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What does it mean to be American? Re-thinking Immigration in a post-COVID world

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By Claire R. Thomas

On the first Friday morning in March, my law students and I attended a naturalization ceremony at Federal Court in Brooklyn. We were privileged to witness as 257 people from 70 different countries, from Albania to Zimbabwe, become the newest citizens of the United States.

The judge welcomed all of us as “My fellow Americans” and acknowledged the persons standing before her who had chosen to build their lives in this now second country of theirs- the United States. We joined children and family members together in saying the “Pledge of Allegiance” and singing “The Star-Spangled Banner.”

There were many smiles and also a few tears. My students reflected on how memorable and moving this experience was for them, as well as how different from our regular class discussions and client experiences in which we bear witness to the multitude of injustices perpetuated against immigrants in the United States. Little did I know that this poignant ceremony would be the last for a long time, as soon after, all such large gatherings were banned, and that three months would go by before any more applicants would become U.S. citizens.

Many assert that the COVID-19 pandemic has exposed the true dysfunction of the U.S. immigration system. This is partially true. From its inception as a remnant of colonial poor laws transformed after American independence into state-level practices, and finally in the 1880s to federal policies, U.S. immigration laws have historically favored the migration of white, able-bodied, property-owning men and pushed to exclude all others. Thus, the current immigration system is in fact, functioning the way it was designed — to preserve the status quo through continuing a racist, oppressive, violent system.

The Trump Administration has built upon the framework put in place by its predecessors, with the apparent goal of simply stopping immigration to the United States. While the wall at the Southern border remains under construction, the [“invisible wall”](#) is in place, achieved through administrative shifts in policies and a flurry of executive orders that seek to end immigration. The list is insidiously [long](#), and touches upon all aspects of the U.S. immigration system- employment-based, family-based, humanitarian, and the Diversity Visa Lottery. For example, access to applying for asylum protection- a right under both U.S. domestic and international law- is denied, and those in need of humanitarian protection are told to wait in Mexican border cities until further notice. The Immigration Courts are immobilized, with growing backlogs and no plan for a timely and fair adjudication of cases, let alone for actually notifying immigrants

of changes in their hearing dates. Thousands of immigrant children were separated from their parents and two years later many still remain apart. Families remain locked away in immigrant detention facilities. Waiting times for almost all immigration applications have increased significantly, often by years.

More perniciously, in the past six months, the Administration [has increasingly used the cover of COVID-19](#) as an excuse for continuing their implementation of racist, xenophobic policies that [do little to protect public health](#) and instead increase human suffering. Northern and Southern land borders with the United States are now simply closed to those seeking humanitarian protection indefinitely; U.S. consulates and embassies abroad are shuttered; Europeans, Brazilians, and Chinese persons are banned from traveling to the United States; and employment-based visas are severely restricted. Naturalization ceremonies and in-person interviews for all immigration benefits simply stopped for months. These limits were carried out with little fanfare and seemingly few objections from the general public, as Americans face the dual overwhelming challenges of skyrocketing domestic coronavirus cases and soaring unemployment.

The agency which adjudicates immigrant benefit applications, including citizenship applications, the United States Citizenship and Immigration Services (USCIS), has mismanaged itself out of money and now [two thirds of its employees face imminent furlough this summer](#), significantly increasing wait times which have already reached many years.

In short, nothing about the U.S. immigration system is currently functional. And this is the very point.

By mid-June, some USCIS offices have reopened for limited in-person appointments. Naturalization events occur now across the country in [much smaller numbers](#), leaving immigration advocates to fear that the social distancing mandated by the COVID-19 pandemic will only further impede the ability of those with pending naturalization applications to become U.S. citizens in time to vote in the November election. Participants are [limited to the applicants themselves](#) and to USCIS staff- no family members allowed. Some are even conducted as [“drive throughs.”](#) The great ceremony my students and I witnessed in March, along with countless other naturalized U.S. citizens, has been reduced to only the [“legally required portions”](#) and the signing of a piece of paper.

Those becoming U.S. citizens are often thought of as the lucky ones. They had made it through the seemingly insurmountable battlefield of obstacles lobbed

against them at every step of their immigration journey. The marathon of applications, appointments, hearings, and evidence-gathering, endless waiting times, and uncertainty have finally come to an end.

Nevertheless, the fact that new citizens have ultimately prevailed does not excuse an immigration system designed to exclude and deter. Nor does this system consider as “worthy” those who are not on a path to citizenship, but have lived their entire lives in the United States, where they are building their families and futures. To normalize such a system in a future post-COVID world does nothing to solve the underlying ideologies in place to exclude, humiliate, exploit, and denigrate immigrants.

Those who argue for restrictions on immigration assert that foreign nationals should just “get in line,” which reflects a general ignorance of how the U.S. immigration system works in practice, or that newcomers should “follow the law,” overlooking the ugly history of immigration in America. It is important to note that the earliest laws of 1790 allowed only “free white persons” to be American, meaning only white men who owned property could become U.S. citizens. All other persons at the time, including white women, enslaved persons, and Native Americans, were excluded from the privilege of citizenship. It took until 1952 for Congress to allow for naturalization “regardless of race or sex.”

This begs the question of if our laws for naturalization have evolved to become more inclusive, why can't our immigration laws become less racist, misogynistic, ableist, and classist? The ingrained dysfunction of the U.S. immigration system is a choice. Now that the disarray in every step of immigration adjudication is laid out in plain sight, it is time to rethink and to create anew an immigration system that is fair and humane, instead of normalizing disorder and the denial of human rights.

On this 4th of July, let us honor the resilience of immigrants who chose this country as their home despite enormous obstacles. Just as the laws regarding who could become an American have progressed from only considering white men, imagine an immigration system which allows for others to be welcomed to the United States. Advocate for an immigration system that is more inclusive, equitable, and reflective of the United States presently — not another vestige of times past.

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