

IMMIGRATION DETAINEE PRO BONO OPPORTUNITIES GUIDE



*Cited in Joseph v. Holder,
No. 05-74390 archived on April 23, 2010*

**American Bar Association
Commission on Immigration**



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INTRODUCTION

We Need Your Time and Talent to Defend the Rights of Detained Immigrants and Refugees

Welcome to the Immigration Detainee *Pro Bono* Opportunities Guide. Created by the American Bar Association's Commission on Immigration, this guide provides opportunities for lawyers to create justice in the lives of detained immigrant and refugee adults and children.

The Commission directs the Association's efforts to ensure fair and unbiased treatment and full due process rights for immigrants and refugees within the United States, and develops and assists the on-going operation of *pro bono* programs that encourage volunteer lawyers to provide high quality, effective legal representation for individuals in immigration courts. The Commission places special emphasis on the needs of the most vulnerable immigrant and refugee populations such as immigration detainees.

The need for lawyers to help immigrants and refugee adults and children detained by the Department of Homeland Security's Immigration & Customs Enforcement (ICE) has reached crisis proportions. The Department of Homeland Security (DHS) was established per the Homeland Security Act of 2002 (Pub. L. No. 107-296, 116 Stat. 2135). The Department incorporates 22 federal agencies including ICE. The Executive Office for Immigration Review (EOIR- Immigration Court) remains within the Department of Justice.

As a result of 1996 immigration laws mandating the detention of asylum-seekers and immigrants, immigrant detainees now constitute the fastest growing segment of the incarcerated population in our country. Totaling more than 200,000 annually, these immigrants are being held at over 400 facilities nationwide, the majority of which are local jails or private prisons. The detention of these detainees usually lasts for a period of months; however, there are cases that have lasted for years while on appeal.

Adult and child refugees and immigrants are detained pending removal proceedings before EOIR. These are civil administrative proceedings and are adversarial in nature. They often pit the lone detainee, sometimes with limited education and English skills, against highly skilled government attorneys. Without the right to government-appointed counsel, only ten percent of people detained by ICE secure legal representation in their cases.

Legal representation significantly affects the outcome of removal proceedings. Detainees have compelling claims for relief from removal, including United States citizenship, permanent residence (green cards), and asylum for refugees fleeing persecution. According to a recent analysis of Department of Justice data, an immigrant who receives legal representation is more than four times more likely to be granted asylum from an immigration judge than someone who is not represented.

Detainees also often contend with significant conditions of confinement issues ranging from health care to access to counsel and legal materials. ICE implemented Detention Standards that the American Bar Association helped negotiate. These standards provide for access to counsel and humane treatment. *Pro bono* attorneys play a vital role in helping to ensure their full and consistent implementation.

Pro bono attorneys and law firms can help ameliorate the plight of detained men, women and children.

PERSPECTIVE: Sierra Leone Teenager Seeking Asylum

“I have not had a more rewarding legal experience than seeing the tears of joy and relief in my client’s eyes when the judge told him he did not have to return to the country where he was tortured and his family had been killed,” said Kendall Millard, an attorney in the Washington, DC law office of Arnold & Porter, who represented a teenager from Sierra Leone last year. It was his first in-court experience and he argued successfully before an immigration judge.

“Leon,” a teenager from Sierra Leone, was detained at Baltimore Washington International Airport in July 2001. He lived in Freetown, Sierra Leone, with his brother and had been providing non-military help to the U.N. Peace-Keeping force protecting the city from the rebels. When the rebels invaded Freetown, they shot his brother and tortured Leon for two days. He escaped to Guinea and then to Gambia before fleeing to the United States more than two years later.

Mr. Millard represented Leon at his “credible fear” interview, and decided along with another law firm associate to take on his asylum case through to the merits hearing ten months later. Because Leon was in detention for the first five months, Mr. Millard was only able to meet with him irregularly. He could not call Leon or even get messages to him. Instead, he had to wait for Leon to call collect from jail. Finally, Mr. Millard and his legal team were able to secure parole for Leon to live with his aunt in New York. This allowed his lawyers to meet with him several times in their office to work on his affidavit and conduct a mock trial. They also found a psychologist working with torture victims to meet with him in New York on a pro bono basis and to submit an expert report on his behalf.

