

The KKK, Immigration Law and Policy, and Donald Trump

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Many Americans know the Ku Klux Klan (KKK) for its horrific acts of violence directed at African Americans. Although generally overshadowed by that violence, the KKK's vilification of other groups, including immigrants and religious minorities, long has been central to its quest for white Anglo-Saxon supremacy. This Essay analyzes the enduring legacy of the KKK's immigration philosophy on contemporary American immigration law and politics. Some modern anti-immigrant advocates champion remarkably similar policies to the Klan's with racial animus on full display. Former President, and the 2024 Republican nominee for President, Donald Trump is an example.

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INTRODUCTION

Chattel slavery, Jim Crow, and generations of racial discrimination are part and parcel of the history of oppression of African Americans in the United States. Arising from the ashes of the Civil War, the Ku Klux Klan (KKK or “Klan”) is most famous for its horrific violence, including spectacle public lynchings of African Americans, as a means to maintain the racial hegemony of the old Confederacy.¹ Sadly, racial terrorism and discrimination followed Blacks who fled North.²

Besides victimizing African Americans, the KKK sought to rid the nation of immigrants, Catholics and Jews (many of whom were immigrants), and other minorities.³ Stringent, if not punitive, immigration laws often have accompanied the Klan’s periodic resurgences throughout United States history.⁴ Even though the KKK has receded into the background of modern U.S. social life, its antipathy for immigrants continues to reappear in mainstream American politics.⁵ In fact, anti-immigrant sentiment experienced a surprising spurt of popularity with Donald Trump’s rise to political power.⁶

This Essay contends that legal scholars and historians have under-analyzed an important component of the KKK’s philosophy and legacy. Generally speaking, the KKK’s xenophobia often has been little more than an afterthought—mentioned at best in passing—in the scholarly analysis of the Klan’s history and legacy.⁷ Contributing to that omission, the Black/white paradigm of civil rights traditionally focused on the civil rights concerns of

1. See *infra* Part I.

2. See generally ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION* (2010) (analyzing the history of the “great migration” of African Americans from the South to the North).

3. See *infra* Part I.

4. See *infra* Part I; see also Jared A. Goldstein, *Unfit for the Constitution: Nativism and the Constitution, From the Founding Fathers to Donald Trump*, 20 U. PA. J. CONST. L. 489, 493 (2018) (tracing the historical influence of nativism and anti-foreigner sentiment on U.S. constitutional law).

5. See *infra* Part II.

6. See *infra* Part II. Animosity toward immigrants, of course, existed in the United States long before the current anti-immigrant moment. See generally JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860–1925* (rev. ed. 2002) (chronicling the anti-immigrant movement in the early 1900s leading to passage of a restrictive and discriminatory 1924 immigration law); ERIKA LEE, *AMERICA FOR AMERICANS: A HISTORY OF XENOPHOBIA IN THE UNITED STATES* (2021) (reviewing the history of xenophobia in the United States); IMMIGRANTS OUT! *THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* (Juan F. Perea ed., 1996) (offering perspectives on the growth of nativism in the 1990s in the United States); EDIBERTO ROMÁN, *THOSE DAMNED IMMIGRANTS: AMERICA’S HYSTERIA OVER UNDOCUMENTED IMMIGRANTS* (2013) (analyzing various anti-immigrant outbursts in the United States). Even before comprehensive federal regulation of immigration became the rule in the late 1800s, immigration was a controversial national political issue. See generally HAROLD HOLZER, *BROUGHT FORTH ON THIS CONTINENT: ABRAHAM LINCOLN AND AMERICAN IMMIGRATION* (2024) (analyzing the evolution of Abraham Lincoln’s views on immigration during a time of popular animosity directed at Irish, German, and other immigrants).

7. See *infra* Part I (citing scholarship about the KKK with little analysis of the organization’s anti-immigrant ideology).

African Americans, which resulted in a body of scholarship that did not fully engage the civil rights concerns of non-Blacks.⁸ This Essay maintains that serious attention should be paid to the breadth and depth of the Klan's campaign against immigrants and its enduring legacy on the modern anti-immigrant movement in U.S. political life.

Specifically, this Essay seeks to show that the Klan's commitment to white supremacy and hatred of immigrants thrives in former President Donald Trump's thinly veiled appeals to racism. Those appeals might be characterized as "dog whistles" to racists and white supremacists, who form a part of his political base.⁹ This Essay identifies the striking parallels between the KKK's fervently anti-immigrant philosophy and Trump's unforgiving anti-immigrant dogma.

Part I of this Essay summarizes the evolution of the KKK's immigration agenda and its impacts on U.S. immigration law and policy. Part II connects the dots between the Klan's history and the modern anti-immigrant movement that former President Trump champions, which has spread like wildfire and triggered efforts by several states to pursue unforgiving immigration enforcement laws and policies. Ultimately, the popularity of Trump's call to dramatically restrict immigration and deport immigrants en masse should serve as a wake-up call to the nation.

I. THE ANTI-IMMIGRANT AGENDA OF THE KU KLUX KLAN

In addition to the horrific violence directed at African Americans, the KKK has advocated a strident anti-immigrant platform, which was in place from its inception, but metastasized as the nation's animosity for immigrants spiked in the 1920s.¹⁰ White supremacy and the hatred of non-Anglo Saxons, including Catholics and Jews, served as the foundation of the KKK's immigration positions.¹¹ In advocating its poisonous agenda, the Klan deployed patriotic, pro-American themes, including slogans such as "America First," to attack immigrants as un-American and a danger to the nation.¹² To justify anti-

8. See Juan F. Perea, *The Black/White Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CALIF. L. REV. 1213, 1214 (1997) (analyzing how the Black/white paradigm of civil rights renders invisible Latina/o civil rights issues); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181, 1198 (1997) (reviewing LOUISE ANN FISCH, *ALL RISE: REYNALDO G. GARZA, THE FIRST MEXICAN AMERICAN FEDERAL JUDGE* (1996)).

9. See generally IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014) (contending that modern politicians regularly employ racial code—so-called dog whistles—to generate passions in the public for anti-minority laws and policies).

10. See *infra* Part I.A.

11. See *infra* Part I.A.

12. See *infra* Part I.A.

immigrant laws and policies, the KKK also relied on concerns about crime, national security, and other social ills blamed on immigrants.¹³

In effect, the KKK preached hatred of immigrants, as well as African Americans and other minorities, and considered them to be enemies of white Americans.¹⁴ To attack those enemies, the KKK supported draconian immigration laws and their most aggressive enforcement.¹⁵ The fact that many immigrants over time were non-white, or not Protestant, contributed significantly to the animosity.¹⁶ Racial difference and foreigner status rendered immigrants unpopular with the public and made immigrants convenient scapegoats for the nation's economic, social, and political anxieties.¹⁷ The KKK throughout U.S. history has seized the opportunity to capitalize politically on the unpopularity of immigrants.¹⁸

Vociferously attacking immigrants from Mexico, Central America, Asia, and the developing world generally,¹⁹ the Klan today enthusiastically supports drastic restrictions on immigration and tough border enforcement, including through vigilante action.²⁰ One KKK leader went so far as to call for “corpses” on the United States/Mexico border, a chilling statement in light of the scores of border deaths.²¹ Although immigrants stand accused of causing a wide array of social ills, from criminal activity to taking jobs from United States citizens, racism is at the core of the KKK's immigration positions and the modern anti-immigrant movement.²² Contemporary white supremacists thus have targeted immigrants of color for attack.²³

A. THE FOUNDATIONS

After the Civil War and the abolition of slavery, the KKK emerged and devoted itself to African American subordination.²⁴ Although the United States often has proclaimed itself to be a “nation of immigrants,” the Klan's concept of

13. *See infra* Part I.A.

14. *See infra* Part I.A.

15. *See infra* Part I.A.

16. *See infra* text accompanying notes 45–48.

17. *See infra* Part I.A.

18. *See infra* text accompanying notes 48–59.

19. *See infra* Part I.B.

