

## LEARNING TO SPEAK HUMAN

### A CONVERSATION WITH DONALD ANTHONYSON

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“People are born on the same land mass... [but because] I was born on this side of the fence, and you were born on that part, I am more than you are. You are not even considered a human being; you are a number, or a label. To me, I’ll always fight that.”<sup>1</sup>

When you hear Donald Anthonyson speak, you know you’re listening to a man who has made it his life mission to fight against the inhumanity sewn into the fabric of our legal institutions. A lifelong social justice advocate, Anthonyson has fought for human rights on issues ranging from police brutality to xenophobic responses to immigration.<sup>2</sup> Currently, Anthonyson is the Director of Families for Freedom (“FFF”), an immigrant defense network fighting against deportation and detention.<sup>3</sup>

According to Anthonyson, “FFF is first and foremost a human rights organization.” The organization was formed organically in the aftermath of 9/11 when Arab and Muslim families began losing men to the American government. Forced to report to the government on the sole basis of their nationality, “thousands of people were ripped from their families, locked in detention centers, and eventually deported.”<sup>4</sup> For FFF, unlike other immigration groups, the work was never really about the law or the government; it has always been about the family, from whom deportees were being kidnapped and exiled.

The impact of United States’ immigration policies on families has become especially salient in recent months. In May 2018, the Trump administration introduced a “zero-tolerance” immigration policy that separated parents from their children when they entered the country together, in order to prosecute parents and place children in the custody of a sponsor, such as a relative or foster home, or held in a shelter.<sup>5</sup> The public reacted immediately, horrified at the image of children

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<sup>1</sup> BlackImmigrationNet, *Donald Anthonyson’s Story*, YOUTUBE (May 31, 2012), [https://www.youtube.com/watch?v=x-AJ6f\\_aHxM](https://www.youtube.com/watch?v=x-AJ6f_aHxM) [<https://perma.cc/3EZR-KDMU>].

<sup>2</sup> *Movers & Thinkers: Speakers Bureau, Donald Anthonyson*, NEW YORK FOUNDATION, <http://nyf.org/speakers/donald-anthonyson/> [<https://perma.cc/V57D-Q5UT>].

<sup>3</sup> BlackImmigrationNet, *supra* note 1.

<sup>4</sup> *The History of Families for Freedom*, FAMILIES FOR FREEDOM, <http://familiesforfreedom.org/history-families-freedom#history> [<https://perma.cc/6EM3-GXMH>].

<sup>5</sup> Miriam Valverde, *What You Need to Know About the Trump Administration’s Zero-Tolerance Immigration Policy*, POLITIFACT (June 6, 2018), <https://www.politifact.com/truth-o-meter/article/2018/jun/06/what-you-need-know-about-trump-administrations-zer/> [<https://perma.cc/256G-FVHN>]. See also Charlie Savage, *Explaining Trump’s Executive Order on*

being ripped from their parents' arms, but science tells us just how bad this policy was for the families involved:

Research studies done soon after World War II, for example, found that the separation from parents could make children more vulnerable to personality disorders and mental illnesses, like depression and anxiety. According to the Society for Research in Child Development, various other studies have shown that separation from parents puts kids at a higher risk for poor social functioning and problems in forming healthy relationships. These problems some work suggests, can persist even after reunification with family, and on into adulthood.<sup>6</sup>

Research also suggests that it takes a toll on the parents:

Immigrants who enter the U.S. face a kind of “triple trauma,” said Elizabeth Jordan, an attorney with the Civil Rights Education and Enforcement Center, a nonprofit organization investigating medical and mental healthcare in immigration detention facilities. There’s the trauma that pushed them to flee, the trauma of the journey itself, and the trauma of detention. “Now, they’ve added on this extra layer of the acutely distressing situation of having your child taken away from you and not knowing where they are or if they’re doing okay,” she said.<sup>7</sup>

In June 2018, in reaction to severe public backlash and political pressure, President Trump signed an executive order to end the separation of families at the border.<sup>8</sup> Along with this executive order came a judicial one from U.S. District Judge Dana Sabraw, ordering the government to reunite the families it had divided.<sup>9</sup> More than 2,300 children had been separated within the month that the policy was in effect,

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*Family Separation*, N. Y. TIMES (June 20, 2018), <https://www.nytimes.com/2018/06/20/us/politics/family-separation-executive-order.html> [<https://perma.cc/4XT2-WRSV>].

