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Editors' Note

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27.1 EDITORS' NOTE

CUNY Law Review attempts to respond to both urgent and long-term social justice legal issues, in print and online, with a commitment to public interest-oriented legal scholarship that works to expose and dismantle systems of oppression. Through this issue and the Law Review's overall work, the journal seeks to participate in ongoing critical conversations and related, interconnected struggles for liberation. Publishing works that strive to interrogate, change, dismantle, eliminate, or replace existing legal and social structures also requires a continuous reckoning with the injustice and violence that these structures mete out to our communities locally and around the world.

In February 2024, as this issue went to print, the Israeli military launched strikes on Rafah, a city at the southern edge of the Gaza strip on the Egyptian border where approximately 1.5 million displaced Palestinians (more than half of Gaza's population) are seeking shelter.¹ These strikes are part of not just the Israeli government's wholesale military assault on Palestinians following the October 7, 2023 Hamas attack, but also decades of systemic violence that have resulted in an ongoing existential threat to and destruction of Palestinian lives and freedom.²

The bombardment of Rafah also comes roughly one month after the International Court of Justice ("ICJ") issued its order in *South Africa v. Israel*,³ which, to date, Israel has largely ignored.⁴ In this order, the ICJ directed Israel to do everything in its power to prevent acts of genocide; punish direct and public incitement to genocide; and guarantee the delivery of humanitarian aid, medical assistance, and access to adequate food and water to people in Gaza.⁵ While the ICJ did not call for an im-

¹ *Palestinians Live in Scarcity in Rafah as Israeli Ground Assault Looms*, AL JAZEERA (Feb. 18, 2024), <https://perma.cc/B392-43F5>.

² *Israel Must End Its Occupation of Palestine to Stop Fuelling Apartheid and Systematic Human Rights Violations*, AMNESTY INT'L (Feb. 19, 2024), <https://perma.cc/W33Z-P7TX>.

³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Order (Jan. 26, 2024), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

⁴ *One Week After ICJ Ruling, Is Israel Following the Court's Orders?*, AL JAZEERA (Feb. 2, 2024), <https://perma.cc/TT65-SN8R>; see also *Is Israel in Breach of the ICJ's Order?*, AL JAZEERA (Feb. 13, 2024), <https://perma.cc/6NTL-JWE9>.

⁵ S. Afr. v. Isr., Order, ¶ 86; see also Julia Frankel, *Israel's Military Campaign in Gaza Seen as Among the Most Destructive in Recent History, Experts Say*, ASSOCIATED PRESS, <https://apnews.com/article/israel-gaza-bombs-destruction-death-toll-scope-419488c511f83c8>

mediate ceasefire, it required Israel to report back within one month of this order on the steps it has taken to comply with the decision pursuant to the Charter of the United Nations.⁶ In spite of this order, Israel has since intensified its attacks, killing hundreds more Palestinians.⁷ It has done so after Palestinian plaintiffs and human rights organizations brought proactive litigation in U.S. federal court against the Biden administration, alleging Israeli and U.S. war crimes and requesting an injunction to protect civilians in Gaza under U.S. obligations to the UN Genocide Convention.⁸ As the District of Northern California ruled that it did not have jurisdiction to direct foreign policy,⁹ in an interview with *Democracy Now!*, human rights attorney and scholar Noura Erakat laid bare the tension between the law as an instrument of change and one that perpetuates oppression:

We see in the United States the Center for Constitutional Rights bring a lawsuit in the Northern District of California, where the judge agreed that the ICJ was correct that this is undeniable, a case of genocide, but he doesn't have the jurisdiction in order to stop the Biden administration. We saw the highest court in the world say the same thing, that this is plausibly genocide. We are seeing a series of judicial decisions that are coming to the same conclusion, but none of them can be enforced without political will, which is being impeded in the Security Council by the United States.¹⁰

The law alone remains an insufficient tool to address, much less prevent, atrocities of this kind, as well as the many injustices that vulnerable and excluded individuals may seek to remedy through legal

5baea22458472a796 (Jan. 11, 2024, 1:55 PM) (on file with CUNY Law Review); *Explaining the International Court of Justice's Ruling on Israel and Gaza*, PERRY WORLD HOUSE (Feb. 8, 2024), <https://perma.cc/JCD4-GE2N>.

