
Transcript of Commentary on Citizenship and Its Constraints

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**TRANSCRIPT OF COMMENTARY ON
CITIZENSHIP AND ITS CONSTRAINTS
DePaul Law Review Symposium
March 9, 2002**

*Cecilia Munoz**

Thank you for having me as part of this Symposium today. Thank you also for being here on Saturday to think about and talk about these incredibly important issues. I have to start by saying that I started my career in Chicago, and when I joined what was then the Chicago Committee on Immigrant Protection, one of my first Latina role models was Esther Lopez, who I am honored to share the panel with. Also, one of my first teachers and friends was Craig Mousin, who put today's event together. I was very lucky to have him as a teacher and guide then, and I think you all are very lucky as well.

I do not know where to start, as so much has been put on the table. I kept scribbling notes during the other presentations of things I wanted to address that have already come up. I hope when we get to the question-and-answer period that you will ask about the *bracero* program and guest-worker issues.

In the course of the next couple of months, we will find ourselves in not one, but two historical debates. The first will be focused entirely on the agriculture context, where we have an existing guest-worker program in which the working conditions are truly appalling. The second debate is the one currently being raised by this whole notion of negotiations between the United States and Mexico, which is raising the issue of industries beyond agriculture and whether legalization ought to be combined with some kind of temporary-worker framework. One essential question is whether a temporary-worker framework must follow the existing rules that have thus far been set by the agriculture industry, or whether something vastly different, that respects the rights of the workers themselves, can be created as an alternative structure that takes the existing migration stream, through which people risk their lives to get to jobs in the United States, and legalizes it.

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Part of my job at National Council of La Raza is, as we heard in a previous presentation, to be one of those “cosmopolitan liberals” who not only works within the range of what is politically feasible, but tries to extend the boundaries of what is politically feasible to ensure the rights of every worker, legally or illegally, in this country. In Washington, I often have to remind people of what I think the Chicago audience knows instinctively, that this is a nation of immigrants. We are a nation that holds among its highest values this notion that if you come to the United States and choose this place as your home and do your part, you are one of us, you are an equal, you are an “us” not a “them,” no matter where you are from, no matter what your status was or what religion you practice or the color of your skin. That is one of the great ideals of America. It is an ideal we always try to live up to, although at times we are more successful at living up to it than at others.

Until very recently, this notion of citizenship was simply an affirmative step that people who were immigrants took in order to formally establish their ties and their allegiance to the United States. It is not the point at which their allegiance necessarily begins. The substantial differences between citizens and non-citizens, at least those who are legally here, really had to do with voting. People who are lawfully present, and even people who are not lawfully present, are expected to pay taxes, serve in the military, and have the same obligations as the rest of us; but unless you are a U.S. citizen, obviously you do not have the right to vote. United States citizenship back then also did, and still does, secure family reunification for some family members; that is, U.S. citizens can petition for a slightly broader range of relatives from abroad than can legal residents. Additionally, some federal jobs are available only to U.S. citizens.

So, there have been traditional differences between citizens and lawful permanent residents, but those differences have become dramatically more pronounced since the Immigration and Welfare Reforms of 1996. In 1996, Congress drew a bright-line in our immigration policies, although this line was really drawn in 1986 by the Immigration Reform and Control Act (IRCA) between people who were here without immigration papers and people who were here legally. Back then, the differences between people who were here legally, and U.S. citizens, were very small, and the differences between the rights of the immigrant population and the rights of everybody else have been growing and growing ever since that 1986 point when, as a matter of law, we determined it was illegal to hire people without immigration papers.

There are all kinds of troubling corollary effects of that particular policy. Whether we like it or not, the law draws a line between those with and without papers in a way that has put undocumented immigrants in a position of being more isolated, with less access to their rights than others in the workforce. They are, however, not any less present in the workforce. We do not benefit from their labor any less, but they are more isolated in the workforce, less able to claim workplace rights, and more fearful of cooperation between local law enforcement authorities and the Immigration and Naturalization Service (INS), particularly when local police decide to play the role of immigration police.

Our biggest challenge with respect to citizenship—how interesting that this seems like the good old days—was encouraging people to come forward. One of the biggest jobs in promoting citizenship had to do with helping people get through a fairly complicated process dealing with arbitrary procedures at the INS, where in some districts you would get asked, “Who was the first President of the United States?,” and in other districts you would get asked, “What is the process to become a circuit court judge?,” which is a somewhat different order of questioning. So, our citizenship challenges had to do with encouraging people to come forward and exercise their right to vote, and in the course of that work we focused on these disparities in the application of the policy, which are typical of the way the INS operates.

The 1996 Immigration and Welfare Reforms really changed all of that in a very fundamental way. Congress drew a second bright-line, not just between undocumented immigrants and everybody else as a matter of public policy, but between people who were lawfully present and U.S. citizens. Congress drew the line in two different laws.

