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In the Breach: Citizenship and its Approximations

SUSAN BIBLER COUTIN*

ABSTRACT

To analyze the forms of membership that are created in the gap between formal citizenship and social belonging, this paper takes up three examples of citizenship in the breach: (1) the 1980–1992 Salvadoran civil war, in which human rights abuses perpetrated in El Salvador effectively constituted Salvadoran migrants as stateless persons, though technically they held Salvadoran citizenship; (2) informal U.S. membership claims put forward by longtime U.S. residents who were deported to El Salvador; and (3) the legal or documentary problems that emerge when legal permanent residents, some of whom immigrated to the United States from El Salvador during the 1980s, seek to naturalize or petition for undocumented family members. Analyzing these three examples suggests that citizenship and informal membership are defined in relation to each other, and that in moving between official citizenship and its approximations, law itself moves between legal fictions and legal realities.

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INTRODUCTION

On September 9, 2011, at the offices of a Los Angeles based nonprofit organization that for nominal fees assists low-income Spanish-speaking immigrants in completing immigration forms, I observed a paralegal's appointment with Edgar,¹ a naturalization applicant who was in his sixties. The paralegal had already collected most of Edgar's supporting documents, recorded his trips outside of the United States over the past five years, calculated the duration of each absence, and filled out his demographic information, current and previous addresses, and marital history. The paralegal then announced somewhat apologetically: "I'm going to have to ask you around fifty "yes or no" questions, and these may come up in your naturalization interview as well, so it is important to make sure that you understand the questions."

Opening up a separate computer file, in which the questions on the form had been translated into Spanish, the paralegal began: "Have you ever claimed to be a U.S. citizen?" "Have you ever failed to pay your taxes?" "Have you ever been a member of any organization, association, club, fund, party, or group in the United States or anywhere else?" "Have you ever been a member of the communist party, a totalitarian organization, or a terrorist organization?" "Have you ever advocated the overthrow of any government?" "Have you ever persecuted anyone?" "Have you been affiliated with the Nazis in Germany?" "Have you ever committed a crime?" "Have you ever been arrested or detained by a law enforcement officer for any reason?" "Have you been convicted of a crime?" "Have you ever been in jail or prison?" "Have you ever been a habitual drunkard?" "A prostitute?" "A drug smuggler?" "Have you been married to more than one person at a time?" "Have you failed to pay child support?" And the questions continued.² Edgar was able to answer "no" to most, though he was advised to submit a copy of the court disposition for a prior arrest for which he had been found not guilty, as well as information about his previous traffic tickets.

Three weeks later, on September 30, 2011, the author observed another appointment with a very different outcome. A young couple,

1. Please note that to protect confidentiality, pseudonyms have been used for all individuals encountered during fieldwork. Additionally, certain demographic details (such as country of origin or age) may have been changed to preserve anonymity.

2. The naturalization application form, which contains the precise wording of these questions, is available online at: *N-400 Application for Naturalization*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=480ccac09aa5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD> (last updated Apr. 6, 2012).

Ana Maria and Rodolfo, had come to inquire whether Ana Maria, a U.S. citizen, could petition for a green card for Rodolfo, who had entered the United States in 1998. While their three-year-old daughter (a U.S. citizen by birth) huddled on her father's lap, a paralegal reviewed their situation. Yes, Ana Maria could petition for Rodolfo, but Rodolfo would have to return to Peru, his native country, to obtain the visa. Upon leaving, he would trigger a ten-year bar on reentry because he lived in the United States without legal status for more than a year.³ To reenter earlier than ten years, he would have to apply for a waiver on the grounds that it would be a hardship on his wife for him to be outside of the country. To qualify, the hardship would have to be more than that caused by the separation itself. Rodolfo and Ana Maria received this news in silence, then Rodolfo thanked the paralegal for giving him accurate information rather than false hopes. They then left.

What accounts for the very different outcomes of these two appointments? In both cases, individuals had lived in the United States for considerable periods of time, becoming members of communities, working, and forming families.⁴ Yet, despite the fact that Edgar's life in many ways resembled that of U.S. citizens, he faced a series of deeply stigmatizing questions. Fortunately for him, he was able to answer them appropriately, and he would be able to produce a legal record that was likely to qualify him for naturalization. Nonetheless, the questions that he was posed sharply distinguished between the formal status of citizenship and the deep yet incomplete connections that, as a legal permanent resident, he had already developed to the United States. This distinction between formal and incomplete forms of belonging is an instance of what professors Leisy Abrego and Cecilia Menjívar refer to as "legal violence."⁵ Rodolfo, for example, could not overcome this

3. See Nancy Morawetz, *The Invisible Border: Restrictions on Short-Term Travel by Noncitizens*, 21 GEO. IMMIGR. L.J. 201, 216 (2007) (analyzing the impact of the ten-year bar and other immigration reforms).

4. On the degree to which noncitizens are nonetheless able to become members of communities, see LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 7 (2006) ("Any vision of the world that presumes a stark dichotomy between a political society's inside and out . . . is unequipped to contend with the complex interpenetration of institutions and practices and persons across borders that characterizes the contemporary landscape.").

5. "Legal violence captures the suffering that results from and is made possible through the implementation of the body of laws that delimit and shape individuals' lives on a routine basis. Under certain circumstances, policy makers and political leaders enact laws that are violent in their effects and broader consequences. Although their effect may be considered a form of both structural and symbolic violence, we refer to it as legal violence because it is embedded in legal practices, sanctioned, actively implemented through formal procedures, and legitimated—and consequently seen as 'normal' and natural because it 'is the law.'" Cecilia Menjívar & Leisy Abrego, *Legal Violence:*

distinction to gain the status that his wife and daughter already held. And yet, despite his undocumented status, Rodolfo and Ana Maria are able to go about their daily lives and even to travel within the United States, a fact that in some ways makes the distinction between formal and unrecognized forms of membership immaterial.

Thus, immigration laws may impact where Rodolfo can work, how he travels, and whether he can attend college and receive basic medical care. But, if Rodolfo is apprehended by immigration authorities, his close U.S. citizen family members and the many years he lived in the country might actually prevent him from being deported.⁶ In the meantime, Rodolfo lives in many ways as if he is a citizen. In the gap between Edgar's experiences and Rodolfo's experiences, and between Rodolfo's undocumented status and the reality of his life in this country, what is real citizenship and what is its approximation?

Of course, "real" is a problematic term, a point that suggests that distinctions between "reality" and "fiction" may be difficult to sustain. This difficulty arises not because law "in action" differs from law "on the books" but rather because by creating the domain of the undocumented, the unauthorized, and the "as if,"⁷ law itself gives rise to its own violation, creating worlds that are governed both by law and by

Immigration Law and the Lives of Central American Immigrants, 117 AM. J. SOC. 1380, 1387 (2012). On notions of legal violence see generally ROBERT COVER, *Violence and the Word*, in NARRATIVE, VIOLENCE, AND THE LAW: THE ESSAYS OF ROBERT COVER 203 (Martha Minow et al. eds., 1992); Austin Sarat, *Introduction: On Pain and Death as Facts of Legal Life*, in PAIN, DEATH, AND THE LAW 1 (Austin Sarat ed., 2001); Austin Sarat, *Situating Law Between the Realities of Violence and the Claims of Justice: An Introduction*, in LAW, VIOLENCE AND THE POSSIBILITY OF JUSTICE 3 (Austin Sarat ed., 2001).

6. Rodolfo would be eligible to apply for cancellation of removal, which is available at the discretion of the U.S. Attorney General to immigrants who can demonstrate good moral character, ten years of continuous U.S. residence, and that deportation would pose an extreme and exceptional hardship to a U.S. citizen or legal permanent resident spouse, parent, or child of the applicant. See SUSAN BIBLER COUTIN, *LEGALIZING MOVES: SALVADORAN IMMIGRANTS' STRUGGLE FOR U.S. RESIDENCY* 7 (2000) (discussing the differences between cancellation of removal and an earlier immigration remedy, suspension of deportation). See generally DANIEL KANSTROOM, *AFTERMATH: DEPORTATION LAW AND THE NEW AMERICAN DIASPORA* (2012) and Joanna Dreby, *The Burden of Deportation on Children in Mexican Immigrant Families*, 74 J. MARRIAGE & FAM. 829 (2012), for a discussion about the impact of deportation on families.

7. On legal fictions and acting "as if," see Susan Bibler Coutin, Bill Maurer & Barbara Yngvesson, *In the Mirror: The Legitimation Work of Globalization*, 27 LAW & SOC. INQUIRY 801, 804 (2002) and Annelise Riles, *Collateral Expertise: Legal Knowledge in the Global Financial Markets*, 51 CURRENT ANTHROPOLOGY 795, 802-803 (2010) (discussing H. VAHINGER, *THE PHILOSOPHY OF "AS IF"* (C.K. Ogden trans., 1924)).

something else that is not law.⁸ If law, a system that claims to be “gapless,”⁹ is in fact supplemented by something other than law, then law’s claim to be all-encompassing is an illusion. At the same time, the notion that law is incomplete might equally be characterized as an illusion in that the domain of the undocumented is *a product of law*, and therefore, is not entirely “outside” of law’s domain.

