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Suspension of Deportation Hearings and Measures of "Americanness"

resumen

Una forma de identificar las características que, según las autoridades y la ley, el ciudadano ideal debe de tener es estudiar casos de inmigración en corte. Por medio de observar la preparación de tales casos, entrevistar a abogados y solicitantes, y asistir a audiencias en la corte federal de inmigración en Los Angeles, se analiza estas características. La investigación se enfoca en los casos conocidos como "suspensión de deportación". Para ganar, el solicitante tiene que haber vivido en los Estados Unidos por siete años, mostrar buen carácter moral y probar que deportación causaría un daño extremo al aplicante o a un pariente del aplicante. El análisis indica que, aunque no se menciona la raza ni la etnicidad del solicitante, las características preferidas se basan en la cultura anglosajóna, lo cual promueve un modelo anglosajón del cuidadano ideal. Por eso, aún cuando se ganan los casos, la ley impone requisitos que perjudican a ciertos sectores de la población.

The migrations through which globalization is realized produce what might be termed variegated national populations (see Inda 2000; Perry 2000). In contrast to the model of national membership in which territories and citizenries coincide (Gupta and Ferguson 1992; Malkki 1992), countries like the United States are now made up of populations whose legal statuses and national affiliations are diverse. Not only are many U.S. residents nationals of other countries, in addition, individuals experience different degrees of inclusion in the national polity. Undocumented immigrants may lack legal statuses but live in many ways like other residents (Coutin 2000); those with temporary authorization (such as pending asylum applications) may have to live with an eye toward two possible futures (Schiller et al. 1995); legal permanent residents share many of the rights accorded to U.S. citizens[1] but formally owe allegiance to other nations; and even full legal citizens may be marginalized due to their gender, ethnicity, social class, or sexual orientation.[2] Belonging is clearly multidimensional.

Such internal differentiation creates grounds through which long-time residents who are formally excluded from the United States can stake claims

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to legal inclusion. Undocumented immigrants who act as "social citizens" (Hammar 1990, 1994) by living, working, establishing families, and paying taxes in the United States can argue that they have become de facto proto-citizens on whom the conferral of permanent legal status merely recognizes the connectedness that they have already achieved. This rationale has served as a justification for the 1986 amnesty program, for registry, and for making periods of continuous presence prerequisites for granting or changing statuses.[3] Establishing such connectedness can be difficult, however, given that historically, complete citizenship has been limited at particular times to white people, men, the propertied, heterosexuals, and so forth.[4] Although many of these restrictions have been formally eliminated, many argue that the category "citizen" is still inflected with racial, ethnic, gendered, class, and heterosexual meanings (Matsuda 1993; Nelson 1984; Haney López1996; Sapiro 1984).

One context in which these meanings become apparent is during suspension of deportation hearings. Under pre–1996 immigration law[5], individuals who were in deportation proceedings could petition to have their deportations "suspended" (which conferred legal permanent residency) on the grounds that they had lived in the United States continuously for seven years, that they had demonstrated good moral character, and that deportation would be an extreme hardship for applicants or for applicants' relatives. Race, ethnicity, class, gender, and heterosexuality were relevant to suspension criteria in particular ways. Regarding race and ethnicity, one way to prove hardship was to show that applicants had become so acculturated to the United States that they could no longer "fit in" in their countries of origin. Emphasizing the distinctiveness of their "American" identity entailed noting ways that their lives approximated some version of Anglo U.S. culture. Class was relevant to demonstrating rootedness in that assets in the bank, homeownership, upward mobility, and career goals helped to establish that applicants were fulfilling the American dream. Women, who typically earned less than men and who

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sometimes had to seek public assistance, were particularly disadvantaged in meeting these criteria. Similarly, gays, lesbians, and members of nontraditional families could not define their relationships as "marriages" for immigration purposes, which undercut their ability to argue that deportation would separate them from U.S.-based relatives. Suspension hearings thus provide a window into racial, ethnic, gendered, class, and heteronormative meanings of ostensibly neutral categories of membership.

In order to identify ways that legal inclusion or exclusion can be implicitly racialized, gendered, class-based, and heteronormative, I analyze the criteria through which U.S. immigration judges assessed deservingness during four suspension hearings. I do not attribute these criteria to the biases or ideologies of individual judges but rather to the logic of immigration law and of suspension in particular. Like other legal cases, suspension hearings measure litigants' lives against legal prototypes; in this instance, that of the ideal proto-citizen. Attending to the questions that judges and attorneys posed to suspension applicants can shed light on the nature of this prototype. Interpreting these cases requires some knowledge of the social field in which understandings of suspension law circulate. I therefore begin by discussing attorneys' efforts to assess the potential strength of clients' suspension cases. This discussion provides the necessary context for analyzing the hearings themselves.

The Social Field: Reading Suspension Cases

One place where undocumented immigrants learned about suspension law was through community organizations that provided low-cost legal services to indigent clients. Between 1995 and 1997, as part of a larger study of Salvadorans' efforts to gain legal status in the United States (Coutin 2000), I conducted fieldwork within the legal services departments of three major Los Angeles–based Central American community organizations.[6] Fieldwork consisted of observing attorney–client interviews, attending case review meetings, helping to prepare asylum and suspension applications, observing public presentations on immigration law, attending hearings in immigration court, and interviewing legal services providers and applicants regarding their legal strategies and experiences. Suspension law was critical to the work of these organizations and to their clients' hopes of legalizing.[7]

Within cities such as Los Angeles, rumors regarding methods of legalizing circulate among immigrant populations. In Spanish, suspension was known as "*la ley de los siete años*" (the law of seven years). Legal service providers were continually correcting clients' belief that having lived in the United States for seven years was sufficient to qualify for suspension. As one attorney explained during a public presentation on immigration law, "On TV and on the radio they are always saying 'the defense of seven years' and, unfortunately, that's

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only half the story because there are two more requirements [good moral character and extreme hardship] and they never tell people what the other two requirements are. And many people, even with seven years, lose their cases." Although suspension was not as available as their clients might have hoped, legal staff nonetheless considered suspension an important remedy for long-time residents with legally compelling hardship arguments. Because their resources were limited, legal staff only accepted cases that they thought would be approved; therefore, the majority of clients who met the minimum seven-year bar were nonetheless turned away, due to having been convicted of crimes, received welfare, been unemployed, or done little to distinguish themselves from others who had lived in the United States without legal status.

The experience of Carlos Sanchez[8], who approached a Central American community organization in 1996, illustrates how community groups "weeded out" all but the strongest cases. During his intake interview with a staff attorney, Carlos explained that he had lived in the United States since 1985 and had obtained a work permit by applying for "amnesty" as a seasonal agricultural worker. When he learned that his mother had become ill, Carlos went to visit her in Mexico, assuming that even though his amnesty case had just been denied, his unexpired work permit would allow him to reenter the United States. Instead, he was detained at the U.S.–Mexico border and was placed in exclusion proceedings. To evaluate Carlos's suspension case, the attorney elicited other facts about Carlos's life. Carlos was married to a Guatemalan woman who had lived in the United States since 1988 and who had applied for some form of status but had never received papers. Carlos and his wife had two U.S. citizen children, ages six years and four months, and the six-year-old received instruction in English at a public school. Carlos said that his own English skills were not good, that he owned no property, had committed no crimes, did not attend church, and had paid income taxes since 1988. The attorney explained that because Carlos's absence was brief and innocent, a judge might excuse it. It would then be possible for Carlos to apply for suspension of deportation.[9] "One thing that worries me," the attorney continued, "is your wife's status." "It seems that there ought to be something that I can do," Carlos commented, "because I've been here 11 years." Nonetheless, the following day, at a case review meeting with other staff, the attorney gave his assessment of Carlos's suspension claim: "His testimony was consistent throughout and he would have a chance at suspension. But his wife's status wasn't clear. He does have two small children and he has paid his taxes. But he doesn't speak English." Reluctantly, the legal staff decided not to accept Carlos's case.

