

“WHAT IF YOU’RE DISABLED AND UNDOCUMENTED?”¹:

REFLECTIONS ON INTERSECTIONALITY, DISABILITY JUSTICE, AND REPRESENTING UNDOCUMENTED AND DISABLED LATINX CLIENTS²

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¹ LEAH LAKSHMI PIEPZNA-SAMARASINHA, *Making Space Accessible Is an Act of Love for Our Communities*, in CARE WORK: DREAMING DISABILITY JUSTICE 74, 76 (2018) [hereinafter CARE WORK]. Piepzna-Samarasinha poses this as part of a series of questions to illustrate the experiences that a disability justice framework should center, but that the civil rights-based model of the Americans with Disabilities Act fails to address. This paper is, in part, a reflection on that question.

² Throughout, I have chosen to use Latinx as the default term to describe immigrants from Latin America, and to use identity-first language as my default when describing disability, while recognizing that these terms encompass many communities and experiences, that these terms have complicated personal and political implications, and that I am a member of neither a disability nor a Latinx community. When writing about specific individuals or specific communities, I follow their lead. For a brief discussion of the history and meaning of identity-first and person-first language in disability communities, see Brittany Wong, *It’s Perfectly OK to Call a Disabled Person ‘Disabled,’ and Here’s Why*, HUFFINGTON POST (Sept. 16, 2021), <https://perma.cc/Q4XJ-7RP5>. For a critique of the use of Latinx, see Luisita Lopez Torregrosa, *Many Latinos Say ‘Latinx’ Offends or Bothers Them. Here’s Why.*, NBC NEWS (Dec. 14, 2021), <https://perma.cc/FA9Z-LRBY>.

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I. INTRODUCTION

The intersection of disability and immigration status is under-explored in both legal academic literature and training resources for lawyers. In the words of Alice Wong, a disabled activist, author, and host of the *Disability Visibility* podcast, “Undocumented people have always been invisible, and there’s little known or written about undocumented disabled people.”³ But it is an important intersection and in need of attention. Exclusionary immigration laws in the United States have always been grounded in mutually reinforcing white supremacist and ableist ideologies,⁴ and the current U.S. immigration system is both ableist and disabling.⁵ The further intersection of undocumented immigrant, disabled, and Latinx identities is in need of specific attention: first, because approximately 78% of undocumented immigrants in the United States were born

³ Disability Visibility, *Immigration and Disability*, DISABILITY VISIBILITY PROJECT, at 1:12 (Sept. 24, 2017), <https://perma.cc/9335-YPNR>. In a sense, a closer reading of this straightforward observation is a fruitful starting point for this paper. At first glance, the observation seems to ignore the knowledge of undocumented disabled people about their own experiences, inadvertently perpetuating the very erasure that Wong describes. But on the other hand, as I suggest throughout this essay, because there has been so little work applying an intersectional lens to disability and immigration, it does seem that undocumented, disabled Latinx immigrants may not identify as part of a disability community or movement, frame their experience in terms of disability discrimination, or even identify as disabled in a way that fits the construction of disability in U.S. law and/or U.S.-based disability rights movements.

⁴ See Natalia Molina, *Medicalizing the Mexican: Immigration, Race, and Disability in the Early-Twentieth-Century United States*, RADICAL HIST. REV., Winter 2006, at 22, 24 (revealing how racialization and medicalization were mutually constitutive in the rhetorical and political processes by which Mexican immigrants were associated with contagious diseases to promote restrictive immigration policy from the 1920s onward). See generally JAY TIMOTHY DOLMAGE, *DISABLED UPON ARRIVAL: EUGENICS, IMMIGRATION, AND THE CONSTRUCTION OF RACE AND DISABILITY* (2018) (describing Ellis Island as the site of construction of race and disability categories in the context of, and in furtherance of, U.S. eugenics movements).

⁵ See *infra* Part III.

in Mexico and Central America, South America, or the Caribbean;⁶ and second, because anti-immigrant rhetoric, law, and policy in the United States is often blatantly and violently anti-Latinx.⁷ Donald Trump brought this violence to the center of national rhetoric and policymaking, amplifying existing white nationalist movements, building on an already draconian immigration system to implement extreme exclusionary and violent practices, and intensifying the fear, violence, and discrimination faced by Latinx communities in the United States.⁸

⁶ *Profile of the Unauthorized Population: United States*, MIGRATION POL'Y INST. (Feb. 6, 2023), <https://perma.cc/N69J-957D>.

⁷ See generally Stephanie L. Canizales & Jody Agius Vallejo, *Latinos & Racism in the Trump Era*, DAEDALUS, Spring 2021, at 150, 150-51 (offering an overview of Trump's rhetoric and policy actions from the campaign through his presidency and grounding Trump's work in long-existing white nationalist movements and processes of racialization of Latinx people in the United States).

⁸ *Id.* at 151-52. While the U.S.-Mexico border was a consistent focus for the Trump campaign and presidency, his administration's sweeping changes to the immigration system heightened the experiences of violence and exclusion for many groups of immigrants, refugees, and asylum seekers. See generally JESSICA BOLTER ET AL., MIGRATION POL'Y INST., *FOUR YEARS OF PROFOUND CHANGE: IMMIGRATION POLICY DURING THE TRUMP PRESIDENCY* (Feb. 2022), <https://perma.cc/7G4N-P3RY> (providing a comprehensive report of all immigration actions taken by the Trump administration from January 20, 2017, through January 20, 2021, and the countries and communities impacted by these actions). Trump's rhetoric repeatedly revealed the white, Christian nationalist ideology shaping his immigration platform, as well as specifically anti-Black racism. For example, when discussing immigration with a bipartisan group of senators at the White House, Trump reportedly referred to El Salvador, Haiti, and countries on the African continent as "shithole countries" and expressed a preference for immigrants from Norway. See Josh Dawsey, *Trump Derides Protections for Immigrants from 'Shithole' Countries*, WASH. POST (Jan. 20, 2018, 7:52 AM), <https://perma.cc/CKG2-ARUQ>. Like Latinx communities, Muslims were a particular target of Trump's campaign rhetoric and presidential actions, and those living in the United States experienced an increase in violence during the Trump presidency. See Faiza Patel & Rachel Levinson-Waldman, *The Islamophobic Administration*, BRENNAN CTR. FOR JUST. (Apr. 19, 2017), <https://perma.cc/G3LH-E6N6>. After promising to ban all Muslims from entering the United States during his campaign, Trump issued a series of executive orders banning travel to the United States and restricting visa applications for citizens of majority-Muslim countries. See Louise Cainkar, *The Muslim Ban and Trump's War on Immigration*, MIDDLE E. REP., Spring 2020, <https://perma.cc/Y5F2-JUWS> (describing the evolution of Trump's actions to ban travel from majority-Muslim countries and the harms these orders caused to both Yemeni immigrants in the United States and their families in Yemen); see also Jessica Taylor, *Trump Calls for 'Total and Complete Shut-down of Muslims Entering' U.S.*, NPR (Dec. 7, 2015, 5:49 PM), <https://perma.cc/Z854-VQ3X> (documenting Trump's anti-Muslim campaign rhetoric). The first executive order excluded travelers from seven Muslim-majority countries. See Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017) (revoked by Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017)). The Ninth Circuit blocked this executive order by a temporary restraining order. See *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017). Following the Ninth Circuit's decision, Trump issued a second executive order, excluding travelers from six majority-Muslim countries for 90 days. See Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017) (revoked by Proclamation No. 10,141, 86 Fed. Reg. 7,005 (Jan. 20, 2021)). Finally, Trump issued a

While the Biden administration has rolled back some of Trump's more extreme immigration measures,⁹ Canizales and Agius Vallejo describe "Latinos' heightened experiences of racism, and the relegitimization of overt [w]hite nationalism" as "one of [the Trump administration's] lasting legacies."¹⁰ The ways that Latinx immigrants who are both undocumented and disabled experience the U.S. legal system are shaped by this context, and by multiple other legal contexts, including U.S. disability law, disability law in their country of origin, and international human rights frameworks including the Convention on the Rights of Persons with Disabilities (which the majority of Latin American countries have ratified and the United States has not).¹¹

This article brings together scholarship from multiple disciplines alongside personal narratives that explore the experiences of undocumented and disabled Latinx immigrants across a range of contexts.¹² I

proclamation banning immigrant and many non-immigrant visas for citizens of Iran, Libya, Somalia, Syria, and Yemen, as well as North Korea and Venezuela. See Proclamation No. 9,645, 82 Fed. Reg. 45,161 (Sept. 24, 2017). Trump's anti-Muslim rhetoric and policy resulted in family separation, a drastic decrease in the number of immigrants and refugees from majority-Muslim countries, and an increase in anti-Muslim hate crimes within the United States. See Leila Rafei & Ashoka Mukpo, *The Enduring Harms of Trump's Muslim Ban*, ACLU (Jan. 19, 2021), <https://perma.cc/79N9-8Q5M> (profiling the Muslim ban's impact on four individuals and their families); David J. Bier, *Trump Cut Muslim Refugees 91%, Immigrants 30%, Visitors by 18%*, CATO INST. (Dec. 7, 2018, 9:44 AM), <https://perma.cc/JC5H-UQ4R>; Patel & Levinson-Waldman, *supra*.

⁹ See *Factbox: What Has Biden Done So Far to Roll Back Trump's Immigration Policies?*, REUTERS (Feb. 2, 2021, 5:52 PM), <https://perma.cc/PN22-RJCD>.

¹⁰ Canizales & Agius Vallejo, *supra* note 7, at 151-52. Indeed, at the time of writing, the legacy of the Trump administration's embrace of overt white nationalist violence was seen in the then-new methods of state-sponsored kidnapping of Latinx immigrants at the southern border, developed and funded by the administrations of Governors Greg Abbott of Texas and Ron DeSantis of Florida. See Will Sennott et al., *With Faraway Migrant Drop-Offs, G.O.P. Governors Are Doubling Down*, N.Y. TIMES (Sept. 15, 2021), <https://www.nytimes.com/2022/09/15/us/desantis-abbott-migrants-immigration.html> (on file with CUNY LR).

¹¹ See *CRPD and Optional Protocol Signatures and Ratifications*, UNITED NATIONS ENABLE (May 11, 2016), <https://perma.cc/DV8B-LEXB>; Convention on the Rights of Persons with Disabilities, May 3, 2008, 2515 U.N.T.S. 3.