20. *See infra* Part I.B.

21. Keegan Hanks, *KKK Joins Immigration Debate with Calls for “Corpses” on the Border*, S. POVERTY L. CTR. (July 31, 2014) (emphasis added) (quoting Klan leader), <https://www.splcenter.org/hatewatch/2014/07/30/kkk-joins-immigration-debate-calls-corpses-border>.

22. *See infra* Parts I.A–B.

23. *See infra* Part II.

24. *See generally* ELAINE FRANTZ PARSONS, *KU-KLUX: THE BIRTH OF THE KLAN DURING RECONSTRUCTION* (2015) (reviewing the formation of the KKK after the Civil War); FERGUS M. BORDEWICH, *KLAN WAR: ULYSSES GRANT AND THE BATTLE TO SAVE RECONSTRUCTION* (2023) (analyzing President Ulysses Grant's efforts to halt the KKK from derailing Reconstruction).

America simply did not leave room for immigrants, with immigrants of color, Catholics, and Jews all being particular targets of Klan animosity.²⁵ Xenophobia and anti-African American racism easily co-existed in Klan philosophy.²⁶ The KKK's fervent commitment to white supremacy unified its attacks on African Americans and immigrants, with a white Anglo-Saxon America being the overriding goal of its activities.²⁷

Besides racism and xenophobia, economic, social, political, and cultural concerns fueled the Klan's—and other white supremacist groups'—anti-immigrant stances.²⁸ The KKK frequently invoked the protection of white workers to justify the banishment of immigrants, with Chinese immigrants in the 1800s being a well-known example.²⁹ Allegations similar to those made in the modern immigration debate included the following: immigrants accepted lower wages from employers than white citizens could live on, engaged in rampant criminal activity, and caused a great many other social ills.³⁰ The Klan sought no less than the mass removal of immigrants from the United States.³¹

Importantly, the KKK did not understand the rule of the law as restricting its pursuit of a white America.³² Indeed, it literally viewed the ends as justifying the means and pursued white supremacy by any means necessary.³³ The Klan frequently resorted to brutal violence, such as lynching, to accomplish political ends,³⁴ including suppressing minority voters, enforcing segregation and the ban on interracial relationships, and, more generally, maintaining and defending white supremacy.³⁵

1. *The KKK's Impact on Immigration Law and Policy*

The KKK has historically advocated extreme immigration measures, including drastic restrictions on immigration and mass removal of immigrants from the United States.³⁶ Over time, the Klan's positions have resonated with vocal segments of the American public and occasionally have prevailed in the political process.³⁷

25. See PARSONS, *supra* note 24, at 118.

26. *See id.*

27. *See id.*

28. *See id.*

29. *See infra* Part I.A.2.

30. *See infra* Parts I.A.1–2.

31. *See infra* Parts I.A.1–2.

32. *See infra* Parts I.A.1–2.

33. *See infra* Parts I.A.1–2.

34. *See infra* Parts I.A.1–2.

35. *See infra* Parts I.A.1–2.

36. *See infra* text accompanying notes 45–59.

37. *See infra* notes 45–57 and accompanying text; *infra* Part II.

Long after Reconstruction, the KKK in the 1920s experienced a popular resurgence.³⁸ With outspoken Klan support, Congress passed the Immigration Act of 1924,³⁹ which included the discriminatory national origins quotas system. The law responded to public animosity toward immigrants and dissatisfaction with their overall “quality.”⁴⁰ By design, the quotas system, which remained in place until 1965,⁴¹ greatly restricted the immigration of Asians and Southern and Eastern Europeans, including many Jews and Italians.⁴² To justify the system, Congress relied on eugenic studies—now generally considered to be racist—portraying the affected groups of immigrants as inferior.⁴³ A House Report on the legislation specifically noted that “the continued arrival of great numbers [of races from southern and eastern Europe] tends to upset our balance of population, to depress our standard of living, and to unduly charge our institutions for the care of the socially inadequate.”⁴⁴

During this time, “Klan propaganda surely strengthened racialized anti-immigrant sentiment both in Congress and among the voters.”⁴⁵ A potent political force in the United States in the 1920s,⁴⁶ the Klan “was a major proponent of the [1924 Immigration] Act.”⁴⁷ Since at least the early 1900s, “America First” has been used by the KKK to propagate anti-immigrant sentiment and racial animus.⁴⁸ For example, Binghamton, New York in the

38. See generally TIMOTHY EGAN, *A FEVER IN THE HEARTLAND: THE KU KLUX KLAN’S PLOT TO TAKE OVER AMERICA, AND THE WOMAN WHO STOPPED THEM* (2023) (documenting the Klan’s resurgence in the 1920s and its domination of politics in some states, such as Indiana); Jill Weiss Simins, “America First:” *The Ku Klux Klan Influence on Immigration Policy in the 1920s*, IND. HIST. BUREAU: UNTOLD IND. (Apr. 3, 2024), <https://blog.history.in.gov/america-first-the-ku-klux-klan-influence-on-immigration-policy-in-the-1920s> (to the same effect).

39. Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (repealed 1965). The law also was known as the Johnson-Reed Act. See *id.*

40. See *infra* text accompanying notes 91, 95–101.

41. See Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (establishing the national origins quotas system), *repealed by* Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911.

42. See HIGHAM, *supra* note 6, at 300–30 (discussing the history surrounding congressional passage of the national origins quotas system).

43. See generally DANIEL OKRENT, *THE GUARDED GATE: BIGOTRY, EUGENICS AND THE LAW THAT KEPT TWO GENERATIONS OF JEWS, ITALIANS, AND OTHER EUROPEAN IMMIGRANTS OUT OF AMERICA* (2019) (analyzing the reliance on eugenic studies in the passage of the 1924 Act and the creation of the national origins quotas system). Popular books published during that time embraced eugenics as a justification for restricting immigration. See, e.g., MADISON GRANT, *THE PASSING OF THE GREAT RACE; OR, THE RACIAL BASIS OF EUROPEAN HISTORY* (1916) (tying eugenics to white racial superiority in calling for an end to immigration); LOTHROP STODDARD, *THE RISING TIDE OF COLOR AGAINST WHITE SUPREMACY* (1920) (analyzing the collapse of white supremacy and tying eugenics to white racial superiority).

44. H.R. REP. NO. 68-350, at 13 (1924).

45. LINDA GORDON, *THE SECOND COMING OF THE KKK: THE KU KLUX KLAN OF THE 1920S AND THE AMERICAN POLITICAL TRADITION* 195 (2017).

46. See *id.* at 163.

47. KELLY J. BAKER, *GOSPEL ACCORDING TO THE KLAN: THE KKK’S APPEAL TO PROTESTANT AMERICA, 1915-30*, at 169 (2011).

48. See *infra* text accompanying notes 49, 58.

1920s was the site of a KKK “America First” Parade where banners reading “America First | One Country | One Flag” were openly displayed.⁴⁹

During the same general period in the 1920s, the KKK and other anti-immigrant groups supported Prohibition, in no small part because they blamed immigrants for the abuse of alcohol.⁵⁰ Enforcement of the ban on alcohol thus was a way to attack immigrant communities.⁵¹

The national origins quotas system did not restrict immigration from the Western Hemisphere and thus did not curb immigration from Mexico.⁵² With the support of white supremacists, Congress soon turned to restrict Mexican immigration.⁵³ Congress, with white supremacists at the lead, passed the Undesirable Aliens Act of 1929, which made illegal entry into the U.S. a crime.⁵⁴ The law “was intended to combat Mexican immigration because of Mexicans’ perceived racial characteristics.”⁵⁵ A successor to that law, which has been the basis for the prosecution of many millions of Latina/o noncitizens,⁵⁶ has been challenged for being passed by Congress with an anti-Mexican animus.⁵⁷

During the 1920s, and probably well before, “the ranks of the Ku Klux Klan [were] open only to men and women born in the United States. . . . The women of the . . . Klan [stood] for ‘America First[.]’”⁵⁸ Racial purity was critically important, with the KKK proclaiming that “pure American blood must be kept uncontaminated by mongrel strains and protected from racial pollution.”⁵⁹

49. Photograph of Ku Klux Klan parade in Binghamton, New York, in the 1920s, in Colin Kidd, *Behold, America by Sarah Churchwell Review – the Underside of the ‘American Dream’*, *GUARDIAN* (July 14, 2018, 2:30 PM EDT), <https://www.theguardian.com/books/2018/jul/14/behold-america-history-of-american-dream-sarah-churchwell-review>.

