

IMMIGRATION

Immigration and the Allure of Inclusion

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INTRODUCTION

The legal predicament of Victor Navorski is a classic tale of a man without a country and is unfortunately replete with metaphors for the plight of immigrants to this land. Navorski's saga begins when he is detained at the border of the United States, which in his case is at one of New York City's airports. He is legally unable to leave his port of entry and locale of detention because the government of his homeland, Krakozhia, was recently overthrown and the United States has not recognized the new regime. After surviving in a legal and literal state of limbo for several months, Navorski eventually musters up the courage to illegally cross the border by leaving the airport in order to enter the United States and fulfill his family's dream.

Victor Navorski's saga was not addressed in the media or courtrooms but in theaters and home videos, as he is a fictional character played by Tom Hanks in the film "*The Terminal*."² Navorski's character is based on the tragic real-life saga of Merhan Karimi Nasseri, who after being expelled from Iran without a passport has lived in France's Charles de Gaulle Airport since 1988.³ Nasseri has been unable to leave the French airport because his briefcase containing legal documents, including a refugee certificate permitting him to reside in England, were

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² "The Terminal," DreamWorks Pictures (2003).

³ See Mark Baker, *Lost in the Judicial Wilderness: The Stateless Corporation After Matimak Trading*, 19 NW. J. Int'l. L. & Bus. 130 (1998); Craig S. Smith, 16 Years on an Airport Bench, and 15 Minutes of Fame, N.Y. Times, Aug. 21, 2004, at A4.

stolen in a French train station.⁴ Because it is based on fact, Nasser's saga is obviously far more consequential; nonetheless, both stories in many ways trace the trials of legal and illegal immigrants throughout the Western world. These two stories reflect, in a microcosm, the real-life trials of millions of immigrants; the protagonists are faced with immigration regimes that are apparently filled with arbitrary distinctions, irrational motivations, and bureaucratic nightmares.

I. IMMIGRANT STORIES

Essentially, all immigrant stories concern labels and their consequences, including the fiction of the legal and illegal "alien."⁵ These labels in turn are created by immigration regimes that have the effect of establishing identities of both welcomed and unwelcome newcomers into a society. These fictions or labels occur within what can be described as the legal fiction of the nation-state. In many respects, all immigrant debates and accounts are tales of inclusion and membership within legal frameworks that decide which groups of people are deemed worthy of eventual formal membership within a political structure. Indeed, the label of "alien" situates persons as "outside of 'We the people' and therefore places them by definition as outsiders."⁶ Typically, under western immigration systems, those deemed worthy of membership are classified as legal aliens or immigrants, who in turn are allowed the right to convert their status to full participants within the society, known as naturalized citizens. The naturalized citizens are contrasted, in immigration parlance, with those that are deemed to have entered the nation-state illegally; in other words individuals who arrive in ways that are inconsistent with the means deemed appropriate by the nation-state are deemed to be illegal aliens. For all intents and purposes, illegal aliens, exist in the shadows of the society with virtually no political presence or rights. In fact, the label of illegal alien alone justifies the disregard of any pretense of rights that should be afforded to "legal" members of society. For instance, in explaining why Haitians in the early 1990s were repatriated to their homeland without any judicial or administrative process, in apparent

⁴ See Matthew Rose, *Waiting for Spielberg*, N.Y. TIMES, Sept. 21, 2003 at 82.

⁵ Sylvia R. Lazos Vargas, "Aliens" in our Midst Post-9/11: *Legislating Outsiderness Within the Borders*, 38 U.C. DAVIS L. REV. 1683 (2005).

⁶ *Id.* at 1685.

violation of international law, President George H. Bush declared that these individual were not refugees but “illegals.”⁷ All too often, unfortunately for those groups in need or desire of entry, the distinctions between the appropriate and inappropriate methods of entry do not appear to be based upon sound moral or legal grounds or justifications.

Both the Navorski and Nasser stories contain symbolisms that illustrate these ambiguities and arbitrary enforcement of immigration laws. For instance, in both situations the victims of the legal conundrums, through no fault of their own, were prevented from leaving their peculiar place of detention—an airport—and could not legally leave those confines in order to fulfill their wishes of entering their targeted countries.

Using what is termed here as the Navorski-Nasser phenomenon as a rhetorical tool, this essay briefly reviews aspects of the exclusionary history of domestic immigration law and juxtaposes the rhetoric of inclusion associated with immigration and this country’s history of racialized exclusionary immigration practices. After describing the apparent disconnect between notions of inclusiveness associated with the rational structure of U.S. immigration law and immigration policies in practice, this essay develops a fictional analogy using three imaginary countries to highlight the dramatic differences in the implementation of U.S. immigration law. Against this backdrop, the essay then discusses the articles of Maria Pabon Lopez, Jose Miguel Flores, and Arthur Read that are part of the immigration cluster of LatCrit IX. The Lopez article explores the aftermath of the *Plyler v. Doe*,⁸ decision and its affect on undocumented children. The Flores piece explores the effect of globalization on luring Latin American communities to the United States. The Read piece questions the propriety of the President’s proposed guest workers’ program.

II. THE FICTION OF INCLUSIVENESS UNDER DOMESTIC IMMIGRATION REGIMES

America is all too often described as a nation of immigrants. From the welcoming words at the feet of the statute of liberty inviting the poor, the tired, and huddled masses yearning to be free, this national creed or narrative suggest a welcoming and inclusive land.

⁷ *Id.*

⁸ 457 U.S. 202 (1982).

Notwithstanding the millions of immigrants that can bear witness to this national narrative, the history of mass migration to this land is also filled with examples of policies and practices that evince anything other than a welcoming narrative. Perhaps the most obvious disconnect between an inclusive national narrative and practice is evidenced by this country's treatment of racial minority immigrants. While the United States is among the most open nations in terms of acceptance of immigrants, with hundreds of thousands admitted every year, the history of United States immigration demonstrates that for people of color, and other disfavored groups, legal immigration to this land was all too often an elusive rather than an inclusive proposition. Professor Bill Ong Hing, in his book, *Defining American Through Immigration Policy*, traces the earliest manifestations of immigration limits.⁹ He notes that the fear of foreigners motivated early attempts at immigration control; including the 1798 Alien and Sedition laws which were aimed at silencing political opposition and French revolutionaries.¹⁰ Similarly, in his book *The 'Huddled Masses' Myth*, Dean Kevin Johnson traces what he terms as the darker and harsher aspects of this country's immigration story.¹¹ Dean Johnson methodically traces the little-known racialized history of exclusion in U.S. immigration laws.¹² This exclusionary history against racial minorities is believed to have begun in the 1800's with local, state, and federal exclusion and mistreatment of Chinese immigrants.¹³ These laws included: Congress' passage of the Chinese exclusion laws that effectively barred all Chinese immigration,¹⁴ and the Supreme Court's endorsement of Congress's virtually absolute power to exclude foreigners in *The Chinese Exclusion Case*.¹⁵ Other examples include: the 1907-1908 Gentleman's Agreement between the U.S. and Japan, which severely restricted Japanese immigration,¹⁶ The Immigration

⁹ BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* (Temple Univ. Press, 2004).

