

## WAITING FOR PAPERS

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Sébastien Chauvin

De Boeck Supérieur | *Politix*

2009/3 - No 87  
pages 47-69

ISSN 0295-2319

This document is a translation of:

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Chauvin Sébastien, « En attendant les papiers »,  
*Politix*, 2009/3 No 87, p. 47-69.  
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Translated from the French by JPD Systems

Available online at:

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<http://www.cairn-int.info/journal-politix-2009-3-page-47.htm>  
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How to cite this article:

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Chauvin Sébastien, « En attendant les papiers »,  
*Politix*, 2009/3 No 87, p. 47-69. DOI : 10.3917/pox.087.0047  
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# Waiting for Papers

## The Bridled Incorporation of Irregular Migrants in the United States<sup>1</sup>

Sébastien CHAUVIN

**Abstract** – In the United States as elsewhere, the lack of legal documents plays a key role in irregular migrants' precarious condition. The characteristics of the American immigration system nevertheless allow the undocumented to enjoy rights that contrast with the more suppressive systems of Western Europe. Illegal immigrants have been incorporated into society, State, and the job market in a way that cannot be fully appreciated merely by pitting formal exclusion, on the one hand, against informal integration or subjective legitimacy, on the other. Their concrete citizenship, while inferior, includes many formal elements, at both local and national levels. This advanced normalization of illegality tends, in turn, to further institutionalize their subordinate condition. Not being reduced to the status of noncitizens, irregular immigrants tend to form a recognized, stabilized stratum of subcitizens, whose self-regulation, bureaucratic stability, and fiscal participation have been maintained by endlessly repeated promises of amnesty, which, since 1986 in the case of Mexicans, have always been deferred. In this context, illegality appears, not as an absolute marker of illegitimacy, but rather as one more obstacle within a continuum of probationary citizenship. The fact that irregular migrants sometimes have to commit more offenses, however, if they wish to benefit from the most formal civic attributes, means that the social meaning of those attributes remains indeterminate, since those who hold them can be represented as "more illegal" as well as "more legal."

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1. My thanks to Nicolas Barreyre, Christian Baudelot, Anne Bory, Bruno Cousin, Blanca Garcés-Mascareñas, Sylvia Günther, Alexandre Jaunait, Nicolas Jounin, Sylvain Laurens, Walter Nicholls, Loïc Wacquant, and the anonymous reviewers of *Politix* for their useful comments on earlier drafts of this article. Any errors that remain are my own.

Intensified efforts to suppress illegal immigration in recent times, particularly since the toughening on the “war against terrorism,” have led to an increase in the number of internment camps and “situations of exception” in many developed countries. This movement has prompted frequent references to Agamben’s analyses of *homo sacer*, the individual reduced to “bare life,” a dehumanized corporeality deprived of any legal existence by the law itself and stripped of sacrificial value.<sup>2</sup> While this liminal status is indeed a constant threat that defines the condition of the undocumented as potentiality, the civic insecurity experienced on a daily basis by irregular migrants within their society of residence is far from being limited to that. The intensity and parameters of this insecurity differ substantially depending on the political space and historical period in question. They depend in particular on the system of citizenship and identification practices in force.<sup>3</sup> This paper develops these propositions by presenting the system of moderate illegality in which the vast majority of undocumented migrants evolved in the United States in the 1990s and first decade of this century. This system existed in spite of the security-based rhetoric in the wake of 9/11, and despite the fact that there has been a notable tightening of controls since 2006. Irregular migrants have, in fact, enjoyed an array of formal and informal citizenship rights, which have contrasted sharply in some ways with the more suppressive systems of Western Europe. This advanced normalization of illegality has contributed, in turn, to further institutionalizing the subordinate status of the undocumented on US soil. Having never been reduced to the status of noncitizens, they tend to form a recognized, stabilized stratum of subcitizens, whose self-regulation has been maintained by endlessly repeated promises of amnesty, which, since 1986 in the case of Mexicans, have always been deferred.

The development of “citizenship studies” over the past twenty years has hugely complicated the understanding of “citizenship” in the social sciences in the following three ways: (i) by analyzing the various components of contemporary citizenship (civic, political, social);<sup>4</sup> (ii) by demonstrating that citizenship is not a dichotomous variable, which hermetically separates “citizens” and “noncitizens,” but rather a continuum in which formal belonging to the national community represents only one, sometimes reversible, element;<sup>5</sup> and, finally, (iii) by shedding light on the multiplicity of authorities, situated at unequal and, at times, conflicting geographic scales, who are able to confer citizenship rights.<sup>6</sup>

2. G. Agamben, *Homo Sacer: Le pouvoir souverain et la vie nue*, trans. Marilène Raiola (Paris: Le Seuil, 1997).

3. G. Noiriel, “The Identification of the Citizen: The Birth of Republican Civil Status in France,” in *Documenting Individual Identity: The Development of State Practices in the Modern World*, ed. J. Kaplan and J. Torpey (Princeton: Princeton University Press, 2001).

4. T. H. Marshall, “Citizenship and Social Class” in *Class, Citizenship and Social Developments*, 2<sup>nd</sup> ed. (Chicago: University of Chicago Press, 1993).

5. M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004).

6. N. Yuval-Davis, “The ‘Multi-Layered Citizen,’” *International Feminist Journal of Politics* 1, no. 1 (1999).

These theoretical innovations have made it easier to think about the “infralégal divisions likely to run through the category of citizen”<sup>7</sup> and, conversely, the various aspects of the “citizenship” of noncitizens (legal and illegal alike).<sup>8</sup> Until now, this latter concept has been researched from two angles. On the one hand, it has been investigated as an international legality backed up by human rights, guaranteeing a “postnational citizenship” attached to individuals and not groups.<sup>9</sup> On the other, it has been investigated as an “informal citizenship” that sees migrants, especially illegal ones, integrating concretely and subjectively into their region of residence by participating in all the local institutions, from school to church, by way of political movements.<sup>10</sup> The combination of these two processes makes the undocumented in particular “unauthorized yet recognized” human beings, to quote Sassen.<sup>11</sup>

Many analyses of the “irregular condition” do not, however, adequately question the distinction between formal and informal citizenship, and inevitably place undocumented migrants among the latter. They still frequently rely, whether implicitly or explicitly, on a legitimist topography of the relationship between legality and formality, where greater illegality must logically be accompanied by increased informality. Undocumented migrants in the United States are now incorporated into society, State, and the job market in a way that cannot be fully appreciated merely by pitting formal exclusion, on one hand, against informal integration or subjective legitimacy, on the other. This dichotomy can be investigated by situating the tension, not in a conflict between State and society, but rather in the very mechanisms of legal and bureaucratic incorporation. The citizenship of the undocumented, while inferior, includes many formal elements, at both local and national level. While the dominant media images of recent immigrants to the United States alternate between the street-corner day laborer and the informal “ethnic entrepreneur,” indications are, rather, that the majority of the country’s undocumented migrants work in formal permanent positions in the legal economy. The proportion of this latter group was estimated at 75% in 2005 by the chief actuary of the US Social Security Administration (which mainly manages pensions). In that year alone, the total income declared on false or incorrect social security numbers reached fifty-six billion dollars, corresponding to 1.5% of overall wages. Annual contributions amounted to

7. A. Spire, “Semblables et pourtant différents. La citoyenneté paradoxale des 'Français musulmans d'Algérie' en métropole,” *Genèses* 53 (2003): 61.

