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Morning Keynote Address

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I want to thank the organizers for inviting us. It’s really nice to come out here and meet you all. I also want to thank my co-founder, Fekkak Mamdouh, who’s here in the audience. He worked at Windows and founded ROC-NY with me. And I really thank the organizers for inviting him to come. It’s so important, when you’re having a conference about immigrant workers, to have immigrant workers participating as part of the conference.

I want to say that I appreciate the title of the conference: Making Movement: Communities of Color and New Ways of Organizing Labor. I really like that title. It includes a lot of different things, and there are a lot of different reasons why I think it’s so apropos to everything that we’re talking about today.

First, I think it is rare in immigrant worker circles, the worlds that I organize in, to have a conversation about how this is not an immigrant workers’ struggle, this is an immigrant worker of color struggle. And there really is a

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† Executive Director of Restaurant Opportunities Center of New York (ROC-NY). Ms. Jayaraman is a graduate of Yale Law School and the Harvard Kennedy School of Government. In 1992, she founded Women and Youth Supporting Each Other (W.Y.S.E.), a national non-profit organization dedicated to working with young women of color to become leaders in their communities. As attorney/organizer at the Workplace Project, a Latina/o immigrant worker organizing center, she created The Alliance for Justice, a law and organizing program that organized custodial, factory, and restaurant workers to fight for workplace justice. Most recently, together with workers from Windows on the World, the restaurant at the top of the World Trade Center, she founded ROC-NY, an immigrant workers’ center focused on organizing immigrant restaurant workers all over New York City, particularly those displaced from the World Trade Center. Among other things, ROC-NY has organized workers to win workplace justice campaigns and launch their own cooperatively-owned restaurant. Ms. Jayaraman teaches political science and labor law at Brooklyn College, Queens College, and New York University and is also publishing a book on organizing immigrant workers in New York City.

1. Assistant Director of ROC-NY, Fekkak Mamdouh came to the United States from Morocco in 1988 at the age of 27. He has a degree in physics from a University in Morocco. Formerly a worker at Windows on the World, he was a founder of ROC-NY. Mamdouh has organized more than 400 of his peers, and won campaigns to hire former Windows on the World workers and obtain back wages for other restaurant workers.

2. Windows on the World was the restaurant at the top of the World Trade Center.
difference between the experiences that immigrant workers today face, coming from mostly brown countries, than immigrant workers faced at the turn of the 20th century, coming mostly from Europe.

I wanted to give you a couple of examples to get us thinking about why that might be the case. There are many people who disagree with my point, and that is fine. There will always be people who say, “People went through it before, and now people are going through the same thing again. People will come out of it the way that earlier generations of immigrants came out of it.” But I don’t think that’s the case. I know a lot of my members don’t think it is the case, and I wanted to give you a couple of examples of why we believe that.

At the turn of the century, around the early 1900s, there were hundreds of thousands of young immigrant girls, mostly from Russia, Poland, eastern European and European countries, working in garment factories in New York City—hundreds of thousands of girls. Many of you know that in 1911 there was a factory in New York City called the Triangle Shirtwaist Factory. Today it is an NYU building. There were 150 girls—there were hundreds of girls, but there were 150 girls in particular working on the eighth floor—and the employers had locked the doors of the factory because they didn’t want union organizers to get in and talk to the girls. A fire broke out, and the girls were forced to either burn to death or jump to their death because it was the eighth floor of a ten-story building. So it was a tragedy, a horrible tragedy. Hundreds of people were in Washington Square Park, watching these girls either screaming and burning to their death or jumping from the eighth floor—just a terrible, terrible tragedy.

Directly afterwards, a lot of New York, not just working people, but also wealthy people, all kinds of people, came out into Union Square every single day for weeks and months because they were horrified at what had happened. Even now, every year there’s a memorial for the Triangle Shirtwaist Factory fire, and people come out to memorialize the event. Four years of investigation ensued into the conditions in garment factories in New York City. The Governor, who actually was an immigrant himself and had lived in the Lower East Side conducted his own investigations.

Frances Perkins, who was Secretary of Labor under President Franklin D. Roosevelt, actually saw the girls jumping herself. France Perkins’ outcry, the general outrage and all of the investigations all ultimately converged into great labor law. After the Triangle Shirtwaist Factory fire, unions picked up a lot of steam, things happened, and ultimately, several years later, we got the New Deal. The New Deal gave us the right to organize, the Fair Labor Standards Act and so much else.


