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## Fear, loathing, and the hemispheric consequences of xenophobic hate

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FEAR, LOATHING, AND THE HEMISPHERIC CONSEQUENCES OF  
XENOPHOBIC HATE

*Ernesto Sagás\* and Ediberto Román\*\**

*“When you have fifteen thousand people marching up . . . how do you stop these people?” “You shoot them” [crowd member shouts] [chuckling, Trump responds:] “[O]nly in the Panhandle can you get away with that thing.”<sup>1</sup>*

President Donald Trump

*“Thousands of criminal aliens. They’re pouring into our country.”<sup>2</sup>*

President Donald Trump

*“They’re not people, these are animals.”<sup>3</sup>*

President Donald Trump

*“Take a look at the death and destruction that’s been caused by people coming into this country . . . caused by people that shouldn’t be here.”<sup>4</sup>*

President Donald Trump

*“[We] have millions and millions of people pouring into our country.”<sup>5</sup>*

President Donald Trump

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<sup>1</sup> Zamira Rahim, *Trump Smirked at Idea of Shooting Migrants at Rally Three Months Before El Paso Massacre*, THE INDEPENDENT (Aug. 4, 2019), <https://www.independent.co.uk/news/world/americas/us-politics/trump-shooting-migrants-video-rally-el-paso-a9038961.html>.

<sup>2</sup> HuffPost, *Trump’s Anti-Immigrant Catchphrases*, YOUTUBE (June 27, 2018), <https://www.youtube.com/watch?v=nXYXaUJ4ROk>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

*"We cannot allow our [c]ountry to be overrun by illegal immigrants."*<sup>6</sup>  
President Donald Trump

*"We will be overrun with crime and with people that should not be in our country."*<sup>7</sup>  
President Donald Trump

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## 1. INTRODUCTION

Hate speech has consequences.<sup>8</sup> Those consequences often go far beyond hurt feelings.<sup>9</sup> In fact, such words can lead to violence.<sup>10</sup> They also have the power to effect lasting wounds<sup>11</sup> and can be "used

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<sup>6</sup> *Id.* (quoting Donald J. Trump (@realDonaldTrump), TWITTER (June 22, 2018, 6:43 AM), <https://web.archive.org/web/20210106231013/https://twitter.com/realDonaldTrump/status/1010156224749408258>).

<sup>7</sup> *Id.*

<sup>8</sup> Janet Murguía, *The El Paso Shooting Is the Violence Latinos Have Been Dreading*, N.Y. TIMES (Aug. 6, 2019), [https://www.nytimes.com/2019/08/06/opinion/el-paso-shooting-latino.html?fbclid=IwAR1Kvz1laeEiai8HZs7\\_PYkIsrAQmZdwiRGHo7wT2bmlKuGvK0IZpwCpZ8](https://www.nytimes.com/2019/08/06/opinion/el-paso-shooting-latino.html?fbclid=IwAR1Kvz1laeEiai8HZs7_PYkIsrAQmZdwiRGHo7wT2bmlKuGvK0IZpwCpZ8).

<sup>9</sup> Naomi Elster, *More than Hurt Feelings: The Real Danger of Hate Speech*, IMPAKTER (Apr. 5, 2017), <https://impakter.com/hurt-feelings-real-danger-hate-speech/>.

<sup>10</sup> *Id.*

<sup>11</sup> Cary Nelson, *Hate Speech and Political Correctness*, 1992 U. ILL. L. REV. 1085 (1992) ("Hate speech has the power to effect lasting wounds; it also can channel and symbolize the much more pervasive and sometimes less easily isolatable structural forms of discrimination. In some environments, hate speech may be especially potent.").

as weapons to ambush, terrorize, wound, humiliate and degrade.”<sup>12</sup> The Merriam-Webster Dictionary defines such speech as expressions of “hatred targeting a particular group of people.”<sup>13</sup> Black’s Law Dictionary defines it as “speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence.”<sup>14</sup> In other words, such speech is “directed against a specified or easily identifiable individual or . . . a group of individuals based on an arbitrary and normatively irrelevant feature” that “stigmatizes the target group by implicitly or explicitly ascribing to it qualities widely regarded as highly undesirable.” As such, “the target group is viewed as an undesirable presence and a legitimate object of hostility.”<sup>15</sup>

Empirical data highlights significant deleterious effects of hate speech on victims, their families, and communities at large.<sup>16</sup> One of these effects is the direction of societal attitudes and behaviors against the targeted group.<sup>17</sup> For instance, expressions of hate speech can result in deep dislike and distrust of the targeted group, ultimately leading to violence against that group.<sup>18</sup> In fact, hate speech can be considered a form of cyber-bullying,<sup>19</sup> a means used by terrorists to recruit members,<sup>20</sup> and in its worst form, it can even be a contributory

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<sup>12</sup> MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 1 (1993).

<sup>13</sup> *Hate Speech*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2003).

<sup>14</sup> *Hate Speech*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>15</sup> Katharine Gelber & Luke J. McNamara, *Evidencing the harms of hate speech*, 22 SOCIAL IDENTITIES: JOURNAL FOR THE STUDY OF RACE, NATION AND CULTURE 324 (2016), <https://www.tandfonline.com/doi/pdf/10.1080/13504630.2015.1128810?needAccess=true>.

<sup>16</sup> See Katarzyna Bojarska, *The Dynamics of Hate Speech and Counter Speech in the Social Media: Summary of Scientific Research*, CENTRE FOR INTERNET AND HUMAN RIGHTS 1 (2019), [https://cihr.eu/wp-content/uploads/2018/10/The-dynamics-of-hate-speech-and-counter-speech-in-the-social-media\\_English-1.pdf](https://cihr.eu/wp-content/uploads/2018/10/The-dynamics-of-hate-speech-and-counter-speech-in-the-social-media_English-1.pdf).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See *D.C. v. R.R.*, 106 Cal. Rptr. 3d 399 (Ct. App. 2010).

<sup>20</sup> See Org. for Sec. and Co-operation in Eur. & Council of Eur., *Expert Workshop on Preventing Terrorism: Fighting Incitement and Related Terrorist Activities 2–3* (Nov. 28 2006), [https://www.coe.int/t/dlapil/cahdi/Source/Docs%202007/CM\(2006\)204rev%20E.pdf](https://www.coe.int/t/dlapil/cahdi/Source/Docs%202007/CM(2006)204rev%20E.pdf) [hereinafter OSCE Report]; see also Salah Uddin Shoaib Choudhury,

factor for genocide.<sup>21</sup> Indeed, hate speech, among other factors, enabled both Adolf Hitler's promulgation of Nazi ideology as well as the genocidal campaigns in Rwanda and in the former Yugoslavia.<sup>22</sup>

#### I. U.S. IMPACT

As is now common knowledge, President Donald Trump began his 2016 presidential bid by waging a verbal war against immigrants.<sup>23</sup> Despite his rhetoric of hordes of criminals entering the country, President Trump had little to no evidence to support his claims of an impending threat at our borders.<sup>24</sup> Indeed, such claims run counter to the facts related to undocumented immigrants, which suggest that this population is typically not only far from a threat, but also a vital economic engine constituting an invaluable labor force.<sup>25</sup> However, facts and hard data are largely irrelevant when a country's leader repeatedly uses his bully pulpit to appeal to the base xenophobic fears and biases of a willing public.<sup>26</sup> Trump notably used

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*Hate Speech and Political Islam: Root Cause of Religious Extremism, Terrorism and Jihad*, THE YALE INITIATIVE FOR THE INTERDISCIPLINARY STUDY OF ANTISEMITISM (Oct. 29, 2009), <https://vimeo.com/7537431> ("In today's Muslim world, political Islam is patronizing hate speech, which I believe is the root cause of religious extremism, terrorism and Jihad.").

<sup>21</sup> Choudhury, *supra* note 20.

<sup>22</sup> See Nelson, *supra* note 11; see also René Lemarchand, *Disconnecting the threads: Rwanda and the Holocaust Reconsidered*, *Journal of Genocide Research* 1–2 (2002), <https://doi.org/10.1080/146235022000000436>.

<sup>23</sup> Ian Schwartz, *Trump: Mexico Not Sending Us Their Best; Criminals, Drug Dealers And Rapists Are Crossing Border*, REAL CLEAR POLITICS (June 16, 2015), [https://www.realclearpolitics.com/video/2015/06/16/trump\\_mexico\\_not\\_sending\\_us\\_their\\_best\\_criminals\\_drug\\_dealers\\_and\\_rapists\\_are\\_crossing\\_border.html](https://www.realclearpolitics.com/video/2015/06/16/trump_mexico_not_sending_us_their_best_criminals_drug_dealers_and_rapists_are_crossing_border.html).

<sup>24</sup> David Nakamura, *Blame game: Trump casts immigrants as dangerous criminals, but the evidence shows otherwise*, WASH. POST (Mar. 24, 2017), [https://www.washingtonpost.com/politics/blame-game-trump-casts-immigrants-as-dangerous-criminals-the-evidence-shows-otherwise/2017/03/23/f12dffdc-0f4d-11e7-9d5a-a83e627dc120\\_story.html](https://www.washingtonpost.com/politics/blame-game-trump-casts-immigrants-as-dangerous-criminals-the-evidence-shows-otherwise/2017/03/23/f12dffdc-0f4d-11e7-9d5a-a83e627dc120_story.html).

<sup>25</sup> See EDIBERTO ROMÁN, *THOSE DAMNED IMMIGRANTS: AMERICA'S HYSTERIA OVER LATIN AMERICAN IMMIGRATION* (2013) (Study after study depict immigrant communities, especially undocumented ones, are far less likely to engage in crime than other residents).

<sup>26</sup> Casey Ryan Kelly, *Donald J. Trump and the rhetoric of resentment*, 106 QUARTERLY J. OF SPEECH, no. 1, 2020, at 3, <https://www.tandfonline.com/doi/full/>

incendiary rhetoric to stoke the flames of fear and hatred.<sup>27</sup> He actually introduced his campaign by calling for an end to undocumented immigration with the now infamous statement: “When Mexico sends it people, they’re not sending their best. . . . They’re bringing drugs; they’re bringing crime; they’re rapists[.]”<sup>28</sup>

After the election, Trump continued to remind his base of a purported invasion at the Mexican border by using inflammatory political rhetoric to create a hateful, alarmist, and xenophobic narrative depicting hordes of immigrants ready to surge into the United States.<sup>29</sup> In a visit to the border, he notoriously and inaccurately proclaimed “It’s a colossal surge and it’s overwhelming our immigration system, and we can’t let that happen.”<sup>30</sup> Yet, reality demonstrates otherwise. The purported undocumented immigration problem does not derive from those crossing the Southern border.<sup>31</sup> Instead, undocumented immigration is actually much more impacted by visa overstays.<sup>32</sup> But brown people from Central and South America crossing the border are far easier and identifiable targets, especially as a group that cannot defend itself.<sup>33</sup> Trump continued to create nationalistic fervor amongst

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10.1080/00335630.2019.1698756 (“The audience is caught in the perpetual liminality between defeat and triumph.”).

<sup>27</sup> Daniel Denvir, *In true nativist fashion, Trump is blaming immigrants for US problems*, THE GUARDIAN (Apr. 23, 2020), <https://www.theguardian.com/commentisfree/2020/apr/23/in-true-nativist-fashion-trump-is-blaming-immigrants-for-us-problems>.

<sup>28</sup> Ian Schwartz, *supra* note 23.

<sup>29</sup> Jonathan Lemire & Zeke Miller, ‘*Our country is full*’: Trump says migrants straining immigration system, PBS NEWS HOUR (Apr. 8, 2019), <https://www.pbs.org/newshour/politics/our-country-is-full-trump-says-migrants-straining-immigration-system>.

<sup>30</sup> *Id.*

<sup>31</sup> Amanda Seitz & Will Weissert, *AP Fact Check: Visa Overstays Outpace Border Crossings*, ASSOCIATED PRESS (Jan. 3, 2019), <https://www.apnews.com/48d0ad46f143478d9384410f5ae3d38b>.

