

**A TEN YEAR REVIEW
OF THE BIA PRO BONO PROJECT:**

2002-2011

SUMMARY

In 2001, the Executive Office for Immigration Review and Catholic Legal Immigration Network, Inc. developed the BIA Pro Bono Project (the “Project”) in collaboration with several non-governmental organizations, including the American Immigration Lawyers Association, the American Immigration Law Foundation (now the American Immigration Council), Capital Area Immigrants’ Rights Coalition, and the National Immigration Project of the National Lawyers Guild. In October of 2004, an evaluation demonstrated that the Project had been successful in its first three years at increasing the prevalence and quality of appellate briefs before the Board of Immigration Appeals (“BIA” or “Board”). The 2004 evaluation further found that the involvement of pro bono counsel (including law students, law school graduates, attorneys, and BIA Accredited Representatives) positively impacted the outcomes in cases represented through the Project.

The following evaluation seeks to measure the impact of the Project more than a decade after its inception.¹ Specifically, the evaluation assesses the Project’s success in matching unrepresented respondents with pro bono counsel and whether the involvement of such attorneys and other representatives resulted in positive outcomes for those represented. In addition, the evaluation notes any ancillary effects of the Project.

The evaluation showed that the Project has sustained an average success rate of 87% in matching pro se respondents with pro bono counsel between 2002 and 2011, with a 97% success rate in the final three years of the evaluation. Of those counsel matched, approximately 74% filed a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). As would be expected, those who are represented through the Project are also more likely to have briefs filed with their appeals than pro se respondents. According to results from a survey of Board Members and staff attorneys, these briefs are considered of superior quality than those filed by pro se respondents and are more likely to identify dispositive issues in the case. Most significantly, an analysis of the appeals before the Board between 2002 and 2011 showed that pro se litigants who are represented through the Project are more likely to obtain a favorable outcome in their cases than those who do not receive representation. This is particularly the case for individuals who are detained.

¹ Although the Project began in 2001, it did not maintain uniform data for the entirety of 2001. Accordingly, this evaluation relies on data from 2002 to 2011.

ORGANIZATIONAL BACKGROUND

Executive Office for Immigration Review - Office of Legal Access Programs

The Executive Office for Immigration Review (“EOIR”), an agency within the Department of Justice, is responsible for the administration of the immigration court system. Under delegated authority from the Attorney General, EOIR’s Immigration Judges and the Board of Immigration Appeals interpret and adjudicate immigration cases pursuant to United States immigration laws. Immigration Judges conduct administrative court proceedings in immigration courts throughout the nation. The Board of Immigration Appeals, located in Falls Church, Virginia, has nationwide jurisdiction and hears appeals of the decisions of Immigration Judges. EOIR is headed by a Director who reports directly to the Deputy Attorney General.

The Office of Legal Access Programs (“OLAP”) falls within the purview of EOIR’s Director. Formerly known as the Legal Orientation and Pro Bono Program, OLAP is responsible for administering the Legal Orientation Program, the Legal Orientation Program for Custodians of Unaccompanied Alien Children, and the BIA Pro Bono Project. OLAP also coordinates EOIR’s Committee on Pro Bono, the Model Hearing Program, and other initiatives aimed to improve access to legal services for individuals appearing before EOIR’s tribunals. Pro bono representation and other legal services for individuals in immigration court and before the Board promote the effective and efficient administration of justice, and EOIR is committed to expanding and improving these efforts.

Catholic Legal Immigration Network, Incorporated

In 1988, the United States Conference of Catholic Bishops established Catholic Legal Immigration Network, Inc. (“CLINIC”) as a non-profit organization to support a rapidly growing network of community-based immigration programs. CLINIC has long served as the lead project coordinator for the BIA Pro Bono Project by providing expert legal services, training, and overall program support to the volunteer attorneys who screen case files and accept cases for representation. CLINIC works in partnership with EOIR to coordinate the screening of potential cases before the Board, and recruits pro bono counsel to represent selected cases through its listserv. Finally, CLINIC has tapped into its network of attorneys and other representatives to promote the Project and, through its training and mentorship, continues to expand the number of individuals who take part in the Project.

PROJECT STRUCTURE

The BIA Pro Bono Project seeks to match unrepresented respondents who may have a meritorious claim to stay in the United States with volunteer attorneys and other representatives who have expressed a willingness to represent the respondent in his or her appeal before the Board. The Project achieves this goal by identifying unrepresented noncitizens whose cases are on appeal before the Board (“respondents”), screening those cases with the help of volunteer attorneys, and then posting those cases to a listserv managed by CLINIC, which then matches a pro bono representative with the respondent.

