

THE ASYLUM REPRESENTATION PROJECT
AND THE LEON LEVY FELLOWSHIP
AT HUMAN RIGHTS FIRST:
AN INNOVATIVE PARTNERSHIP TO INCREASE
PRO BONO REPRESENTATION FOR INDIGENT
ASYLUM-SEEKERS

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*on behalf of the Katzmann Study Group Subcommittee on Improving
Mechanisms for Service Delivery and the Subcommittee on Increasing
Pro Bono Activities from Law Firms****

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Deportation is always a harsh measure; it is all the more replete with danger when the alien makes a claim that he or she will be subject to death or persecution if forced to return to his or her home country.

– Supreme Court Justice John Paul Stevens (retired)¹

Justice should not depend upon the income level of immigrants.

– Judge Robert A. Katzmann²

INTRODUCTION

Many immigrants in removal proceedings, including asylum-seekers and others with legitimate claims to lawful immigration status, face the harsh prospect of being removed from the United States simply because they cannot afford competent legal representation.³ Faced with the complexity of our immigration laws and an overburdened immigration court system with procedures they may not understand, some will fail to appear in court and be ordered removed in absentia, some will become victims of incompetent paid attorneys or those engaging in the unauthorized practice of law, and others will try unsuccessfully to litigate their own cases against trained government attorneys. Without a right to government-funded counsel in immigration proceedings, there is a need for legal service providers to further develop their partnership

¹ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987).

² Robert A. Katzmann, *The Legal Profession and the Unmet Needs of the Immigrant Poor*, 21 *GEO. J. LEGAL ETHICS* 3, 5 (2008).

³ Since 1996 the Immigration and Nationality Act (INA) has employed the term “removal” to refer to the processes of both the “deportation” of a person who is within the United States and the “exclusion” of a person who seeks admission into the United States. *See* *Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)* of 1996, Pub. L. No. 104-208, div. C, tit. III, § 309(d)(2), 110 Stat. 3009-546, 3009-626 (codified as amended at 8 U.S.C. § 1101 note). This Article uses the terms “removal” and “deportation” interchangeably, as the effect is the same regardless of the terminology.

with law firms to provide pro bono legal representation for these individuals.

To help address this need, the Leon Levy Foundation has generously created a two-year fellowship to fund a full-time attorney at Human Rights First (Leon Levy Fellow or Fellow). This person will conduct a monthly screening session for potential asylum clients at the New York Immigration Court, located at 26 Federal Plaza in New York City (Asylum Representation Project). Law firm associates coordinated by the Public Service Committee of the Federal Bar Council (PSC) will assist with those screenings. The Leon Levy Fellow will also work closely with the Study Group on Immigrant Representation, launched by The Honorable Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit (Katzmann Study Group), and with Human Rights First, to promote an increase in high-quality pro bono legal representation of immigrants in New York City.

The Leon Levy Fellowship and the Asylum Representation Project will help to address the problem of inadequate legal representation of indigent asylum-seekers and other immigrants by challenging the private bar in New York City to increase pro bono representation of individuals who are identified through this project as having legitimate claims to relief and, at the same time, offering much-needed assistance to Human Rights First, an organization that provides free legal services for asylum-seekers through one of the largest and most effective pro bono representation programs in the country.

This Article discusses the joint initiative of the Asylum Representation Project and the Leon Levy Fellowship and ways that this pilot project can be expanded to provide for fellows at other nonprofit legal service providers to create additional capacity for screening days for indigent immigrants with eligibility for relief other than asylum. Part I of this Article discusses the current crisis in legal representation for indigent immigrants. Part II discusses the need for nonprofit legal service providers, philanthropic organizations, and law firms to partner and develop creative and effective approaches to pro bono representation for this population. Part III outlines the contours of the Leon Levy Fellowship and the Asylum Representation Project. Finally, Part IV suggests ways in which the partnership model of the Leon Levy Fellowship and the Asylum Representation Project can be extended to other areas of immigrant representation, and expresses our hope that such a project can also be replicated in other parts of the country where there are large immigrant populations in need of pro bono legal representation.

I. THE NEED FOR EFFECTIVE COUNSEL FOR ASYLUM-SEEKERS
IN REMOVAL PROCEEDINGS

Despite the complexity of our immigration laws and the harsh consequences of removal from the United States, the majority of immigrants facing removal appear in immigration court without the assistance of counsel.⁴ Immigrants in this position face a complex and draconian body of U.S. immigration law—a statutory and regulatory scheme that even immigration experts and judges can find inscrutable—often without knowledge of their procedural rights and substantive avenues of relief from removal, and without the skills and training to maneuver the procedures of administrative adjudication and judicial review.⁵ Such disadvantages would hardly be acceptable in a legal proceeding where the stakes were low, but are truly shocking in removal proceedings in which an individual's liberty and life are at stake. Indeed, an unsuccessful outcome in immigration court, leading to the removal of a person from the United States, carries dire consequences. The U.S. Supreme Court has observed that removal “is a drastic measure and at times the equivalent of banishment or exile,”⁶ and “may result also in loss of both property and life, or of all that makes life worth living.”⁷

In no context are the consequences of removal more extreme than for asylum seekers facing the risk of death, torture, or other forms of persecution if they are returned to their countries of origin.⁸ In the words of former Supreme Court Justice John Paul Stevens, “Deportation is always a harsh measure; it is all the more replete with danger when the alien makes a claim that he or she will be subject to death or persecution if forced to return to his or her home country.”⁹ Where asylum-seekers fear loss of life in particular, “[t]he death penalty principle

⁴ See OFFICE OF PLANNING, ANALYSIS, & TECH., U.S. DEP'T OF JUSTICE, FY 2010 STATISTICAL YEAR BOOK, at G1 (2011), available at <http://www.justice.gov/eoir/statspub/fy10syb.pdf>.

