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# THE LONG ARC OF DISPOSSESSION: RACIAL CAPITALISM AND CONTESTED NOTIONS OF CITIZENSHIP IN THE U.S.-MEXICO BORDERLANDS IN THE EARLY TWENTIETH CENTURY

NATALIA MOLINA

*This article examines the deportation proceedings of Nicolas Flores to interrogate larger issues of race, citizenship, and belonging in the U.S.-Mexico borderlands. The case demonstrates how concepts of race based on culture and biology, and the fact that Flores lacked racial capital, helped cast doubt on his citizenship and even reinscribed him as an immigrant.*

IN APRIL 1921, TWO U.S. Army scouts apprehended Nicolas Flores on the U.S.-Mexico border in Los Ebanos, Texas.<sup>1</sup> They turned Flores over to U.S. Immigration Service officials, who arrested him.<sup>2</sup> According to the scouts, their captive ran a boat service on the Rio Grande, charging immigrants to ride in a river skiff between Mexico and the United States.<sup>3</sup> The scouts had not witnessed

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NATALIA MOLINA, an associate professor and the associate dean in the Division of Arts and Humanities at the University of California, San Diego, wishes to thank audiences in the Latino Studies Department at Indiana University and at the New Frontiers of Race conference at the University of Chicago, where she presented earlier versions of this article. She would also like to thank John Nieto-Phillips, Ramón Gutiérrez, Jesus de la Teja, Neil Foley, Monica Martinez, Ian Fusselman, and the anonymous readers who read or commented on this piece.

<sup>1</sup> The role of the army scout was to reconnoiter an area. It is unclear why they would detain an immigrant.

<sup>2</sup> Prior to 1933, the Bureau of Immigration and the Bureau of Naturalization were separate entities within the Department of Labor. "U.S. Citizenship and Immigration Services: Agency History," Department of Homeland Security, last modified 19 March 2014, <http://www.uscis.gov/history-and-genealogy/our-history/agency-history/agency-history>.

<sup>3</sup> During this period, Mexicans routinely crossed the river for work, to visit family, or to go shopping. Crossing outside of border checkpoints spoke more to how locals often saw U.S. and Mexican border towns as a single transnational entity rather than part of two separate nations. Thus, such crossings are more accurately understood as an indication of how locals conceived of

Flores operating the ferry but apprehended him based on the testimony of a man who contended that Flores had shuttled him to the United States a few days earlier. The scouts said they had been aware of Flores's alleged illegal activities the previous year, when two other scouts claimed to have seen him from a distance ferrying small groups of Mexican immigrants on two separate occasions; Flores had escaped when they tried to seize him. Officer Royal Collins claimed that he first saw Flores four or five years earlier in order "to know him." What Collins meant by that phrase is unclear, but it raises the possibility that Flores may have been targeted for arrest. Flores denied the charges, claiming it was a case of mistaken identity.<sup>4</sup>

Flores was charged with violating section 8 of the Immigration Act of 1917 for crossing immigrants into the United States outside of the inspection of an immigration officer—a misdemeanor punishable by a fine not to exceed \$2,000 and imprisonment for up to five years for each immigrant he brought, or attempted to bring, to the United States. He was also charged with violating section 3 of the act, including not entering the United States at a designated point of entry and being a person likely to become a public charge at the time of entry. As we shall see, Flores could trace his family lineage back to 1793, had lived in the United States for over thirty years, and owned property and raised a family there. But the charge regarding section 3 meant that the Immigration Service was essentially treating him as a new immigrant. Thus, the Flores case demonstrates how public perception of Mexicans did not solely rely on their racial categorization—as white, Indian, or in-between people—but about how they were continuously reinscribed as immigrants. This contributed to perceptions of them as foreign and as non-citizens, which could potentially lead to their deportation.

Much of the literature in Mexican American history has demonstrated the routine racialization of Mexicans as inferior to whites or as nonwhite, which denied them citizenship rights.<sup>5</sup> Concepts of race based on phenotype, culture, biological understandings, language, and other markers cast doubt on Flores's citizenship, but so did

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space than as evidence of efforts to evade border checkpoints for permanent, undocumented entry. On transnational circuits, see Roger Rouse, "Thinking through Transnationalism: Notes on the Cultural Politics of Class Relations in the Contemporary United States," *Public Culture* 7 (Winter 1995): 353–402.

<sup>4</sup> Nicolas Flores, sworn statement, 7 April 1921, file 55063-362, Records of the Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration—Washington, DC (hereafter Immigration File).

<sup>5</sup> Natalia Molina, *How Race Is Made in America: Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley, 2013), 43–67; Neil Foley, "Becoming Hispanic: Mexican Americans and the Faustian Pact with Whiteness," in *Reflexiones: New Directions in Mexican American Studies*, ed. Neil Foley (Austin, 1997), 53–70; Thomas A. Guglielmo, "Fighting for Caucasian Rights: Mexicans, Mexican Americans, and the Transnational Struggle for Civil Rights in World War II Texas," *Journal of American History* 92 (March 2006): 1212–37; Martha Menchaca, *Recovering History, Constructing Race: The Indian, Black, and White Roots of Mexican Americans* (Austin, 2001); and Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley, 1997).

his landless status. Legal scholar Cheryl I. Harris, in a highly influential essay, argues persuasively that “[even] in the early years of the country, it was not the concept of race alone that operated to oppress Blacks and Indians; rather, it was the *interaction* between conceptions of race and property that played a critical role in establishing and maintaining racial and economic subordination.”<sup>6</sup> Harris points out, for example, that black slaves did not have access to property. They *were* property. Similarly, Peggy Pascoe’s award-winning book *What Comes Naturally* demonstrates how the intersections of miscegenation laws and property rights allowed whites to “[turn their] whiteness . . . into property.”<sup>7</sup> Pascoe presents case after case of women of color married to white men who were unable to claim or keep their property upon their husbands’ deaths because antimiscegenation laws invalidated or did not recognize their unions.

