

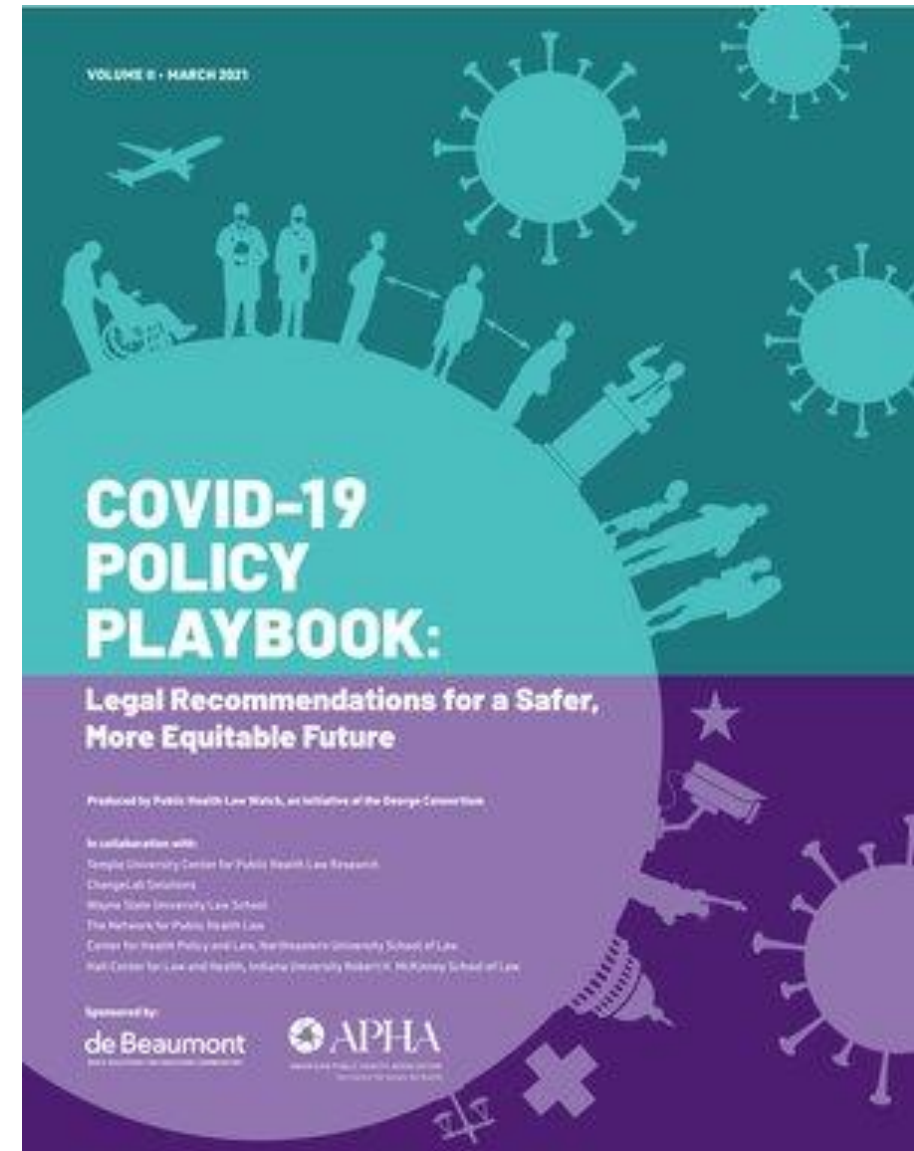
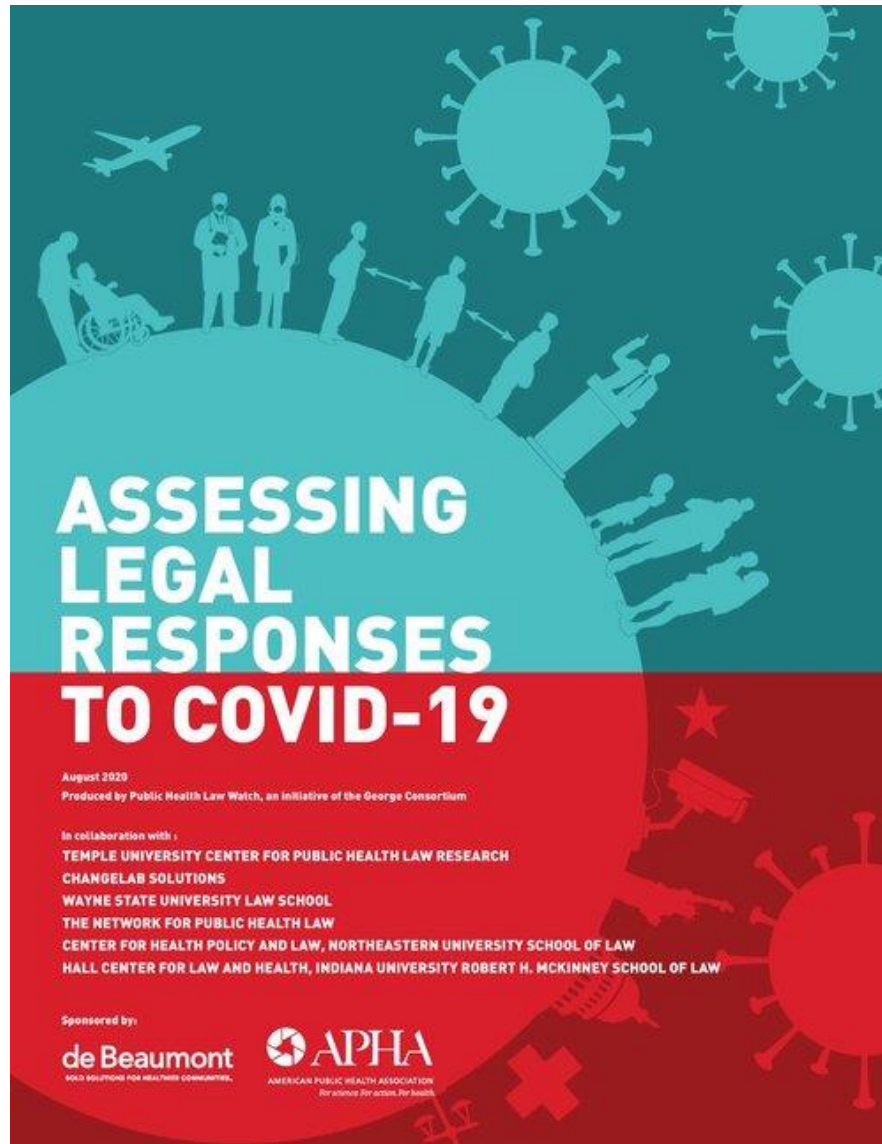
# Health-Focused Immigration Restrictions: The Impact on the Pandemic

