



The BIA Pro Bono Project Is Successful

**Board of Immigration Appeals
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Table of Contents

	Page
Executive Summary.....	i
Introduction.....	1
Background.....	1
Project Benefits.....	2
Project Structure.....	3
Population Served and Screening Process.....	4
Methodology.....	7
Evaluation Design.....	7
Study Research Questions.....	8
Study Findings.....	9
More and Better Pro Bono Representation.....	9
Favorable Outcomes in Pro Bono Cases.....	11
Easier to Understand Appellate Issues.....	14
Other Positive Side Effects of the Project.....	15
Conclusion and Recommendations.....	18
Attachments	
A - Current BIA Pro Bono Project Procedures	
B - CLINIC Project Statistics - June 2003 to May 2004	
C - Study Survey Questionnaire	
D - Project Testimonies Compiled by CLINIC	
E - Key Study Survey Findings & Outcomes Data Chart	

Executive Summary

The Board of Immigration Appeals (BIA) Pro Bono Project (the project) recently completed its third year of operation. In May 2004, the Pro Bono Coordinator for the Executive Office for Immigration Review (EOIR) asked for an independent evaluation of the project. The study focused on the original project goals. Based upon available EOIR data and an opinion survey completed by Board members and attorneys, and by non-governmental agencies, the project has been very successful in meeting its original goals. The report concludes with a few suggestions to continuously review and evaluate the BIA Pro Bono Project.

The project is designed to match pro se respondents, who have pending appeals before the BIA, with pro bono counsel. The project seeks to remove traditional obstacles private attorneys face in identifying, locating and communicating with unrepresented aliens by providing EOIR case tracking and summary information to facilitate the initial contact.

Since its inception in January 2001, the BIA Pro Bono Project has increased the **level and quality of pro bono representation** before the Board; nearly 300 additional litigants, who filed appeals on their own, have benefitted from counsel. Moreover, the study found that the project:

- generates more and better briefs for review by the Board; although most self-represented aliens fail to file a brief, virtually all of the project cases included briefs on behalf of the alien, and;
- it helps articulate the key issues on appeal. Board members and attorneys, who responded to the study survey, believe that the pro bono project routinely provides quality briefs before the Board. As a result, better briefs facilitate the legal review by Board attorneys by making it easier to understand the appellate issues.

Given its limited resources and current case screening design, the project selects the most meritorious cases on appeal before the Board. The program affects only a small portion of the Board's caseload. However, despite the limited scope of the project, it is universally welcomed and praised within EOIR. The project presents very little additional resource burdens on administrative case processing, facilitates legal review, and enjoys a high success rate on appeal. In the eyes of its stakeholders, the BIA Pro Bono Project is a success.

“Many people, without even knowing me, are helping me in my deepest needs.”

- Detained Respondent Represented through the BIA Project

Introduction

The Board of Immigration Appeals (BIA) Pro Bono Project recently completed its third year of operation. In May 2004, the Pro Bono Coordinator for the Executive Office for Immigration Review (EOIR) asked for an independent evaluation of the project.

Progress reports, along with anecdotal information and testimonies, have provided some insight into the impact of the BIA Pro Bono Project (hereinafter referred to as the project). However, to date, the project has not been subject to a systematic, independent program evaluation. This study attempts to provide an examination of project results, as originally defined by EOIR.

Our second President of the United States, John Adams, captured the essence of pro bono service in a 1761 letter by asking...

“to what greater object, to what greater character, can we aspire as lawyers to assist the helpless and friendless in a worthy cause...To devote your skill and energy to the plight of another, without the promise of a material reward for oneself, is what sets us apart as professionals.”

This evaluation accepts - and does not attempt to measure - the intrinsic value of pro bono work; namely, donating legal expertise and service for the public good. Instead, the study focused on the original project goals. The report concludes with a few suggestions to continuously review and evaluate the BIA Pro Bono Project.

Background

The project was established by EOIR on January 17, 2001. Initially, it was launched as a six-month “pilot” project. Today, the project is well into its fourth year of operations.

The project is designed to “increase pro bono representation for detained individuals who would otherwise proceed without representation (pro se) in appealing their cases to the

Board of Immigration Appeals (BIA) or in responding to an appeal by INS¹ of an immigration judge's order." The project scope was expanded recently to increase pro bono opportunities for certain appeals by aliens not detained by the Department of Homeland Security (DHS).

To put it simply, the project creates opportunities to match pro se respondents, who have pending appeals before the BIA, with prospective pro bono counsel.² The project seeks to remove traditional obstacles private attorneys face in identifying, locating and communicating with unrepresented aliens by providing EOIR case tracking and summary information to facilitate the initial contact.

Project Benefits

The original project plan assumed that pro bono counsel will write and file appellate briefs - identifying and arguing the issues on appeal - better than self-represented litigants. Other key "a priori" goals of the project are:

- attorney involvement in writing the appeal brief will, by and large, have a meaningful impact on the outcome of the appeal, and;
- higher quality briefs facilitate the legal review by BIA staff attorneys and, in turn, creates a smoother and more effective case review by the Board.³

Prior to the launch of the pilot project, the immigration advocacy community expressed concern that detained, unrepresented aliens had "little or no access to pro bono counsel...and account for a disproportionately large number of published decisions" by the Board.⁴

This study attempts to measure these original project goals and concerns. Several research questions were drafted and tested with project participants. These research questions were incorporated into the evaluation design and format for this report.

¹ The Immigration and Naturalization Service was abolished on March 1, 2003. Immigration enforcement and prosecutory functions are now assigned to the new Department of Homeland Security (DHS).

² The terms pro se respondents, unrepresented aliens and self-represented litigants are used interchangeably throughout this report.

³ EOIR Memorandum: Subject: BIA Pro Bono Project (10-27-2000) from Pro Bono Coordinator to Chairman of the Board of Immigration Appeals, page 2.

⁴ EOIR Memorandum, Ibid.

Project Structure

The BIA Pro Bono Project is one of three major initiatives by the EOIR Pro Bono Program (hereinafter referred to as the program office) “to facilitate access to information and create new incentives for attorneys and law students to take on pro bono cases before the Immigration Courts and the Board.”⁵ The EOIR Pro Bono Coordinator manages these three major activities; namely, the Legal Orientation Program (also known as “Rights Presentations”), the BIA Pro Bono Project, and interagency initiatives to provide pro bono legal services for Unaccompanied Alien Children.

The Board designated a senior attorney to provide legal policy advice to the project, as needed, and assigned one team leader in its Clerk’s Office to provide administrative case processing support for the program office. The Clerk’s Office dedicated a work area for volunteer attorneys to screen cases for the project.⁶

The program office relies upon their unique partnerships with the following non-government organizations (NGOs), who assist immigrants on a variety of legal matters:

- the Catholic Legal Immigration Network, Inc. (CLINIC);
- the American Immigration Law Foundation (AILF);
- the American Immigration Lawyers Association (AILA);
- the Capital Area Immigrants’ Rights (CAIR) Coalition, and;
- the National Immigration Project of the National Lawyers Guild.

Volunteers from the private bar help screen, review and provide representation in pro bono cases through the project. The volunteer attorneys, who screen appeals, assess the merits of the appeal and refer potential pro bono cases to CLINIC, are absolutely vital to the success of the project.

⁵ EOIR Memorandum, Ibid.