8. S. Sassen, “Foundational Subjects for Political Membership,” in *Territory, Authority, Rights* (Princeton: Princeton University Press, 2006).

9. Y. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994). Also: J. Cohen, “Changing Paradigms of Citizenship and the Exclusiveness of the Demos,” *International Sociology* 14, no. 3 (1999).

10. S. Coutin, *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency* (Ann Arbor: University of Michigan Press, 2000).

11. S. Sassen, “The Repositioning of Citizenship: Emergent Subjects and Spaces for Politics,” *The New Centennial Review* 3, no. 2 (2003).

between six and seven billion dollars for pensions and 1.5 billion for healthcare contributions. In all, the “nest egg” was equivalent to 10% of the funding needs of the SSA’s Retirement Insurance Benefits program.<sup>12</sup>

While the country’s employment system is at the core of this illegal-formal citizenship, the latter goes far beyond that. In fact, the undocumented in the United States encounter such formal elements throughout their civic existence. This article examines the main aspects of this existence by focusing on the situation of undocumented Mexican migrants. These are emblematic of undocumented migration: not only is an absolute Majority of Mexican migrants in the United States undocumented, these also represent an absolute majority of all undocumented migrants in the country. In order to more precisely illustrate how bureaucratic trajectory and subjective experience of the law intersect, details will be given of the key moments in the documentary history of Antonio, a migrant Mexican waiter, who was born in 1978 in the State of Morelos and entered the United States illegally in 1993. Antonio took part in a series of interviews that I conducted between 2004 and 2007 as part of an ethnography of day labor in Chicago.<sup>13</sup>

The first section of this article examines the principal conditions of the normalization of a precarious civic position for undocumented migrants living and working on US soil. These principal conditions are: the huge number of irregular migrants, the support of the Mexican government, the relatively low level of institutionalization of the identification system, and, finally, the conservative pragmatism of the authorities and employers. The second section underlines the formal civic attributes illegal residents enjoy. It shows that these elements are based partly on the decentralized structure of the US citizenship system. It also presents the way in which the various fragments of irregular citizenship can rely on one another to form an increasingly solid foundation, where the illegal origin has been partly effaced. This section concludes by shedding light on the ambivalence at work among three principles of illegitimacy, which do not intersect and sometimes enter into conflict: inauthenticity, illegality and informality (for example, the most authentic documents can make their holder more illegal when they are illegitimately detained). The final section of this paper analyzes the unique role of the promise of regularization, not just in the self-regulation of the undocumented within society and the job market, but also in the active contribution they make to the formalization of their subordinate citizenship. This particular integration into the wheels of American State and society does not create a “disaffiliation” of illegal migrants, as Robert Castel named various

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12. E. Porter, “Illegal Immigrants Are Bolstering Social Security with Billions,” *The New York Times*, April 5, 2005.

13. S. Chauvin, “Intérim industriel et mobilisations de journaliers à Chicago” (PhD diss., EHESS, 2007). Most of the ethnographic material cited in this paper come from this dissertation, which combined participatory observation, interviews and archive analyses.

forms of social exclusion, but rather a “bridled” incorporation, to use the adjective Moulrier-Boutang employed about certain types of dependent wage-earners whose freedom is legally constrained.<sup>14</sup>

## The Normalization of Mass Illegality

Among the conditions of possibility of this system of moderate illegality, there is, first of all, the massification of illegal immigration. At the end of the last decade, there were almost twelve million undocumented migrants, accounting for 4% of the US population and over a third of the total number of foreigners.<sup>15</sup> At seven million, the Mexican-born undocumented constituted an absolute majority (59%) in the total number of illegal migrants on US soil. By March 2008, conversely, 56% of Mexican immigrants were undocumented, a figure even reaching 80 to 85% for those arrived in the previous decade. These very high proportions led some commentators to talk of a racialization of illegality, which has been associated, both symbolically and statistically, with the Mexican minority.<sup>16</sup> This massification contributes to normalizing the presence of undocumented migrants and makes any prospect for collective deportation unrealistic.

More than seven million irregular migrants, corresponding to 5.4% of the country’s wage-earners, hold a job and even higher rates can be observed in sectors such as construction or agriculture. This structural fact of the American economy also impacts Mexico itself. More than 10% of Mexico’s population now lives in the United States and the money sent back by emigrants in 2006 exceeded its income from tourism and direct foreign investment. It is, in fact, the country’s second largest source of revenue after the national oil company, PeMex.<sup>17</sup> This income goes, notably, towards funding public infrastructure projects.<sup>18</sup> In Chicago, these transfers form a human and financial connection between Illinois’s industrial wage-earners and the rural agrarian villages in Mexico.<sup>19</sup> The combined massification of immigration and illegality has

14. Y. Moulrier-Boutang, *De l’esclavage au salariat. Économie historique du salariat bridé* (Paris: PUF, 1998).

15. J. Passel and D. Cohn. *A Portrait of Unauthorized Migrants in the United States*. (Washington, DC: Pew Hispanic Center, 2009). These are estimates based mainly on a comparison of the number of inhabitants born abroad with the number of legal immigrants living in the United States. The fact that many undocumented migrants respond to the monthly “Current Population Survey,” conducted on a sampling basis by the federal government, is itself an indication of their lesser illegitimacy as compared to the undocumented in Western Europe.

16. N. de Genova, “La production légale de l’illégalité’ des migrants/Mexicains,” in *Politiques migratoires, grandes et petites manœuvres*, ed. F. Düvell (Lyon: Carobella ex-natura, 2005). These figures mean that more than a quarter of the twenty-eight million people of Mexican origin living in the United States, including US citizens, are undocumented.

17. Banco de Mexico, *Informe Annual 2006*, April 2007, 40.

18. R. C. Smith, *Mexican New York: Transnational Lives of New Immigrants* (Berkeley: University of California Press, 2005).

19. N. de Genova, *Working the Boundaries: Race, Space and “Illegality” in Mexican Chicago* (Durham: Duke University Press, 2005).

allowed a relatively hermetic and protective community to emerge. This “illegal zone” is surrounded and protected by a large, legal Hispanic minority, many of whom hold US citizenship. The bonds are often familial: in 2008, 4.5 million US-born children lived with at least one illegal parent (Passel and Cohn. *A Portrait of Unauthorized Migrants*, 8).<sup>20</sup> This ethno-national community offers new arrivals material support, a transitional path to integration, and a protective buffer that limits direct interaction with public authorities.

