

The Clinician

UNIVERSITY OF MIAMI SCHOOL OF LAW HEALTH RIGHTS CLINIC

10 YEAR ANNIVERSARY CELEBRATION

SATURDAY, FEBRUARY 20, 2016 "Over 200 students, representing over 2000 clients, securing over \$3,000,000."

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Sometimes it Takes a Village: Health Rights Clinic Battles for Cancer Patient

Carlos Nuñez sits in the waiting room with his mother at Sylvester Comprehensive Cancer Center's pediatric oncology clinic, alex's place, at the University of Miami Miller School of Medicine. The walls of the pediatric hospital are covered with children's drawings, happy messages, and photographs of grateful children. The 22-year-old is here because he has a type of brain cancer that is more common in children than adults.

In early April, Carlos Nuñez, a junior college student at Indian River State College in Fort Pierce, Florida and part-time janitorial worker, was suffering from migraines, dizziness, and vertigo. His doctor thought Nuñez might have an ear infection but, being thorough, also ordered a MRI.

Between the time of the office visit and the scheduled MRI, Nuñez's mother, Carmen, became concerned — her son, and first born, was having lots of problems with his balance. She took him to the local emergency room, where a CAT scan revealed a sizable mass. He was soon diagnosed with a cancerous brain tumor.

Nuñez was referred to Sylvester, part of UHealth, the University of Miami Health Care System, for surgery and follow up. He has had laser surgery to remove the tumor, completed thirty treatments of radiation; chemotherapy is ongoing.

Mrs. Nuñez quit her janitorial job to care for her oldest son, bringing him to Miami for treatment and caring for him at home. Carlos is still too sick to be left alone. The loss of both her and Carlos's income caused the family (Carlos has two sisters) to fall into financial hardship; their father's support from his construction job in Orlando was not enough to keep the family solvent.

Nuñez applied for Social Security Disability payments — which would automatically kick in Medicaid as well — and was denied. He reapplied and again was denied.

"I couldn't believe when the doctor told me I had to stop working and going to school, and then my mother had to stop working to help me," Nuñez said. "Luckily our van is doing okay, but the driving up and back is a lot more than



Carmen and Carlos Nuñez

we usually drive. We started falling behind very quickly on rent and food and things we need."

Fortuitous timing

The School of Law's Associate Director of the Health Rights Clinic Melissa Swain makes presentations about securing benefits to medical groups.

"We had just presented to the medical providers at alex's place a few days earlier," said Swain. "We give presentations to groups at the medical school several times a year as a way to keep the Medical-Legal Partnership active. Since we started in 2005 we have assisted over 1,000 patients obtain their rightful government disability payments and health insurance."

In the audience that day was Ida Rodriguez, a clinical social worker at alex's place. Minutes after Rodriguez placed a call to the Health Rights Clinic about Nuñez's case, a team was en route to the medical campus.

"Things like this always take forever, even with groups like Legal Aid, where there is a lot of red tape," said Rodriguez. "The people from the clinic were here the same day I called."

Second-year law student Princess Manasseh, a 6'1" Los Angeles native, and 6'4 Gulliver High School junior Alaz

Sengul, who was in a summer program at the law clinic, met with Carlos and his mother that afternoon. Manasseh speaks Spanish fluently and was able to communicate with Mrs. Nuñez, who is from Puerto Rico and has a limited understanding of English. Sengul's mother is a professor and cancer researcher at UM's Miller School of Medicine; and Sengul has a strong interest in science.

From the start, supervising attorneys at the clinic felt that Social Security had not even done a cursory examination of the application and they pushed, through Manasseh and Sengul, to have the case reviewed without sending it to hearing.

"From the first time I met Carlos, I could tell he had a resilient spirit," Manasseh said. "Once I heard his story and understood how unfair his denial was, I was extremely angered. I was mad at the system and I became determined not to let Carlos be a victim of that system. It made me fight that much harder to secure disability payments for this client that was truly in need of, and entitled to, these benefits."

Sengul helped by creating a simple one-page form for Nuñez's doctor that simplified the Social Security disability criteria to a series of boxes to check and a line for a signature – it is already becoming a standard document in brain cancer cases – a figurative smoking gun record.

