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The Helena Vigilante

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THE DARK HORSE

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0 COMMENT

LOCAL IMMIGRATION ATTORNEY SHAHID HAQUE-HAUSRATH ON HIS RECENT LR-121 VICTORY, MONTANA PROGRESSIVES AND WHY HE DOES WHAT HE DOES...

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Helena's Shahid Haque-Hausrath is an immigration attorney who has helped his clients avoid deportation, sued the Montana Highway Patrol for discriminatory practices and now defeated the state in a lawsuit against LR-121, a legislative initiative that sought to deny any and all state benefits to undocumented immigrants, but which Haque-Hausrath argued could only really lead to racial profiling by state employees. The Vigilante recently caught up with Haque-Hausrath a couple hours before he had to catch a plane to Salt Lake City to go defend a client against a pending deportation.

Vigilante: You're pretty young to own your own law firm. How old are you?

Haque-Hausrath: I'm 35 years old and I started the Border Crossing Law Firm in 2008, when I was 29 years old.

Like a lot of people around Montana, you're a transplant. Where'd you grow up?

My dad initially came to the U.S. from Pakistan to be a doctor in under-served rural communities. I was born in Augusta, Georgia. We lived there for a few years before moving to southern Illinois. When I was around seven years old, we moved to southern Indiana.

What about college/law school?

I went to college at the University of Southern Indiana, which is a pretty small school. I studied Business and Sociology as a double major, but wasn't particularly engaged and didn't get very good grades. Somehow, I managed to get into law school anyway, and went to the Chicago-Kent College of Law, which is in downtown Chicago.

For the first time, I found myself actually interested and engaged in what I was learning. I wound up getting straight A's and was ranked first in my class during that first year. I was on the school's law review, which is where I met my wife Katherine. During my last two years in law school, I participated in an externship program with the National Immigrant Justice Center.

They had such a demand for assistance that law students could directly represent asylum seekers with very little oversight. I ended up winning asylum for four refugees over that two-year period. I graduated from law school with high honors in 2005.

What was your first job as an attorney?

"I try to explain how (people who vilify immigrants) should put themselves in the shoes of the immigrants that they are vilifying and try to think about what they would do if they needed to provide for their own families and what steps they would take, what lengths they would go to."
— Haque-Hausrath

Like most law schools, my school had a competitive interview process to work for large firms. I scored a job at Jenner & Block, which is a large law firm in Chicago with more than 400 attorneys. I worked on all sorts of complex litigation, including civil RICO law and defending class action litigation. I also continued by pro bono representation, and won asylum for three more refugees.

That sounds lucrative. Why'd you quit?

I was definitely making the most money I ever will in my career, and it was a good way to pay off student loan debt, but it wasn't what I wanted to do for the long term. My wife, Katherine, had grown up in Boise and had gone to college at the University of Montana. We hatched the idea of moving to Montana, where we could settle down, buy a house, and start a family. It was a big move, but for some reason we were totally confident that it was the right step for us. Turns out that we were right, and we've never looked back. We love it in Helena. We bought a house built in 1874, and we have two kids who were born here — Desmond is three years old, and Coretta is a little over one year old.

What prompted you to start an immigration law firm in Helena?

By that point I had already won asylum for about eight refugees, and I found that work to be really rewarding. All of my clients had extremely compelling reasons to fear returning to their home countries, but it's very difficult to win asylum. Some of those hearings were contentious, and I recognized that I played an important role in making sure that my clients got a fair hearing and that their stories were told. I wanted to continue the work of helping immigrants stay in the U.S.

My parents were immigrants, and my own experiences helped me understand the profound impact of immigration on a person's life. I was at a point in my life where I was sick of representing big corporations, and instead of just doing my pro bono asylum cases, I wanted to spend my entire career helping unite families so they can enjoy what our country has to offer. I decided to quit my job and open my own law firm.

In retrospect, that seems like a rather large risk, but at the time I was completely confident that it was the right thing to do, and it really was. I've been doing this for about six years, and I can't imagine doing anything else.

You also started a nonprofit, Montana Immigration Justice Alliance. When was that and why did you think it was important?

