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THE 2023 CLAY Awards



MEETH (MUNMEETH) K. SONI, MARION ("MICKEY") DONOVAN-KALOUST, DAVID S. ETTINGER, CHRIS HU, BETH J. JAY / PHOTO CREDIT: ARIN MIKAILIAN

Helping a teen boy escape El Salvadorian gangs and become a lawful resident

GUARDIANSHIP

DAVID S. ETTINGER, CHRIS HU, BETH J. JAY, HORVITZ & LEVY LLP;
MARION DONOVAN-KALOUST, PRACTICING LAW INSTITUTE; **MUNMEETH SONI**, EQUAL JUSTICE WORKS

GUARDIANSHIP OF SAUL H.

Saul H., the son of impoverished parents in El Salvador, was in the ninth grade when two men with tattoos of devil horns demanded he joins their gang. Saul declined; they persisted with death threats to him and his family.

In constant fear, Saul saved half his wages from work at a car wash — the other half went to buy food for his family — and fled alone to the U.S. As an unaccompanied immigrant minor, he spent months in a Texas shelter before a distant California relative took him in. Saul applied to a Los Angeles probate court for the predicate findings he'd need to obtain federal special immigrant juvenile status. But a court commissioner said no.

Enter David S. Ettinger, a veteran Horvitz & Levy LLP partner who was winding down a distinguished 40-year career by moving to of counsel status and working as the principal writer of the firm's authoritative *At the Lectern* blog. Recruited by the directing attorney of Immigrant Defenders Law Center, Marion Donovan-Kaloust, Ettinger set out on a pro bono quest on Saul's behalf.

"I thought we could change the commissioner's mind. When that didn't happen, I thought we had a good chance at the Court of Appeal," Ettinger said. "I thought maybe we'd get an unpublished reversal."

Instead, an appellate panel affirmed that Saul was out of luck because his parents' poverty left them unable to provide for and protect him. That meant Saul could not legally establish that parental reunification was impossible due to abuse, neglect or abandonment — a test for obtaining special immigrant juvenile status. The finding left Saul facing deportation.

Ettinger successfully petitioned the state Supreme Court for review, argued forcefully for reversal, and, in August 2022, obtained a unanimous opinion ordering that Saul should get special immigrant juvenile status so he can apply for lawful permanent residence. His federal application is pending. *Guardianship of Saul H.*, S271265 (Ca. S. Ct., op. filed Aug. 15, 2022).

The high court held that the correct approach is to find that parental reunification is impossible because it would

subject Saul to a substantial risk of serious physical harm due to his parents' inability to adequately protect him.

"The best thing about the Supreme Court opinion is the way it redirects the focus from the parents' conduct to the harm to the child," Ettinger said.

Ettinger said he's heard the opinion has already been found useful by immigration lawyers. Said Immigrant Law Center's Donovan-Kaloust, it "importantly reduces barriers for vulnerable children seeking protection from California courts."

Ettinger said that after some 15 appearances at the state Supreme Court over the course of his career and numerous pro bono cases, "this is the most satisfying win I've had because it concerns a particularly vulnerable group of kids. I expect this will be my last case — though you never know."

— JOHN ROEMER