

BEARING WITNESS
DRAWING IN THE
MOMENT
IN IMMIGRATION COURT

"4 CASES"
**BEARING WITNESS
IN THE MOMENT**

Report from the Immigration
Court Observation Project

Bearing Witness in the Moment:

Report from the Immigration Court
Observation Project

THE ADVOCATES FOR HUMAN RIGHTS
2020



PREFACE

The machinery of detention and deportation grinds relentlessly in the United States, though few citizens are aware of it. While the vast majority of immigration enforcement operations take place hidden from public view, immigration courts—which conduct hearings to determine whether a person should be deported or allowed to remain in the United States—provide a window into the system that expels people from the United States. This report details the experiences of the volunteer immigration court observers who are bearing witness to those proceedings.

Court observation, or trial monitoring, is an established human rights practice. Conducted primarily in criminal proceedings by non-governmental and intergovernmental human rights organizations and academic programs across the globe, court observation programs simultaneously exercise and observe a “fundamental human right: the right to a fair and public hearing.”¹ The Immigration Court Observation Project draws on this practice to identify and bring visibility to systemic human rights violations arising in the context of civil immigration enforcement. The project brings observers from the public into the Fort Snelling Immigration Court in Minnesota to observe and document immigration hearings of people who are currently held in Immigration and Customs Enforcement (ICE) detention.

The Immigration Court Observation Project began as an effort to harness some of the energy that erupted at airports following the Muslim Ban and direct it toward what was anticipated to be a volatile environment for detained people facing deportation. The hope was that observers could provide a bird’s eye view of emerging trends and problems. But when members of the public began observing detained removal hearings, many questioned the everyday practices and assumptions upon which the deportation system rests.

In late 2019, The Advocates conducted a survey and held a series of round tables to explore the project’s impact on observers and their perceptions of proceedings. What motivates people to participate? What impact does court observation have on them? What are their perspectives on immigration court in the greater context of our system of justice and our treatment of immigrants?

Observers interviewed for this report raise serious concerns about due process in immigration court. They question who and what our immigration courts aim to serve, with many struggling to reconcile their notions of justice with the laws that govern immigration in the United States.

¹ UN Office of the High Comm’r for Human Rights, Manual on Human Rights Monitoring, ch.22 at 4 (2011) <https://www.ohchr.org/Documents/Publications/MonitoringChapter22.pdf>.

They perceive the system as both brutal and banal, with scant consideration of human dignity even when individual actors strive to do their best.

There has been significant upheaval in the months since immigration court observers were interviewed for this report. COVID-19 ground immigration courts to a near halt for months and trapped many people inside immigration detention centers. At time of publication, the courts remain only partially opened. And, on May 25, 2020, the extrajudicial killing of George Floyd propelled people into the streets and into conversation about the racist history, intent, and impact of systems of policing in the United States. Meanwhile, the administration has introduced numerous regulations and executive orders expanding the authority to expel, repel, and deter people from the United States, and reports of shocking abuses from inside ICE detention centers continue to emerge. We are at a moment of reckoning as a nation with our history of white nationalism, which, while built on colonization and slavery, has been furthered by our immigration laws.

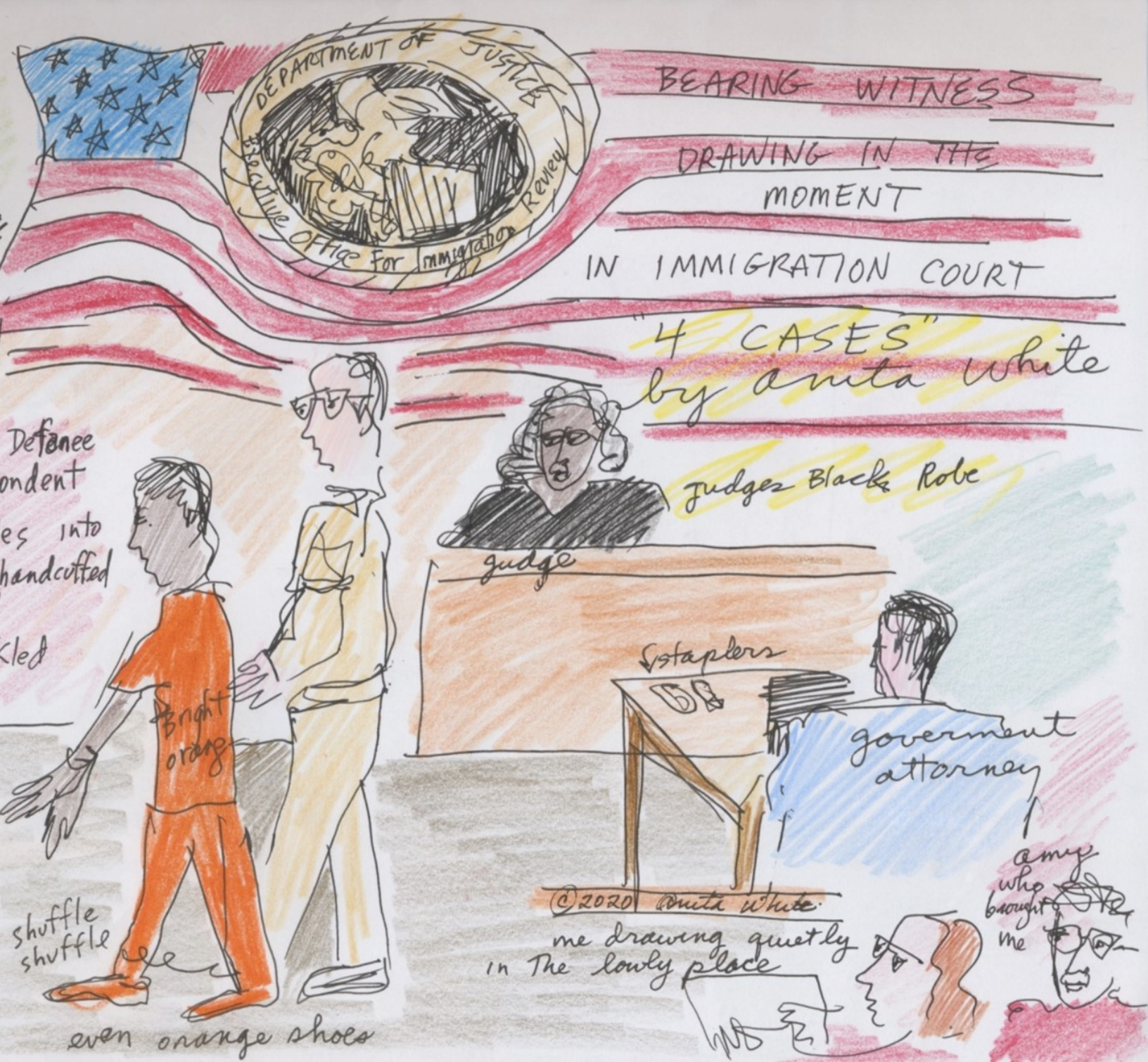
More than 600 people have participated in the Immigration Court Observation Project since its inception in 2017. This report is drawn from those observers who responded to our request to reflect upon and share their experiences. Additionally, the project is an ongoing collaboration between the University of Minnesota Law School's James H. Binger Center for New Americans, the law firm of Robins Kaplan LLP, and The Advocates for Human Rights. This report, however, is the result of research conducted and analyzed by The Advocates, which is solely responsible for its contents, conclusions, and any errors.

This report is dedicated to David Weissbrodt, Professor Emeritus, University of Minnesota Law School. His work has inspired and guided human rights lawyers and activists in Minnesota and around the globe, including the founders of The Advocates for Human Rights. A distinguished scholar and global leader in international human rights law, Professor Weissbrodt has written extensively on human rights monitoring and documentation, including the practice of trial monitoring, for more than four decades. His 1982 article, *International Trial Observers*, remains foundational and relevant today.

CONTENTS

- Preface i
- Executive Summary..... 1
 - Volunteer Engagement and Action 1
 - Findings 2
 - Defining Justice 2
 - Barriers to Immigration Justice 3
 - Recommendations 3
 - What Observers Want People to Know 3
 - Topline Policy Recommendations 3
 - Conclusion..... 4
- Introduction 5
 - Purpose of this Report 5
 - Methodology..... 5
 - Courtroom Sketches..... 7
- Background 8
 - The Immigration Court Observation Project 8
 - The Volunteer Observers 9
 - Trial Monitoring as a Practice..... 9
 - About Immigration Court 10
- Volunteer Engagement and Action 14
 - Initial Motivation to Participate 14
 - Sustaining Motivation 15
 - Taking Action..... 18
- Findings 19
 - Defining Justice 19
 - Just Laws 20
 - Due Process..... 21
 - Non-Discrimination 22
 - Recognition of Human Dignity 23
 - Barriers to Immigration Justice 24
 - Unjust Laws 24

Unfair Process	26
Unequal Treatment	34
Lack of Dignity	35
Conclusion and Recommendations	40
What Observers Want Judges to Know	40
Honor Human Dignity.....	40
Ensure Understanding.....	41
Foster Transparency.....	42
What Observers Want the Public to Know	42
Policy Recommendations	43
Enact Just Laws.....	44
Ensure Due Process	44
Ensure Non-Discrimination	45
Promote Dignity	46
Conclusion.....	47
Acknowledgements.....	48
Appendices	49
Appendix A: Volunteer Registration Form.....	49
Appendix B: Volunteer Survey.....	52
Appendix C: Roundtable Discussion Guide.....	55
Appendix D: Court Observation Form	56
Appendix E: Observation Drawings and Descriptions.....	58



EXECUTIVE SUMMARY

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The Immigration Court Observation Project is a collaboration between The Advocates for Human Rights, the James H. Binger Center for New Americans at the University of Minnesota Law School, and Robins Kaplan LLP in Minnesota. The project began in April 2017 following first Muslim Ban, seeking to harness some of the energy that erupted at airports in protest and direct it toward what was anticipated to be a volatile environment for detained people facing deportation.

The Immigration Court Observation Project draws on the international human rights practice of trial monitoring to identify and bring visibility to systemic human rights violations arising in the context of civil immigration enforcement. The project brings observers from the public into the Fort Snelling Immigration Court in Minnesota to observe and document immigration hearings of people who are currently held in Immigration and Customs Enforcement (ICE) detention.

The hope was that observers could provide a bird's eye view of emerging trends and problems. But when members of the public began observing detained removal hearings, many questioned the everyday practices and assumptions upon which the deportation system rests.

This report explores how immigration court observers have been affected by participation in the project and how inviting the public inside the workings of the deportation infrastructure can call into question the workings of that system. This report aims to illuminate court observers' motivations, experiences, perceptions, and recommendations. The report centers the voices of the court observers who participated in a survey and roundtable discussions. This report is the result of research conducted and analyzed by The Advocates, which is solely responsible for its contents, conclusions, and any errors.

VOLUNTEER ENGAGEMENT AND ACTION

Volunteers identified being motivated to participate in court observation by outrage at injustice in the immigration system; by the opportunity to take action, bear witness, and learn; and by personal connections to the issue of immigration. Once inside the courtroom, observers reported that their experiences largely aligned with their initial motivations, deepened their understanding of the immigration system, and allowed them to take action.

Volunteers reported that the experience inspired them to act. From a list of specific actions: 44% said they have recruited others to volunteer; 15% wrote letters to the editor, blog or social media posts; 38% contacted an elected representative; 51% attended other immigration trainings; 42% attended a protest, rally, or demonstration; 21% volunteered with other immigrant justice or legal aid nonprofits; and 45% donated money to these organizations.

FINDINGS

Observers reflected on their notions of justice and due process. They reported a significant disconnect between these concepts and what they observe while monitoring immigration court hearings. Observers questioned the fairness of many of the fundamental premises of the immigration system itself. Many were troubled by the consequences of a technical distinction between “criminal” and “civil” proceedings, which results in significantly more limited procedural protections to people facing deportation than those charged with criminal offenses. They identified serious barriers to justice that undermine the fairness of proceedings which result in the expulsion of hundreds of thousands of people from the United States each year. They noted the overwhelmingly disproportionate impact of immigration enforcement on Black, Latinx, and Asian refugees and immigrants and the way in which racist criminal policing and prosecution practices magnify who ends up detained by ICE. They felt the coercive power of detention on people’s ability to pursue their cases. Observers questioned the legitimacy of a system where laws appeared unable to do justice, even when procedures were followed.

Defining Justice

International law defines core standards of justice, including just laws, due process, non-discrimination, and recognition of human dignity. When asked to reflect on the immigration system and their idea of what justice means, observers identified these same elements.

Observers reported a belief that, for any court system to dispense justice, the system must be based on laws which are just. There was strong consensus among volunteers that our current immigration laws do not necessarily allow justice to be done—largely because the laws themselves do not allow for the outcomes which observers perceived to be just outcomes.

When observers reflected on the concept of “due process,” they identified two key elements: transparent, consistent rules and an understandable, accessible process. Observers noted that ensuring language access throughout hearings and in written information is essential to due process. Observers also included access to attorneys and other resources in their understanding of due process.

Observers also agreed that to achieve justice there needs to be fair treatment regardless of race, nationality, or immigration status. Systems that create or perpetuate racist practices lack legitimacy. Finally, court observers identified recognition of human dignity as essential to justice. Many noted the importance of respect, empathy, and humanity in the courtroom.

Barriers to Immigration Justice

Immigration court observers noted serious, and in some ways insurmountable, barriers to justice in the immigration enforcement system. Their concerns largely track the benchmarks for justice they identified. Observers voiced concerns resulting from an **underlying legal framework** that provides few ways for people to immigrate, myriad reasons for their expulsion, and limited defenses to deportation. Observers identified serious **due process concerns**, perceiving that the system unfairly “stacks the deck” against people by depriving them of the means to understand and participate in their cases. Observers also surfaced how policing and incarceration systems intersect with and impact deportations, amplifying **racial bias** in immigration enforcement. Finally, observers found the immigration enforcement system dehumanizing, degrading, and coercive in a way that **undermines human dignity**.

RECOMMENDATIONS

What Observers Want People to Know

Court observers were struck by the banal and brutal nature of the immigration enforcement system. Many recognized that the system’s design and implementation often leaves little room to do justice. Changes in immigration statutes, administrative policies, enforcement priorities, and appropriations—together with an end to racially-biased policing and prosecution practices which result in the criminalization of many immigrant and refugee communities—are needed.

But when asked what they wished judges to know, observers focused on the need to honor human dignity and to ensure understanding. Observers noted that when judges slow down, greet people, and take time to actively listen and check for understanding, due process is improved. Observers also acknowledged the emotional toll taken on systems personnel, including the judges, court staff, government attorneys, interpreters, and private attorneys.

Immigration court observers reported that while human rights monitoring can be emotionally challenging, it can also challenge their notions of the U.S. immigration system and the portrayal of the issue in the media. Monitoring immigration hearings also deeply affected their understanding of the impact the system has on the people facing deportation, their families, and their communities.

Topline Policy Recommendations

Immigration court observers were clear that immigration policy must meet international human rights standards by doing justice, operating fairly, being free from discrimination, and supporting human dignity.

>> Recognize the dignity of human beings in the design and implementation of immigration laws, policies, and practices. Enact an immigration framework that promotes the dignity and well-being of migrants and the members of communities in countries of origin, transit, and destination.

>> Recognize that detention and exile deprive people of their liberty, separate people from their families and communities, result in loss of homes and careers, and may mean return to torture, persecution, or other serious human rights violations. Ensure that the system making such weighty decisions provides commensurate due process protections including access to counsel, language access, and the ability to meaningfully understand and participate in the removal process.

>> Recognize that the United States has an obligation to respect, protect, and fulfill the human rights of all persons within its jurisdiction regardless of race, citizenship or immigration status, disability, class, or other protected class.

>> Recognize the obligation to treat all detained persons with respect for their inherent dignity and value as human beings. Ensure that no one is subjected to torture or other degrading treatment or punishment. Ensure that no one is subjected to arbitrary detention.

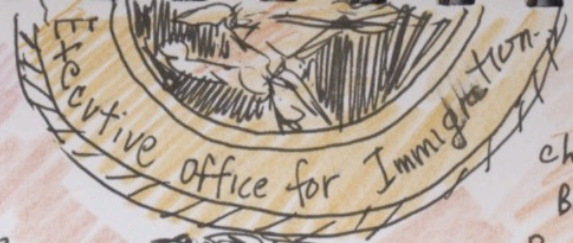
CONCLUSION

The United States must develop and implement policies that ensure respect, protection, and fulfillment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle.

Actors at all levels—from congress to courtrooms—can take steps to prevent and address human rights violations. Public officials should take immediate actions where possible, repeal laws and policies which undermine these objectives, and redesign immigration laws consistent with human rights standards.

Members of the public have an important role in envisioning and demanding a just and fair immigration system. Bringing the public to witness immigration hearings helps to identify how laws and policies operate in practice and to articulate when they fail to meet human rights standards. The Immigration Court Observation Project has built a more informed and impassioned corps of advocates. But in the end, responsibility is on all of us: “We are all complicit by our tax paying in a system that is costly for us and unjust to refugees and immigrants, and we need to work to change that system and to elect officials at all levels who will work to fundamentally change this system.”