4. Governor Alfred E. Smith was the Vice Chairman of the Factory Investigating Commission who later became the Governor of New York.

5. An activist for the rights of women and workers, Frances Perkins lobbied for better working hours and conditions. Speaking of the Triangle fire, which she witnessed, Perkins said it was “a never-to-be-forgotten reminder of why I had to spend my life fighting conditions that could permit such a tragedy.” In 1933, FDR appointed her the Secretary of Labor, making her the first woman ever appointed to a cabinet position. She held that position until 1945.

6. During the New Deal, several statutes established protections for workers to organize in a
It was great.

So let’s skip ahead. September 11th, 2001. There are 300 workers working at Windows on the World at the top of the World Trade Center. The vast majority of them are immigrants. The vast majority of them are immigrants of color, coming from Asia, Latin America, the Arab world, South Asia, Africa, and Afro-Caribbean countries. They literally came from all over the world. The owner of Windows on the World wanted somebody from every country in the world to be represented in the restaurant so that any tourist that came from anywhere would have somebody who spoke their language when they came to the restaurant.

9/11. The doors in the restaurant are supposed to be open, just like in Triangle Shirtwaist Factory. The doors are supposed to be open to let workers go to the roof, should they need to. But the doors are locked for similar reasons: they don’t want workers going up to the roof and idly spending their time and they don’t want other people coming in. The plane hits the building. Workers don’t know what to do. They either burn to their death or jump to their death. Sounds very familiar, right? They burn to their death or they jump to their death. If they could have gone out through the doors on the 107th floor, they could have gone to the roof, and many could have been rescued by the helicopters that were circling above the building. But that didn’t happen. Some people were found intact, their full bodies. That means they jumped. All that was found of others was a finger nothing was found because they were burned to death.

This sounds so familiar, right? Hauntingly familiar. Immigrants burned to death or jumped to their death on 9/11. Well, instead of a New Deal or a Frances Perkins or four years of investigation into locked doors, one month later we got the PATRIOT Act. One month later we got the PATRIOT Act, and we really have to think about the way in which the government and the public at large react to the daily tragedies that immigrant workers of color face versus the way that things changed rapidly at the turn of the century, when young immigrants were coming from Europe and working in terrible conditions.

The PATRIOT Act. What was it? It was a horrible, draconian piece of legislation, the latest piece, because there have been many more since then, with very harsh immigration consequences. Our workers, many of whom are from Bangladesh or Morocco or Egypt—not only did they lose family members and friends and coworkers at Windows on the World, they lost their job and then, months later, were called into special registration to be detained indefinitely, deported and treated like cattle. So our folks got a triple whammy. Not only did they lose people at the World Trade Center, they lost their jobs, and then they were treated like third- or fourth-class citizens because there was an immediate backlash against all of them right after 9/11. So, I really think it’s important to think about the differences in such strikingly


similar situations: the consequence and the reaction when it's brown people.

The other thing that we need to think about is the way in which these industries have changed. Increasing numbers of brown people work in them. The restaurant industry in New York is the one that is nearest and dearest to my heart and the one with which I'm most familiar. Mamdouh and I have often talked about how just thirty years ago, many of the top restaurants in New York City were French, and there was not a lot of diversity. French restaurants employed almost completely French or other white European staff. Everybody working in the front and the back alike was all white. And the sector was actually much more unionized than it is now. If you went to midtown, anyplace in midtown was mostly unionized. Jobs were okay.

Over the last twenty years—we've looked at census data and just published a report\(^9\)—the industry has become more Asian, Latino, African, Afro-Caribbean, and that's occurred coincidentally, or not so coincidentally, during the same time that wages have deteriorated, working conditions have deteriorated, and the union is almost nonexistent in the sector. Nonexistent! There are 165,000 restaurant workers in New York City, and less than 1 percent of them belong to a union, as opposed to a time thirty years ago when any restaurant in midtown you went to was unionized.

So what's going on? Is it really just a coincidence that as the brown people start working in the sector, the wages start to decline and the working conditions get worse and the union disappears? Is that what's going on? Is it just a coincidence? Sixty-seven percent of all restaurant workers in New York City are now foreign-born, and close to 40% of all restaurant workers are undocumented.\(^10\) And these restaurants—they love these workers. They want these workers. They can pay them whatever they want, they can treat them however they want, and there's definitely no union anywhere in sight. And that is for a number of reasons. But we can talk about that more later today.

