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2017 Symposium Panel Discussion: The Life of an Immigration Attorney

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2017 SYMPOSIUM PANEL DISCUSSION:
THE LIFE OF AN IMMIGRATION ATTORNEY

Moderator:

William “Bill” Benos

Panelists:

Tanishka V. Cruz

Cori Alonso-Yoder

Naureen Hyder

Ashley Shapiro

EDITOR'S NOTE & DISCLAIMER

The following is a minimally-edited transcript of the discussion panel from the 2017 Richmond Public Interest Law Review Symposium, Immigration: Exploring Today's Legal Landscape, held on October 20, 2017. Short biographies of the speakers are included in the introductory remarks by the moderator. The panel discussion can be viewed at <https://goo.gl/2oEdTk>.

None of the opinions of these persons are necessarily the opinions of their respective agencies or employers. They are not to be used nor will they be able to be used for any legally binding purpose regarding the speaker or any agency.

PANEL QUESTIONS & ANSWER

Bill Benos:

Good afternoon, everyone. Again, thank you for being here today. Thank you very much to the [Public Interest Law] Review for putting on this program. I know you've all enjoyed some very poignant and personal stories that you've heard throughout the morning. You've heard some excellent content from Ms. Diaz. Thank you for helping us qualify for CLE credit! Very, very well done. I know many of you are appreciative not only of the content, but the fact that we are able to enjoy having CLE today, which is important as we are ending the month of October soon.

A little change of pace now. We are going to do a panel discussion, which will be a little more-free ranging and non-topic specific. And we have four excellent panelists here, and I'll let them tell you a little bit about their own personal details. And you'll see their bios are really nicely laid out in the terrific materials that the Review has put together. But the way I'm going to introduce them is to tell you a little bit about

how they are very illustrative of how immigration law brings people together from different perspectives, diverse angles, and really different policy views and different lives.

Let me start by telling you a little bit about myself since I'll be moderating today. My name is Bill Benos. I'm a partner at Williams Mullen. I founded our immigration practice 25 years ago, and it was founded on the basis of a very interesting case. As the Soviet Union collapsed, I had the opportunity to represent a very prominent communist in Gorbachev's cabinet. And the memo went around, and one of the partners said, "We need someone to help handle this case. Anyone have any interest?" I was a fifth-year associate, I guess, at that time. Of course, I raised my hand and that's what brought me into this area of practice ultimately. Now my focus at Williams Mullen as a practitioner in a large firm is primarily business immigration law. So, as I was telling Cori, I try to avoid immigration court like the plague. I don't make any—I have a partner who—who handles those things. But it's also good to have partners and a support team to help handle things in this particular area. So, I came to immigration from the perspective of a business perspective, and that's what I'm going to speak a little about today in terms of my perspective.

These four ladies have a much different perspective in many ways. Tanishka Cruz is a solo practitioner at Cruz Law in Charlottesville, and she's an attorney also with the Legal Aid Justice Center. So, her perspective is interesting, because she comes from the opposite end of the law firm size perspective from me, and she also blends family law with immigration law, which it's

a nice and different perspective from mine. And she also brings a pro bono perspective, which I think all four of us share, because my pro bono focus is primarily on asylum cases.

I have Cori Alonso-Yoder and she's a practitioner-in-residence, and she brings the perspective of academia. She's with the Immigrant Justice Clinic at American University Washington College of Law.

Naureen Hyder is here as well, and she also brings a slightly different perspective, because, I guess, I bring the old person's perspective—she, like the rest of the panel, brings the young person—dynamic person's perspective. And she's the founder of Hyder Immigration Law. In addition to being a solo practitioner, she shows that immigration is also genetic in her pedigree, because when I started practice I practiced in the same community as her father who was a fantastic immigration practitioner. So, the apple does not fall far from the tree.

And lastly, we have Ashely Shapiro, and she's an immigration resource attorney for the Virginia Indigent Defense Commission. And she brings the perspective of an educational component in the criminal law context. She does public defender training, and primarily that relates to the consequences of criminal convictions, which can be pretty serious and devastating to a lot of individuals who often don't really know what also comes of it. So those are the directions that we're going to bring. And I'm going to go through and ask them to talk a little bit about some hot-button issues that they see in their practice. But, before doing so, let me let each of them say hello to you. And we'll start with you.

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Cori Alonso-Yoder:

Sure. Thanks for the introduction. So I'm Cori Alonso-Yoder. I'm a practitioner-in-residence at American University Washington College of Law. I'm a clinical professor in the immigrant justice clinic and our work revolves around a broad base of justice—equal justice issues that arise for immigrants in the D.C. community writ-large, D.C., Maryland, and Virginia, but also trans-nationally. I wanted to thank Ms. Hennessy for her reference to Centro de los Derechos del Migrantes' [(CDM)] "Picked Apart" report that was actually a collaboration of our clinical program with CDM, which is an organization on which I sit on the board. So, I'm glad to see that that's still getting around. Our work involves individual client direct representation as well as project-based policy advocacy work, including the kind of work that was related to our "Picked Apart" program. We're currently involved in a legislative advocacy effort in Maryland related to that work—related to the crabbing industry—to create stronger protections for recruiters who go into Mexico to recruit for the crabbing industry. So, that's just a little bit—we take a different approach to clinical teaching, and we work on a broader base of issues than just immigration specifically. So, that's a little bit of a background on me and on the clinic.

