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Use of the Term 'Illegal Alien'

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**POINT:** If someone is not a citizen of this country (an "alien") and not here legally, they are by definition an "illegal alien." Adopting a different euphemism only serves to normalize what is in fact a criminal situation.

*Eric A. Ruark, Federation for American Immigration Reform (FAIR)*

**COUNTERPOINT:** The term "illegal alien" is inherently pejorative and serves to criminalize the entire person. Alternative, more accurate terms exist and should be used, such as "unauthorized immigrant" or "undocumented worker."

*Shoba Sivaprasad Wadhia, Penn State Law*
COUNTERPOINT

This essay examines the use of the terms “alien,” “illegal,” and “illegal alien.” It will show that use of the term “illegal alien” is problematic for a number of reasons, not least because it is subject to many definitions that are often inaccurate. Moreover, even if there is agreement on the scope of the term, it cannot be fully understood without studying the individual characteristics of those defined by this term, as well as the role of the government in sustaining an outdated immigration structure that creates powerful incentives for illegal immigration. Finally, this essay will show that the term “illegal alien” is dehumanizing because it modifies not just a single action but the entire person.

BACKGROUND

The legal framework for immigration includes a statute designed by Congress and a lengthy set of regulations and policies created by various units in the executive branch of government. The Immigration and Nationality Act (INA) is the statute passed by Congress in 1952 (and amended many times thereafter) that articulates the technical details and definitions of immigration law. The INA draws lines between those wishing to come to the United States temporarily (student, visitor, scholar, etc.) and those seeking to immigrate permanently, often on the basis of a family or employer-employee relationship. The various visa categories identified in the INA can be confusing, but for the purposes of this essay what is important is that many people seeking permanent residence in the United States are subject to numerical quotas or country-based limitations, which over the years have resulted in long wait times for noncitizens, even when they are legally eligible for a visa. Moreover, the law provides for only 5,000 permanent visas for persons performing essential work such as migrant labor and hospitality services, which means that many noncitizens living in the United States providing his work without specific authorization under the immigration laws live “in the shadows.”

Many immigration enforcement functions, including arrest, detention, and deportation, as well as immigration “service” functions, such as the processing of green card applications, asylum applications, and citizenship applications, are housed in different parts of a cabinet-level agency known as the Department of Homeland Security (DHS). Individuals who are apprehended by DHS for deportation or “removal” are often repatriated “voluntarily,” sometimes removed speedily, and other times placed in “removal proceedings” before the immigration courts. This means that only a fraction of the people facing removal actually see a courtroom or judge before they are physically expelled or granted some form of relief from removal. The immigration court system has lower and appellate levels of review and rests within the Department of Justice. The judges who preside over removal cases do not enjoy unfettered discretion or independence, and in many cases they are required to issue removal orders against people who have compelling personal traits or circumstances, such as a lucrative job or a family member who is a U.S. citizen.
DEFINITIONS IN DICTIONARY AND IMMIGRATION CODE

The Merriam-Webster Online Dictionary defines illegal as “not according to or authorized by law,” or “not sanctioned by official rules (as of a game).” The word alien is defined as “belonging or relating to another person, place, or thing,” or “relating, belonging, or owing allegiance to another country or government.” These terms, as well as “illegal alien,” have been used by legislators, judges, government employees, and journalists in meaningful ways, as will be discussed herein.

The Immigration and Nationality Act (INA) defines alien as “all people who are not nationals” of the United States, and it goes on to utilize the term fruitfully throughout the code. On the other hand, the term “illegal alien” appears nowhere in the code. The words alien and illegal appear in the governing regulations that interpret sections contained in the INA and a number of documents created by the agencies responsible for applying the INA. These documents include, but are not limited to, written opinions by the immigration court or Board of Immigration Appeals, policies and news releases posted by the Department of Homeland Security, and decisions published by the Administrative Appeals Office within DHS. For example, the DHS website contains facts about its enforcement activities, including a record number of removals of “illegal aliens” in 2010—over 392,000 removals nationwide. These sources also contain the terms “unauthorized alien,” “undocumented alien,” “criminal alien,” and “fugitive” to describe noncitizens residing in the United States without legal authority.