I think the deterioration in working conditions in the restaurant industry over the last twenty years has paralleled not just the influx of people of color into the industry, but also the enormous, tremendous boom in profits and jobs that the employers at the top end have experienced. So, if you look at the chart, it's incredible because as the profits and jobs in the industry are going up, the wages are going down. Over the last twenty years, workers' wages have stagnated at $19,000 a year.\(^11\) That's $9.11 median wage. That means more than half, 80,000 workers in the restaurant industry in New York City are making less than $9.00 an hour. And if that's median, you can imagine a large number are making anywhere between a dollar—we've interviewed folks who make a dollar or some people who don't make anything at all because they live on their tips—up to five, six. You know, our minimum wage is less than yours.\(^12\) You guys are lucky here, or you've organized better, I guess.

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10. Id.
11. Id.
12. In 2005, California and New York have the same minimum wage of $6.75, but by local ordinance, San Francisco has a minimum wage of $8.82. N.Y. COMP. CODES R. & REGS. tit. 12, § 142 (2005); CAL. CODE REGS. tit. 8, § 11000 (2001); SAN FRANCISCO, CAL., ADMINISTRATIVE CODE ch. 12R, art. 4 (2003).
Over all, in the country, immigration law has become more and more draconian as immigrants of color come to the United States. The timing is too parallel to be coincidental. The concept of illegal simply didn’t exist at the turn of the century, when folks were coming from Europe. Ninety-seven percent of all the folks coming into Ellis Island at that time were let in.\(^\text{13}\) People were turned away for health reasons, obviously, but beyond that, there was no concept of illegal. Why weren’t laws like IIRIRA passed at the turn of the century, when a quarter of all the people in the United States were foreign born?\(^\text{14}\) Think about that.

Today we say immigrants are raiding our country and we’re worried about the numbers. A quarter of all people at the turn of the century were foreign born, and that’s not the case now. Why weren’t laws like that passed at that time? Clearly, there were discriminatory immigration policies. Obviously, there are nuances to all of this and I’m making sweeping statements. There were discriminatory immigration policies then, but not to the breadth and extent that we face today. And I think more importantly, immigration policy was being used as labor policy as extensively as it is now. What we experience and see in organizing restaurant workers in New York City is that it’s really immigration law that’s keeping people from organizing. It’s really immigration law that’s keeping people from speaking about things like minimum wage and overtime violations and discrimination.

Why is there a culture of noncompliance with the law in the restaurant industry? Why have wages declined? It’s in large part because employers no longer feel like they need to pay the minimum wage. Employers no longer feel like they need to pay overtime. When the head of the Restaurant Association\(^\text{15}\) tells us, “Nobody pays overtime in this industry; it’s just not done,” that is a sign that they feel that there’s no need to do so because immigration law has effectively created a culture of fear and quelled organizing. It’s enforced sporadically. Employers want immigrant workers so the law is enforced sporadically so that they can have the workers, but also have them in such a way that they’ll never speak up for themselves—they’ll never organize, they’ll never say, “I need to be paid according to the books. I need to be paid by the law.”

Unfortunately, beyond immigration policy being used as labor law, we’re facing the erosion of the labor law that we do have. Most of you know that last year laws were passed in Congress that eroded the rights to overtime for millions and millions of workers.\(^\text{16}\) And then when the Supreme Court decided Hoffman Plastic,\(^\text{17}\)


\(^\text{14}\) The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered statutes of 8 U.S.C.). Signed into law by President Clinton, this law made sweeping changes to U.S. immigration law. Among other things, the law imposed a rigid affidavit of support requirement, created severe penalties for immigration violations, exposed legal immigrants and others to deportation for minor criminal convictions, made it more difficult to obtain legal residence, and permitted law enforcement agents and local police to enforce immigration laws.

\(^\text{15}\) The New York State Restaurant Association is an advocacy organization representing the interests of restaurant owners. The Association has fourteen chapters, including one in New York City. Currently the Association represents 7,000 restaurants. New York State Restaurant Association, http://www.nysra.org/ (last visited Feb. 24, 2006).

\(^\text{16}\) Regulations adding many exemptions to the requirement of minimum wage and overtime previously mandated by the Fair Labor Standards Act became effective in August 2004. The new exemptions cover not only executive, administrative, and professional employees, but also commissioned
many of us in New York and other places were immediately trying to limit its scope. The ethnic press was going around saying, "The Supreme Court says immigrants no longer have rights. There's no right to minimum wage. There's no right to organize. There's no right to overtime. There's no right to workers' compensation."

