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## Anti-Carceral Theory and Immigration: A View From Two Law School Clinics

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**ANTI-CARCERAL THEORY AND IMMIGRATION:  
A VIEW FROM TWO LAW SCHOOL CLINICS**

SABRINA BALGAMWALLA\* AND LAUREN E. BARTLETT\*\*

ABSTRACT

*This article explores clinical teaching philosophies related to anti-carceral theory and provides examples of how to support student learning in clinics serving immigrant clients. Anti-carceral theory in this context is used to refer to an approach that resists criminalization and incarceration within law, drawing on abolitionism, intersectional and anti-carceral feminism, and decolonization. The anti-carceral lens provides framing and language to name the dynamics of social exclusion and discrimination inherent in immigration law. It also allows us to unpack immigration regulation as a series of choices made within the larger context of law enforcement and its systems of surveillance, policing, and confinement. This article is meant to encourage clinical faculty to integrate anti-carceral theory into teaching as a means for students to critically explore the law and their roles as advocates.*

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## INTRODUCTION

We are two clinicians—one who focuses exclusively on immigration law, one who includes representation of noncitizens in a human rights clinic—who have observed the ways in which law enforcement and carceral punishment have affected our clients. As clinical teachers, we consciously embrace opportunities to explore these larger social justice themes in our clinic classrooms using the lens of anti-carceral theory. In this article, we explore our clinical teaching philosophies in relation to anti-carceral theory and provide examples of how we support student learning in this context. Our hope is that this article will encourage clinical faculty, especially those who teach clinics and represent noncitizens, to integrate anti-carceral theory into their courses as a means for students to critically explore the law and their roles as advocates.

## I. OUR CLINICS

As background for those unfamiliar with clinical pedagogy, we first provide an overview of clinical teaching to lay the foundation for the integration of critical theory in our teaching. In this section, we also provide a brief introduction to how we select cases and the specific types of immigration-related cases we handle in our respective clinics.

*A. Clinical Teaching Objectives & Methodology*

Law clinics provide students with the opportunity to represent clients in real-world situations.<sup>1</sup> Clinic students are closely supervised by a faculty member, who teaches, guides, and supports students, but clinic students are often primarily responsible for client representation.<sup>2</sup> Law clinics usually provide free legal services to clients who would otherwise be unable to afford legal services.<sup>3</sup>

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1. See, e.g., SUSAN BRYANT, ELLIOT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* xv (2014) (“Clinicians provide students their first moment of responsibility for clients, a role that requires them to take actions that have consequences in the real world.”); Margaret Moore Jackson & Daniel M. Schaffzin, *Preaching to the Trier: Why Judicial Understanding of Law School Clinics is Essential to Continued Progress in Legal Education*, 17 *CLINICAL L. REV.* 515, 516–17 (2011).

2. See, e.g., BRYANT ET AL., *supra* note 1, at xv; Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 *CLINICAL L. REV.* 489, 499 (2013) (“Students are given responsibility for their client matters, with the professors providing a range of supervision and guidance.”).

3. See BRYANT ET AL., *supra* note 1, at xv; Grose, *supra* note 2, at 511; Margaret M. Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 14 (2000) (“Hundreds of thousands of low-income clients have been well served by clinic students.”).

Law clinics may also engage in community education, movement lawyering, and different types of advocacy on behalf of clients or groups.<sup>4</sup>

“Clinical legal education started in response to the failure of traditional legal education to prepare students to engage in the craft of being a lawyer.”<sup>5</sup> Today, clinical legal education focuses on teaching students the skills and values necessary to their careers as lawyers.<sup>6</sup> Law clinics use several different methodologies for teaching, including live client representation, case supervision, rounds, seminar classes, and simulations, to achieve learning goals.<sup>7</sup> Students learn about professional identity by inhabiting the role of a lawyer, exploring and linking their personal values and aspirations with those of the profession.<sup>8</sup>

In addition to its distinctive methods, a hallmark of clinical education is an express commitment to social justice.<sup>9</sup> Professor Carolyn Grose writes that clinical education aims to “expose students to the underbelly of the legal system, and its place and role in society; and . . . to challenge them to think critically about that system and their place in it.”<sup>10</sup> Clinic students’ case and project work, combined with readings, simulations, presentations, observations, and seminar class time, provides them with a palette of experiences with clients to analyze systemic issues and see how those issues impact their clients.