50. See Jayesh M. Rathod, *Distilling Americans: The Legacy of Prohibition on U.S. Immigration Law*, 51 *HOUS. L. REV.* 781, 811 (2014); see also Thomas P. Pegram, *Hoodwinked: The Anti-Saloon League in 1920s Prohibition Enforcement*, 7 *J. GILDED AGE & PROGRESSIVE ERA* 89 (2008) (analyzing the relationship between the Anti-Saloon League and the KKK, and their support for national prohibition).

51. See Rathod, *supra* note 50, at 802.

52. See *id.* at 842–43.

53. See Eric Fish, *Race, History, and Immigration Crimes*, 107 *IOWA L. REV.* 1051, 1059–79 (2022); see also CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *WELCOME TO THE WRETCHED: IN DEFENSE OF THE “CRIMINAL ALIEN”* 44–70 (2024) (discussing how a white supremacist and KKK member who, as a member of Congress, successfully advocated for the Undesirable Aliens Act of 1929).

54. Undesirable Aliens Act of 1929, Pub L. No. 70-1018, 45 Stat. 1551.

55. Fish, *supra* note 53, at 1080.

56. See *id.* at 1053–54 (“About 99 percent of the defendants in [unlawful entry] cases are nationals of Mexico or other Latin American countries”) (footnote omitted).

57. See *United States v. Carrillo-Lopez*, 68 F.4th 1133, 1154 (9th Cir. 2023) (rejecting an Equal Protection challenge to 8 U.S.C. § 1326, a successor to the provisions of the Undesirable Aliens Act of 1929, barring illegal re-entry into the United States).

58. *WOMEN OF THE KU KLUX KLAN, AMERICA FOR AMERICANS AS INTERPRETED BY THE WOMEN OF THE KU KLUX KLAN, CREED OF KLANSWOMEN I*, 5, available at <https://collections.library.yale.edu/catalog/2107175>.

59. *Id.* at 6.

Later, Congress passed the Immigration and Nationality Act of 1952 (INA),⁶⁰ the comprehensive immigration law that, as amended, remains the omnibus U.S. immigration law.⁶¹ The INA, among other things, punished communists (and noncitizens in any way affiliated with organizations deemed communist) and maintained the discriminatory national origins quotas system of the 1924 act, which the KKK supported.⁶² President Truman issued a blunt veto message criticizing the quotas system:

The idea behind this discriminatory policy was, to put it baldly, that Americans with English or Irish names were better people and better citizens than Americans with Italian or Greek or Polish names. It was thought that people of West European origin made better citizens than Rumanians [sic] or Yugoslavs or Ukrainians or Hungarians or Balts or Austrians. Such a concept is utterly unworthy of our traditions and our ideals. It violates the great political doctrine of the Declaration of Independence that “all men are created equal.”⁶³

Congress overrode the veto.⁶⁴

The 1952 Act included other features consistent with the Klan’s anti-immigration philosophy. Among other things, it greatly restricted immigration to the United States and allowed for detention and removal of noncitizens on political and other grounds.⁶⁵

When Congress dismantled the quotas system in 1965, limits on Western Hemisphere immigration evolved into per-country ceilings on immigration.⁶⁶ These ceilings served to limit immigration from Latin America for the first time in U.S. history, as this had emerged as a region sending a large number of the nation’s immigrants.⁶⁷ Racism explained the new anti-Latina/o features of the 1965 Act.⁶⁸ As a blue-ribbon presidential commission summarized:

60. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (current version at 8 U.S.C. §§ 1101–1537). The INA was also known as the McCarren Walter Act for two of its congressional sponsors. *See id.*

61. *See Immigration and Nationality Act*, U.S. CITIZENSHIP & IMMIGR. SERVS. (July 10, 2019), <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>.

62. *See supra* text accompanying notes 60–61.

63. Harry S. Truman, *Veto of Bill to Revise the Laws Relating to Immigration, Naturalization, and Nationality*, 182 PUB. PAPERS 441, 443 (June 25, 1952).

64. *See* Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (overriding President Truman’s veto).

65. *See* Philip Monrad, *Ideological Exclusion, Plenary Power, and the PLO*, 77 CALIF. L. REV. 831, 840–42 (1989) (summarizing some of the problematic features of the Immigration & Nationality Act).

66. *See* Kevin R. Johnson, *The Beginning of the End: The Immigration Act of 1965 and the Emergence of the Modern U.S.-Mexico Border State*, in *THE IMMIGRATION AND NATIONALITY ACT OF 1965: LEGISLATING A NEW AMERICA* 116, 119 (Gabriel J. Chin & Rose Cuison Villazor eds., 2015).

67. *See id.*

68. *See, e.g.*, H.R. REP. NO. 89-745, at 48 (1965) (noting that the “most compelling reason” for imposing nations in the Western Hemisphere quota was fear of mass immigration from Latin America); S. REP. NO. 89-

The United States was . . . far from free of prejudice . . . and one part of the 1965 law reflected change in policy that was in part due to antiforeign sentiments. Prejudice against dark-skinned people . . . remained strong. In the years after World War II, as the proportion of Spanish-speaking residents increased, much of the lingering nativism in the United States was directed against those from Mexico and Central and South America. . . . Giving in to . . . pressures as a price to be paid for abolishing the national origins system, Congress put into the 1965 amendments a ceiling [on Western Hemisphere immigration] to close the last remaining open door of U.S. policy.⁶⁹

For its part, the Supreme Court shielded immigration laws from judicial review and allowed them to be enforced in unforgiving ways.⁷⁰ The 1924 and 1952 immigration acts went into law without judicial interference. Discrimination thus was allowed in the immigration laws and their enforcement.

Antisemitism, which was central to Klan ideology throughout its history, greatly shaped the U.S. immigration laws and their enforcement for generations.⁷¹ The quotas system passed by Congress in 1924, and in effect until 1965, barred many Jewish persons from southern and eastern Europe from admission into the United States.⁷² Antisemitism also undoubtedly contributed to the United States government's heartless refusal to allow Jewish persons who fled Nazi Germany on the MS *St. Louis*—which had made it to U.S. coastal waters—to disembark in the United States.⁷³

2. *The KKK in the West*

In the 1800s, the migration of Chinese workers to the West, primarily men who worked in mining and railroad construction, including that of the transcontinental railroad, sparked mean-spirited public responses.⁷⁴ Chinese immigrants' alleged immorality and propensity for crime, along with the desire to protect white workers from wage depression and shield white women from Chinese men, were often used as justifications for state and local anti-Chinese

748, at 17–18 (1965), *reprinted in* 1965 U.S.C.C.A.N. 3328, 2226 (expressing concern with the immigration from nations of the Western Hemisphere).

69. U.S. SELECT COMM'N ON IMMIGR. & REFUGEE POL'Y, STAFF REP.: U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST, *in* IGOR I. KAVASS & BERNARD D. REAMS, JR., 18 THE IMMIGRATION ACT OF 1990: A LEGISLATIVE HISTORY OF PUB. L. NO. 101-649, at 208 (1981) (emphasis added) (footnote omitted).

70. *See, e.g.*, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–16 (1953) (upholding the indefinite detention of a long-term lawful permanent resident seeking to return to the United States).

71. *See infra* text accompanying notes 72–73.

72. *See supra* text accompanying notes 42–44.

