Mapping Deportations

The Roots of Immigration Control: 1790–1876

Naturalization Act of March 4, 1790
The nation's first naturalization law, the 1790 Naturalization Act restricted the right to naturalize to "any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years . . . ."[1] The term "white" strictly limited naturalization to European immigrants.[2] Congress would not abolish all racial restrictions on naturalization until 1952.

The Haitian Revolution (1791 - 1804)
On August 22, 1791, enslaved people on the French-controlled island of Saint Domingue, the most profitable colony in the world, launched a mass rebellion. By 1803, the freedom fighters had ousted the French from Saint Domingue and established Haiti, the first Black republic in the Americas. This event inspired the nation's first immigration ban as well as the nation's first refugee allocation.

"An act providing for the relief of such of the inhabitants of Santo Domingo, resident within the United States, as may be found in want of support" (January 28, 1794)
Amid the Haitian Revolution (1791-1804), whites, especially slaveholders, fled the island *en masse*. In 1794, Congress authorized the President to provide the thousands of French refugees arriving from Haiti (then Saint Domingue) with cash assistance to resettle in the United States. This was the nation's first federal allocation of refugee aid in the United States.[3]

The Alien Friends and Alien Enemies Acts of 1798
Amid the French and Haitian revolutions as well as domestic political struggles between the Federalists (George Washington, John Adams, and Alexander Hamilton, who were pro-British and advocating for strong central government) and the Democratic-Republicans (Thomas Jefferson and James Madison, who were pro-French and advocating for more state power), a federalist-dominated Congress passed the nation's first federal deportation laws: the 1798 Alien Friends Act and the 1798 Alien Enemies Act. The goal was to limit French, pro-French, and French revolutionary influences, including the Haitian Revolution, on U.S. governance. The Alien Friends Act authorized the president to summarily deport any non-citizen he believed to be "dangerous to the peace and safety of the United States, or . . . concerned in any treasonable or

[1] Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103.
[2] Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), 86. *See also*, Gabriel J. Chin & Paul Finkelman, "The 'Free White Person' Clause of the Naturalization Act of 1790 as Super-Statute," *William & Mary Law Review* vol. 65, no. 5 (2024), 1047-1115; Carl J. Bon Tempo and Hasia R. Diner, *Immigration: An American History* (New Haven: Yale University Press, 2022), 56.
[3] "Santo Domingan Refugees, [10 January] 1794," *National Archives*. See also, Evan Taparata, "No Asylum for Mankind: The Creation of Refugee Law and Policy in the United States, 1776–1951" (PhD diss., University of Minnesota, 2018), 63; Gary B. Nash, "Reverberations of Haiti in the American North: Black Saint Dominguans in Philadelphia," *Pennsylvania History: A Journal of Mid-Atlantic Studies* vol. 65 (1998), 44-73; and Ashli White, "The Politics of 'French Negroes' in the United States," *Historical Reflections/Réflexions Historiques* vol. 29, no. 1 (2003), 103–121.

secret machinations against the government."[4] It was an unpopular law, and never actually utilized. James Madison said the Alien Friends Act would "transform the present republican system of the United States, into an absolute, or at best mixed monarchy."[5] When Thomas Jefferson became president in 1800, he and a new Congress let the Alien Friends Act lapse and it was never renewed. In contrast, the Alien Enemies Act, which authorized the president to "apprehend, restrain, secure, and remove" people from a "hostile" nation who are 14 years or older whenever the U.S. is at war or under "any invasion or predatory incursion," was used extensively in the War of 1812 as well as World War I and II.[6]

> **Fast Forward to Now:** The Alien Enemies Act remains law to this day. President Donald J. Trump invoked it on March 15, 2025, and used it to imprison and deport people without due process to a prison in El Salvador. Legal challenges to its use remain on-going.[7]

Act of February 28, 1803

The Haitian Revolution (1791-1804) triggered mass panic among enslavers in the United States. Would Haiti's Black freedom fighters inspire or ignite a similar revolt among enslaved people in the United States? Hoping to thwart any such revolt, southern states banned free Blacks, especially from the Caribbean, from entering their states. For example, South Carolina banned "negroes from the West Indies," Pennsylvania banned entry to "French Negroes," and Georgia banned entry to all "free negroes" and enslaved Blacks from the West Indies. In 1803, Congress backed these state laws by passing the nation's first immigration ban. It stated "no master or captain of any ship or vessel, or any other person, shall import or bring, or cause to be imported or brought, any [free] negro, mulatto, or other person of colour [into any state prohibiting their entry]."[8] This was the nation's first federal immigration ban.

1807 Act Prohibiting the Importation of Slaves (March 2, 1807)

This Act banned the importation of enslaved people into the United States, effective January 1, 1808.[9] It was not an immigration law but the development of U.S. immigration control unfolded against the backdrop of slavery. Even after the importation ban, southern slavers refused to allow the federal government to develop a national immigration regime, fearing that abolitionists would seize that power.

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[4] An Act Concerning Aliens [Alien Friends Act], Pub L. No. 5-58, 1 Stat. 570 (1798). *An Act Respecting Alien Enemies* [Alien Enemies Act], ch. 66, §1, 1 Stat. 577 (1798).

[5] As quoted on page 23 of Julia Rose Kraut, *Threat of Dissent: A History of Ideological Exclusion and Deportation in the United States* (Cambridge: Harvard University Press, 2020).

[6] Elizabeth Burnes, "WWI Enemy Alien Registrations, Permits, and Enforcement," *National Archives History Hub* (Jul. 1, 2022). See also "World War II Enemy Alien Control Program Overview," *National Archives*.

[7] Alien Enemies Act, Pub. L. No. 5-66, 1 Stat. 577 (1798); 50 U.S.C. §21 (2018). "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua," Mar. 15, 2025 [The White House].

[8] Immigration Act of 1803. For more information on the 1803 Immigration Act see, Llana Barber, "Anti-Black Racism and the Nativist State," *Journal of American Ethnic History* vol. 42, no. 4 (2023), 5-59.

[9] Act Prohibiting Importation of Slaves of 1807, Pub L. 9-21, 2 Stat. 424 (1807).

For a visualization of the trans-Atlantic slave trade across time see: *The Atlantic Slave Trade in Two Minutes*.

The Negro Seaman Acts (1822 - 1861)

In the summer of 1822, the mayor of Charleston, South Carolina, accused a free Black man named Denmark Vesey and more than one hundred other free and enslaved African Americans of planning a slave revolt. They accused Vesey of "us[ing] free black sailors to conduct his clandestine, treacherous communications."[10] Vesey denied the charges, but he and 34 of the accused were hanged. Another thirty-one were either sold away or deported. Following the Vesey uprising, South Carolina authorities, who remained panicked that free Blacks Haitians might incite a revolt among the state's enslaved population, passed the 1822 Negro Seaman Act, which prohibited free Black sailors and other ship workers from entering the state's ports. Any Black ship worker who unlawfully docked in one of the state ports was subject to mandatory detention in a local jail, and their ship captain, under penalty of a minimum $1,000 fine and at least two months in prison, was required to pay all fees associated with their incarceration. If a ship captain did not pay the fees, the Act authorized the local sheriff to sell the detainee into slavery.[11] By 1832, Florida, Georgia, North Carolina, Alabama, Louisiana, and Mississippi had passed similar laws.[12] In 1856, Texas also passed a Negro Seamen Act. By the time of the Civil War, Southern authorities had closed the nation's coastline facing the Caribbean to free Black migrants and arrested up to 20,000 free Black sailors, incarcerating most of them and selling an untold number into slavery.[13]

Indian Removal Act (May 28, 1830)

The development of U.S. immigration control unfolded against the backdrop of the removal of Indigenous nations and the settler occupation of the region now claimed as the U.S. national territory. The Indian Removal Act of 1830 authorized the president to grant lands west of the Mississippi River to tribes who, under extraordinary pressure, left their homelands. It is but one example of how the federal government pursued the mass removal of Indigenous nations across the North American continent.[14] President Andrew Jackson's administration used the Act to forcibly remove an estimated 100,000 Indigenous nations from their homelands in what is now the states of Georgia and Alabama.[15]

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[10] Michael A. Schoeppner, *Moral Contagion: Black Atlantic Sailors, Citizenship, and Diplomacy in Antebellum America* (Cambridge: Cambridge University Press, 2019), 22.

[11] Michael A. Schoeppner, "Black Migrants and Border Regulation in the Early United States," *The Journal of the Civil War Era* vol. 11, no. 3 (2021), 317-339.

[12] Jacki Hedlund Tyler, "The Unwanted Sailor: Exclusions of Black Sailors in the Pacific Northwest and the Atlantic Southeast," *Oregon Historical Quarterly* vol. 117, no. 4 (2016), 506–507.