¹² It is important to pause here to acknowledge a long history of thought and scholarship on the relationship between Latinx identity, ethnicity, and race as constructed in both a U.S. and a Latin American context, and to be precise about my own use of "Latinx" throughout this article. First, I intend my use of "Latinx" to be understood neither to denote a monolithic community nor to denote a racial identity. LatCrit scholars have revealed the legal and social processes and systems that produce racism experienced by Latinx communities, as well as the relationship between Latinx identity, race, and ethnicity in the white supremacist U.S. legal system. See generally Ian F. Haney López, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. 279 (1997); LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (1st ed. 2007) [hereinafter *MANIFEST DESTINIES*]; LAURA E. GÓMEZ, *INVENTING LATINOS: A NEW STORY OF AMERICAN RACISM* (2020) [hereinafter *INVENTING LATINOS*]. At the same time, the use of

have chosen to focus on the experience of being disabled, undocumented, and Latinx in the United States not to exclude narratives from other immigrant communities, but to honor the specificity and complexity of how ableism is constructed, sustained, and resisted in the context of the U.S. government's rhetorical and policy response to migration from Latin America, especially migration across the southern border. My hope is that, in theorizing the ways legal practitioners can use a disability justice and intersectional lens to understand harms caused by the legal system, this article provides a framework for similar attention to the intersection of undocumented status and disability in other communities.¹³ Using an intersectional lens, I will show that discrimination, violence, and other manifestations of systemic subordination impact individuals who *both* are disabled *and* have a precarious immigration status differently than either disabled citizens or non-disabled non-citizens. Further grounding my analysis in the framework of disability justice developed by Patty Berne, Mia Mingus, Leroy Moore, Stacey Milbern, Eli Clare, and Sebastian Margaret will reveal how these intersections create opportunities for solidarity

Latinx/Latino/Latina as an identity category has worked to erase Afro-Latinx experiences and anti-Black racism. See, e.g., Juan A. Godoy Peñas, *Are You Black or Latino? Ser afro-latino en los Estados Unidos [Are You Black or Latino? Being Afro-Latino in the U.S.]*, ESTUDIOS DEL OBSERVATORIO/OBSERVATORIO STUD., June 30, 2020, <https://perma.cc/P2LV-VQQT>; Felice León, *Black and Indigenous Millennials Are Canceling Latinidad. Here's Why*, THE ROOT (Sept. 26, 2019), <https://perma.cc/V6JJ-8EKG>. My focus in this article is on the relationship between disability and undocumented status as constructed by U.S. immigration law, and in particular undocumented status as experienced by immigrants from Latin America, who are often racialized and specifically targeted by U.S. immigration law and political rhetoric. See generally Canizales & Agius Vallejo, *supra* note 7. However, as I discuss further in Part VI *infra*, one significant limitation of this article is that it does not explore the specific ways in which anti-Black racism impacts the experiences of disabled and undocumented immigrants. In addition, empirical research conclusions cited throughout this paper are often limited either by reliance on census data or by reliance on other surveys that similarly present confusing and problematic options for participants to self-define race and ethnicity. See generally Jorge González-Hermoso & Robert Santos, *Separating Race from Ethnicity in Surveys Risks an Inaccurate Picture of the Latinx Community*, URB. INST. (Oct. 15, 2019), <https://www.urban.org/urban-wire/separating-race-ethnicity-surveys-risks-inaccurate-picture-latinx-community> (on file with CUNY Law Review).

¹³ See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991) (developing intersectionality as a theory for understanding how racism and sexism interact to produce the forms of discrimination and violence experienced by Black women). For scholarship drawing on Crenshaw to apply an intersectional lens to ableism and racism, primarily with implications for the field of education, see Subini Ancy Annamma et al., *Dis/ability Critical Race Studies (DisCrit): Theorizing at the Intersections of Race and Dis/ability*, 16 Race, Ethnicity, & Educ. 1 (2013).

and movement-building based on the recognition that ableism, imperialism, and white supremacy constitute and reinforce each other.¹⁴

Naming and understanding the intersection of undocumented status and disability is crucial for lawyers committed to pursuing anti-subordination work, whether through representing individual clients or supporting grassroots movements. I write as a white and non-disabled civil legal aid practitioner, and the goal of this article is to open a conversation that is particularly relevant for other legal aid attorneys. I focus on legal aid both because it is where I practice, and because legal aid lawyers provide direct representation to undocumented and disabled clients on a range of legal issues, many of which are not explicitly related either to disability discrimination or to immigration status, but all of which may be shaped by a client's experiences navigating anti-immigrant and ableist systems. This work also has implications for disability rights and immigration attorneys. Ultimately, this article is a call to action for legal practitioners to locate our day-to-day work more precisely within the overlapping systems of oppression that impact our clients, and to adopt a more expansive vision of our role in supporting clients in their pursuit of justice for themselves and for their communities.

Part II introduces disability rights as the predominant framework for opposing ableism through the U.S. legal system, and then turns to the disability justice critique of disability rights as a framework that is insufficiently intersectional and transformative. Disability justice informs my definition of disability, my understanding of the intersections between ableism and other systems of subordination, and my normative position that the goal of legal scholarship and practice is to support clients and communities who work to dismantle systems of subordination. Part III describes how the U.S. immigration system is both ableist and disabling, forcing undocumented Latinx migrants into situations that increase the likelihood of developing mental illness and physical impairments, while at the same time communicating through both explicit policy and fear-mongering rhetoric that seeking care leads to deportation. Part IV draws together literature from diverse fields and personal narratives that touch on immigration status and access to services for disabled individuals, exploring how, on the one hand, immigration status is often a barrier to accessing services in the United States, and, on the other hand, the relative strength of services available in the United States can be a motivation for migrating and remaining. Part V offers concrete suggestions for how an awareness of the intersection of disability and immigration status might inform a lawyer's approach to building a relationship, providing holistic

¹⁴ See generally *What Is Disability Justice?*, SINS INVALID (June 16, 2022), <https://perma.cc/6ZMX-3W6W>.

support, and developing legal strategy with undocumented and disabled clients. Finally, Part VI concludes with brief suggestions for further work.

II. FROM DISABILITY RIGHTS TO DISABILITY JUSTICE

Undocumented immigrants are theoretically protected from disability-based discrimination by civil rights laws that fall under the disability rights umbrella. However, these rights mean little in practice when communities are systematically blocked from even learning about them, let alone accessing the courts when rights have been violated. Conchita Hernández Legorreta, co-founder of the National Coalition of Latinx with Disabilities, describes the disconnect between her experience as the disabled child of undocumented immigrants and the disability rights framework:

[M]y community and I were not the intended audience of [the Disability Rights Movement].

. . . The systematic consequence of that was that I did not have access to my basic rights, resources, and information. . . . Yet [because] of a lack of systemic support systems, my family and community stepped forward to provide me with loving, educational, and empowering care. They taught me what the school system and Disability Rights Movement failed to do.

. . .

Many other activists of color and I are most at odds with the Disability Rights Movement's fixation on "independence." This is a notion that an individual with a disability should do everything on their own, and that anything short of that hinders that individual. However, this is a Eurocentric concept based on capitalist individualism The reality is that individuality and independence is not part of my and my community's narrative¹⁵

Hernández Legorreta's experience, which I return to in Part IV, reveals the gaps between the social assumptions embedded in and reinforced by disability rights law and the experience of a disabled Latinx immigrant. Her experience is also an example of how communities build systems of support and care outside of the U.S. legal system.¹⁶

¹⁵ Conchita Hernández Legorreta, *I Grew Up Latinx & Disabled—& I'm Creating the Change I Want to See*, REFINERY29 (Sept. 15, 2020), <https://perma.cc/ZFP3-RUBS>.

¹⁶ For the theory and practice of mutual aid and community care outside of state systems, see generally DEAN SPADE, *MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT)* (2020). See also LEAH LAKSHMI PIEPZNA-SAMARASINHA, *THE FUTURE IS DISABLED: PROPHECIES, LOVE NOTES AND MOURNING SONGS* 61-70 (2022) (critiquing ableism within the

Hernández Legorreta's description of the failures of the disability rights movement, on the one hand, and the mobilization and support of her Latinx community, on the other hand, resonates with the disability justice critique of the limitations of U.S. disability law.

In the 1970s, disability rights organizers, drawing on the strategies and frameworks of the civil rights movement, built a broad, cross-disability coalition to fight for equality of persons with disabilities, including independent living and inclusion in communities, schools, and workplaces.¹⁷ The disability rights movement largely rejected medical models of disability, which define disability as an unfortunate and individual deficit to be treated and, to the extent possible, overcome.¹⁸ Instead, the disability rights movement embraced a social model that understands disability as “not a . . . result of an individual's impairment, but something created, in large part, by a society's response to the impairment.”¹⁹

The movement's significant legal victories include the passage of Section 504 of the Rehabilitation Act (“Section 504”) and its implementing regulations,²⁰ the Individuals with Disabilities Education Act (“IDEA”),²¹ the disability provisions of the Fair Housing Act (“FHA”),²² and the Americans with Disabilities Act (“ADA”).²³ In theory, these laws entitle all children to a free and appropriate public education and prohibit discrimination on the basis of disability in employment, state and local government, public accommodations, and housing. In practice, disabled individuals must first understand their rights, then navigate complex administrative processes through which these rights often operate, and finally, have the time, resources, and trust in the legal system to commence

mutual aid networks that arose in response to the COVID-19 pandemic and describing “disabled mutual aid” as a distinct practice).

¹⁷ See Natalie M. Chin, *Centering Disability Justice*, 71 SYRACUSE L. REV. 683, 706-10 (2021).

¹⁸ See Jerry Alan Winter, *The Development Rights Movement as a Social Problem Solver*, DISABILITY STUD. Q., Winter 2003, at 33, <https://perma.cc/9BRA-YCWP>.

¹⁹ *Id.*

²⁰ Nondiscrimination Under Federal Grants and Programs, 29 U.S.C. § 794 (prohibiting discrimination on the basis of disability against otherwise qualified individuals).

²¹ Individual with Disabilities Education Act, 20 U.S.C. §§ 1400-82. See also *About IDEA*, U.S. DEP'T OF EDUC., <https://perma.cc/GUX2-R797> (last visited May 10, 2023).

²² 42 U.S.C. §§ 3601, 3604(f). See also *Guide to Disability Rights Laws*, ADA.GOV (Feb. 28, 2020), <https://perma.cc/9CWD-BPP4>.