USE OF THE TERM “ILLEGAL ALIEN” BY THE U.S. SUPREME COURT

The terms “illegal alien,” “alien,” and “illegal” appear in judicial opinions that involve immigration matters, including many decisions issued by the U.S. Supreme Court. To illustrate, consider the noteworthy case of Hoffman Plastic Compounds, Inc. v. NLRB (2002), which involved an immigrant named Jose Castro who relied on a friend’s birth certificate to gain employment at a plastics factory called Hoffman Plastic Compounds. Castro and other workers were terminated from their jobs after the company learned about their union activities. Concluding that the factory had violated the law by firing Castro and others “in order to rid itself of known union supporters,” the National Labor Relations Board (NLRB) ordered the factory to pay Castro back wages. The Supreme Court disagreed, however, and held that unauthorized workers like Castro were not entitled to back wages. Writing for the majority, Chief Justice William Rehnquist used the terms “illegal workers” and “illegal aliens” several times. The use of the terms was not limited to the majority opinion but was also used multiple times by Justice Stephen Breyer in his dissenting opinion. For example, Justice Breyer remarked, “The Court has recognized these considerations in stating that the labor laws must apply to illegal aliens.” Thus, the term “illegal alien” has been used by the Court even when offering a “pro-immigrant” opinion.

Justice Sonia Sotomayor made news when she used the terms “undocumented worker” and “undocumented immigrants” instead of “illegal aliens” or “illegal immigrants” in the 2009 case of Mennonite Industries v. Carpenter. As reported by The New York Times, a legal database revealed that Justice Sotomayor was the first justice to use the term “undocumented immigrant” in the history of decisions by the Supreme Court. Sotomayor later used the term “illegal alien(s)” several times in the 2011 case Chamber of Commerce of the United States v. Whiting, but she was citing previous cases in which the Supreme Court had used the phrase.

USE OF TERM “ILLEGAL ALIEN” BY MEDIA AND SPECIAL INTEREST GROUPS

In light of the regular use of the terms “alien,” “illegal,” and “illegal alien” in legal documents and by the U.S. Supreme Court, it might seem reasonable for journalists, policy pundits, and the public to use the same terms. In many cases, media outlets make conscious decisions about which phrases to use in their publications. For example, USA Today employs the term “illegal immigrants” to describe noncitizens in the United States without authorization. As with many other mainstream papers that use the same term, USA Today does not use the words “illegal” or “illegals” as nouns. Similarly, the Associated Press uses the term “illegal immigrants” but avoids using “illegal alien” or “illegal” as nouns. The New York Times also uses the term “illegal immigrant,” Ruben Navarette, a columnist for the San Diego Union Tribune, supports the use of “illegal immigrant” but has written that he believes there are “bigger fish to fry” than the terms used in the immigration debate.
With somewhat different motivations than mainstream journalists, special interest groups, and immigration restrictionists in particular, use the terms “illegal alien” and “illegal” to advance positions that oppose any form of immigration, legal or otherwise. Professor Kris Kobach, a former advisor to Attorney General John Ashcroft and the architect of numerous immigration programs aimed at penalizing immigrants in the name of 9/11 security, relies on a discrete subsection of the U.S. Code to support the use of illegal alien. But most anti-immigration organizations, among them Numbers USA, Federation for American Immigration Reform (FAIR), and the Center for Immigration Studies, defend the term with the catchphrase, “What part of illegal don’t you understand?”