Clinical legal education is also as much about theory as it is practice, with an emphasis on intentionality and reflection.<sup>11</sup> Clinical supervisors facilitate critical reflection on student attorneys’ experiences practicing skills and their interactions with clients and the legal system as a whole—surfacing observations, assumptions, and manifestations of students’ personal values.<sup>12</sup>

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4. See, e.g., Barry et al., *supra* note 3, at 58; Mary Helen McNeal, *Unbundling and Law School Clinics: Where’s the Pedagogy?*, 7 CLINICAL L. REV. 341, 359 (2001).

5. BRYANT ET AL., *supra* note 1, at xv.

6. See, e.g., *id.*; Deborah N. Archer, *Open to Justice: The Importance of Student Selection Decisions in Law School Clinics*, 24 CLINICAL L. REV. 1, 5 (2017) (“For many law students who participate in clinical programs, the singular focus of a clinical experience is the acquisition of foundational lawyering skills such as interviewing, counseling, and trial skills.”); Jackson & Schaffzin, *supra* note 1, at 537.

7. David F. Chavkin, *Excerpt from Clinical Legal Education Textbook for Law School Clinical Programs*, PILNET (2002), <https://www.pilnet.org/resource/excerpt-from-clinical-legal-education-textbook-for-law-school-clinical-programs/> [<https://perma.cc/357R-EXBG>].

8. *Id.*; BRYANT ET AL., *supra* note 1, at 6.

9. See, e.g., Grose, *supra* note 2, at 495–96; BRYANT ET AL., *supra* note 1, at 6 (“A driving and important instinct propelling clinical education’s creation was students’ enhancing social justice and learning about justice from that experience.”); Martin Guggenheim, *Fee-Generating Clinics: Can We Bear the Costs?*, 1 CLINICAL L. REV. 677, 683 (1995).

10. Grose, *supra* note 2, at 495.

11. *Id.* at 493.

12. Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLINICAL L. REV. 1, 11 (1997).

### B. Case Selection

Case selection is key to clinical pedagogy, as clinic cases are the texts that students use to learn how to be lawyers and to reflect on the law and legal system.<sup>13</sup> Case selection is also inseparable from clinics' social justice objectives.<sup>14</sup> Both of our programs are live-client clinics focused on representation for underserved populations and emerging legal needs in the community. Though we take different approaches to case selection, both of our clinics represent noncitizens.

Lauren founded the Human Rights at Home Litigation Clinic ("HRAHLC") at St. Louis University School of Law in January 2020 with a mission to protect and promote fundamental human rights for the most vulnerable persons of color, primarily immigrants and detained persons, in the St. Louis region. HRAHLC cases are selected to give students the chance to engage in litigation in state and federal court, as well as other adversarial settings such as before the Inter-American Commission on Human Rights or a parole board. HRAHLC students practice discovery and trial skills and make deep connections with their clients in spite of the many hurdles, including language barriers and limited communication with detained clients. By design, HRAHLC students compare, contrast, and apply U.S. law and international human rights law on a regular basis, which Lauren finds helps with the development of critical reflection skills.<sup>15</sup> The HRAHLC centers anti-racism both in its casework and in class. In conjunction with anti-carceral theory, Lauren expressly uses a race-based systemic reform lens. Lauren describes the HRAHLC as an anti-racist clinic in her syllabus and integrates readings and activities that highlight approaches to racial justice throughout the semester.<sup>16</sup>

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13. See, e.g., BRYANT ET AL., *supra* note 1, at 251–77.