73. *See* Naomi S. Stern, *Evian's Legacy: The Holocaust, the United Nations Refugee Convention, and Post-War Refugee Legislation in the United States*, 19 GEO. IMMIGR. L.J. 313, 316–18 (2004). *See generally* GORDON THOMAS & MAX MORGAN WITTS, *VOYAGE OF THE DAMNED* (2d ed., 1994) (chronicling the history of the MS *St. Louis*).

74. *See* Kevin R. Johnson, *Systemic Racism in the U.S. Immigration Laws*, 97 IND. L.J. 1455, 1460–61 (2022).

laws and actions.⁷⁵ During that time in U.S. history, KKK chapters engaged in anti-Asian activities in the West,⁷⁶ including in California.⁷⁷ Vigilante groups in the West, fueled by racial animus, replicated the KKK's activities and campaigned, politically and through violence, against immigrants.⁷⁸

Aiming to expel Chinese workers, businesses, and residents from towns, anti-Chinese violence by white citizens plagued the west in the late 1800s.⁷⁹ Attacks on Chinese immigrants and businesses in western settlements occurred with regularity.⁸⁰ In the small mountain town of Truckee, California, for example, the “Cue Klux Klan” boycotted Chinese businesses, burned down Chinatowns, otherwise victimized Chinese residents, and killed Chinese workers in an organized effort known as the “Truckee Method.”⁸¹ One of the effort's explicit objectives, which was largely accomplished, was to drive Chinese people from the region.⁸²

Moreover, the Workingmen's Party, a populist labor movement, embraced the slogan “The Chinese must go!”⁸³ to perpetuate one of its stated goals: protecting U.S. workers from cheap Chinese labor.⁸⁴ Its fiery leader, Denis Kearney, preached hate for the Chinese, and championed ending Chinese immigration and expelling Chinese immigrants from the United States.⁸⁵

After the Supreme Court thwarted efforts by the states to halt Chinese immigration into their jurisdictions,⁸⁶ political forces in the West, with the full support of California, prevailed in convincing Congress to pass the Chinese Exclusion Act of 1882.⁸⁷ This landmark legislation represented the first

75. See, e.g., *People v. Hall*, 4 Cal. 399, 399 (1854) (upholding a California law barring the testimony of Chinese persons “against a white man” in criminal prosecutions).

76. See Kevin Waite, *The Forgotten History of the Western Klan*, ATLANTIC (Apr. 6, 2021), <https://www.theatlantic.com/ideas/archive/2021/04/california-klans-anti-asian-crusade/618513>; Knute Berger, *Our Dishonorable Past: KKK's Western Roots Date to 1868*, CROSSCUT (Mar. 19, 2017), <https://crosscut.com/2017/03/history-you-might-not-want-to-know-the-kkks-deep-local-roots-west-california-washingtonoregon#:~:text=Nearly%20150%20years%20ago%2C%20as,stretching%20from%20Southern%20California%20to>.

77. See Newell G. Bringhurst, *The Ku Klux Klan in a Central California Community*, 82 S. CAL. Q. 365, 376 (2000).

78. See *infra* Part II.A.

79. See *infra* text accompanying notes 80–85.

80. See Johnson, *supra* note 74, at 1460–69.

81. See *id.* at 1463 (quoting an anti-Chinese leader's commentary). The author of the commentary, Charles McGlashan, was later elected to the California Assembly; the commentary suggested that “bounties be paid to people who cut off the ponytails of Chinese men as, ‘is the case with pelts of wolves, cayotes [sic], and like vermin.’” *Id.* at 1465 (footnote omitted).

82. See *id.* at 1460–69.

83. *Id.* at 1461.

84. See *id.*

85. See *id.* at 1461–62.

86. See, e.g., *Chy Lung v. Freeman*, 92 U.S. 275, 280–81 (1875) (invalidating a California law requiring bond for admission of immigrants into the state).

87. See Johnson, *supra* note 74, at 1469–72.

comprehensive federal immigration legislation and generally prohibited Chinese migration and allowed for the removal of Chinese immigrants.⁸⁸ The Supreme Court emphatically shielded the undisputedly racist immigration law from constitutional review⁸⁹ and established the extraordinary rule, which remains the law of the land, that Congress's immigration judgments are wholly immune from judicial review.⁹⁰

B. THE MODERN KKK AND IMMIGRATION

As is the case for its anti-Black hatred, the KKK's animosity toward immigrants and its devotion to white supremacy have remained constant throughout U.S. history.⁹¹ This Subpart of the Essay outlines the Klan's modern anti-immigrant activities.

Consistent with the KKK's approach, white supremacist groups today often attack immigrants and emphasize the allegedly negative impacts of immigrants on U.S. society.⁹² Unfortunately, racism thrives in the debate over immigration law and its enforcement.⁹³ Although color-blind in most respects, the modern immigration laws in operation have unquestionably disparate racial impacts.⁹⁴

Over time, the KKK's immigration advocacy turned toward combating what the Klan came to see as the most serious contemporary immigration threat—Mexican and other Latina/o migrants.⁹⁵ For example, the Southern Poverty Law Center highlighted in a report that the “Imperial Wizard of the Loyal White Knights of the Ku Klux Klan doesn't want amnesty [for undocumented immigrants]. *He wants 'corpses' on the [United States/Mexico] border.*”⁹⁶ In 1997, David Duke, then an officer in the national KKK, announced

88. *See id.*

89. *See* Chae Chan Ping v. United States (*The Chinese Exclusion Case*), 130 U.S. 581, 606 (1889).

90. *See generally* Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998) (analyzing how, even though inconsistent with modern constitutional jurisprudence, *The Chinese Exclusion Case* remains good law).

91. *See infra* Parts I.B–II.

92. *See infra* Part II.B.

93. *See infra* Part II.

94. *See generally* Kevin R. Johnson, *A Case Study of Color-Blindness: The Racially Disparate Impacts of Arizona's S.B. 1070 and the Failure of Comprehensive Immigration Reform*, 2 U.C. IRVINE L. REV. 313 (2012) (reviewing racially disparate impacts of color-blind U.S. immigration laws).

95. *See* Susy Buchanan & David Holthouse, *The Franchise*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/intelligence-report/2015/franchise> (last visited Apr. 16, 2024) (noting that the KKK in the 1920s organized vigilante activity in the border region); John Wilkens, *San Diego's Long, Troubled History with Racist Hate*, L.A. TIMES (May 6, 2018), https://enewspaper.latimes.com/infinity/article_share.aspx?guid=0f89a304-f920-4309-9e56-e8242bfe6e57 (stating that the KKK in the 1920s targeted Mexican immigrants and remained a presence in the San Diego area for decades).

96. Hanks, *supra* note 21 (emphasis added) (quoting Klan leader).

plans for Klan members to patrol the United States/Mexico border to curb the “illegal alien problem.”⁹⁷

Similar to Latina/o immigrants, immigrants from Asia also have suffered the wrath of the modern KKK.⁹⁸ One glaring example garnered national attention. With the end of the war in Vietnam bringing refugees to the United States, the Klan engaged in violent attacks on Vietnamese fishermen in the Gulf of Mexico, with the stated goal of protecting white fishermen.⁹⁹ Congress passed the Refugee Act of 1980,¹⁰⁰ which was designed in part to restrict the President’s power to admit Vietnamese and other refugees into the United States.¹⁰¹

In sum, the Klan has targeted immigration and immigrants with political and other attacks.¹⁰² Consistent with its long history, the KKK considered immigrants from Mexico, Central America, and Asia as not worthy of being American, and believed these immigrants undermined the nation’s social and cultural fabric.¹⁰³ The KKK’s antipathy for immigrants of color fits in with the long history of racial animus in the United States. Such animus is at the core of advocacy for harsh immigration measures and a reduction of immigration from Latin America and Asia.¹⁰⁴

II. DONALD TRUMP AND THE CONTEMPORARY ANTI-IMMIGRANT MOVEMENT

Since at least the 1980s, Democratic and Republican politicians had largely abandoned the staunchly anti-immigrant and racist rhetoric of the past in discussing immigration.¹⁰⁵ In 1986, Republican President Ronald Reagan signed the last major immigration reform legislation into law, which included amnesty programs allowing hundreds of thousands of undocumented immigrants to regularize their immigration status.¹⁰⁶ Subsequent Republican Presidents George H.W. Bush and George W. Bush pressed relatively moderate

97. *Ku Klux Klan Plans Border Patrol to Help Fight Illegal Alien Problem*, N.Y. TIMES (Oct. 18, 1977), <https://www.nytimes.com/1977/10/18/archives/ku-klux-klan-plans-border-patrol-to-help-fight-illegal-alien.html> (quoting Duke’s announcement).