<sup>32</sup> *Id.*; see also Román *supra* note 25, at 50–90.

<sup>33</sup> See Ediberto Román, *4 reasons why migrant children arriving alone to the US create a ‘border crisis’*, THE CONVERSATION (Mar. 31, 2021), [https://theconversation.com/4-reasons-why-migrant-children-arriving-alone-to-the-us-create-a-border-crisis-157999?utm\\_source=twitter&utm\\_medium=social&utm\\_term=&utm\\_content=acb4c423-9a5d-4aa8-b390-003bf2262586&utm\\_campaign=erscm](https://theconversation.com/4-reasons-why-migrant-children-arriving-alone-to-the-us-create-a-border-crisis-157999?utm_source=twitter&utm_medium=social&utm_term=&utm_content=acb4c423-9a5d-4aa8-b390-003bf2262586&utm_campaign=erscm) (“Undocumented immigrants – and particularly children – are not the constituents of any Washington politician. They have no voice within the U.S. democratic system. While journalists

his largely white base of support to demonize the so-called Latin American invasion at the southern border.<sup>34</sup> Indeed, Trump's "us-versus-them" anti-immigrant political rhetoric likely won him the 2016 presidential election.<sup>35</sup> Thus, this demonstrates that antagonistic rhetoric can serve as a powerful, if not dangerous, tool.<sup>36</sup>

## II. SOUTHERN IMPACT

Unfortunately, the effects of Trump's hate were not limited to domestic shores. Latin American immigrants in the United States and even in their homelands are racialized, scapegoated, and rejected by hate/fear mongering rhetoric.<sup>37</sup> The "us-versus-them" mentality, pitting rightful citizens against the invading masses, has become a clarion call throughout the hemisphere to conservative politicians who use hate to demonize easy and largely silenced targets. Paradoxically, Latin American immigrants come from a region where hate speech is as effectively deployed as it is in the United States. They often flee repression for economic opportunity and freedom only to face similar consequences of hate in the United States. For example, Dominicans reject Haitians,<sup>38</sup> Chileans reject Dominicans,<sup>39</sup> Argentinians reject

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can and do report on immigration problems, and public interest law firms can and do represent these children in immigration proceedings, unaccompanied minors are simply not part of any politician's voting bloc or reelection strategy. Consequently, the issue is often overlooked or mishandled without real political repercussions.").

<sup>34</sup> David Nakamura, *supra* note 24.

<sup>35</sup> Harry Enten & Perry Bacon Jr., *Trump's Hardline Immigration Stance Got Him To The White House*, FIVETHIRTYEIGHT (Sept. 12, 2017), <https://fivethirtyeight.com/features/why-polls-showing-daca-as-popular-even-among-republicans-dont-tell-the-whole-story/> (citing polls showing immigration was a pivotal election issue).

<sup>36</sup> Stephan Lewandowsky, Michael Jetter & Ullrich K. H. Ecker, *Using the president's tweets to understand political diversion in the age of social media*, Nature Communications (Nov. 10, 2020), <https://www.nature.com/articles/s41467-020-19644-6> ("We find that increased media coverage of the Mueller investigation is immediately followed by Trump tweeting increasingly about unrelated issues.").

<sup>37</sup> See Ediberto Román & Ernesto Sagás, *Ruse and Rhetoric as the Populist's Xenophobic Ploy*, FIU LEGAL STUDIES RESEARCH PAPER SERIES (June 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3875720](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3875720).

<sup>38</sup> Ernesto Sagás, RACE AND POLITICS IN THE DOMINICAN REPUBLIC 44 (2000).

<sup>39</sup> Caterine Galaz, Gabriela Rubilar, & Claudia Silva, *Migración dominicana en Chile*, DEPARTAMENTO DE EXTRANJERÍA Y MIGRACIÓN (2016), <https://www.extranjeria.>

Bolivians,<sup>40</sup> Brazilians reject Venezuelans,<sup>41</sup> and so on. The bottom line is that fear and loathing of immigrants is politically useful, and as a result of its widespread use by the Trump administration, our hemispheric neighbors feel free to reproduce our policies and discourse.<sup>42</sup>

Immigration has accordingly become the easiest scapegoat for politicians facing economic and political turbulence.<sup>43</sup> For instance, after failing to achieve his 2016 presidential campaign promise of having Mexico pay for the Southern border wall, Trump declared a national emergency, purportedly empowering him to circumvent the traditional lawmaking process and giving him unilateral power to fund his pet political project.<sup>44</sup> His declaration was, at the very least, misplaced. Emergency declarations are drastic measures that have not arisen in settings even remotely or related to the way President Trump has used them.<sup>45</sup> They usually focus on international disputes, weapon proliferation, and export controls, which do not necessarily mean war, and a few have focused on “specific crises, like a swine flu outbreak in 2009[.]”<sup>46</sup> Indeed, “nearly all national emergency declarations under the 1976 National Emergencies Act relate to sanctions or export

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gob.cl/media/2016/12/Bolet%C3%ADn-N%C2%BA2-Migraci%C3%B3n-Dominicana-en-Chile-2.pdf.

<sup>40</sup> Patricia Bullrich: “Acá vienen ciudadanos peruanos y paraguayos y se terminan matando por el control de la droga,” LA NACION (Jan. 24, 2017, 10:53 AM), <https://www.lanacion.com.ar/1978531-patricia-bullrich-aca-vienen-ciudadanos-peruanos-y-paraguayos-y-se-terminan-matando-por-el-control-de-la-droga>.

<sup>41</sup> Robert Muggah & Adriana Abdenor, *Brazil and Venezuela Clash Over Migrants, Humanitarian Aid and Closed Borders*, THE CONVERSATION (Mar. 7, 2019), <https://theconversation.com/brazil-and-venezuela-clash-over-migrants-humanitarian-aid-and-closed-borders-112913>.

<sup>42</sup> See Román & Sagás, *supra* note 37.

<sup>43</sup> *Id.*

<sup>44</sup> See Olivia Paschal, *Read President Trump’s Speech Declaring a National Emergency*, THE ATLANTIC (Feb. 15, 2019), <https://www.theatlantic.com/politics/archive/2019/02/trumps-declaration-national-emergency-full-text/582928/>.

<sup>45</sup> Philip Bump, *Declaring a National Emergency to Build a Border Wall Is Out of Step with History—and Unpopular*, WASH. POST (Feb. 14, 2019), <https://www.washingtonpost.com/politics/2019/02/14/declaring-national-emergency-build-border-wall-is-out-step-with-history-unpopular/>.

<sup>46</sup> *Id.*



restrictions.”<sup>47</sup> And what is even more disturbing is that President Trump, during the emergency declaration announcement, stated that the issue was not in fact an emergency.<sup>48</sup>

Nevertheless, President Trump’s declaration of a national threat to build his border wall was widely seen as an effort to appease his political base and live up to his 2016 campaign promise. Moreover, it successfully redirected the national media and the public discourse from ongoing impeachment investigations to the so-called immigrant threat.<sup>49</sup> What Trump has done is far from new. Political theorist Hannah Arendt, in her iconic book entitled “The Origins of Totalitarianism,”<sup>50</sup> describes a politician seeking to become a dictator and explains how this politician may appeal to the masses, their frustrations, and their feelings of lost power and political significance to attack the politician’s target group.<sup>51</sup> In the creation of such a pan movement, “[t]here is a single explanation for everything, and before the single explanation, everything else falls away.”<sup>52</sup>

To our south, hate speech led to changes in law and policy throughout the hemisphere to pass laws and policies to oust and silence the so-called immigrant threat. For instance, in the Dominican Republic, the government used this immigrant threat to as a basis to expel Haitian immigrants and denaturalize citizens of Haitian descent.<sup>53</sup> Immigration Law 285-04 interpreted a provision of the Dominican Constitution—seen by some as a legal loophole being abused by

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<sup>47</sup> *Id.*

<sup>48</sup> See Rahim, *supra* note 1.

<sup>49</sup> Cornelius Rubsamen, ‘I am a Populist’: A Critical Discourse Analysis of the Populist Rhetoric of Donald Trump’s Presidential Campaign, UNIV. OF HAWAII (2020), <https://scholarspace.manoa.hawaii.edu/handle/10125/70335> (“Trump skillfully leveraged the affordances of social media to engage directly with his followers and to provoke scandals. . . . Ultimately, Trump successfully employed populist rhetoric to win the 2016 presidential campaign, to the detriment of American democracy, as well as to the health and prosperity of Americans[.]”).

<sup>50</sup> HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* (1958).

<sup>51</sup> See *id.*

<sup>52</sup> Parnell Palme McGuinness, *The Trump era is over, not with a bang but with an elegant troll*, SYDNEY MORN. HERALD (Jan. 24, 2021), <https://www.smh.com.au/world/north-america/the-trump-era-is-over-not-with-a-bang-but-with-an-elegant-troll-20210122-p56w34.html>.

<sup>53</sup> See Ley General de Migración, No. 285-04, GACETA OFICIAL 10291 art. 5–47 (2010) (Dominican Republic).

immigrants—and perversely concluded that all offspring of individuals that originally arrived as undocumented were also undocumented.<sup>54</sup> The new law purportedly clarified temporary workers' status (e.g., Haitian immigrant workers) as non-residents "in transit" regardless of how much time they had spent living and working in the Dominican Republic.<sup>55</sup> This law, along with a 2010 constitutional amendment, changed the Dominican Constitution, which had long-recognized birthright citizenship to all born in the Dominican Republic.<sup>56</sup> The 2010 Dominican Constitution rewrote the language of the "in transit" clause to specify that the children of those "in transit or that reside illegally in Dominican territory" were not citizens of the Dominican Republic.<sup>57</sup> This redefinition of Dominican citizenship meant children born to unauthorized Haitian migrants would not be entitled to Dominican citizenship under the Dominican constitution.<sup>58</sup> Only the children of Dominican citizens or legal residents were entitled to *jus soli* citizenship.<sup>59</sup> As a result, thousands of children of Haitian migrants born in the Dominican Republic since 2010 became stateless as their parents were unable to produce legal documents entitling them to citizenship.<sup>60</sup> A 2013 decision by the Dominican Constitutional Tribunal went even further by retroactively stripping thousands of Haitian Dominicans of their citizenship as far back as 1929.<sup>61</sup>

On the same day that Trump issued the Muslim Ban,<sup>62</sup> Argentina adopted a restrictive immigration law—the 70/2017 decree (hereinafter "the Decree")—also ostensibly based upon fighting a domestic criminal threat.<sup>63</sup> After conservative President Mauricio

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<sup>54</sup> *See id.*

<sup>55</sup> *See id.*

<sup>56</sup> Constitución de la República Dominicana [Constitution], GACETA OFICIAL [OFFICIAL GAZETTE] 10561 art. 1–102 (2010) (Dominican Republic).

<sup>57</sup> *Id.*

<sup>58</sup> *See id.*

<sup>59</sup> *See id.*

<sup>60</sup> *See id.*

<sup>61</sup> Tribunal Constitucional [Constitutional Court], Sept. 23, 2013, Sentencia TC/0168/13 (Dom. Rep.).

<sup>62</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>63</sup> Law No. 25.871, BAs., Jan. 27, 2017, B.O. 1 (Arg.).