"The Carlos Nuñez case was a truly moving case because it exemplified the influence a lawyer can have in ensuring basic necessities to those who desperately need it," said Sengul. "I pushed myself for this case because it was not a matter of Social Security acting within the law, but instead a matter of life and death. Carlos needed aid as soon as possible, and he was counting on us at the clinic to help him receive necessary treatment. This situation helped me understand the impact my work can have on our community."

Manasseh worked the file and worked the phones pushing Nuñez's case up the bureaucratic ladder. In less than a

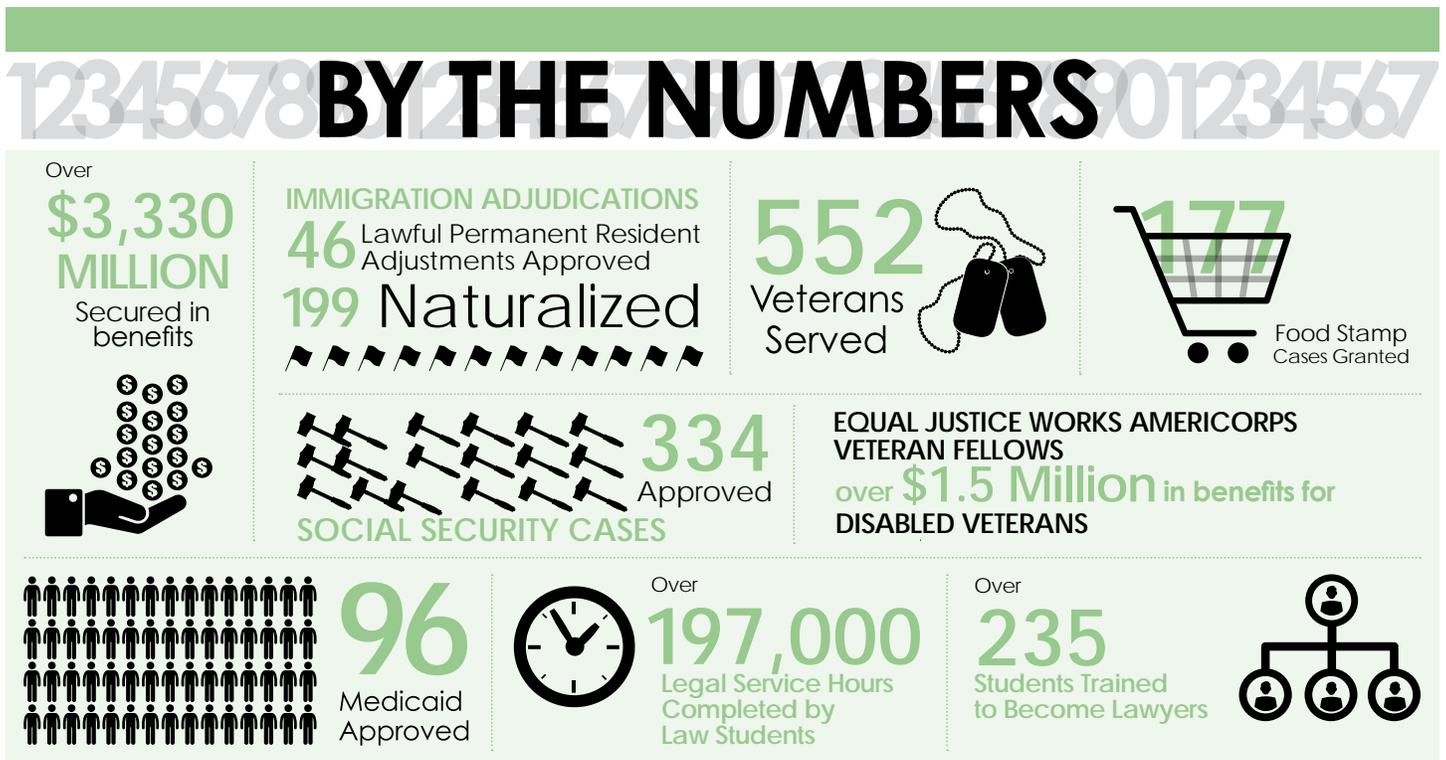
month of pleading, threatening, cajoling, and being very, very pushy, they got Carlos's case reopened and awarded monthly disability payments. The Social Security award also triggered Medicaid.

