

7-15-2023

Mother of Exiles: Hospitality & Comprehensive Immigration Reform

Ana M. Rodriguez

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Recommended Citation

Ana M. Rodriguez, *Mother of Exiles: Hospitality & Comprehensive Immigration Reform*, 43 J. Nat'l Ass'n Admin. L. Judiciary Iss. 2 (2023)

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Mother Of Exiles: Hospitality & Comprehensive Immigration Reform

By Ana M. Rodriguez

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Not like the brazen giant of Greek fame,
With Conquering limbs astride from land to land;
Here at our sea-washed, sunset gates shall stand
A mighty woman with a torch, whose flame
Is the imprisoned lightning, and her name
Mother of Exiles. From her beacon-hand
Glowes world-wide welcome; her mild eyes command
The air-bridged harbor that twin cities frame.
“Keep, ancient lands, your storied pomp!” cries she
With silent lips. “Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!”¹
[emphasis added.]

INTRODUCTION

Immigration is a “key axis of political contestation” and the focus of rising populist movements around the globe.² Indeed, disagreement over immigration in the United States was a significant factor in President Trump’s election and again in President Biden’s four years later.³ During their two presidencies, the COVID-19 pandemic elicited numerous societal fears and

¹ EMMA LAZARUS, THE NEW COLOSSUS (1883).

² Katherine Kondor, Sabina In Mihelj, Václav Štětka & Fanni Toth, *News Consumption and Immigration Attitudes: A Mixed Methods Approach*, 48 J. OF ETHNIC AND MIGRATION STUD. 4129, 4129 (2022).

³ Christian Joppke, *Immigration in the Populist Crucible: Comparing Brexit and Trump*, 8 COMPAR. MIGRATION STUD. 1, 2 (2020), <https://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-020-00208-y>. See also Kelsey Norman, *U.S. Immigration and the 2020 Election*, RICE U. BAKER INST. FOR PUB. POLICY 1, 1 (2020), <https://scholarship.rice.edu/bitstream/handle/1911/114649/bi-brief-102020-cme-immigration.pdf?sequence=1&isAllowed=y>.

anxieties.⁴ Various administrative responses, such as the recently repealed Title 42,⁵ expedited deportations during the pandemic, were disparately applied to different asylee groups.⁶ During the recent application of Title 42 (2020–2023), cage-like facilities held and separated migrant children from their parents.⁷ Uniquely, these immigration practices were defended by some through a misuse of the Christian Bible.⁸

This article examines the historical pattern of denying immigration in the U.S. on moral and supposedly Christian grounds. Although it is reasonable that no nation is duty-bound to welcome every foreigner and provide the same benefits afforded those with full citizenship, this article contends that a genuinely Christian response demands the biblical core value of hospitality to others.⁹ Indeed, xenophobia is the antithesis of hospitality and cannot be supported

⁴ Peter H. Huang, *Pandemic Emotions: The Good, the Bad, and the Unconscious-Implications for Public Health, Financial Economics, Law, and Leadership*, 16 Nw. J. L. & Soc. Pol'y 81, 81 (2021). “[F]ear and anger over COVID-19 fueled anti-Asian and anti-Asian American hatred and racism. COVID-19 caused massive tragic economic, emotional, mental, physical, and psychological suffering.” *Id.*

⁵ The Department of Homeland Security implemented Title 42’s termination on May 23, 2022. *CDC Public Health Determination and Termination of Title 42 Order*, CENTERS FOR DISEASE CONTROL & PREVENTION (Apr. 1, 2022), <https://www.cdc.gov/media/releases/2022/s0401-title-42.html>.

⁶ *See infra* notes 43–55 (discussing Title 42’s application on Ukrainian refugees versus Haitian refugees).

⁷ *See P.J.E.S. by & through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 506 (D.D.C. 2020). In *P.J.E.S.*, unaccompanied minor noncitizens challenged the CDC’s suspension of immigration due to COVID-19 and holding children in “cage-like” facilities pending deportation. *Id.* The Court granted a preliminary injunction against the Secretary of Homeland Security and enjoined further expulsion under Title 42. *Id.* at 551.

⁸ *See infra* Part III.

⁹ Elizabeth McCormick & Patrick McCormick, *Hospitality: How a Biblical Virtue Could Transform United States Immigration Policy*, 83 U. DET. MERCY L. REV. 857, 857 (2006).

by a faithful, exegetical interpretation of the Christian Bible.¹⁰ It should be noted that this article does not propose the emergence of an American theocracy; however, hospitality-based dialogue and humanitarian principles can elicit meaningful praxis on the issue of immigration within the United States' pluralistic framework.

Part I of this article will analyze the current immigration crisis at the southern border of the U.S. and the recent use of Title 42 to expedite deportations. Part II provides a historical outline of immigration law in the U.S. and the moral justifications, including misrepresentations of the Christian Bible, oft weaponized against disfavored migrant groups. Part III provides insight into how the Hebrew and Christian Scriptures emphasize the importance of hospitality towards strangers, prioritize the well-being of foreigners, and encourage a re-evaluation of current U.S. immigration policies.

I. COVID-19 AND TITLE 42'S END OF ASYLUM

The United States is on track to see two million migrants seeking entry at the southern border, the most significant surge in two decades.¹¹ Undocumented migrants continue to cross

¹⁰ In November 2022, Fordham Law School's Institute on Religion, Law, and Lawyer's Work held a conference considering the "theological, legal, and contemporary implications related to immigration." Sejla Rizvic, *IRLLW Conference Looks at Intersection of Religion, Law, and Immigration*, FORDHAM LAW NEWS (Jan. 19, 2023), <https://news.law.fordham.edu/blog/2023/01/19/irllw-conference-looks-at-intersection-of-religion-law-and-immigration/>. Multiple scholars, including Thomas Massaro, S.J., of Fordham University, assessed the theological and philosophical aspects of the subject. *Id.* "Massaro expressed how 'in our age of anxiety and distrust, hospitality turns out to be perfectly countercultural virtue, even subversive at times.'" *Id.* He additionally emphasized that "'it is incumbent upon people of faith to reject those tragically prevalent toxic attitudes of antisemitism, Islamophobia, and all varieties of xenophobia, which is the direct opposite of hospitality.'" *Id.*

¹¹ *What Are President Biden's Challenges At The Border?*, BBC NEWS (Jun. 29, 2022), <https://www.bbc.com/news/world-us-canada-56255613>.

the border in one of two ways: (1) by asylum¹² or (2) through secret crossing.¹³ Normally, immigrants who physically arrive in the United States may apply for asylum.¹⁴ Under federal law, the Attorney General cannot deport the individual if the immigrant’s “life or freedom would . . . be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹⁵ The burden of proof is on the applicant to establish refugee status.¹⁶ Similarly, the Trafficking Victims Protection Reauthorization Act affords additional protection to unaccompanied minors at the border.¹⁷ However, the COVID-19 pandemic created an avenue to deny entry to asylum seekers and unaccompanied minors.¹⁸

¹² Those who “‘have suffered persecution or fear that they will suffer persecution’ in their home country are eligible to apply for asylum when they present themselves at a port of entry for admission into the US.” *Id.*

¹³ Secret crossing includes “evad[ing] border officials by hiding in cars or traveling undetected across unprotected – and often treacherous – parts of the US-Mexico border.” *Id.*

¹⁴ 8 U.S.C. § 1158(a)(1).

¹⁵ 8 U.S.C. § 1158(a)(2)(A). This provision provides an exception to an immigrant’s right to seek asylum when those threats are not present. *Id.*

¹⁶ 8 U.S.C. § 1158(b)(1)(B)(i). “To establish that the applicant is a refugee within the meaning of [8 U.S.C.S. § 1101(a)(42)(A)], the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.” *Id.*

¹⁷ Ashley Binetti Armstrong, *Co-Opting Coronavirus, Assailing Asylum*, 35 GEO. IMMIGR. L. J. 361, 367 (2021) (citing Trafficking Victims Protection Reauthorization Act, Pub. L. 110-457, Stat. 5044 (2008), codified at 8 U.S.C. § 1232). Any unaccompanied alien child shall not be deported if (i) the child is a “victim of a severe form of trafficking in persons,” and there is evidence that the “child is at risk of being trafficked upon return to the child’s country of nationality or of last habitual residence”; (ii) the child has a “fear of returning” owing to a “credible fear of persecution”; and (iii) the child is not “able to make independent decisions to withdraw the child’s application for admission to the United States.” 8 U.S.C. § 1232(a)(2)(A).

¹⁸ Franko Ordonez, Asma Khalid & Mara Liasson, *U.S. anticipates an increase in asylum-seekers as Title 42 is set to end*, NPR (May 3, 2023, 4:04 PM), <https://www.npr.org/2023/05/03/1173776556/u-s-anticipates-an-increase-in-asylum-seekers-as-title-42-is-set-to-end>. “Title 42 is the pandemic-era rule the federal government has been using to reject asylum seekers without hearings.” *Id.*

On March 13, 2020, President Trump declared COVID-19 a national emergency.¹⁹ Thirteen days later, the Centers for Disease Control (CDC) issued an order under Title 42 to combat the spread of COVID-19.²⁰ Title 42 allows U.S. Border Agents to quickly expel migrants instead of processing them under regular immigration laws.²¹ Legislators in the mid-twentieth century drafted the little-known provision “amidst concerns regarding soldiers returning from foreign countries with ‘tropical diseases’” after World War II.²² Title 42 draws its authority from the 1893 Act, which equipped the government to mitigate the transmission of infectious diseases from foreign countries by excluding “in whole or in part, the introduction of persons and property from such countries.”²³ Title 42 provides:

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall

¹⁹ Armstrong, *supra* note 17, at 366 (citing Proclamation No. 9994, 85 Fed. Reg. 15337 (Mar. 13, 2020): “[T]he COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020.”)

²⁰ Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 26, 2020) [hereinafter March 2020 Order]; *see also* 42 U.S.C.A. § 265 (West).

²¹ *Id.* (March 2020 Order). Title 42 allows the federal government to reject asylum seekers without a hearing. *See* Ordonez, *supra* note 18.

²² Armstrong, *supra* note 17, at 369-70 (quoting 90 CONG. REC. 4796 (1944) (statement of Mr. Brown)).

