

Immigrant Oppression and Social Justice

Amy Reed-Sandoval

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Reading Committee
Michael Blake, Chair
Sara Goering
José Antonio Lucero
William Talbott
Shelley Wilcox

Department Authorized to Grant Degree:
Department of Philosophy

University of Washington

Abstract

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Amy Reed-Sandoval

Chair of the Supervisory Committee
Michael Blake, Professor
Department of Philosophy

My dissertation provides a partial response to the question of what is owed by states to undocumented migrants in their territory. According to one prominent philosophical position, long-term undocumented migrants should be allowed to remain because they have become *de facto* social members of the society in question. I contend that this view, while important, neglects a different category of undocumented migrant: those who are oppressed while living in the new society. I argue that oppressed undocumented migrants are owed, as a matter of justice, a right to remain in the state where the oppression took place. To do this, I employ a bottom up philosophical approach in order to develop a descriptive and normative account of undocumented migrant oppression (i.e., what it is, and why it is unjust). I call those who are oppressed as undocumented migrants the “socially undocumented”. I show why, in light of the normative account of undocumented migrant oppression, a right to remain for the socially undocumented is the only just solution to this perplexing social problem.

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INTRODUCTION

When I was seven years old I moved with my family from Allentown, Pennsylvania to Santa Ana, California. I was enrolled in a public elementary school with a very significant representation of Mexican and Mexican-American children. I recall swiftly going into culture shock—though, of course, I was unaware of any such concept at the time—as I was served new, mouth-burning foods in the school cafeteria, enjoyed warm sunshine in the middle of winter and regularly heard my classmates speak to each other in Spanish. I felt far away from my largely Pennsylvania-German roots.

As a shy new kid I felt very fortunate when Camila, one of my classmates, made an effort to become my friend. Camila told me that she and her family had come to the United States from Mexico about a year ago. Her parents were farmworkers, and I was under the impression that they worked long days and struggled to make ends meet. Camila was enrolled in the intensive ESL program at our school and was steadily improving her English. I had never been close to someone from another country before, but I was soon delighted to call her my best friend. Our teacher joked that we were inseparable.

Later that year I became very concerned when Camila missed school for a full week. My parents did not know her parents, and I had no way to check on her. When she finally returned she seemed different. Gone were her uplifting smiles and there were obvious tear-stains on her face. She confided in me that her father had been deported. A few days later, Camila stopped coming to school and I never saw her or heard from her again. That was the first time that I felt confronted by the philosophical problem of borders.

I was devastated to lose my best friend, and to this day I have not stopped wondering what happened to Camila. By the time I returned to Pennsylvania with my family a few years later I had developed a deep concern for the moral and political dimensions of immigration. I eventually pursued immigrant rights activism, and later began to work on the philosophy of immigration. I wanted to find a way to articulate what I perceived, and continue to perceive, as the injustice that Camila and her family suffered in the United States.

But I struggled to find a conceptual framework in which to do so as I began to explore the philosophy of immigration. I simply could not find a space for Camila's story in the literature. Most political philosophers have ignored immigration altogether, or they have focused exclusively on the question of whether national borders are inherently unjust. Though many of these philosophical contributions are extremely important, they do not help me to address what I consider to be the unjust deportation of Camila's father.

And, of course, Camila's perplexing story is not idiosyncratic. The number of immigrants in the world is now greater than the population in the world's fifth largest country.¹ According to the United Nations, there are approximately 185-192 million legal and unauthorized immigrants living throughout the world², and this number is growing by approximately six million people per year.³ In the 1990s the population of undocumented migrants more than doubled in the United States; recent estimates report that 29 percent of all foreign-born residents in the USA lack legal authorization to live within US territory.⁴ According to Immigration and Customs

¹ Ann Aurelia López, *The Farmworkers Journey* (Berkeley: The University of California Press, 2007), page 3

² United Nations, *World Migrations 2005: Costs and Benefits of International Migration*. International Organization for Migration, Geneva, www.iom.int/en/news/pr822_en.shtml Of course, the actual number is much higher, given the difficulties of acquiring data about the number of undocumented migrants living in territories without legal authorization.

³ International Labor Conference, 2004. *Towards a Fair Deal for Migrant Workers in the Global Economy*. 92d Session, Report 6.

⁴ López, page 4

Enforcement (ICE) of the Department of Homeland Security, in 2013 ICE conducted 368,644 immigration removals.⁵

It is no secret that many, if not most, undocumented migrants throughout the world have left their countries of origin in hopes of escaping severe poverty and/or persecution. Since the initiation of the North American Free Trade Agreement (NAFTA) in 1994, which led to the influx of cheap US corn in Mexico and put vast numbers of Mexican farmers out of business, millions of Mexicans have left their homes and land in order to search for work and livelihood in the United States. Citing a report from Public Citizen's Global Trade Watch 2001, Ann Aurelia López reports that "[o]ne year after NAFTA's initiation, the Mexican agricultural ministry estimated that one million Mexican farmers had already left their land and predicted that one million more would leave the land each year for NAFTA's first fifteen years."⁶ This is unsurprising; by 2001, real corn prices in Mexico had fallen by more than 70 percent, which meant that "corn farmers and their families had to live on less than one third of the income they earned in 1995".⁷

Upon their arrival within their new territory of residence, undocumented migrants in search of work are immediately vulnerable to exploitation at the hands of their new employers. As Peter Benson argues in "El Campo: Faciality and Structural Violence in Farm Labor Camps," many undocumented Latino/a farmworkers in the US, "[e]xcluded from rights and protections afforded other worker, [endure] endemic poverty, poor health outcomes, and squalid living conditions."⁸ He adds that "[t]his structural violence is sustained by government neglect and

⁵ US Immigration and Customs Enforcement (ICE). "FY 2013 ICE Immigration Removals." Accessed May 25, 2014. <https://www.ice.gov/removal-statistics/>

⁶ Lopez, page 7

⁷ Lynn Stephen, *Transborder Lives: Indigenous Oaxacans in Mexico, California and Oregon* (Durham: Duke University Press), 145

⁸ Peter Benson, "El Campo, Faciality and Structural Violence in Farm Labor Camps," in *Ethnographic Essays in Cultural Anthropology: A Problem-Based Approach* (Wadsworth: Cengage Learning, 2001), page 621

illegal hiring practices and liberalized production regimes that benefit multinational corporations ... putting migrants in harm's way.”⁹

These facts and observations are rendered all the more urgent, I believe, given that the United States immigration system has long been proclaimed “broken” by voices on both sides of the immigration debate.¹⁰ Those who are opposed to granting amnesty to undocumented migrants generally argue that sovereign states are entitled to police their borders and rigorously control their membership. On this relatively common view, undocumented migrants are not supposed to be here and they should be deported if and when they are apprehended. Arguing from this very standpoint, many Republicans and Tea Party members have criticized Barack Obama for being lax on deportations while failing to police efficiently the US-Mexico border.¹¹

On the other hand, many immigrant rights activists have criticized President Obama for having thus far removed nearly two million undocumented migrants under his administration.¹² In sharp contrast to his Republican critics, some immigrant rights activists call Obama “deporter-in-chief”.¹³ Many propose that his administration enact a comprehensive immigration reform that would grant amnesty to long-term undocumented migrants.

Along similar lines to the aforementioned immigrant rights activists, political philosophers such as Joseph Carens argue that after a six year period, undocumented migrants

⁹ *ibid*

¹⁰ The White House: President Barack Obama. “Creating an Immigration System for the 21st Century.” Accessed May 25, 2014 <http://www.whitehouse.gov/issues/immigration>. The same language is used by those deemed more politically conservative, such as central Tea Party organizer Sal Russo. See Stephen Dinan, “Tea Party leader says time is now to fix immigration,” *The Washington Times*, access May 25, 2014 at <http://www.washingtontimes.com/news/2014/may/14/tea-party-leader-says-now-it-time-for-republicans-/?page=all>

¹¹ See, for instance, Ginger Thompson and Sarah Cohen, “More Deportations Follow Minor Crimes, Records Show,” *The New York Times*, access May 25, 2014 at http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?_r=0

¹² *ibid*

¹³ See AJ Vicens, “The Obama Administration’s 2 Million Deportations, Explained,” *Mother Jones*, accessed May 25, 2014 at <http://www.motherjones.com/politics/2014/04/obama-administration-record-deportations>

become *de facto* members of the “new society” in which they live. Carens argues that this *de facto* membership warrants granting to the undocumented a *de jure* right to remain.¹⁴

It struck me that Camila’s story—or, more specifically, my intuitions surrounding it—were getting lost in this debate. I had a hunch that even though her family had migrated to the US without legal authorization, it was still unjust to deport people who had been so hard-working, and who were paid so little for their labor. However, the most prominent political and philosophical proposal for amnesty for undocumented migrants—that of granting a right to remain to those who are long-term—is largely inapplicable to Camila and her family. Having only been in the US for one short year, they did not qualify as “long term” migrants.

In this dissertation I wish to address this lacuna. I hope to demonstrate that oppressed undocumented migrants are owed a right to remain in the state where their oppression has taken place. They should be granted amnesty even if, like Camila and her family, they do not qualify as long-term migrants. I argue that this is not a matter of charity but a matter of social justice. That said, I do not dismiss the view that long-term migrants deserve to remain on the basis of their *de facto* social membership. Rather, I will shift our focus to this neglected category of undocumented migrants.

This is, then, a dissertation about undocumented migrant oppression. However, it is titled “*Immigrant Oppression and Social Justice*” because, as I shall argue, undocumented migrant oppression is such that it affects not necessarily those who are *legally* undocumented, but those who are socially undocumented. I argue that the socially undocumented share a common set of unjust constraints that are imposed because they are perceived to be undocumented on the basis of how they look. As we shall see, one can be a “legal” US citizen or permanent resident but still

¹⁴ See Joseph Carens, *Immigrants and the Right to Stay* (Cambridge: The MIT Press, 2010), and Joseph Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013).

meet these conditions. At the same time, one can be legally undocumented but fail to meet these conditions. I argue that undocumented migrant oppression does not always neatly track “legal status”.

As I shall explain, to be perceived to be undocumented is often to be perceived to not belong.¹⁵ It is often to be perceived to be deportable and easily “cast aside”. To be treated as an inferior on this basis often entails being exploited, harassed and denied basic workplace protections due to a widespread belief (on the part of others) that one will not complain about one’s treatment for fear of deportation. This, I argue, is the nature of undocumented migrant oppression.

Allow me to make a few remarks about the assumptions and scope and of this project. First, over the course of this dissertation I assume as provisionally fixed both the existence of territorial borders, as well as the right of states to exclude non-members from entering their territory. It follows from this assumption that undocumented migrants do, in fact, break just laws in crossing borders without legal authorization.

While I recognize that this assumption is contentious, I make it because I want my work to be politically useful within the scope of our actual social world. I intend to demonstrate that even if we assume that undocumented migrants have broken just laws—even if we grant to states a *prima facie* or *presumptive* right to police their borders and control their membership—it still holds that oppressed undocumented migrants are treated unjustly and owed a right to remain.

Second, while I consider my argument to be global in its scope, my policy recommendations and geared primarily toward wealthy liberal democracies. This is due to a number of factors. First, such states have espoused a commitment to liberal principles of justice

¹⁵ But not always. An immigrant rights activist may perceive someone as undocumented—but feel that they do, in fact, have a right to remain.

and they should be held accountable for that commitment. Second, such states have benefited economically from a legacy of colonialism—often from precisely those countries from which the majority of the world’s undocumented migrants originate.¹⁶ Third, wealthy liberal democratic states generally possess the requisite resources with which to enable undocumented migrants to become full-fledged citizens. I believe that these concerns render particularly strong the obligations of wealthy liberal states towards undocumented migrants residing in their territory.

I should also note that given that I am geographically positioned in the United States, where immigration from Latin America is a prominent and controversial political issue, I will use Latin American migratory experiences to the United States as my philosophical starting point in what I call a “bottom up” analysis. I will shape my arguments around, and my recommendations toward, the US sociopolitical context. As I do so, I strive to write with a deep awareness of my positionality. I am not Latin American or Latina and I should not be taken to speak for Latin Americans and Latino/as.

At the same time, I believe that my framework of analysis is relevant for thinking about undocumented migration outside of the United States. For instance, I believe it could be used to assess (in part) what is owed to, say, North African and South American migrants in Spain, and to many Eastern European migrants in the United Kingdom. It may also be applicable to immigrant groups in the US who are not Latino/a. I shall not pursue these pressing issues in the context of this dissertation, however.

¹⁶ For as Phillip Cole has argued, “[t]oo often liberal political philosophy is written against the background of a fictional history in which colonial exploitation never occurred. But once we bring this historical element into our considerations, it has a profound impact on our ethical reasoning concerning migration. It is therefore inadequate to insert an international dimension into a ‘traditional’ and therefore ahistorical liberal framework; we have to move forward to a postcolonial perspective, a perspective that recognizes that colonial power and exploitation have fundamentally shaped the world.” See Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Phillip Cole, 200), page 14.

Finally, allow me briefly to stake out the conception of justice I employ in this paper. Justice, as I understand it, entails respect for the moral equality of all people across the globe. Just states are duty-bound to uphold universal moral equality on a global scale.¹⁷ In accordance with relational egalitarianism I assume that respect for moral equality requires dismantling oppressive structural social relations that undermine the social standing of members of oppressed social groups.¹⁸

This dissertation is organized as follows. In chapter 1 I will engage in some metaphilosophy in order to describe my approach to the philosophy of immigration in this dissertation. I employ a “bottom up” methodology which I position at the intersection of political and Latin American and Latino/a philosophy. I do this because, as I shall argue, exclusively “top down” immigration philosophy is inadequate (or, at least, it has been thus far) for addressing the phenomenon of undocumented migrant oppression. My aim for this chapter is to show why some of the most prominent pieces of immigration philosophy cannot adequately address Camila’s story and those that resemble it.

In chapter 2 I turn to communitarian approaches to immigration philosophy. I explore, in particular, the respective approaches of Michael Walzer and David Miller. I argue that these approaches are *somewhat* bottom up. As we shall see, Walzer’s argument that guest worker programs are impermissibly exploitative creates something of a precedent for thinking about undocumented migrant oppression.

At the same time, however, communitarian immigration philosophy grants states vast discretion over whom they will allow to become members. I shall argue that in this respect,

¹⁷ Michael Blake, “Immigration,” in *A Companion to Applied Ethics*, edited by R.G. Frey and Christopher Heath Wellman (Malden: Blackwell Publishing 2003), page 225

¹⁸ This philosophical framework is explained in greater detail in Elizabeth Anderson, “What is the Point of Equality” in *Ethics* 109 (1999): 283-337 and Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press), 1990

communitarian immigration philosophy is top down and not entirely useful for thinking about undocumented migrant oppression. As we shall see, it takes as its philosophical starting point the interests and perspectives of dominant social groups (in this case, those who are already members).

In chapter 3 I turn to the most prominent bottom up approach to immigration philosophy that has been crafted. Joseph Carens has argued that long-term undocumented migrants deserve a right to remain in the state to which they have migrated without authorization due to the *de facto* social membership they have developed over time. My goals for my assessment of Carens's work are two-fold. First, I wish to highlight a clear, distinctive example of bottom up reasoning. This will illustrate the approach that I shall adopt in chapters 4 and 5. Second, I wish to highlight some limitations of Carens's argument as a theory of what is owed to undocumented migrants. I will argue that Carens's approach neglects the important phenomenon of immigration oppression—though his bottom up methodology has provided us with tools for approaching this phenomenon.

In chapters 4 and 5 I engage in bottom up theorizing to provide a theory of undocumented migrant oppression. In chapter 4 I argue, I provide a descriptive and normative account of what it means to be *socially undocumented*. We shall see that undocumented migrant oppression is unjust. I argue that this holds true even if we grant that undocumented migrants have broken just laws in migrating to the “new society” without legal authorization.

Finally, in chapter 5 I argue that the socially undocumented cannot permissibly be deported. This is because, as I shall argue, such deportations impermissibly reinforce (unjust) undocumented migrant oppression.

To make my argument, I employ Debra Satz's methodology in her important article "Markets in Women's Sexual Labor"¹⁹. In that paper Satz argues that prostitution is unjust if and only if it reinforces the status inequality of the social group of women. Using her framework, I explore important features of the deportation process as it is conducted in the United States. As we shall see, deportations are part of a cycle of injustice in which the vulnerability and exploitability of the socially undocumented is systematically reinforced.

There are, of course, a range of philosophical problems in immigration that this dissertation shall not address. I will not be tackling the important issues of immigrant admissions, debates about whether migration of highly educated people from the Global South produces a morally problematic "brain drain," or the perplexing question of who should count as a refugee. More narrowly, I hope to provide a convincing philosophical account of undocumented migrant oppression that will enable us both to unveil the semi-hidden injustice of undocumented migrant oppression, and ultimately develop just solutions to this exigent problem.

¹⁹ Debra Satz, "Markets in Women's Sexual Labor," in *Ethics* 106 (1995)

CHAPTER 1
 METAPHILOSOPHICAL FOUNDATIONS
 BOTTOM UP REASONING AND THE PHILOSOPHY OF IMMIGRATION

*“1,950 mile-long open wound
 dividing a pueblo, a culture,
 running down the length of my body
 staking fence rods in my flesh,
 splits me splits me
 me raja me raja
 This is my home
 this thin edge of
 barbwire.” – Gloria Anzaldúa¹*

“People must realize that they cannot make up for failing to regulate their numbers or to care for their land by conquest in war, or by migrating into another people’s territory without their consent.” – John Rawls²

I. Introduction

I intend to approach the philosophical dimensions of undocumented migration from the bottom up. This is because, as I shall argue here and in chapter 2, a largely top down approach to immigration philosophy makes it very to account for undocumented migrant oppression. Indeed, Camila’s story seems to fade away in the immigration philosophies I explore here. I argue that some of the most influential works in immigration philosophy are largely inapplicable to undocumented migrant oppression.

¹ Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza* (San Francisco: Aunt Lute Books, 1987), page 25

² John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), page 8

In this chapter I aim to accomplish four tasks. First, I briefly outline what I mean by top down versus bottom up philosophy. Second, I show why and how this methodology tends to neglect undocumented migration (and other crucial dimensions of immigration). Third, I further flesh out my bottom up approach to immigration philosophy, which I position at the intersection of Anglo-American political and Latin American philosophy. And, lastly, I show how this approach will enable us to assess the neglected phenomenon of immigrant oppression.

II. Top-down Immigration Philosophy

A great deal of immigration philosophy has been top down as opposed to bottom up. Broadly, this means that it begins in the realm of abstract, universalized conceptions of justice, and that these principles are then applied to particular cases of immigration practice and policy. More specifically, we can distinguish between three different ways that a given philosophical approach can be top down or bottom up: *logically*, *socially*, and in relation to the *ideal/non-ideal theory distinction*.

A *logically* bottom up approach will begin with particular moral judgments about particular cases and then develop overarching moral principles on that basis. A logically top down approach will do the precise opposite, starting with a universalized conception of justice and then applying it to particular cases.

A *socially* bottom up approach often comes from a place of solidarity with vulnerable and marginalized social groups. The nuances of this approach will become clearer when we explore bottom up reasoning in the context of Latin American philosophy. On the other hand, a socially top down approach will often privilege the perspectives of more powerful and dominant social groups.

Finally, bottom up approaches are often conducted in the realm of *non-ideal theory*, while top down approaches are often conducted in the realm of *ideal theory*. Importantly, however, non-ideal theory and bottom up philosophy are not exactly the same thing. I shall explore this in greater detail in a later section.

With this in mind, let us assess two very prominent examples of top down immigration philosophy: the immigration philosophy of John Rawls, and Joseph Carens's argument for open borders. I shall not refute these arguments in this chapter. Instead, my intention is to demonstrate how these approaches neglect very important philosophical dimensions of immigration—including immigrant oppression—as a result of being overtly top down.

Prior to beginning, I should note that these thinkers do not *always* engage in top down philosophy in all of their work. As we shall see in chapter 3, Joseph Carens will eventually make a dramatic move into non-ideal theory in his immigration philosophy (though this work is sharply disconnected—on a philosophical level—from his top down approach that we shall explore in this chapter). Thus, I am not offering commentary on the full corpus of these thinkers' respective works. In addition, as we shall see, it is possible for a view to be logically top down but socially bottom up. And, finally, as we shall explore, Rawlsian political philosophy does indeed contain resources for engaging in bottom up theorizing. Unfortunately, however, he does not employ this methodology in his stated immigration philosophy.

John Rawls and the Erasure of Immigration

John Rawls wrote very little about immigration, having applied his theory of justice strictly to clearly defined states with a predetermined membership.³ His position is rendered clear in *Political Liberalism*, where he argued that

A democratic society, like any political society, is to be viewed as a complete and closed social system. It is complete in that it is self-sufficient and has a place for the main purposes of human life. It is also closed ... in that entry into it is only by birth and exit from it is only by death... Thus we are not seen as joining society at the age of reason, as we might join an association, but as being born into a society where we will lead a complete life.⁴

Within this vision of democratic society as a social system into which one is born, and which one only exits through death, it is hard to generate a conception of justice for immigrants (documented or undocumented). Indeed, it is difficult to reflect philosophically on immigration altogether.

When Rawls did write about immigration he defended the rights of states to control their borders. He did so by citing the vital role that sovereign states play in upholding egalitarian justice on a domestic level.

Defending this position, Rawls argued in *The Law of Peoples* that “[i]t does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified,”⁵ adding that “[i]n the absence of a world-state, there must be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some extent on historical circumstances.”⁶ In other words, despite the morally troublesome ways that essentially

³ See John Rawls (1999) and John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971). For further discussion see also Michal Blake, “Immigration,” in *A Companion to Applied Ethics*, edited by R.G. Frey and Christopher Heath Wellman (Malden, Blackwell Publishing, 2003)

⁴ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), page 41

⁵ Rawls (1999), 39

⁶ *ibid*

all of the world's national borders came into existence—histories that make our current borders seem morally arbitrary *at best*—Rawls believed that they can be justified from the perspective of international justice.

The Law of Peoples, according to Rawls, is a “realistic utopia”. That is, it is a state of affairs in which *all* liberal or “decent” (but not necessarily liberal) peoples are willing to govern their relations with one another in accordance with Rawls’s vision of international justice. Liberal peoples (or states) are internally just constitutional democracies. “Decent” peoples (or states) fall short of this but nevertheless allow their citizens to play important roles in public sphere decision-making. Together, the liberal and decent peoples of the world form the Society of liberal and decent Peoples who comprise Rawls’s realistic utopia.

