

Lawyering from a Deportation Abolition Ethic

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This Article contributes to the emerging literature on abolition within the immigration legal system by mapping deportation abolition theory onto lawyering practice. Deportation abolitionists work to end immigrant detention, enforcement, and deportation, explicitly understanding immigrant justice as part of a larger racial justice fight connected to resisting White supremacy. Although a number of deportation abolition initiatives have recently emerged to challenge the racist foundations of immigration law, most of these deportation abolition organizations have few, if any, lawyers on staff. This Article surfaces tensions related to deportation abolition theory and lawyering, including goals within abolition theory to center directly affected people and address power and privilege differentials, including the privilege of being a lawyer. Lawyers practicing a deportation abolition ethic may confront challenges with reconciling their professional role as officers of the court and duties to their individual clients as they operate within an unjust system they seek to abolish. Despite these tensions, this Article argues that immigration lawyers interested in moving toward deportation abolition can play significant support roles in efforts to radically transform the immigration legal system, as well as in complementary efforts to address the immediate needs of those entangled in the deportation system.

DOI: <https://doi.org/10.15779/Z386W9696T>

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* Clinical Professor of Law, Tulane University Law School. For helpful insights and conversations at various stages of this project, thanks to Amna Akbar, Sabrineh Ardalan, Sameer Ashar, Matthew Boaz, Jason Cade, Angélica Cházaro, Sherley Cruz, Kate Evans, Adam Feibelman, César Cuauhtémoc García Hernández, Lindsay M. Harris, Jennifer L. Koh, Annie Lai, Jennifer Lee, Fatma Marouf, Medha Makhoul, Shalini Bhargava Ray, Paromita Shah, Ragini Shah, Silky Shah, Sirine Shebaya, Sarah Sherman-Stokes, Tania Valdez, and Mary Yanik. This Article benefited from presentations at the 2020 NYU Clinical Law Review Writers' Workshop and the 2021 Biennial LatCrit Conference. I am also grateful to Alex D. Rodríguez Pérez, Sarah Hunt-Blackwell, and Kayla Chisholm for their excellent research assistance.

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INTRODUCTION

Calls for police abolition have taken a national stage due to uprisings after the killing of George Floyd and many other Black people at the hands of police. Protestors target the institution of policing—rather than individual bad actors—and assert that the key to addressing police violence is less policing, perhaps even no police.¹ Many of these protestors identify as carceral abolitionists,² who seek to end “the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems,” also called the “prison industrial complex.”³ Carceral abolitionists assert that racist state violence is inherent in

1. Amna A. Akbar, *How Defund and Disband Became the Demands*, N.Y. REV. (June 15, 2020), <http://www.nybooks.com/daily/2020/06/15/how-defund-and-disband-became-the-demands/> [<https://perma.cc/4PTP-U9ZX>].

2. I use the term “carceral abolition” throughout this article, which is analogous to Prison Industrial Complex abolition, defined as abolishing “both the diffusion of mechanisms of surveillance and control encompassed by Foucault’s (1977) exploration of disciplinary power and practices of confinement more generally.” Justin Piché & Mike Larsen, *The Moving Targets of Penal Abolitionism: ICOPA, Past, Present and Future*, 13 CONTEMP. JUST. REV. 391, 398 (2010).

3. *What Is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, <http://criticalresistance.org/about/not-so-common-language/> [<https://perma.cc/RG8P-2MGH>].

policing systems and that policing has been used historically through the present to control and punish Black and Brown communities. Rather than seeking reforms, carceral abolitionists seek the complete dismantling of the prison industrial complex in furtherance of a positive vision of community safety and healing. This is true within the immigration landscape as well. Immigration policing, surveillance, and detention 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.

Momentum is growing in the immigrant rights community with advocates offering a vision of deportation abolition. As early as 2013, the #Not1More Deportation campaign called for the end of deportation of all immigrants, challenging the premise of President Obama's immigration plan that called for protecting worthy immigrants while increasing militarization of the border and expanding enforcement.⁴ He famously articulated this plan of prioritizing deportations for "Felons, not families. Criminals, not children. Gang members, not a mom who's working hard to provide for her kids."⁵ While mainstream immigrant advocacy largely supported these plans, some immigrant organizers critiqued President Obama's immigration agenda of expanding enforcement and criminalization of migrants, calling him the "Deporter-in-Chief."⁶ By the summer of 2018, campaigns to "Defund Hate"⁷ and "Abolish ICE"⁸ had gained traction in a national dialogue over defunding immigration enforcement couched in deportation abolition. In 2020, a national campaign to "Free them All" followed, which advocated for releasing detained immigrants as well as all other people serving time in prisons and jails. In July 2020, more than four hundred immigrant rights and ally organizations wrote an open letter pledging to "[w]ork[] to dismantle white supremacy, white nationalism, and the anti-Blackness that permeates our society, including within the immigrant justice

4. The #Not1More campaign started as a project of the National Day Laborer Organizing Network and became an independent campaign in early 2015. *About, #NOT1MORE*, <http://www.notonemoredeportation.com/about/> [https://perma.cc/9LSX-RJ4F].

5. President Barack Obama, Remarks by the President in Address to the Nation on Immigration (Nov. 20, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-President-address-nation-immigration> [https://perma.cc/KBX4-NB2S].

6. Latino USA, *Obama Leaves Office as 'Deporter-in-Chief'*, NPR (Jan. 20, 2017), <https://www.npr.org/2017/01/20/510799842/obama-leaves-office-as-deporter-in-chief> [https://perma.cc/6F5P-5HHE].

7. Defund Hate, which is co-anchored by Detention Watch Network and United We Dream, is a broad coalition of groups that agree that ICE and CBP funding should be decreased, although many member groups are not explicitly abolitionist. *See* DEFUND HATE, <https://defundhate.org/> [https://perma.cc/EW8W-XC6Y].

8. *See* Silky Shah, Opinion, *Why America Still Needs to Abolish ICE*, NBC (Oct. 14, 2020), <https://www.nbcnews.com/think/opinion/why-america-still-needs-abolish-ice-ncna1243293> [https://perma.cc/57RC-F6T7].

movement” and stand in solidarity with Black communities.⁹ These actions fall within the spectrum of a deportation abolition agenda in solidarity with immigrant communities to defund, delegitimize, and dismantle immigration law enforcement, particularly Immigration and Customs Enforcement (ICE). ICE is the immigration agency tasked with interior enforcement, which includes arresting, detaining, and deporting those suspected of violating immigration laws.¹⁰ Deportation abolitionists reject criminalizing language that relies upon and legitimizes stereotypes of good immigrants deserving of protections and undeserving ones who should be deported.¹¹

The confluence of the uprisings in the aftermath of George Floyd’s death, anti-Asian violence, and xenophobia,¹² combined with the focus on the immigration detention system during the COVID-19 crisis have made calls for abolition more urgent. In recent years, some “unapologetically abolitionist”¹³ immigrant rights initiatives have emerged, as well as individual immigrant defense attorneys who may personally identify as “abolitionist.”¹⁴ This is in stark contrast to the major immigration lawyer associations which seemingly reinforce the carceral system by focusing on due process reforms at the expense of advocating for abolition of detention and deportation.¹⁵

9. *Solidarity Letter from the Immigrant Justice Movement*, CMTY. LEGAL SERVS. IN PALO ALTO (June 4, 2020), <http://clsepa.org/wp-content/uploads/2020/07/Letter-of-Solidarity-from-the-Immigrant-Justice-Movement-with-Signatories-6.5.20.pdf> [<https://perma.cc/GV8M-B68X>].

10. Those who identify as “abolitionist” in the immigrant justice movement are not monolithic; some advocate solely for the abolition of detention centers, others for dismantling immigration police like ICE, while others argue for the abolition of deportation. Indeed, some of those who support reducing ICE and CBP budgets might not even identify as abolitionist.

11. See Silky Shah, *The Immigrant Justice Movement Should Embrace Abolition*, FORGE (Mar. 4, 2021), <http://forgeorganizing.org/article/immigrant-justice-movement-should-embrace-abolition> [<https://perma.cc/78Q3-L8A5>]; Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L.J. 207, 211 (2012); Angélica Cházaro, *Challenging the “Criminal Alien” Paradigm*, 63 UCLA L. Rev. 594, 597–99 (2016).

12. *Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide*, HUM. RTS. WATCH (May 12, 2020), <http://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide> [<https://perma.cc/F8TE-XG2B>].

13. See, e.g., MP4: Just Futures Law, JUST FUTURES L., <https://justfutureslaw.org/wp-content/uploads/2019/07/Just-Futures-Law-a-legal-office-for-and-by-the-immigrant-rights-movement.mp4> [<https://perma.cc/LL6B-CGJP>].

14. On social media, some immigration legal services attorneys identify as abolitionists. For example, Allison Furman is an abolitionist immigration attorney with Catholic Charities of DC. Allison Norris (@allisonnorris), TWITTER, <https://twitter.com/allisonnorris?lang=en> [<https://perma.cc/GS49-954U>]. A recent deportation defense job posting included connecting program goals “to the broader goal of abolishing immigration detention” as part of official responsibilities. Centro Legal de La Raza, Job Announcement for “Immigrants’ Rights Managing Attorney” within the Abolishing Immigration Detention Team, REMOTE WKLY. (2021), <https://remoteweekly.ai/portal/job/112520--managing-attorney-immigrants-rights/> [<https://perma.cc/6U2Q-CADF>].

15. See *Key Issues*, AM. IMMIGR. LAWS. ASS’N’S ADVOC. CTR., <https://www.aiala.org/advocacy-media/tools/advocacy-action-center/> [<https://perma.cc/8WDW-MZ4U>]; *Immigration*, A.B.A.,

The few legal scholars examining carceral abolition theory in the immigration context have flushed out the contours of deportation abolition theory, without mapping that theory specifically into lawyering practice.¹⁶ This Article addresses the need to apply theory to practice. It also engages with broader crimmigration scholarship, which provides an expansive and detailed accounting of the parallels in the immigration and criminal legal systems, the punitive nature of immigration surveillance, imprisonment, enforcement, and the racial animus animating immigration law design and implementation.¹⁷ Yet, crimmigration scholars, including myself, have largely focused on reforms to expand access to counsel, shift to alternatives to detention including the use of ankle bracelets, train judges, prosecutors, and officers, and suggest tweaks to specific regulations and statutes.¹⁸ While these reforms may have immediate incremental benefits to some individuals, they may also inadvertently serve to legitimize the immigration deportation system, specifically immigration surveillance, policing, prisons and prosecution. Some of these reforms necessitate investing more funds into agency budgets with the unintended consequence of expanding, rather than contracting, the deportation state.

In contrast, Angélica Cházaro introduced the concept of “deportation abolition” in her groundbreaking article, *The End of Deportation*.¹⁹ She lays out the theoretical groundwork for deportation abolition, articulating the structural violence of deportation and the need to destabilize and delegitimize the deportation legal system.²⁰ Deportation abolition is focused on ending policing, detention, and deportation in the immigration legal system. This Article contemplates the tensions inherent to lawyers who hold a vision of deportation abolition while practicing and advocating within the immigration

https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/immigration/ [https://perma.cc/KAG9-H5X8].

16. For literature that explores the theory of deportation abolition, see, for example, Angélica Cházaro, *The End of Deportation*, 68 UCLA L. REV. 1040, 1113–16 (2021); Angélica Cházaro, *Beyond Respectability: New Principles for Immigration Reform*, 52 HARV. J. ON LEGIS. 355 (2015); César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 246 (2017); Shiu-Ming Cheer, *Moving Toward Transformation: Abolitionist Reforms and the Immigrants’ Rights Movement*, 68 UCLA L. REV. DISC. 68 (2020).

17. See Jennifer M. Chacón, *Managing Migration Through Crime*, 109 COLUM. L. REV. SIDEBAR 135, 136 (2009); César Cuauhtémoc García Hernández, *Creating Crimmigration*, 2013 BYU L. REV. 1457, 1459 (2014); Anil Kalhan, *Immigration Surveillance*, 74 MD. L. REV. 1, 4–6 (2014); Yolanda Vázquez, *Constructing Crimmigration: Latino Subordination in a “Post-Racial” World*, 76 OHIO ST. L.J. 599, 599–600 (2015).

18. Laila L. Hlass, *The Adulthood of Immigrant Children*, 34 GEO. IMMIGR. L.J. 199, 256–58 (2020) (discussing reforms to increase proportionality for child immigrants).

19. Cházaro, *The End of Deportation*, *supra* note 16, at 1045–46.

20. Peter Markowitz has also explored the meaning of “Abolish ICE” through a policy lens, suggesting a compliance-based scheme to replace our existing system of detention, mass deportation, or policing. See Peter L. Markowitz, *Abolish ICE . . . and then What?*, 129 YALE L.J.F. 130, 130 (2019); Peter L. Markowitz, *After ICE: A New Humane & Effective Immigration Enforcement Paradigm*, 55 WAKE FOREST L. REV. 89, 89 (2020).

legal system.²¹ It then aims to reconcile some of these tensions by drawing out how abolition theory can specifically be applied within the immigration legal system for lawyers who aspire to practice a deportation abolition ethic. In this vein, this Article builds upon critical legal academic literature on lawyering²² and expands the emerging literature regarding abolition lawyering theory and pedagogy.²³

In Part I, this Article provides a sketch of carceral abolitionist theory and strategies, including a key abolitionist campaign to demand divestment of funding from law enforcement and reinvestment of public funds to support community to further justice and address historic harms. In Part II, this Article maps how the deportation state aligns within the carceral state, tracing two important strains of immigration legal history that parallel broader policing histories: how the immigration legal system explicitly and implicitly has built racial hierarchies, and the militarization of immigration policing alongside a skyrocketing enforcement and detention budget. Next, this Article details the emergence of a cohort of deportation abolition advocacy groups campaigning to decrease the carceral imprint of the deportation state, explicitly advocating to “Defund Hate” and “Abolish ICE.” In Part III, this Article incorporates principles from abolition theory and practices from emerging deportation abolition organizations to draw out the praxis of deportation abolition lawyering. Ultimately, this Article articulates how lawyers can begin to practice a “deportation abolition ethic,”²⁴ a framework to forward efforts to dismantle immigration prisons and policing and reimagine a new and just future for immigrant communities.

21. In a 2020 national survey to measure burnout and secondary traumatic stress among immigration lawyers, many survey respondents stated they felt complicit in a broken, racist, and dysfunctional system. See Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. 733, 743 (2021).

22. See, e.g., Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*, in NEW PERSPECTIVE ON LAW, CULTURE, AND SOCIETY 11 (Robert W. Gordon and Margaret Jane Radin eds., 1992); Laila L. Hlass & Lindsay M. Harris, *Critical Interviewing*, 2021 UTAH L. REV. 683 (2021); Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464 (2017); Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENVER U. L. REV. 399 (2019); Daniel Farbman, *Resistance Lawyering*, 107 CALIF. L. REV. 1877 (2019).

23. Daniel Farbman has developed the concept of “resistance lawyering,” a lawyering practice of those who engage in “regular, direct service practice within a procedural and substantive legal regime” that he considers “unjust and illegitimate” to both “mitigate the worst injustices of that system and to resist, obstruct, and dismantle the system itself.” Farbman, *supra* note 22, at 1880; see Nicole Smith Futrell, *The Practice and Pedagogy of Carceral Abolition in a Criminal Defense Clinic*, 45 N.Y.U. REV. L. & SOC. CHANGE 159 (2021).

24. See Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1162 (2015) (using the term “prison abolition ethic” to focus upon the moral orientation “of abolitionist writings and nascent social movement efforts, which are committed to ending the practice of confining people in cages and eliminating the control of human beings through imminently threatened police use of violent force”).

I.

CARCERAL ABOLITION THEORY AND PRACTICE

Carceral abolitionists argue that laws, institutional structures, and market incentives often facilitate police violence.²⁵ Carceral systems are means of subjugating Black people, poor people, and other oppressed communities in the United States, legitimized by existing law and legal systems. Therefore, strategies that expand state power and funds are not abolitionist, because they serve to further perpetuate this violence. Carceral abolitionists are engaged in strategies, such as decreasing police budgets, to dismantle the interlocking system of state violence. Simultaneously, they are working to change power distribution and living conditions, particularly of those who are most vulnerable, and ultimately reinvest resources in communities to better promote community safety and health.²⁶

A. *A Sketch of Carceral Abolition Theory*

The prison abolition movement—focused on ending all forms of incarceration—has existed since the historical appearance of prisons as the central form of punishment.²⁷ Anti-prison activism predated the massive growth of prisons in the 1970s and 1980s.²⁸ By the late 1990s, activists in California formed Critical Resistance, a national prison abolitionist initiative.²⁹ In understanding the explosive growth of the incarcerated population, prison abolitionists challenged the myopic focus on individual behavior. Instead, prison abolitionists insist on an analysis of economic and political structures supporting massive prisoner expansion and point to how prisons had become part of the economy and market forces, which incentivizes incarcerating more people.³⁰ Furthermore, the prison industrial complex analysis requires a

25. Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1786 (2020).

26. *The Convergence of Movements to Abolish ICE and Defund the Police*, DUKE L. IMMIGRANT RTS. CLINIC & DUKE IMMIGRANT & REFUGEE PROJECT (Sept. 23, 2020), <https://law.duke.edu/transcripts/Transcript-The-Convergence-of-Movements-to-Abolish-ICE-and-Defund-the-Police.pdf> [<https://perma.cc/TR9H-2NHE>].

27. ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 9 (Greg Ruggiero ed., 2003).

28. Angela Y. Davis & Dylan Rodriguez, *The Challenge of Prison Abolition: A Conversation*, 27 SOC. JUST. 212, 215 (citing generally to THOMAS MATHIESON, *THE POLITICS OF ABOLITION: ESSAYS IN POLITICAL ACTION THEORY* (Nils Christie, Karl O. Christiansen, Knut Sveri & Patrik Törnudd eds., 1974); BARBARA BOWARD, MARY JO BRACH, SCOTT CHRISTIANSON, MARY ANN LARGEN, JULIE LEWIN, JANET LUGO, MARK MORRIS, WENDY NEWTON & FAY HONEY KNOPPS, *INSTEAD OF PRISON: A HANDBOOK FOR PRISON ABOLITIONISTS* (Mark Morris ed., 1976)).

29. *History: Beyond the Prison Industrial Complex*, CRITICAL RESISTANCE, <http://criticalresistance.org/about/history/> [<https://perma.cc/F5JU-NGGY>].

30. DAVIS, *supra* note 27, at 85.

realization that the racialization of prison populations—specifically, the overrepresentation of Black and Brown people—is not incidental, but by design.³¹

Critical Resistance has expanded its analysis beyond prisons to an understanding of multiple, interconnected carceral institutions. This understanding defines the prison industrial complex as the convergence of government and industry interests attempting to solve social, economic, and political problems through surveillance, policing, and prisons.³² Carceral abolition takes an intentionally broad view—understanding the interconnectedness of prisons, police, and surveillance across communities in criminal, immigration, family, mental health, and other legal systems.³³

Three themes emerge from this conception of carceral abolition. First, carceral abolitionists view historical state violence against communities of color, particularly Black people, as evidence that policing systems were designed to maintain racial control and hierarchy. Second, interconnected systems of harm—prisons, police, and surveillance—form a powerful ecosystem maintained by strong private and state interests, which must be countered by building power in directly impacted communities. Lastly, carceral abolitionists do not simply want to abolish prison and policing systems in the negative sense, but to reimagine more just, community-based systems of accountability and support.³⁴

A first theme within carceral abolition is the need to dismantle racist policing systems.³⁵ Carceral abolitionists posit that abolition is required because the prison industrial complex is racist by design, spanning back from the origins of policing in the United States. Carceral abolitionists take a historical perspective, connecting the origins of U.S. policing to slave patrols and the first sheriffs' departments' role in patrolling the Southern border.³⁶ This history also reckons with how the state has used violent means to control Black and Indigenous people through enslavement and colonialism.³⁷ Ultimately, this

31. *Id.*

32. *What Is the PIC?*, *supra* note 3.

33. *See* Akbar, *supra* note 25, at 1842.

34. This is similar to W.E.B. DuBois' description of the negative abolishment of slavery. "DuBois argued that the abolition of slavery was accomplished only in the negative sense. In order to achieve the *comprehensive* abolition of slavery—after the institution was rendered illegal and black people were released from their chains—new institutions should have been created to incorporate black people into the social order." ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE* 95 (2005).

35. *See, e.g.,* Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 *HARV. L. REV.* 1684, 1685 (2019).

36. Christina Heatherton, *#BlackLivesMatter and Global Visions of Abolition: An Interview with Patrisse Cullors*, in *POLICING THE PLANET: WHY THE POLICING CRISIS LED TO BLACK LIVES MATTER* 35, 36 (Christina Heatherton & Jordan T. Camp eds., 2016).

