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### Immigration Politics: Shifting Norms, Policies and Practices

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**SYMPOSIUM**

**IMMIGRATION POLITICS: SHIFTING NORMS,  
POLICIES AND PRACTICES<sup>1</sup>**

*Felicia Escobar*

*Annie Lai*

*Hiroshi Motomura*

*Karen Tumlin*

*Kathleen Kim, moderator*

Loyola of Los Angeles Law Review is pleased to present our second “symposium discussion” series in which leading experts are invited to engage in an evening symposium on a new or changing area of law. Held in partnership with the Loyola Immigrant Justice Clinic, our second evening symposium was designed to examine ways for immigration law practitioners and professors to teach, interpret, and advocate amid changing Trump administration policy measures. To shed some light on how to protect immigrants in a time of shifting practices, the symposium panelists were:

- FELICIA ESCOBAR – Felicia Escobar is Director of Immigration at The Beacon Fund, which works to unleash individual potential by investing in youth and their families, supporting communities, and removing systemic barriers to success. Previously, Felicia served at the White House Domestic Policy Council; led the White House Task Force on New Americans; worked for state legislators; and advocated for Texas’s Latino community

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as a UnidosUS State Policy Analyst, among other roles. Felicia earned a Bachelor of Arts from Yale University, Masters of Public Policy from the Harvard Kennedy School of Government, and her J.D. from UCLA School of Law.

- ANNIE LAI – Annie Lai is a Clinical Professor of Law and Co-Director of the Immigrant Rights Clinic at the University of California, Irvine School of Law. Professor Lai teaches, researches, and practices at the intersection of immigrants’ rights, civil rights, immigrant workers’ rights, and criminal law and procedure. Her scholarship has appeared in journals such as the Boston College Law Review, Santa Clara Law Review, and Denver Law Review. She is a frequent author of amicus briefs and a regular commentator on immigrants’ rights issues, including state and local immigration policy. Prior to joining the faculty at UCI, Professor Lai worked as a staff attorney for the Urban Justice Center Community Development Project in New York and the ACLU of Arizona. She also served as a Clinical Teaching Fellow and Lecturer in Law at Yale Law School. Professor Lai received her J.D. from the New York University School of Law and her B.A. from Duke University.
- HIROSHI MOTOMURA – Hiroshi Motomura is the Susan Westerberg Prager Distinguished Professor of Law at UCLA and an influential scholar and teacher of immigration and citizenship. He has written two general audience books: *Americans in Waiting* (2006) and *Immigration Outside the Law* (2014), and co-authored two casebooks: *Immigration and Citizenship: Process and Policy* (8th ed. 2016) and *Forced Migration: Law and Policy* (2d ed. 2013). The recipient of many teaching honors, including the UCLA Distinguished Teaching Award in 2014, and one of twenty-six law professors nationwide profiled in *What the Best Law Teachers Do* (2013), he is now at work on a new book, *The New Migration Law*, with the support of a Guggenheim Fellowship.

- **KAREN TUMLIN** – Karen Tumlin is a nationally recognized impact litigator focusing on immigrants’ rights. She successfully litigated numerous cases of national significance, including a challenge to the Trump administration’s effort to end the DACA program and the Muslim ban, as well as the constitutional challenge to Arizona’s notorious anti-immigrant law, SB 1070. She formerly served as the Director of Legal Strategy and Legal Director for the National Immigration Law Center, where she built a legal department of over fifteen staff who developed and led cases of national impact.

And our moderator,

- **KATHLEEN KIM** – Kathleen Kim is a professor of law at Loyola Law School Los Angeles. Her scholarship and teaching address the intersection of immigration law, workplace rights, civil rights, and the 13th Amendment. She is co-author of the leading casebook on human trafficking. She helped to co-found the Loyola Immigrant Justice Clinic as faculty supervisor. Prior to joining Loyola, Kim launched the first legal services project in the nation focused on the civil rights of immigrant trafficked workers as a Skadden Fellow and staff attorney at the Lawyers’ Committee for Civil Rights. Kim served as a gubernatorial appointee to the first California Department of Justice Alliance to Combat Trafficking and Slavery. As a Los Angeles Police Commissioner from 2013 to 2016, Kim helped to enact departmental reforms that increased protection of Los Angeles’s immigrant communities. Professor Kim received her J.D. from Stanford Law School where she was a Judge Takasugi Public Interest Fellow and an editor for the Stanford Law Review. She received her B.A. in philosophy with high distinction from the University of Michigan.

**Kathleen Kim (Moderator):** I’m one of several people representing the clinic here, a faculty member here at Loyola, teaching immigration, and we’re really excited to host this program and to be here to uncover all of the substantive insights that our expert panelists have. Some of them have come from pretty far away.

Now I'm going to hand it over to Emily Robinson and Marissa Montes who co-direct the Immigrant Justice Clinic to say a couple of things.

**Emily Robinson:** We co-direct, teach, and run the Immigration Clinic. In the last few years we've grown from a team of two, with Kathleen, to a team of nine. So, hopefully, you'll get to say hi to some of our colleagues here today. We also have a lot of students who have helped, and we would like to thank our board for their generous sponsorship of this event.

**Kathleen Kim (Moderator):** Yes, today's symposium just would not have been possible without the support of our board. Thank you.

**Emily Robinson:** And thank you to all of you, as well, for joining us today, and to all of our panelists; some of which have traveled from other parts of the nation. So, thank you so much for being here, and we really hope that you enjoy the symposium and that it inspires you guys to all take action.

**Marissa Montes:** Thank you so much, we hope you learn a lot from today, and have some ideas for social resistance moving forward. Thanks.

**Kathleen Kim (Moderator):** Okay. So, the first panel is on immigration policy, and I'll be moderating. I'm just going to do brief introductions of each of the panelists, whose bios you can read in the programs. And I will also give a brief description of what each panelist will be discussing. Afterwards we hope to leave a good amount of time for some moderated discussion and question and answer. And I'm very pleased that each of our panelists will be giving a different and yet important perspective on the topic of immigration policy.

We will begin our panel with Karen Tumlin, who is the Legal Director of the National Immigration Law Center. She will be talking about some of the highlights of the current administration's immigration policy and practice over the last year, and also discuss how those immigration policies and practices reflect much of the campaign rhetoric that occurred during the presidential campaign.

Karen will be followed by Professor Hiroshi Motomura from UCLA Law School, who recently won a Guggenheim to work on his current book, which asks questions regarding the civil rights framework and the limitations on that type of approach to progressive immigration reform policies. And our hope is that those kinds of

questions might provoke your own thoughts on what immigration reform ought to look like, and what kinds of norms should be underlying those policies.

Hiroshi will be followed by Annie Lai, who is a professor at the University of California, Irvine Law School, where she runs the Immigrant Rights Clinic. She comes to UCI after completing the Cover Clinical Teaching Fellowship at Yale, and her comments are drawn from a recently published article that she wrote addressing, in large part, local responses to federal immigration enforcements and policies, including so-called sanctuary policies.

Annie will be followed by Felicia Escobar, who recently worked in the Obama administration as a presidential advisor on immigration policy. She has held many such policy advisor positions, at esteemed levels of the federal government, and she is currently working in the development and philanthropic field; Felicia also worked on the recently implemented Los Angeles Justice Fund,<sup>2</sup> which has supported many local immigrants' rights organizations. She will be reflecting on her experiences in the Obama administration, policy development and reform during the Obama administration, and her thoughts on the current situation. She will also talk about the kind of work that she's been doing and philanthropy to further immigrants' rights efforts. With that, we will start with Karen.

**Karen Tumlin:** Great. Thank you so much, Kathleen, it's really nice to be at Loyola. I consider Loyola my adopted law school home. Many years ago now, Kathleen Kim came over to the National Immigration Law Center where I work and pitched this idea about this amazing Immigration Law Clinic she was going to build that did good work to help immigrants. And she convinced myself and my boss, our executive director, Marielena Hincapié, to teach as adjuncts for many years. And I had the privilege of working with many of the Loyola folks in the room, and it is so amazing to see what you all have built. I'm really proud to be here today, and so grateful for all you add to the Los Angeles community.

So, that was the uplifting part of the talk; now I want to focus a little bit on my vantage point as someone who's been litigating with many of the folks in this room against the Trump administration on

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2. See *L.A. Justice Fund*, CAL. COMMUNITY FOUND., <https://www.calfund.org/lajusticefund/> (last visited Feb. 24, 2019).

immigration. What do I see as what they've achieved and what they've done in their first year with respect to reshaping immigration law and policy? And, you know, these are most definitely not the highlights; as Kathleen said, they are certainly the lowlights.

The first point of course is, when you hold the White House, you don't have to actually change federal immigration law by Congress in order to radically change federal immigration law. That is the plus when folks like Felicia are in the White House, and the minus when folks who have an agenda to divide immigrant communities are in the White House. So, where I want to start is to say that when this administration came in, they were clear, they didn't hide the ball. The American public certainly knew that President Trump intended to radically reshape immigration law. We certainly knew that his views towards immigrants lead toward the notion that immigrants are criminals. And that that was going to be a key part of what he did when he took office. And very quickly we saw that the cast of characters who had been advisors and were being put in place in the administration, were what I would consider true believers; folks who had very formed views about immigration, and critically knew the system.

