



### Season 2, Episode 5

**Hiroshi:** Welcome as we continue with season two of Unsettled: Immigration in Turbulent Times. I'm Hiroshi Motomura.

**Alex:** And I'm Alex Aleinikoff.

On this podcast, we examine the legal and political moves the Trump administration is making in immigration law and policy and put them into broader context at this unsettled moment in our history.

**Hiroshi:** Okay, Alex, we're back. I'm looking forward to today's conversation.

**Alex:** Yeah, and I'm really glad, Hiroshi, that we're getting to the issue of detention, which seems to be such a linchpin in the administration's mass deportation effort.

**Hiroshi:** One of the centerpieces of immigration policy under the second Trump administration has been a multi-pronged emphasis on enforcement inside the United States, through aggressive arrests by federal agents of Immigration and Customs Enforcement, or ICE, and personnel from many other federal agencies.

We've seen this ramped up enforcement in raids in neighborhoods and workplaces throughout the country and arrests of people who come to appointments and hearings at government offices and immigration courts. Sometimes the basis for this enforcement has been first to take away the lawful status of some noncitizens, then moving to deport them from the United States, or to "remove" them, in the language of federal immigration law.

We've also seen an unprecedented emphasis on putting noncitizens into detention. This means locking them up in prison facilities while their cases are being decided. Detention has been a centerpiece of US immigration law enforcement since 1996, but we're seeing a significant new turn in its use. The administration has interpreted federal statutes in unprecedented ways to expand the categories of people who it says must be locked up in prison facilities.

A number of lawsuits have challenged this expanded use of detention. Some courts have struck down some of the administration's efforts, but other courts have upheld them.

Notably, the administration has been intent on minimizing the practical effects of court decisions that have gone against it. One of those ways has been to expand the group of people who it says must be detained and then transfer people to parts of the country where the courts agree.

The administration's emphasis on detention has had real impact. We've seen accelerated deportations with only a minimal look at whether people have the right to stay in the United States under federal law, and many people are giving up on their cases and leaving the United States, feeling that they have no real choice.

In this episode, we'll look at immigration detention in the second Trump administration. In early 2025, one might have doubted its ability to carry out mass deportations, but last summer, Congress approved a huge funding increase for immigration enforcement – \$200 billion – and for immigration detention in particular – \$45 billion.

The administration has been using that money to greatly expand detention facilities by buying warehouses to be converted into eight large-scale detention facilities – essentially prisons – each to be used to hold 7,000 to 10,000 people, plus 16 so-called processing centers that will hold 1000 to 1500 people each.

According to federal government documents, the goal is to have these facilities operational by the end of September of this year, so about six months from now. The administration intends to use military procurement to speed up this transformation.

Our guests today are well-positioned to help us understand these trends in immigration detention. Both are attorneys with the Rocky Mountain Immigrant Advocacy Network, or RMIAN, a nonprofit based in the Denver, Colorado, metro area. Here I should mention that I'm a member of the board of directors of RMIAN.

RMIAN has several interlocking programs, and one of them provides legal services at the federal immigration detention facility in Aurora, Colorado, run by the GEO Group, the largest private prison company in the United States, under contract with ICE.

Mekela Goehring is the Executive Director of RMIAN, Laura Lunn is RMIAN's Director of Advocacy and Litigation.

Welcome, Mekela and Laura.

**Mekela:** It's great to be here, Hiroshi and Alex, and I'm delighted to be here with my colleague Laura.

**Laura:** Hi, Hiroshi and Alex, thanks so much for having us. It's really nice to be in conversation with you both.

**Hiroshi:** We'll first talk to Mekela and Laura about the human dimension of detention – what it means for people in prisons, in ICE detention centers.

So, could you tell us about the detention facility in Aurora? What is it? What are the conditions there, and who's there and how long do they stay?

**Mekela:** Thanks so much, Hiroshi, for focusing on immigration detention, especially at this moment in US History. I think it is a particularly important place for all of us to understand. And the immigration detention center in Aurora is a really important place to look, because it was one of the very first immigration detention centers that the GEO Group, a huge multinational corporation, won to imprison people from the US government.

When it was first built and this contract was started, was in the late eighties, and it was a detention facility that had capacity to imprison 150 people. It has now expanded to a detention facility that can detain over 1500 individuals on any given day. And I have been working at RMIAN for the last 23 years. And when I reflect back, when I first started working at RMIAN there, the facility had the capacity for 350 people.

So it's an immigration detention facility that if you didn't know that it was there, you probably wouldn't find it. It's in an industrial area of Aurora. But once you get there, you see a huge prison facility that's surrounded by chain link fence, and in every sense it is a prison. Even though these detention centers are called detention centers, it is essentially a prison facility.

