

# **ARTICLES & ESSAYS: The Washington Lawyers' Committee's Cases and Other Initiatives Involving Immigration and Refugee Law**

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## **Reporter**

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## **Text**

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[\*218]

### INTRODUCTION

The Washington Lawyers' Committee for Civil Rights & Urban Affairs ("Lawyers' Committee" or "Committee") established its program now named the Immigrant and Refugee Rights Project in 1978 ("Project").<sup>1</sup> It was the first such program in the Washington D.C. area that employed Spanish-speaking staff to respond to the legal needs of newcomers in the community.<sup>2</sup> The Project sought to mobilize the resources of the private bar to provide critical legal representation and advocacy on issues facing immigrants. The Project has devoted significant resources in assisting immigrants to obtain their civil rights or challenge denials of basic civil rights due to their national origin or citizenship status. The Project has filed a number of cases challenging discriminatory employment and housing

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<sup>1</sup> Deborah M. Levy, Washington Lawyers' Committee for Civil Rights under Law: The Alien Rights Law Project, [\*27 How. L.J. 1265 \(1984\)\*](#). The project was initially known as the Alien Rights Law Project and renamed in 1990 as the Asylum and Refugee Rights Project. Its current name was adopted in 1999 in order to reflect changes in the issues addressed and the client population the Committee sought to serve.

<sup>2</sup> Since 2012, the project has focused increasingly on civil rights denials affecting newcomers in the areas of employment, housing, and criminal justice reform. As a result, responsibility for the day-to-day operation of the project has been assigned to Committee staff members with specific expertise in these fields. During the period 1978-2012, the following individuals served as Project Directors:

1978-1981 Dale F. Swartz

1981-1982 Juan Mendez

1982-1990 Carolyn Waller

1991-1997 Deborah Sanders

1998-2004 Denise Gilman

2006-2012 Laura Varela

practices, denouncing law enforcement misconduct against immigrants, and assisting groups and individuals targeted for abuse following the September 11, 2001, terrorist attacks. It has also researched and reported on civil rights issues and proposed policy changes to the government to improve respect for the civil rights of immigrants.

The Project's involvement in immigration and refugee issues is wide-ranging: it serves as an intermediary between federal and state government agencies and immigrant communities, it has created one of the strongest pro bono immigration legal referral programs in the area, it coordinates local and national policy advocacy initiatives, it provides training to lawyers who seek to represent immigrants and asylees, and it responds to traditional civil rights concerns in areas such as fair housing and equal employment. This article summarizes a number of the Project's noteworthy endeavors relating to immigration [\*219] and refugee issues that have occurred since the article Washington Lawyers' Committee for Civil Rights Under Law: The Alien Rights Law Project was published in 1984,<sup>3</sup> which summarized the Committee's work on the Alien Rights Law Project since 1978.<sup>4</sup>

## I. THE CURRENT STATUS OF IMMIGRATION IN THE UNITED STATES

Immigration has become a particularly contentious issue in recent years. Bills have been introduced to significantly reduce the levels of legal immigration to the United States<sup>5</sup> and the current President, Donald Trump, has publicly announced his support of such reductions.<sup>6</sup> The Administration has also announced restrictive new procedures affecting asylum seekers and has begun to expand the already massive immigration detention system. Serious concerns have been raised as to whether the Administration's actions to remove undocumented immigrants from the United States are violating due process because of the lack of access to legal representation by these immigrants as well as clogged immigration courts.<sup>7</sup> There were an estimated eleven million undocumented immigrants in the United States as of 2015.<sup>8</sup> Large numbers of documented and undocumented persons living and working in the United States are being affected by the changes in immigration policy.<sup>9</sup> Other initiatives include the creation of a denaturalization task force to investigate whether certain naturalized U.S. citizens committed fraud in the naturalization process, with [\*220] the goal of revoking their naturalization and removing those individuals from the United States.<sup>10</sup>

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<sup>3</sup> Levy, *supra* note 1, at 1265.

<sup>4</sup> *Id.* at 1267.

<sup>5</sup> See generally RAISE Act, S. 1720, 115th Cong. (2017) (amending the Immigration and Naturalization Act to establish a point system for immigration).

<sup>6</sup> See President Donald J. Trump Backs RAISE Act, whitehouse.gov, (Aug. 2, 2017), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/>.

<sup>7</sup> Katie Benner & Charlie Savage, Due Process for Undocumented Immigrants, Explained, N.Y. Times (June 25, 2018), <https://www.nytimes.com/2018/06/25/us/politics/due-process-undocumented-immigrants.html>; The Deported: Immigrants Uprooted from the Country They Call Home, Human Rights Watch (Dec. 5, 2017), <https://www.hrw.org/report/2017/12/05/deported/immigrants-uprooted-country-they-call-home>.

<sup>8</sup> Jeffrey S. Passel & D'Vera Cohn, As Mexican Share Declined, U.S. Unauthorized Immigrant Population Fell in 2015 Below Recession Level, Pew Res. Ctr. (Apr. 25, 2017), <http://www.pewresearch.org/fact-tank/2017/04/25/as-mexican-share-declined-u-s-unauthorized-immigrant-population-fell-in-2015-below-recession-level/>.

