

NATURALIZATION & IMMIGRANT RIGHTS

NATURALIZATION AND ITS EFFECTS ON LATINO EMPOWERMENT*

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Although we have made some real progress over the last couple of years, we have overlooked the issue of naturalization for much of the past twenty years. Even when our community has pursued empowerment issues with some activism, there was never any real effort to increase citizenship *per se*. We have many individuals in our communities who are not U.S. citizens. They are legal permanent residents, amnesty applicants, refugees, asylees, and students with visas from abroad. The fact that one out of every two Latino adults in the states of California, Illinois, and Florida is not a U.S. citizen has tremendous consequences for our community.

When you consider an average group of 100 Latinos and the potential for political empowerment, 37 must be eliminated because they are not over eighteen years of age. In Los Angeles, of the 63 people left, 32 are not eligible to participate in the electoral process because they are not citizens. Of the 33 remaining, approximately 60% register to vote. Of those 18, only eleven will go to the polls. Thus, for every 100 Latinos, our real political power is limited to eleven actual voters.

The critical issue that differentiates us from other communities is citizenship. If the problem was only a matter of age, we would only have to wait ten or twenty years for our community members to mature, register to vote and start participating.

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However, our participation is hampered by the age *and* citizenship factors both.

In America, there is an assumption that U.S. citizenship is an automatic last step in the immigration process. Most people think that immigrants come into this country with their permanent visas and automatically become U.S. citizens upon the expiration of those visas. The facts indicate otherwise.

In fact, the naturalization rate varies by the country from which an immigrant originates. If someone comes from any of the Asian countries, it typically takes about six years to become a citizen. If someone is from Europe, it takes about eight years to apply for citizenship. However, if someone comes from Mexico or Latin America, it takes thirteen to fifteen years to apply for citizenship. Thus, for every 100 Asian immigrants that entered in 1980, 56 would have become citizens by the end of 1990. In that same period of time, only six out of every 100 Mexican immigrants would have become citizens.

What accounts for the differences in naturalization rates? On the surface, the citizenship requirements appear simple and straight forward. First, you must have been in the U.S. for five years as a permanent resident; second, you must have good moral character; third, you must pass a civics exam that tests U.S. history and some basic skills in written English. Yet in the law we learn that what appears clear, such as a statute, often conceals much discretion and arbitrary treatment. This is also true in the naturalization process.

In the past twenty years, we have tried to standardize the naturalization process so that all immigrants get equitable treatment. However the process of naturalization is a bureaucratic one. An immigrant must fill out an N-400 form, file it, and return for the examination after a certain period of time. If the immigrant does not pass, he or she must re-apply and begin the process again. If the immigrant passes, she is called back for the swearing-in ceremony, at which she will raise her right hand and renounce all fidelity and allegiance to a foreign state. Up until that moment when the individual is sworn in, the process is purely bureaucratic.

The Immigration and Naturalization Service (INS) is in a powerful position vis-à-vis all immigrants. After all, immigrants do not have the right to vote and are scared of losing their visa status. I was once at a mass naturalization ceremony at the Convention Center in Los Angeles, where two thousand people were in attendance, and yet you could literally hear a pin drop. I turned to one of the INS representatives and said, "This is really amazing. You have two thousand people in this building and no

one is talking." The INS official looked at me, smiled, and said, "We said we would renounce their visas if they spoke." True or not, his statement illustrates the fear that exists in our immigrant community. Unfortunately, aside from the efforts of NALEO and that of certain other groups,¹ few groups have advocated for naturalization.

One area that we [NALEO] have addressed has been the INS definition of "failure." The INS claims that the naturalization process is uncomplicated. They support their claim with statistics which show that of the thousands of immigrants applying, only 1-2% fail. This, they argue, makes unnecessary the work of community and legal advocacy groups on behalf of the immigrant.

When NALEO began investigating INS operations, we found that the INS definition of "failure" was somewhat odd. A "failure" occurred when an individual exhausted the process without successfully challenging the INS examiner's finding of non-qualification. Only an individual who sought to challenge a finding of non-qualification before a court and was then subsequently found to be *not qualified* would be classified as a "failure" by the INS. Thus, the INS did not consider that there were "failures" when individuals did not challenge a finding of non-qualification!

Moreover, 20% of Latino applicants are turned away by individual INS officers. When an applicant would go in for their exam, the INS officer might ask, "Who was the third president of the United States?" or "Who was the second president of the United States?" This was if the person was lucky. If unlucky, the INS officer might ask, "How many pilgrims landed on Plymouth Rock?" If a person could not answer, the INS officer would suggest that the applicant withdraw his/her application. Yet INS officials would not call this a "failure."

The naturalization process is like a pipeline with two big holes past which the immigrant must maneuver in order to attain citizenship. "Withdrawal" is the first big hole. The other hole involves the failure to fill out the application form correctly. If filled out incorrectly, the INS returns the application. When this occurs, the INS classifies the application as a "return," but not a "failure."

