

**THE CRISIS OF UNREPRESENTED IMMIGRANTS:
VASTLY INCREASING THE NUMBER OF
ACCREDITED REPRESENTATIVES OFFERS THE
BEST HOPE FOR RESOLVING IT**

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INTRODUCTION

The U.S. immigration system is exceedingly complex, and access to legal representation is the primary determinant in obtaining a just immigration outcome. Immigrants must navigate a byzantine, burdensome, and high-stakes legal process, conducted in a language they often do not speak. They often must do so without any legal representation. Unlike criminal defendants, immigrants are not entitled to government-funded lawyers. Legal services organizations, such as Legal Services Corporation,¹ that receive any federal funding are prohibited from providing legal representation to most immigrants. Faith-based and charitable legal services organizations provide some legal representation to immigrants through attorneys, staff members, and volunteer lawyers who provide pro bono legal services. The limited pro bono legal services that are available, however, cannot meet even a majority of the demand. This imbalance has persisted for decades and, indeed, has recently grown exponentially worse despite significant efforts to recruit lawyers for pro bono assistance.

Long-standing regulatory authority provides a possible pathway forward. Federal regulations allow what are called “accredited representatives” to provide legal services in administrative immigration proceedings.² This authority has existed for more than seventy years, during which accredited representatives have competently and successfully assisted many migrants.³ Although there are only approximately 2,300 accredited representatives today,⁴ many more persons could effectively and efficiently be educated to do the job.⁵ But they will not be unless existing members of the immigration

1. Legal Services Corporation “is a private, nonprofit corporation established” and funded by Congress that “provides legal services through grants to independent local programs.” *Legal Services Corporation*, FED. REG., <https://www.federalregister.gov/agencies/legal-services-corporation> [<https://perma.cc/7LLR-L4BK>] (last visited Nov. 3, 2023).

2. *See infra* Part IV.

3. *See infra* Part IV.

4. *See infra* note 119 and accompanying text.

5. *See infra* Part IV.

ecosystem recognize the importance of accredited representatives and take steps to support their occupation's growth.

How might this be accomplished? What conditions are required to sustain and grow this career path in law?

This Essay's thesis is that the health care industry may provide some guidance. In the 1960s, the United States experienced a severe shortage of doctors.⁶ There were a shrinking number of general family practitioners and health care was inaccessible to low-income people as well as those residing in rural settings.⁷ Responding to this need, the health care industry launched two new classes of health care professionals: physician assistants and nurse practitioners.⁸ These new health care career paths increased health care availability while moderating the cost. Today, nurse practitioners and physician assistants are integral providers of health care services.⁹

This Essay proceeds in six parts. Parts I and II note how and why representation so dramatically improves outcomes for immigrants.¹⁰ Part III discusses why more pro bono representation by attorneys cannot work as the primary solution for problems of unrepresentation,¹¹ and Part IV discusses the history and contours of the accredited representative position while explaining why it is the most viable solution to the representation problem.¹² Parts V and VI of this Essay trace the successful development of nurse practitioners and physicians assistants in health care¹³ to discover lessons that can be applied today to build out and build up the accredited representative position for immigration law.¹⁴ Part VI concludes with recommendations for how our immigration ecosystem can encourage the growth of the accredited representative position.¹⁵

One word about terminology. This Essay argues for the expansion of a class of immigration practitioners referred to as "accredited representatives." Accredited representatives are authorized under federal immigration regulations to provide legal representation to immigrants in federal administrative proceedings.¹⁶ Accredited representatives are not lawyers, but they are authorized to do what lawyers do in certain circumstances. This Essay uses the terms "immigrant advocate" and "immigration practitioner" to refer to anyone who is authorized to provide legal representation to an immigrant, whether they are a lawyer or an accredited representative.

6. *History of AAPA and the PA Profession*, AM. ACAD. OF PHYSICIAN ASSISTANTS, <https://www.aapa.org/about/history/> [<https://perma.cc/YV9X-QSVU>] (last visited Nov. 3, 2023).

7. *See infra* Part V.B.4.

8. *See infra* Part V.

9. *See infra* Part V.

10. *See infra* Parts I–II.

11. *See infra* Part III.

12. *See infra* Part IV.

13. *See infra* Part V.

14. *See infra* Part VI.

15. *See infra* Part VI.

16. *See infra* Part IV.

I. REPRESENTATION IN IMMIGRATION CASES DRAMATICALLY IMPROVES OUTCOMES FOR MIGRANTS

Perhaps the most robust finding in immigration law is that representation matters. No matter the time period reviewed, the data set examined, or the methodology utilized, decades of studies have shown that for migrants in immigration court, a “lack of counsel has a pronounced, negative impact on case outcomes.”¹⁷ Given that there are, to my knowledge, no studies contesting this basic point, the remainder of this part looks to some leading studies detailing the sizeable advantage represented migrants have.

In their 2009 book *Refugee Roulette*, Professors Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag found that “[r]epresented asylum seekers were granted asylum at a rate . . . almost three times as high as the 16.3% grant rate for those without legal counsel.”¹⁸ Significantly, the authors’ regression analyses “confirmed that, with all other variables in the study held constant, represented asylum seekers were substantially more likely to win their case than those without representation.”¹⁹ *Refugee Roulette*’s conclusions echo the findings of an earlier study by the U.S. Government Accountability Office (GAO). The GAO study, using a different database, found that the grant rate for affirmative applicants with representation was 39 percent, compared to 12 percent for those without representation.²⁰

Studies that broadened their inquiry beyond asylum cases to all varieties of immigration court cases found even greater disparities. For example, the 2010 New York Immigrant Representation Study included an extensive review of cases in New York immigration courts.²¹ Among other things, the group found that 74 percent of nondetained individuals who were represented by lawyers obtained successful outcomes, whereas only 13 percent of nondetained individuals who were not represented by lawyers obtained

17. DONALD KERWIN, *MIGRATION POL’Y INST., INSIGHT: REVISITING THE NEED FOR APPOINTED COUNSEL* 5 (2005).

18. JAYA RAMJI-NOGALES, ANDREW I. SCHOENHOLTZ & PHILIP G. SCHRAG, *REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM* 45 (2009).

19. *Id.*

20. U.S. GOV’T ACCOUNTABILITY OFF., *GAO-08-940, U.S. ASYLUM SYSTEM: SIGNIFICANT VARIATION EXISTED IN ASYLUM OUTCOMES ACROSS IMMIGRATION COURTS AND JUDGES* 30 (2008).

21. N.Y. IMMIGRANT REPRESENTATION STUDY, *ACCESSING JUSTICE: THE AVAILABILITY AND ADEQUACY OF COUNSEL IN IMMIGRATION PROCEEDINGS* 5 (2011), <https://justicecorps.org/app/uploads/2020/06/New-York-Immigrant-Representation-Study-I-NYIRS-Steering-Committee-1.pdf> [https://perma.cc/43D6-TS6V]. This study originated in a convening of immigration thought leaders organized by Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit. *Id.* at 1. The group of assorted scholars, immigration lawyers, and judges that resulted is commonly referred to as the Katzmann Study Group. The New York Immigrant Representation Study was published in partnership with the Vera Institute of Justice and provides a broad assessment of both the accessibility and effectiveness of representation before the immigration courts. *Id.* at 1–2.

successful outcomes.²² Similar studies focused on the immigration courts of Illinois and California, respectively, yielded similar results.²³

Broadening the inquiry further, we can look to the first ever nationwide study of access to counsel in immigration court by Professor Ingrid Eagly and immigration attorney Steven Shafer. Their 2015 study analyzed approximately 1.2 million immigration court removal cases from 2007 to 2012, which were decided on the merits by approximately 377 different immigration judges.²⁴ The Eagly-Shafer study found that although only 37 percent of immigrants were represented by an attorney,²⁵ that 37 percent collectively did “better at every stage of the court process—that is, their [removal] cases [were] more likely to be terminated, they [were] more likely to seek relief, and they [were] more likely to obtain the relief they [sought].”²⁶

The magnitude of the disparities Eagly and Shafer found were stunning:

For example, detained immigrants with counsel obtained a successful outcome (i.e., case termination or relief) in 21% of cases, ten-and-a-half times greater than the 2% rate for their pro se counterparts. Success rates were even higher among immigrants represented by nonprofit organizations, large law firms, or law school clinics. Moreover, the relationship between representation and successful cases was statistically significant and persisted when controlling for other variables that could affect case outcomes, including detention status, nationality, prosecutorial charge type, fiscal year of decision, and jurisdiction of the immigration court. Among similarly situated respondents, the odds were fifteen times greater that immigrants with representation, as compared to those without, sought relief and five-and-a half times greater that they obtained relief from removal.²⁷

Regarding these disparities, allow me to note (at the risk of gilding the lily) that they would likely be even more extreme if Eagly and Shaffer had counted as “represented” only those individuals who were represented at all stages of their court proceedings. To the contrary, however, Eagly and Shaffer counted *any* period of assistance by a lawyer as representation, and

22. *Id.* at 19.

23. *See, e.g.*, ROB PARAL & ASSOCS., THE RESURRECTION PROJECT, ASSESSING CAPACITY TO PROVIDE LEGAL SERVICES TO UNDOCUMENTED IMMIGRANTS IN ILLINOIS (2022), <https://resurrectionproject.org/wp-content/uploads/2022/08/Assessing-Capacity-to-Provide-Legal-Services-to-Undocumented-Immigrants-in-Illinois.pdf> [https://perma.cc/M44D-HHR5]; ALISON HAMBURG, ALEJANDRO BARRIO, DAVID KLAUBER & DAVID ONEK, GRANTMAKERS CONCERNED WITH IMMIGRANTS & REFUGEES, IMMIGRATION LEGAL SERVICES IN CALIFORNIA: A TIME FOR BOLD ACTION (2020), https://www.gcir.org/sites/default/files/resources/GCIR_Legal-Services-Assessment-%20February%202020_0.pdf [https://perma.cc/ASD2-YQU5].

24. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 11 (2015). Records were obtained from the Executive Office for Immigration Review (EOIR), the adjudicating agency located within the U.S. Department of Justice. *Id.* at 6.

25. *Id.* at 7.

26. *Id.* at 9.

27. *Id.*

specifically noted that “only 45% of immigrants [they] count as ‘represented’ had an attorney appear at all of their court hearings.”²⁸

After reviewing the broadest available studies, we may narrow our focus by considering the special plight of children in immigration court. In various papers concerning this topic, the Vera Institute of Justice has noted that: (1) “[r]epresentation makes a fourteen-fold difference in terms of case success for family cases defined as ‘women with children’”;²⁹ (2) “[c]hildren with legal representation . . . obtain[] legal outcomes that allow[] them to remain in the United States 70 percent of the time, compared to just 9 percent for children without representation”;³⁰ and (3) “[o]nly 5 percent of non-detained, represented children have been ordered removed in absentia for failure to appear in court, compared to 80 percent of unrepresented children.”³¹

Finally, the impact of representation can be even more pronounced in cases involving unaccompanied children. A recent study by the Congressional Research Service examined data provided by the Executive Office for Immigration Review (EOIR) for cases completed between October 1, 2017, and March 31, 2021.³² In these cases, 54 percent of the unaccompanied children received legal representation, while 46 percent did not.³³ Incredibly, 1,473 represented children received some form of immigration relief—such relief would include asylum, a special immigrant juvenile status or, for victims of trafficking, nonimmigrant status—but only *thirteen* unrepresented children received the same.³⁴ This constitutes, for unaccompanied represented children, a success rate that is more than 100 times—not 100 percent, but more than 100 times—the success rate for unaccompanied, unrepresented children.³⁵

The extreme differences in outcomes—in the case of unaccompanied children and the other examples noted in this part—leave no doubt that a lack of representation substantially harms a migrant’s likelihood of receiving a positive outcome in court. Indeed, as the National Association of Immigration Judges has stated, “[t]he value of representation for noncitizens in the immigration court cannot be overstated.”³⁶ The next part explores why, over so many studies and so many decades, representation has proven so crucial to success in the immigration courts.

28. *Id.* at 8.

29. KAREN BERBERICH & NINA SIULC, VERA INST. OF JUST., WHY DOES REPRESENTATION MATTER?: THE IMPACT OF LEGAL REPRESENTATION IN IMMIGRATION COURT (2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf> [<https://perma.cc/284C-FTEG>].

30. *Id.*

31. *Id.*

32. WILLIAM A. KANDEL, CONG. RSCH. SERV., R43599, UNACCOMPANIED ALIEN CHILDREN: AN OVERVIEW 22 (2021), <https://crsreports.congress.gov/product/pdf/R/R43599> [<https://perma.cc/Z2VB-P8DC>].

33. *Id.* at 16–17, tbl. 1.

34. *Id.*

35. *Id.*

36. NAT’L ASS’N OF IMMIGR. JUDGES, NAIJ POSITION ON LEGAL REPRESENTATION IN IMMIGRATION COURT (2021), <https://www.aila.org/File/Related/21050438a.pdf> [<https://perma.cc/E3ZP-E49A>].

II. THE REASONS WHY UNREPRESENTED MIGRANTS FARE WORSE IN IMMIGRATION COURTS ARE MULTIFOLD AND OVERDETERMINED

It is an old—and generally truthful—saying that “the person who represents himself has a fool for a client.” In the vast majority of cases, hiring a lawyer *is* likely to produce a better outcome than one would receive by pleading one’s own case. The adage expresses a truth that is thought to apply broadly, covering all types of cases and all kinds of people, even lawyers themselves. And if the truth the adage conveys—that one disserves one’s own case by self-representation—applies broadly, what are we to think of a system that, as a practical matter, requires about half of all migrants³⁷ to do exactly that?

In the best-case scenario, self-representation might not pose a major problem. The immigration system that many migrants are forced to navigate alone, however, is far from the best-case scenario—it approaches the worst-case scenario. We cannot call unrepresented migrants fools, of course. Being unrepresented is not a matter of choice for them; in representing themselves they are making the best of a bad situation. We are fooling ourselves, however, if we think that the disparate outcomes revealed by numerous studies do not represent a widespread miscarriage of justice. Consider the following.