Case #4



children
Born in
Rwanda
Rwandan

Because of
the genocide
there... it
might very well
be that the
respondent is
stateless."



He is a refugee
and is stateless
No. He does not
have a birth certificate

He was born in
a refuge camp.
He is stateless

Give me a month
your honor please

© 2020 Anita White

INTRODUCTION

INTRODUCTION

PURPOSE OF THIS REPORT

This report explores how immigration court observers have been affected by participation in the project and how inviting the public inside the workings of the deportation infrastructure can call into question the purpose of that system. While the Immigration Court Observation Project launched with several general goals, the project quickly expanded and, to date, more than 600 individual volunteers have observed hearings. Congregations encouraged members to participate and share what they had learned. Professors assigned observation as part of their coursework. After operating for a year, the project partners invited observers to gather and share their thoughts. The conversation illuminated the power in this group through its vast and diverse professional experience, deep knowledge, and keen insight.

This report looks at several questions:

- What drew people to volunteer as a court observer?
- What keeps them coming?
- What actions have they taken because of their involvement?
- How does what they witness in court align with their expectations based on their understanding of our system of justice?
- What do they see as barriers to justice in court?
- How do language and culture impact access to justice?
- What do they want the court and the public to learn from their observations and perceptions?

In short, how could the experience of outside observers, typically with no formal legal training and not a party to the proceedings, offer a road map for improvements that would ensure our immigration system upholds international standards of human rights? This report focuses on the experiences, observations, and recommendations of volunteer immigration court monitors.

METHODOLOGY

This report aims to understand, not the data collected during court observation, but the observers themselves: their motivations, experiences, perceptions, and recommendations. The focus is on the project's impact on observers and their notions of justice and the legitimacy of immigration court. The findings in this report are drawn from the data collected through volunteer applications, a survey, and guided small group discussions.

All volunteers are asked to complete a registration form with contact information, consent to the observers' code of conduct, and respond to questions about their interests and relevant experience. **(See Appendix A for volunteer registration form)**. First among the questions is how they learned of the project and their motivation for participating. These registrations, along with survey responses, were reviewed and analyzed for common themes.

The code of conduct is drawn from international trial monitoring principles and includes a commitment to confidentiality, non-intervention, objectivity, and adherence to courtroom rules.

The Advocates for Human Rights invited prior and current volunteer court observers to complete an online survey in September 2019 (N = approximately 530). **(See Appendix B for survey questions.)** The survey focused on observers' motivations, how the experience met their expectations, what actions they took as a result, and their perceptions of fairness and respect in court proceedings. Eleven percent (n = 53) responded to the survey by mid-October. Two volunteer observers with professional qualitative research expertise analyzed the survey results along with staff support.

The Advocates then invited all volunteer observers (N = approximately 530) to participate in facilitated roundtable discussions. A total of eight separate facilitated discussions were held over the course of the three evenings in November 2019. Each discussion had a designated facilitator and notetaker. Each roundtable discussion started with the same questions as prompts, but facilitators were instructed to follow the conversation, rather than sticking to script after getting started. The discussion prompts focused on notions of justice and due process in general and how observers saw those concepts manifest in immigration court. A total of 33 volunteers participated in these in-depth conversations. **(See Appendix C for discussion prompts.)**

Some volunteers completed the survey and participated in a roundtable discussion; some did one or the other. A total of 67 unique individuals provided responses included in this report.

Following the roundtables, The Advocates conducted preliminary analysis of the findings to develop an initial outline. In addition, several questions were identified and pro bono volunteers at several law firms undertook research into these issues. The team engaged in a thorough review of the survey and discussion notes, coding for common themes and unique perspectives.

This report centers the voices of the volunteers who observe immigration court hearings. All quotes found in the report are from these volunteers unless otherwise attributed.

COURTROOM SKETCHES

The report features courtroom sketches by artist Anita White. Ms. White observed immigration court hearings and documented her observations in a series of powerful drawings that convey the complexity of immigration court hearings. Appendix E includes each of the pieces used in this report with full text descriptions for readers who use assistive technology.

Case # 2

They asked for my ID, They handcuffed me and slammed me against the truck. They took me to patrol car. I didn't answer, & just stayed quiet



unfortunately I have no control over ICE and its officers. but you can file a complaint

He explains what happened in Spanish

my client was assaulted by immigration officers and he wanted to tell you about that

He has children here. He is not a flight risk

@5030 Anita White

BACKGROUND

BACKGROUND

THE IMMIGRATION COURT OBSERVATION PROJECT

The Immigration Court Observation Project is a collaboration between The Advocates for Human Rights, the James H. Binger Center for New Americans at the University of Minnesota Law School, and Robins Kaplan LLP in Minnesota. It began in April 2017 in response to the administration's first Muslim Ban and the resulting surge of protests and interest in actions to support immigrants.

The project seeks to:

- Bring transparency and accountability to immigration court,
- Have the public witness the workings of immigration court,
- Observe and document the impact of the administration's executive orders and policy changes,
- Refer select cases for representation or litigation,
- Compare Minnesota to national trends,
- Collaborate with court observation projects nationally,
- Understand the public's perceptions of justice and due process,
- Promote human rights standards for immigration court.

Initially designed to be a self-directed observation experience,² court observers would watch a brief orientation video, sign up for a shift, print copies of a multi-page observer form, and return the completed forms to the Binger Center, which developed a data collection tool and data entry process. Today, the Immigration Court Observation Project has a mandated training for new volunteers, a mentoring option, detailed instructional materials, and ongoing support and education for observers. Court observation focuses on "custody redetermination" (bond) and preliminary "master calendar" removal hearings for people detained in immigration custody. Observers do not attend "individual calendar" merits hearings or non-detained hearings.

Court observers complete a two-page observation form for each observed hearing. (See Appendix D for the court observation form.) Observers record demographic information such as

² Initially the project had two tracks: one track to orient non-immigration attorneys who volunteered to represent detained people in their bond hearings, and a second track for non-attorneys to monitor and document what was happening in detained immigration court hearings. The Bond Project continues to recruit and train volunteer attorneys to represent people seeking release on bond from ICE custody.

gender, country of origin, primary language, objective information such as the presiding judge, counsel for the Department of Homeland Security (DHS), whether or not the person was represented, type of relief (defenses to deportation) being sought, bond requests and decisions, and criminal history. The observation form also collects subjective impressions about the respondents' ability to understand and participate in the hearings, the demeanor of the judge and government attorney, and the fairness of the process and outcome of the hearing. All collected observations are entered by volunteers into a database. Approximately every six months, the project team analyzes and reports on the data.

THE VOLUNTEER OBSERVERS

Volunteer court observers find the project through different avenues, with many referred by academic programs, faith communities, or by other volunteer observers. Some find the project through internet searches, through prior interaction with the sponsoring organizations, or as a requirement for a university or college class. A small number were referred by immigration attorney friends or family members.

Through late March 2020, 609 people³ had participated as court observers since the project's inception. While most have participated in five or fewer observation shifts, more than sixteen percent have observed more than five times. Of these, 26 people have participated in more than 20 shifts. One volunteer has attended 146 shifts at immigration court. Thirteen of the volunteers have been trained to mentor new observers.

Volunteers described significant professional experience in a variety of fields, bringing a wealth of experience and a variety of professional lenses into the courtroom. Journalism, psychology, social work, nursing, public health, law, marketing, and teaching each were reported by several volunteers, with many other fields also identified. Because court observation requires weekday availability, many volunteers are retired. Volunteers often reported having decades of pre-retirement experience in their fields. A small number noted being immigrants themselves or having immigrant parents.

TRIAL MONITORING AS A PRACTICE

Trial observation is an established human rights monitoring, documentation, and advocacy tool.⁴ First and foremost, trial observation underscores the right to a fair public trial.

³ As of this report's publication, more than 650 people have participated in the project, and the numbers continue to grow.

⁴ See David Weissbrodt, *International Trial Observers*, 18 *Stan. J. Int'l L.* 27 (1982), available at https://scholarship.law.umn.edu/faculty_articles/233. See also UN Office of the High Comm'r for Human Rights,

Monitoring also fosters transparency and accountability of the judicial process itself. The Office of the High Commissioner for Human Rights (OHCHR) notes that “monitoring can also be an evidence-based diagnostic tool that contributes to an assessment of an individual trial or of the functioning of a country’s justice system overall.”⁵ OHCHR also notes that the presence of trial monitors may serve a protective function for the rights of the accused, witnesses, victims, and justice system personnel.⁶

Trial monitoring often is conducted under the auspices of the United Nations or other intergovernmental organizations. Well-funded initiatives such as the Clooney Foundation for Justice’s TrialWatch® project have increased capacity for international trial observation by non-governmental organizations, particularly focusing on ad hoc monitoring of trials of human rights defenders. Despite being a well-developed international practice, trial monitoring is a rarely used tactic in the United States.

Trial monitoring typically has focused on the adherence of criminal trials to basic international human rights standards. While due process standards in administrative proceedings are less well-developed, in the case of U.S. immigration hearings the divide between administrative and criminal proceedings is largely a distinction without a difference. The classification of removal proceedings as civil, rather than criminal, proceedings regularly is used to justify diminished due process protections. At the same time, the consequences of deportation can be far more devastating than being convicted of a crime, and the deportation system is deeply entwined with criminal policing and incarceration systems. Both U.S. jurisprudence and international standards have yet to adequately address this fundamental problem.

ABOUT IMMIGRATION COURT

The federal government is charged with implementing U.S. immigration laws. The executive branch controls the agencies that oversee adjudication of asylum, permanent residency, naturalization, and other applications; border control; refugee and visa processing abroad; and detention and deportation. While several federal agencies have limited roles, the Department

Manual on Human Rights Monitoring, Chapter 22 at 4, <https://www.ohchr.org/Documents/Publications/MonitoringChapter22.pdf>; International Commission of Jurists, A Manual on Trial Observation: Practitioner’s Guide No. 5, available at <https://www.icj.org/criminal-trials-and-human-rights-a-manual-on-trial-observation/>; American Bar Association, “The Impact of Trial Monitoring,” available at https://www.americanbar.org/groups/human_rights/trial-monitoring/the-impact-of-trial-monitoring/ (last visited Dec. 10, 2020).

⁵ UN Office of the High Comm’r for Human Rights, Manual on Human Rights Monitoring, Chapter 22 at 18 (2011), <https://www.ohchr.org/Documents/Publications/MonitoringChapter22.pdf>.

⁶ UN Office of the High Comm’r for Human Rights, Manual on Human Rights Monitoring, Chapter 22 at 18 (2011), <https://www.ohchr.org/Documents/Publications/MonitoringChapter22.pdf>.

of Homeland Security (DHS) handles most immigration functions through three agencies: U.S. Citizenship and Immigration Service (USCIS), Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE).

Nearly 70 immigration courts, operating in 29 states and two territories, and a single administrative appeals board are part of the Department of Justice’s Executive Office for Immigration Review (EOIR).⁷ As executive branch agencies, they implement the immigration statutes passed by Congress and regulations enacted through the rulemaking process. Like all federal agencies, they also implement priorities determined by the administration, including policies relating to budgets, case prioritization, and operating procedures.

Immigration court proceedings start when DHS charges a person with a violation of civil immigration laws. Immigration judges (IJs) have limited authority; primarily, they determine whether a person is “removable” from the United States, decide applications for “relief” from removal, such as claims for asylum, and review custody determinations (bonds).⁸ Fewer than 500 federal immigration judges are responsible for adjudicating removal, bond, and other proceedings⁹ for the more than 1.2 million pending cases nationwide.

Civil v. Criminal: A Distinction with a Difference | People in immigration court face civil immigration charges—not criminal charges. This distinction means that people facing removal are afforded even fewer due process protections as someone being prosecuted for a crime, including the right to a court-appointed attorney for those who cannot afford to hire a lawyer. *See, e.g. Carlson v. Landon*, 342 U.S. 524, 537–38 (1952); *Abel v. United States*, 362 U.S. 217, 237, 80 S.Ct. 683, 696, 4 L.Ed.2d 668 (1960).

Immigration court proceedings are *civil proceedings* to determine whether a person has violated *administrative immigration laws*. DHS has broad authority to interrogate any “alien”¹⁰ or “person believed to be an alien” as to their right to be or remain in the United States; to arrest anyone who is in or entering the country in violation of immigration law; and to search for aliens “within a reasonable distance” of U.S. boundaries by boarding vessels, trains, and

⁷ See <https://justice.gov/eoir> for more information about the organizational structure of the Executive Office for Immigration Review (last visited Dec. 10, 2020).

⁸ See 8 C.F.R. §§ 1240.1(a), 1240.31, 1240.41.

⁹ See Executive Office for Immigration Review: An Agency Guide, https://www.justice.gov/eoir/page/file/eoir_an_agency_guide/download, (last visited Dec. 10, 2020), for an overview.

¹⁰ Federal immigration law defines an “alien” as any person who is not a citizen or national of the United States at 8 U.S.C. § 1101(a)(3) and the term is used throughout federal statutes and regulations to refer to non-citizens.

vehicles.¹¹ People may be placed in removal proceedings after being apprehended by DHS. DHS may also refer people to immigration court after denying an immigration benefit application, such as an application for asylum, permanent residence, or naturalization.

Arrest to Deportation Pipeline | ICE often detains people when they are released from jail, so any contact with law enforcement can lead to deportation, even if the person is never charged with or convicted of a crime. If a person entered the United States without inspection, overstayed a period of authorized stay, or otherwise violated conditions of their status, they are “deportable” regardless of whether they have been convicted of any crime.

Arrest by federal, state, or local criminal law enforcement authorities makes non-citizens vulnerable to being turned over to ICE, regardless of whether they are charged with or convicted of any crime. Indeed, ICE often takes custody of people before they have been convicted—leaving the person with unresolved criminal charges—or even charged with a crime. Some jails facilitate “turn-overs” to ICE. They may honor “detainer” requests to hold a person who has been released from criminal custody until ICE can pick the person up or to notify ICE when the person is being processed for release from the jail. Jail practices, such as calling ICE when anyone born outside the United States is booked into the jail, continue. Even when jails do not actively cooperate, ICE may monitor jail rosters to investigate individuals who are booked into or released from custody. Booking also triggers federal database checks, which may result in ICE issuing detainer requests or notices to appear in immigration court.

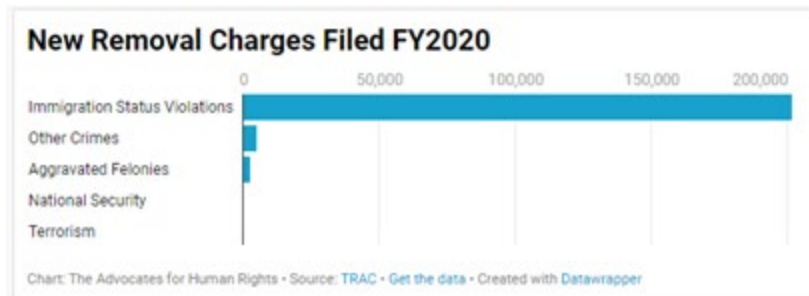
Although all removal proceedings are civil, some removal charges rest on criminal history. Many types of crimes can result in a person losing or being denied immigration status. But only a tiny fraction of removal charges filed in the immigration courts are based on what immigration law classifies as “aggravated felonies”¹² or other criminal history.¹³ Most removal charges—more than 96% in FY2020—are based on immigration status violations. Court data¹⁴ shows that, of new filings with the immigration courts in FY2020, 201,921 were based on administrative status violations such as entry without inspection or visa overstays; 5,082 on history of “crimes involving moral turpitude,” controlled substance violations, domestic violence, and other crimes; 2,722 based on “aggravated felony” convictions; 43 based on national security grounds; and fifteen based on terrorism-related grounds.

¹¹ See 8 U.S.C. § 1357 (2020).

¹² 8 U.S.C. § 1101(a)(43) defines more than 20 broad categories of crimes as “aggravated felonies.”

¹³ 8 U.S.C §§ 1182(a)(2) and 1227(a)(2) describe who is inadmissible or deportable based on criminal offenses.

¹⁴ See Transactional Records Access Clearinghouse, “Nature of Charge in New Filings Seeking Removal Orders,” (last visited Dec. 10, 2020). https://trac.syr.edu/phptools/immigration/charges/apprep_newfiling_charge.php.