<sup>9</sup> CAP Immigration Team & Michael D. Nicholson, The Facts on Immigration Today: 2017 Edition, Ctr. for Am. Progress (Apr. 20, 2017, 9:00 AM), <https://www.americanprogress.org/issues/immigration/reports/2017/04/20/430736/facts-immigration-today-2017-edition/>.

<sup>10</sup> See Denaturalization, Explained: How Trump Can Strip Immigrants of their Citizenship, Vox (July 18, 2018, 11:20 AM), <https://www.vox.com/2018/7/18/17561538/denaturalization-citizenship-task-force-janus>.

Comprehensive immigration reform is desperately needed but has little chance of passing due to the inability of the parties in Congress and the President to agree on those issues. In the meantime, the Trump Administration has repealed the Deferred Action for Childhood Arrivals ("DACA") program,<sup>11</sup> and since September 2017, has ended the Temporary Protected Status ("TPS") designation for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan,<sup>12</sup> and more countries may have TPS terminated in the future. The termination of TPS for these nationalities will result in hundreds of thousands of foreign nationals who have lived and worked lawfully in the United States for decades losing work authorization and facing deportation to unsafe conditions in their home countries.<sup>13</sup>

## II. THE PROJECT HAS BEEN INVOLVED IN A WIDE RANGE OF CASES AND INITIATIVES ON BEHALF OF IMMIGRANTS AND REFUGEES

### A. Recent Cases

In May 2017, citizens or lawful permanent residents who had at least one family member seeking entry to United States, and three organizations serving or representing Muslim clients or members, brought an action for declaratory and injunctive relief against the President, the Department of Homeland Security ("DHS") and its Secretary, the Department of State and its Secretary, and the Office of the Director of National Intelligence and its Director, regarding the [\*221] President's second Executive Order temporarily suspending entry of nationals from six predominantly Muslim countries, suspending for 120 days the United States Refugee Admissions Program ("USRAP"), and decreasing refugee admissions for 2017 by more than half.<sup>14</sup> The Committee filed an amicus curiae brief along with several other amici. The Fourth Circuit held that a nationwide preliminary injunction was warranted, but the order was later vacated following the Executive Order's expiration "by its own terms" on September 24, 2017.<sup>15</sup>

On October 5, 2017, following the Trump Administration's decision to roll back DACA, the Lawyers' Committee, together with CASA de Maryland and a coalition of other immigrant rights organizations and individual recipients and applicants of the DACA program, sued the federal government for unjustly and illegally ending the program. The lawsuit argues that the government did not follow proper procedures in ending the program and was instead motivated by an unconstitutional racial animus against Mexican and Central American DACA beneficiaries. It seeks to reinstate DACA and protect the privacy of individuals who were induced to submit sensitive personal information to immigration officials when they applied.<sup>16</sup>

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<sup>11</sup> This termination is currently being litigated. See [Casa De Maryland v. U.S. Dep't of Homeland Sec., 284 F. Supp. 3d 758 \(D. Md. 2018\)](#), appeal filed Casa de Maryland v. DHS, Nos. 18-1521, 18-1522 (4th Cir. Sept. 1, 2018).

<sup>12</sup> Royce Murray, TPS Is Extended for Somalia, Leaving Only 4 of 10 Designations Intact, Am. Immigr. Council: Immigr. Impact (July 20, 2018), <http://immigrationimpact.com/2018/07/20/tps-extended-somalia-designations/> ("Although the effective dates of those terminations were delayed by 12 or 18 months, more than 310,000 TPS holders are now on a path to losing their status altogether and will be at risk of deportation. That leaves only Somalia, South Sudan, Syria, and Yemen with TPS, which includes approximately 8,800 beneficiaries.").

<sup>13</sup> See Tanya Arditi, RELEASE: U.S. Would Lose \$ 164B in GDP Over 10 Years If TPS Holders from El Salvador, Honduras, and Haiti Were Removed from Labor Force, Finds New CAP Analysis, Ctr. for Am. Progress (Oct. 20, 2017), <https://www.americanprogress.org/press/release/2017/10/20/441213/release-u-s-would-lose-164b-in-gdp-over-10-years-if-tps-holders-from-el-salvador-honduras-and-haiti-were-removed-from-labor-force-finds-new-cap-analysis/>.

<sup>14</sup> [Int'l Refugee Assistance Project v. Trump, 857 F.3d 554, 574 \(4th Cir. 2017\)](#), vacated, **138 S. Ct. 353 (2017)**.

<sup>15</sup> [Int'l Refugee Assistance Project v. Trump, 876 F.3d 116, 119 \(4th Cir. 2017\)](#) (citing Exec. Order No. 13,780, [82 Fed. Reg. 13209](#) (Mar. 9, 2017)).

<sup>16</sup> See [Casa De Maryland, 284 F. Supp. 3d at 762-63, 778-79](#).