One reason the abovementioned adage gained such widespread currency, to the point where it would be applied to lawyers themselves, is the recognition that many fields of the law are so complex—covered with pitfalls and landmines—that to tread them as a nonspecialist is foolishly dangerous. It is widely recognized that immigration law is one such field. Indeed, it may be debatable whether U.S. immigration statutes and regulations are “second only to the Internal Revenue Code in complexity,”³⁸ but there is little question that immigration law is “labyrinthine, extraordinarily difficult to navigate without expert legal assistance—even for adults with formal education.”³⁹ The U.S. Court of Appeals for the Ninth Circuit did not

37. *Outcomes of Immigration Court Proceedings*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE: IMMIGR., <https://trac.syr.edu/phptools/immigration/closure/> [https://perma.cc/DU6T-EYFE] (last visited Nov. 3, 2023); see also *Individuals in Immigration Court by Their Address*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE: IMMIGR., <https://trac.syr.edu/phptools/immigration/addressrep/> [https://perma.cc/RV7Q-HEE6] (last visited Nov. 3, 2023) (showing that the odds of having legal representation in immigration court removal proceedings ranges from 12 percent to 58 percent, depending on the state in which the immigrant lives).

38. *Castro-O’Ryan v. U.S. Dep’t of Immigr. and Naturalization*, 847 F.2d 1307, 1312 (9th Cir. 1987) (quoting ELIZABETH HULL, *WITHOUT JUSTICE FOR ALL: THE CONSTITUTIONAL RIGHTS OF ALIENS* 107 (1985)).

39. ALYSSA SNIDER & REBECCA DiBENARDI, VERA. INST. OF JUST., *REPRESENTATION MATTERS: NO CHILD SHOULD APPEAR IN IMMIGRATION PROCEEDINGS ALONE* (2021), <https://www.vera.org/downloads/publications/representation-matters.pdf> [https://perma.cc/5A-V M5U].

exaggerate when it concluded that “[a] lawyer is often the only person who could thread the labyrinth.”⁴⁰

Sources of confusion for unrepresented migrants fall into three main categories: (1) questions about what the law is (i.e., substantive legal questions); (2) jurisdictional questions regarding the proper government body for addressing a claim; and (3) practical questions about trial practice techniques and courtroom procedures. As the third category would apply to many different substantive areas, this part does not dive into the category in much detail. It is, however, important to note that understanding how to, for example, call and to question witnesses, collect and introduce evidence, object to the opposing side’s questions and actions (and on what grounds), and craft legal arguments are all obviously important to success in any legal forum. Thus, a lack of any of these skills may prove fatal to one’s case.

The other two sources of confusion may prove equally fatal and, in contrast to the third category, immigration law creates an especially high chance of fatality. With respect to the substantive law, Judge José A. Cabranes noted “[t]he inscrutability of the current immigration law system,” describing it as “a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike.”⁴¹ Barriers to legal understanding begin with the possibility that laypersons could reasonably be completely ignorant that they have a claim, as they would have no incentive to research or pursue the matter. For example, would a child who was born abroad and whose parents were born and lived abroad for their entire life suspect that they may qualify to acquire citizenship because of a grandparent’s U.S. citizenship and residency?⁴² Would someone who was blackmailed or extorted in the United States and reported that crime to the police suspect that they may be eligible for a visa as a victim of a crime?⁴³ And would an older person necessarily know about the registry date, a date in 1972 that could provide a basis for a green card (granted to permanent residents) if continual presence in the United States could be shown, even if no other grounds for the card existed?⁴⁴ Immigration law is designed to cover a significant percentage of individual circumstances and to achieve a number of often unrelated policy aims. The sheer volume of law, however, paired

40. *Castro-O’Ryan*, 847 F.2d at 1312; see also *Lok v. Immigr. & Naturalization Serv.*, 548 F.2d 37, 38 (2d Cir. 1977) (likening immigration law to King Minos’s labyrinth); *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (noting “the labyrinthine character of modern immigration law”).

41. *Drax*, 338 F.3d at 99.

42. See 8 C.F.R. § 322 (2023).

43. 8 U.S.C. § 1101(a)(15)(U); see also *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status> [<https://perma.cc/HFR4-8UQM>] (Mar. 20, 2023).

44. The “registry date” is a date in 1972 that could provide a basis for a green card, which is granted to permanent residents. *Green Card Through Registry*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-eligibility/green-card-through-registry> [<https://perma.cc/U4QE-LVZN>] (Nov. 27, 2017); see also *Legalization Through Registry*, AM. IMMIGR. COUNCIL (Sept 28, 2021), <https://www.americanimmigrationcouncil.org/research/legalization-through-registry> [<https://perma.cc/WEB3-73CE>].

with exceptions to the law—and exceptions to the exceptions—creates a barrier to understanding just as surely as the conceptual complexity discussed in the next paragraph.

In addition, even when unrepresented migrants determine that they may be eligible for a particular immigration benefit, complex and potentially thorny questions may arise about how to establish eligibility under the law. Asylum claims are available, for example, to people who suffered past persecution or have a well-founded fear of future persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion.⁴⁵ Yet, to establish eligibility, an immigrant would need to know what makes a fear “well-founded,” which types of acts courts have determined rise to the level of persecution, that the statutory term “on account of” refers to the motivation of the persecutor, and that evidence of such motives would need to be included in the application. None of the required elements are without their complications. In formulating a claim, for instance, an unrepresented migrant could easily overlook the importance of the “social group” category—thinking it is meant to apply to established service organizations like the Kiwanis Club or the Knights of Columbus—when it is actually a much broader category, potentially covering kinship ties or even informal connections to other members of a persecuted minority such as transgender individuals.⁴⁶ And even if one believes that they can satisfy the substantive requirements, other requirements could discourage a claim. The one-year timeliness requirement might act as a barrier to filing for asylum, for example—it seems simple to calculate the time from one’s last entry into the United States—and yet the one-year requirement has exceptions of its own that are by no means obvious from the face of the statute.⁴⁷

Determining the applicable law in immigration is also complicated by the fact that sources of law include not only statutes and regulations, but also case law and decisions published as memos or directives. In addition, one may also have to be familiar with state criminal laws and sentencing guidelines, international human rights law, and, in some cases, family law. An example of immigration law’s complexity is the vast number of application forms available from United States Citizenship and Immigration Services (USCIS); its website contains links to 106 different application

45. Immigration and Nationality Act, ch. 477, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C.).

46. The case law concerning what constitutes a particular social group in asylum law is one of the most complex in immigration law. *Practice Advisory: Applying for Asylum Based on Membership in a Particular Social Group*, NAT’L IMMIGRANT JUST. CTR., <https://immigrantjustice.org/for-attorneys/legal-resources/file/practice-advisory-applying-asylum-based-membership-particular> [<https://perma.cc/P5QR-YHHL>] (July 19, 2021).

47. For example, the one-year deadline is extended when extraordinary or changed circumstances excuse the delay. *See* 8 U.S.C. § 1158(a)(2)(D); *see also* Special Duties Toward Aliens in Custody of DHS, 8 C.F.R. § 208.5 (2023).

forms.⁴⁸ By contrast, the website for the Internal Revenue Service links to ten commonly used forms.⁴⁹

Turning to jurisdiction, it may be a daunting challenge for an unrepresented migrant to determine who can hear their claim. There are three agencies within the U.S. Department of Homeland Security (DHS) alone involved in immigration.

First, USCIS adjudicates affirmative applications for immigration benefits, such as visa petitions⁵⁰ and applications for employment,⁵¹ temporary protected status (TPS),⁵² and most humanitarian forms of protection, including visas for victims of crimes in the United States,⁵³ for victims of human trafficking,⁵⁴ and affirmative applications for asylum.⁵⁵ USCIS also handles all applications to become a U.S. citizen (i.e., applications for naturalization).⁵⁶

Second, if the case does not involve an affirmative benefit, it may fall within the jurisdiction of U.S. Immigration and Customs Enforcement (ICE).

48. *All Forms*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/forms/all-forms> [<https://perma.cc/DU9Q-2G4T>] (last visited Nov. 3, 2023).

49. *Forms, Instructions & Publications*, INTERNAL REVENUE SERV., <https://www.irs.gov/forms-instructions> [<https://perma.cc/B49G-UPPG>] (last visited Nov. 3, 2023).

50. See 8 U.S.C. § 1153; see also DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., PETITION FOR ALIEN RELATIVE: USCIS FORM I-130 (2021), <https://www.uscis.gov/sites/default/files/document/forms/i-130.pdf> [<https://perma.cc/T6A8-SG4G>].

51. See 8 C.F.R. § 274.12(a) (2023); see also DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., APPLICATION FOR EMPLOYMENT AUTHORIZATION: USCIS FORM I-765 (2022), <https://www.uscis.gov/sites/default/files/document/forms/i-765.pdf> [<https://perma.cc/2GE7-H9T3>].

52. See DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., APPLICATION FOR TEMPORARY PROTECTED STATUS: USCIS FORM I-821 (2019), <https://www.uscis.gov/sites/default/files/document/forms/i-821.pdf> [<https://perma.cc/58BG-V7DP>]; *Temporary Protected Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> [<https://perma.cc/35KA-L3LA>] (last visited Nov. 3, 2023).

53. See DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., PETITION FOR U NONIMMIGRANT STATUS: USCIS FORM I-918 (2021), <https://www.uscis.gov/sites/default/files/document/forms/i-918.pdf> [<https://perma.cc/C4DS-FDSD>]; *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status> [<https://perma.cc/4M6U-QLMA>] (last visited Nov. 3, 2023).

54. See *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-t-nonimmigrant-status> [<https://perma.cc/6WXC-JAYQ>] (last visited Nov. 3, 2023); see also DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., APPLICATION FOR ADVANCE PERMISSION TO ENTER AS A NONIMMIGRANT: USCIS FORM I-192 (2021), <https://www.uscis.gov/sites/default/files/document/forms/i-192.pdf> [<https://perma.cc/5NCG-V6Q6>].

55. See 8 U.S.C. § 1158; see also DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., APPLICATION FOR ASYLUM AND FOR WITHHOLDING OF REMOVAL: USCIS FORM I-589 (2023), <https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf> [<https://perma.cc/U5RD-VQMC>].

56. See DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., APPLICATION FOR NATURALIZATION: USCIS FORM N-400 (2019), <https://www.uscis.gov/sites/default/files/document/forms/n-400.pdf> [<https://perma.cc/W9KA-7JM2>]; see also *Citizenship and Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/citizenship/learn-about-citizenship-and-naturalization> [<https://perma.cc/ZMV7-6RMQ>] (last visited Nov. 3, 2023).

ICE is responsible for the interior enforcement of U.S. immigration laws. ICE officers manage all aspects of the immigration enforcement process, including conducting regular check-ins for individuals subject to electronic monitoring through GPS or ankle monitors, conducting workplace raids, managing immigration detention operations and centers, representing the government in removal cases in administrative courts, and removing immigrants from the country, among many other tasks.⁵⁷

Third, cases initiated close to the border fall within the jurisdiction of U.S. Customs and Border Protection (CBP). CBP is responsible for determining whether someone who arrives at the border is entitled to enter the United States or not, can order individuals removed at the border, and is increasingly involved in determining whether someone can enter the United States to apply for asylum.⁵⁸

In addition to these DHS agencies, EOIR, a subagency of the U.S. Department of Justice (DOJ), oversees the immigration court system. EOIR houses the immigration courts, which adjudicate removal cases,⁵⁹ and the Board of Immigration Appeals (BIA), which hears appeals from immigration court cases.⁶⁰ The Office of Refugee Resettlement, part of the U.S. Department of Health and Human Services, provides support to refugees and to immigrant children who enter the country unaccompanied by a parent or adult guardian.⁶¹

States are also involved in various aspects of immigration. Children who are eligible to apply for special immigrant juvenile visas (SIJV) must first appear in their local jurisdiction's family court and obtain a family court order stating that they have been abused, neglected, or abandoned by at least one parent.⁶² That family court order is then filed with USCIS as part of the

57. See *Fact Sheets*, U.S. IMMIGR. & CUSTOMS ENF'T, <https://www.ice.gov/factsheets> [<https://perma.cc/X9J9-4PDJ>] (last visited Nov. 3, 2023).

58. For example, CBP has the authority to determine if someone can be removed and to expedite their removal from the country. See 8 U.S.C. § 1225; see also *Claims of Fear*, U.S. CUSTOMS & BORDER CONTROL, <https://www.cbp.gov/newsroom/stats/sw-border-migration/claims-fear> [<https://perma.cc/QMW9-ZDH5>] (last visited Nov. 3, 2023).

59. "EOIR's Office of the Chief Immigration Judge (OCIJ) has approximately 350 immigration judges who conduct removal hearings and other administrative court proceedings in approximately 60 immigration courts nationwide." U.S. DEPT. OF JUST., EXECUTIVE OFFICE FOR IMMIGRATION REVIEW: AN AGENCY GUIDE (2017), https://www.justice.gov/eoir/page/file/eoir_an_agency_guide/download [<https://perma.cc/MD34-EQM8>].

60. "Immigration judges generally have the jurisdiction, or authority, to determine removability, excludability, or deportability and to adjudicate certain applications for relief or protection from removal under the INA." *Jurisdiction, Authority, and Priorities*, U.S. DEPT. JUST., <https://www.justice.gov/eoir/reference-materials/general/chapter-1/4> [<https://perma.cc/78EJ-PE5Q>] (last visited Nov. 3, 2023).

61. Within the U.S. Department of Health and Human Services, "[t]he Office of Refugee Resettlement (ORR) serves unaccompanied children in two distinct programs: the Unaccompanied Refugee Minors Program (URM) and the Unaccompanied Children (UC) Program." *Unaccompanied Refugee Minors Program*, OFF. REFUGEE RESETTLEMENT (Mar. 17, 2023), <https://www.acf.hhs.gov/orr/programs/refugees/urm> [<https://perma.cc/EA9J-77QY>].

