



EQUAL JUSTICE

DREAMERS

BELONG

HERE

#Home
is
HERE



DEFEND
DACA

HOME IS HERE

Yale Law School faculty, alumni,
and students look back at a tumultuous
four years fighting for
a more just immigration system

By Michelle Bauman Fielstra
Illustration by Eri Griffin



They grounded an airplane, reunited children with their families, and led the charge to restore the Deferred Action for Childhood Arrivals program (DACA). When the Trump administration pressed local and state governments to defund sanctuary cities and enforce a public charge rule, a small army of clinic students helped protect some of the most vulnerable members of our society. For the past four years, Yale Law School's faculty and students have been on the front lines of many of the country's biggest immigration law cases, making headlines and changing the lives of clients whose futures hung in the balance.

Led by an intrepid faculty trio of Sol Goldman Clinical Professor Muneer Ahmad, Clinical Associate Professor Marisol Orihuela '08, and William O. Douglas Clinical Professor Michael Wishnie '93, the Worker and Immigrant Rights Advocacy Clinic (WIRAC) has been at the forefront of many high-profile immigration cases in recent years. In 2020, the clinic won a major victory, first at the Supreme Court and then in federal district court, leading to the full restoration of the DACA program. WIRAC also secured two nationwide injunctions over the course of four years, including in the Muslim ban case, and filed several first-in-the-nation, groundbreaking lawsuits, including a suit on behalf of children separated from their parents at the southern border.

At the same time, the San Francisco Affirmative Litigation Project (SFALP), founded and directed by Dean and Sol & Lillian Goldman Professor of Law Heather K. Gerken, helped secure two critical injunctions — one of them nationwide — that protected immigrants through an innovative partnership with the San Francisco City Attorney's Office. The clinic has provided students with a front-row seat to cases with real-world impacts.

Looking back at their time in the trenches, these professors, students, and alumni reflect on the lessons learned along the way and recall the vivid moments and emotions that fueled them through a daunting and unpredictable period.

A WHOLE WORLD RESTORED

On a muggy July afternoon in 2018, Professors Wishnie and Orihuela drove to a Connecticut children's shelter. After filing emergency habeas litigation, they were anxious to meet two of the many children who had been forcibly separated from their parents at the U.S.-Mexico border throughout the previous few months. When they

arrived, despite their best efforts to connect, the 14-year-old girl was almost completely silent; they were told that she barely spoke with the staff of the facility where she was now living. "It was hard to imagine someone separating these children — as small, fragile, and young as they were — from their parents," Hannah Schoen '19 recalled. Orihuela greeted both children in Spanish, and she assisted Professor Wishnie in striking up a conversation about soccer with the younger child, a small 9-year-old boy. "As I turned to go home and see my family for dinner, I was aware that he could not leave that space, and he could not have dinner with his family, because my government had decided otherwise," Wishnie said.

Three years ago, Americans watched in horror as immigration agents began forcibly separating children, including infants, from their parents who had been detained at the southern border. News outlets showed photographs of sobbing toddlers holding the hands of uniformed agents and groups of children in cages, where they were held for weeks before being shipped to various Health and Human Services facilities across the country.

The clinic's clients, 9-year-old J.S.R. and 14-year-old V.F.B., whose identities are protected, were transported to a facility in Connecticut after being taken away from their respective parents in Texas. When WIRAC heard that there were children being detained in Connecticut, its team members sprang into action, partnering with Connecticut Legal Services to file a federal lawsuit on behalf of the children on July 2, 2018, demanding the children's reunification with their families and reparation for the trauma inflicted on them.

Orihuela recalled the passion that clinic members brought to the case. "Our students responded to children being separated from their parents with urgency and tenacity befitting the horror of the



Professor Muneer Ahmad (at the podium) during a press conference in July 2018 about the child separation cases.

government's actions," she said. "As a new parent and an immigrant to the U.S., it guts me to imagine the fear that these parents must have felt. I'm both heartened and unsurprised that our students rose to the occasion to reunite our clients with their families."