Wendy E. Parmet

# Immigration Laws are an Adverse SDOH for Immigrants, Their Families & The General Public

- They Create Barriers to the Safety Net
- They Create Conditions for Contagion
- They Distort Policy Responses



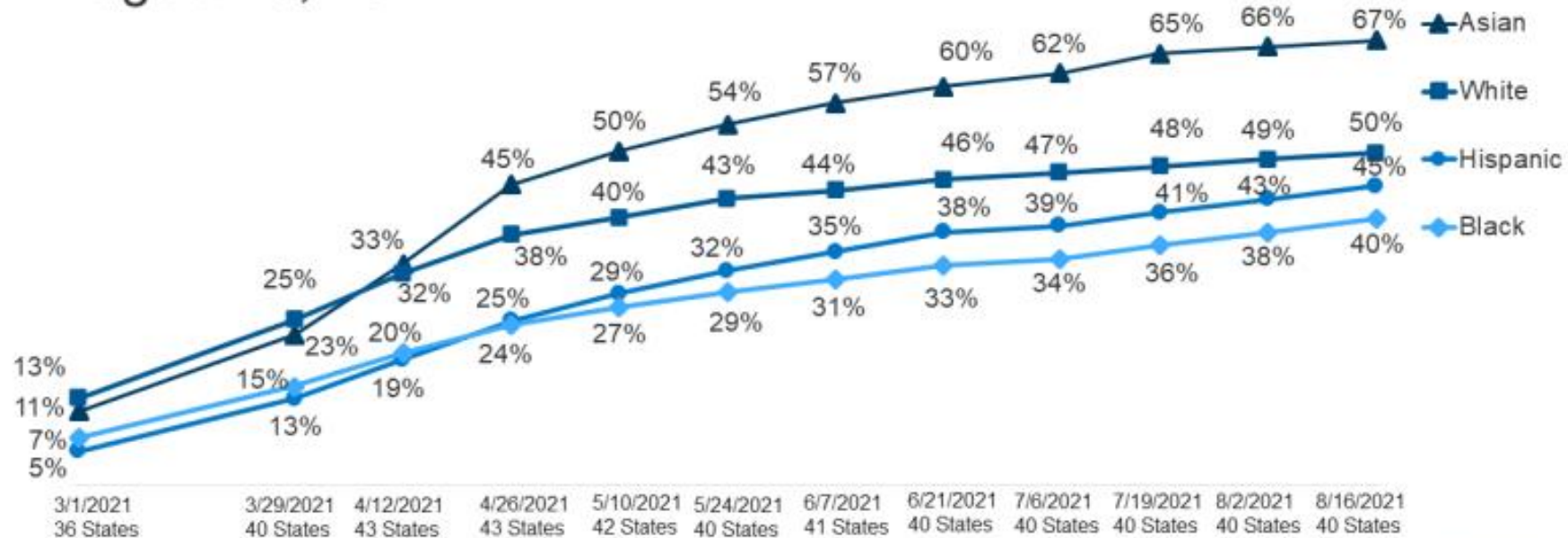


# Immigrants & COVID-19

- There are over 44 million immigrants in the US, most are naturalized citizens or LPRs.
- Traditionally immigrants have been healthier (and younger) than native-born citizens – but there is tremendous heterogeneity.
- Although data is lacking, data that is available shows that immigrants—especially Latinx immigrants & their communities -- have suffered disproportionately during the pandemic.
  - “the proportion of foreign-born noncitizens was the strongest predictor of the burden of COVID-19 cases within a community.” Figuera et al, 2020.
  - Latinx individuals have suffered 154 deaths per 100,000 compared to Whites (124 per 100,000). COVID Racial Data Tracker

Figure 4

## Percent of Total Population that Has Received at Least One COVID-19 Vaccine Dose by Race/Ethnicity, March 1 to August 16, 2021



SOURCE: Vaccination data based on KFF analysis of publicly available data on state websites; total population data used to calculate rates based on KFF analysis of 2019 American Community Survey data.