⁵ See, e.g., *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (describing the “labyrinthine character of modern immigration law” as “a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike”); see also Jojo Annobil, *The Immigration Representation Project: Meeting the Critical Needs of Low-Wage and Indigent New Yorkers Facing Removal*, 78 FORDHAM L. REV. 517, 523 (2009).

⁶ *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948).

⁷ *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).

⁸ Individuals fearing persecution if returned to their home countries may seek relief from removal in the forms of asylum under INA § 208, withholding of removal under INA § 241(b)(3), and withholding of removal under Article III of the U.N. Convention Against Torture, 8 C.F.R. §§ 208.16(c)(4), 208.18(b) (2011). For the purposes of this Article, we use the term “asylum” to encompass each of these forms of relief.

⁹ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987).

that ‘death is different’ suggests that the interest of refugees in the outcome of their cases could hardly be higher.”¹⁰

Despite these dire consequences of removal, there is no right to appointed counsel in removal proceedings or in an affirmative application for asylum that will be adjudicated by an asylum officer.¹¹ The proposition that there is no constitutional right to appointed counsel in immigration proceedings is based on the Supreme Court’s determination that such proceedings are civil rather than criminal in nature.¹² This distinction leads to the bizarre result that, for example, an immigrant who has lived in the United States with immigration status since childhood is “entitled to a lawyer when he faces a night in jail for a minor criminal offense but when that same person faces lifetime exile from his U.S. citizen family, his career, and his home, he is not entitled to any legal assistance.”¹³ In the absence of a system of appointed counsel, “removal cases too often turn on an immigrant’s income, rather than on the merits of his or her claim.”¹⁴ Recognizing, as Judge Katzmann has, that “[j]ustice should not depend upon the income level of immigrants,”¹⁵ the American Bar Association (ABA) has called for “legislation to overturn the ‘no cost to the government’ restriction on representation in removal proceedings.”¹⁶ Similarly, numerous scholars and advocates have argued in favor of a right to appointed counsel in immigration proceedings—particularly in asylum cases where a person with a legitimate claim may face death if removed to his or her home country.¹⁷ Unfortunately, however, Congress has not heeded this call and seems unlikely to do so in the foreseeable future.

Further compounding the problem is the reality that low-income immigrants who have a limited ability to pay for legal assistance in their cases are at risk of being taken advantage of by predatory nonlawyer

¹⁰ John R. Mills et al., “*Death is Different*” and a Refugee’s Right to Counsel, 42 CORNELL INT’L L.J. 361, 372 (2009).

¹¹ INA § 292, 8 U.S.C. § 1362 (2006) (“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”).

¹² INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984) (“A deportation proceeding is a purely civil action . . .”); see also Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 FORDHAM L. REV. 541, 546–47 & nn.26–27 (2009) (collecting cases).

¹³ Markowitz, *supra* note 12, at 547.

¹⁴ Report and Recommendation to the House of Delegates, Comm’n on Immigration, Am. Bar Ass’n (Feb. 13, 2006), <http://www.civilrighttocounsel.org/pdfs/ABA%20Resolution%20on%20Counsel%20in%20Immigration%20Proceedings.pdf>.

¹⁵ Katzmann, *supra* note 2.

¹⁶ Report and Recommendation to the House of Delegates, *supra* note 14, at 1.

¹⁷ See Mills et al., *supra* note 10, at 363.

“notarios”¹⁸ or unscrupulous attorneys whose level of assistance falls well below the level of competence that should be the standard of the legal profession in this country.¹⁹ It is all too common to hear judges lament that “immigration [is] the area in which the quality of [legal] representation [is] lowest.”²⁰ Judge Noel Brennan of the New York Immigration Court at 26 Federal Plaza has remarked:

[A]ll too often the representation [in her courtroom] is mediocre. Some lawyers simply lack legal expertise. But there is also a kind of ennui that is widespread among lawyers who appear before me. Case theory is not developed. Necessary documents are not produced, nor are immigrants prepared to present reasonable explanations for why such documents are absent. Applicants and witnesses are often unprepared for the cross-examination by experienced DHS attorneys. . . . I’ve grown concerned that many attorneys are just not very interested in their work and therefore bring little professional vigor or focus to it.²¹

Unfortunately, the consequences of such subpar representation are felt by immigrant clients, while the attorneys who have failed them are generally not held accountable because the client who has lost his or her case may not understand the system well enough to make a complaint to the relevant disciplinary authorities and may even have been deported. As Judge Katzmann aptly observed in a Second Circuit opinion, “[w]hen lawyers representing immigrants fail to live up to their professional obligations, it is all too often the immigrants they represent who suffer the consequences.”²²