<sup>6</sup> Rhitu Chatterjee, *Migrant Kids Survive Hardship to Reunite With Parents. Then What?*, NPR (Nov. 17, 2018), <https://www.npr.org/sections/health-shots/2018/11/17/660593391/migrant-kids-survive-hardship-to-reunite-with-parents-then-what> [<https://perma.cc/7BST-GTDW>].

<sup>7</sup> Nicole Einbinder, *How Trump’s Family Separation Policy Has Affected Parents*, Frontline (Aug. 2, 2018), <https://www.pbs.org/wgbh/frontline/article/how-trumps-family-separation-policy-has-affected-parents/> [<https://perma.cc/YJG4-KAR4>].

<sup>8</sup> Michael D. Shear, Abby Goodnough, & Maggie Haberman, *Trump Retreats on Separating Families, but Thousands May Remain Apart*, N. Y. TIMES (June 20, 2018), <https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html> [<https://perma.cc/YVD5-78UW>].

<sup>9</sup> *Ms. L. v. Immigration and Customs Enforcement*, No. 18-cv-0428 DMS MDD (S.D. Cal. Jun. 28, 2018).

and as of November, four months after the order, 171 children remained separated and alone in custody.<sup>10</sup>

What is perhaps most shocking from all of this is the news from October 2018 that the Trump administration is apparently considering another policy that would separate parents from their children. The policy being considered would “keep families in detention for a few weeks, and then force them to make a choice: to stay in detention for the months or years it takes for their cases to be resolved (and waive their rights under the Flores court settlement, which prevents the administration from keeping children in immigration detention indefinitely), or agree to be separated so that the child can go to the less restrictive custody of Health and Human Services.”<sup>11</sup> The policy is meant to be a deterrent to prevent future would-be migrants from deciding to come into the United States. But it appears that these deterrence policies do not work—there was a 64% increase in apprehensions following the implementation of the May 2018 zero-tolerance family separation policy.<sup>12</sup> And in the ongoing government shutdown, a lack of funding is forcing immigration courts to postpone hearings for immigrants currently in detention, resulting in these immigrants having to wait for many more months and possibly years before they can be reunited with children and family.<sup>13</sup>

Amidst the throes of what appear to be some of America’s worse moments in the area of human rights, Anthonyson reminds us that all problems have a history. “It’s crass, it’s ugly,” says Anthonyson when describing Trump’s immigration policy, “but it’s nothing new.” Although Trump’s immigration policies are a new breed of unfiltered xenophobia in the 21<sup>st</sup> century, FFF tracks over generations the immigration policies and human rights laws that have dehumanized immigrants, particularly immigrant children.<sup>14</sup> The Convention on the Rights of the Child, for example, is a treaty ratified by 182 countries, which recognizes, *inter alia*, that “the child, for the full and harmonious development of his or her personality, shall

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<sup>10</sup> Catherine E. Shoichet, *171 Kids from Separated Families are Still in Custody. Most Won't be Reunited with Their Parents.*, CNN POLITICS (Nov. 8, 2018), [https://www-m.cnn.com/2018/11/08/politics/separated-families-reunification-update/index.html?r=https%3A%2F%2Fwww.google.com%2F](https://www.m.cnn.com/2018/11/08/politics/separated-families-reunification-update/index.html?r=https%3A%2F%2Fwww.google.com%2F) [https://perma.cc/7S52-BGEY].

<sup>11</sup> Dara Lind, *The Trump Administration Reportedly Wants to Try Family Separation Again*, VOX (Oct. 12, 2018), <https://www.vox.com/2018/10/12/17969780/family-separation-trump-plan-children-orphans> [https://perma.cc/U8RK-ZGLA].

<sup>12</sup> Dara Lind, *Trump's DHS is Using an Extremely Dubious Statistic to Justify Splitting up Families at the Border*, VOX (May 8, 2018), <https://www.vox.com/policy-and-politics/2018/5/8/17327512/sessions-illegal-immigration-border-asylum-families> [https://perma.cc/GWJ5-VY8Q].

<sup>13</sup> Debra Cassens Weiss, Lorelei Laird, & Lee Rawles, *What Happens After Federal Courts Run Out of Money to Continue Operations?*, ABA JOURNAL (Jan. 7, 2019), <http://www.abajournal.com/news/article/what-happens-after-federal-courts-run-out-of-money-to-continue-operations> [https://perma.cc/MBW4-5HRP].