So, let's just start with a few participants. The Attorney General, Jeff Sessions—he has very deep knowledge of the Immigration and Nationality Act. And we know what his views are, right? In his time in the Senate, he was very clear about his desires to do different things.<sup>3</sup> He thought that the asylum system was primarily fraudulent.<sup>4</sup> There were constant hearings that he ran against DACA in attempts to defund DACA.<sup>5</sup> You know all these things were very clear, but what I'm highlighting is the marriage, not only of individuals whose views were extreme and anti-immigrant, but whose knowledge of the

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3. See *Alabama Senator Jeff Sessions, ON ISSUES*, [http://www.ontheissues.org/senate/jeff\\_sessions.htm](http://www.ontheissues.org/senate/jeff_sessions.htm) (last visited Feb. 24, 2019).

4. See Andrew R. Arthur, *Jeff Sessions's Impact on Immigration as Attorney General*, CTR. FOR IMMIGRATION STUDIES (Nov. 15, 2018), <https://cis.org/Arthur/Jeff-Sessions-Impact-Immigration-Attorney-General>; Miriam Valverde, *Jeff Sessions Claims Asylum System Rampant with Fraud and Abuse*, POLITIFACT (Oct. 19, 2017, 3:00 PM), <https://www.politifact.com/truth-o-meter/statements/2017/oct/19/jeff-sessions/jeff-sessions-claim-about-asylum-system-fraudulent/>.

5. See Brett Samuels, *Sessions Pushes Back on Judge's DACA Ruling*, HILL (Aug. 6, 2018, 2:44 PM), <https://thehill.com/regulation/court-battles/400595-sessions-pushes-back-on-daca-ruling-courts-improperly-using-power-to>; see also *Attorney General Jeff Sessions Issues Statement on DACA Court Order*, U.S. DEP'T OF JUSTICE (Aug. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-issues-statement-daca-court-order>.

practicalities of federal immigration law were deep. So, these folks had a playbook when they took office, it was not just the little sheet of paper that was underneath Kris Kobach's arm during the transition period. There were documents that had been drafted by key anti-immigrant groups like the Center for Immigrant Studies. These documents are like 89-point, single-spaced bulleted requests of how President Trump could, without congressional intervention, radically reshape immigration law. And then they started to roll those policy changes out.<sup>6</sup> I'm going to talk about a couple of examples specifically, starting with the Muslim ban, and then moving to DACA.

How many of you went to LAX or some other airport around the country the weekend of January 27th, when the Muslim ban first rolled out? And how many of you have done any type of consultation or work with folks on Muslim ban #1, #2, or #3? Great. I'm going to talk a little bit about my own experience with the Muslim ban litigation, including with one of my co-counsel from the very beginning, Mike Wishnie, who is in the room, who will be talking later this afternoon.

Much of my experience with the Muslim ban has been through my daughter's eyes, who is eleven now. I'll be candid; my daughter was impacted by the election. Her response the morning after the election was, "But, mommy, he doesn't like women, he doesn't like immigrants, he doesn't like disabled people; why did we elect him?" That's the eyes of the child. We filed with Mike, and with the International Refugee Assistance Project, a lawsuit that was then heard on that Saturday regarding individuals who were being detained at the airports under the very first Muslim ban, resulting in their release.<sup>7</sup> Watching that through the eyes of my daughter that night, when I told her I was not putting her to bed because we needed to file a lawsuit overnight. So, when she woke up, she said, "Did you do it? Did you sue the president?" I said, "Yes, we did." And so, later that day when we had a hearing she was like, "Did you win?" and I said, "We did." There were all those things happening; there was the tremendous feeling of the power of the people showing up at Atlanta Airport, at Dallas, at LAX, at JFK. The videos of people being released, and that

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6. See *Center for Immigration Studies*, S. POVERTY L. CTR. <https://www.splcenter.org/fighting-hate/extremist-files/group/center-immigration-studies> (last visited Feb. 24, 2019).

7. Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, *Darweesh v. Trump*, No. 1:17-cv-00480, 2017 Westlaw 393446 (E.D.N.Y. Jan 28, 2017).



feeling. . . And then it kept going. There was the Washington lawsuit, and everybody tuned in on C-SPAN, and the Trump administration lost—everything was enjoined again.<sup>8</sup>

Now, a different president might have stood down. In the light of actual resistance of people in the streets, and the massive rebukes by the court, someone else may not have continued the effort, rescinding the executive order one, putting out executive order two, then executive order three; which is permanent. But this president did.<sup>9</sup> That’s a reminder that, even with the massive stumbling of the rollout of the first executive order, the widespread criticism that the administration took from not being prepared, the criticism from within agencies, the criticism of former national security advisors, and the public outrage, this administration was like, “Whoops. What we’re going to do is do it better, do it longer, do it more permanently. And get our real Muslim ban.”

I think that is a lesson for all of us in terms of what we’re facing. I don’t know if you all remember this particular wrinkle of the Muslim ban litigation; there was the moment when the U.S. Supreme Court limited to whom the Muslim ban could be applied, saying it could not apply to close family members—what they called, “bona fide family relationships.”<sup>10</sup> Originally, grandparents were not included. And believe it or not, again, this is an administration who wanted to fight for the difference to exclude grandparents or first cousins as somehow different in terms of family relationships than others. And again, these are the lessons that we take forward when we’re thinking about the zeal with which this administration, for three more years at minimum, will continue to push forward an agenda to leave lasting changes on immigration policy.

Now, I want to talk about a few lessons from DACA. When Trump was elected, immediately I was most concerned that DACA was at risk. I know all of us know DACA recipients. For many of us, for our family members, and for our loved ones, that is the reality. And the fear that their lives and the lives of our communities were going to be thrown into chaos was real. As the months wore on, we had the set of executive orders that were leaked and then the set that was

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8. *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017).

9. *See* Exec. Order No. 13769, 82 Fed. Reg. 8,977 (Jan. 27, 2017); Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017); Exec. Order No. 13815, 82 Fed. Reg. 50,055 (Oct. 24, 2017).

10. *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2088 (2017).

implemented. There was no action on DACA, and we got past eight months of the administration with the president sometimes saying he had love in his heart for DACA recipients and renewals were proceeding. I was lulled into submission, or a belief that it might be okay. Then rumors started heating up that the repeal of DACA was coming.

Again, the reason I'm choosing to highlight this piece of the DACA story, not what's happened in the courts nor what's happening in Congress, is that DACA, as a program, polls at 80 to 86 percent favorability.<sup>11</sup> That's crazy. Nothing is that favorable in the U.S. currently. Our shelter's communications director likes to say, "Apple pie polls at 33 percent." And again, the notion that this administration will talk about love in their hearts for DACA recipients and that recipients should not be afraid, but yet go after the intensely popular program is something that we have to take seriously when we're assessing what could be the next step in the changing and radicalization of immigration policy.

There are two other things that I will highlight. The administration said this funny thing, and they tried to have it both ways. "Well, we're going to phase out the program. We're going to give everybody one month to reapply."<sup>12</sup> First there were massive hurricanes and natural disasters across our country. We were bringing litigation with Yale and Make the Road, and they refused to budge and give any inch for individuals who maybe couldn't meet that deadline—that arbitrary one-month scramble imposed on DACA recipients—even if they were impacted by the hurricane.<sup>13</sup> And that shows the digging in of their heels.

Then, the reports came out that all types of arbitrary things were happening on the 10/5 deadline.<sup>14</sup> That applications that were literally received at six o'clock at night were rejected because they had picked

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11. Scott Clement & David Nakamura, *Survey Finds Strong Support for 'Dreamers'*, WASH. POST (Sept. 25, 2017), [https://www.washingtonpost.com/politics/survey-finds-strong-support-for-dreamers/2017/09/24/df3c885c-a16f-11e7-b14f-f41773cd5a14\\_story.html?utm\\_term=.d6c12052dc75](https://www.washingtonpost.com/politics/survey-finds-strong-support-for-dreamers/2017/09/24/df3c885c-a16f-11e7-b14f-f41773cd5a14_story.html?utm_term=.d6c12052dc75).

12. Alan Neuhauser, *DHS: 1 in 7 DACA Recipients Did Not Apply to Renew Status*, U.S. NEWS & WORLD REPORT (Oct. 19, 2017), <https://www.usnews.com/news/national-news/articles/2017-10-19/dhs-1-in-7-daca-recipients-did-not-apply-to-renew-status>.

13. *Id.*

14. *Id.*; Liz Robbins, *Post Office Fails to Deliver on Time, and DACA Applications Get Rejected*, N.Y. TIMES (Nov. 10, 2017), <https://www.nytimes.com/2017/11/10/nyregion/post-office-mail-delays-daca-applications.html>.

up the mail earlier in the day. Regardless of the human impact. That there were massive documented postal delays, that resulted in folks not being able to get their applications in on time.<sup>15</sup> And even as that came out, the initial instinct, until they were slowly beaten down somewhat by the courts, was to dig in their heels and draw a bright line.<sup>16</sup> And that says something, even while they were publicly saying that that they want Congress to fix it, etcetera.<sup>17</sup>

We don't fully know, but we went through this period of very serious congressional attention on a Dream Act, incredible protests and civil disobedience led by DACA youth. And I'm left with the lingering question of, was it intentional? Did the president end DACA, in order to leverage a very nasty congressional fight? We don't know, and we're not going to ever know, but it's a valid question.

