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Footnote Forum's Moderated Conversation With the Authors of The Domestic Violence Survivors Justice Act and Criminalized Immigrant Survivors, Assia Serrano and Nathan Yaffe

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**FOOTNOTE FORUM'S MODERATED
CONVERSATION WITH THE AUTHORS OF THE
DOMESTIC VIOLENCE SURVIVORS JUSTICE
ACT AND CRIMINALIZED IMMIGRANT
SURVIVORS, ASSIA SERRANO AND NATHAN
YAFFE¹**

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Speakers

Assia Serrano and Nathan Yaffe

Moderators

Kimberly Fong and Rachel Pincus

Kimberly Fong 00:00

Assia and Nathan, on behalf of CUNY Law Review and Rachel and me and all of our staffers, thank you so much. We've really enjoyed working on the article. Thank you for sharing your experiences and showing the shortcomings of the Domestic Violence Survivors Justice Act for criminalized immigrant survivors, mainly that once criminalized immigrant survivors' sentences get shortened under the DVSJA, ICE and law enforcement collaboration leads to those survivors getting deported, which is in contrast to the intent of the Act to provide relief to domestic violence survivors. So, Assia, can you please tell us a little bit more about yourself? How did you come to the US and what were your plans while you were in the US?

Assia Serrano 01:05

Sure. My name is Assia Serrano. I was born and raised in Panama. And at the age of 15, I moved to New York with my mom. Well, actually, my mom left a year before me and she sent for my sister and I who were the oldest. So our plans for leaving Panama were simply you know, a

¹ The transcript has been edited lightly for clarity.

better life, better opportunities. And since my father worked for the American government, while we were here in Panama, we had no problems getting the paperwork necessary to leave Panama. And when I got to New York, I was 15 going on 16 and I was placed in high school and I spoke no English, and it was very difficult to assimilate, to make friends without having been able to communicate with them. But you know, within a year, I was able to understand that and it took me a little while to actually speak [English], but I began to make friends. I went to Jamaica High School in Queens and I was placed in the 11th grade. So after my first year in high school, I knew enough English to be able to graduate and I graduated with my class the following year, and that was 2001. After I graduated, because of my immigration status, I was unable to go to college. I mean, I could have went to college, but I had to pay and my family didn't have the money to pay. And I didn't qualify for financial aid. So right after that, I started working at a supermarket where they allowed me to work as a cashier and [I] actually worked while I was in high school. And I kept that job for a few years after [audio cuts out] . . . to welcome us and so that we can all have an opportunity to do better to search for a better life. But because of the hurdles that I faced—and my family wasn't smart enough when it came to immigration. They thought that maybe it's best to keep it this way as opposed to looking for assistance. I stayed in that [immigration status] for many years. I went to the States with a visa . . . I think they allowed me to stay [in the US] six months . . . or a year, I'm not sure how long, [or] what was the timeframe. But I guess we were in violation of that. But as a minor, you know, your parents don't tell you everything you need to know. And I have to say that going to the United States wasn't my choice. You know, my mom went so we had no choice but to go. And so we were uprooted from what we knew and then placed there and we had to figure it out. My sister and I, and my cousin as well. Yeah.

Kimberly Fong 04:25

Thank you so much for sharing all that. Assia, we see that many attorneys worked on your case before Nathan. So could you tell us a little bit more about how you two got connected?

Assia Serrano 04:40

Well, I was in Bedford Hills Correctional Facility where I served almost 15 years of my sentence. I was part of a group of women actually from *Survived & Punished*,² right. I knew someone who was

² See generally *End the Criminalization of Survival*, SURVIVED & PUNISHED NY, <https://perma.cc/8UJ2-GYAZ> (last visited Dec. 9, 2022) (describing *Survived & Punished* NY

communicating with someone from Survived & Punished, and they said would you like to meet someone. And I was like, “Sure, absolutely.” And a woman named Samah,³ began visiting me and we became friends. Samah would visit me maybe like once or twice . . . every two months. And I remember Samah saying, “I’m an immigration attorney.” But she explained in what sort of role she played in this. And you know, I totally never asked any questions. We just met, we visited, we spoke on the phone, we wrote letters, and she just provided that sort of support from the organization. And when I remember when I first . . . when I was about to be resentenced, when I got resentenced, I wrote Samah, and I said, “Samah, you know, I have this immigration situation that I have to deal with. But I’m not so sure what the status is.” And she says, “Well, let me connect you with someone that I know.” And I met Sophia⁴ first. I began communicating with Sophia immediately when I was still in Taconic Correctional Facility and through Sophia, I met Nathan. By the time I met Nathan, I was already in Rensselaer County [Correctional Facility]. And I spoke to Nathan once and he says, “Well, hi, Assia. I just want your permission to be your attorney.” I was like, “Permission?! I’m super happy that you are willing to take my case.” And so from that moment, he says, “I’ll be in charge.” He has been in charge, and it has been such a great relationship. Nathan will look for any little opportunity that he can to help me out, to uplift my story, to just work on this, and obviously he does it but he always asks me for permission, “Is that okay?” And my response is always, “It’s always going to be okay. I trust you.” But he’s so good when he still says, “I still need to ask you, and I always want your permission when it comes to things that you know will have your story out there.”

Kimberly Fong 06:51

That sounds really just [like] client-centric and diligent lawyering.