²³ Act of Feb. 15, 1893, ch. 114, §7, 27 Stat. 449, 452 (1893) [hereinafter 1893 Act]. In 1893, cholera aboard four ships created national alarm. In response, Congress passed the 1893 Act giving the federal government quarantine authority. The Act “was a major . . . turning point in the evolution of federal and public attitudes toward the obligation of the central government in matters of health.” Carleton B. Chapman & John M. Talmadge, *Historical and Political Background of Federal Health Care Legislation*, 35 DUKE L. L. & CONTEMP. PROBS. 334, 338-39 (Spring 1970), <https://scholarship.law.duke.edu/lcp/vol35/iss2/7>.

designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.²⁴

The CDC's March 2020 Order "declared that '[i]t is necessary for the public health to immediately suspend the introduction of covered aliens' and 'require[d] the movement of all such aliens to the country from which they entered the United States, or their country of origin, or another location as practicable, as rapidly as possible.'"²⁵ This article argues that Title 42's halt on asylum seekers (1) violates existing domestic and international law and (2) is xenophobic in application.

A. TITLE 42: THE TRUMP ADMINISTRATION

The Trump Administration's focus on immigration reform overtly sought to deport immigrants and "seal the southern border to prevent migrants—including asylum-seekers—from entering the United States."²⁶ Dubbed the "Asylum Ban," Title 42 is a broad-based tool used against non-white immigrants.²⁷ This section argues that xenophobia and nativism guide Title 42's application. Intertwining health concerns with immigration policy ultimately paints non-white immigrants "as inherently dangerous sources of contagion who [have] to be subjected to highly coercive measures in order to protect the health of native-born citizens."²⁸ Moreover, Trump-era policy continuously targeted Mexican immigrants in applying the law and with

²⁴ 42 U.S.C. § 265 [hereinafter Title 42].

²⁵ *Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 157 (D.D.C. 2021), *aff'd in part and remanded*, 27 F.4th 718 (D.C. Cir. 2022) (quoting Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17060-02, 17067, 2020 WL 1445906 (March 26, 2020)).

²⁶ *Armstrong*, *supra* note 17, at 362–63.

²⁷ *Id.* at 372, 376.

²⁸ Wendy E. Parmet, *The Worst of Health: Law and Policy at the Intersection of Health & Immigration*, 16 IND. HEALTH L. REV. 211, 214 (2019).

racially charged rhetoric.²⁹ Before COVID-19, Trump established xenophobic rhetoric toward Mexican immigrants.³⁰ In fact, Trump voiced concerns in 2015, five years before the first confirmed U.S. COVID-19 case,³¹ alleging ““tremendous infectious disease . . . pouring across the border.””³² Trump claimed building a wall along the southern border would protect public health because “[p]eople with tremendous medical difficulty and medical problems are pouring in, and in many cases it’s contagious.”³³ Trump’s allegations that Mexican immigrants are dirty, contagious, infectious, and disease-ridden fostered anti-Mexican sentiment and ultimately influenced Trump-era immigration policy along the southern border.³⁴ Importantly, Trump

²⁹ President Trump claimed, “The U.S. has become a dumping ground for everyone else's problems When Mexico sends its people, they're not sending their best. They're sending us not the right people.” Engy Abdelkader, *Immigration in the Era of Trump: Jarring Social, Political, and Legal Realities*, 44 HARBINGER 76, 77 (2020) (quoting *Here's Donald Trump's Presidential Announcement Speech*, TIME (Jun. 16, 2015), <https://time.com/3923128/donald-trump-announcement-speech/> [<https://perma.cc/A9L5-RS7B>]).

³⁰ See *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1917 (2020) (Sotomayor, J., concurring). “The *Batalla Vidal* complaints catalog then-candidate Trump’s declarations that Mexican immigrants are ‘people that have lots of problems,’ ‘the bad ones,’ and ‘criminals, drug dealers, [and] rapists.’” *Id.* (Citing *Batalla Vidal v. Nielson*, 291 F.Supp.3d 260, 276 (E.D.N.Y 2018)). “The *Regents* complaints additionally quote President Trump’s 2017 statement comparing undocumented immigrants to ‘animals’ responsible for ‘the drugs, the gangs, the cartels, the crisis of smuggling and trafficking, [and] MS13.’” *Id.*

³¹ *CDC Museum COVID-19 Timeline*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/museum/timeline/covid19.html#:~:text=January%2020%2C%202020%20CDC,18%20in%20Washington%20state> (last visited Oct. 20, 2021). On January 20, 2020, the “CDC report[ed] the first laboratory-confirmed case of the 2019 Novel Coronavirus in the U.S. from samples taken on January 18 in Washington state.” *Id.*

³² Hunter Walker, *Donald Trump Just Released an Epic Statement Raging Against Mexican Immigrants and ‘Disease,’* BUS. INSIDER (July 6, 2015), <https://www.businessinsider.com/donald-Trumps-epic-statement-on-mexico-2015-7> (“[T]remendous infectious disease is pouring across the border. The United States has become a dumping ground for Mexico and, in fact, for many other parts of the world.”).

³³ Philip Bump, *Trump’s Arguments for Necessity of Border Wall Have Already Been Broadly Debunked*, WASH. POST (Dec. 11, 2018), <https://perma.cc/TQH4-H8VA>.

³⁴ Brad Brooks, *Victims of Anti-Latino Hate Crimes Soar in U.S.: FBI report*, REUTERS (Nov. 12, 2019), <https://www.reuters.com/article/us-hatecrimes-report/victims-of-anti-latino-hate-crimes-soar-in-u-s-fbi-report-idUSKBN1XM2OQ>.

simultaneously attacked Mexican immigrants' moral character.³⁵ Trump stated that Mexican immigrants are “criminals, drug dealers, [and] rapists” in addition to a national health concern.³⁶ Trump also alleged that Mexican immigrants are an “invasion” that seeks to destroy American morality, health, and safety.³⁷ When politicians paint non-white immigrants as the enemy, they channel the public's fear during economic and health crises towards minorities and thereby justify inhumane responses toward them.³⁸ The Trump administration used Title 42 to effectively end the U.S. asylum regime and denied vulnerable non-white protection seekers and unaccompanied children.³⁹

Hispanic hate crimes rose over 21% in 2018 “We’re seeing the swapping of one derided group in the social-political arena for another,” said Brian Levin, director of the Center for the Study of Hate and Extremism at California State University, San Bernardino. “Attacks against Muslims peaked around 2016 when terrorism was the concern. Now immigration is the No. 1 issue and Latinos are being targeted.”

Id.

³⁵ See *Regents*, *supra* note 30, at 1917.

³⁶ Michelle Ye Hee Lee, *Donald Trump's False Comments Connecting Mexican Immigrants and Crime*, WASH. POST (Jul. 8, 2015, 3:00 AM), <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime/>.

³⁷ *Remarks by President Trump on the Illegal Immigration Crisis and Border Security*, THE TRUMP WHITE HOUSE (Nov. 1, 2018, 4:19 PM), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-illegal-immigration-crisis-border-security/>.

³⁸ See Brendan Lantz, Marin R. Wenger & Jack M. Mills, *Fear, Political Legitimization, and Racism: Examining Anti-Asian Xenophobia During the COVID-19 Pandemic*, 13 SAGE RACE & JUSTICE 80, 81 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9475372/pdf/10.1177_21533687221125817.pdf. (“[R]esearch has implicated the role of the state—in exacerbating, emboldening, or legitimating bias through the use of targeted inflammatory rhetoric.”) *Id.*

³⁹ Armstrong, *supra* note 17, at 363.

B. TITLE 42: THE BIDEN ADMINISTRATION

Although Biden’s political allies previously urged ending the Trump-era policy, the administration continued using Title 42 to deport immigrants until May 2023.⁴⁰ While Title 42 continued, the Biden administration expelled “most single adults and family units along the southwest border.”⁴¹ Furthermore, the Biden administration continued deporting unaccompanied minors until the court ordered an injunction against the practice.⁴² The Biden Administration undertook bipartisan fire for deporting 4,000 Haitians in nine days in May 2022 to a “country ravaged by natural and man-made calamities.”⁴³ In August 2021, a 7.2 magnitude earthquake rocked Haiti, creating an immediate crisis with some 650,000 people needing humanitarian assistance.⁴⁴ Concurrently, Haitian President Jovenel Moise’s assassination in July 2021 “plunged the country, already suffering from rising violence and an economic crisis made worse by natural

⁴⁰ See John Gramlich, *Key Facts About Title 42, the Pandemic Policy that has Reshaped Immigration Enforcement at U.S.-Mexico border*, PEW RESEARCH CENTER (Apr. 27, 2022), <https://www.pewresearch.org/fact-tank/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/> (“Even during the Biden administration, however, Title 42 expulsions remained common: In March 2022, 51% of all migrant encounters at the southwestern border ended in expulsion under Title 42.”). See also CDC, *supra* note 5 (Title 42 repealed May 11, 2023).

⁴¹ 98 No. 30 Interpreter Releases Art. 4 (Aug. 9, 2021).

⁴² See *P.J.E.S. by & through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 506 (D.D.C. 2020) (holding unaccompanied minor noncitizens were subject to detention in hotels or “cage-like” facilities, which demonstrated likelihood that minor noncitizens would suffer irreparable harm and thereby met the requirements for injunctive and declaratory relief.)

⁴³ Camilo Montoya-Galvez, *U.S. Expels Nearly 4,000 Haitians in 9 days as Part of Deportation Blitz*, CBS NEWS (Sept. 27, 2021, 9:28 PM), <https://www.cbsnews.com/news/haiti-migrants-us-expels-nearly-4000-in-nine-days/>.

⁴⁴ *Massive Earthquake Leaves Devastation in Haiti*, UNICEF (Oct. 4, 2021), <https://www.unicef.org/emergencies/massive-earthquake-devastation-haiti>.

disasters, into further turmoil.”⁴⁵ In light of this humanitarian crisis, Democrats unsuccessfully urged a temporary halt to Title 42 expulsions to Haiti.⁴⁶ Deportation flights to Haiti continued under the public health order.⁴⁷ In stark contrast, the administration permitted Ukrainian refugees under Title 42 in March 2022, underscoring continuous xenophobic and racist applications in immigration law.⁴⁸

The Department’s arbitrary favoritism to “white” European asylees was painfully evident in the Department of Homeland Security’s recent memo instructing border patrol authorities to consider exempting Ukrainians from Title 42 when entering the country.⁴⁹ The memo, *Title 42 Exceptions for Ukrainian Nationals*, urges:

The Department of Homeland Security recognizes that the unjustified Russian war of aggression in Ukraine has created a humanitarian crisis. CBP is authorized, consistent with the Title 42 Order, on a case-by-case basis based on the totality of the circumstances, including considerations of humanitarian interests, to except Ukrainian nationals at land border ports of entry from Title 42. Non-citizens who are in possession of a valid Ukrainian passport or other valid Ukrainian identity documents, and absent risk factors associated with national security or public safety, may be considered for exception from Title 42 under this guidance.

