

## **Democracy in Danger**

### **S1E16 Border of Cruelty**

**Will Hitchcock** [00:00:03] Hello, I'm Will Hitchcock.

**Siva Vaidyanathan** [00:00:05] And I'm Siva Vaidyanathan.

**Will Hitchcock** [00:00:06] And from the University of Virginia's Deliberative Media Lab, this is Democracy in Danger.

**Donald Trump** [00:00:12] When Mexico sends its people, they're not sending their best.

**Siva Vaidyanathan** [00:00:16] I'm sure you remember this speech. That was how Donald Trump launched his first campaign for president in June of 2015 as he descended a gilded escalator in New York City.

**Donald Trump** [00:00:29] They're bringing drugs, they're bringing crime. They're rapists. And some, I assume, are good people.

**Will Hitchcock** [00:00:35] Siva, I sure remember it. And I think it really just put a marker down that bigotry and xenophobia was going to be at the center of Donald Trump's campaign for president in 2016. And ultimately, it has persisted right through into his administration.

**Siva Vaidyanathan** [00:00:51] Yeah, but, you know, it's hard not to notice that for a lot of us, America's brutal immigration policies made so much more cruel under Trump have faded from our minds. I mean, much of our attention in the past few months has been focused on the coronaviruses pandemic, on the economic catastrophe that it caused and our continued reckoning with racial inequality and state violence. But, you know, in October, we were reminded of just how horrible and tragic policies like family separation at the border have been.

**Chris Hayes** [00:01:23] NBC News reports that lawyers appointed by a federal judge to identify migrant families who are separated from ministration say they have yet to track down the parents of five hundred forty five children. That approximately two thirds of those parents were deported to Central America without their children leaving the families separated, possibly permanently.

**Will Hitchcock** [00:01:43] Siva, I'm certain that when it comes time to write the history of the Trump years, that the extraordinarily harsh and I would say very public cruelty of U.S. immigration policy is going to be a central chapter of that story.

**Siva Vaidyanathan** [00:01:56] Well, our guest today has made a start in assessing our inhumane immigration laws and their impact on democracy. Syracuse University political scientist Elizabeth Cohen is here with us from Princeton, where she's a visiting faculty fellow. She's the author most recently of *Illegal: How America's Lawless Immigration Regime Threatens Us All*. Elizabeth, welcome to Democracy in Danger.

**Elizabeth Hinton** [00:02:21] Thank you so much. It's such a pleasure to get to talk to you.

**Siva Vaidyanathan** [00:02:25] Elizabeth, Donald Trump has talked constantly about immigration and during the last four years, his administration has implemented many

changes in immigration policy. Can you walk us through some of the major changes and their consequences? How different is the Trump regime than the standard American policy for the past 50 years or so?

**Elizabeth Hinton** [00:02:48] Sure, that's a really important question, because there's actually some discussion among scholars about whether things are really different or actually very much the same. And I think one place to start is to focus attention away from where the narrative usually goes, which is to subjects like people seeking asylum at the southern border and interior enforcement against undocumented immigrants who've been living in the country for a long period of time. And just remind people that with a lot of help from Stephen Miller, who is a policy adviser to President Trump, Trump's administration has managed to find a lot of ways to terminate opportunities for legal, lawful immigration to the United States, both for short term visas for people who come to do work in occupations where we have visas set aside. And also, he's made a lot of inroads in just stopping regular opportunities for people to come to the United States. And then, of course, there are the programs that people are more familiar with, like zero tolerance policy that was kind of initiated by Jeff Sessions that was separating children from parents seeking asylum at the southern border. So, you know, these are some pretty dramatic changes. There are also ways in which he's continued policies that predate his presidency by many years. And of course, probably the one thing he'd like to be known for, which would be removing undocumented immigrants from the country, he lags behind his predecessor, President Obama.

**Siva Vaidyanathan** [00:04:36] Well, one of the things that's weird about this moment and xenophobia, immigration, immigration policy, deportation is, of course, as you point out in your book, if you consider undocumented immigration to be a problem, it's much less of a problem now. It's been much less of a problem since 2015 than it was in previous decades, especially in the early years of the 2000's. And we often hear defenders of Trump's policies use phrases or excuses like, you know, when we talk about family separation, well, they shouldn't have broken the law or, you know, they're illegal. And my family got here decades ago but legally! You know what's going on with those defenses? And what is it with this distinction between legal and illegal? It seems so clearly expressed by people in public. But I think from your book, I learned it's nowhere near simple.