Thus, in the movement between law and law’s “outside,” law becomes real and unreal, even as informal or quasi-legal activities and persons gain and lose legitimacy, and those who appear to have full membership are hailed and excluded. Law is a material force that has a potentially tremendous impact on individuals’ lives, but I argue that its force *derives from* rather than *exists in spite of* moments when law is rendered illusory. Various scholarly depictions of law have hinted at such legal irreality, for example, by delineating linkages to power that make law nefarious or shadowy,¹⁰ analyzing the indeterminacy that so animated critical legal studies discussions,¹¹ noting the illogic of treating similarly situated individuals differently,¹² and attending to law’s magical or transformative qualities.¹³ I argue that these characteristics of law can also be discerned through the experiences of those such as Rodolfo, who lack the *privilege* of living according to the law, and those such as Edgar, who are treated as suspect.

To examine law’s movement between reality and irreality, this paper analyzes membership *in the breach*, that is, in the gap between formal and informal forms of belonging.¹⁴ Individuals enter this gap in

8. Susan Coutin, Justin Richland & Veronique Fortin, *Routine Exceptionality: The Plenary Power Doctrine, Immigrants, and the Indigenous under U.S. Law*, 3 U.C. IRVINE L. REV. (2012).

9. Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy*, 60 VAND. L. REV. 483, 507 (2007) (“[T]he system of reasoning is itself linguistically closed in a curious way, as we have seen. On the one hand, it seems open to almost everything. There is no event, no corner of society, it seems, that cannot be translated into legal categories. And yet, the pragmatic system that we find in law school pedagogy closes in on itself at the point where any challenge to its underlying system of reasoning arises.”).

10. See UGO MATTEI & LAURA NADER, *PLUNDER: WHEN THE RULE OF LAW IS ILLEGAL* 1-9 (2008).

11. See generally THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 1-15 (David Kairys ed., 3d ed. 1998).

12. MAX WEBER ON LAW IN ECONOMY AND SOCIETY 79 (Max Rheinstein ed. & trans., Edward Shils trans., 1966) (“The jury, as it were, thus took the place of the oracle, and indeed it resembles it inasmuch as it does not indicate rational grounds for its decision.”).

13. See Pierre Bourdieu & Richard Terdiman, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 805, 838 (1987).

14. See generally Christina M. Getrich, *Negotiating Boundaries of Social Belonging: Second-Generation Mexican Youth and the Immigrant Rights Protests of 2006*, 52 AM.

multiple ways, including by being in violation of U.S. immigration law,¹⁵ immigrating without authorization, overstaying their visas, having partial or temporary status,¹⁶ or being formally excluded through deportation despite having extensive membership ties.¹⁷ Examining membership in the breach suggests that formal, legal membership categories and forms of belonging that may be informal or partial are defined in relation to each other. Thus, scholarship that focuses primarily on formal membership regimes can obscure the degree to which the inaccessibility of formal membership can render such regimes irrelevant.¹⁸ Likewise, sharp distinctions between “legal” and “illegal” immigrants overlook the ways that unauthorized presence confers limited legal rights¹⁹ and the ways that formal legal recognition, such as the misleadingly named status “lawful permanent residency,” may be revocable.²⁰ At the same time, attending to solely informal or incomplete forms of membership fails to grasp the ways that, under certain circumstances, formal citizenship alone provides protection against life-shattering removal or incarceration.²¹ It is precisely in the breach that citizenship’s necessity, irrelevancy, and tantalizing approximations combine to give membership new meanings and to make migrants suspect.

BEHAV. SCIENTIST 533 (2008) (discussing popular perceptions of the gap between formal and informal forms of belonging among youth).

15. See generally LEO R. CHAVEZ, *SHADOWED LIVES: UNDOCUMENTED IMMIGRANTS IN AMERICAN SOCIETY* (1992); JACQUELINE MARIA HAGAN, *DECIDING TO BE LEGAL: A MAYA COMMUNITY IN HOUSTON* (1994).

16. See generally Cecilia Menjivar, *Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States*, 111 AM. J. SOC. 999 (2006); Alison Mountz et. al., *Lives in Limbo: Temporary Protected Status and Immigrant Identities*, 2 GLOBAL NETWORKS 335 (2002).

17. See generally THE CONTESTED POLITICS OF MOBILITY: BORDERZONES AND IRREGULARITY (Vicki Squire ed., 2011); THE DEPORTATION REGIME: SOVEREIGNTY, SPACE, AND THE FREEDOM OF MOVEMENT (Nicholas De Genova & Nathalie Peutz eds., 2010).

18. See generally Nicholas P. De Genova, *Migrant “Illegality” and Deportability in Everyday Life*, 31 ANN. REV. ANTHROPOLOGY 419 (2002), for an example of an analysis that emphasizes the impact of formal membership regimes.

19. See HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 10 (2006) (discussing the legal rights conferred by being territorially present). See generally BOSNIAK, *supra* note 4, at 1-16 (discussing the “inbetween” status of those who reside in a country where they lack formal citizenship).

20. See DANIEL KANSTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* 203 (2007).

21. See generally KANSTROOM, *supra* note 6, for a discussion of the impact of deportation. See generally HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* (1966), for a discussion of the importance of citizenship. See generally YASEMIN NUHOĞLU SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE* (1994), for a discussion of formal citizenship as being increasingly irrelevant.

The first section of this paper discusses approximation, by which I mean the movement between formal and informal membership and between legal reality and irreality. I refer to this movement as “approximation” because informal and unrecognized or unreal forms of membership may approach and resemble but never fully replicate formal and recognized versions. The paper then turns to three instances of the breach between formal and informal membership. The first example concerns formal citizenship being disregarded due to political circumstances. During the 1980–1992 Salvadoran civil war, human rights abuses perpetrated in El Salvador effectively constituted Salvadoran migrants as stateless persons, though technically they held Salvadoran citizenship.²² My analysis of this process draws on interviews that I conducted from 2006–2010 with Salvadoran youth who left the country during the civil war.

My second example considers the informal U.S. membership claims put forward by long-time U.S. residents who were deported to El Salvador and whom I interviewed there in 2008.²³ Many of these individuals had legal permanent residency or a temporary status (such as a pending asylum application) in the United States prior to being deported. Considering these two examples together reveals uncanny resemblances between the emigration of the 1980s and the deportations of the 2000s.²⁴

The third example draws on my observations made in 2011 of appointments between legal staff and clients at the offices of the Los Angeles-based nonprofit organization mentioned above. In doing so, I consider the legal or documentary problems that emerge when legal permanent residents, some of whom immigrated to the United States from El Salvador during the 1980s,²⁵ seek to naturalize or petition for

22. See generally HUGH BYRNE, *EL SALVADOR'S CIVIL WAR: A STUDY OF REVOLUTION* (1996) and TOMMIE SUE MONTGOMERY, *REVOLUTION IN EL SALVADOR: FROM CIVIL STRIFE TO CIVIL PEACE* (2d ed. 1994), for accounts of the Salvadoran civil war. See generally THE COMM'N ON THE TRUTH FOR EL SAL., *FROM MADNESS TO HOPE: THE 12-YEAR WAR IN EL SALVADOR* (1993).

23. See generally M. Kathleen Dingeman-Cerda & Susan Bibler Coutin, *The Ruptures of Return: Deportation's Confounding Effects*, in PUNISHING IMMIGRANTS: POLICY, POLITICS AND INJUSTICE 113 (Charis E. Kubrin et al. eds., 2012); Susan Bibler Coutin, *Confined Within: National Territories as Zones of Confinement*, 29 POL. GEOGRAPHY 200 (2010).

24. See generally Susan Bibler Coutin, *Falling Outside: Excavating the History of Central American Asylum Seekers*, 36 LAW & SOC. INQUIRY 569 (2011).

25. See generally BETH BAKER-CRISTALES, *SALVADORAN MIGRATION TO SOUTHERN CALIFORNIA: REDEFINING EL HERMANO LEJANO* (2004); SARAH J. MAHLER, *AMERICAN DREAMING: IMMIGRANT LIFE ON THE MARGINS* (1995); CECILIA MENJÍVAR, *FRAGMENTED TIES: SALVADORAN IMMIGRANT NETWORKS IN AMERICA* (2000), for information on Salvadoran immigration to the United States.

undocumented family members. The problems that such individuals encounter reveal how and why, for some, full U.S. citizenship has been placed out of reach.

I. APPROXIMATION

My analysis of citizenship in the breach focuses on approximation as a legal process made necessary by the pull of that which is outside of law.²⁶ A hallmark of globalization has been the increased movement of people around the globe, ranging from global cosmopolitan elites who can acquire multiple citizenships and who enjoy relatively unimpeded movement,²⁷ to poor migrants who move at great expense and personal risk and who are the targets of enforcement regimes.²⁸ Such movements result in populations made up of citizens, legal visitors, immigrants with temporary or partial membership, and undocumented residents.²⁹ Through such dispersals, citizenship is undergoing change,³⁰ both via an opening up that permits transnational ties, diasporic citizenries, and dual citizenships,³¹ and a closing down that excludes the undocumented and the culturally “foreign.”³² As citizenship itself changes, particular

26. See generally LUCAS HILDERBRAND, *INHERENT VICE: BOOTLEG HISTORIES OF VIDEOTAPE AND COPYRIGHT* (2009), for an interesting discussion of the ways that law dealt with videotape copies in a pre-digital age.

27. See generally AIHWA ONG, *FLEXIBLE CITIZENSHIP: THE CULTURAL LOGICS OF TRANSNATIONALITY* (1999).

28. See generally THE DEPORTATION REGIME: SOVEREIGNTY, SPACE, AND THE FREEDOM OF MOVEMENT, *supra* note 17; Monica W. Varsanyi, *Rescaling the “Alien,” Rescaling Personhood: Neoliberalism, Immigration, and the State*, 98 *ANNALS ASS’N AM. GEOGRAPHERS* 877 (2008); William Walters, *Deportation, Expulsion, and the International Police of Aliens*, 6 *CITIZENSHIP STUD.* 265 (2002).

