

Human Mobility, Indigenous Ancestry, Native Sovereignty, and the American People: A Response to Alexandria Ocasio-Cortez

Violent and Hurtful First-Generation Politics: Fourth-Generation Warfare

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Introduction

In February 2019, Representative **Alexandria Ocasio-Cortez** made remarks concerning immigration, human mobility, Native land, and the ancestry of Latino people. She argued for respect for what she described as “the right of human mobility,” connecting that idea to the fact that the United States is situated on Native land and to the proposition that Latino people are descendants of Native peoples. She further argued that people should not be told that they cannot enter or remain in the country, or be criminalized simply because of their identity or immigration status.

Her statement raises several different questions that should be examined separately: whether human mobility constitutes a human right, whether there is a constitutional right to travel within the United States, whether Indigenous ancestry creates an immigration right, what Native sovereignty actually means, and whether describing the United States as Native land in this manner can inadvertently harm or erase the identity of actual Native nations and other Americans.

The central issue is that **history, ancestry, citizenship, tribal citizenship, immigration status, Indigenous identity, and constitutional rights are not interchangeable concepts.**

Source:

The Right to Human Mobility

There is a meaningful distinction between a broad human-rights concept of freedom of movement and a specific right recognized under United States constitutional law.

Freedom of movement is recognized in international human-rights law in various contexts. Within American constitutional law, however, the Supreme Court has specifically recognized a constitutional right to travel between states.

In *Saenz v. Roe*, 526 U.S. 489 (1999), the Supreme Court recognized the constitutional right to interstate travel. The Court identified protections associated with entering and leaving

another state, being treated as a welcome visitor, and receiving equal treatment after establishing residence in another state.

This means that **there is a real constitutional right of movement within the United States.**

That right should not, however, automatically be transformed into a constitutional right of unrestricted international immigration.

Interstate Travel Is Not the Same as International Immigration

The distinction between interstate travel and international immigration is fundamental.

A United States citizen generally has a constitutional right to travel from one state to another. A state cannot simply prohibit a citizen from moving from Arizona to Maine, Florida, California, or another state because of an arbitrary classification.

International immigration is different.

The federal government possesses extensive authority over immigration, including admission, immigration status, and removal of noncitizens. In *Arizona v. United States*, the Supreme Court emphasized the federal government's dominant role in immigration policy and held that states cannot establish immigration policies that improperly conflict with federal authority.

Therefore, Ocasio-Cortez's concept of “human mobility” is broader than the constitutional right to interstate travel currently recognized by the Supreme Court.

Political or philosophical assertion of a human right is not the same thing as an enforceable constitutional right under United States law.

Indigenous Land and Latino Ancestry

The original tribes and colonies unquestionably have a long history involving Indigenous peoples and the dispossession of Indigenous lands. Numerous Indigenous nations existed on the continent before the creation of the United States, and those nations continue to exist today.

It is also historically true that many Latino people possess Indigenous ancestry from North, Central, or South America.

But these facts do not automatically establish that all Latino people constitute an Indigenous nation, nor do they establish that Indigenous ancestry gives a person an unrestricted legal right to enter or remain in the United States.

There is an important distinction between:

Indigenous ancestry

Indigenous identity

membership in a particular tribal nation

United States citizenship

immigration status

nationality

and

constitutional rights.

These categories should not be collapsed into one another.

A person can possess Indigenous ancestry without being a citizen of a particular federally recognized tribal nation. Likewise, a person can be Latino without being Indigenous, Indigenous without being Latino, or both Latino and Indigenous.

The Importance of Actual Tribal Sovereignty

This distinction becomes particularly important when discussing land.

Federally recognized tribes are not simply racial categories. They are political communities with governments, citizens, territories, laws, histories, and relationships with the United States.

The Bureau of Indian Affairs describes tribal sovereignty as involving tribes' authority to make decisions concerning their own property and citizens.

Consequently, Native sovereignty should not be reduced to a generalized racial claim that anyone with some Indigenous ancestry possesses a collective political claim to the United States.

If land is being discussed as properly belonging to an Indigenous nation, the important questions are:

Which Native nation?

What historical or treaty relationship does that nation have to the land?

Who are that nation's citizens?

What does that nation itself seek?

What legal mechanism would restore or recognize the claimed interest?

Those questions place actual Native nations and their governments at the center of the discussion rather than treating Indigenous identity as a political category available for anyone to invoke.

The Land Back Question

The term “Land Back” also requires precision.

Land Back is an Indigenous-led **movement** with different meanings and objectives depending upon the organization and community involved. Some efforts involve returning lands to tribal ownership. Other efforts involve restoring access, stewardship, treaty rights, jurisdiction, or Indigenous control over particular resources and places.

There is therefore a substantial difference between an Indigenous nation seeking restoration of its own treaty rights or ancestral lands and a politician making a generalized assertion that an enormous racial or ethnic population possesses an inherent claim to American territory because some members of that population have Indigenous ancestry.

That distinction is essential.

A Native nation seeking restoration of its own land or sovereignty is asserting the interests of an identifiable political community.