⁶ The project does not require an inordinate amount of additional staff resources, especially at the Board. The EOIR Pro Bono Coordinator spends about 10 percent of his work year on the project; the program office paralegal devotes approximately 30 percent of her time to the project. The Clerk’s Office team leader reported that the procedure to identify, pull and arrange for pro bono case files for screening each week was very efficient, and did not interfere with her assigned responsibilities.

CLINIC served as the NGO project coordinator under an EOIR contract. As such, CLINIC provided expert legal services, training, and overall project management. As the lead project coordinator, CLINIC prepared monthly, quarterly and annual reports on the results, challenges and proposed solutions to improve the BIA Pro Bono Project. The project functioned as a true “partnership” between the federal government (i.e., EOIR), and participating, nonprofit NGOs and the private bar.

Population Served and Screening Process

The project population has evolved into five categories of pro se cases with appeals pending before the Board. The five categories are:

1. Detained case appeals filed by the DHS or by minors, and detained cases involving a certification of the appeal by the Immigration Judge;
2. Non-detained case appeals filed by the DHS or by minors, and non-detained cases involving an Immigration Judge certification;
3. Detained case appeals filed by asylum seekers (non-criminal charge);
4. Non-detained case appeals filed by asylum seekers (non-criminal charge), and;
5. Detained case appeals filed by individuals, with criminal convictions, seeking protection under the Convention Against Torture (CAT) and other claims for relief.

By design, the original project focused exclusively on case appeals filed by detained aliens. The project was expanded in June 2003 to include case appeals filed by aliens who are not detained by DHS.

The project procedures are illustrated in Chart A found on page 6. In short, there are four basic project steps: (1) EOIR reviews a computer-generated report of the targeted population each week; (2) EOIR selects and refers potential project cases for the attorney screeners to review and critique; (3) cases screened and selected by the volunteer attorneys are forwarded to CLINIC for national recruitment of pro bono counsel; and (4) recruited pro bono counsel is secured by filing as the attorney of record with the Board. A more detailed discussion of the “Current BIA Pro Bono Project Procedures” can be found in Attachment A.⁷

⁷ This document was prepared by CLINIC and taken from its most recent annual report on the project. Project partners are developing new procedures to increase the success rate of locating and

There are four categories of people who may present cases (or appear) before the Board; they are: unrepresented aliens, attorneys, accredited representatives, and certain kinds of individuals who are expressly recognized by the Board (e.g., law students or law graduates).⁸ All representatives must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). Aliens (respondents), who choose to pursue their appeal as self-represented litigants, need not file an EOIR-27 with the Board. The Board processes an appeal as “pro se” when an EOIR-27 form has not been filed with the Clerk’s Office.

Throughout the project, CLINIC has been very successful in screening and matching self-represented litigants with pro bono counsel. During the first six months of the project, CLINIC successfully arranged for pro bono counsel in 93 percent of the cases circulated to its project participants.⁹ During FY 2002, the program office reported a pro se alien to pro bono counsel “matching rate” of 70 percent for the project.¹⁰ This very impressive success rate for matching detained cases with pro bono counsel continued during the third year of operations.

However, the project has encountered some difficulties locating non-detained aliens. In its 2004 annual report, CLINIC highlights the recent challenges in locating and matching non-detained aliens with pro bono counsel. Despite these process challenges, the project continues to match detained self-represented litigants with counsel at a high rate of success - 69 percent of the time pro bono counsel is secured.¹¹

matching non-detained aliens with pro bono counsel.

⁸ See BIA Practice Manual, Chapter 2; which can be found at www.usdoj.gov/eoir/.

⁹ The project matched 51 of the 55 detainees with pro bono representatives. See CLINIC’s evaluation of the BIA Pro Bono Project, May 30, 2001.

¹⁰ Of the 142 cases selected for possible pro bono representation, 100 cases were matched with pro bono counsel through the project. BIA Pro Bono Project Cases: Evaluation Period: (10/1/01 to 9/30/02).

¹¹ See CLINIC Memorandum: RE: The BIA Pro Bono Project Year-End Report (June 16-2004) and 2004 Annual Report.

Chart A
BIA Pro Bono Project Process Steps

Step 4 -Pro Bono Attorney Recruited and EOIR-27 Filed

Interested pro bono counsel contacts CLINIC coordinator.

CLINIC coordinator contacts alien explaining project.

CLINIC provides pro bono counsel with procedural guidance.

Individual wanting representation signs EOIR-27 form

Secured pro bono counsel receives and files EOIR-27 with Board.

Step 3 - Cases Screened Forwarded to CLINIC Coordinator

CLINIC recruits, coordinates and schedules volunteer attorney screeners.

Volunteer reviews record and creates redacted summary of issues on appeal.

Case summaries are forwarded to CLINIC pro bono coordinator.

Redacted case summaries e-mailed to over 350 prospective pro bono counsel.

Step 2 -EOIR Refers Cases to Volunteer Attorney Screeners

EOIR pro bono staff reviews report for potential project participation

EOIR conducts quality check of alien custody status and mailing address.

EOIR refers 12 cases for review by voluntary attorneys screeners each Friday.

EOIR notifies BIA clerk's office and pulls appellate case records for screeners.

Step 1 - Computer Generated Report by EOIR

Electronically search for targeted population for EOIR pro bono staff.

List 20-to-80 case appeals each week with briefing schedules set in past 7 days.

In contrast, attempts to locate non-detained aliens have been less successful, thereby reducing the overall success rate to match aliens with counsel. Recently, the project secured pro bono counsel only 47 percent of the time.¹² Some of the reported reasons for an unsuccessful match for the project include: no response from the alien; the individual already retained counsel; the alien declined the offer for pro bono counsel; or unable to locate and contact the alien.

Project participants are actively working together to improve ways to find and match pro se aliens for the project, especially more efficient ways to overcome the “systemic problems” locating aliens not detained by DHS.¹³ Because project partners are working on a solution to this administrative issue, the study did not examine this issue further, considering it generally outside the scope of the primary research questions.

Methodology

The study examined project operations and results from January 17, 2001 through January 17, 2004. The study focused upon whether or not the project has had a measurable difference in increasing the level and quality of pro bono representations before the Board.

Evaluation Design

The evaluation is designed as an “impact assessment” of specific project goals. The intended purpose of the project, as advocated by EOIR and NGO officials, helped formulate the study research questions. Project “output” measures include increased representation, better quality briefs filed, and more effective and timely legal review of immigration appeals. The impact on project participant staff resources were studied, as well as any unintended side effects of the project.

The impact assessment attempted to measure certain “outcomes” of the project. For example, the study questioned to what extent pro bono representation, arranged through the project, actually improved case processing efficiency or made a difference in the outcome of the appeal.

¹² From June 2003 through May 2004, the project screened 421 cases of which 99 were referred to CLINIC and circulated nationally to recruit pro bono counsel. There were 90 cases where counsel replied indicating a desire to represent the pro se alien. Of those 90 available pro bono representatives, 47 filed EOIR-27 forms as the attorney or representative of record.

¹³ See Attachment B for recent project statistics - CLINIC 2004 Annual Report.

EOIR case tracking data were reviewed, organized and analyzed using a business intelligence reporting tool. There were 281 pro bono cases during the three years of the project; as expected, most of these appellate matters were case appeals filed by unrepresented detained aliens (n = 261). This study population was validated using CLINIC reports and data.

