

A ROLE FOR ARTIFICIAL INTELLIGENCE IN A POLITICIZED IMMIGRATION WORLD

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I. INTRODUCTION

Artificial intelligence (AI) technologies frequently bring to mind science fiction novels and dystopian futures in which humans are at the mercy of technological overlords. While such scenarios might still be a long time away, science fiction can nonetheless be instructive in thinking about the role of artificial intelligence in society. Science fiction stories reveal a classic tension between the promise and frailties of technological prowess and of human decision-making. Powerful technological tools, when placed in the wrong hands, can have catastrophic consequences, as indicated by the humans responsible for “The Matrix,”¹ or by every James Bond villain’s intent to use modern technology for personal ends. At the same time, technology meant to protect us, from at best our own limitations and at worst our basest impulses, can aggrandize power and

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1. THE MATRIX, Amazon Prime (Warner Bros. 1999).

flip the script, depriving humans of autonomy while leaving machines in charge, as in *Hal from 2001: A Space Odyssey*.² In short, science fiction forces us to ask which option presents more danger: using technology like AI to make decisions, or leaving it up to humans to make decisions.

This tension is unmistakably evident in the world of immigration law and policy. For more than one hundred years, and especially now, immigration policy has highlighted the weakness of human decision-making. Immigration debates prompt racial and ethnic stereotyping, reactionary proposals, and deliberate refusals to examine evidence or prioritize fact-based decisions. Current policymakers emphasize mass deportations, widespread detention, family separation, and restricted rights,³ regardless of the facts and circumstances of individual cases. The Trump administration is seeking to dramatically reduce the federal workforce and further reduce the ability of a heavily backlogged agency to process and adjudicate immigration applications.⁴

One could argue that the introduction of advanced technological tools merely exacerbates these problems. Immigration authorities have employed technology with an eye toward invading rights and assuming wrongdoing by noncitizens. Among other examples, the Department of Homeland Security (DHS) uses AI technology to enhance the surveillance and invade the privacy of noncitizens and others in border areas.⁵ United States Citizenship and Immigration Services (USCIS) uses AI tools to increase the number of asylum applications it labels as frivolous, which not only results in the denial of asylum but also in the loss of other rights for that asylum seeker.⁶ And where technological tools such as risk assessment algorithms actually work to a noncitizen's benefit, say by recommending release from detention, immigration officials have overridden the recommendation or altered the algorithm so that it will increasingly recommend detention in lieu of release.⁷

2. 2001: A SPACE ODYSSEY, Amazon Prime (Metro-Goldwyn-Mayer 1968).

3. See Orozco *infra* note 60 and accompanying text; Kight & Gibson *infra* note 103 and accompanying text.

4. See *infra* notes 101–103 and accompanying text.

5. See *infra* notes 40–55 and accompanying text.

6. See *infra* notes 39, 129 and accompanying text.

7. See Kate Evans & Robert Koulish, *Manipulating Risk: Immigration Detention Through Automation*, 24 LEWIS & CLARK L. REV. 789, 794–96 (2020); Hannah Bloch-Wehba, *A Lawsuit Against ICE Reveals the Danger of Government-by-Algorithm*, WASH. POST (Mar. 5, 2020, at 15:20 UTC), <https://archive.is/20200401105252/https://www.washingtonpost.com/outlook/2020/03/05/lawsuit-against-ice-reveals-danger-government-by-algorithm/> [https://perma.cc/KPS4-PLX7] (discussing how ICE has been accused of manipulating its risk assessment tool); Complaint at ¶7, *Velesaca v. Decker*, 458 F. Supp. 3d 224 (S.D.N.Y. 2020) (No. 1:20-cv-01803) (alleging

Accordingly, many lawyers, scholars and organizations have sounded the alarm over the federal government's use of AI tools with respect to immigration. Among the concerns expressed are that AI tools will perpetuate bias in immigration enforcement, that it will intrude on personal privacy including in ways that violate constitutional rights, that it will make errors resulting in the wrongful denial of claims, that officials will use it to further their agenda of finding ways to deny relief to noncitizens, and that it is non-transparent and inaccessible to the general public.⁸ These critiques are well-founded. Yet it is equally clear that the AI train has left the yard, and that the government is going to press forward in its development and use of AI tools. Focusing on whether to use AI at all is impractical. Rather, the emphasis should be on how to best harness the benefits AI can bring while also managing its risks.⁹

Perhaps surprisingly, immigration may be one space where AI offers hope for progress, even while carrying significant risks. This essay suggests that immigration policymaking displays how human decision-making is so flawed and fraught that enabling greater use of AI technology—with appropriate guardrails and guiding principles—may actually help protect us from ourselves. That assertion is in no way intended to downplay the risks of AI technology, particularly when put in the hands of political actors who face a range of motivations, including nefarious ones. Rather, AI tools, which lack motivation and intent, can provide a buffer against human cruelty, implicit bias, and capacity limitations.

This essay offers three principles to guide AI with respect to immigration. First, AI technology can offer independence and protection from political interference and influence over day-to-day agency decisions. By taking first-level decisions out of human hands, it can prevent political meddling or at least make it more difficult. Second, the full impact of the current administration's effort to reduce the federal workforce and to weaken agency power¹⁰ remains to be seen, but the effect is likely to be felt for years to come. The reality is that there may be fewer government workers in the foreseeable future, that institutional knowledge may disappear, and that immigration benefit backlogs are likely to grow.¹¹ AI may end up being not just beneficial, but

that ICE's detention tool was manipulated and recommends detention of nearly 100% of noncitizens).

8. See *infra* notes 22–34 and accompanying text.

9. See generally Margot Kaminski, *Regulating the Risks of AI*, 103 B.U. L. REV. 1347 (2023) (suggesting that policymakers are not seeking to ban AI, but are accepting that it will be part of the future and are seeking to manage its risks while obtaining its benefits).

10. See *infra* notes 101–103 and accompanying text.

11. See *id.*

indispensable, for adjudicating visa and benefit claims in a timely fashion, and for ensuring that eligible noncitizens receive the relief to which they are entitled. Finally, while the Biden administration stated that AI should be done in a rights-respecting way,¹² this essay suggests instead that AI use should be guided by the principle of affirming human dignity. In that way, it can address a noncitizen's affirmative claim for benefits, i.e. where the noncitizen is seeking government help. But it can also protect against the government's non-consensual intrusion of noncitizen rights, such as through expanded surveillance.

II. HOPES AND CONCERNS REGARDING THE USE OF AI IN IMMIGRATION

AI has frequently been described as a transformative technology, and a once-in-a-generation opportunity.¹³ It has the potential to greatly improve productivity, drive economic growth in everything from computer coding to customer service to medical research and beyond, serve community needs, and help the public in a variety of ways.¹⁴ Although there are concerns about abuse, there is an emerging consensus that AI is here to stay.¹⁵

The federal government has shown great interest in developing and using AI tools in a variety of government operations, and that interest will only increase as time goes on. The Biden administration declared that it "must seize the opportunities AI presents while managing its risks."¹⁶ The Trump administration wants to reduce regulation around

12. See *infra* note 52 and accompanying text.

13. See, e.g., DEP'T OF HOMELAND SEC., ARTIFICIAL INTELLIGENCE: ROADMAP 4 (2024) https://www.dhs.gov/sites/default/files/2024-03/24_0315_ocio_roadmap_artificialintelligence-ciov3-signed-508.pdf [<https://perma.cc/Z39L-X7EW>] ("Artificial Intelligence may well be the most consequential technology of our time. It has the power to innovate beyond measure, and to reshape how we secure our nation and protect our communities."); Ezra Klein, *The Government Knows A.G.I. Is Coming*, N.Y. TIMES (Mar. 4, 2025), <https://www.nytimes.com/2025/03/04/opinion/ezra-klein-podcast-ben-buchanan.html> [<https://perma.cc/2YYG-H8ME>] (conversation between Ezra Klein and Ben Buchanan, a Biden Administration AI advisor).

14. See, e.g., Exec. Order No. 14,110, 88 Fed. Reg. 75191 (Nov. 1, 2023).

15. See, e.g., Kaminski, *supra* note 9.

16. Memorandum from Shalanda D. Young, Dir. Off. Mgmt. & Budget, to Heads of Exec. Dep'ts & Agencies, Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence (Mar. 28, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/03/M-24-10-Advancing-Governance-Innovation-and-Risk-Management-for-Agency-Use-of-Artificial-Intelligence.pdf> [<https://perma.cc/X244-WHEG>].