²³ Americans with Disabilities Act, 42 U.S.C. §§ 12101-213. See also Julia Carmel, *‘Nothing About Us Without Us’: 16 Moments in the Fight for Disability Rights*, N.Y. TIMES (July 29, 2020), <https://www.nytimes.com/2020/07/22/us/ada-disabilities-act-history.html> (contextualizing these legislative victories within the disability rights movement from the 1970s to the present) (on file with the CUNY Law Review).

litigation when their rights are violated.²⁴ Moreover, while the successes of the disability rights movement were the result of intersectional coalition-building, the contributions of Black activists and activists of color have largely been erased from mainstream histories of the movement.²⁵

Disability rights laws in practice reinforce a system designed to maintain inequalities based on race, class, gender, citizenship status, and other identities around which systems of domination and oppression operate. Disability justice activists critique the disability rights movement for “center[ing] people who can achieve status, power and access through a legal or rights-based framework.”²⁶ The disability justice framework was developed and named in 2005 by Patty Berne, Mia Mingus, Leroy Moore, Stacey Milbern, Eli Clare, and Sebastian Margaret to describe grassroots movement work led by disabled and queer artists and activists of color.²⁷ Disability justice was in part a response to both the white supremacy that activists encountered in the disability rights movement, and the ableism they encountered in other radical organizing spaces.²⁸ Like the disability rights movement, the disability justice movements embrace a social model of disability, but they also center a deeply intersectional analysis, recognizing that “able-bodied supremacy has been formed in relation to other systems of domination and exploitation. The histories of white supremacy and ableism are inextricably entwined, created in the context of colonial conquest and capitalist domination.”²⁹ Ultimately, the aims of disability justice are transformation and liberation, and the means to get there are collective action and an emphasis on community care and interdependence.³⁰

Disability justice offers an analytic framework for understanding experiences that are shaped both by ableism and by other systems of oppression, as well as a call to action to “re-imagin[e] a disability rights future

²⁴ For example, the IDEA, which unlike the ADA largely assumes a medical model of disability, creates complex and often confusing parental procedural rights as the primary means of ensuring disabled students’ education rights, a framework that is often experienced by families as a series of barriers to getting schools to meet their children’s needs. *See generally* RUTH COLKER, *DISABLED EDUCATION: A CRITICAL ANALYSIS OF THE INDIVIDUALS WITH DISABILITIES IN EDUCATION ACT* (2013).

²⁵ *See* Chin, *supra* note 17, at 709-10.

²⁶ Sins Invalid, *supra* note 14.

²⁷ *Id.*; *see also* PIEPZNA-SAMARASHINHA, *supra* note 16, at 168-74, 243-48.

²⁸ *See* Sins Invalid, *supra* note 14.

²⁹ *See id.*

³⁰ *See, e.g.*, ALISON KAHER, *FEMINIST, QUEER, CRIP* (2013); Mia Mingus, Paul K. Longmore Lecture on Disability Studies at San Francisco State University: Access Intimacy, Interdependence and Disability Justice (Apr. 11, 2017), <https://perma.cc/MT8Z-Y99H>. *See generally* PIEPZNA-SAMARASHINHA, *Crippling the Apocalypse: Some of My Wild Disability Justice Dreams*, in *CARE WORK*, *supra* note 1, at 122.

beyond the single-issue narrative of disability.”³¹ Members of the legal profession have begun to recognize the limitations of disability rights, and to center the principles of disability justice when describing and resisting white supremacist and ableist systems. Katie Tastrom, the Disability Justice Committee Co-Chair for the National Lawyers Guild, writes about the impact of carceral systems on disabled Black people and disabled people of color, arguing that disability justice requires abolition and proposing disability justice-oriented strategies for abolition movements.³² Natalie M. Chin argues for centering disability justice principles in civil rights litigation at the intersection of ableism and anti-Black racism:

Disability rights can further build on critical race theory and its descendant theories to envision a world where we move beyond the disability rights framework of accessibility, integration, and independence. This is not to say that these concepts are not important in challenging practices of discrimination and segregation. Rather, this call is to view these notions more broadly as part of a larger and more nuanced framework built on key principles of Disability Justice.³³

Like Tastrom and Chin, I embrace disability justice’s intersectional approach, its insistence on centering the narratives and leadership of disabled people of color, and its orientation toward transformational change. Although disability rights law can, in certain contexts, be *one* useful tool for supporting anti-subordination work, I do not take the enforcement of disability rights law as an end in and of itself. Indeed, as I describe below, the disability rights regime may actually serve as a potential barrier to accessing justice, and as a potential source of harm that must be resisted, for individuals who experience multiple forms of oppression. Legal aid practitioners need to adopt a disability justice framework. In so doing, they can develop a more critical and expansive understanding of what it means to represent clients who experience injustice shaped by both disability and immigration status, including clients who may define their identity, and their sources of community and solidarity, in ways that do not align with the U.S. disability rights narratives. By adopting a disability justice framework, practitioners can more effectively represent clients who daily navigate a legal system that provides remedies for disability-

³¹ Chin, *supra* note 17, at 692-94.

³² Katie Tastrom, *Disability Justice and Abolition*, NAT’L LAWS. GUILD (June 27, 2020), <https://perma.cc/D5BR-RPLR>. Although Tastrom outlines the broad institutional reach of the carceral system and its impact on disabled people, she does not discuss immigration. *Id.*

³³ Chin, *supra* note 17, at 736; *see id.* at 688, 747-48.

based discrimination at the same time it excludes and punishes immigrants in ways that are deeply rooted in ableist ideologies.³⁴

III. AN ABLEIST AND DISABLING IMMIGRATION SYSTEM

U.S. immigration law is both ableist and disabling. It is structured to exclude disabled individuals from migrating to the United States, and from benefiting from medical care and government services. It also produces experiences of migration and residency in the United States that cause undocumented migrants to develop disabilities. Thus, legal practitioners representing undocumented and disabled Latinx clients may be representing individuals who developed disabilities in part *because of* the experience of migration, and who have been deterred from accessing health-related services once in the United States.

I use Talila A. Lewis's working definition of ableism co-developed with disabled Black and other people of color because it captures the way that ableism functions as a *system* that reinforces and is reinforced by other systems of oppression:

A system that places value on people's bodies and minds based on societally constructed ideas of normality, intelligence, excellence, desirability, and productivity. These constructed ideas are deeply rooted in anti-Blackness, eugenics, misogyny, colonialism, imperialism and capitalism. This form of systemic oppression leads to people and society determining who is valuable and worthy based on a person's language, appearance, religion and/or their ability to satisfactorily [re]produce, excel, and "behave." You do not have to be disabled to experience ableism.³⁵

³⁴ See *id.* at 687-88, 692-93. At the same time, legal practitioners who are white and/or non-disabled need to be wary of co-opting the language of disability justice, and to avoid centering ourselves in spaces and conversations not meant for us. My thinking here is shaped by Piepzna-Samarasinha, who writes that "[m]ost [disability justice] folks I know are really nervous about our work being co-opted and ripped off," and who reminds the readers of her most recent essay collection, "This is, like everything I do, a love letter to other disabled QTBIPOC. Others can listen in, but you are not my primary audience . . ." PIEPZNA-SAMARASHINHA, *Crip Lineages, Crip Futures*, in CARE WORK, *supra* note 1, at 240, 254; PIEPZNA-SAMARASHINHA, *supra* note 16, at 42. As I discuss further in Part V *infra*, adopting a disability justice framework as a white and non-disabled lawyer means understanding the intersecting oppressions caused by the legal system, developing creative and subversive legal strategies, and seeking out ways to work in solidarity with disability justice leaders—it does not mean claiming expertise, linguistically reframing traditional disability rights practice as "disability justice," or promoting our organizational work as "disability justice work" in a way that diverts resources from and decenters movement leaders.

³⁵ Talila "TL" Lewis, *January 2021 Working Definition of Ableism*, TALILA A. LEWIS (Jan. 1, 2021), <https://perma.cc/H7ZM-CE76> (alteration in original) (presenting "a working definition by Talila 'TL' Lewis . . . developed in community with Disabled Black [and] other

Using this working definition, this section traces ableism within the immigration system, first by examining the public charge category as one way that ableism is embedded in U.S. immigration law as a tool of exclusion, and then by describing the disabling impacts of the migration process, focusing on routes from Central America to the U.S. border, and finally by suggesting ways that undocumented status continues to force immigrants into disabling contexts in the United States.

A. Exclusionary Immigration Laws and the Public Charge Rule

In a comment on the Department of Homeland Security 2019 Inadmissibility on Public Charge Grounds Final Rule (the “Trump rule”),³⁶ Alessandra N. Rosales traces the history of the public charge category from the earliest exclusionary immigration laws to the present, demonstrating immigration law has *always* intentionally targeted immigrants with disabilities for exclusion.³⁷ Although the most direct target of the Trump rule was not undocumented immigrants but, rather, immigrants with a documented status seeking an adjustment of status and/or permanent residence,³⁸ the public charge category is a useful starting point for understanding how ableist logic has played a foundational role in U.S. immigration law.³⁹ Moreover, the Trump rule is relevant to understand the impact of the immigration system on documented and undocumented

negatively racialized people, especially Dustin Gibson”). For Chin’s discussion of this definition, see Chin, *supra* note 17, at 696. Chin asserts that this definition of ableism is crucial to understand the societal control of disabled Black and Brown bodies. Disability justice centers ableism as the root of disability oppression, revealing a complex system fueled by white supremacy, dominance, and control. Analyzing ableism through this lens allows for a deeper examination of disability and provides a critical tool to evaluate who benefits from the disability rights framework.

³⁶ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. at 41,292. The Trump rule went into effect on February 24, 2020, and was applied through March 9, 2021. See *USCIS Announces Public Charge Rule Implementation Following Supreme Court Stay of Nationwide Injunctions*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 30, 2020), <https://perma.cc/HY8E-HWG4>; *Public Charge*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/RDJ9-VEH5> (last visited May 10, 2023). It was replaced by a new Public Charge Ground of Inadmissibility Final Rule, which was announced in September 2022 and took effect in December 2022. 87 Fed. Reg. 55,472 (Sept. 9, 2022) (codified at 8 C.F.R. pts. 103, 212, 213, and 245).

³⁷ See Alessandra N. Rosales, *Excluding ‘Undesirable’ Immigrants: Public Charge as Disability Discrimination*, 119 MICH. L. REV. 1613, 1617-18 (2021).

³⁸ See Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (“[P]ublic charge inadmissibility provisions set forth in this final rule will apply to all aliens seeking admission or adjustment of status, or any other immigration benefit for which admission is required, . . . irrespective of the alien’s age, medical condition, economic status, place of origin, or nationality.”).

