

Bridging the Immigration Detention Justice Gap

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INTRODUCTION

From Alexandria, a small city in the center of Louisiana, we drive north. Dense forests line the two-lane roads through tiny, no-stoplight towns. Finally, we turn down a road that appears to be something like an old driveway; indeed, it used to be a private road to a plantation, and then a private prison for the state in the criminal legal system. Now, we start to see hand-painted signs with stenciling: “WINN CORRECTIONAL CENTER, 5 MILES.”¹ At the end of those



¹ Aaliyah Channer, Photograph of a road sign signaling toward the Winn Correctional Center (April 3, 2023) (on file with author).

five miles lies a massive carceral complex holding over one thousand detained immigrant men from countries all over the world.

Our law clinic joins a constellation of legal support operating in the region to conduct presentations and legal intakes for as many detained immigrants as possible. The law clinic team joins collaborators from the Southeast Dignity Not Detention Coalition (SDND), a group of legal services providers and immigrants' rights organizations.² Our law students work alongside advocates from the Southeast Immigrant Freedom Initiative of the Southern Poverty Law Project,³ Robert F. Kennedy (RFK) Human Rights,⁴ the American Civil Liberties Union of Louisiana,⁵ and Immigration Services & Legal Advocacy.⁶ We will spend the entire day in continuous meetings with men from far-flung places across the globe, all of whom have converged seeking safety and opportunity in the United States—only to discover an inhumane incarceration instead of the welcoming American dream.

Over the course of several days, we will meet hundreds of recent arrivals from dozens of countries speaking even more languages—West African men speaking Arabic, Wolof, or Pulaar, Spanish speakers from Colombia, Ecuador, Honduras, and Nicaragua, plus Uzbeks, Tajiks, and Russians. We meet rare-language speakers like a Mauritanian speaker of Hassaniya, an Iraqi speaker of Kurdish, a Guatemalan who speaks Popti, and a Senegalese person speaking Soninke. We see people from Turkey and China and Egypt, Mexico and Eritrea and Nigeria. Across all these nationalities and languages, detained people in varying levels of crisis are eager for information about their situation and legal options.

² See *ACLU of Louisiana and Immigrants' Rights Organizations Visit More Than 3000 People Detained in ICE Custody in Effort to End Prolonged Detention*, ACLU LOUISIANA (Jan. 11, 2023), <https://www.laclu.org/en/press-releases/aclu-louisiana-and-immigrants-rights-organizations-visit-more-3000-people-detained> [https://perma.cc/RP84-SPJ8] (describing the partners and work of the Coalition). SDND is a relatively new coalition that brings together various existing legal services projects in the area.

³ See Michael Lukens, *The Need for More Immigration Attorneys in the Deep South Was Already Urgent. After the SPLC Layoffs, It's a Full-Blown Crisis*, PRISM REPS. (July 15, 2024), <https://prismreports.org/2024/07/15/deep-south-immigration-attorney-crisis-splc-layoffs/> [https://perma.cc/5J3Y-ADXD].

⁴ *U.S. Advocacy and Litigation*, ROBERT F. KENNEDY HUM. RTS., <https://rfkhumanrights.org/our-impact/justice/us-justice/> [https://perma.cc/4YHG-KNVL] (last visited July 22, 2024).

⁵ *Immigrants' Rights*, ACLU LOUISIANA, <https://www.laclu.org/en/issues/immigrants-rights> [https://perma.cc/2R7M-TL97] (last visited Oct. 5, 2023).

⁶ *Our Mission*, ISLA IMMIGR. SERVS. & LEGAL ADVOC., <https://www.islaimmigration.org/> [https://perma.cc/S9KD-CLJS] (last visited May 20, 2024).

Each group of language speakers is paired with an attorney–law student team, which provides a Know Your Rights legal orientation program, often through a telephonic interpreter we contact through a language line. We explain to the audience some of their rights in detention and the basic tenets of asylum law. Invariably, we also find ourselves answering questions from the audience such as, Where are we? What is the address where we are being held? And what are the pathways to get out? For most of the detained people we meet, no one has explained this fundamental information to them in a language they understand.

When time allows, we conduct individual intakes with those who want one, hurrying through their personal stories in ten minutes or less and advising them as to their next legal steps. Detained immigrants here find themselves in a variety of procedural postures that we puzzle through so we can help them request release, prepare for an upcoming court hearing, or ask Immigration and Customs Enforcement (ICE) to simply deport them. Many people we speak with are receiving legal information for the first time. For many, we are the first to speak to them in their language (through phone interpreters) since they arrived in the facility—which was sometimes months before. People repeatedly and without prompting share stories of medical mistreatment, poor food, solitary confinement, and other human rights violations. We are witnesses to this suffering. Although this work is critically important for each person we meet, the vastness of the system and the knowledge of the many we have not reached can make the work discouraging. These short visits to a few detention centers are only momentary assistance to a fraction of those inside, but these visits are a step toward improved access to counsel for detained people.

The United States operates the world’s largest immigration detention system⁷ and holds about thirty-five thousand immigrants in detention on any given day.⁸ Many are held in remote, difficult-to-access facilities like Winn, far from lawyers and support networks.⁹

⁷ CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISONS: AMERICA’S OBSESSION WITH LOCKING UP IMMIGRANTS* 10–11 (The New Press 2019).

⁸ See *ICE Detainees*, TRAC IMMIGR., https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html [<https://perma.cc/6NJ6-FUV9>] (last visited Oct. 5, 2023).

⁹ See Joanne Elgart Jennings, *ICE Detainees Held in Rural Areas, Far From Legal Assistance*, PBS (Oct. 19, 2019, 5:09 PM), <https://www.pbs.org/newshour/show/ice-detainees-held-in-rural-areas-far-from-legal-assistance>; Eunice Hyunhye Cho et al., *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, ACLU 20–21 (Apr. 30, 2020), https://assets.aclu.org/live/uploads/publications/justice-free_zones

The Know Your Rights Project we join grew out of a collection of legal nonprofits engaged in increasing access to counsel and reducing the presence of ICE in Louisiana. This collective eventually grew into the Southeast Dignity Not Detention Coalition (SDND).¹⁰ SDND's approach may be considered part of the "big immigration law" movement, a lawyering style utilizing collective, collaborative advocacy to represent or educate large groups of immigrants.¹¹ Law clinics,¹² organizers, and legal advocates¹³ across the country take part in this advocacy to both address immediate legal needs and abolish immigration prison altogether.

Plugging into these advocacy networks, the Cornell clinic participates in this work in two geographic regions. We work in

[_immigrant_detention_report_aclu_hrwc_nijc_0.pdf](https://perma.cc/2P2G-8UH6) [https://perma.cc/2P2G-8UH6] (the availability of immigration attorneys within 100 miles of new detention centers (post-2017) is among the lowest of all detention facilities nationwide).

¹⁰ The coalition is made up of various nonprofit partners, including those listed in this Article describing a national Day of Action. *Nationwide Actions to Decry Deaths in Immigration Cages, Demand Justice*, FREEDOM FOR IMMIGRANTS (July 19, 2023), <https://www.freedomforimmigrants.org/press-center/nationwide-actions-to-decry-deaths-in-immigration-cages-demand-justice> [https://perma.cc/5WDU-YQPA].

¹¹ See Stephen Manning & Juliet Stumpf, *Big Immigration Law*, 52 U.C. DAVIS L. REV. 407, 412 (2018) (big immigration law is an innovative "[c]ollaborative representation" of populations of immigrants with similar claims by nonprofits, law clinics, small firms, and dedicated projects).

¹² Today, many law schools have immigration law clinics. See, e.g., *Tulane Immigrants' Rights Law Clinic*, TUL. UNIV. L. SCH., <https://law.tulane.edu/tulane-immigrants-rights-law-clinic> [https://perma.cc/J8EB-LF4R]; *Kathryn O. Greenberg Immigration Justice Clinic*, CARDOZO L., <https://cardozo.yu.edu/immigration-justice-clinic> [https://perma.cc/5LFX-4QYB] (last visited Aug. 15, 2024); *James H. Binger Center for New Americans*, MINN. L., <https://law.umn.edu/james-h-binger-center-new-americans> [https://perma.cc/V46J-CSCX] (last visited Aug. 15, 2024); *Immigrant Rights Clinic*, U.C. IRVINE SCH. OF L., <https://www.law.uci.edu/academics/real-life-learning/clinics/immigrant-rights.html> [https://perma.cc/HQE6-K2T2] (last visited Aug. 15, 2024); *Law Clinics*, UNIV. OF S.F. SCH. OF L., <https://www.usfca.edu/law/engaged-learning/law-clinics> [https://perma.cc/W7K2-D56H] (last visited Aug. 15, 2024); *Immigration and Human Rights Clinic*, UNIV. OF THE D.C. DAVID A. CLARKE SCH. OF L., <https://law.udc.edu/immigrationclinic/> [https://perma.cc/FA6F-QQJT] (last visited Aug. 15, 2024). There are dozens more immigration-focused clinics at law schools around the nation, many of which are long-established, and others which are more recent additions to the growing prevalence of immigration-focused clinics in the universe of clinical legal education.

¹³ For example, Detention Watch Network and Freedom for Immigrants are major national organizing groups in this field. See *Immigration Detention 101*, DET. WATCH NETWORK, <https://www.detentionwatchnetwork.org/issues/detention-101> [https://perma.cc/KB3K-XNFG] (last visited Oct. 5, 2023); See also *Policy Advocacy*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/policy-advocacy> [https://perma.cc/EK9K-48LZ] (last visited Oct. 5, 2023).

Louisiana¹⁴—a state that hosts eight rural detention centers¹⁵ and the state with the second-highest population of detained immigrants¹⁶ with about forty-five hundred detained immigrants on the average day.¹⁷ And we participate in the Know Your Rights Project at the Buffalo Federal Detention Facility in Batavia, New York.¹⁸ In Batavia, we partner with the same collaborators from RFK Human Rights, together with organizations local to New York State such as Prisoner’s Legal Services.¹⁹ Louisiana and Batavia are strangely connected, with ICE often transferring detained people between the two areas and immigration judges sitting in Batavia presiding over virtual hearings for immigrants detained in Louisiana. Both the area around Batavia and the Louisiana facilities’ locations are relatively rural and remote, creating additional parallel challenges. We began this work in Louisiana through a professional connection and because New York has a project attempting universal representation of detained immigrants. We expanded to Batavia after learning of the connections between Louisiana and Batavia, the existing gaps in universal representation in New York, and our desire to engage in advocacy closer to home. With a combination of on-site work, remote casework for detained clients, and advocacy projects like critical legal research and resource creation, clinic students work to reduce the vast justice gap for detained immigrants in these areas.

¹⁴ In 2023, we visited immigration detention centers in Louisiana in April and September; these visits are discussed throughout this Article. The collaboration with Louisiana organizations working in detention continues, along with remote client representation. See Rebecca Bowes, *IL Immigration Clinic Helps Secure Parole for Rare Language Speaker* (Apr. 16, 2024), <https://www.lawschool.cornell.edu/news/11-immigration-clinic-helps-secure-parole-for-rare-language-speaker/> [https://perma.cc/6VMF-FPVL].

¹⁵ *About*, LA. ADVOC. FOR IMMIGRANTS IN DET., <https://laaid.org/> [https://perma.cc/H8PZ-6C2N] (last visited July 22, 2024) (states that there are eight detention centers in Louisiana).

¹⁶ *Immigration Detention Quick Facts*, TRAC IMMIGR., https://trac.syr.edu/immigration/quickfacts/#detention_topfac [https://perma.cc/4L9E-2MFT] (last visited Oct. 5, 2023).

¹⁷ *Detention Facilities Average Daily Population*, TRAC IMMIGR., <https://trac.syr.edu/immigration/detentionstats/facilities.html> [https://perma.cc/CT2Y-TPTL] (under State, choose Louisiana. Then choose one of the relevant dates on “current as of,” such as 9/18/2023. Then add up all the numbers for each facility. This will show 4,514 immigrants detained across Louisiana as of Sept. 18, 2023) (last visited Oct. 5, 2023).

¹⁸ See Deborah Morales and Angelina Leach, *Immigration Clinic Visits Batavia Detention Center*, CORNELL L. SCH. (Apr. 16, 2024), <https://www.lawschool.cornell.edu/news/immigration-clinic-visits-batavia-detention-center/> [https://perma.cc/E28Y-9TRF].

¹⁹ *About Us*, PLS PRISONERS’ LEGAL SERVS. OF N.Y., <https://plsny.org/> [https://perma.cc/4K2Q-QFYE] (last visited May 20, 2024).

With this practical experience as underpinning, this Article examines how immigrant detention contributes to the access to justice gap and argues for an end to detention, alongside mobilization of law students in the interim.²⁰ Throughout this piece, examples from clinic work in detention, especially in Louisiana, illustrate the arguments. In Part I, this Article provides a brief overview of the urgency for legal counsel and the underlying legal right to access to counsel for detained immigrants within both domestic and international frameworks. In Part II, we argue that the barriers to counsel the government imposes on those in detention creates a de facto denial of access to counsel that violates both due process and international human rights norms. In Part III, we explore the interconnected solutions of abolition and alternative legal aid projects, building on the longstanding work by immigration clinicians and others in the field. Finally, in Part IV, we set out three primary goals for law clinics engaging in immigration detention work.

I

THE RIGHT TO LEGAL ASSISTANCE FOR DETAINED IMMIGRANTS

A. Detained Immigrants Need Counsel

Lack of immigration counsel is particularly dire for people in immigration detention. Many studies and scholars have shown that whether or not people in immigration detention have access to counsel is the single most important factor determining the outcome of their cases.²¹ A study of the New York Family Unity Project, where detained

²⁰ The authors recognize that calling for increased access to counsel is a reform that “may also inadvertently serve to legitimize the immigration deportation system.” Laila L. Hlass, *Lawyering from a Deportation Abolition Ethic*, 110 CALIF. L. REV. 1597, 1601 (2022). The authors view their call as an interim measure that is part of the longer path to abolition. *Id.* at 1605.

²¹ See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 UNIV. PA. L. REV. 1, 9, 70 (2015) (describing different outcomes for represented versus unrepresented noncitizens in removal proceedings between 2007 and 2012); see also Jennifer Stave et al., VERA INST. OF JUST., *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* 60 (Nov. 2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-immigrant-family-unity-project-evaluation/legacy_downloads/new-york-immigrant-family-unity-project-evaluation.pdf [https://perma.cc/B5H5-XHTR] (success rate for indigent immigrant detainees with legal counsel is predicted to be 1,100% greater than for pro se detainees in New York City); Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, 50 L. & SOC’Y REV. 117, 119 (2016) (immigrant detainees’ likelihood of securing bond is substantially higher when represented by counsel); Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, *Refugee*

respondents received appointed counsel, found that success rates for detained cases increased with representation by approximately 1,100%.²² In California, a several-year study found that detained immigrants who were represented by counsel succeeded more than five times as often as unrepresented detained immigrants.²³ Indeed, those who obtain counsel are far more likely to win their cases, even those who initially appear to have “weak” cases.²⁴ This drastic shift in outcomes suggests that many of the unrepresented people in detention have meritorious cases that they simply cannot fight alone.

Counsel is important in detained cases for a variety of reasons that stem from the structure of detention, such as the adjudication process.²⁵ For example, appearing in court while detained is more difficult without a lawyer. Detained immigrants often must appear for hearings in Immigration Court by videoconference,²⁶ which many detained people described as a disorienting experience. Faced with a judge they cannot see well, and often using telephonic interpreters, applicants may struggle to understand the proceedings and to provide coherent testimony. These procedural complexities in turn make it more difficult for immigration judges to make accurate credibility determinations based on facial expressions and demeanor.²⁷

Roulette: Disparities in Asylum Adjudication, 60 STAN. L. REV. 295, 340 (2007) (“[W]hether an asylum seeker is represented in court is the single most important factor affecting the outcome of her case.”).

²² Stave et al., *supra* note 21 (success rate for indigent immigrant detainees with legal counsel is predicted to be 1,100% greater than for pro se detainees in New York City).

²³ THE CAL. COAL. FOR UNIVERSAL REPRESENTATION, CALIFORNIA’S DUE PROCESS CRISIS: ACCESS TO LEGAL COUNSEL FOR DETAINED IMMIGRANTS 3 (June 2016), <https://www.nilc.org/wp-content/uploads/2016/06/access-to-counsel-Calif-coalition-report-2016-06.pdf> [<https://perma.cc/85KS-HBEF>].

²⁴ See Karen Berberich & Nina Siulc, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court*, VERA INST. OF JUST. (Nov. 2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf> [<https://perma.cc/5EEU-PH7W>].

²⁵ Stacy L. Brustin, *A Civil Shame: The Failure to Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings*, 88 BROOK. L. REV. 163, 176 (2022) (“Detained noncitizens are limited in their ability to master the complexities of removal law and procedure, gather evidence including letters of support and affidavits critical to supporting a defense to removal, draft necessary motions and briefs, and most importantly, hire and communicate with an attorney.”).

