Ending Sheridan: Rise of a Rights Architecture

June 21, 2019
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1. AN INDUSTRY OF MISERY

Originating in the mountains along the Pacific coast, the south fork of the Yamhill River rises and runs due east. At nearly its mid-point, the river slices nearly exactly in half the town of Sheridan, Oregon. To the north of the river lies the historic town square. To the south sits the Federal Corrections Institute Sheridan, a 189-acre federal prison operated by the Bureau of Prisons. Outside the prison, the vast fields of the Willamette Valley unfold. Bounded by mountain ranges on all sides, the valley floor surrounding the prison is some of the most fertile agricultural land in the region.

Built in 1989 to “protect society by confining offenders in the controlled environments,” the prison is the town of Sheridan’s largest employer. It also comprises nearly a third of Sheridan’s population. The federal prison in Sheridan is a medium-security facility dedicated for individuals being detained pretrial, individuals found guilty of federal crimes who have not yet been sentenced, and individuals who have been sentenced but await designation of a federal prison.

Electric fencing and razor wire secure the perimeter of the prison facility. Its access road has a two-stage entry barricade that regulates movement to and from the prison. There are lights, towers, and cameras that illuminate, monitor, and control the space. And there are armed guards.

On a clear early summer morning in May 2018, stacks of mattresses appeared out of nowhere at the Sheridan prison. Later that day, 124 asylum-seeking men, who had originally been detained at the United States border with Mexico, were transported and locked inside cells with those mattresses. The men came from places across the globe—India, Nepal, Guatemala, Mexico, Honduras, China,
Eritrea, Armenia, Bangladesh, Peru, Mauritania, Brazil, Cameroon, El Salvador, Nicaragua, and Russia.

In May 2018, the Trump Administration incarcerated almost 1,600 noncitizens in federal prisons along the west coast. Like the 124 men incarcerated at Sheridan, all of the individuals were detained in those prisons under civil—not criminal—authority.

While ostensibly a place whose very existence is an expression of the force of law, the Trump Administration’s deportation policies turned the Sheridan prison into a place of clandestine and cruel detention entirely outside of the rule of law. For weeks, those 124 men were held without any meaningful way to contact the outside world and no way for the outside world to find or contact them. For weeks, without any access to courts or any judicial oversight, they were incarcerated for at least 22 hours each day in a triple-bunked cell with an open toilet. They were stripped naked and searched in front of others. The filth in the overcrowded cells was dehumanizing and degrading. Many had no idea they were in a state called Oregon—so far from the homes they had fled seeking safety in the United States.

Power is not law, but power often manifests itself in law and legal procedures. Power in the absence of law is a common occurrence when immigration theory arrives in the field. The nature of immigration regulation historically fosters anti-rule-of-law tendencies by state actors. The autocratic trifecta of secrecy, unitary authority, and a vast detention complex represent the core of immigration regulation. Oxymoronically, the anti-rule-of-law nature of regulating migration might be better understood as a feature and not a bug that encourages autocratic experimentation. In the spring of 2018, this feature of immigration regulation that rewards autocratic experimentation bloomed into an unprecedented use of the federal prison system to facilitate rapid removals without court oversight or access to counsel.

II. ORIGINS OF RESISTANCE

This report summarizes the work of the Sheridan Pro Bono Project—a project of the Innovation Law Lab in Portland, Oregon. This work used a new mode of representation called Massive Collaborative Representation (MCR) to intentionally exert power on the deportation system so that it might more fairly and more consistently adhere to the laws of the United States. The Sheridan Pro Bono Project relied on the Rights Architecture to situate the massive collaborative representation in order to rapidly implement and scale its response to the Trump
Administration’s clandestine and cruel detention scheme at Sheridan. Oregon’s Rights Architecture made the Sheridan Pro Bono Project possible.

The Sheridan Pro Bono Project won 100% of the credible fear claims and 97% of the release claims—unheard-of client outcomes in traditional representational models. Although the legal representation was centralized at Innovation Law Lab, its MCR approach to representation was built on the work of a large coalition of organizations, including Unidos Bridging Community, ACLU of Oregon, Asian Pacific American Network of Oregon (APANO), Interfaith movement for Immigrant Justice (IMIrJ), Rural Organizing Project (ROP), Causa, ICE Out of Sheridan, Progressive Yamhill and many other organizations who regularly work together through Oregon Ready.