In choosing not to represent Carlos in immigration court, legal staff at this community organization "read" his case the way that they thought that it would be "read" by an immigration judge. Deservingness was measured

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according to length of residency, criminal record, church membership, tax payments, family ties, and English-language skills. Although they were sympathetic to Carlos, legal staff did not consider his case particularly strong. Moreover, cases that were deemed "weak" abounded. To give but one example, legal staff at this organization considered but did not accept the case of Dominga Argueta, a 54-year-old Guatemalan woman who had lived in the United States for seven years and who attended church, but had been arrested, had no schooling, had not paid income taxes, was unemployed, owned no property, had no U.S. citizen or legal permanent resident relatives, and was single. One paralegal referred to Dominga's suspension claim as "half a case."

Even when they did not accept suspension cases, legal staff at community organizations told clients how to make lifestyle changes that would improve their chances of winning suspension in the future. During an interview, one Anglo attorney who was also a board member at a Central American community organization explained how he would implement this strategy: "All that we can do is prepare people [who are not likely to be awarded political asylum] for suspension. So, they need to join the clubs, and we need to tell them not to teach their kids Spanish, to assimilate them . . . It's too bad, but it's true. Young kids and Spanish-speaking kids can assimilate if they're deported."[10] This attorney's emphasis on achieving cultural "whiteness" was echoed at a public presentation on immigration law. Using an audience member as an example, the speaker (who was an attorney and an immigrant from Southeast Asia) advised his largely Spanish-speaking, immigrant audience,

> This is what the judge wants to see in a suspension case. This woman came at a young age, she graduated from a U.S. high school, and she can speak English. This is not a matter of racism on the part of the immigration judge. They want to know whether or not, as they define these things, they should deport her. They want to know if she has taken classes in English. Are you a member of a church? No? Then join one. The judge is looking for this, so it could be important to your case . . . Have you been on the PTA [Parent Teacher Association]? Are you involved in the YMCA [Young Men's Christian Association]? Are you involved in your church? What do you give to the community? . . . Have you gone to college? Have you obtained some higher education? Have you paid your income taxes? Do you have white Americans who can speak on your behalf in the courtroom? The courts here are racist. What will save this lady is to show that she is Americanized. She has to celebrate the Fourth of July, Thanksgiving. She has to show that she has been acclimated to the United States. [see also Coutin 2001:130]

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When meeting with clients who might be eligible for suspension in the future, staff at community organizations often advised them that they could improve their chances of winning if they did volunteer work, joined the PTA, coached a sports team, and got their children involved in Boy Scouts and Little League.

Although it was not the only criterion used to assess suspension claims, emphasizing applicants' cultural "whiteness" was a means of situating applicants firmly in the United States rather than in a foreign or a transnational space. Although English-language skills, participation in the PTA, Boy Scouts, and sports teams, and doing volunteer work are not limited to Anglo-Americans, these activities are considered facets of mainstream U.S. life and are therefore "markers" used to assess (and, if lacking, delegitimize) individuals' claims to membership. As William Flores and Rina Benmayor note, "Borders, real and symbolic, jut seemingly ever higher and wider to encapsulate the United States against the perceived threat of cultural invasion from Latinos" (1997:2; see also Rosaldo 1989)—whether native-born U.S. citizens or not. In suspension hearings, applicants' acculturation in the United States was measured against their cultural and social "distance" from their countries of origin. The more acculturated to the United States and deculturated from their society of origin, the more extreme the hardship that a deportation would impose. In suspension hearings, it was not the foreignness of applicants' origins that was at issue, but rather whether or not applicants had, deliberately or otherwise, "broken" with their countries of origin and become connected to the United States. To distinguish their current "American" identities from their earlier "foreign" ones, applicants emphasized ways that their lives overlapped with mainstream Anglo culture. Therefore, although there were few overt references to race or to ethnicity during suspension hearings, testimony regarding language skills, culture, hobbies, and community involvement implicitly measured applicants' lives against a presumed mainstream and Anglo standard of "Americanness."

Although demonstrating cultural "whiteness" was a strategy for meeting suspension criteria, Central Americans' evaluations of their own deservingness were more complex. On the one hand, even though popular understandings of suspension law focus primarily on having lived in the United States, the other two criteria—good moral character and extreme hardship—surfaced in interviewees' explanations of why they needed to remain in the United States. Interviewees—most of whom eventually hoped to apply for suspension of deportation[11]—stated that they deserved to remain in the United States because they had developed roots, acclimated to U.S. society, paid taxes, obeyed the law, established families, and worked hard. Interviewees depicted themselves

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and their compatriots as "ideal immigrants" who only wanted to better their lives and who thus were pursuing the American dream. These depictions overlapped considerably with the criteria used to assess suspension cases. On the other hand, interviewees neither uniformly saw themselves as having permanently broken ties with their countries of origin nor claimed to have become culturally Anglo. One interviewee, who hoped to eventually become a naturalized U.S. citizen, stressed emphatically, "I will always be Salvadoran, regardless of where my citizenship is or what piece of paper I have." Moreover, in reaction to policies that restricted immigration rights, limited eligibility for public benefits, abolished affirmative action and bilingual education, and promoted English only[12] (Inda 2000; Perea 1997), many interviewees defined themselves as "Hispanic" or "Latino." As Salvador Carranza, a 39-year-old Salvadoran man, told me:

> Politics here are very inflammatory for people who come from other countries. They are proposing many laws against the Hispanic right now, though they aren't directly against the Hispanic, because they affect everyone, whether they're from Europe or from Asia or from elsewhere. But because our countries are so close together, more than anyone else, these laws affect the Hispanic. And there's a false image of immigrants now. All kinds of people have come here, and many are very prepared [well-educated]. And the costs of preparing them were born by their country . . . People come here with the goal of working. We aren't accustomed to taking public aid. Everyone who I know from my country likes to work. Here, there are discriminatory people, racist people. The people who are proposing these laws are motivated, probably, by fear, the fear that a minority will become a majority. The fear of losing power. And this isn't right because everyone who comes here works, everyone pays taxes.

As evidenced by this quote, policies that seek to "defend the borders" or to promote cultural homogeneity can further, rather than inhibit the development of pan-Latino identities. Much like suspension criteria, such policies can be experienced as racist, as racializing, and as an attempt to establish Anglo, or mainstream U.S. culture as the definition of "Americanness."

Attending to the racializing nature of suspension criteria exposes ways that suspension hearings are imbued with power relations. Like other legal proceedings[13], suspension hearings measure applicants' lives against particular legal criteria. The terms through which applicants can define their lives are therefore predefined. When applicants claim to fit the prototype of a deserving citizen, they simultaneously depict themselves as yet another instance of the American immigrant story (see Chock 1991; Coutin and Chock 1995). When applicants testify that they have not received welfare, they willingly

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or otherwise participate in a schema according to which receiving public benefits is illegitimate. By speaking, applicants enter stories that were already written by others and for political ends with which applicants may or may not agree. Furthermore, these stories reproduce particular assumptions about the connection between citizenship, race, ethnicity, gender, class, and sexual orientation. There is thus a sense in which, regardless of the outcome of a case, applicants are "trapped" by the legal notions through which their cases are judged.