Congress drew the new line first in the Welfare Reform Act of 1996. Here, the debate was concerned with getting people who were in the welfare system into the workforce—we can debate how successful or unsuccessful that has been, but regardless of your position on that question, the conversation was fundamentally about moving from welfare to work. The single biggest part of that bill, however, had nothing to do with getting anybody into the workforce. The single biggest part of that bill was a straight-up budget cut in services to legal immigrants. Fully forty percent of the cost-savings in the Welfare Reform Act were drawn from this budget cut. It was the largest single piece of the welfare reform bill, which is quite fascinating because it was not part of the debate.

The debate was about welfare dependency—or, alleged dependency—and the means of getting welfare recipients into the

workforce. However, the law's single biggest impact was this cut in services to immigrants, which was especially severe because it was retroactive. In other words, Congress did not say, "Okay. From here on out, we have changed our minds about how we are going to do things. From now on, if you come to the United States, you need to come with the understanding that there is not going to be a safety net available to you essentially until you become a U.S. citizen." Instead, Congress said, "Unless you are a U.S. citizen, you are no longer worthy of a federal safety net." Congress cut off the following four big federal safety net programs: Supplemental Security Income (SSI), which provides cash assistance to the elderly and people with disabilities; Medicaid, which is the primary health care program for the poor; food stamps; and what used to be called AFDC, and is now called TANF (Temporary Assistance to Needy Families). So, Congress essentially said, "Only citizens are deserving of these services, period." And the big crisis that immediately ensued had to do with people who had been in this country for many years and had never naturalized for one reason or another, mostly because they never thought they needed to. In many cases, these were very elderly, very infirm people. You may remember some of the press coverage surrounding this. There was coverage in every state. Suddenly there were stories everywhere about people in nursing homes who fled to this country during and after World War II, refugees who were struggling to pass the citizenship exam, trying to learn their U.S. civics and then forgetting what they had learned the next day and panicked because they received letters saying their only support was going to be taken away from them.

I have never experienced anything like that in my career as an immigration advocate. Within a year's time, those immigrants and their family members and communities had raised their voices enough that about fifteen billion dollars worth of services were restored within a year by the same Congress that had just taken them away. As extraordinary an accomplishment as this was, it is important to understand that, while there have been a couple of restorations—one in SSI and Medicaid and another in food stamps—those restorations and services only apply to legal and lawfully present immigrants who were in the country at the time welfare reform was passed. We pushed hard enough to get Congress to say, "Well, maybe you are right, we should not have changed the rules on people who were already here. But from here on out, anybody coming in, we expect you to work, to pay your taxes, to serve in the military when called, and to be, perhaps, called upon to sacrifice everything for this country. But if you get

killed in the line of duty, your family, if they are not U.S. citizens, is not eligible for the federal safety net. So, maybe they will go back to where they came from because, as the federal government, we are not going to be here for you.”

It is an extraordinary thing when you think about it, especially in a country that is dedicated to the principles and values that we are dedicated to. The policy was framed in a way that is increasingly characterizing the immigration debate. It does not disqualify people on the basis of what they are—lawfully present immigrants—but excludes people on the basis of what they are not—they are not Americans, they are “non-citizens.”

There is the bright-line. Thus, we have citizens who are presumably deserving, and everybody else, who is presumably not. That is a very big fundamental change, and it has changed the equation with respect to coming forward to naturalize.

Not surprisingly, around the time Congress enacted this policy in 1996, the naturalization rates went up by about five hundred percent across the country. Why? There were a couple of different reasons. First, people were protecting themselves. It became a defensive act to apply to naturalize because, God forbid something should happen to you, you were not going to get any help. The programs that you were paying for with your tax dollars were not going to be available to you. Accordingly, some people naturalized as an act of self-defense. Without once having debated it, we transformed the act of becoming a U.S. citizen from something you do because you want to raise your hand and swear allegiance, to something you do in order to protect yourself. That is a big change.

Another reason people came forward to naturalize was because they were angry. The United States had created an environment in which we respected the contributions of people who were not citizens, as long as they were legally here. We did not respect the undocumented immigrants who also made contributions, but, as a matter of public policy, if you were legally here, our laws respected your rights on par with those of U.S. citizens. Make no mistake, the law also expected immigrants to make the same contributions, but in return they were provided the same kind of access to services. And when that shifted, people got angry, and they naturalized in droves, registered to vote in droves, and went to the polls in droves. We changed California’s politics entirely as a result of that, by ousting Republican lawmakers associated with anti-immigrant campaigns, and ultimately changed politics across the country. These are changes that continue to take place.

But you still hear the rhetoric. Policymakers still talk about non-citizens. They talked about it a great deal, as you heard earlier today, in the airline security bill. Under that new law, if you are a non-citizen, maybe you are suspect and maybe we do not want you handling our bags at the airports. The ironies that you heard about earlier today are very real, like the baggage screener that must be a U.S. citizen, but the National Guardsperson standing behind that baggage screener with an M16 and the soldiers fighting in Afghanistan that do not. Congress decided to restrict the availability of baggage screener jobs to make us all feel better about security.

