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## 'Otro Mundo Es Posible': Tempering the Power of Immigration Law through Activism, Advocacy, and Action

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## **‘Otro Mundo Es Posible’: Tempering the Power of Immigration Law through Activism, Advocacy, and Action**

SUSAN BIBLER COUTIN†

### INTRODUCTION

Since the late 1970s, when the United States Congress commissioned the Select Commission on Immigration and Refugee Policy to reevaluate immigration law and policy, public debate over immigration to the United States has

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† Professor of Criminology, Law and Society and Anthropology, University of California Irvine. An earlier version of this paper was presented at the Baldy Center at the University of Buffalo as part of the “Tempering Power” conference in 2018. I thank Errol Meidinger, David Engel, Anya Bernstein, and the organizing committee for inviting me to participate, and John Braithwaite for his inspirational keynote address. The paper was much improved by comments from Sameer Ashar, Jennifer Chacón and Stephen Lee, my collaborators in the research. I am deeply indebted to the individuals who were interviewed for this project and to the institutions that collaborated in the research. Our research assistants Edelina Burciaga, Alma Garza, Liz Clark Rubio, and Jason Palmer helped with data collection, and Jason helped code data for one section of the paper. The paper also draws on ideas developed through talks presented at the University of Connecticut, the Law and Society Association, and the “Paper Trails” workshop funded by Wenner-Gren. I am grateful to Sarah Horton, Josiah Heyman, Catherine Buerger, and other organizers, panelists, and audience members for these opportunities. This material is based upon work supported by the National Science Foundation under Grant No. SES-1535501 and the Russell Sage Foundation under award number 88-14-06. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author and do not necessarily reflect the views of the National Science Foundation or the Russell Sage Foundation.

become increasingly intense and polarized. In recent years, United States President Donald J. Trump has denounced Mexican immigrants as rapists and proposed building a wall along the United States-Mexico border,<sup>1</sup> suggesting that United States immigration and border control policies are lax. Likewise, to restrictionists, such as the Federation of Americans for Immigration Reform (“FAIR”), the size of the undocumented population, estimated at 10.7 million,<sup>2</sup> is further evidence that immigration is “uncontrolled” by law.<sup>3</sup> In contrast, to those directly impacted by immigration policies, United States immigration law is anything but lax. Young people who have been denied educational opportunities and threatened with deportation have organized rallies and resorted to hunger strikes to spur Congress to regularize their status.<sup>4</sup> And, some 226,119 individuals were removed from the United States in 2017,<sup>5</sup> often to countries they had left as children.<sup>6</sup> Moreover, such restrictionist measures are nothing new. While anti-immigrant sentiment has risen as the Trump Presidency has

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1. Eugene Scott, *In Reference to ‘Animals,’ Trump Evokes an Ugly History of Dehumanization*, WASH. POST (May 16, 2018), [https://www.washingtonpost.com/news/the-fix/wp/2018/05/16/trumps-animals-comment-on-undocumented-immigrants-earn-backlash-historical-comparisons/?noredirect=on&utm\\_term=.67a14aab6f86](https://www.washingtonpost.com/news/the-fix/wp/2018/05/16/trumps-animals-comment-on-undocumented-immigrants-earn-backlash-historical-comparisons/?noredirect=on&utm_term=.67a14aab6f86).

2. Jens Manuel Krogstad et al., *5 Facts About Illegal Immigration in the U.S.*, PEW RES. CTR. (Nov. 28, 2018), <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>.

3. *See About Fair*, FED’N FOR AM. IMMIGR. REFORM, <http://fairus.org/about-fair> (last visited Apr. 18, 2019).

4. Carlos Ballesteros, *Jailed Immigrants Launch Hunger Strike Until Congress Passes a ‘Clean’ DREAM Act*, NEWSWEEK (Dec. 19, 2017), <https://www.newsweek.com/clean-dream-act-hunger-strike-dreamers-jail-752372>, Accessed 12/21/2018.

5. U.S. IMMIG. & CUSTOMS ENFORCEMENT, FISCAL YEAR 2017 ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT (2017), <https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf>.

6. *See generally* JACQUELINE BHABHA, CHILD MIGRATION AND HUMAN RIGHTS IN A GLOBAL AGE (2014) (discussing child migration).

stoked nationalist sentiments,<sup>7</sup> removals were actually higher during the previous administration, when President Barack H. Obama earned the moniker “Deporter-in-Chief.”<sup>8</sup> A vast infrastructure of detention facilities, border and interior enforcement agents, militarized equipment, identification technologies, legal instruments, and international agreements undergird the current United States immigration enforcement regime.<sup>9</sup> What power does law have within this apparatus? And how do immigrants and their allies take actions to “contest the expulsion of people from humanity”?<sup>10</sup>

Addressing these questions requires reflecting on both the nature of power and on how power can be harnessed, shaped, and moderated; in a word, tempered.<sup>11</sup> My understanding of power relies heavily on Michel Foucault, who sees power as *productive, diffused throughout society*, and capable of *responsibilizing* individuals by holding out standards of deservingness that lead them to govern themselves.<sup>12</sup> Thus, immigrants to the United States

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7. Jared P. Van Ramshorst, *Anti-immigrant Sentiment, Rising Populism, and the Oaxacan Trump*, J. LATIN AM. GEOGRAPHY, Apr. 2018, at 253–56.

8. Muzaffar Chishti et al., *The Obama Record on Deportations: Deporter in Chief or Not?*, ONLINE J. MIGRATION POL'Y INST. (Jan. 26, 2017), <https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not>.

9. See generally MICHAEL WELCH, DETAINED: IMMIGRATION LAWS AND THE EXPANDING I.N.S. JAIL COMPLEX (2002).

10. William Walters, *Deportation, Expulsion, and the International Police of Aliens*, 6 CITIZENSHIP STUD. 265, 287 (2002).

11. Professor John Braithwaite defines “tempering” in the following way:

Power is a good thing; it is needed to enforce legal judgments, to keep the peace, to raise funds to build schools and hospitals. It is untempered power that is bad because it is arbitrary power. Power that is tempered by the rule of law's discipline is more resilient in important ways. It grows authority in the areas of regulation and governance that can be distinguished from domination (which is untempered, arbitrary power).

John Braithwaite, *Tempered Power, Variegated Capitalism, Law and Society*, 67 BUFF. L. REV. 527 (2019).

12. For a description of the Foucauldian notion of power, see MICHEL

experience power in the form of *illegalization*,<sup>13</sup> the process by which individuals who enter United States territory without authorization or who stay beyond the expiration dates of their visas are materially constituted as “illegal aliens” whose very presence in the United States is deemed unlawful. The presence of 10.7 million undocumented individuals in the United States can be seen less as a sign that law is powerless in preventing visa overstays and unauthorized entry, than as an indication of law’s ability to illegalize by producing this population. Illegalization is diffused in that it occurs through everyday interactions, such as when an individual applies for a job and is asked for proof of work authorization, when students who wish to attend college learn that only citizens and lawful permanent residents are eligible for financial aid, when police impound the car of a driver who was unable to secure a driver’s license without proof of lawful presence, when a couple wants to go dancing at a nightclub but cannot provide an identification, or when a child wishes to participate in a school fieldtrip but can’t travel through local checkpoints.<sup>14</sup> Public and legal discourse regarding deservingness also establishes criteria, such as employment, acculturation, and self-sufficiency, against which individual immigrants may measure their lives, potentially leading immigrants to internalize these definitions of success.<sup>15</sup> Such rhetoric of deservingness serves

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FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (Alan Sheridan trans., 1977); THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY (Graham Burchell et al. eds., 1991); Nikolas Rose et al., *Governmentality*, 2 ANN. REV. L. & SOC. SCI. 83, 83–104 (2006).

13. See generally THE DEPORTATION REGIME: SOVEREIGNTY, SPACE, AND THE FREEDOM OF MOVEMENT (Nicholas De Genova & Nathalie Peutz eds., 2010).

14. HEIDE CASTAÑEDA, BORDERS OF BELONGING: STRUGGLE AND SOLIDARITY IN MIXED-STATUS IMMIGRANT FAMILIES *passim* (2019); JOANNA DREBY, EVERYDAY ILLEGAL: WHEN POLICIES UNDERMINE IMMIGRANT FAMILIES *passim* (2015); Laura E. Enriquez, *Gendering Illegality: Undocumented Young Adults’ Negotiation of the Family Formation Process*, 61 AM. BEHAV. SCIENTIST 1153, 1153–71 (2017).

15. Cecilia Menjívar & Sarah M. Lakhani, *Transformative Effects of Immigration Law: Immigrants’ Personal and Social Metamorphoses Through Regularization*, 121 AM. J. SOC. 1818 *passim* (2016). See also Angela S. García,

to legitimize boundaries between citizens and noncitizens.

Immigration law's productivity, diffusion throughout society, and role in responsabilization not only constitute a form of power but also give immigrants themselves the opportunity to temper this power. First, immigrants can harness the law's productivity by redefining immigration categories in ways that legitimize their presence. To do so, they may construct counter-narratives that highlight their contributions to, and membership in, United States society, thus challenging the legitimacy of official law by putting forward their own measures of deservingness. Second, immigrants can also attempt to formalize their own understanding of the law by staking claims for legal status. These claims can push law in new directions, and thus shape and temper law's meaning. Third, immigrants can defy responsabilization by adopting strategies that limit immigration law's ability to shape their lives. Some of these practices, such as staking legal claims, engage law explicitly, whereas others, such as creating counter-narratives or devising community resistance to limit the power of immigration law, engage law only indirectly. Nonetheless, law suffuses both illegalization and immigrants' (and their allies') efforts to survive in the United States while also attempting to regularize their status.

Illegalization is also closely linked to *racialization*, that is, to the governance of immigrants as racial and ethnic "others,"<sup>16</sup> and to *criminalization*, the presumption that immigrants may commit crimes at higher rates and the

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*Hidden in Plain Sight: How Unauthorised Migrants Strategically Assimilate in Restrictive Localities in California*, 40 J. ETHIC & MIGRATION STUD. 1895, 1895–1914 (2014).

