

Hawai'i Access to Justice Conference
"Access to Justice and the Time of COVID"
June 25, 2021

Workshop Summary¹

"Working Together to Provide Immigration Legal Services to the Low-Income Clients"

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Background Information on Immigration in Hawai'i:

- Current population of Hawai'i has many immigrants: 255,000 residents are immigrants, meaning around 1 in 5 of people you see around you are residents who were born in a foreign country and who immigrated to US intending to make it their permanent residence.
 - o Higher than the nationwide average by almost 5 percent.
 - o Over 110,000 of these immigrants have not naturalized.
 - o Nearly 48,400 of these do not have legal status in the United States.
 - o On top of this, estimated that there are 4,200 DACA eligible residents.
 - o Most of this population are people that have been here for years, are established.
- Despite these numbers, Hawai'i does not fare well in terms of providing support for those immigrants.
 - o Study that came out this year that ranked Honolulu as 95th out of cities in the US that provides support for immigrants.

Picture of Immigration Assistance in the State Now:

- *The Legal Clinic* (TLC) : Assist with U-Visas, T-Visas, Asylum applications, DACA applications, removal defenses, appeals, detention and bond hearings.
 - o Diverse clientele: Immigrants from the Philippines, Pacific Islands, COFA, African countries, South America, etc.
- *Refugee & Immigration Law Clinic* (RILC) : DACA applications, defense in removal proceedings, asylum applications, and more.

¹ This workshop summary was prepared by Eliot Schulte, Paralegal, Legal Aid Society of Hawai'i.

- Founded in order to address gap in access to justice for low-income immigrants, many of whom don't speak English, or who live in remote areas.
- What services are currently available for the low-income immigrant community?
 - RILC – two attorneys that work here (+ eager law students).
 - TLC – only a few attorneys (+ legal assistant).
 - HIJC – work specifically with immigrants who are victims of crime.
 - Attorneys that do pro bono work.
 - Catholic Charities – provide USCIS legal services on the Big Island and Oahu (accredited representatives).
 - DOJ can give accreditation – then you can practice doing administrative work and go into immigration court as non-lawyer.

Issues that Immigrants in Hawai'i Face:

- No right to counsel in immigration court – many people do not have representation in immigration courts.
 - There is a lot at stake. People stand to lose a lot: being separated from their families, lose their livelihoods, their homes. Issues of life and death – many are afraid to return to their home countries because they know or fear that they will face persecution if they return.
 - Overall rate of 62% of people that are represented in immigration court, but if you look at percentage of representation based on where people are coming from, i.e. from richer countries, representation is skewed towards those higher income places.
 - Disadvantages unrepresented litigants face:
 - There are studies that show that people's chances if they are represented are way better than if they are not represented. Huge discrepancy in outcome if you are represented vs. not.
 - Law changes extremely frequently (particularly during Trump administration), and it is hard to keep up with this. As attorneys, struggled to keep up with this.
 - Many immigrants have limited English proficiency, and/or limited knowledge of the law, cultural knowledge, etc. Ex: Judge will open up with script, speaking in Legalese – not really believable that everyone understands what is being read to them.
 - Immigration courts are set up like an assembly line. Things that would never happen in a courtroom where citizens were involved happen in immigration court.

- Examples:
 - Ex 1: Husband was in removal proceedings due to minor criminal offense, picked up by ICE at the court. He was detained at federal prison on Oahu because HI does not have immigration detention center. During pandemic, the policy was that once quarantine ends, the hearing is scheduled for the following morning. The guards would not allow client to call an attorney the night before his hearing because he was still in quarantine.
 - A lot of jailhouse lawyering goes on– what this man was told was if he does not give up, if he does not waive his right to an attorney, he will remain in this detention center for months. This was not true because he did not have serious criminal charges. He showed up scared to his first hearing, so he waived his right to an attorney, waived his right to appeal, and was removed within a week. This a common story.
 - Ex 2: COFA migrant, had been here for 20 years. He had no trouble during this time, employer wrote long nice letter for his hearing, all his family is here. He had one conviction during a bad period in his life and he was picked up for drug use, and then transferred over to the detention center. He lost his case, lost his appeal. He was in detention center for over a year during all this – due to a statute that said that when you commit certain offenses, like substance abuse, you must be detained. His criminal sentence was a few days at a jail in Hilo, but he was then transferred and ended up spending over a year in a detention facility (difference in dispensation of justice). Case has been going on for over a year and a half in appeals. He would have spent this whole time in detention if attorney (Esther!) had not succeeded in her request for a bond hearing.
 - *Casas-Castrillon vs. US Department of Homeland Security* – Case where Plaintiff spent 9 years in immigration detention while his case was going through appeals process. (This is what Esther relied on in her request for a bond hearing for her client)
 - This example shows that you can have laws that are helpful for those in removal proceedings, but you often need people to help enforce those laws. Government has cadre of lawyers on their side enforcing the rules

and laws, and immigrants need that on the other side as well.

- Lack of due process in a lot of ways.
- No liberty interest at stake in immigration court.
- Asylum: for those that have suffered or are in danger of suffering persecution in their own countries.
 - o Very complex legal issue – very high and hard standard to meet. Very hard for people to do by themselves without knowledge of the law. If you add in limited English proficiency and limited literacy, it makes it almost impossible for people to do this by themselves.
 - o Many of the clients RILC helps are victims of gang violence, domestic violence and gender-based violence. During the Trump administration, these reasons for asylum were trying to be eliminated.
 - Some of these changes are starting to change and be reversed, but going slow.
 - o Difference between a refugee and asylee:
 - Asylee: someone who is coming into the country with no status, so once they are in the country, they apply for asylum within the country. People that have to leave – cannot stay (act of desperation).
 - Refugee: someone who is making the same request but outside the country. Grounds are similar.
 - o Types of cases: affirmative (client is applying for asylum) and defensive (client is in removal proceedings and is using asylum as a defense)

How to Help!

- What should attorneys who are interested in doing pro bono work in this field do? How can they start?
 - o *Esther*: When she got started, she first worked with an attorney who had more experience, attended a training on asylum law, and from that point on, did research and learned law, read cases on WestLaw, etc. Reach out to TLC!
 - o *Taylor*: RILC does mentor pro bono attorneys, very hands on because asylum cases are so complex. Naturalization workshops.
 - o *Corey*: There are also efforts to start a volunteer corps of attorneys and fellows to represent clients in immigration court in Hawai'i.