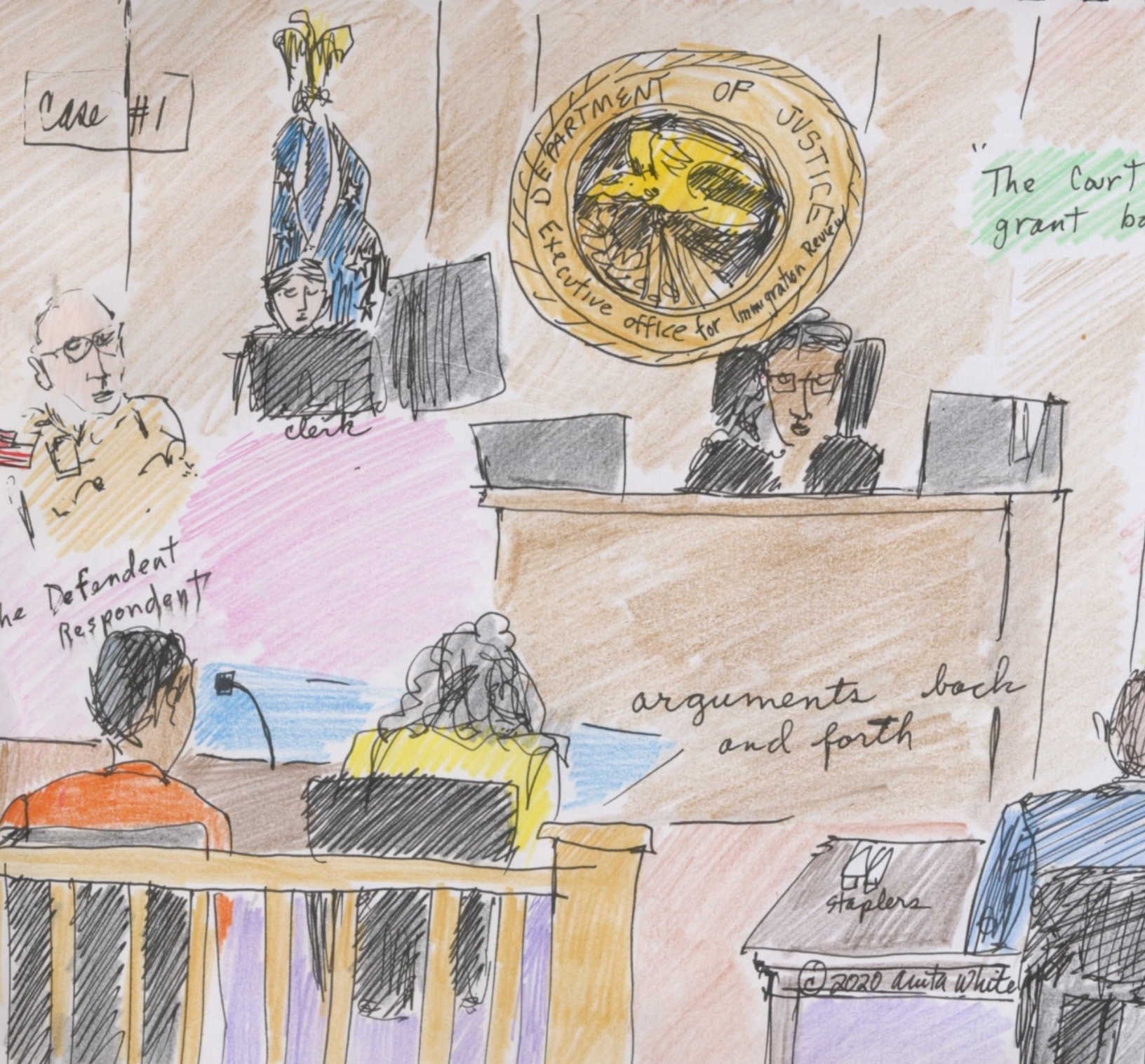
DHS has broad legal authority¹⁵ and enormous capacity to detain people during removal proceedings, with ICE detention capacity at times exceeding 50,000 people on any given day.¹⁶ ICE has discretion to release some people on their own recognizance (i.e., release with a promise to attend future hearings) or on conditions such as paying a bond or electronic monitoring, or to hold them in custody. In those cases, immigration judges have authority to review bond amounts and can set bonds as low as \$1500. In other cases, largely those where ICE seeks removal because of a criminal conviction, immigration law mandates detention with no right to release until a final disposition of the case. Even when bond is set, many people remain detained throughout the time it takes for a judge to decide their removal case and for any appeals to be decided because they cannot afford to pay the bond.

Once in removal proceedings, the government has the burden of proving that the person is an “alien” and has violated immigration laws, either because they are in the country without legal status or have violated the conditions of their status. The government often meets this burden when the person admits the allegations when questioned by DHS. The person may present their case to the immigration judge to prove either that they are not deportable or that, even if deportable, they have some form of “relief” from removal that would allow them to remain in the United States.¹⁷ The law provides few defenses to deportation and each has specific technical requirements which the person must prove. Both sides may appeal an immigration judge’s decision to the Board of Immigration Appeals; for detained people, this can mean continued detention.

¹⁵ See 8 U.S.C. § 1226 (2020).

¹⁶ See, e.g., ACLU, et al., Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration, Apr. 2020, at 4 (finding that “ICE detained, on average, over 50,000 people each day in fiscal year (FY) 2019. At times in FY 2019, the detained population per day exceeded 56,000 people... When Customs and Border Protection (CBP) facilities are included, the federal government detained some 80,000 people at a time...”).
https://www.hrw.org/sites/default/files/supporting_resources/justice_free_zones_immigrant_detention.pdf.

¹⁷ Some people may be removed without any hearing before an immigration judge. For example, people entering on the visa waiver program waive the right to a removal hearing as part of the terms of the program. Aliens who are not permanent residents and who have been convicted of an aggravated felony, as defined by 8 U.S.C. 1101(a)(43), may be subject to administrative removal under 8 U.S.C. § 1228(b) and removed without a hearing before an immigration judge.



VOLUNTEER ENGAGEMENT AND ACTION

VOLUNTEER ENGAGEMENT AND ACTION

INITIAL MOTIVATION TO PARTICIPATE

Observers were asked what initially motivated them to participate in this court monitoring project. Responses cluster into several overlapping categories. Volunteers identified being motivated by outrage at injustice in the immigration system; by the opportunity to take action, bear witness, and learn; and by personal connections to the issue of immigration.

The overwhelming response indicated outrage at current policies and procedures. Two observers mentioned the “broken system,” with one elaborating, “I want to be on the right side of history. I want immigrants to have the right to a fair trial and I want to do my part in affecting positive change for people.” Many volunteers used words like “outrage,” “anger,” and “shame” to express their feelings about the “injustices” and “violations” of “human rights” in “how immigrants are treated” and the “administration’s crimes against immigrants.” “My anger (as a human being) and shame (as U.S. citizen paying taxes) [regarding] immigration policies led me to look for a way to be active in working on behalf of immigrants and refugees...” “I am disturbed by what is happening to immigrants in this country. I see this as a way I can contribute to help witness and ensure accountability in the court system...” One observer mentioned “outrage at xenophobia” and another said, “I am angered by discrimination against immigrants, especially by the justice system.” Almost all were “feeling frustrated about how immigrants are treated.” And another: “I have a passion for human rights and I wanted to make sure that we are respecting human dignity regardless of legal status.”

A second motivating factor was the importance of concrete action. It was important for these observers to know they were making an impact; their strong feelings compelled them to “take action” . . . “on behalf of immigrants and refugees caught up in the U.S. immigration system.” The words “action/active” or “doing” were used often: “I wanted to be active in helping immigrants navigate our systems so that they can become fully participating members of our community and eventually citizens.” “I wanted to take action in something relating to immigration, and this was a great opportunity to do so without needing a law degree.” “I want to do my tiny part in protecting the rights of immigrants.” Observing was “a way to stand in solidarity with those who are marginalized,” a way “to let the system know they are being watched,” “To RESIST,” to “combat the administration’s unjust and accelerating attacks on immigrants to the U.S.,” and “a desire to feel like I can do something about the border crisis.” Some wanted more than protest. “I want to do more than just march. Marching is good but not enough.” Another was motivated to attain “peace of mind that I am doing what I can to protect our democratic values and uphold the constitutional rights of people in need.”

Many spoke of witness and solidarity. “To bear witness...” “I want to stand with people seeking asylum here in Minnesota. I believe we as citizens must participate and be involved with the process in order to make changes and create a more just system.” “I am concerned about the actions of our current administration. I want to provide support to honor our core values that we have as a nation. It is important to give witness so that positive change can happen.”

Some were motivated by a chance to learn and to become more knowledgeable, to “understand what’s going on in immigration detention court in our city, and to try to be of whatever help I can during this critical time.” “I would like to gain firsthand information about how proceedings are conducted, the individuals at risk of deportation, and the impact on significant persons in their lives.” Given all the misinformation in the national discourse, a common sentiment was expressed: “I feel this is a good way to start understanding our confusing immigration system.”

A smaller group were initially motivated by personal reasons, such as family immigrant history or interest in becoming, or connection to, an immigration attorney. One observer reported being a member of “a social justice group through my church,” who wanted “to give back to the Hispanic community that saved our parish.” On a very personal note, one observer wrote that “My family has many undocumented people that I love.” Another stated “I am a daughter of immigrant parents and I understand the importance that court hearings hold for many immigrants facing potential deportation.” “For 15 years, observing my [immigration lawyer] daughter, I have seen the pressures put on professionals who are trying to help people caught up in the immigration process. I have no training and so I didn’t think I could help. But when I heard about this program, I realized I could do something.”

SUSTAINING MOTIVATION

Once inside the courtroom, observers reported that their experiences largely aligned with their initial motivations, deepened their understanding of the immigration system, and allowed them to take action.

**“I SEE OUTRAGES IN COURT, SYSTEMATIC RACISM
AND A DECK STACKED AGAINST IMMIGRANTS.”**

“The experience only deepened my concern about how immigrants are treated and how broken the system is.” “It has increased my empathy for the people I see in court, but also my frustration with the injustice of the system itself.”

It “made me more determined to work for change.” “I’ve learned a lot and feel like I’m helping.” “I think my observations are a small contribution to justice.” “It is something I can do.” “I’m fairly new but I have learned a lot and feel as if the observation has some power in the courtroom.” “Although the outcomes can be heart-breaking I think holding the court

accountable is crucial.” “I feel like I am able to help provide transparency to the process and also show the detainees that they have support by just being present in the courtroom.” “I know from rare & brief conversations with the security guards & detainee’s lawyers that they know they are being watched. And it still feels like I am helping in some way.” “I feel like I am being present for people facing deportation and keeping the courts accountable. I honestly believe they would treat people with even less humanity if there were not court observers present.”

Those whose motivations were primarily about learning found themselves engaged in ways which also enhanced their initial reasons for becoming observers and overlapped with the impact the project has had on their lives. “The experience has aligned with my initial motivations in that I feel I am much closer to the immigration process.” “I have learned what happens in the Minnesota immigration court system, am better able to understand headlines, and better activate/encourage others to join the observer program and take protest actions against the system.” “But I am even more horrified by what I observe.” “I have learned a tremendous amount about the immigration bond and removal process. I am now considering going into immigration law if possible.”

Observers expressed motivation to educate others. “I am now able to have challenging conversations—people have a lot of misperceptions—especially about crime and about access to legal immigration. People are surprised to learn how long people are held in detention, how high bonds are and that detainees are shackled in court.” “I also try to talk to people about my experiences, like when my family members talk about immigration. I can say, I saw somebody going through this, and explain what I specifically saw. I hope that the stories that we share impact the movement.”

The experience of observing has also led to more of an understanding of the judges. “Observing made me more aware of people and their situations. It made me more empathetic to the respondents but also the judges tasked with following the current administration’s interpretation of the law.” “It has also helped me get an understanding of the court process and has helped me be a better advocate for my family.”

Observers felt that they were making an impact. Many reported making a “difference,” that observers’ presence “matters,” and that “there’s always more to learn. . . to better understand the struggles and obstacles for detainees.” “I still find all of this fascinating and hope I’m helping in some small way.” “Because it feels like we are having impact—however small—even when it is just to refer [for representation].” “I have felt powerless [about] the horrible treatment that immigrants face. This is one small way I can give back.” “I find it very difficult—emotionally—filling out forms [that observers are asked to submit]—but continue because it might contribute in a small way to changing the system.” “I think it’s important that the judges

and DHS attorneys know they are being watched.” “I choose to believe that our presence matters in Court [and] our presence as observers is more important as policies worsen.” “I wanted to be a part of helping protect immigrants’ rights. I have seen multiple occasions where judges may have handled things differently if they were not being observed.”

Observers often described their work as bearing “witness.” “It was important for me to be what I call ‘bearing witness’ to these trials.” “I need to witness so I can also advocate for change.” “Witnessing respondents’ stories being told...in court has made me feel more engaged with what is going on in our country with regard to immigration.” For some it is not just bearing witness but bearing responsibility. “Another reason I keep doing this is to have a real in-my-face reminder of what this administration is. I’m privileged enough that it’s not hugely impacting me personally. But to actually see that and go ok, you can’t disconnect yourself from this. I’m complicit in it, I’m paying for it, my tax dollars pay for it.”

Observers also expressed hope that detainees know that someone is watching the proceedings. “I wish the detainees knew we were there [for them]. It would humanize the situation in some way to make them feel like somebody cares.” “I know my presence is noticed by detainees and I want to project hope to them.” “I try also if I’m there and there are family members in the courtroom to smile at them and share a kind greeting. I think there’s something powerful to greet the family so they can feel someone is with them or hoping for them.”

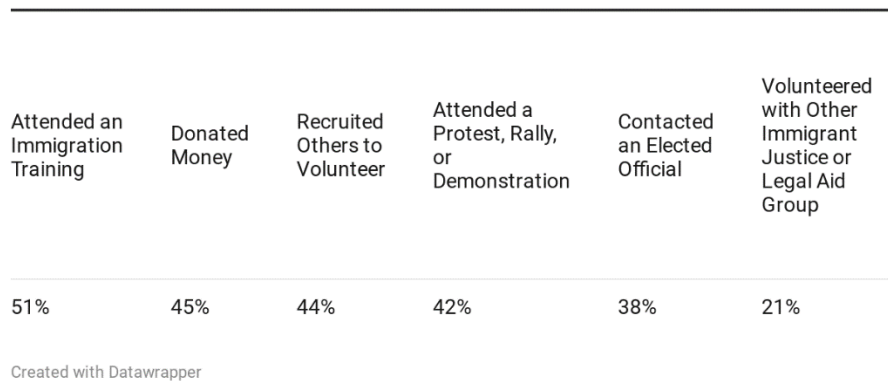
A few survey responders reported ambiguity about the experience. They reported they were “not sure” or “yes/no” on whether their observing had value. As one put it: “Yes because I got to witness how the immigration court treats immigrants who have been detained. . .No because I don’t think my participation is going to help change the system.” Another, who felt “good to be part of this process” also struggled with questions such as, “is this the best use of my energy around this issue? Is this work effective in supporting or bettering the life of immigrants, the outcomes for detainees?” And even wondered if “my presence in the hearings serves in some way to legitimize the...government process.”

Ultimately observers continued because they want to be part of systems change. “I hope we’re making an impact and we’re changing the feel in the courtroom. Our groundswell—we don’t have power, but we may have influence. We don’t know exactly where this will go. There’s a lot of consensus about what’s broken. And a lot of wisdom there. And when educated white people say this is rigged and we don’t want to be complicit. That’s powerful. Ultimately, we aren’t doing this as an exercise in futility. We want the system to be improved.”

TAKING ACTION

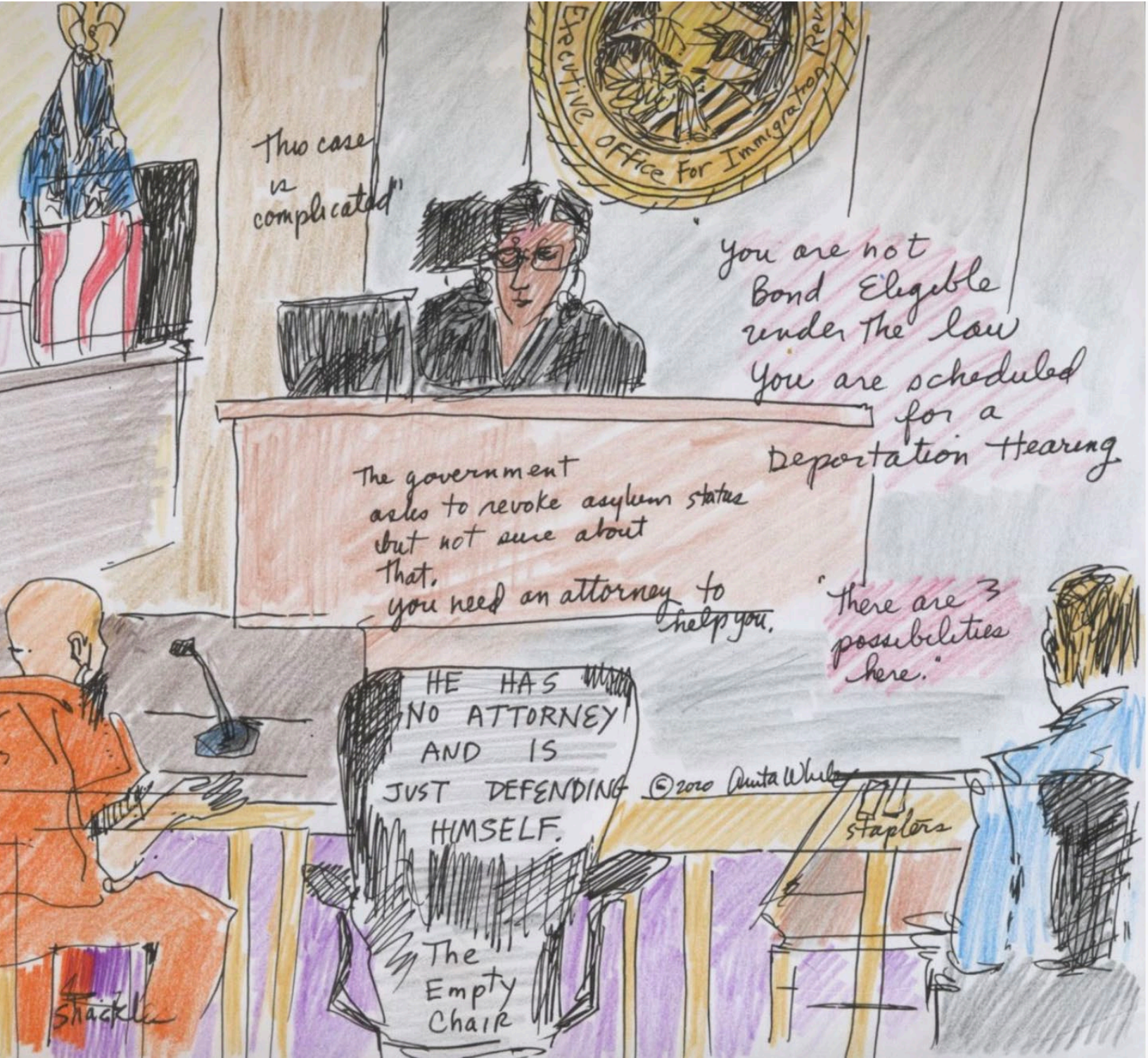
Observers responded with a resounding “Yes!” to the question of whether court observation has prompted them to take action. From a list of specific actions: 44% said they have recruited others to volunteer; 15% wrote letters to the editor, blog or social media posts; 38% contacted an elected representative; 51% attended other immigration trainings; 42% attended a protest, rally, or demonstration; 21% volunteered with other immigrant justice or legal aid nonprofits; and 45% donated money to these organizations. One observer has started a group at a church.