[13] Michael A. Schoeppner, *Moral Contagion: Black Atlantic Sailors, Citizenship, and Diplomacy in Antebellum America* (Cambridge: Cambridge University Press, 2019), 1-13. See also Kate Masur, *Until Justice Be Done: America's First Civil Rights Movement, from the Revolution to Reconstruction* (New York: W. W. Norton & Company, 2021); Michael A. Schoeppner, "Black Migrants and Border Regulation in the Early United States," *The Journal of the Civil War Era* vol. 11, no. 3 (2021), 317-339.

[14] Indian Removal Act of 1830, Pub. L. 21-148, 4 Stat. 411 (1830).

[15] "An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi," (Twenty-First Congress, Session I, Chapter 48, Statute I (May 28, 1830); Claudio Saunt, *Unworthy Republic: The Dispossession of Native Americans and the Road to Indian Territory*

For a visualization of how the United States seized over 1.5 billion acres from America's Indigenous people see: Invasion of America.

An Act to Prohibit the "Coolie Trade" by American Citizens in American Vessels (February 19, 1862)
During the U.S. Civil War, some southern enslavers attempted to replace enslaved Black laborers with contract workers from China and India, whom many referred to as "coolie" labor.[16] To prevent the rise of a new form of unfree labor in the U.S. South, Congress passed the "Anti-Coolie" Act, to "prohibit the coolie trade by American citizens in American vessels."[17]

The Fourteenth Amendment (July 9, 1868)
In the wake of the Civil War, Congress enacted and the States ratified a constitutional amendment that guaranteed citizenship to "all persons born or naturalized in the United States, and subject to the jurisdiction thereof," regardless of race, and established that no state could deny "any person" equal protection or due process.[18] Congress inserted the "subject to the jurisdiction thereof" into the birthright citizenship clause to exclude from birthright citizenship the children born to foreign diplomats, the children born to the soldiers of an occupying army, and Indigenous people subject to the authority of their tribal government.[19]

> **Resistance Story: 1869 -- The Composite Nation**
> Frederick Douglass, an abolitionist and racial justice advocate, was one of the first public figures to speak out against Chinese exclusion. In a speech entitled, "The Composite Nation," he warned that laws denying Chinese immigrants the right to enter the United States and prohibiting them from naturalizing as U.S. citizens jeopardized the experiment in "absolute equality" yet to be realized in the United States. "If the white race may exclude all other races from this continent, it may rightfully do the same in respect to all other lands, islands, capes, and continents, and have all the world to itself," he warned.[20]

Naturalization Act of 1870
Expanded the right to naturalize to include "aliens being free white persons, and to aliens of African nativity and to persons of African descent."[21] Senator Charles Sumner (R-MA), an abolitionist and long-time advocate of racial equality, attempted to pass a more sweeping version

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(New York: W. W. Norton & Company, 2020); Christina Snyder, *Great Crossings: Indians, Settlers, and Slaves in the Age of Jackson*, 1st ed. (New York: Oxford University Press, 2017), 145; and, Michael Witgen, *Seeing Red: Indigenous Land, American Expansion, and the Political Economy of Plunder in North America* (Chapel Hill: University of North Carolina Press, 2021).
[16] Moon-Ho Jung, *Coolies and Cane: Race, Labor, and Sugar in the Age of Emancipation* (Baltimore: Johns Hopkins University Press, 2006), 6.
[17] Anti-Coolie Act of 1862, Pub. L. 37-27, 12 Stat. 340 (1862).
[18] 14th Amendment to the United States Constitution.
[19] Stephen J. Kantrowitz, "White Supremacy, Settler Colonialism, and the Two Citizenships of the Fourteenth Amendment," vol. 10, no. 1, *Journal of the Civil War* (2020), 29-53.
[20] Frederick Douglass, "Our Composite Nation: Frederick Douglass America" (1869).
[21] Naturalization Act of 1870, Pub. L. 41-254, 16 Stat. 254 (1870).

of the law, proposing an amendment to strike the word "white" from the naturalization act and all other federal laws. The Senate rejected the Sumner amendment.[22] Congress did not abolish all racial restrictions in the nation's naturalization system until 1952.

Page Act (Act of March 3, 1875)
Prohibited the arrival of "cooly" laborers and immigrants previously convicted of "felonious crimes." It also criminalized the "importation" of "any subject of China, Japan, or any Oriental country" for "lewd and immoral purposes."[23] Federal authorities largely used this law to stop Chinese women from entering the United States.[24]

***Chy Lung v. Freeman* (October 1, 1875)**
In this case, the Supreme Court struck down an attempt by the state of California to restrict immigration from China. The Court ruled that the federal government had "exclusive" authority to control the admission of people from abroad. After *Chy Lung*, anyone seeking to restrict immigration to the United States would have to get the federal government to act.[25]

The Whites-Only Regime: 1877–1929

Chinese Exclusion Act (May 6, 1882)
Another law in a series of measures Congress took to drastically limit Chinese immigration during this period, this law prohibited Chinese laborers from entering the United States for ten years.[26] Congress did not repeal the Chinese exclusion laws until 1943.

Immigration Act of August 3, 1882
Prohibited entry to any "convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a charge" and required all immigrants to pay a "head tax" (entry fee) of fifty cents.[27]

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[22] Martin B. Gold, *Forbidden Citizens: Chinese Exclusion and the U.S. Congress: A Legislative History* (Alexandria: TheCapitolNet.com, 2012), 1-32. See also Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (New York: Oxford University Press, 2006), 73.
[23] Page Act of 1875, Pub. L. 43-141, 18 Stat. 477.
[24] George Anthony Peffer, "Forbidden Families: Emigration Experiences of Chinese Women under the Page Law, 1875-1882," *Journal of American Ethnic History* vol. 6, no. 1 (1986), 28–46.
[25] *Chy Lung v. Freeman*, 92 U.S. 275 (1875).
[26] Chinese Exclusion Act, Pub. L. No. 47-126, 22 Stat. 58 (1882).
[27] Immigration Act of 1882, Pub. L. No. 47-376, 22 Stat. 214. This statutory scheme was upheld in *Edye v. Robertson* (aka, the "*Head Money Cases*"), 112 U.S. 580 (1884).

***Elk v. Wilkins* (November 3, 1884)**
John Elk (Ho-Chunk) was denied the right to vote in Nebraska on the ground that he was an "Indian," even though he was born in the United States. He argued that he was a citizen under the Fourteenth Amendment because he was "born . . . in the United States, and subject to the jurisdiction thereof," and therefore entitled to vote, especially because he had fully severed his relation to his tribe. The Supreme Court rejected his claim, holding that people born in (and as members of) "an independent political community" are not entitled to birthright citizenship. In 1924, Congress assigned citizenship to all Indigenous people born in the United States, effectively overruling *Elk*.[28]

The Scott Act (October 1, 1888)
Prohibited Chinese laborers who had legally entered the United States prior to November 17, 1880, but since left the country from entering the United States. [29]

***Chae Chan Ping v. United States* (May 13, 1889)**
The United States Supreme Court ruled that, as a matter of national security, Congress could impose rules to stop non-citizens from entering the United States for any reason, including race. As the Court explained, "The power of the legislative department of the government to exclude aliens from the United States is an incident of sovereignty . . . If, therefore, the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects."[30]

Immigration Act (March 3, 1891)
The 1891 Immigration Act expanded the list of banned immigrants to include "all idiots, insane persons, paupers or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease, persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, polygamists, and also any person whose ticket or passage is paid for with the money of another or who is assisted by others to come . . . ."[31] This act also authorized the deportation of any immigrant who entered the United States but should have been excluded at the time of their entry and granted immigration officials the authority to order deportations without judicial review.[32] But it imposed a one-year statute-of-limitation on most deportations, excluding Chinese laborers who, if they had unlawfully entered the United States, were indefinitely deportable. In 1907, Congress extended

[28] *Elk v. Wilkins*, 112 U.S. 94 (1884). See also, Brad Tennant, "Excluding Indians Not Taxed: Dred Scott, Standing Bear, Elk and the Legal Status of Native Americans in the Latter Half of the Nineteenth Century," *International Social Science Review* vol. 86, no. 1/2 (2011), 24–43.
[29] Scott Act, Pub. L. No. 50-1064, 25 Stat. 504 (1888).
[30] *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).
[31] Immigration Act of 1891, Pub. L. No. 51-551, 26 Stat. 1084 (1891).
[32] Immigration Act of 1891, Pub. L. No. 51-551, 26 Stat. 1084 (1891).

the general statute-of-limitation on most deportations to three years. In 1917, Congress extended this limit to five years. In 1952, Congress lifted nearly all statutes-of-limitation on deportation.[33]

***Nishimura Ekiu v. United States* (January 18, 1892)**
When immigration officials denied Nishimura Ekiu, a Japanese national, the right to enter the United States, claiming she was likely to become a public charge, Ekiu appealed her exclusion, arguing that allowing a single immigration official to deny her entry to the United States violated her due process rights. The U.S. Supreme Court ruled that Congress could give immigration officials final authority to exclude immigrants, and that this was consistent with the Due Process Clause. "As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."[34]

Ellis Island, est. January 1, 1892
Ellis Island opened as an immigrant processing and detention center. By 1954, federal authorities at Ellis Island had inspected nearly 12 million immigrants, mostly Europeans, fewer than 2% of whom were denied entry to the United States. In comparison, inspectors at Angel Island, California's primary port of entry, denied entry up to 33% of the time to the mostly-Asian immigrants who sought entry between 1910 and 1940.[35] To see a visualization of the number of admissions to the U.S. by region from 1899–1929, click here.

