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Second Class Citizenship: The Limited Freedom of the Children of Undocumented Immigrants (Privacy, Freedom, and Technology)

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ABSTRACTS

This study aims to explain the conditions of immigrants in Latin America, especially regarding differences in race and status of immigrant family members. The method in this study used a descriptive method with a review of case studies based on social conditions and conflicts that occur in America. The results of this study illustrated that the condition of Latin American immigrants, especially people with the black race, is still became social problem, namely discrimination against black children. Black people in America feel watched over and considered as "slaves" to white people. They feel that the freedom to mingle in society is still very limited, especially to illegal immigrants who do not have citizenship documents. In addition, to being discriminated against by Americans, this social gap is also difficult to eliminate because the American government also feels unsure of illegal immigrants, especially from the black race, to be trusted, thus severely limiting their freedom.

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1. INTRODUCTION

As of the most recent count almost five million children that are US citizens live with at least one parent with an undocumented immigrant status (Carnock, 2016). As US citizens, the children of these mixed status families are entitled to the same rights and benefits as any other citizen, however their parents are not entitled to these same rights. While the children are eligible for government assistance programs such as Medicare, food stamps, Obamacare, and public housing; studies have found that mixed status families generally do not take advantage of the programs that their documented family members qualify for. Government assistance programs would benefit the entire family in providing more stability to their households, but families tend to not use their programs out of fear for the privacy of their undocumented family members. Constantly faced with uncertainty over what changes new administrations will make to immigration policies, both documented and undocumented members of mixed status families act cautiously when it comes to their interactions with the government out of fear that their interactions may have consequences. Despite being citizens, documented family members live in fear and uncertainty with their undocumented family members. Most mixed status families are comprised children born in the United States to undocumented parents. Children with undocumented parents legally have the same rights as any other US citizen, however the legal status of their parents complicates and creates barriers to actually being able to exercise these rights. Children with

undocumented parents often find themselves policing their own behavior to avoid complications for their parents, as they are dependent on them. To add more uncertainty to their lives, President Trump announced his desires to end birthright citizenship further putting into question the rights of children with undocumented parents. For documented children with undocumented parents their rights as American citizens are not only limited by barriers, but also fragile and subject to politics. The children of undocumented parents have legally has the same freedoms as every other American citizen, however barriers, fear of government surveillance on their families, and uncertainty over changes in immigration policy limits how much freedom they can actually experience.

The circumstances of mixed status families and constitutional rights is especially prevalent when it comes to documented children with undocumented parents. Mixed status families tend to be lower income due to their parent's inability to apply for certain jobs. Children in mixed status families suffer the consequences of a low income family--food instability, housing instability, etc. This general economic instability leads to other barriers in their lives such as, difficulty in school, health issues, and mental health issues. While the government offers assistance to low income households to account for these issues undocumented children find themselves unable to benefit from these programs because of their parents' fear of deportation and interactions with the government. The consequences of this fear is the inability to address these issues--causing negative long term effects that follow into adulthood.

Under the law, the documented children are not treated differently and have the same rights as any other US citizen. However, distrust for the government and their ability to protect the privacy of citizens--especially when it comes to people who are trying to protect undocumented citizens--leads children and other family members to forgo some of the programs and rights that they are entitled to. In a sense these family members are succumbing to a panoptic phenomena where they are self policing out of fear that the government might not be respecting their rights to privacy.

The children of undocumented parents have a right to privacy--just like any other American--however the law does not account for how the surveillance of their undocumented family may affect and limit their right to privacy. It is not uncommon for undocumented immigrants that are attempting to work with the system to obtain documentation to check in with ICE regularly. While the image that comes to mind when thinking of an undocumented immigrant is generally one of someone living in the shadows, thousands of undocumented immigrants are not in hiding at all. In fact, hundreds of thousands of undocumented immigrants report to ICE routinely for "check ins." (Rose, 2017). These check ins can range from the immigrant themselves reporting to ICE offices to check in to ICE agents visiting their homes.