A generalized racial claim about “Latinos” is something entirely different.

It would be inappropriate to assume that all Native nations have identical positions on land transfers, immigration, federal policy, or American citizenship. Native peoples are not one political organization, and they should not be spoken for collectively without their consent.

The Potential Harm to Actual Native People

There is a serious concern that broad statements equating Latino identity with Indigenous identity can unintentionally diminish the political identity of actual Native Americans.

If “Native” becomes a generalized racial designation applied to millions of people based upon ancestry, the distinction between **tribal citizenship and generalized ancestry** can become blurred.

That can be harmful because tribal nations have spent generations defending their political sovereignty and their right to determine their own citizenship and political relationships.

The history of Native land loss is not abstract. The Bureau of Indian Affairs documents the enormous loss of Indian land under the federal allotment system, including more than 90 million acres that passed out of Indian ownership and control between the beginning of the allotment policy and its termination in 1934.

For that reason, Native land questions deserve precision rather than political simplification.

If someone genuinely wants to support Native land rights, the appropriate question should be **which Native nation has the claim and what does that nation want?**

Native sovereignty should not be used merely as a rhetorical vehicle for resolving modern immigration policy.

Indigenous Does Not Mean One Race

There is another important dimension to this discussion.

The concept of being indigenous should not be transformed into a permanent racial hierarchy in which one population is considered inherently “native” while everyone else is permanently categorized as foreign.

Human populations have moved throughout history. People of European ancestry are indigenous to various European homelands. People of African ancestry are indigenous to numerous regions of Africa. Asian peoples are indigenous to numerous regions of Asia. Indigenous peoples of the Americas have their own distinct histories, nations, cultures, and relationships with their lands.

Recognizing these realities does not diminish American Indian identity.

In fact, it can provide a more consistent understanding of the word **indigenous**.

A person can be indigenous to one geographic homeland while having ancestors who migrated somewhere else generations or thousands of years earlier.

At the same time, in American legal and political terminology, **“Native American” has a specific meaning generally associated with the Indigenous peoples of the Americas**, particularly American Indian and Alaska Native peoples. That specific political and cultural meaning should not be erased.

Native American Identity Is Not the Opposite of White American Identity

The fact that someone is of European ancestry does not automatically mean that person is perpetually foreign to the United States.

Some American families have lived in the United States for generations. Their ancestors may have arrived centuries ago. Their families may have served in the American military, established communities, built businesses, farmed American land, participated in civic life, and raised generations of children who know no other homeland.

Those people can have a profound and legitimate connection to America even though they are not members of an Indigenous tribal nation.

This does not erase the existence of Native nations.

It means that **Native American identity and American national identity are not mutually exclusive concepts**.

A person can recognize Native sovereignty while also recognizing the legitimate generational belonging of other Americans.

The opposite approach creates an unnecessary division between “Native” people and everyone else, as though Americans whose ancestors arrived later can never develop an authentic connection to the country.

That is an overly simplistic understanding of ancestry, citizenship, and belonging.

It is also harmful and cruel.

The American identity is an American ethnic and cultural identity associated with the United States of America. The name “America” predates the creation of the United States, but it was incorporated as the country’s official name and came to represent the developing ethnic culture, people, and national identity of the United States. This understanding should not be taken for granted, nor should the cultural identity and historical peoplehood that developed alongside it.

The Same Principle Applies to Latino Americans

The same principle should be applied consistently to Latino Americans.

Many Latino Americans possess Indigenous ancestry. That ancestry should be respected.

But Latino identity itself is extraordinarily diverse. Latino populations include people with Indigenous, European, African, Asian, Middle Eastern, and mixed ancestry.

Therefore, saying that **all Latinos are descendants of Native peoples** is historically and genealogically too broad to serve as a universal proposition.

More importantly, Indigenous ancestry does not automatically make someone a citizen of a particular Native nation.

Tribal citizenship is a political relationship governed by the particular nation, its laws, and its citizenship requirements.

This distinction protects Native nations from having their political identity replaced by a generalized racial category.

The Danger of Turning Native History Into an Immigration Argument

The most serious concern with Ocasio-Cortez’s argument is therefore not that she recognizes Native history.

Recognizing Native history is important.

The concern is the potential consequence of connecting Native land, Latino ancestry, and immigration rights in a manner that implies that Latino identity itself creates a special claim to American territory.

That reasoning risks taking a complex history of Native nations and converting it into a generalized political argument about immigration.

It can also create an unintended contradiction.

If Native sovereignty is the principle being defended, then Native nations should be the ones whose sovereignty, citizenship, treaties, land claims, and wishes are respected.

Native peoples should not become merely a rhetorical foundation for another political movement.

Native peoples of America, or ethnic Americans, have long expressed opposition to colonialism and the dispossession of established communities. The experience of mass migration raises questions about modern colonialism, modern settlement, demographic change, genocide, war, and the relationship between newcomers and people with longstanding connections to America. Claiming to be indigenous to a place while participating in modern colonial practices, and then presenting mass migration as something universally welcomed by Native Americans or long-established American communities, is not a position that is actually held; it stands in stark opposition to the views of many American people.