<sup>14</sup> Andrew Mitrovica, *Family Separation as a Policy: America Has Done It Before*, AL JAZEERA (Jun. 23, 2018), <https://www.aljazeera.com/indepth/opinion/america-latest-amnesia-epidemic-immigration-policies-180621081203449.html> [https://perma.cc/6Q4Z-E8P2].

grow up in a family environment, in an atmosphere of happiness, love and understanding.”<sup>15</sup> Only one country has refused to ratify this treaty: the United States.<sup>16</sup> “When a country like the United States refuses to sign the Convention on the Rights of the Child, we are being explicit about what we think about children,” Anthonyson says. “Look at what we do, not what we say.”

Deportation is another deterrence tactic whose overly broad use has had an immense negative impact on families.<sup>17</sup> When FFF was first started, less than 200,000 people were deported yearly.<sup>18</sup> Since then, in the past decade, more than 4.5 million people have been deported from the United States.<sup>19</sup> Much of this can be attributed to major revisions to the US immigration laws made in 1996 (the “1996 laws”), which created a draconian immigration system. As NYU’s Immigrant Rights Clinic explains in its report “Dismantle, Don’t Expand,” the 1996 laws have impacted the immigrant community in three long-lasting and broad ways:

First, they vastly expanded the criminal grounds of deportation.<sup>20</sup> Second, many of the newly deportable offenses trigger mandatory detention and deportation. This bars immigration judges from considering people’s life circumstances before ordering them to a foreign country. Third, the 1996 Laws significantly reduce the power of the courts to ensure the laws are fairly enforced.<sup>21</sup>

Combined with the War on Terror and War on Drugs, a cumulation of legislation has developed a growing overlap in criminal and immigration law—“cimmigration”<sup>22</sup>—which has, in turn, exposed millions of longtime residents to forced deportation, particularly people of color. What makes this worse is that there is very little institutional support for immigrants in court proceedings, and

<sup>15</sup> G.A. Res. 44/25, Preamble (Sep. 2, 1990).

<sup>16</sup> Sarah Mehta, *There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights: US*, ACLU (Nov. 20, 2015), <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens> [<https://perma.cc/5YVQ-WVCH>].

<sup>17</sup> Kirk Semple, *Deportations Have ‘No Observable Effect’ on Crime Rate, Study Concludes*, NYTIMES (Sep. 3, 2015), <https://www.nytimes.com/2014/09/04/us/deportations-dont-lower-crime-rates-study-says.html> [<https://perma.cc/CLX3-E64H>].

<sup>18</sup> *The History of Families for Freedom*, *supra* note 4.

<sup>19</sup> *Indefensible Podcast Series: Stories of People Resisting Deportation*, IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/indefensible/> [<https://perma.cc/5DKG-7P8Y>].

<sup>20</sup> It is significant to note the retroactive nature of the 1996 laws, such that long-standing legal immigrants with criminal records from their youths in the early 1900s, would fall under the auspices of the 1996 Laws’ detention and deportation powers.

<sup>21</sup> IMMIGRANT JUSTICE NETWORK AND IMMIGRANT RIGHTS CLINIC AT NYU SCHOOL OF LAW, *DISMANTLE, DON’T EXPAND: THE 1996 IMMIGRATION LAWS 2* (2017), [https://www.immigrantdefenseproject.org/wp-content/uploads/1996Laws\\_FINAL\\_Report\\_5.10.17.pdf](https://www.immigrantdefenseproject.org/wp-content/uploads/1996Laws_FINAL_Report_5.10.17.pdf) [<https://perma.cc/WFE4-FR56>] [hereinafter *DISMANTLE, DON’T EXPAND*].

<sup>22</sup> Felicia Arriaga, *Understanding Crimmigration: Implications for Racial and Ethnic Minorities Within the United States*, 10 SOC. COMPASS 805 (2016).

many go through the system without a clear understanding of what is being asked of them or what legal rights and recourses they have to fight for their lives in the United States.<sup>23</sup>

Like others in the FFF community, Anthonyson pulls much of his passion from his own personal experiences in the immigration system. In 2004, Anthonyson was traveling in and out of the country as a legal permanent resident when he was stopped in Puerto Rico by Customs and Border officers. Like many others in the United States, he had no idea that a single misdemeanor from his youth could be grounds for his removal from the United States, despite his “green card”-holding status. Anthonyson is a bit reticent about telling his story, preferring to talk about “more serious” problems others are facing in detention centers now, but through his disjointed tale about his path from airport, through detention center and court proceedings, and finally to freedom, he is eager to talk about a single moment of “humanity” he experienced in that process. That moment was with the supervising officer of the immigration officer who first flagged Anthonyson as removable.

