

Southeast Immigrant Freedom Initiative Guide for Pro Bono Counsel

MISSION

The Southeast Immigrant Freedom Initiative (SIFI) provides high-quality, holistic pro bono legal representation to immigrants detained in the southeastern United States. By ensuring that skilled attorneys are available to protect detained immigrants' due process rights, the SIFI endeavors to win every meritorious deportation defense case arising out of recent and anticipated immigration enforcement actions.

Pro bono attorneys are involved in the following SIFI Project phases:

- Release Phase: On-the-Ground Detention Center-Based Intake, Bond Representation, and Initial Preparation of Deportation Defense; Remote Support for SIFI's Bond Representation.
- Merits Phase: Representation of Detained Immigrants.

SIFI'S HISTORY

The Southeast Immigrant Freedom Initiative was developed by and is coordinated by the Southern Poverty Law Center (SPLC). Implementation of the first SIFI office at the Stewart Detention Center in Lumpkin, Georgia was a collaboration between SPLC, the American Immigration Lawyers Association (AILA), the American Immigration Council (Council), the Innovation Law Lab (Law Lab), and the American Immigration Representation Project (AIRP). Since SIFI's launch in March 2017, SPLC has opened three additional SIFI offices at the Irwin County Detention Center in Ocilla, Georgia; the Folkston ICE Processing Center in Folkston, Georgia; and the LaSalle ICE Processing Center in Jena, Louisiana.

OBJECTIVES

Objective 1: Provide Pro Bono Representation to Protect Immigrants' Due Process Rights in the Southeast

Why: When an attorney is not present to hold them accountable, immigration prosecutors and judges often place expediency and, at times, ideology ahead of immigrants' fundamental due process rights.¹ On the other hand, detained immigrants with counsel are more than 10 times as likely to succeed in their cases as detained immigrants without a lawyer. Immigrants who are released from detention and are able to secure counsel are almost 20 times as likely to succeed as pro se detained immigrants.²

Deportation separates parents from their children, leads to economic instability and potential impoverishment for both deportees and the families they leave behind, and may result in persecution for deportees. Lives, families, and futures are on the line.³

How: By providing aggressive, high-quality, and professional representation, we endeavor to win every meritorious case brought on behalf of immigrants detained in the southeastern United States.

Objective 2: Challenge the Deportation Machine

Why: Congress has ensured that noncitizens have a right to a hearing in many cases and to administrative process in others.⁴ Yet the complexity is daunting.⁵ When a detainee lacks counsel, the system runs like a crushing machine. The process rolls over the immigrant, and detention is used as the ultimate leverage.⁶

The deportation machine only functions because the vast majority of immigrants swept up in raids and apprehended through other enforcement actions do not have lawyers. The efficacy of the machine depends upon the assumption that immigrants will pass through detention centers and be quickly processed for removal, and that immigrants will not be informed of and exercise their rights.⁷

How: If held accountable by counsel who protect the due process rights of their clients and assist those clients in seeking bond and relief on the merits of their cases, we are putting what should be a natural burden on the legal process that adjudicates deportations. By building representation for detained immigrants and protecting their rights as they move through this process, we show that the deportation machine functions with routine deprivations of these rights. Thus, we challenge the machine and show the critical necessity of fundamental reforms.

Objective 3: Educate the Public about Immigrants and Thereby Change the Narrative

Why: Current immigration policies that have expanded removal priorities are based on hate and fear, not facts.⁸ Some of the advisors and agency chiefs who have recently advocated for vast expansion of immigration enforcement and the scaling back of immigrants' due process rights have close ties with anti-immigrant hate groups and parrot their rhetoric.⁹

They have attempted to take control of the narrative by spreading misinformation, describing immigrants as criminals, job-stealers, and even terrorists.¹⁰ These narratives dehumanize and vilify immigrants to justify unchecked enforcement and an erosion of fundamental rights.¹¹

Yet, draconian enforcement did not begin with the current administration. The previous eight years saw more deportations than in any prior administration.¹² While the motives may have been different – a failed effort to achieve comprehensive immigration reform by mollifying advocates for strict enforcement – the results were still devastating for immigrant communities and similarly relied upon the erosion of immigrants' due process rights. These earlier policies laid the foundation for the current expansion of detention and deportation, now propelled by amplified anti-immigrant rhetoric.¹³

As long as this is the narrative the public hears, efforts to implement immigration laws and policies rooted in human rights (and in actual facts) will fail.