"We are pleasantly stunned by the outcome Princess and Alaz were able to secure for Carlos," Swain said. "It is unheard of to have a denied case reopened and approved, and never in 30-days. The best we can usually hope for is to maybe get a case expedited through the hearing process. Florida is the slowest region in the country hearing cases — most as long as two years — with final decisions judgments nearing the four-year mark from application. Princess seemed to have been deaf to the word no. Every time she heard it, she asked for the next supervisor until she got her way."

Nuñez is still in a long battle with cancer, but his burden is lightened somewhat by not having to fight on the financial front as well. He only has cancer to worry about.

"Now I can focus all of my attention on getting better. I am getting Medicaid, and the social security payments so we are able to catch up on rent, and buy food and necessities," Nuñez said. "I so appreciate Princess' and Alaz's help. When I told my mom I was getting the payments, she said, 'Gracias a Dios!'"

"So much of best outcomes are tied to the patient's mental state; having a positive frame of mind is half the battle. Being freed of some of the worry for the family's well-being helps any patient's recovery," said Rodríguez. "And Carlos is such a likeable person; he has goals, he is organized, he takes his treatment very seriously. And he is so generous."



Health Rights Clinic Files Federal Suit Against Social Security Administration

By Catharine Skipp

The attorneys and certified legal interns from Miami Law's Health Rights Clinic have filed a federal suit against the Social Security Administration on behalf of 12 indigent and disabled clients who have been waiting as long as 26 months to secure a hearing or receive rulings from a Social Security judge.

The suit asks the government to compel the Social Security Administration to "promptly schedule, hear, and adjudicate" the claims of their clients.

Eleven are U.S. citizens and one is a legal resident; they range in age from 62 years old to a 14-year-old boy. They have all been initially denied either Supplemental Security Income or Social Security Disability and are awaiting a hearing before a federal Administrative Law Judge.

One of the twelve is Maria del Carmen Ruiz, a 62-year-old woman who is suffering from years of physical and emotional abuse; she has been waiting for 26 months for a hearing to be scheduled.

"The delay defeats the Social Security's purpose of helping to keep people from poverty, and, in the case our clients, has the harshest impact on the poorest population. Miami has one of the highest poverty rates in the country, which makes the extreme delay in Miami that much more unfair," said JoNel Newman, Director of the Health Rights Clinic.

Miami has the longest wait times in the country. "We don't know exactly why this is the case," said Zach Lipshultz, a third-year law student in the Clinic, who is working on the case. "It might be due to a lack of administrative judges, or staffing, or something else with Social Security. It might also relate to the extreme poverty and extreme need for disability benefits in Miami-Dade County."

In Florida, the overwhelming number of applications is denied (70% of initial applications and 90% on reconsideration); thereafter, the applicant is entitled to a hearing before an administrative law judge. The hearing is the only point in process where the applicant can present witnesses, and is the stage where the process is most favorable to the applicant. Nationally, over 76% of cases heard by Administrative Law Judges in 2010 were favorable to the applicant.

"Comparing the average wait time in Miami to other cities, Social Security applicants here endure delays that are substantially longer than anywhere else in the United States," said Taylor Schmaltz, a third-year law student in the Clinic who is working on the case. Wait times to appear



Ian McKenzie, Brasilia Echevarria and Zachary Lipshultz

before a judge in Miami average almost two years; the next worst city in the nation's wait time – Washington, D.C. – is a year-and-a-half.

Lead plaintiff, Bridgette Johnson, has been waiting more than two years and still has not seen a judge. "It has been very difficult to make ends meet during the 26 months I have had to wait for Social Security to hear my case," Johnson said. "I now try to work a few days every month just to get by. This causes me much pain, but I don't feel I have any other option."

