

Immigration Disobedience

Jennifer J. Lee*

The immigration system operates through the looming threat of the arrest, detention, and removal of immigrants from the United States. Indiscriminate immigrant arrests result in family separation. Immigrants languish in carceral facilities for months or even years. For most undocumented immigrants, there is no available pathway to citizenship. To protest this injustice, undocumented immigrants, lawful immigrants, and native-born citizens defy the law by engaging in direct action, deportation resistance, or hunger strikes.

This Article examines how this phenomenon, which I call “immigration disobedience,” has fundamentally altered the legal landscape for immigration reform. It begins with a description of immigration disobedience by drawing on hundreds of accounts over the past decade and provides context for the phenomenon within the history of disobedience to the immigration system. Next, it considers the ways in which immigration disobedience consists of a new approach to resistance within the movement for immigrant rights. Immigrants develop their capacities as noncitizen political agents and take on leadership for the movement. Activists create new spaces of contestation to be publicly viewed and heard. As a result, immigration disobedience has produced a more transformative agenda that aims to redefine citizenship, end detention, and abolish ICE.

DOI: <https://doi.org/10.15779/Z386T0GX32>

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* Associate Professor of Law, Sheller Center for Social Justice, Temple University Beasley School of Law. The author would like to especially thank Kathryn Abrams, Sameer Ashar, Jane Baron, Jaya Ramji-Nogales, Rachel Rebouché, Peter Spiro, and the participants of the Temple Law Writers’ Workshop and Rutgers Law Faculty Colloquium. Thanks also to Julie Randolph, our law librarian, and Mona Alsaidi, Thomas Chapman, Amy Chin-Arroyo, BK Katzmann, Tram Ha, and Natalia Ruggiero for their tireless research assistance.

Ultimately, this Article explores how everyday people in social movements, who have a personal and sophisticated understanding of the law's dysfunction, can offer more creative and radical policy possibilities for legal reform. A decade of immigration disobedience has shifted the political demands from a focus on the legalization of immigrants to an overhaul of the existing immigration system. Rather than seek procedural improvements or benefits for "deserving" immigrants, today's agenda recognizes the need to reconfigure institutions that perpetuate racial and economic inequality. More specifically, immigration disobedience teaches us, as lawyers and legal scholars, about the need to look to activism outside the law to work, think, and act in service of social change.

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INTRODUCTION

This Article broadly examines a phenomenon I term “immigration disobedience.” Immigration disobedience involves defiant acts such as blockading streets to abolish ICE,¹ hunger striking for release from civil immigration detention, or defying deportation orders by seeking church sanctuary. These acts expose an unjust system that operates through the looming threat of the arrest, detention, and removal of immigrants from the United States.

1. U.S. Immigration and Customs Enforcement (ICE). As part of the U.S. Department of Homeland Security, ICE apprehends, detains, and departs immigrants from the United States.

As a result, immigration disobedience has fundamentally changed the policy possibilities for immigration reform.

Systematically reviewing hundreds of events from 2010 through 2020 reveals a distinct phenomenon within the movement for immigrant rights.² Acts of immigration disobedience fall broadly into three categories: direct action, deportation resistance, and hunger strikes. A diverse set of activists engage in such acts, including undocumented immigrants, immigrants with lawful status, and native-born citizens across different regions of the United States. Under the Obama administration, immigrants used direct actions, often by physically interfering with ICE's enforcement machinery. In response to the Trump administration's aggressive immigration enforcement program, an increasing number of native-born citizens stepped in to engage in direct actions, while a record number of immigrants defied deportation in churches. Under both administrations, immigrants in detention engaged in hunger strikes, with a marked increase of such strikes in 2015, and again from 2019 to 2020. Although disobedience tactics and actors can shift in response to changing political contexts, activists have consistently shared this impulse to act outside the law.

Immigration disobedience consists of a new approach to resistance. The government normally maintains its power over immigrants through tacit obedience to the current immigration system.³ Through direct action, deportation resistance, and hunger strikes, immigrants demonstrate their collective power to publicly challenge the government. Such acts provide immigrants with the opportunity to operate as noncitizen political agents who lead the movement for immigrant rights. Immigration disobedience prioritizes immigrant voices, control, and leadership based on the principle that immigrants have a more intimate and sophisticated understanding of the immigration system's injustice.

Further, activists use immigration disobedience to create new spaces of contestation. Such spaces are a way to counteract immigrants' exclusion from existing political processes that regularly determine immigration policy. Instead, activists claim alternative spaces that bypass traditional institutional channels—whether it be on the streets, inside of sanctuary churches, or in detention centers—to publicize the human costs of the immigration system.

Consequently, immigration disobedience proposes a new and more radical agenda for reform that seeks to overhaul the existing immigration system. With the opportunity for leadership and the space to voice their own demands, immigrants can have more personal, creative, and radical ideas about the law's dysfunction. In response to the human suffering within their communities, they aim to move the agenda beyond the constraints of existing rights or citizenship. While the agenda may sometimes include more immediate and personal demands, it simultaneously calls into question the legitimacy of state violence

2. See Appendix for a series of figures detailing the overall trends of immigration disobedience.

3. See GENE SHARP, *THE POLITICS OF NONVIOLENT ACTION* 16 (Marina Finkelstein ed., 1973).

by ICE. The long-term and broader agenda involves critiquing the racial and economic inequality of the immigration system. Activists recognize the harms caused by solely focusing on obtaining citizenship for “desirable” immigrants and pursuing procedural “improvements” that keep intact a system of surveillance and incarceration. Instead, immigration disobedience’s agenda conceives of an altogether different kind of immigration system that redefines citizenship, ends the use of carceral facilities, and abolishes surveillance of immigrant communities.⁴

This Article contributes to the growing movement law literature about how everyday people in social movements impact the possibilities for transforming unjust legal systems.⁵ Critical race theory scholars have long identified how “[t]he method of looking to the bottom can lead to concepts of law radically different from those generated at the top.”⁶ More recently, Amna Akbar, Allegra McLeod, and Jocelyn Simonson have examined how grassroots organizing and protest politics have helped to reshape and reimagine the criminal legal system.⁷ In particular, they contrast the powerful critique emerging from various social movements with the narrow ways in which the mainstay of legal scholarship often envisions reform.⁸ Instead, everyday people are shifting the existing discourse about legal reform.⁹

Focusing on immigration disobedience, this Article adds to the scholarly conversation about considering immigration reform in more creative and revolutionary ways. Within the immigrant rights realm, some scholars have examined how social movements have helped to reshape the conversation about the immigration system by pushing beyond the limitations of citizenship¹⁰ or

4. See, e.g., Silky Shah, *The Immigrant Justice Movement Should Embrace Abolition*, FORGE (Mar. 4, 2021), <https://forgeorganizing.org/article/immigrant-justice-movement-should-embrace-abolition> [https://perma.cc/PDX2-Q6SN].

5. See Amna A. Akbar, Sameer Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 826, 843 (2021) (recognizing how “movement law” approaches scholarship “about law, justice, and social change as work done in solidarity with social movements” given its “commitment to grassroots contestation”).

6. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 326 (1987). See also RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY 51–52 (2017) (describing how the prevailing conception of justice deprives a marginalized person from expressing a grievance in terms the system will understand).

7. See, e.g., Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 NYU L. REV. 405, 476 (2018) [hereinafter Akbar, *Toward a Radical Imagination*]; Allegra M. McLeod, *Law, Critique, and the Undercommons*, in A TIME FOR CRITIQUE 252, 252 (Didier Fassin & Bernard E. Harcourt eds., 2019) [hereinafter McLeod, *Critique*]; Jocelyn Simonson, *The Place of “The People” in Criminal Procedure*, 119 COLUM. L. REV. 249, 249 (2019).

8. Akbar, *Toward a Radical Imagination*, *supra* note 7, at 414; McLeod, *Critique*, *supra* note 7, at 253; Simonson, *supra* note 7, at 270.

9. Akbar, *Toward a Radical Imagination*, *supra* note 7, at 432; Simonson, *supra* note 7, at 267–69.

10. See, e.g., Kathryn Abrams, *Contentious Citizenship: Undocumented Activism in the Not1More Deportation Campaign*, 26 BERKELEY LA RAZA L.J. 46 (2016) [hereinafter Abrams, *Not1More*]; Allegra M. McLeod, *Immigration, Criminalization, and Disobedience*, 70 U. MIAMI L.

seeking the abolition of surveillance or deportation.¹¹ Much of the immigration literature about legal reform, however, has focused on local sanctuary policies that involve the lawful disruption of the federal immigration system.¹²

Yet immigration disobedience is worth examining as a distinct phenomenon over the past decade. As with some past and contemporary examples of civil disobedience, immigration disobedience is a public, non-violent project¹³ of collective self-determination that operates outside of the established system to challenge existing democratic institutions.¹⁴ Today's phenomenon, however, departs from the past history of resistance to the immigration system. The overall phenomenon is more frequent and varied in terms of its tactics and participants. Further, immigrants themselves tend to be the protagonists of such events, even when they collaborate with native-born citizens. Rather than advocate within the existing immigration system for certain immigrant subgroups, the end goal of immigration disobedience today is to challenge the fundamental operation of ICE's enforcement machinery.

This countervailing trend for transformative solutions has ultimately contributed to a foundational shift in immigration advocacy. It has helped to create a new range of policy possibilities that have moved the baseline of political demands immigrant rights movements are making under the Biden administration. Instead of requesting the legalization of certain immigrant subgroups, a decade of activism has altered the legal reform landscape to broaden legalization for all undocumented immigrants, end immigration detention, and abolish ICE. It recognizes the proclivity of the federal government to keep ICE's enforcement machinery intact, regardless of who is in the White House. Immigration disobedience shares commonalities with other contemporary social

REV. 556 (2016) [hereinafter McLeod, *Immigration*]; Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 4 (2017).

11. See, e.g., Peter L. Markowitz, *Abolish ICE . . . and Then What?*, 129 YALE L.J.F. 130, 130 (2019) (proposing a humane immigration-enforcement system following the abolition of ICE); Angélica Cházaro, *The End of Deportation*, 68 UCLA L. REV. 1040 (2021) (challenging the presumption that deportation is an inevitable part of immigration law); Karen J. Pita Llor, *A Study on Immigrant Activism, Secure Communities, and Rawlsian Civil Disobedience*, 100 MARQ. L. REV. 565 (2016) (describing immigrant acts of resistance and civil disobedience against the Obama administration's Secure Communities (SCOMM) immigration enforcement program).

12. This phenomenon has been extensively discussed by scholars. See, e.g., Rose Cuison Villazor & Pratheepan Gulasekaram, *Sanctuary Networks*, 103 MINN. L. REV. 1209, 1211 (2019); Christopher N. Lasch, R. Linus Chan, Ingrid V. Eagly, Dina Francesca Haynes, Annie Lai, Elizabeth M. McCormick & Juliet P. Stumpf, *Understanding "Sanctuary Cities,"* 59 B.C. L. REV. 1703, 1704 (2018); Jason A. Cade, *Sanctuaries as Equitable Delegation in an Era of Mass Immigration Enforcement*, 113 NW. U. L. REV. 433, 437 (2018); Ming H. Chen, *Trust in Immigration Enforcement: State Noncooperation and Sanctuary Cities After Secure Communities*, 91 CHI.-KENT L. REV. 13, 43 (2016); Stella Burch Elias, *The New Immigration Federalism*, 74 OHIO ST. L.J. 703, 703 (2013).

13. Immigration disobedience is also generally in defiance of law, although some activists may technically straddle the line between the lawful and unlawful while placing themselves at risk of sanctions.

14. Robin Celikates, *Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm*, 23 CONSTELLATIONS 37, 40 (2016).

movements, such as Black Lives Matter (BLM), that have similarly set a radical agenda by looking to impacted communities for solutions.¹⁵ Like these movements, immigration disobedience has more firmly connected the exclusion, control, and exploitation of the immigration system to the larger forces of racial and economic inequality.

The more radical policy possibilities posed by immigration disobedience, however, raise questions about political feasibility. A familiar tension exists between the more immediate and necessary co-optive process of concessions and holding out for more transformative reform. Yet this broader agenda is significant precisely because it serves as a reminder of the long-haul nature of systemic change. This more radical and creative vision, particularly given its critique of existing institutions, can begin to float into the consciousness of those who are sympathetic yet part of mainstream politics.¹⁶ It also serves as an important counterpoint to the more readily realized reforms that leave intact a system that continues to cause human suffering. In this way, immigration disobedience's agenda can serve as a long-term beacon in the struggle for immigrant rights.

Finally, the phenomenon of immigration disobedience points to different ways we, as lawyers and legal scholars, can work to combat the injustice of the immigration system. It teaches us how lawyers can practice law in a way that values the principles of immigration disobedience by promoting lawyering approaches that value the political agency, control, and leadership of immigrants. Further, it forces us to consider the ways in which certain seemingly sound policy choices—particularly those focused on incremental reforms or niche-openings—throw segments of the community under the bus. Finally, it compels legal scholars to think outside of “logical” legal frameworks by offering a more radical and transformative vision of reform.¹⁷ Immigration disobedience ultimately instructs us about the need for humility among lawyers and legal scholars working in service of the movement for immigrant rights.

This Article proceeds as follows. Part I describes the phenomenon of immigration disobedience. It explains the causes and trends while introducing the three categories of immigration disobedience. It also demonstrates how the current phenomenon, compared to past examples of immigration resistance, constitutes something distinct. Part II demonstrates how immigration disobedience amounts to a new approach to resistance by prioritizing the political agency and leadership of immigrants, claiming new resistance sites, and setting broad and radical demands. It explores how immigrants operating as noncitizen

15. See KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION 176 (2016).

16. Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2758 (2014).

17. Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1842 (2020) [hereinafter Akbar, *An Abolitionist Horizon*].

political agents outside the confines of traditional political processes enable setting a more transformative agenda for reform. Next, Part III demonstrates how this activism has resulted in a foundational shift in the policy possibilities for immigration reform. It examines how a response to systemic racial and economic inequality necessitates reconfiguring the existing institutions while grappling with the political infeasibility of transformative change. Finally, Part IV offers some brief thoughts about what we might learn, as lawyers and legal scholars, from these grassroots social movements that are operating outside of the law. An appendix details some of the overall findings related to immigration disobedience.

I.

PHENOMENON OF IMMIGRATION DISOBEDIENCE

This Section details the phenomenon of immigration disobedience. It provides background for why immigration disobedience is happening and describes its different forms and overall trends. It then contextualizes immigration disobedience both as a form of civil disobedience and as a distinct phenomenon within the movement for immigrant rights.

A. *Why Immigration Disobedience*

Activists engage in immigration disobedience in response to an unjust immigration system. Immigrants' lived experiences are often incongruent with the ways in which the immigration system treats them because of their "illegality." The existing program of arrest, detention, and deportation of immigrants also results in substantial harm to immigrant families. Yet the political pathways so far have utterly failed to address the plight of immigrants.

By way of background, many undocumented immigrants have longstanding ties to the United States. Douglas Massey and Karen Pren explained that the increased militarization of the border after 1986 reduced the numbers of undocumented immigrants who migrated back to their home country.¹⁸ Due to the increased costs of going back and forth, the undocumented population hunkered down in the United States, swelling during the 1990s and 2000s.¹⁹ A study covering 2012–2016 showed that 62 percent of undocumented immigrants had lived in the United States for ten years, while 21 percent had lived in the United States for more than twenty years.²⁰ Most recent estimates

18. Douglas S. Massey & Karen A. Pren, *Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America*, 38 POPULATION & DEV. REV. 1, 22–23 (2012).

19. *Id.* at 17–18.

20. Julia Gelatt & Jie Zong, *Settling In: A Profile of the Unauthorized Immigrant Population in the United States*, MIGRATION POL'Y INST. 3 (Nov. 2018), https://www.migrationpolicy.org/sites/default/files/publications/UnauthorizedData-FactSheet_FinalWeb.pdf [<https://perma.cc/9MGD-6X3W>].

place 14.4 million people (including 3.7 million U.S. citizen children) residing in mixed-status families.²¹

Undocumented immigrants experience legally sanctioned discrimination. The immigration system creates a subclass of undocumented workers with circumscribed rights.²² Such workers are more likely to be relegated to labor markets with low pay and dangerous jobs as well as suffer from on-the-job exploitation and abuse.²³ Federal law also explicitly excludes undocumented immigrants from many public benefits and programs, such as the most recent exclusion from CARES Act funding for the pandemic.²⁴ Local anti-immigrant legislation has exacerbated discrimination against immigrants, from criminalizing undocumented immigrants to authorizing local officials to cooperate with ICE.²⁵ While many of these local policies have been found unconstitutional, they create an anti-immigrant climate within these jurisdictions.²⁶

Meanwhile, the federal government has engaged in a robust program of arrest, detention, and deportation of immigrants over the past decade. Deportation tactics have ebbed and flowed over time but consistently involve the indiscriminate removal of immigrants regardless of how long they have resided in the United States.²⁷ Despite the rhetoric about deporting “gang bangers” or “criminal aliens,” deportations over the past decade have involved many immigrants without criminal records.²⁸ This same history shows that tens of thousands of immigrants who have been deported are parents to minor children who are U.S. citizens.²⁹ The deportation of immigrants often means that families have lost a parent, spouse, or caretaker.³⁰ While the Biden administration is

21. Julia Gelatt, *Mixed-Status Families Ineligible for CARES Act Federal Pandemic Stimulus Checks*, MIGRATION POL’Y INST. (May 2020), <https://www.migrationpolicy.org/content/mixed-status-families-ineligible-pandemic-stimulus-checks> [https://perma.cc/W85X-EYQ8].

22. See 8 U.S.C. § 1324a (prohibiting employers from hiring undocumented workers).

23. Jennifer J. Lee, *Legalizing Undocumented Work*, 42 CARDOZO L. REV. 1893, 1902, 1943–44 (2021).

24. 8 U.S.C. § 1611 (public benefits); 26 U.S.C. § 32(c)(1)(D) (earned income tax credit); Gelatt, *supra* note 21.

25. See, e.g., ALA. CODE § 31-13-10 (2018); Ariz. Legis. Serv. Ch. 113 (S.B. 1070) (West).

26. See *Arizona v. U.S.*, 567 U.S. 387, 416 (2012); *U.S. v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012).

27. See Andrew Tae-Hyun Kim, *Deportation Deadline*, 95 WASH. U. L. REV. 531, 543 (2017).

28. Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, N.Y. TIMES (Apr. 6, 2014), <https://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html> [https://perma.cc/6KUF-BBLX]. See Deborah Sontag & Dale Russakoff, *In Pennsylvania, It’s Open Season on Undocumented Immigrants*, PROPUBLICA (Apr. 12, 2018), <https://www.propublica.org/article/pennsylvania-ice-undocumented-immigrants-immigration-enforcement> [https://perma.cc/CEG8-X7HK].

29. Madeline Buiano, *ICE Data: Tens of Thousands of Deported Parents Have U.S. Citizen Kids*, CTR. PUB. INTEGRITY (Oct. 12, 2018), <https://publicintegrity.org/inequality-poverty-opportunity/immigration/ice-data-tens-of-thousands-of-deported-parents-have-u-s-citizen-kids/> [https://perma.cc/4GPE-HCHR].

30. Joanna Dreby, *The Burden of Deportation on Children in Mexican Immigrant Families*, 74 J. MARRIAGE & FAM. 829, 836–39 (2012).

attempting to reform this indiscriminate approach to enforcement, ICE continues to cast a wide net, creating fear within immigrant communities due to ICE's own institutional autonomy and discretion.³¹

Immigrant detention has also been steadily increasing over the past decade.³² Congress has mandated a daily immigration detention quota in yearly appropriations bills.³³ Various laws require mandatory detention.³⁴ Even when detention is non-mandatory, ICE has long exercised its discretion to jail immigrants after an arrest.³⁵ Detention takes a grave psychological toll on immigrants, who face social isolation and debilitating uncertainty.³⁶ A 2017 Office of Inspector General report identified a range of serious human rights violations in detention, such as delayed and inadequate medical care, unauthorized strip searches, unsafe food handling, and limited hygienic supplies.³⁷

Further, immigrants are increasingly disillusioned, despairing, and angry with the American political system that has failed to address their situation. There are very few ways for immigrants to obtain legal status in the United States.³⁸ The last major reform for creating pathways to citizenship occurred in 1986. In 2006 and 2013, attempts to pass comprehensive immigration reform failed.³⁹ While the Deferred Action for Childhood Arrivals (DACA) program created in 2012 provided relief for over 600,000 immigrant youth,⁴⁰ it ultimately

31. John Washington, *ICE Subverting Biden's Priorities for Detention and Deportation*, INTERCEPT (May 7, 2021), <https://theintercept.com/2021/05/07/ice-biden-priorities-deportation/> [<https://perma.cc/QCL3-9M8V>].

