
FOREWORD

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I am honored that I was asked to introduce this unique issue of the *William Mitchell Law Review*. My connection to William Mitchell College of Law spans from my student days (culminating in graduation in 1969), to ten years later when I joined the adjunct faculty. I created the survey course in Immigration & Citizenship Law at the college and taught it thirty times.

In a great many respects, the significant issues and policies relating to the emergence of this dynamic field during the past thirty to thirty-five years have paralleled my own professional career. This continues to be true today as well, and indeed, immigration is an intense subject and interest in its ramifications has never been greater. Nearly the entirety of my professional life as a lawyer has been spent in the private practice of immigration and citizenship law. I feel strongly that it is essential to keep in mind both the timeframe together with world events, which have both sparked as well as driven the migration of humans worldwide.

Contemporary American immigration history began with the pullout of our military forces from Southeast Asia in 1975 and continues today with ongoing workplace raids by Immigration and Customs Enforcement (ICE). This year ICE planned and executed the biggest raids in U.S. history in its search for undocumented

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Following his law studies, Ingber lived in Belgium where he worked for a Belgian investment bank and in Israel where he was employed by the Canadian Embassy as a locally engaged specialist. He was also admitted to the Israel Bar Association in 1974.

Returning to the United States in 1977, Ingber began a niche practice focusing exclusively on immigration and nationality law. He started teaching this subject in 1980 at the William Mitchell College of Law, where he continues to serve as an Adjunct Professor. Recently, Professor Ingber has contributed to the development of two new seminars at William Mitchell emphasizing Human Rights and Business Immigration.

foreign nationals, known popularly in the media as “illegal aliens.”¹ The majority of these raids were focused on American employers operating food processing and manufacturing facilities.²

Raids on America’s workplaces have for the first time resulted in criminalizing the status of individual foreign nationals working in the United States without authorization. Previously, this behavior was treated civilly with the ultimate governmental goal being deportation, either voluntarily or pursuant to a final order. Recently, the U.S. Supreme Court announced its decision to hear an appeal from the Eighth Circuit involving the conviction and mandatory two-year prison sentence for an unauthorized alien using a false identification card.³ A decision is expected in early 2009. Six different circuits have split on the issue, with the pivotal question being whether an individual (alien or citizen) may be punished for “knowingly” stealing the identity of another when caught using a social security number not his own.⁴ A frequent claim by the accused, who concedes using a phony ID card, is that he believed that he was using a made-up number, not a number or other document specifically belonging to an actual person.⁵

The issue is one of leverage. The government believes that

1. See U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, FY07 ACCOMPLISHMENTS (2008), available at

<http://www.ice.gov/doclib/pi/news/factsheets/fy07accomplshmntsweb.pdf> (indicating that in fiscal year 2007, “ICE removed a record 276,912 illegal aliens, including voluntary removals, from the United States”).

2. See Libby Sander, *Immigration Raid Yields 62 Arrests In Illinois*, N.Y. TIMES, Apr. 5, 2007, at A12, available at http://www.nytimes.com/2007/04/05/us/05raid.html?_r=1&scp=1&sq=immigration%20raid%20yields%2062&st=cse&oref=slogin (discussing recent raids at meatpacking, manufacturing, and construction company facilities).

3. *United States v. Flores-Figueroa*, 274 F. App’x 501 (8th Cir. 2008), cert. granted, No. 08-108, 2008 WL 2882195 (Oct. 20, 2008).

4. Compare *United States v. Godin*, 534 F.3d 51, 53–54 (1st Cir. 2008) (“[T]he government must prove that the defendant knew that the means of identification transferred, possessed, or used during the commission of an enumerated felony belonged to another person.”), *United States v. Miranda-Lopez*, 532 F.3d 1034, 1040 (9th Cir. 2008), and *United States v. Villanueva-Sotelo*, 515 F.3d 1234, 1236 (D.C. Cir. 2008), with *United States v. Mendoza-Gonzalez*, 520 F.3d 912, 915 (8th Cir. 2008) (holding that the government is not required to prove that defendant knew that the means of identification transferred, possessed, or used during the commission of an offense belonged to another person), and *United States v. Hurtado*, 508 F.3d 603, 610 (11th Cir. 2007), and *United States v. Montejo*, 442 F.3d 213, 216–17 (4th Cir. 2006).

