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IMMIGRATION AND CITIZENSHIP LAW**

**OUR IMMIGRATION FUTURE: LAW, POLITICS, AND
BELONGING**

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TABLE OF CONTENTS

I. INTRODUCTION.....	1227
II. THE LIMITS OF LAW IN THE COURTS.....	1235
III. THE PROMISE OF POLITICAL ACTION	1238

I. INTRODUCTION

It is an understatement to say that Donald Trump helped put immigration in the news. His first administration brought many dramatic changes to immigration law and enforcement.¹ In the early days of President Trump’s second term, the nation experienced an unprecedented “shock and awe” campaign with a flood of immigration

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1. See generally Rose Cuison-Villazor & Kevin R. Johnson, *The Trump Administration and the War on Immigration Diversity*, 54 Wake Forest L. Rev. 575 (2019) (analyzing critically the adverse impacts of President Trump’s first term immigration policies on people of color).

policy initiatives. Despite its rock-solid constitutional foundation,² birthright citizenship is under attack. Requiring migrants to wait in Mexico while claims to remain in the United States are decided, the Remain in Mexico policy returned.³ Expedited removal again has been expanded to allow for the removal of migrants arrested in the entire country, not just the border regions, without due process of law, including notice and the opportunity to be heard.⁴ The President deployed the military to assist in immigration enforcement and combat the so-called “invasion” of migrants.⁵ President Trump declared an immigration state of emergency in the U.S./Mexico border region.⁶ With the support of some Democrats, Congress passed the Laken Riley Act,⁷ with its unforgiving detention and removal measures. Military planes deported migrants to

2. See *Trump v. Barbara*, 2025 U.S. LEXIS 4487 (U.S. Dec. 5, 2025) (granting review of the constitutionality of President Trump’s birthright citizenship executive order); Samuel Breidbart & Maryjane Johnson, *Birthright Citizenship Under the U.S. Constitution*, BRENNAN CTR. FOR JUST. (Dec. 5, 2025) (analyzing birthright citizenship under the Fourteenth Amendment), <https://www.brennancenter.org/our-work/research-reports/birthright-citizenship-under-us-constitution> [<https://perma.cc/NJ6X-FDDX>]. For analysis of the historical foundations of the Fourteenth Amendment and modern attacks on birthright citizenship, see Sandra L. Rierson, *From Dred Scott to Anchor Babies: White Supremacy and the Contemporary Assault on Birthright Citizenship*, 38 GEO. IMMGR. L.J. 1 (2024). A summary of the history of birthright citizenship can be found in the Testimony of Professor Amanda Frost before the U.S. House of Representatives Committee on the Judiciary. “*Subject to the Jurisdiction Thereof: Birthright Citizenship and the Fourteenth Amendment: Hearing Before the Subcomm. on the Const. and Ltd. Gov’t of the H. Comm. On the Judiciary*,” 119th Cong. (2025) (prepared testimony of Professor Amanda Frost), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Frost%20Testimony.pdf> [<https://perma.cc/KLL9-AL7A>].

3. See Ximena Bustillo & Jasmine Garsd, *Trump Reinforces Use of His “Remain in Mexico” Policy*, NPR (Jan. 20, 2025, at 13:46 ET), <https://www.npr.org/2025/01/20/g-s1-43802/trump-immigration-border-remain-in-mexico-policy> [<https://perma.cc/3DNR-2NJJ>].

4. Notice Designated Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025); see Jeanne Kuang, *Trump’s Executive Orders on Immigration Are Creating Fear. What You Need to Know About Them*, NEWS FROM THE STATES (Feb. 10, 2025, at 8:30 ET), <https://www.newsfromthestates.com/article/trumps-executive-orders-immigration-are-creating-fear-what-you-need-know-about-them> [<https://perma.cc/3DNR-2NJJ>].

5. See Elizabeth Goitein & Joseph Nunn, *How Turning the Border into a Military Zone Evades Congress and Threatens Rights*, BRENNAN CTR. FOR JUST. (Apr. 28, 2025), <https://www.brennancenter.org/our-work/research-reports/how-turning-border-military-zone-evades-congress-and-threatens-rights> [<https://perma.cc/MEK6-BDK5>].

6. See WHITE HOUSE, *Declaring a National Emergency at the Southern Border of the United States* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-emergency-at-the-southern-border-of-the-united-states/> [<https://perma.cc/X2RZ-UZCY>].

