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## Exiting the American Dream

Jayesh Rathod

### ABSTRACT

Exit planning among U.S. citizens is on the rise. A confluence of worrisome domestic conditions—including societal violence, the curtailment of individual rights, and creeping authoritarianism—has prompted U.S. citizens to contemplate and plan for a possible departure from the country. Among the more popular exit pathways, particularly for minorities in the United States who have experienced or fear identity-based mistreatment, are programs that allow descendants of citizens or other members of the diaspora to acquire status in their ancestral homelands. Decades or even centuries after their ancestors' arrival, present-day U.S. citizens are considering a return journey, thereby disrupting long-standing narratives about immigrant integration and plural democracy in the United States.

In this Essay, I offer a firsthand account of exit planning and describe how I, a gay man of color and son of immigrants, successfully obtained status in India, the nation of my parents' birth. Drawing upon the scholarly traditions of critical legal studies and social scientific autoethnography, I interweave academic research and storytelling to generate insights about the motivations that underlie exit migration and the actual process of applying for status overseas. The Essay also records reflections about what diasporic return signifies for the project of U.S. democracy, the possibility of internal or circular migration, the powerful role of private industry in enabling transnational moves, and the complex relationships that exit planners maintain with both the United States and their ancestral homelands.

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## TABLE OF CONTENTS

|   |     |
|---|-----|
| INTRODUCTION.....   | 124 |
| I. MY FATHER’S MIGRATION STORY.....                             | 127 |
| II. EXIT PLANNING AND DIASPORIC RETURN AMONG U.S. CITIZENS..... | 128 |
| III. CHARTING AN EXIT PATHWAY .....                             | 134 |
| IV. REFLECTIONS AND ANALYSIS.....                               | 139 |
| A. Return Journeys and Democratic Failure .....                 | 139 |
| B. Internal and Circular Migration .....                        | 141 |
| C. The Role of Private Industry .....                           | 144 |
| D. Relationship to India and the United States.....             | 145 |
| CONCLUDING THOUGHTS.....  | 146 |

## INTRODUCTION

Long-simmering societal tensions and uncertainty regarding the country's political future have led a growing number of U.S. citizens to develop a migratory exit strategy. While a U.S. passport grants temporary access to most corners of the world, many of these exit planners hope to acquire a more secure, long-term status in another country—such as permanent residence or citizenship—to facilitate emigration should worsened conditions compel their departure.<sup>1</sup> In surveying possible migration options, many U.S. citizens are drawn to programs that allow the descendants of citizens or other members of the diaspora to acquire status in their ancestral homelands.<sup>2</sup> For some of these diasporic descendants, the experience or fear of mistreatment linked to their race, religion, gender identity, or sexual orientation motivates them to identify a secure pathway out of the United States.<sup>3</sup> For others, concerns about creeping authoritarianism, regressive social policies, or an inadequate social safety net in the United States animate relocation planning.<sup>4</sup>

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1. Valeriya Safronova, *The New American Status Symbol? A Second Passport*, N.Y. TIMES (Aug. 20, 2020), <https://www.nytimes.com/2020/08/20/style/golden-visa-second-passport-dual-citizenship.html> [<https://perma.cc/F7BK-DYU6>] (reporting that a second passport is seen as “a way to ensure freedom of movement in the future”).
  2. See, e.g., Alice Kantor, *Americans Are Using Their Ancestry to Gain Citizenship in Europe*, BLOOMBERG (Oct. 19, 2022, 10:00 AM), <https://www.bloomberg.com/news/articles/2022-10-19/how-to-get-irish-and-italian-citizenship-more-americans-apply-for-eu-passports> (citing statistics regarding passport applications in Germany, Ireland, and Italy).
  3. See, e.g., Colette Coleman, *Blaxit: Tired of Racism, Black Americans Try Life in Africa*, N.Y. TIMES (Feb. 16, 2024), <https://www.nytimes.com/2024/02/16/realestate/african-americans-africa.html> [<https://perma.cc/SK8Y-P2Y8>] (describing how the experience of racism in the United States, together with other factors, led various Black Americans to relocate to countries in Africa); Isobel van Hagen, *Transphobia is on the Rise in the US. Meet the Transgender People Planning to Relocate to Europe Because They Can No Longer Stand the 'Hostile Environment.'*, BUS. INSIDER (May 7, 2023, 5:48 AM), <https://www.businessinsider.com/nonprofit-trans-people-flee-the-us-onslaught-anti-lgbtq-legislation-2023-5> [<https://perma.cc/BKQ7-XZ5C>].
  4. See, e.g., Alaric DeArment, *The Americans Who are Fleeing the United States*, NEW REPUBLIC (Feb. 2, 2023), <https://newrepublic.com/article/170259/american-emigration-far-right-violence> [<https://perma.cc/HR78-FGH2>] (citing polling and social media activity demonstrating an interest in exit migration following the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*); Ashley Fetters Maloy, *Their Ancestors Came to America. After Dobbs, They Want Out.*, WASH. POST (Aug. 29, 2022, 6:00 AM), <https://www.washingtonpost.com/lifestyle/2022/08/29/dual-citizenship-european-union-germany-italy> [<https://perma.cc/VNM8-U5SS>] (citing gun violence and loss of individual rights as other factors that underlie exit planning).

Even if successful in obtaining status in another country, many of these exit planners opt to remain in the United States with their U.S. citizenship intact and view their newly acquired visas and passports as a lifeboat to use in case of emergency.<sup>5</sup> And while the United States is not yet experiencing broad waves of emigration, this growth in exit planning<sup>6</sup> raises a suite of important questions: How accessible are these legal pathways for diasporic migration? What are the implications of this trend for the future of human mobility and migration governance? What does the acquisition of an additional status by these U.S. citizens, and in particular by members of minority groups, signify for their relationship with the United States? Similarly, how do these exit planners understand their relationship with the ancestral lands where they have obtained a new status? And is this exit planning merely an ephemeral trend for uncertain times, or does it provide evidence of deeper challenges in the project of building a diverse democracy in the United States?

This Essay endeavors to offer an initial response to these questions, drawing upon my own experience as a gay man of color and son of immigrants who successfully obtained status in India, the country of my parents' birth. In choosing to deploy my own personal narrative, I draw inspiration from important scholarly traditions that invoke the author's lived experience when seeking to understand the everyday impact of law and other social forces. The first is the rich scholarly tradition of feminist and Critical Race theorists, who have used underrepresented authors' narratives to offer new perspectives on salient legal debates.<sup>7</sup> As Mari Matsuda articulated, centering the narratives of persons of color can facilitate critique of the law, and in turn, catalyze important transformations in society.<sup>8</sup>

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5. See, e.g., Kristin Surak, *Millionaire Mobility and the Sale of Citizenship*, 47 J. ETHNIC & MIGRATION STUD. 166, 178 (2020).
  6. As used in this essay, the term "exit planning" refers to the process of identifying and securing a lawful migration pathway into another country, to be used if circumstances in one's country of residence compel the need to emigrate. The pathways that exit planners pursue include both temporary and permanent statuses based on ancestry, familial relationships, professional qualifications, investment, and more. See *infra* note 28.
  7. See, e.g., Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971 (1991) (assessing the use of narrative in feminist legal scholarship). A recent and powerful example of this type of scholarship is the essay penned by Mitchell F. Crusto, who deployed his own narrative and that of his family to make the case for the continued use of race-conscious admissions policies. See Mitchell F. Crusto, *A Plea for Affirmative Action*, 136 HARV. L. REV. F. 205 (2023).
  8. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324 (1987). Scholars have debated the objectivity and typicality of these personal narratives. See, e.g., Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 850–55 (1993). Nevertheless, they offer unique perspectives that are often absent in dominant legal discourse. See Robert S. Chang,

The second is the current, within the social sciences, to adopt autoethnographic methods. In the same way that postmodernism led some legal scholars to challenge traditional discursive methods, social scientists turned to autoethnography to “open[] up a wider lens on the world.”<sup>9</sup> Autoethnographic or autobiographical research offers the built-in advantage of a motivated researcher who can render a thick description of events.<sup>10</sup> Social scientific works that utilize autoethnography reflect varied methods and stylistic approaches, from structured studies that situate the author within a particular community to personal narratives with a literary quality.<sup>11</sup>

As this Essay draws upon distinct scholarly traditions, it embraces a variegated methodological approach. It interweaves legal academic research, ethnography, and storytelling to better understand the dynamics of exit planning among U.S. minorities, and to explore the broader repercussions of this phenomenon. It features personal and familial narratives, articulated from an intersectional viewpoint, and informed by my own expertise and curiosity regarding the forces that underlie exit planning trends. In so doing, it offers a real-life “counterstory,” from the tradition of critical legal studies, that challenges a prevailing narrative about law and society—in this case, of the United States as a destination country and safe haven for minorities.<sup>12</sup>

In Part I, I share the migration story of my father, Mukund Rathod, highlighting the difficult conditions he overcame to emigrate from India to the United States in 1970. I then pivot to the present in Part II, describing how my scholarly research and sense of instability in the United States jointly propelled me to seek status in India. Melding research with personal narrative, I outline the types of legal migratory pathways available to diasporic descendants and highlight an increasingly popular option for persons of Indian origin: the Overseas Citizen of India (OCI) program. In Part III, I chronicle my own process of applying for OCI status. The Essay concludes with a preliminary analysis of the questions

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*Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1270–78 (1993).

