LATIN LAWYER
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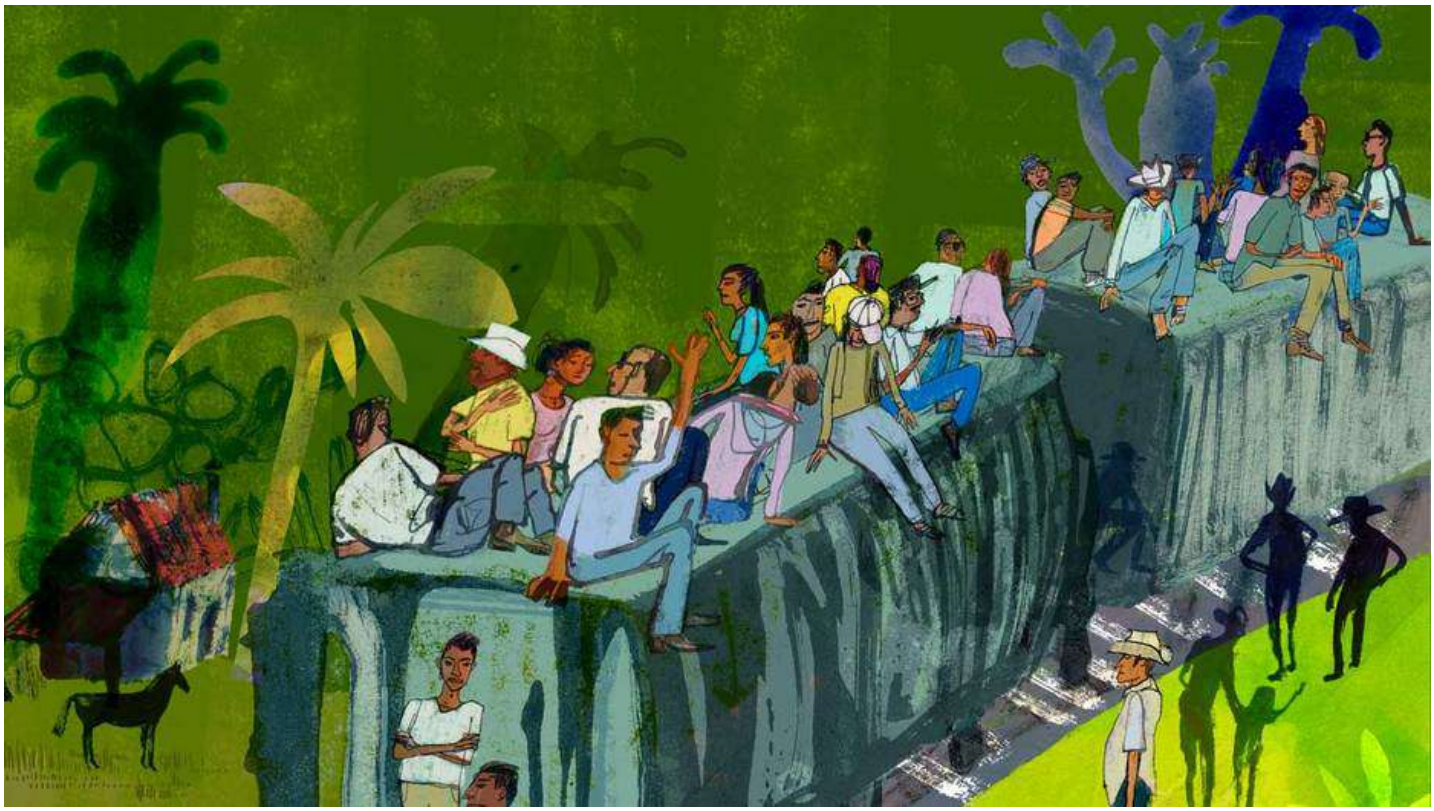
Pro bono 2019

The migration train

Fredrik Karlsson 03 February 2020 ( ) ( ) ( ) ( )



Credit: Illustration by Alexander Wells

Perhaps no other image best captures the desperation of Latin America's poorest and most vulnerable migrants than that of La bestia, a freight train route commonly used by Central American migrants to reach the US. On their journeys to new lives, people on the move in Latin America face legal uncertainty, vulnerability and alienation. This has necessitated an unprecedented need for pro bono counsel from lawyers, finds Latin Lawyer.

Some call it *El tren de los desconocidos* ("the train of the unknown") or *El tren de la muerte* ("the death train"), but it is perhaps best known as *La bestia* ("the beast"). The freight train network primarily transports export goods from the

southern Mexican state of Chiapas to cities along the US border, but also on board are people desperate to leave behind misery, violence and unemployment in their home countries to start anew in the US.