AI and other technological innovations,¹⁷ and many prominent AI leaders such as Sam Altman and Marc Andreessen donated significant amounts to the Trump campaign.¹⁸ Congress also has passed several statutes supporting enhanced AI technologies and ways of using them to support government activities.¹⁹

More specifically, the Department of Homeland Security (DHS) has long invested in AI technologies in carrying out immigration functions. As early as 2009, DHS began investigating whether predictive algorithms could aid in immigration detention decision-making.²⁰ With the emergence of generative AI technologies, DHS has tried to use new technologies to carry out immigration functions.²¹

As DHS has accelerated its use of AI, concerns about the possible misuse of AI have accelerated in corresponding fashion. First, AI tools

17. For example, President Trump issued an executive order calling for removal of regulatory barriers to AI development and federal preemption of state laws that regulate various aspects of AI. *See* Exec. Order No. 14,365, 90 Fed. Reg. 58499 (Dec. 11, 2025).

18. *See* Cade Metz, *OpenAI's Sam Altman to Donate \$1 Million to Trump's Inaugural Fund*, N.Y. TIMES (Dec. 13, 2024), <https://www.nytimes.com/2024/12/13/technology/openai-sam-altman-trump-inauguration.html> [<https://perma.cc/XF83-PHHQ>] (quoting Open AI chief Sam Altman as saying “President Trump will lead our country into the age of A.I., and I am eager to support his efforts to ensure America stays ahead”).

19. *See, e.g.*, AI in Government Act of 2020, Pub. L. No. 116-260, div. U, title I, § 104, 134 Stat. 2288 (2020) (codified at 40 U.S.C. § 11301); Advancing American AI Act, Pub. L. No. 117-263, div. G, title LXXII, subtitle B, §§ 7224(a), 7224(d)(1)(B), 7225, 136 Stat. 3669–72 (codified at 40 U.S.C. § 11301). Congress also has previously introduced additional bills to promote AI accountability, such as the Algorithmic Accountability Act, which would require federal agencies to conduct impact assessments and other evaluations of different AI tools. Algorithmic Accountability Act, S. 2892, 118th Cong. (2023).

20. DORA SCHRIRO, IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS 20 (2009) (recommending that ICE implement risk assessment to make detention and release determinations). *See also* JUST FUTURES LAW & MIJENTE, AUTOMATING DEPORTATION: THE ARTIFICIAL INTELLIGENCE BEHIND THE DEPARTMENT OF HOMELAND SECURITY'S IMMIGRATION ENFORCEMENT REGIME 4 (2024) [hereinafter AUTOMATING DEPORTATION], <https://mijente.net/wp-content/uploads/2024/06/Automating-Deportation.pdf> [<https://perma.cc/SY9D-YNX2>] (“The Department of Homeland Security (DHS) has been using AI-like technologies for over a decade.”).

21. Memorandum from Alejandro N. Mayorkas, Sec’y of Homeland Sec., to DHS Agency & Off. Leaders, Acquisition and Use of Artificial Intelligence and Machine Learning Technologies by DHS Components (Aug. 8, 2023), https://www.dhs.gov/sites/default/files/2023-09/23_0913_mgmt_139-06-acquistion-use-ai-technologies-dhs-components.pdf [<https://perma.cc/6DBW-8TQQ>] (stating DHS’s goal of mastering AI technology and using it effectively to support the agency’s mission). DHS also expressed its support for “the responsible integration of artificial intelligence (AI) into the Department’s activities” during the first Trump administration. *See* U.S. DEP’T OF HOMELAND SEC., ARTIFICIAL INTELLIGENCE STRATEGY, at tit. (2020), https://www.dhs.gov/sites/default/files/publications/dhs_ai_strategy.pdf [<https://perma.cc/E8E2-FRJJ>].

may recreate or exacerbate human biases.²² If the information in the language models on which a tool is trained is a product of bias, then the AI tool will incorporate those biases.²³ In short, training AI on biased data will lead to a biased tool. For example, facial recognition technology is more likely to falsely label Black men than White men.²⁴

Second, AI may simply make errors, whether or not the product of bias. Even aside from the well-publicized cases where AI tools simply make up information, they can be prone to inaccurate decision-making on the basis of the information they analyze.²⁵ Moreover, it may be particularly prone to error in analyzing immigration applications, where documents may not be written in one's native language or the writer may use language in a way that doesn't track the most common uses in large language models.²⁶ In one notorious case, a British AI tool ordered the revocation of visas and immediate deportation of 7,000 students it accused of cheating on an English language exam, a conclusion that turned out to be wholly wrong.²⁷

Third, AI tools, particularly proprietary ones controlled by private companies, are not transparent. The public is ordinarily not privy to how an AI tool makes its decision, what evidence it relied upon, or how it justified its inferences.²⁸ AI is thus criticized for being a "black box."²⁹

22. See AUTOMATING DEPORTATION, *supra* note 20, at 14–15, 43 nn. 31–32 (citing studies showing "that AI has in many instances worsened discrimination").

23. See *id.*

24. See Joy Boulamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 PROCS. MACH. LEARNING RSCH. 1, 12 (2018); see also Maurizio Guerrero, *ICE Is Swiftly Expanding Its Sprawling Surveillance Apparatus*, PRISM (Jan. 30, 2025), <https://prismreports.org/2025/01/30/ice-surveillance-immigrants/> [<https://perma.cc/W2UY-VKT2>] (describing how facial recognition technology caused three false arrests in Detroit in 2024).

25. Aaron Sankin & Surya Mattu, *Predictive Policing Software Terrible at Predicting Crimes*, THE MARKUP (Oct. 2, 2023, at 10:00 UTC), <https://themarkup.org/prediction-bias/2023/10/02/predictive-policing-software-terrible-at-predicting-crimes> [<https://perma.cc/L7VK-K66T>].

26. *AI-Detectors Biased Against Non-Native English Writers*, STAN. UNIV. HUM.-CENTERED A.I. (May 15, 2023), <https://hai.stanford.edu/news/ai-detectors-biased-against-non-native-english-writers> [<https://perma.cc/8ZAM-5YZ3>].

27. See Alexandra B. Harrington, *Automation Nation: What Happens When Algorithms Decide Entry for Immigrants and Refugees*, N.Y. STATE BAR ASS'N (Feb. 17, 2023), <https://nysba.org/automation-nation-what-happens-when-algorithms-decide-entry-for-immigrants-and-refugees/> [<https://perma.cc/R4MQ-69U9>] (describing the British case).

28. Saurabh Bagchi & The Conversation US, *Why We Need to See Inside AI's Black Box*, SCI. AM. (May 26, 2023), <https://www.scientificamerican.com/article/why-we-need-to-see-inside-ais-black-box/> [<https://perma.cc/G3QZ-9875>].

29. See *id.*

Of course, each of these criticisms applies to human decision-makers as well. Judges and other adjudicators have explicit and implicit biases that impact their decisions.³⁰ Researchers have documented that judicial decisions, particularly in immigration, are arbitrary and depend more on the identity of the judge than the facts of the case.³¹ Adjudication decisions, particularly in high-volume agencies like the immigration court system and USCIS, often lack reasoning or a written opinion, and may be as opaque or more opaque than a machine-based decision.³² Nevertheless, if AI is able to make many more decisions, and at a faster rate, than its human counterparts, AI may be problematic even if human decision-making is also flawed.

Another concern centers around the selective way the government uses AI. Although immigration policy involves both allowing people into the United States (benefits) and keeping people out of the United States (enforcement), DHS has concentrated its AI use on enforcement to the detriment of using it to help noncitizens obtain benefits.³³ The government's approach, even before the 2024 election, seems to assume that noncitizens were bringing meritless claims, were here without legal basis and should be removed, or were national security threats. DHS has described AI as a device to fight "against new and existing threats."³⁴ It has employed risk assessment tools to determine whether a noncitizen is likely to abscond from appearing at future court hearings and whether to detain a noncitizen as a security threat or a flight risk.³⁵ DHS has dramatically expanded surveillance at the Southern border with the help of AI technology. The agency employs a range of tools from surveillance

30. See Sandra G. Mayson, *Bias In, Bias Out*, 128 YALE L.J. 2218, 2278 (2018) ("Human beings are prone to cognitive biases that distort rational judgment. In the context of risk assessment, judges may overweight factors that have particular salience to them (including the current charged offense), fall victim to framing effects, and give undue significance to their own past experience."); Emily Ryo & Reed Humphrey, *The Importance of Race, Gender and Religion in Naturalization Adjudication in the United States*, 119 PNAS 1, 1 (2022) (studying naturalization applications and finding that "all else being equal, non-White applicants and Hispanic applicants are less likely to be approved than non-Hispanic White applicants").

