



The Human Cost of IIRIRA — Stories From Individuals Impacted by the Immigration Detention System

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Executive Summary

The 1996 passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) has had a devastating impact on immigrants who are detained, indigent, and forced to face deportation proceedings without representation (*pro se*). In the past 20 years, immigration detention has grown exponentially and a criminal–immigration detention–deportation pipeline has developed as a central function of the immigration system. Despite the growing specter of the “criminal alien” in the American psyche, there is little public knowledge or scrutiny of the vast immigration detention and deportation machine. Enforcement of IIRIRA has effectively erased human stories and narrowed immigration debates to numbers and statistics.

The five vignettes below tell the stories of individuals who have personally experienced the impact of IIRIRA. Part 1 describes the on-the-ground reality of a state public defender’s obligations and struggles to defend immigrants from harsh consequences of criminal convictions. Part 2 provides the perspective of an indigent immigrant fighting his deportation *pro se*. Part 3 describes a nonprofit immigration attorney’s challenges in providing legal services to detained immigrants. Part 4 is a glimpse into the brisk pace of an immigration judge’s detained docket. Part 5 tells the story of a detained immigrant’s family member and the many hoops she must jump through to ensure he has a fighting chance in immigration court. Collectively, these vignettes provide a realistic picture of the immigration detention experience, revealing the human cost of IIRIRA.

Introduction

Since its passage in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) has had a devastating impact on immigrants who are indigent, detained,

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and forced to face deportation proceedings without representation (*pro se*). IIRIRA's criminalization of the immigration system has funneled millions of immigrants through a massive criminal immigration deportation pipeline. IIRIRA expanded the number of criminal offenses that trigger deportation, detain immigrants without possibility of bond, and bar them from legal defenses against deportation. As a result, the United States now operates the world's largest immigration detention system (Global Detention Project 2016). Over 40,000 immigrants are detained by the Department of Homeland Security (DHS) on any given day (Barrett 2016). They are detained under conditions set by Immigration and Customs Enforcement (ICE) and by Customs and Border Protection (CBP), with little review from outside entities.

Despite increased public awareness of the civil rights violations undergirding the mass criminal incarceration epidemic in America, stories of detained immigrants, the overburdened legal service providers and judicial employees who work to ensure their due process rights, and the impact of detention on the family members of detainees remain largely hidden from the public. Meanwhile, the institutional foundation of IIRIRA has spurred public discourse that embraces the criminalization of immigration, recently culminating in the 2016 election of a president whose campaign explicitly centered on portraying immigrants as criminals and carrying out mass deportations.

This article reveals the daily toll IIRIRA takes on individuals who play a role in the detention-deportation pipeline. It presents five separate vignettes that illustrate important systemic challenges and reveal the viewpoints of different actors within the system: a public defender who must defend immigrant clients against the deportation consequences of criminal charges; a detained, indigent immigrant who must navigate the complex system from a remote jail without the assistance of a lawyer; a nonprofit legal service provider who serves as the sole source of legal information for immigrants who cannot afford private representation; an immigration judge who adjudicates the fates of detained immigrants in an over-burdened immigration court; and a detained immigrant's family member who faces permanent separation from a loved one. In light of the new administration's alarmingly anti-immigrant stance, these human costs of IIRIRA can no longer be ignored.

Part I: The Public Defender

In 2010, 14 years after IIRIRA, the US Supreme Court issued the landmark decision *Padilla v. Kentucky*, in which it acknowledged the explosive increase in deportations based on criminal convictions.¹ The Court recognized that deportation is more than a mere "collateral consequence" of a criminal conviction, stating that "[d]eportation is an integral part — indeed, sometimes the most important part — of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes."² Because of the severity of deportation, the Court found that an immigrant in criminal proceedings is entitled to accurate legal advice from her criminal defense attorney about the immigration consequences of her criminal charges.

Padilla accommodates the post-IIRIRA joining of the immigration and criminal justice systems by laying the duty on criminal defense attorneys to understand and alleviate the

1 *Padilla v. Kentucky*, 559 U.S. 356 (2010).

2 *Id.*, 364.

disproportionate impact of criminal convictions on immigrants. Public defenders and court-appointed attorneys are already overburdened by gross inequities in the criminal justice system, and have few resources to bear the additional obligation of providing accurate and specific advice about the immigration consequences of criminal pleas. Such advice requires ongoing training on the complicated nexus of federal immigration and state criminal law. Most states have yet to implement a system providing training or resources on immigration law for indigent defense providers, leaving many defense attorneys without the necessary infrastructure to fulfill their *Padilla* obligations.

Even where indigent criminal defense attorneys are provided immigration law training, there is often little they can do to protect their clients against deportation. IIRIRA categorized a broad variety of crimes as triggers for deportation and mandatory detention (Torrey 2015). Defense attorneys are tasked with explaining to their clients that simple misdemeanor offenses like shoplifting or marijuana possession can lead to grossly disproportional consequences under immigration law, such as mandatory and indefinite detention and possible banishment from their communities.

Below, a public defender recounts these tensions in indigent criminal defense.

As a public defender,³ I witnessed firsthand the incredible power of the government and the inequity of enforcement. The jurisdiction in which I practiced was very diverse; I met and represented people from almost every ethnic background and most corners of the globe.

Yet, despite crime statistics consistently showing that each demographic group has roughly the same incidence of criminality (except for immigrants, who are actually less likely to commit crimes), the majority of my docket was filled with minority clients. Most of them had been beaten down and targeted by the “justice” system for most of their lives. My minority clients were all too often stripped of individuality and treated by judges and prosecutors as mere symbols of poverty and dysfunction.

Most vulnerable among my clients were those not born in this country. With or without lawful status, they were at the bottom of the totem pole, deemed “illegal” by virtue of their very presence. The scorn of the state, from the bench or the prosecution, is enflamed when dealing with noncitizens. This biased treatment magnifies the consequences of IIRIRA and creates a system in which immigrants are punished twice for a single offense.

Thankfully, my office was fairly progressive in training and implementing the *Padilla* standards. We learned about the unequal impact a conviction has on a noncitizen, and sought to mitigate those consequences. We were at the nascent stages of this pursuit, despite the consequences of criminal convictions being well-known in the immigration world since 1996. This disconnect spawned from previous rulings of the Supreme Court that held that immigration consequences were collateral, civil consequences, either not important enough or too complex to be considered integral to the criminal case.⁴ The 2010

3 Ashley R. Shapiro is an immigration resource attorney with the Virginia Indigent Defense Commission who advises public defender offices throughout Virginia on the immigration consequences of criminal convictions. Prior to that, she worked for four years as a public defender in Virginia and Maryland.

4 *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

Padilla decision rocked the defense world and marked a sea change in criminal defense. Panic ensued when the ruling came out. How could we learn enough immigration law to understand what would happen to our clients after they left our care in criminal court? Suddenly the advice “you should talk to an immigration attorney, this conviction might have consequences,” was, by itself, woefully inadequate, even malpractice.