Thousands of the poorest migrants from Central America travel atop the train every year. In doing so they take huge risks; many succumb to serious injuries, kidnappings, extortion and even death. But for many, it is the only option. They cannot afford other ways of travelling and on *La bestia* they can avoid authorities' immigration points and police raids on other forms of transport.

La bestia has been running for many years and migration has an even longer history in Latin America. But over the past five years the region has seen a dramatic uptick in migration, reaching crisis levels. Many people are escaping desperate circumstances in their home countries by taking whatever route possible out to start a new life somewhere else. Venezuela is suffering from economic meltdown, forcing more than 4 million people to leave the country since 2015. Over the past two years in Central America, caravans of thousands of people have fled one of the world's most violent places – the so-called northern triangle of El Salvador, Guatemala and Honduras – to reach the US. Concurrently, migrants face political resistance from US President Donald Trump's anti-migration policies, including attempts to build a wall along the US-Mexico border, as part of a broader, zero-tolerance stand against illegal border crossing.

For Latin American law firms, these crises have led to a rising number of pro bono cases related to migration. Of the firms that took part in our 2019 pro bono survey, 30% said they worked on immigration matters in 2018 (the year on which the survey collected data). This compares to the 28% that reported doing migration-related work during 2017, and the 19% that said they did so in 2016. There is a clear upwards trend. Six out of the nine clearinghouses we spoke to as part of our latest survey highlighted immigration cases as some of their highest impact projects from 2018.

Taking the initiative

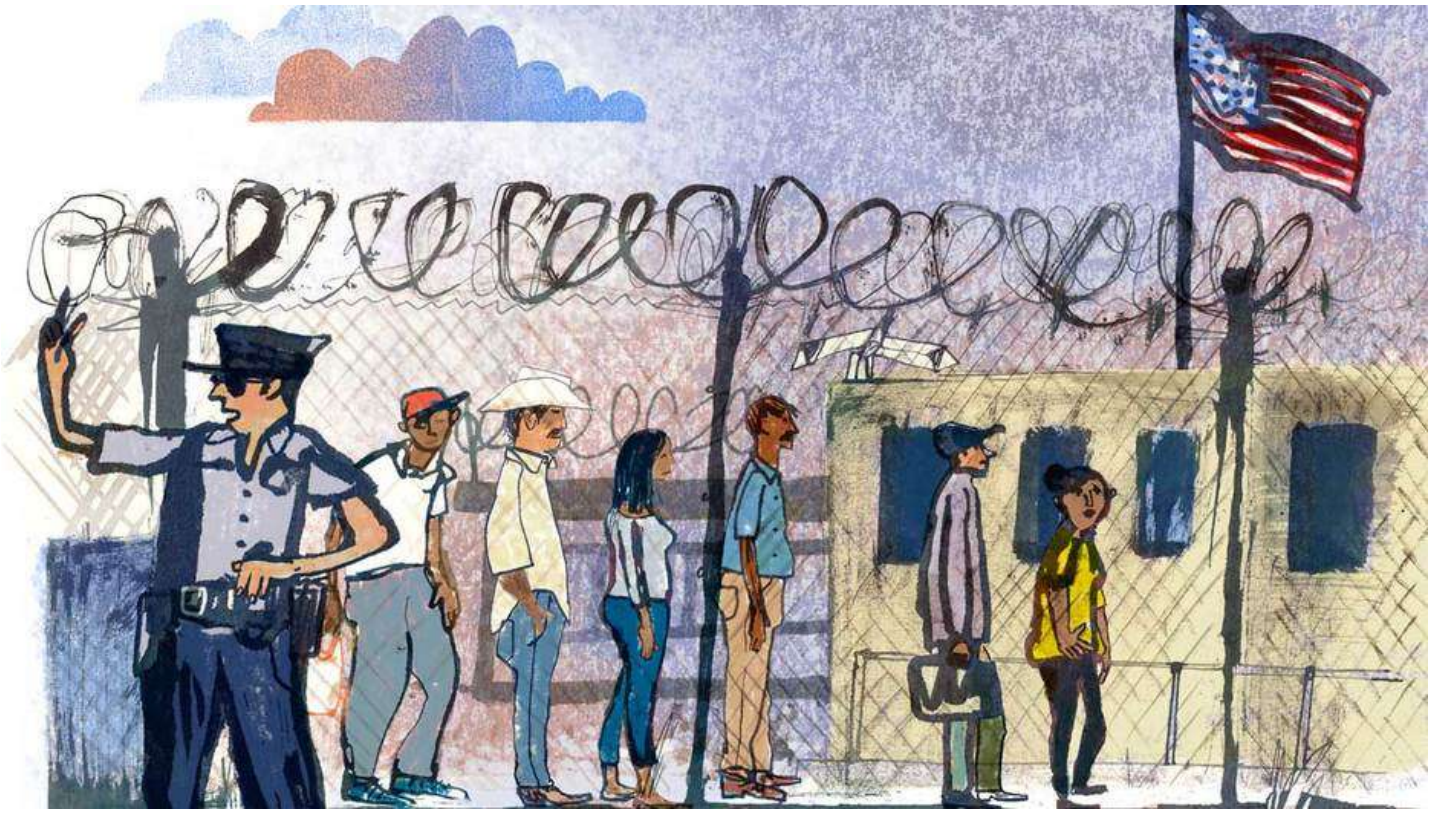
Millions of people in vulnerable positions are in desperate need of legal advice, often on how to obtain refugee or legal status in their new home countries, or how to access health services and be eligible to work. This is where lawyers can play their part. “Providing pro bono work is part of our profession and we have a duty to give back to the community, giving the pro bono client the same service as any billable client and bringing the same quality solution,” says Valentina Villa, counsel at Creel, García-Cuéllar, Aiza y Enriquez SC in Mexico City.