Nathan Yaffe 07:03

I would just add to that. I mean, I think that one thing that is really important about Assia’s case is, Assia has testified before the New York

as a “coalition of defense campaigns and grassroots groups committed to eradicating the criminalization of survivors of domestic and sexual violence and the culture of violence that contributes to it. The all-volunteer organization includes community organizers, survivor advocates, legal experts, and policy advocates including currently and formerly incarcerated survivors.”).

³ Samah Sisay: *Staff Attorney*, CTR. FOR CONST. RTS., <https://perma.cc/EG9H-VFF8> (last visited Nov. 17, 2022).

⁴ Sophia Gurulé: *Policy Counsel, Immigration Practice*, BRONX DEFS, <https://perma.cc/VZ48-VAE5> (last visited Dec. 9, 2022).

State Legislature, Assia has written op-eds, Assia has participated in panels like your advocacy. I mean, I definitely bring ideas to you, [Assia], and I hear what you're saying. Like, certainly when it comes to court paperwork, there's a lot of checking in but I'm taking the lead, but you also take the lead on most of the political advocacy work, and just do it sometimes on your own, and so Assia has been working on advocacy, both at the state and federal level, participating in actions and panels around The New Way Forward Act,⁵ which is federal legislation that would create a path to return for people in Assia's situation and also lessen the immigration consequences for a lot of past criminalization across the board. And I think that one of the things that has really been important for me personally about working with Assia is that, because Assia, you're such a powerful advocate and so energized to advocate politically around your case, I think that I've seen a big part of my role as just helping find opportunities and helping with implementing things like this article or other work that we've done together, because one, I think your voice is so essential, and powerful, but also because I think that there's a tendency for lawyers to kind of dominate in these conversations. And I think that that's a thing that can lead to a big disconnect between the experiences of people who are in situations like yours, Assia, and what the lawyers who represent those folks say is best for them. And a great example of that is with things like the Institutional Hearing Program that we talked about in the article⁶ where legal service providers might say, "This [the IHP] is great, and we want this to continue." And even without assuming any ill intentions from them, that sort of like in a grotesque way is self-interested and they know that it's to the detriment of their clients. Even leaving [ill intentions] off the table, which I don't think is what's happening, it's still . . . it just reflects their biases and shortcomings. And, you know, Assia has the experience of being inside, seeing what this looks like in practice. And then I can ask something of her about her view on this. And then she's like, "Oh, yeah, I know what that looks like. It's really terrible for a lot of people." And I think that that kind of like, openness to critique and mindfulness of the limitation of the role of lawyering, especially in a case like this, where the law is just like so stacked against, you know, anything good happening here. I think it's been really important for me, and I think maybe something that Sophia and Samah and I are open to (and we all still work together, even though like my name has been on more of the filings), [in a way] that maybe past lawyers haven't been

⁵ New Way Forward Act of 2021, H.R. 536, 117th Cong. §§ 102, 701 (2021).

⁶ Assia Serrano & Nathan Yaffe, *The Domestic Violence Survivors Justice Act and Criminalized Immigrant Survivors*, 26 CUNY L. Rev. F. 24 (2023).

[mindful about the limitation of lawyering] who've worked with Assia and also, often lawyers aren't in general.

Rachel Pincus 10:35

I think that's a great segue to our next question. The article shows the difficulty of noncitizens who have deportation orders in securing immigration representation, other than with firms that practice immigration law in a seemingly mechanical, narrow and sometimes even exploitative way. So Nathan, can you discuss as an immigration lawyer, some of the systemic issues that you know cause immigration lawyers as an industry to not incorporate more of that client-centered advocacy into their lawyering that you just talked about?

Nathan Yaffe 11:14

Yeah, I'm happy to and Assia, I think it'd be really useful for you to share your experiences with past lawyers, immigration lawyers, or just like interacting with lawyers in general. But I think that in terms of systemic issues, I think there are two things. One, I think that people who practice law are kind of often indoctrinated into thinking about the system in a certain way and thinking that the system is about justice and thinking that if they present things in a certain way, then the judge or ICE won't do the maximum amount of violence to their client. And I think it's important to be diligent and do all those lawyering things too, of course, but I also think that.. getting into that mindset, where you are telling yourself that, "If I just lawyer well, then something just will happen." I think it's really dangerous. And so I think that's a way that people are encouraged to think and also the way that people kind of feel they have to think about their jobs for self-preservation and to stay motivated to be a lawyer. Another systemic issue is that I think people don't trust their clients, and don't trust people that speak publicly about their cases. I think lawyers are really nervous that they haven't prepared someone the way they would prepare someone to be on the witness stand, and [if] they speak publicly about their case, either they're going to say the wrong thing, or they are going to antagonize the judge or antagonize ICE and [who are] gonna be mad and that's gonna lead to worse outcomes. And I understand of course, that you could say something publicly that ICE could bring up in court. Obviously, that's a possibility. But I think that it's also the case that, if you aren't willing to fight publicly too, then you cede, that whole—it's like a multi-front war against state violence, right—and one front is ICE and the cops doing public propaganda all the time. They do public propaganda all the time. And I think that there's a lot of missed opportunities because lawyers play a role where they're discouraging their clients from speaking publicly, or even more than that,

what we see in *Survived & Punished* a lot, is that if we're connected with someone in an advocacy way, not representing them (I mean, *Survived & Punished* doesn't represent anyone), but they have a private criminal defense attorney or, you know, an 18-b publicly appointed defense attorney, that lawyer will try to stop the volunteers from *Survived & Punished* from even speaking publicly. It's not even the person who's getting prosecuted or going up for their DVSJA resentencing. It's like other volunteers. They don't want anyone to talk about [the case] publicly. And I think it all just kind of contributes to this idea that the law is not about politics, and that the law is some like, internally coherent, highly specialized system of rules, and things operate according to the rules, when I think we know or should know that, this is all political, and so we have to fight politically or else we're going to lose.⁷ But I'm curious, Assia, what you think about like, how you felt with your relationship with the various lawyers you've had over the years, from your original case through to immigration proceedings and tied through to the DVSJA, like before we started working together, how it was for you working with those lawyers?

