

Declaration of Steven H. Schulman

I, Steven H. Schulman, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection.

1. I am the Pro Bono Partner at Akin Gump Strauss Hauer & Feld, a large international law firm with more than 900 lawyers. Prior to joining Akin Gump in 2006, I was the Pro Bono Counsel at Latham & Watkins, an international law firm with more than 2500 lawyers worldwide. I have been involved in pro bono asylum representation for more than 20 years.
2. I also serve on the Board of Directors of the Association of Pro Bono Counsel (“APBCo”). APBCo is a mission-driven membership organization of more than 200 attorneys and practice group managers who run pro bono practices in over 100 of the world’s largest law firms. I have also served as President of APBCo and as the head of APBCo’s Immigration Task Force, which facilitates coordination of pro bono immigration representation among the APBCo firms. I submit this declaration on my own behalf; my statements my own, and not those of Akin Gump, Latham & Watkins, or APBCo.
3. In my role as Pro Bono Partner at Akin Gump and as Pro Bono Counsel at Latham & Watkins, I have directly represented or supervised the representation of hundreds of asylum-seekers from all across the world. My work has included hearings in many immigration courts across the country and interviews in every Asylum Office. I have also worked on reports on conditions at the U.S.-Mexico border, including the Appleseed Report “Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors” (2011), *available at* <https://www.appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.
4. I have also led major pro bono initiatives to provide representation to asylum-seekers. For example, in 2014, I helped found the Karnes Pro Bono Project, which provides representation to hundreds of women and children detained at the family detention center in Karnes County, Texas. These families are primarily from Central America and are apprehended at the U.S.-Mexico border.

5. We established the Karnes Pro Bono Project to prepare and represent these Central American asylum-seekers in their credible fear interviews before U.S. Citizenship and Immigration Services and, as necessary, their reviews of negative credible fear determinations by immigration judges. Our representation has continued into Section 240 removal proceedings – we have represented women detained at Karnes at trial in immigration courts, at the Board of Immigration Appeals, and at the federal Courts of Appeal.
6. As part of the Karnes Pro Bono Project, we have worked with other major law firms to provide representation to detained asylum-seekers, as well as those released from detention. In addition, as a pro bono lawyer with broad and deep experience in representing asylum-seekers, and through my APBCo connections, I have become a resource for many pro bono practice leaders and individual pro bono lawyers representing asylum-seekers at all levels of the process. I intimately know the challenges faced – and typically overcome – by pro bono lawyers seeking to represent asylum-seekers.
7. Detention in remote areas like Karnes County, Texas already limits the availability of pro bono lawyers. These challenges include travel to a relatively remote location, the inability to use cell phones in the detention center, and the lack of available interpretation for lawyers who are not fluent in Spanish. Even with those challenges, my colleagues at major law firms have been able to provide representation to hundreds of families released from Karnes and other family detention centers. We also provide representation to hundreds of other asylum-seekers who are either detained in the United States or released pending their immigration court proceedings.
8. The Migration Protection Protocols (“MPP”), by forcing asylum-seekers to remain in Mexico instead of being detained or released in the United States, exacerbates these problems and poses significant and unprecedented obstacles that pro bono lawyers may not be able to overcome. The MPP will, in any event, significantly curtail our ability to provide pro bono representation to asylum-seekers. (This assumes, of course, that the Mexican government will even allow U.S. lawyers into Mexico to represent asylum-seekers.

Recently, attorneys from the non-profit group *Al Otro Lado*, which assists migrants, were refused entry into Mexico.)

9. Of course, those seeking asylum in the United States in immigration court, including those subject to the MPP, have a right to counsel. Section 292 of the Immigration and Nationality Act guarantees individuals in immigration removal proceedings “the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as [t]he[y] shall choose.” However, the MPP demands that asylum-seekers in these “removal proceedings” remain in Mexico pending their U.S. immigration court hearings, with no ability to meet with counsel inside the United States. (Oddly, Customs and Border Protection has provided asylum seekers returned at San Ysidro with lists of legal service providers (in English) located in California and the U.S. state of their intended destination – even though they are going to be returned to Mexico and not allowed to travel to California or anywhere else in the United States to meet with counsel.) Accordingly, *pro bono* lawyers seeking to represent asylum-seekers will need to travel to Mexico to provide representation, a situation that will significantly limit the availability of *pro bono* counsel and limit the effectiveness of those who do volunteer.
10. First, before agreeing to provide *pro bono* representation, law firms will need to understand the risks associated with sending lawyers to these border towns in Mexico. The well-publicized violence in these communities will undoubtedly limit the number of law firms willing to send lawyers outside the United States for *pro bono* representation. Within those firms that decide they are willing to send *pro bono* lawyers, individual volunteers may very well be hesitant to accept the security risks.
11. Second, assuming firms approve travel to Tijuana or other border areas in Mexico, the travel will be even more difficult than trips to Karnes and other remote detention centers within the United States. Volunteer lawyers will need to spend even more time on international travel, and their accommodations in the border areas of Mexico will likely not be conducive to conducting their US-based business in off-hours. (In the alternative, they could return to the U.S. daily, but this adds another layer of complication and lost

productive time.) Complicated travel logistics will further limit the pool of available pro bono lawyers.

12. Third, lawyers who are not fluent in Spanish will be of even more limited use if we are forced to provide representation in Mexico. Not only must these lawyers arrange for interpretation when speaking with asylum-seekers, but they also may need to have interpretation services available at all hours during their travel to Mexico. This added expense and logistical hurdle will add another cost to the firms, undoubtedly limiting the number of lawyers willing to volunteer for these cases.
13. Fourth, my colleagues and I have significant reservations about the ethical rules that may limit our ability to practice law outside the borders of the United States. We would need to understand the rules of our state bars and of Mexico. Already, my APBCo colleagues and I have started to research these issues, and the answers are far from clear as to whether our lawyers can ethically travel to Mexico to represent asylum-seekers.
14. Fifth, in addition to the travel costs for pro bono lawyers noted above, firms will need to accept the additional expense of transporting to Mexico psychological experts, translators, investigators and other personnel necessary to build an asylum case.
15. Preparing an asylum case under these circumstances will surely present other issues that will impede effective representation. I have no doubt that significant other logistical problems will arise in providing ongoing pro bono representation to clients who are living in impermanent conditions in a foreign country with limited access to phones, computers, mail and other means of communication.
16. In short, to my law firm pro bono colleagues and me, the MPP appears to be little more than an effort to strip asylum-seekers of their right to representation. The pro bono legal community has made great strides to overcome the obstacles presented by detention within the United States (though even so, detained asylum-seekers in the U.S. still struggle to find representation compared to the non-detained population). Even if we are able to determine ways to deal with the challenges presented by the MPP and represent asylum-seekers in Mexico, the MPP will drastically limit the number of individuals we can represent.

Because legal representation plays a significant role in whether an asylum seeker with a meritorious claim is actually able to secure relief, the consequence of the MPP will be that more asylum seekers with meritorious claims will go unrepresented and as a result will denied relief.

I declare upon penalty of perjury that the foregoing statements made in this declaration are true and correct.

Date: 18 February 2019



Steven H. Schulman