7. 119 Pub. L. No. 1, 139 Stat. 3 (2025); see Ximena Bustillo & Deirdre Walsh, *Congress Clears GOP-led Immigration Enforcement Bill With Democrats On Board*, NPR (Jan. 22, 2025, at 18:39 ET), <https://www.npr.org/2025/01/22/nx-s1-5253926/congress-laken-riley-act> [<https://perma.cc/DU8J-ANA3>].

their homelands.⁸ With much fanfare, President Trump ordered migrants to be shipped to Guantánamo Bay, Cuba for detention.⁹ Immigration roving patrols with officers questioning and arresting people on the streets of cities across the country.¹⁰ I could go on, but you no doubt get the picture. The Trump administration is engaged in a deliberate effort to demonstrate a relentless commitment to immigration enforcement whatever the human costs. This is a radically different approach than that taken by President Biden and, in fact, any U.S. president.¹¹

As intended, the public literally can watch the nightly news for evidence of the Trump administration's commitment to immigration enforcement. Mass deportation, "criminal aliens," and invasion are buzzwords that dominate daily news reports of immigration. Like the general public, immigrant communities cannot avoid the constant drumbeat for increased immigrant arrests, detentions, and deportations. Fear and anxiety grip those communities as they fear being torn apart from families, communities, and friends.

The policy impacts of the Trump administration's immigration measures are far from clear but will be the subject of study and debate for decades. Legal scholars are scrambling to identify all that the various executive orders and policies do in terms of immigration. Given the sheer number, that task alone is a most formidable challenge.

8. See CENTER FOR HUMAN RIGHTS, UNIV. OF WASH., *JBLM-Based Planes Used in Military Deportation Flights and Flights to Guantánamo* (Feb. 19, 2025), <https://jsis.washington.edu/humanrights/2025/02/19/research-shows-jblm-based-planes-used-in-military-deportation-flights-and-flights-to-guantanamo/> [<https://perma.cc/ARV9-T35L>].

9. See *id.*

10. See Marlene Lenthang, *Here Are the Cities Where ICE Raids Are Taking Place*, NBC NEWS (Jan. 27, 2025), <https://www.nbcnews.com/news/us-news/are-cities-ice-raids-are-taking-place-rcna189390#> [<https://perma.cc/K9WG-ZG3B>]. After this keynote in April 2025, the Trump administration engaged in a series of controversial large-scale immigration enforcement operations employing roving patrols of immigration officers stopping, questioning, and arresting persons on the streets of Minneapolis, Los Angeles, Chicago, Charlotte, New Orleans, and Washington D.C. See Christina Carrega, *A City-by-City Breakdown of Trump's Immigration Raids and Troop Deployments*, CAPITAL B NEWS (Jan. 26, 2026), <https://capitalbnews.org/trump-national-guard-city-updates/> [<https://perma.cc/6LZZ-CFTU>].

11. See Cuison-Villazor & Johnson *supra* note 1 (citing authority); AM. IMM. COUNCIL, *New Report Examines Biden's Approach to Immigration Enforcement*, (May 18, 2021), <https://www.americanimmigrationcouncil.org/press-release/new-report-examines-bidens-approach-immigration-enforcement/> [<https://perma.cc/P5S6-SQFY>]; Megan Hogan, *Trump vs. Biden on Immigration: A Side-by-Side Policy Comparison*, PETERSON INST. FOR INT'L ECON. (June 24, 2024), <https://www.piie.com/blogs/realtime-economics/2024/trump-vs-biden-immigration-side-side-policy-comparison> [<https://perma.cc/8SFY-HUW9>].

We are at a calamitous time for immigration law and policy. This conference thus comes at an opportune historical moment. Thanks to Professor Rose Cuison-Villazor, the Rutgers University Law Review, and the Rutgers Center for Immigrant Justice, for inviting me to deliver this keynote. I am especially honored that, at this conference, we pay tribute to the careers of two influential Rutgers Law immigration scholars.