62. The process for gaining Lawful Permanent Resident status through Special Immigrant Juvenile Status (SIJS) entails several steps with both state law and federal immigration law

SIJV application.⁶³ State criminal charges can often have federal immigration consequences, so immigrants with criminal charges or records need to be aware of how their sentence impacts their immigration status.⁶⁴

The characteristics and personal circumstances of migrants tends to exacerbate the characteristics of immigration law that make self-representation difficult. Recall Judge Cabranes's description of immigration law as "a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike."⁶⁵ Judge Cabranes's recognition that immigration law confuses the Government shows that the law confuses government attorneys who are, presumably, immigration law specialists. Migrants are rarely trained as attorneys and are much less specialists in immigration law. Their lack of formal training, however, is only the first of many struggles that migrants attempting to represent themselves must face.

The hyper-technicality of the law confuses government attorneys, says Judge Cabranes.⁶⁶ It is critical to note here that the hyper-technical language of the law is *English*. Certainly, that hyper-technicality must especially confuse unrepresented migrants who do not understand simple English. Further, that hyper-technicality must perplex detained migrants, who are unlikely to have adequate access to the legal sources—statutes, regulations, case law, memos, and directives—that could explain the law to them (in English, of course). As a thought experiment, consider how that hyper-technicality must confuse non-English-speaking, detained immigrant *children*.⁶⁷ As a final challenge, factor in the heightened possibility that the migrant is suffering from the impact of trauma.⁶⁸ How can unrepresented

components: (1) obtain a SIJS predicate order in state juvenile court, (2) file a petition with USCIS for SIJS, and (3) once SIJS status is granted, apply for legal permanent resident status. *See, e.g.*, KIDS IN NEED OF DEF., CHAPTER 4: SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) (2015), <https://supportkind.org/wp-content/uploads/2015/04/Chapter-4-Special-Immigrant-Juvenile-Status-SIJS.pdf> [<https://perma.cc/8ULY-6W6T>].

63. *Id.*

64. *See* KATHY BRADY, IMMIGR. LEGAL RES. CTR., ALL THOSE RULES ABOUT CRIMES INVOLVING MORAL TURPITUDE 23 (2022), https://www.ilrc.org/sites/default/files/resources/all_those_rules_cimt_june_2020.pdf [<https://perma.cc/7LBQ-AQKA>].

65. *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003).

66. *Id.*

67. The Vera Institute of Justice has noted that "[t]he developmental distinctions between adults and children—children's relative difficulty in evaluating risks, regulating emotions, and understanding the consequences of decisions—make it even harder for children to navigate legal proceedings." SNIDER & DiBENARDI, *supra* note 39, at 2.

68. *See* Michele R. Pistone & Philip G. Schrag, *The New Asylum Rule: Improved but Still Unfair*, 16 GEO. IMMIGR. L.J. 1, 49 n.272 (2001) (collecting studies showing elevated levels of Post-traumatic Stress Disorder (PTSD) among refugees); *see, e.g.*, Meilynn Shi, Anne Stey & Leah C. Tatebe, *Recognizing and Breaking the Cycle of Trauma and Violence Among Resettled Refugees*, 7 CURRENT TRAUMA REPS. 83 (2021); Ryan Essex, Erika Kalocsányiová, Nataliya Rummyantseva & Jill Jameson, *Trust Amongst Refugees in Resettlement Settings: A Systematic Scoping Review and Thematic Analysis of the Literature*, 23 J. INT'L MIGRATION & INTEGRATION 543, 562 (2021) ("[P]re-migration experiences shaped trust [T]rauma and exposure to war were significant in shaping trust amongst refugees in resettlement and . . . this impacted participants' fundamental outlook on the world."); Mark Van Ommeren, Bhogendra Sharma & Joop de Jong, *Culture, Trauma, and Psychotrauma Programmes*, 350

migrants in these circumstances possibly “navigate” the hyper-technical immigration system? Almost all of them are merely carried along by it, like sailors in a small boat caught in an Atlantic nor’easter or a Pacific tsunami. By accident or luck, some will get through it and survive, but rare instances of accidental justice cannot validate a system that is generally unjust.

Given the challenges described above, it is no wonder that the widespread lack of representation for migrants has long been recognized as a problem for migrants as well as for the legitimacy of the law. The following section surveys the solutions that legal thinkers and groups have recommended be done about it.

III. THE TRADITIONAL SOLUTION PROPOSED FOR IMPROVING IMMIGRANT REPRESENTATION—THE ENCOURAGEMENT OF MORE PRO BONO REPRESENTATION BY LAWYERS—IS MANIFESTLY INADEQUATE

Individuals appearing in immigration proceedings have a right to obtain legal representation. In practice, however, most immigrants do not have sufficient funds to pay for a lawyer. Immigrant-serving organizations around the country try to meet the need for legal representation by offering immigrants free or low-cost legal services. Nevertheless, the demand for representation exceeds the supply of charitable legal services professionals. A recent study by the Center for Migration Studies, a leading immigration think tank, examined legal services “available to low-income immigrants on national, state and sub-state levels.”⁶⁹ The study found that one charitable legal services professional⁷⁰ exists for every 1,413 undocumented immigrants nationwide.⁷¹ In areas of the country where there are few immigration lawyers, that imbalance between supply and demand is far worse; the ratio in Alabama, for example, is 1 in 6,656, and it is 1 in 3,010 in Kansas.⁷²

LANCET 595, 595 (1997) (noting “[i]ncreased rates of post-traumatic stress disorder . . . among Turkish, Palestinian, and Bhutanese survivors of torture”). Victims of PTSD may be reluctant to discuss the source of their trauma, especially absent the establishment of a trusting relationship with an interrogator. See Derrick Silove, Ingrid Sinnerbrik, Annette Field, Vijaya Manicavasagar & Zachary Steel, *Anxiety, Depression and PTSD in Asylum-Seekers: Associations with Pre-migration Trauma and Post-migration Stressors*, 170 BRIT. J. PSYCHIATRY 351, 356 (1997) (“Survivors of organised violence suffering from PTSD may be mistrustful and experience difficulty in modulating feelings of frustration . . . thus increasing the risk of conflict with authority figures and/or making it more difficult to find and sustain employment.”). A promise of confidentiality can be a step toward establishing that relationship and thus a step toward communicating the information that may qualify an immigrant for asylum.

69. Donald Kerwin & Evin Millet, *Charitable Legal Immigration Programs and the US Undocumented Population: A Study in Access to Justice in an Era of Political Dysfunction*, 10 J. ON MIGRATION & HUM. SEC. 190, 190 (2022) (“Legal professionals working in charitable immigration service programs serve as the study’s rough proxy for legal capacity, and undocumented immigrants its proxy for legal need.”).

70. The term “charitable legal services professional” includes “attorneys, federally accredited non-attorneys, paralegals and legal assistants.” *Id.*

71. *Id.*

72. *Id.*

The traditional response to this imbalance between supply and demand has been to encourage lawyers to take on immigration cases pro bono. The BIA launched the BIA Pro Bono Project in 2001 “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.”⁷³ More recently, in a statement regarding protecting migrant children’s rights, Kids in Need of Defense called for more attorneys, stating that “[l]egal representation serves as a fundamental safeguard to protect the wellbeing and rights of unaccompanied children. This critical support can and should be leveraged as part of broad efforts to prevent child labor exploitation by ensuring that all children are provided attorneys to assist them.”⁷⁴

The campaign for attorneys to do more to provide representation for migrants has continued for several decades. In fact, when I took on my first asylum case in the early 1990s, it was in response to a call from Human Rights First (then the Lawyers Committee for Human Rights). But the number of lawyers taking on pro bono immigration cases remained rather insignificant for years. Records obtained from EOIR by the Transactional Records Access Clearinghouse (TRAC) show that

in 2000, just 55 court cases were recorded as completed with pro bono representation. Ten years later, in 2010, this had grown nationwide to just 149 cases. Amid the growing workload of the court during this period, the percent of noncitizens securing pro bono assistance remained a minuscule fraction of just over 5 out of every 10,000 cases.⁷⁵

Efforts to increase the number of pro bono lawyers intensified after 2012, when “a wave of unaccompanied children seeking sanctuary began arriving along the U.S.-Mexico border.”⁷⁶ Like adult immigrants, child immigrants are neither constitutionally nor statutorily entitled to government-appointed lawyers. As a result, children regularly appear in immigration court without representation.⁷⁷ Consequently, the Congressional Research Service noted

73. *BD. OF IMMIGR. APPEALS, THE BIA PRO BONO PROJECT IS SUCCESSFUL* 3 (2004), <https://www.justice.gov/sites/default/files/eoir/legacy/2005/02/01/BIAProBonoProjectEvaluation.pdf> [<https://perma.cc/YR49-HM7Y>] (quoting Memorandum from Pro Bono Coordinator to Chairman of the Bd. of Immigr. Appeals (Oct. 27, 2000)).

74. *KIDS IN NEED OF DEF., LEGAL REPRESENTATION: A VITAL SAFEGUARD TO PROTECT UNACCOMPANIED CHILDREN FROM LABOR EXPLOITATION* 4 (2023), https://supportkind.org/wp-content/uploads/2023/04/23_A-Vital-Safeguard-to-Protect-Unaccompanied-Children-from-Labor-Exploitation.pdf [<https://perma.cc/WL5A-C55F>].

75. *Despite Efforts to Provide Pro Bono Representation, Growth Is Failing to Meet Exploding Demands*, TRANSACTION RECS. ACCESS CLEARINGHOUSE: IMMIGR. (May 12, 2023), <https://trac.syr.edu/reports/716/> [<https://perma.cc/Y3GQ-VNED>].

76. *Id.*

77. Jack H. Weil, Assistant Chief Immigration Judge in EOIR’s Office of the Chief Immigration Judge, asserted during a 2015 sworn deposition that three- and four-year old children can learn immigration law well enough to represent themselves in immigration court. Jerry Markon, *Can a 3-Year Old Represent Herself in Immigration Court?: This Judge Thinks So.*, WASH. POST (Mar. 5, 2016, 4:57 PM), https://www.washingtonpost.com/world/national-security/can-a-3-year-old-represent-herself-in-immigration-court-this-judge-thinks-so/2016/03/03/5be59a32-db25-11e5-925f-1d10062cc82d_story.html [<https://perma.cc/DLR3-MAP>]

that “immigration judges should . . . encourage the use of pro bono legal counsel if the child is not represented.”⁷⁸ When this wave of immigrant children began to migrate to the United States, there was a concerted effort by immigrant-serving organizations to respond by recruiting and training pro bono lawyers to fill the representation gap.⁷⁹

Today, most of the major national organizations that provide legal services to immigrants actively recruit and train pro bono lawyers. Nongovernmental organizations (NGOs) that facilitate pro bono legal services for immigration representation typically connect qualified lawyers with individuals in need. They may also offer training and support to pro bono lawyers, ensuring that they have the necessary knowledge and resources to effectively advocate for their clients. For example, Kids in Need of Defense, a national organization responding to the needs of unaccompanied immigrant children, built a network of over 800 law firms, corporations, law school clinics, and bar associations that provide pro bono lawyers to assist the child immigrants on its roster.⁸⁰ Tahirih Justice Center, which provides legal services to immigrant women and children, created a Pro Bono Network for its volunteer lawyers.⁸¹ Human Rights First continues to work with pro bono lawyers from corporate law firms.⁸² VECINA launched an attorney mentoring program for lawyers interested in taking on asylum cases pro bono.⁸³ In addition to these efforts by immigrant-serving organizations, the American Bar Association’s (ABA) Commission on Immigration actively recruits and trains pro bono lawyers for immigration work, and its Children’s Immigration Law Academy Pro Bono Guide helps lawyers find cases that need pro bono assistance.⁸⁴

9]. Judge Weil is “a longtime immigration judge who is responsible for training other judges.” *Id.*

78. KANDEL, *supra* note 32.

79. *Who Is Represented in Immigration Court?*, TRANSACTION RECS. ACCESS CLEARINGHOUSE: IMMIGR. (Oct. 16, 2017), <https://trac.syr.edu/immigration/reports/485/> [<https://perma.cc/BPY4-F7V3>].

80. “Legal representation serves as a fundamental safeguard to protect the wellbeing and rights of unaccompanied children. This critical support can and should be leveraged as part of broad efforts to prevent child labor exploitation by ensuring that all children are provided attorneys to assist them.” KIDS IN NEED OF DEF., *supra* note 74. “The majority of unaccompanied children in the United States—tens of thousands of children—do not have lawyers. KIND and our pro bono attorneys are working to close this gap.” KIDS IN NEED OF DEF., CELEBRATING THE WORK OF OUR PRO BONO ATTORNEYS AND PARTNERS AT KIND 1 (2022), https://supportkind.org/wp-content/uploads/2022/10/22_PBA-fact-sheet-v5.pdf [<https://perma.cc/M4EV-U7M4>].

81. *Pro Bono Network FAQs*, TAHIRIH JUST. CTR., <https://www.tahirih.org/get-involved/our-pro-bono-network/frequently-asked-questions-about-our-network/> [<https://perma.cc/7AMV-HYJF>] (last visited Nov. 3, 2023).

82. *Represent Asylum Seekers*, HUM. RTS. FIRST (July 6, 2022), <https://humanrightsfirst.org/action/represent-asylum-seekers-in-the-asylum-process/> [<https://perma.cc/K3FM-MJF2>].

83. *Attorney Mentorship Program*, VECINA, <https://vecina.org/what-we-do/attorney-mentorship-program/> [<https://perma.cc/YL6U-UC8D>] (last visited Nov. 3, 2023).