Many undocumented immigrants find themselves members of this system when they seek asylum. Regular check ins and home visits insure to immigration that the immigrants will not go into hiding, but being a part of the program does not guarantee safety from deportation. In mixed status families this arrangement can cause conflict. People in this program

can get stuck in a legal limbo for decades at a time; unaware of this fact at the time they choose to report themselves to immigration and seek asylum. Unable to predict the length of the process, immigrants often end up starting families--with children that are citizens. Indirectly, with ICE surveilling their undocumented family members, documented family members end up being surveilled as well by a government agency. Especially in the case of home visits, children in this situation end up with their privacy infringed on based on a commitment their parents made to the government years before.

2. METHOD

The method used in this study was a qualitative descriptive method. The case study was based on social conditions in Latin America that focused on the black community's problems related to freedom in society. This study examined differences in race and status of family members (illegal immigrants) in American social life.

3. RESULTS AND DISCUSSION

3.1. *Legal Rights vs Reality and Fear*

As American citizens the children of undocumented family members are entitled to government assistance (National Immigration Forum, 2019). While a citizen child receiving benefits legally should not impact the eligibility of their parents to obtain documentation in the future or increase their chances of deportation, many parents decide to not enroll their children in government programs. The law being ever changing and constantly impacted by politics fear over the uncertainty of the law prevents parents from taking the risk. Children of undocumented parents statistically suffer

from lower household income, housing insecurity, and food insecurity (Hagan et al. 2003). Many are eligible for government programs that could bring more stability in these areas, but do not access their rights to these benefits out of fear of the consequences.

Even for families that choose to take the risk to enroll their children in government assistance programs, there are still barriers to receiving benefits. Children are often denied food stamps and welfare because their parents are unable to provide proof of income to show that the child is in fact qualified for assistance (Bonessi, 2018). Without a Social Security Number employment is limited for undocumented immigrants, forcing many to work under the table jobs, making it difficult to provide proof of income to the DSS. Parents without a social security card are able to provide the DSS with a Tax Identification Number--if they have one--or signed paid stubs by their boss. For those that are unable to provide a Social Security Number the policy and guidelines for proof of income are less clear and many families find themselves being rejected for not providing enough information. Social worker Flor Giusti has been helping undocumented immigrants apply for SNAP benefits for over 30 years--Giusti has noticed that after the Trump Administration came into power the number of families that were rejected has increased from less than a hundred to hundreds (Bonessi, 2018). Undocumented parents without a SSN or a TIN typically would use the signed paid stubs as a proof of income, however administration have been double checking eligibility by demanding that they include either a SSN or TIN in

addition to the signed paystubs. Many parents are unable to provide this added information causing their children to be turned away for benefits. While under the law a parent's immigration status should not impact a child's eligibility to receive benefits barriers exist within the process itself that prevent the child from accessing the assistance that they are entitled to.

As recently as 2018, experts find that many parents are even terminating enrollment from their children due to a proposed public charge rule announced by the DHS in September of 2018 (Villarreal, 2018). Drawing from the portion of immigration law that states that an immigrant must be self sufficient and not a burden to the government before coming to the United States, the rule stated that in order to be considered for permanent residency immigrants can not have received public benefits (US Department of Homeland Security). The public charge rule did not go as far as to include benefits that their documented children might receive, but earlier debate and conversation suggested that the rule may include benefits received by children (Villarreal, 2018). With the law being fluid and impacted by politics, the polarization of the government brings fear of what current and future administrations may propose and pass. Despite the fact that the rule ended up not affecting benefits received by citizen children, a significant amount of undocumented parents have unenrolled their children from programs due to fear.

The ability of the law to change abruptly through a Supreme Court Decision, an executive order, a law passed by Congress, etc. has led undocumented

parents to subscribe to panoptic behavior. The panopticon as described by Michel Foucault is a prison: the cells in this prison are organized in a circle and in the center is a tower where the guards reside. In this prison the guards are able to see the prisoners from every angle, but the prisoners are unable to see the guards--causing the prisoners to change their behavior and police themselves for fear that someone is watching or will be watching (Foucault, 1977). Panoptic behavior includes self policing, whether or not an authority is watching. Fear of authority figures, such as the government and government agencies drives this instinct to act differently as to not draw attention of authorities. While the panoptic on generally applies to current law and the reason why people currently follow the law, the concept can be extended to self policing due to fear of what consequences future laws will bring.