Thus, we must also question what role Flores’s lack of racial capital played in marking him as an outsider. For Mexicans, access to whiteness often depended upon various factors, including their ability to accumulate capital. Mexicans were considered non-white because of their indigenous heritage, but access to resources, land, and money helped move them up the social hierarchy. As historian David Montejano has argued, “money whitens.” His study of the Texas frontier revealed that Anglos divided Mexicans into two groups—landed and landless—with the landed finding more acceptance.<sup>8</sup> Land ownership and whiteness were so closely connected that access to racial capitalism inevitably shaped who was perceived as a citizen.<sup>9</sup>

The Flores case reached beyond the men involved and the small community it most directly affected. As we shall see, Nicolas Flores could not pinpoint his birthplace since his community spanned both sides of the border, but he could claim citizenship through his American-born father. Flores eventually hired lawyers to exonerate him and prevent his deportation. His case quickly addressed larger questions regarding the parameters of citizenship. Flores’s attorneys argued that his deportation would “subject practically every American citizen of Mexican extraction who resided on or near the border, below Laredo, to attacks upon his citizenship and the danger of deportation.”<sup>10</sup> In claiming

<sup>6</sup> Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106 (June 1993): 1716 (emphasis in original).

<sup>7</sup> Pascoe also demonstrates that during certain periods, these laws were not enforced. For instance, during the settlement of the West, white men were permitted to benefit from the transfer of property upon the death of their Indian wives. Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford, 2009), 106, 94–108.

<sup>8</sup> David Montejano, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin, 1987), 84.

<sup>9</sup> On race as an organizing principle in the development and growth of capitalism, see Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill, 1983). On racial capitalism in the American West, see Nayan Shah, *Stranger Intimacy: Contesting Race, Sexuality, and the Law in the North American West* (Berkeley, 2011); Foley, *White Scourge*; and Nicole M. Guidotti-Hernández, “Petra Santa Cruz Stevens and the Sexual and Racial Modalities of Property Relations in the Nineteenth-Century Arizona-Sonora Borderlands,” *Cultural Dynamics* 26 (November 2014): 347–78.

<sup>10</sup> Brief for Nicolas Flores, 13 June 1921, 6, Immigration File (hereafter Flores brief).

citizenship, Flores (and the diverse members of his community who went on record in support of him) asked that we consider how much more than his birthplace shaped his belonging. His family lineage, his ties to the land, and his long personal membership in a Spanish-speaking community that spanned the U.S.-Mexico border created and sustained a layered identity that he and his community recognized as American.

This article mainly draws on Immigration Service sources that offer insight into its inner workings and how policy was debated, made, and institutionalized as well as the racial knowledge it used to make decisions. Flores case records include arrest warrants, correspondence between local immigration officials and the Immigration Service in Washington, DC, and correspondence with Flores's hired attorneys. These records demonstrate that high-stakes policy decisions could hinge on the outcome of one case. Moreover, these sources offer something not always seen in these types of records: the perspective and voice of a Tejano community. The testimonies Flores's attorneys solicited in depositions provide a very different perspective on citizenship, belonging, and the fluidity of the borderlands. Taken in the aggregate, the sources provide a rich view of the contested nature of the borderlands and how one case could shape immigration policy for generations.

Many Mexicans living in the United States in the early twentieth century had long-standing ties to land, community, and family lineage—bonds that predated Texas statehood. These attachments—not a birth certificate—shaped their identity. Flores lived in the small South Texas town of Los Ebanos, located in Hidalgo County, alongside the Rio Grande.<sup>11</sup> His community had originally spanned both sides of the river prior to the end of the U.S.-Mexican War and the imposition of the border. For practical purposes, the question of which community members were “American,” “Mexican,” or Tejano was moot. Inhabitants of this border region maintained fluid identities that defied and transcended distinct nation-based categories.

This case provides an accessible, empirical example of how Mexicans drew on a sense of belonging rooted in their long-standing cultural and historical presence in the United States to stake their claim beyond legal definitions of citizenship. These bonds preceded the statehood of Texas. As such, it also addresses larger issues of social membership and cultural belonging. Elsewhere I have written about how the uneven terrain of citizenship resists being defined simply by whether one can claim it but is gauged

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<sup>11</sup> For histories of South Texas, see Daniel D. Arreola, *Tejano South Texas: A Mexican American Cultural Province* (Austin, 2002); Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas, 1734–1900* (Albuquerque, 1998); Douglas E. Foley, *From Peones to Politicos: Class and Ethnicity in a South Texas Town, 1900–1987* (Austin, 1988); and Jennifer Rose Nájera, “Troublemakers, Religiosos, or Radicals? Everyday Acts of Racial Integration in a South Texas Community” (PhD diss., University of Texas at Austin, 2005). For examples of resistance and expressive cultures in South Texas, see José E. Limón, *Dancing with the Devil: Society and Cultural Poetics in Mexican-American South Texas* (Madison, 1994); Américo Paredes, *With His Pistol in His Hand: A Border Ballad and Its Hero* (Austin, 1958); and Monica Muñoz Martínez, “Inherited Loss: Tejanas and Tejanos Contesting State Violence and Revising Public Memory, 1910–Present” (PhD diss., Yale University, 2012).

through a subjective lens that relies upon a constellation of factors, including gender, race, class, and sexuality.<sup>12</sup> Scholars have also examined how people have dealt with this exclusion by making claims for rights and dignity and critiquing the exclusionary practices of the state and imagining themselves as belonging to something beyond the nation-state. This is particularly evident in studies of *cultural citizenship*—the term Latino studies and other disciplines use to refer to how those who “feel rejected as full and equal citizens” of the United States claim membership and social rights to incorporate themselves into U.S. society.<sup>13</sup> Lastly, today’s borderlands scholars strive to demonstrate how people negotiated citizenship in their daily lives in regions historically shaped by power contestations. By shifting the focus to the local level, one can see the ways in which some groups must negotiate belonging and citizenship *every day*.<sup>14</sup>