Professor Alan Hyde was talking about the importance of family reunification in the U.S. immigration laws long before Donald Trump challenged family immigration and in his first term adopted the heartless policy of family separation to deter migration.¹² Professor Hyde's article *The Law and Economics of Family Reunification*¹³ is path-breaking. Unlike many law review articles, it may be more relevant today than it was when published in 2014. He pointedly explained that

[T]he data clearly dispel a common trope of the political forces opposed to family unification: fear of so-called "chain migration." The fear is that each immigrant admitted can potentially sponsor dozens if not hundreds of siblings and children, who in turn sponsor their spouses, and the spouses' siblings and children, and so on. . . . [T]his bears no resemblance to the actual behavior of immigrants to the US, each of whom over a lifetime will sponsor, on average, 1.2 family members.¹⁴

President Trump has roundly criticized family-based immigration, the centerpiece of U.S. immigration laws, which he denigrates as "chain migration."¹⁵ Reducing family immigration is one of his many strategies for reducing *legal*, as well as undocumented, immigration. That point is worth highlighting. Although President Trump regularly rails at undocumented immigrants, he also seeks to restrict legal immigration. In his first term, he backed a bill that would have cut legal immigration by half.¹⁶ In the early days of his second term, he froze refugee

12. See Terry Gross, *How the Trump White House Misled the World about its Family Separation Policy*, NPR (Aug. 11, 2022), <https://www.npr.org/2022/08/11/1116917364/how-the-trump-white-house-misled-the-world-about-its-family-separation-policy> [https://perma.cc/MN5B-TXTQ].

13. Alan Hyde, *The Law and Economics of Family Reunification*, 28 GEO. IMMIGR. L.J. 355 (2014).

14. *Id.* at 367 (emphasis added).

15. WHITE HOUSE ARCHIVES, *It's Time to End Chain Migration* (Dec. 15, 2017), <https://trumpwhitehouse.archives.gov/articles/time-end-chain-migration/> [https://perma.cc/MP58-X8HU].

16. WHITE HOUSE ARCHIVES, *President Trump Backs RAISE Act* (Aug. 2, 2017), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-backs-raise-act/> [https://perma.cc/4QM3-TZV6].

admissions.¹⁷ As he did in his first term, President Trump early in his second term again lifted Temporary Protected Status and other relief from removal for migrants from Venezuela, El Salvador, Haiti, Nicaragua, and many other nations, almost all populated by people of color.¹⁸ Those affected lost their legal status to remain in the United States and are subject to removal.

Professor Linda Bosniak is one of the nation's deepest critical thinkers on the place and status of immigrants in society. Her book *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (Princeton University Press, 2006), is perhaps the most influential modern book about membership. Professor Bosniak's analysis is especially relevant today as the rights of immigrants to the United States are under attack. Immigrants are demonized and dehumanized, subject to harsh measures at virtually every turn, and law often has proven to be ineffective in checking overzealous immigration measures.¹⁹ Immigrant membership in U.S. society is contested at every turn.

Both of these Rutgers Law scholars have done critically important work that helps us understand the current immigration landscape. And their work will no doubt help us in the future. Much has been written—and more unquestionably will be written—about President Trump's approach to immigration and treatment of immigrants. Importantly, we must go beyond mere criticism of the current administration's array of unforgiving immigration policies and seek to develop workable solutions. Although those tasks are easier said than done, they are essential if we hope to bring the nation to a better place in terms of immigration.

As immigration enforcement measures come at the nation left and right, those interested in protecting immigrants scrambled to consider how to respond. As in President Trump's first term, many legal

17. See WHITE HOUSE, *Realigning the United States Refugee Admissions Program*, (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/realigning-the-united-states-refugee-admissions-program/> [<https://perma.cc/XAS9-JDZQ>].

18. DEP'T OF HOMELAND SEC., *Temporary Protected Status*, <https://www.uscis.gov/humanitarian/temporary-protected-status> [<https://perma.cc/9HDA-486R>]. See also *Noem v. Nat'l TPS All.*, 2025 U.S. LEXIS 2817 (U.S. Oct. 3, 2025) (staying an injunction that halted the end of Temporary Protected Status for Venezuelans); *Noem v. Doe*, 145 S. Ct. 1524 (2025) (staying an injunction barring the elimination of the Biden administration's humanitarian parole for Cuban, Haitian, Nicaraguan, and Venezuelan noncitizens).