29. See generally TOMAS HAMMAR, *DEMOCRACY AND THE NATION STATE: ALIENS, DENIZENS, AND CITIZENS IN A WORLD OF INTERNATIONAL MIGRATION* (1990) and *FROM ALIENS TO CITIZENS: REDEFINING THE STATUS OF IMMIGRANTS IN EUROPE* (Rainer Bauböck ed., 1994), for information on the multiple statuses held by those who reside in national territories.

30. See generally BOSNIAK, *supra* note 4 (theorizing reconceptualizations of citizenship).

31. See generally Brian Keith Axel, *The Context of Diaspora*, 19 *CULTURAL ANTHROPOLOGY* 26 (2004), for information on diasporic populations. See generally LINDA BASCH, NINA GLICK SCHILLER & CRISTINA SZANTON BLANC, *NATIONS UNBOUND: TRANSNATIONAL PROJECTS, POSTCOLONIAL PREDICAMENTS, AND DETERRITORIALIZED NATION-STATES* (1994); Linda Bosniak, *Citizenship Denationalized*, 7 *IND. J. GLOBAL LEGAL STUD.* 447 (2000), for information on transnational and dual citizenships.

32. See generally EVE DARIAN-SMITH, *BRIDGING DIVIDES: THE CHANNEL TUNNEL AND ENGLISH LEGAL IDENTITY IN THE NEW EUROPE* (1999), for information on European rejections of the culturally foreign. See generally JOSEPH NEVINS, *OPERATION GATEKEEPER: THE RISE OF THE “ILLEGAL ALIEN” AND THE MAKING OF THE U.S.-MEXICO BOUNDARY* (2002); Mathew Coleman, *A Geopolitics of Engagement: Neoliberalism, the War*

individuals attempt to move between categories, redefining themselves as insiders rather than as outsiders. Such migrations between nations and statuses have produced both a formal citizenship regime, in which demarcations are clear; a “shadow” regime, in which people move regardless of formal membership ties, if they can do so; and some movement between the two. Efforts to move entail *approximating citizenship*, e.g. through a mimicry or resemblance that can eventually garner legal recognition; or through a nearness or proximity through which the presence of the unauthorized among legal residents may create kinship or other ties; through substitution or proxy. An example of such a situation occurs when language skills are taken as a proxy for membership; and through falling short, approximating but not realizing citizenship. Those who are in these situations experience citizenship in the breach, with “breach” referring both to a gap or schism and being in violation. Approximation thus can result in membership or in disqualification.

Legally, approximations carry a certain weight. In adverse possession law, an unlawful possessor earns legal rights by *approximating* ownership through improving land to the benefit of the community.³³ In common law marriage—as well as in the current legal treatment of domestic partnerships—the couple creates a socially and legally recognized relationship by *approximating* marriage, through their words and deeds.³⁴ Asylum is available to individuals who have a well-founded fear of persecution either by their government or by groups their government cannot control, a definition that involves some slippage or approximation between governmental and nongovernmental groups. Occupation is, in some parts of the world, a means of gaining legal rights to land or other property.³⁵ At the same time, as a legal strategy, approximation runs a certain risk. Providing documents that *approximate* but that are not in fact official records is considered fraud. Approximating the truth can be considered perjury. Becoming like a

on Terrorism, and the Reconfiguration of US Immigration Enforcement, 12 *GEOPOLITICS* 607 (2007); Walters, *supra* note 28, for information on enforcement tactics that attempt to close the U.S.-Mexico border.

33. At least one scholar has argued that adverse possession law should provide a framework for providing amnesty for long-residing undocumented immigrants. See generally Monica Gomez, Note, *Immigration by Adverse Possession: Common Law Amnesty for Long-Residing Illegal Immigrants in the United States*, 22 *GEO. IMMIGR. L.J.* 105 (2007). I thank Glenn Trager for this reference.

34. See generally Glenn Trager & Susan Coutin, Gaps between Membership and Belonging: The Case for Legal Recognition of de Facto Residency (May 27, 2010) (unpublished manuscript) (on file with authors).

35. See generally Boaventura de Sousa Santos, *The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada*, 12 *LAW & SOC'Y REV.* 5 (1977).

citizen, therefore, can be a means of acquiring status, or grounds for inadmissibility—recall that Edgar was asked whether he had ever (falsely) claimed to be a U.S. citizen.

Whether resulting in recognition or disqualification, approximation relies on particular understandings of citizenship. Immigration scholar Hiroshi Motomura distinguishes between contract and affiliation as bases for obtaining U.S. citizenship.³⁶ To approximate membership through contract, immigrants note their contributions to society and argue that the United States must fulfill its end of the bargain by granting them membership,³⁷ whereas affiliation is based on the ties of blood (*jus sanguinis*) and culture that individuals can demonstrate.³⁸ Law professor Dan Kanstroom notes that even legal, permanent residents are presumed to be “on probation,” which means that their behavior is scrutinized (as was Edgar’s) to determine whether they are worthy of remaining in the United States.³⁹ Moral worth is thus deemed relevant to qualifying for naturalization. Anthropologist Jonathan Inda analyzes the forms of surveillance, identification, and border regulation through which the U.S. government has made “illegal immigrants” a target of policy.⁴⁰ He argues that racialized others—Latinos and Asian Americans, in particular—have been deemed less capable of regulating their behavior and are, therefore, sometimes judged less qualified for citizenship. To the degree that immigration law in the United States has undergone securitization, immigrants have come to be seen as potential enemies based on the notion that a sharp boundary divides those who are within and outside of the nation.⁴¹ Approximating citizenship, according to such a notion, would be akin to infiltration.

Moments when the formal and shadow membership regimes butt up against each other, through approximation, have contradictory legal underpinnings. For example, international law guarantees individuals

36. See generally MOTOMURA, *supra* note 19.

37. SUSAN BIBLER COUTIN, *NATIONS OF EMIGRANTS: SHIFTING BOUNDARIES OF CITIZENSHIP IN EL SALVADOR AND THE UNITED STATES 183-200* (2007) (discussing immigrant rights campaigns that argue that immigrants have fulfilled a bargain through their contributions to society and therefore deserve recognition).

38. See AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* 7-8 (2009) (defining *jus sanguinis* and *jus solis* as bases for citizenship).

39. Daniel Kanstroom, *Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases*, 113 HARV. L. REV. 1889, 1907 (2000) (“Pure social control deportation laws . . . follow what might best be termed an ‘eternal probation’ or, perhaps, an ‘eternal guest’ model.”).

40. See JONATHAN XAVIER INDA, *TARGETING IMMIGRANTS: GOVERNMENT, TECHNOLOGY, AND ETHICS* 2-3 (2006).

41. See generally LEO R. CHAVEZ, *COVERING IMMIGRATION: POPULAR IMAGES AND THE POLITICS OF THE NATION* (2001); LEO R. CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* (2008).

the right to exit their country of nationality, but not the right to enter another country.⁴² Countries have the right to control movement across their borders, but according to the principle of *non-refoulement* they cannot legally return individuals to a place where they have been persecuted.⁴³ The United States, at its discretion, has permitted unauthorized immigrants to legalize on particular grounds, including a need for asylum,⁴⁴ ties to U.S. citizens or legal permanent resident relatives,⁴⁵ and lengthy periods of presence in the country.⁴⁶ It also has created bars that permanently exclude some from legalizing.⁴⁷ Those who gain lawful residency may naturalize, fall out of status (e.g., due to excessive time outside of the United States), or be convicted of crimes, stripped of their residency, and deported. Approximations demarcate or enable movement between licit and illicit orders. I turn now to examples of breaches created through approximation.

A. *De Facto Statelessness*

The first breach that I consider is the *de facto* statelessness that results when citizens have to leave their country due to political violence. Such *de facto* statelessness reveals instances when citizenship turns out to be only an approximation and, therefore, not fully real. To illustrate this *de facto* statelessness, I examine the experiences of Salvadoran youth who fled to the United States during the 1980–1992 Salvadoran civil war. The case of these youth is particularly stark because they were citizens of El Salvador, but they were raised in the United States. The Salvadoran civil war was between a right-wing government (supported by the United States) and leftist guerrilla insurgents.⁴⁸

42. Linda S. Bosniak, *Human Rights, State Sovereignty and the Protection of Undocumented Migrants Under the International Migrant Workers Convention*, 25 INT'L MIGRATION REV. 737, 737 (1991).

43. Paul Kuruk, *Asylum and the Non-Refoulement of Refugees: The Case of the Missing Shipload of Liberian Refugees*, 35 STAN. J. INT'L L. 313, 342-43 n.240 (1999).

44. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

45. See *Green Card Through Family*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=4c2515d27cf73210VgnVCM100000082ca60aRCRD&vgnnextchannel=4c2515d27cf73210VgnVCM100000082ca60aRCRD> (last updated May 13, 2011) (stating that family-based immigration is permitted under the visa preference system).

