

Mass Deportations and the Rule of Law: A Conversation with DDC Director Alex Holtzman

by Gregory DeFreitas

Throughout the past decade's election campaigns, immigration's impacts on crime and the economy have held center stage. Donald Trump's claimed that an "invasion" was underway at our southern border that could only be defeated by mass deportations – despite all evidence to the contrary. But from the very start of the second Trump administration this year, he has broadened its deportation targets beyond undocumented immigrants to include lawful foreign-born residents, even green card holders. Among the most scrutinized cases is that of a Salvadoran migrant, Kilmar Armondo Obrego Garcia, mistakenly deported without due process to a notorious El Salvador prison. Even after the US Supreme Court in April ordered the government to "facilitate" his release and return to the U.S., the Trump administration has so far shown no intention of complying.

Long Island has assumed an outsized role in the nation's volatile immigration debates since the first sizeable refugee flows escaping the Central American wars began arriving in the early 1980s. Over the last decade of Trump's political activity, he has spotlighted the region in trying to make the case that unauthorized immigration posed a growing crime threat that justified unprecedented increases in deportations. Having called the country's cities "bloodstained killing fields" overrun with undocumented immigrant gangs, he branded Long Island a suburban test case. In a 20 visit he told a Brentwood audience: "I never thought I'd be standing up here talking about liberating towns on Long Island where I grew up."

A few weeks after Trump's January 2016 inauguration, Judge Gail Prudenti, dean of the Maurice A. Deane School of Law at Hofstra University, announced the formation of the Deportation Defense Clinic (DDC). Since it began operations in June 2017, the DDC has provided direct representation for individuals at imminent risk of deportation as well as law reform advocacy and education in communities near its Long Island base. Its legal team has represented clients from Brazil, British Virgin Islands, Cote D'Ivoire, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Peru and Venezuela.¹

The director of the DDC since 2019 has been Alexander Holtzman, an Assistant Clinical Professor at Hofstra's law school. He was born in New York to Serbian immigrant parents and began working with nonprofit organizations assisting seasonal migrant workers in his undergraduate years at Kalamazoo College. After graduation, he went on to earn a law degree at Ohio State University. After earning his JD, he was awarded a fellowship from the Immigration Justice Corps in New York. Over the next three years, he represented migrant youth as a staff attorney at the Safe Passage Project, before his appointment to lead the DDC. We spoke at his office in mid-April.

Q: Could you first please tell us about your background and how you got into immigration law?

AH: Well, my mom and her whole side of the family are immigrants from Serbia. They came prior to the war in the nineties. So I was exposed to immigration issues early, including issues of integrating into a new society and having family members who initially speak English as a second language.

Then in college, I spent a year in Ecuador, and learned Spanish. And when I came back to my undergrad, I decided that I wanted to kind of keep up that skill. Then I started working for Farm Worker Legal Services of Michigan. I did outreach.

Kalamazoo was a great undergrad school for social justice and study abroad. So while I was there. I worked at this law office on farm worker legal services. I did outreach to over 100 migrant camps as part of my summer experience, I was supposed to inform workers of their civil and human rights and connect them with attorneys if they were interested. It was a law office representing farm workers. They were largely picking fruits and vegetables in the fields of Western Michigan.

I was frankly appalled by what I saw. There were migrant camps built off of highways pretty hard to access. You wouldn't know they were there unless you were kind of looking. I saw workers with terrible skin conditions from pesticide exposure, children who had been injured from falling through kind of dilapidated trailers, in these trailer parks, which were the migrant camps. Some were here lawfully on H-2B or other seasonal visas. But other workers were undocumented -- maybe had already been living in Michigan and ended up taking that work without agricultural visas.

Workers complained about farmers having shotguns and threatening to call ICE on them if they asked for minimum wage, which was state law. This ultimately led to a report by the Civil Rights Commission of Michigan, documenting some of those problems at the time.

When I did this work, it was roughly around 2008 to 2009. After my undergrad in Michigan, I ended up becoming a community organizer and worked with a largely undocumented population. Actually, it was not exclusively immigrant-related, since I also worked with other community members.

I decided ultimately that I wanted to go to law school, and I thought that would be a better way for me to kind of advance the issues that I care about, immigration included. I went to Ohio State, where I qualified for in-state tuition at the time, and could do a dual degree in law and public policy. I took my public policy classes at night, usually in a law degree during the day, and was able to complete those degrees in three years.