CASES BEFORE THE BOARD

The Board conducts appellate review of immigration proceedings that occur in immigration courts. Immigration proceedings begin when the Department of Homeland Security (“DHS”) files a “Notice to Appear” alleging that an individual is an alien and challenging his or her legal claim to be in the United States. The filing is received and adjudicated by one of the approximately 250 Immigration Judges in the nation’s 59 Immigration Courts. An Immigration Judge determines whether a respondent is removable from the United States or has a legal claim to stay lawfully (sometimes known as “relief”). Relief may be based on a visa, a need for protection, or temporary permission to stay in the United States. In adjudicating the case, the Immigration Judge might order a respondent removed, terminate removal proceedings against the respondent, or grant him or her a form of relief.² After the Immigration Judge renders his or her decision, either the DHS or the respondent may then appeal the decision to the Board. The Board reviews the Immigration Judge’s underlying decision and any arguments made on appeal. It is only upon the filing of a “Notice of Appeal” with the Board by either the DHS or the respondent that the BIA Pro Bono Project may become involved.

ADMINISTRATION OF THE BIA PRO BONO PROJECT

The Project is administered in four basic steps on a weekly basis. First, an EOIR-maintained software program generates a list of pending case appeals based on a tiered system of criteria. Second, OLAP staff review the automated list for accuracy and select 12 cases for volunteer attorneys to screen. Third, volunteer attorneys screen the selected cases and write summary descriptions for those cases they deem best suited for pro bono representation. Finally, CLINIC distributes the summaries (with sensitive data redacted) via listserv to its network of pro bono attorneys and other representatives to recruit legal representatives for the cases.

(1) BIA Pro Bono Project Automated List

The Project uses an automated filtering software maintained by EOIR to generate a list of appeals pending before the Board. The system automatically selects case appeals according to a hierarchy of criteria described below. Additionally, factors such as representation status (only cases involving unrepresented respondents are selected) and

² There are other outcomes possible in immigration proceedings, but these are the most common and most relevant to the Project and its evaluation.

the date the briefing schedule was set (within the previous 7 days) are taken into account. The software identifies the appealing party and retrieves pertinent personal data, such as the respondent’s name, alias, address, nationality, and language. It similarly notes any application for relief filed by the respondent and the Immigration Judge’s decision with respect to this application.

Cases are automatically selected based on the following criteria (listed below in descending level of priority), which were developed with input from CLINIC, volunteers, and the other partner organizations that supported the BIA Pro Bono Project at its inception.

Level	Criteria
One	Detained DHS appeals, Immigration Judge certifications, and juvenile appeals
Two	Non-detained DHS appeals, Immigration Judge certifications, and juvenile appeals
Three	Detained respondent appeals involving asylum, withholding of removal, and/or protection under the Convention Against Torture
Four	Non-detained respondent appeals involving asylum, withholding of removal, and/or relief under the Convention Against Torture
Five	Detained appeals involving other appellate issues and forms of relief (e.g., cancellation of removal, citizenship claims, or termination)

Level One cases exclusively involve appeals relating to detained respondents. Additionally, the vast majority of Level One cases involve appeals filed by DHS after an Immigration Judge has terminated proceedings against a detained respondent or granted the detained respondent some form of immigration relief allowing him or her to remain lawfully in the United States. The relief is often a grant of asylum, withholding of removal, or cancellation of removal. Less frequently, Level One cases involve detained juvenile appeals or cases in which an Immigration Judge has transferred the case to the Board for review although neither party has appealed the decision (“Immigration Judge certifications”). The Project saw only a total of 4 Immigration Judge certifications between 2002 and 2011.

In practice, the Level Two cases consist almost exclusively of DHS appeals filed after an Immigration Judge has granted a respondent relief. In Level Two cases, however, the respondent is not detained.

Levels Three and Four focus on the type of relief sought. A case falls within Level Three if the respondent is detained and the form of relief sought is asylum, withholding of removal, or protection under the Convention against Torture. Similarly, a case falls within Level Four if the respondent seeks protection-based relief but is not detained.

