

Long-Term Residence as Evidence of De Facto Membership

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Shoba Sivaprasad Wadhia, [Americans In Waiting: Finding Solutions for Long Term Residents](#), 46 **Notre Dame J. Leg.** 29 (2019).

In 2018 the Pew Research Center reported that approximately two-thirds of all unauthorized migrant adults in the United States have lived here for more than ten years. The average length of residence is fifteen years. The unauthorized migrant population has become a more settled population rather than a temporary population and mass deportation is politically impossible. In light of these realities it is critically important to seriously explore a pathway to lawful immigration status and/or citizenship for this population. Wadhia's recent article in the *Notre Dame Journal of Legislation* argues that long-term residence should be a basis for access to regularizing immigration status in the United States. This argument is rooted in the historical use of long-term residence as the basis for a variety of forms of relief in immigration law.

Americans in Waiting: Finding Solutions for Long Term Residents offers a detailed overview of the role that long-term residence has played in the past, the role that it currently plays, and the role that it could play to address the immigration status of the almost 11 million unauthorized migrants in the United States. Long-term residence in the United States has been recognized as a mitigating factor in deportation cases since 1891 when Congress authorized the deportation of individuals who became a public charge within one year of arrival. The one-year statute of limitations was later extended to five years and this approach to deportation grounds was continued in 1917 when crime-based deportation grounds were adopted.

As historian Mae Ngai notes in the classic text *Impossible Subjects: Illegal Aliens and The Making of Modern America* "it seemed unconscionable to expel immigrants after they had settled in the country and had begun to assimilate." ¹

As Wadhia explains with the words of Ngai, "they settle, raise families and acquire property—in other words, they become part of the nation's economic and social fabric." (P. 30.) Thus, deportation was not appropriate for long-term residents regardless of their immigration status or their actions within the country.

Wadhia's article provides an incredibly useful overview of the various legal tools that have been used historically, and today, to provide relief to long-term resident non-citizens. The article begins with registry and ends with an order of supervision. Each tool offers a different type of relief, but each is available based on the non-citizens' long-term residence in the United States. The additional tools addressed are the pathway to citizenship created in the 1986 Immigration Reform and Control Act, suspension of deportation, cancellation of removal, the 1997 Nicaraguan Adjustment and Central American Relief Act, temporary protected status, general deferred action, and the 2012 Deferred Action for Childhood Arrivals program. These tools vary in whether or not the recipients obtain lawful permanent residence status, permission to reside in the United States temporarily, or a promise not to

deport for a specified period of time along with work authorization.

The political challenges which the United States of America is currently facing regarding the fate of approximately 11 million unauthorized migrants are not new. Long-term residence has historically been a basis for viewing individuals as members of our national community and providing a pathway to lawful immigration status. The American polity recognized presence and the resulting connections as paths to membership. Even though this approach to membership has not been applied equally to all immigrant groups, it is a principle that has been operationalized in our legal system. The political reality is that almost 11 million individuals are not going to be deported from the United States *en masse*. Therefore, it is important to discuss options for recognizing the *de facto* membership of this established population rather than allowing them to languish with uncertainty, limited employment options, and limited opportunities for social and political engagement. This article and Wadhia's important book, *Banned: Immigration Enforcement in the Time of Trump* (2019), provide important insights on the role and use of discretion in responding to this challenge. Ultimately a legislative response is necessary to provide unauthorized migrants with durable solutions, but Wadhia outlines a wide range of statutory options that demonstrate that long-term residence is a compelling basis for providing a durable solution.

1. Mae M. Ngai, **Impossible Subjects: Illegal Aliens And The Making Of Modern America** 59 (2004).

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