31. See generally JAYA RAMJI-NOGALES ET AL., REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM (2009) (demonstrating that judges within the same office can reach divergent asylum decisions on similar cases, underscoring the arbitrary influence of adjudicator identity).

32. See, e.g., Richard Frankel, *Risk Assessment and Immigration Court*, 81 WASH. & LEE L. REV. 1, 34–35 (2023) (describing how immigration judges rarely issue written bond decisions, and that the decisions they do issue are short and contain little reasoning).

33. See AUTOMATING DEPORTATION, *supra* note 20, at 16 (explaining that "DHS's major goal for AI is to expand detention and deportation").

34. Memorandum from Alejandro N. Mayorkas, *supra* note 21, at 1.

35. AUTOMATING DEPORTATION, *supra* note 20, at 28–31.

towers with powerful cameras and data-gathering devices to robotic dogs that can patrol in difficult or dangerous terrain, all with the goal of creating a “digital border wall” on top of the physical barriers present at the border.³⁶ It also has focused on analyzing large data sets to look for “criminal patterns” or national security risks that support deportation of allegedly dangerous individuals.³⁷

Even when addressing immigration benefits, such as applications for asylum or for naturalization, DHS uses AI to find grounds to deny applications rather than grant them. For example, DHS’s AI Asylum Text Analytics tool scans asylum applications to find common language patterns that might indicate fraud or otherwise impugn the applicant’s credibility.³⁸ More generally, DHS is using AI tools to screen a broad range of immigration applications to identify potential “fraud, public safety, or national security concerns.”³⁹

Rolling out AI technology to surveil and cast suspicion on noncitizens has only expanded during the Trump administration, and with fewer safeguards to protect civil liberties. With respect to immigration, the Department of Government Efficiency (DOGE) is working to create a vast government database that will enable the government to watch and monitor noncitizens on an unprecedented scale.⁴⁰ Trump’s “border czar” Tom Homan is an avid supporter of using AI to help increase and facilitate deportation.⁴¹ The Trump administration’s expansion of AI surveillance is likely to reach “unprecedented levels.”⁴² ICE has

36. *Id.* at 37–39; Eric Spitznagel, *From Robots to AI: The Tech Behind Trump’s Plan to Secure the Southern Border*, N.Y. POST (Jan. 18, 2025, at 07:00 ET), <https://nypost.com/2025/01/18/us-news/robots-to-ai-the-technology-behind-trumps-plan-to-seal-the-southern-border/> [<https://perma.cc/UP2K-WRSG>] (describing use of robotic dogs).

37. AUTOMATING DEPORTATION, *supra* note 20, at 34–36.

38. U.S. DEPT OF HOMELAND SEC., PRIVACY IMPACT ASSESSMENT FOR THE PANGAEA: PANGAEA TEXT 4 (2021), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis085-pangea-january2021_0.pdf [<https://perma.cc/G5Z9-WY7F>]; *accord* Complaint at 1, *Refugees Int’l v. U.S. Citizenship & Immigr. Servs.* No. 24-cv-3559 (D.D.C. Dec. 20, 2024); AUTOMATING DEPORTATION, *supra* note 20, at 23, 47 n.65.

39. *See* AUTOMATING DEPORTATION, *supra* note 20, at 23, 47 n.66.

40. Makena Kelly & Vittoria Elliott, *Doge Is Building a Master Database to Surveil and Track Immigrants*, WIRED (Apr. 18, 2025, at 17:48 ET), <https://www.wired.com/story/doge-collecting-immigrant-data-surveil-track/> [<https://perma.cc/Z3DQ-ZCLP>].

41. Monument Advoc., *Artificial Intelligence and Immigration in a Second Trump Administration*, LINKEDIN (Jan. 15, 2025), <https://www.linkedin.com/pulse/artificial-intelligence-immigration-second-trump-administration-fgm5e/> [<https://perma.cc/PTC6-H7LT>].

42. Guerrero, *supra* note 24 (“Within days of Trump’s presidential win, ICE sought out contractors to enlarge, transform, and modernize the agency’s ability to track, monitor, and surveil noncitizens”). *See also* Spitznagel, *supra* note 36 (“Artificial Intelligence-based strategies . . . will likely form a large part of both securing our Southern Border and Trump’s deportation strategy.”).

contracted with the technology firm Palantir to build surveillance tools for targeting noncitizens for deportation and plans to expand that policy out to other technology companies as well.⁴³ It has contracted with Clearview AI to access facial recognition technology in efforts to track noncitizens.⁴⁴ ICE is also taking steps toward using “predictive analytics and modeling” to gather data on noncitizens that it can use to support immigration raids and to carry out the administration’s mass deportation agenda.⁴⁵ The State Department announced that it will use AI to search noncitizen students’ social media accounts and then revoke student visas if it finds anything the government considers to be a pro-Hamas statement.⁴⁶ Private AI companies are promoting AI-powered drones, robotic dogs patrolling dangerous terrain that are equipped with sniper rifles to fire on people, and large scale data analysis to identify noncitizens perceived to be security threats.⁴⁷ The Trump administration also appears poised to accelerate efforts to use AI to predict who is likely to overstay a visa, commit a crime, or fail to appear at immigration proceedings.⁴⁸ Additionally, the U.S. House of Representatives has passed legislation, now pending in the Senate, that would require DHS to develop a plan to integrate new technologies, including ones that “incorporate artificial intelligence,” to enhance border security operations.⁴⁹ Finally, aside from direct technological development, the Trump administration also is expanding the amount of data it collects from noncitizens. It is now requiring large numbers of noncitizens to

43. See Dell Cameron, *ICE Wants to Build Out a 24/7 Social Media Surveillance Team*, WIRED (Oct. 3, 2025, at 09:21 ET), <https://www.wired.com/story/ice-social-media-surveillance-24-7-contract/> [<https://perma.cc/5JD5-GA4P>]; *Palantir Granted \$30 Million to Build “ImmigrationOS” Surveillance Platform for ICE*, IMMIGR. POL’Y TRACKING PROJECT, <https://immpolicytracking.org/policies/reported-palantir-awarded-30-million-to-build-immigrationos-surveillance-platform-for-ice/> [<https://perma.cc/TE53-8QYM>] (last visited Feb. 23, 2026).

44. See *ICE Contracts with Clearview AI for Facial-Recognition Technology*, IMMIGR. POL’Y TRACKING PROJECT, <https://immpolicytracking.org/policies/reported-ice-contracts-with-clearview-ai-for-facial-recognition-technology/#/tab-policy-documents> [<https://perma.cc/WJ8C-8NKW>] (last visited Feb. 23, 2026).

45. Guerrero, *supra* note 24.

46. Marc Caputo, *Scoop: State Dept. to Use AI to Revoke Visas of Foreign Students Who Appear “Pro-Hamas”*, AXIOS (Mar. 6, 2025), https://www.axios.com/2025/03/06/state-department-ai-revoke-foreign-student-visas-hamas?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiospm&stream=top [<https://perma.cc/VDK8-G4DW>].

47. Spitznagel, *supra* note 36.

48. Paige Gross, *Federal Immigration Officials Have Extensive Technology at Their Disposal*, IDAHO CAP. SUN (Feb. 3, 2025, at 03:55 ET), <https://idahocapitalsun.com/2025/02/03/federal-immigration-officials-have-extensive-technology-at-their-disposal/> [<https://perma.cc/S7J7-4R4E>].

49. Emerging Innovative Border Technologies Act, H.R. 993, 119th Cong. § 2(a) (2025).

register with the government and submit biometric information.⁵⁰ This in turn makes it easier to track and follow noncitizens.

Alarming, this expansion is occurring without regard for the risks of error, bias, or the infringement of civil liberties on those who are the subjects of AI tools. Although the Biden administration indicated that the government should use AI in a transparent fashion and should be sensitive to protecting civil rights,⁵¹ it does not appear that the administration lived up to its aspirations.⁵² In any event, the new administration has revoked earlier executive orders on safe AI development, and its latest pronouncements on AI show no interest in regulating AI to prevent misuse or to promote safety.⁵³ Vice President JD Vance recently told European leaders that AI safety concerns and regulation could stifle the technology, and signaled that the United States would prioritize AI advancements over AI risk mitigation.⁵⁴ President Trump's executive order on AI calls for rescinding or overriding regulatory guardrails that impact AI development.⁵⁵

To be sure, AI's risks, particularly where civil liberties are at stake, are serious and wide-ranging. Yet, as explained below, human decision-making also carries risks in an increasingly charged and politicized immigration world.