Leon had his final hearing on the merits in April 2002, and the judge granted asylum in July 2002—exactly one year after the date of his arrival in the United States. He is now living with his aunt in New York and preparing to finish high school so he can go to college. In fact, Leon will return to participate in a mock trial for a DC Bar training session. This experience “gave me the skills and confidence to do it again.” And, indeed, Mr. Millard has taken on another asylum case and “plans to make pro bono representation of asylum seekers a regular part of my legal practice.”

Arnold & Porter has also been working very actively with the Capital Area Immigrant Rights (CAIR) Coalition, representing asylum seekers who would be persecuted or even killed if returned to their home countries. “We have developed a niche representing detained asylum seekers, and have a system set up whereby the CAIR Coalition notifies us when people fleeing persecution are detained at area airports and need representation at their credible fear interview which, by law, must occur within 48 hours,” said Mr. Millard. Arnold & Porter also is representing the CAIR Coalition and the American Immigration Lawyers Association in an Administrative Procedures Act lawsuit in the U.S. District Court for the District of Columbia challenging new Department of Justice rules that, if not overturned, would have the effect of encouraging the Board of Immigration Appeals to rubber-stamp erroneous denials of asylum by immigration judges.

PRO BONO OPPORTUNITIES



III. DIRECT REPRESENTATION

Interested *pro bono* attorneys may provide direct representation to immigration detainees in their immigration cases before the Immigration Court, Board of Immigration Appeals or, in some cases, federal district courts or circuit courts of appeals. *Pro bono* attorneys can pursue a wide range of substantive immigration remedies on behalf of immigrant detainees to remain in the United States. Some of these remedies are within the Immigration Court's exclusive jurisdiction while others lie within the jurisdiction of ICE. These forms of relief have important implications for an immigrant's eligibility for federal medical, educational and housing benefits and the ability to immigrate immediate relatives abroad.

Here is a summary of the most salient classes of detainees, their potential remedies and the rewards of working with them:

Asylum-Seekers and Torture Convention Applicants

Many detained adults and children, who fled or fear abuse or mistreatment by their governments or groups within their homelands, have cognizable claims before the Immigration Court. In order to ensure

their safety and protection, claims against removal may be made in the form of asylum, withholding of removal, and protection under Article 3 of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In providing legal representation, attorneys may gain mastery in a discrete, manageable universe of statutes, regulations and administrative and federal case law pertaining to asylum, withholding and CAT claims. Firm attorneys, especially new associates, may gain invaluable litigation experience before the Immigration Court, Board of Immigration Appeals (BIA) and even federal courts. While they take place in an adversarial forum, the proceedings are administrative. They are not necessarily as daunting or protracted in duration as federal proceedings. Usually, asylum hearings can be disposed of in less than one day of hearings.

Some law firms have become creative in allocating *pro bono* resources for a specific constituency of vulnerable, detained asylum seekers (*e.g.*, women, Chinese children, gays and lesbians). This targeting helps firms acquire a particular expertise regarding a specific class of asylum seekers. Over time, this provides for the creation of model and recyclable materials and templates, which reduce outlays in research time. On average these claims take approximately fifty to one hundred hours to prepare. However, this depends on the attorney's familiarity with the subject matter, foreign language compatibility with the detainee, supporting documentation, and the identification and availability of potential witnesses (*e.g.*, interpreters, medical and mental health expert witnesses). Attorneys may reduce their work hours by enlisting paralegals to help assist with gathering information; organizing documentation; interpreting for witnesses; and identifying witnesses.

Pro bono attorneys and law firms may enjoy representing people seeking these forms of relief, particularly given the compelling nature of their claims of persecution and torture. Securing legal protection for an asylum-seeker can make the difference between opening the door to freedom and safety in the United States and deportation to unknown fates or death.

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PERSPECTIVE: Children's Refugee Project

How would a teenager challenge ICE' illegal service of a Notice to Appear, the charging document for removal proceedings? How could he find a country conditions expert? And how would he stand up to hostile ICE cross-examination without anyone to explain to him the meaning of the questioning and to defend his rights?