²⁶ *Id.* at 195.

²⁷ U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-438, IMMIGRATION COURTS: ACTIONS NEEDED TO REDUCE CASE BACKLOG AND ADDRESS LONG-STANDING MANAGEMENT AND OPERATIONAL CHALLENGES 55 (2017).

Judges also look at detained individuals with bias, given the stigma of being detained.²⁸ For example, detained people at Winn Correctional Center must attend court in shackles and wearing prison jumpsuits repurposed from when the detention center was a criminal prison, which amplifies the stigma they face.²⁹ When counsel is involved, however, counsel can argue for necessary modifications, whether those are in-person hearings or modifications to preserve arguments about credibility. And if detained immigrants have counsel representing them, they are also more likely to be released and avoid the stigma of detention altogether.³⁰

Additionally, the mechanisms for release from immigration detention are often arbitrary and opaque, making progress difficult without a lawyer. Unlike in the criminal system, the validity of the arrest of the detained person is not reviewed by any neutral arbiter.³¹ For those who are detained, there is often no hearing at all regarding whether the person should remain detained.³² Or, if there is a hearing, it does not take place for weeks or even months.³³ People who are arrested by immigration authorities at the border are often placed in an

²⁸ LAUREN SEIBERT, HOW CAN YOU THROW US BACK? 100, <https://www.hrw.org/report/2022/02/10/how-can-you-throw-us-back/asylum-seekers-abused-us-and-deported-harm-cameroon> [<https://perma.cc/28DP-PFY5>] [hereinafter THROW US BACK] (detailing bias and due process concerns that prevent fair adjudication of asylum claims); Letter from Hallie Ludsin, Professor, Emory L. Sch., Lisa Graybill, Deputy Legal Director, S. Poverty L. Ctr. & Eunice Cho, Staff Attorney, S. Poverty L. Ctr., to Juan Osuna, Director, Exec. Off. for Immigr. Rev., Observations of Atlanta Immigration Court 1, 9 (Mar. 2, 2017), https://www.splcenter.org/sites/default/files/2017-atl_complaint_letter_final.pdf [<https://perma.cc/CZ4M-LSUP>]; *Estelle v. Williams*, 425 U.S. 501, 504–05 (1976).

²⁹ Email from Rose Murray to Jaclyn Kelley-Widmer, Paper on Access to Counsel in Immigration Detention 1, 1 (Feb. 28, 2024, 6:11 p.m.) [hereinafter Murray] (on file with authors).

³⁰ Emily Ryo, *Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings*, 52 LAW & SOC'Y REV. 503, 517 (2018) (study finding the odds of being granted bond were about three times higher for detained immigrants with attorneys as compared to unrepresented detained immigrants).

³¹ Lindsay Nash, *Inventing Deportation Arrests*, 121 MICH. L. REV. 1301, 1312–13 (2023).

³² See 8 U.S.C. § 1226(c) (subjecting people with certain inadmissibility or removability grounds to mandatory detention); 8 U.S.C. § 1225(b)(IV) (subjecting people in expedited removal proceedings to mandatory detention).

³³ See, e.g., *Vazquez Perez v. Decker*, No. 18-cv-10683, 2019 WL 4784950, at *2 (S.D.N.Y. 2019) (noting a median wait time of eighty days for detainees in an NYC detention center to receive an initial hearing, when a detainee has the first opportunity to be released on bond).

expedited removal procedure that does not allow for a bond hearing.³⁴ In these cases, the only way to be released is within ICE's discretion.

In Louisiana and many other jurisdictions, ICE grants release to detained immigrants rarely. In 2020, the New Orleans Field Office denied release on parole to 99% of applicants.³⁵ Indeed, the categorical denial of release requests was the subject of a lawsuit brought by the Southern Poverty Law Center and ACLU of Louisiana³⁶ and of an advocacy campaign around the unjust, prolonged detention of Black asylum seekers.³⁷ Despite this litigation, parole requests are still difficult to win, and may be stymied by bureaucratic indifference.

For example, in one case our clinical team encountered at Winn, our client had been detained for over ninety days waiting to receive any sort of hearing about his case. When we requested that ICE release him, his deportation officer told us he could not be released without a preliminary credible fear interview. But upon our inquiries with the asylum office, that agency told us that they had not received any paperwork from ICE to even schedule that preliminary interview. After more advocacy with higher-level ICE officials, the client ultimately received a court notice for a hearing, which was held four months after the client's initial apprehension—and it would have been longer had we not intervened to insist that proceedings begin. Without an attorney, that client would have been detained indefinitely, unable to even make a claim for relief or request release. After discussing this case further with our partners at the Southeast Immigrant Freedom Initiative, we learned that this situation is extremely common.³⁸ Indeed, attorneys regularly encounter dozens of individuals who have never had a hearing and require escalation to multiple agencies to receive one.³⁹

³⁴ See 8 C.F.R. § 235.3(b)(2)(iii) (2024) (stating that “arriving aliens” shall be detained during their proceedings); 8 C.F.R. § 1.2 (defining “arriving alien” as an applicant for admission at a port of entry).

³⁵ Cho et al., *supra* note 9, at 6.

³⁶ *Heredia-Mons v. McAleenan*, ACLU LA. (Mar. 31, 2020), <https://www.laclu.org/en/cases/heredia-mons-v-mcaleenan> [<https://perma.cc/6Z73-QETM>].

³⁷ Frances Madeson, *African Asylum Seekers Jailed In Louisiana Stop Eating In Protest*, LA. ILLUMINATOR (Aug. 21, 2020), <https://lailluminator.com/2020/08/21/african-asylum-seekers-imprisoned-in-louisiana-stop-eating-in-protest/> [<https://perma.cc/TSJ7-LPCM>].

³⁸ Murray, *supra* note 29.

³⁹ *Id.*

B. Detained Immigrants Have the Right to Access to Counsel

Given the importance of counsel for detained immigrants, there should be a right to appointed counsel. Constitutional and international human rights frameworks call for significant procedural protections whenever a government deprives people of liberty. The Supreme Court “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.”⁴⁰ Yet, per the court’s interpretation, the U.S. Constitution provides only limited procedural protections to immigrants in removal proceedings—even for those who are detained during their proceedings. Immigrants in removal proceedings have a right to access to counsel rather than a right to appointed counsel, as they would have in the criminal legal system.⁴¹ But there is no right to appointed counsel for detained immigrants.⁴²

Unlike those facing criminal charges, immigrants in removal proceedings must pay for their own counsel or secure pro bono assistance themselves⁴³ because immigration proceedings are considered civil in nature. Scholars have long contested the civil classification for detained persons in removal, arguing that immigration detention is far more akin to the criminal system because of the defensive posture, the high stakes of deportation, and the liberty

⁴⁰ *Addington v. Texas*, 441 U.S. 418, 425 (1979).

⁴¹ Dana Leigh Marks, *Immigration Judge: Death Penalty Cases in a Traffic Court Setting*, CNN: OPINION (June 26, 2014, 9:29 AM), <https://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html> [<https://perma.cc/ZCT4-RPV8>] (“What many Americans are just beginning to realize is that a high-stakes drama is being played out in a courtroom near them right now . . . The courtrooms are located in our nation’s 58 immigration courts, whose cases include what amount to death penalty cases heard in traffic court settings.”).

⁴² *Dakane v. U.S. Attorney General*, 399 F.3d 1269, 1273 (11th Cir. 2005); 8 U.S.C. § 1362; 29 U.S.C. § 1229a(b)(4)(A) (recognizing due process right to counsel at detainee’s expense); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990) (finding that immigrants have a due process right to retain counsel of their choice at their own expense). As scholar César Cuauhtémoc García Hernández explains, “[i]n civil immigration court, there is no right to a government-paid lawyer. If you have the money, you can hire one. If you don’t, you’re out of luck.” GARCÍA HERNÁNDEZ, *supra* note 7, at 4. Some states and municipalities have enacted universal representation schemes for certain communities of immigrants. New York State has the largest statewide public defender program for immigrants in the country. *Universal Representation for Detained Immigrants Facing Deportation in New York State: The New York Immigrant Family Unity Project*, VERA INST., <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/new-york-immigrant-family-unity-project> [<https://perma.cc/FV8U-4NJB>] (last visited Nov. 6, 2023).

⁴³ See generally *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

interests at issue.⁴⁴ Indeed, immigration detention itself is a form of punishment.⁴⁵ In the criminal legal system, the Supreme Court has noted that where the machinery of the government is arrayed against the defendant, the person “cannot be assured a fair trial unless counsel is provided for him.”⁴⁶ As in a criminal case, in removal proceedings, the United States government has a trained attorney acting as a prosecutor and advocating for the person’s removal.⁴⁷ The attorney representing the government is a specialist in immigration law, which courts have repeatedly noted is “second only to the Internal Revenue Code in complexity.”⁴⁸ And unless the person in removal proceedings has an attorney, they have to understand the law well enough not just to defend themselves, but also to affirmatively present their case. The respondent bears the burden of demonstrating their eligibility for relief

⁴⁴ See, e.g., Jennifer Lee Koh, *Downsizing the Deportation State*, 16 HARV. L. & POL’Y REV. 85, 89 (2021) (referring to “quasi-criminal measures like physical incarceration” as part of the deportation state); César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 245, 252–53 (2017) (describing the “blurry boundary” between civil and criminal schemes in the context of immigration detention); Juliet P. Stumpf, *Civil Detention and Other Oxymorons*, 40 QUEEN’S L.J. 55, 58 (2014) (“Immigration detention is the mirror image of criminal detention. It is no coincidence that mass immigration detention grew up in the same time and space as mass incarceration, sharing the same facilities and actors to achieve a nearly identical restraint on liberty.”); Anil Kahan, *Rethinking Immigration Detention*, 110 COLUM. L. REV. SIDEBAR 42, 43 (2010) (“[E]xcessive immigration detention practices have evolved into a quasi-punitive system of *immarceration*.”); Whitney Chelgren, *Preventive Detention Distorted: Why It Is Unconstitutional to Detain Immigrants Without Procedural Protections*, 44 LOY. L.A. L. REV. 1477, 1493–94 (2011).

⁴⁵ Mary Holper, *JRAD Redux: Judicial Recommendation Against Immigration Detention*, 91 GEO. WASH. L. REV. 561, 581 (2023) (“The logic of immigration detention, even though it is constitutionally limited to serve as civil pre-trial detention, tracks the punitive logic of the criminal justice system in its role as adjudicator of punishment.”); Matthew Boaz, *Practical Abolition: Universal Representation as an Alternative to Immigration Detention*, 89 TENN. L. REV. 199, 205 (2021); René Lima-Marín & Danielle C. Jefféris, *It’s Just Like Prison: Is a Civil (Nonpunitive) System of Immigration Detention Theoretically Possible?*, 96 DENV. L. REV. 955, 956 (2019); Emily Ryo, *Detention as Deterrence*, 71 STAN. L. REV. ONLINE 237, 241 (2019); César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346, 1349 (2014).

⁴⁶ *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

⁴⁷ Brustin, *supra* note 25, at 184 (“Experienced government attorneys represent DHS in every proceeding.”).

⁴⁸ *Baltazar-Alcanzar v. Immigr. & Nat’l Servs.*, 386 F.3d 940, 948 (9th Cir. 2004) (citation and quotation marks omitted); see also *Ardestani v. Immigr. & Nat’l Servs.*, 502 U.S. 129, 138 (1991) (“The complexity of immigration procedures, and the enormity of the interests at stake, make legal representation in deportation proceedings especially important.”).

from deportation and the burden of demonstrating their eligibility for release from detention.⁴⁹

The consequences of removal proceedings are extremely high. The person in removal proceedings is at risk of being sent to a country where they may be in danger or lack material necessities. If they have lived in the United States for long, they may stand to lose their home, community connections, and employment. Indeed, the punishment for someone ordered removed from the United States can be much more severe than a jail term.⁵⁰ Given the parallels to criminal proceedings, immigrants in detention should have the right to appointed counsel. However, it is also important to recognize that appointed counsel alone would not cure the access to counsel issues in the immigration detention system outlined in Part II, *infra*, and could further entrench the system itself, as discussed in Part IV, *infra*.

Immigrants in detention also have the right to access to counsel under human rights norms. These norms establish the right to justice and liberty, including freedom from arbitrary detention.⁵¹ International protocols have established that immigration detention should be “of last resort” and “an exceptional measure.”⁵² Immigration detention must be shown in each individual case to be necessary and proportionate to legitimate state goals, and governments must afford migrants sufficient procedural protections.⁵³ Particularly in the case of asylum seekers, the United Nations High Commissioner for Refugees’ guidelines on

⁴⁹ 8 U.S.C. § 1229a(c)(4); *Locked Away: The Urgent Need for Immigration Detention Bond Reform*, NAT’L IMMIGRANT JUST. CTR. 6–7 n.15 (May 4, 2023), https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2023-06/NIJC-Policy-Brief_ICE-Bond-Reform_May-2023.pdf [<https://perma.cc/7N67-J2X3>] (explaining first that in custody decisions made by DHS officers, 8 C.F.R. § 236.1(c)(8) allocates the burden of proof to the immigrant to prove that they are not a flight risk or a danger to persons or property and, second, that the Board of Immigration Appeals has interpreted the regulation to require the same allocation of burden in bond hearings before an immigration judge).

⁵⁰ In 2010, the Supreme Court recognized that deportation is often a penalty that is more severe than jail time or other consequences of criminal convictions. *See Padilla v. Kentucky*, 559 U.S. 356, 364 (2010).

⁵¹ International Covenant on Civil and Political Rights art. 9, Dec. 16, 1996, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171 (“No one shall be subjected to arbitrary arrest or detention.”).

⁵² Denise Gilman, *Realizing Liberty: The Use of International Human Rights Law to Realign Immigration Detention in the United States*, 36 *FORDHAM INT’L L.J.* 243, 268–69 (2013). For more detail on the specific human rights frameworks, governing bodies, and decisions that set out these norms, see generally *id.* However, this Article does not directly consider the issue of impediments to counsel caused by immigration detention. *See id.* at 249.

⁵³ *Id.* at 269.

immigration detention state that free legal assistance “should be provided where it is also available to nationals similarly situated” and “should be available as soon as possible after arrest or detention to help the detainee understand his/her rights.”⁵⁴ The guidelines also mandate that “[l]awyers need to have access to their client, to records held on their client, and be able to meet with their client in a secure, private setting.”⁵⁵

Though the right to access to counsel is acknowledged both by international law and domestic law, the United States is failing to provide access to counsel within the current immigration detention scheme. For refugees in particular, the United States has committed to protecting these vulnerable groups from *refoulement*, or being sent back to a country where they would face persecution.⁵⁶ In the United States, immigration detention “presents an apparent contradiction: [T]he state posture is one of respect for rule of law . . . yet perversely, the country detains refugees in such intolerable conditions and with such limited access to legal counsel”⁵⁷ that their cases are nearly impossible to win. Indeed, the “statistics regarding the sheer number of individuals subjected to immigration detention and the lengthy duration of detention demonstrate a systemic emphasis on detention in the immigration context without meaningful constraint.”⁵⁸

C. Detained Immigrants Cannot Exercise Their Right to Access to Counsel

Despite the acute need for counsel and their right to access to counsel, most immigrants in detention in the United States proceed unrepresented.⁵⁹ Funding for representation of immigrants in removal proceedings is sparse.⁶⁰ A 2022 study found that there is one nonprofit

⁵⁴ *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, UNITED NATIONS HIGH COMM’R FOR REFUGEES 1, 27 (2012), <https://www.refworld.org/policy/legalguidance/unhcr/2012/en/87776> [<https://perma.cc/K45T-M87L>].

⁵⁵ *Id.*

⁵⁶ See Shana Tabak, *Refugee Detention as Constructive Refoulement*, 48 YALE J. INT’L L. 289, 295 (2023) (explaining obligation of non-refoulement under international conventions).

⁵⁷ *Id.* at 289.

⁵⁸ Gilman, *supra* note 52, at 295.

⁵⁹ Emily Ryo & Reed Humphrey, *Beyond Legal Deserts: Access to Counsel for Immigrants Facing Removal*, 101 N.C. L. REV. 787, 808 (2023).

⁶⁰ See *id.* at 799 (describing existing funding schemes for immigration representation projects); Angélica Cházaro, *Due Process Deportations*, 98 N.Y.U. L. REV. 407, 478 (2023).

legal professional providing immigration legal services per 1,413 undocumented people in the United States.⁶¹ Only eight out of every one thousand people ordered removed in fiscal year 2023 by an immigration judge had managed to find pro bono representation.⁶² Detained immigrants are especially unlikely to be able to afford to pay an attorney or find pro bono counsel due to their detention.⁶³ When detained immigrants don't find counsel, they proceed pro se, often patching together advice from jailhouse lawyers, support from family on the outside, and their own creative tenacity.⁶⁴ And even when they do retain counsel, detained people face a combination of conditions, barriers, logistical issues, and geographic remoteness that impedes meaningful access to that counsel.⁶⁵ In Part II, *infra*, we discuss some of the systemic barriers to access to counsel faced by people in U.S. immigration detention that create a de facto violation of this right to access.

