

Ms. Margaret Satterthwaite  
Special Rapporteur on the Independence of Judges and Lawyers (IJL)  
Office of the United Nations High Commissioner for Human Rights  
Palais Wilson  
52 rue des Pâquis  
CH-1201 Geneva, Switzerland.

RE: Call for input to IJL Legal Empowerment report

Dear Ms. Satterthwaite,

Thank you for the opportunity to provide input on your thematic report concerning the promise of legal empowerment to expand and transform access to justice. Our submission concerns the deepening access to civil justice crisis in the United States and the impact of the legal profession's monopoly on law practice in deterring promising people-centered solutions to everyday justice problems. Specifically, we are concerned about the chilling effects that prohibitions on the unauthorized practice of law (UPL) in the U.S. have on both the ability for nonlawyer community justice workers to provide critical legal assistance to low-income and underserved communities, further exacerbating a growing civil justice crisis of both exclusion and inequality.

In this submission we discuss empirical evidence documenting the access to civil justice crisis in the United States and its disproportionate impact on people with low incomes and people of color. We then explore the significant barriers to access to justice created by protectionist regulations, including the criminalization of non-lawyer legal advice and its chilling effect on the ability for people who are not lawyers to help members of their communities find just solutions to their civil legal problems. Finally, we offer recommendations for reform.

#### I. Statement of Identity and Interest

Rebecca L. Sandefur, PhD is professor in the College of Liberal Arts and Sciences at Arizona State University and Faculty Fellow at the American Bar Foundation (ABF), an independent, non-partisan research organization focused on the study of law and legal processes. In 2018, Professor Sandefur was named a MacArthur Fellow for her development of a new evidence-based approach to access to civil justice for low-income people. Professor Sandefur has served on several commissions exploring ways to improve access to justice in the United States and globally, including with the American Bar Association, the American Academy of Arts and Sciences, the Organisation for Economic Co-operation and Development (OECD), and the World Bank. She co-chaired a project at the American Academy to improve the collection and use of data about civil justice in the United States. Her work, which has been funded by the National Science Foundation among other sources, has received numerous awards, including from the National Center for Access to Justice (2015) and the National Center for State Courts (2020). In 2013, she was The Hague Visiting Chair in the Rule of Law. She is co-founder and co-chair of Frontline Justice, an evidence-based approach to reimagining the future of justice work in the United States.

Matthew Burnett, JD is senior program officer for the Access to Justice Research Initiative at the American Bar Foundation (ABF) and visiting scholar at Arizona State University. Prior to joining the ABF, Matthew was Senior Policy Officer at Open Society Foundations, where he worked to advance access to

justice and legal empowerment through research, advocacy, litigation and grantmaking in Africa, Asia, Latin America, Eastern Europe, and the United States. Over nearly two decades, Matthew's writing on access to civil justice and legal empowerment has appeared in more than 20 publications, and he has given more than 80 presentations and workshops around the world. He is currently a collaborator on a National Science Foundation (NSF) funded CIVIC planning grant focused on expanding access to justice through nonlawyer Community Justice Workers in rural and Alaska Native communities and serves as an advisor to the National Center for Access to Justice in the United States. He is co-founder, with Rebecca Sandefur, of Frontline Justice.

## II. Civil Access to Justice in the United States

The United States faces an access to civil justice crisis. Every year, Americans will experience 150 million to 250 million new civil justice problems, threatening their ability to have a safe place to live, make a living, and care for those who depend on them.<sup>1</sup> They include problems like evictions, debt collection, bankruptcy, wage theft, domestic violence, foreclosure, access to medical treatment, and the care and custody of family members. However, according to the most recent report by the Legal Services Corporation (LSC), the federal government funder of civil legal aid in the United States, less than ten percent of people with low incomes have any or adequate access to legal assistance.<sup>2</sup>

While free legal help exists through legal aid and pro bono programs, these programs are routinely forced to turn away at least half of *eligible* clients due to limited resources.<sup>3</sup> And those are only the people who both understand their problems to be legal in nature and can access these organizations. Most civil justice problems that Americans experience receive no legal attention whatsoever. They never make it to a lawyer or to a court.