⁴⁵ *Haiti President’s Assassination: What We Know So Far*, BBC NEWS (Feb. 1, 2023), <https://www.bbc.com/news/world-latin-america-57762246>.

⁴⁶ Letter from Members of Congress to Secretary Alejandro N. Mayorkas, U.S. Dep’t of Homeland Sec. (Nov. 30, 2022), <https://pressley.house.gov/wp-content/uploads/2022/11/Letter-led-by-Reps.-Pressley-Bush-Jones-re-Haiti-TPS.pdf>.

⁴⁷ Eileen Sullivan & Miriam Jordan, *Biden Administration to Deport Haitians in South Texas*, N.Y. TIMES, <https://www.nytimes.com/2021/09/18/us/politics/biden-administration-haiti-texas.html> (last updated Sept. 30, 2021).

⁴⁸ Jasmine Aguilera, *Where Migrants Suffered Matters at the U.S.-Mexico Border*, TIME (Apr. 13, 2022, 6:47 PM), <https://time.com/6166535/ukrainians-mexico-border-title-42/>.

⁴⁹ Memorandum from Matthew S. Davies, Exec. Dir., Admissibility and Passenger Programs of U.S. Customs and Border Prot. to the Dir., Off. of Field Operations of U.S. Customs and Border Prot. (Mar. 11, 2022), <https://www.aila.org/File/DownloadEmbeddedFile/92100>.

Ukrainian non-citizens granted an exception from Title 42 may be processed for any disposition under Title 8, as appropriate, including urgent port of entry humanitarian parole on a case-by-case basis.⁵⁰

The Administration's night-and-day response to Ukrainian refugees compared to Haitian refugees is a glaring example of favoring "white" immigrants over non-white immigrants.⁵¹ Both Ukrainian and Haitian refugees are fleeing life-threatening conditions and seeking safe harbor within the U.S..⁵² Title 42 applies to both immigrant groups and yet the law is used to expedite the deportation process for Haitians⁵³ while advocating for exceptions for another ethnic group because of the "humanitarian crisis" and needs of Ukrainian refugees.⁵⁴ It is notable that ICE also disproportionately detained Haitian immigrants during the COVID pandemic.⁵⁵

⁵⁰ *Id.*

⁵¹ Aguilera, *supra* note 48 ("For some experts who study the U.S.'s immigration and refugee history, the March memo exempting Ukrainians from Title 42 came as no surprise. It's consistent, they say, with [] a broader pattern of American sympathy for predominately white migrants from predominately Christian countries fleeing violence that is not typically extended to people who aren't white or non-Christian.") *Id.*

⁵² Catherine E. Shoichet, *As the US Rolls Out the Welcome Mat for Ukrainian Refugees, Some See a Double Standard at the Border*, CNN (Mar. 29, 2022, 11:04 AM), <https://www.cnn.com/2022/03/29/us/ukrainians-us-mexico-border-cec/index.html>.

⁵³ Sullivan & Jordan, *supra* note 47. Title 42 is not the first time public health policy and immigration conflation targeted Haitian refugees. Haitian refugees were similarly targeted in the 1990s. Long after the HIV endemic in the U.S., Congress barred noncitizens with HIV from visiting or immigrating to the U.S. and quarantined HIV positive refugees from Haiti at Guantanamo Bay, Cuba. Wendy E. Parmet, *The Worst of Health: Law and Policy at the Intersection of Health & Immigration*, 16 *Ind. Health L. Rev.* 211, 216 (2019) (citing Lynne Duke, *Haitian Refugees with HIV Remain in Limbo as Asylum Claims Stall*, WASH. POST (Aug. 7, 1992), <https://perma.cc/F25P-DV6Z>).

⁵⁴ Davies, *supra* notes 49–50 (Memo exempting Ukrainian refugees from Title 42).

⁵⁵ Bill Ong Hing, *Addressing the Intersection of Racial Justice and Immigrant Rights*, 9 *BELMONT L. REV.* 357, 362 (2022).

In 2020, the number of Haitian families detained by ICE grew significantly at the Karnes County Residential Center in Texas. As the COVID pandemic progressed and ICE released some families, the Haitian population in Karnes County disturbingly grew from twenty-nine percent to forty-four percent from January to March of 2020. During the same

Although the use of Title 42 was made evident during the COVID-19 pandemic, leveraging pretextual health concerns to close the U.S. border to non-white protection seekers is not new policymaking.

II. XENOPHOBIA CLOAKED IN MORALITY, HEALTH, AND SAFETY

U.S. immigration is riddled with the dichotomy of welcoming certain foreign demographics and forcibly removing others. This section explores whom the U.S. welcomes and the *moral, health, and safety* premises of these policies. Race-based policy tied to morality, health, and safety has been used to remove foreigners and justify the inhumane treatment of unfavored immigrants. Therefore, understanding the foundational xenophobic roots of modern immigration policy is a critical backdrop for this article.

A. HISTORIC IMMIGRATION POLICY AGAINST “NON-WHITE” IMMIGRANTS

The bosom of America is open to receive not only the opulent [and] respectable Stranger, but the oppressed [and] persecuted of all Nations [and] Religions; whom we shall wellcome [sic] to a participation of all our rights [and] privileges, [sic] **if by decency [and] propriety of conduct they appear to merit the enjoyment.**⁵⁶

President George Washington’s welcome to foreigners alludes to an inherent right to enjoin with the American ideal.⁵⁷ However, within the Founding Father’s vision of extending welcome

period, seventeen percent of the families in that detention center were Mexican, six percent were Honduran, and 5.2% were Cuban. According to further data gathered by the Refugee and Immigrant Center for Education and Legal Services (“RAICES”) in Texas, there is also a massive disparity in the costs of Haitian immigrant bonds compared with the bonds for other nationalities. From June 2018 to June 2020, “the average bond paid by RAICES was a whopping \$10,500. But bonds paid for Haitian immigrants by RAICES averaged \$16,700, 54% higher than for other immigrants. The result: Black immigrants stay in ICE jails longer because of the massive disparity in their bonds.”

Id.

⁵⁶ Letter from Joshua Holmes, Sec’y, Volunteer Ass’ns, to George Washington, (Dec. 2, 1783) (on file with National Archives), <https://founders.archives.gov/documents/Washington/99-01-02-12127> (emphasis added).

⁵⁷ *Id.*

to the foreigner lies an important caveat—this right relied upon “conduct” and “merit.”⁵⁸ Thus, historically, welcome and hospitality is something to be earned. This principle inversely denotes that those who are denied entrance and citizenship do not *deserve* to enjoy these rights. The weighty power to judge who deserves immigration and citizenship historically belongs to Congress.⁵⁹ Longstanding Supreme Court precedent recognizes Congress’s “plenary” power over immigration provides nearly absolute authority to decide which foreigners may enter or remain in the U.S.⁶⁰

Analyzing Congress’ qualifications for citizenship sheds light on foundational immigration principles. White, property-owning males were by the law’s reflection the *most human*⁶¹ and entitled to “Life, Liberty, and the pursuit of Happiness.”⁶² In 1790, Congress defined eligibility for citizenship by naturalization and gave this important right to “free, white person[s]” of “good

⁵⁸ *Id.*

⁵⁹ U.S. CONST. art. I, § 8, cl. 18 (“The Congress shall have Power . . . [t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”)

⁶⁰ *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (“The Court without exception sustains Congress’ ‘plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.’” (quoting *Boutilier v. Immigr. & Naturalization Serv.*, 387 U.S. 118, 123 (1967))); *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320, 343 (1909) (noting plenary power of Congress as to admitting aliens and the complete and absolute power of Congress over the subject of immigration); *see also Galvan v. Press*, 347 U.S. 522, 531 (1954) (“Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government.”)

⁶¹ *See* U.S. CONST. art. I, § 2 cl. 3. The Three-Fifths Clause of the U.S. Constitution declared that any person who was not free would be counted as three-fifths of a free individual. *Id.*

⁶² THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” *Id.*

character.”⁶³ The 1790 Naturalization Act “directly connected race with the capacity to embrace the nation’s constitutional values.”⁶⁴ In *Federalist No. 2*, John Jay⁶⁵ surmised that the Constitution derived from Americans’ religious heritage and common ethnicity.⁶⁶ Thus, the Constitution was written for and by white individuals with good character.⁶⁷ In 1795, Congress fearing a foreign majority voting power, added a religious and moral subtext that changed the Act’s text from “good character” to “good moral character.”⁶⁸ Only “free white person[s]” with “good moral character” could be “attached to the principles of the constitution of the United States.”⁶⁹ Congress equated

⁶³ An Act To Establish an Uniform Rule of Naturalization, 1 Stat. 103, 1st Cong. (1790).

⁶⁴ Jared Goldstein, *The Klan's Constitution*, 9 ALA. C.R. & C.L. L. REV. 285, 305 (2018).

⁶⁵ John Jay, the first chief Justice of the United States, helped legitimize the Court overseas, and crafted the boundaries and responsibilities of the United States Supreme Court. *John Jay*, Oyez, https://www.oyez.org/justices/john_jay (last visited May 23, 2023).

⁶⁶ THE FEDERALIST NO. 2, at 38 (John Jay) (Clinton Rossiter ed., 1961) (Providence has been pleased to give this one connected country to one united people . . . a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence.”)

⁶⁷ *Id.*

⁶⁸ Naturalization Act of 1795, 1 Stat. 414, 3rd Cong. (1795).