I had a series of immigration-related experiences there which kind of confirmed for me that I wanted to go into immigration law. I received a fellowship called the Immigrant Justice Corps, or IJC, started by a Federal judge. Judge Robert Katzmann sat on the second Circuit Court of Appeals and started this fellowship in New York to train the next generation of immigration attorneys. Unfortunately, he passed away recently. He was a real inspiration. His parents or grandparents had escaped Nazi, Germany, so he himself had an immigration story to tell from his own family history. And then he heard a lot of immigration cases at the second Circuit Court of Appeals.

As you might be aware, if you lose a case in Immigration Court, you can appeal it to the Board of Immigration Appeal. After that, you appeal it straight up to the Second Circuit Court of Appeals here in New York. The fellowship was through an organization called Safe Passage Project, where I represented immigrant children who were in removal proceedings (the statutory term for deportation proceedings).

Q: A former Hofstra prof, Valeria Luiselli, wrote a book about her experience interviewing immigrant children separated from their parents during the first Trump administration.

AH: Yes, the *Lost Children Archives*, and also *Tell Me How It Ends: An Essay in 40 Questions*. I am familiar with her writing; it came out at the time. From some of my connections as an organizer, I wanted to offer "Know-Your-Rights forums" to some of the congregations I'd worked with, like synagogues, churches, and

mosques. We did those forums with the NAACP at the time, and my first summer I worked in Washington, DC, at the office of the chief counsel of USCIS (US Immigration and Citizenship Services).

And then I learned from that experience that's not the happiest office where I wanted my career to go, because usually the reason why immigration cases end up at that office is because they've been denied. And then we're kind of continuing to argue the case further up the chain. I realized that wasn't where I wanted to be in my career at the time. My second summer I worked for a civil rights law firm and I slowly realized immigration was what I was really interested in.

Q: When did you get appointed director of the Deportation Defense Clinic here at Hofstra?

AH: I became director of this clinic about 6 years ago.

Q: In 2018, on its first anniversary, I interviewed the clinic's first director, Emily Torstveit Ngara. Did you replace her when she left?

AH: Yes. I was hired after Emily headed down South. I think she's at Georgia State now. Part of my job at first was to fundraise to raise money, to institutionalize the clinic, to make it permanent here at Hofstra.

Q: Is that now done? And where does most of the money come from?

Hofstra supports it in a myriad of ways. But also I had some contacts with private foundations, and was able to have folks invest in the work of the clinic.

Q: Has the University administration continued to be supportive of the clinic's work and objectives?

AH: Absolutely. Yes, our new dean, Jenny Roberts, has been totally supportive.

The big picture, as you probably saw online, is we focus on 3 main areas: community engagement, client representation; impact litigation.

Like last spring we had a meeting at Workplace Justice in Hempstead for exploited construction workers, where we informed them of their rights and provided legal screenings and ultimately ended up taking 8 cases of a class of exploited construction workers

And we are now working with Carecen (Central American Refugee Center) to file various applications for these exploited workers. That's an example of a kind of community engagement. We offered this service to a group of workers, and then ultimately ended up with 8 clients who were currently still. We often work closely with them. I'm on their board now.

Q: What about your third focus area: impact litigation?

An example of that would be like kind of cases that affect more broadly the immigrant community on Long Island. So here's one example of that. Roughly five years ago, when I started, I jumped into a case that the clinic was involved in suing Nassau County police for unlawfully arresting immigrants pursuant to ICE detainer requests, which are not judicial warrants and do not provide reasonable cause, which is basically akin to probable cause under New York State law that a crime was committed. Because, as you probably know, being undocumented is not a crime right? It's a civil infraction only. And New York State law does not permit law enforcement to arrest someone pursuant to a civil offense, like a parking ticket, absent reasonable cause that a crime was committed, or a judicial warrant.

Q: The Trump administration has drawn sharp criticism in its early months for letting ICE agents grab even people with legal documents and then ship them out of the U.S.

AH: If they detain and hand them over to ICE for purely immigration reasons, that would violate New York State law. That was this fantastic decision in the Wells case (aka the Francis decision), that enjoined or stopped Suffolk County police from doing just that. in what are called 287(g) Agreements, deputizing local law enforcement once again to arrest non-citizens pursuant to ICE detainer requests. You might ask, well, how is that legal under the Wells decision? And I'll tell you it's not. So we're actually currently exploring litigation about just that matter. That's just one example of the kind of impact litigation that we might do.

Unfortunately, Nassau County Executive Bruce Blakeman, has signed what are called 287(g) Agreements, deputizing local law enforcement once again to arrest non-citizens pursuant to ICE detainer requests. You might ask, well, how is that legal under the Wells decision? And I'll tell you it's not. So we're actually currently exploring litigation about that matter. That's just one example of the kind of impact litigation that we might do.