Because the majority of people caught in the criminal system are indigent, this burden fell heavily on public defenders and court-appointed attorneys with already demanding caseloads. The expansion of the criminal grounds of deportability disproportionately affected our indigent clients, people already targeted by our prejudiced system and now subject to vastly disparate consequences. I was fortunate to practice in a metropolitan area, and was trained repeatedly in immigration consequences. But most attorneys do not have such resources available to them and are ill-prepared to deal with noncitizen clients, even if they have the best intentions. Some attorneys are recalcitrant to expand their existing duties, and still don’t think it should be their job to investigate and learn about an entirely new set of laws. Some are just so overloaded with cases that they believe they don’t have the time to learn or can do just the bare minimum. Many indigent clients simply end up deported, never realizing they had a right to be advised about the dire immigration consequences in advance of taking a criminal plea. IIRIRA changed the landscape of criminal defense, and it has been a slow process getting defense attorneys to live up to their legal obligations.

Immigration law is complex, with harsh consequences for something as minor as petty shoplifting. I believe *Padilla* was correctly decided and brought much-needed changes, but that doesn’t diminish the immense pressure it placed on criminal defense attorneys to learn the wide array of consequences their clients could face. The intricate web of triggers and bars can baffle even a practicing immigration attorney. Together with the lack of a right to counsel in immigration court, this makes the duty of a criminal defense attorney all the more burdensome. It is daunting to be responsible for a whole area of law outside your general practice. It is even more daunting to recognize that even the hardest-fought plea deal in criminal court cannot avoid devastating immigration consequences for a noncitizen defendant.

As public defenders, we learned as much as we could about immigration consequences in the hopes of negotiating better outcomes for our clients, or at least fully explaining *all* of the consequences of a plea offer so that they could make an informed decision about their criminal case. Explaining these complex consequences to a client, especially with a language barrier, is a difficult task. The client must be given sufficient information to be able to weigh the short-term effect of the criminal case against the long-term immigration impact. Clients all too often have to choose between whether to give up their right to trial in a case they could perhaps win, or the surety of a plea offer. They might have to choose a longer jail sentence than is appropriate for their crime, in order to stay in the country with their family. Public defenders must bear witness to our clients’ heartache in making these choices, for which there is often no right answer. These were some of the hardest conversations I had to have as a public defender, and they are a direct consequence of IIRIRA greatly expanding the criminal triggers for immigration consequences.

It is our duty as public defenders to use knowledge of immigration consequences to seek more favorable plea offers for our clients, but this is easier said than done. I would often

run into a familiar refrain from prosecutors: “Why should I treat your client different than a citizen?” or “Why should I care what happens to your client; he shouldn’t be here anyway?” These myopic views ignore the fact that consequences of a criminal punishment are doubly magnified for a noncitizen. Over time some prosecutors opened up to the idea of negotiating cases in light of the broader immigration consequences. But many still refuse to consider them, which leaves the client with an impossible choice and reveals the fundamental unfairness of the system. An immigrant’s future rests almost solely on the luck of the draw — which prosecutor is assigned the case, and will they be willing to consider the full picture?

The same holds true for the bench. Some judges entertain sentencing pleas designed to mitigate immigration consequences, and others won’t. Judges are not often trained in the complexities of immigration consequences, and their knowledge depends on the defense presenting the information to them. Again, the burden falls on the defense attorney to mitigate the immigration consequences for a noncitizen by educating the judge on them in order to seek a sentence that properly addresses those consequences.

We defense attorneys are not seeking preferential treatment for our noncitizen clients. We don’t just want to get all the cases dismissed and let immigrants get a free pass, although this is what many on the government side believe. Rather, it is to level the playing field, to not let what is viewed as a small mistake in the criminal system result in catastrophic immigration penalties. IIRIRA did not just change the immigration system; together with *Padilla*, it changed indigent defense and the way we practice. By placing the burden to defend against immigration consequences onto defense attorneys, *Padilla* thankfully added a layer of protection that helped to mitigate the heavy impact of IIRIRA. But that impact continues to be borne by noncitizens, and the indigent defense attorneys seeking to protect them, every day.

Part II: The Immigrant Detainee

IIRIRA exacerbates the isolation of detained indigent immigrants by limiting access to counsel and other due process protections in a civil system of law that has long operated on the presumption that noncitizens merit fewer due process protections. The US Supreme Court has long declined to enumerate exactly which due process protections attach to immigration proceedings; in fact, in many cases, due process is whatever the federal government has decided it is.⁵ The Court has called deportation a deprivation of “all that makes life worth living”⁶ and a “the equivalent of banishment or exile.”⁷ Nevertheless, the Court has affirmed that, although deportation is “intimately related” to the criminal process, it remains a civil process distinct from, and exempt from the same standards as, criminal proceedings.⁸ Consequently, despite functioning similarly, immigration proceedings do not benefit from the wealth of advocacy and litigation that has secured due process procedural protections in criminal proceedings.

5 *Ekiu v. U.S.*, 142 U.S. 651, 660 (1892).

6 *Ng Fung Ho v. White*, 259 U.S. 276, 287 (1922).

7 *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948).

8 *Padilla v. Kentucky*, 559 U.S. 356 (2010), *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

Perhaps the most important protection lacking in the immigration system is the right to appointed counsel. Decades ago, the Supreme Court recognized that due process cannot exist in the adversarial criminal justice system without the Sixth Amendment's guarantee of counsel. The Court upheld this fundamental right for indigent defendants, stating that the "noble ideal" of "fair trials before impartial tribunals in which every defendant stands equal before the law . . . cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."⁹ By contrast, immigration law does *not* require court-appointed counsel for indigent immigrants, as counsel is considered a "privilege" afforded to a noncitizen, not a right.¹⁰ Accordingly, 63 percent of immigrants in immigration court are unrepresented (Eagly and Shafer 2015, 19). When detained, only 14 percent of immigrants secure counsel, leaving 86 percent with no option but to defend against their deportation *pro se* in opposition to a trained government lawyer (ibid,30). Detention itself has a significant impact on an individual's ability to afford and access counsel: Non-detained immigrants are five times more likely to have lawyers than detained immigrants (ibid, 32).

Considering the recent mass expansion of the detention system, the numbers of *pro se* detained immigrants are growing exponentially (Barrett 2016). With so few of them represented, the vast majority cannot even protect their most basic, limited rights in immigration court, and will be deported without a fair hearing.¹¹

Below, a longtime legal permanent resident recounts his ongoing fight against deportation without representation.

After being detained for over 21 months¹² by immigration authorities in deplorable conditions while fighting my deportation, placed in solitary confinement, forcibly removed from the country, and redetained after my case was reopened, I can personally say that the immigration system I have experienced is a shame and disgrace for people who are caught in it.