32. EUNICE HYUNHYE CHO, TARA TIDWELL CULLEN & CLARA LONG, JUSTICE-FREE ZONES: U.S. IMMIGRATION DETENTION UNDER THE TRUMP ADMINISTRATION 14 (2020), https://www.aclu.org/sites/default/files/field_document/justice-free_zones_immigrant_detention_report_aclu_hrw_nijc_0.pdf [<https://perma.cc/5N2B-GYVC>].

33. Denise Gilman & Luis A. Romero, *Immigration Detention, Inc.*, 6(2) J. ON MIGRATION & HUM. SEC. 145, 148 (2018).

34. See, e.g., 8 U.S.C. § 1226(c); 8 U.S.C. § 1225(b)(2)(A); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 U.S.C. § 1231(a)(2). See also Anil Kalhan, *Rethinking Immigration Detention*, 110 COLUM. L. REV. SIDEBAR 42, 46 (2010) (noting that two thirds of detainees are under some kind of mandatory custody).

35. 8 U.S.C. § 1226(a). See Denise Gilman, *To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial Immigration Detention*, 92 IND. L.J. 157, 167 (2016).

36. Farrin R. Anello, *Due Process and Temporal Limits on Mandatory Immigration Detention*, 65 HASTINGS L.J. 363, 368 (2014).

37. OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., OIG-18-32, CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT DETENTION FACILITIES, 3–8 (Dec. 11, 2017).

38. *Why Don't Immigrants Apply for Citizenship?*, AM. IMMIGR. COUNCIL (Oct. 7, 2021), <https://www.americanimmigrationcouncil.org/research/why-don%E2%80%99t-they-just-get-line#:~:text=Immigration%20to%20the%20United%20States,numerical%20limitations%20and%20eligibility%20requirements> [<https://perma.cc/PET2-NFRT>].

39. Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. § 601 (as passed by Senate, May 25, 2006); Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong., § 2102 (as passed by Senate, June 27, 2013).

40. Jeanne Batalova, Julia Gelatt & Ariel G. Ruiz Soto, *Deferred Action for Childhood Arrivals (DACA) Data Tools*, MIGRATION POL'Y INST. (2002), <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles> [<https://perma.cc/VE8F-F3WL>].

failed to provide a pathway to citizenship.⁴¹ In 2014, the Deferred Action for Parents of Americans (DAPA) program,⁴² which was to provide relief to an estimated 3.6 million parents,⁴³ was enjoined by the courts.⁴⁴ While there may be prospects for some more targeted relief for discrete subgroups of immigrants on the horizon—such as DACA recipients or farm workers—any broader relief will likely confront political opposition.⁴⁵

The result, therefore, is a deep concern about the substantial injustice flowing from the immigration system. Activists thus look to immigration disobedience to address the substantial injustices against immigrants.

B. *Kinds of Immigration Disobedience*

This Article reviews over 250 events of immigration disobedience from 2010 through 2020 (see Appendix for further details). There are three common categories of acts: direct action, deportation resistance, and hunger strikes. Direct action involves activists trespassing, creating blockades or sit-ins, or engaging in unlawful entry. Deportation resistance involves immigrants openly defying orders of removal by seeking sanctuary in religious institutions. Hunger strikes involve immigrants refusing food in civil detention facilities.

From 2010 to 2020, immigration disobedience occurred in all regions across the country.⁴⁶ While the largest number of events occurred in 2017 and 2018, there have been at least a dozen incidents each year since 2013.⁴⁷ In 2020, the overall number of events began to decline, likely because of the onset of the COVID-19 pandemic.

Changing political context explains some of the more notable variations in immigration disobedience over time. Undocumented youth⁴⁸ participated in much of the immigration disobedience in roughly the first half of the decade.

41. See Janet Napolitano, Sec’y, U.S. Dep’t of Homeland Sec., Memorandum on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012).

42. Jeh Charles Johnson, Sec’y, U.S. Dep’t of Homeland Sec., Memorandum on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (Nov. 20, 2014).

43. RANDY CAPPS, HEATHER KOBALL, JAMES D. BACHMEIER, ARIEL G. RUIZ SOTO, JIE ZONG & JULIA GELATT, DEFERRED ACTION FOR UNAUTHORIZED IMMIGRANT PARENTS: ANALYSIS OF DAPA’S POTENTIAL EFFECTS ON FAMILIES AND CHILDREN 21 (2016).

44. Texas v. U.S., 809 F.3d 134, 188 (5th Cir. 2015), *aff’d*, 136 S. Ct. 2271, 2272 (2016).

45. See Michael D. Shear, *Biden Signals He’s Flexible on Immigration Overhaul*, N.Y. TIMES (Feb. 17, 2021), <https://www.nytimes.com/2021/02/17/us/politics/biden-immigration.html> [<https://perma.cc/U7P9-YD99>].

46. Appendix, Figure 2.

47. Appendix, Figure 1.

48. This Article does not use an age cut-off to define “youth.” Many came to the United States as children and must grapple “in an ongoing, continuous way with the reality of life in an undocumented family.” Genevieve Negrón-Gonzales, *Unlawful Entry: Civil Disobedience and the Undocumented Youth Movement*, in CONTEMPORARY YOUTH ACTIVISM: ADVANCING SOCIAL JUSTICE IN THE UNITED STATES 271, 274 (Jerusha Connor & Sonia M. Rosen eds., 2016).

The earliest phase involved direct actions primarily focused on demanding the legalization of undocumented youth. After the creation of the DACA program in 2012, undocumented youth, along with other activists, increasingly engaged in direct actions that sought to end deportations more broadly for all immigrants from 2013 to 2015.⁴⁹ One of the most innovative direct action strategies was to “intervene physically in the machinery of immigration enforcement.”⁵⁰ The use of bodies was not only intended to educate the public about the various sites of the deportation process⁵¹ but also a response to the failure of traditional political strategies with the Obama administration.⁵² The number of hunger strikes also saw an uptick towards the end of this period. All these tactics, however, still depended on an administration that was receptive and willing to entertain political demands from the immigrant rights movement.⁵³

In 2017, the Trump administration sharply shifted course by rolling out its anti-immigrant policies. In response, there was an increase in deportation resistance and direct actions seeking to end detention and abolish ICE. The elimination of Obama-era priorities, for example, cast a wider net in terms of the kinds of immigrants susceptible to deportation.⁵⁴ This susceptibility dovetailed with a marked increase of immigrants engaging in deportation resistance in 2017 and 2018.⁵⁵ Similarly, the increase in direct actions in 2018 and 2019 seeking to abolish ICE and end detention can be associated with the liberal resistance to the Trump administration.⁵⁶ In particular, the exposure of the administration’s family separation policy in 2018 brought out many individuals to protest the immigration system.⁵⁷ Activists engaged in direct actions during this time are associated with a broader range of advocacy groups beyond the mainstay of religious and immigrant rights organizations. An abolish ICE protest in Philadelphia in 2018, for example, involved numerous socialist political parties and grassroots community groups fighting for racial and economic equality.⁵⁸

49. *Id.*

50. Abrams, *NotIMore*, *supra* note 10, at 60.

51. *See id.*

52. Marcela Valdes, *Is It Possible to Resist Deportation in Trump’s America?*, N.Y. TIMES MAG. (May 23, 2017), <https://www.nytimes.com/2017/05/23/magazine/is-it-possible-to-resist-deportation-in-trumps-america.html> [<https://perma.cc/QDR5-AWJT>].

53. Chris Zepeda-Millán & Sophia J. Wallace, *Mobilizing for Immigrant and Latino Rights Under Trump*, in THE RESISTANCE: THE DAWN OF THE ANTI-TRUMP OPPOSITION MOVEMENT 90, 95 (David S. Meyer & Sidney Tarrow eds., 2018).

54. Matthew T. Albence, Exec. Assoc. Dir., U.S. Immigr. & Customs Enf’t, Memorandum on Implementing the President’s Border Security and Interior Immigration Enforcement Policies (Feb. 21, 2017).

55. Appendix, Figure 3.

56. *Id.*

57. *See* Maggie Jo Buchanan, Claudia Flores & Philip E. Wolgin, *The Trump Administration’s Family Separation Policy Is Over: What Comes Next?*, CTR. FOR AM. PROGRESS (Apr. 12, 2021), <https://www.americanprogress.org/issues/immigration/reports/2021/04/12/497999/trump-administrations-family-separation-policy/> [<https://perma.cc/VA8A-ZJ6M>].

58. The blockade of the ICE office entrance was organized by Philly Socialists, Socialist Alternative, Party for Socialism and Liberation, and the Democratic Socialists of America. Co-

While religious activists have consistently participated in immigration disobedience over the decade, they are also more prominently featured in much of the direct action occurring in 2018 and 2019. In 2019, there were also a larger number of hunger strikes.⁵⁹ These numbers continued to increase in 2020 over concerns about COVID-19.

Further, the Trump administration's targeting of immigrants resulted in chilling much of their engagement in direct action.⁶⁰ Other activists, such as native-born citizens, began to fill the gap. Some of these activists explicitly acknowledged that they had a lot less to lose "put[ting] their bodies on the line" than undocumented immigrants.⁶¹ As Adela Munoz, a DACA recipient, stated after the rescission of DACA, "They can actually get arrested, some people can't."⁶² Such activists also adopted the innovations developed by undocumented youth under the Not1More campaign. In 2017, when activists blocked a bus headed for NWDC, activist Ethan Harrison echoed the need "to make actual moves with our bodies, with our time, to prevent people from being detained, to prevent people from being deported."⁶³ The power differential of native-born citizens better being able to weather the consequences of immigration disobedience will be further explored below.

Activist diversity plays an important role in immigration disobedience. It helps not only to sustain immigration disobedience but also to signal to the public that there is a broader coalition in support of immigrant rights. Deportation resisters and hunger strikers require the support of a diverse array of community members to make their disobedience effective. With direct actions, the identity of who is participating may be unclear to an outside observer. At times it can be significant for activists to self-identify, particularly as undocumented immigrants. Other times, activists are more generally identified as members of their broader community (e.g., Chicagoans, Wisconsinites).

sponsors included Reclaim Philadelphia, Liberation Project, Montgomery County Socialists, Green Party, International Marxist Tendency, and POWER. Jeff Gammage & Claudia Irizarry-Aponte, *Police Clash with Protesters Outside Philly ICE Office, Arresting 29*, PHILA. INQUIRER (July 3, 2018), <https://www.inquirer.com/philly/news/abolish-ice-protest-philadelphia-immigration-berks-20180703.html> [https://perma.cc/J4RL-9NFU].

59. Appendix, Figure 3.

60. Zepeda-Millán & Wallace, *supra* note 53, at 94–95. See also Maria De Jesus Mora, Rodolfo Rodriguez, Alejandro Zermeno & Paul Almeida, *Immigrant Rights and Social Movements*, SOCIO. COMPASS, May 2018, at 1, 4 (2018) (noting how repressive threats, such as the use of police raids, incarceration, and deportation, instill fear and are more likely to cause demobilization).

61. Andrea González-Ramírez, *The Millennial Jews Taking on ICE*, GEN (Jan. 29, 2020), <https://gen.medium.com/the-millennial-jews-taking-on-ice-831accbbe2f> [https://perma.cc/9HQY-WBGU].

62. Cheyenne Haslett, *Dreamers Protest on Capitol Hill on DACA Deadline Day*, ABC NEWS (Mar. 5, 2018), <https://abcnews.go.com/Politics/Dreamers-protest-capitol-hill-daca-deadline-day/story?id=53539262> [https://perma.cc/9T86-YWNQ].

63. Conrad Wilson, *Police Arrest 6 After Protesters Block ICE Bus in Portland*, OPB (Oct. 11, 2017), <https://www.opb.org/news/article/oregon-portland-protesters-block-ice-bus-immigration/> [https://perma.cc/25J2-8DTQ].

What ties these acts together is the way in which activists—whether they are undocumented immigrants, documented immigrants, or native-born citizens—share the imperative to act outside of the law to protest the immigration system. Activists display multiple emotions, such as outrage, conviction, tenderness, and despair. Undocumented youth activists have exhibited “frank outrage, a form of anger with sharp overtones of moral grievance.”⁶⁴ As undocumented youth activist Alex Aldana reflected, “I get disgusted by the idea of being disposable.”⁶⁵ Hunger strikers, like Ajay Kumar, have an unwavering commitment to “freedom or death” given the intolerable conditions in detention.⁶⁶ Activists at a protest demanding release of immigrants from family detention in Berks County, Pennsylvania, were arrested for hugging families across a fence.⁶⁷ Another activist, Donna Russo, said, “Words are not enough . . . More and more people have to show it—more than just doing something online or screaming in the streets.”⁶⁸

In Martin Luther King Jr.’s famous letter from Birmingham Jail, he wrote that “we had no alternative except that of preparing for direct action” because “[t]here comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into . . . corroding despair.”⁶⁹ Those engaging in immigration disobedience similarly no longer hold out hope for normal political means for correcting the substantial injustice against immigrants. The next three Sections specifically describe how activists have engaged in immigration disobedience over the past decade.

1. Direct Action

Direct action is the most varied category of immigration disobedience because it involves a variety of activists, including undocumented immigrants, immigrants with legal status, and native-born citizens (or some combination thereof). There are also a great variety of demands that follow such acts, ranging from seeking to stop the deportation of specific individuals to abolishing ICE.

64. Abrams, *Not I More*, *supra* note 10, at 57.

65. Alex Aldana, *Rage of Refugees: Angry, Betrayed, Broken Illegal (on the Verge of Exile)*, BGD (Sept. 3, 2014), <http://www.bgdblog.org/2014/09/rage-refugees-angry-betrayed-broken-illegal-verge-exile/> [<https://perma.cc/7YKK-P9LP>].

66. Rozina Ali, *A Hunger Strike in ICE Detention*, NEW YORKER (Oct. 29, 2019), <https://www.newyorker.com/news/as-told-to/a-hunger-strike-in-ice-detention> [<https://perma.cc/NQ63-FCGB>].

67. *Berks County Detention Center to Continue Operations Without a License*, AL DÍA (Feb. 22, 2016), <https://aldianews.com/articles/politics/immigration/berks-county-detention-center-continue-operations-without-license> [<https://perma.cc/Q5HV-VY8F>].

68. Mike Sugerman, *30 Protesters Arrested During March Against ICE in Times Square*, WCBS NEWSRADIO 880 (Feb. 16, 2020), <https://www.audacy.com/wcbs880/articles/30-protesters-arrested-at-times-square-march-against-ice> [<https://perma.cc/74LU-3SPE>].

69. Martin Luther King, Jr., *Letter from Birmingham City Jail*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 289, 291, 293 (James Melvin Washington ed., 1991).

Possibly the most iconic acts of direct action involve youth activists (sometimes referred to as Dreamers or DACA activists). Undocumented youth have been seeking a pathway to legalization since 2001.⁷⁰ Over the past decade, however, they have increased their visibility by publicly pronouncing their presence in violation of civil immigration laws.⁷¹ This pronouncement—“[We are] undocumented, unafraid, and unapologetic”—has been described as “coming out of the undocumented closet.”⁷² In 2010, undocumented youth activists engaged in a sit-in in Senator John McCain’s office. Known as the “Dream Act 5,” this watershed event was the first time undocumented youth had publicly engaged in immigration disobedience that risked their own deportation.⁷³ These activists dressed in blue graduation caps and gowns, which would soon become ubiquitous for such events.⁷⁴ Soon thereafter, youth activists across the country engaged in disobedience, with activists as young as sixteen years old being arrested. Two undocumented youth activists, for example, occupied and engaged in a hunger strike in President Obama’s Denver campaign office.⁷⁵ In June 2012, the Obama administration created the DACA program, describing undocumented youth as children who had come unlawfully to the US “through no fault of their own.”⁷⁶

Many undocumented youth activists, however, came to reject the frame of the innocent and Americanized youth that left behind other undocumented immigrants who did not fit this mainstream ideal.⁷⁷ They sought to broaden the fight beyond education and legalization to contest the U.S. enforcement regime.⁷⁸ One such example is the undocumented youth activists known as the “Dream Nine” or “Dream 30,” who openly crossed the border without

70. See Student Adjustment Act of 2001, H.R. 1918, 107th Cong. (2001) (referred to H. Subcomm. on 21st Century Competitiveness, July 20, 2001).

71. Negrón-Gonzales, *supra* note 48, at 276–83.

72. Rose Cuison Villazor, *The Undocumented Closet*, 92 N.C. L. REV. 1, 29, 51 (2013). These first acts of coming out publicly to declare one’s undocumented status are also a form of direct action. At the time these declarations were first being made, little was known about whether such declarations would lead to deportation. These instances, however, are hard to track in comparison to other events of direct action discussed in this Article.

73. Laura Corruner, “*Coming out of the Shadows*”: *DREAM Act Activism in the Context of Global Anti-Deportation Activism*, 19 IND. J. GLOB. L. STUDIES 143, 148–49 (2012).

74. Devin Dwyer, *Immigrant Students Face Deportation After Protest at McCain Arizona Office*, ABC NEWS (May 19, 2010), <https://abcnews.go.com/Politics/undocumented-student-immigrants-face-deportation-mccain-office-protest/story?id=10689042> [https://perma.cc/76TF-UW5K].

75. *DREAM Act Protesters Who Staged Sit-In at Obama’s Denver Campaign Office, Call Off Hunger Strike, Vow More Actions to Come*, HUFFINGTON POST (June 13, 2012), https://www.huffpost.com/entry/dream-act-protesters-who-_n_1593739 [https://perma.cc/2K82-RP9W].

76. *READ: Obama’s Full Statement on DACA*, CNN (Sept. 5, 2017), <https://www.cnn.com/2017/09/05/politics/obama-full-statement-daca/index.html> [https://perma.cc/FX88-MP5M].

77. Abrams, *NotIMore*, *supra* note 10, at 50.

78. Luisa Laura Heredia, *Report: More than DREAMs*, NACLA (May 17, 2016), <https://nacla.org/news/2016/05/17/nacla-report-more-dreams> [https://perma.cc/SYU6-UKYD].

documents in 2013.⁷⁹ These activists requested humanitarian parole as part of the “#BringThemHome” campaign.⁸⁰ Once detained, these activists began to organize within immigration detention, including by engaging in hunger strikes.⁸¹ As one activist, Lizbeth Mateo, stated: “I hope that we can change the debate as to what family reunification means.”⁸²

The nationwide Not1More Deportation Campaign also began in mid-2013.⁸³ This campaign sought to highlight the separation of immigrant families caused by deportation.⁸⁴ One group stopped a bus of deportees from leaving a detention facility in Phoenix.⁸⁵ This group included a mother of “DREAMers” who chained herself to the fence of the ICE complex alongside youth activists.⁸⁶ Other youth activists chained themselves to ladders at the detention center in LA, asking for “DACA for all.”⁸⁷

More activists joined in direct actions to end deportations, often under the umbrella of the Not1More campaign. Within the span of one year from 2013–2014, Chicagoans stalled a bus filled with immigrants set to be deported, blocked Michigan Avenue in front of a hotel where President Obama was set to speak, and blocked traffic at an ICE detention facility.⁸⁸ In February 2014, a group of

79. Rory Carroll & Ed Pilkington, *Dream Nine Immigration Activists Freed*, GUARDIAN (Aug. 7, 2013), <https://www.theguardian.com/world/2013/aug/08/dream-nine-immigration-activists-freed> [<https://perma.cc/RTX2-VHLE>]; Ted Hesson, *A Landmark Protest on the U.S.-Mexico Border*, ABC NEWS (Sept. 30, 2013), https://abcnews.go.com/ABC_Univision/News/weve-border-protest/story?id=20420193%20 [<https://perma.cc/T7YX-TV8N>].

80. *Id.*

81. McLeod, *Immigration*, *supra* note 10, at 576.

82. Leslie Berestein Rojas, *The ‘Dream 9’ Protest: Youth Immigration Activists’ Tactics Grow Riskier*, 89.3 KPCC (July 25, 2013), <https://archive.kpcc.org/blogs/multiamerican/2013/07/25/14353/the-dream9-protest-youth-activists-tactics-grow-ri> [<https://perma.cc/33RC-2CP2>].

83. Abrams, *Not1More*, *supra* note 10, at 47.

84. See *Open Cases*, #NOT1MORE DEPORTATION, <http://www.notonemoredeportation.com/portfolio-type/open-cases/> [<https://perma.cc/4MB8-QYQN>].

85. Daniel González, *More ‘Dreamers’ Risk Arrest, Deportation to Help Cause*, USA TODAY (Aug. 26, 2013), <https://www.usatoday.com/story/news/nation/2013/08/26/immigration-Dreamers-protests/2698689/> [<https://perma.cc/PE7K-XBBQ>].

86. *DREAMers Stop Deportation Bus in Ongoing Escalation at ICE Facility in Phoenix*, UNITED WE DREAM (Aug. 22, 2013), <https://unitedwedream.org/2013/08/dreamers-stop-deportation-bus-in-ongoing-escalation-at-ice-facility-in-phoenix/> [<https://perma.cc/CL3P-47K8>].