**KFF**

# Pre-COVID Legal Barriers to the SDOH

- Many federal and state programs limit access to benefits to citizens or some classes of lawfully present non-citizens.
- Personal Responsibility & Work Opportunity Reconciliation Act
  - Limits access to federal public benefits; including Medicaid, CHIP, SNAP to “qualified aliens” and imposes a 5 year rule.
- Affordable Care Act
  - Limits access to health insurance to “lawfully present” noncitizens.
- Lack of access to tuition assistance & other state benefits.

\*\*Note: there are lots of exceptions and exceptions to the exceptions!

# Pandemic Relief Legislation

- CARES Act
  - Relief checks were denied to taxpayers who filed jointly with someone who used a taxpayer ID #.
  - Support for testing & treatment did not cover costs of treatment/diagnosis for a condition that turned out not to be COVID.
- Families First Coronavirus Response Act
  - Unemployment compensation not available to undocumented workers.
- Coronavirus Response and Relief Supplemental Appropriates Act
  - Allowed citizens who file jointly with an undocumented resident to receive stimulus funds.
- American Rescue Plan Act
  - Allows undocumented parents to receive child tax credit for authorized children



# Fear as a Barrier to the SDOH

- Raids While Accessing Health Care
- Public Charge Rule

*“To protect benefits for American citizens, immigrants must be **financially self-sufficient.**”*

PRESIDENT DONALD J. TRUMP





# Detering Benefits: The Public Charge Rule

- Went into effect Feb. 2020- vacated March 2021.
- Created adverse immigration consequences for utilizing public benefits
- Worked more by fear than by legal exclusion. Few immigrants who were eligible for benefits were actually affected, but fear was great.
- Study by Babey et al found that 25 % of low-income adults in California reported avoiding benefits due to fear of the rule.
- USDA found that national participation in SNAP among children in mixed-status households dropped by 22.5% between 2018-2019.
- Study by Touw et al found that immigrant essential workers avoided Medicaid and SNAP due to the rule during the pandemic.

# Creating Contagion

- Detention – Out the Border and Beyond
  - As of Sept. 7, 2021 there were over 27,000 cases of COVID among migrants in ICE detention
  - As of Sept. 7, 2021 there were 973 active cases
- Deterring Vaccination
  - As of Aug. 22, 2021, 22,000 immigrants in ICE custody had received one dose; 167 % increase since July
  - Confusion about ID requirements
  - Use of National Guard in vaccination sites

# Distorting Policy

- Immigration-Based Travel Bans
  - Inciting hate
  - Taking our eye off the “contagious ball”
- Title 42
  - CDC used the Public Health Service Act to bar entry from Mexico
  - The Biden Administration has continued this except for unaccompanied minors
    - Hisha-Huisha v. Mayorkas (D.D.C. Sept. 16, 2021) enjoined the policy with respect to families.
- Scapegoating
  - Gov. Abbott Exec. Order GA-37 – authorizes state police to “stop any vehicle upon reasonable suspicion” of transporting migrants who have crossed the border illegally because “the admittance and movement of migrants under the Biden Administration is exposing Texans to COVID-19.”

# Moving Forward: Looking to the Next Pandemic

- Rolling back the Trump Administration's most punitive measures is not sufficient.
- Comprehensive immigration reform must be considered as a public health measure & a vital part of pandemic preparedness.
- Access to the social safety net should not depend upon immigration status – and utilizing health care & public benefits must not jeopardize immigration status.
- Repeal PRWORA's 5 year rule (Lift the Bar Act)& the public charge provision in the INA.
- Need far more research & data on both the scope of the problem and effective interventions.

# COVID-19 in U.S. Immigration Detention Centers

2021 Public Health Law  
Conference  
September 22, 2021

Panel: *Immigration Law and  
Public Health*

Eunice Cho  
Sr. Staff Attorney  
ACLU National Prison Project

# Overview

- The Danger of COVID-19 in Immigration Detention
- Litigation for Liberation: COVID-19 Lawsuits
- Public Health Recommendations and Actions



# COVID-19 in Jails, Prisons, and Detention

- Before the pandemic, these places were overcrowded, unhygienic, and cruel.
- Jails, prisons and detention centers are group-living environments where COVID-19 spreads rapidly.
  - Shared, close quarters; no social distancing
  - Little access to soap, hygiene, PPE
  - Lack of COVID-19 testing
  - Inadequate medical care
  - Rural locations far from hospital resources
  - Lack of vaccine access / inadequate patient education

Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention

## *Chicago's Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars*

At least 1,324 confirmed coronavirus cases are tied to prisons and jails across the United States, according to data tracked by The Times, including at least 32 deaths.