The Society of Peoples is very different from the world that we inhabit today. Rawls argued that “[i]n such a social world peace and justice would be achieved between liberal and decent peoples both at home and abroad,” and that “[t]he idea of this society is realistically utopian in that it depicts an achievable social world that combines political right and justice for all liberal and decent peoples in the Society of Peoples.”⁷ One might object that Rawls’s realistic utopia is in fact *unrealistic* in the scope of the world in which we live—a world that, as Rawls admits, is filled with “unjust war and oppression, religious persecution and the denial of liberty and conscience, starvation and poverty, not to mention genocide and mass murder.”⁸ Nevertheless, Rawls argued that a Society of Peoples is possible if we manage to achieve just and decent institutions on a global scale. Such institutions will, he claimed, inspire citizens of the world to be just and good, thereby making a Society of Peoples possible and sustainable over time.

⁷ Rawls (1999), page 6

⁸ Rawls (1999), pp. 6-7

How is this relevant to immigration? Importantly, Rawls claimed that immigration would cease to occur in this realistic utopia. Thus, he suggests that immigration is not an important topic for political philosophers to consider. I quote him at length here. Note that this is the most sustained discussion of immigration that occurs in all of Rawls's work:

There are numerous causes of immigration. I mention several and suggest that they would disappear in the Society of liberal and decent Peoples. One is the persecution of religious and ethnic minorities, the denial of their human rights. Another is political oppression of various forms, as when the members of the peasant classes are conscripted and hired out by monarchs or mercenaries in their dynastic wars for power and territory. Often people are simply fleeing from starvation, as in the Irish famine of the 1840s. Yet famines are often themselves in large part caused by political failures and the absence of decent government. The last cause I mention is population pressure in the home, and among its complex of causes is the inequality and subjection of women. Once that inequality and subjection are overcome, and women are granted equal political participation with men and assured education, these problems can be resolved. Thus, religious freedom and liberty of conscience, political freedom and constitutional liberties, and equal justice for women are fundamental aspects of sound social policy for a realistic utopia. The problem of immigration is not, then, simply set aside, but is eliminated as a serious problem in a realistic utopia.⁹

Rawls believed that once persecution, oppression and socioeconomic inequalities are eliminated in the realistic utopia, people will cease to migrate to foreign lands. Rawls therefore relegated immigration to the realm of non-ideal theory, or “the questions arising from the highly nonideal conditions of our world with its great injustices and widespread social evils.”¹⁰ Unfortunately, Rawls does not explore the question of immigration his section on non-ideal theory in *The Law of Peoples*.

Nevertheless, Rawls believed that ideal theory could be used as a source of guidance for the non-ideal conditions of our world. He took non-ideal theory to represent where we are now, which is far from a realistically utopian Society of liberal and decent Peoples, and ideal theory to represent where we ought to end up. Thus, we should use ideal theory as our guide for navigating

⁹ Rawls (1999), page 9

¹⁰ Rawls (1999), page 89

our non-ideal world. Indeed, Rawls explained that “the idea of a well-ordered society should also provide some guidance in thinking about non-ideal theory, and so about difficult cases of how to deal with existing injustices.”¹¹

However, Peter Higgins argues convincingly that Rawls’s ideal theory is not merely inadequate for providing guidance about immigration philosophy in our current world, but also “positively counterproductive”.¹² Higgins claims that in response to Rawls’s realistic utopia, in which no one has significant reasons to migrate, it may seem that states can unobjectionably adopt either of the following two immigration policies. First, they may open the borders completely, assuming that hardly anyone will migrate. Second, they may close the borders (severely) for the same reason.

Higgins claims that the adoption of either of these policies would be deeply problematic in our actual social world. Many people across the globe *do* desperately wish to migrate in order to escape poverty and/or persecution. Thus, the second policy has the potential to be deeply problematic. In addition, Higgins points out that a great deal of migration can actually *exacerbate* existing inequalities in impoverished nations if it leads to a “brain drain”. Thus, the first policy is potentially problematic as well. In sum, we cannot use Rawls’s claims about immigration in his ideal theory to generate morally acceptable immigration policies in our actual, non-ideal world.

Finally, Higgins questions Rawls’s empirical assumptions about the reasons for which people often migrate. People do not migrate *solely* to escape poverty and persecution. Rather, he explains, immigration often occurs in response to people wishing to be closer to family and friends, or to ecological crises that are increasingly displacing people, or as a result of free trade

¹¹ Rawls (1999), page 13

¹² Peter Higgins, *Immigration Justice* (Edinburgh: Edinburgh University Press, 2013), page 15

agreements inspiring massive movements of human labor. Thus, Higgins concludes that “since the primary determinants of contemporary migrant flows are unlikely to disappear even under ‘reasonably favorable conditions’, it is likely that international migration will persist at a rate worthy of moral attention even in a realistically utopian moral order.”¹³

Rawls’s argument, as discussed here, is a paradigmatic example of a *logically* top down approach to the philosophy of immigration conducted in the realm of *ideal theory*. He crafted a vision of a realistic utopia that is vastly different from the social world that we currently inhabit. Then, he used this vision to assess the particular moral and political problem of immigration (albeit briefly). Finally, Rawls used this approach to take immigration off the table almost entirely for the purpose of philosophical discussion. He did suggest that the non-ideal problem of immigration can be guided by his ideal theory. However, we saw that his ideal theory would in fact generate faulty and counterproductive immigration policy.

I certainly recognize the merit in Rawls’s approach. I believe that some top-down philosophy is indeed necessary for addressing important social issues, including immigration. We cannot simply look to where we are now, which is a deeply morally flawed state of affairs, in order to determine where we ought to be. Developing conceptions of justice and rightful action will often require taking a step back from our existing social norms and conventions in order to assess them from a critical distance. Instead, what I object to is the almost *exclusive* employment of top-down methodology in a great deal immigration philosophy given the ethical concerns it obliterates and even distorts.

I should emphasize that there is, in fact, space in Rawlsian methodology for a bottom up approach to immigration philosophy. Throughout his work (and, in particular, in *A Theory of Justice* and *Justice as Fairness: A Restatement*) Rawls employs the idea of a “reflective

¹³ Higgins, 17

equilibrium”.¹⁴ In a reflective equilibrium we strive to bring our particular moral judgments into harmony (or equilibrium) with our endorsed universal principles of justice.

Rawls contends that if we find that a particular moral problem challenges one of our universal moral principles we must carefully reflect upon this. If appropriate, we should revise our universal moral principles *themselves* in response to the particular moral challenge we have faced.

At the same time, we can use our universal moral principles to guide us in our particular moral challenges. Indeed, our universal principles can tell us if our intuitions about a given moral challenge are misguided. As we can see, Rawlsian methodology contains resources for engaging in both top down *and* bottom up philosophy. In the context of immigration philosophy, Rawls could feasibly regard Camila’s story as a challenge to his claims about the justice of borders. My argument is strictly that Rawlsian immigration philosophy has been conducted in a way that is overtly top down, and that this has generated a philosophical precedent that makes it difficult to philosophize about immigration oppression.

With this in mind, let us explore how Rawls’s vision of immigration (*as it stands*, not as it could be) neglects crucial moral dimensions of Camila’s story. Recall that Camila’s father, a hardworking and underpaid undocumented farmworker from Mexico, was deported from the United States.

A Rawlsian reading of Camila’s story—based solely upon Rawls’s stated immigration philosophy—would be quite simple. Camila’s father crossed a legitimate border and thus broke a legitimate law. However, the following questions remain unanswered. First, does it follow from this that the *deportation* of Camila’s father was, in fact, just? Second, if Camilla’s father

¹⁴ For further discussion see Rawls (1971) and John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001).

migrated from a society that did *not* conform to Rawls's vision of a Society of Peoples, was he necessarily wrong in crossing the US-Mexico border without authorization? Third, were Camilla and her family mistreated while in the United States (even if it is granted that they crossed legitimate borders without legal authorization)? Fourth, if so, what should be done about it? Once again, it is not my claim that a Rawlsian political philosopher cannot answer these questions. But in order to do so she will need to reject Rawls' stated immigration philosophy and do some bottom up theorizing.

Indeed, as Charles Mills explains, "what distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual ... Ideal theory either tacitly represents the actual as a simple deviation from the ideal, not worth theorizing in its own right, or claims that starting from the ideal is the best way of realizing it."¹⁵ Along these very lines, I contend that Camila's story is *not* merely a deviation from the ideal. Rather, it is worthy of philosophizing about in its own right.

Joseph Carens on Open Borders

Rawlsian immigration philosophy is *logically* top down and developed in the context of *ideal theory*. It is not, however, *socially* top down, given Rawls's overarching commitment to developing a theory of justice that responds to the needs and interests of the worst off.

Similarly, top-down immigration philosophy has also been employed in what are often considered "radical" arguments *against* the rights of states to unilaterally control their borders. In fact, the most prominent debate in immigration philosophy has been both "radical" and top-down in nature: the "open borders debate" over whether justice demands the erosion of state borders.

¹⁵ Charles Mills, "Ideal Theory as Ideology" in *Hypatia*, vol. 20, no. 3 (2005): 168

This debate demonstrates, once again, that *logically* top down philosophy need not be *socially* top down.

The most famous argument for open borders comes from Joseph Carens. Carens employs Rawls's framework in *A Theory of Justice* to argue *against* Rawls's own claim in *The Law of Peoples* that national borders are justified.

In his important paper "Aliens and Citizens: The Case for Open Borders,"¹⁶ Carens argues that prominent frameworks in political philosophy—in particular, utilitarianism, Nozickian libertarianism, and Rawlsian liberalism—all support the erosion of state borders.

Utilitarianism, which, as Carens explains, demands that we "maximize utility",¹⁷ may very well demand open borders. On this view, every human (and perhaps even some non-human animals) gets equal concern and representation in the utility-maximizing calculus. Thus, when we are considering whether State X ought to admit more would-be migrants, we need to consider the "utility" of State X's citizens and the "utility" of would-be migrants *equally*.

Carens acknowledges that if allowing massive amounts of migrants to enter State X would yield a net-decrease of overall utility (say, for economic reasons) then utilitarianism would require State X to maintain closed borders. However, Carens points out that given the significance of the interests of the global poor in migrating to a wealthy country that would offer them economic opportunities—and given that their utility would thus be increased so sharply by the opportunity to migrate—immigration restrictions will probably be shown to be unjustified even if we take into consideration the interests of the citizens of State X.

¹⁶ Joseph Carens, "Aliens and Citizens: The Case for Open Borders," in *The Review of Politics* vol. 49, no. 2 (1987): pp. 251-273.

¹⁷ There are, of course, different consequentialist views on what ought to be maximized in a consequentialist or utilitarian calculus. I follow Carens's own depiction of utilitarianism here.

Carens also argues that Nozick's libertarianism would call for the loosening of immigration restrictions. Nozick was, of course, a fervent supporter of the rights of individuals to engage in voluntary transactions with other individuals: "they possess this right as individuals, not as citizens. The state may not interfere with such exchanges as long as they do not violate someone else's rights."¹⁸

Thus, State X may not interfere with the rights of its citizens to contract laborers from other countries. In doing so, State X would violate its citizens' individual rights. Because of this, the state lacks the right to control immigration; migrants should be able to come and go as they please, seeking work as they will.

Carens acknowledges that non-citizens would still be barred from entering the private property of State X citizens. Also, existing socioeconomic inequalities would probably render them unable to move to "affluent suburbs". However, Carens points out that these restrictions also hold for the citizens of State X. In sum, Carens submits that from a Nozickian libertarian perspective "the control that a state can legitimately exercise over its land is limited to the enforcement of the rights of individual owners...Prohibiting people from entering a territory because they did not happen to be born there is no part of any state's legitimate mandate."¹⁹

The most nuanced of Carens's open borders defenses occurs when he argues for world-wide freedom of movement from a Rawlsian perspective. He employs, and also expands upon, Rawls's argument in *A Theory of Justice* to render it global in scope. Carens argues that we would choose an "open society" with freedom of movement from behind the Veil of Ignorance: a

¹⁸ Carens, 253

¹⁹ Carens, 254

hypothetical situation in which we are to search for principles of justice without any knowledge of how we are positioned in society in terms of class, race, gender, ability, etc.²⁰

As mentioned previously, Rawls confines the scope of his argument to the enclosed nation-state. On Rawls's view, those who get behind the Veil of Ignorance are, at the very least, aware that they live in a democratic society (and presumably in the Global North). However, Carens argues that it is antithetical to Rawls's project that the scope of his theory of justice be confined this way. He states that "citizenship in Western liberal democracies is the modern equivalent of feudal birthright privilege—an inherited status that greatly enhances one's life chances. Like feudal birthright privileges, restrictive citizenship is hard to justify when one thinks about it closely."²¹ Thus, though Rawls himself opted to allow for state borders and confine his theory of justice to the nation-state, Carens argues that we should apply the Veil of Ignorance globally. We should disallow those who go behind the Veil from knowing where they will be geographically positioned upon emerging.

Carens argues that we would indeed choose the right to migrate from behind the Veil of Ignorance. If you knew that you could be born anywhere in the world—including within a relatively impoverished, non-democratic society—you would choose that the right to migrate freely. This is, I think, ideal theory at its best.

Things become a bit more complicated when Carens's ventures into non-ideal theory, however. In non-ideal theory—in which there is unjust war and unjust poverty, as well as environmental degradation—there may be a number of reasons to restrict freedom of movement.

For instance, Carens argues that if massive amounts of immigration to liberal democracies would undermine liberal values, this may be a reason to restrict immigration.

²⁰ See Rawls (1971) for further discussion.

²¹ Carens, 252

Second, immigration could be restricted to prevent terroristic threats to public safety. And, lastly, if it can be shown that complete freedom of movement would actually harm the worst-off (say, through producing a brain drain) then freedom of movement can be restricted as well. Despite these possibilities that emerge in the realm of non-ideal theory, Carens is optimistic that Rawlsian, Nozickian and utilitarian arguments would yield borders that are far more porous if not entirely open.

Carens's argument is admirably complex. Not only does he use prominent top down theories to generate a truly radical argument for the erosion (and even elimination) of borders, he also strives to take into account empirical realities about our actual social world by working within non-ideal theory. However, for our present purposes, two things should be noted about Carens's view. First, Carens's non-ideal argument does not constitute bottom up reasoning. Second, as such, it cannot account for a range of philosophical dimensions of immigration, like undocumented migration and the deportation of Camila's father.

Why doesn't Carens's non-ideal theory count as bottom up reasoning? While Carens acknowledges that the erosion of state borders that he argues for using ideal theory may be undermined in non-ideal theory, he does not philosophize *on the basis of* the empirical, "on-the-ground" issues that he considers. In other words, while Carens recognizes that issues such as "overwhelming demand," threats to liberal values, and possible harm to the worst off may *limit* the freedom of movement he advocates, he does not go so far as to explore what *new* principles and immigration philosophies might be inspired by these very concerns were he to adopt them as his philosophical starting point in a genuine bottom up analysis.

Once again, in bottom up reasoning, the non-ideal features of our world are not to be regarded as mere exceptions to the rule or deviations from the ideal. Instead, they are to be

adopted as the *starting point* for a philosophical analysis that aims to generate universal principles and philosophical frameworks that are inspired by, and genuinely responsive to, the world in which we live.

In this sense, non-ideal theory and bottom up reasoning are not the same. Carens himself seems to acknowledge this in his work on undocumented migration. As we shall see in chapter 3, Carens's argument about documented migration is sharply and deliberately disconnected from his top down open borders argument. Rather than philosophizing on the basis of his argument for open borders, Carens philosophizes on the basis of the lived experiences of undocumented migrants themselves.

Why can't Carens's view account for the justice or injustice of the deportation of Camila's father? In the open borders world of Carens's top down philosophy, Camila's father would not have been deported. Indeed, he and his family would have been legally permitted to migrate to the United States and work here.

However, as Carens acknowledges, we do not live in such a world; we do not inhabit Rawls's realistic utopia. Given that the "on-the-ground" considerations that Carens explores are only considered inasmuch as they possibly put some limits on open borders, we are given no conceptual resources with which to consider whether the deportation of Camila's father was just or unjust in our current social world. As Shelley Wilcox argues, "the 'open borders' position on immigration is an attractive cosmopolitan ideal, and the freedom of movement argument might be plausible at the level of ideal theory."²² She adds that "this argument fails to provide normative guidance concerning immigration in the world as it is today."²³ In sum, I submit that since Carens did not philosophize on the basis of the non-ideal—since he did not engage in

²² Shelley Wilcox, "Immigrant Admissions and Global Relations of Harm," in *Journal of Social Philosophy*, vol. 38 no. 2 (2007) page 274

²³ *ibid*

bottom up reasoning in the famous essay—his argument for open borders is largely inapplicable to Camila’s story.

Prior to completing this section, allow me to note that while I am pointing out a limitation in Carens’s methodology, I do not in fact intend this to be a criticism of his paper. His essay is a historic contribution to the philosophy of immigration, as it compellingly calls into question dominant assumptions about the morality of borders.

III. Bottom Up Immigration Philosophy

We have seen that top down immigration philosophy (or, at least, top down immigration philosophy as it has been conducted to date) neglects philosophical dimensions of undocumented migrant oppression. To begin with, Rawls nearly erased immigration from the philosophical landscape. In addition, even the *non-ideal* components of top down immigration philosophy are generally wedded to ideal theory in a way that is unresponsive to the lived experiences of undocumented migrants. And, as we shall see in the forthcoming chapters, these lived experiences are often oppressive.

Because of this, I submit that our search for justice in undocumented migration cannot be overtly top down in nature. Instead, it ought to be *logically* and *socially* bottom up in a way that responds to the realities of our non-ideal social world. Furthermore, it need not take ideal theory as a starting point. I believe that only then will undocumented migrant oppression—and Camila’s story—gain legitimacy as a philosophical problem.

In this final section I will flesh out in greater detail what I mean by bottom up methodology, which I position at the intersection of Anglo-American political and Latin American philosophy. Having done this, I will argue that this provides us with a helpful

framework within which to explore the philosophical dimensions of undocumented migrant oppression.

The notion of “bottom-up reasoning” has been developed most prominently by the political philosopher and epistemologist William Talbott, who uses the life and work of Bartolomé de las Casas to illustrate what this methodology entails.²⁴

Bartolomé de las Casas, who, as many are aware, participated in the conquest of Cuba, was an *encomendero*. That is, he was a Spaniard to whom American Indian workers were “assigned” by the Spanish crown, purportedly in exchange for fair wages and decent working conditions as part of the *encomienda* system. Despite these official “goals” of the *encomienda*, American Indians endured horrible abuses including murder, torture, rape and enslavement. Many were forcibly, systematically converted to Christianity as part of an effort to “save their savage souls” (though the question of whether they had souls was widely debated).

In 1511, a Dominican Friar by the name of Antonio de Montesinos delivered a sermon to the *encomenderos* of Hispaniola to “treat their Indians humanely on threat of damnation.”²⁵ Partly in response to this “call to Christian conscience,” but largely as a result of his observations of the horrible treatment of Native Americans by Spanish conquistadors, Las Casas renounced his *encomienda*, became a Dominican Friar, and devoted himself to campaigning for the rights of American Indians.

William Talbott argues that Las Casas’s life and work illustrate bottom-up reasoning. Talbott presents this method as an alternative to the “proof paradigm,” which, in moral philosophy, demands that we assess whether our particular moral judgments are right or wrong by means of referring (solely) to *infallible* universal moral principles.

²⁴ William Talbott, *Which Rights Should Be Universal?* (Oxford: Oxford University Press, 2005)

²⁵ Edwin Williamson, *The Penguin History of Latin America* (London: Penguin Books, 1992), 15

Imagine that I adhere to the proof paradigm, and am trying to decide whether to kill someone at this very moment. Prior to doing so, I consult my universal moral principles. One of them says that killing is wrong. Thus, I conclude that it would be wrong to kill someone at this particular moment. This seems plausible at first, but the problem is that there are always exceptions to our universal moral principles. I may be called upon to kill in self-defense; many would regard this as justified even if it's generally true that killing is wrong. Talbott claims that when I revise my universal or "ground level" moral principles in light of my particular moral judgments, or find "new ground level norms to cover the exceptional cases,"²⁶ I am engaging in bottom-up reasoning.

He explains that "...ground-level moral principles (including principles of human rights) are the result of a largely bottom-up process of discovery, based on ground-level particular moral judgments about actual and hypothetical particular cases (e.g., that Hitler's extermination of the Jews was wrong)."²⁷ Importantly, there is space for universal moral principles on this view; however, they are to be regarded as *reliable* but *fallible*.

How did Las Casas engage in bottom up reasoning over the course of his life? Note that Las Casas, an immigrant to the Americas, was born in the global *center* rather than the *periphery* (to follow Enrique Dussel's terminology). This means that he was raised in the midst of the *quintessential imperialist philosophy*—the Spanish colonialist philosophy that maintained, through military might, that natives were deeply inferior to Europeans, lacked souls, and could justifiably be enslaved and otherwise brutalized. Talbott describes a possible universal moral norm that the conquistadors may have adhered to: *beings that lack souls can be enslaved*. In accordance with the proof paradigm, the conquistadors could have reasoned as follows:

²⁶ William Talbott, *Human Rights and Well-Being* (Oxford: Oxford University Press, 2010), page 14

²⁷ Talbott (2010), page 13

- (1) Beings who lack souls can be enslaved;
- (2) American Indians lack souls;
- (3) Therefore, American Indians can be enslaved (1,2).

Talbott argues that bottom-up reasoning partially rescued Las Casas from such an utterly fiendish and wrongheaded view. It was not simply as a result of Montesinos's sermon and Las Casas's own reflections on Christian Scriptures, as many historians have maintained. Rather, Las Casas first learned that disparaging claims and stereotypes held by Spaniards about American Indians were wrong after spending time in the Americas.²⁸ Second, Talbott argues that he began to "identify with" the Native Americans by developing relationships with them. He "[began] to imagine what it is like to be them" through "empathic understanding ... it is important to note that this is not a purely intellectual change."²⁹ This led to Las Casas's moral views being "thrown into disequilibrium, because his moral norms [seemed] to provide epistemic justification for believing the colonists' treatment of the natives to be wrong, but his particular moral judgments [rebelled] in response to the obvious wrongness of that treatment."³⁰ Thus, he engaged in bottom-up reasoning, by using his particular moral judgments to alter his moral norms: Las Casas was able to conclude that the treatment of the American Indians by Spanish conquistadors is wrong.

