

Request for a Thematic Hearing of the IACHR

during the

187th Period of Sessions
July 10th to 21st, 2023

on

The Impact of Overly-broad Unauthorized Practice of Law Restrictions on Human Rights

submitted by

**Jailhouse Lawyers Initiative housed at Bernstein Institute for Human Rights at NYU School of Law
and NYU Law Global Justice Clinic.**

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I. Introduction

On behalf of the Jailhouse Lawyers Initiative, a project housed at the Bernstein Institute for Human Rights and the Global Justice Clinic at the New York University School of Law, and our coalition of partners, and pursuant to Article 66 of the Rules of Procedure of the Inter-American Commission for Human Rights (“IACHR” or “Commission”), we request a thematic hearing during the 187th period of sessions. The proposed hearing will cover the *Impact of Overly-broad Unauthorized Practice of Law Restrictions on Human Rights*, focusing on access to justice for underserved and incarcerated communities in the United States and the protection of human rights defenders, like jailhouse lawyers, who seek to close the justice gap through their work in and outside of prisons.¹ The justice barrier facing these communities, and the human rights defenders who work to address these impediments to access to justice, remain invisible to the American legal system and regional and global human rights bodies. We request the Inter-American Commission to take up this urgent issue and address overly broad and punitive Unauthorized Practice of Law restrictions that criminalize human rights work and profoundly exacerbate the access to justice crisis in the United States. Reform to such laws and protecting human rights defenders like jailhouse lawyers, is a crucial step towards ending mass incarceration in the United States.

The objectives of this hearing are to:

- Provide specific and contemporary examples of the impact of overly-broad Unauthorized Practice of Law (UPL) regulations on jailhouse lawyers’ ability to act as human rights defenders - and the subsequent impact on access to justice for underserved communities in the United States.
- Provide a platform to make visible the pervasiveness of UPL in causing harm to communities impacted by civil and criminal legal issues.
- Present the case for reforming UPL regulations as a critical piece in closing the justice gap in the United States.

At a minimum, we will have four participants in the hearing: Jhody Polk, Kevin Campfield, Darren Breeden, and Tyler Walton.

A. Background

¹ Individuals colloquially known as jailhouse lawyers are incarcerated people who generally have no formal legal training, but teach themselves the law to advocate for themselves and the rights of their peers. See “The Jailhouse Lawyer Initiative at the Bernstein Institute for Human Rights”, https://www.law.nyu.edu/centers/bernstein-institute/legal_empowerment/jailhouse_lawyers.

At 23 years old, Jhody Polk, founder of the Jailhouse Lawyers Initiative, was sentenced to eight years in prison and assigned to work as a law clerk in the prison law library in a correctional facility in Florida.² Through her work in the law library, Jhody became a jailhouse lawyer, an incarcerated individual who generally has no formal legal training, but teaches themselves the law to advocate for themselves and the rights of their peers. Jailhouse lawyers' ability to perform this work emerged from two U.S. Supreme Court rulings in 1969 and 1977 that carved out the constitutionally protected right of people in prison to receive legal assistance from other people in prison.³ Accordingly, Jhody assisted women with criminal, civil, family, constitutional and immigration law matters. Jhody is one of the many jailhouse lawyers across the United States who, in her words, are "introduced to the law for the first time while in prison." For Jhody, knowing and understanding the law was a crucial step in the process of decarcerating her mind and understanding how to imagine a free, collective future for her and her community. Before her incarceration, Jhody felt defined as a product of her parents, her environment and the American narrative of a poor black woman from the south. But during her incarceration she unlearned everything she thought she knew and created her own narrative, values and beliefs. "Law clerk and jailhouse lawyer is the identity I and others chose for me."⁴

Upon her release, Jhody's expertise and passion drove her to use her knowledge to assist her community. She had one goal after coming home: getting her law license to practice and give back. She knew her legal skills would be valuable to many, especially given the lack of access to legal services within her community. But when Jhody attempted to take her skills to a professional legal setting, she was turned away—rejected from every attorney's office she applied to even after obtaining her degree in paralegal studies. Left with no option, Jhody worked as a housekeeper to care for her family. There she used her legal skills and passion for the law to help the women she worked with to understand the law and seek support and protection for the myriad of legal challenges they faced as employees, mothers, tenants, and members of isolated, vulnerable communities.⁵

But even this critical advice—given freely without compensation—put Jhody at risk of running afoul of a complex set of laws called Unauthorized Practice of Law ("UPL") regulations. Across the United States, these regulations prevent the unauthorized practice of law and are enshrined within the legal codes of almost all 50 states. Typically, the laws state only lawyers can engage in the practice of law and further

² The Jailhouse Lawyers Initiative was founded by Jhody Polk, a formerly incarcerated jailhouse lawyer from Florida and 2018 Soros Justice fellow. The JLI invests in jailhouse lawyers—incarcerated justice advocates—as a core strategy in ending the cycle of incarceration and is housed at NYU School of Law's Bernstein Institute for Human Rights. The JLI fuses legal education, movement building, participatory research, and advocacy to bring visibility to jailhouse lawyers and ensure they have the resources to know, use, and shape law. The JLI works under the framework of legal empowerment—shifting power, knowledge, and resources to directly affected communities so they can activate systems, lead justice struggles, and become the authors of their own liberation." See "The Jailhouse Lawyer Initiative, Bernstein Institute for Human Rights", https://www.law.nyu.edu/centers/bernstein-institute/legal_empowerment/jailhouse_lawyers.

³ The U.S. Supreme Court ruled in *Johnson v. Avery* and *Bounds v. Smith* that the right for incarcerated individuals to help other incarcerated individuals with their legal issues was constitutionally protected. See *Johnson v. Avery*, 393 U.S. 483 (1969) and *Bounds v. Smith*, 430 U.S. 817 (1977).

⁴ Testimony of Jhody Polk. Inter-American Commission on Human Rights, Civil Society Hearing on "The Situation of Human Rights in the United States." March 10, 2023.

⁵ Id.

even criminalize practice by anyone who is not an attorney.⁶ While such regulations seem targeted in their specificity and rational in their objectives to ensure people can obtain quality legal services—the extremely broad drafting of these statutes and the harsh penalties that accompany these laws—have a pervasive and immense impact on access to justice for marginalized communities. For credentialed lawyers, UPL regulations are aimed towards attorneys practicing in jurisdictions they are not accredited to work within, as well as disbarred attorneys from practicing due to, for example, an ethics violation.⁷ But for nonlawyers, such regulations carry profound effects—decreasing the already slim availability of legal support for underserved communities and far stricter penalties for violating the law.⁸

For example, New York state’s UPL statute criminalizes nonlawyers (“any natural person”) from practicing law (“None but attorneys to practice in the state”).⁹ “Practice of law” is an undefined term, covering potential activities such as filing petitions and briefs to courts, appearing before courts as attorneys or counselors, or more broadly “rendering legal services”—which, according to New York State Bar Association commentary on the regulation, can include furnishing legal advice.¹⁰ Violations are generally a misdemeanor, unless an individual has falsely presented themselves as an attorney or person permitted to practice law, and/or causes another person to suffer monetary loss in excess of \$1000 or other material damages. In the latter case, violations are a Class E felony, a serious charge with potentially extreme consequences.¹¹ Similarly, in New Jersey, a person is guilty of unauthorized practice of law if they “knowingly engage in the unauthorized practice of law.”¹² The problem, however, is that the statute fails to define or describe what the unauthorized practice of law *actually is*, meaning it could cover a friend or family member offering advice to another on a legal matter or a formerly incarcerated jailhouse lawyer assisting a pro se litigant in filling out forms. Given that New Jersey penalizes unauthorized practice of law as a crime in either the third or fourth degree, depending on the degree of harm, the stakes for these individuals are extremely high.

Another member of the Jailhouse Lawyer Initiative, Kevin Campfield, worked on the frontline of this justice gap and experienced the consequences of New Jersey’s UPL scheme firsthand. While incarcerated, Kevin wrote his own legal briefs and assisted numerous individuals who represented themselves in both

⁶ As an example, in New York, state law regulating UPL is found in New York Judiciary Law Chapter 30, Article 15, Sections 478 and 484. 478 states that “it shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself or herself. . . .” The statute goes on to list various means of “practicing or appearing,” including doing so in any court of record in the state, holding oneself to the public as an attorney, and using the title of lawyer or other similar titles. It also provides for a few limited exceptions. See Appendix Box 1 for further statutory language.

