



# One Law Clinic

# Two Cities

YLS STUDENTS TACKLE IMMIGRANT RIGHTS CASES IN  
DANBURY AND NEW HAVEN



BY KAITLIN THOMAS

Juan Barrera stands in front of a cluster of microphones, his eyes downcast. He sways from side to side just slightly as he speaks in Spanish. With television cameras rolling and the flash and click of cameras around him, Barrera tells of the day in September 2006 when he was arrested in Danbury, Connecticut, after being offered work as a day laborer.

Beside him stands Justin Cox '08, a student in the Law School's Worker and Immigration Rights Advocacy Clinic (WIRAC). When Barrera finishes speaking, Cox begins translating.

"We didn't know why, but they immediately arrested us and put us in handcuffs. We didn't know what was going on," he says.

Barrera begins speaking again, and the cameras continue to roll.

This day marks a milestone not only for Barrera, but also for WIRAC. Cox and other students in the clinic have called this press conference—a year after the arrests of Barrera and ten other Danbury day laborers—to announce that the men popularly known as the "Danbury 11" have filed a federal civil rights lawsuit. With the help of the clinic, nine of the eleven men arrested in September 2006 are suing the City of Danbury, its mayor, several of its police officers, and a number of federal agents for violating the First, Fourth, and Fourteenth Amendments. It has taken thousands of hours of research, writing, and phone calls on the part of the students and their supervising professors to get to this day.

Meanwhile, forty miles away, New Haven is embroiled in its own immigration battle. Again at the center of all of the controversy, a group of Yale Law School students and their teachers have spent countless hours meeting with clients, researching legal standing, and drafting requests and memos.

In June 2007, the New Haven Board of Aldermen overwhelmingly endorsed a municipal ID card program that would allow all residents of New Haven—regardless of citizenship—to obtain "Elm City Resident Cards." Just two days later, in a move Clinical Professor of Law Michael Wishnie '93 characterizes as retaliatory, federal immigration officers conducted raids, arresting thirty-two people suspected of being illegal immigrants.

Representing nearly thirty of those arrested, WIRAC is alleging that Immigration and Customs Enforcement (ICE) agents used racial profiling to target those arrested and entered homes without warrants or consent. In August 2007, the clinic filed a Freedom of Information Act (FOIA) lawsuit against the Department of Homeland Security aimed at discovering how ICE agents coordinated the June raids and the extent of the New Haven Police Department's involvement in the raids. The clinic has also filed FOIA suits against the Connecticut State Police, U.S. Marshals Service, and U.S. Department of State, all of whose agents, according to ICE, also participated in the New Haven raids.

"Family members, clergy, community leaders, and city officials asked Yale's clinic to join them in assisting the men and women arrested in the New Haven raids—the federal government, after all, is represented before the Immigration Court by experienced prosecutors," Wishnie says about the clinic's decision to become involved in the case. "The government alleges that each of our clients is an unauthorized immigrant, but those allegations are neither conceded nor proven. Rather, on behalf of our clients we have challenged gross abuses by



immigration agents who entered homes without warrants or consent, made arrests without probable cause, engaged in racial profiling, and impermissibly retaliated against the city’s residents for adopting the municipal ID program.”

### *The Danbury 11*

According to the lawsuit brought by the YLS faculty members and students, Juan Barrera and his co-plaintiffs were victims of illegal immigration enforcement by local police and of racial profiling. The “Danbury 11” arrests, the lawsuit alleges, are part of a pattern of unlawful and discriminatory law enforcement by the Danbury Police Department and ICE.

Ten students have worked on the Danbury 11 case, with several faculty members providing oversight. Simon Moshenberg ’08, Elizabeth Simpson ’09, Shayna Strom ’09, and Margot Mendelson ’09 have represented the day laborers in their removal cases, which are pending before an immigration judge in Hartford, and also handled a state FOIA proceeding against Danbury. The civil case filed in September 2007, as well as a pending federal FOIA suit against ICE, is the work of Justin Cox ’08, Rebecca Engel ’09, Geri Greenspan ’08, Thom Ringer ’08, and Michael Tan ’08 (with First Amendment research by Kate Desormeau ’08). Robert M. Cover Clinical Teaching Fellow and Clinical Lecturer in Law Chris Lasch ’96 and Robert M. Cover Clinical Teaching Fellow Ramzi Kassem join Wishnie in supervising the students.