Undocumented parents—and undocumented people, in general--tend to air on the side of caution when it comes to the law and their interactions with the government. Immigration law has proven to be unstable and constantly changing in the United States. Undocumented parents with children born in the United States often have spent decades in the United States and were able to watch as the law changed (Rose, 2017). While their current actions may not affect their future immigration status today, the law is fluid enough to cause fear that their current actions may have future consequences--leading them to behave as if they are in a panoptic on. The decisions that parents make, out of fear of the future, have current consequences for themselves and their children. Citizen children are unable to receive their legally entitled benefits because of their

parents' fear of what consequences future laws have. This behavior leads to less security and less freedom for their children.

These fears are not completely unjustified, especially considering the debate around immigration during the Trump Administration. The Trump Administration's stance on immigration is quite different from the previous presidency. While the Obama Administration took steps toward providing some sort of security for undocumented immigrants and their families; under President Trump, immigration policy in the United States has become far more conservative. President Trump has even gone as far as to question the legality and citizenship of "anchor babies," American born children with undocumented parents who plan on sponsoring their children when they come of age (Barbash, 2017). The right to citizenship is guaranteed by the birth right doctrine in the 14th Amendment ([The Constitution of the United States](#)). While the likelihood that this doctrine is overturned by this administration or future administrations is low, the fact that it is even under question is fosters even more feelings of anxiety and distrust for the government to protect constitutionally given rights.

For mixed status families, the birthright citizenship and the legal status of their American born children is often one of the few senses of security that these families draw from in the United States. With this right that many families believed to be set in stone being questioned by a current administration, mixed status families are questioning less secure rights. Lawyers and legal experts generally assure mixed status families that the discussion surrounding

birthright citizenship is just politics and the law is unlikely to change; however all laws begin with political debate--leaving open the possibility that the law may change. The probability may be low, even the smallest possibility leaves mixed status families changing their behavior out of fear of the uncertainty.

3.2. Technology and Future Concerns for the Safety and Privacy of Mixed Status Families

As technology advances it may be more difficult for documented family members to hide the fact that some members of the household are undocumented. Currently, it is not impossible and relatively common for undocumented people to live in the shadows even with documented family members. By being careful with the usage of government programs and other techniques documented family members are able to not draw attention to their family members that do not have papers. However, these techniques are possible because paperwork in the United States are still largely analogue and not digital--making it possible for people to fall through the "cracks" in the system. With technology advancing and the likelihood of the United States moving towards a more digital government, it may be more difficult to hide from the government.

Using the country of Estonia as an extreme example of a digital government, it is possible to examine the likely threats that digitalization might have on undocumented people--especially those with undocumented family members. The government of Estonia and its business is handled almost completely digitally. All personal records, paperwork, bank statements, etc can be

accessed using an ID card (Heller, 2017). A digital government has certainly made the government more efficient and easier to access, however the ID card acts as a social security card, begging the question of if the United States were to implement this system, what would happen to undocumented people?

The most clear and immediate consequence of this system is that is nearly impossible to complete simple daily tasks without this ID card, thus singling out those who do not have the card as well as making it impossible for them to even live a normal life. Undocumented people would be completely reliant on their documented family members to conduct simple tasks. With a large portion of documented family members being the children of undocumented parents, this reliance would limit their freedom and tie them indefinitely to their undocumented parents.

Estonia is an extreme example of a digital government, but the effects of digitization could still be problematic even on a smaller scale. Digitizing on any level in government will allow the government to keep better records of all US citizens, including those that hale from mixed status families. The United States is already on its way to making the government less analogue and more digital (Gangadharan, 2019). Interestingly enough, the US government and other supporters argue that a more digital government would actually lead to more privacy rights for citizens (Corydon et al., 2016). While this might be true for the majority of US citizens, citizens in mixed status families may not

be afforded the same right to privacy as others.

The law as it is written does not explicitly limit the privacy for citizens in mixed status families, in fact court cases have generally protected the privacy rights of citizens. However, even if the law does not limit privacy explicitly, there are ways that the law can implicitly infringe on privacy ([Gangadharan, 2019](#)). Better record keeping through digitization will make it difficult for younger citizens to hide their status of their parents. Digitization will make it easier to follow citizens and will make discrepancies more obvious.