The last piece that I would share on DACA is a story from one of our depositions. Because of a very smart attorney on our team, we decided that we would depose a fairly unknown official named Gene Hamilton. Mr. Hamilton is a high-ranking DHS advisor who had worked for a long time for Sessions before. We had some indications that he had something fairly significant to do with the Duke memo. And we had two of our DACA clients in that deposition that day; they were sitting to my left, and the deposition was tense. A little bit on a whim it occurred to me that perhaps this gentleman had actually authored the Duke memo, so I asked him that. To which he took credit for it. But before that, I had asked him—and I didn't even mean this to be a hard question—if he considered the decision to end DACA to be a life-altering decision for DACA recipients. And he started to resist, to argue with me about that. “What do you mean by life-altering?” And I was like, “I mean something that significantly changes your opportunities in life.” I said something like that. “Limits your educational opportunities, limits the things you can do.” And he was resisting it. “No, I wouldn't know that, I wouldn't know that to be

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15. Robbins, *supra* note 14.

16. *Id.* (“[A] request is considered received by U.S.C.I.S. as of the actual date of receipt at the location for filing such request.”).

17. Elaine C. Duke, *Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA)*, U.S. DEP'T HOMELAND SEC. (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>; Donald Trump (@realDonaldTrump), TWITTER (Sept. 5, 2017, 5:38 PM), <https://twitter.com/realDonaldTrump/status/905228667336499200> (“Congress now has 6 months to legalize DACA (something the Obama Administration was unable to do). If they can't, I will revisit this issue!”).

true,” and he eventually said, “No one’s life was going to be at stake” in a very callous, very difficult way. And I could see the faces of our clients who had brought this lawsuit against the termination of DACA. And afterwards, when our clients have spoken publicly, they have talked about that moment, and what it felt like to be in the room, with someone who was proud to take credit for authoring this memo and who very callously did not think that ending DACA would be life-altering for them and for their families.

And I think this is what this administration really believes. There are massive changes we’ve already seen. The notion of what the impact is on families and communities, I think, is low. I will close with something about my own immigrant mom and her experiences. So, I have an immigrant mom from an island in Canada called Newfoundland. Most of my life she hasn’t talked a ton about her views on immigration policy. But she came to help me before we had a DACA argument, to help me take care of my kids, and she was really upset. The “shithole countries” comments had just come out. She got in from the airport and was like, “I can’t believe that,” and “They were so offensive to me,” and this and that. I said, “Mom, he’s not talking about you, right. You know you’re the chain.” She said, “What do you mean, chain? I don’t even know what that means, chain migration. What does that even mean, I’m not a chain?” And I was like, “Well, you know, then when you came, you had your sister come, and she became a green card resident. Chain migration.” She was like, “Ah, chain. Well, I’m not a chain. I’m also not from a shithole, that was just family.”

And that’s my piece of hope. We have to remember that this is such an extreme agenda by this administration, that people are feeling the extremism even if it’s not targeted at them, because it is offensive to who they are and who we are as a country. And with that, I will leave the floor to Hiroshi.

**Hiroshi Motomura:** Thanks, and thanks to all of you for being here. Thanks to everyone at Loyola for organizing this and bringing us all together. I know it takes so much work to make something like this happen, so I really appreciate it.

I’d like to take a few minutes to reflect on the moment we’re in, and to think about the arguments that the immigrants’ rights movement makes. I want to think about the arguments that we make in litigation, the arguments we make in politics, and the narrative

we're adopting. As Karen points out, I think this is a very difficult moment in so many ways, but it is also a time to think about how to move forward in the future. My remarks may seem abstract and theoretical, but a lot of this comes from my own lawyering work on cases, and yet also stepping back and figuring out what we're saying. So I want to ask, what kinds of arguments are we making? What kind of language are we using? What kind of institutions are we relying on? What are the ideas here?

Let me start with this question: how do immigration law and immigrants' rights relate to civil rights? I define civil rights broadly, and I'll say a little bit more about that in a minute. But I'll start by suggesting that it's been natural for the immigrants' rights movement to think about itself as some version of a civil rights movement. That makes a lot of sense for some historical reasons. Race and ethnicity have driven immigration and citizenship law since the very beginning, starting no later than 1790, when Congress limited eligibility to naturalize as a U.S. citizen to free white persons.<sup>18</sup> Citizenship eligibility expanded over the years, but birthright citizenship was racially restricted for a long time. For decades it excluded African Americans, as the Supreme Court held in *Dred Scott*.<sup>19</sup> After the American Civil War, citizenship by naturalization was still racially restricted until 1952.<sup>20</sup> Immigration was explicitly racially restricted until 1965.<sup>21</sup>

In 1965, you have the immigration amendments that ended explicit discrimination. This 1965 immigration law was enacted at the same time as the 1964 Civil Rights Act and the Voting Rights Act of 1965.<sup>22</sup> There was a moment of alliance, a moment when the civil rights movement was tackling immigration questions as well—and ending explicit discrimination. But the fact is that discrimination continued in less obvious forms after 1965. And that's part of the history of labor and race in this country, with race having long defined or isolated immigrants as wanted for their labor. Certainly, slavery is

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18. Naturalization Act of 1790, ch. 3, 1 Stat. 103.

19. *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

20. IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 28 (10th ed. 2006).

21. David S. Fitzgerald & David Cook-Martin, *The Geopolitical Origins of the U.S. Immigration Act of 1965*, *MIGRATION POL'Y INST.* (Feb. 5, 2015), <https://www.migrationpolicy.org/article/geopolitical-origins-us-immigration-act-1965>.

22. *Id.*

part of that story, and later the reliance on Asian immigration to build the Transcontinental Railroad—more generally, to provide much of the cheap labor that did dangerous and dirty work in the western United States.<sup>23</sup> This was true for Asian immigrants as well as immigrants from Mexico and elsewhere in Latin America.<sup>24</sup>

In 1965, though you have the end of explicit discrimination in the admission system, other things take place that still make it hard to come to the United States to work, especially from Latin America.<sup>25</sup> For the first time in history, you had numerical caps on Latin American immigration, which had never before been limited numerically. At the same time, the system—to this day—doesn't allow many people to come legally to work. There's no line to stand in, as a practical matter, if you don't have a college degree. The system tolerates and even invites undocumented immigrants, especially from Mexico, to come to work. Workers are wanted, but they are undocumented and therefore easily exploited.<sup>26</sup> Enforcement is applied in cycles; sometimes the law is not enforced, sometimes it is heavily enforced. Enforcement is highly selective and based on political expedience. That leaves immigration agencies and their employees with vast discretion, which is exercised without much accountability and with a serious risk of discrimination.<sup>27</sup>

This is what brings me back to the civil rights framework. I think it does essential work. I'm not here to criticize it, but to ask what it means for us going forward. The civil rights framework has worked to challenge government laws, policies, and decisions and it has made a

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23. *Chinese Immigration and the Transcontinental Railroad*, IMMIGRATION DIRECT, <https://www.uscitizenship.info/Chinese-immigration-and-the-Transcontinental-railroad/> (last visited Feb. 24, 2019).

24. *Id.*; Erin Blakemore, *The Brutal History of Anti-Latino Discrimination in America*, HISTORY (Sept. 27, 2017), <https://www.history.com/news/the-brutal-history-of-anti-latino-discrimination-in-america>; *The Impact of Expansion on Chinese Immigrants and Hispanic Citizens*, OER SERVS., <https://courses.lumenlearning.com/suny-ushistory2os2xmaster/chapter/the-impact-of-expansion-on-chinese-immigrants-and-hispanic-citizens/> (last visited Feb. 24, 2019).

25. See Douglas S. Massey & Karen A. Pren, *Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America*, 38 POPULATION DEV. REV. 1 (2012).

26. See Daniel Costa, *Employers Exploit Undocumented Workers to Keep Wages Low*, N.Y. TIMES (Sept. 3, 2015, 3:30 AM), <https://www.nytimes.com/roomfordebate/2015/09/03/is-immigration-really-a-problem-in-the-us/employers-exploit-unauthorized-immigrants-to-keep-wages-low> (discussing the contribution of undocumented workers to the economy and why they are easy to exploit).

27. KATE M. MANUEL & TODD GARVEY, CONG. RESEARCH SERV., R42924, PROSECUTORIAL DISCRETION IN IMMIGRATION ENFORCEMENT: LEGAL ISSUES, CONG. RES. SERV. (2013) (discussing the wide discretion that immigration agencies have).

big difference. For this purpose, I'm using "civil rights" to include not just the struggle against explicit racial discrimination, but also against less obvious forms of discrimination. And that struggle has taken place through insistence on due process and the rule of law. That is where the action is if you're trying to end discriminatory policing, for example, under laws that look neutral on their face.

These arguments are interesting because they rely on some kind of premise that you belong to the national community of the United States. That doesn't mean you have to be a citizen; in fact, much of the work that's been done in applying the civil rights movement to immigrants' rights is to say that you don't have to be a formal U.S. citizen to have these protections; you just have to have some connections with this country. You can be a permanent resident, you can be a temporary worker, you can be undocumented. But you have to, in some sense, be connected to this country.<sup>28</sup> This approach is not uncontested, but on this basis there's been a great deal of change reflecting the perspective that immigrants belong. In this way, we can look at immigrants' rights as a civil rights question.<sup>29</sup> Not only against discrimination, but also for due process and rule of law.<sup>30</sup>

Applying civil rights to immigrants is not uncontested. The immigrants' rights movement often needs to start, depending on the audience you're talking to, by persuading people that immigrants, including the undocumented in many cases, are part of the national community. If you convince someone of that, then you can convince them that rights are involved, and not just rights, but also values that go beyond rights, like separation of church and state in the Muslim ban litigation.