Geary Act (May 5, 1892)
The Geary Act extended the ban on Chinese labor immigration for another ten years and required all Chinese immigrants in the United States to carry a certificate of residency. To acquire a certificate, Chinese immigrants had to find "at least one credible white person" to testify on their behalf. Any Chinese immigrant found in the United States without a certificate of residency could be arrested and brought before a judge who could, without a jury trial, sentence them to up to one year of hard labor in prison followed by deportation.[36]

> **Resistance Story:** Chinese immigrants rebelled against the 1892 Geary Act, refusing to apply for the certificates and hiring some of the nation's top lawyers to challenge its constitutionality. Could Congress really order people imprisoned and sent to hard labor without trial? And, where did the U.S. Constitution give the federal government the power to deport people—that is, banish them—from this country? In the years ahead, the Supreme Court would answer these questions in a set of rulings that left all immigrants with far fewer constitutional protections than the law had afforded them before. Several of these rulings remain precedent today.

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[33] Andrew Tae-Hyun Kim, "Deportation Deadline," *Washington University Law Review* no. 95, no. 3 (2017) 531, 568-69.
[34] Ekiu v. United States, 142 U.S. 651, 660 (1892). Although courts later read this passage to limit judicial review of congressional decision making, at the time the Court understood it to mean just that Ms. Ekiu need not be afforded a trial in federal court. See Adam Cox, "The Invention of Immigration Exceptionalism," *Yale Law Journal* [forthcoming], (Sept. 5, 2024), 334-338.
[35] Angel Island Immigration Museum, "Ellis Island/Angel Island: A Tale of Two Stations, Health at the Immigration Stations."
[36] Geary Act, Pub. L. No. 52-60, 27 Stat. 25 (1892).

***Fong Yue Ting v. United States* (May 15, 1893)**
Fong Yue Ting and Wong Quan refused to comply with the 1892 Geary Act. Instead of registering with the federal government, they turned themselves in for arrest, while another long-term resident, Lee Joe, proved his residence with only a Chinese witness. The U.S. Supreme Court ruled against Fong, Wong, and Lee, upholding the "one white witness" rule on the ground that Congress not only could authorize the deportation of non-citizens, but could do so without providing the due process afforded to those facing punishment. "The right of a nation to expel or deport foreigners . . . rests upon the same grounds and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country," explained the Court. "The provisions of the Constitution, securing the right of trial by jury and prohibiting unreasonable searches and seizures, and cruel and unusual punishments, have no application [to deportation proceedings]."[37] Based on that reasoning, it upheld the deportation of Chinese residents who had lived lawfully in the country for years, even though there was no evidence that they were unlawfully present. Although the Court would later extend limited due process rights to immigrants in deportation proceedings, *Fong Yue Ting* (1893) remains a foundational precedent widely cited in U.S. immigration law cases.[38]

> **Fast Forward to Now:** The Supreme Court has never overruled *Chae Chan Ping, Nishimura Ekiu*, or *Fong Yue Ting*. On the contrary, courts continue to cite them as precedent to support broad claims of government power over immigration control, and even to engage in race discrimination at the border.[39]

***Wong Wing v. United States* (May 18, 1896)**
In 1892, Wong Wing and three other Chinese men were arrested for being unlawfully present in the United States. A federal officer summarily ordered them imprisoned at hard labor for sixty days, after which they were to be deported. They challenged their conviction and imprisonment without trial. In 1896, the Supreme Court ruled in their favor, striking down the Geary Act's provision subjecting deportable immigrants to hard labor without trial. But the Court also stated that the federal government could detain immigrants while their deportation cases were pending. Ever since, immigrant detention has been a central part of the nation's immigration enforcement system.[40]

***In re Rodriguez* (May 3, 1897)**
At the conclusion of the U.S.-Mexico War (1846-1848), the United States annexed what is now the American Southwest and, in the Treaty of Guadalupe Hidalgo (1848), extended U.S.

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[37] *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).
[38] *DHS v. Thuraissigiam*, 591 U.S. 103, n. 26, (2020).
[39] See *Zadvydas v. Davis*, 533 U.S. 6789, 695 (2001); see also *Washington v. Trump,* 847 F.3d 1151, 1162, n. 6 (9th Cir. 2017). For further discussion of *Chae Chan Ping*'s longevity, see Ahilan T. Arulanantham, "Reversing Racist Precedent," *The Georgetown Law Journal* vol. 112, no. 3 (2024), 449-454. For discussion on *Chae Chan Ping*'s implications for the scope of federal authority over immigration control see Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (New York: Oxford University Press, 2006), 27-31.
[40] *Wong Wing v. United States*, 163 U.S. 228 (1896).

citizenship to Mexicans living in this territory. In 1897, after two white men in San Antonio, Texas, claimed that Mexicans were racially ineligible to become naturalized U.S. citizens, a federal judge in Texas established that the United States was bound by the Treaty of Guadalupe Hidalgo to honor Mexican eligibility for U.S. citizenship. Even if Anglo-Americans regarded many Mexicans as non-white in everyday life, Mexicans were to be regarded as "white by treaty" for the purposes of U.S. naturalization law.[41] However, neither the treaty nor the Court's ruling afforded citizenship (or other rights) to Apache, Comanche, Kiowa, Diné, or other Indigenous peoples who continued to assert their own territorial and political claims in the region.[42] To view a visualization estimating the proportion of deportation orders over time issued to Indigenous peoples, see here.

***United States v. Wong Kim Ark* (March 28, 1898)**
In a case involving the U.S-born child of Chinese immigrants, the U.S. Supreme Court affirmed that the 14th Amendment guarantees birthright citizenship to all persons, regardless of race.[43]

> **Fast Forward to Now:** In one of his first major acts as President in 2025, Donald Trump attempted to reverse the Fourteenth Amendment's protections, declaring that children born to undocumented people and children born to immigrants here on temporary visas were not U.S. citizens.[44] Immigrants' rights advocates and others have challenged this in the courts.

Immigration Act (March 3, 1903)
The 1903 Act extended the statute-of-limitations on most deportations from one to three years. Also added anarchists to the list of non-citizens prohibited from entering the United States and raised the head tax (entry fee) to $2.[45]

[41] Gregg Cantrell, "Our Very Pronounced Theory of Equal Rights to All: Race, Citizenship, and Populism in the South Texas Borderlands," *The Journal of American History* vol. 100, no. 3 (2013), 676.
[42] Alan Shane Dillingham, "What an Indigenous Perspective on Mexican History Reveals," *Washington Post*, Feb. 10, 2023.
[43] *United States v. Wong Kim Ark*, 169 US 649 (1898).
[44] Protecting the Meaning and value of American Citizenship, Jan. 20, 2025 [The White House].
[45] Immigration Act of 1903 (also known as the Anarchist Exclusion Act), Pub. L. 57-162, 32 Stat. 1213 (1903).

***Yamataya v. Fisher* (April 6, 1903)**
Kaoru Yamataya, a Japanese immigrant in Washington, was arrested and ordered deported four days after entering the United States, on the grounds that she was likely to become a public charge. She challenged her deportation order, arguing that due process required that she receive adequate notice of the charges against her and a fair hearing. The U.S. Supreme Court ruled that the Constitution guarantees U.S. residents facing deportation—even those alleged to have entered illegally—the "opportunity to be heard upon the questions involving [their] right to be and remain in the United States."[46] Today, courts read *Yamataya* to establish that people facing deportation from within the U.S. (as opposed to those facing exclusion), have a right to a fair deportation hearing under the Constitution. However, Ms. Yamataya herself lost her case, as the Court ruled that she had not raised her objections (even though she did not speak English).

