

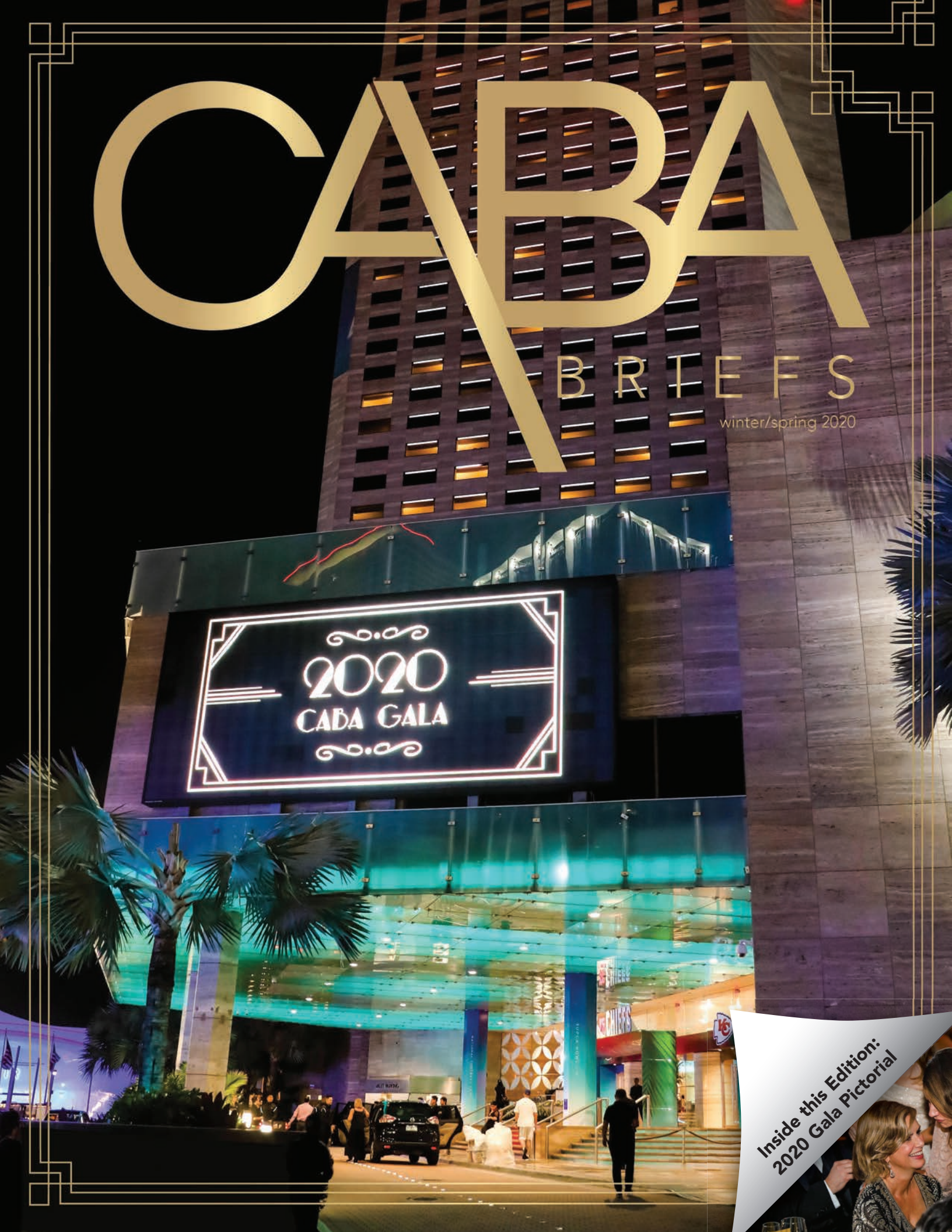
# CABA

BRIEFS

winter/spring 2020

2020  
CABA GALA

Inside this Edition:  
2020 Gala Pictorial





Congratulations to our own

## Frances Guasch De La Guardia

the Cuban American Bar Association's 2020 president.

Holland & Knight is proud of our decades-long tradition of supporting the Cuban American community across Florida. Our partners are dedicated to advancing and participating in CABA, with five serving as president – the most of any law firm.

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Current and former CABA presidents from Holland & Knight include, from left: Annie Gamez, Frances Guasch De La Guardia, Vivian de las Cuevas-Díaz and Raul Cosío. Jorge Hernandez-Toraño (not pictured) is also a former CABA president.

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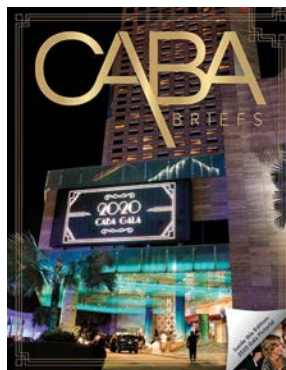
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Featured on the cover is  
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# Meet the BOARD

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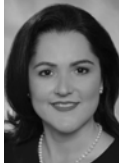
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WINTER/SPRING 2020 | PRINTED IN THE USA

CABA Briefs is published bi-annually by the Cuban American Bar Association, Inc. ("CABA"). CABA is a non-profit voluntary bar association founded in 1974 by lawyers of Cuban descent. CABA's members include judges, lawyers, and law students of all backgrounds interested in issues affecting the Cuban community, as well as broader legal and human rights issues impacting minority communities as a whole. CABA's mission is to promote equality of our members; increase diversity in the judiciary and legal community; serve the public interest by increasing awareness to the study of jurisprudence; foster respect for the law; preserve high standards of integrity, honor, and professional courtesy among our peers; provide equal access

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## President's MESSAGE



Foremost, I hope this message finds all of you safe and healthy. As of the writing of this statement, we find ourselves facing unprecedented times in the history of our lives: a global pandemic has transformed the way we work, travel and engage with each other. Indeed, the global pandemic, COVID-19, has altered the very way we live and interact. The phrases “social-distancing,” “flattening the curve,” and “self-isolation” have become part of our everyday lives and vernacular. Together, however, we will navigate these uncertain times and persevere.

Due to the need for social distancing, CABA will be postponing some of its events that are planned for this spring and summer and we hope to return to our regular or modified programs and content soon thereafter. In the interim, please cherish and take advantage of this extra time with your family and strengthen those special bonds. Also, we implore you to please heed all the recommendations and warnings of the experts and stay home, if required to do so. Together we can flatten the curve and make a difference and most importantly protect the most vulnerable of

our community. The life you save by staying home, and not passing on the virus, may be that of your mothers, your grandparents, or your vulnerable relatives and neighbors. My fondest wish is that by the time you read this message that the worst of this crisis will be over with all of you safe and sound.

On behalf of CABA, the board of directors, and our members: I want to thank you for making the 2020 CABA Gala a truly exceptional night. Your support and sponsorships enabled us to secure a record-setting amount of funding to assist and improve the lives of those less fortunate. Due to your generosity, CABA raised over \$120,000 combined for CABA Foundation and CABA Pro Bono. Additionally, the 2020 GALA set a record in attendance with over 1,100 guests many of who stayed late into the night and early morning. We had rave reviews and it is all thanks to your generosity and support. This year we had many exciting events planned, both networking and fundraising, and our hope is to bring those to you once it is deemed safe to do so. COVID-19 has certainly affected our programming, but it has not stopped our efforts to continue to provide you with excellent programming. The board of directors is meeting regularly via tele-conferencing and we are adapting our programming to include virtual events focused on helping the community, which will include discussing mental health issues.

It is truly my privilege to serve CABA and I pledge to meet this challenge head on. My plan for CABA during these unprecedented times, in which all our lives have been dramatically disrupted, is to adapt and utilize our resources, and that of our members, more so than ever before, to promote our mission to help those less fortunate in our community. Today, we are all being called upon to commit in a different way and I hope we can all rise to the challenge together. Stay tuned and stay safe.

