



EJA Immigration Fellow Updates

*Melissa Pena
Texas Rio Grande Legal Aid
University of Michigan J.D.
2019*



Melissa Pena

*Melissa Pena is the recipient of a **two-year \$130,000 Immigration Fellowship to work at a Detention Facility on the Southern Border.***

Here, she shares monthly updates on her work.

“I am thankful to Equal Justice America and Texas Rio Grande Legal Aid for creating this fellowship with the Dilley Pro Bono Project. We are at a moment where there is a great need for more effort towards ending family detention. I am honored to serve clients who have endured unbelievable violence and scarring trauma, and have nevertheless had the immense courage to fight for their lives and the lives of their children. I never imagined that I would be presented with such an incredible opportunity fresh out of law school. The importance of the work is not lost on me and I cannot wait to begin what I have been working towards for years.”

October 2019

I am about two and a half months into the immigration fellowship that I was fortunate enough to receive with Equal Justice America, and will be giving monthly updates about the work I'm doing, if you want to tune in!

I work for the Dilley Pro Bono Project in the largest immigration detention center in the country, the South Texas Family Residential Center in Dilley, TX, serving the immigrant mothers and children who are detained there.

Most of the families that we see at the center are fleeing unimaginable, extreme, and horrific violence in Central America, and elsewhere. They are forced to flee their countries, or else face certain death. They make the difficult decision to leave behind their beautiful homes because they have been overrun by needless violence, and they can no longer survive there. They journey through multiple countries, facing danger as they travel. They go days without food, water, shelter, security, or knowledge of what has become of their family who they might get separated from on the journey. They fight until they can't anymore to save their beautiful children and give them a chance at life.

And when they arrive at the shores of the "land of the free" and the "home of the brave," these brave, awe-inspiring women who just want to be free are being met with abhorrent treatment in what they call the "hieleras" and the "perreras" (ice boxes, and dog houses). Some women and children are fed frozen, moldy food, or being fed such a minimal amount that they go hungry. Some are being threatened to self-deport, or else be separated from their children who they've done everything for. Some are taunted with water when they are dying of thirst, only to have someone laugh in their face and pour it on the ground. When they express their fear of returning to their countries, they are brought to the detention center and unjustly detained like criminals.

I have the honor of working alongside my passionate, driven, and powerful co-workers in helping these women and children seek asylum in the United States. I help prep women and children for their Credible Fear Interviews (which are interviews with an asylum officer who determines whether they have a potential asylum claim), as well as help women who have been apprehended internally. I also help women appeal their negative decisions for an immigration judge to review.

Listening to these women's stories of horrific violence is a very hard and painful thing to do. But they have a strong will to survive and fight for their lives and the lives of their children despite the difficulties they have suffered. Their humble, yet passionate nature keeps me going.

November 2019

I have now been working with the Dilley Pro Bono Project for almost 4 months, and a lot has happened in the world of immigration that has affected the women that we provide services to.

One of the main changes that has detrimentally affected our work is what is known as the “interim final rule,” (also known as the “third country transit ban” or the “asylum ban”-which is my personal preference as it is more direct in what it does) . This regulation put forth by the government makes it so that those who are trying to seek asylum in the United States are ineligible to do so if they crossed through Mexico and did not ask for asylum while in Mexico, deemed a “safe” third country despite the horrific violence our clients suffer as migrants crossing through Mexico (such as trafficking, rape, and extortion). They may still be eligible for two other forms of relief (withholding of removal or protection under the Convention Against Torture), but these two forms of relief are much more difficult to obtain, as they require a higher standard of proof. Moreover, under these two forms of relief, becoming a lawful permanent resident or citizen is not permitted, and neither is travelling outside of the U.S. And more still, one can never petition for family members to join them in the United States, meaning more permanent family separation for most of our clients, regardless of the fact that they are only coming here to seek safety from horrific persecution.

Although clients who are Mexican citizens and are seeking asylum in the United States are not under this asylum ban, we are nevertheless seeing this ban applied to Mexican asylum seekers, who are then receiving negative outcomes for their cases, despite having solid, strong cases for asylum.

