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Pro Bono Innovators 2023 Honoree Latham & Watkins

SPECIAL REPORT

Lisa Helem, *Executive Editor*

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*In our 2023 issue of Pro Bono Innovators, Bloomberg Law honors Latham & Watkins for its advocacy on behalf of a child with disabilities in *Perez vs. Sturgis Public Schools* and the Sturgis Board of Education, in which the US Supreme Court ruled for their client in March. The firm is also honored for its work with Afghan refugee assistance.*

Latham's pro bono work includes advocating for a deaf child, Miguel Perez, who had been denied reasonable accommodation by his school district for 12 years. His parents sought relief in administrative proceedings under the Individuals with Disabilities Education Act and Americans with Disabilities Act. The firm also is honored for its Afghan refugee assistance. How did your firm strategize on how to approach these matters?

Roman Martinez, Supreme Court and appellate

partner: Although I've argued more than a dozen cases in the Supreme Court, none has been more satisfying as the 9-0 victory for Miguel Luna Perez in *Perez v. Sturgis Public Schools*, an important case vindicating the rights of disabled students under the Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA).

Miguel is deaf. For 12 years, he attended Sturgis Public Schools in Michigan. But Sturgis violated the IDEA and ADA when it refused to teach Miguel sign language and provide other accommodations. Instead, Sturgis isolated Miguel from his classmates while telling his parents (who speak no English) that he was earning good grades and progressing towards graduation.

This permanently stunted Miguel's ability to communicate. Miguel and Sturgis settled an administrative claim that Miguel filed under the IDEA, granting Miguel compensatory educational relief. But when Miguel filed a separate ADA claim for monetary relief in federal court, the district court and Sixth Circuit refused to let him proceed, holding that Miguel's IDEA settlement forfeited his right to bring the ADA claim.

Miguel's legal team reached out to help with a long-shot effort to obtain Supreme Court review, because they knew about my prior advocacy in two landmark IDEA cases I handled while serving at the Department of Justice: *Fry v. Napoleon Community Schools* (2017), and *Andrew F. v. Douglas County School District RE-1* (2017).

After joining Miguel's legal team, we filed — and the Supreme Court granted — our petition for certiorari. In our merits briefing and at oral argument, we explained that the IDEA's exhaustion requirement does not bar ADA (or other non-IDEA) claims when a disabled student seeks a remedy — like compensatory damages — that the IDEA does not authorize. We urged the Justices to reject the

contrary rulings of all 10 courts of appeals to have addressed the issue, explaining that none of those courts had properly interpreted the IDEA's text.

On March 21, 2023, the court issued a unanimous 9-0 decision bucking circuit consensus and adopting our argument in full. The case was then remanded to the district court, and this past October, Miguel and the Sturgis school district reached a settlement. While the terms are confidential, Miguel and his family are very happy.

Laura Atkinson-Hope, Latham public service counsel, on the Afghan humanitarian crisis: The strategy was to triage the legal needs — identify the clients who needed limited scope advice and help them at scale, while staffing comprehensive legal teams for clients who needed more bespoke and enduring services. We listened to our legal services colleagues on the frontlines of the evacuation and directed our resources to have the highest impact.

What were the most innovative aspects of two of your clients' matters in your view? And who took the lead on driving innovation with the work?

Roman Martinez: We successfully persuaded the Supreme Court to adopt our argument that the IDEA's exhaustion requirement does not apply when the plaintiff brings a non-IDEA claim seeking money damages. All 10 courts of appeals that had addressed that issue had concluded that the exhaustion provision applies in that circumstance. The Latham team nonetheless persuaded the Justices to depart from the circuit courts and agree — unanimously — that the IDEA's text, structure, and history support the opposite position.

We also worked to bring Miguel's story to a wide audience, arranging an interview with [The Daily Moth](#), which is one of only a few professional American Sign Language (ASL) publications.