While that may sound a bit strange—feeling thankful toward the person who initiated the painful process of possibly getting deported—Anthonyson feels that this officer was the only one throughout the entire process who recognized him as a person, and not simply another deportation case. The officer openly expressed his frustration with feeling like a cog in an immigration system that systematically disrupted people’s lives and split families. As someone implementing these laws “on the ground,” the officer appeared to feel the impact of launching a federal case against individuals quite personally. In some ways, by failing to give officers like the one Anthonyson faced sufficient power of discretion over whom they arrested, the system was not only failing to respect the humanity of immigrants, but also of its hard-working employees tasked with implementing such painful policies on an unforgivingly vast scale.

The officer eventually said, “Look, the only thing I can do to help you at the moment is to sign you up for bond.” Once an immigrant is arrested for removal proceedings, she is typically put into detention. Currently, the United States maintains the largest immigration detention infrastructure in the world, detaining approximately 38,000 to 42,000 persons per year.<sup>24</sup> 2018 in particular saw the most people in immigration detention since 2001, averaging more than 42,000 people in custody each day throughout the fiscal year.<sup>25</sup> An immigration judge can typically allow arrested immigrants to be let out of the detention center “on bond”, which is basically an exchange of defendant’s money for defendant’s temporary freedom

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<sup>23</sup> DISMANTLE, DON’T EXPAND, *supra* note 21.

<sup>24</sup> Geneva Sands, *This Year Saw the Most People in Immigration Detention Since 2001*, CNN POLITICS (Nov. 12, 2018), <https://www.cnn.com/2018/11/12/politics/ice-detention/index.html> [<https://perma.cc/NXW4-QDF2>]. See also *Immigration Detention Map & Statistics*, END ISOLATION, <http://www.endisolation.org/resources/immigration-detention/> [<https://perma.cc/L78G-926G>].

<sup>25</sup> Sands, *supra* note 24.

and promise to appear for all hearings and obey the judge's order at the end of the case.<sup>26</sup> "He did his best to get me out without the bond, but it didn't happen. . ."<sup>27</sup>

The officer advised Anthonyson to try to make bond and get out of detention, so that he would be better able to make his case for cancellation of removal in court. Several studies have shown that detained persons are typically farther away from family, resources, and legal representation, which leads to significantly lower success of their cases in court. For example, according to the New York Immigrant Representation Study, only 3% of unrepresented *detained* immigrants saw their cases reach successful results (i.e., case termination or relief from removal) compared to 13% of unrepresented *non-detained* persons, and 18% of represented *detained* persons compared to 74% of represented *non-detained* persons.<sup>28</sup>

Moreover, detention centers have long been known for their dire conditions. Early in 2018, a team of researchers from Human Rights First visited three of the main facilities in New Jersey used by Immigration and Customs Enforcement ("ICE") to detain non-citizens, and found that detainees were subject to "harsh and inhumane conditions."<sup>29</sup> They were denied medical care, served food with worms and maggots, and suffered racism, discrimination, and harassment from detention facility officers.<sup>30</sup>

Reflecting on the activism of Ravi Ragbir and others in the immigration community, Anthonyson explains, "[immigrants] are simply demanding the same rights as everyone else in the country with a criminal charge." He continues, "By nature of the American Constitution, the criminal [justice] system gives rules that the federal and state systems have to abide by." We are bound by law to protect the

<sup>26</sup> For more on mandatory detention, see Florence Immigrant and Refugee Rights Project, *All About Bonds* (October 2011), <https://www.justice.gov/sites/default/files/eoir/legacy/2013/01/22/Bonds%20-%20English%20%2811%29.pdf> [<https://perma.cc/64XS-GYHS>].

<sup>27</sup> BlackImmigrationNet, *supra* note 1.