14. Archer, *supra* note 6, at 6.

15. For example, HRAHLC students drafted a shadow report submitted to the U.N. Committee on the elimination of racial discrimination in July 2022 regarding people currently and formerly detained, 95% of whom are Black, in St. Louis, highlighting torturous punishment and inhumane confinement conditions that are used on a daily basis. See *Racially Discriminatory Treatment and Punishment of Pretrial Detained Black Persons in the City of St. Louis: Water Shutoffs, Excessive Use of Chemical Agents, and Solitary Confinement—A Report Submitted to the Committee on the Elimination of Racial Discrimination in its 107<sup>th</sup> Session*, OFF. OF THE HIGH COMM'R FOR HUM. RTS. (July 15, 2022), [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_49323\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_49323_E.pdf) [<https://perma.cc/N9WF-Z5CP>].

16. Relevant assigned readings include: Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States after Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 121, 121 (2015); Zenobia Lai, Andrew Leong & Chi Chi Wu, *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 UCLA ASIAN PAC. AM. L.J. 1, 10–18 (2000); Erika K. Wilson, *The Great American Dilemma: Law and the Intransigence of Racism*, 20 CUNY L. REV. 513, 514 (2017). HRAHLC students also complete a journal assignment later in the semester with the prompt: "Please describe one aspect of your clinic work that relates to anti-racism and explain why."

Sabrina has directed the Asylum & Immigration Law Clinic (“AILC”) at Wayne State Law School since 2017. The clinic was founded in 2009 with a focus on asylum claims, relief under the Violence Against Women Act, and U visas. These cases all hinge on testimony from clients, so students spend several hours each semester doing in-depth interviews with clients and developing a claim for immigration relief.<sup>17</sup> In response to community need, the clinic’s docket now includes removal defense and appeals. Because detained cases tend to be resource-intensive and thus difficult to take on for local nonprofits, the clinic’s work periodically includes representation for individuals in Immigration and Customs Enforcement (“ICE”) detention.<sup>18</sup> Sabrina teaches from an intersectional perspective, integrating readings that highlight racialized, gendered, and classist aspects of immigration law so students can better contextualize both their clients’ experiences and their own immigration histories.<sup>19</sup>

## II. THE THEORY: ANTI-CARCERAL THEORY AS A FRAMEWORK FOR CLINICAL TEACHING

Adopting a critical theoretical lens is not technically necessary for a clinic, but it is a powerful way to add context to casework.<sup>20</sup> In our clinics, one lens we regularly employ—and introduce in this article—is anti-carceral theory. We use the term “anti-carceral theory” to refer to an approach that resists criminalization

17. There are numerous articles and presentations devoted to the critical skills that students develop working on these types of immigration cases. *See, e.g.*, Kevin R. Johnson & Amagda Pérez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423, 1437–38 (1998).

18. Detained cases are often considered challenging due to the expedited timeline for developing claims for relief, the logistical challenges of communicating with individuals in detention facilities, and the remote location of detention facilities. *See, e.g.*, Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 S. CAL. L. REV. 1, 66 (2018); *Council Advocates for Meaningful Access to Legal Representation in Immigration Detention*, AM. IMMIGR. COUNCIL (Oct. 29, 2021), <https://www.americanimmigrationcouncil.org/research/council-advocates-meaningful-access-legal-representation-immigration-detention> [<https://perma.cc/79JC-XZ4P>].