We also used the *Perez* case as a teaching tool to further Latham's partnership with The Appellate Project (TAP), a non-profit mentorship-based organization devoted to promoting diversity in the field of appellate litigation. We arranged for 12 TAP mentees to participate in a series of hands-on working sessions — including an initial strategy discussion, observation of moot court, and a post-argument debrief — to discuss the case and Latham's strategy, giving participants a behind-the-scenes look at how Supreme Court cases are fought and won.

Laura Atkinson-Hope: We have long engaged on Special Immigrant Visa matters for Afghan allies, but the crisis following the fall of the Afghan government required us to quickly scale our capacity and engage thoughtful triage to best protect clients' safety. Realizing a gap in legal services for Afghan evacuees, we proposed a project to Human Rights First, allowing 500+ Latham colleagues — including our 304-member summer associate class — to assist 100+ Afghan clients on permanent residence applications,

contributing 7,200 hours of legal services in 10 weeks. This was the first time our pro bono program marshalled an entire summer class on a single project.

We leveraged the firm's premier immigration practice and built on longstanding relationships with several partner organizations on the front lines of working with asylees and refugees, including Human Rights First, Kids in Need of Defense, and the International Refugee Assistance Project.

Tell us more about the impact of these two matters on the local, national, and/or global level.

Roman Martinez: The unanimous US Supreme Court ruling is a major victory for children with disabilities, opening the courthouse doors to Miguel and other student victims of discrimination. The court's decision ensures that children with disabilities who are denied a free and appropriate public-school education can pursue all available remedies under federal anti-discrimination law, including under the ADA and the Constitution.

Laura Atkinson-Hope: The legal assistance that Latham continues to provide helps our Afghan clients avoid uncertain futures, including possible deportation to a country under Taliban control. While these clients wish to stay in the US for varied reasons — some as outspoken advocates for women's rights, some as members of religious and ethnic minorities, and others who have worked on behalf of the US government or military — all share a real and credible fear of prosecution, punishment, and incarceration under the Taliban's harsh regime. Since November 2021, our lawyers have donated more than 30,000 hours of legal services in support of Afghan refugees, including helping them pursue SIVs, asylum, and permanent residence.

Why do you think your team ultimately achieved successful results in these matters?

Roman Martinez: Latham applied our usual approach to appellate litigation, combining creative strategy with exhaustive legal research, hard-hitting briefs, and a crisp and compelling oral argument. We were inspired in this effort by Miguel and a team of talented co-counsel, who had worked hard to build the record and advance Miguel's interests in the lower courts. Ultimately, we are grateful that the Justices saw fit to grant review and take a fresh and independent look at this important area of law.

Laura Atkinson-Hope: The combination of massive limited-scope projects and bespoke full-scope representation on behalf of the most vulnerable clients allowed us to bring lawyer resources from 17 Latham offices to bear. In close consultation with pro bono partners expert in the field to guide our strategy, the team capitalized on the strength of the 2022 summer associate class, the breadth of Latham's global platform, and the opportunities that the pandemic's remote work culture

provided for cross-staffing and serving clients globally. Taken together, Latham's response to the Afghan crisis represents one of the largest, and most impactful, pro bono efforts of any law firm on this issue.

What did you do to celebrate when these matters were resolved?

Roman Martinez: Finding out that the US Supreme Court ruled unanimously in favor was extremely gratifying. This case was not only a win for Miguel, but also for other children with disabilities who are in a similar position and can now obtain full relief when they suffer discrimination.

Laura Atkinson-Hope: While we are very proud of our work to address the Afghan crisis, we recognize that these efforts are ongoing. We continue to partner and collaborate with frontline organizations like Human Rights First, International Refugee Assistance Project, and KIND to help immigrants and asylees around the globe.

Responses provided by Roman Martinez, Latham & Watkins Supreme Court and appellate partner and Laura Atkinson-Hope, director of Global Pro Bono. Martinez led on the Perez v. Sturgis Public Schools matter. And Atkinson-Hope led the firm's response to the Afghan humanitarian crisis.

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