



**NEW YORK  
LAW SCHOOL**

Lenni B. Benson, Executive Director, Safe Passage Project and Professor of Law, New York Law School

Written Testimony for New York City Council

Oversight on Unaccompanied Minors in Removal Proceedings

Submitted December 9, 2015

Dear Members of the City Council:

I begin with three quotes from immigrant youth. We are fortunate to be meeting these young people at the immigration court and offering the youth confidential screenings and assistance as they face deportation or removal proceedings. Their words speak volumes:

**“Every day I lived in fear for my life. I felt powerless.”**

**(A diario temía por mi vida. Me sentía impotente.)**

**“I was just a poor young man with dirty clothes, why would those men want to harm me?”**

**(Yo solo era una nina pobre con ropa sucia, ¿por qué esos hombres quieren hacerme daño?)**

**“We were so afraid of the gangs that I was not able to leave or be outside of my house alone. I was only allowed to go to school and to church but always with an adult.”**

**(Teníamos tanto miedo de las maras que yo no podia salir o estar fuera de mi casa solo. Solamente tenía permiso para ir a la escuela o a la iglesia pero siempre con un adulto.)**

These are just three quotes from young people fleeing El Salvador, Guatemala, or Honduras. In the past few years civil society in these countries has greatly diminished and today the UN ranks them in the top five of the most violent nations in the world. The vast majority of children we are assisting are fleeing and the feelings express above are echoed by the vast majority of children and teens we meet through our work as a juvenile docket provider and part of the ICARE coalition built by the generosity of Robin Hood Foundation, New York Community Trust and the New York City Council initiative on Unaccompanied Minors and fueled by the energy and dedication of our partnering non-profits and volunteer attorneys.

In these hearings I know that other members of ICARE will report to you on the collective impact of this initiative and share the number of children the coalition has helped. In my testimony I write to share more specific information about The Safe Passage Project and the story of one of the youth we are currently assisting. We hope you will hear today how very proud we are to be working in New York. This initiative is creating an important model of protecting immigrant youth and making the possibility of legal protection a reality for many young New Yorkers.

Jacob R.C. (a pseudonym)

Safe Passage first met **Jacob R.C.** in immigration court on September 22, 2014, when he was 17 years old. Jacob was born in Honduras and had an extraordinarily difficult childhood. When he was a young child, his mother was incarcerated and his father passed away. Jacob spent most of his childhood on the streets because he did not have anywhere else to live. Jacob began working when he was 9 years old and was not able to continue school after the 8<sup>th</sup> grade. Jacob rarely ate regular meals and was always hungry. The *barrio* where Jacob's grandmother lived was overrun by dangerous gangs. He heard gunshots and witnessed gang violence; he saw a dead body in the streets. Jacob, as a vulnerable homeless youth, was a prime target for gang recruitment. Though he resided with his grandmother for a period of time, she was elderly and became ill, leaving her unable to care for Jacob. Once again Jacob was without a home

When he was 17, Jacob made the decision to flee Honduras in search of safety, protection, and a brighter future. Jacob made the perilous journey from Honduras on foot, by bus and finally atop "La Bestia" – a dangerous freight train –to the United States alone. U.S. Border Patrol apprehended him shortly after he crossed the U.S. border, and he was immediately placed in removal proceedings. Safe Passage Project met with Jacob at immigration court and conducted a thorough screening to assess his possible legal relief. Safe Passage swiftly secured legal representation for Jacob—a dedicated team of two lawyers at the law firm Kramer Levin Naftalis & Frankel LLP and two lawyers from Morgan Stanley.

On the advice of Safe Passage, the legal team has sought Special Immigrant Juvenile Status (SIJS) findings in the Family Court and will later use these findings to support an application for permanent residents status before the United States Citizenship and Immigration Service. SIJS is a path to permanent residency and to citizenship and protects youth who have been neglected, abused or abandoned by one or both parents. In this case, Jacob may have also qualified for asylum as a person having a well-founded fear of persecution. Making the decision of whether to pursue one remedy or another is a complex calculus of factors and knowledge of the current agency perspective on qualifying for protection.

In this case, the team began with helping Jacob secure a legal guardian. Sadly, after starting the case in Family Court, his proposed legal guardian disappeared, leaving Jacob alone yet again. Without a guardian to anchor the Family Court proceeding, Jacob's SIJS case would be stalled or impossible. It is part of the challenge of working with unaccompanied minor children that some of the people who agree to sponsor the child out of immigration detention are unwilling or unable to become the child's legal guardian. "Sponsorship" out of detention is not a recognized legal status nor does it grant the adult any formal ability to protect the child, make decisions for the youth, or act as his legal guardian or custodian. The state family court proceedings are essential to make sure that youth like Jacob have a stable and capable guardian who is able to guide the youth and help protect the child's well-being through meaningful care and engagement.

Remarkably, one of the members of the Kramer legal team, Rachael De Chacon, stepped in: she was changing law firm employers. She formally withdrew as counsel from Jacob's case and agreed to serve as Jacob's guardian instead. Rachael's action is exceptional and her parents and family have embraced Jacob. The two meet frequently and the guardianship petition is now pending before the Family Court. The legal assistance of the combined efforts of Safe Passage and the Kramer Levin legal team enabled Jacob to seek the legal protection the United States affords him.