9. Carolyn Ellis, Tony E. Adams & Arthur P. Bochner, *Autoethnography: An Overview*, 36 HIST. SOC. RSCH. 273, 275 (2011).
10. See Sarah Wall, *An Autoethnography on Learning About Autoethnography*, 5 INT’L J. QUALITATIVE METHODS 146, 155 (2006).
11. *Id.* at 152–55; Cheryl S. Le Roux, *Exploring Rigour in Autoethnographic Research*, 20 INT’L J. SOC. RSCH. METHODOLOGY 195, 198–99 (2017) (cataloging different types of autoethnographic inquiry).
12. See, e.g., Aja Y. Martinez, *A Plea for Critical Race Theory Counterstory: Stock Story Versus Counterstory Dialogues Concerning Alejandra’s “Fit” in the Academy*, 42 COMPOSITION STUD. 33, 38 (2014); Daniel G. Solorzano & Tara J. Yosso, *Critical Race and LatCrit Theory and Method: Counter-Storytelling*, 14 INT’L J. QUALITATIVE STUD. EDUC. 471, 474–77 (2001).

outlined above, drawing from my scholarly research and my firsthand experience as a diasporic exit planner.

### I. MY FATHER'S MIGRATION STORY

This story begins in the early 1960s, in a dusty rural village of just a few thousand people in the state of Gujarat, India. At the height of the civil rights movement in the United States, my father, Mukund, then a recent college graduate, was waging a struggle of his own halfway across the globe. He was born into poverty, and he grew up living with his family in a simple, two-room structure in this village. The village had a curious name: Kharaghoda, or Salty Horse—a name derived from the expansive salt fields that punctuated the landscape and anchored the local economy.

The residents of Kharaghoda often complained about the overwhelming heat and ubiquitous dust, but for Mukund, the most oppressive aspect of life in Kharaghoda was the pressure of wanting—and indeed, needing—to achieve greater financial stability to provide for himself, his parents, and his four siblings. Despite his family's very limited resources, Mukund excelled in school, and mentors identified him as someone who could make it out of Kharaghoda to larger cities, and possibly even to the West. With help from benefactors who believed in his potential, Mukund attended college at Gujarat University and even obtained a master's degree in statistics.

As Mukund surveyed his options in the early 1960s, the thought of immigrating to the United States was simply not an option. In 1917, U.S. legislators had imposed an "Asiatic Barred Zone" excluding immigrants from much of Asia, including the Indian subcontinent.<sup>13</sup> Less than a decade later, the U.S. Congress introduced the quota system to preserve an America that was comprised primarily of white persons from northern and western Europe and exclude the "undesirable races" from eastern and southern Europe.<sup>14</sup>

But in 1965, everything changed and the doors of opportunity in the United States were literally flung open for people like Mukund. In that year, Congress lifted decades-old restrictions with the passage of the Immigration and Nationality

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13. Immigration Act of 1917, Pub. L. No. 64-301, § 3, 39 Stat. 874, 876; see also Sherally Munshi, *Immigration, Imperialism, and the Legacies of Indian Exclusion*, 28 *YALE J.L. & HUMAN.* 51, 76–77 (2016).

14. Mae M. Ngai, *The Architecture of Race in Immigration Law: A Reexamination of the Immigration Act of 1924*, 86 *J. AM. HIST.* 67, 69 (1999).

Act of 1965.<sup>15</sup> Whether intended by the 1965 law or not, the decades that followed saw much greater migration from Asia, Africa, and parts of Latin America.<sup>16</sup>

And so the emigration began. Word began to spread among Mukund's peers about educated folks emigrating to the United States. They had successfully applied for visas, packed their suitcases with important paperwork and the few sets of clothes they owned, and made their way to communities that had begun to absorb the trickle of Indian migrants. Mukund also navigated the process and obtained a coveted visa for professionals. In July 1970, he boarded a plane for the first time at Santa Cruz Airport in Bombay. By then, he was married with a five-year-old daughter, and his wife and child both bid him a garlanded farewell, planning to reunite with him in the United States. Half a day later, Mukund emerged from O'Hare Airport into the embrace of a humid Chicago summer.

Like many immigrants, Mukund's experience in the United States was filled with surprise, struggle, and eventual success. Surprise at the rhythm of urban Chicago and the unexpected kindness of strangers. And struggle with being understood and bearing a difficult-to-pronounce name. Those and other struggles never fully disappeared, but they were balanced by times of happiness and success. And by realizing unimaginable opportunities for his three children, including his youngest—who graduated from law school, worked as an immigrants' rights lawyer, and made his way to a career in legal academia. Inspired by the circumstances surrounding my own father's journey, I chose to study the forces animating contemporary transnational migration.

## II. EXIT PLANNING AND DIASPORIC RETURN AMONG U.S. CITIZENS

About fifty years after my father's arrival in the United States, and a few years after he passed away, I began to research a previously unthinkable phenomenon: U.S. citizens departing the country in significant numbers and seeking asylum abroad. This research gradually morphed into a larger scholarly project, focused on the involuntary emigration of U.S. citizens and the diverse pathways used to gain entrance to other countries, including diasporic return migration.

My inquiry into these topics began during the tumultuous years of the Trump administration. As societal tensions continued to mount, my scholarly

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15. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911; see also Mariano-Florentino Cuéllar, *The Political Economics of Immigration Law*, 2 U.C. IRVINE L. REV. 1, 9–10 (2012).

16. See Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273, 276 (1996).

attention fixated on the very real possibility of significant migratory *outflows* from the United States. This led me to a fascinating exploration of both the history and present-day trends of asylum-seeking by U.S. citizens.<sup>17</sup> I discovered, through this research, that between 2000 and 2021, U.S. citizens filed nearly 14,000 asylum claims in ninety-one different countries.<sup>18</sup> Although only a small fraction of these claims were granted,<sup>19</sup> many of the cases captured significant public attention in destination countries,<sup>20</sup> as governments grappled with the thorny political consequences of declaring a U.S. citizen a refugee.

Although many classes of U.S. citizens have sought asylum—including war resisters, political dissidents, and even domestic violence survivors—one of the more notable categories in the current political moment comprises members of marginalized groups who simply no longer feel safe in the United States. Included within this category are racial, religious, and sexual minorities who experienced serious incidents of identity-based harm, and determined that they could no longer comfortably reside in this country.<sup>21</sup> Black American men,<sup>22</sup> trans women,<sup>23</sup> and others have formally invoked refugee laws, and at times have strategically engaged the media to make their case about the failures of civil rights and police protections in the United States.<sup>24</sup>

While I was digesting these cases, I began to experience a sense of instability and uncertainty about my own environment. As the protests of 2020 and then the January 6 insurrection roiled my home city of Washington, D.C., I countenanced doubts about my future. What if the situation deteriorates further, and my

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17. See generally Jayesh Rathod, *Fleeing the Land of the Free*, 123 COLUM. L. REV. 183 (2023).

18. *Id.* at 188–89.

19. *Id.* at 192 (“Since 2000, fewer than 400 asylum claims filed by U.S. citizens have been granted by the immigration or political authorities of another country.”).

20. For example, U.S. servicemembers seeking asylum after refusing to fight in the war in Iraq sparked a vigorous debate in Canadian society. *Id.* at 198–207.