Level Five includes detained respondent appeals in cases involving forms of relief unrelated to a fear of persecution or torture (such as cancellation of removal, citizenship claims, or termination) as well as other appellate issues (such as mental competency). This allows the system to retrieve potentially strong cases for representation, such as cases involving longtime lawful permanent residents seeking cancellation of removal to,

in effect, “pardon” their convictions and remain lawfully in the United States. In the past five years, cases represented under the Pro Bono Project are almost as likely to involve an application for cancellation of removal as they are to involve a protection-based form of relief.

(2) Case selection by OLAP staff

Each week, the automated filtering software usually generates between 12 and 45 cases that fall within Levels One through Five. Due to the limited availability of volunteer attorneys to serve as screeners, not all cases selected by the automated filtering software can be reviewed. OLAP staff normally choose only 12 from the automated list, since this is the average number of cases a volunteer attorney screener can review per week. Included in the 12 cases selected for screening are all Level One and Two cases retrieved by the automated software. The remaining slots are filled by cases from Levels Three, Four, and Five, respectively. These cases are then electronically flagged, and the BIA clerk staff pulls the cases for review.

(3) Cases screened by CLINIC volunteers

Volunteer attorneys recruited and trained by CLINIC help screen the 12 cases that are selected for review each week. The volunteer screeners assess the merits of each appeal and determine whether the case would be appropriate to be matched with pro bono representation. Screeners then write up detailed summaries of the facts and legal issues on the cases selected. Both OLAP staff and CLINIC ensure that any personally identifiable information is removed from the summaries, which are then posted by CLINIC to a listserv viewable only by individuals who have agreed to represent respondents in their case appeals on a pro bono basis.

(4) Cases matched with pro bono counsel by CLINIC

Once pro bono counsel agrees to take a case, the respondent involved is contacted and given the option of accepting representation. CLINIC offers mentoring to the pro bono representatives and tracks the status of the case from screening to case outcome, where possible.

“The BIA Pro Bono Project is an invaluable resource for ensuring access to justice for detained immigrants in the Los Angeles area. In the past several months alone, the BIA Pro Bono Project’s lookout list has enabled us to facilitate the representation of a domestic violence victim fleeing her abuser, a long-time lawful permanent resident fighting to remain with her family, and a transgender woman terrified of returning to a country where she suffered state-sponsored persecution. In each case, we identified the individual through our Legal Orientation Program and sent the case to the BIA Pro Bono Project’s lookout list in an attempt to find representation on appeal. In each case, the BIA Pro Bono Project came through. These detainees were alone before the Immigration Court but, because of the work of the BIA Pro Bono Project, will have the legal help that they need to pursue their claims for protection from removal. I look forward to the continued expansion of the critical work of the BIA Pro Bono Project, through its lookout list, to enable us to secure legal representation for the many detainees with meritorious claims for relief from removal.”

Staff Attorney
Immigrants’ Rights Project
Public Counsel
Los Angeles, CA

“Lookout List”

In addition to the automatically generated list discussed above, legal services providers can refer compelling cases in which the respondent was unrepresented before the Immigration Judge and has a pending appeal before the Board to the Project by contacting CLINIC, who, in coordination with OLAP, will place the case on the Project’s “lookout list.” Once the appeal is received at the Board, the Project will pull the case for review by the screener to determine whether the case is appropriate for representation.

POPULATION SERVED

Reaching the hard to reach and those with the highest likelihood of success

In determining which kinds of cases to prioritize for screening and possible representation under the Project, EOIR relied on input from CLINIC and its network of volunteers supporting the Project. There was universal interest in reaching the detained population, as this population has historically had difficulty retaining legal representation, often due to the remote locations of detention facilities. Stakeholders also chose to focus on DHS appeals as a priority. A DHS appeal signifies that the respondent arguably has a meritorious claim, as the DHS only appeals where the Immigration Judge has granted the respondent a benefit or terminated removal proceedings. Therefore, in an effort to reach the claims with the greatest potential for relief, as well as reach those who are least likely to find representation elsewhere, the Project prioritized DHS appeals and appeals in which the respondent is detained.

The Project was successful in meeting this goal. Of the approximately 698 cases in which the Project provided representation from 2002 through 2011, 627 (almost 90%) involved detained respondents. Additionally, a majority (59%) of the total cases represented by the Project during this period were appeals filed by DHS.³ Approximately 53% of the

³ This does not include cross appeals, which accounted for approximately 13 cases during this period.

cases represented by the Project involved Level One cases: cases where DHS was the appealing party *and* the respondent was detained.