Tanishka Cruz:

I actually came to Virginia back in 2012, and, in 2014, I learned that the Legal Aid Justice Center was starting up a Special Immigrant Juvenile Project. It was birthed out of the crisis where we had numbers of unaccompanied minor children arriving at the U.S. border, which since 2014, there have been over 150,000 unaccompanied minors from Central America. I started in as

a volunteer attorney on that project and then weaseled my way into a full-time staff position where I led the Special Immigrant Juvenile Project with them working state-wide, taking these cases, and training pro bono attorneys that we needed in the communities to, as Ms. Diaz talked about, getting these predicate orders from juvenile courts throughout the state of Virginia. As time went on, I've shifted roles at LAJC. I am now co-teaching and co-supervising the Immigration Law Clinic, which is run in conjunction with the University of Virginia, and we basically do a lot of asylum cases in that clinic. [I am] now in private practice, also in Charlottesville, because I saw a big need in the community. Working for Legal Aid Justice Center has been so fulfilling, but it was also—whenever you work for a pro bono organization or free legal services there are priorities, and you can't take every case that comes in. It was very difficult in central Virginia, especially in the Charlottesville area, not having very many attorneys—private attorneys—to refer people to. So, that's why I opened up my own shop.

Benos:

Excellent, Excellent. Naureen?

Naureen Hyder:

As Professor Benos said, I am the founder of Hyder Immigration Law here in Richmond. We are a full-service immigration law firm, so we kind of touch on a lot of what you guys heard about today: a little bit of [special immigration juvenile status (SIJS)], a little bit of business immigration, family immigration, removal proceedings. So, we do a little bit of everything. I've been practicing immigration law for a little bit of time, but I started my own practice

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two years ago. So, we've slowly expanded and grown, and we just hired a new attorney and we have a good staff so we really are helping a lot of immigrants in the Richmond area. It was really exciting to hear...

Benos: A student of mine, by the way...

Hyder: Yes, I hired an attorney who was a student of his. But it was great to hear that Tanishka was starting her own practice, because it's wonderful to have good resources in the Virginia area. As you said, Charlottesville is sort of a small community of immigration attorneys. So I kind of bring a different perspective to this panel in the sense that I haven't had any non-profit background. My passion for immigration law kind of was running around the halls of my father's immigration law firm from a very young age. So, I never thought that I would actually end up doing that area of law. But when I graduated I realized that I kind of associated practicing law with helping people, and I guess I only really associated it with immigration law. So, I landed—after commercial real estate, I landed in immigration and I haven't stopped since and it's a really great area to be a part of. My friends that are a lot of attorneys know that I'm very, very passionate about what I do and it's kind of something to be proud of: that being an attorney in this area, in this era of the Administration, and all the changes that we're going through, we really are helping people on a daily basis. So, that's me in a nutshell.

Benos: Excellent.

Ashley Shapiro:

I actually come from the complete opposite side. I'm a criminal defense attorney. I've been a criminal defense attorney for about six years prior to starting my current job. I was up in northern Virginia, where there's very high non-citizen population, and I saw my clients who were already sort of the forgotten of society—the indigent clients, people that were even worse off—and most of my clients were non-citizens that were also indigent and also couldn't afford an attorney. And, in Fairfax, in my particular jurisdiction, we didn't exactly have favorable prosecutors and judges to work with. So I worked with another great organization in D.C. called Capital Area Immigrants' Rights Coalition. They sort of partnered our office to offer us training. I was particularly interested in it, and then after *Padilla* [*v. Kentucky*], actually my agency decided to have a *Padilla*-compliance attorney, which are popping up all over the country. Maryland has a very established attorney up there, so I took the job to combine my two interests, and now I'm not in court anymore, but I'm training all of our public defenders across the state and developing curriculum for all the court-appointed attorneys to make sure they're coming up to their *Padilla* obligations. There's a lot of push back about that in the criminal bar. They think that they're too busy, they don't have time, and it's my job to tell them I don't care. So I do a lot of trainings.

I also do case-specific consultations. So, after the trainings, attorneys will reach out to me and say, "I have a client with these issues, with these charges, what can we do?" And that's everything from trying to get different charges, trying to amend in-

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dictments, particular sentences, or, in this era with undocumented clients, a lot of times just fully advising them to understand what's going to happen once they get to immigration court, how quickly that's going to happen. We're also working on dealing with detainers, which under Obama had been being used unlawfully less and less. The Attorney General had an opinion, I think in 2015, saying that you could not hold someone after their criminal release date, which is what all of the courts have held—the Constitution. That's starting to go by the wayside with increased pressure from [Immigration and Customs Enforcement (ICE)], so we're kind of tracking that, trying to challenge that, and keeping an eye out for how the local government is responding in the new era to ICE demands.