In addition, on October 4, 2017, the Lawyers' Committee and Wiley Rein LLP filed a Fifth Amendment complaint in the U.S. District Court for the Western District of Virginia on behalf of immigrants detained in the Shenandoah Valley Juvenile Center.<sup>17</sup> The complaint seeks to remedy a range of violations of the U.S. Constitution, including the systemic and routine denial of necessary mental health care, discrimination based on race and national origin by staff, excessive force, and the extreme and inappropriate use of restraints and seclusion in the Center.<sup>18</sup> The complaint seeks an injunction from the court to reform the practices at the Center.<sup>19</sup> The Center houses approximately 30 immigrant children, and is one of only two secure detention facilities for immigrant children in the country.<sup>20</sup> Each of the [\*222] young people in the facility entered the United States escaping violence in their home countries, predominantly in Mexico and Central America.<sup>21</sup>

#### B. Local Advocacy

In 2004, the Lawyers' Committee helped pass the D.C. Language Access Act of 2004, which was one of the first in the country. They spearheaded a coalition of grassroots and legal organizations from the community to draft and promote the legislation through campaigns, testimony before the D.C. council, and by working with D.C. council members. The law includes strong provisions requiring local government to service immigrants in the languages that they speak. The Act "obligates the DC government to provide equal access and participation in public services, programs, and activities for residents of the District of Columbia who cannot (or have limited capacity to) speak, read, or write English."<sup>22</sup>

The Lawyers' Committee has also been active in local policy issues. For example, on December 6, 2016, the Lawyers' Committee submitted testimony in support of the D.C. Council's Resolution Regarding Federal Immigration Raids (2016 PR21-0617), which was introduced in response to the escalating fear felt by the D.C. immigrant community regarding the pervasive anti-immigrant rhetoric that has characterized politics in recent times.<sup>23</sup> The Lawyers' Committee's testimony urged the D.C. Council to pass key legislation that would provide stronger protection to immigrant residents.

#### C. Lawyer Training

In 1978, the Project began training lawyers to provide pro bono representation to individuals in deportation proceedings or facing civil rights violations related to their national origin or non-citizen status. The training was initially provided to several hundred lawyers. Today, the Lawyers' Committee's achievements are largely due to the collaboration between Committee staff and the thousands of lawyers from [\*223] over 100 law firms in the D.C. area who have given generously of their pro bono time.

#### D. Employment Discrimination

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<sup>17</sup> See John Doe, et al. v. Shenandoah Valley Juvenile Ctr. Comm'n, No. 5:17-cv-00097, ECF No. 1 (W.D. Va., Oct. 4, 2017).

<sup>18</sup> Id. at 1.

<sup>19</sup> Id. at 24.

<sup>20</sup> Id. at 6, 16.

<sup>21</sup> Id. at 1.

<sup>22</sup> See Office of Human Rights, D.C., Know Your Rights: Language Access, <https://ohr.dc.gov/service/know-your-rights-language-access> (last visited Oct. 7, 2018) (summarizing the purpose of D.C. Code Mun. Regs. tit. 4 § 1201 (LexisNexis 2018)).

<sup>23</sup> See Matthew K. Handley et al., The Committee Submits Written Testimony in Support of Sense of the Council Regarding Federal Immigration Raids Resolution of 2016 PR21-0617, Wash. Law. Comm. (Dec. 6, 2016), <http://www.washlaw.org/news-a-media/537-testimony-pr21-0617>.

The Lawyers' Committee has been involved in a number of employment discrimination cases involving immigrant workers. In *Montoya v. S.C.C.P. Painting Contractors*,<sup>24</sup> the Lawyers' Committee and co-counsel Pillsbury Winthrop Shaw Pittman LLP obtained a consent decree, approved by the Maryland District Court, against S.C.C.P. Painting Contractors, which agreed to pay \$ 200,000 in unpaid wages, damages, and attorneys' fees to immigrant workers who had claimed wage payment abuse by the company.<sup>25</sup> The Lawyers' Committee and co-counsel had filed a collective and class action against the area painting company on February 21, 2007, in Maryland District Court for engaging in a uniform and systematic scheme of wage payment abuse against their immigrant employees for work performed throughout Washington, D.C., and Maryland.<sup>26</sup> The case established important precedent in the Fourth Circuit on January 14, 2008 when the District Court of Maryland ruled, in a published decision, that an individual's immigration status is irrelevant in a Fair Labor Standards ("FLSA") action.<sup>27</sup> The court held that the protections provided by the FLSA are available to citizens and undocumented immigrants, regardless of immigration status. This result will help protect thousands of exploited immigrant workers in the future.

In *Lopez v. NTI*,<sup>28</sup> the Committee co-counseled with Brown Goldstein Levy LLP and CASA of Maryland, and successfully represented Plaintiffs with limited proficiency in English who had claims for unpaid minimum, overtime, and promised wages after digging trenches and installing fiber-optic cable for the benefit of Verizon. To date, the litigation has resulted in a partial settlement of \$ 105,000.<sup>29</sup> This amount covers a portion of the workers' unpaid promised wages as well as attorneys' fees and costs.<sup>30</sup>

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### E. Housing Discrimination

The Lawyers' Committee has had particular success in its work challenging housing discrimination against immigrants. In *Torres v. District of Columbia*,<sup>31</sup> the Lawyers' Committee filed a class action lawsuit against the D.C. Department of Human Services alleging violations of language access requirements.<sup>32</sup> The suit resulted in a landmark settlement against the D.C. Department of Human Services.<sup>33</sup>

In *2922 Sherman Avenue Tenants Ass'n v. District of Columbia*,<sup>34</sup> the Lawyers' Committee, together with Relman & Dane PLLC, Jenner & Block LLP, and Tycko & Zavareei LLP, obtained a settlement worth \$ 700,000 on behalf of twenty-four tenants of the Columbia Heights/Mt. Pleasant Neighborhood alleging discrimination on the basis of

