

A conversation with Michael Wishnie on July 13, 2014

Participants

- Michael Wishnie – William O. Douglas Clinical Professor of Law and Deputy Dean for Experiential Education, Yale Law School, teaches Worker and Immigrant Rights Advocacy Clinic and Veterans Legal Services Clinic
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Note: This set of notes was compiled by the Open Philanthropy Project and gives an overview of the major points made by Professor Wishnie.

Summary

Open Philanthropy Project spoke to Professor Wishnie about immigration reform and veterans advocacy issues.

Immigration

The conversation focused on creative ways to increase the number of immigrants who could come into the country, even in the absence of Comprehensive Immigration Reform.

Parole authority under Section 212(d)(5) of Immigration and Nationality Act

Section 212(d)(5) of the Immigration and Nationality Act (INA) gives parole authority (i.e., discretion in granting undocumented immigrants “parole” to remain in the US) to immigration officials in the case of “urgent humanitarian reasons or significant public benefit.” These terms are not further defined in the statute itself, though the statute’s regulations offer a non-exhaustive list of example circumstances. The statute states that parole authority is to be used on a case-by-case basis. Parole authority is intended as a “safety valve” so that, among other things, Congress does not need to issue a new Temporary Protected Status (TPS) order in every special circumstance (e.g., natural disasters).

Some immigrant rights groups have prioritized advocating for the use of the INA’s “urgent humanitarian reasons or significant public benefit” provision to return deportees, in cases where this would reunite families. These groups include United We Dream (UWD) and National Day Laborer Organizing Network (NDLON)

These efforts dovetail with other existing campaigns to reunite families.

The use of parole authority has several benefits, including:

- Its use is not limited to people who have already been deported.
- There is no annual cap on the number of people who can qualify.
- There is no limit to the number of times the authorized length-of-stay can be extended.
- It could bring in a substantial number of people with work authorization.

Some people are concerned that if parole authority were used in this way, political opposition to the statute allowing it would increase, making it more difficult to use at all.

There may also not currently be enough focus on naturalization as a way to bring wider circles of family members into the US.

Military provisions

It may be effective to try to expand the scope of existing provisions that allow family members of military personnel to be regularized, although military personnel are a relatively small group. An advantage of this strategy is that the provision could be included in the National Defense Authorization Act (NDAA), guaranteeing it a vehicle to move through Congress even when immigration issues are not being specifically considered.

Direction for funding

Major immigration groups, especially those based in Washington, DC, currently receive a disproportionate amount of funding, but the fact that CIR has not been achieved yet is a failure in field work. Directing more money to effective smaller groups throughout the nation may be the best route to achieving comprehensive immigration reform in the long term.

Veterans

Veterans in America comprise a substantial population with significant needs. While American culture valorizes veterans to some extent, veterans are also stigmatized through association with poverty, homelessness, and mental health problems such as PTSD.

There was a significant social movement for veterans' rights during and after the Vietnam War, which has now largely faded. Veterans' organizations such as the American Legion and the Veterans of Foreign Wars of the US (VFW) have networks of lay advocates who assist disabled veterans in applying for VA benefits without charge, but these "veterans service officers" (VSOs) are usually not trained in law. There are not professional, rigorous legal services focused on veterans' benefits. There are no groups effectively representing veterans of Iraq and Afghanistan and few legal services offices around the country with attorneys specializing in VA benefits or discharge upgrades, the two most important areas of specialized veterans practice. (The Equal Justice Works fellowships, providing funding for time-limited fellowships by recent law graduates to offer legal assistance to veterans in legal services offices around the country is a welcome development, but it is unclear how many of these positions will continue after the fellowships terminate.)

The Veterans Legal Services Clinic, a course taught in part by Professor Wishnie, was started in 2010 to address veterans' issues. While many veterans fall into groups for

which other sources of aid exist (e.g., the homeless, poor, mentally ill, and minorities), there are veteran-specific needs to address, including:

- Record correction, i.e., upgrading a veteran's discharge status to "honorable" or "general under honorable conditions." Veterans who receive an "other than honorable," "bad conduct," or "dishonorable" discharge are ineligible for many disability, housing, employment, education, and other benefits. A bad discharge also makes it more difficult for a veteran to find private employment and imposes a lifetime stigma and shame on the veteran.
- Mental health. Undiagnosed post-traumatic stress disorder (PTSD), traumatic brain injuries, etc., can cause poor military performance resulting in a bad discharge, after which the veteran may be unable to get treatment, benefits, education, or employment.
- Race discrimination. In the Vietnam era, a large-scale U.S. Department of Defense analysis concluded that black soldiers were twice as likely as white soldiers to receive a bad discharge. Vietnam veterans are the largest population of living veterans.
- Sexual assault. Not only has there been widespread failure to address and prosecute sexual assault within the military, but there has also been failure by the Department of Veterans Affairs (VA) to help veterans suffering from PTSD due to sexual assault. While women in the military are disproportionately targets of sexual assault, nearly 50% of victims of sexual assault in the military are men.

Veteran employment opportunities could be improved by ensuring that employers recognize job accreditation earned by veterans through military training and experience. Currently, veterans are often required to go through a redundant, costly, time-consuming civilian accreditation process before becoming eligible for occupational and professional licenses necessary to pursue a career – for instance, a skilled Navy electrician with 20 years of training and experience may be required to complete costly training and apprenticeship programs before becoming eligible for a civilian electrician's license. It would also be beneficial to ensure that community colleges offer credit for military coursework. The Veterans Legal Services Clinic recently helped pass a bill in Connecticut to promote veterans' employment, building on similar recent efforts in Maryland, Illinois, New York, and elsewhere.

Previously, the Veterans Legal Services Clinic drafted and successfully advocated for enactment of state legislation to expand eligibility for admission to pre-trial diversionary programs waived for veterans in the state criminal justice system.

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