Flores could claim U.S. citizenship through a variety of methods. According to the brief his lawyers, José Tomás (J. T.) Canales and Harbert Davenport, submitted to the Department of Labor (the agency that oversaw the Immigration Service), Flores could trace his lineage in Texas back to 1793, when the Spanish government ceded a *porcion* (plot of land) to his great-great-grandfather, Jose Antonio Flores.<sup>15</sup> But no one could be certain that Nicolas was born in the United States. The Army scouts caught him when he was fifty-four years old, long after the death of his parents, who could have confirmed his birthplace. He had been delivered by a midwife, not born in a hospital,

<sup>12</sup> Molina, *How Race Is Made in America*; Natalia Molina, *Fit to Be Citizens? Public Health and Race in Los Angeles, 1879–1939* (Berkeley, 2006); and David G. Gutiérrez, “The Politics of the Interstices: Reflections on Citizenship and Non-Citizenship at the Turn of the Twentieth Century,” *Race/Ethnicity: Multidisciplinary Global Contexts* 1 (Autumn 2007): 89–120.

<sup>13</sup> David G. Gutiérrez, “Migration, Emergent Ethnicity, and the ‘Third Space’: The Shifting Politics of Nationalism in Greater Mexico,” *Journal of American History* 86 (September 1999): 481–517; Alicia Schmidt Camacho, *Migrant Imaginaries: Latino Cultural Politics in the U.S.-Mexico Borderlands* (New York, 2008); William V. Flores and Rina Benmayor, *Latino Cultural Citizenship: Claiming Identity, Space, and Rights* (Boston, 1997), 2; Renato Rosaldo, *Culture and Truth: The Remaking of Social Analysis* (Boston, 1989); and Gutiérrez, “Shifting Politics.”

<sup>14</sup> For more on contemporary trends in borderlands studies, see Kelly Lytle Hernández, “Borderlands and the Future History of the American West,” *Western Historical Quarterly* 42 (Autumn 2011): 325–30; Pekka Hämäläinen and Samuel Truett, “On Borderlands,” *Journal of American History* 98 (September 2011): 338–61; and Ramón A. Gutiérrez and Elliot Young, “Transnationalizing Borderlands History,” *Western Historical Quarterly* 41 (Spring 2010): 27–53. For recent model studies that demonstrate the tensions between cultural and national citizenship in the borderlands, see Katherine Benton-Cohen, *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands* (Cambridge, MA, 2009); John McKiernan-González, *Fevered Measures: Public Health and Race at the Texas-Mexico Border, 1848–1942* (Durham, 2012); Geraldo L. Cadava, *Standing on Common Ground: The Making of a Sunbelt Borderland* (Cambridge, MA, 2013); Monica Perales, *Smelertown: Making and Remembering a Southwest Border Community* (Chapel Hill, 2010); Anthony P. Mora, *Border Dilemmas: Racial and National Uncertainties in New Mexico, 1848–1912* (Durham, 2011); and Nicole M. Guidotti-Hernández, *Unspeakable Violence: Remapping U.S. and Mexican National Imaginaries* (Durham, 2011).

<sup>15</sup> A *porcion* measured 4,428 acres of land. Alonzo, *Tejano Legacy*, 166.

a common practice at the time.<sup>16</sup> Since many of the midwives who served Los Ebanos lived on the Mexican side of the border, Flores could have been born there or on the Texas ranch his parents owned one hundred miles north of the border. Additionally, as a three-month-old baby, Flores went to live with his father's sister in Mexico because of an illness in the family, and possibly because his own mother had died when he was still quite young.<sup>17</sup> He grew up spending lengthy visits with his father and moved back to the state permanently at the age of twenty-one.<sup>18</sup>

Like half of the Mexican-heritage population in the state, Flores spoke Spanish, not English. He lived in Texas for more than thirty years, raised two American-born teenage sons—who lived in Texas with their mother, his ex-wife—and his family's history in the state spanned several generations. Yet because he lacked documentation, the Immigration Service moved to deport him. Prior to his arrest, Flores had never concerned himself with the particulars of his birthplace. More important was the fact that he had lived his adult life in the United States, fully enacting the roles of worker, voter, and loyal citizen. This is clear in the firmness with which he declared his American identity: "I claim to be an American citizen because my father was an American citizen and I have lived in America and have been a law abiding American citizen since I was a very young man. . . . I may have been born in Mexico, I do not know positively, but my parents were American citizens and lived in Hidalgo County, Texas, at the time of my birth."<sup>19</sup>

Flores's life story testified to the arbitrary and artificial nature of a border that until April 1921 had little or no bearing on his everyday life. Canales and Davenport solicited character witnesses who submitted sworn affidavits testifying to both Flores's position as a citizen and the strength of his character. The affidavits included reminiscences by his family, friends, and acquaintances regarding their community. These recollections reflect the region's long history of fluidity, as shown by the description by Preciliano Flores, who purchased Flores's father's land from his widow:

These lands are situated on the north bank of the Rio Grande directly opposite the Village of San Miguel de las Cuevas on the Mexican side. Prior to 1875, this village of San Miguel was headquarters and trading point for all the ranches in the porciones. The church, the school and

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<sup>16</sup> Charlotte G. Borst, *Catching Babies: The Professionalization of Childbirth, 1870–1920* (Cambridge, MA, 1995), 1.

<sup>17</sup> Flores mentions that his mother died when he was young, and in describing his frequent trips to Texas as a youth, he refers to visiting his father, not visiting his parents or his father and mother. Nicolas Flores, affidavit, 17 May 1921, 1, Immigration File.

<sup>18</sup> Flores brief. The Immigration Service claimed that Flores said he was a Mexican citizen the first time they interviewed him, which Flores flatly denied in later interviews, calling attention once again to his history and, thus, his uncertainty about where he was born.