Volunteer Engagement



Only a handful of observers said, “none of the above.” Although in answering the question of whether expectations aligned with experience, one indicated the importance of using the experience to talk to friends and others, and more than one future lawyer is now inspired to study and practice immigration law, possibly a lifetime career investment.

Observers have taken action on cases, making referrals for representation, referring cases for possible litigation, and referring cases to an immigration bond fund, all as a direct result of observing in the courtroom. Some observers have helped prepare pro se packets, assisted in gathering evidence for bond applications, and even done preliminary work on asylum applications. Many have participated in training webinars which have enabled them to post public comments in opposition to restrictive rule changes proposed by the administration, specifically on the new public charge rules and the new asylum restrictions.



"This case is complicated"

you are not Bond Eligible under the law You are scheduled for a Deportation Hearing

The government asks to revoke asylum status but not sure about that. you need an attorney to help you.

"There are 3 possibilities here."

HE HAS NO ATTORNEY AND IS JUST DEFENDING HIMSELF.

The Empty Chair

©2010 Anita White

staplers

Shackles

FINDINGS

FINDINGS

Observers reflected on their notions of justice and due process. They reported a significant disconnect between these concepts and what they observe while monitoring immigration court hearings. Observers questioned the fairness of many of the fundamental premises of the immigration system itself. Many were troubled by the consequences of a technical distinction drawn between “criminal” and “civil” proceedings, which results in more limited procedural protections to people facing civil deportation proceedings than those charged with criminal offenses. They noted the overwhelmingly disproportionate impact of immigration enforcement on Black, Latinx, and Asian refugees and immigrants and the way in which racist criminal policing and prosecution practices magnify who ends up detained by ICE. Observers questioned the legitimacy of a system where laws appeared unable to do justice, even when procedural safeguards were in place. They felt the coercive power of detention on people’s ability to pursue their cases. They identified serious barriers to justice that undermine the fairness of proceedings which result in the expulsion of hundreds of thousands of people from the United States each year.

DEFINING JUSTICE

International law defines core standards of justice, including just laws, due process, non-discrimination, and recognition of human dignity. When asked to reflect on the immigration system and their idea of what justice means, observers identified these same elements.

Just laws. Accountability, with an allowance for second chances and the righting of wrongs. Presumption of innocence that places the burden of proof on the government. Unjust laws cannot mete out justice.

Due process. An established, transparent, understandable, and accessible set of rules and procedures and their fair application allowing a just outcome.

Non-discrimination. Equal access, a fair shot, and application of the rules without regard to race, class, gender, sexual orientation, national origin, or disability, among other traits.

Recognition of human dignity. Being heard. Justice requires that each person be treated as an individual, with respect, kindness, and empathy.

Just Laws

Observers reported a belief that, for any court system to dispense justice, the system must be based on laws which are just. There was strong consensus among volunteers that our current immigration laws do not necessarily allow justice to be done—largely because the laws themselves do not allow for the outcomes which observers perceived to be just outcomes.

THE “COURT MIGHT BE FOLLOWING THE LAW OF THE LAND, BUT JUST BECAUSE SOMETHING IS LEGAL DOESN'T MAKE IT RIGHT. SO IT'S HARD TO DETANGLE ALL OF THAT. ARE THEY JUST FOLLOWING THE LAWS OR IS THE COURT NOT BEING JUST?”

Observers noted the distinction between legality and justice. “If we are speaking from a moral definition of justice, where we function in the legal definition [following the law] appears to be quite different [from the moral definition].” “In observing, if you keep going you understand the process. But it’s important to keep telling yourself that even though it’s ‘normal,’ I don’t think it’s justice. If they have a good attorney or a good case, that doesn’t necessarily translate to justice if the system is inherently unjust.” “This court and the set-up of the court is unjust and it is un-American and goes against our history as Immigrants.”

Observers also included the concept of fairness as part of what constitutes a just law. Observers recognized that while disagreements exist about this subjective element, fairness requires a certain level of access to the process. “Justice means to me [that] the outcome is fair to all participants.” “I think of justice as a sense of fairness, being treated fairly. I know it when [I] see it, I know when I’m not seeing it.” “Words that come to my mind are that everyone has a voice and it’s recognized. [Justice is] a system for a voice to be heard.” People need “a fair shake,” though we “may not agree on what is fair.” “It brings up a conundrum, what one person thinks is not same as someone else.” In the context of immigration court, access also means

addressing language and other barriers. “Unfettered access to the world, to what you need.” “Unfettered access to resources you need, safety, absence of threats, access without barriers.” This includes, in immigration court, legal “representation for everyone.”



Observers identified that just laws function to right wrongs, provide accountability, and allow for second chances. Some observers struggled to identify the harms the immigration system seeks to rectify. “My daughter works in criminal justice studies and I tend to think in terms of that system, what justice should be is putting

things right. There's some wrong, and justice puts it right." "I also think of justice in situations where someone has been hurt or wronged and it being that person's opportunity not to feel healed but get something in return, and in situations in immigration court...I don't think I have seen justice." "We tend to see it as punitive and now it's just back to the 80s and the political manipulation of our laws to carry out positions instead of justice. I feel frustrated, the wrongs brought to court are questionably even wrongs brought to society. It should be helping people who are wronged." "I think [justice] is holding people accountable for their actions but in a way that respects their humanity. I would say it takes into account their circumstances. People do harm, and people need to be accountable for the harm they've caused... but the harm people have caused may not be their fault; it may be the fault of their circumstances." In the "broadest sense you get a second chance...Everybody deserves a second chance." "Immigrants are perceived to cause harm, but do they? Or are they being caused harm by us?" One observer had a different perspective. "I don't necessarily agree with that. I've seen people come illegally and commit violent crimes, shown to not respect our laws. I think there are some people who should be deported."

Due Process

When asked to articulate their understanding of "due process," observers identified two key elements: transparent, consistent rules and an understandable, accessible process. Observers noted that ensuring language access throughout hearings and in written information is essential to due process. Observers also included access to attorneys and other resources in their understanding of due process.

"IT CAN'T BE DUE PROCESS IF THE DETAINEES DON'T UNDERSTAND WHAT IS HAPPENING, DON'T KNOW WHAT WILL HAPPEN, AND CAN'T ANTICIPATE THE CONSEQUENCE OF THEIR ACTIONS."

Due Process | While civil immigration proceedings are "not subject to the full range of constitutional protections," *see, e.g., Salgado-Diaz v. Gonzales*, 395 F.3d 1158, 1162 (9th Cir. 2005) (as amended), people facing deportation have both a constitutional and a statutory right to a "full and fair hearing," *see, e.g. Reno v. Flores*, 507 U.S. 292, 306 (1993) (noting that it is "well-established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings"); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49-51 (1950); 8 U.S.C. § 1229a(b)(4)(B). In practice, this means the proceeding must be "so fundamentally unfair that the alien was prevented from reasonably presenting his case," *Lozada v. I.N.S.*, 857 F.2d 10, 13 (1st Cir. 1988), to violate due process.

“If justice is the outcome, due process is how to get there.” “Due process means there are rules and guidelines that are transparent to follow.” “For there to be due process there can’t be changing of the rules every other week.” It’s due process when “all possible care was taken in how we proceed, moving ahead carefully, attending to all benchmarks, checkmarks, before moving to the next part of the process. It’s taking care.”

The process needs to be fair, but “detainees have to know and understand the process for it to be fair.” “They should be given the opportunity to understand the rules and guidelines.” People need “a cohesive view of what is going to happen. Lack of that is lack of due process.” “Part of me doesn’t think any of them receive due process; they are not informed.” “I’m not sure they get preparation in advance or know what the hearing is for.” “It requires knowledge of your rights, and the court making sure you understand. It’s being advised of rights.”

Related to understanding the process, observers also identified that having language access and access to an attorney and resources are an essential factor in achieving due process. “Equality also means equal access—to information, resources, understanding the rules of the system.” Understanding includes the “right to a trial in a language you understand” that “must be culturally and linguistically appropriate and in the person’s native language, tak[ing] the person into account.” “The right to [an] attorney if you need one.” “As far as I can tell there’s a reasonable belief that if I go to court, I need an attorney to tell me what rights are, to tell me what to do.” “Having access to documentation to make the right decisions is part of due process.”

Observers were somewhat divided on whether due process means doing it the same for everyone every time or addressing the needs of the individual. This is akin to the equity versus equality debates around many public services in the United States. Some defined it as “following the letter and intent of the law.” “Due process should be divorced from emotionality, so it’s going to be fair. Like the scientific process. Otherwise every case becomes a mess.” Others noted that “due process is more likely to lead to justice if procedures can be adjusted to make sure the individual involved is getting [individualized treatment].” “Following protocols strictly is divorced from treating people on a human level. It’s so procedural in nature. I see that in cases, rather than addressing the individual needs and wants, it’s a list of what the judge needs to do, say, and ask.”

Non-Discrimination

Observers agree that to achieve justice there needs to be fair treatment regardless of race, nationality, or immigration status. “Justice is an equal/fair level playing field” “I guess one thing for me is that everybody is treated to the same regardless of race, gender, etc.” “Brian Stevenson said the opposite of poverty is not wealth, it’s justice. Justice needs to be equally

distributed, not by wealth or status.” “True justice would be that everyone would be treated equitably and that the same rule would apply to everyone. I have two adult sons, and when I sit and do my court observations, I can't help but compare the young men to my sons. They just did something that most young men do. They're just doing dumb young man stuff.”

Observers questioned whether the system can uphold the principle of due process if non-citizens are not guaranteed the same protections and access as citizens. “Do you have to be a citizen to get due process?” Due process and justice should be universal.” “It should be same regardless of citizenship status. There should not be a dual track for citizen or non-citizen.”

Recognition of Human Dignity

Court observers identified recognition of human dignity as essential to justice. To achieve justice there must be empathy, “putting yourself in someone else’s shoes.” “Compassion is a part of justice” One perceived that the court “sees immigrants through the stereotypes...rapists, drug dealers, large numbers constitute an invasion, instead of seeing immigrants as victims fleeing for their lives.” “One detainee was looking for relief under fear of terrorism. He had pictures of the spot where the mother of his child had been shot and killed, and the judge was like— nothing— ‘next.’ I wanted the judge to acknowledge that she’d heard that the mother of his child had been shot and killed. Do they have to remain neutral? I think she could say ‘I’m sorry this happened.’ It’s humanity. It doesn’t need to affect [their judgement].” “The job is to decide things based on law, but you can still be human.”

Many observers note that the simple act of making eye contact demonstrates respect and recognizes human dignity. “The judge, when using an interpreter, is looking down, not at the respondent. It’s rude, you’re supposed to look at the person you’re talking to when using an interpreter.” Showing respect and treating with dignity includes not avoiding eye contact, not rushing, not getting “sharp” or “short” with detainees, not treating “defendants like numbers.” A judge is most respectful when taking interest in a detainee’s story rather than getting “frustrated with how the detainees don’t seem to understand all the details of the process” and then repeating the “process with the same language [the judges] had just used, which the detainees still don’t really understand or don’t understand the consequences of their answers or decisions.” Observer comments reflected the understanding that probing and genuinely listening to a migrant’s story rather than clinging to the script is a way to show respect and empathy and treat detainees with dignity. An observer noted disrespect and a lack of empathy in the case where “the Judge stated I’m going to let you explain your side. But by the time you are done you are going to be deported anyway.”

BARRIERS TO IMMIGRATION JUSTICE

“THE STRESS OF THE ENTIRE SITUATION: SHACKLES, DIFFERENT LANGUAGE, STRESS OF DETENTION, PRESSURE OF THE SITUATION. I MEAN THAT THERE CAN’T REALLY BE DUE PROCESS OR JUSTICE. THERE IS TOO MUCH STACKED AGAINST THEM.”

Immigration court observers noted serious, and in some ways insurmountable, barriers to justice in the immigration enforcement system. Their concerns largely track the benchmarks for justice they identified. Observers voiced concerns resulting from an **underlying legal framework** that provides few ways for people to immigrate, many reasons for their expulsion, and limited defenses to deportation. Observers identified serious **due process concerns**, perceiving that the system unfairly “stacks the deck” against people by depriving them of the means to understand and participate in their cases. Observers also surfaced how policing and incarceration systems intersect with and impact deportations, amplifying **racial bias** in immigration enforcement. Finally, observers found the immigration enforcement system dehumanizing, degrading, and coercive in a way that **undermines human dignity**.

Unjust Laws

Observers spoke of a disconnect between what they perceive to be just outcomes and what the law allows. Their comments express both surprise and frustration with the limited ways in which people can immigrate to the United States, the many reasons people can be deported, and the limited authority of immigration judges to consider their length of residence or family ties, or to grant people a second chance. Their responses also suggest that they see the detention and deportation system as punitive, at odds with a supposedly civil (as opposed to criminal) system.

“ONE CASE, HE WAS BROUGHT INTO THE U.S. AS A YOUNG CHILD AND HAD SOME MINOR THING. HE HAD A CHOICE OF DEPORTATION OR VOLUNTARY DEPARTURE. I DON’T KNOW. IT SEEMS UNJUST. HE’S GOT NOTHING, NO LIFE ANYWHERE ELSE.”

Many observers expressed surprise at how few options to remain in the U.S. there are— even for long-time residents or those who have no criminal history— and feel this needs to change to achieve justice. There is “no pathway for so many people.” The government is “looking for ways to systematically remove people from this country and deport them.” “The law is unfair and unjust, so [court] is like theatre.” “It didn’t seem like justice at all to send a person [back] who’s been here all their life.” “People being here—for 15 years—living right, doing the right things and

making it in their community, get detained and deported. And their whole family is still here. This seems to be happening more and more often.”

Limited Defenses to Deportation | Federal immigration law provides few defenses to deportation.

- **Asylum, Withholding of Removal, and the Convention Against Torture (CAT)** protect people who are afraid to return to their home country because they fear persecution on account of race, religion, nationality, membership in a particular social group, or political opinion or they fear torture.
- **Cancellation of Removal** allows an immigration judge to exercise discretion to grant lawful permanent resident status to long-term residents of the United States. Long-term lawful permanent residents (people who have had green cards for at least 5 years and who have lived in the United States continuously for at least 7 years) and who have not been convicted of an aggravated felony may apply. Long-term undocumented residents who have been continuously in the United States for at least 10 years, have good moral character, and whose deportation would cause exceptional and extremely unusual hardship to their LPR or U.S. citizen spouse, child, or parent may apply. Victims of domestic violence by a U.S. citizen or LPR may also qualify for Cancellation of Removal.
- Sometimes people can prove they are not deportable as charged, that they are eligible to “adjust status” to lawful permanent residence through a family member or other program, or that they are a U.S. citizen.

When asked what they would like the public to know about immigration court, one observer stated, “The system is rigged. It’s hard to win a case. We are tearing families apart. This isn’t due process in the ways we expect in our justice system.” “Our laws are unfair. Long-time residents are forced to leave, and the people do not have legal help through the process.” Others put it more simply: “It’s not a just system.” “It is stacked against immigrants.”