87. Yolanda Alaniz, *From LA to D.C., Young Activists Take Up Civil Disobedience for Immigrant Rights*, FREEDOM SOCIALIST PARTY (Feb. 2014), <https://socialism.com/fs-article/from-la-to-d-c-young-activists-take-up-civil-disobedience-for-immigrant-rights/> [<https://perma.cc/S9MF-399B>].

88. *Chicagoans Block Michigan Ave to Protest President’s Deportations*, #NOT1MORE DEPORTATION (May 19, 2013), <http://www.notonemoredeportation.com/2013/05/29/chicagoans-block-michigan-ave-to-protest-presidents-deportations/> [<https://perma.cc/Q524-4WEC>]; Ellyn Fortino, *Immigrant Rights Activists Arrested While Protesting Deportations at Broadview Detention Center (VIDEO)*, PROGRESS ILL. (Apr. 8, 2014), <https://web.archive.org/web/20201128102932/https://progressillinois.com/files/quick-hits/content/2014/04/08/immigrant-rights-activists-arrested-while-protesting-deportations-broadview/> [<https://perma.cc/QQ9B-GXQX>].

nine formed a human chain across the driveway of the Northwest Detention Center (NWDC) to stop a bus carrying detainees out of the facility.⁸⁹ Two of those participating were identified as undocumented activists. Wisconsinites and their family members chained themselves together at the ICE Office in Milwaukee in June 2014 to demand the release of a detained immigrant, Manuel Lopez.⁹⁰ Those participating had a range of immigration statuses.⁹¹ Demanding a halt of deportations, eleven activists shut down an intersection in Santa Monica along Obama's motorcade route in June 2014.⁹² The eleven arrested were identified as "a mix of activists and young immigrants," including seven undocumented youth.⁹³ Such actions not only garnered media coverage but also resulted in activists spending hours or sometimes days in jail or immigration detention.⁹⁴

Activists also engaged in direct action to address mass firings. ICE, for example, backed away from high-profile workplace raids that resulted in the arrest and deportation of immigrant workers under the Obama administration.⁹⁵ Instead, it conducted "silent" raids by examining corporate paperwork that resulted in the mass firing of immigrant workers. In 2014, an ICE workplace audit led to the firing of hundreds of undocumented workers at a Silicon Valley supermarket. Activists shut down an intersection in front of one of the supermarkets, demanding a moratorium on "deportations and firings."⁹⁶

Other direct actions include protesting immigration detention. In 2015, activists crossed onto the property of Stewart Detention Center, in what was their ninth annual protest of the detention center. As one activist stated: "As a Christ follower, I had to decide whether to obey Immigration and Customs Enforcement

89. Ray Stoeve, *They Started by Blockading a Bus Full of Detainees – and Went on to Shake Up the Immigration Debate*, YES! (Apr. 17, 2014), <https://www.yesmagazine.org/social-justice/2014/04/17/hunger-strikes-lockdowns-and-border-actions-how-the-undocumented-are-shaking-up-the-immigration-debate/> [https://perma.cc/J8P8-JZ5K].

90. *Breaking: Milwaukee Families Respond to Raids Shutting Down ICE*, #NOT1MORE DEPORTATION (June 19, 2014), <http://www.notonemoredeportation.com/2014/06/19/milwaukee/> [https://perma.cc/AH3J-9T43].

91. *Id.*

92. Leslie Berestein Rojas, *Immigrant Rights Protesters Arrested Along Obama's LA Motorcade Route*, KPCC (June 8, 2013), <https://archive.kpcc.org/news/2013/06/08/37634/immigrant-rights-protesters-arrested-along-obama-s/> [https://perma.cc/9U5C-KHDH].

93. *Id.*

94. Abrams, *Not1More*, *supra* note 10, at 68.

95. Miriam Jordan, *Fresh Raids Target Illegal Hiring*, WALL ST. J. (May 2, 2012), <https://www.wsj.com/articles/SB10001424052702304868004577378042369495780> [https://perma.cc/3JTY-JMCE].

96. David Bacon, *Giving Up on Congress, Immigrant Workers Stage Wave of Protests*, THESE TIMES (Mar. 6, 2014), https://inthesetimes.com/working/entry/16382/wave_of_immigrant_worker_actions [https://perma.cc/6XA3-GYW5].

and CCA or obey God.”⁹⁷ The Shut Down Berks Coalition engaged in various direct actions in 2016 seeking to close the family detention facility in Pennsylvania, by hugging detainees across a fence or blocking the intersection in front of the state capitol.⁹⁸

After the election of President Trump, activists continued to engage in direct action. In 2017, the Trump administration’s rescission of DACA⁹⁹ led to renewed sit-ins and blockades. Activists began to demand a “clean” legislative solution that provided a pathway to legalization for undocumented youth and did not otherwise punish other undocumented immigrants. Soon after the announcement, three undocumented youth activists were arrested for crowding, obstructing, or incommode for leading demonstrators around the Senate Office Building.¹⁰⁰ A group of Catholics, including nuns, were arrested on similar charges at the U.S. Capitol in 2018.¹⁰¹ One participant, Sister Persch, commented, “I stand with Dreamers now at this moment of truth, which to me is a moral issue. When these traditional strategies we have used have no impact, we have to move to action that could involve taking a risk to disrupt this unjust system in some way.”¹⁰² Just a month earlier, Jewish groups had also engaged in a sit-in leading to arrests at the Capitol.¹⁰³ They did so in conjunction with immigrant-led youth groups, such as United We Dream.¹⁰⁴

The Trump administration’s widened net—deporting any immigrant ICE encountered—led to further direct actions by activists.¹⁰⁵ Guadalupe García Aguilar, who had an order of removal from 2013, was living under an order of supervision as a low priority for deportation in Arizona.¹⁰⁶ In 2017, when she was taken by ICE at her regular check-in, community members from Puente rallied to her defense.¹⁰⁷ Activists threw themselves in front of various vans,

97. Steve Pavey, *Charges Dropped in Immigration Detention Protest*, ANABAPTIST WORLD (May 7, 2015), <https://anabaptistworld.org/charges-dropped-in-immigration-detention-protest/> [https://perma.cc/X4LA-ZUCK].

98. Bobby Allyn & Rachel Wisniewski, *Berks County Protests Lead to Arrests over Detention Center*, WHYY (July 16, 2018), <https://whyy.org/articles/berks-county-protests-lead-to-arrests-over-detention-center/> [https://perma.cc/W56U-92T8].

99. Elaine C. Duke, Acting Sec’y, U.S. Dep’t of Homeland Sec., Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA) (Sept. 5, 2017).

100. Lindsay Moore, *Dreamers Are Taking Bigger Risks to Get the Attention of Congress*, PHX. NEW TIMES (Nov. 27, 2017), <https://www.phoenixnewtimes.com/news/Dreamers-are-taking-bigger-risks-to-get-the-attention-of-congress-9893435> [https://perma.cc/UW65-8HAU].

101. Rhina Guidos, *Dozens of Catholics Arrested as They Call on Congress to Help ‘Dreamers’*, AM. MAG. (Feb. 27, 2018), <https://www.americamagazine.org/politics-society/2018/02/27/dozens-catholics-arrested-they-call-congress-help-Dreamers> [https://perma.cc/W3Z2-MVGC].

102. *Id.*

103. Stosh Cotler, *We’re Proud as Jews, and as Immigrants, to Have Been Arrested for the Rights of Dreamers*, HAARETZ (Jan. 21, 2018), <https://www.haaretz.com/opinion/we-re-u-s-jews-and-proud-to-be-arrested-for-Dreamers-rights-1.5748750> [https://perma.cc/H9E9-QVZU].

104. *Id.*

105. See Albence, *supra* note 54.

106. Valdes, *supra* note 52.

107. *Id.*

including “Manuel Saldaña, an Army veteran who did two tours in Afghanistan, planted himself on the ground next to one van’s front tire, wrapping his arms and legs around the wheel.”¹⁰⁸ The administration also began to target undocumented activists for arrest and deportation.¹⁰⁹ When immigrant activists Enrique Balcazar and Zulily Palacios of Migrant Justice in Vermont were arrested by ICE, activists engaged in a sit-in at Boston’s South Bay Detention Facility to seek their release from detention.¹¹⁰

Beginning in 2018, the Trump administration’s harsh immigration policies fueled direct actions to abolish ICE. A 2018 sit-in at the Capitol, for example, sought not only to end family separation and detention but also to abolish ICE.¹¹¹ This sit-in involved a variety of activist women, including elected officials, native-born citizens, and immigrants with legal status.¹¹² Therese Patricia Okoumou, a naturalized citizen from Congo, climbed the Statue of Liberty as part of an abolish ICE protest.¹¹³ It led to the arrest of eight activists associated with Rise and Resist, a group aiming to “oust the Trump administration, fight for equality and collaborate on a wide variety of social justice issues.”¹¹⁴ Activists who identified with the Occupy ICE movement maintained illegal encampments across the country, often at ICE offices.¹¹⁵ Other abolish ICE activists engaged in more traditional disobedience tactics, such as blocking traffic to close down streets¹¹⁶ or entrances to ICE buildings.¹¹⁷ They have also used direct action against private companies, such as Amazon, Microsoft, and Comcast,

108. *Id.*

109. See John Burnett, *See the 20+ Immigration Activists Arrested Under Trump*, NPR (Mar. 16, 2018), <https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-under-trump> [https://perma.cc/T523-W8DP].

110. A.P. Joyce, *20 Are Arrested During Protests Against ICE’s Detention of Undocumented Activists*, MIC (Apr. 24, 2017), <https://www.mic.com/articles/175045/20-are-arrested-protests-against-ice-s-detention-of-undocumented-activists> [https://perma.cc/X75K-FWPB].

111. Talia Wiener & Richard Gonzales, *Hundreds Arrested Protesting Trump Administration’s Immigration Policies*, NPR (June 28, 2018), <https://www.npr.org/2018/06/28/624401005/hundreds-arrested-protesting-trump-administrations-immigration-policies> [https://perma.cc/URF7-449Z].

112. *Id.*

113. Eric Killelea, *Abolish ICE: Woman Climbs Statue of Liberty to Protest Trump’s Immigration Policies*, ROLLING STONE (July 5, 2018), <https://www.rollingstone.com/culture/culture-news/abolish-ice-woman-climbs-statue-of-liberty-protest-trump-immigration-696187/> [https://perma.cc/6J9M-TXUL].

114. *Id.*

115. See Adam Gabbatt, *The Growing Occupy Ice Movement: ‘We’re Here for the Long Haul,’* GUARDIAN (July 6, 2018), <https://www.theguardian.com/us-news/2018/jul/06/occupy-ice-movement-new-york-louisville-portland> [https://perma.cc/WN5D-DX89].

116. Sugerman, *supra* note 68.

117. Kevin Beaty & Esteban L. Hernandez, *Immigration Activists Form Human Blockade at ICE Headquarters in Centennial*, DENVERITE (Aug. 2, 2018), <https://denverite.com/2018/08/02/immigration-activists-form-human-blockade-at-ice-headquarters-in-centennial/> [https://perma.cc/FG4A-2VEM]; Mike Ludwig, *Behind the Blockades: Intersectional Organizing to Abolish ICE*, TRUTHOUT (July 11, 2018), <https://truthout.org/articles/behind-the-blockades-intersectional-organizing-to-abolish-ice/> [https://perma.cc/7KP4-Y54H].

demanding the termination of their contracts with ICE.¹¹⁸ Other targets include the business headquarters of private prison companies that detain immigrants on behalf of ICE.¹¹⁹ While #AbolishICE at first seemed to be a meme for only the most radical, the concept has since been embraced by a few Democratic politicians.¹²⁰

Finally, starting in 2019, an increasing number of “Never Again” mobilizations, which sought to end immigration detention, occurred across the country. Jewish youth organized these actions, calling for “clos[ing] the camps.”¹²¹ They blocked entrances to various detention facilities and ICE offices, and they disrupted rush hour traffic and a Fourth of July parade.¹²² While there has been some political jockeying around analogizing immigration detention to the Holocaust, Sarah Gratz, an activist, said, “It’s not about the words. It’s about seeing that the conditions of these people are due to the same hateful, racist and ignorant ideologies that caused these same things to happen to our grandparents and great-grandparents.”¹²³ They use chants at actions that urge that “racist ICE has got to go.”¹²⁴ Another activist, Julia Davidovitz, explained, “We are a community that’s been targeted. We can’t stand by while it happens to others.”¹²⁵

118. Amir Vera, *76 Anti-Ice Protestors Arrested During Sit-In at Microsoft Store in New York*, CNN (Sept. 15, 2019), <https://www.cnn.com/2019/09/14/us/anti-ice-protesters-arrested/index.html> [<https://perma.cc/58N5-36Z4>]; Brendan Krisel, *Six Arrested in Midtown Protesting Amazon’s Links to ICE*, PATCH (Aug. 1, 2018), <https://patch.com/new-york/midtown-nyc/six-arrested-midtown-protesting-amazons-links-ice> [<https://perma.cc/7GJ3-X9YZ>]; Adam Hermann, *Eight Arrests Made at Comcast Center During Latest ICE Protest*, PHILLY VOICE (July 31, 2018), <https://www.phillyvoice.com/eight-arrests-made-comcast-center-ice-protest/> [<https://perma.cc/33WP-27F4>].

119. Chas Sisk, *20 Arrested After Protesters Block CoreCivic Headquarters in Nashville*, 90.3 WPLN NEWS (Aug. 7, 2018), <https://wpln.org/post/20-arrested-after-protesters-blockade-corecivic-headquarters-in-nashville/> [<https://perma.cc/W9QL-8858>].

120. Markowitz, *supra* note 11, at 131. *See, e.g., A Welcoming and Safe America for All*, BERNIE SANDERS, <https://berniesanders.com/issues/welcoming-and-safe-america-all/> [<https://perma.cc/QRZ7-97A2>] (last visited Aug. 8, 2021) (campaigning on “breaking up ICE and CBP and redistributing their functions to their proper authorities”). *See also* Lilly Fowler, *‘A Never-Again Moment’: Jewish Protesters Join Fight Against ICE, Tacoma Detention Center*, CROSSCUT (Aug. 8, 2019), <https://crosscut.com/2019/08/never-again-moment-jewish-protesters-join-fight-against-ice-tacoma-detention-center> [<https://perma.cc/CM3W-HU8D>] (“Several presidential candidates, including Sens. Elizabeth Warren, Bernie Sanders and Kamala Harris, are vowing to make the phaseout of private immigration detention centers and prisons part of their campaigns.”).

121. Ben Kesslen, *‘Never Again Means Close the Camps’: Jews Protest ICE Across the Country*, NBC NEWS (July 15, 2019), <https://www.nbcnews.com/news/us-news/never-again-means-close-camps-jews-protest-ice-across-country-n1029386> [<https://perma.cc/GU7E-M34H>].

122. *Id.*

123. Stephanie Russell-Kraft, *Jewish Youth Say “Never Again” as They Protest Trump’s Concentration Camps*, THESE TIMES (July 9, 2019), <https://inthesetimes.com/article/immigration-protesters-jewish-youth-activism> [<https://perma.cc/N9LX-JDWJ>].

124. Anthony G. Attrino, *36 Protesters Arrested Outside ICE Detention Center in N.J.*, NJ.COM (July 1, 2019), <https://www.nj.com/union/2019/07/dozens-of-protesters-arrested-outside-immigration-detention-center-in-nj.html> [<https://perma.cc/QGG2-BY4D>].

125. Kesslen, *supra* note 121.

Over the past decade, direct actions have been the mainstay of immigration disobedience.¹²⁶ They have involved a great variety of actors and demands. Some immediate demands include seeking the release or stopping the deportation of specific individuals, demanding the rehiring of immigrant workers, or providing a pathway to legalization for undocumented youth. The longer-term and broader demands focus on ending deportation, shutting down detention, and abolishing ICE. Despite this great variety in demands, those engaging in direct actions share the willingness to accept responsibility for their actions, even if it means going to jail or immigration detention.

2. *Deportation Resistance*

Deportation resistance involves both the more immediate and personal demand to lawfully remain in the United States and the long-term and larger demand of ending family separation and deportation. Deportation resisters work with good Samaritan allies, who are community members that offer physical sanctuary within their congregation. There are over one thousand congregations that identify as being part of the “New Sanctuary Movement.”¹²⁷

Daniel Neyoy-Ruiz provides a classic example of deportation resistance. In 2014, he defied a deportation order by seeking sanctuary in a church in Arizona.¹²⁸ He came to the attention of authorities after a traffic stop because of a leaky tailpipe.¹²⁹ At the time, he had resided in the United States for 14 years, with a wife and teenage son, and had no criminal record.¹³⁰ His removal order highlighted the indiscriminate nature of ICE enforcement and its impact on undocumented immigrants who have established lives for themselves and their families in the United States.¹³¹

From 2014 to 2018, there were fifty-seven cases of immigrants who sought sanctuary in cities such as Phoenix, Arizona; Columbus, Ohio; and Greensboro, North Carolina.¹³² These immigrants commonly had final removal orders from an immigration court that required them to self-deport from the United States within a certain timeframe. In response, they publicly defied their deportation orders by entering sanctuary with the assistance of good Samaritans. Those seeking sanctuary make clear that they are “not hiding” but rather fighting for “the injustice that so many immigrants are facing.”¹³³

126. See Appendix, Figure 3.

127. MYRNA OROZCO & NOEL ANDERSEN, *SANCTUARY IN THE AGE OF TRUMP* 4 (2018).

128. *Id.* at 4–5.

129. Bill Chappell, *Immigrant Who Sought Sanctuary in Arizona Church Can Stay in U.S.*, NPR (June 10, 2014), <https://www.npr.org/sections/thetwo-way/2014/06/10/320686993/immigrant-who-sought-sanctuary-in-arizona-church-can-stay-in-u-s> [https://perma.cc/JR2E-5U6B].

130. *Id.*

131. OROZCO & ANDERSEN, *supra* note 127, at 4–5.

132. *Id.* at 6–7.

133. Jeff Gammage, *Undocumented Immigrant Mother, Four Children Claim Sanctuary in North Philly Church*, PHILA. INQUIRER (Dec. 13, 2017),

Immigrants who defy their removal order are potentially at risk for both civil and criminal penalties. Civil penalties are most common.¹³⁴ Activists like Maria Chavalan-Sut in Charlottesville, Virginia, received notices that they owe hundreds of thousands of dollars in fines to the U.S. government.¹³⁵ The government withdrew these fines after government documents revealed that such fines were targeted at outspoken deportation resisters.¹³⁶ Deportation resisters who fall under certain immigration categories may also face potential imprisonment of up to four years or longer.¹³⁷

In contrast, good Samaritan allies are likely immune from prosecution. The ACLU has advised congregations that providing sanctuary does not amount to the unlawful harboring of undocumented immigrants.¹³⁸ The public nature of sanctuary undermines a prosecution for harboring that otherwise requires an “intent to evade detection by the authorities.”¹³⁹ Others have argued that the Religious Freedom and Restoration Act could also provide an exception to the harboring laws.¹⁴⁰

In theory, ICE still has discretion to conduct enforcement at a church, even though its “sensitive locations” memo disfavors conducting enforcement actions at religious institutions, schools, and hospitals.¹⁴¹ Despite the risks, immigrants such as Angela Navarro explain that they defy deportation because: “I’m taking sanctuary for my own life, my family, and the entire immigrant community.”¹⁴² ICE has, likely because of optics, so far refrained from enforcement actions against deportation resisters.

<https://www.inquirer.com/philly/news/immigrants-sanctuary-undocumented-church-advocate-philadelphia-deportation-20171213.html> [https://perma.cc/A7G4-YGJY].

134. 8 U.S.C. § 1324d; 8 U.S.C. § 1253; Civil Monetary Penalty Adjustments for Inflation, 84 Fed. Reg. 13499, 13502 (Apr. 5, 2019) (to be codified at 6 C.F.R. pts. 278, 270, 274a, 280).

135. *Immigrants Taking Sanctuary in Churches Hit with Huge Fines*, FOX BUS. (July 30, 2019), <https://www.foxbusiness.com/politics/immigrants-taking-sanctuary-in-churches-hit-with-huge-fines> [https://perma.cc/WUG6-RM2A].

136. Complaint at 3, *Austin Sanctuary Network v. Gaynor*, No. 1:21-cv-00164 (D.D.C. Jan. 19, 2021). See Franco Ordoñez, *Trump Administration Withdraws Huge Fines for Some Immigrants in U.S. Illegally*, NPR (Oct. 22, 2019), <https://www.npr.org/2019/10/22/772263253/trump-administration-withdraws-huge-fines-for-some-immigrants-in-u-s-illegally> [https://perma.cc/3W4Q-MLYS].

137. 8 U.S.C. § 1253(a)(1).