The United States has been my home for 20 years. I have only lived here lawfully. When I was a young child, I came to the United States as a lawful permanent resident with my family. I graduated high school with honors. My commitment to this nation and its values runs deep. I am a US war veteran. I fought and sacrificed for this country in Iraq during Operation Enduring Freedom and Operation Iraqi Freedom.

My troubles began years ago after I made some wrong decisions in my life, and I was convicted for possessing with intent to distribute a small amount of cocaine and possessing

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

10 8 U.S.C.A. §§ 1229a(b)(4)(A).

11 *Bridges v. Wixon*, 326 U.S. 135, 154 (1945), recognizing that deportation "visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom" and cautioning that "care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness."

12 This is an account written in collaboration with a *pro se* individual who is a longtime lawful permanent resident of the United States. His name is not disclosed for confidentiality purposes, as his legal case is ongoing.

a firearm. ICE placed me in removal proceedings and told me that I was in mandatory detention without eligibility for bond. I did not have the option to both fight my deportation and enjoy my right to liberty.

Unable to work while detained, I had no money to hire a private attorney. The immigration judge gave me a list of organizations that supposedly provided legal representation at low or no cost for indigent respondents like me. I called every single organization listed, desperate to find a lawyer to fight my case. Not a single one was able to help me. Most of them did not answer my calls. For those who answered, none of them would take my case *pro bono*. The list was useless. Because of my extensive efforts to access a *pro bono* lawyer from detention, my immigration case and my detention were prolonged for over a year. I had no option but to fight my case by myself while detained, against a trained government attorney. Compared to many detainees I was fortunate, because I speak English and had some education from finishing high school. But I lacked any legal training or knowledge of US immigration laws.

The very few materials that the immigration detention center in Farmville, Virginia provided for people forced to represent themselves were outdated. Access to state law materials are essential to mount any defense against deportation triggered by a conviction, and most detainees at my detention center were being deported because of a Virginia conviction and would have benefitted from access to Virginia state legal materials. However, the detention center law library did not have a single state law book or statute. I felt helpless against the ICE attorney, who could cite the latest case law to support the argument to deport me. There was almost no point in defending myself. I was at a complete disadvantage.

The law told me I was not in detention to be punished. But I was forced to live in the most intolerable conditions imaginable. The food was disgusting and there was never enough, forcing us to go hungry and spend any money we had in our detainee accounts to buy products from the commissary store. Phone calls to our family members were insanely expensive — we were charged a dollar per minute to call outside the center's area code.

Once, along with other detainees, I refused to eat in protest of the deplorable conditions. As a result of my peaceful protest I was taken to a holding cell where I was kept for days without a shower. Then I was placed into solitary confinement for 30 days for “inciting a demonstration.” I did not deserve those horrid days in solitary.

At one point I was transferred to Rappahannock County Jail, a facility with even crueler conditions. The staff treated us like animals. We faced lockdowns for at least 20 hours daily. During lockdown I had no ability to leave the small cell I shared with another detainee. The cell had a toilet inside, and during lockdown we were forced to go without showers and eat our meals in the same place we went to the bathroom. I truly believe the food was not meant for human consumption. If we complained about the conditions, we faced punishment of lockdown for 72 hours. When I tried to communicate with my deportation officer, the facility put me on suicide watch, where I was stripped naked before being forced to wear heavy, confining clothes, then abandoned to the living hell of a small, bare cell with no toilet, sink, or bed. There was nothing inside it but a hole in one corner where I was supposed to go to the bathroom. There was no way to flush or wash my hands, though I had to eat with my hands because they gave me no utensils. I had to sleep like a dog on the concrete floor.

I was not a human being. No human being in modern civilization is meant to endure these conditions. Certainly not in the United States of America, whose freedom I had proudly fought for.

I lost my case. The judge failed to correctly apply the complex and fast-evolving criminal immigration law, which changes by the day in higher courts. I appealed to the Board of Immigration Appeals (BIA), knowing the decision was legally wrong, and lost again. I filed a motion to reconsider, but while it was pending the government deported me to a place where I knew no one.

After being exiled, I learned that the Board had reconsidered and sent my case back to the immigration judge for further analysis. Desperate to attend my hearing to fight for my rights, I attempted to reenter at the border checkpoint seven times and explain my situation to officials, though I knew doing so would mean being detained again upon entry. On the seventh attempt, a fellow US Army veteran working for US Border Patrol agreed to let me in to be detained and continue fighting my case.

For months I stayed detained again, struggling to navigate the complex area of criminal immigration law without access to counsel or legal resources. Throughout this entire time, I remained separated from my family. Finally, I was able to get bond to be released from detention.

To this day, I continue to fight my case *pro se*, hoping for the opportunity to have the law applied fairly. Refusing to give up, I have submitted numerous briefs to the immigration court explaining how the law does not permit my deportation. At any moment the courts can order me deported again. Each day, when I feel the tightness of the ankle bracelet that ICE has forced me to wear, I am reminded of the grave uncertainty of my future, my liberty, and my ability to remain with my family in the only place I have ever called home.

Most detainees are not as lucky as I have been to get this second chance. Every day, numerous people are deported to places where they face persecution and death. The United States government praises itself on providing a fair and just opportunity for immigrants to defend ourselves against removal. But that system is a sham. Most of us face detention without access to counsel, inhumane detention conditions, and permanent separation from our families and our homes.

Part III: The Nonprofit Immigration Attorney

As the number of detained immigrants has grown exponentially in the past two decades, one of the largest challenges of the detention system has been access to counsel. While accessing legal services is difficult for anyone in detention, immigration advocates nationwide face the added challenge of accessing detained immigrants. Over the past two decades, advocates and attorneys have fought just to access immigration detention centers. The access they have gained has been closely monitored and regulated by ICE, such that the services they can provide are limited.

Currently, some nonprofit legal service organizations have access to some, but not all, immigration detention centers. They are able to conduct know-your-rights presentations

inside detention centers, distilling complicated law and procedure into easily communicable, bite-size pieces of information in a matter of minutes for detainees. These nonprofit attorneys and other service providers then help identify immigrants in need of legal representation and, if possible, connect them with *pro bono* attorneys. An immigrant's access to *pro bono* counsel depends on the strength of each local nonprofit organization's efforts to cultivate a network of *pro bono* attorneys, as well as the location of the detention center. While know-your-rights presentations provide a measure of legal access, they stop short of providing representation to detained immigrants in immigration court — the single most important factor affecting an immigrant's chances of winning relief in removal proceedings. Detained immigrants who cannot afford private immigration attorneys are particularly impacted by the lack of access to legal information. Former Attorney General Eric Holder declared in 2010 that immigrant access to attorneys should be recognized as part of an “indigent defense crisis” and, in the same breath, hailed the provision of general legal information as “a great success story” (Holder 2010) .