Because of this new regulation, as well as several other new changes (such as being placed with new immigration judges, who review negative decisions, who have a disgustingly high percentage of asylum denials), we are seeing so many women who are being persecuted because of a protected ground lose their case, and be returned to a country where they face extreme danger, violence, and even death.

Even with all unbelievably horrific changes we have seen, though, our team has not given up, and we continue to come up with new ways to fight back against the government’s attempts to keep people who deserve safety just as much as anybody away.

“The humility, fight, and strength that our clients possess keeps us all marching forward, and fighting the good fight against racism, hatred, and greed.”

December 2019

Since I've been here since August, I have seen mothers and children come and go, depending on their luck. They are either lucky enough to get an asylum officer who actually does their job and hears out a person when they're bravely recounting their story; or they're unlucky and they

get an "asylum officer" whose actually with Customs and Border Protection who is trained to deny a case and give an inadequate interview.

If they're on the lucky side, then the asylum officer who interviewed them grants them the opportunity to leave detention and fight their case free of incarceration. If they're unlucky, they're denied that opportunity despite having a clear cut claim, and are deported back to their countries where death and torture usually awaits. Although immigration judges are supposed to be impartial, their previous employment backgrounds of working for DHS, ICE, etc., and their decisions and demeanor in the courtroom show what a joke "impartiality" really is in the immigration field.

If clients are lucky, they'll get a judge who applies the law, and reverses or "vacates" the negative decision given by the asylum officer or CBP officer. If they're unlucky, they'll get a judge who applies THEIR law, or their client's law, the Department of Justice, and the judge will uphold the negative decision.

**"There are no laws, and there is no justice
when an outcome depends on luck."**

Although I've seen mothers and children come and go, I have also seen them incarcerated for disgustingly long amounts of time, even up to 4 months. I have seen them wait more than a month for their appeal with an immigration judge, even though they should only have to wait 7 days. I have seen children begging their mothers to get them out of there because they've been caged for so long, even though they've done nothing wrong. I've seen a change in the atmosphere, which now holds a mugginess of desperation.

But nevertheless, I've seen a lot of beautiful and empowering things too. I've seen people coming together to fight this unjust system from all walks of life. The Dilley Pro Bono Project hosts volunteers every week that come bear witness to what's happening in the United States, land of the "free." They help

us handle the large amounts of women and children we see every week, and work long difficult hours to help us ensure we help as many women as we possibly can. I've seen women who are detained help each other, and help the new arrivals figure out where to go and what to do. I've seen women who have suffered horrific domestic violence transform into the powerful, strong, luchadora women they always were. And I see those who are losing hope get encouraged by those who have extra fight to offer and share.

I've also seen the team I work with work long, hard hours to do everything they can to make sure these women and children are given the justice they deserve.

January 2020

After working here for half a year (6 months), I have come to quite a few realizations about the immigration system, but chief among those is that it is a corrupt system because it was racist from its inception.

Although there are those who tremble in fear when they hear the words “open borders,” and believe that restrictions on immigration are necessary, history has shown they are not. Before severe restrictions on immigration were a thing, the Burlingame Treaty of 1868 between the United States and China allowed for the free migration of persons.

In Article V, the treaty states, “The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other, for purposes of curiosity, of trade, or as permanent residents.”

As one can see, open borders are not such a radical idea. And yet, presenting the idea of open borders in current times seems to result in fear and xenophobia.

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The United States benefited from the dangerous, grueling labor provided by many Chinese immigrants in their work to complete the Transcontinental railroad (and their work in other fields, like agriculture), immigration laws came into existence. After the completion of the railroads, though, there was a shortage of available labor.

Instead of getting creative and working to try to solve the problem, white Americans pointed the finger at the easiest targets at the time: Chinese immigrants. Their “otherness” made them easy targets to isolate, and phrases like “they’re taking our jobs” came into existence.

Chinese immigrants were lynched, burned, and murdered, like during the Rock Springs Massacre of 1885.

In order to combat the violence against Chinese immigrants, the United States implemented the first robust immigration law: The Chinese Exclusion Act. This initially only prohibited Chinese laborers from entering the U.S., but eventually made it so that all Asian immigrants were being denied entry.