138. See 8 U.S.C. § 1324(a)(1)(A)(ii)–(iii).

139. ACLU, *Sanctuary Congregations and Harboring FAQ* (Apr. 13, 2017), <https://www.aclu.org/other/sanctuary-congregations-and-harboring-faq> [https://perma.cc/P9NY-FB27].

140. Thomas Scott-Railton, *A Legal Sanctuary: How the Religious Freedom Restoration Act Could Protect Sanctuary Churches*, 128 YALE L.J. 408, 453 (2018).

141. John Morton, Dir., U.S. Immigr. & Customs Enforcement, Memorandum on Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> [https://perma.cc/6DHT-EQ2T].

142. OFFICE OF PUBLIC WITNESS, PRESBYTERIAN CHURCH (USA), *SANCTUARY: A DISCERNMENT GUIDE FOR CONGREGATIONS* 12 (2017), <https://www.pcusa.org/get/resources/resource/41738/> [https://perma.cc/V7FT-C48M].

3. *Hunger Strikes*

Immigrants engaging in hunger strikes have a variety of demands: better conditions; release from detention; and shutting down immigration detention. Like deportation resisters, hunger strikers work with community members on the outside to vocalize their claims more broadly.

Immigrants are placed in civil detention while they are being processed through the system for deportation. Immigrants may have to remain in detention while their case is pending because they are either subject to mandatory detention or unable to pay the increasingly high bonds to be released.¹⁴³ Although concerns about the conditions of ICE detention facilities have been recurrent, patterns of mistreatment and abuse have grown worse due to the unprecedented expansion of the immigration detention system since 2006.¹⁴⁴ Recent reports highlight increasingly serious conditions, including the use of excessive force by officers, lack of access to mental health services, unhygienic conditions, and neglect of people with disabilities.¹⁴⁵

The Northwest Detention Center (NWDC) in Tacoma, Washington, a facility run privately by the GEO Group, has seen multiple hunger strikes. In 2014, twelve-hundred detainees refused food, with a core group of fifteen to twenty detainees maintaining the strike on a rolling basis for fifty-six days.¹⁴⁶ As one hunger striker at NWDC explained in 2019:

We are tired of eating garbage, finding maggots, and other things in the food. GEO and ICE don't do anything, they take the report and then they say "everything has been fixed," yet we continue finding maggots in the food. GEO guards mistreat us, they yelled at us, in some instances they have assaulted people here. Some people are afraid of them, but mostly we are tired of being treated that way. We also want to do something for you all, we want to support the efforts outside to shut down this place.¹⁴⁷

One news report estimated that approximately sixteen-hundred detainees engaged in hunger strikes at over eighteen different detention facilities from

143. HAFSA S. MANSOOR & KATHERINE COMLY, A LONG TIME COMING: HOW THE IMMIGRATION BOND AND DETENTION SYSTEM CREATED TODAY'S COVID-19 TINDERBOX 8–9 (2020), <https://law.shu.edu/docs/publications/clinics/how-immigration-bond-and-detention-system-created-todays-covid-19-tinderbox.pdf> [<https://perma.cc/WX6J-X5HJ>]; CHO ET AL., *supra* note 32, at 28.

144. Gilman & Romero, *supra* note 33, at 149. *See also* CHO ET AL., *supra* note 32, at 5; Oldaker v. Giles, No. 7:20-cv-00224 (WLS), 2021 WL 3779837, at *1 (M.D. Ga. Aug. 8, 2021) (female detainees alleging “unnecessary and nonconsensual gynecological procedures”).

145. CHO ET AL., *supra* note 32, at 6–8, 31.

146. Leah Montange, *Hunger Strikes, Detainee Protest, and the Relationality of Political Subjectivization*, 21 CITIZENSHIP STUD. 509, 515 (2017).

147. *Rising Trend: Immigrants Protest Their Incarceration with Hunger Strikes at ICE Detention Centers Across the Country*, DET. WATCH NETWORK, (Oct. 21, 2019), <https://www.detentionwatchnetwork.org/pressroom/releases/2019/rising-trendimmigrants-protest-their-incarceration-hunger-strikes-ice> [<https://perma.cc/Z73B-ZE7G>].

2015 to 2020.¹⁴⁸ In just the first three months of 2019, for example, there were six hunger strikes at Riverdale Correctional Facility in Louisiana.¹⁴⁹ These detainees demanded their release while their cases were being adjudicated.

Hunger strikers often work with community members outside of detention. For example, La Resistencia, an organization that has been working to shut down NWDC, created a Hunger Strikers Handbook that connects hunger strikers on the inside with activists on the outside.¹⁵⁰ Hunger strikers at the Berks Detention Facility relied on the Shut Down Berks Coalition that seeks to close down the facility to publicize the letter that they had written to the outside world demanding their release.¹⁵¹ Similarly, hunger strikers at the El Paso Detention Facility received support from a coalition of organizations that helped them advocate with ICE.¹⁵²

Due to the onslaught of COVID-19, hunger strikes appeared across the United States, with immigrants demanding release, or at the very least, protective measures.¹⁵³ At Irwin County Detention Center in Georgia, for example, detainees pleaded with officials for weeks for masks and temperature checks, and to stop the transfer of new detainees into their units.¹⁵⁴ Detainees in both the men's and women's units organized a hunger strike.¹⁵⁵ Some of the women held up signs in a recorded video that stated: "There are sick people here" and "We are afraid of infecting one another, by breathing, coughing, anything."¹⁵⁶ At Otay Mesa Detention Center, hunger striker Edgar Granski stated: "We are afraid for

148. John Washington, *The Epidemic of Hunger Strikes in Immigrant Detention Centers*, NATION (Feb. 13, 2020), <https://www.thenation.com/article/society/immigrant-detention-hunger-strike/> [https://perma.cc/8UH5-GT7D].

149. Michael Isaac Stein, *Hunger Strikes at ICE Detention Centers Spread as Parole, Bond Are Denied*, NPR (Apr. 19, 2019), <https://www.npr.org/2019/04/19/713910647/hunger-strikes-at-ice-detention-centers-spread-as-parole-bond-is-denied> [https://perma.cc/KBR4-86KK].

150. See J. CIPRIANO RÍOS ALEGRIA, ANGELICA CHÁZARO, TOMÁS MADRIGAL, MURPHY MITCHEL, JOSEFINA MORA, MARU MORA VILLALPANDO, WENDY PANTOJA, NAOMI STRAND & MEGAN YBARRA, *A HUNGER STRIKERS HANDBOOK* (2017).

151. See *Take Action: Support the 22 Mothers on Hunger Strike at Berks*, END FAM. DET. (Aug. 16, 2016), <https://web.archive.org/web/20160823121143/https://endfamilydetention.com/take-action-support-the-22-mothers-on-hunger-strike-at-berks/> [https://perma.cc/XD52-4L4B].

152. *Letter to DHS Secretary Kirstjen Nielsen Demanding Release of Hunger Strikers in El Paso Ice Facility*, S. ASIAN AM. LEADING TOGETHER (Feb. 11, 2019), https://saalt.org/letter-to-dhs-secretary-kirstjen-nielsen-demanding-release-of-hunger-strikers-in-el-paso-ice-facility/?fbclid=IwAR3lr0jKH4mxAB6dgENljakXf_HJ0twYr83Q1bz0xbjxwyqoOGliAD8jzAA [https://perma.cc/T89E-RBLK].

153. David Noriega, Belle Cushing & Jika Gonzalez, *Immigrants Are Now on Hunger Strike in 3 ICE Detention Centers over Coronavirus Fears*, VICE (Mar. 20, 2020), https://www.vice.com/en_us/article/pkew79/immigrants-are-now-on-hunger-strike-in-3-ice-detention-centers-over-coronavirus-fears [https://perma.cc/7SL3-CVNU].

154. Seth Freed Wessler, *Fear, Illness and Death in ICE Detention: How a Protest Grew on the Inside*, N.Y. TIMES MAG. (June 7, 2021), <https://www.nytimes.com/2020/06/04/magazine/covid-ice.html> [https://perma.cc/5RCM-W8R5].

155. *Id.*

156. *Id.*

our lives and asking for immediate release of all detainees due to the outbreak of COVID-19.”¹⁵⁷

Immigrants who engage in hunger strikes regularly face retaliation for their behavior.¹⁵⁸ While hunger strikes violate no law per se, hunger strikers have experienced the use of beatings, rubber bullets, and pepper spray by guards.¹⁵⁹ After helping to organize hunger strikes at NWDC, Manuel Abrego described how he had been punished by being placed in a six-by-ten-foot cell for twenty-three hours per day.¹⁶⁰ Detention officials may also retaliate against hunger strikers by employing the painful practice of force-feeding.¹⁶¹

C. *Is Immigration Disobedience a Distinct Phenomenon?*

Collective acts of immigration disobedience today have familiar roots but also constitute something distinct. On the one hand, immigration disobedience resembles some past and contemporary examples of civil disobedience. On the other hand, today’s immigration disobedience is distinct from the past history of disobedience against the immigration system. It occurs more frequently, consists of a greater variety of tactics and actors, and has immigrants often leading the charge. Today’s phenomenon also differs from the past because it more broadly challenges the immigration system’s overall mistreatment of immigrants.

1. *Immigration Disobedience as Civil Disobedience*

Immigration disobedience meets the basic elements that comprise most definitions of civil disobedience.¹⁶² Civil disobedience is defined as an

157. Kate Morrissey, *COVID-19 Concerns Prompt Hunger Strikes, Protests Inside Otay Mesa Detention Center*, SAN DIEGO UNION TRIB. (Apr. 17, 2020), <https://www.sandiegouniontribune.com/news/immigration/story/2020-04-17/covid-19-concerns-prompt-hunger-strikes-protests-inside-otay-mesa-detention-center> [https://perma.cc/YL4B-4BLG].

158. See EUNICE HYUNHYE CHO, JOANNA NAPLES-MITCHELL, RANIT MISHORI, MATTHEW WYNIA, JOHN ANDREWS, KATHERINE C. MCKENZIE & SUMAIYA SAYEED, *BEHIND CLOSED DOORS: ABUSE AND RETALIATION AGAINST HUNGER STRIKERS IN U.S. IMMIGRATION DETENTION 6–9* (2021), https://www.aclu.org/sites/default/files/field_document/aclu_phr_behind_closed_doors_final_1.pdf [https://perma.cc/G8AK-JW7B].

159. *Breaking: As Hunger Strikes Erupt Nationwide in ICE Detention, Immigrants Subjected to Retaliation and Excessive Force*, FREEDOM FOR IMMIGRANTS (Aug. 6, 2019), <https://www.freedomforimmigrants.org/news/2019/8/6/multiple-hunger-strikes-erupt-in-ice-jails-and-prisons-nationwide> [https://perma.cc/D3EH-U99C].

160. Renée Feltz, *Immigrant Detainees Went on Hunger Strike Against Intolerable Conditions and COVID Exposure. ICE Punished Them with Solitary Confinement.*, SOLITARY WATCH (Jan. 28, 2021), <https://solitarywatch.org/2021/01/28/immigrant-detainees-went-on-hunger-strike-against-intolerable-conditions-and-covid-exposure-ice-punished-them-with-solitary-confinement/> [https://perma.cc/RG6Q-6HHR].

161. *WMA Declaration of Tokyo –Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*, WORLD MED. ASS’N (2006), <https://www.wma.net/policies-post/wma-declaration-of-tokyo-guidelines-for-physicians-concerning-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-in-relation-to-detention-and-imprisonment/> [https://perma.cc/C4RM-S9BU].

162. The precise definitional elements of civil disobedience are contested.

intentional illegal act for the purpose of instigating change to governmental policies.¹⁶³ Such acts are usually public,¹⁶⁴ nonviolent,¹⁶⁵ and involve people engaging in civil disobedience who are willing to accept punishment.¹⁶⁶ In part, these latter limitations seek to distinguish civil disobedience from acts of ordinary offenders.¹⁶⁷ And while the disobedient may either break the law that is the focus of their protest (direct civil disobedience) or an unrelated law (indirect civil disobedience), their purpose for law-breaking is not simply about testing the validity of a law.¹⁶⁸

Activists involved in immigration disobedience deliberately engage in illegal acts with the intent to influence the public that specific policies are illegitimate or unwarranted.¹⁶⁹ Activists engaging in non-violent disobedience break the law in very public ways such as publicizing entry into sanctuary or blockading entrances to detention facilities, stopping traffic on highways, and setting up encampments in front of ICE offices.¹⁷⁰ Further, although activists may contest the legality of the punishment imposed (particularly any immigration consequences), they do not abscond to evade punishment. Finally, some social movement actors engage in direct disobedience, such as deportation resistance or unlawful entry, while others engage in indirect disobedience by creating sit-ins or blockades and are charged with trespass or disorderly conduct.

More specifically, immigration disobedience aligns with a radical democratic view of civil disobedience.¹⁷¹ This view characterizes civil

163. See JOHN RAWLS, *A THEORY OF JUSTICE* 364 (1971); Candice Delmas & Kimberley Brownlee, *Civil Disobedience*, STAN. ENCYC. PHIL. § 1 (2021), <https://plato.stanford.edu/entries/civil-disobedience/> [https://perma.cc/KT3Z-2GPH]; JEAN L. COHEN & ANDREW ARATO, *CIVIL SOCIETY AND POLITICAL THEORY* 587–88 (1992).

164. Compare RAWLS, *supra* note 163, at 366 (defining civil disobedience as a public act), with Delmas & Brownlee, *supra* note 163, § 1.22 (recognizing that civil disobedience need not act openly or non-anonymously).

165. Compare RAWLS, *supra* note 163, at 366–67 (defining civil disobedience as nonviolent), with Delmas & Brownlee, *supra* note 163, § 1.23 (recognizing that acts of civil disobedience can include violence).

166. Delmas & Brownlee, *supra* note 163, § 1.24.

167. *Id.*

168. RAWLS, *supra* note 163, at 365.

169. Hunger strikes is one category of acts that does not appear to meet the definition of civil disobedience. There is no law being broken even though hunger strikers may be subject to significant punishment for their acts. While this Article does not consider acts connected to unauthorized migration to be immigration disobedience, one might categorize such acts of evasion, deception, use of force against state officials, and smuggling, as a form of resistance to global poverty or a type of conscientious evasion. Delmas & Brownlee, *supra* note 163, § 2.4.

170. See, e.g., Christina Fan, *Nearly 100 Anti-ICE Protesters Arrested After Shutting Down West Side Highway*, CBS N.Y. (Aug. 10, 2019), <https://newyork.cbslocal.com/2019/08/10/west-side-highway-closed-ice-protest/> [https://perma.cc/5Z5D-9MS8]; Attrino, *supra* note 124; Ludwig, *supra* note 117.

171. Celikates, *supra* note 14, at 40. Compare RAWLS, *supra* note 163, at 364–365. John Rawls epitomizes a more narrow view of civil disobedience, which should be limited to “address[] the sense of justice of the majority” by “invok[ing] the commonly shared conception of justice that underlies the

disobedience “as an essentially collective and political practice of contestation—as a form of struggle in which the vertical form of state authority is confronted with the horizontal power of the association of citizens or the governed.”¹⁷² Activists engage in “critical oppositional activity” because of the structural inequities in real world politics that make official institutional channels of communication closed or ineffective.¹⁷³

For activists, immigration disobedience serves as an opportunity to challenge the structural deficiencies of the established political system. They speak for themselves, both directly and collectively, outside the confines of the established political and legal system.¹⁷⁴ Immigrants are unable to address their condition due to the structural inequities of real-world politics. Hegemonic discourses about the “criminal alien” or “freeloaders” have enabled policies that create suffering among immigrants.¹⁷⁵ Today’s immigration disobedience challenges the procedural and institutional deficiencies in the democratic process that prevent activists from effectively engaging in that process.¹⁷⁶ It rejects operating within the limits of the political order because that order reproduces and perpetuates harms and injustice.¹⁷⁷ A toolkit for activists protesting immigration detention, for example, says: “The goal is to actually make it impossible for ICE and/or the Democratic Establishment to do business as usual. Find the chokepoint and shut it down—we are not f**king around here.”¹⁷⁸ Activists block driveways to detention centers, ICE offices, and intersections to highlight their messages of “close the camps” or “shut [it] down.”¹⁷⁹ Propelled by the intransigence of those in political power, activists look beyond appealing to the majority by seeking to shake up the ossified political system.¹⁸⁰ In doing so, they are able to demonstrate community power.

political order.” *Id.* In particular, Rawls limits civil disobedience to infringements of individual liberties guaranteed by constitutional values. *Id.* at 365, 373–74.

172. Celikates, *supra* note 14, at 41.

173. Iris Marion Young, *Activist Challenges to Deliberative Democracy*, 29 POL. THEORY 670, 670–71 (2001).

174. See ANDREAS KALYVAS, *DEMOCRACY AND THE POLITICS OF THE EXTRAORDINARY: MAX WEBER, CARL SCHMITT, AND HANNAH ARENDT* 288 (2008) (describing Hannah Arendt’s writings on civil disobedience).

175. See William Smith, *Civil Disobedience and the Public Sphere*, 19 J. POL. PHIL. 145, 157 (2011).

176. See Celikates, *supra* note 14, at 41.

177. Young, *supra* note 173, at 673.

178. Ben Sales, *The Jews Getting Arrested at ICE Centers Are Just Getting Started*, JEWISH TELEGRAPHIC AGENCY (July 12, 2019), <https://www.jta.org/2019/07/12/united-states/the-jews-getting-arrested-at-ice-centers-are-just-getting-started> [https://perma.cc/N9WQ-BE4T].

179. Kesslen, *supra* note 121; Jeremy Long, *Protesters Arrested at Berks County Residential Center*, READING EAGLE (July 16, 2018), <https://www.readingeagle.com/2018/07/16/protesters-arrested-at-berks-county-residential-center/> [https://perma.cc/3LTC-5A48].

180. Young, *supra* note 173, at 673; William E. Scheuerman, *Recent Theories of Civil Disobedience: An Anti-Legal Turn?*, 23 J. POL. PHIL. 427, 437 (2015).

Rather than limiting their disobedience based on an infringement of constitutionally guaranteed individual liberties,¹⁸¹ activists seek to promote a different shared conception of justice.¹⁸² Immigrants who live within our midst do not have equal citizenship within the constitutional regime, particularly when it comes to their rights with respect to arrest, detention, and deportation from the United States.¹⁸³ As the Court explained in *Mathews v. Diaz*, “The exclusion of aliens and the reservation of the power to deport have no permissible counterpart in the Federal Government’s power to regulate the conduct of its own citizenry.”¹⁸⁴ In *Demore v. Kim*, the Court departed from its jurisprudence on non-punitive detention by upholding the mandatory detention of immigrants without an individualized hearing.¹⁸⁵ It did so by deferring to Congress’s “broad power over naturalization and immigration,” which includes making rules that “would be unacceptable if applied to citizens.”¹⁸⁶ Such rules include the increased tolerance for racial profiling in the context of immigration enforcement.¹⁸⁷ In *Brigoni-Ponce*, the Court held that “[t]he likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor” for stopping cars.¹⁸⁸ As a result, this decision gave immigration authorities a free pass to expand their ethno-racial profiling, with many instances of profiling occurring with individuals of “Hispanic” appearance.¹⁸⁹

In recognizing the limitations of constitutional values, activists justify immigration disobedience by referencing alternative religious, moral, or legal principles. Activists such as Rabbi Jonah Pesner, who was arrested at a sit-in, are inspired by religious beliefs: “[T]his is no time for business as usual. In the Torah, we are called 36 different ways to love the stranger, the orphan, and the widow. We were strangers in the land of Egypt, and know what it means to be turned away from places we thought of as home.”¹⁹⁰ Others focus on the “cruelty” of a mass deportation and enforcement system that is “indiscriminate”

181. RAWLS, *supra* note 163, at 365, 373–74. Ronald Dworkin has similarly argued that civil disobedience must be based on principles “embedded in the Constitution” rather than simply exemplify a disagreement in policy approaches. RONALD DWORKIN, A MATTER OF PRINCIPLE 111 (2000).

182. PETER SINGER, DEMOCRACY AND DISOBEDIENCE 88 (1973).

183. Rachel E. Rosenbloom, *The Citizenship Line: Rethinking Immigration Exceptionalism*, 54 B.C. L. REV. 1965, 1984 (2013).

184. 426 U.S. 67, 80 (1976).

185. 538 U.S. 510, 531 (2003).

186. *Id.* at 521 (citing *Mathews*, 426 U.S. at 79–80).

187. Rosenbloom, *supra* note 183, at 1989.

188. *U.S. v. Brigoni-Ponce*, 422 U.S. 873, 886–87 (1975).

189. Kevin R. Johnson, *The Case Against Racial Profiling in Immigration Enforcement*, 78 WASH. U. L.Q. 675, 696–97 (2000).