As a lawyer, Steve Schulman, former National Pro Bono Counsel at Latham & Watkins, provides the answers to these questions, and lets his child clients know that someone here in the United States cares for them. And "when I see that they understand what is happening, and that they can participate in their own case, I've received my own reward," said Steve Schulman. "Working with children is a challenge, but one with tremendous rewards. It becomes instantly obvious that even the older children – like his 17-year-old client from Tanzania – have no ability to navigate their way through the complex immigration system."

In March 2001, Latham & Watkins initiated a firm-wide pro bono project to assist unaccompanied children in ICE custody. The Child Refugee Project has three elements: (i) direct representation of minors in immigration proceedings; (ii) legislative advocacy for federal legislation concerning the custody and care of unaccompanied children; and (iii) systemic advocacy, including leading class-action litigation, administrative lobbying and standards-setting efforts.

Since its inception, Latham attorneys in ten U.S. offices have represented more than 40 individual children in various immigration proceedings. Their work with these children has included applications for asylum, appeals before the Board of Immigration Appeals and the U.S. Courts of Appeals, applications for Special Immigrant Juvenile Status and applications for "T" visas for victims of severe forms of trafficking.

The firm also has provided legislative counsel to the Women's Commission on Refugee Women & Children, a project of the International Rescue Committee, on child refugee issues pending before the U.S. Congress. As a result of this work, the Homeland Security Act of 2002 included a provision that transferred the custody of unaccompanied alien children from ICE to the Office of Refugee Resettlement within the Department of Health and Human Services. This provision eliminates the conflict of interest presented by allowing one agency both to control the custody of refugee children and to prosecute their removal from the United States. Many children have been victims of ICE's use of detention to achieve its enforcement goals.

The firm has also worked on several matters relating to systemic change in the treatment of children in ICE custody. The firm is co-counsel to the Los Angeles-based Center for Human Rights and Constitutional Law and other legal services organizations in a class action settlement agreement governing release policies and the conditions of confinement for children in ICE custody. More than 35 summer associates and 15 attorneys have worked with the American Bar Association Commission on Immigration to develop model standards for the custody and care, representation, and adjudication of unaccompanied alien minors in the United States.

Lawful Permanent Residents Eligible for Waivers to Retain Their Green Cards

A significant number of individuals in immigration custody are lawful permanent residents of the United States charged with violating immigration or criminal laws. Most criminal offenses, even the most minor ones, (*e.g.*, shoplifting or joy-riding) render permanent residents removable from the United States, regardless of their deep family and community ties and equities in the United States. Many permanent residents who immigrated at an early age cannot speak a foreign language and have no ties to their native country. In these cases, deportation can be devastating and tantamount to exile.

However, these permanent residents may be eligible for humanitarian relief in the form of a waiver that allows them to retain their green cards. These forms of relief are known as “cancellation of removal” or its predecessor form of relief known as a 212(I) waiver. For such purposes, they must meet the eligibility criteria for the waiver and prove to the immigration judge that their equities outweigh the negative factors and thus warrant this discretionary waiver.

Many *pro bono* attorneys and firms have embraced representing these deserving permanent residents in their claims as a means of keeping American families together. According to census 2000 data, one in every ten people in America is a non-citizen and one in every five American families includes people of mixed immigration status.

In providing legal representation, attorneys gain invaluable knowledge and skills in trial advocacy, from witness preparation to admissibility of evidence. Unlike asylum cases, this litigation experience is relatively easier since these waivers entail more of a factual rendition and factual determinations by the immigration judge. Preparing a client for a cancellation hearing involves organizing and establishing the evidence and cases of the client and his or her family to demonstrate hardship if removed. Evidence regarding the client’s repentance and rehabilitation also may be considered. These waivers require significantly less time than asylum claims and involve preparing an application, gathering and organizing supporting documentation of family ties, property, work history and rehabilitation, and preparing the client and his or her family members to testify at the hearing. Paralegal support can facilitate this process. Unlike most asylum seekers, many permanent residents have sufficient command of English to proceed without interpreters.

Undocumented Immigrants Eligible for Relief

Contrary to popular opinion, the majority of undocumented immigrants in the United States are not those who entered without inspection at a border. Instead, they have entered lawfully but have overstayed their visas. Many times, immigration laws are so restrictive or complicated that non-citizens have been unable to use their visa or immigration status to remain in the United States lawfully. These people may come to the attention of ICE and be placed in detention through work-place raids, anonymous tips to enforcement officials or police collaboration with ICE, including the turning over of undocumented immigrants at routine traffic stops.