We also do appellate work like appealing immigration cases that we litigate in court, and so that could create opportunities for impact litigation too depending on the case and whether it has the potential to overturn existing law, or kind of set a new precedent, or something like that.

Q: So you're very busy, How many lawyers can you draw upon? Are you mainly using a few colleagues the law school? Or do you have pro bono folks who pitch in to do you the cases, the outreach and everything else?

AH: I mean, we're totally busy. In terms of attorneys, we have other clinical professors here. We're all part of the same nonprofit. Loris Wren is director of the asylum clinic, for example, or Theo Liebmann is director of the youth advocacy clinic that does special immigrant juvenile status cases for immigrant children.

But they have separate clinics. So for my clinic, it's just me right now and then I have 8 students per semester. Each year, those 16 total work on the immigration cases largely in the client representation bucket which we can talk more about. But they also might assist with both community engagement and impact litigation as well.

And then some students want to stick around longer. So through independent studies, or what we call advanced clinic, which is practicum, is the name of the class. Students can stick around so probably at any one time like this semester. I have about a dozen students working with me at any one time on the cases. So somewhere between 16 and 24.

Q: What are the other deportation defense clinics on the island, that you draw legal help from or collaborate with?

AH: We collaborate in a bunch of ways. I can describe a couple. There is one other immigration law clinic at Touro where Mauricio, a friend, recently started. There are basically 4 organizations that kind of form like the 4-legged stool, so to speak, of pro bono immigration representation on Long Island: Carecen (Central American Refugee Center), Make the Road New York, Brentwood Safe Passage Project (where I used to work), and then Hofstra.

Now there are a couple of other organizations out there. There's this organization Ola, out in East Hampton and a few others. But when I started at Hofstra, there were less than a dozen pro bono immigration attorneys for all

of Long Island -- for the tens of thousands of clients who needed representation in Hempstead, Brentwood. All throughout the island there were less than 12 of us.

That number's increased substantially, and there's a couple of reasons why we've been trying to collaborate and work together. We started to try to address the pipeline issue by starting a fellowship here at Hofstra. I mentor law students before they even step through the door. We'll select 3 fellows every year to be what are called Long Island Immigration Advocacy Fellows.

And then they get guaranteed summer internships at these organizations, and summer stipend \$7,500 each summer in addition. I totally encourage those fellows to sign up for my clinic, so sometimes they're the same folks.

But there are other law students who are interested in immigration, who I'll mentor throughout law school and try to connect them to job opportunities thereafter, like at IJC the fellowship, or at Carecen, or Make the Road or any other, and that's 3 per year.

Q: You said there are far more immigration attorneys. Roughly how many?

AH: Now, upwards of 36. I think we've more than tripled the number of pro bono immigration attorneys. And just to be clear about that. I'm talking about free immigration attorneys like what I am for clients. There are, of course, more private immigration attorneys, but many of our clients can't afford to hire a private attorney. Compare that with six years ago, when there were basically 3 or 4 attorneys per organization.

Q: How would you say things have changed since the first Trump administration?

AH: We're just into the first few months of it. This administration so far is doing immigration deportation. Let's start with the big picture. One of the most concerning things right now -- maybe in the world, but certainly in the United States -- is the erosion of the rule of law, of checks and balances. Having the Executive branch defy court orders just today. I don't know if you saw yet in the news, but Judge Boasberg issued a contempt, finding against the U.S. Government's Department of Justice for deporting individuals to a torture prison in El Salvador in violation of that court order,

Part of this erosion of the rule of law is a complete lack of due process for individuals. Kilmar Garcia, a Salvadoran, was residing here, thanks to a withholding of removal, which is a protection that the U.S. Government is required to provide clients if they meet a standard that's more likely than not that they could be killed or persecuted or tortured upon removal to a specific country. In this case, El Salvador.

Nonetheless, the Trump administration wrongfully sent that client to El Salvador, and now seems to be refusing to return him. This is despite the fact that there's been multiple clients in the past who've been wrongly deported, that the U.S. Government has effectuated their return. And so that's kind of the big picture is a major concern. It's not that there weren't concerns about you know this erosion in the rule of law during the 1st Trump administration, but it seems like things have gotten much worse this time around.

Q: Were you surprised by the press conference with Trump and President Bukele of El Salvador, the way they glibly responded to questions about returning to the U.S. the unlawfully deported prisoner?

AH: I wasn't surprised in the sense that I didn't think it would play out that way. I was surprised that they were so brazenly kind of tongue in cheek, almost laughing at the judge, seeming to say like: "There's nothing we can do here." As though the President of the United States, one of the most powerful people in the world, couldn't request right then and there the return of somebody who was wrongfully deported!