Immigrants' rights advocates are torn about the limited access to detention centers for which they have fought for the past two decades. Know-your-rights presentations may be the only form of legal access for tens of thousands of immigrants, especially those in remote detention facilities. Nonprofit attorneys who provide this service know that such well-intentioned efforts usually do not lead to *pro bono* representation, may actually encourage immigrants to accept deportation if their case is winnable but difficult, and may impede the growing movement for universal representation in immigration court by serving as a stopgap of due process that legitimizes a broken system.

Below, a nonprofit attorney describes the struggle and challenge of providing legal services to detained immigrants.

*The Visit*¹³

The heavy metal door slams shut behind me and I am trapped, automatic doors surrounding me on either side. I wait patiently in full view of the security camera, hoping to hear the telltale click and buzz that will allow us to push our way out of this claustrophobic hallway. I follow the correctional officer down the hall to the first block. A ring of theatrically oversized jail keys jangles at his hip. It is already hot and humid this morning and the temperature will soar to well over 100 degrees this afternoon in the jail. The administrative offices are cool, but I'm told that air conditioning is just not an option in the cells — it would cost too much.

An automated door of metal bars slides open to let me into Block 1. In front of me are two levels of cells, each cell guarded by its own metal door. To my right, a row of metal bars leads me into the day room: a small TV in one corner and four metal picnic benches bolted down the middle. Massive, industrial-size fans futilely blow hot air, adding to the noise and frustration of the 20 men in front of me.

13 Saba Ahmed is a staff attorney with a nonprofit organization that provides limited legal services on a *pro bono* basis to detained immigrants.

I launch into my rehearsed introduction: *I'm an immigration attorney but I'm not here to represent you. I'm only here to provide information about immigration law and the deportation process and orient you to your case.* Rapt attention. *You are here because the government is trying to deport you. Sometimes there are ways to fight against a deportation. If you do not have an attorney, we can speak with you to see if you qualify for a legal defense against deportation.* I look down at my list of four names of new detainees that ICE gave us earlier this week, then up at all the men in front of me. Per usual, our information is incomplete and our attempts to plan out the precious time we have in each block are thwarted. I spend a few minutes organizing the men into two groups — those we've spoken with before and those who have not yet heard my know-your-rights presentation. Our group of four — one attorney and some volunteer law students — springs into action, taking people aside individually to deliver pamphlets simplifying complex immigration laws.

I begin the know-your-rights presentation. *This jail, despite what it looks like and feels like, is an immigration detention center; it is not a criminal jail.* Scoffs, disbelief, incomprehension. *Criminal convictions may affect a person's case in many ways: maybe they're not eligible for bond, maybe the judge will set a bond unattainably high, maybe a person won't be eligible for certain defenses, maybe the conviction is so serious that there's only a small chance that a person will actually win a defense against their deportation.* Hope drains and attention begins to wander. I'm careful to always use the third-person "they" or "a person" and not the second-person "you" because this is not legal advice; it's merely a general orientation. By the time I've finished explaining requirements for the limited defenses against deportation, few people are hopeful, but they still want to speak with an attorney who can explain the details of their case.

Each member of our team has five to 10 minutes to speak with a detained immigrant who doesn't already have an attorney. We want to see as many people as we can in the limited time we're allowed today. I speed through our intake form, knowing I must be thorough because it may be weeks before I have a chance to speak with a person again and a single missing fact could affect their eligibility for relief. I run through biographical info, how the person entered the United States, past arrests or convictions, family members and community in the United States, and if and why a person is afraid to go back to their country. I am always impressed and sometimes overwhelmed by the level of faith each person puts in me, speaking candidly of past persecution and harm in their home country or criminal convictions in the United States. I'm not sure I could muster the same faith or courage to bare such things to a stranger in a few minutes.

Having spoken with hundreds of detained immigrants and honed my five-minute intake skills, I am adept at cutting people off if they start describing horrific details of their persecution (I don't need to know how it happened, only that it happened) or that their children at home are crying and asking for them (because their children likely won't help them qualify for a defense against deportation). I've developed a callous conscience over the past two years. On the one hand, I am constrained by the minutes we have in each block; on the other hand, I am relieved that I don't have the time to listen because I don't know if I can bear any more painful stories.

We trudge from block to block in the jail, repeating this performance five or more times through the day. We take a 20-minute lunch and push on. Just one more block to go —

we've saved the smallest for last. We walk in expecting to see the eight people on our list. The officer tells me that there are 26 more immigrants who arrived at the jail a few days earlier, but they are not on our list and we can't meet them because there's not enough time. In a desperate attempt to provide some form of legal access, I shout down the halls at the closed metal doors: *We are immigration attorneys! We don't have time to talk to you today, but give us a call so we can talk about your case! I'm leaving papers with our phone number!* I hand over legal guides and information to the officer but know this is a shot in the dark. The free legal hotline that connects immigrant detainees to our office is complicated to dial and I know that many won't be able to reach us. Most of them will be gone by the time we visit again next month.

Followup

Out through the loud metal doors and into the sunshine. We breathe a collective sigh of relief and climb into the car, ready for the three-hour drive home. On a good day, the visit and drive takes about 14 hours. Our volunteers fall asleep in the back seat, exhausted by the pace of the visit. I am energized, the adrenaline rush that started at 5:00 am and kept me going through the day will last a few more hours — I'll crash when I get home. Next week, we'll be off to another county jail *cum* immigration detention center and another one the week after that. For now, there's no sense of accomplishment, only exhaustion. I'm mentally running through the people I met today — who had a strong case? How many days do I have to follow up? Will it be possible to find a *pro bono* attorney?

The next day we begin the breakdown of our jail visit. We meet and review every person's options under immigration law. We sort through the cases one by one, debating each other and debating our consciences on how to proceed with each case. The lucky ones are put on a fast track to find a *pro bono* attorney, a process that generally takes several weeks. The unlucky ones — the majority of those we review — are closed with a message: *We're sorry, we see no viable legal relief in your case. You are welcome to consult with another attorney.* In between, there are the cases which require meticulous fact-gathering to assess if there is a chance to fight deportation. We spend the next few days calling family members, digging into the facts of a criminal conviction, and gathering evidence. Our reviews and follow-ups are always completed with a sense of urgency as it's impossible to ignore the looming risk of deportation. This process is made more difficult by lack of access to the detainees. In many cases, we encounter people after they have been detained for weeks or have had several court hearings, too late in the process to stop or slow down a deportation.

In between our jail visits, detained immigrants are frustrated in detention and are seeking a way to get out. They'll ask for a bond and, when they are denied or can't pay the amount set, they'll ask for a deportation. It's heartbreaking to go back to jail after following up on a case and see someone with a deportation order because they just could not bear any more detention.

