

FEDERAL COURT VICTORY UPHOLDS IMMIGRANT CHILDREN'S RIGHTS TO STATE PROTECTION

(Washington, D.C.) On January 11th, 2008, the U.S. District Court of Central California declared that immigrant children seeking protection from abuse and neglect should not be barred from access to state courts. In making its decision, the Court took into account an *amici curae* brief filed by Columbia University Law School's Child Advocacy and Immigration Clinic on behalf of First Star and the Children's Advocacy Institute.

Ragini Shah, Assistant Professor at Columbia in charge of the brief, stated "the District Court's decision in *Perez-Olano* makes great strides towards protecting immigrant children in the United States. These children are often fleeing from violence in their home countries and are in the United States without adult guardians. The District Court's decision curtails Immigration Customs and Enforcement from encroaching on the ability of these children to seek protection of state courts when they are abused, neglected, or abandoned and from pursuing immigration benefits for which they are eligible."

The case, *Perez-Olano v. Gonzalez*, centered around immigrant minors in the U.S. who were eligible for an immigration benefit known as Special Immigrant Juvenile Status (SIJS), but who were unable to access the benefit due to various procedural and regulatory roadblocks. First Star's brief addressed two issues of concern to these children: access to the state courts to help protect them against harm, and requirements in the federal regulations that control these children's ability to have their cases heard by immigration officials. The brief argued that the federal government had superseded its authority by depriving state juvenile and family courts of their traditional role when it came to the needs of immigrant youth. The brief also asserted that the federal regulations went beyond the scope of the Special Immigrant Juvenile Statute, creating additional and unnecessary limitations and barriers to these vulnerable children seeking protection and justice.

U.S. District Judge Pregerson's decision in favor of the plaintiffs held that the Immigration Customs and Enforcement (ICE) may not curtail the rights of immigrant children unless the state court's decision would alter the physical or legal custody of the child. In the same decision, however, he determined that the regulations did not contradict the statute and found that agencies do have the authority to determine eligibility criteria.