⁶⁹ Goldstein, *supra* note 64, at 305 (citing Naturalization Act of 1795, 1 Stat. 414, 3rd Cong. (1795)); The 1795 Act replaced the 1790 naturalization law that similarly limited naturalization to “free white person[s]” who swore an oath to “support the Constitution of the United States.” An Act To Establish an Uniform Rule of Naturalization, 1 Stat. 103, 1st Cong. (1790). The dual requirements for naturalized citizenship established by Congress in 1795 which were commitment to constitutional principles and membership in the white race, persisted with relatively few changes until 1952 when Congress finally repealed any racial criteria for citizenship. Immigration and Nationality Act of 1952, 66 Stat. 163, 82nd Cong. (1952)).

race with moral capability when defining who deserved citizenship.⁷⁰ Foreign immigration policy would similarly reflect race-based morality justifications.⁷¹

1. LEGISLATION AGAINST CHINESE IMMIGRANTS

In 1875, Congress used morality to substantiate its “first racially-specific federal immigration restriction”⁷² against Chinese immigrants. The mid-1800s rise in Chinese immigrants coming to the U.S. peaked during the California Gold Rush.⁷³ “[R]ailroad companies actively recruited Chinese” laborers and “[i]ndustrialists came to depend on Chinese workers as a source of cheap labor.”⁷⁴ The U.S. viewed Chinese immigration as a positive and passed the 1868 “Burlingame Treaty with China, which prohibited restrictions on Chinese immigration.”⁷⁵ However, increased Chinese immigration led to xenophobia and racism.⁷⁶ Anti-Chinese sentiment portrayed Chinese foreigners as a threat to public morality; Chinese women were depicted as

⁷⁰ Immigration and Nationality Act of 1952, 66 Stat. 163, 82nd Cong. (1952).

⁷¹ Marian L. Smith, *Race, Nationality, and Reality*, NAT’L ARCHIVES (2002), <https://www.archives.gov/publications/prologue/2002/summer/immigration-law-1>.

⁷² Ming Zhu, *The Page Act of 1875: In the Name of Morality* 1, 2 (Mar. 23, 2010) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1577213#references-widget (citing Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 641 (2005)).

⁷³ Ellen Terrel, *Chinese Americans and the Gold Rush*, LIBR. OF CONG. (Jan. 28, 2021), https://blogs.loc.gov/inside_adams/2021/01/chinese-americans-gold-rush/#:~:text=At%20the%20peak%20of%20gold,tax%20of%20%24%20per%20month.

⁷⁴ Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 649 (2005) (citing BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990* 20 (1st ed.1993)).

⁷⁵ *Id.* at 644; Burlingame-Seward Treaty of 1868, U.S.-China, art. VI, July 28, 1868, T.S. No. 48 [hereinafter Burlingame Treaty].

⁷⁶ *The Long History of Racism Against Asian Americans in the U.S.*, PBS (Apr. 9, 2020), <https://www.pbs.org/newshour/nation/the-long-history-of-racism-against-asian-americans-in-the-u-s>.

prostitutes, and a sexual threat to white Americans.⁷⁷ President Ulysses Grant called for “immigration legislation against the ‘evil practice’ of prostitution by Chinese women.”⁷⁸ Grant asserted “[h]ardly a perceptible percentage of [Chinese women] perform any honorable labor, but they are brought for shameful purposes, to the disgrace of communities where settled and to the great demoralization of the youth of these localities.”⁷⁹ California Senator Cornelius Cole similarly depicted Chinese women as “the most undesirable population, who spread disease and moral death among our white population.”⁸⁰

A. THE PAGE ACT OF 1875

Anti-Chinese sentiment led Congress to pass the first race-based national restriction on free immigration: The Page Act of 1875.⁸¹ The Page Act marked the end of open borders and effectively prohibited Chinese women from entering.⁸² Although the Page Act prohibited prostitution of “Oriental” women, the Act effectively stopped Chinese women from immigrating.⁸³ Congress carefully worded the Page Act to restrict prostitution of “Oriental” women, instead of immigration generally or the Chinese specifically, due to the Burlingame Treaty.⁸⁴ The Page Act escaped violating the Burlingame Treaty “by framing itself as immigration protection in the name

⁷⁷ Pooja R. Dadhania, *Deporting Undesirable Women*, 9 UC IRVINE L. REV. 53, 59 (2018).

⁷⁸ *Id.* (quoting 3 CONG. REC. 3–4 (1874)).

⁷⁹ *Id.* (quoting 3 CONG. REC. 3–4 (1874)).

⁸⁰ *Id.* at 60 (citing Abrams, *supra* note 74, at 633 (quoting Cornelius Cole: The Senator Interviewed by a Chronicle Reporter, S.F. CHRON., Oct. 23, 1870, at 1)).

⁸¹ Page Act of 1875, ch. 141, 18 Stat. 477 (repealed 1974).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Zhu, *supra* note 72, at 3.

of morality.”⁸⁵ However, some scholars argue “that the law was motivated more by the economic threat of cheap Chinese laborers and that the focus on prostitution was essentially a smoke screen.”⁸⁶ This theory may account for the increase in anti-Chinese sentiment even after the Page Act became effective.⁸⁷

The Page Act did not encompass a ban on male Chinese laborers, and therefore, legislators pursued additional restrictions.⁸⁸ Indeed, California legislators continued to discuss mass restrictions on all Chinese immigrants after the Page Act.⁸⁹ For example, the 1876 California State Senate Committee addressed two emergencies: (1) “*The Chinese are upon us*. How can we get rid of them?” and (2) “*The Chinese are coming*. How can we stop them?”⁹⁰ The California State Senate Committee investigated the ‘social, moral, and political effects’ of Chinese immigration . . . an evil, ‘*unarmed invasion*.’”⁹¹ Reverend S.V. Blakeslee addressed the moral and national

⁸⁵ *Id.* at 4.

⁸⁶ *Id.* at 4.; see also Jennifer M. Chacon, *Loving Across Borders: Immigration Law and the Limits of Loving*, 2007 WIS. L. REV. 345, 350 (2007) (“The Act’s ostensive purpose was to limit prostitution, but there is a great deal of evidence suggesting that Congress’s objective was to develop a way to exclude Chinese immigrants—particularly Chinese women—at a time when the Burlingame Treaty expressly precluded such exclusion.”).

⁸⁷ See Abrams, *supra* note 74, at 706 (“The Page Law provided a foothold for anti-Chinese forces . . . Over the next seven years, the anti-Chinese forces grew and continued to devise methods of restricting the Chinese. These forces were to a great extent motivated by fear of competition from Chinese laborers, who accepted lower wages than whites.”) *Id.*

⁸⁸ See Zhu, *supra* note 72, at 35-37.

⁸⁹ See *id.* at 35.

⁹⁰ Cal. Senate Committee Report, *The Social, Moral, and Political Effects of Chinese Immigration*, 1, 275 (1878), [https://iif.harvard.edu/manifests/view/drs:4226138\\$3i](https://iif.harvard.edu/manifests/view/drs:4226138$3i).

⁹¹ Erika Lee, *The Chinese Exclusion Example: Race, Immigration, and American Gatekeeping, 1882–1924*, 21 J. AM. ETHNIC HIST. 36, 36 (2002) (emphasis added) (quoting *Anti-Chinese*, DAILY ALTA CAL, Apr. 6, 1876, at 1).

implications of increased Chinese immigration before the California State Senate Committee, on behalf of the General Association of Congregational Churches of California.⁹² Blakeslee observed that “[t]he tendency of all this is tremendously towards evil; towards vice and abomination; towards all opposed to the true spirit of Americanism, and is very dangerous to our morality, to our stability, and to our success as a people and nation.”⁹³ Blakeslee feared that Chinese immigrants who “dwell permanently in a republic” would “become free and equal citizens” by “principle and law of necessity.”⁹⁴ He thus argued that Chinese immigration should be restricted “and so relieve [the U.S.] from impending peril to our republican and Christian institutions.”⁹⁵

If prostitution and sexual deviance was the legislature’s true concern, arguably morality discussions would be angled against such conduct. However, the fear of Chinese citizenship as a broader threat to American success supports the underlying labor concerns posited by those who suspect the Page Act’s actual economic intentions.⁹⁶ By shrouding immigration law in moral puffery, these economic labor concerns could remain concealed.⁹⁷ Regardless of intent, the Page

⁹² Cal. Senate Committee Report, *supra* note 90, at 241.

⁹³ *Id.* at 242.

⁹⁴ *Id.* at 243. “[I]f the Chinese continue to come, for it is a principle and law of necessity, that if any class of people dwell permanently in a republic they become free and equal citizens, or else the republic must be destroyed.” *Id.*

⁹⁵ *Id.* at 240.

⁹⁶ See CONG. GLOBE, 41st Cong., 3d Sess., 351, 357-58 (1871), <https://memory.loc.gov/cgi-bin/ampage?collId=llcg&fileName=096/llcg096.db&recNum=372>. Four years before the Page Act, Democrat William Mungen of Ohio proposed the Chinese would have an advantage in the labor market and threaten American jobs. “[M]illions of Chinese will come, on double these terms capitalists will engage millions of them . . . thus superseding the white labor.” *Id.*

⁹⁷ Zhu, *supra* note 72, at 33 (“[G]iven the widely accepted social views of Chinese women as prostitutes . . . Congress was essentially relying upon the racial sentiments and misconceptions of the public to keep away any domestic allegations of impropriety.”).

Act codified moral disrepute of “Oriental” immigrants and paved the way for future xenophobic immigration policy.⁹⁸

B. CHINESE EXCLUSION ACT OF 1882 & GEARY ACT OF 1882

Following the Page Act, Congress enacted the Chinese Exclusion Act of 1882.⁹⁹ The Chinese Exclusion Act created “an absolute 10-year ban on Chinese laborers immigrating to the United States . . . on the premise that it endangered the good order of certain localities.”¹⁰⁰ Historians note the Chinese Exclusion Act is the “country’s first significant restrictive immigration law,” the first to restrict “immigrants based on their race and class,” and a “watershed” moment “shap[ing] twentieth-century United States race-based immigration policy.”¹⁰¹ Anti-Chinese sentiment and legislation continued.¹⁰² When the Chinese Exclusion Act ended, Congress extended it for an additional ten years with the 1882 Geary Act.¹⁰³ The Geary Act required Chinese people in the U.S. to carry a Certificate of Residence, a precursor to the green card system, to prove

⁹⁸ Page Act of 1875, *supra* note 81.

⁹⁹ Chinese Exclusion Act of 1882, Pub. L. No. 47-126, § 22 Stat. 58 ch. 126 (1882). “Passed in 1882, the Chinese Exclusion Act marked the first time that the United States restricted immigration on the basis of race and nationality. For over sixty years, Chinese immigrants and Chinese Americans were effectively excluded from assimilating into mainstream American society.” Paul Yin, *The Narratives of Chinese-American Litigation During the Chinese Exclusion Era*, 19 ASIAN AM. L.J. 145, 145 (2012).

¹⁰⁰ *Chinese Exclusion Act (1882)*, NAT. ARCHIVES, <https://www.archives.gov/milestone-documents/chinese-exclusion-act> (last updated Jan. 17, 2023).