While the access to civil justice crisis affects all Americans, it disproportionately affects the poor and people of color.<sup>4</sup> A range of studies demonstrate that people with low incomes and people of color are more likely to experience civil justice issues and, further, that those issues are more likely to lead to adverse consequences for them, such as lost income, housing or impaired health.<sup>5</sup> Differences in social identity, legal capability, and spatial context create distinctive justice needs that cannot be met by a single model of service delivery reliant on lawyers.<sup>6</sup> In effect, most Americans are locked out of the law, and a promising, people-centered solution – nonlawyer community justice workers – is largely thwarted by protectionist regulations.

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<sup>1</sup> IAALS and Hiil, *Justice Needs and Satisfaction in the United States of America 2021: Legal problems in daily life* (2021). Available at: <https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf>.

<sup>2</sup> Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans* (2021). Available at: <https://justicegap.lsc.gov/the-report/>.

<sup>3</sup> See NLADA, What is Legal Aid?, at <https://www.nlada.org/tools-and-technical-assistance/civil-legal-aid-resources/what-legal-aid>.

<sup>4</sup> Rebecca L. Sandefur & James Teufel, "Assessing America's Access to Civil Justice Crisis," 11 *U.C. Irvine L. Rev.* 753 (2021) at 769.

<sup>5</sup> *Ibid*; IAALS and Hill supra n 1; Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*. Chicago, IL: American Bar Foundation (2014); Rebecca L. Sandefur, "Access to Civil Justice and Race, Class and Gender Inequality." *Annual Review of Sociology* 34:339-58 (2008).

<sup>6</sup> Kathryn M. Young and Katie R. Billings, "An Intersectional Examination of U.S. Civil Justice Problems," 2023 *ULR* 487 (2023). Pruitt, L. R., Kool, A. L., Sudeall, L., Statz, M., Conway, D. M., & Haksgaard, H. (2018). Legal deserts: A multi-state perspective on rural access to justice. *Harv. L. & Pol'y Re.*, 13, 15.

### III. Prohibitions on the Unauthorized Practice of Law and the Criminalization of Legal Help

In the United States lawyers have a *de facto* monopoly on the practice of law. Every state prohibits the unauthorized practice of law (UPL) by non-lawyers and nearly every state criminalizes it.<sup>7</sup> At the same time, more lawyers is neither a realistic nor responsive solution to this crisis. Despite a four-fold increase in the number of lawyers over the last 50 years, the crisis has worsened.<sup>8</sup> And in many cases geographically embedded, culturally responsive, and linguistically proficient nonlawyer solutions are far preferable.

Evidence from the United States and other countries is clear that nonlawyer justice workers are as or more effective than lawyers and have the potential to both scale and empower communities.<sup>9</sup> Some narrow exceptions exist in the United States, for example, in Social Security, Veterans' Affairs and Immigration, where federal agencies have for decades relied on nonlawyers to meet people's justice needs, as well as carve outs like Tribal lay advocates operating in the hundreds of Tribal courts across the United States. Nevertheless, these examples are both under-researched and undertheorized as solutions to the access to justice crisis.

A few states have experimented with relaxing UPL prohibitions in various ways. For example, both Delaware and Texas allow nonlawyer justice workers to represent both landlords and tenants in eviction proceedings.<sup>10</sup> Domestic violence has for decades been an area where advocates have called for expanded, legally empowered roles for nonlawyer victim advocates.<sup>11</sup> In 2020, the Arizona Supreme Court issued an administrative order authorizing a Licensed Legal Advocate program, which allows domestic violence advocates to provide legal advice and support, including with orders of protection and other related family law issues, which was later expanded statewide in 2023.<sup>12</sup>

In addition to these more targeted interventions, two states – Utah and Alaska – have made far more sweeping reforms to empower justice workers. Utah launched the first, and currently only, legal services regulatory sandbox in the United States in 2020. The Utah sandbox allows entities to seek waivers of existing blanket unauthorized practice of law (UPL) prohibitions in favor of assessing applicants' risk of harming consumers and monitoring the impact of admitted entities' work on consumers.<sup>13</sup> So far, across over 45,000 services, the Utah Office of Legal Services Innovation has received a total of seven complaints related to the three harms, all of which have been investigated and resolved satisfactorily

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<sup>7</sup> National Center for Access to Justice, *Working with Your Hands Tied Behind Your Back: Non-Lawyer Perspectives on Legal Empowerment* (2021) at 5. Available at: <https://ncaj.org/working-your-hands-tied-behind-your-back>.