37. Akbar, *supra* note 25, at 1817–18.

historical view reveals that there is no neutral starting point to return to, so the eventual goal will be to create new systems of justice.³⁸

A second theme of carceral abolition is a focus on redistributing power and resources away from carceral systems and toward directly impacted communities. As the state has cut social welfare programs, privatized systems, and abandoned public goods and infrastructure, it has diverted funds to policing and prisons. As a result, policing and prisons have become a “monopoly over emergency response” for all sorts of crises emanating from social problems, including mental health crises, drug use, and homelessness. While police budgets have grown, funding to address these social problems has been drained.³⁹

By understanding how state and market forces work together to exert violence over Black and Brown people, carceral abolitionists seek solutions and strategies that build power in and shift resources to communities. Building power in community includes developing coalitions where different groups come together to forward a common goal or address a shared problem, as well as forming alliances—a partnership with a broader ambition and longer-term vision.⁴⁰ The formation of Sista II Sista, a collective of women of color fighting against both interpersonal and state violence, provides an illustrative example of building community power as a strategy and goal. It centers directly impacted women of color in its structure and work, promoting “principles of self-determination, interconnected personal and social transformation, and collective action against injustice.” This model is distinct from many service organizations whose structures do not center those directly impacted and may actually disempower communities by framing people in terms of needs and deficiencies.⁴¹

A third theme within carceral abolition theory is the need for transformational change instead of a focus on reforms to simply improve the functioning of existing carceral systems. To seek systemic change, advocacy must target the underlying causes of injustice, “rooted in a theory about transforming the world,” instead of a focus on individual “bad” actors.⁴² Understanding that not all change will happen overnight, carceral abolitionists also advocate for interim steps to transformational change, or non-reformists

38. Amna A. Akbar, *Towards a Radical Imagining of the Law*, 93 N.Y.U. L. REV. 405, 460 (2018).

39. Akbar, *supra* note 25, at 1822.

40. Elizabeth (Betita) Martinez, *Unite and Rebel!: Challenges and Strategies in Building Alliances*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* 192 (Duke Univ. Press, 2016).

41. Sista II Sista, *Sistas Makin' Moves: Collective Leadership for Personal Transformation and Social Justice*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY*, *supra* note 40, at 200.

42. Heatherton, *supra* note 36, at 35, 37.

reforms.⁴³ Non-reformist reforms, also called transformative or revolutionary reforms, are changes that move toward systemic change, rather than reifying and strengthening the carceral state.⁴⁴

At the same time carceral abolitionists seek transformational change, they may engage in harm reduction in existing systems.⁴⁵ Harm reduction is often used to refer to public health measures that minimize negative health and social impacts associated with drug use.⁴⁶ In the context of abolition theory, harm reduction broadly refers to responses to state or intrapersonal violence that aim to immediately lessen the overall violence experienced within the impacted community.⁴⁷ In this way, efforts to minimize violence experienced by those entangled in carceral systems through immediate aid, including legal support, could be categorized as harm reduction. Importantly, anti-carceral harm reduction efforts, alongside systemic changes, reject punishment as part of any response.⁴⁸ Ultimately, carceral abolitionists seek security and safety for all with an investment in high quality public education, equitable universal health care, and fair housing.⁴⁹

B. Carceral Abolition Strategies in Practice

Carceral abolition strategies apply carceral theory to dismantle the racist carceral state, build power in communities, and seek transformational justice. These strategies are often practiced outside of the legal system, as legal remedies are often limited by existing laws and legal systems that work to maintain the status quo.⁵⁰ Yet even as most strategies do not involve traditional legal interventions through court processes, lawyers sometimes work alongside organizers to support campaigns through legal advocacy. Furthermore, some harm reduction strategies may involve legal strategies working in tandem with

43. “[N]on-reformist reforms provide a framework for thinking about reforms that aim to build grassroots power as they redress the crises of our times. They embody a combined concern with democracy and the economy, the ends and processes of grassroots power: to fight criminalization and privatization as we organize for collective self-determination.” Amna Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 98 (2020).

44. Cheer, *supra* note 16, at 71–72.

45. In fact, carceral abolitionists often work toward simultaneously preventing harm, intervening in existing harm, and addressing past harm in order to transform people’s lives. Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1615 (2019).

46. *What is Harm Reduction?*, HARM REDUCTION INT’L, <https://www.hri.global/what-is-harm-reduction> [https://perma.cc/65EP-32GP].

47. Mia Mingus, *Transformative Justice: A Brief Description*, TRANSFORM HARM, <https://transformharm.org/transformative-justice-a-brief-description/> [https://perma.cc/AY96-KZNC].

48. McLeod, *supra* note 45, at 1616.

49. See *Vision for Black Lives*, MOVEMENT FOR BLACK LIVES, <http://m4bl.org/policy-platforms/> [https://perma.cc/75WG-USLM] (asking for reallocated “resources to the healthcare, housing, and education our people deserve”).

50. For example, “law is political, constructed and subjective, dedicated to the status quo and subject to manipulation.” Akbar, *supra* note 38, at 444.

systemic change efforts, such as efforts to secure release on bond or bail for incarcerated people. Carceral strategies work toward one or more of the tenets of abolition theory, including through dismantling racist carceral systems, building power in communities, and working toward transformational change, and creating new systems of care.

Dismantling carceral systems of state violence and private industry violence is a core goal of carceral abolition strategies. This may be done through defunding, delegitimizing, decriminalizing, or otherwise constricting the power of the state. Campaigns to shut down jails and detention centers and attempts to block the construction of new ones fit squarely into this framework.⁵¹

Carceral abolition strategies may also further power redistribution by building power, knowledge, and resources in communities.⁵² An example of this can be seen through the nationwide increase in “mutual aid” programs, which provide political education and share resources to increase community safety and build power.⁵³ Mutual aid projects are a form of political participation where people collectively decide to care for each other to change political conditions. They focus on building new and sustainable social relationships instead of simply putting pressure on their government representatives to achieve change.⁵⁴

Unlike giving programs that are simply charity, mutual aid programs emphasize political education, create community power, and foster community participation.⁵⁵ Importantly, mutual aid seeks to expand solidarity—eschewing judgment of those who are deserving or worthy of support.⁵⁶ Also, they are participatory, relying on collective action, instead of a single authority figure.⁵⁷

51. For example, Detention Watch Network’s #CommunitiesNotCages campaign centers the voices of formerly detained immigrants alongside organizers to provide public awareness of the scope of the immigration incarceration problem, and then focuses on shutting down individual centers and liberating individual people. #CommunitiesNotCages, DET. WATCH NETWORK, <http://www.detentionwatchnetwork.org/take-action/communitiesnotcages> [https://perma.cc/F8QH-7WFM]. There have also been coalitions against jail expansion and new jails in cities across the country including Atlanta, the Bay Area, Detroit, Los Angeles, New York City, Seattle, and St. Louis. Akbar, *supra* note 1.

52. See, e.g., *Abolitionist Principles & Campaign Strategies for Prosecutor Organizing*, CMTY. JUST. EXCH. (Jan. 22, 2020), <http://www.communityjusticeexchange.org/abolitionist-principles> [https://perma.cc/83SM-BX8Q].

53. See, e.g., DEAN SPADE, *MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT)* (2020).

54. *Mutual Aid*, 8TOABOLITION, 8toabolition.com/mutualaid [https://perma.cc/ZSV7-WZBU].

55. See Tressie McMillan Cottom, *What’s Better Than Charity?*, N.Y. TIMES (Dec. 17, 2021), <https://www.nytimes.com/2021/12/17/opinion/charity-philanthropy-mutual-aid.html> [https://perma.cc/7ML9-ZRVZ] (Distinct from charity, mutual aid giving “not only meets material needs but also builds the political power and social connections that makes them more resilient.”).

56. SPADE, *supra* note 53, at 12–15.

57. *Id.* at 16–20.

For example, in the midst of the pandemic and after multiple hurricanes, the Mutual Aid Responses Network (MARN) in New Orleans began providing direct aid—like cash and laundry services—as well as information, such as locations of food distribution and phone charging sites.⁵⁸ The group also has been providing emotional support through its Facebook group to thousands of people in the network.⁵⁹ Importantly, as it addresses immediate needs, MARN works to transform existing systems that have led to the crisis of care, and as such are connected to a large network of organizers in the Deep South.⁶⁰

Lastly, carceral abolition strategies may seek transformative change by experimenting with new systems of justice and redefining community safety away from policing and toward supporting family unity, health, and security. These strategies often use transformative or healing justice principles,⁶¹ which are non-punitive remedies that are antiracist, intersectional, and focused on self-determination and healing of the survivor and the community.⁶² Transformative justice⁶³ “aspire[s] to work toward broader social, political, and economic change,” distinct from the individualized responsibility emphasized in restorative justice approaches.⁶⁴ Transformative justice centers anti-subordination both foundationally and through process and outcomes.⁶⁵

For example, reparations are an abolitionist strategy that rely on transformative justice to provide non-carceral accountability while also building community resources and shifting resources away from the state. In Chicago, the City Council adopted a reparations package for harms committed

58. Miriam Belblidia & Chenier Kliebert, *Mutual Aid: A Grassroots Model for Justice and Equity in Emergency Management*, IMAGINE WATER WORKS (Jan. 26, 2022), <https://www.imaginewaterworks.org/mutual-aid-a-grassroots-model-for-justice-and-equity-in-emergency-management/> [https://perma.cc/CF3X-DATE].

59. *Id.*

60. MARN is connected to Project South—an initiative rooted in the Southern Freedom Movement—as well as the Southern Movement Assembly, a collective working to build shared power to challenge White supremacy and other forms of oppression and seek liberation for all. See *Mutual Aid Response Network*, IMAGINE WATER WORKS (Aug. 22, 2020), <https://www.imaginewaterworks.org/mutual-aid-response-network/> [https://perma.cc/4L6L-RWT3].

61. I do not suggest here that unauthorized migration is a harm that requires transformative justice. However, deportation abolitionists may advocate for transformative justice in response to the violence and abuse immigrants have experienced within the immigration legal system.

62. Healing justice incorporates racial justice, disability justice, and economic justice. It includes “responding to and intervening in generational trauma and violence,” “collective practices” to respond to oppression, “imagining a generative and co-created future,” as well as “centering disability justice, people of color, and economic justice.” *Our Framework*, FIREWEED COLLECTIVE, <http://fireweedcollective.org/our-framework/> [https://perma.cc/NC3Q-J7JS].

63. This is distinct from restorative justice, which is a victim-centered process to promote accountability and rehabilitation. It may supplement or replace criminal legal system, often including victim-offender mediation with restitution or apology. Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J.L. & POL’Y 13, 41–42 (2011).

64. McLeod, *supra* note 45, at 1630–31.

65. Harris, *supra* note 63, at 57–58.

by a police commander who had tortured Black men to coerce confessions through mock lynchings, electroshock, beatings, and burnings for over twenty years.⁶⁶ The reparations package included a public memorial, millions of dollars for torture survivors, free junior college tuition and counseling for survivors, and mandatory public-school curriculum about the history of police brutality.⁶⁷ Instead of focusing on punishment for the police officer, the reparations promoted safety by affirmatively investing in communities through education, direct aid, and acknowledgment of wrongdoing.

Many carceral abolitionist strategies will simultaneously further multiple goals, such as dismantling state violence, building community power, and reimagining justice. For example, defunding the police is a key demand of prison abolitionists across the country as they seek to dismantle state violence and redistribute resources to communities.⁶⁸ Defunding refers to reducing funding and resources of law enforcement in order to reinvest in programs that better assure collective safety, such as affordable housing, access to health care, and education.⁶⁹

Strategies to decarcerate can dismantle state violence and build power in communities simultaneously. For example, the National Mama's Day Bailout campaign aims to free Black mothers from jail while documenting systemic harm through report-writing, which amplifies the voices of those most impacted. Even though bail funds transfer money to the state, they can be viewed as a harm-reduction measure, because they secure immediate liberation for those in crisis. Bail programs tied to campaigns can also serve as a non-reformist reform, as long as the efforts build knowledge about the harms of jails and organize community members to fight mass incarceration. Along these lines, organizers of the National Mama's Day Bailout Program developed the Black Mama's Fellowship Program, an eight-week program where participants develop leadership skills and strategize together to build community

66. Natasha Korecki, *What Chicago's Ultimate Bad Cop Taught Me About Police Reform*, POLITICO (June 15, 2020), <http://www.politico.com/news/magazine/2020/06/15/chicago-bad-cop-police-reform-318955> [<https://perma.cc/PW87-UWXA>].

67. Natalie Y. Moore, *Payback: Chicago Police Commander Jon Burge and His Crew Tortured False Confessions out of Hundreds of Black Men*, MARSHALL PROJECT (Oct. 30, 2018), <http://www.themarshallproject.org/2018/10/30/payback> [<https://perma.cc/7QFP-DT3R>].

68. See *About*, DEFUND THE POLICE, <http://defundpolice.org/about/> [<https://perma.cc/XS4V-EZUP>].

69. “#DefundPolice is a demand to cut funding and resources from police departments and other law enforcement and invest in things that actually make our communities safer: quality, affordable, and accessible housing, universal quality health care, including community-based mental health services, income support to stay safe during the pandemic, safe living wage employment, education, and youth programming.” Interrupting Criminalization Initiative, *Defund Toolkit: Concrete Steps Toward Divestment from Policing & Investment in Community Safety*, at 3, MOVEMENT FOR BLACK LIVES (2020), <https://filtermag.org/wp-content/uploads/2020/06/Defund-Toolkit.pdf> [<https://perma.cc/67P4-ZA7W>].

power.⁷⁰ Another multi-pronged abolitionist effort is the national #CounselorsNotCops campaign, which challenges the school-to-prison pipeline by redirecting funds and resources to student counselors instead of school resource officers to fight the criminalization of and discrimination against Black children. In doing so, the campaign fundamentally shifts resources from the carceral system to community support while also raising political consciousness about the school-to-prison pipeline.⁷¹

II.

THE CARCERAL IMMIGRATION LEGAL SYSTEM AND THE RISE OF DEPORTATION ABOLITION

Carceral abolitionists explicitly detail how immigration enforcement, surveillance, and detention centers are parts of the prison industrial complex, which is racist by design.⁷² Two strains of analysis regarding the immigration legal system are particularly salient for deportation abolitionists. First, the immigration legal system is designed to construct and maintain racial hierarchies, both formally and informally. Understanding how legal systems sustain racial subordination is significant as “[t]he most far-reaching racial subordination stems not from illegal police misconduct, but rather from legal police conduct.”⁷³ Second, the massive expansion and militarization of immigration policing is a phenomenon that deprives immigrant communities of necessary resources and builds up the power and scope of the deportation state.

Because of these two threads, immigration enforcement is a racial subordination project that tears immigrant communities apart and makes them more susceptible to having their labor extracted.⁷⁴ Against this backdrop, deportation abolition organizations have emerged to dismantle and defund racist policing systems, specifically ICE and Border Patrol, and shift power and resources toward immigrant communities.⁷⁵

70. *Free Black Mamas Fellowship*, NAT’L BAIL OUT, <https://www.nationalbailout.org/fellowship/> [https://perma.cc/AW87-8SS8].

71. *See Counselors Not Cops*, DIGNITY IN SCHOOLS (Aug. 2021), <http://dignityinschools.org/take-action/counselors-not-cops/> [https://perma.cc/JJ7S-9H53].

72. This political vision explicitly includes understanding how immigrants are subjected to carceral systems. *What Is the PIC?*, *supra* note 3 (mentioning “immigrants” as one community being oppressed within the prison industrial complex).

73. Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1425 (2016).

74. HARSHA WALIA, BORDER AND RULE: GLOBAL MIGRATION, CAPITALISM, AND THE RISE OF RACIST NATIONALISM 15–16 (2021).

75. For example, the Immigrant Justice Network released a statement: “those of us who were willing to say #AbolishICE must be willing to say #DefundThePolice as well.” *If You Supported #AbolishICE, then You Need to Support #DefundPolice*, NAT’L IMMIGR. PROJECT OF THE NAT’L LAWS. GUILD (June 1, 2020), https://nipnl.org/comment/2020_01Jun_defund-police.html [https://perma.cc/855L-C5V6].

A. Immigration Law as Building Racial Hierarchies

Carceral abolitionists describe how the long history of violence and racist policing has subjugated people of color, particularly Black and Indigenous communities.⁷⁶ Deportation abolitionists, like carceral abolitionists, center those communities most impacted by carceral systems.⁷⁷ In the immigration context, this means drawing out histories of Native Americans and Black migrants, which are often neglected in accounts of immigration history. It also means understanding how White supremacy ideology animates historic and modern immigration law and policies targeting immigrants of color. It happens through explicitly discriminatory statutes and policies, as well as more informally through laws targeting populations due to poverty and entanglement with the criminal legal system.⁷⁸ All branches of government—the Legislature, the Executive and its agencies, and the Judiciary—are implicated in how White supremacist ideology has infused immigration laws, policies, and practices.

Building racial hierarchies has been part of American history since the colonial period.⁷⁹ Colonial America forged its beginnings with the violent displacement of the land’s Indigenous residents, ultimately leading to the slaughter of Native Americans through war and disease.⁸⁰ As part of the colonial project, colonists encouraged the voluntary migration of propertied White men from western Europe to provide capital and fill new settlements.⁸¹ At the core of the colonial project was the large-scale violent forced migration and enslavement of hundreds of thousands of people of African descent under the chattel slavery system.⁸² Scholar Rhonda Magee suggested this system, regulated by federal and state law, should be considered our nation’s first system of immigration law.”⁸³

76. *Our Values*, FREEDOM FOR IMMIGRANTS, <http://www.freedomforimmigrants.org/our-values> [<https://perma.cc/WZJ2-8ZYH>] (“[T]he immigration detention system is built upon a long history of white supremacy, capitalism, and imperialism.”).

77. See *Who We Are and Where We’re Going*, NAT’L IMMIGR. PROJECT OF THE NAT’L LAWS. GUILD, https://www.nationalimmigrationproject.org/PDFs/members/2021_28Apr_backgrounder.pdf [<https://perma.cc/ZA5J-PKA9>] (discussing how to prioritize efforts to support those facing the most challenges with least resources, including those who are criminalized and people of color).

78. The earliest naturalization law, limiting citizenship to White people, is an example of formal racism. Naturalization Act of 1790, ch. 3, 1 Stat. 103–04, *repealed by* Naturalization Act of 1795, ch. 20, 1 Stat. 414. Restrictions on migration based on the likelihood of being financially dependent on government benefits may serve to discriminate along racial lines in a formally race-neutral manner. 8 U.S.C. § 1182(a)(4) (enumerating the public charge inadmissibility).

79. MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 6 (Princeton Univ. Press 2004).

80. K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878, 1888–1903 (2019).

81. ALINA DAS, *NO JUSTICE IN THE SHADOWS: HOW AMERICA CRIMINALIZES IMMIGRANTS* 32 (Bold Type Books 1st ed. 2020).

82. See DANIEL KANSTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* 63 (Harv. Univ. Press 2010) (referencing Indian removal laws).

83. Rhonda V. Magee, *Slavery as Immigration?*, 44 U. S.F. L. REV. 273, 276 (2009) (citation omitted).

During the colonial period, states developed immigration provisions that often regulated interstate as well as foreign migrants, restricting migration for those convicted of crimes, and those who were poor.⁸⁴ Notably, some migration restrictions were explicitly along racial lines, specifically regulating particular Black communities.⁸⁵ In the early 1800s, Southern states restricted free Black seamen arriving at Southern ports, forcing them to be held in jail or quarantined on the ship.⁸⁶ Laws regularly excluded people from voting and owning property by deeming certain categories of people “foreign,” such as Black people, women, Indigenous people, and the poor.⁸⁷

White supremacist ideology and the first citizenship law of 1790 reserved naturalization for only certain “free White persons.”⁸⁸ Similarly, the 1857 *Dred Scott* decision was grounded firmly in racist ideology, ruling that a Black man born in the United States was not a citizen as he was part of an “inferior class of beings.”⁸⁹ Even after Congress enacted the Civil Rights Act of 1866, recognizing birthright citizenship for all people, and states ratified the Fourteenth Amendment two years later, White nativists continued to challenge citizenship for some people of color born within the United States. Children of Asian immigrants were regularly denied citizenship under a theory that their parents were loyal to another government and therefore not “subject to the jurisdiction” of the United States as described in the Fourteenth Amendment.⁹⁰ When California-born Wong Kim Ark challenged his detention by immigration officials,⁹¹ the Justice Department’s arguments were firmly rooted in White supremacy, arguing citizenship must be protected from “the foul and corrupting taint of a debasing alienage.”⁹² Although the Supreme Court ultimately vindicated Wong Kim Ark’s rights, declaring in 1898 that native-born children of immigrants are U.S. citizens by birthright,⁹³ the Trump administration

84. See Gerald L. Neuman, *The Lost Century of American Immigration Law*, 93 Col. L. Rev. 1833, 1841–48 (1993).

85. *Id.*

86. KEVIN R. JOHNSON, RAQUEL ALDANA, BILL ONG HING, LETICIA M. SAUCEDO & ENID TRUCIOS-HAYNES, *UNDERSTANDING IMMIGRATION LAW* 46 (LexisNexis 2d ed. 2015).

87. DAS, *supra* note 81, at 32.

88. Naturalization Act of 1790, ch. 3, 1 Stat. 103–04, *repealed by* Naturalization Act of 1795, ch. 20, 1 Stat. 414.

89. *Dred Scott v. Stanford*, 60 U.S. 393, 405 (1857).

90. *Id.*

91. *United States v. Wong Kim Ark*, 169 U.S. 649, 649 (1898).

92. Gabriel J. Chin, Chae Chan Ping and Fong Yue Ting: *The Origins of Plenary Power*, in *IMMIGRATION LAW STORIES* 7 (David Martin & Peter Schuck eds., 2005) (citing Brief for U.S. at 37, *United States v. Wong Kim Ark*, 169 U.S. 649 (1898)).