³⁹ See, e.g., Rosales, *supra* note 37, at 1620-21.

immigrants alike, as many immigrants live in mixed-status families,⁴⁰ and the fear and uncertainty created by the Trump rule has had a lasting impact on entire communities.⁴¹

Rosales begins her analysis of the history of public charge as an ableist category with the Immigration Act of 1882, which excluded “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge,”⁴² and the Immigration Act of 1891, which excluded “[a]ll idiots, insane persons, paupers or persons likely to become a public charge.”⁴³ These nineteenth-century laws placed individuals likely to become a public charge in the same category as individuals with what we would now describe as mental illness or intellectual disabilities. Rosales goes on to trace how immigration law has “shifted from the overt exclusion of immigrants with disabilities to exclusion by proxy” by “focus[ing] [on] reliance on government assistance, which indirectly envelops immigrants whose disabilities necessitate costly healthcare and other public benefits.”⁴⁴

During the twentieth century prior to the Trump presidency, the U.S. Department of Homeland Security (“DHS”) and its predecessor agency, the Immigration and Naturalization Service (“INS”), relied on a definition of public charge articulated in the INS 1999 Interim Field Guidance.⁴⁵ The 1999 definition was reinstated when U.S. Citizenship and

⁴⁰ See *Health Coverage and Care of Immigrants*, KAISER FAM. FOUND. (Mar. 30, 2023), <https://perma.cc/4WGY-EZLT> (“Many individuals live in mixed immigration status families that may include lawfully present immigrants, undocumented immigrants, and/or citizens. One in four children has an immigrant parent, including over one in ten (12%) who are citizen children with at least one noncitizen parent.”).

⁴¹ See *id.* (describing how the Trump administration’s immigration policy changes contributed to increasing immigrant families’ fears about enrolling in Medicaid and CHIP, despite being eligible, and that these changes likely contributed to decreased Medicaid enrollment by immigrant families and their U.S.-born children).

⁴² Rosales, *supra* note 37, at 1618 (citing Ibrahim Hirsi, *Trump Administration’s ‘Public Charge’ Provision Has Roots in Colonial US*, WORLD (Dec. 19, 2018, 2:00 PM), <https://perma.cc/JU86-N7NS>; see also KUNAL M. PARKER, MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600-2000 122 (Michael Grossberg & Christopher L. Tomlins eds., 2015) (citing Immigration Act of 1882, ch. 376, 22 Stat. 214 (1882)).

⁴³ Rosales, *supra* note 37, at 1613 n.30 (citing Immigration Act of 1891, ch. 551, § 1, 26 Stat. 1084, 1084 (1891)). See also DOLMAGE, *supra* note 4, at 16-17 (discussing the introduction and expansion of the “likely to become a public charge” category as grounds for exclusion at Ellis Island in the last decade of the nineteenth century and first decade of the twentieth, used in connection with the exclusionary categories of “poor physique” and “feeble-minded.”).

⁴⁴ Rosales, *supra* note 37, at 1617.

⁴⁵ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999) (“‘[P]ublic charge’ means an alien who has become . . . or who is likely to become . . . ‘primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.’”).

Immigration Services (“USCIS”) stopped enforcing the Trump rule on March 9, 2021,⁴⁶ and it was codified in the Biden administration’s new final rule.⁴⁷ The 1999 INS Guidance defined a “public charge” as a noncitizen “who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) ‘primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.’”⁴⁸ In other words, immigrants could access non-cash benefits, and cash assistance programs like the Supplemental Nutrition Assistance Program (“SNAP”) without risking public charge determination. But immigrants could not (and under the new final rule, still cannot) access Supplemental Security Income (“SSI”), one of the primary sources of cash assistance for disabled individuals in the United States,⁴⁹ without risking exclusion on public charge grounds.

In 2018, the Trump administration re-infused guidance on public charge determinations with explicitly ableist language, amending the Field Guidance to instruct officers to consider the following factors as weighing in favor of a public charge determination: “health issues which might affect employment, increase likelihood of future medical expenses, or otherwise affect the applicant’s ability to adequately provide for himself or herself or dependents.”⁵⁰ The Trump rule vastly expanded the benefits that would be considered in the public charge determination to include Supplemental Nutrition Assistance Program, housing assistance, and federally funded Medicaid.⁵¹

⁴⁶ See Press Release, U.S. Dep’t of Homeland Sec., DHS Secretary Statement on the 2019 Public Charge Rule (Mar. 9, 2021), <https://perma.cc/7A7H-Z6UA>.

⁴⁷ See Public Charge Ground of Inadmissibility, 87 Fed. Reg. at 55,472.

⁴⁸ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. at 28,689.

⁴⁹ *Benefits for People with Disabilities*, U.S. SOC. SEC. ADMIN., <https://perma.cc/QW79-XM9G> (last visited Feb. 11, 2023). For a fuller discussion of SSI, including an exploration of the tensions between the definitions of disability and assumptions about disability governing SSI and disability rights laws like the ADA, see generally Mark C. Weber, *Disability Rights, Welfare Law*, 32 CARDOZO L. REV. 101 (2011).

⁵⁰ Rosales, *supra* note 37, at 1621 (citing U.S. DEP’T OF STATE, FOREIGN AFFAIRS MANUAL 9 § 302.8-2(B)(2)(b)(2) (2018)). Rosales also documents the way Trump’s rhetoric echoed the ableist language of twentieth-century immigration laws, citing multiple occasions on which he described Latinx immigrants as bringing disease. *Id.* at 1633 n.165.

⁵¹ *Compare Public Charge Fact Sheet*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Sept. 22, 2020), <https://perma.cc/L7TH-XBL8> (stating that benefits considered when determining public charge in 2019 rule include food stamps, housing benefits, and Medicaid), *with* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,692 (proposed Mar. 26, 1999) (detailing the 1999 rule’s criteria for public charge determinations, which are generally limited to cash benefits and explicitly exclude Supplemental Nutrition Assistance Program, housing assistance, and Medicaid).

Rosales offers a legal analysis of the Trump rule as disability discrimination under Section 504 of the Rehabilitation Act, because the rule “denied immigrants with disabilities meaningful access to healthcare, energy assistance, nutrition security, and other benefits.”⁵² Rebecca Cokley and Hannah Leibson, writing in 2018, describe the human cruelty of the Trump administration’s proposed rule, predicting its impact on disabled immigrants and their families:

While these changes threaten all immigrants and their families, they would have particularly devastating effects on disabled immigrants and families who live with them. For example, exclusion from energy assistance programs such as LIHEAP [Low Income Home Energy Assistance Program] would especially affect people who require electricity to support medical equipment such as ventilators and power wheelchairs. . . . [E]xclusion from [SNAP and LIHEAP] would create heightened food insecurity and higher utility bills for not only disabled parents but for their children as well.

. . . Parents . . . would be forced to decide between enrolling their children in health care programs that lawmakers have made them eligible for and thereby failing Trump’s test themselves, or instead opting out of potentially lifesaving medical services to keep their family together.⁵³

At the same time, the Migration Policy Institute concluded that the proposed rule would disproportionately exclude immigrants from Latin America, Africa, and Asia from permanent residence, highlighting the mutually reinforcing ableism and white supremacy at the heart of Trump’s immigration policy.⁵⁴ In the context of the virulent anti-

⁵² See Rosales, *supra* note 37, at 1629-30.

⁵³ Rebecca Cokley & Hannah Leibson, *Trump’s Public-Charge Rule Would Threaten Disabled Immigrants’ Health and Safety*, CTR. FOR AM. PROGRESS (Aug. 8, 2018), <https://perma.cc/PD92-TGGE>. While the Trump rule as enacted ultimately did not consider energy assistance programs like LIHEAP in the public charge determination, that largely does not matter because fear generated from the moment the proposed rule entered public discourse meant that many immigrants chose to go without benefits that were not implicated in the public charge determination. See HOLLY STRAUT-EPPSTEINER, DOCUMENTING THROUGH SERVICE PROVIDER ACCOUNTS HARM CAUSED BY THE DEPARTMENT OF HOMELAND SECURITY’S PUBLIC CHARGE RULE 1-3 (2020) (noting that draft versions of the rule containing even broader restrictions, leaked from 2017 onward, chilled immigrants’ use of benefits even before the final version took effect).

⁵⁴ See Jeanne Batalova et al., *Through the Back Door: Remaking the Immigration System via the Expected “Public-Charge” Rule*, MIGRATION POL’Y INST. (Aug. 2018), <https://perma.cc/QVA6-DN4M> (basing their analysis on a leaked draft that weighed income below 250 percent of the federal poverty level). The final Trump rule changed the income threshold

immigrant rhetoric and policy that defined the Trump presidency, the Trump rule created an atmosphere of fear and confusion that prevented immigrants even from accessing services that were not considered in the public charge determination.⁵⁵ And this fear and confusion continued to create barriers to accessing healthcare services even after the rule was rescinded.⁵⁶

The lasting harms of the Trump rule to immigrant communities⁵⁷ are important for legal aid lawyers to understand because connecting clients with benefits is often an integral part, if not the focus, of our work. When representing undocumented clients, or clients in mixed-status families, we must recognize the way that the Trump rule interacted with benefits law: limiting in practice access to benefits for which immigrants were otherwise eligible, and producing an ongoing and justified distrust of government assistance.⁵⁸ It is also worth noting that even the new final rule, which the Department of Homeland Security framed as a “fair and humane” departure from the Trump rule,⁵⁹ and which some immigration advocates support,⁶⁰ still weighs the receipt of cash assistance as a factor in public charge determinations.⁶¹ Because cash assistance includes SSI and long-term institutionalization at government expense including in nursing and mental health facilities, the public charge category continues to explicitly exclude immigrants who experience disability and poverty from routes to permanent residence.⁶² This illustrates the limitations of even

to 125 percent of the federal poverty level. Danilo Trisi, *Administration’s Public Charge Rules Would Close the Door to U.S. to Immigrants Without Substantial Means*, CTR. ON BUDGET & POL’Y PRIORITIES (Nov. 11, 2019), <https://perma.cc/VVH2-TBL3>.

⁵⁵ See HAMUTAL BERNSTEIN ET AL., AMID CONFUSION OVER THE PUBLIC CHARGE RULE, IMMIGRANT FAMILIES CONTINUED AVOIDING PUBLIC BENEFITS IN 2019 1-2 (2020).

⁵⁶ Kaiser Fam. Found., *supra* note 40.

⁵⁷ See *New Public Charge Regulation Welcome, and More Welcoming*, AM. IMMIGR. LAWS. ASS’N (Sept. 8, 2022), <https://perma.cc/FG59-9F3A>.

⁵⁸ See Kaiser Fam. Found., *supra* note 40.

⁵⁹ *DHS Proposes Fair and Humane Public Charge Rule*, U.S. DEP’T OF HOMELAND SEC. (Feb. 17, 2022), <https://perma.cc/PZR7-CWQP>.

⁶⁰ See Am. Immigr. Laws. Ass’n, *supra* note 57.