Of all the countries feeling the impact of the millions of people leaving Venezuela, it’s fair to say Colombia has been the most affected. Since 2014 some 1.6 million Venezuelans have migrated to Colombia – more than have gone to any other Latin American country, according to the United Nations refugee agency, UNHCR. To help them find their feet, in 2017 the Colombian government created a special permit allowing Venezuelans to temporarily reside and work in the country. But many remain undocumented. As a result, points out Fundación Pro Bono Colombia’s executive director Ana María Arboleda, it has been difficult for the government to know Venezuelans’ needs and develop effective public policies to help them.

In response, the Colombian clearing house launched workshops in border towns to inform Venezuelans how they can obtain legal status and get access to health services and employment. Gómez-Pinzón was involved in workshops held in the northern border town of Cucutá. Without the seminars, associate Daniel Flórez says migrants in the town might not have obtained legal status, given the lack of legal support from government institutions. Helping them also served to help society as a whole, given poverty and unemployment levels are already high in some of the towns receiving large influxes of migrants. “For understandable reasons they are unlikely to return to Venezuela, and if they don’t get legalised they won’t be able to contribute,” he says.

Like Colombia, Brazil shares a border with Venezuela and Brazilian firms are doing similar work with migrants. For example, Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados has organised workshops with migrants

seeking refugee status, informing them of local immigration laws and what they need to provide to obtain legal status in Brazil. “It is a massive help to the people needing this advice,” says partner Flavia Regina de Souza Oliveira.



Credit: Illustration by Alexander Wells

Problem solvers

Regional migration in Latin America has reached unprecedented levels, making creative thinking a must when it comes to pro bono in this field. This is especially so because migration often occurs against the backdrop of dense bureaucratic systems, making it difficult to achieve fast results.

A good example of thinking outside the box is Fundación Pro Bono Chile’s Yo migro (“I migrate”), an app it launched in 2018 to help migrants better understand Chile’s new immigration law (which was passed in the same year). Paula Zaldívar, associate at Morales & Besa, says the law triggered a lot of uncertainty, particularly because it meant migrants applying for certain visas had to do so from their home countries instead of in Chile. A new type of visa was subsequently put in place, but the procedures to obtain it were unclear, says Zaldívar. The app gives users consolidated information about immigration

regulation in one place and in a straightforward way. It also allows people to follow their applications and search for agencies and organisations that they might find useful.

Peruvian firms doing pro bono work with migrants have also had to adapt to changing government policy. Peru is the second biggest recipient of Venezuelan migrants – receiving some 850,000 as of October 2019, according to UNHCR. The government recently withdrew a temporary resident permit for Venezuelans it had only created a year earlier, instead encouraging migrants to apply for a tourist visa, which is more difficult to obtain.

Clearing house Alianza Pro Bono Perú, in coordination with the Pan American Development Foundation and law firms Benites, Vargas & Ugaz Abogados; Estudio Echecopar; Philippi Prietocarrizosa Ferrero DU & Uría (Peru); Miranda & Amado Abogados; Rebaza, Alcázar & De Las Casas; and Osterling Abogados, responded by launching a project called Integrando horizontes ("Integrating horizons") which included developing a manual designed in an easy-to-digest format, telling migrants how to obtain asylum and access basic services. The manual was designed to be a buffer against complex Peruvian immigration laws and information provided by authorities that is often confusing for new arrivals, says María Eugenia Tamariz, an associate at Benites Vargas.