⁷ See American Bar Association, “Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law”, (2019)

<https://nysba.org/NYSBA/Coursebooks/Fall%202016%20LPM%20Coursebook/Bridging%20the%20Gap/2.1%20-%20Cliff%20Ennico%20-%20Rule%205.5%20Unauthorized%20Practice%20of%20Law.pdf> .

⁸ See Devika Kewalramani, “Non-lawyers beware: new law will make unauthorized practice a felony,” Lexology, (2013). <https://www.lexology.com/library/detail.aspx?g=681d1198-ae6d-42c8-abdd-daa606741408>, accessed Nov. 12, 2023.

⁹ See New York Judiciary Law Chapter 30, Art. 15, §484 and New York State Bar Association, Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law, (2019)

<https://nysba.org/NYSBA/Coursebooks/Fall%202016%20LPM%20Coursebook/Bridging%20the%20Gap/2.1%20-%20Cliff%20Ennico%20-%20Rule%205.5%20Unauthorized%20Practice%20of%20Law.pdf>.

¹⁰ See New York Judiciary Law Chapter 30, Art. 15, §478.

¹¹ See New York Judiciary Law Chapter 30, Art. 15, §485 and 485-A.

¹² See [NJ Rev Stat § 2C:21-22 \(2014\)](#).

criminal and quasi-criminal cases, as well as civil proceedings, covering family law, medical and disability, and employment. Upon release, Kevin felt compelled to use the extensive skills and experience he gained while working in prison to address the urgent justice needs of communities inside and out of prison. He founded the People’s Paralegal Services, a firm dedicated to providing legal assistance for individuals representing themselves in criminal and civil matters in New Jersey—charging a fraction of the fees of other firms and taking on cases for people who had no other option for assistance. Kevin’s personal experience of incarceration combined with his extensive background in legal work, created a vital and unique legal support system for incarcerated members within his community. While the assistance Kevin offered was to clients who represented themselves *pro se*, his guidance was critical in empowering them to take informed charge of their cases. Despite these efforts, Kevin was forced to shutter his practice once the New Jersey State Bar Ethics Committee threatened him with reincarceration for violating UPL regulations, resulting in a profound loss of livelihood and denying crucial legal support for his incarcerated clients.¹³

Furthermore, the wider and more systemic societal implications of UPL reach beyond the legal profession. As written, the overly broad and criminalized nature of UPL laws intensifies the already dire access to justice crisis in the United States stretching across civil and criminal justice cases. Indeed, while UPL is an invisible, niche area of the law that the general public is largely unaware of, the impact of its restrictions are acutely felt by the most vulnerable communities in the United States—those who lack access to basic legal services and representation like the people Kevin and Jhody supported.¹⁴ For Jhody, Kevin and many others like them, UPL regulations are a violation not only of their human rights, but those of their children, culture, and communities, who feel the immediate and pervasive effects of the access to justice crisis. Access to justice is a human right, one that is threatened by the UPL scheme that prevents not only former jailhouse lawyers from sharing their legal skills with their community, but also ensures that whole communities remain invisible both to and from the law.¹⁵

The State has an obligation to remove obstacles to access to justice, and failing to do so further isolates underserved communities from participating and seeing themselves in the legal system supposedly built to represent and support them. Formerly incarcerated jailhouse lawyers like Jhody and Kevin deserve to bring their skills, practice, and love of the law back into their communities; they are expert human rights defenders who’s essential legal work is currently criminalized by overly-broad UPL regulations. Indeed, Jhody’s community knows her as a paralegal, as someone who truly knows the law and understands the struggles of her community, yet she feels like someone in hiding—facing barriers that are impossible to scale because of UPL restrictions. As human rights defenders, former jailhouse lawyers working to close the justice gap must be brought out of hiding, must be championed, and must be advanced. Consequently, UPL reform is essential to protecting the human rights of marginalized communities in the United States.

II. Context and Summary of Information to be Presented to the Commission

¹³ Testimony of Kevin Campfield, JLI Community Consultation, Feb. 28, 2023.

¹⁴ Rohan Pavuluri, Sukti Dhital and Devon Simmons, “Offering Legal Advice must not be Illegal”, NY Daily News, May 12, 2022, <https://www.nydailynews.com/opinion/ny-oped-offering-legal-advice-must-not-be-illegal-20220512-ewzr3dxxwne7ddj226twbiutu-story.html>.

¹⁵ Testimony of Jhody Polk. Inter-American Commission on Human Rights, Civil Society Hearing on “The Situation of Human Rights in the United States.” Mar. 10, 2023.

A. Context

Access to justice is a human right. For years, the Commission has recognized access to justice as a guarantee of economic, social, and cultural rights and in the context of gender-based violence, tied to the right to access a court and right to remedy.¹⁶ Yet the United States is facing an access to justice crisis with immediate and expansive consequences. A medical emergency, eviction notice, or change in immigration status can hurl families deeper into poverty, putting them at risk of incarceration, family separation, or death.¹⁷ And although everyone has a right to equality before the law, this ideal is far from the reality for those living on the margins—indeed, tens of millions of Americans face justice problems that place them at the risk of devastating outcomes.¹⁸ Legal processes are complex and for millions of people living in America, the law is often out of reach, impenetrable, or a threat. Crucially, seeking guidance and legal services to navigate the legal system is near impossible due to affordability and availability of counsel, forcing the country’s most underserved communities to fend for themselves without any meaningful support. Lawyers, backed by professional associations, have largely priced out services for individuals and families across the country, both in civil and criminal legal contexts. In the civil context, in 2022, low-income Americans did not receive adequate legal assistance with 92% of their civil legal needs, while in more than 75% of civil cases in courts across America, at least one party is unrepresented.¹⁹

More specifically and viscerally, statistics for cases filed in state district and superior courts across the United States show a very high share (between 50 and 90%) of self-represented parties in domestic violence, family law, and housing cases.²⁰ Indeed, only about 3% of tenants have an attorney representing them in eviction proceedings, while 80% of landlords retain counsel unrepresented.²¹ Thus, people are evicted from their homes and become unhoused—a fourth of individuals facing homelessness nationally lost housing due to eviction—a situation only magnified by the COVID-19 pandemic.²²

¹⁶ For a summary of Inter-American Court of Human Rights case-law on access to justice in the context of gender-based violence and the protection of women, see ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE IN THE AMERICAS at <http://www.cidh.org/women/access07/chap1.htm>. See also OEA/Ser.L/V/II.129 Doc. 4, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights - Executive Summary, September 7, 2007, <https://www.cidh.oas.org/countryrep/AccessoDESC07eng/Accessodescindice.eng.htm>, accessed February 27, 2023.

¹⁷ See Sukti Dhital, Lam Nguyen Ho, and Margaret Satterthwaite, “Foreword: Critical Legal Empowerment”, 97 NYU Law Rev. 1547, 1548, (December 2022).

¹⁸ See Rebecca L. Sandefur, “Access to What?”, 148 DAEDALUS 49, 49 (2019), see also John G. Levi & David M. Rubenstein, Introduction, 148 DAEDALUS 7, 8 (2019).

¹⁹ See LEGAL SERVICES CORPORATION, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (Apr. 2022), <https://justicegap.lsc.gov/resource/2022-justice-gap-report/>, accessed February 27, 2023. .

²⁰ See the Self Represented Litigation Network, “Pro Se Statistics”, <https://www.srln.org/system/files/attachments/NCSC%202006%20SRL%20stats%20summary.pdf>, accessed Feb. 2, 2023.

²¹ See INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, THE LANDSCAPE OF ALLIED LEGAL PROFESSIONAL PROGRAMS IN THE UNITED STATES 3 (Nov. 2022), https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf, accessed February 27, 2023; See also National Center for Access to Justice, Justice Index, <https://ncaj.org/state-rankings/justice-index>, accessed Feb. 19, 2023.

²² “The Case for an Eviction Right to Counsel,” Data for Progress and the National Coalition for a Civil Right to Counsel, 2021, <https://www.filesforprogress.org/memos/right-to-counsel-in-housing-court.pdf>.