Once Social Security benefits are granted, the person also qualifies for Medicaid. "The impact of the delay is incredibly harsh in Miami, because in Florida there is no Medicaid expansion," said Ian McKenzie, a third-year law student and Certified Legal Intern in the Clinic who is also working on the case. "As a result, the only way for a disabled, impoverished adult in Florida to receive health insurance is to have their disability case adjudicated and approved by Social Security. We have many clients in the Clinic who go without adequate health care for years because of these delays."

Another client, Maria del Carmen Ruiz has been unable to work for several years and suffers from multiple chronic diseases. She fits the criteria for entitlement for disability benefits. As a result of the delay, she is unable to afford her medication and her condition has worsened. Such is the case with all of the plaintiffs represented by the lawyers and students from the Health Rights Clinic.

Melissa Swain, Assistant Director of the Health Rights Clinic, said, moving forward, "the lawsuit is being served, and the Government has 60 days to answer."

Zachary Lipshultz Named Young Advocate of the Year by Florida CHAIN

FL CHAIN members and Zachary Lipshultz



Florida CHAIN honored third-year law student Zachary Lipshultz with its first Young Advocate Award on September 17, 2015 for his advocacy work at Miami Law's Health Rights Clinic. The Health Rights Clinic helps impoverished Floridians who have been denied access to health care receive much-needed services. Florida CHAIN (Community Health Action Information Network) presented the award at the non-profit's inaugural annual conference, Moving Together in a New Era of Healthcare.

The Young Advocate Award honors individuals under the age of 25 who have "shown extraordinary leadership, mobilization, and education of other youth in the area of healthcare advocacy."

"I cannot think of an individual more deserving of this award," said JoNel Newman, Director of the Clinic. "In his first few months at the Clinic, Zach secured over \$16,000 in welfare entitlements and

Medicaid benefits for a client who had been wrongfully denied for three years."

Under the guidance of Director Newman, Zach worked as a student advocate helping low-income patients receive much-needed services. He spearheaded a team of law students that produced a step-by-step guide to navigating Miami-Dade's healthcare system. This guide serves not only as a valuable aid to impoverished Floridians struggling to access the system, but also as a long overdue educational resource for medical professionals working from within the system.

Zach conducted extensive research on a variety of current issues including the shortfalls of the Miami-Dade Prison intake screening procedures. He also worked closely with surgeons at both the University of Miami and Jackson Memorial Hospital to improve policies addressing vulnerable populations who have been denied access to necessary procedures.

Zach continues to demonstrate his exemplary commitment to educating other youth as a Clinic Fellow where he mentors second-year law students. In addition, he is an integral member of the Clinic's Litigation Team representing over a dozen clients in an upcoming suit against the Social Security Administration.

From Unaccompanied Minor to Lawful Permanent Resident

On August 25, 2015, 5 year-old Yoselin Pavon went from undocumented unaccompanied minor to United States Lawful Permanent Resident when US Customs and Immigration Services (USCIS) approved her application for residency as a Special Immigrant Juvenile (SIJ). Special Immigrant Juvenile is a unique classification granted to children who are unlawfully present in the United States in need of humanitarian protection because they have been abused, abandoned and/or neglected by their parents. Before a child can be granted SIJ status by USCIS, a Dependency Court judge must make a determination that the child was in fact abused, abandoned and/or neglected and adjudicate them dependent.

Yoselin entered the United States through Texas from Mexico alone at 9 months old. Her mother handed her over to coyote smugglers at the border who later held Yoselin for ransom from her maternal grandmother. Yoselin has been in her grandmother's care since then and has maintained very limited contact with her mother and no contact at all with her father. Both of her parents remain in Mexico and have not made any efforts to reunite with Yoselin.

Yoselin came to the Health Rights Clinic through the Pediatric Mobile Clinic, which is one of the Health Right's Clinic medical-legal partnership sites. Through client interview with her grandmother, the Clinic was able to determine that Yoselin could be eligible to adjust her immigration status through the SIJ process. A Petition for Dependency in the Miami-Dade County Dependency Court was filed earlier this year. The Honorable Circuit Judge Hanzman granted the petition and Yoselin was adjudicated dependent. With Judge Hanzman's order the Clinic was able to then file for SIJ status and permanent residency with USCIS, ultimately changing Yoselin's immigration status and life forever.