In addition to navigating the complicated legal aspects of Jacob's case, Safe Passage is also providing social work assistance. When Jacob and one of the dedicated attorneys from his team met with Samantha Norris, the Safe Passage social worker, it was obvious Jacob would benefit from a host of social services. That same day, Jacob was accompanied to The Door, where he became a member and was connected to vital assistance including meals, psychological support, other young people, and the possibility of emergency housing. Safe Passage also brought Jacob to Terra Firma in the Bronx where he has received essential medical services, dental care, and both individual and group mental health counseling. Safe Passage is currently assisting Jacob in enrolling in an evening HSE (formerly GED) prep program at Union Settlement House, which he will attend two evenings a week while he works in the Bronx as an apprentice barber. In addition, Jacob regularly attends Safe Passage soccer games and mentoring events, where he has met other kids like himself, who have had very challenging childhoods. Here in New York, Jacob is happy, healthy, pursuing education and legal residency. For the first time in his life, Jacob is safe.

The PBS Newshour interviewed Jacob and his legal team. Producer Ivette Feliciano was able to produce two video segments built on her analysis about the needs of unaccompanied minors. The first piece described the status of the national litigation seeking a court order that children must be provided free counsel by the federal government as an essential element of due process. The case is still in very early stages and the litigation is unlikely to result in immediate rulings for either side. The second story shares the feelings and emotions of Jacob and his new guardian, Rachel as together they work through the complex legal process that we all hope will lead Jacob to permanent resident status.

Jacob's story is available here in a short three minute video:

<http://www.pbs.org/newshour/updates/once-alone-and-undocumented-teen-finds-family-in-immigration-court/>

## **The Needs of Unaccompanied Minors**

Jacob's story helps illustrate some of the real challenges of working with unaccompanied youth. Safe Passage Project is very appreciative of City Council and Robin Hood funds that allowed us to hire two experienced mentor attorney counsel , Desireé Hernández, Alexandra Rizio; and our social worker, Samantha Norris. We use the skills of these valued professionals to recruit, train, and mentor our pro bono attorneys and student volunteers. Safe Passage is designed around an intensive mentored pro bono model. With the addition of a professional social worker we have been able to offer more trainings and support to the legal teams and we are able to offer externships to outstanding social work externs. The Central American youth have suffered in their countries of origin and during their desperate journeys; the integration of social work support and experienced mentoring makes the pro bono work possible.

## **It Begins With Skilled Legal Services**

We know that you are aware that the youth we meet at the Immigration Court are not currently entitled to free counsel even when the children are indigent. Safe Passage Project was created in 2006 to help train and recruit pro bono attorneys to start aiding immigrant youth. In 2006 New York Law School began to regularly host trainings on remedies for immigrant children. Even a city like New York, with thousands of qualified attorneys, has few attorneys with the training to navigate the complexity of representing children in state family court matters and also assist youth in immigration court and securing immigration status. There is a great deal of specialization within the practice of law. Our mission is to prepare attorneys with support in all the related legal fields that intersect in children's lives.

New York Law School generously began to support this work by housing the Safe Passage Project and supporting adjunct professors who would mentor and assist law students and pro bono attorneys to help immigrant youth. Today Safe Passage is an independent not-for-profit corporation housed within the law school and integrated with a law school clinic.

As Safe Passage Project grew, the need for more coordination and staff attorneys grew to offer the close mentoring and guidance that is at the heart of the work we do. In 2012 we had fewer than fifty children's cases. Today we are helping more than 550 children and we have close to 500 active pro bono volunteers. These attorneys come from many practice areas, diverse law schools, and variety of levels of expertise. We also work with attorneys in solo practice or small firms, in addition to working with larger law firms. We have a mission of improving and supporting the quality of the legal representation available for children.

The City is doing a tremendous job in aiding immigrant youth. Still the needs for more legal services at the NY Immigration Court are very real. To try to meet some of the needs across the country, the federal government created a program, Justice AmeriCorps, in the summer of 2014 and extended in 2015 that allows Safe Passage Project to hire a few recent graduates as legal fellows. This grant is the first step the federal government has made to offer some legal assistance to unaccompanied minors. Because so many of the immigrant youth are not resident in New York City, Safe Passage Project has

devoted the Justice AmeriCorps fellows to children residing in Long Island.<sup>1</sup> Justice AmeriCorps fellows are also limited to serving children placed into proceeding after October 1 of 2014, well after the largest wave of children arrived and children must be under 16. This year we will again devote almost all of these resources to helping children resident in Long Island.

## **Training and Mentoring**

While we hesitate to say any child's immigration case presents a "straight forward" or "simple" path to legal status, even when a case may at first seem to have a clear legal trajectory, we have come to appreciate that the circumstances of the child's past and the need for integrated and guided legal and social services are essential to successful outcomes. We are encouraged that so many attorneys have stepped forward to volunteer with us to represent children. We know that with mentoring and support even an inexperienced pro bono attorney new to the field can build a trusting relationship with his or her young client, work steadily toward helping the young person obtain legal status, and ultimately after working through the thorny and challenging delays of legal and bureaucratic process, set the young person on a path to a stable future as a legal permanent resident of the United States.