The monopolistic, overly broad and criminalized nature of UPL laws and regulations that exacerbate the access to justice crisis, and are in part manufactured by powerful actors, including professional legal associations, such as the American Bar Association, and state Bar associations who prevent the expansion of the legal profession by limiting credentialing and certification. These associations additionally exercise a large degree of influence on UPL legislation in the United States. Indeed, changes in state UPL statutes—such as adding harsher penalties for violations—have resulted at the urging of bar associations who wield enormous power and make decisions that have implications for former jailhouse lawyers, community organizers, social workers, and non-profits working in justice-oriented spaces.²³ This monopoly is further supported by specious arguments that all nonlawyers—even those trained, such as jailhouse lawyers—do not have a valuable role to play in legal services. To the contrary, one only needs to turn to the healthcare industry to see the vital role that trained non-doctors such as nurses, physicians assistants, community health workers, technicians play in expanding health services. Similarly, nonlawyers can be essential in supporting people with many forms of legal work, such as filling out forms, collecting data and evidence, accompanying loved ones and community members to hearings, or explaining a legal process, among other areas of support.²⁴

Compounding affordability difficulties and the legal services monopoly are language barriers, systemic discrimination, racial profiling, and unequal bail and access to sentencing. These factors pose significant

See also “REPORT ON LEGISLATION BY THE PRO BONO AND LEGAL SERVICES COMMITTEE AND HOUSING COURT COMMITTEE,” New York City Bar Association, 2014, <https://www2.nycbar.org/pdf/report/uploads/RighttoCounselinHousingNYCProBonoHousingCourtReportFINAL2.27.15.pdf>.

²³ New York Judiciary Law Chapter 30, Art. 15 §485-A makes unauthorized practice of law a felony. This section illustrates the power that professional associations can have in influencing the UPL landscape, even when their own ethics rules may not apply to nonlawyers. The regulation was developed by the Unauthorized Practice of Law Committee of the New York State Bar Association and the New York State Legislature adopted the committee’s recommended language word-for-word for the legislation in 2013. While the NYSBA has its own ethics rules regulating professional conduct, those rules are only relevant to barred attorneys, whereas §485-A applies to nonlawyers regardless of whether they received compensation or not. In the state of Illinois, both the Chicago Bar Association and the Illinois State Bar Association (“ISBA”) have had significant historical roles in bringing UPL cases and work in tandem with the Illinois Attorney Registration and Disciplinary Commission, which admits on its website that it will “defer” to the associations when they have taken action. See “How the ARDC tackles the Unauthorized Practice of Law,” Illinois Courts, News, Sep. 27, 2017.

²⁴ Some states in the U.S., such as Utah and Washington, are experimenting with programs that expand the ability of nonlawyers to engage in legal practice independently—meaning without the supervision of a licensed attorney. For example, Utah implemented a Limited Paralegal Practitioner program which enables paralegals to practice on limited, particularized matters. The program has wider eligibility requirements and counts substantive law experience towards those requirements. Similarly, Limited Licence Legal Technicians in Washington are “licensed by the Washington Supreme Court to advise and assist people going through divorce, child custody, and other family law matters.” See Washington State Bar Association, “Join the Legal Profession,”

<https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians>.

Other states like Oregon and Colorado may soon follow, deploying similar programs of their own. In Utah, the program was established among a slate of changes made to improve access to justice in the state. More time is needed to evaluate the success of such programs, since the first (Utah) only began in 2020. See Utah Courts at [utcourts.gov](https://www.utcourts.gov/legal/lpp/), <https://www.utcourts.gov/legal/lpp/>, Above the Law, “Utah’s Licensed Paralegal Practitioner Program Starts Small,” Dec. 12, 2019,

<https://abovethelaw.com/2019/12/utahs-licensed-paralegal-practitioner-program-starts-small/>.

barriers in access to justice, particularly for marginalized communities.²⁵ This lack of access to justice further impedes the enjoyment of other key rights, including the right to a fair trial and due process. When individuals are unable to obtain quality legal advice and services, the effect is increased injustice and inequality that ultimately diminishes public trust in both the legal profession and system as a whole. Mothers and fathers are permanently separated from their children—according to the American Bar Association and U.S. Department of Justice, parents without legal representation are more likely to experience negative outcomes in custody cases; where one parent had an attorney and another did not, the unrepresented parent was five times more likely to have their parenting time limited or eliminated. For child custody cases where one parent suffers intimate partner violence, “attorney representation resulted in greater protections being awarded to intimate partner violence victims and their children.”²⁶

In the criminal context, many defendants are assigned court-appointed attorneys. Nationwide, about 80% of individuals facing criminal charges use court-appointed attorneys, and the number is higher for Black individuals.²⁷ These public defenders handle heavy caseloads and often operate in resource-strapped environments with staff shortages, making them unable to devote adequate time to cases.²⁸ Furthermore, these court-appointed attorneys rarely stay with cases post-sentencing because the Sixth Amendment of the U.S. Constitution (which establishes the right to counsel) generally does *not* include the right to court-appointed representation in post-conviction proceedings like appeals and habeas corpus petitions.²⁹ Consequently, incarcerated individuals are totally isolated, left to languish in prison lacking the resources to pursue their protected rights. Currently and formerly incarcerated individuals are overwhelmingly pro se litigants (about 92%), and are forced to navigate the legal system alone and at a significant legal disadvantage.³⁰ This crisis has only been further exacerbated by climate emergencies, threats to democracy, and rising income inequality.³¹ Decades long prison sentences caused by unfair trial practices continue to go unchallenged due to significant barriers in obtaining legal counsel and support post-conviction. Critically, what is needed is an increase in the breadth of legal assistance offered to incarcerated individuals to combat the mass incarceration crisis in the United States.³²

Overly-broad UPL statutes exacerbate this crisis of justice in America. Indeed, the United States Department of Justice agrees that strict restrictions imposed by state UPL statutes create a monopoly of

²⁵ See the National Center for Access to Justice Justice Index, <https://ncj.org/state-rankings/justice-index>, accessed February 19, 2023.

²⁶ Mary Kernic, “Final Report of the “Impact of Legal Representation on Child Custody Decisions among Families with a History of Intimate Partner Violence Study,” National Institute of Justice, May 2015, <https://nij.ojp.gov/library/publications/final-report-impact-legal-representation-child-custody-decisions-among>.

²⁷ See Erika Bolstad, “Public Defenders Were Scarce Before COVID, It’s Worse Now,” Pew Stateline Article, June 21, 2022, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/06/21/public-defenders-were-scarce-before-covid-its-much-worse-now>, accessed February 27, 2023.

²⁸ *Id.*

²⁹ See *Anders v. California*, 368 U.S. 738 (1967); *Smith v. Robbins*, 528 U.S. 259 (1999).

³⁰ Only 7.6% of incarcerated individuals had lawyers representing them during their sentence, compared to 86% of non-incarcerated individuals in civil cases. See Andrea Fenster and Margo Schlanger, “Slamming the Courthouse Door: 25 years of evidence for repealing the prison litigation act,” Prison Policy Initiative.

³¹ See Joseph E. Stiglitz, “COVID Has Made Global Inequality Much Worse,” *SCIAM*. (Mar. 1, 2022).