¹⁰ *Id.* at 18.

¹¹ KEVIN R. JOHNSON, *THE "HUDDLED MASSES" MYTH* (Temple Univ. Press 2004).

¹² *Id.* 42.

¹³ *Id.* at 17.

¹⁴ See GERALD L. NEWMAN, *STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS, AND FUNDAMENTAL LAW* 19-43 (1996); See also RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 79-130 (1989); CHARLES MCCAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST IN NINETEENTH-CENTURY AMERICA* (1994).

¹⁵ *Ping v. United States*, 130 U.S. 581 (1889).

¹⁶ ROGER DANIELS, *ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED*

Act of 1917 which expanded exclusion of immigration to the “Asiatic barred zone;”¹⁷ the naturalization law system that limited naturalization to “White” and after a civil war to African ancestry immigrants.¹⁸ Subsequent exclusionary acts include the 1924 National Quota System, which was designed to “ensure stability in the ethnic composition of the United States.”¹⁹ There are also, unfortunately, more recent manifestations of racial exclusion.²⁰ For instance, there is the Immigration Act of 1965, though often viewed as progressive and liberalizing, nonetheless imposed a 120,000 person ceiling on migration from the Western Hemisphere. This limitation was part of a compromise to the fear of a drastic increase in immigration from Latin America.²¹ The motivations behind the Reagan administration’s commencement of the interdiction and repatriation of Haitian nationals seeking admittance to land is also subject of considerable criticism.²² The George H. Bush, Bill Clinton, and George W. Bush administrations have all followed this policy of aggressive Coast Guard interdiction at sea and summary denials of asylum claims by Immigration and Naturalization Service officials. Professor Steve Legomsky examined this policy and concluded “[t]he public would never [have accepted] this if the boat people were Europeans.”²³ As one author described, “In the end, asylum seekers from Haiti, one of the few nations near the United States with a large black population, suffered some of the hardest treatment imaginable at the hands of the U.S. government.”²⁴

III. IMMIGRATION REGIMES AND THE CITIZENSHIP CONSTRUCT

Exclusionary raced-based acts against immigrants of color are not now championed by the government as the basis for its practices and should obviously never have been the hallmarks of any rational immigration regime. Immigration regimes should be based on rational economic, political, and humanitarian policies relating to both the desires of entrants to a land and the receiving country’s

STATES SINCE 1850 pp. 123-28 (1988).

¹⁷ Immigration Act of 1917, Ch. 29, § 3, 39 Stat. 874, 875-76 (1917).

¹⁸ IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996).

¹⁹ JOHNSON, *supra* note 11, at 22-23.

²⁰ Immigration Act of 1965, Public Law No. 89-236, 79 Stat. 921, § 21 (c).

²¹ JOHNSON, *supra* note 11, at 25.

²² *Id.* at 40

²³ James Harney, *Critics of U.S. Policy See Racist Overtones*, USA TODAY, Feb. 3, 1992, at 2A (quoting Legomsky).

²⁴ JOHNSON, *supra* note 11, at 42.

interest and ability to accept those entrants. Thus, immigration affects both bodies that move and the juridical status or label that is imposed upon them by virtue of whether the government of destination is accepting of those movements. In other words, immigration concerns both a physical phenomenon and legal construction through labels such as “alien” and “citizen,” which define who are the members of society and who are unwelcome. Immigration, as a legal construct, is thus one of the primary vehicles used to create a status that both creates identity and defines membership. At least in Western constructions, those who enjoy the preferred status of full social and political participants of society are recognized as the “citizens.”²⁵ Persons with citizenship status stand in sharp contrast with those with silenced, marginalized, and limited rights holders of a society, known as aliens. Immigration law is thus “illuminating resource for studying the place of domestic groups in the U.S. social hierarchy.”²⁶ Through this legal regime, “the government is afforded free reign to treat non-citizens . . . as it sees fit.”²⁷ As demonstrated above, this discretion has facilitated the disconnect between the treatment of minority immigrants to the rhetoric of inclusion associated with domestic immigration. Specifically, despite the fact that most Americans are descendants of immigrants and the national character of this welcoming and embracing land to immigrants is evidenced by Emma Lazarus’ timeless declaration in the *New Colossus* poem, racial minorities have largely not faced a welcoming land throughout the history of this land. Nonetheless, the vast majority of Americans abide by the popular belief that holds that to be an American citizen, a person did not have to be of any particular national, linguistic, religious, or ethnic background. All he or she had to do was commit him or herself to the political ideology centered on the abstract ideas of liberty, equality, and republicanism. Thus, the universal ideological character of American nationality is largely believed to be open to anyone who legally enters this land and has the will to become an American citizen.

The central discussion of the citizenship concept in the United States Constitution is addressed in the first section of the Fourteenth Amendment, which provides: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

²⁵ THOMAS ALEXANDER ALEINIKOFF, ET. AL., *IMMIGRATION AND CITIZENSHIP PROCESS AND POLICY* (West 4th ed. 1998).

²⁶ JOHNSON, *supra* note 11, at 40

²⁷ *Id.*

the United States, and the state wherein they reside.”²⁸ This fairly straightforward clause establishes two basic ways to achieve citizenship: (1) by birth, and (2) through naturalization. Citizenship by birth can occur by being born within the physical boundaries of this land, also known as *jus soli*, which in Latin means by soil. The second means to acquire citizenship by birth is *jus sanguinis*, which in Latin means by blood, by being born outside United States’ territory to one or both United States citizen parents.²⁹ The other means to attain official membership or citizenship is through naturalization—the process that an immigrant may undertake if he or she chooses to become a citizen. Naturalization creates citizenship status through the means and process set forth by Congressional enactment. As a result, though the applicant initiates the naturalization process, once begun, the applicant nonetheless does not control whether he or she will be deemed to have earned the right to be a citizen.

