



Idaho Attorneys Volunteer to Help Detained Refugees

Pro bono work by immigration attorneys tries to restore rule of law

Dan Black

In late July Maria Andrade put her Boise immigration practice on hold and set out for a remote detention facility in Artesia, N.M., hoping to aid some of the several hundred women and children detained there.

What she found was shocking. Andrade was among the first attorneys to gain access to the facility — a federal law enforcement training center surrounded by barbed wire, where several hundred women and children are being held. These refugees, she said, were being denied their rights to request asylum as guaranteed by law. “People as a class are being denied the ability to apply,” she said.

There were several obstacles to justice at the facility, she said:

1. Access for pro bono attorneys is extremely difficult: the facility is located more than three hours away from a major metropolitan area (approximately 195 miles from El Paso,

237 miles from Albuquerque). Once attorneys arrive at the facility’s gates, they have to wait for immigration officers to pick them up in a van to escort them the short distance to the “law library,” the only place where the women and children were permitted to meet with them.

2. Refugees often speak little or no English and they lack knowledge of the American legal system. Before they could speak with an attorney they were being asked technical legal questions (“Are you a member of a particular social group?” or “Have you ever been harmed or threatened in your home country because you belong to a group that is seen as different or

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special by society?”) that will have grave consequences for their asylum application: if they answer with a simple yes or no, then they may unknowingly exclude themselves from asylum.

3. Refugees had illusory access to interpreters, family or the courts. Some, like indigenous Mayans from Guatemala, do not speak Spanish, and there were no interpreters for local indigenous dialects. Refugees were allowed only one time-limited (generally 3-5 minute) phone call a day, which practically means they must decide between calling their attorney or their family as their cases advance along a rapid court calendar. If a caller is unable to reach someone during the time permitted by the immigration officers, the individual must wait until the next day.

4. Refugees have no privacy to explain the traumatic events that led to their flight — the “law library” (a trailer containing neither books, nor access to legal databases, nor reports of country conditions) lacks



Maria Andrade



Yadira Jurez



Nathaniel Damren



Benjamin Stein

cubicle walls, let alone visitation rooms that would ensure confidentiality. As a result, refugees must tell their stories in front of guards and their children, who might be traumatized to hear about rape and other horrors, often including the children's own threatened murder.

The ACLU, National Immigration Project of the National Lawyers Guild, and the American Immigration Council, along with other nonprofits and law firms, filed suit on August 22, asking a federal district court to order the Department of Homeland Security to remedy these conditions and allow due process.

Andrade saw the crisis coming

Ms. Andrade and her colleagues had been hearing horror stories of criminal organizations, such as drug traffickers and the notorious street gangs known as maras, overpowering civic institutions in broad swathes of El Salvador, Honduras and Guatemala. Across Central America, stories abound of businesses subject to extortion, women forced to marry gang members and children forcibly removed from schools as new gang recruits. There were numerous accounts of infants taken and sold on the international organ transplant market, rampant rape and indiscriminate violence against women.

At the same time, the U.S. border patrol observed a spike in the number of families at the southern border looking for safety. U.S. politicians decried the influx at the border claiming they were economic immigrants who would take American jobs. In fact, reports from all neighboring countries showed that an influx of Central Americans were fleeing systemic violence caused by the maras, drug traffickers and other criminal organizations.

What are they fleeing from?

Highly sophisticated criminal elements have taken over the social structures in Central American countries of Guatemala, El Salvador and Honduras. Those who stand up against injustice alone, challenging police who look the other way or criticizing gang violence are raped, beaten or have their children taken away.

- Women bear the worst of it.
- Single women living alone are at particular risk of being told to marry gang members. Sexual violence is rampant.

- Boys of a certain recruitment age are at risk of being taken directly out of school. Gang leaders say, "You're old enough. Time to join the organization." School teachers, parents, police and military are powerless against these gangs.

- If the husband gets in trouble with the Maras, then the whole family is in danger of extortion and impunity.

- Women in Guatemala are not allowed to leave their husbands under the fear of violence.

The Obama Administration promised to quickly deport the women and children back to their home countries. A new expedited removal policy at Artesia was outlined by President Obama in a June 30 letter to Congress, which stated that the government had adopted "an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers."

The June 30 letter further stated that the Administration would establish new facilities specifically "to expedite the processing of cases involving those who crossed the border in recent weeks."

"They want to ram as many people through as possible, without taking time to go through the process of determining whether they qualify under the legal criteria as refugees, Ms. Andrade said.

Politics trumps rule of law

Those statements were seen as permission to skirt the law, Andrade said, and Homeland Security set up the Artesia facility as a shortcut in the process for quick deportation.

"They are substantively being pre-judged," Andrade said, before

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they have a chance to even learn what their rights are under U.S. law.

"A lot of these are textbook cases" for successful asylum, Andrade said, adding that 90 percent of the cases she saw during her two-week stay likely would be successful in their bid for asylum.