III. HUMAN DECISION-MAKING IN AN INCREASINGLY POLARIZED IMMIGRATION WORLD

Just as AI tools may make faulty, biased, or improper decisions, humans' decision-making is similarly flawed. Moreover, those shortcomings become particularly pronounced when issues are highly charged, politicized, and subject to the political whims of those in power. Humans have a pretty poor track record when it comes to immigration. Whether through statutes, rules or individual decisions, government officials have long used immigration law as thinly veiled cover for racial

50. *Alien Registration Requirement*, U.S. CITIZENSHIP & IMMIGR. SERVS. (May 6, 2025), <https://www.uscis.gov/alienregistration> [<https://perma.cc/2W8Q-QK9G>].

51. See Exec. Order No. 14,110, 88 Fed. Reg. 75191, 75193 (Oct. 30, 2023).

52. See Complaint at 1–2, *Refugees Int'l v. U.S. Citizenship & Immigr. Servs.* No. 24-cv-3559 (D.D.C. Dec. 20, 2024) (describing how the Biden administration used AI to find ways to reject asylum applications); *AUTOMATING DEPORTATION*, *supra* note 20, at 18–32 (asserting that the Biden administration failed to live up to its own AI commitments).

53. See Exec. Order No. 14,179, 90 Fed. Reg. 8741 (Jan. 23, 2025).

54. Thomas Adamson & Aamer Madhani, *JD Vance Rails Against 'Excessive' AI Regulation in Rebuke to Paris at European Summit*, L.A. TIMES (Feb. 11, 2025, at 09:12 PT), <https://www.latimes.com/politics/story/2025-02-11/jd-vance-rails-against-excessive-ai-regulation-in-rebuke-to-europe-at-paris-summit> [<https://perma.cc/K8UQ-M4U7>].

55. Exec. Order No. 14,365, 90 Fed. Reg. 58499 (Dec. 11, 2025).

exclusion and stereotyping. Prior immigration laws created national quotas to maximize white, Western European immigration and minimize immigration from the rest of the world.⁵⁶ State Department officials in the 1930s and 1940s actively sought to deny entry to Jewish people fleeing the terror of Nazi Germany and Nazi-occupied territories.⁵⁷ Today, false, inflammatory, and dangerous anti-immigration narratives pervade political debates. Noncitizens are falsely labeled as job stealers, criminals, and destroyers of American culture.⁵⁸ This rhetoric in turn influences political and policy decisions around immigration, resulting in mass detention policies, expanded policing and detention of noncitizens, elimination of refugee and other support programs, and other restrictive policies.

Moreover, existing law places enormous power over immigration in the hands of executive branch political appointees. Thus, rather than promoting a stable, neutral and even-handed system, political actors often manipulate immigration policy to advance their own policy goals. These policies can then ricochet back and forth as political administrations change. For example, unlike the job protections afforded to Article III judges or even to elected state judges, Immigration Judges do not receive civil service protections and can be hired or fired at will.⁵⁹ Some administrations use this power to fire judges who do not rule in alignment with the administration's policy objectives and to replace them with others who will.⁶⁰ Most notably, the Trump administration quickly

56. See JIA LYNN YANG, *ONE MIGHTY AND IRRESISTIBLE TIDE: THE EPIC STRUGGLE OVER AMERICAN IMMIGRATION, 1924–1965*, at 69 (2020) (describing how the 1924 law prioritized immigration from Western Europe and severely restricted immigration from Eastern Europe and other areas of the world).

57. See *id.* at 68–69, 73–76 (“State Department officials who controlled the issuance of visas during [the 1930s and into World War II] routinely thwarted efforts to admit more Jews”).

58. See, e.g., Aviva Chomsky, *Immigration Myths Feed Divisions Among Workers*, LAB. NOTES (Feb. 26, 2025), <https://www.labornotes.org/2025/02/immigration-myths-feed-divisions-among-workers> [<https://perma.cc/M8NB-DZ3M>].

59. *Duenas v. Garland*, 78 F.4th 1069, 1074 (9th Cir. 2023) (“Amador Duenas has identified no such limit on the Attorney General’s ability to dismiss Immigration Judges or BIA members. Thus, the removal process for these officials complies with Article II, as they ‘remain dependent’ on the Attorney General for their positions—and by extension, on the President.”).

60. See, e.g., Emily Ngo, *Immigration Courts Thrown into Chaos as Trump Administration Purges Dozens of Judges*, POLITICO (Dec. 6, 2025, at 11:59 ET), <https://www.politico.com/news/2025/12/06/trump-immigration-court-judge-purges-00679376> [<https://perma.cc/5NCQ-HHUZ>] (reporting that in 2025, the Trump has fired nearly 100 of the nation’s 700 immigration judges, with a focus on “judges with higher than average rates of granting migrants asylum, judges with dual citizenship and those with a history of providing legal defense to immigrants”); Adriel Orozco, *While Federal Firings Focus on Immigration Processing, Funding for Immigration Enforcement Expands*, AM.

fired nine of the twenty-eight judges on the Board of Immigration Appeals (BIA).⁶¹ All nine were appointed by former President Biden.⁶²

The politicized nature of immigration policymaking also creates instability, unpredictability, and extreme measures rather than centrist ones. Policies instituted by one administration are often overturned by the next. For example, in 2014, the BIA held that certain victims of domestic and intimate partner violence may qualify for asylum.⁶³ In 2018, then-Attorney General Jeff Sessions overruled that decision and held that such individuals did not qualify for asylum.⁶⁴ Then, in 2021, new Attorney General Merrick Garland overruled that decision and restored the BIA's prior ruling from 2014.⁶⁵ And most recently, Attorney General Pam Bondi vacated Garland's ruling and reinstated the rulings from the first Trump term.⁶⁶ Other examples of policy reversals, from Temporary Protected Status designations,⁶⁷ to whether ICE can make arrests in sensitive locations around schools, hospitals and churches,⁶⁸ to whether the Trump administration will exercise prosecutorial discretion with respect to deportable individuals who do not present any security threat,⁶⁹ abound.

Policy decisions are made in the heat of the political moment. In an attempt to cement a legacy that will extend beyond one's political term, administrations may try to impose extreme measures—ones that

IMMIGR. COUNCIL (Mar. 6, 2025), <https://immigrationimpact.com/2025/03/06/federal-frings-immigration-processing-enforcement-expands/> [<https://perma.cc/HZ34-AY49>].

61. See Orozco, *supra* note 60.

62. *Id.* This is not the first time a presidential administration has fired BIA judges en masse in order to promote a political agenda. In 2002, Attorney General John Ashcroft reduced the number of BIA judges from twenty-three to eleven, and many of the removed judges were those who voted in favor of noncitizens at higher rates than other judges on the Board. See Peter J. Levinson, *The Facade of Quasi-Judicial Independence in Immigration Appellate Adjudications*, 9 BENDER'S IMMIGR. BULL. 1154, 1155–56 (2004).

63. See A-R-C-G-, 26 I. & N. Dec. 388, 395 (B.I.A. 2014).

64. A-B-, 28 I. & N. Dec. 307, 308–09 (Att'y Gen. 2021).

65. See *id.* (reversing Trump-era decisions and restoring precedent from 2014). The Attorney General possesses authority to review and overturn any decision by the BIA. 8 C.F.R. § 1003.1(h).

66. Matter of S-S-F-M-, 29 I. & N. Dec. 207, 208 (Att'y Gen. 2025).

67. Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti, 90 Fed. Reg. 10511, 10515 (Feb. 24, 2025).

68. *Protected Areas and Courthouse Arrests*, U.S. IMMIGR. & CUSTOMS ENF'T (Feb. 20, 2026), <https://www.ice.gov/about-ice/ero/protected-areas> [<https://perma.cc/35D6-CZB3>] (noting that it had rescinded Biden-era guidance on arrests in sensitive locations).

69. Memorandum from Sirce E. Owen, Acting Dir., Exec. Off. Immigr. Rev. to All of EOIR, Cancellation of Director's Memorandum 23-04 (Feb. 3, 2025), <https://assets.aila.org/files/a4834792-07f2-4b98-bae9-81184eb46ec3/25020401.pdf> [<https://perma.cc/6MSL-KMZ4>] (rescinding prior memorandum regarding prosecutorial discretion).

respond to popular rhetoric, rather than ones striving for balance—that are based on perceptions rather than facts. Executive branch decisions, whether good, bad or ugly, are subject to rapid change, exposing the populace to the whiplash and instability of an immigration ping-pong match.