So in order to get in, you're having to go through metal detectors. Folks who are inside the facility are stripped of all their individuality and in color-coded uniforms. And it holds people from really throughout the United States, but depending on the administration and the enforcement priorities of the administration, that reflects who's in detention in Aurora.

**Alex:** Mekela, what are the conditions like inside for the people being held there, and are there, are there kids there?

**Mekela:** So the Aurora immigration detention facility holds individuals who are above 18 years old, so there aren't kids there, but of course there are kids that are profoundly impacted by the immigration detention center in Aurora and really throughout the United States. One of the things that you notice when you go in, either to court or to be in the lobby and wait for visitation, is the number of family members, including children who are there to visit loved ones who are inside the facility.

So inside the facility, people are detained in pods; and RMIAN and particularly Laura, has led a lot of RMIAN's work in filing administrative complaints against many of the abuses that happen within the immigration detention center. So this has included things like the overuse of solitary confinement, a lack of medical care, harassment against trans- and non-binary individuals.

But you essentially have a private corporation that is running an immigration detention center and their number one priority is making money for their shareholders. And so what we see at every step of the way is cutting corners in terms of medical care, in terms of access to food, to the provision of mental health services, to legal access.

And for RMIAN the reason that we were founded and the reason that we grew was because we observed the grave injustices that were happening inside of the Aurora immigration detention center, and most particularly within the immigration court, that's within the Aurora immigration detention center.

**Hiroshi:** Another way of asking about who's there, is: how long are they staying?

**Laura:** Well, Hiroshi, your guess is as good as mine. I think that that's a feature of civil immigration detention – that a lot of people don't understand – is that somebody who's held in civil immigration custody is not serving a sentence. There was no finding of guilt, and these are not criminal proceedings.

And so really their case is driving how long they're going to be detained. And those things are typically tethered together, where somebody will continue to pursue their immigration case, and they might be detained as long as they're pursuing their case. And so what that could look like for some folks is that they're detained for a very short time, perhaps if they're not pursuing an immigration case.

It could be that they're detained for kind of like a medium length of time. If they go in front of an immigration judge, they win their case, nobody appeals and then they're released into the community. But what we're seeing is people being detained for years at a time because maybe they went to the immigration court and then somebody filed an appeal to the Board of Immigration Appeals.

It went back to the immigration court, it went back to the Board of Immigration Appeals. It might have gone to the Tenth Circuit Court of Appeals. So throughout the entire appellate process, ICE is typically holding onto the person.

Another thing I just want to drill down on in terms of distinguishing between civil detention and criminal is that typically in criminal cases, the government can't appeal if they lose at the trial court level. And that's not the case in immigration custody. So somebody could prevail in front of an immigration judge, and then the Department of Homeland Security decides to appeal that decision. That would ultimately end up prolonging the person's detention.

**Hiroshi:** So that would extend it from a matter of months to possibly a year or longer. Is that really what it is? That you have multiple stages of a process?

**Laura:** Yeah, that's exactly right. And from where I sit, a year or longer is most common. Certainly we have clients who have been detained for two, three years, facing prolonged detention. That can be challenged through a petition for writ of habeas corpus. We can talk more about what that looks like. But there really isn't a mechanism within the immigration system itself to prevent people from being detained for those really lengthy periods of time.

**Hiroshi:** And one thing I wanted to ask you about the population of people who are there – how many of them are, for example, stopped at the border? How many of them have been arrested inside the United States? How many have been long-term residents in the United States before they're put in detention? I know it's really hard to say, so I'm not asking for statistics, but really more just a general sense of who's there, and how that has changed over the last few years.

**Laura:** Yeah. I think what's really interesting about the Aurora facility is that because it is right in the middle of the country, the population morphs significantly depending on the detention priorities of the federal government. Why I say that is when I initially started working at RMIAN about 10 years ago, the majority of folks were people who had been picked up after living in the United States for kind of a long period of time.

Then they might've been picked up in the Rocky Mountain region and brought to Aurora, or they might've been transferred from other facilities who maybe had a higher population, and they needed to empty out bed space. We hear this term bed space lot. The Department of Homeland Security is constantly thinking about where they can put people.

Under the Obama administration, I would say there was a large increase of people coming up from the southern border, and we saw that under the Trump administration, too. And so for a while there, the vast majority of folks being detained in Aurora were asylum seekers, and none of whom had criminal history. They were just seeking some type of respite from harm, and so our services pivoted to help folks in that situation. I think what we're seeing right now is it's really challenging for somebody to seek asylum in the United States at this moment.