II

IMMIGRATION DETENTION VIOLATES THE RIGHT TO ACCESS TO COUNSEL

Ensuring that detained immigrants have practical access to counsel is essential not only to give them an actual chance at winning their case⁶⁶ but also because the Constitution and human rights frameworks

⁶¹ Donald Kerwin & Evin Millet, *Charitable Legal Immigration Programs and the US Undocumented Population: A Study in Access to Justice in an Era of Political Dysfunction*, 10 J. ON MIGRATION & HUM. SEC. 190, 190 (2022).

⁶² *Despite Efforts to Provide Pro Bono Representation, Growth Is Failing to Meet Exploding Demands*, TRAC IMMIGR. (May 12, 2023), <https://trac.syr.edu/reports/716/> [<https://perma.cc/N8ZV-M3V7>].

⁶³ *New Proceedings Filed in Immigration Court*, TRAC IMMIGR., <https://trac.syr.edu/phptools/immigration/ntanew/> [<https://perma.cc/4FYT-RCSA>] (under “Immigration Court State,” select “Texas”; then under “Custody,” select “Never Detained”; then under “Represented,” select “Not Represented”) (showing that 19% of detained immigrants in removal proceedings as of April 2024 were represented, as compared to 31% of immigrants who had been released from immigration detention) (last visited May 11, 2024); *see also* Mirian G. Martinez-Aranda, *Precarious Legal Patchworking: Detained Immigrants’ Access to Justice*, OXFORD UNIV. PRESS, 2–3, 8 (2023) (legal aid organizations are chronically under-resourced, with the demand for such services far outstripping the capacity); Part II *infra* (discussing barriers to counsel for detained immigrants).

⁶⁴ Martinez-Aranda, *supra* note 63, at 8–9.

⁶⁵ *See* Part II *infra*.

⁶⁶ *See* Eagly & Shafer, *supra* note 21, at 49.

require it.⁶⁷ Immigration detention—especially in rural areas—creates a structural, de facto denial of counsel that conflicts with both constitutional due process and international human rights norms.⁶⁸

Despite immigrants' legal right to access to counsel and the critical need for counsel while detained, most detained immigrants must proceed unrepresented due to significant barriers to their ability to access counsel. These barriers can be grouped generally into three categories: geography, logistics, and conditions.

⁶⁷ See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *United States v. Salerno*, 481 U.S. 739, 746 (1987) (“When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.”); International Covenant on Civil and Political Rights art. 14, Dec. 16, 1996, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171 (“In the determination of any criminal charge against him, or 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.”); *Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A) at 15–16 (1979) (finding that the European Convention for the Protection of Human Rights and Fundamental Freedoms “may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court”); International Convention on the Elimination of All Forms of Racial Discrimination: Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Feb. 18, 2008, CERD/C/USA/CO/6 ¶ 22 (“The Committee further recommends that the State party allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings . . .”).

⁶⁸ See Zachary Manfredi & Joseph Meyers, *Isolated and Unreachable: Contesting Unconstitutional Restrictions on Communication in Immigration Detention*, 95 N.Y.U. L. REV. 130, 136 (2020) (arguing that, “in all cases the Fifth Amendment requires the government to provide detained noncitizens adequate means to solicit legal representation, meet privately with retained counsel, communicate with potential witnesses, access necessary records, and prepare evidence and testimony. Conditions of confinement that frustrate these basic guarantees offend the Fifth Amendment’s protection of a full and fair hearing and should be held unconstitutional.”); Mark Noferi, *Cascading Constitutional Deprivation: The Right to Appointed Counsel for Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 MICH. J. RACE & L. 63, 105 (2012) (“pre-hearing detention without counsel, in cascading fashion, impacts the fundamental fairness of the underlying proceedings, which in turn implicates the liberty interests affected by deportation.”); Chelgren, *supra* note 44, at 1497 (arguing that immigration detention is unconstitutional because it is both quasi-punitive and obstructs the administration of justice).

A. Geographic Barriers: Many Detention Centers Are Remote

The remote, rural location of many immigration prisons⁶⁹ and transfers to such centers⁷⁰ contribute to the violation of the due process right to access to counsel that must be afforded to detained immigrants.⁷¹ Remote detention centers are often far from immigration attorneys or located in areas with very few immigration attorneys and organizations,⁷² decreasing immigrants' chances of finding counsel.⁷³ For example, Winn Correctional Center is over a four-hour drive from New Orleans, Louisiana, where many of the legal service providers are located. The pro bono immigration services list for the LaSalle Immigration Court in Jena, Louisiana, has listed only two organizations: one information line in Washington, D.C., and one nonprofit organization located in Tennessee.⁷⁴ Remote detention centers require extensive travel and create other hurdles for both

⁶⁹ Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 S. CAL. L. REV. 1, 29 (2018) (finding that 50% of immigration facilities were located outside of metropolitan areas).

⁷⁰ See César Cuauhtémoc García Hernández, *Due Process and Immigrant Detainee Prison Transfers: Moving LPRs to Isolated Prisons Violates Their Right to Counsel*, 21 BERKELEY LA RAZA L.J. 17, 20–22 (2011) (discussing frequent transfers and noting that “[c]ountless detainees, immigration attorneys, non-governmental organizations, courts, and other commentators have noted the common-sense conclusion that isolated prisons result in reduced access to legal counsel.”).

⁷¹ Peter Markowitz et al., *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 CARDOZO L. REV. 357, 380 (2011) (being located in, or transferred to, remote facilities impedes an immigrant’s ability to apply for relief); Holper, *supra* note 45, at 581 (noting that the location of centers is among the physical barriers they face).

⁷² Immigrants in rural areas have more difficulty finding representation. See Ryo & Humphrey, *supra* note 59, at 810–11; Ryo & Peacock, *supra* note 69, at 29 (“At the facility level, mean distance to the nearest nonprofit immigration attorney was about forty-nine miles.”).

⁷³ See Ryo & Humphrey, *supra* note 59, at 819 (finding, in a study of non-detained immigrants, that “the relative supply of immigration lawyers in a given immigrant respondent’s community is a significant predictor of whether that immigrant will obtain legal representation.”).

⁷⁴ EXEC. OFF. FOR IMMIGR. REV., U.S. DEP’T OF JUST., LIST OF PRO BONO LEGAL SERV. PROVIDERS: LOUISIANA (2023).

immigration attorneys⁷⁵ and for the loved ones of detained individuals who might also help connect them to legal resources.⁷⁶

Further, ICE often transfers immigrants from detention centers located near metropolitan areas to facilities that are rural and isolated, such as those in Batavia and Louisiana.⁷⁷ These transfers typically result in the loss of any counsel that was already contracted near the original site of detention and make finding new counsel exponentially more difficult.⁷⁸ For immigrants with a certain legal status in the United States, these transfers are likely a due process violation in themselves,⁷⁹ compounded with the additional due process barrier created by virtually all immigration detention.

The result of such limited counsel options is clear: When we visited Winn, we met hundreds of people who wanted pro bono representation but were unable to find anyone to take their cases. Detained people reported that no one answered the phones at the legal projects that they attempted to call. While New York State has robust programs to provide detained people with counsel across the state, New York is the only state attempting to provide universal representation for detained immigrants at this time, and even in New York, there are documented

⁷⁵ See Manning & Stumpf, *supra* note 11, at 419 (“Mass, remote detention imposes high barriers to coordination of information, to collaborative legal and practical strategy, and to the physical presence of lawyers. As well, most immigrant advocate communities are inadequately positioned to respond to systemic detention of whole populations.”); Tabak, *supra* note 56, at 319 (very few attorneys are willing to represent detained immigrants and detainees are isolated from social networks that could help them tap legal resources to put up a credible defense); Jennings, *supra* note 9 (“There’s a limited amount of people who are doing the detained cases in Louisiana because it is, they are so far, so rural, so difficult to get to and to handle.”).

⁷⁶ See Ryo & Peacock, *supra* note 69, at 29; García Hernández, *supra* note 70, at 20–21; Chelgren, *supra* note 44, at 1487, 1496; HUMAN RIGHTS WATCH, LOCKED UP FAR AWAY: THE TRANSFER OF IMMIGRANTS TO REMOTE DETENTION CENTERS IN THE UNITED STATES, 3–4, 54–56 (2009).

⁷⁷ For example, a 2011 study found that ICE transferred “almost two-thirds (64%) of those detained in New York to far-off detention centers (most frequently to Louisiana, Pennsylvania, and Texas), where they face the greatest obstacles to obtaining counsel.” Markowitz et al., *supra* note 71, at 363; Noferi, *supra* note 68, at 76–77 (Calling out Louisiana as the state with the lowest lawyer-detained immigrant ratio and arguing that “ICE’s pattern of transferring detainees from urban areas such as New York or Los Angeles, near where immigrants live, to facilities in Louisiana, Texas, or Arizona underserved by lawyers has exacerbated the representation crisis for detainees.”); Manfredi & Meyers, *supra* note 68, at 137–38.

⁷⁸ See Manfredi & Meyers, *supra* note 68, at 140 (ICE makes transfers without considering the impact on existing counsel); Noferi, *supra* note 68, at 76–77.

⁷⁹ García Hernández, *supra* note 70, at 17 (arguing that relocation of detained lawful permanent residents “frequently violates the Fifth Amendment’s due process right to counsel”).

gaps in access.⁸⁰ At Batavia, our law student team met many asylum-seekers who were waiting to be assigned counsel but were not able to speak to an attorney until after their initial screenings for their asylum case had been completed.

B. Logistical Barriers: Counsel Is Unreachable

Even when immigrants have representation, they face multilayered logistical barriers mounted by detention systems and the government and private actors running them, effectively violating due process.⁸¹ Detained immigrants face extreme hurdles to both obtaining attorneys and to the communication with their attorneys that is necessary for zealous representation.⁸²

To begin, the quick adjudication timeline for detained people means having a lawyer is difficult to obtain in time. Detained cases conclude in an average of forty-two days,⁸³ which is much faster than the non-detained docket. The fast timelines of detained cases mean that one must find a lawyer very quickly⁸⁴—so quickly that initial decisions are often made before a detained person even has time to find counsel. As a case rapidly proceeds with (or usually without) a lawyer, detained people must attempt to rapidly collect evidence, often including evidence located thousands of miles away in their home countries. Yet

⁸⁰ See *What to Do After a Loved One Is Detained by ICE*, N.Y. LEGAL ASSISTANCE GRP., https://www.nylag.org/wp-content/uploads/2020/01/ICE-Detained-Flyer_Final_english29807.pdf [<https://perma.cc/GG9H-TY4D>] (last visited May 30, 2024) (describes eligibility requirements for NYC’s NYIFUP and states that people who already have prior orders of removal are ineligible); *Deportation Defense Manual*, MAKE THE ROAD N.Y. 29, 34, <https://maketheroadny.org/wp-content/uploads/2022/08/Deportation-Defense-Manual.pdf> [<https://perma.cc/AL4V-HQAS>] (last visited May 30, 2024) (states that if a detained person hires a private attorney before the first court date, they are no longer eligible for NYIFUP even if they can’t afford the attorney in the future).

⁸¹ Manfredi & Meyers, *supra* note 68, at 136 (“The obligation to ensure a ‘full and fair’ hearing requires that the government not impose barriers to communication that provide it with an unfair advantage in the litigation of noncitizens’ removal claims”); see also Noferi, *supra* note 68, at 70–71, 102 (arguing that appointed counsel for immigrants in pretrial detention should be a constitutional right, and that heightened due process is necessary for detained immigrants).

⁸² Aditi Shah & Eunice Hyunhye Cho, *No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Centers*, ACLU 7, 8 (2022) [hereinafter *No Fighting Chance*].

⁸³ EXEC. OFF. FOR IMMIGR. REV., U.S. DEP’T OF JUST., EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ADJUDICATION STATISTICS: MEDIAN COMPLETION TIMES FOR DETAINED CASES (2023).

⁸⁴ Eagly & Shafer, *supra* note 21, at 36.

detention also obstructs efforts to communicate with family or others who might be able to assist with the immigration case.⁸⁵

Indeed, the basic ability to communicate with those outside of detention is very limited and prevents detained immigrants from accessing counsel.⁸⁶ Critical obstacles include inadequate tablet and telephone access;⁸⁷ lack of access to video calls (and the high costs of these calls);⁸⁸ facilities requiring A-numbers (individual immigrant identification numbers) for attorneys to communicate with people in immigration detention; lack of email and electronic communication and reliable methods to exchange legal documents; delays in legal mail; and barriers to in-person visits.⁸⁹ At Batavia, many detained people reported to us that the electronic tablets through which they can make phone calls were limited in number.⁹⁰ The people we spoke to reported significant conflict between dorm-mates over the few tablets available in the dorms.⁹¹ While detained people at Batavia previously received some free phone calls to family members, ICE recently revoked this access.⁹² Now, all outgoing phone calls cost money. Detained people

⁸⁵ For example, people in immigration detention must pay for phone calls, which are time-limited and expensive (cell phones are banned). They also must pay for electronic communication with the outside world, if this electronic communication is even available. *See generally No Fighting Chance*, *supra* note 82.

⁸⁶ *See generally No Fighting Chance*, *supra* note 82.

⁸⁷ Interviews by Cornell Immigr. L. & Advoc. Clinic with detained people (Sept. 2023 & Mar. 2024) (on file with authors).

⁸⁸ *No Fighting Chance*, *supra* note 82, at 7 (“With only limited exceptions, detained immigrants must pay to make outgoing phone calls to counsel at the majority—approximately 85 percent—of the detention facilities for which we received responses. At some facilities, detained immigrants are charged \$0.21 per minute, and sometimes up to \$0.40 per minute. These rates are especially burdensome given that many detained immigrants are indigent and the only opportunity to earn money is the ‘Voluntary Work Program,’ where detained people earn \$1 per day performing work to maintain the detention facility.”); Juliana Kim, *ICE Lifted Its Ban on Family Visits, but Relatives Still Struggle to See Loved Ones*, NPR (Nov. 21, 2022, 5:01 AM), <https://www.npr.org/2022/11/21/1134611341/ice-covid-restrict-social-visits-immigrants-detained-families> [<https://perma.cc/Z6W4-72UC>] (noting that in one detention center in Bakersfield, California, a 15-minute video call costs \$3.15).

⁸⁹ *No Fighting Chance*, *supra* note 82, at 8.

⁹⁰ Interview by Cornell Immigr. L. & Advoc. Clinic with detained person (Mar. 2024) (on file with authors).

⁹¹ *Id.*

⁹² *Id.* As of June 2024, the free phone call policy was ended, resulting in hunger strikes by detained people in protest. *Loss of Free Phone Access – A Critical Lifeline in Detention – Triggers Hunger Strikes*, DET. WATCH NETWORK (June 13, 2024), <https://www.detentionwatchnetwork.org/pressroom/releases/2024/loss-free-phone-access-critical-lifeline-detention-triggers-hunger-strikes> [<https://perma.cc/HWG9-7CGQ>].

also stated that stamps are expensive: one book of ten stamps costs \$6.10, and mailings require several stamps.⁹³

These logistical communications issues are part of a long string of challenges to immigrant access to counsel while in detention, documented over decades.⁹⁴ This pattern of barriers regularly results in attorneys and clients being unable to communicate consistently, confidentially, and clearly.⁹⁵ These barriers directly contravene the Performance Based National Detention Standards (PBNDS) governing immigration detention centers, which directs facilities to provide reasonable access to telephone calls.⁹⁶

Further, communication between clients and attorneys is challenging even when both parties are physically together in the detention center. For example, a coalition of five immigration rights organizations filed a complaint in 2022 outlining the severe, systemic deficiencies in access to counsel that people in detention face,⁹⁷ focusing on four specific detention centers—one of which is River Correctional, located in a rural part of Louisiana.⁹⁸ Among these challenges is the lack of private spaces to conduct legal meetings.⁹⁹ Unlike in criminal jails, which provide private attorney-client meeting rooms for criminal defendants and their counsel, people detained at River and some other immigration detention centers meet with their

⁹³ *Id.*

⁹⁴ See, e.g., Manfredi & Meyers, *supra* note 68, at 144–45.

⁹⁵ For example, detention facilities often fail to facilitate scheduled legal calls or prohibit scheduling calls at all. When calls do come through, they are often truncated and of poor audio quality. *No Fighting Chance*, *supra* note 82, at 7–8.

⁹⁶ See PERFORMANCE-BASED NAT'L DET. STANDARDS 2011 § 5.6(II)(9) (U.S. IMMIGR. & CUSTOMS ENF'T. rev. ed. 2016) [hereinafter PBNDS 2011] (“Facilities shall strive to reduce telephone costs, including through the use of emerging telecommunications, voiceover and Internet protocol technologies.”); *id.* § 5.6(V)(A)(2) (“Each facility shall provide detainees with access to reasonably priced telephone services.”).