21. *Id.* at 220–27 (detailing claims filed by racial and sexual minorities).

22. For example, Kyle Cauty, a Black American man who applied for asylum in Canada, cited how he was harassed and targeted in the United States, including by police. Janell Ross, *A Black American Is Applying for Refugee Status in Canada, Citing Police Racism. Don’t Laugh.*, WASH. POST (Nov. 2, 2015, 1:39 PM), <https://www.washingtonpost.com/news/the-fix/wp/2015/11/02/a-black-man-is-applying-for-refugee-status-in-canada-citing-police-racism-dont-laugh> [<https://perma.cc/N6LD-64C4>].

23. Transgender rights activist Danni Askini sought asylum in Sweden after she received death threats because of her activism work. Melissa Hellmann, *Danni Askini Seeks Asylum in Sweden*, SEATTLE WKLY. (Nov. 22, 2018, 3:00 PM), <https://www.seattleweekly.com/news/danni-askini-seeks-asylum-in-sweden> [<https://perma.cc/3SWJ-6JVL>].

24. See *id.* (providing detailed media coverage, including firsthand accounts and documents from Askini, recounting her departure from the United States and pursuit of asylum in Sweden).



physical safety is at risk? And what if certain minorities are mistreated and scapegoated? What would I do, and where would I go? Despite all the layers of privilege I enjoyed—Ivy League degrees, status as a tenured law professor, and economic security—a part of me wondered about the risks I might face in a destabilized future. As both a gay man of color and a student of history, I could not simply assume that everything would be fine.

As I delved further into my research, I discerned that U.S. citizen asylum seekers are just a sliver of the U.S. citizens who depart the country when facing conditions of vulnerability. While significant numbers of U.S. citizens have sought formal refugee protection, an even wider swath have pursued an assortment of visa and citizenship options that are less politically fraught and often easier to navigate.<sup>25</sup> One pathway that is growing in popularity, particularly for U.S. citizens who are members of minority groups or have traceable ethnic heritage, is migration based on diasporic descent.<sup>26</sup>

Diasporic migration pathways have proliferated around the world, offering individuals the opportunity to obtain temporary visas, residency, and even, in some cases, automatic citizenship.<sup>27</sup> These pathways exist in the laws of dozens of countries, including in Europe, Asia, and Africa.<sup>28</sup> Anthropologist Takeyuki

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25. Jayesh Rathod, *Pressured Exit*, 98 TUL. L. REV. 805, 846–59 (2024) (cataloging migratory vehicles used by U.S. citizens facing conditions of vulnerability, including diasporic migration programs, retirement and investment-based statuses, and conventional pathways, such as family- or employment-based immigration). Asylum claims often encounter significant legal hurdles, whereas other pathways, such as migration based on ancestry, can be more straightforward. Compare My Khanh Ngo & Judy Rabinovitz, *Asylum Seeker’s Wrongful 6-Year Detention is Emblematic of a Broken System*, ACLU (Oct. 10, 2023), <https://www.aclu.org/news/immigrants-rights/asylum-seekers-wrongful-6-year-detention-is-emblematic-of-a-broken-system> [<https://perma.cc/ZZ6G-G4K5>] (recounting legal hurdles faced by an LGBTQ asylum seeker), with Kathleen Peddicord, *Could Your Ancestry Be Your Ticket to Life in Europe?*, FORBES (Sept. 30, 2023, 9:04 AM), <https://www.forbes.com/sites/kathleenpeddicord/2023/09/30/could-your-ancestry-be-your-ticket-to-life-in-europe/?sh=11113f8533ee> [<https://perma.cc/3L9J-R64A>] (describing the relative ease of obtaining citizenship or residency through ancestry as compared with other migration pathways).
26. Immigration brokers that facilitate access to citizenship based on descent have reported an uptick in interest among U.S. citizens. See, e.g., Interview with Kelly Cordes, Irish Citizenship Consultants (Feb. 2, 2023) (notes on file with author).
27. See Rathod, *supra* note 25, at 821–23, 846–53.
28. See, e.g., *Citizenship by Descent (Iure Sanguinis)*, CONSOLATO GENERALE D’ITALIA LONDRA, <https://consolondra.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/cittadinanza/cittadinanza-per-discendenza> [<https://perma.cc/ZU3P-PGVW>] (providing the requirements for noncitizens to claim Italian citizenship by descent); Bifue Ushijima, *Japan Opens a Door to Fourth-Generation Japanese Abroad*, PUB. RELS. OFF., GOV’T OF JAPAN (2009), [https://www.gov-online.go.jp/eng/publicity/book/hlj/html/201809/201809\\_09\\_en.html](https://www.gov-online.go.jp/eng/publicity/book/hlj/html/201809/201809_09_en.html)

Tsuda, who has published widely on this phenomenon, observes that countries offering such programs often have a distinct motivations—everything from a genuine desire to reconnect with coethnics, to an intent to address labor market shortages with a more homogeneous migrant population.<sup>29</sup> Most programs require proof of an ancestor (typically, a parent or grandparent) who previously possessed that country’s nationality.<sup>30</sup> Ghana embraces a more expansive definition, offering status, via a “Right of Abode” provision, to “person[s] of African descent in the Diaspora” who meet specified eligibility requirements.<sup>31</sup>

These various migratory pathways for diasporic descendants have inspired many U.S. citizens to initiate exit planning, and they have already enabled some to depart the country permanently. Among them are Black Americans who have grown tired of entrenched racism, discrimination, and even state violence.<sup>32</sup> Okunini Kambon, for example, relocated from Chicago to Ghana after a police encounter resulted in a questionable criminal charge that was ultimately dismissed for lack of probable cause.<sup>33</sup> Washington Post reporter DeNeen Brown is also planning her eventual departure from the United States, and cites the exhausting toll of the everyday racism experienced by Black Americans.<sup>34</sup>

Another community pursuing diasporic return comprises Jewish Americans concerned about persistent and growing antisemitism, creeping authoritarianism,

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[<https://perma.cc/H637-35XD>] (providing long-term resident visas for Japanese descendants); Josué Mehoudenou, *Benin Opens Door to Nationality for Slave Descendants*, BARRON’S (Aug. 9, 2024), <https://www.barrons.com/news/benin-opens-door-to-nationality-for-slave-descendants-77f809b0> [<https://perma.cc/JKT3-LACE>] (describing legislation that would allow descendants of enslaved Africans with sub-Saharan ancestry to obtain citizenship in Benin).

29. TAKEYUKI TSUDA, *Why Does the Diaspora Return Home? The Causes of Ethnic Return Migration*, in DIASPORIC HOMECOMINGS: ETHNIC RETURN MIGRATION IN COMPARATIVE PERSPECTIVE 21, 27–29 (Takeyuki Tsuda ed., 2009).

30. See, e.g., Legge 5 febbraio 1992, n. 91, G.U. Feb. 15, 1992, n. 38 (It.) [<https://perma.cc/QE5V-CWPV>] (defining and providing the legal pathway to citizenship for Italian descendants whose direct parents or grandparents qualify as citizens under the act).

31. See *Right of Abode*, MINISTRY OF THE INTERIOR, REPUBLIC OF GHANA, <https://www.mint.gov.gh/services/right-of-abode> [<https://perma.cc/6ZMT-ZGE2>]; Katharina Schramm, *Diasporic Citizenship Under Debate: Law, Body, and Soul*, 61 CURRENT ANTHROPOLOGY S210, S211–12 (2020).

32. Kim Hjelmggaard, *‘I’m Leaving, and I’m Just Not Coming Back’: Fed Up With Racism, Black Americans Head Overseas*, USA TODAY (July 1, 2020, 6:47 PM), <https://www.usatoday.com/story/news/world/2020/06/26/blaxit-black-americans-leave-us-escape-racism-build-lives-abroad/3234129001> [<https://perma.cc/S83Z-G3YJ>].