**U.S.**

**MORE THAN 700 PEOPLE HAVE TESTED POSITIVE FOR CORONAVIRUS ON RIKERS ISLAND, INCLUDING OVER 440 STAFF**

**Crisis at Oakdale: Coronavirus cripples federal prison in Louisiana**



# Why It Matters

- *"They had 60 people in 60 bunks at York [County Prison, in Pennsylvania]. There was no way to socially distance. Every bunk is three feet apart. I have asthma and high blood pressure, so this was a big deal to me. I asked the officer for sanitizer to sanitize the bathroom, because there were six stalls for 60 people, and he said no. We were just asking, 'Can you just give us some basic things to protect us while we're here?'"*
- -Aaron Hope



-Aaron Hope has been in the US since he was 9. He is from Trinidad and Tobago, but has lived in Brooklyn, New York, with his family for what “feels like [his] entire life.” Aaron has a B.A. in psychology from Queens College in New York. Since his release, Aaron has returned to his family and is now working at a restaurant.



## Detainees at Otay Mesa Detention Center were offered masks, but only if they signed contracts



The medical section of the Otay Mesa Detention Center. (Nelvin C. Cepeda / The San Diego Union-Tribune)

# One ICE Detention Facility's Response



*Security staff at La Palma Correctional Center (CoreCivic ICE facility in Arizona, site of one of the largest COVID-19 outbreaks in ICE facilities) fired pepper spray and chemical agents on immigrant detainees who were engaged in a peaceful hunger strike protest of the failure to provide COVID-19 protections.*



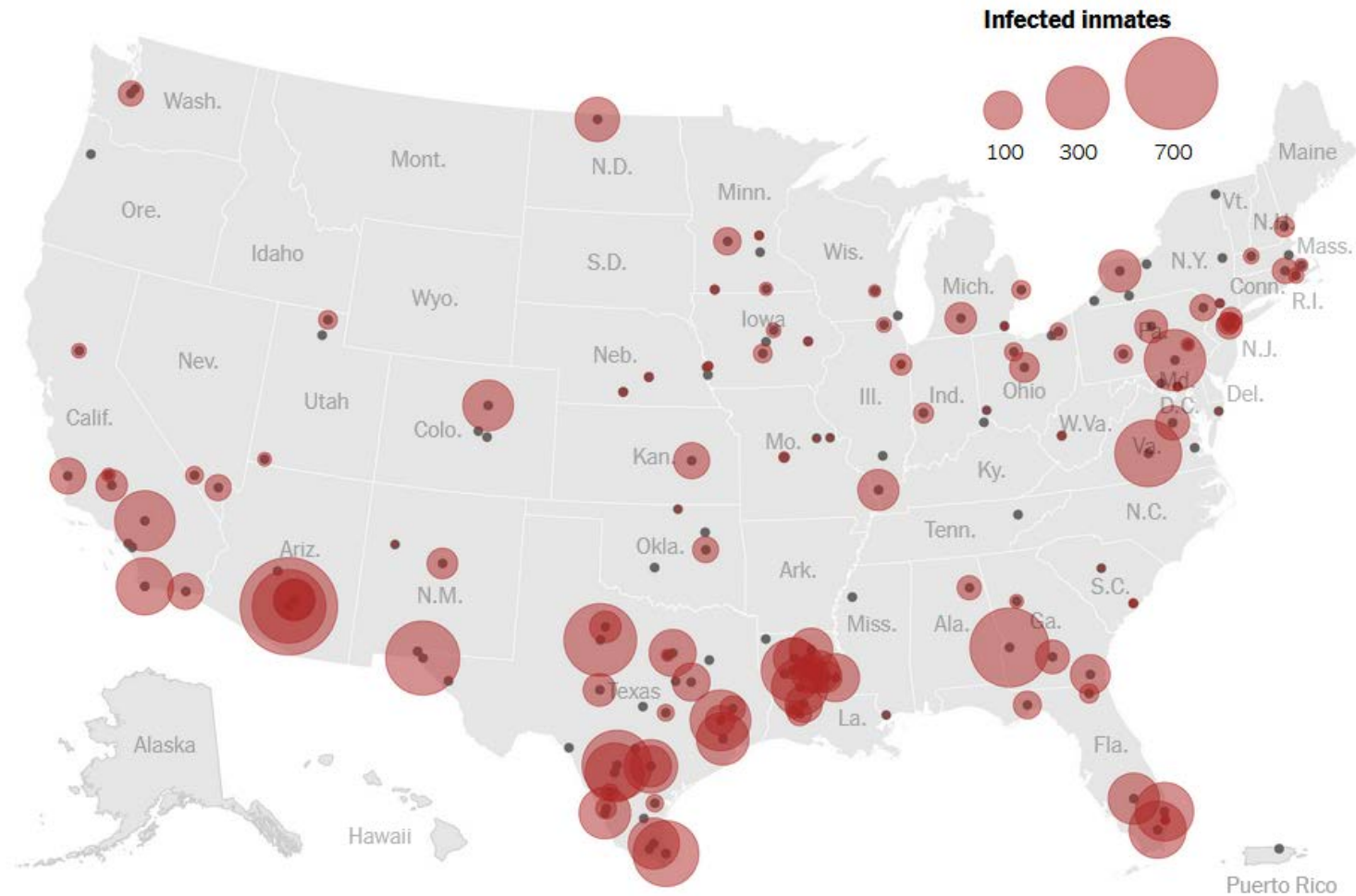
Legal Issues

**ICE flew detainees to Virginia so the planes could transport agents to D.C. protests. A huge coronavirus outbreak followed.**



Members of federal agencies block 16th Street NW near the White House in Washington on June 3.  
(Bonnie Jo Mount/The Washington Post)

## Cumulative Covid-19 infections at 162 ICE detention facilities



Source: New York Times database of reports from federal and local agencies | Note: As of March 31, 2021 • By Scott Reinhard

# ICE's COVID-19 Failures

- **Lack of Transparency.** No public reporting regarding staff infections or deaths; ICE detainee hospitalizations.
- **Refusal to Test Detainees for COVID-19, Even When Tests Are Available.**
- **Lack of Candor to the Court.** Numerous district courts concluded that ICE officials had provided false testimony or obstructed proceedings in COVID-19 ICE detention cases.