⁹⁷ Complaint for Injunctive and Declaratory Relief at 3–5, *Am. for Immigr. Just. v. U.S. Dep’t of Homeland Sec.* (D.D.C. July 6, 2023) (No. 22-3118) 2023 WL 4364096 (listing the many ways in which the defendants restrict attorney-client communications, such as refusing to schedule calls, provide confidential meeting spaces, or provide a method to exchange confidential legal documents).

⁹⁸ River Correctional Center is located in Ferriday, Louisiana, about three hours from New Orleans. See *River Correctional Center*, U.S. IMMIGR. & CUSTOMS ENF'T, <https://www.ice.gov/detain/detention-facilities/river-correctional-center> [<https://perma.cc/B5Q9-C6QN>] (last visited July 6, 2024).

⁹⁹ Complaint for Injunctive and Declaratory Relief at 18, *Am. for Immigr. Just. v. U.S. Dep’t of Homeland Sec.* (D.D.C. July 6, 2023) (No. 22-3118) 2023 WL 4364096, https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/challenging_the_governments_barriers_to_access_to_counsel_complaint.pdf [<https://perma.cc/25UL-NXWP>].

attorneys in open-air multiuse rooms or in rooms where conversations can be overheard.¹⁰⁰ Further, attorneys are often prohibited from using laptops and printers in detention facilities,¹⁰¹ making it very difficult to draft and edit documents together with their clients or call a phone interpretation line. In our clinic's experience, in Louisiana, advocacy groups have recently been permitted to bring laptops and phones into facilities; but in Batavia, all technology remains prohibited.

Finally, lack of access to evidence is an additional barrier to successful case outcomes. At Winn Correctional Center, our clinic found that detained people face curtailed access to phone calls and to personal effects that contain evidence.¹⁰² For example, one person we met, A, was detained in Winn for several months awaiting his hearing. He described text messages, photos, and videos that he told us were stored in his phone and which were compelling evidence of the persecution he had faced in his home country. But because detained people are not allowed to access their phones, A was not able to submit that evidence. He asked the immigration judge to help him get his phone, with no luck—the judge does not have jurisdiction over ICE policies. We also engaged in advocacy with ICE officers on his behalf; but before we could successfully help A access his evidence, A was denied asylum and deported.

C. Conditions Barriers: Detention Is Inhumane

The horrific conditions in detention cause detained immigrants psychological and physical distress, which makes it difficult for them to focus on their legal cases.¹⁰³ Immigrants in detention are often in a state of shock when first apprehended, and their fear of deportation is justifiably high.¹⁰⁴ Then, they enter a prison system with conditions

¹⁰⁰ *Id.* at 18–21.

¹⁰¹ *Id.* at 24.

¹⁰² Manfredi & Meyers, *supra* note 68, at 139.

¹⁰³ See Riddhi Mukhopadhyay, *Death in Detention: Medical and Mental Health Consequences of Indefinite Detention of Immigrants in the United States*, 7 SEATTLE J. FOR SOC. JUST. 693, 705 (2008) (“The deleterious impact of detention on the psychological and physical health of most immigrants can also hinder an immigrant’s asylum or removal claim itself.”); Chelgren, *supra* note 44, at 1481, 1497 (arguing that the poor conditions in confinement are part of the reason that immigrants give up on their valid legal claims); Tabak, *supra* note 56, at 291.

¹⁰⁴ Mirian G. Martinez-Aranda, *Collective Liminality: The Spillover Effects of Indeterminate Detention on Immigrant Families*, 54 L. & SOC’Y REV. 755, 765–67 (2020).

that violate basic constitutional and human rights norms.¹⁰⁵ Reports by human rights organizations,¹⁰⁶ law clinics,¹⁰⁷ academic studies,¹⁰⁸ and even government agencies themselves¹⁰⁹ continually and consistently reveal major abuses within detention centers, especially regarding medical care, food, sanitation, and related basic needs.¹¹⁰ For example, detained people in Batavia told us that there was insufficient food, with often only a peanut butter sandwich for dinner.¹¹¹ Physical safety is

¹⁰⁵ Detailed discussion of the full scope of human rights issues are beyond the purview of this Article, though these horrific conditions are also part of the reason we call for the abolition of immigration detention below. *See infra* Section III.A; *see also* García Hernández, *supra* note 44, at 262 (calling for dismantling immigration prisons because they are part of “entwined racist projects” that cannot be reformed); *Carceral Carousel*, IMMIGRANT LEGAL RES. CTR. & DET. WATCH NETWORK (May 2023), https://www.ilrc.org/sites/default/files/2023-05/Carceral%20Carousel%20%282023%29_1.pdf [<https://perma.cc/T4XU-QJGR>] [hereinafter *Carceral Carousel*] (describing the continued conditions issues in Louisiana prisons despite calls for reform and concluding that abolition is necessary); THROW US BACK, *supra* note 28, at 69–96 (describing horrific conditions that impede asylum seekers from advocating for themselves, with a focus on Cameroonian individuals detained in Louisiana).

¹⁰⁶ *See, e.g.*, S. POVERTY L. CTR., SHADOW PRISONS: IMMIGRANT DETENTION IN THE SOUTH, 7 (Nov. 2016), https://www.splcenter.org/sites/default/files/leg_ipp_shadow_prisons_immigrant_detention_report.pdf [<https://perma.cc/CX46-2VK6>] [hereinafter SHADOW PRISONS]; AM. CIV. LIBERTIES UNION, CODE RED: THE FATAL CONSEQUENCES OF DANGEROUSLY SUBSTANDARD MEDICAL CARE IN IMMIGRATION DETENTION (2018), <https://assets.aclu.org/live/uploads/publications/coderedreportdeathsicedetention.pdf> [<https://perma.cc/2Q9N-BBXX>].

¹⁰⁷ *See, e.g.*, “Endless Nightmare”: Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention, PHYSICIANS FOR HUM. RTS. (Feb. 6, 2024), <https://phr.org/our-work/resources/endless-nightmare-solitary-confinement-in-us-immigration-detention/> [<https://perma.cc/UAK7-WA6V>].

¹⁰⁸ *See* Channele Diaz et al., *Harmful by Design—A Qualitative Study of the Health Impacts of Immigration Detention*, 38 J. OF GEN. INTERNAL MED. 2030 (July 2023), <https://pubmed.ncbi.nlm.nih.gov/36451013/> [<https://perma.cc/6WPV-KAU9>]; Dennis Kunichoff et al., *Migrant Children in U.S. Detention Face Physical, Mental Harms: Report*, HARV. SCH. OF PUB. HEALTH (Jan. 2024), <https://www.hsph.harvard.edu/news/hsph-in-the-news/migrant-children-in-u-s-detention-face-physical-mental-harms-report/> [<https://perma.cc/D4RQ-S24X>].

¹⁰⁹ *See, e.g.*, OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., VIOLATIONS OF ICE DETENTION STANDARDS AT RICHWOOD CORRECTIONAL CENTER IN MONROE, LOUISIANA (2023); OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., VIOLATIONS OF ICE DETENTION STANDARDS AT SOUTH TEXAS ICE PROCESSING CENTER (2022).

¹¹⁰ *See, e.g.*, Tom Dreisbach, *Government’s Own Experts Found ‘Barbaric’ and ‘Negligent’ Conditions in ICE Detention*, NPR NEWS (Aug. 16, 2023), <https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions> [<https://perma.cc/EGY6-SXY3>]; SHADOW PRISONS, *supra* note 106, at 7.

¹¹¹ Interviews by Cornell Immigr. L. & Advoc. Clinic with detained people (Mar. 2024) (on file with authors).

also a common issue, with guards threatening and enacting violence and failing to prevent violence between people detained.¹¹² Several people detained at Winn sustained injuries when guards kneeled on their necks in an attempt to force them to fingerprint their removal orders.¹¹³ The use of tear gas and pepper spray on people detained at Winn has been an ongoing problem.¹¹⁴ Guards employ solitary confinement as retribution for perceived tiny infractions,¹¹⁵ such as asking for extra food when the miniscule portions leave detained people constantly hungry, as eight people detained in Winn told us.¹¹⁶ Some also described the food as rotten or moldy, which has been a subject of complaint before at Winn.¹¹⁷

Despite numerous watchdog efforts and lawsuits¹¹⁸ exposing these horrific conditions and demanding redress for years, very little has

¹¹² SHADOW PRISONS, *supra* note 106, at 15; Zebra Warsi, 'Immensely Invisible: Women Fighting ICE's Inaction on Sexual Abuses,' FUTURO UNIDAD HINOJOSA (July 21, 2023), <https://futuroinvestigates.org/investigative-stories/immensely-invisible/immensely-invisible-women-fighting-ices-inaction-on-sexual-abuses/> [<https://perma.cc/MF9C-7SKB>].

¹¹³ *Complaint Against Louisiana Detainees Being Tortured into Signing Deportation Orders*, ADVOC. FOR IMMIGRANT RTS. (Feb. 2, 2021), <https://www.airlegal.org/blog/complaint-against-louisiana-detainees-being-tortured-into-signing-deportation-orders> [<https://perma.cc/2EU2-S3AZ>].

¹¹⁴ Letter from Jaclyn Cole, Outreach Paralegal, and Mich. P. Gonzalez, Staff Attorney, Southern Poverty Law Center, to Hon. Joseph V. Cuffari, Inspector General, Dep't of Homeland Sec. (August 7, 2020); Hayley Miller, *ICE Detention Center Officials Indiscriminately Tear Gassed Asylum Seekers, Complaints Say*, HUFFPOST (Aug. 16, 2020), https://www.huffpost.com/entry/ice-tear-gas-detainees-winn-correctional-center_n_5f35305ec5b6fc009a625a85 [<https://perma.cc/SH53-494W>].

¹¹⁵ SHADOW PRISONS, *supra* note 106, at 59.

¹¹⁶ Interview by Cornell Immigr. L. & Advoc. Clinic with detained people (Sept. 2023) (on file with authors).

¹¹⁷ Daniella Silva, *Detainees and Advocates Decry 'Horrible' Conditions at Louisiana ICE Detention Center*, NBC NEWS (July 17, 2023), <https://www.nbcnews.com/news/detainees-advocates-decry-horrible-conditions-louisiana-ice-detention-rcna92339> [<https://perma.cc/6WYT-HAF9>].

¹¹⁸ See, e.g., *Immigrants' Rights and Human Rights Organizations File Civil Rights Complaint Exposing Torture, Sexual Abuse, and Medical Neglect of a Hunger Striker at a Louisiana ICE Detention Center*, ROBERT F. KENNEDY HUM. RTS. (Mar. 30, 2023), <https://rfkhumanrights.org/press/immigrants-rights-and-human-rights-organizations-file-civil-rights-complaint-exposing-torture-sexual-abuse-and-medical-neglect-of-a-hunger-striker-at-a-louisiana-ice-detention-center/> [<https://perma.cc/5R77-HKQP>]; *Immigrants Detained at Torrance County Detention Facility Sue ICE Over Sham Inspection*, NAT'L IMMIGRANT JUST. CTR. (Nov. 8, 2023), <https://immigrantjustice.org/press-releases/immigrants-detained-torrance-county-detention-facility-sue-ice-over-sham-inspection> [<https://perma.cc/K2YB-RD4F>]; *ACLU Files Class Action Lawsuit on Behalf of Medically Vulnerable People in Immigration Detention Nationwide*, ACLU (Mar. 1, 2022), <https://www.aclu.org/press-releases/aclu-files-class-action-lawsuit-behalf-medically-vulnerable-people-immigration> [<https://perma.cc/4BMQ-K72N>].

changed. Indeed, even the U.S. Office of the Inspector General has found that these monitoring efforts do not lead to sustained compliance or systemic improvements.¹¹⁹ Thus, human rights violations in detention continue largely unabated.¹²⁰

Together with the poor conditions in the facilities and lack of access to necessary goods such as medical care and legal services, detained immigrants are emotionally taxed.¹²¹ For example, in fall 2023, our clinic worked extensively with several clients of varied backgrounds, each of whom described how the conditions in detention created or exacerbated their physical and mental health issues. Indeed, as we found in our September 2023 visit to Winn, 60% of detained immigrants with whom we had individualized legal meetings volunteered information about the stressors they were facing.¹²² These stressors ranged from difficulty sleeping, to too little food, to depression, and fear caused by the conditions inside.¹²³

For our client D,¹²⁴ a Turkish man seeking asylum for religious, political, and ethnicity-based reasons, his time in detention amplified his symptoms of PTSD, anxiety, depression, insomnia, and adjustment disorder. Sometimes, he could access his medications for some relief, but at other times, guards would not supply them. He was, at times, the only Turkish speaker in his dorm. He said that the guards yell profanities at people and regularly threaten them with solitary confinement for minor “infractions” like not standing in a straight line.

Similarly, our client N had almost no contact with others in his language, as he was apparently the only speaker of his Middle Eastern language in the entire facility of over sixteen hundred men. In working with him through an interpreter, he expressed to his student team that he was so depressed and despairing due to his inability to communicate with others that he had become suicidal. He also said he was beginning to forget how to speak his language correctly because the only time he did so was through an interpreter on his legal calls. N told his student

¹¹⁹ See generally OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., ICE’S INSPECTIONS AND MONITORING OF DETENTION FACILITIES DO NOT LEAD TO SUSTAINED COMPLIANCE OR SYSTEMIC IMPROVEMENTS (June 26, 2018).

¹²⁰ See generally Boaz, *supra* note 45, at 206–09.

¹²¹ Martinez-Aranda, *supra* note 104, at 765–66.

¹²² Jaclyn Kelley-Widmer, Mapping the Experiences of Detained Immigrants (2023–24) (unpublished and ongoing study) (on file with author).

¹²³ *Id.*

¹²⁴ Our client gave informed consent for his information to be included in this piece, including reviewing this content in his language and making revisions which we incorporated here.

attorney that he “had to get medication because [he] was thinking about harming [him]self” and because the experience of detention was “psychological torture.”¹²⁵

The constant uncertainty and physical discomfort detained immigrants experience can lead to their difficulty or inability to pursue access to counsel—particularly when the counsel is so difficult to access in the first place. Detained people also cannot work to afford to hire a lawyer from the private bar. There are few jobs available for detained people within the immigration detention center. Our clinical team met people at Batavia and Winn who were unable to work, even though they wanted to, because all of the detention center jobs had been filled.¹²⁶ Also, the work that is available is paid far below minimum wage.¹²⁷ Immigrants who are working in immigration detention often work for one dollar per day, which leaves them unable to pay any standard retainer fee.¹²⁸ And those detained immigrants who do find counsel face massive practical challenges to actually access those legal services, as discussed above.

In combination, the barriers inflicted by geography, logistics, and conditions amount to a de facto denial of access to counsel for immigrants in detention.¹²⁹

III

LAW CLINICS BRIDGING THE GAP

Given the barriers described above, this Article argues that abolishing immigration detention centers is the only way to prevent the de facto rights violations the detention complex creates and entrenches. This Article builds on the growing abolition scholarship in legal

¹²⁵ Kelley-Widmer, *supra* note 122.

¹²⁶ Interviews by Cornell Immigr. L. and Advoc. Clinic with detained people (Sept. 2023 and Mar. 2024) (on file with authors). Interview with individual detained person, in Batavia, N.Y. (Mar. 8, 2024) (on file with authors).

¹²⁷ Complaint for Declaratory and Injunctive Relief and Damages at 2, Wilhen Hill Barrientos, Margarito Velazquez Galicia, and Shoaib Ahmed v. Coercivic, Inc., 4:18-cv-00070-CDL (M.D. Ga. Apr. 17, 2018), https://www.splcenter.org/sites/default/files/01_-_complaint.pdf [<https://perma.cc/5AGB-CEDP>].

¹²⁸ See *No Fighting Chance*, *supra* note 82, at 7 (“[M]any detained immigrants are indigent and the only opportunity to earn money is the ‘Voluntary Work Program,’ where detained people earn \$1 per day performing work to maintain the detention facility.”); Eagly & Shafer, *supra* note 21, at 35 (“Detainees are not able to work and thus face obstacles to paying for private counsel.”).

¹²⁹ See Manfredi & Meyers, *supra* note 68, at 192.

literature¹³⁰ while focusing on the access to counsel issue. Ultimately, because deprivation of counsel is inevitable while immigration detention exists, immigration detention must end.

Meanwhile, advocates should endeavor to expand representation and access to legal knowledge for those currently in detention. Strategies to address the issue of access to counsel require an abolitionist lens because of the rights violations,¹³¹ intersectional justice issues caused by detention,¹³² and the sheer practical realities. With the huge numbers of people currently detained¹³³ in remote locations and the barriers to client communication facing attorneys who do represent detained people,¹³⁴ it would be virtually impossible for attorneys to meaningfully represent all of the people who are currently detained.¹³⁵ And of course, there are insufficient practicing lawyers for the population of immigrants detained.¹³⁶ However, legal projects, including those involving law students, can make an impact. This section theorizes how law school clinics can develop projects that bridge the gap between the existing lack of access to counsel and the eventual goal of immigration detention abolition.