The above statistics reflect the policy goals of the Project as opposed to the overall composition of appeals before the Board. According to data compiled by EOIR’s Office of Planning, Analysis, and Technology (“OPAT”), of all appeals that were filed and completed between 2002 and 2011, just under 20% of the cases involved detained respondents and less than 1.5% involved detained cases in which DHS was also the appealing party. Overall during 2002 to 2011, DHS was the appealing party in less than 7% of the cases before the Board.⁴

Forms of relief and longtime residents

The largest subset of cases represented by the Project between 2002 and 2011 involved lawful permanent residents (388 cases or almost 56%). Other groups of respondents represented under the Project were individuals who were present without admission or who entered without inspection (135 cases or 19%) and respondents who were admitted to the United States on a non-immigrant visa and overstayed (125 cases or almost 18%).

There were two primary forms of relief at issue both in DHS appeals and respondent appeals represented by the Project: (1) protection-based relief, including asylum under section 208 of the Immigration and Nationality Act, withholding of removal under section 241(b)(3) of the Act, and protection under the Convention Against Torture (349 cases or 50%); and (2) cancellation of removal under section 240A of the Act, including cancellation of removal for lawful permanent residents and for non-permanent residents (193 cases or almost 28%). Of the DHS appeals seen by the Project, the basis of the appeal was generally to dispute an Immigration Judge’s grant of termination of proceedings (110 cases or almost 27% of DHS appeals) or to dispute a grant of relief, usually protection-based claims (142 cases or 34% of DHS appeals) or cancellation of removal (131 cases or 32% of DHS appeals). Respondent appeals based on an application for protection-based relief far outnumbered respondent appeals based on cancellation of removal (72% and 22% of respondent appeals, respectively).

“I humble myself to write to you to express my supreme gratitude for finding me a lawyer. Thank you one million times. Once again, infinite thank you for what your firm has been doing for me.”

BIA Pro Bono Project Respondent

While the Project favors asylum-based cases by placing them in the Level Three and Four categories for automated selection, these percentages also reflect the universal trends seen by the Board. OPAT data shows that of all appeals filed and completed between 2002 and 2011, asylum applications made up approximately 63% of the applications for relief.

⁴ Again, this figure does not take into account cross appeals, which accounted for only 1,021 (.5%) of the 187,194 cases filed and completed between 2002 and 2011.

By comparison, cancellation of removal claims made up no more than 22% of the applications on appeal before the Board between 2002 and 2011. The Project's cancellation of removal caseload (193 cases or 28% of its overall caseload) thus approximately mirrors the prevalence of cancellation of removal cases before the Board.

There are two forms of cancellation of removal. The first is for lawful permanent residents, meaning individuals to whom the United States government has granted permission to reside and work indefinitely in the United States. Lawful permanent residency is granted mainly to refugees, individuals with family members who are United States citizens or lawful permanent residents, or individuals deemed to be skilled workers. In order to be eligible for cancellation of removal, lawful permanent residents need to also demonstrate that they have been lawfully residing in the United States for at least 5 years and continuously residing in the United States for at least 7 years. The other kind of cancellation of removal, generally pursued by respondents who entered the United States without permission, requires proof of 10 years of continuous physical presence in the United States. Therefore, cancellation cases usually involve individuals who have established long-term ties to the United States, increasing the probability that they have a meritorious claim for relief.

OUTCOMES

CASES SCREENED AND REPRESENTATIVES MATCHED

CLINIC has been very successful in screening and matching pro se respondents with pro bono counsel. Between 2002 and 2011, volunteer attorneys screened approximately 12 cases per week. Out of the more than 6,000 cases screened, CLINIC selected 1,084 cases for possible representation, posting redacted summaries of each case and the issues on appeal to its listserv of pro bono counsel. CLINIC was able to match pro se respondents in these cases with counsel 87% of the time. In the last three years evaluated (2009 through 2011), CLINIC was able to find counsel willing to take the case on a pro bono basis 97% of the time.

Although CLINIC has been successful in matching pro se respondents with pro bono representatives who are willing to enter an appearance in the case, not every case matched results in

"I got the news and wish to call you with gladness in my heart and praises to the good lord for showing kindness on me by making it possible for CLINIC to offer to help me. . . . Thank you for finding me counsel to take my appeal pro bono."