93. 169 U.S. at 649. This provision of law continues to be targeted by conservatives. See Jess Bravin, *What Is Birthright Citizenship, and Can It Be Ended in the U.S.?*, WALL ST. J. (Oct. 30, 2018), <http://www.wsj.com/articles/what-is-birthright-citizenship-and-can-it-be-ended-in-the-u-s-1540921714> [https://perma.cc/P46R-RNA8].

repeatedly raised the possibility of an executive action that would exclude the children of immigrants from citizenship.⁹⁴

While racial hierarchies have been constructed through explicitly racist laws like the Asian exclusion acts, race-neutral immigration laws also work to maintain racial hierarchies. Supposedly race-neutral laws targeting poor immigrants and those who have had contact with the criminal legal system disproportionately impact Black immigrants as well as other immigrants of color.⁹⁵ Race-neutral immigration laws targeting immigrants with criminal convictions as well as poor immigrants purported to be “public charges” date back to the colonial era.⁹⁶ The criminalization of migrants was bolstered by the criminalization of Black citizens. During Reconstruction, as formal rights to citizenship and naturalization were recognized for Black people, states instituted vagrancy laws, known as the Black Codes, so that localities could mass arrest and incarcerate Black people.⁹⁷ Ultimately, these laws subjected Black communities to hard labor through the convict leasing system and to disfranchisement in some states, justified by criminal histories involving moral turpitude.⁹⁸ This was the reason “moral turpitude” was introduced into immigration law as a ground of exclusion in 1891.⁹⁹ The term was written into the 1917 Immigration Act, which set the essential framework for modern deportations related to contact with the criminal legal system.¹⁰⁰

Historic and modern immigration laws that formally exclude immigrants with certain criminal convictions or suspected criminal involvement are rooted in associations of criminality with racial identity. Anti-Asian racism spurred the passage of laws excluding immigrants who had drug crimes. As opium became associated with Chinese people, legislators began to criminalize its use, and law enforcement enforced these new laws disproportionately against

94. Brett Samuels, *Trump Administration Revives Talk of Action on Birthright Citizenship*, HILL (Nov. 20, 2020), <http://thehill.com/homenews/administration/526950-trump-administration-revives-talk-of-action-on-birthright-citizenship> [https://perma.cc/89TR-WJS9].

95. *Black Women Overrepresented in Solitary Confinement*, SENT’G PROJECT (Dec. 16, 2016), <https://www.sentencingproject.org/news/race-justice-news-black-women-overrepresented-solitary-confinement/> [https://perma.cc/566B-E9HA] (“The criminal enforcement system—each stage of which has been shown to target Black people disproportionately—has become a funnel into the immigration detention and deportation system.”). The impact of race has not been studied in-depth but could be great in the context of release from immigrant bonds. See Denise Gilman, *To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial Immigration Detention*, 92 IND. L.J. 157, 201 (2016) (“The racial impacts of the reliance on money bonds have not been studied in the immigration context but may well be significant.”).

96. JOHNSON ET AL., *supra* note 86, at 44–45.

97. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (The New Press rev. ed. 2012).

98. DAS, *supra* note 81, at 49.

99. *Id.* at 50.

100. KANSTROOM, *supra* note 82, at 133.

Chinese immigrants.¹⁰¹ Some advocates at the time explicitly played upon White fears of racial mixing, suggesting Chinese immigrants would use opium to corrupt White women and young people.¹⁰²

Congress cemented White supremacist ideology through a series of early federal immigration laws which were later largely upheld by the courts. The 1875 Page Law targeted women from “China, Japan, or any Oriental country”¹⁰³ under the guise of restricting prostitution, despite actually being intended to “protect white American families from the perceived sexual threat of Chinese women.”¹⁰⁴ Congress passed a cascade of laws in the late 1880s to permanently exclude anyone of Chinese descent regardless of citizenship,¹⁰⁵ and later expanded these policies to exclude an “Asiatic barred zone,” including South Asia, parts of the Arab world, and East Asia.¹⁰⁶

The courts generally upheld and maintained immigration laws that served to build and maintain racial hierarchies. For example, in a case known as the Chinese Exclusion Case, the Supreme Court upheld an absolute federal authority to expel noncitizens.¹⁰⁷ The Court rooted the authority in the nation’s need to “give security against foreign aggression,” even if the aggression is not directly from a foreign country, but “from vast hordes of its people crowding in upon us.”¹⁰⁸ Years later, in *Fong Yue Ting*, a case of a lawful resident of Chinese descent who faced deportation, the U.S. government made explicitly racist arguments, comparing the removal of Chinese communities to longstanding federal policies that permitted the forcible removal of Native Americans and the British deportation of Egyptians and Turks.¹⁰⁹

Political discourse makes clear how White supremacist ideology underlies immigration laws targeting Black people, Native Americans, Asians, and other communities of color. The Know-Nothing party’s political ascent in the 1850s provides an example of this.¹¹⁰ It demanded that the government address the “Yellow Peril”¹¹¹ and “keep America pure.”¹¹² During legislative hearings, Californian Senator John F. Miller promoted White supremacy as the basis for curbing Chinese migration and the “almost complete extermination” of Native

101. DAS, *supra* note 81, at 50.

102. *Id.*

103. Pooja R. Dadhania, *Deporting Undesirable Women*, 9 UC IRVINE L. REV 53, 58 (2018).

104. *Id.* at 59.

105. *See* Chin, *supra* note 92, at 3.

106. JOHNSON ET AL., *supra* note 86, at 60.

107. *Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 606–11 (1889).

108. *Id.* at 606.

109. DAS, *supra* note 81, at 48.

110. Marcella Alsan, Katherine Eriksson & Gregory Niemesh, *Understanding the Success of the Know-Nothing Party 1* (Nat. Bureau of Econ. Rsch., Working Papers No. 28078, 2020).

111. Chin, *supra* note 92, at 7.

112. JOHNSON ET AL., *supra* 86, at 55.

Americans.¹¹³ Similarly, Senator John P. Jones of Nevada testified before Congress that excluding those of Chinese descent was justified by “race-struggles” such as “our dealings with the negro race” and “the Indian race.”¹¹⁴

At the same time, White supremacist ideology shaped who was prioritized to enter the United States as permanent residents. Racial categories and the contours of the “White race” hardened in immigration law through the quota system established in the 1920s, whereby visas were allocated for those migrating from certain countries.¹¹⁵ Eugenicists supported legislative efforts to establish a quota system of racial and ethnic priorities, focused on promoting White immigration.¹¹⁶ The Johnson-Reed Immigration Act of 1924 set numerical limits on immigration and established “a *global* racial and national hierarchy that favored some immigrants over others.”¹¹⁷ Immigration from outside the Western Hemisphere was severely restricted, and Asians were completely barred.¹¹⁸ The 1952 Immigration and Nationality Act not only imported the restrictive national origins formula of 1924, but also imposed quotas on former British colonies in the Caribbean in efforts to limit Black immigrants.¹¹⁹

Although the quota system was abolished, modern immigration law includes per-country caps for visa categories, so that the combined numbers of family—and employment-based immigrants from a single country—do not exceed 7 percent of combined worldwide limits.¹²⁰ This perpetuates a new form of quotas, where immigrants from certain countries, including China, India, Mexico, and the Philippines often have to wait many more years to reunite with family than immigrants from other countries.¹²¹

The way that immigration laws and practices racialize and subjugate immigrants of color continues into more recent history. For example, during the Great Depression, forcible removals impacted one million people of Mexican ancestry, including U.S. citizens.¹²² A few decades later, “Operation Wetback” targeted Mexican immigrants, resulting in the removal of about one million people, including U.S.-citizen children.¹²³ This same White supremacist

113. Chin, *supra* note 92, at 4 (“Upon what other theory can we justify the almost complete extermination of the Indian, the original possessor of all these States?”).

114. *Id.* at 5 (citing 13 Cong. Rec. 1487 at 1745 (1882)).

115. NGAI, *supra* note 79, at 7.

116. DAS, *supra* note 81, at 51–52.

117. NGAI, *supra* note 79, at 3.

118. JOHNSON ET AL., *supra* note 86, at 63–64.

119. NGAI, *supra* note 79, at 237–38.

120. Immigration and Nationality Act (INA) § 202(a)(2), 8 U.S.C. § 1152(a)(2).

121. See *The Visa Bulletin*, U.S. DEP’T OF STATE: BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> [https://perma.cc/2GHV-ZSVK].

122. Kevin Johnson, *Trump’s Latinx Repatriation*, 66 UCLA L. REV. 1442, 1455 (2019).

123. *Id.*

ideology informs immigration law and policy racializing and targeting Middle Eastern and South Asian immigrants. In the months following September 11, 2001, Arab and South Asian Muslim men were arrested and detained, interrogated under a “voluntary” interviewing program, and subjected to a targeted “alien absconder” program.¹²⁴ In 2002, Former Attorney General John Ashcroft created a “special registration,” focused on Arab and Middle Eastern men, forcing them to register at a port of entry, be interviewed one month after entry, and be put at risk of arrest for noncompliance.¹²⁵ When explaining the rationale for these initiatives, Attorney General Ashcroft made clear that he viewed the whole population as suspicious and hoped to instill fear in these communities.¹²⁶ Even as some of these programs have phased out, the racialization of Middle Eastern, Arab, South Asian, and Muslim communities continues through other means. Recent examples include the Controlled Application Review and Resolution Program, which targeted Middle Eastern and South Asian immigrants, excluding them from citizenship and other immigration benefits,¹²⁷ and President Trump’s so-called Muslim bans, directed at predominantly Muslim nations in the Middle East and Africa.¹²⁸ The Supreme Court upheld the executive power to issue the Muslim bans, with the majority of the Court discounting the extensive evidence of racial animus underlying the ban, even though the executive order “masquerade[d] behind a façade of national-security concerns.”¹²⁹

One of the most prominent examples of how racism is amplified in the modern immigration legal system is through immigration law’s creation and treatment of so-called “criminal aliens.” In the mid-1980s, New York Senator Alfonse D’Amato’s questions regarding the immigration agency’s effectiveness to deport immigrants with criminal records, or “criminal aliens,” led to a 1986 Government Accountability Office report and series of hearings that named the “criminal alien” as a central problem to address.¹³⁰ In the 1980s

124. Sameer M. Ashar, *Immigration Enforcement and Subordination: The Consequences of Racial Profiling After September 11*, 34 CONN. L. REV. 1185, 1192 (2002); see Shoba Sivaprasad Wadhia, *Business as Usual: Immigration and the National Security Exception*, 114 PENN. ST. L. REV. 1485, 1499–1502 (2010).

125. Wadhia, *supra* note 124, at 1502.

126. See Ashar, *supra* note 124, at 1193 (noting that in justifying his focus on Arabs and South Asian Muslims, Attorney General Ashcroft said “you have an elevated profile of enforcement. There is going to be an awareness in the community that we are going to ask people to do that in such a way as to elevate a sense among those who would break the law that this isn’t the thing to do.”).

127. *USCIS CARRP Program*, AM. C.L. UNION, <http://www.aclusocal.org/CARRP/> [<https://perma.cc/5D3S-6PRK>].

128. Exec. Order No. 13769, 82 Fed. Reg. 8977 (2017) (the original travel ban); Exec. Order No. 13780, 82 Fed. Reg. 13209 (2017) (the second and revised travel ban); Proclamation No. 9645, *Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats*, 82 Fed. Reg. 45161 (2017).

129. *Trump v. Hawaii*, 138 S. Ct. 2392, 2433 (2018) (Sotomayor, J. dissenting).

130. DAS, *supra* note 81, at 71.

and 1990s, a succession of harsh immigration laws specifically targeting “criminal aliens” were passed, including the Anti-Drug Abuse Act, the Antiterrorism and Effective Death Penalty Act (AEDPA), and the Illegal Immigration Reform and Responsibility Act (IIRAIRA). These laws collectively created a system of mandatory immigration detention and expanded the criminal categories that led to mandatory deportation. The mass expansion of funding for law enforcement and “tough on crime” stances in the 1970s and 1980s birthed mass incarceration, and the rise of mass immigrant detention followed.¹³¹

Understanding the role of White supremacy in immigration law, formally and informally, and the complicity of immigration laws and practices in building and maintaining racial hierarchies is central to a deportation abolition framework. This is not the case for some isolated statutes, but rather a key thread throughout the U.S. immigration legal system including deportability, pathways to residency, and citizenship. Furthermore, these racial hierarchies have been built through Congressional Acts, Executive Orders, and decisions by the judiciary, often upholding executive and congressional authority over the rights of immigrants.

B. The Mass Militarization of Immigration Policing

A second thread of historical analysis for deportation abolitionists involves the mass militarization of immigration policing. In particular, the mass expansion and militarization of immigration policing budgets in recent decades represents a trajectory toward widening the scope of the deportation state.¹³² Immigration enforcement budgets have steadily grown over the years, with significant spikes in the last several decades.¹³³ The exponential increase in funding of immigration policing and prisons¹³⁴ mimics the expanse of funding in prisons and policing in the criminal context. Notably, the increased funding of policing has happened in tandem with the defunding of social programs that support communities. Deportation abolitionists view the budget expansion and militarization of immigration enforcement as intimately connected to a wider pattern of instilling racial hierarchies. The confluence of these threads of immigration history results in ever-expanding state violence targeting immigrants of color. This, in turn, increases the urgency of deportation

131. *Id.* at 70–75.

132. See generally Jennifer Lee Koh, *Executive Defiance and the Deportation State*, 130 *YALE L.J.* 948 (2021) (proposing that failures to comply with federal court orders and professional norms are contributing factors to the dominance of the deportation state, which in turn leads to the deportation state expanding its authority).

133. CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISON: AMERICA’S OBSESSION WITH LOCKING UP IMMIGRANTS* 119–138 (2019); see DAS, *supra* note 81, at 32.

134. DAS, *supra* note 81, at 205 (“[T]he federal budget for immigration imprisonment has expanded steadily since the 1980s to more than \$2.8 billion in 2019.”).

abolitionist demands to defund enforcement in favor of allocating resources to support immigrant family reunification, housing, education, and healthcare.

The history of U.S. Border Patrol (Border Patrol) illustrates the intertwined threads of racialized policing, militarization, and massive budget expansion. While the first federal immigration agency was established in 1891, the Border Patrol was not created until 1924. The Border Patrol, with a million-dollar budget¹³⁵ and intention to ultimately target immigrants from Mexico, has had a reputation for violence in its policing.¹³⁶ Since the 1925 Act giving Border Patrol agents arrest authority, the everyday practices of Border Patrol agents have become grounded in their individual abilities to use physical coercion. This violence has sometimes “escalated into spectacular gunfights that became the backbone of border lore that painted the men of the Border Patrol as a ‘band of hard-bitten patrol officers.’”¹³⁷ The first generation of border agents included former guards, police officers, sheriffs, and “gunslingers of various types.”¹³⁸

Racialized policing has been endemic to the Border Patrol from its inception. In 1924, just as the border agency was created, the National Origins Act passed, creating a quota system of racial and ethnic priorities that focused on promoting White immigration.¹³⁹ Nativists were outraged that immigrants of Mexican descent were not formally excluded, arguing that Mexico was a nation of mongrels.¹⁴⁰ Border Patrol officers soon began to target Mexican nationals almost exclusively.¹⁴¹ By the early 1940s, the national focus of the agency shifted to the Southern border.¹⁴² This transformation had significant impact and, as scholar Kelly Lytle Hernández wrote, “rescript[ed] the story of race in America by binding Mexicanos to the caste of illegals.”¹⁴³

The modern Border Patrol agency remains a site of unchecked violence against immigrants. A Cato Institute report found that between 2006 to 2016, Border Patrol “misconduct and disciplinary infractions outstripped all other

135. KELLY LYTLE HERNÁNDEZ, *MIGRA!: A HISTORY OF THE U.S. BORDER PATROL* 75 (Earl Lewis, George Lipsitz, Peggy Pascoe, George Sanchez & Dana Takagi eds., 1st ed. 2010).

136. Garrett M. Graff, *The Green Monster: How the Border Patrol Became America’s Most Out-of-Control Law Enforcement Agency*, *POLITICO MAG.* (Nov./Dec. 2014), <http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220/> [<https://perma.cc/2ABZ-F3TN>].

137. HERNÁNDEZ, *supra* note 135, at 57 (citing CHARLES ASKINS, *UNREPENTANT SINNER: THE AUTOBIOGRAPHY OF COLONEL CHARLES ASKINS* 49 (Paladin Press 1984)); see Lindsay M. Harris, *Withholding Protection*, 50 *COL. HUM. RTS. L. REV.* 1, 65 (2019) (discussing Border Patrol killing migrants).

138. HERNÁNDEZ, *supra* note 135, at 218–19 (quoting U.S. IMMIGR. & NATURALIZATION SERV., 23 *NO. 1 I AND N REPORTER*, at 2, *FIRST FIFTY YEARS* (1974)).

139. HERNÁNDEZ, *supra* note 135, at 28.

140. *Id.*

141. *Id.* at 2.

142. HERNÁNDEZ, *supra* note 135, at 2.

143. *Id.* at 101.

federal law enforcement,” yet it is nearly impossible to determine the extent of corruption because of opaqueness and inconsistency of publicly kept records.¹⁴⁴ Complaints of misconduct have alleged serious harms including agents running a person over with a vehicle, making physical threats, sexually assaulting a woman in a hospital, and denying medical attention to children.¹⁴⁵ Despite this, there was no action taken in about 96 percent of complaints.¹⁴⁶ The agency came under scrutiny after reports of widespread sexual harassment within the force,¹⁴⁷ as well as sexual violence against migrants.¹⁴⁸ In 2019, a secret Facebook group of 9,500 current and former Border Patrol agents was revealed, consisting of jokes about the deaths of Mexican migrants, vulgar illustrations of Latina lawmaker Rep. Alexandria Ocasio-Cortez, and derogatory comments calling a group of Latinx lawmakers who planned to visit a detention center as “scum buckets” and “hoes.”¹⁴⁹ More recently, Border Patrol made news as footage surfaced of Patrol agents on horses, swinging long reins that resembled whips and chasing Black migrants from Haiti on the border.¹⁵⁰

144. Shaw Drake, *CBP Wants to Destroy Records of Misconduct. We Can't Let Them*, AM. C.L. UNION (Sept. 30, 2020), <http://www.aclu.org/news/immigrants-rights/cbp-wants-to-destroy-records-of-misconduct-we-cant-let-them/> [https://perma.cc/Y8VK-PTP4] (quoting Alex Nowrasteh, *Border Patrol Termination Rates: Discipline and Performance Problems Signal Need for Reform*, CATO INST. (Nov. 2, 2017), <http://www.cato.org/publications/policy-analysis/border-patrol-termination-rates-discipline-performance-problems-signal> [https://perma.cc/JJU5-P2XF]). In 2022, Congressional leaders have called into question so-called Critical Incident Teams, also referred to as “shadow police units,” who are internally investigating complaints of misconduct and allegedly tampering with evidence. Rafael Bernal, *Democrats Ask for Information on Specialized Border Patrol Teams*, HILL (Jan. 24, 2022), <https://thehill.com/latino/591108-democrats-ask-for-information-on-specialized-border-patrol-teams-citing-lack-of> [https://perma.cc/2T8B-6BUN].

145. Guillermo Cantor & Walter Ewing, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, AM. IMMIGR. COUNCIL (Aug. 2, 2017), <http://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered> [https://perma.cc/JXG4-T5AV].

146. *Id.*

147. Chantal Da Silva, *Exclusive: Border Patrol Knew About Harrowing ‘Game of Smiles’ Sexual Assault Claims, but Did Not Take Action, Former Official Says*, NEWSWEEK (Nov. 29, 2019), <http://www.newsweek.com/border-patrol-game-smiles-sexual-assault-1447434> [https://perma.cc/L766-BA64].

148. Press Release, U.S. Senate Comm. on Appropriations, Summary: The Department of Homeland Security Fiscal Year 2021 Appropriations Bill, (Dec. 21, 2020), <https://www.appropriations.senate.gov/imo/media/doc/DHS.pdf> [https://perma.cc/T7RC-CHEH].

149. A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, PROPUBLICA (July 1, 2019), <http://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes> [https://perma.cc/X2SD-6UEJ].

150. Joel Rose, *The Inquiry into Border Agents on Horseback Continues. Critics See a ‘Broken’ System*, NPR (Nov. 6, 2021), <https://www.npr.org/2021/11/06/1052786254/border-patrol-agents-horseback-investigation-haitian-immigrants> [https://perma.cc/Q4J2-QWHX].

While Border Patrol violence has remained unchecked over the years, the budget for migration enforcement has vastly increased,¹⁵¹ often justified by national security concerns. As early as the 1920s and 1930s, the immigration agency shifted its focus from simply excluding noncitizens to actively “combatting alien criminal and subversive elements” in close collaboration with U.S. attorneys and the Federal Bureau of Investigation.¹⁵² Then, by 1940, the modern surveillance system originated with the “Alien Registration Act,” requiring all noncitizens over the age of fourteen years old to be fingerprinted at local post offices.¹⁵³ By December 1940, the government had taken fingerprints of nearly five million immigrants.¹⁵⁴ The immigration budget nearly doubled in 1941¹⁵⁵ as part of its move from the Department of Labor to the Department of Justice.¹⁵⁶ Roosevelt claimed the re-organization was a “pressing need,” as part of “measures required for the Nation’s safety” to “afford more effective control over aliens.”¹⁵⁷ Alongside this militarization, the upward budget and personnel trajectory steadily increased. By 1970, the budget had exploded to more than \$100 million and continued to balloon.¹⁵⁸

The story of massive spending to militarize the immigration agency deepened in the 1980s and 1990s with a series of federal laws incentivizing and expanding the policing, incarcerating, and deporting of immigrants. In 1988, the first modern mandatory detention provision marked the beginning of the mass immigrant incarceration trend.¹⁵⁹ Then, the 1994 Violent Crime Control

151. See Koh, *supra* note 132, at 962.

152. History of the Immigration and Naturalization Service: A Report / prepared at the request of Senator Edward M. Kennedy, chairman, Committee on the Judiciary, United States Senate, for the use of the Select Commission on Immigration and Refugee Policy; prepared by the Congressional Research Service, Library of Congress, 96th Cong., 2d sess. 47 (1980).

153. *Id.* at 47.