IV. THE POTENTIAL BENEFITS OF AI IN A POLITICIZED IMMIGRATION WORLD

Immigration policy may turn out to be an important test case for human versus machine decision-making. Immigration highlights both the dangers and potential of AI. In the hands of responsible and balanced decision-makers, AI can transform people's lives and help them secure the benefits to which they are entitled. In the hands of others, it can be unleashed as a tool of terror, control, and racial bias. Given that high-ranking members of the current administration have expressed a desire to inflict trauma on federal workers and federally funded institutions,⁷⁰ as well as to create a culture of fear in immigrant communities,⁷¹ this is far from a theoretical concern. At the same time, if we place trust in AI and give it sufficient independence from human oversight, perhaps it can provide a check against the politicized and hyperbolized behavior that has become the hallmark of immigration policymaking.

Some believe that AI tools are too dangerous to use in the absence of enduring and strong safeguards. Based on the government's history of using AI in secretive, opaque ways and with an emphasis on surveillance

70. See *New Videos Surface of Trump's Former OMB Director Calling for "Traumatizing" EPA Staff*, ENV'T PROT. NETWORK (Oct. 24, 2024), https://www.environmentalprotectionnetwork.org/20241030_vought-video-leak/ [<https://perma.cc/CUJ9-RPRV>] (quoting the now-current OMB Director Russell Vought as saying that a second Trump administration wants "the bureaucrats to be traumatically affected" and to be "put [] in trauma"). Similarly, Christopher Rufo, a conservative activist who is influential in Trump administration circles, wants to terrorize American universities. See Ross Douthat, *The Anti-D.E.I. Crusader Who Wants to Dismantle the Department of Education*, N.Y. TIMES (Mar. 7, 2025), <https://www.nytimes.com/2025/03/07/opinion/chris-rufo-trump-anti-dei-education.html> [<https://perma.cc/U4X3-PUXM>] (quoting Rufo as wanting universities to feel "existential terror" during the second Trump administration).

71. See Jeanne Kuang, *Trump's Executive Orders on Immigration Are Creating Fear. What You Need to Know About Them*, CALMATTERS (Feb. 10, 2025), <https://calmatters.org/california-divide/2025/02/trump-executive-orders-immigration> [<https://perma.cc/L8FY-BF4D>]; Hamed Aleaziz & Zolan Kanno-Youngs, *Frustration Grows Inside White House over Pace of Deportations*, N.Y. TIMES (Mar. 5, 2025), <https://www.nytimes.com/2025/03/05/us/politics/trump-immigration-deportations-arrests.html> [<https://perma.cc/T668-YNZY>] (describing culture of fear within the government over immigration policy).

rather than support, a group of “over 140 tech, immigrant rights, labor, civil rights, government accountability, human rights, religious and privacy organizations” called on DHS to halt its use of AI technologies until greater safeguards could be put in place.⁷²

Such sentiments are laudable and deserve serious consideration. At the same time, the call to halt AI, for the time being, is unrealistic. The AI train is out of the station and has built up too much momentum to stop. Congress continues to call for AI development and to provide funding for DHS to use AI in the sphere of immigration.⁷³ Those who study AI talk about managing its risks rather than banning even short term applications.⁷⁴ In such an environment, it is more productive to consider *how* to use AI with respect to immigration rather than *whether* to use AI, while still staying mindful of the risks AI presents.

AI presents several opportunities for improving immigration decision-making that are at least worth considering. First, AI tools, if backed by independent review and enmeshed in notice-and-comment regulatory structures, and if safeguarded by robust due process protections, could offer a level of insulation from politicized decision-making, and could focus more on the facts of individual claims rather than scoring political points.⁷⁵ Second, in a world of growing backlogs and what is now appearing to be a future of fewer federal workers, AI may become indispensable, rather than just advisable, for addressing the rising pile of immigration applications that is multimillion strong.⁷⁶ Third, perhaps the least likely to gain traction, centering immigration AI on a principle of human dignity (ideally solidified in regulation if not legislation) could help to curb abuses while allowing AI to serve members of the public rather than to harm them.⁷⁷

72. *Cancel DHS Use of AI Technologies for Immigration Enforcement and Adjudication by December 1, 2024*, ADVOC. FOR HUM. RTS. (Sep. 4, 2024), <https://www.theadvocatesforhumanrights.org/News/A/Index?id=513> [<https://perma.cc/TDP7-MJQX>]. Several members of Congress also have called for immigration agencies to suspend their AI-related activities. Letter from Fifteen Members of Congress to Alejandro N. Mayorkas, Sec’y of U.S. Dep’t of Homeland Sec., and Shalanda Young, Dir. of Off. of Mgmt. & Budget (Dec. 19, 2024), https://chuygarcia.house.gov/sites/evo-subsites/chuygarcia.house.gov/files/evo-media-document/2024FINALArtificialIntelligence_OMB_DHS.pdf [<https://perma.cc/8BCV-EYSC>].

73. Cecilia Kang, *The Department of Homeland Security Is Embracing A.I.*, N.Y. TIMES (Mar. 18, 2024), <https://www.nytimes.com/2024/03/18/business/homeland-security-artificial-intelligence.html> [<https://perma.cc/ZY6E-EENR>] (discussing, inter alia, a \$5 million budget allocation for DHS to institute AI projects).

74. See, e.g., Kaminski, *supra* note 9.

75. See *infra* Section III.A.

76. See *infra* Section III.B.

77. See *infra* Section III.C.

A. AI Can Insulate Decision-Making from Political Pressures

By taking humans out of the equation—or at least making them a less central part of the equation—AI tools can limit the ability of humans to interfere with evidence-based immigration decisions in service of their own partisan political agendas. If certain immigration decisions are governed by a machine applying an algorithm or using a large language model, those decisions should come out the same way regardless of which the political administration is in power. Because AI tools do not have an agenda, they can make decisions simply by applying their model to the individual case (though recognizing the risk for bias, which is addressed below). Hopefully, this will foster greater objectivity and consistency while avoiding political hyperbole, misinformation, and partisanship. In essence, the AI tool could operate almost like an independent agency that has some built-in protections against political interference.

There are various ways to give independence to AI tools without ceding human involvement entirely. While AI tools must be periodically reassessed and evaluated, this could be handled by an independent review committee.⁷⁸ In fact, this is exactly the directive Congress gave the Attorney General to reevaluate the risk of recidivism in criminal sentencing.⁷⁹ Some state and local jurisdictions are experimenting with similar requirements in other contexts, such as employment discrimination.⁸⁰

78. See Frankel, *supra* note 32, at 56 (suggesting independent review of risk assessment tools in immigration bond hearings).

79. See The First Step Act of 2018 § 107(e)(4), U.S.P.L. 115-391, 132 Stat. 5194, 5216 (2018) (stating that the “Independent Review Committee shall assist the Attorney General” in, among other things, “reviewing and validating the risk and needs assessment system” used under the Act), <https://www.congress.gov/115/plaws/publ391/PLAW-115publ391.pdf> [<https://perma.cc/PFR2-Q2AL>]; see also *The First Step Act of 2018: Risk and Needs Assessment System – Update*, DEPT. OF JUSTICE 2 (Jan. 2020), <https://www.ojp.gov/First-Step-Act-of-2018-Risk-and-Needs-Assessment-System-UPDATE> [<https://perma.cc/3MRS-W8KW>] (“The IRC’s [Independent Review Committee] input has been critical to the Department [of Justice]’s development and review related to PATTERN.”).

80. See, e.g., N.Y. COMP. CODES R. & REGS. tit. 6, § 5-301 (2021) (requiring employers to submit any “AEDT” (Automated Employment Decision Tool) they want to use to annual bias audits). A proposed bill in the District of Columbia would have required private entities that use AI in any of certain selected areas to audit their tools for bias and report it to the D.C. Attorney General’s office. See Council B. 25-0114, 25th Council, § 7(b)(1) (D.C. 2023). “In 2024, nearly 700 AI-related bills were introduced in state legislatures nationwide, focusing on issues like algorithmic bias, privacy, and protecting against AI-generated misinformation.” Mike Cummings, *Yale’s Digital Ethics Center Helps U.S. States Navigate the Promise and Perils of AI*, YALENEWS (May 7, 2025), <https://news.yale.edu/2025/05/07/yales-digital-ethics-center-helps-us-states-navigate-promise-and-perils-ai> [<https://perma.cc/CW9F-ZUW7>].