An opinion survey was designed and distributed to all Board members, Board attorneys and a representative group of EOIR employees and NGOs (see Attachment C for a copy of the survey). A total of 146 surveys were distributed via e-mail.¹⁴ The survey contained eighteen statements about the project goals. Using a five-point scale, the survey measured to what extent EOIR/BIA employees and NGOs “agreed or disagreed ” with each statement. In addition, existing agency literature, project reports and related pro bono web sites were reviewed to develop the evaluation design.

Study Research Questions

The central question of this evaluation study is:

- “Has the BIA Pro Bono Project increased the *level and quality* of pro bono representation before the Board? If so, to what extent and how?”

In other words, as predicted by the program office and NGOs, it is true that pro bono counsel routinely prepare and file briefs more often than self-represented aliens? And, do these pro bono briefs articulate appellate issues better than pro se aliens, making it much easier for the Board to review and adjudicate the appeal?

Related research questions are:

- “What were the outcomes of pro bono project cases in terms of Board decisions in favor or against the alien? If so, why?”
- “Does increased pro bono representation arranged by the project improve case efficiency at the Board?” “If so, how?”
- “Is there a measurable impact on the overall time on appeal (i.e., filing of the notice of appeal to final disposition) for pro bono project cases as compared to

¹⁴ The response rate was somewhat limited (22 percent), however, a good representation of all targeted survey participants completed and returned the opinion survey. Half of the Board Members completed the survey. It is important to note that pro bono cases have been adjudicated by all Board panels. Interestingly, according to EOIR data, 70 percent of all BIA attorneys have reviewed at least one pro bono case during the project period.

other represented or unrepresented cases?”

- “What are the unexpected side effects of the pro bono project?”

The evaluation design was circulated for comment prior to collecting data for the study. It was approved by the EOIR Pro Bono Coordinator on June 4, 2004. Data collection and analysis were completed in July 2004.

“The (pro bono) clients get high quality representation. The briefs allow the BIA to understand the issues fully...Our students at Cornell Law School have really benefitted from this experience, both personally and professionally.”

**- Stephen W. Yale-Loehr
Adjunct Professor, Cornell Law School
Co-Author, Immigration Law & Procedure Treatise**

Study Findings

The study findings are reported below. Each research question is reintroduced and answered based upon the best available data collected during the study period. Sample observations by survey participants are highlighted to reinforce study findings.¹⁵

More and Better Pro Bono Representation

As mentioned, the central question of this evaluation study is: “Has the BIA Pro Bono Project increased the *level and quality* of pro bono representation before the Board? If so, to what extent and how?” The study data suggests strongly that the project has been successful implementing this goal. Nearly 300 pro se litigants have benefitted from pro bono counsel through the project.

¹⁵ See Attachment D for an interesting and compelling series of testimonies in support of the project compiled by CLINIC.

More important, almost all Board members and staff attorneys responding to the study survey “strongly agree” that pro bono briefs are of higher quality than those filed by pro se aliens. One Board attorney went so far as to say that “the pro bono briefs are generally some of the best briefs we see at the Board and I look forward to getting them.”

“Often it’s impossible to decipher what the alien is attempting to relay in their pro se brief... The pro bono briefs are generally some of the best briefs we see at the Board and I look forward to getting them.”

- Board attorney

During the first three years of the project, a total of 281 self-represented litigants secured pro bono counsel in time to file briefs before the Board. Most of these cases (n = 261) were case appeals filed by detained aliens. EOIR case tracking statistics show that briefs, on behalf of the alien, were filed with the Board in virtually all of the project cases (95 percent of the time). Clearly, pro bono cases, arranged by CLINIC through the project, practically ensure that an alien’s brief will be filed with the Board. As a result the opposing parties to the appeal and the Board are better served when briefs are filed.

During the project period, the Board received more than 11,000 case appeals filed by aliens detained by DHS. Most of these detained litigants were represented by counsel (55 percent) while a total of 5,152 cases were pro se case appeals, (45 percent).¹⁶ Most often, pro se case appeals by detained aliens failed to file a brief before the Board. According to EOIR automated records, only 43 percent of the pro se, detained case appeals, filed during the project period, included an alien brief in the appellate case file.

As predicted by the program office and NGOs, pro bono counsel increases representation before the Board and generates more appellate briefs for review by the Board. The benefit of a quality appellate brief invariably facilitates the adjudicatory process.

¹⁶ See EOIR Statistical Yearbook for overall representation trends before the Board. During the project period, the national rate of represented aliens increased from 64 percent to 72 percent.

Virtually all survey participants “strongly agreed” that the quality of briefs filed by pro bono counsel is much better than those filed by self-represented litigants. Only one survey participant (BIA attorney) disagreed on this point. The prevailing opinion, among the Board members and BIA attorneys who responded to the survey, is that the pro bono project routinely provides quality briefs before the Board.

“Pro Bono cases primarily increase the quality of the Board decision because (the) focus is on key issues... identified in the brief.”

-Board attorney

Similarly, the survey supported the notion that pro bono briefs articulate issues on appeal before the Board much better than self-represented litigants. Again, virtually all of the survey participants “strongly agreed” that pro bono cases better focus on the most important issues on appeal. One BIA attorney suggested that “pro bono cases primarily increase the quality of the Board decision because (the) focus is on key issues...”

Key survey findings are reported in Attachment E. Of the eighteen statements in the survey, the goal of facilitating legal review by reducing the time to understand appellate issues in the case was viewed as the most positive impact of the project. Board attorneys, in particular, “strongly agreed” that the project goal of securing better briefs has been very successful.

Favorable Outcomes in Pro Bono Cases

“What were the outcomes of pro bono project cases in terms of Board decisions?” The study data suggests that pro bono project cases generate more favorable outcomes than comparable appeals by pro se aliens. The limitations of the data are highlighted below and additional research by the program office is strongly suggested.

The reader should consider these possible outcomes as estimates only. The Board does not track data in a manner that allows for a formal “win/lose” analysis. The reader should also bear in mind that the cases were pre-screened before being accepted into the program. Because the Board’s data system is not designed for a determination of success on appeal, several assumptions were made when automated records of BIA decision codes were reviewed. For example, a remand decision code, for an appeal filed by an alien, was considered as “favorable to the alien.”

A comparison of detained case appeal decisions filed by unrepresented versus

represented litigants indicates that pro bono project cases help an alien respondent present the best possible arguments before the Board and, in turn, increases their chances for a favorable outcome on appeal. The pro bono case outcomes (n = 261 detained case appeals) were compared to pro se cases *filed by detained aliens, not participating in the project*. Without the pro bono project, many, and possibly all, of the appellate issues in these meritorious cases may not have been clearly articulated to the Board if the alien respondent had pursued their appeal on their own (pro se).

Specifically, when a pro se *detained* alien filed an appeal with the Board, and then secured pro bono counsel through the project, the *alien respondent was three-to-four times more likely to win a favorable decision than those who represent themselves during the appellate process*, (see Chart B). During the study period (the first three years of the project), there were 139 appeals filed by pro se aliens and subsequently matched with pro bono counsel through the project. Of that total number of filings, thirty alien respondents (22 percent) got a favorable decision on their appeal.

A review of automated decision records for pro se detained aliens who filed case appeals during the same period, shows a success on appeal rate of only 7 percent. From January 2001 to January 2004, the Board received 4,539 case appeals filed by pro se aliens detained by DHS. This total factored out all pro bono project cases filed during that time period and counted only appeals filed by pro se aliens. Of more than 4,500 appeals, there were only 330 decisions favorable to the pro se detained aliens, (see Attachment E for study data).