“The judges are following procedure, but our laws need to change. If people have been here for 15-plus years, why aren’t they allowed to become a citizen or pass a test?” “I don’t think people realize how difficult it is to get citizenship.” “The length of time in the US should be a factor.” “[People] don’t understand that systemically, there is no pathway to citizenship, no legal option to come here [for most people]. The whole system needs an overhaul. Money we’re using to throw people out could be better used. It’s a catch-22 all the way around.” “Justice is not separating families.” “Especially when they have never lived in their country of origin or have been here since childhood or maybe don’t speak their ‘native language.’” “It’s a second chance ministered judicially, right now discretion is very limited.”

Observers also identified underlying presumptions of the deportation system as being at odds with their expectations of a justice system. This reflects observers’ perceptions of detention and deportation as punishment. As more than one observer put it, “the overall process of assuming the detainees are guilty and may be removed is inherently unfair.” “There is no ‘presumption of

innocence'. It seems to me our whole immigration system is becoming more concerned with 'protecting us' instead of the rights of the detainees. They have the burden of proof to demonstrate they're not a threat to society, specifically in bond."

Observers found it unfair that the law places the burden of proof of eligibility to stay in the United States on people who are unrepresented, detained, and without access to interpretation, translation, or evidence to support their cases. "If they don't have an attorney, they don't have any resources. No one else can go see them." "You can't access your phone [in detention] but if you don't know someone's phone number, how are you supposed to call for help. Just think how lost you are when you lose your phone for a few hours. But so much of what we know and do these days is on our phone. It's inhumane." "Another thing I found out last week is about witness statements if someone couldn't come personally. They said the statements had to be in English and notarized. What happens when something comes in and it's not notarized?" "Give people looking for asylum – give them a document that tells them the state of the country they are from – a human rights report."

Observers found it unfair that arrests or convictions for crimes that would not carry significant penalties for citizens have major immigration consequences. "Someone caught with a little pot can get deported to somewhere they can get killed, whereas an American citizen can get away with just a ticket." In the case of driving under the influence, there is a "small fine for a white office worker, but for an immigrant, they are forced from the country. They should both receive the same or equal punishment. Pay for the crime in criminal court and don't use the crime for a reason to throw someone out of the country." "Detainees sometimes commit crimes" but "most charges against them are definitely not things that make them a danger to society."

Unfair Process

Court observers noted serious problems with the immigration court process faced by detained individuals. Many perceived that the immigration court lacks sufficient discretion and independence to do justice. Observers voiced shock at the lack of legal representation. Of particular concern to many observers was the failure to provide adequate language access to people facing a complex and high-stakes process. Observers also noted that financial barriers and difficulties obtaining required evidence also impede due process.

"THE SYSTEM IS RIGGED."

Lack of Judicial Independence

Many observers pointed to judges' limited authority to exercise discretion in cases as contributing to an unfair process. These limits on immigration judge discretion are the

combined result of congressional laws (for example, laws stripping judges of discretion or limiting discretionary defenses to deportation)¹⁸ and administration policy (for example, policies limiting immigration judge’s authority to control their dockets).¹⁹ Nonetheless, many observers perceived that, as an executive branch agency, the immigration court does not operate with the independence of other courts established within the judicial branch and that immigration judges, as Department of Justice employees, must follow executive branch policies. For some observers, this resulted in a perception of political interference.

“IMMIGRATION COURT SHOULD BE MOVED OUT OF THE EXECUTIVE BRANCH TO THE JUDICIAL BRANCH.”

Many court observers perceived that the judges must follow orders and do not seem to have discretion. The judges are “more like administrators than judges.” They are “subject to political directives, rather than interpreting law.” “In the middle of the hearing—I forget the issue—the policy had been changed in the middle of the day, and [the judge] had to correct the attorney.”

“What I don’t quite understand is how much leeway the judges have.” “How bound are the judges? How much discretion do they have?” “It’s a process that needs to be re-thought, there needs to be genuine due process, where the judge is not influenced by his or her employer. They don’t have complete discretion to make a just decision.” The judges have rules and expectations they’re operating under, they don’t have any discretion.” “How can judges be impartial with this



¹⁸ The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 and the Illegal Immigration and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009 (both codified as amended in various sections of the U.S. Code) expanded or created “mandatory” detention and deportation in broad categories of cases. For example, IIRIRA eliminated the INA § 212(c) waiver, which gave immigration judges discretion to allow long-term lawful permanent resident to retain their status after a criminal conviction. See Immigration and Nationality Act (INA) of 1952, Pub. L. No. 82-414, § 212(c), 66 Stat. 181, 187 (codified at 8 U.S.C. § 1182(c) (repealed 1996)). IIRIRA also eliminated INA § 244 “suspension of deportation,” which allowed immigration judges to grant permanent resident status to long-term undocumented residents. IIRIRA replaced these provisions with much more limited defenses known as “cancellation of removal.” See 8 U.S.C. § 1229b(a)-(b). Congress also expanded categories of “mandatory” detention to arbitrarily detain certain categories of people, rather than base the decision to detain on the individual facts and circumstances of the case. See 8 U.S.C. § 1226(c). Federal courts were also stripped of jurisdiction to hear many types of cases. See 8 U.S.C. § 1252.

¹⁹ See, e.g., EOIR PM-19-13, Use of Status Dockets (Aug. 16, 2019); EOIR Office of the Chief Immigration Judge, OPPM-17-01, Continuances (July 31, 2017); Matter of L-A-B-R-, 27 I&N Dec. 405 (A.G. 2018); Matter of Castro-Tum, 27 I&N Dec. 271, 293 (A.G. 2018).

much pressure? As employees of executive branch, they just can't be impartial." As one observer noted, "the system is rigged, but use your discretion where you can."

Case completion quotas and case timeline requirements significantly contributed to observers' perception that immigration judges lack sufficient independence. "Given the culture judges are operating under, they are being the best they can be. By culture, I mean bureaucracy, quotas. They've got expectations handed down to them under the Attorney General and the apparatus under him. They're paid to make the highest number of decisions. I don't see how they can be as just as they want to be in the environment, it's a systemic thing."

"Judges are expected to adjudicate [many] cases a year, can't have an overturn rate of more than 15%, given prevailing direction of what we want for these people, the bias for the judges if unsure is to deport." "The judges have pressure due to quotas." While there was some disagreement about whether the timelines for detained cases are too short or too prolonged, observers agreed that the system fails to meet the needs of the detainees.

Lack of Universal Representation

Observers identified that the foremost barrier to justice in immigration court is the lack of universal representation. Most observers reported shock at learning there is no public defender system for indigent people in removal proceedings the way there is in criminal court. Observers noted that while people are told at the beginning of removal proceedings that they "are entitled to an attorney at no cost to the government," limited availability of free legal services, the cost of hiring private counsel, and the challenges people face in securing representation while detained mean many people represent themselves.

"WITHOUT AN ATTORNEY THEY HAVE NO CHANCE."



The "failure to provide public defenders for every detainee [was a surprise]." "The defendants need attorneys, and many do not have them." "Not having counsel is the biggest obstacle." "In criminal court you have a right to an attorney. Immigration has a lack of the right to a [government-provided] attorney and immigration court has a much faster pace and often comes with a language barrier." "The stakes are too high, and the tools are too few [to not be provided an attorney]."

"Last year a man was pro se. He said he had family in the country and the judge kept 'railroading' the

detainee. The judge would ask questions and the detainee would try to answer but the judge would cut them off or twist his answers. The judge didn't allow the detainee to speak or provide the info the judge was requesting. The detainee ended up being deported."

"The judge will ask, 'Do you have an attorney?' And the answer is 'no, I can't afford one'. The judge replies, 'OK, be ready to speak for yourself.'" "That's the barrier, so many are not represented. Lack of representation is the biggest need." "People don't get legal representation, and the list of free legal representation only has three agencies." "The case is continued, and they're told to find an attorney. It's a joke they need the list to know how to find one." "There are only three agencies listed and they don't call back." "The judge tells them, 'keep calling, [the attorneys] are busy people.'" "That was an eye-opener, I thought there would be a long list of free legal assistance."

Universal Representation | Deportation can mean exile, family separation, loss of career and property, and—in some cases—persecution or torture upon return. But the law extends the right to government-appointed counsel only to those facing criminal charges. Some Minnesota communities are funding support for universal representation in removal proceedings.

An observer was overwhelmed by "the speed with which detainees are expected to make life-defining decisions, most of the time without counsel." Most felt that there should be universal representation and that without it, people don't have a fair shot. One observer suggested that an "attorney should be provided in most situations, not all. If somebody has been in this country for a number of years, they should be afforded an attorney by the government if they cannot afford one themselves." Another suggested, "Or everyone, regardless of how long they've been here, should have an attorney for at least their initial hearing, or even a paralegal." "One of the last things I saw was the big backlog and there [are] not enough pro bono attorneys. Someone sent us the list of nonprofit agencies; and then they get discouraged and they say deport me. And that just makes me want to cry." "They can't find an attorney and it's too long in detention."

Lack of Language Access

Time and again, observers expressed that language barriers are a significant impediment to due process. They expressed concern about insufficient language interpretation during legal arguments, the lack of interpreters in detention, and the lack of translation assistance for documents and relief applications. Observers reported that the complexity of the language used in immigration proceedings is not accessible or comprehensible, especially to less educated respondents. Simply put, observers report that without free, accessible, and thorough translation and interpretation services, and without communication geared toward their

understanding rather than adherence to a script, people cannot fully participate in removal hearings and do not have a fair shot at making the immigration judge understand their case.

“IT’S INTERESTING BECAUSE AS A HEALTHCARE PROVIDER, WE TELL PEOPLE ‘DON’T BELIEVE WHAT YOU READ ON THE INTERNET.’ BUT IN IMMIGRATION COURT, WE’RE TELLING PEOPLE TO ASK OTHER PEOPLE IN DETENTION FOR HELP AND ADVICE. IN HEALTH CARE, WE’D NEVER TELL YOU TO ASK YOUR NEIGHBOR ABOUT YOUR BRAIN TUMOR.”

Observers noted that interpreters were not always present for hearings, leaving detained people struggling to understand and spending longer time in detention. “I’ve seen the judge pressuring someone to accept their non-preferred language.” “Why are they not scheduling the appropriate language in advance? For some languages it’s more difficult to find interpreter.” “That brings up another worry. I don’t speak Spanish; I don’t know if the translator is accurate or not.”

Observers were concerned that often, even if an interpreter is present, everything being said in court is not interpreted. “They are not translating everything that is said.” “There is an issue with not having the full hearing interpreted, and the impact of that.” “Slow down, provide translators when you require documents to be in English. These hearings are often about life and death for defendants.” One observer noted “side conversations [between the judge and counsel] are not translated.” “Please allow time for the language to process within respondents who do not understand English.”

Appropriate interpretation made a strong impression on observers. “The interpreter was on the phone. it was the first time that they interpreted the whole case. Usually they do introduction and ‘these are your rights’. And then the judge and attorney go really fast and interpreter is really fast. This interpreter kept saying ‘excuse me’ and would speak up in the middle and start interpretation. You need to give me time to interpret. It was really great to see. That was the first time I saw a non in-person interpretation where all the legal terms and everything else was interpreted.”

Observers were clear that interpretation was not enough. The judge must check for understanding. “Interpretation—having done it—it’s difficult and exhausting. But I think the reality is, a person who’s translating is translating all the legalese, and it’s still a foreign language.” “I see this in the different ways judges deal with the basic script they follow in covering relevant immigration laws and policies. Some stay with the Department of Justice script, even hide behind it, while others fulfill it while also respecting the migrant stories each detainee brings to court.” One observer advised that judges “should see what we see and write down. Serve the detainee’s story, not the Department of Justice’s script.”

“In terms of language, this means not just wanting a ‘yes’ to the question ‘do you understand what I just explained?’ but really listening to body and cultural language in probing to find out with more certainty that the detainee genuinely understood and asking a detainee to repeat instructions as a way to check on understanding.” “Sometimes, too, when they will answer in the affirmative to the judge asking, ‘Do you understand?’ Don’t you think they are agreeing because they want the judge to like them?”

Observers noted that failure to use plain language undermines due process by inhibiting understanding. “Another part of court that seems so unfair is how fast the judges speak and all the terms they use. The court interpreters probably even get used to the terms. They [the detainees] don’t have knowledge of the legal terms.”

“Translation might not be enough. It might not lead to understanding. Legal lingo and concepts don’t become understandable just because words are translated.” “In the initial hearing, the court is to give them notice to certain rights. They may not be able understand what the terms mean. Like what is an appeal?” “One time, it was so frustrating; the detainee didn’t understand. The judge was telling him about his rights, provide evidence, and appeal. The person clearly didn’t understand what it meant to appeal. It was circular, the judge kept saying same thing. Check for understanding, it’s quicker! It took so long. Think of a different way to say it.”



Observers made the point that detainees are expected to understand what native English-speakers often cannot. “Never forget how abstruse the law, even simple legal jargon, is to average English-speaking American citizen non-lawyers, let alone to detainees who do not speak English and were not raised in this culture.” “I’ve been observing for 10 months, and still get really confused. I’m reasonably well educated and speak English. I wonder about the complexity from the detainee’s point of view. If you haven’t been in a courtroom before, plus you’re stressed anyways, it’s an extremely complex situation. You are hearing incredibly sophisticated conversations. Respondents are not cognitively impaired but still can’t grasp what’s going on.” “My dad and grandfather were attorneys. I’m well educated and at my first time in court I had no idea, no clue. Really think about being hauled out of jail, told there’s a hearing, given a few pieces of paper, asked by the judge do you understand? Would I answer yes?”

“Give people the ability to understand what they’re navigating. There are even times I feel like I’m not understanding what is being said in immigration court. And I’m not defending my status, and my life. And I’m an educated woman who navigates complicated systems!” “I heard people say they don’t know why they’re here, they were woken up at 4 a.m. and told to come to court today.”

“Boilerplate language [judges] have to use doesn’t always . . . translate in a way that detainees understand. A judge is looking for a yes/no answer and it appears that the detainees don’t always know what they are agreeing to, or at least what the ultimate consequences of their agreement means.” One observer counseled judges to “speak slowly. If someone keeps asking the same question or doesn’t understand what you are saying, say it differently. Don’t just keep repeating yourself.”

Required Advisals | Immigration judges are required to advise people in removal proceedings of the consequences and rights in immigration proceedings. Failure to provide these warnings can allow the person to appeal or reopen their case.

A conversation at a round table discussion went something like this:

“The level of communication is at a high level and is not meant to be understood by the detainee.”

“When you translate or interpret do you do it to a certain level? Like fourth-grade level?”

“No-it has to be exact.”

“Which means it’s up to the speaker.”

“Why doesn’t the judge or lawyer try to adjust?”

“I work in healthcare, and the consent forms have to be written at certain grade level, and translations are done at that level.”

“Sometimes I wish I could say something. Can I talk to him for 20 minutes in a language he understands?”

The concerns about language accessibility also extend to difficulties obtaining translation of documents, especially for people in detention. “Lack of procedure and document translation is a barrier to due process.” “Have someone at the detention center who can translate and explain documents and the [removal hearing] process.” “All documents are given in English and all need to be submitted in English. This is an undue burden. Especially if they don’t speak Spanish. There may not be anyone in jail with you who speaks your language who can help translate.” “They have to turn in everything in English. We should make it easy for translation assistance.” “I think the language barrier and [the requirement] to only submit forms in English. . . is the

biggest obstacle to fairness because it is very hard for many detainees to complete this process and have a fair shot at the system.”

“The judge might tell the detainee, ‘Here are the documents I expect. You have to do the research by yourself. Also you have to find someone who’s bilingual [in detention] to translate for you, and return by such and such a date in English.’” “What bugs me [is the requirement of] getting translations of all documents. Are translators available for them? So many people don’t have their documents translated. One judge is really cold, and says ‘figure it out, you have to have them translated.’” “I saw a respondent who had no person in the detention facility with them who spoke their language. He just broke down, it’s really difficult for those who speak a language that not many others speak.”

Trauma and stress also may impede understanding. Observers noted that the court must acknowledge and mitigate the traumatic impact of immigration proceedings. “Being present for a hearing that determines your future and not understanding what is happening [whether because of a language barrier or lack of understanding of procedure] is acutely unjust and traumatizing.” “And what is the state of mind as people come into the courtroom. Do they understand how many possible hearings they can have? Is this their one and only shot? What does this hearing mean in terms of what can happen to them? In healthcare, you hand people a document that makes sure people understand what they need to do, because you want them to succeed! In this situation, it seems absurd that someone with that amount of anxiety is being directed to do this long series of things. It’s ridiculous.”

The impact of trauma extends beyond the respondents, to court personnel. “How can they sit and hear day after day, hear those stories? It’s got to be draining.” “I have to look at being a judge, it’s got to be overwhelming. Hearing trauma stories time after time. We all deal with bad things differently. You sometimes need to draw a wall.”

Financial Barriers

“YOU CAN’T GET DUE PROCESS WITH FINANCIAL BARRIERS.”

Observers noted that being poor undermined access to justice. People struggled to pay for attorneys, to post bond so they could be released from ICE custody pending their hearing, and in some cases to afford filing fees for immigration applications. Observers witnessed people struggling with the decision of whether to raise defenses to deportation—resulting in a longer stay in detention—when families depend upon their paycheck.

