

Is America Fulfilling Its Promise?

Safeguarding Legal Protections
for Immigrants

Editors

Scott Fein

Rose Mary Bailly

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INTRODUCTION

It is often said, because it is the plain and simple truth, that America is a nation of immigrants. We are uniquely defined and enriched by our immigrant heritage. This is especially so in New York State, which has always been a refuge for immigrants. For well over a century, the Statue of Liberty in New York harbor has stood as a symbol to immigrants of America's welcome and our promise of a better life.

As this book goes to press in the summer of 2019, our country is embroiled in a contentious national debate over immigration policy and enforcement. Citizens and policymakers are grappling with profoundly difficult and complex issues. Should citizenship be granted to the nation's estimated 11 million undocumented immigrants? Is it necessary to construct a wall on the U.S.-Mexico border?

In New York, judges and attorneys are ensuring the rights and freedoms of immigrants. In Washington, by contrast, federal authorities have implemented policies that rip children from the parents of asylum seekers at our southern border and hold them for extended periods in detention facilities.

Children have been placed in frigid, cramped cells, without adequate food and medical treatment. Many have not been provided with soap or toothpaste and have no place to bathe or even wash their hands.

Along with so many other Americans, we at the New York State Bar Association (NYSBA) recoiled in horror as we learned of this treatment of children, which was brought to light by courageous lawyers acting in the highest and noblest traditions of the legal profession.

As lawyers, we know how to debate without dividing and we have an obligation to lead our communities back to the source of this nation's strengths—pluralism, tolerance and diversity. That is the purpose of this book. It presents a comprehensive view of our current immigration policies at the local, state and national levels, and draws a sharp contrast between the state and federal policies.

This book shows how a nation built by immigrants can and should treat those who come to our shores in search of better lives. It draws on the combined efforts of dedicated jurists, law professors, legal service organizations, lawyers and local law enforcement to address today's immigration challenges in a constructive, humane way. Though created and

written primarily by lawyers, the book is not just for the legal community. Public officials will find insightful information here as will anyone, lawyer or not, committed to the rule of law.

I want to take this opportunity to thank everyone who made this book possible, including co-editors Scott Fein and Rose Mary Bailly, the authors of individual chapters, NYSBA's Committee on Immigration Representation and the Government Law Center at Albany Law School, which provided a series of chapters that examine various aspects of immigration policy, including granting noncitizens access to public benefits and driver's licenses.

America needs lawyers and their voices now more than ever. Our expertise, practical wisdom and good judgment are qualities sorely needed in these challenging times. I am proud to say that the contributors to this book and the members of the New York State Bar Association have risen to the challenge.

Hank Greenberg
President
New York State Bar Association

PREAMBLE

Since our founding, America has welcomed more immigrants than any other nation. Emma Lazarus’s entreaty—“Give me your tired, your poor, your huddled masses yearning to breathe free”—has guided our national policy, but, like every human endeavor, its application has been imperfect. Born of nativism, economic fears and, at times, racism, we have on occasion excluded from entry groups that on whim or scant evidence were deemed undesirable. The Chinese, Japanese, Irish, Jews, Italians, Muslims, and increasingly Central Americans have at one time or another been deemed unsuitable.

For those deprived of entry, or asylum, or who are noncitizens subject to arrest, deportation and the deprivation of rights, their refuge has been the American legal system and its practitioners. We have again been called upon and, as we hope this publication reflects, have endeavored to respond.

Legal service organizations, often the first line of defense, have sought to provide guidance, but those that receive federal funding are, by operation of law, limited in their representation of most non-U.S. citizens. The need for lawyers to supplement the existing immigration Bar is acute. Into the breach come pro bono attorneys, law professors, and law students to assist in navigating the legal process including visa denials, deportation and asylum hearings, access to health care and, of course, matters pertaining to unaccompanied minors, among so many other tasks.

In New York, the legal community’s response has been heartening, including by the State Bar Association’s Committee on Immigration Representation, as reflected in its recent report seeking the right to counsel in immigration proceedings, the resources provided by the many not for profit legal service organizations, and law schools. In particular, I would commend your attention to the Explainer series prepared by the Government Law Center of Albany Law School. Worthy of recognition are their supportive partners in the law enforcement community, one of whom, Craig Apple, the Sheriff of Albany County, helps set the stage for this publication. I would remiss if I did not note the contribution of our State’s jurists who have extended State Constitutional Due Process protection to non-citizens irrespective of immigration status.

Why this publication and this topic? The New York State Bar Association and Government Law Center of Albany Law School seek to explore issues of public concern. We invite practitioners and academics to share

their perspectives, debunk myths, reflect on their experience and test new theories. The struggle to develop a sound, sustainable and humane immigration system merits examination. We are hopeful this book will inform that discussion.

We offer our heartfelt appreciation to those who have taken of their time to contribute to this publication.

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