To further assess how categories of membership are inflected with racialized and other meanings, I turn to four suspension hearings that I observed in Los Angeles in 1996 and 1997. These cases are a subset of a larger sample of deportation hearings that I observed while conducting research regarding Central American immigrants' legalization strategies. I selected these four cases because in each, definitions of success, acculturation, and family were in contention. The applicant in the first case was a 23-year-old Mexican man who had an out-of-wedlock child with a married woman. The applicant in the second case was a Salvadoran woman in her thirties who had been battered by her husband and who was applying for suspension of deportation under the Violence Against Women Act. The applicant in the third case was a Salvadoran man in his early thirties who was present in court with his wife and two sons. Finally, the applicant in the fourth case was a 41-year-old Nicaraguan man who was divorced, whose wife had been granted custody of their three children, and who had been accused of abusing his ex-wife. Each of these hearings occurred before a different immigration judge. In the first, second, and fourth cases, applicants were represented by an attorney from a Central American community organization and had therefore been deemed by the organization's legal staff to have strong suspension cases. In the third, I knew neither the applicant nor the applicant's attorney. Power relations inhere not only in decisions to grant and deny legal permanent residency, but also in the ability to define the criteria that indicate de facto membership. I therefore pay attention to the criteria through which judges construe particular life experiences as examples of progress, acculturation, rootedness, and "Americanness."

Suspension Hearings

Case 1: Mario Rodrigues

I attended the deportation hearing of Mario Rodrigues, a 23-year-old Mexican citizen, in June 1996, some six months after I first met Mario at a community organization. Mario was in difficult legal straits. He had hired a notary public who seemed knowledgeable about U.S. immigration law, but who counseled Mario to apply for political asylum as a means of getting a work permit and, ultimately, U.S. residency. Mario had, however, immigrated

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to the United States primarily for economic reasons. His asylum application was denied, and his case was referred to an immigration court, where he was placed in deportation proceedings. Mario was desperate to remain in the United States. Using words that evoked suspension criteria, Mario told the legal worker who conducted the intake interview that he wanted to do something with his life and that he had a steady job, many relatives in the United States, and a U.S. citizen child. The intake worker was clearly impressed with Mario, and she persuaded the other legal staff to take on this case. His hearing was attended by the community organization's staff attorney, two law clerks who were interning at the attorney's organization, Mario's parents and girlfriend, and me.

Mario's courtroom testimony articulated three interrelated hardship arguments. These were (1) that Mario had become so accustomed to life in the United States that he could no longer live in Mexico, (2) that Mario needed to remain in the United States in order to realize his educational and professional goals, and (3) that severing Mario's financial and emotional ties to his U.S. relatives would create hardships for all concerned. These hardship arguments were designed to demonstrate acculturation, progress, and rootedness. Regarding acculturation, Mario depicted himself as completely acculturated to life in the United States. Mario testified in English rather than Spanish, demonstrating linguistic assimilation. Mario provided evidence that he had lived in the United States for eight years, from age 14 to 23, and had attended (but not completed) junior high school in the United States. When asked whether he could continue his studies in Mexico, Mario replied, "No, I don't believe that I could. I love California. I feel like—this is my life here. I can't go back to Mexico now. I've been here since I was 14." This statement negated any cultural legacy from Mexico and asserted a clean break between Mario's life in Mexico and in the United States. Under questioning by the judge, however, Mario admitted that he could speak, read, and write Spanish fluently. Bilingualism and biculturalism can weaken acculturation-based hardship arguments.

To demonstrate progress, Mario stressed his educational and professional goals. Mario testified that he worked at a rent-a-car agency earning $10.20 an hour, and that he hoped to pursue a career in electronics and computers. Although he currently held a working-class job, this testimony depicted Mario as upwardly mobile. Mario explained, "I want to be a professional, I want to earn more money. I want to be successful and improve myself, and I realize that the only way to do that is through getting an education." Mario told the judge that he had dropped out of junior high school because he needed to work, but that he had recently resumed his education, and would earn his GED (General Equivalency Diploma) in two years. The judge found Mario's timing suspicious:

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Judge: Why did you only start going to school a couple of months ago?

Mario: Because I realized that my education was important. I knew that I had to get an education if I was ever going to get ahead.

J: But why did you start going in February of '96?

M: Because I knew that it was important for me to get an education.

J: Did you decide to take these courses due to this hearing?

M: No, I was planning to go to school for a long time because I know that education is very important. And it was difficult to go earlier because of my son.

Regarding rootedness, Mario testified about his financial and emotional ties to U.S. citizen and legal permanent resident relatives. Mario depicted himself as an integral member of two overlapping nuclear families: his natal family, consisting of his parents and siblings, and his own procreative family, consisting of his girlfriend and their three-year-old son. Mario testified that he lived with and provided essential financial support to his father, a legal permanent resident who was disabled due to a work-related injury, and his mother, a legal permanent resident suffering from diabetes and having limited job skills. In addition to his parents, Mario had nine siblings, one of whom was a U.S. citizen, six of whom were legal permanent residents, and two of whom were being petitioned for by other relatives. If Mario were deported, he would be isolated from these close relatives.[14] Mario also testified that he had formed his own family with his U.S. citizen girlfriend and their son, who was born in the United States. Mario submitted evidence that he was providing $150 to $200 a month in financial support to his girlfriend and to their son, that he saw his son and girlfriend on a daily basis, and that he and his son had an emotionally close relationship.

Mario's relationship to his girlfriend posed a potential problem for his case: Could Mario claim to have good moral character (one of the three requirements in a suspension case) if he had had an out-of-wedlock child? Precisely what sort of relationship was he involved in? Testimony therefore returned to this relationship repeatedly throughout the hearing. This relationship was first described when Mario was being questioned by his own attorney:

Attorney: How long have you been together with your girlfriend?

Mario: For six years.

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A: Have you thought about getting married?

M: I've thought about it, but I'm just not ready yet.

J: Why aren't you ready?

M: Because I still need to go to school, and I have to continue my education before I'm ready to get married. I know that I need to get a better job.

J: And how would marriage prevent this?

M: I need to go to school, I have to continue my education, I want to be somebody. I'm just not ready to get married.

Further details regarding the complexity of their family structure emerged when the judge was asking Mario about his financial and living arrangements:

Judge: Who lives with your girlfriend?

Mario: [Hesitating.] My son and she has another child with someone else.

J: Feel comfortable and just answer the questions. How does your girlfriend pay her rent?

M: She receives some money from someone else for her other child.

J: Do you also give her money?

M: Yes, I do.

J: About how much do you give her on a monthly basis?

M: About $150 to $200.

When it was her turn to cross-examine Mario, the INS trial attorney elicited further, potentially damaging information:

Trial Attorney: How old was your girlfriend when she gave birth to your son?

Mario: She was 34.

Judge: [Sounding surprised.] How old is she now?

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M: 38.

J: How old are you?

M: 23.

TA: Is your girlfriend getting AFDC [Aid to Families with Dependent Children] for your son?

M: No, not welfare. My son has never had welfare.