Macri took power in 2015,<sup>64</sup> Argentinian media began to take a decidedly negative take on immigrants, often portraying them as violent and involved in drug-related crimes.<sup>65</sup> Early in 2016, Argentina's Interior Minister, Patricia Bullrich, blamed Peruvian immigrants for a host of wrongs. Part of her statement included the following: "Peruvian nationals come here and end up killing each other over control of drugs[.]"<sup>66</sup> In August 2016, both the National Directorate of Migration and the Ministry of Security announced plans to create a detention center for irregular migrants.<sup>67</sup>

Following the anti-immigrant rhetoric stemming from both individuals in government and negative media coverage, President Macri passed the Decree, which alleged an emergency need to amend the country's immigration act by executive decree; this decision amended several aspects of Argentina's immigration law.<sup>68</sup> For instance, the law significantly changed the grounds for inadmissibility and removal,<sup>69</sup> making the commission of "any type of crime" a ground for inadmissibility and removal.<sup>70</sup> These measures have subsequently been condemned by human rights groups such as Amnesty International.<sup>71</sup> An Amnesty International report focusing on Argentina's immigration changes concluded that the "decree created regressive policies that introduced impediments to admission and residence of migrants in the country; accelerated expulsion procedures by limiting individuals' right to defense; eliminated the family unit as

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<sup>64</sup> Simon Romero & Jonathan Gilbert, *In Rebuke to Kirchner, Argentines Elect Opposition Leader Mauricio Macri as President*, N.Y. TIMES (Nov. 22, 2015), <https://www.nytimes.com/2015/11/23/world/americas/argentina-president-election-mauricio-macri.html>.

<sup>65</sup> Patricia Bullrich: "Acá vienen ciudadanos peruanos y paraguayos y se terminan matando por el control de la droga," *supra* note 40.

<sup>66</sup> *Id.*

<sup>67</sup> See Amnesty Int'l, *Argentina: Regressive Human Rights Policies*, AI Index AMR 13/6772/2017 (Mar. 2017).

<sup>68</sup> See Amnesty Int'l, *Algunas consideraciones sobre la modificación de la Ley de Migraciones* (Decreto de Necesidad y Urgencia 70/2017), <https://amnistia.org.ar/wp-content/uploads/delightful-downloads/2017/02/Migraciones-QyA-1.pdf>.

<sup>69</sup> *Id.* at 6.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

a condition to avoid expulsion; and restricted access to the Argentine nationality.”<sup>72</sup>

Chile, a country that was previously well-known for its welcoming immigration policies, has also been affected by increasing hate speech rhetoric. In fact, the recent election of right-wing President Sebastián Piñera, who campaigned on a “tough on crime, tough on illegal immigration” platform,<sup>73</sup> transformed both the narrative surrounding immigration as well as the safety of the immigrant community as a whole.<sup>74</sup> While campaigning in 2017, Piñera promised to open Chile’s borders to skilled immigrants while detaining and deporting those that committed crimes.<sup>75</sup> Piñera’s discourse is noticeably similar to the conservative, anti-immigrant rhetoric encompassing Trump. Piñera also decried Chile’s lenient immigration laws and border controls by portraying them as obsolete and in need of modernization through urgent reform. Without specifying nationalities, Piñera also raised concerns about an increase in crimes supposedly caused by immigrants living in Chile.<sup>76</sup>

After April 16, 2018, Haitians were no longer allowed to travel to Chile without first securing a visa—valid for 30 days—at the Chilean Consulate in Port-au-Prince.<sup>77</sup> Moreover, individuals on tourist visas were no longer able to acquire work permits and/or permanent resident status in Chile.<sup>78</sup> As previously stated, Piñera mainly supported an immigration system designed to attract skilled immigrants, individuals with postgraduate degrees from the top 200

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<sup>72</sup> Amnesty Int’l, *2017 Human Rights Agenda for Argentina* (2017), <https://amnistia.org.ar/wp-content/uploads/delightful-downloads/2017/02/PRENSA-ingles4.pdf>.

<sup>73</sup> Camilo Carreño, *Piñera: ‘Muchas de las bandas de delincuentes en Chile son de extranjeros,’* LA TERCERA (Nov. 29, 2016), <https://www.latercera.com/noticia/pinera-muchas-las-bandas-delincuentes-chile-extranjeros/>.

<sup>74</sup> *Migrating to Chile gets tougher for Haitians*, SANTIAGO TIMES (Apr. 10, 2018), <https://santiagotimes.cl/2018/04/10/migrating-to-chile-get-tougher-for-haitians-and-venezuelans/>.

<sup>75</sup> See Política Chile, *Sebastián Piñera – Inmigración en Chile*, YOUTUBE (May 14, 2017), [https://www.youtube.com/watch?v=4QfxD3J\\_Mes](https://www.youtube.com/watch?v=4QfxD3J_Mes).

<sup>76</sup> *Id.*

<sup>77</sup> Política Chile, *supra* note 75.

<sup>78</sup> *Id.*; see also Acosta, Marcia Vera-Espinoza & Leiza Brumat, *The New Chilean Government and its Shifting Attitudes on Migration Governance*, MIGRATION POL’Y CENTRE (May 3, 2018), <https://blogs.eui.eu/migrationpolicycentre/new-chilean-government-shifting-attitudes-migration-governance/>.

universities,<sup>79</sup> thereby mirroring Trump's preference for immigrants from developed nations over those from "shithole countries."<sup>80</sup> Not surprisingly, in the midst of the Covid-19 pandemic, Piñera deported dozens of migrants living in Chile without resort to the legal system.<sup>81</sup>

Continuing this trend, Brazil recently elected a self-proclaimed populist leader, former army captain Jair Bolsonaro, who is commonly referred to as the "Trump of the Tropics" for his Trump-like admiration for authoritarian solutions, his controversial comments encompassing everything from women's rights to Brazil's military dictatorship, and his promise to restore Brazil's greatness.<sup>82</sup> On the issue of immigration, Bolsonaro has called immigrants from poor countries the "scum of the world," a "threat to public order," and Bolsonaro has publicly stated that Brazil cannot become a "country of open borders."<sup>83</sup> As such, expectedly, a recent survey by the U.N.'s International Organization for Migration found that one-third of Venezuelan migrants in northeastern Brazil had experienced discrimination.<sup>84</sup> More recently, Bolsonaro rejected international understandings with respect to immigration. Specifically, he announced that his government would no longer follow the United Nations migration accord, which is the Global Compact for Safe, Orderly and Regular Migration.<sup>85</sup> Bolsonaro's rhetoric resulted in

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<sup>79</sup> *Migrating to Chile Gets Tougher for Haitians*, *supra* note 74.

<sup>80</sup> See Julie Hirschfeld Davis, Sheryl Gay Stolberg & Thomas Kaplan, *Trump Alarms Lawmakers With Disparaging Words for Haiti and Africa*, N.Y. TIMES (Jan. 11, 2018), <https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html>.

<sup>81</sup> Christian Campos, *Arbitrary expulsions of migrants in Chile must stop immediately, urge rights experts*, UN REPORTS (May 19, 2021), <https://news.un.org/en/story/2021/05/1092282>.

<sup>82</sup> Shannon Sims, *Here's How Bolsonaro wants to Transform Brazil*, THE ATLANTIC (Jan. 12, 2019), <https://www.theatlantic.com/international/archive/2019/01/heres-how-jair-bolsonaro-wants-to-transform-brazil/580207/>.

<sup>83</sup> Robert Muggah & Adriana Abdenor, *Brazil and Venezuela Clash Over Migrants, Humanitarian Aid and Closed Borders*, THE CONVERSATION, (Mar. 7, 2019), <https://theconversation.com/brazil-and-venezuela-clash-over-migrants-humanitarian-aid-and-closed-borders-112913>.

<sup>84</sup> *Id.*

<sup>85</sup> Ernesto Londoo, *Far Right President Jair Bolsonaro Pulls Brazil from United Nations Pact Designed to Protect Migrants*, THE INDEPENDENT (Jan. 10, 2019, 8:07 PM), <https://www.independent.co.uk/news/world/americas/jair-bolsonaro-brazil-migration-accord-united-nations-venezuela-refugee-crisis-a8721461.html>.

policies harming the immigrant community.<sup>86</sup> Explicitly, since 2020, Brazil issued over two dozen decrees limiting immigration, access to entry, and rights of immigrants in Brazil.<sup>87</sup> As can be expected, especially during the difficult times we are facing as a global community today, enforcement of these decrees has significantly cruel effects. For example, in August 2020, dozens of people—including children—were deported in northwestern Brazil close to the Peruvian border and left without food, water, hygienic care, or shelter.<sup>88</sup>

### III. EFFECTS ON U.S. IMMIGRANT COMMUNITIES

In the United States, Donald J. Trump made the incitement of hateful rhetoric against immigrants the cornerstone of his rise to political power.<sup>89</sup> Once in office, Trump continued his anti-immigrant rhetoric<sup>90</sup> by creating a climate of hate and potential violence against individuals that appeared to be immigrants.<sup>91</sup> Trump normalized hate speech against immigrants, pushed white supremacist ideas, and empowered white nationalists to take action to defend “their country.”<sup>92</sup> The January 6, 2021 attempt to overthrow the U.S. Capitol was not only the most vivid example of a white insurrection, but it was

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<sup>86</sup> *U.S. and Brazil Relations Regarding Migration Issues*, Wash. Office on Latin America, (Mar. 9, 2021), <https://www.wola.org/wp-content/uploads/2021/03/Carta-Biden-3.pdf>.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See also Enten & Bacon, Jr., *supra* note 35 (citing polls showing immigration was a pivotal election issue).

<sup>90</sup> See Anthony Rivas, *Trump’s Language About Mexican Immigrants Under Scrutiny in Wake of El Paso Shooting*, ABC NEWS (Aug. 4, 2019, 3:05 PM), <https://abcnews.go.com/US/trumps-language-mexican-immigrants-scrutiny-wake-el-paso/story?id=64768566>.

<sup>91</sup> See Benjamin Newman et. al., *Trump’s Rhetoric Does Encourage Open Prejudice and Bias. We Checked*, WASH. POST (Mar. 11, 2020), <https://www.washingtonpost.com/politics/2020/03/11/trumps-rhetoric-does-encourage-open-prejudice-bias-we-checked/> (citing the authors’ empirical study which found that “[w]hen prominent political figures like Trump make racially charged statements, it can indeed let ordinary Americans feel that they can freely express their own bias.”).

<sup>92</sup> Sabrina Tavernise & Matthew Rosenberg, *These are the Rioters Who Stormed the Nation’s Capitol*, SEATTLE TIMES (Jan. 8, 2021, 8:48 AM), <https://www.seattletimes.com/nation-world/nation-politics/these-are-the-rioters-who-stormed-the-nations-capitol/>.

also the depiction of how years of anti-immigrant rhetoric led a predominantly white crowd to attempt to reclaim the purported “white” nation.<sup>93</sup> Ultimately, Trump’s hateful rhetoric not only affected targeted minority populations, but it also affected the rule of law as it undermined democratic institutions as well as the civic culture that sustain them.<sup>94</sup>

#### A. The Mechanics of Stigma

Anti-immigrant discourse, ranging from factually incorrect assertions to inflammatory rhetoric, has a significant impact on the public’s perception of a potential immigrant “threat” as well as the implementation of public policy.<sup>95</sup> Psychologists recognize that people

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<sup>93</sup> *Id.*

<sup>94</sup> Amy Guttman, *The Lure and Dangers of Extremist Rhetoric*, DÆDALUS 70 (2007), <https://president.upenn.edu/sites/default/files/daedalus.pdf> (“Politicians can use extreme rhetoric in a calculated way to capture the public’s attention, to rally support of single-valued interest groups, and to mobilize voters.”); *see also* Tushar Irani, *What is Good Rhetoric?*, AEON (2017), <https://aeon.co/essays/what-is-the-difference-between-good-and-bad-political-rhetoric> (“Adolf Hitler’s Nuremberg Rallies of the 1920s and ‘30s were highly effective propaganda tools in consolidating power for the Nazi Party and influencing the views of the German people, but the wider effects of his ability to fabricate a redeemed Germany were devastating for the country.”); Tom Jacobs, *The Three Rhetorical Tricks that Bind Trump to His Base*, PACIFIC STANDARD (Feb. 21, 2019), <https://psmag.com/ideas/the-three-rhetorical-tricks-that-bind-trump-to-his-base> (“Last week, Jim Acosta of CNN challenged him in a press conference about the ‘national emergency,’ and Trump immediately shut him down, calling him ‘fake news,’” Scacco says. ‘The reason he did that was that he had to immediately inoculate his supporters from that type of messaging. By insulating his supporters, he helps to create and affirm his reality.’”); Ediberto Román & Ernesto Sagás, *Rhetoric and The Creation of Hysteria*, Soc. Sci. Rsch. Network (Sept. 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3699002#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3699002#) (“[S]uch efforts provide these politicians [who use xenophobic political rhetoric] with resuable explanations that can be implemented to avoid addressing legitimate issues with the polity.”); *see generally* Janell Ross, *Just How Unique is the Political Rhetoric of the Donald Trump Era*, WASH. POST (Dec. 7, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/12/07/is-our-out-of-control-political-rhetoric-really-all-that-extraordinary/>.