The ultimate goal for many immigrants is to become a permanent resident or citizen. The interest in becoming a citizen is understandable because citizenship is a broad concept that is supposed to signify the rights afforded and obligations imposed in the Constitution, but also is supposed to guarantee an “individual’s membership in a political community and the resulting relationship between allegiance and protection that binds the citizen and the state. It includes the sense of permanent inclusion in the political community in a non-subordinate condition.”³⁰ Practically speaking, citizenship also allows one to seek eligibility for the full compliment of economic rights and government largess provided to citizens. Thus, theoretically citizenship signifies an individual’s “full membership” in a community where the ideal of equal membership is theoretically to prevail.³¹ Scholars have argued that because equality and belonging are inseparably linked, to acknowledge citizenship is to confer “belonging” to the United States.³²

²⁸ U.S. CONST. amend. XIV, § 1.

²⁹ ALEINIKOFF, *supra* note 25, at 276.

³⁰ JOSE A. CABRANES, CITIZENSHIP AND THE AMERICAN EMPIRE 5 n.12 (1979).

³¹ " Kenneth Karst, *Citizenship, Race, and Marginality*, 30 WM. & MARY L. REV. 1 (1988).

³² Jonathan C. Drimmer, *The New Pheus of Uncle Sam: The History, Evolution and Application of Birthright Citizenship in the United States*, 9 GEO. IMMIGR. L.J. 667 (1995). The scholars can find considerable support in the founding fathers' interpretation of this construct prior to the drafting of the Constitution. For instance, the authors of the Federalist Papers addressed a form of national citizenship, in which citizens were to be endowed with equal rights. John Jay in Federalist No.

IV. CONTEMPORARY IMMIGRATION LAW

Despite being within a legal framework with a history that is less than pristine, the primary United States immigration statute, which establishes a largely rational paradigm for those seeking to legally enter and stay in this land, is the Immigration and Nationality Act (INA) of 1952.³³ Though this statute is a contemporary immigration statute that set forth this country's mandate concerning immigration, even this act contains vestiges of antiquated exclusionary regimes. Nonetheless, pursuant to its effort to create a rational and just system, under the INA there are several types of immigrants, including labor migrants,³⁴ professional migrants,³⁵ entrepreneurial migrants,³⁶ and refugees and asylees.³⁷ The INA also recognizes a system where otherwise deportable or inadmissible aliens may seek safe haven in this country if they are in fear of persecution by forces in their homeland.³⁸ Over

2 observed that "to all general purposes we have uniformly been one people—each individual citizen every where [sic] enjoying the same national rights, privileges and protection." THE FEDERALIST No. 2, at 10 (John Jay) (Jacob E. Cooke ed., 1961). Madison in Federalist No. 57 observed "who are to be the electors of the Representatives [in Congress.] Not the rich more than the poor; not the learned more than the ignorant; not the naughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States. No qualifications of wealth, of birth, of religious faith, or of civil profession are permitted to fetter the judgment or disappoint the inclination of the people." THE FEDERALIST No. 57, (James Madison) (Jacob E. Cooke ed., 1961). Scholars have also agreed that the concept of citizenship is associated with notions of equality. Professor Ackerman observed that "[in claiming citizenship, an individual - is first and foremost - asserting the existence of a social relationship between himself and others. More specifically, a citizen is (by definition) someone who can properly claim the right to be treated as a fellow member of the political community. Bruce A. Ackerman, *Social Justice in the Liberal State*, 74 (Yale University, 1980). Professor Fox, who recently examined the history of the term, observed that while "Madison and the other authors of The Federalist Papers may have had little to say about the substance of ... citizenship, they did believe that such a thing existed, that it defined a sphere of equality." James W. Fox, Jr., *Citizenship, Poverty, and Federalism, 1787-1882*, 60 U. PITT. L. REV. 421 (1999). James Kettner similarly noted "revolution created the Status of 'America citizen' and produced an expression of the general principles that ought to govern membership in a free society ... and it ought to confer equal rights." JAMES H. KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608-1807* (1978).

³³ See Pub. L. 82-414, 66 Stat. 163 (1952); U.S.C. 1101 et. seq.

³⁴ ALEINIKOFF, *supra* note 25, at 276.

³⁵ *Id.* at 277.

³⁶ *Id.* at 278.

³⁷ *Id.* at 280.

³⁸ Note, *Membership Has Its Privileges and Immunities: Congressional Power to Define and Enforce the Rights of National Citizenship*, 102 HARV. L. REV. 1925, 1932 (1989).

the years, after enactment of the INA, amendments to that statute were passed to affect the admissibility of several groups of immigrants and asylum seekers. These amendments facilitated the ability of certain groups to emigrate, permanently reside, and become citizens in this land. Many of the policies of the INA, despite effectively noting the beginning of the end of mid-century race-based race quotas to immigration, initiated other policies that continued to raise questions concerning the motivations of the act. For instance, the 1952 amendments included in the list of individuals to be excluded from immigration those who were “afflicted with psychotic personality.”³⁹ After the provision was struck down by the Ninth Circuit in *Fleuti v. Rosenberg*,⁴⁰ the Act was amended to exclude those afflicted with “sexual deviation.” Immigration scholars have concluded that these amendments were intended to exclude gays and lesbians.⁴¹ Another example of controversy associated with the contemporary regime is the 1965 amendments to the INA, which eliminated the discriminatory quota system of dating back to the 1920s, but initiated the use of discriminatory diversity visas. These diversity visas limited immigration from the western hemisphere to 120,000 persons. This change had its intended affect of limiting Latino/a immigration.⁴²

Given America’s repeated examples of its reluctance to accept racial minorities as legal immigrants, it is not difficult to appreciate why there may be some cynicism and differing impressions concerning the inclusive rhetoric of immigration. This in turn may leave many immigrants, who in recent times are perceived to be largely from Central and South America, with the impression they face entering a land that is not nearly as welcoming as its national narrative declares. The practices of interdiction at sea and aggressive border patrols make this view abundantly clear. The cynicism with respect to this country’s immigration rules is perhaps best highlighted by the film “The Terminal.” The utterly arbitrary reason for denying Navorski’s entry merely because his homeland changes governments appears analogous to the denial of or limits on immigration for certain groups merely because of where a person is from or whether we oppose the political structure of the immigrant’s

³⁹ 8 U.S.C. § 1182 (a) (4) (1952).

⁴⁰ 302 F.2d 652 (9th Cir. 1962). See also William B. Turner, *Lesbian/Gay Rights and Immigration Policy: Lobbying to End the Medical Model*, 7 J. Pol’y Hist. 208-25 (1995).