> **Fast Forward to Now**: At least since the mid-1990s, the government and federal courts have steadily eroded the principle established in *Yamataya* by creating exceptions to its rule that individuals facing deportation from within the United States are entitled to a fair hearing. The Supreme Court approved one significant exception in *DHS v. Thuraissigiam*,[47] which held that an individual arrested a short distance inside the United States could be treated like someone stopped at the border. Most recently, the second Trump administration has used the "expedited removal" power established in 1996 to deport thousands of individuals from within the United States without affording them a hearing before an Immigration Judge, despite *Yamataya*'s rule.

The Gentleman's Agreement (February 15, 1907)
Under pressure from the Asiatic Exclusion League and similar groups, President Theodore Roosevelt's administration reached a "Gentleman's Agreement" with the Japanese government to stop most Japanese and Korean immigration to the United States.[48]

> **In Their Own Words: 1905 - Asiatic Exclusion League**
> Established in San Francisco, the Asiatic Exclusion League aggressively lobbied Congress to ban all Asian immigration to the United States. According to the League, "the Caucasian, Mongolian, Malay and Ethiopian can never dwell together in peace under the same fig tree."[49] It would largely succeed in its aims over the course of the next several decades.

Immigration Act (February 20, 1907)
The 1907 Act extended the list of noncitizens prohibited from entering the United States to include "imbeciles, feeble-minded persons, epileptics and tuberculous aliens," raised the head tax to $4, established that any noncitizen who entered the United States "except at the seaports thereof, or at such place or places as the Secretary of Commerce and Labor may from time to

[46] Article I, Section 8, Chapter 18.8.7.2 Aliens in the United States.
[47] *DHS v. Thuraissigiam*, 591 U.S. 103 (2020).
[48] Office of the Historian, U.S. Department of State, *Japanese-American Relations at the Turn of the Century, 1900 - 1922*.
[49] Proceedings of the Asiatic Exclusion League (Dec. 1907), 4.

time designate, shall be adjudged to have entered the country unlawfully and shall be deported," and created the first provisions authorizing deportation for post-entry conduct, such as criminal conviction. The 1907 Act also established the first bipartisan congressional committee to study immigration to the United States. Chaired by William P. Dillingham (R-VT), the committee became known as the Dillingham Commission. It would shape immigration law for decades to come.[50]

Expatriation Act (March 2, 1907)
This law mandated that "any American woman who marries a foreigner shall take the nationality of her husband," stripping U.S. citizenship from U.S. citizen women when they married non-citizen men. Since virtually all Asian immigrants were barred from becoming U.S. citizens at this time, this meant that white women who married Asian men would lose their citizenship.[51]

Angel Island (January 21, 1910 - November 5, 1940)
Although dubbed the "Ellis Island of the West," Asian immigrants arriving at the Angel Island immigration facility experienced radically different conditions than European immigrants arriving at Ellis Island. For example, Ellis Island arrivals were typically screened and released within 2-3 hours of arriving. In contrast, Angel Island arrivals were often detained for weeks or months. Some remained detained on the island for up to two years.[52]

Dillingham Commission (1911)
In its 41-volume report, the Dillingham Commission identified 1883 as a breakpoint in U.S. immigration history: the year when the majority of immigrants ceased to arrive from countries in northwestern Europe (such as Belgium, Great Britain, Ireland, Sweden and Germany) and instead began arriving from countries in Asia as well as southern and eastern Europe (such as Austria-Hungary, Greece, Poland, Russia, and Italy). To reverse these trends, the Dillingham Commission urged Congress to take the following steps: (1) continue banning Asian immigration; (2) require all immigrants over the age of 16 to pass a literacy exam; and (3) cap "the number of each race arriving each year," with the caps tied to the pre-1883 national origin patterns. By 1924, Congress had adopted all three recommendations.

[50] An Act to Regulate the Immigration of Aliens into the United States (1917).
[51] Act of Mar. 2, 1907, ch. 2534, § 3, 34 Stat. 1228, 1228.
[52] Erika Lee and Judy Yung, *Angel Island: Immigrant Gateway to America* (New York: Oxford University Press, 2010).

Hearings on the Restriction of Hindu Laborers (February 13, 1914)
During the early twentieth century, a small number of South Asian immigrants began immigrating to the United States, driven in part by the British Empire's repression of the anti-colonial movement in British India. Describing South Asian immigrants as a "new danger," the Asiatic Exclusion League and others began pressuring Congress to add South Asians to the list of immigrants prohibited from entering the United States. In 1914, Congress held hearings on "The Restriction of Immigration of Hindu Laborers," which directly led into the passage of the 1917 Immigration Act.[53]

Rise of Eugenics (1890s to 1920s)
Between the 1890s and 1920s, eugenics was a form of "race science" that was wildly popular in the United States.[54] Eugenicists believed that intelligence, health, and morality were inherited traits carried in blood, and that across the sweep of human history, the transmission of blood traits had resulted in the creation of "inferior" and "superior" races. Eugenicists ranked the humans originating from northwestern Europe above all others.[55] To insulate the "Nordics" and "Teutonic" bloodlines of northwestern Europe from contagion, eugenicists advocated for social policies that advanced selective breeding among the "superior" races while separating, containing, and pruning "inferior" races with anti-miscegenation laws, racial segregation, forced sterilization, and immigration restrictions.[56] Throughout the 1920s, eugenicists played a powerful role in drafting U.S. immigration legislation.[57]

> **In Their Own Words 1916 - Madison Grant -- "The American Prophet of Scientific Racism"**
> An internationally-renowned eugenicist, Madison Grant (1865-1937) has been described as the "American prophet of scientific racism."[58] In 1916, Grant published his most influential book, *The Passing of the Great Race,* which, among other things, argued that humans originating from northwestern Europe were the world's "Master Race." Theodore Roosevelt called *The Passing of the Great Race* a "capital book; in purpose, in vision, in grasp of the facts of our people most need to realize." Adolph Hitler called it "my Bible."[59] Throughout the 1910s and 1920s, Grant and other eugenicists played a major role in pushing Congress to adopt a series of immigration restrictions that aligned with their world view by closing the nation's doors to everywhere but northwestern Europe.

[53] Seema Sohi, "Barred Zones, Rising Tides, and Radical Struggles: The Antiradical and Anti-Asian Dimensions of the 1917 Immigration Act," *The Journal of American History* vol. 109, no. 2 (2022), 298–309.
[54] Linda Villarosa, "The Long Shadow of Eugenics in America," *New York Times*, Jun. 8, 2022.
[55] National Human Genome Research Institute, *Eugenics and Scientific Racism* (last updated May 8, 2022).
[56] National Human Genome Research Institute, *Eugenics and Scientific Racism* (last updated May 8, 2022).
[57] National Human Genome Research Institute, *Eugenics and Scientific Racism* (last updated May 8, 2022).
[58] Jonathan Peter Spiro, *Defending the Master Race: Conservation, Eugenics, and the Legacy of Madison Grant* (Burlington: University of Vermont Press, 2009), xii.
[59] Jonathan Peter Spiro, *Defending the Master Race: Conservation, Eugenics, and the Legacy of Madison Grant* (Burlington: University of Vermont Press, 2009), xi.

Immigration Act (February 5, 1917)
Consolidating all previous immigration laws, the 1917 act also required all immigrants to pass a literacy test, and created an "Asiatic Barred Zone" (ABZ), by drawing a circle around most of Asia and barring immigration from anywhere inside the circle. Because federal authorities had already banned most Chinese, Japanese, and Korean immigration, the largest group of potential immigrants excluded by the law were South Asians.[60]

Emergency Quota Act (May 19, 1921)
The Emergency Quota Act capped the number of immigrants allowed to enter the United States at 355,000 annually and introduced a national quota system that reserved 55% of all quota slots for immigrants from northwestern Europe.[61] But Congress exempted countries in the western hemisphere from the quota system. Diplomats argued that limiting immigration from the Western Hemisphere would jeopardize the nation's military and trade interests, especially in Mexico, which was a primary source of raw materials for U.S. industries: copper, petroleum, and more.[62] And, employers across the U.S. West strongly opposed capping Mexican immigration: they wanted unrestricted access to Mexican migrant laborers.[63] Congress conceded to these concerns, exempting all countries in the Western Hemisphere from the quota system, which allowed an unrestricted number of Mexicans to continue entering the country each year (although they were still subject to other grounds of exclusion).[64]

Cable Act (September 22, 1922)
The Cable Act repealed the 1907 Immigration Act's rule stripping women of citizenship when they married foreigners, but only if those foreigners were eligible to naturalize. Because only Europeans and Africans were eligible to naturalize at this time, in practice the law preserved the racist and sexist rule that American women who married Asian men would lose their citizenship.[65]