TA: You said that you give $150 to $200 to your girlfriend every month, is that correct?

M: That's right.

TA: Is that enough to support your son?

M: I also pay for things for him, like I buy him clothes.

J: Didn't you say that your girlfriend got welfare?

M: She receives AFDC for her older son, not for my son.

TA: Who has custody of your son?

M: What do you mean?

TA: Is there a court order regarding custody or family support?

M: No, there is not.

Not only had Mario had an out-of-wedlock child, in addition, he was involved with an older woman who already had another child and who was receiving welfare. Welfare use, which was treated in these hearings as a facet of character, particularly stigmatized applicants.

Although Mario's girlfriend was a U.S. citizen and her actions were not at issue during this hearing, the judge assumed the authority to question her regarding the legitimacy of receiving welfare while working. This testimony revealed that not only was Mario not married to the mother of his child, in addition, she was married to someone else. Although this judge did not remark on this fact, other judges sometimes treat infidelity as a sign of immoral

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character. In another hearing that I attended, a different judge told a suspension applicant who admitted that he was living with a married woman, "So now we have an adulterer! That's adultery." To rectify this potentially problematic interpretation, Mario's attorney tried to redefine the relationship between Mario and his girlfriend Marissa as quasi-marital[15]:

Trial Attorney: Have you ever considered marriage to Mario?

Marissa: I'm not ready yet for getting married.

TA: But what do you see as the future of your relationship with Mario?

Judge: If you don't know, say so.

M: I don't know. But I would like for him always to be around.

TA: Do you love him?

M: Yes.

Mario's effort to define himself, his girlfriend, and his son as a family were further complicated by competing definitions of household. In the following excerpt, Mario, the judge, and the INS trial attorney dispute the meaning of "living together":

Trial **Attorney**: Has your son ever lived with you?

Mario: He's stayed at my house from time to time, and I see him everyday.

TA: Has he lived with you?

M: I see him every day.

TA: But does he live with you, yes or no?

M: I see him and he stays with me sometimes.

TA: Sir, do you understand the question?

M: Yes, I do.

TA: Sir, on your '92 and '94 tax returns, did you say that you were a head of household and that your son lived with you, and did you claim him as a deduction?[16]

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M: Yes.

TA: And does your son live with you?

M: We share our son.

Judge: Does he spend the night at your house on a regular basis?

M: He has slept at my house, yes.

J: In a typical week, how many nights would he sleep at your house?

M: He has not slept at my house for some time.

In this excerpt, Mario disputes the trial attorney's definition of living with someone. If Mario saw his son on a daily basis and contributed to his son's maintenance but his son did not in fact sleep at Mario's house (though Mario may well have slept at his son's house), could it be argued that they, in some sense, lived together? The legitimacy of Mario's tax deduction and of his family arrangements were at issue in competing answers to this question.

Although questions were raised regarding Mario's relationship to his girlfriend, the judge approved his application for suspension of deportation. Her decision cited Mario's relationship to his parents and his hard work as the primary reasons for granting the petition:

> The court finds that the respondent has met the required seven years of continuous residence, that the respondent is a person of good moral character, and that it would be a hardship on both the respondent and on the respondent's legal permanent resident parents if he were to be deported to Mexico. I have observed the demeanor of the respondent and have listened to his testimony, and I find him to be a conscientious person who carefully answered the questions. I commend him for the work that he has done since he entered this country, and I commend him especially for his assistance to his parents. He is a good and honorable son, and it would be a hardship on his parents if this relationship were to be severed. It would also be a hardship on you if you were not able to see them. The court encourages the respondent to continue his education, and to continue his efforts with his son. The respondent has made a tremendous effort in this country to date. You are a legal permanent resident as of this date. If there are no other matters, then this hearing is adjourned.

Although this decision did not cite Mario's relationship with his girlfriend as an additional hardship, neither did the decision treat this relationship as stigmatizing Mario. Mario was deemed deserving.

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Case 2: Mercedes Cortes

I first met Mercedes Cortes, like Mario Rodrigues, in the offices of a Central American community organization from which she was requesting legal assistance. Mercedes, a Salvadoran woman in her thirties had, like Mario, gotten into deportation proceedings by following bad legal advice. She had first entered the United States in 1986, but was detained by the INS and then permitted to depart the country voluntarily. She reentered the United States in 1987. Her husband, a legal permanent resident, had petitioned for her, but when she left him due to domestic violence, he withdrew the petition. She next tried to obtain a work permit through a notary, who submitted an asylum application on her behalf. She did not have a strong asylum case, so her case was referred to court, where she was placed in deportation proceedings. The legal worker who interviewed Mercedes advised her that her best chance of obtaining legal status would be through suspension of deportation, rather than political asylum. He added that as a victim of domestic violence, she could apply for suspension of deportation under the Violence Against Women Act (VAWA). A VAWA suspension case requires only three years of continuous presence, rather than the usual seven, as a means of preventing domestic violence victims from staying in abusive relationships in order to get a green card. Although she had more than the requisite three years of continuous presence, the legal worker believed that Mercedes would benefit from this law. The community organization agreed to accept her case, and Mercedes was represented by the same attorney who had represented Mario Rodrigues. I attended her court hearing in October 1996.

Mercedes's hardship argument focused on the marital abuse that she experienced and her need to remain in the United States in order to support her three children in El Salvador. Unlike Mario, Mercedes had few relatives in the United States. She had not attended school in the United States, and she had not learned English. She spoke Spanish during the hearing. Mercedes testified that she had never received public assistance, she had always paid her taxes, she had never been arrested, and she earned $5.50 an hour working in sewing. Unlike Mario, Mercedes could not depict herself as acculturated or as pursuing educational or career advancement.

Mercedes's courtroom testimony emphasized her responsibility, as a mother, to provide for her children in El Salvador. She argued that because it was very difficult to find work in El Salvador, she needed to remain in the United States, where, even with a minimum wage job, she was able to send financial support to her children. The judge questioned Mercedes's claim that it is difficult to work in El Salvador, asking, "Are you saying that no women in El Salvador work?" His question implied that "women's work" is always available. Mercedes responded that even if she found work in El Salvador, it would be

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difficult to earn enough money to support her children. While being questioned by her attorney, Mercedes articulated her hardship claim:

> **Attorney:** How would you feel if you had to return to El Salvador?
>
> **Mercedes:** I would feel badly. I'm the one who supports my children.
>
> A: But your children are in El Salvador, isn't that right?
>
> M: Yes.
>
> A: If you went back to El Salvador, wouldn't you be reunited with your children?
>
> M: Yes.
>
> A: Then why would you feel bad?
>
> M: I am the one who supports my children.

To establish her eligibility to apply for suspension of deportation under VAWA, Mercedes had to prove that she was a victim of domestic violence. Mercedes testified that her husband hit her repeatedly, that she reported the abuse to the police, that her husband threatened to harm her children in El Salvador, and that she was psychologically traumatized by these experiences. The characterization of such events as "abuse" was never disputed during the hearing.

Mercedes's case created a dilemma for the judge. Going off the record, he asked Mercedes's attorney to explain why Mercedes was applying for suspension of deportation, rather than self-petitioning, as is also permissible under VAWA. Mercedes's attorney explained:

> She is the beneficiary of a visa petition that became current and then expired and she wasn't able to take advantage of the visa because of the abuse situation. Otherwise, she could simply do a self-petition in court based on her continuing marriage, but since she can't she is applying for suspension of deportation under the Violence Against Women Act.