And so the majority of folks who we're seeing have been living in the United States and are being picked up in kind of mass enforcement actions, or individual enforcement actions, where people are being targeted and brought in by DHS.

**Hiroshi:** So then the process involves them going to court. We often hear about immigration court, and I guess there are courts in the facility itself. That's not where we normally expect judges to be. We normally think about judges as being in courthouses, but can you say more about what these proceedings are like when someone is held in the Aurora facility and then goes before a judge. What are those proceedings like, and are there lawyers? What's it like for someone who's detained

there to present their case and essentially argue that they have a right to stay in the United States for some reason provided by law?

**Mekela:** I think what we all know is that the detention system is very much designed as, like Laura explained, a deterrent to people being able to exercise their legal rights and remedies that they may be in fact eligible for under U.S. immigration law.

So Laura described a lot of the clients whom she or our team are representing and going through removal proceedings and the length of time that they have to stay in detention in order to assert their rights and present their cases before the immigration judge.

But what we see a lot of times is the majority of folks who are at both the Aurora immigration detention center and truly immigration detention centers around the country, is that there is no access to counsel. So as everyone knows, there's no right to court appointed counsel, the federal courts have held. There's no right to court appointed counsel at this time for anyone who's in immigration proceedings.

So that means even little kids have to represent themselves. It also means individuals in detention who don't have access to any of the resources to present their case, also have to represent themselves. And they're representing themselves in adversarial proceedings before an immigration judge with an attorney from Immigration and Customs Enforcement on the opposite side, arguing for their removal.

This is a body of laws you all have explored on this podcast with national experts that is one of the most complex areas of law to understand. And so when you think about folks who are at the immigration detention center, separated from their loved ones, separated from their community, put in a color coded jumpsuit, imprisoned in dorms, have no access to the internet, do not, for the most part, have access to counsel, and then they have to go in front of the immigration judge.

And, and the first hearing that most people have is a master calendar hearing, which is a huge group hearing where the courtroom within the detention center is overflowing. Even if individuals in detention have family members or loved ones who want to come and support them and testify on their behalf, many times what we see is there's not enough room in the courtroom, so they're not allowed to come in and testify on their behalf.

People are rushed through proceedings. One of the huge changes that we've seen over the last year is that we used to have a regular group of immigration judges that practiced before the immigration detention center. That has all now changed. And now most of the time the immigration judges are there via video teleconference. And so the individuals are not able to see the judge. The judge is just there on a screen.

There may be an interpreter for them, but a lot of times the government requests that individuals waive a full and complete translation. And so imagine trying to be in a courtroom, hearing the ICE attorney say things, hearing the judge say things, none of which is getting interpreted for you.

The only thing that's getting interpreted for you are the questions that are going directly to you. And then of course you have the specter of the prolonged detention. If you do decide you want to fight your case, then you're looking at months and months of being in immigration detention while you're doing that.

When I think about one of the most unfair systems in the US legal system, I think of immigration courts and particularly immigration courts within detention centers. And so what that has resulted in Colorado and across the United States, especially within the last year, is we've seen four times the number of people be removed from the Aurora immigration detention center because people know the odds that they're facing, and they're trying to balance the impossible decision of supporting family members, supporting kids who are outside, with trying to pursue their legal case.

And like I mentioned, I think it's critical to mention that most folks that are going through this process don't have an amazing attorney like Laura Lunn, who is fighting for them both in front of the immigration court, but also willing to take their case to federal court if need be.

**Hiroshi:** One thing that you didn't mention but we should hear more about is who the immigration judges are – how they're chosen, what's their independence, that sort of thing, because I think we think of federal judges often times as independent folks who are in federal courthouses.

**Laura:** Immigration judges are administrative law judges, which means that they fall within the scope of the agencies themselves rather than Article III judges who have judicial independence and are formally a part of the judiciary.

What does that mean? Well, immigration adjudications are very politicized because immigration judges fall under the scope of the Department of Justice. They are housed in the Executive Office for Immigration Review. Ultimately their boss is the Attorney General of the United States. And so obviously the AG is a political appointee, so whoever's president really gets to dictate what the priorities of the agency are.

I actually clerked for the Executive Office for Immigration Review in El Paso, Texas, a number of years ago now. All of the judges who I clerked for came from the Department of Homeland Security themselves. So either they were prosecutors for ICE or they were attorneys for Customs and Border Protection. We at the time did not have a single judge who had not come from immigration enforcement.

The Biden administration really made a concerted effort to try to make the immigration bench more balanced, I would say, where it wasn't just folks coming out of immigration enforcement being the adjudicators. They hired a bunch of folks who used to work representing noncitizens in immigration proceedings.