Those who approach immigration philosophy from the subfield of Latin American philosophy will be interested in Las Casas's "bottom up legacy" as discussed here. Las Casas is often considered to be the first liberation theologian, which is very significant given the importance of liberation theology, philosophy and pedagogy to Latin American philosophy. It would be worthwhile to reflect, albeit briefly, on the linkages between Talbott's depiction of

²⁸ 59

²⁹ *ibid*

³⁰ Talbott, 60

bottom up reasoning and Latin American liberation philosophies, given our present goal of developing an approach to immigration philosophy that is capable of accounting for undocumented migrant oppression. As we shall see, there are lessons to be learned from the Latin American philosophical tradition.

Liberation philosophy, theology and pedagogy are known for their call for a philosophy that is developed not just on behalf of, but also with, vulnerable and marginalized people. In his secularized liberation philosophy, Dussel explains that “those who hear the lament or protest of the other are stirred to the very center of their world, are decentered. The cry of pain of one we cannot see signifies someone, not something.”³¹ Here, “the other” is the oppressed person whom society has forgotten or marginalized. This sort of decentering was precisely what inspired Las Casas to question some of the problematic “ground level” principles that he eventually abandoned.

Liberation theologian Gustavo Gutierrez has explained that “the non-person questions not so much our religious universe but above all our economic, social, political and cultural order, calling for a transformation of the very foundations of a dehumanizing society.”³² And, perhaps most famously, Paulo Freire has argued that “true solidarity with the oppressed means fighting at their side to transform the objective reality which has made them ... ‘beings for another’.”³³

I believe that this is what is needed for an immigration philosophy that is responsive to the ethical challenge of undocumented migrant oppression. Given the state of much immigration philosophy thus far—which has been predominantly top down—oppressed undocumented

³¹ Enrique Dussel, *Philosophy of Liberation* (Marknell: Otis Books, 1985) page 60

³² Gustavo Gutierrez, “The Task and Content of Liberation Theology,” translated by Judith Connor, in *The Cambridge Companion to Liberation Theology* (Cambridge: Cambridge University Press, 1999)

³³ Paulo Freire, *The Pedagogy of the Oppressed* (New York: Continuum, 2003), page 49

migrants like Camila's family are rendered "non-persons" who do not fit into our cherished theories.

In order to account for this phenomenon, and in order to find conceptual space for Camila's story, we need to regard undocumented migration as something that it worth theorizing in its own right. In accordance with liberation philosophy, we need to assess the ways that undocumented migrants shake and question the foundations of our system. And, in accordance with bottom up reasoning, we should start at this space, with a sense of empathic understanding, to see what useful ground level principles we can generate on this basis.

IV. Moving Forward

In this chapter I have argued that we should approach the philosophical dimensions of undocumented migration in a bottom up rather than top down fashion. In much top-down immigration philosophy, undocumented migrants like Camila appear to be non-persons, to use Gustavo Gutierrez's term.

And yet, as I explored in the introduction to this dissertation, undocumented migrants play a huge role in the social, political and economic lives in many countries (including, of course, the United States). Following Enrique Dussel, I believe that the presence of undocumented migrants in places like the United States poses a challenge to many of our core beliefs about justice, immigration and state sovereignty. With this in mind, my arguments about the nature and implications of undocumented migrant oppression in chapters 4 and 5 will proceed from the bottom up—starting with empirical facts and narratives about the lived experiences of undocumented migrants in the United States.

In chapter 2 I turn to communitarian immigration philosophy. Interestingly, while communitarians generally reject top down political philosophy, communitarian immigration philosophy is often *socially* top down. As we shall see, communitarian philosopher Michael Walzer makes an important foray into the philosophical dimension of immigrant oppression in his argument against the legitimacy of guest worker programs. However, the socially top down nature of communitarian immigration philosophy makes it difficult to assess broader questions of justice in undocumented migration.

CHAPTER 2 COMMUNITARIAN IMMIGRATION PHILOSOPHY LOGICALLY BOTTOM UP, SOCIALLY TOP DOWN

“In acknowledging a national identity, I am also acknowledging that I owe special obligations to fellow members of my nation that I do not owe to other human beings.”¹ – David Miller in *On Nationality*

I. Introduction

In chapter 1 I argued that the top down nature of most immigration philosophy has rendered it inadequate for attending to philosophical problems in undocumented migration. Thus, it provides us with almost no guidance for determining what is or is not owed to the approximately 11 million undocumented migrants currently living in the United States. Indeed, in top down immigration philosophy the urgency of undocumented migrant oppression as a philosophical problem seems to fade.

I claimed that there are three senses in which a philosophical approach to immigration could be top down (or, alternatively, bottom up): *logically*, *socially*, and in relation to the *ideal versus non-ideal theory distinction*. I argued that while largely top down immigration philosophy neglects undocumented migrant oppression, a bottom up approach appears more promising for the purpose of exploring this issue.

I concluded that a bottom up approach to immigration philosophy should therefore possess the following features. First, it should recognize the philosophical importance of various

¹ David Miller, *On Nationality* (Oxford: Oxford University Press, 2009), page 49

dimensions of immigration, including immigration oppression. Second, it should regard undocumented migration as a philosophical problem that is worthy of theorizing in its own right. And third, it should frequently adopt as its starting point the concerns, needs and perspectives of immigrants themselves.

In the next two chapters I shall survey a number of approaches to immigration philosophy that are *not* logically top down. Not all of the theories I shall explore are focused specifically on undocumented migration. Nevertheless, assessing them will prove helpful for developing a framework for thinking about justice and undocumented migration oppression. A central feature of all the approaches I will survey in these chapters is that they regard the non-ideal as worthy of theorizing in its own right.

My goals for chapters 2 and 3 are as follows. In the present chapter I assess communitarian approaches to immigration philosophy, focusing on the work of Michael Walzer and David Miller. I argue that these approaches are logically bottom up, but often socially top down. As a result, communitarian immigration philosophy is helpful for philosophizing about undocumented migrant oppression in some ways, but not others.

In chapter 3 I turn to what I call the “explicitly bottom up” immigration philosophy of Joseph Carens. My overarching argument throughout chapters 2 and 3 is that all of these views—those of communitarian immigration philosophers, and that of Carens—point to the need for a distinctive theory of undocumented migrant oppression. Such a theory should demonstrate precisely *what* undocumented migrant oppression is, *why* it is unjust and *what* ought to be done about it. Chapters 4 and 5 will be devoted to these tasks.

II. Communitarian Immigration Philosophy: Walzer and Miller

I now turn to the communitarian approaches to immigration philosophy of Michael Walzer and David Miller. Broadly, the term “communitarian” is usually taken to refer to philosophical positions that possess the following characteristics. First, they object to Rawlsian liberalism on the grounds that it is overtly abstract and therefore unsatisfying. Second, along these lines, communitarian views contain an appeal to specificity. That is, they call for recognition of the fact that communities inevitably offer differing interpretations of goods, money, work and even justice itself. Finally, communitarians go further than simply recognizing that different conceptions of justice exist for different communities. They ultimately argue that determinations of right and wrong—*for a given community*—must come from explorations of the meanings of goods *in that particular community*. With this in mind, let us now take a look at Walzer’s and Miller’s immigration philosophies.

Peter Higgins helpfully refers to Walzer’s and Miller’s views on immigration as *prescriptively nationalist*. By this he means the following. Both views assert that states ought to adopt whatever immigration policy best accords with their national interest.² Thus, if a very restrictive immigration policy best accords with the national interest of the United States, then the United States ought to adopt a restrictive immigration policy. This approach is sharply distinguishable from Carens’s open borders position, which maintains that the interests and needs of citizens across the globe (particularly the global poor) can trump the rights of states and their citizens to turn immigrants away.

² Peter Higgins, *Immigration Justice* (Edinburgh: Edinburgh University Press, 2013), page 22

Walzer advances two core arguments for immigration restrictions.³ The first is the argument from *domestic cohesiveness*. He claims that if too many immigrants are permitted to enter a given state, this will generate internal friction. Walzer argues that in a state without immigration restrictions, neighborhoods will cease to be places of open entry and exist for members of the state in question.

He says that “to tear down the walls of the state is not, as Sidgwick worriedly suggested, to create a world without walls, but rather to create a thousand petty fortresses.”⁴ In other words, in a world without borders, neighborhoods will close themselves off to newcomers due to the overwhelming spirit of distrust that will quickly prevail.

Walzer’s second argument for immigration restrictions is his argument from *cultural cohesiveness*.⁵ Note that his political philosophy is, in broad strokes, devoted to preserving communities of character. With this in mind, he argues that “the distinctiveness of cultures and groups depends on closure and, without it, cannot be conceived as a stable feature of human life. If distinctiveness has a value, as most people ... seem to believe, then closure must be permitted somewhere.”⁶ In other words, not only will society members come to distrust one another in a world without borders—entire societal cultures will disappear in a borderless world.⁷

Walzer concludes that “at some level of political organization, something like the sovereign state must take shape and claim the authority to make its own immigration policy, to control and sometimes restrain the flow of immigrants.”⁸ In sum, in order to preserve the communities of character and unique senses of meaning that Walzer claims are the sources of

³ I follow, here, Peter Higgins’s insightful characterization of Walzer and Miller’s views in *Immigration Justice*.

⁴ Walzer, 38

⁵ For further discussion see Higgins, 26-28

⁶ Walzer, 39

⁷ I borrow the term “societal culture” from Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 2005)

⁸ Walzer, 39

justice, right and wrong for particular communities, immigration restrictions must often be imposed upon outsiders. As Higgins explains, Walzer is not simply arguing that states *can* restrict immigration if they find that so doing accords with the national interest. Rather, he is arguing that states *should* restrict immigration because so doing necessarily *does* accord with the national interest.

Walzer's argument has been objected to on the grounds that it essentializes cultures and ignores the extent to which dissent and disagreement exist within any given nation-state. In response to such criticisms, David Miller's communitarian or prescriptively nationalist immigration appears far more careful and nuanced.

In his *On Nationality* Miller argues that immigration need not, as a matter of necessity, threaten communities of character. As he explains, "why should immigrants pose a threat to national identity once it is recognized that that identity is always in flux, and is molded by the various sub-cultures that exist within the national society?"⁹

Nevertheless, Miller argues that immigration can be restricted if it occurs so quickly, or so intensely, that immigrants will be unable to assimilate into the culture of the "host" society. It can also be restricted if the massive immigration of a particular group threatens to overwhelm the dominant culture of the "host" state. This is because, argues Miller, shared nationality is what binds citizens together such that they are willing to make sacrifices for one another and the good of the state. It brings about a spirit of collaboration and camaraderie that is necessary to preserve political and social stability.

The debate about the scope and adequacy of communitarian or prescriptive nationalist approaches to (immigration) justice is certainly interesting. However, for our present purposes I want to explore two things. First, I want to assess the ways in which Walzer and Miller apply

⁹ Miller, 128

their views to immigration phenomena *other than* immigrant admissions. In particular, I wish to focus on their arguments regarding guest worker programs and refugees. As we shall see, Walzer's argument about guest worker programs is a paradigmatic example of logically and socially bottom up philosophy that is conducted in the realm of non-ideal theory.

Second, I want to explore the ways that communitarian political philosophy is, nevertheless, socially *top down* on the whole. Walzer's argument about guest worker programs can be contrasted sharply to his general approach to immigration philosophy, making the former appear rather *ad hoc*. I argue that these socially top down features of communitarian immigration philosophy render it somewhat inadequate—at least, as it currently stands—for the purpose of attending to the philosophical dimensions of undocumented migration.

I conclude that if we want to apply Walzer's bottom up arguments about guest worker programs to the realm of undocumented migration, we need to produce a distinctive theory of undocumented migrant oppression.

Communitarian Arguments about Guest Workers and Refugees

There is no doubt that Walzer opposes guest worker programs—at least as they have traditionally been devised. In such programs foreign nationals are “brought in” to a host country for a limited period time. During that time they perform needed labor for the host country for low wages.

In at least one sense, guest worker programs seem mutually beneficial both for the workers and for the host country. The host country is able to recruit workers to perform jobs that its citizens are unwilling to do (at least, under the conditions that are being offered by employers). At the same time, foreign nationals employed as guest workers are granted

opportunities to earn more money than they otherwise would be able to in their countries of origin.

There is, however, another dimension of guest worker programs that leads Walzer to regard them as impermissible. He argues that guest worker programs often generate an exploited underclass of people within the host state. Guest workers are, crucially, regarded strictly as *guests*—not as citizens with rights. Though they are “enmeshed” in the society, labor force and legal system of the host state, guest workers are not given a political voice or official representation.

Walzer explains that “they are locked into an inferior position that is also an anomalous position; they are outcasts in a society that has not caste norms, metics in a society where metics have no comprehensible, protected, and dignified place.”¹⁰ Furthermore, he says that “that is why the government of guest workers looks very much like a tyranny: it is the exercise of power outside its sphere, over men and women who resemble citizens ... but are nevertheless barred from citizenship.”¹¹

It is wrong, says Walzer, that guest workers be treated as inferiors laboring under a tyrannical government. Walzer argues that given that guest workers are, indeed, participants in the host society—in a community of character with all of its distinctive senses of meaning and justice—they should be granted full rights and put on a path to citizenship.

Walzer also advances an argument about obligations to admit refugees that stems from his conceptual framework for thinking about membership, admissions and communities of character. He argues that states have strong obligations to admit those refugees with whom they have particularly strong ideological or ethnic affinities. So, for example, the United States has a

¹⁰ Walzer, 59

¹¹ *ibid*

strong obligation to admit refugees fleeing from totalitarian regimes, as well as persons that the United States has effectively *made* refugees (like those fleeing from Vietnam after the war).¹²

In addition, Walzer claims that states also have moral obligations to admit needy refugees who may be escaping famine and/or persecution even if they do not share a strong ideological or ethnic affinity with the refugees in question. Importantly, however, Walzer claims that while states have a *general* moral obligation to allow refugees to enter, *particular* states do not have *particular* obligations to admit a specific number of refugees. He explains that

Once again, communities must have boundaries; and however they are determined with regard to territory and resources, they depend with regard to population on a sense of relatedness and mutuality. Refugees must appeal to that sense. One wishes them success; but in particular cases, with reference to a particular state, they may well have no right to be successful.¹³

David Miller advances a similar view on state obligations to admit refugees. Like Walzer, Miller argues that states have strong obligations to admit people whose rights are being violated in their home state. However, the question of which particular states are required to take in which particular migrants is likewise left ambiguous on Miller's view.

Miller also argues that those refugees who are admitted need not be treated as long-term migrants. He claims that "they may be offered sanctuary in states that are able to protect them, and then be asked to return to their original countries when the threat has past."¹⁴ This is because, in accordance with his argument in *On Nationality*, Miller contends that states are permitted to close their borders and ultimately exclude foreigners in order to preserve their own welfare and unique national identity.

¹² Walzer, 49

¹³ Walzer, 50

¹⁴ David Miller, "Immigration: The Case for Limits," in *Contemporary Debates in Applied Ethics*, edited by Andrew Cohen and Christopher Heath Wellman (Malden: Blackwell Publishing, 2005), pp. 202-203

In assessing communitarian immigration philosophy we can see how bottom up reasoning provides useful tools for assessing philosophical dimensions of immigration outside of the open borders debate. Communitarian political philosophy completely collapses the ideal versus non-ideal distinction. On such views, the empirical realities of our social worlds are not mere deviations from the ideal. Rather, they are the very source of the senses of meaning of which any given community's theory of justice is going to be comprised.

We can see, then, the ways that communitarian political philosophy is bottom up: both logically and with regard to the ideal versus non-ideal distinction. In addition, communitarian political philosophy is at times also socially bottom up. Indeed, socially bottom up thinking provides Walzer and Miller with resources for considering the needs and interests of non-citizens like guest workers and refugees.

Turning his attention to these former "non-persons," Walzer was able to perceive that guest workers actively participate in their host state while lacking formal membership. He also became aware of immigration exploitation and oppression. In sum, we can see that when we proceed from the bottom up many previously neglected dimensions of immigration are thrown into relief.

And yet, there are many important respects in which communitarian political philosophy is socially top down. Because of this, it is unclear whether this approach can be employed in the service of considering undocumented migrant oppression. Indeed, the socially top down nature of most communitarian political philosophy makes Walzer's important argument about the impermissibility of guest worker programs seem inapplicable to unauthorized migrants.

Here is why. First, note that communitarian immigration philosophy begins with a predetermined "we" who are entitled to choose whom to admit to "our" territory. Indeed, as

Walzer explains, “we who are already members of a society do the choosing, in accordance with our own understanding of what membership means in our community and of what sort of community we want to have.”¹⁵ His view is slightly more nuanced than this¹⁶, but the general idea is that preexisting members of a given community have full power to determine who ought to be granted membership. This is very different from Carens’s argument for open borders (which is socially bottom up—or so I have argued), which maintains that all people across the globe enjoy a human right to freedom of movement. In this sense, the pre-established citizenry is significantly empowered on this view.

Along similar lines, we have seen that Miller does not require states to take in refugees, regardless of how needy they may be, if so doing would undermine the dominant culture and/or national interest. Both Walzer and Miller regard the duties of states to help desperate foreigners as issues of charity rather than justice. This is because states are only called upon to admit needy foreigners at their discretion, when it will not undermine the national interest.

In conclusion, I submit that communitarian approaches to immigration philosophy are, in general, socially top down.

This may seem odd, given that I have argued that Walzer’s analysis of guest worker programs is an excellent—perhaps even paradigmatic—illustration of logically and socially bottom up reasoning that collapses the ideal versus ideal theory distinction. As we have seen, Walzer begins with an assessment of the empirical realities of historical guest worker programs. He focuses not merely on the experiences and perspectives of those citizens who benefited from guest worker labor, but also on the experiences of guest workers themselves. He realizes that guest worker programs, in the scope of our actual social world, often bring about an exploited

¹⁵ Walzer, 22

¹⁶ See, for instance, Walzer, pp. 32-33

underclass of citizens. And finally, he concludes that guest worker programs ought to be abandoned. Instead, workers should only be invited in if and only if they will be put on a path to full citizenship.

This leads us, however, to a more difficult question. Can Walzer's reasoning about guest worker programs be applied to the phenomenon of undocumented migration? On the one hand, it seems that Walzer's position on guest worker programs might be employed to argue that undocumented migrants are owed a right to remain. After all, like guest workers, they are also deeply enmeshed in the economy and law of the state to which they have migrated (albeit without legal authorization).

But on the other hand, undocumented migration seems crucially different from guest worker programs. Unlike guest workers who enter their host state via legally authorized channels, undocumented migrants lack legal permission to be in the state that they currently inhabit. Furthermore, many citizens of their "host state" may strongly object to the presence of undocumented migrants in their territory. "We" who do the choosing may object to allowing "them" to remain if "they" have migrated into "our" territory without legal authorization.

In sum, if undocumented migrants were never invited in by the preexisting members of the host state, it is unclear whether the host state is required to grant them a right to remain. It is also unclear whether the oppression of these unauthorized migrants is unjust. The socially top down nature of communitarian immigration philosophy simply cannot clearly account for undocumented migrant oppression.

Conclusion

Allow me to summarize this section. We have seen that communitarian political philosophy is, in many respects, logically bottom up, and that it collapses the ideal versus non-ideal theory distinction. Because of this, it provides us with some conceptual space in which to theorize about neglected philosophical dimensions of immigration—including the ethics of guest worker and refugee programs. Indeed, Walzer’s argument about guest worker programs is a paradigmatic example of bottom up theorizing. However, we saw that communitarian political philosophy is also socially top down in that it privileges the interests of a dominant group: the “we” who do the choosing with regard to who can enter “our” territory.

Where does Camila’s story fit here? What are we to make of those who enter foreign lands without legal authorization, only to be exploited and otherwise oppressed in that land? I believe this is a puzzle for communitarian immigration philosophy. Camila and her family were deeply enmeshed in the United States—but they broke “our” rules that said that “they” were not authorized to enter.

I therefore conclude that communitarian immigration philosophy points to the need for a distinctive theory of undocumented migration oppression. We need to see whether, *despite having migrated without legal authorization*, and despite popular opposition to the presence of undocumented migrants (on the part of some, but not all), the oppression of undocumented migrants is as morally troubling as the oppression of guest workers who have entered the state with legal permission to do so.

In addition, I hope to have demonstrated, in this chapter, the ways that bottom up theorizing can bring us closer to assessing the long-neglected philosophical problem of

undocumented migrant oppression. We are closer than we were in chapter 1, but there is still a distance that must be traveled.

CHAPTER 3
BOTTOM UP IMMIGRATION PHILOSOPHY
JOSEPH CARENS ON UNDOCUMENTED MIGRATION

I. Introduction

In the previous chapter I argued that communitarian political philosophies are generally *logically* bottom up, and that they collapse the distinction between *ideal* and *non-ideal theory*. In addition, I argued that Michael Walzer's argument about the impermissibility of guest worker programs is also *socially* bottom up. Indeed, through employing thoroughly bottom up reasoning, Walzer was able to philosophize about the wrongful oppression of guest workers—a category of migrants whose experiences are neglected in the largely top down immigration philosophies explored in chapter 1.

However, I also argued that the generally *socially* top down nature of communitarian political philosophy makes it difficult to apply Walzer's innovative analysis of guest worker programs to the phenomenon of undocumented migrant oppression. This is because both Walzer and David Miller grant to states robust rights to exclude outsiders. We saw that refugees and a range of other needy prospective migrants can permissibly be excluded—and in fact *ought to be excluded*—if so doing best advances the national interest.

Given that undocumented migrants were not “invited in” by the states in which they currently reside, it is difficult to found grounds in communitarian philosophy for articulating the nature (and perhaps the wrong) of undocumented migrant oppression. If “we” did not invite

“them” in, then what grounds do “they” have for objecting for any mistreatment they endure in “our” territory?

In the introduction to this dissertation I suggested that some of the most widely-cited works in immigration philosophy make it difficult to assess philosophically any possibly injustices lurking in the deportation of Camila and her family. Thus far, we have seen how the political urgency of Camila’s story fades in both liberal and communitarian approaches to the philosophy of immigration.

We have seen that in Rawlsian immigration philosophy, society is presented as a closed system. Borders are justified, and undocumented migrant is simply not considered. Alternatively, within the open borders paradigm *everyone* can migrate. It is therefore difficult to assess what (if anything) is owed to oppressed undocumented migrants in particular.