***Ozawa v. United States* (November 13, 1922)**
On October 16, 1914, a Japanese immigrant named Takao Ozawa applied to become a U.S. citizen. His application was denied because he was neither a "free white person" nor a person of "African nativity" or "African descent."[66] Ozawa challenged this denial, arguing that he should be regarded as white because his skin was lighter than many people of European descent, that he had gone to high school and college in California, spoke fluent English, went to church, and in other ways had assimilated to whiteness.[67] In 1922, the U.S. Supreme Court rejected Ozawa's

[60] Immigration Act of 1917.
[61] Emergency Quota Act, Pub. L. 67-5, 42 Stat. 5 (1921).
[62] Benjamin C. Montoya, *Risking Immeasurable Harm: Immigration Restriction and U.S.-Mexican Diplomatic Relations, 1924-1932* (Lincoln: University of Nebraska Press, 2020), 157.
[63] Benjamin C. Montoya, *Risking Immeasurable Harm: Immigration Restriction and U.S.-Mexican Diplomatic Relations, 1924-1932* (Lincoln: University of Nebraska Press, 2020), 157.
[64] "Emergency Quota Law (1921)," *Immigration History*, accessed Jul. 18, 2024.
[65] Sarah A. Sadlier, "That's Leaving It Pretty Much Up To Jane: Gendered Citizenship, Explicit Feminism, And Implicit Racism In The 1922 Cable Act," *Stanford University Department of History*, (Summer 2016), 17-24.
[66] *Ozawa v. United States*, 260 U.S. 178 (1922).
[67] *Ozawa v. United States*, 260 U.S. 178 (1922).

arguments, ruling that the intent of Congress in 1790 "was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified."[68] This case reaffirmed the principle that Asian immigrants were not considered white (or Black) and were therefore ineligible to naturalize as U.S. citizens.[69]

***Thind v. United States* (February 19, 1923)**

Bhagat Singh Thind was a soldier in the U.S. Army and a veteran of World War I. On December 9, 1918, Thind became a U.S. citizen. Four days later, the U.S. Bureau of Naturalization revoked his citizenship on the ground that he was not "white."[70] Thind contested the revocation, arguing that as a high-caste Hindu from India, he was Caucasian and therefore eligible to naturalize. The Court rejected Thind's argument, reiterating that the intention of the naturalization laws "was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white."[71] The Court then held "white" should be interpreted "in accordance with the understanding of the common man," and asserted that "the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country recognized as white" including "children of English, French, German, Italian, Scandinavian, and other European parentage."[72] The Court also noted that the "congressional attitude of opposition to Asiatic immigration generally," including India, supported its decision.[73]

After *Thind*, the U.S. Bureau of Immigration began to retroactively revoke the citizenship of naturalized U.S. citizens of Indian descent. They denaturalized sixty-five people between 1923 and 1924.[74]

***Tod v. Waldman* (November 17, 1924)**

Szejwa Waldman and her children sought admission to the United States as Jewish refugees from Ukraine. The government denied their request, arguing that Ms. Waldman was illiterate and one of her children was likely to become a public charge due to disability (she was alleged to be "lame"). A lower court ordered them released, and the government appealed. The Supreme Court ruled the Waldmans were entitled to a new hearing because government officials had not clearly stated their reasons for excluding them, including whether or not the Waldmans were in fact religious refugees (which would exempt them from the literacy requirement). *Waldman* exemplifies the Court's expansion of due process protections for arriving non-citizens during this period.[75]

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[68] *Ozawa v. United States*, 260 U.S. 178 (1922).
[69] Ian Haney Lopez, *White by Law: The Legal Construction of Race* (New York: New York University Press, [Republished] 2006), 56- 61.
[70] Ian Haney Lopez, *White by Law: The Legal Construction of Race* (New York: New York University Press, [Republished] 2006), 61-65.
[71] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923).
[72] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923).
[73] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923).
[74] Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008), 244.
[75] *Tod v. Waldman*, 266 U.S. 113 (1924). For more on this expansion, *see* Adam Cox, "The Invention of Immigration Exceptionalism," *Yale Law Journal* vol. 134, no. 2 (2024), 329, 401, n. 257 (collecting cases).

The Johnson-Reed Act, aka National Origins Act (May 24, 1924)
Reduced the number of quota immigrants allowed to annually enter the country to 155,000 and tweaked the quota equation to increase the percentage of quota slots reserved for northwestern Europeans.[76] The 1924 Act also prohibited all "alien[s] ineligible for naturalization" from entering the United States.[77] Since U.S. naturalization law continued to exclude Asians from the right to naturalize, this provision was designed to end Asian immigration to the United States. Congress did not impose a ban on Black immigration but the 1924 Act also required all immigrants seeking to enter the United States to first acquire a visa from a U.S. consular abroad and consular officials in the Caribbean began systematically denying visas to Black immigrants. Black immigration plummeted by 94%, dropping from 12,243 in 1924 to 791 in 1925.[78] See our visualization showing the impact on Black migration here.

> **Fast Forward to Now:** For the last several decades, anti-immigrant advocates have reprised many of the racist themes underlying the 1924 Act. Those voices have gained prominence in the last ten years, as Donald Trump has embraced much of their ideology and rhetoric. Among many other examples, now-President Trump has said repeatedly that immigrants are "poisoning the blood of our country."[79] At the time of the 1924 Johnson Reed Act, Representative Albert Johnson, one of the two architects of the Act, "[a]dvocated for the 'principle of applied eugenics' to reduce crime by 'debarring and deporting' people."[80] The Johnson Reed Act and the eugenic principles that underlied it were well received by some contemporary foreign leaders. Indeed, Adolf Hitler praised the 1924 Johnson-Reed Act as a valiant effort to exclude the "foreign body" of "strangers to the blood" of the ruling race.[81]

U.S. Border Patrol (est. May 28, 1924)
On May 28, 1924, Congress established the U.S. Border Patrol. In the U.S.-Mexico border region, Border Patrol officers quickly focused on apprehending and deporting Mexican nationals.[82]

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[76] National Origins Act, Pub. L. 68-139, 43 Stat. 153 (1924).
[77] National Origins Act, Pub. L. 68-139, 43 Stat. 153 (1924).
[78] Table III: Total and Negro Immigrant Aliens Admitted And Emigrant Aliens Departed: United States, 1899-1937, in Ira D. A. Reid, The Negro Immigrant (New York: Columbia University Press, 1939). See also, Llana Barber, "Anti-Black Racism and the Nativist State," *Journal of American Ethnic History* vol. 42, no. 4 (2023), 5-59; Winston James, *Holding Aloft the Banner of Ethiopia: Caribbean Radicalism in Early Twentieth Century America* (New York: Verso, 1998); and, Lara Putnam, *Radical Moves: Caribbean Migrants and the Politics of Race in the Jazz Age* (Chapel Hill: University of North Carolina Press, 2013).
[79] Ishaan Tharoor, "The West's 'poisoning the blood' moment," *Washington Post,* Dec. 21, 2023.
[80] *U.S. v. Carrillo-Lopez*, 555 F.Supp.3d 996, 1009 (D. Nev. 2021).
[81] James Q. Whitman, *Hitler's American Model: The United States and the Making of the Nazi Race Law* (Princeton: Princeton University Press, 2017), 46-47.
[82] Kelly Lytle Hernandez, *Migra! A History of the U.S. Border Patrol* (Berkely and Los Angeles: University of California Press, 2010), 17-97.

House Hearing on "The Racial Problems Involved in Immigration from Latin America and the West Indies to the United States" (March 3, 1925)

Following the adoption of the 1924 Johnson-Reed Act, eugenicists demanded ending the western hemisphere exemption. Among them, the U.S. Secretary of Labor, James F. Davis, believed the western hemisphere exemption to the national quota system was "disastrous" because it did not cap non-white immigration from the Americas.[83] In 1925, he commissioned a report, warning that "Immigrants from these countries [in Latin America and the West Indies] tend to lower the average of the race value of the white population of the United States."[84]

> **In Their Own Words: 1925 - Senator Coleman Livingston Blease (D-SC)**
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> After serving as the governor of South Carolina, Senator Coleman Livingston Blease (D-SC) was elected to Congress in 1925. He entered Congress with one goal: protect white supremacy. As a senator, he opposed the idea of a world court because he refused to support any "court where we [Anglo-Americans] are to sit side by side with a full blooded 'nigger'."; he read the poem, "N-----s in the White House," from the floor of congress; and, he openly advocated for lynching. During a congressional debate over the western hemisphere exemption, Blease proved himself a strong proponent of ending the western hemisphere exemption. According to Blease, "I want them [Mexicans] kept out . . . When they get over here they have to behave or we will kill them."[85]

U.S. House Hearing on Seasonal Agricultural Laborers from Mexico (January/February, 1926)