A. Law Clinics as Participants in Transformative Justice Work

This Article advocates for a transformative model of legal representation that complements efforts for universal individual representation and utilizes the energy, passion, and time of law students, reaping pedagogical benefits while leveraging the resources and flexibility of law clinics. This section also summarizes the specific

¹³⁰ For literature exploring the theory of abolition of detention and deportation, see, for example, Hlass, *supra* note 20; Angélica Cházaro, *The End of Deportation*, 68 UCLA L. REV. 1040, 1113–16 (2021); Shiu-Ming Cheer, *Moving Toward Transformation: Abolitionist Reforms and the Immigrants' Rights Movement*, 68 UCLA L. REV. DISC. 68 (2020); Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1616 (2019); García Hernández, *supra* note 44, at 252–53.

¹³¹ See *supra* Part I, discussing the constitutional and international human rights implicated and violated by immigration detention.

¹³² Hlass, *supra* note 20, at 1637.

¹³³ For example, on December 3, 2023, there were 36,755 people in immigration detention across the United States. *ICE Detainees*, TRAC IMMIGR., https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html [<https://perma.cc/36ZA-WMB9>].

¹³⁴ See *supra* Part II.

¹³⁵ *Carceral Carousel*, *supra* note 105 (describing the continued conditions issues in Louisiana prisons despite calls for reform and concluding that abolition is necessary).

¹³⁶ See, e.g., Markowitz et al., *supra* note 71, at 358 (discussing “the acute shortage of competent attorneys willing and able to competently represent individuals in immigration removal proceedings”).

detention trips the Cornell Immigration Law and Advocacy Clinic has taken since 2023.

1. Law Students as Participants in Transformative Justice Work

Law students have tremendous energy, creativity, and enthusiasm. With their compassion and drive, law students can add capacity to under-resourced detention teams, allowing some degree of scaling up during Know Your Rights visits. During our trips to immigration detention centers in Louisiana and New York, Cornell law students were able to directly connect with detained people and provide legal knowledge alongside experienced advocates who had been working with the community for years. Experienced attorneys reported greatly enjoying working alongside the students, both for practical purposes (having someone else to witness and take notes) and for the meaningful mentoring experience and exchange of ideas.

Law students are not yet jaded or worn down by the system and bring fresh perspectives to individual cases. Students can be particularly insightful in detention center interviews because they often have ideas that are less clouded or stifled by existing legal knowledge—making them inherently creative in ways that can complement less traditional modes of lawyering and allowing them to engage differently with legal cases. For example, while meeting people in detention, students have often asked questions that a more experienced attorney might have disregarded. In April 2023, a student speaking with a detained man whose wife was detained in another center—and who had a much stronger asylum claim—sought solutions to see if the man’s deportation could be stayed while his wife’s winnable case was pending. A more jaded lawyer who has seen too many deportations and the weight of government machinery in action might assume there was nothing to be done; but in pursuing that question, the student found that our partner lawyers had creatively tried using a certain type of procedural hold in a similar situation, and the partners thought it was worth a try. Students may come up with innovative legal theories and ideas for client-centered practices that draw more on nonlegal knowledge and help experienced lawyers break out of habits that may not be productive or serve the community as well.

Similarly, law students are open to innovative ideas, willing to look within and beyond the system, and ready to imagine a more just future. They have not yet experienced major legal setbacks and are new to witnessing the horrors of detention, which can lead to creative ideas for reform or abolition. Witnessing the realities of immigration detention

is a profound educational experience. Introducing law students to anti-detention movement lawyering can begin to build a greater cohort of legal allies to oppressed communities¹³⁷ while achieving shorter-term goals for specific detained clients—like access to counsel and successful case outcomes—and for the broader immigrant justice movement.

Students are also well situated for detention work because they are explicitly involved in an educational project and have a seminar component of the clinic class. Clinic students receive training on substantive law, client interviewing, and multicultural lawyering that helps prepare them for the work. Then, a day spent interacting with clients, issue spotting, and assessing clients' cases provides them an intensive learning experience that builds their skills under pressure. Their understanding of the substantive law and systemic functions crystalizes as they see these procedures play out.

In addition, the pedagogical space to contextualize and reflect upon clinic work within seminar discussion and through reflection essays provides the unique opportunity to build in a theoretical background along with the casework. Readings on transformative lawyering,¹³⁸ abolition theory,¹³⁹ and narratives by formerly detained people¹⁴⁰ provide students with more perspectives and context than just their own limited experience working with detained people. After our March 2024 detention visit, we invited the practicing attorneys who had accompanied us to our debriefing class, building in reflective space to share about the experience. Overall, the seminar component of the detention project has allowed for robust discussion regarding abolition and reform, practical solutions, and goals of representation.

2. Clinical Detention Projects as a Site for Transformative Justice Work

Law school clinics are excellent sites for transformative justice work in immigration detention because of their relative flexibility and resources, along with their integrated pedagogy of substantive law and

¹³⁷ See Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191, 203 (2015).

¹³⁸ We assign an excerpt from Jayesh Rathod, *Transformative Immigration Lawyering*, 132 YALE L.J.F. 632 (2022).

¹³⁹ We assign an excerpt from PATRISSE CULLORS, *AN ABOLITIONIST'S HANDBOOK* (2021).

¹⁴⁰ For example, we assign an excerpt from the memoir of EDAFE OKPORO, *ASYLUM: A MEMOIR AND MANIFESTO* (2022).

reflective practice. Clinical faculty may choose to engage with access to counsel projects as a component of the clinic docket, as they often have broad discretion to choose which types of projects and cases their clinic will handle.¹⁴¹ Unlike nonprofits, which are often tied to funding with specific deliverables, a law clinic may be able to commit resources to more challenging cases or projects that take a larger team, such as detention work. Law clinic flexibility is often also paired with more robust resources than the average nonprofit, as law clinics may have funding to support initiatives like student travel for client work to fulfill both pedagogical and service goals.

With these relative structural freedoms, clinic faculty can be well positioned to innovate in general and within the immigration advocacy space. Clinic faculty can build a docket that balances engagement both with individuals¹⁴² and with movements through multipart cases and projects such as pro se materials. Traditionally, many immigration law clinics concentrate on representation of individuals rather than on organizational clients or campaigns.¹⁴³ Representing individual clients allows students to attain important milestones in their legal education, such as client interviewing, building a case theory, and representing a client in court.

In addition, clinics can pair these narrower casework goals with complementary projects that work in tandem with the transformative vision of directly affected communities¹⁴⁴ and espouse a broader view

¹⁴¹ Rathod, *supra* note 138, at 652–53 (“clinics are optimally situated to disrupt incrementalism and to challenge path dependence in immigration policymaking. The very act of embracing an ambitious, transformative goal—and diligently pursuing that goal with the unique combination of resources, perspective, and expertise that clinics offer—will signal a departure from established practices in the advocacy community.”).

¹⁴² See Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775, 779 (2017).

¹⁴³ See Rathod, *supra* note 138, at 648.

¹⁴⁴ See Cheer, *supra* note 130, at 72–73 (“While addressing community members’ everyday material needs through practical changes is important, it should be accompanied by a larger vision of the world that we want to see, one that is rooted in liberation, justice, participatory democracy, solidarity, imagination, hope, and joy. If we do not present this vision in our demands, then we will not be able to strive towards it.”); Thea Cabrera Montejo et al., *Reimagining the Refugee & Asylee Experience Through Law: Exploring U.S. Culpability and (Un)exceptionalism*, 25 HUM. RTS. BRIEF 128, 130 (2022) (lawyers should “take a backseat and allow the voices and opinions of community members to be the driving force” behind their representation); Charles Elsesser, *Community Lawyering - The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 376 (2013); Kathleen Kersh & Matthew N. Currie, *Working for Justice in an Unjust System: Moving Beyond the Legal System*, 55 U. ILL. L. REV. 251, 258 (2022).

of how their access-to-counsel projects fit within anti-oppression strategies.

This work takes time and will not be achieved in a single semester of a clinical course.¹⁴⁵ This reality is challenging, as law clinics often favor shorter-term projects with discrete goals, while movement lawyering requires a longer timeline.¹⁴⁶ Further, clinics may struggle to create lasting community connections due to constant student turnover and dissonance between the academic timeline and the needs of communities.¹⁴⁷ Still, clinical faculty can overcome some of these challenges by maintaining faculty relationships with community partners, training students on movement lawyering, orienting students to the longer-term project, and continuing to provide individual case representation for both student and client benefit.

The “big immigration law” movement is a vehicle for clinical engagement in access-to-counsel work that connects with movements.¹⁴⁸ Professors Stephen Manning and Juliet Stumpf coined the term “big immigration law,” which they describe as “a new mode of representation that rapidly scales, and by the act of scaling directly confronts the mechanisms that rendered asylum law inoperable.”¹⁴⁹ In other words, advocates can offer large-scale support to detained groups and combat the lack of access to counsel leading to the default of deportation.¹⁵⁰ Coalitions of legal organizations both offer counsel and engage in strategies that disrupt the detention and deportation apparatus¹⁵¹ in various detention centers around the country. Proyecto Dilley (formerly the Dilley Pro Bono Project) was perhaps the most well-known, largest project of this kind, bringing in lawyers and law students from around the country to the South Texas Family Residential Facility in Dilley, Texas, on a weekly basis from

¹⁴⁵ See, e.g., Freeman, *supra* note 137, at 196; Rathod, *supra* note 138, at 648 (“[W]orking for transformative social change is a long-term endeavor.”).

¹⁴⁶ Rathod, *supra* note 138, at 648.

¹⁴⁷ See *infra* Section III.B.4 discussing challenges.

¹⁴⁸ Manning & Stumpf, *supra* note 11, at 420; Ryo & Humphrey, *supra* note 59, at 828–29 (describing “big immigration law”); Lindsay M. Harris, *Learning in “Baby Jail”: Lessons from Law Student Engagement in Family Detention Centers*, 25 CLINICAL L. REV. 155, 170 (2018) (describing law clinic engagement in family detention advocacy).

¹⁴⁹ Manning & Stumpf, *supra* note 11, at 420.

¹⁵⁰ The “big immigration law” movement started in 2014 when a group of immigration attorneys began mobilizing around a project to provide counsel to detained women and children held in Artesia, New Mexico. *Id.* at 417.

¹⁵¹ *Id.* at 420 (describing components of an effective resistive counter-structure to the mass detention and deportation apparatus that had derailed asylum law).

approximately 2015 until the 2020 pandemic changed what was possible.¹⁵²

In general, these law clinic projects involve occasional trips by clinic students and faculty to the detention centers over a period of a few days or a week. Many law clinics have plugged into such projects in the last decade,¹⁵³ with significant clinical involvement not only in Dilley but also at the facility in Karnes City, Texas,¹⁵⁴ and the Berks County Detention Facility in Berks, Pennsylvania—all of which were family detention centers.¹⁵⁵ Clinics have also engaged in non-family detention work, including legal orientation programming (LOP) trainings, direct representation, and pro se resource creation.¹⁵⁶ Law clinic involvement in these projects has often been in collaboration

¹⁵² See Harris, *supra* note 148; *Family Detention*, IMMIGR. JUST. CAMPAIGN, <https://immigrationjustice.us/advocacy/advocacy-issues/family-detention/> [<https://perma.cc/P6MK-Y68G>] (last visited Dec. 14, 2023). Proyecto Dilley still welcomes law clinic volunteers, though with less regularity than prior to the pandemic. See *Detained Families Seeking Asylum*, GEORGETOWN L., <https://www.law.georgetown.edu/human-rights-institute/programs/detained-families-seeking-asylum/> [<https://perma.cc/2AU2-9Z49>] (last visited Dec. 14, 2023) (discussing Georgetown Law School trip to Dilley in January 2023).

¹⁵³ Harris, *supra* note 148, at 160 (describing “various models of law school volunteer responses, ranging from trips incorporated into an existing legal clinic, to part of a service-learning program or practicum, to student-led models with varying degrees of formal engagement.”).

¹⁵⁴ *Id.* at 163, 170. Cornell Law clinic students participated in a service-learning trip in Dilley in 2019, led by one of the authors. See *Cornell Law Students Go to Border to Help Mothers, Children Seeking Asylum*, WSKG (Jan. 11, 2019, 10:43 AM), <https://www.wskg.org/news/2019-01-11/cornell-law-students-go-to-border-to-help-mothers-children-seeking-asylum> [<https://perma.cc/YY27-SRXD>].

¹⁵⁵ *Center for Immigrants’ Rights Clinic*, PENN STATE L., <https://pennstatelaw.psu.edu/practice-skills/clinics/center-immigrants-rights> [<https://perma.cc/S39Q-LDMK>] (last visited Dec. 14, 2023) (“In Fall 2018, students from CIRC worked with detained families in Berks Family Residential Center and assisted with their asylum claims and has also provided group rights presentations at local jails with immigration detainees.”). The Berks County Detention Facility closed after the federal government ended its contract with the facility on January 31, 2023. *Berks County Detention Center Closes, Finalizing Eight-Year Campaign Led by PA Immigrant Community*, CASA (Jan. 31, 2023), <https://wearecasa.org/berks-county-detention-center-closes-finalizing-eight-year-campaign-led-by-pa-immigrant-community/> [<https://perma.cc/GY4P-RW5L>].

¹⁵⁶ See Harris, *supra* note 148, at 197 (listing law clinics working in nonfamily detention centers prior to the family detention work); Lindsay M. Harris, *Contemporary Family Detention and Legal Advocacy*, 21 HARV. LATINX L. REV. 135, 151 (2018) (describing the work of clinical professors from University of Texas Law); *Know-Your-Rights Materials*, IMMIGRANTS’ RIGHTS CLINIC, STANFORD L. SCH., <https://law.stanford.edu/immigrants-rights-clinic/know-your-rights-and-pro-se-materials/#slnav-ihp-pro-se-guides> [<https://perma.cc/ND3K-KD67>] (last visited Dec. 15, 2023) (describing visits to a detention center in Richmond, CA, and creation of a pro se resource guide).

with legal organizations that work more consistently, or constantly, within the facilities.¹⁵⁷

Professor Lindsay M. Harris provides a framework for constructing optimal law student involvement in detention work, including ensuring adequate preparation and supervision; avoiding a model in which students only work in family detention without additional context; and avoiding “voluntourism,” in which students take more than they give to detained communities.¹⁵⁸ In a model that allows law clinics to “fly in, fly out” of areas with detention centers, the privilege difference between the legal team and the clients is extreme, and the advocacy can be inherently extractive. Projects like this come with a high risk of “lawyer saviorism” that must be balanced through both preparation and training before the trip,¹⁵⁹ reflection during and after the trip, and ongoing engagement with the work through remote follow-up projects that build on the work that took place on-site during the trip.

3. Case Study: Cornell’s Detention Project

In designing our project, we strove to meet pedagogical and community goals and aimed toward transformative justice. Cornell’s Immigration Law & Advocacy Clinic engagement in this area serves as both a case study and an example of a project in constant development. Since 2022, Cornell’s clinic has been working with legal organizations in Louisiana that are part of the Southeast Dignity Not Detention Coalition (SDND Coalition or SDNDC).¹⁶⁰ The SDND Coalition is a grassroots, community-engaged, movement-style collaborative that includes formerly detained individuals and

¹⁵⁷ See, e.g., *Family Detention*, IMMIGR. JUST. CAMPAIGN, <https://immigrationjustice.us/advocacy/advocacy-issues/family-detention/> [<https://perma.cc/E6Z3-NFAN>] (last visited Dec. 14, 2023); *Our Community Projects*, ALDEA, <https://aldeapjc.org/our-projects#berks-county> [<https://perma.cc/567P-MX7U>] (last visited Dec. 18, 2023).

¹⁵⁸ Harris, *supra* note 148, at 198.

¹⁵⁹ Our clinic seminars involve readings and discussion of pieces on community and movement lawyering, and on first-person narratives. See, e.g., Charles Elsesser, *Community Lawyering - The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375 (2013); Arthur Kinoy, *RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE’S LAWYER* (1984); VALARIE KAUR, *SEE NO STRANGER: A MEMOIR AND MANIFESTO OF REVOLUTIONARY LOVE* 183 (2020); Edefe Okporo, *ASYLUM: A MEMOIR AND MANIFESTO* (2022); *The Stories*, PROLONGED DETENTION STORIES, <https://www.prolongeddetentionstories.org/the-stories> [<https://perma.cc/H7C5-JBFF>] (last visited Jan. 29, 2024). We also involve guest speakers who are community organizers and/or movement lawyers to help contextualize our work and engage our students across the broader advocacy landscape.