I incorporated my non-profit pretty early on, but it really picked up and became more active in 2011. I recognized that we live in a state with pretty broad anti-immigrant sentiment, and I can't change things over the long term through direct legal representation of immigrants. I started testifying against anti-immigrant bills in the 2009 legislative session and have continued that work.

I also recognized that until we can break through false myths and misinformation, we can never really make progress on this issue. I started presenting at libraries and other locations around the state to try and educate the public about how our immigration system really works. But most importantly, I recognized that immigrants in the state are very isolated, and one of the major goals of MIJA is to provide direct services to immigrant communities to empower them.

Over the years, I came into contact with other like-minded people who were working on immigrant rights issues, and they ultimately became the board members of MIJA. We are still an all-volunteer organization, which means no one (myself included) gets paid a salary for our work. But we've been lucky to get funding to be able to pursue our goals, which includes litigation when it is necessary to advocate for our communities.

Speaking of litigation.... You fight and prevent deportations, you've sued Montana Highway Patrol for allegedly profiling suspected immigrants, and you recently sued the state to stop immigration initiative LR-121—which 80 percent of Montana voters supported—so I'm thinking there are probably some people out there who are thinking, “Who the hell does this guy think he is?” So tell us what you're about.

I view my role as advocating for a pretty marginalized and disenfranchised group of people. Immigrants living in Montana are readily identifiable in a state where they stand out—they may look different and sound different—and over the years I've seen a lot of violations of their rights. Most of the time, they don't stand up for their rights, they don't push back, they don't go to court ... and what I've chosen to do with my career is pretty much represent that group of people and advocate for them to try to give them some kind of voice.

So even though it may seem like there are very few immigrants in the state of Montana and some people might think that I am in the news disproportionately to the amount of immigrants we have in the state, I don't actually view it that way. I think for every right that I am suing to vindicate, or for every deportation I am trying to stop, there are so many more people who didn't have access to representation or didn't have an advocate and were wrongly deported or wrongly arrested by the Montana Highway Patrol.

Do you know how many clients you have?

Since moving here, I've come to represent over a thousand immigrants in the state of Montana and I've also come into contact through my nonprofit group and the advocacy I do providing free legal consultations to immigrants—I do at least two a year of all-day, free legal consultations—I've collected stories from at least 2,000 more immigrants in the state.

So, in a state like Montana, there are substantially more immigrants than that, but I think that I am one of the people with the most insight into immigrants in the state of Montana. I represent people in cities all throughout the state, in little cities in eastern Montana like Culbertson or Sidney and then the northwestern part of the state as well and certainly plenty of people in Billings and Helena and Bozeman. There are immigrants all throughout the state and in different parts of the state they encounter different difficulties or dynamics and I've come to understand those issues pretty well.

So the immigration situation in Montana is not the way people perceive it?

A lot of people assume that the population in Montana is primarily Mexican. And a large percentage is. A large percentage is Canadian. But then there is just the whole gamut of people from pretty much every single country in the world. People are always surprised to hear that there are people from Ghana and from Kazakhstan here but there are I know other people from their country and they're surprised.

Sometimes without revealing confidentiality, I can put them in contact with one another and provide some comfort for them to talk to another person. Because it can be kind of isolating in Montana. That's one of the things I hear the most ... and that's one thing that my nonprofit tries to do is create a sense of community for immigrants—primarily Latino immigrants—and hold social events and dances and things that have nothing to do with lawsuits and nothing to do with immigration status. It's just about building a sense of community.

You probably have a good perspective on this: what are the main things that bring immigrants to Montana?

One of the biggest things I hear is just that same reason a lot of people move to Montana: because it's a beautiful place to live with wide open spaces and a quiet and safe place to raise your children. I think that's a big part of it for a lot of people. Another part of it is just to pursue opportunities. But there are just as many stories for why people come here as there are for why anybody else comes here. It's different for everybody but Montana is a great place to live.

You shared with me some emails and a phone call you received after winning the LR-121 lawsuit—after the story hit the New York Times, USA Today—and a lot of those people are aggressive and seem to to be grossly oversimplifying it. If you actually look at the case, it's clearly more technical and nuanced than they want to paint it. So could you walk us through what you saw as the technical faults of LR-121?