In 1926, Rep. Albert Johnson (R-WA) held hearings on a proposal to end the Western Hemisphere exemption. The debate focused on stopping Mexican immigration to the United States. According to Rep. John C. Box (D-TX), "The continuance of a desirable character of citizenship is the fundamental purpose of our immigration laws. Incidental to this are the avoidance of social and racial problems, the upholding of American standards of wages and living, and the maintenance of order. All of these purposes will be violated by increasing the Mexican population of the country."[86] But diplomats and employers from the southwestern United States continued to oppose imposing the quota system on Mexico and prevented the proposal from advancing beyond hearings in the House Committee on Immigration and Naturalization.[87]

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[83] James J Davis, *Selective Immigration* (St. Paul: Scott-Mitchell Publishing Co., 1925), 207-208.
[84] Robert Franz Foerster, *The Racial Problems Involved in Immigration from Latin America and the West Indies to the United States: A Report Submitted to the Secretary of Labor* (Washington D.C.: GPO, 1925) 335.
[85] Eric S. Fish, "Race, History, and Immigration Crimes," *Iowa Law Review* vol. 107, no. 1051 (2022), 33. Statement of Cole L. Blease in *Restriction of Western Hemisphere Immigration: Hearing Before the Committee on Immigration, United States Senate, Seventieth Cong. 1st sess. 1437, a Bill to Subject Certain Immigrants, Born in Countries of the Western Hemisphere to the Quota Under the Immigration Laws Feb. 1, 1928* (Washing D.C.: GPO, 1928), 25.
[86] Statement of John C. Box in *Seasonal Agricultural Laborers from Mexico: Hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-ninth Congress, first session, January 28 and 29, February 2,9,11, and 23, 1926* (Washington D.C.: GPO, 1926), 333.
[87] David Scott Fitzgerald and David Cook-Martín, *The Democratic Origins of Racist Immigration Policy in the Americas* (Cambridge: Harvard University Press, 2014), 102.

The Invention of Voluntary Departure (1927)
Facing a budget crisis, the U.S. Immigration Service authorized Border Patrol officers to offer Mexican and Canadian immigrants facing deportation the option to "voluntarily depart" to their home countries. By selecting "Voluntary Departure" (VD) instead of deportation, immigrants avoided detention and a formal deportation hearing, and the U.S. Immigration Service saved the time and money they would have otherwise had to spend on detention and formal deportation proceedings. Since 1927, over ninety percent of all forced removals out of the United States have occurred via the Voluntary Departure, also known as "Voluntary Return," process. Historians estimate that Mexicans have typically comprised over ninety percent of all Voluntary Departures/Returns.[88] To see a visualization showing the breakdown of voluntary departures by region, see the "Voluntary" Departures visualization here.

U.S. House Hearings on the "Eugenical Aspects of Deportation" (February - April, 1928)
In 1928, Rep. Johnson (R-WA) held hearings on a new proposal to add all countries in the Western Hemisphere to the list of quota nations. Amid those hearings, the committee's eugenics expert, Dr. Harry Laughlin, testified that "Immigration control is the greatest instrument which the Federal Government can use in promoting race conservation of the Nation."[89] Again, the proposal failed to overcome opposition from diplomats and western employers.

U.S. State Dept. Begins Denying Visas to Mexican Workers (January 1929)
In January 1929, Secretary of Labor Davis convinced the U.S. Secretary of State, Frank B. Kellogg, to order consular officials in Mexico to stop issuing visas to Mexican workers. Kellogg agreed, ordering consular authorities in Mexico to deny visas to all Mexican immigrants who could not prove they were not "liable to become a public charge."[90] In 1930, after the onset of the Great Depression, Secretary Kellogg extended this order to all countries.

Registry Act (March 2, 1929)
The Registry Act allowed immigrants who had unlawfully entered the United States prior to June 3, 1921 to pay a $20 fee [$376 in 2025 dollars] and become Lawful Permanent Residents (LPRs). By 1940, Europeans and Canadians comprised 80% of the 115,000 immigrants who regularized their status through the Registry Act.[91]

> **Fast Forward to Now:** Registry functioned as a consistent legal pathway to give immigrants a way to regularize their status for many years, but has become less relevant over the last several decades as Congress has chosen not to update the eligibility date.

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[88] Kelly Lytle Hernandez, *Migra! A History of the U.S. Border Patrol* (Berkely and Los Angeles: University of California Press, 2010), 76.
[89] "The Eugenical Aspects of Deportation. Hearings before the Committee on Immigration and Naturalization, House of Representatives, Seventieth Congress, First Session. Feb. 21, 1928," (including testimony taken Apr. 28, 1926, with eight appendices) [Statement of Dr. Harry H. Laughlin], 19.
[90] Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 54. See also, Robert A. Divine, *American Immigration Policy: 1924 - 1952* (New Haven: Yale University Press, 1957), 62-68.
[91] Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 82. See also, "Legalization through Registry," *American Immigration Council* (Sept. 2021).

> Even today, the immigration laws permit individuals who came to the United States prior to January 1, 1972 to simply "register" for lawful permanent residence. Immigrants' rights groups proposing "comprehensive immigration reform" in recent years have advocated updating the registry to implement that change.

Undesirable Aliens Act (March 4, 1929)
In March 1929, Congress enacted the 1929 Undesirable Aliens Act, which made it a misdemeanor to enter the United States without inspection and a felony to re-enter or attempt to re-enter the United States without inspection after deportation.[92] Congress did *not* similarly punish overstaying a visa, because they designed the 1929 law to target Mexican immigrants, who made a large number of uninspected border crossings as they migrated to and from work in the United States. By 1940, U.S. attorneys had prosecuted tens of thousands of Mexican migrants for unlawful entry/reentry.[93]

> **Fast Forward to Now:** In 2021, a federal court ruled the illegal reentry statute unconstitutional because it was adopted with "discriminatory intent" and continues to disparately impact Latinos. The Biden administration appealed the ruling, and in 2023 the Ninth Circuit ruled in favor of the government.[94] Courts have sided with the government in similar challenges elsewhere. Today, the federal government continues to aggressively prosecute the crimes invented by white nationalists in 1929. In 2022, 95% of people charged under Section 1326 were from Mexico, Central America, and the Caribbean countries.[95]

Consolidate and Carry Forward: 1930–1952

Tydings-McDuffie Act (March 24, 1934)
The Tydings-McDuffie Act ended unlimited immigration from the Philippines, which had been a U.S. territory since 1899, by promising independence to the Philippines in 1945 and immediately limiting Filipino immigration to no more than 50 people annually.[96]

Alien Registration Act (June 28, 1940)
A wartime measure, the Alien Registration Act made it a crime for anyone to "knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing the Government of the United States or of any State by force or violence, or for anyone to organize any association which teaches, advises, or encourages such an overthrow, or for anyone to become a member of or to affiliate with any such association." This 1940 law also

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[92] Seventieth Congress, Session II, Ch. 690 (1929), 1551-155.
[93] Kelly Lytle Hernandez, *City of Inmates: Conquest, Rebellion and the Rise of Human Caging in Los Angeles, 1771 - 1965* (Chapel Hill: University of North Carolina Press, 2017), 138-139.
[94] *United States v. Carrillo-Lopez*, I68 F.4th 1133, 1149 (9th Cir. 2023).
[95] 8 USC 1326 Defendants Charged District Court FY22.
[96] Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 119-121.

required all adult non-citizen residents of the United States to register with the federal government within four months. This short-term registration requirement was permanently codified in 1952, although it has been inconsistently enforced.

> **Fast Forward to Now:** The second Trump Administration has attempted to aggressively enforce this law, creating a scheme that requires large classes of non-citizens, including undocumented people, to register. Those who fail to register can be prosecuted, thus effectively rendering it a crime to be undocumented. Immigrants' rights groups have challenged the program in court.[97]

Nationality Act (October 14, 1940)
Revised the 1870 Naturalization Act to extend the right to naturalize to "descendants of races indigenous to the western hemisphere."[98] President Roosevelt and the Department of State urged Congress to adopt this amendment after a group of eugenicists attempted to have Mexicans recategorized as "Indians" and, thereby, rendered ineligible to naturalize as U.S. citizens.[99] As Europe and Asia descended into war, Roosevelt made this move to maintain smooth diplomatic relations with Mexico and other countries in the Western Hemisphere.

