

2023

Professor Muneer Ahmad's Comments - Panel 2

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Recommended Citation

Ahmad, Muneer (2023) "Professor Muneer Ahmad's Comments - Panel 2," *Tennessee Law Review*: Vol. 90: Iss. 3, Article 8.

Available at: <https://ir.law.utk.edu/tennesseelawreview/vol90/iss3/8>

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Bluebook 21st ed.

Muneer Ahmad, Prof. Muneer Ahmad's Comments, 90 TENN. L. REV. 565 (2023).

ALWD 7th ed.

Muneer Ahmad, Prof. Muneer Ahmad's Comments, 90 Tenn. L. Rev. 565 (2023).

APA 7th ed.

Ahmad, Muneer. (2023). Prof. muneer ahmad's comments. Tennessee Law Review, 90(3), 565-570.

Chicago 17th ed.

Muneer Ahmad, "Prof. Muneer Ahmad's Comments," Tennessee Law Review 90, no. 3 (Spring 2023): 565-570

McGill Guide 9th ed.

Muneer Ahmad, "Prof. Muneer Ahmad's Comments" (2023) 90:3 Tenn L Rev 565.

AGLC 4th ed.

Muneer Ahmad, 'Prof. Muneer Ahmad's Comments' (2023) 90(3) Tennessee Law Review 565

MLA 9th ed.

Ahmad, Muneer. "Prof. Muneer Ahmad's Comments." Tennessee Law Review, vol. 90, no. 3, Spring 2023, pp. 565-570. HeinOnline.

OSCOLA 4th ed.

Muneer Ahmad, 'Prof. Muneer Ahmad's Comments' (2023) 90 Tenn L Rev 565

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**PROF. MUNEER AHMAD'S COMMENTS –
PANEL II**
MUNEER AHMAD

*“The frame for the immigrant justice movement must be more
capacious than it has been in the past ...”*

I am so delighted to be here to celebrate Fran. I first encountered Fran's work as a law student in a clinical course taught by Lucie White called Community-Based Advocacy. Fran had taught such a course here at Tennessee for many years, and Lucie was bringing its values and methods to Harvard. That course, and Fran's work, were formative, because amidst a pedagogy of Socratic method in an institution that exalted both the law and the lawyer, I was introduced to the possibilities, privileges, joys, and frustrations of working alongside, learning from, and co-creating with communities in need; and to doing so in a way that was neither self-aggrandizing nor self-effacing of the role of the lawyer. Fran's work invited me into a normative model of the progressive lawyer as one working in community rather than on behalf of it, bringing 'the law' not as a solution but a resource, situating law within structures of power, and marrying the hope for social change with a grounded vision for how to enact it. It's a model that I try to pass on to my students today. Many years ago, Fran wrote:

Some of the greatest pleasure I have known as a scholar and activist has come in situations where I was working to catch and pass on the words of people at the margin, people who have had direct experiences of injustice and who hold deep convictions about those experiences, but few channels through which to share or project them.¹

May we all have that pleasure of capturing those words and passing them on.

My task is to address the relationship between labor migration and the immigrants' rights movement. Let me say a few words about the context from which I approach this question. I co-teach in the Worker and Immigrant Rights Advocacy Clinic at Yale Law School. We do a range of work, both litigation and community advocacy, on immigration, immigrants' rights, and labor. To give a few examples of

1. Fran Ansley, *Inclusive Boundaries and Other (Im)possible Paths toward Community Development in a Global World*, 150 U. PENN. L. REV. 353, 364 (2001).

our work: We currently represent workers at McDonald's franchise who are seeking to organize and were retaliated by their employer for doing so. We represent a group called Connecticut Drivers United, an organization of gig economy workers who are organizing for improved wages and treatment through legislation at the state level. We represent a group called Connecticut Students for a Dream, which has long advocated for immigrant youth and is now advocating for expansion of Medicaid in the state of Connecticut to all residents, without regard to immigration status. We represent two families of asylum seekers in which the children were forcibly separated from their parents under the Trump administration's 2018 "Zero Tolerance" policy.² Those families are now suing the government for money damages for the injuries that the children and parents suffered.

Our clinic brought the first challenge to the first Trump Muslim ban, which you may remember, happened in the first weeks of the Trump administration, and sought to fulfill his campaign promise to put a "total and complete shutdown of Muslims entering the United States."³ And we have long represented a group of immigrant youth with Deferred Action for Childhood Arrivals (DACA). Our clinic brought the first challenge to the Trump administration's attempt to terminate the DACA program and we continue to litigate that matter today.

With this background in mind, I will turn to the topic of labor and migration in the United States, but I want to do so in relation to social movements, and the immigrant justice movement in particular. And in keeping with one theme of Fran's work, I want to focus on the framing, or the frameworking within which that movement operates. As Fran has written, "social movements must use a frame that valorizes and motivates collective action."⁴ A frame, Fran writes, "cannot convince or engage unless it is culturally intelligible to its intended audience."⁵ But the frame can't just mirror the language,

2. Ron Nixon, *'Zero Tolerance' Immigration Policy Surprised Agencies, Report Finds*, N.Y. TIMES (Oct. 24, 2018), <https://www.nytimes.com/2018/10/24/us/politics/immigration-family-separation-zero-tolerance.html>.

