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Interview with Dilley Delegation Staff

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INTERVIEW WITH DILLEY DELEGATION STAFF

Footnote Forum Podcast, a CUNY Law Review Production

PART I

Reena Novotnak: You're listening to Footnote Forum, a production of the law review at City University of New York School of Law. I'm your editor and host, Reena Novotnak, and I'm joined by our guests, two CUNY Law students.

Joanna Lopez: My name is Jo Lopez, I'm a 3L in the full-time program.

Jacklyn Mann: Hi everyone, I'm Jackie Mann, I'm also a 3L here.

Reena Novotnak: This year, on the podcast, we focused on the Freedom of Information Act and Freedom of Information Law, or FOIA and FOIL. Jo and Jackie joined us to talk about their experience with the Dilley Delegation, and the challenges and lack of transparency they faced when preparing their clients for asylum hearings. Right now, you're listening to part one of two of this interview. In this episode, you'll also hear the voices of two law review staffers: Maya Kouassi and Cesar Ruiz. But it's Jo here who'll start us off.

Joanna Lopez: The Dilley delegation was a year-long effort initiated by three students to bring together other CUNY Law students and law professors to be able to provide much-needed on-the-ground work in Dilley, Texas.¹ In a nutshell, we spent a week at the South Texas Family Residential Center and assisted mothers and their children as they prepared for their credible fear interviews. So, much of the work that was done that week was spending 12 to 14-hour days at the detention center and working with women, and listening to their stories, and finding a way to structure their experiences in a way that was palatable to an asylum officer so that they would receive a positive interview and move forward

¹ *CUNY Delegation Makes a Difference at Immigration Detention Center in Dilley, TX*, CUNY SCHOOL OF LAW (Aug. 29, 2019), <https://perma.cc/5X2M-5SRX>; Rachel Vick, *CUNY Law Students Assist Asylum-Seekers Detained at the Border*, QUEENS DAILY EAGLE (Aug. 20, 2019), <https://perma.cc/TC2D-XM2J>.

in the asylum process, and also be released from detention, which is a really crucial part of the work that we were doing.

Maya Kouassi: So, can you speak a little bit to the asylum process in general? How does asylum work? What are the elements that you were preparing your clients for [for] their credible fear interviews? How does that process work?

Jacklyn Mann: So, in a nutshell, there are two types of asylum: affirmative and defensive.² Affirmative means that an individual is already inside the United States, within the borders, and may already have some sort of legal status in the United States, but for a variety of reasons is now affirmatively requesting asylum.³ At Dilley, we were exclusively working within the realm of defensive asylum.⁴ So, the first step is that credible fear interview.⁵ And the elements that you have to prove are: you have been persecuted or have a well-founded fear of future persecution based on your political opinion, religious beliefs, your race or country of national origin, and finally—and the most common at Dilley—was membership in a particular social group, which is one of the trickiest grounds for protection that one can try to meet.⁶ And you have to demonstrate that the government is unable or unwilling to protect you.⁷ Membership in a particular social group requires that the group that you are claiming you are a part of is cognizable, meaning that there are immutable characteristics that the individual should not have to change, or cannot change.⁸ The group also needs to be defined with particularity, meaning that it's not too

² *Types of Asylum*, U.N. HIGH COMM'R FOR REFUGEES, <https://perma.cc/4MP7-Z377> (last visited Feb. 20, 2020).

³ *The Affirmative Asylum Process*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://perma.cc/QU9G-SNRX> (last updated Apr. 19, 2019).

⁴ *The Dilley Pro Bono Project*, AM. IMMIGRATION LAWYERS ASS'N (Oct. 30, 2019), <https://perma.cc/YA8M-7TQE>; see also *Obtaining Asylum in the United States*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://perma.cc/K2JJ-B6C4> (last updated Oct. 19, 2015).

⁵ *Questions & Answers: Credible Fear Screening*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://perma.cc/Y23F-EWU4> (last updated July 15, 2015).

⁶ See 8 U.S.C. § 1158(b)(1)(B)(i) (2009); see *In re A-B-*, 27 I. & N. Dec. 316, 320 (A.G. 2018).

⁷ *In re A-B-*, 27 I. & N. Dec. at 320, *abrogated by* *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018). *In re A-B-* treated domestic and gang violence as impermissible grounds for credible fear, as they were considered “personal” and not “state sanctioned” violence. *Id.* In *Grace v. Whitaker*, the court held that immigration judges may not rely on this general rule against domestic or gang violence-based credible fear claims. 344 F. Supp. 3d at 126.

⁸ *In re A-B-*, 27 I. & N. Dec. at 327-28 (quoting *In re Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985)).

broad of a group.⁹ For example, women in Guatemala probably wouldn't be particular enough for asylum. Finally, the group needs to be socially distinct, meaning that the society in which the individual lived and was exposed to persecution recognizes that social group—that it is not necessarily visible, but is something distinct in that society, not American society.¹⁰

Joanna Lopez: And particular social group also deals with, like, not if you belong, but if you're perceived to be a part of a particular social group.¹¹ So the one example that I always think of is someone's sexual orientation.¹² Whether or not you fall into a specific sexual orientation, if someone perceives you to be a specific sexual orientation and they act on it, that can very well be a basis for asylum—whether or not you actually are a sexual orientation minority where you live. Something that Jackie brought up is making sure that the particular social group is cognizable.¹³ That has become a very, very difficult standard to meet because, for example, something that has continued to be upheld is if you're a part of a specific clan.¹⁴ But if, for example, you are a family within a specific region and, maybe in your specific society people know who you are, it's become much harder to make the argument that, because I'm a family member within this family structure, that's cognizable within society.¹⁵ So an example that continues to be upheld is if you're a clan— and making that determination that it's not just family-based, but it's a clan.¹⁶ Mostly you see the argument that they belong to a specific family group.¹⁷ So I guess the only distinction is that specifically, maybe for ethnic minorities within a region, Jackie mentioned, just being Guatemalan is simply not enough. One of the experiences while we were there, someone mentioned, "Well, I'm the only person that sells tamales within my neighborhood," and trying to frame a creative way in that situation. We know that there is a lot more information-gathering that would need to happen. How do people know that you're the only tamales lady in your neighborhood? Is it visible? How do people know? Can someone see you on the street? I think it's just become really difficult, and trying to fit it within a standard that keeps making it more difficult for individuals to meet.

⁹ *In re A-B-*, 27 I. & N. Dec. at 320.

¹⁰ *Id.* at 336.

¹¹ *In re M-E-V-G-*, 26 I. & N. Dec. 227, 240 (BIA 2014).

¹² *In re Toboso-Alfonso*, 20 I. & N. Dec. 819, 822 (BIA 1990).

¹³ *In re A-B-*, 27 I. & N. Dec. at 340.

¹⁴ *Id.* at 336; *In re H-*, 21 I. & N. Dec. 337, 342-43 (BIA 1996).

¹⁵ *In re A-B-*, 27 I. & N. Dec. at 318.

¹⁶ *See supra* note 14.

¹⁷ *In re H-*, 21 I. & N. Dec. at 342-43.

Jacklyn Mann: And with the family and the clan cases—the clan cases have been really successful in the past in Sub-Saharan Africa and the Horn of Africa, where clans and tribes are very identifiable by certain characteristics.¹⁸ They’re not necessarily a part of a different race or national origin, but these clan cases have been recognized as part of a particular social group, and that was extended to families because the same logic carries over.¹⁹ You have the same last name; it’s traceable back to you. But this administration doesn’t think that that’s sufficient, and I think it’s really apparent to us and it’s kind of a strange question to pose to someone when you’re interviewing them about their family.²⁰ Like, “What makes your family unique? And how does everyone know that you’re related?” And it just seems like such a no-brainer: “Well, we look the same, we live together, we have the same name. You can choose your friends, you can’t choose your family— like everyone knows who we are.”

Jacklyn Mann: But it’s just something that you have to get really creative with. And the *Matter of L-E-A* decision from the Board of Immigration Appeals—before it went to the Attorney General— talked about the Romanovs.²¹ They were persecuted because they were Romanovs. Yes, there were political motivations, but asylum permits a mixed-motive analysis, and you could impute political opinion onto the children of the Romanovs. Would you be as inclined to persecute a child for an imputed political opinion if they didn’t also have that family membership? It’s something that’s really established and clear, and for whatever reason it’s just not working anymore. While we were down there, we had a training before we started volunteering and they gave us updates on tactics that were working. Because the standard of proof for the credible fear interview is much lower, we just have to get them through that first step.²² And then hopefully they find equally zealous and creative attorneys once they’re released from detention who can carry the claim all the way through to the individual hearing. This administration has tried to roll

¹⁸ *Id.* at 343.

¹⁹ *In re L-E-A*, 27 I. & N. Dec. 40, 43-44 (BIA 2017).

²⁰ *Id.* at 46-47 (citing *Cambara-Cambara v. Lynch*, 837 F.3d 822, 826 (8th Cir. 2016)).

²¹ *In re L-E-A*, 27 I. & N. Dec. at 44.