WWII Farm Laborer Programs (1942-1964)
The U.S. signed "non immigrant" labor agreements with Mexico and the British West Indies. These agreements allowed contract workers from Mexico, the Bahamas, Jamaica, Barbados and British Honduras (now Belize) to enter the United States, work on farms across the United States, and return home at the end of their contract. Under these agreements, millions of Mexican and Caribbean laborers were authorized to temporarily work in the United States, but not permanently settle. The agreements, which formally assigned a large number of non-white labor migrants to temporary status in the United States, lasted between 1943 and 1964, and facilitated the arrival and departure of approximately 30,000 West Indians and more than 2 million Mexicans.[100]

Magnuson Act (December 17, 1943)
In response to demands from advocacy groups who opposed Chinese exclusion as well as the government of China, a wartime ally, Congress lifted the naturalization ban for Chinese immigrants, which made Chinese immigrants eligible to enter the United States. But Congress subjected China to the quota regime, which capped Chinese immigration at no more than 105 Chinese immigrants per year.[101]

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[97] National Immigration Law Project, "Know Your Rights: Trump's Registration Requirement for Immigrants" (Apr. 11, 2025).
[98] Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (1940).
[99] David Scott FitzGerald and David Cook-Martín, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Cambridge: Harvard University Press, 2014), 106-107.
[100] Fitzroy Andre Baptiste, "Amy Ashwood Garvey and Afro-West Indian Labor in the United States Emergency Farm and War Industries' Programs of World War II, 1943-1945," *Ìrìnkèrindò* vol. 2, no. 2 (2003). See also, Maria L. Quintana, *Contracting Freedom: Race, Empire, and U.S. Guestworker Programs* (Philadelphia: University of Pennsylvania Press, 2022).
[101] Magnuson Act, Pub. L. No. 78-199, 57 Stat. 600 (1943).

***Korematsu v. United States* (December 18, 1944)**
On February 19, 1942, President Franklin D. Roosevelt issued Executive Order 9066, which ordered the mass incarceration without trial of both Japanese immigrants and U.S. citizens of Japanese descent living in the western United States.[102] Fred Korematsu, a Japanese-American man from San Leandro, California, refused to comply with the order. When he was arrested and convicted for violating the order, he appealed his conviction. In *Korematsu*, the Court ruled that the conviction was valid, noting that the "military urgency of the situation" justified the evacuation of U.S. citizens on the basis of their race.[103] The Court did not overrule *Korematsu* until 2018 when, in its decision upholding the Muslim Ban, the Court stated that *Korematsu* was no longer good law.[104]

Luce-Celler Act (July 2, 1946)
This law lifted the ban on naturalization for immigrants from the Philippines and India. It coincided with the Philippines gaining independence from the United States and India gaining independence from Britain. As with China, however, the law now applied the national origins formula to each country, opening up only 105 annual quota slots for them.[105]

The Displaced Persons Act (June 25, 1948)
This law served as a prelude to the Refugee Convention by allowing for up to 202,000 WWII refugees to quickly enter the United States, mortgaging future quotas from their countries of origin. The Act limited eligibility to Europeans who were officially registered as "displaced persons" prior to December 22, 1945. This cutoff date denied eligibility to at least 100,000 European Jews, many of whom continued to flee post-war anti-semitic violence, such as the Kielce Pogrom on July 4, 1946 in Poland. The December 1945 cutoff date as well as the singular focus on Europe also denied eligibility to people fleeing global refugee crises unleashed at the end of the war, such as the mass dislocation of approximately 15 million people created by the Partition of India in 1947, the mass expulsion of several hundred thousand Palestinians from their homes that coincided with the creation of Israel, and the flight of several hundred thousand mainland Chinese residents to Hong Kong.[106] In 1950, Congress amended the 1948 Act to allow an additional 304,100 European refugees to enter the United States. By 1952, 337,244 displaced Europeans had become permanent U.S. residents.[107] By 1956, a total of 600,000 European refugees had entered the United States.[108] In contrast, the United States did not recognize or

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[102] Exec. Order No. 9066, 7 FR 1407 (1942).
[103] *Korematsu v. United States*, 323 U.S. 214, 223 (1944).
[104] *Trump v. Hawaii*, 585, U.S. 667, 710 (2018).
[105] Marian L. Smith, "Race, Nationality, and Reality: INS Administration of Racial Provisions in U.S. Immigration and Nationality Law Since 1898," *Prologue Magazine* vol. 34, no. 2 (Summer 2002).
[106] Peter Gatrell, *Free World? The Campaign to Save the World's Refugees, 1956-1963* (Cambridge: Cambridge University Press, 2011), 25-29. Mel Schiff, "President Truman and the Jewish DPs, 1945–46: The Untold Story," *American Jewish History* vol. 99, no. 4 (2015), 327-352.
[107] Robert A. Divine, *American Immigration Policy: 1924 - 1952* (New Haven: Yale University Press, 1957), 110-145.
[108] Maria Cristina Garcia, *The Refugee Challenge in Post-Cold War America* (New York: Oxford University Press, 2017), 3.

admit non-European refugees until it acceded to the 1967 Protocol to the 1951 United Nations' Refugee Convention.

Guam Organic Act (August 1, 1950)
This law lifted the naturalization ban on the Chamorro people from and residing in the U.S. territory of Guam.[109]

The Immigration and Naturalization Systems of the United States: The Senate Report (1950)
Following a multi-year study of the nation's immigration and naturalization laws, this senate report recommended maintaining the 1920s quota system. "Without giving credence to any theory of Nordic superiority," explained the report "the subcommittee believes that the adoption of the national origins formula was a rational and logical method of numerically restricting immigration in such a manner as to best preserve the sociological and cultural balance in the population of the United States. There is no doubt that it favored the peoples of the countries of Northern and Western Europe over those of Southern and Eastern Europe, but the subcommittee holds that the peoples who made the greatest contribution to the development of this country were fully justified in determining that the country was no longer a field for further colonization and henceforth further immigration would not only be restricted but directed to admit immigrants considered to be more readily assimilable because of the similarity of their cultural background to those of the principal components of our population."[110] This report established the basis for the next major overhaul of the U.S. immigration regime: the 1952 Immigration and Nationality Act.

***Knauff v. Shaughnessy* (December 16, 1950)**
In October 1948, the Assistant Commissioner of the Immigration and Naturalization Service and the U.S. Attorney General denied entry to Ellen Knauff, the German wife of a U.S. citizen. They did so without affording her a hearing, based on secret evidence that she presented a national security threat. Knauff appealed her exclusion, arguing that she had been excluded without due process. The U.S. Supreme Court ruled in the Government's favor,[111] "swiftly demolish[ing] half a century of immigration jurisprudence" that had established limited due process protections for arriving non-citizens.[112] In doing so it invented a new rule just for exclusion cases: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." To this day, courts and immigration authorities cite *Knauff* and related cases to "deny all but the most limited procedural protections to migrants who have not been inspected and legally authorized to enter the United States."[113]

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[109] 64 Stat. 385 (1950). Timothy P. Maga, "The Citizenship Movement in Guam, 1946-1950," *Pacific Historical Review* vol. 53, no. 1 (1984), 59–77.
[110] "The Immigration and Naturalization Systems of the United States: Report of the Committee on the Judiciary," 80th Congress, 1st Session, April 20, 1950 (GPO, 1950), 455.
[111] *U.S. ex re. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950).
[112] Adam B. Cox, "The Invention of Immigration Exceptionalism," *Yale Law Journal* vol. 13, no. 2 (2024), 418.
[113] César Cuauhtémoc García Hernández, *Migrating to Prison: America's Obsession with Locking Up Immigrants* (New York: New Press, 2023), 33.

The United Nations Refugee Convention (July 28, 1951)
The Convention defined a refugee as "any person who . . . as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." The Convention's drafters gave states the option of limiting this definition to protect people displaced by "events occurring in Europe," which several of them did. The United States did not adopt the Convention, despite having helped to write it.[114]

***Carlson v. Landon* (March 10, 1952)**
In *Carlson*, the Supreme Court upheld a law allowing the government to jail non-citizens accused of membership in the Communist Party while their deportation cases were on-going. (The Court authorized the deportation of people for joining the party in a companion case it decided on the same day). *Carlson* established for the first time that the government could detain noncitizens out of concern for public safety, even if there was no need to detain them to make sure they appeared for court. This danger-based justification would facilitate the explosive growth of the immigration detention system in the late 20th century.

> **Resistance Story: David Hyun**
> David Hyun was one of the people who fought against his detention and deportation in *Carlson v. Landon*. Hyun, originally from Korea and a citizen of China, came to the U.S. at the age of seven, first arriving in Hawaii and eventually settling in California.[115] Hyun served in both the Reserve Officers Training Corps at the University of Hawaii and the United States Engineer Corps.[116] Despite his many equities, the government detained Hyun on the sole justification that his affiliation with the Communist party deemed him a danger to the U.S. The Supreme Court upheld his detention in *Carlson v. Landon*.