# ICE's COVID-19 Vaccine Failure

## COVID-19 VACCINE

While ICE cannot force individuals in detention to be vaccinated, all detention facilities are responsible for ensuring their ICE detainees are **offered** the COVID vaccine in accordance with state priorities and guidance. Detention facility staff should contact their state's COVID-19 vaccine resource (i.e., state or county department of health) to obtain vaccine. The process to register to obtain the vaccine may involve several steps, and each state health authority will likely require detainee demographic reporting for those detainees who are vaccinated. Please reference the CDC [COVID-19 Vaccine FAQs in Correctional and Detention Centers](#) for additional information.

## Immigration detention centers showcase California's vaccine chaos

HEALTH

### No Clear Plan For How To Vaccinate ICE Detainees

May 7, 2021 - 4:06 PM ET  
Heard on All Things Considered

ELIZABETH TROVALL | HOUSTON PUBLIC MEDIA

## “You’re Doing Nothing”: Judge Slams ICE for Failing to Vaccinate Detainees

*The lawsuit covers people at a detention center in upstate New York.*

Immigration

ICE has no clear plan for vaccinating thousands of detained immigrants fighting deportation



# COVID-19 in Prisons, Jails, and Detention: The Numbers (March 2020-Sept. 2021)

**27,711**

ICE detainees  
have tested  
positive\*

**20x**

Average infection rate  
in ICE detention is  
20x that of general  
public

**10\***

ICE detainees have  
from COVID-19\*

# Why It Matters

In March 2021, ICE hospitalized Martin Vargas Arellano, a 55-year-old man, after he contracted COVID-19 at an ICE detention facility in Adelanto, California. ICE released him from custody on his deathbed at the hospital; because he was not formally in ICE's custody at the time of his death, ICE avoided mandatory reporting and investigation requirements. Mr. Vargas Arellano's family and counsel learned of his death weeks later only after filing a missing person's report.



*Martin Vargas Arellano*

# ACLU's COVID-19 Litigation

**40**

Lawsuits

**32**

Detention facilities  
nationwide

**800+**

People released from  
detention

# ACLU's COVID-19 Litigation

- “When the State takes a person into its custody . . . The Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 480 U.S. 189, 199-200 (1989).
- Immigrant detainees have Fifth Amendment substantive due process right to “reasonable safety” in government custody.

Case 2:20-cv-00409 Document 1 Filed 03/16/20 Page 1 of 21

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

KARLENA DAWSON; ALFREDO  
ESPINOZA-ESPARZA; NORMA LOPEZ  
NUNEZ; MARJORIS RAMIREZ-OCHOA;  
MARIA GONZALEZ-MENDOZA; JOE  
HLUPHEKA BAYANA; LEONIDAS  
PLUTIN HERNANDEZ; KELVIN  
MELGAR-ALAS; JESUS GONZALEZ  
HERRERA,

Petitioners-Plaintiffs,

v.

NATHALIE ASHER, Director of the Seattle  
Field Office of U.S. Immigration and Customs  
Enforcement; MATTHEW T. ALBENCE,  
Deputy Director and Senior Official Performing  
the Duties of the Director of the U.S.  
Immigration and Customs Enforcement; U.S.  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT; STEVEN LANGFORD,  
Warden, Tacoma Northwest Detention Center,

Respondents-Defendants.

Case No. 2:20-cv-409

PETITION FOR WRIT OF  
HABEAS CORPUS PURSUANT  
TO 28 U.S.C. § 2241 AND  
COMPLAINT FOR INJUNCTIVE  
RELIEF

PET. FOR WRIT OF HABEAS CORPUS &  
COMPL. FOR INJUNCTIVE RELIEF  
Case No. 2:20-cv-409

American Civil Liberties Union  
915 15th St. NW, Washington, DC 20005  
Tel: 202-393-4930  
Fax: 202-393-4931

# Standard for Treatment of Immigrant Detainees

- Civil detention cannot “amount to punishment of the detainee.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).
- “If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine [civil detainees]—who may not be punished at all—in unsafe conditions.” *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982).

# What We Need

- Close detention facilities nationwide.
- Replace detention with community-based case management.
- Immediately release medically vulnerable people from COVID-19, and reduce population.
- Commit not to re-detain released individuals.
- Ensure practices consistent with CDC guidelines; provide vaccine access and halt transfers.