**Elizabeth Hinton** [00:05:36] Yeah, it's really not. You know, I saw somebody the other day point out that neither illegal immigration nor undocumented immigration is really a part of our immigration code. It's a relatively confined period of US history in which we even have kind of concept that you could be in the country without authorization. The undocumented population in the United States, which was growing for a period of several decades starting in the 1980s, starts to shrink and a lot of people start to return. And a lot of the push factors that have been driving people to come into the country without authorization vanish. And so we have right now a smaller and older and more long term population of people without authorization in the US than we did in the early 2000s. That pivot point is around 2008 when things really start to shift. And it's really important to distinguish like, you know, there was absolutely nothing illegal about what was going on at the southern border when zero tolerance was affected. Like, it's perfectly legal to request asylum and ask for a procedure. About half the people in the US who are unauthorized came with permission, but have their visas have expired. So it's a very diverse - from the legal perspective - it's a very diverse population we're talking about.

**Will Hitchcock** [00:07:07] That leads into a question that we sort of hinted at the top of the show. Elizabeth, the US government, we've learned, has not been able to locate the

parents of five hundred and forty five children who were separated from their families at the border by U.S. immigration officers. So, you know, this is horrific news for anyone, especially anyone who might have children of their own, to imagine such a thing happening. But put it into a little bit of broader context. You know, was the family separation policy that we're seeing today, was that new? Is that distinctive in the Trump era? And then second, what are the institutions that are driving it and that are imposing this policy? Can you just give a little bit for our listeners about ICE, about the Border Patrol, about their place in this network of immigration enforcement?

**Elizabeth Hinton** [00:08:05] Sure. So the family separation policy was piloted. So before zero tolerance, there was like a pilot program to kind of see how this would work. And the information that we've been given about the families that have been separated and not reunited suggests that those folks come mostly from the pilot program where records just really were not being kept. It's not at all atypical for the agencies that do immigration enforcement work to have terrible or no records. But those families were largely a part of the pilot program before the full program went into effect. And Trump likes to say that this was actually Obama's policy and that he ended it. And that's just a wild misrepresentation. And it is not necessary to deny that President Obama did some really, I think, troubling and regrettable things when it came to immigration in the United States, particularly during the first part of his presidency. But families were separated in a very unusual circumstances and infrequently during the Obama presidency. This really was Trump's policy and he needs to own it and take responsibility for it. So, yes, that particular thing is unusual. Cruelty and cruelty toward children is not unusual, but that specific policy is Trump's. So many agencies were involved in family separation because the children went to Health and Human Services in the office - the ORR or the Office of Refugee Resettlement. But the primary agencies doing work on immigration enforcement in the United States are ICE, Immigration and Customs Enforcement and CBP, Customs and Border Protection. And they're kind of very distinct from each other. There's not a lot of overlap and they each have their own kind of pathological institutional culture.

**Siva Vaidyanathan** [00:10:08] Yeah, so, you know, we've heard a lot about a burgeoning movement, basically as a hashtag of abolish ICE. And, you know, I think many people confuse, conflate ICE and Customs and Border Patrol. How do you assess the current level of opposition to these policies? Is there an effective public outreach engagement campaign? Is there is there anything close to an organized movement to make our country more humane or is this just a hashtag?

**Elizabeth Hinton** [00:10:40] You know, I think one thing to keep in mind is that if you look at opinion polling all the way back to the 90s, you see very consistent support when people are asked pretty neutral questions, consistent support both for immigration and for immigrants. There are ways you can ask questions that kind of lead people to give a stronger answer in one direction or the other. But when you don't, you see there is support. There is also now a hashtag movement for abolish ICE. Like immigration nerds sometimes get a little bit huffy about the fact that plenty of people whose life is not built around understanding immigration policy don't always know the difference between ICE and CBP or don't know which agency is doing which thing. And it's my job to kind of know who's doing what. But for most people, it doesn't matter in the sense that both agencies are really problematic and they've been problematic for a very long time, pretty much since their inception. So I think it's good that people want to abolish ICE because ICE is not a well-run, effective agency. And ultimately, people are going to need to realize that these are two agencies that are part of Homeland Security and that Homeland Security is also its own problem. So I was not terribly distressed when the protests in Portland revealed that

Homeland Security is, in fact sending people to pluck people off the streets and to investigate citizens and sometimes to arrest citizens for perfectly legal forms of protest.