We are proud to serve as an important source of free in-person and on demand trainings that support the legal work of our pro bono volunteers but are also widely available to our ICARE partners and the larger community. While many of our resources are on our website, we hope to offer additional videos, manuals, and resources in the near future. Many of our teaching and legal materials are not posted on our website but are available through our direct mentoring work.

Together the non-profit and law school have conducted **over fifty trainings** in the past two years. We work with the ICARE partners and local bar associations to bring some of the City's best advocates to speak and to share their skills and knowledge with the larger community. Some of our trainings focus specifically on the psycho-social needs of the youth and the importance of self-care for the professionals who serve children who are victims of trauma. This past fall we offered trainings on immigration court procedures, best practices before the asylum office, assessing the needs of youth who have experienced trauma, motions to preserve due process rights, and advanced topics in special immigrant juvenile cases. We are particularly grateful to Council member Rory Lancman and Speaker Melissa Mark-Viverito who joined us for our trainings on October 27, 2015.

We also hold open office hours for our pro bono attorneys so our staff are on call to assist. We note that New York Law School donates its facilities and training resources to make sure that cost of training is not a barrier to attorneys, students, and volunteers who want to become prepared to represent immigrant youth.

Safe Passage Project was fortunate to receive a grant from the Practicing Law Institute (PLI) that allowed us to create a Director of Legal Training. Claire Thomas, formerly a mentor attorney at Safe Passage, fills this role. She has recently worked with our social worker and Colleen Duffy of the Administration for Children Services to offer free trainings and share best practices with caseworkers

---

<sup>1</sup> These federal grants are insufficient to pay the full salaries of the legal fellows and we are grateful for support from the New York Immigration Coalition, the Long Island Health and Welfare Foundation and the Office of New Americans together with sponsorship of one of the fellows by the Long Island based firm of Jadeja and Cimone.

servicing city youth. Together Claire and the staff at the Safe Passage Project are offering on going cycles of trainings both at the law school and in law firms. With Careen Shannon, a partner at Fragomen, Del Rey, Bernsen, and Lowey, we hope to produce in 2016 a text that will represent the first comprehensive treatise on the many aspects of representing children in immigration matters.

We hope the City Council will continue to support training for other agencies that serve city youth and fund Safe Passage Project and other experienced non-profits to offer more outreach and training to attorneys, social workers, educators, and health workers who are working with these vulnerable populations. Training pays for itself many times over. We know that with training and mentored support, these professionals can transform the lives of the immigrant youth and improve the communities where the youth live.

### **Stand Ready: The Crisis is Not Over**

As we prepare this testimony, the federal government has announced that it is expanding the number of beds dedicated to the detention of children apprehended at the border. In *The New York Times* on November 27, 2015 and today on December 7, 2015 Julia Preston reported that government officials are expanding the detention space because the numbers of children apprehended in August, September and October reflected an unusual increase for the time of year and the largest number of children apprehended in a similar time period. In the past, New York has been in the top four receiving states for the relocation of these youth. It was number two in 2014. Under existing legal precedent, the detention must be short and the federal government is forced by past settlement agreements and current litigation to release the children as soon as safe sponsors can be found. Due to our city's large population of people from the countries of El Salvador, Guatemala and Honduras, New York can expect more children will be here.

We also know that some children are not apprehended at the border either because they entered with temporary visas or were not detected. Amongst our 1.4 million school children in New York there are many children in the public schools that also need legal assistance. There are remedies for children that are not possible when they become adults. We hope the City Council will explore more funding to reach these youth as well. For many years Safe Passage Project has also provided pro bono support to a public school in Washington Heights. We hope to continue to do so in the future but the demands of the surge in court cases have stretched our resources. Further, leaders at several other city schools have asked us for help and at this stage we have to say we don't have the capacity to meet the needs of children not in removal proceedings. It is shame to wait until the child is facing a crisis. The stress and worry for the children who are not in status can be harmful to educational achievement and long-term economic stability.

The resources the City has provided have been essential and we will continue to work with our ICARE partners to report on the needs at the Immigration Court. We know the City is committed. Based on our existing funding, Safe Passage Project anticipates that we will be over our caseload capacity within two months. While we have eager pro bono attorneys ready to begin, as we hope our testimony has illuminated, the energy and commitment of the pro bono community can only succeed with adequate support of lawyers and social workers.

We can do it together. We have made a start. Let us continue to prepare and build capacity in the legal community to help these youth successfully navigate the complex barriers of immigration law.

We thank you for this opportunity. We are proud to be part of New York Initiative for Unaccompanied Minors. Thank you.

Respectfully submitted by:

Lenni Benson, Executive Director, Safe Passage Project  
and Professor of Law, New York Law School  
185 West Broadway, NY, NY 10013; 212-431-2336;  
[lbenson@safepassageproject.org](mailto:lbenson@safepassageproject.org) or [lbenson@nyls.edu](mailto:lbenson@nyls.edu).