²² 8 U.S.C. § 1225(b)(1)(B)(v) (2009) (defining “credible fear of persecution” as “a significant possibility, taking into account the credibility of the statements made by the [asylum seeker] in support of [their] claim and such other facts as are known to the officer, that the [asylum seeker] could establish eligibility for asylum . . .”).

back a lot of the protections of defensive asylum.²³ And a lot of the particular social groups that were really successful in the past are now being limited or restricted, and in some cases, just taken off the table— just destroying certain parts of this case law that has been held up for a really long time and for good reason.²⁴ A lot of it just goes to this administration’s attempt to ban all asylum and really just terrorize the folks that need it the most.²⁵

Maya Kouassi: You spoke a little bit about working with mothers and children. I think it would be interesting to hear sort of a zoomed-out understanding of who your clients were. What sort of similarities did they share culturally in terms of the obstacles that they were overcoming? And also, what differences did they have as well?

Joanna Lopez: Many of the women and children that were detained were from the Northern Triangle. So that refers to three Central American

²³ See, e.g., Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019) (to be codified at 8 C.F.R. pts. 208, 1003, 1208); Stef W. Kight, *U.S. Faces Surge of Asylum Claims Under Trump*, AXIOS (May 9, 2018), <https://perma.cc/ZTG9-X6T8> (noting that 119,144 defensive asylum applications were filed in 2017, compared to 68,530 in 2016); Nicole Narea, *The Demise of America’s Asylum System Under Trump, Explained*, VOX (Nov. 5, 2019, 12:00 PM), <https://perma.cc/4PEA-EKZE> (identifying seven ways the Trump administration “made it all but impossible to seek asylum in the US”); John Washington, “Do We Believe In Asylum? If We Do, We Need to Stop This Rule”: *Trump Policy Upends Protections at U.S.-Mexico Border*, INTERCEPT (July 16, 2019, 3:01 PM), <https://perma.cc/KMQ7-FL6A> (“The Trump administration announced an unprecedented rule that would deny tens of thousands of asylum-seekers the chance to find refuge in the United States, imposing a bar to asylum for anybody who has passed through another country without applying for protection and being denied it there.”).

²⁴ See, e.g., Peniel Ibe, *How Trump Is Making It Harder for Asylum Seekers*, AM. FRIENDS SERV. COMMITTEE: BLOG (Mar. 11, 2020), <https://perma.cc/4T2B-EKZY> (“Under a July 2019 decision, being persecuted based on threats against a family member is no longer likely to qualify someone for asylum . . . being a member of family does not count as being part of a ‘particular social group.’”); Zolan Kanno-Youngs, *Justice Dept. Moves to Block Asylum Claims Based on Family Ties*, N.Y. TIMES (July 29, 2019), <https://perma.cc/C7QA-ZQR5> (quoting Attorney General William P. Barr in saying that “an [asylum applicant’s] family-based group will not constitute a particular social group unless it has been shown to be socially distinct in the eyes of its society, not just those of its alleged persecutor.”).

²⁵ See Bianca Bruno, *Ninth Circuit Refuses Trump Request to Undo Block of Asylum Ban*, COURTHOUSE NEWS SERV. (Mar. 5, 2020), <https://perma.cc/6G2X-ZTNZ>; Peter Margulies, *Asylum Update: Ninth Circuit Deals Two Defeats to the Trump Administration*, LAWFARE (Mar. 3, 2020, 8:00 AM), <https://perma.cc/K4CH-ZZ2J> (reporting on the Ninth Circuit’s ruling that Trump’s “so-called ‘Remain in Mexico’ policy” violated the Immigration and Nationality Act); see also Dara Lind, *Trump’s Asylum Ban Could Apply Retroactively to Thousands of Migrants Even Though Officials Promised It Wouldn’t*, PROPUBLICA (Oct. 22, 2019, 12:55 PM), <https://perma.cc/6KMK-PSDW> (describing Trump policies designed to “crack down” on asylum seekers).

countries: Guatemala, Honduras, and El Salvador. In terms of similarities, just to keep it brief, I think that they [have] had really long and arduous journeys making it to the United States. That really shaped the way in that they told their stories and experiences to us. Another similarity is that many of them were survivors of domestic violence back home. Something that was really difficult to even talk about was: one of the many reasons that they were coming was to create a better life for themselves and for their children, knowing very well that that's not something that would necessarily sway an asylum officer in granting them a positive in their credible fear interview. So that similarity was something that you saw throughout. They were coming here with their children, and they're leaving their homes behind, and they're hoping to—even with the uncertainty of what lies in the United States, [there] is a hope that they were holding onto. In terms of differences, I can't really say that I found many differences in their stories and who they were culturally. They're mothers, they have this deep love and understanding of their children and their needs and their desires and their dreams. So, I think altogether, they were pretty unitary in their reasons for why they were coming here as individuals and as mothers.

Reena Novotnak: You keep saying “the women that we worked with, the female clients that we worked with,” or that they were mothers. Was there a reason that you were only working with women?

Jacklyn Mann: The way that the detention centers are set up is that—there was a decision a long time ago, I would say probably during the Bush administration, to close family detention.²⁶ And then the detention centers were reopened under the Obama administration.²⁷ So the detention centers where you see the most need are typically these detention centers, which are built for women and children. And I guess for safety reasons, the government has determined that men shouldn't be housed in

²⁶ See LUTHERAN IMMIGRATION AND REFUGEE SERV. & WOMEN'S COMM'N FOR REFUGEE WOMEN & CHILDREN, LOCKING UP FAMILY VALUES: THE DETENTION OF IMMIGRANT FAMILIES 6 (2007), <https://perma.cc/Z77E-PC6P> (“The practice of detaining families in jail-like, criminal settings is contrary to the explicit intent of Congress.”); *Family Detention Backgrounder and Talking Points*, DETENTION WATCH NETWORK, <https://perma.cc/F5D6-YSF9> (last visited Mar. 19, 2020) (“In 2009, the US stopped using large-scale family detention in response to public opposition and a lawsuit highlighting conditions that were entirely inappropriate for children and families . . .”).

²⁷ Alicia A. Caldwell, *Administration to Open Detention Centers for Families Caught Crossing the Border*, PBS NEWSHOUR (June 20, 2014, 1:15 PM), <https://perma.cc/5EM7-NCDA> (describing the Obama administration's announcement that new family detention centers would be opened amid a surge of immigrant families crossing the border from Central America).

the same place as children.²⁸ So family units are separated a lot. You'll hear from clients who—a husband and wife, or a mother and father—will cross the border together with their children. The father will take one child and the mother will take the other, and the mother and that child will get detained. Because there are no facilities that are licensed to hold men and children,²⁹ the father and the other child will probably be given an ankle monitor or ICE check-ins or something else to ensure that they continue with the asylum process. And as a result of the *Flores* settlement agreement, which happened in the '90s, there are certain rules about how children are held in detention: how long they can be held, they should have access to schools, medical care.³⁰ So these are the facilities that really have to be held accountable to that settlement. And so that's why we work with women and children exclusively when we go there. It's also worth noting that—as far as I am aware—none of these facilities permit a transgender woman to be held at the facility.³¹ In my previous experience, before law school—and I think this is still true today based on what we saw at Dilley—a trans woman will be held at the detention center for men, and that's very traumatizing.³² And when speaking with trans women in

²⁸ *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells*, HUM. RTS. WATCH (Feb. 28, 2018), <https://perma.cc/3N94-W9M5> (“Adult men are almost always held separately from the rest of their family and are subsequently detained in wholly different facilities from those used for women and their children.”).

²⁹ Maria Sacchetti et al., *Separated Immigrant Children Are All over the U.S. Now, Far from Parents Who Don't Know Where They Are*, WASH. POST (June 24, 2018, 7:49 PM), <https://perma.cc/8GC2-2V53> (“Parents were put in one cell, children in another . . . Children were often sorted by country, gender and age, to keep older and younger ones apart.”); Dara Lind, “*Women to One Side, Men to the Other*”: *How the Border Patrol's New Powers and Old Carelessness Separated a Family*, PROPUBLICA (Jan. 31, 2020, 5:00 AM), <https://perma.cc/K7BQ-QZ2X> (describing the Trump administration's impact on immigrant families and the legality of family separation practices).

³⁰ Michael D. Shear & Zolan Kanno-Youngs, *Migrant Families Would Face Indefinite Detention Under New Trump Rule*, N.Y. TIMES (Aug. 22, 2019), <https://perma.cc/U6HU-JACY> (“[T]he *Flores* settlement . . . limits the time children can spend in detention and establishes minimum standards for the holding facilities for families and children.”).

³¹ *Compare* Memorandum from Thomas Homan, Exec. Assoc. Dir., ICE, on Further Guidance Regarding the Care of Transgender Detainees (June 19, 2015), <https://perma.cc/JK7Q-JCSN> (advising that transgender individuals in detention be placed in facilities staffed by personnel trained in LGBTI sensitivity), with N. Jamiyla Chisholm, *ICE Closes the Only Transgender Migrant Detention Unit in the U.S.*, COLORLINES (Jan. 31, 2020, 12:10 PM), <https://perma.cc/AA4Z-LW45> (describing the closure of ICE's only transgender detention unit and the history of abuse against transgender women in immigration detention), and Press Release, Senator Dianne Feinstein, Feinstein, Murray, Senate Democrats Question ICE on Treatment of Transgender Detainees (Feb. 10, 2020), <https://perma.cc/QQF4-W434> (“To date, it is unclear which ICE detention facilities, if any, have formally modified their contracts to provide a safe environment for transgender migrants as outlined in the 2015 memo.”).