19. Examples of these readings include GRACE CHANG, *DISPOSABLE DOMESTICS* (2000); MAI M. NGAI, *IMPOSSIBLE SUBJECTS* (2004); Susan Bibler Coutin, *Falling Outside: Excavating the History of Central American Asylum Seekers*, 36 L. & SOC. INQUIRY 569 (2011); Rachel E. Rosenbloom, *Policing Sex, Policing Immigrants: What Crimmigration’s Past Can Tell Us About Its Present and Its Future*, 104 CAL. L. REV. 149 (2016); Natalie Nanasi, *Domestic Violence Asylum and the Perpetuation of the Victimization Narrative*, 78 OHIO ST. L.J. 733 (2017); Shoba Sivaprasad Wadhia, *National Security, Immigration and the Muslim Bans*, 75 WASH. & LEE L. REV. 1475 (2018).

20. *See, e.g.*, Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1615 (1991); Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL’Y & L. 161, 162 (2005).

and incarceration within law, drawing on abolitionism, intersectional and anti-carceral feminism, and decolonization.<sup>21</sup> The anti-carceral lens gives us framing and language to name the dynamics of social exclusion and discrimination inherent in immigration law. It also allows us to unpack immigration regulation as a series of choices made within the larger context of law enforcement and its systems of surveillance, policing, and confinement.

Lawyers who practice at the intersection of immigration and criminal law will be familiar with the relationship between a conviction in criminal court and a deportation in immigration court.<sup>22</sup> But the law and legal systems also create schemas of criminalization based on immigration status alone. Even law intended to be benevolent—such as the creation of special forms of immigration relief for people who have suffered from trafficking or violent crime—reinforce stereotypes about “good” and “bad” immigrants, with the threat of detention and deportation looming over those deemed to be on the wrong side of the law.<sup>23</sup> For these reasons, immigration law scholars and community advocates alike have called for greater solidarity between the immigrant rights movement and movements for prison abolition.<sup>24</sup>

Anti-carceral theory feels particularly relevant to teaching law at this moment, given what our law students have seen and experienced in their lifetimes. In the years leading up to their decision to attend law school, our students have seen police lynchings, racial justice protests, and debates over

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21. These areas often intersect. *See, e.g.*, ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 9, 13 (Greg Ruggiero ed., 2003) (highlighting connections between mass incarceration, racism, and sexism); MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 2 (2010) (placing incarceration in the historical context of legalized racial discrimination); *Statement on Gender Violence and the Prison Industrial Complex (2001)*, INCITE! (2001), <https://incite-national.org/incite-critical-resistance-statement/> [<https://perma.cc/7E2C-CPKG>] (last visited Sept. 19, 2022) (highlighting the relationship between abolition and autonomy feminism); LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY ix (George Steinmetz & Julia Adams eds., 2009) (connecting criminalization with systemic social stratification and impoverishment); HARSHA WALIA, UNDOING BORDER IMPERIALISM (2013) (examining the relationship between colonialism, carceral politics, and border enforcement).

22. Criminal defense attorneys are required to advise on collateral consequences of a plea, including the immigration consequences for noncitizens. *See Padilla v. Kentucky*, 559 U.S. 356, 374 (2010).

23. *See Sabrina Balgamwalla, Trafficking in Narratives: Conceptualizing and Recasting Victims, Offenders, and Rescuers in the War on Human Trafficking*, 94 DENV. L. REV. 1, 3 (2016).

24. *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/X5AL-SVJG>]; Laila Hlass, *Lawyering from a Deportation Abolition Ethic*, 110 CAL. L. REV. 1597, 1597 (2022); Lauren E. Bartlett, *One of the Greatest Human Tragedies of Our Time: The U.N., Biden, and a Missed Opportunity to Abolish Immigration Prisons*, 43 MITCHELL HAMLIN L.J. PUB. POL'Y & PRAC. 37, 41–42 (2022).

whether and how to reform or abolish policing and prisons.<sup>25</sup> They have read a president's Twitter missives about religious immigration bans and building border walls, and observed policies separating families and leaving refugees stranded.<sup>26</sup> They have seen successful legal challenges to policies and practices, but have also witnessed devastating failures in court.<sup>27</sup> In short, many law students enter law school with some skepticism about the legal system—and the law's ability to provide social justice—and are primed for a learning style that places their casework in the context of broader social justice movements.<sup>28</sup> This theoretical approach is also a powerful way for students to develop consciousness about the voices and perspectives that are centered within the law,