16. See generally LEO R. CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* 1–72, 135–218 (2d ed. 2013); *GOVERNING IMMIGRATION THROUGH CRIME: A READER* (Julie A. Dowling & Jonathan Xavier Inda eds., 2013); *IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* (Juan F. Perea ed., 1997) [hereinafter *IMMIGRANTS OUT!*]; Jennifer M. Chacón, *Managing Migration Through Crime*, 109 COLUM. L. REV. SIDEBAR 135, 135–48 (2009).

increasing convergence of immigration and criminal law.<sup>17</sup> The racialization of immigration law is reflected in the fact that different opportunities are afforded to those who overstay their visas versus those who enter United States territory without authorization.<sup>18</sup> The latter are typically from Latin America and are ineligible to adjust their status within the United States, potentially triggering a bar on reentry if they leave the country in order to do so. Those who overstay their visas—often from Asian countries—are eligible to adjust within the United States. The distinction between unlawful entry (“entry without inspection”) and visa overstays is compounded by socioeconomic status because obtaining a visa typically requires demonstrating substantial financial resources. Racialization also occurs through public images of mass migration coming from Mexico<sup>19</sup> and through police profiling.<sup>20</sup> The criminalization of immigrants—often referred to as “crimmigration”<sup>21</sup>—has taken the form of collaboration between federal immigration authorities and local police agencies,<sup>22</sup> stiffened immigration consequences for even minor criminal offences,<sup>23</sup> criminal prosecution of unlawful entry and reentry,<sup>24</sup> and the general

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17. GOVERNING IMMIGRATION THROUGH CRIME, *supra* note 16 *passim*; Chacón, *supra* note 16, at 135–48; Graham C. Ousey & Charis E. Kubrin, *Immigration and Crime: Assessing a Contentious Issue*, 1 ANN. REV. CRIMINOLOGY 63, 63–84 (2018); Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 *passim* (2006).

18. See *Modes of Entry for the Unauthorized Migrant Population*, PEW RES. CTR. (May 22, 2006), <https://www.pewhispanic.org/2006/05/22/modes-of-entry-for-the-unauthorized-migrant-population/>.

19. CHAVEZ, *supra* note 16, at 1–19.

20. See, e.g., Anthony E. Mucchetti, *Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities*, 8 HARV. LATINO L. REV. 1 (2005).

21. Stumpf, *supra* note 16, at 376.

22. See Jennifer M. Chacón, *Overcriminalizing Immigration*, 102 J. CRIM. L. & CRIMINOLOGY 613, 623 (2012).

23. Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936, 1946 (2000).

24. Chacón, *supra* note 16, at 137–38.

presumption that immigrants may be criminals. For example, immigration forms contain pages and pages of crime and security-related questions, such as: “Have you **EVER** committed, assisted in committing, or attempted to commit, a crime or offense for which you were **NOT** arrested?”<sup>25</sup> and “Have you **ever** advocated (either directly or indirectly) the overthrow of any government by force or violence?”<sup>26</sup> Such questions treat immigrants as security risks and criminally suspect.

Although it might appear that illegalization begins when individuals enter the United States without authorization or overstay the expiration date of their visas, in fact, it starts earlier, before immigrants enter the United States. Individuals experience displacement through the structural processes—human rights violations, citizen insecurity, environmental degradation, economic exploitation—that drive them out of their countries of origin.<sup>27</sup> If they travel without authorization, they are illegalized through the humiliations and deprivation they experience during their journeys. Unauthorized migrants may have to hire smugglers, expose themselves to the elements, travel in hidden compartments, forge documents, bribe officials, and risk being victimized by crime.<sup>28</sup> After arriving in the United States, they may be denied work authorization, identification documents, and access to public services. In the case of those who are deported, illegalization also follows them after they are expelled from the country, where they

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25. DEPT OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERVS., APPLICATION FOR NATURALIZATION 14, <https://www.uscis.gov/n-400> (follow “Form N-400” hyperlink) (last visited Apr. 28, 2019).

26. *Id.* at 12, emphasis original.

27. See, e.g., JASON DE LEÓN, THE LAND OF OPEN GRAVES: LIVING AND DYING ON THE MIGRANT TRAIL (2015); Angelina Snodgrass Godoy, *When “Justice” is Criminal: Lynchings in Contemporary Latin America*, 33 THEORY & SOC’Y 621 (2004).

28. DE LEON, *supra* note 27 *passim*. See also Susan Bibler Coutin, *Being En Route*, 107 AM. ANTHROPOLOGIST 195 (2005).



are often labeled as criminals.<sup>29</sup> If they return to the United States without authorization, they face prosecution for felony reentry.<sup>30</sup> They actually have a legal status as prohibited persons that they did not have prior to emigrating.<sup>31</sup> Illegalization is therefore transnational, temporally complex, and linked to historically entrenched processes of extraction and displacement.

Individuals who are subject to illegalization experience deep *uncertainty* about their status, future, and prospects.<sup>32</sup> They are located in a space and time of “liminal legality”<sup>33</sup> in that their lives in many ways are undifferentiated from those of United States citizens, yet they lack legal status. Liminality is exacerbated by the fact that Congressional inaction on immigration reform proposals has given rise to a pent-up desire for legal change, even as recent executive initiatives, such as President Obama’s Deferred Action for Childhood Arrivals (“DACA”) program, which allows certain students who arrived in the United States as children to gain work authorization and temporary relief from deportation,<sup>34</sup>

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29. M. Kathleen Dingeman & Rubén G. Rumbaut, *The Immigration-Crime Nexus and Post-Deportation Experiences: En/Countering Stereotypes in Southern California and El Salvador*, 31 U. LA VERNE L. REV. 363 *passim* (2009).

30. DANIEL KANSTROOM, DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY 1–20 (2007).

31. Connie McGuire & Susan Bibler Coutin, *Transnational Alienage and Foreignness: Deportees and Foreign Service Officers in Central America*, 20 IDENTITIES 689, 689–704 (2013).

32. INES HASSELBERG, ENDURING UNCERTAINTY: DEPORTATION, PUNISHMENT AND EVERYDAY LIFE *passim* (2016); Bridget Anderson, *Battles in Time: The Relation Between Global and Labour Mobilities*, NEW MIGRATION DYNAMICS, 5–24 (2007); Ruben Andersson, *Time and the Migrant Other: European Border Controls and the Temporal Economics of Illegality*, 116 AM. ANTHROPOLOGIST, 795, 795–809 (2014); Melanie B.E. Griffiths, *Out of Time: The Temporal Uncertainties of Refused Asylum Seekers and Immigration Detainees*, 40 J. ETHNIC & MIGRATION STUD. 1991, 1991–2009 (2014); Cecilia Menjívar, *Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States*, 111 AM. J. SOC. 999, 999–1037 (2006).

33. Menjívar, *supra* note 32 *passim*.

34. Memorandum from Janet Napolitano, Sec’y of Homeland Sec., to David V. Aguilar, Acting Comm’r, U.S. Customs & Border Control (June 15, 2012)

have been rescinded by the Trump Administration but permitted to remain in effect due to court action.<sup>35</sup> This complex legal scenario has intensified uncertainty for immigrants, who do not know whether a legalization opportunity will materialize, if they will be able to qualify, how their family would be impacted, or whether they will be apprehended and possibly deported. Such uncertainty can cause plans to be placed on hold, marriages or childbearing to be deferred, and individuals to live in a state of preparation.<sup>36</sup> Uncertainty has been theorized as a form of social control,<sup>37</sup> a suspension of time that places individuals in a different order of being, one in which individuals can neither advance nor return to their prior state.<sup>38</sup> It also is associated with precarity<sup>39</sup> in that this suspension of time and of rights impacts individuals' abilities to work, obtain housing, pursue educational opportunities, and obtain healthcare. Psychologically and emotionally, uncertainty can be devastating.

The uncertainty experienced by immigrants has been coupled with a shift in the nature of immigration remedies, which increasingly have taken discretionary forms that are vulnerable to being rescinded when there are changes in leadership. A case in point is DACA, which was created by President Obama under pressure from students and

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[hereinafter Napolitano Memo], <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

35. See Memorandum from Elaine C. Duke, Acting Sec'y, to James W. McCament, Acting Dir., U.S. Citizenship & Immigration Servs. (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>. For an overview of current DACA litigation, see *Status of Current DACA Litigation*, NAT'L IMMIGRATION LAW CTR. (Nov. 9, 2018), <https://www.nilc.org/issues/daca/status-current-daca-litigation/>.

36. SUSAN BIBLER COUTIN, *EXILED HOME: SALVADORAN TRANSNATIONAL YOUTH IN THE AFTERMATH OF VIOLENCE* 165–205 (2016).

37. Matthew S. Hull, *Documents and Bureaucracy*, 41 ANN. REV. ANTHROPOLOGY 251, 251–67 (2012).

38. See HASSELBERG, *supra* note 32 *passim*; Andersson, *supra* note 32, at 801.

39. PRODUCING AND NEGOTIATING NON-CITIZENSHIP: PRECARIOUS LEGAL STATUS IN CANADA *passim* (Luin Goldring & Patricia Landolt eds., 2013).

activists, after Congress failed to pass the Development, Relief, and Education for Alien Minors Act (“DREAM”), which would have allowed students who immigrated to the United States as children to become lawful permanent residents.<sup>40</sup> Instead of being grounded in statutory law, DACA is an exercise of prosecutorial discretion,<sup>41</sup> according to which the executive branch has the authority to set enforcement priorities that meet national priorities.<sup>42</sup> DACA is therefore quite limited. Individuals who are granted DACA relief are basically considered low priorities for enforcement.<sup>43</sup> They receive work authorization and a temporary reprieve from deportation, but they are not deemed to have been granted legal status in the United States.<sup>44</sup> The Trump Administration has attempted to revoke DACA, and even though its efforts to do so have been enjoined by the courts,<sup>45</sup> the legal fate of the DACA program

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40. See generally WALTER J. NICHOLLS, *THE DREAMERS: HOW THE UNDOCUMENTED YOUTH MOVEMENT TRANSFORMED THE IMMIGRANT RIGHTS DEBATE* (2013).

41. Shoba S. Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 CONN. PUB. INT. L.J. 243 *passim* (2010).

42. Napolitano Memo, *supra* note 34.

43. *Id.*

44. According to the United States Citizenship and Immigration Service, Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion. For purposes of future inadmissibility based upon **unlawful presence**, an individual whose case has been deferred is not considered to be unlawfully present during the period in which deferred action is in effect. An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action does not confer **lawful status** upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence.

*Frequently Asked Questions*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/archive/frequently-asked-questions> (last visited Apr. 28, 2019) (emphasis in original).

45. Order Denying FED. R. CIV. P 12(b)(1) Dismissal & Granting Provisional Relief, *Regents of Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 298 F. Supp. 3d 1304 (N.D. Cal. 2018) (No. C 17-05211 WHA).

is still unclear. DACA recipients are therefore transitory subjects who must appeal to officials who retain authority to grant or deny their requests as a matter of discretion.<sup>46</sup> Their position in the United States is highly insecure.

In sum, immigration law fosters illegalization, racialization, and criminalization, has long-lasting and transnational implications, leads to potentially debilitating uncertainty, and is both unchanging (due to congressional inaction) and unstable (as discretion can be exercised differently by different administrations). To explore how immigrants harness, reshape, and moderate the power that suffuses processes, I draw on fieldwork conducted within immigrant-serving organizations in Southern California, as well as on interviews that carried out between 2014–2017 with 135 individuals, over half of whom were immigrants who were seeking to legalize their status in the United States.<sup>47</sup> Fieldwork consisted of volunteering and shadowing legal service providers at a non-profit that served low-income Spanish-speaking immigrants in the Los Angeles area. Volunteering and shadowing took place one day per week approximately eight months per year between 2011–2014, and then less regularly from 2014–2017. Interview participants included government officials who were involved in conceptualizing and implementing executive relief programs, immigrant rights advocates, activists, and attorneys affiliated with immigrant-serving organizations and coalitions in Los Angeles and Orange Counties, and Latin American and Asian and Pacific Islander immigrants who approached these organizations for legal services or to

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46. Susan Bibler Coutin et al., *Deferred Action and the Discretionary State: Migration, Precarity and Resistance*, 21 *CITIZENSHIP STUD.* 951, 951–968 (2017).