"But I can tell you that 99 percent of these people will lose without access to an attorney."

Since mid-July, there has been a dozen or so pro bono attorneys working from 7 a.m. to 1 a.m., making the most of their short visits in Artesia. When the facility closed each evening, the attorneys met for a strategy session at a local church, before going to a motel to work on individual cases.

“This is like a fire. There’s an emergency — we know this area of law — so we are the ones to respond,” Ms. Andrade said.

An emotional toll

The fate of an estimated 50,000 refugees hangs in the balance. Immigration attorneys from all over the country have gathered in Artesia, creating a bond that they are doing the right thing. But the schedule and working conditions are incredibly difficult.

“It’s emotionally exhausting,” Andrade said. “I feel fortunate I have the ability to leave my practice. I have a great staff who have been supportive, picked up cases, and also travelled to Artesia to help. The whole reason this firm exists is to provide just consideration before the courts,” she said.

“It’s good to feel like your skills are having an effect and helping people,” she said. “But we’re participating in a system that is not providing justice. That doesn’t feel good. There’s not enough of us.”

So, is this sort of work fun?

“No. It is not fun. It is really not fun,” Andrade said. “You are constantly meeting with people who are traumatized, carrying a lot of emotion and it can be overwhelming.”

She worries about the families inside the facility. “They are locked up in this crowded facility with

nothing to do. Mental health counselors can’t get in. The press can’t get in. Yesterday I heard a report a girl was sexually assaulted. Sick kids are everywhere. The children are not eating, and more are getting sick,” she said.

So what keeps Andrade going?

“Outrage,” she answers without hesitation. “Nobody is going to compromise my clients’ rights. I know that I would win, I know these are good claims. You want people to know that they are putting aside the process. It makes a farce of what you do.”

Refugees are given confusing information about their fate. If they agree to a quick deportation, they are told things will go well. Otherwise, they have to stay in detention indefinitely. “Detention is being used to wear people down and give up their right to apply,” Andrade said.

The volunteers take their work very seriously, she said. “Every moment you are not working, another person is being deported.”

Petition for relief, literally

Andrade currently serves on the board for the National Immigration Project of the National Lawyers Guild, which has asked the

federal courts for practical tools to let pro bono lawyers do their jobs in Artesia. For instance, there are no phones allowed in the library, the only place where lawyers can meet with clients. It is a chaotic place where women and children are crying, telling their stories through interpreters, or through broken English.

Attorneys initially had no way to get notice of hearings, and the only food allowed inside the facility are snack bars. Hearings with judges are all done long-distance over video conference, which further dehumanizes the refugees’ plight, Andrade said. Overall, the officials have placed numerous roadblocks in the way of pro bono lawyers trying to do their jobs.

Andrade reported to the National Immigration Project in Chicago at the beginning of September, and said that eventually more cases out of Artesia will win, which will open the door for more successful cases.

“We just have to keep insisting on procedure,” she said. The lawsuit also claims refugees at Artesia are being given an unfair bond amount. A \$5,000 bond is considered pretty high in traditional immigration proceedings; in Artesia, the majority of detainees are held on bond ranging from \$17,000 to \$30,000.

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The lawsuit points out that during detainees' initial screening of an individual's credible fear of harm in their home country, typically 77 percent of detainees are passed on to the next level. In Artesia, that number is 38 percent.

The U.S. government similarly violated its own laws in the 1970s and 80s, Ms. Andrade said, when it systematically turned away refugees from Haiti, El Salvador and Guatemala. Eventually, the courts reasserted the rule of law, but as of the writing of this article, that has not yet happened for this wave of refugees. Ms. Andrade plans to return to Artesia this fall as her schedule permits. And from her firm, attorneys Benjamin Stein and Nathaniel Damren, along with legal assistant Yadira Juarez, have also made the trip.

The lawsuit, *M.S.P.C. v. Johnson*, was filed in the U.S. District Court for the District of Columbia. Since its filing, immigration officers have relaxed the procedures for attorney entry into the facility and begun constructing a separate entrance solely for them. A room with cubi-

The scene in Artesia

- Artesia is one of several processing facilities meant to quickly process and deport a backlog of 30,000 to 50,000 detainees captured on the U.S. border. It holds 672 people and is located about 200 miles north of El Paso, Texas.
- Pro bono attorneys visiting Artesia need experience in asylum and litigation. Some have one but not the other and get some quick training onsite.
- Of the 12 or 13 attorneys in Artesia, most stay only a few days.
- Maria said the pro bono attorneys must "educate the judges" because they are not familiar with border issues in the 5th Circuit.
- Maria said an important reason for pro bono attorneys is simply to witness what is happening.

cles has also been set aside to ensure client confidentiality.

As of September 5, 2014, two women have received grants of asylum by the immigration court.

About the Author

Dan Black is the *Communications Director for the Idaho State Bar and Managing Editor of The Advocate*. He is a former newspaper reporter, copy editor and managing editor.



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