⁴¹ HING, *supra* note 9, at 82-91; JOHNSON, *supra* note 11, at 140-51.

⁴² JOHNSON, *supra* note 11, at 25.

homeland. There is an irony in that the fictional portrayal of Victor Navorski is probably an enormously effective and non-threatening means to address struggles for identity and inclusion faced by immigrant groups. Navorski's tale is also so engulfing because of its plethora of statements concerning this country's identity and acceptance of outsiders. For instance, shortly before he is stopped at the airport, Navorski witnesses scores of other foreigners arriving and departing the airport area, yet upon first being detained, he cannot understand why he is unable to even step a foot outside the airport. While in the film the basis for the other individual cases of immigration is not discernable, outside the explicitly fictional world of film, the immigration policies of the U.S. and most western nation-states all too often do not appear more coherent than something out of a fictional tale like *The Terminal*. The sheer absurdity of Navorski's exclusion is due to a regime change in his homeland, which leaves him literally "stuck at the border."

Similarly, in the far more troubling real life travesty of Merhan Nasser, the French government has prevented him from leaving an airport for over a decade because he was of being expelled from his homeland for protesting against a dictator and then had his legal documents stolen.⁴³ Unfortunately, Navorski and Nasser's troubles are not unlike the apparent arbitrariness associated with legal distinctions drawn to permit and prevent individuals seeking entrance into the United States. Not unlike the arbitrary practices in the film, contemporary domestic immigration policies, while framed as rational policies deemed to protect the economic and political integrity of the country's infrastructure, upon closer examination, raise questions as to whether the application of immigration laws are affected by illegitimate grounds such as the racial identity or privileged political status of the immigrant. Navorski's general interest in entering this country was not unlike the hundreds of other travelers depicted in the film. However, because of circumstances beyond his control, namely the *coup d'etat* that occurred in his homeland, he is deemed, as the film depicts, "unacceptable."⁴⁴ The film therefore ultimately

⁴³ See *supra* note 4.

⁴⁴ Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, a noncitizen denied admission at a port of entry into this country was considered an "excludable," the act replaced that label with the work "removal." A noncitizen denied admission at a port of entry into this country was considered an "excludable," the act replaced that

proves to be a provocative critique of how this government treats outsiders and foreigners.

In the actual events in which the film is based, the victim of arbitrary entry rules, Merhan Nasserri has been unable to leave a French airport for over a decade. If Nasserri was detained in a U.S. airport and had other, perhaps preferred, identity markers, such as originating from a communist country, instead of theocracy-based dictatorship, he probably would not be detained indefinitely at an airport. Nasserri, however, is left with no alternative but to live off of the assistance of his adoptive airport family. This problematic condition is exacerbated by the fact that over the years, Nasserri's physical and mental health has been in a rapid state of decline.⁴⁵ The arbitrariness faced by both Nasserri and Navorski, described here as the Nasserri-Navorski Phenomenon, can often be evidenced in how in practice this country often draws lines and deems otherwise similarly situated peoples ineligible for entry. This perceived arbitrariness is highlighted when racial constructions are implicated.

V. ENTERLAND, EXILIOLAND, AND NEVERENTERLAND: CITIZENSHIP AS A NONFICTION GENRE

A quick reference to this country's treatment of three similar and neighboring peoples illustrates the arbitrary distinctions that affect immigrant groups desirous of entering this land. In addition, when examining the treatment of the immigrants from these lands, questions arise whether the disparate treatment is at least in part due to racial constructions. One need not look much further than a few hundred miles to the south of the State of Florida to appreciate a Nasserri-Navorski phenomenon. In the tales of the three lands described below, the imagined quality of immigration and membership are highlighted. Despite similar locales and histories, but vastly differing constructions of race, the immigration and emigration positions of these three peoples are dramatically disparate. The first of these people are from the land that will be called "Enterland." As the name suggests, the people of this country can enter and leave freely to and from the United States. They are a people from the Caribbean who are not much different from the nationals of nearby islands. Though their native tongue is

label with the word "removal."

⁴⁵ See Matthew Rose, *Waiting for Spielberg*, N.Y. TIMES, Sept. 21, 2003 (Sept. 2), 2003 at 82.

Spanish, their culture, like those of the people of the surrounding countries, largely derives from African, indigenous, and peninsular roots. As a result of historical happenstance, this country and by extension its people are formally part of the United States.⁴⁶ These people never chose to become part of the United States; they just happen to live in a land that became the booty of war.⁴⁷ Though the people of this land are U.S. citizens they do not share the same rights of other Fourteenth Amendment U.S. citizens within the mainland U.S. or U.S. citizens living in another country, for that matter.

Though these people may exist in a subordinate citizenship status, it is that very status that has nevertheless provided them with a preferred migration status.⁴⁸ Specifically, despite the fact that nationals of this land are not equal citizens in that they do not have formal representation in the government that controls their lives,⁴⁹ their anomalous status empowers them with the right to freely enter, leave, and even reside in the U.S. mainland.⁵⁰ When one compares them to similarly situated island people of the Caribbean, one can readily take note of the fact that they are similar to many in this region that are deemed as a matter of law far less acceptable or worthy of residing in the U.S.⁵¹ Unlike most other Caribbean people, or nationals from just about any other country for that matter, if the people of Enterland wish to enter and stay in the United States, they can do so for any reason and without any restrictions.⁵² In fact, they may enter for cultural, political, or purely economic reasons. All they have to do is purchase or otherwise obtain a ticket and board an airplane bound for the United States. The primary reason for the status of this group is that their land and its people were acquired by the U.S. after the Spanish-American War.⁵³ As a result, the people of this island group have both a subordinate status under a legal regime of U.S. citizenship, but a preferred status under the U.S.

⁴⁶ Ediberto Roman, *The Alien-Citizen Paradox and other Consequences of U.S. Colonialism*, 26 FL. ST. U. L. REV. 1 (1998).

⁴⁷ EFREN RIVERA RAMOS, *THE LEGAL CONSTRUCTION OF IDENTITY* (American Psychological Association, Wash. D.C. 2001).

⁴⁸ Ediberto Roman, *Empire Forgotten: The United States Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997).

⁴⁹ *Id.*

⁵⁰ *See supra* note 29, at 3.

⁵¹ *Id.*

⁵² FRANCISCO A. SCARANO, *PUERTO RICO* (McGraw Hill 1993).

⁵³ *See supra* note 30, at 55; *supra* note 29, at 5; *supra* note 31, at 1121.

immigration regime vis-à-vis other aliens who do not enjoy mainland citizenship.