As a second-year law student, Cox heard about the case shortly after the men were arrested on September 19, 2006. “I knew that a couple of my friends (Moshenberg and Greenspan) were working on getting the men out on bond, and I heard how they were driving all over the place to find the guys, scrambling to raise money and conduct legal research,” he remembers. “My initial reaction was that this is why I went to law school—to help people when they need it most—and that I wanted in.”

Cox’s interest in immigrant rights began in college when he was working at a restaurant waiting tables. The product of a conservative, rural, homogeneously white town in Missouri, he began an unlikely friendship with several of his co-workers who were undocumented workers.

“I eventually learned all about the struggles my co-workers went through to make ends meet,” Cox recalls. “Their stories echoed that of my own mother, working two or three jobs at a time, and I continued learning Spanish to keep exploring this new world.”

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*Justin Cox ’08*

A year spent in Latin America furthered his sympathy for undocumented workers in the U.S. “I realized that I was, plain and simple, lucky to have been born into this country, where hard work can pay off meaningfully, and I resolved to help those who weren’t born so lucky,” he explains. “[*Barrera et al. v Boughton et al.*] encapsulates all of those motivations, I think: these guys were just out looking for honest work so that they could put food on the table, and they got arrested for it because the government thinks they weren’t lucky enough to be born in this country. I can’t imagine anything more unjust.”

On the morning of his arrest in September 2006, Juan Barrera says he was waiting in Danbury’s Kennedy Park—a well-known area for day laborers to wait for work—when a man in a van approached him and offered work demolishing a fence. Barrera accepted the offer and got in the van. A few blocks later, the van pulled into a parking lot, where it was surrounded by law enforcement officials, and Barrera was arrested without explanation. Denied access, he says, to a telephone or an attorney, he was held in solitary confinement for four days, then transferred to a Massachusetts prison.

As it turns out, the men arrested that day were transported to different detention centers around the country, some as far away as Texas. After the initial work of getting the men out on bond, Cox joined the case. Though the immediate concern was building a defense in immigration proceedings, there was also work to be done researching the possibility of an affirmative civil rights suit against the City of Danbury and ICE, sending off various FOIA requests under state and federal law, and filing FOIA actions if the agencies

did not respond (the first of which was filed in federal court in December 2006).

The language and geographic barriers made fact development a challenge. “Our clients...spent between ten and thirty-five days in detention,” Cox says. “Throughout the bond process, the team had little contact with them—which, we think, was the point of shipping them all over the place.” But with the help of Danbury and New Haven community members, clinic students were able to talk to the men over several weeks, clarifying what happened. They also researched the context of the arrests and established what Cox calls Danbury’s “recent anti-immigrant policies” which involved, according to the civil suit, unequal enforcement of housing rules, traffic stops motivated by racial profiling, and a crackdown on volleyball games, a sport favored by the Ecuadorean community.

“What became clear through our fact development was that whoever carried out the arrests trampled on our clients’ constitutional rights,” Cox says. “In particular, the fact that they were arrested without a single question being asked of them is indicative of Fourth Amendment and Equal Protection violations (the latter because the officers were apparently just assuming that since they were Latino, they were undocumented). The background information about the attempts of Mayor Boughton and the Danbury police to drive the day laborers away from Kennedy Park suggested they were being retaliated against for their First Amendment rights to congregate and solicit work.” One of the suit’s common threads is that the Danbury Police routinely make civil immigration arrests without having followed the statutory procedures set out by Congress for the local enforcement of immigration laws.

After brainstorming possible constitutional violations and theories, the team divided the work into substantive areas of law. Tan took on Equal Protection; Desormeau and Engel worked on the First Amendment; Ringer tackled preemption; Cox took the Fourth Amendment and Federal Tort Claims Act; Moshenberg, Simpson, and Strom became the experts on state FOIA and the immigration proceedings; Greenspan researched issues of standing, federal FOIA, and municipal liability.