Assia Serrano 15:47

So it was precisely what you explained. It is a thing where it's best if you don't say anything, unless [you are] prepared to speak. So with my criminal attorney, Alan, we had a great relationship. But he did fear that anything that I would say could potentially harm me. And so the whole time that I awaited trial and sentencing, I wasn't able to speak. And this is actually the first time, after all the years and all the attorneys that I've encountered, that I have been allowed to use my voice. And one thing that Nathan always says is, "No one tells your story better than you. I want you to say it." And we will sit, and we will write each other. He will send me messages, "Are you comfortable?" And "Yes, I feel like you can do this." "You got this." "Your voice is very important." "You are a great advocate for yourself." And so the constant reassuring that "[before] you were told not to speak and you were told not to say certain things—but now is the time it's important for you to speak. It's important for people to hear from you directly. You know, I can tell your story, but there's emotion behind it, you lived it, you experienced it." And so my first immigration attorney, if we can even call him my immigration attorney, I

⁷ See generally Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 N.Y.U. CLINICAL L. REV., 663 (2017) (discussing legal strategies as only one tool in building social movements to challenge oppressive systemic institutions, as well as centering the voices of those who are oppressed and lawyers engaging in activism in addition to lawyering).

met him for two minutes before seeing the judge and he spoke very [quickly]. He said a few things, “We’re going to go away and we’re going to come out, and that’s it.” And so I got to say nothing but my name. And I felt like at the moment, it felt like the right thing to do because when you are in front of a judge, you just don’t know what to say. You speak when you are allowed to speak and you speak when your attorney feels like you’re prepared to speak. So all of that ended up affecting me more than it helped me. So the second hearing was the same thing. You know, we didn’t see each other again, I didn’t get any paperwork. “Oh they’re just going to ask you two questions.” And he told me what the two questions were going to be. “Is this true?” “Yes.” And that was about it. But there was never a moment when I felt free enough to say how I felt. Or I never felt adequate enough. So obviously, I don’t know the lingo. But I also didn’t feel adequate enough to even say, “That’s not true,” or “May I say something?” Whereas now, I feel very empowered to say, “This is not what is happening,” or “I don’t agree.” Honestly, rarely ever do Nathan and I ever disagree on something. He’s able to see my point. And I’m able to see where he’s coming from and we work so well together. And the same thing applies for Samah and Sophia. Samah was like soft-spoken, I love it. Nathan is too, and Sophia is like a ball of fire and I just love the authenticity in how we’re able to just chat with each other not just like [in] an attorney-client relationship, but as someone who’s really invested in the best outcome for my life. And so now I feel like this is the first time in all of the years that I’ve encountered attorneys that I can actually speak publicly and openly and say what really happened without feeling like there’s gonna be repercussions for it.

Rachel Pincus 19:10

That’s all really great to hear. And I think somewhat connected to that, we do want to ask Nathan a question about your own professional identity. So as Assia has talked about already, and as the article mentions a lot, you have approached Assia’s case emphasizing that earlier attorneys’ representation was flawed from the start and Assia just spoke to that whole series of representation. And that ended up escalating to her deportation upon DVSJA resentencing. Clearly, you’ve approached her case really differently and you’re currently working on getting her back to the US through various ways. So we’re wondering if you can share a little bit more about how you became the lawyer that you are and, I think, speak to the ways generally that you’ve incorporated your strategies in Assia’s case and in your professional identity.

Nathan Yaffe 20:31

Yeah. That's a good and hard question. I mean, I want to just be clear about one thing about what you said in the beginning of your question about approaching Assia's case, emphasizing earlier attorneys' representation was flawed. I do feel that and I think that that's true for all the reasons we were just talking about, about voice, about disempowering people by using a legal credential and mak[ing] [non-lawyer clients] feel like they can't speak about their own life . . . absolutely. Even at a more basic level than that, in terms of just doing the basic task of lawyering, Assia's past immigration attorneys have been completely inadequate. I mean, both the attorney she had when she was incarcerated, and went before an immigration judge, and the attorney who she had right at the end of her time in prison, and who was supposed to try to help reopen her immigration case, both attorneys more or less treated the outcome of her case as a foregone conclusion, and gave far less than the acceptable minimum level of effort. And the [lawyer] who was representing her [when she was incarcerated] inside gave her active misinformation about where she was at in the process. And so, yes, I stand by all the critiques we were just talking about, but in addition to that, her attorneys were inadequate in the most very elemental, basic ways of just being lawyers. In terms of my sort of approach and professional identity, I think that it's been really important to me in every aspect of my practice, to try to bring whoever I'm working with in on every decision to the greatest extent possible. And that means a lot more conversation about even really basic stuff, like, "Here's a procedural question. Let's talk about the strategy behind this thing I want to do, and you can weigh in and tell me, that's right or wrong." That, to me, is really essential to try to create a collaborat[ive] relationship with everyone[']s cases that I'm working on. And I think that's true for strategic reasons related to how you approach lawyering and believing that people are experts in their own lives and believing that people should feel empowered to fight their own cases, but it's also true for sort of philosophical and moral reasons. Related to the same thing, it's not my life that the judge is coming after. And if I'm creating a relationship where Assia was just talking about, [how] you walk into the court with this feeling that you're only allowed to say one thing and you're not even allowed to correct the record, [or] if someone says something that's not true, you can only say exactly what your lawyer told you, you're allowed to say. There are situations where I might think it's very important for my client not [to] share information. And if that's true, I will have a conversation with them where I explain why I think that, at this particular moment, it's going to be harmful, not helpful to share information. Here's what I think makes this moment not one of those moments. But that sort of general feeling of disempowerment and whatever to me, that is my nightmare scenario for a way my relationship