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<sup>24</sup> [\*Montoya v. S.C.C.P. Painting Contractors, Inc.\*, 589 F. Supp. 2d 569 \(D. Md. 2008\).](#)

<sup>25</sup> [\*Id.\* at 582.](#)

<sup>26</sup> [\*Complaint at 2, Montoya v. S.C.C.P. Painting Contractors, Inc.\* 530 F. Supp. 2d at 746, 749 \(D. Md. 2008\).](#)

<sup>27</sup> [\*Montoya\*, 530 F. Supp. 2d at 749.](#)

<sup>28</sup> [\*Lopez v. NTI, LLC\*, 748 F. Supp. 2d 471 \(D. Md. 2010\).](#)

<sup>29</sup> [\*Id.\* at 474.](#)

<sup>30</sup> *Id.*

<sup>31</sup> *Torres v. District of Columbia*, No. 1:15-cv-01766 (D.D.C. Oct. 21, 2015).

<sup>32</sup> Def. Notice of Removal at 2, *Torres*, No. 1:15-cv-01766.

<sup>33</sup> Settlement Agreement, Wash. Law. Comm., <http://www.washlaw.org/pdf/dhslan> settlement 11.29.16.pdf (last visited Oct. 7, 2018).

<sup>34</sup> 2922 [\*Sherman Ave. Tenants' Ass'n v. D.C.\*, 444 F.3d 673 \(D.C. Cir. 2006\).](#)

national origin.<sup>35</sup> The settlement resolved the tenants' claims that District officials had selectively enforced housing codes when they condemned large apartment buildings in predominantly Hispanic neighborhoods and forced tenants to move, under the guise of "code enforcement," with little or no notice to the tenants, and no relocation assistance.<sup>36</sup>

In *Equal Rights Center v. City of Manassas*,<sup>37</sup> the Lawyers' Committee and co-counsel, Beveridge & Diamond PC, filed a lawsuit in the U.S. District Court for the Eastern District of Virginia claiming that the City had violated the U.S. Constitution, the Federal Fair Housing Act, and federal and state civil rights laws to target Hispanic residents and by engaging in illegal harassment, intimidation, and coercion based on national origin and familial status.<sup>38</sup> The complaint further alleged that Manassas City Public Schools violated the U.S. Constitution, the Federal Fair Housing Act, and federal and state civil rights laws by secretly disclosing confidential student records to the [\*225] City to target Hispanic families for discriminatory zoning actions.<sup>39</sup> In September 2008, the parties reached a settlement agreement which included expansive new protections for residents related to the City's residential inspections.<sup>40</sup> As part of the settlement, the City and the School Board agreed to pay \$ 775,000 to resolve all the plaintiffs' claims of damages, attorneys' fees, and administrative costs relating to the lawsuit.<sup>41</sup>

#### F. Education

The Lawyers' Committee has also been actively involved in cases involving discrimination of immigrants in education. In *Horne v. Flores*,<sup>42</sup> the Lawyers' Committee filed an amicus curiae brief in a case alleging that the State of Arizona was violating Equal Educational Opportunities Act ("EEOA") by failing to take appropriate action to overcome language barriers.<sup>43</sup> The Supreme Court ultimately held that a statewide injunction was not warranted, and that the district court must consider factual and legal challenges that may warrant relief on remand.<sup>44</sup>

In a seminal case, *Plyler v. Doe*,<sup>45</sup> the Supreme Court affirmed a Fifth Circuit Court of Appeals decision that held unconstitutional a Texas statute denying the children of undocumented immigrants access to free public education.<sup>46</sup> The Project participated in the Supreme Court as well as in the Court of Appeals. In the Fifth Circuit, the Project

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<sup>35</sup> Sue Anne Pressley Montes, *City to Pay \$ 700,000 in Settlement with Hispanic Tenants*, Wash. Post (Dec. 14, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/13/AR2006121302518.html>.

<sup>36</sup> *Id.*

<sup>37</sup> *Equal Rights Ctr. v. City of Manassas*, No. 1:07-cv-01037 (E.D. Va. Oct. 16, 2007).

<sup>38</sup> Complaint at 2, 15, *Equal Rights Ctr. v. City of Manassas*, No. 1:07-cv-01037 (E.D. Va. Oct. 16, 2007).

<sup>39</sup> *Id.* at 16.

<sup>40</sup> *Manassas City Council Approves Settlement of Civil Rights Lawsuit*, Equal Rights Ctr., (Sept. 23, 2008), <https://equalrightscenter.org/pr-archives/2008/07-09.23.08> *Manassas City Council Approves Settlement of Ci.pdf*.

<sup>41</sup> *Id.*

<sup>42</sup> [\*Horne v. Flores\*, 557 U.S. 433 \(2009\)](#).

<sup>43</sup> Brief of Amici Curiae Washington Lawyers' Committee for Civil Rights and Urban Affairs Immigrant and Refugee Rights Project, DC Language Access Coalition, and Latin American Youth Center, in Support of Respondents Miriam Flores and Rosa Rzeslawski, at 4-6, *Thomas C. Horne, Superintendent, Arizona Public Instruction v. Miriam Flores, et al.*, 2009 WL 815217.

<sup>44</sup> [\*Horne\*, 557 U.S. at 470-72](#).