Aseem Mehta '20 was one of the clinic members working on the case. "The case was among my first experiences participating in the 'crisis lawyering' that marked WIRAC's response to the Trump years," he said. "I was inspired by the determination and commitment that so many folks — social workers, clergy, organizers, medical professionals, lawyers — collaboratively deployed with such speed and purpose."

Wishnie recalled, "In the child separation [crisis], there was already a case pending, a class action on behalf of parents, and so one might have said, 'What more can be done?' By being open to trying things that hadn't been tried before, despite the uncertainty and the risk, it turned out there was something to be done."

In fact, the clinic came up with the concept of bringing a suit — a disability rights claim — on behalf of the children instead, the first of its kind in the nation. Ahmad explained that the evidentiary centerpiece of the case was a child psychiatrist's testimony about the trauma that an abrupt and prolonged parental separation inflicts on children.

Ahmad was in the room with the 9-year-old boy when he was reunited with his father in July. Ahmad, himself a father of a young son, recalled that day with a lump in his throat: "The trauma of their separation was completely unimaginable to me. But I felt privileged to be there, too. In that moment, there was no mistake about what the case was about." Wishnie added, "Reuniting one parent with

one child is a world. It's a whole world that's restored. I wish we could have done it even faster than we did, but I'm so glad that neither child had to spend even one more day apart from their parent."

A SMALL BUT MIGHTY ARMY

President Donald Trump's first executive order in January 2017 enacted his campaign-promised attack on sanctuary cities. Executive Order 13768 sought to punish cities that did not deport undocumented immigrants, stating that sanctuary jurisdictions were no longer eligible to receive federal grants.

Christine Kwon '17, who was a student in the San Francisco Affirmative Litigation Project (SFALP) clinic and later served as its fellow, recalled being prepared for whatever might happen. She said, "I knew that the advent of a presidential administration with a clear agenda to target immigrants would demand urgent response; I didn't expect to be in court before the end of the month. But we filed suit within a week."

SFALP clinic students work directly with the San Francisco City Attorney's Office to conceive, develop, and litigate some of the most innovative public interest lawsuits in the country — lawsuits that tackle problems with local dimensions but national implications.

Emma Sokoloff-Rubin '18, the current San Francisco Affirmative Litigation Project Fellow, described the impressive scope of the clinic: "Working on the sanctuary cities cases as a student, and then helping to oversee SFALP students' work on these and other immigration cases as Fellow, has given me a window into San Francisco's ability to leverage its unique position as a city and a county to protect its citizens and effect real change."

Professor Michael Wishnie:

"SITTING IN THE ARGUMENT AT THE SUPREME COURT, IT FELT SO GRAY AND DRY IN THERE . . . THEN, TO STEP OUTSIDE AND SEE ALL OF THESE YOUNG PEOPLE, WITH COLORFUL LANGUAGE AND COLORFUL SIGNS AND MUSIC, IT FELT ALMOST LIKE I'D STEPPED OUT OF A BLACK-AND-WHITE MOVIE INTO A TECHNICOLOR WORLD."

Members of the San Francisco Affirmative Litigation Project in 2019: Fellow Emma Sokoloff-Rubin '18 and students Shannon Manley '20, Melissa Fich '21, and Duncan Hosie '21





My Khanh Ngo '17 (above) and Worker & Immigrant Rights Advocacy Clinic members working on the Muslim ban case in 2017.

The clinic’s case with the City Attorney’s Office was the first in the nation to challenge the federal executive order, and its lawsuit alleged that the order violated the Tenth Amendment of the United States Constitution. In April, only three months after filing, the clinic secured a temporary nationwide injunction that was ultimately made permanent on November 20, 2017. Kwon recalled her joy and surprise when she heard of their early victory: “To win a preliminary injunction on a nationwide basis and immediately stop this unconstitutional order in its tracks seemed unimaginable.”

In 2019, when the U.S. Department of Homeland Security announced a new rule that would radically expand the reasons someone can be deemed a “public charge” and thus be denied entry into the U.S. or refused adjustment of their immigration status, SFALP was ready again. The City Attorney’s Office foresaw that the rule would have created a wealth test that prevented working-class immigrants from accessing the American Dream, and they rushed to offer a legal challenge.