BIA Pro Bono Project Respondent

representation. Due to a number of factors, an unrepresented respondent may refuse representation or not respond to an offer of representation. As the vast majority of respondents served by the Project are detained, a common reason for refusal of representation is the individual's hope that, by not pursuing an appeal, he or she will be released (even if ultimately deported). Alternatively, a respondent may retain his or her own private attorney, or wish to draft the appeal brief pro se. In some cases, DHS withdraws the appeal before pro bono counsel can enter an appearance. A non-detained respondent may move without providing sufficient contact information for the Project to obtain his or her consent to representation. However, despite these factors,

approximately 74% of the cases matched with pro bono counsel between 2002 and 2011 were ultimately represented by pro bono counsel.

BRIEFS FILED

By participating in the Project, pro bono representatives agree to file a brief on the respondent's behalf before the Board. The filing of briefs is the most important aspect of the Project, as it is the respondent's one opportunity to present the Board with his or her legal argument as to why he or she should be allowed to remain in the United States. Although the Board's decision might not always result in a clear "win" or "loss" for the respondent, it determines whether the case will be completed with no change to the Immigration Judge's decision, whether the case will need to be reviewed again by an Immigration Judge ("remanded"), or whether the decision of the Immigration Judge will be reversed.

The brief is also beneficial to the Board members and staff attorneys who review the cases. The brief distills the respondent's claim to stay in the United States into a few salient legal points that make coming to a decision easier. Immigration law is complex even for seasoned attorneys; therefore, an unrepresented respondent, particularly one who is detained with limited access to legal materials, is rarely able to hone in on the legal issues that make a difference in his or her case. A brief written by competent counsel lends focus to a respondent's immigration case and makes his or her appeal stronger. Out of the 47,614 appeals filed and completed before the Board between 2002 and 2011 where the respondent was unrepresented, the pro se respondent filed a brief in only 22,618 of them (47%). Detained pro se respondents filed briefs in only 7,223 of these cases (15%).

In early 2010, the Project administered a survey to Board Members and Board staff attorneys.⁵ This survey was modeled after a similar questionnaire distributed in 2004 for the initial Project evaluation. The 2010 survey sought to measure the impact of the Project from the perspective of the Board Members and Board staff attorneys. A total of 44 Board Members and staff attorneys participated. The survey alerted the Board Member and staff attorneys reviewing a particular case that that case was one in which the Project had obtained pro bono counsel to represent the respondent. The survey then asked a series of questions regarding the quality of the brief filed in that particular case, whether the brief assisted in understanding the issues in and reducing the time spent on that case, and whether pro bono counsel increased the likelihood of a favorable decision in that case. Finally, the survey asked the Board Member or staff attorney whether, in his or her opinion, the entry of pro bono counsel's appearance *in general* increases the likelihood of a favorable Board decision. The data below reflects that some of the goals of the Project are being met from the perspective of the Board:

- **93%** of survey participants stated pro bono counsel identified dispositive issues and clearly articulated pertinent arguments in the briefs.
- **96%** of participants rated the quality of pro bono briefs as better than most briefs filed by pro se respondents.

⁵ The 2010 survey is included as an appendix to this evaluation.

- **71%** rated the quality of pro bono briefs submitted as better than most briefs filed by respondents represented by paid counsel.
- **77%** responded that pro bono briefs assisted them in understanding the legal issues in the case.
- **51%** stated the pro bono briefs helped to reduce the time to resolve the case.
- **51%** responded that a pro bono representative's appearance in that particular case increased the likelihood of a favorable Board decision for the respondent.
- **80%** replied that, in their opinion, the entry of a pro bono representative's appearance would generally increase the likelihood of a favorable Board decision in a given case.

MEASURING FAVORABLE OUTCOMES

From the perspective of the respondent, a goal of obtaining representation is to receive a favorable outcome in his or her case. However, case outcomes are not always clear cut, and trying to determine whether a respondent “won” or “lost” his or her case can be subjective. For example, sometimes a remand order from the Board – sending the case back to the Immigration Judge for further review – results in a respondent's order of removal being changed to a grant of relief after further fact finding or analysis by the Immigration Judge. Thus, a remand may ultimately lead to a favorable outcome for the respondent. However, unless the Board specifically states in a written order to the Immigration Judge that the outcome of the decision should be changed, a remand might not result in the Immigration Judge changing the order of removal to a grant of relief. It is possible that the remand order simply requires the Immigration Judge to elaborate on the reasoning behind the order of removal or address an issue that was not adequately addressed.