Relatedly, incorporating an AI tool's model or algorithm into Administrative Procedure Act's notice-and-comment rulemaking process, such that the tool could not be manipulated by human actors except via notice-and-comment, would also make it harder for political actors to interfere with the process.⁸¹ Ironically, most of the Biden administration's guidance on developing AI in a safe and measured way that protects civil liberties was easily revoked by the Trump administration precisely because it was issued as guidance and not enshrined as a notice-and-comment rule.⁸²

In addition, constitutional due process protections may also help promote fairness and independence in AI decision-making. Unlike AI use by employers or other private entities, government AI use for immigration purposes is state action that is subject to constitutional constraints. Under the Supreme Court's decision in *Mathews v. Eldridge*,⁸³ individuals may be entitled to a certain level of process, including individualized hearings, when AI is used in a way that affects their rights. The test requires balancing the strength of the individual's interest and the risk of an erroneous decision by the government agency against the administrative burden on the government to provide greater process.⁸⁴ There are several examples where plaintiffs have raised constitutional challenges to AI-assisted decisions by government agencies where they alleged a high risk of error and minimal procedural protections.⁸⁵ If these due process safeguards are also applied to government use of AI in immigration decision-making, that might also help protect against AI misuse. Of course, this depends on the federal government's willingness to abide by constitutional norms. So far, the current administration has advanced very aggressive interpretations of

81. See 5 U.S.C. § 553 (defining the notice-and-comment regulatory process).

82. See Exec. Order 14,179, 90 Fed Reg. 8741 (Jan. 23, 2025) (revoking Biden-era Executive Orders relating to AI).

83. See generally *Mathews v. Eldridge*, 424 U.S. 319 (1976) (establishing a three-part balancing test to determine the specific dictates of due process required before the government may deprive an individual of a property interest).

84. *Id.* at 335.

85. For example, cases involved government use of AI to reduce or eliminate disability benefits or unemployment benefits without providing individualized hearings. See generally *C.S. v. Saiki*, No. 6:17-cv-00564 (D. Or. Apr. 19, 2017) (disability benefits); *Bauserman v. Unemployment Ins. Agency*, 950 N.W.2d 446 (2019), *aff'd*, 983 N.W.2d 855 (2022) (unemployment benefits). For a more detailed discussion of due process challenges to AI-based decisions, see Anat Lior, *Fighting AI Harms Together: What Class Actions Can (and Can't) Do* 34–36 (April 2026) (unpublished manuscript) (on file with author).

what it may do in the process of enforcing immigration law, including interpretations that commentators have called unconstitutional.⁸⁶

Ultimately, the degree of control one is willing to give to an AI tool depends on how much one trusts it. Although it might seem concerning to reduce human interference with AI tools, that can sometimes be a good thing. ICE's experiment with using AI risk assessment tools to recommend detention or release is a good example.⁸⁷ Studies showed that the AI tool recommended release from detention more often than ICE officers.⁸⁸ Although ICE officers had the authority to override the tool's recommendations, in practice they only did so when the tool recommended release, but not when it recommended detention.⁸⁹ Even worse, ICE ultimately redesigned the tool so that it would recommend detention more often.⁹⁰ According to one lawsuit, after ICE modified the tool, the rate of recommended releases plummeted from forty-seven percent to three percent.⁹¹ In other words, it may be the case that the algorithm was doing just fine on its own. Problems ensued only after humans jumped in to manipulate the tool to reach a desired political outcome.

Of course, there is no guarantee that tools will be objective or balanced. As mentioned above, studies have established that AI tools can replicate or exacerbate racial bias.⁹² At the same time, some evidence suggests that AI tools can be more easily debiased than humans.⁹³ Once biases are identified, the tool can be reprogrammed and retested to account for that bias.⁹⁴ Human behavior is much more stubbornly

86. See, e.g., John E. Jones, III & The Conversation, *Former Bush-Appointed Federal Judge: Why the ICE memo Allowing Officers into Your Home Without a Warrant Is Unconstitutional*, FORTUNE (Jan. 23, 2026, at 11:30 ET), <https://fortune.com/2026/01/23/why-ice-memo-warrantless-home-entry-is-unconstitutional-former-federal-judge/> [https://perma.cc/55XL-EPQT] (describing an ICE legal interpretation concluding that ICE officers can enter homes without a judicial warrant and explaining that interpretation is inconsistent with the Fourth Amendment).

87. See sources cited *supra* note 7.

88. See, e.g., Evans & Koulisch, *supra* note 7.

89. See *id.*

90. See *id.*

91. See Bloch-Wehba, *supra* note 7; see also Complaint at ¶7, *Velesaca v. Decker*, 458 F. Supp. 3d 224 (S.D.N.Y. 2020) (No. 1:20-cv-01803) (alleging that ICE's detention tool was manipulated and recommends detention of nearly 100% of noncitizens).

92. See *supra* notes 22–24 and accompanying text.

93. Sendhil Mullainathan, *Biased Algorithms Are Easier to Fix than Biased People*, N.Y. TIMES (Dec. 6, 2019), <https://www.nytimes.com/2019/12/06/business/algorithm-bias-fix.html> [https://perma.cc/2P39-2LHE].

94. See *id.*

entrenched and difficult to change.⁹⁵ In light of how political actors use immigration policy to achieve political ends, often ones that are disconnected from evidence, the law or common sense, it is at least worth considering whether using AI tools in order to create some independence can carry benefits.

B. AI Tools May Be Necessary for a Depleted Federal Workforce

Second, artificial intelligence could help address immigration backlogs. There are many noncitizens who apply for immigration benefits with USCIS and who clearly or likely qualify for the relief they seek. Yet, even for cases where a right to relief is fairly plain from the contents of the application—whether it is for a work permit renewal, an application for Temporary Protected Status (TPS), or an application for a U visa by a survivor of crime who showed willingness to cooperate with law enforcement—noncitizens can wait months or even years to receive a decision.⁹⁶ Delay causes many adverse consequences. Applicants are left in legal limbo subject to deportation while the application remains pending.⁹⁷ Applicants may find themselves unable to lawfully work to support themselves and their families, putting them in a difficult position as they must decide how to subsist for a year or more while their cases languish.⁹⁸ In the meantime, the uncertain time frame and waiting

95. See *id.* At the same time, there is some concern that humans can actually pick up new biases from AI tools and then continue to incorporate those biases even after they stop using the tool. See Lauren Leffer, *Humans Absorb Bias from AI—And Keep It After They Stop Using the Algorithm*, SCI. AM. (Oct. 26, 2023), <https://www.scientificamerican.com/article/humans-absorb-bias-from-ai-and-keep-it-after-they-stop-using-the-algorithm/> [<https://perma.cc/MR4S-ZQYE>].

96. See *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://egov.uscis.gov/processing-times/historic-pt> [<https://perma.cc/3PKL-VNE4>] (last visited Feb. 26, 2026). Processing times for U visa applications now can take 2.5 years or more. See *Case Processing Times*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://egov.uscis.gov/processing-times/> [<https://perma.cc/V2J4-JPZX>] (last visited Feb. 26, 2026) (from “Form” dropdown menu, select “I-918 | Petition for U Nonimmigrant Status”; from “Form Category” dropdown menu, select “Petition for a noncitizen who is a victim of qualifying criminal activity, and their qualifying family members (Time from Initial Filing to Bona Fide Determination (BFD) Review)”; from “Field Office or Service Center” dropdown menu, select “Service Center Operations (SCOPS)”; then, click “Get processing time”).

97. See Jeff Arnold, *‘We Need a Chance’: Migrants Willing but Unable to Work*, NewsNation (Mar. 1, 2024, at 17:33 CT), <https://www.newsnationnow.com/us-news/immigration/we-need-a-chance-migrants-willing-but-unable-to-work/> [<https://perma.cc/2KEW-9Y8Z>].