The people of the second group are from the country called "Exilioland." These people, like the people of Enterland, primarily speak Spanish and are made up of peoples from Africa, Spain, and indigenous descendants. In fact, in anthropological circles, the people of Enterland and Exilioland are widely believed to be originally from the same or similar Awarak Indian tribes. Though the people of Exilioland are not formal members of the United States, the people of this group are deemed to be a politically desirable group. In large measure this is because these people are inhabitants of a repressive dictatorial regime whose political philosophy is antithetical to the United States' interests in the region. Others, who are perhaps more sympathetic to that regime, would note that Exilioland is also the only country in the hemisphere which has steadfastly opposed the United States' hegemonic geopolitical interests in the region. In either case, the people of this land are also arguably more acceptable in large measure because of their value as ideological trophies: they live under a repressive government that follows a political system, namely Communism that is deemed repugnant to this land's democratic system of governance.⁵⁴ The people of this group have the ability to stay in this country if they merely touch dry land. As such, the people of this group hold a preferred immigrant or entrance status, although the people of this group often reject the notion that they are in fact immigrants, instead claiming an exile status. In fact, as a result of the 1965 amendments to the INA, Congress adopted a new preference designed to broaden overseas refugee programs.⁵⁵ Persons could qualify for this program by establishing that they had "fled" persecution in a "communist or communist-dominated country."⁵⁶ As a result of those amendments, under current immigration laws, the people of this group are presumed to be political asylum seekers-despite any attendant economic motives for emigration-and are virtually always

⁵⁴ Maryellen Fullerton, *Cuban Exceptionalism: Migration and Asylum in Spain and the United States*, 35 U. MIAMI INTER-AM. L. REV. 527 (2004); Berta Esperanza Hernandez-Truyol, *On Becoming the Other, Cubans, Castro, and Elian - A LatCritical Analysis*, 78 DENV. U. L. REV. 687 (2001); Francisco Valdes, *Diaspora and Deadlock, Miami and Havana: Coming to Terms with Dreams and Dogmas*, 55 FL. L. REV. 283 (2003).

⁵⁵ See Immigration and Naturalization Act Amendments, Pub. L. No. 89-236, 79 Stat. 911 (1965).

⁵⁶ *Id.*

allowed to stay in the U.S. and they are allowed to become U.S. residents faster than any other exile, asylum, or immigrant group.⁵⁷ In the immigration “wet-foot, dry-foot” legal distinction, basically created for this group of people, the federal government of this land created a special status for this group.⁵⁸ This policy was nevertheless more restrictive than previous policies aimed at people from such lands such as Exilioland. Unlike other immigrant or exile groups seeking asylum, the people of this land are allowed to stay in this land irrespective of whether they can prove a well-founded fear of persecution.⁵⁹ Like the people of Enterland, some of the people of Exilioland may seek to migrate to the mainland U.S. for economic or other reasons.⁶⁰ Nevertheless, the people of Exilioland are essentially legally deemed to always arrive for political asylum reasons, irrespective of whether their undisclosed reasons were primarily based upon economic necessity or other concerns.⁶¹ Though some have suggested that the rationale for the unique presumed-asylum status of these people is because this group is extraordinarily politically active and has a powerful voice in the State of Florida,⁶² which has often been a pivotal state in national elections, the rationale behind or irrationality of such law applicable to this group is beyond the reach of this essay. What is relevant to this project is that despite the fact the first two Caribbean people have similar histories, originate from similar peoples, experience similar histories as colonies of Spain, gained their independence from Spain in the same armed conflict, and arguably were controlled by the U.S., at least for a certain period, their immigration status is dramatically different.⁶³

Members of one group, because they are part of the United States’ colonial possessions and are ostensibly U.S. citizens, may enter and leave the U.S. Members of the other group, however, because of

⁵⁷ *Id.*

⁵⁸ *Id.* at 530.

⁵⁹ See Fullerton, *supra* note 54, at 527.

⁶⁰ See Valdes, *supra* note 54, at 285.

⁶¹ See Valdes, *supra* note 54, at 530.

⁶² See Hernandez-Truyol, *supra* note 54, at 535.

⁶³ Richard Barnes, *Refugee Law at Sea*, 53 INT’L & COMP. L.Q. 47 (Jan. 2004); Alberto J. Perez, *Wet Foot, Dry Foot, No Foot: The Recurring Controversy Between Cubans, Haitians, and the United States Immigration Policy*, 28 NOVA L. REV. 437 (2004); Note, *The Cuban Adjustment Act of 1986: Mirando Por Los Ojos de Don Quijote O Sancho Panza?*, 114 HARV. L. REV. 902 (2001), Susan M. Akram & Kevin R. Johnson, “Migration Regulation Goes Local: The Role of States in U.S. Immigration Policy”: Race, Civil Rights, and Immigration After September 11, 2001: The Targeting of Arabs and Muslims, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002).

this government's stance against communism and perhaps the proximity of their homeland to the United States, are able to obtain an expedited asylum status only upon touching dry land of the continental U.S. However, the ability of the people of Exilioland to immigrate to the U.S. is significantly more challenging than that of the people of Enterland. The people of Enterland, because of century-old legal fictions that declared that Enterland is paradoxically both foreign and domestic, are deemed worthy of entry without having to struggle to literally touch United States soil. The people of Exilioland must defy their homeland's repressive laws, illegally emigrate, and touch dry land. Recent events have exemplified the absurdity and arbitrariness of such requirements. In an actual fact pattern that is probably more peculiar than most law professors could envision when drafting a final exam, on January 4, 2006, a group of 15 individuals from Exilioland were able to touch "dry-land" by landing on a section of the old Seven Mile Bridge off the coast of the Florida Keys.⁶⁴ Despite evidently achieving the threshold marker for entry—touching dry land—federal immigration officials ruled that because the bridge was not currently used by pedestrians and is not actually "touching one of the Keys, the bridge was not in fact dry land. In yet another vivid example of the peculiar immigration rules of this land, the immigrants were deemed never touched dry land and were then repatriated to their homelands, undoubtedly facing reprisals from that government. Recently, the federal government agreed to exam the propriety of the "wet-foot, dry-foot" policy in part due to a hunger strike initiated by a local political and community leader of the Exilioland people residing in the United States.

The people of Exilioland, because of their closed society, unlike those in Enterland, cannot simply take an airline flight to the United States. Instead, they must risk their lives, often in makeshift boats, in shark-infested high seas in order to touch U.S. land. Moreover, the people of Exilioland, unlike the people of Enterland, are not able to readily and easily return to their homeland.