Benos:

Excellent, thank you. What I think you'll hear as we sort of relate some of our experiences today is that we all share some commonalities, and maybe a lot of you do too. And I made a small list before coming. We're deadline driven. I think we live and die by deadlines and that is the nature of immigration law. It's a granular practice. Litigators may have large cases. They might have a large tort action, which consumes days and weeks and months. We have little bits of sand on the beach of hundreds and hundreds of cases, and for most of us that adds a different stress to our day. It adds a different dynamic, but it adds a certain excitement as well. The reason why I decided that I thought it was an area that I wanted to go into rather than just a basic corporate setting is that it's also a very personal practice. I think you'll hear today experiences that reflect that as well. And by luck or happen-

stance, the one thing I think we all share is that immigration law is also at the intersection of really important issues in our society—social issues, public policy, government, the rule of law—for many businesses, and that’s a key blend that defines us.

So, with that little background, let me ask my first question. My first question is: what is the biggest challenge you face on a daily basis practicing immigration law or being in the immigration field, in your chosen profession?

Cori Alonso-Yoder:

I think the biggest challenge—and has become an increasing challenge—is the extremely discretionary nature of the law, of immigration law, and the decisions that are made between individual judges or adjudicators who are making determinations on relief from deportation or eligibility for benefits, to officers who are, on behalf of ICE, enforcing the law and who are they going to be targeting their efforts towards. It makes it difficult to understand when counseling individuals who are going to be most at risk, and it ends up being a risk assessment when you are dealing with millions of people in the U.S. who are living in the United States undocumented. But even those who are in lawful status and are looking to change their status or are looking to remain in the country and move into a different form of protection under the law, because there is such a highly discretionary system, and the nature of the decisions can at times be difficult to challenge, especially if there are determinations made about an individual adjudicator’s assessment of credibility, it can be very difficult to later appeal or to, in any way, challenge that determination later, which makes it quite difficult

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to—even within a set system with laws that's quite elaborate—to let individuals know what they can expect, and it becomes a very kind of personalized-to-your-jurisdiction sort of understanding who are your adjudicators, who are your judges.

But you'll see nationwide that there is wide fluctuations, especially in the immigration courts over the kinds of decisions that are made, what kinds of claims, for asylum particularly, are granted, and that makes it quite difficult to give a sense of certainty when you're advising and we can never talk in terms of absolutes. But definitely when an individual is coming and is trying to get a sense of what their options are, it can be quite difficult when there is such a wide range of possible outcomes or determinations, particularly for people who—in my practice, I have worked with in the last several years with asylum seekers who are seeking protection based on their sexual orientation or transgender identity, and they don't believe that there will be any sort of government protection for them from the beginning. So kind of helping them to understand that process for asylum can be quite daunting, and they may decide they want to remain in the shadows than take the chance that they might denied an opportunity to be safe.

So I think that for me is difficult, and I think that when we are working in the clinic with students—we have 16 students in the immigrant justice clinic—and we're trying to help them understand one of the tasks and the goals of the clinic is to help students deal with uncertainty, because that's what we do as lawyers. And they're not used to doing that, especially not in a law school education where there are certain right an-

swers and wrong answers at times, but helping them to embrace uncertainty and to navigate through uncertainty can be even more challenging when the system itself is so uncertain, and increasingly so with Executive Orders and different priority policy shifts, especially when you're looking at cases that are in a backlog that were filed years and years ago under a different set of circumstances and expectations about what the outcome would look like by the time it came up for adjudication and recognizing that that is totally out the window. It can be difficult to have any sense of stability or finality about these decisions, and it may be a several year process before—it will be several years before an individual finds themselves actually fully outside of the scope of immigration jurisdiction by becoming a U.S. citizen. So every time they go down that next step of the path, they are confronting that uncertainty again and again. So I think that the shifting sands are probably the biggest challenge that we encounter in our practice.

Benos:

Yeah. Shifting sands. That is certainly true, and if you haven't experienced it yet, you will. I know your father experienced it. I have clients who started the green card process in 2004, 2003. It is now 2017. They're still waiting. There are queues, the backlog, so in addition to shifting sands, I would also question the sanity of a system that works this way. And in fairness and full disclosure, I am also Canadian so I started practicing in Canada, so I had a taste of what the Canadian immigration system is, and in 2014, became an element of discussion in the immigration reform context. With the use and modification of things like points-

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based systems, different approaches, but we'll leave that discussion to Tanishka. What about you? What do you face every day? I see the letters RFE, and some other notes...