³² Testimony of Gale Muhammed, JLI Community Consultation, Feb. 28, 2023.

legal services and decrease competitiveness in the legal marketplace, ultimately harming consumers by forcing them to face legal problems on their own—likening the situation to an antitrust violation.³³

At the forefront of addressing this human rights crisis are jailhouse lawyers. They regularly assist and accompany incarcerated community members on their pro se cases, and conduct legal writing, research, and analysis on a host of legal issues from civil rights actions to habeas corpus petitions, administrative grievances, parole/probation, and family law matters, among others.³⁴ Thus, jailhouse lawyers are human rights defenders under the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms because they offer “relevant advice and assistance in defending human rights and fundamental freedoms” through providing legal help in prison.³⁵ Jailhouse lawyers actively close the justice gap and ensure critical protections of human rights. When a jailhouse lawyer, for example, helps an incarcerated mother place her child with a family member until release, that jailhouse lawyer is defending the right of the child “to know and be cared for by his or her parents.”³⁶ When a jailhouse lawyer assists an incarcerated man with filing an Ineffective Assistance of Counsel appeal, they defend the individual’s right to defend himself personally or to be assisted by legal counsel of his own choosing.³⁷ While the State specifically provides and allows for people to assist each other with legal matters while incarcerated, upon release, UPL regulations directly interfere with their ability to act as human rights defenders within their communities and beyond.³⁸

The right to legal assistance for incarcerated people is protected by the United States Constitution—though “legal assistance” in this context does *not* mean the right to an attorney funded by the state. Many incarcerated individuals are unable to access the help they need due to affordability, limited legal resources within prisons, or other obstacles. Most states have implemented the right to “access the courts” through peer to peer legal assistance by incarcerated persons. This is the genesis of modern jailhouse lawyering, and typically, both federal and state prisons mandate creations of law libraries to facilitate legal research by incarcerated individuals, and the hiring of incarcerated law clerks to operate those law libraries. This is one example of the tacit approval for jailhouse lawyers to offer legal assistance to their incarcerated peers. Through this work, they have had a profound impact on the legal landscape of America as whole, and yet their role within the legal system is often invisibilized. In many instances, they

³³ See Letter from Maggie Goodlander, Deputy Assistant Attorney General of the Antitrust Division, United States Department of Justice to the North Carolina General Assembly, Feb. 14, 2023, (“Although the “practice of law” is largely regulated at the state level, the United States Supreme Court has made clear that federal antitrust law generally applies to the legal profession. Consistent with these principles, the Antitrust Division has brought its own enforcement actions under the federal antitrust laws and obtained injunctions against unreasonable restraints in the marketplace for legal services, including unreasonable restraints on competition between lawyers and non-lawyers. For that reason, the Division has advocated for the elimination of undue restrictions on competition between lawyers and non lawyers that are not necessary to address legitimate and substantiated harms to consumers or are not sufficiently narrowly drawn to minimize anticompetitive effects.”).

³⁴ The Jailhouse Lawyer Initiative, Bernstein Institute at NYU School of Law,

https://www.law.nyu.edu/centers/bernstein-institute/legal_empowerment/jailhouse_lawyers.

³⁵ 53/144 United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Art. 9.

³⁶ 44/25 Convention on the Rights of the Child, Art. 7.

³⁷ OAS American Convention on Human Rights, Art. 8(d).

³⁸ See *Bounds v. Smith*, 430 U.S. 817 (1977).

are the only support that incarcerated individuals have on the inside and serve as counselors, mentors and teachers to their incarcerated community members and their families.³⁹

Further, upon release, jailhouse lawyers can also be one of the keys to ending cycles of mass incarceration by bringing legal knowledge and skills directly to communities impacted by the criminal legal system and supporting communities with a host of unmet legal needs. Indeed, Jhody and Kevin tried to assist their community members in addressing legal problems, but were undermined and limited by the complex network of UPL laws. Such restrictions placed upon former jailhouse lawyers violate the access to justice rights of underserved communities who are unable to access legal assistance due to the various obstacles described above. As a visceral example, due to UPL regulations, Kevin was forced to close his firm's doors to hundreds of incarcerated people in desperate need of legal support. UPL ensures that jailhouse lawyers like Jhody and Kevin and the individuals they support remain invisible to the law. In concert with the Inter-American Court of Human Rights, the Commission has already expressed the view that States have a "positive duty...to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice."⁴⁰ The Commission further cites economic and financial obstacles as a core issue States are required to resolve through domestic courts, social services, and public policy. Overly-broad UPL restrictions operate precisely as one of these obstacles, as it allows for the monopolization of legal services and keeps legal advice out of reach for many families. Notwithstanding this human rights violation, the Commission has yet to explore UPL as a specific mechanism of inequality. The Commission, through its Report on the Situation of Human Rights Defenders in the Americas, recognized the duty of guarantee and protection owed to human rights defenders, such as trade union leaders, indigenous leaders, judicial officers, and women. However, in delineating these "vulnerable groups of defenders," the Commission did not include other justice advocates, such as jailhouse lawyers and community paralegals who are essential to the fight to decarcerate the United States and vulnerable to extreme financial penalties, prosecution, loss of livelihood, and imprisonment due to UPL restrictions.⁴¹

Finally, UPL statutes often take the form of broad, vaguely written laws that criminalize a large number of activities under the undefined umbrella of "the practice of law."⁴² For example, the New York state regulation reads, "The definition of 'practice of law' is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public

³⁹ Jhody Polk and Tyler Walton, "Legal Empowerment is Abolition," forthcoming publication.

⁴⁰ OEA/Ser.L/V/II.129 Doc. 4, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights - Executive Summary, Sep. 7, 2007, <https://www.cidh.oas.org/countryrep/AccessoDESC07eng/Accessodescindice.eng.htm>, accessed Feb. 27, 2023.

⁴¹ "Community paralegals," also known as "grassroots legal advocates," provide a bridge between the law and real life. These paralegals are trained in basic law and in skills like mediation, organizing, education, and advocacy. Community paralegals are different from conventional paralegals—their primary role is not to assist lawyers, but rather to work directly with the communities they serve. Community paralegal programs are diverse. Some take a holistic approach, addressing a range of justice needs; others focus on addressing a specific issue, like violence against women or protection of customary land rights. Some paralegals serve a very local jurisdiction—a village, a neighborhood—as volunteers; others are paid staff who cover a much larger area—a chiefdom, say, or a district." See "What is a Community Paralegal?" Namati. See also OEA/Ser.L/V/II.124 Doc. 5 rev.1, Report on the Situation of Human Rights Defenders in the Americas, Mar. 7, 2006, <http://www.cidh.oas.org/countryrep/Defenders/defenderstoc.htm>, accessed Feb. 26, 2023.

⁴² See New York State Bar Association, NYSBA NY Rules of Professional Conduct (2021) and Illinois State Bar Association, "ISBA and the Unauthorized Practice of Law - What the Public Needs to Know" accessed Mar. 23, 2023 at <https://www.isba.org/sites/default/files/committees/upl/uplfaq.pdf>.

against rendition of legal services by unqualified persons.” The language “whatever the definition” renders the meaning of “practice of law” absurdly unclear, potentially criminalizing a litany of activities without specifically elucidating what those activities are. The Commission’s Second Report on the Situation of Human Rights Defenders in the Americas notes that “the criminalization of activities to defend human rights therefore constitutes a complex obstacle that in a variety of ways affects the free exercise of the defense of human rights,” highlighting that vaguely written statutes can unfairly criminalize legitimate activities by human rights defenders, affecting “defenders both individually and collectively. For a human rights defender personally, it can cause anguish, insecurity, frustration, and a feeling of powerlessness before State authorities; deprivation of liberty; unexpected economic burdens; and damage to the defender’s reputation and credibility.”⁴³ UPL represents an invisible, but pernicious form of criminalization that stigmatizes the critical work jailhouse lawyers do in making justice accessible for those who are otherwise not able to reach it. Reform to such laws and protecting human rights defenders like jailhouse lawyers, is a crucial step in removing a significant barrier in the access to justice crisis, and moving towards ending mass incarceration in the United States.

B. Overly-broad UPL Restrictions Violate Right to Access to Justice

Right to Equality Before the Law, Right to Fair Trial, Right to Equal Protection

Access to justice is a human right: in a review of standards adopted by the Inter-American System, the IACHR expressly stated the existence of a “right of access to justice” noting specifically that IACHR case law systemically prioritizes access to justice and obligates States to remove obstacles, such as economic obstacles, that stand in the way.⁴⁴ Providing free legal assistance, for example, is identified as a viable strategy. Access to justice also encompasses a group of rights defined in human rights law. The International Covenant on Civil and Political Rights (“ICCPR”) establishes: “Article 14.- All persons shall be equal before the courts and tribunals. In the determination [...] of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]”⁴⁵. Articles II of the American Declaration on the Rights on Duties of Man and Article 24 of the American Convention on Human Rights state that “all people are equal before the law.”

⁴³ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS OEA/Ser.L/V/II. Doc. 66, Second Report on the Situation of Human Rights Defenders in the Americas, Dec. 31, 2011, <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>, accessed Feb. 27, 2023. See also IACHR Hearing on criminalization of human Rights defenders, 140th Session, Oct. 26, 2010.

⁴⁴ Inter-American Commission on Human Rights, OEA/Ser.L/V/II.129 Doc. 4, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights, Sep. 7, 2007, <http://www.cidh.oas.org/pdf%20files/ACCESS%20TO%20JUSTICE%20DESC.pdf>, accessed Feb. 15, 2023.