Finally, in communitarian political philosophy closed borders are not only justified, but often *required* in order to promote the national interest. We are left with the question that this dissertation aims to address: how we to consider philosophically undocumented migrant oppression? How can we determine what it is, whether it is unjust, and what ought to be done about it?

In this chapter I explore the explicitly bottom up approach to immigration philosophy of Joseph Carens. His position on undocumented migration is *logically* and *socially* bottom up, and it also collapses the *ideal versus non-ideal theory distinction*.

My main goals for this chapter are two-fold. First, I want to demonstrate how Carens provides a methodological framework for beginning to consider undocumented migrant oppression. Second, more strongly, I argue that Carens’s argument for amnesty for long-term

undocumented migrants highlights the need for a distinctive theory of undocumented migrant oppression. Chapters 4 and 5 will be devoted to this task.

II. Joseph Carens on Undocumented Migration

Joseph Carens is one of the first philosophers to have seriously considered undocumented migration as a philosophical problem. As we shall see, Carens's argument for amnesty for undocumented migrants is an excellent example of bottom up immigration philosophy.

We saw in chapter 1 that Carens is also well known for his "open borders" argument that I characterized as top down. Carens himself subsequently recognized that an open borders policy is, at least at present, *unrealistically utopian* and thus rather unhelpful for the purpose of generating immigration policy.

Carens argues in his paper "Realistic and Idealistic Approaches to Immigration" that there is room for both of these approaches to immigration philosophy.¹ He claims that it is important to construct realistic immigration philosophy—in which the "is" is not too distant from the "ought"—in order to enact social change. As we shall see, Carens intends for his approach to undocumented migration to be realistic (in contrast to his idealistic open borders stance).

However, Carens also notes that there is room for idealistic approaches to immigration philosophy as well. After all, were it not for ideal theory, he contends, it would be difficult to argue against immensely morally problematic institutions such as slavery in social contexts in which slavery is widely regarded as acceptable.

With Carens's own "realistic" versus "idealistic" distinction in mind, I shall provide in this section an overview of his influential argument for amnesty for long-term undocumented

¹ Joseph Carens, "Realistic and Idealistic Approaches to the Ethics of Immigration," *International Migration Review* vol. 30 no. 1 (1996), pp. 156-170

migrants. I shall then explain why this approach is clearly bottom up. Finally, I argue that Carens's bottom up approach points to a need for a distinctive theory of undocumented migrant oppression.

I turn, then, to Carens's argument. Carens claims that undocumented migrants who have spent a significant amount of time in a country develop a strong moral right to remain there. On this view, after a period of about six years undocumented migrants have effectively become social members of the political community to which they have migrated. This renders them deserving of citizenship and a right to remain.

Carens asserts that "...social membership does not depend on official permission ... People who live and work and raise their families in a society become members, whatever their legal status: that is why we find it difficult to expel them when they are discovered."²

To generate intuitive support for his view, Carens describes a number of cases of undocumented migrants who appear to have acquired a *moral* right to remain despite lacking legal permission. For instance, he tells the story of Miguel Sanchez, a man who, after being denied a visa on a number of occasions, migrated to the United States from Mexico without legal authorization in hopes of escaping severe poverty. Sanchez has lived in the United States for many years. He is married to and has a child with an American citizen. Though he has learned English, holds two jobs in the US, and is an active participant in his community, Sanchez lives in constant fear of being deported.

Carens also discusses the famous case of 80-year-old Marguerite Grimmond. Grimmond was born in the United States but moved to Scotland with her family as a young girl. She remained in Scotland until the age of 80, at which time she took a vacation to Australia.

² Joseph Carens, "Immigrants and the Right to Stay," *Boston Review*, accessed May 28, 2014 at <http://bostonreview.net/BR34.3/carens.php>. For an extended version see Joseph Carens, *Immigrants and the Right to Stay* (Cambridge: The MIT Press, 2010).

Grimmond was told upon her return to the UK that she was, in fact, an irregular migrant who needed to return to her “home” in the United States. This generated a public scandal and media frenzy in the UK.

With both of these cases Carens wishes to highlight what he regards as a widespread intuition. After a certain amount of time, undocumented migrants develop a moral right to stay in the country to which they have migrated. People like Grimmond and Sanchez have, from a moral perspective, become members of the countries in which they now live, and it would be “cruel and inhumane” to deport them.³ Carens claims that “[t]he moral right of states to apprehend and deport irregular migrants erodes with the passage of time. As irregular migrants become more and more settled, their membership in society grows in moral importance, and the fact that they settled without authorization becomes correspondingly less important.”⁴

Carens’s argument is an example of bottom up immigration philosophy on all fronts. He has deliberately moved away from his ideal theory in order to explore a “realistic” (or *non-ideal*) approach. He clearly regards the non-ideal as worthy of theorizing in its own right. Carens does this in a *socially* bottom up manner. His aim is to provide conceptual resources for enacting change that could benefit undocumented migrants in the scope of our actual social world. Furthermore, Carens’s approach is *logically* bottom up. He adopts as his philosophical starting point the lived experiences of at least a subset of immigrants themselves (i.e., long-term undocumented migrants) and develops an immigration philosophy on that basis.

I believe that Carens has arrived at an important and compelling conclusion. Furthermore, he has provided a methodological framework for exploring undocumented migration

³ Carens, *Boston Review*

⁴ *ibid.* One might still object that even if undocumented migrants are not criminals, they have still technically broken the law and should be held accountable. Carens might grant this point, but maintain that they should pay a fine for having broken the law as opposed to being deported or going to jail.

philosophically. David Miller has stated, in his commentary on Carens's argument for amnesty for long-term migrants: "in reading Carens's paper, I often found myself wondering the underlying political philosophy was that he was bringing to bear on the irregular migrants question."⁵ The appropriate answer, as I hope to have demonstrated, is that Carens's is employing a bottom up methodology that enables him to philosophize *on the basis of* the lived experiences of migrants themselves.

Carens's bottom up methodology opens the door for thinking about the range of experiences—and, perhaps, injustices—that undocumented migrants face. He paves the way for a dialogue that is unprecedented in the top down immigration philosophy explored in chapter 1. We can therefore ask the following questions in response to his bottom up approach.

First, why has Carens focused on this particular sub-group of undocumented migrants (i.e., long-term migrants) in his analysis? Second, are there other aspects of undocumented migrant experiences that are perhaps more urgent, or that pose unique challenges that are not captured here? Third, can bottom up theorizing produce philosophical challenges to Carens's view?

I shall now argue that the phenomenon of undocumented migration *oppression*, which Carens's paper neglects, poses some problems for his view. Importantly, however, I wish to note that Carens's bottom up methodology has paved the way for precisely the sort of analysis and argument that I shall now undertake.

With this in mind, let us consider the following cases of two different undocumented migrants in the US. Both of these cases are inspired by real people, though names and a few identifying details have been changed. These cases will motivate the analysis I undertake in chapters 4 and 5:

⁵ David Miller, *On Nationality* (New York: Oxford University Press, 1995), 193

(1) Gary is a white, middle class, London-based citizen of the United Kingdom who plays in a punk rock band. While he enjoys a moderate level of success as a punk rocker in London, he has trouble distinguishing himself from the competition. He decides to try his luck in Washington, DC—a city with a thriving punk scene. Gary is convinced that the fact that he is British will give him the artistic “edge” in DC that he had been striving for in London. However, Gary is quite unsuccessful in his efforts, and spends the next six years performing uninspiring children’s music at birthday parties. He eventually considers returning to London.

(2) Alicia, a citizen of Mexico, has been an undocumented migrant in Los Angeles, California for almost two years. Her husband was when he attempted to cross the US-Mexico border without authorization, after losing his livelihood as a small farmer as a result of the NAFTA-induced influx of cheap American corn to Mexico.

Since that time, Alicia found herself unable to make ends meet for herself and her children, so she decided to undertake the perilous journey on foot to the United States. She is now a domestic worker for a number of wealthy families in LA. She spends approximately four hours per day on public transportation to and from her employers’ homes, and she lives in a small room that she shares with several other families (all of whom are undocumented migrants from Mexico and Central America). Alicia’s employers frequently force her to work with dangerous chemicals and deduct from her wages if they are not completely satisfied with her work. Like many undocumented domestic workers, Alicia has also suffered sexual abuse at her place of work. After two years of work in the US, Alicia is found out and threatened with deportation back to Mexico.

According to the view that a right to remain should be granted to long-term migrants, Gary, but not Alicia, should be granted legal authorization to stay in the United States.

Advocates of amnesty for Gary may argue—perhaps compellingly—that Gary has become a *de facto* US citizen through his direct participation in American society during the past six years. His closest friends and colleagues are now all Americans. Alicia, on the other hand, can claim no such membership on this view. She has not lived in the United States for very long, and her interaction with US citizens is very minimal.

I believe that the cases of Gary and Alicia will lead some to question the intuitive appeal of Carens's proposal. Does Gary ultimately deserve a right to remain? His case seems different from those of Marguerite Grimmond and Miguel Sanchez. Grimmond's case is simply far more extreme. Miguel Sanchez's case is also more extreme, given that he has a partner and children in the United States. In addition, Miguel Sanchez is someone who, unlike Gary, came to the United States to escape extreme poverty.

I believe that we are compelled to assume—on the basis of this fact, and our knowledge that Sanchez is an undocumented migrant from Mexico—that his experience as an undocumented migrant in the United States was far more burdensome than that of Gary. If we are less than moved by Gary's case for a right to remain, then it seems that something *other than* long-term migrant status may be providing intuitive support for Carens's argument.

And what of Alicia? Though she has spent considerably less time in the United States than Gary, her case for a right to remain may seem stronger. One might feel that she was problematically oppressed and disrespected in the United States—that her experiences were far too burdensome. It may seem far more “cruel and inhumane” for a state to deport a person who was mistreated in its territory, at least as an undocumented migrant.

I wish to derive the following conclusions from this section. I have argued that Carens's approach to immigration philosophy is bottom up. As such, it provides us with a methodological

framework for considering philosophical a range of undocumented migrant experiences.

Employing bottom up methodology, Carens argues that long-term undocumented migrants are owed a right to remain.

However, I believe that when we employ Carens's bottom up or "realistic" approach we find ourselves compelled to answer some difficult questions. Is Gary's right to remain truly more urgent than Alicia's? On what grounds might Alicia have to remain in the United States if she is not a long-term migrant? On what grounds, if any, can we argue that Alicia's treatment was unjust?

This is not a rejection of Carens's own view. Nor do I wish to suggest that Carens is not moved by these sorts of concerns. My claim is simply that Carens's bottom up approach to immigration philosophy points to the need for philosophical exploration of undocumented migrant oppression. I turn to this task in the next chapter.

CHAPTER 4 DEMYSTIFYING THE INJUSTICE OF UNDOCUMENTED MIGRANT OPPRESSION

We have seen that political philosophers have too often considered only the justice of hypothetical people crossing hypothetical borders. Fortunately, however, there are now some important exceptions to this—those philosophers who take as their philosophical starting point the interests and lived experiences of actual migrants in our actual social world.

In chapter 3 we explored Joseph Carens’s bottom up approach to immigration philosophy. Another important example of this methodology comes from José Jorge Mendoza. He argues in a recent paper that immigration enforcement mechanisms in the United States interior—including surveying, identifying, interrogating and apprehending—are unjust inasmuch as they (further) marginalize Latino/a citizens and legal residents of the US.¹ Given that approximately 80 percent of undocumented migrants in the United States are from Latin America, “aggressive internal enforcement strategies . . . disproportionately target citizens who are (or appear to be) of Latin American descent.”² Mendoza argues, compellingly, that it violates the moral equality of Latino/a citizens that they should bear this immense burden when other social groups, particularly whites, are largely exempt from it. In a bold conclusion he argues that internal immigration enforcement strategies cannot be performed justly and should be stopped altogether.

Mendoza’s conclusion is, I believe, compelling but incomplete. Immigration policies in the United States that marginalize Latino/a citizens are, indeed, anti-egalitarian and

¹ José Jorge Mendoza, “Discrimination and the Presumptive Rights of Immigrants” in *Critical Philosophy of Race*, vol. 2 no. 1 (2014): 68-82.

² Mendoza, 75

impermissible. However, his assessment of the moral wrong of internal immigration enforcement strategies is limited. This is because Mendoza's argument—as it stands—depicts the “rights” of undocumented migrants strictly *in terms of* the rights of Latino/a citizens and legal residents of the US.

In other words, these immigration enforcement mechanisms are cast as unjust not because they wrong the undocumented migrants in question, but because they lead to disproportional harassment of Latino/a citizens and legal residents. Mendoza's argument, while powerful, thus circumvents a fundamental question of immigration justice: what rights and protections are owed to undocumented migrants *themselves*?

Clearly, Mendoza is striving to develop a firm basis for articulating the rights of the undocumented. But he has encountered a conceptual barrier—one that is attributable, I believe, to a widespread tendency in immigration philosophy and politics to understand the term “undocumented migrant” as referring strictly to legal status as opposed to a social group membership. While many immigration philosophers think of “Latinos” or “women” as social groups whose moral equality can be undermined by unjust immigration policies³, “undocumented migrants” are generally regarded as a collection of idiosyncratic individuals who happen to lack legal authorization to be in the state they currently inhabit. Working within this framework, Mendoza only has the means to argue that the oppression of undocumented migrants is wrong because it contributes to unjust treatment of “legal” Latino/a citizens and legal residents.

³ See, for instance, Alison Jaggar, “Transnational Cycles of Gendered Vulnerability: Rethinking Some Basic Assumptions of Western Political Philosophy,” in *Gender and Global Justice*, edited by Alison Jaggar (Cambridge: Policy Press: 2014) pp. 18-39 and Shelley Wilcox, “Who Pays for Gender Institutionalization?” in *Gender Identities in a Globalized World*, edited by Ana González (Amherst: Humanity Books, 2008), pp. 53-74

In response to this conceptual barrier, I argue in this paper that the term “undocumented migrant” should be taken by political philosophers and crafters of immigration policy to refer not primarily to the legal status of being undocumented, but to an oppressed social group. I call the social group of people who are oppressed as undocumented migrants the “socially undocumented”. The socially undocumented, I shall argue, are those who *endure a common set of unjust constraints on the basis of being perceived to be undocumented*. Crucially, these are not constraints that stem from being legally undocumented.

The understanding of “social group” that I employ is—to borrow from Rawls’s old slogan—political, not metaphysical. Importantly, the groups of socially and legally undocumented people (respectively) are not comprised of exactly the same sets of individuals. As we shall see, one can endure unjust constraints on the basis of being perceived to be undocumented without being legally undocumented. Similarly, one can be legally but not socially undocumented.

How will thinking of what it means to be undocumented in terms of social group status help us to understand the rights of undocumented migrants *themselves*—and not strictly in terms of the rights of citizen and legal resident Latino/as? As we shall see, when we are restricted to understanding the term “undocumented migrant” as a legal status it is conceptually very difficult, if not impossible, to identify the injustice of undocumented migrant oppression. Oppression is something that happens to people not as individuals but as members of social groups.⁴ Thus, in the absence of a satisfactory account of the social group of undocumented migrants, we can neither explain the injustice of undocumented migrant oppression nor develop adequate solutions for alleviating that injustice.

⁴ For further discussion, see Kenneth Clatterbaugh, “Are Men Oppressed?” in *Rethinking Masculinity: Philosophical Explorations in Light of Feminism* (Lanham: Rowman & Littlefield Publishers, Inc., 1996) pp. 289-305

In addition, there are political consequences to understanding “undocumented migrant” solely in terms of legal status. We shall see that it often serves as a red herring, distracting policy makers from uncovering what is owed to the undocumented at the bar of justice.

My argument proceeds as follows. I begin by motivating my claim that we should distinguish between the legally and the socially undocumented. Second, I develop and defend a political understanding of a social group. Third, I provide a descriptive account what it means to be socially undocumented. Fourth, I show how this account enables us to understand the injustice of undocumented migrant oppression. Fifth, I argue that this provides groundwork for developing an account of undocumented migrant rights.

Before I begin, I review the assumptions I shall be making in this chapter, as outlined in my introduction. First, I assume that national borders are morally and politically justified. It follows from this assumption that undocumented migrants break just laws in crossing borders without legal authorization. I recognize that this is a contentious claim. I make the assumption for pragmatic reasons; I want my work to be politically useful to immigrant rights activists within the scope our actual social world. I intend to show that undocumented migrant oppression indeed exists and is unjust even within a “closed borders” paradigm.

As we shall see, operating within such a framework need not entail a defense of the *status quo* in immigration policy. In addition, note that one can consistently hold that borders are just, but also maintain that unduly physically harming undocumented migrants at the border and elsewhere—or denying them access to health care or other vital social services—is a violation of their human rights.⁵

⁵ A version of this argument is made by Shelley Wilcox, “Two Approaches to Undocumented Migration” (Paper Presented for Radical Philosophers Association Panel at the 2011 Pacific Division Meeting of the American Philosophical Association).

My second assumption is, once again, the conception of justice I employ in this paper. Justice, as I understand it, entails respect for the moral equality of all people across the globe.⁶ Just states are duty-bound to uphold universal moral equality; they cannot regard their own citizens as morally superior to citizens of other countries. In accordance with relational egalitarianism, I assume that respect for universal moral equality requires dismantling oppressive structural social relations.⁷ Thus, dismantling injustice will require, among other things, a thorough understanding of the deep social structures that perpetuate inequality.

I. “Undocumented Migrant”: Legal or Social Group Status?

In both philosophy and contemporary politics the term “undocumented migrant” has often been used to denote a person who lacks legal permission to be in the state that they currently inhabit. Importantly, one can argue that (some) undocumented migrants deserve amnesty even as one employs this legalistic understanding of what it means to be undocumented.

The most prominent example of this line of philosophical argument comes from Joseph Carens. He argues that those *legally* undocumented migrants who have resided in the new society for over six years are entitled to a right to remain due to the *de facto* social membership that they have developed over time.⁸

Carens discusses the infamous, and idiosyncratic, case of Marguerite Grimmond, who was born in the United States but moved to Scotland with her family as a young girl. Grimmond remained in Scotland until the age of 80, at which time she took a vacation to Australia. She was

⁶ For further discussion see Michael Blake, *Justice and Foreign Policy* (Oxford: Oxford University Press, 2013)

⁷ See Elizabeth Anderson, “What is the Point of Equality” in *Ethics* 109 (1999): 283-337 and Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press), 1990

⁸ Joseph Carens, “Immigrants and the Right to Stay,” *Boston Review*, accessed May 28, 2014 at <http://bostonreview.net/BR34.3/carens.php>. For an extended version see Joseph Carens, *Immigrants and the Right to Stay* (Cambridge: The MIT Press, 2010).

told upon her return to the UK that she was, in fact, a legally undocumented migrant who needed to return to her “home” in the United States. Carens uses Grimmond’s case to highlight an intuition shared by many. After a certain amount of time, legally undocumented migrants develop a moral right to stay in the country to which they have migrated—making it “cruel and inhumane” to deport them.

There is much to admire in Carens’s social membership argument, and it is not my intention to argue against it. But what I do wish to convey is that Carens’s position—which has gained much popularity in immigration philosophy—regards “undocumented” status strictly as a legal one. That is, for Carens, an undocumented migrant is someone who lacks *legal* permission to reside in the country in which they now reside.

While this may seem like a minor observation, it has very important consequences for the sort of immigration ethics and policy that can and cannot be developed. To illustrate this, let us review the cases of Gary and Alicia, both of whom are *legally* undocumented migrants in the US. (Again, these cases are hypothetical but inspired by commonplace “real world” narratives.)

(1) Recall that Gary is a white, middle class citizen of the United Kingdom who plays in a punk rock band. While he enjoys a moderate level of success as a punk rocker in London, he has trouble distinguishing himself from the competition. He decides to try his luck in Washington, DC—a city with a thriving punk scene. Gary is convinced that the fact that he is British will give him the artistic “edge” in DC that he had been striving for in London. However, Gary is quite unsuccessful in his efforts, and he spends the next six years performing uninspired children’s music at birthday parties (all the while lacking legal permission to be present in the United States). He eventually considers returning to London.

(2) Alicia, a citizen of Mexico, has been an undocumented migrant in Los Angeles, California for a year. Her husband was killed while attempting to cross the US-Mexico border without authorization, after losing his livelihood as a small farmer. Since that time, Alicia found herself unable to make ends meet for herself and her children, so she decided to undertake the perilous journey on foot to the United States. She is now a domestic worker for a number of wealthy white families in LA.

She spends approximately four hours per day on public transportation to and from her employers' homes, and she lives in a small room that she shares with several other families (all of whom are undocumented migrants from Mexico and Central America). Alicia's employers frequently force her to work with dangerous chemicals and deduct from her wages if they are not completely satisfied with her work. Despite the fact that she moves around Los Angeles with great caution, after a year in the US Alicia's legally undocumented status is found out and she is threatened with deportation back to Mexico.

Most people will acknowledge that Alicia has been wronged in ways that Gary has not. However, it may seem less clear that Alicia has been *oppressed* and *treated unjustly*. After all, Alicia lacks legal permission to be in the state where her wrongful treatment is taking place. Thus, one might argue that while Alicia is indeed being treated in a morally troublesome manner, this treatment is simply not the stuff of oppression and social injustice. She is "free to leave," one might say, and she lacks any legitimate legal recourse to a minimum wage and other workplace protections.

The problem here, I contend, is that we are conceiving of what it means to be an "undocumented migrant" solely in terms of legal status. I will now argue that while both Gary and Alicia are undocumented migrants in legal terms, Alicia—but not Gary—is socially

undocumented. (Along similar lines, Marguerite Grimmond was legally but not socially undocumented.) Clarifying what this means will enable us to articulate the injustice endured by Alicia.

II. Social Groups – Political, Not Metaphysical

Before I describe what it means to be socially undocumented I must provide a satisfactory conception of a social group. In this section I turn to this task.

Following Ann Cudd and Iris Marion Young I submit that *politically*, we should try to understand our social world in terms of social groups because doing so is explanatorily useful for understanding and alleviating oppression.⁹ As argued by Young, “evaluating inequality in terms of social groups enables us to claim that some inequalities are unjust ... because such group-based comparison helps reveal important aspects of institutional relations and processes.”¹⁰

Similarly, Cudd argues that thinking in terms of social groups can enable us to understand “unjust group-based hierarchies.”¹¹ A “group-conscious practice of assessing inequality”¹² can enable us to uncover why women lack social equality with men all over the world, Latino/as with whites in the United States and elsewhere, persons with disabilities with the able-bodied, etc. In sum, in a *political* conception of a social group we posit social groups inasmuch as doing so enables us to uncover oppression and unjust inequality.