The judge then described his dilemma:

> She could have gotten legal status by remaining in the marriage, and she left the marriage, so now this doesn't strike me as a hardship but rather as a false choice. The hardship now has to do with her leaving the country . . . The three-year standard is a way of getting the woman out of an abusive

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marriage and still being able to apply for legal status. But, once you're out of the relationship, how does the abuse factor into the hardship?

Apparently unconvinced by Mercedes's claim that she needed to remain in the United States in order to support her children in El Salvador, the judge sought to avoid ruling in this case. He suggested that her attorney ask a high level INS official to reactivate the expired second-preference-based visa. Only if the visa could not be extended would the judge rule on her case. Mercedes' attorney succeeded in getting the visa extended, making the judge's ruling unnecessary. The judge's dilemma, however, indicates that he had questions about Mercedes's deservingness.

Case 3: Gabriel Herrera

I attended the suspension hearing of Gabriel Herrera, a 31-year-old Salvadoran suspension applicant, purely by happenstance when a hearing that I had intended to observe was unexpectedly cancelled. Gabriel was represented by an attorney who seemed to be inexperienced. The judge and the INS trial attorney occasionally had to tell her what to do next. Gabriel's wife and two sons were also in court for the hearing.

To demonstrate hardship, Gabriel argued that he had established roots in the United States, that he needed to remain in this country in order to pursue his career and familial goals, and that his children, both of whom were U.S. citizens, would suffer if he had to return to El Salvador. In essence, he depicted himself as a de facto legal resident who lacked only formal recognition of his status. Gabriel testified that he had lived in the United States for 11 years, during which time he had worked first at an assembly plant, then as a printer. Gabriel had attended an English as a Second Language school from 1987 to 1989, thus evincing his desire to master the skills needed to succeed in the United States. In fact, he testified in English during the hearing. Gabriel had purchased a home, bought a car, and established several bank accounts. He also attended two churches, paid his income taxes, had never received public assistance, and was never arrested. The judge questioned Gabriel extensively about his church membership and his leisure activities. Gabriel testified that he spent his weekends working around the house, visiting relatives, and taking his son to a karate class. The only potentially damaging fact that emerged during the hearing was that Gabriel had not purchased car insurance. Unlike Mario and Mercedes, Gabriel did not have to struggle to define his family situation as legitimate.

In order to portray himself as a de facto legal resident, Gabriel de-emphasized anything that suggested continuing ties to El Salvador. For example, while being questioned by his attorney, Gabriel downplayed the existence of his mother, who lived in El Salvador:

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Attorney: Do you have relatives in El Salvador?

Gabriel: Not really, mainly my family is in San Francisco.

A: Where are your parents?

G: They died, except for my mother.

A: Where is your mother?

G: She's in El Salvador.

Similarly, after testifying that he did not really have relatives in El Salvador, Gabriel admitted that he had four brothers there. Like Mario Rodrigues, Gabriel expressed a clear choice for the United States over El Salvador:

Attorney: Why do you want to stay in the United States?

Gabriel: Because I've lived here, I have family here, I work here, I want to be able to follow my own goals, I want to be able to support my family.

In addition to the hardship that deportation would pose to Gabriel himself, Gabriel argued that his nine-year-old son, George, a U.S. citizen who spoke fluent English and had attended U.S. schools, would be adversely affected. If Gabriel were deported, then George would either have to accompany him, thus (as an American) facing possible educational, cultural, linguistic, and economic disadvantages, or George would remain in the United States and experience an emotionally difficult separation from his father. The INS trial attorney therefore said that she wanted to hear George testify about his life and his relationship to his father. Much of this testimony consisted of the judge and the INS trial attorney quizzing George on elements of popular U.S. culture. I will quote George's testimony (in which questions are posed first by his father's attorney, then by the INS trial attorney, and finally by the judge) in its entirety:

Attorney: What is your name?

George: George.

A: How old are you?

G: Nine years old.

A: What is your favorite subject in school?

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G: Art.

A: Do you know what you want to be someday?

G: Not yet.

A: Do you have friends at school?

G: Yes.

A: What language do you speak with your friends?

G: English.

A: Have you been to El Salvador?

G: Yes.

A: Do you remember it?

G: Not much.

A: How many brothers and sisters do you have?

G: One, Mark.

A: How would you feel if you didn't live with your father?

G: Sad.

A: Would you rather live in El Salvador or here?

G: I don't know.

A: Nothing further.

Trial Attorney: [Gently.] Do you know why you're here today?

G: No.

TA: Your parents didn't explain it to you?

G: No.

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TA: We're here to decide whether or not your father will get a green card. How would you feel if your father didn't get a green card?

G: Sad.

TA: Are you looking forward to Christmas?

G: Yes.

TA: Do you have aunts who live here?

G: Yes.

TA: Are you going to celebrate it with them?

G: Yes.

TA: Are you asking for anything special this year?

G: Yes.

TA: What are you asking for?

G: I don't remember.

TA: What do you like to do?

G: Spend time with my father.

TA: Do you have friends?

G: Yes.

Judge: You take karate?

G: Yes.

J: How far have you progressed?

G: What?

J: What belt do you have?

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G: Orange.

J: What belt do you want?

G: Purple.

J: Do you enjoy karate?

G: Yes.

J: Why?

G: I don't know.

J: Do you ever give your father a hard time about going?

G: No.

J: Why not?

G: I don't know.

J: Do you like school?

G: Yes.

J: What kind of student are you?

G: I don't know.

J: What grades do you get?

G: Sometimes A's.

J: You said that art is your favorite subject. What kind of art do you like?

G: Christmas.

J: You mean drawing?

G: Yes.

J: Do you like movies?

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G: Yes.

J: What was the last movie that you saw?

G: *Santa Claus*.

J: When did you last go to the movie theatre?

G: Last week.

J: What did you see?

G: I didn't go.

J: You didn't go? Where did you see the movie?

G: The whole class saw it.

J: Your whole class went to the movie theatre?

G: No, we saw it in school.

J: What was the last movie that you saw at a movie theatre?

G: *Casper*.

J: What big movie just came out?

G: The dalmation movie.

J: Did your parents promise you anything about that movie?

G: No.

J: I bet they would take you if you ask. Did you ask?

G: No.

J: Why not?

G: I keep forgetting.

J: Are you happy?

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G: Yes.

J: Is your brother happy?

G: I don't know.

J: What language do you speak to your brother?

G: Spanish and English.

J: Good, I hope that you keep your Spanish.

TA: I have no opposition to a grant of suspension in this case.

J: There was a board decision recently that approved a case involving a nine-year-old boy, and that case was certainly no more deserving than this one. I approve the application for suspension of deportation. This hearing is now closed. Take your kids to see *101 Dalmations*.

Gabriel: [Happily.] We will.

This testimony seems designed to test the *normalcy* of George's and thus Gabriel's life. Did George celebrate such American holidays as Christmas?[17] Did he have English-speaking (Anglo?) friends? Could he name Disney movies? What grades did he get in school? It is possible that if George did not celebrate Christmas, spoke primarily Spanish with friends and family, watched Spanish-language films, and performed poorly in school, his father's case would have been adversely affected. In fact, an attorney once told me that a client of his had been deported because the client's elementary school-age child got poor grades, leading the judge to conclude that switching to another school system would pose no hardship to the child. In another case, a different attorney told me that an immigration judge was unable to see an applicant's participation in a soccer league—presumably a "foreign" sport—as evidence of community ties. Through signs of assimilation to middle-class U.S. culture, George constituted both himself and his father as "deserving."