Once detained, these immigrants are placed in removal proceedings. When competent counsel has been engaged, various forms of relief may be available. One form of relief is “cancellation of removal” resulting in permanent residence (green cards) for those who have been in the United States for more than a decade. These immigrants must prove to the immigration judge that their deportation will cause exceptional or extremely unusual hardship to their United States citizen or permanent resident parent, spouse or child.

Undocumented immigrants also may be eligible for permanent residence based on their family relationship, employment or as victims of domestic violence. Some immigrants may be eligible for visas as victims of severe trafficking or serious crimes. Others still may be eligible for temporary status to remain in the United States if the Attorney General has designated their country as one whose citizens are eligible for temporary protected status due to environmental or political upheaval.

These immigrants need competent counsel to surface and advocate zealously in their cases for relief from removal before the EOIR. Depending on their relief form, if pursuing immigrant visas, for example, their cases may prove less litigation- and time-intensive than asylum and permanent residents' waiver cases. Their cases may also provide *pro bono* attorneys with greater understanding of different categories of visas and their intricacies, which may be relevant to the attorneys' general practice. Finally, many *pro bono* attorneys enjoy working with such clients as they share the American Dream and seek to be productive, law-abiding and integrated members of our community.

Long-Term Detainees

Long-term detainees are individuals in ICE detention who have completed their removal proceedings and have been ordered removed but are subject to long-term detention because of the inability of ICE to effectuate their removal. This situation may be due to lack of a diplomatic agreement between the U.S. and the foreign country in question (*e.g.*, Vietnam, Laos, Cuba) or obstacles or delays posed by the foreign consulates in issuing travel documents. Detainees may include asylum-seekers who did not secure asylum. However, many detainees are long-term permanent residents with deep ties to the United States who have been stripped of their green cards. This occurs when they have committed removable offenses under the 1996 immigration laws, which render them ineligible for any waivers to remain in the United States.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court held that ICE could not detain any immigrant beyond six months after his or her removal order, unless there is a significant likelihood of removal in the reasonably near future. ICE' implementation of *Zadvydas* provides for a ninety-day review of the detainee's eligibility for release and in-person reviews at six-month intervals thereafter. Nonetheless, as of August 2002, more than 3,500 long-term detainees from over 150 countries had yet to be released under the terms of *Zadvydas*.

Many *pro bono* attorneys and law firms have come to the aid of indefinite detainees by representing them in their ICE reviews. The ICE review process is administrative and consists of advocating for a detainee's release based on the detainee's criminal, family and immigration history and providing evidence of their plans when released such as employment, treatment and housing. Attorneys usually procure letters of sponsorship and support for release. These cases require a few hours to gather documents and prepare correspondence for ICE review, and the interview process usually takes less than an hour.

If the ICE review process succeeds, the detainee is released under an order of supervision and is eligible for work authorization and, in some cases, public assistance until he or she can be removed to his or her native country. The removal process can take years depending on the foreign government. If the ICE review process fails, *pro bono* attorneys and law firms can litigate a detainee's release through *habeas corpus* petitions per *Zadvydas* in local federal district court and in a federal court of appeals if necessary. Although this process involves federal litigation, this area of *habeas corpus* is fairly manageable for new attorneys without litigation experience given the limited scope of *Zadvydas* and limited apposite case law.

PERSPECTIVE: Board of Immigration (BIA) Appeals Pro Bono Project

Illana Greenstein, of Kaplan, O'Sullivan & Friedman in Boston, Massachusetts, heard about the Board of Immigration Appeals Pro Bono Project at a National Lawyers' Guild conference in fall, 2001 and put her name on a list of people who agreed to be contacted with case summaries. The Project is a unique partnership between EOIR and several non-governmental organizations that advise or assist immigrants, including the Catholic Legal Immigration Network, Inc. (CLINIC), the Capital Area Immigrants' Rights (CAIR) Coalition, the National Immigration Project of the National Lawyers Guild, and the American Immigration Law Foundation (AILF).