And what we've seen under the Trump administration is mass firings of any immigration judges who had a background that the government thinks may demonstrate that they have some type of sympathy toward noncitizens in proceedings.

And so we've seen mass layoffs, or early retirement of immigration judges, and the government hiring of a bunch of folks out of the military who maybe don't have any immigration expertise to administer immigration law.

**Alex:** Laura, do you think your clients get a fair hearing?

**Laura:** That's a really hard question, right. I will say I don't think this is a fair system. I don't think that systemically we can say that there is fairness infused in the way we adjudicate immigration cases. I mean, just zooming out, what is it that we're actually talking about here?

We're talking about somebody getting some type of government benefit, right? It's like we're talking about whether or not someone qualifies for a green card or, whether or not someone qualifies for asylum. And the way in which the system that we've created is modeled after the criminal legal system is preposterous to me.

We have government-trained prosecutors who appear in every single case who, are trying to argue that no one writ large, should qualify for the benefit. And then we're not affording folks government-appointed counsel to help people navigate the proceedings on the other side to make sure that they're understanding what the immigration law says and how it might apply to their facts and circumstances. I think that there is not any kind of fairness baked into the way that the system is structured.

**Alex:** You mentioned that people who contest their cases may spend months, years in detention in Aurora. Normally in the US legal system, people have a right to apply for bail, particularly since many of the people you're talking about have community ties and are not serious criminals. You think they'd be released. What is the process for obtaining release from detention at Aurora.

**Laura:** I will start at square one, and that is the Department of Homeland Security has broad discretion. They do not have to detain anyone. And I fundamentally believe that no one should be detained while they pursue an immigration benefit. The fact that detention exists means that somebody is there because DHS has made this custody determination to assess whether or not they want to detain the person.

And if they're in detention, then we know DHS wants to detain them. Folks can seek release from DHS, the agency that's making all of these decisions about detention. They could seek parole, which is where DHS can authorize somebody to be released from their custody. And usually there might be some type of monitoring of that person. But they can live at liberty within the community. A person can also seek bond from the Department of Homeland Security and DHS could unilaterally set a bond amount, whatever they deem reasonable to release the person to mitigate any kind of flight risk or dangerousness [be]cause those are the two elements that adjudicators are looking at when they're assessing whether or not to detain somebody.

**Alex:** So I assume that you seek release for all of your clients in Aurora, unless they're subject to the mandatory detention grounds. Are many or most or none granted release?

**Laura:** It has been a rollercoaster ride to answer that question. [delete laughter] Under the current administration, we have seen construction of the statutory scheme where the Executive Office for Immigration Review started first in Tacoma, Washington, and then we saw in Aurora, Colorado, judges saying that folks who have traditionally been categorized as qualifying for bond . having a different statutory interpretation and saying that they were actually subject to mandatory detention because they were deemed as arriving and seeking admission into the United States, no matter how long they'd been living in the United States.

**Alex:** Let me just see if I can summarize that. So, for years and years and years, people arrested inside the country who weren't serious criminals and had to be mandatorily held were able to go to an immigration judge and say, release me on bond. And they were routinely released if they had ties to the community and weren't dangerous.

The second Trump administration comes in and says, oh no, you've been reading the statute wrong for 20, 30 years. Anybody we pick up inside the country who, didn't come in as a nonimmigrant, didn't come in with some kind of visa, now must be mandatorily detained. And so you have a thousand habeas corpus cases around the country where people have been released and the government says, no, those people should never have been released.

That has gone to a circuit court that has agreed with the government. Other courts have not agreed with the government on this, but the position the government is taking now is basically mandatory detention applies to everybody picked up inside the country who didn't go through formal inspection to get in.

And that's the situation you're dealing with in Aurora. Did I say that right?

**Laura:** Yes, you said that right.

**Hiroshi:** We have different federal courts of appeals will be weighing in on this. The Fifth Circuit Court of Appeals that has agreed with the government, essentially that it can expand the scope of what's called mandatory detention in this way. Aurora is not in the Fifth Circuit; it's in the Tenth Circuit. So what are you seeing with judges in the Tenth circuit?

**Laura:** We have over 3000 cases where federal judges have disagreed with the government's position, and there's only about 130 cases where the government's position has prevailed. The government was very successful in getting this issue in front of the Fifth Circuit, which is a trend that we've seen with all kinds of different immigration issues.

But you're exactly right, Hiroshi. This is not binding on folks outside of the Fifth Circuit. We have seen the Seventh Circuit express disagreement with the interpretation that the Fifth Circuit has embraced. And we're seeing appeals on this issue going up across the country in all of the circuits. And I would anticipate that it's going to continue to be litigated, and at some point it probably will end up in front of the Supreme Court.