98. See *infra* text accompanying notes 99–101.

99. See Denny Chin & Kathy Hirata Chin, “*Kung Flu*”: *A History of Hostility and Violence Against Asian Americans*, 90 FORDHAM L. REV. 1889, 1929–35 (2022).

100. Pub. L. No. 96-212, § 101, 94 Stat. 102, 102 (1980).

101. See Adam B. Cox & Cristina M. Rodríguez, *The President and Immigration Law*, 119 YALE L.J. 458, 503 (2009).

102. See *supra* Part I.A.1.

103. See *supra* Part I.A.

104. See *supra* Part I.A.

105. See *infra* text accompanying notes 106–111.

106. See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 201, 100 Stat. 3359, 3394 (1986) (codified at 8 U.S.C. § 1255a). Today, Republican political leaders generally oppose amnesty of any kind for undocumented immigrants. See Mary D. Fan, *Legalization Conflicts and Reliance Defenses*, 92 WASH. U. L. REV. 907, 936 n.202, 938 (2015).

immigration agendas, with the second President Bush endorsing comprehensive immigration reform.¹⁰⁷ Similarly, restrictionist groups established by racists and xenophobes, such as the Federation for American Immigration Reform, generally distanced themselves from their founders.¹⁰⁸

Over the course of the latter half of the 20th century and the early years of the new millennium, the political discussion of immigration law and enforcement slowly became more sanitized, with fewer blatant racist appeals.¹⁰⁹ Public discourse about immigration, and immigration law and policy, at least temporarily changed.¹¹⁰ In a major step in that direction, Congress repealed the discriminatory national origins quotas system and the remnants of Chinese exclusion amid the civil rights movement, thus moving toward a more color-blind visa allocation system.¹¹¹

Initially as a businessman and television personality, Donald Trump emerged on the national political scene and, from the outset, advanced an unabashedly anti-immigrant agenda that, upon even superficial reflection, is remarkably similar to that of the KKK. Moreover, in presenting his agenda to the public, Trump regularly employs fiery, racially tinged rhetoric reminiscent of the Klan's.¹¹²

A. THE PARALLELS BETWEEN THE IMMIGRATION IDEOLOGIES OF THE KKK AND DONALD TRUMP

Donald Trump veered in a dramatically different direction than other modern political leaders with respect to immigration. Promising to “Make America Great Again,”¹¹³ he famously began his 2016 run for president by attacking Mexican immigrants as “rapists” and “criminals.”¹¹⁴ He also employed

107. See George W. Bush, President of the U.S., State of the Union Address (Feb. 2, 2005) (transcript available at <https://georgewbush-whitehouse.archives.gov/news/releases/2005/02/20050202-11.html>).

108. See *John Tanton Is the Mastermind Behind the Organized Anti-Immigration Movement*, S. POVERTY L. CTR. (June 18, 2002), <https://www.splcenter.org/fighting-hate/intelligence-report/2002/john-tanton-mastermind-behind-organized-anti-immigration-movement>.

109. See *supra* text accompanying notes 106–108.

110. See *supra* text accompanying notes 106–108.

111. See *supra* text accompanying notes 60–70.

112. See *infra* Part I.A.

113. See *Donald Trump Declares That He Will Make America Great Again, Again*, ECONOMIST (Nov. 17, 2022), <https://www.economist.com/united-states/2022/11/17/donald-trump-declares-that-he-will-make-america-great-again-again>.

114. Donald Trump, Announcement of Presidential Bid (June 16, 2015) (transcript available at <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/>) (“When Mexico sends its people, they’re not sending their best. . . . They’re sending people that have lots of problems They’re bringing drugs. They’re bringing crime. They’re rapists.”); see Lindsay Pérez Huber, “*Make America Great Again!*”: *Donald Trump, Racist Nativism and the Virulent Adherence to White Supremacy Amid U.S. Demographic Change*, 10 CHARLESTON L. REV. 215, 222–23 (2016) (analyzing white supremacist foundations of Donald Trump’s 2016 immigration platform).

the old Klan slogan “America First.”¹¹⁵ Trump’s ardent anti-immigrant positions, along with his controversial civil rights views, helped propel him to victory in the 2016 election.¹¹⁶

Race was central to Trump’s approach to immigration.¹¹⁷ In taking this position, he broke from the more moderate immigration approaches of recent U.S. presidents, including those of Republicans.¹¹⁸ Trump promised to bring back racist immigration enforcement programs of the past, such as “Operation Wetback,” a 1954 campaign that removed hundreds of thousands of persons of Mexican ancestry from the United States.¹¹⁹ He proclaimed that the nation did not need immigrants from “sh—— countries,” specifically naming El Salvador and Haiti,¹²⁰ and opined that the nation should admit more immigrants from nations like Norway.¹²¹ In light of those statements, the Trump administration unsurprisingly pursued the most aggressive immigration enforcement policies in modern U.S. history, with decidedly — if not intentionally — adverse consequences on noncitizens of color.¹²² Like past anti-immigrant advocates, President Trump and his first Attorney General, Jeff Sessions, justified aggressive actions to stop immigrants from taking jobs from American workers.¹²³

Trump’s overall approach to immigration is more or less in line with the KKK’s anti-immigrant agenda. His fiery language fits comfortably with the KKK’s crude racist language. Moreover, Trump’s immigration positions and

115. See Susan Dunn, *Trump’s ‘America First’ Has Ugly Echoes from U.S. History*, CNN (Apr. 28, 2016, 8:02 AM EDT), <https://www.cnn.com/2016/04/27/opinions/trump-america-first-ugly-echoes-dunn/index.html>.

116. See generally Perry Bacon, Jr., *How the 2016 Election Exposed America’s Racial and Cultural Divide*, NBC NEWS (Nov. 11, 2016, 8:16 AM PST), <https://www.nbcnews.com/politics/white-house/how-2016-election-exposed-america-s-racial-cultural-divides-n68230> (discussing how the 2016 election revealed a sharp divide over race, ethnicity, and culture in America, and ultimately that, as one political activist put it, “‘White America elected Donald Trump’”).

117. See *supra* text accompanying notes 113–116.

118. See *supra* text accompanying notes 113–116.

119. See Philip Bump, *Donald Trump Endorsed ‘Operation Wetback’—But Not by Name*, WASH. POST (Nov. 11, 2015, 2:43 PM EST), <https://www.washingtonpost.com/news/the-fix/wp/2015/11/11/donald-trump-endorsed-operation-wetback-but-not-by-name>.

120. Colin Dwyer, *‘Racist’ and ‘Shameful’: How Other Countries Are Responding to Trump’s Slur*, NPR (Jan. 12, 2018, 12:45 PM ET), <https://www.npr.org/sections/thetwo-way/2018/01/12/577599691/racist-and-shameful-how-other-countries-are-responding-to-trumps-slur> (quoting Donald Trump).

121. See Nurith Aizenman, *Trump Wishes We Had More Immigrants from Norway. Turns Out We Once Did*, NPR (Jan. 12, 2018, 6:32 PM ET), <https://www.npr.org/sections/goatsandsoda/2018/01/12/577673191/trump-wishes-we-had-more-immigrants-from-norway-turns-out-we-once-did>.

122. See generally Rose Cuison Villazor & Kevin R. Johnson, *The Trump Administration and the War on Immigration Diversity*, 54 WAKE FOREST L. REV. 575 (2019) (reviewing the adverse impacts on people of color of the Trump administration’s various immigration policies).