As a result of all of these factors—including the absence of a right to appointed counsel, the inability of many immigrants to afford effective counsel, and the prevalence of unscrupulous attorneys and notarios who prey on this vulnerable population—some immigrants who have legitimate legal claims to remain in the United States are nevertheless

¹⁸ See Careen Shannon, *Regulating Immigration Legal Service Providers: Inadequate Representation and Notario Fraud*, 78 *FORDHAM L. REV.* 577, 588–89 (2009) (“Many nonlawyers who provide immigration services of one kind or another to immigrants refer to themselves as ‘notarios’ as a way of preying on Spanish-speaking immigrants who assume that notarios are attorneys or who misconstrue the American ‘notary public’ as being equivalent to the ‘notario público,’ who in many Latin American countries possesses training and authority similar to an attorney or judge in the United States. People holding themselves out as notarios in the United States are often known to charge excessive fees for services that may constitute the unauthorized practice of law and to mishandle immigration documents and procedures, often precluding immigrants who had legitimate claims from pursuing those claims due to missed deadlines, a lack of understanding of immigration laws, policies and procedures, or outright fraud.” (footnotes omitted)).

¹⁹ See generally *id.*

²⁰ Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 *STAN. L. REV.* 317, 330 (2011).

²¹ Noel Brennan, *A View from the Immigration Bench*, 78 *FORDHAM L. REV.* 623, 626 (2009).

²² *Aris v. Mukasey*, 517 F.3d 595, 601 (2d Cir. 2008).

ordered removed from the country because they are unable to thoroughly prepare their case for the adjudicator. For asylum-seekers with genuine claims this can mean a return to persecution and torture.

The New York Immigrant Representation Study Report, a joint project of the Katzmann Study Group and the Vera Institute, finds that, among nondetained immigrants, represented individuals have a seventy-four percent success rate in securing relief from removal, while the success rate of unrepresented immigrants is only thirteen percent.²³ The numbers are even starker with respect to detained immigrants, with the success rate falling to eighteen percent for those with counsel, as opposed to three percent for unrepresented individuals.²⁴ There can be no question that having a lawyer dramatically increases the chance of success in an immigration case.²⁵ The likelihood of success increases even more dramatically when an immigrant is represented by diligent pro bono counsel.²⁶ However, many individuals with cases before the immigration courts do not have lawyers and are left trying to navigate the system on their own.

A corollary of this failure of representation is an enormous strain on immigration judges. In the case of pro se immigrants and cases in which counsel fails to provide effective representation, immigration judges find themselves in the precarious position of informing immigrants of their rights to relief from removal while also acting in their official roles as impartial adjudicators.²⁷ Moreover, immigration judges must meet this additional challenge while already contending with overly burdensome caseloads. In 2009, Judge Brennan noted that each immigration judge sitting at 26 Federal Plaza had approximately one thou-

²³ Steering Comm. of the N.Y. Immigrant Representation Study Report, *New York Immigrant Representation Study Report, Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings* (pt. 1), 33 CARDOZO L. REV. 357, 363–64 (2011).

²⁴ *Id.* at 364.

²⁵ Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 340 (2007) (“The results of the cross-tabulation analysis confirm earlier studies showing that whether an asylum seeker is represented in court is the single most important factor affecting the outcome of her case. Represented asylum seekers were granted asylum at a rate of 45.6%, almost three times as high as the 16.3% grant rate for those without legal counsel. The regression analyses confirmed that, with all other variables in the study held constant, represented asylum seekers were substantially more likely to win their case than those without representation.” (footnotes omitted)).

²⁶ *See id.* at 341 (“[A]sylum applicants represented pro bono by large law firms cooperating with Human Rights First (formerly the Lawyers Committee for Human Rights) had a success rate of about 96% in the 479 cases they handled to conclusion in that same period [January 2000 through August 2004].” (footnote omitted)).

²⁷ *See* OFFICE OF PLANNING, ANALYSIS, & TECH., *supra* note 4 (noting that, due to the large percentage of pro se respondents in immigration court, “[i]mmigration judges, in order to ensure that such individuals understand the nature of the proceedings, as well as their rights and responsibilities, must take extra care and spend additional time explaining this information”); *see also* 8 C.F.R. § 1240.11(a)(2) (2011) (“The immigration judge shall inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter . . .”).

sand active cases, most of which “involve[d] people seeking asylum in the United States because of suffering inflicted on them for their political opinion, nationality, race, or religion.”²⁸ As a result of this huge caseload, judges in that particular court are now scheduling hearings as far out as 2015, due to lack of resources and space on the calendar to hear testimony and render decisions on those sensitive cases earlier.

