

## **GULAG USA: Legal Challenges to Immigrant Detention**

On July 26, 2008, The Immigration Law Clinic of UC Davis School of Law and the Immigration Law Clinic Alumni Council are sponsoring a MCLE program on keeping immigrant clients out of detention and protecting their rights while detained. National experts will lead a training program on key legal issues for immigration and criminal practitioners.

There is no charge for the program. Registered participants may earn 4.5 MCLE units.

GULAG USA: Legal Challenges to Immigrant Detention (MCLE)  
California Western School of Law  
225 Cedar Street  
San Diego, California 92101  
Saturday, July 26, 2008 (8:30 a.m. to 2:30 p.m.)

### **Program**

8:30 a.m. to 9:00 a.m. Registration and light refreshments (bagels and coffee)  
9:00 a.m. to 10:30 a.m. Panel One  
10:45 a.m. to 12:15: Panel Two  
12:15 p.m. to 1:00 p.m. Lunch break (Sandwiches and soft drinks)  
1:00 p.m. to 2:30 p.m. Panel Three

**In order to assure space please RSVP by July 15, 2008 to [tmedina@ucdavis.edu](mailto:tmedina@ucdavis.edu)**

**What is immigrant detention?** “[T]housands of people who are not American citizens are being locked up for days, months, or years while the government decides whether to deport them. Some have no valid visas; some are legal residents, who may have lived in the United States lawfully for many years, but who have criminal convictions; others are seeking asylum from persecution.”

**Where are they being detained?** Immigrants are being held in a “patchwork of federal centers, county jails and privately run prisons that have become the nation’s fastest growing form of incarceration.” “Some 33,000 people are crammed into these overcrowded compounds on a given day – ... [at some]... 23 (federal) facilities, which house roughly half of the 33,000 detainees. Seven of these are owned by private prison companies. [T]he government also housed detainees in 279 local and county jails.”

**Why?** For decades the courts have rejected mandatory (no bail) detention based on one’s status rather than his flight risk or danger to the community, but rather have insisted on an individualized determination (bond hearing). In 1996 President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) which mandated detention without bail for tens of thousands of immigrants and refugees. While the circuit courts found mandatory detention unconstitutional, the United Supreme Court narrowly

approved the measure rejecting the individualized detention with Justice Kennedy providing the critical yet exceptionally ambiguous fifth vote. Demore v. Kim, 538 U.S. 510 (2003). Because the Demore v. Kim case provides guidance to lower courts, it has spawned litigation across the United States challenging such detention.

[See Nina Bernstein, Few Details on Immigrants who died in US Custody, New York Times, May 5, 2008. Dana Priest and Amy Goldstein, As Tighter Immigration Policies Strain Federal Agencies the Detainees pay a heavy price. (Washington Post, May 11, 2008].

**9:00 am to 10:30      Panel One: Immigration Court Remedies: Bond & Joseph hearings.**

Raha Jorjani, UC Davis Immigration Law Clinic (Moderator)  
Christina Powers, Florence Immigrant & Refugee Rights Project  
Fatma Marouf, San Diego Practitioner

Panel One will focus on the practicalities of representing detained immigrants before the Immigration Court. Panelists will cover the nuts and bolts of bond hearings, as well as discuss local patterns and practices. The Panel will cover a variety of issues including mandatory detention, requesting bond and presenting your bond application before the immigration judge, dealing with criminal convictions on discretion, and an exploration of the automatic stay provision in the Code of Federal Regulations.

**10:45 to 12:15 pm      Panel Two: Judicial remedies available for immigration detention and conditions of confinement: Habeas corpus, Bivens actions and attorney's fees.**

James Smith, Director Emeritus of UC Davis Immigration Law Clinic (Moderator)  
Holly Cooper, UC Davis Immigration Law Clinic  
Tom Jawetz, ACLU Staff Attorney, Washington, D.C.  
Cappy White, Director, UC Davis Civil Rights Clinic

**1:00 to 2:30 pm      Panel Three: How Federal Defenders of San Diego, Inc. challenge immigrant detention through habeas corpus attacks on post final removal order detention and prolonged detention focusing on Zadvydas, Tijani, and the modified categorical approach.**

Shaffy Moeel, Federal Defenders of San Diego, Inc., (Moderator)  
Vincent Brunkow, Federal Defenders of San Diego, Inc.  
James Fife, Federal Defenders of San Diego, Inc.  
Janet Tung, Federal Defenders of San Diego, Inc.

