



*Promoting fundamental fairness for immigrants accused or convicted of crimes by working to transform unjust deportation laws and policies and educating and advising immigrants, their criminal defenders, and other advocates.*

## SUMMER 2014 NEWSLETTER

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### IDP and New York State Defender Association Form New Statewide Partnership



On July 1, 2014, IDP and New York State Defenders Association (NYSDA) began a collaboration to provide criminal defense attorneys statewide with formal training, one-on-one advice in individual cases, and legal updates on the intersection of criminal and immigration law. Plea agreements, even to minor offenses, can result in detention and deportation for many immigrants, but defense counsel can minimize these risks by properly counseling their clients and defending cases strategically. IDP was housed by NYSDA until 1999 and has played a special role in training and advising defenders in New York since 1997, including by publishing the go-to immigration manual and numerous practice advisories for defenders throughout the state. IDP has trained and mentored defender offices most intensively in New York City, and now public defenders and appointed counsel throughout the city have access to

immigration counsel tasked with advising them of the immigration consequences attendant to each offense. Our partnership with NYSDA will enable us to focus more on equipping defenders outside of New York City who may not have the same degree of access to local immigration expertise. "NYSDA is a chief source of support for many New York defenders, and we are thrilled to be working together to ensure they have access to immigration support," said IDP's Benita Jain. "It is our hope that fewer families will be separated and destabilized due to a loved one's deportation as a result of this partnership."

### IDP is Proud to Create Innovative Screening Resource for Immigrant Justice Corps



Everyone has heard of the Peace Corps, right? Recently, the Hon. Robert Katzmann, Chief Judge of the U.S. Court of Appeals for the Second Circuit, had the idea of creating an Immigrant Justice Corps ("IJC") in response to the gross underrepresentation of immigrants that he witnessed every day as a federal judge. The Robin Hood Foundation recognized the IJC's unique potential, and provided \$1.4 million in seed-funding for its creation after conducting extensive research and consultation with experts across the legal field. The IJC recently awarded 40 fellowships to recent law-school and college graduates to provide critical legal counsel and support for poor immigrants and their families. These fellows will begin

their terms in September of this year. In the meantime, IJC has retained IDP and PBN to create an online dashboard that the community fellows will use to input the clients' demographic and relevant historical information. The dashboard will then link to an online offense database that will screen for potential criminal bars related to each type of immigration application. IDP's Su Yon Yi has been intrepidly creating the offense database this summer. "Working on this tool is a reminder for me of the complexities of the intersection of criminal and immigration law.

With the tool, IJC fellows who might not be familiar with this area of law can look up the most common New York offenses and identify when an immigrant may be eligible for an immigration benefit or when a complicated case needs to be referred to an immigration attorney” shared Su Yon. IDP is thrilled to be part of breaking new ground and helping with the fellows’ capacity to better serve their clients as IJC seeks to make equal access to justice a reality for New York City immigrants, and a model for other cities.

## IDP Publishes Practice Advisory on *Padilla* Retroactivity Following NYS Court of Appeals Decision

On March 31, 2010, the Supreme Court held, in *Padilla v. Kentucky*, that the Sixth Amendment requires criminal defense counsel to advise noncitizen defendants regarding the risk of deportation before entering a guilty plea, and, absent such advice, a noncitizen may raise a claim of ineffective assistance of counsel. This is an issue of utmost importance to immigrants because even minor convictions under the state penal code can be construed as “aggravated felonies” for immigration purposes. Following the *Padilla* decision, IDP started a post-conviction relief project that assists attorneys with challenges to guilty pleas entered without advice from counsel about the attendant risks of immigration consequences. IDP, along with many advocates, has taken the position that this requirement should be applied to plea agreements made final prior to March 31, 2010. Although the U.S. Supreme Court disagreed in *Chaidez v. U.S.*, pertaining to federal convictions, advocates are litigating the retroactive application of *Padilla* on the state level. Most recently, the New York Court of Appeals addressed the issue in *People v. Baret*. Labe Richman represented Roman Baret; IDP, NYSDA, NACDL, NYSACDL, and several local criminal defense organizations filed an amici brief in support of the defendant. Unfortunately, the majority held that *Padilla* does not apply retroactively, and that a defendant cannot obtain a remedy for a violation of the *Padilla* duty pertaining to a conviction that was final pre-*Padilla*. This disappointing decision elevates “sterile legal doctrine” over humanity and justice, as stated by Chief Judge Lippman in dissent. However, it does not foreclose other avenues for attacking pre-*Padilla* plea agreements.