In other words, the first immigration law came to be because white Americans didn’t want Chinese immigrants to take “their” jobs. Their white supremacist mindset made them believe they were entitled to those jobs above other humans, and the United States conceded to this white supremacist mindset and implemented a law to try to keep “them” away.

I shared this with you all to highlight the fact that the immigration system in the U.S. has racist beginnings. And because of those racist beginnings, and because not much has changed about immigration laws since then, the current system is one that treats beautiful human beings like less than garbage.

Fighting a system that was never made to benefit our clients is incredibly draining and difficult, but every day I am finding a way to blunt the evil, and at the very least, not advance it.

One thing I hope to get across to those reading this post is this: nobody leaves their home unless it’s for good reason. The United States is not a magical land where dreams come true. It’s a country with many flaws and many things to be improved. People are not coming here to steal your jobs, or to take anything from you. They’re not coming here because the United States is “good” and other countries are “bad.” In fact, the United States produces several refugees too, meaning U.S. citizens are fleeing from the U.S., and seeking asylum in another country.

People are coming here because they are not safe in their beautiful homes that have been overrun by violence (thanks to the help of the United States, by the way), and they want a greater chance at survival/life for themselves and their children. My hope is that someday, a larger majority of people will come to this realization, and that seeking safety and a better life is decriminalized as a result. La Lucha Sigue!

February 2020

For this month's blog post, I wanted to focus on clients who speak rare languages, and how difficult it is to provide legal services for them.

The majority of clients we see speak Spanish, but we also have clients who speak several other different kinds of languages, including indigenous languages such as Mam, K'iche, and Quechua. Because the majority of our staff at the Dillley Pro Bono Project speak Spanish, as well as our volunteers, finding ways to communicate with these clients proves extremely difficult.

Because we need interpreters to communicate with our clients who speak languages other than Spanish, attending to those clients takes a longer amount of time because finding an interpreter who speaks their rare language is close to impossible most of the time. As a result, those clients are often left waiting to speak to a lawyer for a longer period of time than, say, someone who speaks Spanish.

Sometimes, those clients who speak rare languages also speak a little bit of Spanish, and we are therefore able to communicate some basic information to them, but there are still those clients who don't speak anything other than their rare, beautiful language, and are left even more confused in an already confusing immigration system. Although we have a language translation service that we use, there are rarely, if ever, interpreters who speak these rare languages.

There have been instances where a client who spoke a rare language was forced to continue her interview in Spanish, even though she barely spoke any. In fact, one such client who spoke a RL was being taught Spanish in the facility by her roommates because she knew so little when she arrived. As a result, this client was unable to express herself and the reasons she fears returning to her country during her interview, and she received a negative determination. She was one of the unlucky ones who got a bad judge, and her negative determination was therefore affirmed. This is all despite the fact that she had

not one, but three incredibly strong asylum claims, which we found out after she was able to communicate them to us in the Spanish she'd just learned.

As you can see, we are always in need of rare language speakers to serve as interpreters. Please spread the word, and get in touch with me if you would like to serve as an interpreter for the project, or know anyone who speaks a rare languages who would be willing to help women in desperate need of communication. La Lucha Sigue!

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March 2020

For this month’s blog post, it only seems natural to write about the ways COVID-19 (a.k.a. coronavirus) has affected my work and the work of my peers who work on the ground for the Dilley Pro Bono Project.

Unfortunately, a lot of the women we work for are still detained despite the obvious dangers that COVID-19 poses to them. In general, detention centers heighten the danger of disease transmission because of the large number of people detained, and the close proximity that everyone is required to be cramped in. Physical distancing is close to impossible, especially in over-cramped facilities where everyone shares the same toilets, showers, and general areas. Furthermore, failing to release those who are particularly vulnerable to the virus could not only harm those who are wrongfully detained to begin with, but also staff who work at the facilities, and the surrounding community as well when an outbreak occurs, which is almost certain given what we have seen occur in other countries with much smaller imprisoned populations.

Proper medical care is already a huge obstacle to have access to for those who are detained, and people are often told “we don’t have that kind of medicine here,” even if all that is being sought is some medicine to help with fever reduction. Clients are often turned away when they attempt to seek medical care, and are told “just to drink water.” Those already vulnerable clients who have other health concerns are lucky if they get the proper medical care they need. I’m sure you can imagine it will be the same case with coronavirus, only a lot worse.