123. See Susan Ferriss, *How Trump and Sessions Cherry-Picked Data to Blame Immigrants for Lower Wages*, CTR. FOR PUB. INTEGRITY (Apr. 30, 2018), <https://publicintegrity.org/inequality-poverty-opportunity/immigration/how-trump-and-sessions-cherry-picked-data-to-blame-immigrants-for-lower-wages>.

rhetoric often jar contemporary racial sensibilities and stir ugly passions.¹²⁴ Reminiscent of the Klan, Trump appealed to patriotism and to “Make America Great Again”¹²⁵ to bolster his immigration positions.

Links between the KKK and Trump have been previously identified.¹²⁶ His father, who was arrested at a KKK rally in the 1920s, has been rumored to be a member.¹²⁷ Unheard of in modern U.S. history, the KKK endorsed Trump’s candidacy for president in 2016,¹²⁸ and famous ex-Klan leader, David Duke, did as well.¹²⁹ The Klan’s backing of Trump speaks volumes about how his immigration and civil rights positions fit into KKK ideology. More generally, white supremacists have found inspiration in Trump’s positions.¹³⁰

The attacks on immigrants and citizens of color have also been prevalent in recent years in areas other than immigration law and policy.¹³¹ For example, President Trump repeatedly referred to COVID-19 as the “Chinese virus” or “Kung Flu,” as the nation reeled from the pandemic and social tensions ran high.¹³² His words had consequences. At roughly the same time that he vilified Chinese people, hate crimes against Asian Americans spiked.¹³³

124. See, e.g., *supra* text accompanying notes 113–123; *infra* text accompanying notes 128–130.

125. See *supra* text accompanying note 113.

126. See *infra* text accompanying notes 127–130.

127. See Tom Norton, *Was Donald Trump’s Father in the KKK?*, NEWSWEEK (Jan. 29, 2024, 6:53 PM EST) <https://www.newsweek.com/was-donald-trump-father-kkk-1864382>; Jon Wiener, *Fred Trump and the KKK of the 1920’s: Linda Gordon, Plus Nancy MacLean on the Roots of the Radical Right*, NATION (Jan. 4, 2018), <https://www.thenation.com/article/politics/the-trump-familys-history-with-the-kkk>.

128. See Christopher Hooton, *The Ku Klux Klan Officially Endorses Donald Trump for President*, INDEPENDENT (Nov. 2, 2016, 9:54 PM GMT), <https://www.independent.co.uk/news/world/americas/us-politics/the-ku-klux-klan-officially-endorses-donald-trump-for-president-a7392801.html>.

129. See Andrew Naughtie, *Former KKK Leader Endorses Trump for President Again—and Tucker Carlson for VP*, INDEPENDENT (July 9, 2020, 10:14 AM BST), <https://www.independent.co.uk/news/world/americas/kkk-trump-david-duke-tucker-carlson-election-2020-a9609491.html>.

130. See, e.g., Charles Betha, *What a White Supremacist Told Me After Donald Trump Was Elected*, NEW YORKER (Aug. 17, 2017), <https://www.newyorker.com/news/news-desk/what-a-white-supremacist-told-me-after-donald-trump-was-elected>; Nicole Narea, *Donald Trump’s Long History of Enabling White Supremacy, Explained*, VOX (Nov. 29, 2022, 10:50 AM PST), <https://www.vox.com/policy-and-politics/23484314/trump-fuentes-ye-dinner-white-nationalism-supremacy>.

131. See *infra* text accompanying notes 132–133.

132. See David Nakamura, *With “Kung Flu,” Trump Sparks Backlash Over Racist Language—and a Rallying Cry for Supporters*, WASH. POST (June 24, 2020, 7:13 PM EDT), https://www.washingtonpost.com/politics/with-kung-flu-trump-sparks-backlash-over-racist-language--and-a-rallying-cry-for-supporters/2020/06/24/485d151e-b620-11ea-aca5-ebb63d27e1ff_story.html (quoting Donald Trump). Trump also made remarks about other groups that were allegedly racist. See, e.g., Dominick Mastrangelo, *ABC News President: Trump’s Comments About Black People ‘as Racist as They Come’*, HILL (Feb. 28, 2024, 10:51 AM ET), <https://thehill.com/homenews/media/4494066-abc-news-president-trump-black-people-racist>.

133. See Kimmy Yam, *Trump Is ‘Legitimizing’ Hate Incidents Against Asian Americans: U.N. Experts*, NBC NEWS (Oct. 16, 2020, 3:48 PM PDT), <https://www.nbcnews.com/news/asian-america/u-n-experts-trump-legitimizing-hate-incidents-against-asian-americans-n1243791>.

Despite, or perhaps because of, his racial insensitivity, anti-immigrant advocacy, and the many criminal and civil actions against him—including prosecution for his role in the January 6, 2020, insurrection in Washington, D.C., Trump was the frontrunner for the Republican nomination for president since the beginning of the 2024 campaign and secured the Republican nomination.¹³⁴

Distinctive among modern U.S. presidents, Trump's menacing message struck a chord with white supremacist and anti-immigrant groups,¹³⁵ as evidenced by the KKK's endorsement of his presidential candidacy.¹³⁶ He refused to condemn white supremacists who engaged in violence in 2017 in Charlottesville, Virginia.¹³⁷ Some of the insurrectionists in January 2021 in Washington, D.C. displayed white supremacist regalia and symbols, including Confederate flags.¹³⁸ In sum, white supremacists evidently were attracted to the hatred of immigrants and the aggressive immigration enforcement advocated by Trump.

The Trump administration's approach to immigration mirrored the roots, rhetoric, and policies advocated by the KKK. Moreover, the signature Trump campaign slogan "Make America Great Again" is strikingly similar to the KKK's reliance on patriotism and "America First" in attacking immigrants.¹³⁹ Trump in fact invoked "America First" as a guiding principle for his policies.¹⁴⁰

Trump's attacks on immigrants no doubt encouraged political leaders to adopt similar anti-immigrant positions.¹⁴¹ Seeing the political benefits of attacks on immigrants, the pursuit of tough immigration enforcement policies, and harsh anti-immigrant diatribes, Republican politicians, including Florida Governor Ron DeSantis and Texas Governor Greg Abbott, have enthusiastically embraced harsh immigration measures and laws.¹⁴² Most charitably viewed as attempting to bring national attention to the impacts of immigration on border states, both

134. See Stephanie Lai & Hadriana Lowenkron, *Trump Wins Republican Nomination, Setting Up Rematch with Biden*, BLOOMBERG (Mar. 12, 2024, 9:07 PM PDT), <https://www.bloomberg.com/news/articles/2024-03-13/trump-wins-republican-nomination-setting-up-rematch-with-biden>.

135. See *infra* text accompanying notes 137–138.

136. See *supra* text accompanying notes 128–130.

137. See Rick Klein, *Trump Said 'Blame on Both Sides' in Charlottesville, Now the Anniversary Puts Him on the Spot*, ABC NEWS (Aug. 12, 2018, 7:57 AM), <https://abcnews.go.com/Politics/trump-blame-sides-charlottesville-now-anniversary-puts-spot/story?id=57141612>.

138. See Christine Fernando & Noreen Nasir, *Years of White Supremacy Threats Culminated in Capitol Riots*, ASSOCIATED PRESS (Jan. 14, 2021, 9:09 AM PDT), <https://apnews.com/article/white-supremacy-threats-capitol-riots-2d4ba4d1a3d55197489d773b3e0b0f32>.

139. See *supra* text accompanying note 115.

140. See, e.g., Lily Rothman, *The Long History Behind Donald Trump's 'America First' Foreign Policy*, TIME (Mar. 28, 2016, 6:14 PM EDT), <https://time.com/4273812/america-first-donald-trump-history>.