**Hiroshi:** But how do you deal with the fact that the law is different in two different parts of the country? Which law applies to someone who is picked up somewhere and held in Aurora? What happens if they get transferred out?

**Laura:** You know, that is a thing that keeps me up at night, Hiroshi, this question of transfer. We might have favorable law here in the District of Colorado, and I might be working up a habeas petition for one of my clients and I tell them, please don't tell anyone that we're gonna file this habeas petition, especially not ICE, because I feel like if they catch wind that we're going to try and file something here in the District of Colorado, it is going to be a matter of time before they try to transfer you out of this jurisdiction. And most likely to the fifth Circuit, right? We've seen a huge uptick in detention in the Fifth Circuit, and we know that the law is not favorable to many folks there.

And so I think everybody's kind of anticipating that more and more people will continue to be detained in the Fifth Circuit, and folks will likely be transferred to the Fifth Circuit anytime the government thinks that it is more beneficial for them to litigate an issue there than it is elsewhere.

**Mekele:** I really just wanted to take us back to the 30,000 foot view. As you know, we're spending this time as attorneys and legal experts in this space talking about the specifics of different federal statutes. I think one of the things that the Trump administration has been so successful, in a very devastating way for immigrant communities and so many other communities is really just taking the floor out of things that were established law before, doing things that are unlawful. But while that's getting litigated, there's so much harm to individuals that's happening. And when we think about detention enforcement bond decisions, really the reason that immigration detention has expanded from, you know, when I graduated from high school, there were 5,000 detention beds across the United States. There are now over 70,000 detention beds across the United States on any given day. Congress has given ICE \$45 billion to continue to expand this. And the reason that all of this is happening is because the government has decided that by putting people in detention and then not allowing them to get out on bond, then the vast majority of people who do not have attorneys are simply going to accept a removal order.

And that's what we're seeing every single day, whether they're in the Fifth Circuit or whether they're in the Tenth Circuit. And so I think it's really important for us to examine as a society, if we want to have a country where there's over 100,000 of our community members who are imprisoned on any given day because of civil infractions. And that's certainly not a country that I want to live in. But it has been a sea change over the last year and I think we'll continue to see that.

**Alex:** Laura, you mentioned that some people are being sent to countries that are not their home countries. Can you say more about that process and how ICE is using that to of coerce people to depart?

**Laura:** Sure. So, typically somebody who has a final order of removal is removed to their country of origin, and in some circumstances they can't be removed. That might be because there's no diplomatic ties with the, with their country of origin, or it could be because they've won protection preventing their removal to that country. So what that looks like is typically an order that says you are being ordered removed, but that removal is withheld or deferred from your country of origin, because you have demonstrated that you'll face persecution or torture in that country. So what we're seeing is a lot of folks in that situation where they've won their fear-based claim, they've demonstrated that it's more likely than not they'll be persecuted or tortured in their country of origin, and then ICE is detaining them nonetheless to effectuate their removal to a third country.

So we're seeing that play out in different ways. Some folks might have come to the United States, been detained, sought relief and then they won their case. So I'll give you an example of a client who is from Iran, and we filed a habeas petition for him recently. He's been detained now for over a year after winning his fear-based claim based on religious based fear of return to Iran. The judge granted his case and ICE has held him in detention for a full year on this.

Premise that they can effectuate his removal to a third country, even though they haven't demonstrated that there's any third country who would be able to accept him, nor have they provided a process for him to be able to try to seek a fear-based claim against removal to a mysterious third country that we don't even know which one it might be. Right. Another situation is a client who won a convention against Torture claim in 2019 and then was re-arrested last July by ICE and detained based on this idea that he could be removed from the United States. They tried to get him to say he wasn't afraid to go back to Somalia anymore, which was not the case. And he refused. And then they never identified a third country to which they could remove him to. Ultimately, we were able to get him out of detention through this habeas petition.

But this is what's happening where just the existence of this third country removal policy is being used as a pretext to authorize detention of people who have final orders. And so that has expanded how many people are in detention, both by picking them up off of the street, but also by extending and prolonging the amount of time that people are being held in detention.

**Alex:** You're saying it's a pretext because what ICE really wants to do is have these people decide it's not worth it, and I'm just going to go home.

**Laura:** Absolutely. And I say it's a pretext because, you know, when we challenge the application of the policy to individual people, that's where it comes to light. In so many of these cases, that ICE hasn't even tried to find a third country to remove the person to or has no evidence that a third country exists that that would be willing to accept the person. Yet they're using that as the tool to justify somebody's detention.