Finally, I would like to introduce you to the CABA Briefs new 2020 editorial staff: Diana Arteaga (Editor in Chief), Candice Balmori (Co-Editor) and Daniel Buigas (Ads Editor). CABA Briefs is in exceptional hands. Enjoy the Winter/Spring Issue.

Best,

A handwritten signature in black ink that reads "Frances Guast De La Guardia". The signature is written in a cursive, flowing style.

Frances  
CABA 2020 *President*

## Editor-In-Chief's MESSAGE



Dear CABA Members:

We are thrilled to present the Winter/Spring issue of CABA Briefs for your enjoyment. This issue commemorates the 2020 CABA Gala and includes a review of our recent events. Additionally, you will find articles that touch on the changing judicial and political landscape, the invaluable work of CABA Pro Bono Legal Services, and CABA's growing presence on law school campuses.

I would like to thank the CABA Briefs committee members as well as Candice Balmori and the other co-chairs for their work on this issue. A special thanks to our Ads Editor Daniel Buigas and our Assistant Editors Sixsy Alfonso, Sammy Epelbaum, Jesus Gonzalez, Lia Lopez, and William Mueller for their commitment to making this issue a reality in light of all of the obstacles and interruptions in operations caused by the coronavirus.

As part of CABA's efforts to continue programming and content for our members in compliance with all social-distancing guidelines, this issue of CABA Briefs will be a special electronic-only version. Previous issues

are also available electronically for our members on CABA's website.

We appreciate the support shown by our members and community who have contributed to this edition and look forward to working with you on our next edition.

Thank you,

A handwritten signature in black ink that reads "Diana Arteaga". The signature is fluid and cursive.

Diana Arteaga  
*Editor-in-Chief*



2019



2018



2017



2006

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# USCIS Expands Definition of “Public Charge”

By Eric Hernandez and Eva Spahn

On February 24, 2020, after overcoming various legal injunctions,<sup>1</sup> US. Citizenship & Immigration Services (“USCIS”) implemented<sup>2</sup> the “Inadmissibility on Public Charge Grounds” final rule (the “Final Rule”).<sup>3</sup> As further explained below, the Final Rule modifies the standard for the Department of Homeland Security (“DHS”) to determine when an individual is inadmissible and ineligible for admission into the U.S.

or an adjustment of immigration status because they are “likely at any time to become a public charge.”

Prior to the Final Rule going into effect, “public charge” was defined as a person “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.” Under the prior rule, DHS could

focus on the applicant sponsor’s income when determining whether an applicant was likely to become a public charge.

The Final Rule instructs DHS to consider and weigh certain factors to determine whether in the “totality of the alien’s circumstances” the applicant is likely to become a public charge.

The Final Rule shifts DHS’s focus from the applicant sponsor’s





income to the applicant's future earning potential based on their financial status, age, health, family status, assets, resources, education, skills, prospective immigration status, and expected period of admission.

In addition, it changes the analysis from whether an individual might become "primarily dependent" on a government benefit to whether that individual is "more likely than not" to receive certain government benefits for more than 12-months in the aggregate within any 36-month period. These benefits include, supplemental security income, temporary assistance for needy families, federally funded Medicaid (with certain exclusions), food stamps, and public housing. Other benefits, such as disaster relief benefits, emergency medical assistance, national school lunch programs, energy assistance, food pantries, and homeless shelters, are excluded.

While the Final Rule pertains to those applying for a green card, to extend their stay, or to change their status from within the U.S., the Department of State has extended this application to those applying from *outside* the United States.<sup>4</sup> It exempts refugees, asylees, Afghans and Iraqis with special immigrant

visas, certain nonimmigrant victims of crimes and trafficking, applicants filing under the Violence Against Woman Act or for Special Immigrant Juvenile Status, those who DHS has granted a waiver of public charge inadmissibility, and permanent residents applying for naturalization, renewing their green card, or applying to remove conditions on their permanent residency.

In sum, the Final Rule makes it harder for some applicants to obtain a green card despite their family's ability to support them and will likely cause DHS to categorize more applicants as inadmissible.

<sup>1</sup> See *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599 (2020); *Wolf v. Cook Cty.*, 206 L.Ed.2d 142, 142 (U.S. 2020).

<sup>2</sup> U.S. Citizenship and Immigr. Servs., *Public Charge* (Mar. 13, 2020), <https://www.uscis.gov/greencard/public-charge>.

<sup>3</sup> Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019).

<sup>4</sup> U.S. Dep't of State, *Information on Public Charge* (Feb. 26, 2020), <https://travel.state.gov/content/travel/en/traveladvisories/ea/Information-on-Public-Charge.html>.



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**Eva Spahn** is an attorney at Greenberg Traurig, P.A.



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# CABA PRO BONO'S 35TH ANNIVERSARY

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By Viviana Mendiola, Esq.



10

On December 11, 2019, CABA Pro Bono celebrated its 35<sup>th</sup> anniversary with a party at Holland & Knight, meant not only to acknowledge the organization's long tenure, but also to celebrate the people who made its achievements possible.

CABA Pro Bono Legal Services began in 1984, when Jose Garrido, a past president of CABA Pro Bono Project, saw the need of Spanish speakers in the community who did not have access to legal representation. A group of attorneys gathered, united by one passion: to

help the disadvantaged by providing pro bono representation.

In 2006, CABA Pro Bono's serving president, Manuel L. Crespo, advocated for the project to become its own entity, establishing it as a 501c3 nonprofit organization, with its own board members and permanent physical location in Little Havana at the nonprofit Abriendo Puertas. Here, Mr. Crespo set up shop, painting the walls, redoing the floors and hiring its first employee, Maria Jacqueline Rodriguez, who is currently still employed and working hard for them. CABA

Pro Bono remained at this office until 2008, before relocating to a location near the Orange Bowl. In 2009, under executive director Raul Flores, CABA Pro Bono hired its first staff attorney to handle foreclosure cases in house. Before this, CABA Pro Bono referred all cases to volunteer attorneys. CABA Pro Bono continued to grow with the hard work of many, including past president, Sandra Ferrera, who served as the Pro Bono Chair for many years.

In 2013, under the leadership of executive director Lesley Mendoza,

CABA Pro Bono moved to its current offices at 2400 South Dixie Highway and added another staff attorney. At that time, the immigrant children's program ("Mi Futuro") was created to benefit abused, abandoned, and/or neglected immigrant children. This program has represented over 1,200 immigrant children since its inception. CABA Pro Bono continued growing and adding additional staff and staff attorneys. In 2014, "Podemos" was created to provide legal and holistic representation to victims of domestic violence. By 2015, CABA Pro Bono added a third program for victims of human trafficking. In 2019, the Veteran's Representation Program was created to address the unmet needs of veterans participating in Miami-Dade Veterans Court. Also in 2019, CABA Pro Bono received a grant from the Florida Bar Foundation to strengthen its pro bono efforts. Currently, CABA Pro Bono employs 8 attorneys and 4 staff members.

None of this would have been possible without the generous

support and time dedicated to fundraising by so many of CABA & CABA Pro Bono's past presidents and board members. Vivian de las Cuevas held the first Art in the Tropics to raise funds for CABA Pro Bono in 2005. Isabel Diaz and Yara Lorenzo organized the first CABA Pro Bono 5K. Giselle Gutierrez organized the first CABA Marlins Night in 2016. Maria D. Garcia traveled annually to our State Capital for close to 10 years, each time accompanied by many other board members to advocate for increased funding of CABA Pro Bono. Her efforts paid off as each year the legislature increased CABA Pro Bono's funding.

In its 35 years, CABA Pro Bono has provided indispensable relief to individuals in their cases ranging from sex trafficking to domestic violence to foster children to immigration and much more. CABA Pro Bono has expanded its services for veterans in family law matters and to children who are victims of neglect and abuse by focusing on

delivering quality representation. The work of its dedicated staff is of immeasurable value to the community as a whole and to the individuals who receive their help. The need for legal representation is growing but with the help of CABA Pro Bono and its volunteers, the community will continue to find much needed relief.