SFALP secured a crucial injunction on December 2, 2020. The victory ensured that immigrants in California and many other states who use assistance programs like non-emergency Medicaid and food stamps cannot be denied entry or green cards by the federal government.

“When I started this clinic over a decade ago, I couldn’t have imagined that our students would be winning cases that have such a profound impact nationwide,” said Gerken. “They are a small but mighty army. Winning two injunctions, ensuring that justice prevailed for vulnerable communities in our country — I’m in awe of what our students have accomplished.”

FIGHTING TOOTH AND NAIL TO KEEP PEOPLE IN THE COUNTRY

Late one Friday night in January 2017 during President Trump’s first week in office, Professor Wishnie received an urgent call from two former students. Becca Heller ’10 of the International Refugee Assistance Project (IRAP) and Justin Cox ’08 of the National

Immigration Law Center (NILC) told Wishnie that two Iraqi clients, Mr. Darweesh and Mr. Alshawi, had been detained at John F. Kennedy International Airport, pursuant to Trump’s hours-old Executive Order 13769. Both detainees had been given refugee status because of their and their families’ service to the U.S. military in Iraq.

The executive order, known as the Muslim ban, imposed a 120-day moratorium on — and drastically cut the annual cap for — the United States’ refugee resettlement program; blocked entry of people from the Muslim-majority countries of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for at least 90 days, regardless of visa or green card status; and barred Syrian refugees from the U.S. indefinitely.

Over that weekend, Professors Wishnie, Ahmad, and visiting professor Elora Mukherjee ’05, along with WIRAC students, fellows, and their co-counsel, waged an all-hours battle of legal wits and determination in which they ultimately secured a nationwide injunction, the first in the country.

Working through the night on that Friday, the team first wrote a habeas petition and a motion for class certification. They filed at 5:30 a.m. Saturday, just before planes were scheduled to start departing from JFK and other East Coast airports. At noon, WIRAC received word that the government had released Mr. Darweesh, but Mr. Alshawi remained detained. The team then set to work on a motion for a temporary restraining order or other emergency relief. While one group of students worked on the motion, another rallied media attention, and a third created templates based on their successful habeas petition and began emailing them to the many lawyers rushing to volunteer at airports around the country. The team filed their motion around 4 p.m. and called the Brooklyn courthouse to request an emergency hearing, which the duty judge granted and scheduled for 7 p.m. that evening.

My Khanh Ngo ’17 said she will always remember working on the case that weekend, “surrounded by my classmates and clinical professors in the basement of our clinic building — fielding calls from lawyers and volunteers around the country, holding our collective

WIRAC members photos by Harold Shapiro

Dean Heather K. Gerken:

“THEY TRULY ARE A SMALL BUT MIGHTY ARMY. WINNING TWO INJUNCTIONS, ENSURING THAT JUSTICE PREVAILED FOR VULNERABLE COMMUNITIES IN OUR COUNTRY — I’M IN AWE OF WHAT OUR STUDENTS HAVE ACCOMPLISHED.”

breath as we waited for news from the Brooklyn courthouse.” When they received the news that the judge had not only granted the stay, but had concluded the plaintiffs were likely to succeed on their motion to certify a nationwide class, and therefore directed that the emergency stay would apply to the whole country, Ngo recalls feeling the weight of that moment. “That was the first time I felt part of a collective who was able to effectively mobilize on a national scale and push back against xenophobia embodied in government action,” she said.

“While there was enormous elation when we won,” Professor Ahmad recalled, “we were receiving calls late into the evening on Saturday night from people who were still being subjected to the ban. We had indisputably won, and yet we were tooth-and-nail fighting to keep people in the country.” The WIRAC team frantically texted a photograph of the court order to the lawyers at JFK and other airports, and they called U.S. Customs and Border Patrol agents around the country. When they heard that a Fulbright Scholar had already been put on a plane back to Iran, they called JFK’s air traffic control and had the plane pulled from the tarmac. “Those few hours dramatized the gap between law in paper and law in action,” Ahmad said, “and it was completely a law-in-action kind of moment.” Ngo emphasized, “Our case was a reflection on the entire community, not just the clinic — the policy lost in the eyes of the public and history.”

