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Building on the Legacy of the University of Idaho's Immigration Clinic During the Pandemic

Geoffrey J. Heeren

The growing presence of immigrants in Idaho is one of the reasons why the University of Idaho College of Law has had an immigration clinic since the early 2000s.¹ Immigrants make up 6% of Idaho's population and 8% of its labor force.² Moreover, Idaho's growing immigrant population is a driving force for its economy. Immigrants—both those with lawful and undocumented status—pay tens of millions of dollars of taxes in the state.³

In some strategic sectors of the Idaho economy, like the enormously lucrative dairy industry in Southern and Eastern Idaho, immigrants overwhelmingly make up the work force.⁴ The increasing presence of immigrants in the state—and in neighboring regions like Eastern Washington—means there is a need for attor-

neys to help non-citizens with an area of law that one federal court called a “labyrinth that only a lawyer could navigate.”⁵

This pressing need equates to the availability of jobs for University of Idaho law graduates trained in immigration law. The Immigration Litigation and Appellate Clinic at the University of Idaho College of Law offers these opportunities. This year, the clinic adapted to the pandemic in order to continue its legacy of excellent immigrant representation. This article will provide an overview of the clinic, its recent work, and its scope.

A leadership transition

Prior to coming to the University of Idaho, I created an immigration clinic at Valparaiso University Law School, but the law school closed in 2019 due to declin-

ing enrollment. Afterward, I was honored to be selected to lead the University of Idaho's clinic, which has a nearly two-decade-long history, a number of litigation victories, and graduates throughout the region who have gone on to successful careers. I was happy to have a chance to build on the excellent work of my predecessors: Professors Monica Schurtman, Debbie Smith, Christina Pollard, Kate Evans, and Kathryn Railsback. The clinic is also lucky to have a great cast of highly supportive colleagues, including the Legal Administrator, Todd Bowman, Clinical Services Coordinator, Cindy Maylott, and the Director of Clinics at Idaho, Professor Jessica Long.

Moreover, Professors Evans and Railsback were generous with introducing me to some of the important local stakeholders who had developed a relationship with



One of the clinic students who has argued before the Ninth Circuit Court of Appeals, Anthony Lee. Photo credit: Kylie Morgan.

the clinic, including Maria Andrade, the Executive Director of Immigrant Justice Idaho, great local private immigration attorneys like Alycia Moss in Coeur d'Alene, and Marcela Pattinson, who heads an office at neighboring Washington State University (WSU) dedicated to supporting non-citizen students. This strong foundation for the clinic helped assure a smooth transition.

The primary purpose of the clinic has always been to offer students the opportunity to represent actual clients with immigration law issues. These opportunities, which will be explained in greater detail in the following, include *pro bono* legal consultations with non-citizen students, direct representation of non-citizens before administrative agencies, delivering outreach presentations on immigration law, federal litigation, and appellate work. The clinic has often focused on cases involving clients with humanitarian claims, such as abandoned immigrant children, asylum seekers, or survivors of brutal crimes or human trafficking. The diversity and intensity of these experiences ensures that students completing the clinic will enter the practice of law with a range of experience and an appreciation for the challenges facing many non-citizens.

Counseling local non-citizen students

The clinic has had a contract with WSU for several years to offer free legal consultations to non-citizen students at

the school. In the past, consultations had been primarily conducted by professors, with students serving in a supportive role. However, these consultations offered an excellent pedagogical opportunity for students to gain interviewing, legal research, and client counseling skills—particularly during a pandemic, given that WSU students were a client population that would likely be comfortable with having interviews via Zoom. As I built my plan for the clinic, the WSU interviews became an important component of our casework and curriculum, which is designed to teach students the interviewing, counseling, and legal research skills the practice of law demands.

Over the course of the year, University of Idaho students handled dozens of these interviews. After researching each WSU student's issue, clinic students presented the issue to the class and then worked with me to develop legal advice that they offered at a follow-up session. We also ended up taking several cases that we handled on behalf of WSU students, such as cases for Deferred Action for Childhood Arrivals (DACA)—a form of relief available to undocumented immigrants brought to the U.S. as children. Moreover, we delivered four outreach presentations for WSU students, staff, and faculty over the course of the year on the topics of immigration pathways, immigrant worker's rights, DACA, and the new Administration's immigration policies.

Litigation and appellate work

I also wanted to continue the clinic's proud legacy of litigation and appellate work. While immigration court hearings had become difficult to arrange during the pandemic as a result of immigration court closures and postponements, the federal court system was continuing to function well, with hearings occurring via Zoom. We took a case through the Ninth Circuit's pro bono program on behalf of a Guatemalan woman who was detained at the Northwest Detention Center in Tacoma, Washington.⁶ The case presented a host of fascinating legal issues, including the novel question of whether there is a right to counsel for non-citizens with prior removal orders who are seeking review by an immigration judge of their claim that they fear returning to their country.

Our client had presented a deeply disturbing account of violence that she fled but had been pushed through a fast-track process without a chance to bring in a lawyer to help her. The case had another heart-breaking aspect, too—the client was separated from her four children, who were living with a family member in Minnesota.

Two students, Audrey Engan and Anthony Lee, represented our client in preparing briefs before the Ninth Circuit Court of Appeals, and another two students, Rosa Cabrera Thompson and James Haws, worked to get her out of detention. In December, we succeeded in convincing the agency to release her from detention so that she could enjoy the holidays with her children for the first time in years.⁷ Following up on this important interim victory for the client, Anthony Lee argued the client's case at the Ninth Circuit Court of Appeals in April.

