

By Lee Ann Russo and Bob Glaves

Fixing the **Immigration System**

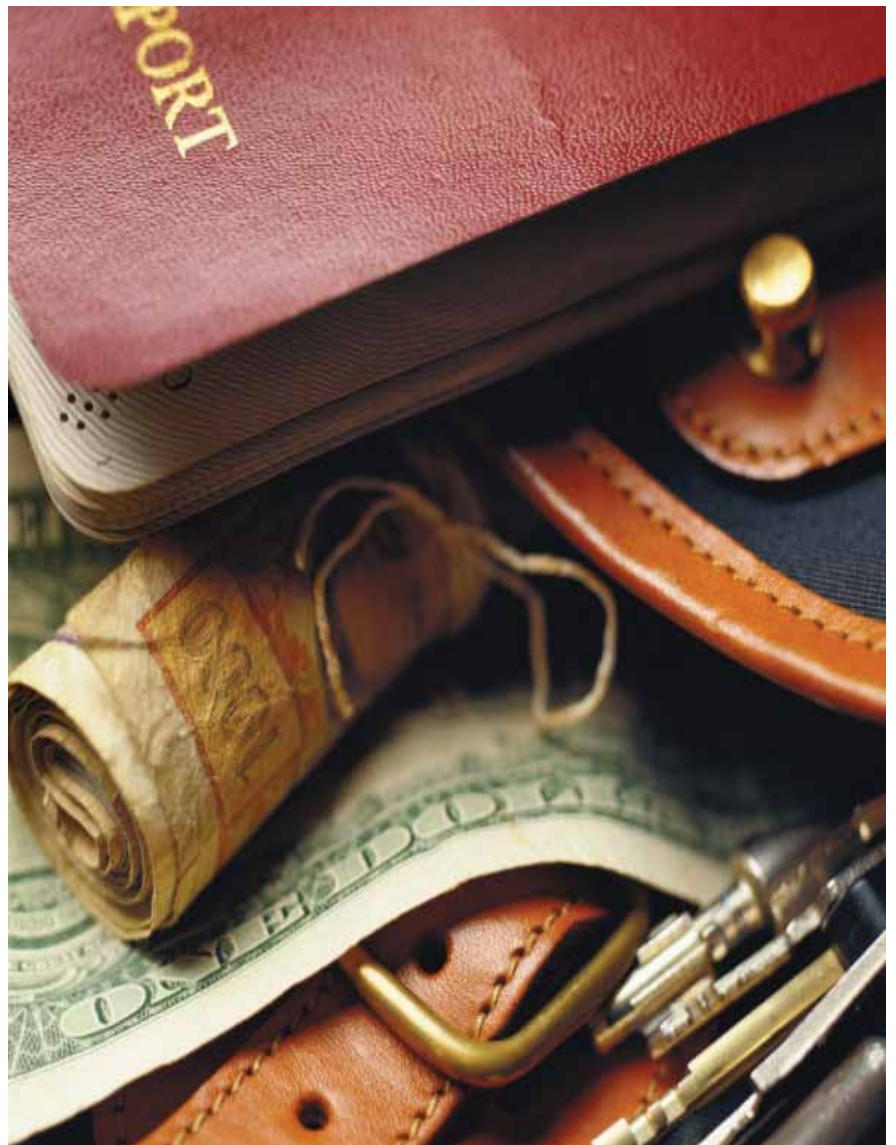
A Roadmap for Reform, and a Place for the Legal Community to Lead

WHEN THE TOPIC OF IMMIGRATION comes up, seemingly the only thing all sides agree upon is that the system is broken. We're a nation of laws and a nation of immigrants, but the current system does justice to neither of these core values. And it's becoming increasingly complex and dysfunctional by the day.

As complicated as the system has become, fixing it is relatively simple: a comprehensive overhaul that deals honestly and justly with the current problems while setting the system on a sustainable course going forward. Unfortunately, it's the louder extremes that dominate the debate today, and we're all worse off as a result.

The legal community can and should play more of a leadership role in reshaping this debate and leading us toward real solutions. We can do that by informing ourselves on these issues, providing pro bono representation to the large number of immigrants caught within the system and unable to afford counsel, and taking a more active role in advocating for a comprehensive and responsible solution.

In this article, we briefly review the sources of the current problems in the system, highlight their consequences for our country and the justice system, and provide a roadmap for a comprehensive, bipartisan solution. We also provide a list of resources where you can get reliable information on these issues and a snapshot of available pro bono opportunities in the Chicago area.



The Sources of the Problem

Flaws in the system. Fundamental and long-standing flaws in our nation’s laws governing immigration are the underlying source of today’s broken system. Rather than a system that sets immigration limits on a rational basis, for decades we’ve had arbitrary and inflexible limits on legal immigration that have little relation to economic needs or realities. This has led to gaps in the labor market for high-skilled and low-skilled workers that can’t be filled through existing legal channels.

