



The Case for Pro Bono Placement, Even When We “Lose”

To be a pro bono coordinator in the world of immigration legal services is to wear many hats. On any given case, a pro bono coordinator often serves as careful match maker, language interpreter and expert guide, messenger, cheerleader, fortune-teller, mind-reader, and sometimes, shoulder to cry on. They do all of this with what seems like a million factors, many well beyond their control, at play. The pressure is real.



But guaranteeing a win, well, that’s impossible. And more importantly, it is not a pro bono coordinator’s burden to carry. A recent case CILA staff was involved in made something crystal clear - there’s a strong case for pro bono placement, even when, as much as it hurts, you “lose.” And maybe if we look at it right, even in losing, we win.

The Pro Bono Coordinator’s Burden

The job of a pro bono coordinator is not an easy one. Meaningful? Yes. Important, in fact, critical? Also, a resounding yes! But easy? Oh, there are moments, but many might say they are infrequent. There is the dilemma of making the right match – “Will this child open up to this pro bono attorney?” “Will they connect?” “Will this pro bono attorney communicate regularly enough with the child?” “How much should I play a part, and how much should I step back and let them develop rapport?” There is also, of course, the critical need to keep everyone apprised of developments in law and policy, and deadlines. “Things are changing, and it’s best you file the application ASAP” “You might need to reach out to class counsel in this litigation” “Remember that he turns 18 soon!” And then there are the efforts to predict the future – “Will the asylum officer ask about that?” “Will we get the right ICE counsel the day of the merits?” A bridge between many worlds, it can

often feel like a pro bono coordinator needs all the stars to align to win, and that they may just have to move each one of them themselves. Still, no matter how many stars need moving, the pro bono coordinator hopes.



The ability to hope is, perhaps, the key job requirement for pro bono coordinators. They hope to win, whether that's Special Immigrant Juvenile Status, asylum, a U or T visa, or some other form of relief from deportation for the child client. Somewhere along the way the voice in their head will whisper that the bad facts will carry the day, or the child will have a tough time testifying, or the adjudicating body is trending a problematic way now, or the judge won't go for that argument, or that new binding case from the court of appeals is terrible. And still,

the pro bono coordinator will push forward, always hopeful that a win is not impossible, that the universe is constantly shifting, that there's enough arbitrariness and discretion in the system to allow for miracles, that for this amazing child (and this dedicated pro bono), things will work out.

But if success is defined by "winning" legal relief for the child, then there will be many instances of "losing." No matter how well the child testifies, or how up to speed the pro bono attorney is, or how hard the pro bono coordinator wills it to be - there's simply too much beyond their control. We all know too well the truth of that in asylum cases, especially. **Just remember that the grant statistics for asylum may not be great with representation, but they are dismal without it.**¹

This article aims to make the case for pro bono, even when the adjudicator denies relief. It does so, in part, by telling the story of one pro bono asylum case that CILA staff was recently involved in. We offer a glimpse into our experience – one that had us feeling all the things – nerves, frustration, disillusionment, exhaustion, but also solidarity, greater awareness, and perhaps most importantly, renewed hope. This is Emanuel's² story, and we are lucky to be part of it. It is a story about how even when we lose, we win.

EMANUEL'S STORY

1. Emanuel Talks Like Obama

It was nearly 13 years ago, but I still remember the intake. I conducted intakes with a lot of teenage boys at that time, and this kid stood out. He was not quiet. Indeed, he had so much to say the very first time we met. He was fourteen, tall with a small, thin frame. It was like he was stretching out and didn't have time to put on

¹ According to a [2017 TRAC report](#), statistically, without representation, only one out of every ten asylum seekers wins their case, and the odds of gaining asylum are five times higher when represented. A [2021 TRAC report](#) also provides a helpful analysis of four groups of asylum seekers – affirmative, defensive, and represented or unrepresented.

² The client's name has been changed to protect his privacy.



weight fast enough. He was a bright-eyed kid, with a tuft of curly hair that sat nicely on the top of his head. It was hard not to be impressed by Emanuel. I remember how compelling he was, how strong he was in his convictions, even the rhythm to the way he spoke. I thought, “Wow, this kid talks like Obama.” I was hopeful.