The people of the third island group come from a land called "Neverenterland." These people like the people of Enterland and Exilioland, reside on an island in the Caribbean, were once colonial subjects, and derive from Indigenous, African,

⁶⁴ *Cubans Sent Home After Arrival at Bridge Piling*, CNN.COM, Jan. 9, 2006, <http://www.cnn.com/2006/US/01/09/cubans.dryland.ap>

and European cultures, yet are deemed largely unacceptable or ineligible for any immigration status that will easily permit them entrance.⁶⁵ In addition, in racial construction terminology they also happen to be considered black. It is the racial construction of these people that is arguably the greatest difference in the perception of these otherwise similarly situated and constructed people. The people of Neverenterland are not part of the U.S. colonial landscape and do not reside within a political framework that is threatening to the United States.⁶⁶ Despite the fact that they reside only a few hundred miles away from Exilioland and Enterland in arguably the same Archipelago of islands known as the *Antilles*,⁶⁷ these people are neither free to enter the United States or are deemed worthy of easily applying for political asylum.⁶⁸ When they arrive on U.S. land, even if they touch dry land, they are deemed to be in this country solely for economic reasons and under this country's current immigration regime are presumptively ineligible to stay in the country.⁶⁹ Despite the fact that the people of Enterland essentially seek to come to this land for economic reasons, they are allowed to do so without ever facing any perilous journeys at sea. Yet the people of Neverenterland routinely risk their lives in dangerously overcrowded makeshift transport boats, and are rarely allowed to remain within the U.S.⁷⁰ Unlike the people of Exilioland, even if the people of Neverenterland touch dry land, they typically cannot stay in this country. They are deemed to be "ineligible" under domestic immigration law or "unacceptable" as it is described in the film *The Terminal*. In many respects Victor Navorski, though in the film he is apparently from a European Country, his disparate treatment makes him resemble someone from Neverenterland rather than Krakozhia. The people of Neverenterland are constructed as unworthy entrants who arrive solely for economic reasons, and despite Emma Lazarus' noble national narrative and an economic system that hails economic upward mobility, under current domestic immigration policies, an economic motivation

⁶⁵ See Deborah M. Weissman, *The Human Rights Dilemma: Rethinking The Humanitarian Project*, 35 COLUM. HUM. RTS. L. REV. 259 (2004); Perez, *supra* note 63, at 437-40.

⁶⁶ See Weissman, *supra* note 65, at 260.

⁶⁷ See SCARANO, *supra* note 52, at 3.

⁶⁸ Kevin R. Johnson, *Open borders?*, 51 UCLA L. REV. 193 (2003).

⁶⁹ Angela P. Harris, *Equality Trouble: Sameness and Difference in Twentieth-Century Race Law*, 88 CAL. L. REV. 1923 (2000).

⁷⁰ *Id.*

for entry is an insufficient reason for with exception to those from Enterland, to be permitted to stay in this country.⁷¹

As one may by now appreciate, the people of Enterland, Exilioland, and Neverenterland are actually from Puerto Rico, Cuba, and Haiti, respectively. As addressed above, these people live in then same island region, have similar histories, often seek to arrive in this land for a better life, but are treated differently.⁷² While the author of this essay appreciates that this country cannot easily allow any and all people to migrate, what is sought here is to highlight, not unlike the portrayal in *The Terminal*, the questionable and troubling lines drawn and the fictions created to exclude some and include others. This is not to say that the people of Cuba or Puerto Rico are unworthy of entering and staying within the United States, but the fact is that many of the interests of the people of Puerto Rico, and arguably for many from Cuba, in arriving probably have more to do with quality of life issues, such as economics than with political statements, yet both groups are able to stay when they arrive in this land. Although the people of Haiti live in a desperate economic state and political repression not too dissimilar to the plight of the people of Cuba, They are not allowed to stay in this land, even upon touching dry land. In fact, referring back for a moment to the recent debate revolving around the 15 Cuban migrants who recently had the misfortune of landing on an old bridge, although many opponents of the wet-foot, dry foot policy have sound reason to challenge that policy, cynics of immigration priorities may argue with some force that but for the Cuban community's influence in local politics in the pivotal State of Florida in national elections, the federal government would not have agreed to revisit its odd wet-foot, dry-foot distinction for Cuban migrants. Indeed it is likely that 100 hunger strikers from Haiti would not have caused such an immediate response by the federal government. Ironically, Haitian immigrants to this land are neither politically influential in national politics,⁷³ and paradoxically did not have the good "fortune" to have been colonized by the United States, and as a result are unwelcome to stay in this land.⁷⁴

⁷¹ *Id.* at 1930.

⁷² *Id.*

⁷³ Many minority groups could look to the Cuban Exile community's success in becoming one of the few minority groups, if in fact it is fair to characterize them as one, to gain significant political and economic influence on a local and, to some extent, a national level.

⁷⁴ Perez, *supra* note 63, at 440.

VI. THEORETICAL CHALLENGES TO THE CITIZENSHIP NARRATIVE

The Nasserri-Navorski phenomenon is also used here to highlight the arbitrariness of immigration rules and regulations touched upon by the articles in the immigration cluster of the IX Annual LatCrit Conference. While the articles themselves are difficult to unify other than by noting, in the broadest sense, their common themes, they do in one form or another note the peculiar consequences of immigration priorities. The three articles in the immigration cluster highlight the vulnerable and anomalous status of alien groups within this land. The articles of Jose Miguel Flores, Maria Pabon Lopez, and Arthur Read provide diverse writings touching upon often arbitrary rules of exclusion and inclusion.⁷⁵ The articles question the legal creations used to define which groups can stay and actively participate in all affairs in this land. Stemming from a panel touching upon immigration, educational access, and social justice. The articles address a host of provocative issues related to the contemporary immigration debate. In fact, the ironies and injustices addressed by the works fit within the metaphors raised by the Nasserri-Navorski Phenomenon.

In the first article, Lopez explores the issue of the right to education as applied to undocumented Latina and Latino children.⁷⁶ She argues that the so-called “immigration crisis” in the public’s imagination has led to state and federal governmental restrictions on the ability of Latina and Latino groups to effectively participate in all aspects of society.⁷⁷ In part because of the fear of foreigners heightened by the post-September 11, 2001 world, the efforts at restrictions have included limits on the ability of non-citizens to obtain driver’s licenses,⁷⁸ access to health care,⁷⁹ access to public assistance⁸⁰ and access to education.⁸¹ Lopez characterizes the children of

⁷⁵ See e.g., Maria Pabon Lopez, *Reflections Regarding the Education of Latino/a Undocumented Children: Plyler v. Doe and Beyond*, 35 SETON HALL L. REV. 1367 (2005).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Maria Pabon Lopez, *More than a License to Drive: State Restrictions on the Use of Driver’s Licenses by Non-Citizens*, 29 S. ILL. U. L. J. 91 (2004); Kevin Johnson, *Driver’s Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213 (2004).