190. Amir Tibon, *Dozens of U.S. Jewish Activists Stage Sit-in on Capitol Hill Protest in Protest of Trump’s Threat to Deport Dreamers*, HAARETZ (Jan. 18, 2018), <https://www.haaretz.com/us-news/2018-01-18/ty-article/.premium/u-s-jews-protest-trumps-threat-to-deport-dreamers-on-capitol-hill/0000017f-dc08-db22-a17f-fcb9ddb60000> [https://perma.cc/65CA-PBX5].

or “random”¹⁹¹ by “harassing, pursuing, and terrorizing immigrants and activists all over this country with impunity . . . forcing immigrants to live in fear, while making the rest of us less safe.”¹⁹² These principles can also sound in the legal discourse of international human rights by calling for the right, life, and security of all persons.¹⁹³

In its effort to dismantle the entire “immigration enforcement apparatus,”¹⁹⁴ immigration disobedience finds similarities with past and contemporary examples of civil disobedience. The civil rights era’s use of civil disobedience is one point of reference. While Martin Luther King Jr. believed that civil disobedience should embody the “highest respect for law,”¹⁹⁵ he also saw it as a means to more radically “get[ting] rid of the evil system”¹⁹⁶ and justified such actions by referencing moral and religious principles.¹⁹⁷ Other civil disobedience during the civil rights era looked more explicitly at challenging American society through Black radicalism, Black nationalism, and anti-colonial movements.¹⁹⁸ Immigration disobedience, however, might find even closer kinship with contemporary movements, such as climate activists,¹⁹⁹ BLM,²⁰⁰ or Occupy movements²⁰¹ that reject operating within the existing political system in more explicit terms. It borrows concepts from these movements.²⁰² Activists across movements also collaborate in actions or express their solidarity with one another.²⁰³ Immigration disobedience, therefore, is not so much a distinct

191. Elaine Godfrey, *What ‘Abolish ICE’ Actually Means*, ATLANTIC (July 11, 2018), <https://www.theatlantic.com/politics/archive/2018/07/what-abolish-ice-actually-means/564752/> [<https://perma.cc/8NCR-WH9V>].

192. Sean McElwee, *It’s Time to Abolish ICE*, NATION (Mar. 9, 2018), <https://www.thenation.com/article/archive/its-time-to-abolish-ice/> [<https://perma.cc/73UP-FRAJ>].

193. See G.A. Res. 217A, Universal Declaration of Human Rights, art. 3 (Dec. 10, 1948).

194. González-Ramírez, *supra* note 61.

195. Martin Luther King, Jr., *Love, Law, and Civil Disobedience*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 43, 49 (James Melvin Washington ed., 1991). The early civil rights movement was more within the bounds of the system by holding it accountable to its constitutional and statutory promises. See Kathryn Abrams, *Performative Citizenship in the Civil Rights and Immigrant Rights Movements*, in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50, 14 (Ellen D. Katz & Samuel R. Bagenstos eds., 2015) [hereinafter Abrams, *Performative Citizenship*].

196. King, Jr., *supra* note 195, at 47.

197. Martin Luther King, Jr. famously looked to justify civil disobedience by reference to or in the Christian tradition. *Id.* at 49.

198. KATRINA FORRESTER, IN THE SHADOW OF JUSTICE: POSTWAR LIBERALISM AND THE REMAKING OF POLITICAL PHILOSOPHY 67 (2019).

199. *Demand & Principles*, EXTINCTION REBELLION, <https://extinctionrebellion.us/> [<https://perma.cc/K48C-PURC>].

200. Martha Biondi, *The Radicalism of Black Lives Matters*, THESE TIMES (Aug. 15, 2016), <https://inthesetimes.com/features/black-lives-matter-history-police-brutality.html> [<https://perma.cc/M3HC-LKHJ>].

201. Bernard E. Harcourt, *Political Disobedience*, 39 CRITICAL INQUIRY 33, 34 (2012).

202. See, e.g., Gabbatt, *supra* note 115.

203. *Infra* notes 347–349.

phenomenon among social movements but rather part of the rise of modern movements that are seeking to upend structural inequality.

2. *Distinguishing from Past Immigration Disobedience*

On the other hand, immigration disobedience is a distinct phenomenon within the history of immigration resistance. In the past, immigrants and allies have sometimes engaged in illegal acts that risk sanctions in response to discriminatory policies against immigrants.²⁰⁴ In comparison to these past events, however, today's immigration disobedience is distinct in its frequency, tactics, and participants. It looks to immigrants for leadership and has broader end goals that seek to overhaul the ways in which the immigration system arrests, detains, and deport immigrants.

In the 1890s, for example, the Chinese Six Companies, a council led by the Chinese merchant elite, engaged in immigration disobedience. They organized a boycott against the U.S. government registration requirements.²⁰⁵ The Chinese Exclusion Act required Chinese nationals to register with the collector of internal revenue of their respective districts.²⁰⁶ Nationally, over 90,000 Chinese nationals protested this xenophobic law and failed to register by the deadline (e.g., only 439 of the 26,000 of those eligible in San Francisco had registered), risking both arrest and deportation.²⁰⁷

Immigrants have also previously engaged in hunger strikes while in detention. In 1919, for example, seventy-three immigrants, labeled as the "Ellis Island Reds" went on hunger strike while awaiting deportation to protest the screens placed between immigrants and their families in the visiting room.²⁰⁸ Later in 1948, labor organizers detained at Ellis Island engaged in hunger strikes to request their right to bail while the government reviewed their cases.²⁰⁹ Hunger strikes became more common during the contemporary era of

204. There is a long history of lawful resistance, such as litigation, political lobbying, boycotts, and lawful protest. Immigrants and allies have organized to file legal challenges in the courts, such as contesting the Chinese Exclusion Act in the 1890s or stopping coercive deportations in the 1970s. *See, e.g.,* Gabriel J. Chin & Daniel K. Tu, *Comprehensive Immigration Reform in the Jim Crow Era: Chinese Exclusion and the McCrea Act of 1893*, 23 *ASIAN AM. L.J.* 39, 39 (2016). They have also organized protests and education campaigns to stop immigration raids. ADAM GOODMAN, *THE DEPORTATION MACHINE: AMERICA'S LONG HISTORY OF EXPELLING IMMIGRANTS* 138–40 (2020). For the first time in 2006, there were nationwide protests against a proposed bill to criminalize undocumented immigrants.

205. MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 213 (2004).

206. Geary Act of May 5, 1892, 27 Stat. 25 § 6.

207. Chin & Tu, *supra* note 204, at 45.

208. *Ellis Island Reds on Hunger Strike*, N.Y. TIMES (Nov. 26, 1919), <https://timesmachine.nytimes.com/timesmachine/1919/11/26/96868927.html?pageNumber=2> [<https://perma.cc/7C24-Y85U>].

209. Brianna Nofil, *Ellis Island's Forgotten Final Act as a Cold War Detention Center*, ATLAS OBSCURA (Feb. 2, 2016), <https://www.atlasobscura.com/articles/ellis-islands-forgotten-final-act-as-a-cold-war-detention-center> [<https://perma.cc/R34G-UKJT>].

immigration detention.²¹⁰ Haitian refugees became known for their hunger strikes in the 1980s and 1990s, protesting U.S. policy towards Haitian asylum seekers and their indefinite detention at Guantanamo.²¹¹ From the 1990s on, immigrants of varied nationalities held hunger strikes at the Houston Processing Center in Texas, El Centro Service Processing Center in California, and the Wackenhut facility in New York.²¹² There, immigrants protested against the abuse, mistreatment, and prolonged confinement.²¹³

The sanctuary movement of the 1980s also serves as a close historical analog to today's deportation resistance. Susan Bibler Coutin described this movement as involving a grassroots religious-based network that helped refugees from El Salvador and Guatemala fleeing violence.²¹⁴ The sanctuary movement opposed U.S. policy towards such migrants, which included the near-refusal to grant political asylum by characterizing them as economic migrants.²¹⁵ Activists in the sanctuary movement began screening Central American refugees south of the border, unlawfully bringing them into the United States and sheltering these refugees in their homes or at religious institutions.²¹⁶ Their work led to several high-profile federal prosecutions of native-born citizens for "alien smuggling."²¹⁷

The sanctuary movement, however, involved a contradiction between contesting state control of migrants and reinforcing distinctions between legal and illegal immigration.²¹⁸ While the activists' determination of who was a political refugee was much broader than U.S. policy, they screened out economic migrants who they determined were not legally entitled to asylum.²¹⁹ Further, while activists collected testimonies for the purpose of persuading audiences about the legitimacy of their claims, some refugees resented "being put on display" and the paternalism from native-born citizens who provided sanctuary.²²⁰

While today's immigration disobedience has some similarities to these past events, it is more varied in terms of its tactics and actors. Activists, for example,

210. MARK DOW, *AMERICAN GULAG: INSIDE U.S. IMMIGRATION PRISONS* 55 (2004).

211. CARL LINDSKOOG, *DETAIN AND PUNISH: HAITIAN REFUGEES AND THE RISE OF THE WORLD'S LARGEST IMMIGRATION DETENTION SYSTEM* 2–3, 71–72, 99 (2018).

212. DOW, *supra* note 210, at 105, 111–13, 203–04.

213. *Id.* at 111–13. *See also* Cheryl Little, *Continuing Problems at Krome Service Processing Center*, 20 *DEFENSE ALIEN* 143, 144 (1997).

214. Susan Bibler Coutin, *Enacting Law Through Social Practice: Sanctuary as a Form of Resistance*, in *CONTESTED STATES: LAW, HEGEMONY AND RESISTANCE* 282 (Mindie Lazarus-Black & Susan F. Hirsch eds., 1994).

215. Susan Gzesh, *Central Americans and Asylum Policy in the Reagan Era*, *MIGRATION POL'Y INST.* (Apr. 1, 2006), <https://www.migrationpolicy.org/article/central-americans-and-asylum-policy-reagan-era> [<https://perma.cc/7KGF-M6TY>].

216. Coutin, *supra* note 214, at 283.

217. *Id.* at 290.

218. *Id.* at 300.

219. *Id.* at 292–93.

220. *Id.* at 296–97.

have introduced a form of direct action unheard of a few decades ago: physical interference with the machinery of ICE enforcement. There is also an increased diversity of actors. Undocumented youth activists, for example, are a new kind of actor who publicize their disobedience and ultimately risk their own deportation. The combination of actors—the undocumented immigrant, the legal immigrant, and the native-born citizen—allows for the persistence of immigration disobedience, even under the Trump administration. At the same time, this combination denotes an acceptance of immigration disobedience tactics more widely among community members.

Overall, immigration disobedience is occurring with more frequency. While there is no numerical accounting for immigration disobedience prior to 2010, the nearly 250 events from 2010 to 2020 look to be more numerous than what occurred in any other historical period. Hunger strikes, for example, appear to be more frequent, particularly given the unprecedented expansion of immigration detention over the past decades.

Further, the approach of today's immigration disobedience differs because immigrants themselves are more likely to be the protagonists of such actions. In contrast to the sanctuary movement of the 1980s, for example, deportation resisters are active protagonists who make their own decision to enter sanctuary, rather than being the object of rescue by good Samaritan allies.²²¹ Good Samaritan allies often prioritize immigrant control over their own narratives, moving away from the White savior model of the 1980s that focused on saving victims in need of humanitarian relief. Instead, they seek to lift "the prophetic voices of immigrant leaders."²²² As one good Samaritan ally explained: "The ways in which these stories are used will be determined by the storytellers themselves."²²³

Finally, today's immigration disobedience is concerned with the overhaul of the immigration system rather than working for recognition within the existing immigration system. Deportation resisters no longer fit a specific refugee profile but rather protest their deportation as an inhumane act of family separation.²²⁴ In addition, undocumented youth activists, who once focused on their own legalization, have extended their agenda to cover the broader issues of deportation and detention of all immigrants. In an open letter, some youth

221. SUSAN BIBLER COUTIN, *THE CULTURE OF PROTEST: RELIGIOUS ACTIVISM AND THE U.S. SANCTUARY MOVEMENT* 120 (1993).

222. SANCTUARY TOOLKIT: DEVELOPED FOR UNITARIAN UNIVERSALIST CONGREGATIONS CONSIDERING OFFERING PHYSICAL SANCTUARY 5 (2017), https://www.sanctuarynotdeportation.org/uploads/7/6/9/1/76912017/interfaith_sanctuary_toolkit.pdf [<https://perma.cc/V99W-USY2>].

223. Daniel Schwartz, *Searching for a New Sanctuary Movement*, DISSENT MAG. (June 25, 2010), https://www.dissentmagazine.org/online_articles/searching-for-a-new-sanctuary-movement [<https://perma.cc/3TAJ-67LP>].

224. See, e.g., Sara Fleming, "Zero Tolerance for Family Separation," *Denver Protesters Tell Trump*, WESTWORD (June 16, 2018), <https://www.westword.com/news/denver-immigration-advocates-protest-zero-tolerance-border-policy-10432695> [<https://perma.cc/XU8C-SZGA>].

activists expressed: “We do want to be able to vote and voice our opinions. We cannot, however, wait for that to happen while our families are being persecuted.”²²⁵ Activists under the auspices of Not1More, Never Again, or Occupy ICE, engage in immigration disobedience to highlight the need to end the arrest, detention, deportation of all immigrants. While today’s immigration disobedience might still encompass some specific asks—such as providing individual relief from deportation, legalizing immigrant youth, or improving detention conditions—it also comes with a broader agenda that aims to overhaul the existing immigration system.

II.

NEW APPROACH TO RESISTANCE

Immigration disobedience constitutes a new approach to resistance. With immigrant leadership, control, and voices, it prioritizes the self-actualization of immigrants as political agents. Further, immigration disobedience creates new spaces of contestation that allow activists to circumvent their exclusion from traditional political processes and institutions. As a result, immigration disobedience has produced an agenda shaped by those directly impacted by the immigration system. This agenda encompasses more transformative reforms, such as abolitionist demands that seek to end detention and abolish ICE.

A. *Immigrant Leadership*

Immigration disobedience is primarily led by immigrant leaders. Given the potential for retaliation, the immigration system causes many immigrants to keep a low profile.²²⁶ Over the past decade, however, an increasing number of immigrant activists have challenged the immigration system by developing their capacities as noncitizen political agents. They take on leadership roles in the movement and set the political demands for reform. This new approach emphasizes whose expertise matters and suggests that impacted individuals are better qualified to politically lead the movement for immigrant rights.

For undocumented immigrants, their social membership within the United States is incongruous with their “illegality.” Undocumented immigrants work and pay taxes. They attend school and belong to religious congregations. They purchase goods and services like any other U.S. consumer. For undocumented immigrant youth, the conflict between perception and reality is even more pronounced. The right to a K–12 education constitutionally guaranteed by *Plyler v. Doe* is instrumental in shaping a cultural sense of belonging and entitlement to a better future.²²⁷ As a day-to-day reality, however, undocumented youth find

225. Stoeve, *supra* note 89.

226. Shannon Gleeson & Roberto G. Gonzales, *When Do Papers Matter? An Institutional Analysis of Undocumented Life in the United States*, 50 INT’L MIGRATION 9–10 (2012).

227. Abrams, *Not1More*, *supra* note 10, at 62; Gleeson & Gonzales, *supra* note 226, at 7–8.

themselves excluded from social and economic opportunities, such as access to driver's licenses, financial aid for higher education, or traditional job markets.²²⁸

Immigrant activists push back on the immigration system that tries to keep them in the shadows.²²⁹ They have overcome fear to reaffirm their dignity as human beings living within the midst of an intolerable situation.²³⁰ As undocumented youth activist Tania Unzueta said: "When you stop being afraid, there's a whole world of possibilities in terms of how much risk you're willing to take to fight for what you believe is just."²³¹ As a group, undocumented youth activists say they "feel safer, stronger, and more empowered as a result of declaring their status."²³² Deportation resisters, like Angela Navarro, state, "I have lived in fear for over 10 years and I can't continue living this way."²³³

Rather than focus on discrimination or invisibility, undocumented youth activists engage in immigration disobedience to portray "themes of courage, stories of empowerment, and examples of youth standing their ground on moral authority to speak up for themselves."²³⁴ Deportation resisters, who choose to enter sanctuary, publicly reject the court orders that seek their removal from the United States. Immigrants may defy deportation orders by failing to depart. Rather than hiding, they openly seek sanctuary and say, "I had the option to flee and go into hiding, but instead I'm here"²³⁵ or as Carmen Apolonia Hernandez explains: "I know that I am an example, and I feel a sense of bravery . . . I am in the church, fighting for my freedom and for the freedom of my children."²³⁶ By "recognizing and affirming one's equal moral worth as a person," immigrants are able to express self-respect.²³⁷

228. Negrón-Gonzalez, *supra* note 48, at 275.

229. The government's political power derives from this tacit obedience to the current system. See SHARP, *supra* note 3, at 16.

230. Tommie Shelby, *Justice, Deviance, and the Dark Ghetto*, 35 PHIL. & PUB. AFFS. 126, 153 (2007). See also PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* 48–49 (1998) (describing resistance to retain a sense of dignity or honor).

231. Marie Landau, *Out of the Shadows, into the Spotlight*, THESE TIMES (July 5, 2010), http://inthesetimes.com/article/6114/out_of_the_shadows_into_the_spotlight [<https://perma.cc/HH6L-3FG9>].

232. Corruner, *supra* note 73, at 160.

233. OFFICE OF PUBLIC WITNESS, *supra* note 142, at 12.

234. Claudia Alejandra Anguiano, *Undocumented, Unapologetic, and Unafraid: Discursive Strategies of the Immigrant Youth Dream Social Movement 199–200* (July 1, 2011) (Ph.D. dissertation, Univ. of N.M.) (available at https://digitalrepository.unm.edu/cj_etds/24) [<https://perma.cc/HG5S-NYCE>].

235. Ryan Summerlin, *Woman Takes Sanctuary Against Deportation in Carbondale*, DENV. POST (Nov. 18, 2017), <https://www.denverpost.com/2017/11/18/colorado-woman-sanctuary-carbondale/> [<https://perma.cc/WKG5-TQT4>].

236. Claire Sasko, *Meet the Asylum Seeker Leading Philly's Fight Against the National Immigration Crackdown*, PHILLY MAG. (Mar. 26, 2019), <https://www.phillymag.com/news/2019/03/26/carmela-apolonio-hernandez/> [<https://perma.cc/4VNX-285Y>].

237. See Shelby, *supra* note 230 at 153 (describing how riots in impoverished urban neighborhoods represent a duty of self-respect).

In the process, immigrant activists take control over their own destiny that was otherwise prefigured by the immigration system. One undocumented youth activist, Felipe Baeza, stated “I am tired of waiting. I am tired of living in the shadows of hate and ignorance. I am tired of people deciding and having the power over my future.”²³⁸ Deportation resisters are similarly attempting to create a different future for themselves and their families. By entering sanctuary, Sandra Lopez explained that “I’m fighting for my family to be together.”²³⁹ Hunger strikers too capitalize on one of the only things that they can control in detention: choosing to eat or not.²⁴⁰

Further, immigrant activists use their own self-actualization to inspire others to act in solidarity. Their performative acts “reflect, capture, and shape emotions to mobilize followers.”²⁴¹ One immigrant detainee, Jose Moreno, helped to organize a hunger strike inspired by seeing activists block a bus from departing the detention facility.²⁴² Deportation resister Aura Hernandez implores: “I ask all of you to not keep quiet, to defend your rights, the rights of our children.”²⁴³ Undocumented youth activists’ sit-ins in various senators’ offices in Washington DC served as an inspiration for other youths to join the movement.²⁴⁴

The decision to engage in immigration disobedience is still a fraught one, particularly for immigrants. Activists may question whether disobedience is worthwhile on a personal level or for the broader community.²⁴⁵ Dulce Guerrero, an organizer from the Dream 30 event, described that individuals may not be ready to engage in disobedience because of the stress associated with the possibility of long-term detention and deportation.²⁴⁶ Activists who engage in immigration disobedience can also suffer from physical and emotional harm

238. Heredia, *supra* note 78.

239. Summerlin, *supra* note 235.

240. Stephen J. Scanlan, Laurie Cooper Stoll & Kimberly Lumm, *Starving for Change: The Hunger Strike and Nonviolent Action, 1906–2004*, 28 RSCH. SOC. MOVEMENTS, CONFLICTS & CHANGE 275, 303–304 (2008). *But see* JoAnn McGregor, *Contestations and Consequences of Deportability: Hunger Strikes and the Political Agency of Non-citizens*, 15 CITIZENSHIP STUD. 597, 608 (2011) (rejecting an overly romanticized notion of political agency that comes with “desperation, distress and divisions”).

241. SIDNEY G. TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* 143 (3rd ed. 2011) (emphasis omitted). A movement’s lifetime will draw on a broad range of emotions such as fear, shame, pride, community, and finally anger when conventional tactics appear ineffective. *Id.* at 155.

242. Stoeve, *supra* note 89.

243. Claudia Torrens, *Immigrant Mother Hiding in NY Sanctuary Church Vows to Stay*, AP NEWS (Mar. 29, 2018), <https://apnews.com/article/4e5bcb3117aa4471b927081b6e2c98fb> [<https://perma.cc/5MFB-R4AB>].