These gaps are underscored by recent reports that more than 3 million jobs are open right now in the U.S. that employers are having trouble filling even in this time of high unemployment due to a mismatch of skills or location. Some of those jobs eventually can and should be filled through continued improvements in our education system and increased use of training and retraining programs for American workers. But just as has been true throughout our nation’s history, immigrant workers are needed to fill a significant share of this gap to keep our economy dynamic and growing.

Without adequate legal channels in the current system, many companies report that they have no choice but to expand outside of the U.S. when they otherwise would have here, and/or artificially limit their expansion in this country, neither of which helps our economy. For lower-skilled workers and their families, a dangerous black market has developed for them to obtain open jobs here, making lawbreakers of many thousands of people who want nothing more than to follow the paths of our ancestors toward a better life.

All or nothing penalties. Current penalties for violating these unworkable immigration laws are virtually always “all or nothing,” further aggravating the problems of the broken system. Either deportation or some type of deferred action are the basic options for the millions of immigrants who are here and don’t qualify for legal status under the current laws, with few available penalties in between. While there are some very limited

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ways for immigrants to gain legal status, for most there effectively is no way to legalize in the current system. Piecemeal attempts to clamp down on enforcement without addressing the fundamental systemic flaws for the most part have only made the system even more complex and dysfunctional.

Due process often lacking. Finally, and significantly for us as lawyers, the current immigration enforcement and adjudication system too often inhibits access to counsel and lacks key due process protections. Immigrants, even those detained, do not have access to appointed counsel. Contested immigration matters are resolved in a federal administrative system that for the most part is ill-equipped to properly handle the serious and sometimes life-and-death decisions inherent in immigration. That problem has been further aggravated by the growing volume of people caught up in the immigration enforcement system, with huge backlogs increasingly developing in the immigration courts.

The Consequences of the Problem

Millions of people in legal limbo. There are now believed to be more than 11 million people living in the U.S. without legal status, and more than 500,000 in Illinois alone, many of whom have family

members who are U.S. citizens or legal residents. Living in this legal limbo not only limits mobility and life options for these immigrants and their families, it makes them more vulnerable to a host of other legal problems, from consumer fraud and various employment-related abuses to domestic violence and human trafficking.

More enforcement without fixing system creating other problems. Increasingly aggressive enforcement without fixing the underlying problems in the system is creating many other issues. Families are being divided by the deportation of otherwise law-abiding people. Often the family breadwinner is deported, leaving the remaining members of a previously stable family in economic distress.

The increasing involvement of local authorities in immigration enforcement, sometimes voluntary but often not, has frayed relations between local law enforcement and their communities in much of the country. When people who are not criminals or have committed only minor infractions are deported after contact with local authorities, community policing efforts are compromised, which ultimately can negatively impact public safety. Recent policy announcements by Immigrations and Customs Enforcement (ICE) to use prosecuto-

RESOURCES ON IMMIGRATION ISSUES

ABA Commission on Immigration. http://www.americanbar.org/groups/public_services/immigration.html

American Immigration Council. <http://www.americanimmigrationcouncil.org>

Migration Policy Institute. <http://migrationpolicy.org/>

National Immigrant Justice Center. <http://www.immigrantjustice.org/>

American Immigration Lawyers Association. <http://aila.org/>

rial discretion to focus its resources on more serious offenders are a positive development on this front but ultimately will only make a difference if employed consistently and systematically. And even then people will be left in the problematic legal limbo discussed above.

Unique challenges for access to justice. Immigrants without legal status also face other unique access to justice challenges. These challenges are compounded by the deficiencies in due process in the immigration system and the overuse of detention for immigrants who don't pose a risk to public safety.

This complex system is also marked by very unforgiving penalties for small mistakes. This contributes to the perils created by a highly specialized area of law that even most lawyers don't understand.

Fixing the Problem

Any fix to our nation's immigration system must satisfy the overriding goals of restoring the rule of law to the system and protecting our national security while meeting our economic needs and respecting our fundamental values as a nation. This is eminently achievable in bipartisan fashion if we do the following:

Realistically address those who are here now without legal status. The immigrants in the country without legal status do not fit a single profile. Some were brought here by family as young children, have never known any other country and have been model students. Many others came to fill a promised job, worked hard, paid taxes, started families and contributed to their communities. Still others came to the U.S. to join family members who were here legally, but are without realistic legal options and face

lengthy backlogs for arbitrarily limited legal visas. It is only a small minority that has gotten into the kind of trouble that raises safety concerns for the community.

In assessing how to address the millions currently here without legal status, we need to account for this range of profiles and the existing system that gives these immigrants few if any realistic legal options. There should be no amnesty, but a range of penalties allowing the punishment to fit the crime and making "earned legalization" possible for those who have played by the rules. Penalties should range from fines and a lengthy probation period for those who have violated immigration laws, to deportation for those who have committed serious crimes. Those seeking legalization should be required to show proficiency in English and pay all applicable taxes and fines during their probation periods. And we must ensure the government invests sufficient resources in its infrastructure (to efficiently process a high volume of applications in timely fashion) and also provides sufficient funding so legal assistance and other necessary services for effective immigrant integration, particularly ESL classes, are sufficiently available. These costs can be offset by funds from the fines associated with this program and savings from making immigration enforcement more targeted and reducing the length of and eliminating unwarranted detentions.