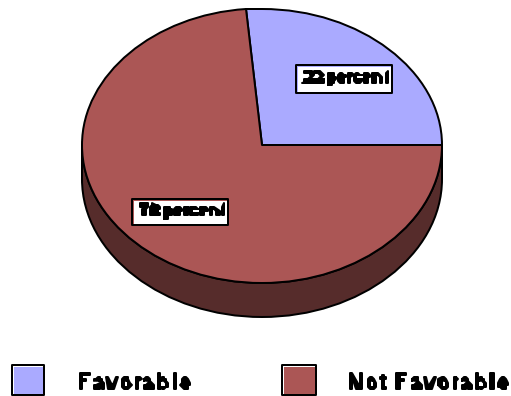
In contrast, the decision outcomes for appeals *filed by DHS* were comparable between unrepresented respondents in the Board's general caseload of detained aliens versus represented respondents through the project. Pro bono project case appeals outcomes were favorable to the alien 62 percent of the time *when DHS filed the appeal*. Favorable outcomes for pro se aliens not involved in the project and responding to a DHS appeal were virtually at the same rate of success as pro bono cases, (69 percent success rate for self-represented case appeals outside of the project).

When examining total outcomes, *regardless of who filed the appeal*, the study data shows that in the Board's overall caseload, self-represented, detained aliens get a favorable decision in one-in-ten case appeals (10 percent of the time).¹⁷ Chances of a favorable Board decision are much greater for those detained aliens *who participate in the pro bono project*. Of the 281 cases in the study sample, 113 Board decisions or 40 percent of completed project cases appear to result in a favorable decision for the alien.

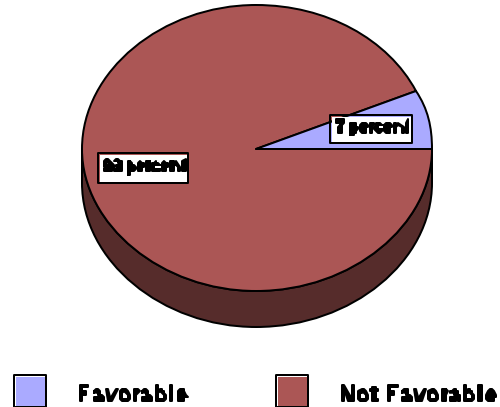
¹⁷ This data set include a handful of cross appeals and certification of appeals by immigration judges.

Chart B
Pro Bono versus Pro Se
Appellate Outcomes for Detained Aliens

Pro Bono Detained Case Appeal Outcomes
Filed by Alien



Pro se Detained Case Appeal Outcomes
Filed by Alien & excludes project cases



It is important to reiterate that this data is merely an indicator of the project outcomes. Reaching back to three-year-old data and relying exclusively on automated records, without the official case file in hand, creates some degree of uncertainty about actual outcomes. The program office should consider more routine follow-up of pro bono project outcomes. A more thorough analysis of case records will better measure decisions in favor or against aliens through pro bono counsel participating in the project (see recommendations).

Although *project screening for meritorious cases* may be a critical factor for the higher success rate on appeal for aliens, participation in the pro bono project seems to increase an alien respondent’s chance to win their appeal before the Board. Better appellate briefs prepared by pro bono counsel are key reasons for success. As stated succinctly by a survey participant, “better (pro bono) briefs assist the alien’s chance to succeed on appeal.”

Easier to Understand Appellate Issues

The study examined the project goal of enhancing case efficiency. Specifically, “Does increased pro bono representation arranged by the project improve case efficiency at the Board?” If so, how?

According to EOIR performance measures, in general, Board attorneys are extremely

efficient when reviewing case appeals by detained aliens.¹⁸ Once the appellate record is complete and the case is ready for adjudication, 90 percent of all detained case appeals are processed by Board attorneys in less than 10 days and then forwarded for Board Member review. Consequently, there is little opportunity to save significant processing time during the legal review stage for this type of appeal.

The survey, however, did provide some insight on case efficiency when processing pro bono cases. The survey participants, especially Board attorneys, seem to “agree” that the project improves their case efficiency by reducing the time it takes to understand and resolve the issues on appeal.

The study also examined the issue of “time on appeal” for pro bono project cases. “Is there measurable impact on the overall time on appeal (i.e., filing to final disposition) for pro bono project cases as compared to other represented or unrepresented cases?” The study data shows that pro bono project cases take a little longer to complete but do not add an unreasonable amount of time on appeal.

By design, the project screening selection and recruitment process delays the briefing stage of immigration appeals process. However, this delay is minimal. During the project period, the Clerk’s Office set the original briefing schedule for pro se detained aliens in 51 days from the date the appeal was filed with the Board.¹⁹ Project cases added just over 2 weeks to the normal process. Of the 261 detained case appeals matched with pro bono counsel, the Clerk’s Office set the original briefing schedule in 78 days from the date the appeal was filed. Consequently, very little administrative case processing time is added in the Clerk’s Office for pro bono project cases.

Overall, pro bono cases take slightly longer to complete than the general caseload of detained case appeals. The Board has established an agency performance goal to complete 90 percent of all case appeals filed by detained aliens within 180 days from the filing of the notice of appeal. Recently, the overall success rate for this performance goal has reached a completion rate of 94 percent.

During the first three years of the project, most pro bono cases for detained aliens were completed in only 199 days. This median time on appeal remained about the same for the third year of the project. The “time on appeal” for most pro bono cases is not that far off the BIA

¹⁸ See EOIR statistical Yearbook; www.usdoj.gov/eoir/. All BIA performance measures for time on appeal use “calendar” days.

¹⁹ Median processing times were used in this report as a better yardstick of central tendency of the pace of project cases on appeal.

performance goal and thereby, reasonable to accept as a good investment of time given the goals of the project.²⁰

Consequently, one could argue that the difference in overall time on appeal is a small investment to secure a high quality brief for legal review. The study showed that the added benefit of a pro bono brief clearly helps a Board attorney better understand the appellate issues, and therefore, outweighs the two-to-three weeks added to the overall time on appeal.

Other Positive Side Effects of the Project

The final research question examined any unexpected benefits or costs of the project. In other words, “What are the side effects of the pro bono project?”

The study did not uncover any evidence that detained, self-represented aliens account for “a disproportionately large number of published decisions by the Board.” As previously mentioned, the immigration advocacy community was concerned about this issue at the start of the pilot project. During the project period, the Board published about 60 decisions. In the overwhelming majority of these published decisions, the alien respondent was represented on appeal; very few involved pro se aliens.²¹

There is a noticeable general trend, however, that the representative rates have increased for detained aliens responding to all appeals filed by DHS. Specifically, in the past six years, the overall representation rate doubled for detained case appeals filed by DHS. For the three-year period prior to the start of the BIA Pro Bono Project, detained aliens were represented in only 34 percent of all case appeals filed by DHS. During the three years of the project, representation rates for detained case appeals *filed by DHS* reached a high of 64 percent; including a noticeable number of pro bono project cases.