Cruz:

When I got offered the job at LAJC one of the things the director told me was that every day is going to be different, and I was like, "Yeah, okay, sure." But I mean it really is. Every day is different because of the shifting sands idea. When you have, let's say, a child that starts off at 15 or 16 and has a three-year wait, a three- or four-year wait until they have a green card interview, there can be so many changes, and just things that happen that can just change the course of a case. But I think one of the things I struggle the most with, and what I have a problem with is, to me, the hardest thing is not the person who has a hyper-complicated case that's going to take hours and hours of legal research to figure out. It's the case where I have nothing, there's just no path, and that to me is probably one of the most difficult aspects of it, because you have very narrow avenues that you can go through. I mean when we're talking about the 150,000 unaccompanied minor children who have come in, and we look SIJS, that's only a very narrow path to relief against deportation, because all of those children are likely in deportation, in active proceedings and they aren't afforded the right to an attorney, so they have to somehow get themselves represented. And you have people who will tell you stories about how they've been here for 20 years, and they haven't broken any law, but there's nothing. They have nothing. You either have to have a way, by way of a family re-

lationship or employment or some humanitarian basis to find yourself in some—in the position where you can seek that discretion, and that's difficult. I think that's a really challenging aspect of this practice.

Benos:

Yeah, it is a challenge when you have nothing to offer to a client, and no matter how creative you've been trained to be, it's often a challenge to look them in the face and say, "I'm sorry, you'll have to wait for immigration reform." I've been saying that now for years. We had [19]86, I remember. We had [19]96. We were supposed to have 2006, 2007. Nothing happened, so it gets a little bit worn, and you see people, for example, they have relatives who are in seriously bad health who are in need, and they're stuck here. [Deferred Action for Childhood Arrivals (DACA)] people: we've had several people who can't go back to visit an aging and dying grandparent, in Sicily in one case.

Cruz:

And there's the myth of, "Well, now my child is 21, and they can petition for me." And then we talking—I think it was the professor who may have brought up the unlawful presence bars, and things that happen that are obstacles. Or if you have sibling, if they still are depending on the country. You are still looking at 20 years in some cases before you can actually get somewhere in your case.

Hyder:

I think that's the most common misconception: that there is a line to just get in. "Why can't they just get in line like my ancestors did?" or "Why can't they just stand in line

like the rest of us?" But there is no line. The options for legal immigration to the United States are so incredibly limited. That is a big reason why we have so many undocumented individuals in this country because there aren't that many options to get here legally. I think it was Lakshmi [Challa] that spoke about having—when you go to apply for a visa at the consulate—you have to show ties to your home country, so property ownership, bank accounts, job. Well if you don't have money, you don't have those things, we're limiting the access to come into this country already at the outset for even a visitor visa to only those who have the money to sort of get those visas. Yeah, that is definitely a struggle in the job.

I've been doing it unfortunately for long enough that I'm a little jaded, though. So out of the twelve consultations we have a day, probably half of them we can't do anything for you. But I don't speak Spanish fluently, so I'll have paralegals sit in and interpret with me. When she first started after—because we do free initial consultations for that sole purpose, because there are so many people that come in that we can't help, but I would like to tell them what the options could be and why they don't qualify for them, so that when they go to the guy down the street or to the other attorney that is just starting, they don't waste their money on something that is not available—but my paralegal, after every single one of those appointments looks at me and says, "There's really, nothing? There's nothing you can think of?" And that's just unfortunately the reality of it.

But for me, the biggest struggle, I would say is the changing—constant changing nature, especially in this Administration. I was

on the phone with a client the other day. He called, like, five times, and finally, I said, "Okay, I'm going to finish my appointments. I'm going to call him back." He was terrified, because his mother is permanent resident from Yemen and she was traveling home, and he said something—and this was on Friday at four o'clock. I hadn't looked at my phone; I had appointments; I hadn't looked at the Internet; I hadn't looked at Twitter—and he said, "Something has happened today, and I want to know if she can travel." I said, "Nothing has happened. I don't know. I've been working," and one of my paralegals runs in with her phone and is like, "Something's happened. I just got an alert." So literally that's how quickly things are changing in the sense that with one Executive Order or one policy shift or one speech by somebody in the Administration saying that we're doing something wrong, or that we're dirty immigration attorneys, which I promise we are very clean individuals up here. But there's just constant changing, and that is—as Cori said, we are attorneys that are supposed to help our clients deal with uncertainty, but unfortunately, we ourselves are dealing with uncertainty every day. So it's really challenging to be able to give advice that somebody could rely on when we don't know how strong that advice will hold up in the next 12 hours, not even 24 or 48. So that for me has been a really emotional struggle. And people always ask, "How's practice?" And I feel like I'm always Debbie Downer saying, "I'm exhausted and tired." But it's just unfortunately the reality of it. You guys have gone through many administrations, I've only been practicing with one administration, so for us younger practitioners, I think it's a new era to sort of navigate the waters.

