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OPENING the Doors to Justice

Volunteer attorneys greatly impact the plight of immigration detainees

BY ROB HUIE
For a person seeking asylum, an order of removal can mean return to a country where he or she will face persecution, imprisonment, torture or death.

At any given time, San Diego's population includes more than a thousand immigrant detainees at the San Diego Correctional Facility, a jail in Otay Mesa referred to as "CCA" after the for-profit entity that operates it. These detainees are parties to deportation ("removal") proceedings that are pending in San Diego Immigration Court, or they are pursuing appeals from removal orders of that court. Federal law provides that they are allowed to have counsel, but "at no expense to the Government" (8 U.S.C. §1362).

As a group, immigration detainees are badly in need of legal assistance, by any measure. In recent years, the representation rate in immigration court proceedings has been around 35 percent; among detainees, the rate drops to 16 percent for fiscal year 2007. The detainees are housed in prison conditions in a foreign country with an unfamiliar legal system, few resources at their disposal, and with language and cultural differences that pose barriers to effective self-representation. Some of them are refugees dealing with the psychological and physical effects of torture or mistreatment.

There is a lot at stake for many of the detainees. For a person seeking asylum, an order of removal can mean return to a country where he or she will face persecution, imprisonment, torture or death. Carmen M. Chavez, executive director of Casa Cornelia Law Center in San Diego, observes that for many of her clients, "a removal proceeding is effectively a death-penalty case." For other detainees, removal means separation from family, or the disruption of lives that have been established in this country.

Notably, not all immigration detainees are aliens. Sometimes U.S. citizens are also detained, typically individuals who are stopped at a port of entry and who appear "foreign," speak little English, have limited resources and lack appropriate documentation. Last year for example, the Casa Cornelia Law Center in San Diego represented a U.S. citizen who was detained at CCA for six weeks until his family was able to produce a U.S. passport at an immigration court hearing. While a six-week detention is unusual, Chavez reports that in some cases citizens are deported after they admit to being citizens of another country—possibly in order to avoid being jailed while awaiting a hearing. "United States citizens are deported every day," she says.

**The Current State of Legal Services**
Organizations that seek to provide legal services to immigration detainees face barriers of their own. Many legal-services organizations receive funding from the Legal Services Corporation, a federal entity with a $350 million budget. Under federal regulations, organizations that receive these funds can only provide assistance to U.S. citizens and "eligible aliens," certain aliens who are lawfully present in the United States (45 C.F.R. §1626.1). These organizations are not allowed to represent undocumented aliens using federal funds or funds from any other source.

Casa Cornelia, which does not receive any federal funding, provides free representation to many detainees who are seeking asylum. After sending questionnaires and conducting screening interviews, Casa Cornelia accepts around 45 asylum cases per year, handling some through its staff attorneys and farming out the rest to volunteer attorneys. In addition to asylum cases, Casa Cornelia and its volunteers provide representation in removal proceedings to unaccompanied children (who are detained at two facilities in East County, in conditions more favorable than those at CCA) and assist immigrant women and children who are victims of domestic violence. Casa Cornelia's mission is to help immigrants who have suffered human and civil-rights violations, and most
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detainees fall outside this group.

All immigration detainees are provided by the government with the List of Free Legal Services Providers—a list of attorneys who may be willing to provide pro bono legal services. "The list" is maintained by the Executive Office of Immigration Review (EOIR), in Falls Church, Virginia, the agency within the Department of Justice that operates the immigration courts and the Board of Immigration Appeals. Federal regulations provide that, to get on the list, an attorney must submit a declaration that he or she "provides free legal services to indigent aliens" and "is willing to represent indigent aliens in immigration proceedings pro bono" (8 C.F.R. §1003.63). Rose Kasubsy, former executive director of Casa Cornelia, expresses concern that the list “may give false hope to detainees” or a false sense to the public generally of the availability of pro bono legal representation. Because there are no clear guidelines for what an attorney is undertaking by placing his or her name on the list, there is some concern that the list is subject to abuse as free, government-sponsored advertising. Indeed, EOIR has recently stated that it intends to strengthen the requirements for appearing on the list.