The problem—the reason why the civil rights framework for immigration law and immigrants' rights is contested—is that for many in the American public, or in the world, if you're not a citizen, you stand outside the border—literally or figuratively. Drawing the line at

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28. See e.g., 8 U.S.C. § 1229b(b)(1) (2012) (requiring ten years physical presence and hardship to a citizen or resident relative for cancellation of removal process for non-residents).

29. Lauren Gambino, *The Civil Rights Issue of Our Time: How Dreamers Came to Dominate US Politics*, GUARDIAN (Jan. 27, 2018, 2:00 AM), <https://www.theguardian.com/us-news/2018/jan/27/the-civil-rights-issue-of-our-time-how-dreamers-came-to-dominate-us-politics> (arguing immigration is the civil rights issue of our generation).

30. Irene Bloemraad & Doris Marie Provine, *Immigrants and Civil Rights in Cross-National Perspective: Lessons from North America*, 1 COMP. MIGRATION STUD. 45, 59 (2013) (discussing how captured undocumented immigrants are deprived of due process).

the border allows people to respond that immigrants are different; you don't belong here. That's the reason it's safer politically to insult Mexican immigrants than it is to say the same things about U.S. citizens of Mexican ancestry.

And yet, I think that the immigrants' rights movement, by relying on this framing, finds that challenges can be effective if immigration decisions hurt people who, in some sense, belong here. For example, you've seen a steady erosion of the so-called plenary power doctrine.<sup>31</sup> To put that in plain English, we've seen an expansion of judicial review, such that courts are more willing to scrutinize government decisions for constitutional defects,<sup>32</sup> based on some connection to this country.

We saw that in a case called *Kerry v. Din* a few years ago, when five Justices seem to recognize that a U.S. citizen's spouse petitioning for a spouse in Afghanistan had an interest to be protected, in particular in knowing something about the reasons the U.S. government decided to exclude him.<sup>33</sup> You've seen this in the Muslim ban litigation, when one version of the Supreme Court injunction, as Karen mentioned, protected people with a bona fide relationship with a U.S. person or entity. So, the ban hurt people inside the United States.<sup>34</sup>

It's clear that this civil rights approach is very effective, and I think in this moment it's quite essential. This is true especially because the concepts of civil rights and protecting people inside the border resonate with the public and with decision makers. And this is why, as a practical matter, that though the ideas may be equally grounded in human rights, they often get translated into some version of U.S.-based civil rights, especially in litigation.

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31. See *Padilla v. Kentucky*, 559 U.S. 356 (2010) (expanding the use of judicial review where non-immigration cases have immigration-related consequences); *Landon v. Plasencia*, 459 U.S. 21 (1982) (finding that a legal permanent resident should have been afforded due process in an exclusion hearing); *Yamataya v. Fisher*, 189 U.S. 86 (1903) (finding that noncitizens are owed some measure of due process in deportation proceedings); *Wong Wing v. United States*, 163 U.S. 228 (1896) (finding that due process is owed where punishment is used on noncitizens); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (framing immigration-related issues with non-immigration arguments, thereby avoiding the need to address plenary power).

32. *Id.*

33. *Kerry v. Din*, 135 S. Ct. 2128, 2139–47 (2015) (Kennedy, J., concurring in judgment) (Breyer, J., dissenting).

34. *Hawaii v. Trump*, No. 17-17168, 2017 WL 5343014 (9th Cir. Nov. 13, 2017).



There was a time one hundred years ago or so, when the government could use the border as a reliable defense against challenges.<sup>35</sup> Now, however, it can sometimes be an effective immigrants' rights move, because it's not giving in to the argument, "You're outside the border." Instead, immigrants' advocates are making the argument, "No, we're inside some version of the border, in that we belong here. We have rights, too." That's the civil rights framework, and I think it's super-important. But I'm also asking us to be reflective. This civil rights framework has some real limitations; perhaps not as much in litigation, but more in political narrative and in immigration policy in general. Let me try to explain what these limitations are.

What happens to this framework when immigration politics is driven not by the struggle to protect the undocumented, but by large scale migration from outside the United States? The focus shifts to refugee protection, which has been a part of the bedrock of U.S. policy toward migration for a very long time. And yet, refugee protection has been based on some assumptions. One assumption is that there aren't that many people who will be applying. And as soon as people start showing up in greater numbers, this country does things like put the Coast Guard out there to make sure people don't land on the beach, where they can apply for asylum.

Notice what this does to the civil rights framework. All of a sudden, the politics can shift away from questions of who belongs and who's already here, and toward a new focus on the large numbers of people who are outside. What that does is make it possible for people who are resisting the civil rights approach to immigration and immigrant rights to shift the terms of debate toward the perception of loss of control over borders, and away from the rights of people connected to the United States.

The discussion then becomes very vulnerable to demagoguery and race-based ultra-nationalism, especially because it enables the rhetoric of national security and criminal threat from outsiders. In short, the civil rights move that is used to protect undocumented

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35. *See Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (holding that the plenary power included the right to exclude and deport noncitizens); *see also Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) (treating a returning legal permanent resident instead as a noncitizen seeking initial entry, whereupon he was confined at the border and refused entry into the United States).

immigrants is harder to deploy in the refugee context. You see this more in Europe than in this country, but I think it has become very much a part of the politics here.

The civil rights framework is an awkward or at least an incomplete way to fight this type of restrictionism. Instead, it becomes important to think more broadly—to think about the relationship between immigration and citizenship, and between trade and development. If you get outside of litigation and think about the best approaches to immigration or migration issues, you have to think beyond migration itself. You have to think about the people who move to this country. We can't assume that everyone wants to come to the United States and become an American citizen. What people want is an opportunity to stay home, and a realistic option to go home. But also not to be forced home.

From this perspective, solutions require attention to economic development, to trade, and to restructuring our relationships with countries, especially, but not only, in Latin America. A civil rights framework—and I mean not so much to criticize it as to figure out how to use and build on it—is that it deflects attention from these topics. For example, civil rights-based arguments for legalization will not produce a long-term solution, unless we also think about why people feel they need to migrate in the first place.

The last thing I'll mention is that much of the resistance and anxiety that we see directed against immigration is expressed in economic terms, but a lot of resistance and anxiety isn't economic. Some of it *is* economic, so I don't want to suggest that there isn't some economic basis to the anxiety. But immigrants are easily blamed for foundational stresses that are inherent in today's economy, things like technology and automation, free trade, decline of labor unions, and the underfunding of public education.

In this setting, the civil rights framework, when it's a poor fit for the immigration issues of the day, runs a risk of overemphasizing U.S.-based rights concerns, and thus muting economic justice concerns and allowing anti-movement forces to take over economic justice narratives. That's an area to which the immigrants' rights movement needs to be very attentive. This is especially true because many of the concerns that immigrants themselves have are concerns not only with race, due process, and the rule of law, but also with economic justice. To allow the economic justice space to be taken over in a way that can

be turned into restrictionism is something to be very vigilant about and guard against.

So, it comes down to this. The civil rights framework is absolutely essential for defensive work, especially in this moment, but we need to be aware of its limitations and to keep in mind arguments and narratives beyond civil rights. This is especially true as we think about politics, policy, and narrative in conjunction with litigation. Thank you.

**Annie Lai**: I'm Annie Lai. I want to thank Loyola Law School, the Immigrant Justice Clinic, Marissa Montes and Emily Robinson, as well the Law Review and Kathleen Kim for having me here. It's really nice to have opportunities to take a step back from what we are doing in our day-to-day work, and to think about where we're going.

I'm going to talk a little bit about the struggle over sanctuary jurisdictions, sanctuary cities, whatever you want to call them. And I will use the word "sanctuary" in an effort to embrace and retake the term. The word has been used pejoratively, but I'll use it in a celebratory fashion. This topic has been in the public debate a lot, perhaps most recently occasioned by a suit filed by the Justice Department last week against the State of California, challenging three California laws: SB 54, the California Values Act; AB 450, the Immigrant Worker Protection Act; and AB 103, which is an act that calls upon the state to monitor conditions in immigration detention facilities.<sup>36</sup>

A lot of the dialogue about the lawsuit that has been out there, at least among law professors, has been about this notion that the preemption tables have turned, that the Justice Department is now using the precedent of a 2012 Arizona case against the state of California, against progressives for their immigration policies.<sup>37</sup> To be honest, personally, having litigated some of those issues, I don't find the lawsuit to be such a nail biter. So I'm not going to focus on the lawsuit, but on the underlying policies that California has enacted, the

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36. See Complaint at 2, *United States v. California*, 314 F. Supp. 3d 1077 (E.D. Cal. 2018) (No. 18-264). The United States government sued California, claiming that Senate Bill 54, Assembly Bill 450, and Assembly Bill 103 "obstruct, or otherwise conflict with, federal immigration enforcement efforts." *Id.*

37. *Id.* at 4 (citing *Arizona v. United States*, 567 U.S. 387, 394–95 (2012)) (arguing that "[b]ased on its enumerated powers and its constitutional power as a sovereign to control and conduct relations with foreign nations, the United States has broad authority to establish immigration laws, the execution of which the States cannot obstruct or discriminate against").

organizing fights that led to those policies, and what they mean for where we are going next.<sup>38</sup>

The reasons why I don't think the DOJ litigation is much of a nail biter are two-fold. First, a lot of the policies in California were carefully drafted. They also were designed to really prevent violations of constitutional rights, and I don't think that preemption works so simply as a two-way street. The second is that a lot of the preemption fights that we had in the last administration, when we saw states like Arizona, Alabama, and Georgia taking anti-immigrant actions, did not lead to full wins for the federal government. If you recall from the 2012 Arizona case, the Supreme Court didn't uphold the injunction as to all state law provisions that had been enjoined by the courts below. It allowed a section called the "Show Me Your Papers" clause—section 2(B) of SB 1070—to go forward because the courts didn't want to say that Arizona had no power to limit the discretion of local police officers in terms of when they were going to engage in immigration investigations.<sup>39</sup> Actually, the only outer limit was based on the Fourth Amendment and people's right to be free from illegal search and seizure. But otherwise the Court allowed that provision to go forward.