## **PANELISTS AND MODERATORS**

### **Vincent Brunkow:**

Vincent Brunkow began his career as a trial attorney with Federal Defenders of San Diego, Inc in 1995. In 2003, he became Assistant Appellate Supervisor for the office. During his tenure, Vince has argued numerous cases before the 9<sup>th</sup> Circuit, with notable victories such as United States v. Vidal, an *en banc* decision, and United States v. Lopez-Montanez. Vince has taught at various seminars, both locally and nationwide.

### **Holly Cooper :**

Holly Cooper is the Associate Director of the Immigration Law Clinic at UC Davis where she focuses on detained immigrants' rights. Holly is an alumna of University of California, Davis. She previously worked for the Florence Immigrant and Refugee Rights Project as the Senior Staff Attorney. She co-authored the Arizona Immigration Consequences Chart analyzing the removability of various Arizona criminal statutes. She has also authored articles about challenging immigration detention in federal court.

### **James Fife**

James Fife has been an appellate attorney with Federal Defenders of San Diego, Inc. since 2005. Before that he was a free-lance legal researcher on state criminal appeals and a college instructor in language arts and linguistics. Most of his caseload at Federal Defenders is advocacy for indefinite detainees in ICE custody, including administrative custody review, habeas corpus petitions in district court, and appeals of habeas cases. He is counsel for petitioner in the case of Casas-Castrillon v. Lockyer, in which the Ninth Circuit should soon render an important clarification of the Circuit's law on indefinite detainees.

### **Tom Jawetz**

Tom Jawetz is the Immigration Detention Staff Attorney at the ACLU National Prison Project, where he is currently co-counsel in two class action lawsuits pertaining to the conditions of confinement and poor medical care at the San Diego Correctional Facility. Tom graduated from Yale Law School and served as a law clerk to the Honorable Kimba M. Wood in the United States District Court for the Southern District of New York.

### **Raha Jorjani**

Raha Jorjani is a Supervising Staff Attorney at the UC Davis Immigration Law Clinic where she focuses on immigration consequences of criminal convictions and defense of detained immigrants in removal proceedings. Raha was graduated from CUNY School of Law and was formerly a Staff Attorney at the Florence Immigrant and Refugee Rights Project.

### **Fatma Marouf**

Fatma E. Marouf, a private attorney in Los Angeles, received her J.D. with honors from Harvard Law School. She has been actively involved in Los Angeles's ICE Raids Response Network, representing numerous detained workers. Prior to practicing immigration law, Fatma clerked for the Honorable Consuelo B. Marshall, then Chief Judge of the U.S. District Court for the Central District of California, and worked with California Rural Legal Assistance in Stockton, California.

**Shaffy Moeel**

Shaffy Moeel has been a trial attorney with Federal Defenders of San Diego, Inc. since 2005. During that time she has litigated numerous cases involving the nexus of immigration and criminal law. Prior to joining Federal Defenders, Shaffy was a law clerk for the Equal Justice Society and the Executive Office of Immigration Review. Shaffy graduated from U.C. Berkeley with a degree in Peace and Conflicts Studies and then graduated from UCLA School of Law.

**Christina Powers**

Christina L. Powers has been a staff attorney at the Florence Immigrant and Refugee Rights Project since 2006. She has advised hundreds of detainees on possible relief from removal and represented dozens of individuals in bond proceedings. She is a 2006 graduate of Georgetown University Law Center.

**James Smith**

James Smith, Director Emeritus, Immigration Law Clinic, UC Davis School of Law organized the UC Davis Immigration Law Clinic in 1981 and directed the Clinic until he retired in 2007. He is a former Fulbright Scholar in Mexico and Uruguay and currently divides his time between Mexico and the United States where he stays involved in human rights issues.