84. *Pro Bono Matters*, AM. BAR ASS’N.: CHILDREN’S IMMIGR. L. ACAD., <https://cilacademy.org/pro-bono/pro-bono-matters/> [<https://perma.cc/9B95-9CHZ>] (last visited Nov. 3, 2023); *see also* VERA INST. OF JUST. & AM. BAR ASS’N, CHILDREN’S

These efforts, supplemented by a large increase in law school immigration clinics, have markedly expanded the number of migrants receiving pro bono representation. According to TRAC, completed pro bono represented cases jumped from fifty-five cases in 2000 to 1,894 cases in 2015.⁸⁵ Then, just one year later, in 2016, the number more than doubled.⁸⁶ The number of cases “doubled again by 2019 reaching 8,054 cases completed with the help of pro bono attorneys.”⁸⁷ Another jump occurred in fiscal year 2022, which saw “a record number of . . . cases [completed]—some 13,400—with pro bono attorneys.”⁸⁸

These efforts are commendable and need to continue. However, over the last few years, it has become evident that lawyers cannot be the primary agent in solving the representation crisis. Although the number of cases taken by lawyers has increased significantly, it has not kept pace with the exponential growth of cases requiring representation. Indeed, the scope of the representation problem has ballooned since 2010, when 262,799 cases were pending in immigration courts nationwide.⁸⁹ More than 2.621 million cases are currently pending in immigration courts alone, an increase of more than 2.3 million cases over thirteen years.⁹⁰ Despite all the efforts to build pro bono legal capacity for immigration court representation, “[a]s of the end of April 2023, over three out of four persons ordered removed [in fiscal year 2023] by Immigration Judges had no representation, and just 0.8%—that is only 8 out of 1,000—had been able to find a volunteer attorney to represent them.”⁹¹

Sadly, the overall picture is bleaker than these dismal numbers suggest. In addition to all of the cases pending in immigration court, another 8.6 million applications were pending before USCIS as of September 30, 2022.⁹²

IMMIGRATION LAW ACADEMY PRO BONO GUIDE (2020), <https://cilacademy.org/wp-content/uploads/2020/11/2020.08.20-CILA-Pro-Bono-Guide.pdf> [<https://perma.cc/DV4D-NYMH>].

85. *Despite Efforts to Provide Pro Bono Representation, Growth Is Failing to Meet Exploding Demands*, *supra* note 75.

86. *Id.*

87. *Id.* Notably, “[t]hese numbers may not capture the full picture of pro bono work that attorneys do, since they only involve cases in which an appearance was entered. For instance, in some courts, attorneys can provide guidance to immigrants in court using a ‘friend of the court’ appearance rather than taking on the respondent as a client.” *Id.*

88. *Id.*

89. *Historical Immigration Court Backlog Tool: Pending Cases and Length of Wait by Nationality, State, Court, and Hearing Location*, TRANSACTION RECS. ACCESS CLEARINGHOUSE: IMMIGR., https://trac.syr.edu/phptools/immigration/court_backlog/ [<https://perma.cc/3E9K-WHPP>] (last visited Nov. 3, 2023).

90. *Immigration Court Quick Facts*, TRANSACTION RECS. ACCESS CLEARINGHOUSE: IMMIGR., <https://trac.syr.edu/immigration/quickfacts/eoir.html> [<https://perma.cc/QA4V-CX28>] (last visited Nov. 3, 2023) (as of October 2023, there were 2,620,591 active cases in the immigration court backlog).

91. *Despite Efforts to Provide Pro Bono Representation, Growth Is Failing to Meet Exploding Demands*, *supra* note 75.

92. U.S. CITIZENSHIP & IMMIGR. SERVS., NUMBER OF SERVICE-WIDE FORMS BY QUARTER, FORM STATUS, AND PROCESSING TIME, JULY 1, 2022 - SEPTEMBER 30, 2022 (2022), https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2022_Q4.pdf [<https://perma.cc/9HPM-JD2D>].

Moreover, a report by the Committee for Immigration Reform Implementation estimates that at least one million of the unauthorized immigrants living in the United States are eligible for immigration status but are unable to identify and request relief because they lack access to an attorney.⁹³ The same might be true for those who appear in immigration court without a lawyer: EOIR records indicate that fewer than 25 percent of immigrants who appear in immigration court without representation appeal their decisions to the BIA, likely because they are not aware of the option or how to pursue it.⁹⁴ Clearly, a new source of representation has never been more necessary.

The definition of insanity, it is said, is to do the same thing over and over again while expecting a different result. We have long passed the point at which an increase in lawyer representation can reasonably be regarded as the primary solution for the growing problem of representation in immigration proceedings. A new approach—a new emphasis—is necessary. Part IV explores the path that is likely to bring the greatest success.

IV. ACCREDITED REPRESENTATIVES ARE THE NEW PATH NEEDED TO ADDRESS THE PROBLEM OF UNREPRESENTED IMMIGRANTS

Since the 1950s, the federal government has operated a program that authorizes qualified legal representatives to provide legal representation to low-income immigrants. The program’s mission is “to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice.”⁹⁵ EOIR’s Office of Legal Access Programs (OLAP) implements the program’s regulations through its Recognition and Accreditation (R&A) Program. The R&A Program extends licensure to practice immigration law before the administrative immigration system to “accredited representatives” who work in “recognized” nonprofit organizations that provide legal assistance to immigrants on a pro bono or low-cost basis.⁹⁶

The R&A Program has two parts. The first part involves designating the immigrant-serving host organization as a “recognized organization,” which requires that the organization is a nonprofit entity serving low-income

93. Charles Kamasaki, Susan Timmons, Courtney Tudi, Amelia Collins, Jack Holmgren, Donald Kerwin & Kerry O’Brien, *Immigration Reform and Administrative Relief for 2014 and Beyond: A Report on Behalf of the Committee for Immigration Reform Implementation (CIRI), Human Resources Working Group*, 3 J. ON MIGRATION & HUM. SEC. 283, 291 (2015).

94. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 20, at 60–61.

95. *Recognition & Accreditation (R&A) Program*, U.S. DEP’T JUST., <https://www.justice.gov/eoir/recognition-and-accreditation-program> [<https://perma.cc/HRW9-EKSD>] (last visited Nov. 3, 2021).

96. *Id.* Other legal scholars have recognized the need to expand access to justice through paralegals and accredited representatives who provide limited legal services. *See, e.g.*, Beenish Riaz, *Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System*, 45 N.Y.U. REV. L. & SOC. CHANGE 82, 89 (2021); Erin B. Corcoran, *Bypassing Civil Gideon: A Legislative Proposal to Address the Rising Costs and Unmet Legal Needs of Unrepresented Immigrants*, 115 W. VA. L. REV. 643 (2012).

individuals and charges low or no fees for its services.⁹⁷ Organizations seeking to host accredited representatives must provide “access to adequate knowledge, information, and experience in all aspects of immigration law and procedure”⁹⁸ and submit the following to the BIA:

A description of the immigration legal services that the organization seeks to offer; a description of the legal resources to which the organization has access; an organizational chart showing names, titles, and supervisors of immigration legal staff members; a description of the qualifications, experience, and breadth of immigration knowledge of these staff members, including, but not limited to resumes, letters of recommendation, certifications, and a list of all relevant, formal immigration-related trainings attended by staff members; and any agreement or proof of a formal arrangement entered into with non-staff immigration practitioners and recognized organizations for consultations or technical legal assistance.⁹⁹

Although most DOJ-recognized organizations are immigration legal services organizations, many recognized organizations do not self-identify principally as immigration legal services providers. The roster of approximately 850 recognized organizations includes public libraries, job training and workforce development programs, domestic violence shelters and treatment programs, English language programs, labor unions, parish- and faith unit-based charitable organizations and ethnic ministries, family resource centers, DREAMer programs,¹⁰⁰ and other student groups.¹⁰¹

The second part of the process involves applying for accreditation for an individual who works or volunteers at the recognized organization. When an organization applies for recognition for the first time, the recognition application must be filed together with an application to accredit an

97. 8 C.F.R. § 1292.11 (2023); *id.* § 1292.13.

98. *Id.* § 1292.11(a)(4); *see also Recognition of Organizations and Accreditation of Non-attorney Representatives*, 81 Fed. Reg. 92346, 92365 (Dec. 19, 2016) (codified at 8 C.F.R. pts. 1001, 1003, 1103, 1212, 1292).

99. 8 C.F.R. § 1292.11(e) (2023); *see also Recognition of Organizations and Accreditation of Non-attorney Representatives*, 81 Fed. Reg. at 92368.

100. The term “DREAMers” refers to young undocumented immigrants who were brought to the United States as minors and could potentially become eligible for protection under a version of the Development, Relief, and Education for Alien Minors (DREAM) Act, S. 1291, 107th Cong. (2001), which has never been passed by Congress. *The Dream Act: An Overview*, AM. IMMIGR. COUNCIL (Mar. 16, 2021), <https://www.americanimmigrationcouncil.org/research/dream-act-overview> [<https://perma.cc/85E3-NHZ6>]. DREAMer programs, such as the Santa Fe DREAMers Project, provide services to those immigrants who would qualify for protection under the proposed act. *See, e.g., What We Do, SANTA FE DREAMERS PROJECT*, <https://www.santafedreamersproject.org/whatwedo> [<https://perma.cc/4PK4-SVUQ>] (last visited Nov. 3, 2023).

101. *Recognized Organizations and Accredited Representatives Roster*, U.S. DEP’T JUST. (Aug. 28, 2023), <https://www.justice.gov/eoir/page/file/942301/download> [<https://perma.cc/V5QM-6E9B>]; *see also* Kamasaki et al., *supra* note 93, at 303 (listing categories of members in CLINIC’s network).

individual who will work or volunteer at the recognized organization.¹⁰² In other words, accredited representatives may only provide legal services and representation through DOJ-recognized organizations, nonprofit immigrant-serving legal organizations with the infrastructure and resources to support accredited representatives.¹⁰³ Once initially recognized, the organization can apply for accreditation for additional representatives.¹⁰⁴ There is no limit on the number of accredited representatives who can be affiliated with any one recognized organization.

To become an accredited representative, applicants must satisfy educational, experiential, and character and fitness criteria.¹⁰⁵ The educational requirements expect accreditation applicants to demonstrate that they “[p]ossess[] broad knowledge and adequate experience in immigration law and procedure.”¹⁰⁶ OLAP authorizes accredited representatives to represent immigrants at one of two levels: partial or full accreditation.¹⁰⁷ Partially accredited representatives are authorized to work on immigration issues before the DHS, including USCIS, ICE, and CBP. The most common applications and petitions for immigration benefits that partially accredited representatives support include: naturalization, citizenship (acquisition and derivation), adjustment of status to lawful permanent residency (green cards), humanitarian visas (such as T visas for victims of human trafficking, U visas for victims of crimes, and VAWA for victims of domestic violence), employment authorization, temporary protection status, and asylum applications filed affirmatively with USCIS by those who are not already in removal proceedings before an immigration court.¹⁰⁸

Fully accredited representatives may represent immigrants and appear not only before the three immigration-focused DHS agencies, but also in immigration court proceedings and in administrative appeals before the BIA.¹⁰⁹ To qualify for full accreditation, the applicant must establish that

102. *Recognition and Accreditation Program Frequently Asked Questions*, U.S. DEP’T JUSTICE: EXEC. OFF. FOR IMMIGR. REV. 23, <https://icor.eoir.justice.gov/en/faq/> [<https://perma.cc/L43V-9T8R>] (last visited Nov. 3, 2023).

103. 8 C.F.R. § 1292.12(a) (2023).

104. *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 102.

105. 8 C.F.R. § 1292.12(a)(1) (2023); *see also Recognition of Organizations and Accreditation of Non-attorney Representatives*, 81 Fed. Reg. 92346, 92368 (Dec. 19, 2016) (codified at 8 C.F.R. pts. 1001, 1003, 1103, 1212, 1292) (“Character and fitness includes, but is not limited to, an examination of factors such as: Criminal background; prior acts involving dishonesty, fraud, deceit, or misrepresentation; past history of neglecting professional, financial, or legal obligations; and current immigration status that presents an actual or perceived conflict of interest.”).

106. 8 C.F.R. § 1292.12(a)(6) (2023). Applicants wishing to become BIA-accredited representatives submit the following to demonstrate the “broad knowledge and experience” requirements: “[a] description of the [applicant’s] qualifications, including education and immigration law experience; letters of recommendation from at least two persons familiar with the individual’s qualifications; and documentation of all relevant, formal immigration-related training, including a course on the fundamentals of immigration law, procedure, and practice.” *Id.* § 1292.12(c).

107. *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 102.

108. *See Kerwin & Millet*, *supra* note 69.

109. *Id.*

they “ha[ve] formal training, education, or experience related to trial and appellate advocacy.”¹¹⁰ As such, “[t]hey are expected to write legal briefs and motions, question witnesses in court, and demonstrate other oral advocacy skills.”¹¹¹ Fully accredited representatives have the same authority as lawyers do before immigration courts and the BIA.¹¹² Thus, fully accredited representatives sit at the counsel table, speak to the judge, sign legal documents and applications, file pleadings, offer evidence, conduct direct examinations, deliver opening statements and closing arguments, and make objections to evidence during cross examination, all on their own.

Essentially, accredited representatives’ authority, within the limited context of administrative adjudications, is closer to that of a lawyer than it is to a paralegal. Accredited representatives’ relationships with clients, and their authority before adjudicators, differ significantly from the relationship and authority that paralegals hold. Most significant is the client relationship. Accredited representatives are authorized under federal regulations to provide direct legal services to clients and enter into direct service relationships with clients through their recognized organizations. By contrast, paralegals work with and for lawyers. A paralegal does not have an independent relationship with a client. Rather, the paralegal’s relationship to a client derives from the relationship a client has with a lawyer for whom the paralegal works. Ultimately, a lawyer is responsible for the work of a paralegal and the lawyer maintains the direct relationship with the client.