III. THE UNTRANSLATABLE SOUNDS OF THE LAW OF IMMIGRANT DETENTION

The Immigration and Nationality Act is the law that governs admission, removal, and adjudication of claims made by noncitizens. Section § 235(b) of the INA is a powerful statute that “maximizes executive power, minimizes process, and eliminates judicial intervention—with a singular goal to deport at high velocity.” This powerful provision unnecessarily enhances the power of the Executive by authorizing rapid removals based solely on the discretion of executive officials without court oversight. It is notoriously susceptible to manipulation by the federal government because it shields executive action. The passage of time has proven that Presidents and executive officers cannot resist § 235(b)’s siren call toward autocratic whim.

Outside the normal procedures that allow courts to fairly ascertain facts and then fairly apply law, the Trump Administration used its ostensibly unitary expedited removal power under § 235(b) to classify every individual that DHS incarcerated at Sheridan as an invader of the United States and therefore unworthy of the law. The Administration intended to use clandestine and cruel incarceration as a means to both achieve rapid removals and punish individuals who lawfully applied for asylum. There is no escaping the conclusion that the Trump Administration’s unprecedented use of clandestine and cruel conditions in Sheridan was meant as a punishment for these men who had lawfully applied for asylum. Clandestine and cruel incarceration was mirrored in Victorville, California, and elsewhere across the United States.

Our law, however, normally forbids incommunicado incarceration and cruel civil punishments. And our normal constitutional principles resist expressions of
power that make judgments in the absence of facts. Not even the immense power concentrated in § 235(b) countenances clandestine incarceration and cruelty. So, when President Trump made his digital declaration that “[w]hen somebody comes [to the United States], we must immediately, with no Judges or Court Cases, bring them back from [sic] where they came,” he was not just tweeting: he was blatantly exercising power in the absence of law.  

Under the Fifth Amendment and INA § 235(b)(2)(B), members of the Sheridan cohort were entitled to an appropriate level of procedure that would give them a meaningful opportunity to present evidence to demonstrate—or not demonstrate—that they were bona fide asylum-seekers. The Trump Administration imposed a different rule, though, on the entire cohort. The Trump Administration classified the entire cohort as “invaders” and therefore unworthy of the process due under the Constitution and statute.

Under the Fifth Amendment and the INA, §§ 235(b) and 236(a), a noncitizen should be released from detention if he or she is not a danger to the community or a flight risk. While that rule is simple, the procedure the government uses can be complex and counter-intuitive. There are different kinds of “release” from detention: parole or bond. Although the rule is the same in both contexts, who makes the decision and how the decision is made varies. Bond is available if “such release would not pose a danger to property or persons, and [the noncitizen] is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). DHS may parole a noncitizen into the United States “for urgent humanitarian reasons or significant public benefit” under INA § 212(d)(5)(A), if the noncitizen’s continued detention “is not in the public interest” and he or she “present[s] neither a security risk nor a risk of absconding” as per 8 C.F.R. § 212.5(b). Current ICE guidelines are entirely consistent with the statute and regulations and reiterate their plain terms. The Parole Directive further instructs that if an arriving alien found to have credible fear has sufficiently established his or her identity, lack of danger to the community, and lack of flight risk, ICE “should, absent additional factors[, parole the alien on the basis that his or her continued detention is not in the public interest.”