¹⁶⁰ ACLU LOUISIANA, *supra* note 2 (showing that Southern Poverty Law Center is a member of the Coalition).

developed from the Shut Down NOLA ICE Coalition. SDND uses legal advocacy¹⁶¹ and organizing strategies to call attention to detention abuses and strives toward abolitionist goals.¹⁶² SDND was formed in response to increasing numbers of detention centers in Louisiana,¹⁶³ which also spurred Cornell's involvement. One of the SDND Coalition members, RFK Human Rights, also works in Batavia, New York, so the clinic has been able to partner with this group in detention projects in both states.

The Cornell clinic accompanied coalition legal organizations on trips to detention centers in Winn and Jena, Louisiana, in April and September 2023, and Batavia, New York, in March 2024.¹⁶⁴ During each trip, we conducted Know Your Rights presentations and individual intakes, provided legal advice, made referrals when possible, and attended to urgent legal needs. These trips demonstrate the opportunities and benefits of law student involvement in LOP, both through the number of people we reach and through the less tangible act of accompaniment and solidarity with the detained people we meet.¹⁶⁵

During our April 2023 Louisiana trip, we conducted presentations and intakes at Winn Correctional Center, using the space in the "Freedom Chapel" for these meetings. We conducted the same work at LaSalle Correctional Center in Jena, Louisiana, in a series of smaller

¹⁶¹ Andrew Perry & Nora Ahmed, *We're Making Sure People in Immigration Detention Know Their Rights*, ACLU (Dec. 7, 2023), <https://www.aclu.org/news/immigrants-rights/were-making-sure-people-in-immigration-detention-know-their-rights> [https://perma.cc/L6QN-USPS] (discussing the coalition of legal services providers working in immigration detention, which are the same organizations who are part of SDND).

¹⁶² See, e.g., *Family, Advocates Demand Answers and Justice Following Death of Man ICE Had Recommended Be Released in November 2022*, FREEDOM FOR IMMIGRANTS (June 29, 2023), <https://www.freedomforimmigrants.org/press-center/families-advocates-demand-justice-for-ernesto-rocha-cuadra> [https://perma.cc/5MW2-UTSU].

¹⁶³ Louisiana opened several new immigration detention centers in 2019, bringing the total number of facilities up to eight (plus one transfer staging facility) and making Louisiana the state with the second-highest number of detained people. ACLU LOUISIANA, *supra* note 2; Nomaan Merchant, *Louisiana Becomes New Hub for Immigrant Detention Under Trump*, PBS.ORG (Oct. 9, 2019), <https://www.pbs.org/newshour/nation/louisiana-becomes-new-hub-for-immigrant-detention-under-trump>.

¹⁶⁴ We plan to continue to visit centers in Louisiana and/or Batavia a few times per year, resources permitting.

¹⁶⁵ See *infra* Part IV (discussing goals); Margaret Reuter et al., *Attorney as Accompagnateur: Resilient Lawyering When Victory Is Uncertain or Nearly Impossible*, 59 WASH. U. J.L. & POL'Y 107, 108, 116 (2019) ("the first or foundational professional value is to *accompany* her client—stand beside, stand up for, and give respect and voice to the client's story—irrespective of victory.").

rooms. Together with our Southeast Immigrant Freedom Initiative (SIFI) partners, we reached hundreds of people in four days of visits.¹⁶⁶ This volume was possible because we had relative cooperation from the facility staff, who brought large groups of people who had languages in common to meet with us.



Photo: Legal Rights Initiative Intake Sheet (blank) and related documents, Winn Correctional Center, September 2023.¹⁶⁷

During our September 2023 Louisiana trip, we spent two days in the Winn Correctional Center. Our five-person Cornell team partnered with three attorneys from RFK Human Rights and the ACLU of Louisiana. Students shadowed more experienced attorneys on the first day, observing or co-presenting Know Your Rights (KYR) presentations and individual consults. By the second day, students were ready to present KYRs and provide consults on their own, while asking supervising attorneys plenty of questions. Altogether, we provided twenty-two KYR presentations in eleven languages, reaching sixty-

¹⁶⁶ We did not track precise data during this initial trip as our Institutional Review Board (IRB) application for data collection was still in process during this pilot trip. We received IRB approval for all data collection and analysis described herein.

¹⁶⁷ Jaclyn Kelley-Widmer, Photograph of a Legal Rights Intake Sheet and related documents (Sept. 18, 2023) (on file with author).

three detained individuals. The average KYR lasted about forty minutes. On this second trip, we were not able to reach as high a volume of individuals because detention center staff would bring us only smaller groups with multiple language needs. This forced us to provide multiple simultaneous presentations, stifling our ability to dramatically scale up the number of people we reached as we had done in April. But we were able to use telephonic interpreters to provide one-on-one KYRs and consults that rare language speakers might not otherwise have received.

In March 2024, we visited the Buffalo Federal Detention Facility in Batavia, New York. In Batavia, presentations and consults took place in the gymnasium or library. Over two days of visits, our students partnered with experienced attorneys from partner agencies to provide eighteen KYR presentations in nine languages, reaching 118 detained individuals. The average KYR lasted about fifty minutes. Students and faculty also provided forty individual consultations, and our partner attorneys provided more. In addition to reaching this vulnerable and isolated population in need of legal services, our students had a tremendous learning experience.¹⁶⁸ They were able to both observe systemic injustices and make connections with individuals, building a profound understanding of the immigration legal system and those caught up in it.

In addition to the in-person LOPs in the detention centers, the clinic has continued to work on projects for detained (or formerly detained) individuals in Louisiana and Batavia, such as limited-scope projects like motions, asylum evidence packets, and parole requests.¹⁶⁹ Some of these projects have come to us by referral from legal coalition partners, and others have been clients we personally met while in the centers. Further, clinic students have worked on projects such as pro se materials to be distributed to detained groups during LOP presentations. By maintaining regular communication with partners who can visit the detention centers more often than we can, our clinic is able to intermittently accept cases and projects, maintaining a relatively continuous docket of remote work on behalf of Louisiana detained communities. We have also been able to refer clients to other lawyers when we couldn't take the cases ourselves, helping further

¹⁶⁸ See Morales & Leach, *supra* note 18.

¹⁶⁹ See Rebecca Bowes, *1L Immigration Clinic Helps Secure Parole for Rare Language Speaker*, CORNELL L. SCH. (Apr. 16, 2024), <https://www.lawschool.cornell.edu/news/1l-immigration-clinic-helps-secure-parole-for-rare-language-speaker/> [<https://perma.cc/8836-CDJ8>].

bridge the justice gap. These ongoing projects help the clinic maintain a connection to our partner agencies and the communities they serve.

Overall, our clinic students have been able to engage in these projects on behalf of detained people within a contextualized backdrop that incorporates discussion of abolitionist theory, reforms, racism, and other nuanced legal and policy considerations of immigration detention.

B. Challenges for Law Students Involved in Transformative Immigration Work

Working on transformative, abolition-focused justice projects for detained communities also comes with challenges, including establishing effective community collaboration; navigating shifting resources in a difficult, often traumatizing environment; and the need for deep legal expertise.

1. Complex Collaborative Dynamics

While community-informed perspectives are essential,¹⁷⁰ this collaboration can be challenging for practical and political reasons. Law professors must develop and maintain relationships with community partners amid constant student turnover. Professors must juggle several goals, prioritizing the projects their partners find most critical while also identifying projects that can be molded to clinic timelines, meet pedagogical goals, and fit within available funding.

Further, professors must both navigate the dynamics of the collaborative and help their students through ethical challenges that may arise. Tensions often exist between lawyers and movements, as differences in approach between these cohorts often arise,¹⁷¹ and lawyers must build trust in order to successfully collaborate.¹⁷² The very nature of being in elite spaces like law schools creates an

¹⁷⁰ “[N]o matter how experienced, clever, and resourceful that lawyer may be, the most important element is still the informed support and active participation of the people involved.” ARTHUR KINOY, *RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE’S LAWYER* 59 (1984).

¹⁷¹ See, e.g., Rathod, *supra* note 138, at 639–40 (discussing tensions between community organizers and those in the movement who push for more moderate reforms); Freeman, *supra* note 137, at 193 (discussing how would-be movement lawyers “inadvertently inhibit or destabilize movement-building efforts.”).

¹⁷² Kersh & Currie, *supra* note 144, at 279 (“Only when the lawyer has proven their trust will the impacted community be willing to engage in a co-created legal intervention.”).

attenuation from the communities a law clinic may seek to serve.¹⁷³ Lawyers generally view issues through their professional lens, while their potential clients may see their engagement with legal matters as incidental to their broader life or the collective struggle.¹⁷⁴

Meanwhile, activists often prioritize goals or strategies that do not involve traditional legal methods, opting instead for accessible, creative, nonlegal methods for change¹⁷⁵ to which lawyers may not be accustomed.¹⁷⁶ Lawyers may find that their collaborators resist the institutionalized strategies with which they are familiar as a problematic engagement with a system that is a “manifestation of the very injustice they are seeking to address.”¹⁷⁷ But alternative strategies can sometimes create challenges for lawyers in maintaining legal professionalism.¹⁷⁸ For example, lawyers’ ethical duty of zealous representation can conflict with organizing methods.¹⁷⁹ Additionally, movement lawyers themselves may have differing takes on strategy and tactics.¹⁸⁰

Of course, both lawyers and law students may experience dissonance in their work within carceral institutions while also fighting

¹⁷³ See Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLINICAL L. REV. 401, 433 (2012) (discussing the power imbalance that often exists between lawyers and their clients, and the social and economic reasons for such imbalance).

¹⁷⁴ See Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1076–77 (2007).

¹⁷⁵ See Jennifer J. Lee, *Immigration Disobedience*, 111 CAL. L. REV. 71, 74 (2023); Amna A. Akbar, *Toward A Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 476 (2018) (describing the role of social justice movements in reimagining solutions and transformations); Freeman, *supra* note 137, at 200 (“it can be deeply unsettling for lawyers to learn that there are dozens upon dozens of effective advocacy strategies that can help shine a light on an injustice, shift power dynamics, and/or produce change, and of those only a few are typically taught in law schools.”).

¹⁷⁶ Freeman, *supra* note 137, at 199 (“many highly skilled and successful lawyers that maneuver easily within courtrooms and legislatures are functionally useless within grassroots-led advocacy campaigns.”).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 200; Kieran McEvoy et al., *Lawyers in Conflict and Transition*, THE PRACTICE, July/Aug. 2022, <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/lawyers-during-conflict/lawyers-in-conflict-and-transition/> [<https://perma.cc/ZH2N-JRR9>].

¹⁷⁹ Susan D. Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447, 449 (2018) (noting “long-standing ethical concerns about lawyers whose pursuit of ideological commitments over specific client interests creates tension with professional duties of client loyalty.”).

¹⁸⁰ See, e.g., Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464, 1496 (2017) (providing an example in which two sets of lawyers each “used a full repertoire of lawyering tactics that included litigation and non-litigation advocacy.”).

to dismantle them.¹⁸¹ Clinical professors must be prepared to navigate these dynamics while still advancing pedagogical and client-facing goals.

2. Traumatic Work Environment

Legal aid organizations and law clinics alike require tremendous resources to engage meaningfully in immigration detention work, not only because of the remote locations and logistics of the facilities but also because of the mental and emotional stamina required. Logistically, law clinics usually must plan well in advance because of academic timelines, while community partners may be more flexible, but often have limited and variable capacity. Law clinic capacity and funding may also change semester by semester, leading to fluctuating ability to engage and threatening the sustainability of the projects. Funding constraints may limit travel, causing clinics to rely more on remote work—which, while filling an essential role, may be harder for students to fully engage with when they have not also seen the inside of a detention center.

Further, working in detention centers can be traumatic and triggering.¹⁸² Advocates will witness clients in extreme distress, with medical and psychiatric complaints, and who are living with PTSD. Law students, and all advocates in detention, must be trained in trauma-informed practices and vicarious trauma self-care.

Even outside the facility, working with clients in detention can be emotionally difficult. Indeed, law students who worked on cases in fall 2023 noted that they expected work inside detention to be difficult, but they were surprised when the more emotionally harrowing part of their work was the follow-up representation. Over hours of legal calls, they developed closer relationships with certain clients, who opened up to

¹⁸¹ Hlass, *supra* note 20, at 1597; *see also* McEvoy et al., *supra* note 178 (noting that while “lawyers are often critical of the structural failings of the legal system in which they work . . . this rarely leads them to conclude that they should refuse to engage.”); Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. 733, 752–53 (2021); *see also* Alexandra D. Lahav, *Portraits of Resistance: Lawyer Responses to Unjust Proceedings*, 57 UCLA L. REV. 725, 746 (2010).

¹⁸² Sarah A. MacLean et al., *Perspectives on Working with Immigrants Held in Detention Using Photovoice*, 92 PSYCHIATRIC Q. 793, 793 (2021) (finding that legal volunteers who work with immigrants in detention centers may be at risk of secondary trauma); Harris, *supra* note 148, at 206 (“In addition to preparing students to effectively interview, counsel, and represent traumatized individuals, clinicians and leaders of these intensive trips to detention centers must also educate students as to the phenomenon of vicarious traumatization.”).

them about their past and current traumas. Viewing their clients' stresses over time, and how these stresses continued despite our assistance, was demoralizing. When we had legal setbacks in cases, law students experienced despair and disappointment as they saw just how vigorously the system worked against the clients. In contrast, while in detention, students saw opportunities and were hopeful that they could solve some problems for their clients. Thus, the casework itself revealed the injustices of the system more deeply than just the visit to the detention center.

Law clinics working on detained projects, both short- and longer-term, must have a coherent plan for navigating secondary trauma and burnout,¹⁸³ including regular discussion of these issues and time away from the work to process and recover.

3. *Intricate Legal Needs*

Cases arising in immigration detention are often legally challenging and unpredictable. First, the cases of detained people are likely to be in a wide variety of procedural postures. Detained people may have just arrived in the United States or may have lived in the country for years but have criminal records that add complexity. There are numerous statutes under which detention is authorized, with different release levers for each.¹⁸⁴ Professors and partner attorneys can train law students on these issues, but with limited experience, they are unlikely to be able to fully deploy this knowledge within the fast-paced, stressful detention center setting.

Second, the legal parameters of a case are not always what determines the case outcome; there is an element of apparent randomness,¹⁸⁵ and it can be impossible to determine why a person is being held if they cannot explain it well, they leave out a key detail a lawyer would need to know, or they do not have access to their legal documents to share with the lawyer during their consult. Knowing how to liaise with the staff at the facility and the idiosyncrasies of the space are essential for effective use of time.

Third, the types of cases within the facilities are constantly changing, and the people in detention are not organized by type of case. In one group arriving to meet with lawyers at the same time, there could be recent arrivals from Guatemala with permanent residents from Jamaica

¹⁸³ Harris & Mellinger, *supra* note 181, at 802.

¹⁸⁴ See *supra* Part I.

¹⁸⁵ See *supra* Part II.

who have pending criminal charges with Armenians who have been detained over six months.¹⁸⁶ Thus, law clinic faculty and students entering a detention facility simply have no idea what exactly they will encounter. This unpredictability makes it impossible to fully prepare students, who cannot gain the deep expertise that would be needed to analyze all the situations they come across.

Thus, a high level of faculty supervision, aided by community partners with greater experience in the specific facility, is essential for law clinics working in detention centers. With these resources in place, law students can meaningfully lessen the justice gap even with their limited expertise. Further, law clinics can situate their detention work within the access to counsel movement and abolition discussion, advancing these dual goals as a way to bridge the justice gap.

IV

ABOLITIONIST GOALS AND ACCESS TO COUNSEL

A. Why Abolition

Immigration detention is a deeply problematic institution rife with problems,¹⁸⁷ including the lack of access to counsel highlighted here. In considering how to remedy the wrongs of immigration detention, advocates must center their effort within an abolitionist framework. Detention is generally taken for granted in the U.S. context, with modern pro-immigration movements often organized around detention and deportation as inevitabilities.¹⁸⁸ However, detention does not have to be the mechanism the United States uses for immigration control.¹⁸⁹ We amplify the call of Professor Angélica Cházaro, who argues that these efforts must reframe around the movement for abolition.¹⁹⁰ Abolitionists call for decarceration, the end to immigration prisons, and the disentangling of the criminal and immigration systems.¹⁹¹ Within

¹⁸⁶ Indeed, our clinic saw such a group in April 2023.

¹⁸⁷ See Lee, *supra* note 175, at 84–86; Hlass, *supra* note 20, at 1599, 1611.

¹⁸⁸ Cházaro, *supra* note 130, at 1048.

¹⁸⁹ Sarah Sherman-Stokes, *Immigration Detention Abolition and the Violence of Digital Cages*, 95 U. COLO. L. REV. 219, 232 (2024) (“detention as the default has not always been the norm.”).

¹⁹⁰ Cházaro, *supra* note 130, at 1048 (“By deportation abolition, I mean ending the practice of expulsions on the basis of national origin.”).