⁴⁵ The right to access to justice is also recognized in the Universal Declaration of Human Rights (“UDHR”) and in the American Declaration of the Rights and Duties of Man (“ADRDM”) as the right to a fair trial. The former establishes: “Article 10.- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations [...]”. The latter determines: “Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights”.

Similarly in its General Comment No. 32, the Human Rights Committee⁴⁶ further interpreted Article 14 of the ICCPR by establishing that: “Access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice...The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way . . . States are encouraged to provide free legal aid in [non-criminal cases], for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so.”⁴⁷ This body also determined that the right to a meaningful access to justice is related to the principle of equality between the parties which is applicable to all proceedings and requires “each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”⁴⁸ Also, for a person to have a meaningful access to a fair and just trial, “an individual must know all of her legal and other options and must understand how to navigate the system”, understand the nature of the judicial proceedings, its consequences and be able to make informed decisions about the case.⁴⁹ Hence, the right to an effective and meaningful access to justice is related to ensuring fairness⁵⁰ for the parties participating in a judicial proceeding as well as access to information in order to be able to make informed decisions.

Critically, human rights are interrelated, meaning there is a State obligation to guarantee the right to access to justice to all individuals without discrimination on any grounds and in equal conditions. Additionally, the right to access to justice is linked to the assistance of counsel and, for the people who require it, to legal aid.⁵¹ Thus, any distinction based on economic status or capacity for paying for the services of an attorney would be a prohibited form of discrimination—a rampant form of discrimination experienced by many in the United States due to UPL regulations. In practice, this argument does not weaken access to a lawyer when required, but rather advocates for expanding the availability of legal services to include other legal experts, such as jailhouse lawyers.

The law touches numerous aspects of people’s lives and is not restricted to experiences with the criminal justice system. People facing debt, bankruptcy, divorce, eviction, or any other economic, social, and cultural rights, all have a right to equality before the law—yet it is clear for millions of people in the United States that this is not the case. The legal system in the United States is biased to make people think that only lawyers are competent providers of legal assistance.⁵² This bias further roots elitism in the legal

⁴⁶ The Human Rights Committee is the body in charge of interpreting the ICCPR and supervising that States comply with it. One of the mechanisms in which the Human Rights Committee interprets the ICCPR is by issuing General Comments on different articles of the treaty. Moreover, one of the ways this body supervises States’ obligations is by receiving Periodic Reports from States Parties to the ICCPR and issuing Final or Concluding Observations regarding those Reports. There are other treaties that address specific rights, and each treaty body has a Committee in charge of its interpretation and supervision, with similar functions as the ones mentioned here.

⁴⁷ Human Rights Committee (CCPR). General Comment No. 32 “Article 14: Right to equality before courts and tribunals and to a fair trial”. CCPR/C/GC/32. 23 Aug. 2007, para. 10.

⁴⁸ Id at para. 13.

⁴⁹ Beenish Riaz. “Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System”, NYU Rev. L. Soc. Change 45, 1 (2021).

⁵⁰ European Commission Recommendation of Nov. 27, 2013 on the right to legal aid for suspects or accused persons in criminal proceedings.

⁵¹ Special Rapporteur on the Independence of Judges and Lawyers, Report on “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”, A/HRC/23/43. Mar. 15, 2013, para. 20.

⁵² Interview with Rohan Pavuluri, Oct. 18, 2022.

profession and results in gatekeeping that prevents a multitude of communities from accessing legal services—and thereby solving legal problems.⁵³ The consequences of this include poverty, homelessness, and mental and physical health issues. Take the COVID-19 Eviction Moratorium announced in March 2020 by the United States Center for Disease Control. In order to receive relief, the burden was on tenants to assert their rights by submitting a completed and signed declaration of their eligibility to their landlords—that could be challenged by the landlord.⁵⁴ In Georgia, some local courts provided information about the process, even making copies of the form available. But other tenants seeking information about how to complete the form or copies to reference, encountered extremely resistant court personnel who refused to provide any guidance on the process to file out of fear of running afoul UPL by providing “legal advice.”⁵⁵ In fact, 61% of courts in Georgia failed to “direct litigants to the CDC declaration or provide information about the moratorium to tenants facing eviction.”⁵⁶ Without any instruction or guidance, many tenants remained unable to file for protection, likely resulting in patently wrongful, illegal evictions.

Even more damaging, UPL is fundamentally entrenched in the U.S. legal system, though its role in exacerbating injustice is largely invisible. People have no federally protected right to counsel in civil cases, nor are presented with an alternative based in state or local law. In combination with affordability barriers, lack of knowledge, and UPL restrictions, there is practically speaking nowhere else to turn. The consequences are drastic for the large share of self-represented parties. Pro se litigants often fail to meet threshold procedural requirements in U.S. courts—such as properly filing pleadings, serving the opposing party with key legal documents, and scheduling hearings with the court—necessary for a judge to hear the merits of their case, commonly resulting in a default judgment or dismissal.⁵⁷ Even past that stage, litigants face daunting motion practice, discovery, and the application of evidentiary rules. In the words of Jessica K. Steinberg, noted scholar of access to justice, “the American court system offers unequal access to justice—or perhaps more aptly stated, makes equal justice nearly unattainable.”⁵⁸ This injustice is manifested in acute, everyday concerns, such as bankruptcy proceedings, one of the most complex, yet essential legal procedures for many individuals. Upsolve, a non-profit, assists lower-income people in filing for bankruptcy on their own for free by training people who are not lawyers to help filers using an

⁵³ Historically, the legal profession in the United States was not managed by professional associations, but rather through an apprenticeship system. However, this system was heavily racialized and included a deliberate “screening” function whereby existing lawyers, dominated by White, male Christians rejected apprentices who did not share their background. Marginalized communities have thus always been disadvantaged in the legal profession which has prioritized exclusion and rejected expansion, inclusivity, and diversity. The first bar associations in the U.S. behaved much like “cartels,” restricting access to the profession and creating barriers to entry grounded in character and fitness requirements that painted anyone who was not a member of the association as illegitimate. See “Unlock the Bar: The Case for Abolishing the Character and Fitness Process,” Feb. 2022.

⁵⁴ See National Housing Law Project, Federal Moratorium on Evictions - FAQ for Renters, Aug. 2021, https://nlihc.org/sites/default/files/National-Eviction-Moratorium_FAQ-for-Renters.pdf, accessed Feb. 28, 2023.

⁵⁵ Daniel Pasciuti, Tabitha Ingle, and Lauren Sudeall, “Courts in Crisis Part II: The Rising Tide of the Rental Housing Crisis in Georgia,” Center for Access to Justice at Georgia State University College of Law. See also Lauren Sudeall, “The Overreach of Limits on ‘Legal Advice’,” YALE L.J. 131.

⁵⁶ See Daniel Pasciuti, Tabitha Ingle, and Lauren Sudeall, “Courts in Crisis Part II: The Rising Tide of the Rental Housing Crisis in Georgia,” Center for Access to Justice at Georgia State University College of Law.

⁵⁷ See Jessica K. Steinberg, Demand Side Reform in the Poor People’s Court, 47 CONN. L. REV. 741, 749 (2015).

⁵⁸ Id.

online tool.⁵⁹ The organization is currently litigating to stop New York UPL regulations from being applied to their platform and employees.⁶⁰ To the founder of Upsolve, Rohan Pavuluri, preventing services like these from operating in low-income and justice-impacted communities is equivalent to a civil rights violation. “It’s fundamentally unfair to prevent communities from using tools like Upsolve to access justice and finally be seen as equal under the law.”⁶¹

UPL has also been wielded as a threat when organizers or communities are seeking to disrupt the status quo and seek justice for their community members.⁶² For example, legal aid organizations working with tenant advocacy groups report that opposing counsel representing landlords threatened to report the group for violating Illinois’ UPL regulation as a means to target and shut down their organizing activity, effectively “winning” the case and preventing those tenants from accessing any form of justice for housing violations.⁶³

Inequity is also manifested in the limited yet unpaid work former jailhouse lawyers are doing for incarcerated individuals. Former jailhouse lawyers maintain the networks and relationships established while in prison and often continue to support people who are still incarcerated with their cases. These individuals largely work out of a moral obligation and understanding that nobody else will help but them.⁶⁴ Even though they are closest to the justice gap, the assistance that jailhouse lawyers can legally provide is limited due to overly-broad UPL restrictions.