Yoselin Pavon

HRC summer team



(L to R) Nicole Pecorella, Devon Frampton, Andrew Sarangoulis, Princess Manasseh, Luiz Miranda, Marlon Baquedano

HRC fall-spring team



Back (L to R) Jean Phillip Shami, Ian McKenzie, Princess Manasseh, Elijah Waring, Rafael Mas, Paul Witkiewitz Front (L to R) Issac Riddle, Sarah Bujold, Brittany Stockman, Linet Suarez, Anthony Moreland, Ilexis Mazer, Kelly Shami, Stephanie Erickson

HRC new hires



Erin Hoover is the Health Rights Clinic's newest hire as an attorney and Equal Justice Works AmeriCorps Fellow with the Health Rights Clinic. During her second year in law school, Erin was a legal intern in the Health Rights Clinic, where she assisted health-impaired clients with Social Security, Immigration, and Public Benefits

cases. Erin was also selected to be a clinical fellow the following summer, during which time she supervised legal interns and served as an AmeriCorps JD by providing legal assistance to low-income and disabled veterans.

As a third year student, Erin continued her career in public service by interning with the City of Sunny Isles Beach and with the Everglades Law Center. She also was a member of the Race and Social Justice Law Review. Erin received her J.D. from University of Miami in 2015 and her B.S. from the University of North Florida in 2011. Erin was a Division One Soccer player as an undergraduate and captained the Deans Cup women's soccer team during law school.



The Health Rights Clinic is pleased to announce that **Ryan Foley, JD '13**, will be continuing his work at University of Miami Law School with the Veterans Rights Project. During his tenure as an Equal Justice Works AmeriCorps Fellow, Foley developed a close partnership with Carrfour Supportive Housing's veteran program Operation

Sacred Trust, a non-profit organization focused on ending and preventing homelessness for veterans and their families. With his Fellowship coming to an end, Foley reached out to the organization to find a way to continue his work. Not wanting to lose the services provided by Foley, Carrfour agreed to support a new position within the Health Rights Clinic. Foley now the Director of Legal Assistance for Operation Sacred Trust and Project Leader for the Veteran Rights Project. The Health Rights Clinic cannot thank Carrfour Supportive Housing and Operation Sacred Trust enough for their commitment to help the veteran community and for their incredible support in helping keep Ryan part of the Health Rights Clinic team.

SAVE THE DATE

Saturday, February 20, 2016

HEALTH RIGHTS CLINIC 10 YEAR ANNIVERSARY CELEBRATION

10 years teaching, scholarship and legal assistance to the community.

2:00 - 5:00 p.m.

CLE Ethics Program in E352

Friday night Happy Hour for those in town,
Location TBA.

5:00 - 8:00 p.m.

Reception and awards presentation on the Bass Bricks

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Brian Toth is associate in the litigation department at Holland & Knight in Miami. He practices media law (defending newspapers and journalists in libel actions), class-action defense, and commercial litigation. He also represents persons pro bono in various kinds of matters -- including having obtained Special Immigrant Juvenile Status for a Salvadoran boy and, most recently, having defended a Haitian journalist in a libel action in federal court.

"The clinic prepared me well to be a lawyer, chiefly because the work I did in the clinic is a lot like the work I do now. For example, in the clinic, Professor Newman and I represented a woman who was facing eviction from public housing for not having paid an alleged debt that she was never told about until she received the eviction notice. We interviewed the client, came up with a strategy (laches), and put on our case at an evidentiary hearing. As a practicing lawyer -- whether I'm representing a big company or a person pro bono -- the approach that I take to a matter is essentially the same. The clinic helped me learn the practice of law."

"Plus, I got good, hands-on experience in the clinic. When I graduated law school, I had already handled three evidentiary hearings. Preparing for those hearings, going through them, and obtaining the results -- two positive, one negative -- were formative experiences."

Brian graduated magna cum laude from the University of Miami School of Law in 2008.