It is statistically unclear, at this point, whether the pro bono project has contributed directly to this trend. The program office believes it has to some degree. The project screening process, which favors selecting DHS appeals as a top priority, may be influencing this significant increase in representation rates.²² Nearly half of the project cases in this study (n = 131) were DHS appeals - roughly 45 additional represented cases each year (see page 4 for the

²⁰ Project pro bono cases completed during the three year project averaged 214 days from the filing date of the notice of appeal; during the third year, cases were completed in 208 days.

²¹ See www.usdoj.gov/eoir/vll for BIA published decisions on the Virtual Law Library.

²² Detained case appeals filed by DHS are a small part of the Board’s caseload, traditionally between 4 percent and 6 percent of all case appeals involve aliens in DHS custody.

project screening process).

Considering that the Board receives only 75-to-100 DHS appeals in cases involving detained aliens each year, one could argue that the pro bono project is a contributing factor that more and more detained aliens have the benefit of counsel to respond to an appeal filed by DHS. This potential impact was not part of the original project objectives, and therefore, not part of this analysis. More research would help clarify the contributing factor(s) to the overall increase in representation rates for detained aliens responding to DHS appeals.

“There is a good chance we would not be able to continue the clinic without the BIA Project to rely on for cases. The BIA Project is perfect for this, because attorneys / experts have already reviewed the files and determined that good issues exist, and we receive case descriptions that allow us to determine which cases would be the best pedagogically.”

**- Estelle McKee, Professor
Cornell Law School**

Education is a positive side effect of the project. The BIA Pro Bono Project fosters continuous learning throughout the immigration advocacy community. This educational side effect of the project benefits law students and recent graduates, “both professionally and personally.” Inspired by a professor’s personal participation in the BIA Pro Bono Project, the Cornell Law School established a pro bono appellate clinic in 2003. The Cornell Law School Asylum and Convention Against Torture Appellate Clinic provides educational opportunities for eight law students who write appellate briefs and file motions to remand, reopen or reconsider, when appropriate, on behalf of immigration clients. The Cornell clinic, and arguably others like it, may not continue to exist without the project referring cases for pro bono representation.

The project screening system, whereby expert volunteer attorneys identify and critique the meritorious issues in the pro bono case, facilitates learning at the Cornell clinic. According to a professor at the Cornell clinic, “The BIA Project is perfect for this, because attorneys / experts have already reviewed the files and determined that good issues exist, and we receive case descriptions that allow us to determine which cases would be the best pedagogically.”

Similarly, several law firms have reported to CLINIC that the project provides “excellent learning opportunities to summer associates, as it allows them to engage in and complete a work product (an appellate brief) from start to finish during their summer internship.” This learning opportunity provides mutual benefits to the immigration advocacy community and the Board. Such real-world educational experiences may influence these summer interns to pursue immigration law after graduation.²³

For the Board, the project educates prospective attorneys and accredited representatives on how to do business with the Board. You might say that this educational and outreach aspect of the BIA Pro Bono Project is no different than the Board’s award-winning Practice Manual. Both initiatives provide information and knowledge as a public service to parties appearing before the Board.²⁴

²³ See testimonies in Attachment D.

²⁴ Several NGO survey participants highlighted the educational and outreach benefits of Board Members attending project training sessions. Many expressed their appreciation to those Board Members for providing this service.

Conclusion and Recommendations

The mutual benefits derived from strong pro bono participation in immigration proceedings has been long recognized by EOIR. The BIA Pro Bono Project has been very effective and successful meeting its original goals.

Since its inception, almost 300 aliens, who would have otherwise appeared pro se before the Board, benefitted from pro bono counsel. This legal representation has had a positive impact upon the quality of appellate issues reviewed by Board attorneys and presented to the Board. Interestingly, from the review of EOIR automated records, it appears that pro bono representation arranged through the project has had a meaningful impact on the outcome of appeals.

The BIA Pro Bono Project has functioned as a true partnership between EOIR and the immigration advocacy community. Several recommendations are offered to review and promote project results on a more recurring basis. Specifically, the program office should:

1. revisit, update, and continuously monitor project goals;
2. conduct regular reviews of completed EOIR appellate records to better measure project goals, especially actual outcomes of the appeal, (e.g., reviewing *case files and e-decisions* posted on EOIR virtual law library to validate outcomes of pro bono cases);
3. consider measuring case efficiency and the quality of briefs by conducting follow-up surveys of Board attorneys who recently reviewed pro bono cases, and;
4. develop a reporting system using available EOIR business intelligence tools.

Attachment A: Current BIA Project Operating Procedures (documented by CLINIC)

1. Each week, the EOIR identifies the following types of cases for which briefing schedules were set during the prior week:

- (1) Detained case appeals filed by the DHS or minors, or detained cases involving IJ certifications;
- (2) Non-detained case appeals filed by the DHS or minors, or non-detained cases involving IJ certifications;
- (3) Detained case appeals filed by asylum-seekers;
- (4) Non-detained case appeals filed by asylum-seekers;
- (5) Detained case appeals filed by persons seeking protection under the Convention Against Torture (CAT).

All cases involve persons who appeared pro se before the IJ and remain pro se before the BIA.

2. The BIA Clerk's Office pulls the files of the identified cases and makes them available to volunteer screening attorneys. The EOIR forwards a maximum of 12 cases per week for screening by volunteer attorneys with the BIA Project. (BIA Project screeners have indicated that the maximum number of cases they are able to screen during one half of a day is 12). To identify 12 cases, the EOIR selects cases first from category (1), and then (2), (3), (4), and (5) until a total of 12 cases has been reached.

3. Prior to providing the detained case files to the BIA Project screeners, the assistant to the EOIR Pro Bono Coordinator updates and records the detention location and detention facility mail policies for each case involving a detained respondent. This ensures that BIA Project screeners do not screen detained cases of persons who are no longer in DHS custody.

4. Prior to providing non-detained case files to the BIA Project screeners for their review, the assistant to the EOIR Pro Bono Coordinator verifies the non-detained respondent's address by calling the non-detained respondent at the phone number in the EOIR's record. If the phone number is not in service or is not accurate, and as a result contact with the non-detained respondent to verify his/her address is not possible, the case is not forwarded to BIA Project screeners for review. The only non-detained cases forwarded to the BIA Project screeners are those for whom the EOIR has verified the non-detained individual's address. This ensures that the Project will be able to locate the non-detained individual after it spends significant time and resources reviewing the case, creating a redacted summary of it, and matching it with pro bono counsel. For non-detained cases that are subsequently summarized by BIA Project screeners, the EOIR provides CLINIC with the non-detained respondent's phone number and address.²⁵

²⁵ Note that the procedures governing non-detained cases will change as soon as the solution outlined in section VI of this report is able to be implemented.

