

ERIKA NYBORG-BURCH

Clinical Professor of Law & Director, Farmworker and Immigration Rights Clinic

425 W. Jefferson Street, Tallahassee, FL 32306-1601 • enyborgburch@law.fsu.edu

EDUCATION

Yale Law School, New Haven, CT 2013 – 2016

Juris Doctor (J.D.)

Activities: Project for Law and Education, President
Capital Assistance Project, Research Assistant
Justice Collaboratory on Law and Policing, Research Assistant
Marshall Brennan Constitutional Literacy Project, Teacher
Yale Law and Policy Review Journal, Editor

Brown University, Providence, RI 2006 – 2010

B.A., with honors in International Relations and B.A. in Hispanic Studies,

Honors: *magna cum laude*, Fichter Prize for Outstanding Senior in Hispanic Studies

Honors Senior Thesis: *Citizens or Aliens? Undocumented Immigrants and the Discourse on Removal in the United States*

Activities: Watson Institute Fellow in International Studies
Janus Fellow for Political Discourse

Study Abroad: Casa de las Americas, Havana, Cuba, 2008

PROFESSIONAL EXPERIENCE

Florida State University College of Law, Tallahassee, FL June 2023–present

Clinical Professor of Law, Director, Farmworker & Immigration Rights Clinic

Direct the Farmworker & Immigration Rights Clinic. Supervise students in all clinical matters, including representing clients seeking humanitarian relief in removal proceedings and before federal agencies, developing community education projects, presenting know-your-rights trainings, and advocating in support of farmworkers and immigrant workers. Develop and teach clinical class on relevant topics that include lawyering ethics and skills, substantive immigration and labor law, and broader issues in the U.S. immigration and labor systems. Mentor clinical students, research assistants, and pro bono students. Build partnerships with community organizations. Engage in fundraising.

Boies Schiller Flexner LLP, San Francisco, CA May 2021– June 2023

Senior Associate

Represented plaintiff and defendant clients in high-stakes disputes through all phases of civil litigation, including appeal. Advocated in dispositive briefing and motions practice before trial and appellate courts. Led discovery, including as first chair of depositions and as expert liaison. Represented clients *pro bono*, including survivors of sexual abuse and trafficking, reproductive health care providers, and students with disabilities. Member of firm's Diversity Committee, LGBTQ+, Women's Affinity Groups. Mentored students through firm's Tribal Affairs Task Force.

American Civil Liberties Union of Pennsylvania, Philadelphia, PA February 2020 – May, 2021

Attorney

Worked on a wide range of civil rights and civil liberties cases in federal and state courts and administrative tribunals. Litigated challenges to civil immigration detention and pre-trial detention before federal district and circuit courts. Engaged in motions practice, written advocacy, appellate advocacy, and discovery for claims on behalf of putative class members and individuals. Drafted

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and litigated Section 1983 claims against local police departments challenging racial and ethnic profiling. Litigated public access requests against local agencies to increase public access to information, including policies for policing, prosecution, and bail. Advised on legislative and advocacy work. Supervised legal fellows and interns.

The Bronx Defenders, The Bronx, NY 2018 – 2020
NYIFUP Attorney, Immigrant Justice Corps Fellow

Represented clients in removal proceedings through the New York Immigrant Family Unity Project (NYIFUP). Engaged in motions practice in immigration court. Prepared prehearing statements and evidentiary materials for applications for relief from removal, including asylum and cancellation of removal. Represented clients in immigration court hearings on these applications and secured grants of asylum for multiple clients. Wrote appellate briefs for the Board of Immigration Appeals (BIA). Prepared federal habeas petitions for detained clients. Submitted applications for visas with USCIS.

Asylum Seekers Advocacy Project (ASAP), New York, NY 2017 – 2018
Founding Member, Attorney, Remote Removal Defense Coordinator

Represented clients in motions to reopen before the BIA. Drafted templates, guides, and supplemental resource database for practitioners. Coordinated attorney supervision of student volunteers preparing filings for asylum seekers. Co-developed trauma-informed representation program at the South Texas Detention Center in Dilley, Texas.

Third Circuit Court of Appeals, Judge Thomas L. Ambro, Wilmington, DE 2016 – 2017
Federal Judicial Law Clerk

Analyzed relevant legal issues in cases and presented judge with summary, recommendation, and questions for counsel at oral arguments. Drafted opinions and edited opinions from other chambers. Reviewed motions and prepared responsive orders. Screened briefing from *pro se* applicants and flagged cases for the judge. Edited colleagues' work-product.