<sup>45</sup> [\*Plyler v. Doe\*, 457 U.S. 202 \(1982\)](#).

<sup>46</sup> [\*Id.\* at 230](#).

joined with the Bishop of the Episcopal Diocese of Dallas to file a brief as amici curiae.<sup>47</sup> The Project and the Diocese argued that the state's denial of basic education to undocumented immigrant children violated both the Due Process and Equal Protection Clause [\*226] of the Fourteenth Amendment.<sup>48</sup> In the Supreme Court, the Project filed an amicus brief together with the Bishop of the Episcopal Diocese of Dallas. The brief focused primarily on the argument that the statute was unconstitutional under any standard of review because it was not rationally related to any legitimate State purpose.<sup>49</sup> The Project argued that Texas could not justify the statute merely by adopting a federal purpose.<sup>50</sup> In a 5-4 decision, the Supreme Court affirmed the decision of the Fifth Circuit.<sup>51</sup> Justice Brennan's opinion for the Court began by recognizing that undocumented immigrants may claim the benefit of the Fourteenth Amendment's guarantee of equal protection, and holding that the Texas statute did not pass the rational basis test.<sup>52</sup>

On the local level, the Lawyers' Committee testified before the D.C. Council in July 2015 regarding the "Language Access for Education Amendment Act of 2015," which seeks to increase language access in public schools and would better serve the immigration population of students across the District of Columbia.<sup>53</sup>

### G. Refugees and Political Asylum

Upon the Project's establishment in 1978, it became involved in the administrative proceedings that led to the promulgation of new regulations governing the procedures to be used by the then Immigration and Naturalization Service ("INS") in determining political asylum claims asserted by immigrants at ports of entry or in the United States. For most of 1979 through March 1980, the Project was involved in a coalition effort to enact the Refugee Act of 1980 and to include within the Act provisions that, in substance, would make it consistent with the U.N. Convention and Protocol Relating to the Status of Refugees. The Project has also been involved in efforts to secure extended voluntary departure on behalf of certain groups.

[\*227] In addition to political asylum representation, the Project provided assistance to approximately 350 cases<sup>54</sup> involving post-asylum issues and also responded to approximately 800 telephone calls per month.<sup>55</sup> The Project helped its successful asylees bring their families to the United States. The Project also helped individuals and families apply for legal permanent residency (green cards), obtain required travel documents, apply for citizenship, and obtain fee waivers when eligible. As a result of the hands-on experience gained during this five-year initiative, the Project provided quarterly legal updates and individual assistance to its cadre of volunteer lawyers.

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<sup>47</sup> Brief for the Washington Lawyers' Committee for Civil Rights Under Law and the Bishop of the Episcopal Diocese of Dallas, Texas, as Amici Curiae in Support of Appellees, *Plyler v. Doe*, 1981 WL 389999 (5th Cir. 1981).

<sup>48</sup> *Id.* at 5-7.

<sup>49</sup> Brief for the Washington Lawyers' Comm. for Civil Rights Under Law & the Bishop of the Episcopal Diocese of Dallas, Texas, as Amici Curiae in [Support of Appellees, at 11, \*Plyler v. Doe\*, 457 U.S. 202 \(1982\)](#).

<sup>50</sup> *Id.* at 13.

<sup>51</sup> [Plyler, 457 U.S. at 230](#).

<sup>52</sup> [Id. at 210-11](#).

<sup>53</sup> Comm. on Educ., Council of the District of Columbia, Report on Bill 21-0066, the "Language Access for Education Amendment Act of 2015", B. 21-0066, 21st Sess., at 1, 18 (2015).

<sup>54</sup> The number of post-asylum cases was provided to the author and based on the recollection of the members and/or associates of the Washington Lawyers' Committee.

<sup>55</sup> The number of telephone calls is an estimate of a ten-year period, 1995 to 2005, during which the Project was very active in this aspect of work.

One of its success stories was the reunification of an Ethiopian family. The principal asylee was able to bring their daughter to the United States after a lengthy process, but in the meantime, the daughter gave birth. The quirk in the law was that the asylee's child was eligible to enter the U.S. as asylees, but not the grandchild.<sup>56</sup> The Project succeeded in reunifying the grandchild with his family and avoided a lengthy wait under the family visa process.

The Project responded to approximately eighty telephone calls a month in Spanish, French and other languages through a language line funded by the D.C. Bar. The Project referred callers to other immigration providers including members of the CAIR coalition, government agencies, and private low-cost attorneys. In addition, the Project provided immigration forms, and helped individuals obtain case processing times and court dates.

In *Haitian Refugee Center v. Smith*,<sup>57</sup> a 16-count complaint seeking preliminary and permanent injunctive relief was filed against INS District Office No. 6, alleging that the Government's program regarding Haitian asylum-seekers was designed to achieve mass deportation of Haitians in violation of their rights under the Refugee Protocol, the Constitution, the Immigration and Nationality Act and INS regulations.<sup>58</sup> The Project had an active role in this case. The District Court enjoined the Government from expelling or deporting any members of the class and from further processing of asylum request until the Government submitted, and the court approved, a plan for reprocessing [\*228] the plaintiffs' applications.<sup>59</sup> The Court of Appeals affirmed the aspects of the lower court's decision that found substantial due process violations in the administrative procedures employed by the INS in processing the Haitians' asylum applications.<sup>60</sup> In addition, the Project provided assistance to hundreds of Haitian asylum applicants in proceedings before the Board of Immigration Appeals. Project volunteers worked directly with immigration rights organizations and individual immigration attorneys throughout the country on this matter.