This discussion may seem fastidious, but when "returned" and "withdrawn" applications are taken into account, fully 30%

1. For example, in 1979 Cuban Americans advocated for the 50/20 provision, which says that if someone is over fifty years of age and has lived in this country for more than twenty years, that person can take the naturalization exam in his/her native tongue. 8 U.S.C. § 1423 (1992).

of all immigrants do not attain citizenship when they first apply. In the 1980s, the INS turned away between 140,000 and 160,000 people per year, the total of which Latinos constituted a significant percentage.

Moreover, when immigrants are rejected, they get very discouraged; only one of two reapply. This squares with the community's perception that the process of naturalization is complex and belies the INS position over the past thirty years that only 1% fail.

Another critical issue is the backlog of applications. There was a story in the southwest about an old Mexican immigrant who goes to the INS office and asks, "Mister, when am I going to be called in?" The INS official answers, "In eight years, three months and two days." The old immigrant, with his keen understanding of the process, asks, "Morning or afternoon?" It is only after an application is pending for four months that it is considered a backlogged application. Thus, when you look at INS records which show that an application is backlogged three months, the applicant has actually been waiting *seven* months. In Los Angeles, people wait for eleven months before they get called in for the exam.

Yet even in the Latino community, we tend to blame the victim; we also believe the stereotypes. Many of us believe that the reason Mexicanos do not become citizens is because they think, "*Nací Mexicano; moriré Mexicano.*" ("I was born a Mexican; I will die a Mexican.") We believe the myth that Mexican immigrants hold vast unknown acreages of land in Mexico. Yet we fail to see that many of our immigrants are trying to become citizens but are unable to get through the process.

The complexity of the INS form also presents an obstacle. One question on the form asks whether the applicant has been a member of the SS. Translate that for someone who has ten years of education: "*Ha sido miembro de la SS?*" Another question asks whether the applicant has ever held a title of nobility in their country. In Spanish: "*Ha sido rey o reina en su país?*" These are questions with which many immigrants have difficulty. Eighth grade English will not suffice. While these forms have been simplified in the past two years, they still have these sorts of questions on them.

Finally, the nature of the exam is also arbitrary. While few support the literacy tests required in the southern states as barriers to the voting rights of citizens, few fight against the arbitrariness of the citizenship exam. Ninety percent of the examiners are hard working men and women who are just doing their job; they have ten minutes to process each applicant and are simply

doing their best to get people through the process. However, our data indicates that 10% of INS examiners exercise arbitrary power in their examinations. Some ask up to 56 questions even though the typical applicant is asked only seven questions. The previous example about the number of Pilgrims who landed on Plymouth Rock was reported on NALEO's hotline.

We have seen some progress. There has been some simplification of the form and as a result of the Immigration Reform and Control Act of 1986,² there has been a standardization of the exam. There is now also a set list of one hundred questions from which examiners ask questions of immigration applicants; thus it is possible to prepare for the exam. Moreover, a couple of years ago, the INS contracted with the Education Testing Service to create a standardized ETS exam for applicants; the exam consists of twenty questions of which twelve correct answers are required to pass. The INS has also contracted with CASAS, an adult education service, to create another standardized exam. Likewise, we are now better able to prepare our applicants to get through the process.

The challenge for the Hispanic community in the 1990s will involve efforts to increase naturalization. We have had three different streams of immigrants applying for naturalization in the 1990s. Legal permanent residents have come into this country at an ever increasing rate; there has been a sixfold increase in Mexican, South American, and Central American immigrants applying for citizenship. In addition there are three million amnesty applicants that will become eligible for citizenship on October 1, 1993. The rest will be eligible in March 1994. The third group will be eligible for citizenship under a new INS rule which will allow anyone who received their green card prior to 1978 to reapply for a green card. Individuals in this third group will have to pay a fee of \$70. However, many immigrants are calculating the cost and realizing that they can apply for citizenship at a cost of \$90 and not go through the process every ten years. (The INS requires immigrants holding green cards to renew them every ten years.)

The most significant change has taken place in our communities. In Los Angeles, monthly citizenship drives are being held. We have been told that Mexican immigrants are not interested in naturalization and that only 9,000 Mexican immigrants were applying for citizenship every year for the past five years. However, Mexican immigrants are now among the top three groups that become U.S. citizens.

2. Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended in scattered sections of 8 U.S.C.).

Yet, we still have much work to do. Furthermore, we cannot adopt political empowerment strategies that treat Latinos like Black Americans. The immigration experience is a unique reality for Latinos. We have to embrace political empowerment strategies that take this into account.

Finally, we must change the way we think of the immigration issue itself. Latino immigrants are thought to be less deserving than Asian, Irish, and Italian immigrants. Yet ninety percent of Latino immigrants who have been in this country for more than five years plan to stay in this country; 60% have taken some steps to become citizens. Unfortunately, only 25% succeed. We must recognize and appreciate the political power generated by other immigrant groups. We must not forget the lessons of Tammany Hall, the giant naturalization machine that processed sixty to seventy thousand naturalization applications every two years.

Finally, I want to emphasize that there *is* a tremendous role for the legal profession to play in assisting naturalization efforts and helping our immigrants become American citizens.