46. See, e.g., Immigration and Nationality Act § 240A, 8 U.S.C. § 1229b (1996).

47. See generally *Illegal Immigration Reform and Immigrant Responsibility Act*, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

48. See generally BYRNE, *supra* note 22; MONTGOMERY, *supra* note 22.

The war was characterized by surveillance, roadblocks, forced recruitment, bombings, battles, abductions, torture, and massacres. From 1981 to 1984, the guerrilla forces sought an immediate military victory and fought accordingly. When a victory was not forthcoming, the insurgents devised an alternative strategy of wearing away at the Armed Forces of El Salvador through prolonged war. To counter this effort, the Salvadoran military strafed areas that were deemed zones of guerrilla support, causing high levels of civilian casualties.⁴⁹ As Hugh Byrne, author of the book *El Salvador's Civil War*, explains, "Applying Mao Zedong's maxim that guerrillas are like fish swimming in a sea that consists of its civilian base of support, the Salvadoran armed forces and their U.S. advisers adopted a strategy of 'draining the sea.'"⁵⁰ Paramilitary death squads, frequently with links to the Salvadoran military, also abducted, tortured, and assassinated those suspected of supporting the guerrilla forces.⁵¹ Through such treatment, the Salvadoran authorities defined private citizens as internal enemies.⁵² Though technically citizens, such individuals were not afforded the protections associated with citizenship, including observance of basic civil rights.

One individual affected by human rights abuses was Saul Henriquez, a college student who I interviewed on his campus in 2007.⁵³ Saul told me of his family's experiences:

My parents . . . met in San Salvador . . . My mom was a housekeeper, and my dad, I think he did yard work at a house in San Salvador . . . We lived in Soyapango at the time . . . We had an uncle that lived with us. He was a

49. "The death rate of civilians in El Salvador was 28 times greater than that of civilians under the military regimes of Argentina and Chile." ELISABETH JEAN WOOD, *INSURGENT COLLECTIVE ACTION AND CIVIL WAR IN EL SALVADOR* 8 (2003).

50. BYRNE, *supra* note 22, at 130.

51. On death squad activity in El Salvador, see MARÍA CRISTINA GARCÍA, *SEEKING REFUGE: CENTRAL AMERICAN MIGRATION TO MEXICO, THE UNITED STATES, AND CANADA* 20-26 (2006).

52. Deborah Barry, Raúl Vergara & José Rodolfo Castro, "Low Intensity Warfare": *The Counterinsurgency Strategy for Central America*, in *CRISIS IN CENTRAL AMERICA: REGIONAL DYNAMICS AND U.S. POLICY IN THE 1980S* 77, 84 (Nora Hamilton et al. eds., 1988) ("National security doctrine assumes an astute, underhanded enemy who can disguise his or her ideas and infiltrate every aspect of society; included are individuals and organizations that endorse social change and eventually anyone who does not support the repressive policies required by the dictates of the doctrine. Effectively combating this amorphous enemy requires drawing lines of battle in every area of national life where the enemy might operate—the economy, diplomacy, unions, and religious organizations, all potential components of the rearguard.").

53. Interview with Saul Henriquez, in California (July 16, 2007).

professor at la Nacional [National University]. He was also a leader of one of the social organizations that one of the guerrilla [groups] had during that time. He lived with us at the house. So in 1985, the death squads came and they got him from the house. And like five days later, my Dad had to identify his body. And the thing that happened was in those times, if you were connected with that sort of stuff, that was it. So he came out in the newspaper, my Dad. So he got really scared, he took off. He left from the house. Like a month later, he came to the U.S.⁵⁴

As a publicly known brother of a death squad victim, Saul's father was at risk of being abducted himself. His formal Salvadoran citizenship remained intact, but in practice, he had to flee the country. Likewise, others fled due to seeing discarded bodies, finding body parts, traveling on buses that were boarded by soldiers, witnessing executions, living in areas where battles took place, or fearing forced recruitment.⁵⁵ For those who became wartime refugees, it was the ongoing practice of violence, rather than a formal procedure, that made it impossible for them to remain in their country of citizenship.

Salvadorans who entered the United States in search of safety from the war occupied a double breach, not only between *de jure* citizenship and *de facto* alienage (as enemy suspects), but also between being physically and legally present in the United States. During the 1980s and the early 1990s, the U.S. government viewed the civil war as a battle between western democracy and international communism.⁵⁶ Discounting the indigenous causes of the conflict, the Reagan administration insisted that if the guerrillas gained power in El Salvador, then Communism could spread throughout the region, thus threatening the security of the United States.⁵⁷ During the 1980s, the U.S. government sent \$6 billion in military and other aid to El

54. *Id.*

55. BYRNE, *supra* note 22, at 115 (noting that, by 1984, “[w]ithin El Salvador there were 468,000 displaced people (9.75 percent of the population), 244,000 in Mexico and elsewhere in Central America, and 500,000 more in the United States, for a total of more than 1.2 million displaced and refugees (25 percent of the population).”).

56. “The hard-liners in the Reagan administration portrayed the Salvadoran civil war as part of the East-West struggle, in which the United States had a moral duty to contain Cuban/Soviet expansionism.” GARCÍA, *supra* note 51, at 24.

57. *Id.* at 95 (quoting the National Security Council as stating, “We are committed to defeating the Marxist-Leninists in Central America. We believe that should we fail to do so on the current battlefields of El Salvador and Nicaragua, we shall have to face them in Mexico and on the canal where the stakes will be much higher.”).

Salvador,⁵⁸ while asylum applications filed by Salvadorans were denied at a rate of 97.4 percent.⁵⁹ Unwillingness to recognize the human rights violations being committed by Salvadoran authorities, coupled with U.S. immigration controls, made it very difficult to obtain a visa to enter the United States legally. As a result, most Salvadorans who came during the war years did so without authorization, thus placing themselves in the breach between law and illegality.

Again, Saul Henriquez's experiences illustrate the dual nature of the breach that he occupied. Unable to remain in El Salvador, Saul's father and oldest sister entered the United States clandestinely, joining an uncle who was already here. Six months later, Saul, Saul's younger sister, and his mother joined his father. Though he remembered nothing of the trip, Saul related that he and his sister were separated from their mother so that they could cross the border posing as children in another family. They had no difficulty, but it took his mother three attempts to succeed in crossing. Though initially undocumented, Saul's father was able to qualify for amnesty under the 1986 Immigration Reform and Control Act (IRCA),⁶⁰ and in the mid-1990s, Saul himself became a resident through his father. Saul was eventually able to naturalize.

As noted above, the double-breach occupied by Salvadorans who entered the United States without authorization during the Salvadoran civil war was a form of quasi statelessness. These migrants were, for certain practical purposes, without government protection. Unable to vote in either the United States (due to their legal status) or in El Salvador (due to distance), they were disenfranchised.⁶¹ If they came to the attention of U.S. authorities, they could be deported, and if they were deported, they could once again be subjected to persecution. The right to a nationality is not particularly meaningful in the absence of practical protections associated with that right.

58. BENJAMIN C. SCHWARZ, *AMERICAN COUNTERINSURGENCY DOCTRINE AND EL SALVADOR: THE FRUSTRATIONS OF REFORM AND THE ILLUSIONS OF NATION BUILDING* 2 (1991).

59. U.S. COMM. FOR REFUGEES, *DESPITE A GENEROUS SPIRIT: DENYING ASYLUM IN THE UNITED STATES* 9 (1986).

60. Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359. Through legalization programs, individuals who had been in the United States continuously and illegally since January 1, 1982, or who had performed certain types of agricultural work in the United States were permitted to become lawful permanent residents. See generally HAGAN, *supra* note 15; UNDOCUMENTED MIGRATION TO THE UNITED STATES: IRCA AND THE EXPERIENCE OF THE 1980S (Frank D. Bean et al. eds., 1990).

61. See generally MIGRATION AND CITIZENSHIP: LEGAL STATUS, RIGHTS AND POLITICAL PARTICIPATION (Rainer Bauböck ed., 2006), for a discussion on the forms of political participation practiced by undocumented immigrants and political rights accorded to immigrants in different countries.

To counter their own vulnerability, Salvadoran émigrés demanded a different relationship with both El Salvador and the United States. In El Salvador, the 1992 peace accords made possible a new rapprochement between Salvadoran authorities and citizens living abroad, even as the remittances that Salvadoran émigrés sent to relatives living back home created a new motivation for such rapprochement.⁶² Remittances increased dramatically during the 1980s, from \$74 million in 1980 to \$232 million in 1985 and \$600 million in 1990.⁶³ Remittances provided a buffer against impacts of structural adjustment programs, while also stabilizing the Salvadoran currency in the postwar period. Salvadoran leaders in the United States began demanding that Salvadoran authorities treated them as more than a source of income.⁶⁴

Community groups sent delegations to El Salvador, urging political leaders there to intercede with U.S. authorities to secure a permanent status for those who had immigrated during the war years.⁶⁵ A participant in one such delegation recalled, “the work of Salvadoran organizations in the United States toward El Salvador contributed greatly to the migration theme being important.”⁶⁶ Salvadoran officials, who wanted to preserve remittance flows, supported immigrants’ rights in the United States and sought to strengthen their relationship with

62. See Permanent Representative of El Salvador to the U.N., Letter dated Jan. 27, 1992 from the Permanent Representative of El Salvador to the United Nations addressed to the Secretary-General, U.N. Doc. A/46/864 (Jan. 30, 1992), available at https://peaceaccords.nd.edu/site_media/media/accords/Chapultepec_Peace_Agreement_16_January_1992.pdf, for the text of the peace accords. See generally KATHARINE ANDRADE-EEKHOFF, MITOS Y REALIDADES: EL IMPACTO ECONÓMICO DE LA MIGRACIÓN EN LOS HOGARES RURALES [MYTHS AND REALITIES: THE ECONOMIC IMPACT OF MIGRATION ON RURAL HOMES] (2003); Juan José García, *Hacia una interpretación del impacto económico y sociocultural de las migraciones a Estados Unidos y las remesas familiares* [Toward an Interpretation of the Economic and Sociocultural Impact on the United States and the Family Remittances], 26 POLITICA ECONÓMICA [POLITICAL ECONOMY] (1994), for a discussion of remittances to El Salvador.