Fallout

The pace of the jail visit cycles hasn't allowed me much time for reflection on my role in the detention-deportation pipeline. I've heard nonprofit attorneys who visit detention centers

described as the public defenders of the immigration system because we are the last line of defense for indigent immigrants facing deportation. But this characterization is inaccurate because public defenders have far more access to their clients and, more importantly, the ability to represent them in court. In contrast, I have very limited access to immigrant detainees. Our access is always carefully negotiated with DHS to fit the agency's limited conception of legal access and due process for immigrants. At any time, DHS can limit the length or number of our visits to jail, restrict telecommunication access, or refuse to let us know who or how many people are being detained — all of which exacerbate an already challenging job.

Then there is the moral quandary I grapple with. There is a growing movement for universal representation of indigent immigrant adults and children. I can't help but think that the limited and general legal services are a band-aid put on this great need — a measure of legal access that stops short of actual legal representation, the one thing that actually makes a difference in an immigrant's chance of winning their case. Instead, I add efficiency to the clogged immigration courts. This means that *pro se* detainees may get a bond or win their case, but more likely they accept a deportation or ask for voluntary departure, making bed space for the next detained immigrant and opening up a slot for a hearing on the immigration judge's detained docket. Most days I feel like a glorified case manager, not a zealous advocate as lawyers should be, but a prop for due process, moving people through the pipeline. If I see a case that's a stretch — maybe there is a legal argument to make that this crime does not make a person deportable, or maybe the good and bad equities are on balance — I can't take on the case and fight. The most I can do is tell the person that if they want a fighting chance, they need to pay \$5,000, \$10,000, or more, for an attorney willing to make creative legal arguments. What kind of legal access is that?

There is also the emotional fallout of the job. Completing a jail visit means receiving calls from desperate immigrant detainees and desperate families. There's a relief I feel when someone's family scrapes together the thousands of dollars for a private attorney, or when someone is no longer detained. Whether they're out on a bond or they were deported, the weight of responsibility is lifted; that's one less person for me to track. I am worn down with telling people over and over that there is "no relief" for them, that there is just no room for them in our laws or in our country — it doesn't matter that they fear death in the most violent country in the world; it doesn't matter that they have young children here. There is just no way to fight their deportation. I absorb their anger with the immigration system and their grief at losing their family — after all, who else can they talk to; who else will listen to their story?

All of this, over and over, hundreds of "cases," hundreds of lives, leads to a slow burnout. Our will and desire to help detained immigrants can only take us so far, no matter how young, idealistic, and optimistic we start out. The unpredictable case load, the early morning visits, the late evenings, the effects on our partners and families — all of it weighs on me. This job is a constant effort to strike the right balance between hope, despair, and the motivation to go on.

Part IV: The Immigration Judge

There is widespread consensus that immigration courts are overwhelmed with immense caseloads, inadequate staffing, and lengthy backlogs (Arnold & Porter 2010). Non-detained immigrants in removal proceedings often wait two to three years to have their cases adjudicated. Cases on the detained docket move much faster. Despite the considerable time it takes to access counsel, determine eligibility for defenses to deportation, and gather evidence, the average life of a *pro se* detained immigrant's case totals a mere 23 days (Eagly and Shafer 2015, 63).

In addition to facing institutional pressure to quickly move cases while immigrants are detained at government expense, judges are overburdened with the number of detained cases that must be efficiently adjudicated (Lustig et al. 2008). In 2015, immigration judges adjudicated and completed 51,005 detained cases, constituting 28 percent of all immigration cases completed that year (EOIR 2016, figure 11). Judges have very little face time with immigrants in their courtroom, and about half the time spent with *pro se* detainees involves requests for continuances to seek counsel (Eagly and Shafer 2015, 61). Furthermore, as administrative law judges, immigration judges have obligations to the respondents who appear *pro se* and are often required to step into the role of counsel in order to fully develop the record through interrogating, examining, and cross-examining an immigrant and any witnesses.”¹⁴

Below, a former immigration judge provides a snapshot of a few minutes on the detained docket.

*Prelude*¹⁵

Wednesday afternoon, detained master calendar. Feeling love and dread. Love: Fast-paced, meaningful, live audience, prepared attorneys, challenging legal questions, teamwork, mediation, problem solving, saving lives, teaching, performing, drama, positive messages, mentoring, full range of life and legal skills in use and on display. Dread: Hopeless cases, sobbing families, watching goodbyes, “not-quite-ready-for-primetime” (“NQRFT”) attorneys, bad law, missing files, missing detainees, lousy televideo picture of respondent, equipment failures, claustrophobic courtroom, clogged dockets, imprisoned by the system, due process on the run, stress.

Pregame Warm-up

“How many today, Madam Clerk?”

¹⁴ Immigration and Nationality Act (INA) § 240(b)(1).

¹⁵ This account is written by Hon. Paul Wickham Schmidt, who served as the chairman of the Board of Immigration Appeals before being appointed to the Arlington Immigration Court in May 2003, where he served as an immigration judge for 13 years before recently retiring from that position. While the names he has provided in this account are entirely fictional, the situations he describes are based on his own wealth of experience adjudicating cases in immigration court.

“Fourteen, five bonded, two continued.”

“Thanks, Madam Clerk. Let’s make it happen!”

Showtime.

Politeness, patience, kindness. Listen.

“Please rise, the United States Immigration Court at Arlington Virginia, is now in session, Honorable Paul Wickham Schmidt, presiding.”

Jam-packed with humanity. Live. Uncomfortably hot. Bandbox courtroom. Ratcheting tensions. America’s most important, most forgotten courts. Lots of moving pieces. Put folks at ease. Performance begins.

The Damned

“We’re on the record. This is Judge Paul Wickham Schmidt at the United States Immigration Court in Arlington, Virginia; we’re on a televideo hookup with the DHS Farmville Detention Center, the date is . . . , and this is a master calendar removal hearing in the case of Ricardo Caceres, file number A123 456 789. Counsel, please identify yourselves for the record.”

“Bonnie Baker for the respondent, Mr. Caceres.”

“April Able for the DHS.”

“What are we here for Ms. Baker?”

“Your Honor, we’re seeking a reasonable bond for my client, who has been in the United States for more than two decades. He’s a family man, the sole support of his wife and four US citizen children, who are sitting right behind me. He’s a skilled carpenter with a secure job. He pays his taxes. He’s a deacon at his church. His employer is here this afternoon and is willing to post bond for him. The respondent’s wife is out of work, and the family is on the verge of being evicted from their apartment. The oldest son and daughter are having trouble in school ever since their father was detained. The baby has developed asthma and cries all night.”

“I assume he’s in detention for a reason, Ms. Baker. What is it?”

“Well, Your Honor, he had a very unfortunate incident with one of his co-workers that resulted in his one and only brush with the law. I think he probably got some questionable legal advice, too.”

“What’s the conviction?”

“Aggravated assault with a deadly weapon.”

“Sentence?”

“18 months, with all but three months suspended, Your Honor.”

“Hmmm. Doesn’t sound very promising. What’s your take, Ms. Able?”

“He’s an aggravated felon, Your Honor, under the BIA and Fourth Circuit case law. Therefore, he’s a mandatory detainee. May I serve the records of conviction?”