33. *Id.*

34. DeNeen L. Brown, *The Case for Leaving America to Escape Racism*, WASH. POST (Sept. 26, 2022, 10:00 AM), <https://www.washingtonpost.com/magazine/2022/09/26/case-leaving-america-escape-racism> [<https://perma.cc/RQU2-CTZD>].

and the possibility that they might, once again, be scapegoated.<sup>35</sup> The process of *aliyah* and the underlying Law of Return allows for the automatic conferral of Israeli citizenship upon Jews who relocate to Israel.<sup>36</sup> Although immigration to Israel under *aliyah* has dropped significantly since the commencement of hostilities in October 2023, tens of thousands have made the journey in recent years.<sup>37</sup> Michal Geiger pursued *aliyah* in 2020 and relocated her family from New Jersey to Israel because she “[doesn’t] see America welcoming Jews for much longer.”<sup>38</sup> Apart from Black Americans and Jewish Americans, many others—including the descendants of Irish and Italian immigrants—are pursuing dual nationality in various European countries based on descent.<sup>39</sup>

Although these U.S. citizens have compelling reasons for wanting to depart the United States, and very well may find solace in an ancestral homeland, their arrival often has a mixed impact on the destination country. An influx of U.S. citizen migrants of relative affluence can distort local economies by raising consumer prices and by making housing unaffordable for native-born residents.<sup>40</sup> Further, diasporic returnees often enjoy economic, social, and even racially coded advantages, suggesting a neocolonial dimension to their return journeys.<sup>41</sup> In some instances, commentators have explicitly framed diasporic return as a colonial project.<sup>42</sup>

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35. See Avital Chizhik-Goldschmidt, *If Not Now, When? Thousands of American Jews Apply to Move to Israel in Pandemic*, FORWARD (June 2, 2020), <https://forward.com/life/447688/american-jews-aliyah-israel-pandemic> [https://perma.cc/5TPH-D37T].

36. YOSSI HARPAZ & BEN HERZOG, REPORT ON CITIZENSHIP LAW: ISRAEL 2–7 (2018), [https://cadmus.eui.eu/bitstream/handle/1814/56024/RSCAS\\_GLOBALCIT\\_CR\\_2018\\_02.pdf](https://cadmus.eui.eu/bitstream/handle/1814/56024/RSCAS_GLOBALCIT_CR_2018_02.pdf) [https://perma.cc/2MPP-4GGP].

37. *Report: Jewish Immigrants to Israel Decreased ‘Significantly’ After War*, MIDDLE EAST MONITOR (Dec. 21, 2023, 9:38 AM), <https://www.middleeastmonitor.com/20231221-report-jewish-immigrants-to-israel-decreased-significantly-after-war> [https://perma.cc/9XD4-89KQ].

38. Chizhik-Goldschmidt, *supra* note 35.

39. See Rathod, *supra* note 25, at 848–50.

40. See Kent Mensah, *A Tale of Two Cities: Diaspora Influx Hikes Cost of Living for Ghanaians*, ALJAZEERA (Aug. 25, 2023), <https://www.aljazeera.com/features/2023/8/25/a-tale-of-two-cities-diaspora-influx-hikes-cost-of-living-for-ghanaians> [https://perma.cc/3KA5-GCVG].

41. See Joan Phillips & Robert B. Potter, *‘Black Skins–White Masks’: Postcolonial Reflections on ‘Race’, Gender and Second Generation Return Migration to the Caribbean*, 27 SING. J. TROPICAL GEOGRAPHY 309 (2006).

42. See, e.g., Haleema Shah, *Is Israel a “Settler-Colonial” State? The Debate, Explained.*, VOX (Apr. 17, 2024, 9:00 AM), <https://www.vox.com/world-politics/24128715/israel-palestine-conflict-settler-colonialism-zionism-history-debate> [https://perma.cc/T6YK-Y7LF] (providing historical context for analyzing whether the state of Israel and the practice of *aliyah* are settler colonial projects).

That said, while some of these diasporic exit planners promptly relocate, most simply store away their newly acquired status, treating it like an insurance plan.<sup>43</sup> For racial, religious, and other minorities, the experience of discrimination or mistreatment because of their identity—or the fear of such harm in the future—is a central driver of the exit planning. These individualized concerns are situated within a matrix of broader societal trends that have generated a sense of insecurity and vulnerability among many U.S. citizens: the erosion of democratic structures, regressive decisions from the U.S. Supreme Court, and growing societal violence, including the proliferation of guns.<sup>44</sup>

This uptick in exit planning and emigration among U.S. citizens invites important questions about current conditions in the United States: Why do U.S. citizens feel compelled to leave, and what should be done to address the conditions that prompt their departure? Assuming changes should be made, who specifically has the responsibility to ameliorate the adverse circumstances? Are departure decisions rooted in actionable government failures, or do they simply reflect inevitable fractures in a complex society? Should we view this emigration as uniformly problematic, or celebrate the fact that fellow citizens can find a more hospitable environment? The answers to these questions will, of course, vary depending on one's perspective and sense of the stakes involved.

The particular phenomenon of diasporic return migration—which includes minorities in the United States departing for ethnic homelands—invites even thornier questions about the state of U.S. democracy. Some might argue that the departure of these individuals reflects at least a partial subversion of the much-touted narrative of the United States as a welcoming country *defined* by its diversity. Indeed, perhaps in reality, the United States been unable to generate and sustain conditions where people of all backgrounds feel truly welcome and safe. Instead, forces of nativism, racism, xenophobia, and queerphobia have made life in the United States too difficult to bear, at least for some. While exit planners and departing citizens still comprise only a fraction of the overall population of minorities in the United States, they may be a harbinger of larger trends in the future. At a minimum, these departures indicate that a combination of circumstances can tip the scales in favor of exit planning or even a move overseas, with identity-based vulnerability being an important factor.

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43. See Surak, *supra* note 5, at 178.

44. Maloy, *supra* note 4.

### III. CHARTING AN EXIT PATHWAY

As I expanded my knowledge of these diasporic migration pathways, I became curious about options available to me. What would *my* exit strategy be? Although conditions in Washington, D.C. remained fairly stable after President Biden's inauguration, and I had not experienced any direct harm, I felt that some exit planning on my part would be prudent. I also wondered whether such planning might allow me to better understand the very phenomenon I was studying as an academic. Following the models of critical legal storytelling and autoethnographic inquiry in the social sciences, I embarked on my own exploration of diasporic return.

My sights, naturally, turned to the possibility of obtaining some kind of status in India, the country where my parents were born and where they had previously held citizenship before becoming naturalized U.S. citizens. Over the years, I had heard in our family's social circles about different statuses available to the descendants of Indian citizens, including NRI (Non-Resident Indian)<sup>45</sup> and PIO (Person of Indian Origin).<sup>46</sup> My oldest sister, Madhavi, had attempted to obtain one of these in the past, but eventually abandoned the idea after finding the process extremely bureaucratic and cumbersome.

Through my research, I learned about a different status that first launched in 2005, but following some recent modifications, has been gaining in popularity among members of the Indian diaspora: Overseas Citizen of India (OCI).<sup>47</sup> OCI is a status available to persons who were previously citizens of India, or to their

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45. Non-Resident Indians (NRIs) are persons who are Indian citizens but who live outside of India for more than 183 days per year. Mira Burmeister-Rudolph, *Policy Differentiation and the Politics of Belonging in India's Emigrant and Emigration Policies*, 27 *CITIZENSHIP STUD.* 1074, 1079 (2023).

46. The Citizenship Act, 1955, § 5(1)(b) (detailing the requirements for citizenship by registration for a person of Indian origin residing either in India or another country). The PIO category includes former Indian citizens who have naturalized elsewhere, as well as descendants of Indian nationals up to the fourth generation. Burmeister-Rudolph, *supra* note 45, at 1079–80. In 2015, the PIO program merged with Overseas Citizen of India (OCI). *Id.* at 1084.