**Hiroshi:** Let me ask you about a different aspect of this, which is that some members of Congress have raised concerns about the immigration detention system. One of them, LaMonica McIver of New Jersey, was arrested while trying to conduct

congressional oversight of a detention facility in her state. What have you heard from Colorado representatives and senators about their efforts to find out what's happening with federal detention in your region, and presumably to raise concerns if they find anything to be troubling?

**Laura:** So we've been in regular contact with our congressional offices more so than probably ever before. And I think what's startling is how little information they have. So Representative Jason Crow – he is the House member – the Aurora facility is in his district – and he has done a lot about detention oversight in his time in Congress.

He and Representative Neguse were both plaintiffs in litigation challenging the administration's policy to turn away members of Congress who wanted to conduct oversight visits in immigration detention facilities. They've done an incredible amount of work to try to pierce back the veil and make sure that members of Congress are able to take a peek inside of immigration detention facilities.

But at the same time, there are just huge limitations in terms of what kind of oversight they're able to provide. I think that that's a real question in this moment. What can Congress do about what is happening? And maybe not just can, but what will they do about what is happening? Because I think that those questions might be a little bit different.

But one thing is for sure, people are paying closer attention to these issues than they ever have before. I think the amount of education that's happening right now is remarkable. And I guess that's one piece of hope that I have, is that people delving into this system, and better understanding all of the ways in which it's being weaponized against people, might provide them with a foundational understanding that could allow for more meaningful change in the future.

**Alex:** Picking up on that last point. We saw in the Twin Cities an incredible outpouring of support from the community for the immigrant community and for others. Are there similar community efforts, going on in the Denver area? Have they helped your work? Have they been involved in the detention issue? How is the community getting organized?

**Mekele:** Yeah, I think that's also my sliver of hope in this this moment, Alex, is the way in which community has stepped up in quite powerful and profound ways, and we see that both at the micro-level with community organizations that RMIAN coordinates with; we're also seeing it with local and state government.

I would say that Colorado is a unique immigrant rights advocacy ecosystem, a pretty powerful one, but we're not a California or New York, where we have a huge number of organizations and resources who are doing this work. But what we do have are long-term committed community members and organizations who have worked together for many, many years.

And frankly, we learned a lot of lessons during the first Trump administration. During the first Trump administration there were so many different attacks coming at different

places, and we all tried to do everything. This time when we were preparing for election results and then when we had the election results, RMIAN and so many of our community partners got together and said, how do we really be strategic about our work? What is the expertise that RMIAN has? What is the expertise that other community-based immigrants rights organizations have, and how can we mobilize to provide the fullest support and stand up for immigrants rights in this moment? And I think what we've seen in Colorado thus far has been a really successful response.

We in Colorado have not seen the huge infusion of ICE agents and CBP agents in the more visible displays like we've seen in Los Angeles or Chicago and Minneapolis. But what all of us who are in this space want the public to know is that the rate of arrests and enforcements in community is happening at an unprecedented rate in Colorado—a rate, frankly, that we've never seen before.

And arrests of longtime community members, individuals who have established lives and professional experiences here in the United States who have children who are US citizens, and they're getting wrapped up in this enforcement effort. And so the ways in which we've seen rapid response networks stand up – similar to what we've seen in Minneapolis, the ways in which we've seen community education be spread powerfully throughout both the Denver Metro area and throughout the state.

And then we also are really fortunate, and I feel really grateful to be in a state where we have pretty powerful protections for immigrants through state legislation. We protect personal information and don't allow the sharing of information between state and local law enforcement, and ICE.

There's new legislation that's being introduced this session that would create a private right of action in state courts if individuals' constitutional rights have been violated in the course of immigration enforcement efforts. And this is part of a trio of bills that's really focusing on immigrant rights in Colorado.

We're also seeing huge protests against potential new immigration detention facilities in Colorado. Through FOIA legislation that the ACLU has done, we know that ICE is planning to build additional detention facilities in Colorado, and community is already standing up to protest against these facilities.

And then the last piece of support that I'll just mention is the creation of immigrant legal defense funds, and that is at both the state level as well as a number of cities and jurisdictions throughout Colorado, recognizing how important it is to have attorneys in these systems, have also created statewide and local immigrant legal defense funds to provide attorneys for people who, who don't have counsel.

**Hiroshi:** And what have you seen by way of federal funding for legal services? I mention that because across the past few administrations, there have been programs to provide at least information to detainees.

**Mekela:** I think it's such an important question, Hiroshi, and is really a piece of this larger picture of what the federal government is doing in this moment. At the same

time in which enforcement has been expanded, detention has been expanded exponentially, legal protections like TPS and other humanitarian protections are being taken away.