How: We counter the current false narrative by helping raise detained immigrants' voices and by reminding the public that these immigrants are our families, friends, and neighbors. These are regular – and sometimes extraordinary – people who came here seeking refuge and the opportunity to provide better lives for their families.

We publicize real stories – backed by empirical evidence – of the women, men, and children we serve. These stories defuse the fear of, and hatred toward, immigrants by demystifying who they are.

Objective 4: Hold Law Enforcement and Detention Facility Personnel Accountable for Violations of Immigrants' Civil Rights

Why: The history of immigration enforcement in the United States also is a history of racial profiling, unconstitutional searches, surveillance, and arrests, and instilling fear in immigrant communities.¹⁴

The history of immigrant detention in the United States also is a history of cruel conditions of confinement in geographically isolated and often for-profit prisons; little or no access to counsel; and, at times, indefinite incarceration without trial, conviction, or the ability to post bond.¹⁵ This is fundamentally at odds with the constitutional and human rights of all people, including immigrants.

How: We gather information and data during the intake process at immigrant detention centers. Where raids or other immigration enforcement actions violate immigrants' constitutional rights, we bring litigation or refer the cases to outside attorneys, including SIFI volunteers. Where DHS prosecutors attempt to introduce evidence seized in violation of immigrants' constitutional rights, we file motions to suppress.

Through ongoing communication with detained immigrants, we monitor conditions of confinement, particularly focusing on efforts prevent access to legal counsel. We advocate and, if necessary, litigate to challenge any efforts by detention officials and immigration judges to deny or limit immigrants' ability to be represented by an attorney. Further, where the duration of detention violates an immigrant's constitutional rights, we represent that immigrant in a federal habeas corpus action or refer the immigrant to outside counsel.

Objective 5: Cultivate and Expand Attorney Engagement

Why: There are more attorneys in the U.S. Senate, the U.S. House of Representatives, and in state legislatures than almost any other profession.¹⁶ Attorneys advise all levels of government. Through individual representation and strategic litigation, attorneys have the power to challenge constitutional deprivations and other injustices. Yet, many attorneys don't know how immigration policies affect real people.

How: We need to make the lives of detained immigrants visible. For too long, immigration enforcement and detention has been allowed to expand outside of the public's view. We are more likely to run into a burning building to rescue someone we care about.¹⁷ By working directly and developing relationships with individuals harmed by the raids and other enforcement actions, pro bono attorneys will no longer see the immigration policy debate as purely theoretical. Rather, they will understand that draconian immigration policy and enforcement has a terrible impact on real people. Once an attorney completes her or his work with the project, she or he will take the experience home. The attorney will be more likely to remain engaged in immigrant advocacy.

THE ROLE OF SIFI PRO BONO ATTORNEYS IN A NUTSHELL

Release Phase: On the Ground (OTG) Detention Center-based Intake, Bond Representation, and Initial Preparation of Deportation Defense

Purpose: Intake, preparation of bond and parole submissions, legal representation in bond proceedings, assistance with *habeas corpus* proceedings, OTG support for Merits Phase, litigation support and development, court accountability, and public advocacy.

Locations: Stewart Detention Center in Lumpkin, Georgia; Irwin County Detention Center in Ocilla, Georgia; Folkston ICE Processing Center in Folkston, Georgia; and LaSalle ICE Processing Center in Jena, Louisiana.

Training: Approximately 4 hours of online training and onsite in-person training.

Supervision: Continuous, by onsite and remote immigration attorneys.