<sup>8</sup> Gillian K. Hadfield and Jamie Heine, Life in the law-thick world: The legal resource landscape for ordinary Americans. In: *Beyond Elite Law: Access to Civil Justice in America*. Cambridge University Press (2016).

<sup>9</sup> Rebecca L. Sandefur "Legal advice from nonlawyers: consumer demand, provider quality, and public harms." *Stan. JCR & CL* 16 (2020): 283.

<sup>10</sup> Delaware Supreme Court Rule 57.1; Tex. R. Civ. P. 500.4

<sup>11</sup> See, e.g. Catherine F. Klein and Leslye E Orloff, "Symposium on Domestic Violence: Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law," *Hofstra L. Rev.* 801 (Summer 1993); Margaret F. Brown, "Domestic Violence Advocates' Exposure to Liability for Engaging in the Unauthorized Practice of Law," 34 *Colum L.J. & Soc. Probs.* 279, 294-95 (2001); and Suzanne J. Schmitz, "Whats the Harm?: Rethinking the Role of Domestic Violence Advocates and the Unauthorized Practice of Law," 10 *Wm. & Mary J. Women & L.* 295 (2004).

<sup>12</sup> Arizona Supreme Court Administrative Order No. 2020-84; Arizona Supreme Court Administrative Order No. 2023-21.

<sup>13</sup> Matthew Burnett and Rebecca L. Sandefur, "Designing Just Solutions at Scale: Lawyerless Legal Services and Evidence-Based Regulation," *Direito Público*, 19(102) (2022).

from the perspective of both the affected consumer and the regulator.<sup>14</sup> In the Utah sandbox, nonprofits currently engage justice workers to help the public with a range of civil justice issues, including medical debt, domestic violence protection orders, and expungement, and innovative models such as embedding domestic violence legal advocates within municipal and county government agencies.

In Alaska, the Supreme Court last year was the first in the country to authorize a UPL waiver that allows Community Justice Workers trained and supervised by Alaska Legal Services Corporation (ALSC) to provide limited scope legal advice and representation without a law license.<sup>15</sup> To date ALSC has trained over 150 Community Justice Workers, with over 70 additional applicants currently underway. So far hundreds of cases have been handled by Community Justice Workers, many of whom are from and work in remote Alaska Native communities where there are no lawyers.

As these examples show, these solutions are not new, and broader reforms to UPL rules that allow more justice workers to serve low-income and marginalized communities have been profound. However, they are still the exception to the rule. These reforms must go further and do so with a greater sense of urgency. Meaningfully addressing the access to justice crisis in the United States requires a diverse and emboldened field of justice workers and an expansive view of justice work.

#### IV. Recommendations for Reform

Considering the examples and evidence above, we suggest the following recommendations for reform:

1. Law and justice are public goods. They should not be gatekept by private interests. Regulation of the practice of law – and by extension, access to justice – should be removed from the control of formal legal professions and placed in the hands of public regulators.
2. A growing body of empirical sociolegal research, some of it referenced above, reveals how justice and law are sought and experienced from a people-centered perspective, and how lawyerless legal services can be an effective route to accessing justice. Regulation of the practice of law should be informed by this evidence base.
3. Enabling people-centered access to justice should be a key goal of legal services regulation, and regulation's design should reflect people-centered principles.
4. Support the development of locally instigated, culturally and linguistically appropriate solutions; discourage centrally planned universal design in services. The current model of lawyer-centric and lawyer-led regulation entrenches estrangement of people from the law.
5. Encourage exploration of a range of regulatory reforms that create an enabling environment for people-centered justice services and legal empowerment. These may include waivers of unauthorized practice of law prohibitions, deregulation of certain types of practice, or evidence-based regulation.

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<sup>14</sup> Utah Office of Legal Services Innovation. 2023. Activity Report: March 2023.

<sup>15</sup> Alaska Bar Rule 43.5.

Respectfully submitted,

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