3. For a description of this work, see Muneer I. Ahmad & Michael J. Wishnie, *Call Air Traffic Control: Confronting Crisis as Lawyers and Teachers*, in CRISIS LAWYERING: EFFECTIVE LEGAL ADVOCACY IN EMERGENCY SITUATIONS (Ray Brescia & Eric K. Stern, eds., 2021).

4. Ansley, *supra* note 1, at 361.

5. *Id.* at 363.

values, and images dominant in the culture; it also has to project a vision of justice that is not yet realized.

For some decades, the strategic goal for immigrant worker justice has been legalization of the undocumented population. The thinking here has been fairly straightforward: undocumented status renders workers vulnerable to exploitation in the workplace, resulting in wage theft, depressed wages, and degraded working conditions. The Supreme Court's 2002 decision in *Hoffman Plastics*,⁶ which held that undocumented workers could not get reinstatement or backpay even when they were fired for engaging in protected organizing activity, only exacerbated this vulnerability and further constrained the ability of workers to bargain with employers. Social and racial exclusion further compound the vulnerability. Legalization, then, would solve the problem of migrant worker exploitation.

This is not to say that in the absence of legalization, there is nothing to be done. Quite the contrary, as Jennifer Gordon discussed in the first panel,⁷ there is a tremendous amount of work that can be done that is ongoing by workers' centers, and there has been successful organizing of undocumented workers by organized labor. Even in just the past year, we have seen the creation of a program for deferred action, a limited form of immigration relief, for workers who participate in labor enforcement or support labor enforcement activities by the government.⁸ So there are things that can be done and are being done in the absence of legalization.

That said, legalization has been the kind of "Holy Grail" for trying to resolve the deepest vulnerabilities of undocumented workers and for most of this century, the frame for achieving this strategic goal of legalization has been "comprehensive immigration reform," or CIR as it came to be called among advocates. Like the last major legalization program, in 1986, CIR proposals for the past two decades have featured a tradeoff: legalization for most of the millions of undocumented people present in the United States, in exchange for expanded border and interior enforcement and new initiatives to prevent unauthorized employment. CIR was built on a consensus between progressives pushing for equitable treatment and business-

6. *Hoffman Plastics v. NLRB*, 567 U.S. 883 (2002).

7. See Jennifer Gordon, *The World the Fire Wrought: A Tribute to Fran Ansley*, 90 TENN. L. REV. 543 (2022).

8. See Dep't of Homeland Security, *DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations*, DHS (Jan. 13, 2023), <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>.

oriented conservatives who value a larger labor force. This framework privileges the claims for those already here and working, and aspires to shut off the “future flow” of unauthorized migration. It thus creates a sharp divide between the interior, where undocumented workers and their families reside, and the border.⁹

I think it is fair to say that political and cultural changes in the country over the past several years have rendered this framework obsolete. Trump’s galvanizing of anti-immigrant sentiment and his policies along the Southern border, many of which the Biden administration has continued, have dramatically altered the political space available for compromise. Whereas the interior and the border were once divisible issues in immigration politics, the focus on driving back asylum-seekers now so predominates those politics that the border and the interior have collapsed.

Indeed, the plight of asylum-seekers, and efforts to dramatically curtail the asylum system, are now central to our immigration politics in a way that places new and different demands on the framing of immigrant justice. The business wing of the Republican party has capitulated to the cultural wing on immigration. Expanded border enforcement is no longer a chit to be traded for legalization; it is a stipulated term in both political parties. And our entire system of asylum is now in jeopardy, both here and around the world.

In light of these new realities, the frame for the immigrant justice movement must be more capacious than it has been in the past, encompassing migrant labor concerns but also reaching significantly beyond them. The centrality of asylum in the current moment is shifting not only the politics of immigration but also the composition of the immigrant population, introducing Central Americans, South Americans, and Haitians, into the forefront of the current immigration moment.

The bad news is that we still have a long way to go to develop this new frame. The good news is that these efforts are under way, largely driven by young, first-generation immigrants who are at the vanguard of the movement. It is these directly affected communities that are reshaping the frame into one that includes not only immigrant youth, but immigrant workers and immigrant families. Informed by abolitionist and criminal reform movements, it embraces robust deportation defense, demands accountability for ICE and CBP abuses, and rejects the exclusion of people with criminal convictions from

9. For a discussion of comprehensive immigration reform efforts over the past several decades, see Muneer I. Ahmad, *Beyond Earned Citizenship*, 52 HARV. C.R.-C.L. L. REV. 257 (2017).

proposals for legalization. It has explicitly incorporated racial justice into its vocabulary—both out of recognition of the racial subordination that our current immigration system produces and perpetuates, and out of solidarity with the racial justice movement newly energized to combating anti-Blackness. And it is a vision that encompasses asylum seekers in an effort to maintain the protections of an international legal order that is supposed to protect those fleeing persecution.

This is a difficult vision to hold together. But the outlines of a frame are there, which can be roughly summarized as follows:

Immigrant justice is worker justice.

Immigrant justice is racial justice.

Immigrant justice is criminal justice.

Immigrant justice is global justice.

