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## Do we have a moral duty to disobey immigration Laws?

Abstract: Political theorists, such as Javier Hidalgo, argue that immigration laws in principle are unjust and that the United States should adopt a more broadly open border system. Hidalgo also challenges individual obligations to obey those unjust immigration laws, reasoning that the harm done to those who report undocumented immigrants by reporting is less harmful than the immigrants themselves. He reasons that imposing legal duties of the state contributes to the violation of rights of immigrants. Hidalgo adopts the *Revisionary Theory*, a theory that describes open immigration's appeal to the value of freedom of movement. He uses the revisionary theory to describe why the restrictive immigration policy of the United States is unjust and strips unauthorized immigrants of their occupational freedom, as well as their freedom of movement. This is a *normative claim with normative premises*. I deny his claim that United States citizens are morally obligated to disobey the immigration laws to protect unauthorized immigrant's occupational freedom and freedom of movement.

## Introduction

First, let's offer some contextual clarity of the United States immigration policy. These policies are set with balancing the intention of protecting the United States, as well as improving diversity and innovation in the United States. Every territory needs border stability to function safely and properly, and

when people try to cheat or escape that system, that is a breach of national security. Regardless of whether or not that person intends to cause harm, they are violating laws and regulations set by the state and therefore are a threat to our security. Hidalgo reasons that these immigrants are seeking-asylum or looking for job opportunities, and that as individual citizens in the United States, it is our obligation to protect this community against the ruling fist of immigration policy. He elaborates enforcing policy changes that reduce a common phenomenon regarded as *Interaction Restrictions*.<sup>1</sup> These restrictions are enforced by the state, by enforcing severe consequences to anyone who is endorsing unauthorized immigrants (whether that be offering employment to illegal immigrants, or simply allowing them to serve as a tenant on a property). These restrictions, Hidalgo reasons, directly hamper the community of illegal immigrants' occupational freedom (their ability to acquire employment based on their skill-set), and are unjust. He compares the restrictions to what is defined as the *Cooperation Principle*. This principle within our context shows how citizens are coerced to cooperate with state immigration laws and regulations to avoid the consequences of providing support and assistance to illegal immigrants.<sup>2</sup> Hidalgo reasons that individuals should disobey immigration laws because the harm incurred to the group that is in the wrong (illegal immigrants who have bypassed the necessary regulations to enter the United States) outweighs the self-harm that would incur if a citizen were caught breaching those same immigration policies.<sup>3</sup>

In this paper, I will challenge Hidalgo's normative claim that as individual citizens it is our moral obligatory duty to disobey immigration laws. My argument goes like this: In Section 2, I will describe our moral obligation as citizens of the state to obey the law. In Section 3, I will explain how the harm caused by disobeying immigration policies can be more harmful to the welfare of the United States than to unauthorized immigrants themselves. In Section 4, I will describe unique situations that respond to the

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1 Hidalgo 166

2 Hidalgo 168

3 Hidalgo 173

objection of Hidalgo and his *Revisionary Theory*, which I will analyze later. Section 5 concludes my argument.

## **Section 2: Our Moral Obligation to obey the law.**

In this section, I will briefly discuss why we are obligated to obey the law, in this case specifically United States immigration laws and policies.

There are multiple reasons to uphold the obligation to obey the law. The law is the protection of individual rights. But by upholding the law, we display respect for the Common good of our Nation, as well as Democratic accountability. By respecting and following the law, individuals avoid harm and have the privilege of occupational freedom along with the freedom of movement. These are two examples of the freedom that makes the United States a place that individuals from across the World want to live in. Immigration laws are enforced to protect the welfare of the United States and their citizens. While the United States welcomes immigrants, there is an extensive process and procedure to ensure that whoever is joining the citizenship of the state poses no threat to our security and safety.

When someone breaks the law, regardless of intention, that is a breach of security, and therefore the person is assumed a threat to the state. Hidalgo describes the risks of breaching immigration laws and tries to understate the consequences of violating the policies set in place. By violating laws set by the state that you have citizenship within, you are making yourself a threat to national security. Regardless of the severity of consequences, there are still repercussions that could directly and indirectly affect you and your assets and family.

Democracy is set in place so that individuals who believe laws and policies should change have a voice in a political environment and can voice their opinions. Simply advocating for less restrictive immigration policies to your political figures can have a much larger impact than disobeying laws with the intent of reasoning them unjust. Being part of a collective citizenship means that you are a contributor to society. You earn an income, pay taxes, and spend money, all of which contributes to the economic state of the Country. Citizens operate like this on a daily basis with the goal of protecting the integrity of our system. This system allows us individuals to pursue our occupational freedom and freedom of movement. By respecting the laws set in place by our governing system, we reap the benefits that same system rewards us. With respect to our immigration laws and policies, by following our moral obligation to obey the law we promote fairness and equality, as well as supporting a system that allows legal immigrants based on the premise that the immigrant poses no threat to our national security and will become a contributing member to our citizenship.

### **Section 3: Harm caused by obeying immigration laws**

In this section, I will discuss drawbacks of Hidalgo's claims that refer to the harm caused by obeying immigration laws.

Hidalgo describes the harm caused to unauthorized immigrants when faced in front of the law. Most unauthorized immigrants are fleeing from a home because of financial or safety issues. Although it is nearly inhumane to detain and deport illegal immigrants, the safety and welfare of the United States are the driving factors that lead those decisions. Someone that could not enter the United States through the official process of immigration shouldn't be allowed into the territory regardless of whether or not they were a threat.