But what is a social group? I employ Ann Cudd’s externalist account. Cudd argues that “what makes a person a member of a social group is not determined by any internal states of that person, but rather by objective facts about the world, including how others perceive and behave

⁹ Also, following Cudd, I bracket interesting metaphysical questions about the nature of groups.

¹⁰ Iris Marion Young, “Equality of Whom? Social Groups and Judgments of Injustice,” in *The Journal of Political Philosophy* 9(1), page 2

¹¹ Ann Cudd, *Analyzing Oppression* (Oxford: Oxford University Press, 2006), 28

¹² Cudd, 29

toward that person.”¹³ She calls these objective facts about the world “constraints.” These constraints include “legal rights, obligations, burdens, stereotypical expectations, wealth, income, conventions, norms and practices.”¹⁴

Thus, just as the formal denial of equal rights is a constraint, so is the expectation that people dress and talk in a particular ways in professional settings. Importantly, the constraints of which Cudd speaks also include incentives and rewards for certain behaviors. They are “facts that one does or ought to rationally consider in deciding how to act or plan one’s life, or facts that shape attitudes about other persons.”¹⁵ For example, the expectation that men not cry in public is a constraint that the social group of men rather uniquely face. But this constraint also brings with it social rewards—namely, those that are associated with being perceived as masculine.

In sum, I follow Cudd in understanding a social group to be “a collection of persons who share (or who would share under similar circumstances) a set of constraints on action.”¹⁶

The constraints themselves are put in place by social institutions. Social institutions exist in a variety of forms. They can include “government, legal systems, schools, banks, gender rules and norms, rules of etiquette, media outlets, stereotypical beliefs, class, caste systems, and racial declassification systems.”¹⁷ As Peter Higgins summarizes it, social institutions “create social groups by conditioning the lives of some people in one way, other people in another way.”¹⁸ They often serve to privilege some groups while marginalizing others.

¹³ Cudd, 36

¹⁴ Cudd, 50

¹⁵ Cudd, 1

¹⁶ Cudd, 44

¹⁷ *ibid*

¹⁸ Peter Higgins, *Immigration Justice*, (Edinburgh: Edinburgh University Press, 2013), 112

Importantly, “these social institutions and constraints can, but need not, give rise to thoughts and feelings on the part of the group member which serve to reinforce her membership in the social group.¹⁹ In other words, while some people will whole-heartedly identify as being members of particular social groups, others will resist membership or be largely unaware of it. For instance, one can be identified by others as female, and be subjected to constraints on that basis, even if one rejects that label and self-identifies as male. Similarly, one can enter into the social group of Latino/as if one is taken to be Latino/a by one’s fellow society members—even if one strives to distance oneself from that ethnic label and identity.

With this conception of social grouphood in mind, we are now in a position to understand what an *oppressed* social group is. Cudd defines an *oppressed* social group as a collection of persons who share (or who would share under similar circumstances) a set of *unjust* constraints on action. How do we know whether the constraints that are placed on one’s action are, in fact, unjust?

To answer this question, Cudd first notes how sets of constraints can fall disproportionately, or unequally, on some groups more than on others. She provides the example of segregated public restrooms. If, on average, the restrooms assigned to one group are of lesser quality (in terms of general wait time and cleanliness, for instance), then a certain set of constraints are being borne unequally by that group. Cudd then suggests—a bit too quickly, I believe—that the unequal constraints are unjust if the inequality in question is itself *unjustifiable*.²⁰

While Cudd does not spend very much time establishing what it means for an unequally distributed constraint to be unjustifiable, I believe we can extract from her account the following

¹⁹ Cudd, pp. 36-37

²⁰ Cudd, 51

guiding principles. First, some group-based constraints on action are uncontroversially *justifiable*. For example, the social group of people who study philosophy rather than medicine are *justifiably constrained* by the fact that their local hospital denies them permission to perform open heart surgeries on its patients.

Alternatively, unjust or unjustifiable constraints on action are those that stem not from legitimate decisions one has made (i.e. studying philosophy rather than medicine), but from the ways that one's social group identity leads to one's interests being systematically thwarted by unjust group-based hierarchies.

In other words, an *unjustifiable* shared constraint on action for a social group is one that undermines the moral equality of members of that group (or that reinforces their extant inequality). It is a constraint that is imposed upon them as a result of morally arbitrary features that they possess—i.e. in terms of race/ethnicity, gender, ability, etc.

For instance, the expectation that women regularly wear uncomfortable clothing and shoes to “look attractive” is an unjustifiable constraint because it stems from the belief that women should devote themselves to their exterior beauty for the pleasure and acceptance of men. This systematically undermines and reinforces women's inequality in relation to men. However, the expectation that medical doctors regularly read important medical journals to “stay on top of their fields” is not an unjust or unjustifiable constraint, as it does not respond to or reinforce any unjust group-based hierarchies.

Allow me to summarize the account of social groups—and oppressed social groups—that I employ. Social groups are collections of people who share, or who would share under similar circumstances, a set of constraints on action. These constraints are generated by a variety of social institutions. People can be members of social groups without knowing it or claiming it. An

oppressed social group is “a collection of persons who share (or who would share under similar circumstances) a set of *unjust* constraints on action.”²¹ Unjust constraints on action are those that undermine one’s moral equality in relation to others, or that reinforce one’s extant inequality in relation to others, on the basis of one’s social group membership.

III. The Socially Undocumented

I now turn to the question of what it means to be socially undocumented. I will argue that (1) there is a social group of people facing similar constraints that stem from being *perceived to be undocumented*; and (2) these constraints are *unjust*.

Let me begin by arguing that being *legally* undocumented is neither necessary nor sufficient for oppressed as an undocumented migrant. As we shall see, being legally undocumented does not, in and of itself, lead to unjust constraints. Thus, if the legally undocumented can be said to comprise a social group on the basis of a shared set of constraints, it is not necessarily an *oppressed* social group.

To see why this is the case, let us consider some of the constraints on action that both Alicia and Gary share strictly as a result of being legally undocumented. Neither of them can vote in US elections. They cannot serve on US juries. They both lack a legal right to work in the United States. However, recall that only those constraints that are *unjust* entail membership in an oppressed social group. I have assumed national borders to be morally and politically legitimate. Thus, these are not (*prima facie*) unjust constraints. Alicia and Gary are not necessarily oppressed on the basis of the constraints that stem from being legally undocumented.

This point is further illustrated by an example from Michael Blake. The fact that I, as citizen of the United States, cannot vote in French elections is not unjust. That is, the French

²¹ Cudd, 44

government, in denying me permission to vote in French elections, does not regard me as morally inferior to the citizens of France. Blake explains that:

The restriction recognizes...the distinct institutional contexts in which French and American citizens are situated. French citizens, being coercively ruled by a set of French legal and political institutions, are entitled to guarantees of political equality simply inapplicable to the set of both French and American citizens. Nothing here is a denial of moral equality. The different set of political entitlements reflects the distinct implications of moral equality in distinct institutional circumstances; it respects, rather than abandons, the notion of moral egalitarianism.²²

In denying me the right to vote in French elections, the French government simply recognizes that I am a member of a distinct institutional context. I am treated as neither superior nor inferior to the citizens of France. My inability to vote in French elections is thus not an *unjust* and *unjustifiable* constraint on my action, for it does not undermine my moral equality to the French in any way.

In the very same way, the constraints that Alicia and Gary face strictly on the basis of not being US citizens—i.e., lacking legal permission to vote and to serve on US juries, and to reside and work legally in the US—are not necessarily unjust and unjustifiable constraints. I conclude, then, that the social group of those who are oppressed as undocumented migrants (if it exists) is not the same as the group of legally undocumented migrants. Furthermore, the constraints stemming from being legally undocumented are not oppressive.

I will now argue that Alicia is socially undocumented not on the basis of her legal status, but because of how she is perceived on the basis of how she looks. I argue for this in terms of the following.

²² Michael Blake, "Immigration and Political Equality" in *San Diego Law Review* 45(4) (2008), 967

First, Alicia faces a host of constraints (associated with immigration status) that Gary does not.²³ Second, Alicia endures these constraints because she is perceived to be undocumented—*not* because she is legally undocumented. Third, these constraints are *unjustifiable* and therefore *unjust* because they are imposed on the basis of morally arbitrary features such as race/ethnicity and socioeconomic class. They are therefore different from legitimate constraints that are imposed because Alicia (and Gary) are legally undocumented—i.e., being able to vote in United States elections. Because of this, Alicia—and those similarly positioned—share a set of unjust constraints. They therefore comprise an oppressed social group, the socially undocumented.

I turn, then, to my first point. Alicia faces a host of constraints associated with undocumented status that Gary does not. For instance, she lives in greater fear than Gary does of being pulled over or otherwise targeted by the police in an encounter that could lead to her deportation. She thus moves around Los Angeles timidly, with a sense of limitation and caution. Gary, on the other hand, navigates DC with general ease. He does not fear that his immigration status will be called into question if he gets pulled over at a traffic light, and he happily goes to boisterous parties and punk rock concerts on a regular basis.

In addition, Alicia is subjected to a range of offensive stereotypes and assumptions in her interactions with many US citizens and institutions because people assume that she does not belong in the US. Indeed, people assume may that she cannot speak English and even tell her to go back to her country. This may have a disparaging impact on the way Alicia views herself. Gary, however, can interact with the Americans around him with far greater ease. People do not

²³ I add the qualifier “associated with undocumented status” to distinguish the sorts of constraints that are relevant to undocumented migrant oppression, broadly conceived, from other unevenly distributed constraints that are imposed on the basis of other features of Alicia’s identity, such as gender. My aim is to uncover what is unique about undocumented migrant oppression in particular. I shall explore this issue in further detail later in this paper.

doubt his intelligence or English language ability when they come across him. Indeed, his English accent often leads people to assume that he is remarkably intelligent.

Alicia is also compelled to engage in underpaid and sometimes degrading labor that most US citizens and legal residents would be reluctant to perform. When she seeks employment as a domestic worker or a farmworker, her employers will not think twice about paying her less than minimum wage and denying her basic workplace safety protections.

On the other hand, when Gary applies for work as a musician at children's birthday parties he gets paid more than the minimum wage. While he may not thoroughly enjoy this work, he is treated roughly the same way—in terms of respect and workplace safety—as a US citizen in a similar position would be treated. Were Gary to apply for work in places traditionally associated with exploitable undocumented migrant labor (like a meat-packing plant) he may even struggle to get hired.

In sum, we have seen that Alicia faces a host of constraints that Gary does not. People assume that Alicia is an immigrant who does not belong in the United States and cannot speak English. They both underpay and under-protect her in jobs that undocumented migrants usually perform because they assume that she will not complain for fear of deportation. Alicia constantly fears that she will be targeted by the police in an encounter that will eventually lead to her deportation.

I now turn to my second claim. Alicia does not face these constraints because she is legally undocumented. When Alicia is harassed, demeaned and exploited to by a range of US citizens and institutions it is not because authorities have confirmed that she lacks legal permission to live and work in the United States. Rather, it is because of *how she is perceived* on the basis of *how she looks*.

It will be easier to illustrate this by turning to “real world” examples of people who face the same constraints as Alicia. I will explore the grounds upon which many people—who are positioned in a way that is similar to Alicia—are demeaned, harassed by the police and immigration enforcement, and exploited in worksites that are traditionally associated with undocumented migrant labor. As I explore these narratives I will argue that this treatment is not a response to the fact that the people in question are legally undocumented. Rather, it is in response to how they are perceived on the basis of how they look. I end this section with brief discussion of what it means to “look undocumented”.

I have argued that Alicia is demeaned by US citizens and legal residents in ways that are associated with immigration status. The following statement from Alma, a Latina child, illustrates far more clearly what this often entails:

Just last year I went into a store and I was paying for my groceries and the clerk didn't think I spoke English. She was out of plastic bags so she said to the bagger, “Just go ahead and put it in paper bags, they don't care,” as if I didn't know what she was saying. But I said, “But I do care. I like it in plastic better.” I think because we're Hispanic and they know we do field work, and we're new in the area, they think less of us. We're human and we work hard. Maybe we don't work in a store, but we're picking apples for them to sell in the store.²⁴

In this statement we see that Alma was demeaned by a US citizen or legal resident. The clerk at the grocery store automatically assumed that Alma was a foreigner who could not speak English, and that she did not care about the quality of her grocery bags like a US citizen would.

Importantly, this demeaning treatment did not occur because the clerk somehow knew that Alma was legally undocumented. In fact, Alma is a citizen of the United States and speaks English as one of her first languages. Instead, this treatment occurred on the basis of how Alma

²⁴ Ann Miles and Christina Sonnevile, “The Cultural Construction of Poverty,” in *Ethnographic Essays in Cultural Anthropology: A Problem-Based Approach*, edited by Bruce Morrison and Roderick Wilson (Wadsworth: Cengage Learning, 2001) pp. 157-179

was perceived by the clerk. On the basis of how she looks, Alma was perceived as someone who does not belong in the United States—and she was demeaned on that basis.

Similarly, when people assume that Alicia does not speak English, and when they tell her to go back to her country, this occurs because of judgments people make on the basis of how Alicia looks. This does not transpire because Alicia is legally undocumented.

I have also claimed that the sense of trepidation with which Alicia navigates the city on the way to and from work is attributable not to her legally undocumented status, but rather to the way that Alicia is perceived. To further argue for this, let me begin by noting that Alicia's experiences are shared by many others in the United States.

In their chapter “Deportation in the U.S.-Mexico Borderlands: Anticipation, Experience, and Memory,” anthropologists Victor Talavera, Guillermina Gina Nuñez-Mchiri and Josiah Heyman discuss the ways that “deportability” is experienced profoundly by a subset of the population in the United States—including people who have never been physically deported.²⁵ The authors argue that many people feel “branded” as undocumented and deportable on the basis of how they look. This produces tremendous anxiety and trauma for those who feel thus branded. It constrains their movement and often forces them into a state of social isolation.

To illustrate this, the authors discuss a series of 2005 raids that took place in El Paso, Texas, in which police officers used routine traffic stops to locate and apprehend undocumented migrants (eventually turning them over to Immigration and Customs Enforcement (ICE) agents).²⁶ The El Paso County Sheriff's Department purposefully targeted neighborhoods that are heavily populated by Mexican farmworkers by putting a disproportionate amount of checkpoints

²⁵ Victor Talavera, Guillermina Nuñez-Mchiri and Josiah Heyman “Deportation in the US Borderlands: Anticipation, Experience and Memory” in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, edited by Nicholas De Genova and Nathalie Peutz (Durham & London: Duke University Press, 2010)

²⁶ Talavera et al, 169

in those areas. Talavera, Nuñez-Mchiri and Heyman interviewed an undocumented Mexican woman in El Paso who reported that people like her “move around the city like rats, quickly, hoping not to get caught.”²⁷

Once again, this treatment not a response to the fact that the targeted people in question are legally undocumented. To see why, note that Gary does not face similar constraints. While Gary’s case is hypothetical it nevertheless has argumentative force. It seems truly absurd to imagine a white, middle-class, legally undocumented Londoner would moving around Washington, DC with trepidation—hoping that his immigration status will not be called into question if and when he gets pulled over at a traffic light.

There is further evidence that the trepidation with which Alicia, and those similarly positioned, move about the cities and towns where they live does not stem from their legally undocumented status. Indeed, many *US citizens and legal residents* endure this very same constraint. To illustrate this point, let us recall a powerful passage from Gloria Anzaldúa in her *Borderlands/La Frontera: The New Mestiza*:

In the fields, *la migra*. My aunt saying, “*No corran*, don’t run. They’ll think you’re *del otro lao*.” In the confusion, Pedro ran, terrified of being caught. He couldn’t speak English, couldn’t tell them he was a fifth generation American. *Sin papeles*—he did not carry his birth certificate to work in the fields. *La migra* took him away while we watched. *Se lo llevaron*. He tried to smile when he looked back at us, to raise his fist. But I saw the shame pushing his head down, I saw the terrible weight of shame hunch his shoulders. They deported him to Guadalupe by plane. The furthest he’d ever been to Mexico was Reynosa, a small border town opposite Hidalgo, Texas, not far from McAllen. Pedro walked all the way to the Valley. *Se lo llevaron sin un centavo al pobre. Se vino andando desde Guadalupe*.²⁸

As Anzaldúa’s passage demonstrates, one can be constrained to move about with trepidation even if one is a US citizen or legal resident. Pedro’s treatment is in response to the way that he is

²⁷ Talavera et al, 175

²⁸ Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza, 25th Anniversary Edition* (San Francisco: Aunt Lute Books, 1987)

perceived on the basis of how he looks (and, in turn, to the way that he has internalized himself as being perceived).

Talavera, Nuñez-Mchiri and Heyman provide yet another powerful example of how US citizens and legal residents can face this very constraint. They interviewed with Gloria, a woman who had previously been undocumented but is now a legal resident of the United States. Gloria said:

It has been twelve years since I have not been to Mexico. I lived many years in the United States as an illegal. Today I am a legal resident, but I feel the same. My mind-set has not changed; I continue living in fear. I do not feel important. I live my life in hiding. I still do not go out in public much. I have no self-confidence, and I continue to live my life as if I was still illegal. I want to live my life differently, but I just can't.²⁹

Like Pedro in Anzaldúa's passage, Gloria has a legal right to be present in the United States. However, just like Alicia, who happens to be legally undocumented, Gloria is subjected to constraints on her movement as a result of the ways that her "deportability" was internalized.

In sum, given that Gary does not navigate DC with a sense of trepidation, and given that many US citizens and legal residents also experience this constraint, I submit that the (constraining) fear with which Alicia moves around Los Angeles stems not from her status as legally undocumented, but because of how she looks.

Finally, I have also claimed that when Alicia is asked to do degrading work that US citizens are not inclined to do, and when she is paid less for that work than a US citizen would be, this is not in response to the fact that she is legally undocumented. On what grounds can I make such a claim? Are Alicia's employers not exploiting her *explicitly* in response to her undocumented status?

²⁹ Talavera et al, 184

It is important to note that many exploited legally undocumented migrants do, in fact, possess “working papers”—they just happen to be false. Thus, it cannot be said that their exploitation is a direct response to their *legally* undocumented status, for they have presented paperwork that asserts that they have legal permission to work.

In addition, it is clear that Alicia could easily get hired for a position that is traditionally associated with undocumented migrant labor (i.e. field work, employment in a factory) without ever having to “prove” that she is legally undocumented. She would swiftly be hired for such positions on the basis of how she looks.

Further evidence for the fact that exploitation that Alicia, and those similarly positioned, face is not in response to their legal status comes from the fact that one can have legal authorization to work in the United States and still be exploited as an undocumented migrant. Mary Romero argues in her ethnography of the working conditions of domestic workers—*Maid in the USA*—that many Latina legal residents of the United States who are employed as household workers often labor under the same conditions as legally undocumented household workers who are also Latina.³⁰ They are in this respect “grouped in” with those who are oppressed as undocumented migrants.

Alternatively, Seth Holmes, a white American anthropologist who worked alongside Oaxacan Triqui migrant workers in the state of Washington as part of his anthropological fieldwork, reports that he was paid more and treated better by his overseers on the basis of being perceived as educated and white. This occurred despite the fact that he had deliberately sought out the experience of working and being treated like a legally undocumented farmworker.³¹

³⁰ For further discussion see Mary Romero, *Maid in the U.S.A.* (New York: Routledge, 2002).

³¹ See Seth Holmes, *Fresh Fruit: Broken Bodies: Migrant Farmworkers in the United States* (Berkeley: University of California Press, 2013).

I have suggested that these constraints faced by Alicia, and others similarly positioned, are imposed not because they are legally undocumented, but because of how they are perceived on the basis of how they look. José Jorge Mendoza has argued that immigration enforcement and expulsion strategies in the US interior are imposed disproportionately on those who “look Latino/a” or possess “Mexican appearance”.³² Note, in addition, that all of the examples of mistreated undocumented migrants I have explored are themselves Latino/a. With this in mind, one might raise the following objection. Why have I opted to develop an account of a social group called the “socially undocumented” as opposed to referring to the social group of Latino/as?

I argue that just as the respective social groups of legally and socially undocumented people are not comprised of exactly the same group of individuals, the respective social group of Latino/as and the socially undocumented are not coextensive.

First, it is possible to be Latino/a without “looking undocumented”—or even “looking Latino/a” in accordance with problematic, widespread stereotypes about how a Latino/a “looks”. Jorge J.E. Gracia argues in his paper “The Nature of Ethnicity with Special Reference to Hispanic/Latino Identity”³³ that many Latino/as lack genetic linkages to most other Latino/as. He explains that “for instance, some children of Welsh immigrants to Argentina are as Hispanic/Latino as any other Hispanic/Latino—indeed, when they visit Wales they feel they do not belong there.”³⁴ While it is beyond the burden of this paper to explore thoroughly the rich, complicated philosophical debate around the nature of Latino/a identity³⁵, I briefly mention

³² Mendoza, 74. See also *United States vs. Brignoni-Ponce*, 422 U.S. 873 (1975).

³³ Jorge J.E. Gracia, “The Nature of Ethnicity with Special Reference to Latino/Hispanic Identity” in *Public Affairs Quarterly* vol. 13 no. 1 (1999) pp. 25-43

³⁴ Gracia, 33

³⁵ For further discussion see (for instance) Linda Martín Alcoff, *Visible Identities: Race, Gender and the Self* (Oxford: Oxford University Press: 2006) and Jorge J. E. Gracia, *Hispanic/Latino Identity: A Philosophical Perspective* (Oxford: Blackwell Publishers, Inc., 2000).

Gracia's argument to motivate my claim that the social group of Latino/as and that of the socially undocumented are not comprised of exactly the same sets of individuals.

Furthermore, questions of economic class trouble the suggestion that these social groups are precisely coextensive. Take, for instance, this exchange in an ethnographic interview that Josiah Heyman conducted with an INS inspector:

Q: How do you pick one Hispanic out of a crowd of Hispanics in downtown Nogales?