In another case, one litigated by our clinic, the Ninth Circuit overturned an injunction in Arizona that challenged Arizona's attempt to criminalize undocumented workers.<sup>40</sup> And the Ninth Circuit basically said, "We're not going to find the entire field of regulating the employment of immigrants preempted, and we're going to confine it to the narrow terms of what's in federal law."<sup>41</sup>

I think because of the partial nature of some of the wins in the prior administration, California's not going to have such a difficult

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38. Compare Assemb. B. 103, 2017 Leg., Reg. Sess. (Cal. 2017) (expanding state oversight of ICE detention facilities), and Assemb. B. 450, 2017 Leg., Reg. Sess. (Cal. 2017) (requiring employers to see a judicial warrant before allowing ICE to enter a non-public workspace), with S.B. 54, 2017 Leg., Reg. Sess. (Cal. 2017) (limiting law enforcement's involvement in enforcing federal immigration law).

39. See *Arizona v. United States*, 567 U.S. 387, 414 (2012). The court held that, as section 2(B) stands, it only allows officers to do a "status check during the course of an authorized, lawful detention or after a detainee has been released," and does not indicate alternative consequences that conflict with federal law. *Id.*

40. See *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1101–02 (9th Cir. 2016). Puente argued that Arizona implemented a series of laws that criminalized employment-related identity theft in attempt to regulate the employment of undocumented workers. *Id.*

41. See *id.* at 1108 (holding that the statutes cannot be struck down in their entirety because Arizona can enforce laws in ways that do not infringe on federal immigration priorities).

time in the courts. What I think is more worthy of our attention is not so much the doctrinal debate—and I understand I’m speaking to law students and attorneys—but the struggle over federal policy and how states and localities are responding.

It’s not going to be any news to anybody in this room that since the election some of the really explicit anti-immigrant, I dare to say, hate-filled policies, at the federal level have led to dozens of new sanctuary policies being adopted at the state and municipal level. When I use the term “sanctuary,” I mean going a little bit beyond the traditional notion of disentangling local law enforcement from the federal immigration enforcement machinery, but also local welcoming policies, policies designed to ensure equal access to local benefits, and to send a message to immigrants that they’re valued members of a local community. I think that, while the terms of these debates going on at the local level are often sparked by this notion of constitutional cities and having a rule of law at home, in terms of the respect for the civil and constitutional rights of immigrants as well as people that might be swept up in efforts to enforce immigration and the immigration laws, I think that the law is really just a starting point for these discussions. In these local discussions, of which our clinic at UCI has been a part of, you see very quickly the limits of the law of constitutional doctrine; if these local policies just did what was constitutionally required, I think they would be relatively uninspiring. I think that a lot of the local policies really go beyond what can be said to be required by constitutional law.

If we’re thinking about Congress, maybe we won’t see any legislative reform, the Supreme Court is really not going to save us, and we’re going to live through a very, very hard time now. The real question is, “What comes next?” We’re going to try to mitigate the damage, but what comes next? I think that the conversation that’s happening at the local level around sanctuary policies are where you can find the answer to the question of what comes next—because once you move beyond the law in these sanctuary debates at the local level, what you see are conversations about what a local community represents, who belongs, and who is part of the membership of a local community. And local views are not always necessarily tied to what the parallel definitions are at the federal level.

One example of a place where a sanctuary debate took place after the election was Santa Ana in Orange County.<sup>42</sup> Our clinic worked with grassroots organizers in a broad coalition to get a sanctuary ordinance passed. This particular city decided to embrace the term and I think we ended up with a really bold policy that we're quite proud of. But I think it's important to note that the organizers that pushed this policy didn't see their work as new work, as resisting this all of a sudden terrible federal force. The organizers saw it as a political opportunity because now the Democrats were willing to take much bolder positions; certainly, there was an urgent call to arms, but it was also an opportunity. And what they did shows how the terms of these local sanctuary debates can define what our federal immigration policy is in the future; they moved beyond just disentanglement and looked at issues like reform of the local criminal justice system, gentrification, the intersection between immigration and their local educational system. To take a broad view of the lives of the immigrants at the local level, the city wanted to connect the struggles of immigrants to the struggles of others in their community. That included immigrants who have intersectional lives and aren't just concerned about immigration enforcement; but are being pushed out of their neighborhoods, are being caught up in the juvenile justice system, etcetera.

I think that is where the most promising, creative, courageous, bold conversations about immigration policy are happening, and where we should look to for what's next.

**Felicia Escobar:** Thank you so much, it's great to be here at Loyola. When I was in Washington, I knew the Immigrant Justice Clinic from a distance, but coming back to Los Angeles it's been great to see the great work you all are doing. I know you're one of the partners and grantees of the Los Angeles Justice Fund and are always looking for creative ways to advance the conversation in all kinds of contexts, including having a dialogue like this today. So, thank you so much for having me.

So, again, my name is Felicia Escobar. For seven years, I was in the Obama administration, working on immigration policy, working to make changes both within the law, but also working to fix and

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42. See Nick Gerda, *It's Official, Santa Ana Is Orange County's First Sanctuary City*, VOICE OC (Dec. 7, 2016), <https://voiceofoc.org/2016/12/its-official-santa-ana-is-orange-countys-first-sanctuary-city/> (discussing Santa Ana's decision to officially declare itself a sanctuary city).

change the law. That was work I did when I was a staffer in the United States Senate. I've been able to work on three failed immigration debates, '06, '07, and 2013, as well as lots of conversations about just trying to pass the Dream Act, just trying to pass the JOBS act, and so many other pieces of legislation throughout the last decade or so. I had my notes prepared, but I also have been reflecting on the comments that people were making about this administration and the moment we're in right now.

First, I would say that, obviously, I think we all know this administration is very different from many administrations, both Democratic and Republican. They are really taking their cues from a very extreme segment of the population, the FAIRs of the world, Center for Immigration Studies, who have been waiting for this moment for decades, where they actually have a White House and an administration that is not just open to listening to their views and their ideas, but actually willing to take action on them. They've brought many of those people into the administration, and I know from my own experience that who sits in certain seats, whether it is at the White House, or in the agencies, or on the bench—that really matters, and that really does determine the way forward in many ways. They have recruited from the finest of the anti-immigrant rights sector of the debate. They've really picked out people who have been railing for years against both Democrat and Republican administrations on questions about how the law is currently being interpreted and implemented. With the federal government, there are thousands of laws on the books and you literally have to make a decision about what laws you want to implement because you have limited resources, and how you go about implementing those laws. In the Obama administration we went about it a different way, obviously, than they are.

One thing that I would challenge: Karen said she felt that they knew what they were doing at the beginning. I don't think they did. I think that's why the first Muslim ban was such a failure, and that failure has continued to help with the Muslim ban #2, #3, and the other litigation that moved forward. I think they had a knowledge of the system, but I know from my experience that you don't really know how the system runs until you're actually implementing it. You can have many policy debates, as a policy maker on the Hill or as a litigator outside the federal government, but there's nothing like actually being

in the room and having to bring together agencies, having to bring together people who have years of expertise on you in many cases when it comes to implementing the law, and trying to figure out how to make those systems work—particularly when in many situations agencies actually don't really get along and don't work well together. I would say DOJ and DHS don't work well together, generally. When you have Jeff Sessions running both DHS and DOJ, then they work better together. The State Department and DHS don't really like each other. But when you have people who are put in power in those agencies who share a very similar viewpoint, it makes it a lot easier to get things done.

One thing that they've also done, that others have not done in the past, is they've completely ignored the expertise that they have in their executive branch. And that's why you see a flight of people from the State Department. There were also some incredible people who left DHS, people who I did not always agree with, but who actually had a deep knowledge of how the system works. Same thing with DOJ, same thing with all of the agencies on a number of issues, not just immigration. So, I think they have just decided they don't really care what those folks say; instead, they're going to pursue a very clear agenda that they have. To do that, they find people within those agencies who have been there a while, who maybe have been rogue elements, and bring them from the bowels of agency bureaucracy up to positions of power. To me, that is how, in this last year, they have actually been able to be much more effective than they were in that first few months of the administration. They realized that they just couldn't rely on responsible leadership, that it worked its way up the bureaucracy, they needed to find folks outside of the bureaucracy or at the bottom rungs of bureaucracy to help advance their agenda.

I do think that they knew what they were doing when they got rid of DACA, and that they knew what they were doing when they were slowly starting to phase out TPS. They wanted to shift the norms of the debate, they wanted to shift the conversation from being the eleven million plus, whatever we have to take as a compromise, to get the eleven million undocumented folks here legalized, to a conversation about DACA and TPS holders versus the entire eleven million. DACA students and families, or DACA recipients, they're trying to continue to keep the conversation focused on not just themselves, which I think is incredibly courageous and is just an incredible thing to see their



commitment to their whole family and their whole community, they want to bring the conversation back to the eleven million. But this administration is trying to shift the conversation and, in deal making and in policy making, when you are trying to negotiate a bill, there are always going to be tradeoffs, and there are always going to be compromises made. And that makes it much more difficult for the people who are in the room trying to make those compromises, when they feel like they have, basically, another 1.2 million people in our country who are now being moved from being a legalized group, to being an undocumented group again. And people who have significant roots in the country, because they were legalized for so long, and so the equities and interests that are out there, and the sectors that are fighting for them might be a little bit louder than, perhaps, the folks that are living in the shadows now. I do think that this was a very intentional decision. I, kind of, was hoping it wasn't as I was seeing it unfold, but as the conversation moved on, it felt like it really was.