New Developments
In recognition of current needs in San Diego, the American Bar Association (ABA) (in cooperation with the federal courts, EOIR’s pro bono office, and numerous other organizations) is launching the Immigration Justice Project of San Diego. The project, which is projected to have a three-person staff, will conduct presentations and give basic legal information to groups of detainees at CCA. The ABA project will also recruit, train and mentor volunteer attorneys to provide pro bono legal services.

Why should attorneys volunteer to help immigration detainees? One answer is to promote “due process.” More concretely, there are many children or adults who need help, in cases where help can make a significant difference. Unlike federal regulations for funding legal services, the California State Bar’s resolution on pro bono work—which urges attorneys to devote at least 50 hours per year to providing legal services to indigent individuals or to organizations that help the poor and disadvantaged—does not discriminate based on the recipient’s immigration status.

Additionally, representation of immigration detainees helps the immigration courts run more efficiently. Elaine Komis of EOIR’s public affairs office explains, “Experience has shown that individuals who receive pro bono representation are more likely to have their cases completed faster. This results in fewer court hearings and less time spent in immigration court proceedings.” This means a lower administrative burden not only for the immigration bureaucracy (including the immigration courts and the Board of Immigration Appeals), but also for the federal courts. Nationwide, more than 50 percent of immigration appeals are handled by the 9th Circuit; to the extent that the court is able to handle these appeals more efficiently, it has
Attorneys interested in volunteering or getting further information can contact any of these individuals or organizations directly:

Casa Cornelia Law Center
Carmen M. Chavez at 619-231-7788, ext. 321 or cchavez@casacornelia.org

ABA’s Immigration Justice Project of San Diego
Irna Lieberman at liberman@staff.abanet.org

Catholic Legal Immigration Network Inc. (CLINIC)
Carol Pelton at cpelton@cliniclegal.org

EOIR Pro Bono Office
Online at usdoj.gov/eoir/probono/probono.htm

San Diego Volunteer Lawyer Program
www.sdvlp.org

more resources to devote to other types of appeals. Obviously, representation of detainees improves not only the efficiency, but also the quality of adjudication. It also means less time in detention and lower detention costs to the government.

Providing representation or even basic legal information to detained migrants also helps curtail the practice of unlicensed “notarios” claiming to be immigration lawyers or specialists and defrauding victims who are unfamiliar with the U.S. legal system.

It would be a mistake to assume that, with the ABA’s project under way in San Diego, the legal needs of detainees are being met. Any organization’s effort to coordinate volunteer attorneys is, of course, meaningless without actual volunteers. Casa Cornelia, which has so far succeeded in managing a high volume of asylum cases and in representing all unaccompanied minors, has never turned away a volunteer attorney.

The commitment of volunteers is an important part of the picture. Another part is making it easier and more appealing for attorneys to volunteer and enabling volunteer attorneys to make better use of their limited resources. Organizations—such as Casa Cornelia, the ABA’s Immigration Justice Project, the Catholic Legal Immigration Network (which recruits volunteer attorneys to write appellate briefs in immigration matters), EOIR’s pro bono office, and others—help by screening cases, matching volunteer attorneys with clients or providing training and support. Other suggestions have been offered to make it less difficult for volunteer attorneys to communicate with their clients. A brief meeting with a client detained at CCA in the remote reaches of Otay Mesa can easily take half a day, and migrants detained at the facility in El Centro face an even more daunting task of finding representation. These obstacles could be overcome by transporting to the immigration courts in downtown San Diego not only those detainees who have court appearances, but also those detainees who need to meet with their counsel. Technological solutions such as videoconferencing have also been proposed. Carmen Chavez explains that communicating with a detained client involves dealing with obstacles created by geography and bureaucracy—and describes minimizing these obstacles as part of the broader goal of “enhancing access to justice.”

Indigent detainees may share the need for help, but there is no one typical immigration case. Although asylum cases are frequently time-consuming, other volunteer opportunities (like representing six to eight unaccompanied children at a hearing in immigration court) take little more than a day, reports Kasusky. Additionally, some local attorneys are involved in providing assistance to immigration detainees in ways other than direct representation—for example, by participating in inspections of CCA or lawsuits filed by the American Civil Liberties Union over overcrowding and poor medical care at CCA.

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