IV. INSIDE SHERIDAN: MASSIVE COLLABORATIVE REPRESENTATION

On May 28, 2018, the government began the incarceration of the cohort in Sheridan. From May 28, 2018 to June 26, 2018, the Sheridan cohort was effectively incarcerated incommunicado and under cruel conditions. From June 8, 2018 to June 22, 2018, volunteer attorneys and advocates sought access to the immigrant
detainees. Access was uniformly denied. On June 22, 2018, Innovation Law Lab, represented by the ACLU of Oregon and volunteer attorneys from the law firm Stoll Berne, filed suit to gain access with the express intent to represent every individual who wanted a lawyer. Before filing suit, Innovation Law Lab had communicated with the government about its intent to deploy an MCR project at Sheridan. On June 22, 2018—the same day that it sued—Innovation Law Lab sought a temporary restraining order to authorize immediate access. In creating the access demand, the advocates carefully explained the type of access needed, the process for collectivized representation, and how much time—almost to the hour—the advocates needed to be able to engage in the act of representation. On June 25, 2018, the district court granted a temporary restraining order. The order had three key features: (1) it provided temporal access—hours that could be consumed in service of representation; (2) it provided physical space inside the facility to engage in the act of representation—the space needed to consume the hours authorized; and (3) it prevented unilateral facility transfers of the cohort—the government needed permission from either the lawyers or the court before any member of the cohort could be transferred. On June 26, 2018, lawyers were able to access the facility and the cohort members.

The Sheridan Pro Bono Project achieved a perfect—100%—win rate for credible fear screenings and a near perfect—97%—release rate for individuals represented by the pro bono attorneys. It achieved these outstanding client outcomes because it scrupulously applied the Big Immigration Law theory to every aspect of the representational model.
Massive Collaborative Representation is grounded in a new theory for immigrant legal representation first described in a paper called *Big Immigration Law*.\(^{28}\) The theory is based on an examination of representation projects that arose in response to mass detention and deportation policies that the U.S. government used in 2014 and 2015 to deport asylum-seekers from the United States in massive numbers. Our canvassing of the representation projects in Artesia, New Mexico, in 2014 and Dilley, Texas, in 2015, demonstrated that immigrant legal representation could be reconceptualized “from one lawyer—one client to many lawyers—many clients” to achieve advocacy goals where other mass representation devices, including the federal class action device, would be unavailable or impractical.\(^{29}\)

There are “numerous power relationships” throughout the detention and deportation process. There are “political, financial, and legal relationships” between numerous actors and institutions. Each of these actors and institutions “connect and intersect” to form “a dense web [of power] that passes through apparatuses and institutions, without being exactly localized in” any single actor or institution.\(^{30}\) One of these relationships, between lawyer and client, holds a sliver of the power in the form of the Fifth Amendment and the INA to deflect an institution’s authority to physically restrain or expel the client. Wielded singly, however, that power is rendered insignificant by other larger intersecting relationships such as those between the DHS, federal prosecutors, and federal prisons. The relationship between the lawyer and the noncitizen client is amenable to aggregation by collecting together the slivers of power with which the Constitution and Congress imbued the lawyer-client relationship.\(^{31}\) “In theory, the big immigration law advocacy model addresses the same asymmetry in power that the immigration class action would ordinarily address.”\(^{32}\) However, unlike the class action, which channels its power through a federal court’s power, “big immigration law asserts its own power by aggregating the lawyer and client relationships into one superstructure.”\(^{33}\)

Massive Collaborative Representation is “focused” direct representation that has coherently scaled in order to contest a particular legal rule at a particular physical place.\(^{34}\) Because the U.S. government, “by its very essence, is so omnipresent that it is challenging to conceive of an immigrant representation system that can achieve a similar scale[,]” an MCR project must “identify[ ] a focal point of activity where a legal rule is contested in a particular physical space.”\(^{35}\) In other words, an MCR project brings a legal battle to a particular jurisdiction.

As originally conceived, the Big Immigration Law theory noted the importance
of “aggregation” in an MCR project and left open a research question as to how “aggregation theory from social science explains the ability of the big immigration law model to scale effectively.” An analysis of the Sheridan Pro Bono Project’s work reveals the importance of aggregation and, in fact, suggests that creating an “aggregation point” is the critical and defining factor of the MCR model.

Big Immigration Law theory predicts that when lawyers and advocates organize themselves into a massive collaborative representation scheme, they positively influence the power relationships that otherwise perpetuate the dominance of detention and deportation over fair adjudication. The theory predicts this outcome based on the impact that MCR’s collectivizing lawyer “consumption” of the government function exerts at a particular jurisdiction.