³² Brian Stauffer, “*Do You See How Much I'm Suffering Here?*”: *Abuse Against Transgender Women in US Immigration Detention*, HUM. RTS. WATCH (Mar. 23, 2016),

Central Texas before law school, something that would come up a lot was harassment and abuse from others in the detention center, as well as the guards and other officials that worked in the detention center. So that's currently as it stands.

Cesar Ruiz: So, we talked about the infrastructure. We kind of want to dive into—what were some of the obstacles that you faced as an advocate?

Jacklyn Mann: In order to volunteer at Dilley, you have to be screened about a month in advance, get security clearance.³³ You have to get permission for everything. You have to get permission to bring a laptop into the facility.³⁴ Because there are children at the facility, they have to run a background check.³⁵ And so the first day, that Monday morning that we got there at about 7:15 in the morning, we were told that our clearance was approved. However, ICE had never approved our laptop clearance, which is crucial—and the Dilley Pro Bono Project has done so much

<https://perma.cc/S4SA-6AQ3> (“Many of the [transgender] women we interviewed who were detained in men’s detention facilities described being sexually assaulted by male detainees or guards.”).

³³ *Dilley Pro Bono Project*, IMMIGRATION JUSTICE CAMPAIGN, <https://perma.cc/NGJ6-DPDK> (last visited Feb. 20, 2020) (“The South Texas Family Residential Center is a jail. Like other jails, there are restrictions on who is eligible to enter the premise. Immigration & Customs Enforcement (ICE) conducts a criminal background check on all volunteers who wish to enter the facility.”).

³⁴ *South Texas Family Residential Center*, U.S. IMMIGRATION & CUSTOMS ENF’T, <https://perma.cc/93PN-CQKX> (last updated Oct. 24, 2019) (“No electronic devices (cell phones, pagers, radios, etc.) are permitted in the center.”).

³⁵ See U.S. IMMIGRATION & CUSTOMS ENF’T, ICE/DRO DETENTION STANDARD 2 (2008), <https://perma.cc/2K85-95SU> (“A background check will be conducted on all new volunteers prior to their being approved to provide services to detainees.”); see also Molly Olmstead, Report: Government Waived Background Check Requirements for Staff at Largest Detention Center for Migrant Children, SLATE: THE SLATEST (Nov. 27, 2018, 4:50 PM), <https://perma.cc/5AJE-WU2N> (“According to the AP, the former director of the federal Office of Refugee Resettlement approved the decision to waive checks for child abuse and neglect for the more than 2,000 staff members brought on since the facility opened. The office reportedly had assumed staff members had undergone FBI fingerprint checks, but they had not. The AP reported that recently hired employees are still not receiving background checks.”); Memorandum from Daniel R. Levinson, Inspector Gen., Office of Inspector Gen., Dep’t of Health & Human Servs. to Lynn Johnson, Assistant Sec’y, Admin. for Children & Families, on Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff (A-12-19-20000) (Nov. 27, 2018), <https://perma.cc/7Z8X-F5RE> (“Tornillo is not conducting required Federal Bureau of Investigation (FBI) fingerprint background checks for staff working at Tornillo. Instead, Tornillo is using checks conducted by a private contractor that has access to less comprehensive data, thereby heightening the risk that an individual with a criminal history could have direct access to children in ORR care.”).

advocacy around this³⁶—because of the volume of cases that need to be handled and the really relatively quick turnover. It's not like other jail facilities where it's sort of expected that as an advocate you're not gonna be able to bring your computer in.³⁷ Our professors remind us of that all the time: "You know, you're gonna have to take handwritten notes if you want to do work with incarcerated individuals." But they were able to advocate around that issue and get clearance approved just so that they can use their case management software and keep track of everything, because the facility has the capacity to hold 2,500 individuals.³⁸ And while we were there, it was not at that capacity—it was about 1,500. But it's really hard to keep track of everyone's case and if you've seen everyone. There were about 15 of us there volunteering, plus the on-the-ground staff, which fluctuated from two to five employees per day, and you have to interview dozens of women every day. When they told us that we couldn't bring our computers in, it was really frustrating, even though the clearance had been approved. And it's just a reminder that you're really at the whim of whoever's in charge that day. We later learned that the senior ICE official, administration person, who was in charge of all of that was on vacation, and whoever was subbing in for that office or that day just felt like giving us a hard time. I think that's really common, and it's something that you have to be cognizant of while you're working there, because at any time, they could cite you for breaking a rule or a policy. There's no touching, there's no hugging,³⁹ the women have to keep an eye on their children at all times, and so you really do—for the sake of the Dilley Pro Bono Project and its ongoing relationship there—you really have to make sure that you don't break any rules. And that can make doing

³⁶ Maria Benevento, *Legal Representation for Detained Migrants Hindered by Access Issues*, NAT'L CATH. REP. (Dec. 21, 2018), <https://perma.cc/J2MM-ATXG> ("'You waste a lot of time' going through security, waiting for officials to bring your client and waiting for a confidential meeting room, said Katy Murdza, advocacy coordinator for the Dilley Pro Bono Project. Rules on what can be brought in seem arbitrary and sometimes change unexpectedly. Detention centers prohibit cell phones and sometimes even laptop computers, forcing attorneys to type up handwritten notes at home after a long day visiting clients.").

³⁷ See U.S. DEP'T OF JUSTICE, FED. BUREAU OF PRISONS, PROGRAM STATEMENT NO. 1315.07, LEGAL ACTIVITIES, INMATE 16 (1999), <https://perma.cc/33JC-DSFG> ("Ordinarily, the use of any other electronic device (for example, videotape recorders or computers) are not to be permitted. The Warden may permit such use, however, if it is shown that such use is absolutely essential to facilitate the attorney-client relationship, and such use would not be inconsistent with the institution's maintenance of security, good order, or discipline.").

³⁸ Immigration Justice Campaign, *Dilley Volunteer Orientation - The Human Element* (00:30-00:40), VIMEO, <https://player.vimeo.com/video/384559325> ("It's got bed space for about 2,400 people and it houses solely immigrant women who are caught with their children, usually right at the U.S. border.").

³⁹ Martin Garbus, *What I Saw at the Dilley, Texas, Immigrant Detention Center*, NATION (Mar. 26, 2019), <https://perma.cc/RG99-HUJE>.

your job really hard, right? Because you want to be empathetic and be able to be flexible and assist a mother with her child and do whatever you need to do. But there were countless obstacles; I really think there's just too many to talk about.

Joanna Lopez: Yeah, I guess, maybe just one of the obstacles generally was the amount of space and how desensitized CoreCivic⁴⁰ and the ICE guards want you to be with the women and children. That really navigated the way that you moved around. We had to be very aware of what we were bringing into the trailer in terms of food—again, we were there for really, really long days. And just being really mindful that we had to keep doors closed at all times because we didn't want young children to see us, you know, with a bag of chips or a Coke. Even when we were providing the preparations, just knowing that you were being watched at all times. So, we got a sense of what these women and children go through on a daily basis. It was really jarring to try to have these private conversations with them about their life and their experiences and seeing—every minute or so really—an ICE officer or CoreCivic guard peeking into the window and really seeing what you're doing and the discussions that you're having with them. And that's if we're lucky to have a private meeting space to discuss with them. If you don't, then you're out on that table in the general area with everyone else as you're talking about really, really sensitive and traumatizing information. And knowing that a guard is right there, watching it all happen. So, yeah, just the lack of privacy, the heightened watching of everyone. I guess one of the things that we haven't touched upon was just how cold it was in that trailer—and it was freezing for us—and we have the ability to bring in our sweaters and things from the outside to make sure that we're comfortable. Coffee, you know, whatever that might be. And seeing them—they have clothing that they're provided, but it's not the clothing that you would wear when you're cold. And many, if not all, of the children there while we were there were sick. So maybe that's also one of the obstacles: these are mothers who are talking about these experiences while also dealing with their sick children, and wanting to make sure their children are okay, but also wanting to provide the necessary information that they know is going to help them move forward and get out of detention. There were, like Jackie mentioned, a lot of things at play and it's really hard to list them all because the entire

⁴⁰ Shane Bauer, *Today It Locks Up Immigrants. But CoreCivic's Roots Lie in the Brutal Past of America's Prisons.*, MOTHER JONES, Sept.-Oct. 2018, <https://perma.cc/YZ7R-EYR9> (noting that CCA rebranded to CoreCivic four months after the author's undercover investigation of a private prison was published); *South Texas Family Residential Center*, CORECIVIC, <https://perma.cc/W2BM-S2GM> (last visited Feb. 12, 2020); Immigration Justice Campaign, *supra* note 38.

system is working against these women and children. It's really hard to pinpoint them all.

Cesar Ruiz: How would you say that affected you—kind of like the work you did, and meeting the goals that your client sets out?

Joanna Lopez: You have to be super flexible [*laughter*]. Just being aware of what their experiences are, and like, the burdens that they have already, and doing really any little thing you can to help alleviate those burdens. Often times, these rooms, again, are cold. But there were enough chairs to where I would try to build a bed for their children to sleep on so that their mothers don't have to necessarily hold them during the entire process. And that also provides an opportunity for them to sleep and for their mothers to actually be able to speak with us and feel a little bit more comfortable, and knowing that you are doing the best you can and working with the resources that you have. One really good thing is that we had each other, and we were a delegation. Often times things are moving at such a rapid pace that you need something quickly, and all you do is shout out, "I need this and this," and someone immediately is like, "Oh, I can jump [in] if you need to do something else," or, "I can help you do this." It really is a group effort. And I know that they do have volunteers that come in often, but it's really nice to go there with people you already know have your back and are willing to help. And everyone really is just at the ready, waiting for directions, or for someone to delegate something. There was never an instance where one of us was not willing to help or not flexible with their time, even when we were at capacity.