## Oscar Xirum Sanchez

*Oscar is a 42-year-old husband and father of two. He has lived in the United States for 18 years, and his wife and daughters, age 6 and 3, are all U.S. citizens.*

*Oscar was detained for four months in ICE custody at the Calhoun County Correctional Facility in Michigan until he was released as a result of litigation brought by the ACLU.*

# End the Immigration Detention Machine

<https://www.youtube.com/watch?v=kOyngQdTByM>



# You can stand up and speak up now!

- Tell Department of Homeland Security Director Mayorkas to shut down the ICE detention machines
  - <https://action.aclu.org/send-message/shut-down-ice-detention-machine>
- Tell President Biden to not send more than 4,000 people back to Federal Bureau of Prisons facilities
  - <https://action.aclu.org/send-message/4000-people-could-be-sent-back-prison-contact-biden-now>



Photo Copyright Flickr-Via Tsuji

## For more information:

Eunice Cho  
ACLU National Prison Project  
[echo@aclu.org](mailto:echo@aclu.org)

**ACLU**

**WE THE PEOPLE**



**PennState**  
Dickinson Law

# Immigration Surveillance in Health Care

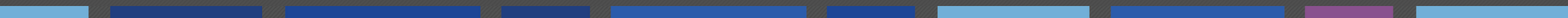
Medha D. Makhlouf  
September 22, 2021

**PRACTICE GREATNESS**

# Roadmap

- I. Noncitizens and Health Care System Avoidance
- II. Immigration Surveillance in Health Care: The Legal Landscape
- III. Health Care Sanctuaries

# I. Noncitizens and Health Care System Avoidance





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*Low-income immigrants with a serious medical condition are in an impossible situation. How much do you risk for medical care? Deportation would devastate your family but so would your illness and death.*

LISA SUN-HEE PARK, ENTITLED TO NOTHING: THE STRUGGLE FOR IMMIGRANT HEALTH CARE IN THE AGE OF WELFARE REFORM 135 (2011).



# Immigration Surveillance in Health Care

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Interrogation and arrest of noncitizens at health care sites

---

Information-gathering about noncitizens from agencies that administer publicly funded health programs.



## Concrete Problem

Noncitizens are choosing to delay or avoid seeking health care based on a fear of immigration consequences. This creates health risks in the larger community, decreases the efficiency of the health care system, and intensifies health inequities in the noncitizen population.

Figure 1. A 7-year-old boy from Guatemala is tested for Covid-19 in Stamford, Connecticut, in May. John Moore/Getty Images, retrieved from <https://www.bloomberg.com/news/articles/2020-05-20/why-so-many-immigrant-families-avoid-getting-help>.

# Healthcare System Harms

Increased risk of  
infectious disease

Decreased cost-  
effectiveness

Creation of  
humanitarian crises  
in the noncitizen  
population

Exacerbation of  
racial disparities /  
stratification in  
health care

# Ethical Harms

Forces providers to alter clinical risk calculations and clinical recommendations for reasons relating to immigration enforcement.

Threatens to make providers into agents of the state, contradicting their professional duties to their patients.

# System Avoidance

A Behavior Response:  
Deliberate and systematic avoidance of institutional contact because of concerns about coming under heightened surveillance.

Consequence:  
Suppression of socially valuable behavior.





Caitlin Dickerson, *Undocumented and Pregnant: Why Women Are Afraid to Get Prenatal Care*, N.Y. TIMES (Nov. 22, 2020).