And we had to go out and respond and say, "No, no, no, immigrants! No, that's not true! Hoffman Plastic is not saying you no longer have rights. Hoffman Plastic is just saying that if you organize and you're undocumented and you get fired, after you get fired and the court says yes, you were fired for organizing, you can't get your back pay. That's it. It's a limited decision. Don't worry. We still have our rights as undocumented workers."

Well, ironically now, several years have passed and we're beginning to see that what those papers were saying is beginning to come true. Judges are beginning to use Hoffman Plastic to take away rights from undocumented workers in a variety of fields. In New York last year, an appellate judge ruled that an undocumented worker who became permanently disabled in a construction job would have to receive payment, penalties and back wages from the employer in the prevailing wage of his home country.18 Think about that for a second. That means that you come to this country, you work under this country's laws, and the employer gets your labor in this country, but if you become permanently disabled, you can only be paid in the wages of your home country. How just is that, or how constitutional? What's going on? Laws in this country that we held very sacred are being eroded because we're people of color. That's my opinion. I hold it very strongly. It's flat-out racism and discrimination. We can debate whether things are the same as they were at the turn of the century, but frankly I don't think so. I think things have changed as brown people have come to this country.

What we're seeing over all is a confluence of globalization and U.S. foreign policy: U.S. foreign policy supporting dictatorships and oppressive regimes abroad and forcing people out of their home countries at the same time that manufacturing is leaving the United States to these very same countries. And the service sector is taking over, contingent jobs are growing, which means that jobs are no longer as stable or secure as they used to be. We've got service sector jobs that are temporary, part time, or seasonal. That's all happening at the same time. Capital is moving. There's tons of mobility of capital, and very little mobility of labor. Very, very little.

The reason why I'm really happy about the second part of the title of this conference, which is "New Ways of Organizing Labor," is because clearly all these new things that are happening—the erosion of labor law, immigrants of color coming to the country, service sector industries growing, contingent jobs growing—force us to think about new ways to organize. We can't use the traditional models of the past. They're clearly not working. If the restaurant workers' local in New York City, HERE Local 100, spent all of its time going restaurant by restaurant, as it used to, working on collective bargaining agreements restaurant by restaurant, we wouldn't see any growth in our lifetime. We just wouldn't.

We have to think about new ways of organizing. We're forced to. And I recognize there are new, creative things happening all over the country. Here in San sale representatives, some farmworkers, drivers and mechanics. 29 C.F.R. §§ 541 (2004).

Francisco, the Chinese Progressive Association\textsuperscript{19} is doing an amazing job retraining former manufacturing workers for new service sector jobs. In New York, Domestic Workers United\textsuperscript{20} has been organizing domestic workers to fight, and they just introduced a bill in the state legislature, an amazing bill that would require a minimum wage of ten dollars for every domestic worker in New York State as well as health insurance.\textsuperscript{21} This is unheard of. And the fact that it was introduced in both the assembly and the senate is extraordinary.

Then from our end, in the restaurant industry, we have to constantly rethink new and creative ways to surround the industry and attack it from all sides. We have a multi-ethnic workplace, workers from more than fifty-five countries—from the Arab world, from Africa, from the Afro-Caribbean, from South Asia, East Asia, from Southeast Asia, from Latin America, and from Latino-Caribbean countries—all coming together and uniting around this common purpose of surrounding the industry to lift conditions. We’ve done it, and we’ve had to do it using a multi-prong strategy. First, going after the bad apples in the industry, targeting the really huge, powerful, abusive restaurant corporations and using a combination of litigation, protest, dinner theater, hand-billing, clergy, everything we can think of, to win huge settlements against really powerful restaurant corporations. This then sends a signal to the rest of the industry. That’s one.

Two, doing research and policy work to lift consciousness and create a culture of organizing among workers. We are introducing a bill into City Council based on two years of research that we’ve done and a report that we just published.\textsuperscript{22}

Three, working with the handful of good restaurant employers who actually see that there are benefits to treating their workers well in the job. Benefits such as loyalty and customer satisfaction. We hope to educate these employers about their legal obligations. The employers will hopefully then educate other employers about the benefits of doing things right.

And then four, developing a model for the industry through our cooperative restaurant, to sends a message to the industry: You can treat your workers well and pay them well and still make profit—it’s possible. And through this, also creating a new set of worker-owners that will infiltrate the state association of restaurant owners and advocate from within for workers’ rights.

We have to be creative. We have to do things in new ways and different ways that traditional unions have not been able to do. We have to think about how to bring together workers of color from many different places, without focusing on single ethnic groups. We have to focus on sector-based approaches because we’re seeing that that builds power in an industry.