63. COUTIN, *supra* note 37, at 124. See Banco Central de Reserva de El Salvador [Central Reserve Bank of El Salvador], *US\$2,275.2 millones en remesas familiares hasta julio de 2012* [\$2,275.2 million in Family Remittances as of July 2012] (Aug. 16, 2012), http://www.bcr.gob.sv/esp/index.php?option=com_k2&view=item&id=315:remesas-familiares-julio-2012&Itemid=168 (reporting that as of July 2012, El Salvador had received \$2.27 billion in remittances.).

64. “The plan’s authors (who included Salvadorans living abroad) . . . stressed the idea that Salvadorans living abroad had much more than money to offer El Salvador.” COUTIN, *supra* note 37, at 88. The “plan” referred to in this quote is a report that the Salvadoran president commissioned, sort of a blue print for the nation.

65. *Id.* at 82-90 (on the relationship that Salvadorans living abroad forged with the Salvadoran government during the post-war years).

66. COUTIN, *supra* note 37, at 83.

the community living abroad. In 1994, a monument to “El Hermano Lejano,” or the “Distant Brother,” was erected in San Salvador.⁶⁷ In the mid-1990s, Ana Cristina Sol, the Salvadoran ambassador to the United States, began working with hometown associations to assist with fundraising and donations, and in 1996 and 1997 the Salvadoran ombudswoman for human rights, Maria Victoria de Áviles, took up the cause of migrants’ rights.⁶⁸ In 1998, Salvadoran president Calderón Sol held a series of consultations with Salvadoran experts living within and outside of the country, and he then published a report, the “Plan de la nación,” or “Plan of the Nation,” which emphasized that El Salvador had become a “Society without Borders.”⁶⁹ Under the presidency of Francisco Flores, a directorate to attend to the community living abroad was established within the Ministry of Foreign Affairs, and under President Antonio Saca, the directorate became a viceministry.⁷⁰ Mauricio Funes, the current Salvadoran president and the first opposition candidate from the Frente Farabundo Martí para la Liberación Nacional, a political party formed out of the Salvadoran guerrilla organization by the same name, ever to win the presidency, has continued to emphasize the important contributions that Salvadorans living abroad make to El Salvador.

Likewise, in the United States, émigrés spent the 1980s advocating for asylum. Then, in the 1990s, when the war concluded, they advocated for the right to immigrate due both to their reasons for leaving their homeland and to preserve the lives they had constructed in the United States.⁷¹ In the mid-1980s, members of the U.S. sanctuary movement, congregations that had declared themselves “sanctuaries” for Salvadoran and Guatemalan refugees, partnered with refugee service organizations to sue the U.S. government for asylum.⁷² In 1991, this case, which was known as *American Baptist Churches v. Thornburgh*, was settled out of court, giving Salvadoran and Guatemalan asylum

67. BAKER-CRISTALES, *supra* note 25, at 99-100.

68. COUTIN, *supra* note 37, at 82-90.

69. COMISIÓN NACIONAL DE DESARROLLO [NATIONAL DEVELOPMENT COMMISSION], TEMAS CLAVES PARA EL PLAN DE NACIÓN: CONSULTA ESPECIALIZADA [KEY ISSUES FOR THE PLAN OF THE NATION: SPECIALIZED CONSULTATION] (1999).

70. See COUTIN, *supra* note 37, at 96 (“One of the first acts of the 2004-9 Saca administration was to create a vice ministry of Attention to ‘Hermanos en El Exterior’ [‘Brothers Abroad’]”).

71. See COUTIN, *supra* note 6, at 146 (“During this introspective moment, activists reassessed their claim that Central Americans were refugees and instead began to call themselves and their communities immigrants.”).

72. See GARCÍA, *supra* note 51, at 98-112 on the sanctuary movement and the American Baptist churches versus Thornburgh lawsuit.

seekers the right to de novo asylum hearings under rules designed to ensure fair consideration of their claims.⁷³

At approximately the same time, the 1990 Immigration Act created Temporary Protected Status (TPS) and designated Salvadorans as the first recipients of this status.⁷⁴ Eighteen months later, when TPS expired, George H.W. Bush extended it but renamed it “Deferred Enforced Departure” (DED) status.⁷⁵ Neither TPS nor DED conferred a path to permanent status or the right to reenter the United States, so awardees were more or less trapped within U.S. borders. In 1996, passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)⁷⁶ made it much more difficult for DED recipients to apply for status through other means.

As a result, Salvadoran and Guatemalan activists joined forces with Nicaraguans, who had fled the leftist Sandinista government, and with Central American authorities, to seek a permanent solution.⁷⁷ With bipartisan support, the Nicaraguan Adjustment and Central American Relief Act (NACARA), was passed in 1997.⁷⁸ Through NACARA, Salvadorans won the right to apply for legal permanent residency on the basis of the hardship that deportation would cause. This hardship was based both on the conditions in their country of origin (the violence of the civil war and difficult economic conditions in the post war period) *and* on the degree to which their lives had come to approximate those of legal U.S. residents. The Federal Register codified hardship factors as including:

- (1) the age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;
- (2) the age, number, and immigration status of the alien's children and their ability to speak the native language and adjust to life in

73. *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). See also Carolyn Patty Blum, *The Settlement of American Baptist Churches v. Thornburgh: Landmark Victory for Central American Asylum-Seekers*, 3 INT'L J. REFUGEE L. 347 (1991).

74. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

75. RUTH ELLEN WASEM & KARMA ESTER, CONG. RESEARCH SERV., RS20844, TEMPORARY PROTECTED STATUS: CURRENT IMMIGRATION POLICY AND ISSUES 4 (2010) (“Rather than extending Salvadoran TPS when it expired in 1992, the former Bush Administration granted DED to what was then estimated as 190,000 Salvadorans through December 1994.”).

76. Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

77. For a more detailed history, see COUTIN, *supra* note 37, at 46-72 on the passage of the Nicaraguan Adjustment and Central American Relief Act and the negotiation of the NACARA regulations.

78. *Id.*

another country; (3) the health condition of the alien or the alien's child, spouse, or parent and the availability of any required medical treatment in the country to which the alien would be returned; (4) the alien's ability to obtain employment in the country to which the alien would be returned; (5) the length of residence in the United States; (6) the existence of other family members who will be legally residing in the United States; (7) the financial impact of the alien's departure; (8) the impact of a disruption of educational opportunities; (9) the psychological impact of the alien's deportation or removal; (10) the current political and economic conditions in the country to which the alien would be returned; (11) family and other ties to the country to which the alien would be returned; (12) contributions to and ties to a community in the United States, including the degree of integration into society; (13) immigration history, including authorized residence in the United States; and (14) the availability of other means of adjusting to permanent resident status.⁷⁹

Thus, Salvadorans who emigrated to the United States during the war years successfully challenged their own double disqualification, enabling approximation to become reality for many. Nonetheless, lengthy delays—from the 1980s when Salvadorans immigrated to the late 1990s and early 2000s, when NACARA was implemented—created a persistent vulnerability that left some of these noncitizens subject to deportation. Section B examines this vulnerability and its effects.

B. Deportation

The second breach that I consider is that experienced by one-and-a-half generation Salvadoran youths who immigrated during the war years and who were deported to El Salvador in the late 1990s or the 2000s.⁸⁰ Having grown up in the United States, these youths' lives

79. Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries, 63 Fed. Reg. 64895 (proposed Nov. 24, 1998) (to be codified at 8 C.F.R. pts. 103, 208, 240, 274a & 299).

80. On the term "1.5 generation," see *ETHNICITIES: CHILDREN OF IMMIGRANTS IN AMERICA* 11 (Rubén G. Rumbaut & Alejandro Portes eds., 2001) (defining "1.5 generation" as "U.S.-born children of immigrants"). Generally, the term 1.5 generation refers to immigrants who immigrated as children and who therefore share characteristics of first

approximated, but legally were not quite the same as those of U.S. citizens. Their vulnerability to deportation resulted from multiple factors, including the circumstances in which they and their family immigrated to the United States in the first place; the unavailability of a status that would have allowed them to naturalize earlier in their lives; their dependence on parents for information about immigration; and civic rituals pervasive in U.S. schools. These civic rituals allowed them to think of themselves as quasi citizens;⁸¹ and the immigration reforms adopted in 1996 expanded the range of crimes that stripped even legal permanent residents of their status and mandated their removal.⁸² Because, in El Salvador, deportees were regarded with deep suspicion, these longtime U.S. residents also experienced a double breach: deported from the United States as noncitizens, they were treated as foreigners in their supposed homeland. Hence, following deportation, youths discovered that their Salvadoran citizenship was not fully real either, in a practical sense. Their double disqualification mirrors but inverts that experienced by wartime Salvadoran refugees in the 1980s, though politically, these moments are treated differently.