<sup>95</sup> Jennifer Mercieca, *A Field Guide to Trump’s Dangerous Rhetoric*, THE CONVERSATION (June 19, 2020, 10:14 AM), <https://theconversation.com/a-field-guide-to-trumps-dangerous-rhetoric-139531> (“For example, [Trump] treated Muslim refugees as dangerous enemy objects masquerading as people – as a ‘Trojan horse’ that would unleash “a 200,00-man army, maybe. Or 50,000 or 80,000 or 100,000.””).

do not enter the perceptual arena empty-handed, but rather they use perception as a way to understand or interpret a concept; people accordingly create mental impressions. Because people do not interpret what they perceive without preconceived notions, they come into the perceptual arena with what is known as perceptual baggage. “Perceptual baggage includes our unique idiosyncratic collection of experience, needs, and desires as well as common culturally shared beliefs.”<sup>96</sup> In other words, most individuals usually have preconceived beliefs and look for evidence to confirm them.<sup>97</sup> Accordingly, the biases and negative immigrant stereotypes that were—and continue to be—circulated in our society have become embedded in the shared beliefs of our culture as a whole.

Perceptions are influenced by both explicit and implicit biases. Explicit biases refer to the open attitudes and beliefs we have about a social group on a conscious level.<sup>98</sup> On the other hand, within the sociocultural setting, implicit biases may be the unconsciously held set of associations about a particular social group, which may result in the attribution of certain qualities to all individuals belonging to that group. The American Values Institute, an antiracist scholarly consortium, provides a useful definition of implicit bias:

Also known as Hidden Bias or Unconscious Bias, Implicit Bias arose conceptually as a way to explain why discrimination persists, even though polling and other research clearly shows that people oppose it ... In 1995, Doctors Anthony Greenwald and M.R. Benaji posited that it was possible that our social behavior was not completely under our conscious control. In *Implicit Social Cognition: Attitudes, Self-Esteem and*

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<sup>96</sup> Sheila T. Murphy, *The Impact of Factual Versus Fictional Media Portrayals on Cultural Stereotypes*, 560 *THE ANNALS OF THE AM. ACAD. OF POLITICAL & SOC. SCI.* 165, 166 (1998).

<sup>97</sup> See Carl A. Stiles, *What is the Scientific Method?*, 13 *BETA BETA BETA BIOLOGICAL SOCIETY*, 13–14 (1942); see also Jennifer Crocker & Katherine M. Knight, *Contingencies of Self-Worth*, 14 *CURRENT DIRECTIONS IN PSYCHOL. SCI.* 200–203 (2005) (describing self-validation goals in pursuit of self-worth).

<sup>98</sup> Erin Long-Crowell, *Implicit vs. Explicit Attitudes: Definition, Examples & Pros/Cons*, *STUDY.COM* (June 28, 2013), <https://study.com/academy/lesson/implicit-vs-explicit-attitudes-definition-examples-pros-cons.html>.



Stereotypes, Greenwald and Benaji argued that much of our social behavior is driven by learned stereotypes that operate automatically – and therefore unconsciously – when we interact with other people.<sup>99</sup>

To further understand implicit bias, one needs to understand the concept of schemas, or “templates of knowledge that help us organize specific examples into broader categories,” as explained by UCLA law professor Jerry Kang:

When we see, for example, something with a flat seat, a back, and some legs, we recognize it as a “chair.” Regardless of whether it is plush wheels or bolted down, we know what to do with an object that fits into the category “chair” . . . We have schemas not only for objects, but also processes, such as how to order food at a restaurant . . .

[U]nless something goes wrong, these thoughts take place automatically without our awareness or conscious direction. In this way, most cognitions are implicit.<sup>100</sup>

Moreover, schemas also apply to human beings (e.g., “the elderly”).<sup>101</sup> We often unconsciously assign people into various categories such as age, gender, race, and profession.<sup>102</sup> Just as we might have implicit cognitions that help us perform everyday activities, we also have implicit social cognitions that assist us in our thinking about social categories.<sup>103</sup> Kang further observes:

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<sup>99</sup> *What Is Implicit Bias?*, AM. VALUES INST. (Aug. 24, 2009), <http://americansforamericanvalues.org/unconsciousbias/> [[https://web.archive.org/web/20130324204259/http://www.americanvaluesinstitute.org/?page\\_id=14](https://web.archive.org/web/20130324204259/http://www.americanvaluesinstitute.org/?page_id=14)].

<sup>100</sup> Jerry Kang, *Implicit Bias: A Primer for Courts*, NAT'L CENTER FOR ST. CT[S] 1 (Aug. 2009), <https://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/kangIBprimer.ashx>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

If we unpack these schemas further, we see that some of the underlying cognitions includes stereotypes, which are simply traits we associate with a category. For instance, if we think a particular category of human beings is frail – such as the elderly – we will treat them with care when physically interacting with them. If we think of another category as foreign – such as Asians – we will be surprised by their fluent English. These cognitions also include attitudes, which are overall evaluative feelings that are positive or negative.<sup>104</sup>

As Kang argues, these shortcuts can be harmful and lead to dangerous results – particularly when applied to vulnerable groups. Thus, individuals must be vigilant in ensuring that certain shorthand efforts do not lead to discriminatory actions.<sup>105</sup> This is especially important within the legal setting as that is the medium for which fairness and equality can become accessible to all.<sup>106</sup> For example, Kang stresses that individuals must be vigilant in questioning whether they carry a bias – either implicit or explicit – associating aggression with Black men.<sup>107</sup> Do we see Black men as more likely to have initiated a fight than to have acted in self-defense, or have we internalized the lessons of Dr. Martin Luther King, Jr. and now live in a “colorblind” society?<sup>108</sup>

In his groundbreaking book *Stigma: Notes on the Management of Spoiled Identity*, Erving Goffman observed:

By definition . . . we believe the person with a stigma is not quite human. On this assumption we exercise varieties of [discriminatory practices], through which we effectively, if often unthinkingly, reduce his life chances. We construct a stigma-theory, an ideology to

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 2.

<sup>106</sup> See generally Román, *supra* note 15, at 90–95.

<sup>107</sup> Kang, *supra* note 105.

<sup>108</sup> ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 5 (First Touchstone ed., Simon & Schuster 1963) (1986).

explain his inferiority and account for the danger he represents, sometimes rationalizing an animosity based on other differences, such as those of social class.<sup>109</sup>

The person who is stigmatized “is viewed as different, with this difference involving important qualities that set the possessor off as deviant, flawed, spoiled, or undesirable.”<sup>110</sup> Much like a disease, stigmas have real and lasting physiological and psychological effects that infect the subject of the stigma with lasting moral repugnance.<sup>111</sup> As the scholars Howard Kunreuther and Paul Slovic observe, “[w]hen we think of the prime targets for stigmatization in our society, members of minority groups, the aged, homosexuals, drug addicts, and persons afflicted with physical deformities and mental disabilities, we can appreciate the affect-laden images that, rightly or wrongly, are associated with such individuals.”<sup>112</sup> In a 1994 study, researchers at the University of Western Ontario examined the formation of attitudes toward new immigrant groups. They observed that indirect information may be especially important in the formation of attitudes toward new immigrant groups because most individuals oftentimes have no personal, direct information on which to base their attitudes toward such groups. This study reinforces the notion that information about these social groups is often derived from a variety of other sources such as the news media, surveys, and even acquaintances.<sup>113</sup>

Dean Kevin Johnson of the University of California Davis School of Law discussed how psychological studies have

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<sup>109</sup> JEANNE X. KASPERSON & ROGER E. KASPERSON, *THE SOCIAL CONTOURS OF RISK, VOLUME 1: PUBLICS, RISK COMMUNICATION AND THE SOCIAL AMPLIFICATION OF RISK* 166 (2005).

<sup>110</sup> *Id.*

<sup>111</sup> See PAUL ROZIN, *TECHNOLOGICAL STIGMA: SOME PERSPECTIVES FROM THE STUDY OF CONTAGION*, IN *RISK, MEDIA, AND STIGMA: UNDERSTANDING PUBLIC CHALLENGES TO MODERN SCIENCE AND TECHNOLOGY* 33 (James Flynn et al. eds., 2001).

<sup>112</sup> HOWARD KUNRENEUTHER & PAUL SLOVIC, *RISK, MEDIA, AND STIGMA: UNDERSTANDING PUBLIC CHALLENGES TO MODERN SCIENCE AND TECHNOLOGY* 331, 332 (James Flynn et al. eds., 2001).

<sup>113</sup> Gregory R. Maio, Victoria M. Esses & David W. Bell, *The Formation of Attitudes Toward New Immigrant Groups*, 24 *J. APPLIED SOC. PSYCHOL.* 1762, 1764–65 (1994) [hereinafter *Formation of Attitudes*].

demonstrated that displaced frustration and fear of “the other” may unconsciously result in the development of racial prejudice.<sup>114</sup> For example, one study of displaced aggression reported on the projection of negative attitudes toward two minority immigrant groups after a test caused school children to miss a trip to the movies.<sup>115</sup> The school children representing the racial majority did not blame the test-givers, who were mostly protected from attack because of their positions of authority, but rather projected their anger on defenseless racial minorities.<sup>116</sup> Johnson points out that such examples parallel the long history of using immigrants as scapegoats for the social problems affecting society at large.<sup>117</sup> For instance, when the U.S. economy declined in the late 1800s, the people’s frustration shifted from background economic causes to specifically blaming Chinese immigrants.<sup>118</sup> Gordon Allport likewise observed that “most Germans did not see the connection between their humiliating defeat in World War I and their subsequent anti-Semitism.”<sup>119</sup> In this case, as with the others, “frustration was displaced from complex real-world causes to a simple and defenseless origin: a minority group seen as ‘the other.’”<sup>120</sup> In the search for simplistic answers to complex problems, many individuals causally blame easy targets who—because of their “otherness”—cannot defend themselves. Thus, generalized negative attitudes toward a minority group make it easier for a society to create policies targeting that now-stigmatized group.

There is ample evidence of this phenomenon directed against immigrant groups in U.S. domestic jurisprudence, including the

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<sup>114</sup> Kevin Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A “Magic Mirror” into the Heart of Darkness*, 73 IND. L. J. 1111, 1155 (1998).

<sup>115</sup> *Id.*

<sup>116</sup> See Neal E. Miller & Richard Bugelski, *Minor Studies of Aggression: II. The Influence of Frustrations Imposed by the In-Group on Attitudes Expressed Toward Out-Groups*, 25 J. PSYCHOL. 437 (1948).

<sup>117</sup> Johnson, *supra* note 114, at 1156 (citing GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 243–59 (1954)).

<sup>118</sup> *Id.* (The psychological literature makes clear that a complex interplay of factors contributes to the development of antiimmigrant sentiment.); see, e.g., GREGORY R. MAIO ET AL., *AMBIVALENCE AND PERSUASION: THE PROCESSING OF MESSAGES ABOUT IMMIGRANT GROUPS*, 32 J. EXPERIMENTAL SOC. PSYCHOL. 513 (1996) [hereinafter *AMBIVALENCE AND PERSUASION*].

<sup>119</sup> Johnson, *supra* note 114, at 1156.