Many observers noted the catch-22 of bonds: people cannot come up with bond money if they are detained and cannot work. “A barrier to due process is the expense for filing.” “They have to decide whether to pay for the bond or pay for the lawyer or send money to their family.”

Detention and Bond | Some people are statutorily barred from being released on bond, but even where they are eligible, a judge may deny bond or set bond so high that a person cannot pay it. The median bond granted by immigration judges nationally was \$8,500 in FY2020.

<https://trac.syr.edu/phptools/immigration/bond/>

“Families can’t come up with a bond payment when the only worker in the family is detained.” “How can they come up with anything? They have no money.” “What bugs me are the bond amounts. One guy couldn’t raise money for bond so he’s languishing.” There was a “case where the bond is to be posted, but they don’t have the money at that time. The money was on the way, but the judge is demanding the money at this time. The detainee was confused about the options available to him.” “That raises a fairness issue, the amount of bond set, is it fair? Is it reachable? Fairness to detainee. You have to be kidding me, it’s like thousands.”

Difficulty getting evidence

Observers noted that detained people face often insurmountable barriers to obtaining required documents and evidence.

“I’m always shocked how there is missing documentation. ‘We can’t get ahold of the police report.’ I’m stunned how often I hear this. Documentation was filled out incorrectly. Oh, the second page of the notice to appear is missing. I always think like, oh my gosh. That doesn’t seem like due process.”

Another shared an example of a bond hearing held “on a Monday. The detainee says yes, I can get a statement from my employer regarding my employment. The judge says we’ll reconvene on Thursday. But the employer’s in North Dakota, they can’t get it by then. That’s not due process.”

“I had a case where someone was applying for asylum and the judge was like ‘you need to bring filled out material’. And the detainee said, ‘well I had all of that and they confiscated it on the bus.’ The court called downstairs to see if it was somewhere. Now he has to recreate these things. He had gone through all of this. ‘Well’, the judge said, ‘You have to redo it all.’”

Unequal Treatment

Observers spoke to the impact of racial profiling and racist policing practices that propel people into immigration court. This appearance of racial profiling delegitimizes the court and is a barrier to justice. Observers noted that arrests or convictions for crimes that would not carry significant penalties for citizens have major immigration consequences, and these differences also have strong racial overtones.

“I’VE ONLY SEEN ONE WHITE PERSON [IN IMMIGRATION PROCEEDINGS], EASTERN EUROPEAN? IT’S A RACIST SYSTEM.

“Sometimes it seems like criminal charges are a trumped-up thing. Examples: a taillight out, a little powder in the glove box. Someone called in for a suspicious person in their neighborhood. The cops came and tackled him because he didn’t acknowledge them, because he hadn’t done anything wrong and didn’t think they were talking to him. They injured the innocent man.” “I’ve only seen one white person [in immigration proceedings], Eastern European? It’s a racist system.”

“There was a case, a Mexican man picked up... [He was] a roofer and [was] detained. The attorney made a statement to the judge that the only crime his client had committed was that ‘his client was roofing while brown.’” “A detainee was driving in North Dakota with snow on the license plate and was pulled over and detained without committing another crime.” “The detainee was the passenger in a truck without passport or ID. He had committed no crime.” “A detainee was charged with a DUI. [He] went to friend’s house and drank, then sat in car to call his wife to come pick him up because he realized he shouldn’t be driving. The neighbor called the cops. [The detainee] got busted for being in a car while drunk. It’s frustrating because he had done the responsible thing.” “One person said he went to the hospital after a car accident and he was turned into ICE.” “I have a case that was hard to see but gave me hope. There was a family of four. One son is a U.S. citizen, 16 years old, staying with relatives in Kansas. Three family members were in detention, father, mother, and oldest son. The judge opened the mother’s file, she had seen the son that morning, the father earlier in the week. The family was in a park in North Dakota, and the police were called, a case of racial profiling...The judge said, ‘We’ll get you out,’ and set the minimum bond. I was encouraged”

“A large number of those in immigration detention have lived in Minnesota over a decade...living normal, everyday lives, working and paying taxes, with U.S. citizen children and a strong connection to the U.S. Many have been here since they were children themselves. What’s changed is that this administration has been rounding people up like never before...It’s heartbreaking to see people picked up for ‘wrong place, wrong time,’ their lives forever shattered.” “We sometimes detain people who have lived here for years without incident, and one minor infraction can lead to deportation.”

Lack of Dignity

Observers expressed shock over the dehumanizing character of the detention and deportation process. This pervasive atmosphere undermines people’s ability to advocate for themselves and leads to misunderstanding, frustration, and despair. Observers were struck by the inherently

coercive nature of detention, which impedes the ability of people to pursue defenses to deportation.

**“IT’S AN IMPERSONAL, HIGH PACED ASSEMBLY LINE
THAT IS NOT APPROPRIATE TO MAKING LIFE-
CHANGING DECISIONS FOR PEOPLE AND THEIR
FAMILIES.”**

“One of the very first times I observed, I noticed a former coworker of mine in the benches, so I went and greeted her. She was there to support a family member. Her family member was actually ordered deported. At the end of the hearing, he stood up and blew my co-worker a kiss and she sort of bowed her head. At that moment, I was like this isn’t about people we don’t know, this is about people who are part of our world. These people are connected to people we do know. It was so heartbreaking for me to see that. Their life just got torn apart. We don’t define people only by crimes they ever committed. It’s like, somebody loved that man.”

Give them a pencil

“Injustice is when the judge is giving all the instructions and the detainees cannot take notes.” “Make sure they have access to write things down.” “If it’s not written down, how will they know or remember?” At least “have someone note it down for them and give it to them.” Or the judge “could provide a form to let them know what rights they have, what evidence they need.” “Yesterday I was in court, a man was representing himself; he wanted a bond hearing and wanted to apply for asylum. The judge tried to explain what he would need. He asked for it in writing and the judge ignored him. I go away and if I don’t write stuff things down [I can’t remember]. How are these people getting this through the interpreter? How are they remembering all of these things? They don’t have paper. They struggle to even put headphones on. All human indignity.”

Supposedly “[i]f they ask for a pencil they can get it. Why not have a pencil and paper ready for them? I was an attorney for 35 years – you’re under duress, you’re not going to be assertive to ask for a pencil/paper.” “Last Thursday, a man was in court and asked someone to write down everything he needed to do, like, get the police report from the DUI, bring this, fill out this application and the judge said ‘I am telling you what you need to bring’. I thought oh my gosh, for one, the language needs to be interpreted for him. Not only that, he has to find the documents and get them translated. I thought how is that fair, he doesn’t even have an equal shot, a reasonable shot at it? Again, he’s shackled and what does that do to your self-advocacy?”

Lack of cultural competency

Observers noted frequent lack of understanding of the conditions in other countries, including lack of appreciation of the legal and judicial climates in these countries, the impact of ethnic and religious divisions, the challenges of access to education. Observers saw this manifest as lack of sensitivity and patience in the courtroom and as frequent inability to establish understanding in communication.

“The environment of the court may have different rules and practices than the country of origin. They do not know the rules or expectations.” One observer recounted a case where she was struck by the lack of cultural sensitivity. “Speaking as an anthropologist, they [the judges] need cultural training. There was a man from Ghana with fraud charges. He had two older kids who were disabled, and two younger ones who started having trouble in school. He’d been in jail for 10 months...An older daughter was there, she was asking for his release saying the family needed him. The judge asked her how she was doing her MA and taking care of the kids [while her father was in jail] and she said she had her laptop and was working online, but it was hard because the disabled kids needed services. The judge asked if they can get these services in Ghana? I mean come on. The father said he’d be killed if he’s returned to Ghana. The judge said ‘who would know?’ and the man said ‘everyone.’ The judge said ‘The entire population of Ghana? Not everyone would know.’”

Jumpsuits and shackles



The most frequent response to the question of what first surprised observers about immigration court was visual. Observers expressed shock at the “shackles,” and “seeing the detainees in handcuffs and leg-cuffs...”

“IT CONTRIBUTES TO THE IMAGE OF THE PERSON SITTING AT THAT TABLE: DO YOU SEE A HUMAN BEING, OR SOMEONE SO DANGEROUS THEY NEED TO BE CHAINED?”

“I think it can stall due process.” “I also hate the shackles. They can’t raise their hand... They have to shuffle, and those obnoxious orange suits.” “Get them out of jail, shackles, orange jumpsuits, stop shaming them.” “Why in shackles? There are guards! And in the hallway, every five feet is another guard.” “I have a sense they are coming [into the courtroom] from some place dark. When they come out, and that horrible sound, the clunking of the door, the bank vault sound.”

Observers put themselves in the detainee's shoes. One observer, when asked what the public should know about immigration court stated, "It is cold and uncaring." "You're walking in with your head down." You can't write with shackles on, even if they gave you paper and pencil. It just feels like punishment to constantly remind you of your lesser status. It's demeaning." "You have to watch your feet so you don't trip. You begin completely disempowered. Then you have to ask for assistance to get the headphones on. You're put in a position of helplessness. You can't even sit in a chair independently, while trying to represent yourself independently." "There is a lot of intimidation of the system beside the obvious things like the shackles, there is a dynamic or energy."

Many observers objected to the dehumanizing effect of detaining people facing deportation. "The individuals are jailed and treated like serious criminals and not like human beings who are trying to stay in the U.S. and [are] seeking asylum." "It [creates] unconscious bias." "It's saying 'this is a criminal.'" One observer noted that "I've sat in on hundreds of sexual assault cases. They are mostly released on their own recognizance, they are rarely held on bond. They [the defendants in criminal cases] don't come in shackled. The disparity is alarming. It says about where we are as a country in our understanding." It's about "who we value." "Seeing immigrants as criminal is ingrained in our society."

Civil detention is unjust and coercive

Many observers note that detention often causes people to give up on their cases, despite the merits or the possibility of remaining in the United States. Observers expressed that "civil detention is inherently unjust" and "detention is coercive, so they can't have a fair hearing."

"WE'VE ALL SEEN SOMEONE WHO SAID JUST 'SEND ME HOME, I CAN'T STAND THIS ANYMORE.'"

"Detainees will say they need out and can't go back to jail. The judge will ask if they are asking to be deported, and they say no, but they can't go back to jail." "Conditions in detention are so terrible, they take their chance. We've all seen someone who said just send me home, I can't stand this anymore. And that's part of the whole, that's the goal. Just like separating children from their parents was to force people to choose deportation." "The [immigration] court system is overwhelmed with cases that take far too long to resolve. . . .The result is a detainee being held in custody or with bond requirements that are a major burden to both the public and detainee." "By time I see them they are so worn down, they have so many appearances, they are completely numb, they have no capacity to stand up for themselves. Is there room in the system for non-lawyer support, advocacy? It's a really complex system if they don't have anyone."

Documented Abuse | Abuses of human rights in ICE detention centers are well documented. They include prolonged and indefinite detention; extended use of solitary confinement; restricted access to counsel, family, and community; inadequate medical care; racial profiling; and sexual and physical abuse. Many of those detained by ICE are arbitrarily detained in violation of international law. See, e.g. ACLU, Human Rights Watch, and National Immigrant Justice Center, *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration* (2020).

Despite the technical classification of the detention and deportation system as civil, not criminal, observers perceived detention as punitive. “The punishment without committing a crime is unjust -- and expensive.” “The isolation of being taken totally out of your community and then having to navigate something that could potentially threaten your life sounds unjust.” “Your ability to defend yourself is limited when you’re incarcerated.” “I’ve been reading, questioning why being detained is an acceptable aspect of immigration law. In so many other kinds of civil law it’s obviously not a part of it. Because immigration law is equated to criminal law that’s what makes it acceptable.” “How long they are held without seeing their family, and the case keeps getting pushed back and back. It’s unjust.”



One observer shared this insight: “The things I’ve seen... like the detainee whose wife and child were in the courtroom, the child was really young but not causing a scene, at end the judge said ‘I let her in this time, but in general I don’t let anyone in under age 14.’ When they walk in and there’s no one, no family support, it’s hard. A detainee once complained about lack of access to a phone. Detainees are confused about why they’re being held. Jail is punishment for crime. One time the judge

said ‘jail time doesn’t count as punishment’. Legally yes, they’re not being punished, just detained. But detainees have different idea of justice, their lived experience isn’t justice for them.”

Observers expressed skepticism about the efficacy of the stated purpose of ICE detention, which is supposed to protect public safety and assure that people appear for court hearings. “In the immigration system there’s much higher attendance for court dates, there’s much [more] riding on it. The risk standpoint: low. Danger to society: low. Where’s the due process? Where’s the equity there? Why are we spending so much resources, time and money [on detention]? And it causes harm to a family.”



RECOMMENDATIONS

CONCLUSION AND RECOMMENDATIONS

WHAT OBSERVERS WANT JUDGES TO KNOW

“EACH DETAINEE IS AN INDIVIDUAL FIGHTING FOR THEIR ONE PRECIOUS LIFE.”

Court observers were struck by the banal and brutal nature of the immigration enforcement system. Many recognized that the system’s design and implementation often leaves little room for judges to do justice. Changes in immigration statutes, administrative policies, enforcement priorities, and appropriations—together with an end to racially-biased policing and prosecution practices which result in the criminalization of many immigrant and refugee communities—are needed.

But when asked what they wished judges to know, observers focused on the need to honor human dignity and to ensure understanding. Observers noted that, when judges slow down, greet people, and take time to actively listen and check for understanding, due process is improved. Observers also acknowledged the toll taken on systems personnel, including the judges, court staff, government attorneys, interpreters, and private attorneys. An observer gave a note of thanks to immigration judges: “Thank you for honoring people’s dignity as you do difficult work.”

Honor Human Dignity

Many observers suggested that simply acknowledging the humanity of the people facing deportation can enhance justice. “When judges acknowledge their humanity...when it looks like they are listening to the story and there’s evidence they really are hearing it.” “Judges acknowledging the humanity of the person—it decreases the stress.” “When judges actually just look at the detainee, when they make eye contact.” “Some things can be added in the courtroom, not big things, but smiling, how are you. It doesn’t take a lot of time and effort. It changes the tone of the room.” “Greeting and acknowledging in the beginning, it’s so simple. If they start with good morning, then it’s not so procedural.”

“Take the time to acknowledge the humanity of the folks sitting before you. They are more than their immigration status.” “Make eye contact, treat people with dignity. Do what you can to maintain hope. People’s lives are being destroyed, show compassion.” “Please look at the respondent [not your paperwork] and greet the respondent.”

“Look for the good in a human being and respond accordingly to their plight.” “Remember that the people before [you] are human beings and want a safe and better life.” “These are human

beings trying to survive.” “Patience is necessary and crucial; the people incarcerated are in a terrifying position and some empathy does not get in the way of the judicial process.” “These are suffering people. More kindness and acknowledgement of defendant’s humanity would not hurt objectivity or the legal process.” “The detainees are humans and just trying to create a better life for themselves and their families, just like all of us.” “Kindness is free. Whatever these people have done they have had a hard life at some point. Please be patient and keep your humanity.”

“For the majority of cases, these people just want a better life. They want an opportunity to work to provide for their families. While some may have minor traffic violations on their record, for most their only crime was entering the country undocumented. I would ask judges to show compassion for what the detainees have gone through and continue to go through in our flawed system.” “Care about the detainees, not just the speed with which your docket is dispatched.” “I know the number of cases is staggering but I ask that you treat all detainees with respect.” “Judges need to treat these people like people and not a nuisance to get rid of. They have worked, paid taxes, etc. They have children. Judges ask questions like, ‘Why did you drive without a license?’ The detainee was driving to get to work to support their family. . . Most are not a danger to society and it costs everyone to keep them detained.”

Ensure Understanding

Court observers noted that judges’ and government attorneys’ efforts to ensure understanding of the process, especially by explaining the legal options and rules, is essential to a fair process. When “the court tries to verify what a translator [says] and that they understand the proceedings,” that supports due process. “DHS attorneys sometimes throw a lifeline to respondents and recommend types of relief.” “I see an occasional kindness from the [government attorney].”

“A judge that intervenes due to lack of understanding, and supplies information on the options, could be an element of due process.” “Saying you have this option or that option, do you understand?” “The other day a confused person [the respondent] just gave the Judge a pile of stuff. The judge spent a long time sorting it out, that was towards the direction of being helpful.”

“Can the judge give them a two-minute summary at the beginning of each hearing? Because often detainees don’t know what is going on or what has already happened or about to happen. It would save money for the government because detainees sometimes can’t read or write in English so we are wasting money on hearing after hearing rather than just giving detention centers resources to help detainees.”

“Judges sometimes encourage detainees to not give up.” “Recently, an immigrant said, ‘I’m so tired of being locked up, I just give up and want deportation.’ The respondent spent 40 years in the United States. He’s from Nigeria, has family in the U.S., and didn’t want to be a citizen because it would disrespect his father from Nigeria. The judge told him he has too much at stake, don’t ask to be deported.”