The strain on the federal courts of appeals is likewise enormous: in 2010, immigration cases comprised twenty-four percent of the docket of the U.S. Court of Appeals for the Second Circuit,²⁹ with most cases involving asylum claims.³⁰ As a result of curtailed judicial review and highly deferential standards of review, circuit court judges are often unable to remedy unjust decisions from the immigration courts or the Board of Immigration Appeals because the immigrants’ lawyers failed to properly develop their clients’ cases and records before the administrative bodies. As Judge Katzmman has observed, “Often times, the reviewing appellate judge, who is constrained at the time the case comes before her, is left with the feeling that if only the immigrant had secured adequate representation at the outset, the outcome might have been different.”³¹

II. THE NEED FOR LEGAL SERVICE PROVIDERS TO PARTNER WITH PHILANTHROPIC ORGANIZATIONS AND LAW FIRMS PROVIDING PRO BONO LEGAL SERVICES

Immigrants who struggle to navigate our complicated immigration system on their own are at increased risk of deportation when they cannot afford competent attorneys. As noted above, a recent study found that only thirteen percent of unrepresented immigrants in New York City are successful in their cases, compared to seventy-four percent of those who have lawyers.³² The numbers are even lower for those in immigration detention.³³ As long as immigrants facing removal—and possible return to countries where they may be persecuted or killed—have no right to appointed counsel while other systemic impediments render it difficult for them to secure competent paid counsel, there will continue to be an acute need for pro bono legal representation. Nonprof-

²⁸ Brennan, *supra* note 21, at 624.

²⁹ See JAMES C. DUFF, ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2010 ANNUAL REPORT OF THE DIRECTOR 97 tbl.B-3 (2011), available at <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/JudicialBusinesspdfversion.pdf>.

³⁰ See Katzmman, *supra* note 2, at 6.

³¹ *Id.* at 9.

³² See *supra* note 23 and accompanying text.

³³ See *supra* note 24 and accompanying text.

it legal service providers, philanthropic organizations, and law firms each play an important role in helping to address this need by working together and developing creative and effective approaches to pro bono representation for this population.

Lawyers have an ethical obligation to engage in pro bono representation. In an inspiring lecture given in 2008, Judge Katzmann described this duty:

In our legal system, driven by complex rules and procedures, a lack of access to competent legal services damages fundamental concepts of fairness and equality before the law. The lawyer's function is grounded in role morality, the notion that special obligations attach to certain roles—in the lawyer's case, to serve justice. As a consequence of specialized knowledge and skill, lawyers claim autonomy to perform their jobs. In large measure, the state grants such autonomy, an effective monopoly, in exchange for lawyers, as officers of the court, discharging their duty to further equality before the law. After all, the very reason that the state conferred such a monopoly was so that justice be served—a notion that surely means that lawyers have an obligation to provide effective representation and some responsibility toward those unable to pay or those pursuing an unpopular cause. A lawyer's duty to serve those unable to pay is not an act of charity or benevolence alone, but rather one of professional responsibility, reinforced by the terms under which the state has granted to the profession effective control of the legal system.³⁴

Similarly, the ABA has made it clear in Rule 6.1 of its Model Rules of Professional Conduct that “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay” and “should aspire to render at least fifty (50) hours of pro bono publico legal services per year.”³⁵ This duty exists regardless of a lawyer's “professional prominence or professional work load.”³⁶ Each of the fifty states has either adopted a rule analogous to Rule 6.1 or has instituted other rules or policies calling for lawyers admitted within that state to provide pro bono services.³⁷ In addition to meeting the ethical standards set by the ABA and the bar association of a particular state, every lawyer has an intrinsic ethical duty to perform work for the greater good.

Many of the law firms in New York City readily subscribe to this vision of pro bono work as an intrinsic part of a lawyer's role. Those firms are very supportive of their associates taking asylum cases for pro bono representation and understand that effective representation will

³⁴ Katzmann, *supra* note 2, at 4.

³⁵ MODEL RULES OF PROF'L CONDUCT R. 6.1 (2009).

³⁶ *Id.* R. 6.1 cmt. 1.

³⁷ See *State Ethics Rules*, Am. Bar Ass'n, http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html (last updated June 23, 2011).

often require more than the minimum number of hours recommended by the ABA and state bar rules. There is also a trend among law firms of “[institutionalizing] pro bono service by dedicating personnel to coordination and supervision” of their pro bono practices, which builds support for pro bono work.³⁸ Partners at law firms can and often do encourage their associates to engage in pro bono work in a number of ways, including by their personal commitments to pro bono representation—in other words, leading by example—and they can also help to ensure that the time spent preparing a pro bono case will count toward the “billable hours” that are expected of the associate each year at that particular law firm. The comments to the ABA Model Rules of Professional Conduct state that law firms should take reasonable steps to “enable and encourage all lawyers in the firm”³⁹ to engage in pro bono work, recognizing that “[p]ersonal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.”⁴⁰

In addition to fulfilling the ethical obligation to use one’s legal skills for the greater good, pro bono representation gives new associates a chance to develop legal research, writing, client interviewing, and trial preparation skills that will make them more effective advocates for future pro bono clients and paying clients alike. Pro bono representation of indigent asylum-seekers also provides lawyers of every experience level the opportunity to use their skills and resources to achieve justice and perhaps even to save the life of a person who would otherwise be deported to a country where that person would be at risk of persecution or torture. Many law firm associates describe their pro bono asylum work as the most rewarding work of their legal career and are profoundly changed by the experience of winning such a case, especially when it means that they have saved the life of their client and made it possible for that client to petition for derivative asylum status for a spouse or children, thus reuniting an entire family and bringing them all to safety. The benefits of pro bono representation are therefore not limited to the asylum-seeker or other indigent client who is provided with counsel; such representation provides immeasurable benefits to the lawyer, his or her law firm, and the legal profession as a whole. In fact, one law firm associate describes the pro bono representation of her asylum client as “one of the most rewarding personal and professional experiences I have ever had” and says in describing her client that “[h]er grace in-

³⁸ Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 *FORDHAM L. REV.* 2357, 2359 (2010).