A: That's something I can't tell you but after a year, in a crowd of ten, I can pick out the one illegal. Clothes are real important, their demeanor, how they present themselves, the way they walk around. Dirty clothes, ill-fitted clothes. But the only way to really know was to ask, and we had that right, so we asked.³⁶

As this example demonstrates, the socially undocumented are perceived to be undocumented not only on the basis of race and ethnicity, but also socioeconomic class.

In sum, I acknowledge that there is great overlap between the social group of Latino/as and the socially undocumented. And I agree with Mendoza that U.S. and legal resident Latino/as in the United States disproportionately bear the burden of US internal enforcement and expulsion strategies. However, I submit that the term "socially undocumented" refers not simply to being Latino/a, but to a complex intersection of race/ethnicity and class.

We have seen, then, that there exists a social group that faces a common set of constraints associated with immigration status—the socially undocumented. Alicia, but not Gary, belongs to this group. This brings me to my final question. Is this an *oppressed* social group? That is, are these constraints—restricted movement, workplace exploitation in worksites that are associated with undocumented migrant labor, and the general, demeaning presumption that the socially undocumented do not belong—*unjustifiable* and *unjust*?

³⁶ Josiah Heyman, "State Effects on Labor Exploitation: The INS and Undocumented Migrants at the Mexico-United States Border" in *Critique of Anthropology* 18:157 (1998)

Now that we have carefully distinguished between the (*prima facie*) justifiable constraints that one faces on the basis of being *legally* undocumented—i.e. lacking a legal right to work in the United States, to vote in U.S. elections and to own property—it becomes clearer that the constraints that the socially undocumented face are, indeed, unjust.

Unlike justifiable constraints that respond strictly to one's legal status, the socially undocumented face unique constraints on the basis of morally arbitrary features such as race/ethnicity and class. As such, these constraints are unjustifiable, for they reinforce unjust group-based hierarchies. These constraints are inconsistent with the requirement of just states to uphold universal moral equality. The socially undocumented is therefore an (unjustly) oppressed social group.

IV. Objections

I shall soon explore how this understanding provides a framework for an account of undocumented migrant rights. But first I shall address a series of possible objections to my claim that the Alicia—and, more broadly, the socially undocumented—are unjustly oppressed. Some of these objections will, in fact, enable me to illustrate more clearly the importance of thinking in terms of socially, and not strictly legally, undocumented migrant status.

(1) I have argued that it is *not* unjust that Alicia lacks a right to be present in the United States, but that it *is* unjust that she is oppressed while in the United States. One might insist that if Alicia lacks a right to be in the US then the oppression she endures simply cannot be unjust.

In response to this objection, let me clarify that one's moral equality cannot permissibly be violated even in response to one's having engaged in an unauthorized activity. I will illustrate this point with a comparatively trivial example. If a police officer catches me running a red light,

he may permissibly force me to pay a fine or endure some other just penalty. This responds to the fact that I have broken a just law. It respects me as a moral equal. It would be impermissible, however, for the police officer to respond to my running a red light by loudly proclaiming to me and others that women are incompetent drivers. This undermines, rather than respects, my moral equality with men. Clearly, the fact that I broke a just law does not give the police officer a right to undermine me this way. It is equally absurd to suggest that Alicia can be oppressed because she crossed the US-Mexico border without legal authorization.

(2) The objector might respond that Alicia's unauthorized border-crossing should be likened not to the act of running a stop sign, but to the act of breaking into someone's house without permission. Imagine that Jane breaks into Bill's home and he finds her sitting in his living room, calmly drinking what remains of his orange juice. He repeatedly asks her to leave, and she refuses. Bill could use a reasonable amount of force to extract Jane from his home, but instead he decides to act oppressively towards her. He tells her that as long as she remains in his home, Jane will have to cook and clean for Bill while reflecting upon what it means to be properly feminine.

Here, the objector may make two different arguments: (a) Bill is allowed to treat Jane this way while she is on his property; and (b) since Jane is free to live whenever she wishes, Bill's demands do not constitute an "unjust constraint" on her action. Similarly, Alicia has "broken into the United States" and can, like Jane, justifiably be oppressed. Given that she is free to leave the United States whenever she wishes, her disagreeable experiences do not constitute "unjust constraints" on her action.

The first strand of objection relies upon a false analogy. The relationship between individuals and their property is not the same as the relationship between states and their

territories. States do not “own” the land in the same way that a homeowner owns her property—nor do the citizens of the United States collectively “own” the US national parks and other public spaces.³⁷ The relationship between states and their territory is not one of ownership but of sovereignty; this is a crucial distinction. Just states are required to uphold universal moral equality in ways that individual citizens are not (at least not in their homes). While parents can favor their sons or their daughters (legally, not morally)—perhaps by paying for their sons, but not their daughters, to go to college—legitimate, just states are not allowed to discriminate in this fashion.

I now turn to the second strand of objection. The fact that one is “free to leave” an undesirable context does not make the constraints one faces in that context unjust. A person suffering the constraints associated with racism in his place of work, or in his neighborhood, is “free to leave” in hopes of finding a kinder neighborhood or office. But this does not mean that the constraints he faces in his place of work and neighborhood can be justified. The test of whether someone faces unjust constraints is not whether they are free to leave, but whether those constraints *violate one’s moral equality*. Thus, though Alicia entered the US without authorization and is “free to leave,” the oppressive constraints she faces are still unjust.

(3) The objector may reply that given that Alicia has crossed the border without permission—all the while knowing that she will most likely be treated poorly in the United States—she has consented to the oppressive treatment that she encounters. Since she has consented to this treatment, her moral equality is respected.

This objection is also unsuccessful as we have been given no compelling reason to believe that Alicia has consented to her treatment. Imagine that Veronica gets a job in an area of

³⁷ For further discussion, see Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000).

town where there is a high rate of assault against women. She could choose not to take that job. However, she really needs the money to feed her family and jobs are hard to come by (or perhaps she is simply very interested in that job). Sadly, one day when she is walking home from work, Veronica is assaulted. The fact that Veronica took a job in that particular area of town does not suggest that she “consented” to being assaulted any more than Alicia’s unauthorized border crossing suggests that she “consented” to oppressive treatment in the United States.

I believe that this set of objections illustrates the philosophical and political importance of distinguishing between the legally and the socially undocumented. Even if we regard national borders to be politically legitimate, talk of “illegality” often amounts to a red herring in our discussions of immigration. Indeed, we are irresponsibly distracted by talk of illegality. We fail to distinguish between the legitimate ways that states can respond to Alicia’s unauthorized border crossing (i.e., denying her the legal right to work and vote), and the illegitimate ways that states violate the moral equality of the socially undocumented by supporting the oppressive social institutions that constantly undermine them.

The final objection I will consider is more philosophically complex. Alicia is oppressed on many levels. She is undocumented, but she is also a woman of color. How can we know whether she is being mistreated on the basis of being perceived to be undocumented, or on the basis of being a woman of color? As Anzaldúa writes, “*la mojada, la mujer indocumentada*, is doubly threatened in this country. Not only does she have to contend with sexual violence, but like all women, she is prey to a sense of physical helplessness.”³⁸ How do we know the basis on which Alicia is facing these unjust constraints?

This is an important objection. I have tried to include in my “list” of the ways that Alicia is mistreated on the basis of being perceived to be undocumented only those things that appear

³⁸ Anzaldúa, 34

clearly connected to socially undocumented status in a broad (non-gendered) sense. These include her limited, fearful movement out of fear that she will be “stopped” by the authorities, the fact that she is targeted by the police and immigration enforcement on the basis of how she looks, and the fact that she gets paid less, and is asked to do more, than US citizens (or, more specifically, those who are perceived to be US citizens). I have tried to avoid other constraints that may stem from other aspects of her marginalized status—for instance, racial slurs and the very fact that she, *qua* woman, is expected to do housework in the first place.³⁹

In response to this objection I should also highlight, once again, my *political* conception of a social group. I have argued that we should posit social groups inasmuch as so doing enables us to understand oppression and work to alleviate it. I have been searching for an account of undocumented migrant oppression that is not only descriptively accurate, but also potentially useful for dismantling undocumented migrant oppression (an issue I shall explore in the final section). In searching for an account of undocumented migrant oppression that is potentially useful for crafting immigration policy, it seems appropriate to seek an account that can articulate the ways that a subset of the US population is being unjustifiably undermined in association with undocumented migrant status. And I believe that my account of what it means to be socially undocumented accomplishes this.

Having said that, I recognize a complex, intersectional analysis is required in order fully to articulate how Alicia is oppressed as a woman of color who is also socially undocumented. Indeed, far more work must be done to articulate the varied “faces” of undocumented migrant oppression.⁴⁰

³⁹ For further discussion see Wilcox, “Who Pays for Gender Deinstitutionalization”

⁴⁰ I borrow this concept from Iris Marion Young.

For instance, Indigenous migrants from Latin America are often socially undocumented, but they also face unique forms of oppression that are not endured by their *mestizo* socially undocumented counterparts.⁴¹ I present my account of the socially undocumented as a mere starting point for crafting immigration policy, and hope that it can contribute to future intersectional analyses of the ways that various sub-groups of the socially undocumented endure unique forms of oppression.

To conclude, in this section I have developed an understanding of the socially undocumented. I have also defended my view against a series of objections. I have suggested that understanding the term “undocumented migrant” as denoting not just legal status, but social group membership, can not only help us understand undocumented migrant oppression, but also develop a compelling account of undocumented migrant rights. I now turn to this task in the final section of my paper.

IV. Justice for the Socially Undocumented: A New Framework for Undocumented Migrant Rights

The socially undocumented share a common set of unjust constraints because they are perceived to be undocumented on the basis of how they look. The constraints are unjust because they undermine the moral equality of the socially undocumented—thereby perpetuating unjust social group-based hierarchies.

How can this account help us to develop an account of rights for the socially undocumented? My claims in this section are only tentative, and intended to inspire future work and conversation about this important question.

⁴¹ For further discussion of this issue see Michael Kearney, “Transnational Oaxacan Indigenous Identity: The Case of Mixtecs and Zapotecs” in *Identities: Global Studies in Culture and Power* vol. 7 no. 2 (173-195) pp. 173-195; and Jonathan Fox, “Reframing Mexican Migration as a Multi-Ethnic Process” in *Latino Studies*, 4 (2006) pp. 39-61

First, note that we now have grounds on which to argue that the socially undocumented *themselves* are wronged on the basis of the oppression they endure. This holds true even though many (but not all) of the socially undocumented crossed the US-Mexico border without legal authorization.

Recall that José Jorge Mendoza argued that internal immigration enforcement mechanisms are unjust because they disproportionately impact Latino/a citizens and US residents. In response, I have argued that he gets half-way there. Immigration enforcement mechanisms are oppressive when they undermine, and give rise to, the socially undocumented—a group that includes both “documented” Latinos and a subset of legally undocumented migrants in the United States. I believe that while this is the conclusion that Mendoza strives for, he cannot get there because he conceives of “undocumented migrant” as a legal rather than social group status. In other words, Mendoza writes on behalf of undocumented migrants like Alicia, but he is working within a framework that treats all undocumented migrants like Garys.

Aside from oppressive immigration enforcement mechanisms in the US interior, my account shows that the following things constitute injustice for the socially undocumented (note that this is not an exclusive list): (1) undermining treatment based on the assumption that the socially undocumented do not belong and cannot understand English; and (2) being underpaid and under-protected in places of work that are traditionally associated with undocumented migrant labor. Indeed, we can now argue that even though many socially undocumented people lack a legal right to work in the US, it is nevertheless unjust that they be exploited at work in the US (or at least more exploited than those who are not socially undocumented).⁴²

⁴² For an account of undocumented migrant exploitation as “super-exploitation” see Heyman (1998). A somewhat similar argument is offered by Christopher Wellman in his rejection of exploitative guest worker programs. Wellman argues that while states have a right to exclude, when they do choose to admit migrant workers they cannot permissibly do so under exploitative conditions. See Christopher Wellman and Phillip Cole, *Debating the Ethics of*

My previous comments focused on negative rights for the socially undocumented. However, I believe that my account may also provide groundwork for a conception of positive rights for members of this social group.

Recall that in Martin Luther King's *Letter from Birmingham Jail*, he condemns a form of life which forces part of a society to live "on tiptoe stance," forever fearful of speech and self-assertion, and of the violence which could be occasioned by such self-presentation. The response to segregation, of course, was to create the legal and social structures by which African Americans could more effectively speak out against their own marginalization: to remove the institutions (i.e., segregated schooling, terroristic violence, and so on) that silenced their voices. This transition has been halting and imperfect, but the process can be understood as an effort to give those who are marginalized a chance to present themselves to society as entitled to moral equality.

Similar arguments might be made in favor of the right to remain undocumented status. The socially undocumented might have a case to regularize their status, simply in virtue of the fact that legal rights to remain have the ability to reduce the sorts of vulnerability that give rise to their oppression. We might have the right to remain, on this account, because the absence of that right is what allows group-based injustice to continue.

We might also, though, regard the methods I have introduced here as ones that provide guidance even in the absence of a right to remain. The idea that motivates my suggestions here is that we can, in the face of group-based oppression, provide those groups with some tools needed to undermine their own oppression—even in the absence of a right to permanent residence. I will here discuss only one. On the basis of the framework I have provided, we can

Immigration: Is There A Right to Exclude? (Oxford: Oxford University Press, 2011). Of course, guest worker programs and undocumented migration each raise different sets of ethical questions, but I believe there is at least some similarity between the two arguments.

defend the development of rules preventing information-sharing between federal agencies of immigration status information – as in California’s recent Trust Act – in virtue of the ways in which this act encourages the socially undocumented to speak up against injustice. Those who might be able to report workplace violence, or exploitative working conditions, are often in no position to do so, simply because of the vulnerability they experience because of their legal status. To compartmentalize the authority structure of the government would, on this account, offer a way of speaking back against social-group-based oppression.

My main conclusions, though, are more general. I hope to have established two things in this paper: first, that the analysis of the undocumented in virtue of social group membership is a more promising avenue than one that simply focuses on the legal status of persons. The second thing I want to establish is broader—namely, that the philosophy of immigration ought to reflect the lived experience of those whose social worlds are shaped by immigration. I stated at the outset that political philosophers have too often considered only the justice of hypothetical people crossing hypothetical borders. Political philosophy should be informed, instead, by the experiences of those whose lives are created under the oppressive conditions created by our system of border enforcement. Political philosophy, in other words, should be done in dialogue, both with Latin American thought, and with the activist communities that are working to improve the lives of migrants.

CHAPTER 5
THE INEGALITARIAN SPECTACLE OF DEPORTATIONS
WHY THE SOCIALLY UNDOCUMENTED
CANNOT BE DEPORTED

“Making the minimum wage, that is the best you can do. It’s better to work in a market, lining up the shopping carts or cleaning bathrooms, making the minimum wage. But in the fields, they make you work when it is raining, when it is snowing, and they pay you just about anything. Like I said, it is much better to work somewhere like a market... They pay you the same and you are inside. In that kind of work you get a break, you can drink a coffee; eat a piece of banana, a piece of bread, whatever you want. You can sit down and eat. But in the fields? In the mud? What kind of break do you get? Often, none. The grower or mayordomo will tell you, “No break. You will lose a lot of time. Get used to it.” No, no, no. I worked in a camp like that. They never gave us breaks. They said, “No, it’s fine. Just work.” And the break? “You didn’t get a break,” they said, “we’re going back to work.” And if you did get a little break, then they made you work twenty minutes or an extra half an hour at the end of the day... No, they just want you to work... and if you complain, well, what if the migra shows up? What then?”¹

I. Introduction

In this chapter I argue that deportations are often “inegalitarian spectacles” that serve to reinforce undocumented migrant oppression. In such cases, I contend, deportations are unjust. I argue that while there is nothing *intrinsically* wrong with the deportation of undocumented migrants, the permissibility of this practice must be assessed against a backdrop of inequality in order to determine precisely which deportations are allowed or disallowed at the bar of justice.

Unfortunately, the sort of assessment I shall advocate is not practiced in immigration policy and law enforcement and this has enabled countless unjust deportations to take place. “To deport” is often defined, and understood, as forcing a non-citizen to leave the country. When

¹ Lynn Stephen, *Transborder Lives: Indigenous Oaxacans in Mexico, California, and Oregon* (Durham and London: Duke University Press, 2007), 171

President Obama is referred to by some immigrant rights activists as “deporter in chief,” this is usually in reference to the number of undocumented migrants that have been forced to leave the United States under his administration (now totaling around two million).² However, just as I argued, in chapter 4, against adopting a purely legalistic understanding of “undocumented migrant,” I will also argue against such a restrictive understanding of deportations.

One obvious reason for this is that many people who are and have been deported from the United States are, in fact, US citizens and legal residents.³ Second, such a restricted understanding of deportations fails to capture the ways that they often constitute spectacles of inequality.

A particularly flamboyant example of the latter comes from the notorious Maricopa County, Arizona sheriff Joe Arpaio. Arpaio has been accused of humiliating prisoners—many of whom are undocumented migrants who have been “rounded up” under his administration.⁴ He often has them work on the roadsides in chain gangs while residing in the “Tent City” he created to push the punishment of his prisoners into the public eye.

Arpaio attracted widespread criticism in 2009 (at least, on the part of some—he remains popular amongst many Arizonans) when he forced approximately 200 undocumented migrants to march along the streets of Maricopa County—once again, in a chain gang—to the “Tent City”. He forces his inmates to wear pink underwear and often uses pink handcuffs in what is regarded as an effort to humiliate them (though Arpaio denies this).⁵ Arpaio, and many of those working

² AJ Vicens, “The Obama Administration’s 2 Million Deportations, Explained,” *Mother Jones*, April 14, 2014, accessed May 31, 2014 at <http://www.motherjones.com/politics/2014/04/obama-administration-record-deportations>

³ See, for instance, Kristin Collins, “N.C. Native Wrongly Deported to Mexico,” *charlotteobserver.com*, August 30, 2009, accessed May 31, 2014 <http://www.charlotteobserver.com/2009/08/30/917007/nc-native-wrongly-deported-to.html#.U4qh2CqF-Mq>

⁴ See *Under Arpaio*, Documentary, Produced and Directed by Jason, Co-Produced by Mary Charlotte Thurtle. Pan Left Productions, 2012. For further information visit <http://underarpaio.com/>

⁵ Randy James, “Sheriff Joe Arpaio,” *Time Magazine*, October 13, 2009, accessed May 31, 2014 at <http://content.time.com/time/nation/article/0,8599,1929920,00.html>

under him, have been accused of enacting “brown raids” on predominantly Latino/a and Native American neighborhoods in hopes of “rounding up” undocumented migrants and deporting them.⁶ An overtly restricted understanding of what it means to deport an undocumented migrant cannot reflect the deep injustice that lurks in practices such as this.

I am not suggesting that justified deportations are *not* deportations. Rather, I argue that deportations should be understood in terms of the vital role they play in a broader cycle of oppression—a cycle that is in place before, during and after many deportations.

More specifically, in this paper I shall argue that the deportation of those who are *oppressed as undocumented migrants* (a group that I refer to as the *socially undocumented*, as explained in chapter 4) unjustly reinforces undocumented migrant oppression through an impermissible spectacle of inequality. This practice is therefore inconsistent with relational egalitarian justice.

My analysis is focused on a particular type of deportations: those that Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) refer to as “interior apprehensions and removals”.⁷ That is, I am focusing on those undocumented migrants who are apprehended in the interior of the United States—not those who are apprehended while trying to cross the border.

Importantly, the great majority of deported undocumented migrants in the United States are, in fact, apprehended along the US-Mexico border. The experiences of these particular migrants do not necessarily enter into the framework of undocumented migrant oppression that I have developed. This is because it can plausibly be argued that those migrants who are apprehended at the border are not apprehended in response to how they look (which is unjust),

⁶ See also *Under Arpaio*

⁷ US Department of Homeland Security, Immigration and Customs Enforcement (ICE), “FY 2013 Immigration Removals,” accessed May 31, 2014 at <https://www.ice.gov/removal-statistics/>

but in response to what they are doing (namely, crossing the US-Mexico border without authorization). This does not hold in all cases, though—having “Mexican appearance” can and sometimes does play a key role in one’s being apprehended in the borderlands.⁸ Thus, many migrants apprehended while crossing the US-Mexico border may be socially undocumented. But it is beyond the burden of this chapter to explore this complicated and important issue with the care it requires.

My argument proceeds as follows. I begin by reviewing briefly what it means to be socially undocumented as developed in chapter 4. Next, I explain what I mean when I say that deportations of the socially undocumented constitute inegalitarian spectacles. I will follow the line of analysis developed by Debra Satz, who argues in her paper “Markets in Women’s Sexual Labor” that female prostitution is objectionable when it serves as a “theater of inequality” that reinforces women’s subservience to men.⁹ I use, and unpack, Satz’s argument in order to explore the ways that deportations often reinforce undocumented migrant oppression. Finally, I argue from a moral point of view it is impermissible for the state to reinforce undocumented oppression. Since deportations of the socially undocumented do, in fact, reinforce undocumented migrant oppression, it wrong for the state to conduct such deportations.¹⁰

I recognize that the state’s obligation not to deport the socially undocumented enters into conflict with its right—and, some would say, its duty—to respond to unauthorized migration in its territory. However, I argue that since there are other, reasonable alternatives available to the

⁸ Having “Mexican appearance” can be part of a set of articulable facts that generate “reasonable suspicion” justifying a warrantless deportation near the US Mexico border. For further discussion see “Updating Brignoni-Ponce: A Critical Analysis of Race-Based Immigration Enforcement” in *The New York University Journal of Legislation and Public Policy*, vol. 11:567, accessible at <http://www.nyuylpp.org/wp-content/uploads/2012/10/Connor-Updating-Brignoni-Ponce.pdf>

⁹ Debra Satz, “Markets in Women’s Sexual Labor,” in *Ethics* 106 (1995)

¹⁰ Note that all of my claims in this paper are *prima facie*. There may be cases in which the socially undocumented may permissibly be deported – for instance, in the case of violent criminal activity.

state that do not reinforce undocumented migrant oppression in this way, it is illegitimate for the state to deport the socially undocumented.

Note that my proposal differs from Comprehensive Immigration Reform and the philosophical view that long-term undocumented migrants (those who have been in the country for at least six years, according to Carens¹¹) should be granted a right to remain. I do not necessarily reject this important view which, as we saw in chapter 3, rests upon a very different argument. However, we shall see that the socially undocumented should be granted a right to remain even if they have not been in the country for a very long time.