\textsuperscript{19} The Chinese Progressive Association (CPA) is a grassroots membership-based organization whose mission is to empower the Chinese community in the Bay Area, but also works to improve the living and working conditions of low-income immigrants and other disenfranchised communities. Chinese Progressive Association, http://www.cpasf.org/(last visited Feb. 24, 2006).

\textsuperscript{20} Domestic Workers United is an alliance of domestic workers and domestic worker organizations that have come together to gain respect, recognition and fair labor standards for domestic workers. Domestic Workers United, http://www.domesticworkersunited.org/(last visited Feb. 24, 2006).


But I have to say there’s a limit to our creativity. There’s a limit to our creativity at the local level. And that’s why I’m really happy about the most important piece of the title of this conference, which is “Making Movement,” because I really worry that we’ve become so focused on our local struggles—and perhaps I’m most guilty of this—and building power in the restaurant industry and building power for immigrant workers in New York City that we have so little time left to think nationally and globally, and so little time left to think about a movement.

Unfortunately, since George W. Bush was elected, I think many of us have switched into a reactive or almost depressed mood. Many of my colleagues in New York City who are very focused on amnesty and legalization, and coming up with new bills at the national level for amnesty and legalization, are now having to switch forces and just react and organize against the Real ID Act. You all know about the Real ID Act. It is the Sensenbrenner bill that denies driver’s licenses to undocumented folks, but also allow the DMV and the former INS to share databases. The worst piece is a new bounty hunter provision that allows individuals to go after undocumented people and get money for it, as well as giving law enforcement officials greater power with regard to going after undocumented folks.

So, here we are, switched into this horrible reactive mode of just trying to stop the right-wing agenda, instead of really thinking about what’s possible in terms of a movement. And I don’t just mean a labor movement. Obviously, we need a real labor movement. What we’ve got right now is not a labor movement. We’ve got unions and we’ve got worker centers, and we’ve got lots of lawyers and we’ve got people fighting. And it’s good, but we don’t have a labor movement. But I’m not just talking about a labor movement. I’m not even just talking about an immigrants’ rights movement. I’m talking about a movement for social justice that recognizes the limits of capitalism, that fights against globalization, that fights against the war and what’s occurring in Palestine, that fights for racial equality because race is and has to be recognized as such an extraordinary piece of what’s going on for immigrant workers.

We see these movements in moments, at least in New York and I’m sure here, too. We see these movements on February 15th with Where the World Comes Together, or even better, with the Republican National Convention protests right
before Bush was elected—a week of people from all movement sectors coming together and just saying, "No, no, no!" and feeling really powerful and united. It was an amazing, amazing force, and it ended, right?

So, it just becomes more and more frustrating and yet more and more urgent for us to think about movement, movement, movement. What does it mean? How can we build it? How can we come together from different pieces and make it happen? And I think we also need to think seriously about international labor standards. We need to stop just focusing on stopping the Real ID Act and developing a new path to citizenship for folks here. We really need to think about international labor standards and how they relate to domestic immigration policy.

Many of us in different worker centers conduct serious political education on these topics. We at ROC-NY have immigrant restaurant workers coming in every week. We do political education with them twice a week, and we do plays on capitalism, we do plays on Palestine, we do plays on the war in Iraq, we do little skits about workers' rights and immigrants' rights and the Real ID Act and everything. We try to build solidarity between immigrant workers in New York City from all over the world and struggles going on all over the world. We try to do exchanges between international workers and workers in New York City and other places. We try to take our workers all over the place.

But that's just not enough. It really is not enough, and part of it is that sometimes we just don't have the time or the capacity or the energy to think about how to build a movement. So, many of you in the room are up-and-coming lawyers, and I was there once and I hated it, but I'm out, thank God! I'm not a practicing lawyer—thank God for that also. I am an organizer, and I am thankful for people who actually enjoy practicing law, so I commend you. I ask you and me and Mamdouh and all of us to force ourselves to constantly think about movement, movement, movement, and how we are building it and how we can work together and how we can make it happen. How can we push the envelope to be as forward thinking as we can, as proactive as we can and not stuck in this reaction mode that we've been in for so long?

So, good luck to everybody. I hope we have a great discussion today, and I look forward to meeting you all.

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27. See David Ho, Election 2004: Outside Hall, Angry Chants; NY Police Keep Tight Lid on Protestors, ATLANTA JOURNAL-CONSTITUTION, Sept. 4, 2004, at 5C.