Most of the forty-one deportees I interviewed in El Salvador had previously acquired temporary or permanent legal status in the United States, though some had been undocumented. Of those, 46 percent were legal permanent residents; 22 percent had work permits resulting from a temporary status (such as TPS or a pending application for political asylum); 7 percent had some other form of legal status; 22 percent were undocumented; and 2 percent (one individual) did not know his status. I met interviewees through NGOs (nongovernmental organizations) that worked with deportees, so this sample is not statistically representative. Nonetheless, it provides some indication of the ways that the suspicion described earlier takes shape within the lives of noncitizens.⁸³

For these migrant youths, informal forms of belonging, such as becoming part of U.S. schools and neighborhoods, led to disqualification, as some youths came to participate in activities, such as drug use, that

generation immigrants (born overseas) and second generation immigrants (raised in the United States).

81. Roberto G. Gonzales, *Learning to Be Illegal: Undocumented Youth and Shifting Legal Contexts in the Transition to Adulthood*, 76 AM. SOC. REV. 602, 608 (2011) (“[R]espondents spent their childhood and early adolescence in a state of suspended illegality, a buffer stage wherein they were legally integrated and immigration status rarely limited activities.”).

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

83. This interview material is discussed in greater detail in Susan Bibler Coutin, *Displaced Subjectivities: Salvadoran Deportees’ Narratives of Removal*, IDENTITIES (forthcoming).

have been increasingly criminalized.⁸⁴ Interviewees' accounts of their childhoods in the United States described encounters with police, being recruited into gangs, and being exposed to crime-related violence.⁸⁵ The very practices that made these migrant youths part of communities, therefore, also put them at risk of being removed. Victor Castillo, for example, described living in a community where the lack of access to public spaces—in this case, parks—led youth gangs to enter rival gang members' territories:

It was a barrio . . . And you could only enter through Rose Hills. On the border of Whittier and Pico Rivera...They jumped me in when I was 13, into the gang of that barrio . . . Se llamaba "Sunrise . . ." And because the police, the Pico Rivera sheriffs entered, and there were no parks. Our barrio was the only place that had no parks. So to go somewhere else to go to the park, we ran into problems [due to gang rivalries]. So we were concentrated there. And there were a lot of us. So that's where I lost myself, in drugs, the police bringing me to jail.⁸⁶

For some interviewees, participating in U.S. youth culture led to being convicted of crimes. Manuel Urquilla, who grew up in Boston, had this experience:

I was getting involved in minor possession of alcohol, and driving without a license. I used to get caught doing a lot of stupid things, when I was sixteen, seventeen. It was the people I was hanging with. I got caught with a stolen car. Three times. But it was so funny because I was never the one who used to steal the car. I used to hang out with this Puerto Rican kid, and he would say, "Just watch! Just watch!" And he'd go take the car, and I

84. Jeff Ferrell, *Culture, Crime, and Cultural Criminology*, 3 J. CRIM. JUST. & POPULAR CULTURE 25, 32 (1995) ("[C]riminalization campaigns . . . disproportionately target ethnic minorities, gays and lesbians, young people, and other outsiders. It is certainly no accident that, historically, marijuana users, Black and Latino/Latina zoot suiters and gang members, and working class bikers in the United States and Great Britain have been the focus of highly publicized criminalization campaigns.")

85. See generally JAMES DIEGO VIGIL, *A RAINBOW OF GANGS: STREET CULTURES IN THE MEGA-CITY* (2002).

86. Interview with Victor Castillo, San Salvador, El Salvador, in person (July 8, 2008).

would just stand on the corner. It was something to do, I guess. We didn't even sell the car. Just for rides . . .⁸⁷

As they acquired criminal records as noncitizens, these youths became vulnerable to deportation.⁸⁸ For example, Lorenzo Gómez had been a legal permanent resident prior to being convicted of drug possession and deported to El Salvador. Likewise, Marcus López was on probation when he was detained by Immigration officials during a meeting with his probation officer. Bitterly, Marcus related that although he had been trying to turn his life around, he lost everything for which he had worked. He stated, "They [immigration officers] just told me, 'You got a warrant to get you deported. This is INS.' Locked me [up]. I lost everything."⁸⁹ Similarly, deportee Pablo Ramirez, who had been convicted of possessing a concealed weapon, described how his permanent residency card was destroyed when immigration officials apprehended him at his home:

The worst thing is that we had papers. We had our green cards. And we thought with the green card, we were citizens, basically. I remember that when ICE came to pick us up at the house, they said, "Where's your green card?" And usually, I used to carry it in my wallet. I took it out and said, "So what're you going to do now?" And he's like, "Well, you ain't an American citizen. So you're going back to your country no matter what." And right then and there, he just, boom! Flipped it over and broke it in half. Just grabbed it, and flipped it over, and pffff, ripped it.⁹⁰

Despite being deported, while in El Salvador, these deportees insisted to me that they belonged in the United States. To do so, they repeatedly cited particular locations—such as U.S. streets, schools, hospitals, and businesses—where they had been and that were components of their life histories. They thus insisted that deportation could not fully erase their prior U.S. existence. For example, during an

87. Interview with Manuel Urquilla, San Salvador, El Salvador, in person (July 18, 2008).

88. See generally Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006), for a discussion on the increasing intersection between criminal and immigration law.

89. Interview with Marcus López, San Salvador, El Salvador, in person (July 15, 2008).

90. Interview with Pablo Ramirez, San Salvador, El Salvador, in person (July 16, 2008).

interview in San Salvador, Herbert Osorio, who was deported in absentia after failing to attend a court hearing insisted, "*I was there. I could be American, I could be from North America.*"⁹¹ Likewise, when Lorenzo Gómez told me that he had two daughters, aged thirteen and sixteen, he added that they were each born at Cedar Sinai hospital in Los Angeles and when Edgar Ramirez described his elementary school experience, he named each school that he had attended: "I was in fourth grade in elementary school. It was called Walgrove Elementary School. On Venice [Blvd] . . . [Then] I went to Kittridge. Kittridge Elementary School. I started sixth grade. And then, I finished that and went to Junior High. Madison Junior High."⁹²

By citing these locations, interviewees demonstrated that their lives had approximated those of U.S. citizens to such a degree that, while in the United States, they had been virtually indistinguishable from those around them. As Norberto Manzano, who had moved to the United States in 1988 at the age of seventeen, explained, "I became adapted to U.S. culture, because I went to school and every day they taught us U.S. history; I pledged allegiance to the flag. I was forgetting that I was a Salvadoran."⁹³

In addition to describing the hardships they had encountered growing up in marginalized communities, interviewees emphasized their own productivity and positive societal contributions. Lorenzo Gómez, for example, told me of his job as an AT&T operator: "People would call the operator. I was an operator. 'Okay, where do you want to place your call?' 'The Florida Keys.' 'Okay ma'am, this is the area code, and who do you want to call?' Stuff like that. It was fun! I made friends. You talk to people."⁹⁴ By describing their positive social contributions and placing these in well-known U.S. businesses, such as AT&T, interviewees indirectly claimed membership in the United States and emphasized their own future potential. Why, interviewees asked, had they been removed when, to give other examples, they were capable of installing alarm systems, working at Pizza Hut, putting crown molding in homes, selling real estate, being awarded scholarships, and studying in college? Such questions emphasized their value as persons, the profound losses they had experienced, and the unjust and destructive nature of deportation.

91. Interview with Herbert Osorio, San Salvador, El Salvador, in person (July 8, 2008) (emphasis added).

92. Interview with Edgar Ramirez, San Salvador, El Salvador, in person (July 9, 2008).

93. Interview with Norberto Manzano, San Salvador, El Salvador, in person (July 8, 2008).

94. Interview with Lorenzo Gómez, San Salvador, El Salvador, in person (July 9, 2008).

Because deportees who had grown up in the United States were informally rejected in many corners of Salvadoran society, they were doubly disqualified, both from the United States and El Salvador. Socially, deported one-and-a-half generation migrants encounter discrimination from other Salvadorans. Interviewees insisted that other Salvadorans could identify them as deportees by their manner of dressing, speaking, and walking. Others apparently assumed that because they had been deported, they were criminals, delinquents, or, at the very least, outsiders. One interviewee recounted, "People don't look at me like I belong here. They look at me like I'm a stranger. [They say] 'This guy can't even speak Spanish . . . He ain't Salvadoran, he's gringo . . . He was born here, but that don't mean he's *from* here.'"⁹⁵ Interviewees described boarding a bus, only to have other riders grab their purses and look away in fear.

Tattoos were a particular source of discrimination. In the United States, it is common for individuals to obtain tattoos as a matter of fashion and self-expression. In El Salvador, interviewees discovered that their tattoos were taken as an indication of criminality and gang membership, even if the tattoos were not gang related. Interviewees reported that because of their tattoos they were subjected to beatings; denied job opportunities; and harassed by gang members, security guards, and the police.⁹⁶ For example, one interviewee commented, "I'm concerned here about the police. See over here [in El Salvador], we're not normal. Once they pull up the shirts and look at the tattoos, all that comes to mind is, 'Let's take him to jail. Let's get rid of him.'"⁹⁷ One ex-gang member reported that the police beat him and that when he denounced the beating, he received a death threat.

Deportees resisted their removal from the United States in at least two ways. One was to return without authorization, an option made more difficult by intensified border enforcement and by increased penalties associated with reentry following deportation.⁹⁸ Another way of resisting deportation was to recreate aspects of their former U.S. lives even though they were continuing to live in El Salvador. For example, Roberto Orellana told me:

95. Interview with Victor Castillo, San Salvador, El Salvador, in person (July 8, 2008) (emphasis added).

96. See generally ELANA ZILBERG, *SPACE OF DETENTION: THE MAKING OF A TRANSNATIONAL GANG CRISIS BETWEEN LOS ANGELES AND SAN SALVADOR* (2011), for a discussion regarding discrimination against deported Salvadorans.