⁶¹ See Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55,636 (Sept. 9, 2022) (codified at 8 C.F.R. pt. 212) (defining “likely at any time to become a public charge” as “likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense”).

⁶² See *id.* (further defining “public cash assistance” to include SSI, and “long-term institutionalization at government expense” to include long-term care in a nursing facility or mental health institution). It is worth noting that deinstitutionalization, in favor of support in community, remains a goal of the disability rights movement, and that activism grounded in disability justice links the goal of deinstitutionalization with broader carceral abolition. Stella Akua Mensah, *Abolition Must Include Psychiatry*, DISABILITY VISIBILITY PROJECT (July 22, 2020), <https://perma.cc/PJ8W-CED2>.

progressive reform within a legal framework that, from its inception, has both relied on and contributed to the construction of race and disability to maintain systems of exclusion and oppression.

B. The Disabling Impact of Migrating to and Living Undocumented in the United States

The ecosystem produced by U.S. immigration policy vis-à-vis Latin America not only excludes on the basis of disability, but also pushes migrants into conditions, both of migration and of day-to-day life in the United States, that are disabling. Undocumented migrants on the route from Central America to the southern U.S. border are at a particularly high risk both of facing disability-related violence and of developing new physical or psychosocial disabilities.⁶³ For example, Human Rights Watch, interviewing members of migrant caravans from Honduras, Guatemala, and El Salvador, documented both disability-related motivations for migrating, including discrimination and disability-related violence, and the way disability shaped the experience of migration: violence and exploitation on migration routes, inaccessible routes and means of transportation, and inaccessible toilets and amenities in migrant shelters along the way.⁶⁴ A recent Special Migration and Disability Report by the Coalición México por los Derechos de las Personas con Discapacidad (Coamex) documented instances of individuals acquiring physical and psychosocial disabilities along migration routes from Central America to the southern U.S. border, gathering testimonies through field visits and interviews between 2017 and 2019.⁶⁵ With regard to physical disabilities, testimonies revealed:

[T]he main factors by which physical disabilities are acquired are: (1) mutilations of one or more limbs when trying to get on or off the moving train, mainly in escape situations to avoid being stopped by immigration authorities; (2) accidents on the road due to rollovers or collisions of vehicles in which groups of migrants are transported under risky conditions such as overcrowding; (3)

⁶³ Kristen H. Starkowski, *The Body at the Borderlands: Applying a Feminist-of-Colour Disability Studies Lens to the USA-Mexico Refugee Crisis*, FEMINIST ENCOUNTERS: J. CRITICAL STUD. CULTURE & POL., Sept. 12, 2022, at 4.

⁶⁴ Carlos Ríos Espinosa, *Life with a Disability in the Migrant Caravan: Humanitarian Agencies Should Search for Migrants with Disabilities at US-Mexico Border*, HUM. RTS. WATCH (Dec. 20, 2018, 4:52 PM), <https://perma.cc/GCP7-G63F>.

⁶⁵ COALICIÓN MÉXICO POR LOS DERECHOS DE LAS PERSONAS CON DISCAPACIDAD (COAMEX), *MIGRATION & DISABILITY: A VIEW FROM INTERSECTIONALITY*, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FICO%2FMEX%2F36889&Lang=en (click on PDF icon to download) (last visited July 30, 2023) (on file with CUNY Law Review).

physical injuries when being the victim of violent acts, such as physical torture or being thrown from a moving train by members of an organized crime or by the arbitrary use of force by authorities⁶⁶

The migration conditions that produce physical disabilities also lead to trauma and risk of developing long-term psychosocial disabilities.⁶⁷ Time spent in detention facilities has also been shown, unsurprisingly, to correlate with the development of depression, anxiety, and PTSD.⁶⁸

Undocumented migrants who are able to reach and settle in the United States continue to live and work in disabling conditions. Immigrants in general work riskier jobs than non-immigrants, and undocumented immigrants in particular are overrepresented in high-risk industries.⁶⁹ Indeed, construction, transportation, and agriculture all employ high numbers of immigrants and are among the industries with the highest rates of fatal work injuries.⁷⁰ Undocumented status enhances an already steep power imbalance between employers and employees in dangerous industries, facilitating employer exploitation and disincentivizing employee complaints.⁷¹ Put another way, workplace rights mean less when asserting those rights means risking deportation.⁷² Moreover, unsafe work conditions, lack of access to services, and the potential for violent encounters with the U.S. legal system through immigration proceedings harm mental, as well as physical, health. Undocumented Latinx immigrants are more likely than documented Latinx immigrants or citizens to experience psychosocial difficulties related to work, healthcare, and the legal

⁶⁶ *Id.* at 4.

⁶⁷ *Id.* at 6-7.

⁶⁸ Cory L. Cobb et al., *Linking Acculturation Factors, Family Environments, and Mental Health Outcomes Among Latino Families in Traditional, Emerging, and Crisis Immigrant Receiving Contexts in the United States*, in *MENTAL AND BEHAVIORAL HEALTH OF IMMIGRANTS IN THE UNITED STATES: CULTURAL, ENVIRONMENTAL, AND STRUCTURAL FACTORS* 3, 13 (Gordon C. Nagayama Hall ed., 2020). *See also* Starkowski, *supra* note 63, at 4 (providing an analysis of the experience of the disabling effects of migration across the southern U.S. border).

⁶⁹ Pia M. Orrenius & Madeline Zavodny, *Do Immigrants Work in Riskier Jobs?*, 46 *DEMOGRAPHY* 535, 548 (2009), <https://perma.cc/VG5K-XC64>.

⁷⁰ Emily Underwood, *Unhealthy Work: Why Migrants Are Especially Vulnerable to Injury and Death on the Job*, *KNOWABLE MAG.* (Jul. 18, 2018), <https://perma.cc/UCC9-F8S2>; *see Number and Rate of Fatal Work Injuries, by Private Industry Sector, 2021*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/charts/census-of-fatal-occupational-injuries/number-and-rate-of-fatal-work-injuries-by-industry.htm> (last visited July 12, 2023) (on file with CUNY Law Review).

⁷¹ *See* Underwood, *supra* note 70.

⁷² *See* Michael Grabell & Howard Berkes, *They Got Hurt at Work—Then They Got Deported*, *NPR* (Aug. 16, 2017, 5:00 AM), <https://perma.cc/RBF3-QQVW>.

system.⁷³ A recent community-based participatory research study captures the health impact of day-to-day life in a hostile social, political, and legal context: Interviews with 23 undocumented Latinx migrants at healthcare centers in Michigan revealed “heightened stress and adverse mental health outcomes” because of “restrictive immigration policies, anti-immigrant rhetoric present in the media, fear and expectations of deportation, firsthand and secondhand discriminatory events, social isolation, and internalized anti-immigrant rhetoric.”⁷⁴

This overview of the ways that the ableism embedded in immigration policy harms disabled and undocumented Latinx immigrants is by no means complete. However, an overview not only of one context, but across the contexts encountered by undocumented Latinx immigrants allows us to begin to understand a more holistic picture of the ways that anti-immigrant and ableist oppression intersect to impact Latinx individuals who are both disabled and undocumented. This is significant for the legal aid lawyer because these contexts shape the personal history that a client brings to the legal aid office, and shapes their framework for envisioning legal strategies and potential remedies. In the next part, I turn more specifically to the purview of legal aid work to explore how experiences and contexts like those described above shape the experience of accessing services and exercising rights for undocumented, disabled Latinx immigrants and their families.

IV. THE NEED FOR SERVICES AND BARRIERS TO ACCESS

Helping clients access benefits and healthcare services is central to the work of a legal aid lawyer.⁷⁵ Even when accessing benefits is not the explicit goal of the legal representation—as it is, for instance, when representing clients in administrative hearings regarding denial of government benefits—it is an important part of holistically addressing a client’s

⁷³ See M. Carmela Pérez & Lisa Fortuna, *Psychosocial Stressors, Psychiatric Diagnoses, and Utilization of Mental Health Services Among Undocumented Immigrant Latinos*, in *MENTAL HEALTH CARE FOR NEW HISPANIC IMMIGRANTS: INNOVATIVE APPROACHES IN CONTEMPORARY CLINICAL PRACTICE* 107, 115 (Manny J. González & Gladys González-Ramos eds., 2005).

⁷⁴ Mislael Valentín-Cortés et al., *Application of the Minority Stress Theory: Understanding the Mental Health of Undocumented Latinx Immigrants*, 66 AM. J. CMTY. PSYCH. 325, 334 (2020).

⁷⁵ See, e.g., *Civil Legal Aid 101*, U.S. DEP’T OF JUST. OFF. FOR ACCESS TO JUST. (Jan. 27, 2023), <https://perma.cc/D4UY-GHBL>; see also *What Is Legal Aid?*, NAT’L LEGAL AID & DEF. ASS’N, <https://perma.cc/N9E5-YNE6> (last visited Feb. 22, 2023) (defining legal aid as, in part, “defend[ing] access to services for people of all backgrounds, including children, veterans, victims of domestic violence, the elderly, and those living with disabilities”).

needs.⁷⁶ Moreover, access to health services can be in practice, if not legally, a prerequisite for successfully exercising rights under disability law.⁷⁷ Thus, to better understand the dynamics that influence an undocumented and disabled Latinx migrant's decisions about whether and how to use services to which they are legally entitled, this section draws together scholarship and narratives about the way undocumented and disabled migrants conceive of their disability, their need for services, and the risks of using government-provided services in a range of contexts, including education, medical care, and mental healthcare.

As described in Part III, service providers in the wake of the 2019 Public Charge Final Rule reported that undocumented clients were afraid to access services, including those services not implicated in the public charge determination.⁷⁸ But even before Trump infused U.S. immigration policy with heightened cruelty, a number of studies specifically focused on access to mental healthcare found that Latinx immigrants were less likely to access mental healthcare services than U.S.-born Latinx individuals.⁷⁹ A number of social and cultural factors may influence a decision

⁷⁶ While my focus here is on civil legal aid offices, the “holistic representation” approach to legal services has roots in holistic defense models, developed in the 1990s by organizations like the Bronx Defenders, which understood the role of the public defender office to extend beyond criminal legal defense and to encompass addressing a client’s broader legal and non-legal needs. See James M. Anderson et al., *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 HARV. L. REV. 819, 825 (2019). To that end, holistic defense offices are staffed with not only “criminal defense lawyers and related support staff (investigators and paralegals) but also by civil, family, and immigration lawyers as well as social workers and nonlawyer advocates, all working collectively and on an equal footing.” *Id.* at 821. Today, “holistic representation” is used to describe a range of individual and organizational practices that provide “legal representation that considers a broader range of client needs.” *Id.* at 826.