with a client would go. I would have totally failed in my job as an attorney, even if there's an ok outcome in the case, if that's how the person was feeling. And I think in terms of how I got that way, I mean, I think there are a million ways to answer that question, but at a very concrete and recent history level, I think that one way is that I did a lot of work in a pro-se immigration clinic before I became an immigration lawyer at the New Sanctuary Coalition,⁸ where the orientation was, no one had a lawyer, so everything was about people feeling empowered to tell their own stories, and doing the maximum amount possible to help people feel ready to go into the most hostile, disempowering environment, and like stand up to that and assert their own narrative. And that's what I did for years, as a volunteer, before I was an immigration attorney. And I think that really grounded me in an orientation to my practice.

Kimberly Fong 25:42

So I guess going back to advocacy, Assia, can you tell us a little bit more about how you've been since returning to Panama and can you tell us a little bit more also about any kind of DVSJA-related advocacy work?

Assia Serrano 26:08

I always tell Nathan, that I feel like even though I'm in Panama, I'm still connected to people in the United States, my friends, for [the] 15 or 17 years I was still incarcerated, and so those are the people that I shared things with. In Panama, luckily, fortunately, I am okay. Even though when I got here, my father was 86 years old now is the person that was in charge of me, say, for lack of a better word. Because I came here with \$300 in my pocket and not knowing what I was going to do with my life. But fortunately, speaking English has opened up doors for me so I got a job two weeks after I got here and I work with the same company. I am a supervisor now, and that has given me the stability that I need. It's not my dream job. I hope to God that I don't have to stay there, but it's what has allowed me to have a steady income to be on my own. Now I have my own apartment after a year. I was able to get my own apartment. In Panama, we don't have the resources that they have in the US so there's no food stamps. We don't have cash assistance. There's no Medicaid. All of these things, you obtain through employment. And so when I think sometimes I feel like I'm stuck, and like things are not moving fast enough, but then I think about it, and being released just a little over a year ago, in being in the position that I am now and having my own apartment and not having to worry if I'm going to be able to pay rent

⁸ See Bernstein Institute, NYU Law, *New Sanctuary Coalition - Pro Se Legal Clinic*, YOUTUBE (Dec. 9, 2019), <https://youtu.be/YBhUJOSjrPY>.

tomorrow or be kicked out. Having the ability to save money, like I look at all of those things and I'm just like grateful because I am in a good space. No, I don't have my children . . . which they are like my life. But, I still have the communication that I have with them today. And you know having my children say that they are so proud of me because they know where I was. Now, the things that I'm doing, and just sharing with them, you know, every little accomplishment, every little thing that I do here, that's what motivates me to do better. But what I feel drives me, in addition to my children, is the connections that I've made in the United States. I work with Osborn Association, and actually we have a panel on Tuesday, and I also work with Marymount Manhattan College. I graduated from Marymount Manhattan College and I'm also part of a panel on [October 20, 2022]. Those connections that allow me to remain connected with the people that I met, with the friends that I made over the years, is what allows me to feel like "You know what. You can do this." I have made friends here, my coworkers. But my coworkers don't know my life. And in order to build a real, solid friendship, you share things about yourself, and my incarceration and my deportation are things that I feel only certain people will be privy to. And those are things that I don't want to share with them, and I don't think that they will understand the things that I have endured, the things that I've experienced, and so I limit myself. And so my relationships here are . . . surface relationships. The deep relationships that I built over the years I maintain with my friends in prison, and write through JPay. We write each other two, three times a week. When I'm able to, I send money. When I'm able to, I send things that I know are necessary, because I know what it feels like to be in that position, in need and not want[ing] to ask someone. And so those are my connections, I feel like they are my lifeline. Just meeting with people who have been incarcerated who are now doing work with our children, and people that meet me sometimes every other week. I'm a part of the Survivors Justice Project. And so we also meet every other week and those things are what keeps me grounded. What keeps me saying to myself, "You can handle this, you can do this, you know, you can just call someone and talk to them if necessary." But Nathan always says, "If you need anything, just let me know." You know, randomly even if it's nothing that we're working on and he will say, "Hey, I'm here." So those things are what I feel like are keeping me going in Panama, because although for years I was raised here, and [spent] 22 years in the United States, [the US is] what I consider my home. So coming back here I am making it, but there's a level of fear and there's the level of apprehension. I'm very leery of people. But I'm not going anywhere. I live in a cocoon, and I thought that when I left prison, I was going to be like, "I'm going here." "I'm going there." But the reality is, I'd rather not. I'd rather just

stay in my safe space, which right now is my apartment, and continue to build the relationships that I established.