It is unlikely that the United States will switch to a completely digital government in the near future, however as technology becomes more advanced and more commonplace it is not far fetched to predict that eventually the United States will make that switch. In the event that this transition happens, mixed status families will be at risk. Undocumented immigrants generally are already either under the surveillance of the government or trying to avoid surveillance ([Pallitro and Heyman, 2008](#)). Digitization would only make it easier for the government to keep track of undocumented immigrants and their families. Requiring documented children to participate in the digital government would likely reveal the legal status of their parents; limiting the amount of privacy they can have in regards to their household situation. Multiple databases already exist to keep track of undocumented immigrants ([Rose, 2017](#)), a switch towards a more digital government would only serve as another vehicle to collect information about undocumented immigrants.

3.3. The Other Side: Are the children of undocumented immigrants even entitled to the same rights as other citizens?

Many conservatives argue that the rights of citizens born of undocumented parents are not limited in any way. Instead they argue that these children are afforded too many rights and protections by the government. With President Trump calling into question how the Citizenship Clause in the 14th Amendment should be interpreted, the debate now centers around whether or not the children of undocumented parents ever had a right to citizenship at all.

As stated previously, birthright citizenship is guaranteed by the 14th Amendment, however it can be argued that the clause does not cover the children of undocumented immigrants. The citizenship clause states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." ([US Const. Amend XIV sec 1](#)). The clause that is the topic of debate is "subject to the jurisdiction thereof." those that are against birthright citizenship for undocumented immigrants argue that the children of undocumented immigrants are not considered a part of the jurisdiction. Interpretation of the constitution is ultimately left to the Supreme Court to decide and on this matter. For Supreme Court precedent on the subject of birthright citizenship both sides use the decision in *Wong Kim Ark v US (1884)* as a grounding for their argument. By making this argument those that support ending birthright citizenship for children of undocumented immigrants are arguing that changing the law and political debate is not limited the

freedom of “anchor babies” because they do not have that right to freedom at all.

Wong Kim Ark was born in the United States to immigrant parents from China and was declared a citizen at birth--based on the 14th Amendment. Upon returning to the United States after an international trip, he was declined reentry due to a new law passed by Congress declaring that those of Chinese descent could not be naturalized ([United States v Wong Kim Ark](#)). The Supreme Court ultimately ruled in his favor declaring that his particular circumstance was covered under the 14th Amendment and a current act of Congress could not limit that right ([United States v Wong Kim Ark](#)).

Those that argue against the legitimacy of the citizenship of “anchor babies” argue that the majority opinion in Wong Kim Ark is limited and does not encompass the children of undocumented immigrants. In Wong Kim Ark the court states:

“A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China.”

It can be argued that the language of this decision provides a limited interpretation on the matter of birthright citizenship; the court states that Wong Kim Ark’s specific circumstance is included in the 14th Amendment. Critics point out that Wong Kim Ark’s parents were documented immigrants and the court’s ruling should not be interpreted to include the children

of undocumented immigrants--as it is a different circumstance from Wong Kim Ark’s. Proponents for abolishing the right to citizenship for the children of undocumented immigrants claim that it was not the intentions of the writers of the Amendment to include the children of undocumented immigrants. The purpose of the Amendment was to ensure citizenship rights for former slaves during the Reconstruction period. The framers, as they argue, did not intend for the law to encompass every person born in the United States.

The historical context of the 14th Amendment was to ensure citizenship rights to African American people born in the United States in a post slavery society, however the framers did include exclusions to birthright citizenship--none of which included the children of undocumented immigrants. The statement “subject to the jurisdiction thereof,” was included to exclude the children of foreign dignitaries born in the United States and Native Americans born in the United States--as they were considered subjects of their own sovereign nations at the time the Amendment was written ([United States v Wong Kim Ark](#)). While it is possible that the writers of the amendment did not account for the children of undocumented immigrants, based on historic and legal precedent it generally stands that children born of undocumented parents are included in the jurisdiction of the United States.

Circling back to the decision made in *US v Wong Kim Ark*, Justice Gray in the majority opinion listed several factors relating to Wong Kim Ark’s circumstance that guaranteed his right to citizenship.