154. *Id.*

155. LEMUEL B. SCHOFIELD, ANNUAL REPORT OF THE IMMIGRATION AND NATURALIZATION SERVICE 35 (1941), <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Common/Pages/GetDoc.aspx?ClientID=MU95007&MediaCode=9024687> [<https://perma.cc/4ZCH-T3RX>].

156. Edward M. Kennedy, History of the Immigration and Naturalization Service: A Report / prepared at the request of Senator Edward M. Kennedy, chairman, Committee on the Judiciary, United States Senate, for the use of the Select Commission on Immigration and Refugee Policy; prepared by the Congressional Research Service, Library of Congress, 96th Cong., 2d sess. (1980). At 47 (citing 54 Stat. 230)

157. Reorganization Plan No. V of 1940, eff. June 15, 1940, 5 F.R. 2223, 54 Stat. 1238, by Act June 4, 1940, ch. 231, § 1, 54 Stat. 230 (Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 22, 1940, pursuant to the provisions of the Reorganization Act of 1939, Approved Apr. 3, 1939), <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5a-node84-leaf90&num=0&edition=prelim> [<https://perma.cc/P9KW-F3JE>].

158. *Id.* at 90.

159. See Anti-Drug Abuse Act, Pub. L. No. 100-690, 102 Stat. 4181 (1988). Although this is the first modern mandatory detention bill, an earlier one existed in 1893. An Act to Facilitate the

and Law Enforcement Act set up a system to compensate states for incarcerating migrants, make penalties more severe for immigration-related crimes, and broaden surveillance and control through establishing a “criminal alien tracking center.”¹⁶⁰ The passage of the 1996 Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act further expanded categories of criminalization of immigrants by creating new classes of deportability relating to crime.¹⁶¹ By 1999, the Immigration and Naturalization Service (INS) budget had exploded to more than \$4 billion with “the lion’s share of the budget” committed to “strengthening its successful multi-year strategy to manage the border, deter illegal immigration, combat the smuggling of people, and remove criminal and other illegal aliens from the United States.”¹⁶² A number of scholars have connected pressure from the prison industry to this growth.¹⁶³

The immigration agency was restructured in 2003 and formally placed within the new U.S. Department of Homeland Security (DHS). Nonetheless, the massive allocation of funds for immigration policing continued. ICE, one of the modern immigration policing branches, was created at this time. Between 2003 and 2019, ICE spending nearly tripled its initial budget of \$3.3 billion to \$8.4 billion.¹⁶⁴ The immigration carceral state expanded alongside the budget, and the number of jail beds to hold immigrants increased to 40,520 a day in 2018.¹⁶⁵ Meanwhile, the budget for Customs and Border Protection (CBP), the other policing arm within the immigration legal system, also nearly tripled

Enforcement of the Immigration and Contract-Labor Laws of the United States, 52nd Cong. ch. 206, § 5, 27 Stat. 569, 570 (1893).

160. Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103rd Cong. (1994).

161. See Antiterrorism & Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, 1277 (1996); Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009, 546 (1996) (codified at 8 U.S.C. § 1226 (2012)).

162. Michael Welch, *The Role of the Immigration and Naturalization Service in the Prison-Industrial Complex: Critical Resistance to the Prison-Industrial Complex*, 27 SOC. JUST. 73, 73–88 (2000) (citing INS, Sheet: Strengthening the Nation’s Immigration System (1999); KITTY CALAVITA, INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S. (1992); ROBERT S. KAHN, OTHER PEOPLE’S BLOOD: U.S. IMMIGRATION PRISONS IN THE REAGAN DECADE (1996); MICHAEL WELCH, IMMIGRATION VORTEX: I.N.S. AND THE BLACK HOLES OF DETENTION (2001) (quoting INS, Sheet: Strengthening the Nation’s Immigration System (1999))).

163. See HERNÁNDEZ, *supra* note 133, at 55–76; DAS, *supra* note 81, at 32; Welch, *supra* note 162, at 73 (“[T]he INS responds to the market imperatives of the prison-industrial complex, an enterprise whereby lawbreakers and undocumented immigrants are commoditized as raw materials for private profit.”).

164. *The Cost of Immigration Enforcement and Border Security*, AM. IMMIGR. COUNCIL (Jan. 20, 2021), <http://www.americanimmigrationcouncil.org/research/the-cost-of-immigration-enforcement-and-border-security> [https://perma.cc/3YXU-TSQE] (citing U.S. DEP’T OF HOMELAND SEC., DHS BUDGET FY 2018, FY 2019, FY, 2020, FY 2021, <http://www.dhs.gov/dhs-budget> [https://perma.cc/A5U6-BHJ7] (resources listed under the headings “FY 2018,” “FY 2019,” “FY 2020,” and “FY 2021”)).

165. *Id.*

from \$5.9 billion in 2003 to \$17.1 billion in 2021.¹⁶⁶ From the reformulation of the agencies in 2003 to 2019, the number of Border Patrol agents nearly doubled and ICE's police force tripled in size.¹⁶⁷

In addition to utilizing funds allocated by Congress, ICE and CBP budgets have grown by reallocating funds from other executive programs. In July 2019, DHS notified Congress that it was going to reprogram and transfer \$116 million to “fund ICE single adult detention beds and transportation.”¹⁶⁸ Indeed, the agency moved \$200 million from other agencies to ICE, including \$10 million from the Federal Emergency Management Agency at the start of hurricane season in June 2019.¹⁶⁹ In May 2019, \$1.5 billion in Department of Defense funds was pulled to fund the border wall along the Southwest border.¹⁷⁰ Even funds from U.S. Citizen and Immigration Services (USCIS), often considered the “benefits” or humanitarian side of the U.S. immigration system, were transferred to ICE for a number of initiatives, despite its own budget shortfalls and forced furloughs in summer of 2020.¹⁷¹ In 2020, the executive moved \$207.6 million of USCIS funds to ICE to support more enforcement.¹⁷² Ultimately, the history of immigration policing shows the enterprise has long been undergirded by racial violence and has trended toward mass militarization. Over time, justified by national security concerns, enforcement budgets have skyrocketed.

166. *Id.*

167. *Id.*

168. *DHS to Reprogram and Transfer \$271 Million to Support Humanitarian and Security Emergency Response*, U.S. DEP'T OF HOMELAND SEC. (Aug. 27, 2019), <https://www.dhs.gov/news/2019/08/27/dhs-reprogram-and-transfer-271-million-support-humanitarian-and-security-emergency> [<https://perma.cc/7QVX-DGZ6>]; see U.S. DEP'T OF HOMELAND SEC., FY 2019 SOUTHWEST BORDER EMERGENCY TRANSFER AND REPROGRAMMING NOTIFICATION (July 26, 2019), <https://assets.documentcloud.org/documents/6354580/DHS-FY-2019-Southwest-Border-Emergency-Transfer.pdf> [<https://perma.cc/56QK-D4TZ>].

169. Ron Nixon, *\$10 Million from FEMA Diverted to Pay for Immigration Detention Centers, Document Shows*, N.Y. TIMES (Sept. 12, 2018), <https://www.nytimes.com/2018/09/12/us/politics/fema-ice-immigration-detention.html> [<https://perma.cc/U3GM-5Q7L>].

170. Idrees Ali, *Pentagon to Transfer \$1.5 Billion to Border Wall from Afghan Forces, Other Areas*, REUTERS (May 10, 2019), <https://www.reuters.com/article/us-usa-border-pentagon/pentagon-to-transfer-15-billion-to-border-wall-from-afghan-forces-other-areas-idUSKCN1SG1TM> [<https://perma.cc/5GN6-NV55>].

171. Sarah Pierce & Doris Meissner, *USCIS Budget Implosion Owes Far More than the Pandemic*, MIGRATION POL'Y INST. (June 2020), <https://www.migrationpolicy.org/news/uscis-severe-budget-shortfall> [<https://perma.cc/G3Q2-473B>].

172. U.S. DEP'T OF HOMELAND SEC., *Budget-in-Brief: Fiscal Year 2020*, at 1, 60 (2020), https://www.dhs.gov/sites/default/files/publications/fy_2020_dhs_bib.pdf [<https://perma.cc/JN2T-FYC4>].

C. *Deportation Abolition Strategies in Practice*

In response to the growth of immigration prisons and policing, carceral abolitionist organizers and collectives have emerged.¹⁷³ Early deportation abolitionist demands can be traced to the 2013 #Not1More movement, incubated at the National Day Laborer Organizing Network.¹⁷⁴ The #Not1More movement was led by a “motley crew of undocumented people, women of color, queers, and grassroots organizers,”¹⁷⁵ formed in the midst of civil disobedience from youth who crossed the U.S-Mexico border without documents and later organized hunger strikes while in detention centers.¹⁷⁶ #Not1More directly challenged the strategy of mainstream immigrant rights advocacy efforts. Whereas mainstream advocacy efforts focused on lobbying Congress to pass earned legalization bills,¹⁷⁷ #Not1More shifted movement rhetoric toward ending enforcement.¹⁷⁸ Drawing on campaigns by undocumented and unafraid immigrant youth leaders, as well as organizing against institutional racism responding to Arizona’s 1070 bill, #Not1More called for “not one more family destroyed, not one more person left behind, not one more indifferent reaction to suffering, not one more deportation.”¹⁷⁹ At its heart, #Not1More was a moratorium on deportations.¹⁸⁰

Some members of the #Not1More movement formed Mijente, a Latinx and Chicana¹⁸¹ community fighting for racial, economic, gender and climate

173. For example, the Movement for Black Lives has issued a vision calling for ending immigration restrictions that disproportionately target Black migrants; abolishing detention, deportation, and immigration enforcement; defunding immigration enforcement; repealing 1996 crime and immigration legislation; and ending the criminalization, surveillance, dehumanization, and exclusion of Black migrants, with particular force on those facing multiple forms of oppression. *End the War on Black Migrants*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/end-the-war-on-migrants/> [<https://perma.cc/XPB6-JX5Y>].

174. *About, #NOT1MORE*, *supra* note 4. In 2012, Puente in Arizona was also working to fight all deportations. See Marcela Valdes, *Is It Possible to Resist Deportation in Trump’s America?*, N.Y. TIMES (May 23, 2017), <https://www.nytimes.com/2017/05/23/magazine/is-it-possible-to-resist-deportation-in-trumps-america.html> [<https://perma.cc/DBQ4-6CXH>].

175. Tania Unzueta, Maru Mora Villalpando, & Angélica Cházaro, *We Fell in Love in a Hopeless Place: A Grassroots History from #Not1More to Abolish ICE*, MEDIUM (June 29, 2018), <https://medium.com/@LaTania/we-fell-in-love-in-a-hopeless-place-a-grassroots-history-from-not1more-to-abolish-ice-23089cf21711> [<https://perma.cc/436A-Y39J>].

176. Jennifer J. Lee, *Immigration Disobedience’s Agenda*, 111 CALIF. L. REV. (forthcoming 2023) (manuscript at 10).

177. One such proposed comprehensive immigration reform bill, where immigrants earn their pathway to residence by paying fees, residing in the US for a specified time length, and lacking a criminal record passed in the Senate in 2013. Border Sec., Econ. Opp., and Immigr. Modernization Act of 2013, S. 744, 113th Cong. (2013).

178. Unzueta, Villalpando & Cházaro, *supra* note 175.

179. *About, #NOT1MORE*, *supra* note 4.

180. Unzueta, Villalpando & Cházaro, *supra* note 175.

181. Chicana refers to politically empowered Mexican Americans, adapted from “Chicano” to be gender expansive, meaning it includes all those who do and do not identify within the gender spectrum. See, e.g., Grayson Schmidt, *Latinx, Latino/a or Chicano: Students Share What They Call*

justice, based on carceral abolitionist theory. A central claim of carceral abolitionists is that the struggles of Black and Brown communities against state violence are interconnected and should not be waged in silos. Therefore, Mijente and other entities focused on deportation abolition work in solidarity with larger racial justice struggles, like the Movement for Black Lives, to ensure a racial justice lens in its advocacy and that racial justice movements have policies and strategies regarding the war on immigrants integrated within its work.¹⁸²

A number of organizations have emerged or reoriented toward deportation abolition.¹⁸³ Some of these organizations may explicitly refer to abolition,¹⁸⁴ while others have less explicit abolitionist language.¹⁸⁵ One commonality in these organizations is that lawyers are usually a small section of staff, if there are any lawyers.¹⁸⁶ This may reflect efforts to center directly affected people and creative organizing strategies.¹⁸⁷ Additionally, those working in social movements may have concerns about the limitations of lawyers in advocating for systems change, because lawyers at times have a role as an officer of the court, operating within an existing legal system. Still, legal organizations

Themselves and Why, UNIV. OF S. CAL. NEWS (Oct. 14, 2020), <http://news.usc.edu/177351/latinx-latino-latina-chicano-usc-students-identity-labels-self-identify/> [<https://perma.cc/LS5V-RDTE>]; Code Switch, *You Say Chicano, I Say . . .*, NPR (May 1, 2019), <https://www.npr.org/transcripts/718703438> [<https://perma.cc/MTV2-4AX4>].

182. For example, deportation abolitionists working hand-in-hand with carceral abolitionists helped draft “The Breathe Act,” which divests tax dollars from policing, including immigration policing, to reinvest in community care. *The Breathe Act*, MOVEMENT FOR BLACK LIVES, <https://breatheact.org/> [<https://perma.cc/KZF8-SPBV>].

183. Some of these groups include Black Alliance for Just Immigration, Detention Watch Network, Families for Freedom, Freedom for Immigrants, Grassroots Leadership, Just Futures Law, the Movement for Black Lives, Mijente, the National Day Laborer Organizing Network, the National Immigration Project of the National Lawyers Guild (NIPNLG), Organized Communities Against Deportation, and the UndocuBlack Network. This list is not exhaustive or necessarily representative; others, nationally and locally, espouse deportation abolition internally and externally.

184. Just Futures Law, *supra* note 13 (referring to the organization as “unapologetically abolitionist”). Similarly, Detention Watch states that they are “building power in communities . . . to abolish immigration detention.” *About*, DET. WATCH NETWORK, <http://www.detentionwatchnetwork.org/about> [<https://perma.cc/JA6C-63G8>]. Freedom for Immigrants states they are “devoted to abolishing immigration detention, while ending the isolation of people currently suffering in this profit-driven system.” UndocuBlack Network also calls explicitly to “end the cruelty of our interior detention and deportation system.” *#WeAreHome*, UNDOCUBLACK NETWORK, <http://undocublack.org/new-page> [<https://perma.cc/QT7E-HCAT>].

185. For example, the Black Alliance for Just Immigration refers to addressing “structural racism and systemic discrimination.” *Who We Are*, BLACK ALL. FOR JUST IMMIGR., <http://baji.org/who-we-are/> [<https://perma.cc/BTL2-PEYL>].

186. Notably, only the National Immigration Project and Just Futures Law are explicitly legal organizations, while the National Day Laborer Organizing Network is an organizing model with an in-house legal department focused on supporting organizing goals.

187. Lee, *supra* note 176 (“Activists operating outside of the confines of the law often have more personal, creative, and radical ideas about the law’s dysfunction.”).

should occupy a specific space within the deportation abolition landscape, using abolitionist legal strategies and supporting organizing efforts. For example, the National Immigration Project of the National Lawyers Guild (NIPNLG) works specifically to train attorneys to practice with an abolition frame,¹⁸⁸ and integrates their work with organizing initiatives.¹⁸⁹ Similarly, legal entities Just Futures and the UCI Law School's Immigrant Rights Clinic have supported Mijente's #NoTechForICE campaign by producing a report challenging technological surveillance of immigrant communities, a core part of modern immigration policing.¹⁹⁰ Detention Watch Network, an organization without lawyer staff positions, worked with lawyers to develop a toolkit as part of its #FreeThemAll campaign, which demanded the release of people in ICE custody in the backdrop of the COVID-19 pandemic.¹⁹¹ These examples illustrate that lawyers still have an important role in the overall movement ecosystem, even though they are not leading efforts.¹⁹²

A few other themes emerge from these organizations' missions, values, and work. First, most organizations explicitly identify as anti-racist, challenging racism as part of their work and acknowledging the immigration system's long history of building racial hierarchies. Second, many organizations are focused on building community power and shifting resources by defunding immigration policing and reinvesting in communities. Third, they generally demand structural changes and non-reformist reforms to destabilize and reduce the existing carceral immigration system, proposing new visions of community safety and justice.

188. For example, a 2021 membership meeting included sessions on the "racist origins and impact of immigration laws" and "abolitionist lawyering." *2021 Membership Meeting Agenda*, NAT'L IMMIGR. PROJECT OF THE NAT'L LAWS. GUILD, <https://nipnlg.org/2021-membership.html> [<https://perma.cc/6Z2C-LDAZ>].

189. For example, they have partnered with BAJI and the National Immigrant Justice Center as part of an effort to include immigrants in the Pardon process. *Civil Rights Groups Call on President Biden to Include Immigrants in Pardon Process*, NAT'L IMMIGR. PROJECT OF THE NAT'L LAWS. GUILD, https://nipnlg.org/pr/2021_02June_pardon-power.html [<https://perma.cc/VQ8D-LYKS>].

190. *About, #NOTECHFORICE*, <https://notechforice.com/about/> [<https://perma.cc/98RF-XVKY>].

191. DET. WATCH NETWORK, #FREETHEMALL: TOOLKIT TO SUPPORT LOCAL DEMANDS FOR MASS RELEASE OF PEOPLE IN ICE CUSTODY, <https://docs.google.com/document/d/1d5O71qvC3-xkwGO3F61cLytjoVgzBohs18RP2LvV6LM/edit> [<https://perma.cc/6K69-2XGU>].

192. Some scholars have argued lawyers and law can play an important role in movements, but that they need to be careful about not commandeering the movement. Christine Cimini & Doug Smith, *An Innovative Approach to Movement Lawyering: An Immigrant Rights Case Study*, 35 GEO. IMMIGR. L.J. 431, 443 ("In terms of autonomy, lawyers, armed with the allure of sufficiently mystifying legal change, have the power to overwhelm grassroots movements, tend to divert causes to those most amenable to court resolution, and leave decision making in the hands of a limited elite.").

1. *An Antiracist Orientation to Dismantle Racial Hierarchies*

Promoting racial justice is an integral theme for deportation abolition organizations. Several organizations specifically identify how White supremacy has animated immigration systems with the need for people of color—both immigrants and citizens—to be committed to joint struggles for equity and liberation. For example, the Movement for Black Lives vision statement proclaims “[w]e are a collective that centers, and is led by and rooted in, Black communities. And we recognize our shared struggle with all oppressed people: collective liberation will be a product of all of our work.”¹⁹³ NIPNLG states it recommits “to support and partner with those who face the greatest challenges with the fewest resources,” using an intersectional approach in solidarity with directly impacted folks.¹⁹⁴

Fighting for racial justice is so significant to some deportation organizations that it is the reason they were founded.¹⁹⁵ For example, the Black Alliance for Just Immigration (BAJI) was founded in 2006, in response to repressive immigration laws, to bring together Black voices to fight for racial, social, and economic justice.¹⁹⁶ Similarly, Families for Freedom began in the aftermath of 9/11 when the government targeted Arab and Muslim men, forcing them to report to the government based solely on their religion and nationality. As a result, thousands were taken from their families, imprisoned in immigration jails, and eventually deported.¹⁹⁷

Many of the deportation abolition organizations shine light on how immigration laws and policing serve to racially subjugate communities and how criminalization disproportionately impacts people of color, particularly targeting Black and Latinx communities. Organizations thread together histories of slavery, Native American genocide, Japanese internment, and modern day mass incarceration to understand how White supremacy, imperialism, and private market forces work to perpetuate racial violence.¹⁹⁸ Some also identify the progression of violent policing in criminal and immigration contexts as inextricably linked.¹⁹⁹ Just as deportation abolition

193. *Vision for Black Lives*, *supra* note 49.

194. *Who We Are and Where We're Going*, *supra* note 77, at 1.

195. For example, Detention Watch Network was founded after the passage of the harsh 1996 immigration laws that drastically expanded those subjected to detention and deportation; in 2012, Detention Watch Network made clear that their vision called for an abolition of immigrant detention. *See Shah*, *supra* note 11.

196. *See Who We Are*, *supra* note 185.

197. *See About, FAMILIES FOR FREEDOM*, <https://familiesforfreedom.org/about> [<https://perma.cc/N8L3-XG4Q>].

198. *Our Values, FREEDOM FOR IMMIGRANTS*, <https://www.freedomforimmigrants.org/our-values> [<https://perma.cc/KY99-SFVE>] (articulating how a long history of “white supremacy, capitalism, and imperialism” undergirds the immigration detention system functioning “to dispossess marginalized communities and peoples of their homes and their histories.”).

199. *See About, FAMILIES FOR FREEDOM*, *supra* note 197.

organizations connect historic struggles against White supremacy to modern ones, they suggest that current fights must involve broad coalitions that see their struggles intertwined.

Deportation abolitionists explicitly reject respectability politics and the narrative of the good immigrant.²⁰⁰ Instead, deportation abolitionists advocate for all immigrants, centered on those who are often most impacted and criminalized.²⁰¹ Furthermore, the call for deportation abolition becomes stronger with the understanding that criminal deportation serves as an expression of racial animus toward immigrants of color, grounded in anti-Black racism.²⁰² On the flip side, they posit that centering those most marginalized in both theory and practice actually promotes safety for everyone.²⁰³ From the deportation abolitionist perspective, this translates to ensuring Black immigrant experiences are not erased or essentialized.²⁰⁴

Along these lines, deportation abolition organizations work to ensure those directly impacted by carceral immigration policies are guiding advocacy efforts.²⁰⁵ Notably this sentiment is in tension with predominant legal culture, including in many firms and certain public interest legal offices, whose White staff reflect values of prioritizing credentials such as clerkships, law review, and law school rankings, without much attention to those who might be directly impacted.²⁰⁶ In contrast, the deportation abolition legal offices make efforts to center “the leadership and lived experience of organizers, activists, and base-building community groups.”²⁰⁷ Deportation abolition organizations appear to

200. See, e.g., Cházaro, *supra* note 11, at 594; Rebecca Sharpless, “Immigrants Are Not Criminals”: *Respectability, Immigration Reform, and Hyperincarceration*, 53 HOUS. L. REV. 691, 692 (2016); Keyes, *supra* note 11, at 207.