THE ONGOING FIGHT FOR DREAMERS

The fall semester was just beginning in 2017 when the alarming news broke that the Trump administration was rescinding the Deferred Action for Childhood Arrivals (DACA) program. WIRAC responded within hours, converting a lawsuit it had previously filed on behalf

of 26-year-old New Yorker and DACA recipient Martín Batalla Vidal and the immigrants’ rights organization Make the Road New York (MRNY) in the U.S. District Court for the Eastern District of New York into the first challenge to DACA’s termination.

Hannah Schoen recalled that in the ensuing months, the plaintiffs and the nation’s 700,000 Dreamers were always on her mind, whether she was writing, researching, or arguing in front of the Second Circuit. “It was not lost on me how many people depended on DACA to be able to continue their lives here in the United States — to remain in their homes, with their families, and with the educational and employment opportunities that they had worked so hard for,” she said.

One DACA recipient affected by that September 5, 2017, order was future Yale Law School student Armando Ghinaglia Soccoro ’14 BA, ’18 MDIV, ’21 JD, a Yale College graduate who was nearing the completion of his degree at Yale Divinity School and who was applying to law school. Ghinaglia, who moved to Texas from Venezuela as a baby, had become familiar with WIRAC through its representation of Connecticut Students for a Dream, an immigrant youth advocacy organization that he joined in his sophomore year at Yale College. Ghinaglia recalled, “I valued the grit, determination, and care for undocumented people that the WIRAC students showed.” He hoped to walk in their footsteps one day.

In February 2018, WIRAC and MRNY achieved a major victory when a federal district court in New York granted the plaintiffs’ motion for a nationwide preliminary injunction, the second to enjoin the rescission of DACA.

Emily Villano ’19 described what it was like to be a student involved in the DACA litigation at that time: “It moved at an incredible pace. I was able to stand up in federal court on behalf of my clients.

(near right) Emily Villano ’19 speaking at a press conference for the DACA case. (far right) Hannah Schoen ’19 argued before the Second Circuit in *Batalla Vidal v. Trump* on January 25, 2019.



Professor Muneer Ahmad:

“THOSE FEW HOURS DRAMATIZED THE GAP BETWEEN LAW IN PAPER AND LAW IN ACTION, AND IT WAS COMPLETELY A LAW-IN-ACTION KIND OF MOMENT.”



The rally outside the Supreme Court during arguments for the DACA case in November 2019.

Despite being one of the most inexperienced members of the team, I was given the chance to help shape the litigation.”

Wishnie and Ahmad emphasized that much of the clinic’s work on the DACA case was simply putting one foot in front of the other and taking innovative risks, sometimes pursuing theories that other lawyers had hesitated to follow. Wishnie said, “I hope that our students take away a sense that even in the face of overwhelming adversity, there’s something to be done.” This belief, Wishnie added, gave them the hope they needed to continue through each step of the case over more than three years.

In January 2019, the Second Circuit heard the government’s appeal. Before a packed courtroom and with C-SPAN cameras granting rare permission to broadcast the argument live, Schoen rose to speak at the podium with her classmates watching back on campus. “Arguing the Second Circuit appeal was incredible. It was an opportunity I had hoped to have at some point in my career.

Having that opportunity as a law student was completely surreal,” Schoen said.

In the summer of 2019, WIRAC received word that the Supreme Court had granted cert in the various cases without waiting for the Second Circuit to rule. “Suddenly, everything exploded,” Ghinaglia, who by this time had joined WIRAC’s ranks as a 1L, remembered. “We were trying to figure out: How do you work with a hundred other lawyers on a Supreme Court case?” Clinic students also spent a lot of time meeting regularly with their clients in New York. “We wanted to make sure their voices were heard,” he said.