Sure. There are certainly people who want to look at this in terms of black and white—as in, you’re either for undocumented immigration or you want to stop it— and the Montana Legislature was looking at it in those terms as well. They were deliberately ignoring the complexities of federal immigration law.

When you say “deliberately ignoring,” what do you mean by that?

In the course of testimony in front of these committees, there were plenty of people who pointed out some of these problems with the law ahead of time. Since 2009 at least, I’ve been testifying in front of the legislature about these bills that would bring the state into enforcing federal immigration law.

A lot of these bills died in committee or were vetoed by the governor, but at no point did I ever think that the legislature was listening to what I was saying about these specific problems with the bills and actually trying to correct them or trying to pass something that would withstand scrutiny as a matter of federal pre-emption. That’s why I say they willfully ignore these issues. I’ve testified and critiqued bills before where I was laying out specific legal problems with these bills that could be corrected.

Now, I always opposed these bills altogether as a whole, but I also pointed out specific problems with them. That was the case with LR-121. I opposed it for moral reasons. I think it’s wrong and taking the wrong course of action in trying to deny basic state services that the state shouldn’t be trying to regulate based on immigration status, like infant hearing screenings or crime victim services, but in addition to that, there were specific legal problems with the bill and those were the crux of the lawsuit.

One of the things was that the state of Montana made the mistake of trying to make its own independent determination of somebody’s immigration status and that’s something the federal government doesn’t allow states to do.

What does that look like in practice?

Under the federal immigration scheme, there are specific benefits that are restricted to undocumented immigrants or even certain immigrants who are legally here. You have to meet certain criteria to get certain benefits. They devised a federal database so that you could screen for those but the purpose of that database was solely to determine whether you are eligible or not eligible for specific benefits. That database isn't a database that determines if you are unlawfully present in the U.S. or that you are an "illegal alien."

So someone goes in to get their baby a hearing screening and the people who are giving the screening would then try to access that database and say you are either eligible or ineligible—is that correct?

Yeah. For instance, Medicaid, certain there services, those are screened to determine whether you are a "qualified alien"—under the federal terminology, they call it a qualified alien—and if you are a qualified alien, that means you meet certain criteria and you're eligible to get the benefit. If you're not, then the database would say you're not eligible or appears you're not eligible, you would be denied the benefit.

But that certainly doesn't mean that you're now an "illegal alien." There could be all kinds of reasons why you're not eligible for that benefit, but you're not an illegal alien either. What the state was trying to do with LR-121 was ignore those complexities. They would just say, "Well, illegal aliens don't get state services, and to determine if you're an illegal alien we're going to run you through this database. "

Early on, Judge Sherlock recognized that database wasn't the right database to be using. It doesn't determine that. That part was quite clear. In the preliminary injunction decision, he stopped the state from using that database. So the state was left in this predicament where they didn't have any other means to make the determination except to have state employees pour through the documents and decide for themselves what you're immigration status is.

So state employees would literally be sitting there trying to determine your status?

Right. First of all, state employees don't have the training. But second of all, they're just not authorized to do that under federal law. Under the federal system, it's officials within the Department of Homeland Security who make a determination whether or not they think you're here legally. But, even then, they have to charge you with being deportable from the United States and then you have the right to see an immigration judge typically. Then the immigration judges will review the facts and make their determination you're subject to deportation, so it really steps on the federal scheme to have some state employee deciding for themselves where you stand. And it is very clear why you can't do that.

Take the situation of Audemio Orozco-Ramirez, my client who was sexually assaulted in Jefferson County Detention Center. He was the victim of sexual assault while subject to a final order of deportation. That's why he was in detention to begin with. So he had illegally entered the country many years ago. He had been deported. He illegally re-entered the country and was subject to re-instatement of this same order of removal. He didn't have a right to see a judge. After the sexual assault, we were able to secure his release from detention and he was able to get a work authorization card while he awaited the next steps with what's going to happen while he seeks justice.... He has the work authorization card, so as far as the State of Montana would be concerned if they are trying to make their own determination, is he an illegal alien? He's subject to a final order of deportation, yet the federal government released him and gave him a work authorization card.