**Viviana Mendiola, Esq.** joined CABA Pro Bono Legal Services in June 2019, as Pro Bono Director. She is responsible for recruiting, mentoring, and training volunteer attorneys. In her role, she also uses technology to develop innovative pro bono programs and initiatives and tracks the outcomes of pro bono cases.

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1. American Bar Association Section of Legal Education and Admissions to the Bar, 2020

2. American Bar Association data on Class of 2018 long-term employment; excludes non-professional and school-funded jobs

3. *The National Jurist*, Fall 2019

# Pro Bono Becomes Personal

---

By Viviana Mendiola, Esq.

Several months ago, I began my tenure as the pro bono director of CABA Pro Bono Legal Services. Before then, I had experienced the profound chasm between our community's needs and access to justice when I worked with self-represented litigants in Family Court and as a volunteer at Miami-Dade County's Law Library.

service with CABA Pro Bono Legal Services, including the opportunity to gain experience while helping vulnerable members of our community, meet other practitioners and judges, be recognized in social media, and obtain CLE credits. I also invoke Florida's aspirational Rule 4-6.1(a) regarding pro bono public service, which provides that all

and his sister in Cuba was the beneficiary. The purpose of the petition was to bring my client's sister to the U.S. to address issues related to the death of her mother. My client, his sister and I had only just learned that their parent, a U.S. Citizen, had unexpectedly died due to complications resulting from a car accident.

*"Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever-increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made fulfilling the responsibilities of community service quite difficult. But public service marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure." – Justice Sandra Day O'Connor, 78 Or. L. Rev. 385, 391 (1999).*

My main duty is straightforward: to recruit and mentor volunteer attorneys to provide free legal services to a greater number of children, individuals and families in need. In support of this, I regularly recite the benefits of pro bono

Florida lawyers should provide pro bono legal services to the poor.

Shortly after I was hired, a death in my family caused me to unexpectedly represent a family member on a pro bono basis. My client was a petitioner for Humanitarian Parole,

Humanitarian Parole is an extraordinary measure sparingly used to bring an otherwise inadmissible alien into the United States for a temporary period due to a compelling emergency. Parole is governed by numerous laws



and regulations, including Section 212(d)(5) of the Immigration and Nationality Act, Sections 402 and 421 of the Homeland Security Act of 2002, and Title 8, Code of Federal Regulations, Section 212.5. As may be gleaned, obtaining Humanitarian Parole can be challenging, yet the facts of my client's case were compelling and seemingly worthy of an extraordinary measure. I communicated with my client urgently and often, assembling an arsenal of documents to submit in support of the petition for Humanitarian Parole. Ultimately, my client's petition was granted, and his sister flew from Havana to Miami and back to attend to their deceased parent's affairs.

My experience deepened my resolve to make legal services accessible to more and more members of our community. Assuaging my client's

grief vis-a-vis my volunteer legal work resulted in the most personally satisfying professional experience I have had to date, and that is why I am sharing this.

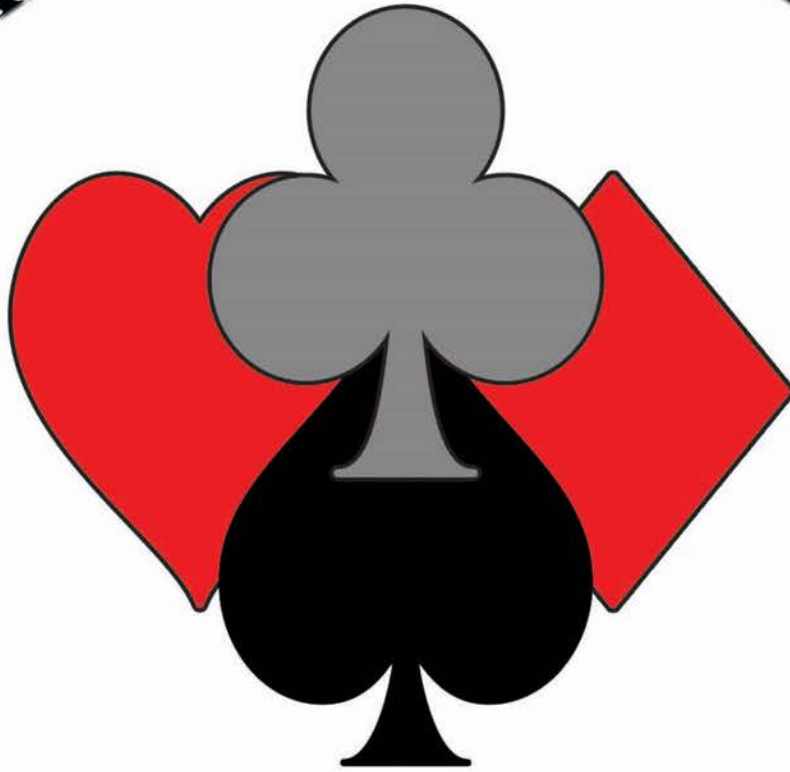
Areas of pro bono practice we work in include immigration law, veterans' issues, human trafficking, domestic violence and family law. What CABA Pro Bono Legal Services can offer you is what they offered me when I stepped up to take my relative's case: skilled staff members who guide you with consistency and empathy. I invite you to consider volunteering with us. If you are interested in serving as a pro bono advocate, please email me at [vivianam@cabaprobono.com](mailto:vivianam@cabaprobono.com). We invite you to participate at a half-day clinic or at one of our other limited, short-term volunteer opportunities, or by taking a case!



**Viviana Mendiola, Esq.** joined CABA Pro Bono Legal Services in June 2019, as Pro Bono Director. She is responsible for recruiting, mentoring, and training volunteer attorneys. In her role, she also uses technology to develop innovative pro bono programs and initiatives and tracks the outcomes of pro bono cases.



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# CASBA - St. Thomas University School of Law

Yunis Curbelo and Sulany Perez

In 2006, two St. Thomas University law students founded the CABA Chapter of St. Thomas University School of Law ("St. Thomas"); indeed, our organization coined the

term *CASBA*, meaning the Cuban American *Student* Bar Association ("CASBA"). Since its inception, CASBA has been dedicated to assimilating the CABA community

with the St. Thomas law student body.

As a St. Thomas organization, CASBA is dedicated to cultivating Cuban American culture by providing our student-members with a forum to interact with fellow students, faculty, and staff members; to promoting volunteer activities and pro bono representation in South Florida on behalf of the students; and to providing opportunities to connect with CASBA alumni and current CABA members as we all accomplish two common goals: to obtain a post-graduate job and to maintain connections that last a lifetime.

As one of the local Miami Chapters, CASBA has been highly involved with CABA and the various networking opportunities that CABA provides. St. Thomas CASBA members have had the opportunity to gain pro bono hours, network with CABA members, and be involved in the legal community as a whole.

The CASBA Chapter promotes CABA events to our student-members, including the Young Lawyers Network event, Desayuno con CABA, and CABA Pro Bono Legal Services. Additionally, CASBA has often volunteered at the Marlins Game Night and the CABA Gala. This year, CASBA President, Yunis Curbelo, and Vice-President, Sulany Perez, worked one-on-one with CABA in order to obtain volunteers for the remarkable 2020 CABA Gala. As a Chapter, not only did we obtain twice the number of volunteers



from the previous years, but we were also able to witness the installation of Frances Guasch De La Guardia, a proud St. Thomas Law Alumni, as president.

To promote CASBA on campus to the St. Thomas law student body, our Chapter participated in the St. Thomas Law Organization Fair and held a General Meeting. In both of these events, members and prospective members were informed about upcoming CABA events and how the organization provides access to resources available to those student members that would like to be associated with the Cuban culture and heritage in South Florida.