¹⁰¹ Lee, *supra* note 91, at 36.

¹⁰² *Id.* at 39. In 1889, the United States Supreme Court urged “vast hordes of [Chinese] people are crowding upon us” and are “dangerous to [America’s] peace and safety.” *Ping v. United States*, 130 U.S. 581, 606 (1889).

¹⁰³ Yin, *supra* note 99, at 152.

they had legally entered the country.¹⁰⁴ Some scholars call these the “Dog-Tag” Laws.¹⁰⁵ If a Chinese person did not have their physical certificates, they faced imprisonment and hard labor for up to a year and then deportation.¹⁰⁶ In *United States v. Wong*, a federal district court held the Geary Act’s hard labor clause unconstitutional.¹⁰⁷ The court urged:

[T]he [C]onstitution, which has potency everywhere within the limits of our territory, covers alike with its protection every human being within it An alien who comes into this country against the consent of our government, and even contrary to a law expressly excluding him, does not thereby become an enemy of our country. Certainly, so long as he remains within our borders, and so long as our government remains on terms of peace and amity with the country of which he is a subject, he must be regarded as a friendly alien. If such an alien may be arbitrarily deprived of his liberty, surely he may be arbitrarily deprived of his property, and even of his life It is certainly something in which a citizen of the United States may feel a generous pride that the government of his country extends protection to all persons within its jurisdiction, and that every blow aimed at any of them, however humble, come from what quarter it may, is ‘caught upon the broad shield of our blessed constitution and our equal laws.’¹⁰⁸

Although the court’s reflection expresses the Constitution’s inherent protection of all humans, Chinese immigrants continued to face xenophobic attacks and citizenship bans.¹⁰⁹ As

¹⁰⁴ Gabriel J. Chin & Daniel K. Tu, *Comprehensive Immigration Reform in the Jim Crow Era: Chinese Exclusion and the McCreary Act of 1893*, 23 ASIAN AM. L.J. 39, 43–44 (Jun. 14, 2016).

¹⁰⁵ *Id.* at 54. “Representative Hitt railed against the registration requirement, stating: ‘Never before in a free country was there such a system of tagging a man, like a dog to be caught by the police and examined, and if his tag or collar is not all right, taken to the pound to be drowned or shot. Never before was it applied by a free people to a human being, with the exception (which we can never refer to with pride) of the sad days of slavery.’” *Id.* at 54–55 (quoting 25 CONG. REC. 2450 (1893)).

¹⁰⁶ 27 STAT. 25, § 4. The Supreme Court ultimately held that the Geary Act’s hard labor requirement could not be imposed administratively. *United States v. Wong*, 57 F. 206, 213 (S.D. Cal. 1893).

¹⁰⁷ *See Wong*, 57 F. at 211.

¹⁰⁸ *Id.* at 211–13.

¹⁰⁹ Congress did not repeal the 1882 Chinese exclusion acts until 1943. Quotas remained leaving a yearly limit of 105 Chinese immigrants. *Edward Bing Kan: The First Chinese-American Naturalized after Repeal of Chinese Exclusion*, U.S. CITIZENSHIP & IMMIGR. SERVS. (last visited May 23, 2023), <https://www.uscis.gov/about-us/our-history/history-office-and-library/edward-bing-kan-the-first-chinese-american-naturalized-after-repeal-of-chinese-exclusion>.

Justice Harlan infamously penned, “[t]here is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race.”¹¹⁰

2. IMMIGRATION LEGISLATION AGAINST LATINO IMMIGRANTS

Recognizing immigration law’s foundational racist justifications to fit labor needs can help contextualize modern immigration policy. As discussed above, historians argue that labor concerns lay at the heart of anti-Chinese legislation.¹¹¹ Similarly, labor needs have historically shaped the treatment of Latino people along the U.S. southern border. Labor-based policies and racist responses include the Bracero Program¹¹² and subsequent Operation Wetback.¹¹³ “To fully understand the racial underpinnings of the enforcement operation, one needs to appreciate the meaning of the term *wetback*, a racial epithet generally referring to people of Mexican ancestry.”¹¹⁴

A. BRACERO PROGRAM & OPERATION WETBACK

World War II caused a serious labor shortage across American farms.¹¹⁵ To address this issue, the U.S. and Mexico established the Bracero Program.¹¹⁶ The Bracero Program created a

¹¹⁰ *Plessy v. Ferguson*, 163 U.S. 537, 561 (1896), *overruled by Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483 (1954).

¹¹¹ Abrams, *supra* note 74, at 652; Zhu, *supra* note 72, at 3.

¹¹² Leti Volpp, *Impossible Subjects: Illegal Aliens and Alien Citizens*, 103 MICH. L. REV. 1595, 1606 (2005).

¹¹³ Kevin R. Johnson, *Trump's Latinx Repatriation*, 66 UCLA L. REV. 1442, 1460–64 (2019).

¹¹⁴ *Id.* at 1461.

¹¹⁵ Hannah Lustman, *Sick Uncertainty: How Executive Threats to EPA Programs for the U.S.-Mexico Border Threaten Environmental Justice*, 10 ARIZ. J. ENV'T. L. & POL'Y 465, 472 (2020).

¹¹⁶ *A Latinx Resource Guide: Civil Rights Cases and Events in the United States*, LIBRARY OF CONG., (last visited Mar. 28, 2023), <https://guides.loc.gov/latinx-civil-rights/bracero-program>. The World War II labor shortage was also caused by the internment of Japanese American citizens. *Id.*

“legal avenue for Mexican laborers to enter the United States” to work even though “they otherwise lacked proper documentation.”¹¹⁷ An estimated “4.6 million Mexicans” immigrated to the United States to work through the Bracero Program.¹¹⁸ At Mexico’s insistence, states such as Texas, Arkansas, and Missouri were excluded from the Bracero Program because they “explicitly racially discriminated against Mexicans.”¹¹⁹ However, these states continued to actively recruit undocumented labor from Mexico, and the number of “wetbacks” in these states skyrocketed.¹²⁰ Thus the U.S. heavily recruited legal and illegal labor from Mexico between 1942 and 1964.¹²¹ Anti-Mexican sentiment grew as immigration increased to meet U.S. labor demands.¹²² Anti-Mexican sentiment claimed California’s “problem of Chinese immigration” was “strikingly similar” to the problem “now posed by the Wetback.”¹²³ The “menace of the Wetback invasion”¹²⁴

¹¹⁷ The Hon. Audrey J.S. Carrión & Matthew M. Somers, *A Case for the Undocumented Immigrant*, 44 MD. B.J. 30, 33–34 (2011).

¹¹⁸ Volpp, *supra* note 112, at 1605.

¹¹⁹ *Id.* at 1606.

¹²⁰ *Id.* “[W]etback’ referred to Mexicans who had illegally crossed the Rio Grande into the United States.” *Id.* at 1606 n.27.

¹²¹ “Congress led by Senator McCarran, allegedly removed obstacle so migrant farmworkers could easily cross the border to appease agricultural growers while simultaneously undermining pathways to citizenship, access to healthcare, and minimum wage for those same migrant workers.” *United States v. Munoz-De La O*, 586 F. Supp. 3d 1032, 1047 (E.D. Wash. 2022).

¹²² “Use of this racial slur [wetback] carried into the 1950s, when Senate Bill 1851, referred to by some congressmen as the ‘Wetback Bill,’ sought to bar ‘aliens from entering or remaining in the United States illegally’ while simultaneously protecting employers from prosecution for ‘harboring’ undocumented employees.” *Id.* at 1037–38.

¹²³ *Wetbacks: Can the States Act to Curb Illegal Entry?*, 6 Stan. L. Rev. 287, 304 (1954) [hereinafter *Wetbacks*].

¹²⁴ *Id.* at 315.

represented a “real danger to California’s citizens” and “in the agricultural communities of the Southwest, antisocial behavior on the part of the Wetback element aggravate[d] an already sensitive cultural condition.”¹²⁵

These broad stroke attacks against “the evils of the Wetback invasion, the menace to public health, the depressive effect on wages, the drain on local resources,”¹²⁶ demanded government action. The racial disparagement of Mexican laborers as a threat to American society similarly echoed the demonization of Chinese laborers.¹²⁷ Unsurprisingly, these parallel labor fears and racism spurred mass deportation of Mexicans from the U.S. through Operation Wetback.¹²⁸ In 1954, an estimated 1.1 million migrants were removed through aggressive Border Patrol measures.¹²⁹ Border Patrol enforcement tactics included “raids and airlifts, fences and concertina wire, and deportations and boatlifts to keep recalcitrant farmers and ranchers from thrusting the southwest into a slave past.”¹³⁰ Operation Wetback was “sanctioned by U.S. public opinion, which blamed ‘wetbacks’ for the propagation of disease, labor strikes in agriculture, subversive and communist infiltration, border crimes, low retail sales in South Texas, and adverse effects on domestic labor.”¹³¹ Operation Wetback, engorged with racist generalizations, constructed the

¹²⁵ *Id.* at 292.

¹²⁶ *Id.* at 320–21.

¹²⁷ *See Wetbacks, supra* note 123, at 304.

¹²⁸ Bill Ong Hing, *Entering the Trump Ice Age: Contextualizing the New Immigration Enforcement Regime*, 5 *Tex. A&M L. Rev.* 253, 277 (2018).

¹²⁹ *Id.*

¹³⁰ Johnson, *supra* note 113, at 1463 (quoting KELLY LYTLER HERNANDEZ, *MIGRA! A HISTORY OF THE U.S. BORDER PATROL 176–79* (2010)).