**Janet Tung**

Janet Tung has been an attorney at the Federal Defenders of San Diego, Inc., specializing in appeals and habeas since 2006. She has represented numerous detainees seeking release from prolonged and indefinite immigration custody. Before coming to Federal Defenders, she graduated from UC Berkeley School of Law in 2003, clerked for the Honorable M. Margaret McKeown of the Ninth Circuit Court of Appeals, and represented prisoners, parolees, and other plaintiffs at Rosen, Bien & Galvan, LLP, a San Francisco law firm specializing in civil rights and complex class action litigation.

**Carter White**

Carter “Cappy” White has been a practicing attorney for over 20 years, representing noncitizens in immigration matters, and plaintiffs in civil rights, employment, and personal injury cases. He is Supervising Attorney of the U.C. Davis Civil Rights Clinic, representing prisoners in excessive force, medical neglect, religious freedom, and other civil rights cases. The Clinic has won attorney’s fees awards under both the Equal Access to Justice Act (EAJA) and 42 U.S.C. §1988. Mr. White also teaches law school courses in civil rights and pretrial skills.

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**PARTICIPATING ORGANIZATIONS****American Civil Liberties Union National Prison Project**

The American Civil Liberties Union (“ACLU”) is the largest civil liberties organization in the country, with offices in 50 states and over 500,000 members. The ACLU established the National Prison Project (“NPP”) in 1972 to protect and promote the civil and constitutional rights of people in detention. The NPP is the only program in the United States that litigates

conditions of confinement cases on a national basis; at any given time we have cases pending in 20 to 25 states. In recent years, the use of immigration detention has skyrocketed, making immigration detention the fastest growing form of incarceration in this country. As a result, the NPP has developed an immigration detention initiative to protect the rights of this frequently unrepresented population.

#### **Civil Rights Clinic (UC Davis School of Law)**

The Civil Rights clinic represents indigent plaintiffs in State and Federal trial and appellate courts. In recent years, the Immigration and Civil Rights clinics have collaborated on immigration detention cases, obtaining a stipulated dismissal (and client's release from custody) and EAJA fee award in a prolonged detention writ of habeas corpus.

#### **Federal Defenders of San Diego, Inc.**

Federal Defenders of San Diego, Inc., is a private, non-profit corporation based in San Diego with a branch office in El Centro, California, representing indigent persons accused of federal criminal offenses. A thirteen-member Board of Directors oversees their daily operation. FDSDI is independent from the local federal judiciary and funded by a sustaining grant awarded by Congress under the Criminal Justice Act.

FDSDI is located in the Southern District of California. Their close proximity to the U.S.-Mexico border has a strong influence on their caseload. The majority of clients represented by FDSDI are charged with drug and immigration related offenses. FDSDI attorneys also have the opportunity to represent clients facing a wide variety of federal charges, including bank robbery, fraud, counterfeiting, pornography, assault, and firearms offenses.

The staff currently consists of over thirty trial attorneys and fifty support personnel, many of whom are bilingual and bicultural. FDSDI has an aggressive and distinguished appellate department. FDSDI attorneys are assisted by highly trained and dedicated investigators and have the benefit of in-house interpreter and bond departments.

#### **Florence Project (Florence, Arizona)**

The Florence Project is a nonprofit legal service organization that provides free legal services to men, women and children detained by the Immigration and Customs Enforcement (ICE). The project provides a full range of services to detained people including live pre-hearing rights presentations; confidential individual interviews; in depth counseling and case preparation for pro se clients; direct representation in clients' bond hearings and meritorious claims for relief from removal; and referral for pro bono representation.

#### **Immigration Law Clinic (UC Davis School of Law)**

The UC Davis School of law established the Immigration Law Clinic in 1981 in order to provide clinical legal education to law students, legal services to the immigrant community and continuing legal education to the immigration and criminal bar. In 2001, the Clinic established the King Hall Immigrant Detention project to provide representation of detained immigrants.

**Immigration Law Clinic Alumni Council**

The UC Davis Immigration Law Clinic Alumni Council provides outreach and networking opportunities to over 400 Clinic alumni, continuing education for the immigration and criminal bar and students and recent graduates.