Conversely, in relation to adjudicators of immigration cases, accredited representatives are themselves authorized as representatives. They appear on their clients’ behalf before the administrative agencies and are authorized to speak on behalf of their clients before immigration agencies. Accredited representatives are responsible for their own work—they do not work under anyone else’s license or authority. Although accredited representatives have access to lawyers who provide technical advice and guidance, accredited representatives are authorized and expected to speak on behalf of their own clients. By contrast, paralegals are never authorized to speak on behalf of a client or represent a client before any adjudicator. Paralegals work behind the scenes for lawyers; the lawyers are the frontline representatives of the clients—they enter appearances and represent clients in immigration court. By contrast, when accredited representatives are working or volunteering for a recognized organization, they maintain authority to represent clients, independent of lawyers. Once an accredited representative is no longer affiliated with a recognized organization, however, the accreditation authority becomes void. Accreditation is not transferrable to another

110. 8 C.F.R. § 1292.12(c).

111. *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 102.

112. Accredited representatives are not authorized to represent immigrants in state, federal district, or appellate courts. A fully accredited representative may represent individuals before both DHS and EOIR, which includes the immigration courts and the BIA. *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 102.

recognized organization.¹¹³ If an accredited representative begins an affiliation with a different organization, the new organization must apply anew for DOJ recognition and accreditation for the individual.¹¹⁴

According to EOIR data, “[b]etween 2010 and August 4, 2020, accredited representatives provided representation in 7,799 removal cases.”¹¹⁵ During that time, immigration courts issued 6,315 decisions in cases in which a fully accredited representative provided legal services.¹¹⁶ Further, “[f]ifty-one percent (51%) of those decisions resulted either in a termination order (2,251 cases) or in the court granting relief (943 cases).”¹¹⁷ In addition to providing representation on the merits of immigration matters, fully accredited representatives have also successfully helped release immigrants from detention. Specifically, “[b]etween 2010 [and] 2020, EOIR documented 1,544 bond receipts across the country for noncitizens represented by an accredited representative.”¹¹⁸

This program has been vastly underutilized despite the great need for immigration representation. There are fewer than 2,300 accredited representatives nationwide today.¹¹⁹ The vast majority of accredited representatives are partially accredited and conduct most of their work before the DHS.¹²⁰ Although the number of fully accredited representatives has increased in recent years, only approximately 300 of the 2,300 accredited representatives are fully accredited.¹²¹

One need not believe that accredited representatives will provide superior legal assistance to conclude that concerted efforts should be directed at recruiting and training more accredited representatives. Proponents of accredited representatives need only show that accredited representatives can adequately represent their clients and can be more efficiently produced than lawyers. Both of these tests can be met.

113. *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 102 (go to the heading “Can an organization lose its recognition?” under the “Recognition” category).

114. *Id.*

115. CATHOLIC LEGAL IMMIGR. NETWORK, INC., KEY TAKEAWAYS FROM FREEDOM OF INFORMATION ACT REQUEST ON OFFICE OF LEGAL ACCESS PROGRAMS (OLAP) AND THE RECOGNITION AND ACCREDITATION PROGRAM 5 (2021), [https://www.cliniclegal.org/sites/default/files/2021-03/Key%20Takeaways%20from%20Freedom%20of%20Information%20Act%20Request%20on%20Office%20of%20Legal%20Access%20Programs%20\(OLAP\)%20and%20the%20Recognition%20and%20Accreditation%20Program.pdf](https://www.cliniclegal.org/sites/default/files/2021-03/Key%20Takeaways%20from%20Freedom%20of%20Information%20Act%20Request%20on%20Office%20of%20Legal%20Access%20Programs%20(OLAP)%20and%20the%20Recognition%20and%20Accreditation%20Program.pdf) [<https://perma.cc/624J-VLLA>]; *see also* Tonya Foley, *CLINIC Releases Key Takeaways from FOIA Requests on OLAP and the Recognition and Accreditation Program*, CLINIC, <https://www.cliniclegal.org/resources/doj-recognition-and-accreditation/clinic-releases-key-takeaways-foia-requests-olap-and> [<https://perma.cc/ZT86-NH48>] (Mar. 19, 2021).

116. CATHOLIC LEGAL IMMIGR. NETWORK, INC., *supra* note 115, at 5.

117. *Id.*

118. *Id.*

119. *Recognized Organizations and Accredited Representatives Roster*, *supra* note 101.

120. *See id.* Note that the exact number of accredited representatives may actually be lower than reported by EOIR, as the names of several of the representatives appear more than once on this roster.

121. *See id.*

First, although the typical accredited representative will lack the breadth of legal knowledge of lawyers, a thorough accredited representative training can easily match the immigration law training that a law student receives—and that is not only because a typical law student receives zero training in immigration law.¹²² Training for accredited representatives is narrowly tailored and focused on teaching the key competencies needed to adequately represent clients. This model varies significantly from traditional legal education, which teaches broad and general legal concepts to a student body that could practice in any area of law before a range of adjudicatory bodies.¹²³

Second, although law schools are uneasily situated within the university ecosystem as halfway professional schools and halfway academic training grounds, accredited representatives are unequivocally trained for practice. The narrow and specific area of legal practice that accredited representatives specialize in makes it possible to train them for actual practice before immigration adjudicators. The coursework is specifically tailored to the specific skills and values that they use regularly on the job, such as providing trauma-informed client interviewing and counseling, conducting intake interviews to determine eligibility for immigration benefits or relief, understanding cross-cultural differences, working with interpreters and expert witnesses, and conducting research about conditions in foreign countries. The coursework also recognizes the unique need to engage in self-care and identify vicarious trauma in themselves.

In addition, by definition, accredited representatives will work in an environment focused on immigration law, to an extent that very few lawyers experience in their own work environments. Whatever accredited representatives do not learn during their training periods, they can reasonably be expected to soon learn in practice. Considering their robust training, work experience, and long history of success in ably representing migrants, accredited representatives are clearly capable of adequately providing legal support to individual immigrants.

The remaining question is whether accredited representatives can be produced in numbers sufficient to put a substantial dent in the currently

122. Indeed, it is important to note that most lawyers who take on immigration cases on a pro bono basis may have no prior training or experience in immigration law. Many have never before worked with immigration clients. Many have limited experience working with clients who have experienced trauma and for which gaining rapport and trust is foundational for a healthy client relationship. Pro bono lawyers must be trained in all of this before providing legal services to immigrant clients.

123. See William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Five Key Observations*, in EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 5–8 (2007). Similarly, most paralegal educational programs are general in nature. Like law school, most paralegal programs teach broadly about several areas of law. According to the American Bar Association, the accrediting body of paralegal programs, the curriculum must include “general education and legal specialty courses.” *Educational Information for Paralegals*, AM. BAR. ASS’N, <https://www.americanbar.org/groups/paralegals/profession-information/educational-information-for-paralegals/> [https://perma.cc/FL78-EUQV] (last visited Nov. 3, 2023). Paralegal students take courses in substantive law and legal procedures and process. *Id.* The education is general, since paralegals can work in any variety of legal services areas after completion of their studies. *Id.*

growing problem of unrepresented immigrants. This is, of course, the great shortcoming of the hope that lawyers themselves could solve the problem. History has tried this solution, and it has been found wanting. For several reasons, however, greatly increasing the number of accredited representatives is more promising than a continuing reliance on lawyers more or less alone.

First, reliance on accredited representatives is a very practical solution. Accredited representatives can be trained and deployed much more quickly than lawyers. Law school and being admitted to the bar takes close to 3.5 years.¹²⁴ In contrast, my program at Villanova University, Villanova Interdisciplinary Immigration Studies Training for Advocates (VIISTA), is designed in three stackable fourteen-week modules, each of which is offered three times a year, in the fall, spring, and summer.¹²⁵ Students who are interested in becoming partially accredited representatives can take two modules and be qualified to apply for accreditation in twenty-eight weeks.¹²⁶ Students who are interested in becoming fully accredited representatives, or who want to transition from being a partially to a fully accredited representative, study for an additional fourteen weeks.¹²⁷ In both cases, of course, as discussed earlier, an affiliation with a recognized organization is necessary.

Second, for a host of interrelated reasons, accredited representative training is more convenient and accessible than law school training for most people. It is much cheaper than law school training, so cost is not a significant barrier.¹²⁸ Programs like VIISTA are offered as online, asynchronous programs, maximizing the ability of students who work full time or have extensive family commitments to complete the educational program.¹²⁹ The program's online format offers geographic flexibility, allowing for students to access the education from wherever they are located. Finally, because of the reduced time commitment and significantly reduced

124. Law school is three years long, after which recent graduates spend the summer studying for the bar examination.

125. *Program Details*, VILLANOVA UNIV., <https://www1.villanova.edu/university/professional-studies/academics/professional-education/viista/program-details.html> [https://perma.cc/T2HE-CLQQ] (last visited Nov. 3, 2023).

126. *Id.*

127. *Id.*

128. "According to data collected by the American Bar Association (ABA) in 2022, the average annual cost of tuition and fees for full-time, in-state law school students is \$42,823." Ke'alohe Wang, *What Does Law School Cost, and Is It Worth It?*, FORBES (Mar. 1, 2023), <https://www.forbes.com/advisor/education/law-school-cost/> [https://perma.cc/66LB-YPYL]. "The average cost of private law school tuition in the US is \$53,034 a year." David Merson, *How Much Is Law School?*, JURIS EDUC. (June 7, 2023), <https://www.juriseducation.com/blog/how-much-is-law-school> [https://perma.cc/Q4H4-QNGP]. VIISTA costs less than \$4,000 for all three modules, which is about 9.3 percent of the median cost of attending law school. And, without the need to earn high salaries that would allow them to pay back law school debt, accredited representatives are better situated to provide low-cost legal representation to indigent immigrants.

129. VIISTA students report working around ten to fifteen hours per week. Notably, many students log into the online learning management system during times when traditional in-person educational options are unavailable, such as on nights, weekends, and holidays.

costs for accredited representative training, a career as an accredited representative remains more attractive to people at all stages of life. Recent college graduates, mid-career professionals, stay-at-home parents, people returning to the workforce, and retirees can all find purpose and meaning in this work. Encouraging this large pool of candidates to train as accredited representatives greatly increases the number of people who might be available to help immigrants in the future.

It is important that accredited representatives can be relied on to competently represent immigrants, especially when combined with the fact that accredited representatives can be more easily, effectively, and efficiently produced than law school graduates. The combination of these two factors counsels strongly in favor of adopting policies that will encourage building attractive career paths in the growing field of accredited representation.

An additional argument in favor of accredited representatives assuming an increased load as representatives of otherwise unrepresented immigrants is that such a development would greatly advance the goals of diversity, equity, and inclusion. Consider, for example, that accredited representative programs provide potential career options for immigrants and refugees who were trained in legal services in their home countries. Acquiring employment opportunities is a perennial problem facing legal professionals who migrate to the United States, as legal education in a foreign country does not typically qualify someone for admission to the bar.¹³⁰

In addition, the ability to speak a foreign language is a significant advantage in the immigration field, as is cultural competency and knowledge of different countries. These systemic advantages will accrue to the benefit of new immigrants and immigrant communities, assuming that we adopt policies and provide adequate support to build up the field of accredited representatives.

Another group that seems to be unrepresented in professional circles is residents of rural areas. Making this career path available to people who are native to rural or remote communities is also consistent with the goals of diversity, equity, and inclusion. Recruiting lawyers to work in remote or rural areas can be a recurrent problem for immigrant-serving organizations. Even when legal services organizations are successful in recruiting entry-level lawyers to work in remote areas, the lawyers may move to organizations in urban or suburban areas of the country after they have gained transferrable skills. This is costly for the legal services organization that invests in training the lawyer but reaps benefits from the training only until the lawyer switches jobs. A better investment for the organization may involve training accredited representatives who live in, and are recruited from, places that need legal services. The organization could train them to do the work that is needed in their local communities. Further, those who are

130. One exception is the State of New York, which allows foreign lawyers to sit for the bar after they receive a LLM degree from a U.S. law school. *See A U.S. Bar Examination*, UNIV. CHICAGO, <https://www.law.uchicago.edu/llm/bar> [<https://perma.cc/2MGL-JEHG>] (last visited Nov. 3, 2023).

native to the community may be more likely to stay in their local community for the long term. The benefits would accrue to immigrants living in rural areas, rural residents committed to a rural lifestyle, and rural communities generally.

What policies will grow the field of accredited representatives in a way that leads to lasting positive change? Part V provides the background for considering this question by exploring the origins and development of the occupations of nurse practitioner and physician assistant.

V. HOW NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS BECAME INDISPENSABLE TO THE PROVISION OF HEALTH CARE IN AMERICA

Before the 1960s, nurse practitioner and physician assistant positions did not exist in any recognized form.¹³¹ Their placement into the health care profession developed over many years and involved many players in health care, government, philanthropy, and academia.¹³² Considering that the position of accredited representative could undergo a similar trajectory in terms of gaining importance and public recognition, we may learn from the history of how nurse practitioner and physician assistant became new careers. How did the health care system make room for nurse practitioners and physician assistants? What was done to create an environment that was supportive of their growth? What worked and what did not work? In raising the profile of accredited representatives, how can we proactively avoid the problems encountered by advocating for nurse practitioners and physician assistants?

A. *The Development and Growth of the Nurse Practitioner and Physician Assistant Professions*

The nurse practitioner and physician assistant career paths started in the 1960s when universities started to train for new roles in the health care industry. “[E]nterprising health care professionals in academic medicine”¹³³ and their universities pioneered the two professions. With early philanthropic support, which played a huge role in getting the career paths off the ground, the new careers flourished and expanded nationwide. Parts V.A.1 and V.A.2 briefly outline the origins and development of both professions.

1. The Nurse Practitioner

Dr. Loretta C. Ford, a nurse, and Dr. Henry K. Silver, a pediatrician, established the first certificate program for nurse practitioners at the

131. See *infra* Parts V.A.1–2.

132. See *infra* Parts V.A.1–2.

133. Scott Kohler, *The Development of the Nurse Practitioner and Physician Assistant Professions: The Commonwealth Fund, Robert Wood Johnson Foundation, and Carnegie Corporation of New York, 1965*, in CASEBOOK FOR THE FOUNDATION: A GREAT AMERICAN SECRET: HOW PRIVATE WEALTH IS CHANGING THE WORLD 86, 86 (2007).