Though these are incredible ironies, they are difficult to raise in a public policy context. Why? Because advocates are nervous that if we raise them, soon we are going to have restrictions on airline pilots and flight attendants and everybody else in the system. That is, unfortunately, the way this political process has been working as of late. It is frustrating, especially with the enormous contributions—economically, socially, and culturally—of the population that we are talking about. So, we have a new bright-line with respect to access to the safety net. We have a new bright-line with respect to access to certain kinds of jobs. And, I hope, in the course of your work and studies you are looking at the lines Congress has drawn with respect to due process of law. America now has very different standards for constitutional protections between immigrants and U.S. citizens. The Justice Department is pursuing various immigrants aggressively right now, to detain them indefinitely, without telling their families where they are, without giving them access to attorneys and, in many cases, without access to the courts.

This week, I was at a press conference with a couple of people—U.S. citizens—whose family members are long-term legal residents, and who now face permanent separation from their families because of the harshness of our laws. For example, a gentleman from Greece, whose wife spoke at this press event, was arrested because he owned a car dealership and his employees were selling used cars. He did not do anything wrong, but he was convicted because he was a supervisor of the employees who had broken the law. As a result, because he is not a U.S. citizen, he was detained for an incredibly long period of time and is required to be deported without access to the courts. Under the 1996 immigration reforms, the courts do not have the authority to provide him with relief even though his wife and four children are citizens. His family has been completely torn apart by something he did not do, because access to justice is different for

those who are not U.S. citizens. The impact is so severe that many Americans are astonished when they hear the cases described.

It does not seem right for a country like this one to lock somebody up in detention indefinitely and potentially allow him or her to be convicted on the use of secret evidence, which is another provision of a 1996 law. It is an extraordinary thing in a country like this to strip the courts of their authority to provide relief in these kinds of cases in which, when reasonable people look at the facts, they conclude it is unreasonable to tear families apart for relatively minor offenses. The courts do not have any authority to intervene. These are extraordinary changes. Sadly, immigrants now participate in the citizenship process as an act of self-defense against unreasonable laws and policies.

In fact, naturalization rates for immigrants are skyrocketing, which has to do with protecting rights, as well as with anger at the process that created these inequities. It is unfortunate when our public policies create that kind of incentive for naturalization, because it has transformed a process that used to be solely about people coming forward to raise their hand to take the oath. This raises some fundamental questions about who we are as a nation of immigrants—this whole notion that, if you come, “you are one of us,” with equal rights.

It is interesting to think about what this means in terms of citizenship as a political phenomenon. People who come here as immigrants have a higher propensity to engage in participation; that is, once they are naturalized, they are more likely than those of us who were born here to get out and vote. What does that do to our understanding of ourselves as one nation and one people regardless of who we are and where we come from? These are the big values questions that are being called into question by our public policies. And as advocates—and by that I mean advocates all across the country representing a whole range of institutions—what we think we are fighting for are really fundamental values of the United States as a nation of immigrants. Advocates are fighting to preserve the notion that citizenship should be about participation and about preserving that sense that we are all equals under the law. And we now have a lot of work to do just to get back to where we were before 1996, which has become still more difficult since September 11.

In addition to dealing with that new bright-line that has been drawn, we are still dealing with the old one, which has gotten brighter and brighter. Among the most significant implications of this shift is the debate that we are currently in the thick of with respect to immigration reform. Advocates around the country are organizing to

achieve a new legalization program for the 8.5 million people living and working in the United States without immigration papers, contributing enormously but without access to their rights. For this group, even the rights they have on paper are very difficult to access because, while the country's labor laws technically protect them, it is pretty hard to access them when your employer can call the INS if you complain, and the next thing you know you find yourself in another country. It is pretty difficult to press a claim against an abusive employer. The labor movement, by the way, has done an enormous amount to change that dynamic and help people assert their rights against those odds. But the fact of the matter is, the nation's immigration policy is based on the assumption that there is no room for migrants in our labor force. As a matter of policy, we do not want them to come, and we are going to make life as difficult as possible if they do. Our economic policies, on the other hand, acknowledge that there is indeed room for this labor force. Indeed, the very existence of 8.5 million workers in that labor force is pretty solid proof.

So, the question is, when we reach numbers like eight or nine million people without papers, with limited legal rights, what is in the best interest of the country? Is it reasonable to continue to allow our policies to be out of sync with the realities that drive immigration? Perhaps it is wiser to take steps to revise our policies so that our laws recognize for the first time that, in fact, there is room for immigrants, and that we, in fact, value their hard work and should reward it with the same access to rights, ability to organize, and ability to ultimately become citizens and be full partners in the society that benefits from their labor.

Ultimately, the various immigration policy struggles that we are engaged in are about these more fundamental questions, about preserving the value of equal access under the law, and about ensuring that all of those whose labor enriches this country are equally protected under the law. This is a particularly poignant struggle in this nation of immigrants, and a particularly difficult one now that the country has become so terrified of foreigners and so focused on security. It is not an overstatement to say that the very character of our nation, which boasts a rich immigrant history but much ambivalence about its future as a nation of immigrants, is at stake in this debate. I look forward to continuing this conversation today, and throughout the broader debate. Thank you.