The St. Thomas CASBA organization also hosts a yearly “Lunch and Learn,” which is open to the general law student body in order to inform students about current immigration issues. The last speaker event held was “Immigration & Cuba: A Discussion of Current Issues & Policies” featuring Rogelio del Pino, Esq., a former CABA President (1983), and Melissa Dominguez, Esq. Additionally, we will be hosting our yearly “Lechonazo” on March

26, 2020, a Chapter tradition. For this event, CASBA will be roasting a pig, while listening to classic salsa music, playing dominos, and staying in touch with our Cuban culture as we enjoy a classic Cuban lunch amongst colleagues.

Although we are a Cuban-based organization, CASBA prides itself in connecting with other St. Thomas organizations in order to raise awareness and host events that affect all cultures and heritages. During the Fall of 2019, CASBA along with multiple St. Thomas organizations, joined together in order to contribute to the collective effort of bringing relief to those affected by Hurricane Dorian in the Bahamas. Moreover, CASBA furnishes the general St. Thomas student body with free monthly Cuban-coffee shots, *croquetas*, and *pastelitos*.

CASBA will not only continue its involvement with CABA, but also continue providing St. Thomas law students with all of the resources available in order to achieve individual personal fulfillments, career advancements, and of course—free coffee.



**Yunis Curbelo** is a third-year student at St. Thomas University School of Law. In 2000, she immigrated from Cuba with her parents, and became the first in her family to obtain a college degree when she graduated magna cum laude from Florida International University with a B.A. in Sociology. Ms. Curbelo will also be the first in her family to become a lawyer after she graduates in May 2020.



**Sulany Perez** is a third-year student at St. Thomas University School of Law. In 2016, she graduated from Florida International University with a B.A. in International Relations. A first generation Cuban American, Ms. Perez will be the first in her family to become a lawyer.

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# A Suggestion for Advocacy During the COVID-19 Pandemic

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By Candice Balmori, Esq.

In his National Book Award-winning work, *Waiting for Snow in Havana: Confessions of a Cuban Boy*, Cuban-American author and professor, Carlos Eire wrote, “[t]he world changed while I slept and much to my surprise, no one had consulted me ... Of course, that’s the way it had been all along. I just didn’t know it until that morning.”<sup>1</sup> On March 12, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic. Seemingly overnight, the Western Hemisphere began to rally to vigilance. Soon thereafter emergency rooms across the United States filled with more suspected and confirmed cases of the virus, but lacking necessary medical supplies. Many took precautionary measures. We began working from home. We practice social-distancing. We halted unfettered visits to elderly family members, and social outings. For many, even the ability to earn an income has been denied or furloughed, and there is increased food insecurity in our communities. Our movements have been restricted by local and state-wide orders, curfews have been imposed, and hotels and public areas have been closed to us. Even the culturally-ubiquitous greeting of a kiss on the cheek has been quarantined.

Though everyone has been impacted by this global crisis, not everyone has been impacted in the same manner. And there is no dispute that those without access to basic resources, or regular healthcare, or even exposure to daily fact-specific information surrounding the pandemic are tragically vulnerable. In Cuba,

for instance, these circumstances regularly endure, even without the misfortune of a global pandemic. But, factor in the pandemic and there is little room to conclude anything other than the fact that this healthcare crisis will befall the island nation’s general population harshly.

Each story of COVID-19’s impact on family and friends is heart-wrenching because—I think—we feel deep-down that all are innocent victims to the silent virus. But there are some consequences to the specially vulnerable that are particularly unjust because they are preventable. As we stay at home during this uncertain time, we can each be advocates, not only for the general Cuban population which is, itself, vulnerable given the comparatively older average age of its population, but especially for another very vulnerable segment of Cuban society—its political prisoners.

## Cuba’s Political Prisoners

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Despite the Cuban government’s claims that it has no political prisoners, international human rights defenders and organizations like the Organization of American States have verified facts to the contrary. As recently as August of 2019, after conducting a renewed assessment, the Inter-American Commission on Human Rights (the IACHR) has deemed it necessary to prepare an updated report on human rights in Cuba, within which it plans to address: the constitutional and legal framework concerning human rights; political

rights; access to economic, social, cultural, and environmental rights; freedom of expression; judicial independence and access to justice; and human rights defenders. Prior-published reports document that Cuba’s political prisoners languish with unjust sentences, meager food rations, and a general lack of medical attention in retaliation for merely expressing opinions contrary to those of the Cuban regime.

So what does that have to do with COVID-19? Everything. Simply stated, by virtue of their unjust imprisonment, these individuals now find themselves among an extremely vulnerable population. Their incarceration for expressing dissent from their government’s policies places political prisoners at senseless risk by exposing them to unsanitary conditions where illness already runs rampant. They have been restricted to close confines with others among whom the virus will, with scientific certainty, be liable to spread at a rapid pace. Further, depending on the conditions of their incarceration, political prisoners are least-prioritized for access to already-limited medical resources. Being a political prisoner in Cuba has never been easy, but it is now arguably more dangerous than it ever has been.

The case of Jose Daniel Ferrer, for instance, illustrates what it means to be a political prisoner in Cuba. It is also a reminder that simple acts taken for granted, like possessing a copy machine, or associating with a differing political ideology, can lead to a life-jeopardizing sentence.



In 2003, after participating in a grassroots effort to advance democratic political reforms known as “the Varela Project,”<sup>2</sup> Jose Daniel Ferrer was sentenced to 25 years in prison. The Cuban Government alleged that Ferrer was found in possession of various technological devices, including cameras, computer disks, a copy machine, and some medicine. As a result he was prosecuted for “acts against the independence or territorial integrity of the State,” criminalized under Article 91 of the Criminal Code, specifically for “threatening the integrity of the Cuban State, working in the service of the United States Government, and receiving from members of known counter-revolutionary organizations technical resources, equipment, propaganda, financial resources and medical products, and for having engaged in seditious activities against the country, upsetting public order, and copying, receiving, distributing and circulating

misinformation about Cuba and its authorities.”<sup>3</sup> After 8 years spent in prison for effectively possessing a camera, a copy machine, opposing political views, and some medicine, as part of an agreement between the Cuban Government and the Catholic Church, Jose Daniel Ferrer was finally released from his prison sentence in 2011.<sup>4</sup>

Upon his release, Jose Daniel Ferrer went on to lead the Unión Patriótica de Cuba (UNPACU), another Cuban dissident organization that remains active today. Over the course of the intervening years, he has routinely been detained and harassed by Cuban state security for his association with UNPACU. He has also routinely been denied permission to travel outside of the country, with few exceptions. Only months ago, in September of 2019, Jose Daniel Ferrer was imprisoned again, along with three other UNPACU activists. His trial for alleged assault was finally held at the

end of February of 2020. However, reports of the trial (which was held behind closed doors) revealed that the intent behind his prosecution was likely linked to his continued criticism of the Cuban government. A recount of his most recent imprisonment includes reports of torture and beatings and repeated humiliation. According to Ferrer, he spent six months in an isolation cell in the Aguadores prison in Santiago de Cuba this time, and received no medical treatment on account of his refusal to wear the uniform given to inmates convicted of other crimes.<sup>5</sup> He also reportedly lost approximately 55 pounds after going on a hunger strike that lasted more than 20 days.<sup>6</sup>

#### Detention Conditions for Cuban Political Prisoners

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The deplorable conditions of imprisonment in Cuba have been detailed for decades. Stephen Purvis,



a British architect and businessman who once worked and lived in Cuba and was provisionally charged with being an “enemy of the State” in 2012, recounts spending “almost every hour of the day [at Villa Marista] in a cell the size of a double mattress, with three other inmates . . . The four shared an open latrine.”<sup>7</sup> “The appalling conditions were only alleviated by the ‘psychological games’ of interrogation that took place day and night.”<sup>8</sup> A 2013 report by the BBC from Combinado del Este (another prison), authored back when foreign press were permitted rare access ahead of a Universal Periodic Review by the United Nations Human Rights Council, describes cramped cells and a particular instance where a detainee “drew back the plastic curtain to reveal a combined shower and toilet tray. There was no running water, though that is common in Cuba.”<sup>9</sup>

## A Call to Action

It should offend the conscience of any freedom-loving person to permit an individual whose “crime” is founded on the courage to think independently of a governing power to languish and suffer this dangerous virus’s effects in the absence of sanitary conditions, apart from family, and without access to proper medical care.