November 22, 2020

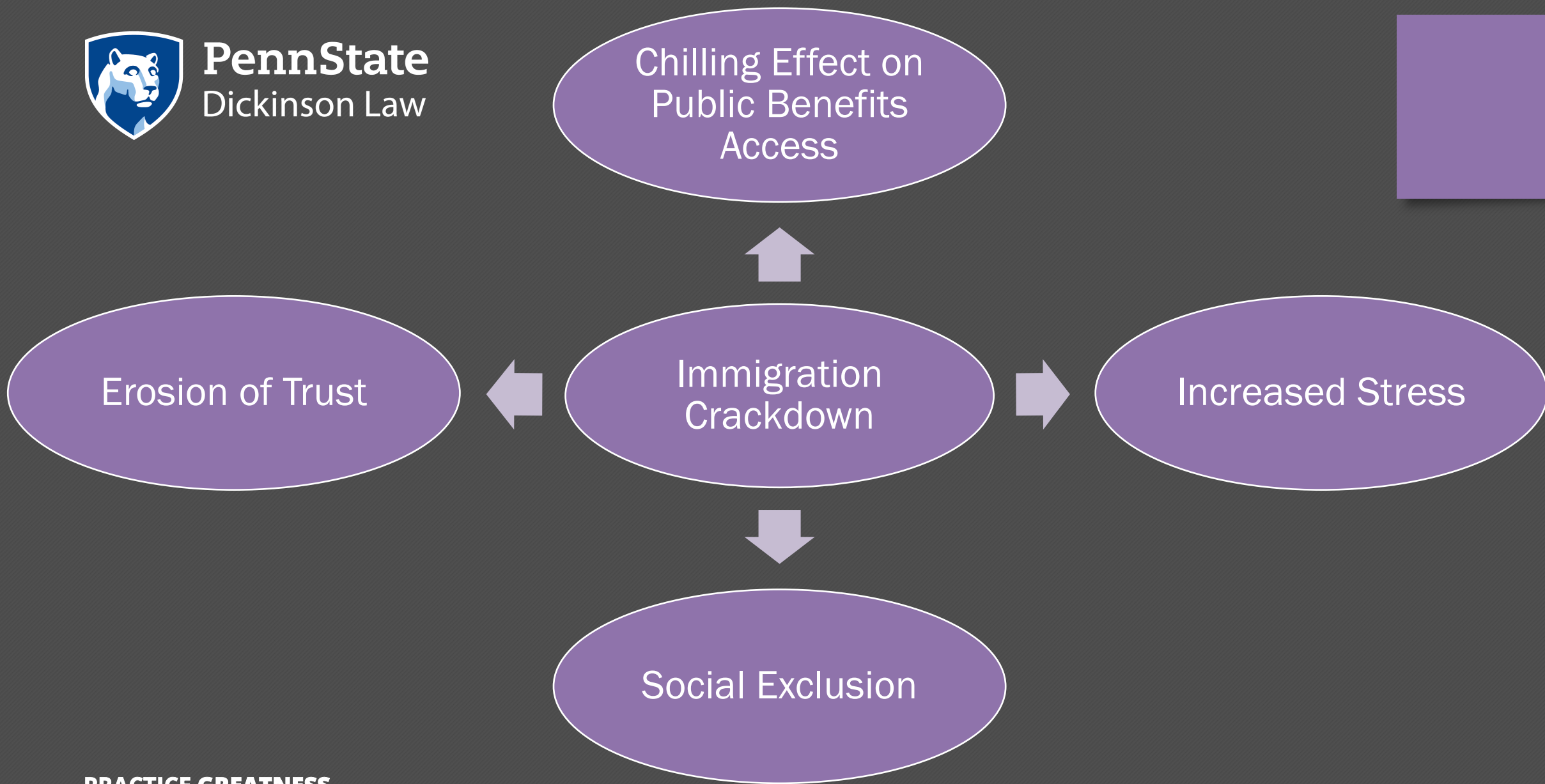
The New York Times

## *Undocumented and Pregnant: Why Women Are Afraid to Get Prenatal Care*

Undocumented women are risking their health by postponing prenatal care and giving birth at home in response to the Trump administration's immigration enforcement policies.



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## U.S. frees 10-year-old undocumented immigrant with cerebral palsy



Rosa Maria Hernandez, 10, was detained by federal immigration agents in Texas after she passed through a Border Patrol checkpoint on her way to a hospital to undergo surgery. (Courtesy Agustina Arroyo/Courtesy Agustina Arroyo)

By **Maria Sacchetti**  
November 3, 2017

Federal officials on Friday released a 10-year-old girl with cerebral palsy who was detained in Texas Oct. 25 after undergoing surgery because she was an undocumented immigrant traveling without her

NATIONAL

## Border Patrol Arrests Parents While Infant Awaits Serious Operation

September 20, 2017 - 7:06 PM ET  
Heard on All Things Considered

JOHN BURNETT



Irma and Oscar Sanchez were apprehended by the Border Patrol when they took their infant son, Isaac, to a children's hospital to have emergency surgery.

John Burnett/NPR

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1. Undocumented Noncitizens – including people who hold liminal or “in-between” statuses.
2. Noncitizens with Legal Status – public charge, deportation risk
3. Naturalized U.S. Citizens – specter of denaturalization
4. U.S. Citizens in Mixed-Status Families – spillover immigration consequences

**Who is affected by immigration surveillance in health care?**

# Risk Factors for the COVID-19 Pandemic in Vulnerable Immigrant Communities

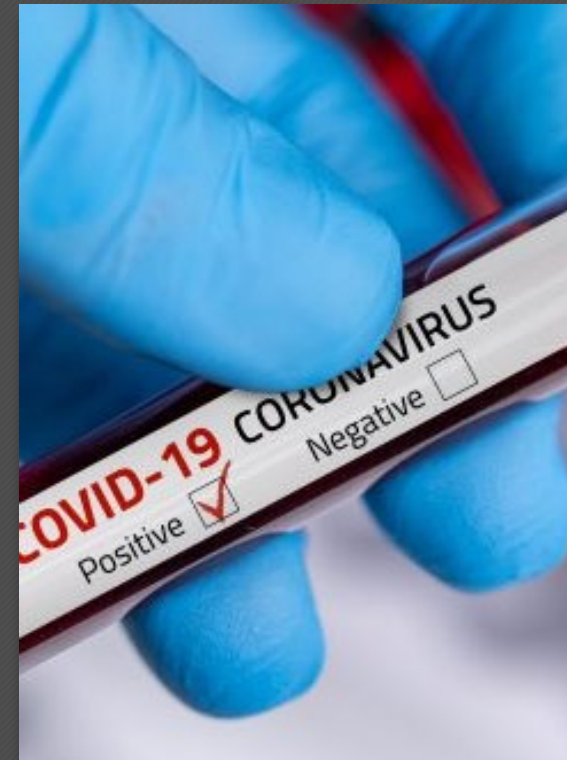
Medical	Economic	Legal	Social
<ul style="list-style-type: none"><li>• Under- or un-insured</li><li>• Limited healthcare options/access</li><li>• Higher prevalence of comorbidities</li></ul>	<ul style="list-style-type: none"><li>• Need to continue to work despite “social distancing”</li><li>• More likely to have a job where risk of SARS-CoV-2 exposure is increased</li><li>• Use of mass transit</li></ul>	<ul style="list-style-type: none"><li>• Fear of legal penalties for themselves or their families if healthcare is sought</li></ul>	<ul style="list-style-type: none"><li>• Crowded households</li><li>• Multigenerational households</li><li>• Reduced internet and phone access</li><li>• Limited ability to speak/read English</li></ul>

Adapted from Eva Clark et al., *Disproportionate Impact of the COVID-19 Pandemic on Immigrant Communities in the United States*, 14 PLOS NEGLECTED TROPICAL DISEASE e0008484 (2020).