As they each produced memos on their area of law, the students reached out to YLS faculty (including David Boies Professor of Law Robert Post ’77 and then Sidley Austin - Robert D. McLean ’70 Visiting Professor of Law Pam Karlan ’84) for their expertise. In between weekly strategy meetings with Wishnie and Lasch, the students sent flurries of emails, sharing drafts of memos and complaints. “The more we researched and wrote,” Cox says, “the more inspired we

became, for what we were learning was only confirming our own gut instincts about the case: our clients had been grievously wronged.”

Besides learning firsthand about the Fourth Amendment, FOIA litigation, the nuts and bolts of immigration law and proceedings and filing a lawsuit, Cox has improved his Spanish, particularly his legal vocabulary.

“I’ve also learned a great deal about how local municipalities, frustrated at the lack of federal action in immigration law and enforcement, are attempting to fill the vacuum with their own regulation and enforcement activities,” Cox says.

The clinic students and faculty meet with their Danbury clients about once a month, though Moshenberg and Cox (both of whom speak Spanish) keep in touch with the men more regularly to ask follow-up questions and remind them of court appearances. Other members of the team are in charge of cooperating with Danbury community supporters, who include clergy, private citizens, and town council members.

“Our clients have been very appreciative of our work, and conscientiously do everything we ask of them,” Cox says. “They know that they represent a larger struggle for Latino and immigrants’ rights in Danbury and beyond.”

### *The New Haven Raids*

While Cox and others have been working on the Danbury 11 case, Stella Burch ’09 has been focusing her efforts on a separate immigration case in New Haven. On the morning of her third day working with the clinic this past summer, Burch heard whispers in the hallways that something “big” had happened. Over the course of the day, details emerged and clinic students learned that a number of Fair Haven residents had been arrested in raids conducted by ICE agents.

The raids came just two days after New Haven’s Board of Aldermen approved a proposal to create a municipal ID program, effectively granting all New Haven residents—regardless of immigration status—a form of valid identification entitling them to certain municipal services (*see sidebar, page 44*).

That evening, Burch and a number of her peers went to a local church where they worked with the families and friends of those who had been arrested. “It was a very moving experience,” Burch remembers. “People were distraught—especially the children who had seen their parents arrested. People were afraid to come forward and speak to us, afraid to be out on the streets, and even afraid to return to their own homes.” After several hours, the volunteers had compiled a preliminary list of people who had gone missing during the raids.

“As soon as we had names we started calling prisons—trying to find out where our clients were,” Burch remembers. “This was not an easy task. In order to locate anyone detained within the immigration system, you need an Alien Identification Number, known as an ‘A number,’ issued to an alleged alien when he or she is processed by the authorities. But nobody knew the A-numbers, apart from the detainees themselves, who had not been able to make phone calls. We eventually located our clients by making cold calls to prisons—we called just about all of the county jails and private prisons in New England to track down all of our clients.” Similar to the Danbury case, those arrested in the New Haven raids were moved out of state—to Massachusetts, Rhode Island, and Maine. Concerned that their clients would be moved even farther away, clinic attorneys two days after the raids tried to file emergency bond motions in their

clients’ names. Those motions were initially rejected because the attorneys didn’t yet have the clients’ A numbers.

Visiting her clients in a Rhode Island jail the weekend after the arrests was an experience that Burch (who is British and had never before been to an American prison) describes as “sobering.”

The visit, though, strengthened her resolve for the upcoming days of exhaustion. “I don’t think anyone can really be prepared for the whirlwind experience of that first week—I certainly wasn’t,” she says. “We didn’t sleep much, and we had to fight hard for every scrap of information we could lay our hands on. It was also emotionally draining, hearing the stories of how people had been taken away from their families—especially the stories told by the children. But the guidance from [supervising attorneys] Mike Wishnie, Hope Metcalf, and Chris Lasch was amazing—I think all of the

students felt overwhelmed by the experience, but incredibly supported in our work.”

Burch and fellow clinic students Tan, Bram Elias ’09, Deborah Marcuse ’08, Anand Balakrishnan ’09, Sarahi Uribe (a recent Yale College graduate who had taken an immigration clinic while an undergrad and speaks Spanish fluently), and two law school students from the University of Connecticut and the University of Pennsylvania often worked late into the night, sustained by large quantities of local pizza.

The students met with their clients several times while they were in prison and interacted frequently with the clients’ families. “It was very humbling,” Burch says, “to hear them say ‘we believe in you, we know you will get us out of jail.’ We were first-year law students, we knew nothing—or at best next-to-nothing—and we were still the best ‘lawyers’ to whom our clients had access.”