19. See Steven W. Bender, *Getting There From Here: Reflecting on Compassionate Immigration Policy*, 32 WM & MARY J. RACE, GENDER, & SOC. JUST. 87, 93–95 (2025) (discussing the “flurry of measures intended both to deter new southern border crossings and to encourage existing undocumented immigrants to self-deport out of fear they might be pulled from their home, their workplace, the courthouse, or even their car, and shackled and sent to a ‘death’ prison in El Salvador . . .”).

challenges have been brought in the courts.²⁰ If the past is any indication, those challenges will have limited impacts on blunting the harsh edges of the Trump administration's immigration measures. Rather, political mobilization, activism, and social movements are needed to meaningfully change the direction of immigration law and its enforcement. A vigorous immigrant justice movement emerged in recent years. Organized mass protests in 2006 halted passage of a tough, if not cruel, immigration bill in Congress.²¹ Activists pushed the Obama administration to announce the Deferred Action for Childhood Arrivals (DACA) policy, which provided immigration relief and work authorization to young undocumented people.²² Activists have vigorously demanded the abolition of Immigration and Customs Enforcement and organized the Abolish ICE movement.²³

For political action to succeed, leaders must identify what kind of activism and reform proposals will effectively address the pressing immigration issues facing the United States. Those, of course, are difficult questions. Unfortunately, in the current moment, it is simply not possible to even have a rational discussion of the possibilities, much less reach any kind of consensus on reforms.

This conference asks us to consider the inclusion and exclusion of noncitizens and reform of the laws. Immigration reform has been discussed time and again for many years. The calls for reform vary dramatically. A path for legalization for undocumented immigrants—a necessary initial step advocated by immigrant rights activists to foster inclusion of undocumented noncitizens in U.S. society—is ardently opposed in some quarters as an unjust amnesty for lawbreakers. Increased enforcement is popular with the public but the most effective

20. Notable litigation successes in the first days of the second Trump administration include *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025) (requiring the return of a migrant lawfully in the United States who was wrongfully deported to a notoriously cruel, high security prison in El Salvador); *Trump v. J.G.G.*, 604 U. S. 670 (2025) (per curiam) (rejecting removal without due process of Venezuelan migrants alleged to be gang members under the Alien Enemies Act of 1798); *A.A.R.P v. Trump*, 605 U.S. 91 (2025) (per curiam) (to the same general effect).

21. See Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. 99 (2007); Xóchitl Bada et al., *Immigrant Rights Protests – Spring 2006*, C.R. & LAB. HIST. CONSORTIUM, UNIV. OF WASH. (2006), https://depts.washington.edu/moves//2006_immigrant_rights.shtml [<https://perma.cc/G8J4-N2QN>].

22. See Susan Bibler Coutin, “*Otro Mundo es Posible*”: *Tempering the Power of Immigration Law Through Activism, Advocacy, and Action*, 67 BUFF. L. REV. 653, 662–63 (2019); *Dep’t of Homeland Sec. v. Bd. of Regents of Univ. of Calif.*, 591 U.S. 1 (2020) (holding that the Trump administration’s attempted rescission of DACA was unlawful).

23. See Peter L. Markowitz, *Abolish ICE . . . And Then What?*, 129 YALE L.J. F. 130 (2019).

approaches that hold employers accountable for employing undocumented immigrants, have proven to be a political landmine.²⁴

Although this conference is devoted to inclusion, exclusion, and reform, the current administration is not worried in the least with inclusion of immigrants or minority citizens in U.S. society. Exclusion is the overriding goal. Immigration reform to the Trump administration means changes that promote exclusion and removals²⁵ and, in my estimation, would likely set us back generations in terms of inclusion. In that regard, the administration seeks to drastically reduce non-white immigration and dramatically transform the contemporary racial demographics of immigration to the United States. It is noteworthy that the Trump administration's crusade against diversity, equity, and inclusion (DEI) programs is directed at all minorities, not only immigrants.²⁶

Xenophobic outbursts in U.S. history have had long term impacts on the sense of belonging of the disfavored communities—and thus promoted their exclusion. The impacts of Chinese and Asian exclusion, mass deportation of persons of Mexican ancestry, targeting of Muslims and Arabs, and other discriminatory immigration measures will affect the inclusion of people in those communities long after the formal laws and policies ended.²⁷ These laws and policies effectively served to exclude these groups from the national community. In this moment, the fear and stigma of raids and removals based in large part on race will likely have impacts on immigrants and their descendants for generations to come. Affirmative steps will need to be taken to heal those enduring wounds.