¹⁹¹ See Lee, *supra* note 175, at 75; Hlass, *supra* note 20, at 1599, 1632–33; Casey L. Chalbeck, *Separating the Hands: Why Reorganization-Oriented Abolitionism Won’t Meaningfully Change ICE*, 34 GEO. IMMIGR. L.J. 79, 90 (2019); Juliet Stumpf, *The*

this framework, reforming, rather than dismantling, the detention system is problematic for at least three broad reasons: the underlying assumption of detention, the intractable nature of the system that can thwart reform attempts, and the limitations of projects that build on the existing system, such as universal representation projects.

First, immigration detention comes from racist, colonial origins.¹⁹² As a form of social and racial control, immigration detention is an anti-democratic, anti-humanitarian system. Detention is also ineffective, at least toward its purported goal of immigration enforcement.¹⁹³ Thus, immigration detention is a racialized method of movement control rife with abuse; it is morally repugnant.¹⁹⁴ The mass detention system and its corollary components cannot be remediated by ensuring counsel for all detained immigrants.¹⁹⁵ Indeed, as movement lawyer Jim Freeman states, “even if the legal profession were somehow able to meet all of the discrete, individualized needs of oppressed people, we still would not have a just society.”¹⁹⁶

Second, focusing on procedural improvements to the immigration system masks this larger context of systemic harm.¹⁹⁷ Only proposing reforms to the system would result in maintaining the overall system of carceral control, perhaps mitigating some immediate issues, but generally continuing the status quo.¹⁹⁸ Although we should continue

Crimmigration Crisis: Immigrants, Crime, and Sovereign Power, 56 AM. U. L. REV. 367, 413 (2006).

¹⁹² Hlass, *supra* note 20, at 1599 (“[D]etention centers are one part of the prison industrial complex’s larger interlocking systems of racist social control. Deportation abolitionists seek to end immigrant detention and deportation, explicitly understanding immigrant justice as part of a larger struggle for racial justice.”); McLeod, *supra* note 130, at 1617; Carrie L. Rosenbaum, *Crimmigration—Structural Tools of Settler Colonialism*, 16 OHIO ST. J. CRIM. L. 9, 10 (2018); Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 HARV. L. REV. 1684, 1685 (2019).

¹⁹³ See Allegra M. McLeod, *The U.S. Criminal-Immigration Convergence and Its Possible Undoing*, 49 AM. CRIM. L. REV. 105, 130 (2012) (explaining that the “U.S. criminal-immigration convergence fails as an immigration enforcement framework”).

¹⁹⁴ See Chalbeck, *supra* note 191, at 91 (describing the ineffective and “morally dubious” functions of ICE).

¹⁹⁵ Sherman-Stokes, *supra* note 189, at 263 (“The violence of detention, deportation, and now alternatives to detention, is irrefutable.”).

¹⁹⁶ Freeman, *supra* note 137, at 193.

¹⁹⁷ Lee, *supra* note 175, at 71 (“immigration disobedience has produced a more transformative agenda that aims to redefine citizenship, end detention, and abolish ICE.”).

¹⁹⁸ Hlass, *supra* note 20, at 1605 (“A third theme within carceral abolition theory is the need for transformational change instead of a focus on reforms to simply improve the

trying to improve conditions in the short term, “frameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond the prison.”¹⁹⁹ Further, reforms rarely work in practice, instead serving to paper over systemic injustices that cannot be solved by legal strategies alone.²⁰⁰ The documented failures of watchdog efforts²⁰¹ and the institutionalized barriers to change²⁰² demonstrate that the system is more or less immune to effective reforms that seek to incrementally adjust the system while maintaining the same broad structure.

Third, improvements that build more capacity within the system are both important in the short term but in tension with abolitionist goals in the long term. Universal representation projects for detained people are one mode that advocates and governments have embraced to expand access to counsel for individual cases.²⁰³ Representation by counsel is the best way to improve case outcomes²⁰⁴ and overall success for individuals in other parts of their life.²⁰⁵ Thus, these projects are crucial, given the state of the immigration system and the very real consequences for those detained today. Still, as Professor Cházaro points out, there are “tensions between the fight for federally funded counsel for immigrants and the fight to dismantle the mass deportation regime,”²⁰⁶ as arguments for universal representation can inadvertently support the detention and deportation apparatus by

functioning of existing carceral systems.”); Chalbeck, *supra* note 191, at 119 (“ICE’s institutional structure and the underlying immigration problems present in the United States do not lend themselves to reorganization-based solutions.”).

¹⁹⁹ ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 20 (Greg Ruggiero, ed.) (2003).

²⁰⁰ See Freeman, *supra* note 137, at 193.

²⁰¹ OFF. OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., ICE’S INSPECTIONS AND MONITORING OF DETENTION FACILITIES DO NOT LEAD TO SUSTAINED COMPLIANCE OR SYSTEMIC IMPROVEMENTS (2018) (“neither the inspections nor the onsite monitoring ensure consistent compliance with detention standards, nor do they promote comprehensive deficiency corrections.”).

²⁰² See, e.g., McLeod, *supra* note 193, at 142 (describing specific “structural problems [that] cannot be resolved by isolated procedural reforms”); Chalbeck, *supra* note 191, at 83 (2019) (arguing that ICE’s history shows that reform may be inappropriate).

²⁰³ Angélica Cházaro, *Due Process Deportations*, 98 N.Y.U. L. REV. 407, 409–10 (2023); see generally Boaz, *supra* note 45.

²⁰⁴ See *supra* Section I.A and note 21 (listing studies and articles supporting this conclusion).

²⁰⁵ Boaz, *supra* note 45, at 257.

²⁰⁶ Cházaro, *supra* note 203, at 412 (showing how “federally funded counsel may ultimately serve as a cover for the continued expansion of immigration enforcement.”).

creating more actors engaged in and embedded in these systems.²⁰⁷ We can also see parallels with the criminal defense system, which contributes to mass incarceration in the United States through the very structure of indigent defense provision.²⁰⁸ Nevertheless, localized campaigns for increased access to representation may encourage local governments to invest in and care about their immigrant communities without bolstering the overall size of the federal system.²⁰⁹

While universal representation programs are critical and can be successful,²¹⁰ gaps in coverage can and will remain.²¹¹ Most states do not have universal representation programs.²¹² Few funded pro bono projects for detained representation exist nationwide,²¹³ and detained cases are often especially difficult to place with pro bono projects or counsel.²¹⁴ True universal counsel could reduce the number of people in detention.²¹⁵ However, even with more counsel, detention may not

²⁰⁷ Sherman-Stokes, *supra* note 189, at 263; *see also* Cházaro, *supra* note 130, at 1048; Cházaro, *supra* note 203, at 411 (“Improving immigration adjudication procedures through federally funded counsel would improve the integrity of the mass deportation regime” but would also legitimize the existence of immigration detention.).

²⁰⁸ The structure of indigent criminal defense systems, while provided as of right, also exacerbate mass incarceration. *See* Eve Brensike Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 MICH. L. REV. 207, 210 (2023).

²⁰⁹ *See* Boaz, *supra* note 45 (explaining why and how universal representation is a practical and necessary step for immigration detention issues in the present, on the path to abolition).

²¹⁰ *See generally* Boaz, *supra* note 45, at 225–28.

²¹¹ For example, universal representation providers in upstate New York have certain criteria for clients to qualify for representation, and these criteria leave out some individuals. For example, if a person’s case started in another jurisdiction and they were then transferred to Batavia, or they previously had a different lawyer for their first court hearing, they do not meet the criteria for representation. *See What You Need to Know for Your Noncitizen Client*, RIAC MONTHLY NEWSLETTER (WNY Regional Immigr. Assistance Ctr., Buffalo, N.Y.), Nov. 2022, at 2 (describing eligibility requirements to be represented by Prisoners’ Legal Services or Volunteer Lawyers Project).

²¹² *The Movement for Deportation Defense: Information Hub*, VERA INST. OF JUST., <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative/state-and-local-deportation-defense-information-hub> [<https://perma.cc/3PW8-C5UZ>] (last visited May 30, 2024) (showing that most states do not have a deportation defense program); *see Equity Corps of Oregon*, IMMIGR. L. LAB, <https://innovationlawlab.org/programs/equity-corps-of-oregon/> [<https://perma.cc/76SV-AXWH>] (last visited May 31, 2024) (discussing Oregon’s first universal representation project).

²¹³ Ryo & Humphrey, *supra* note 59, at 800–02.

²¹⁴ *See generally No Fighting Chance*, *supra* note 82.

²¹⁵ Boaz, *supra* note 45, at 257.

significantly decrease, considering the existence of local detention center “bed quotas” to keep detention centers full.²¹⁶

The abolitionist movement thus maintains the overarching goal to close immigration detention centers, with varied intermediate goals.²¹⁷ Activists²¹⁸ and scholars²¹⁹ across the detention abolition movement (including both criminal and immigration detention) espouse a variety of movement strategies²²⁰ and theories²²¹ that work toward the goal of abolition. Abolition as a goal of the movement has grown in prominence over the last decade, seeing greater traction than ever before.²²² In recent years, the movement has succeeded at closing some

²¹⁶ An increasing number of ICE detention contracts include “guaranteed minimums,” which require ICE to pay for a minimum number of detention beds at specific facilities regardless of whether those beds are used. See Silky Shah et al., *Banking on Detention: Local Lockup Quotas & the Immigrant Dragnet*, DET. WATCH NETWORK AND CTR. FOR CONST. RTS. 1 (2015), <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20CCR%20Banking%20on%20Detention%20Report.pdf> [<https://perma.cc/QN7S-RXJL>]. Contracts with guaranteed minimums may also include “tiered-pricing” provisions that give ICE a discount on each additional person detained above the guaranteed minimum. *Id.* at 6. Guaranteed minimums and tiered pricing incentivize ICE to fill detention facilities to capacity to avoid paying for unused beds and to take advantage of tiered-pricing discounts. See *id.* at 3, 6. GOV’T ACCOUNTABILITY OFF., GAO-21-149, IMMIGRATION DETENTION: ACTIONS NEEDED TO IMPROVE PLANNING, DOCUMENTATION, AND OVERSIGHT OF DETENTION FACILITY CONTRACTS 51 (2021) (stating that about a quarter of the facilities ICE used in fiscal year 2020 had guaranteed minimums requiring payment for about 28,000 beds per day nationwide, and that of those guaranteed-minimum contracts, all but five included tiered pricing).

²¹⁷ Hlass, *supra* note 20, at 1655.

²¹⁸ Activists calling for the end to immigration detention are interconnected with the broader prison abolition movement and intertwined, present and historical fights for justice across systems. See PATRISSE CULLORS, *TWELVE STEPS TO CHANGING YOURSELF AND THE WORLD: AN ABOLITIONIST HANDBOOK* 8 (2021); Char Adams, *Mariame Kaba Wants Us to Imagine a Future Without Prisons*, NBC NEWS (Feb. 23, 2021, 6:00 AM), <https://www.nbcnews.com/news/nbcblk/mariame-kaba-wants-us-imagine-future-without-prisons-n1258586> [<https://perma.cc/8WJ4-HGVR>] (“For [Mariame Kaba], the political framework [of abolishing the prison industrial complex] is a ‘vision of restructured society and world,’ one without prisons, jails and immigrant detention centers.”).

²¹⁹ See *supra* note 129 (listing scholarly literature exploring the theory of abolition of detention and deportation).

²²⁰ Hlass, *supra* note 20, at 1623, 1655; Chalbeck, *supra* note 191, at 90; Cházaro, *supra* note 130, at 1113.

²²¹ McLeod, *supra* note 193, at 151 (explaining why criminal law methods are ineffective mechanisms for immigration control).

²²² See Lee, *supra* note 175, at 116 (“In comparison to a decade ago, immigrant rights groups are currently demanding more radical policy reforms that fundamentally challenge the ICE enforcement regime.”); Chalbeck, *supra* note 191, at 82 (discussing the mainstreaming of the Abolish ICE movement); *but see* Hlass, *supra* note 20, at 1623 (considering “mainstream” efforts to include legislative lobbying of immigrant rights advocacy groups rather than the more radical carceral abolitionist collectives).

individual detention centers.²²³ Still, major challenges to abolition remain, including political feasibility²²⁴ and entrenched institutional cultures.²²⁵

Therefore, lawyers and law clinics that are part of the movement for detention abolition may align their work with this broader goal while focusing their day-to-day work on “non-reformist reform[s]”²²⁶ or “abolitionist reforms.” These strategies are “improvements that win real, material changes and get us closer to systemic change rather than incrementally improving and thereby reifying existing structures.”²²⁷ This means developing strategies that have both practical, immediate impacts on affected individuals and communities that also have an intersectional, contextualized approach and a long-ranging vision for future justice.²²⁸ Lawyers and law clinics working within the abolitionist frame must also de-center themselves and work to align their efforts to complement and accompany organizers’ efforts.²²⁹

²²³ Tyche Hendricks, ‘Waste of Federal Funds’: ICE Ends Contract with Northern California Jail After Years of Outrage Over Conditions, KQED (Dec. 9, 2022), <https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-jail-after-years-of-outrage-over-conditions> [<https://perma.cc/U5TA-HDRL>]; Gabriela Martínez, *Controversial Berks County Immigrant Detention Center to Close*, 90.5 WESA (Dec. 1, 2022, 2:00 PM), <https://www.wesa.fm/politics-government/2022-12-01/controversial-berks-county-immigrant-detention-center-to-close> [<https://perma.cc/6A2A-TWBD>]; Fernanda Echavari, *Two Controversial Detention Centers Will Reportedly Stop Holding Families Long Term*, MOTHER JONES (Feb. 25, 2021), <https://www.motherjones.com/mojo-wire/2021/02/immigration-family-detention-centers-change-dilley-karnes/> [<https://perma.cc/TT7W-VMVV>].

²²⁴ Lee, *supra* note 175, at 76.

²²⁵ McLeod, *supra* note 193, at 151 (“Criminal-immigration enforcement gives rise to a particular crime-centered institutional culture characterized by an emphasis on danger, solidarity, suspicion, cynicism, authority, and numerical indicators of completed crime control projects or cases closed”).

²²⁶ Amna A. Akbar, *Non-Reformist Reforms and Struggles Over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2527 (2023); *see also* Hlass, *supra* note 20, at 1631.

²²⁷ Cheer, *supra* note 130, at 71 (these reforms are also called “transformative reforms, non-reformist reforms, and revolutionary reforms”); *see also* Rathod, *supra* note 138, at 632 (critiquing incrementalism in immigrants’ rights work).

²²⁸ *See* Cheer, *supra* note 130, at 72–73 (providing a framework for abolitionist reforms); McLeod, *supra* note 130, at 1615; Ahmad, *supra* note 174, at 1082 (urging “a lawyering practice that rejects narrow legal solutions to clients’ problems, and that instead seeks to address underlying causes of poverty and subordination.”).

²²⁹ *See, e.g.*, Kersh & Currie, *supra* note 144, at 257 (discussing “centering . . . vulnerable client groups in legal advocacy” and providing case studies). For example, immigrants’ rights activists are sometimes joined by practicing lawyers in their anti-detention efforts. *See, for example, Following Mass Layoffs, Advocates Demand Full Closure of Louisiana Prison, Releases Not Transfers, and Health Jobs for Locals*, FREEDOM

Advocates focused on access to counsel issues must consider how efforts to improve such access may interplay with the broader abolitionist project. The provision of legal services—and of legal information and self-help tools—can be part of a greater vision toward abolition of the problematic immigration system currently in place,²³⁰ despite its inherent interplay with the system. Access to counsel projects can be the site of transformational advocacy when lawyers collaborate with affected communities and their advocates.²³¹ Professor Laila Hlass argues that “carceral abolitionist lawyers can contribute to furthering abolition, as long as their vision remains focused on an abolitionist horizon and retains essential abolition principles and strategies.”²³² Indeed, movement lawyer Jim Freeman opines that “virtually every activity performed by a lawyer can be done in a way that contributes to organizational or community capacity building.”²³³

Thus, in striving to increase access to counsel through an abolitionist frame, advocates can creatively engage with alternative or complementary modes of legal access to bolster individual representation while engaging in distribution of legal and practical information²³⁴ through alternative, perhaps radical, models of justice access. Law clinics involved in detention projects can join big immigration law movements while striving toward the client-centered goals below.

FOR IMMIGRANTS (Nov. 20, 2023), <https://www.freedomforimmigrants.org/press-center/advocates-demand-full-closure-pine-prairie> [<https://perma.cc/KVU7-UX2E>], a recent call for closure of a Louisiana immigration detention facility by advocacy group Freedom for Immigrants, joined by deportation defense attorneys.

²³⁰ Boaz, *supra* note 45, at 244–45.

²³¹ See Rathod, *supra* note 138, at 651–55 (describing how law clinics can integrate bigger-picture advocacy work, including projects that aim for “ambitious structural reform to U.S. immigration law that will have a positive and transformative impact on the lives of noncitizens” and critical perspectives); *but see* Akbar, *supra* note 175, at 447 (“Movement groups have largely refrained from fighting to strengthen preexisting rights, or to demand legal recognition of new ones.”).