47. Members of the research team are Sameer Ashar, Edelina Burciaga, Jennifer Chacón, Liz Clark, Susan Bibler Coutin, Alma Garza, Jason Palmer and José Torres. For an overview of the research, see Sameer M. Ashar et al., *Navigating Liminal Legalities Along Pathways To Citizenship: Immigrant Vulnerability and the Role of Mediating Institutions* (Univ. of Cal. Irvine Sch. of Law, *Legal Studies Research Paper Series* No. 2016-05), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2733860](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733860).

attend events that they organized. To preserve confidentiality, interviewees are identified by pseudonyms in this article.

My analysis here focuses on three practices through which immigrants themselves seek to temper illegalization: (1) constructing counter-narratives; these narratives were recounted during public protests and in private interviews that my colleagues and I conducted; (2) the legal craft entailed in seeking legal status; and (3) the community resistance through which immigrants seek to emerge from uncertainty regardless of whether or not they are able to obtain papers. Counter-narratives, legal craft, and community resistance are interconnected and mobilize law in ways that have practical implications. When recounted publicly, counter-narratives potentially can sway public opinion, leading to change in immigration law and policy. In private, such narratives also can potentially influence listeners' thinking and produce a sense of legitimacy and self-worth within immigrant communities. Legal craft seeks to interpret law in ways that will support regularization and seeks to promote local and state initiatives that will counter illegalization. Through community resistance, immigrants develop means of persisting in the United States in defiance of exclusionary measures. Together counter-narratives, legal craft, and community resistance, in conjunction with activism and the broad-scale litigation that challenged the rescission of DACA, seek to bring another world into being, one in which individuals and communities are able to thrive regardless of legal status.<sup>48</sup>

#### COUNTER-NARRATIVES

One way that immigrants and their allies combat illegalization is through counter-narratives that question boundary-setting, challenge assumptions of criminality, and

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48. Jennifer M. Chacón, *Citizenship Matters: Conceptualizing Belonging in an Era of Fragile Inclusions*, 52 U.C. DAVIS L. REV. 1, 1–7 (2018).

denounce racialization. Of course, to the degree that they merely invert existing tropes, counter-narratives can be limited in their political efficacy. For example, challenging narratives of criminality by asserting law-abidingness disputes restrictionist narratives but still allows restrictionists to set the terms of debates over immigration policies.<sup>49</sup> Yet, counter-narratives also can go beyond “countering” to instead put forward alternative visions of membership and belonging. Moreover, counter-narratives can be asserted both publicly, in an effort to sway public opinion, and privately, as a means of challenging delegitimizing discourses, asserting self-worth and creating community.<sup>50</sup> Of course, noncitizens’ narratives are far from homogenous.<sup>51</sup> While counter-narratives generally contest state notions of illegality, some narratives also echo normative views of deservingness, suggesting, for example, that those who commit crimes or receive public benefits are unworthy of legalization. Examining the voices of those who are subjected to illegalization reveals the messy realities associated with defying state power while also sometimes reproducing the distinctions (such as legal/illegal, law-abiding/criminal, hard-working/lazy) through which state power is legitimated.

This Section presents examples of both public and private counter-narratives. The public example is an analysis of signs and slogans at the 2017 May Day March in Los Angeles. While the May Day march (on May 1st, International Workers Day) generally focuses on workers’ rights,<sup>52</sup> this march has also become an occasion for asserting

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49. Cf. OiYan Poon et al., *A critical Review of the Model Minority Myth in Selected Literature on Asian Americans and Pacific Islanders in Higher Education*, 86 REV. EDUC. RES. 469, 469–70 (2016) (regarding the ways that critiques of the model minority myth actually reinforce the myth).

50. Menjivar & Lakhani, *supra* note 15, at 1818–25.

51. I thank Stephen Lee for this point.

52. Eli Meixler, *On International Workers’ Day, Here’s the History behind the Holiday Celebrating Laborers Around the World*, TIME (May 1, 2018),

immigrants' rights, particularly since the mass immigrant rights marches of 2006, when unprecedented numbers took to the streets to oppose legislation that would have made it a felony to be in the United States without legal status.<sup>53</sup> The 2017 May Day March in Los Angeles was the first since Trump's election in 2016. I attended as part of fieldwork being conducted with an immigrant-serving organization. My analysis of this event is based on fieldnotes and photos. One limitation is that I was only able to document the signs and slogans that I was able to witness; I did not have a comprehensive view of the march. Four key themes emerged in the slogans and signs that I was able to analyze: empowerment, unity, immigrants as contributors to United States society, and authorities as illegitimate or illegal. Highlighting empowerment, rejecting borders, celebrating contributions, and countering criminalization suggested possibilities for an alternative vision of community and belonging, one in which both citizens and noncitizens would be able to shape policy, access rights and services, enjoy the fruits of their labor, and live without fear.

The private example consists of narratives elicited in 2016, during interviews with undocumented immigrants who had received deferred action through DACA or who had hoped to qualify for deferred action through the programs that were enjoined. Because the presidential elections were underway at the time, interviewees were cognizant of candidates' statements about immigration policies and were eager to voice their own predictions, opinions, and fears. I identified three counter-narratives in this interview material. The most prominent counter-narrative contended that it was legitimate for the State to distinguish between deserving and undeserving immigrants, but that in practice, such distinctions have been drawn so narrowly that many

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<http://time.com/5260887/labor-international-workers-day-google-doodle/>.

53. Alfonso Gonzales, *The 2006 Mega Marches in Greater Los Angeles: Counter-Hegemonic Moment and the Future of El Migrante Struggle*, 7 *LATINO STUD.* 30, 30–31 (2009).

deserving individuals are being erroneously excluded. A second and much less common counter-narrative argued that boundaries themselves are illegitimate and that all deserve legal status regardless of their record or behavior. Third, almost all interviewees denounced instances of discrimination that they had experienced, indirectly putting forward the counter-narrative that laws should be enforced in ways that do not privilege individuals on the basis of their race, social class, ethnicity, or national origin. Together, these public and private examples of counter-narratives reveal how immigrants themselves seek to challenge narratives of criminalization.

### *May Day March*

The 2017 May Day March in Los Angeles took place in downtown, beginning at MacArthur Park, where immigrant rights protests and community celebrations had taken place for decades.<sup>54</sup> The surrounding Pico Union area, where many Central Americans settled when they first entered the United States, is home to *panaderias*, courier services, *botánicas*, store-front churches, and immigrant-serving organizations.<sup>55</sup> Upon entering the youth center of a nonprofit where I was conducting fieldwork and volunteer work, I saw that the center was bustling with activity. Approximately twenty-five community members, predominantly from the Latinx, Spanish-speaking constituency served by this organization, were munching on *pan dulce* and breakfast burritos, making signs, chatting, or selecting drinks and snacks that the organization had

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54. See, e.g., Marina Peña, *MacArthur Park: A Hub for Immigrants, but Why?*, FREEWAY (2016), <http://offthefreeway.com/2016/community/mpena/>; Alene Tchekmedyian, *Hundreds of Demonstrators Rally in MacArthur Park to Denounce Trump's Immigration Policies*, L.A. TIMES (Sept. 10, 2017, 6:55 PM), <http://www.latimes.com/local/lanow/la-me-ln-daca-march-20170909-story.html>.

55. See NORA HAMILTON & NORMA STOLTZ CHINCHILLA, SEEKING COMMUNITY IN A GLOBAL CITY: GUATEMALANS AND SALVADORANS IN LOS ANGELES 229–30 (2001).



provided to carry during the march. Many had pinned capes reading “*lucha*” (struggle) or “*justicia*” (justice) to their shirts, as though they were super heroes. Soon, the nonprofit’s director announced in both English and Spanish that the group would be leaving to assemble for the march. She advised to avoid Trump supporters as well as confrontations with the police. If anyone felt unsafe at any time, they were to look for a National Lawyer’s Guild attorney, who would be monitoring the event. “The important thing is for our voices to be heard,” she concluded.

As the group from this nonprofit joined the rest of the assembled marchers, it was possible to see crowds of people stretching out into the surrounding streets. Many marchers had been mobilized by organizations, as demonstrated by the fact that they were wearing organizational t-shirts or carrying the same pre-printed signs. Others carried hand-drawn signs, drums, noise makers, or megaphones. It was a boisterous group. After standing in the hot sun for more than an hour, the march began. It was a slow walk, through major city thoroughfares to the Los Angeles Civic Center. In addition to marchers, there were crowds of onlookers along the route of the march, and both marchers and onlookers filmed events on cell phones. News media sometimes also joined the marchers, walking backwards so that they could film the oncoming group. There was a police presence, but no altercations were witnessed.<sup>56</sup>

As noted earlier, four themes that countered immigrant illegalization emerged in the slogans and signs that I observed: empowerment, unity, immigrants as contributors to United States society, and authorities as illegitimate or illegal. The first theme, empowerment, is central to protests more generally, as reflected in the ubiquitous chant “*¡Sí, se puede!*” (“yes you can”), a slogan coined by United Farmer

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56. Marisa Gerber et al., *LAPD’s May Day Strategy: Relationships, Numbers, and Invisibility*, L.A. TIMES (May 1, 2017, 8:35 PM), <http://www.latimes.com/local/lanow/la-me-ln-may-day-protests-20170501-story.html>.

Workers leader Dolores Huerta and made famous by the migrant farmworker movement.<sup>57</sup> Chanting “*Sí, se puede*” connected the May Day marchers to other causes and social movements and countered the disempowerment associated with illegalization. Likewise, another chant, “*¿Qué queremos? ¡Justicia! ¿Cuándo lo queremos? ¡Ahora!*” (“What do we want?” “Justice!” “When do we want it?” “Now!”) is used at many marches and is an empowering demand for justice. A sign that was more unique to immigrant rights at this historical moment was shaped like the state of California.<sup>58</sup> This sign evoked California’s efforts to resist immigration policies promulgated by the Trump Administration, and more generally, the possibility of state or local sanctuary and other initiatives designed to include noncitizens as constituents, regardless of federal policies.<sup>59</sup> For example, California allows undocumented immigrants to qualify for drivers licenses and attend public universities at in-state tuition rates, and limits local law enforcement collaboration with federal agents in immigration matters.<sup>60</sup>

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57. *The History of ¡Si Se Puede!*, UNITED FARM WORKERS, <https://ufw.org/research/history/history-si-se-puede/> (last visited Apr. 18, 2019).