People are not able to get out of detention any longer. At the same time, what this administration has done is take attorneys and specifically public interest pro bono attorneys out of the system. So one of the first things that the administration did, literally on January 20, was issue a very hatefully named executive order that demanded that longstanding programs that have been existent for decades be scrutinized and essentially terminated.

So what this meant was a program called the Legal Orientation Program, which for two decades, across bipartisan support, was terminated. And this was a program that allowed nonprofit organizations like RMIAN and many of our sibling organizations across the United States to go in and provide information to individuals before they had their first hearing in front of the immigration judge.

We know in Colorado, over 86% of people do not have an attorney to represent them when they're going in front of the immigration court. And so that opportunity to hear a Know Your Rights presentation – to have an individual orientation with an attorney who has your best interests at heart and could explain the law and how to present your case in front of the immigration judge – was absolutely critical to people's success in being able to defend their rights and protect their interests.

I think it's quite telling that the first thing that this administration did was eliminate that program, eliminate attorneys from being in immigration detention centers to be able to shine a light on what was happening within those detention centers. And we see that in so many individual cases – just heartbreaking outcomes of individuals who are railroaded through a system and accept removal orders even though they don't need to.

We also see it in pretty big constitutional questions that are being raised in litigation, like the government's unlawful use of the Alien Enemies Act. It was truly because RMIAN's attorneys were on the ground at the Aurora immigration detention center and started hearing from other individuals, who were still detained in Aurora, that individuals had been taken out in the middle of the night while they were in the middle of their asylum cases, put on a plane and taken to an infamous prison, CECOT, in El Salvador. And there's a very real reason why this administration has decided to cut all funding for programs that allow attorneys like RMIAN's attorneys to be in these immigration detention centers, because our attorneys are able to shine a light on what's happening and are able to elevate the injustices that are happening in what is just such a hidden system. And so for RMIAN and for so many of our sibling organizations across the country, it has meant people have had to do hiring freezes, staff layoffs; nonprofit organizations have literally had to shut their doors.

And attorneys who have dedicated their careers to being in these spaces and have a tremendous amount of expertise are no longer in these spaces providing that expertise. And, you know, this has been a network that has been two decades of building it, that's being devastated in the course of the last year.

**Alex:** You know, as I hear you talk about the number of obstacles that have now been placed in the way of you doing the work you'd like to do on behalf of noncitizens who may well have good claims to remain in the country, I know you're occupied day to day with these cases and what's coming at you, but do you have time to look into the future and what do you see, what kind of hope is there for changing the system? Are we in it for the next three years, no matter what? What would you recommend to people who want to try to do something about this?

**Laura:** Alex, I can't say that, I have a lot of hope for the next three years. I already kind of gave you my hopeful answer is that, you know, people are paying attention in a way that they haven't before— and hopefully just understanding what the system is today and how much devastation has been able to transpire in such a short amount of time in terms of how we view our roles as advocates within this system.

For a long time, I thought providing people with information about their rights and responsibilities within the system and helping them understand who qualifies and who doesn't, could help allow for people to gain access to benefits that they're eligible for and they deserve.

I think the way that I look at this work right now is empowering people by giving them very realistic information so that they can make informed decisions about how they want their life to proceed. And that's always been the case with the program that Mekele was just describing, the Legal Orientation Program, where it's really empowering people through information so they can make educated decisions about how they want to live their lives and whether or not they want to try and seek an immigration benefit in the United States, or whether or not they don't, and they want to go to their country of origin and see how their life will shake out from there.

So, maybe part of the hope is just that people will be better educated about what the system looks like so that we can shift it in whatever direction we as a collective country want. Because if you look at like recent polling, you know this, the current regime and the current level of immigration enforcement is wildly unpopular in the United States. So what do we do with that? And how does the country, and the masses, how do we move this issue forward collectively? Because we certainly can't do it alone as nonprofit legal service providers.

**Alex:** Mekele, did you want to respond?

**Mekela:** The future prediction that is the hardest to wrap my head around and that feels like it's coming our way and in a lot of ways, very unavoidable is this massive increase in immigration detention. And certainly I have spent my career trying to help people that are ensnared in this system and trying to end this system. And so that feels overwhelming in this moment, knowing that the federal government now has \$45 billion to build more prisons, imprison more people, and that's stark. And I hope that there is, like Laura describes, a new awareness, and certainly we see that with the folks we work with.