²³² Hlass, *supra* note 20, at 1637.

²³³ Freeman, *supra* note 137, at 196.

²³⁴ The World Justice Project has demonstrated that most people care much more about their practical needs (Will I be able to get out of detention? When?) than about the formal legal process. Zoom recording: Global Trends in People-Centered Justice Measurement, held by the American Bar Foundation (Dec. 18, 2023) (on file with author).

*B. Client-Facing Goals for Law Clinics Working in
Immigration Detention*

Students can engage in a variety of project formats to create a bridge between the current lack of sufficient counsel for detained immigrants and the decarcerated world we want to see. Law clinic projects may include (1) LOP and Know Your Rights presentations to disseminate crucial legal knowledge to affected groups; (2) direct legal services for individuals ranging from brief advice and counsel, to limited-scope representation on discrete issues, to full representation; and (3) engagement with systemic issues, both through legal mechanisms and through supporting alternative actions seeking redress.²³⁵

In addition to the pedagogical, student-facing goals of any law clinic, this Article suggests that law clinics embark on transformative justice projects in immigration detention with three primary goals with respect to the clients they are serving: (1) triage of legal cases to promote access to counsel, (2) community empowerment, and (3) supporting community organizing.

1. Access to Counsel: Triage and Connections

When conducting legal intakes in detention centers, law clinics can be a resource for triaging cases and directing them to the legal resources necessary to expand detained peoples' access to counsel.

Although lawyers and law clinics working in detention cannot represent all the potential clients they encounter, they can promote access to counsel by finding the claims that are most viable and the people who are most vulnerable and connecting them to representation. Law students can look for clients who are the most vulnerable: queer clients, rare language speakers, those who cannot read or write in any language, and those with severe medical conditions. They can identify asylum seekers with strong claims, those with Convention Against Torture claims, those with urgent parole cases, or those in prolonged waits for next steps in their legal proceedings. Students can also identify those who have been detained the longest, prioritizing them for advocacy with ICE or for habeas cases. And even if they are not on-site, law clinics can be in regular communication with the legal teams

²³⁵ See Jaclyn Kelley-Widmer, *Why Not a IL Clinic?*, 30 CLINICAL L. REV. 411, 426–31 (2024) (describing different modes of law-student clinical work with immigrant communities).

that are in the facilities and be poised to remotely take on certain cases following detention center visits.²³⁶

Law clinics can identify which types of cases they can work on directly²³⁷ and otherwise help to refer cases to organizations that may not have the time and capacity to visit the facilities but do have advocates on staff who can take cases for representation.²³⁸ Law clinics can also conduct limited scope follow-up work after the visit, such as remote preparation for credible fear interviews, research projects for individuals, and LOP calls for rare language speakers. They can send pro se resources, such as when we mailed a packet for pro se parole to several people we met from the country of Georgia after getting the packet translated to the Georgian language following our visit. In partnership with other legal aid organizations, clinic students can help document the treatment of people in detention and supplement legal briefings.²³⁹ This ongoing engagement is part of the counterweight to the potential “voluntourism” concerns as well. Further, law student work in detention centers can also promote transformative change through community empowerment and collaboration with organizers.

2. Empowerment of Detained Communities

People in immigration detention have very little agency. The systems and conditions of immigration detention inherently disempower those in detention, often making it difficult for them to manage day-to-day life, let alone rally the resources it takes to defend their legal cases.²⁴⁰ Although detained people benefit most from individual representation, when this is not possible, law clinics

²³⁶ Given our remote location from the Louisiana facilities, Cornell has adopted a structure of occasional visits a few times a year paired with regular communication with our partners. We often know which weeks our partners will be visiting detained people, so that even if we cannot join the trip, we can be ready to accept certain cases following these visits.

²³⁷ As noted in Part III *supra*, law clinics typically engage in at least some full-scope representation to allow students to develop a full range of legal skills. Given the rarity of representation for detained people, law clinics providing full representation must be careful not to “raise the bar” for all cases by over-litigating them, making the level of evidence or other filings unattainable for the average detained person.

²³⁸ For example, our clinic has taken on parole cases for representation and worked on asylum cases in a limited scope capacity, providing pro se I-589 assistance and country conditions packets and translations for individuals we met.

²³⁹ See, e.g., *Immigrants’ Rights and Human Rights Organizations File Civil Rights Complaint Exposing Torture, Sexual Abuse, and Medical Neglect of a Hunger Striker at a Louisiana ICE Detention Center*, *supra* note 118.

²⁴⁰ See *supra* Part II (describing detention conditions).

can step in to assist with legal orientation programming.²⁴¹ Connecting individuals with pro se resources in detention can stabilize them, allowing them to engage in better self-advocacy.²⁴² Legal projects can thus use their limited resources to give as many people as possible the dignity of understanding what is happening to them and helping them prepare for what comes next—including deportation, if that is inevitable. Providing basic knowledge empowers people to make informed decisions about their lives, with specifics about how to fight a legal case as a secondary matter.²⁴³ Detained people need to know the truth about their chances, both for paths out of detention and for their legal cases. This empowers them to decide whether to rally their resources to find (and maybe pay for) a lawyer and withstand more detention, or direct their resources into easing their transition back to their home country or supporting their families. When detained people have more access to information, they can make choices such as revealing their status as a queer person to the immigration judge even though they are afraid, or choosing voluntary departure when their case is not likely to succeed.

Thus, instead of, or in addition to, providing individual counsel, which can be done only at a limited scale, law clinics can focus on providing detained communities legal orientation programming, pro se resources, and materials with legal information. Indeed, the SDND Coalition has a large library of external-facing information for distribution for those in detention, and the clinic has been assisting both

²⁴¹ See Bettina Rodriguez Schlegel, *Legal Orientation Program*, VERA INST. OF JUST., <https://www.vera.org/projects/legal-orientation-program> [<https://perma.cc/MGH9-LYLV>] (describing LOP services provided by or with the Vera Institute of Justice at forty-three detention centers across the United States).

²⁴² Pangea Legal Services, *Orientation to Pro Se Resources in Detention Project* presentation (July 18, 2023) (notes on file with author).

²⁴³ The World Justice Project has found that most people care much more about their practical needs and life trajectories than about the formal legal process. Zoom recording: *Global Trends in People-Centered Justice Measurement*, *supra* note 234.

SDND and Batavia-area providers to expand those handouts. Through both orally delivered Know Your Rights presentations and written materials, which they physically haul to detention centers each day because detained people cannot access electronic materials, legal teams are able to reach large groups of people across many languages.²⁴⁴



Photo: A van full of large plastic boxes of legal materials.²⁴⁵

Further, the creation of human connections is a crucial part of the empowerment goal. Lawyers and law students can accompany detained communities, acknowledging when there is no clear path and when the system is unjust or failing them.²⁴⁶ Many people we have spoken to in detention tell us they expected a more welcoming environment in America, but instead, they are imprisoned. Walking alongside detained people can provide an alternative narrative about America and, at its best, empower clients and inspire law students and advocates to continue their justice work.

3. Supporting Organizing

Law clinics can amplify the work of both organizations fighting for justice and the work of detained people who self-organize. Activists and organizers have created spaces to push systems toward abolition

²⁴⁴ See Eileen Korey, *1L Students Counsel Hundreds in Detention Centers During Spring Break “Reality” Experience*, CORNELL L. SCH. (June 7, 2023), <https://www.lawschool.cornell.edu/news/1l-students-counsel-detained-immigrants/> [<https://perma.cc/4CKM-9TU6>] (describing the authors’ April 2023 detention center trip, during which they provided legal orientation programming to about 800 detained people).

²⁴⁵ Photograph by Aaliyah Channer (Apr. 3, 2023) (on file with authors).

²⁴⁶ See Reuter et al., *supra* note 165.

by creating new sites of resistance²⁴⁷ that do not depend on lawyers or the law, such as by using media attention to resist deportation of specific individuals.²⁴⁸ Organizers may also work alongside or within legal organizations.²⁴⁹ Law clinics with capacity and resources to enter detention centers can literally witness the present injustices, alerting organizers to the issues currently arising in detention. Knowing what populations are in detention can help organizers know what work there is to be done—for example, in September 2023, our clinic encountered numerous Mauritanian individuals in Winn. In discovering this group from a country we had not seen highly represented before, we could alert a Mauritanian advocacy group²⁵⁰ so that they could connect with this community. Similarly, in February 2024, we connected with an organization working with people from the Marshall Islands²⁵¹ while representing Marshallese individuals also held in Winn.

Law clinics can also assist by adding a legal voice to campaigns led by organizers. For example, detained activists have engaged in hunger strikes that bring attention to conditions inside the facilities.²⁵² Lawyers and clinics can amplify these actions by both representing hunger strikers²⁵³ and by helping them share their story with the media.²⁵⁴ For example, in March 2023, Detention Watch Network, an organizing coalition, publicized a hunger strike at the facility in Jena,

²⁴⁷ Lee, *supra* note 175, at 108.

²⁴⁸ *Id.*

²⁴⁹ Farida Jhabvala Romero, *'Until We Drop': Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation*, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions> [<https://perma.cc/5QPT-7DAY>] (picturing an organizer who works at a legal nonprofit, Pangea Legal Services).

²⁵⁰ *About Us*, MAURITANIAN NETWORK FOR HUM. RTS. IN THE USA, <https://www.mauritaniannetwork.org/> [<https://perma.cc/E857-RAZS>].

²⁵¹ Home page describing Arkansas Coalition of Marshallese's mission and vision, ARK. COAL. OF MARSHALLESE, <https://www.arkansasmarshallese.org/> [<https://perma.cc/HM9G-SYFT>].

²⁵² Romero, *supra* note 249.

²⁵³ *Hunger Strikers in Central Valley Immigration Detention Facilities File Class Action Lawsuit Against ICE, GEO Group for Illegal Retaliation*, ACLU N. CAL. (Feb. 24, 2023), <https://www.aclunc.org/news/hunger-strikers-central-valley-immigration-detention-facilities-file-class-action-lawsuit> [<https://perma.cc/K3NP-CS3L>] (describing a lawsuit filed on behalf of hunger strikers by the ACLU).

²⁵⁴ *Detained Individuals Forced to Pause Hunger Strike at CA Immigration Detention Facilities*, CAL. COLLABORATIVE FOR IMMIGRANT JUST. (Mar. 29, 2023), <https://www.ccijustice.org/post/detained-individuals-forced-to-pause-hunger-strike-at-ca-immigration-detention-facilities> [<https://perma.cc/6CY8-SLKK>] (listing numerous legal advocacy organizations that are part of the MV-GSA Hunger Strike Support Committee).

Louisiana, and included comments from several lawyers who are part of the movement in their media release.²⁵⁵ Further, law clinics can add to the public information available about immigration detention by drafting and publishing reports about detention center conditions and challenges.²⁵⁶

In identifying both the humanitarian and legal injustices they witness, students can draw connections and build pieces of broader projects. For example, law students could record injustices experienced by groups or individuals. Then, they can help craft stories for organizing campaigns²⁵⁷ or create records to add to ongoing lawsuits documenting complaints about conditions.²⁵⁸ If they identify specific legal issues, they can research them to support lawyers representing clients, adding capacity, and broadening access to counsel. For example, lawyers may have a need for an expert witness declaration about a certain country and type of claim. A law clinic can work on locating an expert and assisting them in drafting a compelling declaration to contribute to evidence submitted in court.²⁵⁹

Law clinics can also be part of legal strategies to pursue resolution of bigger-picture systemic injustices that the community is experiencing. For example, in meeting with a variety of detained people, students on our September 2023 and March 2024 trips identified various stressors people were experiencing, both legal and

²⁵⁵ *Mass Hunger Strike at ICE Detention Facility in Louisiana – Detained People Demand to Be Released*, DET. WATCH NETWORK (Mar. 2, 2023), <https://www.detentionwatchnetwork.org/pressroom/releases/2023/mass-hunger-strike-ice-detention-facility-louisiana-detained-people-demand> [<https://perma.cc/A4QR-Q4S7>].

²⁵⁶ See, e.g., *No End in Sight: Prolonged and Punitive Detention of Immigrants in Louisiana*, TUL. UNIV. L. SCH. IMMIGR. RTS. CLINIC (May 2021), <https://law.tulane.edu/sites/default/files/TLS%20No%20End%20In%20Sight%20Single%20Pages%20FINAL.pdf> [<https://perma.cc/M4ZC-L5GR>]; Annabel Adams, *UCLA Law Students Publish Report on Conditions in California Prisons During the Pandemic*, UCLA L. (June 7, 2023), <https://law.ucla.edu/news/ucla-law-students-publish-report-conditions-california-prisons-during-pandemic> [<https://perma.cc/79YK-HSB6>].

²⁵⁷ Freedom for Immigrants (formerly CIVIC), an organization devoted to abolishing immigration detention, partnered with the Immigrant Rights Clinic at NYU School of Law to create a platform for stories of people who have been in immigration detention. *Prolonged Detention Stories: Immigration Detention Exposed*, PROLONGED DET. STORIES, <https://www.prolongeddetectionstories.org/home> [<https://perma.cc/652L-9NG5>].

²⁵⁸ See, e.g., *Immigrants' Rights and Human Rights Organizations File Civil Rights Complaint Exposing Torture, Sexual Abuse, and Medical Neglect of a Hunger Striker at a Louisiana ICE Detention Center*, *supra* note 118.

²⁵⁹ The Center for Gender and Refugee Studies partnered with a class at the University of Oklahoma on a project like this for gang-related claims from El Salvador. Pangea Legal Services, *Orientation to Pro Se Resources in Detention Project presentation* (July 18, 2023) (notes on file with authors).

nonlegal. In debriefing the issues that arose in their cases, students identified a trend of challenges in language access for speakers of rare languages. Indeed, over 30% of people we spoke with struggled to get legal information in their languages or to communicate with government officials and officers because of lack of interpreters.²⁶⁰ This issue has a direct impact on legal proceedings, which cannot advance unless the adjudicator can effectively communicate with the respondent.

At the same time, we saw that language access had just as big an impact on people's ability to retain hope and dignity in detention. We encountered many people who spoke rare languages and were the only speaker of that language they had encountered in detention or were part of a small group.²⁶¹ Several people we met were also not literate in any language, making it nearly impossible for them to obtain any information, let alone represent themselves.

Because of the widespread trend in language access issues, our clinic decided to partner with RFK Human Rights²⁶² to file a complaint with the U.S. Office of Civil Rights and Civil Liberties (CRCL).²⁶³ A CRCL complaint can be a vehicle to document and register such issues, potentially spurring government response and at least laying the groundwork in case of future litigation. We did not advance this project item alone—we also worked with our detained clients, asking them whether they wanted to raise this complaint and be a part of it and whether they knew other individuals in detention who wanted to be a part of it. Altogether, our law student team interviewed twenty-one detained people with language access issues, recording their stories for the complaint.

²⁶⁰ In Winn in September 2023, 31% of detained people we spoke with had language access complaints, and in Batavia in March 2024, 33% had this complaint.

²⁶¹ See *supra* Section II.C., giving the cases of D and N as examples. We continue to encounter and represent rare language speakers during and after most detention center visits.

²⁶² Thank you to attorneys Sarah Decker and Sarah Gilman for their continued mentorship on this project.

²⁶³ *Office for Civil Rights and Civil Liberties*, DEP'T OF HOMELAND SEC., <https://www.dhs.gov/office-civil-rights-and-civil-liberties> [<https://perma.cc/56C8-R4VS>]. The complaint was filed August 12, 2024. *Advocates File Federal Complaint on Widespread Language Access Issues at Louisiana ICE Facility*, ROBERT F. KENNEDY HUM. RTS. (Aug. 12, 2024), <https://rfkhumanrights.org/press/advocates-file-federal-complaint-on-widespread-language-access-issues-at-louisiana-ice-facility/> [<https://perma.cc/X345-3QWV>].

CONCLUSION

Immigration detention is a site of grave injustice and critical lack of access to counsel. Systemic barriers prevent detained immigrants from receiving the counsel they should be able to access under domestic and international law. While the only long-term solution is the end of immigration detention, at present, law student work in immigration detention centers can be a crucial source of expanded legal knowledge and representation for detained immigrants. The abolitionist framing we propose allows students to both engage with the system in the immediate term, for those currently mired in it, but also pushes for longer-view work to happen simultaneously. Collaboration with organizers—within and without the detention center walls—and larger-scale legal education projects are part of an abolitionist reenvisioning of what modes of lawyering can be effective in immigration detention. This critical approach is a call for conversation and iteration of projects that work to dismantle oppressive structures, even as they engage with parts of those systems in the present moment. In both immigration detention work and in other poverty law contexts more broadly, lawyers, law professors, and clinic students should continuously reflect and revise, adapting our work to changing circumstances and listening to the communities we serve.