The biggest concern at the time – and this was 2009 – was whether the asylum office would take jurisdiction and adjudicate his asylum claim or he’d end up fighting hard against ICE counsel and before an immigration judge. He had entered the United States as an unaccompanied minor, but he was now living with his mother. His facts could be described as “good” only by those who do the work we do – persecution by gang members in his small community, but with religion as a central reason. Emanuel had become involved in his church and was getting attention as a youth preacher. I never heard him preach, but I heard him talk about his faith, and I knew he must have been brilliant before a crowd. He journeyed to the United States soon after the persecution.

I was KIND’s pro bono coordinator in the Houston office in 2009, and I referred the case to the fellow we had at the time. She worked with him on his declaration and on preparing for his asylum interview, took a colleague (then a fellow at the Cabrini Center, and now CILA’s Director Dalia Castillo-Granados) to interpret at the interview, and it all went well. Emanuel was amazing. But this was not long after the TVPRA of 2008 went into effect, and just when the asylum office would take jurisdiction over cases filed by unaccompanied minors who had reunified with a parent, nobody knew. Soon the “no jurisdiction” letter came, and what would be a long saga began – one that wouldn’t see its end until 2022.

2. Timing is Everything

The “no jurisdiction” letter meant Emanuel’s case was now before the judge, and there, it would languish. A merits hearing was finally set for May of 2013, and while the attorney who had inherited the case was prepping for that, there were rumblings that USCIS would soon issue what is now known as the “Kim memo.” Emanuel’s counsel was now Dalia Castillo Granados (at that time, working as direct representation attorney at KIND), and she filed a motion to reconsider with the asylum office based on the “Kim memo.” The asylum office responded promptly that it would not reconsider its no jurisdiction determination and adjudicate Emanuel’s case, so back before the judge they were.

Numerous merits dates were set after that, but they were always moved by the court, and not at Emanuel’s request. The team that would ultimately try Emanuel’s case was sorted out during that time. Dalia was now CILA’s Director, and I was working with her. We secured pro bono counsel in Timothy Tyler, Counsel at the law firm of Vinson & Elkins. He had been a colleague of mine before, and I knew he’d give Emanuel’s case the attention it required. With Tim’s dedication and resources, and Dalia’s expert guidance, it felt as though Emanuel had a shot. Together, they worked on ironing out every detail through Emanuel’s declarations, and on gathering the evidence and country conditions documentation they needed, including working with an expert able to both prepare a report and testify by video.

A merits hearing date that stuck was finally set for February of 2022. The team included Tim’s associates at Vinson & Elkins at the time –Carly Sagehorn and Kylie Terry (a previous associate, Andrea Cohen, also worked on the case), and they met frequently on case strategy issues and to prepare Emanuel to testify. When the day finally came, they were as ready as anyone could be. Efforts to reach out to ICE counsel for stipulation to a grant of asylum were not successful. ICE was willing to dismiss the case, but so much time had passed, so



much work had been done, and Emanuel was ready to risk a removal order if it meant a chance he could step into the light. After much deliberation, Emanuel decided he wanted to go forward.

3. A Day-Long Merits, Hope and Disillusionment

The hearing was set for 10:30 am, but everyone else had arrived early. I was the last to arrive and walked in to greet Emanuel. I had not seen him since I had met with him so many years before, but I had come to support Dalia and Tim should they need anything. Emanuel was a grown man, now 26 years old. He was tall, with broad shoulders, and still so many curls. He had the same bright eyes, the same positive energy about him. I gave him a hug and smiled as we chatted, but I was nervous. I was worried that the judge and ICE counsel would forget that he was a little boy when he fled his home country, and that they would lack empathy for the man he was now.

ICE counsel was offering dismissal again in discussions outside the courtroom, stressing that the judge would never grant a case like Emanuel's – a case based on persecution by gang members. But ICE counsel had never heard Emanuel speak, hadn't heard him tell his story, and neither had the judge. We knew little about the judge, who had been appointed recently, but this wasn't a *do-the-mental-gymnastics-required-with-me* case based on a particular social group. Emanuel was persecuted because of his religion, and the case had been briefed and documented meticulously. How much time had the judge or ICE counsel spent reviewing his enormous document submissions, I wondered? We had no idea. Maybe counsel could gauge the judge's inclinations better after they had presented Emanuel's testimony, and perhaps that of the expert as well. Dalia asked ICE counsel if the offer to dismiss would be off the table if they proceeded and then decided, before the judge ruled, that they wanted to take the offer. The answer was yes, the offer to dismiss would be off the table. Ultimately, it was Emanuel's decision whether to go forward, and he said he wanted to tell his story.