5. See *Flores-Figueroa*, 274 F. App’x at 502 (defendant pled guilty to misuse of immigration documents but not guilty to identity theft).

aliens present in the United States without authorization would not contest (and thus delay) their deportation if the threat of an extra two years in prison could influence them to accept being removed immediately, thus forgoing their right to an administrative hearing.

It must be clearly stated that the subject of immigration law may seem very narrow, but for those working in this highly specialized discipline it is actually quite broad. To undertake a thorough discussion of the subject one must understand its process and complex procedures as well as multiple and ever-changing governmental policies emanating from its complex development. Federal law⁶ assures lawful immigration benefits (both temporary as well as permanent residence) tied to certain qualifying family relationships, based on specific job skills or occupation shortages, as well as business and international treaty considerations.⁷ Benefits (visas) are also awarded to individuals coming to America as students, business people, and tourists, as well as for numerous other bona fide reasons.⁸

The migration of a person, community, or nation to a far-off land, I submit, is not a natural phenomenon. It happens because of a “push and a pull”—a person feeling pushed from the land of her birth to another land offering an attraction, or a pull. The “push” can be attributed to a variety of causes such as a poor economy, the lack of opportunity, the threat of war, persecution, or a natural catastrophe. The “pull” can be ascribed to a desire to reunify with close family members, to seek shelter in a safe place, or simply to provide new opportunities for the next generation. In any event, it requires giving up native language and learning another, leaving family and significant others behind, turning one’s back on his native culture, foods, and ways of conduct—in effect, starting over. During the last thirty years we have witnessed enormous changes: the dominance of oil on the global economy; the international spread of the internet; numerous coups and revolutions in Indo-Europe as well as throughout Africa and South America; wars involving other countries initially and then the United States; the fall of Communism; and the emergence of the

6. *See generally* Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, 66 Stat. 163 (2007) (codified as amended at 8 U.S.C. §§ 1101 *et seq.*).

7. INA §§ 201–203, 8 U.S.C. §§ 1151–1153 (2006).

8. INA §§ 221(a)(1), 101(a)(15), 8 U.S.C. §§ 1201(a)(1), 1101(a)(15) (2006).

enormous economic engines of China and India. Add to this the tragedy of 9/11, the Iraq war, the mortgage bust, a demoralized financial market, unsustainable population growth, climate change, and the mother of all meltdowns—the world’s declining supply of oil.

Humanitarian concerns also play an instrumental role affecting the acceptance of certain foreign nationals qualifying as refugees. Others may be allowed to remain in the United States if they are able to establish a well founded fear of persecution due to race, religion, nationality, and membership in a particular social group or holding certain political opinions.⁹ Enforcement concerns resulting from unlawful admission or unauthorized activities after being physically present could lead to numerous grounds of personal inadmissibility.¹⁰

These are spelled out in federal laws and regulations. It is this latter category of enforcement that has garnered the interest of the media in the bulk of its reporting, particularly since 2001.

Congress passed the Patriot Act quickly after the tragedy of 9/11.¹¹ Americans soon became obsessed with thoroughly knowing the true identity of those who were entering the United States, those who were staying in the United States, and what they were doing with their time here. Unmasking the true identity of foreigners as well as citizens has caused all sorts of abrogation of individual rights. “Kemosabe,” as his trusted Native American sidekick, Tonto, knew him, was the only masked man to gain the affection of American television watchers over the years.¹² This has faded with the passing of the *Lone Ranger* television series, which captured the imagination of mid-century children. Those children became the “baby boomers” and with their approaching retirement, what had been a plentiful workforce has waned. One way of dealing with fewer workers in the United States has been to make massive investments in laborsaving technologies. Other approaches included job-sharing, working from home, providing daycare services in the workplace, and rehiring retirees as

9. See INA § 208 (“Asylum”), 8 U.S.C. § 1158 (2006).

10. See INA § 208(b)(2)(A), 8 U.S.C. § 1158(b)(2)(A) (2006).

11. See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

12. *The Lone Ranger*, IMDB, <http://www.imdb.com/title/tt0041038/> (last visited Dec. 12, 2008).

consultants. One of the most outstanding and controversial solutions has been a cumulative reliance on immigrants, both legal as well as illegal.