II. Who Is Socially Undocumented?

In this section I briefly review my account of what it means to be socially undocumented, as developed in chapter 4.

Let us recall the two hypothetical “cases” of undocumented migrants that I have been exploring in preceding chapters. We discussed the story of Gary, who is a white, middle-class UK citizen who came to the United States to become a punk rock star. He chose to remain in the United States without legal authorization in hopes of advancing his music career. If Gary’s undocumented status happens to be found out through purely legitimate means, it does not appear to be intrinsically wrong to deport him back to the UK.¹²

Second, we discussed the story of Alicia, an undocumented migrant from Mexico. A single mother, she came to the United States after her family’s livelihood as subsistence farmers

¹¹ Joseph Carens, “Immigrants and the Right to Stay,” *Boston Review*, accessed May 28, 2014 at <http://bostonreview.net/BR34.3/carens.php>. For an extended version see Joseph Carens, *Immigrants and the Right to Stay* (Cambridge: The MIT Press, 2010).

¹² It may be wrong after a certain period of time, according to Carens.

was ruined. Alicia worked as a maid for a number of wealthy families in Los Angeles. She was regularly underpaid, undermined, and denied basic workplace protections.

I argued that a clear difference between Alicia and Gary is that Alicia has been oppressed as an undocumented migrant but Gary has not. That is, Alicia, but not Gary, is socially undocumented. However, like Gary, Alicia also migrated to the United States without legal authorization. So how can it be said that Alicia was oppressed in the United States if she lacks a legal right to live and work here in the first place?

I argued that the first step in understanding how Alicia was, indeed, unjustly oppressed is to think of the term “undocumented migrant” as denoting not a *legal status* but a social group membership. This is because people are generally oppressed not as individuals but as members of certain social groups.¹³ Thus, an account of “undocumented migrant” as denoting social grouphood is important for uncovering possible oppressive forces at play in Alicia’s experience. By making this move we can begin to see undocumented migrant oppression as a systematic pattern in which a certain segment of society comes to be perceived, and also treated, as morally inferior.

I employed Ann Cudd’s externalist account of a social group. Cudd argues that a social group experiences a common set of constraints on their action—of which the group members may or may not be aware. These constraints may be cultural, institutional or psychological. People can be members of a social group without knowing it or claiming it; all that is required is that they face a similar constraint or set of constraints as others in the group.

An oppressed social group is a group of people who face a common set of constraints that are *unjustifiable* (and therefore unjust). I argued that unjustifiable constraints are those that

¹³ See Kenneth Clatterbaugh, “Are Men Oppressed?” in *Rethinking Masculinity: Philosophical Explorations in Light of Feminism* (Lanham: Rowman & Littlefield Publishers, Inc., 1996) pp. 289-305

reinforce, or give rise to, unjust group-based hierarchies. An unjustifiable constraint is one that undermines the moral equality of social group members in accordance with their social group membership.

I then used Cudd's account to explore the ways that people can be oppressed as undocumented migrants. I argued that we should distinguish between the legitimate ways that legally undocumented migrants are subjected to constraints (i.e. being denied the right to vote in their new country of residence), and the illegitimate ways that people can be undermined as socially undocumented.

I argued that those people who are systematically targeted by police and immigration enforcement in raids that are intended to assess immigration status, told to go back to their countries of origin, and paid less than US citizens are for their work, are illegitimately oppressed as undocumented migrants. I argued that this is because this treatment responds not to their *legally* undocumented status, but to the way that they look. This is made clear by the fact that those who "look undocumented"—like Alicia—are subjected to such treatment. Those who do not "look undocumented"—like Gary—are not.

One aspect of undocumented migrant oppression that I explored in chapter 4, and that I wish to emphasize in this chapter, is the role that *deportability* plays in sustaining undocumented migrant oppression. We saw that many socially undocumented people—who, once again, may or may not be US citizens or legal residents—feel "branded" as undocumented and deportable.

We saw that being "branded" as deportable, in the way that I described in chapter 4, occurs on the basis of how the socially undocumented look as opposed to any confirmation of their legal status. In addition to feeling "branded" as undocumented by law enforcement as they move about the street with a sense of trepidation, we also saw that the socially undocumented are

exploited at work because it is assumed that they will not complain about their treatment for fear of deportation. Once again, this exploitation occurs not in response to any confirmation of *legally* undocumented status—for many “illegal” socially undocumented people use fake documents, or are never asked to “show their papers” in the first place. Rather, it occurs on the basis of how they look.

I do not wish to trivialize the significance of the fact that many socially undocumented people who are exploited at work do not, in fact, have a plausible way to complain about their unjust treatment. In other words, I do not wish to diminish the role that being *legally undocumented* can and does play in sustaining the conditions through which many socially undocumented people are exploited at work in the United States. Certainly, having a legal right to live and work in the United States would give the socially undocumented resources for “speaking back” against their oppression—as suggested in chapter 4.

My point, however, is that exploitation of the socially undocumented bears a distinctive injustice. Employers assume that their employees will accept sub-standard working conditions, and they will assume that they lack the ability to defend themselves, *because they are perceived to be undocumented on the basis of how they look*. In short, the socially undocumented are branded as deportable on the basis of their appearance—on the street, at work and elsewhere. This holds true even if the *legally undocumented* status of many socially undocumented people is indeed playing a role in sustaining the conditions of their oppression.

Once again, this treatment undermines moral equality of the individuals in question, for it involves the imposition of constraints on the basis of morally illegitimate factors such as race/ethnicity and class. These constraints are therefore unjust and unjustifiable, reinforcing impermissible group-based hierarchies. The socially undocumented are thus an oppressed social

group. I argued that both “documented” and undocumented individuals can be oppressed as undocumented migrants, but that one can be *legally undocumented* without entering into this framework of oppression.

In sum, the socially undocumented are those who are *subjected to unjust constraints because they are perceived to be undocumented on the basis of how they look*. As argued above, and in chapter 4, being perceived to be undocumented often entails being *perceived to be deportable*.

III. Inegalitarian Spectacles

In the previous section, and throughout chapter 4, I described what it means to be socially undocumented. In the subsequent sections I turn to the following question. From a moral point of view, is it permissible for the socially undocumented to be deported?

I shall soon argue that deporting the socially undocumented is unjust because constitutes an inegalitarian spectacle. But first I must clarify what I mean by this. I follow Debra Satz’s line of analysis in “Markets in Women’s Sexual Labor,” where she argues that prostitution often serves as a “theater of inequality” that supports the subordination of women.¹⁴ As such, it “contributes to, and also instantiates, the perception of women as socially inferior to men.”¹⁵ She further argues that if prostitution did not play a causal role in supporting women’s subordination, it would not necessarily be problematic on a political or moral or political level.¹⁶ Thus, prostitution is “not wrong irrespective of its cultural and economic context.”¹⁷

¹⁴ Satz

¹⁵ Satz, 64

¹⁶ *ibid*

¹⁷ *ibid*

To illustrate this, Satz carefully distinguishes between different types or practices of prostitution. First, she considers streetwalker prostitutes, who are often driven to such work by poverty. They generally rely upon the protection of pimps who may act violently towards them. Streetwalkers generally lack control over whether or not they have sex with a man. They are often scorned by society.

In contrast, many “call girls” become prostitutes not out of desperation, but out of a desire to earn a considerable amount of money (perhaps to help pay for a college education). Unlike streetwalkers, call girls generally exhibit control over whether they have sex with a man. Finally, Satz considers male prostitutes, who are “generally not subject to the violence of male pimps” and “tend to work on their own.”¹⁸

Out of these three cases, Satz suggests that streetwalking is emblematic of a theater of inequality. This is because the phenomenon of streetwalking—in which impoverished women are often violently controlled by the men to whom they sell their bodies for sex—degrades women by treating and representing them as the sexual servants of men.¹⁹ Their desperation, vulnerability and lack of autonomy in the face of male power constitute a spectacle of inegalitarianism.

Satz fleshes out this argument over the course of her article. She argues that there are two ways in which gender inequality supports and is sustained by prostitution. The first is in terms of equality of income and opportunity. As discussed, streetwalkers are often “driven” to become prostitutes because of an unjust lack of other viable economic alternatives stemming from systematic discrimination against women as a social group.

¹⁸ Satz, 66

¹⁹ Satz, 74

The second sense is in terms of status inequality. Satz explains that all women are relegated to an inferior social status through the social mechanisms of negative stereotyping (i.e. women are considered less intelligent and less dominant than men), unequal power (women are more likely to be violently assaulted than men are), marginalization (women are denied access to a range of respected jobs and social roles that tend to be reserved for men) and stigma (being a woman is often associated with a “badge of dishonor,” particularly in rape cases).²⁰

Importantly, the phenomenon of prostitution not only stems from this status inequality, it also supports and deepens women’s perceived inferiority to men. Satz explains that “...whenever there are significant inequalities between groups, those on the disadvantageous side will be allocated to subordinate positions [T]he positions they occupy will serve to reinforce negative and disempowering images of themselves.”²¹

Satz argues that by associating women with negative stereotypes—by reinforcing the idea that women are the sexual servants of men—prostitution makes it less likely for women to be hired for many prestige-garnering jobs. It also contributes to the way that women are stereotyped and perceived as a social group. Satz also argues that other forms of traditional “women’s work” (like housecleaning, babysitting, and secretarial work) can also have this effect.

With all of this in mind, I can now explain how I understand and employ the phrase “spectacle of inequality” throughout the rest of this paper. I will unpack this metaphor in somewhat greater detail than Satz does to make it applicable to other contexts.

Note that I do not take myself to be listing the necessary and sufficient conditions of a spectacle of inequality. I readily acknowledge that some such spectacles may not be captured on my analysis. Instead, I am delving into Satz’s analysis of prostitution—which many find

²⁰ Satz, 77

²¹ *ibid*

compelling (as I do)—to see what it can teach us about justice in deportations. I aim to show that if Satz is right about how prostitution reinforces women’s oppression, then deportations also enforce the oppression of the socially undocumented.

I believe that the metaphor of a “theater” or “spectacle” of inegalitarianism throws into relief, most helpfully, the ways that many social practices are systematically (perhaps even flamboyantly) “played out” in the public eye in a way that reinforces oppression. Given the media attention accrued to Sheriff Joe Arpaio’s tactics this metaphor is particularly apt. I employ the term “spectacle” rather than “theater” (which is Satz’s term) to emphasize that I am exploring a real, non-fictional practice in which the “characters” are not necessarily play-acting.

I should note, though, that deportations of the socially undocumented are problematic even if they are unwitnessed (an issue that I discuss below). Even if “outsiders” to the socially undocumented community never see deportations, they still contribute to the marginalization of the socially undocumented by, among other things, compelling them to *see themselves as deportable* (I discussed this in greater detail in chapter 4). Thus, though I emphasize the theatrical elements of deportations, I am certainly not suggesting that deportations ought to be conducted in clandestine form. Deportations of the socially undocumented would still reinforce status inequality even if conducted under a veil of secrecy by the state.

So, what makes something an inegalitarian spectacle—one that reinforces the perceived inferiority of a given social group? Taking my inspiration from Satz’s analysis, I believe that such spectacles often contain four components.

First, they are *public or semi-public interactions*. Let me clarify what I mean by “semi-public”. I do not wish to say that *every* element of the practice takes place in the public eye. Certainly not all aspects of prostitution always take place in the public realm. Furthermore, the

spectacle of inequality of prostitution can be played out even for those who may never have laid eyes upon an actual prostitute.

In order for a practice to be *semi-public*, it must be generally understood to transpire in a widespread fashion. The spectacle can be played out for society members not only in “real life,” but also in the media and popular discourse. Along these lines, one need not personally visit a prostitute to be confronted by the ways that prostitution responds to and reinforces women’s inferior social status. As this example shows, one can be an audience member for the spectacle without personally witnessing it. One need only absorb its damaging effects.

Second, in an inegalitarian spectacle the public or semi-public interaction is one in which one “character” is dominated by the other “character”. I assume a very broad definition of domination. When domination occurs in an interaction between two people—or between a person and an institution, like the state—the person (or institution) in a position of power does or can impose his or her will on another person (or institution) who is less powerful.²²

In the case of prostitution (at least, the type of prostitution that is relevant to this analysis), the prostitute is, for a period of time, the dominated sexual servant of the client. Even though prostitutes are often paid for their work and consented to do it, they face a constant threat of violence and degradation as they engage in this role.

Third, the interaction must be *systematic* in the following way. There are generally two roles that are “played out” in the spectacle. Members of a particular social group will generally be “cast” in the role of the dominant person and members of a different social group will generally be “cast” in the role of the dominated person. Once again, in the case of prostitution, the social group of “women” is generally represented in the role of the dominated person, while the social group of “men” is generally represented in the role of the dominating person.

²² I am grateful to Patrick Taylor Smith for discussing this point with me.

Fourth, in an inegalitarian spectacle a *distinctive history of injustice* plays a causal role in the fact that members of a given social group tend to be in the dominant position while members of a different given social group tend to be in the subordinate position. In the case of prostitution, it is not out of mere coincidence or caprice that women tend to be those employed as streetwalkers, with men generally serving as pimps or johns. Instead, unjust background conditions provide a causal explanation for the ways these roles are cast.

Finally, and most importantly, an inegalitarian spectacle serves to *reinforce* the past injustice in question. In other words, the spectacle contributes to the very status inequality that supports and sustains the theater of inequality itself. The spectacle of inequality perpetuates a vicious cycle of injustice by systematically displaying one group as inferior to and dominated by another.

III. Deportations as a Spectacle of Inequality

In this section I argue that deportations of the socially undocumented constitute spectacles of inequality. As we shall see, Gary's deportation does not necessarily constitute such a spectacle, but Alicia's deportation does. To review, these conditions for a spectacle of inequality are:

- (1) It is a public or semi-public spectacle;
- (2) In the spectacle one person or "character" is dominated by the other;
- (3) It is systematic, in that members of one social group tend to be represented in the position of the dominated person, while members of another social group tend to be representing as the dominating person;

- (4) A history of injustice provides a causal explanation for this spectacle (specifically, for who falls into the subordinate group, and who falls into the dominant group); and
- (5) The spectacle reinforces the very status inequality that sustains the theater of inequality itself.

In the case of deportations, (1), (2) and (5) are very simple and straightforward, and will require little defense or explanation, while (3) and (4) will require greater explanation.

1. A Public or Semi-Public Spectacle

Many elements of deportations are indeed played out in public. For example, when undocumented migrants are summoned to court for a hearing about their immigration status these hearings are generally open to the public. It is not a secret to US citizens that deportations transpire here on a regular basis.

However, I consider deportations *semi-public* (rather than public) spectacles because they can be played out for society members who may have never personally witnessed any component of an actual deportation. There is near-constant, popular news coverage of the number of people who are deported annually—whether it be Obama’s deportation record, Arpaio’s treatment of the socially undocumented, or otherwise. Immigrant rights activists regularly engage in prominent anti-deportation protests (for instance, the annual May Day rallies). Furthermore, the issue of deportations often comes up constantly in public debates about immigration. This is how most people become aware of deportations.

2. Domination

I take it as uncontroversial that an element of domination is involved in deportations. Most will acknowledge this regardless of whether they believe that deportations are, in general, just.

Deportations entail someone's forced removal from a state, by the state. The state is able to exert political, social, emotional and bodily control over legally undocumented migrants. For instance, as we shall soon explore in greater detail, during the ICE raids of worksites that were popularized during the George W. Bush administration, many undocumented migrants were physically detained and removed by law enforcement. Many undocumented migrants are placed in detention centers as they await hearings about their immigration status. If, following their hearing, an undocumented migrant is granted an order of departure, she is physically removed from the United States.

3. Systematic Roles

In this section I argue that in most deportations (by which, once again, I mean *interior* apprehensions and removals) in the United States, the socially undocumented tend to be represented in the role of deportees.²³

I argue for this in terms of the following. First, most people who get deported from the United States are Latin American. Second, most immigration audits and raids have generally taken place in spaces where the socially undocumented (most of whom, once again, are Latino/a) are perceived to work. Third, legislation like SB1070 (versions of which have been adopted in

²³ Less interestingly, those who are not socially undocumented—those who are acknowledged as having a right to remain—are those represented in the role of deporters. I shall not focus my attention on this here.

six US states) leads to greater arrests, which in turn lead to greater deportations, of the socially undocumented.

Let me begin with my first point. The majority of those who are deported from the United States are Latin American. According to ICE, in 2013 9 of the “Top 10 Countries for Removal” (where “removal” signifies” deportation) were Latin American Countries, with the top five positions occupied by Mexico, Guatemala, Honduras, El Salvador and the Dominican Republic.²⁴ A total of 357, 422 people were represented in the “Top 10 Countries for Removal” out of a grand total of 368, 644 deportations. As we can see, almost everyone who is deported from the United States is Latin American. According to the Pew Hispanic Center, one in four Hispanic adults said that they “personally know someone who has been deported or detained by the federal government for immigration reasons in the past 12 months.”²⁵

Of course, the majority of the deported undocumented migrants referenced here were apprehended while trying to cross the US-Mexico border. As I stated at the outset, those who are apprehended at the border do not necessarily enter into my framework of undocumented migrant oppression. However, a total of 133, 551 undocumented migrants were deported in 2013 after being apprehended in the interior of the United States. While ICE does not provide data regarding the citizenship of those migrants apprehended in the interior, we can derive from these figures that the majority of those migrants who were “removed” from the interior were Latin American.

I now turn to my second point. We have grounds to conclude that those undocumented migrants who were “removed” from the US interior were socially undocumented. That is, they were oppressed as undocumented migrants prior to being apprehended by ICE. To see why, we

²⁴ US Department of Homeland Security, Immigration and Customs Enforcement (ICE), “FY 2013 Immigration Removals,” accessed May 31, 2014 at <https://www.ice.gov/removal-statistics/>

²⁵ *ibid*

must look at the practices via which ICE (and, previously, the INS or Immigration and Naturalization Service) apprehends or has apprehended undocumented migrants.

Under the George W. Bush administration ICE raids were often systematically conducted on sites that are traditionally associated with undocumented migrant labor. The ICE Swift raids conducted as part of “Operation Wagon Train” are a notorious example of this. These immigration raids—which were the largest and most sweeping of their kind in US history—targeted six meat-packing plants owned by Swift & Company.

ICE was widely condemned for enacting perceived racial profiling in these raids. The Urban Institute of the National Council of La Raza reported that “almost all of the immigrants arrested in these raids were Latinos – primarily from Mexico, Guatemala and Honduras—but nationally almost a quarter of undocumented migrants are from regions of the world other than Latin America.”²⁶ Latino/a US citizens and permanent residents targeted in the raids reported being discriminated by ICE agents. For instance, during a Swift raid in Utah all employees with a perceived Latino/a appearance were forced to get in a line to be interrogated by ICE. Non-Latino/a citizens were given blue bracelets and immediately allowed to leave the line.²⁷ Maria, a Latina Swift employee who is also a US citizen, said “I was in the line because of the color of my skin. They’re discriminating against me. I’m from the United States and I didn’t even get a blue bracelet.”²⁸

These notorious raids have been retired under the Obama administration. They have been replaced with I-9 audits through which employers are investigated to see if they are complying

²⁶ The Urban Institute and National Council of La Raza, *Paying the Price: The Impact of Immigration Raids on America’s Children* (2007), page 2, accessed May 31, 2014 at

http://www.urban.org/uploadedPDF/411566_immigration_raids.pdf

²⁷ Jennifer Sanchez, Dawn House and Kristen Moulton, “Federal Raid Puts Families in Limbo,” *Salt Lake City Tribune*, December 13, 2006, accessed May 31, 2014 at http://www.sltrib.com/ci_4829962

²⁸ *ibid*

with immigration laws. Although, in theory, the goal of these audits is to target the employers themselves, they have in fact led to massive firings of undocumented workers who lack legal authorization to work. Once again, ICE has been accused of targeting Latino/a workers in this strategy.²⁹ Furthermore, ICE's own guidelines for which worksites ought to be audited—sites that are rumored to have worksite violations—are precisely those sites where the socially undocumented tend to be employed.³⁰

I readily acknowledge that ICE—and, previously, the INS—may target sites that are traditionally associated with undocumented migrant labor because such sites have historically employed legally undocumented labor (and not *simply* due to the sort of racial profiling involved in undocumented migrant oppression). I am strictly arguing that the ICE audits and INS raids are disproportionately targeted at sites where the socially undocumented tend to be employed.

Moving on, ICE often points out that many apprehended undocumented migrants previously committed a crime. Indeed, they report that in 2013, 82 percent of “removed” undocumented migrants had been previously convicted.³¹ This brings me to my third point. Legislation like SB 1070 (currently adopted in six US states) leads to greater deportations of the socially undocumented. It is important to bear in mind the role that undocumented migrant oppression plays in these arrests.

This legislation requires police officers to check the immigration status of those who are arrested and inspire within the officers “reasonable suspicion” with regard to their immigration status. Unsurprisingly, those who inspire the “reasonable” suspicion that they do not belong tend

²⁹ MALDEF: The Latino Legal Voice for Civil Rights in America, “MALDEF Co-Releases Report Citing Record Deportation Numbers,” accessed May 31, 2014 at

http://www.maldef.org/news/releases/maldef_coreleases_deportation_report/

³⁰ Immigration and Customs Enforcement, “Worksite Enforcement Strategy,” accessed May 31, 2014 at

http://www.ice.gov/doclib/foia/dro_policy_memos/worksite_enforcement_strategy4_30_2009.pdf

³¹ US Department of Homeland Security, Immigration and Customs Enforcement (ICE), “FY 2013 Immigration Removals,” accessed May 31, 2014 at <https://www.ice.gov/removal-statistics/>

to be working-class Latino/as. Thus, those whose undocumented status is “revealed” via SB1070 are socially undocumented. That is, they are perceived not to belong *merely on the basis of how they look*, and they are subjected to a set of constraints on that basis. I have argued that these constraints are unjust. On these grounds, I submit that the socially undocumented tend to be “cast” in the role of deportees in interior removals.

It is important to remember that a spectacle of inequality plays a role in public perception. Do we have grounds for concluding that the socially undocumented are being *perceived* as those who are getting deported? I believe we do.