THE TERM “ILLEGAL ALIEN” IS INACCURATE

The term “illegal alien” is not defined in the Immigration and Nationality Act, and for this reason alone is considered inaccurate to some scholars and immigration pundits. Beyond this absence, it is difficult to find the right fit or composition of people that accurately fall within the scope of the term. For some, it includes anyone who entered the United States without a valid entry or admission—those who “snuck” over the U.S.-Mexico border for example. Others apply the term to most of the population in the United States that is in violation of the immigration laws. In technical terms, this would include both the unlawful border crossers and those who entered the country with a valid visa or through legal means but then did not maintain their status or let it expire. A third but less popularized segment of the potentially unauthorized population comprises lawful permanent residents (LPRs) or green card holders who engage in conduct that would warrant an immigration charge. Applying the term “illegal alien” to this group is inaccurate in some cases, the government must first prove by clear and convincing evidence that the legal permanent resident is in fact deportable. Moreover, the term “illegal alien” is problematic in all three cases because immigration status can change when the noncitizen applies for an immigration benefit or relief from removal under the law.

Related problem is that the label “illegal alien” follows a person even when he or she is technically regularized to a legal status at a point in the future, because those who use the term keep using it even after a person achieves valid status. As the Supreme Court said in Plyler v. Doe (1982), “the illegal alien of today may well be the legal alien of tomorrow.” For example, a man who enters the U.S. without a valid visa may later be identified as a beneficiary on a valid visa petition filed by his U.S. citizen wife. Similarly, individuals who enter on a business visa from a war-torn country where they face harm could let their visas expire and then pursue refugee protection by applying for asylum. Finally, a green card holder who is placed in removal proceedings because of a past shoplifting conviction might be eligible for a discretionary waiver based on hardship to that person’s U.S. citizen family or the date of the crime in question. If a person spends a short period of time without legal justification and then regularizes to a valid immigration status based on a decision by the immigration agency or a judge, it is inaccurate to continue to label the person an illegal alien. It is also inaccurate to describe the entire population of noncitizens living in the United States without authority under immigration laws “undocumented,” because many of the individuals described above, namely those who enter the United States and let a visa expire, or green card holders who have a run-in with the law, did enter the United States with “documents.”

The term “alien” is formally and broadly described in the immigration code. Consequently, it would be difficult to argue that using the term to describe persons who are not citizens or nationals of the United States is wholly inaccurate. On the other hand, the law specifies that the government bears the burden of proving “alienage” for noncitizens present in the United States without being admitted or paroled. Moreover, looking just at the dictionary definition of “alien,” it could be asserted that persons living in the United States without a legal immigration status or pending application for relief belong to an “other place” or owe their allegiances to “another country.” On the contrary, many people living in the United States without a legal immigration status have significant ties to the country, live in “mixed” households where a child or spouse may be a U.S. citizen, and contribute to the U.S. society in meaningful ways.

One might argue that people with such intimate ties and family relationships would nevertheless be eligible to apply for some form of legal relief from removal, such as cancellation of removal or a waiver based on hardship to a legal loved one. But the INA contains limited offerings for people who present compelling or equitable reasons. For example, it is possible for Jose, a noncitizen who has lived in the United States for 10 years, is a financial breadwinner to his family, is husband to a U.S. citizen and the father to three U.S. citizen children, and is a regular patron of his local church, to be ordered deported or removed from the United States because he used an irregular social security number to work. Jose
may disagree that he owes allegiance to “another country” or that after 10 years of living in the United States he associates with “another place.”

EXAMINING INDIVIDUAL CHARACTERISTICS OF THE “ILLEGAL ALIEN” POPULATION

Even if there is agreement regarding who falls within the illegal alien population, it is important to explore why and how they got there. For discussion purposes, “illegal alien” is defined here as any person who is in the United States without a valid immigration status. Roughly, this would include both those who entered the country surreptitiously and those who entered on a valid visa but then let that visa expire. Nonetheless, a level of tension still exists for people like Jose. In his examination of “undocumented immigrants” through the lens of a “lawbreaker” versus a “resident,” Stephen Legomsky (2009) found that the vast majority of noncitizens residing in the United States without authorization have been in the country for several years. Relying on social science research, Legomsky concluded that unauthorized immigrants behave far more like other residents than like other lawbreakers.