³⁹ MODEL RULES OF PROF’L CONDUCT R. 6.1 cmt. 11 (2009).

⁴⁰ *Id.* R. 6.1 cmt. 1.

spires me, her gratitude overwhelms me, and her strength motivates me to continue asylum advocacy.”⁴¹

The law firm associate who takes an asylum case for pro bono representation brings hope to his or her client as well as a level of professionalism to the task by engaging the resources of the law firm, relying on existing administrative support, and preparing the case with the same impressive level of diligence that the associate would devote to the case of a paying client. However, the law firm associate generally does not have expertise in asylum law and procedure because his or her paid work is focused in a different practice area. For that reason, the most effective pro bono representation models involve a nonprofit legal service provider with attorneys on staff who are experts in this field and can mentor the law firm associate throughout the pro bono representation. The nonprofit legal service provider is often also the entity that identifies genuine cases and determines which are appropriate for pro bono representation. This screening function helps to ensure that the cases taken for pro bono representation by law firm associates are worthy of the time and resources that will be devoted to them.⁴²

Although this partnership between law firms and nonprofit legal service providers dramatically increases the likelihood of success in individual asylum cases, and benefits all of the parties involved while also lessening the burden on our immigration court system, it is heavily dependent on funding for the nonprofit legal service providers. The recent economic downturn, following on the heels of the Bernard L. Madoff financial scandal, which caused a number of foundations that had been funding this work to close their doors,⁴³ has dealt a serious blow to the nonprofit legal service providers that match indigent asylum-seekers and other immigrants with pro bono counsel. The terrible effect of these financial turns on the nonprofit legal service providers further highlights the importance of sustained financial assistance for this work from existing foundations and other philanthropic organizations.

Since 1992, the Fund for New Citizens at the New York Community Trust has supported a collaborative effort between a group of nonprofit legal service providers to allow for pro bono representation of

⁴¹ E-mail from Ayana N. Free, Associate, Cleary Gottlieb Steen & Hamilton LLP, to the authors (Sept. 7, 2011) (on file with authors).

⁴² Law firms also have opportunities to participate in other models of pro bono representation, such as sending associates on externships to work at a nonprofit legal provider for several months and partnering with law school clinics to perform pro bono representation. The authors express the hope that these excellent partnership models—while distinct from the model described in this report—continue to expand and flourish.

⁴³ See, e.g., Geraldine Fabrikant, *Foundation that Relied on Madoff Fund Closes*, N.Y. TIMES, Dec. 20, 2008, at B3; Stephanie Strom, *Giant Wall St. Fraud Leaves Charities Reeling*, N.Y. TIMES, Dec. 16, 2008, at A1.

asylum-seekers and other immigrants in New York City who cannot afford private counsel. This collaborative effort is known as the Immigration Representation Project (IRP) and includes Catholic Charities Community Services of the Archdiocese of New York (Catholic Charities), Hebrew Immigrant Aid Society, Human Rights First, and The Legal Aid Society.⁴⁴ The IRP provides pro bono legal representation for hundreds of low-income immigrants in removal proceedings every year, and provides legal consultations to thousands more, on a wide range of immigration cases. The IRP has been recognized as a leader in the provision of legal representation to the immigrant poor in New York City and has been praised by immigration judges at the New York Immigration Court as a successful program that is worth expanding. In April 2005, the Migration Policy Institute issued an analysis of the urgent need for legal representation in removal proceedings, and endorsed the IRP as an “excellent, lower-cost alternative” for delivering removal defense services to low-income immigrants.⁴⁵ The success of the IRP and its member agencies led to a request in 2003 to participate in a special juvenile docket tailored to the unique legal needs of immigrant youth in removal proceedings.⁴⁶ More recently, the confidence of the immigration judges in the IRP and the long-term success of that project at the New York Immigration Court led to the proposal to the Leon Levy Foundation for additional funding to expand that work to create an additional day of screening for indigent asylum-seekers and for a Leon Levy Fellow who will work closely with the Katzmann Study Group to address barriers to pro bono legal representation in New York City.

Each of the IRP member agencies employs a slightly different model for the provision of legal services to clients identified through the screenings at the New York Immigration Court. While the clients identified as appropriate for representation by Catholic Charities are generally represented by attorneys on staff at that agency, the clients identified as appropriate for representation by The Legal Aid Society may be represented jointly with pro bono counsel. Human Rights First identifies asylum-seekers and others who may be eligible for related forms of relief and matches them with pro bono counsel who will become the attorneys of record. Those pro bono attorneys receive training on asylum law and procedure and remain in close contact with attorneys on staff at Human Rights First for guidance throughout the case process. Although the IRP is based in the New York Immigration Court, each of the member agencies also serves other populations, including nonciti-

⁴⁴ See Annobil, *supra* note 5, at 524.