Increasingly, protection comes from the Mexican government itself. When President Vicente Fox had to apologize publicly in May 2005 after declaring that Mexican immigrants to the United States were willing to take jobs “that not even Blacks want to do,” he invited Jesse Jackson, a historic figure in the civil rights struggle, to Mexico City for a genuine diplomatic union. They signed a reconciliation agreement between the two communities.<sup>21</sup> On September 2, 2007, the new Mexican president, Felipe Calderón, protesting against an increase in police raids on undocumented workers in the United States ordered by the Bush Administration, declared that he would defend his citizens, and that “Wherever there are Mexicans, there is Mexico.”<sup>22</sup> The Mexican government has opened consulates in towns where there are large concentrations of immigrants, which function as community centers speaking on behalf of an ethnic minority. These centers lobby banks and public institutions to get them to accept the registration cards they produce for their illegal citizens. In 2007, nearly three million copies of a “high-security” version of the *matrícula consular* were produced, which in 2009 were accepted at more than 160 banks and recognized by nearly 1,100 police departments across the country.<sup>23</sup> Various businesses and institutions accept the lack of documents (especially not having a driver’s license, which normally serves as an ID card in the United States) and learn not to interpret the lack of documents as signifying a customer’s possible unreliability. In March 2006, for example, a large poster appeared in Spanish on the window of the National City Bank in the Humboldt Park neighborhood of Chicago, informing potential customers: “Here you can use your consular registration card or your passport to identify yourself.” A local Spanish-speaking station, Telemundo Chicago, broadcast the same advert at four o’clock every morning during May 2006. In it, a car dealership announced during a rather rudimentary promotional sequence: “Our cars at the best prices! No need for a driver’s license or a Social Security card here!”

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20. The United States applies *jus soli* to nationality.

21. G. Thompson, “Uneasily, a Latin Land Looks at Its Own Complexion,” *The New York Times*, May 19, 2005.

22. J. McKinley “Mexican President Assails U.S. Measures on Migrants,” *The New York Times*, September 3, 2007.

23. R. Archibald, “Debate Raging, Mexico Adds to Consulates in U.S.,” *The New York Times*, May 23, 2007.



### **Identification of Citizens on US Soil**

Such events are inseparable from the practices of identification that predominated at the time in the United States. Referring to Malaysia and other southern countries, Sadiq speaks of “weakly institutionalized citizenship” to denote a control system in which identification is uncommon and incompletely standardized, and where the distinction between citizens and noncitizens is not clearly marked in practice.<sup>24</sup> He describes, in particular, the mass participation of undocumented migrants in the Malaysian national elections, and the way in which it was manipulated by the Malay majority. The citizenship and identification systems in the United States in the first decade of this century were also characterized, to a lesser degree, by limited institutionalization.<sup>25</sup> Passports are only held by between a quarter and a third of US citizens.<sup>26</sup> Up until the introduction of the optional “passport card” in July 2008, there was no federal ID card. While the driver’s license is used as ID, it is issued by each state according to its own rules, which in some cases do not require proof of legal status in the state.<sup>27</sup> When legal status is checked, the license’s expiry date is not systematically adjusted to the expiry of the visa. In most everyday situations, ID checks are rare, lax and easily circumvented, including at election time. Antonio explains how, after he had just crossed the border illegally in 1993, he was able to fly from San Diego to Chicago with his mother, brother, and sister with no documents other than his ticket:

Antonio: The plan is very easy. No need to go through the check point. It’s very easy.

Sébastien: Because it was before September 11?

Antonio: Yes, it was very easy, but they do that so that it’s easier. For example, the flight leaves at five o’clock. What they do is, if they live ten minutes from the airport, they leave fifteen minutes beforehand. And when they get there, there are announcements in the airport: “Just fifteen minutes till departure.” So when they get there five minutes before takeoff, you make like you were ... running for the plane. So what security does is, they make you go through the metal detector, but they don’t ask you for ID, and they don’t ask you anything, because there’s a rush. Otherwise they’d ask you for ID.

Sébastien: So that was the only way not to get your documents checked?

Antonio: Yes, you had to say something like (feigning panicked voice) “Oh, my plane is leaving!” So they were like (same urgent voice): “Ok, go, go, go!” You see, that was the trick! (Interview conducted in Chicago, September 4, 2004)

24. K. Sadiq, “When States Prefer Non-Citizens Over Citizens: Conflict Over Illegal Immigration Into Malaysia,” *International Studies Quarterly* 49, 2005, p.113.

25. This in no way means that the US federal government is weak (see W. Novak, “The Myth of the ‘Weak’ American State,” *American Historical Review* 113 [2008]), but rather that “citizenship” is historically less central and less relevant as a criterion for domination and discrimination. The US Constitution, for example, speaks of “persons” or “people” and does not specify whether it applies solely to citizens (see D. Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* [Baltimore: Johns Hopkins University Press, 1996, 102]).

26. Until June 1, 2009, there was no need for a passport to cross land and sea borders, including for returning from Mexico.

27. Until September 11, 2001, the following four states issued driver’s licenses without checking the legal status of applicants: North Carolina, Tennessee, Utah, and Virginia.



In every country, the beliefs of the inhabitants themselves contribute to the concrete formulation of citizenship by revealing a unique conception of the State and a unique form of “legal consciousness.”<sup>28</sup> In France, for example, the idea seldom occurs to people, even to those who vigorously condemn identity checks, that this activity is not a normal prerogative of State power, albeit it should not be abused.<sup>29</sup> In contrast, in the United States, the idea that a police force can conduct random ID checks in public places remains relatively unthinkable and reserved for exceptional situations. In American history, the police have, in fact, never had any explicit aim to “force all individuals to prove their civil identity with an official document attesting to their centrally-held registration.”<sup>30</sup>

In May 2005, taking on board the fact that some of the 9/11 perpetrators held (genuine) driver’s licenses, the US Congress passed the Real ID Act, which laid out a series of mandatory federal regulations for the manufacture of identity cards. As is often the case, it was the need to have better control over certain stigmatized groups that contributed here to “rationalizing” the entire identification system, including for the most legitimate citizens.<sup>31</sup> The vigorous response to this new law by the inhabitants of some states matched their concern for their rights. In May 2006, there were unlikely protest rallies held in New Hampshire (where article 10 of the State Constitution contains a “right to revolution”), which brought together libertarians and liberals, from the Cato Institute to the American Civil Liberties Union. The principle of identity checks conjured up an image for the protestors, not of Nicolas Sarkozy, but of Adolf Hitler. A member of the House of Representatives protested:

If they say you can’t get on a plane without a Real ID certified driver’s license, it is no exaggeration to say that there will be many other things you won’t be able to do unless you have that type of ID document, such as getting a job. That smacks of 1984 and, more significantly, of the Nazi’s “Your papers, please.”

The defenders of New Hampshire’s decision to withdraw from the Real ID program (which potentially led to state documents not being recognized in the rest of the country upon implementation of the law) even organized fake check points where, dressed as SS officers, they ordered passersby to identify themselves. Evangelical Christians declared that the Real ID program paved the way

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28. See: (i) P. Ewick and S. Silbey, *The Common Place of Law. Stories of Everyday Life* (Chicago: University of Chicago Press, 1998); (ii) L. Israel (L.), G. Sacriste, A. Vauchez, and L. Willemez, *Sur la portée sociale du droit. Usages et légitimité du registre juridique* (Paris: PUF, 2005); and (iii) J. Pélisse, “A-t-on conscience du droit? Autour des *legal consciousness studies*,” *Genèses* 59 (2005).

29. This is the case despite the fact that French law, in theory, strictly regulates these controls (Gisti, *Le contrôle d’identité des étrangers*, March 2003, 3–13).