Several months later, the e-mails started coming, with summaries of claims by pro se applicants whose cases were at the BIA. Ms. Greenstein selected a case that involved a country with which she was familiar and a legal issue about which she knew nothing.

According to Ms. Greenstein "signing up was like stepping onto a moving sidewalk." Molly McKenna, the coordinator at CLINIC, handled all the initial logistics and, within a matter of weeks, the case was arranged. Ms Greenstein praised the Board of Immigration Appeals Pro Bono Project. "It is extraordinarily well-organized, the coordinator is endlessly helpful and the whole process runs smoothly and predictably."

Her client was detained in Hartford, Connecticut, several hundred miles away from her. She read his testimony in a transcript and talked to him once or twice by phone. The Board granted her client asylum. The INS released her client and he boarded a bus to Boston to meet her. "I have to say that seeing him was one of the most gratifying moments of my life.... I have never had a case which shifted so dramatically and so rapidly, and which made me think that I really had something to do with changing the course of someone's life forever."

PERSPECTIVE: Protecting Freedom: Fighting Against Indefinite Detention

Hogan & Hartson makes pro bono work a priority. Their immigration team, comprised of Paul Virtue, E. Desmond Hogan and Lynne Baum, took on the case of Donald Seretse-Khama in the spring of 2002 and won.

Donald Seretse-Khama was born in Liberia in 1972 and moved to Virginia with his family when he was eight years old. He became a lawful permanent resident of the United States. In 1993, he was convicted of a drug-related offense. In 1998, upon completion of his sentence, Mr. Seretse-Khama was immediately transferred to INS custody. INS pursued removal proceedings but Liberia refused to issue travel documents. Liberia denied him entry because he had no ties to the country, did not speak the language and would become a ward of the state.

*In the summer of 2001, the U.S. Supreme Court ruled in *Zadvydas v. Davis*, 533 U.S. 678, that deportable immigrants whose countries will not accept them back may not be incarcerated indefinitely. After the 90-day removal period, INS (now ICE) may detain the immigrant for six months. After that time, the immigrant may petition to be released if he or she can prove that there is no “significant likelihood” of removal within the reasonably foreseeable future.*

After this ruling, when Donald Seretse-Khama had been detained for nearly four years, Hogan & Hartson took on his challenging case. According to Ms. Baum, “I honestly do not believe that the government would ever have released him without a court order. To be able to litigate this case, where the government was so wrongly depriving Mr. Seretse-Khama of his freedom for a potentially indefinite duration, and win, was perhaps the most amazing experience of my life.” The National Law Journal wrote a feature article about Ms. Baum and this case entitled, “INS Flouts Court Order on Prisoners, Critics Say” (Aug. 12, 2002). Lynne Baum said that she “went to law school because I saw that the legal system has often been the only institution willing to do justice for causes without popular support.”

II. LEGAL ASSISTANCE



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There are many innovative ways for *pro bono* attorneys and law firms to provide or facilitate desperately needed legal assistance and services to detainees.

Legal Rights Presentations for *Pro Se* Detainees

Interested attorneys and law firms can help develop programs to provide legal rights presentations and workshops for unrepresented detainees who are forced to appear “*pro se*” or “*in pro per*” in their removal proceedings. Traditionally, such programs are conducted by experienced nonprofit immigration service providers, but, in their generalized absence, they can easily be undertaken by individual attorneys or a group of individual attorneys and sponsored by law firms on a *pro bono* basis.

A legal rights presentation consists of an attorney and/or a paralegal under attorney supervision, providing a group of detainees with basic legal information on general court and appellate processes and detainee legal rights and outlining potential remedies in removal proceedings. The presentation can be up to one hour in duration per the ICE Detention Standards. The format usually involves a scripted presentation pre-approved by ICE. Many model scripts can be used for such purposes and are available from nonprofit immigration service providers (e.g., Florence Immigrant and Refugee Rights Project (firrp@primenet.com) and the South Texas Political Asylum Representation Project (ProBAR) (probartx@worldnet.att.net).