25. See, e.g., Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Nov. 5, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html> [<https://perma.cc/LY6G-4UEP>]; Rachel Treisman, *Where The Chauvin Verdict Fits In The Recent History Of High-Profile Police Killings*, NPR (Apr. 20, 2021), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/20/989292294/where-the-chauvin-verdict-fits-in-the-recent-history-of-high-profile-police-kill> [<https://perma.cc/TZW5-GA6S>]; Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, NEW YORKER (May 7, 2021), <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition> [<https://perma.cc/Z7UU-27YP>].

26. See, e.g., Garrett Epps, *Trump's Tweets May Have Sunk His Travel Ban*, ATLANTIC (June 5, 2017), <https://www.theatlantic.com/politics/archive/2017/06/trumps-tweets-may-have-sunk-his-travel-ban/529167/> [<https://perma.cc/UMF8-9JC2>]; Aaron Rugar, *Trump's Tweets Saying He's Already Building the Border Wall, Briefly Explained*, VOX (Feb. 21, 2019), <https://www.vox.com/2019/2/21/18234613/trump-tweets-border-wall-construction-explained> [<https://perma.cc/G48V-W8GC>]; COMM. ON OVERSIGHT & ACCOUNTABILITY, U.S. HOUSE OF REPRESENTATIVES, CHILD SEPARATIONS BY THE TRUMP ADMINISTRATION (July 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-2019.%20Immigrant%20Child%20Separations-%20Staff%20Report.pdf> [<https://perma.cc/8RVP-TSSE>].

27. See, e.g., *Trump v. Hawaii*, 138 S. Ct. 2392, 2399–400 (2018) (holding that the Proclamation restricting travel to the United States by citizen of eight countries—Chad, Iran, Iraq, Libya, North Korea, Syria, Venezuela, and Yemen—did not violate the president's statutory authority or the Establishment Clause); *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1133 (S.D. Cal. 2018) (granting class-wide injunctive relief to prohibit separation of class members from their children in the future).

28. The Guerilla Guides to Law Teaching are another example of how law professors can use critical theory, community perspectives, and history to deepen discourse on legal doctrine in the classroom and invite students to broaden their conceptions of what it means to practice law. See *Guerilla Guides to Law Teaching: "About,"* GUERRILLA GUIDES, <https://guerrillaguides.wordpress.com/about/> [<https://perma.cc/H4EJ-3X8K>] (last visited Sept. 20, 2022) (describing these teaching approaches that “acknowledge and confront our present ‘movement moment’” and “embrace this moment as an important opportunity to revisit methods and sources of teaching in the legal academy”); *Guerilla Guides to Law Teaching: "Four Principles,"* GUERRILLA GUIDES, <https://guerrillaguides.wordpress.com/2016/08/29/fourprinciples/> [<https://perma.cc/6472-6YUN>] (last visited Sept. 20, 2022) (outlining four guiding principles of building solidarities, advancing resistance, broadening and deepening discourse, and radical interventions).



including a deeper awareness of their own personal and professional privileges.<sup>29</sup>

### III. THE PRACTICE: HOW WE USE ANTI-CARCERAL FRAMEWORKS IN OUR CLINICS

We now turn to application—how anti-carceral theory guides our teaching and support for our students’ professional identity formation in clinic. In this section, we specifically highlight examples of the immigration-carceral nexus in our cases. Some of these matters focus directly on the immigration consequences of criminal offenses and the ambivalence it creates for noncitizen clients interacting with law enforcement. Other cases implicate the relationship between immigration enforcement and carceral infrastructure. Through these examples, we illustrate how we engage students with the critical lens of anti-carceral theory.