I think it's surprising just how brazen these officials have been. And clearly the second time around, Stephen Miller and his ilk have really come up with a plan to bring down tremendous misery on the immigrant rights community. But they are also targeting lawyers.

To get to a couple of specific examples, I'll start with clients and then talk about their attack on lawyers. As you know, some things have changed overnight since Trump came back into office. So, for example, we help these construction workers I referred to earlier apply for something called deferred action for labor enforcement violations. So basically, they were exploited at the construction company. They're key witnesses in a Federal lawsuit brought by a Federal agency. They deserve some protections while they're witnesses. These protections defer the action of any deportation proceedings and provide work authorization. It's kind of analogous to DACA.

Of the 8 workers that we represent, we received 5 approvals during the Biden Administration, and then the 3 remaining applications have been completely halted. Once the Trump administration started, I've only heard of less than a handful of approvals of this program.

Additionally, the risks of applying for relief or kind of visas to get status in the United States has increased. This was something I somewhat expected during the 1st Trump administration. And now once again, USCIS has implemented something called a notice to appear policy (NTA). What that means is the charging document in Immigration Court. You might kind of think about an analogy to Criminal Court like a criminal complaint. Here's what you did wrong. You can plead guilty or not guilty in immigration Court. The notice to appear says, like, here it's supposed to say, Here's when and where you're supposed to show up, although ICE frequently doesn't include that information.

And then what are you charged with? So maybe you entered without inspection at the southern border. It's a civil infraction, and it could be part of the case to get a client removed from the country. Getting back to the client representation piece of what my clinic does, We do three main things: we file T visas for human trafficking victims, U visas for crime victims, or we file immigration court motions to reopen cases.

If someone already has a deportation order and we want to get it reopened and then pursue some form of relief. So previously we filed the T visa for human trafficking, if someone's a victim of sex or labor trafficking. If it was denied, there wasn't a lot of risk for that particular client. Maybe we could appeal it, but that might be the end of the matter.

Now, if somebody comes forward to the government and says: "You may not know I'm here, but I'm here. I've been living here for 10 years, and I've been human trafficked. I'd like to apply for that visa or a U visa, or something else." USCIS implemented this new policy, which says, if you apply for a form of relief and are denied, you can be placed in deportation proceedings.

And so the risk of applying for relief has greatly increased, whether that's a deferred action application I mentioned earlier or other forms of relief. That was not altogether a surprise, but was disappointing nonetheless, and really puts people between a rock and a hard place. The T and U visas require law enforcement cooperation. So now you go to law enforcement, you cooperate, you apply for a visa.

You're taking the risk of getting into deportation proceedings if you go to law enforcement. Say I've been a victim of domestic violence where I've been raped or I've been sex trafficked. In the past, I would report it to a law enforcement officer. But now Nassau County has signed a 287(g) agreement that they're going to cooperate with ICE. So now clients fear that they could be detained by ICE for reporting domestic violence victimization.

Q: What about the recent case where a student protester turned up for their citizenship hearing and was grabbed by ICE?

AH: That's another example. Part of the erosion of the rule of law is targeting immigrants purely based on speech. What has been particularly a flashpoint is pro-Palestinian protesters or activists being targeted, having their international student visas revoked, having their green cards threatened with rescission. I think it's very concerning, when someone who has a green card and is eligible for citizenship shows up to his own naturalization ceremony – a day that many people celebrate for the opportunity to become a U.S. Citizen – but instead is detained, purely based on speech. This is a further erosion of civil rights in this country than many of us thought we'd never see in our lifetime. So it's incredibly grave.

Q: Might their thinking be that the more you hold down new citizenship, the more you hold down voting by people who are presumably going to be relatively sympathetic to candidates who are more pro-immigrant?

AH: Yes, even though voting behavior seems to kind of depend on certain community characteristics. Look at Southern Florida Cubans, who haven't panned out to be the future Democratic voters some expected. So who knows the political implications? It's very concerning. The last example I'll share is the Trump administration going after, not just clients, as we expected would happen, but also after attorneys and institutions that support clients. Going after universities for teaching about diversity, going after lawyers who represent immigrants.

I'll give an example from my personal experience that I don't often share. But I am 9 years into 10-year public service loan forgiveness. So I've worked in nonprofits my whole career. I went to law school with a promise that if I completed 10 years of government or nonprofit work, my law school loans would be forgiven. And now, in the 9th year of my tenure program. President Trump issued an executive order saying immigration attorneys should not qualify. They are making direct or veiled threats of sanctions against immigration attorneys and others who bring Federal or other lawsuits -- targeting attorneys, including big law firms. Getting these settlements from some firms, I think, has really been part of a strategic decision to attack advocates who might stand up and support the rule of law and the civil rights of non-citizens.