Foster Transparency

When asked what facilitates due process in immigration court, many observers felt that their presence has impact. “I hope our presence communicates something to the officials and respondents, that we’re watching and we’re thinking about this.” “A couple of times I’ve been the only one sitting there. I wonder, would you change if I wasn’t there?” “I know they change. I’ve heard testimonials from attorneys that it has.” “The judges should be affected by supporters in the court room.” “I think it makes a difference to the judge to see you scribbling notes.”

WHAT OBSERVERS WANT THE PUBLIC TO KNOW

“EVERYONE DESERVES A FAIR CHANCE AT LIFE AND LIBERTY...IF WE WERE NOT BORN IN THE UNITED STATES, WE WOULD BE IN THEIR SHOES. IT’S JUST PURE LUCK THAT WE ARE NOT.”

Immigration court observers reported that while human rights monitoring can be emotionally challenging, it can also challenge their notions of the U.S. immigration system and the portrayal of the issue in the media. Monitoring immigration hearings also deeply affected their understanding of the impact the system has on the people facing deportation, their families, and their communities.

“It is not easy to watch. The courts are deluged with cases and our federal government is doing nothing to make the situation better. It’s actually worsening.” “Immigration Court is a difficult process to watch. Most respondents are hard-working just trying to live the American dream. The most heartbreaking cases are those of young adults who have never lived outside the United States but are at risk of being deported to their ‘home country.’” “This is not an easy black or white situation that politicians want you to believe. There are some people that should stay in the country and some that should not. But we need a system that is fair and respectful to both.” “I’d want the public to understand that it is a difficult and emotional process for many immigrants and their families, and in many cases everything is stacked against the detainee.” “It is a racist system and is so burdensome to the poor.”

“The media/news tend to characterize immigrants as outsiders and different from U.S. citizens; however, what I have been shocked most by is how much I can relate to and feel sympathetic towards people that have very different life experiences...we are all human regardless of where we come from, and the current process of detaining immigrants, putting them through an unfair process they do not understand, and separating them from their families is inhumane and should not persist.”

“Everyone deserves a fair chance at life and liberty...If we were not born in the United States, we would be in their shoes. It’s just pure luck that we are not.” “Try to remember that detainees are human beings, generally good people who are trying to provide better living conditions for their families...Look at your own family histories, you might discover that ancestors came to this country under similar circumstances.” “I’d want the public to know that people going through immigration court have taken a big risk and put much of their lives into trying to emigrate to the United States.”

Volunteers encouraged others to participate in monitoring. “No matter your political views, you should observe court.” “Everyone should see it for themselves at least once to feel empathy for people facing deportation.” “I would like to encourage everyone to experience it once, so you understand the stories being told and the weight people facing deportation carry.” “Everyone needs to become informed about what is happening—both good and bad. While there is some necessity to this work, the disruption of families and lives is palpable.” “Become aware of what’s happening and become involved in some way, if only through a donation.” “It’s happening right here in our city.”

POLICY RECOMMENDATIONS

Immigration court observers were clear that immigration policy must meet international human rights standards by doing justice, operating fairly, being free from discrimination, and supporting human dignity. Observers pointed to several areas of particular concern, including:

- absence of meaningful defenses to deportation or avenues to move into lawful status;
- lack of access to counsel, failure to ensure understanding of and access to the process, and use of detention to effectively coerce abandonment of legal options;
- disproportionate consequences of criminal or administrative violations and amplification of the effects of racism in policing on immigrant and refugee communities; and
- degrading treatment, including use of shackling and prison attire.

The deficiencies noted by observers point to fundamental failures of U.S. immigration laws, policies, and practices to meet internationally recognized human rights standards.

Enact Just Laws

>> Develop and implement policies that ensure respect, protection, and fulfillment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle.

Congress should:

- Enact a new immigration framework that promotes the dignity and well-being of migrants and the members of communities in countries of origin, transit, and destination.
- Amend immigration laws to prevent people from falling out of status or remaining undocumented by narrowing criminal and other grounds of deportability and bars to immigration status or deportation defenses; expanding waivers of inadmissibility to facilitate adjustment of status to lawful permanent resident; and allowing undocumented people to move into non-immigrant status (such as visitor, student, or worker visa status).
- Repeal mandatory deportation provisions. Ensure that everyone who faces expulsion has access to a hearing on the impact of deportation on protection from torture, trafficking, or persecution; family unity and the best interests of the child; and other fundamental human rights. Ensure people are never returned to persecution or torture in violation of U.S. treaty obligations.

State and local governments should:

- Ensure state criminal laws, sentencing and probation schemes, post-conviction relief statutes, and pardon processes do not result in disproportionate immigration consequences.

The public should:

- Demand reforms to U.S. immigration laws to create people-centered policies that promote the dignity and well-being of migrants.

Ensure Due Process

>> Recognize that detention and exile deprive people of their liberty, separate people from their families and communities, result in loss of homes and careers, and may mean return to torture, persecution, or other serious human rights violations. Ensure that the system making such weighty decisions provides commensurate due process protections.

Congress should:

- Create statutory due process protections sufficient to protect people from human rights violations and with the aim of ensuring that people understand their legal rights and options and have a reasonable and meaningful opportunity to pursue them.
- Legislate and appropriate for universal representation of all indigent persons seeking protection or facing removal.
- Remove the immigration court from the Department of Justice with statutory protections against political interference.
- Appropriate sufficient funds to support a fully functioning immigration court system, ensuring reasonable docket loads, sufficient staff support and language access, and

appropriate technology. Ensure that appropriations for adjudications is increased in proportion to appropriations for enforcement operations.

- Amend statutes to provide reasonable timelines for filing applications, motions, and appeals. Allow reopening of cases for good cause and always in the case of ineffective assistance of counsel, changed circumstances, or government misconduct.

Federal agencies should:

- Develop standard, comprehensible written instructions and oral advisals with the goal of ensuring understanding and ability to comply with instructions. Ensure accessibility to people with low or no literacy and to people who do not speak or read English. Ensure forms and instructions are accessible in detention centers for pro se applicants. Train personnel to use plain language, check understanding, and on other cultural communications skills.
- Ensure full and fair interpretation of all hearings, including off-the-record discussions and arguments.
- Promote access to counsel, including pro bono counsel, for all through consistent, professional, and accessible practices.
- Eliminate arbitrary case completion quotas and other performance measures designed to speed adjudication of cases. Create performance metrics that reward adherence to due process and other legal standards rather than focusing on fast processing of cases. Restore and expand immigration judge discretion to manage dockets, dismiss or administratively close cases, and control caseloads.
- Ensure all detention centers have sufficient attorney visitation facilities; free and confidential means of telephone, video, email, and text communication with counsel; and sufficient staffing to ensure timely access to counsel and to documents needed to pursue defenses to deportation. Terminate contracts with facilities that fail to ensure meaningful access to counsel.
- Require detention facilities to facilitate access to mental competency and chemical dependency evaluations needed to establish eligibility for release from custody or for immigration relief. Terminate contracts with facilities that do not afford access.

The public should:

- Demand federal appropriations support access to justice.

Ensure Non-Discrimination

>> Recognize that the United States has an obligation to respect, protect, and fulfill the human rights of all persons within its jurisdiction regardless of race, citizenship or immigration status, disability, class, or other protected class.

Congress should:

- Eliminate \$1,500 statutory minimum bond and require consideration of ability to pay in all bond decisions.
- Remove drug possession as a ground of removability.

State and local governments should:

- Avoid entanglement of criminal legal systems with immigration enforcement mechanisms.

- Dismantle systems which criminalize, police, prosecute, and incarcerate Black, Indigenous, and other communities of color; poverty; and mental illness.
- Take steps at all levels to reduce levels of incarceration, including probation and sentencing reform.
- Ensure access to driver's licenses and state identification documents.

Promote Dignity

>> Recognize the dignity of human beings in the design and implementation of immigration policies. Recognize the obligation to treat all detained persons with respect for their inherent dignity and value as human beings. Ensure that no one is subjected to torture or other degrading treatment or punishment. Ensure that no one is subjected to arbitrary detention.

Congress should:

- Repeal mandatory detention laws. Ensure that every person who is detained has access to an individualized custody determination before an independent judicial authority.
- Ensure accountability for human rights violations committed by immigration officials and contractors and work to eliminate a culture of tolerance for those abuses. Fully fund and empower effective, independent oversight mechanisms.

Federal agencies should:

- End detention-first practices and use detention only as a last resort, consistent with international standards. Avoid prolonged, indefinite, or arbitrary detention by ensuring regular custody review of every person held in detention. Use alternatives to detention that promote people's dignity, safety, and ability to participate in removal proceedings.
- End routine shackling and provide appropriate civilian clothing for people appearing in immigration court.
- Ensure prolonged solitary confinement is never used.
- Ensure that all facilities used for ICE detention comply with federal immigration detention standards. Do not contract with facilities that are unable or unwilling to meet these standards and do not waive compliance with standards when entering or renewing contracts. Terminate contracts with facilities which violate these standards.
- Provide regular trauma-informed training and ongoing support designed to foster resilience for judges, attorneys, and staff.

State and local governments should:

- End use of prolonged solitary confinement. Consistent with international standards, never hold a person in solitary confinement more than 15 days and never inflict solitary confinement on people with mental or physical disabilities.
- Stop using federal immigration or other contracts as revenue streams for general county or local government operations or public safety budgets. Use funds for the safety, health, and access to justice of those detained. Provide public accountability for the contracts.
- Ensure all persons held in confinement are treated with dignity. Enact state standards for detention conditions. Create statutory oversight authority to ensure standards are met. Proactively monitor and effectively respond to complaints of violations.

- Allow and foster programs that support the health, well-being, and resilience of people held in confinement, such as pen pals and visitation programs, while working to decarcerate.
- Ensure the well-being and resilience of personnel who work with immigrants and refugees in detention.

The public should:

- Demand transparency in city, county, state, and federal policy and budget decisions relating to policing, prosecution, and incarceration.
- Hold decision-makers accountable for ensuring that violations of rights are investigated, violators are held accountable, and steps are taken to prevent violations.
- Expand immigration court observation projects in every court. Moral witness and the documentation of human rights abuses is critical in upholding human dignity.

CONCLUSION

The United States must develop and implement policies that ensure effective respect, protection, and fulfillment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle.

Actors at all levels—from congress to courtrooms—can take steps to prevent and address human rights violations. Public officials should take immediate actions where possible, repeal laws and policies which undermine these objectives, and redesign immigration laws consistent with human rights standards.

Members of the public have an important role in envisioning and demanding a just and fair immigration system. Bringing the public to witness immigration hearings helps to identify how laws and policies operate in practice and to articulate when they fail to meet human rights standards. The Immigration Court Observation Project has built a more informed and impassioned corps of advocates. But in the end, responsibility is on all of us: “We are all complicit by our tax paying in a system that is costly for us and unjust to refugees and immigrants, and we need to work to change that system and to elect officials at all levels who will work to fundamentally change this system.”

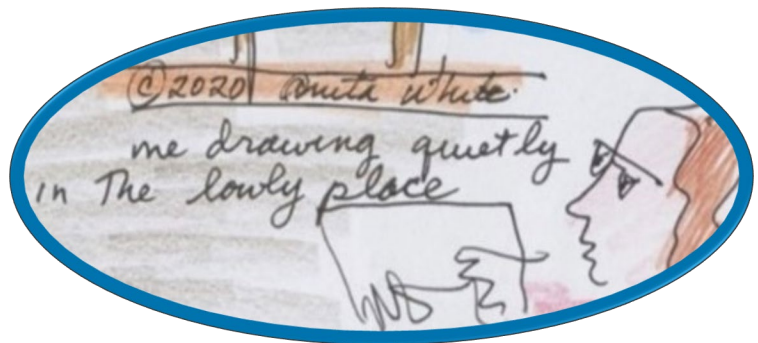
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Courtroom Artist | Anita White is a local artist from Minneapolis, Minnesota. “Drawing is a way for me to find beauty and to navigate life's challenges. I have drawn at the beach, in my garden, and I also documented my way through my late husband’s many medical challenges at Hennepin Healthcare. My motto: ‘Nothing is so scary you can't draw it!’ has helped me find courage to draw my way through many family caregiving moments. Drawing in the courts has been a way to pay attention and to bear witness to those without a voice.”



<http://www.mnartists.org/anita-white>

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APPENDICES

APPENDIX A: VOLUNTEER REGISTRATION FORM

<https://www.theadvocatesforhumanrights.org/immcourtoobservers>

People detained by federal Immigration and Customs Enforcement (ICE) face barriers to basic human rights. While people detained by ICE have the right to legal counsel, they do not have the right to a government-appointed attorney. Many people, regardless of age or capability, have to represent themselves in immigration court. Detention undermines the ability to seek and enjoy asylum from persecution, to remain with family, and to a fair day in court. Although immigration court hearings are open to the public, few people witness these proceedings.

The Human Rights Defender Project Court Observers help bring transparency and accountability to this system. Court Observers attend hearings and report on issues of concern including access to counsel, family and community support, and interpretation; the manner of arrest; and the ability of individuals to raise defenses to deportation.

No immigration experience or law license is needed. This community service opportunity is open to all. Court observers must have valid government-issued photo identification to enter the immigration court; a REAL ID or passport will be required as of October 1, 2021.

This project currently is open to observers at the **Fort Snelling Immigration Court** only.

Step 1: [Click here](#) to watch the orientation video.

Step 2: Complete the Volunteer Agreement below.

Step 3: New Volunteers are required to attend an in-person training. Once you complete the Volunteer Agreement you will be contacted about the next orientation.

Step 4: If you have already completed the Volunteer Agreement, and been trained, click [here](#) to sign up for shifts.

Step 5: Attend scheduled shift, note observations, and return completed form as directed.

VOLUNTEER AGREEMENT:

First Name

Last Name

Address 1

Address 2

City

State

Zip Code

This is an in-person volunteer opportunity at the Fort Snelling MN Immigration Court.

E-mail

Phone Number

* denotes a required field

How did you learn about the project?

Experience or Training (Describe any experience or training you have that may be relevant to this project (e.g. psychologist, journalist, graphic designer). Let us know if you have ever been a court observer for another project.)

Why do you want to participate? (What do you hope to get out of being part of this project?)

Languages (List other languages spoken, if any.)

Attendance [insert initials]

I will attend the shifts I sign up for and will give at least 48 hours notice of cancellation, except in cases of emergency.

Diligence [insert initials]

I will complete the observation forms to the best of my ability and will submit the forms within 2 weeks of my observation shift.

Boundaries [insert initials]

I understand that regardless of my professional qualifications or personal beliefs, as a Court Observer I am engaging in a lay capacity. I will not give legal or other professional advice to people in the courtroom or waiting area.

Confidentiality [insert initials]

I will respect the privacy of people appearing in court and will not share any personal or identifying information that I learn during court observation.

Conduct [insert initials]

I agree to follow the code of conduct in the courtroom: Cell phones powered off; No food or drink; Enter and leave the courtroom quietly; Refrain from speaking with the respondent/detained persons at any time; Refrain from speaking with the judge, guards, or attorneys during court proceedings; Leave the courtroom with all my belongings as directed for closed hearings or to make room for family members; Identify myself as a court observer if asked.

Non-Intervention [insert initials]

I agree to adhere to the principle of non-intervention in the judicial process. I will not engage or interact with the court regarding the merits of an individual case and will not attempt to influence indirectly outcomes in cases through informal channels.

Objectivity [insert initials]

I agree to adhere to the principle of objectivity. I will endeavor to report on proceedings accurately.

Training [insert initials]

I have watched the orientation video and agree to follow project instructions.

Volunteer Agreement [insert initials]

Trial monitoring is an important human rights tool for enhancing the fairness, effectiveness, and transparency of the justice system. Trial monitoring expresses the right to a fair public trial and serves as a diagnostic tool to support justice reform. Court observers must adhere to international trial monitoring standards, local court rules, and project guidelines. By signing, you agree to abide by these standards.

*** denotes a required field**

APPENDIX B: VOLUNTEER SURVEY

Survey: Experiences and Perceptions of Immigration Court

Human Rights Defender Project Experiences and Perceptions of Immigration Court

The Advocates for Human Rights, a co-sponsor of the Immigration Court Observation Project, is analyzing the impact of court observation on volunteers and trying to better understand volunteer perceptions of justice and due process. The first part of this research is a brief online survey. Responders will also be invited to attend a facilitated round table discussion on this topic. A subset of volunteers will also be contacted for an in-person interview. Participation is completely voluntary. No individual participants will be identified in the final report. Your name and contact information will only be used to reach out with further invitations and to share the final report.

We anticipate it will take 15 minutes to complete the survey.

All volunteers have received a link to this survey, so please do not forward the link to others outside of the project.

*** Required**

1. Email address *
2. Name *
3. How many observation shifts have you attended? *

Mark only one oval

1

2-5

6-10

More than 10

4. What motivated you to participate in this project? *
5. Has the experience aligned with your initial motivations? Please describe.
6. Did anything surprise you when you first observed a hearing? Please describe.
7. If you continue to volunteer, why do you continue? (N/A if not applicable).

8. If you no longer volunteer, why did you stop? (N/A if not applicable).

9. Has court observation impacted you?

Mark only one oval.