⁷⁹ See H.R. 3722, 108th Cong. (2004) (the Undocumented Alien Emergency Medical Assistance Act) (not passed).

⁸⁰ See The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, 1105 Stat 2260.

⁸¹ See, e.g., *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137, 149 (2002); *Plyler*,

undocumented parents as hostages in the immigration crises, particularly in their access to effective education. She argues this plight exists despite the United States Supreme Court's decision in *Plyler v. Doe*,⁸² which held that undocumented children are entitled to state funded education. Based on the *Plyler* decision, Lopez observes that undocumented children's right to education should have been secure without any efforts to limit that right. Despite the pronouncement of *Plyler*, Lopez argues that these vulnerable students continue to face severe challenges in educational access and achievement. For instance, she notes that state efforts in California,⁸³ Arizona,⁸⁴ and Massachusetts,⁸⁵ have attempted to dismantle bilingual education. In essence, Lopez's central thesis is that in an era antagonistic to immigrants, Latina and Latino children, particularly those of undocumented workers, are the most at risk.

In the year that so many institutions in the legal academy have celebrated the fiftieth anniversary of the groundbreaking decision of *Brown v. Board of Education*,⁸⁶ Lopez questions the impact of *Plyler* and laments the failure of courts and scholars to use that decision to assist undocumented children.⁸⁷ The paper argues that *Plyler* must be read as an integral part of *Brown*'s legacy and notes that education, though not currently formalized as a fundamental right by U.S. constitutional law, is an essential aspect of membership in this society.

The Lopez article is of some moment in that it advocates for greater emphasis on a decision that speaks not only to the importance of education, but also to the reality that children of undocumented workers are part of this society. The piece effectively highlights a perhaps underappreciated decision in terms of its importance to the right of education and the rights of undocumented children.⁸⁸ Somewhat surprisingly, the article does not, however, use the decisions in *Plyler*, *Brown*, and the recent

457 U.S. at 220.

⁸² 457 U.S. 202 (1982).

⁸³ Kevin R. Johnson & George Martinez, *Discrimination by Proxy: the Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227 (2000).

⁸⁴ See William Ryan, Note, *The Unz Initiatives and the Abolition of Bilingual Education*, 43 B.C. L. REV. 487 (2002).

⁸⁵ See Charu A. Chandrasekhar, Comment, *The Bay State Buries Bilingualism: Advocacy Lessons From Bilingual Education's Recent Defeat in Massachusetts*, 24 CHICANO-LATINO L. REV. 43 (2003).

⁸⁶ 347 U.S. 483 (1954).

⁸⁷ *Plyler*, 457 U.S. at 220.

⁸⁸ *Id.*

Supreme Court affirmative action decisions in *Gratz v. Bollinger*,⁸⁹ and *Grutter v. Bollinger*,⁹⁰ which are also addressed in the article, to advocate for the recognition of education as a fundamental right. Though the *San Antonio Independent School District v. Rodriguez*,⁹¹ decision, which refused to hold that education is a fundamental right, was re-affirmed in *Plyler*, advocates of the rights of undocumented children nonetheless should question *San Antonio*'s logic and constitutional basis. From a political perspective, without the recognition of education as fundamental right, undocumented children will continue to be at risk and subject to political whim. The primary basis for the Supreme Court's refusal in *San Antonio* to recognize the fundamental nature of education stems from the fact that education is not an enumerated right in the Constitution.⁹² What the *San Antonio* Court failed to acknowledge was that there are numerous fundamental rights that are not enumerated in the Constitution. Those rights include the right to marry,⁹³ the right to travel,⁹⁴ the right to raise children,⁹⁵ and the right to procreate.⁹⁶ As Lopez illustrates, under the current educational as well as immigration regime, the most vulnerable in our society have continuously been subject to attack. She illustrates that as recently as the year 1996; two federal proposals would have effectively overruled *Plyler*. In two proposed amendments to the Illegal Immigration reform and Immigrant Responsibility Act ("IIRIRA"),⁹⁷ Representative Elton Gallegly failed but almost further limited the rights of the undocumented.⁹⁸ Lopez further points out that at the state level, California's anti-immigrant Proposition 187, if it had not been struck down, contained a provision that was designed to overrule *Plyler*.⁹⁹ Without the recognition of education as a fundamental right it is unlikely that the status of undocumented children will change much for

⁸⁹ 539 U.S. 244 (2003).

⁹⁰ 539 U.S. 306 (2003).

⁹¹ 411 U.S. 1, 37 (1973).

⁹² *Id.*

⁹³ *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978); *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

⁹⁴ *Shapiro v. Thompson*, 394 U.S. 618 (1969).

⁹⁵ *Stanley v. Illinois*, 405 U.S. 645 (1972); *Moore v. City of E. Cleve.*, 431 U.S. 494, 499 (1977).

⁹⁶ *Zablocki*, 434 U.S. at 385.

⁹⁷ Pub. L. No-104-208, 110 Stat. 3000-546, 3009-575 to -577 (1996).

⁹⁸ Lopez, *supra* note 75.

⁹⁹ *Id.*

the better.¹⁰⁰ Thus, Lopez effectively highlights that in the current intolerant and arbitrary immigration system, the most vulnerable of innocents are often subject to legal attack merely because this society is antagonistic to the parents of those innocents. The Lopez article demonstrates that in the context of education, undocumented children fit within the Nasser-Navorski Phenomenon. Not unlike Navorski, who is given the right to stay at the airport border until his legal status is resolved but is repeatedly stifled in his efforts to feed himself, undocumented children were theoretically granted the right to public education in *Plyler*, but have often had that right challenged and in practice limited. While Navorski was afforded a right, lodging without food, that right was illusory. Though *Plyler* similarly afforded the children of the undocumented public education, repeated efforts at curbing immigrant rights, Lopez argues, have devalued the value of *Plyler*.