Nevertheless, in an appeal, a goal of the appealing party is to identify factual or legal errors in the decision of the Immigration Judge. A remand would not be ordered if the lower court's decision did not contain some error or an omission that required review. Therefore, for purposes of the analysis here, in cases where the respondent has appealed an Immigration Judge's decision, a remand is considered a “favorable outcome” for the respondent because pro bono counsel succeeded in identifying an error or omission requiring the Immigration Judge to further review the case. This evaluation also considers respondent appeals that result in a remand for background checks only, a sustained appeal, or termination to be favorable outcomes from the perspective of the respondent.

In cases involving DHS appeals, measuring outcomes favorable to the respondent is more straightforward. The most favorable outcome for a respondent in a DHS appeal is when the case is remanded for a background check or when the appeal is dismissed. The Board remands a case for a background check when it has not disturbed the Immigration Judge's grant of relief to the respondent. Similarly, if the case is dismissed after a DHS appeal, it signifies the Board found no error in the Immigration Judge's decision. As noted above, the DHS would only appeal if it asserts that the respondent was ineligible for the immigration benefit granted by the Immigration Judge (such as a grant of asylum or termination of proceedings). Therefore, if the Board dismisses a DHS appeal it agrees with the Immigration Judge's decision to grant the respondent relief or termination.

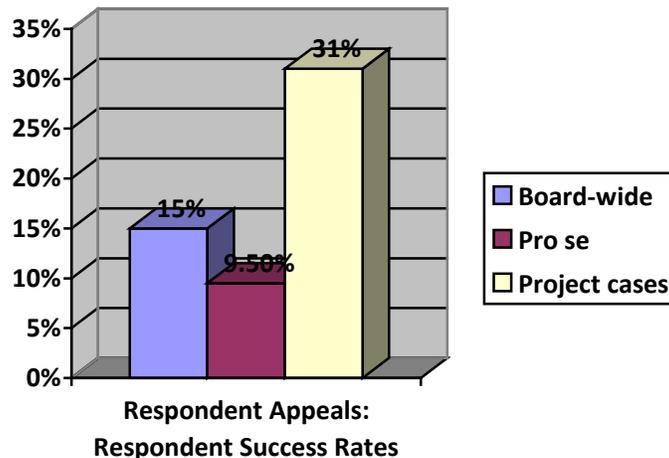
CASE OUTCOMES

Comparing the percentage of favorable outcomes obtained by unrepresented respondents to those obtained by respondents represented by the Project, it appears that the Project's involvement tends to increase the likelihood of a favorable appellate outcome for a respondent.

Respondent appeals

Between 2002 and 2011, out of a total of 171,499 decisions issued by the Board involving respondent appeals, the Board remanded 21,877 cases, remanded 2,567 cases for background checks only, sustained 1,177 appeals, and terminated 789 cases. Thus, between 2002 and 2011, just over 15% (26,410 cases) of all respondent appeals reviewed by the Board were resolved in the respondent's favor. Out of the 43,571 decisions issued by the Board between 2002 and 2011 in which the respondent appealed and was *unrepresented*, the Board issued a decision favorable to the respondent just 9.5% of the time. Specifically, the Board remanded 3,602 cases, remanded 152 cases for background checks, sustained 114 appeals, and terminated 254 cases.

By contrast, respondent appeals represented through the Project during the same timeframe were resolved in the respondent's favor approximately 31% of the time – *triple* the success rate of unrepresented respondent appeals, and *double* the overall success rate of respondent appeals before the Board. Out of the 269 respondent appeals cases represented by the Project during this time frame, 84 were sustained, remanded, remanded for background checks only, or terminated.