Q: What about their suspension of asylum rights? I spent part of my latest sabbatical doing pro bono work in Manhattan at the Asylum Assistance Center, where, aided by immigration lawyers, we would interview asylum applicants seeking work permits. It often took the entire day to fill out the key I-589 USCIS form for just one person. But they were clearly desperate to get some legal status and work permits. How have the new asylum restrictions affected your clinic's work?

AH: Our asylum laws have long required a migrant to first be on U.S. soil before they can apply for asylum. And the government signed agreements since World War II recognizing under international law that asylum seekers have a right to reside in a target country until their asylum application is decided.

Let's say, for instance, that you were injured on the journey over the U.S.-Mexico border. You're caught by border patrol and you need to immediately go to the hospital. They could parole you into the U.S. on humanitarian reasons, to stay for a temporary period of time. You could also apply from abroad under a Biden administration program from certain countries to be paroled in from abroad, and fly here lawfully, not because you have immigration status beyond parole, but to have an opportunity.

The only way you can apply for asylum is to first be physically in the country. But alternatively, we've also now created civil, sometimes criminal penalties depending on entry, and whether someone's entered after a deportation order or not. The law is the same as it was before. But things have gotten more challenging in

immigration court, including, like a number of judges, have been fired during the Trump administration, presumably because they were hired during the Biden Administration. So there's issues of court packing, or at least culling the court of, in many cases very good reputable judges. I can think of a few specifically who were fired but the right to seek asylum and the asylum laws in the U.S. This law has not been changed by Congress, and the Trump Administration cannot just wholesale change asylum laws without going through Congress.

Q: You've been here since 2019. How has the demand for your clinic's services changed since then?

AH: I now receive a new call from someone seeking legal representation on average, every 3 days. And as you might imagine, we can't take a case every 3 days. Anyone who's seeking immigration representation can call our office. If it's not a purely asylum matter for asylum clinic or something regarding immigrant children. Then they'll likely receive a deportation defense clinic phone screening. Basically, it's like roughly 15 questions, which try to get down to the bottom of what exactly is the reason for the call and what help are folks needing.

Then I'll review that, and then one of a couple of things will happen. Sometimes it's just not be the type of case that we do, but we'll provide referrals to outside organizations that might be able to assist. It might require more information, and then students will do a legal screen. They'll meet with a prospective client for an hour or an hour and a half here, and we'll ask additional questions to try to kind of figure out. Is this a client who we could help? And then the 3rd option is maybe, after that second screening, it appears like: Hey, this is the type of case that really fits our mission. We have capacity, we want to assist. Then we would accept that case for representation, and they would become our client. We'd sign a retainer, and we'd move forward with whatever the thing that we needed to work on with the client.

They don't have to pay; our representation is 100% free. But we sign a retainer that is just like a contract between us. So basically, we promise to be. You know, their pro bono immigration attorneys. They're free attorneys, and they promise to do various things. Stay in touch with us, and understand the scope of what we're promising to do. Often, like we'll do it in pieces. Say we'll file a motion to reopen your case.

And then, if that's successful, we can sign another agreement to discuss, you know, further representation. Or we'll say, up. But then we'll have to sign a separate agreement to do your green card application after that, if it's successful or something like that.

Q: About how many cases do you decide to take on each month?

AH: At any one time we have between 30 and 40 cases active cases on our docket. Probably a little closer to 40 right now. It's a little hard to estimate by month, because basically, I try to take cases in 2 batches, not always, but generally before the 2 semesters is, when is the best time to contact my clinic? And so like August and November, December are the 2 best times. If I had to guess, I would say, maybe we take a case on average like one every month or 2, something like that on average.

There are 3 immigration courts downtown. There's 26 Federal Plaza, 201 Varick Street, and 290 Broadway. Some of those courts have ICE offices. So, for example, Federal Plaza has an ICE office for enforcement and removal operations. Some of our clients in the past, have been required to attend what are called ICE check-in meetings. Maybe they wear an ankle monitor, and they have to check in that they haven't absconded. Or sometimes ICE just requires them to go and check in or show that they've gotten a passport since, or something like that. And Varick Street has traditionally been the detained Docket Court.