58. See *infra* Figure 1.

59. See Monica W. Varsanyi, *Rescaling the “Alien,” Rescaling Personhood: Neoliberalism, Immigration, and the State*, 98 ANNALS ASS’N AM. GEOGRAPHERS 877, 877–96 (2008).

60. Leisy Abrego, *Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California*, 33 L. & SOC. INQUIRY 709, 709–10 (2008); Roxana Kopetman, *California’s Sanctuary Law, SB54: Here’s What It Is—and Isn’t*, ORANGE COUNTY REG. (May 7, 2018, 8:45 AM), <https://www.ocregister.com/2018/05/04/californias-sanctuary-law-sb-54-heres-what-it-is-and-isnt/>; *AB 60 Driver License*, STATE OF CAL. DEPT OF MOTOR VEHICLES, <https://www.dmv.ca.gov/portal/dmv/detail/ab60> (last visited Apr. 28, 2019).

**FIGURE 1.** Sign created at the youth center in preparation for 2017 May Day march.



Second, slogans and signs at the May Day March also promoted unity by countering distinctions between “deserving” and “undeserving” immigrants<sup>61</sup>—and indeed, the very idea that national borders were a legitimate basis for distributing rights and benefits. The California state sign also included the words “Co-exist,” repeated in two different

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61. For a discussion of such distinctions, see Genevieve Negrón-Gonzales et al., *Introduction: Immigrant Latina/o Youth and Illegality: Challenging the Politics of Deservingness*, 9 *ASS'N MEXICAN AM. EDUCATORS J.* 7, 7–10 (2016).

colors (black and green), perhaps suggesting that groups of people could live together regardless of differences. This sign also contains the slogan, “No human being is illegal,”<sup>62</sup> a quote from Nobel Peace prize recipient and holocaust survivor Elie Wiesel.<sup>63</sup> A slogan of immigrant rights movements for decades, this phrase critiques illegalization and dehumanization by appealing to humanity as a universal quality of people.<sup>64</sup> The phrase suggests that the adjective “illegal,” cannot encompass a person’s being. Likewise, another sign mimicked the sorts of forms that immigrants and others must complete to establish their identities:

Birthplace: Earth  
Race: Human  
Politics: Freedom  
Religion: Love

This sign also emphasized the commonality of being born on earth over the divisions created by national boundaries, and claimed humanity as a common racial designation. Butterflies, which cross borders when they migrate and which have come to symbolize freedom of movement,<sup>65</sup> were a pervasive symbol at the march, as seen in Figures 2 and 3, below.<sup>66</sup>

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62. See, e.g., Mae M. Ngai, *No Human Being Is Illegal*, 34 *WOMEN’S STUD. Q.* 291 (2006).

63. Elie Wiesel, *The Refugee*, 34 *CROSSCURRENTS* 385, 385–90 (1984).

64. Contrastingly, for discussions critiquing humanitarianism, see Heath Cabot, *The European Refugee Crisis and Humanitarian Citizenship in Greece*, *ETHNOS J. ANTHROPOLOGY* (Oct. 2018), [https://www.academia.edu/37553813/The\\_European\\_Refugee\\_Crisis\\_and\\_Humanitarian\\_Citizenship\\_in\\_Greece](https://www.academia.edu/37553813/The_European_Refugee_Crisis_and_Humanitarian_Citizenship_in_Greece); Didier Fassin, *Policing Borders, Producing Boundaries: The Governmentality of Immigration in Dark Times*, 40 *ANN. REV. ANTHROPOLOGY* 213 *passim* (2011); Miriam Ticktin, *Transnational Humanitarianism*, 43 *ANN. REV. ANTHROPOLOGY* 273, 273–89 (2014).

65. Juan Velasco, *The Language of Nation Beyond Borders*, in *ETHNIC LITERATURES AND TRANSNATIONALISM: CRITICAL IMAGINARIES FOR A GLOBAL AGE* 217, 217–28 (Aparajita Nanda ed., 2015).

66. See *infra* Figures 2, 3.

**Figure 2.** A marcher displays her sign.



Third, to counter the notion that immigrants pose a threat or are a drain on society,<sup>67</sup> slogans and signs emphasized immigrants' contributions to the United States. The phrase, "Immigrants make America GREAT," which appears on the sign in Figure 1,<sup>68</sup> is a play on Trump's slogan, "Make America great again."<sup>69</sup> The revision "Immigrants make America GREAT" substitutes a different form of nationalism, potentially that of the American dream, for the exclusionary, wall-building, version of nationalism promoted

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67. CHAVEZ, *supra* note 16, at 48.

68. See *supra* Figure 1.

69. Emma Margolin, 'Make America Great Again'— Who Said It First?, NBC NEWS (Sept. 9, 2016, 10:00 PM), <https://www.nbcnews.com/politics/2016-election/make-america-great-again-who-said-it-first-n645716>.

by Trump. Likewise, the quote “Every aspect of the American economy has profited from immigrants,” attributed to John F. Kennedy<sup>70</sup> in the sign in Figure 2,<sup>71</sup> is nationalistic—citing a respected United States president and the national economy—but also in a way that highlights immigrants’ contributions to national well-being. Other signs<sup>72</sup> also emphasized immigrants’ labor. “*La Tierra Es de quien La Trabaja*” (“the land belongs to those who work it”) suggests that labor, rather than property rights, are grounds for ownership and belonging. This sentence suggests that immigrants, particularly those who are farmworkers, have more right to be within United States territory than landowners. Likewise, “Respect workers, not only the labor they produce,” emphasizes that immigrants are more than laborers, they are also people—workers—who deserve respect and rights.

**FIGURE 3.** Marchers displaying their signs.



Fourth, a series of signs also turned criminalization rhetoric on its head, suggesting that United States

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70. President Kennedy wrote, “every aspect of the American economy has profited from the contributions of immigrants.” JOHN F. KENNEDY, *A NATION OF IMMIGRANTS* (1964).

71. See *supra* Figure 2.

72. See *infra* Figure 3.

authorities, rather than immigrants, are the ones who should be considered illegal. The partially visible sign “Liberation not deportation” in Figure 3<sup>73</sup> implies that authorities have oppressed immigrants through deportation. A sign that took the form of a comment bubble accused the President of illegality in language that mocked Trump’s speech and twitter style: “ILLEGAL PRESIDENT NOT ELECTED BY THE PEOPLE. VERY, VERY BAD!” This sign seemingly refers to the fact that Trump lost the popular vote, even though he prevailed in the electoral college,<sup>74</sup> suggesting that Trump’s presidency is illegal, as a result. As well, it could potentially call into question the composition of the electorate, since noncitizens are excluded and communities of color have been disenfranchised through felony disenfranchisement laws and restrictive voter identification laws.<sup>75</sup>

Another sign took the form of a banner, and featured a phrase that has become a slogan for the undocumented youth movement: “I AM UNDOCUMENTED UNAPOLOGETIC AND UNAFRAID.”<sup>76</sup> In quotation marks that seem to reference the spoken word testimonies that have been a hallmark of the undocumented student movement, this slogan directly rejects the sense of culpability associated with accusations of illegality. In contrast to the “DREAMer” narrative, in which young people argued that their

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73. See *supra* Figure 3.

74. Drew Desilver, *Trump’s Victory Another Example of how Electoral College Wins are Bigger Than Popular Vote Ones*, PEW RES. CTR. (Dec. 20, 2016), <http://www.pewresearch.org/fact-tank/2016/12/20/why-electoral-college-landslide-s-are-easier-to-win-than-popular-vote-ones/>.

75. Angela Behrens et al., *Ballot Manipulation and the “Menace of Negro Domination”: Racial Threat and Felon Disenfranchisement in the United States, 1850–2002*, 109 AM. J. SOC. 559, 559–662 (2003); Rachael V. Cobb et al., *Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence From the City of Boston in 2008*, 7 Q.J. POL. SCI. 1, 2–3 (2010).

76. See Hinda Seif, “Unapologetic and Unafraid”: Immigrant Youth Come Out From the Shadows, 134 NEW DIRECTIONS FOR CHILD & ADOLESCENT DEV. 59 *passim* (2011).



educational and work-related achievements in the United States coupled with their young age at the time of immigrating made them deserving of status, this slogan proudly proclaimed that immigrants had nothing to apologize for. The slogan asserted that immigrants were willing to “come out” as undocumented and that they would not be fearfully forced into hiding by anti-immigrant policies. This slogan also builds commonality across undocumented people regardless of their age (by suggesting that parents of undocumented youth are not culpable either) or criminal history (instead of distinguishing “deserving” DREAMers from those who are less deserving). Indeed, a chant that was repeated throughout the march was, “*otro mundo es posible, no tenemos que vivir así,*” (“another world is possible, we don’t have to live like this”<sup>77</sup>). To further explore what this other world might look like, I turn now to the second example of counter-narratives: interviews with potential or actual deferred action recipients.

### *Interview Material*

Between 2014 and 2016, our research team interviewed seventy-three immigrants who had approached Southern California immigrant-serving organizations in hopes of obtaining legal status. To understand changes in interviewees’ legal trajectories, approximately half of the those who were interviewed in the first two years were re-interviewed after a year, as we added new interviewees to our pool. When we began our study, President Obama had announced that parents of United States citizen and lawful permanent resident children would be able to apply for deferred action through a program known as Deferred Action for Parents of Americans (“DAPA”) and had also expanded

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77. The chant “another world is possible” was used most memorably in recent times during the World Trade Organization demonstrations in Seattle in 1999. See generally DAVID McNALLY, *ANOTHER WORLD IS POSSIBLE: GLOBALIZATION & ANTI-CAPITALISM* (2d ed. 2006).



the eligibility criterial for DACA.<sup>78</sup> We recruited interviewees through announcements at immigrant rights forums, document preparation workshops, and legal clinics that sought to educate individuals about deferred action and we also met interviewees through referrals from the organizations that were holding these events. As we were carrying out our project, twenty-six states that favored restrictive immigration policies sued the federal government.<sup>79</sup> Both DAPA and the expansion of DACA were enjoined.<sup>80</sup> We therefore had the opportunity to examine how would-be applicants understood and responded to the announcement and then suspension of these opportunities for legal relief. Interviewees were diverse in terms of gender, national background, and age. We also interviewed forty-two advocates (some of whom were also re-interviewed after one year) and seventeen former Department of Homeland Security officials, gathered legal and administrative guidance documents associated with deferred action, and conducted observations within staff at immigrant-serving organizations. This Section draws primarily on interviews with would-be applicants for deferred action. Their experiences of preparing to apply for relief through programs that were suspended gives them unique perspectives regarding immigration policies.

I identified three basic counter-narratives within interviewees' assessments of United States immigration policies. First, a prominent perspective among the noncitizens whom we interviewed was that *boundaries that distinguish deserving from undeserving immigrants are legitimate but too narrow*. According to this counter-narrative, it is fair for the United States to deny some

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78. *2014 Executive Actions on Immigration*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/archive/2014-executive-actions-immigration> (last visited Apr. 28, 2019).

79. *Tex. v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015), *aff'd by an equally divided court* 136 S. Ct. 2271 (2016) (per curiam).

