"Locked Up and Locked Out: Immigrant Detention and the Decline of U.S. Asylum"

Alisa Garni and Lisa Melander
People’s experiences

El Salvador, Guatemala, Honduras, Mexico, Venezuela, Cuba, Colombia, China, Haiti, Brazil, Democratic Republic of the Congo, Uzbekistan, Kazakhstan
INA 212(a)(6)(c)/(a)(7)/IIRIRA 1996: Expedited removal unless express fear

“Hielera”
Translation?
Counsel?
Stakes?

ICE detention
CFI (asylum)
RFI (temp protection)
CAT (temp protection)

“Negative”
Appeal
Likely deportation

“Positive”
NTA
Ice check-ins
Hearing

Client = Super Hero

Note about fathers and daughters
What must a woman prove to get a “positive”?

**LEGAL ELEMENTS** of an asylum & withholding of removal claim:

1) She has a well-founded fear of persecution
2) On account of a protected ground (nexus)
   - Race, religion, nationality, political opinion, particular social group, women treated as property (DV and trafficking)
3) At the hands of the government, or an entity the government is unwilling or unable to control (acquiescence) AND
4) Internal relocation within her country is not reasonable

Dilley Pro Bono Project
He said, “I hate your brother, and he is going to pay with you.”

“You’re possessed by the devil and deserve to die”

“You are a traitor, like all liberals.”

“You will suffer with the life of your daughter.”

“I have been looking for a good girl, a virgin, from the church.”
Recent Changes

2018-2019

- CFIs: 99.5% success
- Counsel for everyone
- USCIS in person interviews

2019-2020

- CFIs: under 50%
- CBP on phone
- “Video” Appeals
- Much less counsel
- Longer in detention
- “Migrant Protection Protocols” (MPP) Previously “metering”
+ Asylum Ban…
You are barred from asylum if:

--you entered or attempted to enter the United States; at the Southern border;

--on or after July 16, 2019;

--and failed to apply for protection from persecution or torture in at least one third country through which you transited while in route to the US

unless...
Three Exceptions to Bar

**Exception 1**
Final judgement denying asylum in third country

**Exception 2**
Meet the definition of a victim of a severe form of trafficking as defined by 8 CFR 214.11

**Exception 3**
Transited only through a country not a party to the 1951 refugee convention, 1967 protocols, OR CAT

Dilley Pro Bono Project
International Law

- 1967 Protocol Relating to the Status of Refugees
  - Non-Refoulement
- International Convention on Civil and Political Rights (ICCPR)
- Convention Against Torture (CAT)

- Crossing border w/o authorization ≠ crime
- Presumption of liberty/freedom of movement
- No detention as deterrence (detention only for ID, very short, only if no alternative)
- Due process/counsel
- Know stakes
- Best interests of child
- Translation/"best language"

Dominguez et al. 2016
‘At the heart of all civilization and development is community--the mutually cooperative and voluntary venture of people assuming responsibility for our brothers and sisters everywhere’ (1962, Tennessee)

~Paraphrasing Dr. King