaccompanied alien children can be subject to permanent inadmissibility for making a false claim of U.S. citizenship. As the Eighth Circuit noted, the draconian penalty for false citizenship claims has been described as the "immigration version of the death penalty." The Eighth Circuit also told the BIA to consider an important alternative issue: if unaccompanied children *can* be subject to inadmissibility for false claims of U.S. citizenship, must the BIA apply a more liberal rule for timely recantation of such statements that takes into account their relative immaturity?

At the time of the grant application we were awaiting briefing schedules and we were organizing both ILCM's legal strategies and possible amicus support to ensure the best possible outcome for all minor immigrants whose ability to legally attain immigration status hangs in the balance of the Board of Immigration Appeal's analysis. It was expected that briefing at the BIA would begin in late 2011 with amicus briefs following within weeks. As this is an area where the BIA has not issued a precedent decision binding on all of the immigration judges, ILCM deems the likelihood of a binding decision in this case to be quite high. Litigation at the BIA will include briefing and responding to the government's brief, coordinating strategic amici tactics and briefs, and addressing supplemental issues including a possible re-litigation at the 8th Circuit post BIA decision. The time frame is between several months or one year or longer for a decision from the BIA. We are predicting that the decision will likely require additional clarification from the 8th Circuit Court of Appeals. If ILCM needs to return this case to the 8th Circuit, an additional 9-12 months would be required post BIA decision.

Efforts made related to the case in the six months prior to April 1, 2012:

Project Director, Ben Casper and *Pro bono* attorney Mahesha Subbaraman prepared an outstanding new brief for the case on remand to the BIA after the briefing schedule was finally determined. DHS did not file a brief with the BIA but instead offered the attached settlement which will allow Alejandra to remain in the United States with her family.

The Eighth Circuit decision and DHS's settlement—which was proposed by the agency's most senior counsel in Washington D.C., rather than local DHS attorneys—has now sparked a broader re-evaluation of policy that we hope will inspire the government to adopt interpretations of our immigration laws that fully account for the special status and vulnerability of all children.

We are pleased that after nearly eight years of litigation the Department of Homeland Security (DHS) has agreed to withdraw all charges against Ms. Sandoval and will now allow her to obtain permanent resident status. The impact of the case is still unfolding and we expect that our final report in August of 2012 will detail how this individual case will have influenced, or be poised to be a catalyst of change for, a national policy for thousands of other immigrant children in the future.

Efforts made related to the case in the intervening months between April 1, 2012 and August 1, 2012:

Pursuant to the settlement, Ms. Sandoval returned to immigration court in May of 2012 and she was granted permanent resident status by an immigration judge. Continuing after April 1, 2012, Project Director Benjamin Casper has been involved in ongoing but confidential communication with government officials in Washington, D.C., as well as leadership of the American Immigration Lawyers Association, providing detailed guidance as to the proper legal standard the government should apply in planned policymaking regarding unaccompanied children and false claims of U.S. citizenship. The date for implementation of new policy remains uncertain, and Benjamin Casper remains engaged in the efforts to shape the most generous policy possible.