IDP’s Dawn Seibert has prepared a [practice advisory](#) that describes a host of strategies to obtain post-conviction relief for immigrant clients affected by the *Baret* decision, and its counterparts in states that have decided against *Padilla* retroactivity. Seibert says, “*Baret* is a deeply unjust decision, and it will likely make it more difficult for immigrants to vacate pre-*Padilla* convictions. But it does not foreclose relief in any case, and we must continue to fight to vacate convictions that form the basis for removal proceedings.” To download the advisory, visit [immdefense.org](http://immdefense.org).

## Andrea Panjwani Receives Lefkowitz Public Service Award from Fordham Law School



Co-Executive Director Andrea Panjwani has received the 2014 Louis J. Lefkowitz Public Service Award from Fordham Law School in recognition of her work fighting housing discrimination and homelessness, and defending immigrants who are survivors of torture, gender-based violence, religious and political persecution from deportation. The award was presented at the Twenty-third Annual Public Interest Awards Dinner of the Public Interest Resource Center at Fordham Law. The award is named for Louis J. Lefkowitz, a Fordham Law School alumnus and former Attorney General of the State of New York, who embodied the highest standards of public service. It is given annually to alumni or friends of Fordham Law School who have made significant contributions to the school’s public service programs, or whose careers have had a significant impact in public interest law and community service. Ms. Panjwani was one of three individuals to receive the award which was presented by Dean Michael Martin. Her co-recipients were Chief Judge Jonathan J. Lippman of the New York State Court of Appeals and Stacy O’Haire-Fahey, Pro Bono Director of Proskauer Rose. Ms Panjwani is also the recipient of the Equal Justice Award and the Above and Beyond Award.

## Litigation Update: Protecting Immigrants from Deportation for Minor Drug Offenses

On June 30, 2014, the U.S. Supreme Court granted cert in *Mellouli v. Holder*, Dkt. No. 13-1034, an important case that may affect the ability of immigrants to defend themselves against deportability for minor drug-related offenses. Specifically, the case raises the question of whether the federal government may deport an immigrant for a misdemeanor state (Kansas) drug paraphernalia conviction without proving that the conviction related to a drug on the federal controlled substance schedules. How the Court resolves this question could also affect whether the government has to make such a showing when seeking to deport immigrants for other types of drug-related offenses in any state where the state drug statute covers substances that are not on the federal schedules, such as New York. The Immigrant Defense Project is working with Mr. Mellouli's lawyers as well as allies across the country to plan strategy, develop legal arguments, and coordinate amicus briefing.



## Policy Updates: New York City Municipal I.D., Marijuana Decriminalization Bill, & Federal Reform

### IDP fights for a NYC Municipal ID that Protects the Rights of New Yorkers



On June 26, 2014, the New York City Council passed the New York City Identification Bill, which will make government-issued IDs available to a wide range of New Yorkers, including undocumented immigrants, youth, and homeless individuals. IDP worked closely with other campaign members to ensure that NYC residents will be able to self-designate gender on the card. The City leadership worked hard to ensure that the NYPD would accept the municipal ID, which has particular importance for immigrants who are increasingly at risk of deportation when encountering police. As the City will be retaining personal data, including scanned copies of the documents used to apply for the card for two years from date of application, IDP will continue to work with other advocates and the City to maximize privacy protections for applicants. IDP will also continue our community education, including the soon to be launched bilingual interactive web-based tool, "[Don't Get ICED: A Guide To Protecting Immigrants From Deportation After An Arrest](#)" and our collaborative graphic novel, "[DANGER! Police Involvement in Mass Deportation.](#)" a joint project between IDP, Sylvia Rivera Law Project and the Sex Workers Project.