Jacklyn Mann: One of the other major obstacles was that there's no written policy or apparent transparency about how much notice someone should get before their credible fear interview.⁴¹ So you have some clients who will come in and they'll say, "Oh, I've been here for two or three days. I've gotten acclimated and now I have this notice saying I'm going to have my interview in 48 hours." And that's totally doable, but then other times you have women who come in and say, "I got here two days ago. I was waiting at the medical clinic overnight and I didn't sleep, and now I got this notice that I have an interview in an hour." And so we were just scrambling for those cases. They used to be more flexible with rescheduling interviews for reasons like that, but at the time that we were there, you really needed to demonstrate some extraordinary circumstance

⁴¹ Cf. 8 C.F.R. § 208.30(d) (2019) (explaining the duties of an asylum officer at the time of the credible fear interview, but not providing information as to what notice is required for the asylum seeker).

in order to have your interview rescheduled.⁴² And so the result of that is you're having this crammed session with the client, hope that they're ready, and being aware that, like Jo said, everyone pulls together and tries to make it happen. So, while you're having this crammed session with that client, someone else is sending an email asking the asylum officer to reschedule the interview. But you're also preparing for that request to be denied, so then you have to keep working as if the interview is going to happen, and also flag that client for a potential denial and appeal that may come up. So I think that made the work really complicated because that happened on a daily basis. I think we all experienced that in some capacity at one point or another.

Joanna Lopez: I think that everyone had a very, very particular role in really just ensuring that things were as difficult or impossible as they could be for us while we were there. In terms of the CoreCivic guards and the ICE officers that were there, they just go around and intimidate the women. And there were a few instances where children are running around being children, and they're in a really small space, and they're trying to keep themselves entertained. And in running around, they're going to fall, and they're going to hurt themselves, and they're going to cry. And instead of, you know, offering them their hand to help them a bit, they're screaming at them and yelling at their moms and saying, "You need to contain your kids," and speaking to children in a way where you're not acknowledging them, one, as children, and two, as humans. And very jarring to see that these guards were also people of color, knowing that they are very similar in family structures and lifestyles and culture. To see them really not look at them as, like, people—really just as humans—and watching that treatment and being really surprised that people can really flip a switch within themselves and consider it work. And consider it, "This is how I make my living," and, "I need to do my job," you know, "It's Dilley, Texas! It's such a small space, a small area, and there's only so many jobs and this provides for me and my family," but not being aware that in that process, you're really demeaning and demoralizing other family structures that are within that detention center.

Jacklyn Mann: So the key actors here are the CoreCivic guards and the CoreCivic Corporation, which is—most people probably know—a

⁴² C.F.R. § 208.30(d)(1) (2019); *see also* *Hernandez-Segovia v. Barr*, 763 F. App'x 613, 615 (9th Cir. 2019) (stating that a credible fear interview may be rescheduled for the purpose of obtaining an attorney or consultant); *Osorio v. Immigration & Naturalization Serv.*, 99 F.3d 928, 930 (9th Cir. 1996) (noting that an immigration examiner routinely rescheduled interviews when an interpreter was required).

for-profit prison corporation that was formerly Corrections Corporation of America.⁴³ They changed their name recently because of all of the, you know, scandals and public outcry against this for-profit prison corporation.⁴⁴ So when you're there, you're working with these guards that are within this company that have privately contracted with the government, and CoreCivic and GEO Group are the two main ones.⁴⁵ GEO Group also runs the women and children detention center in Karnes, Texas, which is not too far away.⁴⁶ And they've just got a monopoly over private prisons and the complex in the United States as a whole.⁴⁷ They don't exclusively run immigration detention centers. They run jails and prisons for those with criminal convictions as well or those awaiting trial—and they lobby like hell.⁴⁸ They donate a lot of money to political campaigns for high-level officials and lower officials, and these contracts have been under intense scrutiny for a long time and a lot of that information is very publicly available.⁴⁹ And I think one of the cool things about the movement lawyering and just community organizing as a whole is that those groups are largely to thank for a lot of the scrutiny and data that we have today about these corporations. And so hopefully, that continues. I think, with the family separation policy, there was a lot of pushback and examination

⁴³ Devlin Barrett, *Private-Prison Firm CCA to Rename Itself CoreCivic*, WALL ST. J. (Oct. 28, 2016, 11:00 AM), <https://perma.cc/4MPP-Y3E7>; *Corrections Corporation of America Rebrands as CoreCivic*, CORECIVIC (Oct. 28, 2016, 12:53 PM), <https://perma.cc/BXB5-4HMU>; see also Garbus, *supra* note 39.

⁴⁴ Barrett, *supra* note 43; see HOLLY KIRBY ET AL., *THE DIRTY THIRTY: NOTHING TO CELEBRATE ABOUT 30 YEARS OF CORRECTIONS CORPORATION OF AMERICA* (2013), <https://perma.cc/YL2W-DLU3> (describing the scandals and incidents that have occurred under CCA 30 years after its founding).

⁴⁵ *CoreCivic Inc.*, AM. FRIENDS SERV. COMMITTEE, <https://perma.cc/9SRE-BFAJ> (last updated July 19, 2019); *The GEO Group Inc.*, AM. FRIENDS SERV. COMMITTEE, <https://perma.cc/726Q-C2Q4> (last updated July 24, 2019).

⁴⁶ *Karnes County Family Residential Center*, GEO GROUP, <https://perma.cc/7L6U-ZMXA> (last visited Feb. 20, 2020); see also Maria Sacchetti, *ICE to Resume Detaining Migrant Families at South Texas Facility*, TEX. TRIB. (Sept. 22, 2019, 10:00 AM), <https://perma.cc/2YQ4-MNG5>.

⁴⁷ Christopher Petrella, *Private Prison Monopolies*, PRISON LEGAL NEWS (Oct. 15, 2012), <https://perma.cc/R686-YFDX>; see also Ron Knox, *Monopolies, Trump, the Border, and Fascism*, AM. PROSPECT (July 18, 2019), <https://perma.cc/5HBL-E2RU>.

⁴⁸ Michael Cohen, *How For-Profit Prisons Have Become the Biggest Lobby No One Is Talking About*, WASH. POST (Apr. 28, 2015, 6:00 AM), <https://perma.cc/ATP2-9EA5>; see also Steve Horn, *Private Prison Firms Use Revolving Door Lobbying, Generous Campaign Donations*, PRISON LEGAL NEWS (Aug. 6, 2018), <https://perma.cc/RPN2-QX62>.

⁴⁹ See, e.g., *CoreCivic Inc.*, CTR. FOR RESPONSIVE POL., <https://perma.cc/QX48-F2JY> (last visited Feb. 20, 2020); *GEO Group*, CTR. FOR RESPONSIVE POL., <https://perma.cc/VCR3-A778> (last visited Feb. 20, 2020).

of what was going on at detention centers.⁵⁰ But these things like—as the headlines fade into a different topic or a new scandal or a new tweet, you know, people lose interest. And I think it’s really important that we keep going back to Dilley and that everyone who’s been doing the work continues to do that work and really keep an eye on them because they’ve gotten away with so much and covered up so much, and they think that if they just change their name and open a new facility in rural Texas, no one’s watching. But I think we can show them that they’re wrong.

Reena Novotnak: You’ve been listening to part one of two of the second episode of Footnote Forum. I’m Reena Novotnak, editor, host, and theme music composer. Thanks to staffers Rachna Agarwal, Sarah Bradford, Sarah Badillo, Nicole de los Santos, Danielle Leake, Dan Moczula, Rachel Goldman, Cesar Ruiz, Maya Kouassi, Ariel Federow, Shezza Ab-boushi Dallah, and Andrew Miller. Thanks also to our Editor-in-Chief, Audrey Juarez, and the rest of the managing editorial board. Special thanks to Joanna Lopez and Jacklyn Mann for sharing their story with us. Catch us next time for the second half, where we will continue to discuss the challenges of lawyering in an immigration detention center.

Until next time, I’ll leave you with a quote from a famous Supreme Court decision. As a reminder to everyone to complete the 2020 census, our quote comes from *Department of Commerce v. New York*, which struck down the Trump administration’s proposed citizenship question.⁵¹ Justice Breyer felt that the decision didn’t go far enough: the citizenship question wasn’t just a pretextual way to achieve the administration’s ends, it was an abuse of discretion. He wrote in separate opinion:

There is no serious dispute that adding a citizenship question would diminish the accuracy of the enumeration of the population—the sole constitutional function of the census and a task of great practical importance In short, the Secretary’s . . . citizenship question created a severe risk of harmful consequences, yet he did not adequately consider whether the question was necessary or whether it was an appropriate means of achieving his stated goal These failures, in my view, risked undermining

⁵⁰ See *USA: Govt. Contractors Accused of Profiting from Separation & Detention of Migrant & Asylum Seeking Families*, BUS. & HUM. RTS. RESOURCE CTR., <https://perma.cc/M5HG-Y6JU> (last updated July 13, 2019).