C. Jailhouse Lawyers Are Human Rights Defenders Who Close the Justice Gap

The Right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms

The Inter-American Human Rights system has resolved to promote principles enshrined in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and further delineated recommendations for States to ensure human rights defenders are protected from criminalization, harassment, and interference.⁶⁵ Jailhouse lawyers are a key example of human rights defenders working against many substantive threats to fundamental freedoms and the right to personal

⁵⁹ See Sara Merken, “NY nonprofit may help debtors without breaking legal practice rules, judge says,” Reuters (2022) <https://www.reuters.com/legal/government/ny-nonprofit-may-help-debtors-without-breaking-legal-practice-rules-judge-says-2022-05-25/>.

⁶⁰ See *Upsolve Inc., v. James*, 1:22-cv-00627, (SDNY 2022).

⁶¹ Interview with Rohan Pavuluri, Oct. 18, 2022.

⁶² Interview with Lam Ho, Oct. 18 2022.

⁶³ Id.

⁶⁴ Interview with Kelly Harnett, Oct. 6 2022.

⁶⁵ AG/RES. 1842 (XXXII-O/02), HUMAN RIGHTS DEFENDERS IN THE AMERICAS: SUPPORT FOR THE INDIVIDUALS, GROUPS, AND ORGANIZATIONS OF CIVIL SOCIETY WORKING TO PROMOTE AND PROTECT HUMAN RIGHTS IN THE AMERICAS, Jun. 4, 2022, and INTER-AMERICAN COMMISSION ON HUMAN RIGHTS OEA/Ser.L/V/II. Doc. 66, Second Report on the Situation of Human Rights Defenders in the Americas, Dec. 31, 2011, <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>, accessed Feb. 27, 2023. See also IACHR Hearing on criminalization of human Rights defenders, 140th Session, October 26, 2010. https://www.oas.org/xxxiiiga/english/docs_en/docs_items/agres1842_02.htm, accessed Feb. 27, 2023.

liberty under the American Convention on Human Rights.⁶⁶ These include cases of wrongful imprisonment based on faulty conviction and ineffective assistance of legal counsel, the “bread and butter” of the jailhouse lawyer’s caseload.⁶⁷

More than 2 million people are incarcerated in the United States and many of them represent themselves pro se and work with jailhouse lawyers for assistance.⁶⁸ In 2021, 86.6% of individuals in U.S. Federal District Court represented themselves in quasi-criminal and habeas corpus cases—a good proxy to demonstrate the breadth of jailhouse lawyer involvement in pushing such cases forward.⁶⁹ Gale Muhammed, a member of the Jailhouse Lawyers Initiative stressed that it is “jailhouse lawyers who get people out of prison,” highlighting the very real way in which they are actively expanding access to justice, thereby acting as human rights defenders by providing legal assistance and relevant advice.⁷⁰ Indeed, many pro se litigants are successful because jailhouse lawyers assist them in overturning wrongful convictions and getting retrials.⁷¹

However, outside of prison, the picture looks very different. If UPL reform was implemented, jailhouse lawyers who are released from prison could be one of the keys to ending cycles of incarceration by bringing legal knowledge and skills directly to their communities. They not only make the rights of incarcerated people a reality, but also have the capacity, skills, and power to utilize their experience post-release to help address the justice needs of communities inside and outside of prison. However this work is criminalized upon release from prison by UPL restrictions. This prevents them from fulfilling their roles as human rights defenders in underserved and marginalized communities. UPL thus interferes with the ability of many to realize their human right, like an invisible mechanism of oppression that touches the lives of millions even without their knowledge.

Because UPL statutes as written are extremely broad, the resulting impact is equally overarching in scope—criminalizing almost any non-credentialed lawyer from even casually applying legal doctrine to a set of facts. Consequently, many human rights defenders, in addition to jailhouse lawyers, such as tenant organizers, activists, and other justice advocates working against discrimination or to preserve other fundamental rights are, unbeknownst to them, caught in the grasp of a UPL offense. Lawyer and founder of Beyond Legal Aid, Lam Ho, recounts how landlords and opposing counsel wield UPL regulations like a weapon to prevent tenant organizers in Chicago from negotiating on behalf of themselves—threatening to report the activists if they attempt to make any demands in negotiations with landlords.⁷² Kevin, as

⁶⁶ American Convention on Human Rights, Art. 7.

⁶⁷ Testimony of Kevin Campfield, Feb. 23, 2023.

⁶⁸ Collected testimony from interviews with former jailhouse lawyers, including Kelly Harnett, Jhody Polk.

⁶⁹ Incarceration and the Law, Cases and Materials - Data Supplement, <https://incarcerationlaw.com/> accessed Mar. 30, 2023.

⁷⁰ Testimony of Gale Muhammed, Feb. 23, 2023.

⁷¹ See Sewell Chen, “Jerry Rosenberg, Jailhouse Lawyer, Dies at 72,” NYTimes, Jun. 1, 2009. See also Daniele Selby, “How a Wrongly Incarcerated Person Became the ‘Most Brilliant Legal Mind’ in ‘America’s Bloodiest Prison,’” Innocence Project, Sep. 17, 2021, (“I saw a lot of wrongful convictions as in-house counsel, especially from New Orleans parish — where I came from — where they had withheld information and convicted many innocent people,” Calvin said. “It was hard to help them because we often couldn’t get access to those records.”). See also Justine van der Leun, “Kelly Harnett Had to Get Free,” New York Magazine, Jan. 4, 2023, (By Harnett’s count, four women were released because of her work, and many others moved their cases forward.”).

⁷² Interview with Lam Ho, Oct. 18, 2022.

discussed earlier, lost his livelihood when he had to close his business after being reported to the ethics committee and fined \$10,000. Jhody has been home from prison for almost nine years, and yet despite all her success, attending law school and becoming a lawyer is still unachieved, forcing her to find an alternative path to advocate against mass incarceration. All of these activists seek to bring legal support to their communities and have developed a deep understanding and love of how they could leverage the law to imagine a freer future for themselves and their communities—but UPL restrictions stand in the way.

III. Conclusion and Possible Action by the Commission

Access to justice is both a human right and a right under the United States Constitution. It is further recognized by all countries and different intergovernmental bodies including the Inter-American Human Rights System.⁷³ The restrictions placed on the work of current and former jailhouse lawyers not only affect them, but adversely impact the access to justice rights of underserved communities. Expanding access to justice should be pursued through both national and international mechanisms. Ensuring equal access to justice and “responsive, inclusive, participatory and representative decision-making at all levels” are targets of United Nations’ Sustainable Development Goal No. 16.⁷⁴

The lack of access to justice contributes to the mass incarceration crisis in the United States and can be directly linked to poverty, homelessness, racial inequality and discrimination, and continued erosion of trust in the State and its legal institutions. The case study of jailhouse lawyers and their post-release experiences demonstrates how overly broad and punitive UPL regulations are a mechanism by which the justice gap is maintained. The Inter-American system can play an important part in the quest to reform UPL regulations by asserting that jailhouse lawyers and other justice advocates (like community paralegals or grassroots legal workers) are human rights defenders worthy of the right of protection and to work without the interference of draconian UPL. Thematic hearings can contribute to raising awareness on how UPL operates, while referring the situation to the OAS Special Rapporteur for Persons Deprived of Liberty and OAS Special Rapporteur for Human Rights Defenders and Justice Operators can launch further investigation to help articulate the extent of harm of UPL specifically on incarcerated individuals.

A. Potential Action from the Commission

We therefore respectfully urge the Commission to grant this request for a thematic hearing. If granted, we hope to explore ideas for Commission action at the hearing, such as the following:

1. Reaffirm the right to access to justice as an autonomous right and use the Commission’s tools to protect that right in the United States.
2. Assert that jailhouse lawyers are human rights defenders under Inter-American case law and jurisprudence.
3. Refer the situation of the U.S. access to justice crisis in prisons and the role Unauthorized Practice of Law plays within it to the OAS Special Rapporteur for Persons Deprived of Liberty.

⁷³ The right to access to justice is recognized in the Universal Declaration of Human Rights (“UDHR”) and in the American Declaration of the Rights and Duties of Man (“ADRDM”) as the right to a fair trial. The International Covenant on Civil and Political Rights also establishes access to justice in “Article 14 Right to equality before courts and tribunals and to a fair trial.”