¹³¹ *See Carrión, supra* note 117, at 34 (citing MANUEL GARCIA Y GREIGO, *THE IMPORTATION OF MEXICAN CONTRACT LABORERS TO THE UNITED STATES, 1942-1964* (Univ. of Cal. San Diego

“‘wetback’ as a dangerous and criminal social pathogen fe[eding] the general racial stereotypes of ‘Mexican,’ with no real distinction made between immigrants and U.S. citizens of Mexican ancestry.”¹³² In *United States v. Machic-Xiap*, the Court found “racial prejudice played an invidious and overwhelming role in the creation of the Undesirable Aliens Act of 1929”¹³³ and subsequent “explicitly named ‘Operation Wetback.’”¹³⁴

The Government argues “wetback” was not a derogatory term when Congress used it in 1952 because it was an “accurate description” of Mexican immigrants whose backs were wet from having illegally entered the United States by crossing the Rio Grande River. The Court does not find this argument persuasive; reducing an entire population to a fleeting condition of a subset of that population is precisely what makes the term a slur. The nonchalance with which Congress used “wetback” . . . is further evidence that at least some members of Congress harbored racial animus toward immigrants from Latin America.¹³⁵

Although “*wetback* has been replaced over time with *illegal alien*,” racial animus toward immigrants from Latin America continues to pervade the U.S. and the Administrative branch.¹³⁶

B. MODERN IMPLICATIONS

Racial animus against immigrants from Latin America (and non-white immigrants) continues to have inhumane and deadly ramifications. The 2019 El Paso shooter “explicitly stated his hostility against people of “Mexican origin”¹³⁷ and the “Hispanic **invasion** of Texas” as he

1981); DAVID GREGORY GUTIÉRREZ, *BETWEEN TWO WORLDS: MEXICAN IMMIGRANTS IN THE UNITED STATES* 58 (1996)).

¹³² Johnson, *supra* note 113, at 1462.

¹³³ *United States v. Machic-Xiap*, 552 F. Supp. 3d 1055, 1078 (D. Or. 2021).

¹³⁴ *Id.* at 1070.

¹³⁵ *Id.* at 1074.

¹³⁶ Johnson, *supra* note 113, at 1462.

¹³⁷ Teo Bugbee, *915: Hunting Hispanics’ Review: Anatomy of an American Killing*, N.Y. TIMES (Jul. 1, 2021), <https://www.nytimes.com/2021/07/01/movies/915-hunting-hispanics-review.html>.

murdered twenty-three individuals in a Wal-Mart store.¹³⁸ [emphasis added.] The far-right gunman echoed President Trump’s immigration remarks similarly by denoting illegal immigration as an “invasion.”¹³⁹ President Trump commented, “At this very moment, large, well-organized caravans of migrants are marching towards our southern border. Some people call it an ‘invasion.’ It’s like an invasion . . . We are stopping people at the border. This is an invasion, and nobody is even questioning that.”¹⁴⁰ Depicting non-white immigrants as an attack or “invasion” against the U.S. derives from language used against Chinese and Mexican immigrants throughout U.S. history.¹⁴¹ President Trump’s language elicited fear to justify Title 42’s expedited deportation of unfavored immigrants.¹⁴² Although President Biden’s immigration remarks are not brazenly conveyed against non-white immigrants, the disparate treatment of Haitian refugees compared to

¹³⁸ Vanessa Romo, *El Paso Walmart Shooting Suspect Pleads Not Guilty*, NPR (Oct. 10, 2019), <https://www.npr.org/2019/10/10/769013051/el-paso-walmart-shooting-suspect-pleads-not-guilty>.

¹³⁹ *Remarks by President Trump on the Illegal Immigration Crisis and Border Security*, TRUMP ARCHIVES, (Nov. 1 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-illegal-immigration-crisis-border-security/>.

¹⁴⁰ *Id.*

¹⁴¹ *See Lee, supra* note 91, at 36 (The 1876 California State Senate Committee investigated the “unarmed invasion” of Chinese immigrants). *Id. See also United States v. Munoz-De La O*, 586 F. Supp. 3d 1032, 1038 n.8 (E.D. Wash. 2022) (citing 82 Cong. Rec. 8115 (June 26, 1952) (In 1952, Senator Humphrey offered an amendment to “vote on . . . the wetbacks . . . to stop this invasion . . . by illegal entrants, who drive down our standard of living . . . and jeopardize the health and security of our Nation.”)).

¹⁴² “The Trump administration, arguably more than almost any other, has taken pains to dramatically limit the scope of asylum, targeting Central American asylum seekers with particular animus and precision . . . [with] Title 42 effectively closing the door on asylum for anyone from Central America.” Sarah Sherman-Stokes, *Public Health and the Power to Exclude: Immigrant Expulsions at the Border*, 36 GEO. IMMIGR. L.J. 261, 277–81 (2021).

Ukrainian refugees reflects the administration’s unequal value system.¹⁴³ Non-white immigrants continue to be disparaged and turned away from the United States.¹⁴⁴

As displayed through immigration policy bedrock, including the Page Act, Chinese Exclusion Act, Bracero Program, and Operation Wetback, “non-white” immigrant laborers are welcomed into the U.S. to fit labor demands.¹⁴⁵ When labor demands are met, or national animus arises regarding competition for “white” American workers, the U.S. bans, deports, and discredits the morality and cleanliness of migrant laborers.¹⁴⁶ Disfavored foreigners are not depicted as vulnerable, but rather as a security risk and an affront to morality (often Christianity).¹⁴⁷ By interweaving morality, health, and safety rationale against migrants, xenophobia increases, leading to racially charged violence.¹⁴⁸

III. CHRISTIAN BIBLICAL HOSPITALITY FRAMEWORK

This section provides a Christian Biblical hospitality framework that disarms the so-called morality-based initiatives and rhetoric that merely disguises xenophobia and racism.

A. DEFINING BIBLICAL MORALITY WITHIN IMMIGRATION REFORM

¹⁴³ Aguilera, *supra* note 48 (“Unlike tens of thousands of other migrants, fleeing violence in other countries, border guards could exempt Ukrainians from the public health order, Title 42.” Conversely, “the U.S. has returned more than 18,800 Haitians back to a country riven with gang violence, political instability, economic collapse, and fallout from natural disasters.”) *Id.*

¹⁴⁴ Symposium, *White Nationalism as Immigration Policy*, 71 STAN. L. REV. (2019). Volume 71. Trump stated Mexican immigrants are “criminals, drug dealers, [and] rapists” in addition to a national health concern. *See Lee supra*, note 36.

¹⁴⁵ *See supra* Part II.

¹⁴⁶ *Id.*

¹⁴⁷ *See supra* notes 93–95, 123–25 and accompanying text.

¹⁴⁸ *See supra* notes 137–38 and accompanying text regarding El Paso mass shooting.

Throughout U.S. history, the Bible has been invoked to justify anti-immigrant rhetoric and policy. For example, the Trump administration used the Bible to support separating immigrant children from their families at the U.S-Mexico border.¹⁴⁹ Attorney General Jeff Sessions cited a passage from the Apostle Paul’s Epistle to the Romans¹⁵⁰ and stated “[o]ur policy that can result in short-term separation of families is not unusual or unjustified.”¹⁵¹ Former White House Press Secretary Sarah Sanders added “it’s very biblical to enforce the law.”¹⁵² However, Sessions’ “attempt[] to justify the separation of migrant families by citing Romans 13--the same scriptural reference used to sanction slavery in the antebellum South”¹⁵³ sparked criticism from many religious groups.¹⁵⁴

¹⁴⁹ Emily McFarlan & Yonat Shimron, *Why is Jeff Sessions Quoting Romans 13 and why is this Bible Verse so Often Invoked?*, USA TODAY (June 16, 2018, 3:08 PM), <https://www.usatoday.com/story/news/2018/06/16/jeff-sessions-bible-romans-13-trump-immigration-policy/707749002/>. Attorney General Jeff Sessions, defending immigration policy actions, cited Romans 13 language that states “obey the laws of the government because God has ordained them for the purpose of order . . . Orderly lawful processes are good in themselves and protect the weak and lawful.” *Id.*

¹⁵⁰ Attorney Jeff Sessions used Romans 13 to justify separating immigrant families. *Id.* Romans 13:1 states: “Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God.” *Romans* 13:1. However, Romans 13 also contains the summation of all Biblical commandments: “For all the commandments . . . and any other commandment, are summed up in this word: ‘You shall love your neighbor as yourself. Love does no wrong to a neighbor; therefore love is the fulfilling of the law.’” *Romans* 13:9-10.

¹⁵¹ *U.S. Attorney General Quotes Bible to Defend Separating Families*, BBC (June 15, 2018), <https://www.bbc.com/news/world-us-canada-44499048>.

¹⁵² *Id.*

¹⁵³ Jonathan C. Augustine, *A Theology of Welcome: Faith-Based Considerations of Immigrants As Strangers in A Foreign Land*, 19 CONN. PUB. INT. L.J. 245, 247 (2020)

¹⁵⁴ Sarah McCammon, *Evangelicals Push Back On Sessions' Use Of Bible Passage To Defend Immigration Policy*, NPR (June 15, 2018, 4:29 PM), <https://www.npr.org/2018/06/15/620471106/evangelicals-push-back-on-sessions-use-of-bible-passage-to-defend-immigration-po>.

The Bible is often invoked because immigration is a moral issue as explained by Cardinal Theodore E. McCarrick:

[I]mmigration is not just a theoretical policy issue, but ultimately a humanitarian issue that impacts the basic dignity and life of the person, created in the image and likeness of God. It is because of its impact on basic human dignity and human life that we believe immigration is, first and foremost, a moral issue.¹⁵⁵

Indeed, America's civil and criminal justice systems are influenced by the Mosaic Code found in the Hebrew and Christian Scriptures. Further,

Few people, if any, would dispute that the Ten Commandments--and its parallels from other ancient cultures--as well as other directives contained in the Pentateuch of the Hebrew and Christian Scriptures, inform our notions of right and wrong and, as such, have influenced the development of Western law of which the American legal system is part.¹⁵⁶

Scholars, "most notably Professor Shaffer of Notre Dame Law School, have argued that American legal ethics has a Christian moral root, and that legal ethics today should be founded on Christian ethical principles."¹⁵⁷ Christian ethics need not be the only voice, but they can help guide immigration jurisprudence and define the moral treatment of non-citizens. Although the Christian Bible does not provide an exact template for restructuring the U.S. immigration system, it does contain direct and indirect guidance that promotes hospitable responses to immigration.¹⁵⁸

¹⁵⁵ McCormick & McCormick, *supra* note 9, at 860–61 (quoting Cardinal Theodore E. McCarrick, Archbishop of Washington, Statement on Comprehensive Immigration Reform (Mar. 1, 2006), available at <http://www.usccb.org/mrs/mccarrick.shtml>).

¹⁵⁶ Steven K. Green, *The Fount of Everything Just and Right? The Ten Commandments As A Source of American Law*, 14 J.L. & RELIGION 525, 525 (2000).

¹⁵⁷ M.H. Hoeflich, *On the Christian Origins of American Legal Ethics*, J. KAN. B. ASS'N 49, 49 (2017) (citing T. Shaffer, *ON BEING A CHRISTIAN AND A LAWYER: LAW FOR THE INNOCENT* (1981); T. SHAFER, *FAITH AND THE PROFESSIONS* (1987); T. SHAFER & R. COCHRAN, *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* (2009)).