University of Colorado in 1965.¹³⁴ The program focused on family health, disease prevention, and general health promotion.¹³⁵ Further, “[a]ccording to Ford, society’s demand for primary care services and nursing’s potential to meet the need were the reasons for the development of nurse practitioners; the physician shortage merely provided the opportunity.”¹³⁶ Supported by a three-year grant from the Commonwealth Fund, Drs. Ford and Silver developed a model educational program.¹³⁷ Nursing school deans, nurses, and others within the nursing community initially were skeptical of the new career path.¹³⁸

Organized medicine expressed opposition to the concept of a nurse “functioning in an expanded role not under [physicians’] direction,” labeled the concept bad doctoring, and would concede only that these independent practitioners were physician extenders. Some in both nursing and medicine viewed this type of collaboration with alarm, suspicion, and distrust.¹³⁹

Despite this opposition, the American Nurses Association (ANA) began advocating for the recognition of nurse practitioners as a distinct health care profession within a few years of the launch of the new training program. The ANA also developed a certification program for nurse practitioners, which required additional education and clinical experience beyond the registered nurse level. In 1977, the ANA administered the first nurse practitioners certification exam,¹⁴⁰ and by the mid-1980s, all fifty states had established licensing regulations for nurse practitioners.¹⁴¹ In 1993, the National Council of State Boards of Nursing (NCSBN) created a standardized

134. *History of Nurse Practitioners in the United States*, SIMMONS UNIV., <https://online.simmons.edu/blog/history-nurse-practitioners> [https://perma.cc/9T2F-JYL5] (last visited Nov. 3, 2023); see Loretta C. Ford & Henry K. Silver, *The Expanded Role of the Nurse in Child Care*, NURSING OUTLOOK, Sept. 1967, at 43.

135. *Id.* at 44.

136. John Michael O’Brien, *How Nurse Practitioners Obtained Provider Status: Lessons for Pharmacists*, 60 AM. J. HEALTH-SYS. PHARM. 2301, 2302 (2003).

137. Kohler, *supra* note 133, at 87. The Robert Wood Johnson Foundation provided similar seed funding to the University of New Mexico. Ann O’Sullivan, *Nurse Practitioner Pioneers: Celebrating 50 Years of Role Development*, 11 J. FOR NURSE PRACS. 578, 586 (2015).

138. See, e.g., Diane O. McGivern, Eileen M. Sullivan-Marx & Mathy D. Mezey, *Advanced Practice Nursing: Preparation and Clinical Practice*, in NURSE PRACTITIONERS: EVOLUTION OF ADVANCED PRACTICE 3, 4 (Mathy D. Mezey, Diane O. McGivern, Eileen M. Sullivan-Marx & Sherry A. Greenberg eds., 4th ed. 2003); Kohler, *supra* note 133. “Some nurses and physicians opposed the nurse practitioner model. Certain nursing leaders believed that nurse practitioners were no longer practicing nursing, that the title was ‘ambiguous and misleading,’ and that such training in primary care medicine would ‘control and devour nursing education and practice.’” O’Brien, *supra* note 136, at 2302.

139. O’Brien, *supra* note 136, at 2302.

140. See *History of NPs in the United States*, OHIO ASS’N ADVANCED PRAC. NURSES (June 7, 2021), <https://oaapn.org/2021/06/history-of-nps-in-the-united-states/> [https://perma.cc/PB34-PBHH] (last visited Nov. 3, 2023).

141. It took longer for Louisiana, which amended its Nurse Practice Act in 1996 to explicitly establish the nurse practitioner role. See *Nurse Practitioners: A Timeline*, ADVANCE FOR NURSE PRACS. & PHYSICIAN ASSISTANTS, Nov. 2011, at 66.

certification exam, known as the NCLEX-NP, which remains in use today.¹⁴² Over the years, the role of the nurse practitioners has expanded to include more specialized areas of practice, such as pediatrics, oncology, and gerontology.

After none of the dissenters' fears materialized, the University of Colorado program became a model for several similar educational programs started at colleges and universities around the country.¹⁴³ Over time, the profession expanded to include general care nurses and also specialists. Today, nurse practitioners are recognized as important members of the health care team, providing high-quality and cost-effective care to patients across the lifespan.

2. The Physician Assistant

Around the same time as the University of Colorado nursing program started, Dr. Eugene Stead, chairperson of the Department of Medicine at the Duke University Medical Center, started the first program to educate physician assistants.¹⁴⁴ Responding to the need for additional health care personnel with generalized medical knowledge, Stead applied his extensive experience training navy medics to create a new career in health care. Stead envisioned "a mid-level class of health care providers who could play the part of nurse or physician and would be trained in far less time than the latter."¹⁴⁵ Duke's first class of physician assistants included four navy hospital corpsmen who had received medical training while serving in the military.¹⁴⁶ Further, "[i]n what amounted to an intense two-year abbreviated version of medical school, Stead's physician assistants learned to perform much the same role as a doctor, while working under a licensed physician direction."¹⁴⁷ Stead's innovative educational model was prominently featured by the national press in 1965,¹⁴⁸ and his first class graduated in 1967.¹⁴⁹ The American Academy of Physician Assistants was formed the following year, in 1968.¹⁵⁰

Physician assistant programs gained federal funding and public acceptance in the early 1970s as a viable solution to widespread physician shortages.¹⁵¹ The medical community supported the physician assistant profession and even initiated accreditation standards and a national certification process and

142. To pass the examination, a licensure candidate had to answer "a minimum of 75 up to 265 questions, 15 of which were pilot questions, within 5 hours and meet the passing standard." Diane Benefiel, *The Story of Nurse Licensure*, 36 *NURSE EDUCATOR* 16, 18 (2011).

143. Kohler, *supra* note 133, at 88.

144. *History of AAPA and the PA Profession*, *supra* note 6.

145. Kohler, *supra* note 133, at 87.

146. *History of AAPA and the PA Profession*, *supra* note 6.

147. Kohler, *supra* note 133, at 87.

148. *Reader's Digest Article Mentions Duke PA Program*, PAHX, <https://pahx.org/gallery/readers-digest-article-mentions-duke-pa-program-2/> [<https://perma.cc/9X55-2XC6>] (last visited Nov. 3, 2023).

149. *History of AAPA and the PA Profession*, *supra* note 6.

150. *Id.*

151. *Id.*

standardized exam for physician assistants.¹⁵² Today, physician assistants are “licensed to practice medicine with physician supervision. [Physician assistants] conduct physical exams, diagnose and treat illnesses, order and interpret tests, counsel on preventive health care, assist in surgery, and write prescriptions.”¹⁵³

Less than sixty years since the inception of these two career paths, there are more than 355,000 nurse practitioners¹⁵⁴ and 168,000 physician assistants¹⁵⁵ nationwide.

B. Growth Strategies for Nurse Practitioners and Physician Assistants

A deeper dive into the history and growth of the nurse practitioner and physician assistant career paths reveals four key strategies that allowed proponents to overcome obstacles and to propel the emerging career paths forward: First, securing financial support from private philanthropy. Second, building networks and coalitions of support for nurse practitioners and physician assistants. Third, enlisting political and governmental support. Fourth, conducting research to (1) understand the role that the nurse practitioners and physician assistants played in the ecosystem, (2) assess the value that the new professions provided, and (3) measure their related cost savings.

1. Securing Support from Private Philanthropy

Private philanthropy played a critical role in supporting the early development of both the nurse practitioner and physician assistant career paths. Indeed, the Commonwealth Fund’s commitment to developing these fields is so significant that it is memorialized in a book dedicated to the subject, *For the Welfare of Mankind: The Commonwealth Fund and American Medicine*.¹⁵⁶ Notably, the University of Colorado’s nurse practitioner training program launched with funding from the Commonwealth Fund.¹⁵⁷ The physician assistants’ educational model was similarly supported by private philanthropy. Stead was initially awarded a grant by the National Heart Institute, followed by grants from the Josiah Macy, Jr. Foundation, the Carnegie Corporation, the Rockefeller Foundation,

152. *Id.*

153. James F. Cawley, *Physician Assistants and Their Role in Primary Care*, 14 AM. MED. ASS’N J. ETHICS 411, 411 (2012).

154. *Historical Timeline*, AM. ASS’N NURSE PRACS., <https://www.aanp.org/about/about-the-american-association-of-nurse-practitioners-aanp/historical-timeline> [<https://perma.cc/575W-DJS9>] (last visited Nov. 3, 2021).

155. *Press*, AM. ACAD. PHYSICIAN ASSOCS., <https://www.aapa.org/news-central/press/> [<https://perma.cc/5SUW-82MS>] (last visited Nov. 3, 2023).

156. A. MCGEHEE HARVEY & SUSAN ABRAMS, *FOR THE WELFARE OF MANKIND: THE COMMONWEALTH FUND AND AMERICAN MEDICINE* (1986).

157. *Bridging Gaps in Healthcare*, COMMONWEALTH FUND, <https://centennial.commonwealthfund.org/bridging-gaps-health-care.html> [<https://perma.cc/837T-WZDL>] (last visited Nov. 3, 2023).

and the Commonwealth Fund.¹⁵⁸ His program at Duke relied on outside funds until 1982.¹⁵⁹

2. Building Networks and Coalitions

Soon after the educational programs began graduating students with credentials, coalitions began to form around these new career paths. Within the first few years of practice, physician assistants and nurse practitioners both formed associations to network, collaborate, and build support.

Around the same time as the American Academy of Physician Assistants was formed in 1968,¹⁶⁰ nurse practitioners established similar coalitions. In 1974, the American Nurses Association formed the Council of Primary Care Nurse Practitioners, which helped solidify the role of nurse practitioners within the health care system.¹⁶¹ Between 1973 and 1985, more than eleven nurse practitioner organizations were established as part of a concerted effort to standardize training and the scope of nurse practitioner practice and to gain more recognition within broader society.¹⁶² Among their efforts was the creation of certification examinations for nurse practitioners.¹⁶³

By 1993, the National Nurse Practitioner Coalition, a nurse practitioner lobbying organization, was established to serve and represent individual nurse practitioners and their organizations under one unified umbrella.¹⁶⁴

Shortly thereafter, the coalition became the American College of Nurse Practitioners (ACNP). Membership in ACNP was offered to individual nurse practitioners, small groups of nurse practitioners from individual institutions, and local, state, and national nurse practitioner organizations. ACNP proved to be a critical organization in the nurse practitioner community. It provided the identity and strength necessary to unite the profession and move the campaign forward.¹⁶⁵

These coalitions were immediately impactful because they communicated regularly with members and provided clear recommendations for action, with detailed instructions on how to influence federal policy.¹⁶⁶ Their primary

158. See Kohler, *supra* note 133, at 87.

159. *Id.* at 88.

160. See *History of AAPA and the PA Profession*, *supra* note 6. The American Academy of Physician Assistants previously operated as the American Association of Physician Assistants. *Id.*

161. *Historical Timeline*, *supra* note 154.

162. *Id.*

163. *Id.*

164. O'Brien, *supra* note 136, at 2304.

165. *Id.* at 2305.

166. *Id.* at 2304. (“ACNP encouraged nurse practitioners with a message that was both educational and inspirational. Member communications were concise and timely and provided clear recommendations. Journal articles, faxes, and e-mail provided detailed instructions on whom to contact, how to contact them, and why it was important to do so. Similar educational strategies were used to request testimonials, case studies, and demonstration projects documenting the effectiveness of nurse practitioner services. Inspirational messages kept organization members and grass-roots activists engaged, energized, and ‘on message.’ Articles dedicated entirely to political activism appeared regularly.”).

goal was to secure provider status, in other words, reimbursement for their services directly from the payer and to not be reliant on payment from the physician with whom they worked.¹⁶⁷ This policy change was important because “nurse practitioners were initially paid primarily as employees of the physician or hospital, often under Medicare rules that reimbursed their collaborative activities under the physician’s provider number.”¹⁶⁸ They simultaneously engaged a broad media strategy to gain national recognition.¹⁶⁹ The media strategy proved helpful in enlisting political and governmental support, as discussed below. It also proved helpful in gaining support from the American Medical Association, which provided its official seal of approval of the physician assistants profession in 1969.¹⁷⁰

3. Enlisting Political and Governmental Support

The nurse practitioner occupation gained momentum after enlisting support from legislators and other government officials, as well as from within the medical field. The Comprehensive Health Manpower Training Act of 1971¹⁷¹ provided funding for educating and training health care professionals.¹⁷² This created additional opportunities for nurse practitioners and physician assistants to receive formal education and training, which further supported the profession’s growth and advancement. The Rural

167. *See generally id.*

168. *Id.* at 2302.

169. EILEEN M. SULLIVAN-MARX, DIANE O’NEILL MCGIVERN, JULIE A. FAIRMAN & SHERRY A. GREENBERG, *NURSE PRACTITIONERS: THE EVOLUTION AND FUTURE OF ADVANCED PRACTICE 7* (5th ed. 2010). One of the earliest publications in the popular press about nurse practitioners appeared in *Look* magazine in 1966. *See* Roland H. Berg, *More than a Nurse, Less than a Doctor . . .*, *LOOK*, Sept. 6, 1966, at 48.

170. James F. Cawley, Elizabeth Cawthon & Roderick S. Hooker, *Origins of the Physician Assistant Movement in the United States*, 25 *J. AM. ACAD. PHYSICIAN ASSISTANTS* 36, 36–40 (2012) (“A critical event in the survival of the PA concept was the endorsement given by the AMA in 1969. Stead and several of his colleagues introduced a resolution in the AMA House of Delegates to encourage state medical boards to amend medical practice acts to sanction PA practice. Support for the development of the PA profession also came from the American College of Surgeons, the American Academy of Family Physicians, the American Academy of Pediatrics, and other medical groups. Such organizations were involved in the formation of two critical systems that were vital parts of the young profession: PA program accreditation and the national certifying examination.”). After physician assistants gained initial credibility, historical documents emerged suggesting that prototype physician assistants were abundant in the world with different names, origins, and functions. *See* Richard W. Dehn, Christine M. Everett & Roderick S. Hooker, *Research on the PA Profession: The Medical Model Shifts*, 30 *J. AM. ACAD. PHYSICIAN ASSISTANTS* 33, 33–42 (2017).

