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Helping the Unrepresented

In fiscal year 2008 alone, 168,810 people moved through the Immigration Court system without the help of a lawyer. The results are disheartening. According to *Refugee Roulette*, a person who is represented by a lawyer is nearly three times more likely to win asylum than an immigrant going it alone.

The top priority should be to ensure as many people as possible are represented by competent counsel. For those immigrants who remain on their own, the goal should be to make the process simpler.

Those immigrants appearing without a lawyer, or “pro se,” often enter the system without any understanding of the process before them, much less of the grounds for relief that may be available to them. The Immigration Court system, meanwhile, presents a maze of technical filing requirements and court procedures, as well as intricate legal burdens that can present difficulties for even experienced lawyers with significant resources at their disposal. For a person who speaks little English and has no legal experience, the Immigration Court process can be impenetrable.

Throughout our interviews, we heard just how difficult it is for these pro se immigrants. One person stated that pro se immigrants are the “worst off” and that “the system is not working for them.” We also heard considerable criticism of the existing pro se resources, which our interviewees characterized as inadequate. They also complained that the Immigration Court Practice Manual, the only comprehensive guide to Immigration Court procedure EOIR has published, was never intended for the unrepresented and is therefore not helpful to them.

Many Immigration Judges do their best to help pro se immigrants by offering multiple continuances to allow them to find attorneys and by taking time to explain their rights and the court’s procedures. This effort is admirable and should continue. The top priority, however, should be to ensure that as many people as possible are represented by competent counsel. For those immigrants who remain on their own, the goal should be to make the process simpler.

These two goals lead Appleseed to make the following recommendations.

Maximize Pro Bono Representation

Ensure that the 2008 Pro Bono Guidelines are faithfully implemented.

The best way to make the system fair would be for every immigrant to be represented by counsel. Few immigrants, however, can afford a good lawyer. For these people, the opportunities for pro bono representation should be significantly expanded. Private law firms and nonprofit organizations provide the pro bono lawyers, to be sure, but the government has a crucial role to play.

In 2008, the Chief Immigration Judge issued guidelines for facilitating pro bono legal services. These guidelines have been supported by pro bono providers and, if implemented, could significantly increase the number of immigrants who receive pro bono representation. The guidelines seek to reduce the administrative burden on pro bono counsel with a series of recommendations:

- Designate a pro bono liaison judge or committee in each Immigration Court to work with local practitioners to facilitate pro bono representation.
- Increase the flexibility of courtroom practices and scheduling for pro bono practitioners.

- Make greater use of pre-hearing statements and conferences to increase the efficiency of pro bono representation.
- Provide training to pro bono lawyers.

Unfortunately, the implementation status of these recommendations is unclear. As a start, EOIR should direct each Immigration Court to disclose the status of its implementation of the pro bono guidelines immediately and to provide (or create) a timetable for their full implementation. Immigration Courts can also share information to develop best practices to encourage pro bono representation.

Use videoconferencing, even though flawed, to expand representation to immigrants in remote areas.

In the opinion of many of our interviewees, even immigrants with meritorious claims have virtually no chance of success without legal representation. Unfortunately, representation is sometimes more a function of geography than merit. DHS detention centers are often located in remote areas, such as rural Texas, where bed space is less expensive but few if any lawyers are available for pro bono representation. EOIR cannot choose where to locate DHS detention centers but it can take steps to expand pro bono representation for detainees confined far from available lawyers.

Although our interviewees widely condemned videoconferencing, and we propose that its use be sharply curtailed, videoconferencing can bring pro bono representation to locations where lawyers are scarce. Already, the Headquarters Immigration Court in Falls Church, Virginia assists Immigration Courts from around the nation with their overflow caseload by videoconferencing, demonstrating EOIR's willingness to use videoconferencing for its own administrative benefit. EOIR should leverage this technology for the benefit of detained immigrants as well.

For those immigrants who have given their informed written consent to have their hearing conducted by videoconference, EOIR should

use videoconferencing to connect immigrants in remote regions with pro bono lawyers in other parts of the country. An immigrant without a lawyer faces such insuperable odds that the benefits of representation exceed the drawbacks of videoconferencing.