**Will Hitchcock** [00:12:24] There's a lot of great work yet to be written on scare quotes, homeland security. But, you know, if I can just kind of get you to talk a little bit about the sort of rhetorical arc that Trump has engaged with respect to immigration, because as you pointed out, in 2016, immigration, fear of immigrants building the wall, the prospect of a caravan of migrants coming towards the United States. He used all of these tropes relentlessly. But in 2020, unless I'm missing something, he's moved in a different direction away from this kind of overt fear of immigrants, maybe towards orienting anxieties of white America, his base, toward black and brown people who are already American citizens. What's happening here? Race is the thread that's connecting these things but immigration seems like it's less of a pressing or top line issue in the 2020 campaign. Am I reading that right?

**Elizabeth Hinton** [00:13:19] I think you are. You know, you could not avoid talking about immigration during the 2016 campaign. And Trump was really successful in stoking a lot of nativism among his base. And then kind of, I think, the fringes of his support where there were people who might not have supported another Republican but were kind of being drawn in. And it is remarkable, I think, to see what he's what he's been paying attention to recently, because it hasn't, by and large, been pumping up his successful Muslim bans or talking about the ending of many forms of illegal immigration. He talks about the wall a little bit, which is really like a failure because there's not much wall. There never will be much wall and parts of the wall keep falling down or getting breached. But to Trump, I don't think there's any change at all because underneath discussions of law and order - whether you're talking about law and order and his favorite or at least favorite blue cities or whether you're talking about law and order at the border - it's it is, I think, probably almost always coded language for race. And so it's seamless for Trump to go from talking about undocumented immigrants are coming to the United States to do all kinds of dangerous things to our democracy and our economy and your cities, or to say like Black Lives Matter protests and antifa are going to be coming and destroying your cities. And we need to bring law and order to that. And these are just these are all racial appeals. These are all a part of the same, I think, guiding philosophy for him, which is if you can make people anxious about race and about their place in society and destabilize their sense that they're a part of a society self-governing with people of other races, then he can gain power and gain their support.

**Will Hitchcock** [00:15:26] Elizabeth, this is this brings me to a to the beginning of your book, which is very moving, in which you tell a brief story about your own family's history. And you point out that your mother came to the United States in 1950 after surviving the Holocaust and living for a time in displaced persons camps in Central Europe. Can you just tell us a little bit about your family's story and perhaps how it shaped your thinking about immigration and immigration law? But in particular, I wondered to what extent it triggers thoughts in your head about the future of the notion of birthright citizenship? That is all of us are immigrants. We have raised children and families in this country under the assumption that to be born in America is to be an American. But do you have a sense, as you read the history and then as you project forward, that this constitutional guarantee is likely to come under assault in in the near future in the US?

**Elizabeth Hinton** [00:16:29] So that's a great set of questions. And I'll just answer the last one first and say, yes, like the 14th Amendment, the post Civil War Amendment from which we get the idea of birthright citizenship is already under assault. It's it has been for

years. And, you know, I wouldn't have been able as a little child to tell you much about the 14th Amendment. But I can tell you that my reaction to growing up in a family, not exclusively immigrants, but my mother's side of the family were not only immigrants, but they were refugees and they were stateless people. My reaction to that was just to almost not be able to understand or wrap my head around the enormity of the fortune to be born with citizenship. Because it seems to me that it was utterly arbitrary, like a zygote in one country gets this great opportunity and others don't. And you can't hold children responsible for where they're born or to whom they're born. So I understood citizenship to be an extremely arbitrary and unfair set of distinctions at a young age. And I knew that it was something that also was fragile, that it could be taken away. So my mother is naturalized because my family did eventually get visas to come to the United States and they came without any citizenship. So I've looked recently at the family's naturalization papers and she would always remind me that she and I were different because her citizenship could be taken away. And indeed, one of the things that happened under the Obama administration and has continued under the Trump administration is a campaign to go through lots of naturalization records and look for people who could potentially be denaturalized and deported from the country, stripped of their citizenship. But you get a sense when you come from a family where everything fell apart, you know, that things can actually fall apart. And they were lucky but most people aren't.