⁵¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

public confidence in the integrity of our democratic system itself.⁵²

⁵² *Id.* at 2584 (2019) (Breyer, J., concurring in part and dissenting in part).

INTERVIEW WITH DILLEY DELEGATION STAFF

PART II

Reena Novotnak: You're listening to Footnote Forum, a production of the law review at City University of New York School of Law. I'm your editor and host, Reena Novotnak, and I'm joined by our guests, two CUNY Law students.

Joanna Lopez: My name is Jo Lopez. I'm a 3L in the full-time program.

Jacklyn Mann: Hi everyone, I'm Jackie Mann. I'm also a 3L here.

Reena Novotnak: This year on the podcast, we focused on the Freedom of Information Act and Freedom of Information Law, or FOIA and FOIL. Jo and Jackie joined us to talk about their experience with the Dilley Delegation and the challenges and lack of transparency they faced when preparing their clients for asylum hearings. Right now, you're listening to part two of this interview. In this episode, you'll also hear the voices of three law review staffers: Maya Kouassi, Cesar Ruiz, and Rachel Goldman. Just a quick warning: this episode contains discussion of child sexual abuse. Maya has the first question.

Maya Kouassi: Could you speak to your role in terms of the infrastructure that was in place as you were preparing your clients for the interviews; what was your role as their attorney?

Joanna Lopez: So, from the beginning, we were very clear that we were not attorneys and that we were there as volunteers for the week, letting them know what the Dilley Pro Bono Project was, what their presence is like. What they do is, every day, you have a group of women who come and are waiting for a *charla*, which is an orientation on what we will be doing with them during our individual meetings. So, they go through the *charla*. We have one volunteer who does a *charla* with them, and then afterwards there is a booklet that has everyone's name on there and what we do as volunteers. You call them up one by one, and we are in just one huge room with smaller individual meeting rooms. It's not enough. Some of us, if there isn't any space to have a private meeting where you are talking about these really, really traumatic experiences, you sit within that big room and try to sit as far away as possible from other people. Once you call their name, you try to find a private meeting space, and you kind of give them a quick overview of the asylum process and really what the

asylum officer is looking for. Like Jackie mentioned, all you want to do is provide that one small piece that's enough to sway an asylum officer to give them that positive finding so that they can move forward in the asylum process and get out of detention.⁵³ Ideally, you want to be able to spend hours and hours and hours, because, really, what you're trying to do is gather their entire experience in a small amount of time. That's a really, really frustrating thing to do. You are speaking at a fast pace, and you're telling them, "These are the points that we're trying to hit because these are the specific points that the asylum officer is going to hit when you're going through in this interview," really trying to fit in the specific shapes of what they want, and molding and creating their experience into a narrative that really touches upon those points. It's really difficult because they have their children there with them. Oftentimes they have young ones, and while they're trying to tell you their experiences, they're also taking care of their children with them. So in terms of the infrastructure, it's a very, very fast-paced thing that we have to do. Ideally, we want to spend an hour and a half. There were a few instances where, because they didn't receive adequate notice, we were helping them prepare in ten minutes, trying to say—really just laying out in a minute flat: "This is what they're going to be asking; this is what they're looking for. Think of your entire life experience and try to give them really quick and direct answers that touch upon those points, because all you need to do is have one piece of information that's going to sway them to provide you with a positive finding, because this isn't the end-all. All you need is to get your foot in the door to continue with the process." So, infrastructure-wise, it's a very fast-paced setting and a very small area, and we only had access to that one trailer. We had no access to any other part of the detention center. So, for many of us, we only saw that area—the security trailer when we're coming in. A few of us got an opportunity to actually see what the court looked like there, but, really, those were the three areas which we worked out of.

Maya Kouassi: Was there any space to follow up—after they had their credible fear interviews—with any of these clients?

Joanna Lopez: Very limited! [*Laughter*] Personally, I would tell them, "After your credible fear interview, if there's something that you need to bring up or follow up [on], just come back to the trailer." But that's not always guaranteed—to them or to us. So, after your preparation,

⁵³ See generally 8 C.F.R. § 208.13(b) (2019) (requiring an applicant to have either suffered past persecution or have a well-founded fear of future persecution in order to be eligible to qualify as a refugee).

you kind of have to live with the idea that you might not see them again, but [you let] them know, “If you’re allowed—if they let you back in—this is my name; ask for me.” And then you make the time. I don’t think that this was something that we were told we could necessarily do or not do, but [*laughter*] we’re trying to work within the confines of the Dilley Pro Bono Project and know that there’s limited time, limited space, and a lot of women and children who are also trying to go through that preparation process. So, you fit it in where you can and hope for the best, really.

Cesar Ruiz: I’m curious why both of you personally decided to go to Dilley and be a part of the Dilley Delegation?

Joanna Lopez: Okay, I guess I’ll start [*laughter*]. So, I am a born-and-raised Arizonan. I definitely grew up on the border; I have family on both sides of Novalis. And for me, really, with the work that I want to do, I think that it’s absolutely crucial to see what happens on the ground at the border—on both sides of the border—to see the human rights issues that we’re not addressing on either side. And while I was in law school, I really wanted an opportunity to be able to do this kind of work and to think about, “What am I learning in a classroom, and how can I apply it to real life?” I think that for anyone who is interested in doing immigration work, it has to be a part of your reality, because it really shapes and navigates the way that you move forward as an attorney—as an immigration attorney, as an advocate—to be able to see this in person and not just in photos, in the media, on the internet. Because that is also another way in which we become desensitized to what is actually happening, who it’s actually affecting. And seeing it for yourself really grounds you in the work that you want to do. So, for me, I didn’t want my first experience doing this work [to be] when I became an attorney. And as someone who wants to work primarily with children, specifically unaccompanied minors, I think that when we think about family separation—yes, we are thinking about the children, but they’re also their own people; they also have a lot of autonomy. And there is still a lack of transparency as to how children are being shuffled through these systems and being separated from their families and having to deal with such complex immigration cases and issues really on their own.

Jacklyn Mann: I guess I would say I first got involved in this type of work in college, mostly due to a serendipitous accident: budget cuts [*laughter*]—like the recession. The school cut my work-study program, and it ended up working out really well because they placed me in an off-site, off-campus work-study program where you could work at a nonprofit and they would supplement your hourly wages. They asked me what I had

an interest in, and I'd had a very diverse group of friends in high school who all had different immigration statuses and family in different parts of the world. Something that was always apparent in our group was, like, who had what rights and privileges and who could go get a driver's license. This was 2009, when we graduated high school, so before DACA.⁵⁴ And so when I went to college, I wanted to study Spanish and sociology with a focus on immigration. My first sort of exposure to this work was working at the refugee resettlement agency as a work-study employee in college. I just got totally hooked on it: I loved the people that I worked with, their mindset in working with clients, and just getting to speak to people from different parts of the world and with different experiences every day. After college, I joined AmeriCorps. I went to Austin, Texas, where I worked at a shelter for immigrants and asylum seekers who've recently been released from detention. So, that was also my first exposure to immigrant detention, which I didn't know that much about before graduating from college. From there, I worked at another agency working with survivors of domestic violence, sexual assault, and human trafficking. As you can imagine, a lot of our clients that we were advocating for were women of color, immigrant women. After that, I worked as a paralegal for an immigration law firm. At the firm, we were able to be part of this pro bono project where we would train attorneys in the Central Texas area to go volunteer at these detention centers. And so, when I started law school, I really missed that, and I felt like, you know, your head is just in the books all the time, and you don't forget why you're here, because you know why you got here and what you're going to do when you leave, but, [you're] just really looking for a way to go get back to that work and, you know, roll up your sleeves and work with detained individuals. Some of us had been volunteering at the detention center, which is a county-run facility—it's not a for-profit facility—in Pennsylvania. When this opportunity came up to go back to Texas and work closer to the border, it was just like, of course, count me in.

Rachel Goldman: What do you want people to know about your experience, and would you recommend it to other students?

Joanna Lopez: I think that for this experience, this is something that anyone who is interested in doing immigration work should really try to get involved with. I would preface it with: I knew that it was going to be a very, very difficult experience. But I didn't know how physically and

⁵⁴ Memorandum from Janet Napolitano, Sec'y of Homeland Sec. to David V. Aguilar, Acting Comm'r, U.S. Customs & Border Prot., et al. (June 15, 2012), <https://perma.cc/6DCP-RXLD> (regarding the implementation of Deferred Action for Childhood Arrivals (DACA)).

emotionally draining it was going to be. Even if you have had previous immigration experience, I think that this is a whole other world—a whole other experience for folks. Again, I'm going to say that I'm really, really glad that I went with my co-delegates because some of us knew each other, some of us had done work previously, but there was a level of community that I think was very necessary and crucial. Being there, you're very isolated from people—very isolated from everything. So, knowing that you have solidarity and support from your colleagues was very important in my self-care. It was really nice to unwind after a long day and sit by the pool and just, you know, talk about how we're feeling and debrief, and it's nice to know that other people also cared about each other's well-being. I think that it's very important to speak Spanish or at least have some level of understanding because, again, it's a very fast-paced environment. And what I wouldn't want is to ever be a disservice to anyone. And we made it work—we had a few non-Spanish speakers, and we teamed up and paired up. But I think with the way that things are going now, depending on when you go, it could be much more difficult to be able to work within those structures. I would recommend it to anyone who really has a desire to help people. It doesn't necessarily have to be immigration, but if you really think that the atrocities that are happening at the border need to be addressed and highlighted, and doing that in whatever way you can, I think [it] is absolutely crucial. I know that there were some delegates who had never done immigration work before. And if you haven't, don't let that stop you from wanting to do this work because, really, being a volunteer there for a week just as a single person, you help so many people. You can imagine, when you go with a delegation, the amount of women and children that you're seeing, that you're helping. And the Dilley Pro Bono Project really needs volunteers, and it's such a crucial component to the work that they do. Don't let the media influence when it is and isn't needed. It's always needed. And I think that's a really huge thing that I would like to highlight: this has been happening before family separation. People have been in detention for a really, really long time, and it's only when it's addressed through the media and you see—it's really unfortunate that you have to see—videos of abuse or videos of people dying for people to think, “Oh, well my services or my help is needed.” As long as we continue to have detention centers around the nation, we should be able to provide these services in any way that we can, and really what they need is people power.