Unlike lawyers working individually, an MCR model is intended to channel the collectivized lawyers into becoming the largest single consumer of the government function. At Sheridan, the government—the Departments of Homeland Security and Justice—viewed their function as detaining and deporting noncitizens. This particular government function (to detain and deport) involves two core visceral elements: physical detention and physical removal. These elements are the prototypical examples of a restraint of liberty. Therefore, the DHS and DOJ are required to administer them through the lens of the Fifth Amendment and related federal laws that provide a right to representation to the noncitizen. That is, in order to detain or deport, due process requires that the DHS and DOJ create procedure to accomplish the detention or deportation. The Due Process Clause and the rights to representation statutes create a set of consumers of the detention and deportation procedure: lawyers and their clients.

In earlier deployments of the model, such as in Artesia, we described how the model built power outside of the Fifth Amendment. In Big Immigration Law, we suggested that this ability to build power was an attribute of the model’s aggregation of the multiplicity of relationships centered around the lawyers in an MCR organized structure. The power of the advocates, the theory posits, is not strictly in a one-to-one ratio with the Fifth Amendment. Through aggregation, the advocates should be able to create systems and processes that are not required by the Fifth Amendment per se; rather, these systems and processes are attributes
of the fact of being the largest consumer of the government function. Sheridan affirms the importance of aggregation. By examining the data, we can see when the moment of power shifted—almost to the day—and the data suggests that this moment in time is a result of MCR’s emphasis on aggregation.

The advocates at the Sheridan project created “focus” by defining the site of resistance based on two factors: (1) the actual physical location where (2) a specific policy or legal rule would be contested. At Sheridan, there were two core policies that were contested. The first policy the advocates contested was the Trump Administration’s classification of the Sheridan cohort as “invaders” who did not merit due process of law. The second was the Trump Administration’s policy that the categorical detention of the Sheridan cohort was the norm instead of an individualized liberty analysis.

The Sheridan project first challenged the Trump administration’s policy choice that members of the Sheridan cohort were not entitled to due process of law. The advocates focused solely on contesting the Trump Administration’s invocation of an “invader” rule. The advocates further focused on the invocation of the rule by contesting it *only* within the Sheridan jurisdiction.
For the project, the advocates defined the Sheridan jurisdiction as (1) the Sheridan prison, and (2) the related DHS or EOIR offices that processed the Sheridan cases: the DHS office of Immigration and Customs Enforcement in Portland, the USCIS Asylum Office in San Francisco, and the EOIR’s Portland Immigration Court. These four places (the prison, the ICE office, the asylum office, and the immigration court) comprised the site of resistance where the invader/due process rule was contested.

The dark blue shows the government’s power by measuring its enforcement of its invader rule. From May 28 until July 19, the entire cohort was characterized as an invader, as opposed to an asylum-seeker. On June 26, 2018, the lawyers began work in a collective fashion—aggregating their relationships through daily coordination, detailed protocols, a centralized and collaborative strategic decision-making process—all of which were blended together with technology. Starting on June 26, the aggregated lawyer activity related to the credible fear process is charted. This included legal visits, filings with the asylum office, and representation at credible fear interviews. Big Immigration Law theory predicts that as the MCR project grew in size as the largest consumer of the government function, the project would alter the flow of power within the jurisdiction to favorably advance its due-process-centered rule and impact the government’s ability to enforce its invader/no-due-process rule. The theory predicts that as we gradually built power, at first we would be confined to only the power we could aggregate through the Fifth Amendment until a tipping point is reached—the aggregation point—wherein the power flow should change dramatically and, thus, improve the ability for the advocates to contest the legal rule. The power flow should change dramatically because as the MCR project approaches the point of aggregation, advocates are consuming enough of the government function to create new rules around consumption that are not necessarily required by the law.

For example, in Sheridan, the advocates advanced special notification rules for when a credible fear interview could be scheduled, and special appearance rules to monitor credible fear interviews in real-time. The advocates created process and rules around the use of the TRO’s access. The rules described how we would consume the temporal and physical access—part of the government function—in such a way that it enabled the advocates to build power outside the confines of the Fifth Amendment. At that moment, when the consumption rules and the due process rules converged, the power should shift. Here, as to the first rule (unworthy of due process v. entitled to due process), that occurred around July 22, 2018.
Using a strict MCR approach, the advocates created a separate focus to challenge the different policy that the Trump Administration was enforcing at Sheridan: detention—not liberty—would be the norm and, therefore, individuals should not ordinarily be released into the community from Sheridan; rather, individuals should be deported.