¹⁵⁸ *See* Augustine, *supra* note 153, at 257.

Importantly, the Christian Bible continues to be used in the immigration debate.¹⁵⁹ Therefore, an understanding of what the Hebrew and Christian Scriptures say about immigrants, foreigners, and citizenship is a critical backdrop. This article contends true Judeo-Christian application demands hospitality and does not justify dehumanizing non-citizens or denying asylum based on race.¹⁶⁰

For indeed, grace is the key to it all. It is not our lavish good deeds that procure salvation, but God's lavish love and mercy. That is why the poor are as acceptable to God as the rich. It is the generosity of God, the freeness of his salvation, that lays the foundation for the **society of justice for all** . . . God's concern for justice permeated every part of Israel's life. It should also permeate our lives.¹⁶¹ [emphasis added.]

B. SCRIPTURE AND THE DIGNITY OF THE IMMIGRANT

This section will analyze justice as reflected in the Hebrew and Christian Scriptures' treatment of foreigners, aliens, and refugees through (1) immigration commandments and (2) the *imago Dei*.

1. IMMIGRATION COMMANDMENTS

The Bible directly proscribes how citizens should treat foreigners within the Hebrew Canon and Christian New Testament¹⁶². The Mosaic Code¹⁶³ commanded the just and kind treatment of foreigners residing amongst the Jewish people: "The alien who resides with you shall be to you as

¹⁵⁹ See *supra* notes 149–150 (Attorney General Jeff Sessions justified tearing migrant families apart with *Romans* 13).

¹⁶⁰ Augustine, *supra* note 153, at 249.

¹⁶¹ TIM KELLER, *GENEROUS JUSTICE: HOW GOD'S GRACE MAKES US JUST* 40 (2010).

¹⁶² See *infra* notes 163-174. See also Augustine, *supra* note 153, at 257 ("A scripturally-based argument can therefore be made that God used migration as a means of bringing disparate groups into community with one another while simultaneously spreading the gospel.").

¹⁶³ The Mosaic Code is contained in the Torah's Books of Exodus, Leviticus, Numbers and Deuteronomy.

the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt: I am the Lord your God.”¹⁶⁴ The Mosaic Code categorized foreigners akin to widows and orphans and demanded intentionally pursuing good for these vulnerable groups: “Cursed is anyone who withholds justice from the foreigner, the fatherless or the widow.”¹⁶⁵ In sum, citizens are instructed to (1) not oppress immigrants;¹⁶⁶ (2) treat immigrants just like citizens;¹⁶⁷ (3) love and help foreigners as they would their own poor brother;¹⁶⁸ and (4) show justice to foreigners.¹⁶⁹ Indeed,

¹⁶⁴ *Leviticus* 19:34.

¹⁶⁵ *Deuteronomy* 27:19.

¹⁶⁶ *Exodus* 22:21 (“Do not mistreat or oppress a foreigner, for you were foreigners in Egypt.”); *Exodus* 23:9 (“Do not oppress a foreigner; for you yourselves know how it feels to be foreigners, because you were foreigners in Egypt.”).

¹⁶⁷ *Leviticus* 19:33-34 (“When a foreigner resides among you in your land, do not mistreat them. The foreigner residing among you must be treated as your native-born. Love them as yourself, for you were foreigners in Egypt. I am the Lord your God.”); *Deuteronomy* 23:16 (“Let them live among you wherever they like and in whatever town they choose. Do not oppress them.”); *Ezekiel* 47: 22-23 (“‘You are to allot it as an inheritance for yourselves and for the foreigners residing among you and who have children. You are to consider them as native-born Israelites; along with you they are to be allotted an inheritance among the tribes of Israel. In whatever tribe a foreigner resides, there you are to give them their inheritance,’ declares the Sovereign Lord.”).

¹⁶⁸ *Leviticus* 25:35-37 (“If any of your fellow Israelites become poor and unable to support themselves among you, help them as you would a foreigner and stranger, so they can continue to live among you. Do not take interest or profit from them, but fear your God, so that they may continue to live among you. You must not lend them money at interest or sell them food at a profit.”); *Deuteronomy* 10:18-9 (“He defends the cause of the fatherless and the widow, and loves the foreigner residing among you, giving them food and clothing. And you are to love those who are foreigners, for you yourselves were foreigners in Egypt.”).

¹⁶⁹ *Deuteronomy* 24:14-15, 17 (“Do not take advantage of a hired worker who is poor and needy, whether that worker is a fellow Israelite or a foreigner residing in one of your towns. Pay them their wages each day before sunset because they are poor and counting on it. Otherwise they may cry to the Lord against you, and you will be guilty of sin . . . Do not deprive the foreigner or the fatherless of justice, or take the cloak of the widow as a pledge.”); *Zechariah* 7:10 (“Do not oppress the widow or the fatherless, the foreigner or the poor. Do not plot evil against each other.”).

the act of withholding justice and oppressing foreigners is cursed¹⁷⁰ and is equated to mistreating orphans and widows,¹⁷¹ shedding innocent blood,¹⁷² and idolatry.¹⁷³ The Bible emphasizes the particular vulnerability of foreigners, widows, and orphans “referred to by biblical scholars as the vulnerable whom God would affirmatively ‘defend,’ ‘love,’ and ‘watch over.’”¹⁷⁴ The *gërim* (non-Jews in a Jewish regime) were vulnerable “because they were living under political, social, and economic institutions not of their own choosing” similar to modern migrants.¹⁷⁵ “In some ways the *gërim* were granted more protection than the general population of native Israelites due to their particularly vulnerable status.”¹⁷⁶ For example, *gërim* “were permitted to glean the

¹⁷⁰ *Deuteronomy* 27:19 (“Cursed is anyone who withholds justice from the foreigner, the fatherless or the widow.”);

Malachi 3:5 (“So I will come to put you on trial. I will be quick to testify against . . . those who oppress the widows and the fatherless, and deprive the foreigners among you of justice, but do not fear me,” says the Lord Almighty.”).

¹⁷¹ *Ezekiel* 22:7 (“In you they have treated father and mother with contempt; in you they have oppressed the foreigner and mistreated the fatherless and the widow.”);

Zechariah 7:10 (“Do not oppress the widow or the fatherless, the foreigner or the poor. Do not plot evil against each other.”);

Psalms 146:9 (“The Lord watches over the foreigner and sustains the fatherless and the widow, but he frustrates the ways of the wicked.”).

¹⁷² *Jeremiah* 7:6 (“If you do not oppress the foreigner, the fatherless or the widow and do not shed innocent blood in this place, and if you do not follow other gods to your own harm.”);

Jeremiah 22:3 (“This is what the Lord says: Do what is just and right. Rescue from the hand of the oppressor the one who has been robbed. Do no wrong or violence to the foreigner, the fatherless or the widow, and do not shed innocent blood in this place.”).

¹⁷³ *Id.*

¹⁷⁴ See Koh, Jennifer Lee, *Agape, Grace, and Immigration Law: An Evangelical Perspective* (Sept. 26, 2017) in AGAPE, JUSTICE AND LAW (Robert Cochran and Zachary Calo, eds., Cambridge University Press, 2017) (Citing Elizabeth McCormick & Patrick McCormick, *Hospitality: How a Biblical Virtue Could Transform United States Immigration Policy*, UNIV. OF DET. MERCY L. REV. 83 (2006): 857, 866).

¹⁷⁵ Olga Kazmina, *Migrants and Citizens: Justice and Responsibility in the Ethics of Immigration*, 34 J.L. & RELIGION 255, 257 (2019) (book review).

¹⁷⁶ Heidi Dunn, *A Solution: An Approach to Addressing Fear-Based Claims Within the Religious Conservative Community and Its Application to A Current Refugee Concern*, 24 GEO. IMMIGR. L.J. 333, 343 (2010).

leftover produce from farms along with other vulnerable populations”¹⁷⁷ (widows, orphans, and the poor), “received food from the triannual tithe”¹⁷⁸ and God commanded Israel to love the *gerim* as He did.¹⁷⁹

Importantly, the Christian New Testament upholds the Mosaic law and Hebrew Scriptures.¹⁸⁰ In the famous Sermon on the Mount, Jesus Christ reminds the crowd: “Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfill them.”¹⁸¹ Jesus continued his Sermon on the Mount, expanding the Mosaic Code beyond the text of the law—“one violates the commandments against murder by simply being angry with another; looking lustfully at another woman renders a man guilty of adultery in his heart; one must pray for one’s enemies, not just one’s friends.”¹⁸² In essence, “Jesus asks us to go beyond the letter of the law to understand its spirit.”¹⁸³ With this understanding, at a minimum, the Mosaic commandments regarding immigration apply for those who claim Christianity and cite the Bible as their moral source. But following “Jesus’s reading of the Hebrew Scriptures means that we

¹⁷⁷ *Id.* citing *Leviticus* 23:22.

¹⁷⁸ *Id.* citing *Deuteronomy* 14:22-23.

¹⁷⁹ *Id.* citing *Deuteronomy* 10:18-19.

¹⁸⁰ Victor C. Romero, *Christian Realism and Immigration Reform*, 7 U. ST. THOMAS L.J. 310, 325 (2010).

¹⁸¹ *Id.* citing *Matthew* 5:17.

¹⁸² *Id.* at 325 citing *Matthew* 5:21-22 (murder); *Matthew* 5:27-28 (adultery); *Matthew* 5:43-48 (love for enemies).

¹⁸³ *Id.* at 325.

need to go beyond the minimum required by the law and seek to fulfill the spirit of peace and generosity” displayed by God’s intentional protection of the vulnerable foreigner.¹⁸⁴

Additionally, the Bible’s treatment of foreigners is not categorized by race.¹⁸⁵ There is no disparate treatment or qualifiers that limit hospitality.¹⁸⁶ “As Great Britain’s chief rabbi Jonathan Sacks reports, while the Hebrew Scripture has but one commandment to love the neighbor, it includes thirty-six commands to love the stranger”¹⁸⁷ all without reference to race. Indeed, Jesus’s parable of the Good Samaritan demonstrates radical impartiality when caring for a foreign neighbor.¹⁸⁸ This famed parable displays hospitality and service between two ideologically and ethnically differing groups who vehemently despised each other.¹⁸⁹ The parable’s

¹⁸⁴ Romero, *supra* note 180, at 326.