Rachel Goldman: Thank you for that. What kind of training did you have, and what kind of training do you think people should have when they go and do this?

Jacklyn Mann: So, we didn't have much formal training before we left at all. Some folks obviously came in with their own training from other internships or work experience prior to law school. But the training that we got was one event here at CUNY in the spring. After that, the training was provided by the Dilley Pro Bono Project itself. So, volunteers typically go down there. We were supervised by two attorneys: one current professor, Talia Peleg,⁵⁵ who is in the Immigrant and Non-Citizen Rights Clinic,⁵⁶ and recently-retired professor Susan Markus,⁵⁷ who some of us had the pleasure of having in 1L for Law Sem.⁵⁸ So, we were getting a lot of feedback from both of our professors and brainstorming and sharing ideas and teaching each other as we went along.

Rachel Goldman: I was wondering if you could speak to whether the rules and criteria were clear to you and your clients, and if there were any areas of confusion.

Jacklyn Mann: I think that the rules around conduct inside the facility were unclear—hot and cold—but also very clear when it was chosen to be enforced. Jo has already talked about guards scolding mothers and children and not really being empathetic or considerate or kind. And I think the criteria—we tried to make it as clear as possible, as far as the criteria for asylum and what to expect in the credible fear interview, but, you know, we know that trauma has an effect on the way that folks are able to retain information [and] remember the events surrounding the trauma clearly. So, you know, there's only so much that you can do. You absolutely give every case 110 percent. But it's very daunting to be before the asylum officer—even though they're not a judge, they're not a law enforcement official. But I think there's a lot of confusion around that, in general. After everything that an asylum seeker has gone through—you know, passing through multiple countries and being processed by border patrol and then handed off to ICE and put on the bus and sent to the detention center where we're saying, "No, we're volunteers, but we're not

⁵⁵ Talia Peleg, CUNY SCHOOL OF LAW, <https://perma.cc/PZ3J-CX3W> (last visited Mar. 12, 2020).

⁵⁶ Immigrant & Non-Citizen Rights Clinic, CUNY SCHOOL OF LAW, <https://perma.cc/S74S-LBPD> (last visited May 10, 2020).

⁵⁷ See @CunyLawDilleyDelegation, INSTAGRAM (Aug. 21, 2019), <https://perma.cc/KN2U-PEUH>.

⁵⁸ See generally *The Lawyering Curriculum*, CUNY SCHOOL OF LAW, <https://perma.cc/7Z56-2UEH> (last visited Mar. 12, 2020) ("First-Year Lawyering Seminar teaches legal reasoning, professional responsibility, legal writing, and other lawyering skills by integrating clinical methodology with substantive, theoretical, and doctrinal material. Using simulation exercises and hypothetical cases, students role-play lawyers, clients, judges, or legislators confronted by legal issues arising from material in their other first-year courses.").

attorneys,” and then other actors are saying, “I’m not ICE; I’m a private prison guard,” and it’s like—who do you trust? Who’s really trying to help you? So, I think in the credible fear interview—no matter how clear the *charla* or the prep has made the process—it’s still very daunting and intimidating.

Joanna Lopez: And I think that the only confusion for a lot of us was when and how these women were receiving their interview notices. That was never really made clear to any of us. Like Jackie mentioned, some of them were there for a few days and then would receive an interview notice which would give them adequate time to be able to prepare. And so, for some women who hadn’t received their interview notice—and they’re asking us, and we would say, “Have you looked in your room? Have you asked any of the fellow women in your area when they received theirs?” Some were coming in with 10-to-15, 20 minutes before they had their interview, so they never saw a notice at all. Even then, it was still very unclear how to get to their interview, where it’s located, and I had a few women ask, “Can you go with me?” Or, “can you take me?” And again, we weren’t allowed outside of our specific trailer. So, in terms of confusion, I think [confusion was generated by] just the interview notice itself. You know, I never saw one—I don’t know if Jackie or anyone else saw an interview notice. It was really difficult to have this golden ticket for them that really would be their way out and no one having an understanding of what it looked like, when they should receive it, and how soon they should be receiving it. There was no transparency. I think it was also hard for me to determine who was a CoreCivic guard [versus] who was an ICE officer. I pretty much blurred everyone together as one anti-immigrant individual, and I stayed as far away as possible. I don’t think that there was any accountability with them. It was very much, “You do as we say, you follow our rules, or we’ll revoke privilege; we’ll ban you forever,” which is something that we were told, so we had to be very careful in how we navigated our day by day—how we navigated our conversations and movement with each other.

Reena Novotnak: You were saying it was hard for you to tell the difference between CoreCivic people and ICE guards. What were they wearing that makes you know they were a guard?

Joanna Lopez: They all looked the same to me. They all carried themselves in a manner that is exerting this power that they have over women and children. You see what they’re wearing in comparison to what these women and children are wearing, and they’re wearing very specific

color-coded clothing.⁵⁹ Just the manner in which they carry themselves. For me, personally, coming in every morning, I wasn't saying, "Good morning," I wasn't saying, "Hello," I wasn't making eye contact. I'm giving them my ID, going through the sensor, doing what I need to do to get into that trailer to speak with the people that I want to speak with, and really avoiding them at all costs. Not once did I have a conversation with any of them. My level of communication as to who they were, why they were there, and what they were doing was communicating with the on-the-ground staff of the Dilley Pro Bono Project. They have to have some sense of a working relationship with them because they know that they're there every day, 365 days of the year. So, it was easy for me to remove myself, knowing that I would be there for a week. Whereas with them, they know that they have to maintain some level of respect and courtesy so that they're able to do the work that they need to do.

Reena Novotnak: Do you think FOIA is useful when you're dealing in that kind of short-term advocacy?

Joanna Lopez: That would be hard.

Jacklyn Mann: Yeah, I would say probably not. When you're doing FOIAs for individual cases—say you're trying to get the records of someone who may have had a removal order *in absentia* when they were a child and they're not sure—that can take months, just to get the record for that one individual.⁶⁰ So, I don't know that it could have been done in the time that we were there. If we could have FOIA-ed some things that would have shined a light on some of the policies for the next week, given how quickly things change, I think it definitely could have been useful—although I don't know. I think the government tends to drag its feet when they know that you're looking for something [*laughter*].

Joanna Lopez: There's such a lack of transparency altogether in the immigration context. It would be particularly useful to know more about detention centers. We have an idea of how they work and the ins and outs of how they work and what's going on, but until you're actually doing

⁵⁹ See U.S. IMMIGRATION & CUSTOMS ENF'T, ICE/DRO DETENTION STANDARD: CLASSIFICATION SYSTEM 3 (2008), <https://perma.cc/79S5-7J6R> (“[U]pon completion of the classification process, staff shall assign individual detainee’s color-coded uniforms and wristbands as follows: Dark Red Level 3 (Highest Security) Bright Orange Level 2 (Medium) Dark Blue Level 1 (Lowest”).

⁶⁰ See Press Release, Am. Immigration Council, Judge Grants Class-Action Status to Thousands of Immigrants Waiting for Access to Their Immigration Records (Oct. 15, 2019), <https://perma.cc/Z7M7-P5RH>.

that on-the-ground work like what the Dilley Pro Bono Project is, it's still kind of far off. We know it's there, and we know these things are happening. You don't necessarily have all of that information, so I think that being able to obtain that information is crucial, but—

Jacklyn Mann: I think there's a lack of transparency about medical care; there's lack of transparency around certain contracts. I believe over the summer there was the boycott of Wayfair, the furniture company, that was going to sell furniture to the detention centers,⁶¹ and they said, "Oh, we didn't know about it!" But I think we need to be looking at that stuff all the time, and if we can have more transparency as to who they're contracting with—what businesses are selling clothing and furniture and medicine—we could push back. And those efforts have been really successful in the past. When I was working at the shelter in Central Texas, there were concerns and talks about FOIA-ing the bond amounts that are set by country of origin. There was a rumor [for there] to have been—as informs all judicial decisions—racism behind when judges were granting bond and how much, based on the race and national origin of the asylum seeker. While we were there, for context, about 98% of women who went into a credible fear interview received a positive determination and were able to be released. Now, because of the metering program or the "Remain in Mexico" program,⁶² we've been told from the attorneys on the ground that the success rate is only about 50% because you have these additional criteria that you have to show: you asked for asylum in the countries that you traveled through before you got here.⁶³ There's a lack of transparency as a whole around that new policy and how it's being implemented across the board. It supposedly went into effect before we went to Dilley, but while we were there, we weren't seeing the effect of it, and now we are. So, why is that? And is it being applied evenly across the border? At the time that we were in Dilley, it was being applied to folks coming through ports of entry or asking for asylum at ports of entry. But if the person had

⁶¹ See Sapna Maheshwari & Emily Flitter, *As Wayfair Workers Protest Migrant Detention, the Specter of a Consumer Boycott Rises*, N.Y. TIMES (June 26, 2019), <https://perma.cc/L4LZ-RW38>.