We go to events where there's over a thousand people who have come out from the community who are seeing what happened in Minneapolis, who are hearing about Fernando Jaramillo, who was driving his two kids to school in Durango and got pulled over by an unmarked vehicle. It was a case of mistaken identity, but ICE didn't care and continued to detain all three of them. They were a family that then was transferred to Texas and sent to the Dilley detention center. That community in Durango is outraged; and I think like so many of these issues where there's so much disinformation and so much misinformation coming from the federal government, my hope is that as more and more people realize that this isn't something that's far away that's happening to other people, this is something that's happening to all of us and our loved ones and our community members, and make those connections that the country does start to shift.

We start to shift back to a country that's not going to imprison people for civil infractions. We start to shift to a country that provides universal representation for kids who are in immigration proceedings and for adults who are in immigration detention. And working in the space that Laura and I work in with all of our colleagues, it's a great, great privilege to get to be surrounded by individuals who are so deeply dedicated to social justice, to immigrants rights, and who are working for that difference in our society.

And so I do see some rays of hope in that area; and yet we're operating against a vast machinery of the federal government and a tremendous amount of resources that are creating devastating harm.

**Alex:** Well, the work that your organization, both of you are doing is just, remarkable given the headwinds you face. And I really wanna thank you for being with us today and sharing your experiences and your expertise. Much appreciated.

**Hiroshi:** Thank you so much.

**Mekela:** What a privilege to be here with all three of you. Appreciate you all.

**Laura:** Yes. Thank you so much for having us.

**Hiroshi:** What really struck me in this conversation is how many dimensions this detention question has. Some of it has to do with simply a matter of what food and medical care people are getting. Some of it has to do with the involvement of private companies, which are the overwhelming number of detention facilities. Some of it has to do with the role of the courts and moving people from one jurisdiction to another. Another has to do with how it isn't necessarily about deportation, per se, in the formal sense – essentially persuading or maybe coercing people to give up on their cases. Another thing has to do with attorneys and the funding for attorneys. Another has to do with transparency, just knowing what's going on.

I keep coming back to the fact that the immigration legal system we have is one that's created this huge zone of discretion. People can be detained or not detained. People can be arrested, not arrested. People can be given status or even that status can be taken away. And the fluctuations you could have in one administration or another are

so vast. And it all comes back to the type of fundamental system we've had, really for generations.

**Alex:** Yeah, I think you're right to point to the dramatic changes that have been made here. When the administration first announced their mass deportation plan—a million people will be deported— I think a lot of people said, well, there's no way in the world because you're not going to have the people and the detention facilities, that it takes too long inside the country. You've closed the border, you can stop people from coming in, but you're never going to be able to force that many people out. They went ahead and they've got now huge appropriations for ICE and for detention, which means you have more people on the street arresting more people, and now you put them in a place that is a miserable place to be.

And either you've taken away their lawyers or their chances for relief from deportation, or even if they have a chance of making a case, they get so fed up about being in a terrible place. They decide to go home. I think you're right to point to all these pieces, but for the administration, it's a very coherent picture puzzle that, put together, all the pieces work together to drive towards this goal of having a million people leave the country. And I think they're making more progress on that than we expected they could because of these incredibly harsh measures. This expansion of detention, if you think of the money that's being spent here, it's almost unbelievable, the billions of dollars.

We're talking about a lot of people in detention who probably don't have a way to stay in the United States; they probably have not filed an asylum claim in time or wouldn't win it or don't have any other way of staying in the country. And yet they should be able to stay in the country because they've lived here for years and contributed and committed no crime.

And again, it seems to me, the one answer here, other than changing administrations is a legalization program that allows these people to attain legal status.

**Hiroshi:** Yeah, I think that legalization is a proper focus here, but I think about legalization as giving legal status to people who should have had legal status. And that suggests that it's not just legalization as such, but it's also reworking the system so that we don't have to have the legalization debate and discussion in 20 years or in 30 years.

The other thing I just wanted to add is that we've seen a lot of activity in federal courts in this area particularly of detention. The question of whether the government is correct in greatly expanding the scope of mandatory detention under the statute. And we've seen an overwhelming number of federal district court judges disagree with the government. And we've simultaneously seen a lot of frustration, annoyance, disapproval and even I would dare to say criticism or condemnation of federal government policies to essentially try to sidestep, possibly even ignore, federal court orders.

And, as much as there's a focus on the US Supreme Court, on the shadow docket, we've seen federal district judges adopting very strong language against the administration,

including, and maybe even, especially in the area of detention and third country removals. And that's very much a trend and I think it's very much a trend worth watching.

**Alex:** Hiroshi always great to talk to you, and we will be back soon with a surprise announcement for our next podcast.

**Hiroshi:** It's great to talk with you, Alex. I'm so glad that we had this conversation today.