⁷⁴ United Nations, *Sustainable Development Goals*, Goal 16: Promote just, peaceful and inclusive societies. <https://www.un.org/sustainabledevelopment/peace-justice/>

4. Refer the situation of jailhouse lawyers and the lack of protections awarded to them as human rights defenders to the OAS Special Rapporteur for Human Rights Defenders and Justice Operators.
5. Call upon professional legal associations, including the American Bar Association, to revisit Unauthorized Practice of Law regulations and explore reforming, revising, and making such laws more flexible.
6. Call upon professional legal associations to hold consultations with impacted communities, in particular, jailhouse lawyers.

B. Submission and Support of the Request

Request Submitted By:

Jhody Polk, Founder, Jailhouse Lawyer Initiative

Sukti Dhital, Executive Director, Bernstein Institute for Human Rights, New York University School of Law

Tyler Walton, Project Attorney, Bernstein Institute for Human Rights, New York University School of Law

Sruthi Rao, Law Student Advocate, Global Justice Clinic, New York University School of Law

Supporters of the Request

In addition to the Jailhouse Lawyers Initiative at the Bernstein Institute for Human Rights and the Global Justice Clinic, at New York University School of Law, this request is supported by:

Ayuda Legal

Alexander McLean, Founder and CEO, Justice Defenders

Beyond Legal Aid

Center for Institutional and Social Change, Columbia Law School

Council of Nine (CNNA-USA)

Defying Legal Gravity

Innovation for Justice, University of Arizona James E. Rogers College of Law, University of Utah David Eccles School of Business

Just Media

Law for Black Lives

Legal Link

Namati

National Justice Impact Bar Association (NJIBA)

Organized Communities Against Deportations

Silicon Valley De-Bug (National Participatory Defense Network Coordinating Organization)

Unlock the Bar

Upsolve

Women Who NEVER Give UP

IV. Appendices

Appendix 1: UPL Statutes

The legislative framework for UPL in New York is primarily formed by sections in New York Judiciary Law Chapter 30, Article 15. As a general rule, New York Judiciary Law prohibits nonlawyers and/or people who are not admitted and registered to perform activities that are intended to be performed exclusively by licensed and admitted attorneys. These prohibitions include: filing petitions and briefs to courts, appearing before courts as attorneys or counselors, or making the public believe that the subject is an admitted and registered attorney.⁷⁵ Chapter 30, Article 15, §478 contains the above restrictions and applies indiscriminately to nonlawyers doing paid or unpaid work. It contains limited exceptions for clinical students, legal consultants, and people working in animal rights.⁷⁶ This provision does not include an express exception regarding jailhouse lawyers or incarcerated individuals. Chapter 30, Article 15, §484 prohibits nonlawyers from asking for or receiving any compensation for appearing as an attorney in court or conducting legal work, such as preparing deeds, wills, and other legal documents, pleadings, or conducting business as an attorney.⁷⁷

Finally, §485 and §485-A describe the penalty framework for violations of the previous sections. Violations are generally a misdemeanor, unless, under §485-A, an individual has falsely presented themselves as an attorney or person permitted to practice law, and/or causes another person to suffer monetary loss in excess of \$1000 or other material damages. In the latter case, violations are a Class E felony.⁷⁸

New York §478 brings little clarity to what exactly is contemplated by the “practice of law,” other states’ regulations don’t contain any specificity and again borrow from professional associations ethics rules. Take, for comparison, Illinois’ UPL statute (705 ILCS 205) which simply states “No person shall be permitted to practice as an attorney or counselor...without having previously obtained a license for that purpose...” and lacks reference to examples of what “legal services” may comprise.⁷⁹ Both the New York State Bar Association and the Illinois State Bar Association note that it is impossible to formulate an all-encompassing definition of “practice of law” and that “practice of law” will inevitably vary by jurisdiction.⁸⁰ This creates a gray area as to what activities fit into the practice of law, resulting in extremely broad applications of the regulation where anyone interpreting facts through the lens of a law can be reported as practicing law inappropriately.

Appendix 2: Kevin Campfield, The People’s Paralegal

Testimony of Kevin Campfield - Owner and Founder of the People’s Paralegal Services, New Jersey.

Working as a jailhouse lawyer while incarcerated, Kevin Campfield wrote his own legal briefs, directing his public defender on arguments to make in court, resulting in the eventual vacating of his guilty plea

⁷⁵ See New York Judiciary Law Chapter 30, Art. 15, §478.

⁷⁶ Id.

⁷⁷ See New York Judiciary Law Chapter 30, Art. 15, §484.

⁷⁸ See New York Judiciary Law Chapter 30, Art. 15, §485 and 485-A.

⁷⁹ See Illinois Compiled Statutes, 705 ILCS 205.

⁸⁰ See New York State Bar Association, NYSBA NY Rules of Professional Conduct (2021) and Illinois State Bar Association, ISBA and the Unauthorized Practice of Law - What the Public Needs to Know.

after spending 12 years in prison. During his incarceration, he also assisted numerous individuals who represented themselves in both criminal and quasi-criminal cases, as well as civil proceedings, covering family law, medical and disability, and employment. Upon release, Kevin founded the People's Paralegal Services, a firm dedicated to providing legal assistance for individuals representing themselves in both criminal and civil matters in New Jersey. The People's Paralegal Services charged a fraction of the fees of other attorneys and legal services firms and took on cases with individuals who otherwise had no other help. Kevin worked on divorces, custody cases, habeas corpus petitions, ineffective assistance of counsel petitions, among other cases. For individuals with court-appointed attorneys, Kevin's legwork was essential in relieving the capacity burden faced by public defenders, giving them information necessary to file motions or push cases forward—successfully winning releases for wrongly imprisoned individuals. For pro se litigants, Kevin provided critical guidance to explain complicated legalese and processes to ensure individuals were well-equipped to represent themselves in negotiations and the courtroom. Through his firm, Kevin operated as a human rights defender, actively closing acute justice gaps both in and outside of prison.

Despite this work, Kevin ran afoul of New Jersey's UPL statute and faced an inquiry by the New Jersey State Bar Association Ethics Committee. This committee of 21 lawyers expressed admiration for his accomplishments, including the release of four individuals from prison, but still shut down his firm finding his actions in violation of the State's UPL regulations. While Kevin avoided prosecution and reincarceration, the bar association's implementation of UPL restrictions interfered with his work as a human rights defender and destroyed his livelihood. It further removed a critical resource making justice a reality for his clients both in and outside of prison, who otherwise could not gain access to an attorney to assist them in legal matters. Consequently, without Kevin's support and due to their inability to procure legal counsel, these individuals are *denied* equal treatment under the law and their rights to equal protection and to a fair trial. Overly-broad and punitive UPL restrictions are a form of discrimination threatening the rights of Kevin's clients to equal treatment under the law under the American Declaration on the Rights and Duties of Man, as well as the American Convention on Human Rights. Furthermore, for Kevin's incarcerated clients, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, are violated.

Kevin's testimony poignantly demonstrates how restrictive UPL regulations can in practice limit the ability of individuals to receive adequate legal counseling and access to justice in equal conditions. Thus, harmed populations by UPL restrictions are communities who are unable to access legal services, *as well as* incarcerated individuals who cannot find adequate legal assistance. The impact of UPL extends far beyond the law profession and its effects are not isolated, but systemic.

Appendix 3: Jhody Polk, Founder of the Jailhouse Lawyer Initiative⁸¹

Testimony of Jhody Polk - heard by Commission on March 10, 2023

My name is Jhody Polk, I am the founder of the Jailhouse Lawyers Initiative, JLI. I'm here to talk about my community, one that has been invisible to you and the broader human rights community. At 23 years old I was sentenced to 8 years in prison and assigned to work as a law clerk in the prison law library- this

⁸¹ This testimony was heard on March 10, 2023 during the IACHR 186 Period of Sessions: Meeting with Civil Society on the Situation of Human Rights in the United States.

is when I became a jailhouse lawyer. Jailhouse lawyers are incarcerated individuals who generally have no formal legal training, but teach themselves the law to advocate for themselves and the rights of their peers.