Other PA prototypes included the assistant medical officer in Micronesia, Fiji, and Papua, New Guinea; the apothecary in Ceylon; the public health worker in Ethiopia; the clinical assistant in Kenya; the barefoot doctor in China; the *practicante* in Puerto Rico; the rural nurse in Cuba; the *officier de santé* in France; and the *feldsher* in Eastern Europe. All had been clinicians in use before the contemporary PA emerged []. In the United States, one proposal was the term *assistant medical officer* to describe a type of healthcare worker almost identical to today’s PA.

Id. at 33–34.

171. Pub. L. No. 92-157, 85 Stat. 431 (1971) (codified at 42 U.S.C. § 201).

172. *Id.*

Health Clinic Act of 1977¹⁷³ provided an early victory for nurse practitioners working in rural areas by mandating federal funding for rural health clinics staffed with nurse practitioners.¹⁷⁴ Soon thereafter, national news outlets including the *Wall Street Journal*, *Today's Health*, the *New York Times*, and the *Washington Post* reported on nurse practitioners in the respective newspapers' main or health sections.¹⁷⁵ By 1985, the news outlets "had printed letters to the editor [about nurse practitioners] over 150 times."¹⁷⁶

Although they were working on this national legislative strategy, nurse practitioner and physician assistant associations also employed a state-level legislative strategy. Several states enacted legislation that specifically addressed the role and scope of the practice of nurse practitioners, such as granting them the authority to prescribe medications and perform certain medical procedures.¹⁷⁷ These state-level policies helped to expand the role and responsibilities of these emerging careers and increased access to high-quality health care services for patients across the United States.

The nurse practitioner coalitions developed a detailed legislative strategy to push for federal reimbursement for their services (referred to as "provider status").¹⁷⁸ In 1997, thirty years after the first nurse practitioner and physician assistant training programs were founded, Congress authorized this provider status in the Balanced Budget Act of 1997.¹⁷⁹ That bill's passage marked a significant victory, as it authorized payment for the services of nurse practitioners and physician assistants at a rate of 85 percent of physicians' rates.¹⁸⁰ Until the passage of the Balanced Budget Act, nurse practitioners could not be directly reimbursed for inpatient services provided to Medicare patients.¹⁸¹ With the enactment of this legislation, acute care nurse practitioners could be directly compensated for care provided.¹⁸²

Recognition of nurse practitioners as Medicare-eligible health care providers was the result of years of persistent, passionate activism by nurse practitioners and their leaders. The evolution of advanced-practice nursing and its subsequent inclusion in federal health care reimbursement language is an excellent example of a health profession achieving change and recognition.¹⁸³

Indeed, a unique combination of efforts by individual members, coalitions, associations, and professional lobbyists achieved this game-changing victory.

173. Pub. L. No. 95-210, 91 Stat. 1485 (codified as amended in scattered sections of 26 and 42 U.S.C.).

174. *Id.*

175. SULLIVAN-MARX ET AL., *supra* note 169.

176. *Id.* at 8.

177. O'Brien, *supra* note 136, at app. A.

178. *See generally id.*

179. Pub. L. No. 105-33, 111 Stat. 251 (codified as amended in scattered sections of the U.S.C.).

180. O'Brien, *supra* note 136, at app. A.

181. *Id.* at 2305.

182. *Id.* at 2303.

183. *Id.* at 2302.

According to the chair of the reimbursement task force, "The critical difference . . . in our success came from the nurse practitioners contributing their time, resources, and energy. In the final analysis, the key to success came from them, the calls, the faxes, e-mails that applied the pressure on Congress to get the job done."¹⁸⁴

4. Conducting Research Studies

Throughout the development of these career paths, nurse practitioner and physician assistant researchers rigorously documented the impact that these career paths were having in the field. Early research and scholarship on nurse practitioners and physician assistants reported on the level of care, patient satisfaction, and models of work.¹⁸⁵ The research outcomes revealed that nurse practitioners and physician assistants were embraced by patients and that they provided a quality of service comparable to physicians in many respects.¹⁸⁶

For example, one study evaluating physician assistant performance found that they could "provide the average office patient with primary care that compares very favorably with care given by the physician."¹⁸⁷ Productivity studies further showed that the provision of care by physician assistants was comparable to physicians.¹⁸⁸

Research continued to confirm that they were providing service to the community. Another study took advantage of the Rural Health Clinic Act of 1977 to document the cost-effectiveness of nurse practitioner services in rural settings.¹⁸⁹ The data from rural health clinics was used to prove the concept and gain more widespread support.¹⁹⁰ In the 1970s, nurse practitioners "documented that they increased the availability of primary care services and that patients and physicians were satisfied with their care."¹⁹¹

184. *Id.* at 2305.

185. *Id.* at 2302.

186. *Id.*

187. Harold C. Sox, *Quality of Patient Care by Nurse Practitioners and Physician Assistants: A Ten-Year Perspective*, 91 ANNALS INTERNAL MED. 459, 466 (1979).

188. See, e.g., Robert C. Mendenhall, Paul A. Repicky & Richard E. Neville, *Assessing the Utilization and Productivity of Nurse Practitioners and Physician's Assistants: Methodology and Findings on Productivity*, 18 MED. CARE 609, 622 (1980); Jane C. Record, Michael McCally, Stuart O. Schweitzer, Robert M. Blomquist & Benjamin D. Berger, *New Health Professions After a Decade and a Half: Delegation, Productivity and Costs in Primary Care*, 5 J. HEALTH POL. POL'Y & L. 470, 471 (1980).

189. O'Brien, *supra* note 136, at 2303.

190. *Id.*

191. *Id.* at 2302; see also Mendenhall et al., *supra* note 188; Stephen B. Morris & David B. Smith, *The Distribution of Physician Extenders*, 15 MED. CARE 1045, 1054-56 (1977); Sharon Alongi, Denise Geolot, Linda Richter, Sally Mapstone, Milton T. Edgerton & Richard F. Edlich, *Physician and Patient Acceptance of Emergency Nurse Practitioners*, 8 J. AM. COLL. EMERGENCY PHYSICIANS 26, 27-28 (1979); CONG. BUDGET OFF., PHYSICIAN EXTENDERS: THEIR CURRENT AND FUTURE ROLE IN MEDICAL CARE DELIVERY (1979); Record et al., *supra* note 188.

A review of the physician assistant literature, conducted in celebration of the fiftieth anniversary of the physician assistant profession, reveals the breadth of research that was conducted:

A great deal of health services research was performed during the 1970s and 1980s examining the effect of introducing [physician assistants] into medical practices. Sometimes these were case control studies and sometimes the investigators compared the productivity of small practices before and after introducing a [physician assistant]. The Bureau of Health Professions in the Department of Health, Education, and Welfare (now the Department of Health and Human Services) underwrote much of this research. After a decade, more than 60 research publications revealed that physician assistants were well accepted, safe, and effective practitioners in medical care delivery. Studies also showed that patient acceptance of the [physician assistant] role was high and that most [physician assistants] worked in general medical care practices in medically needy areas.¹⁹²

Notably, many of the seminal evaluations of physician assistant use found that in ambulatory care practices and in health maintenance organizations, physician assistant “productivity (number of patient visits) approached and sometimes exceeded that of family medicine physicians.”¹⁹³

During the 1980s, as the health care industry experienced increased health care costs, nurse practitioners conducted rigorous studies to establish their value within the health care ecosystem. For example, a 1994 article in the *New England Journal of Medicine* concluded that “[w]hen measures of diagnostic certainty, management competence, or comprehensiveness, quality, and cost are used, virtually every study indicates that the primary care provided by nurse practitioners is equivalent or superior to that provided by physicians.”¹⁹⁴

When some physicians disputed the research conclusions, nurse practitioners

responded with still more data, including a randomized trial in the *Journal of the American Medical Association* supporting the hypothesis that primary care outcomes do not differ between nurse practitioner and physician delivery. These findings spurred increasing utilization of nurse practitioners and would prove vital in establishing policies validating the profession.¹⁹⁵

In 1986, the Office of Technology Assessment (OTA), a former office of Congress, gathered information about nurse practitioners’ quality of care.¹⁹⁶ The OTA compiled a report, noting that “individual studies comparing [nurse practitioners] and physicians find that the quality of care provided by [nurse practitioners] functioning within their areas of training and expertise tends to

192. Dehn et al., *supra* note 170, at 34.

193. *Id.*

194. O’Brien, *supra* note 136, at 2302 (quoting Mary O. Munding, *Advanced-Practice Nursing: Good Medicine for Physicians?*, 330 *NEW ENGL. J. OF MED.* 211 (1994)).

195. *Id.*

196. *Id.* at 2307 n.20.

be as good or better than care provided by physicians.”¹⁹⁷ Two areas in which physicians scored higher than nurse practitioners included “management of problems requiring technical solutions” and “level of activity limitation and anxiety in patients with chronic problems.”¹⁹⁸ In nine other areas, the OTA found that nurse practitioners and physicians provided equivalent care to patients and, in twelve other outcomes, the OTA found that nurse practitioners provided better care than physicians.¹⁹⁹

In *The Economic Basis of Physician Assistant Practice*, Dr. Roderick Hooker presented various studies evaluating the cost-effectiveness of physician assistants.²⁰⁰ Hooker examined various factors that helped position physician assistants as one of the most cost-effective health care providers, finding “10 studies have shown that [physician assistants] provide lower cost health care, within their spheres of practice competency, that is comparable, and in some instances superior, to that provided by physicians.”²⁰¹

By following these four strategies, the nurse practitioner and physician assistant movements were able to engineer widespread acceptance of their professions within health systems, state and federal governments, and the general public. The next part discusses how a movement for accredited representatives might achieve substantially the same ends.

VI. RECOMMENDATIONS AND CONCLUSION

The nurse practitioner and physician assistant movements are instructive for advocates of the widespread use of accredited representatives within the legal services ecosystem. The history of the two movements in the medical field shows the necessity of thinking ahead, while simultaneously understanding and acting in the present moment. Taking that history seriously and understanding how it was able to achieve success is the key to formulating a similarly successful strategy for the occupation of accredited representatives. In articulating an initial version of that strategy, I will utilize the same four strategic components that were discussed in Part V.

A. Philanthropy

I began the work on VIISTA in 2016. It became fully operational in 2020, and our first class completed the program in 2021. I was aided in this effort by grants from the John D. and Catherine T. MacArthur Foundation, the J.M.K. Innovation Prize (JM Kaplan Fund), the Raskob Foundation for Catholic Activities, the American Bar Endowment, the ABA, the Justamere Foundation, The Resurrection Project, the Augustinian Defenders of the

197. CONG. OFF. OF TECH. ASSESSMENT, OTA-HCS-37, NURSE PRACTITIONERS, PHYSICIAN ASSISTANTS, AND CERTIFIED NURSE-MIDWIVES: A POLICY ANALYSIS 19 (1986).

198. *Id.*

199. *Id.*

200. See generally Roderick S. Hooker, *The Economic Basis of Physician Assistant Practice*, 13 AM. ACAD. PHYSICIAN ASSISTANTS 51 (2000).

201. *Id.*

Rights of the Poor, and The St. Augustine Foundation, as well as private donors. These grants were instrumental to achieving success for VIISTA. We currently have 150 students enrolled and many more have finished the program. Approximately fifty students have already received DOJ accreditation.²⁰² Many others are working or volunteering in other capacities that assist immigrants and immigration service providers.

The number of sources of funding for VIISTA demonstrates that philanthropists are open to the innovative idea of broadening the role of accredited representatives in our immigration legal system. Certainly, funders are currently interested in supporting representation efforts for immigrants, and some funders have even urged their colleagues at other foundations to “resource the immigrant justice movement, particularly the legal services ecosystem, and capitalize on efforts to create pathways to legalization for millions of immigrants in this country. This includes investments in targeted strategies that not only increase access to legal counsel for immigrants, but also strengthen the legal services infrastructure.”²⁰³ Individual NGOs, universities and others who might strategically utilize funding will need to make the case to these funders that the funding they would make available to enhance immigration representation efforts would be most effective if directed toward developing the field of accredited representatives. Based on my experience with VIISTA, I would advise those who are working with accredited representatives, or who would like to work with them, to seek out philanthropic foundations and other donors, for I believe the time is ripe for people with innovative ideas in this space.

B. Coalition Building and Networks

Coalition building was probably the most important key to the success of the nurse practitioner and physician assistant movements. It helped with fundraising, with obtaining favorable government action, and with finding support for and coordinating research. Given this, there is probably no task more important for the success of the incipient accredited representative movement than for it to build coalitions united behind the idea that accredited representatives can play a huge role in addressing access to justice in immigration. This step is critical for the success of the accredited representative movement.

There is much work to be done regarding this component of an accredited representation strategy. Coalition-building has been central to VIISTA

202. Some VIISTA certificate holders have received partial accreditation from DOJ; others are fully accredited. *VIISTA — Villanova Interdisciplinary Immigration Studies Training for Advocates*, VILLANOVA UNIV., <https://www1.villanova.edu/university/professional-studies/academics/professional-education/viista.html> [https://perma.cc/H35L-XW82] (last visited Nov. 3, 2023).