30. G. Noiriel, “Introduction,” in *L’identification. Genèse d’un travail d’État*, ed. G. Noiriel (Paris: Belin, 2007), 14.

31. Spire shows how the introduction of the French national identity card in October, 1955 came in response to a desire to have better control over the movements of the “French Algerian Muslims” (Spire, “Semblables et pourtant différent,” 58–9).

for the future assignment of a single number to every human being, which, according to their interpretation of the last book of the Bible, announced that the Apocalypse was imminent.<sup>32</sup> In March 2007, the federal government decided to postpone implementation of the act until December 2009. By 2008, a total of eleven states had voted to prohibit application of the Real ID Act. These ranged from liberal states, like Washington and New Hampshire, to conservative ones, jealously guarding their independence, like Oklahoma, Georgia, and South Carolina.<sup>33</sup>

### ***Conservative Pragmatism and Limited Repression***

The growth in the number of undocumented migrants has also been encouraged by the conservative pragmatism of the American authorities and employers, who have maintained a policy of promoting both immigration and the illegality of the new arrivals.<sup>34</sup> The 1965 Hart-Celler Act, which abolished quotas for Europe, instituted new ones for Latin America (120,000 per annum, well below the annual number of immigrants from Mexico alone at the time). Although the Refugee Act had set the bar for legal entries for each country at 18,200 in 1980, the annual number of Mexican arrivals reached several hundred thousand. This is what De Genova (*Working the Boundaries*, 234) calls “an active process of inclusion through illegalization.”

The 1986 Immigration Reform and Control Act (IRCA) allowed the collective regularization of 2.7 million people and, in theory, strengthened the suppression of employers of illegal immigrants who were not covered by the amnesty. In reality, it only made a semblance of instituting sanctions. It is true that this law, which is still in force, does require employers to do an initial check of their employees’ papers. In practice, however, all they have to do to be covered is to prove that they have checked the existence of the papers (namely by making a photocopy), without having to certify that they are genuine. In short, the IRCA implicitly invites employees to have false documents rather than no documents at all. Massey et al. (*Beyond Smoke and Mirrors*, 119) summarize the situation: “Whereas before 1986, all Mexicans had to do to be hired was to show up at a work site and offer their labor, after 1986, the rules changed; a worker now had to appear *with documents*,” whether genuine or fake. In addition, in the 1990s, employers were generally given three days notice of raids by the Immigration and Naturalization Service and could, therefore, could let go of their employees ahead of time (De Genova, *Working the Boundaries*, 235). In doing so, they transferred the legal uncertainty to the employees themselves (who left the company before they were fired). From 2000, the number of raids

32. P. Belluck, “Mandate for ID Meets Resistance From States,” *The New York Times*, May 6, 2006.

33. See <http://www.realignightmare.org>.

34. D. Massey, J. Durand, and N. Malone, *Beyond Smoke and Mirrors: Mexican Migration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2003).

dropped significantly, and raids on workplaces in particular disappeared almost completely.<sup>35</sup>

Responding to a new wave of nativist reaction with assurances of toughness (while, at the same time, attempting to prepare national opinion for an inevitable future regularization), the Bush Administration undertook to substantially increase controls from 2006, including in the workplace. In spite of the undeniable intensification of efforts, however, the suppression and level of control remained extremely moderate by international standards. It is not always easy to obtain precise data, as government agencies tend to exaggerate their own results by piling up stacks of figures, which do not add up in reality. The Bush Administration inflated the official number of deportations in 2006, for example, by including, retroactively (based on 2001 figures), immediate expulsions carried out at the border, involving people trying to enter the country—most of these people tried several times until they succeeded. In fiscal year 2007 (from October 1, 2006 to September 30, 2007), the Department of Homeland Security carried out 319,382 expulsions.<sup>36</sup> A total of 75,000 of this number were carried out at the border by the US Customs and Border Protection services (and included multiple attempts). Only 244,000, therefore, involved foreigners arrested within the country by Immigration and Customs Enforcement. While this was a record figure, representing a twofold increase on the 2002 figure, it only involved 2% of the estimated total of undocumented migrants in the country.<sup>37</sup> By comparison, the lowest approximations of the number of expulsions from France under Minister Brice Hortefeux, for example, reached between 4% and 7% of the irregular immigrant population.<sup>38</sup> At the height of the wave of conservative suppression under the Bush administration, an undocumented person in the United States thus had a three times lower risk of being deported than an undocumented person living in France.

The period from 2006 to 2008 was also marked by a series of dramatic raids on workplaces, the most sensational of them being on May 12, 2008, on the Agriprocessors plant in Postville, Iowa. A total of 389 people were arrested during the operation, including three managers: this was a record. But these very high-profile police raids conceal very minor activity in reality. The highest number of

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35. E. Porter, "The Search for Illegal Immigrants Stops at the Workplace," *The New York Times*, March 5, 2006.

36. US Department of Homeland Security, *Immigration Enforcement Actions: 2007*, Washington.

37. This figure does not include 891,000 voluntary returns, but these were primarily people caught at the border (83%) or voluntarily withdrawing their application for admission (11%).

38. Estimates of the number of undocumented foreigners in France are lower than the US figures, and vary between 200,000 and 400,000. Although Hortefeux announced 30,000 expulsions for 2008, about half were either voluntary returns by mainly European foreigners or readmissions into countries in the Schengen Zone. This brought the approximate total of real expulsions to 15,000 (P. Weil, "Politique d'immigration: le dessous des chiffres," *Le Monde*, January 14, 2009).

arrests took place in fiscal year 2008, with a total of 6,287 nationwide, including 135 employers and managers. In that year, therefore, with the undocumented labor force estimated at seven million, an unauthorized employee had less than one chance in a thousand of being arrested at his or her workplace. In the period from 2002 to 2005, the annual average number of work-related arrests was 791 for the entire United States, or less than one in 10,000 undocumented employees.<sup>39</sup> While the human consequences of these raids on their victims are devastating, their greater impact concerns, first, the fear they induce in the entire immigrant population, and, second, the subordinate employability that is reinforced by this fear. Most of the suppression occurs at the border, a constant “spectacle” of immigration policy and “exemplary theater” of the threatened national integrity (De Genova, “La production légale,” 233–7). Once across the border, a more complex disciplinary system awaits irregular migrants.

### **Informal or Bridled Citizenship?**

There are two reasons why it may not be possible to group all the elements of citizenship enjoyed by the undocumented on US soil into the “informal” category. On the one hand, many of the elements are conferred by official public institutions, reflecting a relatively compartmentalized administrative system. On the other, the inauthenticity or possible illegality of the documents and numbers, which give access to certain common rights, does not make them informal, albeit they often make them more insecure and often partial. It is, therefore, possible to add a different angle to the approach that pits formal rights, on the one hand, against more informal civic practices, on the other. This points to the discordant relationships among the very authorities who generate and guarantee the formal rights.

#### ***Decentralized Citizenship***

United States citizenship is largely fragmented, both geographically and institutionally. At the federal level, the immigration, social security, and Internal Revenue services are separate and relatively hermetic agencies. As for geographic decentralization, it enables undocumented migrants to navigate among the various levels of involvement of the public authorities, with the federal government generally suppressive and the state governments more lenient.<sup>40</sup> There is

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39. These are my own calculations, based on data presented in the Immigration and Customs Enforcement’s *Fiscal Year 2007 Annual Report: Protecting National Security and Upholding Public Safety* (Washington, December 2008) and the Department of Homeland Security’s website.