The dark blue line indicates the government’s power to enforce its detention rule by measuring the detention status of the cohort. From at least May 28, 2018, when the cohort arrived in Sheridan, the government set their default rule of detention by ordering that every individual be detained. Around August 1, 2018, every member of the cohort had successfully passed the credible fear/asylum-seeker screening phase of the legal contest. Incarceration is not required, and although the government could have released any of the members of the cohort at any time, the detention orders remained in place. On August 1, 2018, the advocates began filing motions in the Portland immigration court and applications for release with the Portland ICE office. The aggregated lawyer activity—a bond hearing, a bond motion, a request for administrative release, a request for parole, and legal visits with clients in support of each of these activities—gradually built in momentum until, again, the point of aggregation where the MCR project became the largest consumer of the government function and the power flow changed dramatically. Here, the project achieved an aggregation point between August 20 and August 25.
V. THIS IS WHERE YOU BELONG

The distance between Sheridan and The Dalles, Oregon is about 150 miles as the crow flies, which it so happens is the same route, more or less, about 40 Oregonians walked in October 2018 as part of a campaign seeking an end to immigrant detention.39 So it was there, on October 4, 2018, at the midpoint of the journey, that Carlos and Abdoulaye stood in the slipstream of the hundreds of voices gathered, to make manifest the work of the organizations involved in the Rights Architecture: Carlos and Abdoulaye were present at the square outside the immigration court building and not detained inside the prison at Sheridan. “I could hardly believe it,” Carlos said. “A guard came to my cell and said, ‘you’re leaving now.’ I only had time to say goodbye to my cellmate.” 40

To unravel the detention and deportation machine inside Sheridan (through massive collaborative representation) required a matching outside game. Thus, we turned to Oregon’s Rights Architecture.

The 2017 inauguration of Donald Trump prised immigration policy into three core tactics with the objective of deporting millions and millions of people.41 The first: create narrative pathways that stigmatize noncitizens, particularly noncitizens of color, because the government and society can more easily apply harsh rules and discriminatory treatment to people—collectively or individually—who are perceived as different.42

The second was to build the apparatus of mass immigrant incarceration because deportation is a visceral act: it requires capturing and transporting a human body from one place to another. It requires planes, trains, buses, vans, jails, and mass prison spaces—and the personnel to go with it.43 Notably, once these
physical manifestations of incarceration are brought into being, they seldom go away.\textsuperscript{44}

The third tactic was to eliminate courts and lawyers.\textsuperscript{45} That is to say, to achieve the burn rate necessary for deporting millions of people, the Administration needs to eliminate process. Velocity matters a great deal.

In combination, these three tactics coalesce into an attempt, unprecedented in contemporary times, to achieve a social reordering through the immigration power of mass expulsion. At the beginning of the Trump Administration, it was clear that an irreparable assault against the social fabric of the United States was about to begin, with the goal to maximize deportations in order to rid Trump of people whom his Administration didn’t like to reshape our national identity.\textsuperscript{56} The strategy, as it has played out during the administration’s time in power, “suggest[s] that [the President] views U.S. national identity in racial terms and seeks to preserve the nation’s predominantly white identity” through expulsions.\textsuperscript{47}

Panic played out in many places around the country.\textsuperscript{48} With good cause, communities with immigrant populations were fearful of what would happen next, and advocates were uncertain about what to do in response.

In Oregon, just a few days after the election, a different response was brewing among a group of interconnected advocates who quickly saw the need for a new vision for collaboration. These long-standing connections, friendships, and historically tight advocacy engagements gave rise to the concept of a Rights Architecture: a comprehensive system that would act as a direct counter-structure to each of the tactics for mass expulsion.