Data may show that illegal immigrants are half as likely to be arrested than native-born Americans.<sup>4</sup> But it is important to examine not just the threats immigrants can pose to others, but the threats they can pose to our economy and businesses. Hidalgo brings up this example of an owner named Sam, and an unauthorized employee named Leticia. Hidalgo reasons that if Sam were to hire Leticia knowingly as an unauthorized worker, Leticia would not be punished – but Sam would. Hidalgo reasons that Sam would face minor fines for employing an unauthorized worker, but the harm to Sam is less than the harm to Leticia if she were not to get this job, so it is Sam’s moral obligation to pay the fine and hire Leticia<sup>5</sup>. While in this situation Hidalgo is right in the sense that Sam faces less harm if he were in the wrong than if Leticia were to not get this job, but Hidalgo doesn’t consider the possible external effects of Sam making this decision. Sam hiring Leticia directly affects Sam’s business – because he now must pay a fine – which factors into his profitability as well as his ability to employ. By taking on that fine for Leticia, the price for hiring another employee that would have generated more income for Sam has been replaced with a state fine. That decision also affects how much Sam spends, how much he pays for taxes, both of which indirectly affect the economic state of the United States. It also affects Sam’s family, by jeopardizing the financial stability of his household. Another concern, if Sam were to discreetly employ Leticia, and pay her at a lower rate than required because she herself is unauthorized, Sam’s business gains a competitive advantage amongst the market, because his cost of production if not reported is much cheaper than usual.<sup>6</sup>

This relates directly to Interaction Restrictions, and why upholding those restrictions can promote economic stability as well as the safety of our state. In Sam’s situation, the Cooperation Principle applies to both of his decisions to either employ or fire Leticia, because in one situation he is cooperating with

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Leticia against the state to benefit her and his business's profitability, but if he were to fire Leticia he would be making that decision with the intent of upholding the laws set by the state to protect his business from external fines.

#### **Section 4: Potential concerns**

In this section, I will refute claims made by Hidalgo regarding the harm caused versus then harm inflicted, as well as his interpretation of an appropriate way to incur immigration policy change. One objection to disobeying the law is if the given harm caused is extremely severe. These are instances where an unauthorized immigrant is seeking asylum, or fleeing an abusive upbringing. To this challenge there are immigration policies and support mechanisms for protecting those unique groups from their danger. Immigration laws are set so that all illegal immigrants that are seeking asylum must be granted a hearing. Until a resolution can be made by the court, the asylum seeking immigrant is allowed to stay in the United States until a safe resolution can be found.<sup>7</sup>

Regarding asylum, my peer Dylan Perlstein made an observation that "Asylum does exist, but it does not often cover many of the situations people are escaping from, and even then the acceptance rate is only around 40%."<sup>8</sup> While he provides the correct statistics, the reason that the acceptance rate is low is because most asylum-seekers don't provide the necessary documents to file for asylum. David Nguyen, head attorney of the law office of Houston, lists the main reasons for asylum denial are: Inconsistency throughout the process, both in a timely manner as well as inconsistency in reasons to seek asylum, as well as not properly hiring an attorney.<sup>9</sup> Both of these reasons make up a majority of denials, while both are easy and accessible to follow.

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<sup>7</sup> PBS

<sup>8</sup> Perlstein

<sup>9</sup> David Nguyen

As shown above, the law is not meant to cause harm. It is meant to uphold social order within our Country, and if immigrants come to the United States to seek asylum, we have laws in place that give those unauthorized people rights to protection and safety.

Hidalgo also reasons that the immigration laws set in place are unjust, and the method that would result in the most change policy wise is to disobey those same laws. Hidalgo references Henry Thoreau's claim that "the machine of government... requires you to be an agent of injustice to another, then, I say break the law. Let your life be a counter-friction to stop the machine"<sup>10</sup>. Hidalgo's interpretation of Thoreau's claim is that this "counter-friction" directly translates to disobeying the law. I interpret Thoreau's claim to revolve within the scope of democracy, reasoning that his definition of "counter-friction" means **disputing and encouraging change** within the immigration policies that may seem unjust, instead of fully disobeying and operating against it. Hidalgo chooses not to explore our political obligations, which is why his argument is heavily misconstrued. The change that he wants to see regarding immigration policy can only be achieved by evolving the policies themselves. Disobeying laws set by the state that we are citizens of would only cause the state to tighten policies even more.

## Section 5: Conclusion

In this argument, I have chosen to refute Hidalgo's approach to incurring change in immigration policy that allows for more open borders. While we share similar opinions that change should happen, his approach challenges the democratic system in place, whereas my argument utilizes the democracy that our country was built on to encourage policy changes. Hidalgo promotes disobeying the law, led by falsifying the risk and consequences of doing so. Laws and policies have been enacted by our state with

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<sup>10</sup> Hidalgo 184

the innate goal of increasing security, safety, and welfare of the citizens. As citizens, it is our due diligence to uphold and evolve those same laws to protect the state's physical and economic security. As soon as someone makes the decision to disobey a law set in place, they become a threat to our national security, regardless of the significance of the offense.

We have a moral obligation to uphold the immigration laws set in place by our state. We must place trust in our leaders to make the right decisions for our welfare and security. While those policies negatively affect many by their elongated process to entry and tightened security, we as United States citizens have to trust the political leaders of our state to make whatever decision. We believe that decision to be made through the scope of protecting national security and citizen welfare. If the policies prove to become unjust, it is our right and political obligation to utilize our democratic system to promote change. If change is necessary, the public majority will support it. As former President Jimmy Carter once preached, “The experience of democracy is like the experience of life itself—always changing, infinite in its variety, sometimes turbulent and all the more valuable for having been tested in adversity”. It is our moral duty to incur change in our community is by utilizing the constitutional rights given to us, not by disobeying them.