244. Corruner, *supra* note 73, at 150–51.

245. *See, e.g.*, Ashar, *supra* note 10, at 26 n.102 (citing a personal statement by Jesús, an undocumented youth activist wrestling with engaging in direct action).

246. Diana Bryson Barnes, *“Bring Them Home” Undocumented Activism: Week One in Otay*, NACLA (Mar. 15, 2014), <https://nacla.org/news/2014/3/15/bring-them-home-undocumented-activism-week-one-otay> [<https://perma.cc/E8K7-CDMC>].

because of their actions. More than a month after his release, hunger striker Ajay Kumar continued to have both vision and psychological issues.²⁴⁷ Living in isolation caused deportation resister Jose Chicas to suffer stress that took a toll on his physical health.²⁴⁸ Further, sanctions imposed on social movement actors, such as fines, civil detention, criminal arrest, or deportation, create personal costs, particularly for undocumented actors. After publicly re-entering the United States unlawfully as part of the Dream 30 group, activist Rocio Hernandez-Perez was deported because he was deemed ineligible for immigration relief.²⁴⁹ Government retaliation against activists is also common. Detention centers, for example, have regularly engaged in various forms of retaliation against hunger strikers, such as the use of force-feeding, excessive force, and solitary confinement.

Despite these consequences, some immigrants still choose to engage in immigration disobedience. Aura Hernandez explained that she defies her deportation order because “I am not going to keep quiet anymore.”²⁵⁰ Mothers hunger striking in family detention in Berks County, Pennsylvania, wrote: “We are desperate, and we have decided that we will get out of here dead or alive.”²⁵¹ Undocumented activist Maru Mora Villalpando, who has engaged in direct action, stated that “I hope our children see that when you do something, things change, and when you stop being afraid, when you start questioning why . . . things change.”²⁵²

The community surrounding such activists can also help provide support. Good Samaritan allies who provide sanctuary, for example, may attempt to provide emotional support to immigrants defying deportations.²⁵³ Other communities can provide a sense of belonging by offering a network that will activate in the event of retaliation. After the government’s retaliation against immigrant activists from Vermont, activists from the community mobilized a direct action to protest their detention. As one of those activists, Rev. Annie Gonzalez Milliken, explained, “[A]s an ally I need to have their back.”²⁵⁴

247. Ali, *supra* note 66.

248. Thomas McDonald, *Two Years After Seeking Sanctuary in a Durham Church, Jose Chicas Feels Anxious and Abandoned*, INDY WEEK (June 25, 2019), <https://indyweek.com/news/northcarolina/two-years-sanctuary-jose-chicas/> [https://perma.cc/6H2X-MME9].

249. ‘Dream 30 Activist’ Deported as Others Reportedly Released, AL JAZEERA AM. (Oct. 29, 2013), <http://america.aljazeera.com/articles/2013/10/29/-dream-30-activistdeportedasothersarereleased.html> [https://perma.cc/Z7RM-5NLF].

250. Torrens, *supra* note 243.

251. Wendy Feliz, *Why 22 Mothers Are on Hunger Strike at the Berks Family Detention Facility*, IMMIGR. IMPACT (Aug. 15, 2016), <https://immigrationimpact.com/2016/08/15/mothers-hunger-strike-berks-family-detention-facility/> [https://perma.cc/TG6B-R9P7].

252. Stoeve, *supra* note 89.

253. See, e.g., John Gehring, *Mothers in Sanctuary, Living in Churches for over Two Years, Endure Isolation*, NAT’L CATH. REP. (May 8, 2020), <https://www.ncronline.org/news/opinion/mothers-sanctuary-living-churches-over-two-years-endure-isolation> [https://perma.cc/S356-2ZKK].

254. Joyce, *supra* note 110.

Undocumented youth activists also recognized that they were connected to a network that “would organize on their behalf if they were taken” by ICE.²⁵⁵

By engaging in immigration disobedience, immigrant activists stand up for themselves rather than meekly acquiescing to an unjust system. Frances Fox Piven and Richard Cloward described a shift in consciousness where individuals who ordinarily consider themselves helpless come to believe that they have some capacity to change the system.²⁵⁶ They no longer perceive the system as legitimate and are able to stand up, organize, and instigate change.²⁵⁷ Patricia Ewick and Susan Sibley similarly described an “against the law” consciousness for those who “forge moments of respite from the power of the law.”²⁵⁸ These individuals may choose to resist by violating conventional and legal norms with a “strong sense of justice and right.”²⁵⁹

Immigration disobedience has played a part in developing immigrants into noncitizen political agents.²⁶⁰ This process of “political subjectivization” transforms an immigrant, who otherwise has “no formal claim to the national space or to the rights of a citizen,” into one “capable of ‘taking part’ in the political.”²⁶¹ Other factors too have contributed to the political self-actualization of immigrant activists. Over the years, activists have, for example, gained expertise about how to work within the legal system, by engaging in activities such as lobbying Congress or registering Latinx voters. These experiences within immigrant rights organizations have helped immigrant activists build the political self-confidence to engage in immigration disobedience.²⁶²

As noncitizen political agents, immigrant activists lead the movement for immigrant rights. Activists have taken “control of both the message and the means of their own advocacy, for themselves, their families, and their communities.”²⁶³ As undocumented youth activist Alaa Mukahhal explains about their role: “We initiate the action, we frame the conversation, and we determine the messaging. We tell our own stories. That in itself, is a liberating

255. Abrams, *NotIMore*, *supra* note 10, at 62.

256. FRANCES FOX PIVEN & RICHARD A. CLOWARD, POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL 3–4 (1977).

257. *Id.*

258. EWICK & SILBEY, *supra* note 230, at 48–49.

259. *Id.* at 49. *See also* Ashar, *supra* note 10, at 38.

260. *See* ENGIN F. ISIN, BEING POLITICAL: GENEALOGIES OF CITIZENSHIP 275–76 (2002) (constituting “themselves as political agents under new terms, taking different positions in the social space than those in which they were previously positioned”). *See also* Anne McNevin, *Ambivalence and Citizenship: Theorising the Political Claims of Irregular Migrants*, 41 J. INT’L STUD. 182, 197 (2013); AMALIA PALLARES, FAMILY ACTIVISM: IMMIGRANT STRUGGLES AND THE POLITICS OF NONCITIZENSHIP 113 (2014); Abrams, *Performative Citizenship*, *supra* note 195, at 6; Corrunker, *supra* note 73, at 155.

261. Montange, *supra* note 146, at 513.

262. KATHRYN ABRAMS, OPEN HAND, CLOSED FIST: PRACTICES OF UNDOCUMENTED ORGANIZING IN A HOSTILE STATE 94 (2022).

263. Ashar, *supra* note 10, at 38.

feeling.”²⁶⁴ While relying on community allies makes deportation resisters and hunger strikers more vulnerable to outside control, such allies often look to immigrants for their leadership. As one deportation resister, Jeanette Vizguerra, explains her relationship with good Samaritans, “[T]hey are doing us a favor by giving us a safe place to stay, but we still get to make our own decisions.”²⁶⁵ Hunger strikers, who collaborate with outside activist allies at the Northwest Detention Center, use the slogan “Nothing about us without us!” to center the resistance on themselves.²⁶⁶

Native-born citizen activists who engage in immigration disobedience can play an important role in supporting the leadership of immigrants. Despite the potential power differential based on differing status, native-born citizen activists are increasingly consulting or collaborating with immigrants. As Courtney Kearney, a native-born citizen activist, stated about her engagement in immigration disobedience: “[W]hen the Latinx community leaders asked for solidarity . . . because it was too dangerous to stand for themselves, I had to plant my feet.”²⁶⁷ These kind of approaches with immigrants controlling, directing, or influencing immigration disobedience by native-born citizen allies are essential to building the political agency of immigrants.

Immigration disobedience ultimately demonstrates how immigrant activists can create a new role for themselves within the sociopolitical order. Kathryn Abrams has noted that political rights and responsibilities are no longer solely reserved for those who have formal citizenship.²⁶⁸ Rather, immigrants can engage in acts that rupture prevailing assumptions about political belonging and participation defined by formal citizenship.²⁶⁹ Thus, immigrants become “political agents under new terms,”²⁷⁰ which not only emphasizes the primacy of their own expertise but also allows them to lead the movement and set the agenda for reform.

B. *New Spaces of Contestation*

Activists use immigration disobedience to claim or transform spaces for disruption. Normally, immigrants face various kinds of exclusion in everyday life, the courts, or mainstream politics. While native-born citizens face less exclusion, the dominance of anti-immigrant rhetoric similarly creates limitations for them in mainstream politics. To break past these limitations, immigration

264. René Galindo, *The Functions of Dreamer Civil Disobedience*, 24 TEX. HISP. J.L. & POL’Y 41, 50 (2017).

265. OFFICE OF PUBLIC WITNESS, *supra* note 142, at 7.

266. Montange, *supra* note 146, at 517.

267. Leowebkly.com, *Heyburn 9 Protester Speaks About the Trial, Motives and How to Help*, POPULAR RESISTANCE (July 10, 2019), <https://popularresistance.org/heyburn-9-protester-speaks-about-the-trial-motives-and-how-to-help/> [https://perma.cc/M6ST-6NFE].

268. See Abrams, *Performative Citizenship*, *supra* note 195, at 13.

269. ISIN, *supra* note 260, at 277.

270. *Id.* at 276.

disobedience provides activists with the opportunity to recast spaces—both literally and figuratively—to be viewed and heard. Without the need to work within the confines of the existing political system, activists can convert the normally hidden circumstances of immigrants into public display, thereby disrupting an immigration system that keeps immigrants in the shadows.

Immigrants face multiple exclusions from being heard.²⁷¹ At its most extreme, immigrants are socially excluded from regular everyday life because of incarceration in immigration detention. Immigrants too are often unheard in the courts. When immigrants attempt to challenge their own deportation before an immigration court, most of those attempts fail.²⁷² Challenges to exclusion from equivalent constitutional rights have also failed.²⁷³

Deportation resisters and hunger strikers attempt to overcome these exclusions by creating new sites of resistance. Deportation resisters, with the support of good Samaritan allies, use the sanctuary site to publicly play out the impact of deportation on families. By using media attention, deportation resistance provides “an opportunity to advocate for [themselves] and the immigrant community.”²⁷⁴ They do so by revealing their day-to-day struggles, including the inability to engage in regular everyday activities, such as dropping their children off at school.²⁷⁵ Hunger strikers also transform the previously invisible space of detention into a site that broadcasts the abject suffering of immigrants. As hunger striker Edgar Granski said, “We want our voices to be heard.”²⁷⁶ They have brought politics into the no-man’s land of the detention center and claimed or taken “a political voice and space.”²⁷⁷

Even immigrants who lead a semblance of a regular life in the United States are shut out of mainstream politics at the federal level. Immigrants find political channels closed to them or ineffective, given their inability to vote in most elections.²⁷⁸ In addition to electoral exclusion, immigrant organizations may

271. Walter J. Nicholls, *From Political Opportunities to Niche-Openings: The Dilemmas of Mobilizing for Immigrant Rights in Inhospitable Environments*, 43 *THEORY & SOC’Y* 23, 26–27 (2014).

272. See, e.g., Executive Office for Immigration Review Adjudication Statistics, FY 2021 Decision Outcomes, U.S. DEP’T JUST. (Oct. 19, 2021), <https://www.justice.gov/eoir/page/file/1105111/download> [<https://perma.cc/N3D7-5D2D>].

273. While the spate of lawsuits filed against the Trump administration have had some success, they have focused on enjoining reversals of existing policies to maintain the status quo. See *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020); *NAACP v. U.S. Dep’t of Homeland Sec.*, 364 F. Supp. 3d 568 (D. Md. 2019).

274. Mary Shinn, *Woman Taking Sanctuary from Deportation in Colorado Church Hits 1,000 Day Mark*, *DENV. POST* (Feb. 27, 2020), <https://www.denverpost.com/2020/02/27/rosa-sabido-sanctuary-colorado/> [<https://perma.cc/DG3Y-NCT3>].

275. See Jeff Gammage, *For Children in Philly Church Sanctuary, a Risky Ride to School*, *PHILA. INQUIRER* (Aug. 28, 2018), <https://www.inquirer.com/philly/news/immigrant-children-church-sanctuary-first-day-school-philadelphia-ice-20180828.html> [<https://perma.cc/PBF8-ZL5B>].

276. Morrissey, *supra* note 157.

277. Montange, *supra* note 146, at 511, 518.

278. ALEJANDRO PORTES & RUBÉN G. RUMBAUT, *IMMIGRANT AMERICA: A PORTRAIT* 183 (2014).

have less political influence because of the undocumented status of some of their members.²⁷⁹ The problem of access too stems from the fact that law and policymaking authority concerning the immigration system is centered in Washington D.C.²⁸⁰ Even with the Obama administration's greater receptivity to immigrant issues, those who were critical of the administration were otherwise shut out.²⁸¹ While native-born citizens may not face identical barriers, their voices are drowned out by the hegemony of inflammatory anti-immigrant rhetoric in mainstream politics.²⁸²

Thus, activists engage in direct actions to contest their exclusion from these traditional political processes and institutions. One of the undocumented youth activists in the 2010 sit-in at Senator McCain's office, Lizbeth Mateo, explained: "We wanted to take ownership of our lives and our future. We decided to do it inside his office, because outside—they would close the office, lock us out."²⁸³ In 2012, undocumented immigrants from the Undocubus engaged in a direct action outside of the gates of the Democratic National Convention in Charlotte, North Carolina, to ensure that "there [w]ould be voices of undocumented immigrants at the convention."²⁸⁴ Other activists occupy spaces that involve interfering with "business as usual," such as blocking entrances to governmental offices or detention facilities. These reclaimed spaces become political sites where "sovereignty is performed" with authorities either negotiating or having "armed bodies of men . . . seizing, arresting, pacifying, terrifying, removing bodies in full display of the public."²⁸⁵

In these spaces, activists have a more active and creative role to perform.²⁸⁶ At the core of contentious politics is the "power to disrupt through the invention of innovative ways of performing protest."²⁸⁷ Activists have stood in front of

279. *Id.*; S. Karthick Ramakrishnan & Irene Bloemraad, *Introduction: Civil and Political Inequalities*, in *CIVIC HOPES AND POLITICAL REALITIES: IMMIGRANTS, COMMUNITY ORGANIZATIONS, AND POLITICAL ENGAGEMENT* 2, 4 (S. Karthick Ramakrishnan & Irene Bloemraad eds., 2008). Immigrant organizations, however, often play a role in voter mobilization efforts. *See, e.g., Immigrant Power Fund*, VOTER MOVEMENT PROJECT, <https://movement.vote/funds/immigrant-power-fund/> [<https://perma.cc/KPQ5-P3DC>].

280. Daniel I. Morales, *Dissent in Immigration*, 16(2) *LAW, CULTURE & HUMANITIES* 250, 253 (2020).

281. Walter J. Nicholls, Justus Uitermark & Sander van Haperen, *Going National: How the Fight for Immigrant Rights Became a National Social Movement*, 46 *J. ETHNIC & MIGRATION STUD.* 705, 720 (2020).

282. *See* Young, *supra* note 173, at 685.

283. Negrón-Gonzalez, *supra* note 48, at 278.

284. Griselda Nevarez, *The Undocubus: DREAM Activists Arrive in Charlotte to Make Their Voices Heard at the Democratic National Convention*, *HUFFINGTON POST* (Sept. 3, 2012), https://www.huffpost.com/entry/undocubus-dream-activists-democractic-convention_n_1852019 [<https://perma.cc/A924-C2UP>].

285. Peter Nyers, *Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement*, in *DEPORTATION REGIME: SOVEREIGNTY, SPACE, AND THE FREEDOM OF MOVEMENT* 413, 434 (Nicholas De Genova & Nathalie Peutz eds., 2010).

286. KALYVAS, *supra* note 174, at 286.

287. TARROW, *supra* note 241, at 101.

deportation buses, chained their necks to an ICE facility, and set up a 30-foot-tall wooden tripod in front of ICE offices with a sign stating “I.C.E. Ruins Lives Here.”²⁸⁸ The aim of such performances is to attract media attention, which is more likely given the sensational means of immigration disobedience.²⁸⁹ With certain actions, state violence can also become a spectacle, such as the dragging away of bodies for arrest or the force-feeding of hunger strikers, making the state violence of the immigration system visible.²⁹⁰

Immigrants use these new or transformed spaces to present their own narrative about the immigration system. In reviewing disobedience related to Not1More Deportation, Gabriela Marquez-Benitez and Amalia Pallares noted the ways in which activists were able to become the protagonist in spaces without having to be an established leader.²⁹¹ Leah Montange discussed how hunger strikers in immigration detention around the world have transformed spaces by exercising their rights as political subjects.²⁹²

Immigration disobedience, therefore, provides activists with the power to circumvent these exclusions by physically co-opting public and private spaces to be viewed or heard. Rather than work through traditional channels to set agendas, they directly confront political actors with their own demands.²⁹³ As a result, activists can set their own agenda rather than be limited to the sphere of existing rights accorded by the immigration system.²⁹⁴

C. Agenda for Transformative Reform

Immigration disobedience’s agenda embodies a more transformative vision for the immigration system. The new approach of immigration disobedience—

288. See, e.g., *Breaking: DC Area Protest Shuts Down Regional ICE Office, #NOT1MORE DEPORTATION* (Dec. 16, 2013), <http://www.notonemoredeportation.com/2013/12/16/dc/> [<https://perma.cc/6GAY-UD3E>]; *Breaking: Immigrant Youth Shut Down ICE in Los Angeles, #NOT1MORE DEPORTATION* (Dec. 16, 2013), <http://www.notonemoredeportation.com/2013/12/16/dtla/> [<https://perma.cc/DQT3-B3RA>]; Ludwig, *supra* note 117.

289. TARROW, *supra* note 241, at 142.

290. See Nyers, *supra* note 285, at 434; Gabriela Marquez-Benitez & Amalia Pallares, *Not One More: Linking Civil Disobediences and Public Anti-Deportation Campaigns*, 19 N. AM. DIALOGUE 13, 17 (2016); Ali, *supra* note 66.

291. Marquez-Benitez & Pallares, *supra* note 290, at 17.

292. Montange, *supra* note 146, at 515.

293. See, e.g., Adam Hermann, *Immigration Rights Demonstrators Arrested During Sit-in at Joe Biden’s Philadelphia Headquarters*, PHILLY VOICE (July 10, 2019), <https://www.phillyvoice.com/immigration-rights-protest-arrests-joe-biden-headquarters-philadelphia-sit-in/> [<https://perma.cc/CG4S-KEN4>] (describing the sit-in at the Biden headquarters demanding that the then candidate agree to end all deportations, legalize 11 million undocumented immigrants, and unite all separated families). See also Abrams, *Not1More*, *supra* note 10, at 64 n.70 (describing how undocumented youth activists sought to secure a direct voice that was otherwise unmediated by national pro-immigrant non-profits).

294. See Muneer I. Ahmad, *Resisting Guantánamo: Rights at the Brink of Dehumanization*, 103 NW. U. L. REV. 1683, 1758 (2009) (describing hunger strikes at Guantánamo to force a confrontation outside of a rights-based strategy).

immigrants operating as noncitizen political agents outside the confines of traditional institutional channels—has led to a more personal and sophisticated understanding about the injustice of the immigration system. Mari Matsuda notes how prioritizing the voices of those who are oppressed leads to different results.²⁹⁵ By providing immigrants with the opportunity to voice their own demands, immigration disobedience results in a new and more radical agenda for reform.

Reform of the immigration system is often limited to “niche-openings,” which involves narrow opportunities for immigrants with “strategic attributes.”²⁹⁶ This sorting focuses on what kinds of immigrants deserve to be accepted as members of American society.²⁹⁷ Previous niche-openings consisted of providing relief for vulnerable immigrants, such as children or victims of crime or trafficking.²⁹⁸ Other strategic attributes that make immigrants deserving include those who provide economic benefits or are otherwise “good Americans.”

Further, most reforms to the immigration system are premised on what Angélica Cházaro called “the common sense of deportation.”²⁹⁹ The government keeps the deportation system intact by potentially offering procedural improvements that can address the more glaring glitches. Improvements to the ways in which deportation proceedings are conducted—whether it be access to counsel, evidentiary rules, or appointment of judges—are examples of such procedural improvements.³⁰⁰ Changing the approach to enforcement is another way to procedurally improve the enforcement process. The Obama administration’s shift from high-profile workplace raids to “silent” raids by auditing corporate paperwork still resulted in the mass firing of immigrant workers. While these mass firings caused less harm and disruption to immigrant workers than workplace raids (and incidentally less bad publicity for the

295. Matsuda, *supra* note 6, at 325–26. See also Simonson, *supra* note 7, at 303–304 (noting how bottom-up communal resistance to local police actions and prosecutions bring a “sophisticated understandings of the history and discourse surrounding seemingly neutral procedures”).