“Yes, thank you Ms. Able. Isn’t Ms. Able right, Ms. Baker? He’s mandatory detained under the applicable law, isn’t he?”

“Well, Your Honor, technically that might be right. But we’re asking you to exercise your humanitarian discretion in this extraordinary situation.”

“As you know, Ms. Baker, I’m not a court of equity. The law gives me no discretion here. So, based on what you’ve presented, no bond. What’s next? Are you admitting and conceding removability and filing for relief?”

“The family wanted me to ask for bond, Your Honor.”

“You did, Ms. Baker. What’s the next step?”

“Well, the respondent has instructed me that if you didn’t grant a bond, he just wants a final order to go back to Mexico. He’s been in detention for some time now, and he just can’t wait any longer.”

“You’re sure that’s what Mr. Caceres wants to do?”

“Yes, Your Honor.”

“Mr. Caceres, this is Judge Schmidt, can you hear me?”

“Yes.”

“Because of the crime you committed, the law doesn’t permit me to set a bond for you. Your lawyer, Ms. Baker, tells me that you have decided to give up your rights to a full hearing and be removed to Mexico. Is that correct?”

“Yes, Your Honor. I can’t stand any more detention.”

“You understand that this is a final decision, and that once I enter the order you will be removed as soon as DHS can make arrangements.”

“Yes, judge, I understand.”

“And, you’ve discussed this with your family, sir?”

“I just want to go — no more detention. Can I go tomorrow?”

“Probably not. But the assistant chief counsel and DHS officer in court are noting that you want to go as soon as can be arranged.”

“Your Honor, may his wife and children come up and see him for a moment?”

“Yes, of course, Ms. Baker. Please come on up folks.”

“Your Honor, the respondent’s wife would like to make a statement to the court.”

“I don’t think that’s prudent, Ms. Baker. She’s already hysterical, and there is nothing I can do about the situation, as I’m sure you’ll explain to her. We have lots of other people waiting to see me this afternoon.”

“Understood. Thanks, Your Honor.”

“You’re welcome, Ms. Baker. You did the best you could. Take care folks. I’m sorry you’re in this situation. Mr. Caceres, good luck to you in Mexico. Please stay out of trouble. The clerk will issue the final order. Who’s next, Madam Clerk?”

The “Not-Quite-Ready-For-Prime-Time” (“NQRPT”) Lawyer

“Mr. Queless, we’re here for your filing of the respondent’s asylum application.”

“Um, Your Honor, I’m sorry I don’t have it with me. I didn’t have a chance to get to it.”

“Why’s that, Mr. Queless? Your client has been in detention for some time now, and I gave you a generous continuance to get this done.”

“That’s very true, Your Honor, but the power was off at our office for a day, and my son crashed his car and I had to take care of the insurance and the repairs.”

“All right, come back in three weeks with your filing, without fail.”

“Can I come back next week, Your Honor? My client has been in detention a long time.”

“I know that, counsel. That’s why I wanted you to file *today*, so we could set an individual date. I’m already overbooked for next week, and I can’t justify putting you in front of others who are prepared.”

“Ah, could we just set an individual date now, Your Honor, and I’ll promise to file within a week?”

“That sounds like a *really* bad idea, Mr. Queless, in light of actual performance to date. I want to see the completed filing *before* I assign the individual date. That’s how we do things around here. You’ve been around long enough to know that.”

“Excuse me, Your Honor, but may I be heard?”

“Yes, you may, Ms. Able.”

“With due respect, Your Honor, at the last master calendar you said *this* would be the *final* continuance. This detained case has been pending for months, and you have given counsel a more than reasonable opportunity to file for relief. At this point, the DHS must request that you deny any further continuance and move that you enter an order of removal.”

“Well, I sympathize with your position, Ms. Able. I did say this would be the last continuance, and I’m as frustrated as you are. But I note that the respondent is from a country where we routinely grant asylum, often by agreement or with no objection from your office. Therefore, I feel that we must get to the merits of his claim. Let’s do this. Mr. Queless, I’m going to give you an ‘incentive’ to get this filed. If the I-589 is not complete

and ready to file at the next hearing — no more excuses, no more ‘dog ate my homework’ — I’m going to agree with Ms. Able, grant her motion, and enter an order of removal against your client. Do you understand?”

“Yes, Your Honor. I’ll have it here at the master in three weeks.”

“Anything further from either counsel?”

“Nothing from the DHS, Your Honor.”

“Nothing from the respondent, Your Honor.”

“Hearing is continued.”

The Skeptic

“How are you this afternoon, Mr. Garcia?”

“Okay.”

“Spanish your best language?”

“Yes.”

“Is this your first appearance before me?”

“Yes.”

“You’re going to look for a lawyer before we proceed with your case?”

“Do I need a lawyer, judge?”

“Depends on what you want, Mr. Garcia. I can send you back to Guatemala at government expense or give you voluntary departure if you wish to pay your own way and avoid having a formal removal order on your record. Is that what you want?”

“Oh, no, judge. I don’t want to go back.”

“Then, you need a lawyer, sir. Officer, please give Mr. Garcia the legal services list. Mr. Garcia, this is a list of organizations in Virginia that might be willing to represent you at little or no charge if you can’t afford a lawyer. You should also check with family and friends to see if they can help you find a free or low-cost lawyer to take your immigration case. I’ll set your case over for three weeks to give you a chance to look.”

“Can I come back next week?”

“You won’t be able to find a lawyer by then, sir. Take the three weeks. If you don’t have a lawyer by then, we’ll go forward without one.”

“Okay, Your Honor.”

“Good luck in finding a lawyer, Mr. Garcia. The clerk will issue the notices. Who’s next, Madam Clerk?”

Postlude

Out of court. Satisfied. Tired. Drained — like a Steph Curry three-pointer. Find my colleagues. Fresh air. Walk in the park. Talk sports, politics, weather. Visit Starbucks. Final refill. Recharge batteries. Master tomorrow morning. Fifty non-detained. Too many. The beat goes on. Walking free. Not an “alien.” Glad. Lucky. Thankful.

Part V: The Family Member

Beyond individual immigrants, IIRIRA has a rippling effect on the families of immigrants. The detention and deportation system treats the children, spouses, parents, brothers, and sisters of immigrants as a mere afterthought, collateral damage to the mission of enforcing immigration laws. But the impact of losing a loved one through this system is harshly felt by family members and its social effects reverberate throughout the larger community.

The heaviest impact is borne by the children of immigrant parents, who are primarily apprehended through the criminal justice system. In addition to the many US citizen children of lawful permanent residents facing deportation, an estimated 4.5 million US citizen children have an undocumented parent at risk of detention and deportation (Koball et al. 2015, 1). These children are more likely to drop out of school, rely on welfare, and require foster care if a parent is deported. Children who are separated from one or both parents due to deportation face emotional devastation and an increased risk of dropping out of school or ending up within the criminal justice system, which have lifelong implications for earning potential and welfare costs (Vasquez 2011, 669-670; New York Immigrant Family Unity Project 2013, 12). For indigent families, particularly those with young children, deportation forces reliance on public welfare benefits.