The most comprehensive approach to legal rights presentations consists of conducting presentations on a regular basis – daily, weekly or monthly – targeting detainees scheduled for their first immigration hearing. These presentations ensure a level of minimal legal assistance for all detainees in removal proceedings, help increase the efficiency and effectiveness of immigration proceedings, and reduce detainee anxiety and detention costs. Legal rights presentations also are an essential tool to screen cases for *pro bono* representation, since through the presentation the provider gains a comprehensive view of the many cases available for *pro bono* representation and can weigh their respective merits for referral to *pro bono* attorneys.

Legal materials may be distributed at a legal rights presentation. After the presentation, attorneys may provide individual counseling sessions with confidentiality to advise a detainee about his or her specific case. These presentations and counseling sessions can be targeted to specific groups on specific topics such as asylum-seekers, women, and indefinite detainees. The ICE Detention Standard on Group Presentations on Legal Rights outlines the procedures for legal presentations and can be found at <http://www.ice.gov/graphics/about/organization/guidance.htm>. Cognizant of the benefits to all stakeholders, EOIR has disbursed a congressional appropriation of \$1 million dollars to develop or expand sophisticated legal orientation programs at six facilities in Arizona, California, Texas, New York and Washington.

Legal rights presentations, however, can be meaningful for detainees even without *pro bono* representation – especially when detainees have little to no access to any form of legal assistance. The time commitment for legal rights presentations varies based on the model being implemented. On average, however, it is a half-day proposition to conduct the presentation and follow-up individual interviews and advice, excluding travel time.

Group Workshops for *Pro Se* Detainees

A logical outgrowth of legal rights presentations is group workshops for *pro se* detainees to orient them on how to represent themselves in their claims for relief from removal. Group workshops are authorized under the ICE Detention Standard on Group Presentations on Legal Rights.

Lawyers can organize group workshops by form of substantive relief available to a *pro se* detainee and broken down into sessions and topics, including presentations on preparing applications for relief, gathering evidence, and preparing the respondent and witnesses for testimony. Relevant legal materials also may be distributed. Group workshops may be combined with individual counseling sessions depending on the numbers of volunteers available to assist.

Note that some forms of relief are better suited for group workshops than others. Asylum-seekers tend to be more reluctant to share their stories in front of strangers than are applicants for cancellation of removal, given the threat of persecution they face in their homeland. Asylum also is a more complex area of law than cancellation of removal, which tends to be fact-based.

Through group workshops, attorneys facilitate detainee empowerment and participation in their own cases as they gain knowledge and skills in representing themselves. Attorneys can assist detainees in filling out immigration forms and applications for relief from removal and can identify sources of evidence and key evidence to support the case. Through workshops, attorneys can provide trial advocacy tips and encourage role-playing exercises for detainees in order to prepare them for individual hearings.

The time commitment for group workshops, which usually is about half of a day, may vary depending on the sophistication of the workshops and the number of volunteers involved in the effort.

Detainee Correspondence

Another way to assist detainees is by developing a correspondence project in which detainees from a certain facility or facilities in a lawyer's area may write the lawyer for basic legal information and assistance or to complain about their conditions of confinement.

Standardized forms to facilitate such correspondence have been created and are available at <http://www.abanet.org/immigration/probono/info.html>. Packets for use by detainees also are available on substantive relief forms through the Lutheran Immigration & Refugee Service (www.lirs.org). Correspondence projects tend to be less time-intensive than other approaches.

Legal Newsletters, Fact Sheets and Self-Help Manuals

Pro bono attorneys and law firms may create newsletters or fact sheets for detainees, providing updates in immigration law and policy. Self-help manuals can be drafted for detainees on a variety of immigration matters and remedies and to address conditions of confinement issues. Examples of two excellent manuals created by Hogan & Hartson on Federal Tort Claims Act and *Bivens* complaints and release from indefinite detention are available at <http://www.abanet.org/immigration/>. Newsletters, fact sheets and manuals can be distributed to detainee *pro bono* service providers nationwide, and efforts may be waged to place them in the law libraries of facilities holding immigration detainees.

Manuals require a level of expertise and time to ensure that they are intelligible to detainees with limited education and literacy. Newsletters, fact sheets and manuals should be translated into various languages for maximum impact.