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Benos: Challenges for you?

Shapiro: Practicing in criminal court has been particularly difficult. When I first started, all of us are thinking about how bad Trump is, but people tend to forget Obama was called the "Deporter-in-Chief." So when I first started criminal law, I would have clients all the time on driving without a license, a tiny, tiny traffic offense, where I would have to say, "wink, wink, nudge, nudge, if you come back to court, you're getting deported." And of course, they came back every single time because they wanted to follow the law so badly and they wanted to do the right thing. They don't want to not come court, so they would come to court, they would get arrested, and I would never hear from them again. Then, we saw sort of the bright light of enforcement priorities. Then all of a sudden, there was a way to protect undocumented clients: it was wonderful if I could just get it within this little rubric, I could actually help a client who was undocumented, who has been here 20 years and done everything right, and had a little bit of skirmishes with the law, but nothing too serious.

Cut to now where we are back to a place where there is nothing I can do to help this person. But they'll say, "It's just a vis—," and we're not talking, if someone is convicted of a very serious felony, of course, there are going to be consequences for that. But the vast majority of my clients were people with histories in this country, people who have just made some stupid, either young mistakes or just bad decisions or have substance abuse issues, and we would

have to either run the balance of "don't come back to court," which, of course, we can't legally advise or "this is what is going to happen to you, and oh by the way, that one possession of marijuana is going to trigger mandatory detention." And "Oh, by the way, I know you have me as an attorney now, you don't get one in immigration court. I'm all you have." So there's an added pressure that the vast majority of people don't have attorneys in immigration court, I have to train all my field attorneys to give them the only advice they are probably going to have on "apply for cancellation of removal" to a person who probably doesn't have a ton of education, who's going to have to argue that by themselves in immigration court, if they understood it from what I told my attorneys to tell them.

So it's very frustrating to just to feel so helpless. There's just so little we can do. I mean I think that we've sort of elevated criminal practice in the state, but there's still so little that we can really do to help people, and we're completely at the whims of prosecutors and judges, so it's best that we do to. We know what the consequences are going to be. I've had it go both ways. I've had to ask a court specifically for a 364-day sentence to preserve an asylum claim for my client, and she was not known for her—we'll say lack of prejudice—and she intentionally gave me 365 days. And I've had that happen. I've also had a judge intentionally give my client a bit extra active time to avoid that 365-day sentence. Same court, same bench, different judges, same charge. And one person has no path to relief and one person has all of the availability. And having those struggles and sort of not being able to have the control over

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the situation, aside from kind of holding

their hand and kind of helping, is very frustrating.

Benos:

It is frustrating. And what I'm hearing is shifting sands, lack of options, but I always pride myself on seeing the glass half-full. And so there are gems that come up that are illustrative of how you can help your clients. For example, it hasn't happened often, but a couple of years ago a case came in and it was under the long forgotten 245(i). Does everyone know what 245(i) is? 245(i) was a provision that sunset in 2000. It was a provision that had come up that basically allowed people here who were here unlawfully to pay a fee of a \$1,000, and regularize their status. And so you practice, you have some cases up in the early 2000s, you help them, and then this one came along, and we're now basically helping someone who came from Guatemala become a permanent resident who had long overstayed, and who went through the process, got in line, got in the queue—you're right, there really isn't a line—here he is today and it's coming down now to one finite detail. We have to prove—now think about this, now think about what you have in your attics, what paperwork you can provide—he has to demonstrate that he was physically present in the United States on December 21, 2000, and he has to show by some kind of piece of paper. For us, fortunately, he had kept one stray bank account that showed that he had made a deposit on that date. And at that time, unlikely now where we have a proliferation of online banking, and you just do everything without ever seeing another hu-

man being. You actually had to go to the bank and present yourself to deposit a check, and so that is going to be the saving grace, but in the mode of shifting sands and uncertainty, we are going to have to provide a lot more documentation.

Could each of you maybe share one example where there was an option, where there was something you could do, and maybe it would illustrate some aspect of the law that would be informative to our audience?

Alonso-Yoder:

So I had a positive result just this past week. I met with a client who had been approved for asylum after being in the United States for almost ten years. And if you have any familiarity with asylum law, that's a big hurdle to overcome, because you're supposed to apply within the first year of having arrived to the U.S., so he applied rather late, and we had to make an argument to justify why that was. And those are challenging. The presumption is that you're barred if you don't meet that one-year filing deadline. And he was a pretty vulnerable individual. He had been persecuted in his home country of El Salvador, and had experienced severe mental health repercussions related to persecution, but also probably some pre-existing genetic conditions, including hallucination and feelings that one of his family members, who had been murdered, was actually coming to him and telling him to join him in death—these sorts of terrifying visions. And happily he was able to get mental health support, and his providers were very encouraging of him seeking a legal path to see if there was some way he might be able to remain in the country, because they were fearful for his condi-

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tion if he were to be returned to El Salvador. So we worked on his case. I think it followed me from three different offices for about four years, and it got stuck in the backlog and took time to document the justification for the delay in asylum as well as the asylum merits being met in his claim. Happily, we finally got a decision that was favorable, and he came into my office this week just to talk through what it meant now to have asylum: that he was not yet a U.S. citizen, what were the distinctions, rights, and responsibilities, and he was just tearing up. "I truly am lucky."