#### H. The Ayuda Case

In 1988, Arent Fox LLP was approached by the Committee for help in representing four immigrant rights organizations - Ayuda, Inc.; the Latin American Youth Center; the Ethiopian Community Center, Inc.; and the Mexican American Legal Defense and Educational Fund - in a challenge to the implementation of the Immigration Reform and Control Act of 1986 ("IRCA").<sup>61</sup> Under that statute, an amnesty program was opened briefly for "undocumented aliens" - defined as immigrants who had entered the country legally as non-immigrants, but whose status subsequently became unlawful through the passage of time or some violation such as unauthorized employment - to come forward to seek legalization.<sup>62</sup> The statute set out the requirements for amnesty, one of which was that "the alien's unlawful status was known to the Government as of [January 1, 1982]."<sup>63</sup> The INS promulgated regulations which defined "known to the government" as "known to the INS."<sup>64</sup> The immigrant rights

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<sup>56</sup> This information was provided to the author by the Washington Lawyers' Committee.

<sup>57</sup> [\*Haitian Refugee Ctr. v. Smith\*, 676 F.2d 1023 \(5th Cir. Unit B 1982\).](#)

<sup>58</sup> [\*Id.\* at 1026-28.](#)

<sup>59</sup> [\*Haitian Refugee Ctr. v. Civiletti\*, 503 F. Supp. 442, 532-33 \(S.D. Fla. 1980\).](#)

<sup>60</sup> [\*Smith\*, 676 F.2d at 1041.](#)

<sup>61</sup> Immigration Reform and Control Act of 1986, Pub.L. 99-603, [\*100 Stat. 3359 \(1986\)\*](#).

<sup>62</sup> *Ayuda, Inc. v. Meese*, 687 F. Supp. 650, 652 (D.D.C. 1988).

<sup>63</sup> *Id.* at 652-53.

<sup>64</sup> *Id.* at 651.



organizations contended that this interpretation was too narrow and that "known to the government" should mean known to any agency of the government.<sup>65</sup>

In consultation with the Arent Fox attorneys involved, the Lawyers' Committee was involved in a significant effort geared towards proposing inventive methods of defining how an applicant could prove he or she was "known to the government." By advocating for a broad [\*229] definition of the concept, the Lawyers' Committee was able to substantially increase the number of successful applications that likely would have been denied otherwise.

A team of Arent Fox attorneys, working with attorneys from the Lawyers' Committee, filed a lawsuit - on behalf of the four immigrant rights organizations and five "Doe" plaintiffs - in the United States District Court for the District of Columbia requesting a declaratory judgment and injunctive relief. The case was assigned to Judge Stanley Sporkin of that Court, who held daily hearings on the matter and, in March 1988, issued a preliminary injunction preventing the INS from enforcing the regulation which limited the number of otherwise eligible immigrants who could seek legalized residence status.<sup>66</sup> Subsequently, the Judge issued approximately thirty Supplemental Orders, some of which established a procedure whereby the undocumented aliens could file an application with Arent Fox<sup>67</sup> to be able to present their cases before a Special Master appointed by Judge Sporkin.<sup>68</sup> The Spanish-language television and radio stations announced this in their news broadcasts, and the next day the Arent Fox switchboard was flooded with calls from Spanish-speaking individuals seeking information and application forms. After the Arent Fox telephone system proved inadequate to the task, questions were referred to the various agencies that then stepped in and provided the personal assistance requested, and a process was established by immigrant organizations to assist foreign nationals in obtaining the benefit. The Lawyers' Committee subsequently assembled a coalition of immigrants' rights groups to help with amnesty applications.

Judge Sporkin's original orders were not appealed by the Government (indeed the Government acquiesced in the rulings). The Judge and the Special Master held daily hearings to refine the process. Because of those hearings, the Arent Fox and Lawyers Committee lawyers were instrumental in expanding the coverage of the initial ruling to other undocumented immigrants.

Later, eleven new organizations filed a motion to intervene in the case and raised issues that had not previously been considered, namely a requirement of the former Immigration and Nationality Act, [8 U.S.C. § 1305](#) (1976), amended by [8 U.S.C. § 1305](#) (1982), that immigrants who remained in the United States for more than 30 days file [\*230] address change reports to the Attorney General on a quarterly basis. Judge Sporkin again ruled for the plaintiffs but this aspect of the case was appealed to the United States Court of Appeals for the D.C. Circuit.<sup>69</sup> The Circuit, in a split decision, concluded on this other aspect that the District Court lacked jurisdiction.<sup>70</sup> The case was remanded to Judge Sporkin who attempted to interpret what the Circuit had said,<sup>71</sup> but the remand was appealed to the Circuit Court and the Circuit Court again reversed the District Court.<sup>72</sup> Arent Fox and the Lawyers' Committee filed at least two certiorari petitions with the United States Supreme Court involving this other aspect of the case. A similar case was before the Supreme Court at the same time and the Court ultimately found that the

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<sup>65</sup> *Id.* The reason for the requirement was to show that the immigrant had in fact been in the United States as of January 1, 1982 and that his or her status had become unlawful as of that date.