The \textbf{Rights Architecture} uses an organizing framework that segments the work of creating immigrant inclusion into six zones. The Rights Architecture uses an open and transparent framework to support immigrant inclusion organizing. It is an open network in the sense that it is not centrally governed and organizations are free at any time to come into—or leave—the network. It is transparent because organizations that participate in the architecture agree to actively promote transparency about their goals, strategy, and tactics to other organizations in the network. This combination of openness and transparency is intended to foster collaborations and innovations in social change activism.
Inside Sheridan, advocates were creating a tactical counter-structure that, at first, neutralized the Trump velocity objective of eliminating courts and lawyers from the process of mass expulsion. Later, advocates used the MCR counter-structure to shift the power paradigm toward principles rooted in fairness and respect for the rule of law. Outside, a mass mobilization of organizations and people were building the apparatus of welcoming and creating pathways to inclusion. The deconstruction of both the mass incarceration infrastructure and the false stigmatizing narratives required positive acts of construction to happen simultaneously.

Early in the Sheridan response, organizations convened to strategize on how to use authentic narratives about noncitizens, the asylum process, and the detention industry to disrupt and displace the Trump Administration’s false stream of rhetoric. For example, by June 15, nine organizations, led by Unidos Bridging Community, had called Oregonians everywhere to vigil, like Jericho, along the electrified perimeter of the prison at Sheridan.49 Called a “rising tide,” the vigil brought moral clarity to the Sheridan response and, thus, began the simultane-
ous process of deconstruction and construction.\textsuperscript{50} Later, a coalition of organizations led by IMIRJ and the ROP, the pilgrimage between Sheridan and The Dalles was a statewide call to “Unshackle Oregon and Let Our People Go.”\textsuperscript{51} For many in Oregon, Sheridan and The Dalles represented two poles of immoral policies encouraging the mass incarceration of immigrants and refugees. Whereas Sheridan had been a site of clandestine and cruel detention, the NORCOR facility in The Dalles was openly and notoriously operated by Oregon public entities to earn a profit from the misery of detained immigrants as a means to support an ill-advised and overbuilt facility that public coffers can no longer afford.

These narratives were tied together to enable the larger public to see the connections. These connections resonated in many ways. For example, Senators Ron Wyden and Jeff Merkley along with Representatives Earl Blumenauer and Suzanne Bonamici toured Sheridan. Senator Wyden found that the legal “rights [were] rights in name only” and that the Trump Administration was holding the men “essentially incommunicado.”\textsuperscript{52} Representative Bonamici explained that “[t]hese men were victims of horrific crimes or unbearable persecution” and were being “treated as criminals.”\textsuperscript{53} “[U]nder federal law, international treaties, and human decency,” Representative Blumenauer explained, “they should be able to make their case to qualify as refugees.”\textsuperscript{54}
The infrastructure of welcome and healing needed to be built: if the inside team was successful in winning release, what happened then? Thus, the Post-Detention Respite Network, led by APANO, Progressive Yamhill, ICE Out of Sheridan and faith community and leaders with IMIrJ, came to life with a counter-tactic to the mass incarceration apparatus. The Post-Detention Respite Network provided the infrastructure for translation and interpretation services and transported, housed, fed, and clothed the men as they were released. In direct counter to the for-profit transport prison industry, nearly 60 individuals volunteered with the volunteer transport system. These volunteers were on call and could be mobilized rapidly to arrive at the Sheridan prison to greet a client at the moment of his release, welcome him to Oregon, and provide transit to an overnight respite center or, if arrangements were already in place, to the airport or bus station for onward travel. The respite centers were located in gurdwaras and churches in Salem, Portland, Hillsboro, Beaverton, Newberg, Forest Grove and Vancouver. Commissary funds were raised and distributed to provide needed resources to the men before their release to make contact with family. Care kits with toiletries, care products, and clothes were distributed.

Because the mass detention apparatus within the immigration system used and still uses a flawed and immoral bond system that creates untenable stresses on families and communities and is at odds with our values as a nation, advocates established a Bond+ Fund. The Bond+ Fund was created as a mechanism to concentrate donations to achieve the release of unfairly detained noncitizens while also developing a prototype for a new system to replace the flawed and oppressive power dynamic of the current bond process.

VI. ENDING SHERIDAN

The detention and deportation industry continues to thrive. Mass numbers of immigrants, particularly immigrants of color, are being pushed into the deportation pipeline because of racialized government policies about who belongs in the United States. Our immigration policies—long lurking in constitutionally murky places—have expanded in ways that threaten to normalize abnormally unconstitutional and highly risky behavior.