We have those opportunities a lot, relatively commonly, maybe drawn out by years, but you can have good results for people, and the tangible benefit of getting some kind of a status, as opposed to getting a check makes a big difference in people's lives to actually see that civil—that sense of civic inclusion, and he just was welling up with tears, and he said, "I finally can be part of my country." He was—just never felt that there was anything for him back in his country of origin, and that he wanted to do everything he could to give back. And he works at a fast food restaurant in D.C., and was talking about how, even when people accuse him of not speaking English, and even when people say things to him about being an immigrant, he forgives them. And he is just so happy to have the opportunity to be in the U.S. So I think that kind of grace and resilience is something that we have the honor of seeing play out a lot, and it was, for me—I usually have a pretty stiff upper lip about these things, at least in the moment, he was making me tear up as well. He was—it was a very important moment in his life, and to be there, and to be so engaged and present and make a difference in

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that way, I think, is incredibly powerful.

Benos:

Cool. Tanishka, how about you?

Cruz:

I think recently, especially with the new Administration, their directives, it has become increasingly important to address the pipeline into the immigration machine. So something as simple as driving without a license in Virginia can lead to very detrimental consequences for folks. So you were talking about—I mean, in Virginia, if you're a non-citizen, you do not have access to a driver's license. And you might be on your way to work, you might be dropping your kids off at school, but if you have a burned out taillight and you get pulled over, you're going to get a driving without a license charge. And that in the aggregate, once you start to rack up more than one can lead to active incarceration. And, although, under Obama, you know you'd go in a weekend for your second offense on driving without a license, you would come out Monday morning and go back to your daily life. But now that's not happening, and ICE is there Monday morning to get the person and put them in Farmville, or one of the other detention facilities.

So to me, there are ways of defending these cases, and we've talked about briefly, people showing up, but in some cases they don't. They just want to get rid of the ticket. They just want to pay and walk away from it and be done with it. But there are defenses, and just a few weeks ago, I went into a jurisdiction that is pretty tough, but before the hearing, I had the person do 50 hours of community service in the community, and we walked in with that to ask—because on

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the ticket it said that it was the fourth offense, I hadn't seen the driving record—but I asked to see it once we got into court, and what I realized was that it wasn't the fourth offense for driving without a license. There were two offenses for driving on a suspended [license], and there were two offenses—so he was actually going on the second driving without a license charge. Had he just gone in there and hoped for the best, he would have been incarcerated, because the prosecutor, or Commonwealth's Attorney also—although, the judge seemed to be leaning towards "Yeah, sure I'm just going to suspend all active incarceration,"—the Commonwealth's Attorney stopped and said, "You know judge, even though, it's only the second one, it's still the fourth. We should—I'm not going to let up on seeking incarceration." But the judge said that this person had done more than most defendants in this situation, and that he had done his community service beforehand, so he was going to take that into account. And although there was a sentence, all of it was suspended. So that to me, stopping somebody from entering that machine, it is something that brings me fulfillment.

Benos:

Absolutely. Some gem of yours?

Hyder:

Yeah, I had a client that had been here since the early [19]80s, and as any of the attorneys in the room know, that when you have a client that has had more than two or three immigration attorneys before you, you say, "Thank you, but no thank you, I'm not going to help you out." Well here I am, as I had just started my practice, barely any phone calls, I was leaving in the middle of

the day to go to the gym, so this individual walks in, he says—and a lot of my dad's previous clients will come to me—so he came to me and said, "I had a case in the [19]80s, it was denied. I've had, like, six attorneys. Your father was one of them, but he passed away, unfortunately, before he could come to a resolution, etc." And I think he got me on the emotional card, so I said, "Okay, fine. Let me review your case." I had time, so I sat down and looked at it. And you know, at this point, I had just started my practice, so I had been practicing for a little while, but the confidence level wasn't as high as kind of it is now. So I said, "I feel like he has a case, I feel like there's an argument I can make here. But how can six attorneys before me not have done it?" Well, because they all had probably thriving practices and they didn't have time to sit down on one case where you're getting paid not a lot and spend five or six hours to get to that research. So, lo and behold, two years later, I argued, won the case, and he came in—he had been here since the [19]80s, and the entire time, he had a path and nobody could have—nobody really realized it or argued it, because it was a teeny-tiny nuance in the law. And he was just so, so happy. He made me cry. He made my receptionist, everybody in the office was—and it was really cool for me, because I was able to continue something that my father had started and wasn't able to finish it. So that story kind of sticks with me, because it was an individual that was, unfortunately, undocumented in this country for some thirty some years, and the entire time he did have a path. There are definitely many positive cases.