⁶ S. Afr. v. Isr., Order, ¶ 82; see also Katherine Hearst, *Why Didn't the ICJ Order a Ceasefire in Israel-Gaza Genocide Case?*, MIDDLE E. EYE (Jan. 26, 2024 3:52 PM), <https://perma.cc/WF6W-WJSD>.

⁷ See sources cited *supra* note 4.

⁸ Def. for Child. Int'l-Palestine v. Biden, No. 23-CV-05829, 2024 WL 390061, at *1 (N.D. Cal. Jan. 31, 2024); see also *U.S. Court Concludes Israel's Assault on Gaza Is Plausible Case of Genocide*, CTR. FOR CONST. RTS. (Jan. 31, 2024), <https://perma.cc/P57T-2CKY> (explaining the plaintiffs' claims and the court's decision in *Defense for Children International-Palestine v. Biden* and its relevance to the International Court of Justice's January 26, 2024 order in South Africa's case against Israel).

⁹ *Def. for Child. Int'l-Palestine*, 2024 WL 390061, at *5.

¹⁰ "Worst-Case Scenario": Noura Erakat on Israel's Looming Invasion of Rafah: Transcript, DEMOCRACY NOW! (Feb. 12, 2024), https://www.democracynow.org/2024/2/12/noura_erakat_rafah_gaza (on file with CUNY Law Review).

structures. In response, public interest- and social justice-focused attorneys and the movements they are part of must grapple with the limits of the law and consider what to do—outside or alongside it—to address human needs by ultimately changing the law itself. The pieces in Volume 27.1, as well as those published on our blog,¹¹ do just that.

Whether the analysis centers on the transformation of the access to justice movement, as in Professor Roni Amit’s *Access to Injustice: How Legal Reforms Reinforce Marginalization*; an examination of the United States’ immigration system’s inability to recognize and humanely address the needs of stateless people, as in Rachel Marandett’s *On the Road to Nowhere: The Unique Challenges Stateless People Face in Removal Proceedings and the Untenable Legal Limbo Following Final Orders of Removal*; a proposal to revolutionize the legal damages framework, as in Sayid Bnefsi’s *Compensatory Preliminary Damages*; the ways that police accountability mechanisms infringe on an individual’s right to privacy during their most vulnerable and traumatic moments, as in Dalton Primeaux’s *Adjusting the Focus: Addressing Privacy Concerns Raised by Police Body-Camera Footage*; or an exposure of the illegitimacy of racist and exclusionary barriers to the legal profession, as in Tolu Lawal’s and Al Brooks’s *Character and Fitness in America’s Neo-Redemptive Era*; each of these pieces criticizes the existing legal landscape and provides avenues to transform it into a more accessible and equitable one for clients, attorneys, advocates, and movements as a whole.

Additionally, Lawal and Brooks bring their article’s subject matter squarely to the present reality in Gaza and the United States as they detail the impact of threatened and actual professional repercussions for current and aspiring attorneys who advocate for Palestinian freedom.

¹¹ See Annie Seifullah & Jillian Bowen, *The First Amendment’s True Threats Doctrine Needs Updating*, *Counterman Ain’t It*, CUNY L. REV. (Oct. 3, 2023), <https://perma.cc/97PT-HPW7> (arguing for limits on free speech to protect those who are subject to stalking and harassment through tech abuse, while still upholding vital First Amendment rights); Hirsha Venkataraman, *Trans Youth Athletes Are Under Attack. It’s Time to Push Back*, CUNY L. REV. (Oct. 6, 2023), <https://perma.cc/C6KD-YHAJ> (exploring how to counter the weaponization of laws against trans youth through legislation and civic engagement); Nick Leiber, *Ghost Guns Are Fueling the Gun Violence Epidemic. After Bruen, Can Our Laws Keep Up?*, CUNY L. REV. (Oct. 12, 2023), <https://perma.cc/6YJ2-2895> (explaining the survival challenges of state gun safety laws in the face of constitutional challenges to ghost guns, which can be virtually untraceable because they do not have serial numbers, do not require background checks, and can be bought anonymously in parts to be quickly assembled at home); Nick Leiber, *Human Rights Attorneys Grapple with the Law’s Promises and Failures amid Calls to Prevent Genocide in Gaza: A Reading List*, CUNY L. REV. (Nov. 22, 2023), <https://perma.cc/B24V-2BPU> (seeking to understand and address the ongoing atrocities in Gaza through the lens of various experts and recognizing that the law may very well fail in this immediate capacity).