5. CLINIC recruits, coordinates and schedules the volunteer screening attorneys. All screeners are highly experienced immigration practitioners with substantial experience in representing individuals before the BIA. All have been trained on the procedures of the Project by CLINIC and all have signed confidentiality agreements with the EOIR.
6. On Friday of each week, a volunteer screener travels to the BIA where s/he reviews the full record including the transcript of the case and creates a redacted summary of the issues presented in the case. The screener types this summary into a computer program designed by the EOIR.
7. The redacted case summaries created by the screeners are forwarded to the NGO coordinator (CLINIC), who sends the summaries, via e-mail, to a pool of over 300 volunteer attorneys, BIA accredited representatives, and supervised law students. These practitioners have been recruited by CLINIC and the NGO partner agencies. They have been screened and educated about the Project procedures by CLINIC. CLINIC and the NGO partners provide training and mentoring to Project participants when needed.
8. After reviewing the weekly e-mail, a pro bono representative interested in a specific case contacts the NGO coordinator.
9. The NGO coordinator sends the detainee a letter by Federal Express, Express Mail or Priority Mail. The type of mail selected depends on the type of mail the detention facility or jail accepts, or whether or not a non-detained respondent's address is a post office box or includes a phone number (phone numbers are required for Federal Express and Express Mail). The letter explains the Project and indicates that a pro bono attorney is interested in representing him/her. It also includes an eligibility checklist, (which requires the individual to indicate whether or not they are indigent and whether or not they already have counsel), a form EOIR-27 (Notice of Entry of Appearance before the BIA), and a priority mail envelope with pre-paid postage that is pre-addressed to the pro bono representative.
10. CLINIC also sends the following documents to the pro bono representative: (1) a letter that outlines the procedures for filing the Form EOIR-27; (2) a red notice to be submitted to the BIA Clerk's Office with the signed Form EOIR-27 that flags the case as part of the Project and ensures that the proper briefing schedule is set; (3) A list of important points regarding BIA Practice (which has been adopted from the BIA Practice Manual).
11. If an individual wants representation through the Project, he/she returns the signed form EOIR-27 to the pro bono representative, who then files it with the BIA, to the attention of Priority Case Management Team Leader in the BIA Clerk's office.
12. The Clerk's Office holds onto cases that are screened by the BIA Project for 30-days from the date that the original briefing schedule was issued, and accepts EOIR-27's that are filed within 30-days of the date that the original briefing schedule was issued. Under this procedure, CLINIC does not inform the EOIR when EOIR-27's are filed

after the expiration of the initial briefing schedule, but before 30 days from the date that the briefing schedule was issued. If CLINIC learns that an EOIR-27 will be filed shortly after this 30-day period (for example due to a mail related delay at a detention facility), CLINIC contacts the EOIR pro bono coordinator, who alerts the Clerk's Office to hold onto the file for an additional number of days.

13. Upon receipt of the EOIR-27, the Clerk's Office sends the new briefing schedule and a copy of the entire record including the IJ decision and transcript to the pro bono representative. CLINIC instructs Project participants to enclose a pre-addressed FEDEX label (including the Project participant's account number) with their EOIR-27 filing. Project participants indicate in a cover letter to PCM team leader that they are requesting that the record of proceeding (ROP) be sent via FEDEX. When such requests are made, the Clerk's Office sends the ROP and new briefing schedule to the attorney via FEDEX. This ensures that the ROP arrives in a timely fashion and that the attorney has ample time to prepare the brief.

14. The assistant to the EOIR Pro Bono Coordinator reviews each ROP and briefing schedule before it is sent to a pro bono attorney to ensure that the ROP is complete and that the briefing schedule is correctly set. The review takes place as soon as the ROP is prepared, and therefore does not delay the pro bono attorney's receipt of the ROP. If upon receipt of the ROP, pro bono counsel note that documents are missing, they contact Christina Reyes directly.

15. CLINIC provides mentoring to pro bono attorneys upon request, but the pro bono representative is solely responsible for his or her case.

16. CLINIC provides malpractice insurance to all Project participants, as attorneys do not participate in pro bono projects that do not provide such insurance.

Attachment B: Statistics (Compiled by CLINIC)

Non-Detained Case Statistics for the Months of Mid-September 2003 – May 2004²⁶

Non-Detained Cases Where EOIR Could Not Verify Address by Phone ²⁷	188
Non-Detained Cases Forwarded to BIA Project for Screening ²⁸	40
Non-Detained Cases Summarized by Screeners for E-mail Circulation	12

Cases Screened and Matched with Pro Bono Counsel Since June 2003

Cases Reviewed by BIA Project Screeners	421 ²⁹
Cases Circulated via Email to Pro Bono Counsel	99
Cases Where Counsel Indicated Desire to Represent Respondent ³⁰	90
Actual Appearances (EOIR-27's) Entered by Pro Bono Counsel	47

Responses from Non-Detained Individuals Contacted by BIA Project Since June 2003³¹

Non-Detained Individuals Who Accepted Representation	11
Non-Detained Individuals Who Did Not Respond ³²	11
Returned Mail from Non-Detained Individuals	1
Non-Detained Individuals Who Declined Representation	3
Total Number of Non-Detained Individuals Contacted by Project	26

Responses from Detained Individuals Contacted by BIA Project Since June 2003

Detained Individuals Who Accepted Representation	37
Detained Individuals Who Already Had Counsel or Declined Counsel	5
Detained Individuals Released and Unable to Be Located ³³	3
Detained Individuals Who Did Not Respond	7

²⁶ These statistics do not cover June – early September 2003, because it was not until mid-September 2003 that the EOIR began verifying the mailing addresses of non-detained respondents prior to forwarding such cases to the BIA Project for screening.

²⁷ Because the EOIR could not verify an accurate address for these non-detained respondents via telephone, these cases were not forwarded to the BIA Project for screening.

²⁸ In these 20 cases, the EOIR was able to confirm the mailing address for the non-detained respondent, prior to forwarding the case to a BIA Project screener for review.

²⁹ This number includes a significant number of non-detained cases that were screened by BIA Project screeners prior to the time that the EOIR began verifying the address information of non-detained individuals before providing their case files to the BIA Project screeners for review.

³⁰ Of the 99 cases circulated to pro bono counsel participating in the BIA Project, at least one attorney indicated a willingness to represent all but nine of the 99 respondents.

³¹ Note that these figures exclude 13 cases not circulated to Project participants because it was clear from screening the case that the EOIR did not have an accurate address for the respondent. In these cases, the records included returned mail that had been sent by the EOIR to the respondent at the only address available for the respondent.

³² These individuals did not respond to the CLINIC mailing explaining the BIA Project. In each case, the individuals were provided with U.S. Postal Service (USPS) Express Mail Envelopes that were pre-addressed to pro bono counsel. According to the USPS, the tracking numbers for the envelopes were never entered into the USPS tracking system, indicating that the individuals have not used/mailed the envelopes to pro bono counsel assigned to their cases.

³³ Three individuals were released between the time that cases were selected for screening by the EOIR and the time that CLINIC sent mailings to them.

Outstanding Response from Detained Individuals ³⁴	2
Total Number of Detained Individuals Contacted by Project	54

Immigration Status

Minor	8
Visa Overstay	18
Parolee	1
LPR	47
Temporary Resident	1
Arriving Alien	9
Temporary Protected Status	1
Present Without Admission	22
In-Status (U.S. Citizen)	2

Appealing Party

DHS	67
Immigrant	44

Relief Applications Filed

IJ terminated proceedings	10
Asylum, withholding, CAT	46
212(c)/cancellation of removal	13
Administrative Closure	1
In Absentia Order Issued	1
Voluntary Departure	2
Adjustment of Status	1

³⁴ At the time of writing this report, CLINIC had recently sent EOIR-27's and a letter explaining the BIA Project to two detained individuals. CLINIC has not yet received responses from these individuals, but their responses are within the normal time frame that it takes for a detained individual to respond to a mailing.

Attachment C
Survey Questionnaire
Evaluation of the Board of Immigration Appeals (BIA)
Pro Bono Project
June 2004

The BIA Pro Bono Project (the project) recently completed its third year of operations. Simply put, the project creates opportunities to match pro se aliens, who have pending appeals before the Board, with pro bono counsel.