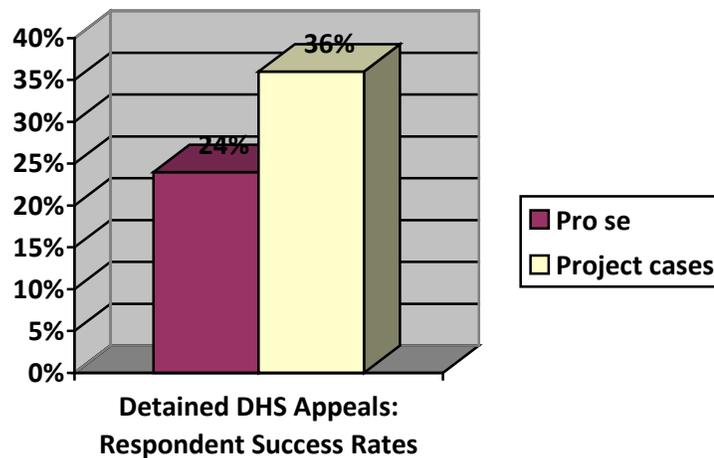
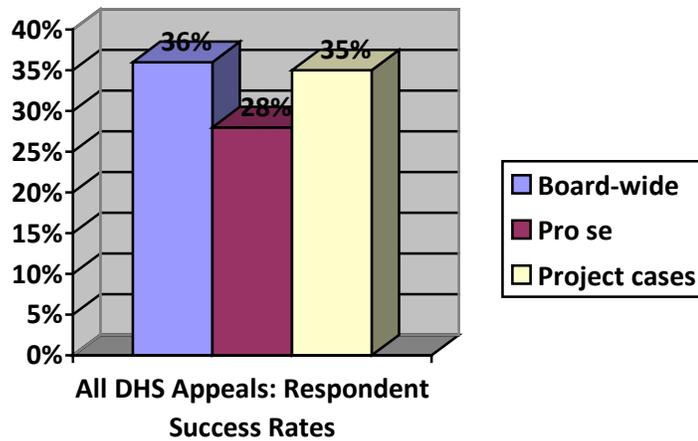


DHS appeals

The Project's involvement in DHS appeals had a less dramatic, but still notable, impact on case outcomes. According to OPAT data, from 2002 to 2011, of the 12,747 Board decisions issued in DHS appeals, 4,606 (or approximately 36%) were dismissed or remanded for a background check. Of the 2,993 decisions during this period involving DHS appeals where the respondent was *unrepresented*, 851 cases (or approximately 28%) were dismissed or remanded for a background check. However, approximately

35% of DHS appeals represented by the Project were either dismissed or remanded for a background check.

The impact of the Project on case outcomes in DHS appeals becomes more pronounced when taking into account the respondent's custody status. In total, the Project represented respondents in 412 DHS appeals. While this is just a small percentage of the 12,747 Board decisions issued involving DHS appeals between 2002 and 2011, it becomes more significant when considering that only 659 of these decisions involved respondents who were detained *and* unrepresented. Of all DHS appeals involving respondents who were detained *and* unrepresented before the Board between 2002 and 2011, only 24% resulted in a dismissal or remand for background checks. When the Project becomes involved, the outcomes improve significantly to a 36% dismissal or background-check remand rate for DHS appeals involving detained respondents.



ANCILLARY EFFECTS OF THE PROJECT

In addition to the increase in favorable case outcomes for respondents represented by pro bono counsel through the Project, respondents have also seen ancillary benefits due to participation in the Project. Volunteer attorneys, accredited representatives, law graduates, and law students who participate in the Project are not required to perform any

“I’m writing from the National Immigrant Justice Center to thank you for your great work with the BIA pro bono project. . . . The cases are well screened, the record is complete, and the additional time offered dramatically improves the quality of representation. In addition to these benefits, we appreciate the work that you all do to bring attention to compelling legal issues. NIJC is always looking for opportunities to advance or clarify the law, and you all do a great job of making sure that cases where this is a real possibility rise to the top of the heap.”

Supervising Attorney
National Immigrant Justice Center,
Heartland Alliance
Chicago, IL

tasks for clients other than representing them before the Board. However, in several instances, pro bono representatives have taken the respondent’s case beyond the Board and represented the respondent on appeal before the relevant federal court of appeals. Additionally, pro bono representatives have often continued to represent the respondent in remanded proceedings before the Immigration Judge, or have been instrumental in helping the respondent securing other pro bono representation for remanded proceedings. Pro bono representatives have also served as liaisons with Immigration and Customs Enforcement regarding issues that have arisen during detention. These continued services, which are not required by the Project but rather valuable side effects of it, have had real results for several respondents.

Furthermore, several cases represented through the Project have resulted in published decisions by either the Board or the federal courts of appeals. For example, the Project provided counsel to the respondent in *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), a Board precedent decision setting forth standards governing whether a respondent is competent to participate in immigration proceedings and the safeguards to be put into place in cases where competence is at issue. The Project also provided counsel to the respondent in *Matter of E-S-I-*, 26 I&N Dec. 136 (BIA 2013), in which the Board set forth legal standards for the proper service of the charging document (the Notice to Appear) in cases involving respondents with indicia of mental incompetency. Another example of a published case in which the Project provided representation is *Matter of Pedroza*, 25 I&N Dec. 312 (BIA 2010), in which the Board held that an individual’s conviction for a crime involving moral turpitude does not render him or her ineligible for cancellation of removal if the crime is punishable by imprisonment for a period of less than a year and qualifies for the “petty offense exception.”