Length of commitment: For Release Phase, 5-6 days onsite (minimum, Monday through Friday) per attorney. Though not required, we request that each attorney also represent one client through the Merits Phase (described below).

What attorneys will do: Pro bono attorneys will conduct intakes, counsel clients (based on screening by SIFI Lead Attorneys), attend nightly meetings to coordinate strategy and review progress, and record case events in LawLab software. Pro bono attorneys also may draft and compile legal documents and certain applications for relief, prepare clients for credible/reasonable fear interviews, represent clients in bond hearings, liaise with family members of detainees, advocate directly with officials at the detention center, provide OTG support for Merits Phase attorneys, refer related civil rights matters to SPLC and other counsel, and other legal work as needed.

Project provides: Training, immigration forms and templates, legal research materials, continuous oversight and mentoring by immigration attorneys, advocacy support, logistical support, intake screening, and investigation support. A remote (non-OTG) bond team will be available to assist with bond-related information gathering. A shared workspace near the detention center will be available. The project may provide interpretation and translation services under certain circumstances. For the duration of the Release Phase, represented detained immigrants will be clients of the SIFI Lead Attorneys, but Release Phase pro bono attorneys may need to enter appearances on behalf of certain clients if necessary.

Attorney provides: The pro bono attorney will pay for her or his travel, accommodations, though some limited free or low-cost accommodations may be available near the project workspace, and meal expenses (travel grants are available for attorneys at certain non-profit organizations). Each attorney should bring a laptop computer or tablet. For access to the detention center and courtrooms, attorneys should bring a Bar card or certificate of good standing, and a government-issued photo ID. Each attorney must be licensed to practice law in any U.S. jurisdiction and must meet SIFI ethical guidelines. Attorneys may be asked to pay interpretation and translation costs associated with the cases they are handling.

Merits Phase: Merits Representation of Detained Immigrants

Purpose: Applications for defensive relief, legal representation in merits proceedings and appeals, court accountability, and public advocacy.

Locations: Starting at any detention center where SIFI has an office and expanding as cases are transferred. Most of the case work may be done remotely. However, some in-person court appearances will be necessary. Some OTG support may be provided by the Release Phase attorneys.

Training: 6-20 hours, depending on complexity of case and attorney's immigration law experience. Though not required, we also recommend that attorneys participate in the Release Phase before joining the Merits Phase.

Supervision: Continuous, by onsite and remote subject matter expert immigration attorneys (the tactical team).

Length of commitment: Duration of case, through appeals to the Board of Immigration Appeals (BIA) and Article III courts as appropriate.

What attorneys will do: With close mentoring by SIFI subject matter experts, each Merits Phase pro bono attorney will represent a client in the merits phase of his or her case, through any appeals. The representation may include detailed client interviews, overseeing investigations in support of client's claims, liaising with family members of detainees, preparing applications for immigration relief, preparing legal briefing, filings and appearances in federal habeas corpus proceedings, appearing at merits hearings, briefing and arguing BIA appeals, briefing and arguing appeals (if warranted) to the appropriate Article III court, and other legal work as necessary.

Merits Phase attorneys also may represent detainees in certain bond hearings.

Project provides: Training (CLE credit may be available), immigration forms and templates, legal research materials (not including online research platforms such as Lexis or Westlaw), continuous oversight and mentoring by immigration attorney subject matter experts, advocacy support, logistical support, and investigation support. A shared workspace with an internet connection and standard office supplies may be available, depending on location. The project may provide interpretation and translation services under certain circumstances.

Attorney provides: The attorney will pay for her or his travel, accommodations, and meal expenses (travel grants are available for attorneys at certain non-profit organizations). Each attorney should have a laptop computer or tablet and have her or his own account to access an online legal research platform such as Lexis or Westlaw. Each attorney must be licensed to practice law in any U.S. jurisdiction and be admitted or eligible for admission (directly or pro hac vice) in Article III courts in the jurisdiction where the client is detained. The client will be represented by the pro bono attorney. Each attorney must carry malpractice insurance that would cover pro bono representation. The attorney will be expected to cover all costs, including filing fees and the costs of any expert witnesses. Generally, with limited exceptions, attorneys will be expected to pay interpretation and translation costs associated with the cases they are handling.