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Benos: Excellent, excellent.

Shapiro: I think probably my most important case happens to be my last case as a trial attorney, and it was—I was supervising one of our junior attorneys on a misdemeanor, and it was this kid that we had had in juvenile court, just kind of a troubled kid, but he was nice, just did stupid young male things, and thankfully all of his juvenile offenses were juvenile offenses and weren't triggering any grounds of removal. The case was very much clearly racial profiling, he was a young black male with a group of young black males, the officer was clearly just targeting them, they had done nothing wrong. And, so I got to sort of stand up on my high horse and argue all of these wonderful, fun things for a jury and his family was just devastated that he, who had come here when he was two, was possibly going to get deported to a country he had never even been to, never even seen, his whole family is here now, and thankfully the jury found him not guilty. And, afterwards, the family is crying, we're crying, and everyone is super happy—finally figured out how serious all of this was. But we were able to not even get him into the immigration system at all, by keeping him—and he was truthfully not guilty, he was just racially profiled—but to be able to protect him from that, and knowing the consequences that even if a jury gives him a fine and no jail sentence he could get deported for it. To be able to protect him from that was just an incredibly rewarding, and pretty good last, last case send-off. So, there are happier moments when you can actually avoid those consequences.

Benos:

Excellent. So there is a lesson to be learned. Persistence, leave no stone unturned, and always take a client who has had six lawyers before you. Well let me turn to my last question. And when I ask you, "what do you think of when you think of hot button immigration issues?" You've seen a lot this morning: kind of workers in the H-2[A] program; you think of sanctuary cities perhaps; you think of, if you are a parent, "why does someone get in-state tuition when I live here and, and they shouldn't?"; muslim immigration perhaps with the Executive Orders; a path to citizenship for people who have come here contrary to the rule of law in the eyes of some; prosecutorial discretion and deportation and some of the consequences; you might think border wall; you might think immigration ban; and, certainly, maybe even skilled labors if you're a business person.

It ultimately boils down, however, to one concept, and that is immigration reform, which is something that I think all of us should strive for because it is important. So, that's the genesis of my final question to you, which is what would you most like to see change in our current immigration system? Easy question. I told them that these were all going to be softballs!

Shapiro:

Fix the immigration system: go.

Alonso-Yoder:

I remember it wasn't that long ago that we thought, "Oh, if we could just get the one-year filing deadline for asylum lifted," because that's sort of unique to the U.S. as it relates to refugee law worldwide. But now I

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think the priority for me is just seeing that there is a path moving forward, especially if we are talking about rule of law and who is following the rules, and who is sort of—it gets hard because I think there is a lot of conflict that I feel about the concept of deserving immigrants and who those may be. But when it comes to people who are kind of most integrated, if that's going to be a goalpost for a value that we hold in our immigration system, as well as just not having an arbitrary enforcement of the law and actually thinking through what is in our economic interest, as well as our sort of values and principles as a country—I think creating some sort of permanent and durable solution that includes a path to citizenship for the undocumented youth who especially put their faith in the government to handle their information with discretion and handle their personal information in good faith for me that seems to be the priority at the moment.

Benos:

So to follow up, your view would be DACA, but not [Deferred Action for Parents of Americans (DAPA)]?

Alonso-Yoder:

Well, you said one, but DAPA, I think a lot of that has seemed to have been divided line politically for a lot of people. So to me I think the point is well taken, and the resilience and the courage and just integrity of young people who say, "We are not leaving our parents behind," has been incredibly moving to hear, especially as DACA was really a creation not of government, but of government under pressure from a social justice movement led by individual Dreamers who were not going to sit by and let

their contributions go for naught. I think DAPA is a logical next step, but I think that it could be, even with DACA, too much of a dividing line for the populace at large. However, with DACA having such strong support, I think I'm fortunate to not be in the position of those Dreamers who have to leave their parents potentially behind, and I hope that any path forward for them doesn't include a more punitive effect for their families, but getting those folks integrated and established—I think it's a matter of time before their parents and their other family members follow.

Benos:

I asked that to buy some more time for you, Tanishka, since this is such a complex issue. But, what is your thought? What is your main focus that you would like to see changed?

Cruz:

So, I see a lot of money, or talk of a lot of money going towards things like enforcement and building of walls and increase in customs and border and detention—and in the materials, I threw in some statistics about how representation matters. If you are unrepresented and detained, you have about a three-percent chance of succeeding—I would want to see that people who are detained and facing removal to get access to counsel. And, that might be overreaching, but I mean, if you leave it up to the legal services, the free legal services, there is just no way these organizations have the capacity to do it all. [The Capital Area Immigrants' Rights Coalition (CAIR Coalition)] does a wonderful job here in Virginia, and the Legal Aid Justice Center, and all of these other organizations, but we just can't

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do it alone. So I think funding that goes towards providing representation, particularly to those who are detained and children—I don't understand how a two year old that is in deportation proceedings isn't represented by some sort of counsel, whether that be a guardian ad litem, or something, but you can have a baby be before an immigration judge and have no right to counsel. And that to me is shameful. So, I would like to see that.