To this end, on April 1, 2020, Luis Almagro, the Secretary General of the Organization of American States, decried the lack of sanitary conditions within the Cuban regime’s prisons over social media, and asked for the freedom of thousands of innocent Cubans who suffer political imprisonment or are unjustly imprisoned in Cuba without having committed any crime, as doing so was fair and necessary. The Secretary General’s social media post linked the video message of Cuban dissident Rosa Maria Paya, whose social media also called for the release of Cuba’s thousands of political prisoners from their unjust incarceration amid the danger of the COVID-19 pandemic. Coincidentally perhaps,

on Friday, April 3, 2020, Jose Daniel Ferrer was released from prison and placed under house arrest. After all, as an Amnesty International prisoner of conscience, it would likely be bad press for the Cuban government if Ferrer were to suffer gravely (and publicly) as a result of the present health crisis.

So what can we do while we stay at home 90 miles or more across the Florida straits? We can advocate. We can amplify messages like those of the Secretary General and Rosa Maria Paya. The current and temporary restrictions on our day-to-day life still allow us to participate in our political process, shape legislation, and build community around COVID-19 related matters. Likewise, our right to free association, free expression, advocacy, and the ability to contact representatives about *other* matters also continues uninterrupted. By contrast, and for perspective, one of the conditions of Jose Daniel Ferrer’s recent house arrest in Cuba is that he refrain from all political activism.

In the time we are now afforded by the absence of our daily commutes and suspension of social events, like good lawyers, we should consider what can be done as advocates for vulnerable populations, both near and far. In taking lessons from rediscovered literature, in the wisdom of Carlos Eire, “Desperation and bravery are usually one and the same thing.”<sup>10</sup> Let’s build on bravery in what may sometimes seem like a time of desperation.

<sup>1</sup> Eire, Carlos M. N. *Waiting for Snow in Havana: Confessions of a Cuban Boy*. New York: Free Press, 2003. Print.

<sup>2</sup> The Varela Project was an effort spearheaded by Osvaldo Paya and others, which collected signatures necessary under the Cuban Constitution of 1976 as amended in 1992, to circulate a proposal of law advocating for democratic political reforms within Cuba, such as the establishment of freedom of association, freedom of speech, freedom of the press,

free elections, freedom of religion, freedom to start private businesses, and amnesty for political prisoners.

<sup>3</sup> See OSCAR ELÍAS BISCET ET AL. vs. CUBA, Case No. 12.476, REPORT N° 67/06, Inter-Am. C.H.R., OEA/Ser.L/V/II.127 Doc. 4 rev. 1 Section III(2)(b), published October 21, 2006, available at: <http://www.cidh.org/annualrep/2006eng/CUBA.12476eng.htm>.

<sup>4</sup> Franks, Jeff. “Cuba frees last of political prisoners from 2003 crackdown,” Reuters (March 23, 2011), available at: <https://ca.reuters.com/article/idCATRE72M94J20110323?sp=true>.

<sup>5</sup> Gamez Torres, Nora. “Cuban government releases prominent dissident from jail but puts him under house arrest,” Miami Herald, (April 3, 2020), available at: <https://www.miamiherald.com/news/nation-world/world/americas/cuba/article241758676.html>.

<sup>6</sup> *Id.*

<sup>7</sup> Gibbs, Stephen. “From now on you have no name. You are prisoner 217: life in a Cuban jail,” The Guardian, (March 19, 2017), available at:

<sup>8</sup> *Id.*

<sup>9</sup> Rainsford, Sarah. “A glimpse inside Cuba’s prisons,” BBC News (May 1, 2013), available at: <https://www.bbc.com/news/world-latin-america-22365244>

<sup>10</sup> Eire, Carlos M. N., *Waiting for Snow in Havana: Confessions of a Cuban Boy*. New York: Free Press, 2003.



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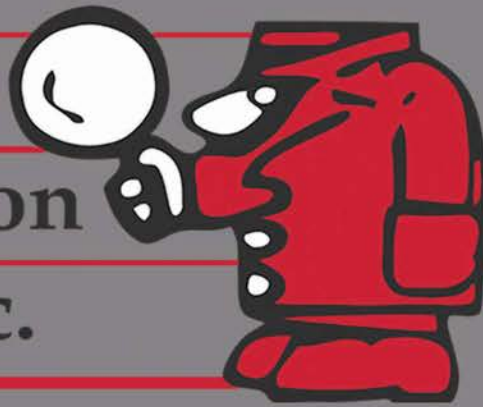
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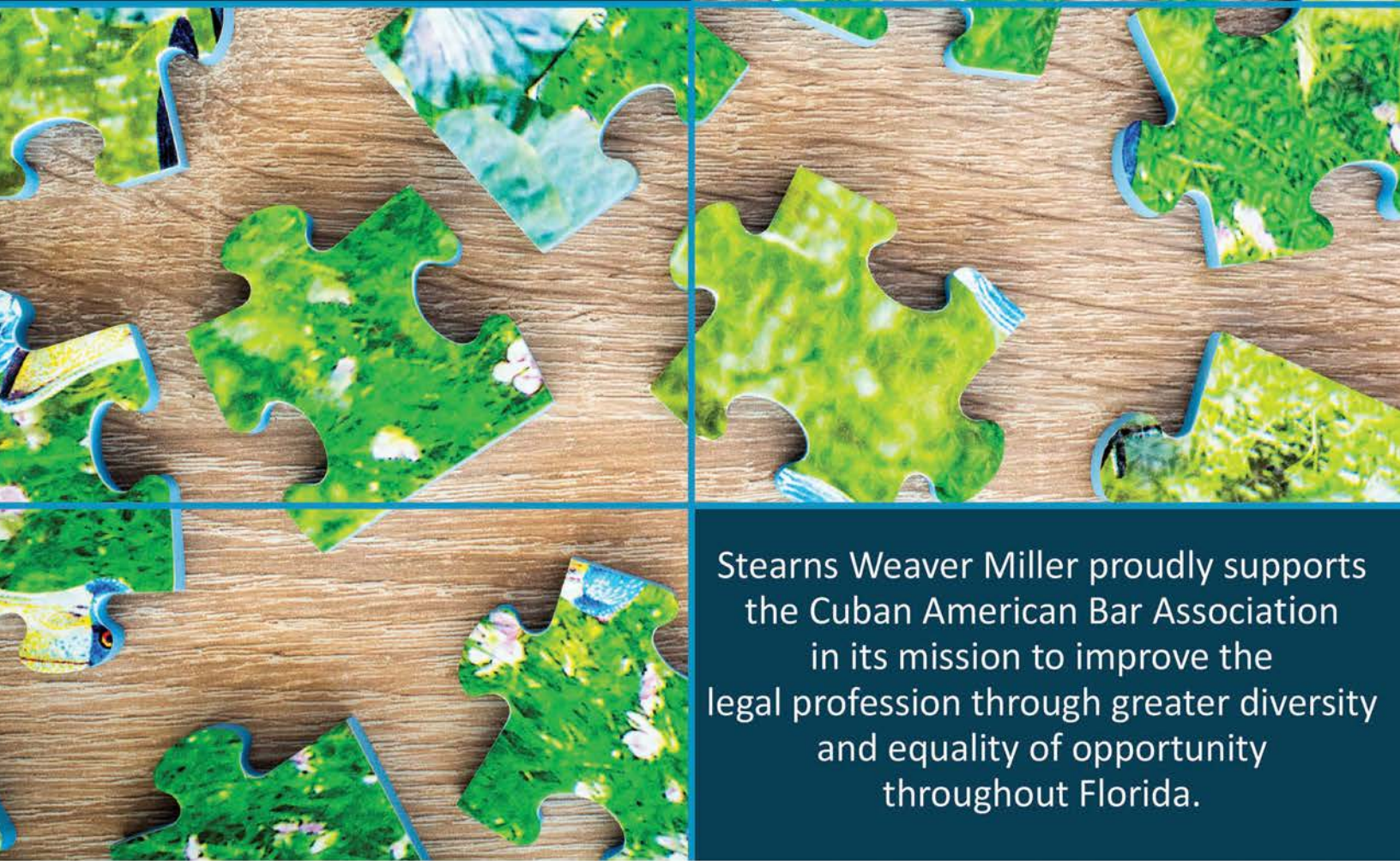
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# LEGAL ROUND UP