Massive Collaborative Representation, when deployed through the Oregon Rights Architecture, proved to be a powerful new method for challenging the normalization of the mass incarceration and deportation of noncitizens. MCR can be combined with other legal tools and organizing strategies to create a counter-structure of justice to resist and eventually replace the detention and deportation industry.
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ENDNOTES

2  See Ericka Cruz Guevarra, In Sheridan, Questions From Residents Linger About Immigrant Detainees, OPB (June 21, 2018).
5  See Paloma Esquivel, U.S. officials move to house 1,000 immigration detainees at federal prison in Victorville, L.A. Times, June 7, 2018. The prisons were identified as located in Sheridan, Oregon; Victorville, California; SeaTic, Washington; and Phoenix, Arizona. Id.
6  Teesdale Decl.
7  Teesdale Decl.
8  Teesdale Decl.
9  See Michel Foucault, The Subject and Power, 8 Critical Inquiry 772 (1982); Juliet Stumpf, The Process Is the Punishment in The Borders of Punishment: Migration, Citizenship, and Social Exclusion 59 (Oxford U. Press 2013) (“Authorities may use the process of the criminal justice system and deportation proceedings in order to sanction non–citizens for their status or in ways that non–citizens uniquely experience as indistinguishable from formal punishment.”).
13  See Getting it Righted at 675–76.
15  See, Trump tweet, June 24, 2018 (“We cannot allow all of these people to invade our Country.”); AG Sessions remark May 7, 2018 (“But we’re not going to stand for this. We are not going to let this country be invaded. We will not be stampeded. We will not capitulate to lawlessness.”).
16  See, e.g., ICE Detainee Nos. 1–74 v. Salazar, 3:18-CV-01279-MO, ECF No.11 (D. Or. filed July 30, 2018) (memorandum in support of habeas petition arguing that the detention of civil immigration applicants is based on the expressed and illegal purpose to punish them).
18  See Trump tweet, June 24, 2018.
19  See Parole Directive; Memorandum from DHS Secretary John Kelly, Implementing the President’s Border Security and Immigration Enforcement Improvements Policies, 9–10 (Feb. 20, 2017).
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Manning TRO Decl. at 12.


24 Innovation Law Lab & ACLU of Oregon, Letter to Thomas Homan, Director of ICE at 4 (June 15, 2018).


27 Decl. of Stephen W Manning in Support of Preliminary Injunction, Innovation Law Lab v. Nielsen, 3:18-cv-01098, ECF 49 at 4 (filed July 20, 2018) (“On June 26, 2018, the day after the TRO was issued in this case, the Law Lab began providing legal services to the immigrant men in FDC Sheridan.”).


29 Id. at 421.

30 Id. at 422.

31 Id. at 423-24.

32 Id. at 424.

33 Id. at 424.

34 Id. at 429.

35 Id. at 430.

36 Id. at 433.

37 For example, Progressive Yamhill, an organization based on Yamhill County, Oregon—the site of the Sheridan facility—maintained an important timeline of events that collected numerous sources from public events, statements, and legal filings. See Progressive Yamhill, Sheridan Asylum Seekers (last updated Aug. 29, 2018).

38 Stephen W Manning, How to crowdsourc[e] a refugee rights strategy, TEDxMtHood (June 29, 2016).

39 Rural Organizing Project, Sheridan to NORCOR: FAQ (Oct. 2, 2018); John Pitney, Creating A Disturbance—Let Our People Go! (Sep. 6, 2018).

40 Innovation Law Lab, Two individuals released from Sheridan, made possible by community giving (Oct. 4, 2018).

41 See, e.g., President-Elect Trump Speaks to a Divided Country on 60 Minutes, CBS NEWS (Nov. 13, 2016), (“What we are going to do is get the people that are criminal and have criminal records, gang members, drug dealers, we have a lot of these people, probably two million, it could be even three million, we are getting them out of our country or we are going to incarcerate. But we’re getting them out of our country, they’re here illegally. After the border is secured and after everything gets normalized, we’re going to make a determination on the people that you’re talking about who are terrific people, they’re terrific people but we are gonna [sic] make a determination at that—But before we make that determination—Lesley, it’s very important, we want to secure our border.”); Michael Finnegan, Trump Sticks to Hard Line on Deporting 11 Million Immigrants, L.A. Times (Aug. 22, 2016) (quoting Donald Trump as saying “if they’re going to be out of here so fast, your head will spin”); Randy Capps, et al., Revving Up the Deportation Machinery: Enforcement and Pushback under Trump, Migration Policy Institute at 2 (May 2018) (“In ways big and small, the administration is pulling as many levers as it can to reorient the enforcement system.”).