Case 4: Armando Castillo

Armando Castillo, a 41-year-old Nicaraguan man, was represented by a Central American community organization. The attorney who represented Mario Rodrigues and Mercedes Cortes also handled his case. Armando had had what the community organization's legal staff deemed a "strong" suspension of deportation case; however, he had gotten divorced and his wife had begun receiving AFDC. Armando and his wife had a joint case; however, Armando's

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wife had failed to appear at an earlier hearing and had been ordered deported in absentia. Armando's case had been reset for July 1996, the hearing that I attended. I did not meet Armando before the hearing, but I was able to discuss the case with Armando and his attorney at the hearing's conclusion.

Armando was applying for both political asylum and suspension of deportation, so the judge stated that she would take Armando's political asylum claim into account in assessing the hardship that Armando would face if deported. In addition, Armando's case was based on his need to remain near his three U.S. citizen children, who were in the custody of his ex-wife; to raise his children in a positive environment; and to maintain an economic status that would permit him to provide financial support to his children. In short, Armando depicted himself as a father who, despite adverse circumstances, was doing his best to fulfill his fatherly responsibilities. For instance, when asked whether he had paid child support before ordered to do so by the divorce court, Armando replied, "Yes, I always did. I don't need the law to tell me that I have to do it." When asked whether he could take his children to live in Nicaragua, Armando broke down in tears saying, "It would destroy them. It would be terrible for them." As an asylum applicant, Armando did not portray himself as "choosing" the United States over Nicaragua; rather, he stated, "It wasn't my decision to leave Nicaragua and come to the United States. I was forced to do so." He did, however, stress the superiority of the United States, as shown by the following excerpt:

Armando: It's a bad situation there.

Judge: What is bad about it?

A: It is politically unstable.

J: What makes you think that our system is any better?

A: That's why I'm here.

Throughout the hearing, the judge assumed the authority to question Armando's claim to be a responsible, but struggling, father. She suggested that he might remarry and abandon his children, and that perhaps the children simply needed their mother and not their father. Armando, however, insisted that he was committed to his children, that he was acting responsibly, and that he and his children had a close relationship. The judge seemed particularly impressed that Armando was paying child support:

Judge: So you paid child support before the court order was in effect.

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Armando: I don't need the law to make me support my children.

J: That's good because there are lots of men who do.

Armando's relationship with his ex-wife also posed a potential obstacle for the judge. The judge wanted to know whether Armando was responsible for breaking up the marriage:

Judge: It appears from the divorce decree that she filed for divorce. Why?

Armando: She was very jealous.

J: Were you giving her cause to be jealous?

A: No. What happened was that I used to come home from work late, and then there were problems. I never earned very much per hour, so I had to work lots of hours to support her and the kids.

J: And do you have any documentation from the judge in the divorce regarding the cause of the divorce?

A: No.

J: Well, did you hit her?

A: No, I didn't.

J: Was there ever any allegation in court that you abused her?

A: Yes, she said that in the court, when we were deciding the custody of the children, but the judge listened to the evidence, and he decided to give me joint legal custody.

J: And do you have any documentation of this?

A: Only the divorce decree which I've given to you.

The fact that Armando's wife was receiving AFDC was another potential problem, a fact that the INS trial attorney emphasized. The judge, however, regarded the divorce as absolving Armando from culpability for his wife's financial problems. The judge informed the INS trial attorney, "I don't believe that he is responsible for her actions. There is a court order regarding his child support payments. Hopefully, the welfare system is aware that he is paying his child support and has cancelled the AFDC."

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Although Armando had been accused of domestic abuse, the judge accepted Armando's claim to be a responsible father.[18] Her decision read as follows:

> He had a marriage that produced three children. That marriage has now dissolved. I am impressed with the respondent's industriousness. I believe the respondent. His testimony about his situation in the United States and about his experiences in Nicaragua is credible. I believe that he is attached to his kids. It is refreshing to hear a father taking responsibility for his children. I find that if he were to be deported, it would cause extreme hardship to his children, both financially and emotionally, to be separated from the father they have known all of their lives and on whom they depend economically. I certainly understand the respondent's concerns about the unstable conditions in Nicaragua. I therefore grant his application for suspension of deportation.

Like Mario and Gabriel, Armando was found deserving.

Discussion

Suspension hearings reveal criteria through which U.S. immigration judges measured the potential "Americanness" of longtime residents who were formally excluded from the United States. Judges' ability to question suspension applicants regarding intimate aspects of their lives is striking. Mario's relationships with his son and girlfriend, Armando's marriage, and George's hobbies were held up for scrutiny. Applicants were treated as potentially suspect, as perhaps having doctored their cases by launching their studies immediately prior to the hearing, or as perhaps "using" their children to acquire legal status but intending to abandon them at a later date. It might seem that the judges in these cases were lenient, in that three of the applicants were awarded suspension and a fourth was able to legalize by reactivating a family visa petition. It is nevertheless important to bear in mind that the criteria applied during these hearings excluded more people than they benefited and that few undocumented immigrants were able to muster the money, time, and legal expertise that it took to apply for suspension of deportation. Moreover, even the cases that were approved were assessed according to hegemonically defined standards of normalcy, and therefore defined applicants as yet another instance of the American immigrant story. Applicants were complicit in this definitional process in that they struggled to meet these definitions, noting, for instance, that they worked hard or were upwardly mobile. At the same time, applicants sought to stretch the definitions, claiming, for example, that a minimum wage job in the garment industry was worth protecting through an award of legal permanent residency.

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These four cases suggest ways that normative notions of race, family, and progress establish boundaries between the deserving and the undeserving. There were few overt references to race or ethnicity in these hearings. Rather, judges in suspension cases focused on acculturation, defined as celebrating mainstream U.S. holidays, being socialized in U.S. schools, speaking English, participating in "typical" leisure activities, and expressing a clear choice for the United States over applicants' countries of origin. Such criteria ignored the cultural diversity of the United States, treated deviations from middle-class Anglo culture as a lack of commitment to this nation, and objectified "culture" as an easily measured set of traits or skills (e.g., speaking English). To meet these criteria, applicants had to downplay their own biculturalism, bilingualism, and transnationalism. Those who could not, such as Mercedes Cortes, risk being deemed undeserving. Questions about language skills, leisure activities, and the linguistic competence of applicants' friends and relatives may therefore have been racially coded efforts to assess applicants' cultural "whiteness."

Similarly, in suspension of deportation hearings, "deservingness" was linked to applicants' abilities to approximate a heterosexual nuclear family (see also Malkki 1992). Mario, Mercedes, Gabriel, and Armando all cited their responsibilities as parents as part of their hardship argument. Mario depicted himself, his girlfriend, and their son as a household; Mercedes stressed her need to support her children in El Salvador; Gabriel was present in court with his wife and two children; and Armando depicted his wife as the absent and perhaps immoral member of an otherwise intact family. These four hearings suggest that women may be at a disadvantage in attempting to approximate a traditional nuclear family. Mario was praised for his efforts with his son; George's responses on the witness stand substantiated Gabriel's claim to be a good father; and Armando was commended for taking responsibility as too few fathers do. Mercedes, however, was not praised for her efforts to support her children in El Salvador. Instead, she had to defend herself against the implication that it would be better for her to rejoin her children. This lack of praise suggests that judges may view mothering as "natural" and fathering as an "achievement" (see also Augustine-Adams 2000). Moreover, the unproven allegation that Armando beat his wife did not hurt his case, but Mercedes, who had proof that she was beaten by her husband and whose immigration case was linked precisely to this abuse (in that her husband withdrew the visa petition), was not necessarily considered eligible for the remedy that VAWA provided for immigrant women who were victims of domestic violence. Although my sample did not include a case of a gay or lesbian suspension applicant, the difficulties experienced by members of nontraditional heterosexual families would likely be exacerbated in their cases.