Criminalization and Identity

There is nevertheless an important constitutional principle underlying the broader concern about identity.

The government generally cannot simply transform someone's race or ethnicity into criminal conduct.

Race, ethnicity, and national origin can be constitutionally significant classifications, and governmental action involving those classifications can be subject to constitutional scrutiny.

Immigration status, however, is legally different.

Federal immigration law can establish legal consequences based upon immigration status. That does not mean that a person's ethnicity itself becomes criminal.

The distinction is therefore between **criminalizing someone because of who they are** and **enforcing a law that applies based upon a legally defined immigration status**.

Those are not automatically the same thing. This is a claim, not a fact.

Could a Government Restriction on Movement Be Challenged?

Potentially, yes.

If a government entity actually prevented United States citizens from traveling between states, or imposed an unconstitutional penalty upon citizens for exercising their right to interstate

travel, there could be a substantial constitutional issue under the principles recognized in *Saenz v. Roe*.

Depending upon the circumstances, potential legal remedies could include declaratory relief, injunctive relief, a constitutional challenge to the law, or a civil-rights action where the statutory requirements are satisfied.

The precise claim would depend upon the actual law, government actor, affected person, citizenship or immigration status, and nature of the restriction.

The important point is that **the constitutional right to interstate travel is real and legally recognized**.

Could the Judge Personally Be Sued?

That question is separate from whether the underlying ruling can be challenged.

A judge generally cannot be personally sued for damages simply because the judge issued a judicial ruling that a party believes was unconstitutional. Judicial immunity generally protects judges from personal liability for acts performed in their judicial capacity.

Therefore, if the objection concerns a particular judicial ruling, the ordinary mechanisms would generally involve **appeal, rehearing, review, or another appropriate judicial proceeding**, rather than a personal damages lawsuit against the judge.

The proper question is therefore not simply:

“Can the judge be sued?”

It is:

“What legal mechanism exists to challenge the governmental action or judicial decision that allegedly violated the right?”

That answer depends upon the particular case.

A More Consistent Understanding of American Belonging

A mature discussion of American identity should be capable of recognizing several truths at the same time.

Native nations existed before the United States and possess continuing political and cultural identities.

Native Americans have experienced extraordinary historical dispossession and have legitimate interests in their lands, treaties, sovereignty, and self-determination.

Many Latino Americans possess Indigenous ancestry.

Many Americans of European ancestry also possess Indigenous ancestry and have families whose relationship with the United States extends across numerous generations.

African Americans, Asian Americans, Latino Americans, Native Americans, European Americans, and Americans of mixed ancestry all have histories that have contributed to the development of the United States.

None of these truths requires erasing another.

America should therefore be capable of recognizing its Indigenous nations without declaring everyone else permanently foreign.

It should be capable of acknowledging Native land dispossession without erasing generations of Americans whose families subsequently built their lives, families, communities, and national identity here.

It should also recognize the forced diaspora and land dispossession experienced by Americans of European ancestry. This includes historical displacement as well as modern forms of white flight, where demographic and economic pressures contribute to the movement of established communities from their homes and regions.

It should be capable of recognizing Indigenous ancestry among Latino Americans without treating Latino identity itself as synonymous with Native American political identity.

And it should be capable of discussing immigration without using Native peoples as a rhetorical instrument for an unrelated political objective.

Conclusion

Ocasio-Cortez's statement presents a broad theory involving human mobility, Native land, Indigenous ancestry, immigration, and protection from criminalization based upon identity or status. Some components of that argument have important foundations in human-rights principles and American constitutional law, particularly the recognized constitutional right to interstate travel.

However, the United States legal system distinguishes interstate travel from international immigration. Federal immigration authority remains extensive, and *Arizona v. United States* confirms the federal government's dominant role in determining immigration status and removal.

Likewise, Indigenous ancestry is not the same thing as tribal citizenship, and Latino identity is not synonymous with Native American political identity.

Most importantly, **Native sovereignty should belong to Native nations themselves**. Their lands, treaties, citizenship, governments, and political interests should not be reduced to a generalized racial concept or appropriated as justification for a separate immigration argument.

At the same time, recognizing Native sovereignty does not require declaring every other American permanently foreign. **Being Native American and being American are not inherently contradictory concepts, and being of European ancestry does not make a multigenerational American permanently foreign to the country in which that person's family has lived for generations. They are also native to America and make up the majority of the American population and culture.**

The better framework is one that rejects racial hierarchy altogether.

Ancestry is not citizenship. Ethnicity is not tribal sovereignty. Immigration status is not race. Native American identity is not synonymous with Latino identity. And generational native American belonging should not be treated as though it disappears simply because someone's distant ancestors came from somewhere else. And certainly not simply because a mobilizer declares it to be true.

A serious discussion of Native rights should therefore begin with respect for actual Native nations and their sovereignty, while a serious discussion of immigration should address immigration law directly. Combining the two by declaring broad racial ownership or entitlement risks harming precisely the American identities that deserve the greatest respect.