#### A. *Collateral Consequences of Criminal Convictions*

For noncitizens in the United States, most criminal offenses carry the threat of deportation.<sup>30</sup> Offenses may prevent noncitizens from obtaining green cards or establishing “good moral character” required for citizenship, leaving noncitizens without options for immigration relief.<sup>31</sup> These offenses may carry immigration consequences even where there is no formal criminal conviction.<sup>32</sup> On an enforcement systems level, local police coordinate with ICE to transfer noncitizens from criminal custody to immigration detention and into removal proceedings based on an arrest alone.<sup>33</sup> The connection between criminal and immigration systems has also become more apparent as immigration

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29. See Johnson, *supra* note 20, at 162 (citing Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991)).

30. See Immigration and Nationality Act (INA) § 237, 8 U.S.C. § 1227 (enumerating grounds of removability).

31. See, e.g., INA § 212(a)(2–3), (6), 8 U.S.C. § 1182(a)(2–3), (6) (enumerating grounds of inadmissibility); INA § 101(a)(43), (f)(8), 8 U.S.C. § 1101(a)(43), (f)(8) (enumerating bars to good moral character).

32. See INA § 101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A), as enacted by Illegal Immigration Reform and Immigration Responsibility Act (IIRAIRA) § 322(a)(1) (stating that a disposition can still qualify as a conviction for immigration purposes if “the [noncitizen] . . . has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed.”); *In re Christopher Pickering*, 23 I. & N. Dec. 621, 621 (B.I.A. 2003) (holding that undoing a conviction solely for rehabilitative purposes or to avoid immigration consequences will not void the conviction for immigration).

33. See *Partnerships Work, Enforcement and Removal Operations*, U.S. IMMIGR. & CUSTOMS ENF’T., <https://www.ice.gov/features/partnerships-work> [<https://perma.cc/9KNN-S852>] (last visited Sept. 13, 2022).

enforcement bears a greater resemblance to criminal punishment, with many ICE detention beds physically located in state and local jails.<sup>34</sup>

Some of our clinic work addresses this intersection between immigration and criminal law directly: AILC students have represented clients in removal proceedings who are referred following a conviction, while HRAHLC students have hosted know-your-rights presentations for practitioners representing immigrants in the U.S. criminal justice system. But our clinics have also engaged more broadly with the connection between deportation and encounters with law enforcement. For example, a mother may be worried that a domestic violence call to the police might trigger her partner's deportation. She must accordingly weigh the temporary safety of making a report with the fact that her children may never see their father again, and the family may face the loss of income or a path to immigration status as the result of deportation. To best represent a client under these circumstances, clinic students must appreciate these competing concerns when giving legal advice.

The HRAHLC takes on these domestic violence cases because there are few attorneys who will provide free legal representation to undocumented immigrants in these civil matters. These cases are also fodder for students' critical reflection on the deficiencies in the legal system for protecting persons experiencing domestic violence. Because this issue is so pronounced in the HRAHLC cases, Lauren has recently added a seminar class devoted to examining the intersections of the criminal justice system, domestic violence, and immigration.

Further illustrating the fraught relationship between immigration and criminal law enforcement, AILC students have historically represented clients seeking immigration relief based on cooperation with law enforcement agencies. In the course of representation, students must counsel clients on the benefits and pitfalls about reporting a crime, as the U visa requires a certificate confirming their cooperation with law enforcement.<sup>35</sup> While some AILC clients seek out protection from law enforcement, few do so without hesitation. When reporting an offense or seeking proof of law enforcement cooperation for a T or U visa, noncitizens—particularly those without authorization to remain in the United States—must reconcile their desire to remain in the United States and concern that reporting an offense might backfire, potentially putting them and their family on the radar of law enforcement and triggering deportation. Where a partner or an employer has threatened to call the police or ICE as part of a pattern

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34. See *Immigration Detention in the United States by Agency*, AM. IMMIGR. COUNCIL (Jan. 2, 2020), <https://www.americanimmigrationcouncil.org/research/immigration-detention-united-states-agency> [https://perma.cc/MA3P-2TSZ].