98. See *id.*

induces anxiety and mental anguish among noncitizens who are stuck in the liminal space between application and decision.⁹⁹

USCIS backlogs are nothing new. As of June 30, 2025, USCIS faced more than 11,500,000 pending applications.¹⁰⁰ This creates inevitable wait times, even if the wait times for some applications have decreased recently.¹⁰¹ Yet, it seems virtually certain that they will only get worse during the Trump administration. The administration is attempting to drastically reduce the federal workforce, which in turn will reduce the number of USCIS officers reviewing applications.¹⁰² The new administration already has fired dozens of USCIS employees, with more likely on the horizon.¹⁰³ The administration also wants to divert DHS funding toward enforcement, detention and deportation and away from processing benefits.¹⁰⁴ In addition to reducing staff and resources, the administration can cause delay in other ways. They can direct officers to issue more requests for additional evidence (RFEs)¹⁰⁵—whether necessary or not—which can push a decision back by several months. In short, absent some sort of intervention, noncitizens will be waiting longer and longer for a decision, no matter how straightforward their claims might be.

99. *See id.*

100. *Immigration and Citizenship Data*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> [<https://perma.cc/E7F9-TWD7>] (last visited Feb. 26, 2026) (under “Fiscal Year 2025: Quarter 3 Data Reports, April–June 2025,” click on “All USCIS Applications and Petition Form Types (Fiscal Year 2025, Quarter 3)” for data).

101. *See id.*

102. *See* Derek Saul, *DOGE Layoffs Pose ‘Growing’ Risk to U.S. Economy and Markets, Says Apollo Economist*, FORBES (Feb. 24, 2025, at 15:19 ET), <https://www.forbes.com/sites/dereksaul/2025/02/24/doge-layoffs-pose-growing-risk-to-us-economy-and-markets-says-apollo-economist/> [<https://perma.cc/EG4M-2FS4>] (indicating that the government may seek to cut as many as one million jobs from the federal workforce in addition to reducing federal contractor jobs).

103. Nicole Sganga & Camilo Montoya-Galvez, *Trump Administration Fires over 400 DHS Employees as Mass Firings Continue*, CBS NEWS (Feb. 16, 2025, at 10:34 ET), <https://www.cbsnews.com/news/trump-administration-fires-over-400-dhs-employees/> [<https://perma.cc/ZQ3K-7DPD>]; Orozco, *supra* note 60 (“On February 14, 2025, DHS terminated nearly 50 U.S. Citizenship and Immigration Services (USCIS) employees, identifying them as ‘non-mission critical personnel in probationary status.’”).

104. ICE is seeking as much as \$2 billion in additional funding to expand deportation efforts. *See* Stef W. Kight & Brittany Gibson, *Scoop: ICE Already Short \$2 billion as Trump’s Immigration Crackdown Ramps Up*, AXIOS (Mar. 14, 2025), <https://www.axios.com/2025/03/14/ice-short-2-billion-trump-immigration> [<https://perma.cc/7465-PZ75>].

105. *See Request for Evidence (RFE)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/glossary-term/79521> [<https://perma.cc/QX7T-SLQT>] (last visited Feb. 26, 2026).

The U visa process provides a particularly good example of a situation where applicants face long backlogs, yet it should be fairly easy for AI tools to identify approvable claims. U visas are available for noncitizens who are survivors of certain crimes while in the United States and who cooperate or are willing to cooperate with law enforcement in the investigation of the crime.¹⁰⁶ As part of the application, every claimant must submit a certification from a local law enforcement official attesting that the claimant cooperated or was willing to cooperate in the investigation of the crime.¹⁰⁷

Because every valid U visa application contains this certification, U visas should be easy to approve quickly. And the process is made even easier because, by regulation, a U visa applicant can receive protection from deportation and eligibility for work authorization simply by submitting as long as the application is bona fide, even if no final determination has been made.¹⁰⁸ The certification will establish that there was a qualifying crime and that the applicant cooperated,¹⁰⁹ which are the critical elements of the U visa claim.¹¹⁰ Moreover, the certification can also corroborate the applicant's sworn declaration and reinforce the applicant's credibility. Testimony from government officials suggests that an initial case screening could be completed in as little as fifteen to thirty days.¹¹¹

Nonetheless, the processing time for a U visa application is frequently more than two-and-a-half years.¹¹² There is no reason decisions should take this long. U visas are a low-hanging fruit. AI tools could fill this space by screening applications and make an initial bona fide recommendation, thus saving visa officer's significant time. This could speed up U visa determination from years to months, or possibly even weeks.

U visas are just one example. There are various ways in which AI could help speed up decision-making or improve accuracy. Perhaps AI could be used most heavily for simpler cases, while complex cases would

106. See 8 U.S.C. § 1101(a)(15)(U).

107. U.S. CITIZENSHIP & IMMIGR. SERVS., Form I-918 Supplement B, U Nonimmigrant Status Certification, <https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf> [<https://perma.cc/QPV6-S7BR>] (last visited Feb. 26, 2026).

108. See 8 C.F.R. § 214.14(d)(2) (2025) ("USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list.").

109. See U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 107.

110. See 8 U.S.C. § 1101(a)(15)(U).

111. See *Solis v. Cissna*, Civ. A. No. 9:18-00083-MBS, 2019 WL 8219790, at *13 (D.S.C. July 11, 2019) (citing testimony from a USCIS official that initial background checks on an applicant can be completed within fifteen to thirty days).

112. See *supra* note 96 and accompanying text.

go straight to a USCIS employee.¹¹³ Perhaps AI could scan applications to see which ones are complete, or which ones should receive a request for additional evidence, which could help reduce burdens on a diminished USCIS staff.¹¹⁴

Even aside from delay, an understaffed and overtaxed workforce can make errors. One criticism of generative AI tools is that they will make mistakes, and there have been several well-publicized cases of AI error in immigration decision-making.¹¹⁵ But when humans are overworked and must move through their caseloads quickly, they can make errors too. With respect to immigration court decisions, for example, immigration judges and the Board of Immigration Appeals (BIA) face significant backlogs and heavy workloads.¹¹⁶ And perhaps not surprisingly, federal courts traditionally have reversed BIA removal decisions at high rates.¹¹⁷ Thus, any concern about AI error must also be counterbalanced by the likelihood of human error. Additionally, if AI tools help reduce backlogs and alleviate some workload pressures for individual employees, that could have the salutary effect of reducing human error rates as well.

Even if the Trump administration's efforts to deplete the federal workforce¹¹⁸ are temporary, they could still have long-term effects. It may take years to replace those officers, and for new employees to build the institutional knowledge that fired employees possessed.¹¹⁹ Something

113. Canada briefly used AI in this fashion, giving it simpler cases and sending complex cases to human decision-makers, before abandoning its AI program in immigration. See Harrington, *supra* note 27.

114. In fact, private companies already market to practitioners AI tools that allegedly can scan applications to determine if there are evidentiary deficiencies and to assess whether an application is complete and approvable. See, e.g., VISALAW.AI, visalaw.ai [https://perma.cc/KTJ2-D7W4] (last visited Feb. 26, 2026).

115. See *supra* notes 25–27 and accompanying text.

116. As of July 2024, the immigration court system faced a backlog of over 3.5 million pending cases. See *Immigration Courts: Actions Needed to Track and Report Noncitizens' Hearing Experiences*, U.S. GOV'T ACCOUNTABILITY OFF. (Dec. 19, 2024), https://www.gao.gov/products/gao-25-106867 [https://perma.cc/E4V9-ZPQ9].

117. See, e.g., Kent Barnett & Christopher J. Walker, *Chevron in the Circuit Courts*, 116 MICH. L. REV. 1, 36–37 (2017) (finding that judges give less deference to immigration decisions than to other agency decisions); Lenni B. Benson, *Making Paper Dolls: How Restrictions on Judicial Review and the Administrative Process Increase Immigration Cases in the Federal Courts*, 51 N.Y. L. SCH. L. REV. 37, 60 n.95 (2006) (“The rate of remand or reversal in the Second Circuit is 20%, and has reached as high as 40% in the Seventh Circuit.”).

118. See Saul *supra* note 102.

119. See, e.g., Franklin Foer, *The Purged*, THE ATLANTIC (Jan. 11, 2026), https://www.theatlantic.com/magazine/2026/02/trump-federal-worker-layoffs-interviews/685321/ [https://perma.cc/Q3N3-R2B6] (describing how the Trump's actions on the federal bureaucracy have eliminated historical expertise and institutional knowledge,

will be needed to substitute for those lost workers. AI tools, especially when focused on evaluating straightforward claims, could fill that gap.

C. Centering AI on a Principle of Dignity

The above discussion highlights the dangers and the promise both of human decision-makers and AI decision-makers. Both actors can cause significant harm, unless they are governed by background principles to mitigate that harm. The advent of AI tools provides a valuable opportunity to identify grounding principles to center AI use.