**Siva Vaidyanathan** [00:18:35] I mean, to a migrant, so much can seem arbitrary, can seem unpredictable. Right. And we're here at a moment where we are recording this before the November 3rd, 2020 election. So we don't know how it's going to end up. But, you know, gosh, 2016, what could be more arbitrary? Out of nowhere it seemed like, you know, Donald Trump became president because of some legacy from the efforts to preserve slavery through the Electoral College. All of a sudden, the person Americans didn't want to be president is president. And the lives of so many families were suddenly turned over as so many were brutalized, so many were traumatized. This time, like in 2016, we face the potential of significant change. So pretend with me for a moment that Joe Biden becomes president. What do you think the agenda for reform in this area will be? And what do you think the agenda for reform in this area should be?

**Elizabeth Hinton** [00:19:40] I think there is at least two crucial areas to hit. The first is I think the Department of Homeland Security was a hastily and poorly conceived cabinet decision. It was the biggest reorganization of the federal government since the creation of the Department of Defense five decades earlier. And it's not well organized. We need to rethink Homeland Security, and that means getting rid of it and starting over. When we do that, that will mean getting rid of ICE and Customs and Border Protection, which are just terrible, wasteful, expensive agencies that don't get us absolutely any benefit. Like I have many charts in the book showing productivity per Customs and Border Protection agency. It's the largest federal law enforcement agency in the country. We have an 18 billion dollar a year budget for these agencies and we're just not getting much out of them. But they are inflicting a lot of misery and abuse and engaging in a lot of illegal behavior. So we have to start over in that department. And then the other thing I think is really important is that we have a long standing tradition in the United States of not treating people who've been in this country for long periods of time as outsiders. And I think we need to recognize that in some sort of legal form. And in the book, what I suggest is a law that's on the books called Registry, which allows people who've been in the country since a certain date, usually a period of many years prior to regularize their status. And it's on the books but the date right now hasn't been updated for a long time. And what I recommend is that we update the date and then put it on a rolling update. So it is simply not possible to basically be living in the country as a citizen would: working, contributing to your neighborhood, joining

organizations and churches, synagogues, mosques, etc., and not also become a citizen because those are citizenly things and that needs to be recognized. So those are the two most important things I think. Burning down our agencies and starting over because they're terrible agencies, and then giving people an opportunity to be citizens.

**Will Hitchcock** [00:22:03] Well, Elizabeth Cohen, your humane and insightful scholarship is going to be very helpful as a guide as we begin to think about a process of repair and of healing. Thank you so much for joining us on Democracy in Danger.

**Elizabeth Hinton** [00:22:19] Thank you.

**Will Hitchcock** [00:22:37] Siva, I think the thing that I take away from this conversation is that I'm starting to see a bigger picture here. You know, we've been talking to some of the smartest, most insightful scholars at work in the country today. And as I put Elizabeth Cohen's comments into context, I remember our discussion with Erica Lee and her talking about the long history of xenophobia and how elastic it is. You know, first it was Catholics and Germans and Irish, the Chinese, the Latin Americans, all of these communities that were always seen as the other and that were dangerous at some particular time in our history. And then you map onto that what we learned from Leah Wright Rigueur and Elizabeth Hinton about the ways in which that process of othering - of making communities dangerous - has long been applied, of course, to African-Americans. And then add in Carol Anderson's work on voter suppression and look at it starts to look like we have a 200 or maybe 400 year old problem of figuring out how to relate our mythic idea of ourselves as a nation of immigrants with the reality that this is a country that has been built around white supremacy and trying to defend that white supremacy.