Nathan Yaffe 31:06

And just to add a little bit about that from my perspective. I mean, one thing that I've noticed, as I became involved in other work, through *Survived and Punished*, or connecting with other people who are incarcerated in New York is, I have been amazed at how many people know Assia, asked about Assia, and formed a connection with Assia, while inside or whether through friendship or through Assia's work as like a peer facilitator or peer counselor, someone working in the parenting center. Assia has done a ton of work while she was inside, and a lot of that work is work trying to be there for people in ways that Assia needed people to be there for her and needed the space to be there for her but wasn't [there] for her. But, whether it's stuff related to like parenting support, [when] Assia obviously was separated from her children, basically, at birth, by incarceration. And she's like helping people in the parenting center inside or whether it's like working [on] legislation like *New York For All*, or *Dignity Not Detention* that has that built-in law [so that] when Assia was getting released, ICE wouldn't have been able to abduct her from prison on her release day and take her to ICE jail. People respond to the trauma of state violence in different ways. And [there's] no critique of people who can't or don't take it this way, but I'm always like, incredibly impressed by how much Assia recognizes that like the stuff that she went through is not just a personal trauma, but also a reflection of policy and a reflection of the way the state is treating lots of people. And she continues to really show up for people, not only her friends who she's in touch with, but also you know, advocating for anyone who's in a similar situation to receive better treatment than what she received.

Kimberly Fong 32:47

Yes, Assia your work, both on a personal level, providing that kind of support that you didn't receive in the same situation and then also, on a broader kind of policy-advocacy level is really important and just so impressive. You talked about *A New Way Forward* a bit, I was hoping that you both could talk a little bit more about that. And just if there are any other kinds of promising legislative amendments to the DVSJA or just other promising advocacy efforts.

Nathan Yaffe 33:26

Yeah, I can start. Certainly, I think there's lots happening at the city, state, and federal level. As a first sort of a basic level, defunding the cops⁹ is helping address these issues, because they're the frontline soldiers of the criminalization dragnet that get people ensnared in the system in the first place. There [are] also efforts to hold City Council hearings and hold the City accountable for the ways that [it's] violating the policies that protect people who are in jail, in Rikers, from ICE.¹⁰ There are the legislative efforts that are mentioned in the article, Dignity Not Detention, which would require an end to all ICE jailing in New York state and New York For All, which would prohibit the kind of collaboration that would allow ICE to kidnap people at the prison gates like what happened to Assia, and has happened to other Survived & Punished members and happens to so many people. New York For All in its current version, would also end the practice of having deportation courts in prison, and so that would mean that someone at the end of their prison sentence, wouldn't be immediately deportable by ICE . . . The person would be released, and then they'd be able to fight their case from the outside if I'm able to find them and start a case . . . So that [change] at the state level would make a world of difference in a situation like Assia's. And then the other thing I'd say is that, federally, the New Way Forward Act which Assia has spoken in support of on multiple occasions and has a sort of biographic video essay about her life that supports the New Way Forward Act,¹¹ it's kind of like a big step toward undoing some of the most recent changes to immigration law that make it easier to deport people for past criminal punishment. And I think that it's an important step. It would make it so that the consequences for criminal convictions are less and it would make it so that the people who have been deported after criminalization would in some cases have a path to come back. And that's obviously all super relevant to Assia's situation, and would make a big difference. And then the last thing is just there are local campaigns all over the country to end ICE jailing in people's own neighborhoods.¹² And

⁹ See César Cuauhtémoc García Hernández, *Defunding the Police Would Limit Their Cooperation with ICE*, PRISM (Aug. 24, 2020), <https://perma.cc/2UQ2-DUUD>.

¹⁰ See *Committee on Immigration*, N.Y.C. COUNCIL (June 9, 2021), <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=868388&GUID=BFBC7758-EFA3-44A8-B76B-28FD920F1AC8&Search=>.

¹¹ See Assia Serrano, IMMIGRANT JUSTICE NETWORK (IJN): A NEW WAY FORWARD ACT, <https://perma.cc/Y54T-8Q6M> (last visited Nov. 18, 2022).

¹² E.g., SURVIVED & PUNISHED NY, FREE: SURVIVORS 10 (2020), <https://www.survivedandpunishedny.org/newsletter-campaign/newsletter-store/> (describing the California Liberation Collective's demands for California Governor Newsom, including to stop noncitizen transfers from state and local custody to ICE and between California prisons and to stop the expansion of immigration detention in California); Hung, *supra* note 7 at 667 (describing instances of attorneys and a group of interfaith clergy and lay people protesting

then ending [ICE] contracts, shutting down [ICE] jails. It is that type of work that is vital and we increasingly know, something we should have known all along, but there's a new report from Detention Watch Network that really reaffirmed and proved that having an [ICE] jail in your local community means that ICE will arrest more people in your local community.¹³ It's not like an abstract thing. It's not just a question of where does ICE cage people before they try to deport them. It's actually a way to keep your communities safe; to shut down a local ICE jail. And so all those efforts are going on, and that's like, [at the] local, state, federal, county [level]. There are efforts everywhere.

Rachel Pincus 36:16

I don't know Assia if you want to add anything to Nathan's answer to that question.