We have significantly less detained clients currently, for a couple of reasons. One is that the New Jersey detention centers, where a lot of our clients were previously held, were largely closed, due to a great campaign

by community organizers and immigrant activists. Another reason is that there's more and more video appearances in Immigration Court. And then I guess 3rd, I found that detained work is challenging in a law school setting. While we did some, representing our clients who were in detention what are called bond hearings, to try to get clients released from detention and represented a number of clients who were falsely accused of gang allegations, which is making a comeback now as well. It's frankly hard to do with law students, because it's urgent, fast-moving work that requires students to kind of drop everything they're doing. Most of our clients are non-detained. It's not to say our clients couldn't be detained, and then we'd have to do that work if they get arrested.

Q: With some, there have been allegations that they should be deported, because so many are dangerous gang members. How do you get counter evidence that an immigrant is in a gang?

AH: It does present a challenge because of bogus evidence often filed in bad faith. I can give you some examples of clients we've represented. How do you prove you're not a gang member, right? Like conclusively, it's not really possible. What I can say is sometimes it's a matter of asking ICE to show the proof which often they don't have, or the evidence that they do have is so patently weak.

Some examples we've seen alleged indicia of gang membership include wearing the color blue, wearing the color red, wearing anything. Chicago Bulls-related, wearing Nike Cortez shoes wearing rosary beads. Any of those things could be indicia of gang membership allegedly. We've had clients, including, you know, one who was detained, who posted a picture with this hand symbol on Facebook. ICE printed out that photo, and then filed an "urban dictionary" with the immigration court, saying: the fact that my client made that hand gesture and said the phrase, low key, that low key, was a gang phrase. And so that's the type of bogus evidence sometimes that we're confronting in Immigration Court. Sometimes we get evidence on whether a person is a law-abiding citizen back home in good standing, or say, no, this person was not in a gang, or they haven't been arrested for being in a gang.

But unfortunately, the implications are real for many of our clients. Now for some of them we've had happy stories, these 2 clients that one I just told, and the one I'm about to tell were wrapped up were arrested as part of Operation Matador, when Trump came to Long Island and ICE partnered with local law enforcement to arrest and levy often false gang allegations against a myriad of often young Hispanic.

We do have happy stories: I actually just taught a case in class today involving one of our clients. He was picked up in a bar. Because ICE and local law enforcement were looking for someone else, a different alleged gang member. They didn't find him there, but they arrested everyone else in the bar. It was a Salvadoran bar, and our client was included, and because he was just at the bar that day, they alleged he was a gang member just because he was at the bar. They say this is a known gang hangout. He must be a gang member. They had no evidence. They filed no evidence. He had no criminal history, yet they had this gang allegation.

Our argument against ICE was to say the fact that you falsely labeled this client a gang member put his life at risk. He now is part of a particular social group for asylum of quote U.S. Law enforcement labeled Gang members. And now you put his life at risk, because what's going to happen is if he gets deported. There are automatic information-sharing agreements between the U.S. Government and El Salvador, and they're going to flag him as a gang member, and he's likely to be arrested, tortured, and killed, either in a Salvadoran prison torture center or by death squads -- these private organizations that collude with Salvadoran military and police to kill gang members. We had an expert testify about that. And ultimately we won asylum for that client based on his false gang allegations. We were able to flip that argument on ICE. So for that client there's a happy story, and he has a green card now.

Our other client that I mentioned earlier with that bogus evidence, unfortunately, had his bond hearing denied, he stayed in jail. Ultimately he had asylum denied to him. We appealed it to the Second Circuit Court of Appeals, and we reached a settlement where they said, okay, we would stipulate that there were some errors in this case. We'll send it back down for another trial, and we agreed to that. And then the client finally gave up, and he said: I've been sitting in jail for years now. I can't wait any longer in jail under the hope that maybe I'll get a fair trial. I'd rather take my chances and get deported back to Honduras. Ultimately we withdrew our appeals, and we said: our client has kind of given up. He wants to go back to Honduras, and then they made him wait 6 months in jail at taxpayer expense until they finally bothered to deport him.

He still sat in jail longer than that. So for some clients there's kind of a happy ending to being falsely accused as a gang member. For others, unfortunately, it's a long and sad road. And I think we're seeing that play out now in the media with some of these unfortunate individuals as well.

Q: You were here throughout Biden's administration. Did you see a radical difference between the Trump 1.0 and the Biden policies leading to deportations? Or did Biden more or less continue the Trump 1.0 policies?

AH: Let me put it this way: during Trump 1.0, almost every Friday we could expect more bad news like that's usually when they release a lot of like bad immigration decisions or news like Friday afternoon. So almost every week, there were new, terrible things to review. It wasn't quite so bad under the Biden Administration, and, in fact, sometimes there was good news like that deferred action application that we talked about earlier. That was a great program. The Biden administration implemented that parole program we talked about earlier, so there was certainly some good news for immigrant advocates in the news from the Biden administration. But there were also a lot of, from my perspective, missed opportunities. A lot of progress that didn't happen.