**Will Hitchcock** [00:23:45] One of the things that Elizabeth Cohen added to my understanding of this whole range of issues and this whole story that we've been telling throughout this season on Democracy in Danger is the notion of arbitrariness. I definitely caught and got excited about it when she described the situation as arbitrary. And I'm thinking a lot more about it. So you can go back to the commentaries of William Blackstone and the sort of origins of the common law. And the idea is that law and policy should change in slow, deliberate, predictable ways, and not just because that's inherently conservative. You know, that's both a problem and an advantage. But because you want people to be able to make decisions about their lives without having all of the conditions change the next week or even the next year. And in the area of immigration and immigration enforcement, we have seen nothing but this whipping back and forth over the past 12 years. So, you know, for a migrant family to think that their condition is one thing and their duties are one thing and their risk level is one thing, and then to find Donald Trump as president and suddenly fear for the future and have to make totally different plans about how to live daily life and then perhaps some sort of return to the Obama ideal or the Obama rhetoric and the frankly, dangerous Obama policies of mass deportation. Right. That's a risk we have with the potential of President Joe Biden. So I think we're just going to have to take Elisabeth's argument seriously and say, you know, we need to look at the long story of how we treat human migrants, how we treat people who come here seeking safety, seeking opportunity. We are going to have to have a much deeper and more frank discussion about what kind of people we want to be and what values we want to represent to the world. And for God's sake, we have to stop brutalizing two year olds as we've been doing. I mean, that in itself is beyond the pale.

**Will Hitchcock** [00:26:15] Yeah, I would just add to that, you know, there is a long continuity. It seems as if this in some ways has been going on as long as the country has

been in existence. But I do think there's a point of rupture that Trump represents. And one way of putting your finger on that is what Adam Serwer called, you know, that the cruelty is the point in that famous 2018 Atlantic essay. There's a public performative aspect of imposing this racism on the bodies of brown people who are legally trying to seek entry into the country through the asylum process. And that is a dangerous turn. That is something that I think we have to shine a bright light on and decide if that's really what we want our country to look like to the rest of the world.

**Siva Vaidyanathan** [00:27:00] Well, absolutely. A Donald Trump rupture was both an expression of continuity, but also an amplification of brutality. Now, families that came to escape drug gangs in Central America, families that served the US military in Iraq and Afghanistan and have to escape because their lives are in danger for doing that right? All of these families suddenly don't know what's next for them. And that is terrifying. That is terrifying. And that's its own form of injustice.

**Will Hitchcock** [00:27:34] That's all we have time for today on Democracy in Danger, please, if you haven't already, go out and vote and then join us next week for an Election Wrap-Up episode with New York Times columnist Jamelle Bouie and Slate senior editor Dahlia Lithwick.

**Siva Vaidyanathan** [00:27:50] I'm so excited about that wrap up episode. I have to tell you, I think it's going to be the perfect culmination of our first season where we've tried to understand the various threats to democracy. And then we can talk to two of my favorite people, both Charlottesvilleians in a sense, who can really walk us through what we might hope for next for our country and for the world. But in the meantime, look to check in with us about this whole electoral process, about justice, about immigration, about any of the themes that you have heard on the first season of Democracy in Danger. Please get in touch with us.

**Will Hitchcock** [00:28:25] You can shoot us a tweet @uvamedialab or an email at uvamedialab.virginia.edu And make sure to visit our Web page, medialab.virginia.edu/democracyindanger.

**Siva Vaidyanathan** [00:28:40] It's a really good resource. On that page, you can find a list of readings that have informed Will and myself as we prepare. And of course, listen, subscribe to this show wherever you get your podcasts.

**Will Hitchcock** [00:28:55] Democracy in Danger is produced by Robert Armengol with help from Jennifer Ludovici. Our interns are Kara Peters and Denzel Mitchell.

**Siva Vaidyanathan** [00:29:03] Support for this show comes from the University of Virginia's Democracy Initiative and from the College of Arts and Sciences. The show is a project of UVA's Deliberative Media Lab, and we are distributed by the Virginia Audio Collective, the podcast Network of WTJU Radio in Charlottesville, I'm Siva Vaidyanathan.

**Will Hitchcock** [00:29:24] And I'm Will Hitchcock. Until next time.