<sup>120</sup> *Id.*

national origin quota system and the establishment of “whiteness” as a prerequisite for naturalization, which effectively excluded Asian immigrants from the United States.<sup>121</sup> Other examples include the deportation of thousands of Mexicans and Mexican Americans, including U.S. citizens, in the American West during the 1930s; the mandatory internment of Japanese immigrants and Japanese Americans living in the West Coast, regardless of their citizenship, during World War II; the refusal to accept many European Jewish refugees fleeing the Holocaust; and the infamous 1950s “Operation Wetback” campaign resulting in the targeted mass deportation of people of Mexican ancestry.<sup>122</sup> Moreover, the Immigration Act of 1965 imposed draconian limits on migration from the Western Hemisphere.<sup>123</sup> Not surprisingly, the current anti-immigrant climate is sparking a new wave of punitive policies from the Trump administration.<sup>124</sup>

President Trump’s use of confrontational language to instill fear and hate strongly suggests that he thrives off of the consequences of stigma. Anthropologist Leo Chavez has defined the type of discourse Trump engages in as political rhetoric. Chavez refers to political rhetoric as speech and images that often rely on emotion-laden messages to “accuse, denounce and actually harm people.”<sup>125</sup> Paradoxically, they can also flatter, promote, and benefit those same individuals.<sup>126</sup> Political rhetoric as part of the social and cultural environment can thus create strong emotions, and it appears President Trump has taken full advantage of its use, “calling Mexican immigrants drug dealers, criminals, and rapists,”<sup>127</sup> and garnering an almost cult-like following from his supporters. Studies on the impact of bias and stigma are useful in understanding how anti-immigrant rhetoric affects immigrants and other individuals who are labeled as

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<sup>121</sup> See IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 27 (2d ed. 2006).

<sup>122</sup> Román, *supra* note 25, at 132 (discussing U.S. legislation that targeted immigrant groups).

<sup>123</sup> *Id.*

<sup>124</sup> See generally, *id.*

<sup>125</sup> Leo Chavez, *Words Hurt: Political Rhetoric, Emotions/Affect, and Psychological Well-Being Among Mexican-Origin Youth*, 228 *SOC. SCI. & MED.* 240, 241 (2019).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

“foreign,” but include Latinx U.S. citizens and permanent legal residents (i.e., “green card” holders).

One can argue that Donald Trump owes his presidency to his effective use of stigma.<sup>128</sup> In many respects, he is a master on the use of populist political rhetoric to demonize immigrants, creating a negative narrative that his followers reproduce while at the same time positioning himself as the savior of society against the immigrant threat.<sup>129</sup> Accordingly, Trump’s highly fictionalized narrative becomes a reality for the willing recipients of such rhetoric.<sup>130</sup> Within this realm, what is arguably the most reprehensible aspect of Trump’s rhetoric is his use of a “contagion” when describing the immigrant threat. In a despicably racist fashion, Trump has repeatedly characterized the so-called immigrant threat as an infestation.<sup>131</sup> In a shameful display of rank bigotry one would expect to hear at a Klan rally, the President of the United States compared immigrants to vermin and claimed that they “would infest our [c]ountry.”<sup>132</sup> It is interesting to note that his current wife, his previous wife, his mother, and his grandparents all entered the United States as immigrants. Nonetheless, such crass, indefensible tropes are sadly not new to this country. Irving Goffman, when discussing stigma, stated that “[w]e believe the person is not quite human . . . We construct a stigma-theory, an ideology to explain his inferiority and account for the danger he represents[.]”<sup>133</sup> Indeed, it is not unusual for those seeking to stigmatize the vulnerable to draw parallels between their targets and a contagion infecting the body.<sup>134</sup>

Many viewed Trump’s official 2016 presidential campaign catchphrase of “Make America Great Again” as a promise to

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<sup>128</sup> Oscar Winberg, *Insult Politics: Donald Trump, Right-Wing Populism, and Incendiary Language*, EURO. J. OF AMER. STUD. (2017), <https://journals.openedition.org/ejas/12132>.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Donald Trump (@realDonaldTrump), TWITTER (June 19, 2018, 6:52 AM), <https://twitter.com/realDonaldTrump/status/1009071403918864385>.

<sup>132</sup> *Id.*

<sup>133</sup> GOFFMAN, *supra* note 108.

<sup>134</sup> ROMÁN, *supra* note 25.

reinvigorate and reestablish the nation's white racist past.<sup>135</sup> Indeed, early in 2018, the New York Times opined that a primary goal of the Trump administration was nothing short of "making America White Again, and Democrats are too afraid to speak that truth."<sup>136</sup> A xenophobic administrative focus not only led Trump to victory by securing the support of his fellow right-wing white community, oftentimes frustrated and threatened by a changing U.S. demographic highlighted by the election of Barack Obama, but it also served as a useful diversion to the many allegations of wrongdoing associated with his administration. In addition to his informal campaign logo of "Build the Wall," Trump also promised to ramp up the deportation of undocumented immigrants.<sup>137</sup> In light of Trump's repeated attacks, many expected large-scale immigration enforcement and Immigration and Customs Enforcement (ICE) raids.<sup>138</sup> Trump's proposed immigration enforcement measures included the mass removal of "criminal aliens," the identification of Mexican immigrants as a group of criminals, ending President Obama's allegedly unconstitutional Deferred Action for Childhood Arrivals ("DACA") program, and subjecting Muslim noncitizens to "extreme vetting" when seeking admission into the United States.<sup>139</sup>

The above-mentioned anti-immigrant ploys were effective at reminding the undocumented of their place, or lack thereof, in American society. Goffman called this consequence the internal effect of stigma.<sup>140</sup> Thus, Trump's base—mostly white, working-class Americans—was relieved to see that the government was "doing something" about the so-called threat. Meanwhile the subjects of such

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<sup>135</sup> See Steve Phillips, *Trump Wants to Make America White Again*, N.Y. TIMES (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/opinion/trump-wants-to-make-america-white-again.html>.

<sup>136</sup> *Id.*

<sup>137</sup> Zolan Kanno-Youngs & Michael D. Shear, *ICE Signals Mass Immigration Arrests, but Not the 'Millions' Trump Promised*, N.Y. TIMES (June 15, 2019), <https://www.nytimes.com/2019/06/18/us/politics/trump-immigration-deportations.html>.

<sup>138</sup> See Ray Sanchez, *After ICE Arrests, Fear Spreads Among Undocumented Immigrants*, CNN (Feb. 12, 2017, 7:10 AM), <http://www.cnn.com/2017/02/11/politics/immigration-roundups-community-fear/index.html>.

<sup>139</sup> Kevin R. Johnson, *Immigration and Civil Rights in the Trump Administration: Law and Policy Making by Executive Order*, 57 SANTA CLARA L. REV. 611, 628 (2017).

<sup>140</sup> GOFFMAN, *supra* note 108, at 7.

rhetoric were constantly being reminded of their vulnerable position in American society as well as being further terrorized into believing that the federal government could potentially be coming for them at any time. Overall, xenophobic politicians often scapegoat and demonize immigrant communities in order to provide the sociocultural majority with the belief that threatening immigrant individuals are being deported and/or removed from mainstream society.

To appeal to its constituents, the Trump administration purposefully exaggerated the extent of immigrant deportations, effectively making the overall number of deportations appear to be much greater than they actually were.<sup>141</sup> This discrepancy served the dual purpose of assuaging anti-immigrant followers without disrupting the vital economic role played by undocumented workers.<sup>142</sup> The phenomenon had several consequences: (1) it created a permanent underclass and foreign scapegoat subject to blame for most of the country's ills; (2) it gave the appearance of a dedicated leadership focused on creating policies to address the immigration issue; (3) it further silenced a shadow segment of society; and (4) it figuratively ousted the immigrant threat by engaging in overtly xenophobic proclamations coupled with widely publicized anti-immigrant measures. Some of these measures included threats of immigrant roundups and deportations as well as the passage of anti-immigrant laws and policies purportedly aimed at deporting and refusing entry to immigrants. However, despite the blatant anti-immigrant rhetoric, the number of immigrants in American society remained largely unchanged.<sup>143</sup>

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<sup>141</sup> See Miriam Valverde, *Donald Trump Exaggerates on Number of MS-13 Gang Members Deported*, POLITIFACT. (May 15, 2018), <https://www.politifact.com/factchecks/2018/may/15/donald-trump/donald-trump-exaggerates-number-ms-13-gang-members/>.

<sup>142</sup> Mark Humphery-Jenner, *Why mass deportations are costly and hurt the economy*, THE CONVERSATION (Feb. 26, 2017, 8:18 PM EST), <https://theconversation.com/why-mass-deportations-are-costly-and-hurt-the-economy-73504>.

<sup>143</sup> *Id.*



b. Effects on Immigrants

As scholars have observed, at its core, hate speech is an assault on human dignity.<sup>144</sup> In fact, Jeremy Walden, leading scholar on hate speech, looked to renowned theorist John Rawls' notion that in a well-ordered society, there is an assurance to all citizens that they will be treated equally.<sup>145</sup> Within this realm, Walden observed that hate speech disrupts that assurance.<sup>146</sup>

[W]hen a society is defaced with anti-Semitic signage, burning crosses, and defamatory racial leaflets, that sort of assurance evaporates. A vigilant police force and a Justice Department may still keep people from being attacked or excluded, but they no longer have the benefit of a general and diffuse assurance to this effect [of being treated justly], provided and enjoyed as a public good, furnished to all by each.<sup>147</sup>

A natural effect of hate speech is the toxic, almost contagion like aftermath, which many authors argue has not only a dehumanizing tone, but also a silencing effect on the targets of the hate speech:

[T]iny impacts of millions of actions - each apparently inconsiderable in itself - can produce a large-scale toxic effect that, even at the mass level, operates insidiously as a sort of slow-acting poison, and that regulations have to be aimed at individual actions with that scale and that pace of causation in mind.<sup>148</sup>

In Trump's xenophobic context, hate speech has led many immigrants to feel under attack, unsafe, and besieged by the

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<sup>144</sup> Jeremy Walden, *The Harm in Hate Speech*, 2 J. OF PEACE, PROSPERITY, AND FREEDOM, 139 (2013).

<sup>145</sup> *Id.* at 140-41.

<sup>146</sup> *Id.* at 141.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

government. One of the most troubling effects of such an environment is the fact that many immigrants who experience feelings of rejection by their government leaders are less likely to report crimes and seek public benefits that they are entitled to such as healthcare.<sup>149</sup> In the end, the Trump Administration created a silenced and terrified immigrant underclass. As discussed above, while Trump did not have a relevant impact in the number of undocumented individuals living in the United States, he did succeed at making the lives of immigrants much more terrifying and insecure.<sup>150</sup>

As previously mentioned, hate speech has the effect of promoting and sanctioning violence against a particular targeted community. Such effects became vividly displayed during Trump's tenure as president, and unfortunately, many of his supporters praised him for his animosity towards immigrants. For instance, on June 14, 2018, a sixty-two-year-old man assaulted a twenty-four-year-old Puerto Rican woman for wearing a shirt bearing the image of the Puerto Rican flag.<sup>151</sup> The perpetrator angrily, and ignorantly, argued that the woman could not be a U.S. citizen if she was in fact Puerto Rican.<sup>152</sup> In another case, on April 20, 2018, a man wearing a "Make America Great Again" hat allegedly pushed a Mexican immigrant onto the tracks of a New York City subway station.<sup>153</sup> The attacker accused the victim of coming to the United States to "take his job," and to "bring drugs here."<sup>154</sup> Later that year, in May 2018, a New York City attorney was recorded shouting "this is America" at a restaurant employee while threatening to call ICE after having overheard such employee speak Spanish with one of the customers.<sup>155</sup> In another incident, on a Fourth of July, a Los Angeles woman hit a U.S. resident with a brick while shouting "Go back to your country!"<sup>156</sup>

Moreover, an Anti-Defamation League report documented a host of other incidents during this period. In one case, several young