So far in this second Trump administration, there has been a stark difference. And I think, unfortunately, it could still get a lot worse. A lot of us are wondering: where are the red lines now? Not following judicial orders is a huge erosion of separation of powers and the rule of law in this country. Going after people purely based on speech, in violation, I think of the 1st amendment, is very concerning. Revoking student visas, threatening universities throughout the country, getting major law offices to capitulate and cut these deals. If lawyers won't stand up and bring a lawsuit if they're being intimidated, who else is going to?

And I fear that big law firms, especially those that cut deals, aren't going to take pro bono work anymore. And we've had support from big law firms in some of our cases writing amicus briefs for U.S. One of our clients was an example for an amicus brief before the U.S. Supreme Court. Some briefs were filed by these big law firms who, I fear, now might be intimidated about getting involved in immigration pro bono work. That's a real shame because those big law firms don't do other pro bono work sometimes because they say: "Well, we're conflicted out because we represent big employers or big banks and things like that. But immigration, we're not because we don't have like direct contracts with ICE." If now they're going to leave the immigration law space, I really fear what type of pro bono work is going to be done at this point?

I do think that Democrats abdicating the space of immigration law to Republicans allows more right-wing policies to take hold more xenophobic prejudice to take root. And I think it doesn't help politically because I think it ends up being like, they don't have an answer to this issue. They don't have a solution, a proposal. And I think immigration, unlike some other political issues, is one where you can't take a pure middle road. I think either you stand up for civil rights and human rights, and want to see people given due process and fairness, or you can go the other way and be enforcement oriented, as we've seen with the trump administration. I think that

you're kind of losing folks on both sides by not making a strong stand. I think immigration is one of the civil rights issues of our time, and I think we're going to look back with real shame on this time, in history.

Q: The mistaken deportation of Kilmar Garcia is being cited by some as evidence of an impending constitutional crisis. What can the courts do if the Supreme Court weighs in on this and the administration says basically: “Drop dead. We’re not going to do it.” Contempt orders?

AH: I'm very curious how this is ultimately going to be enforced. I mean, I think I'll answer your question directly in a moment, but I attended a talk by a colleague recently who said that there's really only been two times in U.S. history where, Presidents have flouted federal court orders in such fashion: Lincoln, during the Civil War, suspended habeas corpus, under obviously pretty unique circumstance with the Civil War; and Andrew Jackson during the mass displacement of Native Americans in the trail of tears, basically saying: “You and what army will stop me removing them from their land?” -- to the death and detriment of tens of thousands of people. Besides that, we're kind of in uncharted land again. I think it's certainly unprecedented, at least the degree of how bad it is.

In terms of what courts can do, I think contempt hearings are possible. Who specifically is going to be held in contempt is, I think, an interesting question, because they could be subject to criminal, you know, incarceration themselves. So are we talking like department of Justice employees, or how far up the chain would that go is, I think, fascinating. But the other thing that courts could participate in, or lawyers should, is going after the law licenses of attorneys. If you are an attorney working for the Department of Justice and flouting a Federal court order, I think someone should look at your bar license and say, are you practicing attorney? Are you a practicing attorney who's following the ethical rules? We saw some of that with former Mayor Giuliani, having to fight about his law license, and I think that that's one way to go after this problem.

But frankly, from a separation of power standpoint, it's not enough even if some attorneys get disbarred or sanctioned. How do you stop the executive branch from overreach? Even the U.S. Supreme Court doesn't have an army to enforce these orders, and so I think they appear to be somewhat, being careful in this moment in time. But I think this is a moment that our judiciary branch needs to speak clearly, strongly, for the rule of law.

Congress can also do a great deal. Whether they will or not, I think many of us have our doubts. President Trump could veto, so they'd have to overcome the veto to pass certain laws. But Congress could impeach the President again, but you know they would have to convict him thereafter. Which they haven't done before.

It's a modest thing, but I think some folks are going to visit El Salvador and go see that jail for themselves, and I bet they're gonna try to meet with some of these individuals. I'm not sure they'll be able to. But I think that that is not just performative. It's good to bring media attention and scrutiny and have them see firsthand. I teach a class at the U.S.- Mexico border. We'll go down in May to the border. And now, more than ever. Students need to see what's happening at the border. We go to an immigration jail. We go to meet with border patrol. We meet with human rights activists.

I also think, for civic society, too, it's important to have people stand up and protest and not be intimidated. I think now is not a time to completely turn away, I understand, for, like self-care reasons. We can't always be on the news, and I could be better about that myself. But now is not a time to kind of ignore it. It's to shed light and stand up against this type of injustice.