Our case was consolidated with two other cases raising the same novel issue concerning right to counsel, one handled by law students at an appellate practicum at Berkeley, and another by the boutique Washington, D.C. law firm of Wilkinson Stekloff. Working with these lawyers and students to prepare for the oral argument offered Anthony an opportunity to learn about appellate lawyering from exceptional practitioners while working on an issue of national importance. On the day of the argument, he ably fielded tough questions from the panel and made compelling points for his client.

We also won release for another client this year: a longtime, lawful permanent resident of the United States who was in detention because of a criminal conviction. My predecessor, Professor Kate Evans, had raised legal arguments to the agency that his conviction did not make him deportable, and continued to represent him in this case after she became the director of a new immigration law clinic at Duke. She and her students were continuing to litigate those claims as they slowly wound their way through the court system, but in the meantime, the client had been detained as of the fall of 2020 for about a year-and-a-half over the course of two stints in the Northwest Detention Center.

In our view, this prolonged period of immigration custody violated the Due Process Clause of the Constitution, and we decided to co-counsel a habeas case raising this and other claims to a federal District Court in the Western District of Washington.⁸ To help with the filing, we brought on local counsel, including University of Idaho law school alumni Luis Cortes Romero and Andrew Augustine. Mr. Romero, who graduated in 2013, had gone on to serve as one of the attorneys in *Department of Homeland Security v. Regents of the University of California*, the case in which the United States Supreme Court held that the Government's rescission of DACA violated the Administrative Procedure Act.⁹

Mr. Augustine, who was an alumnus of the University of Idaho immigration clinic, had joined Mr. Romero at his Seattle-based law firm. Two University of Idaho students, James Haws and Reanna Vanacore, worked alongside a team of three

Duke students on the case.

In February, a Magistrate Judge issued a report and recommendation that our client be granted a bond hearing, and in June, the District Court Judge adopted the report and ordered a bond hearing.¹⁰ The client was subsequently released as part of a settlement agreement with the Government and has now returned to his family in Southern Idaho while he pursues his immigration appeal.

Student leadership

These cases are just two examples of the legal work that students in the immigration clinic at the University of Idaho College of Law handle. In working on these matters, students often serve in the role of lead counsel. With my help, the students are the ones who advise their clients, draft motions and briefs, and step up in court to argue a case.

This opportunity to take ownership over a case offers students a way to learn that cannot be replicated in a traditional classroom. At the same time, students achieve dramatic results for their clients.¹¹ I am grateful to the University of Idaho for allowing us to do this transformative work.



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Valparaiso University Law School, a clinical teaching fellow at Georgetown Law, and a Senior Attorney at Legal Aid Chicago.

Endnotes

1. See Joel Mills, *UI clinic helps immigrants with legal issues*, Lewiston Tribune, July 28, 2007 (in which the clinic's founder, Professor Monica Schurtman, explained her reasons for founding the clinic).
2. American Immigration Council, Fact Sheet: Immigrants in Idaho (Aug. 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-in-idaho>.
3. In 2018, immigrant-led households in the state paid \$419.5 million in federal taxes and \$220.9 million in state and local taxes. Undocumented immigrants alone paid an estimated \$31.1 million in federal taxes and \$22.5 million in state and local taxes in 2018. *Id.*
4. Idaho now ranks third in the nation in milk production, with much of the dairy industry concentrated in the Magic Valley, Treasure Valley, and Eastern Idaho. See Idaho Dairymen's Association, Idaho Dairy Statistics, <https://www.idahodairymens.org/economic-impact>. That is part of the reason why the Idaho Dairymen's Association has supported and worked for immigration reform to address the status of undocumented workers. Bill Dentzer, *Trump Deportations would hit Idaho ag, where a fourth of all workers are undocumented*, *Idaho Statesman*, Nov. 12, 2016.
5. *Ram v. Mukasey*, 529 F.3d 1238, 1242 (9th Cir. 2008) (quoting *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005)).
6. The client has given informed consent for me to generally describe the facts of her case without disclosing her name.
7. Rachel Spacek, *Asylum seeker reunited with family from efforts of U of I immigration law clinic*, Idaho Mountain Express, Dec. 25, 2020.
8. Gretel Kauffman, *Detained by ICE with no bond hearing, Idaho man takes legal action*, Idaho Press, Nov. 20, 2020 (describing habeas petition filed by University of Idaho College of Law Immigration Clinic in collaboration with the Immigrant Rights Clinic at Duke).
9. See Kip Hill, *Idaho law school graduate who helped argue DACA case lauds Supreme Court decision*, Spokesman-Rev., June 18, 2020.
10. *Juarez v. Wolf*, No. C20-1660-RJB-MLP, 2021 WL 2323436 (W.D. Wash. May 5, 2021), report and recommendation adopted, No. 20-1660 RJB - MLP, 2021 WL 2322823 (W.D. Wash. June 7, 2021).
11. As a law school clinic, our primary mission will always be to educate our students, and we therefore take a very modest number of cases each year and cannot come close to meeting the growing need for immigrant legal aid in the state. However, if a reader has a case that they believe would be an appropriate referral, they can contact the clinic at (208) 885-6541. We prioritize cases involving asylum applicants, survivors of human trafficking, crimes, and domestic abuse, and children who have been abused, abandoned, or neglected.

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