Even though there are strict rules that regulate the practice of law to attorneys, called unauthorized practice of law, or UPL, the US Supreme Court has carved out a space for incarcerated people to assist other incarcerated people with their legal matters. For many of us, it is in prison that we are introduced to the law for the first time.

Becoming a jailhouse lawyer was the beginning of my journey as a Human Rights Defender. As a law clerk I assisted women with criminal, civil, family, constitutional and immigration law. My knowledge and experience was just as valuable to my community outside as it was in prison, but the legal profession did not want me. After my release I worked in the hospitality industry after being turned down by every attorney office I applied to. While a housekeeper I helped the women who I worked alongside to understand, protect and get legal support for the many challenges that we were facing as employees, mothers, tenants and isolated community members. Even with years of legal experience, giving this advice put me at threat from UPL.

UPL laws are overly broad and vague - they threaten and harm my community, perpetuating cycles of poverty and incarceration. Take Kevin, a formerly incarcerated jailhouse lawyer and member of JLI who was fined thousands of dollars for violating UPL laws. He had to close his doors to the hundreds of people who wrote to him from prison because no attorney would help them with their case. UPL ensures that jailhouse lawyers like me and Kevin remain invisible to and from the law. Lawyers do not live in our neighborhoods. UPL discourages our children and community from participating and seeing ourselves in the law. We become fearful of the law. THIS IS a violation of human rights. Formerly incarcerated jailhouse lawyers deserve to bring our skills, practice and love of the law back into our communities. We request the Commission to:

- 1) Reaffirm that jailhouse lawyers and our communities have an equal right to access justice.
- 2) Assert that jailhouse lawyers are human rights defenders.
- 3) Call upon bar associations to revisit UPL in collaboration with jailhouse lawyers and our communities.
- 4) Accept our request for a thematic hearing at the Commission's 187th Session.

Working together we can close the justice gap.

Appendix 4: Dan Miller, Post-Conviction Associates Testimony of Dan Miller

Dan Miller is a formerly incarcerated jailhouse lawyer and owner of Post-Conviction Associates, a service assisting incarcerated individuals with their post-conviction motions and appeals. Dan's story is a visceral illustration of the overcriminalized penalty framework of many UPL schemes. To Dan's knowledge, he is one of the few formerly incarcerated individuals actively using his legal skills outside of prison to represent incarcerated people in their legal matters independently (meaning without supervision from a

licensed attorney). Dan’s ethos stems from a firm belief that there is hypocrisy inherent to a system that forces incarcerated individuals to study and practice law as a form of rehabilitation—but then prevents that same individual from utilizing those skills upon release.⁸² “It’s the worst irony that I am prohibited from working as a lawyer when I was forced to do so by the Department of Corrections. As a free man, it’s illegal for me to do what I did while incarcerated. Does that make any sense?”⁸³

For Dan, a possible confrontation with UPL laws is simply an occupational hazard with immensely high risk. The penalty framework causes former jailhouse lawyers like him to face possible further legal consequences, including the threat of reincarceration, if they do attempt to pursue legal work independently. Dan recounted how he received a call from a Deputy Attorney General in New York about his firm possibly violating the state’s UPL laws—but once he explained his view in terms of fairness and irony, the DAG retreated. His work continues undeterred.⁸⁴

Appendix 5: Kelly Harnett, Community Paralegal Testimony of Kelly Harnett

In 2015, Kelly Harnett was sentenced to 17 years to life at Bedford Hills Correctional Facility in New York. While incarcerated, Kelly became a clerk at the facility’s law library—writing motions for herself and other incarcerated women without internet access and a single legal-research database to assist her. During her career as a jailhouse lawyer, four women were released due to her work and countless more were able to move their cases forward. As a survivor of domestic abuse, Kelly was focused on the way the criminal legal system targeted women, especially those who had survived abuse and ultimately used her skills to advocate for her own successful release from prison under New York’s Domestic Violence Survivors Justice Act. Upon her release, Kelly dedicated herself to finding a job where she could help incarcerated women and victims of domestic violence, but found her options startlingly limited despite her depth of expertise and knowledge of New York State criminal law.

Leveraging word-of-mouth and existing relationships with women she was incarcerated with, Kelly managed to work directly with attorneys representing those same women—but was never allowed to do so independently. Furthermore, Kelly worked for free. Even now, when people call her from prison seeking her assistance after they hear about her success in securing releases, she is always very careful to caveat: “I’m not a lawyer so I can’t give you legal advice, but if I were you or if I were working on your case, here’s what I might do.”⁸⁵ Kelly’s story suggests that through immense dedication to networking and advocating for themselves, some former jailhouse lawyers can forge a legal-oriented career post-release. But this may not be the situation for all former jailhouse lawyers—nor is it ideal, given the limitations on what both Kelly can do and the amount of effort it took to get there.

Kelly stresses how she has years of experience and expertise in criminal law, but is prevented from leveraging the knowledge to help other incarcerated individuals now that she is out of prison.⁸⁶ She

⁸² Interview with Dan Miller, Oct. 11, 2022.

⁸³ Id. “Forced” in context means assigned by the Department of Corrections to work in the law library during his sentence - his facility urged him to staff the law library and assist other incarcerated individuals.

⁸⁴ Id.

⁸⁵ Interview with Kelly Harnett, Oct, 6, 2022.

⁸⁶ Interview with Kelly Harnett, Oct, 6, 2022.

continues to work on cases for women who are still incarcerated at Bedford Hills—the largest women’s facility in New York state. Because she’s not paid, she isn’t doing it for the money, but rather out of a moral obligation and understanding that nobody else will help them but her or the few others like her.⁸⁷

Appendix 6: Upsolve v. James, Access to Justice in the South Bronx and Beyond

Testimony of Rohan Pavuluri, Chief Executive Officer, Upsolve, Inc.

Upsolve is a non-profit online app that assists lower-income people in filing for bankruptcy on their own for free by training people who aren’t lawyers to help.⁸⁸ The organization is currently litigating to prevent New York UPL regulations from being applied to their platform and employees.⁸⁹ Conceptions of fairness and equity drive CEO Rohan Pavuluri’s mission. To Rohan, preventing services like Upsolve from operating in low-income and justice-impacted communities is equivalent to a civil rights violation.⁹⁰ The co-plaintiff in Upsolve’s case against New York state’s UPL laws is Reverend John Udo-Okon, a community organizer and faith leader in the South Bronx neighborhood of New York City.

“Members of my community are shut out from ways to vindicate their own rights, and are left with what feels to them like an oppressive justice system stacked against them,” said Reverend Udo-Okon in an interview, emphasizing why access to free bankruptcy advice is essential—given debt collection suits are the most common legal proceedings in the state.⁹¹ Their case highlights the direct harm a lack of access to justice and tools to close the justice gap can have on community members. Liz Jurado, Christopher Lepre and William Evertson are three New Yorkers who were unable to afford any legal assistance upon being sued by debt collectors. Jurado was sued for \$12,000 by her anesthesiologist for a medical bill she received after a routine epidural during childbirth. Lepre unknowingly purchased a broken car, financed with a high-interest loan from subprime auto-lender Credit Acceptance, and then sued by Credit Acceptance for more than \$15,000—despite returning the car to the dealer within three months. And Evertson, a social worker was sued by large third-party debt buyer Cavalry for a debt that was never his. All three who could not afford legal fees to fight back when they were sued, lost their cases and Jurado and Evertson ended up filing for bankruptcy. Lepre had his wages garnished and had to borrow from his 401(k) to make rent. Their conditions underline the dire and urgent need for UPL reform to protect access to justice rights and address systemic harm.

⁸⁷ Interview with Kelly Harnett, Oct. 6 2022.

⁸⁸ See Sara Merken, “NY nonprofit may help debtors without breaking legal practice rules, judge says,” Reuters (2022)

<https://www.reuters.com/legal/government/ny-nonprofit-may-help-debtors-without-breaking-legal-practice-rules-judge-says-2022-05-25/>.

⁸⁹ See *Upsolve Inc., v. James*, 1:22-cv-00627, (SDNY 2022).

⁹⁰ Interview with Rohan Pavuluri, Oct. 18, 2022.

⁹¹ See *Upsolve Inc., v. James*, 1:22-cv-00627, (SDNY 2022) and Robbie Sequeira, “Nonprofit, South Bronx pastor sue AG’s office over ban on free legal advice,” Bronx Times, Jan, 26, 2022.