⁶² See generally HUMAN RIGHTS WATCH, *Q&A: Trump Administration's "Remain in Mexico" Program* (Jan. 29, 2020, 10:00 AM), <https://perma.cc/G84T-RAHD>.

⁶³ See *How the Trump Administration Is Eliminating Asylum in the U.S.*, INT'L RESCUE COMMITTEE (Feb. 4, 2020), <https://perma.cc/3JFJ-5GFX> ("The administration tried again in July 2019 by issuing a policy banning people from seeking asylum if they traveled through any other country and did not apply for asylum in that country first. With limited exceptions, this applies to all asylum seekers who have traveled through Mexico to reach the U.S.-Mexico border and not sought protection in Mexico or another country."); Gustavo Solis, *Asylum Grant Rates Under Remain in Mexico Are Far Below Historic Average*, SAN DIEGO UNION-TRIB. (Dec. 26, 2019, 2:15 PM), <https://perma.cc/8U2V-V8LW>.

managed to get across the border without being apprehended by border patrol until they had gotten a little further into the interior, it wasn't being applied. So why is the policy being applied differently depending on how you are apprehended? I think FOIA is a really useful tool for the impact litigation, of course. Right now, AILA—American Immigration Lawyers Association—has filed a FOIA for the new policy, which there's also a horrific lack of transparency around:⁶⁴ customs and border patrol officers conducting asylum interviews that had previously been the exclusive role of an asylum officer who has training in secondary trauma and interviewing victims of trauma. So, that's definitely very alarming. We don't know if that's being implemented at Dilley right now. These are just areas where the administrative law governs the majority of what happens in the realm of immigration, and I think there's been a lack of transparency over this administration as a whole.

Jacklyn Mann: I think in the late '90s, early 2000s, the Vera Institute had a pilot program around alternatives to detention.⁶⁵ More recently, in 2013, the Obama administration had an alternatives-to-detention pilot project in various cities throughout the United States.⁶⁶ The trade-off with the pilot project was that the government would agree to release asylum seekers to certain designated organizations that would, in turn, provide legal services, case management, connection to housing, and ensure that the asylum seeker would go to all of their ICE check-ins, possibly wear an ankle monitor, and ensure their appearance at all future immigration

⁶⁴ FOIA Request from Emily Creighton, Am. Immigration Council, et al., to Senior Dir. of FOIA Operations, U.S. Dep't of Homeland Sec. (Dec. 21, 2019), <https://perma.cc/4VV2-GD77> (“The FOIA is intended to ensure the public has timely access to information regarding governmental operations. This objective is particularly heightened regarding MPP – a program implemented without transparency that directly impacts the lives of thousands of asylum-seekers every day.”).

⁶⁵ See Kica Matos, *Immigration and Justice*, VERA INST. OF JUSTICE, <https://perma.cc/2MQK-P7XP> (last visited Feb. 27, 2020) (“In the late 1990s, Vera designed, operated, and evaluated the Appearance Assistance Program (AAP) in partnership with the Immigration and Naturalization Service. The AAP sought to reduce the government’s use of detention and ensure that people placed in this alternative to detention complied with the immigration court and deportation processes.”); see also EILEEN SULLIVAN ET AL., VERA INST. OF JUSTICE, TESTING COMMUNITY SUPERVISION FOR THE INS: AN EVALUATION OF THE APPEARANCE ASSISTANCE PROGRAM (2000), <https://perma.cc/7TMW-9N92>.

⁶⁶ See U.S. IMMIGRATION & CUSTOMS ENF'T, STAKEHOLDER REFERRALS TO THE ICE/ERO FAMILY CASE MANAGEMENT PROGRAM (Jan. 8, 2016), <https://perma.cc/82GU-ZYJP> (announcing the Obama-era Family Case Management Program (FCMP) as an alternative to detention (ATD) in five cities).

proceedings.⁶⁷ The shelter where I was working as an AmeriCorps volunteer in 2013 during the pilot project was called Casa Marianella.⁶⁸ It's a shelter on the east side of Austin, non-profit, and the pilot project was nearly 100% successful at our shelter. At others, I can't speak for those, but that pilot project was cancelled by the Obama administration⁶⁹ without justification or explanation to the public as to why that pilot program was being cancelled. And so, given that those detention centers were closed under the Bush administration, reopened by the Obama administration, pilot programs established, and then those were cancelled as well,⁷⁰ the reason why we are where we are today with family detention is a result of this change of administration, change of policy. You never know what's going to happen. The only reason that I can see that the Obama administration would have cancelled the pilot program is because detaining immigrants is so lucrative, and there's so much lobbying that goes on.⁷¹ And so, I think if the public knew on a larger scale how successful that program was—and even its existence in the first place—I think people would be outraged and they'd demand to know why. And I think if we could put that at the forefront of the argument, we could argue that perhaps there was an APA [Administrative Procedure Act] violation [in] cancelling the project, and that needs to be spoken for.

Reena Novotnak: I think a lot of people have the sense that immigration policy has gotten crueler, worse under the Trump administration. But, obviously, Obama was called the “Deporter-in-Chief.”⁷² And as people

⁶⁷ See WOMEN'S REFUGEE COMM'N, THE FAMILY CASE MANAGEMENT PROGRAM: WHY CASE MANAGEMENT CAN AND MUST BE PART OF THE US APPROACH TO IMMIGRATION 4-10 (2019), <https://perma.cc/P2G8-G7VD>.

⁶⁸ *About Us*, CASA MARIANELLA, <https://perma.cc/4EET-EHUL> (last visited May 10, 2020).

⁶⁹ Aria Bendix, *ICE Shuts Down Program for Asylum-Seekers*, ATLANTIC (June 9, 2017), <https://perma.cc/XCC5-5FR7>.

⁷⁰ *Id.*; Forrest Wilder, *How We Got Here: The Disturbing Path that Leads to Child Prison Camps*, TEX. OBSERVER (June 13, 2018, 6:57 PM), <https://perma.cc/3YK2-3LWD>.

⁷¹ See, e.g., Manny Fernandez & Katie Benner, *The Billion-Dollar Business of Operating Shelters for Migrant Children*, N.Y. TIMES (June 21, 2018), <https://perma.cc/4HNR-YDSD> (“For years, including during the Obama administration, [migrant shelter] contractors housed children who were caught illegally crossing the border unaccompanied by a parent or guardian . . . The shelters’ rush to house, and cash in on, the surge of children has made them a new target for Democrats, immigrant advocates and a vocal chorus of local, state and federal officials and community leaders.”); Clyde Haberman, *For Private Prisons, Detaining Immigrants is Big Business*, N.Y. TIMES (Oct. 1, 2018), <https://perma.cc/PU6B-RUMH> (“Core-Civic . . . became a leader in what is now a roughly \$4-billion-a-year American industry: for-profit prisons, privately owned and operated.”).

⁷² Muzaffar Chishti et al., *The Obama Record on Deportations: Deporter in Chief or Not?*, MIGRATION POL’Y INST.: MIGRATION INFO. SOURCE (Jan. 26, 2017), <https://perma.cc/MWZ9-UNKZ>.

who have worked in immigration from before law school, how do you get the sense that policy has shifted, or has it?

Joanna Lopez: I don't think a new administration—or, you know, under the Trump administration—it's gotten worse, but it's always been bad.⁷³ I just think that we're able to see it through rose-colored glasses because we had, you know, Obama as president, our first Black president. For those of us who had some experience during the Obama administration working in immigration and working in detention centers, we know that it wasn't great, and we know that children were subjected, and are still being subjected, to the same kinds of harm that they were then.⁷⁴ These policies have been in place for quite a long time. It's just that we're starting to see really horrific images played out in the media.⁷⁵ It's being used as a tactic by both ends to try to reach the respective means. Before law school, I worked primarily with unaccompanied minors, and something that was really, I guess, jarring for me was to see so many of these detention centers that are called *auberges*—or shelters for children—being obscured in plain view.⁷⁶ They're in our neighborhoods.⁷⁷ People have this really naïve understanding of how they're run and what they actually

⁷³ See Serena Marshall, *Obama Has Deported More People than Any Other President*, ABC NEWS (Aug. 29, 2016, 2:05 PM), <https://perma.cc/36AA-747S> (citing more than 2.5 million individuals deported under Obama administration between 2009 and 2015); see also Zack Budryk, *Deportations Lower Under Trump Administration than Obama: Report*, HILL (Nov. 18, 2019, 11:25 AM), <https://perma.cc/9BQ4-NRJX> (“The Trump administration has deported fewer overall people than were deported under former President Obama despite the ongoing crackdown on immigrants without legal status While the Obama administration deported 1.18 million people in his first three years, the number of deportations has been a little under 800,000 so far under Trump . . .”).