Relatedly, as Marandett notes in her final section, statelessness is particularly poignant for so many Palestinians, who may possess weak identity documents or no identity documents at all, and who are unable to escape violence, devastation, and death in Gaza.

This issue's online Footnote Forum articles also discuss the limitations and potential of the law. In *Idea Bank for New York City's Chief Public Realm Officer: Imagining a Broad, Equity-Enhancing Role for Creating Access to Public Space*, authors Tara Eisenberg, Althea Lamel, Lindsay Matheos, Carolyn Weldy, and CUNY Law Professor Andrea McArdle—all studying the implications of New York City's land use processes as members of the Land Use and Community Lawyering Seminar at CUNY School of Law—propose opportunities for equity to New York City's first Chief Public Realm Officer. They suggest land use policy ideas to address the impact of long-term racial inequity, segregation, and divestment across city resources with inclusive, equitable, and environmentally sensitive approaches to the City's stewardship of public spaces. Athena Mutua's *An Exegesis of the Meaning of Dobbs: Despotism, Servitude, & Forced Birth* provides a critical lens on the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, through an explanation of a heckler's incendiary statements at a demonstration for reproductive justice. Those statements illuminate the power structures that function to intentionally subjugate individuals by limiting or even eliminating deeply rooted liberty rights to bodily autonomy.

As previous editors of the Law Review argued in the introduction to Volume 26.1, the right to bodily autonomy goes beyond reproductive rights.¹² It includes many of the rights and freedoms discussed in this issue as well: freedom from military assault and killing, freedom to meaningfully access the courts as full human beings and gain just outcomes, freedom from the restrictive and inhumane impacts of nation-state borders, freedom to pursue collective liberation through the law, freedom to hold police accountable while simultaneously maintaining one's privacy, and an overall freedom from the inherent oppression built into the legal system itself.

Publishing the legal analysis, critique, proposals, and visions of the authors included here is one aspect of imagining and realizing these collective freedoms through the many tools of social movements, including legal scholarship. As editors-in-chief, we are grateful to the Law Review's faculty advisors, Professor Andrea McArdle, Professor Jared Trujillo, and Professor Kara Wallis, for their guidance, and to the au-

¹² Clementine Stormes & Cassandra Pilla, 26.1 Editors' Note: Bodily Autonomy, 26 CUNY L. REV. (2023).

thors in this volume for the liberation-centered visions they offer. We are particularly appreciative of 27.1 authors Tolu Lawal and Al Brooks, and upcoming 27.2 author Bina Ahmad, for their support throughout publication of this issue. Their engagement with us exemplifies the kind of iterative and collaborative process this journal endeavors to have with authors who not only contribute their individual work, but also act as partners in *CUNY Law Review*'s mission to effectuate justice beyond the page. While this particular issue does not focus primarily on Palestinian liberation and organizing, their input influenced our consideration of how to best use the journal's broader platform in solidarity with Palestine and identify thematic ties here. It also reinforced the ways our conversations with collaborators across movements can and should mirror the kind of future we want to build together. This future inevitably connects to social justice movements and struggles as a whole; it includes a free Palestine, urgent now more than ever.

CUNY Law Review is honored to share these works that question underlying premises of the law, legal procedures, and the legal field itself, and—perhaps even more crucially—offer solutions and alternatives for our collective dignity, equality, and freedom.

Leora Johnson and Salimah Khoja
Editors-in-Chief
CUNY Law Review