<sup>66</sup> *Id.* at 666.

<sup>67</sup> *Id.* at 673.

<sup>68</sup> *Ayuda, Inc. v. Meese*, 700 F. Supp. 49, 51 (D.D.C. 1988).

<sup>69</sup> *Ayuda, Inc. v. Thornburgh*, 880 F.2d 1325, 1329 (D.C. Cir. 1989), vacated, 498 U.S. 1117 (1991).

<sup>70</sup> *Id.* at 1346.

<sup>71</sup> *Ayuda, Inc. v. Thornburgh*, 744 F. Supp. 21, 22 (D.D.C. 1990).

<sup>72</sup> *Ayuda, Inc. v. Thornburgh*, 919 F.2d 153 (D.C. Cir. 1990).

District Courts lacked jurisdiction. <sup>73</sup> The Supreme Court remanded *Ayuda* for further consideration in light of its ruling in *McNary*. <sup>74</sup> The Circuit Court on remand ruled in favor of the Government, though again by a split decision. <sup>75</sup>

As a result of the *Ayuda* litigation, an estimated 50,000 foreign nationals were allowed to legalize their resident status and stay in the country. <sup>76</sup> On his retirement from the bench in 2000, Judge Sporkin called the *Ayuda* case one of his most memorable cases while serving on the bench. <sup>77</sup> He was proud to have been able to mete out justice to these immigrants.

#### I. Other Immigration Litigation and Advocacy Initiatives

In 1979, the Project addressed the failure of the INS to issue work authorizations in a timely manner to immigrants lawfully permitted to work. As a result of the Project's meetings with the Department of Justice ("DOJ"), DOJ issued new guidelines requiring timely issuance of work authorizations to applicants for adjustment of status and [\*231] waivers of excludability, and initiated rulemaking to regulate the procedures and standards for the issuance of work authorizations to immigrants.

In the early 1990s, the Lawyers' Committee advocated heavily in favor of granting Temporary Protected Status ("TPS") to Guatemalan refugees due to the human rights conditions in Guatemala. In 1993, the Lawyers' Committee submitted an extensive report to the U.S. Attorney General describing the legal and factual basis for granting TPS to Guatemalan refugees in the United States. <sup>78</sup> The effort was ultimately unsuccessful, however the U.S. Attorney General at the time, Janet Reno, vowed that the Department of Justice would monitor the situation in Guatemala and would reassess its determination regarding TPS at regular intervals. <sup>79</sup> The Lawyers' Committee's work laid the basis for fairer treatment of Guatemalans in asylum and removal proceedings, along with other Central Americans who received TPS.

In 2015, the Project spearheaded an initiative to assist Nepali nationals seeking TPS. On April 25, 2015, a massive earthquake hit Nepal, causing the deaths of more than 10,000 people, and leaving the country in a state of disaster. <sup>80</sup> The Department of Homeland Security designated Nepal for TPS, allowing eligible Nepalis to stay in the United States, legally work and attend school until they could safely return home. In response to that designation, the Lawyers' Committee, together with other community organizations, launched an initiative to assist with filing for TPS and pairing qualified applicants with pro bono representation.

#### J. CAIR Coalition

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<sup>73</sup> [\*McNary v. Haitian Refugee Ctr.\*, 498 U.S. 479, 497-99 \(1991\)](#).

<sup>74</sup> *Ayuda, Inc. v. Thornburgh*, 498 U.S. 1117 (1991).

<sup>75</sup> [\*Ayuda, Inc. v. Thornburgh\*, 948 F.2d 742 \(D.C. Cir. 1991\)](#).

<sup>76</sup> This information was provided to the author and is based on the personal recollections of those that worked on the case. See generally Susanne Jonas & Nestor Rodriguez, *Guatemala-U.S. Migration: Transforming Regions* (2014) (discussing migrant rights advocacy in the United States and the various victories affecting Guatemalan and Salvadoran asylum seekers).

<sup>77</sup> This information was provided to the author and is based on the personal recollections of those that worked on the case.

<sup>78</sup> Report on file with Wash. Law. Comm.

<sup>79</sup> Letter on file with Wash. Law. Comm.

<sup>80</sup> Kathryn Reid, 2015 Nepal earthquake: Facts, FAQs, and how to help, World Vision (Apr. 3, 2018), <https://www.worldvision.org/disaster-relief-news-stories/2015-nepal-earthquake-facts>.

A further outgrowth of the Lawyers' Committee immigration law work is the Capital Area Immigrants' Rights ("CAIR") Coalition. CAIR Coalition was originally started as a project of the Lawyers' Committee, but became an independent non-profit organization on January 1, 2000. In the last decade, CAIR Coalition has more than doubled in size and has added two new programs to complement our original work serving detained adult immigrants. These programs include [\*232] the Detained Children's Program, which assists unaccompanied immigrant children in the custody of the Office of Refugee Resettlement in juvenile facilities in Maryland and Virginia, as well as the Virginia Justice Program, which educates public defenders on the immigration consequences of crimes with the goal of lessening the disparate impact of criminal proceedings on non-U.S. citizens.