The work law firms are doing in this field is a huge task, says Alianza executive director Marina Lazarte. "We don't even know how many Venezuelan migrants are actually here, [because] they are settled in different places and are not well organised," she points out, making it hard to know exactly what legal issues they face.

Mexican lawyers are also innovating to face challenges presented by bureaucracy. Creel García-Cuéllar works closely with UNHCR's local offices and helps people in asylum cases heard before the Mexican commission for refugee aid (COMAR). The number of refugee claimants in Mexico has doubled every year between 2015 and 2018, and is expected to be close to 80,000 in 2019. But austerity measures have forced the government to reduce COMAR's

funding, resulting in an ever-growing backlog of cases. COMAR is dealing with its smallest budget in years, at a time when the number of undocumented migrants reaching the US border is its highest in a decade.

Government funding cuts and reductions in personnel have slowed immigration processes down, says Creel García-Cuéllar counsel Carlos Martínez Betanzos. To push cases through faster, the firm also brings *amparos* (constitutional claims), which tend to make the authorities react faster, he explains.

Lawyers confirm that navigating local immigration regulations is tricky. For example, Martina Monti, associate at Argentine law firm Bruchou, Fernández Madero & Lombardi, says her country's immigration laws have historically been favourable to migrants and refugees, but legislation is broad. This makes it a challenge to pull together all the essential information in a single manual that caters to people coming from different countries. "It's hard to know where to start looking, and you need to go to several sources," points out Monti. If it's challenging for a local lawyer, it might seem insurmountable for someone with no legal background.

The enormous task of helping millions of migrants places a huge demand on legal minds. What complicates matters further is that many lawyers are not immigration law experts. Many practitioners working on immigration cases come from corporate firms and getting involved in immigration matters is to some degree a re-education process. "I had to return to my law textbooks and learn a lot about immigration law," says Gómez-Pinzón's Flórez, who is principally a capital markets lawyer.

Some lawyers hold back from getting involved in this work because they feel they do not have much to add. This was the experience of Fundación Pro Bono Guatemala. "But after clearly telling them how they could help by gathering people's documentation (including birth certificates and other records), they were all interested," says Claudia Murga, executive director at the clearing house.

There's an argument that lawyers can be of help even when they are not experts in a particular field. Cristina Sandoval, an associate at Consortium Legal (Guatemala) who practises labour and immigration law, says lawyers' professional status adds authority to a case, particularly in procedures heard by officials. "If migrants go to the authorities themselves, the process will be laborious and difficult to manage, but with lawyers representing them it will be more effective," Sandoval points out.

Credit: Illustration by Alexander Wells

Tailoring the solution to the problem

One defining feature of today's migration crisis is the number of countries it affects. It is a truly regional issue that requires a regionwide response. *La bestia* symbolises the journey many migrants make; like many people, it travels through one country while on transit to a final destination. Longer journeys through multiple countries increase people's interaction with different authorities, growing the demand for legal help in different places.

In reaction to the Trump administration's zero-tolerance immigration policy – which led to the separation of some 3,000 children from their families at the Mexico-US border – the Vance Center launched Keep Families Together, an

initiative linking Latin American member firms of the Pro Bono Network of the Americas with US immigration lawyers handling these families' cases. So far 14 law firms from eight countries across the region have helped 75 families reunite by providing US lawyers with necessary documents, including proof of identification, birth certificates and medical and criminal records.

Many of the families affected are from Central America. One of the firms involved there was Consortium Legal; its lawyers have been helping a Guatemalan adolescent file an application with the US embassy to join her mother (who is already in the US). During the process they helped her reconnect with her father in Guatemala, with whom she had not been contact since she was a baby. "We managed to keep a family together in both Guatemala and the US," says Consortium Legal's Sandoval. The adolescent is expecting to find out her asylum status in early 2020.

US law firms have also been heavily involved in cases related to separated Latin American families. For example, in 2018 several Hogan Lovells LLP lawyers worked pro bono to reach a class action settlement with the US government that guaranteed forcibly separated migrant families another chance to seek asylum in the country. The claimants, mainly Guatemalan and Honduran families, had been given two choices by the government: either be reunited with their children and deported together, or be deported alone while their children made a claim for asylum. This resulted in many families agreeing to be deported together, rather than being split up.