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These hearings also suggest that women are at a disadvantage in providing evidence of the financial achievements that are supposed to be part of the American Immigrant Story. Within these hearings, supporting others was considered a good thing, and receiving welfare was not. Men—particularly if they are single or divorced—are less likely to receive welfare than are women. Women's need for welfare derives at least partially from gender discrimination within the labor market, as well as from insufficient child support payments on the part of men (Delaney 1997). In contrast to Mario's, Gabriel's, and Armando's material achievements (a house, schooling, and the ability to make childcare payments), Mercedes's (typically female?) job in sewing was regarded as nondescript. The judge's question, "Are you saying that there is no work for women in El Salvador?" suggested that Mercedes could easily find "women's work." Mario, Gabriel, and Armando, however, were not asked whether "men's work" was equally attainable. Moreover, Armando's ex-wife was deported in absentia, whereas Armando was praised and rewarded with residency.

Social class was also critical to suspension hearings. Even though Mario, Mercedes, Gabriel, and Armando performed unskilled or low-paid work, Mario, Gabriel, and Armando were able to cite their jobs as signs of industriousness and a work ethic, both of which are key components of the American Immigrant Story.[19] Similarly, their financial achievements and career goals (in the case of Mario) suggested upward mobility. Bank accounts, homes, cars, and businesses were also deemed indications of "rootedness" in that some of these assets might be difficult to transfer to another country. Individuals who lived in an underclass—that is, who were unemployed, received welfare, worked in unlicensed businesses, or were paid "under the table"—had a more difficult time meeting suspension criteria. Lack of health insurance or unemployment could be deemed a sign that someone was likely to become a public charge, welfare use was stigmatizing, working in an unlicensed business smacked of illegality and therefore could be seen as poor moral character, and people who were paid under the table had a more difficult time paying income taxes and documenting their continuous presence and their income. Given the intersectionality (Crenshaw 1995) of race, ethnicity, gender, and social class, women and members of minority groups were also more likely to be impoverished and to face difficulty meeting suspension criteria. Moreover, the poverty that made it difficult for working-class women to afford childcare also led some immigrant families to leave their children in the care of relatives in their home countries instead of bringing their children to the United States (Hochschild 2000; Hondagneu-Sotelo and Avila 1997). Mercedes, who had adopted this strategy, found her parenting choices questioned.

Although suspension of deportation was eliminated by the passage of the Illegal Immigration Reform and Immigrant Responsibility Act in 1996,

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gendered, racialized, class-based, and heteronormative prototypes of deservingness continue to influence two related types of cases: cancellation of removal and Nicaraguan Adjustment and Central American Relief Act (NACARA). Cancellation of removal is available to immigrants who can prove ten years of continuous presence, good moral character, and that removal would be an extreme and exceptional hardship to the applicant's U.S. citizen or legal permanent relative spouse, parent, or child. Hardship to the applicant is no longer relevant. NACARA restores suspension benefits to approximately 300 thousand Salvadorans and Guatemalans whose applications for political asylum have been pending since the early 1990s. Most NACARA beneficiaries also enjoy a presumption of hardship, making it much easier for these cases to be approved. For my purposes, however, the significance of suspension hearings lies not in their numerical prevalence within the U.S. immigration system, but rather in the ways that these cases expose assumptions about deservingness and illegitimacy. Suspension criteria derive from broader discourses about social merit and membership rights. Like suspension applicants, U.S. citizens who are not part of heterosexual nuclear families, who do not procreate, who cannot find work, who receive public assistance, or who engage in non-normative cultural practices may be deemed less-than-deserving of full legal and social inclusion. The prototypes that are esteemed during suspension cases shadow many lives.

Policies that restrict immigration rights and that impose particular cultural standards on new immigrants can be experienced as racially discriminatory and can therefore promote pan-Latino identities. Such racializing policies can in turn fuel ethnicity-based organizing efforts (Sanchez 1997), efforts that have the potential to alter the national agenda in ways that could redefine measures of deservingness. Such changes in the national agenda began to occur during and after the 2000 presidential election. Instead of immigrant bashing, candidates courted the Latino vote, Congress passed a very limited liberalization of immigration law[20], and the Bush administration considered Vicente Fox's proposals for a broad-based legalization program. It remains to be seen whether, in the wake of the September 11, 2001 attacks on the World Trade Center and the Pentagon, such efforts will be renewed.

Notes

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1. Legal permanent residents cannot vote or serve on juries, are ineligible for certain public benefits, and are disadvantaged in petitioning for visas for family members.

2. On marginalization on the basis of class, gender, race, and ethnicity, see Barbalet 1988; Flores and Benmayor 1997; Gilroy 1987; Nelson 1984; Pratt 1990; and Sapiro 1984.

3. The 1986 Immigration Reform and Control Act (IRCA) permitted immigrants who had been continuously and illegally in the United States since January 1, 1982, to apply for legal permanent residency. Certain seasonal agricultural workers were also permitted to legalize through IRCA.

4. Until 1952, for example, whiteness was a prerequiste for naturalization (Haney Lopez 1996). During the early 1900s, U.S. citizen women who married foreigners were stripped of their citizenship, whereas marriage to a U.S. citizen man automatically conferred U.S. citizenship on foreign women (Sapiro 1984). At the time that the U.S. Constitution was ratified, property ownership was a requirement for enfranchisement. From 1952 until 1990, homosexuality, first defined as a "psychopathic personality or a mental defect" (U.S. House Committee on the Judiciary 1988:74) and later as a "sexual deviation" (U.S. House Committee on the Judiciary 1988:80) was a ground for exclusion (U.S. House Committee on the Judiciary1988; Pub. L. 101-649 Immigration Act of 1990).

5. As immigration reform was debated in 1996, suspension law came under scrutiny. Advocates of more restrictive immigration policies alleged that immigration attorneys were using the appeals process to delay deportation, that the standards for winning a suspension case were too low, and that suspension could permit large numbers of undocumented immigrants to legalize. As a result of these complaints, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) replaced suspension of deportation with a new remedy called "cancellation of removal." To obtain cancellation of removal, immigrants had to prove ten years of continuous presence, good moral character, and that removal (the new term for deportation) would cause "extreme and exceptional hardship" on a legal permanent resident or U.S. citizen spouse, parent, or child of the applicant. Hardship to the applicant was no longer relevant. In addition to the heightened hardship standard and

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the more lengthy continuous presence requirement, other elements of IIRIRA made it difficult to obtain cancellation of removal. IIRIRA contained a "stop-time" rule, according to which a notice to appear in court stops the accumulation of time for immigration purposes. Thus, an immigrant who received a notice to appear in court after having been in the United States for five years could not acquire additional years of continuous presence and become eligible to apply for cancellation. Moreover, Congress placed a cap of 4,000 on the number of cancellation cases that could be granted in a single year. These measures made it extremely unlikely that cancellation would permit many undocumented immigrants to legalize.