Yes

No

10. If yes, please describe some ways that court observation has impacted you.

11. Have you taken any actions as a result of this project? (check all that apply) *

Check all that apply.

recruited others to volunteer

wrote letters to the editor, blog or social media post

contacted an elected representative

attended other immigration related trainings or workshops

attended a protest, rally or demonstration

volunteered with other immigrant justice organizations

volunteered with other legal service nonprofits

donated money to one of the sponsoring organizations

donated money to legal services nonprofit

donated money to other immigrant justice nonprofit

started law school

none of the above

other:

12. On the scale of 1 to 5 described below, do you think that the hearings you have observed were fair? *

Mark only one oval.

1 – 2 – 3 – 4 – 5

completely unfair -> completely fair

13. Please explain your rating. *

14. As an observer, have you seen anything that facilitates a fair process?

15. As an observer, have you seen anything that impedes a fair process?

16. What practice or procedure do you think is the biggest obstacle to fairness or due process and why?

17. Do you think the judges treat respondents with respect and dignity? *

Mark only one oval.

1 – 2 – 3 – 4 – 5

never treats with respect -> always treats with respect

18. Please explain your answer.

19. Do you think the government attorneys treat respondents with respect and dignity? *

Mark only one oval.

1 – 2 – 3 – 4 – 5

never treats with respect -> always treats with respect

20. Please explain your answer.

21. For respondents who are represented, what are practices that indicate to you that the attorneys are effectively representing their clients? *

22. What is one thing you would want to share with the immigration judges and government attorneys about your observation experience? *

23. What is one thing you would want the public to know about immigration court, as you've observed it? *

APPENDIX C: ROUNDTABLE DISCUSSION GUIDE

Introductions

Explain the process/looking at volunteer perceptions/questions and note takers

Prompt Questions

- What does justice mean to you?
- How do you see that reflected in immigration court proceedings?
- What does due process mean to you?
- What do you think are critical factors for due process in immigration court? Why are those critical factors?
- Tell us about an experience you had while observing court that frustrated you. Why was that frustrating?
- Tell us about an experience you had while observing that made you feel encouraged. Why was that encouraging?

Additional questions:

- What practices do you expect from judges to reflect respect of an individual?
- Have your views on the immigration process changed as a result of your court observations?
- What do you think needs to be added/removed from the system?

Wrap up and evaluation sheet

Networking or training for this project that we can provide?

APPENDIX D: COURT OBSERVATION FORM

Human Rights Defender Project: Court Observation -Detained Docket

Date: _____ Observer (full name): _____ This is my first shift

GENERAL

1. Last 3 digits of A#: _____ 2. Judge: Carr Mazzie Wood Other: _____

3. Government Attorney Name: _____

4. Was the detainee represented? In person By phone By Video No, pro se Attorney failed to appear

a. Attorney type? Private (paid & pro-bono) Non-Profit Unknown

Comment: _____

5. Detainees country of origin (code & Country): _____

6. Gender: Male Female Transgender/ non-binary

7. Detainee Appears in Person Via Video Didn't appear, reason: _____

8. Type of Hearing (if more than one, check both): Bond (BRMV) Continued Bond Initial Removal (IRMV)

Continued Removal (ARMV) Credible/Reasonable Fear (ICFR/IRFR) Withholding only (IWHO) Unknown

BOND HEARING (skip if no bond hearing scheduled today)

9. Did both parties agree to bond amount for today? Yes, \$ _____ No (if yes, skip remaining bond questions)

10. Was bond requested? Yes, Amount if noted \$ _____ No, withdrew bond request (not withdrawn if cont)

11. Continuance: Offered by Judge Requested by detainee Next bond hearing: _____

12. If requested, did Judge grant bond? Yes, \$ _____ No Will issue written decision

13. If denied, why? Ineligible/mandatory detention Danger to society Flight risk Other _____

14. Did parties reserve appeal on bond? DHS: Yes No, waived Detainee: Yes No, waived Judge didn't ask

15. What factors were mentioned in granting or denying bond? _____

REMOVAL HEARING

16. Were pleadings taken? Yes No

17. Did detainee asked to be removed (deported)? Yes No a. If asked for deportation, what words did detainee say?

18. What forms of relief were discussed? Not discussed

42 A LPR Cancellation

I-589 Asylum

Adjustment of Status

42 B non-LPR Cancellation

I-589 Convention against torture

U-Visa or T-Visa

Voluntary Departure

I-589 Withholding of Removal

Other/ unsure _____

19. If relief was discussed, how did it come up?:

Discussed eligibility

Suggested by judge

Submitted previously

Applic. requested/plans apply

Submitted today

Unsure

20. Did Judge order removal/deportation? Yes No 21. Did Judge grant voluntary departure? Yes No

22. Removal continuance: Offered by Judge Requested by detainee Next hearing: _____ Indiv/ Merits

CRIMINAL HISTORY

23. Was a criminal history mentioned? Not Discussed No criminal Hx All convictions All cases are pending

Arrests but no charges All cases acquitted/dismitted Mixed History Unknown outcome of charges/ cases

Comments: _____

24. Detainee’s entry date/ length of time in the US: _____ Unknown

25. Does detainee have family in the US? Yes: _____ No Unknown

LANGUAGE

26. Detainee’s preferred language: _____ 27. Language provided to detainee: _____

28. Was interpreter used? Not needed In Courtroom By phone By video No interpreter available

29. Problems with interpretation: None Not available in preferred language Didn’t interpret all conversation
 Multiple attempts to find interpreter Attorney waived interpretation Technical problems with interpretation

HEALTH

30. Was there mention of detainee having mental health issues (including chemical dependency)? Yes No

a. If yes, what was said, did Judge or court require ICE action, did Judge indicate they’d try to find attorney for case?

31. Do you think detainee may have a mental health issue or cognitive impairment? Yes No Can’t tell

a. If yes, please explain: _____

32. Was there mention of serious medical concern or condition? Yes No a. If yes, please explain: _____

HEARING OVERALL:

For the next set of questions use a 5 point scale 1= strongly disagree 3= neutral, 5= strongly agree

33. The Judge took time to explain what was happening. 1 2 3 4 5

34. The Judge treated everyone with dignity and respect. 1 2 3 4 5

35. The government attorney treated everyone with dignity and respect. 1 2 3 4 5

36. The detainee’s attorney provided good representation. N/A 1 2 3 4 5

37. The detainee seemed to understand what was happening. 1 2 3 4 5

38. The hearing today was unbiased/ neutral. 1 2 3 4 5

39. The detainee participated in the hearing. 1 2 3 4 5

40. The Judge was trustworthy. 1 2 3 4 5

41. The process was fair. 1 2 3 4 5

42. The outcome was fair. 1 2 3 4 5

43. Did the Judge ask if detainee had questions? Yes No No, but detainee had representation

44. Comment about Judge’s demeanor, patience, attitude, listening, respect: _____

45. Detainee supporters in court? Family Other supporters Can’t tell None Supporters acknowledged

46. How long did hearing last? Less than 5 minutes 5-10 minutes More than 10 minutes

47. Could you hear everything that was said in courtroom (volume) Yes No

Additional Notes -Please include significant direct quotes, if any. Note if previously granted bond, but unable to pay, couldn’t find attorney. Comment on what did or did not seem fair. _____

Detained at: Carver Freeborn Kandiyohi Sherburne Other Unknown

APPENDIX E: OBSERVATION DRAWINGS AND DESCRIPTIONS

Appendix E provides a compendium and written descriptions of the illustrations used throughout this report. This appendix includes written descriptions of each of the illustrations for readers who are blind or who have visual impairments.

Anita White attended detained immigration court hearings at the Fort Snelling Immigration Court. She recorded her observations in drawings. These drawings have been used throughout this report to visually illustrate the variety and complexity of hearings in front of immigration judges.

Ms. White's dynamic sketch style captures the many things happening in the courtroom at any given moment. She includes words or phrases in her sketches which identify the people illustrated or record statements made.



Image 1: Cover Image/Executive Summary Image

The detained person walks across the courtroom as his hearing begins. He is wearing a bright orange jumpsuit and “even orange shoes.” He is handcuffed and his legs are shackled, causing him to “shuffle” toward his lawyer while escorted by a guard. The judge sits on her bench wearing a black robe in front of a large government seal which reads “Department of Justice – Executive Office for Immigration Review.” A court clerk also sits at the front of the courtroom. The government attorney sits at a table in front of a computer. The artist has drawn a U.S. flag behind the judge and around the government seal. The words “Bearing Witness Drawing in the Moment in Immigration Court 4 Cases by Anita White” are written on the stripes of the flag. In the lower right corner Anita White sketches herself “drawing quietly in the lowly place” next to “Amy who brought me.”



Image 2: Introduction Image

The detained person is seated next to his attorney, wearing headphones to hear the interpreter. The government attorney sits at another table and holds papers in front of him. The judge looks from her bench to the detained man. The clerk, guard, and interpreter all look on. The man's lawyer says "He is a refugee and is stateless. No he does not have a birth certificate," and "He was born in a refugee camp. He is stateless." The judge says "Because of the genocide there...it might very well be that the respondent is stateless." Next to the judge, it says "children born in Rwanda are Rwandan. The government attorney says "give me a month your honor please."



Image 3: Background Image

The detained person in an orange jumpsuit and shackles is seated next to his attorney at a table, facing the immigration judge and the court clerk. A guard also appears to loom over the table, in front of the detained person. The detained person's attorney explains that he "was assaulted by immigration officers and he wanted to tell you about that." He explains what happened in Spanish: "They asked for my ID. They handcuffed me and slammed me against the truck. They took me to [the] patrol car. I didn't answer. I just stayed quiet." The immigration judge responds: "Unfortunately I have no control over ICE and its officers, but you can file a complaint." His attorney is requesting bond, noting that he "has children here. He is not a flight risk." The government attorney sits at the table to the right with staplers on the desk. The immigration judge denies bond, saying "In light of these concerns, I am not going to grant bond."



Image 4: Volunteer Engagement and Action Image

The detained person sits in a bright orange jumpsuit at a table with his attorney, facing the immigration judge, clerk, and guard. The guard wears an American flag patch on his shoulder, and the clerk stands in front of a larger American flag, showing the white stars on blue background and with a gold eagle topper. Above the detained person's head float the words "The Defendant Respondent." The government attorney sits at a table to the right, with staplers on the desk. "Arguments back and forth" is written between the attorneys. The government attorney says, "I think the Court needs to not give the Respondent bond." The judge disagrees and says, "The Court will grant bond for \$8,000."

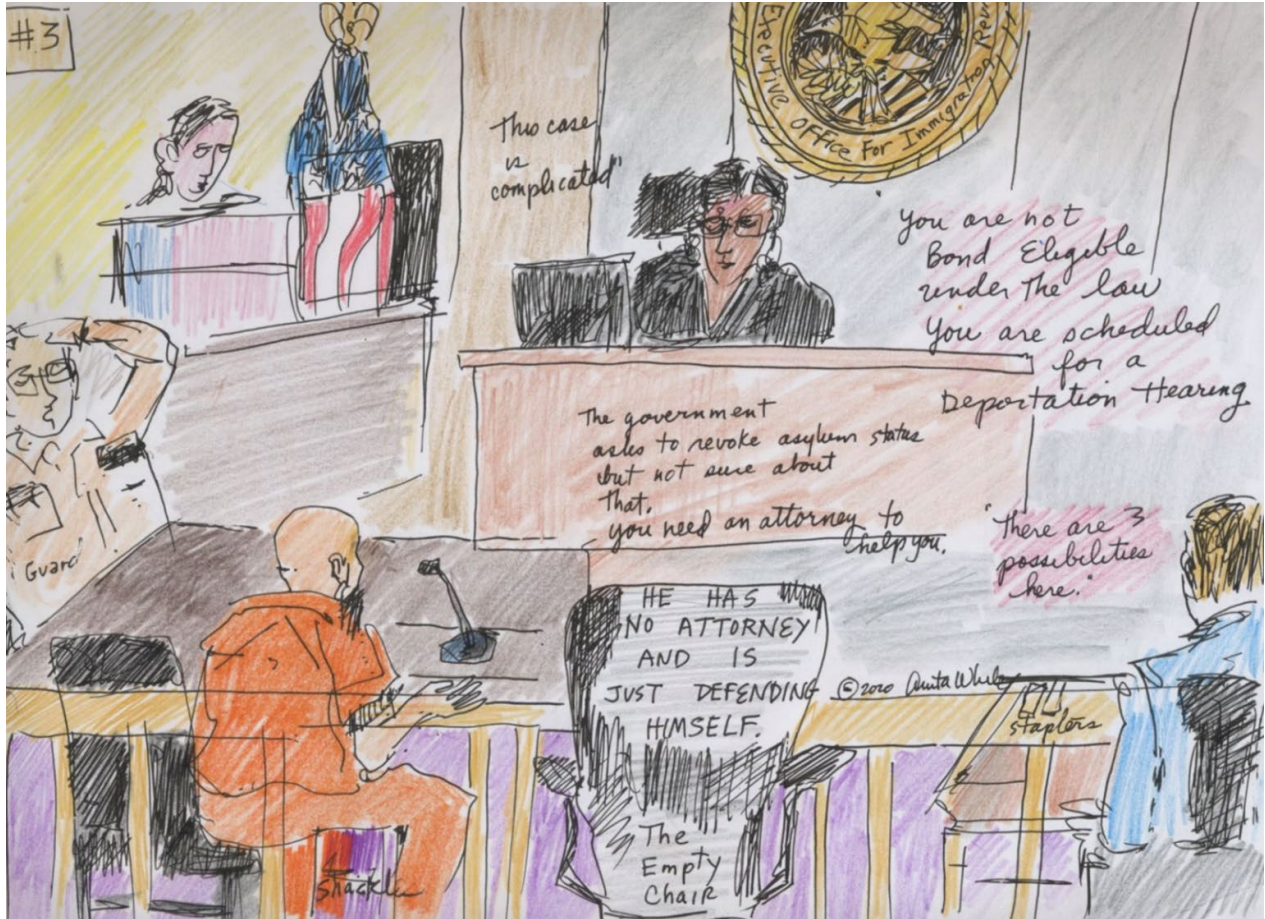


Image 5: Findings Image

The detained person sits at a table, facing the immigration judge. He wears an orange jumpsuit and has shackles on his ankles. Next to him is "The Empty Chair" because "he has no attorney and is just defending himself." The clerk is in the back corner, standing next to an American flag that has a gold eagle topper. The guard stands close to the detained person's table, with his left hand raised to his forehead. The government attorney is at a table to the right that has staplers on it. He is telling the judge, "There are three possibilities here." The judge says, "This case is complicated. You are not bond eligible under the law. You are scheduled for a deportation hearing. The government asks to revoke asylum status, but not sure about that. You need an attorney to help you."



Image 6: First Zoomed Image

The judge sits behind a desk that has block letters "Immigration Court." Between the two tables facing her are "Facts" in block letters and questions: "The stark facts. Bail? Custody? Lawyer?"



Image 7: Second Zoomed Image

The judge sits beneath a large seal with a gold eagle in the center. She wears glasses and her eyes are closed. On it, the seal has the words Department of Justice Executive Office for Immigration Review.



Image 8: Zoomed Image Three

This image is a close-up of “The Empty Chair” because the Respondent “has no attorney and is just defending himself.” The detained person’s hands appear to be explaining something.



Image 9: Zoomed Image Four

A detained person wears headphones. He is seated next to his attorney. The words “Cases come and go VERY quickly today” appear in the air.



Image 10: Zoomed Image Five

A detained person in an orange jumpsuit and “even orange shoes” “shuffles into court handcuffed and shackled,” lead by a guard, while the Respondent’s lawyer, the clerk, and the judge look on. The judge sits beneath an American flag and the immigration court seal.



Image 11: Zoomed Image Six

The detained person, in an orange jumpsuit, and his attorney have their backs to the viewer, and we see the faces of a guard, looming over the Respondent, and the clerk next to the immigration court seal. The detained person’s attorney says, “My client was assaulted by Immigration officers and he wanted to tell you about that.” “He explains what happened in Spanish.” “...asked for my ID. They handcuffed me and slammed me against the truck. They took me to [the] patrol car. I didn’t answer. I just stayed quiet.”



Image 12: Conclusion Image

Three detained persons are seated, wearing orange jumpsuits, handcuffs, and shackles. A transparent figure appears above each of them, and each figure has their hands resting on a detained person's shoulders. The figures have the words "So Many Cares," "Blessings on You," and "Vulnerable," respectively. At the top of the image is the immigration court seal.

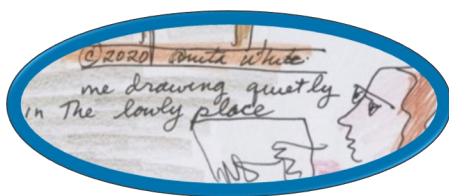


Image 13: Acknowledgements Image

An image of the artist "drawing quietly in the lowly place".

The Advocates for Human Rights

The mission of The Advocates for Human Rights is to implement international human rights standards to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, The Advocates builds broad constituencies in the United States and select global communities.

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