Additionally, CAIR Coalition operates a Detailed Adult Program, which helps detained immigrants learn to understand the Immigration Court and deportation process so they can make better-informed decisions about their cases. CAIR Coalition also runs an Immigration Impact Lab, which aims to respond proactively to the injustices that the detained immigrant men, women, and children increasingly face in the American immigration detention and deportation system through appellate impact litigation. Finally, CAIR Coalition runs the Comunidades Unidas or Community Conversations Project, which is designed to provide holistic and culturally competent workshops on immigrants' rights, defenses against deportation, as well as rights against gender and domestic violence.

### ///. REPORTS ISSUED BY THE LAWYERS' COMMITTEE ON ISSUES AFFECTING THE IMMIGRANT COMMUNITY IN WASHINGTON, D.C.

Over the past two decades, the Lawyers' Committee, together with several law firms, has issued numerous reports on issues affecting the Latino community in Washington, D.C., including educational opportunities, employment discrimination, access to health care, trends affecting Latinos and immigrants in rental housing in the District of Columbia, and civil rights. Notably, the Committee prepared a report after the 1991 Mount Pleasant Riots, when rioting had broken out in the Mount Pleasant neighborhood of Washington, D.C. in response to a police officer having shot a Salvadoran man in the chest following a Cinco de Mayo celebration.<sup>81</sup> The U.S. Commission on Civil Rights relied upon these reports heavily in a report on the state of Latinos in Washington, D.C.

[\*233] The Committee then prepared and released a new series of reports ten years later in 2001-2002.<sup>82</sup> The Civil Rights Review Panel issued its report, "A Place At The Table: Latino Civil Rights Ten Years After The Mount Pleasant Disturbances,"<sup>83</sup> and provided the Conclusions and Recommendations based on the reports. The issues covered included the following: police abuses and interaction with the community, barriers to homeownership, rental housing barriers, employment discrimination, access to health services, immigration, education, and access to justice. The Review Panel stated that to move a Latino civil rights agenda forward, sustained advocacy was needed, as well as political will in governmental policymakers to make the changes needed to correct civil rights abuses and improve respect for the civil rights of Latinos.<sup>84</sup>

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<sup>81</sup> Emily Friedman, Mount Pleasant Riots: May 5 Woven into Neighborhood's History, WAMU 88.5 (May 5, 2011), [https://wamu.org/story/11/05/05/mount\\_pleasant\\_riots\\_may\\_5\\_woven\\_into\\_neighborhoods\\_history/](https://wamu.org/story/11/05/05/mount_pleasant_riots_may_5_woven_into_neighborhoods_history/).

<sup>82</sup> These reports were provided to the author by the Washington Lawyers' Committee and include "A Piece of America' Opportunities for Homeownership for Latinos and Latino Immigrants in the Washington, D.C. Metropolitan Area," "Educational Opportunities for Latinos in the District of Columbia: 1992-2002," "Employment Discrimination Against Latinos in the Washington, D.C. Area," "Latino Access to Health Care in Washington, D.C.," "The Police and the Latino Community: Bridging the Discrimination Gap," "Access to Justice Report," "The District of Columbia's Latino Population and Immigration Law: Unresolved Problems, 1992-2002," and "Rental Housing: Trends Affecting Latinos and Immigrants in the District of Columbia Metropolitan Area." The following law firms collaborated on these reports: Arnold & Porter; Clifford Chance Rogers & Wells; Gibson, Dunn & Crutcher; Hogan & Hartson; Holland & Knight; Howrey Simon Arnold & White; Willkie, Farr and Gallagher; Vinson & Elkins; and Weil Gotshal & Manges.

<sup>83</sup> Saul Solorzano & Yvonne Vega Martinez, A Place at the Table: Latino Civil Rights Ten Years After The Mount Pleasant Disturbances: Conclusions and Recommendations of the Civil Rights Review Panel (2002) (on file with Wash. Law. Comm.).

<sup>84</sup> Id. at 37.

In recent years, special attention has been devoted to the concerns of day laborers in Washington, D.C. and surrounding jurisdictions. On October 29, 2008, the Lawyers' Committee issued a report, *Wages Denied: Day Laborers in the District of Columbia*, in conjunction with Arent Fox, which documented the abuse and exploitation of D.C.'s day laborers, and recommended creating an indoor workers' center where day laborers could connect with prospective employers.<sup>85</sup> The Committee also recommended that the D.C. Office of Wage-Hour Compliance modify its policies and practices to better address the circumstances under which vulnerable day laborers are cheated out of minimum and overtime wages.

**[\*234]**

#### IV. THE PATH FORWARD-PRESSING ISSUES

Many pressing issues face immigrants today. Notably, for those who have lived and worked in the United States lawfully under the provisions of TPS or DACA, their ability to remain in the United States is uncertain. Congressional action is likely needed to provide these individuals with continued status in the United States. In addition, the Trump Administration has stepped up enforcement actions, including employment worksite raids, notices of inspection, and harsh detention and removal policies. These actions have created an environment that is more hostile to immigrants than we have seen in recent years. Other pressing issues include DHS's willingness to separate families, the Trump Administration's plans to build a border wall, and efforts to curtail family immigration.

The work of the Project remains more important than ever in these difficult times for our neighbors who are immigrants.

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<sup>85</sup> An Interview with Lisa A. Estrada, Lead Author of *Wages Denied: Day Laborers in the District of Columbia*, Update, Spring 2009, at 7.