This point is made clear by José Antonio Vargas, who is perhaps the most prominent activist for immigration reform in the United States. Vargas, an accomplished journalist, is a US-based undocumented migrant from the Philippines. He stated in a recent interview on the news program *Democracy Now* (in which he discussed his documentary about undocumented migration):

I’m more convinced now than I was three years ago when I outed myself [as an undocumented migrant] that before we change the politics of this issue, we have to change the culture of this issue. ... I’ve done about 200 events in 42 states, traveling round the country while filming this film ... and the fact that people still think we’re all “Mexicans” (not that there’s anything wrong with being Mexican)...and the fact that people think that this is, you know, a Latino *criminal* issue, right, tells us the long ways we have to go. And I have to tell you...for me the most tragic thing doing all the traveling is how many people, after they find out I’m Filipino ... people say “illegal” and “Mexican” interchangeably. I have to say that for me that’s the most tragic thing. And that’s a big cultural problem. People think that just because you happen to be brown or Latino in this country, you’re not supposed to be here, even if you were born here.³²

Let me summarize what I have argued thus far. Deportations from the US interior are semi-public, involve elements of domination, and disproportionately target and “represent” the

³² Interview with José Antonio Vargas, *Democracy Now*, May 2, 2014, accessible at http://www.democracynow.org/2014/5/2/pulitzer_winning_journalist_jose_antonio_vargas

socially undocumented. This brings us to the next question. Is it *unjust* that the socially undocumented tend to be represented in the role of deportees in this semi-public spectacle?

4. A History of Injustice

In this section I argue that it is, indeed, unjust.

Recall that in her discussion of the ways that a history of injustice supports how the social group of “women” tends to be “represented” as prostitutes, Debra Satz discussed both inequalities of income and opportunity and status inequalities. I shall discuss these two issues in conjunction with one another in the context of deportations.

There are at least three plausible routes via which one might argue that inequalities of income and opportunity support the disproportionate representation of the socially undocumented in the role of deportees.

First, one might argue that the US-Mexico border itself sustains unjust economic inequality. Recall that Joseph Carens has famously argued that today’s borders are the contemporary equivalent of feudal birthright privilege, separating the lucky “haves” from the unlucky “have-nots” (and compelling the have-nots to migrate to the Global North out of desperation).³³ From within this framework, one could easily argue that the inherent injustice of the US-Mexico border itself brings about widespread deportations of poor and oppressed Latino/a citizens. However, given that I am working within a closed-borders framework that assumes that today’s borders are (roughly) just, this line of argument is not available to me.

³³ Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” in *The Review of Politics* vol. 49, no. 2 (1987): pp. 251-273.

Second, one might also argue that US trade and foreign policy has unjustly harmed the developing world, including (and perhaps in particular) Mexico and Latin America.³⁴ Through unjustly enacting trade agreements like NAFTA that ruin the livelihoods of subsistence farmers, one might argue, the United States has effectively compelled Mexican nationals to migrate to the United States despite a lack of legal channels via which to do so. If this is true, then unjust inequalities of income and opportunity do support the high representation of the socially undocumented in the role of deportees. While I find this argument compelling, it is beyond the burden of this paper to defend it successfully given the philosophical controversy that surrounds it.³⁵

Instead, I believe we can understand how inequalities of income and opportunity lead to disproportionate representation of the socially undocumented in the role of deportees by continuing to focus on *status inequality*. Thus, I shall explore these two issues in conjunction with one another.

I have argued that even though the socially undocumented have migrated without legal authorization, they are treated unjustly if they are exploited and otherwise degraded on the basis of being perceived to be undocumented. It is, then, an injustice in income and opportunity that the socially undocumented tend to be relegated to workplaces that pay extremely low wages and offer unsafe and largely undesirable working conditions.

In other words, the socially undocumented may lack a legal right to work in the United States, but it is also unjust that they be underpaid and otherwise mistreated on the basis of how they look. To be clear: the injustice occurs when employers treat the socially undocumented as

³⁴ This argument is made by Shelley Wilcox in "Immigrant Admissions and Global Relations of Harm," *Journal of Social Philosophy*, vol. 38 no. 2 (2007) pp. 274-91

³⁵ See, for instance, Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002).

inferior on the basis of how they look. Given that many employers hire the socially undocumented work in substandard conditions—once again, on the basis of how they look—unjust status inequality supports the fact that the socially undocumented are exploited at work.

Thus, status inequality, which is connected to inequality in income and opportunity, supports the fact that the socially undocumented tend to be those who are deported in interior apprehensions and removals. On the basis of how they are perceived (and, in particular, on the basis of how they are *perceived as deportable*—which we explored in chapter 4), undocumented migrant labor is relegated to places like meat-packing plants, sweatshops and agricultural work. These are the jobs that US citizens are not willing to do.

Of course, ICE is well aware that these are the workspaces to which undocumented migrant labor tends to be relegated. Because of this, as we have seen, ICE disproportionately targets these places in its audits and raids. Thus, the fact that the socially undocumented are those who tend to get deported is caused, in part, by unjust status inequality. They are perceived to be deportable, and they are thus given jobs in workspaces from which people tend to be deported.

Thus, just as stereotypes about women lead to the high representation of women as prostitutes, stereotypes about the socially undocumented lead to their high representation in the “role” of deportees.

This is not to say that ICE officials are consciously acting in response to the status inequality affecting the socially undocumented when they target, say, meat packing plants and fruit-fields. Similarly, male clients of female prostitutes are not necessarily consciously acting in response to the status inequality affecting women when they solicit. I am strictly saying that status inequality—which, in the case of the socially undocumented, is connected to inequality of

income and opportunity—provides a causal explanation of why the socially undocumented tend to be those who are deported in interior apprehensions and removals.

5. Reinforcement

We have seen that prostitution reinforces the oppression of women. Do deportations reinforce undocumented migrant oppression? In this section I argue that they do.

Recall, once again, the injustice of being socially undocumented. One is perceived as not belonging on the basis of how one looks and acts, and one is treated as inferior on this basis. Often, this degrading treatment occurs because those who are perceived as undocumented are perceived as *deportable*. Thus, there is a widespread assumption that the socially undocumented will not be able stand up for themselves for fear of deportation. This inspires some to mistreat the socially undocumented in a variety of ways.

The deportations of the socially undocumented reinforce the perception that they are deportable beings who cannot stand up for their mistreatment. By *in fact deporting* the socially undocumented in a semi-public spectacle that entails the systematic domination of the socially undocumented by the state, the perception of this social group as deportable is swiftly reinforced.

This resembles the ways that prostitution reinforces the subordination of women. The widespread perception that women are suited not for prestigious social positions, but rather to serve as the sexual servants of men, is supported by an institution in which women *in fact serve* as the sexual servants of men. Similarly, deportations reify the very basis upon which the socially undocumented are oppressed.

Allow me to summarize my argument that deportations of the socially undocumented are spectacles of inequality that unjustly reinforce undocumented migrant oppression. Deportations

are at least *semi-public*. That is, even those who have not personally witnessed any particular component of a deportation are generally aware that they continuously transpire through media and other sources. In various ways, they entail the physical domination of the deported by the deporter. The socially undocumented are almost always represented in the dominated “role” of deportee. A distinctive history of injustice provides a causal explanation for why this is the case.

Finally, deportations enforce the oppression of the socially undocumented. In deporting the socially undocumented, the state is confirming, in the public eye, that members of this group are, in fact, deportable. The state thereby reinforces the very public perception that makes undocumented migrant oppression possible. Thus, just as prostitution often constitutes a “spectacle of inequality” that reinforces the very stereotypes or ideas about women that lead to the social group of “women” being disproportionately represented in the “role” of prostitute, deportations of the socially undocumented reinforce the very stereotypes or ideas about the socially undocumented that lead to this group being disproportionately represented in certain exploitative sectors (and eventually deported).

IV. Moving Forward

I now turn to a crucial question. Let us grant that deportations of the socially undocumented unjustly reinforce undocumented migrant oppression. Is that sufficient to show that such deportations are *impermissible*?

One might object that the previously-held perception that Alicia was undocumented cannot have been unjust if it was, in fact, true. According to this objection, if the state targets a fruit field for a raid or audit because it is believed that undocumented migrants work there, and if

it turns out that legally undocumented migrants *do*, in fact, work there, the perception, raid and subsequent deportation are not unjust.

This objection fails to account for the nature and consequences of social group-based oppression. Let us consider an example outside of immigration. It is widely known that racist implicit bias leads many to assume that young African-American males are likely to commit violent crime.³⁶ This will lead some (including many who consider themselves anti-racist) to cross the street if they see a young African-American male approaching them.

Imagine, then, the following. Whenever John sees an African-American male approaching him on the street, he swiftly crosses to the other side. Since he has never been assaulted by an African-American male (but he was once mugged by a white man), one his friends questions his behavior. He replies that he does this because he thinks that most African-American males are criminals. One day, he sees an African-American male approach him (let's call this man Jack), and he crosses to the other side of the street. On this day, however, he is mugged by Jack.³⁷ He therefore feels that his racist beliefs have been confirmed.

Does the fact that Jack did, in fact, mug him justify John's previously belief that Jack—*qua* African-American man—was a criminal likely to mug him? Certainly not. If John is justified in believing (and acting upon) a belief that a particular man was going to mug him because that man was African-American, then he is justified in holding (and acting upon) the racist belief that African-Americans are criminals. But John is not justified in holding such a racist belief. Thus, John's previously-held belief that Jack was going to mug him is unjustified even though he was,

³⁶ B. Keith Paine, "Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon" in *Attitudes and Social Cognition*, vol. 81 no. 2 (2001) pp. 181-192

³⁷ Two notes about the possible expressive character of this example. I am using this example because it is an important, and all-too-real, illustration of the way that unjust attitudes towards marginalized social groups reinforce oppression. That said, I sincerely hope that using this example does not serve to reinforce the very sort of unjust perception that I am arguing against. In addition, I want to make clear that I am certainly not likely likening undocumented migration to violent crime.

in fact, mugged. (Similarly, a person who holds that all women are “whores” is not vindicated upon realizing that the woman to whom he just referred as a whore does, in fact, work as a prostitute.)

However, the objector might respond that this example does not resemble the problem of undocumented migrant deportations in one important respect. In the case of deportations, we are not merely concerned with the unjust *perceptions* that the socially undocumented endure. We are also concerned with what the state may or may not do in response to deportations. One might grant that perceiving people as undocumented on the basis of how they look is wrong, but nevertheless hold that the socially undocumented can still be deported once their legal undocumented status has been confirmed.

Similarly, the objector might grant that John did, indeed, impermissibly harbor a racist perception toward the Jack as Jack approached him. Nevertheless, the objector will argue, Jack can still justifiably be *punished* for mugging John. The mere fact that John harbored unjust beliefs toward Jack does not undermine this fact.

In response to the objector, I grant that Jack can be punished by the state for mugging John. However, and crucially, it would be unjust for the state to do this in a way that reinforces the widely held, unjust belief that African-American males are prone to violence.

It would be wrong to humiliate Jack publicly—perhaps by forcing him to stand on the street holding a sign that says “I am a violent criminal.” In addition, given the unjust, high rate of incarceration of African-American males (it is reported that one in three African-American males will go to jail in their lifetime), a policy that required all arrested criminals who publicly hold signs that say “I am a violent criminal” would certainly reinforce the oppression of this social group. Of course, I believe that any form of public humiliation is wrong, for anyone; it would be

wrong to force this upon Gary. I merely share this example to highlight what I hope is a shared intuition: forms of punishment should not reinforce the oppression of a social group when this is reasonably avoidable.

Along similar lines, Debra Satz argues that those who craft legislation around prostitution should take steps to avoid, as much as possible, reinforcing the oppression of women in the process. Because of this, she does not argue that prostitution should be illegal. Instead, she argues that prostitution should be decriminalized despite the oppressive mechanisms it responds to and supports. Through decriminalization, prostitutes will have greater access to police protection, medical care and other social services. This will diminish the vulnerability of streetwalkers to the violence of male pimps and thereby diminish some of the oppressive mechanisms at play.

Another example pertains to recent European legislation affecting the Roma. Until 2013, when people reported thefts in Italy they were able to check off a box marked “Gypsy” on their official complaint form if they felt they had been robbed by a Roma person. An advocacy group working to fight discrimination against the Roma in Europe campaigned against the practice, and it was only recently banned.

The Executive Director of the European Roma Rights Centre, Deziderui Gergely, remarked that “this situation reflects the deep-rooted and institutionalized anti-Romani racism in Italian society. Public institutions have a responsibility to combat racism and discrimination, not to reproduce and contribute to negative stereotypes.”³⁸ This example demonstrates compellingly that the state should not reinforce unjust attitudes towards oppressed social groups, even when members of those groups may have committed a crime.

³⁸ European Roma Rights Centre, “Theft Victims in Italy Asked to Tick ‘Gypsy’ Box – NGO Wins Change,” August 18, 2003, accessed May 31, 2014 at <http://www.errc.org/article/theft-victims-in-italy-asked-to-tick-gypsy-box-%E2%80%93-ngo-wins-change/4181>

One might insist that if members of a particular (identity-based) social group are, in fact, statistically more likely to commit certain crimes, then it is not unjust to make these assumptions about the groups in questions. This is tantamount to saying that given that women are more likely to be employed as streetwalkers, it is fair for one to assume that the women one meets are prostitutes (or likely to be prostitutes). But this would be absurd—or so I hope the reader will acknowledge.

What principles and guidance can we derive from the discussion thus far? As we know, just states have an obligation to honor universal moral equality. Social group-based oppression undermines moral equality. It seems, then, that states have at least a *prima facie* duty to undermine—or at least not reinforce—oppression. Thus, the state has a *prima facie* duty to avoid reinforcing undocumented migrant oppression through deportations.

I call it a *prima facie* duty because it may enter into conflict with other important obligations that the state has. The state has an obligation, and some would say a duty, to respond to unauthorized activity within its territory. What should the state do, then, when its right to respond to unauthorized migration enters into conflict with its duty to avoid reinforcing undocumented migrant oppression?

I believe that the previous examples demonstrate that the state should choose the response that does the least to diminish the oppression of marginalized groups. It is quite possible that *any* form of semi-public punishment will serve to reinforce the oppression of groups that are stereotyped as criminals. This generates a conflict of duties for the state. That said, at the very least the state should avoid those alternatives that do even more to reinforce social group oppression (i.e. public humiliation and criminalization of practices like prostitution).

Does the state have available reasonable alternatives to deportation that would not reinforce undocumented migrant oppression so greatly? Yes, it does. The state has the option of granting amnesty to the socially undocumented. I call this a reasonable alternative because it has and continues to be employed regularly in a variety of circumstances in the United States.

A sweeping example is the Immigration Reform and Control Act of 1986. Among other things, this act granted amnesty to approximately three million undocumented migrants living in the United States for a long time.

There are numerous other circumstances under which a legally undocumented migrant may be granted a right to remain. Long-term migrants are sometimes eligible for a “Cancellation of Removal” after being apprehended. This allows them to avoid deportation and achieve permanent resident status if, among other things, their departure would cause great hardship to a particular US citizen or permanent resident. Some undocumented migrants can be granted what is called Deferred Action, enabling them to sidestep deportation proceedings and achieve legal authorization to work in the United States. This was popularized in 2012 when the Obama administration announced that it would cease to some deport some undocumented youth who had entered the United States as children.³⁹

Given that some form of amnesty for undocumented migrants is or has been applied in a variety of contexts in the United States, I submit that it does constitute a reasonable alternative to deporting the socially undocumented.

Note that most of the amnesty programs I have identified are granted to long-term migrants. As I have aimed to show throughout this chapter, this should not be the only group that is eligible for a right to remain. The socially undocumented—including those who may lack

³⁹ See National Immigration Law Center, “Frequently Asked Questions: The Obama Administration’s Deferred Action for Childhood Arrivals,” accessed May 31, 2014 at <http://www.nilc.org/FAQdeferredactionyouth.html>

long-term status—should be granted a right to remain because failure to do so unjustly reinforces their oppression.

Allow me to summarize what has been argued thus far. Deportations of the socially undocumented reinforce unjust undocumented migrant oppression. Given that the state has at least a *prima facie* duty to avoid reinforcing the oppression of any social group, the state has a *prima facie* duty not to deport the socially undocumented. This duty, of course, enters into conflict with the state's authorization (or duty) to respond to unauthorized migration—which usually occurs in the form of deportation. However, there exists a reasonable alternative—with great historical precedent—that would not enforce undocumented migrant oppression in this way. That is amnesty for the socially undocumented. In what remains of this chapter, I flesh out my proposal in a bit more detail.

First, note that on my account, some deportations will still be permissible. Gary, the British punk rocker, can permissibly be deported from the United States. He is not socially undocumented, and deporting him would not reinforce undocumented migrant oppression.⁴⁰ Thus, my account has not stripped the state of its *prima facie* right to deport unauthorized migrants in its territory.

How is the state to determine who cannot permissibly be deported on this account? I cannot simply say “every migrant who is socially undocumented,” because it would be difficult, if not impossible, for the state to ascertain the extent to which each and every apprehended migrant has or has not been oppressed. Thus, instead of assessing every migrant's history on a

⁴⁰ Some philosophers, like Joseph Carens, may argue that if Gary has lived in the US for an extended period of time, he should be granted membership on the basis of the *de facto* social membership he has developed. Without taking a particular side on this issue, I will simply point out that Gary is not immediately protected from deportation on my account. (Even on Joseph Carens's account, Gary is deportable before he has acquired the status of a long-term migrant.) In sum, on my account the state still possess a *prima facie* right to deport those who are not socially undocumented.

case-by-case basis, the state should develop immigration policies that are sensitive to the ways that the socially undocumented are oppressed *as a social group*. With this in mind, I offer the following proposals.

First, the state should refrain from deporting any migrant whose legally undocumented status was originally verified as a result of minor crimes like traffic violations. In the era of SB1070, when having a Latino/a appearance is sufficient for arousing “reasonable suspicion” about one’s immigration status, it is very likely that those who are eventually apprehended by ICE in this way are socially undocumented.

Second, for similar reasons, the state should not deport anyone whose undocumented status was determined through an ICE audit of a worksite that is traditionally associated with undocumented migrant labor (including agricultural labor, meat-packing plants, garment factories and more). Given that ICE/DHS tends to target places where the socially undocumented are employed, it is likely that those who are apprehended through these tactics are, in fact, socially undocumented. Note that I am not arguing that it is *unreasonable* for ICE to target work sites that are statistically more likely to feature undocumented migrant labor. Rather, I am arguing that given that undocumented migrant oppression explains why the socially undocumented are hired in such sites in the first place, ICE audits serve to reinforce this injustice.

Third, as discussed in chapter 4, the state should also reevaluate its immigration enforcement and expulsion strategies. Such strategies demean all of the socially undocumented—including those who in fact have a legal right to be in the United States.⁴¹ Throughout this chapter I have been focusing upon those socially undocumented people who are

⁴¹ See José Jorge Mendoza, “Discrimination and the Presumptive Rights of Immigrants” in *Critical Philosophy of Race*, vol. 2 no. 1 (2014):

also legally undocumented. However, it is not simply the deportation of the *legally* socially undocumented that reinforces the oppression of this social group. Justice demands that the harassment and disproportionate targeting of all people who “look undocumented” must end.

V. Conclusion: Immigrant Oppression and Social Justice

In the introduction to this dissertation I told the story of my childhood friend Camila. Camila’s father was deported back to Mexico, from where he and his family had migrated to California. I knew that Camila’s family was hard-working and that they were not well-compensated for their labor. Ever since I was a child, something about this story has struck me as not only sad, but deeply unjust.

However, I found it difficult to find a framework within which to articulate this injustice. John Rawls’s brief writings on immigration could not account for it, nor could the radical open borders debate. Communitarian political philosophy likewise does not provide clear guidance for exploring the moral dimensions of Camila’s story.

Rather than clinging to such frameworks I chose to engage in a thoroughly bottom up analysis—*logically, socially*, and with regard to the *ideal versus non-ideal distinction*—that started with my strong intuition that something unjust had happened to Camila’s father. As we have seen, feminist and Latino/a approaches to immigration philosophy, as well as Joseph Carens’s own work in non-ideal theory, have generated a useful methodological precedent for conducting such a project.

Starting with reflections on the lived experiences and narratives of many undocumented migrants in the scope of our actual social world, I have argued for a particular conception of

undocumented migrant oppression. I call those who are oppressed as undocumented migrants the socially undocumented. They are those who share a common set of unjust constraints on the basis of being perceived to be undocumented because of how they look.

I have argued in this final chapter that it is morally impermissible to deport the socially undocumented because so doing reinforces the oppression of this social group. Though I was a child when Camila's father was deported (as was Camila), and therefore do not fully understand the details of her story, I believe that this account may enable us to articulate why this deportation was wrong.

Of course, my argument leaves a range of questions unanswered. I have restricted my analysis to socially undocumented Latino/as because of the strong, unjust association with undocumented status that this social group seems uniquely to bear. However, I readily acknowledge that other social groups might also be socially undocumented; this is a pressing issue that must be explored in future work and conversation.

In addition, as I indicated in chapter 4, I believe that future intersectional analysis of undocumented migrant oppression is required. What does it mean to be both female and socially undocumented, or both Indigenous and socially undocumented? What sorts of moral problems and injustices are revealed when such intersecting oppressions are articulated? I also believe my account of the impermissibility of deportations of the socially undocumented can and should be extended to consider the unique sociopolitical context of the borderlands of the United States.

While many challenging questions remain unanswered, I hope to have provided a pathway forward for considering these questions. My account offers grounds upon which one can argue that one can be oppressed as an undocumented migrant despite having migrated without legal authorization to the state where one's oppression takes place. I have also provided

a an argument for a right to remain for many undocumented migrants who do not qualify as “long-term,” and may therefore be ineligible for amnesty under proposed Comprehensive Immigration Reform.

Most importantly, I hope to have demonstrated the importance of bottom up methodology—not only in immigration philosophy, but in moral and political philosophy more broadly. Philosophical work on pressing social problems should be conducted in response to emerging social movements, activism, and the lived experiences of real people in our actual world.

Let me conclude by saying that the experience of reflecting upon undocumented migrant oppression in this sustained way, over the course of this dissertation, has also driven home the privileged position in which I find myself as I engage in such philosophizing. I have been writing about a social group of which I am not a member, and about a form of oppression that I have never endured and probably never will. As philosophically stimulating as has been to strive to carve out a philosophical account such as this, it must be remembered that this is an injustice that affects real people in our real world. Undocumented migrant oppression is real, all around us, and deeply unjust. The response to this oppression must be not only words, but also political action on the part of those who find themselves able to take a stand. I hope that my account will prove at least somewhat useful for this latter purpose.

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