<sup>28</sup> The first *National Study of Access to Counsel* in United States immigration courts found that from 2007 to 2012 only 14% of detainees had legal representation with 66% of their non-detained counterparts. This means that non-detained people had an almost 5 times greater chance of having a lawyer. According to that same study, detained people who had a lawyer were 10.5 times more likely to be allowed to stay in the US than those who did not have one. National Immigration Law Center, *Blazing a Trail*, 2-10 (March 2016), <https://www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf> [<https://perma.cc/2BHS-R9NW>]. See Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court*, AMERICAN IMMIGRATION COUNCIL, (Sep. 28, 2016), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court> [<https://perma.cc/354T-FQCJ>].

<sup>29</sup> Human Rights First, *New Report Documents Physical, Mental Health Care Deficiencies in New Jersey Detention Facilities* (February 27, 2018), <https://www.humanrightsfirst.org/press-release/new-report-documents-physical-mental-health-care-deficiencies-new-jersey-detention> [<https://perma.cc/SQV4-TSHS>].

<sup>30</sup> HUMAN RIGHTS FIRST, *AILING JUSTICE: NEW JERSEY, INADEQUATE HEALTHCARE, INDIFFERENCE, AND INDEFINITE CONFINEMENT IN IMMIGRATION DETENTION* (2018), <https://www.humanrightsfirst.org/sites/default/files/Ailing-Justice-NJ.pdf> [<https://perma.cc/F9UU-W6DF>].

fundamental rights of criminal defendants—right to due process, freedom from cruel and unusual punishment, right to free and effective legal representation, and right to a speedy trial. Unfortunately, the American government has refused to extend to persons in the immigration system the same package of rights afforded to criminal defendants. “In immigration, the system, itself, does not recognize its prisoners as human,” said Anthonyson.

It has become a common practice for governments to subject migrants to bureaucratic approval,<sup>31</sup> and to lend legitimacy to the notion that citizenship makes us more human than others. As Anthonyson says, “We have to reach higher. And the higher part is accepting that I am as much as a human as you are.”

On that note, Anthonyson provides three general pieces of advice for any ally eager to make thoughtful and meaningful changes in the field of immigration.

**1. Choose Language Carefully.** “The language [we use to refer to ourselves] is really important because besides the fact that [the immigration system] physically separates us, the language that is being used helps to keep the separation even more so.” Attention to language also helps strip away euphemisms and distills the truth of the immigration system: detainees are “immigration prisoners,” and electrical monitors are “shackles” that limit you to “the master’s zone.” We must choose our language carefully, to make sure that the words we speak in support of human rights for non-U.S. citizens do not undermine that message by holding anti-immigrant philosophy within its very letters.

**2. “Traverse” Bridges with Other Communities.** “The reason we cannot get anything done that is constructive in the immigration field is because the American politician has no fear of the non-US citizen. There is no political system for us; only promises, no action.” The solution, then, is a game of numbers. Through coalition work and intersectional movement-building, we must transform the scale of opposition across struggles, sectors, and geographies, and build the capacity of immigrant leaders to advance an agenda that unites families and communities rather than dividing and criminalizing them.<sup>32</sup> “It’s not just about crossing bridges—it’s about traversing them.” Traversing refers to the fluidity by which communication, reflection, and allyship efforts must go back and forth between immigrant and citizen communities. In particular, Anthonyson describes an urgency by which we must address xenophobia within communities of citizens who have a history of being marginalized and oppressed, to make explicit the relationship between white supremacy and nativism.

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<sup>31</sup> @henrykrinkie, *The Utter Inhumanity of America’s Immigration System and the Case for Civil Disobedience, Part 1* (Oct. 19, 2013), <https://ceinquiry.wordpress.com/2013/10/19/immigration/> [<https://perma.cc/FGZ4-RZ2U>].

<sup>32</sup> *Organizing & Advocacy*, FAMILIES FOR FREEDOM, <http://familiesforfreedom.org/organizing> [<https://perma.cc/C6KL-B7AW>].

**3. Avoid Superstar Movements.** While popularizing certain individuals in the public eye is important in garnering support and momentum for eventual immigration reform, we must be careful not to sensationalize their story, or make them heroes. They deserve our attention no more than all the other detainees and immigrants who remain imprisoned in the immigration system. “That sort of narrative falls straight into the oppressor’s hands. The movement must adjust its strategy to protect more than just a few hundred thousand, when there’s 12 million people to serve. How do we defend [them] all?”