By: ELLIOT B. KULA & W.AARON DANIEL & WILLIAM D. MUELLER

## Rule 1.530 and 1.540 Motions: Not a Case of Tomayto, Tomahto

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### *Spencer v. Deutsche Bank National Trust Company,* Case No. 1D19-113 (Fla. 1st DCA December 4, 2019)

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If you are operating under the belief that Florida Rules of Civil Procedure 1.530 and 1.540 can be used interchangeably depending on the type of post-final relief you're seeking ... well, it's time to set the record straight! Recently, in *Spencer v. Deutsche Bank National Trust Company*, the First District noted a very important distinction that carries significant consequences.

In *Spencer*, a party misread the time specified on a notice of hearing which resulted in their absence from the hearing and entry of a final judgment against them. Within thirty days of the judgment, the party filed a motion to set aside the judgment for excusable neglect under Rule 1.540. The motion sat without ruling and ultimately the party decided to appeal the final judgment.

The First District, while "recogniz[ing] that certain motions [under Florida Rule of Appellate Procedure 9.020(h)(1)] toll the rendition of a final order for purposes of the time to file an appeal, including motions for new trial and motions for rehearing," reminds us that a Rule 1.540 motion did not fit that description of a tolling motion and dismissed the appeal for lack of jurisdiction.

## A Lesson in Contract Interpretation: "Only Means Only."

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### *Super Cars of Miami, LLC v. Webster,* Case No. 3D19-826 (Fla. 3rd DCA March 11, 2020)

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In 2017, rapper Travis Scott attended a Miami Beach New Year's Eve bash thrown by Sean John Combs ("Diddy") and decided to activate "SICKO MODE" by arriving in a rental Lamborghini Aventador from Super Cars, a company specializing in the rental of high-end luxury cars. On the way to the party, unfortunately, the Lamborghini crashed with another car and sustained extensive damage. Scott and Super Cars entered into a settlement agreement wherein Scott agreed to "only pay for any and all reasonable repairs to the car" which amount to just over \$90,000.00.

But after receiving the payment from Scott, Super Cars demanded more money, purportedly related to the "loss of rental income and diminution in value the vehicle sustained during the repair period." Scott disagreed with that demand, contending that the settlement between the parties involved payment of only "reasonable repairs to the car" and no other expense.

The Third District agreed with Scott, interpreting the settlement language's emphasis on "only" as to the exclusion of all else. "The parties," the Third District held, "could have inserted losses sustained for lost rental income and diminished value in this provision, had they so desired."



# LEGAL ROUND UP



## Take Care when Gilding Lilies

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*Perez v. Safepoint Insurance Company,  
Case No. 3D18-1588 (Fla. 3rd DCA November 13, 2019)*

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The Third District's recent opinion in *Perez* provides a cautionary tale of attorneys who strayed a bit too close to the sun by embellishing their client's knowledge over the legal matter in an affidavit. Ms. Perez -- an 82-years-old immigrant who worked as an elementary school teacher in Cuba -- was asked by her attorneys to sign a comprehensive affidavit in opposition to a motion for summary judgment that exuded "certainty regarding the fact, date, and cause of the loss," in an insurance malpractice case, "as well as commentary regarding [the insurance company's] engineering expert's report and deposition testimony." Ms. Perez obliged and the affidavit was filed.

The insurance company then moved for sanctions against Ms. Perez requesting that the trial court dismiss her case with prejudice as a sanction. The trial court held a hearing where it was shown that Ms. Perez suffered from memory issues and required an English translator to testify, though her affidavit was written in perfect English. Ultimately, the trial court agreed with the insurance company that the affidavit was the product of fraud, and dismissed her case.

The Third District, though recognizing this as "a teaching point and a caution that a client's personal knowledge, however imperfect, is not to be gilded, excessively bolstered, or embellished by her counsel in the hope of improving a case," reversed the trial court's order because simply striking Ms. Perez's affidavit would have sufficed. While the attorneys for Ms. Perez escaped relatively unharmed, it was certainly a close call.

## CABA BRIEFS

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*Spencer v. Deutsche  
Bank National Trust  
Company*

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*Super Cars of Miami,  
LLC v. Webster*

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*Perez v. Safepoint  
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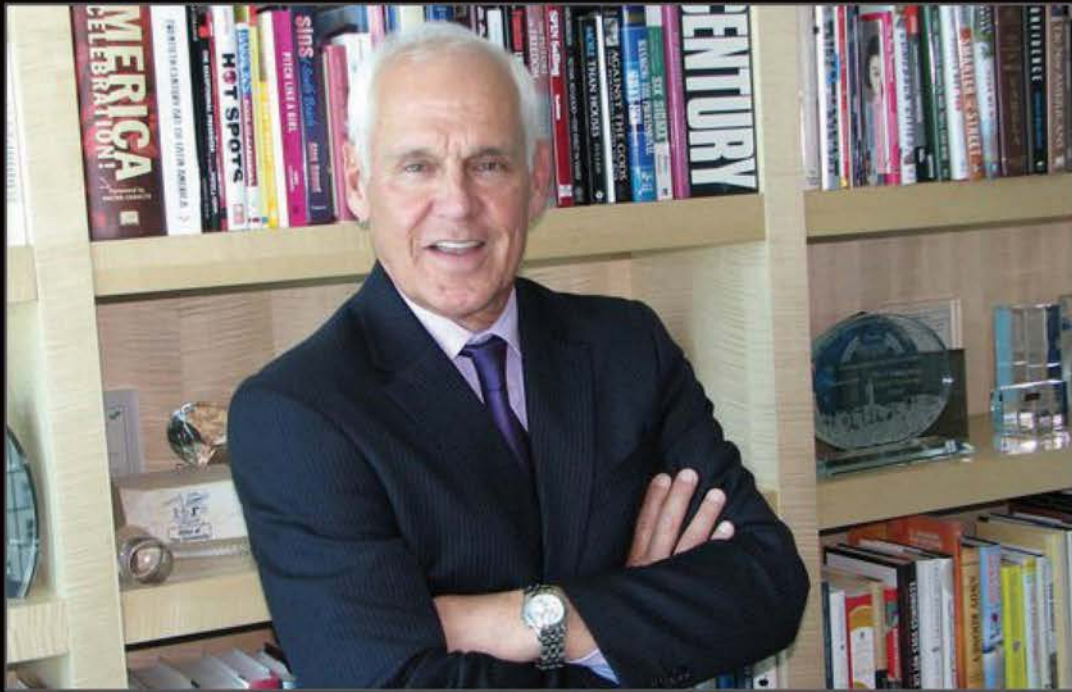
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# ANNUAL MEETING & ELECTIONS

CABA's Annual Meeting and Elections was held on November 13th, 2019 at Sky Lobby of The Miami Tower. This year's event included the presentation of the Osvaldo Soto Paver Award to the Honorable Judge Rodolfo "Rudy" Ruiz, the Presidential Award to Sergio Mendez, and the Amigo Award to Daniel Perez. With over two hundred guests in attendance, including CABA members and numerous CABA Past Presidents, the 2020 Board of Directors were elected along with President Elect A. Dax Bello. Special thanks to our event sponsor: City National Bank for their generosity and years of supporting CABA.