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<sup>149</sup> Anti-Defamation League Center on Extremism, *Mainstreaming Hate: The Anti-Immigrant Movement in the U.S.*, 44–45 (2018).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 27.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

men viciously attacked a man after accusing him of trying to kidnap a woman's daughter.<sup>157</sup> In another case, two men attacked Surjit Malhi, a fifty-year-old Sikh man wearing a turban.<sup>158</sup> The two attackers threw sand in Malhi's eyes, beat him, and vandalized his property by spray-painting "[g]o back to ur [sic] country" on his truck.<sup>159</sup> In a third case, the first Latino mayor of a suburb near Seattle, Washington was attacked by a sixty-two-year-old man who allegedly told him "[w]e're not going to let you Latino illegals take over our city."<sup>160</sup> In two more separate incidents, an Anti-Defamation League ("ADL") report observed that two New York City women harassed Hispanics, a Muslim woman, and several Black or African American individuals while on a bus.<sup>161</sup> In the first incident, a fifty-seven-year-old woman called other riders "illegal immigrants," and told them to "get the [expletive] out of my country."<sup>162</sup> A week later, a second woman taunted a Muslim woman, saying ICE was coming to deport her.<sup>163</sup> The ADL report concluded: [a]ll these incidents, which point to the continued mainstreaming of once-fringe views, feed into a climate of anti-immigrant vitriol, creating an atmosphere where immigrants may be more susceptible to harassment or even violence.<sup>164</sup>

More recently, Trump was accused of promoting hatred and violence against the Asian-American Pacific Islander community through his repeated efforts to blame the Asian community for the Covid-19 pandemic through the use of irresponsible and profoundly ignorant label of the so-called "China-Virus."<sup>165</sup> During the very same night Trump used the "China Virus" slur, several Asian women were shot dead at three massage parlors in Georgia.<sup>166</sup> Moreover, Trump avidly used social media platforms, such as Twitter, in an effort to

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<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Khaleda Rahman, *Donald Trump Repeats 'China Virus' Slur on Fox News on Same Night As Atlanta Shootings*, NEWSWEEK (May 17, 2021, 8:18 AM), <https://www.newsweek.com/donald-trump-said-china-virus-just-before-atlanta-shootings-1576756>.

<sup>166</sup> *Id.*

spread misinformation about the “China Virus” and the “Kung Flu.” Twitter responded by banning him from the platform.<sup>167</sup> Within this linguistic premise, Dr. John Brownstein, author of a study on the effects of hate and social media, stated that online conversations can oftentimes spark violent reactions.<sup>168</sup> Dr. Brownstein concluded that “we often see that online conversations that contain messages of hate don’t stay online.” In fact, “oftentimes, the conversations that take place on social media results in real world consequences.”<sup>169</sup> Furthermore, Dr. Daniel Rogers, an expert on misinformation at New York University, found that hateful social media content can lead to an increased amount of the same type of content being recirculated to users via platforms’ algorithms.<sup>170</sup>

As platform algorithms pick up on engagement around this toxic content, they recommend increasingly more extreme content to users until their feeds are dominated by nothing but the most extreme stuff, goading those users with a propensity toward violence to potentially committing hate crimes.<sup>171</sup>

Although Tucker Carlson, a prominent conservative talk show host, has openly stated that the problem of white supremacy is nothing but a hoax,<sup>172</sup> such false rhetoric combined with the Trump administration’s anti-immigrant/anti-Latinx measures has created a dangerous sociopolitical environment for both immigrants and Latinx U.S. citizens. It is clear that the above-mentioned acts of violence were

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<sup>167</sup> Laura Kurtzman, *Trump’s ‘Chinese Virus’ Tweet Linked to Rise of Anti-Asian Hashtags on Twitter*, UCSF (Mar. 18, 2021), <https://www.ucsf.edu/news/2021/03/420081/trumps-chinese-virus-tweet-linked-rise-anti-asian-hashtags-twitter>.

<sup>168</sup> Dr. Mishal Reja, *Trump’s ‘Chinese Virus’ tweet helped lead to rise in racist anti-Asian Twitter content: Study*, ABC NEWS (Mar. 18, 2021, 5:58 PM), <https://abcnews.go.com/Health/trumps-chinese-virus-tweet-helped-lead-rise-racist/story?id=76530148>.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> Emily S. Rueb & Derrick Bryson Taylor, *Tucker Carlson of Fox Falsely Calls White Supremacy a ‘Hoax’*, N.Y. TIMES (Aug. 8, 2019), <https://www.nytimes.com/2019/08/08/business/media/tucker-carlson-white-supremacy.html>.

fueled by the disrespectful and quite often racist remarks of the most powerful individual in the nation: the President. Although now out of office, it remains to be seen how long Trump's violent speech toward minority populations will continue to be embraced by a large sector of society who seems to have forgotten that the United States was not only founded but also built by hardworking immigrants.<sup>173</sup> A *Newsweek* story observed,

Officials and activists have said anti-Asian attacks were fueled by Trump's rhetoric as his administration struggled to contain the coronavirus, which originated in Wuhan, China. The former president frequently referred to COVID-19 as the "China virus" and also used the racist term "Kung flu."<sup>174</sup>

Even after losing his bid for reelection, Trump's hateful rhetoric and blatant ignorance continues to be felt. A study conducted by Professor Yulin Hswen, an epidemiologist at the University of California, suggests that former President Donald Trump's inflammatory rhetoric regarding the coronavirus—a virus that originated in China—helped spark anti-Asian Twitter content and "likely perpetuated racist attitudes."<sup>175</sup> The study's author observed that "Anti-Asian sentiment depicted in the tweets containing the term 'Chinese Virus' likely perpetuated racist attitudes and parallels the anti-Asian hate crimes that have occurred since."<sup>176</sup> Perhaps not surprisingly, the Asian American community has experienced a striking rise in incidents of hate since the onset of Covid-19.<sup>177</sup> Indeed, anti-Asian hashtags rose dramatically after Trump's use of the term

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<sup>173</sup> See generally Richard Delgado & Jean Stefancic, *Can a Nation Curb Presidential Hate Speech?*, NYU PRESS (Aug. 12, 2019), <https://www.fromthesquare.org/can-a-nation-curb-presidential-hate-speech/#.XcdG2tV7nIU>.

<sup>174</sup> Khaleda Rahman, *Donald Trump Repeats 'China Virus' Slur on Fox News on Same Night As Atlanta Shooting*, NEWSWEEK (Mar. 17, 2021, 8:18 AM), <https://www.newsweek.com/donald-trump-said-china-virus-just-before-atlanta-shootings-1576756>.

<sup>175</sup> Reja, *supra* note 168.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

“China Virus” and the so-called “Wuhan Virus.”<sup>178</sup> Trump, in an odd and once again profoundly ignorant fashion, continued to use the above-mentioned terms despite the World Health Organization urging the avoidance of terms like the “Wuhan virus” or the “Chinese virus,” fearing it could spike a backlash against Asians.<sup>179</sup> Professor Russell Jeung, co-founder of Stop AAPI Hate, argued that Trump’s repeated use of the phrase “Chinese virus” had a direct correlation with the rise in hate crimes affecting the Asian community.<sup>180</sup> Jeung observed,

It demonstrates how words matter. . . The term ‘Chinese virus’ racializes the disease so that it’s not simply biological but Chinese in nature, and stigmatizes the people so that Chinese are the disease carriers and the ones infecting others.<sup>181</sup>

#### IV. VIOLENCE AGAINST IMMIGRANTS AND THE LATINX COMMUNITY

As president, Trump used his hateful narrative, directed at immigrants, to implement a host of policies that sought to attack, silence, confine, and deport both immigrants and Latinx individuals. Almost immediately upon taking office, the Trump Administration began its efforts to target immigrants. By far the most heinous of these programs was family separation. On January 25, 2017, President Trump signed Executive Order 13767, which ordered (i) the construction of a southern border wall, (ii) the expediting of immigration procedures and determinations, and (iii) the commencement of steps to increase border security and immigration law enforcement.<sup>182</sup> In May 2018, Attorney General Jeff Sessions

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<sup>178</sup> See Andrea Salcedo, *Racist Anti-Asian Hashtags Spiked After Trump First Tweeted ‘Chinese Virus,’ Study Finds*, WASH. POST (Mar. 19, 2020, 7:17 AM), <https://www.washingtonpost.com/nation/2021/03/19/trump-tweets-chinese-virus-racist/>.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> Exec. Order No. 13767, 82 Fed. Reg. 8,793 (Jan. 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-border-securityimmigration-enforcement-improvements/> [https://perma.cc/LH6U-NEZV].

declared the U.S. would take a stricter stance on illegal crossings at the U.S.-Mexico border. Replacing the old policy of keeping families together in detention centers, Sessions' new Zero Tolerance policy required that parents and children be separated upon being detained.<sup>183</sup> Sessions stated at a public event that "[i]f you are smuggling a child, then we will prosecute you, and that child will be separated from you as required by law."<sup>184</sup> He further stated that "[i]f you don't like that, then don't smuggle children over our border."<sup>185</sup>

In the first two months of this program, nearly 2000 children were separated from their parents.<sup>186</sup> Tragically, half a decade after first implementing this policy, President Biden's administration is still struggling to find and unite these families.<sup>187</sup> These failures resulted from the callousness and ineptitude of Trump and his sycophants.<sup>188</sup> Under Trump's policy, federal "databases had categories for 'family units,' and 'unaccompanied alien children' [that] arrive[d] without parents," but no federal government agency had information concerning the whereabouts of "more than 2,600 children who had been taken from their families and placed in government shelters."<sup>189</sup>

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<sup>183</sup> Maya Rhodon, *Here Are the Facts About President Trump's Family Separation Policy*, TIME (June 20, 2018), <http://time.com/5314769/family-separation-policy-donald-trump/>.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> See Alayna Treene & Stef W. Kight, *Biden Has Yet to Reunite Any Migrant Families Separated Under Trump*, AXIOS (Apr. 7, 2021), <https://www.axios.com/family-separation-migrants-reunification-biden-4d251d63-c774-4c22-9839-3970a8d5c2ae.html> ("Not one of the hundreds of migrant families separated from President Trump's zero-tolerance policy has been reunited under President Biden thus far, senior Department of Homeland Security officials confirmed on Wednesday.").

<sup>188</sup> Nick Miroff, Amy Goldstein & Maria Sacchetti, *'Deleted' Families: What Went Wrong with Trump's Family-Separation Effort*, WASH. POST (July 28, 2018), [https://www.washingtonpost.com/local/social-issues/deleted-families-what-went-wrong-wit-h-trumps-family-separation-effort/2018/07/28/54bcdcc6-90cb-11e8-8322-b5482bf5e0f5\\_story.html](https://www.washingtonpost.com/local/social-issues/deleted-families-what-went-wrong-wit-h-trumps-family-separation-effort/2018/07/28/54bcdcc6-90cb-11e8-8322-b5482bf5e0f5_story.html).

<sup>189</sup> *Id.*

In addition to the horrific Family Separation policy, the Trump administration increased reliance on 287(g) agreements.<sup>190</sup> These agreements essentially deputize local law enforcement officers as federal immigration agents.<sup>191</sup> These local officers are authorized to interview, arrest, and detain any person who may be in violation of immigration laws depending on the terms of the agreement.<sup>192</sup> Watchdogs are concerned that state and local law enforcement officers empowered to enforce immigration laws have engaged—and will continue to engage—in racial profiling targeting Latinos.<sup>193</sup> Leading immigration scholar, Bill Hing observed that “local enforcement under 287(g) agreements resulted in abuse—most notably racial profiling.”<sup>194</sup>

The Trump Administration further stoked fears by reviving the controversial “Secure Communities” program, which had started and ended during the Obama Administration.<sup>195</sup> This program required local authorities to share fingerprints and other arrest data in

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<sup>190</sup> See Amanda Sakuma, *Donald Trump’s Plan to Outsource Immigration Enforcement to Local Cops*, THE ATLANTIC (Feb. 18, 2017), <https://www.theatlantic.com/politics/archive/2017/02/trump-immigration-enforcement/517071/>.