Professor Ming Chen has done important scholarship on legal integration and full social integration of immigrants, particularly immigrants of color, in U.S. society.²⁸ I initially became interested in immigration law and policy because of the civil rights deprivations experienced by people of color from the developing world as they move through the legal spectrum of immigration statuses toward U.S. citizenship and beyond. Immigrants of color who become citizens do not

24. See, e.g., David Bacon & Bill Ong Hing, *The Rise and Fall of Employer Sanctions*, 38 FORDHAM URB. L.J. 77 (2010).

25. See Cuison-Villazor & Johnson, *supra* note 1, at 585–94.

26. See David Hood-Nuño et al., *Democrats' Electoral Sweep Tests Trump's Anti-DEI and Immigration Agenda*, REUTERS (Nov. 7, 2025, at 6:29 ET), <https://www.reuters.com/world/us/democrats-electoral-sweep-tests-trumps-anti-dei-immigration-agenda-2025-11-07/> [<https://perma.cc/AL3L-MCL9>].

27. See Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111, 1122–27, 1136–40 (1998).

28. See, e.g., MING HSU CHEN, *PURSuing CITIZENSHIP IN THE ENFORCEMENT ERA* (2020).

experience the same sense of inclusion in U.S. society as other immigrants. And the threat of the denaturalization campaign pursued by the Trump administration can undermine naturalized citizens' perceptions of belonging in U.S. society.²⁹ This is the case even though successful denaturalizations likely will be relatively few in number. Similar to denaturalization, many Trump administration policies are designed to send clear and direct messages of exclusion as opposed to inclusion even if they fail as a policy matter.³⁰ For example, enhanced immigration enforcement is unlikely to remove all of the estimated 14 million undocumented immigrants living in the United States.³¹ However, the well-publicized operations and vigorous pursuit of a "mass deportation" campaign has clear impacts on immigrant well-being and perceptions of belonging.

Anti-immigrant episodes sending messages of exclusion have occurred regularly throughout U.S. history. As mentioned, those messages last much longer than the laws and policies do. Chinese and Asian exclusion in the 1800s and 1900s,³² as well as Japanese internment during World War II,³³ continue to have impacts on the sense of belonging of Asian American citizens in the United States.³⁴ The Mexican

29. See Irina D. Manta & Cassandra Burke Robertson, *Inalienable Citizenship*, 99 N.C. L. REV. 1425, 1438–44 (2021) (examining how the uncertainty of U.S. citizenship creates a chilling effect that undermines civic engagement and a weakened social commitment that is necessary for a healthy democracy); Faiza Patel & Margy O'Herron, *Stripping Naturalized Americans of Citizenship Faces High Legal Hurdles*, BRENNAN CTR. FOR JUST. (Oct. 24, 2025) (analyzing the law of denaturalization), <https://www.brennancenter.org/our-work/research-reports/stripping-naturalized-americans-citizenship-faces-high-legal-hurdles> [<https://perma.cc/Q6WG-35NE>].

30. See Christian Hetrick, *Could Trump Actually Enforce "Mass Deportations" of Migrants?*, SOL PRICE SCH. OF PUB. POL'Y, UNIV. OF S. CAL. (Oct. 17, 2024), <https://priceschool.usc.edu/news/trump-mass-deportation-immigrants-deport-migrants-border-wall/> [<https://perma.cc/NK3X-ZTGS>].

31. See Kevin R. Johnson, *Deportation Tactics from 4 US Presidents Have Done Little to Reduce the Undocumented Immigrant Population*, THE CONVERSATION (July 25, 2025), <https://theconversation.com/deportation-tactics-from-4-us-presidents-have-done-little-to-reduce-the-undocumented-immigrant-population-261640> [<https://perma.cc/9TJU-3XY2>].

32. See Robert S. Chang, *Whitewashing Precedent: From the Chinese Exclusion Case to Korematsu to the Muslim Travel Ban Cases*, 68 CASE W. RES. L. REV. 1183, 1186–87, 1192–1209 (2018). See generally Kevin R. Johnson, *Systemic Racism in the U.S. Immigration Laws*, 97 IND. L.J. 1456 (2022) (analyzing systemic racism in the U.S. immigration laws).