42 See, e.g., Jonathan Blitzer, Trump’s Idea Man for Hard-Line Immigration Policy, THE NEW YORKER (Nov. 22, 2016) (noting plan for Muslim registration and stating that Kobach’s “long game may have had less to do with creating legal precedent than it did with sowing social discord.”); David Leonhardt & Ian Prasad Philbrick, Donald Trump’s Racism: The Definitive


45 See, e.g., Remarks by President Trump and NATO Secretary General Jens Stoltenberg Before Bilateral Meeting, The White House (Apr. 2, 2019), (“And we have to do something about asylum. And to be honest with you, you have to get rid of judges.”); Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review, U.S. Dep’t of Justice (Oct. 12, 2017)(calling immigration lawyers “dirty” and alleging that most asylum seekers abuse the court review process established by Congress).

46 E.g., Executive Order No. 13769, Protecting the Nation From Foreign Terrorist Entry Into the United States (Jan. 27, 2017); Executive Order No. 13767, Border Security and Immigration Enforcement Improvements (Jan. 25, 2017); Executive Order No. 13768, Enhancing Public Safety in the Interior of the United States (Jan. 25, 2017); Jayashri Srikantiah & Shirin Sinnar, White Nationalism as Immigration Policy, 71 Stanford L. Rev. Online (March 2019) (analyzing executive orders and other administration actions).

47 Srikantiah & Sinnar, White Nationalism as Immigration Policy (“The President’s statements and policies suggest that he views U.S. national identity in racial terms and seeks to preserve the nation’s predominantly white identity.”).

48 Janell Ross, Aaron C. Davis, Joel Achenback, Immigrant community on high alert, fearing Trump’s ‘deportation force’, The Washington Post (Feb. 11, 2017); Shannon Dooling, Trump Election Spurs ‘Panic’ In Local Immigrant Communities, WBUR (Nov. 15, 2016) (NE corridor); Michael Hiltzik, A punitive Trump proposal strikes panic among immigrants—even before it’s official, LA Times (Aug. 24, 2018) (southern California); Immigrants are in a state of panic, Miami Herald (Nov. 26, 2016) (south Florida); Update: More Than 400 Incidents of Hateful Harassment and Intimidation Since the Election, Southern Poverty Law Center (Nov. 15, 2016); Lindsey Moon & Ben Kieffer, Some Iowans Panic After Trump’s Executive Order on Immigration, Iowa Public Radio (Jan. 31, 2017), (Midwest).

49 Unidos Bridging Community, Press Release: Vigil in solidarity with the 123 immigrant men detained at Sheridan FCI prison (June 15, 2018). The vigil was organized by Unidos Bridging Community, Portland Immigrant Rights Coalition, Interfaith Movement for Immigrant Justice, Yamhill County Democrats, Progressive Yamhill County, American Friends Service Committee, Causa Oregon, Rural Organizing Project, and NW Workers Justice Project.

50 Velena Jones & KOIN 6 News Staff, Hundreds gather for Sheridan Detention Facility vigil, KOIN 6 News (June 18, 2018).

51 See Group pleads with ICE to release detainees: ‘Let our people go’, KOIN (Jul. 31, 2018); Interfaith Movement for Immigration Justice, Letter to Elizabeth Godfrey, Acting Field Office Director, ICE (July 31, 2018).

52 Maggie Vespa, Nate Hanson, ‘They’re basically in limbo’: Oregon Democrats visit federal prison where immigrants are held, KGW8 News (June 16, 2018).

54 Rep. Earl Blumenauer, My visit with ICE detainees at Sheridan prison (June 17, 2018).

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56 Innovation Law Lab, Establishing the Law Lab Bond+ Fund (Sep. 28, 2018).