40. Historian William Novak (W. Novak, “The Legal Transformation of Citizenship in Nineteenth-Century America,” in *The Democratic Experiment: New Directions in American Political History*, ed. M. Jacobs, W. Novak, and J. Zelizer (Princeton: Princeton University Press, 2003), 94) describes how, in the nineteenth century, US citizenship was considered merely “the latest form of membership in a continuum of public jurisdictions and civic associations.” He concluded (*ibid.* 112), with regard to the early twenty-first century, that the unification of federal citizenship as the first foundation of rights remains an “unfinished project”.

one systemic element which is crucial: being in the country illegally is a federal crime to be dealt with by the Immigration and Customs Enforcement (ICE) services. The states, counties, and towns do not set out to arrest and detain undocumented migrants based solely on their irregular presence—a presence they can only verify through external recourse to ICE. The 287(g) program, approved in 1996 but not implemented until the beginning of the first decade of this century, enabled 951 officials from sixty-seven local police departments and penitentiaries (a minuscule proportion of the total number) to be trained and explicitly authorized to make arrests based solely on violation of migratory legality.<sup>41</sup> For fiscal year 2007, this collaboration led to 28,000 people being taken in for questioning, which was less than 3% of the 961,000 people in total taken in for questioning that year (Immigration and Customs Enforcement, *Fiscal Year 2007*). Some states have, in fact, decided to prohibit their departments from cooperating in ICE's operations, or even from notifying the federal departments when they discover that a resident is an irregular migrant. That is the case in Illinois, with an undocumented population estimated at 560,000 in January 2007 (ranked fifth nationally), where no police department participates in the 287(g) program.<sup>42</sup>

Most local government authorities contribute to further integrating undocumented immigrants into social and bureaucratic life.<sup>43</sup> Hence, the State of Illinois now recognizes the registration cards issued by the Mexican Consulate in Chicago as valid ID. In 2007, eleven states issued official driver's licenses (but in a different color) to illegal immigrants ineligible for a Social Security number. This disconnect sometimes leads to conflicts between federal and local authorities. Following the lead of many large cities like New York, Houston, Washington and Los Angeles, the City of Chicago has declared itself a "sanctuary" city, and the local police are prohibited from asking residents if they are legal. Although the federal government has launched an optional program called E-Verify, which is a national database enabling employers to verify the

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41. These data describe the situation in October, 2008. In reality, the established rules and delegated authorities remain very fluid. On the one hand, cooperation with the ICE was already permitted prior to the 287(g) program, which supplied direct access to federal data as well as to specific training and funding. On the other, owing to the limited number of places in the detention centers, the program is supposed to focus on arresting undocumented aliens who have committed a crime. This was already a priority for the local police, who called ICE only when they suspected a foreigner, arrested on some other grounds, was also an irregular immigrant. The lack of authority of the local police forces in the area of immigration in the United States, therefore, has more to do with "legal consciousness" than with official law. Conversely, the 287(g) program implies a change in professional culture as much as a formal delegation of authority. Cf. Government Accountability Office, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, Washington, January 2009.

42. M. Hoefler, N. Rygina, and B. Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2007* (Washington: Department of Homeland Security, September 2008).

43. See: (i) M. Wells, "The Grassroots Reconfiguration of U.S. Immigration Policy," *International Migration Review* 38, no. 4 (2004), and (ii) M. Varsanyi, "Interrogating 'Urban Citizenship' vis-à-vis Undocumented Migration," *Citizenship Studies* 10, no. 2 (2006).

immigration status of job applicants, Illinois has attempted to prohibit companies located in the state from participating in it.<sup>44</sup>

The existence of these levels of legality translates into the “legal consciousness” and political practices of undocumented immigrants (Pélisse, “A-t-on conscience du droit?”). Even though they are illegal in terms of federal immigration legislation, they can—especially as part of social mobilization—invoke compliance with the local and national laws that protect them, for example as wage-earners. Hence, at a rally against a day labor agency in Chicago in February 2006, the main slogan was “Follow the law! Follow the law!” This was an order chanted in English both by African Americans and by the Spanish-speaking undocumented workers, even though they were mostly monolingual.<sup>45</sup> This protest rhetoric, which was not without its ambiguities, carries within it a real potential for civic subjectivation.<sup>46</sup>

### ***‘Separate and Unequal’ Documents?***

This unique form of “legal consciousness” is also based on a well-known but often forgotten fact: irregular immigrants are rarely “undocumented,” strictly speaking. What separates “legal” from “illegal” residents in a country is, today, not so much the possession of documents as the quality and overall legitimacy of them. The subordinate citizenship of illegal residents in the United States is thus based on a parallel identification system equipped with its own institutions. Within this system, ostensibly false documents, very easy to obtain at relatively modest prices, are not just tolerated but actually required by a whole set of institutions, and especially providers of formal jobs. These documents are necessary in the restricted space but they, in turn, restrict the concrete space and the possibilities of physical and economic movement, especially by making it more costly to change employers.

This logic feeds a prolific economy of “community counterfeiters,” who maintain a large clientele as new arrivals show up and as changes are made to real documents by the public authorities. The federal authorities regularly change the color of the “green card,” making the market all the more lucrative for counterfeiters, who adapt the appearance of their products accordingly. In Chicago, in 2005, a new card cost one hundred dollars on average. In addition to there being no shortage of new arrivals, the influx of customers is also maintained by the perishable nature of the documents. The forged documents have

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44. Although this decision has subsequently been overturned, it has nevertheless set the tone for the state’s control policy. Other places, especially smaller towns in the Southern states, use their autonomy in more suppressive ways.

45. S. Chauvin, “Il faut défendre la communauté.’ Ethnographie participante d’un *community meeting* de travailleurs journaliers à Chicago,” *ContreTemps* 19 (2007).

46. E. le Texier, *Quand les exclus font de la politique: Le barrio mexicain de San Diego, Californie* (Paris: Presses de Sciences Po, 2006).



an expiry date just like the real ones and, therefore, have to be replaced regularly as necessary. This secondary market of citizenship, providing its products to the secondary market of labor, is a shady copy of the official system, with its specific documents, procedures and places. The MacDonald's in the Little Village district on the city's southwest side, for example, served as an unofficial waiting room in 2005 for many "customers" as their papers were being created. Such "bastard institutions"<sup>47</sup> tend to "fulfil the same functions as the formal institutions in the areas of work, housing, and relationships" (back-translated from the French),<sup>48</sup> and "Because they fill a void, they operate parallel to the institutions of society as a whole while, at the same time, being dependent on them" (back-translated from the French).<sup>49</sup>

### ***A Document Career: Illegality "in the Final Analysis"***

As it involves degraded institutional duplication based on false documents, which are at once necessary and sufficient, this parallel subcitizenship could be described as the civic version of a ghetto.<sup>50</sup> The "bridled citizenship" of America's undocumented migrants cannot, however, be reduced to a simple parallel version of normal citizenship: irregular migrants also, in fact, experience illegal access to formal citizenship itself. Viewed diachronically, their documentary trajectories frequently reveal a virtuous sequence of "bureaucratic incorporation."<sup>51</sup> In the course of this sequence, a first element of citizenship is obtained, whether by falsification or otherwise. This becomes the condition for a growing civic insertion made up of increasingly formal rights and increasingly "authentic," albeit illegitimate, papers. This is what Antonio's story about his "document career" reveals. Its inventiveness nevertheless ends up, "in the final analysis," being "trapped" and "annulled" by his illegal status.