<sup>19</sup> Martha Menchaca, *Naturalizing Mexican Immigrants: A Texas History* (Austin, 2011), 239 and Flores, affidavit, 4.

the midwives were all at San Miguel and the children of the families who lived on the north bank of the Rio Grande were generally born, baptized and educated at San Miguel. Since 1875 some of the descendants of Jose Antonio Flores have claimed American citizenship while others, including myself, have claimed Mexican citizenship. . . . Since I can remember, he [Nicolas] always resided in Texas, in so far as I know he always claimed to be and was an American citizen.<sup>20</sup>

Clearly, residents imagined the area as one community rather than two distinct spaces belonging to separate countries. The use of the term *headquarters* highlights the concentration of resources and social institutions in one place—which happened to be on the Mexican side of the border but served all community members, regardless of where they resided. This sense of region that was shaped by far more than the nation-state imprinted itself on residents as well. Some considered themselves Mexicans while others, including Nicolas Flores, claimed to be Americans.

This general lack of regard for the border as an important local marker is understandable, given the varied history of border enforcement by both countries. Following the signing of the Treaty of Guadalupe Hidalgo in 1848, which formally ended the U.S.-Mexican War, the United States annexed one-third of Mexico's land—in the process creating a border that spanned more than two thousand miles. For decades the land remained unguarded and relatively open. Due to the vast stretches of land and the lack of resources for patrols, many opportunities existed for informal crossings that some groups, including Chinese immigrants, seized upon.<sup>21</sup> The U.S. Border Patrol did not even come into being until 1924.

In order to remain in the United States, Flores needed to prove his citizenship. He was still in jail a month after his arrest. When a federal grand jury refused to indict him, the Immigration Service took the case before the grand jury a second time, just one day after its first decision. Again it refused to indict Flores. The hearings are not extant, so it is not known why the jury dismissed the case. But in a memo from E. P. Reynolds (the lead investigator in the case) in Brownsville to Supervising Inspector F. W. Berkshire in El Paso explaining the rulings, Reynolds proposed that the border grand juries “invariably contain[ed] one, two, or three or more members who apparently are not in favor of indicting for even the most flagrant violations of the Custom and Immigration Law.” Whether Reynolds's assessment was accurate or simply his way of saving face with his superior is unknown. But even with two dismissals, Reynolds refused to drop the charges.<sup>22</sup>

<sup>20</sup> Preciliano Flores, deposition, 16 May 1921, Immigration File.

<sup>21</sup> After the passage of the 1882 Chinese Exclusion Act, Chinese immigrants, some of whom had settled temporarily in Mexico, sought to enter the United States by crossing over the U.S.-Mexico border. Robert Chao Romero, *The Chinese in Mexico, 1882–1940* (Tucson, 2010) and Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882–1943* (Chapel Hill, 2003).

<sup>22</sup> E. P. Reynolds to F. W. Berkshire, memo, 17 June 1921, Immigration File.



At that point, Flores went on the offensive. He hired the firm of Canales & Davenport to contest his case through a writ of *habeas corpus* on the grounds that he had been unlawfully detained. Canales was a well-known Mexican civil rights attorney and legislator in Texas.<sup>23</sup> Like Flores, his family had received a Spanish land grant. He had grown up transnationally, living in Nueces County, Texas, and attending schools in Mexico. Davenport's expertise focused on Spanish and Mexican land laws in Texas. The two lawyers contended that a negative ruling in the case could result in "a sentence of banishment against a man who [had] lived all his adult life in the United States, believing himself to be an American citizen."<sup>24</sup>

Canales and Davenport used several strategies to support their client's citizenship claim. Their first step involved establishing Flores as upstanding, moral, and—most importantly for this case—American. Ten people signed affidavits testifying to Flores's character and the veracity of his claims. Among the witnesses were several Hidalgo County officials: the sheriff (a former Texas Ranger), the deputy sheriff, the tax collector, and the deputy assessor. Each described Flores as an upright citizen. Family members connected through blood ties or marriage or who had purchased a portion of the family land also testified. Many had known Flores for decades—some their entire lives. They described him as "a hard working and law abiding American citizen" and pointed to his faithful service during World War I as an employee of the Quartermaster Corps, which provided support to military troops at Sam Fordyce, Texas. Tax collector George Schunior also confirmed the Flores family's history in the region. Schunior, describing himself as "very familiar with the titles to" the family's land, asserted that "almost the whole population of Los Ebanos was related to Nicolas Flores."<sup>25</sup>

A second strategy to establish Flores's claim posited his ancestors—and by extension, him—as steadfast Americans. To accomplish this, the attorneys juxtaposed the family with a population historically considered a threat to the United States: Native Americans. They described their client as being descended from a long line of loyal Americans whose efforts to protect their settlement from Indians demonstrated their allegiance. Under Spanish and then Mexican rule, settlers on lands that included what is now Texas had hostile relations with the Comanche Indians. Government officials tried a range of strategies to reduce the violence, including encouraging trade, negotiating peace treaties, and, as part of Mexico's Colonization Law of 1824, inviting foreigners to settle the region. Americans quickly took up the invitation. In Hidalgo County, settlers founded towns as outposts against Comanches and Lipan Apaches. After Mexico seceded from Spain, such conflicts nearly depopulated these areas. The

<sup>23</sup> In 1929, eight years after the Flores case, Canales helped found the League of United Latin American Citizens (LULAC).

<sup>24</sup> Evan Anders, "Canales, Jose Tomas," Texas State Historical Association, last updated 12 June 2010, <http://www.tshaonline.org/handbook/online/articles/fcaag>; Wortham Davenport and Harbert Davenport Jr., "Davenport, Harbert," Texas State Historical Association, last updated 12 June 2010, <http://www.tshaonline.org/handbook/online/articles/fda21>; and Flores brief.

<sup>25</sup> George Schunior, deposition, 16 May 1921, Immigration File.

towns continued to be sites of similar conflicts over the years. In their brief to the court, Canales and Davenport highlighted actions by Flores's ancestors: "These Americans of Mexican blood are the descendants of the pioneers who wrested this region from the Indians in the eighteenth century and fought them for it during the first half of the nineteenth."<sup>26</sup> This statement reveals a strategy designed to establish Flores as a member of the nation by positioning him as part of a family line with a long and laudable history as county residents and by contrasting this lineage with that of a dangerously violent group widely defined as outside the boundaries of belonging.