⁴⁵ *Id.* at 525 (quoting Donald Kerwin, *Revisiting the Need for Appointed Counsel*, INSIGHT (Migration Pol’y Inst., Wash., D.C.), Apr. 2005, at 1, 13, available at http://www.migrationpolicy.org/insight/Insight_Kerwin.pdf).

⁴⁶ *Id.* at 525.

zens in immigration detention centers and immigrants with cases pending before the U.S. Citizenship and Immigration Services. They are also at the forefront in advocating for a range of improvements to our immigration system; that advocacy is informed by the legal representation work but also seeks broader reforms to the system to benefit noncitizens in proceedings throughout the country. The IRP has provided high-quality legal representation to more than three thousand noncitizens in removal proceedings since 1992, with a success rate of between eighty-five and ninety-five percent.⁴⁷

The success of the IRP collaborative, even in the face of economic hardship for the member agencies, can be directly attributed to the long-term commitment and financial support of the Fund for New Citizens at the New York Community Trust. It also demonstrates the importance of long-term partnerships between legal service providers, philanthropic organizations, and law firms to provide sustained pro bono legal representation for indigent noncitizens in removal proceedings.

III. PILOT PROJECT TO ADDRESS THE NEED OF UNREPRESENTED INDIGENT IMMIGRANTS: THE LEON LEVY FELLOWSHIP AND ASYLUM REPRESENTATION PROJECT

Through its collaborative efforts involving federal judges, immigration judges, law firm partners, and other immigration experts, the Katzmann Study Group has identified the need for additional screening and pro bono representation of indigent asylum-seekers and others in removal proceedings at the New York Immigration Court. The Leon Levy Foundation rose to the challenge with a commitment to fund a two-year fellowship at Human Rights First for this purpose. With this additional attorney, Human Rights First will be able to provide legal consultations for more noncitizens in removal proceedings and will be able to provide mentoring and support for a greater number of pro bono attorneys working on cases through its existing asylum legal representation program.

This fellowship and pilot project were announced by Judge Katzmann at a Symposium entitled *Innovative Approaches to Immigrant Representation: Exploring New Partnerships*, which was held at the Benjamin N. Cardozo School of Law on May 3, 2011. Retired Supreme Court Justice John Paul Stevens delivered the opening remarks and set the stage for a well-attended gathering of immigration experts to discuss

⁴⁷ Annobil, *supra* note 5, at 525–26.

these and other innovative ways to address the unmet legal needs of the immigrant poor.⁴⁸

Specifically, the Leon Levy Fellow will play a key role in the development of a pilot project known as the Asylum Representation Project (ARP), which will provide one more day per month when indigent noncitizens in proceedings at the New York Immigration Court can get a free legal consultation and have their cases considered for pro bono legal representation.⁴⁹ The PSC has committed to providing legal support for the pilot project by enlisting a select group of law firm associates to assist with the screening of potential asylum clients at the New York Immigration Court, and those law firms have committed to taking asylum cases for pro bono legal representation.

The Leon Levy Fellowship, together with the ARP, reflect an innovative partnering of the expertise and experience of Human Rights First, the generosity of the Leon Levy Foundation, and the commitment and resources of a number of private law firms that have attorneys involved in the PSC. This partnership should make it possible to increase high-quality pro bono legal representation of indigent asylum-seekers and other immigrants in New York City by creating greater capacity to screen potential clients, conduct intake interviews, place new cases with law firms, and mentor the pro bono attorneys in that representation, while simultaneously challenging the private bar to take on a greater number of asylum cases for pro bono representation.

Through the IRP, the existing screening and representation program at the New York Immigration Court, it has been shown that a strong partnership between legal service providers, law firms, and philanthropic organizations can help to address the legal needs of indigent immigrants in removal proceedings. With the new attorney in the role of Leon Levy Fellow, the goal is to assist a greater number of immigrants while also identifying and addressing the logistical or other impediments that may be limiting pro bono activity at some law firms. In this effort, the Leon Levy Fellow will also work closely with the Katzmann Study Group.

Human Rights First and the PSC very much appreciate the support of the Leon Levy Foundation and the Katzmann Study Group for this fellowship and pilot project. Human Rights First is deeply grateful for the opportunity to build on its decades of success in operating a pro bono representation program that partners with law firms to obtain immigration status for asylum-seekers and their families. Through these

⁴⁸ See Sam Dolnick, *Improving Immigrant Access to Lawyers*, N.Y. TIMES, May 4, 2011, at A24.

⁴⁹ Unless otherwise noted, the details of the Leon Levy Fellowship and Asylum Representation Project are taken from an unpublished proposal and draft call to action, both of which are on file with the authors.

combined efforts, the entities involved will continue to work to improve access to legal counsel for indigent asylum-seekers and other noncitizens in immigration court proceedings.

A. *The Leon Levy Fellow*

The primary responsibilities of the Leon Levy Fellow include coordinating the details of the ARP and exploring innovative ways to increase pro bono legal representation of asylum-seekers who are identified through those screenings. The two-year fellow is an attorney with fluency in a relevant second language, experience representing asylum-seekers in the immigration court system, and a demonstrated interest in and commitment to providing legal services through a pro bono model to immigrants who cannot afford to pay for quality legal representation.