Antonio: You know what? At the time I had a driver's license! You can't get a driver's license without a Social Security number. But at high school, it's easy, because when you're in high school, they give you driving classes. And at school, they give you these papers to fill in, so you can fill them in to get a driver's license. So at the place where it says "Social Security" I just made up mine, I just created a Social Security [number], and that was the first time. ... Since that day, I've always used the same number to get work.

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47. E. Hughes, "Bastard Institutions," in *The Sociological Eye*, ed. E. Hughes (New York: Transaction Publishers, 1984), 98–105.

48. G. Engbersen, M. Van San, and A. Leerkes, "A Room with a View: Irregular Migrants in the Legal Capital of the World," *Ethnography* 7, no. 2 (2006).

49. S. Mahler, *American Dreaming: Immigrant Life at the Margins* (Princeton: Princeton University Press, 1995), 139.

50. L. Wacquant, "Les deux visages du ghetto: construire un concept sociologique," *Actes de la recherche en sciences sociales* 161 (2005).

51. H. Marrow, "Immigrant Bureaucratic Incorporation: The Dual Roles of State Policies and Professional Missions." Paper presented at the annual conference of the American Sociology Association, Boston, July 31, 2008.



Sébastien: So you made up your Social Security number?

Antonio: Yes, I just created it, yes. I remember when they gave us the form at school, they told us, “If you don’t have a Social Security number, just put 000” [Antonio’s former high school, named after a Mexican president, is “99% Hispanic”]. But I’ve got friends who told me: “No, you just need to make up your number. Who would know? Maybe they’ll give you a driver’s license.” And I remember, it was easy: 456, and then the next two numbers were the year my brother was born, and the other four were my year of birth and the date my brother was born. So it was: 456, the other two numbers were 82, which is when my brother was born, and the other two were 78, which is my birthday. So it was easy! And then when I went to get the State of Illinois driver’s license ... I don’t know if it was easy at the time [late 1990s], but I just went there with my high school card, my birth certificate from Mexico, and they gave me a driver’s license. And I had it for about two years.

Sébastien: And why did you keep your driver’s license for just two years?

Antonio: Oh, yeah, that’s a funny story. I remember, I went to the movies in the north end [of Chicago]. . . . On my way home I realized I didn’t have my wallet anymore. And in my wallet I had my money and my documents: my driver’s license and my Mexican ID card [consular registration number]. That meant that, at the time, I didn’t have any papers anymore. I had to go to the State of Illinois to get a new one, a new driver’s license. But before that I called, and they told me I had to bring a photo ID and that I had to bring my Social Security card. But I didn’t have any of that! So I had to take my high school card and my fake Social Security card. You know, the one you buy on 26<sup>th</sup> Street. So I got this fake Social Security card, and I went to the State of Illinois and got in line. And when they called me, they asked me what I was doing there. I said: “I lost my driver’s license, I want a new one.” “You need these documents.” And I remember, I showed them my ID [high school card] and my Social Security card. And I remember that, for my high school card, they said, “We don’t accept that anymore.” And they checked my Social Security card. And they started to look at it. And so this guy called another guy who was an inspector, a police officer. And in this loud, firm voice, he asked me: “Where did you get that?” And I started to shake. I said: “I got it, that’s all.” And that was when I think I started to be afraid, because I smiled. He said to me: “Why are you smiling? It’s not funny,” and he took me, he pulled me into a room and put handcuffs on me. “You know, that’s a fake card, you need to tell me where you got it.” So I told him the truth; I told him I’d gotten it on 26<sup>th</sup> Street. . . . “You know you can go to jail for that!” I think he was trying to frighten me. That was his intention. Because he said to me: “You need to start thinking about what you’re going to tell the judge. Because you’re going to go see a judge, and you’re going to have a trial.” And at that point, I almost started crying because that was the first time it had happened to me. And then, I remember, he went to his computer, and he said: “The computer tells me you have a driver’s license.” He asked me: “How did you get that?” “Through the high school!” “So you do have a Social Security number!” And then, I don’t know if it was the right thing to do, but I lied to him. I said: “Yes, I have a real Social Security number.” “So why did you go get

this fake document?” “Because for me it was quicker to go to 26<sup>th</sup> Street and buy one than to go to the Social Security to get one.” And I don’t know why, but he believed me. ... He asked me why I hadn’t gone to the Social Security, that it’s easy, that it would take a few weeks for them to send it to me, but they would have sent it. I told him I needed my card because I didn’t have any ID card, so it was easier to go to 26<sup>th</sup> Street and pay ten dollars to get a Social Security [card]. (Interview in Chicago, September 14, 2004)

Antonio was released a few hours after this without being arrested but, as a result, he had lost “the privilege of driving in the State of Illinois,” according to the letter he received a few weeks later. This insecure civic status did not prevent him from continuing to use his car.

Sébastien: Do you have a car?

Antonio: Right now I don’t have a car, because it’s busted. But when I had a car, I drove without a license and without insurance. It was like a game, because you had to be careful of the police. And I was stopped twice by the police, and they asked me for my driver’s license, and I would always say: “I don’t have a driver’s license.” “What’s the reason for that?” And I’d tell them the truth. Because most of them, they know. . . why most Hispanic people don’t have a driver’s license. “Because I don’t have a Social Security [number], I don’t have a license.” “So why are you driving?” “Because I have to! I need to work, my job is very far, it takes me a long time if I take the bus. I drive because I need to drive, otherwise I wouldn’t drive!” “Ok, well, go ahead, but be careful.” (Interview in Chicago, September 14, 2004)

We can see that, despite this widespread tolerance, the specter of expulsion is never absent. The most important thing is not so much deportation as deportability, “illegality as a spatialized social condition.” (De Genova, *Working the Boundaries*, 8).<sup>52</sup> Some are expelled so that others, the vast majority, remain expellable. We could agree with De Genova and say that the transnationalization of immigrants’ lifestyles extends Mexico right up as far as Chicago (De Genova, *Working the Boundaries*, 95–143). Alternatively, we could reverse the perspective and say that it is the border that never ends, that the geographic border is just an opportunity in a series of obstacles to entering a country. In the job market, these threats take the form of “no-match letters” sent to employers by the federal Social Security Administration for each employee whose name and number do not match. Employers are free to keep these letters in a drawer and bring them out at any time should they want to get rid of their employees without firing them. Antonio, himself, received a no-match letter (they are sent to both the employer and the employee). In Antonio’s case, a sum of eight thousand dollars was blocked by the US pension system in late 2004. This eight

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52. The term used by Immigration and Customs Enforcement (I.C.E.), at once euphemistic and stigmatizing, is “removable aliens.”

thousand dollars worth of contributions that he had paid in cannot be credited to him because he is unable to provide a name and number that match in the central file. In theory, he will be able to claim it once he has become legal.