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PERSPECTIVE: Challenging Indefinite Detention and Paving the Way for Supreme Court Precedent

“I met Kim Ho Ma like I meet most of my clients: on the other side of a security window, speaking to me through a telephone, just another locked up kid. Except that Kim was not just another locked up kid,” said Jay Stansell, Assistant Federal Public Defender in Seattle, Washington.

This young man became a petitioner in the consolidated case of Zadvydas v. Davis, 533 U.S. 678 (2001), the Supreme Court case challenging the power of the INS to detain indefinitely non-citizens who had been ordered deported but could not be returned to their countries of origin. According to Mr. Stansell, “Kim showed that first day the flash of dark eyes I would come to recognize and love. The flash of eyes that spoke volumes more than any brief I wrote in the case. Eyes that cried, ‘Freedom!’”

Kim had filed a pro se petition for a writ of habeas corpus arguing that his indefinite detention by the INS violated the Constitution. Mr. Stansell and his colleagues at the Office of the Federal Public Defender assisted him with his case and secured his release in federal court in November 1999. But, unlike others they had helped free, “Kim would feel the weight of all ‘lifers’ across the country as the INS and the Department of Justice appealed and appealed his case. Kim read every brief, attended every hearing, and was there at the Supreme Court to hear his precious freedom argued against the government’s “plenary power” over immigration matters. He always believed we would win, and we did.”

And still, throughout this, Kim feared that he could be deported someday to Cambodia if the United States entered into a repatriation agreement with Cambodia. “Over the course of his three years of freedom, Kim spent a lot of time with my family and me. Kim and his family members became a fixture at our house. We would come home to find he had dropped in for a visit or left bags of odd fruit from the Cambodian market at our doorstep with no note. Instead of languishing in detention, as the INS so aggressively sought, Kim was freed to spend three years celebrating the beauty and wisdom of his parents; to become closer to all of his siblings and extended family; to work, laugh, write, and breathe the Seattle air free from iron bars. He became a son and a brother to my wife and me and a big brother to our now 10 and 6 year- old boys.”

“Kim is a gentle friend and kind soul. I was born and bred in a small town in Ohio and was thus so ill-prepared to live to see the day where my brother Kim was deported. As much as the trip to the Supreme Court could be called a lawyer’s dream, it is the human contact with Kim, his family, and all the lifers that will sustain me in my life. Anybody can stand up in a court of law; but it is a precious gift to be let into a human heart. It is why we do this work.”

On October 2, 2002, after the United States executed a repatriation agreement with Cambodia, Kim Ho Ma was re-detained by the INS and deported. According to Mr. Stansell, “The work lives on.”

PERSPECTIVE: Chinese Girl Seeking Refuge and Life in the United States

“Zing” came here to escape Chinese persecution because she was born as a second child, which violated China’s one-child procreation policy. She lived in hiding at her grandparents’ home for the first seven years of her life. Her mother regularly beat her and she was taken out of school after sixth grade. And, according to Cindy Albracht-Crogan, “I had never thought about what happened to children who immigrated to the U.S. to escape persecution in their native countries. It never occurred to me that such children, who do not speak English, were locked in INS detention.”

Ms. Albracht-Crogan and Laura Kennedy of Cohen, Kennedy Dowd & Quigley, PC in Phoenix, Arizona volunteered their time with the Florence Immigrant and Refugee Rights Project. After taking on Zing’s case, the “entire law firm became intimately involved in the case,” from preparing the asylum application to pooling resources to purchase Zing new clothes and personal necessities. Each played a role in fighting for Zing’s right to remain in the United States.

Ms. Albracht-Crogan was surprised by how much personal and professional satisfaction she felt when Zing was granted asylum. It has motivated her not only to continue doing pro bono work but also to advocate on behalf of children detainees. She now supports “The Unaccompanied Alien Child Protection Act,” legislation pending in Congress which would provide child detainees with counsel, guardians, and better conditions of confinement.

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III. ADVOCACY



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Detainees often have few allies for advocacy. *Pro bono* attorneys and law firms can help detainees by becoming involved in administrative, governmental or legislative advocacy on immigration detention issues at the local and/or national level.