For family members trying to support loved ones in immigration detention, the task is bewildering, especially for indigent families whose situation is exacerbated by the detention of the family’s primary breadwinner. Many families exhaust their limited resources hiring private criminal defense attorneys and then cannot pay for immigration attorneys. Phone calls from remote, rural immigration detention centers are exorbitantly expensive, preventing basic communication between detainees and their families. For prolonged periods, families are faced with the imminent threat of being torn apart. This is the most heartbreaking consequence of IIRIRA.

Below, an immigrant’s wife provides her experience with a loved one detained thousands of miles away.

Omar and I¹⁶ met over a year ago, when I was visiting Washington, DC for work. Omar was working at a store I happened to wander into, and we instantly connected. From first sight, our chemistry was electrifying, and after spending more time together we learned we had so much in common. Omar told me he had recently moved to the United States after

16 This account was written by the US citizen fiancée (now wife) of an immigrant detainee who chose not to reveal her name or that of her spouse, as his immigration case is ongoing. Throughout the account pseudonyms have been used to protect their identities.

working in Dubai, though he was originally from Morocco. He wanted to stay in the United States permanently for education and career opportunities, and was living with his brother, a lawful permanent resident, in Washington, DC. He was thrilled to be in America, with all of its opportunities, and wanted to go to school for engineering. Over the next several months our bond grew stronger and I was amazed at how quickly Omar adapted to US culture. He made friends everywhere he went — he just had that effect on people. He was so kind and smart, it wasn't long before I fell in love with him. At some point, we started to discuss our future together and getting married one day. We knew it wouldn't be easy. We come from completely different cultural identities — he is a Moroccan Muslim and I am African American, raised in a Christian household. We knew it might be a challenge for our families to believe in our bond, but we had no doubt that if they saw our love, they would get on board.

Many months later, Omar was arrested at his job. This horrible news was not delivered to me until a few weeks after it happened. I was in Los Angeles, at work, when I got the call one day from Omar's brother. I hadn't heard from Omar in a couple of weeks, which was unlike him. His brother kept me in the dark. He said Omar would call me later that night and told me to make sure I was available to answer. I was furious Omar would wait this long to update me. I was also incredibly worried about him. I waited and waited for his call — so long, in fact, that I fell asleep and missed his first call, which went to voicemail. Thankfully he quickly called again. My anger dissipated as we spoke, replaced by desperation. He told me he was in an immigration detention center in Farmville, Virginia, after being arrested two weeks ago under suspicion for using a credit card that wasn't his. He was innocent and planned to fight the charge, a case of mistaken identity. But the moment he paid bail and was released from county jail, two immigration officials were waiting for him in the waiting room. They rearrested him and took him to immigration detention because he had overstayed his entry visa. Now, he was waiting in detention until he could see the immigration judge. They were trying to deport him. His brother was looking for an immigration lawyer to fight his case.

I was full of questions, trying to make sense of the situation and not sure what it meant. Omar didn't know what it meant himself, but he was calm and loving, trying to stay strong and comfort me. He promised that even if they deported him, he was determined for us to stay together — he would marry me in another country if he couldn't come back to this one. We discussed our faith in God and in each other. I knew that one way or another, I would marry this man. The phone call dropped and cut our time together frustratingly short.

I had so many emotions, but I wasn't worried anymore — I knew Omar would get through this and we would be together, somehow. Omar sounded so confident that he would soon be released from immigration detention and that the false criminal charge against him would be dropped. In hindsight, it is clear that we were both so very naïve about the system he had become trapped in.

Omar's brother hired an immigration attorney to represent him in a bond hearing. None of us was prepared for what happened at that first immigration hearing — Omar still gets upset when he talks about it. The immigration attorney that his brother hired to represent Omar filed a bond motion, and then the government attorney suddenly claimed that Omar had sexually assaulted someone. Omar was shocked. He had been charged with credit card

theft, which he was sure was a case of mistaken identity. At the time of his arrest, the police had asked him about a sexual assault case and he even took a DNA test. The test came back negative, which cleared him of any guilt of sexual assault, and he was never charged for it. Omar knew he could prove his innocence for credit card theft in criminal court once he was released from immigration detention. But the ICE attorney only told the judge Omar had been investigated for sexual assault, not that he was innocent based on the result of the investigation. Even more shocking was that the attorney representing Omar did not say a word in his defense. The judge denied bond, saying that ICE's allegations showed that Omar was dangerous to the community.

Omar was stuck in immigration detention. We were desperate — his brother was paying for a defense attorney to represent Omar on the criminal charge and didn't have any money left for an immigration attorney now that the bond had failed. I was living with my parents, and looking for a new job, so I could not afford to pay for a lawyer. Weeks and then months went by, and Omar remained in detention. Phone calls were hugely expensive. I couldn't call him, he could only call me. Days would pass and I wouldn't hear from him because there was no money on his jail account. Each time we were able to talk on the phone, it was a blessing. We tried to make the most of those phone calls; it was our only time together. We would always comfort each other, but as time stretched on, we got less hopeful. It was depressing for Omar, being in detention — not only the lack of freedom, but the endless waiting and the horrible uncertainty. He was especially upset about being accused of a crime he never committed, and then being denied any chance to prove his innocence. He was sure he would be deported. Regardless, we still had faith. I was prepared to do whatever was necessary to stay together, even if that meant moving to Morocco.

We didn't know how to move forward or the steps to take for Omar's immigration case now that bond had been denied, or what was even happening with his criminal case. Worst yet, we had no idea where to look for concrete information. I started to do some research online and found various organizations focused on relief for detained immigrants. I contacted an organization based in Washington, DC and explained Omar's situation. One week later, I got a call from an immigration attorney from that organization who was familiar with Omar's case. She explained that Omar's criminal case could not go forward without him physically present at the court, and neither ICE nor the criminal prosecutor would take responsibility for transferring Omar to criminal court. She explained that if Omar was married to a US citizen, he could file a family petition to remain in the United States.

Omar and I wanted to get married, but on our own terms — not to keep him from being deported, and not while he was in detention for a crime he didn't commit. When the attorney explained the complicated and costly process for getting married in detention, it became clear I couldn't do it even if we wanted to — I was dependent on my parents, I didn't have the support or resources to travel to Virginia, or pay the thousands of dollars in fees to apply for Omar to get status. I had to be honest — the only way we could get married on such short notice was if Omar got released on an immigration bond, moved to Kansas City, met my parents, and got their blessing. I felt like the chance of me climbing Mount Everest was greater than us getting married anytime soon.