It might be too complicated a question for untrained people whose jobs are otherwise.

Those were really the issues at play in this lawsuit, why the state of Montana through passing LR-121 they were conflicting with federal law and also trying to regulate immigration by classifying people based on their own terminology. They made up their own term: illegal alien, which is not a term under federal laws.

You categorize yourself as a progressive but you also seem to have this tendency to run afoul of other progressives in the community. Not in bad

ways. But even among people in your own cohort you seem to be something of a dark horse. Why is that?

I guess I don't like seeing hypocrisy no matter where it's coming from and I see politicians on all sides being disingenuous, acting in their own political interests only to change their tune down the road when it now appears more politically advantageous. I see nonprofits on the progressive side advocating for candidates for office when it may be in their financial interest to do so but it's not in line with what their values are supposed to be. So I just think that we're never going to get anywhere, we're never going to make any progress in the progressive movement if we allow those types of things to go unchecked.

It seems like it upsets people whenever the message machine gets interrupted by someone who is supposedly on their own side.

There's a lot of cognitive dissonance that people have a hard time dealing with. For instance, when Jon Tester voted against the DREAM Act and Max Baucus did, too. The DREAM Act was something that I think most Democrats in Montana and most progressives supported and yet their candidates were two of only four or so Democrats in the entire country who voted against it. At that point, I took the unpopular position of trying to hold them accountable for that or raise awareness of that so progressives and Democrats could complain and ask them to change their views, but instead ... the answer was just, "He's better than the opponent." That kind of thinking just gets you stuck in a rut. You never move forward. So one of my long-term goals would be to actually bring the issue of immigrant justice or immigrant rights to the forefront so they're eventually a staple of Democratic politics the way that a lot of other issues are.

But it is in some states. Why do you think it isn't in Montana?

Well, I think that a lot of politicians in Montana just make this kind of pessimistic calculation that they're better off leaving the issue of immigration alone or even actively voting against it, because there are more Montanans who oppose it than support it. Democrats who support immigrant rights are more likely to let it slide

that you voted against their principles and republicans are more likely to be mobilized against you if you take an unpopular position. So I think that that's their basic calculation. In a state like Montana, we don't have the sheer number of immigrants to overcome that dynamic, but that's part of the reason why I filed these lawsuits. It basically sends a message that immigrants will stand up for their rights and we will access the legal system when we need to vindicate their rights and we aren't just going to sit back and let the will of the majority subjugate the rights of the minority.

You keep hearing that 80 percent of Montana voters voted for LR-121. And now it's been overturned and some people are a bit critical. They're like, "Hey, if 80 percent of Montana voters want this thing, who are you to try to change that?" That's a fact I didn't try to hide from. In fact, I put it right in the press release that that was the number. And I'm actually proud of that fact because it basically sends a message that 80 percent of Montanans don't get to violate the law and bring the state into racially profiling the minority. That's how LR-121 would have worked in practice. Even though it's supposedly applied to all Montanans, in practice it became pretty clear early on that state agencies had no intention of screening every single person to prove their citizenship. Rather, what they were looking for was this more nebulous test of allowing the law to be implemented when they wanted it to be and not applying it when they didn't want to.

So when people came in for those infant hearing screenings, state employees would look at them and decide: is it possible this person is an undocumented immigrant?

Absolutely. Things like infant hearing screenings are especially ridiculous and hateful just because, if you're getting an infant hearing screening, it's typically done the day after you're born. What are the odds you're in the state of Montana and you weren't born here? And, if you're born here, you're a U.S. citizen. So things like that I think were just designed to discriminate against (people). Say, when there are two parents of a child who are obviously immigrants, they might even maybe appear like day laborers, those would be the types of people who are getting harassed and asked to show documents. But their child is a U.S. citizen just like everybody else. Really,

are we saying that a basic hearing test shouldn't be given to an infant child? I mean, are those really our values?

These lawsuits of yours that have gotten a lot of public notice and been in the media, that's only a small portion of what you do. So how does your time shake out?