47. The Citizenship Act, 1955, § 7A(1) (providing the requirements for registration as an Overseas Citizen of India Cardholder); see also *General Information on OCI Card*, CONSULATE GENERAL OF INDIA, <https://www.cgisf.gov.in/page/general-information-on-oci-card> [<https://perma.cc/4XMH-S2QB>]. The OCI category itself was first introduced via the Citizenship Amendment Act of 2003. Anupama Roy, *Between Encompassment and Closure: The 'Migrant' and the Citizen in India*, 42 *CONTRIBUTIONS TO INDIAN SOCIO.* 219, 237–40 (2008).

children, grandchildren, or great-grandchildren.<sup>48</sup> Applicants can include their minor children as part of the application, along with spouses, provided the marriage has been legally in place for two years prior to submission of the OCI application.<sup>49</sup> Reflecting long-standing regional animosities, however, persons who had a parent, grandparent, or great grandparent who is or was a citizen of Pakistan or Bangladesh are not eligible to apply.<sup>50</sup> Apart from this significant carve out, the law is framed quite expansively, capturing a broad swath of diasporic descendants. As of January 2022, the Indian government had issued over 4 million OCI cards.<sup>51</sup>

Persons with OCI status (known as OCI cardholders) receive many benefits, including a multiple-entry, lifelong visa for visiting India; exemption from foreigner registration requirements for lengthy stays; and greater ability to purchase properties in India.<sup>52</sup> OCI cardholders do not have full and equal citizenship rights with other Indian citizens, however.<sup>53</sup> They are not entitled to vote, nor may they hold certain government positions.<sup>54</sup> Furthermore, they are prohibited from purchasing agricultural or plantation properties in India, likely to avoid reproducing colonial-era dynamics and to protect smaller landholders.<sup>55</sup>

OCI status forms part of a broader trend of embracing transnational citizenship, and perhaps reflects an attempt to achieve more coherence between

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48. The Citizenship Act, 1955, § 7(A)(1) (providing the requirements for registration as an Overseas Citizen of India Cardholder); *Overseas Citizen of India*, ONLINE OCI SERV., <https://ociservices.gov.in> [<https://perma.cc/S84Z-AZNE>].

49. The Citizenship Act, 1955, §§ 7A(1)(b), (d); *FAQ's on OCI*, CONSULATE GENERAL OF INDIA, <https://www.cgisf.gov.in/page/faq-s-on-oci> [<https://perma.cc/GEQ9-QGQ3>].

50. The Citizenship Act, 1955, § 7A(1) (“Provided further that no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country . . . shall be eligible for registration as an Overseas Citizen of India Cardholder under this sub-section.”); see *FAQ's on OCI*, *supra* note 49.

51. *Overseas Citizenship of India Scheme*, MINISTRY OF EXTERNAL AFFS., GOV'T OF INDIA, <https://www.mea.gov.in/overseas-citizenship-of-india-scheme.htm#> [<https://perma.cc/2JZL-LMM9>] (“As [of the] 31st [of] January, 2022 40.68 lakh OCI registration cards [were] issued.”).

52. The Citizenship Act, 1955, § 7B(1) (confering on OCIs all the rights except those detailed in § 7B(2)); see *General Information on OCI Card*, *supra* note 47.

53. See, e.g., The Citizenship Act, 1955, §§ 7B(2)(a)–(i).

54. *Id.* (providing that an OCI cardholder is not entitled to be a member of the legislature or to hold Indian constitutional posts such as that of the President, Vice President, Judge of the Supreme Court or High Court, etc.).

55. *Property Related Matters of NRIs/OCI Card Holders in India*, EMBASSY OF INDIA, DOHA, QATAR, **Error!** **Hyperlink** **reference** **not valid.** [https://indianembassyqatar.gov.in/OCI\\_card\\_holders](https://indianembassyqatar.gov.in/OCI_card_holders) [<https://perma.cc/RD4Y-4YYA>] (“OCI card holders . . . are not permitted to purchase agricultural land, including farmland or any kind of plantation property.”). As noted above, however, neocoloniality can manifest in other aspects of diasporic return migration. See *supra* notes 41–42 and accompanying text.

Indian ethnicity and formal Indian citizenship.<sup>56</sup> As some scholars have observed, OCI status decouples nationhood from the physical territory of India, and uses the issuance of the physical OCI card to generate a sense of connection and belonging.<sup>57</sup> Promotion of OCI may also have instrumental motives, namely encouraging engagement and investment in India by the sizable Indian diaspora.<sup>58</sup> One Indian government official emphasized the breadth of this population, noting during a committee hearing that “the sun never sets on the Indian Diaspora.”<sup>59</sup>

Upon learning about OCI status, I initially harbored mixed feelings. On the one hand, I was enthusiastic about the possibility of having another status, should conditions in the United States deteriorate and compel my exit. On the other hand, I have observed from afar a similar deterioration of democratic norms in India, with the rise of a government that stoked religious divisions and embraced Hindu nationalism.<sup>60</sup> I questioned whether I wished to formally affiliate with such a government. I did not harbor illusions that I could somehow be an agent for change in India as I have styled myself in the United States. In the same way that other U.S. citizen émigrés have acknowledged the imperfections of their destination countries,<sup>61</sup> I understood that if I were to pursue OCI and relocate to India, it would be a largely utilitarian move requiring significant tradeoffs, and not a panacea.

Around this time, I telephoned my mother and casually brought up the topic of OCI status. Almost sheepishly, I mentioned that I was considering applying. Without skipping a beat, she affirmed that it was a good idea. She added, “A lot of the Indians in Chicago are applying for it, and they told me I should, too. In case they kick us out of the country.” I was surprised to hear this matter-of-fact take from my mother, who generally avoided comment on social or political matters. But even within her circle of Indian aunties, conversations about exit planning had started to percolate. She later explained Indians were mindful of the history of

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56. See Roy, *supra* note 47, at 239.

57. See Dhooleka Sarhadi Raj, *The Overseas Citizen of India and Emigrant Infrastructure: Tracing the Deterritorializations of Diaspora Strategies*, 59 GEOFORUM 159, 165–66 (2015).

58. Roy, *supra* note 47, at 239.

59. Raj, *supra* note 57, at 164.

60. See, e.g., Ashutosh Varshney, Srikrishna Ayyangar & Siddharth Swaminathan, *Populism and Hindu Nationalism in India*, 56 STUD. COMPAR. INT’L DEV. 197, 198 (2021) (noting “[t]he phenomenal rise of Hindu nationalism under Narendra Modi”).

61. See, e.g., Jessica Poitevien, *Moving Abroad Doesn’t Mean Leaving Racism Behind, Say Black American Expats*, CONDÉ NAST TRAVELER (Dec. 2, 2020), <https://www.cntraveler.com/story/moving-abroad-doesnt-mean-leaving-racism-behind-say-black-american-expats> [<https://perma.cc/W6VJ-GUE4>] (profiling Black Americans who experienced microaggressive and racist incidents after relocating overseas).

expulsion from Uganda and mistreatment in the United Kingdom,<sup>62</sup> and they carried those lessons to the United States. The rise of an unstable and xenophobic U.S. president, she explained, had brought those concerns to the fore.

As I began to examine the application requirements for OCI status, I quickly found myself in a jumble of complicated and confusing Indian government websites. The interfaces were decidedly user-unfriendly, with application procedures not clearly articulated. As I continued my browsing online, I came across advertisements for private companies based in India that assist individuals in applying for OCI status. These companies offered to provide guidance on the exact paperwork required, and to prepare and compile everything for submission to the Indian government. I looked into these services online and found one, called Documitra (meaning Docufriend) that received consistently positive reviews.<sup>63</sup> These reviews, plus the extremely affordable cost of their services—a mere \$60—convinced me to enlist their help.

I first filled out an online form for Documitra, providing some basic information about myself and my connections to India. After remitting payment, I soon found myself included on a Whatsapp thread labeled “OCI ADULT JAYESH 619.” Anvit, an employee from Documitra, confirmed that they had received my completed form and payment, and provided me with a checklist of documents that I would need to apply for OCI. Among these were copies of my passport, my parents’ former Indian passports and naturalization certificates, proof of our relationship (establishing that I am the son of former Indian citizens), an official document with my current address, and a standard, passport-style photo.<sup>64</sup>

I soon realized that the most challenging documents to acquire would be my parents’ Indian passports. Did my mother still have them stored away somewhere? Had they been surrendered or destroyed when my parents naturalized? I phoned my mother, who offered that she *might* still have them tucked away but would need some time to check. Indian aunties, my mother included, are notorious for stuffing valuable items into nooks and crannies all over

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62. See, e.g., Niranjan Desai, *Revisiting the 1972 Expulsion of Asians from Uganda*, 7 INDIAN FOREIGN AFFS. J. 446 (2012) (oral history from Indian diplomat recounting the 1972 expulsion of Indians by then-Ugandan President Idi Amin); Diane Frost, *The ‘Enemy Within’? Asylum, Racial Violence and ‘Race Hate’ in Britain Today*, 2 TWENTY-FIRST CENTURY SOC’Y 227, 228–30 (2007) (describing the history of racist violence in the United Kingdom, and the heightened risks faced by persons of South Asian origin).

