

César Cuauhtémoc García Hernández is an assistant professor of law at the University of Denver and author of the book “Crimmigration.” Here is a transcript of his conversation with WDET’s Sandra Svoboda:

Svoboda: What is “crimmigration”?

Garcia Hernandez: “Crimmigration” really refers to the merging of criminal law and immigration law that we’ve seen in the United States since about the mid 1980s but that is probably most clearly emblemized in two ways. One by the rhetoric around which we discuss immigration. We talk about immigration in the context of criminality, of dangerousness, or posing some kind of existential threat to the United States. In response the most palpable articulation of “crimmigration,” law enforcement technique is the use of confinement as a means of regulating immigration. Historically we did not throw people behind barbed wires simply because we thought they were in the United States in violation of immigration law. Since the 1980s we have shifted gears and in recent year upwards of 400,000 people have seen the inside of a prison at some point during the year for nothing more than the federal government thinking that they might have violated immigration law.

Svoboda: What accounts for that change in U.S. policy?

Garcia Hernandez: In large part it was a tandem, this happened in tandem with the United States’ willingness to use confinement to address a whole host of social ills, everything from the use of illicit drugs that became the War on Drugs as we know it and the regime of incarceration that has gone along with that, to simply the perceived link between immigration activity and drug activity. In the early 1980s and the mid 1980s, we heard from prominent members of Congress and from the Reagan administration that immigrants were part and parcel with what they claimed was a growing illicit drug activity affecting cities throughout the United States. That link between criminality and immigration has shifted somewhat. We eventually turned it to a link between terrorism and immigration and at times we’ve seen linkages just between just gang activity generally whether related to drugs or terrorism or not, but gang activity and immigration, and we saw this with President Obama who famously said that his administration’s enforcement priorities were to target in his words “felons not families” and he went on to explain that he was forced on gang members and President Trump has in recent weeks articulated a very similar concern between the link between immigration and criminal activity.

Svoboda: When you talk about terrorism specifically that’s generally considered a federal offense and under the purview of federal law but when we get into what’s criminal by state law, we’re seeing some variations that are posing some challenges for that intersection of immigration and criminal law, right?

Garcia Hernandez: One of the tough things about building an immigration law enforcement regime on the back of criminal law is we have a 52 criminal law systems in the United States, criminal justice systems in the United States and that means that there are difference in what the state of Michigan deems a crime versus the state of California or the state of Colorado. Even in some instances when the legislatures of various states seem to be targeting the same activity, they’ll define what constitutes a crime somewhat differently and so the difficulty that

immigration attorneys and immigration judges and prosecutors who work for the Department of Homeland Security and in immigration courtrooms, the difficulty that they have is figuring out when a particular state criminal conviction results in deportation because deportation is ultimately the purview of Congress and Congress alone.

Svoboda: What efforts have been made to make things more consistent?

Garcia Hernandez: The immigration courts are working every day, immigration judges are working every day to identify definitions or identify what Congress has deemed to be, to merit deportation and to identify clear and concrete definitions of the crimes that Congress thinks merit deportation, and then apply those to the variety of criminal offenses that are being prosecuted and resulting in convictions in state courts throughout the United States every single day. But that is a very difficult task made difficult by the fact that the criminal codes of every state are somewhat different, made more difficult in the fact that immigrants are frequently not represented by attorneys and so sometimes the law doesn't develop as quickly or as reliably as it ought to. But at the end of the day the difficulty in meshing state criminal laws with federal immigration law is that we don't have a single system of criminal justice in the United States. We have a large variety of nuances that are embedded into our criminal justice systems. There are good reasons for that being the case. But at the end of the day we only have one immigration law system throughout the United States so the immigration judges and attorneys are tasked with trying to figure out how to make sure that people in Michigan are being subject to the immigration consequences people in Texas or people in Colorado or any other parts of the states so there's not a disparate application of immigration law.

Svoboda: What significance does Juan Esquivel-Quintana have in going before the Supreme Court on Monday?

Garcia Hernandez: I think the Esquivel-Quintana case illustrates the difficulty that immigration courts have with figuring out how to apply immigration law uniformly across the United States. It highlights the fact that people living in Michigan can be treated differently from people living in California and that conflicts directly with the notion that immigration ought to apply uniformly no matter where one fits in in the United States. The other component that I think is highly important in the Esquivel-Quintana case, is the idea that people who have been in the United States for quite significant period of time and people who have been here with the federal government's permission might end up facing the possibility of deportation for engaging in xx activity that is a crime but that is not particularly unusual. And so we see in Mr. Esquivel-Quintana's case that consensual sexual relationships that are certainly not unheard of even involving teenagers result in or potentially might result in his forcible removal from the country that he has called home for just about his entire life where as if he had been a United States citizen he would have put this behind him hears ago and would have been able to turn to more important things.

Svoboda: Do you have a prediction off what the court will do with this case?

Garcia Hernandez: I don't. I think this is a tough issue. The court will have to interpret the statute and we've seen in the past that strange bedfellows sometime arise in these kinds of cases

where justices that are both ends of the ideological spectrum that's represented on the Supreme Court sometimes find themselves aligned with one another because they're trying to give meaning to the words that Congress adopted and to immigration law.

Svoboda: For people in our audience who might want to weigh in on this issue, how can they do that?

Garcia Hernandez: I think the way folks can weigh in to what immigration law currently treats as a deportable offense is by talking to their members of Congress about how expansive or how narrow immigration law ought to be and pushing their members of Congress to enforce, to prioritize enforcement of immigration law in the way that your audience thinks is just. The bottom line is that the Department of Homeland Security does not have enough money to investigate, apprehend and attempt to deport everyone who might be removable from the United States and so there might be people who the federal government chooses to turn a blind eye to essentially and say, "look, we know that you're potentially removable from the United States but there's some other reasons that we might choose to use our limited resources to target other people." And if your audience members think that's the case with Mr. EQ or with other folks that they hear about in their personal lives or through reporting by journalists, then their role is to pressure their members of Congress and the administration to tailor immigration law and immigration law enforcement that fits with their vision of a just immigration law regime.