“It is my hope that we as a country come to the realization that detention of families begging for safety is not necessary. Not now during this pandemic, not before it, and not ever.”

The worst part about all of this is that detention is completely unnecessary. It is also unnecessary legally speaking. A CBP official at the border has the discretion to put a person seeking refuge and asylum in the United States in either what we call 235 proceedings, or 240 proceedings. The first kind of proceedings result in detention. The second kind do not. Under the proceedings that result in detention, even those who present themselves at the border instead of jumping the wall or swimming across the river, (which is often viewed as the “legal” way of going about seeking asylum), are nevertheless incarcerated, sometimes for months at a time. It is therefore not a matter of “only detaining those who crossed illegally.” It’s a matter of CBP officials choosing to incarcerate people rather than not. (By the way, claiming asylum in any manner, including jumping the wall, is always legal.)

Because our clients continue to be detained, our team continues to provide services to those who continue to be wrongfully and inhumanely detained, though our services are entirely remote for the time being in order to protect our amazing clients, as well as our staff and others. This poses some obvious difficulties in terms of getting connected to clients, building trust through the phone with them, getting signatures for important documents that have pending deadlines, etc. Even so, our team is working hard and efficiently to bring services to those women and children who continue to be needlessly detained. I am very lucky to work with people who are willing to adapt to a ton of negativity, and work on ways to use it to our advantage and to the advantage of the people we are lucky enough to represent.

It is my hope that we as a country come to the realization that detention of families begging for safety is not necessary. Not now during this pandemic, not before it, and not ever. La Lucha Sigue!

April 2020

For this month, I want to talk about a government program that has negatively affected many of our currently detained clients. Prompt Asylum Claim Review or “PACR” is a program that essentially makes it so that all rights and procedural safeguards that are available to immigrants seeking asylum are practically non-existent. Immigrants already have minimal rights, and too those have been stripped through PACR. Egregious human rights violations are a result.

PACR is exactly what it is described to be. It is a process by which immigrants go through the process to have their asylum claim reviewed, but in a much quicker fashion. The worst part about the program is the fact that asylum seekers are detained in CBP custody throughout the entire process (about 20 days or so). That means that people are kept in freezing cold, cramped holding facilities (known commonly as “las hieleras” and “las perreras” a.k.a. The “ice box” and the “dog house”). In these holding facilities, people are deprived of access to adequate nutrition, basic shelter, and sanitation. If people are fed, they are given old, cold, wet, moldy food that often makes people sick, or they are given crackers and juice three times a day. To sleep, they are given aluminum blankets. Showers are allowed either every three days, or every week. Changes of clothing are rarely allowed. Detainees are often mistreated. They are yelled at, degraded, or told it’s their fault they are in this situation.

People are forced to undergo their credible fear interviews in these conditions. If you recall, a credible fear interview is something that certain asylum seekers in certain proceedings need to “pass” in order to be able to even begin to apply for asylum. During these CFI’s, asylum seekers are asked to explain their reasons for fleeing their country. Access to an attorney while someone is in PACR is non-existent. While people are in the “hielera” or “perrera”, they are rarely given the opportunity to call anyone. If they are given the chance to make a phone call, it is typically once or twice for 15 minutes or less. The government restricts all access to an attorney, even though asylum seekers have the right to consult with one prior to their interview. That means asylum seekers are expected to know the nuances of asylum law well enough to present their claim properly. Not only that, but they are expected to do that in the disgusting, inhumane conditions they are placed in by the government of the United States.

It is rare, and practically a miracle when someone gets a positive result out of this program. Most asylum seekers are not so lucky. When they get to the

detention center, the only thing we can do for them is file a third appeal, which practically has a 0.00001% success rate.

People risk everything and leave their countries to look for safety and refuge for themselves and their children. Unfortunately, people from other countries are disillusioned about what the United States is all about. Given the way we treat human beings like garbage, it is a wonder how anyone in their right mind would label the U.S.A. as the “land of the free.”