Benos:

Agreed. And I think you can agree that the flipside to due process is adequate representation, so absent that, it is a difficult social issue to overcome. And to all of the students who are here, it should motivate you to want to participate in this system, because there is a lot of need and a lot that can be done. What change would you like to see?

Hyder:

So, I think I would agree with Cori, and of course, Tanishka, 100 percent. Seeing a two year old unrepresented—I am a private attorney, so I make money off of this—but it is heartbreaking to see there is children out there. But with general of reform kind of being an unrealistic option, with where we are with our government at this time, I think DACA and some form of providing a path to the young people in our country who were brought here is so, so important. So I would sort of echo your sentiments on that, and I think that is what is on the table and I do think it is a really good step forward. Obviously I would want more, but you can't get everything.

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Benos:

Absolutely.

Shapiro:

It may seem less realistic. I think the main thing would be to start a line. There should be a line. If you want to come to this to this country, there should be a line to get it. It shouldn't be that once you are here, "but I married a U.S. Citizen,"—it doesn't really help. So, I am definitely on the pathway path, but my personal interests would be the separation of the immigration and criminal systems. The separation of the detention system and the vast consequences for minor offenses in the criminal system has had such disparate and far reaching consequences, and its almost entirely based on [the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)] and the 1996 laws—expense-wise, it is just incredibly expensive, violations of due process, just all over the place. They really should be completely separate systems. The immigration system is civil and it is designed to be civil. It doesn't have any of the criminal protections. It doesn't have the right to counsel. They need to be completely separated. Or, it needs to go the complete opposite direction with right to counsel and all of the rights that are given to criminal defendants, including bond motions, attorneys, speedy trial, all of those rights inherent in the criminal system either need to be imparted on the immigration system, which definitely won't happen, or it just needs to be completely separated and the consequences need to be—not to be taken out, obviously the very serious offences it makes perfect sense to have immigration consequences, but the vast criminalization of the minor offences. My personal immigration

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reform would be to separate those systems.

Benos:

Good. As a final word on this topic, I would suggest that maybe there is some benefit to looking beyond our borders. Looking to examples where this issue has come up elsewhere. Migrant labor is not an American problem, I assure you. I have relatives in Europe. They were hiring their migrant workers, except their Latin America was Russia, Belarus, the Ukraine, eastern Europe. Migrant flows is an issue everywhere, and the issues of the conflagrations that come up when ideologies and beliefs clash are an issue. But, I thought it was pretty laudatory in 2014, when immigration reform tried to deal with a balance between border security, empowering the authorities to do what the law said, to some extent, but also balancing a more-sane system for employment-based or family-based situations, looking maybe to a points-based system that is used effectively in Canada to place people in situations. So, that is something that hopefully will come up, hopefully even in this Administration. I think crazier things have happened, and I am still hopeful that immigration reform will be something that will be successful in the next few years.

So, noting that we are within five minutes, I know that we have met the CLE level, because you have to do 50 minutes in an hour in Virginia, I will close by opening the, the floor to any questions that you all may have. Yes, sir.

Question inaudible

Benos:

Great question. With cases taking so long, for those of you who are upstairs, what can a person do or not do? What is the person's

status over all of that time? I will throw it open to all of you.

Cruz:

Depending on the status that they are seeking, they might be eligible for work authorization that is renewable, and with that in some states like Virginia, you can get a driver's license, and that stabilizes your life some. But again, I worry about the situation where something happens in that time where you are in that gray zone that completely shifts the case where you go from losing the employment authorization for something as simple as—you have a young person who gets arrested for something like possession of marijuana. They are in the SIJ category and they are just in a holding pattern. They can be detained once they are an adult and be subjected to mandatory detention for something very minor. So, it's just like Professor Cade was talking about the U visa process, and somebody is applying for a U visa, but it literally takes four or five years before you get it. Some people get the benefit of getting a work authorization in the middle, a lot of people don't. So, although you have something that is likely to be approved four or five years down the road, it doesn't give you the opportunity to get a social security number or a driver's license, or anything. So, it really depends on what you are applying for. And a lot of the things you are applying for don't get you anything until the final result. The adjudica-

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tion can happen many, many years later.

Hyder:

And if you are detained, you remain detained. Those cases are usually put on an expedited docket, but someone who is subject to mandatory detention and is seeking to go up the different chains of the appeals process in their case could be detained for years and they're just in immigration detention at taxpayer expense.

Benos:

We are adjourned. Thank you again to the Symposium. Well done.