The Supreme Court heard the case on November 12, 2019. Supporters, including WIRAC’s team, lined up at 4 a.m. to get seats in the packed courtroom. Thousands more rallied outside of the building, holding up brightly colored signs with messages including “Defend DACA,” “Home is Here,” and “Immigrants Make America Great.”



Students and faculty from the Worker and Immigrant Rights Advocacy Clinic (WIRAC) attended the DACA arguments at the U.S. Supreme Court: (left to right) Professor Michael Wishnie '93, Professor Marisol Orihuela '08, Armando Ghinaglia Socorro '21, Professor Muneer Ahmad, Laura Kokotailo '20, Edgar Melgar '21, Camila Bustos '21, and Ramis Wadood '21.

Ahmad remembered that day as his strongest emotional memory of the entire case. “When the argument ended, the doors were thrown open, and a group of the plaintiffs and their advocates walked out of the Supreme Court down the grand ceremonial staircase, where there were thousands of people outside waiting. And the applause that went up at that moment was so extraordinary.”

Wishnie was struck by the cinematic quality of that day, “Sitting in the argument at the Supreme Court, it felt so gray and dry in there,” he said. “The questions were about the technicalities of the Administrative Procedure Act; they were not about the actual human stakes and the actual human beings who were at issue in the case. Then, to step outside and see all of these young people, with colorful language and colorful signs and music, it felt almost like I’d stepped out of a black-and-white movie into a Technicolor world.”

In June 2020, the Supreme Court announced its 5-4 decision in favor of the plaintiffs, ordering the full reinstatement of DACA — a momentous victory for the clinic. But by July, the Trump administration had issued a new memorandum that gutted the program and denied all new or pending applications.

WIRAC and its co-counsel and plaintiffs swiftly returned to court, and the team decided that Ghinaglia should argue for them in their August 2020 promotion conference in front of the federal court judge. Ghinaglia recalled, “It was a really wonderful opportunity to be able to stand up and say, ‘Look, I have benefited from this program. I know what this program means to so many people.’”

In November 2020, Judge Nicholas Garaufis made a monumental ruling, ordering the full restoration of the DACA program in a decision that was entered on December 4. The WIRAC team and immigrants’ rights organizations all over the country celebrated this landmark achievement.

But while the win was a major step forward, Ahmad reiterated that the fight for DACA will remain a rollercoaster until the U.S. enacts legislation to protect Dreamers. “Every time we have won, we have let out a sigh of relief and then had a deep intake of breath

about what comes next,” Ahmad said, “because unless and until there is a legislative solution that permanently secures the status of undocumented immigrant youth, there is persistent vulnerability.”

LESSONS IN CRISIS LAWYERING

For those working closely on these challenging, rapid-fire cases, there are several lasting impressions that emerged. One: no matter how difficult the path forward seems, there is always something to be done — and it often means getting creative. None of the clinics’ recent successes would have been possible without thinking outside the box.

Two: in moments of crisis, there can be a wide gap between “law in paper” and “law in action,” and the clinics often stand in that gap, innovating and working at all hours until they have ensured that their clients are safe. Students hone their critical thinking skills during such moments of crisis lawyering.

“Our clinical program prepares our students not just to practice, but to problem-solve; not just to litigate, but to lead,” said Gerken. “Students feel what it’s like to be the only lawyer someone has. Students also learn to serve.”

In collaborating with so many stakeholders to serve vulnerable clients, students learn perhaps the most important lesson: people are the center of it all. From the bonds these law students share with their clients, to the long-lasting connections among professors, current students, and alumni, to the lifetime friendships forged among classmates during late nights in the LSO basement, relationships are the spark that makes all of these inspirational outcomes possible. Wishnie emphasized, “I drew strength, and I think the students did, too, from those human relationships.”

This lesson rang true for many, including Villano, who commented, “WIRAC taught me how to care for my teammates, how to center the experiences of my clients, and how to throw myself into the breach. I’m extraordinarily grateful to have been part of something that I believe matters to so many people.” 🍷