296. Nicholls, *supra* note 271, at 30.

297. Susan Bibler Coutin, ‘*Otro Mundo Es Posible*’: *Tempering the Power of Immigration Law Through Activism, Advocacy, and Action*, 67 BUFF. L. REV. 653, 656 (2019) (“Public and legal discourse regarding deservingness also establishes criteria, such as employment, acculturation, and self-sufficiency . . .”). See also Angélica Cházaro, *Beyond Respectability: Dismantling the Harms of “Illegality,”* 52 HARV. J. ON LEGIS. 355, 387–88 (2015); Muneer I. Ahmad, *Beyond Earned Citizenship*, 52 HARV. C.R.-C.L. L. REV. 257, 289 (2017).

298. Political openings include a focus on victims of crimes or human trafficking that can apply for U or T visas created by the Victims of Trafficking and Violence Protection Act of 2000. See Mariela Olivares, *Resistance Strategies in the Immigrant Movement*, 39 N. ILL. U. L. REV. 1, 21 (2018).

299. Cházaro, *supra* note 11, at 1043.

300. See also *id.* at 1084 (describing the various procedural efforts related to making immigration proceedings fair but fail to question the legitimacy of deportation); McLeod, *Immigration*, *supra* note 10, at 564–65 (examining how procedural improvements to the exclusionary rule or access to counsel fail to address underlying issues of detention and removal).

administration), they reinforced the existing immigration system's subordination of a racial subclass of workers.³⁰¹

Activists may seek more immediate relief by requesting procedural improvements or conforming to the common tropes of deservingness that the immigration system demands.³⁰² Deportation resisters use their defiance to pressure the government to allow them to remain in the United States. Hunger strikers may appeal to a court to seek their release, as many did by showing underlying health conditions during the COVID-19 pandemic. Activists may use direct action to demand the termination of deportation proceedings against a specific community member. In doing so, they may at times speak the “dominant languages of the state” that works at cross-purposes to the rejection of the existing immigration system.³⁰³ In other words, activists may practically need to work within the system for more immediate and individualized relief.

Yet activists engaging in immigration disobedience also have long-term and broader goals. These goals push past these limitations of niche-openings or procedural improvements to upend the existing immigration system.³⁰⁴ Like the Black Lives Matter movement of “ordinary people” who “raise their voices to protest what they regard as injustices in their lives,” those engaging in immigration disobedience do not feel the need to play respectability politics.³⁰⁵ Alex Aldana, who engaged in immigration disobedience at the U.S. border, challenged the notion of the “good-immigrants” that receive protection: “What about illegals like us, terrorized brown and black bodies that are baffled by the misinformation circulated and hatred perpetuated? Do we deserve to be incarcerated, deported, enslaved?”³⁰⁶ Activists are rejecting immigration reform that solely focuses on niche-openings without recognizing the immense human costs of ICE's enforcement machinery on all immigrants.

Youth activists have rejected the political opportunity of seeking legislation that creates a pathway to citizenship solely for themselves and rather advocated for a more transformative change for all immigrants. Their agency, voice, and leadership have pushed against the framing of vulnerability that can often be politically popular (think: “kids in cages”).³⁰⁷ For example, the youth activists in

301. Lee, *supra* note 23, at 151–152.

302. See Austin Kocher & Angela Stuesse, *Undocumented Activism and Minor Politics: Inside the Cramped Political Spaces of Deportation Defense Campaigns*, 53 *ANTIPODE* 331, 337 (2021).

303. *Id.* at 338.

304. Others have noted these limitations and the push back by immigrant rights movements. See, e.g., Annie Lai & Christopher N. Lasch, *Crimmigration Resistance and the Case of Sanctuary City Defunding*, 57 *SANTA CLARA L. REV.* 539, 604–607 (2017).

305. Linda S. Greene, Lolita Buckner Inniss, Bridget J. Crawford, Mehrsa Baradaran, Noa Ben-Asher, I. Bennett Capers, Osamudia R. James & Keisha Lindsay, *Talking About Black Lives Matter and #MeToo*, 34 *WIS. J.L., GENDER & SOC'Y* 109, 119, 127 (2019).

306. Aldana, *supra* note 65.

307. See e.g., the Open Letter to the Immigrant Rights Movement: Our Families Can't Wait (2014), available at Adrian Carrasquillo, *It's DREAMers vs. Longtime Activists on Citizenship as a Deal Breaker for New Immigration Laws*, BUZZFEED (Jan. 16, 2014),

the “Dream Nine” and “Dream 30” sought reentry to the United States without permission to highlight how all immigrants should have the right to remain and freedom of movement.³⁰⁸ Youth activists targeted Rep. Loretta Sanchez’s Office for a sit-in, even though she was a supporter of undocumented youth activists, seeking to get her to end deportations.³⁰⁹ Most recently, youth activists continue to push for a pathway of citizenship for all undocumented immigrants, defunding of immigration enforcement, and the end of immigration detention.³¹⁰

Deportation resisters also more broadly seek to end the injustice of deportation. Immigrants come in all shapes and sizes (e.g., with or without children, long-term ties to the United States, brushes with the criminal system).³¹¹ Yet all their stories share a common theme about the inhumanity of ICE’s enforcement system.³¹² As defiant deportee Rosa Sabido suggests, they can lend their voice for the bigger fight:

Maybe through talking about our stories we give them the strength to come out from the shadows of fear and then be willing to speak, and then create a larger community to fight for our rights, and also to let them know that we are doing this for us, but we are doing this for them as well.³¹³

Hunger strikers also connect their disobedience to the broader fight to shut down immigration detention. In part, they do so by joining with immigrants at other facilities.³¹⁴ There have been several waves of hunger strikes spanning across facilities, such as “#FreedomGiving” over the Thanksgiving of 2015.³¹⁵ During such hunger strikes, activists highlight the inhumanity of the carceral system through stories about inadequate access to food or medicine or the

<https://www.buzzfeednews.com/article/adriancarrasquillo/its-dreamers-vs-longtime-activists-on-citizenshi> [https://perma.cc/LCD7-SUDU].

308. McLeod, *Immigration*, *supra* note 10, at 581.

309. Elizabeth Held, *Three Arrested at Rep. Loretta Sanchez’s D.C. Office*, ORANGE CNTY. REG. (Apr. 9, 2014), <https://www.ocregister.com/2014/04/09/three-arrested-at-rep-loretta-sanchezs-dc-office/> [https://perma.cc/G58G-99AE].

310. *Protect Immigrants Now!*, UNITED WE DREAM, <https://unitedwedream.org/protect-immigrants-now/> [https://perma.cc/Q7QB-G563].

311. See, e.g., McDonald, *supra* note 248; Associated Press, *Charge Dropped Against Immigrant Who Took Refuge in Portland Church*, OREGONLIVE (June 17, 2016), https://www.oregonlive.com/portland/2016/06/charge_dropped_against_francis.html [https://perma.cc/UDR5-YA9P].

312. Fleming, *supra* note 224; Gammage, *supra* note 133.

313. Emily Neil, ‘Sanctuary Stories’ Sheds New Light on Immigrants’ Journeys, ALDÍA (July 3, 2019), <https://aldianews.com/articles/culture/immigration-stories/sanctuary-stories-sheds-new-light-immigrants-journeys/55975> [https://perma.cc/D3NJ-LZFU].

314. See Fernie Ortiz, *ICE Now Says Detainees Held Hunger Strike in Honor of George Floyd*, BORDER REP. (June 11, 2020), <https://www.borderreport.com/hot-topics/migrant-centers/ice-now-says-detainees-held-hunger-strike-in-honor-of-george-floyd/> [https://perma.cc/K7NW-U9BW].

315. Samantha Michaels, *Here’s Why Hundreds of Immigrants in Detention Have Gone on Hunger Strike*, MOTHER JONES (Dec. 3, 2015), <https://www.motherjones.com/politics/2015/12/why-are-hundreds-detained-immigrants-going-hunger-strike/> [https://perma.cc/43MH-82SL].

barriers to communicating with family and counsel.³¹⁶ Hunger strikers have also been asking for freedom and questioning the authority of ICE to detain them. NWDC hunger strikers have stated: “We are taking part in a hunger strike nationwide demanding change and closure of these detention centers, we are acting with solidarity for all those people who are being detained wrongfully.”³¹⁷ In support, activists on the outside block driveways to detention centers, ICE offices, and intersections, to highlight their messages of “close the camps” or “shut [it] down.” More recently, hunger strikers along with their allies during the pandemic have only increased the messaging around “#FreeThemAll,” highlighting how those locked up are extremely vulnerable to infectious disease and could otherwise be released to their families while navigating their immigration case.³¹⁸

The primary demands of activists engaged in direct action include ending deportations, shutting down detention, and abolishing ICE.³¹⁹ Many of these direct actions highlight the harm to families—including their detention, separation, and reunification.³²⁰ The Not1More campaign, fueled initially by undocumented youth activists, was the first to challenge the “common sense” of deportation. Local campaigns sought to shut down specific immigration detention facilities. With the onset of the Trump administration, the demand to abolish ICE repackaged these anti-deportation concepts.³²¹ The demand is to abolish institutions that terrorize communities by engaging in detention and deportation of immigrant communities of color.³²²

Immigration disobedience’s broader demands include a racial capitalism critique³²³ of the immigration system. While racial exclusion is integral to the history of immigration law, the modern incarnation of the immigration system is one of ostensibly race-neutral principles.³²⁴ Yet immigrants trapped within the

316. See Gabriel Huerta, *Immigrants at Adelanto Detention Center Start Hunger Strike*, NBC L.A. (Mar. 16, 2019), <https://www.nbclosangeles.com/news/immigrants-adelanto-detention-center-start-hunger-strike/138243/> [https://perma.cc/7SZ4-9STJ].

317. *Hundreds of Detained Immigrants Join National Prison Strike in Tacoma, WA*, DEMOCRACY NOW! (Aug. 22, 2018), https://www.democracynow.org/2018/8/22/headlines/hundreds_of_detained_immigrants_join_national_prison_strike_in_tacoma_wa [https://perma.cc/PFY5-AWM5].

318. *Free Them All*, DET. WATCH NETWORK, <https://www.detentionwatchnetwork.org/covid-19> [https://perma.cc/834Q-VL7R].

319. Markowitz, *supra* note 11, at 131–32.

320. Tat Bellamy-Walker, *100 Protesters Calling for Shutdown of ICE Get Arrested in New York City*, CNN (Sept. 29, 2020), <https://www.cnn.com/2019/08/11/us/new-york-ice-arrests/index.html> [https://perma.cc/CZC4-GLQK].

321. Godfrey, *supra* note 192.

322. McElwee, *supra* note 192.

323. Robin D.G. Kelley, *What Did Cedric Robinson Mean by Racial Capitalism?*, BOS. REV. (Jan. 12, 2017), <https://bostonreview.net/articles/robin-d-g-kelley-introduction-race-capitalism-justice/> [https://perma.cc/LYF2-2PFE] (describing Cedric Robinson’s theory that capitalism and racism evolved “to produce a modern world system of ‘racial capitalism’ dependent on slavery, violence, imperialism, and genocide”).

324. See The Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965).

immigration system's enforcement machinery are overwhelmingly poor and people of color.³²⁵ As of late, the coded language about “anchor babies” and “chain migration” has given way to more explicitly racist language disparaging Mexicans, Haitians, and other Black and Brown immigrants.³²⁶ Activists use immigration disobedience to explicitly protest racially discriminatory treatment within detention,³²⁷ surveillance of communities of color by ICE,³²⁸ and ethnic cleansing.³²⁹ They highlight how private industry not only reaps profits from ICE's enforcement machinery but also from a readily exploitable workforce that is largely Latinx.³³⁰ They target private companies who profit from the federal immigration system, including the privately-owned detention facilities that detain 80% of the immigrants in the United States.³³¹ Private employers are also part of this racial capitalism. Undocumented immigrants recognize the economic benefit of their low-wage labor (i.e., “All the government cares about is whether you are working and paying taxes”).³³² Their immigration disobedience is directed towards this hypocritical stance of allowing employers to simultaneously profit from undocumented workers while asking them to act as enforcers of the immigration system.³³³

As a result, activists demand an altogether different immigration system. Immigrants with a different history and experience with oppression can better conceive how mainstream reforms are problematic because they keep an unjust

325. Eisha Jain, *The Interior Structure of Immigration Enforcement*, 167 U. PA. L. REV. 1463, 1475 (2019); Gilman & Romero, *supra* note 33, at 156. Lawsuits filed against the proposed public charge rule under the Trump administration illustrate the immigration system's explicit animus against poor immigrants of color. Zack Budryk, *Three More States Sue Over 'Public Charge' Immigration Rule*, HILL (Aug. 20, 2019), <https://thehill.com/homenews/state-watch/458114-ny-attorney-general-sues-over-public-charge-rule> [https://perma.cc/NUR2-TRBG].

326. Kevin R. Johnson, *Immigration and Civil Rights: Is the “New” Birmingham the Same as the “Old” Birmingham?*, 21 WM. & MARY BILL RTS. J. 367, 380 (2012). See Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1917 (2020) (Sotomayor, J., concurring in part, concurring in the judgment in part, and dissenting in part); Ali Vitali, Kasie Hunt & Frank Thorp V, *Trump Referred to Haiti and African Nations as 'Shithole' Countries*, NBC NEWS (Jan. 12, 2018), <https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946> [https://perma.cc/7AWX-A9NB].

327. See, e.g., Katie Jane Femelius, “Someone Needs to Listen to Us”: Why African Asylum Seekers Went on Hunger Strike, THESE TIMES (Oct. 7, 2020), <https://inthesetimes.com/article/african-migrants-hunger-strike-ice-cameroon-racism> [https://perma.cc/7JAE-XYVQ].

328. See, e.g., *Occupy ICE Shuts Down ICE in Los Angeles*, INT'L ACTION CTR. (Sept. 17, 2018), <https://iacenter.org/2018/09/18/occupy-ice-shuts-down-ice-in-los-angeles> [https://perma.cc/TTN6-XEZC].

329. McElwee, *supra* note 192. See also Bill Gallegos, *Ethnic Cleansing and the War on Immigrants: A Program of Resistance*, LIBERATION RD., <https://roadtoliberation.org/ethnic-cleansing-and-the-war-on-immigrants-a-program-of-resistance/> [https://perma.cc/4NPW-D4D3].

330. See, e.g., César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 245, 288–89 (2017) (providing an illustration of this racial capitalism).

331. See *supra* notes 118–119; Gilman & Romero, *supra* note 33, at 148; CHO ET AL., *supra* note 32, at 17.

332. Gleeson & Gonzales, *supra* note 226, at 12.

333. See Bacon, *supra* note 96; Stephen Lee, *Private Immigration Screening in the Workplace*, 61 STAN. L. REV. 1103, 1122–23 (2009).

immigration system intact.³³⁴ A transformed immigration system looks to a vision of decolonization where the policing of territorial borders would no longer justify ICE's enforcement machinery. Tendayi Achiume looked to migrants themselves for reframing international migration as decolonization. In particular, she offered that the decolonizing consciousness of migrants is "capable of suggesting more ethical, and perhaps more sustainable, contours of territorial and political borders."³³⁵ Within the United States, there is some evidence of this "decolonizing consciousness" among undocumented immigrants. Emily Ryo, for example, found that a high percentage of Mexicans crossing unlawfully believed that "the U.S. government has no right to limit immigration" and that "Mexicans have a right to be in the United States."³³⁶ A vision of decolonization aligns with immigration disobedience's agenda to ultimately dismantle ICE's enforcement machinery.

Immigration disobedience manages to set a different agenda not only because it is created by bottom-up resistance from immigrants and their allies but also because it operates outside the law. It recognizes the harms of limiting reform to the existing framework of rights and citizenship. Instead, activists look beyond the confines of the existing immigration system to offer an alternative and more creative vision.

III.

CHANGING THE LANDSCAPE FOR REFORM

In comparison to a decade ago, immigrant rights groups are currently demanding more radical policy reforms that fundamentally challenge the ICE enforcement regime. This profound shift in political demands demonstrates the ways in which social movement activism can fundamentally alter the legal landscape. Like the BLM movement, the movement for immigrant rights is increasingly looking to overhaul an existing institutional system premised on racial and economic inequality. While the demands may lack political palatability or face backlash, these more radical approaches seep into the mainstream agenda. They serve as an important counterpoint to the more easily accomplished reforms and are part of the continued cycles of evolution that will be necessary for realizing justice for immigrants.

The political demands of the immigrant rights movement have markedly changed over the past decade. In 2010, they were focused on a program for legalization. In 2013, a bipartisan comprehensive immigration reform (CIR) bill

334. See DELGADO & STEFANCIC, *supra* note 6, at 11. See also Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1387 (1988) (arguing for a progressive outlook distinct from the dominant political discourse that focuses on the needs of the African American community).

335. E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1569 (2019).

336. Emily Ryo, *Deciding to Cross: Norms and Economics of Unauthorized Migration*, 78 AM. SOC. REV. 574, 599 (2013).

passed the Senate that provided for the fast-track legalization of undocumented youth and farm workers while excluding undocumented immigrants who had past criminal convictions, insufficient continuous presence, or an inability to meet financial obligations.³³⁷ The current CIR proposal is similar to the 2013 bill in terms of its fast-track legalization of specific subgroups.³³⁸

Fast forward to today, the movement for immigrant rights demand reforms that go beyond earned legalization. While they still seek pathways to citizenship, their policy demands now include defunding ICE and Customs and Border Enforcement (CBP), repealing laws that criminalize immigration, ending immigration detention, and ending contracts with private companies that participate in immigration enforcement.³³⁹ In contrast to the 2013 CIR bill, the current bill provides for legalization without any corresponding increase in border security and interior enforcement measures.³⁴⁰ While this bill has little chance of passing in its current form, it establishes a new kind of baseline for the demands made by the immigrant rights movement.

A decade of immigration disobedience helps create this foundational shift in policy possibilities. Those living within impacted communities have determined what will best work “to help them achieve their goals.”³⁴¹ With the BLM movement, for example, projects to abolish the police or prison system look for a more radical reconfiguration of political, social, and economic lives that do not depend on the existence of the carceral system or on throwing segments of the community under the bus.³⁴² One of the co-founders of BLM, Patrisse Cullors, explained how policing is part of the “tangled phenomenon of racial capitalism and settler colonialism,” where the current criminal system evolved from this past control, exclusion, and exploitation of Black and Indigenous peoples.³⁴³ In response, BLM has sought transformative or abolition reforms because they “actually pave the way towards shrinking these systems and actually addressing harm in ways that honors the humanity of our people.”³⁴⁴

Here too activism within impacted communities has helped to create a new policy terrain that includes redefining citizenship, shutting down immigration

337. Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong., § 2102 (as passed by Senate, June 28, 2013).

338. U.S. Citizenship Act, H.R. 1177, 117th Cong. (2021).

339. See, e.g., *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/2S9D-RA9B>]; *Protect Immigrants Now!*, *supra* note 310; *About Us*, FAMS. FOR FREEDOM, <https://familiesforfreedom.org/about> [<https://perma.cc/X77M-HQAN>].

340. U.S. Citizenship Act, H.R. 1177, 117th Cong. (2021).

341. TAYLOR, *supra* note 15, at 176 (quoting BLM co-founder Patrisse Cullors).

342. Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1616 (2019); Marbre Stahly Butts & Amna A. Akbar, *Transformative Reforms of the Movement for Black Lives 9* (2017) (unpublished manuscript) (on file with California Law Review).

343. Akbar, *Toward a Radical Imagination*, *supra* note 7, at 449.

344. Marbre Stahly-Butts, *Keynote Address: Changing the Way We See Modern Policing: Abolition or Reform*, 27 CARDOZO J. EQUAL RTS. & SOC. JUST. 435, 447 (2021).

detention, and abolishing immigration enforcement.³⁴⁵ Using the new approach of bottom-up resistance that operates outside the law, activists determine what is needed to address the human costs of the immigration system. This approach recognizes that the default of the political, economic, and social systems are to keep ICE's enforcement machinery intact, regardless of the presidential administration in power. They have connected the suffering within their communities to a racialized immigration system that excludes, controls, and exploits immigrants to the benefit of private actors. What is needed then is a series of interventions that address human suffering by "building a culture that is rooted in care, dignity, and accountability."³⁴⁶ Rather than throw segments of their community under the bus, activists reimagine an altogether different immigration system.

In this way, immigration disobedience connects to BLM and other social movements that demand radical reconfiguration of the prevailing systems because of systemic racial and economic inequality. There are already examples of cooperation and solidarity across movements. BLM has engaged in protests on the outside to support hunger strikers in immigration detention.³⁴⁷ Local coalitions involving BLM and Indigenous groups have supported acts to shut down ICE because of "the role of U.S. imperialism in forcing migration [and] the war that targets Black and Brown people within U.S. borders."³⁴⁸ More recently, hunger strikers in the Mesa Verde Detention Facility released a statement in support of George Floyd, Breonna Taylor, Oscar Grant, and Tony McDade, stating: "Almost all of us have also suffered through our country's corrupt and racist criminal justice system before being pushed into the hands of ICE."³⁴⁹ A more explicit exploration of immigrant justice as both criminal and racial justice could further connect Black and Brown communities,³⁵⁰ thereby building increased cross-movement solidarity for transformative change.