141. See *infra* text accompanying notes 142–146.

142. See Anita Snow, *Texas, Florida Push Border Laws as Governors Eye Presidency*, ASSOCIATED PRESS (Mar. 17, 2023, 6:29 AM PDT), <https://apnews.com/article/immigration-desantis-texas-florida-abbott-4e1b91322565b78a39b82c095a2ef822>.

governors transported migrants to northern cities with Democratic mayors, including Chicago, Los Angeles, New York, and Washington, D.C.¹⁴³ Those actions literally treated migrants as pawns in nothing less than a cruel national political spectacle.

In addition, in a startling and chilling step, Governor Abbott placed buoys with razor wire in the Rio Grande in an attempt to deter migrants from crossing the U.S./Mexico border and refused to allow the U.S. government to remove them in the face of a Supreme Court order.¹⁴⁴ Deaths of migrants followed.¹⁴⁵ Some Democratic political leaders joined the calls for tighter immigration controls and blamed immigrants for overwhelming the social services safety net and committing crime.¹⁴⁶

With Trump's assistance, immigration and immigrants today are at the center of fierce culture wars over the nation's future.¹⁴⁷ They will likely remain issues of tension and conflict on the national political landscape for the indefinite future.¹⁴⁸

Although Trump's anti-immigrant movement finds compatibility with Klan ideology, the KKK should not be given too much credit or, depending on how one looks at it, blame. The white supremacy at the core of the Klan's philosophy has been a constant in U.S. history and, unfortunately, lives on in modern America.¹⁴⁹ Over time, U.S. political leaders at least temporarily abandoned blatant racist appeals to justify immigration restrictions.¹⁵⁰ They offered more polite and acceptable justifications for immigration policies and

143. See Aaron Blake, *What the Law Says About DeSantis and Abbott Sending Migrants to Blue States*, WASH. POST (Sept. 16, 2022, 8:27 AM EDT), <https://www.washingtonpost.com/politics/2022/09/15/desantis-abbott-migrants-legality>.

144. See *Greg Abbott Increases Razor Wire at Texas Border*, NEWSWEEK (Feb. 12, 2024, 8:44 AM EST), <https://www.newsweek.com/texas-greg-abbott-razor-wire-1868953>; Erwin Chemerinsky, *Opinion: Texas Gov. Greg Abbott Is Defying a U.S. Supreme Court Order. That's Frightening*, L.A. TIMES (Jan. 29, 2024, 2:53 PM PT), <https://www.latimes.com/opinion/story/2024-01-29/opinion-heres-whats-at-stake-in-texas-dispute-with-the-federal-government-over-the-border>; see also *United States v. Abbott*, 2024 U.S. App. LEXIS 18854 (5th Cir. July 30, 2024) (en banc) (lifting district court preliminary injunction directing Texas to reposition barrier on the Rio Grande).

145. See John Moritz, Michael Collins & Francesca Chambers, *Two Found Dead in Rio Grande Where Texas' Barrier and Razor Wire Sparked Federal Lawsuit*, USA TODAY (Aug. 3, 2023, 10:23 PM ET), <https://www.usatoday.com/story/news/politics/2023/08/03/two-dead-in-rio-grande-where-texas-installed-razor-wire-and-buoys/70522492007>.

146. See, e.g., Dana Rubinstein & Jeffery C. Mays, *Eric Adams Wants to Deport Migrants Who Are Accused of Serious Crimes*, N.Y. TIMES (Feb. 27, 2024), <https://www.nytimes.com/2024/02/27/nyregion/adams-deport-migrants-crime.html>.

147. See *infra* Part II.B.

148. See *supra* text accompanying notes 135–146.

149. See *supra* text accompanying notes 113–116, 140.

150. See *supra* text accompanying notes 105–108.

their enforcement.¹⁵¹ Nevertheless, noncitizens of color were disparately affected by the policies advocated by opponents of immigration.¹⁵²

As founding Critical Race Theorist Derrick Bell incisively observed, racism serves as the foundation of U.S. society and is no less than a permanent feature of American social life.¹⁵³ The quest for white supremacy produces and re-produces the systemic racism that today thrives in the U.S. criminal justice system, housing, education, health care, employment, voting, and U.S. society generally.¹⁵⁴ Systemic racism also lives on in immigration law and policy, and indeed is viewed in some quarters as justified when it comes to immigrants.¹⁵⁵

In sum, the civil rights movement and changing racial sensibilities have moderated expressions of racism in civil rights discourse and brought a color-blind approach. That trend, however, has not been so prevalent in the national discussion of immigration. Similar to the KKK's approach to the issue, Trump helped to once again make immigration a significant racial battleground.

B. THE TRUMP ADMINISTRATION'S IMMIGRATION RECORD

In a kind of crusade, the Trump administration systematically pursued a tough immigration enforcement agenda that kept immigration in the public eye.¹⁵⁶ Migrants of color suffered as a consequence.¹⁵⁷ Tapping into the long history of racism at the foundation of U.S. immigration law and policy, Trump backed up his measures with inflammatory, racially charged rhetoric.¹⁵⁸ Just a few Trump immigration measures powerfully illustrate that point: the Trump administration in effect closed the southern border with Mexico through reliance on a rarely-used public health law known as Title 42, claiming that the spread of COVID-19 justified the extraordinary measure;¹⁵⁹ the administration's unprecedented "Return to Mexico" policy forced migrants to wait in deplorable

151. See *supra* text accompanying notes 105–108.

152. See generally Johnson, *supra* note 74 (analyzing systemic racism embedded in U.S. immigration laws).

153. See generally DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (rev. ed. 2018) (contending that racism is a permanent feature of U.S. social life).

154. See generally JUAN F. PEREA, RICHARD DELGADO, ANGELA P. HARRIS, JEAN STEFANCIC & STEPHANIE M. WILMAN, *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* (4th ed. 2023) (collecting cases and materials on racial subordination in the United States).

155. See generally Johnson, *supra* note 74 (tracing the history of racism in U.S. immigration laws and policy).

156. See *infra* text accompanying notes 158–161.

157. See *infra* text accompanying notes 158–161, 166–170.

158. See Domenico Montanaro, *Trump Escalates Racist Rhetoric and Plays on White Grievance at Recent Rallies*, NPR (Feb. 1, 2022, 5:01 AM ET), <https://www.npr.org/2022/02/01/1077166847/trump-escalates-racist-rhetoric-plays-on-white-grievance-at-recent-rallies>.

159. See Deepa Shivaram, *What to Know About Title 42, The Trump-Era Policy Now Central to the Border Debate*, NPR (Apr. 24, 2022, 5:00 AM ET), <https://www.npr.org/2022/04/24/1094070784/title-42-policy-meaning#:~:text=It's%20what%20essentially%20gave%20authority,denying%20entry%20to%20asylum%20seekers>.

conditions in Mexico while their asylum and other claims to relief were decided, which would take many months if not years;¹⁶⁰ and, ostensibly a national security measure, the administration enacted the infamous “Muslim ban,” which denied Muslim noncitizens admission into the United States.¹⁶¹

Like the KKK, Trump did not view the law as meaningfully restricting his immigration law and policy initiatives.¹⁶² As exemplified by his claim that as President, he was completely immune from continued prosecution,¹⁶³ he regularly pushed the law to its limits; courts frequently found his administration’s actions to be unlawful.¹⁶⁴ In turn, Trump criticized the courts and the laws for blocking his immigration initiatives.¹⁶⁵

As his words and deeds made clear, Trump considered Latina/o immigration to be a serious problem.¹⁶⁶ Family separation policies, detention of immigrants, and the proposed wall along the United States/Mexico border unquestionably targeted Latina/o migrants.¹⁶⁷ So did Trump’s effort to rescind the Deferred Action for Childhood Arrival (DACA) policy, which provided temporary relief from removal to a group of predominantly Latina/o noncitizens.¹⁶⁸ The separation of families at the border to deter migration generated a swift political backlash, as many Americans saw it as too extreme

160. See *Biden v. Texas*, 597 U.S. 785, 790–91 (2022) (allowing President Biden to end President Trump’s “Remain in Mexico” policy).