80. *Id.*

individuals legal status and exclude them from United States territory, but the grounds for making such determinations are currently so narrow that many qualified, deserving immigrants are being unfairly excluded. In making this argument, interviewees appealed to immigrants' moral character, contributions to the United States, assimilation, attachment, and patriotism. For example, Graciela, an undocumented hair stylist in her early thirties who was originally from Mexico, commented, "We don't do any wrong, right. We are people who work. We contribute by shopping here. They charge taxes on that so the economy will flourish."<sup>81</sup> Likewise, Alfaro, an undocumented independent businessman in his thirties who was also from Mexico complained, "I am married to a U.S. citizen, my family depends on me, I have a daughter, I pay my taxes, I am a decent person, a hard-worker, I don't have crimes in the United States. That is, I am a responsible person, moral. But I can't get status."<sup>82</sup> Although interviewees such as Graciela and Alfaro sought more expansive understandings of belonging, they, like many, would not extend these to immigrants who were unemployed, receiving public benefits, or committing crimes. For example, Alfaro told us, "If I were a criminal, of course, obviously, I'd have no right to anything,"<sup>83</sup> while Beatriz, an undocumented sixty-year-old homemaker from Peru remarked, "If there are people that are misbehaving or are not moving forward and sometimes there are entire families including a drunken mom, selling drugs, gangsters . . . punish them by taking their documents and deporting them but do it right and make sure."<sup>84</sup> Such comments echo the deep stigmatization of immigrants as criminals, as well as the logic of exclusionary policies, but

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81. Interview with Graciela, in L.A., Cal. (Dec. 6, 2014).

82. Interview with Alfaro, in L.A., Cal. (Jan. 8, 2015).

83. *Id.*

84. Interview with Beatriz, in L.A., Cal. (July 19, 2016).

dispute the idea that immigrants can be lumped together.

In contrast, a second counter-narrative that emerged within a minority of interviewees was the argument that *boundaries are illegitimate*. Like the slogan, “no human being is illegal,” this perspective was grounded in the notion that people share a common humanity,<sup>85</sup> therefore the law should not impose artificial distinctions based on country of origin or mode of entry, regardless of individuals’ past behavior. For instance, Carla, a DACA recipient who was president of the undocumented student club at a private university, called the distinction that some immigrant rights activists made between “deserving” and “undeserving immigrants,” “respectability politics,”<sup>86</sup> noting that the “good immigrant” narrative bases deservingness on characteristics associated with white, heterosexual, middle-class society.<sup>87</sup> She explained:

‘Respectability politics’ is wanting everyone in your group to be good so that those outside can say, ‘Oh, they are so good that I am going to give them this, because they are so similar to us’—and blah, blah, blah. While more radical activism says, ‘Yes, we are different. We have different ideals. That doesn’t matter. We have these ideals and we are going to follow what we want and you have to give us our rights even though we are anti-patriotic, though we are LGBT, though we are single mothers. That is, we don’t have to be . . . the perfect people in a white family. We are different and just the same, we deserve our rights.’<sup>88</sup>

### Rejecting the “good” and “bad” immigrant dichotomy

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85. Patrick A. Taran, *Human Rights of Migrants: Challenges of the New Decade*, in *THE HUMAN RIGHTS OF MIGRANTS* 7, 7–51 (Reginald Appleyard ed., 2001).

86. Carla may be drawing on the work of EVELYN BROOKS HIGGINBOTHAM, *RIGHTEOUS DISCONTENT: THE WOMEN’S MOVEMENT IN THE BLACK BAPTIST CHURCH, 1880–1920* 186 (1993).

87. Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 *GEO. IMMIGR. L.J.* 207 *passim* (2012); Sylvia R. Lazos Vargas, *Deconstructing Homo[geneous] Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 *TUL. L. REV.* 1493 *passim* (1998).

88. Interview with Carla, in L.A., Cal. (July 19, 2016).

connected immigration to broader disparities and structures of oppression, thus interrogating the limitations of formal rights themselves.<sup>89</sup> Carla explained,

Before, I thought, 'Reform it, give us citizenship, give us more visas.' And I thought afterwards, 'Reform the bureaucracy so that we all can have visas.' And now . . . I am thinking, 'Why do we need visas? Why do we need borders? Who is served by them? These [are] tools to divide us.'<sup>90</sup>

In Carla's view, borders artificially divided groups—immigrants, single mothers, LBGT individuals, people of color—that otherwise could unite to challenge inequality.

While there was some disagreement among interviewees about whether boundaries should be redrawn or eliminated, there was much greater unanimity around a third counter-narrative launched by almost all interviewees, namely that *existing boundaries reinforced white privilege*, which has been defined as “a social system that works to the benefit of whites.”<sup>91</sup> Many interviewees stated that they had been

89. See generally Nicholas P. De Genova, *Migrant “Illegality” and Deportability in Everyday Life*, 31 ANN. REV. ANTHROPOLOGY 419 (2002); Gilberto Rosas, *The Thickening Borderlands: Diffused Exceptionality and ‘Immigrant’ Social Struggles During the ‘War on Terror,’* 18 CULTURAL DYNAMICS 335 (2006).

90. Interview with Carla, in L.A., Cal. (July 19, 2016).

91. Laura Pulido, *Rethinking Environmental Racism: White Privilege and Urban Development in Southern California*, 90 ANNALS ASS'N AM. GEOGRAPHERS 12, 13 (2000) (quoting George Lipsitz, *The Possessive Investment in Whiteness: Racialized Social Democracy and the “White” Problem in American Studies*, 47 AM. Q. 369, 369 (1995)).

A focus on white privilege enables us to develop a more structural, less conscious, and more deeply historicized understanding of racism. It differs from a hostile, individual, discriminatory act, in that it refers to the privileges and benefits that accrue to white people by virtue of their whiteness. Because whiteness is rarely problematized by whites, white privilege is scarcely acknowledged. According to George Lipsitz, ‘As the unmarked category against which difference is constructed, whiteness never has to speak its name, never has to acknowledge its role as an organizing principle in social and cultural relations’ . . . . White privilege is thus an attempt to name a social system that works to the benefit of whites.

*Id.*

mistreated due to their race, ethnicity, language skills, or immigration status. They complained about police harassment, racial slurs, abusive employers, politicians who used immigration as a political tool, and policies that reserved work authorization, health care, educational opportunities, and other resources for the advantaged.<sup>92</sup> Alondra, a computer scientist who immigrated to the United States from Peru in the late 1990s, stated bluntly, “If you are Hispanic, the police will stop you.”<sup>93</sup> Because, until recently, undocumented immigrants in California were ineligible for driver’s licenses,<sup>94</sup> many drove without licenses. The risk of losing their cars to the police<sup>95</sup> led to a vicious cycle in which some chose to drive old cars, knowing that these might be confiscated, which in turn gave the police grounds to stop a car due to a broken taillight or other mechanical issue.<sup>96</sup> Critiques of racial harassment depict white privilege and economic advantage as illegitimate grounds for assessing deservingness.<sup>97</sup> Interviewees also encountered racial slurs while going about their daily lives. Perla, a twenty-seven-year-old office worker who had hoped to apply for DACA but did not meet the eligibility requirements was at the Cheese Cake Factory, a popular restaurant, and had to use the restroom. She related, “I had an encounter with a lady . . . . She was just knocking the door really hard and I said well

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92. Jennifer M. Chacón & Susan Bibler Coutin, *Racialization Through Enforcement*, in RACE, CRIMINAL JUSTICE & MIGRATION CONTROL: ENFORCING THE BOUNDARIES OF BELONGING 159, 159–75 (Mary Bosworth et al. eds., 2018).

93. Interview with Alondra, in L.A., Cal. (Nov. 19, 2014).

94. For a discussion of drivers licenses in an immigration context, see Kevin R. Johnson, *Driver’s Licenses and Undocumented Immigrants: The Future of Civil Rights Law*, 5 NEV. L.J. 213 (2004).

95. See, e.g., Catharine Slack, *Municipal Targeting of Undocumented Immigrants’ Travel in the Post 9/11 Suburbs: Waukegan, Illinois Case Study*, 22 GEO. IMMIGR. L.J. 485 (2008).

96. I thank Jason Palmer for highlighting this point in our discussions.

97. This perspective resonates with literature that critiques nativism, racialization, and criminalization. See, e.g., CHAVEZ, *supra* note 16; IMMIGRANTS OUT!, *supra* note 16; JONATHAN XAVIER INDA, TARGETING IMMIGRANTS: GOVERNMENT, TECHNOLOGY, AND ETHICS (2006).

you know, ‘Give me a minute, I’ll be right out.’ When I got out she’s like, she told me, ‘You immigrants, you shouldn’t be here.’”<sup>98</sup> Some interviewees extended critiques of privilege to the international arena, arguing that United States intervention in their countries of origin created an obligation for the United States to respond humanely to migrants. Joaquin, who was originally from Guatemala, a country that suffered significant human rights abuses perpetrated by governments that the United States supported,<sup>99</sup> commented, “We can talk about, about the U.S. and its impact on our countries . . . all of the things that they’ve done. So it’s like you go and you screw over our countries, and then you don’t want us here.”<sup>100</sup> Such comments highlight the degree to which illegalization begins before immigrants leave their country of origin.

Counter-narratives that seek more expansive notions of deservingness, reject borders, or critique white privilege challenge illegalization by promoting a more inclusive social order. Interviewees’ denunciations of such discrimination articulate a social vision in which race, income, appearance, and country of origin would not be used to exclude individuals—and indeed, should perhaps be a basis for inclusion. Together, these counter-narratives assert a positive view of immigrants as responsible, hardworking tax payers with strong ties to the United States. While this positive view in some ways merely inverts criminalization narratives, slogans, signs, and interview material also went further, challenging the injustice of excluding those who work the land, linking the circumstances of immigrants to those of other socially marginalized groups, rejecting distinctions based on immigration status and national origin, denouncing racism, and critiquing government officials.

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98. Interview with Perla, in L.A., Cal. (Apr. 29, 2016).

99. See generally JENNIFER G. SCHIRMER, *THE GUATEMALAN MILITARY PROJECT: A VIOLENCE CALLED DEMOCRACY* (1998).

100. Interview with Joaquin, in Irvine, Cal. (July 28, 2016).

While counter-narratives do not change the law in and of themselves, they may pave the way for legal change by impacting public opinion and contributing to mobilization. They also may enable those who are subject to illegalization to maintain a sense of self-worth and community connection in the face of virulent anti-immigrant sentiment. Counter-narratives therefore temper law's effects while also putting forward alternative visions of social justice.<sup>101</sup>

#### LEGAL CRAFT

In addition to constructing counter-narratives, immigrants challenge illegalization by applying for legal status, if eligible to do so, and by preparing for a future legalization opportunity, should one arise. Applying for legal status is a way to harness the power of law for immigrants' own ends, shaping law through the particular claims made, and limiting restrictionist efforts to define immigration law in an exclusionary fashion. Of course, not all claims are successful and the arguments put forward in applications must adhere to existing definitions of deservingness. Nonetheless, the craft involved in applying for status, or in preparing to apply, is a way of tempering the power of immigration law. For instance, applying for status is a way to push legal categories to include more people. For example, an attorney at an immigrant rights organization insisted that seemingly specialized programs can actually include a broad cross section of immigrants. This attorney pointed out that the U-visa program, which is designed for crime victims,<sup>102</sup> can benefit many in places like Los Angeles, where crime is prevalent.<sup>103</sup> There is therefore a *craft*

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101. Robert Cover has drawn attention to the ways that narratives put forward particular visions of normative ordering. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 *passim* (1983).