This tension is even more pronounced when considering the case of “DREAMers,” or students who would potentially benefit from the Development, Relief, and Education for Alien Minors (DREAM) Act. The DREAM Act is a piece of legislation that has been introduced in many Congresses and, in a nutshell, would provide a legal gateway for people brought to the United States as children by their parents without a lawful status who pursue higher education or enter the military. The stories of individuals who would benefit from the DREAM Act are compelling, in part because they came to the United States at a tender age, and only years after growing up in the United States—where they have developed great character and intellectual curiosity—discovered they were in the country “without documents.” In many cases, the DREAM Act students have been forced to build campaigns around their immigration story in order to receive a temporary reprieve from the U.S. government.

Consider as an example the case of Mandeep Chahal, a graduate of Los Aljos High School in California, where she was voted “Most Likely to Save the World.” Eligible for the DREAM Act, Mandeep is an honors pre-med student at University of California—Davis, pursuing a degree in neurology, physiology, and behavior. In a speech before members of Congress and advocates on Capitol Hill in June 2011, Mandeep remarked, “I came to this country at age six knowing nothing but the alphabet and phrases like ‘thank you’ and ‘please’ that my mom had taught me. Today, I stand before you as an honors college student on her way to med school. It’s been 14 years since I walked into my first grade classroom, and I’ve come a long way since then.” It would be difficult to conclude that Mandeep or the thousands of DREAMers in her shoes are aliens who belong to or owe their loyalties to another country.

WHO IS ACCOUNTABLE? GOVERNMENT INACTION ON IMMIGRATION

The Department of Homeland Security estimated the unauthorized immigrant population to be about 10.8 million in January 2010 (Hoefer, Ryina, & Baker, 2011). This is a legal crisis that requires a congressional response. However, the last time Congress created a legal vehicle for immigrant workers and family members living in the United States in contravention of the immigration laws was in 1990, more than 20 years ago.

To use a simple example, imagine a public university in Virginia operating on a 500-person quota for each incoming undergraduate class in the year 1978. As the population in Virginia, funds at the university, and the number of students in colleges and universities continues to grow, consider the implications of the university maintaining a 500-person quota 25 years later. Like this hypothetical university in Virginia, Congress has not changed the immigration system in more than 20 years, despite significant changes in migration. The frozen quota has created a class of illegal aliens who have a legal means to transfer their status if Congress formulated an updated immigration system. Consequently, it is inappropriate to classify would-be beneficiaries of a legalization program as illegal aliens simply because of government inaction.

It is also important to examine the extent of resources Immigration and Customs Enforcement (ICE, a division of DHS) has to physically remove the entire “illegal alien” population (which under this definition does not include individuals who are in the process of applying for a waiver or relief from removal). According to the Department of Homeland Security, ICE has monies to remove 400,000 persons, or less than 4 percent of the illegal immigrant population per year. In response to this financial reality, and in the absence of broad congressional reforms, DHS has issued a flurry of memoranda on “prosecutorial discretion.” Prosecutorial discretion refers to the immigration employee’s decision to target an
individual for removal even if he or she is technically without an immigration status or is "illegal." A June 2011 memorandum from the agency suggests that ICE officers and attorneys should refrain from enforcing immigration laws against individuals who are very young, elderly, have maintained long residence in the United States, show intellectual promise at a U.S. college, or are members of the military, among others. The memo was criticized as a "backdoor amnesty" from largely anti-immigrant politicians and ICE union members, who accused the executive branch of circumventing Congress. But the reality is that the immigration agency has provided similar guidance on prosecutorial discretion for more than 30 years, because it recognizes that even when the immigration system is "fixed" there are people who have built their lives and contributed generously to the nation, but nevertheless remain vulnerable to deportation.

Together, the existence of an outdated immigration system, the stated position of ICE on the importance of prosecutorial discretion, and the administration's own support for updating the immigration system really test the appropriateness of identifying potential beneficiaries of an updated immigration design as illegal aliens.