33. See *Korematsu v. United States*, 323 U.S. 214 (1944), *overruled*, *Trump v. Hawaii*, 585 U.S. 667, 710 (2018) (overruling *Korematsu* but refusing to disturb President Trump's Muslim ban on the admission of noncitizens from a group of predominantly Muslim nations). See generally ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATION: LAW AND JAPANESE AMERICAN INTERNMENT* (2001) (reviewing Japanese internment during World War II and its enduring legacy).

34. See Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, *supra* note 27, at 1122–27, 1130–31.

repatriation during the Great Depression,³⁵ the mass Mexican deportation campaign known officially as “Operation Wetback” in 1954,³⁶ and concerted contemporary efforts to deport Mexican migrants—along with U.S. citizens of Mexican ancestry, all have lasting social impacts.

Importantly, the comprehensive U.S. immigration law, the Immigration and Nationality Act of 1952 (INA),³⁷ a product of the Cold War, was designed to exclude communists from U.S. shores and to facilitate their deportation from the country. Later amendments changed the directions at various times toward inclusion and exclusion. Nonetheless, the overall goal of the INA is to keep most people out of the country, with relatively few allowed in. Put simply, the immigration law makes exclusion the norm and inclusion the exception.

With that background in mind, how might we pursue changes that will promote inclusion of members of the national community in the 21st century? I have advocated that the United States should rethink its borders and immigration laws and to focus more on letting people in (inclusion) than keeping people out (exclusion).³⁸ Such an approach faces an uphill political battle.

II. THE LIMITS OF LAW IN THE COURTS

As seen in efforts to end racial subordination in the United States, steps to remove racism from U.S. immigration law have encountered many challenges. Even though Congress in 1965 declared racial discrimination to no longer be part of U.S. immigration law,³⁹ the racial

35. For histories of the Mexican repatriation, see FRANCISCO E. BALDERRAMA & RAYMOND RODRIGUEZ, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930S* (2006); CAMILLE GUERIN-GONZALES, *MEXICAN WORKERS AND THE AMERICAN DREAM: IMMIGRATION, REPATRIATION, AND CALIFORNIA FARM LABOR, 1900–39* (1994); ABRAHAM HOFFMAN, *UNWANTED MEXICAN AMERICANS IN THE GREAT DEPRESSION: REPATRIATION PRESSURES, 1929–39* (1974). Oral histories of families banished from the United States show the intergenerational injuries of the Mexican repatriation. See MARLA A. RAMIREZ, *BANISHED CITIZENS: A HISTORY OF THE MEXICAN AMERICAN WOMEN WHO ENDURED REPATRIATION* (2025).

36. See JUAN RAMON GARCIA, *OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954* (1980).

37. Pub. L. No. 82-414, 66 Stat. 163 (1952) (as amended).

38. See KEVIN R. JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* (2007).

39. See Johnson, *Systemic Racism in the U.S. Immigration Laws*, *supra* note 32, at 1471 (acknowledging the discriminatory impacts of the Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965), and its legacy). *But 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 (1996) (offering a more positive look at the 1965 Act and its resulting increase in immigration from Asia). See generally THE

impacts—as well as racial rhetoric of President Trump—reveal that race continues to be a driving force in modern immigration law and policy. The rhetoric and policies drive fear into communities of color across the country.⁴⁰ That fear and anxiety is not simply felt just by immigrants but by U.S. citizens of certain racial backgrounds. Even if they are U.S. citizens who cannot be lawfully removed from the country, Asian Americans and Latina/os, for example, fear being swept up in the hateful, and often indiscriminate, immigration enforcement net.

The limited utility of the law to bring about far-reaching change does not mean that lawyers should not help immigrants in need. Far from it. We should strive to protect through the law the vulnerable in our communities. As the Trump administration's immigration policies took hold, community members sought to provide support to immigrant communities. Community members continue to organize know your rights sessions for immigrants.⁴¹ Churches regularly express support for immigrants.⁴²

There is another important limit on the ability of law and the courts to bring about change in the world of immigration. The courts have been restrained in applying the U.S. Constitution to scrutinize the immigration laws and their enforcement. Indeed, the Supreme Court has, in effect, immunized from constitutional review the immigration laws passed by Congress.⁴³ Historical examples span the era of Chinese

IMMIGRATION AND NATIONALITY ACT OF 1965: LEGISLATING A NEW AMERICA (Gabriel J. Chin & Rose Cuison-Villazor eds., 2015) (offering various perspectives on the Immigration Act of 1965).