Joy Purcell joined the U.S. Department of Education's New York Office for Civil Rights in 2014. As an attorney at OCR she investigates complaints filed against educational institutions alleging civil rights violations. Prior to joining OCR, Ms. Purcell represented parents of children with special needs in education, housing, and access to healthcare cases at a legal services office in Washington, D.C. Ms. Purcell attended law school at the University of Miami School of Law where she graduated magna cum laude. She graduated from New York University, magna cum laude, with a B.A. in Politics and Latin American Studies.

When I entered law school I knew that I wanted to devote my career to public interest law. During my 2L and 3L years I participated in the Health Rights Clinic where I gained invaluable experience in direct legal services that established my career path. My time in the Health Rights Clinic certainly strengthened my passion for direct legal services, but it also gave me the practical lawyering skills I needed to obtain summer internships and ultimately my first job as a civil legal services attorney in Washington, D.C. By the time I graduated law school I had already represented dozens of clients in a variety of cases. Among my many experiences in the Health Rights Clinic, I represented clients in various administrative hearings and drafted an appellate brief.

As a law student in the Health Rights Clinic I came to understand the impact that poverty had on the outcomes of my clients lives, especially with regard to its impact on their health and education. While working as a civil legal services attorney, I was inspired daily by my clients and their belief that a quality education was the path out of generational poverty for their children. I carry this same belief with me in my current position as an attorney at the U.S. Department of Education's Office for Civil Rights and am motivated to ensure that all students have equal access to education free from discrimination.

Jennie Kennedy serves as Chief of Staff and General Counsel to Texas State Representative Celia Israel. During the 2015 Texas Legislative Session, Jennie worked on a range of issues, including bipartisan legislation to increase transparency regarding the care of inmates pregnant in county jails across the state. "The Health Rights Clinic was a critical part of my legal education. From writing memos to arguing in front of a judge, Professor Newman ensured her students left the University of Miami School of Law with real-world lawyering skills," Jennie said. As an intern and a fellow with the Health Rights Clinic during law school, Jennie advocated for low-income, HIV-positive clients, focusing on immigration proceedings and Social Security appeals.

"It wasn't just the skills we learned," Jennie said. "Professor Newman has a talent for helping each student find a niche within the clinic. I had been interested in cross-disciplinary partnerships, and she worked with me to provide presentations to physicians and medical students about how they can critically impact the legal cases of patients living in poverty. The Clinic taught me to how to direct good intentions into positive actions for the community."

Jennie continues to represent asylum clients on a pro bono basis for American Gateways, which nominated her for the Access to Justice Award for 2012 and 2014. She also serves on the board of the Center for Child Protection in Austin. Jennie received her J.D. summa cum laude and was a member of the Order of the Coif, Senior Articles Editor for the University of Miami Law Review, a Dean's Fellow, and a University of Miami Scholar. Since graduation, Jennie worked as an associate at Hunton & Williams LLP, where she twice received the E. Randolph Williams Award for Outstanding Pro Bono Service, becoming director of public policy for the University of North Texas System.

The **HEALTH RIGHTS CLINIC** is a Medical-Legal Partnership operated in collaboration with the University of Miami Miller School of Medicine. The Clinic represents underserved client populations.

REPRESENTATION IS FOCUSED ON THE FOLLOWING PRIORITY AREAS:

- **Social Security & Public Benefits**
- **Immigration**
- **Advance Directives**
- **Veterans Benefits**

The Clinic is one of the first Medical-Legal Partnership in the country to offer diversified support for underserved populations with a coordinated care model targeting unmet legal, medical, psychiatric and social support needs.

MAKE A GIFT TO THE HEALTH RIGHTS CLINIC TODAY! Join the effort to create a lasting impact on the communities served and help to expand legal resources in low-income and underserved populations in Miami.



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For more information on Miami Law visit www.law.miami.edu or call Georgina A. Angones, Assistant Dean, Advancement 1.866.99UMLAW

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BRIDGING THE GAP BETWEEN PATIENT AND CLIENT

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Ph: 305.284.3951 | Fax: 305.284.6407

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