⁷⁴ See Molly Hennessy-Fiske & Cindy Carcamo, *Overcrowded, Unsanitary Conditions Seen at Immigrant Detention Centers*, L.A. TIMES (June 18, 2014, 7:24 PM) (describing conditions of immigrant detention centers under the Obama administration) <https://perma.cc/8CKQ-6XXK>; Jason Lemon, *Are Migrant Detention Centers Worse Under Donald Trump than Under Barack Obama?*, NEWSWEEK (July 2, 2019, 1:41 PM), <https://perma.cc/F4Q8-4BJH> (comparing descriptions of conditions in detention centers under Obama to conditions under Trump); see also Suzanne Gamboa, *From Bad to ‘Sheer Inhumanity’: Detention Conditions for Migrants Worse Under Trump, Advocates Say*, NBC NEWS (July 2, 2019, 5:40 PM) <https://perma.cc/D5MJ-C25A>; Julie M. Linton et al., AAP Council on Cmty. Pediatrics, *Detention of Immigrant Children*, 139 PEDIATRICS 1, Apr. 2017, at 4, <https://perma.cc/23F4-MW3T>.

⁷⁵ E.g., Bill Chappell, *A Father and Daughter Who Drowned at the Border Put Attention on Immigration*, NPR (June 26, 2019, 12:12 PM), <https://perma.cc/WVP8-YUAM>.

⁷⁶ See Aura Bogado, *Here's a Map of Shelters Where Immigrant Children Have Been Housed*, REVEAL (June 26, 2018), <https://perma.cc/QC8C-H4U2>; Decca Muldowney & Adriana Gallardo, *About the Immigrant Children Shelter Map*, PROPUBLICA (June 27, 2018, 12:00 PM), <https://perma.cc/HFA4-D4N5>.

⁷⁷ See sources cited *supra* notes 26, 27.

do, and you think, you know, “Well, these children are coming here on their own without their family members, their parents, and they’re being taken care of here in the United States,” and, you know, “We’re clothing them, we’re feeding them, we’re giving them an education, and how is it that their parents are sending them and having them go through these journeys on their own?” We make these assumptions about families and children and people and what they go through and what their reasons are for coming here. And I think that the structure of detention centers is different everywhere in the nation for a reason. I think that it’s to be able to not hold people, organizations, [or] money accountable. For those of us who had immigration experience—or who have not had experience but are living in these areas where these detention centers are being held—we know they’re in rural places.⁷⁸ We know that they’re being placed in locations where people see this as their only source of income and their only source of being able to provide for themselves and their family members.⁷⁹ All of this is strategic, and there isn’t a lot of transparency with detention shelters for children.⁸⁰ And we have PREA, the Prison Rape Elimination Act, and that is something that a lot of these detention centers paraded around⁸¹—“You have PREA!”—like that’s going to [be] helpful while you’re in detention, knowing full well that for children who are much more vulnerable, they’re subjected to sexual abuse while they’re in detention.⁸² You can do a quick Google search and see how prominent sexual abuse is in children’s detention shelters,⁸³ because one, they’re alone. They’re lucky if they have a sibling that came with them who’s also an

⁷⁸ See Yuki Noguchi, *Unequal Outcomes: Most ICE Detainees Held in Rural Areas Where Deportation Risks Soar*, NPR (Aug. 15, 2019, 7:13 AM), <https://perma.cc/5ZFQ-W9EB>.

⁷⁹ See Monsy Alvarado et al., *‘These People Are Profitable’: Under Trump, Private Prisons Are Cashing in on ICE Detainees*, USA TODAY (Dec. 20, 2019, 11:48 PM), <https://perma.cc/7NDH-JNAJ>; Sarah Tory, *How Western Towns Profit from Detaining Immigrants*, HIGH COUNTRY NEWS (Nov. 3, 2015), <https://perma.cc/YL33-AQJR>.

⁸⁰ Blake Ellis & Melanie Hicken, *‘Secret and Unaccountable’: Where Some Immigrant Teens Are Being Taken by ICE*, CNN (Nov. 30, 2019, 2:35 PM), <https://perma.cc/D22U-X2D3>; Paul Farhi, *Migrant Children Are Suffering at the Border. But Reporters Are Kept Away from the Story*, WASH. POST (June 25, 2019, 6:00 AM), <https://perma.cc/4YZZ-TVGW>.

⁸¹ *Prison Rape Elimination Act*, NAT’L PREA RES. CTR., <https://perma.cc/4GZX-PH2R> (last visited Mar. 12, 2020). *But see End the Detention of Migrant Families and Children!*, JUST DETENTION INT’L (July 2018), <https://perma.cc/S3BF-KX6S> (“Appallingly, HHS has failed to audit many of these facilities on their efforts to protect children from sexual abuse, even though it is required to do so by the Prison Rape Elimination Act (PREA).”).

⁸² Matthew Haag, *Thousands of Immigrant Children Said They Were Sexually Abused in U.S. Detention Centers, Report Says*, N.Y. TIMES (Feb. 27, 2019), <https://perma.cc/YNF6-V8RJ>; Opheli Garcia Lawler, *Thousands of Migrant Children Were Reportedly Sexually Abused in U.S. Custody*, N.Y. MAG.: THE CUT (Feb. 26, 2019), <https://perma.cc/7KQ6-E5CZ>.

⁸³ See sources cited *supra* notes 81, 82.

unaccompanied minor and may or may not be held at the same detention shelter. But it's striking that it's happening across the nation. You see it sporadically on the news, but it's not being addressed, and people aren't talking about it. We're talking about family separation, and we're talking about how horrific it is, but we're not discussing how children are being robbed of their innocence and their bodies. And I think that having a FOIA to really address sexual abuse that's happening in detention and really pinpointing where detention shelters are located—people have no idea that they're in our neighborhoods or, if you're living in a rural area, even in your town, unless you know someone that's working there.⁸⁴ So, I can only speak to Arizona. There were, within—oh goodness, I don't know—a five-mile radius from where I lived personally, there were at least four shelters that were specifically for children. They do a really good job of painting them as shelters or as an organization or an institution that is meant to help children, but they're kiddie prisons.⁸⁵ They may not look like your typical jail or prison, but these children are behind bars, and they're not free to leave, and they don't have the resources or family members to be able to help themselves. It's really up to us to dig out this information and find out where they're being kept and what conditions they're being held under—making it known that they're here, and they're everywhere, and they're in our neighborhoods, and they're in our cities and in our states.

Reena Novotnak: You've been listening to part two of the second episode of Footnote Forum. I'm Reena Novotnak, editor, host, and theme music composer. Thanks to staffers Rachna Agarwal, Sarah Bradford, Sarah Badillo, Nicole de los Santos, Danielle Leake, Dan Moczula, Rachel Goldman, Cesar Ruiz, Maya Kouassi, Ariel Federow, Shezza Abboushi Dallah, and Andrew Miller. Thanks also to our Editor-in-Chief, Audrey Juarez, and the rest of the managing editorial board. Special thanks to Joanna Lopez and Jacklyn Mann for sharing their story with us. That's all for this year's Footnote Forum, but check our website at cunylawreview.org for information about our FOIA regarding notice to appear for credible fear interviews.

⁸⁴ Bogado, *supra* note 76.

⁸⁵ *Immigrant Children's Shelters*, SW. KEY PROGRAMS, <https://perma.cc/T2TE-RJMQ> (last visited Mar. 19, 2020) ("The majority of those in our care are 13-17 year olds [sic] from Guatemala, Honduras and El Salvador who've come here on their own, escaping dangerous conditions in their homeland. During the short period of time they are with us, we work to share the building blocks for their future success."). *But see* Michael Grabell & Topher Sanders, *Immigrant Youth Shelters: "If You're a Predator, It's a Gold Mine,"* PROPUBLICA (July 27, 2018, 12:19 PM), <https://perma.cc/HU7X-FL7B> (describing incidents of abuse at immigration detention centers for children).

As always, I'll leave you with a quote from a famous Supreme Court decision. This comes from *Reno v. Flores*,⁸⁶ a milestone in the litigation that resulted in the *Flores Settlement Agreement*, which set the minimum standards for treatment of minors in immigration detention.⁸⁷ In *Reno v. Flores*, the Supreme Court ruled that immigrant children could be held in INS⁸⁸ detention, the precursor to ICE detention, even if a responsible adult was available to take custody.⁸⁹ Justice Stevens, dissenting, wrote:

[T]he Court holds that even if detention is not really *better* for these juveniles than release to responsible adults, so long as it is “good enough,” the INS need not spend the time and money that would be necessary to actually serve the “best interests” of these children. In other words, so long as its cages are gilded, the INS need not expend its administrative resources on a program that would better serve its asserted interests and that would not need to employ cages at all.⁹⁰

⁸⁶ *Reno v. Flores*, 507 U.S. 292 (1993).

⁸⁷ *Flores v. Reno*, NAT'L CTR. FOR YOUTH LAW, <https://perma.cc/4VZQ-P7PJ> (last visited May 8, 2020).

⁸⁸ Immigration and Naturalization Service.

⁸⁹ *Flores*, 507 U.S. at 315. The decision upheld an INS regulation that permitted the continued detention of immigrant children even where a responsible adult (other than a parent, relative, or legal guardian) was available to take custody of the child.

⁹⁰ *Id.* at 345 (Stevens, J., dissenting) (citations omitted).