40. See generally Stella Burch Elias, *Law as a Tool of Terror*, 107 IOWA L. REV. 1 (2021) (analyzing the use of immigration law and enforcement as a tool to terrorize immigrants).

41. See, e.g., Patty Acomb, *Legislative Update – ICE Response and Know Your Rights Training*, MINN. HOUSE OF REPRESENTATIVES (Jan. 15, 2026), <https://www.house.mn.gov/members/Profile/News/15513/41120> [https://perma.cc/5CA2-MKR2].

42. See, e.g., Salvatore R. Matano, Bishop of Rochester, *Letter to the Faithful Regarding Immigration*, ROMAN CATH. DIOCESE OF ROCHESTER (Jan 30, 2025), <https://www.dor.org/bishop-matanos-letter-to-the-faithful-regarding-immigration/> [https://perma.cc/8X89-JAY8].

43. See *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 609 (1889) (“The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one.”); Johnson, *Systemic Racism in the U.S. Immigration Laws*, *supra* note 32, at 1458 (“In upholding the Chinese Exclusion Act, the Supreme Court in 1889 took the extraordinary step of declaring that Congress possessed ‘plenary power’ over immigration that courts could not disturb; by doing so, the Court in effect immunized the immigration laws from ordinary constitutional review.”). See generally Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of*

exclusion and the Supreme Court's upholding of the discriminatory Chinese Exclusion Act to the Court's refusal to disturb President Trump's Muslim ban.⁴⁴ The courts allowed extraordinary policies directed at immigrants during the COVID-19 pandemic, such as the Title 42 order sealing the U.S. borders.⁴⁵

Limited judicial oversight has meant that Congress and the President often have the final word on immigration law and policy. There is little dialogue between Congress, the Executive Branch, and the courts on immigration matters.⁴⁶ Harsh policies are allowed to remain in place, and the courts often do nothing to halt them. Only blatantly unlawful actions, such as President Trump's effort to restrict birthright citizenship by executive order or removal of noncitizens without due process, appear to be more certain of being limited by the courts.

All this said, my point is that legal protections for immigrants are unlikely to come from the courts. Rather, improvements for immigrants are much more likely to come from Congress and, to a lesser extent, state and local governments.⁴⁷ Of course, achieving immigration reform is a formidable and much-needed task. Congress has debated overhauling the immigration laws for decades only to enact relatively minor reforms that seem to address the specific problems of the day. An example is the punitive Laken Riley Act passed in 2025 in response to the tragic killing by a migrant.⁴⁸ While expanding detention and deportation and allowing states to sue to challenge the President's immigration priorities, the Act does nothing to regularize the immigration status of undocumented immigrants, improve the enforcement of the prohibition on the employment of undocumented immigrants, or expand legal migration so that the law better meets the nation's labor needs. These all are problems that have existed for decades and have resulted in pressures for

Immigration, 46 UCLA L. REV. 1 (1998) (analyzing the modern vitality of *The Chinese Exclusion Case* and the constitutional immunity of the immigration laws).

44. See *Trump v. Hawaii*, 585 U.S. 667 (2018) (upholding President Trump's Muslim ban).

45. See Samantha Artiga, *President Elect Trump May Again Invoke Title 42 to Restrict Immigration*, KFF (Jan. 13, 2025), <https://www.kff.org/quick-take/president-elect-trump-may-again-invoke-title-42-to-restrict-immigration/> [<https://perma.cc/QN86-2T5W>].

46. See Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545, 607–13 (1990) (analyzing the significance of lack of a dialogue between courts and Congress about the immigration laws).

47. Some states have passed laws said to provide sanctuary to immigrants. See generally Rose Cuison Villazor, *What is Sanctuary?*, 61 SMU L. REV. 133 (2008) (discussing so-called sanctuary laws by seeking to limit state cooperation with federal immigration enforcement).

48. 119 Pub. L. No. 1, 139 Stat. 3 (2025).

undocumented immigration that create the almost annual immigration “crisis.” Absent congressional action, one can expect annual crises of this type to continue.

III. THE PROMISE OF POLITICAL ACTION

Politics, not law, are the most likely way to bring about meaningful and lasting change. Over the next few years, we may well see a heated political battle over the future of immigration to the United States.