Assia Serrano 36:20

Nathan covers everything. I honestly, I know the things I've done to advocate for myself and I know that those always have come because Nathan is always looking for an opportunity where I can either write a piece or speak to someone as long as I'm comfortable doing so. But I really, I can't keep track of it right now. Anytime Nathan says, "Hey, do you remember this?" I'm like, "Is it the one I wrote first?" This is how we refer to these [opportunities]. But the only other thing that I'm doing is meeting with people from SJP. We meet every other week and we have meetings on how to approach, or how can we amend the DVSJA to include other people because [the proponents] do recognize that it has been very limited itself. [We discuss how it could] include other crimes, either shorter sentences, because people with shorter sentences are not qualified. And so looking at the immigration piece of it, they do understand that [the immigration consequences for noncitizens] is the limitation. And it's just a conversation. "What can we do? What can be done to avoid this from happening?"

Rachel Pincus 37:08

So I think expanding on the last question [about] [any]more [types of] legislative amendments, or like policy-advocacy strategies, we were

the US's detention of Central American children and families at an ICE holding facility in downtown Los Angeles); LEGAL AID SOCIETY, BROOKLYN DEF. SERVS. & BRONX DEFS. NYIFUP URGES ENACTMENT OF THE DIGNITY NOT DETENTION ACT IN NEW YORK STATE (2021), <https://perma.cc/EG4U-S3TG>.

¹³ See DET. WATCH NETWORK, ET AL., IF YOU BUILD IT, ICE WILL FILL IT: THE LINK BETWEEN DETENTION CAPACITY AND ICE ARRESTS 3 (2022).

also wondering—I know Nathan and Assia you both sort of just referenced a few organizing strategies to interrupt the collaboration between DOCCS for example, with ICE, but Nathan, as you mentioned, lots of agencies cooperate with ICE to increase the number of arrests and detentions—so I think a broad question we’d like to ask is whether you want to talk about any more organizing-based strategies to interrupt these deportations. I know Nathan, that you have been involved in Abolish Ice NY-NJ, which has a campaign to close Orange County Jail.¹⁴ And I’ve also previously heard you talk about big, more mass-mobilization events around peoples’ hearings that people have been successful in delaying really secretive deportations from happening.¹⁵ So stuff like that, if both of you want to take a minute to talk about those strategies.

Nathan Yaffe 38:10

Yeah, I mean, I think that you know, there are times when I think it’s important to kind of throw down, have a street action, do something flashy, do something that, you know, is disruptive. And I don’t really want to like go a lot down the road of talking about that in this conversation, but I think there have been really important moments when people have kind of made it so that the county and state level officials who are responsible for keeping ICE jails open and keeping ICE jails as like a source of revenue for the county and for the state can’t use their favorite tactic, which is make the violence that they’re doing invisible. They like to pretend that the violence that they are behind isn’t really happening, or is less dramatic than it is, and that it is not family separation. And so when people can, you know, rally loved ones to get into the street, and make a big showing, it helps to dramatize and illustrate how this is really attacking a community. And so having a community-scale response is

¹⁴ The campaign was in Orange County, NY. See Abolish ICE NY-NJ (@abolishICE_nynj), TWITTER (July 28, 2022, 10:47 AM), <https://perma.cc/EP2N-R578>; ABOLISH ICE NY-NJ, N.Y. STATE YOUTH LEADERSHIP COUNCIL, <https://perma.cc/X7Z4-QVLW>; see generally Matt Katz, *NY area’s ICE detention facilities are emptying, with local immigrants moved across the country*, GOTHAMIST (July 27, 2022), <https://perma.cc/KB25-C9FM> (describing advocates’ concern that ICE moved detainees from the Orange County Correctional Facility to other jails across the country, effectively “separating families” as “retaliation” against “public allegations of abuse” at the facility); Giulia McDonnell Nieto Del Rio, *ICE Suddenly Transfers Dozens of Immigrants Detained in Orange County*, DOCUMENTED (July 27, 2022), <https://perma.cc/44QY-EYY8> (describing immigrant advocacy groups’ complaint that they filed with the Department of Homeland Security Office for Civil Rights and Civil Liberties over abuse and unsafe conditions at the Orange County Correctional Facility, and advocates’ demand to release detainees from the facility as a result).

¹⁵ See “Law Can Never Be A Substitute For Politics” - Instructions For Thinking About The Law With Politics In Command with Sophia G and Nathan Y, MILLENNIALS ARE KILLING CAPITALISM (July 27, 2022), <https://podcasts.apple.com/us/podcast/millennials-are-killing-capitalism/id1292638162?i=1000571376294>.

really important, and of course, that extends to things like court-packing, as well, which is sending that same message, but to a judge in a particular case. And I think that those topics are really important, you know, in a situation like Assia is in now. There aren't moments like a court hearing in front of a judge that makes sense to try to pack the court right now at this stage of the case. But I think the target that we want to focus pressure on now is [Governor] Hochul, which would be getting a pardon for [Assia], which would help pave the path for her return [to the US].

Rachel Pincus 39:50

Assia, if you have anything you want to add to that, we definitely welcome it. That could also be a good segue to how is your case going right now? And if there are any updates that you want to share with us or any strategies if you want to talk more about the campaign for clemency from Hochul.