201. Families for Freedom believes that comprehensive immigration reforms centered around the “good immigrant” and the “bad immigrant” are antithetical to true immigrant justice, as they function to permit those deemed valuable, the “hard workers,” to receive a pathway and exclude those with criminal convictions. *About*, FAMILIES FOR FREEDOM, *supra* note 197.

202. See Cházaro, *The End of Deportation*, *supra* note 16, at 1089–90.

203. See Heatherton, *supra* note 36, at 40.

204. Part of challenging essentialism is recognizing the diversity of Black immigrants, who come from African countries, the Caribbean, and Latin America. See *State of Black Immigrants*, BLACK ALL. FOR JUST IMMIGR., <http://baji.org/wp-content/uploads/2020/03/sobi-fullreport-jan22.pdf> [<https://perma.cc/H6TR-FYFW>]; *Our Stories and Visions*, BLACK ALL. FOR JUST IMMIGR., <https://baji.org/wp-content/uploads/2021/02/BAJI-Our-Stories-and-Visions.pdf> [<https://perma.cc/NV5M-9BJ4>].

205. For example, Families for Freedom writes: “We believe that those most directly impacted by US immigration enforcement policies are in the best position to provide the support to others going through the same traumatic experience. . . . Through this community based organizing, we aim to lighten the burdensome load that families with members in the system are going through.” *About*, FAMILIES FOR FREEDOM, *supra* note 197.

206. For a discussion of dominant White culture in legal education, see Bennett Capers, Essay, *The Law School as a White Space*, 106 MINN. L. REV. 7 (2021).

207. *Our Vision*, JUST FUTURES L., <https://justfutureslaw.org/#vision> [<https://perma.cc/4PLC-YD5L>].

prioritize equitable hiring practices, resulting in offices that are racially diverse.²⁰⁸ This also translates into filing litigation that is aligned with organizing and the goals of directly impacted communities.²⁰⁹ For example, when NIPNLG engaged in COVID-19-related litigation in 2020 and sought release of immigrants from detention, it explicitly coordinated with local organizers in places where immigrants were most impacted and without much legal support.²¹⁰

2. *Investing in Communities and Building Community Power*

Centering those directly impacted is related to a second strategy of deportation abolition organizations: building community power.²¹¹ Carceral abolitionists argue for not simply divesting funds from law enforcement but to invest in communities. Deportation abolition organizations may employ a number of strategies to build power in communities, such as skills development, organizing campaigns, community bail funds, mutual aid projects, and participatory defense models.

Most organizations simultaneously engage in multiple community power building strategies. One organization dedicated to supporting detained individuals and communities impacted by detention engages in organizing, advocating with elected officials, documenting detention conditions, conducting workshops with detainees, and changing narratives in the media.²¹² Similarly, the UndocuBlack Network, comprised of currently and formerly undocumented Black people, builds community power and resources through leadership development, advocacy, and organizing.²¹³ In addition to building

208. Just Futures Law state their organization “is women-of-color-led.” Just Futures Law, *supra* note 13, at 0:34–0:36.

209. *Our Vision*, *supra* note 207 (“directly impacted communities are not only the heart and soul, but also the tactical brain, of the immigrants’ rights movement.”).

210. NIPNLG worked with organizers and litigators in Mississippi, Louisiana, and Alabama, to work alongside those most directly impacted. See *NIPNLG Responds to the Coronavirus (COVID-19) Pandemic*, NAT’L IMMIGR. PROJECT OF THE NAT’L LAWS. GUILD, https://nipnlg.org/our_lit/practice_advisories/2020_21Mar_COVID_19.html [https://perma.cc/B2P3-N6J6].

211. Angela Davis made clear that Black liberation relates to all people struggling for freedom, including Latino and Native American populations, as well as how anti-Black racism informs anti-Muslim racism. See ANGELA Y. DAVIS, *FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT* 39 (Frank Barat ed., 2016).

212. *About*, FAMILIES FOR FREEDOM, *supra* note 197; see *Hunger Strikes*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/hunger-strikes> [https://perma.cc/8WSZ-LKGU].

213. *The Network*, UNDOCUBLACK NETWORK, <http://undocublack.org/asdasd> [https://perma.cc/CT2P-2HWF].

skills, groups may provide social services to strengthen and build power in the community, including access to immigration lawyers.²¹⁴

Community organizing is a central technique to engage communities in self-determination, influence local, regional, and national decision-making, and deploy community resources toward a shared goal.²¹⁵ Organizing is both a strategy to create change and a means to build power in communities.²¹⁶ Freedom for Immigrants provides a recent example of an organizing campaign around detained hunger strikers, which supported community building of hunger strikers, while trying to affect change. In 2019, when five South Asian asylum seekers detained in Louisiana went on a hunger strike in protest of inhumane detention conditions, Families for Freedom filed four complaints with DHS's Office of Civil Rights and Civil Liberties (CRCL), documenting medical neglect and the retaliatory use of solitary confinement.²¹⁷ Lawyers played a role in drafting and filing the complaints.²¹⁸ Alongside the complaints, organizers mobilized volunteers to support and house strikers if released, and engaged more than 26,000 people through a petition directed toward CRCL.²¹⁹ Although one striker was deported, two strikers were released, and the campaign ultimately served long-term goals of shining a light on inhumane conditions of detention. This illustrates how lawyers have an important support role in deportation abolition campaigns, including leveraging their expertise to draft complaints and advise about other legal concerns.²²⁰

214. BAJI has a program entitled Cultural and Legal Immigration Navigation for Interdependent Communities which provides legal services that are culturally appropriate to support Black immigrants as they navigate legal systems and to connect Black immigrants to organizing opportunities. *Our Programs*, BLACK ALL. FOR JUST IMMIGR., <http://baji.org/our-work/programs/> [<https://perma.cc/S858-9V9G>]. Also, NIPNLG provides technical legal assistance to community groups and organizers who do not have legal support. NAT'L IMMIGR. PROJECT OF THE NAT'L LAWS. GUILD, <https://www.nationalimmigrationproject.org/> [<https://perma.cc/DBN6-SKVU>].

215. See generally Scott Cummings & Ingrid Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001) (providing a historical account of the law and organizing approach and models of community organizing).

216. Some of the deportation abolition organizations are membership-based, have multiple chapters, or more informally collaborate with communities. For example, BAJI has chapters and organizing committees (BOCs). *Our Programs*, *supra* note 214. Mijente writes that organizing is their foundational strategy, "bringing together people and sustaining collective efforts to achieve change. *Our Principles of Unity*, MIJENTE, <https://mijente.net/our-dna/> [<https://perma.cc/QH87-3XVR>].

217. See *Hunger Strikes*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/hunger-strikes> [<https://perma.cc/8WSZ-LKGU>].

218. See Letter from Sofia M. Casini, Freedom for Immigrants, et al., to John Hartnett, Acting Field Off. Dir. Immigr. & Customs Enf't, et al. (Feb. 18, 2020) <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5e4d3ef53fd69d64919d4bb6/1582120693998/Redacted+CRCL+on+Solitary.pdf> [<https://perma.cc/R7DP-8ZBM>].

219. See Rebekah Entralgo, *Campaign: Tell ICE to Immediately Release Hunger Striking Men in Louisiana*, MOVEON CIVIC ACTION, <https://sign.moveon.org/petitions/tell-ice-to-immediately-release-hunger-striking-detainees-in-louisiana> [<https://perma.cc/RA9V-6Z4E>].

220. For instance, NIPNLG along with lawyers at the Haitian Bridge Alliance, ACLU of New Mexico and Innovation Law Lab provided legal support to file civil rights complaints about the

Mutual aid projects are another strategy used by deportation abolition organizations to meet survival needs, mobilize people, and engage in collective action. For example, the Haitian Bridge Alliance has mutual aid programs that provide clothes and food to fellow Haitian immigrants,²²¹ while building community skills and power through peer document translation, resume and work preparation, computer access, assisting in obtaining identification, and immigration lawyer assistance.²²² A number of mutual aid projects sprung up during the pandemic, particularly after many immigrants were locked out of government aid programs.²²³ In this vein, the Undocublack Network established a COVID-19 fund for undocumented Black immigrants.²²⁴

Participatory defense is a community power strategy that deportation abolition organizations are employing.²²⁵ Participatory defense is “a community organizing model for people facing charges, their families, and communities to impact the outcome of cases and transform the landscape of power in the court system.”²²⁶ As part of this community organizing model, people facing charges and their families learn how to participate actively in their own defense. As one scholar writes, participatory defense “seeks to enact a democracy-enhancing vision of criminal justice, where an increase in community self-governance is the catalyst for reducing the impact of the carceral state.”²²⁷ #Not1More was heavily involved in participatory defense,²²⁸

detention of Haitians seeking asylum and their lack of access to their attorneys. See Press Release, Nat'l Immigr. Project of the Nat'l Laws. Guild, Groups Demand ICE Allow Detained Haitians Access to Legal Services (Nov. 9, 2021), https://nipnl.org/pr/2021_9Nov_torance-letter.html [<https://perma.cc/85B9-DSSC>].

221. See Brie Stimson & Ashley Matthews, *Hundreds of Haitian Refugees Celebrate Thanksgiving in San Diego*, NBC UNIVERSAL MEDIA (Nov. 27, 2016) <https://www.nbcsandiego.com/news/local/haitian-refugees-celebrate-thanksgiving-in-san-diego/84896/> [<https://perma.cc/WRW2-X8KX>]; see also Haitian Bridge Alliance, Inc. <https://haitianbridge.org/index.html#> [<https://perma.cc/UJ7Z-SK99>].

222. See Haitian Bridge Alliance, *supra* note 221.

223. See, e.g., La Cura, *Decolonizing Mutual Aid*, EL COMITÉ MIJENTE (May 26, 2020) <https://www.mijentesupportcommittee.com/la-cura-podcast/decolonizing-mutual-aid> [<https://perma.cc/66ZR-6SK7>] (speaking of the urgency to act in light of COVID). For example, National Day Laborer Organizing Network set up Immigrant Worker Safety Net Fund, *Pa'lante Immigrant Worker Safety Net Fund*. *Id.*

224. See *Fund Relief*, UNDOCUBLACK NETWORK, <https://undocublack.org/fundrelief> [<https://perma.cc/CB4W-L4PK>].

225. See *National Participatory Defense Network*, PARTICIPATORY DEFENSE, <https://www.participatorydefense.org/hubs> [<https://perma.cc/K4C2-56TL>] (last visited Mar. 2, 2022). (Most participatory defense hubs are focused on working within the criminal legal system).

226. *Video Profile: Mothers in Charge Launch Participatory Defense Hub in Philly!*, ALBERT COBARRUBIAS JUSTICE PROJECT, <https://acjusticeproject.org/> [<https://perma.cc/KJ26-FMU2>].

227. Marisol Orihuela, *Crim-Imm Lawyering*, 34 GEOR. IMMIGR. L.J. 614, 635 (2020) 635; see *Free Our Future: An Immigration Policy Platform for Beyond the Trump Era*, MIJENTE (June 2018) https://mijente.net/wp-content/uploads/2018/06/Mijente-Immigration-Policy-Platform_0628.pdf [<https://perma.cc/55AD-L4UB>].

and some deportation abolition groups continue to engage in this practice.²²⁹ Grassroots Leadership is part of a national participatory defense network and has a community defense immigration hotline that provides resources and support for those facing an immigration crisis.²³⁰ As part of this program, Grassroots Leadership volunteers work with community members to find their loved ones, access basic needs, and connect with legal resources, including deportation defense trainings.²³¹ Along these same lines, Freedom for Immigrants has also created a program where U.S. citizens and legal permanent resident community members work alongside detained asylum seekers requesting release from detention through bond or parole procedures.²³² Sponsors and asylum seekers pull together a package to bolster their release request.²³³ Lawyers can play an important role in developing legal training tools within participatory defense projects. For example, lawyers with the NIPNLG supported the efforts of Families for Freedom and Detention Watch Network to develop the Deportation 101 training tool—which provides basic orientation of the deportation system—as well as tactics and strategies to fight legal cases.²³⁴ Similarly, Just Futures Law, a lawyer-led organization, collaborated with Mijente to produce a toolkit for people seeking immigration prosecutorial discretion requests.²³⁵

3. *Structural Changes and Non-reformist Reforms*

In concert with building power in communities, deportation abolition strategies seek to structurally disrupt racialized violence against immigrants. This disruption occurs by shrinking the power and scale of immigration policing, while imagining a new vision of safety for communities. Advocacy

228. *Click To Act On Deportation Cases*, #NOT1MORE, <http://www.notonemoredeportation.com/deportation-cases/> [https://perma.cc/CLJ3-XPDV].

229. For example, OCAD has ongoing campaigns to assist people in fighting their own deportation. OCAD, <https://www.organizedcommunities.org/campaigns> [https://perma.cc/3AGA-ZC68] (“We organize and harness our community power by hosting Know your Rights workshops that go beyond your typical content [in deportation defense]. We want people to know how to respond, be prepared, and really challenge the notion that policing keeps our communities safe. We want people to be prepared, not scared, and to feel prepared to fight back.”).

230. See *La Línea de Defensa Comunitaria (Immigration Crisis Hotline)*, GRASSROOTS LEADERSHIP, <http://grassrootsleadership.org/LaLinea> [https://perma.cc/ZS8T-9HNF].

231. *Id.*

232. See *Pledge to Welcome Immigrants In Your Community*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/sponsor-freedom> [https://perma.cc/4CGB-CQ5Q].

233. See Freedom for Immigrants, *Sponsoring an Asylum Seeker* https://docs.google.com/document/d/1x2vCqgt-WcLxI2pGGaTDIU0fyOdy5pEISRZ7_CIWJgk/edit# [https://perma.cc/AA6B-KUKG].

234. *Deportation 101*, IMMIGRANT DEFENSE PROJECT <https://www.immigrantdefenseproject.org/deportation-101-basics-of-the-detention-and-deportation-system/> [https://perma.cc/FF84-UWXX].

235. *Deportation Defense Toolkit – ¡El Pueblo Se Defiende!*, MIJENTE, <https://mijente.net/defend/> [https://perma.cc/AD8U-PG9T].

goals may be deeply structural, or more modest steps toward structural change, termed non-reformist reforms. Two related and structural change-focused demands of deportation abolitionist organizations are to #DefundHate and #AbolishICE.²³⁶ The Defund Hate campaign, co-anchored by Detention Watch Network and United We Dream, and including more than fifty organizations, is committed to cutting funds from immigration policing agencies, specifically ICE and CBP. The goal of cutting funds is then to reinvest funds in communities, such as housing, infrastructure, and healthcare.²³⁷ According to the campaign website, Defund Hate has blocked nearly \$12 billion from ICE and CBP to date.²³⁸ Many deportation abolitionist organizations include defunding immigration policing as a key part of their vision.²³⁹

But just as broader carceral abolitionists engage in varied methods to dismantle state violence, deportation abolitionists engage in a range of strategies. In addition to defunding and dismantling immigration policing, deportation abolition groups argue for decriminalization in the immigration system. This means undoing mandatory detention and deportation and reducing classes of deportable people based on criminal legal system entanglement. Deportation abolitionists also advocate for decarceration through efforts to liberate people from detention and abolish immigration jails. Some projects might also include delegitimizing immigrant policing and prisons through documenting the harm of the systems.

Dismantling immigration policing is a core deportation abolition strategy that often targets detention, surveillance, or other aspects of the deportation state.²⁴⁰ For example, Just Futures Law, in partnership with Mijente and an advisory board of organizers and activists, has developed a project aimed at dismantling surveillance, called the “Take Back Tech Fellowship.” This program trains a selected class of individuals who want to support local organizing and policy campaigns working to dismantle tech policing deployed against immigrant communities.²⁴¹ Fellows include lawyers and paralegals,

236. For example, Freedom for Immigrants’ two policy areas of focus are ending immigrant detention and investing in community-based solutions. *Policy Advocacy*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/policy-advocacy> [https://perma.cc/W8NZ-ZULT].

237. *We Are Here to Defund Hate*, DEFUND HATE NOW, <https://defundhate.org/about/> [https://perma.cc/LM3V-UNAU]. While not all organizations as part of this effort are explicitly abolitionist, they must agree that cutting ICE’s policing budget is needed.

238. *Id.*

239. Mijente calls to defund immigration policing, noting that ICE and CBP account for the largest federal police force with a budget more than all other federal law enforcement combined and often act with impunity. *Free Our Future*, *supra* note 227, at 2.

240. *See End the War on Black Migrants*, *supra* note 173.

241. *See Take Back Tech Fellowship Program*, JUST FUTURES L., <https://justfutureslaw.org/2020-2021-fellowship-program/> [https://perma.cc/2XLB-4YBB].

whose research skills are relevant to the fellows' research role of supporting city organizing and policy campaigns.²⁴²

Deportation abolitionists also seek to untangle the relationship between the criminal and immigration systems. Many deportation abolition organizations point specifically to repealing the 1996 crime and immigration bills that had expanded classes of deportable immigrants and created the mandatory detention scheme.²⁴³ Many of these reforms have been put into the New Way Forward bill, introduced in 2019.²⁴⁴ Deportation abolitionists also advocate for the repeal of criminal laws that criminalize border crossings.²⁴⁵

In addition to amending formal laws, groups may promote decriminalization by targeting specific enforcement programs, such as efforts to discontinue Operation Streamline, a program that requires criminal charges be brought against people crossing borders without permission.²⁴⁶ Decriminalization also includes calls on states and localities to enact local non-cooperation policies, prevent data-sharing with federal immigration agencies, stop providing local jail beds to ICE for immigration detention,²⁴⁷ and end international funding of immigration policing. For example, this includes ending funding of U.S. migration policing programs that work in cooperation with Mexican and Central American governments.²⁴⁸

Decarceration strategies seek to end all forms of detention, including child detention facilities and ankle monitors.²⁴⁹ Private prisons, which constitute more than 80 percent of immigrant detention centers, are often a target of shut down campaigns.²⁵⁰ Challenges to mass incarceration of immigrants include challenges to end mandatory detention, limiting deportations based on drug convictions, and other offenses which disproportionately target communities of

242. *Id.*

243. *See End the War on Black Migrants*, *supra* note 173.

244. New Way Forward Act, H.R.5383, 116th Cong. (2019).

245. *Free Our Future*, *supra* note 227, at 3. This demand received attention in the Democratic Primary Presidential Debates, as Julian Castro suggesting repealing these criminal laws. *See* Dara Lind, *Why Julián Castro started a Democratic Debate Fight Over Repealing "Section 1325"*, VOX (June 26, 2019) <https://www.vox.com/2019/6/26/18760665/1325-immigration-castro-democratic-debate> [<https://perma.cc/5BLU-5QVB>].

246. *Free Our Future*, *supra* note 227, at 3, 11.

247. *Id.* at 4.

248. For example, there are about 15,000 security forces in over 100 countries that have been trained by the United States. "Under the Mérida Initiative, the U.S. funds Mexican security forces to arrest, detain, and deport Central American migrants trying to reach the U.S. border. U.S. dollars fund the violent tactics engaged in by Mexican security forces, rendering the Mexico-Guatemala border even more dangerous than the U.S.-Mexico one for border crossers." *Free Our Future*, *supra* note 227, at 6.

249. *Id.* at 4.

250. *Id.*

color.²⁵¹ Community bail funds,²⁵² particularly those paired with political education, may serve a decarceral goal, even though money is being provided to the state to release individual people.²⁵³ Funds vary in many ways, with some offering counseling, legal support, social services, or organizing efforts around specific release,²⁵⁴ while others may simply provide money.²⁵⁵

Reducing state power and violence by documenting harm and delegitimizing racist institutions and actors may not structurally change the system, but is still aligned with deportation abolition goals as non-reformist reforms. For example, in 2016, Mijente mobilized voters to unseat then-Sheriff Joe Arpaio in a campaign known as “Bazta Arpaio.”²⁵⁶ Organizing included knocking on doors of voters, handing out anti-Arpaio pamphlets, and protesting in front of his office.²⁵⁷ Notably, canvassers did not actively endorse Arpaio’s challenger, but focused education and efforts on ousting Arpaio.²⁵⁸

While they work to shrink systems of state violence through these varied strategies, deportation abolitionists ultimately seek new, affirmative visions of community safety, security, and justice. These new solutions may use a

251. Families for Freedom and the Immigrant Justice Network have advocated for the “The New Way Forward Act,” which sought to shrink the immigration deportation system through ending mandatory detention and private prisons, and curtailing deportation based on drug convictions. See Eunice Hyunhye Cho, Tara Tidwell Cullen & Clara Long, Am. C.L. Union, Hum. Rts. Watch, Nat’l Immigrant Just. Ctr., *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, IMMIGRANT JUST. (2020), https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2020-04/Justice-Free%20Zones_Immigrant_Detention_Report_ACLU-HRW-NIJC_April-2020.pdf [<https://perma.cc/2AW3-SPYF>].

252. Community bail and bond funds involve administering a pool of money to post funds for folks in criminal or immigrant legal systems to be released “out of a dedication to a larger charitable or political mission.” Jocelyn Simonson, *Bail Nullification*, 115 MICH. L. REV. 585, 602 (2017).