In May 2004, the Executive Office for Immigration Review (EOIR) pro bono coordinator asked for an impact assessment of the project. This survey is part of that evaluation study.

The survey has been distributed to Board Members and Attorneys, legal support staff and to Non-Government Organization (NGO) partners in the project. It will take only a few minutes to complete. Your opinions and viewpoints will provide invaluable insight into the benefits, costs and any side effects of the project.

This survey is confidential. Your answers will be analyzed and reported in tabular and narrative summaries only. **Please return this survey by Friday, July 2, 2004**

(Option 1) via e-mail to: Jeff.Fratter@usdoj.gov

(Option 2) or by regular mail to: Jeffrey Fratter, Suite 2400
Board of Immigration Appeals
5207 Leesburg Pike
Falls Church, VA 22041

This is an opinion survey designed to complement statistical analysis about the project. Using the scale below, please rate to what extent you agree or disagree with each of the 18 statements.

The term “project” always refers to the BIA pro bono project. Statements focus upon immigration appeals before the Board unless it contains the caveat “generally speaking.”

Pro bono “counsel” include immigration attorneys, accredited representatives and supervised law students.

5 = strongly agree	4 = agree	3 = don't know	2 = disagree	1 = strongly disagree
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Finally, please answer the six general questions at the end of the survey.

Thank you in advance for your participation in this survey.

Survey Questionnaire for BIA Pro Bono Project Evaluation (June 2004)

5 = strongly agree	4 = agree	3 = don't know	2 = disagree	1 = strongly disagree
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- ___ 1. The project has increased the level of pro bono representation at the Board.
- ___ 2. Generally speaking, pro bono counsel submit appellate briefs more often than pro se respondents.
- ___ 3. Pro bono counsel recruited by the project submit appellate briefs more often than pro se respondents.
- ___ 4. The quality of briefs filed by pro bono counsel is much better than pro se respondents.
- ___ 5. Pro bono briefs articulate issues on appeal much better than pro se respondents.
- ___ 6. Pro bono counsel increases the likelihood of a favorable Board decision for their client.
- ___ 7. Pro bono cases facilitate legal review by BIA staff attorneys.
- ___ 8. Pro bono cases facilitate adjudication of the appeal by Board members.
- ___ 9. Pro bono briefs reduce the time it takes to understand and resolve issues on appeal.
- ___ 10. Generally speaking, pro bono cases reduce the overall time on appeal (i.e., filing to disposition).
- ___ 11. Generally speaking, pro bono counsel is the key factor in the outcome of the appeal.
- ___ 12. The project provides effective ways to resolve administrative case processing problems affecting pro bono cases.
- ___ 13. The benefits of the project clearly outweigh its costs.
- ___ 14. The project performance goals are clear and measurable.
- ___ 15. Pro bono cases improve case efficiency at the Board.
- ___ 16. Pro bono cases reduce time on appeal at the Board.
- ___ 17. Pro bono cases increase the number of briefs before the Board.
- ___ 18. During the past three years, the overall project has been successful.

Survey Questionnaire for BIA Pro Bono Project Evaluation (June 2004)
Additional Comments and Observations

1. Please describe the most important benefits of the BIA pro bono project.

2. Please describe the most difficult problems facing the BIA pro bono project today.

3. What would you do to the correct the problems you listed above?

4. Are there any side effects (positive or negative) of the BIA pro bono project you did not anticipate? If so, please identify the nature and extent of these unintended side effects.

5. Approximately how many cases have you reviewed in which the EOIR Pro Bono Program secured pro bono counsel for the respondent? (please check only one)
 - ' none
 - ' 1-9 cases
 - ' 10-20 cases
 - ' more than 20 cases
 - ' don't know

6. . You are: (please check only one)
 - ' a Board member
 - ' a Board attorney
 - ' another EOIR employee
 - ' NGO project participant

Thank you for participating in this survey

Attachment D - Testimonies Compiled by CLINIC

“My client was detained in Hartford, Connecticut, several hundred miles away from me. I read his testimony in his transcript, and talked to him once or twice on the phone, but to a large degree he remained somewhat unreal to me. I sent off the brief, figured that it would be at least nine months before the Board made a decision, and his case took its place in the back of my mind. Three weeks later, the Board granted my client asylum, the INS released him, and he was on a bus to Boston to meet me.

I have to say that seeing him was one of the most gratifying moments of my life. Immigration cases are always poignant, and there is always something of an urgency to them - particularly to asylum cases. But I have never had a case which shifted so dramatically and so rapidly, and which made me think that I really had something to do with changing the course of someone’s life forever. To watch my client go from what he considered to be the brink of death to freedom was quite something. I’m not quite sure of how to describe it, but I’m getting chills just thinking about it.”

--Ilana Greenstein, Esq., BIA Project Participant

“My office, which handles immigration matters, had done a number of cases as part of CLINIC’s BIA Pro Bono Project. Each case is interesting and different – we have represented clients from Thailand and Mongolia, on asylum and criminal immigration matters. About seven months ago, we took on the case of a Haitian man who had been a permanent resident of the United States for over twenty years. We thought the battle would be about the likelihood that he would be tortured if returned to Haiti. Instead, the Board remanded the case to the Immigration Judge and we were able to apply for cancellation of removal. Our client has little education and had previously been on his own in attempting to properly fill out and file INS forms. Once we started working on his case, it seemed like he couldn’t believe that we were going to help him. Every time he called me from detention, he started off by saying, “Hello Miss Christina, I am so sorry to bother you...” it took me a while to get him to realize that I actually *wanted* to talk to him. Last week, he was granted cancellation of removal and thus retains his status as a lawful permanent resident and avoids deportation to Haiti. Yesterday, he called me and said, “Hello Miss Christina, I am so sorry to bother you. I am at my friend’s house in Delaware...” Knowing that after almost a year he had been released and was returning to his pre-detention life was simply amazing.”

--Christina LaBrie, Esq., BIA Project Participant

“CLINIC’s BIA Pro Bono Project has been a wonderful help to our firm in opening up to our attorneys pro bono opportunities in a very rewarding area. We know that the greatest weakness in our immigration system is the appalling lack of sufficient legal assistance for aliens caught up in that system. Many attorneys who would like to help, however, do not feel able or qualified to do so in an unfamiliar area of the law. CLINIC screens cases, provides forms and training and makes available practical assistance that has allowed us to mobilize and empower willing attorneys with a variety of skills and backgrounds to provide valuable assistance to people caught up in often difficult and heart-rending immigration problems. We are proud of the work we have been able to do for a number of worthy clients, and gratified ourselves at the assistance from CLINIC that made this work possible.”

-John Clark, Of Counsel, Perkins Coie LLP

“The BIA Pro Bono Project serves a very real need by screening cases of unrepresented foreign nationals and matching them with volunteer pro bono attorneys nationwide. I have represented several clients through this program, all of whom were being detained for long periods of time (typically a year or more) while their cases remained pending. Without the service provided by the BIA Pro Bono Project, I and other participating attorneys would have no way of identifying non-frivolous appeals and cases where relief is even possible, and many, many foreign nationals who are in fact eligible for such relief would end up deported and disserved in complete contradiction to the American ideal of liberty and justice for all. The BIA Pro Bono Program helps to make our dearly held principle of due process under law a reality.”