97. Interview with Deris Posada, San Salvador, El Salvador, in person (July 14, 2008).

98. See generally Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U. L. REV. 1281 (2010), for a discussion about increased criminal prosecution of immigration violations, including reentry.

At the house, it's totally 100 percent English. My sister-in-law, she was raised in Kentucky too. Her husband, he was raised in L.A. So her family and me, when we get together, we speak nothing but English. The baby? We don't talk to him nothing but English. I mean, he'll learn Spanish from his Grandma. So, I try to make it as much as I can . . . Then my dad, when we talk on the phone, it's English. I just talk Spanish with my Grandma. And sometimes, I don't know if you remember, there's a lot of helicopters [in Los Angeles] at night. Tch-tch-tch-tch. [Roberto's imitation of the sound of helicopters.] So right here, sometimes when one passes by, I just close my eyes and I feel the breeze at night. I could picture I'm [there]. I miss the whole thing a lot.⁹⁹

Some deportees were able to obtain jobs at call centers, where customers, unaware that they were speaking to a deportee, sometimes praised them for being Americanized.¹⁰⁰ For example, Pablo Ramirez told me, "Sometimes people call me, and they say, 'Thank God I'm speaking to someone in the States!' And inside of me, I'm laughing out loud!"¹⁰¹ These deportees' pride in their knowledge of the United States, their English-language skills, and the reactions of others who took them for Americans served as a way to demonstrate that they had approximated U.S. citizenship and did not deserve to be disqualified through removal.

The double disqualification experienced by deportees demonstrates the complex relationships between formal and informal forms of belonging and thus between law's reality and irreality. Formally deported from the United States, many nonetheless continued to cite their lives lived in the United States as evidence of informal belonging that deserved formal recognition. Similarly, though they were *de jure* Salvadoran citizens like their parents before them, they were not

99. Interview with Roberto Orellana, San Salvador, El Salvador, in person (July 17, 2008).

100. See generally Cecilia Maribel Rivas, *Imaginaries of Transnationalism: Media and Cultures of Consumption in El Salvador* (2007) (unpublished Ph.D. dissertation, University of California, San Diego), available at <http://gradworks.umi.com/32/58/3258783.html>; Nina Siule, *Unwelcome Citizens, Criminalized Migrants, and the Quest for Freedom: Deportees in the Dominican Republic* (May 2009) (unpublished Ph.D. dissertation, New York University), available at <http://gradworks.umi.com/33/65/3365750.html>, for a discussion on connections between deportation and the call center industry.

101. Interview with Pablo Ramirez, San Salvador, El Salvador, in person (July 16, 2008).

afforded the basic rights associated with citizenship, leading some to once again abandon El Salvador. Their double disqualification reproduces some of the same exclusions experienced by their parents' generation, including family separations, violence at the hands of civilians and security forces, exile, and the inability to regularize their status in the United States. Although the strategies through which deportees challenged their disqualification were less successful in altering policy than were those of wartime refugees, it is important to remember that refugees' formal and informal membership claims took years to bear fruit. Perhaps, under a changed political scenario, it will be possible for them to gain the recognition that they seek.

Section C turns to a third breach: namely, the gap between individuals who desire to naturalize and those who can do so. To explore this gap, I focus on obstacles encountered by legal permanent residents who consulted with attorneys or paralegals about the advisability of applying to naturalize. Though their lives in many ways approximate those of citizens, would-be naturalization applicants, like refugees and deportees, are still in the breach between formal recognition and informal membership.

C. Naturalization

Many Central Americans who immigrated during the Salvadoran civil war and who obtained legal permanent residency through NACARA are now eligible to apply for naturalization. Some of the immigrants, along with other Spanish-speaking immigrants who lived in Los Angeles, approached the nonprofit organization mentioned earlier, seeking advice and assistance. Obviously, this organization does not have the authority to grant or deny applications, but, due to the large number of naturalization applications that it prepares, the legal staff members are familiar with potential grounds for disqualification and they help clients to avoid them. The problems that legal staff members identify during the application process, therefore, shed light on the boundaries that are currently being placed around formal membership and on the nature of the suspicion that is directed at noncitizens.

Although the outcome of applications for naturalization cannot be gleaned from observing consultations and the preparation of naturalization applications, such interactions do provide insight into a very early stage of the naturalization process, a moment *before* the decision to go forward is made, when individuals' records assume a somewhat "raw" form. Furthermore, these consultations include some individuals who either decided not to apply or who were advised against

applying. Placing the potential grounds for disqualification that such individuals encounter or imagine alongside the double disqualifications experienced by refugees and deportees reveals the ideal against which the disqualified are measured, as well as the breach that naturalization applicants are attempting to close.

Generally speaking, the formal requirements for naturalization include: (1) completing a specified period of legal permanent residency (three years for those who are married to U.S. citizens and five years for everyone else); (2) demonstrating good moral character during this period; and (3) passing a test on civics and English language skills.¹⁰² Additionally, applicants must complete and submit an application for naturalization, along with the required fee payment of \$680, which can be waived in instances of economic hardship.¹⁰³ Note that people who are not legal permanent residents cannot naturalize, even if they have lived in the United States for decades.

My observations of naturalization consultations and document preparation suggest that would-be applicants encounter a range of problems. At one extreme are criminal convictions or old deportation orders that not only make an individual ineligible to naturalize, but could possibly result in removal. Since the late 1990s, noncitizens who have been convicted of aggravated felonies have frequently been placed in removal proceedings at the conclusion of their criminal sentences, but there are also green card holders who have old convictions and whose cases have not been scrutinized by immigration officials. Applying for naturalization could result in such scrutiny and lead the applicant to be removed. Such convictions are a permanent mark because expungements do not count for immigration purposes.¹⁰⁴ Legal staff, therefore, asked individuals who had been arrested to bring in copies of their police and court records to assess their eligibility to naturalize. Likewise, legal staff carefully questioned individuals about any immigration detentions or prior immigration cases, and, if appropriate, searched for their alien-numbers within the immigration court system to see if there was an old removal order. When individuals who are in removal proceedings fail to appear in court, perhaps out of fear or perhaps due to not receiving a notice to appear in the mail, they can be ordered removed in absentia.¹⁰⁵ If an individual has erroneously been issued a green card despite having a deportation order and if he or she

102. See U.S. CITIZENSHIP & NATURALIZATION SERVS., A GUIDE TO NATURALIZATION (2012), available at <http://www.uscis.gov/files/article/M-476.pdf>.

103. *N-400*, *supra* note 2. See generally IRENE BLOEMRAAD, BECOMING A CITIZEN: INCORPORATING IMMIGRANTS AND REFUGEES IN THE UNITED STATES AND CANADA (2006).

104. *In re Fructoso Luviano-Rodriguez*, 21 I. & N. Dec. 235, 238 (1996).

105. Exec. Office for Immigration Review, 8 C.F.R. § 1003.26 (2012).

attends a naturalization interview, the order can be executed without going before a judge. Informally, noncitizens who have old criminal convictions or removal orders may be quasi citizens, yet their incomplete membership can quickly crumble.

At the other extreme are practical problems, such as insufficient resources or an inability to pass the citizenship test, which can be resolved over time. An individual who encountered both of these problems is Ramon Palacios Quezada, a Salvadoran man in his early sixties who approached the nonprofit to renew his green card, which was about to expire. Before filling out the renewal application, the paralegal who attended to Ramon informed him that he was eligible to naturalize, and that if he did so, he would not need to renew his green card. Ramon immediately objected that he could not afford the fee, which he had heard was \$1,000. She explained that the fee was actually \$680 and that, based on his income, he could ask for a waiver. "And that would not disadvantage me with immigration?" Ramon asked. Although the paralegal assured him that it would not, Ramon remained doubtful. His confusion is understandable, given that qualifying for other statuses sometimes requires demonstrating that one will not be a public charge.¹⁰⁶ Ramon also expressed concern about his ability to pass the English and civics tests. As he had not yet been a resident for fifteen years, he did not qualify to take the exam in Spanish, his native language.¹⁰⁷ Although the paralegal informed him that the nonprofit offered free citizenship classes, Ramon opted simply to renew his green card, for which he had to pay \$450 to U.S. Citizenship and Immigration Services.

106. *Public Charge*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=829b0a5659083210VgnVCM10000082ca60aRCRD&vgnextchannel=829b0a5659083210VgnVCM10000082ca60aRCRD> (last updated Sept. 3, 2009) ("Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an individual seeking admission to the United States or seeking to adjust status to that of an individual lawfully admitted for permanent residence (green card) is inadmissible if the individual, 'at the time of application for admission or adjustment of status, is likely at any time to become a public charge.' Public charge does not apply in naturalization proceedings. If an individual is inadmissible, admission to the United States or adjustment of status is not granted.")

107. See *Exceptions & Accommodations*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ffe2a3ac86aa3210VgnVCM100000b92ca60aRCRD&vgnextchannel=ffe2a3ac86aa3210VgnVCM100000b92ca60aRCRD> (last updated Apr. 8, 2011) ("You Are Exempt From The English Language Requirement, But Are Still Required To Take The Civics Test If You Are . . . Age 55 or older at the time of filing for naturalization and have lived as a permanent resident in the United States for 15 years."), for a discussion of the rules regarding the language in which the U.S. citizenship examination must be taken.