Even as we decry the illegal aliens amongst us and the “threat” of foreigners, many believe the U.S. economy is dependent on them.¹³ The rise in the number of undocumented residents who have accompanied these market adjustments has become a source of considerable controversy, often generating inflamed rhetoric and misinformation. Debates continue over policies and the implications for the future. There is value in having a readily available workforce in place as citizens age, but at the same time it should be recognized that there are costs for health care, education, and social services. Looking at all sides though, someday the United States will recognize the true cost of its war on illegal immigration.

This is not just about dollars, although those are being squandered by the billions. The true cost is to our national identity: the sense of who we are and what we value. It will hit us once the enforcement fever breaks, when we look at what has been done and no longer recognize the country that did it.

It is widely believed that one out of every nine people living in the United States today was born abroad.¹⁴ Approximately one-third of this number are considered to be here without legal authorization¹⁵ either by virtue of having entered the United States without being formally inspected and admitted or having entered lawfully with a proper visa but having since engaged in behavior which makes them removable (or deportable, the term used for many years before the law changed).¹⁶ This translates to

13. See generally JAMES P. SMITH AND BARRY EDMONSTON, EDS, *THE IMMIGRATION DEBATE: STUDIES ON THE ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION* (1998) available at <http://books.nap.edu/openbook.php?isbn=0309059984&page=69>.

14. See NOLAN MALON ET AL., U.S. CENSUS BUREAU, *THE FOREIGN-BORN POPULATION: 2000*, Dec. 2003, <http://www.census.gov/prod/2003pubs/c2kbr-34.pdf> (noting that, as of 2000, 11.1 percent of the United States population was foreign born).

15. It is estimated that approximately 12 million people are present in the United States without proper legal authorization. Steven Ohlemacher, *Number of Illegal Immigrants Hits 12 Million*, ASSOCIATED PRESS NEWSWIRE, Mar. 7, 2006, http://www.breitbart.com/article.php?id=D8G6U2KO8 &show_article=1.

16. See INA §§ 212(a)(6) (violations at entry) and (9) (later unlawful presence and inadmissibility as a result of prior removal), 8 U.S.C. §§ 1182(a)(6) and (9) (2006).

approximately twelve million people, most of whom are working age and whose purpose in coming to America was, in fact, to work!

Some have argued that a nation of immigrants is holding another nation of immigrants in bondage, exploiting its labor while ignoring its suffering, condemning its lawlessness while sealing off a path to living lawfully. The evidence is all around that something pragmatic and welcoming at the American core has been eclipsed, or is slipping away.

Clearly congressional action, absent for several years, is required to craft a rational and sensible policy that fully addresses the realities of a modern society.

Why is this law review issue unusual? Looking back at William Mitchell's long history and that of its law review, there has never been an entire issue devoted almost exclusively to the subject of immigration (citizenship, while a critical component of immigration, represents a small aspect of the subject and accordingly, is not being addressed at this time). Over the last few years there is little doubt that this topic has polarized the country in its conflicting attitudes, whether in favor of more newcomers or opposed to those trying to move here indefinitely. This issue is important because the different authors have considered various aspects of the subject, together with the ongoing conspicuous absence of a crafted, rational, and sensible policy that fully addresses the realities of a modern society. You will read how legal scholars view the concerns of a failed legislative initiative to reform our antiquated immigration provisions; you will be introduced to the heavily trafficked intersection between immigration and the criminal justice system; you will learn of the need for increasing our investment in "immigrant capital;" and you will be asked to understand the arbitrary nature of using quotas to exclude some, but not others, from being admitted to America. You will also gain a better understanding of the difficulty in regulating non-lawyers from preying on vulnerable foreigners, as well as the difficulty in regulating those who practice immigration law in states in which they are not licensed.