--Ron Wada, Attorney at Law, Berry, Appleman & Leiden LLP

“As a BIA Project participating attorney, I write to recommend that the project be continued and expanded. Having practiced deportation defense for almost 20 years, one of my greatest frustrations is that there is no "public defender" system in place for indigent aliens in proceedings in immigration court and on appeal. The demand for representation far outstrips the supply. This program and others like it make small but necessary inroads, steadily chipping away at the seemingly endless representation "iceberg." I encourage EOIR to reach out to the ABA and state and federal bar associations, urging them to ask their members to participate. You may use my name to endorse any such effort, and I will be happy to speak with you or with those organizations in furtherance of such work.”

--Daniel M. Kowalski, Editor-in-Chief, Bender's Immigration Bulletin

“Over the years, I have handled a number of cases as part of the CLINIC BIA Pro Bono Project. More recently, I have had the fortunate experience of being able to introduce a law student to the satisfaction that comes from handling an immigration case on behalf of a detained client. Being a participant in CLINIC’s BIA Pro Bono Project is, in a sense, like having the resources of a pro bono law firm on your side. CLINIC has reduced the screening and assignment processes to a science allowing participants to spend the bulk of their time directly representing clients with enormous needs instead of screening to locate worthy matters.

I can think of no other type of legal representation that is as direct, crucial or personal as that between an attorney and a client who, in many cases, is in grave fear of returning home. As an American, I don’t believe I will ever truly be able to grasp the tragedy that must come when “home” is not “sweet” but is, instead, the place one fears the most. I often hope I am able to convey to my clients through this program the very values that they must have believed were abundant in the United States when they first chose to come here. No doubt, for many of them, America has not proven to be the “land of the free” they expected.”

--Marc M. Harrold, Esq., BIA Project Participant

“We at Shearman & Sterling find that the BIA Project at CLINIC is a great project for summer associates. First of all, as the work is federal, summers and attorneys in all of our U.S. offices can participate. When we take on an immigration appeal for the summer associates to work on, we set up a team with a summer associate or two, a junior associate and a partner. We very much appreciate the training materials and mentoring that CLINIC provides on immigration law. The cases are ideal for summer associate participation because the work can begin as soon as the conflicts check clears. The brief is usually filed by the time the summer associates complete their time at the firm. The associate and partner then remain on the case until a decision is received. What makes this a good summer project is

the amount of time needed to complete it, the excellent case screening done by CLINIC, as well as the training materials and ongoing mentoring for volunteers. It is our pleasure to take on these matters from CLINIC.”

--Saralyn Cohen, Pro Bono Attorney, Shearman & Sterling LLP

“The BIA Pro Bono Project is one of our best sources of pro bono work. Attorneys affiliated with the project pre-screen cases, so that interesting issues and more likely to be presented, and they [CLINIC and its NGO Partners] do a wonderful job of providing support to our attorneys as they research and draft briefs.”

--David Lubitz, Pro Bono Counsel, Swidler Berlin Shereff Friedman, LLP

In 2003, Cornell Law School started an Asylum and Convention Against Torture Appellate Clinic. Through the clinic, 8 students, working in teams of two, write appellate briefs (and where appropriate, motions to remand or reconsider) to the BIA on behalf of immigrant clients who have petitioned to remain in the United States because they fear persecution or face torture in their home countries. According to Estelle McKee, one of the clinical instructors, the impetus for the asylum/CAT appellate clinic came from her own experience representing a client through the BIA Project in the summer of 2001. In her words, “There is a good chance we would not be able to continue the clinic without the BIA Project to rely on for cases. The BIA Project is perfect for this, because attorneys / experts have already reviewed the files and determined that good issues exist, and we receive case descriptions that allow us to determine which cases would be the best pedagogically.”

“One of the most greatest ways of love is to help others in their times of need. Many people, without even knowing me, are helping me in my deepest needs. Your help, care, and concern help me keep hope.”

--Detainee Represented through the BIA Project

“Every day, I have more reasons to be grateful with you and all the people who have help me so much in my case. I know that all of you ran and did everything that was in your hands to successfully stop my deportation...God bless you all! I will never have enough words of appreciation for your help. I owe a lot to all the people who has continuously help me.”

--Detainee Represented through the BIA Project

“This week I had the pleasure of receiving news from my attorney, David J. Chapman, of Fargo, ND. Mr. Chapman informed me that he is going to take my case and that he was referred to me by CLINIC to take on all of my transactions with my appeal before the BIA. I don’t know how to express my gratitude for the assistance that you are giving me, but I am immensely thankful for it, because I know that you only select a few people in your program and that you assign very effective lawyers. A thousand thank yous.”

--Detainee Represented through the BIA Project

“Thank you for representing me through Dear Katie Cunningham and Dear Julie Tappendorf in Chicago. At the time I received for FedEx, I had almost given up on the United States for I could not afford a lawyer, though I was telling the truth about my experiences of abuse...all over Nigeria. You gave me hope and from the brief my lawyers filed, I will win my case. I take them very personal like my two sisters for though I don’t know them, I’m in awe of them for several reasons. They are top-notch lawyers with the Supreme Court of Chicago, the best money can buy. I got for free, dropped in my lap like a gift from heaven... Thank you and God bless.”

--Detainee Represented through the BIA Project

“Without Michael [pro bono attorney], my fiancé would be deported and wouldn’t have the chance to have the relationship with his son. Michael has made such an impact on our lives by helping us. Words can never say how much he’s meant to our family – I don’t know what we’d do without him. He’s a very kind man who is genuine and who gave us a lot of hope for our lives and our future.”

--U.S. citizen fiancé of detainee represented by Michael Lichtenstein, Esq., through the BIA Project

Attachment E

Key Opinion Survey Findings (Median scores reported)

	All	EOIR / BIA
Quality of pro bono briefs are better than <i>pro se</i> litigants	Agree (4.5)	Agree (4.0)
Pro bono briefs articulate issues better than <i>pro se</i> litigant	Agree (4.0)	Agree (4.0)
Pro bono cases facilitate legal review by BIA staff attorneys	Strongly Agree (5.0)	Agree (4.0)
Pro bono cases reduce the time to understand appellate issues	Strongly Agree (5.0)	Agree (4.0)
Pro bono cases increase the number of briefs before the Board	Agree (4.0)	Agree (4.0)
Pro bono cases reduce time on appeal	Don't Know (3.0)	Don't Know (3.0)

Pro Bono Project Case Appeal Outcomes (261 detained cases and 20 non-detained cases)

BIA Decision	Filed by Alien	Filed by DHS	Cross Appeal	I.J. Certs.	Total Outcomes
Favorable to Alien	30 (22%)	81 (62%)		2	113 (40%)
Not Favorable to Alien	109 (78 %)	50 (38%)	9		168 (60%)
Sub-Totals	n = 139	n = 131	n = 9	n = 2	N = 281

All Other “Pro Se” Detained Case Appeal Outcomes (excludes all pro bono cases)

BIA Decision	Filed by Alien	Filed by DHS	Cross Appeal	I.J. Certs.	Total Outcomes
Favorable to Alien	330 (7%)	166 (69%)			496 (10%)
Not Favorable to Alien	4,209 (93%)	73 (31%)			4,282 (88%)
Outcome Unclear			9	75	84 (2%)
Sub-Totals	n = 4,539	n = 239	n = 9	n = 75	N = 4,862