The Pro Bono Network of the Americas is well positioned to cater to cases involving multiple jurisdictions, as it rests on cross-border collaboration. After all, it was set up to bring together law firms and clearing houses in several countries to help those in need. Some of its member organisations have produced a report on the legal obstacles migrants tend to face in each jurisdiction and several members – including Argentina's Bruchou, Fernández Madero & Lombardi, and Morales & Besa from Chile – report currently working on an updated version.

US-Mexican clearing house Appleseed has made use of its unique structure – it is the only clearing house with branches in both countries – to orchestrate a manual for Mexicans facing deportation from the US. The manual was produced by Appleseed and many of its members, as well as non-profit organisations in both countries, and includes advice on a broad range of things, from parental and child rights, to sending money between the US and Mexico, to protecting assets and closing businesses in the US. Executive director Maru Cortazar says law firms also helped train organisations in Mexico and the US, including call centres, on the information in the manual, so it could be shared with people facing the risk of deportation.

CENTRAL AMERICA'S CARAVANS

In 2018 groups of people decided to depart the northern triangle – El Salvador, Guatemala and Honduras – and head towards the US. As the numbers grew into the thousands, the groups turned into caravans of people leaving their home countries for a safe haven elsewhere.

Violence, systematic corruption and unemployment are often cited as reasons behind the exodus, but some argue there are other factors too. While climate change is rarely highlighted as a reason to migrate, it intensifies the reasons people decide to leave their homes, because it causes crop failure, food insecurity and poverty. Research suggests climate change will likely push more people northbound in the coming decades.

According to UNHCR, there are some 400,000 refugees and asylum seekers from the northern triangle worldwide and the number continues to rise. On top of that, there are more than 300,000 internally displaced people in El Salvador and Honduras alone. It is not only the northern triangle that is affected. Since anti-government protests began in Nicaragua in 2018, nearly 90,000 people have left the country in search of a safer place to live.

The work carries on

Most immigration cases involve advisory work, such as filing for visa and asylum applications, and gathering information. But there is also demand for legal counsel on more complex cases. Alianza's Marina Lazarte says firms can sometimes be unwilling to take on more litigious cases. These typically take longer to resolve – requiring more hours and a

greater commitment from the firms involved. "We make progress every year, but I would like to see firms doing more challenging cases," says Lazarte.

An example of this kind of work concerns a case brought by the Jesuit Refugee Service in northern Chile, which successfully filed a writ of *habeas corpus* before a court of appeal in the city of Arica after the Chilean government ordered the expulsion of a group of migrants for illegally entering the country. The Supreme Court ratified the court of appeal's ruling allowing the migrants to stay in October. Morales & Besa partner Edmundo Varas wants to see more lawyers taking on these kinds of matters. "Migrants are a vulnerable group and getting access to justice for them is difficult," he says. The Chilean government's actions to limit irregular immigration makes it even more important to help migrants, he says, as they often do not understand the restrictions and how their legal rights are affected.

Another example of this kind of work is DLA Piper LLP's successful challenge of the US government's decision to separate two Brazilian boys from their fathers, after they crossed the US-Mexican border to seek asylum in the US. The Brazilian Bar Association has also taken initiatives against the separation of families at the US border; Siqueira Castro Advogados' managing partner Carlos Roberto Siqueira Castro and another local lawyer, Ricardo Bacelar Paiva, both of whom are members of the bar's national council, have led calls for the association to take protective custody of 51 Brazilian children separated from their parents.

Clearing houses are already thinking ahead about new ways they can help migrants going forward. "For 2020, we will continue working on immigration issues, but we will also implement legal training for migrants who are already in

Colombia and want to do entrepreneurship. They will need to understand the legal framework for setting up businesses," says Arboleda of Fundación Pro Bono Colombia.

Law firms fiercely compete most of the time, but pro bono is an area where lawyers can collaborate. Those working on pro bono immigration cases in Mexico say it has brought the legal community closer together. Lawyers there use WhatsApp groups to share the latest news in relation to immigration cases they are handling. "This is not a competition with other firms, we have become allies," says Creel García-Cuéllar's Villa.

While law firms and clearing houses do their best to help migrants settle in new countries, *La bestia* goes on. Official numbers are hard to estimate, but in 2019 the train network reportedly re-emerged as a preferred means of travel for migrants seeking new lives in the US. As long as living conditions do not improve in migrants' home countries, it's likely it will stay that way.

Practice area: Pro bono

Country:
Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Venezuela, Colombia, Brazil, Chile, Peru, Argentina