253. Community bail funds have proliferated in recent years, many serving immigrants across the country. See, e.g., *Directory of Immigration System Bail Funds*, CMTY. JUST. EXCH., <https://www.communityjusticeexchange.org/en/immigration-directory> [<https://perma.cc/77K7-PR9N>]. The National Bail Fund Network is a network of over eighty community-based bail and bond funds that pool resources to free people, including thirty-nine community-based immigration bond funds that focus on freeing people from immigration detention. *National Bail Fund Network*, CMTY. JUST. EXCH., <https://www.communityjusticeexchange.org/en/nbfn-directory> [<https://perma.cc/6U5C-872J>].

254. For example, the Congress of Day Laborers in New Orleans organized a campaign to Free Yoel, a member of their workers collective, who had a lung tumor. See Bill Arceneaux, *#FreeYoel, Save a Life!*, BIG EASY MAG. (Aug. 16, 2019), <https://www.bigeasymagazine.com/2019/08/16/freeyoel-save-a-life/> [<https://perma.cc/629Q-WG6T>].

255. Simonson, *supra* note 252, at 599–600.

256. “Bazta Arpaio” is a “play off the Spanish word for ‘enough,’ spelled with a ‘z’ to include the abbreviation for Arizona.” Jude Joffe-Block, *Immigrants in Arizona Are Campaigning to Oust a Controversial Sheriff*, WORLD (Oct. 26, 2016), <https://theworld.org/stories/2016-10-26/immigrants-arizona-are-campaigning-oust-controversial-sheriff> [<https://perma.cc/3E42-HY7L>].

257. See Ray Levy-Uyeda, *Mijente Stayed out of the 2016 Election. Here’s Why It’s Going All in This Time*, IN THESE TIMES (Aug. 10, 2020), <https://inthesetimes.com/article/mijente-stayed-out-of-the-2016-election-in-2020-its-organizing-like-never> [<https://perma.cc/SSR3-9Q8E>] (citing Ruptly, *USA: Protesters Rally Against Joe ‘America’s Toughest Sheriff’ Arpaio in Maricopa*, YOUTUBE (Oct. 22, 2016), <https://www.youtube.com/watch?v=EYyH8GANuRU> [<https://perma.cc/LS3X-Q9SX>]).

258. See Joffe-Block, *supra* note 256.

transformative justice approach,²⁵⁹ working toward broader social, political, and economic change.²⁶⁰ Seeking to prevent future violence through health, accountability, and safety for everyone, instead of carceral solutions is central to transformative justice.²⁶¹

These principles are important to deportation abolitionist entities in how they resolve conflicts internally and how they seek justice for communities in relation to the state. While it is important to distinguish between large-scale systems of harm and individual conflict, any response should be rooted in a culture of “care, dignity, and accountability.”²⁶² For example, Mijente described developing a “leaderful space” with accountability, transparency, and adaptability in order to create space for new and experienced leaders to continue transforming the organization and the world.²⁶³ In terms of resolving internal conflict, Mijente acknowledged conflict will happen, as “everyone is capable of being harmful and of being harmed;”²⁶⁴ so it opts for honest discourse—instead of exclusion—to increase community accountability and resilience. This aligns with transformative justice principles of not isolating those who have caused harm, but inviting them in to seek accountability to move forward as a community.²⁶⁵

Transformative justice solutions may take the shape of community-based alternatives to detention programs. For example, Freedom for Immigrants has taken a first step of creating a safe house to provide temporary sanctuary, meals, clothing, and transportation for immigrants released from detention.²⁶⁶ The organization works to free people through a revolving bond fund, and connect those released to families and communities, lawyers, transportation, and mental health services.²⁶⁷ The ultimate goal is not solely for ending immigrant detention, but to affirmatively create a world where immigrants are thriving.²⁶⁸

When reimagining new systems of care, deportation abolition organizations have suggested reinvesting funds in communities, as well as

259. This is distinct from restorative justice, which is a victim-centered process to promote accountability and rehabilitation, and may supplement or replace criminal legal system, often including victim-offender mediation with restitution or apology. Harris, *supra* note 63, at 41–42.

260. See McLeod, *supra* note 45, at 1630–31.

261. See Mingus, *supra* note 47.

262. Cullors, *supra* note 35, at 1694.

263. *Our Principles of Unity*, MIJENTE, <https://mijente.net/our-dna/> [<https://perma.cc/QH87-3XVR>].

264. *Id.*

265. See Cullors, *supra* note 35, at 1692.

266. See *Alternatives to Detention*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/alternatives-to-detention> [<https://perma.cc/V7PU-FGZR>].

267. See *Our Impact*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/our-impact> [<https://perma.cc/BFC2-DCQW>].

268. See *Sponsoring an Asylum Seeker*, *supra* note 233.

creating new systems of accountability. For example, Mijente has advocated for diverting Border Patrol funds to establish a non-police border rescue force.²⁶⁹ Along the lines of a transformative justice model to seek accountability, Mijente has suggested establishing a truth and reconciliation commission to better understand violence and abuses perpetrated by DHS agencies, including ICE, Border Patrol, and USCIS,²⁷⁰ as well as creation of reparation funds to distribute to those harmed by ICE.²⁷¹

III.

A DEPORTATION ABOLITION ETHIC

An “ethic” refers to “a set of moral principles,” and deportation abolition can be understood as a set of principles and strategies flowing from a specific moral center that opposes the violence of deportation on immigrant communities.²⁷² Carceral abolition is not just a theory, but deeply grounded in everyday action and meant to be practiced.²⁷³ As one carceral abolitionist women of color collective wrote: “justice is not a product that you arrive at . . . Justice is something we have to continually imagine, envision, construct, and practice.”²⁷⁴ Building on carceral abolition theory and the practices of deportation abolition organizations, this Section illustrates a deportation abolition lawyering praxis and seeks to overcome the tensions between everyday immigration lawyering and deportation abolition.

I posit that lawyers can practice a deportation abolition ethic as they work to reduce state violence in the immigration legal system and provide legal support to those in crisis.²⁷⁵ Traditional lawyering and accounts of legal justice often neglect the chasm between the stated ideals of the law and the violent realities of the justice system.²⁷⁶ There are also particular tensions inherent in practicing within a system while also calling for abolition of some of its

269. *Free Our Future*, *supra* note 227, at 5.

270. *Id.* at 8.

271. *Id.*

272. *See* McLeod, *supra* note 24, at 1161–62.

273. Ruth Gilmore, *Making Abolition Geographies Happen*, at 28:26, UNIV. TEX. (Sept. 26, 2019), <https://law.lectures-presentation.la.utexas.edu/paella/ui/watch.html?id=8ab52416-0553-43ee-b900-89014d0ec87b> [<https://perma.cc/5NA5-M2AW>] (“Abolition is a practical program of change, rooted in how people sustain and improve their lives, cobbling together insights and strategies from disparate, connected struggles.”).

274. Sista, *supra* note 41, at 207.

275. Some roles—such as an ICE assistant chief counsel whose daily practice is to seek deportation of noncitizens—are too embedded in the structural violence of the deportation state or too restrictive in other ways to meaningfully practice an abolitionist ethic. Similarly, some scholars have also questioned the meaning or existence of “progressive prosecutors.” *See, e.g.*, Benjamin Levin, *Imagining the Progressive Prosecutor*, 105 MINN. L. REV. 1415, 1417 (2021); Maybell Romero, *Rural Spaces, Communities of Color, and the ‘Progressive’ Prosecutor*, 110 J. CRIM. L. & CRIMINOLOGY 803, 803 (2020).

276. McLeod, *supra* note 45, at 1637.

institutions. This tension is particularly visible for direct services attorneys engaging in triage practices focused on treating the symptoms resulting from the carceral immigration rather than the core illness.²⁷⁷

Lawyering from a deportation abolition ethic offers a way to disrupt harmful and violent parts of the system while practicing within it.²⁷⁸ Immigration defense attorneys, just as criminal defense attorneys practicing a carceral abolitionist ethic, can “highlight engrained assumptions, expose the failures of policing, overload the system’s functioning, and illustrate the social and economic unsustainability of carceral approaches” as part of their legal practice.²⁷⁹ These 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.²⁸⁰ Immigration attorneys practicing a deportation abolition ethic can use the law to reduce harm to individuals, families and communities by challenging immigration enforcement, but should ensure they are not building up the carceral deportation state—through actions to legitimize it or otherwise direct additional resources and power to enforcement and detention.

While there is no single set of abolition-focused strategies that deportation abolition lawyers must engage in, I offer a few categories of inquiry to develop a deportation abolition ethic while practicing immigration law. First, those practicing a deportation abolition ethic must have an anti-racist orientation, so that their practices directly confront and disrupt anti-Black and criminality narratives in immigration legal systems instead of bolstering White supremacy logics. Second, a deportation abolition ethic includes developing practices that build power with immigrant clients and communities instead of reifying the role of the lawyer. Last, in order to reimagine community justice and safety, deportation abolition lawyers should forward structural changes instead of reforms that re-entrench and expand state violence.

A. *An Antiracist Orientation to Dismantle Racial Hierarchies*

Deportation abolition is founded in an understanding that the immigration legal system has engaged historically in building racial hierarchies, subjugating

277. Practicing harm reduction and engaging in system disruption do not have to be seen as in conflict, because solving complex and deep problems requires multi-pronged solutions.

278. Farberman, *supra* note 22, at 1881. (“Both in law schools and in practice, there is a common anxiety that one must choose between “systemic” work and hands-on direct service work. The model of abolitionist resistance lawyers suggests that this need not be an either/or choice.”).

279. Futrell, *supra* note 23, at 179.

280. Amna Akbar has called on legal scholars to move toward an abolitionist horizon and to better understand abolitionist strategies to get there. See Akbar, *supra* note 25, at 1845 (“If we seek to understand how organizers are using law as a tool, we will sharpen our understanding of social change projects that deploy many strategies, including reform, politics, and protest.”).

Black and Brown immigrants to the violence of detention and deportation.²⁸¹ It also has long relied on narratives of criminality and anti-Blackness to justify laws that criminalize immigrants and detain and deport those who have been entangled in the criminal legal system.²⁸² Therefore, practicing antiracism is key for lawyers working toward deportation abolition. An antiracist is someone who confronts racial inequities instead of allowing them to be preserved.²⁸³ Antiracist lawyering involves being aware of how racism impacts clients, colleagues, communities, and oneself, as well as adapting strategically to address racism.²⁸⁴ Having an antiracist orientation includes learning from those most impacted by racism, auditing the many ways racism might be at play, and reshaping lawyering practices to seek racial justice.²⁸⁵

As part of an antiracist orientation, carceral abolitionists insist on centering those most impacted. They also warn against siloing and dividing already marginalized communities. Therefore, deportation abolitionists navigating the immigration legal system must continue to see the parallel and combined struggles against state and police violence and build solidarity with those already engaged in the work. They should work to center those immigrants who are most impacted by state violence, particularly Black migrants and detained migrants.²⁸⁶

Deportation abolition lawyers should consider how to challenge racism organizationally through their vision, staffing, case selection, advocacy efforts, and lawyering strategies, as well as individually. At the organizational level, the vision and implementation must be centered on the experiences of those most directly impacted, particularly Black and Indigenous immigrants.²⁸⁷ Some in the immigrants' rights movement have recently acknowledged its complicity with the anti-Black foundations within the immigration legal system.²⁸⁸

281. See discussion *infra* Section II.A.

282. Karla Mari McKanders, *Immigration and Racial Justice: Enforcing the Borders of Blackness*, 37 GA. ST. UNIV. L. REV. 1139, 1169 (2021) (discussing the disproportionate impact of immigration laws and criminal enforcement on Black immigrants).

283. IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 24 (2019).

284. Lorlei Williams, *An Antiracist Approach to Trauma-Informed Lawyering*, SHRIVER CTR. ON POVERTY L. (June 29, 2021), <https://www.povertylaw.org/article/trauma-informed-lawyering/> [<https://perma.cc/QA36-XX6M>].

285. This derives from the Law Deans Antiracist Clearing House project which suggests three phases of changing law school culture. See *Law Deans Antiracist Clearinghouse Project*, ASS'N OF AM. L. SCHS., <https://www.aals.org/about/publications/antiracist-clearinghouse/> [<https://perma.cc/UZC7-2C5P>].

286. See *Vision and Approach*, JUST FUTURES L., <https://justfutureslaw.org/about/> [<https://perma.cc/7ADA-D48R>] (“Legal work must center the leadership and lived experience of organizers, activists, and base-building community groups.”); see also, McKanders, *supra* note 282, at 1169 (discussing how Black immigrants are often erased from immigration scholarship).

287. Poor and working-class women of color should be in the center of analysis. See Critical Resistance & INCITE! Women of Color Against Violence, *Gender Violence and the Prison-Industrial Complex*, COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY, *supra* note 40, at 226.

288. *Solidarity Letter from the Immigrant Justice Movement*, *supra* note 9.

Specifically, many pro-immigrant advocates and those involved in movements have not challenged immigration discourses that focus almost exclusively on non-Black Latinx experiences and in turn erase Black (including Black Latinx) immigrant narratives.²⁸⁹ This phenomenon of not centering Black people within the immigrant rights movement is what spurred the founding of the Black Alliance for Just Immigration.²⁹⁰

The implementation of an antiracist vision is more significant and complex than simply articulating an antiracist mission, and includes equitable hiring practices.²⁹¹ This is particularly true in legal settings, because the legal profession is an overwhelmingly White space, with 86 percent of attorneys identifying as White.²⁹² Nonprofit leaders are also predominantly White.²⁹³ Unsurprisingly, people of color in nonprofit environments have reported experiencing higher levels of certain career challenges than White peers, including being called on to push diversity efforts, inequitable and inadequate salaries, being called on to represent a community, a lack of role models, and fewer opportunities for advancement.²⁹⁴ Organizations that do not make sufficient efforts to ensure equity in staff recruiting, hiring and retention practices, as well as excluding directly impacted people from leadership positions, work to more deeply entrench racism within immigration spaces.

Organizational implementation of an antiracist vision also includes examining whether case selection excludes immigrants most impacted by policing and prisons, whether formally or informally. For example, many traditional legal services organizations have engaged in case selection focused on who they deem most deserving, excluding those who have had criminal

289. Patricia, Ramon, Miriam & Carolina, *Building Solidarity & Strengthening Ties Between the Immigrant Rights and Black Lives Matter Movements*, MY UNDOCUMENTED LIFE (May 31, 2020), <http://mydocumentedlife.org/2020/05/31/building-solidarity-between-the-immigrant-rights-and-black-lives-matter-movements/> [https://perma.cc/D56U-NLV9].

290. Hawa Allan, *An Unforgiving Legal System Welcomes Black Immigrants to America*, LONGREADS (July 2017), <http://longreads.com/2017/07/10/an-unforgiving-legal-system-welcomes-black-immigrants-to-america/> [https://perma.cc/H9NH-B8VR] (“They soon realized that the immigrants’ rights movement was definitely not black-oriented.”).

291. Although, having an antiracist vision is a start. The Northwest Immigrant Rights Project signals its priority in being antiracist by stating it strives for “justice and equity,” with principles including “solidarity” and the need to collectively challenge “historic patterns of oppression, discrimination and inequity.” *Mission, Vision, and Values*, NW. IMMIGRANT RTS. PROJECT, <http://www.nwirp.org/about/mission/> [https://perma.cc/66G7-N936].

292. A.B.A., *ABA PROFILE OF THE LEGAL PROFESSION 2020*, at 34 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [https://perma.cc/2UME-XU5S]; see generally, Dalia Castillo-Granados et al., *The Racial Justice Imperative to Reimagine Immigrant Children’s Rights: Special Immigrant Juveniles as a Case Study*, AM. U. L. REV. 1779, 1804 (2022).

293. See *Race to Lead Revisited: Obstacles and Opportunities in Addressing the Nonprofit Racial Leadership Gap*, at 1, BLDG. MOVEMENT PROJECT (2020), http://racetolead.org/wp-content/uploads/2020/07/RTL_Revisited_National-Report_Final.pdf [https://perma.cc/77Y4-9TT6].

294. *Id.* at 16.

histories.²⁹⁵ Similarly, children’s rights groups have excluded older youth and those youth in the delinquency system, as well as excluded services to children who are accompanied.²⁹⁶ Because Black and Brown communities are disproportionately impacted by criminal and juvenile delinquency systems, organizations that exclude clients based on criminal histories are re-entrenching White supremacy. Relatedly, many organizations have not prioritized serving Black immigrants and focused solely on non-Black Latinx communities.²⁹⁷ Numerous organizations do not serve detained immigrants²⁹⁸—often justified by capacity concerns.²⁹⁹ While capacity concerns or lack of expertise in crimmigration appear to be neutral justifications, the case selection decisions can serve to further and legitimize racial hierarchies, the deserving and undeserving immigrant narratives, and even bolster credence to anti-Black narratives.

While there is no bright line rule regarding case selection to address this problem, those practicing a deportation abolition ethic should consider whether their case selection is furthering anti-Blackness and legitimizing criminality narratives. This does not mean organizations have to exclusively serve those immigrants with criminal convictions and those who are being detained. Yet, categorically refusing to represent detained clients and those with convictions is inconsistent with deportation abolition framework.

Relatedly, the abolition framework does not require organizations to refuse to pursue certain types of immigration relief. For example, it does not dictate only engaging in representing people seeking “waivers” for criminal convictions while refusing to represent those seeking humanitarian immigration relief (such as asylum for the persecuted, special immigrant juvenile status for abused, abandoned, and neglected children; U visas for those who have

295. For example, the Community Legal Center includes “[n]o felony convictions” in its description on EOIR and Light of Hope Immigration Law Center “will not handle cases involving drugs, sexual or child abuse.” *List of Pro Bono Legal Service Providers, Tennessee*, U.S. DEP’T OF JUST. (July 2022), <http://www.justice.gov/eoir/file/ProBonoTN/download> [https://perma.cc/8HR6-4XW2]. Similarly, the Catholic Immigration Service, Inc. of Washington D.C. “[w]ill not represent those with criminal convictions.” *List of Pro Bono Legal Service Providers, Virginia*, U.S. DEP’T OF JUST. (July 2022), <https://www.justice.gov/eoir/file/ProBonoVA/download> [https://perma.cc/3XWT-XEBW].

296. See, e.g., *List of Pro Bono Legal Service Providers, Virginia*, *supra* note 295 (“KIND only represents minors and unaccompanied children[.]”).

297. In the Summer and Fall of 2020 after George Floyd’s murder, I was in conversation with some immigration organization leaders who spoke of plans to ensure they prioritized serving Black immigrants, which had not been a priority before.

298. See, e.g., *List of Pro Bono Legal Service Providers, California*, U.S. DEP’T OF JUST. (July 2022), <https://www.justice.gov/eoir/file/ProBonoCA/download> [https://perma.cc/E73G-7EW7].

299. Capacity may include geographic concerns as well as costs. It is also important to note that case selection sometimes relates to funding restrictions. So, a related question is whether organizational leaders are soliciting and accepting funding which bolsters narratives about good and bad immigrants or restricts our ability to represent those immigrants most impacted in the immigration legal system.

experienced certain crimes; and T visas for those who have suffered trafficking). In fact, this type of distinction between “good” and “bad” immigration relief is simplistic, as those with criminal convictions who might be otherwise removable could be able to secure status through humanitarian forms of relief.

Those practicing with a deportation abolition ethic must challenge racist policing in the immigration and criminal legal systems and target racist immigration laws, instead of amplifying statistics about criminality that legitimize the criminal legal system.³⁰⁰ For example, lawyers engaging in policy advocacy should ask whether they are amplifying research indicating immigrants commit fewer crimes than citizens, oblivious to the anti-Black racism that underlies this narrative. Immigrant advocates, including myself, have often cited a 2015 report that tries to attack the “criminality” stigma immigrants face without critiquing the criminal legal system.³⁰¹ The report states immigrants are less likely than native-born people to be behind bars and engage in criminal behavior without a critique of racist policing and sentencing that account for disproportionate racial outcomes in the criminal legal system.³⁰²

Along these lines, those practicing a deportation abolition ethic should ensure policy proposals do not dispose of immigrants with criminal histories and allegations of gang affiliation. Nor should they promote narratives that legitimize the criminal legal system and its racist outcomes, resulting in expanding criminalization within immigration laws.³⁰³ For example, many prominent immigrant rights groups have pushed for comprehensive immigration reform to create pathways to citizenship for certain “good immigrants,” grounded in the narrative of successive presidents and politicians who put forth that immigrants on the whole commit less crimes than native-born citizens in the United States.³⁰⁴ Those engaged in policy advocacy should consider centering immigrants who have convictions instead of only promoting narratives of those most “deserving” immigrants, better aligning with a “racial

300. For example, the National Immigration Project of the NLG focuses its advocacy to “ensure that immigration enforcement does not rely on broad racist categories that exclude the most targeted from reforms.” *Who We Are and Where We’re Going*, *supra* note 77, at 2.

301. See Walter Ewing, Daniel E. Martínez, & Rubén G. Rumbaut, *The Criminalization of Immigration in the United States*, AM. IMMIGR. COUNCIL (July 13, 2015), <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states> [<https://perma.cc/S5RH-TVTU>].

302. *Id.*

303. See Cházaro, *The End of Deportation*, *supra* note 16, at 1088–91 (critiquing use of criminal history as basis for deportation and its racist impacts).