35. See INA § 214(p), 8 U.S.C. § 1184(p). The T visa, which is available to survivors of human trafficking, requires evidence that the applicant either complied with any reasonable request for assistance from law enforcement or qualifies for an exception or exemption. INA § 101(a)(15)(T)(i)(III)(aa–bb), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa–bb).

of abuse, clients can be particularly ambivalent about affirmatively contacting these agencies as a victim. To prepare students to counsel their clients and contextualize the policy debate around expectations that a noncitizen cooperate with law enforcement, Sabrina introduces seminar readings about victim stereotypes, critical perspectives on the T and U visa, and the relationship between immigration enforcement and criminal enforcement.<sup>36</sup> Students come away with a deeper understanding of the categories inherent within law and dangers these categories create for our clients, who may not fall easily into a single category.

### *B. Immigration Detention and Jail Conditions*

Both AILC and HRAHLC student attorneys have represented noncitizen detained clients, though in different capacities and the students have been supported with different clinical teaching methods. We both believe that an understanding of the physical reality of jails is extremely valuable for law students. In addition, while observing facilities during client visits, many students hear from their clients about the difficult living conditions in jail—everything from worms in the food, to freezing cells with metal beds, to the pain of not being able to call a loved one. Students also experience the many challenges associated with representing detained clients, including long drives from the law school to detention facilities, limited access to their client by phone and mail, and the lack of privacy and confidentiality that inhibits the sharing of sensitive information.

Over the past five years, AILC has represented respondents detained at the Calhoun, Chippewa, and Monroe County Jails in Michigan and at the Northeast Ohio Correctional Center. Our clients have pursued bond, sought asylum or Convention Against Torture relief, or appealed their claims for immigration relief. Sabrina decided to mainstream discussion of immigration detention into the seminar so students can better appreciate this dimension of immigration enforcement. In a class devoted to due process in immigration proceedings, AILC students analyze data about immigration proceedings obtained through a Freedom of Information Act (“FOIA”) request by the Transactional Record Access Clearinghouse (“TRAC”).<sup>37</sup> Students pull data reports showing detainee

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36. See, e.g., Rachel Gonzalez Settlage, *Uniquely Unhelpful: The U Visa’s Disparate Treatment of Immigrant Victims of Domestic Violence*, 68 RUTGERS U. L. REV. 1747, 1750, 1752 (2016); Michael Kagan, *Immigrant Victims, Immigrant Accusers*, 48 U. MICH. J.L. REFORM 915, 915 (2015); Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, UNIV. OF ILL. AT CHI. (May 2013), [https://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF) [<https://perma.cc/28NG-G4LU>].

37. TRAC is a data gathering, data research and data distribution organization based at Syracuse University, established with the purpose of providing agency oversight information to the

grant rates for bond and immigration relief, which illustrate the impact of representation and jurisdiction on individual cases. Reports also show how individuals are referred to immigration proceedings, further illuminating the relationship between law enforcement and immigration enforcement, profiling, and other forms of surveillance.<sup>38</sup> Students also look at maps showing the remote locations of facilities, as well as news coverage of private immigration detention centers, which are run by the same companies that own “alternatives to detention” technology such as ankle bracelets.<sup>39</sup> Pre-COVID, students also observed master calendar hearings in immigration court, and were asked to share their observations of proceeding and compare the experiences of detained and non-detained respondents. At the end of the semester, students learn how to develop and argue a bond case, and each participates as both a respondent-side and government-side attorney in a simulated bond hearing. Students thus not only come away with a skillset that allows them to better represent individuals in immigration custody—and, to some extent, criminal custody—but also gain insight into the role that immigration incarceration plays into larger systems of enforcement and criminalization.