Pro bono attorneys and law firms have the skills and credentials to help advance detainee concerns, especially in partnership with local and national nonprofit immigration service providers and advocacy organizations. More often than not, local nonprofit immigration service providers lack the resources, political will and ability to advocate on difficult issues regarding conditions of confinement, especially if they need ICE' goodwill to facilitate access to their clients on a routine basis. *Pro bono* attorneys and law firms thus are often better placed to raise difficult conditions of confinement issues.

Advocacy can take many forms and address a range of local and national issues affecting detainees in both administrative and legislative arenas. Administrative advocacy usually is focused on officials at DHS (including ICE), EOIR, and the Department of Justice. Advocacy is conducted through research for white papers and reports and meetings with officials.

Pro bono attorneys and law firms also can help ensure the application of the detention standards at a particular facility. Additionally, they can organize delegations to assess standards implementation and report to the American Bar Association Commission on Immigration. The Commission shares these reports with ICE to respond to issues of pressing concern. Please visit <http://www.abanet.org/immigration/> for more information on detention standards delegations.

Governmental or legislative advocacy may be conducted at the local level focusing on state or local laws, policies and practices, and their relationship with immigration detention. Advocates also may work on the national level on federal legislative efforts on detention-related matters.

Advocacy efforts can be appealing to attorneys whether or not they possess expertise in immigration law. Law firms with offices in Washington D.C. and a governmental affairs operation have a unique forum to participate in national administrative and congressional advocacy. Advocacy efforts may involve short-term work or a long-term commitment depending on the issue. Advocacy also complements direct service work.

CONCLUSION

Lawyers enjoy many opportunities to give their time and talents to serve their communities. We believe that lawyers will find working for detained immigrants and refugees particularly rewarding. Through this work, lawyers can make a real difference in the lives of vulnerable detained immigrant and refugee adults and children. We encourage lawyers to participate in existing efforts or to establish new initiatives to safeguard immigration detainees' rights and humane treatment.

*Cited in Joseph v. Holder,
No. 05-74390 archived on April 23, 2010*

APPENDIX A: LAUNCHING YOUR *PRO BONO* PROGRAM

NEXT STEPS

Interested attorneys and law firms and organizations such as bar associations can take several easy and discrete steps towards participating in or launching a *pro bono* program for immigration detainees.

1. Outreach and Program Development

The first step that individual lawyers, law firms and other organizations may take is to reach out to local nonprofit immigration service providers and other associations such as the American Immigration Lawyers Association to ascertain what services, if any, are being provided for immigration detainees. This will help shape discussion of a possible role and responsibilities for new attorneys and facilitate their effective integration into existing efforts as well as spawning new initiatives. The American Bar Association Commission on Immigration can provide you with a list of local contacts for such purposes.

2. Training and Education

As they become involved in projects, many *pro bono* attorneys, law firms and organizations such as bar associations benefit from training and education in immigration defense and policy work. Many nonprofit service providers and bar associations are equipped to sponsor such trainings. If they do not, *pro bono* attorneys and law firms can request and help organize trainings. Training programs can be subject-specific (e.g., asylum) and can be as short as a few hours to provide a basic overview of relevant laws, procedures and case examples.

Bar associations often provide Continuing Legal Education credit for these trainings in order to attract greater numbers of participants at cost or sometimes in exchange for an attorney's willingness to take a case *pro bono*. *Pro bono* attorneys, law firms and bar associations also organize brown bag lunches or specialized trainings at their offices by nonprofit immigration service providers, thus eliminating travel time and reducing costs.

3. Mentors

Pro bono attorneys, law firms and bar associations can partner with local and national mentors to provide assistance with their cases. Under some *pro bono* programs, *pro bono* coordinators co-counsel and appear on new attorneys' immigration cases for mentorship while others assign individual volunteer mentors with expertise. The American Immigration Lawyers Association Chapter Chairs are an excellent source for local and national mentors. Contact the AILA national office for the Chapter Chair in your area.

4. Resources

Many national programs and agencies can facilitate *pro bono* participation in efforts to help ICE detainees, including the ABA Commission on Immigration. For additional information, please visit the Commission's website at <http://www.abanet.org/immigration> or contact the Commission at 202-662-1005 or immcenter@abanet.org.

*The ABA Commission on Immigration
thanks photojournalist Steven Rubin for his donation of the
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Steven Rubin is a freelance photojournalist in the Washington, DC area
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