In the second article of this cluster, Jose Miguel Flores addresses issues touching upon what he describes as “globalization from below,” or in other words globalization’s effect of luring Latina and Latino communities to American cities. Interestingly enough, many observations made by Flores concerning Asian and Latina migration into cities do not squarely fit within the Navorski-Nasser phenomenon termed here, but the themes raised in the Flores piece do track statements made in the film *The Terminal*. For instance, because Navorski’s interim home was in the airport, those who came to his aid were people of color who found economic opportunity in the airport. Flores notes that in many immigrant communities, other immigrant groups created institutions of support. For instance, Flores argues that as a result of globalization, new forms of participation and representation are developing in immigrant communities. This observation is perhaps the most interesting portion of the article in that the author uses vivid examples of the creation of transnational economic networks, including entities such as the Tepeyac Association of New York, which provides cultural support to Mexican immigrant communities. A similar notion of self-empowerment could be observed in the

¹⁰⁰ See Michael A. Olivas, *Plyler v. Doe, Toll v. Moreno, and Postsecondary Admissions: Undocumented Adults and “Enduring Disability,”* 15 J. L. & EDUC. 19 (1986); Michael A. Olivas, *Storytelling Out of School: Undocumented College Residency, Race, and Reaction,* 22 HASTINGS CONST. L.Q. 1019 (1995).

Terminal when individuals representing minority or outsider groups in the airport provided Navorski with food and social support.

In what could be described as a sociologically focused project, without a significant emphasis on immigration or the other domestic laws, Flores observes that as a result of globalization, Latinas and Latinos “are lured to America’s cities by the economic forces.” While this thesis is interesting, how this recent migration differs from migration throughout the last century is not explored by the Flores article. Nonetheless, the piece makes some worthwhile observations. By examining the Latina and Latino migration in New York’s Jackson Heights and Los Angeles’ Boyle Heights, Flores attempts to highlight the *new mestizaje* or the mixing of cultural forces occurring in American cities. Another question is raised by this part of the thesis, namely, whether this mixing of cultures is a byproduct of globalization, trends of migration, or other forces. Nonetheless, Flores in a cogent fashion traces the changing face of American cities as well as the development of networks of immigrant-centered programs.

The third article in the cluster, written by Arthur Read, is perhaps the most provocative and ambitious in that it squarely confronts a policy that is often characterized as benefiting new immigrant workers. The article questions the propriety of temporary or guest workers programs, which he argues all too often disproportionately affect immigrant and minority communities. Specifically, the article challenges President Bush’s efforts at characterizing the expansion of such programs as immigration reform.

In his advocacy for expanded temporary worker’s programs, the President argued that under his proposal, the program will match the employers with temporary workers, when American employers cannot fill job openings with Americans.¹⁰¹ In return, according to the President, the workers will obtain a provisional legal status as well as employment.¹⁰² Once again, a related subject was depicted in the rhetorical tool used here to organize these articles—*The Terminal*. Not unlike the only real choice undocumented workers

¹⁰¹ See Office of the Press Secretary, *President Bush Proposes New Temporary Worker Program*, WHITEHOUSE.GOV, <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html> (last visited Jan. 7, 2006).

¹⁰² See Office of the Press Secretary, *Fact Sheet: Fair and Secure Immigration Reform*, <http://www.whitehouse.gov/news/releases/2004/01/20040107-1.html> (last visited Jan. 7, 2006).

often have for employment, Navorski was left with no other alternative to make a livelihood other than to take an illegal or “off the books” construction job. In part what makes the Read article so insightful is that it challenges an effort proposed by the President which was promoted as a vehicle of immigration reform aimed at providing legal employment opportunities for otherwise undocumented workers.¹⁰³ Read characterizes the President’s proposals as “the big lies.”¹⁰⁴ In somewhat summary fashion, the article points out that the primary reason that employers interested in such programs cannot find American workers is because they are unwilling to pay living wages.¹⁰⁵ The article compares the President’s proposal with the 1942 “Bracero” program, which the article suggests led to abuses. In essence, the article points out that the proposed expanded temporary workers program ultimately harms all workers. In what is perhaps the only suggestion a reader may have for this piece is that in a relatively brief fashion the article raises so many interesting points and sets forth so many interesting arguments, that the project begs for a more expansive examination of the subject. In addition, the article makes only passing reference to the economic costs of its proposals. Nevertheless, this is an impressive work that is so important and thoughtful that it will likely lead to further works on the subject. For instance, in a persuasive summation of his argument, Read observes:

When the rights of undocumented and migrant workers are not protected, the rights of all workers are diminished. Unscrupulous employers seek out undocumented immigrants or temporary workers because they believe that there are no consequences for violating their rights. These employers gain a competitive advantage over employers who abide by the law. This creates a perverse incentive for employers to hire undocumented workers, over citizens or authorized workers.¹⁰⁶

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Testimony of Richard M. Estrada, Commissioner, U.S. Commission on Immigration Reform Before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration and Claims, Dec. 7, 1995, <http://www.utexas.edu/lbj/uscir/120795.html> (last visited Jan. 7, 2006).

¹⁰⁶ See Michael J. Mayerle, *Proposed Guest Worker Statutes: An Unsatisfactory Answer to a Difficult, If Not Impossible, Question*, 6 J. SMALL & EMERGING BUS. L. 559, 564-66 (Fall 2002); Michael Holley, *Disadvantaged By Design: How the Law Inhibits Agricultural Guest Workers From Enforcing Their Rights*, 18 HOFSTRA LAB. & EMP. L.J. 575, 583-85 (Spring 2001).

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In conclusion, both Nasser and his fictional alter ego, Victor Navorski, exist in many ways in a status that similar to the odd immigration status of the Caribbean people of Haiti. Both Nasser and Navorski were placed in a strange place where they should have been deemed eligible immigrants and visitors, but were nonetheless are deemed unworthy of entry due to forces outside their control. This essay similarly compares the national narrative of “the land of immigrants” and the welcoming invitations to the “hungry and huddled masses yearning to breathe freely” with a history of exclusionary policies that were immorally aimed at excluding disfavored groups. Politics and prejudice, and not cogent economic, political, or humanitarian considerations, have for too long been the basis for a considerable portion of our immigration regimes. Each of the articles in the LatCrit cluster examines provocative immigration issues and likewise questions and explores what appears to be a peculiar and often times arbitrary legal regimes. These articles also arguably go beyond their explicit statements concerning immigration; they also speak to issues touching upon the legal construction of membership and otherness. As these articles point out, opportunity, participation, membership, and immigration are inseparably linked. All too often the rhetoric of membership has conflicted with reality when one bothers to explore the history of people of color seeking membership. The articles in this cluster aptly highlight contemporary manifestations of this tension. By examining the failure of formal legal approaches to provide meaningful opportunities, and humane reform, the articles critique the real life struggles of outsiders within a legal framework that often does not live up to its purported basis or rationality.