While the Biden administration attempted to set some ground rules around AI,¹²⁰ its attempt suffered from several flaws. It committed to taking seriously and working to prevent any AI use that would threaten civil liberties or involve large scale surveillance.¹²¹ However, the government did not follow its own recommendations, using AI in various ways that impacted rights, such as electronic surveillance, without proper disclosure.¹²² Second, although it did post a catalog of its AI tools,¹²³ it failed to provide adequate transparency about how it used the tools.¹²⁴

Furthermore, DHS's AI use is defined by treating noncitizens as objects of suspicion, rather than people acting in good faith. As explained above, DHS is using AI to try to find applications it can label as frivolous, which not only leads to a denial but also drastically curtails the noncitizen's ability to obtain other forms of relief.¹²⁵ Similarly, it is using AI to attack an applicant's credibility by looking for inconsistencies

which will make it harder for government agencies to fulfill essential functions); Tim Reid et al., *US Government Faces Brain Drain as 154,000 Federal Workers Exit This Week*, REUTERS (Sep. 30, 2025, at 08:08 ET), <https://www.reuters.com/legal/litigation/us-government-faces-brain-drain-154000-federal-workers-exit-this-week-2025-09-30/> [<https://perma.cc/7Z6E-GCSQ>] (reporting on the loss of federal worker expertise and noting that it may take years for the government to rebuild that knowledge).

120. See *supra* note 51 and accompanying text.

121. See Memorandum from Shalanda D. Young, *supra* note 16.

122. AUTOMATING DEPORTATION, *supra* note 20, at 35–40.

123. *United States Citizenship and Immigration Services – AI Use Cases*, U.S. DEPT OF HOMELAND SEC. (Feb. 12, 2026), <https://www.dhs.gov/ai/use-case-inventory/uscis> [<https://perma.cc/3GVJ-2YJW>].

124. Complaint at 1, *Refugees Int'l v. U.S. Citizenship & Immigr. Servs.*, No. 24-cv-3559 (D.D.C. Dec. 20, 2024). One also could argue that the government's rights-impacting framework may sweep too broadly. Almost everything that AI does in the immigration context will impact rights in some way. This includes situations where a noncitizen might desire AI assistance, such as where AI tools can speed up the granting of straightforward benefits applications. To the extent a noncitizen has an entitlement or an eligibility for benefits, those decisions implicate rights. If the government restricted that use of AI because it would impact rights, that could undermine some of AI's most beneficial uses.

125. See *supra* note 38 and accompanying text.

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across various documents, despite ample literature showing that it is common for people to describe a version of events differently each time they discuss it (and all the more so when they have experienced trauma).¹²⁶

Instead, this essay suggests centering permissible AI use around a principle of advancing human dignity. Doing so would turn away from treating noncitizens as suspects and toward treating them with humanity. Although dignity is a fuzzy term and hard to define, there is some shared understanding around the term. The American Bar Association has defined human dignity as reflecting “the inherent, equal, and inalienable worth of every person,” and identifies dignity as “foundational to a just rule of law.”¹²⁷ In other areas of law such as corrections, which also involves surveillance and law enforcement, dignity can be a central policy goal. Some countries, such as Norway, utilize a dignity-oriented approach to sentencing and prison administration, in contrast to U.S. prison policies that center around treating prisoners as wrongdoers who need to be surveilled and controlled.¹²⁸ While no principle can perfectly distinguish between AI uses we find troublesome and ones we might find acceptable, a principle of dignity is a good starting point. It would reorient AI use away from its current focus on treating immigrants as objects of suspicion and more toward treating them as people deserving of respect. A dignity-centered approach would make it more difficult to use AI to facilitate widespread surveillance, and easier to use for addressing tasks like benefits applications, reducing backlogs.

A dignity-centered approach could also help advance more nuanced tool design and validation. Take the example of using AI to flag potentially fraudulent asylum applications.¹²⁹ Using AI tools to find inconsistencies in applications and render judgments based on those is a delicate task. It is well-documented that inconsistencies can arise for many reasons other than an applicant’s lack of credibility, especially when applications are submitted by individuals who do not speak English

126. *See id.*

127. A.B.A., HOUSE OF DELEGATES RESOLUTION 113B 1 (2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/113b-annual-2019.pdf> [<https://perma.cc/QAR9-XPVH>].

128. *See, e.g.*, Lauren-Brooke Eisen, *Northern European Prisons Illustrate Focus on Dignity*, BRENNAN CTR. FOR JUST. (Apr. 16, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/northern-european-prisons-illustrate-focus-dignity> [<https://perma.cc/T485-H5VV>].

129. *See supra* note 38 and accompanying text.

or for whom English is not their primary language.¹³⁰ If AI developers knew that their tools would not be used unless it accounts for the nuances and reasons for inconsistencies across time, it might incentivize them to develop better tools.

To be clear, it is difficult to see how dignity alone could be sufficient to manage AI use. Government will always want to use new technologies, including AI, for law enforcement and national security purposes.¹³¹ But adding dignity into the equation at least enables law enforcement and security values to be balanced against other values in deciding when and how AI should be used.

Finally, one common criticism of using AI—whether or not it is governed by dignity-advancing or rights-impacting constraints—is that it is highly scalable.¹³² In other words, it can make many more decisions in much less time than can its human counterparts.¹³³ As a result, an AI-driven world can potentially inflict much more damage than a world of just human decision-makers.¹³⁴ This is a serious concern, especially at a time when the federal government is engaging in what appears to be an all-out war against noncitizens.¹³⁵ Enabling the government to act with greater speed and efficiency could cause serious harm.

At the same time, the scalability concern is revealing, not so much about AI itself, but about our collective faith in government institutions. It suggests that we do not trust government to make good decisions, that we see government as causing more problems than it solves, and that ultimately, we want governments to make fewer decisions rather than more decisions. This viewpoint may have merit, especially now, but it is ultimately an anti-progressive ideal. It sees government as an instrument of harm rather than as an instrument of good, as an object of distrust over trust. It is difficult to fully answer that critique, except to

130. See, e.g., Kif Augustine-Adams & D. Carolina Nuñez, *Sites of (Mis)Translation: The Credible Fear Process in United States Immigration Detention*, 35 GEO. IMM. L.J. 399 (2021) (describing how language barriers can affect credibility assessments in immigration interviews).

131. See e.g., Exec. Order No. 13,859, 84 Fed. Reg. 3967 (Feb. 11, 2019).

132. See, e.g., Willis Ryder Arnold & Meghna Chakrabarti, *What Happened When AI Went After Welfare Fraud*, WBUR (Mar. 13, 2025), <https://www.wbur.org/onpoint/2025/03/13/ai-algorithms-welfare-fraud-benefits> [<https://perma.cc/L75N-MU8A>] (describing how AI errors can be exacerbated because they “can go wrong at scale” and giving example where twenty million people were deemed ineligible for Medicaid by AI tools, many of which turned out to be incorrect).

133. See *id.*

134. See *id.*

135. See, e.g., Amy Gottlieb & Imani Cruz, *Trump’s Actions on Immigration Explained*, AM. FRIENDS SERV. COMM. (Jan. 8, 2026), <https://afsc.org/news/trumps-executive-orders-immigration-explained> [<https://perma.cc/JL35-S8EH>] (describing the executive branch’s varied anti-immigrant measures from 2025 forward).

say that it brings everything back to the science fiction examples at the beginning of this essay. To the extent those suspicions are borne from experience with how people make decisions, how they prioritize political agendas, how they respond to reactionary rhetoric rather than facts, then we are right back where we started. If we live in a world where government cannot make decisions, then we may have bigger concerns to deal with than AI. Instead, perhaps we can hope that as long as that government decisions are constrained by due process, public participation, and other democratic principles, it is okay to empower government to help people in need. If AI tools can offer that opportunity, while also helping to protect against some of the worst aspects of human decision-making, then it is at least something to be considered.

V. CONCLUSION

Both humans and AI tools are flawed decision-makers. Both have great capacity to promote justice, and both have great capacity to inflict harm. In seeing the ways that AI can deny justice and exacerbate racial bias, some have called for limiting the use of AI tools and elevating decisions by people rather than technology. This essay suggests that doing so is not only impractical in light of the reality that AI is here to stay, but also that it is a double-edged sword. Rather than rejecting AI for humans, society should investigate how each can provide a check against the other, in order to soften the worst aspects of our decision-making and elevate more thoughtful ones. In today's highly politicized immigration world, a world that has witnessed some of the most venal policymaking in recent memory, AI tools, particularly ones centered around human dignity, may have something valuable to offer.