⁷⁷ See, e.g., Katherine A. Macfarlane, *Disability Without Documentation*, 90 FORDHAM L. REV. 59, 70 (2021) (arguing that in practice, and inconsistent with ADA legislative history, employees cannot win failure-to-accommodate claims under the ADA unless they provided medical documentation of a disability). Similarly, under the Fair Housing Act, if a disabled tenant requests a reasonable accommodation for a disability that is “not obvious,” their housing provider may request information to “verify that the person meets the Act’s definition of disability,” including verification from “[a] doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability.” U.S. DEP’T OF JUST. & U.S. DEP’T OF HOUS. & URB. DEV., JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE: REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT 13-14 (2004).

⁷⁸ See STRAUT-EPPSTEINER, *supra* note 53, at 1-3; BERNSTEIN ET AL., *supra* note 55, at 1-2.

⁷⁹ See Amelia Seraphia Derr, *Mental Health Service Use Among Immigrants in the United States: A Systematic Review*, 67 PSYCHIATRIC SERVS. 265, 265-66 (2016) (finding through systematic literature review that Latinx immigrants are less likely to access mental healthcare services than U.S.-born Latinx individuals, and finding similar trends among immigrants from Asia, Latin America, and Africa).

whether to use mental health services after migrating to the United States. For example, Latinx immigrants may come from countries where there is much less availability of, and therefore lower use of, mental health services compared to the United States.⁸⁰ Latinx populations in the United States are less likely to perceive the need for mental health services than non-Latinx white people after adjusting for severity of mental illness,⁸¹ and some Latinx immigrants may be influenced by culturally specific attitudes about mental health.⁸² In addition, healthcare in the United States is often a site of harm for disabled individuals, especially those with multiple marginalized identities.⁸³

⁸⁰ See, e.g., Alberto Minoletti et al., *Community Mental Health Services in Latin America for People with Severe Mental Disorders*, 34 PUB. HEALTH REVS., 2012, at 1-2 (“[A]lmost all Latin American countries still invest far less in public mental health than in other public health problems with comparable disease burden. Moreover, a large part of public mental health resources are still used to maintain a system of mental hospitals that do not offer appropriate treatment.”); Robert Kohn et al., *Mental Health in the Americas: An Overview of the Treatment Gap*, 42 PAN AM. J. PUB. HEALTH, Oct. 2018, at 1, 4 (reporting, among other disparities, that the mental health workforce per 100,000 is 8.7 in South America and 125.2 in the United States); Philip S. Wang et al., *Use of Mental Health Services for Anxiety, Mood, and Substance Disorders in 17 Countries in the WHO World Mental Health Surveys*, 370 LANCET 841, 845-47 (2007) (finding generally higher use of mental health services in the United States than in either Colombia or Mexico, the two Latin American countries considered in the study).

⁸¹ Joshua Breslau et al., *Racial/Ethnic Differences in Perception of Need for Mental Health Treatment in a US National Sample*, 52 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 929, 930-31 (2017). While this study did not disaggregate immigrant and U.S.-born Latinx participants, the researchers did find that the gap in perception of need for services was greatest between Latinx participants interviewed in Spanish and non-Latinx white participants. *Id.*

⁸² See, e.g., Kohn et al., *supra* note 80, at 5 (describing barriers to seeking mental healthcare in Latin America including “stigma, lack of mental health literacy, financial burdens, lack of trust in the health care system, and the belief that treatment is not helpful”); Susan Caplan, *Intersection of Cultural and Religious Beliefs About Mental Health: Latinos in the Faith-Based Setting*, 17 HISP. HEALTH CARE INT’L 4, 6-7 (2019) (discussing qualitative study interviewing Latinx members of faith-based communities in the United States, though not focusing exclusively on immigrants, finding that families socialized participants to have negative attitudes about severe mental illness and to conceal symptoms of mental illness).

⁸³ See Mia Mingus, *Medical Industrial Complex Visual*, LEAVING EVIDENCE (Feb. 6, 2016, 6:00 AM), <https://perma.cc/P36Z-G7UL> (offering a visual and descriptive analysis of the Medical Industrial Complex as a system that encompasses, but extends beyond, healthcare settings and targets “oppressed communities under the guise of care, health[,] and safety”); see also Lzz Johnk & Sasha A. Khan, “*Crippling the Fuck Out: A Queer Crip Mad Manifesta Against the Medical Industrial Complex*,” 9 FERAL FEMINISMS, Fall 2019, at 26, 29-33 (2019) (capturing trauma perpetuated within the Medical Industrial Complex through a dialogue between doctor and patient that is based on experiences of the authors and their loved ones); Alana Saltz, *How CBT Harmed Me: The Interview That the New York Times Erased*, DISABILITY VISIBILITY PROJECT (Nov. 11, 2021), <https://perma.cc/Y5FX-VL8K> (describing the harm the author experienced in cognitive behavioral therapy as a person with chronic pain). Keeping these analyses in mind, it is important to note that my engagement with statistics related to healthcare usage is intended to suggest neither that higher rates of healthcare usage

However, these factors alone do not capture the specific interaction between undocumented status and mental healthcare use, because undocumented Latinx migrants are less likely to use mental health services than U.S.-born Latinx individuals *and* Latinx individuals with documented immigration status.⁸⁴ Moreover, even before the 2016 election, undocumented Latinx immigrants reported avoiding seeking mental healthcare because of fear that they would be asked to provide documentation, or that they would be deported when seeking services.⁸⁵ And moving beyond mental healthcare, after the 2016 election, a study of Latinx patients in California emergency departments found that both undocumented immigrants and immigrants with residency status avoided emergency room visits, reporting fear based on anti-immigrant rhetoric and increased immigration enforcement as the main deterrent to seeking healthcare.⁸⁶ Research suggests, then, that at least in the realm of healthcare, and perhaps especially mental healthcare, where there is the most robust body of literature exploring patterns of service use among Latinx immigrants, fear of negative immigration consequences is one of the barriers to accessing services.

At the same time, narratives of disabled undocumented Latinx immigrants in both scholarship and popular media suggest that the relationship between immigration status and access to services is more complex and empowered than the simple narrative of fear and avoidance would suggest. Indeed, some undocumented Latinx immigrants come to and/or remain in the United States specifically because they want to access services to support disability-related needs that would not be available in their country of origin. Moreover, disabled Latinx immigrants from Guatemala, Honduras, and El Salvador may be not only seeking access to services, but also fleeing discrimination and disability-related violence and extortion.⁸⁷

What results for undocumented and disabled immigrants can be a kind of push-and-pull between punitive U.S. immigration policy and

is normatively preferable to lower rates, nor that increased access to the current healthcare system will in and of itself dismantle ableism. Rather, I use these studies as one window into barriers produced at the intersection of racist and anti-immigrant law and policy.

⁸⁴ Derr, *supra* note 79, at 267 (“Undocumented Latino immigrants had lower rates of service use than any other group; they had fewer mental health appointments and lower life-time inpatient and outpatient service use rates than U.S.-born Latinos and Latino immigrants in the United States with legal documents.”); *see also* Pérez & Fortuna, *supra* note 73, at 117-18.

⁸⁵ Derr, *supra* note 79, at 269.

⁸⁶ *See* Carolina Ornelas et al., *Anti-Immigrant Rhetoric and the Experiences of Latino Immigrants in the Emergency Department*, 22 W. J. EMERGENCY MED. 660, 661, 663-64 (2021).

⁸⁷ *See* Ríos Espinosa, *supra* note 66.

entitlement to benefits that would be unavailable in their country of origin. Michelle Garcia, an organizer at Cambiando Vidas, a grassroots group that builds power specifically among the disabled and Latinx immigrant community, described this tension when she spoke about the experience of disabled undocumented Latinx immigrants at the beginning of the Trump presidency:

They have a lot of fear, and their mental state, they have disabilities already, physical disabilities, and then you also have developmental and/or mental disabilities. Because also, they also come from a place of in [sic] their countries of origin, they have—*If here they don't have much services, they at least have some supports and services or access. But in their countries of origin, they have nothing because from their countries like Mexico or South and Central America, there's very little services available to people with disabilities.* So this weighs even more to go back to their countries of origin and be left just there, no services or no supports.⁸⁸

But when asked how fear of deportation to a country without services and supports has impacted the behavior of undocumented Latinx immigrants with whom Garcia works, she responded:

[M]any of them have opted of [sic] not going to their regular checkups at the doctors or going to get medication that they desperately need for diabetes or depression. Or treatments or going for therapy, they stop attending because of the same fear of having [U.S. Immigration and Customs Enforcement (“ICE”)] go into these locations, like a hospital, clinic, so on and so forth, and having them be detained.⁸⁹

In other words, the undocumented and disabled Latinx immigrants with whom Garcia was working faced an impossible bind: They needed to receive services that were not available in their country of origin. But this need resulted in a heightened fear of deportation, which decreased their likelihood of engaging with service providers because of fear that such engagement could trigger detention, deportation, and being completely cut off from services.

The experience that Garcia describes, of having *no* access to services in one's country of origin, is not universal. Indeed, because of barriers to accessing the U.S. healthcare system, some undocumented Mexican immigrants living in the United States still receive preventative screenings

⁸⁸ Wong et al., *supra* note 3, at 10:36-11:37 (emphasis added).

⁸⁹ Wong et al., *supra* note 3, at 12:03-12:35.

and healthcare information through the Mexican consulate's Ventanilla de Salud program.⁹⁰ Still, the work of María Cioè-Peña, who collected *testimonios*⁹¹ from undocumented Mexican immigrant mothers whose children receive special education services in the New York City Public Schools, presents the experiences of a group of women in a similar bind to that described by Garcia:

[The mothers] are overwhelmed with a sense of responsibility to ensure that their children have access to the practitioners, services, and programs without interrogating their validity or appropriateness. Thus, they carry with them the looming fear of deportation while suppressing the possibility of a life without persecution in their [country of origin]

An incomplete understanding of the functions of disability labels and special education in the U.S., coupled with their undocumented status means that these issues, although relevant to all immigrant families, are more dire for these mothers because they must continue interacting with government agents⁹²

Cioè-Peña's research also reveals the way that, even when undocumented immigrants do interface with government agencies to access services, the access can be incomplete if unaccompanied by full information regarding rights and entitlements, and culturally relevant service provision. For example, Cioè-Peña reveals how service providers fail to engage with the differences between how the Latinx mothers understand their children's disabilities and the IDEA-governed⁹³ process of testing, diagnosis, and treatment.⁹⁴ This results in a dynamic where the mothers on the

⁹⁰ See generally Valeria Marina Valle et al., *Ventanillas de Salud: desafíos en el acceso a servicios de salud de inmigrantes mexicanos en EE.UU.* [Defeating Challenges in Healthcare Access for Mexican Immigrants in the United States], 21 ESTUDIOS FRONTERIZOS, Mar. 2020, at 1 (Mex.). See also Nyzelle Juliana Dondé & Tuila Botega, *Migrantes retornados con discapacidad y sus luchas por reconocimiento: una mirada desde la Pastoral de Movilidad Humana de Honduras* [Returned Migrants with Disabilities and Their Struggles for Recognition: A Look from the Pastoral Care of Human Mobility of Honduras], 28 REVISTA INTERDISCIPLINAR DA MOBILIDADE HUMANA [REV. INTERDISCIP. MOBIL. HUM.] 263, 267-68 (2020) (Braz.) (describing a program established in Honduras to connect returning disabled migrants with services and supports, including mental health services).