In between these two extremes are two sorts of problems: (1) evidentiary issues and (2) discretionary assessments of good moral character. Evidentiary issues that applicants encounter include making too many trips outside of the United States (and thus failing to fulfill the required period of residency); failing to keep track of one's trips outside of the United States; being absent from the United States for more than six months; having a discrepancy in one's documentation; and possessing a document that is suggestive of fraud.¹⁰⁸ Nestor, a Nicaraguan client of the nonprofit, had applied for legal permanent residency through NACARA. He had been issued two green cards, each with a slightly different version of his name. A legal staff member advised him that in order to correct this error, he would need to submit a copy of his birth certificate, which had the complete version of his name. Edgar Guerrero, an applicant who I referred to earlier, had a passport in which one of his entries into the United States had not been recorded. Without this entry date, it appeared that Edgar had been outside of the United States for more than six months, a period that would be considered an interruption to his residence in the United States. He was advised to bring in a copy of a relative's passport, as the relative had traveled with him and might have a record of the trip.

Such evidentiary issues, like the practical problems discussed above, can often be corrected. For example, individuals can delay naturalizing until accruing sufficient time in the United States without absences, find additional evidence of travel, or amend an original document to resolve a discrepancy. Such issues are nonetheless revealing. The naturalization process, like many other immigration proceedings, presumes that activities create records, that these records are accurate, and that records can be retrieved. In fact, discrepancies or evidentiary gaps can arise for multiple reasons, often through no fault of an applicant. An official can record someone's name incorrectly, fail to stamp a passport, or stamp a passport illegibly. Buildings where records are kept can burn down—as was common during the Salvadoran civil war—and individual records, such as passports where entries and exits are recorded, can be stolen. The high level of scrutiny and suspicion with which immigration cases are regarded can potentially convert such “innocent” errors into evidence of fraud.

The discretionary good moral character issues that arose in the appointments that I observed focused on unpaid child support, unpaid

108. See *Continuous Residence and Physical Presence Requirements for Naturalization*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=399faf4c0adb4210VgnVCM10000082ca60aRCRD&vgnnextchannel=399faf4c0adb4210VgnVCM100000082ca60aRCRD> (last updated June 14, 2011).

taxes, a failure to report information to immigration officials on a previous form, and a failure to register for the draft.¹⁰⁹ One client who hoped to apply for naturalization in the near future, was going through a divorce. A paralegal advised this individual that he would need to provide evidence that he was paying child support, such as a letter from his wife, court records, or copies of deposits he was making to his wife's account. During another appointment a nonprofit client, who had come in to obtain a naturalization certificate for his daughter, remarked that he had to delay his own naturalization application because he had been paid in cash and had to make payments to the Internal Revenue Service (IRS) to catch up.¹¹⁰ It is important to note that these character issues result, to some degree, from the condition of being an immigrant, particularly one who was undocumented for some time, and these issues are, therefore, something of a catch-22. Parents are separated from children due to lack of travel authorization, and yet they are held accountable for whether they continue to support the children from whom they are separated. Those who are undocumented are often paid under the table, making it more difficult to report and pay taxes on income. Few realize that the undocumented are required to register for the draft even though they are not permitted to be in the country legally.

In addition to such discretionary issues, naturalization applicants must also reveal and provide evidence regarding arrests and convictions, such as petty theft or minor traffic violations. These minor violations do not make them ineligible to naturalize, but officials may wish to include them as part of their analysis of good moral character.¹¹¹ Such intensified scrutiny and suspicion prevents some individuals from even applying for naturalization. For example, Nestor was briefly detained by the police but was never arrested, charged, or convicted of a crime. He chose to renew his green card rather than to naturalize, reasoning that his green card renewal application would serve as a means of "testing the waters" to ensure that this minor incident would not pose a problem to immigration officials. Along with formal disqualification, such caution leads individuals to remain in the breach.

109. See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, ADJUDICATOR'S FIELD MANUAL—REDACTED PUBLIC VERSION, § 73.6 GOOD MORAL CHARACTER (GMC), available at <http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-22380/0-0-0-22999.html> (last visited Aug. 30, 2012).

110. See generally Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1 (2006), for a discussion of undocumented immigrants' responses to U.S. tax laws.

111. See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *supra* note 109.

CONCLUSION

The three examples considered here help to delineate the breach between “real,” complete, and formal membership and partial, informal, and, therefore, not fully “real” membership. The breach between these can be wide or narrow, impossible to navigate, or barely discernable. Both refugees who fled El Salvador during the civil war and longtime U.S. residents who were deported during the 2000s experienced a double disqualification that rendered them quasi stateless. Though technically citizens of El Salvador,¹¹² individuals who fled the country due to human rights violations were informally “disqualified” by the persecution to which they were subjected. Most entered the United States without documentation, and they were also disqualified from remaining in the United States by their mode of entry. Importantly, these refugees and their supporters were able to challenge their disqualification, and they eventually achieved the right to become legal permanent residents under NACARA and have been granted recognition by El Salvador as well.

The lengthy delay in securing this recognition nonetheless contributed to migrant youths’ vulnerability to deportation by preventing them from naturalizing earlier.¹¹³ If convicted of crimes in the United States, the double disqualification experienced by refugees was recreated, with even longtime residents who had gained lawful permanent residency being deported without recourse to a country where they were regarded with suspicion and as foreigners. Deeply stigmatized and with little public sympathy in either country, deportees have been unable to challenge these disqualifications. At the same time, a number of long-time residents who benefited from NACARA and other legal remedies have become eligible to naturalize. Yet, despite their many years living in the United States, old deportation orders or criminal convictions place naturalization out of reach for some, while for others, a deep suspicion of immigrants makes minor documentary discrepancies appear fraudulent while also magnifying the impact of what are perceived as lapses in character. The citizen-like character of informal membership can evaporate in the face of such obstacles, making membership unreal, a mere approximation.

Considering these three examples as a set brings together dual meanings of citizenship as a *legal status* and as an ethical mode of civic

112. See CONSTITUCIÓN DE LA REPÚBLICA DE EL SALVADOR [C.P.] [CONSTITUTION] art. 91 (1983) (“Los salvadoreños por nacimiento tienen derecho a gozar de la doble o múltiple nacionalidad.”) [“The Salvadorans, by birth, have the right of double or multiple nationality.”], for Salvadoran law regarding nationality.

113. See Coutin, *supra* note 24, at 591.

engagement.¹¹⁴ Immigration contexts tend to highlight the former, while studies of politics emphasize the latter. The examples considered here demonstrate that citizenship as a legal status alone is insufficient protection, given the alienation experienced by both Salvadoran émigrés and deportees in their homeland. Likewise, groups whose citizenship is questioned, for example on racial grounds, may be impacted by immigration measures, as has occurred through Arizona Senate Bill 1070,¹¹⁵ recent immigration measures passed in Alabama,¹¹⁶ and city ordinances in Hazelton, Pennsylvania.¹¹⁷

Though such measures ostensibly target undocumented immigrants, they also appear to authorize racial profiling that impacts citizens of Latino descent. Such deep suspicion of foreign-born individuals inserts an absolutism within U.S. immigration law: individuals with certain criminal convictions may be *permanently ineligible* to legalize.¹¹⁸ Moreover, even when informal membership in the United States makes their legal citizenship appear irrelevant, such individuals may discover that their formal legal membership in their country of origin can pull them back. Such formal membership in their country of origin may not, however, confer social recognition there. The double nature of disqualification only becomes apparent through a transnational perspective. Meanwhile, the unattainability of full membership leads some to live in the breach, outside of formal citizenship regimes indefinitely. Ironically, such absolutes may undermine formal membership regimes, as individuals pursue their lives regardless of

114. See generally BOSNIAK, *supra* note 4.

115. See S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010), available at <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>, for the bill's text. See generally Robert F. Castro, *Xenomorph!!: Indians, Latina/os, and the Alien Morphology of Arizona Senate Bill 1070*, 46 HARV. C.R.-C.L. L. REV. 1 (2011), for a discussion of Arizona Senate Bill 1070 and the ways that it furthers stereotypes of aliens.

116. Julia Preston, *In Alabama, A Harsh Bill for Residents Here Illegally*, N.Y. TIMES (June 3, 2011), <http://www.nytimes.com/2011/06/04/us/04immig.html> ("The Alabama bill includes a provision similar to one that stirred controversy in Arizona, authorizing state and local police officers to ask about the immigration status of anyone they stop based on a 'reasonable suspicion' the person is an illegal immigrant. . . . It bars illegal immigrants from enrolling in any public college after high school. It obliges public schools to determine the immigration status of all students. . . . The bill, known as H.B. 56, also makes it a crime to knowingly rent housing to an illegal immigrant. It bars businesses from taking tax deductions on wages paid to unauthorized immigrants.").

117. See Hazelton, Pa., Ordinance 2006-13 (Aug. 15, 2006) (imposing fines on landlords who rent to undocumented immigrants and denying business permits to employers who hire them.). See generally Juliet P. Stumpf, *States of Confusion: The Rise of State and Local Power over Immigration*, 86 N.C. L. REV. 1557 (2008).

118. See generally U.S. DEPT. OF JUSTICE, IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS: PADILLA V. KENTUCKY (2010), available at <http://txe.fd.org/PDF%20files/Padilla-Reference.pdf>.

such regimes' strictures. Though suspect, informal memberships may increasingly be the order of the day, even as law retains the power to impose its own fictions on these approximations.