Tell his story he did, in English, and quite beautifully. Tim guided him with questions. Together, they were almost poetic in how they laid out Emanuel's life for the court. They were fighting so hard for Emanuel's chance at relief, and the intensity of that was in the air. The judge was paying close attention to Emanuel's testimony. I wanted to see in her facial expressions that she found him compelling, but I wasn't sure. It wasn't all flawless, of course. Testimony seldom comes out as perfectly as you would want it to, and ICE counsel was tough on Emanuel, harping hard on statements he made in his very first declaration, the one put together for

his asylum interview over a decade ago. I was sorry for him in those moments when I know he felt attacked. The judge asked Emanuel some questions, and it was hard to tell which way she was leaning. The expert testified after that and did a fantastic job holding his own on cross examination. I was hopeful. Everyone was. There was a recess and then the judge called everyone back for a decision at 3:30 pm.

The judge announced off the record to the parties that she was going to deny, and with those words time stopped. The judge then inquired with ICE counsel about the offer for dismissal, but he responded that he had made it clear that offer would expire if the case proceeded. A look and a few words from the judge told him she

"It's so hard to understand that even though you do everything right and put everything you have into it, that's just not enough sometimes."

*-Dalia Castillo-Granados,
Pro Bono Counsel to Emanuel*



wanted him to think more about that, and he went to make some calls, while Dalia and Tim talked to Emanuel about an appeal. Tough decisions were made. ICE counsel came back, and indicated they were willing to dismiss the case, and that was the end of it. It could not possibly be, but it was.

Everyone walked out broken-hearted and utterly exhausted. Twelve years of waiting and working, an intense day of laying Emanuel bare, and the government's answer was that they were happy to let Emanuel stay in the United States, just without status. The judge was content to let him continue to live here, just in the shadows. Dalia remembers clearly how she felt for both Emanuel and Tim leaving the courthouse.

"I felt bad for [Emanuel]. I think he really thought that telling his story would convince the judge that he deserved asylum. And that's so hard with clients. You want to set expectations, but you don't want them to lose hope. Over the years, I think I had told [Emanuel] his case was going to be hard to win, but then there's the shock of hearing that the judge is going to deny," says Dalia. "And I think it was a shock to Tim, too. It's so hard to understand that even though you do everything right and put everything you have into it, that's just not enough sometimes."

"There's a war in Honduras, a war for young people that's between Christianity and the gangs. That is the truth, and it was my experience."

-Emanuel

As for Emanuel, the outcome of his case was disappointing, but before he could even process what it meant for him, he instinctively tried to cheer up his legal team. He remembers walking out of the courtroom and seeing Dalia, Tim, and the rest of the team so upset. "I remember saying, 'Hey, don't worry, we'll still have each other. I'll invite you guys to my wedding.'" Emanuel has no current plans to get married, but that was his way of reassuring them that they'd all see each other again, and that he was okay.

"I felt bad for Tim and Dalia because to me, they were like older siblings. They made me feel like a younger brother that they were guiding and protecting – always reminding me of what else I needed

to be aware of or to remember to do. They were so focused, and I knew they were always there for me, and that they would never give up. I wanted us to win. They never didn't play the role of attorneys, but they always made me feel like I was a family member of theirs. They never left me alone," says Emanuel.

Despite the result, Emanuel believes appearing in court and telling his story was important, and he's grateful that he was able to do so.

"There's a war in Honduras, a war for young people that's between Christianity and the gangs. That is the truth, and it was my experience. And it is the truth of many young people in Honduras, a truth that a lot of people don't know about, that people here don't hear about. And I don't think I'm the first person to face this war, to try to have this truth recognized."

But that recognition would not come in Emanuel's case. The questions were many. How had ICE won, exactly? How was anyone served, how would anyone benefit, from this outcome? The only thing clear, was that Emanuel deserved a better outcome.

"We thought the signal of free exercise of religion would break through the noise of gang violence. It didn't."

-Timothy Tyler, Pro Bono Counsel to Emanuel



Tim wanted that better outcome terribly, and it was tough to see the asylum process deliver out this result. He recalls telling his wife, “We thought the signal of free exercise of religion would break through the noise of gang violence. It didn’t.”

4. Relief was Lost, But So Much was Gained

In the days after the merits hearing, there were conversations and emails exchanged to express disillusionment, but also offer reassurances that everything that could have been done was done, and to recognize efforts. And in the end, despite the heartbreak, there was the clear understanding that even with a time machine, they’d do it all over again.