Lauren and her HRAHLC students have represented detained immigrants in Missouri jails and prisons with regard to detention conditions and denial of access to healthcare. Community members identified these cases as an area of critical need, where few other attorneys are working. These detained client cases have been particularly eye-opening for students who had a hard time believing that immigrants were being held in small town jails in Missouri for immigration purposes, let alone that their clients, who were being held on non-criminal charges, were denied insulin and wound care. During supervision meetings, Lauren encourages her students to reflect on their client’s goals, as well as the systemic issues that lead to these problems, including crimmigration and the carceral state. Working through the reasons why our clients were detained by

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public. See *Transactional Records Access Clearinghouse: About Us*, TRAC, <https://trac.syr.edu/aboutTRACgeneral.html> [https://perma.cc/7XKZ-ST3Q] (last visited Sept. 21, 2022).

38. AILC students are also assigned reports that further contextualize this data. See, e.g., *The Border’s Long Shadow: How Border Patrol Uses Racial Profiling and Local and State Police to Target and Instill Fear in Michigan’s Immigrant Communities*, ACLU OF MICH. (Mar. 25, 2021), <https://www.aclu.org/press-releases/new-aclu-michigan-report-border-patrol-operates-far-border-and-uses-racial-profiling> [https://perma.cc/D738-SCKJ]; *Take Back Tech Fellowship Reports*, OUR TECH FUTURES, <https://ourtechfutures.com/tbtfreports/> [https://perma.cc/5673-JUYG] (last visited Sept. 19, 2022).

39. See *Mapping U.S. Immigration Detention*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/map> [https://perma.cc/7VGX-8L4B]; Clyde Haberman, *For Private Prisons, Detaining Immigrants Is Big Business*, N.Y. TIMES (Oct. 1, 2018), <https://www.nytimes.com/2018/10/01/us/prisons-immigration-detention.html> [https://perma.cc/2JWM-GQZP]; Johana Bhuiyan, *Poor Tech, Opaque Rules, Exhausted Staff: Inside the Private Company Surveilling US Immigrants*, GUARDIAN (Mar. 7, 2022), <https://www.theguardian.com/us-news/2022/mar/07/us-immigration-surveillance-ice-bi-isap> [https://perma.cc/8EWL-E46S].

ICE in local jails for years at a time and digging into the contracts between ICE and the local jails, has helped generate conversations about the connections between abolition and anti-immigrant movements, both inside and outside of class.

These experiences have also helped push students to think about how one experience with a client connects to other matters and potential systemic reforms. Students working on these cases asked Lauren for more readings on abolition and immigration detention<sup>40</sup> and Lauren began researching and writing on abolition in the context of immigration detention. Lauren and her students reached out to other practitioners to discuss these issues through an abolitionist lens and invited a guest speaker who had deep experience working on immigration detention conditions cases in the Midwest. This work has ended up being life-changing for some students. After working on these immigrant jail cases, one student who had come to clinic hoping to work at a corporate firm, switched gears and applied for post-graduate legal fellowships in the area of crimmigration. Other students have committed to representing detainees in access to healthcare cases pro bono after graduation.

#### CONCLUSION

As law teachers directing clinics and representing noncitizens, we have found the anti-carceral lens to be invaluable in encouraging our students to delve into the context of their clients' legal problems, connect their observations with larger critiques and movements, and reimagine their roles as advocates. Personally, our own learning about justice has also been fortified by making these theoretical connections and integrating them in our practice, teaching, and scholarship. We hope these examples of case selection, readings and exercises, and class discussion topics provide our clinical colleagues with concrete ideas for how they might integrate anti-carceral theory in their own classes.

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40. Lauren and a doctrinal colleague also started a lunchtime reading group open to all law students at St. Louis University School of Law on abolition in 2022, which started by reading DERECKA PURNELL, *BECOMING ABOLITIONISTS* (1st ed. 2021).