102. Sarah Morando Lakhani, *Producing Immigrant Victims' "Right" to Legal Status and the Management of Legal Uncertainty*, 38 L. & SOC. INQUIRY 442, 444 (2013).

103. Such strategies can also lead to a backlash. The Trump Administration,

involved in applying for status in that both immigrants and advocates must analyze immigration law, looking for creative arguments about how and why particular individuals qualify for specific remedies. There is also a craft in seemingly mundane steps such as collecting documents, assembling a file, completing forms, and developing a narrative. It is not obvious, for example, how specific questions on immigration forms should be completed. What counts as “continuously residing” in the United States?<sup>104</sup> Does entering the United States asleep in the back seat of a car that is waived through a checkpoint by immigration officials count as being “inspected and admitted”?<sup>105</sup> Furthermore, there is also a sense in which applying for legal status seeks to hold the government accountable to the promise created when a program is established. Even saving documents in order to be prepared for a legalization opportunity, should one arise, is an effort to “speak back to the state in its own language.”<sup>106</sup>

The legal craft practiced by immigrants and their allies is forged in the hyper-legalized context created by illegalization, criminalization, and securitization. As discussed in the last Section, daily activities such as driving expose the undocumented to the risk of being pulled over, questioned, and potentially taken into custody. Traveling through checkpoints or across state borders can be

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for example, has deported individuals who are waiting for U-visas. Alexandra Villarreal, *U.S. Deporting Crime Victims While They Wait for U Visa*, CHI. SUN TIMES (July 20, 2018, 7:23 AM), <https://chicago.suntimes.com/immigration/us-deporting-crime-victims-u-visa-bernardo-reyes-rodriguez-donald-trump/>.

104. See U.S. CITIZENSHIP & IMMIGRATION SERVS., POLICY MANUAL vol. 12, part D, ch. 3, <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartD-Chapter3.html> (last visited Apr. 28, 2019).

105. *In re Quilantan*, 25 I. & N. DEC. 285, 292–93 (BIA 2010) (discussing what counts as being inspected and admitted).

106. Gary Albert Abarca & Susan Bibler Coutin, *Sovereign Intimacies: The Lives of Documents Within U.S. State- Noncitizen Relationships*, 45 AM. ETHNOLOGIST 7, 8 (2018).



particularly risky.<sup>107</sup> Individuals may be asked for identity documents when they are applying for jobs, attending school, traveling, or seeking to enter a club or bar. Surveillance and suspicion create a documentary burden,<sup>108</sup> according to which the undocumented are repeatedly reminded of their status. They are, in a sense, detained without actually being in detention.

One response to the hyper-visibility of law is a strategy of hyper-documentation.<sup>109</sup> Even though those who lack legal status are referred to as “undocumented,” the reality is that daily life in the United States produces an abundance of documentation, such as receipts, contracts, application forms, medical records, school records, bank statements, letters, bills, check stubs, attendance records, and tax forms—documents that some citizens may take for granted. Such documents can be used in immigration cases as evidence of moral character, kin relationships, financial solvency, and presence on key dates or over specified periods of time. As one nonprofit client who was pursuing naturalization recalled,

Everything is useful. And so, they even asked me for checks from my job when I began to get my residency, checks from work, all that. And I save them, my check stubs, everything. The taxes, that too. One saves everything, because they ask one for *everything*. Even when you shop . . . I have them in a box . . . because there I just go and look for what I need.<sup>110</sup>

Saving such paperwork is therefore a way to prepare for eventual legalization, even when opportunities are

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107. See generally CASTAÑEDA, *supra* note 14; Chacón, *supra* note 48.

108. See, e.g., Didier Fassin & Estelle d'Halluin, *The Truth From the Body: Medical Certificates as Ultimate Evidence for Asylum Seekers*, 107 AM. ANTHROPOLOGIST 597, 597–608 (2005).

109. See generally Abarca & Coutin, *supra* note 106; Aurora Chang, *Undocumented to Hyperdocumented: A Jornada of Protection, Papers, and PhD Status*, 81 HARV. EDUCATIONAL REV. 508 (2011); Juan Thomas Ordóñez, *Documents and Shifting Labor Environments Among Undocumented Migrant Workers in Northern California*, 37 ANTHROPOLOGY WORK REV. 24 (2016).

110. Interview with Gloria, in L.A., Cal. (Mar. 16, 2012).

ephemeral, by documenting presence, connection, and value.

Noncitizens can also counter illegalization by applying for legal status if there is an opportunity for which they potentially qualify. Not everyone who is eligible to apply for legal status does so,<sup>111</sup> likely due to the many obstacles associated with applying, as well as due to fear of exposure to the government. Applicants for legal status must identify an opportunity for which they are eligible. These might include being petitioned for by a United States citizen or lawful permanent resident relative, qualifying for a U-visa due to being a crime victim, or seeking asylum due to being a victim of political persecution.<sup>112</sup> For those who do not appear to be eligible for anything, biding their time is likely a good legal strategy. Once an opportunity is identified, applicants must overcome their fear of revealing their personal information to the very government that could potentially deport them—no easy task, especially because the outcome of an application is not assured, their immigration file may contain a record, such as a deportation order issued when they failed to attend a court hearing, which would disqualify them,<sup>113</sup> and, as demonstrated in the last section, there is a level of distrust of immigration officials. Other obstacles include obtaining the evidence needed for applications, paying application fees, taking time off of work to attend appointments and hearings, securing qualified and affordable legal assistance, understanding the

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111. See Robert Warren & Donald Kerwin, *The U.S. Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. MIGRATION & HUM. SEC. 306, 306–29 (2015).

112. See, e.g., SUSAN BIBLER COUTIN, *LEGALIZING MOVES: SALVADORAN IMMIGRANTS' STRUGGLE FOR U.S. RESIDENCY* (2000); Ruth Gomberg- Muñoz, *The Juárez Wives Club: Gendered Citizenship and U.S. Immigration Law*, 43 AM. ETHNOLOGIST 339, 339–52 (2016); Lakhani, *supra* note 102.

113. For a discussion of in absentia deportation orders, see Rebecca Feldmann, *What Constitutes Exceptional?: The Intersection of Circumstances Warranting Reopening of Removal Proceedings After Entry of an In Absentia Order of Removal and Due Process Rights of Noncitizens*, 27 WASH. U. J.L. & POL'Y 219 (2008).

legal process, and addressing gaps or discrepancies in their records. For example, applicants' names may be spelled differently on their birth certificates and their marriage certificates. Because United States officials treat immigrants as suspect, such discrepancies are potentially interpreted as evidence of fraud.<sup>114</sup>

Applying for legal status gives immigrants the opportunity to redefine liminality as belonging. By documenting their volunteer work, good moral character, church attendance, employment history, educational achievements, and family relationships, they are able to put forward a narrative of deservingness that counter illegalization. Of course, such narratives may also suggest that applicants are exceptions to general patterns and therefore affirm that criteria used to measure deservingness are valid. Nonetheless, applications give noncitizens and the friends and relatives who write letters of support on their behalf the opportunity to submit their own arguments about deservingness. For example, letters of support written by co-workers of a woman who was applying for a U-visa contained statements like, “[Jane Doe] is a good person. She smiles a lot. She is cheerful. She is never mad. She is good at any kind of work. She loves her children.”<sup>115</sup> These statements appear to be expressions of qualities that letter writers valued, regardless of whether these qualities were important for legal purposes. Likewise, a victim of domestic violence sought to convey how traumatic it was for her to prepare a declaration about her experiences. She wrote in Spanish, “Mr. Judge, you do not know how hard, how sad it was to write this letter. I was crying a lot as though it were

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114. Julie Mitchell & Susan Bibler Coutin, *Living Documents in Transnational Spaces of Migration Between El Salvador and the United States*, 44 L. & SOC. INQUIRY 1, 1–28 (2019).

115. Fieldnotes taken in L.A., Cal. as a part of “On the Record: Archival Practices in Immigrant and Indigenous Advocacy” Study (Sept. 1, 2011) (on file with author).

happening again. Mistreatments, insults, shouts, threats.”<sup>116</sup> This statement insisted on making the judge aware of the retraumatization created by the application process. Applicants also sought to appeal to officials’ humanity and sense of compassion. One woman informed the immigration officials who would be reading her letter, “You are very important people in my life and in my children’s lives,”<sup>117</sup> while another wrote, “I hope that you will have compassion and understanding, as whether or not I am able to stay in the country depends on you alone.”<sup>118</sup> Even though they do not address legal criteria,<sup>119</sup> such appeals insist on applicants’ value as persons.

The complex legal craft entailed in applying for status is evident in the experiences of Arnulfo, a Salvadoran day laborer who at the time of our interview in 2014, had become a United States citizen and was gradually petitioning for other family members to enter the United States legally. Arnulfo immigrated to the United States without authorization in 1986, during the Salvadoran Civil War, fleeing the “difficulties that we were living through in our country, the war, and I was forced to leave there, leaving behind my wife and I had two children at that time. I came to this country in search of a better future for my family.”<sup>120</sup> Arnulfo lived in the United States without legal status until 1990. His greatest hardship was being separated from his family. In 1990, he applied for political asylum and was granted work authorization while his application was pending. His attorney advised him, however, that it would be difficult for him to obtain asylum because even though he

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116. Fieldnotes taken in L.A., Cal. as a part of “On the Record: Archival Practices in Immigrant and Indigenous Advocacy” Study (Sept. 7, 2012) (on file with author).