345. Amna Akbar similarly traced how abolitionist organizing over decades has led to the current political demands of defunding and dissolution of the criminal system. Amna A. Akbar, *How Defund and Disband Became the Demands*, N.Y. REVIEW BOOKS (June 15, 2020), https://www.nybooks.com/daily/2020/06/15/how-defund-and-disband-became-the-demands/?lp_txn_id=1270239 [https://perma.cc/Y92T-FQFK].

346. Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 HARV. L. REV. 1684, 1694 (2019).

347. See, e.g., *Black Lives Matter: Driver Charged After Crashing into New York Protest*, BBC (Dec. 12, 2020), <https://www.bbc.com/news/world-us-canada-55288518> [https://perma.cc/N6F9-LXTC]. BLM has also added immigration reform, deportations, and immigration detention centers to its platform, with a specific emphasis on Black immigrants. Zepeda-Millán & Wallace, *supra* note 53, at 105.

348. *Occupy ICE Shuts Down ICE in Los Angeles*, *supra* note 328.

349. Jack Herrera, *Immigrants Stage a Hunger Strike for Black Lives Inside ICE Detention Facility*, PRISM (June 12, 2020), <https://prismreports.org/2020/06/12/immigrants-stage-a-hunger-strike-for-black-lives-inside-ice-detention-facility/> [https://perma.cc/W63E-K5WS].

350. Marisol Orihuela, *Crim-Imm Lawyering*, 34 GEO. IMMGR. L.J. 613, 654 (2020). Immigrant rights movements more generally need to look introspectively at the ways in which their own movements may replicate such racial and economic inequality, particularly by overlooking issues confronting Black immigrants. *Id.* at 655. The Black Alliance for Just Immigration (BAJI), for example,

Yet immigration disobedience's more radical agenda lacks the kind of interest convergence that would make it practically possible.³⁵¹ Within immigration law, niche-openings are classic examples of interest convergence.³⁵² Economic interests, for example, play a role in the push for legalization of certain subgroups. Companies have an interest in maintaining the employment of undocumented youth.³⁵³ The agricultural industry has also long pushed for legalization of farm workers because it fulfills the need for workers.³⁵⁴ For this reason, the Biden administration believes that focused reforms on these subgroups are more likely to see movement. Immigration disobedience's agenda for more transformative reform that would end detention or abolish ICE seemingly lacks the kind of interest convergence that would make such reforms possible. Local government contracts with ICE to detain immigrants can produce substantial revenues that help to pay for other deficits within their county budget.³⁵⁵ The private prison industry too has been a powerful voice in advocating for increased detention quotas that have led to the unprecedented expansion of immigration detention.³⁵⁶ Ending immigration detention, therefore, will have to contend with the economic interests of those who detain immigrants.

Further, such an agenda faces potential backlash. With ongoing anti-racist protests centered on abolishing the police, former President Trump used the rhetoric of "law and order" to stoke fears about "Low Income Projects, Anarchists, Agitators, Looters and . . . 'Friendly Protesters.'"³⁵⁷ The radical

works with African American and Black immigrant communities to organize and advocate for racial, social, and economic justice. *about baji*, BLACK ALL. FOR JUST IMMIGR., <https://baji.org/> [<https://perma.cc/AMH2-52C8>]. See also *About Us*, GRASSROOTS LEADERSHIP, <http://grassrootsleadership.org/mission.html> [<https://perma.cc/BMH5-792R>] (last visited Mar. 14, 2022).

351. Some may also argue that its agenda also lacks a practical vision for implementation. Yet in writing about abolishing ICE, Peter Markowitz consults with immigrant community leaders to construct a vision for a more humane and effective immigration enforcement system that could follow the dissolution of ICE. Markowitz, *supra* note 11, at 137.

352. See Derrick A. Bell, Jr., Comment, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524–25 (1980) (noting how *Brown v. Board of Education* was made possible by the convergence of interests between Blacks and Whites).

353. Bill Ong Hing, *Beyond DACA – Defying Employer Sanctions Through Civil Disobedience*, 52 U.C. DAVIS L. REV. 299, 303 (2018).

354. See George Plaven, *House Sends Farm Workforce Modernization Act to Senate*, CAP. PRESS (Mar. 19, 2021), https://www.capitalpress.com/ag_sectors/dairy/house-sends-farm-workforce-modernization-act-to-senate/article_6afbb946-88ce-11eb-83f9-0fbd4b9dff2c.html [<https://perma.cc/WRN9-U4T5>].

355. See, e.g., AMY CHIN-ARROYO, SOLENA LAIGLE & JENNIFER J. LEE, INTERLOCKING SYSTEMS: HOW PENNSYLVANIA COUNTIES AND LOCAL POLICE ARE ASSISTING ICE TO DEPORT IMMIGRANTS 12–13 (2019), <https://law.temple.edu/csj/wp-content/uploads/sites/3/2019/06/Interlocking-Systems.pdf> [<https://perma.cc/6UJG-594J>].

356. Gilman & Romero, *supra* note 33, at 148–49.

357. Daniel Trotta, *Despite Trump's 'Law and Order' Rhetoric, Protesters Won't Back Down*, REUTERS (Sept. 11, 2020), <https://www.reuters.com/article/us-global-race-usa-protests/despite-trumps->

demands by immigrant groups similarly can create further polarizing of American politics on immigration.³⁵⁸ Some mainstream supporters of immigration reform find immigration disobedience's more transformative vision distracting or counterproductive to accomplishing much-needed compromise for enacting legislation.

But immigration disobedience's agenda continues to matter because it expands the legal horizon of policy possibilities. These possibilities can slide into the consciousness of mainstream politics. Acts of immigration disobedience attempt to shock the public out of complacency around what is normal and acceptable.³⁵⁹ They represent a political consciousness that provides for radical possibilities and a link between constituents and constituted power.³⁶⁰ As a result, sympathetic elected officials who focus on "bureaucratic tinkering"³⁶¹ may be provoked to reevaluate how they have failed to represent the immigrant cause.³⁶² These officials may wonder whether they wish to be aligned with ICE's enforcement machinery. This push for a more expansive vision has begun to influence a few elected officials.³⁶³ There have been several congressional proposals for an alternative immigration enforcement system that eliminates dependence on immigration detention.³⁶⁴ During the height of the pandemic, a different proposal focused on seeking the release of all immigrants from ICE detention.³⁶⁵ Although these proposals are unlikely to gain widespread support, they represent the expansion of policy conversations within traditional political institutions.³⁶⁶

The paradox, however, is that concessions to the dominant political discourse provide the most realistic opportunity to provide immigrants with tangible gains to address their subordination. The struggle is between working within the existing rights discourse as a necessary part of the struggle for inclusion and the harms of buying into the dominant ideology that can serve to

law-and-order-rhetoric-protesters-wont-back-down-idUSKBN2621C3 [https://perma.cc/5MGP-EHRV].

358. Darren E. Tromblay, "Abolish ICE" Is a Dangerous Distraction from Real Immigration Reform, JUST SEC. (Sept. 13, 2018), <https://www.justsecurity.org/60715/abolish-ice-dangerous-distraction-real-immigration-reform/> [https://perma.cc/PS74-RBZS].

359. Smith, *supra* note 175, at 147; Young, *supra* note 173, at 675.

360. KALYVAS, *supra* note 174, at 291.

361. Morales, *supra* note 280, at 265.

362. Paul F. Power, *Civil Disobedience as Functional Opposition*, 34 J. POL. 37, 45 (1972); Morales, *supra* note 280, at 265.

363. See *supra* note 120.

364. Establishing a Humane Immigration Enforcement System Act, H.R. 6361, 115th Cong. § 2(18) (as introduced in House, July 12, 2018); Dignity for Detained Immigrants Act of 2021, H.R. 2222, 117th Cong. (2021); New Way Forward Act, H.R. 536, 117th Cong. (2021).

365. Federal Immigrant Release for Safety and Security Together Act, H.R. 6537, 116th Congress (as introduced in House, Apr. 17, 2020).

366. Akbar, *Toward a Radical Imagination*, *supra* note 7, at 476 (stating that "[r]adical social movements are important not simply for what changes they effectuate in law, but in what they imagine and where they fail").

deradicalize the broader vision.³⁶⁷ The potential legalization of hundreds of thousands of immigrants, for example, would be a transformative event for individuals, families, and communities. Activists may opt to fight for more immediate reforms because they will address some of the human suffering. In particular, the government under the Biden administration will likely draw some activists back to traditional political channels to discuss immigration reform. And while the enactment of any kind of immigration reform will not come easily—when it does—it may channel the “energies and angers” of activists to less disruptive forms of political behavior.³⁶⁸

Yet the policy possibilities that come from immigration disobedience’s agenda serve as an important counterweight to the inevitably co-optive process of concessions.³⁶⁹ While immigration disobedience’s agenda is for the long haul, it keeps a vision informed by those suffering from subordination. This vision, which may remain unfinished, ultimately pursues an evolutionary process that remains open to changing needs over time.³⁷⁰ In the policing context, Amna Akbar labels this as a “dialectical relationship between radical imagination and practical projects.”³⁷¹ Here too the movement for immigrant rights can connect between the reimagined and practical to move towards addressing the systemic inequality. Meanwhile, the continued struggle provides meaning because it gives us hope for the future.³⁷²

IV.

LESSONS FOR THE FUTURE

The phenomenon of immigration disobedience suggests lessons for those lawyers and legal scholars who seek to fight against the injustice of the immigration system. It implicates how we should work, think, and act differently. As lawyers, we need to be thoughtful about how to work in service of mobilizing impacted communities to accomplish social reform. We might, as policy advocates, be more attuned to the ways in which incremental reforms further injustice by leaving behind segments of the community or entrenching ICE’s enforcement machinery. Finally, without traditional legal constraints, immigration disobedience causes us to consider a broader universe of what might be possible for reforming the immigration system.

367. Crenshaw, *supra* note 334, at 1385.

368. PIVEN & CLOWARD, *supra* note 256, at 30. Frances Fox Piven and Richard Cloward famously described how new concessions may outwardly appear to meet the moral demands of the movement and allow the government to safely employ repressive measures against those who spurn these concessions. *Id.* at 30–31.

369. Stahly-Butts, *supra* note 344, at 447.

370. McLeod, *Envisioning*, *supra* note 342, at 1647 (discussing how justice for abolitionists must remain unfinished).

371. Akbar, *An Abolitionist Horizon*, *supra* note 17, at 1842.

372. Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 378 (1992).

What role should lawyers play within the movement for immigrant rights? We can learn from the supporting role offered by native-born activists or the broader community in immigration disobedience. Such activists or community members have provided sanctuary, activated networks in the event of retaliation, linked hunger strikers to the outside world, or stood in at the request of immigrant activists. These acts ultimately reflect a philosophy of collaborating and taking direction from immigrant activists. They support the political self-actualization of immigrants by making possible and amplifying the impact of immigration disobedience.

Lawyers too can embrace a similar supporting role. Communities rightfully distrust lawyers who come in and out of communities to file lawsuits without an understanding of how such litigation should be approached from a community perspective (or whether litigation is even the right approach).³⁷³ Armed with legal training, lawyers can easily assume the lead to the detriment of communities attempting to create their own change. A different breed of lawyer, however, understands this supporting role to communities by valuing the expertise and leadership of impacted individuals.³⁷⁴

Those who identify with this philosophy—whether as community lawyers, rebellious lawyers, or movement lawyers—have worked to support the movement for immigrant rights. Sameer Ashar has described the complicated role that such lawyers have played in immigrant rights campaigns “as facilitators, enablers, and defenders,” helping to develop critical ideas and organizational infrastructure, generate resources for organizing, or accompany activists as they engaged in the public sphere.³⁷⁵ Take the example of lawyers who work with deportation resisters.³⁷⁶ They may advocate with ICE for the reopening or reconsideration of the order of deportation. This work, however, is done behind the scenes to facilitate or enable the deportation resister to step out in public to voice and shape their political demands. Thus, immigration disobedience shows us the different ways that lawyers can provide the space for immigrants to lead and create their own agenda by supporting their political self-actualization.

The difficulty, of course, is that not all lawyering fits this model. Much of the day-to-day lawyering on behalf of immigrants requires working within the

373. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 512 (1976).

374. See Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879, 1917 (2007) (explaining how lawyers played a supportive role to organizers and workers in a New York restaurant worker campaign); Anthony V. Alfieri, *Faith in Community: Representing “Colored Town,”* 95 CALIF. L. REV. 1829, 1844–45 (2007) (describing lawyer collaboration in community-centered decision-making in an effort to resolve legal and non-legal interventions for low-income communities of color).

375. Ashar, *supra* note 10, at 7, 41, 49–50. See also Christine Cimini & Doug Smith, *An Innovative Approach to Movement Lawyering: An Immigrant Rights Case Study*, 35 GEO. IMMIGR. L.J. 431, 511 (2021).

376. Email from David Bennion, Exec. Dir., Free Migration Project to Jennifer Lee (Feb. 24, 2022).

immigration system. Immigrants often need more immediate and individualized relief to be released from detention or avert deportation. Such cases may require demonstrating how the client is deserving of relief or finding ways to fit the client into a niche-opening, such as victim-based immigration relief.³⁷⁷ At first glance, these approaches appear inconsistent with immigration disobedience's broader vision of overhauling the immigration system. Engaging in individual client work is not mutually exclusive with connecting to social movements to work on overhauling the immigration system.³⁷⁸ Immigration attorneys can help support this larger project by connecting their clients to such movements or employing their inside-the-system expertise to shed light on how it might be dismantled. Laila Hlass, for example, proposed that lawyers can still practice with an "abolitionist ethic" by engaging in anti-racist lawyering, building power with clients and client communities, and carefully considering reforms that merely tinker with the system.³⁷⁹

This last point too is an important one for those involved in policy advocacy, who may automatically equate incremental change with progress. What immigration disobedience has revealed, however, is that the movement is increasingly eschewing such reforms in favor of overhauling the existing immigration system. As Marbre Stahly-Butts, Executive Director of Law for Black Lives, said: "[T]he reason why it's so important that we invest in radical reforms or transformational reforms is because without a long-term vision for change, today's reforms become tomorrow's oppression."³⁸⁰ This preference, however, is not so simplistic; it is not a binary of one in favor of the other. Incremental reforms, for example, can have immediate benefits. Rather, the phenomenon of immigration disobedience has taught us to distrust reforms that make life worse for certain immigrants or further amplify the power of the existing enforcement machinery. By offering a more creative, expansive, and radical vision, it has managed to move the baseline of what reform should look like with new policy possibilities.

Finally, immigration disobedience has illuminated how lawyers and legal scholars interested in social change must learn to think and look outside of law. These lessons for lawyers and legal scholars can both be shared with and learned from other social movements that are demanding radical reconfiguration of prevailing systems. Thinking outside the law runs counter to legal training, which instructs us on how to bring cases by establishing claims that fit within the legal framework (or alternatively how to argue that the legal framework should be extended to consider such claims). What is unfamiliar is working in

377. 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, 228-29 (2012).

378. Laila L. Hlass, *Lawyering from a Deportation Abolition Ethic*, 110 CALIF. L. REV. 1597 (2022).

379. *Id.* at 1636.

380. Stahly-Butts, *supra* note 344, at 447.

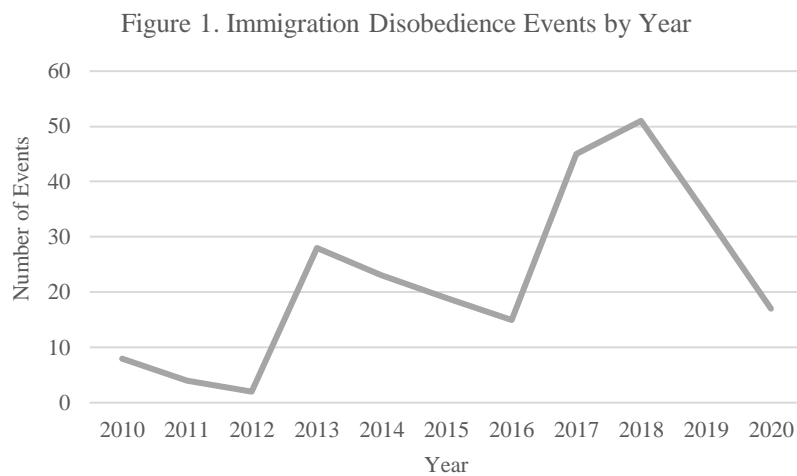
spaces that lack a kind of “legal logic”—for example, interposing legal claims or arguments that have seemingly no chance of success. Yet in the world of social movements, such work may have its own logic, whether it is to create voice, momentum, or a long-term vision of equality. It is precisely outside of these boundaries that the creative and groundbreaking happens, compelling us to consider immigration reform in more radical and revolutionary ways.

CONCLUSION

We have much to learn from the phenomenon of immigration disobedience. Over the past decade, a diversity of social movement actors has engaged in a new approach to resisting the inhumanity of the immigration system. This new approach has lent itself to the setting of an agenda that seeks to redefine citizenship and dismantle ICE’s enforcement machinery. It has not only altered the legal landscape but also taught us to consider the more radical policy possibilities for eradicating the structural, racial, and economic inequality created by the immigration system. As lawyers and legal scholars, it behooves us to think about the ways in which we can look outside the law to work in support of this more transformative vision for immigrants.

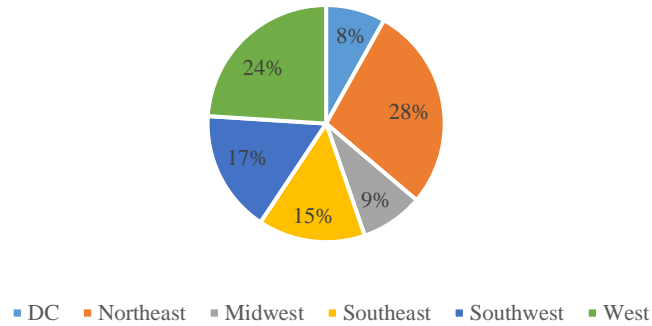
APPENDIX

The following figures represent some overall trends of immigration disobedience from 2010 through 2020. Media accounts were the primary source for the events, although press releases, secondary sources, and organizational websites were also used. My method was to code each event of immigration disobedience. I used dates, locations, and actors to ensure that each recorded event was unique.



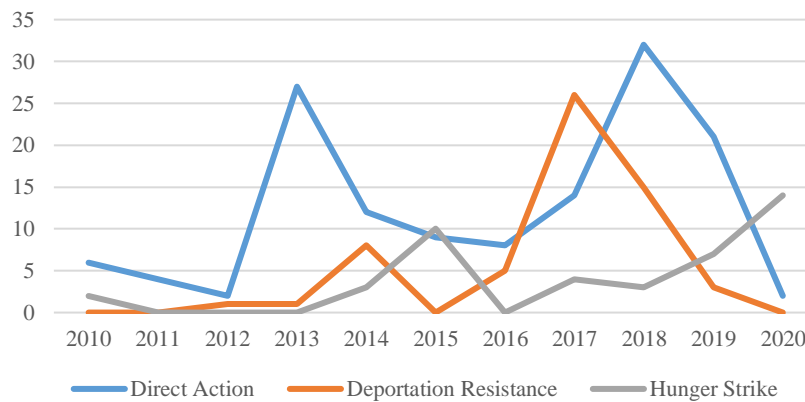
While Figure 1 represents a compilation of collected acts over the past decade, it may not account for all acts of immigration disobedience. An act constituted a unique event despite the number of participants (e.g., a hunger strike might involve one or multiple participants). Further, fixing dates for some acts are difficult (e.g., for acts by deportation resisters, the compilation counts the date of entry into sanctuary).

Figure 2. Immigration Disobedience by Region



The regions in Figure 2 are defined as follows: Northeast: ME, MA, RI, CT, NH, VT, NY, PA, NJ, DE, MD; Southeast: WV, VA, KY, TN, NC, SC, GA, AL, MI, AK, LA, FL; Midwest: OH, IN, MI, IL, MO, WI, MN, IA, KS NE, SD, ND; Southwest: TX, OK, NM, AZ; and West: CO, WY, MT, ID, WA, OR, UT, NV, CA, AL, HI.

Figure 3. Frequency of Different Kinds of Immigration Disobedience



Finally, Figure 3 shows a comparison across the different kinds of immigration disobedience. Overall, direct actions account for the majority of acts over the past decade, with several peaks in 2013, 2015, and 2018. Deportation resistance spiked in 2017, while hunger strikes saw an upward trajectory both in 2014 and 2015, and again in 2019 and 2020.