¹⁸⁵ See Victor C. Romero, *Servant Leadership and Presidential Immigration Politics: Inspiration from the Foot-Washing Ritual*, 26 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 147, 173 (2019).

¹⁸⁶ Dr. Timothy Keller, *Justice in the Bible*, GOSPEL IN LIFE (Fall 2020), <https://quarterly.gospelinlife.com/justice-in-the-bible/> (“Jesus defined ‘loving my neighbor’ as giving practical, financial, and medical aid to someone of a different religion and race. Both doing justice and loving one’s neighbor means treating people of all races and religion and social classes as equal in dignity and worth.”). See also McCormick & McCormick, *supra* note 9, at 857 (“[A] mandate to offer hospitality to the stranger is a central principle of many faith traditions, commanding Christians, Jews, Hindus, and Muslims alike to welcome the alien in our midst.”).

¹⁸⁷ McCormick & McCormick, *supra* note 9, at 857.

¹⁸⁸ *Luke 10:25-27*; see also *Armstrong v. Lumpkin*, CIVIL ACTION NO. 7:18-CV-00356 at 53 n.103 (S.D. Tex. Jan. 19, 2021) (“As recounted in the New Testament, Jesus told the parable of the Good Samaritan to show what it means to ‘love ... thy neighbor as thyself.’” See *Luke 10:25-37* (King James ver.). The story describes a traveler attacked by thieves, who “wounded him” and left “him half dead.” *Id.* at 10:30. After a priest and a Levite pass the injured man without offering aid, a Samaritan came upon him. Although at the time Samaritans and Jews were said to despise each other, the Samaritan had “compassion” for the man, “bound up his wounds, ... set him on his own beast, and brought him to an inn, and took care of him.” *Id.* at 10:34. The next morning before leaving the inn, the Samaritan left money with the innkeeper with instructions to take care of the injured man, assuring the innkeeper that “whatsoever thou spendest more, when I come again, I will repay thee.” *Id.* at 10:35. After telling this story, Jesus asked his listeners: “Which now of these three, thinkest thou, was neighbor unto him that fell among the thieves?” *Id.* at 10:36.”).

¹⁸⁹ *Id.*

nondiscriminatory example of “neighbor” eliminates categorization.¹⁹⁰ Furthermore, the Scriptures also bestow inherent dignity indiscriminately.

2. INHERENT DIGNITY THROUGH THE IMAGO DEI

The imago Dei, or the Latin translation of “Image of God” is a cornerstone biblical and theological doctrine that attributes inherent dignity and worth to all people.¹⁹¹ The imago Dei is derived from Genesis 1:27, wherein “God created mankind in his own image, in the image of God he created them; male and female he created them.”¹⁹² The imago Dei became “a foundation for the development of human rights. Made in God’s image, all humans necessarily have an inherent dignity.”¹⁹³ Thereby, the imago Dei applies to all, citizens and non-citizens alike. Indeed, “[t]here is no longer Jew or Greek, there is no longer slave or free, there is no longer male nor female; for all of you are one in Christ Jesus.”¹⁹⁴ Because God imprints humanity with his own likeness, every person is supremely valuable.¹⁹⁵ Applying the imago Dei to immigration policy means every

¹⁹⁰ See McCormick & McCormick, *supra* note 9, at 893 (A Biblical mandate to practice hospitality suggests “that we cannot neglect our responsibility toward our neighbor simply because he is not ‘one of us’ or because we believe he has not right to be here.” Rather the “Biblical narratives suggest that the duty to welcome the stranger in need falls on everyone, those who have the most to offer, as well as those who have very little to give.”).

¹⁹¹ David B. Kopel, *The Torah and Self-Defense*, 109 PENN ST. L. REV. 17, 18 (2004).

¹⁹² *Genesis* 1:27.

¹⁹³ Kopel, *supra* note 191.

¹⁹⁴ *Galatians* 3:28.

¹⁹⁵ See Joshua Kleinfeld, *Two Cultures of Punishment*, 68 STAN. L. REV. 933, 993 (2016) (quoting Jeremy Waldron, CHRISTIANITY AND HUMAN RIGHTS: AN INTRODUCTION 216 (John Witte, Jr. & Frank S. Alexander eds., 2010) (“The imago Dei] offers a powerful account of the sanctity of the human person, and it seems to give theological substance to a conviction that informs all foundational thinking about human rights—that there is something about our sheer humanity that commands respect and is to be treated as inviolable, irrespective of or prior to any positive law or social convention.”) *Id.*

person regardless of citizenship or merit is due baseline dignity, honor, and justice. Therefore, immigration legislation should account for the emotional, spiritual, and physical needs of those affected. Biblical immigration reform beckons the most humane outcome for everyone, including immigrants, because they are made in God’s image.

3. HOSPITABLE IMMIGRATION POLICY AND EQUAL APPLICATION

As analyzed above, morality-based arguments based on Scriptures promote hospitality and a baseline honor and value given to all foreigners.¹⁹⁶ Indeed, Scriptural immigration rhetoric recognizes immigrants’ vulnerability within society. Therefore, the Bible promotes intentionally pursuing humane policies and treatment of foreigners considering their heightened susceptibilities.

Further, under the biblical motif of the *imago Dei*, immigration policies should be equitably applied if all humans are of equal dignity and value.¹⁹⁷ The holistic Bible narrative does not discriminate based on race, color, religion, sex, and national origin.¹⁹⁸ Thereby, biblical justice and hospitality cannot support dividing foreigners into racial categories and rendering discriminatory treatment and deportation rates.¹⁹⁹ Even current legal immigration processes are

¹⁹⁶ See *supra* notes 191–95 and accompanying text regarding *imago Dei* application.

¹⁹⁷ See *supra* notes 155, 195 and accompanying text.

¹⁹⁸ See *Acts* 10:34 (“Then Peter began to speak: ‘I now realize how true it is that God does not show favoritism.’”); *Acts* 15:9 (“[God] did not discriminate against us and them, for he purified their hearts by faith.”); *Galatians* 3:28 (“There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you all are one in Christ Jesus.”); see also McCormick & McCormick, *supra* note 9, at 893 (citing *Galatians* 5:14).

¹⁹⁹ Bill Ong Hing, *Addressing the Intersection of Racial Justice and Immigrant Rights*, 9 BELMONT L. REV. 357, 361-62 (2022) (citing Alejandro Sanchez-Lopez, *THE STATE OF BLACK IMMIGRANTS IN CALIFORNIA*, 24, (Opal Tometi ed., 2018)) (“It is no surprise that Black immigrants are more likely to be detained and deported for criminal convictions than the rest of the immigrant population. In fact, Black immigrants represented seven percent of the total immigration population (about 3.4 million people) between 2004 and 2015, but comprised 10.6% of all immigrants in removal proceedings during that same period.”).

hampered by these invidious divides.²⁰⁰ Therefore, U.S. immigration policy that inequitably prioritizes human needs based upon race is unjust²⁰¹ and undercuts positive immigrant contributions.²⁰² As Rev. Dr. Martin Luther King, Jr. explained in his letter written from Birmingham City Jail, April 16, 1963:

I would agree with St. Augustine that “[a]n unjust law is no law at all.” . . . Any law that uplifts human personality is just. Any law that degrades human personality is unjust An unjust law is a code that a majority inflicts on a minority that is not binding on itself.²⁰³

In sum, laws that denigrate human value are unjust.²⁰⁴ Further, racist rhetoric and discriminatory immigration policies do not fall under biblical –or Christian—principles. To the contrary, those who assert biblical texts are in the “rare position of having the **doctrinal responsibility**, the ability and the opportunity to advocate on behalf of” foreigners, non-citizens, aliens, neighbors, and strangers.²⁰⁵

²⁰⁰ See Nina Rabin, *Legal Limbo As Subordination: Immigrants, Caste, and the Precarity of Liminal Status in the Trump Era*, 35 GEO. IMMIGR. L.J. 567, 587 (2021), (citing 8 U.S.C. § 1152(a) (2) (2018) (setting total number of immigrant visas available to each country to seven percent of total)); *Id.* (citing U.S. DEP’T OF STATE, BUREAU OF CONSULAR ADD., VISA BULLETIN FOR JUNE 2020, (2020), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2020/visa-bulletin-for-june-2020.html> (stating the example that the 1965 Immigration Act established an equal numerical cap for all countries, replacing a system of numerical quotas based on national origin that had served to preserve racist preferences about the composition of the United States, but in application, “as of June 2020, unmarried sons or daughters of U.S. citizens from Mexico face a wait of over twenty years for their visa to become available, compared to a six-year wait for applicants from most other countries.”)).

²⁰¹ See Aguilera, *supra* note 48 (describing disparate asylum grants).

²⁰² In *Arizona v. United States*, the Supreme Court asserted “immigration policy shapes the destiny of the Nation” and “[t]he history of the United States is in part made of the stories, talents, and lasting contributions of those who crossed oceans and deserts to come here.” 567 U.S. 387, 415-16 (2012).

²⁰³ Martin Luther King Jr., *Letter from Birmingham Jail* (Jun. 12, 1963), https://www.csuchico.edu/iege/_assets/documents/susi-letter-from-birmingham-jail.pdf

²⁰⁴ *Id.*

²⁰⁵ Dunn, *supra* note 176, at 359 (emphasis added).

CONCLUSION

The COVID-19 pandemic and the recent use of Title 42 highlight the continued xenophobic application and racist rhetoric in immigration policy against people of color. Predicating immigration rights on morality, health, and safety is a powerful weapon continually used against supposedly undesirable people groups. As history displays, the law's original requirement to analyze both race and character as penultimate immigration factors created xenophobic responses.²⁰⁶ Congress, through its discretion, interwove morality, health, and safety with race to justify disparate treatment of unfavored migrant groups to fit labor needs. These morality arguments often invoke Christianity and the Bible to justify inequality. However, the Scriptures verily command hospitality towards immigrants. Xenophobia is the antithesis of hospitality and thereby outside of Scriptural rationale. The Scriptures celebrate human dignity as sacred, supporting humane treatment and equality for citizens and non-citizens alike. Ultimately, Scriptures call on faith adherents to provide welcome to strangers in a foreign land. Although this article does not propose a direct application of the Mosaic Code to the United States, God's love for the vulnerable and immigrants is steadfast and can guide contemporary responses. Thus, whenever the Bible is raised in the immigration debate, may we be mindful that it beckons Christians to welcome and love immigrants without respect to race and ethnicity, and to seek justice on their behalf.

²⁰⁶ *See supra* Part II.