Political engagement of immigrants and their supporters has grown significantly in recent years. Unlike the era of Chinese exclusion and Mexican repatriation, organized groups today protest overzealous immigration enforcement policies and demand change. An immigrant justice movement is the hope of the future. Unlike the past, young undocumented immigrants are politically active and zealously advocate for meaningful reform.⁴⁹ College campuses have seen many student immigrant activists.⁵⁰

At least for now, many in the nation support better management of the border through increased immigration enforcement. President Trump has promised to deliver increased enforcement and has pursued many cruel and blunt policies that have monumental human costs. The general public fears “criminal aliens,”⁵¹ immigrant benefit abusers, and floods of non-white immigrants changing the American way of life. Similar concerns have been expressed many times in U.S. history and prevailed in the political process.

We need fresh thinking about immigration and immigrants, political engagement that aims to persuade, not divide, and the articulation of innovative and creative solutions. These issues are not simple ones, but incredibly complex. Moreover, immigration is not simply a

49. See Amanda Peterson Beadle, *Politics is Personal For Young Undocumented Immigrants*, AM. IMM. COUNCIL (May 20, 2014), <https://www.americanimmigrationcouncil.org/blog/politics-is-personal-for-young-undocumented-immigrants/> [<https://perma.cc/MAT4-2ZLL>].

50. See *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120 (D. Mass. 2025) (detailing the participation of noncitizen students and faculty in pro-Palestinian campus protests).

51. Luke Barr, “Criminal” Migrants are “Not Welcome,” According to New Multimillion-Dollar Ad from DHS, ABC NEWS (Feb. 17, 2025), <https://abcnews.com/US/criminal-migrants-new-multimillion-dollar-ad-dhs/story?id=118911856> [<https://perma.cc/6FE7-ATM3>]. The data shows that the vast majority of the noncitizens arrested were not criminals. See Camilo Montoya-Galvez, *Less Than 14% of Those Arrested by ICE in Trump’s 1st Year Back in Office had Violent Criminal Records, Document Shows*, CBS NEWS (Feb. 9, 2026), <https://www.cbsnews.com/news/ice-arrests-violent-criminal-records-trump-first-year/> [<https://perma.cc/YY28-C9CV>].

Democratic/Republican or Red State/Blue State issue. There are major divisions within the political parties about what immigration policies make sense.

The Black Lives Matter movement has played a significant role in challenging the excesses of racialized policing in U.S. social life. Along similar lines, immigrant rights activists sought justice for immigrants and went so far as to call for the abolition of ICE. Immigrant rights activists today are on the defensive in seeking to blunt the Trump administration's harsh measures. The future will require more to bring justice for all, including immigrants.

CONCLUSION

Where does this discussion leave us? Political forces are pushing for change in immigration law and enforcement. This has been the case for many years. At times, the pendulum has swung in the direction of a path to legalization for undocumented immigrants. At other times, the clarion call has been to deport them all. Thus, we see competing strands on the extremes of the immigration spectrum, one vying for inclusion and the other advocating exclusion. These contrasting strands of immigration thought have competed for hearts and minds in U.S. politics for generations. Although the politics have shifted and varied over time, the need for change remains a constant, and the battle between inclusion and exclusion will no doubt continue.

Courts might curb some of the excesses of harsh immigration enforcement measures. But the courts are not likely to be the institution sparking major change that offers meaningful protections for immigrants. Rather, political change achieved through activism and engaged political movements are necessary to achieve lasting and meaningful results. Politics ultimately holds the promise of improvements for immigrants.⁵²

Immigration law and its enforcement are in a time of contestation and turmoil. The second President Trump administration has brought dramatic changes with lightning speed, harsh rhetoric, and much publicity. Indeed, through increasingly aggressive actions, President Trump has attracted more attention to immigration than any modern president. That said, the prospects for positive change are far from certain. A consensus has not formed about the kind of change that is desired or how it can be achieved. The tasks before us are formidable as

52. See Kevin R. Johnson, *Bringing Racial Justice to Immigration Law*, 116 NW. U.L. REV. ONLINE 1 (2021).

1240 *RUTGERS UNIVERSITY LAW REVIEW* [Vol. 77:1227

we collectively seek to envision the future of immigration to the United States.