1 Letter from Eunice Cho, Staff Attorney, SPLC and Olga Byrne, Senior Associate, Human Rights First to Juan P. Osuna, Director, Executive Office for Immigration Review, U.S. Department of Justice (Aug. 25, 2016) (available at https://www.splcenter.org/sites/default/files/2016-8-25_stewart_detention_center-eoir_letter_0.pdf).

2 Ingrid Eagly & Steven Shafer, A National Study of Access to Counsel in Immigration Court, 164 Univ. Penn. L. Rev. 1, 49-50 (2015).

3 Implications of Enforcement Activities for the Well-Being of Children in Immigrant Families, Urban Institute and Migration Policy Institute (Sept. 2015) (available at <http://www.migrationpolicy.org/research/implicationsimmigration-enforcement-activities-well-being-children-immigrant-families>).

4 8 USC §1229(a)

5 Michelle Kim, The Complexity of Immigration Law, Immigration Daily, (available at <http://www.ilw.com>).

6 Ingrid Eagly & Steven Shafer, A National Study of Access to Counsel in Immigration Court, 164 Univ. Penn. L. Rev. 1, 49-50 (2015).

7 Human Rights First, Reducing the Immigration Court Backlog and Delays, (July 2016) (available at <http://www.humanrightsfirst.org>).

8 AILA Summary and Analysis of the DHS Memorandum on Interior Enforcement (Feb. 21, 2017) (available at <http://www.aila.org>)

9 See, e.g., Southern Poverty Law Center (SPLC), Kris Kobach: Lawyer for America's Nativist Movement (Nov. 18, 2016) (available at <https://www.splcenter.org/20161118/kris-kobach-lawyer-america-nativist-movement>); SPLC,

Jeff Sessions: Champion of Anti-Muslim and Anti-Immigrant Extremists (Nov. 18, 2016) (available at <https://www.splcenter.org/hatewatch/2016/11/18/jeff-sessions-champion-anti-muslim-and-anti-immigrant-extremists>); SPLC, Former Executive Director of Anti-Immigrant Hate Group FAIR Joins Trump Administration [as Chief of Staff at CBP] (Jan. 23, 2017) (available at <https://www.splcenter.org/hatewatch/2017/01/23/former-executive-director-anti-immigrant-hate-group-fair-joins-trump-administration>).

10 Alex Nowrasteh, Immigrants and Crime—What the Research Says, Cato Institute (July 14, 2015) (available at <http://www.cato.org>).

11 Alan Gomez, Trump's quick deportation plan may be illegal, past immigration chiefs say, USA Today (Feb. 24, 2017) (available at <http://www.usatoday.com>)

12 Serena Marshall, Obama Has Deported More People Than Any Other President, ABC News (Aug. 29, 2016) (available at <http://abcnews.go.com/Politics/obamas-deportation-policy-numbers/story?id=41715661>).

13 Marisa Franco and Carlos Garcia, The Deportation Machine Obama Built for President Trump, The Nation (June 17, 2016) (available at <http://www.thenation.com>)

14 David Cole, Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism (2003).

15 SPLC, Shadow Prisons: Immigrant Detention in the South (Nov. 2016) (available at https://www.splcenter.org/sites/default/files/leg_jip_shadow_prisons_immigrant_detention_report.pdf).

16 Jennifer E. Manning, Membership in the 114th Congress: A Profile, Congressional Research Service, (2016) (available at <http://www.fas.org>).

17 In 1984, advocate for the homeless Mitch Snyder, when asked why he went on a 31-day hunger strike to force the U.S. Department of Health and Human Services to convert an abandoned building into a homeless shelter, answered, "It's the equivalent of running into a burning building to save those you love. We love those people at the shelter."