### IDP works with Drug Policy Alliance and others on the Fairness and Equity Act

On July 8, 2014, dozens of elected officials, labor leaders, community members and legal experts rallied on the steps of City Hall to introduce the Fairness and Equity Act -- comprehensive reform to address racially biased marijuana arrests and devastating collateral consequences in New York. The bill, sponsored by Assemblymember Karim Camara and Senator Daniel Squadron, builds upon previous attempts to fix New York's broken decriminalization law and seeks to advance fairness and equity within the justice system. IDP has been working closely with the Drug Policy Alliance to ensure that drug reforms protect citizens and noncitizens alike. Racial disparities in drug arrests funnel immigrant communities into a jail-deportation pipeline. Under our current immigration laws, drug offenses have harsh and draconian consequences for greencard holders, asylees, and undocumented people. Even marijuana arrests can often lead to mandatory detention and deportation, and ineligibility to get many kinds of legal status. Because of the complicated nature of immigration law, sometimes reforms that would seem positive for all actually harm immigrants. We will continue to work closely with the Drug Policy Alliance and other members of the coalition to ensure that drug reforms are inclusive of all our communities. We plan to help push the New York State legislature to pass these important reforms. "In this era of mass

deportation, immigrants who encounter police or who have prior convictions, even for marijuana offenses, are increasingly at risk of deportation," says Alisa Wellek, Co-Executive Director of the Immigrant Defense Project. "The Fairness and Equity Act is a critical step in safeguarding all our communities from discriminatory policing and harmful drug policies. In particular, judges will be allowed to consider harsh collateral consequences such as deportation when ruling on cases involving a marijuana violation."

### Federal Immigration Reform Efforts

Co-Executive Director Alisa Wellek has spent the past year working with our Immigrant Justice Network partners and the CAMBIO campaign to fight for federal immigration reform that provides a just and inclusive path to citizenship and ensures that no one is thrown into a detention and deportation machine that tears apart families and violates human rights. Along with our allies, we are engaging with DHS Secretary Jeh Johnson and others in the Obama Administration to push for administrative reforms that will provide real relief to those facing detention and deportation. Many national organizations have taken up our proposals, such as a Statute of Limitations on initiating removal proceedings, and are working with us to help make them a reality.



### Announcing the Newest Members of our Staff

We are excited to announce the two newest members of our staff, **Andrew Wachtenheim** and **Marlene Bossous**!

**Andrew Wachtenheim** joins us as a Litigation Staff Attorney. He comes to IDP from the immigration practice at The Bronx Defenders, a holistic defense organization in Bronx, New York. There he represented noncitizen clients and their families in immigration-related proceedings before the Department of Homeland Security, Executive Office for Immigration Review, and federal courts, and consulted with noncitizen defendants and criminal and family defense attorneys about the potential immigration consequences of contacts with the criminal justice and child welfare systems. During law school, Andrew served as a legal intern with the the ACLU Immigrants' Rights Project in San Francisco and the South Texas Pro Bono Asylum Representation Project (ProBAR) in Harlingen, Texas. As a student practitioner in the International Human Rights Clinic, he worked on a team that provided technical assistance to an international legal services organization as it expanded services in rural communities in post-conflict Liberia. These experiences, as well as the immigration stories of friends and family, contributed to his commitment to advocating on behalf of immigrants facing permanent separation from the lives they have built in the United States. Andrew is a graduate of Fordham Law School where he was a Stein Scholar for Public Interest Law and Ethics and Leitner Intern for International Human Rights. He holds a B.A. from Wesleyan University and speaks Spanish and French.



**Marlene Bossous** joined IDP in August 2014 as the Operations and Communications Associate. Her key role is to support and manage the communications, operations and development work. Marlene coordinates fundraising initiatives and manages office operations to support the mission of IDP. In December of 1994, Marlene migrated to the US. She is originally from Haiti. She is fluent in French and Creole. She has an associate degree in Paralegal studies, and 4 years college in Economics. She has fifteen years of experience in banking and business.

## Meet our Summer Interns

**Meet our** full-time summer interns who made a great contribution to IDP's litigation and advocacy work, as well as providing excellent support to our hotline.

**Abnet Mongistu (Abby)** is entering her second year at Columbia Law School where she serves as the president of the Society for Immigrant and Refugee Rights. Abby learned about IDP through NYU's Public Interest Law Center Fair, and knew she wanted to pursue opportunities focused on immigrant rights. Abby has been working with Benita Jain and compiling defense standards relating to the representation of immigrants in criminal proceedings for every state. As Abby combs through each state's rules of professional conduct, ethical opinions and bar association practice standards, she has been struck by how difficult it is to access immigrant-centric rules and decisions, and by the lack of uniformity between states. IDP plans to use Abby's summary of standards to educate attorneys nationwide, and to advocate for stronger standards. In her work assisting Mizue Aizeki with advocacy in connection with a local case campaign, Abi learned the importance of thinking about the intended audience before preparing remarks and strategy, and how to distill and reinforce the most important information, rather than providing a comprehensive analysis - an uncommon approach for lawyers! In the course of working on the hotline, Abby remarked that "it has been a new and powerful experience for me to be exposed to so many different kinds of immigrant stories - people are so anxious to share their stories and desperate for help." Abby will participate in the Mediation Clinic when she returns to law school this fall, and hopes to be part of the Immigrant Rights Clinic in the spring.