Assia Serrano 40:10

Honestly, the campaign is the most amazing part. I think that those people who are willing to give up their time to advocate for me to uplift my story to say, "You know what? We can do this. We can talk to someone." I think that's the most beautiful part about it. The other part is the waiting, the not knowing, right? So we don't know, the pardon application was submitted while I still was in Rensselaer County Jail. And I was secretly deported, but Nathan, Samah, Sophia, they've pushed, they've asked questions, they've called, they have people who call, and the one thing that I understand about this process, which is the same in the criminal justice process—everything is you wait. You do your part, and you have to wait until someone makes a decision or decides to make a decision. I know that there have been occasions when someone from the Governor's office has contacted Sophia or Nathan asking questions about me, about how I'm doing in Panama. But even in those moments, it's always we ask questions and then we continue to wait. I said to Nathan and I said to Sophia as well, "You know, I don't know how long this is going to take, but a part of me is very hopeful." [But] a part of me doesn't want to just live in hope. If I'm going to go back, I know I'm going to live, but I know that I'm going to have to make a life for myself here. But there's a big part of me that refuses to say like, "That's never gonna happen." And Nathan doesn't believe that either, and neither does Sophia. And I feel like it's very important to just . . . if I say to myself, "I can't do this anymore." I can't continue to hope . . . But I have a great support system. I'm very fortunate to have people who are just willing to go the extra mile and say, Sophia for example, she could not take my case, and she fought and fought, and fought and finally she said [to Nathan], "Ok,

you can help Assia.” And to just find a way to meet other people who are doing the same kind of work and who are willing to say, “I’m willing to help you and uplift your story”—the campaigning part is just so amazing. My family, they have no idea. They don’t understand what’s happening. My family is under the impression that, you know, you’re gonna be there, and we’re just gonna come see you when we can. And unfortunately I haven’t seen my children yet. But they are under the impression that this isn’t going to happen, that our life is going to be [together], that we’re [just] gonna come to Panama to visit you. Sometimes I’d rather keep it that way because I don’t want them to be hopeful. I don’t mind doing the hoping. I don’t want them to be hopeful and be disappointed. But for myself, I just think I know that it isn’t going to move as fast. I mean, I spent 17 years in prison, and I never thought that I’d be released under a law that I’d qualify under, but I just like to look at everything, not just be negative about it or 100% positive. I find myself in a neutral space where I feel like everything is possible. All possibilities. There are paths to take, and until Nathan tells me, “We’re done. We’re not doing this anymore,” there’s always hope for me. He’s very helpful and very smart and savvy that way. Where there’s a small opening, we’re going in there and that has worked for me and is very helpful.

Nathan Yaffe 42:35

We’re never getting to that give up spot. We’re gonna keep fighting until you’re back, Assia. Yeah, and just like very concretely and in a boring way. I mean, there’s a pending challenge in the immigration court right now. The immigration judge, like the level where [Assia’s] case was, where she was originally ordered deported, there was a motion to reopen filed. And that was denied and it’s currently being appealed. And so if that appeal is successful, that would mean the underlying deportation proceedings would be reopened, and Assia would have a chance to assert different types of claims in those underlying deportation proceedings. And obviously, everything changes if we can get her a pardon. That’d be the basis for a new motion to reopen. It would also be relevant to her pending motion to reopen. That would be a game changer across the board. And, honestly, the immigration enforcement authority, ICE/CBP, they could parole Assia even having been deported, without any of the other things happening. So there are multiple paths to pursue. Right now, you know, we’re waiting on a decision on that motion to reopen appeal. And we’re in a phase where we’re about to start gearing up on the pardon campaign again.¹⁶ And so, you know, I think that’s where the focus is

¹⁶ Samah Sisay, *To: Governor Kathy Hochul Pardon Assia Serrano and End Her Family Separation*, <https://perma.cc/CGH5-TZ7U> (last visited Nov. 23, 2022).

right now. But there are lots of strategies to try and we recently have seen, for the first time actually, people with very serious convictions, get a pardon of that conviction and then be able to return to the United States after having been deported. There have been people who've been pardoned, and it [has] prevented deportation, but [the] pardon to return process, that's kind of a newer frontier. And there aren't many people who have done that. But one person just successfully did very recently. And, I don't know if Assia is going to be maybe number two or number three or number four, but that's what we're planning on happening here too.

Kimberly Fong 44:08

So speaking of those cases, where people have had serious convictions and then have been pardoned, and been able to return to the US, can you talk a little bit more about those cases? Where were they? We had read about some cases in California, for instance, where Governor Newsom had pardoned noncitizens with criminal records so that they could either remain and not be deported, or be able to return to the US.

Nathan Yaffe 44:40

Yeah, the case I was thinking about was very recent, out of California. The person was pardoned by Governor Newsom. It was somebody who was born in a refugee camp in Thailand, a refugee of US imperial war and then came to the US, as a very young person, and then was imprisoned and then was deported after being imprisoned.¹⁷ And it took some years of advocacy after she was deported to get the pardon. But then she finally got the pardon, and an immigration court finally entered the decision that allowed her to come back home. Factually, there are a lot of things about her situation that were different. But her overall trajectory of her story is similar [to Assia's]. She was outside the US for a long time, and we want to try and move faster. It's a political organizing challenge to generate pressure around pardons and Hochul has really shamefully continued or even exacerbated Governor Cuomo's approach to pardons, which is to be as cowardly, as infrequent, as non-transparent, as limiting as possible. And so there's a lot of political organizing that has to go into pressuring the administration to live up to its promises. And also, Hochul is someone who has talked about getting into public service

¹⁷ See *Teacher and Advocate Sophea Phea Returns Home from Deportation After 11 Years*, ASIAN AMS. ADVANCING JUST. ASIAN L. CAUCUS (Aug. 19, 2022), <https://perma.cc/A7M7-NBTY> (Sophea Phea's mother brought her to the US as an infant when they were Cambodian refugees. After Sophea's credit card fraud conviction and incarceration, ICE deported her to Cambodia. California Governor Newsom's pardon of Sophea's allowed her to return to the US and will help her become a permanent US resident).

because of her mother's experiences with domestic violence support work and stuff like that, and she hadn't shown any commitment to criminalized survivors of gender-based violence, an area where she has the most control, unilateral control. She can pardon any and everyone who has gone through those experiences, any and every survivor, and especially people who are facing deportation, or have been deported or are trying to return. This should be getting her attention, and she's doing nothing. So that's a political problem that we are going to have to meet at that level. And we're going to.