A third aspect of the legal defense involved substantiating Flores's claim of citizenship due to his father's American citizenship. Canales and Davenport sought to establish that the Treaty of Guadalupe Hidalgo granted Francisco U.S. citizenship. Under that treaty, the 75,000 to 100,000 Mexicans living on the land Mexico had ceded could either return to Mexico or stay in the United States. Those who stayed could choose to be Mexican or U.S. citizens. Individuals who did not declare a choice within a year would automatically become U.S. citizens. To nullify Nicolas's citizenship was, in effect, to nullify his father's citizenship, which in turn would violate an explicit provision of the treaty. The attorneys argued that Mexicans residing in the ceded territories after the war "were solemnly guaranteed the rights of American citizens if they elected to become such, by the plain terms of the Treaty of Guadalupe Hidalgo."<sup>27</sup>

Moreover, the U.S. Supreme Court had ruled thirty years earlier, in *Boyd v. Nebraska ex Rel. Thayer* (1892), that when a person's naturalization documents could not be produced, evidence that qualified individuals had exercised citizenship rights (such as voting) was sufficient to establish citizenship. While the case before the Court involved an Irish immigrant living in Nebraska, mysteriously, its ruling did not seem to apply to a person of Mexican heritage living in Texas. Many of Flores's witnesses testified to having seen both Flores and his father vote in American elections. Nevertheless, his citizenship remained disputed.

To understand why, we must examine Mexican Americans' long history of contested U.S. citizenship. The war with Mexico and the ideology of Manifest Destiny that justified it highlighted Mexicans' inferior racial position due to their indigenous roots. But under the Treaty of Guadalupe Hidalgo, Mexicans residing in the acquired territories were also offered U.S. citizenship. Thus, they were simultaneously considered legally white but socially and culturally "other," a contradiction that would complicate their status for generations to come.<sup>28</sup>

Moreover, Mexicans were incorporated into the nation at a time when racial difference had already been codified in U.S. founding documents. The Naturalization Act

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<sup>26</sup> Flores brief, 2; Pekka Hämäläinen, *The Comanche Empire* (New Haven, 2008); and Flores brief, 6.

<sup>27</sup> Flores brief, 6.

<sup>28</sup> Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Cambridge, MA, 1981) and John M. Nieto-Phillips, *The Language of Blood: The Making of Spanish-American Identity in New Mexico, 1880s–1930s* (Albuquerque, 2004).

of 1790 deemed only “free white persons” eligible for naturalization.<sup>29</sup> In addition, the U.S. Constitution continued to allow for slavery, including the importation of slaves, until 1808 (Section XI, Article 1). And the fugitive slave clause (Section II, Article 4) required that escaped slaves be returned to their owners. Furthermore, the tax code counted whites as “whole persons” but dismissed indigenous peoples as simply “Indians not taxed” and counted slaves as “three fifths of all other Persons” (Section III, Article 1).

This systematic and institutionalized racism meant that Mexicans were already stepping onto an uneven playing field. So racial categories that deemed racialized bodies as inferior were easily transferred to Mexicans once white Americans began to come into regular contact with them in the 1810s and 1820s, a decade later during the Texas War of Independence from Mexico, and during the U.S.-Mexican War and its aftermath.

Even Mexican Americans born in the United States found that the contested nature of the nation’s history affected their citizenship rights. The Fourteenth Amendment extended citizenship to anyone (other than Native Americans, at this time) born in the United States. But because the amendment had been proposed in order to formalize blacks’ position in the nation, some people interpreted birthright citizenship to extend only to whites and blacks. Thirty years after ratification of the amendment, the Supreme Court again addressed the question of birthright citizenship in *U.S. v. Wong Kim Ark* (1898). Born in San Francisco to Chinese parents, Ark visited China as an adult. U.S. officials denied him reentry, citing federal laws that restricted Chinese immigration. Ark’s presumed foreignness led officials to define his citizenship based on his parents’ nationality (*jus sanguinis*) rather than on the place of his own birth (*jus soli*).<sup>30</sup> A majority concurred with Justice Horace Gray that Ark’s citizenship derived from his place of birth. The importance of the case established citizenship as beyond black and white and clarified the lengths to which a nonwhite U.S. citizen was compelled to go in order to reclaim his rightful citizenship.

For generation after generation, Mexicans living in the United States contended with a similar disregard for their rights. The tenuousness of Flores’s status meant that, unlike Ark, he did not even have to leave the United States in order for his citizenship to be questioned and jeopardized. In many quarters, legal and cultural understandings continued to tie citizenship to whiteness.

We should also consider the role that racial capital played in the case. Flores’s attempt to turn his family’s long-standing property holdings into whiteness (in order

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<sup>29</sup> On the relationship between whiteness and citizenship, see Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge, MA, 1998), 7.

<sup>30</sup> Brook Thomas, “China Men, *United States v. Wong Kim Ark*, and the Question of Citizenship,” *American Quarterly* 50 (December 1998): 689–717 and Lee, *At America’s Gates*. In this way, like Mexicans, Asians were consistently re-racialized as permanent foreigners. Moon-Ho Jung, *Coolies and Cane: Race, Labor, and Sugar in the Age of Emancipation* (Baltimore, 2006); Robert G. Lee, *Orientalism: Asian Americans in Popular Culture* (Philadelphia, 1999); and Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* (Durham, 1996).

to legitimize his claim) was unsuccessful. His lineage could be traced back to when his great-great-grandfather, Jose Antonio, had been deeded the land. Flores's father inherited the land he then lived and worked on, meaning he was in the United States in 1848. But for him—and by extension, for his son—property ownership did not carry the same currency as it did for whites. As a result, Flores's citizenship (and his father's, as we shall see below) was contested.