203. Sara Campos, Navin Moul & Kevin Douglas, *For Immigrants, Legal Services Are Critical. Here's How Philanthropy Can Expand Access*, INSIDE PHILANTHROPY (Sept. 15, 2021), <https://www.insidephilanthropy.com/home/2021/9/15/for-immigrants-legal-services-are-critical-heres-how-philanthropy-can-expand-access> [https://perma.cc/UNN9-AV3U].

development since the idea for designing and developing a new accredited representative educational program was initially conceived. Before starting to work on the project, I met with EOIR leadership²⁰⁴ in the fall of 2016 to gauge their interest in the initial concept, shortly after Eagly and Shafer released their report on access to representation in immigration courts. My particular interest at this time was determining how accredited representatives could be trained so that they could increase the pool of people trained to represent clients in court to address the existing need for representation for unaccompanied minors, women with children, and others in immigration court proceedings. I explained that the idea for the program's educational design was novel, since I planned to design the curriculum deliberately from the ground up. Specifically, I intended to solicit input from various stakeholders, including judges, lawyers, clients, and the DHS, and to generate a solid idea of what I wanted the students to know, what skills they should develop, and what values they should gain from the program. The EOIR officials encouraged me to pursue the project. They emphasized that they would like to see more accredited representatives trained in the skills of trial advocacy so that they could effectively appear in immigration court.

A few months later in early 2017, with early seed funding from the John D. and Catherine T. MacArthur Foundation, I convened stakeholders in Philadelphia for a two-day in-person workshop to present the idea of developing a new educational program for accredited representatives and to begin brainstorming what an educational model could look like.²⁰⁵ Workshop attendees included representatives of various key players within the legal services ecosystem.²⁰⁶ Through facilitated conversations and small group work, we answered these questions: What knowledge, skills and

204. I met in person with former EOIR Director, Juan Osuna, Steve Lang, and Rene Cutlip Mason.

205. The workshop began with an overview of the concept and quickly transitioned into the role that specifically trained accredited representatives could play in the legal services ecosystem. Using design thinking techniques, attendees broke into small groups and developed lists of competencies—what we wanted students to know, be able to do, and value upon completion of each segment of the program. Each group developed a list of competencies that were posted around the room. During a gallery walk, everyone was encouraged to review the lists of the other groups, leaving check marks next to the ideas they liked and post-it notes with comments on the ideas they wanted to refine. Day one of the workshop concluded with each small group presenting their ideas to the larger group for feedback, with the goal of beginning to develop a comprehensive list of course competencies. Day two began with another overview of the competencies. Then, each small group worked together to develop learning activities for each competency that would actively engage students in learning so that they could apply the competencies on the job and receive feedback along the way as they were learning.

206. Attendees at the workshop included immigration lawyers and representatives from the American Immigration Lawyers Association; other accredited representatives trainers, such as Catholic Legal Immigration Network (CLINIC) and the Mennonite Central Committee; employers of accredited representatives, such as Hebrew Immigrant Aid Society Pennsylvania (HIAS PA) and Pennsylvania Immigration Resource Center (PIRC); a government official from the Office of Legal Assistance Programs; prospective students; accredited representatives; a representative from the MacArthur Foundation; academics; an expert in online education (who is also trained as a lawyer); and a retired immigration judge.

values do accredited representatives need in order to do their jobs? What do you value most in accredited representatives? What would increase your likelihood of hiring our graduates? What would be a big relief for you? What [knowledge/skills/values] do our graduates need to reduce costs, time, or risk for you? How do we protect immigrants from the unauthorized practice of law? How do we gauge performance and what are your evaluation criteria?

Although engaging coalition partners in developing competencies for the program is novel in legal educational design, its value immediately became apparent. By engaging community partners from the outset, we began to think about education in terms of outcomes (what we wanted the students to know, be able to do, and value by the end of each segment of the program) rather than inputs (which readings to assign and which topics to lecture about). As a consequence, the competencies we sought to teach aligned much more closely to the needs of clients and the community than they would have had we approached the project primarily in terms of inputs. Through early involvement, community members felt a sense of ownership in the project's success. A coalition supporting the idea emerged.

Again, focused on coalition-building, I invited experts from the immigration legal services ecosystem to consult on a draft curriculum.²⁰⁷ With private funding, I organized a two-day in-person workshop attended by leading immigration lawyers from partner NGOs.²⁰⁸

More recently, as Founding Faculty Director of the Villanova University Strategic Initiative for Migrants + Refugees, I have continued efforts to pursue this strategy. During the 2023 Migration Summit hosted by the Refugee Action Hub at the Massachusetts Institute of Technology, our Strategic Initiative partnered with the MIT Systems Awareness Lab to host a two-day virtual systems change workshop with community stakeholders.²⁰⁹ The workshop involved key stakeholders from all layers of the immigration and legal services ecosystem, including representatives from immigrant-serving organizations, legal service organizations, the government, law firms, and philanthropic initiatives,²¹⁰ in active sessions

207. Using the list of agreed-on competences as a guide, I revised and updated materials that I had built and refined over years of teaching a law school immigration-focused clinic to develop a draft VIISTA curriculum.

208. Representatives included lawyers from Kids in Need of Defense, Hebrew Immigrant Aid Society Pennsylvania, Immigrant Justice Corps, and Tahirih Justice Center, as well as other academics and online educational consultants. Responding to EOIR's request that the curriculum include a concentration on trial advocacy, among the participants were retired Immigration Judge and BIA Chairperson, Paul Schmidt, and Professor J.C. Lore III, who is the Director of Trial Advocacy at Rutgers Law, the author of *Modern Trial Advocacy: Analysis and Practice*, and a leading National Institute of Trial Advocates trainer.

209. *Migration Summit 2023 Report*, MIGRATION SUMMIT, <https://migrationsummit.org/migration-summit-2023-report/> [<https://perma.cc/D4QM-SBKY>] (last visited Nov. 3, 2023).

210. Workshop attendees from the legal and immigrant-serving ecosystem included representatives from Acacia Center for Justice, the American Bar Association, Catholic Charities USA, Catholic Legal Immigration Network, Human Rights First, Jewish Family and Children's Services, Justicia Lab, Law School Admissions Council, Mobile Pathways, National Partnership for New Americans, NETWORK, UnidosUS, VECINA, and Vera Institute of Justice.

designed to determine what is necessary to achieve meaningful access to justice for refugees and migrants.

I also have had some success in reaching out to those who would be important coalition partners from within the legal profession. Most notably, the ABA has been very supportive by recruiting Afghani immigrants to enroll in VIISTA and awarding them tuition scholarships.²¹¹ The ABA sees this effort as a key part of its strategy to respond to the unique legal needs of the Afghan citizens who were evacuated to the United States after the fall of Kabul. In the future, an aim of the accredited representative movement should be to expand such outreach to state bar associations, faith-based organizations, NGOs, and ethnic community groups, among others.

In addition to building coalitions of support among immigrant-serving organizations, we are also building coalitions of accredited representatives. An online network of accredited representatives and lawyer mentors is being piloted with the assistance of an American Bar Endowment (ABE) Opportunity Grant and a partnership with Justicia Lab, Pro Bono Net's immigrant justice technology lab. To my knowledge, this is the first effort of its kind for the field. Presently, even though accredited representatives have been authorized to provide legal representation for seventy years, no network exists that unites them with each other or with mentors from outside their organizations. The ABE-funded pilot is designed to connect accredited representatives with each other and mentors, and it will also serve as a repository for information. Though still in a pilot phase, the channels have already developed in ways that would likely mirror the offerings of a future accredited representative professional association. Topics include legal developments, job and volunteer opportunities, how-tos, and "rapid response" advocacy opportunities.

In the longer run, a professional association of accredited representatives is needed to foster collaboration and networking opportunities among its members. Working with a professional organization, accredited representatives would be able to share best practices, facilitate professional development opportunities, and create mechanisms for the exchange of knowledge. A professional association could also help address an identified barrier to the field's growth: accredited representatives representing immigrant clients will seek mentorship and supervision from more seasoned practitioners. A professional organization could assist in recruiting potential volunteer lawyers, making connections, and establishing and sharing best practices for mentorship and supervision.

Finally, accredited representatives face a challenge that was successfully addressed—in part via professional organizations—by nurse practitioners:

211. *ABA Scholarship for Legal Advocates*, AM. BAR ASS'N, https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/aba-scholarship-for-legal-advocates/ [https://perma.cc/9EVW-DKSZ] (last visited Nov. 3, 2023); Cassidy Jensen, *Two University Programs Help Afghan Refugees in Maryland Stay in the U.S. Permanently: 'It's Challenging to Start All Over Again.'* CAP. GAZZETTE (Dec. 28, 2022, 3:58 PM), <https://www.capitalgazette.com/maryland/bs-md-afghan-evacuees-legal-status-20221227-nrfyrjhalzcr3bgiv5zimbsuci-story.html> [https://perma.cc/BKU6-AZWF].

the need to make prospective consumers, partners, and other stakeholders aware of the field's very existence. Just as individual nurse practitioners are engaged in the work of delivering patient care, typical accredited representatives are (more than) fully occupied pursuing their clients' cases. Professional associations could take on the job of promoting the field, a task that realistically will not happen without collective action. Raising awareness of the existence of the profession through communications and other strategies would likely result in an increase in the number of advocates for immigrants training to become accredited representatives, immigrants seeking out their legal assistance, and lawyers agreeing to mentor them.

In addition, as explained in more detail in the next section, the R&A working group, a coalition of immigrant-serving organizations that employ accredited representatives, has been working in coalition for years on issues related to recognition and accreditation.

C. Legislative Efforts

In the cases of nurse practitioners and physician assistants, coalition building also proved crucial in securing support for the groups' legislative efforts. Although a concerted effort needs to be directed at developing a long-term legislative strategy, in the short term, the legislative agenda for accredited representatives has been to secure sufficient funding so that the adjudication of accreditation and recognition applications are not delayed. Indeed, the R&A working group has been focused on ensuring that OLAP has sufficient funding and staffing to issue decisions in a timely manner.

Historically, the adjudication process for recognition and accreditation applications took two to four months from initial application submission to complete.²¹² However, between 2021 and 2022, the same adjudications were taking nine to fifteen months, and in some cases as long as seventeen months.²¹³ Delays in processing applications have cascading effects on organizations trying to serve immigrants. For example, while waiting for DOJ adjudication of recognition or accreditation applications, some organizations may not have been able to deliver services that they were obligated to perform under grant agreements. Other organizations may have had to cancel programs, turn away immigrants seeking legal services, or face staff attrition as they might have been forced to lay off qualified staff who could not practice while they waited for accreditation.²¹⁴ In the midst of these pressures, immigrants without legal representation became susceptible

212. KAREN SULLIVAN, CLINIC POLICY BRIEF: THE SEVERELY UNDER-RESOURCED R&A PROGRAM IS AN ESSENTIAL TOOL TO MEET GROWING NEEDS FOR AFFORDABLE IMMIGRATION LEGAL SERVICES 6–7 (2021) <https://www.cliniclegal.org/resources/federal-administrative-advocacy/policy-brief-severely-under-resourced-ra-program> [<https://perma.cc/E735-5VT3>].

213. *Id.*

214. Under the regulations, accreditation is not transferrable. *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 102. When an accredited representative leaves a job to work at another immigrant serving organization, they need to refile for accreditation anew and are not authorized to work as an accredited representative, pending the renewal authorization for the new employer. *Id.*

to unauthorized providers known as *notarios*. The backlog effectively worked directly counter to the R&A office's purpose of promoting representation by hampering efforts to expand capacity for legal representation, and in some cases, diminishing it.

In response, the R&A working group developed a legislative strategy to reduce the backlog and speed up processing times. The coalition's efforts were successful. As of early 2023, applications were adjudicated within the historic two-to-four-month timeframe. Noting this accomplishment should not pass without a commending of David Neal and his staff at EOIR for working quickly to respond to the coalition's inquiries.

Now the legislative advocacy effort is directed toward securing permanent funding for OLAP. The coalition recommends that Congress allocate \$3 million to establishing a budget line-item within EOIR so that the R&A Program is secure and staffed by dedicated professionals with trained expertise in the process. The coalition is also pushing the federal government to plan for the growth of the R&A Program to keep pace with growing community demand.

D. Research

Acceptance of nurse practitioners and physician assistants was spurred on by research demonstrating their value and cost-effectiveness within the larger health care ecosystem. Similar research is needed for accredited representatives.

Even though many research questions exist, for the movement to gain traction within the immigration services ecosystem, more needs to be known about at least three related topics: (1) the impact that accredited representatives have had in case representation, (2) how accredited representatives work successfully at recognized organizations, and (3) accredited representative salaries and job descriptions as well as the staffing models of the recognized organizations at which they are associated.

First, as to the impact that accredited representatives have had on representation, empirical research about the role that existing accredited representatives play in immigration courts and before USCIS is needed. For example, what types of cases do accredited representatives handle? How does their involvement in cases impact outcomes? How do clients feel about working with them?

Second, research is also needed to better understand how accredited representatives fit into and find success at recognized organizations. For example, how are immigrant serving-organizations with accredited representatives staffed? What onboarding processes have been most successful? How is the work of accredited representatives supervised? What type of person provides the supervision? What mentorship and supervision models are most effective? How does the case docket of accredited representatives compare to the dockets of lawyers? What knowledge, skills, and values do accredited representatives commonly use on the job? What tasks can they perform? Which tasks do they excel at? What background,

experiences and qualities make someone an effective accredited representative? How does the work of accredited representatives differ from the work of paralegals in the office? What tools do they use on the job? What technological tools could be developed to make the work of accredited representatives more efficient and effective?

Third, as we aim to build the accredited representative career path, research related to salaries, job descriptions, and staffing models will become increasingly relevant. In this regard, it is important to know more about the salary ranges for these careers and how accredited representative positions are funded. It will also be important to know what, if any, obstacles exist within recognized organizations to hiring additional accredited representatives and how best to recruit for these positions.

CONCLUSION

By simultaneously pursuing these strategies and objectives, the accredited representative movement will optimize its chances of replicating the success of nurse practitioners and physician assistants. Reaching relative success will not be possible without strategic planning, sustained effort, and active engagement across the ecosystem. Although accredited representatives have existed as a profession for seven decades, in terms of success as a movement, accredited representatives are fifty years behind nurse practitioners and physician assistants. It is my hope that this Essay will help increase support for accredited representatives and will accelerate their recognition as important players in the immigration field. Resolving the crisis of unrepresented migrants that currently plagues the immigration system depends on these and other related successes.