KIPP Central City Primary, New Orleans, LA 2011 – 2013
Second Grade Teacher

Developed school-wide second grade literacy curriculum. Increased student performance scores beyond grade-level benchmark. Initiated academic and behavioral intervention programs. Coordinated with social worker to create support systems for students experiencing trauma. Taught ESOL to a second-grade student.

PUBLICATIONS

- *The War on Immigrants* (work in progress)

This article examines the evolving intersection of immigration enforcement and criminal law in the context of state laws that increasingly criminalize the status of being undocumented. Under federal immigration law, criminal convictions—including violations of state laws—trigger immigration enforcement authority and render individuals in removal proceedings ineligible for certain forms of immigration relief. Scholars have noted how rising criminal prosecutions, and the harsher sentences have fueled the growth of immigration enforcement and federal removal power, a phenomenon often referred to as “cimmigration.” This article argues that, as the national discourse has increasingly scapegoated non-citizens for various social issues, state criminal laws tied to immigration status have created a “cimmigration loop” that amplifies the severity of criminal and immigration consequences. Whereas violations of criminal law previously triggered immigration consequences, immigration status itself can now trigger state criminal enforcement, which in turn can lead to criminal and immigration consequences. This article identifies and analyzes this loop by developing a

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taxonomy of recent state legislation criminalizing the presence of noncitizens and imposing enhanced sentencing for crimes committed by noncitizens. It explores how the expansion of state power into indirect immigration enforcement draws upon the criminalizing rhetoric of xenophobia and the legislative tactics of the so-called War on Drugs. The article finally posits that this expansion raises significant constitutional concerns, particularly regarding due process, equal protection, and federal powers.

- *Rethinking Constitutionally Impermissible Punishment*, 98 NOTRE DAME L. REV. REFL. 40 (2022) (with Nadia Banteka).

Prisons and jails endanger the health and wellbeing of incarcerated individuals and their communities. These facilities are often overcrowded and unsanitary, with limited access to medical care, and no basic sanitation and personal hygiene products unless a person can pay the spiked prices of the jail's commissary. Public health emergencies compound these dangers. Most recently, the spread of the COVID-19 pandemic created a crisis for people in detention, their families, and the communities surrounding jails and prisons. For over a year, there were no vaccines against COVID-19, new strains of the virus continue to evade vaccine-induced immunity, and there is still no known cure for the disease caused by the virus. For over a year, the only known measures to mitigate the spread of this pandemic were social distancing, vigilance with hygiene and disinfectants, and proper ventilation. Yet individuals in jails and prisons had no ability to implement these measures in spaces that, even in the absence of a pandemic, pose public health risks. Every decision to send a person into the jails or prisons, or to deny requests for release, had the potential to cause severe illness and turn into a death sentence for members of communities across the country. Now, with new variants appearing across the globe, we face an uncertain next chapter for public health. In this Essay, we discuss how the COVID-19 pandemic has affected our understanding of constitutionally permissible punishment. We argue, first, that the protracted failure to act by those who have had authority to do so during this public health emergency created a high risk that incarcerated people would suffer severe illness-and even death-in violation of due process protections and the Eighth Amendment prohibition against cruel and unusual punishment. Second, we suggest that a changed understanding of public safety in the context of detention and release during public health emergencies has the potential to shift the framework even after the emergency subsides. Conceptions of what qualifies as a danger to the community and what enhances public safety have radically shifted during this time in a way that supports release of individuals back to their communities. This shift can spur a further interrogation of how we define constitutionally permissible punishment in a system that has fueled mass incarceration.

PRESENTATIONS

- **Oscher Lifelong Learning Institute at Florida State University**, February 2024—Guest Lecturer, *Asylum and Refugee Law and the Legal Landscape at the Southern Border*.
- **Philadelphia Bar Association**, December 2020 – Organizer and Presenter, *Jails, Prisons, and Immigration Detention Centers: Lessons from COVID-19*.
- **Habeas Working Group**, December 2020 – Presenter, *Strategies to Defend Medically-Vulnerable Individuals from Re-detention by ICE*.
- **Tilburg Law School**, May 2019 – Guest Lecturer, *Shrinking Legal Protections and Expanded (Illegal) Detention for Asylum-Seekers in the United States*.

BAR ADMISSIONS

- Florida, California, New York, U.S. Court of Appeals for the Third Circuit, U.S. Court of Appeals for the Ninth Circuit, U.S. Court of Appeals for the Eleventh Circuit.

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LANGUAGES

- Fluent in English, Spanish; Conversational in Greek.