⁹¹ Cioè-Peña uses the Spanish word "*testimonio*" throughout her scholarship to describe the specific type of narrative she is collecting. María Cioè-Peña, *Wanting to Leave; Needing to Stay: Issues for Undocumented Mothers of Children with Disabilities*, 20 MULTIPLE VOICES: DISABILITY, RACE, & LANGUAGE INTERSECTIONS SPECIAL EDUC. 6, 9, 18 (2020).

⁹² *Id.* at 18.

⁹³ Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-82.

⁹⁴ See MARÍA CIOÈ-PENÁ, (M)OTHERING LABELED CHILDREN: BILINGUALISM AND DISABILITY IN THE LIVES OF LATINX MOTHERS 69-71, 77-78 (2021).

one hand understand their children's behaviors as natural developmental differences, and even avoid using the word disability, and on the other hand take official-sounding medical diagnoses as a sign that school service providers are the authorities on their children's needs.⁹⁵

Perhaps more pernicious still, Cioè-Peña and other researchers have documented service providers encouraging parents not to speak to disabled children in Spanish, claiming that bilingualism will inhibit language development.⁹⁶ This practice is an example of how a medicalized approach to disability results in what Cioè-Peña describes as "labels work[ing] to essentialize student needs while erasing their humanity and their communal belonging."⁹⁷ And, at the same time, even within the logic of the treatment model of the IDEA, this is inappropriate advice that is not evidence-based.⁹⁸ In other words, service providers and special education systems, operating at an intersection of medical models of disability and anti-immigrant sentiments expressed through hostility to the Spanish language, advise parents to engage in practices that inhibit language development and cut children off from their families and communities.

Hernández Legorreta, whose story I introduced in Part II, describes an experience similar to those captured by Cioè-Peña, though from the perspective of a disabled child. She grew up in California because, as she writes, "My mother decided to stay in the United States because both my

⁹⁵ *Id.* at 69-71, 82. Cioè-Peña describes the experiences of mothers who have received a disability diagnosis for their children but were not receiving adequate answers to their questions from the school: "[W]e see that this is in part due to a shift in power dynamics. Because the mothers had not been the ones to identify a problem in their child, they no longer felt like the experts on their children and those who they considered experts 'no me daban respuesta . . .'" *Id.* at 82. She continues, "Eventually, this increased sense of invisibility combined with feelings of powerlessness took a toll on the mothers' psychological well-being, often leading them to deny their own capacity as advocates for their children. *Id.* For other examples of school service providers failing to provide Latinx immigrant families with culturally relevant services that engage with different cultural perceptions of disabilities, see generally Elizabeth Ijalba, *Perceptions About Autism in Hispanic Immigrant Mothers of Preschool Children with Autism Spectrum Disorders*, in *LANGUAGE, CULTURE, AND EDUCATION: CHALLENGES OF DIVERSITY IN THE UNITED STATES* 177 (Elizabeth Ijalba et al. eds., 2019).

⁹⁶ CIOÈ-PENÁ, *supra* note 94, at 101-03; Ijalba, *supra* note 95, at 181-82. See generally Victoria Puig, *How Early Childhood Interventions Endanger the Home Language and Home Culture: A Call to Value the Role of Families*, in *LANGUAGE, CULTURE, AND EDUCATION: CHALLENGES OF DIVERSITY IN THE UNITED STATES*, *supra* note 94, at 194-206.

⁹⁷ CIOÈ-PENÁ, *supra* note 94, at 9. See also *id.* at 18-21 (framing students' language rights through a linguistic human rights lens). For a discussion of the medical model framework in education, see Audri Sandoval Gomez & Aja McKee, *When Special Education and Disability Studies Intertwine: Addressing Educational Inequities Through Processes and Programming*, *FRONTIERS EDUC.*, Nov. 2020, at 1, 2 ("special education highlights the needs of the child with a disability through the medical model framework focused on identification and remediation, exacerbating the focus of the disabled from able-bodied individuals" (citations omitted)).

⁹⁸ See Ijalba, *supra* note 95, at 177.

brother and I are blind, and she realized that we could get a better-quality education with accommodations and support than if we were in Mexico, where there were none.”⁹⁹ But she goes on to explain how, in hindsight and from her position as an advocate, she recognizes that “no administrators fully explained to my mother what legal rights we were entitled to. At most schools we received subpar services, but it was more than my mother had ever expected.”¹⁰⁰ Like the mothers in Cioè-Peña’s study, Hernández Legorreta’s mother remained in the United States because her children would have access to better services in the United States than in Mexico. However, because the services available in the United States exceeded those available in Mexico, and because the school system failed to provide Hernández Legorreta’s mother with information about her legal rights in the United States, she realized neither that her children had a substantive right to better services than the schools were providing nor that she had procedural rights to hold the schools accountable to meeting her children’s individual needs. Hernández Legorreta’s work now centers on providing disabled BIPOC immigrants and their families who have been ill-served by the mainstream disability rights movement with access to information so that they can exercise their rights.¹⁰¹

Although this article by no means attempts to universalize a Latinx undocumented immigrant experience from the stories of a graduate of the California public schools whose parents migrated from Mexico, Mexican undocumented immigrant mothers in New York, and the Latinx communities of an organizer in Chicago, the resonances between all these narratives suggest patterns of engagement with disability-related service provision in the United States by undocumented and disabled Latinx immigrants and their families. These patterns are shaped by the tension between, on the one hand, the relative accessibility of services in the United States compared to an individual’s country of origin and, on the other hand, multiple layers of barriers to access arising both from failures in disability rights laws and the systems they create to account for differences in culture, language, and immigration status, and from immigration law’s overt hostility to disabled immigrants, to undocumented immigrants, and specifically to undocumented Latinx immigrants.

At the same time, these narratives reveal patterns of strength and solidarity found outside the entitlements offered by the legal system. Cioè-Peña describes the significance of motherhood in Latinx cultures, and her research centers the strength of mothers of disabled children in the face of special education programs that are at best passively inaccessible and

⁹⁹ Hernández Legorreta, *supra* note 15.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

at worst actively discriminatory.¹⁰² Hernández Legorreta describes her family and community stepping in to provide support where schools and service providers failed.¹⁰³ This is perhaps consistent with research showing that even immigrants who do ultimately use mental health services (including, but not exclusive to, Latinx immigrants) are most likely to first seek help from friends, family, and religious communities.¹⁰⁴ The legal aid lawyer must understand both the potential nuances of accessing services as a disabled and undocumented Latinx immigrant and the potential family- and community-based resources that exist outside of the legal system. Such understanding is necessary to support clients in making informed, empowered choices about when and how to exercise their right to disability-related services and support for themselves and their families.

V. FROM ANALYSIS TO PRACTICE

Thus far, I have outlined some of the complex and devastating consequences of the intersection between an immigration system specifically designed to punish and exclude disabled immigrants, undocumented immigrants, and Latinx immigrants, and a disability rights regime arising from a movement that, while groundbreaking, resulted in systemic reforms that continue to privilege white citizens with financial resources. As far as I could find, there is no empirical research directly addressing how the experiences arising from these intersecting systems shape the way that undocumented and disabled Latinx immigrants interact with the civil legal system in the United States. One can imagine, however, that the overlay of immigration law on statutes like the ADA poses unique barriers for undocumented, disabled Latinx immigrants facing disability-based discrimination—for instance, deterring a client from seeing a healthcare provider whose diagnosis would make it easier to establish the presence of a disability for the purposes of a disability discrimination claim.

This section attempts to demonstrate how an analysis grounded in disability justice might concretely inform practice and help lawyers communicate with undocumented and disabled Latinx clients, build relationships based in trust, and support clients in defining and pursuing their goals within the confines of the U.S. legal system. I offer a list of suggestions, drawn from the narratives and research presented throughout this

¹⁰² CIOË-PENNA, *supra* note 94, at 69-71 (describing mothers who affirmed their children's differences and understood disability not as something inherently wrong with their child, but rather society's failure to recognize neurodiversity).

¹⁰³ See Hernández Legorreta, *supra* note 15.

¹⁰⁴ Derr, *supra* note 79, at 267-68.

article. This is not to encourage lawyers to essentialize or treat undocumented and disabled Latinx clients as a monolith, or to claim an authority based in research that de-centers the authority of a client's experience. Rather, it is to encourage an awareness of the systemic forces that have shaped, and may continue to shape, an undocumented and disabled Latinx client's experience of the legal system—even when representing a client on a matter that seems at first glance unrelated to immigration or disability. This awareness may inform the questions the lawyer asks, the answers that they listen for, and the contextual information that they provide a client, ultimately helping the lawyer understand the client's individual experiences and support the client in meeting their goals.

The suggestions below are written primarily with the legal aid context in mind, largely because that is the context in which I have practiced, and also because it is a context in which connecting clients with benefits is often either a direct or collateral part of client representation, but they are also applicable to civil rights and immigration lawyers. These suggestions are by no means comprehensive but, rather, a starting point, to be continually refined through iterations of practice and theoretical work. Moreover, while these suggestions are written specifically to lawyers working with undocumented Latinx clients, the themes arising from them can also provide a framework for lawyers working with non-Latinx immigrant communities.

- **Provide accurate, up-to-date information about U.S. legal rights and entitlements, and about how exercising these rights intersects with immigration law.** The study of Latinx patients in the California emergency department in the wake of the 2016 election found that “[t]he single most cited factor [by the Latinx participants] that mitigated fear was knowing one’s rights.”¹⁰⁵ This suggests that lawyers who work with undocumented Latinx clients—and, really, any Latinx clients, as clients with residency status may also be impacted by fear for undocumented family members or community members—should devote time to providing up-to-date “know your rights” resources in multiple disability-accessible formats.¹⁰⁶ These resources should include *both* information regarding general civil legal rights in a relevant practice area (disability rights, housing rights, healthcare rights, etc.) *and* immigration implications of exercising specific non-immigration legal rights.¹⁰⁷ If possible, connect

¹⁰⁵ Ornelas et al., *supra* note 86, at 664.