6. These organizations were El Rescate (Spanish for "the rescue"), the Association of Salvadorans of Los Angeles (ASOSAL), and the Central American Resource Center (CARECEN). These groups grew out of committees formed in the 1980s in solidarity with popular movements in El Salvador.

7. The 1996 shift from suspension to cancellation was particularly germane to the legal situation of Central American immigrants, many of whom had fled civil conflicts during the 1980s and, when immigration reform legislation was passed in 1996, were just acquiring the seven years of continuous presence that would have made them eligible to apply for suspension. Most Salvadorans, Guatemalans, and Nicaraguans who entered the United States during the 1980s did so either without the permission of the U.S. government or with tourist visas that soon expired. The only legal remedy for most of these immigrants was political asylum; however, Salvadorans' and Guatemalans' asylum applications were being denied at a rate of 97.4 percent and 99.1 percent respectively. Nicaraguans fared better, with denial rates of 86 percent (USCR 1986:9). Moreover, in 1987, the U.S. government created the Nicaraguan Review Program, which gave eligible Nicaraguans work permits and the right to remain in the United States, but which did not confer legal permanent residency. By the 1990s, many of these Central Americans had lived in the United States for lengthy periods of time. Some had qualified for the 1986 legalization program (see Ulloa 1999), or had U.S. citizen or legal permanent resident relatives who could petition for them. And, through a legal case known as the *American Baptist Churches v. Thornburgh* (760 F. Supplement 796 [1991]), approximately 300 thousand Salvadorans and Guatemalans had won the right to apply for political asylum under rules designed to ensure fair consideration of their claims. Because peace accords in El Salvador and Guatemala made it unlikely that these 300 thousand immigrants would be granted asylum, many hoped to apply for suspension of deportation (Coutin 1998).

8. Pseudonyms have been used for all research participants.

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9. In other words, the judge might put Carlos in deportation rather than exclusion proceedings. To be eligible to apply for suspension of deportation individuals had to be in deportation proceedings. Individuals who were being excluded (that is, forbidden to enter) rather than deported (that is, being taken out of the United States) were ineligible for suspension.

10. It is important to note that Central American community groups did *not* discourage Central American children from learning Spanish. In fact, they sought to preserve immigrants' cultural heritages. I use this quote because this attorney's comment captures something of the logic of suspension law.

11. Between 1995 and 1997, I interviewed approximately one hundred legal service providers, Central American activists, and Salvadorans and Guatemalans who were seeking legal status. Most of the interviewees who were seeking legal status had applied for political asylum under the terms of the ABC settlement agreement (see note 7), and were hoping to eventually apply for suspension of deportation due to the amount of time that they had lived in the United States.

12. In the early-to-mid-1990s, polarizing debates over U.S. immigration law brought the racialized implications of this area of policymaking once again to the fore. In the early 1990s, unemployment, economic restructuring, and demographic changes fueled anti-immigrant sentiment and led to calls for more restrictive immigration policies. In 1993, California voters passed Proposition 187, which required teachers, health care workers, and other social service providers to verify the legal status of their students, patients, and clients, and to report suspected illegal aliens to the U.S. Immigration and Naturalization Service. The constitutionality of Proposition 187 was immediately challenged, which led to a court injunction against enforcing most of the proposition's provisions (Martin 1995). Controversy over immigration policies continued, with heavy news coverage of immigration issues. Studies debated whether immigrants were using welfare, assimilating, paying taxes, taking away citizens' jobs, and abusing public services. Politicians added immigration reform to campaign promises. There were blurred boundaries between opposing immigration and opposing affirmative action, multilingualism, or diversity (Heyman 1998).

13. My analysis draws on the idea that close readings of legal testimony can reveal ways that legal and cultural categories are inflected with racial, gendered, and other meanings. Gregory Matoesian (1993, 1995, 1997; see also Bumiller 1991) has developed this notion in his work on rape trials. Matoesian argues that although rape shield legislation prohibits defense attorneys from introducing evidence regarding the sexual history of a rape victim, attorneys' word choice during questioning nonetheless can invoke normative

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ideas about sexual behavior. By analyzing rape trial testimony (particularly, in cases of "date rape"), Matoesian is able to identify what he terms a "patriarchal logic of sexual rationality" (1995:682) against which the rape victims' statements and behavior are measured. Thus, in these trials, a rape victim is not simply someone who has been raped, but someone whose behavior conforms to societal assumptions about gender, violence, sexuality, and choice. By legitimizing and discrediting particular cultural concepts, legal proceedings create prototypes of "strong" and of undeserving cases. For instance, Sally Merry (1990) and Barbara Yngvesson (1988, 1993; see also Lazarus-Black 1997; Greenhouse et al. 1994) have analyzed how lower courts in New England screen out what court clerks term *garbage cases*, namely, complaints in which the complainant and the accused have a long and contentious history, in which there are multiple grievances and mutual fault, and in which legal intervention is unlikely to resolve the conflict. This contradiction between the ideal of equality before the law and the reality of racial, ethnic, class, gender, and other disparities may well be embedded in the law itself. As Jane Collier, Bill Maurer, and Liliana Suárez-Navaz (1995) point out, the notion that "all are equal before the law" suggests that legal categories are universal, even as law defines the individual as the possessor of "qualities"—including ethnic, gender, sexual, racial, and other "differences"—that must themselves be protected by law (see also Macpherson 1962).

14. The judge did ask whether this abundance of siblings made Mario's presence and financial support crucial to Mario's parents. Mario's father testified that he could not live with any of Mario's siblings and that his other children did not provide financial support.

15. Note that U.S. citizen women were not always able to bestow citizenship upon non-U.S. citizen husbands. See note 4.

16. Mario's attorney later told me that if this issue had proven to be important, he would have objected on the grounds that this was an IRS matter and that Mario was arguably entitled to claim his son as a deduction.

17. My point here is neither that only Americans celebrate Christmas, which is obviously an international holiday, nor that Latinos who are in the United States do not also celebrate Christmas. However, it is significant that the judge inquired about a major U.S. holiday rather than asking George whether he celebrated traditional Salvadoran holidays, such as days dedicated to the patron saints of particular towns and villages.

18. I do not mean to imply that Armando was not a responsible father.

19. During the 1800s, immigration laws sought to restrict the immigration of paupers who were involuntarily "dumped" in U.S. territory by other governments. Poverty per se, however, was not considered grounds for exclusion.

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as it was presumed that migrants entered the United States in order to benefit themselves. A House Committee Report summarizes this history: "Quoting from the [1891] report of the House Select Committee on Immigration and Naturalization, 'The intent of our immigration laws is not to restrict immigration, but to sift it, to separate the desirable from the undesirable immigrants, and to permit only those to land on our shores who have certain physical and moral qualities' . . . The prevalent view was that many, if not most, undesirable aliens were also involuntary aliens. Thus, the House report cited above differentiates between the immigrant who 'comes to the United States to better his condition, or to improve the chances of his children in the struggle for existence' and 'involuntary immigration'" (U.S. House Committee on the Judiciary 1988:10).

20. The Legal Immigration Family Equity Act (LIFE) was passed in 2000. LIFE provides some relief for beneficiaries of family visa petitions and for certain individuals with unresolved legalization cases under the 1986 Immigration Reform and Control Act.

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