161. See *Trump v. Hawaii*, 585 U.S. 667, 700 (2018) (rejecting legal challenges to the Muslim ban).

162. See, e.g., *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 9 (2020) (rejecting President Trump’s effort to rescind the Deferred Action for Childhood Arrivals policy, which provided limited relief to undocumented immigrants who came to the United States as children).

163. See *United States v. Trump*, 91 F.4th 1173 (D.C. Cir. 2024), *vacated and remanded*, *Trump v. United States*, 144 S. Ct. 2312 (2024).

164. See, e.g., *infra* text accompanying notes 165, 168.

165. See, e.g., *DHS Statement on Supreme Court Decision on DACA*, U.S. DEP’T OF HOMELAND SEC. (Feb. 5, 2021), <https://www.dhs.gov/news/2020/06/18/dhs-statement-supreme-court-decision-daca> (quoting Acting DHS Secretary Chad Wolf: “DACA recipients deserve closure and finality surrounding their status here in the U.S. Unfortunately, today’s Supreme Court decision fails to provide that certainty. . . . The American people deserve to have the Nation’s laws faithfully executed as written by their representatives in Congress—not based on the arbitrary decisions of a past Administration. This ruling usurps the clear authority of the Executive Branch to end unlawful programs.”).

166. See *supra* text accompanying notes 114–116.

167. See Jonathan Blitzer, “Do I Have to Come Here Injured or Dead?,” *NEW YORKER* (Jan. 28, 2024), <https://www.newyorker.com/books/page-turner/do-i-have-to-come-here-injured-or-dead> (telling the story of one of the first migrant mothers separated from her children at the border by the Trump administration).

168. Finding the rescission to be arbitrary and capricious, the Supreme Court rejected President Trump’s effort to rescind the Deferred Action for Childhood Arrivals policy. See *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 9 (2020).

and heartless;¹⁶⁹ the administration quickly ended the policy.¹⁷⁰ The mass detention of migrants to enforce the immigration laws, however, continues.¹⁷¹ Championed by Trump, the United States/Mexico border wall remains popular among many Americans.¹⁷² At a KKK convention in 1924, the Governor of Georgia called on the United States to “build a wall of steel, a wall as high as Heaven.”¹⁷³ Although the Klan’s vision of a border wall was metaphorical, Trump’s was real. In sum, the Trump administration’s immigration measures targeted, and devastated, immigrants of color.

C. THE 2024 CAMPAIGN

Trump’s immigration positions have hardened over time.¹⁷⁴ Again appealing to his fervent anti-immigrant base, he promised an even more aggressive approach to immigration enforcement from the outset of the 2024 presidential campaign than that which he pursued in his first term.¹⁷⁵ Reminiscent of Hitler’s vile expressions of hatred toward Jewish people who Germany targeted for genocide, Trump damned immigrants for “poisoning the blood of our country.”¹⁷⁶ Criticism of this over-the-top statement as being racist quickly followed.¹⁷⁷

The fringe “replacement theory” of immigration went mainstream as a justification offered for the attacks on immigrants, especially immigrants of

169. See Terry Gross, *How the Trump White House Misled the World About Its Family Separation Policy*, NPR (Aug. 11, 2022, 1:25 PM ET), <https://www.npr.org/2022/08/11/1116917364/how-the-trump-white-house-misled-the-world-about-its-family-separation-policy#:~:text=During%20the%20Trump%20administration%2C%20over,separation%20wasn't%20the%20goal.>

170. See Kate Lyons, Sam Levin, Jessica GlENZA & Amanda Holpuch, *Trump Ends His Policy of Family Separation with Executive Order—as It Happened*, GUARDIAN (June 21, 2018), <https://www.theguardian.com/us-news/live/2018/jun/20/tender-age-trump-children-separations-detention-shelters-latest-news-updates-live>.

171. See generally CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISON: AMERICA’S OBSESSION WITH LOCKING UP IMMIGRANTS* (2019) (criticizing U.S. government’s increasing use of detention of immigrants as a tool of immigration enforcement).

172. See *Trump Leads ‘Build That Wall’ Chant in California*, NBC NEWS (May 25, 2016), <https://www.nbcnews.com/video/trump-leads-build-that-wall-chant-in-california-692809283877>.

173. Rebecca Onion, “*Build a Wall of Steel*”, SLATE (Jan. 17, 2019, 5:38 PM), <https://slate.com/news-and-politics/2019/01/second-kkk-anti-immigrant-trump-wall.html> (quoting Georgia Governor Clifford Walker at a 1924 Ku Klux Klan convention).

174. See *infra* text accompanying notes 175–177.

175. See Ronald Brownstein, *Trump’s ‘Knock on the Door’: The Former President and His Aides Are Formulating Plans to Deport Millions of Migrants*, ATLANTIC (Feb. 8, 2024), <https://www.theatlantic.com/politics/archive/2024/02/trumps-immigration-plan-is-even-more-aggressive-now/677385>.

176. Ginger Gibson, *Trump Says Immigrants Are ‘Poisoning the Blood of Our Country.’ Biden Campaign Likens Comments to Hitler.*, NBC NEWS (Dec. 17, 2023, 8:18 AM PST), <https://www.nbcnews.com/politics/2024-election/trump-says-immigrants-are-poisoning-blood-country-biden-campaign-liken-rcna130141>.

177. See *id.*

color, and the entire U.S. immigration system.¹⁷⁸ Adherents of the replacement theory see immigrants of color as “replacing” white citizens.¹⁷⁹ The theory has expressly brought to the forefront fears of the changing racial demographics of the United States.¹⁸⁰ Resistance to white replacement served to justify the advocacy of ever-harsher immigration measures.¹⁸¹

From a political standpoint, Trump’s appeal to anti-immigrant sentiment in the United States makes perfect sense. The popularity of his positions serves to energize his political base. When the excesses of his policies have been blunted by the courts, Trump blames judges for thwarting his immigration efforts.¹⁸² The law has served as a barrier to restrict his efforts in other ways.¹⁸³ One clear example is Trump’s repeated public challenges to birthright citizenship.¹⁸⁴ He claims that, as President, he could end birthright citizenship by executive action, a view that almost all legal scholars conclude would be unconstitutional.¹⁸⁵

CONCLUSION

The KKK’s well-known terrorism of African Americans has diverted attention from the Klan’s firm commitment to a war on immigrants and immigration in their quest for a white America. This Essay attempts to highlight the Klan’s anti-immigrant roots, impacts on immigration law and policy, and its continuing legacy.

The Ku Klux Klan has left a lasting political imprint on the United States. Its fervent anti-immigrant stances are part of the Klan’s sinister legacy of hate, which is wholly consistent with the racism baked into the foundations of the United States. Today’s anti-immigrant activists and leaders, including Donald Trump, rely on remarkably similar arguments as those the KKK has championed throughout its history. The Klan’s anti-immigrant philosophy thus lives on in the 21st century.

178. See Richard Delgado & Allen Slater, *Interest Convergence in Immigration Law and Theory*, 73 CASE W. RESV. L. REV. 771, 792–93 (2023) (discussing and debunking replacement theory).

179. *Id.*

180. *See id.*

181. *See id.* at 793.

182. *See supra* text accompanying notes 162–170.

183. *See supra* text accompanying notes 162–170.

184. See Robert Farley, *Can Trump End Birthright Citizenship by Executive Order?*, FACTCHECK.ORG (Oct. 30, 2018), <https://www.factcheck.org/2018/10/can-trump-end-birthright-citizenship-by-executive-order>. See generally Sandra L. Rierson, *From Dred Scott to Anchor Babies: White Supremacy and the Contemporary Assault on Birthright Citizenship*, 38 GEO. IMMIGR. L.J. 1 (2023) (analyzing racial foundations of the efforts to eliminate birthright citizenship).

185. See Farley, *supra* note 184; see also U.S. CONST. amend. XIV (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the Senate wherein they reside.”).