Thankfully, that immigration attorney took on Omar's bond case *pro bono*, though she warned us that chances were slim for Omar to be granted bond. By that point, I had received

a position as a literacy tutor for a nonprofit and had funds to travel. I visited Omar at the detention center in Farmville, Virginia. I also met other women and families who were visiting loved ones. We shared the same feelings: sad but stubbornly optimistic. It was the first time in months Omar and I had seen each other. All weekend, we discussed our life and future together.

A few days later, Omar's immigration attorney was able to prove to the immigration judge that Omar had never been charged with sexual assault. She explained that he deserved a chance to prove his innocence on the credit card theft charge in criminal court. When the judge received all the evidence, he changed his mind. Finally, after six months in immigration detention, Omar was granted release on bond. Thank God.

Today Omar and I are married and living together in Kansas City. We have a one-bedroom apartment and are in the process of filing for his adjustment of status. Meanwhile, his criminal case keeps getting continued, though we're hopeful it will soon be dismissed — Omar will continue to fight to clear his name and I will continue to support him. Every day is still a challenge, but we are so blessed. Every night is also a reminder that, unlike the majority of people whose partners have been detained, I can come home to the man I love. We cherish every moment and realize how quickly it can be taken away. There is so much in the system that we cannot control, but we refuse for it to control our relationship or make us feel helpless. While we may not have faith in the system, we have faith in God, and in each other. Inshallah, love will prevail.

Conclusion

These five vignettes provide a snapshot of the current state of the immigration detention and deportation system 20 years post-IIRIRA. IIRIRA laid the legal framework for the easy disposal of immigrants who are primarily indigent and people of color. In providing the federal government broad leeway in criminalizing and detaining immigrants, IIRIRA has cast its net over all immigrants, encouraging their public characterization as objectionable and disposable.

The enforcement of these laws has entrenched the myth of the “criminal alien” who is deserving only of societal ire and deportation. On November 20, 2014, the criminalization of immigrants that IIRIRA had woven into the fabric of federal law over the years pushed its way forcefully into the public consciousness with three words from President Barack Obama: “Felons, not families” (Obama 2014). Obama coined this phrase when he issued an executive order with the intention of simultaneously appeasing conservatives lobbying for more deportations and advocates lobbying for limits on deportations. This concept of “felons, not families” cemented IIRIRA's false delineation of immigrants as either criminal convicts or family members, ignoring the obvious reality that almost all individuals have families, including those who have been convicted in criminal court and were born outside the United States.

The growing category of individuals legally defined as criminal aliens under IIRIRA, and the subsequent psychosocial dehumanization of immigrants as disposable, threatening, and categorically excludable, has led to where we are in America today. What were once

legally fictionalized constructs have created new and frightening political realities. Taking IIRIRA from law to the next level of intentional, overt discrimination, President Trump ran a presidential campaign centered on fear of the criminal alien caricature, a crude and bigoted generalization that quickly caught on with millions of Americans. In his speech announcing his campaign, Trump accused Mexican immigrants of embodying the criminal alien: “They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people” (Lee 2015). After winning the election, Trump echoed the message: “What we are going to do is get the people that are criminal and have criminal records, gang members, drug dealers, where a lot of these people, probably 2 million — it could be even 3 million — we are getting them out of our country or we are going to incarcerate” (CBS 2016). Harping on the fear of the depraved “other” that IIRIRA set out to exclude and expel helped Trump to rise to power and fortified the fear of this specter.

Perhaps IIRIRA’s greatest damage has been shifting blame to the vulnerable population that it detains and deports, absolving the deporters of any responsibility. In the eyes of the “lawful,” criminal immigrants lose any claim to membership in society, deserve only punishment, and are owed no empathy for permanent separation from their families. The Trump administration, so outspokenly driven to dehumanize millions of immigrants, is the culmination of this 20-year trajectory. Under IIRIRA, the foundation was built, and now the ugly underbelly has been exposed. These are the stories of the human cost of IIRIRA that we ignore at our own social and moral peril.

REFERENCES

- Arnold & Porter LLP. 2010. “Reforming the Immigration Systems: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases.” Washington, DC: American Bar Association, Commission on Immigration. http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf.
- Barrett, Devlin. 2016. “Record Immigrant Numbers Force Homeland Security to Search for New Jail Space.” *Wall Street Journal*, October 21. <http://www.wsj.com/articles/record-immigrant-numbers-force-homeland-security-to-search-for-new-jail-space-1477042202>.
- CBS. 2016. “Interview with Donald Trump.” *60 Minutes*, November 13. <http://www.cbsnews.com/news/60-minutes-donald-trump-family-melania-ivanka-lesley-stahl/>.
- Eagly, Ingrid and Steven Shafer. 2015. “A National Study of Access to Counsel in Immigration Court.” *University of Pennsylvania Law Review* 164(1).
- EOIR (US Executive Office for Immigration Review). 2016. “FY 2015 Statistics Yearbook.” Washington, DC: DOJ. <http://www.justice.gov/eoir/page/file/fysb15/download>.
- Global Detention Project. 2016. “United States Immigration Detention Profile.” <https://www.globaldetentionproject.org/immigration-detention-in-the-united-states>.

- Holder, Eric. 2010. "Attorney General Eric Holder Addresses the Pro Bono Institute." Speech, Washington, DC, March 19. <https://www.justice.gov/opa/speech/attorney-general-eric-holder-addresses-pro-bono-institute>.
- Koball, Heather, Randy Capps, Krista Perreira, Andrea Campetella, Sarah Hooker, Juan Manuel Pedroza, William Monson, and Sandra Huerta. 2015. "Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents." Washington, DC: Urban Institute and Migration Policy Institute. https://cdn.thinkprogress.org/wp-content/uploads/2015/09/21085242/Revised_ImmEnfandChildWellBeing_final.pdf.
- Lee, Michelle Ye Hee. 2015. "Donald Trump's False Comments Connecting Mexican Immigrants and Crime." *Washington Post*, July 8. <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime/>.
- Lustig, Stuart L, Niranjana Karnik, Kevin Delucchi, Lakshika Tennakoon, Brent Kaul, Dana Leigh Marks, and Denise Slavin. 2008. "Inside the Judges' Chambers: Narrative Responses from the National Association of Immigration Judges on Stress and Burnout Survey." *Georgetown Immigration Law Journal* 23(1): 57-83.
- New York Immigrant Family Unity Project. 2013. "The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers." http://populardemocracy.org/sites/default/files/immigrant_family_unity_project_print_layout.pdf.
- Obama, Barack. 2014. "Remarks by the President in Address to the Nation on Immigration." Speech, Washington, DC, November 20. <https://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.
- Torrey, Philip. 2015. "Rethinking Immigration's Mandatory Detention Regime: Politics, Profit and the Meaning of Custody." *University of Michigan Journal of Law Reform* 48(4): 879-913.
- Vazquez, Yolanda. 2011. "Perpetuating the Marginalization of Latinos: Incorporation of Immigration Law into the Criminal Justice System." *Howard Law Journal* 54(3): 640-74.