Citizens need to make decisions right now whether they believe it's not fixable or unsafe? Do we need to flee and become immigrants ourselves, or do we need to stand up

Q: Along those lines, do you think community groups, labor unions and other institutions of civil society need to step up? Especially now that the White House is attacking unions, universities and other nonprofit organizations on many fronts?

AH: Yes. I think there's a lot of organizations stepping up, like Carecen locally, who are doing great work, both on an individual client level, and also more broadly. It's a hard question. I don't pretend to have all the answers. My thoughts are that the civil rights movement from the 1960s can be a model for this moment in time. Some lessons that I take away from that movement are that we need different battles fought at the same time. So, for example, just as the NAACP fought for years, today we need ACLU to keep doing it (as they did during Trump 1.0), nationally to bring these cases with local organizations to challenge unlawful cooperation on a state level with ICE. So we need litigation. And we need protest. And we need the media to continue covering these issues.

And lawyers and academic institutions. I was encouraged to see what Harvard did this week with their letter (protesting White House funding cuts). It seemed like Columbia kind of mustered up some courage after that Harvard letter and joined hundreds of others in another supportive letter. My hope is that institutions will take some comfort from one another and think: "Okay, if they're standing up against it, we can, too."

I mean, they're facing loss of a lot of money, but they're fighting the good fight. And I think that this generation is going to remember who stood up and who didn't. If I were a client who wants to retain a big law firm to represent me, would I choose the organization that capitulated at the 1st opportunity of any struggle, and signed in agreement with this administration, or would I pick the law firm that went to court and said: "We're confident our lawyers can litigate and win?" I would choose the law firm that fights. And I think students want to work for a law firm that fights over one that gives up.

It's complex. I think the blame should be squarely placed on the Trump administration first. The organizations or institutions I admire are those that are standing up and others, I understand, are making compromises based on what they feel like they have to do. And that is a challenging call, and everyone has their own kind of considerations. I do sometimes worry that my own kind of advocacy might one day have negative implications on my career. But that's the bargain we take. What type of advocate would I be if I'm not willing to stick my neck out with my clients?

Q: Has your clinic become a target? Have you folks been getting death threats or social media harassment? What kind of public pressure have you faced lately?

AH: So far it hasn't been as bad as you might expect. We are our own nonprofit law firm. But we're a clinic within a law school within a larger institution. And so we're somewhat insulated from the worst of some of that and so that's encouraging. I mean, certainly there are vocal opponents. Where I most encounter this is actually not so much at work, but more like in my other like personal life. There's just a lot of pro-law enforcement information out there, particularly on Long Island. A lot of NYPD people come out here to retire, and I think having conversations with individuals about being a defense attorney and defending non-citizen immigrants can make people uncomfortable sometimes. It's not always the message that folks want to hear sometimes like: "What about immigrant rights?" is kind of my role to play in those conversations.

Q: Anything else you'd like to add?

AH: I guess my thought is just that like, when we look back on this time in history, I really do think that it will be with considerable shame. The United States for a long time has been, if not in reality, at least in rhetoric, this beacon of freedom and opportunity, where people could speak their mind and protest and oppose both government action and foreign policy issues and not fear retribution, not fear that they're going to lose

immigration status or be deported to a far flung detention center in the south or in another country. And if we get to the place where the way we treat the most vulnerable is without due process and not respecting the rule of law, then all of us have to fear.

Some U.S. citizens may think: “But these policies affect immigrants, not citizens like me. OK, they’re not getting due process. But these are alleged gang members.” But nothing is to say that someone can't allege that that individual is not a U.S. citizen, that that individual is a gang member. And then, if the response is: “But I'll prove I'm not.” How will you prove it, if you don't get due process? You'll be in an El Salvador prison. Do you think ICE will give you time to go and find your birth certificate? Can you swear under oath that you know you were born in the U.S? Even if you're if you got birthright citizenship, you don't remember that time in your life, so you can't testify to that. That's not information within your knowledge. So hopefully you have that documentation. But who among us carries around a birth certificate or a U.S. Passport or other proof of identity at all times right? And so by then you could be in a Louisiana detention facility.

So, you know, due process affects us all. How the government treats the least among us is how it can treat us all at some point. And so I'd end with that kind of call to action, for folks who might not currently be scared because they think: “Oh, this doesn't affect me.” In reality, it could someday.

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¹ See our earlier interview with the first DDC director: “Defending Deportees: A Conversation with Deportation Defense Center Director Emily Torstveit Ngara,” *Regional Labor Review* (Spring/Summer 2018): www.hofstra.edu/cld.