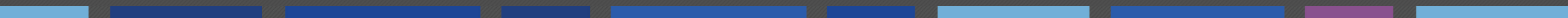
# Reduced Access to Health Care

Noncitizens with COVID-19 symptoms who decline to enroll in Medicaid and cannot pay out of pocket may not seek testing and treatment →

- Disproportionate suffering
- Uncontrolled spread of the virus



# Immigration Surveillance in Health Care: The Legal Landscape



# Laws Governing Immigration Surveillance in Health Care

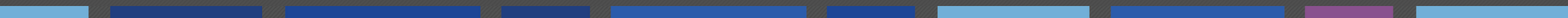
## Surveillance at Health Care Provider Sites

- ICE Sensitive Locations Policy (2011)
- CBP Sensitive Locations Policy (2013)
- HIPAA Privacy Rules

## Surveillance of Publicly Funded Health Care Programs

- Medicaid statute and ACA (restricting disclosure)
- HHS/DoA Policy Guidance (2013)
- ICE Policy (2013)

# Health Care Sanctuaries



# Legal Reforms

- Develop a national strategy on immigrant health
- Create a new agency to prioritize the elimination of health care access barriers in vulnerable communities
- Enact the federal Protecting Sensitive Locations Act
- Revise DHS' Sensitive Locations policies
- State-level reforms to public benefits application process

# Institutional Reforms

- Develop internal protocols for protecting noncitizen patients from enforcement if ICE or CBP comes onsite
- Create “rapid response teams” of designated staff to respond to such appearances
- Designate certain spaces as “closed to the public” or “private”
- Establish liberal policies about documents that satisfy ID requirements
- Ensure that staff is well-trained on internal policies designed to limit immigration surveillance in health care
- Reach out to the community about sanctuary policies





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## Further Reading

Medha D. Makhoulouf, *Health Care Sanctuaries*, 20 YALE J. HEALTH POL'Y, L. & ETHICS 1 (2021), available [here](#).

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Yale Law School

HOME CURRENT ISSUE ARCHIVE MASTHEAD: VOLUME 20 SUBMISSION

## Yale Journal of Health Policy, Law, and Ethics

### Health Care Sanctuaries

Medha D. Makhoulouf

**ABSTRACT.** It is increasingly common for noncitizens living in the United States to avoid seeing a doctor or enrolling in publicly funded health programs because they fear surveillance by immigration authorities. This is the consequence of a decades-long shift in the locus of immigration enforcement activities from the border to the interior, as well as a recent period of heightened immigration enforcement. These fears persist because the law incompletely constrains immigration surveillance in health care.

This Article argues that immigration surveillance in health care is a poor choice of resource allocation for immigration enforcement because it has severe consequences for health and the health care system; additionally, it compromises the legitimacy of the state vis-à-vis its noncitizen residents. The consequences include public health threats, health care system inefficiency, ethical dilemmas, and increased vulnerability in immigrant communities. Laws permitting immigration surveillance in health care also create legitimacy harms by obstructing noncitizens' access to health care and undermining their privacy and rights to public benefits. The COVID-19 pandemic starkly illustrates these dangers, but they exist even in the absence of a novel disease outbreak.

Health care access for noncitizens has largely been left to the vagaries of immigration policy. Immigration surveillance in health care should prompt us to consider the scope and limits of health law and the role of discretion in immigration law. Health care sanctuaries — durable legal protections against immigration surveillance in health care — recover some of the lost equilibrium between immigration enforcement and other goals and values of public policy.

**AUTHOR.** Medha D. Makhoulouf, Assistant Professor and Director, Medical-Legal Partnership Clinic, Penn State Dickinson Law; Assistant Professor, Department of Public Health Sciences, Penn State College of Medicine.

**RECOMMENDED CITATION.** Medha D. Makhoulouf, *Health Care Sanctuaries*, 20 YALE J. HEALTH POL'Y L. & ETHICS (2021).

["Everybody Knows I'm Not Lazy":  
Medicaid Work Requirements and  
the Expressive Content of Law](#)  
Kristen Underhill

[Adding Principle to Pragmatism:  
The Transformative Potential of  
"Medicare-for-All" in Post-Pandemic  
Health Reform](#)  
William M. Sage

[No Parking Here: A Review of  
Generic Drug 180-Day Exclusivity  
and Recent Reform Proposals](#)  
Victor L. Van de Wiele, Jonathan J.  
Darrow & Aaron S. Kesselheim

[Pharmaceutical \(Re\)Capture](#)  
Liza Vertinsky



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