Scholars typically treat the U.S.-Mexican War as a nineteenth-century phenomenon that led to the demise, displacement, and disenfranchisement of Tejanos, Hispanos, Californios, and Mexicanos living in what we now refer to as the Southwest, which constituted one-third of Mexico's sovereign land in 1846. But the quest for domination casts a long shadow. Although the war ended in the middle of the nineteenth century, it continued to serve as a lens for viewing Mexicans as perpetually foreign—immigrants until proven otherwise. The contestation of Flores's citizenship claim clearly shows that it did not matter how long a Mexican family had been rooted in the United States because in the aftermath of the war, these residents became racially suspect outsiders. Perhaps the biggest toll of empire-building is what it exacts on the future: forever forward, anyone associated with the colonized group is always considered a foreigner.

The case also prompts us to think about the arc of dispossession for Mexicans in the United States. Beginning in the 1840s, politicians, officials, and journalists used the notion of Manifest Destiny to justify westward expansion. This ideology expressed a belief that those laying claim to lands not previously owned by whites were bringing democratic institutions to those incapable of self-government. Thus, Manifest Destiny is inherently a racial ideology that pivots on ideas of who is deemed worthy of access to resources and fit for citizenship.<sup>31</sup>

The signing of the Treaty of Guadalupe Hidalgo marked a loss of land for Mexico as well as for many Mexicans who remained in the United States. In California, land-holding Californios often had to prove they owned the land they had been living on for generations. Costly, drawn-out court disputes, surveys of their property, and language barriers resulted in the loss of their lands. In New Mexico, only 10 percent of Spanish Mexicans retained their property after the war. In Texas, an economic downturn in the 1890s led to a fall in cotton prices and agricultural losses. Many white farmers lost their lands too and had to survive as tenant farmers, competing with Mexicans and blacks.<sup>32</sup>

Part of the backlash supported by the People's Party (a populist political group with strong but brief support in Texas and the South) and Texas Governor James Hogg included passage of the state's 1891 Alien Land Law. The law required immigrants who already owned land in Texas to naturalize to retain ownership, otherwise the state could

<sup>31</sup> Horsman, *Race and Manifest Destiny*.

<sup>32</sup> Rosaura Sánchez, *Telling Identities: The Californio testimonios* (Minneapolis, 1995); Miroslava Chávez-García, *Negotiating Conquest: Gender and Power in California, 1770s to 1880s* (Tucson, 2004); Douglas Monroy, *Thrown Among Strangers: The Making of Mexican Culture in Frontier California* (Berkeley, 1990); Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820–1880* (New York, 1999); and Foley, *White Scourge*.

seize their land.<sup>33</sup> Preventing “aliens” from owning land attempted to keep Texas for white Americans. The Texas Supreme Court overturned the law a few months after its passage because it prevented foreign corporations from owning land. The legislature went into a special session to write—and pass—a new version in 1892, which held until the passage of another alien land law in 1921. The campaign by the People’s Party showed that even forty years after the Treaty of Guadalupe Hidalgo Mexicans would continue to be considered outsiders. Racial capital would have allowed them to more easily work their way up the social hierarchy.

The Flores case does not appear to be part of the larger narrative of late nineteenth- and early twentieth-century campaigns to divest aliens of their current landholdings and prevent future acquisitions. Flores owned “a little property that he [had] accumulated by his labor of a lifetime,” which he would have lost had he been deported. But there is no indication that the Immigration Service had targeted him for that reason.<sup>34</sup> Instead, this case defines the consequences of the loss of capital in shaping the region’s racial hierarchy. Flores’s father had remarried after the death of his wife. His second wife, who had inherited the land after her husband’s death, sold it. Thus, though the Flores family could officially claim a presence of over 150 years in the Southwest, in the eyes of the Immigration Service, Nicolas Flores had as much credibility and rights as an immigrant who just crossed over.

Canales and Davenport identified voter intimidation as having played an important role in the initial arrest of their client. They argued that the Flores family, through kinship and connections, could influence approximately three hundred votes. Thus, in their opinion, the actions taken against Flores were “a means of building up a political machine by intimidating the Mexican voters with threats of deportations and attacks on their citizenship if they [did] not vote as these petty officials desired.” The Immigration Service flatly denied the accusation.<sup>35</sup>

Precedence for Canales and Davenport’s arguments can be found in a now-famous case in 1897, *In re Rodriguez*, which contested Mexicans’ right to U.S. citizenship. In a Texas federal district court, Ricardo Rodriguez, a Mexican who had lived in Texas for more than a decade, sought final approval of his application for naturalization.<sup>36</sup> Local politicians opposed his petition, arguing that the Fourteenth Amendment provided for the naturalization of only whites and blacks.<sup>37</sup> Judge Thomas Maxey, who presided over the long-running case, eventually sided with Rodriguez. He agreed that the petitioner

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<sup>33</sup> Menchaca, *Naturalizing Mexican Immigrants*, 100–5.

<sup>34</sup> Flores brief, 6.

<sup>35</sup> J. T. Canales and Harbert Davenport to John Nance Garner, 18 May 1921, Immigration File and U.S. Immigration Service, warrant hearing, 8 June 1921, 2, Immigration File.

<sup>36</sup> *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897).