Among the first tasks of the Leon Levy Fellow was to launch the ARP to provide one more day per month when indigent asylum-seekers and others in proceedings at the New York Immigration Court can get a free legal consultation and have their cases considered for pro bono legal representation.⁵⁰ The PSC has committed to providing legal support for the ARP by enlisting a select group of law firm associates (PSC Asylum Attorneys) to assist with the screening of potential asylum clients. In addition, each participating law firm has committed to take asylum cases identified as meritorious for pro bono legal representation. Each asylum screening session will be conducted by the Leon Levy Fellow with the assistance of one PSC Asylum Attorney, both working under the supervision of an experienced attorney at Human Rights First.

The Leon Levy Fellow will facilitate these efforts by informing the judges at the New York Immigration Court about this additional screening day and by requesting that when it is possible to identify asylum-seekers who are in need of counsel that those individuals be notified about the availability of the ARP screenings. The Leon Levy Fellow will also coordinate with other member agencies in the IRP to make appropriate referrals when a person is screened and found to be in need of pro bono counsel but has a claim for relief other than asylum. In addition, the Leon Levy Fellow will assist with the coordination and training of the PSC Asylum Attorneys so that they can help to conduct the screenings.

After the screenings, the Leon Levy Fellow will conduct any follow-up that might be needed with potential asylum clients, including by conducting consultations and intake interviews of some of the potential clients identified through the screening process, and conducting legal

⁵⁰ See *supra* note 49 and accompanying text.

and country-conditions research to help identify meritorious claims. Once a case accepted into the Human Rights First asylum representation program, the Leon Levy Fellow will assist with placing that meritorious case at law firms for pro bono representation, where possible giving the right of first refusal to the PSC Asylum Attorney who screened the case or the firm at which that associate practices law. In addition, the Leon Levy Fellow will work on other projects as needed for Human Rights First and work with the Katzmann Study Group on its activities relating to promoting legal representation of indigent immigrants.

B. *The Asylum Screening Day*

As noted above, during one regularly scheduled day per month, the Leon Levy Fellow will screen immigrants who are in removal proceedings at the New York Immigration Court and who may be in need of pro bono legal representation with their asylum cases. Each screening will be conducted with the assistance of one PSC Asylum Attorney. The goal of the screening is to obtain the information necessary to determine which individuals might be eligible for pro bono legal representation and should be referred for a full intake interview at the offices of Human Rights First.

For those who are given full-length intake interviews, Human Rights First will assess whether the individual has an asylum case appropriate for pro bono representation, including determining whether the individual's case meets relevant legal standards. As described below, Human Rights First would then seek to place meritorious cases with pro bono attorneys at participating law firms.

C. *The PSC Asylum Attorneys*

Each participating law firm will select two PSC Asylum Attorneys, in consultation with Human Rights First and the PSC Law Firm Coordinator. The PSC Asylum Attorneys will be attorneys who have shown a strong commitment to pro bono immigration work, have substantive knowledge of immigration law, and, ideally, at least one associate from each firm will be fluent in Spanish, French, Mandarin, or another language that would be helpful in conducting the screenings. Although a strong preference, language skills are not a requirement for participation. If, over time, the project grows in scope—as anticipated—the number of participating firms may be expanded in proportion to the increased number or duration of the screenings.

Following each screening, the PSC Asylum Attorney will conduct follow-up work, including the completion of screening forms and writing up any details from notes, in consultation with the Leon Levy Fellow. The decision as to which individuals to bring in for a full-length intake interview will remain entirely with Human Rights First.

After the PSC Asylum Attorneys are selected, Human Rights First, with the assistance of the Leon Levy Fellow, will conduct trainings to prepare the associates to assist with asylum screenings and potentially with the more in-depth intake interviews. Each of these associates would attend the initial training session. However, we expect that only one PSC Asylum Attorney would be needed at each monthly screening. The need for associates to assist with intake interviews will vary. Each participating firm has committed to making at least one of those associates available for a screening day or an intake interview at least once during each three-month period. The rationale for training two associates from each participating firm when only one will likely be required at a time is to ensure that (1) multiple associates can participate in the screenings and intakes over time, and (2) screenings will not be left unstaffed if scheduling issues arise. The PSC Law Firm Coordinator will coordinate among Human Rights First, the PSC Asylum Attorneys, and the firms to ensure that at least one associate from a participating firm is available for each Asylum Screening Day.

In addition to the training and experience that each associate will acquire through the project, the firms will also be offered asylum cases that are identified through the ARP as meritorious and in need of pro bono representation. As noted above, Human Rights First will endeavor to place a prospective asylum client with the PSC Asylum Attorney that screened that particular person at 26 Federal Plaza or assisted with the intake interview at Human Rights First. Case placement would be accomplished through the firm's pro bono coordinator, if applicable, who would then assemble a team to represent the client. Human Rights First will, however, reserve the right to place certain cases elsewhere if necessary, for example if there is a conflict of interest. If a case is offered to the law firm of the PSC Asylum Attorney who screened the prospective client or assisted with the intake consultation interview, and the law firm is unable to take the case for any reason, Human Rights First will offer the case more broadly to the other participating firms before attempting to place the case elsewhere. Once the case is placed with pro bono counsel, attorneys from Human Rights First will mentor the pro bono attorneys as they do in any case placed through the asylum legal representation program, providing guidance and supervision as necessary throughout the pro bono representation.