Create a reality-based immigration system going forward. The immigration system should be based on our country's rational needs and interests. We can't let everyone in who would like to come, but the annual number of legal admissions should be based on the country's economic needs and a reasonable level of family-based immigration, with allotments for refugees and asylum seekers as well.

A workable immigration system should account for both temporary workers (e.g., agricultural, seasonal tourism) and those who seek visas with a path to permanent legal status. The annual admissions allowed should be flexible enough to account for



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PRO BONO OPPORTUNITIES FOR IMMIGRATION

Interested in working on an immigration matter?

The National Immigrant Justice Center (NIJC) and the Legal Assistance Foundation of Metropolitan Chicago (LAF) use pro bono attorneys to handle a variety of immigration matters. Examples of the types of matters you can help with include representing children and adults fleeing persecution who are seeking asylum or other legal relief; assisting victims of domestic violence and other crimes in obtaining legal protection; helping victims of human trafficking; giving “know your rights” presentations to children and adults in detention; and getting involved in advocacy efforts. NIJC and LAF both offer training and continuing support to pro bono attorneys.

For more information about volunteer opportunities on immigration matters, please contact:

NIJC—Claire Coogan, ccoogan@heartlandalliance.org, 312/660-1307

LAF—Mara Block, mblock@lafchicago.org, 312/347-8360

economic variances, but it's critical the levels be set through an apolitical process based on objective criteria.

More strategic and targeted enforcement with a commitment to due process. Enforcement should build on the prioritization ICE recently announced and place the primary focus on those who are dangerous or pose a threat to national security and on those unscrupulous employers who would take advantage of immigrants without legal status. The range of penalties should be more flexible for others, and the system must commit to provide due process and access to counsel for all immigrants in the system. In this way, the huge enforcement costs of the current system can be much more productively put to use.

How We Lawyers Can Lead

Inform Ourselves. The debate over the need for and the elements of any proposed comprehensive immigration reform is all too often fueled by misinformation. Opinions

are formed based upon the conduct of a few with little or no understanding of the circumstances of the many immigrants described above, much less the deficiencies in the current system, which often result in the deprivation of rights that are fundamental to all Americans. As lawyers, we owe a responsibility to our profession and our communities to educate ourselves regarding the system and its failings and to contribute thoughtfully to the public debate.

Be Advocates. With an adequate understanding of the system and its failings, we can then advocate for comprehensive reform. But we cannot let the “perfect be

the enemy of the good” in the meantime. As our government works to overhaul our immigration laws, we as attorneys must insure that all persons on American soil are afforded fundamental rights. For example, no lawyer can seriously contend that immigrant detainees should not be afforded the protections given convicted prisoners under the Prison Rape Elimination Act (“PREA”). Yet today our government does not apply PREA to immigrant detention facilities. And it often fails to provide immigrant detainees critical medical care and other

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Kindness to Strangers

Equal access to justice is absolutely central to the American concept of law and freedom and who we are as lawyers. As a litigator, first in private practice and now for the government, I have seen the real difference that pro bono attorneys make when they represent low-income and other vulnerable people. Pro bono attorneys literally make that fundamental principle come alive. As lawyers, we can all use our time and talents to help make the legal system more accessible and fair to all.



Kaarina Salovaara
President, The Chicago Bar Foundation

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basic needs. Nor should we as lawyers abide immigrant detainees being deprived the right to counsel while government officials encourage them to stipulate away their legal rights. We should advocate for changes that will address these and the many other deprivations of basic rights the current system visits upon immigrant detainees as we push for comprehensive reform.

Volunteer. We can be active participants in the battle to provide the due process protections to which immigrants, refugees and asylum seekers are entitled, but often denied. We can represent detained immigrants, unaccompanied immigrant children, individuals fleeing persecution, sexual minorities, and survivors of human trafficking and domestic violence. To effect real change right now, we should provide quality *pro bono* counsel and give these individuals their fair day in court. The largest barrier to challenging the inequities and injustices in the system is the lack of legal representation for the vast majority of the individuals who endure them. We can help by simply showing up.

Conclusion

As we go forward, there is far more common ground on these issues than the public debate suggests, and a largely silent majority in poll after poll in our country consistently favors the more balanced approach described in this article. As a legal community, we can and must do more to reshape the public debate and actively lead us to real solutions. ■

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any lawyers feel that they cannot provide such service as a result of their employment situation or otherwise. The above examples demonstrate that lawyers can provide service to the public for free (*pro bono publico*) in a number of different ways dependent on their interests and skill sets. I encourage everyone to accept a *pro bono* matter or project, whatever its shape, in the coming months. It is a rewarding experience and the duty of every lawyer. ■

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our heartfelt gratitude and thanks. To those of you who are considering volunteering but haven't yet done so, we desperately need your help. Training is available at no cost by legal service provider organizations and backup guidance and help from experts is always available. Volunteer now—together we can ensure equal access to justice for those in need in our state. Thank you. ■

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