

Testimony of Hiroshi Motomura

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on *Discrimination and Violence Against Asian Americans*

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Committee on the Judiciary
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Mr. Chairman and Committee Members,

Thank you for the opportunity to speak today.

My remarks take a step back from the details of incidents that the other witnesses have addressed.

There is a natural tendency to explain away these crimes as the isolated acts of a few individuals. Related is a natural tendency to avoid a hard look at why these crimes were committed — at why more crimes now, and why against victims of Asian ancestry.

These crimes follow a long historical pattern, as you have heard today. I'd like to explain a key reason for this history. Individuals commit crimes, but they do so in a society that reflects the laws under which we live. To see hate crimes as isolated is to close our eyes to the role of law in shaping attitudes, especially about who is worthy of respect, and who is not.

My focus today is on the immigration laws of the United States, and especially on how these laws have laid the foundation for hate crimes against Asian Americans in the past and in the present, but I hope not in the future.

I'll start by observing that throughout our country's history, immigration laws — in statutes, regulations, and executive branch orders — have discriminated and excluded on the basis of race, nationality, religion, and ethnicity.

There are many examples. Chinese exclusion dates back to the 1870s and 1880s, but it was the law of the land until 1943.¹ A federal statute in 1917 blocked immigration from most of Asia.² From the 1920s, Congress sought to preserve the racial mix of the United States by adopting the national origins system, which with its elaborate caps on immigration based on ethnicity.³ Until 1965, this system kept immigration to the United States from outside the Western Hemisphere almost

¹ See Act of May 6, 1882, ch. 126, § 14, 22 Stat. 58, 61 (1882); Act of Apr. 27, 1904, ch. 1630, § 5, 33 Stat. 392, 428 (1904); repealed by Act of Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600, 600 (1943).

² See Act of Feb. 5, 1917, ch. 29, § 3, 39 Stat. 874, 876. Exceptions were the Philippines, other U.S. possessions, and Japan, which agreed in 1907 to limit emigration to the U.S. mainland. For discussion, see Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* 32 (Oxford Univ. Press 2006).

³ For discussion, see Motomura, *Americans in Waiting*, at 126–32. After a temporary screening measure in 1921, the National Origins Act of 1924 made these ethnic caps a core feature of federal immigration law. See Act of May 19, 1921, ch. 8, §§ 2(a)(6), 3, 42 Stat. 5, 5–7; Act of May 26, 1924, ch. 190, § 5, 43 Stat. 153, 155.

entirely white and largely from western and northern Europe.⁴ My own family was one of the small number of Japanese allowed to come to America before 1965, when immigration from Asia remained severely limited.

Similarly, the large undocumented population from Mexico reflects an immigration system that historically has treated Mexican immigrants as disposable labor and today offers too few legal opportunities to work and live with family in this country.⁵ Most recently, many people have been barred from the United States because they come from certain majority-Muslim or African countries.⁶

Immigration laws, at their simplest, separate “them” *outside* the border from “us” *inside* the border. This may be why public figures have felt free to disparage and insult people from certain other countries, even when some of those public figures might never say the same things about U.S. citizens who trace their family roots to those very same places.

But immigration laws don’t just affect people outside the United States. Immigration laws can make it hard or even impossible for some U.S. citizens, but not others, to live in this country — in *their* United States — with their spouses and children and other close relatives — in other words, to make a life here, together as a family.⁷

In this way, immigration laws tell some U.S. citizens that they are still foreigners — that they cannot fully partake of American life. If they trace their family origins to disfavored parts of the world, or if they follow a disfavored faith, then the message is that their citizenship isn’t as worthy of respect as the

⁴ For discussion, see Motomura, *Americans in Waiting*, at 132–33.

⁵ See U.S. Immigration Comm’n, *Abstract of the Report on Japanese and Other Immigrant Races in the Pacific Coast and Rocky Mountain States*, in *Reports of the Immigration Commission: Abstracts of Reports of the Immigration Commission with Conclusions and Recommendations and Views of the Minority*, S. Doc. No. 61-747, at 690–91 (3d Sess. 1911). For discussion, see Hiroshi Motomura, *Immigration Outside the Law* 31–55 (Oxford Univ. Press 2014).

⁶ See *Protecting the Nation from Foreign Terrorist Entry into the United States*, Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017); *Protecting the Nation from Foreign Terrorist Entry into the United States*, Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017); *Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats*, Proclamation 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017).

⁷ For discussion, see Motomura, *Immigration Outside the Law*, at 94; Hiroshi Motomura, *The New Migration Law: Migrants, Refugees, and Citizens in an Anxious Age*, 105 *Cornell L. Rev.* 457, 471–73 (2020); Hiroshi Motomura, *Whose Immigration Law?: Citizens, Aliens, and the Constitution*, 97 *Colum. L. Rev.* 1567, 1572 (1997); Hiroshi Motomura, *Whose Alien Nation?: Two Models of Constitutional Immigration Law*, 94 *Mich. L. Rev.* 1927, 1946–51 (1996).

citizenship of other Americans. Their citizenship is devalued. In these ways, immigration laws enable discrimination that is based on race, often against U.S. citizens.

Chinese exclusion, for example, was rooted in the idea that people of Chinese descent could not become fully equal citizens of this country because they were not white.⁸ When 120,000 people of Japanese ancestry, most of whom were American citizens, were incarcerated in relocation camps during World War II, this, too, was only possible because they were seen as foreign because of their race.⁹

Especially when this permission to discriminate is embraced, endorsed, and amplified by public figures, what happens next should come as no surprise. The message is that some U.S. citizens don't belong, that they are really foreigners, and that their lives and property aren't worth as much. That message leads to hate crimes against people cast by our immigration laws as fundamentally less American.

No hate crime is an isolated act. We need to take national responsibility for the role of law in what we are seeing today. By discriminating in ways that suggest some U.S. citizens don't belong here, our immigration laws have laid the foundation for hate crimes. As long as our laws continue to lay this foundation, the promise of a shared citizenship¹⁰ that can unite us will remain unfulfilled, and our entire country will suffer.

Thank you.

⁸ See *Chae Chan Ping v. United States*, 130 U.S. 581, 606 (1889). For discussion, see Motomura, *Americans in Waiting*, at 29.

⁹ See *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians*, National Archives (1982).

¹⁰ The racist patterns in U.S. immigration laws have their counterpart in U.S. citizenship laws. In 1857, the U.S. Supreme Court read the U.S. Constitution to deny citizenship to anyone of African ancestry. See *Dred Scott v. Sandford*, 60 U.S. 393, 454 (1857). Only after the Civil War did the Fourteenth Amendment confer citizenship on all persons born on U.S. soil and subject to U.S. jurisdiction. See U.S. Const. amend. XIV, § 1. Citizenship by naturalization also depended on race. Starting in 1790, a federal statute limited naturalization to “free white person[s].” See Act of Mar. 26, 1790, ch. 3, § 1, Stat. 103, 103 (1790). In 1870, Congress opened eligibility to “aliens of African nativity and to persons of African descent”—but not Asian immigrants. See Act of July 14, 1870, ch. 254, § 7, 16 Stat. 254, 256 (1870). A statute in 1943 made Chinese immigrants eligible, Act of Dec. 17, 1943, ch. 344, § 3, 57 Stat. 600, 601, but only in 1952 did Congress repeal the last racial bars to naturalization.