I think one thing they did know was the power of the courts. The conservative movement out there has been fighting for their justices and their judges for decades. They actually get people, to some extent, some people to turn out and vote for candidates based on this question of who is going to be the next Supreme Court Justice, or who is going to be on the appeals or district courts. As a Democrat, and as a progressive, I think we care about lots of things, or I care about lots of things, so that may not be the only thing that makes me turn out to vote for someone. But, for them, that can be a really deciding factor for a faction of their group. As they've taken on and made these decisions to pursue the policies in a very dubious way, they've also pursued the strategy of getting their Supreme Court Justice on the bench, and that was a successful fight that they won. They're trying to do the same thing at the appeals court and district court level and having some success. That tends to happen. In the Bush administration they had significant success, as well. So, I think that's something that we obviously care about as lawyers, because we know that has impacts on all kinds of conversations and all kinds of cases, but I think it does have implications in the way they're trying to shift the agenda using their administrative tools.

As I said, there are lots of things you can do within the law to try to make the system work better, depending on your definition of what "better" means. We had a very different definition of what we thought

“better” meant. We thought it meant using the laws to actually open up avenues for people to stay here. We did a number of different things to help particular communities that were impacted by problems with the system. The issue of someone who isn’t documented and is married to a U.S. citizen, or has some kind of legal avenue or claim to a green card through a family-based system. We worked to create a new system for people to get provisional waivers from something called the lawful presence bar, the three- and ten-year bars, which some of you may know something about.<sup>43</sup> That was a very creative policy that we spent some significant amount of time trying to develop so that it could withstand legal challenge, and so that people could actually use it.<sup>44</sup> It took time, but I think it has taken hold, it is one thing they haven’t completely removed yet. It was also something that was done by regulation, so it takes a little bit more levers to actually do, but also to actually undo.

There were other things that we did related to helping students, related to helping people who want to be entrepreneurs and come to our country, individuals who are waiting for their green cards through the employment-based system, and they have spouses that actually have skills that they want to use in our country. For people who are on H-4 visas, we created a process that allowed them to get a work permit while they wait, which is sometimes years, if not decades, for that green card.<sup>45</sup>

Those were things that we did on the legal immigration side. On the humanitarian side there was a lot of work done to try to make the system work better, because there are backlogs that exist because of legislative caps to try to make sure that people who were waiting for relief via the U Visa system as they were victims of crime, or others to give them some relief to allow them, while they’re waiting for their number to come up to be able to work and live in our country. Obviously, in the last two years of the administration, we fought really

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43. See Daniel González, *New Policy Aids Illegal-Immigrant Spouses*, USA TODAY (Jan. 23, 2013 12:00 PM), <https://www.usatoday.com/story/news/nation/2013/01/23/immigration-spouse-waivers/1858209/> (explaining the policy change that allows undocumented immigrants to apply for a provisional waiver from within the United States to avoid a ten-year ban).

44. *Id.* (“[H]undreds of thousands of undocumented immigrants will more easily be able to become permanent residents as a result of the policy change.”).

45. See Sara Ashley O’Brien, *Immigration Reform: Is This the First Step?*, CNN BUS. (Feb. 24, 2015, 3:01 PM), <https://money.cnn.com/2015/02/24/news/economy/h4-visa-immigration/index.html> (describing President Obama’s executive action as “the first reform to be implemented that’s geared toward high-skilled immigrants”).

hard also to increase efficiency around the refugee system, because it was designed, it is designed to not accept many people and the bureaucracy is comfortable with that. And we had to, all the way from the president down, had to really push our agencies to up the numbers in significant ways year after year as we were seeing the historic humanitarian crisis that we're facing right now.

On the enforcement side, this was the most difficult thing we attempted to do, and it took us years to get this right. We heard from our friends and allies of all the things we were doing wrong, which was fine, and we appreciated that because it actually got us to a place where we announced DACA, where we announced ultimately, we announced the DAPA program, which unfortunately wasn't able to continue because of the legal challenges against it. But we also did things like implement enforcement priorities that were refined over the years so that when we left our administration, the number of people who were actually removed had shrunk quite a bit, and that the types of people that were focused on in terms of removal were also different than the population when we first started our work. We did things like bolster the idea and the use of prosecutorial discretion, when people were actually getting picked up by ICE or whether someone is in an immigration court proceeding and their lawyer says, "This person doesn't meet your priorities, you should close this case." Those were some of the things that we tried to do. And, of course, our playbook was out there in terms of all of the work that we did, and their clear agenda writ large was, "Let's undo everything the Obama administration did." Whether it was in the immigration space, the climate change space, foreign policy space, you name it, that's been a goal of theirs beyond some of this other work they're doing to shift norms.

One thing I would reflect on is that it's a lot harder when you're working in an executive agency, or you're working within a bureaucracy that's actually, for decades, had a culture that is directly in contrast to yours, to try to actually change and shift it. It took us a significant amount of time to do that work. This administration has something to their advantage in that the culture of ICE, the culture of the border patrol is very much, they're a law enforcement, they're a pro-enforcement agency. So, if you tell them, "Go at it, go do your job," they're going to do it with vigor. When you tell them, "Actually, we'd really like you to think a little bit more about your decisions on

a day-to-day basis and make decisions based on a number of factors. And be lawyers, in some ways, and try to have a rational conversation with yourself about the pros and cons of each person you're picking up, whether they should move forward in the enforcement system." And there are some people that fully embrace that, and others that were really, you read all these stories about people feeling like they were unshackled once we were gone, and it was like, "Really? You seemed like you actually didn't want to be the bad guys anymore, and actually appreciated the idea that people could respect you more because you were doing your job in a more informed way." But I guess some of them really did feel shackled by us.

I guess the last thing I would say as I'm closing with my remarks: now I'm in philanthropy. I'm in a different space where I'm hoping to have as much impact, if not more than I had in the past. I think philanthropy has a very important role right now to play. When you see the federal government basically turning its back on immigrants and refugees, local and state government, but also philanthropy, need to step forward and use their voice and use the tools they have to move the debate and the conversation forward. The things that I'm focused on, and we just had a big grant makers conference of immigration funders here in Los Angeles a couple of weeks ago, and a lot of the conversation was really focused on a few things.

So, one is to continue to do the rapid response work. There's so much we don't know in terms of when they're going to do things, and I'm used to being on the other side when I do not know what's going to happen and when it's going to happen, but now I have to be much more responsive, we all do, in terms of the actions that can take place. So, there's a rapid response needed to respond defensively to the agenda. I think there's also a responsibility in philanthropy to support and foster some of the work happening at the state and local levels that is proactive. We don't want to always just be on the defensive as a community, as a movement. We want to be able to continue to advance the ball forward. There are still millions of immigrants in our country that could benefit from services that groups are providing, that state and local governments are providing, etcetera, and that's something that we as funders have to be fostering and supporting.

I think the third piece is we need to be able to help get us back to a robust immigration debate. I want us to fix the DACA issue. I want us to pass the Dream Act. But I really want us to get back to a

conversation when we're talking about the eleven million again, and we're not just talking about a small segment of the undocumented population. And I think in order to get there, we have to reassess how we do this, and I think that the work that Hiroshi is doing is really interesting. The point that he made about the immigration and the economic justice piece, that's something that we're looking at a lot. Because what we found in our administration was that the president cared a lot about immigrant families, he cared a lot about DACA recipients, and so when we announced DACA, when we announced DAPA, we talked about that and we tried to help people understand the human consequences for the broken system for that population. But we also thought it was important that we recognized that there are people feeling real pain, real concern, discomfort about the changes in our society and the changes in the world. We have to find a way to talk to those people without closing them off, because if we don't we'll never get immigration reform done, there will always be some segment, whether it's a moderate Democrat or moderate Republicans that you need to pass something out of the House or Senate, we need to be figuring out how to talk to that group. We shouldn't necessarily compromise our views in terms of thinking about this from a civil rights perspective, it's how I got involved in the debate when I was in high school and college, when Prop 187 was passing, and so I definitely look at this issue from a civil rights perspective and a Latino rights perspective. But I also recognize that there is a population that is hurting, and if we don't talk to them, they certainly will. They're talking about how immigrants are takers, they're talking about how immigrants are criminals and creating public safety issues in our country. That's not true. They talk about how immigrants actually hurt the economy, we all know that's not true, but we have to find a way to talk to those people. And it's an emotional thing, it's not necessarily a numbers thing. We worked on dozens of economic reports about why economic reform mattered for every sector of the country. Unfortunately, it comes back to culture, and it comes back to something beyond economics, and so we really do need to find a way to talk to those folks.