304. See Sharpless, *supra* note 200, at 701.

critique of hyperincarceration” across the criminal and immigration legal systems.³⁰⁵

Deportation abolition lawyers should generally eschew arguments and strategies that play into respectability politics, which appeal to relying on stereotypes of hardworking and law-abiding deservedness and often work to build racial hierarchies.³⁰⁶ Immigration lawyers are in some ways forced to engage in respectability politics because of how the Immigration and National Act (INA) is riddled with value-laden terms. For example, the INA requires immigrants to have “good moral character,”³⁰⁷ and disqualifies them from some protection for committing a “crime involving moral turpitude.”³⁰⁸ Discretion is at the heart of most immigration benefits requiring immigrants to prove they are worthy of a benefit.³⁰⁹ This means even when someone meets the evidentiary burden for each element of asylum as well as most forms of lawful permanent residence, immigration judges and officers may still deny applications due to negative factors, such as perceived criminal history.³¹⁰ These structural aspects of the INA push immigrants and their lawyers to play up their respectability. As one immigration lawyer wrote, “[c]onfession and penance are akin to sacraments in immigration law, and the process of asking the government to pardon your client’s digressions is a disconcerting combination of formulaic and theatrical.”³¹¹ However, a deportation abolition ethic suggests lawyers may push back against this system in small and larger ways, even when asking formally for a “waiver” for an immigration violation. Partnering with clients, lawyers can ensure clients’ testimony expounds on their strengths and successes while contextualizing challenges including systemic racism and other biases clients may experience.

Along these lines, abolitionist lawyers should avoid theories of the case that reinforce racist stereotypes about their clients’ countries of birth. Some forms of relief, like asylum,³¹² withholding of removal,³¹³ Convention Against

305. See *id.* at 698 (“Although pro-immigrant reformers generally embrace the racial critique of hyperincarceration, many hesitate to place noncitizens who have been incarcerated at the center of their political strategies and theories, especially those noncitizens who have been convicted of a serious offense.”).

306. Cházaro, *Beyond Respectability*, *supra* note 16, at 357–58.

307. Immigration and Nationality Act, 8 U.S.C. § 101(f)(3).

308. Immigration and Nationality Act, 8 U.S.C. § 212(a)(2)(A).

309. Hlass, *supra* note 18, at 202.

310. Laila L. Hlass, *The School to Deportation Pipeline*, 34 GA. ST. UNIV. L. REV. 697, 739 (2018).

311. Jawziya F. Zaman, *Why I Left Immigration Law*, DISSENT MAG. (July 12, 2017), https://www.dissentmagazine.org/online_articles/left-immigration-law [https://perma.cc/JM76-AAHA].

312. Immigration and Nationality Act, 8 U.S.C. § 101(a)(42) (refugees are defined by their fear of being persecuted in their home country and inability or unwillingness to be protected by the home country).

Torture protections³¹⁴ and Special Immigrant Juvenile Status,³¹⁵ cancellation of removal,³¹⁶ and Trafficking Visas³¹⁷ require evidence regarding the unsuitability or hardship involved in returning to a home country. Yet, lawyers should consider whether they are unnecessarily cataloguing the unworthiness of a client's country of origin, which may reinforce stereotypes about countries with inhabitants that are predominantly people of color, and ultimately contribute to problematic discourses about the unworthiness of these societies. For example, to prove a client's best interest—a required element for a Special Immigrant Juvenile case—a lawyer with an abolitionist ethic could focus their analysis on the strength of the child's relationships with caregivers in the United States, and provide more nuanced and targeted descriptions of violence that their client specifically experienced.³¹⁸ In this way, a lawyer can provide a narrative that relies on a strengths-based approach that avoids reinforcing demeaning generalizations about immigrant communities as inherently more violent.³¹⁹

This tension of not playing into racist stereotypes while meeting legal standards that may implicate respectability politics is particularly present in asylum law. As one immigration lawyer has written, arguing asylum cases made her feel “implicated in the flawed premises of immigration law, including its reductionist narratives about other countries and its dehumanization of foreigners,” which included reinforcing “tired stereotypes about the global South and forc[ing] clients to undergo a ritual flagellation before they could be granted the privilege of remaining in the country.”³²⁰ By example, she described representing a lesbian woman from a predominantly Muslim country who wants to seek asylum. The lawyer reported her plan to compile media articles and country reports describing the country as patriarchal, the religion as regressive, and her client as “yet another oppressed Muslim woman” to win the

313. 8 U.S.C. § 1231(b) (withholding of removal is for those whose life or liberty is threatened in their home country)

314. 8 C.F.R. § 208.18 (stating that Convention of Torture protection is afforded to those who fear torture in their home country).

315. 8 U.S.C. § 1101(a)(27)(J) (stating that special Immigrant Juveniles must prove that it is in their best interests not to return to their home country).

316. Immigration and Nationality Act, 8 U.S.C. § 240A(b) (stating that those seeking cancellation of removal under various provisions must prove hardship upon removal to their home country).

317. 8 C.F.R. § 214.11(b)(4) (hardship upon removal from the United States).

318. However, a lawyer practicing a deportation abolition ethic may still, with direction from their client, reinforce these stereotypes to ultimately succeed in winning a case and avoiding deportation for their client.

319. Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 *FORDHAM L. REV.* 1545, 1547 (2011) (discussing judicial discourse of immigrants focusing on violence, dangerousness, and criminality).

320. Zaman, *supra* note 311.

case.³²¹ A lawyer with an abolitionist ethic can and should disrupt this narrative by not reflexively relying on these master plots, but rather collaborating with the client to show their strengths in resisting harm directed at them. While the lawyer must prove the likelihood of violence for a lesbian woman, the narrative does not have to ignore that LGBTQ violence occurs in the United States as well.³²²

Some lawyers have suggested that disrupting these narratives may run counter to zealous representation, and that might be the case in certain instances. However, lawyers should carefully scrutinize the idea that zealous representation equals doing anything within the bounds of the law to win, including feeding into problematic and often racist narratives.³²³ First, clients themselves may prefer a theory of the case that is strengths-based and acknowledges their dignity.³²⁴ Scholar Elizabeth Keyes suggested that attorneys do not always have to rely on problematic narratives, but can create “a narrative space somewhere other than that of good and bad, a space that can be broadened over time by other clients and other narratives, step by painstaking step.”³²⁵ This means making incremental changes in advocacy, working with clients to paint effective and more nuanced pictures of their lives to move toward less essentialized master plots and change the discourse in courtrooms and other legal spaces. Furthermore, zealous advocacy explicitly does not encompass “press[ing] for every advantage” nor the use of “offensive tactics,” which may degrade or disrespect someone in the legal process.³²⁶ Tactics relying heavily on racist stereotypes arguably run counter to respecting a client’s dignity as a person from the country and community at question. However, a client may prefer that the lawyer pursue a strategy that is more likely to win.³²⁷ Lastly, the duty of zealous advocacy can be complemented with duties to incorporate third-party interests, engage in law reform, and

321. *Id.*

322. Ultimately, a deportation abolition lawyer working alongside their client must navigate the highly specific context of an individual immigration judge or officer and balance client goals of winning their case and preserving their dignity. Therefore, if a certain judge is likely to deny the asylum claim without a case theory that relies on problematic narratives, then client and lawyer may decide it is more important to play into respectability politics to avoid deportation and win the case. *But see* Robin Walker Sterling, *Defense Attorney Resistance*, 99 IOWA L. REV. 2245, 2263 (noting a false binary between ethical obligation to client and challenge to harmful racism).

323. Muneer I. Ahmad, *The Ethics of Narrative*, J. GENDER, SOC. POL’Y & L. 117, 127 (2002) (“Fidelity to ourselves as lawyers depends upon the honest embrace of such tension [between zealous representation and anti-subordination] as a threshold step to its resolution.”).

324. Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 13 (1990).

325. Keyes, *supra* note 11, at 254.

326. MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. (A.B.A. 1983).

327. Of course, if a client is a joint partner in their case and suggests or wants to engage in such a strategy, it might ameliorate some of the problems, even as it contributes to broader racist discourse.

consider “the systemic costs of putting certain narratives forward.”³²⁸ Therefore, those wishing to practice a deportation abolition ethic should consider avoiding racist stereotypes as they zealously advocate with and for their client.

Lastly, lawyers must educate themselves and confront their own biases, which may include how they relate to communities in which they are working. A lawyer seeking to practice antiracism as part of a deportation abolition framework should reflect whether they have educated themselves on the intersection of the deportation state within the carceral state.³²⁹ This could be done through reading histories such as Alina Das’ “No Justice in the Shadows,” Kelly Lytle Hernández’s “City of Inmates” and “Migra!: History of U.S. Border Patrol,” as well as having education events, like brown bag lunches, webinars or continuing legal education programs focused on understanding immigration policing, detention, and surveillance and their connection to other carceral systems.³³⁰

Some immigration organizations are also publicly engaged in community education regarding the history of the prison industrial complex, including immigration enforcement and detention. For example, the National Immigrant Justice Center has detailed the history and impact of criminalizing entry and re-entry in the United States, illustrating how the criminalization of migration is “a significant contributor to mass incarceration” with “a pernicious impact on the racial and citizenship makeup of those in federal courts and the federal prison population.”³³¹ Freedom for Immigrants includes a history of immigration detention on its website, detailing the first citizenship laws excluding citizenship only to White people as well as the early Asian exclusion laws.³³² Detention Watch Network has created a resource describing the entanglement of ICE, CBP, and local police law enforcement practices formally through programs like 287(g), Secure Communities, and the Criminal

328. Keyes, *supra* note 11, at 255.

329. See Shah, *supra* note 11 (“Learn as much as you can about the intersections between the PIC and deportation machine. Promote political education within your organization and with the individuals you work with.”).

330. For example, the National Immigration Project of the NLG had a webinar about systemic racism in immigration courts and how to incorporate criminal defense practices. *Immigration Defense Strategies*, NAT’L IMMIGR. PROJECT, <https://secure.nationalimmigrationproject.org/np/clients/nationalimmigration/event.jsp?forwardedFromSecureDomain=1&event=1136> [<https://perma.cc/V8XG-3E77>].

331. *Migration Prosecutions and the Racist Systems of Mass Incarceration*, NAT’L IMMIGR. JUST. CTR., <http://immigrantjustice.org/research-items/report-legacy-injustice-us-criminalization-migration#SectionV> [<https://perma.cc/2NH3-XME7>].

332. *Detention Timeline*, FREEDOM FOR IMMIGRANTS, <http://www.freedomforimmigrants.org/detention-timeline> (last visited July 28, 2021) [<https://perma.cc/YYZA-4BPY>].

Alien Program, as well as informally how it shares a reliance on racial and class profiling to identify targets to arrest.³³³

Self-reflection is central to practicing antiracism. For immigration lawyers, this reflection will help them understand their role in the legal system and where they can disrupt racism. As Nicole Futrell has written in the criminal legal context, “[t]he racialized culture of the criminal court process may lead defenders to unwittingly contribute to the structural violence their client is experiencing, despite their own conscious contempt for it.”³³⁴ Some criminal and immigrant defenders may cast themselves in a hero or savior role and believe because of their role they are immune from racism. This may result in talking down to clients and being indifferent to racial harm experienced within legal settings.³³⁵ Therefore, immigration lawyers practicing a deportation abolition ethic should make sure they acknowledge and address their own role in the system historically steeped in building and reinforcing racial hierarchies.

B. *Investing in Communities and Building Community Power*

Traditional lawyering—in immigration and in other contexts—has been critiqued for reifying lawyers, disempowering clients, legitimizing violent legal systems by participation in them, and obscuring community and systemic harm by an overly narrow focus on individual remedy.³³⁶ As some scholars have written, “regnant forms of public-interest legal practice reconstitute the lawyerly idea of the client’s individuated ‘problem’ in ways that undermine collective power-building.”³³⁷ This is because individualizing legal issues as one-off client matters, divorced from a systemic, community-based problem approach makes large-scale problems invisible. This in turn may prevent or frustrate community collective action.

Those who want to practice a deportation abolition ethic must consider ways to disrupt existing power structures in legal relationships and systems to build power with immigrant clients and communities. Several lawyering models have developed to further social justice alongside impacted communities: critical, community, movement, political, progressive, poverty, rebellious, and resistance lawyering, among others.³³⁸ There is no perfect

333. *Defund Racist Law Enforcement: Police, ICE, and CPB*, DET. WATCH NETWORK (2020), http://www.detentionwatchnetwork.org/sites/default/files/Defund%20Police%2C%20ICE%2C%20%26%20CBP_DWN%20%26%20UWD_2020.pdf [https://perma.cc/P5CF-MTEN].

334. Futrell, *supra* note 23, at 184.

335. Black Att’ys of Legal Aid Caucus, *Can Public Defenders Be Racist?*, GIDEON’S SOLDIERS, <https://gideonsoldiers.com/can-public-defenders-be-racist/> [https://perma.cc/B7EF-NJVE].

336. Ashar, *supra* note , at 1467.

337. Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 870 (2021).

338. Hlass & Harris, *supra* note 22, at 685–86.

consensus regarding exactly how these models converge and diverge, although differences in priorities and strategies exist.³³⁹ Those practicing a deportation abolition ethic might consider themselves a community lawyer or a movement lawyer, or someone who practices multiple lawyering models or ascribes to none. One thread that remains constant to these lawyering models is recalibrating legal relationships to take the lead from directly impacted clients and communities, understanding individual harms to be part of larger systemic injustice, and shining light on unjust legal systems. Infinite lawyering decisions should be analyzed through this lens, including how to engage clients and community, decide on case selection, develop and execute case strategies, and work in concert with community education and advocacy efforts.

As an initial matter, a lawyer practicing a deportation ethic should ask how their case selection expands or restricts community power. Most immigration services providers limit their case dockets through a mixture of criteria which may include subject-matter, geographic, income-requirement, and numeric restrictions.³⁴⁰ Case selection restrictions and decision-making might be animated by funders, existing expertise, resources, organizational mission, or other factors.³⁴¹ Alternatively, New York University's (NYU) Immigrant Rights Clinic states "[w]e choose our docket in consultation with our community partners and engage in work that is responsive to community needs."³⁴² One way to expand community power is prioritizing the representation of individuals who are organizing on behalf of immigrant communities and against the carceral state. For example, NYU's clinic is part of the legal team representing Ravi Ragbir, Executive Director of the New Sanctuary Coalition, a network of faith and community groups that advocates for immigrants.³⁴³ In 2018, an ICE official revoked Mr. Ragbir's stay of removal and detained him amidst a protest where hundreds of activists were

339. *Id.* at 686–87.

340. For example, the free immigration legal services organizations provided by the Department of Justice list case type restrictions for various offices. See *List of Pro Bono Legal Service Providers*, U.S. DEP'T OF JUST., <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> [<https://perma.cc/4PR9-7SGV>].

341. One empirical study describes how fund constrictions dictate case selection in the context of U Visa cases. Sarah M. Lakhani, *Universalizing the U Visa: Challenges of Immigration Case Selection in Legal Nonprofits*, 107 CALIF. L. REV. 1661, 1668 (2019) (“Attorneys’ case selection was so tied to funding concerns that lawyers sometimes referred to their clients and potential clients as ‘[name of grant] cases’ instead of ‘U visa cases.’”).

342. *Immigrant Rights Clinic*, N.Y.U., <https://www.law.nyu.edu/academics/clinics/year/immigrantrights> [<https://perma.cc/6Y7B-84UF>].

343. Press Release, I Stand with Ravi, Immigrant Rights Leader Ravi Ragbir Receives Three-Year Deferred Action After Reaching Settlement on First Amendment Suit Challenging ICE Retaliation (Feb. 24, 2022), <https://istandwithravi.org/> [<https://perma.cc/BKV5-GLDZ>].

marching in support of Mr. Ragbir and immigrant rights.³⁴⁴ NYU's Immigrant Rights Clinic, alongside the New Sanctuary Coalition and other immigrant rights groups, have contextualized Mr. Ragbir's arrest as part of a larger effort of immigration policing targeting immigrant rights activists.³⁴⁵ As NYU's Immigrant Rights Clinic Director Alina Das has stated, "ICE's pattern of surveilling and targeting immigrant rights organizers demonstrates how afraid the agency is of being held accountable for its actions."³⁴⁶

Case selection that builds community power could also mean prioritizing representing clients whose claims will expand relief instead of retrenching exceptionalism of who is worthy of relief. For example, in the area of U nonimmigrant status for crime victims, this could look like prioritizing cases of individuals who have experienced crimes related to workplace organizing and retaliation. These U nonimmigrant claims might be more novel than other more established crime victim categories, thereby encouraging the expansion of those included for relief. Similarly, prioritizing claims for those who have suffered labor trafficking on disfavored³⁴⁷ or not well-established legal grounds might expand those included for relief.

It is difficult to determine exactly how to be responsive and accountable to community in case selection. This is a complex question, stemming from the difficulty of how to define community and who is defining the community. While the literature is rich regarding community lawyering and movement lawyering—which centers on facilitating community-driven change—little is written about how to define community, and I do not attempt to address that here.³⁴⁸ While some have suggested establishing specific mechanisms like an advisory client committee that makes the ultimate decision about case selection,³⁴⁹ I do not offer specific prescriptions here aside from the foundational need to build relationships with community groups and organizers regionally.

Deportation abolition lawyers should ensure lawyering strategies draw on client and community expertise and are based in collaboration with clients and

344. *Arrests and Protests Follow Detention of an Immigrant Activist*, WNYC (Jan. 11, 2018), <http://www.wnyc.org/story/arrests-and-protests-follow-detention-immigrant-activist/> [<https://perma.cc/3WPR-NU6N>].

345. Immigrant Rights Voices, *Briefing: Immigrant Rights Activists Under Attack*, <https://youtu.be/Nta4HfSFY48> [<https://perma.cc/PM8M-V73M>].

346. José Olivares & John Washington, *ICE Discussed Punishing Immigrant Advocates for Peaceful Protests*, INTERCEPT (June 17, 2021), <https://theintercept.com/2021/06/17/ice-retaliate-immigrant-advocates-surveillance/> [<https://perma.cc/V7W5-9YLE>].

347. See Annie Smith, *The Underprosecution of Labor Trafficking*, 72 S.C. L. REV. 477, 543 (2020).

348. See, e.g., Michael Diamond, *Community Lawyering: Introductory Thoughts on Theory and Practice*, 22 GEO. J. ON POVERTY L. & POL'Y 395, 395 (2015).

349. Edgar S. Cahn & Christine Gray, *Clinical Legal Education: Where Next? Clients as Co-Producers of System Change*, CLINICAL L. REV. 24, 171, 177–79 (2018).

communities.³⁵⁰ There are numerous ways to draw on client and community expertise as a foundation of lawyering practice. In working with individual clients, lawyers can ensure their approach, tone, and lawyering strategies support their client's autonomy, draw out their client's expertise, and do not undermine their client's power. This could include even the small step of explaining during a retainer conversation that a client is the key contributor to their case and acknowledging that the client's expertise will be a significant part of the joint work of the case.³⁵¹ It could also mean that clients and communities may suggest, determine, or cogenerate legal strategy.

For example, around 2011, I heard a lawyer discuss working with immigrant organizers around the genesis of the Signal litigation, brought by immigrant workers against a large corporation. This lawsuit responded to a massive scheme engineered by a Gulf Coast marine services company, an immigration lawyer, and an Indian labor recruiter who lured hundreds of guest workers from India to a Mississippi shipyard with false promises of lawful permanent residency in the United States.³⁵² The lawyer recounted how when lawyers first met with organizers, the lawyers planned to litigate lost wages and other workplace violations.³⁵³ But their clients rejected the proposed legal theories around workplace disputes and insisted that the company trafficked them. Lawyers worked together with their clients and larger community, and after a seven-year civil legal battle, the court awarded workers \$14 million in compensatory and punitive damages and ruled that Signal International and related businesses engaged in labor trafficking, forced labor, fraud, racketeering, and discrimination.³⁵⁴ In concert with the civil rights litigation, hundreds of workers were represented by lawyers before immigration agencies to secure T visas as survivors of trafficking.³⁵⁵

While collaborating with clients in lawyering strategy is important, a more global question for those lawyers regularly practicing within the immigration legal system is whether they are challenging the carceral immigration system, or mostly serving to legitimize it. The challenge of navigating the tension between both working within and challenging a legal system is not new. Resistance lawyers in the context of fugitive slave laws practiced within a system they opposed while achieving some good outcomes for clients by using court practice to seek delays, clog the system, and seek transfers from federal to state custody. These strategies allowed more

350. Hlass & Harris, *supra* note 22, at 683–84.

351. *Id.* at 739.

352. See *Signal International Lawsuits*, S. POVERTY L. CTR. (Mar. 10, 2018), <http://www.splcenter.org/seeking-justice/case-docket/signal-international-lawsuits> [<https://perma.cc/JJ52-8UWQ>].

353. Email from Jennifer Rosenbaum to Laila Hlass (Jan. 3, 2022) (on file with author).

354. *Signal International Lawsuits*, *supra* note 352.

355. Immigration and Nationality Act, 8 U.S.C. § 101(a)(15)(T)(i)(I).

possibility for their clients to escape custody, build political pressure, and raise money to buy their freedom.³⁵⁶ “Delay, confusion, and legal argument not only made rescue more likely, but also transformed the proceedings from a summary rendition into a community referendum on slavery.”³⁵⁷ Similarly, those practicing a deportation abolition ethic should seek to use legal practice to challenge the carceral immigration system’s legitimacy and be vigilant they are not serving to normalize, or even passively condone, everyday suffering and indignities stemming from the legal system.³⁵⁸ Instead, lawyers should remain aware of and continue to challenge the “ordinary injustice” within the immigration legal system.³⁵⁹

Lawyers should be attentive to whether their lawyering strategies are contributing to a narrative that only an exceptional few immigrants are deserving of relief. In some circumstances, lawyers and clients may decide to play into the system in order to win the case, even if it means retrenching narratives of deservingness in immigration law, but they should also consider whether it is necessary.