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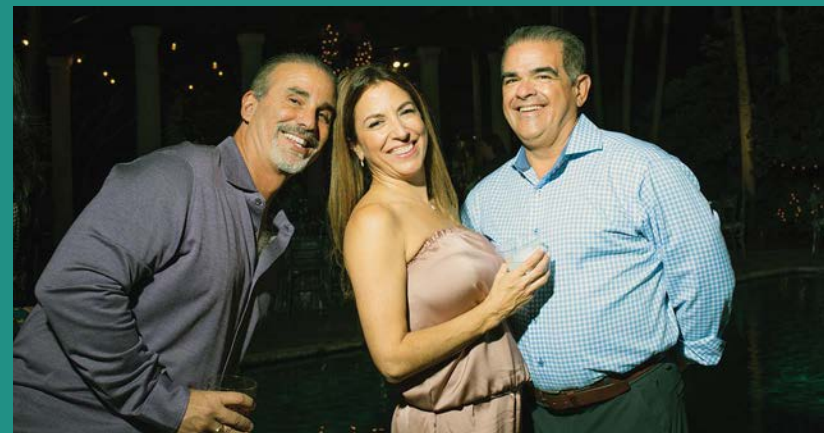
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## *"Cuban Asylum Applicants: A Look at U.S. Immigration Law and Policy"*

On March 3, 2020, CABA held its first panel discussion of the year titled "Cuban Asylum Applicants: A Look at U.S. Immigration Law and Policy," which was graciously sponsored by the law firm Kozyak Tropin & Throckmorton. The panel discussion was organized by the CABA on Cuba Committee and was moderated by CABA on Cuba Committee Co-Chair Candice Balmori. The esteemed panelists for this event included Juan C. Gomez, Esq. (Associate Clinical Professor of Florida International University & Director of FIU's Legal Immigration Clinic), Randolph McGrorty, Esq. (Executive Director of Catholic Legal Services) and Ana Maria Candela, Esq. (Former Federal Prosecutor with the U.S. Dept. of Homeland Security, Immigration & Customs Enforcement and Partner at Candela Eig Jurgens, LLC). CABA's first panel discussion of the year had a phenomenal turn-out of attorneys and community leaders.

This event aimed to explore U.S. immigration laws, procedures, and policy implications as they relate particularly to Cuban asylum applicants. The panelists began by presenting an historical overview of Cuban asylum applications and U.S. immigration procedures and practices from 1959 to the present. They then discussed present-day U.S. policy towards Cuban asylum applicants, the U.S. legal requirements and criteria for obtaining asylum, the process and procedure for detention and/or parole pending asylum adjudication, and the practical function of immigration court, inclusive of issues related to access to counsel, translations, court procedures and the critical role of the triers of fact. This panel discussion also explored the human rights implications for an unsuccessful asylum applicant who is repatriated to Cuba, which our attendees learned included exclusion from work permitting, potential denial of certain government benefits, social ostracizing, state security surveillance, and physical danger, inclusive of brutal beatings from state security.

The CABA on Cuba Committee would like to thank each of the esteemed panelists who participated in this event and shared thoughtful analysis with our members and event attendees, and the law firm of Kozyak Tropin & Throckmorton for their generous sponsorship of this important discussion.







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# YOUNG LAWYERS *Happy* HOUR



On February 20, 2020, the CABA Young Lawyers Committee held its first happy hour of the year at Glass and Vine. Sponsored by Carlos del Valle of Popular Bank, over 100 attendees gathered to socialize on a perfectly cool night in Coconut Grove.



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## **Congratulates Frances Guasch De La Guardia**

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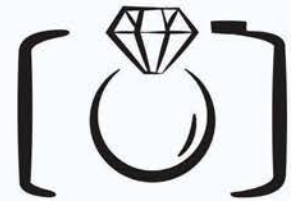


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Grossman Roth Yaffa Cohen welcomes Julian Catala to the Coral Gables office and congratulates Billy Mulligan and Alex Arteaga-Gomez for their promotions to firm partners.