63. *Experience Seamless Travel and Consulate Services With Documitra*, DOCUMITRA, <https://www.documitra.com> [<https://perma.cc/D2KJ-3758>]; *Documitra.com Reviews*, FACEBOOK, <https://www.facebook.com/documitra/reviews> [<https://perma.cc/7H55-K5W3>].

64. WhatsApp Correspondence from Documitra.com to Jayesh Rathod (Oct. 4, 2022, 1:14 PM) (on file with author).



the house, but then forgetting where they placed them. After that conversation, I wasn't optimistic that the passports would be found. Still, my sister, Madhavi, who had immigrated to the United States as a young child with my mother to join my dad, mentioned that she still had hers. That gave me hope that my parents' passports might be stashed somewhere.

A few months later, when Madhavi was visiting my mother, she took on the challenging task of trying to locate the passports. Miraculously, she was able to find just my mother's Indian passport and sent me the scanned pages by email. After taking a few weeks to renew my own U.S. passport, I uploaded most of the requested documents on Documitra's online platform. They promptly responded, reminding me that they also needed my father's Indian passport, along with the naturalization certificates and U.S. passports of both parents. The lawyer in me felt the urge to look at the law itself, which seemed to state that one needed to have only one parent who was an Indian citizen in order to qualify for OCI.<sup>65</sup> Based on that language, why wouldn't the documents of just my mother be enough? Of course, I also had enough experience as a lawyer to know that bureaucratic requirements often diverge from the strict letter of the law. The representative at Documitra confirmed that I would, in fact, need to include the documents for both parents.

Some weeks later, during a trip to visit my mother, I began looking for my father's documents. True to form, my mother directed me to a locked metal cabinet, where she stored some of her clothing along with important papers. I extracted a handful of overflowing file folders and repurposed priority mail envelopes and began reviewing the contents. Fortunately, I was able to find all the documents that Documitra had requested, including my father's Indian passport, naturalization certificate, and U.S. passport. A few days later, I submitted the remaining documents, along with a passport-style photo of me. After all the required documentation was in, Documitra took only one day to send me drafts of the forms to be submitted.

After some back and forth, Documitra sent along the instructions for the final submission. They had set up an online account with the Indian authorities and provided instructions for how to access the account and the steps to be taken online. The company also provided guidance for how the physical paperwork

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65. See FOREIGNERS DIVISION, MINISTRY OF HOME AFFS., OVERSEAS CITIZENSHIP OF INDIA (OCI) CARDHOLDER FREQUENTLY ASKED QUESTIONS (FAQs) 1 (2021), [https://www.mha.gov.in/sites/default/files/OCIFAQs\\_23072021.pdf](https://www.mha.gov.in/sites/default/files/OCIFAQs_23072021.pdf) [<https://perma.cc/BNW5-54Q8>] (listing classes of persons eligible for OCI status, including someone "who is a child or a grandchild or a great grandchild of a [former Indian] citizen," suggesting that proof of only one parent would be required) (emphasis added).

should be compiled and mailed out. In mid-April 2023, I submitted all the required documentation via FedEx, and received email confirmation that the packet had been received and was under review by consular authorities. Just a month later, Anvit sent me a Whatsapp message with the news that my OCI application had been approved. A few days later, an immense, puffy enveloped arrived at my residence in Washington, D.C. Its size belied the very compact contents: an OCI card, akin to a very thin passport, bearing the state emblem of India on the outside, and my name and image within.

#### IV. REFLECTIONS AND ANALYSIS

The process of applying for OCI prompted reflections about my family's migratory trajectory and what the future might hold. The prospect of a return journey to India seemed at odds with my father's formidable struggle to immigrate to the United States, and thus invited related questions about the state of U.S. democracy. Receiving OCI also led me to contemplate the possibility of an internal or temporary move, or even circular migration, which involves a repeated pattern of migration between two or more countries.<sup>66</sup> Further, the experience generated numerous insights about the logistics of seeking status based on descent, and in particular, about the role of private actors in the process. Finally, my case study provides at least one set of perspectives on how diasporic exit planners understand their relationship with both the United States and their ancestral homeland.

##### A. Return Journeys and Democratic Failure

As I navigated the exit planning process, I wondered what my father would think about my pursuit of OCI. One on level, I am sure he would be glad that I had forged a more formal connection with the country of his birth. He was proud of his Indian heritage and maintained close ties with families and friends there. Having grown up in poverty, he had also sought ways to support India's underprivileged, paying forward the generosity that he himself had received. At times in his life, particularly as he aged, he even flirted with the possibility of a permanent return to India. Given all this, he undoubtedly would be glad to see one of his children establishing a formal tie to India. Indeed, most immigrants hope

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66. The European Commission defines "circular migration" as "[a] repetition of legal migration by the same person between two or more countries." *Circular Migration*, EUR. COMM'N, [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/circular-migration\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/circular-migration_en) [https://perma.cc/KHF7-HEDK].

that subsequent generations retain some connection to their roots, and an OCI card certainly reflects such a linkage.

As for the circumstances that gave rise to my pursuit of OCI—including feelings of uncertainty, and even vulnerability about the future—I am less sure about how my father would have felt. He had overcome so much and struggled mightily to chart a course out of Kharaghoda and into the West. Perhaps he would harbor some disappointment that his investment in the United States, while wildly successful by any measure, could possibly come to a premature end for some of his offspring. Although he was not a boastful man, I know that my father—whose story had reached hagiographic proportions in India, and who was truly venerated by his relatives there—would not want to convey that any part of his journey had been a failure.

Yet it is just as likely that he would have adopted my mother's matter-of-fact acceptance of an uncertain future and the concomitant need to plan ahead. Although he rarely articulated it, my father understood the complicated reality of immigrant life in the United States. And for most things, he was a grounded, level-headed thinker who could methodically tackle adversity. Indeed, in my own work with migrants and refugees in the United States, I have come to appreciate their profound resilience. As much as I might fear a worst-case outcome for clients in deportation proceedings, the clients themselves almost certainly had already contemplated that possibility, and had begun sketching out possible responses and survival strategies. Many immigrants, including my father, learned to be nimble and even sanguine in the face of unpleasant developments.

These musings about my family's migration journey, and its unpredictable trajectory, relate to a broader set of questions about the state of democracy in the United States and the sense of vulnerability felt by minorities, including LGBTQ+ individuals and people of color. As noted previously, the United States is not experiencing large emigration waves, and minorities occupy positions of immense social and political influence, including the Vice Presidency and seats on the U.S. Supreme Court. Nevertheless, the persistence of vocal, right-wing extremism, and its tacit embrace by many in leadership roles, contributes to an ongoing sense of social fragility.<sup>67</sup> In particular, as I witness the spate of regressive, anti-LGBT

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67. See Chrissy Stroop, *Is American Democracy on the Brink of Collapse?*, OPEN DEMOCRACY (Jan. 28, 2022, 10:39 AM) <https://www.opendemocracy.net/en/5050/is-american-democracy-on-the-brink-of-collapse> [<https://perma.cc/SBB7-7JHQ>] (noting experts' opinion on the future of the United States in the midst of political turmoil and upcoming 2024 presidential election).

legislation,<sup>68</sup> concerns about a downward spiral and even more aggressive scapegoating loom large.

The project of democracy in the United States has been deeply flawed from its inception, and powerful forces continue to other and diminish members of minority groups, in less obviously violent ways as compared to the past. When viewed through this lens, return migration by diasporic descendants might be seen as an inevitability, as opposed to a failure of an idealized democracy that simply does not (and perhaps never will) exist. Nevertheless, one hopes that the U.S. government and society at large will endeavor to address the conditions that are prompting growing numbers of citizens to consider permanent departure.

To be clear, exit from the United States does not necessarily mean improved conditions in all respects. In my case, the prospect of emigration to India presents significant tradeoffs. While some aspects of life in the United States might be challenging, India would present its own difficulties. Although anti-LGBTQ sentiment appears to be growing in parts of the United States, India is arguably even less welcoming, with reports of widespread societal homophobia.<sup>69</sup> Further, in October 2023, the Supreme Court of India declined to extend marriage rights to same-sex couples.<sup>70</sup> What would life in India look like for me? While I would no doubt enjoy substantial social and economic privilege as a U.S. citizen, living in India as an openly queer person would pose considerable challenges.<sup>71</sup> These tradeoffs reflect a commonly held sentiment among diasporic return migrants: that neither their country of birth, nor their ancestral homeland, perfectly accommodates their multidimensional identities.<sup>72</sup>

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68. See *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024*, ACLU, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights#categories> [<https://perma.cc/7PWU-QZLP>] (Sept. 5, 2024) (reporting on bills relating to civil rights, education, healthcare, public accommodations, and more).