**Kathleen Kim (Moderator):** Okay, we're going to move to moderated discussion and questions from the audience, and I'm just going to start off the conversation with one question directed to the whole panel. And I'm going to ask the question and then put Hiroshi's

slide back up on the screen. I think a lot of us have been involved, to some extent, on shaping local responses to federal immigration policy and enforcement practices, particularly here in Southern California and Los Angeles. And I very much appreciated the suggestion of that being a space for more creative opportunities to push progressive values beyond what has set the foundation of the civil rights movement, like the Constitution, and in particular the Reconstruction Era. And I want to make that comment and then tie it in to Hiroshi's larger question of what the benefits and limitations of a civil rights framework are for our current discussion around what immigration or reform should look like, noting that Hiroshi acknowledged the history of our immigration laws being very, very tied and closely connected to our history of slavery and the intersection of race and labor in our migration movements and laws. So, that is my question, within the context of those comments. The way Annie presented her perception on sanctuary type local and state policies as an opportunity for pushing values beyond the Constitution, and values that actually reflect community values that are not constrained to a traditional notion of who is a member of our community. Could that be one method in which we go on beyond a traditional civil rights framework to shape immigration policy, because Annie also raised this idea that ultimately these are policies that can influence our federal regime?

**Hiroshi Motomura:** When I was talking, I was sharing my thinking about the relationship between the kind of defensive moves that need to be made, especially in litigation, and with broader ideas about where the immigrants' rights movement needs to go in the future. I think I can try to give a two-part answer based on that approach. As an example, it's essential that the movement to protect sanctuary ordinances in cities relies on a number of traditional civil rights ideas. Not just anti-discrimination, but the intersection of anti-discrimination with due process and rule of law.

Against this backdrop, one of the concerns I have about the term "sanctuary"—and I know a lot of advocates for sanctuary have the concern—is that it can be cast merely as a resistance movement. I think it stands for something much more affirmative than that. It stands for, among other things, non-discriminatory policing and accountability in enforcement. At the same time, Annie talked about important ideas with regard to economic justice in local communities,

including giving people who live in a community a voice with regard to economic opportunity. I think that's also important.

More generally, I was thinking about the multiple perspectives I was trying to bring to this conversation. Some of it is asking us to be reflective about the kinds of arguments we're making, to understand how they emerge from the civil rights movement. Not just against explicit discrimination, but also in favor of the things that you need to safeguard against explicit discrimination, like the rule of law. But, at the same time, at this political moment, it's essential to have a narrative for the sanctuary movement that is very much an affirmative one, not just one of resistance. And at the same time to think more broadly about the foundation that's laid for advocacy, especially outside litigation, and toward more permanent solutions.

**Kathleen Kim (Moderator):** Great, thanks.

**Annie Lai:** I can go next, but I'm going to need your assistance with the slides. I do think, I'm actually more interested here what the audience thinks, but I do think that, I didn't mean to create the impression that the sanctuary debates are all bold, and all reflect this intersectional approach; but some of them have, and I think that we have a lot to learn from those that have. One issue I'll just hone in on, because I didn't get to show the rest of my slides is . . . . So, this is the law review article that Chris Lasch and I have worked on recently together, and we look at the sanctuary debate and the defunding of sanctuary jurisdictions in particular. But one thing that had the possibility of replicating itself at the local level in these debates, that could be borrowed from the federal level, is the idea that the local sanctuary law ought to have carve-outs on the basis of people with criminal history. It was a fight, I think a fight that turned out to be a little bit easier than we expected in Santa Ana, but a fight that's very much going on in other places in the country, when you're talking about state and local policies. And in the piece what we say is that the idea that has been put forward by the Trump administration is based on this logical syllogism that there are certain ways that are appropriate use of criminal justice system in punitive ways to address people who are public safety threats. And immigrants fall, the second part of the syllogism is the immigrants falling within that category, and therefore it is appropriate to use mass incarceration, over policing, lack of due process towards this population. What we say is that one approach is to say, immigrants are not criminals, and that is a very

natural response. But that leaves out immigrants with criminal history. What we argue is that what we really need to be doing is look more broadly at the issue, not just attack the minor premise of the syllogism. This is the time to be looking more broadly at the way that we think about these issues, the way we define criminality, and to look at the cultural and environmental factors that are really contributing to the framing of that syllogism—so that we can start to undermine that reasoning. And I'm happy to report that in Santa Ana, we ended up with a sanctuary ordinance that had no carve-outs on the basis of criminal history as a result.

**Felicia Escobar:** So, I guess, I'll try to answer your question, too. I think that this idea of engaging state or local governments in a way that isn't necessarily the Southern California way, but may be the way that applies to middle America, where it can be much more difficult to advance these issues at the state and local level, is this concept of welcoming that you mentioned earlier. It's this movement out there related to how you bring immigrants and refugees together with long-term residents, to actually advance a shared agenda. They talk about the idea of welcoming all people, regardless of their background, into communities so that they can thrive, but so the communities can thrive as well. And very much pushing this idea of inclusiveness, and how inclusiveness as a community, in your rhetoric but also in the policies and the actions that you take at the state and local level, and from the government side, can actually help create really vibrant communities that are strong economically, strong culturally, and strong in many ways. That is one area where I do think there is a lot of receptivity, particularly in places where immigration is really new, and those communities could be receptive to the myth out there about immigrants as takers, and criminals, and things like that. That's work that I've taken a lot of time supporting when I was in the administration, but also now thinking about that work outside of government. I think it's very important to support those concepts and those ideas, because in some cases they can actually advance pretty aggressive policies, but they're doing it through a different lens, and they're getting more people to the table that you wouldn't necessarily expect to come to the table, unfortunately, when it's just looked at from the civil rights perspective. Unfortunately, that just sometimes creates barriers and roadblocks right away for people to come to the table. I think it's a creative way that lots of communities are embracing



right now, and it's easier to embrace that when you have someone that's so clearly unwelcoming in using the bully pulpit from the White House side in terms of the rhetoric that's coming out there. People are saying, "Well, we don't want to be that. We don't know about this sanctuary thing," because I think people do differentiate it in the day-to-day world. Unfortunately, sanctuaries seem really polarizing and political, "But, this welcoming thing, we want to be that." They are, to me, very closely related, but in the day-to-day sometimes people embrace welcoming more than they do maybe sanctuary policies.

**Kathleen Kim (Moderator):** Thanks. Karen?

**Karen Tumlin:** I guess that the piece that I would add is pulled from a rubric of, "things I thought of during your question," as opposed to a direct answer. What this conversation raises for me is the importance of, for example, how we connect even if it's in a courtroom legal fight or the push for a new local ordinance, or the push for a stronger protection in the immigration code or an anti-discrimination provision. What are the values that are surrounded in that public's fight, and quite frankly in the mobilizing? I'll give two really quick examples. What has been determined to block the termination of DACA in the cases including the one that we were involved in, and others, is the Administrative Procedure Act and the kind of procedural hoops agencies need to jump through before they take large-scale final agency action. Nobody is holding their fist up for that, right, and of course in the courtroom when you're really talking about it like, "We were ready to talk about the Flexibility Act, too," but that's not the way the lawsuit is framed, it's not what we say when we emerge from the courtroom and all of that was about New Yorkers, Americans, and their families. And that's a choice. You make a choice about how you talk about that. And Annie and I have lived through the experience, and this is my second example in the Arizona SB 1070 litigation. Early on, the messaging research was talk about preemption, that was the law, right? Federal-state showdown. Our clients were like, "Forget that, they just want us to show our papers because we're brown, yo. Can we talk about that?" And then the case went up, and it got to the Supreme Court, and lo and behold new research showed that preemption stuff was getting us nowhere and we should talk about race. There were a million head slaps. Again, that's the choice. What's powerful is what connects to the experience, what connects to the value. With respect to Attorney General Sessions suing California, it's

so interesting to me. On one hand, I was loving up on Jerry Brown who was like, “It’s an all-out war. California forever.” I was like, “Great, because I remember when you were rejecting pro-immigrant bills. So, yay.” But, on the other hand, it doesn’t behoove California communities that this is a federal-state showdown. That doesn’t help us. And Sessions got up on Facebook Live before sheriffs intentionally, because he had a value to put out. “Immigrants are criminals, and terrorists,” but he was really talking about criminals. That is the value that he is putting forward, and where is our counter? And I don’t think it’s just, “California is great, yay California,” or, “We’re in a war with the federal government.” Where is the counter value about the value of our immigrant families? And we better get that forward.

**Kathleen Kim (Moderator):** Thanks. So, let’s take questions from the audience. Yes, Jenna?

**Audience:** Felicia, you mentioned, and several of you mentioned, the value of having a proactive agenda. But a lot of what I’m hearing is on the state and local level, and I’m just curious to see, from your perspectives, if there is any room you see on the federal level, or if this solely a state and local fight?

**Felicia Escobar:** I mean I think that there’s room to continue to advance the conversations legislatively, we should be having bills out there related to improving and enhancing humanitarian immigration, the process. There’s legislation out there around that’s bipartisan on TPS, in making sure that folks get permanent relief. We should have a proactive, to me very progressive, comprehensive immigration reform bill that’s introduced, and that people can talk about as the real vision, not a border wall plus a small DACA fix as being the only thing that people talk about. I do think it’s important at the federal level to be advancing that conversation. I don’t know, I mean I haven’t found a way yet, and I’m talking to lots of groups because I’d be happy to support it, work that people can do proactively with this administration. If people have ideas, I’m all for it because it might be interesting to try to find a way to work with them on some things. I don’t see anything yet, but perhaps something could emerge. Particularly, we’ll see what happens in November, and maybe they feel differently about how they want to pursue the legislative fight and the administrative fight; who knows? It’s hard to say. I’ve always thought—well at least in the last five to seven years—I think there’s

been a lot of great work happening at the state and local level that wasn't getting a lot of attention nationally, from national funders and from others. And to me, it's really exciting to support that kind of work because I think we're going to get to federal reform at some point, but it's probably going to be because the folks on the ground are much more organized, they have stronger coalitions, they're able to move the needle at the federal level. But I do think that state and local folks are more innovative, can move things faster, and will hopefully put the pressure on Congress eventually to get with the program as well.