“Looking back, I’d make the same choices. It was a good case to place,” says Dalia. “[Emanuel] is very open and personable, and someone that you can easily champion. And if we had any chance of winning his case, it was important to dedicate a lot of resources in terms of country conditions, prepare a strong brief, and taking advantage of the trial skills expertise that private attorneys like Tim have.”

Emanuel’s was not a case lost for lack of effort. Countless hours were spent by the lawyers prepping the case. Tim is quick to add that the lawyers working on the case also received lots of key support. “The lawyers could not have done it without the help from the staff of the firm, from the administrative assistants who spent hours on the phone or trading e-mails with the immigration court, to the audio-visual services personnel who prepared for the possibility of a last-minute switch to a virtual hearing,” says Tim.

Tim feels fortunate for the experience, despite the result. “I was lucky enough to get to be his lawyer,” says Tim. “I have been rewarded so many more times than all the heart I put into it.”

“I was lucky enough to get to be his lawyer. I have been rewarded so many more times than all the heart I put into it.”

-Timothy Tyler, Pro Bono Counsel to Emanuel

“One day I’ll be married, I’ll have children. And I’ll tell them I fought for asylum and that I didn’t win. But I’ll tell them I had the best lawyers, lawyers like the ones you see in the movies, in Hollywood, that fought really hard for me.”

-Emanuel

For Emanuel, he can’t imagine going through the process without counsel. “I would have felt lost. Representation is so important. Without my attorneys, I would not have known what to do or where to go.”

Emanuel says he’s grateful for the experience that was working alongside his attorneys on his case. “This was a case that was only mine. It’s a beautiful thing to know how dedicated my attorneys were. They did the best, the most for me. I look back at my time with them as something beautiful that happened in my life,” he says. “One day I’ll be married, I’ll have children. And I’ll tell them I fought for asylum and that I didn’t win. But I’ll tell them I had the best lawyers, lawyers like the ones that you see in the movies, in Hollywood, that fought so hard for me. I lived all of that, and I

enjoyed those moments – seeing Dalia review the documents, and listening to Tim’s advice, and seeing Carly take notes on her laptop. I felt secure. Because of them my story is greater. Because of them my story grew.”



That accompaniment was key, and despite the decision, Emanuel says he's still standing. "My status doesn't define me. In my case, I lost, and I'm still here. I'm still being the person I was before, humble, hard-working, loyal. It's important for people to know that, that there are young people here like me – good people who stay positive, and who help. When Hurricane Harvey came, I was out there, I was helping people. And I wasn't worried about my status, I wasn't worried about anyone's status. Your status doesn't define you."

Pro Bono Matters, Period.

*As Vera has [written](#), children need a universal representation system. **Court-appointed counsel is the goal, but not yet a reality.** The fact that there are finite resources means we must recruit and train pro bono volunteers who can assist in meeting the need for representation.

*Pro bono coordinators **cannot predict** results in a system built on discretion, and that is still learning to accommodate children. A strategy of keeping "weak" cases in house and placing "winning" cases with pro bono volunteers may not be feasible and has mental health costs.

*Staff attorneys at the nonprofit legal service providers suffer from **secondary trauma**. Their brains and hearts need a break. Though they may seem best suited to handle the most challenging asylum cases, the assessment as to whether they should do so should factor into their current capacity considering the impact that comes with dealing with trauma materials. For a helpful training on this topics, see [here](#). For pro bono volunteers, it may be helpful to provide resources about self-care and secondary trauma given the difficult nature of the cases, both in terms of trauma material and grant rates.

*Change sometimes comes when enough people see just how broken our system is. **We need advocates** beyond those serving alongside us at nonprofit legal service providers to achieve change.

Place the Case

Yes, the inability to secure relief is often heart-breaking, but it shouldn't be defeating. Pro bono placement is essential, especially in a system without government-funded representation for all, and with so many odds stacked against applicants.

Pro bono placement is also key to the mental health of advocates fighting day in and day out. And it is, perhaps most importantly, essential to creating awareness and bringing more think power into improving a system that desperately needs it. In steps that may seem incredibly small, pro bono placement creates constant movement in the right direction – to greater recognition of the humanity of others, no matter where they come from.

###



If your organization has a creative model for pro bono engagement or for helping support and train pro bono attorneys, contact cila@abacila.org to share your experience. Check out CILA's [webpage](#) on Creative Pro Bono Models for more ideas for pro bono programs.