Kimberly Fong 46:33

Also as a follow up, I was wondering if there was anything noteworthy in the advocacy campaign of that case in California that you noticed?

Nathan Yaffe 46:44

Yeah, I think one thing that's noteworthy about [that] advocacy campaign is that there were nonprofit groups that have different types of missions that were energized around it.¹⁸ And so one thing that I would say, when I hear Assia's [pardon campaign] talked about being connected to the Survivors Justice Project, they acknowledged to us in the course of reaching out to them for this article that they recognize that the DVSJA doesn't do anything for someone who is in a position where the conviction alone is going to make them almost certain to be deported after their prison sentence, at least given all the policies and practices in New York right now. And what I'd say is that to an extent that SJP and groups like that are showing up for survivors, recognizing that what they have done doesn't help immigrant survivors, then I would really put it to them that they have an obligation to get really engaged in the pardon fight for those folks who are not protected by just getting a sentence reduction. And so I think that sort of coalition of organizations from different focus areas, I think was really key to that case in California, and I think we would hope that some of the folks who maybe focus on domestic violence usually but don't focus on immigration issues usually would broaden their understanding of their obligation in their work to show up for Assia and people who are in Assia's situation after they get their DVSJA resentencing.

¹⁸ *E.g.*, SEAFN: SOUTHEAST ASIAN FREEDOM NETWORK, <https://perma.cc/LMC2-QPQT> (last visited Nov. 23, 2022); ILOVE MOVEMENT, *#RefugeeResilience #Right2Family #Right2Return*, <https://perma.cc/HMU3-4MKM> (last visited Nov. 23, 2022).

Rachel Pincus 48:08

So our last question is for Assia. I know that you've talked already a little bit about the hope that you're holding out for returning to the US. But I wonder if you could just talk generally about what clemency would mean to you? And I'll just leave it that broad.

Assia Serrano 48:26

Obviously being a mom to my children, and I want to say, although I've always been a part of my children—even from a distance, I've always been involved in their lives. I've done everything I possibly can—but nothing replaces the physicality of my presence, of being there, of them knowing that they can open a door and see me. It will mean that my family, especially my mom, will be at peace. My mom sees me as someone who, because I didn't stay in Panama long, she feels like I'm not fit to be here. She worries about me a lot. My younger sister is here, my younger sister is able to do whatever she wants. My mom feels that she can handle it. But when it comes to me, she would say, "Before you go there, do this." And "Before somebody sees you, take a picture of the cab number you're going into. Text it to me." Or, I have this very small chain. My mom will say, "Please stick it inside your shirt. I don't want anybody to see it." So it's little things like that. It will give my mom a peace of mind. And my family has tried really hard to like be present for me. But they also understand that my children are my life and it's not that I want to be ungrateful that they are here for me. I'm very grateful, but nothing will ever replace that void, the need that I have to be in my children's life, and [the need] that they have for me. It's just, I just envision my life with my children, which it will be . . . it'll be complete. And I know that it will be full of drama. Because they're 17 and 18, and they think that they have their lives figured out, and I'm here to remind them that they don't have their lives figured out. So it's fun to call Mommy and ask Mommy about everything, but it may not be as much fun when Mommy is right here to see it all. And so I just want that, you know. I want to have that where I know I'm going to fight with my daughter, and I'm ready for it. And just dream of what I've dreamed of being for them. I still help my daughter with college work, as I have done throughout the years in high school because she was cutting class, and yell at her—well, I actually don't yell at her, I just speak very firmly, and I have her answer me. "Mmmhm, I need an answer. I need you to answer, yes or no?" And then I remind her that I know she's mad and [that] she's gonna get over it. But I have a right to say what I need to say. And so I . . . I just want that in my life. People here know people who know me here and the people close to my mom know that, "You know, you have always been a happy person." Since I

was a child. I love to dance and I love to make people laugh. But they also recognize that there's a part of me that is not whole. And I won't be whole until I have my children . . . So, for me that will be facing all the challenges because we all know that life is not perfect; it will never be perfect. And just facing the challenges that I know that I will have to face. Because I know that it will not be easy because once I return to New York, I'll still have to look for employment, I'll still have [things] to do. The things that everyone in New York is unaware of that I have to do. But just [to] get on board with the hustle bustle of everyday life . . . I miss the subway so much. I just want to be in there. And I know people think that's not true. But that is true. I love the subway. Just doing those regular everyday things, sticking my feet in the snow, and just be so cold—I miss that! It's hot over here all year long! And people think that I lie when I say that I love the winter. "How do you love the winter, you were born in Panama?" I'm sorry, I love the winter. I love October, the fall, the leaves falling. The cold air hitting my face. I just love that. It's just to me like it will be a dream come true. Just being able to face life and all these obstacles, but with my children.