A lot of the more high-profile advocacy or litigation I've been doing really is not how I earn my living, it's not part of my day job. I do those types of things—like my lawsuit against the Highway Patrol, my advocacy for Audemio's sexual assault, the lawsuit against LR-121—those are all done on a pro bono basis and I don't get any fees for that type of work but it's becoming a larger and larger portion of my practice just because these things keep landing on my desk and I have to do something with them.

Why do you feel like you have to?

It's basically that if I don't do it no one will. What the LR-121 lawsuit, I think that it was necessary for the Montana Immigrant Justice Alliance to step forward and be the plaintiff in that lawsuit. It was an unconstitutional law. It was unconstitutional the minute the legislature put it on the ballot, but 80 percent of Montanans voted for it, it was enacted and we were the ones who challenged it. If we hadn't challenged it, the law would just be standing on the books right now and state agencies would have had to implemented them, people would have been wasting their time and resources in sorting through immigration documents.

So I think it just had to be done. Somebody had to do it and I think that's the way a lot of these work. The Montana Highway Patrol systematically violating the rights of Latino immigrants by pulling them over, holding them without cause—that's actually one of the top ways that people get put into deportation proceedings. There are not enough (Immigration Customs Enforcement) agents to be patrolling and pulling people over, but the Highway Patrol has been doing it for them and it's had a negative impact on families all throughout the state of Montana, fathers and mothers being separated from their children.

Simply by filing the lawsuit, the Montana Highway Patrol has already more or less ceased the activities they were doing. I used to hear about three or four of these unlawful detainments every month and I haven't really heard of any coming from Montana Highway Patrol since we filed this lawsuit. So these types of things can make a difference but it takes a lot of work and a lot of specialized knowledge about the legal system and immigration laws—and I guess I'm just the one in the position to do them.

Anything else you'd want to say about it or about immigration practice in general?

I was just going to say the vast majority of my law practice is split between people who are in deportation proceedings and people who often have relief available to them to stop their deportation—

What do you mean by “relief?”

Oftentimes people who are in deportation proceedings are actually married to U.S. citizens or have U.S. citizen children. Other times they have a claim for asylum because they are afraid of returning to their home country.... Other times there are really, it's hard but there are hardship factors that can prevent your deportation, especially if you have some unique, extraordinary circumstances, like if it would create hardships for your family....so deportation hearings are about 50 percent of my practice and deportations hearings are kind of unique in Montana.

We don't have our own judge. Our judge comes in from Portland and we have our immigration hearings across the street from the Helena airport at the Department of Homeland Security offices and maybe once a month we have telephone status hearings with the judge but only one time a year does the judge actually fly out here to conduct those hearings....

Sometimes I'll have 10 hearings that week and each one is like a little trial and

they're all in that one-week span.

It seems like that would very much be stacked against you.

Luckily we do have a good judge. He very fairly reviews the cases and you know part of it is just developing the evidence and making sure that you're properly advocating for your client and getting their story out there. We just had hearings last May and I won asylum for a domestic abuse victim from Mexico who had fled her country due to this serious abuse and her husband always found her and the Mexican government kind of failed to protect her. When she came to the United States—it's a difficult thing to do, to come forward and share your stories about this domestic violence in court. But I helped her through that case and she was just granted asylum. It's little victories like that that you don't hear about in the newspaper, but to me are just as significant as striking down LR-121. Cases like that really make a difference in people's lives.

Some people are just like, "Keep 'em all out." They just assume no immigration is good immigration. So what do you say to that when you're confronted with that sort of mentality?

I have a lot of answers to those types of things. If I'm really going to sit down and debate people about it I try to explain how they should put themselves in the shoes of the immigrants that they are vilifying and try to think about what they would do if they needed to provide for their own families and what steps they would take, what lengths they would go to.

Sometimes people will actually think about that and understand that if they had greater opportunities and could make more money and keep their families safe by crossing an imaginary line in the sand, they would do that. Once you can kind of understand the human motivation for why people come into the country illegally, then the rest of the argument falls apart.

But I don't view it as my job to try to convince every single Montanan about these

issues. I don't think I'll ever succeed on that and so I spend the majority of my time directly helping the community that I represent and increasing our power by challenging when their rights are violated. I think that's the better strategy to make progress on this issue.

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