Community support for those arrested was high. A few days after the raids, St. Rose of Lima church organized a special Mass and candlelight vigil in support of the detainees. “The church was packed: looking out across the congregation I saw not just Catholics, but also Protestant clergy and Jewish men in yarmulkes,” Burch remembers. “Outside the church people of all races, ages, faiths, and denominations mingled on the steps wearing signs saying ‘no human is illegal.’ The son of one of our clients wore a huge board around his neck with the names of everyone who we knew had been taken, including his mother.”

Burch describes the clinic’s clients as hardworking, decent, and family-oriented. And she questions the methods used by ICE agents and the detainees’ lack of access to attorneys. “Immigration raids like this happen every day, in cities across the U.S., in places where there is no Yale Law School, and no widespread city and community support for the detainees,” she says. “We have a real opportunity here in New Haven to litigate this case on behalf of our clients and other people like them, in the hope that by doing so we can bring about real change.”

In addition to being emotionally rewarding, working with the clinic has provided Burch practical experience. “It’s one thing to learn the Federal Rules of Civil Procedure and quite another to have to file an emergency bond motion in immigration court!” she says.

As a British citizen accustomed to a centralized government, she feels the experience has given her a new apprecia-

tion for the ways in which a federal system can propel progressive policy making and the power of local government.

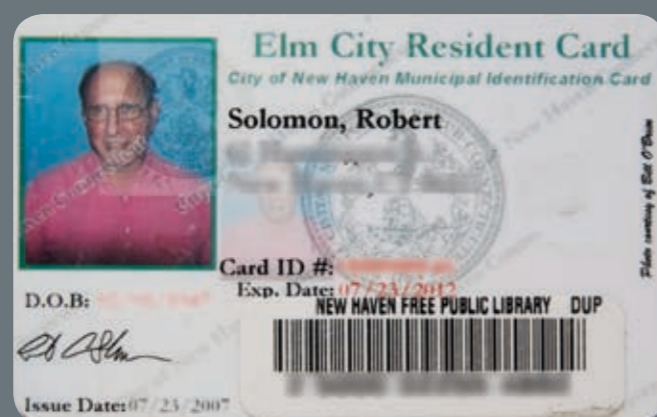
“The City of New Haven’s support for its immigrant community, and the progressive policies it has introduced—for example the Elm City Resident’s Card Municipal ID or the NHPD General Order prohibiting police officers from inquiring into immigration status—have really changed my perception of what local government can achieve,” she says.

That type of hands-on learning is at the heart of the clinic’s benefit to students. “In a clinical program, students must learn to apply abstract legal rules to the reality of human behavior,” says Wishnie. “And in exercising judgment on

**It’s one thing to learn the Federal Rules of Civil Procedure and quite another to have to file an emergency bond motion in immigration court!** *Stella Burch ’09*

The “Elm City Resident Card” allows New Haven residents access to the public library and city parks, and includes a debit feature that allows the cards to be used at some New Haven restaurants and in city parking meters. The ID cards also serve as adequate identification for residents to open bank accounts. Proponents of the ID program argue that it is a major step toward decreasing the number of robberies and home invasions perpetrated against undocumented immigrants who have not had the ability to open bank accounts in the past. Those opposed to the program criticize the city for what they see as encouraging illegal immigration, and are concerned that rising immigration rates will mean fewer jobs for U.S. citizens.

The original proposal for the ID program came after two local community organizations—JUNTA for Progressive Action, Inc., and Unidad Latina en Acción—retained the YLS clinic to develop proposals to promote the integration of immigrants in New Haven.



The ID program was one of six ideas the clinic proposed. After initial interest, the clinic faculty and students helped the city work through the details of how the program would be implemented.

Following concerns from the Board of Aldermen, Professors Robert Solomon and Michael Wishnie ’93 agreed to represent New Haven pro bono should the city be sued on the basis of the municipal ID program—and to handle FOIA requests that the city receives about cardholders’ identities.

The first of its kind in the country, the New Haven municipal ID program has become the focus of national attention; cities such as New York, Chicago, and San Francisco (among others) have shown interest in adopting similar programs.