**Audience:** Thank you all for coming, and for all of your comments. So, staying with the state and local theme, but switching to a challenge there right now. Like those in California, I live in Connecticut, a blue state, where we like to try to squish red dots in our state, that is the recalcitrant cities that we can't win at the municipal levels, so we go to the state and prevent them from forcing detainees and lots of other stuff. But, of course, there's a lot of red states trying to squish blue dots right now, and this circuit showed us just how serious that threat is the other day in the court case. So, I'm curious in the thinking about state and local work, where I also spend a lot of time and appreciate the value and the necessity of a lot of those struggles, how we should think about the red states squishing blue dots problem?

**Annie Lai:** I'll say a little bit. I think the thing that's been inspiring in Texas and in the saga over SB 4 is the ways in which local cities have come out and played a very prominent role in the litigation, and I think it goes back to Karen's point about how you frame the public conversation that's happening around the litigation. The courts will do what they're going to do, and hopefully there will be additional skirmishes, but the thing that will stick and, I think, the thing that will have an impact on the way that Texans view their local community at the local and, hopefully one day, at the state level is the conversation that is happening around cities and why they have taken the position they've taken.

**Hiroshi Motomura:** The question you're raising, Mike, goes to this question of not just what the arguments are in court, but what the narrative is. And so, my sense is that in this litigation the cities are standing up for a couple of different things. A part of the Texas litigation concerned the First Amendment rights of local officials who were forbidden by SB 4 to endorse. This is a case of a city standing

up, or the litigants standing up and saying, “Well, you can’t use this tool to suppress someone’s rights.”

In the same way, I was struck by something in the complaint in the federal government’s lawsuit against the State of California. In talking about state laws, the federal government put the words due process in quotes, as if it’s just something that people made up. It’s due process. In a lot of these sanctuary situations, the local sanctuary ordinances in the red states are articulating values of non-discrimination and the rule of law.

I don’t know how that case is going to turn out, but I think that it underscores the need for some persuasive narrative about what sanctuary-type measures stand for. It could be legal rights, like due process, or protection against discriminatory policing. It could be something more like values, whether it’s separation of church and state, or keeping families together. But the red state conundrum that you point out underscores the need to have an affirmative narrative in blue states, too.

I also should mention something about universities. Being at a university, I naturally think about the relationship that universities and colleges have with their students. That’s a relationship that colleges and universities are uniquely positioned to protect, and it’s almost like protection of the family. Those kinds of affirmative narratives, I think, can do work in red states as well. I know it’s a vague answer but it’s one that tries to identify what buttons there are that can be pushed, both in litigation and in politics.

**Karen Tumlin:** The only thing I’d offer on it, and I love that framing of the inverse problems. I think I should also disclose that I was born and raised in Texas at this point, this is actually really interesting to me, and one of the things that I was saddened by, and many people heard me say this with a really frustrated voice when my home state, our home state, with twenty-five others, sued the Obama administration to end the program that I thought had so much hope for our country; the DACA program. And won. I kept saying, and Ken Paxton is the Attorney General of Texas, and led that after, very craftily, and I kept saying, “Where’s our Ken Paxton? Who’s our blue state Ken Paxton?” To have watched both through the Muslim ban litigation and then the DACA litigation, sixteen or nineteen in the different contexts, states actually get out there and be willing to stand up. I understand it’s different, it’s not within the locality, within the

state context and their challenge to the federal-state showdown again. But I don't have a memory, and maybe you all do, of another time when that level of elected officials was standing up so clearly, side-by-side, with immigrant communities that were being targeted. I do think there's a power there, so whether we put our energy on creating more blue states to squish red dots or protect the blue dots that are standing up in red dots trying to squish them, I think it's more about the accountability for standing with immigrant communities, and we've got to have more of that in all colored states.

**Felicia Escobar:** Yeah and I would just say we need more blue dots in Texas. And we're getting there, and I think that there are people who are working really hard to strengthen not just the local movements, but to connect them all across the state. The challenge with organizing Texas is that it's a mammoth state, and that Austin doesn't talk to San Antonio and they're 70 miles apart. San Antonio and Houston and Dallas don't talk. And then there's the border, and then there's El Paso. And people don't talk enough together, so I know there's a lot of focus in the philanthropic community trying, once again, because they've done it a couple of times, to try to bring that coalition together in a stronger way. Because if that coalition is as strong as some of the California state coalitions are, then you get to a place where you can try to bring in our version of Orange County, or our version of the Central Valley. And so you build more blue dots, and take that organization and investment from people who can do that, like philanthropy. And it also takes figuring out how to message the issue. Because when Prop 187 was passing in California, Texas was not doing that—we were not pursuing an anti-bilingual education like Arizona and California were—but we've gone in the opposite direction. People need to take a step back and figure out why, and how we can learn from the examples of places like California, which is also a mammoth state, and figure out how we create the structures and create the right messaging. Right now, in Texas, being a Republican is a cultural thing, it's not just a political thing. The demographics are generally on our side, but if we don't take advantage of the time we have right now to embrace those demographics, those people could culturally, those second, third generation, 1.5 generation immigrants from Mexico, or Latin America, or Asia could go in a bad direction when it comes to immigrant rights, and say, "I got in, let me close the door behind everyone else." I know that being from Texas, and being

third, fourth generation, I feel a connection to the first generation of immigrants, but there are lots of people in the Latino community that don't. One gift that we have from the Trump administration is that they are so overtly making this about race and ethnicity that those Latinos that, maybe, might not have cared before, like people talk about the Prop 187 moment but at the national level, those Texans are actually responding to this issue now, in a way that they probably wouldn't have.<sup>46</sup> I see that with even my social network from back home, they're people who were probably with me anyway like, "Oh, we're so proud of you Felicia that you work in immigration," but now they're inspired to go to marches and rallies and actually vote, which is a big problem in the state.

**Kathleen Kim (Moderator):** I'm going to take my liberties to take one last question from a student, because I know I had a student hand up before. Do you still have a question? Okay, great, thank you.

**Audience:** Thank you all for coming, I guess this question is mainly for Ms. Escobar, but anyone is welcome to jump in. You mentioned the need to engage with everyone in our local community, including those that don't necessarily share your own views. In that light, I'm sometimes faced with this argument that we have a lot of undocumented persons, and we may be sympathetic to their situation, they have kids and families. But simply allowing them to remain without any sort of restrictions or penalties and giving them a path to residence and citizenship it, I guess, undermines our rule of law and encourages more illegal immigration. How do you respond to that type of argument?

**Felicia Escobar:** Yeah, we all have views on how we'd respond to that. I think helping people understand that the proposals that have been out there about how you get people to get right with the law, they're not cakewalks. They're thirteen-year processes that are going to require people to pay fees, are going to require people to get

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46. See, e.g., Jason Sattler, *DACA Could Be Ruinous Prop 187 Moment with Latinos for Trump and GOP*, USA TODAY (Sept. 5, 2017, 1:12 PM), <https://www.usatoday.com/story/opinion/2017/09/05/daca-ruinous-prop-187-moment-latinos-trump-and-republican-party-jason-sattler-column/632593001/> (discussing what Trump's "Prop 187 moment" will be with the Latino vote); Paul Waldman, *Donald Trump Is the Prop 187 President*, WEEK (Mar. 8, 2018), <https://theweek.com/articles/759641/donald-trump-prop-187-president> ("But something is clearly happening in Texas. In the primaries this year, the number of Republicans casting ballots rose by 15 percent from what it was in the 2014 midterm election, but the number of Democrats voting rose by a remarkable 87 percent. There were still more total Republicans voting, but that looks a lot like a building backlash.").

background checks, are going to require people to stay on the straight-and-narrow for thirteen years before they even get a shot at citizenship. It doesn't mean they get it; they get a shot at actually applying. I think having people understand that, I think it's helpful, and to me it's like relating it to if someone breaks another law. Say you jaywalked, I don't know, you did something, there's a sentence you have to pay for that. You either pay a fine, or maybe you have to go to jail, maybe you get on probation, but that's not for life. Americans don't have to be on probation for life for jaywalking. I think helping people understand how getting people to come out of the shadows, and get on a system, on a process to get right with the law, as a phrase that often pulls well, to me that's no different than what we would do in the criminal justice system. It actually enforces the idea of getting people to be, of having a system that works. The system we have now is we let people just be here, and we don't necessarily know who they are, and we don't put them in a process for trying to meet some requirements in order to earn their citizenship, or whatever you want to call it. I think that's important to remind people that everyone's broken a law in some way and has had to pay a price. But should they have to pay the price for the rest of their life? Can't we find a reasonable way to give them a process? And when you poll people on that, legal immigration does not poll well, it just doesn't, which is why I think they went after it. But an earned path to citizenship always polls, amongst all the immigration issues, the best. Even better than border security. When you explain it to people, because a lot of times people don't really understand. They're like, "Oh, we're going to let them, just like that amnesty thing, they're going to get a slap on the wrist and they're done." That's not what any of the proposals that have been proposed in the last fifteen years would give people.

**Kathleen Kim (Moderator):** Okay, thank you. Thank you to our panel.