<sup>191</sup> See Kevin Johnson, *Immigration and Civil Rights in the Trump Administration: Law and Policy Making by Executive Order*, 57 SANTA CLARA L. REV. 611, 643 (2017).

<sup>192</sup> Sakuma, *supra* note 190.

<sup>193</sup> Jennifer M. Chacón, *A Diversion of Attention? Immigrant Courts and the Adjudication of Fourth and Fifth Amendment Rights*, 59 DUKE L.J. 1563, 1616–17 (2010) (analyzing various programs that have increased the cooperation between federal, state, and local governments in immigration enforcement); *see also* Ming H. Chen, *Trust in Immigration Enforcement: State Noncooperation and Sanctuary Cities After Secure Communities*, 91 CHI.-KENT L. REV. 13 (2016) (to a similar effect); Hiroshi Motomura, *The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Line*, 58 UCLA L. REV. 1819 (2011) (reviewing issues that arise with respect to state, local, and federal cooperation in immigration enforcement); Huyen Pham, *The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power*, 74 U. CIN. L. REV. 1373, 1388–91 (2006) (summarizing various types of state and local laws that limit cooperation with federal immigration enforcement authorities).

<sup>194</sup> Bill O. Hing, *Entering the Trump Ice Age: Contextualizing the New Immigration Enforcement Regime*, 5 TEX. A&M L. REV. 253, 281 (2018).

<sup>195</sup> *Id.* at 290.



an effort to aid in the apprehension of removable immigrants.<sup>196</sup> After an arrest by local authorities, local authorities were instructed to send fingerprints to the FBI.<sup>197</sup> The FBI would in turn share the fingerprints with ICE, and ICE would then review the prints in order to determine if the arrested person was subject to deportation, even if said person had yet to be convicted.<sup>198</sup> The overwhelming majority of persons removed during the Obama administration due to Secure Communities were noncriminal or low-level offenders.<sup>199</sup>

The Trump administration also limited who may enter the country by “ma[king] it more difficult for incoming asylum seekers to establish [the] ‘credible fear’ of persecution [for the purposes of obtaining] political asylum.”<sup>200</sup> A dramatic increase in migration to the U.S. by unaccompanied children began in early 2014.<sup>201</sup> As a result, “the United States Citizenship and Immigration Services (‘USCIS’), whose asylum office handles asylum cases, revised its [policies on] asylum applicants” seeking to demonstrate a “credible-fear screening standard” in order to obtain asylum.<sup>202</sup> The language and tone [of the policy changed and the new policy] instructed asylum officers to impose a burden on applicants that surpassed the well-founded fear asylum standard,<sup>203</sup> which was established by the Supreme Court in *INS v. Cardoza-Fonseca*.<sup>204</sup> “As a result of the changes to the asylum standards, the number of asylum seekers is expected to ‘decline considerably.’”<sup>205</sup>

The Trump administration’s hate extended to U.S. citizens who were formerly immigrants. His administration made efforts to

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<sup>196</sup> *Id.* (citing Tal Kopan & Catherine E. Shoichet, *Key Points in Trump’s Immigration Executive Orders*, CNN (Jan. 26, 2017), <https://www.cnn.com/2017/01/25/politics/donald-trump-immigration-executive-orders/index.html>).

<sup>197</sup> *Id.* (citing Elise Foley, *Obama Faces Growing Rebellion Against the Secure Communities Deportation Program*, HUFFINGTON POST (Apr. 24, 2014), [https://www.huffpost.com/entry/secure-communities\\_n\\_5182876](https://www.huffpost.com/entry/secure-communities_n_5182876)).

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 290–91.

<sup>200</sup> Ediberto Román & Ernesto Sagás, *Trump and Caribbean Xenophobia: The United States and The Dominican Republic*, 46 RUTGERS L. REC. 103, 110 (2019).

<sup>201</sup> Hing, *supra* note 194, at 282.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 283.

<sup>204</sup> See *INS V. Cardoza-Fonseca*, 480 U.S. 421, 421–22 (1987).

<sup>205</sup> Román & Sagás, *supra* note 200, at 110.

denaturalize immigrants who were recently naturalized as U.S. citizens. The U.S. Citizenship and Immigration Services, the federal agency responsible for citizenship applications, announced an initiative, Operation Janus, that focused on identifying and revoking the citizenship of those recently naturalized.<sup>206</sup> The goal of Operation Janus was to denaturalize those who were suspected of lying or otherwise engaging in identity fraud during citizenship applications.<sup>207</sup> From 1990 to 2017, “only 305 denaturalization cases were pursued, an average of 11 per year.”<sup>208</sup> Thus, according to its own data, the federal government redirected over \$200 million dollars of the U.S. Immigration and Customs Enforcement (ICE) budget to address *eleven cases per year*.<sup>209</sup>

Social scientists have long recognized that hate speech can cause harm at several levels.<sup>210</sup> The social sciences have noted that because exposure to hate speech shapes attitudes and influences actual behaviors, including serious hate crimes such as genocide, such rhetoric can disturb social peace.<sup>211</sup> And “[a]bove all, hate speech poses a threat to the physical safety and psychological well-being of targeted group members.”<sup>212</sup> Social scientists find that hate speech has two primary consequences: constitutive and consequential harms,<sup>213</sup> also known as the *internal* and *external* consequences of stigmatizing language.<sup>214</sup> The focus here has been the consequential, or external, consequences of hate speech. Consequential harms of hate speech can occur in four ways: (1) persuading hearers to believe negative

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<sup>206</sup> See Amy Taxin, *U.S. Launches Bid to Find Citizenship Cheaters*, AP NEWS (June 11, 2018), <https://apnews.com/1da389a535684a5f9d0da74081c242f3>; Masood Fari var, *Indian National First to Lose Citizenship Under “Operation Janus,”* VOA NEWS (Jan. 9, 2018, 4:40 PM), [https://voanews.com/usa/indian-national-first-lose-us-citizenship-under-operation-janus\\_](https://voanews.com/usa/indian-national-first-lose-us-citizenship-under-operation-janus_)

<sup>207</sup> See Taxin, *supra* note 206.

<sup>208</sup> Adiel Kaplan, *Miami Grandma Targeted as U.S. Takes Aim at Naturalized Immigrants with Prior Offenses*, MIAMI HERALD (July 12, 2018), <https://www.miamiherald.com/article214173489.html>.

<sup>209</sup> See *id.*

<sup>210</sup> Bojarska, *supra* note 16, at 3.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> See *id.* at 4–5 (discussing the consequential harms of hate speech on targeted groups).

<sup>214</sup> See ROMÁN, *supra* note 25, at 128.

stereotypes that lead them to engage in other harmful conduct; (2) shaping the preferences of hearers so they come to be persuaded of negative stereotypes; (3) conditioning the environment so that expressing negative stereotypes and carrying out further discrimination become normalized, often unconsciously; and (4) causing hearers to imitate the behavior.<sup>215</sup> Some scholars examining the issue question the relationship between hate speech and serious consequences like discrimination and violence.<sup>216</sup> But the bulk of the literature on the subject does in fact find such a relationship.<sup>217</sup> Indeed, the preceding paragraphs illustrate how Trump's rhetoric does have serious consequences and terrorizes communities. As shown by the attacks against U.S. citizens at the border, Trump's xenophobia has made targets of all Latinas and Latinos, irrespective of their legal status.

Indeed, a careful examination of Trump's rhetoric reveals a causal relationship with all of the classic external consequences of hate speech. Given the cult-like support he receives at his frequent rallies and the loud vocal—and at times openly violent—approval of his statements during the rallies, there is little doubt that the stereotypes he uses have fully persuaded his followers. His words shape, or at least affirm, their views, and through the use of words like “invaders,” “animals,” “criminals,” “rapists,” and “drug dealers,” he has nurtured an environment that normalizes discrimination. There is evidence that the most disturbing consequence, however, is that Trump has provided a justification for his followers to commit violence against immigrants. The manifesto penned by the perpetrator of the El Paso mass murder tracked Trump's language of an invasion and the need to stop immigrants.<sup>218</sup> As a right-of-center periodical recently observed, “[t]he president has done more than any politician in living memory to fan the flames of ethnic and racial antipathy and nurture a

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<sup>215</sup> Katherine Gelber & Luke J. McNamara, *Evidencing the Harms of Hate Speech*, 22 SOC. IDENTITIES 324, 328 (2016).

<sup>216</sup> *See id.*

<sup>217</sup> *See, e.g.*, Rubsamen, *supra* note 128; Román, *supra* note 25.

<sup>218</sup> Peter Baker & Michael D. Shear, *El Paso Shooting Suspect's Manifesto Echoes Trump's Language*, N.Y. TIMES (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/us/politics/trump-mass-shootings.html>.

culture of bigotry.”<sup>219</sup> There is no more apt example of the above-mentioned classic consequences of hate speech than the following: “Trump’s rhetoric of dehumanization set the stage for his policy of separating children from their families at the southern border. And it created the conditions that, earlier this year, as *Vox*’s Aaron Rupar wrote, ‘turned the idea of shooting migrants and asylum seekers who try to cross the southern border into a punchline.’”<sup>220</sup> The consequences of his vitriol are both violent and vivid.

The horrific El Paso attack is far from an isolated anti-immigrant assault on that community. Less than a week after the El Paso mass murder, an alleged white supremacist was detained just outside an immigrant center.<sup>221</sup> News reports observed: “He was sitting in his truck wearing blue latex gloves and brandishing a knife. Police recovered a loaded gun, ammo, and a bag of white powder from his person. This happens just as Trump departs El Paso and follows a pattern of local organizers being targeted and increased violence and hate crimes.”<sup>222</sup>

## CONCLUSION

The ugly underside of this new status quo is that it has become “OK” to hate immigrants and discriminate against the “others.” In the United States, the “it’s OK to be white” discourse has normalized racist, xenophobic behavior. What used to be subtle dog-whistle calls to voters are increasingly becoming open calls to stop the transformation of “our country.” Perhaps former White House advisor and ideologue Steve Bannon put it best when he told a French National Front Party crowd: “Let them call you racists. Let them call you xenophobes. Let them call you nativists. Wear it as a badge of

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<sup>219</sup> Peter Wehner, *Trump’s Words Are Poison*, THE ATLANTIC (Aug. 6, 2019), <https://www.theatlantic.com/ideas/archive/2019/08/what-trump-has-done/595585/>.

<sup>220</sup> *Id.*

<sup>221</sup> Yara Simón, *A White Man Was Seen Brandishing a Knife Outside an El Paso Immigrant Center*, REMEZCLA (Aug. 8, 2019), <https://remezcla.com/culture/white-man-outside-casa-carmelita-el-paso>.

<sup>222</sup> *Id.*

honor.”<sup>223</sup> Bannon’s very direct message now resonates well in the United States, where a shifting political tide and the normalization of nationalist xenophobia has granted legitimacy and a national forum to ideas, beliefs, and behaviors that used to exist on the fringes of society. This hateful rhetoric has inspired countless acts of violence against immigrants, people of color, women, and other marginalized groups.<sup>224</sup> Trump’s toxic discourse emboldens those who feel they are losing ground in today’s America: middle-class whites who tend to be rural, older, and without a college education.<sup>225</sup> And for a handful, it is a call to arms to defend their version of America, thus sparking the acts of violence that have become so commonplace nowadays. Hateful rhetoric coming from the president finds fertile ground among many of his followers, breeding fear and loathing of racialized “others,” who are then turned into objects, targets, and enemies. This dehumanization of “others” is part of a well-known script that rallies the base, instills fear in those targeted by it, and—as we have seen recently—justifies committing acts of violence against them.<sup>226</sup> It is identity politics at its worst.<sup>227</sup>

In addition to inciting hate, Trump has also reminded the vulnerable, which is not limited to undocumented immigrants,<sup>228</sup> of their less-than-equal status. As Goffman observed, a consequential effect of stigma is that it reinforces feelings of isolation and otherness within the targeted group. Trump has attacked virtually every outsider group in this country, and in the case of immigrants, he has

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<sup>223</sup> Eli Watkins & James Gray, *Bannon: ‘Let Them Call You Racists,’* CNN (Mar. 11, 2018), <https://www.cnn.com/2018/03/10/politics/steve-bannon-national-front/index.html>.