## **Being a Good Undocumented Migrant: Legalization as Reward**

Bridled rather than informal, the subordinate citizenship of illegal residents in the United States thus combines inferiority, insecurity and normalization. Yet its very extent contains a real element of political subjectivation. This played a key role in the recent rise of a broad social movement for the defense of undocumented migrants, with the mass demonstrations in spring 2006 being its most visible manifestation.<sup>53</sup> The feeling of legitimacy expressed by the demonstrators was also based on the support of employers for their employees. On July 1, 2005, a march brought together several tens of thousands of people to protest the arrival of an anti-immigrant “Minutemen” militia in Chicago. On the day, some “Mexican” plants voluntarily closed their doors and let their employees go to the gathering. The El Gallito plant even let them print T-shirts bearing the company name. While most illegal migrants reject the idea of their illegitimacy on US soil, most notably by asserting their worth and their hard work, they are more tolerant when it comes to the inferiority of their status and condition. We have seen that this inferiority is all the more acceptable for being normalized by a broad swath of civic affiliations. Discipline and self-regulation are mainly encouraged, however, by the promise of future legalization.<sup>54</sup>

### ***Reasonable Discipline***

While officially being accompanied by increased suppression, the 1986 amnesty, which was followed by a series of very limited regularizations in the 1990s, contributed to nourishing a certainty that some new legislation would come about one day. According to the regularization plans discussed during President Bush’s second term, illegal immigrants with a steady professional trajectory and no criminal record would have been able to become regularized by paying a five thousand dollar fine.<sup>55</sup> The need to save in order to accumulate such a sum would in itself have been an incentive for financial discipline. More generally, this discipline is encouraged by the message that having a

53. See; (i) M. Bonzom and S. Chauvin, “Les sans-papiers dans les rues étatsuniennes: retour sur le mouvement immigré du printemps 2006,” *La vie des idées* 19 (2007), and (ii) J. Cohen, “The Rights of Undocumented Immigrants: From a National to a Transnational Perspective,” *Revue française d’études américaines* 111 (2007).

54. The following analysis of “domination by promise” is based on the works of Morice and Jounin on paternalism. Cf. (i) A. Morice, *Recherches sur le paternalisme et le clientélisme contemporains: méthodes et interprétations*. Mémoire pour l’habilitation à diriger des recherches (Paris: EHESS, 1999), and (ii) N. Jounin, *Chantier interdit au public. Enquête parmi les travailleurs du bâtiment* (Paris: La Découverte, 2008).

55. It was noted, with irony, that this is more than smugglers charge for illegal entry into the country.

solid financial past (credit history) is an integral part of good US citizenship.<sup>56</sup> Most notably, the credit history makes it possible to obtain a real estate loan and hence to become a homeowner, like Antonio's undocumented parents in Chicago. Such self-regulation is encouraged by the Hispanic media and by the legal experts they invite to speak. In addition, the federal government itself calls on men from eighteen to twenty-five years of age to be "good undocumented migrants" by declaring themselves to the Selective Service. This is the agency responsible for listing residents able to fight in the event of a national emergency or reinstatement of the draft. The agency officially features the following message on its Web site:

**ATTENTION, UNDOCUMENTED MALES  
AND IMMIGRANT SERVICING GROUPS!**

If you are a man ages of 18 through 25 and living in the U.S., then you must register with Selective Service. It's the law. You can register at any U.S. Post Office and do not need a social security number. **When you do obtain a social security number, let Selective Service know.** Provide a copy of your new social security number card; being sure to include your complete name, date of birth, Selective Service registration number, and current mailing address . . .

Be sure to register before your 26th birthday. After that, it will be too late!

Selective Service does not collect any information which would indicate whether or not you are undocumented. **You want to protect yourself for future U.S. citizenship and other government benefits and programs by registering with Selective Service. Do it today.**<sup>57</sup>

Between 2001 and 2005, the enrolment figure for Latinos in the Army increased by 26%. Officially, recruiting illegal immigrants is prohibited, but the DREAM Act, which had been under discussion in Congress for several years, offered young, undocumented immigrants, who had arrived in the country before the age of 16, the chance to enroll in the Army for two years. They should have finished high school and have no criminal record but, in exchange, they would get a visa and eligibility for student loans.<sup>58</sup> This personalized favor approach, as opposed to collective regularization, is found in an almost ideal form when federal laws are proposed for the regularization of a single "worthy"

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56. Credit history refers to an electronic file containing an individual's financial history, including loans and repayments as well as overdrafts, failures to pay and other proofs of a lack of reliability. The data it contains determine access to new loans and the interest rates offered. A sort of consumer version of the old French "worker logbook," the credit score is required for any change of financial institutions and is very difficult to wipe clean or declare invalid.

57. Selective Service System Homepage, USA Government, accessed January 31, 2008, <http://www.sss.gov>. The passages in bold are original. Translator's note: With the exception of the short paragraph beginning with "Assurez-vous," which was back-translated from the French, the quotation has been cited directly from the original source, accessed July 10, 2013.

58. B. Bender, "Immigration Bill Offers a Military Path to US Dream," *The Boston Globe*, June 16, 2007.

individual. In the summer of 2007, following several cases of high school student arrests, in spite of the fact that they had excellent school grades (like the young Juan Sebastian Gomez in Florida), Congress considered “private bills” to seek their individual regularization.<sup>59</sup>

The family environment also functions as a vector for discipline. During ICE raids on residences, for example, which are aimed solely at illegal migrants who have committed serious crimes, any person in an irregular situation can be arrested. The whole family, therefore, often becomes a “collateral” target of an operation that was originally focused only on one of its members—and perhaps even only on the neighbor. The family is therefore encouraged to exercise significant social control so that no member ever commits a crime or misdemeanor. When it was created, the Fugitive Operations Program was supposed to concentrate only on people already under a deportation order who had committed a serious offense. In actual fact, 73% of the 97,000 people arrested by the Immigration Service, who were responsible for this program between 2003 and 2006, had no criminal record.<sup>60</sup> They were simply in the family, domestic or neighboring environment of the persons sought.

Finally, the undocumented are asked to prove their civic worth by paying their taxes. The US tax code stipulates that anyone having an income in the country must pay taxes. “Fiscal residency” is determined, without reference to either nationality or migratory status, by a “substantial presence test.” Its very title illustrates the flexibility of the US citizenship system.<sup>61</sup> In order to allow foreigners with no valid social security number to become taxpayers, the Internal Revenue Service (IRS) created specific numbers called Individual Tax Identification Numbers (ITIN). Between 1996 and 2003, the IRS distributed fifteen million ITINs, and taxpayers identified by an ITIN paid in a total of fifty billion dollars in taxes. These ITINs are accepted by several banks, authorizing illegal migrants to have an account, credit card, or a real estate loan. Five states also accept an ITIN as ID, allowing the holder to get a driver’s license. “It’s better to stay on the right side of the law,” an undocumented 18-year-old told the Associated Press in 2007 as he left his tax advisor’s office.<sup>62</sup>

59. J. Preston, “In Increments, Senate Revisits Immigrant Bill,” *The New York Times*, August 3, 2007.

60. M. Mendelson, S. Strom, and M. Wishnie. *Collateral Damage: An Examination of ICE’s Fugitive Operations Program* (Washington, DC: Migration Policy Institute, 2009).