IV. OPPORTUNITIES TO EXPAND THE DELIVERY OF FREE LEGAL SERVICES FOR INDIGENT AND LOW-INCOME IMMIGRANTS BY EXTENDING THE MODEL OF THE LEON LEVY FELLOWSHIP AND THE ASYLUM REPRESENTATION PROJECT

The success of the IRP and the enthusiasm and support for the newly created ARP demonstrate that there is a real need to develop additional partnerships among legal service providers, law firms, and organizations that can provide financial support for increased pro bono representation of immigrants. Similar initiatives to expand screening and create additional fellowships, particularly for immigrants who may be eligible for other forms of relief such as cancellation of removal, are needed, as is additional funding and capacity to meet the pressing needs of detained immigrants in this area.

Immigrants make up nearly forty percent⁵¹ of the population of New York City. The city's mayor, Michael Bloomberg, expressed his commitment to better meet the needs of this population, which he calls the "lifeblood of New York City," by supporting immigration reform and by providing funding for a fellowship program to increase high-quality legal representation in immigration proceedings.⁵² In a campaign speech delivered on October 8, 2009, Mayor Bloomberg said that in his third term "the City will partner with private law firms to dispatch deferred legal associates to immigrant communities in need of quality legal assistance and representation."⁵³ He explained that the associates would be "deployed for a minimum one-year fellowship" and that the City would commit two million dollars "to cover a team of supervising attorneys and on-going training of associates and technical assistance in the area of immigration law."⁵⁴ However, the City has yet to come up with the money, even as the need for high-quality pro bono legal representation of immigrants in New York City continues to increase. Fatima A. Shama, Commissioner of Immigrant Affairs in the mayor's office, says that Mayor Bloomberg has not forgotten his campaign promise, and that "[w]e will do what we need to do, not only to maintain our

⁵¹ See *New York City QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3651000.html> (last updated Oct. 18, 2011).

⁵² See MICHAEL BLOOMBERG, IMMIGRANTS: THE LIFE BLOOD OF NEW YORK CITY 3 (2009), available at <http://www.aila.org/content/default.aspx?bc=1016%7C21607%7C21611%7C34335%7C30284> ("The City will commit \$2 million to the effort to cover a team of supervising attorneys and on-going training of associates and technical assistance in the area of immigration law.").

⁵³ Michael Bloomberg, Mayor of N.Y.C., Speech at CUNY Graduate Center (Oct. 8, 2009).

⁵⁴ *Id.*

commitment around a campaign promise, but around what's right."⁵⁵ She recognizes that the need is serious and that "without adequate legal representation, many of these New Yorkers will be unable to meet the American dream."⁵⁶

The Leon Levy Foundation is moving forward to try to address a part of this overwhelming need for pro bono representation of immigrants, and the time is also right for Mayor Bloomberg to move forward with the creation of his fellowship program.

There is a dire need for similar initiatives in other parts of the country, especially for detained immigrants who are being held in detention centers that are located far away from existing legal service providers, including in upstate New York. It is the hope of Judge Katzmann and the authors of this Article that the initiative funded by the Leon Levy Foundation, and inspired by the work of the Katzmann Study Group, will be replicated in creative ways throughout the country where there are also large immigrant populations in need of pro bono legal representation.⁵⁷

CONCLUSION

Many asylum-seekers and other immigrants with legitimate claims to lawful immigration status who cannot afford to pay for an attorney are left to navigate our immigration system on their own in the absence of government-funded counsel. There is an acute need for increased pro bono legal representation for this population. With the support of the Leon Levy Foundation, a two-year fellowship has been created to help increase the number of asylum-seekers in New York City who are provided with high-quality pro bono legal representation. This project is modeled on a successful program in place at the New York Immigration Court. However, its success will depend on the ongoing support of New York City law firms to provide high-quality pro bono legal representation for asylum-seekers in this area. Judge Katzmann and the authors of this Article hope that this fellowship and partnership model will also be replicated to increase high-quality pro bono representation of immigrants who may be eligible for other forms of immigration relief, including cancellation of removal, and for immigrants who may be in

⁵⁵ Dolnick, *supra* note 48.

⁵⁶ Stated during a panel discussion at the Symposium *Innovative Approaches to Immigrant Representation: Exploring New Partnerships*, held May 3, 2011, at the Benjamin N. Cardozo School of Law.

⁵⁷ See Mark Hamblett, *Study, Forum Stress Plight of Unrepresented Immigrants*, N.Y. L.J., May 4, 2011, at 1 ("We hope that, if successful, our model can be replicated in other parts of the country." (quoting Robert A. Katzmann, Judge, U.S. Court of Appeals for the Second Circuit)).

proceedings, whether detained or otherwise, in other parts of the country. This is also the time for the City of New York to launch the fellowship program that Mayor Bloomberg described on the campaign trail to better address the needs of the city's immigrant population. The authors of this Article are grateful to Judge Katzmann for his leadership and look forward to an expansion of pro bono legal services to indigent asylum-seekers and other immigrants who are in need and have no place else to turn for assistance.