69. See Manasi Gopalakrishnan, *How Does India Perceive Homosexuality?*, DEUTSCHE WELLE (Apr. 18, 2023), <https://www.dw.com/en/how-does-india-perceive-homosexuality/a-65345146> [<https://perma.cc/92FF-EG64>] (noting that homosexuality is not perceived well in parts of India, and that queerness is rarely talked of in rural areas).

70. Sameer Yasir & Alex Travelli, *India's Top Court Rejects Gay Marriage, While Voicing Sympathy*, N.Y. TIMES (Oct. 17, 2023), <https://www.nytimes.com/2023/10/17/world/asia/india-same-sex-marriage.html> [<https://perma.cc/X5X2-XBLM>]; *Supriyo v. Union of India*, 2023 SC 920 (2023) (India).

71. Gopalakrishnan, *supra* note 69 (explaining that “[s]ame-sex couples mainly find acceptance in bigger cities,” but homosexuality still lacks widespread acceptance in large parts of India).

72. See Anastasia Christou, *Deciphering Diaspora – Translating Transnationalism: Family Dynamics, Identity Constructions and the Legacy of ‘Home’ in Second-Generation Greek-American Return Migration*, 29 ETHNIC & RACIAL STUD. 1040, 1048–51 (2006) (illustrating the complexity of defining “home” and navigating identity among second-generation Greek Americans who had “returned” to Greece).

## B. Internal and Circular Migration

My successful pursuit of OCI has raised questions about when and how I might use my newly acquired status. OCI will certainly facilitate my entry for brief visits to India, but what set of circumstances would compel me to depart the United States permanently? While I hesitate to conjure up worst-case scenarios, I have reflected on the precise trajectory that I would likely take. Even with my approved OCI status, I realize, an immediate and permanent overseas move would be improbable. Like migrants throughout the world, an intracountry move, or perhaps circular migration, are more foreseeable trajectories should conditions deteriorate in my immediate surrounds.

When forces of displacement compel migrants to leave their communities, internal relocation is often an attractive option, given cultural and linguistic factors, the expense associated with a cross-border move, as well as the simple desire of remaining as close as possible to loved ones.<sup>73</sup> Additionally, professional opportunities can be difficult to secure in other countries, as educational credentials do not always cleanly translate to new contexts, and jurisdiction-specific licensing requirements can be a barrier to applying one's skills in a different setting.<sup>74</sup> In my own case, although I might be able to obtain a professorship overseas or could teach remotely, law practice would likely be much more challenging in another country.<sup>75</sup> Moreover, if the threat I faced was localized, or if conditions were demonstrably better in another part of the country, I would likely prefer to remain in the United States.

And even if conditions led me to depart the United States for India, I could imagine that such a move might be temporary, or that I might engage in some form of circular migration, alternating between the two countries as circumstances required. Migrants spanning a broad range of socioeconomic backgrounds engage in temporary or circular migration, whether for job-related, familial,

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73. Angel Alfonso Escamilla García, *When Internal Migration Fails: A Case Study of Central American Youth Who Relocate Internally Before Leaving Their Countries*, 9 J. ON MIGRATION & HUM. SEC. 297, 299–300 (2021).

74. Massimiliano Tani, *Occupational Licensing and the Skills Mismatch of Highly Educated Migrants*, 59 BRITISH J. INDUS. RELS. 730, 734–35 (2021) (describing how “[o]ccupational licensing . . . creates an artificial hurdle in the labour market by restricting access to several occupations” and thus can impede migrant mobility).

75. See *Resources for Lawyers Going Overseas*, U.S. DEP’T OF STATE ADVOC. PROGRAM SERVS. 1, 3 (2016), <https://2009-2017.state.gov/documents/organization/253915.pdf> [<https://perma.cc/B3BY-5BGL>].

environmental, or other reasons.<sup>76</sup> This notion of temporality appears in Sonali Jain’s ethnographic work among second generation Indian Americans who had “returned” to India for economic and other reasons: the majority of the research subjects in that study viewed their sojourn in India as time-limited and intended to return to the United States at some point.<sup>77</sup>

In a post-pandemic milieu, where transportation and technology facilitate the maintenance of personal and professional relationships, temporary overseas stays are increasingly possible. As compared to my parents’ migration experience in 1970, transcontinental moves today can be managed more easily, and thus can be seen as temporary and reversible.<sup>78</sup> In wealthier countries, short-term overseas stays, especially early in adulthood, have long been seen as important for one’s personal and professional development.<sup>79</sup> Expatriates, lifestyle migrants, and temporary labor migrants comprise other migratory categories associated with an international move.<sup>80</sup> In the present, these forms of migration can sometimes evolve into a type of truly transnational living, where individuals in different economic strata can maintain significant, simultaneous connections to more than one country.<sup>81</sup>

Any of these variants—internal migration, temporary relocation to India, some type of circular migration, or transnationality—assume some amount of privilege. There is the baseline privilege of having the resources to successfully navigate the OCI process. There is also the financial and social privilege needed for a planned and orderly move overseas. These reflections further underscore

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76. See GRAEME HUGO, MIGRATION POL’Y INST., WHAT WE KNOW ABOUT CIRCULAR MIGRATION AND ENHANCED MOBILITY 1, 3 (2013), <https://www.migrationpolicy.org/sites/default/files/publications/Circular-Migration.pdf> [<https://perma.cc/JL3G-VND8>].

77. Sonali Jain, *For Love and Money: Second-Generation Indian-Americans ‘Return’ to India*, 36 ETHNIC & RACIAL STUD. 896, 898 (2013).

78. See, e.g., Andrea Yu, *Going Back Home: Life as a Reverse Immigrant*, WILSON Q., Fall 2015, [https://www.wilsonquarterly.com/quarterly/\\_/going-back-home-life-as-a-reverse-immigrant](https://www.wilsonquarterly.com/quarterly/_/going-back-home-life-as-a-reverse-immigrant) [<https://perma.cc/E75E-UGHV>] (describing the experience of a second-generation Chinese Canadian’s reverse migration to Hong Kong and her eventual return to Toronto, Canada).

79. See Lotta Frändberg, *Temporary Transnational Youth Migration and its Mobility Links*, 9 MOBILITIES 146, 149 (2014).

80. Jørgen Carling, Marta Bivand Erdal & Cathrine Talleraas, *Living in Two Countries: Transnational Living as an Alternative to Migration*, 27 POPULATION, SPACE & PLACE, July 2021, at 2–3.

81. See *id.* at 2, 9 (defining “transnational living as having sustained and similarly significant attachments, interactions and presences in two or more societies separated by national borders” and noting that this phenomenon exists “across the socio-economic spectrum”).

how class privilege animates so many aspects of immigration law and is essentially required for meaningful use of OCI and similar statuses.<sup>82</sup>

### C. The Role of Private Industry

The experience of applying for OCI also yielded many insights about the logistics of exit planning among U.S. citizens. Among the most notable takeaways is the critical role that private industry plays in the process. As described above, I attempted to pursue the process myself, but despite my legal training and extensive immigration practice experience, I quickly turned to a private company. Reflecting on that moment, I am not certain if I even intentionally sought them out, or whether a targeted ad surfaced in my social media feed.

In my scholarly work, I have identified the oversized role that private industry can play in migration processes, and I have even expressed some skepticism about the growing “exit industry.”<sup>83</sup> Yet my experience pursuing OCI revealed that these private actors are incredibly helpful—perhaps even essential—navigators of highly bureaucratized processes. Without the benefit of their expertise, I would almost certainly have been trapped in a frustrating back-and-forth with the Indian government. To be clear, I continue to have concerns about the possibility of private sector overreach in the migration space, including exploitative pricing, fraudulent scams targeting would-be migrants, misuse of personal data, and even agency capture.<sup>84</sup> Nevertheless, I would recommend a service like Documitra to anyone who was contemplating pursuit of OCI.