117. *Id.*

118. *Id.*

119. Emily Ryo, *Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings*, 52 L. & SOC’Y REV. 503 *passim* (2018).

120. Interview with Arnulfo, in L.A., Cal. (Sept. 2, 2014).

feared for his life, he did not have the sort of proof required to win.<sup>121</sup> Arnulfo explained,

They said that . . . my case was not very concrete. Because it's based on having a direct proof that I was in the army, my body was riddled with wounds, or my family was kidnapped. That didn't happen, I fled because I didn't want to die, I didn't want to be forced to join either side in the conflict, I wanted to protect my family.<sup>122</sup>

Although Arnulfo did not obtain asylum, the fact that he had filed an asylum application later made him eligible to apply for United States residency through the Nicaraguan Adjustment and Central American Relief Act ("NACARA").<sup>123</sup> To do so, he had to provide evidence of his good moral character and continuous presence in the United States. Fortunately, Arnulfo had saved the necessary documentation. He recalled,

I saved receipts from funds I sent her, money to support our household. And there were the addresses where I had lived. Because I never rented an apartment, I always live with other people, because my earnings don't allow me to rent an apartment, I am always limited by my family expenses. The receipts that the money transfer agencies gave me for money I sent for food, for my children's schooling . . . . And I have my checks that establish that I was working in this country. I always kept them because I used to say, somehow this will be useful for me . . . . I continue saving documents because if I say something to Immigration and they ask me for proof and if I don't have it, how are they going to be certain of what I tell them? I need proof.<sup>124</sup>

Arnulfo's habit of saving documents paid off. He obtained

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121. For a discussion of the sorts of proof required to obtain political asylum, see Deborah E. Anker, *Determining Asylum Claims in the United States: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment*, 14 IMMIGR. & NAT'LITY L. REV. 227 (1992).

122. Interview with Arnulfo, in L.A., Cal. (Sept. 2, 2014).

123. For a discussion of the NACARA eligibility requirements, see *Nicaraguan Adjustment and Central American Relief Act (NACARA) 203: Eligibility to Apply with USCIS*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/nicaraguan-adjustment-and-central-american-relief-act-nacara-203-eligibility-apply-uscis> (last visited Apr. 28, 2019).

124. Interview with Arnulfo, in L.A., Cal. (Sept. 2, 2014).

residency through NACARA and eventually became a United States citizen. He was able to bring his wife and children to the United States legally. His joyous description of what it felt like to acquire legal status demonstrates the ways that law had previously constrained his life:

Very happy! I felt like when one is handcuffed and they let you go. Go fly, now you can fly! And the first thing I did was fly to my house, I went to go see what I love most in life, my children, my wife, my mother. It had been so long! It was very beautiful what I felt, because I felt that I had been like a prisoner because I could not leave.”<sup>125</sup>

Instead of having to cross the border clandestinely, Arnulfo could travel by air. His status had changed.

Nonetheless, even as a United States citizen, Arnulfo was constrained by United States immigration law because at the time of our interview, he was struggling to petition for a family visa for his adult son. Arnulfo had to pay the expense of this legal process out of his wages as a day laborer and also had to find a sponsor because his income was too low to qualify to file a family petition on his own.<sup>126</sup> After Arnulfo overcame these obstacles, Arnulfo’s son went to an interview at the United States Embassy, only to be told that he had to go through a six-month psychiatric evaluation at a costs of \$125 per appointment. Arnulfo and his wife were shocked by this requirement because, they told me, their son was an Evangelical Christian who did not drink or take drugs and who had studied to become an anesthesiologist and respiratory specialist. They did not see why he needed to be evaluated by a psychiatrist and they found the cost burdensome. Moreover, they were confused by the Embassy’s failure to communicate anything to them about this requirement, which had caused a lengthy delay in their son’s ability to immigrate and had made the outcome uncertain.

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125. *Id.*

126. See *Affidavit of Support*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/greencard/affidavit-support> (last visited Apr. 28, 2019).

Arnulfo said, “The word for me is frustration. Frustrated because even though they [(his son and daughter-in-law)] are doing everything they ask for, there is no certainty of saying they are going to approve this month, this year. No, because every time they ask for more things!”<sup>127</sup> It is noteworthy that Arnulfo and his family experienced the uncertainty associated with illegalization even though he was a United States citizen, most of them were in the United States, and the son who was the beneficiary of the visa petition had not yet left El Salvador. Arnulfo’s persistence in the face of these obstacles was an act of resistance. He had not lost hope, even though he was critical of what appeared to him to be unjust legal processes:

I want my children to give this country what this country gave them as well, through my efforts which has not been easy. But I love this country . . . . But uselessly, one’s thoughts sometimes don’t turn out well because the laws do what they have to do instead of what one thinks.”<sup>128</sup>

The legal craft practiced by Arnulfo and other immigrants sought to make law act the way that they thought it was supposed to.

#### COMMUNITY RESISTANCE

In addition to constructing counter-narratives and practicing legal craft, members of immigrant communities temper the power of immigration law by moving forward with their life projects despite legal uncertainty. Thus, they push back against liminality, temporal paralysis, and spatial exclusion by establishing families, building social networks, moving through the various stages (school, graduation) that mark time, and practicing various forms of integration such as working, volunteering, organizing, and developing institutional connections. In contrast to “pulling oneself up by the bootstraps,” such strategies are collective actions

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127. Interview with Arnulfo, in L.A., Cal. (Sept. 2, 2014).

128. *Id.*

through which noncitizens and their relatives resist being consumed by uncertainty, even as they also are compelled to live with it. As well, strategies are developed in a context of community initiative. Some of the individuals we interviewed had worked on local and state measures to mitigate the impact of immigration status where possible. In California, such successful initiatives include legislation allowing undocumented individuals to obtain drivers licenses, pay in-state tuition rates,<sup>129</sup> qualify for state financial aid,<sup>130</sup> and obtain professional business licenses. While some local communities have attempted to opt-out of state measures by, for example, encouraging their law enforcement agencies to collaborate with federal agents in enforcing immigration laws,<sup>131</sup> other localities have been more welcoming. The City of Santa Ana declared itself a sanctuary,<sup>132</sup> and the City of Los Angeles sponsors “Citizenship Corners” featuring information about naturalization and immigration law at Los Angeles Public Libraries.<sup>133</sup> Through such local initiatives, immigrants and their allies have “rescaled” federal immigration enforcement in ways that foster inclusion.<sup>134</sup>

The experiences of Graciela, an undocumented hairstylist who lived in Los Angeles illustrate the resilience

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129. *California Dream Act Application*, CAL. STUDENT AID COMM’N, <https://www.csac.ca.gov/california-dream-act> (last visited Apr. 28, 2019).

130. *Id.*

131. Cindy Carcamo, *Orange County May Take Stand Against State’s ‘Sanctuary’ Laws*, L.A. TIMES (Mar. 27, 2018, 10:45 AM), <http://www.latimes.com/local/california/la-me-anti-sanctuary-movement-in-oc-20180327-story.html>.

132. Alicia Robinson, *Santa Ana Sides with State in Sanctuary City Legal Fight*, ORANGE COUNTY REG. (April 3, 2018, 6:24 PM), <https://www.oregister.com/2018/04/03/santa-ana-councilmen-want-to-side-with-state-in-sanctuary-city-legal-fight/>.

133. Press Release, City of Los Angeles, Mayor Garcetti Launches New Initiative To Expand Support for Immigrant Angelenos (Jan. 18, 2018), <https://www.lamayor.org/mayor-garcetti-launches-new-initiative-expand-support-immigrant-angelenos>.

134. *See generally* Varsanyi, *supra* note 59.



of immigrant communities in the face of psychic and physical violence inflicted by the arbitrary power exercised by the state. We interviewed Graciela in 2014, after Obama announced additional deferred action opportunities but before these were enjoined, and again in 2016, after an evenly divided United States Supreme Court affirmed the lower court injunction in a one line *per curiam* opinion.<sup>135</sup> Graciela had entered the United States in 2001 at the age of twenty with a tourist visa, after her mother died. Her siblings were already in the United States and she lived in Tijuana, so at first, she traveled across the border to visit and shop but eventually, she decided to stay. She brought her son, who was born in Mexico, with her. Among the people we interviewed, Graciela was one of a small handful who had narrowly missed the age eligibility cutoff of entering the country prior to the age of sixteen and was therefore ineligible for DACA. She also did not have a child who was a United States citizen or lawful permanent resident, and so she was ineligible for DAPA as well. Although she had entered the country with a valid visa, once it expired, Graciela became undocumented. Soon afterwards, she consulted an attorney whom she had heard of on television. She was informed that if she married a United States citizen, the fact that she had entered the United States with a visa would enable her to regularize her status, but other than that, there was nothing for which she could apply. Graciela, like many other immigrants, had hoped that President Obama would extend DAPA to the parents of DACA recipients. She felt that she belonged in the United States, remarking, “We are citizens who are here.”<sup>136</sup>

Graciela employed several strategies that immigrants have devised to resist illegalization: working as independent contractors instead of as employees, obtaining alternative

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135. *Tex. v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015), *aff'd by an equally divided court* 136 S. Ct. 2271 (2016) (*per curiam*).

136. Interview with Graciela, in L.A., Cal. (Dec. 6, 2014).

forms of identification, trying to “pass” as lawful residents, and participating in community activities. These strategies are double-edged swords. For example, independent contractors are not subject to employment restrictions but they do not enjoy labor protections. In a sense, they are the ideal neoliberal subjects. Likewise, adjusting one’s language and comportment in order to “pass” as a lawful resident is not just a means of resistance but also a form of compliance, an indication that individuals have been disciplined through immigration law. Nonetheless, in the face of policies designed to encourage immigrants to self-deport, these strategies are a means of survival.

At the time of the initial interview in 2014, Graciela reported that despite being undocumented, in other respects, she was doing well (and again, note that structural conditions precluded many other interviewees from having such a sense of well-being). Although she could not work legally, she had studied cosmetology in Mexico, and had been able to earn a living by cutting hair. She had obtained a Mexican identification document known as a *matricula consular*<sup>137</sup> and since that had expired, was in the process of getting a Mexican passport. When her car had broken down, the police had treated her amiably, so she wasn’t concerned about traveling through checkpoints. She had learned English and was applying for an Individual Taxpayer Identification Number (“ITIN”) so that she could open a bank account and begin saving for her son’s future. She had also sought out local institutions to mitigate the impact of being undocumented. She was taking arts and craft classes at a local community organization, where she also hoped to seek legal advice in the future. In fact, we met her at a community forum on California Assembly Bill (“AB-60”), which she had attended so that she could obtain a driver’s license as soon

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137. See Monica W. Varsanyi, *Documenting Undocumented Migrants: The Matriculas Consulares as Neoliberal Local Membership*, 12 *GEO POLITICS* 299, 304–07 (2007).

as this new California law went into effect.<sup>138</sup> Also her son's school had held a parent meeting where she obtained a referral to a medical clinic that offered free and low-cost services. Graciela's life was not without challenges. She could not work legally and without a social security number, she could not obtain a cosmetology license and therefore was at risk of being fined by workplace inspectors. She nonetheless defied exclusionary policies by developing plans for her future. She hoped that her son, who was a child arrival, would qualify for DACA when he turned fifteen and that someday, an opportunity would arise for her as well. Her long-term goals were to obtain a cosmetology license, go back to school, help her son complete high school and pursue his dream of becoming an engineer, and eventually become a United States citizen. She reported, "I don't worry. Instead I focus on the fact that he's growing, taking him to school, helping him with work, taking him to programs/activities so he's able to learn as much as he can. I tell him, learn. It'll be good for you and it'll come in handy."<sup>139</sup>

By the time I met with Graciela in 2016 for a second interview, immigrants' legal circumstances at the federal level had worsened. DAPA and the expansion of DACA had been permanently enjoined and the presidential candidacy of Donald Trump, who promised to build a wall along the United States-Mexico border and deport all so-called "illegal immigrants," was gaining steam. Nonetheless Graciela, who was still undocumented and who had married a man who was also undocumented, reported that between 2014 and 2016, her situation had improved: "My life has gotten better. I feel like a more content person."<sup>140</sup> Graciela had obtained her driver's license, which enabled her to purchase car insurance. With her license and insurance, she was unconcerned about police checkpoints: "I just passed right

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138. *AB 60 Driver License*, *supra* note 60.