"ILLEGAL ALIEN" IS DEHUMANIZING

Finally, the term "illegal alien" is dehumanizing because it criminalizes the person, not just an action. Some scholars and journalists choose not to include the terms "alien" or "illegal alien" in their discourse because they convey qualities that extend beyond identification (e.g., "noncitizen") or a single act (e.g., entering the country without inspection). Such critics of these terms often draw analogies to driving over the speed limit. This infraction can sometimes result in a ticket and a fine, but people are not treated as second-class citizens for speeding, and the conduct is forgotten once the fine is paid. Stephen Legensky (2009) deems the term "illegal immigrant" degrading, and remarks, "You don't call a person illegal because he or she has violated a law. It would be like calling someone who speeds on the highway an 'illegal driver,' or even an 'illegal citizen'" (p. 29).

Restrictivists have even converted "illegal" into a noun, usually in the plural ("illegal"), as if one could sum up everything that constitutes a person by calling sole attention to his or her violation of the immigration laws. It's not just inaccurate and illegal—it's utterly dehumanizing. Legal scholar and law school dean Kevin Johnson (1996–1997) has identified "illegal aliens" as the most damning term because it implies criminality, thereby suggesting that the persons who fall in this category deserve punishment, not any kind of legal protection" (p. 8). Similarly, the scholar Gerald Neuman (1995) has criticized the term "illegal alien" because it implies that a person is a criminal, and that no legal duties are owed to him, effectively placing the person outside the scope of the legal system.

Critical of the negative connotations behind the phrase "illegal alien," New York Times editorial writer Lawrence Downes (2011) posits that the word "['illegal'] spreads, like a stain that cannot be washed out. It leaves its target diminished as a human, a lifetime member of a presumptive criminal class." The National Association of Hispanic Journalists has instructed journalists as follows: "Except in direct quotations, do not use the phrase illegal alien or the word alien, in copy or in headlines, to refer to citizens of a foreign country who have come to the U.S. with no documents that show they are legally entitled to visit, work or live here. Such terms are considered pejorative not only by those to whom they are applied but by many people of the same ethnic and national backgrounds who are in the U.S. legally."

Emotion behind the word "illegal" was refueled in June 2011 when Jose Antonio Vargas, a 30-year-old Pulitzer Prize-winning journalist, chronicled his immigration story in The New York Times Magazine. Vargas wrote about his life as a sixth grader in California, falling in love with his American home and life, and his passion for language. He discovered his immigration status while at the DMV at the age of 16. In the process of applying for his driver's permit, he learned that his green card was "fake." Despite his immigration status, Vargas proceeded to earn high achievements as a student, eminent journalist, and full-fledged American until he declared, "I'm done running. I'm exhausted. I don't want that life anymore." Vargas consistently used the term "undocumented immigrant" throughout his essay, leading to a proliferation of the term "undocumented immigrant" and a tweet from Vargas declaring, "Undocumented Immigrant is trending. So let's drop 'illegal' nd 'alien.' No person is illegal or an alien."

Even legal immigrants have been described pejoratively in discussions about exclusionary rules and future migration. In the seminal 1889 Supreme Court case of Choe Choon Ping v. United States (the Chinese Exclusion case), Justice Stephen Field held, "To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from
vast hordes of its people crowding in upon us." Terms such as "illegal aliens" and "vast hordes" produce negative images of people who are criminal, undeserving, and un-American. It is the repeated use of such terms that block solutions to problems with the legal immigration system. The positions put forth by immigration and race scholars, as well as journalists, demonstrate the degree to which "alien," "illegal," and "illegal alien" are dehumanizing terms.

CONCLUSION

The narrative around "illegal alien" needs to change, not only to advance more accurate terminology, but also to build a more politically neutral ground when discussing solutions for fixing the U.S. immigration system. Some possible alternatives include "noncitizen worker," "noncitizen," "unauthorized immigrants," or terms that highlight family relationships, such as "spouse of a green card holder" or "parent of a U.S. citizen child." In the long run, the Supreme Court, lawmakers, and political leaders must change the terms they use to describe noncitizens by using more affirmative terminology and, where appropriate, discussing the lasting nature of a noncitizen's contribution.

REFERENCES AND FURTHER READING


Chue Chan Ping v. United States, 130 U.S. 581 (1889).


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