These immigration brokers, by improving the accessibility and affordability of status in other countries, are no doubt ratcheting up demand.<sup>85</sup> Across the

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82. See Sophie Cranston & Karine Duplan, *Infrastructures of Migration and the Ordering of Privilege in Mobility*, 11 *MIGRATION STUD.* 330, 335–36, 337–40 (2023) (describing how forms of privilege, including education and wealth, can facilitate migration).

83. Rathod, *supra* note 25 at 824–26, 873–76.

84. *Id.*; Karina Zapata, *Some Foreign Workers Paying \$30K or More in Illegal Fees for a Job in Alberta*, *CBC NEWS* (July 15, 2024, 4:00 AM), <https://www.cbc.ca/news/canada/calgary/temporary-foreign-workers-scam-1.7254863> [<https://perma.cc/RNM6-WEQW>] (describing the grossly excessive fees paid to immigration consultants and recruiters for access to overseas job opportunities); Juan Carlos Chavez, *Notario Fraud Leaves Immigrants Vulnerable to Deportation*, *TAMPA BAY TIMES* (Mar. 19, 2024), <https://www.tampabay.com/news/2024/03/19/notario-fraud-leaves-immigrants-vulnerable-deportation> (profiling two immigrants who face possible deportation after immigration “notarios” filed fraudulent applications on their behalf).

85. See Jaeun Kim, *Migration-Facilitating Capital: A Bourdieusian Theory of International Migration*, 36 *SOCIO. THEORY* 262, 270 (2018) (“Immigration states’ entry control . . . produces a structural demand for brokerage.”) (citations omitted).

globe, a vast network of non-attorney brokers and intermediaries facilitate access to visas and other types of status in prominent destination countries, including the United States.<sup>86</sup> The presence of such brokers in the Indian immigration space is not surprising, given that India has outsourced most of its public-facing immigration services to private entities.<sup>87</sup> This includes applications for visas, OCI status, Indian passports, renunciation of citizenship, and police clearance certificates.<sup>88</sup>

These brokers, like many other private entities, have access to an immense volume of sensitive, private information. As I reflect on my experience with Documitra, I realize that I transmitted loads of personal information to faceless interlocutors on Whatsapp and to a web platform that I had vetted only cursorily. Although similar interactions are now the norm across various industries, one wonders whether greater regulation or oversight of these entities might be needed in the future, particularly if demand increases substantially, and unscrupulous actors enter the market.

#### **D. Relationship to India and the United States**

The process of applying for OCI was highly transactional, with nary a live word exchanged. Nearly all my communications with Documitra occurred via email and Whatsapp, and my contact with the Indian government was limited to some keystrokes in a portal and a few email updates. Even the manner of delivery—a valuable document in a soulless white envelope, with no accompanying correspondence or sense of formality—underscored the detached nature of the process. My official induction into the Indian diaspora had the same fanfare as a routine Amazon delivery.

The antiseptic nature of the process mirrors, to some degree, my own feelings as the process unfolded. I was certainly eager to pursue OCI given my scholarly interests in exit planning and diasporic return. Part of me was keen to forge a more formal connection with the country where my parents and eldest sister had been born, and where most of my extended family continues to live. The process itself, however, evoked almost no emotions, apart from the combination of wonderment

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86. See, e.g., CHARLES PIOT & KODJO NICOLAS BATEMA, *THE FIXER: VISA LOTTERY CHRONICLES* (2019) (profiling a savvy Togolese immigration broker who aids clients in navigating the U.S. diversity visa process).

87. See *Public Notice on Visa Outsourcing to VFS*, EMBASSY OF INDIA, WASH., D.C. (Oct. 2023), <https://www.indianembassyusa.gov.in/extra?id=89> [<https://perma.cc/4ECN-7ANG>] (“VFS Global is the existing Outsourcing Service Provider” for immigration processes within the jurisdiction of the embassy).

88. *Id.*



and sadness in reviewing my parents' documentation, including their youthful photos and other interesting details about their lives.

Receiving OCI was also a fairly neutral experience. I was happy that I had successfully navigated the process, and was grateful to have the document, should it be helpful in the future. In other words, my reaction could be summarized as practical positivity as opposed to a joyous homecoming to the diaspora. Despite being an OCI cardholder now, I do not feel a stronger emotional connection, or sense of loyalty, to India. At least for now, I perceive my OCI status as simply a utilitarian exit strategy to be deployed in case of emergency, or as a type of "golden visa" that will facilitate future, short-term visits to India. Perhaps this is all because my "Indian-ness" never was, and likely never will be, defined by my official status vis-à-vis the government of India. It has been shaped by my upbringing, continuing cultural practices, and the unique network of South Asian Americans in which I operate.

In the same way, receipt of OCI has not altered my loyalties to or critiques of the United States. This country remains my home and the center of my personal and professional universe. I continue to identify fully as a U.S. citizen. Importantly, I will continue to advocate for improvements here and hope that the United States will chart a course onto being a diverse, stable, and flourishing democracy. As they say about insurance plans, they are good to have, but hopefully you don't need to use it. In the same way, I hope that a domestic crisis does not compel my use of OCI. But should that be necessary, I now have an exit strategy in hand.

### CONCLUDING THOUGHTS

The United States continues to be regarded as the preeminent destination for migrants, and the country has long styled itself as a protector for vulnerable populations. These narratives obscure the significant number of U.S. citizens who are planning for a possible exit from the country due to actual or anticipated adverse conditions. Many of these exit planners, myself included, are invoking migratory legal pathways that other countries have made available to the descendants of former citizens or members of the diaspora broadly. The OCI status that I successfully obtained is but one among dozens of such statuses that U.S. citizens of different backgrounds can pursue. While some media outlets have begun to report on U.S. citizen exit planning and diasporic return,<sup>89</sup> the

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89. See, e.g., Kantor, *supra* note 2; van Hagen, *supra* note 3.

phenomenon remains largely unexplored, and thus poorly understood, among legal and migration studies scholars.

Drawing upon my father's migration story and my own experience pursuing OCI, this Essay has generated some preliminary insights regarding the institutional architecture that surrounds the exit planning process, and the implications of such planning by members of minority groups, including the descendants of immigrants who are contemplating return to their ancestral homelands. And beyond the insights derived from my own experience, this Essay points to areas where additional research by fellow scholars might be beneficial, including the possibility of internal relocation or circular migration, and the role of immigration brokers in facilitating emigration.

Exit planning adds yet another layer of complexity to the already nuanced relationship between citizens who are members of minority groups and the state. It spotlights deficiencies in the rule of law and societal cohesion that trigger aspirations to emigrate. It also reveals the tradeoffs inherent in migration decisions, and the likelihood of ongoing affiliation with, and perhaps ultimate return to, one's ancestral country of origin. Decades of globalization, along with a post-COVID reset of lifestyle practices, have normalized transnational mobility and the acquisition of multiple statuses by persons of relative privilege. While migrants across the generations have often aspired for a return to their countries of origin (or even a truly binational lifestyle), present-day legal, economic, and infrastructural conditions make it increasingly possible. And, as my experience revealed, private companies are capitalizing on this trend and are enabling access to migration options abroad.

When discussing possible emigration, questions of loyalty, patriotism, and national affiliation inevitably arise. Are U.S. citizen exit planners, including persons who have successfully obtained another status, any less "American" than those whose sole affiliation is with the United States? In reality, some U.S. citizens enter the world with multiple citizenships,<sup>90</sup> and scholars will continue to debate the salience of "divided loyalties" for these individuals and others who acquire statuses later in life.<sup>91</sup> Yet exit planners can hardly be faulted for taking pragmatic steps when confronted with the possibility of worsening conditions and even individualized danger.

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90. See *Dual Nationality*, TRAVEL.STATE.GOV, BUREAU OF CONSULAR AFFS., U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Relinquishing-US-Nationality/Dual-Nationality.html> [<https://perma.cc/QC8X-G48V>].

91. See, e.g., PETER J. SPIRO, *AT HOME IN TWO COUNTRIES: THE PAST AND FUTURE OF DUAL CITIZENSHIP* 23–26 (2016).

Perhaps the greatest threat posed by exit planning is not the severance of social and political ties to the United States, but rather the disruption of long-standing narratives that center immigrant arrivals and obscure departures. While past immigrants, my father included, likely envisioned a permanent stay for themselves and their descendants, the complex present-day reality is both upending and recasting this version of the American dream.