61. In order to be declared a resident, a person must have been physically present in the United States for thirty-one days during the current year and 183 days during the previous three years (counting 100% of the days of presence in the current year, one third in the previous year, and one-sixth in the first year). See <http://www.irs.gov>.

62. “Illegal Immigrants File Taxes Despite Criticism,” Associated Press, April 12, 2007. The use of a tax advisor to prepare one’s income-tax filing is fairly widespread in the United States.

***“Be Yourself”: an Encouragement to Identity Stabilization***

In reality, public speeches and promises of regularization not only have the effect of disciplining the undocumented, but also of better ensuring their identification and traceability. For irregular migrants, it is a matter of stabilizing their “legal personhood” at the same time as they are set up with a “paper identity” supplied by various public agencies (Noiriel, “Introduction,” 13). Despite their illegal status, they must keep their documents, number, name, and relationship between the number and the name, even though they are all fake. The undocumented have to leave tracks so that they can demonstrate their discipline and their existence when this final judgment of the bridled civic career that is regularization comes. Providing additional support for the fact that citizenship cannot be understood within a purely dichotomic model, Antonio explains below why he did not want to buy someone else’s complete identity, even though this would have made it possible for him not to show up as a “no-match” in the social security files. It is possible to detect the subtle way in which the thirst for individual dignity opportunely meets the needs of the new biopolitics of migration.

Sébastien: Ah, so the social security number and the name would match, but with somebody else’s name?

Antonio: Yes, but I didn’t want to, because I hope one day there will be an amnesty, or something like that. One day there will be regularization. And I think that will be good for me to stay OK with the government. I know I’m illegal, I mean, I know I’m breaking the law because I’m here illegally. I’m breaking the law. But it would be breaking the law even more if I worked with a false identity. That’s what a lot of experts say: don’t work with another identity, work with your own name, fill in your tax returns every year. And that’s what I do, I fill in my return, I try to be in order with my taxes...up to now! Because I just received a letter from the IRS saying I owe them around 300 dollars, since 2000, since the 2000 taxes. So I’m going to check that, because I don’t want to pay any more money, if I wait, it’s going to start going up. But I think I’m in order with all that.

Sébastien: So you pay taxes?

Antonio: I pay taxes. I do my returns. Like every other citizen.  
(Interview in Chicago, September 14, 2004)

Susan Coutin has noted the paradox according to which life lived in illegality is then utilized as an argument for regularization.<sup>63</sup> In doing so, however, she mostly stresses informal elements like relations with neighbors or attendance at a church. We have focused here instead on the formal elements, which have several properties: (i) they are often conferred and guaranteed by the State itself,

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63. S. Coutin, “Contesting Criminality: Illegal Immigration and the Spatialization of Illegality,” *Theoretical Criminology* 9, no. 1.

both in its local and also its national ramifications; (ii) they are more likely to involve the commission of illegal acts and fraud; (iii) they mutually reinforce each other's validity, opening up the possibility that an initial offense, like creating false documents, sets off a chain of increasingly "real," albeit "illegitimate," documents; (iv) the significance of the elements of bridled citizenship from the point of view of migratory legality nonetheless remains ambivalent and contested, and can potentially be overturned.

It is not simply a matter of pointing out the existence of "legally ambiguous" (Coutin, "Contesting Criminality," 20) lives, which are made up of both illegal (crossing the border) and legal elements (going to church, taking the children to school, paying back loans). It is also about stressing the fact that the same elements of citizenship can be the subject of contradictory symbolic framings. Is an undocumented migrant who works in a formal job with false documents more or less "illegal" than an informal worker? What about the person who works with real borrowed papers as opposed to their own invented fake papers? In the United States, the accusation of identity theft has become a pretext for certain local police departments to be able to pursue unauthorized immigrants without infringing federal immigration prerogatives.<sup>64</sup> Tax returns are then used as evidence for conviction. If the formalization of irregular citizenship stabilizes, it therefore also offers as many new opportunities for fraud as it does a more palpable grip in terms of repression.

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Even if there were a sudden mass amnesty, as is likely in the early years of the Obama Administration, it does not mean that the twenty odd years, during which workers present on US soil experienced and, to a certain extent, accepted a lastingly inferior position, will be erased so easily. To attempt to explain *a posteriori* this subordination by actual regularization, which will come eventually, is tantamount to "doing a pleonasm" with the world, studied by taking justification as the explanation. It is the justification itself, however, that needs to be understood. Borrowing a concept from Morice, we could call this domination by the future, domination through imposed wait. It is one that sees the promise of amnesty as extending social control, and has domination accepted by presenting it indefinitely as a temporary condition (Morice, *Recherches sur le paternalism*, 108–10).

In 2006, President George Bush stated, with regard to the partial regularization plan he was proposing, that: "What I have just described is not amnesty. It is a way for those who have broken the law to pay their debt to society, and

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64. D. Frosch, "Paying Taxes, and Fearing Deportation," *The New York Times*, February 1, 2009.



demonstrate the character that makes a good citizen.”<sup>65</sup> Statements like this endorse the principle of an “apprenticeship in illegality,”<sup>66</sup> during which individual sacrifice is conceived as a moral buyback. It is within the context of this “deferred citizenship”<sup>67</sup> that the discourse of merit must be understood. This is the discourse that dominated the huge demonstrations in spring 2006, when the themes of honesty and good work ethic were so frequently highlighted (Bonzom and Chauvin, “Les sans-papiers dans les rues étatsuniennes”).<sup>68</sup> The bipartisan bill, which failed in June 2006, would only, however, have given undocumented residents a four-year renewable visa, and not a green card. In the Senate version, immigrants would have had to have waited eight years before being able to become permanent residents, and at least thirteen before becoming US citizens. In a context of increasingly precarious residency documents, “illegality” appears, not as an absolute marker of illegitimacy, but rather as one more obstacle within a continuum of probationary citizenship.

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**Sébastien CHAUVIN** is a senior lecturer in the Department of Sociology and Anthropology at the University of Amsterdam. He is also a

researcher at the Institute for Migration and Ethnic Studies (IMES).

**chauvin@uva.nl**

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65. A newspaper article reported on a young, New York Senegalese man, who had recently been given his papers allowing him to pursue his studies. The article ended with a statement from his former robotics coach certifying that he would make an “excellent American,” because “Amadou has character” (N. Berstein, “Facing Graduation, Not Deportation,” *The New York Times*, February 15, 2009).

66. N. de Genova, “The Production of Culprits: From Deportability to Detainability in the Aftermath of ‘Homeland Security,’” *Citizenship Studies* 11, no. 5 (2007), 428.

67. D. Deschamp, “Une citoyenneté différée. Cens civique et assimilation des indigènes dans les établissements français de l’Inde,” *Revue française de science politique* 47, no. 1 (1997).

68. For an analysis of such a discussion of merit involving the naturalization procedure in France, cf. S. Mazouz, “MÉRITER d’être Français’: pensée d’État et expérience de naturalisation,” *Agone* 40 (2008).