¹⁰⁶ For guidance on designing disability-accessible print materials, web materials, and events, see *Designing Accessible Resources for People with Disabilities and Deaf Individuals*, VERA INST. OF JUST. (Oct. 2017), <https://perma.cc/JA2B-35WB>.

¹⁰⁷ For an example of a holistic “know your rights” resource that addresses immigration implications of exercising non-immigration rights, see *Know Your Rights, MAKE THE ROAD N.Y.*, <https://perma.cc/2FFJ-7VD5> (last visited Apr. 7, 2023).

with Latinx-led community-based organizations to co-create and distribute information. Be prepared to share information regarding legal rights and immigration implications through every stage of client counseling. To do this most effectively, maintain relationships and referral pipelines, for either representation or free one-off consultations, to immigration lawyers. Make sure that the immigration lawyers to whom you make referrals understand benefits law and legal aid work.¹⁰⁸

- **Recognize that your client may not use the language of disability to describe and understand differences that the U.S. legal system would recognize as disabilities. Inform your client both about how U.S. law protects the rights of disabled people and about how U.S. laws define disability.** The question of disability should be one that is revisited throughout the representation, as the lawyer and client build trust and discuss legal strategy, and not one that is disposed of quickly at intake or an initial interview. Begin with open-ended questions about a client's needs and experiences rather than invasive questions about diagnoses. Recognize, too, that the legal aid relationship may never be a safe context for a client to disclose or discuss disability, especially if you are a white lawyer and your client is Black or a non-Black person of color, and honor your client's boundaries.¹⁰⁹ Adopting a disability justice-informed understanding of disability as a social phenomenon can help frame a conversation about disability categories under U.S. law that both validates a client's self-determined identity and explains how asserting specific disability-related claims might meet a client's needs or redress harm. Conversations grounded in a social understanding of disability can also lay the groundwork for empowering clients to claim services and accommodations to which they are entitled by law, and to critique medical

¹⁰⁸ See STRAUT-EPPSTEINER, *supra* note 53, at 16-17. Straut-Eppsteiner reports accounts of non-lawyer benefits navigators encountering clients who had been given misinformation by immigration attorneys unfamiliar with benefits law, or who had been given conflicting advice by legal aid attorneys encouraging clients to apply for benefits and immigration attorneys taking a conservative approach and dissuading clients from applying for any benefits. These accounts suggest a need for closer collaboration and knowledge-sharing between immigration attorneys and legal aid attorneys. Some of the benefits navigators interviewed responded to this problem by referring clients to specific, trusted immigration attorneys, or to legal aid attorneys who had a specialized understanding of the public charge rule.

¹⁰⁹ PIEPZNA-SAMARASHINHA, *supra* note 16, at 20 describes the necessity of BIPOC-led and BIPOC-only disability justice spaces for safe disclosure and discussion of disability: "[D]isability [J]ustice community spaces lead [sic] by Black and [B]rown disabled people are revolutionary spaces because they are often the only ones where disabled BIPOC feel safe to uncloset ourselves and speak our vulnerable and raw disabled BIPOC stories." She goes on to describe her own practice of "always insist[ing] on doing BIPOC only disabled workshops," knowing that "when BIPOC who haven't had space to think about disability from a Black or [B]rown perspective before finally get that space, our disabled BIPOC stories that come out . . . are not ones we will ever feel comfortable sharing in front of white people.").

narratives of disability and challenge services and accommodations that are offered by “experts” but do not meet the client’s individual needs.¹¹⁰

- **Engage clients in conversations about family and community support networks in the United States.** Ask about the resources and support that clients may already be receiving from family, or from their community. Think imaginatively about ways that you can leverage the legal system to make familial support networks more sustainable. For instance, if a family member is serving as an unpaid primary caretaker, explore whether there are avenues for registering that family member as a personal care assistant with a stipend. Make sure you understand and practice trauma-informed methods for engaging in conversation and, as always, keep a client’s potential fears regarding immigration enforcement in mind when counseling the client regarding strategies that connect them or their family with supports.¹¹¹

- **Adopt international and transnational understandings of disability justice and, when appropriate, engage clients in conversations about the services and supports that they received in their country of origin.** When relevant, engage clients in conversations about their experience of receiving support for their disability in their country of origin. Recognize that, while some undocumented and disabled Latinx immigrants may seek access to services in the United States that would not be available in their country of origin, access to healthcare varies both across countries, and regionally within countries. Stay aware of, and inform your clients about, programs like Mexico’s Ventanilla de Salud, which provides not only healthcare screenings, but also referrals to trusted community health clinics.¹¹² Think creatively with your client about how to draw on resources such as a client’s organizing and activism networks, including networks based in their country of origin.

- **Shift narratives in writing and oral arguments.** Chin concludes her piece on the intersection of anti-Black racism and ableism by praising recent litigation challenging Georgia legislation that limits voting access on both disability discrimination and race discrimination grounds.¹¹³

¹¹⁰ Cf. CIOË-PÉÑA, *supra* note 94, at 67 (describing immigrant mothers’ feelings of alienation and confusion at their children being diagnosed with disabilities at school, contrary to their own understandings of their children’s needs and abilities).

¹¹¹ Though beyond the scope of this paper, trauma-informed client interviewing and counseling skills are crucial when working with all clients, and especially with undocumented clients who may have experienced trauma, including trauma related to disability discrimination, in their countries of origin. See generally Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359 (2016) (offering a definition and discussion of trauma and advocating for incorporating trauma-informed practice into clinical legal teaching).

¹¹² Valle et al., *supra* note 90, at 12-14.

¹¹³ Chin, *supra* note 17, at 746-47.

Similar narrative strategies can be adopted by legal aid lawyers working at the intersection of disability, race, and immigration status. Legal aid lawyers are often trained to process a high volume of cases quickly, and through the lens of narrowly defined issue areas. In my experience, this can lead to encouraging clients to focus on one aspect of their story to present a clean and “winning” narrative. If there is a disability-related claim or defense, always ask whether there are claims or defenses related to the client’s race or national origin, and vice versa. If your client is experiencing intersectional discrimination and wants to tell a complex story, explore ways of developing testimony that meets the relevant legal standards but tells a more complex and intersectional story, even if this breaks the mold of the way it is usually done.

- **Seek out and support intersectional movements for justice.**

Remember that a disability justice analysis should push the lawyer beyond merely acknowledging that they work within a legal system designed to uphold ableist and white supremacist systems, and instead push the lawyer toward working in solidarity with movements that seek the abolition of these systems, including by connecting the work of individual representation with the goals of grassroots movements. Even when it is difficult to find organizations explicitly devoted to organizing at the intersection of disability and undocumented status, such as *Cambiando Vidas* in Chicago,¹¹⁴ seek out local disability justice leaders working as organizers focused on this intersection, perhaps within larger organizations, perhaps in intensely local contexts. Connect clients with these leaders to facilitate building grassroots power, and engage in the slow work of building trust to strategize and brainstorm together.

- **Collaborate, think, and work outside the law.** Intersectional work requires collaboration, and indeed almost all of the suggestions above are best implemented in community with others—with lawyers with different legal expertise, with organizers, with families, with communities, and, ideally, with international communities of organizers and activists. Embrace interdisciplinary work, and develop relationships with colleagues within and outside of the legal profession.

VI. WHERE NEXT?

This article provides a wide-ranging overview of the connection between Latinx identity, disability, and immigration status, because no other article has attempted to map this intersection broadly and across contexts.

¹¹⁴ E.g., Alma Olavarría Gallegos, *Cambiando Vidas—Changing Lives*, ACCESS LIVING, <https://perma.cc/MTD3-EPYP> (last visited Mar. 1, 2023).

However, there is much more to be done. Before concluding, I outline three specific limitations and suggestions for further work.

First, the suggestions in Part V are limited by the fact that they are *not* primarily grounded in examples from practice but, rather, arise from reading a wide range of narratives and academic studies touching on the experience of undocumented and disabled Latinx immigrants, reflecting on my experience of legal aid practice, and imagining how these two contexts intersect. There is need for empirical work that centers the first-hand narratives of Latinx immigrants navigating the legal system as, for instance, plaintiffs bringing civil rights claims against employers or housing providers, claimants in administrative actions contesting the denial of healthcare services or other benefits, and defendants in eviction cases. There is need for narratives that answer questions like: How do undocumented and disabled Latinx immigrants experience working with legal aid lawyers? What happens when an undocumented and disabled Latinx immigrant needs a reasonable accommodation in housing or employment?

Second, disability justice says that disabled and undocumented Latinx immigrants should be leading efforts to address the harms inflicted by both the immigration system and the limitations of the disability rights framework. Whether and how legal aid lawyers (or any lawyers) fit into this work is a question that is best answered by movement leaders, not attorneys. There is a need for deep relationship-building and partnerships, and for the development of legal strategies that follow the lead, and meet the needs, of grassroots organizations.¹¹⁵

Third, many of the narratives that inform this article center Mexican immigrant experiences. Most of the larger-scale empirical studies constructed Latinx individuals as a monolithic group, sometimes differentiating between immigrant with residency status, undocumented immigrant, and U.S.-born, but rarely differentiating between countries of origin. None of the larger-scale empirical studies presented data disaggregated by race. There is need for work that addresses the experiences of different Latinx immigrant communities, and that addresses how anti-Black racism impacts the experience of Latinx immigrants who are Black, disabled, and undocumented. And there is need for work that centers the experiences of disabled immigrants from Indigenous communities in Latin America.

¹¹⁵ See, e.g., Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375 (2013); Purvi Shah, *Movement Lawyering Reading Guide*, 47 HOFSTRA L. REV. 99 (2018); Amna A. Akbar et al., *Movement Law*, 73 STAN. L. REV. 821 (2021); *Resources*, MOVEMENT L. LAB, <https://perma.cc/ZUK4-B3P8> (last visited July 8, 2023).

The U.S. immigration system is, and has long been, ableist and disabling. Yet immigrants have limited legal recourse for challenging its ableist harms, because the rights-based framework of U.S. disability law is more accessible to citizens than to non-citizens, especially undocumented non-citizens. These two systems, immigration law and disability law, interact and shape the experiences of clients who are undocumented, disabled, and Latinx. In response, lawyers need to attend to the ways specifically anti-Latinx rhetoric, law, and policy shape the experiences of undocumented and disabled clients.