Make It Easier for the Unrepresented to Represent Themselves

Even after expanding pro bono representation, some immigrants will still be unable to obtain a lawyer. The following recommendations are designed to help pro se immigrants help themselves.

Simplify the filing and pleading standards for unrepresented immigrants.

Our interviewees repeatedly told us that the highly technical Immigration Court filing rules can trip up even experienced lawyers. Pro se immigrants, many of whom speak no English, have little hope of getting these technicalities right. Filings may be delayed, or even dismissed, for having the wrong size or grade of paper or for putting the documents in the wrong order. Therefore, EOIR should ease the filing requirements for pro se immigrants. Pro se immigrants should be held to the same standard as lawyers only for procedural necessities, such as required signatures.

After their documents have been filed, pro se immigrants are expected to comply with complex procedural regulations and rules of pleading. Courts around the country have implemented a variety of programs to assist pro se litigants. For example, the U.S. Court of Appeals for the Ninth Circuit has created instructions for pro se petitioners in immigration cases, including simplified checklists and an informal template "brief," which presents a set of questions structured around the law to develop the petitioner's claim. Private organizations have prepared analogous materials for immigrants to use in Immigration Court, but some Immigration Judges reject those pleadings out of hand. EOIR should instruct Immigration Courts not to reject

template pleadings out of hand but to accept any pleading from a pro se immigrant that contains the basic information and satisfies the minimum procedural necessities. To ensure that the same templates can be used around the country, EOIR should specify the minimum requirements for a pro se pleading.

Upgrade the Immigration Court hotline.

The government has no central resource for immigrants to call to get important information about the Immigration Court process and requirements. EOIR provides an automated telephone service by which an immigrant can check on the status of a pending case but does not provide any information about immigration law and procedure, which a pro se immigrant needs in order to be able to navigate the court system. Moreover, local Immigration Court staff are neither trained nor equipped to provide substantive advice to pro se immigrants.

The No-Help Desk

Immigration Court personnel are often unhelpful or worse to immigrants. One interviewee who watched the exchanges between the Baltimore “court administrator” and immigrants asking for procedural help noted that the administrator’s responses were completely unhelpful and confusing. To get these useless answers, the immigrants had to shout their most personal information because the court administrator was positioned behind bullet-proof glass.

EOIR should establish a toll-free hotline for immigrants to get basic information about the Immigration Court system and its procedures. The hotline should:

- Provide basic “Know Your Rights” information that tracks information provided by Legal Outreach Programs now available in some detention centers.

- Refer callers to immigration legal services across the country upon request.
- Be publicized in Immigration Courts and detention centers, with a number prominently posted.
- Be accessible through detention center telephones.
- Be staffed by agents who provide friendly and competent customer service in multiple languages (at a minimum, English and Spanish).

The IRS toll-free number could serve as an excellent model—it includes a sophisticated “phone tree” to narrow issues and route callers to an appropriate representative and earned a 91.2 percent accuracy rate on tax law questions in 2007.

Produce a pamphlet explaining essential immigration law and Immigration Court procedure.

When unrepresented immigrants enter the Immigration Court system, the government gives them little information about what lies ahead of them. This information vacuum makes immigrants vulnerable to unscrupulous practitioners and creates unnecessary hurdles for all but the most resourceful immigrants. Although EOIR has recognized the value of a “simple written description of Immigration Court proceedings,” it has not yet created such a document. It should.

All pro se immigrants should be given a simple pamphlet that introduces them to the Immigration Court: the hearings, the general grounds for relief, the deadlines and the acronyms, describing in detail the roles and responsibilities of Immigration Judges, Trial Attorneys and private counsel. The pamphlet should explain the mechanism for reporting any misconduct. In addition, to facilitate pro se immigrants’ access to more comprehensive resources, the pamphlet should also direct them to the Vera Institute, which is currently preparing a compendium of invaluable materials that other notable organizations have already developed. The pamphlet should be available at every Immigration Court in multiple languages and should describe available pro se resources.