<sup>37</sup> The efforts against the Rodriguez petition were part of a longer history of attempts to disenfranchise Mexicans in Texas. Arnaldo De León, *In Re Ricardo Rodriguez: An Attempt at Chicano Disenfranchisement in San Antonio, 1896–1897* (San Antonio, 1979).

could be “classed with the copper-colored or red men. He has dark eyes, straight black hair, and high cheek bones.” Yet, Maxey argued, both the constitution of the Texas Republic and the Treaty of Guadalupe Hidalgo either “affirmatively confer[red] the rights of citizenship upon Mexicans, or tacitly recognize[d] in them the right of individual naturalization.” He upheld the right to citizenship by Rodriguez and, by extension, all Mexicans.<sup>38</sup>

Voting lay at the heart of the Rodriguez case. Anthropologist Martha Menchaca traces the relationship between citizenship and electoral politics in Texas in her monograph *Naturalizing Mexican Immigrants*. She makes the case that efforts to denaturalize Mexicans continued well into the twentieth century and that Mexicans’ citizenship was a particularly contested issue at the time of Flores’s arrest. The question of who was a citizen—and thus, a potential voter—was urgent at that time because the Mexican Revolution had prompted an exodus that caused the Mexican population in the United States to more than double between 1910 and 1920 (the numbers rose from 221,915 in 1910 to 486,418 by 1920). More than half of that burgeoning population resided in Texas, accounting for 51.7 percent of the total population.<sup>39</sup> Additionally, the passage of the Nineteenth Amendment in 1919 granted women the right to vote, which also increased the number of resident Mexicans eligible to vote.

Furthermore, in January 1921, three months before Flores’s arrest, the Texas legislature passed a joint resolution that incorporated women’s suffrage rights into the state constitution but also prohibited alien voting.<sup>40</sup> Soon after the bill’s passage, Texas began deporting Mexicans. According to Menchaca, the deportations may have been motivated by the general anti-immigrant sentiment that fueled the new law or were part of a federal directive stemming from passage of the Immigration Act of 1921. Flores’s arrest in Los Ebanos occurred the same month that arrests and deportations began 250 miles north in San Antonio. In the first week alone over five thousand Mexicans were deported or repatriated, often with the help of Mexican consulates. The state called off the deportations within two months after farmers organized and complained to the San Antonio Chamber of Commerce, which responded that not enough Mexicans remained to work the fields.<sup>41</sup> Press reports about the deportation campaign did not specifically mention Flores, nor is the campaign referenced in six months’ worth of correspondence and court proceedings surrounding the case. While it is uncertain whether these larger shifts fueled the case, clearly the rising anti-immigrant sentiment evidenced by the mass deportations contributed to perceptions of Mexicans as undesirable and foreign—a view that did nothing to bolster Flores’s chances of being accepted as American.

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<sup>38</sup> The case was handed down in a lower district court and was therefore not binding in other courts. Nonetheless, it has been hailed as a landmark civil rights case. De León, *In Re Ricardo Rodriguez* and Menchaca, *Naturalizing Mexican Immigrants*, 109–59.

<sup>39</sup> Menchaca, *Naturalizing Mexican Immigrants*, 216.

<sup>40</sup> *Ibid.*, 238. Counties in South Texas did not support the measure.

<sup>41</sup> *Ibid.*, 240–4.

Canales and Davenport wasted no time emphasizing that “[i]f Nicolas Flores is deported, no American citizen of Mexican blood in all this region will feel that his citizenship is assured.” They pointed to the “very great importance of the decision in this case as a precedent for the cases of hundreds of American Mexicans, situated exactly as Nicolas Flores.” Noting that news of the case had spread quickly throughout the region, they also reported that the consensus concluded that Flores’s deportation would be “vigorously resented by practically the whole population of Mexican extraction and by all the older families along the border.”<sup>42</sup> It seems likely that Canales and Davenport explicitly mentioned older families in the region because, like the Floreses, being well established did not preclude being vulnerable to deportation.

These issues made the case of great concern to the Immigration Service. At the local level, officials worried that a ruling for Flores would open the door to a barrage of false claims from Mexican immigrants, based on the alleged citizenship of their parents. E. P. Reynolds contended, “If the attorneys['] contentions are correct in this case, the immigration service might as well quit functioning along this section of the Mexican border in so far as Mexicans are concerned, for practically every Mexican alien who was born and raised in Mexico, as was Nicolas Flores, could, under Mr. Davenport’s line of reasoning, claim American citizenship when it suited him to do so, and he could claim his real Mexican citizenship when that suited him better.” Reynolds added that if the Flores case were dropped, “the Treaty of Guadalupe Hidalgo will be quoted by local attorneys many times hereafter in attempting to prove American citizenship.”<sup>43</sup> Reynolds’s comments suggest that undeserving immigrants, as well as their attorneys, might take advantage of this loophole.

Additionally, Reynolds expressed concern that other immigrants would try to claim U.S. citizenship for their relatives. The law stated that American men (though not American women, until 1934) could transfer their citizenship to their children born abroad, provided that the children came to live in the United States before the age of twenty-one. Reynolds argued that “in effect it would operate to permit any American citizen to send abroad to China, Japan, Russia or any other foreign country for their sons over 21 years of age” who had not previously registered at an American consulate.<sup>44</sup>

Reynolds also worried that not all children brought to the United States would truly be the offspring of the petitioner. Famous cases of subterfuge had occurred within San Francisco’s Chinese community after the massive fire following the 1906 earthquake destroyed official records such as birth certificates. To subvert the Chinese Exclusion Act, some Chinese claimed U.S. citizenship in order to sponsor young Chinese men of no relation to them (a strategy that gave rise to the use of the term *paper sons* to refer to these immigrants). Finally, because federal laws placed increasing restrictions on immigrants from Asia and southern and eastern Europe, more people from these

<sup>42</sup> Canales and Davenport to Garner, 18 May 1921, Immigration File.

<sup>43</sup> Reynolds to Berkshire, 9 June 1921, Immigration File.

<sup>44</sup> Sec. 1993, Rev. Stat. (1878) and Reynolds to Berkshire, 24 August 1921, Immigration File.

regions attempted to enter the country surreptitiously by crossing the U.S.-Mexico border, particularly at the most trafficked ports of entry in Texas. This reality, from Reynolds's perspective, increased the likelihood that a ruling in Flores's favor would lead these non-Mexican immigrants to make false citizenship claims. In that sense, this case called into question the right of anyone not considered white to claim U.S. citizenship.