The Project has also identified several cases that have resulted in published circuit court decisions. In these cases, the Project found representation for the case while on appeal before the Board, and pro bono counsel went on to successfully represent the respondent before the federal courts of appeals and, in one instance, beyond. For

example, in a case identified through the Project, the U.S. Court of Appeals for the Ninth Circuit held that the Immigration Judge had incorrectly required the individual to prove that he suffered torture at hands of a government agent and had applied an incorrect legal standard to his application for withholding of removal. *See Reyes-Reyes v. Ashcroft*, 384 F.3d 782 (9th Cir. 2004). In *Lari v. Holder*, 697 F.3d 273 (5th Cir. 2012), the U.S. Court of Appeals for the Fifth Circuit held that Board could not deny a respondent's motion to reconsider based solely on fact that he had been removed from United States. *See also Prestol Espinal v. Att'y Gen.*, 653 F.3d 213 (3d Cir. 2011) (a case originating through the Project in which the court held that the post-departure bar regulation at 8 C.F.R. § 1003.2(d) was invalid). Most notably, in a unanimous decision, the U.S. Supreme Court held that an individual's conviction for driving under the influence of alcohol in violation of Florida law was not a "crime of violence," and therefore, was not an "aggravated felony" warranting removal. *See Leocal v. Ashcroft*, 543 U.S. 1 (2004).

CONCLUSION

After more than a decade into its existence, the Project has continued to build upon the positive findings in the 2004 evaluation. Thanks to CLINIC's continuously high rate of matching pro bono representatives with pro se respondents, respondents who would otherwise have faced a complex legal proceeding on their own have had access to legal representation on appeal.

Respondents whose cases are selected by the Project's automated filtering software or through the Project's lookout list have the benefit of having experienced professionals examine the potential of their cases on appeal. Those who are ultimately matched with pro bono counsel and consent to representation receive valuable legal services in their appeals before the Board, including the filing of briefs that articulate the legal arguments in their cases. The Board members and staff attorneys who review the arguments on presented on appeal have noted the high quality of the briefs that pro bono counsel have submitted.

By providing legal assistance to detained respondents, the Project reaches a population that may not otherwise have access to such services. This ensures that this historically underrepresented population receives access to vital legal services to most effectively present legal claims. The Project consistently achieves much better outcomes for detainees than if those individuals were to represent themselves.

The Project also has an impact on immigration law as it is practiced in this country. The Project has been able to connect dedicated pro bono counsel to cases that involve emerging issues of immigration law. As a result, some of these cases have become published decisions, thus influencing the interpretation of immigration law.

Thanks to the partnership between CLINIC, EOIR, and volunteers, the Project continues to provide valuable legal services to otherwise unrepresented respondents, thus promoting the effective and efficient administration of justice.

APPENDIX

BIA PRO BONO PROJECT SURVEY

A# _____

1. Did the brief filed by pro bono counsel in this case adequately identify the dispositive issues and clearly articulate pertinent arguments of the case?

YES NO

Please explain.

2. How would you rate the quality of the brief by pro bono counsel in this case compared to most briefs filed by pro se respondents?

BETTER SAME WORSE

Please explain.

3. How would you rate the quality of the brief submitted by pro bono counsel compared to most briefs filed by respondents represented by private counsel?

BETTER SAME WORSE

Please explain.

4. Did pro bono counsel's brief assist you in understanding the issues in this case?

YES NO

Please explain.

5. Did pro bono counsel's brief assist in reducing the time it took you to resolve this case?

YES NO

Please explain.

6. Did pro bono counsel's appearance in this particular case increase the likelihood of a favorable Board decision for this respondent?

YES

NO

Please explain.

7. In your opinion, does the entry of pro bono counsel's appearance in general increase the likelihood of a favorable Board decision?

YES

NO

Please explain.

8. Prior to this case, had you ever noticed in any case you had reviewed in the past that an attorney had been obtained specifically through the BIA Pro Bono Project to represent an alien before the BIA? If so, approximately in how many cases?

Thank you for participating in this survey!