Justice Gray stated that although his parents were Chinese immigrants, they had established residency in this country and were not employed by the Chinese government--therefore making Wong Kim Ark eligible for birthright citizenship ([US Const. Amend XIV](#)). While Justice Gray did acknowledge that Wong Kim Ark's parents were immigrants; nowhere in his opinion did he specify that the legal status of his parents was relevant to the ruling.

Conservatives that are against birthright citizenship argue that anchor babies should not be given the same kind of assistance as citizens with documented parents ([Schuck and Smith, 2018](#)). Children receiving benefits would lead to the undocumented parent receiving benefits as well. As mentioned previously, children from mixed status households tend to be lower income and could benefit from government assistance. President Trump argues that "anchor babies" are a great financial burden on the country ([Barbash, 2018](#)). It is a fact that the majority of children born to undocumented immigrants could and have benefited from welfare programs offered by the government ([Castañeda and Melo, 2014](#)).

However, the Trump Administration does not account for taxes that undocumented immigrants pay to the government without being eligible to receive any of the benefits that their taxes are meant to be paying for ([Villarreal, 2018](#)). Undocumented immigrants pay income taxes through their employer; contributing billions into the Social Security systems without knowing whether or not they will ever receive any of the benefits ([National Immigration Forum](#)). It is an exaggeration to say that the children of undocumented

immigrants are a burden on taxpayers. A large portion of undocumented immigrants choose not to enroll their children in welfare programs and even those that do take the risk met with barriers during the process that prevent them from enrolling their child.

4. CONCLUSION

As citizens of the United States of America we are promised certain rights and protections. Americans have always felt strongly about their rights to privacy and freedom--with privacy rights being there as a means to protect our freedom. However, there is a difference between having these rights and actually being able to exercise them. Exercising constitutionally given rights requires a level of security and trust for the government--trust that the government will protect these rights, trust that future governments will not take these rights away--trust that their rights are truly theirs. For mixed status families it is difficult to be able to trust that the law is stable enough to ensure that current actions will not hold future consequences.

The rights of citizen children are limited even without families self policing. A law or policy does not have to explicitly exclude a certain group of people to be exclusionary. Having the right to receive a certain benefit does not guarantee access to that benefit. For children with undocumented parents required paperwork to receive benefits is a barrier and limits the benefits that they can receive. Even if the text of the policy does not technically prevent anyone from receiving benefits, the actual process can create barriers that exclude certain people.

The consequences of this fear and distrust of the government and the law has a great impact on the citizens in the families. While it is true that undocumented parents often make the choice to self police both themselves and their families, citizen children find themselves policing themselves as well. Fear that any misstep that they make may impact their family's future in the country limits their freedom. They choose to not exercise the rights and benefits that they are afforded because of their legal status in this country because they do not believe that the government will respect their privacy and not inquire deeper into the status of their household.

Mixed status families have always faced uncertainty with America's ever changing immigration policy. However, President Trump has added an extra layer of uncertainty by calling into question the current interpretation of the Citizenship Clause. In doing so, he is questioning the right of the children with undocumented parents to be a citizen of the United States. The implication of Trump's interpretation of the Citizenship Clause is that the children of undocumented parents are not the responsibility of the United States, even if they are born on US soil. The government questioning the validity of their citizenship only fosters more fear and

distrust towards the entity that is meant to protect them and their rights.

From the conception of the country freedom has always been an integral part of the American identity. Most Americans consider freedom to be one of the best attributes that America has as a country. Individual freedoms are well protected by the Constitution and a majority of Americans genuinely believes that they themselves are free. Although the majority of Americans may feel free, there are certain groups of Americans that do not experience this freedom. To able to experience freedom in a country, there has to be a certain level of security and trust for the government to not limit those freedoms. For the children of undocumented immigrants it is difficult to feel free in America when they feel as if their families are being surveilled. Debates in Congress and statements made by the president does not convince these citizens that the government can be trusted to not limit their freedom in the future. Freedom, when it comes to the children of undocumented families, is not as expansive for them as it is to other citizens. The children of undocumented immigrants live in a state of constant fear of surveillance and if you believe that you are always being watched and the government is waiting for just one misstep, how can you truly be experiencing freedom?

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