<sup>224</sup> See The Center on Extremism, *supra* note 149, at 27.

<sup>225</sup> See Phillips, *supra* note 135.

<sup>226</sup> See Susan Benesch, Cathy Buerger, Tonei Glavinic, & Sean Manion, *Dangerous Speech: A Practical Guide*, DANGEROUS SPEECH PROJECT (Dec. 31, 2018), <https://dangerousspeech.org/guide/>.

<sup>227</sup> See generally Francis Fukuyama, *The New Identity Politics: Rightwing Populism and the Demand for Dignity*, EUROZINE (Apr. 18, 2019), <https://www.eurozine.com/new-identity-politics/> (discussing what identity politics is and how it has proliferated in the United States).

<sup>228</sup> See generally, ROMÁN, *supra* note 25 (discussing the effects of anti-immigrant rhetoric on undocumented immigrants, and all other aspects of the Latinx community in the U.S.).

terrorized them and reminded them they are not safe in his vision of America.

Finally, Trump's hateful rhetoric is polarizing political debate and undermining civic discourse in America, with grave consequences for democracy. Yet Trump is but a symptom of a greater malaise. Political discourse has been polarized for decades; partisanship has poisoned the well of reasoned debate, and being a moderate is falling out of fashion. Trump is not the cause but a reflection of deeper problems in our polity.<sup>229</sup> Trump is not the first national leader to demonize immigrants in order to score political points with his base, but his unabashed racist rhetoric, extensive reach via social media and widespread press coverage, and fierce loyalty among his base, imperils the stability of our democracy. While a vocal minority has had a field day bashing immigrants and "Making America Great Again," large sectors of the country brace for the next act of armed violence. In fairness, most of Trump's followers would not support violent acts; from their point of view, they are just in for the ride and having fun while reclaiming their country. And this unquestionable loyalty is very disturbing. As Hannah Arendt made it abundantly clear, this banality empowers evil.<sup>230</sup> In the spirit of critical race scholars who decades ago questioned norms affecting people of color, the president's hateful rhetoric targeting Latinx people—undocumented, documented, and citizens alike—needs to be exposed and questioned by both his followers and detractors, not just for the sake of these communities but for democracy's sake.

Trump did not create xenophobic hate or even was the first major politician to utilize it for political gain.<sup>231</sup> Across our hemisphere, "Trumpian" politicians like Brazilian President Jair Bolsonaro have resorted to the scapegoating of immigrants to deflect blame for his actions,<sup>232</sup> while other elected leaders have been less

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<sup>229</sup> See STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* 53–71 (2019).

<sup>230</sup> See Thomas White, *What Did Hannah Arendt Really Mean by the Banality of Evil?*, AEON (Apr. 23, 2018), <https://aeon.co/ideas/what-did-hannah-arendt-really-mean-by-the-banality-of-evil>.

<sup>231</sup> See ERIKA LEE, *AMERICA FOR AMERICANS: A HISTORY OF XENOPHOBIA IN THE UNITED STATES* 3–4 (2019).

<sup>232</sup> Felipe A. Filomeno & Thomas J. Vicino, *The Evolution of Authoritarianism and Restrictionism in Brazilian Immigration Policy: Jair Bolsonaro in Historical*

overt about their disdain for poor immigrants but still have employed fear-and-loathing tactics to pass harsh anti-immigrant legislation. In Argentina,<sup>233</sup> Brazil,<sup>234</sup> and Chile,<sup>235</sup> countries well known for their immigrant-origin populations, generalized xenophobia directed at poor immigrants of color stands in sharp contrast with the reception enjoyed by the thousands of destitute immigrants that flocked from Europe in the late nineteenth and early twentieth centuries. The descendants of those Spaniards, Italians, and Germans in South America now claim nativity and thumb their noses at Indigenous and Afro-Latinx immigrants that arrive to “their” countries in search of better lives.<sup>236</sup> Even in the Dominican Republic, a small nation known for its thousands of emigrants that toil away in Europe and the United States, Haitian immigrants are scapegoated, exploited, and denied basic human rights.<sup>237</sup> This xenophobia is reproduced at the highest levels of society by a political class willing to take advantage of people’s fears of “Others.” Rather than engaging in good, transparent governance, they would rather borrow from the fear-and-loathing playbook and create a tempest in a teapot in order to hold on to power and avoid being accountable to their constituents. All of this is mostly for show: demagogic leaders make grandiose promises to assuage their voters’ fear, but in the end, very few immigrants are deported because deportation tends to hurt local economies.

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*Perspective*, BULLETIN OF LATIN AMERICAN RESEARCH (2020), <https://onlinelibrary-wiley-com.access.library.miami.edu/doi/10.1111/blar.13166>.

<sup>233</sup> See Jeane DeLaney, *Immigration, Identity, and Nationalism in Argentina, 1850–1950*, in IMMIGRATION AND NATIONAL IDENTITIES IN LATIN AMERICA 91 (Nicola Foote & Michael Goebel eds., 2017).

<sup>234</sup> See Frederik Schulze, *Nation and Migration: German-Speaking and Japanese Immigrants in Brazil, 1850–1945*, in IMMIGRATION AND NATIONAL IDENTITIES IN LATIN AMERICA 115 (Nicola Foote & Michael Goebel eds., 2017).

<sup>235</sup> See Carl Solberg, *Immigration and Nationalism: Argentina and Chile, 1890–1914* (2014).

<sup>236</sup> Liam Miller, *Racism Against Indigenous Groups, Immigration at Issue as Chile Debates New Constitution*, NBC NEWS, (Sept. 9, 2020, 8:35 AM), <https://www.nbcnews.com/news/latino/racism-against-indigenous-groups-immigration-issue-chile-debates-new-constitution-n1239299>.

<sup>237</sup> Sharri K. Hall, *Antihaitianismo: Systemic Xenophobia and Racism in the Dominican Republic*, COUNCIL ON HEMISPHERIC AFF. (June 29, 2017), <https://www.coha.org/antihaitianismo-systemic-xenophobia-and-racism-in-the-dominican-republic/>.

For nations like Argentina, Brazil, Chile, and the Dominican Republic, this trend is worrisome. Not only does it run counter to their historical past as immigrant-welcoming nations; it also negates a long-standing culture of immigrant adaptation by which the descendants of those immigrants of not too long ago are nowadays full-fledged citizens who claim nativity. Whereas becoming an Argentinian, a Chilean, or an American used to be a matter of just one generation, today's Latin American immigrants of color – and their children – are destined to remain perpetual outsiders to societies that no longer welcome them.<sup>238</sup> The violation of the human rights of immigrants in these countries clearly undermines the rule of law for all Argentinians, Brazilians, Chileans, and Dominicans. Treating “Others” like second-class citizens creates a pecking order, a dual standard that violates the fundamental principle of equality before the law – for all, not just for some.<sup>239</sup> But the most troubling consequence of anti-immigrant fear-and-loathing is its impact on the quality of democracy in countries where democracy is young and potentially fragile.

Argentina,<sup>240</sup> Brazil,<sup>241</sup> Chile,<sup>242</sup> and the Dominican Republic<sup>243</sup> endured nightmarish dictatorships during the twentieth century, regimes that imprisoned, tortured, and killed thousands of its own citizens. The transition to democracy came at a heavy price in lives and was welcomed across the region. Yet the current treatment of immigrants of color as the racialized “Other” echoes the authoritarian practices of the past, where citizens were classified by the state as

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<sup>238</sup> See Daniel Kanstroom, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* (2010).

<sup>239</sup> See Tanya K. Hernandez, *Hate Speech and the Language of Racism in Latin America: A Lens for Reconsidering Global Hate Speech Restrictions and Legislation Models*, 32 U. PA. J. INT'L L. 805, 810–11 (2010).

<sup>240</sup> See Juan M. Villareal, *Changes in Argentine Society: The Heritage of the Dictatorship*, FROM MILITARY RULE TO LIBERAL DEMOCRACY IN ARGENTINA (Monica Peralta Ramos & Carlos H. Waisman eds., Routledge 2019) (1987).

<sup>241</sup> See ARCHDIOCESE OF SÃO PAULO, *TORTURE IN BRAZIL: A SHOCKING REPORT ON THE PERVASIVE USE OF TORTURE BY BRAZILIAN MILITARY GOVERNMENTS, 1964–1979* (Joan Dassin ed., Jaime Wright trans., Univ. of Texas Press 1998) (1985).

<sup>242</sup> See MARY HELEN SPOONER, *SOLDIERS IN A NARROW LAND: THE PINOCHET REGIME IN CHILE* (1999).

<sup>243</sup> See BERNARD DIEDERICH, *TRUJILLO: THE DEATH OF THE GOAT* (1978).



“insiders” or “outsiders” and dealt with accordingly.<sup>244</sup> There is no room in a democracy for this kind of treatment. Quite the opposite: equality is the ideological basis of democratic regimes.<sup>245</sup> Moreover, modern democracies place a premium on the protection of minorities, whose interests can be seriously harmed by the tyranny of the majority.<sup>246</sup> The second-class treatment of immigrant populations by legal institutions, their scapegoating and persecution by politicians, and their rejection by society at large imperils Latin American democracies by reproducing authoritarian practices that run counter to accepted principles of democratic equality. No democracy can draw such a line between legal subjects without risking further divisions. Who decides where the line is drawn, and who can guarantee that the line is not pushed further? To expand on Martin Niemöller’s famous quote,<sup>247</sup> what if they come for the immigrants—and no one speaks out?

Democracy—and the rights it protects—is not conditional. It cannot be based on national origin, race, class, or appearance. Unfortunately, the United States has often faltered in its historical mission as a beacon for democracy and a refuge for the oppressed—particularly under the Trump administration.<sup>248</sup> President Trump brought out the worst xenophobic impulses of American society and relished in its use of fear-and-loathing for political gain. With major U.S. politicians providing such abhorrent examples of undemocratic behavior, it is no wonder that Latin American officials will try their hand at practices that seem to work for its northern neighbor.<sup>249</sup> This fear and rejection of immigrants has no place in a modern

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<sup>244</sup> See Jim Patterson, *Trump Appeals to the Authoritarian Within: Vanderbilt Researcher*, VAND. U. (Apr. 19, 2016, 3:15 PM), <https://news.vanderbilt.edu/2016/04/19/trump-appeals-to-the-authoritarian-within-vanderbilt-researcher/>.

<sup>245</sup> See ROBERT A. DAHL, *ON DEMOCRACY* 65 (Veritas paperback ed. 2020).

<sup>246</sup> See *id.* at 47–48.

<sup>247</sup> *Martin Niemöller: “First They Came for the Socialists...”*, U.S. HOLOCAUST MEMORIAL MUSEUM (Mar. 30, 2012), <https://encyclopedia.ushmm.org/content/en/article/martin-niemoeller-first-they-came-for-the-socialists>.

<sup>248</sup> Erika Lee, *Trump’s Xenophobia Is an American tradition — but It Doesn’t Have to Be*, WASH. POST (Nov. 26, 2019), <https://www.washingtonpost.com/outlook/2019/11/26/trumps-xenophobia-is-an-american-tradition-it-doesnt-have-be/>.

<sup>249</sup> Michael Shifter, *The Trump Effect in Latin America*, THE DIALOGUE (Dec. 31, 2018), <https://www.thedialogue.org/analysis/the-trump-effect-in-latin-america/>.

democracy.<sup>250</sup> Thus, it is incumbent on us Americans to safeguard our democratic institutions against xenophobia. In doing so, we are protecting the rights of millions across the globe.

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<sup>250</sup> See Larry M. Bartels, *Ethnic Antagonism Erodes Republicans' Commitment to Democracy*, PROCEEDINGS OF THE NAT'L ACAD. OF SCI. (Sept. 15, 2020), <https://www.pnas.org/content/117/37/22752>.