**Mohammad Haque** is entering his final year at SUNY Buffalo Law School where he has been active in the school's Prison Task Force, a program that provides post-conviction relief education and templates to prisoners, and inspired by his class on asylum and refugee law. Through these experiences, Mohammad was exposed to the unmerciful and disproportionate hurdles that immigrants standing in the crossroads of the immigration and criminal justice systems face, and found IDP after he began to search online for organizations that serve this community. Mohammad has been supporting Dawn Seibert in her post-conviction relief project, and co-authored the Baret practice advisory. Mohammed was impressed by how "quickly Dawn was able to respond with alternative strategies in the face of an absurd decision". Mohammad has also been contributing to IDP's efforts to redress ICE home raids by compiling model pleadings, such as motions to suppress. Mohammad was incredulous after learning that "ICE regularly raids immigrant homes based upon uncorroborated tips, and there is no probable cause standard or warrant procedure. ICE, through its 'Operation Return to Sender Program', enters homes in the middle of the night, weapons displayed, waking children and spouses without good cause, leaving them traumatized". Mohammad's internship with IDP has affirmed his passion to be a zealous advocate for those in the margins who must survive against all odds. Mohammad looks forward to participating on the moot court team, continuing his work with the Prison Task Force and serving as a graduate assistant upon his return to law school.

**Amanda Barfield** is entering her third year at Brooklyn Law School where she has been active in the Youth Represent clinic, which focuses on the collateral consequences that young people who have been in the criminal and juvenile justice systems face. It is in this context that Amanda learned about the way that even minor convictions can put young immigrants in the deportation pipeline, permanently separated from the only home they have known, or keep them from getting deferred action for mistakes that countless young Americans make every day. Amanda, who heard co-executive director Alisa Wellek speak in the Youth Represent clinic, was inspired by IDP's mission and has been crafting a litigation memo that analyzes the bars that asylum seekers face, and identifies strategies to challenge the way the government defines the "particularly serious crime" restriction. Amanda has also provided litigation support to Manny Vargas for an amicus brief for a case pending in the Second Circuit and for the upcoming Supreme Court case of Mellouli v. Holder. Amanda has also loved being able to participate in the hotline and IDP's Know Your Rights presentations at Rikers and Cop Watch. "I did not how closely intertwined the immigration, law enforcement and criminal justice systems are and that even minor convictions can have such severe consequences" observed Amanda.

Ever committed to serving the public interest, Amanda will participate in the Federal Habeas and Capital Defense Clinic upon her return to law school and will sit on the Executive Board of the Journal of Law and Policy. Amanda's note 'The Intersection of Same Sex and Step-Parent Visitation' will be published in the journal's Fall 2014 edition.

**Inho Ko** is entering his second year at Columbia Law School where he has been active in the student ACLU chapter. Inho, who applied to law school with the goal of representing immigrants one day, learned about IDP at the NYU Public Interest Law Center Career Fair and was intrigued by "IDP's unique mission of serving immigrants who have been impacted by the criminal justice system". Inho has excellent research skills and has been working with Manny Vargas to update the "particularly serious crime chart" for the 'Representing Immigrant Defendants in New York' manual. Inho, who has also been doing research in support of advocacy designed to require ICE to obtain judicial warrants before detaining immigrants, noted that "it is easier to get detained than I would ever have realized. The stories I have heard on the hotline and at Riker's, combined with those I have read while researching, have made me realize that I could have been in the same shoes for running a red light if I were not a U.S. citizen". When asked what story Inho found most compelling, he shared about his meeting with an 80 year old Columbian inmate at Riker's. Inho will do some work centered on the way the Dept. of Probation cooperates with ICE before returning to law school. Inho looks forward to participating in the Constitutional Rights Enforcement in Capital, Habeas, and Prison Cases Externship in the coming year, and serving as a student editor on the American Review of International Arbitration.



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