Furthermore, when prosecutors or judges strip people of their dignity in a hearing, deportation abolition lawyers can both use court process—objections, motions to recuse, and formal complaints—as well as advocate outside of the courtroom to shine a light on illegitimate practices inside the courtroom. Consciousness raising and other forms of advocacy can work in concert with direct representation, so that individual cases contribute to the larger message about the unjust and carceral nature of the immigration legal system.³⁶⁰

Those practicing a deportation abolition ethic should consider how they may creatively challenge the carceral system, including using court practice and procedures such as an active motions practice, when best serving these goals. For example, immigrant defenders generally do not push for ICE prosecutors to meet their evidentiary burden to prove removability, instead conceding removability quickly. However, attorneys could more aggressively litigate removability through requesting a contested master calendar hearing or filing motions to suppress evidence of alienage.³⁶¹ These contested hearings could shine a light on widespread racial profiling in policing and change the

356. Farbman, *supra* note 22, at 1909–11.

357. *Id.* at 1898.

358. See Futrell, *supra* note 23, at 179–80.

359. Futrell, *supra* note 23, at 177.

360. Farbman, *supra* note 22, at 1898.

361. Kavitha Surana, *How Racial Profiling Goes Unchecked in Immigration Enforcement*, PROPUBLICA (June 8, 2018), <http://www.propublica.org/article/racial-profiling-ice-immigration-enforcement-pennsylvania> (“[M]otions to suppress are still rare and filed by the most aggressive lawyers.”). This issue arises in a somewhat parallel context in the criminal legal system. Matthew Clair & Amanda Woog, *Courts and the Abolition Movement*, 110 CALIF. L. REV. 1, 13 (2022) (“Defense attorneys, given their scant resources and the power of police in criminal courtrooms, often do not pursue suppression hearings, and when they do, they rarely prevail.”).

narrative regarding immigration policing. Litigating issues more aggressively could also contribute to lengthening case times, which might create more legal or political opportunities for immigrants to stay, such as when country conditions change to make someone eligible for asylum. For some immigrants, having a longer time for their case to be adjudicated may allow for more opportunities to remain long-term in the United States because of changes in law or personal circumstances.³⁶²

Lawyers should recognize the limits of the law and consider how to use integrated advocacy strategies, such as organizing campaigns, community education, and data reporting, alongside formal litigation to forward equitable and more just outcomes.³⁶³ Lawyers who are not working hand in hand with organizers in their work setting should make sure they are connected to communities and organizing efforts, so that they do not undermine community goals. In this way, lawyers can “serve, not direct, social movements.”³⁶⁴ Those practicing a deportation abolition ethic should not only build relationships with immigrant rights organizations, but also with those working on state-level sentencing reforms to decarcerate prison populations as part of the larger carceral abolitionist efforts.³⁶⁵

In this vein, some organizations may formally serve both immigrant clients as well as community groups in order to more effectively work toward deportation abolition. For example, NYU’s Immigrant Rights Clinic engages in some direct legal representation as well as support of organizing efforts by representing organizing initiatives that work at the intersection of immigrant rights and other important social justice issues.³⁶⁶ Tulane Law School’s Immigrants’ Rights Practicum has worked with clients who were members of two local immigrant organizing initiatives: the Congress of Day Laborers and the Seafood Workers’ Alliance. While the clinic was not representing community groups, students collaborated with organizers to support individuals in cases and “understand how supporting their client’s claims helps to further a larger justice goal.”³⁶⁷

Lawyers practicing a deportation abolition ethic should not only support community organizing efforts, but also help connect clients to initiatives that build community skills and resources. Some organizations may have skills-development programs in-house, like Make the Road, which, alongside providing legal services, offers “Transformative Education to develop

362. For example, a marriage might allow for the possibility of family-based petitioning, or if a client suffers a particular crime, they may become eligible for a U Visa.

363. Archer, *supra* note 22, at 410.

364. *Vision and Approach*, *supra* note 286.

365. Zaman, *supra* note 311.

366. Immigrant Rights Clinic, *supra* note 342.

367. Hlass & Harris, *supra* note 22, at 719.

community members' abilities to lead our organization, our movement, and society."³⁶⁸ These efforts work in concert with organizing and policy advocacy to "transform the systems and power structures impacting" immigrant communities.³⁶⁹

C. Structural Changes and Non-reformist Reforms

Deportation abolitionists have critiqued some pro-immigrant lawyers for reformist approaches, which merely tinker at the fringes instead of structurally changing the immigration system. While this may mitigate some harm, it may also serve to ultimately entrench state power and legitimize the legal system.³⁷⁰ In contrast, non-reformist reforms are those incremental changes which move toward structural change. Deportation abolition scholar Angélica Cházaro has identified examples of reformist approaches, including fights for proportionality in the immigration system as well as the fight for access to counsel. She described this as "the fight to get one lawyer for one person to present positive equities (over and over again)" instead of a challenge to deportability itself.³⁷¹ Participating in these legal fights and relying on these systems of proving worthiness only retrenches the system, sending the signal that these immigration laws and the values they imbue are correct.³⁷²

For a more just immigration system, Cházaro argued immigrant advocates must dismantle deportability rather than more deeply entrench a racist system through case-by-case review.³⁷³ Lawyers practicing a deportation abolition ethic must consider whether reforms they advocate for will ultimately invest more resources into the state, thereby increasing the power and scope of state violence. This evaluation should also consider whether reforms will legitimize harmful systems,³⁷⁴ or instead serve as an interim step toward system transformation.

368. *Our Model*, MAKE THE ROAD NEW YORK, <https://maketheroadny.org/our-model/> [<https://perma.cc/R5DX-J7XX>].

369. *Id.*

370. McLeod, *supra* note 45, at 1615.

371. Cházaro, *The End of Deportation*, *supra* note 16, at 1120; *see also* McLeod, *supra* note 45, at 1643 ("Efforts to reform criminal legal processes in order to attempt to realize idealized visions of justice are doomed to simply further entrench existing injustices if they are not accompanied by more transformative demands.").

372. *See* Cházaro, *The End of Deportation*, *supra* note 16, at 1120; *see also* McLeod, *supra* note 45, at 1643 (asserting that "efforts to reform criminal legal processes in order to attempt to realize idealized visions of justice are doomed to simply further entrench existing injustices if they are not accompanied by more transformative demands").

373. Cházaro, *The End of Deportation*, *supra* note 16, at 1120 ("[T]he current paradigm of endless deportation commits us, at best, to facial improvements in a long-term project of managing the migration of the racialized poor through banishment.").

374. Some have criticized the fight for Article I independent immigration courts for this reason. *See* Keyes, *supra* note 11, at 250 & n.167.

A central question to whether a reform is non-reformist is whether it will reduce or expand the deportation state, whether it be through funding, power, or infrastructure. Clear structural changes include defunding immigration enforcement and providing reparations to immigrants harmed by the carceral state.³⁷⁵ Some modest reforms or “non-reformist reforms” may align with an abolitionist ethic by reducing the deportation state’s power and illuminating the illegitimacy and inadequacy of the current system to address social issues.³⁷⁶ Some changes might directly impact budget, while others might involve legal authority to arrest someone. Still other changes might simply challenge notions that immigration policing and prisons increase public safety and therefore reduce the power of the state more informally. Easy cases of forwarding deportation abolition are legislative changes that would strip immigration officials of power and resources to arrest, detain, or deport immigrants, such as a statutory amendment to remove USCIS’s legal authority to issue a charging document.³⁷⁷ Another easy case is repealing laws that expand deportability categories and those that criminalize entry and re-entry. Some laws, like the 2019 Clean Dream Act, might further deportation abolition goals by providing legal permanency to broad swaths of people and building power in communities. However, a key factor is ensuring these pathways are not tied to increased border militarization, interior enforcement, detention centers, or mandatory e-verify, which locks people out of the workforce; nor that they exclude based on entanglement with the criminal system.³⁷⁸

A deportation abolition lens might cut against reforms suggesting trainings of immigration enforcement, as these would increase the budget of the immigration agency and further legitimize the institution of immigration policing by suggesting the problem could be fixed by throwing out some bad apples. Ultimately, this reform distracts from a structural critique of violence inherent to immigrant policing. Along these same lines, deportation abolitionists would not advocate for hiring more immigration judges to address

375. Matt Ford, *The Case for Migrant Reparations*, NEW REPUBLIC (Aug. 1, 2018), <http://newrepublic.com/article/150348/case-migrant-reparations> [https://perma.cc/7GPP-THEH]; see Sarah Sherman-Stokes, *Reparations for Central American Refugees*, 96 DENV. L. REV. 585, 585 (2019).

376. Dan Berger, Mariame Kaba & David Stein, *What Abolitionists Do*, JACOBIN MAG. (Aug. 24, 2017), <http://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration> [https://perma.cc/6ZNY-L73R] (“Central to abolitionist work are the many fights for non-reformist reforms — those measures that reduce the power of an oppressive system while illuminating the system’s inability to solve the crises it creates.”).

377. *Abolitionist Principles & Campaign Strategies for Prosecutor Organizing*, CMTY. JUST. EXCH., http://www.communityjusticeexchange.org/abolitionist-principles_ [https://perma.cc/83SM-BX8Q].

378. *Id.*; see *Abolition Steps vs. Reformist Reforms*, at 3–4, DET. WATCH NETWORK (2022), https://www.detentionwatchnetwork.org/sites/default/files/Abolitionist%20Steps%20vs%20Reformist%20Reforms_DWN_2022.pdf [https://perma.cc/5M83-5RRD].

the backlog of cases, which would amplify and grow the enforcement machine; instead, they would demand scaling back enforcement. Deportation abolitionists do not advocate for alternatives to detention, such as monitoring ankle bracelets or case management, which may broaden the class of people who are detained and surveilled and are punitive. When looking at the problem of law enforcement access to gang databases and law enforcement, deportation abolitionists do not focus on fixing errors to improve “accuracy” of gang databases, but instead focus on ending them.³⁷⁹ Similarly, organizations should work to end immigrant detention, not focus only on making better immigrant jails—which may lead to more funding for newer facilities.³⁸⁰ These types of reforms will not shrink the immigration police state.

Community bond funds are a slightly harder case. Bail funds may work in tandem with organizing efforts to delegitimize immigrant detention by highlighting outrageous bond amounts immigrants face and the geographic remoteness of detention centers, and they also tie the fight against immigrant detention to the fight against the prison industrial complex.³⁸¹ Guerline Jozef, co-founder of the Black Immigrants Bail Fund, stated that a bond campaign “is an example of how together we can eradicate mass incarceration and tear down these systems, transforming one life at a time.”³⁸² Some community bond funds, like Etowah Freedom Fund, may identify explicitly as abolitionist in nature,³⁸³ even though, like other bond funds, the money raised might eventually be forfeited directly to ICE. Furthermore, some might argue that paying immigrant bonds undermines abolition as it serves to legitimize the bond system, putting resources toward one-off cases as opposed to structurally eliminating detention. This concern becomes particularly prominent with the proliferation of funds in the past decade, with some garnering millions of

379. See Hlass, *supra* note 310, at 700–01 (discussing the use of gang allegations and databases in immigration proceedings).

380. Harm reduction and improving people’s daily conditions are in line with abolitionist principles, but funding better jails should not be pursued without considering whether it will amplify the carceral deportation state.

381. See *Community Organizations Free Hundreds of Immigrants from ICE Detention*, DET. WATCH NETWORK, (Oct. 21, 2020), <https://www.detentionwatchnetwork.org/pressroom/releases/2020/community-organizations-free-hundreds-immigrants-ice-detention> [<https://perma.cc/SGT5-EWXJ>] (discussing how in 2020 Detention Watch Network collaborated with a number of immigration organizations as well as the National Bail Fund Network for “Fall Freedom Day,” where they began posting \$3 million in immigrant bonds and freed hundreds of immigrants from detention).

382. *Id.* (discussing how a key point of the campaign focused attention on Black immigrants, and one third of those who were freed from detention were Black immigrants from African, Caribbean, and South American countries).

383. ETOWAH FREEDOM FUND, <http://etowahfreedomfund.org/> [<https://perma.cc/2VED-IMAG>] (“We are an abolitionist group and believe no one belongs in a cage.”).

dollars.³⁸⁴ Others argue that community bail funds can forward deportation abolition goals, as they invest money in liberating community members from jails and create “space for movements and communities to build new bonds of solidarity, power, and safety, to grow their power and their political analysis.”³⁸⁵ Professor Jocelyn Simonson described community bail funds as a form of bail nullification—where communities reject the decision of an intuitional player like a judge, as well as challenge larger aggregate trends of mass incarceration.³⁸⁶ She wrote, “[o]ver time, as community bail funds post bail for multiple defendants, these individual acts can add up to a larger statement about the fairness of money bail. . . [and] a form of on-the-ground resistance to the workings of the criminal justice system.”³⁸⁷

Although working to permanently close immigration detention is an abolitionist goal, there are disagreements about the methods being used. Efforts to end ICE contracts with certain detention facilities serve a non-reformist reform as ultimately these campaigns delegitimize the detention system and shrink ICE’s footprint in certain states. However, if these efforts are promoted without successfully defunding ICE and releasing detained people, then the case becomes harder.³⁸⁸ ICE may simply engage new contracts, perhaps in areas that are more remote and lacking organizers and immigration lawyers. This is why deportation abolitionists argue for just closures, meaning that closure is tied to advocating for releases of detained people,³⁸⁹

The problem of ending an ICE contract when those detained might be transferred to another population played out in organizing fights over ending an immigration detention contract in Hudson County, New York.³⁹⁰ During debates over closures, some legal service providers wrote a letter stating that even though they support abolishing detention, they believed ending the ICE contract would do more harm than good because immigrant communities would be moved from a detention center where they had access to free lawyers to more remote locations where they would be more likely to be

384. Jia Tolentino, *Annals of Activism: Where Bail Funds Go from Here*, *NEW YORKER* (Jun. 23, 2020) <https://www.newyorker.com/news/annals-of-activism/where-bail-funds-go-from-here> [<https://perma.cc/LAD8-UHZR>].

385. Akbar, Ashar & Simonson, *supra* note 337, at 858.

386. Simonson, *supra* note 252, at 595–96.

387. *Id.* at 590.

388. Abolitionist Steps vs. Reformists Reforms, *supra* note 378, at 2 (“Whenever a detention center is shut down, it will be important to mitigate potential harm by working to ensure people are released instead of transferred.”).

389. CAL. DIGNITY NOT DET. COAL., *JUST CLOSURES GUIDE 6* (June 2021), <https://drive.google.com/drive/folders/1PWifkbAM2JJC4EIIY1tplKewvwdwG4m> [<https://perma.cc/4KFB-6A8H>].

390. Shah, *supra* note 11.

unrepresented.³⁹¹ Although Hudson County officials voted to renew the contract in November 2020, they eventually reversed course.³⁹²

Ultimately, it is important to interrogate whether a reform effort will distract from structural change. This is a particularly fraught issue within campaigns for the right to counsel. Some advocates have argued the right to counsel should be a beginning rather than an end of strategies to disrupt power structures in legal systems.³⁹³ For example, the Black Lives Matter movement explicitly calls for free counsel for all immigrants in immigration court in their platform,³⁹⁴ while other deportation abolitionists warn that universal representation, if tied to representing detained people, may legitimize the detention system.³⁹⁵ Scholar Angélica Cházaro interrogated whether the right to counsel is the wrong fight for immigrant advocates for both short- and long-term consequences.³⁹⁶ She argued that this fight may serve to purportedly improve the “integrity” of the deportation regime, rather than work to delegitimize and dismantle enforcement.³⁹⁷ Furthermore, universal representation regimes may come with restrictions on lawyering methods and means, including prohibiting legislative advocacy, support for organizing efforts, and impact litigation.³⁹⁸ Restrictions might also be drawn such that representation is not actually universal, excluding those most impacted by interlocking criminal and immigration enforcement systems. Depending on how funding is structured and if it filters through the federal government, universal representation may result in more resources being invested in the deportation regime instead of less. This examination of the right to counsel

391. Jared Chausow, Redmond Haskins & Anna Kim, *NYC Public Defenders Implore Hudson County Executive to Postpone Vote on Phase-Out of Hudson County Jail Contract with ICE*, BRONX DEFS. (Sept. 11, 2018), <http://www.bronxdefenders.org/nyc-public-defenders-implore-hudson-county-executive-to-postpone-vote-on-phase-out-of-hudson-county-jail-contract-with-ice/> [https://perma.cc/KC7K-YE74].

392. In the face of ongoing organizing and activism against detention and after the governor signed a bill to prevent the state from entering into new contracts with ICE, Hudson officials ended the contract starting November 2021. John Heinis, *With Hudson Set to Exit ICE Contract, NYIFUP Calls for Release, Not Transfer, of Detainees*, HUDSON CNTY. VIEW (Sept. 15, 2021), <https://hudsoncountyview.com/with-hudson-set-to-exit-ice-contract-nyifup-calls-for-release-not-transfer-of-detainees/> [https://perma.cc/H4FY-HKZA].

393. John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis*, 46 FORDHAM URB. L.J. 1081, 1082–87 (2019).

394. *End the War on Black Migrants*, *supra* note 173.

395. *Abolitionist Steps vs. Reformists Reforms*, *supra* note 378, at 3.

396. Angélica Cházaro, *Due Process Deportations* (on file with author).

397. *Id.*

398. For example, in the civil legal context, legal services corporation restricts numerous civil rights cases, political action, and other advocacy. *See* 45 C.F.R. Part 1617 (no class actions); 45 C.F.R. Part 1612 (no rulemaking, no representation in fee-generating case); 45 C.F.R. Part 1612 (no lobbying); 45 C.F.R. Part 1608 (no participation in political activities, election campaigns, ballot measures, initiatives or referendum, voter registration, or voter assistance.); 45 C.F.R. Part 1637 (No civil litigation for prisoners); 45 C.F.R. Part 1639 (no welfare reform).

campaigns should not be meant as a suggestion that lawyers cannot or should not engage in representing individuals in immigration court. As Professor Angela P. Davis has written, “even those committed to the ultimate goal of abolition may support projects that can help ease the suffering of those caught in the criminal justice system.”³⁹⁹

Importantly, focusing solely on due process concerns in the immigration legal system may contribute to legitimizing the system rather than exposing the structural racism and violence of the system, undermining a deportation abolitionist ethic. The philosophy of increased due process resulting in justice may partially rely on the fallacy that more rules will mean less violence, even though “police officers break rules all the time.”⁴⁰⁰ For example, calls for more oversight and accountability over ICE and CBP has not led to fewer people being arrested or detained.⁴⁰¹ Instead these calls implicitly support ICE and CBP’s legitimacy as institutions, thus undermining efforts to reduce the scale of immigrant policing through defunding and delegitimizing.⁴⁰² Lawyers practicing a deportation abolition ethic should certainly use procedural tactics to support their clients’ goals, but these tactics should be performed in concert with narratives in and out of the courtroom that shine light on the racism built into the immigration legal system. It is important not to see an efficient, more procedurally robust immigration court as the goal, instead of eliminating detention and deportations.

Lastly, an analysis of whether a reform is non-reformist asks whether this reform cuts across social movements as part of broader carceral abolitionist efforts. Deportation abolitionists understand the interconnected systems of policing, surveillance, detention, and incarceration, and that to truly transform social institutions these problems should be attacked in concert with the larger carceral abolitionist movement. Therefore, reforms that cut across movements and ally with larger coalitions should be prioritized. Campaigns to decriminalize marijuana could provide an example of an intersectional issue that forwards racial justice and decarceration, promotes public health, and chips away at the deportation state.⁴⁰³ Ultimately, as lawyers offer suggestions regarding proposed legislation, budgets, rule-making, agency policy, or more

399. Harris, *supra* note 63, at 39.

400. Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police: Because Reform Won't Happen*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [https://perma.cc/4XZV-N53N].

401. Although arrests and detention numbers have been impacted by the COVID-19 pandemic, 2019 detention statistics show the upward trajectory of immigration arrests and detention. Mike Guo, *Immigration Enforcement Actions: 2019*, DEP’T HOMELAND SEC., OFF. IMMIGR. STATS. (Sept. 2020), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/enforcement_actions_2019.pdf. [https://perma.cc/SU8H-GYVJ].

402. Cheer, *supra* note 16, at 72.

403. *Id.*

expansive legal programs, they should analyze whether the proposed action will undermine deportation abolition goals, to what extent they can work in concert, and what immigrant organizers and communities are prioritizing.

CONCLUSION

Carceral abolition stems from a deep critique of the prison industrial complex—broadcasting an objection to the combined power of state and private markets working together to profit from subjugating Black and Brown people.⁴⁰⁴ Small but increasing numbers of immigration lawyers who practice and advocate within the immigration legal system are engaging with deportation abolition, seeking to end immigration policing, prisons, and deportation.⁴⁰⁵ This Article identifies tensions that exist for lawyers who are practicing within a system they seek to upend, and how these tensions can be addressed. Relying upon the strategies of current deportation abolition initiatives, this Article illuminates how lawyers can practice a deportation abolition ethic by following an antiracist orientation, building community power, and insisting on structural change and non-reformist reforms. By employing this ethic, immigration lawyers can and should work simultaneously to mitigate daily harms in the immigration legal system while also holding broader visions to dismantle immigration enforcement and detention. This Article calls on immigration lawyers, organizations, and associations to play their part in dismantling the racist immigration detention and deportation system and demanding investment in immigrant communities. Ultimately, lawyers can help shift toward the horizon of abolition and a society grounded in liberation and justice.

404. Akbar, *supra* note 25, at 1815.

405. Cimini & Smith, *supra* note 192, at 443.