The possibility that a ruling *against* Flores could jeopardize the citizenship of all American citizens of Mexican heritage led Canales and Davenport to ask Texas Congressman John Nance Garner, who represented the 15th District, which included Hidalgo County, to intervene. By 1921 Garner had established himself as an influential force in Washington, DC. He was not especially sympathetic to immigration issues, but Ku Klux Klan (KKK) members in the area vowed to oust him from office. His explicit opposition to the KKK (their reason for targeting him) would have further increased his attractiveness to Canales and Davenport, as it may have signaled sympathetic racial politics. He responded to the lawyers' overture by contacting the Department of Labor, a move that led to a stay in the proceedings. The main office of the Immigration Service in Washington, then asked that Flores's case be reopened and that all of the evidence, including the supporting affidavits, be reconsidered.<sup>45</sup>

Berkshire, the supervising inspector, received all of the materials from the hearings. It was likely the first time he had seen the attorneys' entire case file because, after considering all of the evidence, he recommended that the case be dropped. He contacted Reynolds and highlighted the parts of the case that he thought would make Immigration look, at best, unprofessional and, at worst, discriminatory. For example, Berkshire pointed out that Reynolds had been sarcastic to Flores; he felt that an outside observer might view such behavior as prejudicial. With the specter of bias raised, Berkshire—in a radical move—concluded that “[a]ccepting as authentic the matter of local history,” there was “sufficient [grounds] to raise a prima facie presumption in favor of the American citizenship of Nicolas Flores's father.” Thus, the charges against Flores should be dropped.<sup>46</sup>

W. W. Husband, the commissioner general of immigration, based in Washington, disagreed. He wrote to the acting secretary of labor, Theodore Riseley, who oversaw immigration, that he did not believe Flores offered conclusive evidence of his father's citizenship. Furthermore, Husband warned that should Flores's arrest warrant be cancelled, “it would establish a precedent which would doubtless encourage thousands upon thousands of Mexicans living along the Rio Grande to set up similar claims when arrested in deportation hearings.”<sup>47</sup> Riseley agreed and ordered Flores to be deported. Flores's attorneys contested the order and once again began habeas corpus proceedings.

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<sup>45</sup> Bascom N. Timmons, *Garner of Texas: A Personal History* (New York, 1948), 88, 95; Canales and Davenport to Garner, 18 May 1921; and W. W. Husband to Theodore Riseley, memorandum, 24 June 1921, both Immigration File.

<sup>46</sup> Reynolds to Berkshire, 17 June 1921, Immigration File.

<sup>47</sup> Husband to Riseley, 24 June 1921, Immigration File.



Four months later, with Flores still sitting in jail awaiting trial, local immigration officers tried to make their superiors in Washington see the wisdom of Berkshire's recommendation to drop the case. Given the lapse of time between Flores's father's birth and the time of the present case, Reynolds argued, who could prove that the father had not been a citizen? Moreover, he pointed out, the Floreses were "well-known and prominent people of Hidalgo County." Finally, Flores not only had witnesses to attest to his credibility, moral character, and standing as a U.S. citizen, but these witnesses were white men, some of whom were in government or held legal office. Their word was not to be taken lightly, and they were willing to testify in court on behalf of Flores. Additionally, George Harris, the acting supervising inspector of the Mexican Border District office in El Paso, which oversaw the Immigration Service in Texas, New Mexico, and Southern California, opined that an unclear outcome in the deportation hearing should cancel the warrant altogether rather than risk "hamper[ing] this Service in its efforts to enforce the immigration laws." The underlying worry here was that a positive outcome for Flores could lead every immigrant in the area to claim citizenship on the same basis; this, of course, they really could not do since Flores had a village willing to vouch for him as well as his family's proof of property ties. Writing to Husband, Harris conceded that a decision to drop the case might raise criticism, but it would be the "lesser of the two evils." About one month later, E. J. Henning, special assistant to Husband responded. Quoting Harris's "lesser of the two evils" line, Henning agreed with the persuasiveness of the arguments to drop the case. Canales and Davenport, in turn, withdrew their application for a writ of habeas corpus.<sup>48</sup> With that, the case was swiftly closed.

The Flores case continues to speak to larger issues of citizenship, racial capital, and belonging. It reveals the extent to which Mexicans in the United States remained racially suspect outsiders generations after the Treaty of Guadalupe Hidalgo had granted them citizenship—foreign until proven otherwise. Moreover, the case shows that the dead, too, could be vulnerable to symbolic disenfranchisement. Denying Flores his citizenship would have erased a highly significant aspect of the Flores family lineage. It would also have abolished a Mexican presence in Texas, adding to the construction of Mexicans as foreigners rather than the longtime, legitimate residents that history confirms them to be. Finally, deporting Flores as an alien would have been another way of fulfilling the ideology of Manifest Destiny, which took as its aim the ultimate disappearance of the Mexican (and the Native American) presence in the United States.

This case also speaks to the importance of the local. We often think of the U.S.-Mexico border as one long, uniform entity when, in fact, it was differentiated by local labor needs and politics, influenced by geography, and shaped by the specificities of the abutting regions' historical legacies. It is difficult to picture a case like Flores's taking

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<sup>48</sup> Reynolds to Husband, 25 October 1921; George Harris to Husband, 31 October 1921; E. J. Henning, memorandum, 22 November 1921; and Harris to Husband, 10 December 1921, all Immigration File.

place anywhere other than Texas—particularly South Texas, where the presence of cross-border communities and relative insularity lent itself to a communal historical memory that could be tapped to challenge notions of belonging imposed from above.

While the case against Nicolas Flores did not develop into a major legal landmark, it nevertheless has much to teach us. Mexicans have been considered legally white and eligible for naturalization since the Treaty of Guadalupe Hidalgo, yet their access to citizenship has been actively contested ever since. Mexicans' racial exclusion is not marked in the same way as that of blacks and Asians, who were written out of whiteness and, at points in history, citizenship, in absolute terms. When looking at the history of Mexican Americans, we cannot point to landmark Supreme Court cases that clearly mark them as inside or outside of legal or social citizenship as we can for blacks and Asians. The Flores case teaches us to read race not just in the landmark rulings but between the lines.

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