139. Interview with Graciela, in L.A., Cal. (Dec. 6, 2014).

140. Interview with Graciela, in L.A., Cal. (Aug. 3, 2016).

through there confidently, I have my license, I have insurance, and I have my registration.”<sup>141</sup> In 2016, after considerable immigrant activism, California extended medical coverage to children regardless of immigration status, so Graciela’s son had qualified for California Medicaid or “Medi-Cal”.<sup>142</sup> Furthermore, California had amended its business licensing code to enable individuals to obtain licenses with an ITIN,<sup>143</sup> so Graciela was studying to obtain the cosmetology license that she had spoken of in 2014. She explained,

I took advantage of another program or law that was initiated this year where people who don’t have a good social security number can go to school to get a certificate in a technical career, there are many of them but the one I am focused on, the one that interests me because it has to do with my field is cosmetology. So I already initiated the process in January and in approximately one month they will send me the solicitation to send the papers to the state and that way they can give me the appointment.<sup>144</sup>

Graciela anticipated that with a license, her earnings would increase and she would be able to work “freely . . . without fearing that inspectors are going to arrive.”<sup>145</sup> Because she worked independently, she was not an employee and did not need employment authorization. Graciela stressed, “Now I’m happier and paying less for insurance, and now, with this law that allows me to get a cosmetology license, well, I am very, very, very happy.”<sup>146</sup>

Significantly, the legal setbacks regarding deferred action did not impact Graciela because she would not have been able to qualify for DAPA or DACA+ even if these had

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141. *Id.*

142. 75—*Full Scope Medi-Cal for All Children*, CAL. DEP’T OF HEALTH CARE SERVS., <https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/sb-75.aspx> (last visited Apr. 28, 2019).

143. S.B. 1159, 2013–2014 Leg., Reg. Sess. (Cal. 2014).

144. Interview with Graciela, in L.A., Cal. (Aug. 3, 2016).

145. *Id.*

146. *Id.*

been implemented. Graciela was practicing legal craft by recognizing that she was ineligible for status and not allowing herself to be “tricked,” as she put it, into submitting an application, only to be deported.<sup>147</sup> Rather than paralyzing her, legal uncertainty had prompted Graciela to act quickly when opportunities, such as the chance to obtain a cosmetology license, arose: “We have to take advantage of it because the laws can change at any time.”<sup>148</sup> Like other interviewees, Graciela tried to be prepared by gathering documents, for example, to qualify for a driver’s license.<sup>149</sup> Graciela placed her hopes for her son on the DACA program, which, she recognized, was unstable: “We hope that 3 years from now when he’s 15 that law will still be around and he’ll be able to qualify for the Dreamers [(DACA)], if they don’t take it away.”<sup>150</sup> Graciela worried about the outcome of the presidential elections: “If Donald Trump wins he’s not going to want anything at all for people who are here illegally or—

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147. Graciela said:

The news puts on these little information bulletins that you shouldn’t let yourself be tricked because there are those who would—yes, well, I am from Mexico and there are people who, in order to get money from people desperate to get legal paperwork, they tell them, “we are going to submit an application because you can ask for political asylum,” which is something that doesn’t exist for Mexicans. So, the only thing that happens is that people waste their money and they are so hopeful that they are going to get some kind of benefit, and they never get a single thing, the only thing they get are deportations. Yep, that is all they get.

*Id.*

148. *Id.*

149. Graciela said:

I went to get information about AB-60 when it still wasn’t a law, it was just in the commenting stage and they were saying that the law was going to be put on the floor and let’s see if it passes or not, but that we had to prepare ourselves, because if it did go through well, then we’d already be prepared with our documents.

*Id.*

150. *Id.* In fact, President Trump Rescinded DACA in September 2017. Memorandum from Elaine C. Duke, *supra* note 35.

mainly just for being Hispanic.”<sup>151</sup> She still could not legally reenter the United States if she were to visit her family in Mexico or afford health insurance for herself or her husband. Yet, she had the ability to plan:

My plans are, well, that [my son] graduate that he get a career that, hopefully doesn't require expensive tuition, and keep working to support him and, well, hopefully they pass a law that allows me to get a social security number, right? A valid one, and well, save up for my retirement. Those are my plans. And well, why not, a little house. A little house. Yes, but those are my plans.<sup>152</sup>

Graciela's experiences are atypical in many respects, including the fact that she entered with a visa and that she was exceptionally enterprising and had a very positive attitude. Nonetheless, we interviewed other undocumented immigrants who, like Graciela, had devised ways to move forward with their lives despite not having legal status. Such community members sometimes avoided employment prohibitions by becoming independent contractors or founding their own businesses in such fields as catering, gardening, floristry, or home care. Those who had entered without authorization generally could not regularize their status in the United States, but, by 2016, some were nonetheless pursuing educational opportunities or supporting their children's studies and careers. I, in no way want to minimize the precarity caused by living in the United States without authorization, a precarity that includes vulnerability to deportation, material deprivation, exploitation in the workplace, unemployment, health challenges, and lengthy family separation. At the same time, Graciela's experiences demonstrate the community resistance that tempers the power of immigration law by refusing to let legal uncertainty define immigrants' lives. Of course, such community resistance likely cannot forestall deportation. But, it does challenge the exclusionary policies

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151. Interview with Graciela, in L.A., Cal. (Aug. 3, 2016).

152. *Id.*

designed to make immigrants so uncomfortable that they “self-deport.”<sup>153</sup>

#### CONCLUSION: ANOTHER WORLD IS POSSIBLE

The strategies through which noncitizens temper the power of immigration law do not only impact individuals. In addition, collectively, these strategies also seek to create a world in which immigration status would not limit individuals' life chances. In such a world, immigrants would be empowered instead of criminalized, unified instead of divided according to legal status, and able to contribute to the United States in ways that were recognized and rewarded. Enforcement practices that disrupted families would be denounced as illegitimate and discontinued. Immigration law would become more inclusionary, whether by redefining deservingness in meaningful ways or by rejecting boundaries altogether. White supremacy would be partially dismantled by eliminating policing practices that target suspects on the basis of race and by redefining deservingness in ways that did not privilege white, middle class standards. Legalization would either become unnecessary, more accessible, or both, and would reflect values articulated by immigrants. Community members would be able to move forward with life projects like getting married, supporting children, studying, developing a career, without being impacted by immigration status. This vision may sound utopian, and I certainly do not wish to suggest that there is a unified perspective among immigrants—in fact, there are important differences of opinion, as noted above—but in essence, interviews and fieldwork within immigrant communities revealed shared commitments to more inclusive practices in which race and immigration

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153. For a discussion of enforcement tactics intended to force undocumented immigrants to simply leave the country (known colloquially as “self-deportation”), see Rene R. Rocha et al., *Policy Climates, Enforcement Rates, and Migrant Behavior: Is Self-Deportation a Viable Immigration Policy?*, 42 POLY STUD. J. 79, 79–100 (2014).

status ceased to be a barrier to well-being.

The counter-narratives, legal craft, and community resistance developed by immigrants temper the power of immigration law, albeit in limited ways. While they varied, collectively, counter-narratives challenge illegalization, highlighting ways that United States policies contribute to displacement in the first place, asserting immigrants' value and worth, and turning accusations of illegality against government officials, such as President Trump who lost the popular vote. On a practical level, counter-narratives may sway public opinion, cause bureaucrats and fact finders to change law or apply it differently, and sustain immigrants who are confronted with disparaging rhetoric and exclusionary practices on a regular basis. Of course, counter-narratives may also play a role in disciplining immigrants by holding out ideals—law-abidingness, hard work, service, and family—to which immigrants may be expected to conform. Legal craft does have the potential to confer concrete benefits, such as legal status, work authorization, and permission to remain in the country—and to potentially expand categories of eligibility, however, applying for status also in some ways reaffirms the legitimacy of the existing immigration system by appealing to notions of merit and deservingness that are part of immigration law. Community resistance that sought to minimize the impact of immigration status on well-being perhaps has the greatest potential to mitigate the power of immigration law. At the same time, not all immigrants can engage in such strategies and the power of immigration law can be reasserted, regardless of these life strategies in the event that an immigrant is apprehended and placed in deportation proceedings.

Lastly, at a moment when immigrants' legal rights have been eroded through travel bans,<sup>154</sup> family separations at the

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154. Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017). For a discussion of travel ban litigation, see Lydia Wheeler, *Immigrant Groups Sue*



United States-Mexico border,<sup>155</sup> restrictions on refugee admissions,<sup>156</sup> redefinition of public charge,<sup>157</sup> and efforts to make whole classes of persecution victims ineligible for asylum,<sup>158</sup> it is important to highlight the ways that immigrants themselves challenge such initiatives on an on-going basis, through their daily lives. Just as illegalization is brought about through countless everyday interactions, such as stopping a driver at a police checkpoint or asking a job applicant to complete an I-9 form proving that they are authorized to work in the United States, so too are legality and moral worth asserted on an on-going basis through social commentary that critiques immigration policies, the arguments and documentation put forward by those applying for legal status, and state and local policies that minimize the impact of immigration enforcement on immigrants' lives. Whether such commentary, legal craft, and community resistance will eventually redefine federal law and policy remains to be seen.

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*Trump Over Travel Ban*, HILL (July 30, 2018, 2:11 PM), <https://thehill.com/regulation/399528-immigrant-groups-sue-trump-administration-over-travel-ban>.

155. Exec. Order No. 13,841, 83 Fed. Reg. 29,435 (June 25, 2018). Regarding litigation of this executive order, see Kristina Davis, *Family Separation Litigation Shifts to Restoring Migrant Rights and Preventing Future Crisis*, L.A. TIMES (Dec. 29, 2018, 5:45 PM), <https://www.latimes.com/local/lanow/la-me-ln-sd-family-separation-20181229-story.html>.

156. Jennifer Hansler, *U.S. Admits Lowest Number of Refugees in More than 40 Years*, CNN POLITICS (Oct. 3, 2018, 6:08 PM), <https://www.cnn.com/2018/10/02/politics/us-refugees-fy18/index.html>. See also Determination No. 2019-01, 83 Fed. Reg. 55,091 (Nov. 1, 2018).

157. *Proposed Change to Public Charge Ground of Inadmissibility*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/legal-resources/proposed-change-public-charge-ground-inadmissibility> (last visited Apr. 28, 2019).

158. *In re A-B-*, 27 I. & N. DEC. 316 (A.G. 2018).