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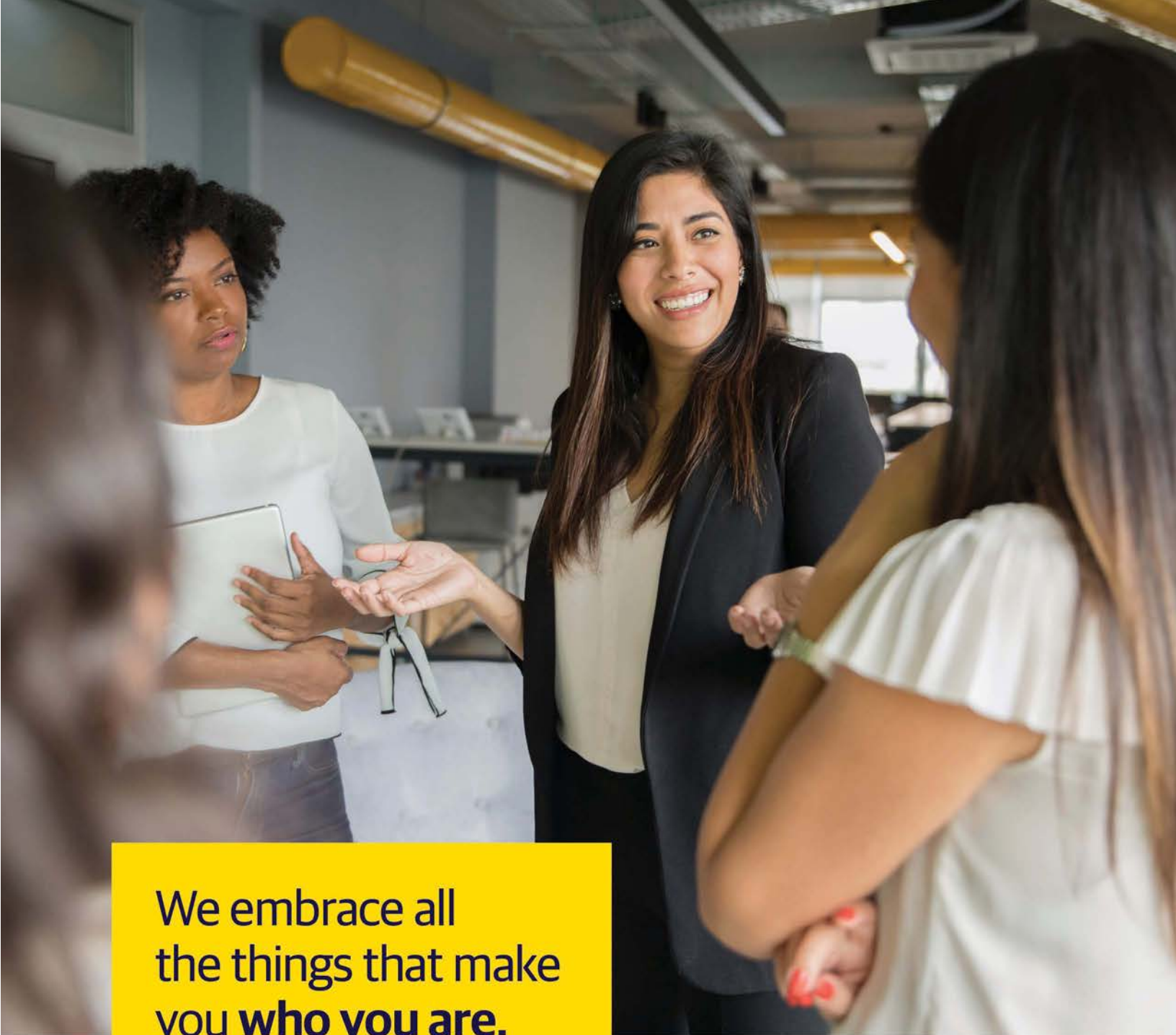
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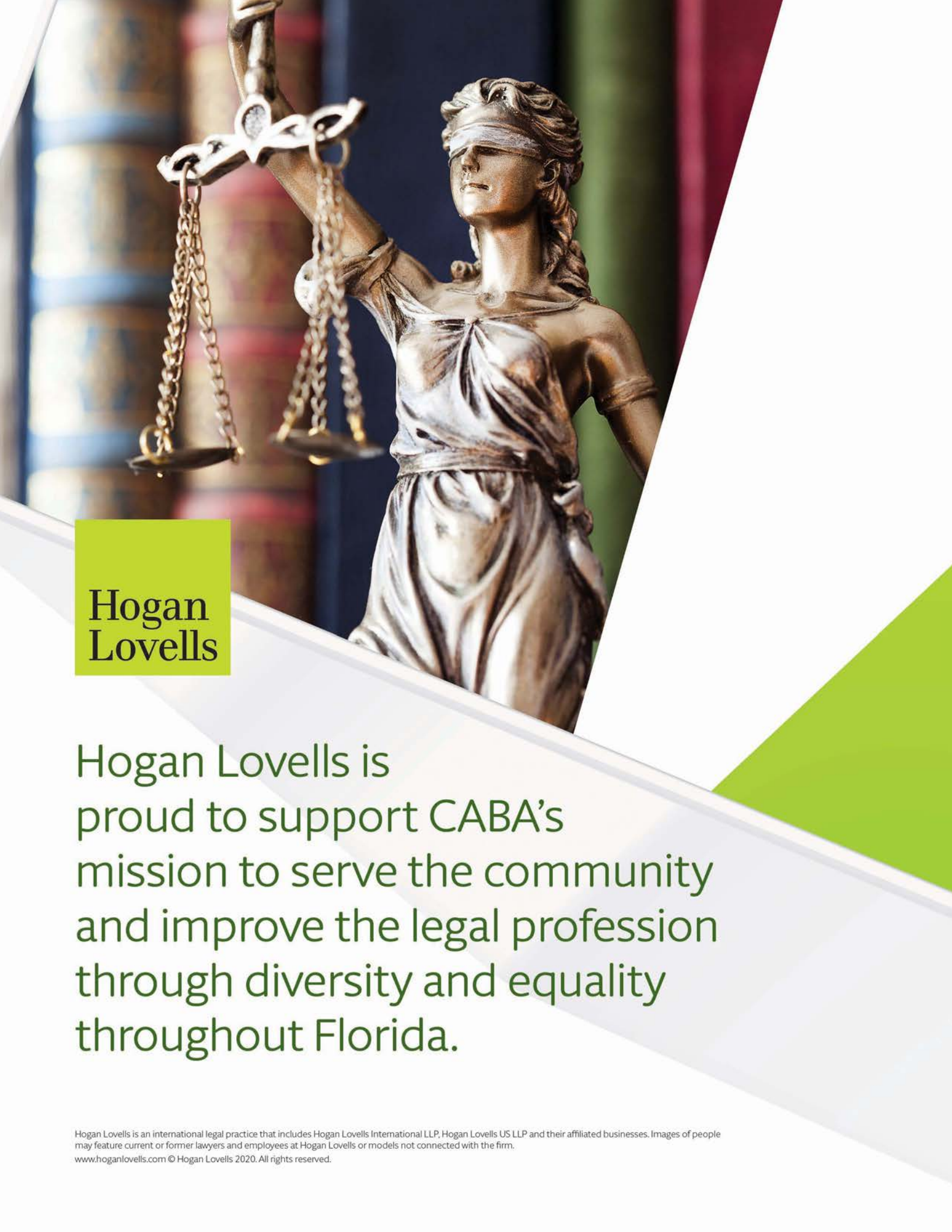
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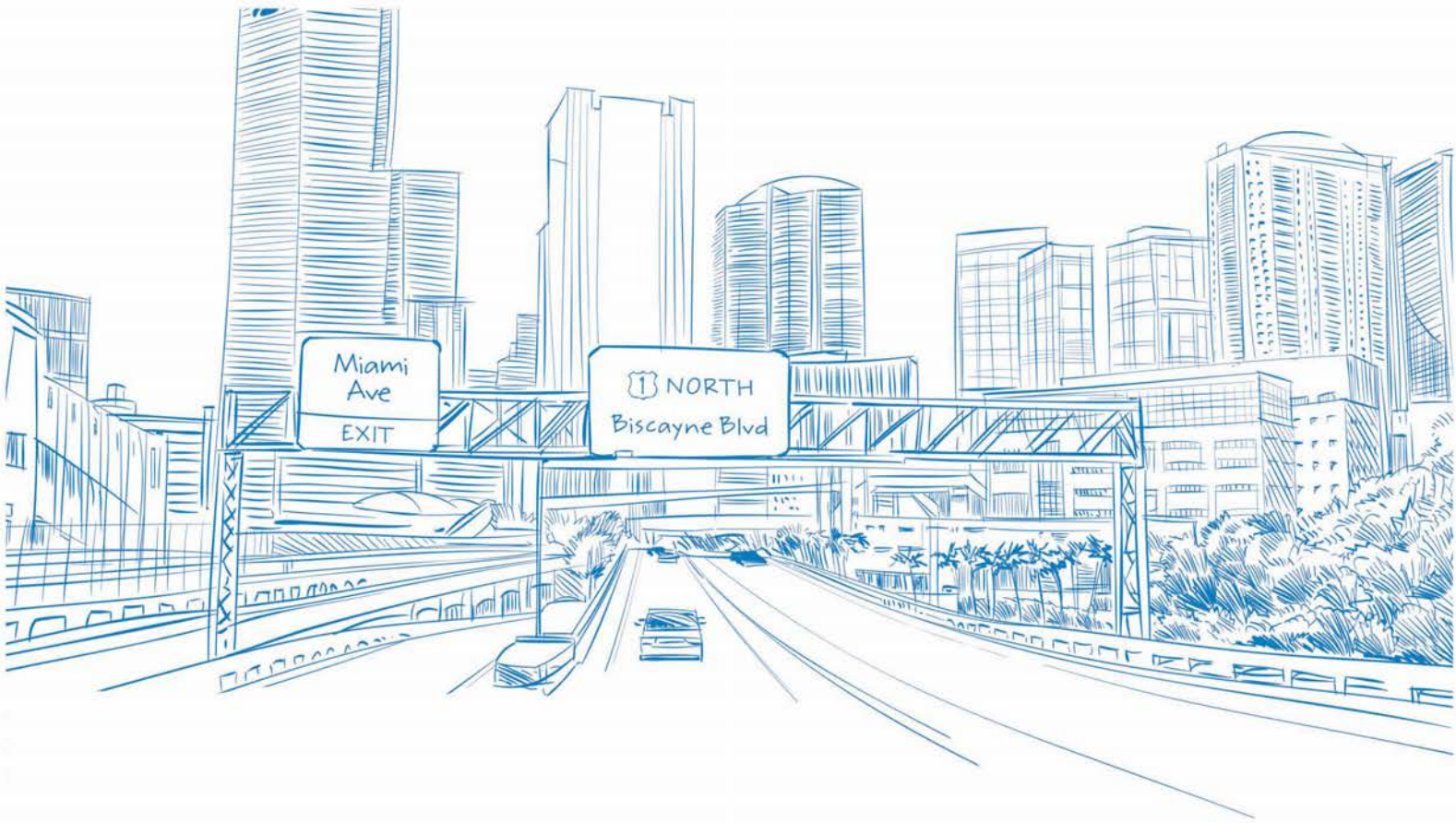
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