An act to assist in preventing aliens from entering or remaining in the United States illegally, aka The "Wetback" Bill (March 20, 1952)
This act made it a felony to harbor, conceal, or transport an undocumented immigrant into the United States. The law included a special carve out, known as the "Texas Proviso," for employers by establishing that "the usual and normal practices incident to employment shall not be deemed to constitute harboring." In other words, employers could not be prosecuted for hiring undocumented workers, but undocumented workers could still be arrested, detained, and deported, as could those who helped them cross. This 1952 law also authorized immigration officers to search private property without a warrant within 25 miles of the border.[117]

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[114] The 1951 Refugee Convention, *The United Nations* (1951).
[115] Brief for Petitioner, *Carlson v. Landon*, No. 35, 1951 WL 81961, at *3, *5.
[116] Brief for Petitioner, *Carlson v. Landon*, No. 35, 1951 WL 81961, at *3, *5.
[117] 98 *Congressional Record* 791 (1952).

Immigration and Nationality Act (June 27, 1952)

The 1952 INA consolidated, revised, and codified into a single code all immigration and naturalization laws passed since 1917. This 1952 law, which remains the basic framework for the U.S. immigration system, terminated the racial bar for naturalization but otherwise carried forward the whites-only immigration regime. In particular, the 1952 INA carried forward the national quota system and created an "Asia Pacific Triangle" as a global race quota applied to all persons of Asian descent. According to this quota, only 2,000 immigrants of Asian descent were allowed to enter the United States annually from anywhere in the world.[118] Similarly, the 1952 INA removed the British colonies in the Caribbean from Britain's large national quota and instead assigned each colony its own quota, allocating no more than 100 slots annually to the Black-majority British colonies in the Caribbean. These Caribbean caps refreshed the quota system to better restrict the number of Black immigrants allowed to enter the country every year.

The 1952 INA also revamped the criminal codes designed to punish Mexicans for entering the United States without inspection. Not only did the 1952 INA carry forward the 1929 crimes of entering and re-entering the United States without inspection but it broadened the codes and made them easier and cheaper to prosecute. Whereas the 1929 legislation had only criminalized "entering" or "attempting to enter" the United States without inspection, the 1952 INA also made it a felony for deportees to be "found in" the United States without inspection. With this expansion in the law, immigration officials could apprehend migrants anywhere in the country and prosecute them locally without having to transport a defendant to the border jurisdiction where they were accused of having entered the United States without inspection. It also effectively erased any statute of limitations for the crime. The 1952 Act also reduced the penalty for unauthorized entry from one year to six months, making it a petty offense, for which there is no right to a jury trial. The combined effect of these changes was to make the crimes of unlawful entry and re-entry far easier and cheaper to prosecute, thus strengthening the criminal prohibition originally enacted in 1929 to target Mexican immigrants.[119]

The 1952 INA also ended the five-year statute of limitations for most deportations, including for immigrants who entered without inspection. At a time when Mexicans comprised over 90% of deportees, these changes to the nation's deportation laws laid the foundations for a vast undocumented population that would be overwhelmingly Mexican. Congress passed these enforcement enhancements without debate.[120]

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[118] Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 188-197; Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 237-239.

[119] For more information on the re-enactment of the 1929 illegal entry/reentry code as part of the 1952 Immigration and Nationality Act see, Ingrid V. Eagly, "Prosecuting Immigration," *Northwestern University Law Review* vol. 104, no. 4, (2010), 1281-1360; Eric S. Fish, "Race, History and Immigration Crimes," *Iowa Law Review* vol. 107, no. 1051 (2022); César Cuauhtémoc García Hernández, *Welcome the Wretched: In Defense of the "Criminal Alien"* (New York: New Press, 2024); Affidavit of Dr. S. Deborah Kang, Associate Professor, University of Virginia, *United States v. Hernandez-Perez*, No. 23-cr-91-GRB (E.D.N.Y, Oct. 12, 2023); and, Doug Keller, "Re-thinking Illegal Entry and Re-entry," *Loyola University of Chicago Law Journal*, vol. 44, no. 1 (2012), 80.

[120] Doug Keller, "Re-Thinking Illegal Entry and Re-Entry," *Loyola University Chicago Law Journal* vol. 44, no. 1 (2012), 80.

Finally, the 1952 INA also granted the U.S. Attorney General the authority to temporarily "parole" into the United States an unlimited number of noncitizens "under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States."[121]

In sum, the 1952 INA not only retained the national origins system but tweaked it to curb Asian and Black migration, and made it faster, easier, and cheaper to prosecute Mexicans for entering or reentering the United States without inspection, while formalizing a parole system that, at the time, was almost exclusively used to admit European refugees into the United States.

President Harry Truman vetoed the 1952 INA. The law "discriminates, deliberately and intentionally, against many peoples of the world," he wrote, urging Congress to continue revising the nation's immigration code and, in particular, abolish the national origin system.[122] But Congress overrode Truman's veto. As the law's author, Senator Patrick McCarran (R-NV) had warned, "If we scrap the national origins formula we will, in the course of a generation or so, change the racial complexion of the population of this nation."[123] A major victory for McCarran and other white nationalists determined to maintain the nation's "racial complexion," the 1952 Immigration and Nationality Act (INA) updated and reinforced the whites-only immigration regime.[124]

> **Fast Forward to Now:** The 1952 law created the parole authority that now constitutes the basis for humanitarian parole. Despite the long history of parole and frequent use by presidents from both political parties, President Trump terminated a number of parole programs after his second inauguration in January 2025, claiming those programs exceeded the President's authority. Immigrant rights advocates are challenging this in court.

Shaughnessy v. United States ex rel. Mezei **(March 16, 1953)**
Ignatz Mezei, the husband of a U.S. citizen, who had previously resided in the U.S. for 25 years and was returning from travels to Hungary, was excluded upon returning to the U.S. on the same

[121] As cited on page 2 of "Humanitarian Parole Authority: A Legal Overview and Recent Developments," *Congressional Research Service* (Jan. 11, 2024).
[122] As quoted on page 228 in Erika Lee, *America for Americans: A History of Xenophobia in the United States* (New York: Basic Books, 2019).
[123] Carlo Giachetti, "The Survival of the Theory of Nordic Superiority in the Immigration and Nationality Act (Public Law 414)" (M.A. thesis, St. Louis: Alma College, 1954), 143. See also Robert A. Divine, *American Immigration Policy: 1924 - 1952* (New Haven: Yale University Press, 1957), 180.
[124] Many scholars have described the 1952 INA as a carry-forward of the 1920s immigration regime. See Divine, *American Immigration Policy: 1924 - 1952* (New Haven: Yale University Press, 1957), 169 (The 1952 INA was "essentially a restrictionist measure recapitulating the protective policy which had evolved in the course of the century . . . the new features did not represent a liberalization of policy but instead harmonized with the restrictionist conception of immigration control"); Ngai, *Impossible Subjects*, 237 ("the 1952 Act brought the many fragments of the nation's immigration and naturalization laws under a single code, but it was less an overhaul than a hardening of existing policy, with a few reforms and innovations"). See also, Carlo Giachetti, "The Survival of the Theory of Nordic Superiority in the Immigration and Nationality Act (Public Law 414)," (M.A. thesis, St. Louis: Alma College, 1954); Motomura, *Americans in Waiting*, 132-135.

grounds as Knauff – on the "basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest." In contrast with Knauff, Mezei could not leave the U.S. after being denied entry because no country would take him, so he remained detained at Ellis Island for 21 months when he challenged his exclusion and detention. Mezei's prospect of indefinite detention did not change the Supreme Court's calculus, however. In *Mezei*, the Court upheld his exclusion and detention, citing *Knauff* and *Chae Chan Ping*, reaffirming that the only due process required upon entry is what Congress establishes, and stating that the exclusion power is a "fundamental sovereign attribute . . . largely immune from judicial control." *Mezei* made clear that the U.S. could exclude noncitizens with minimal process as defined by Congress, and also that the U.S. could indefinitely detain noncitizens in the course of their exclusion without violating due process protections.[125]

Refugee Relief Act (August 7, 1953)
Provided an additional 209,000 special visas for European refugees fleeing Communist countries to enter the United States on a non-quota basis.[126]

***Whom We Shall Welcome, Report of the President's Commission on Immigration and Naturalization* (January 1, 1953)**
This Commission established by President Truman to challenge the 1952 Immigration and Nationality Act declared that the INA "should be completely rewritten."[127] The Commission also called for the "abolition of all deportation except where entry into the United States had been obtained by fraud."[128] Immigration restrictionists in Congress repeatedly stymied follow-up efforts to repeal and replace the 1952 INA.

100-Mile Border Zone (1953)
The U.S. Department of Justice issued a regulation establishing an expansive jurisdiction for Border Patrol officers to enforce the nation's immigration laws, allowing them to, without a warrant, stop, search, and question people about their immigration status within 100 miles of any national boundary.[129] Today, about 200 million people live within the Border Patrol's 100-mile jurisdiction.[130]

Closure of Ellis Island (November 12, 1954)
In 1954, the U.S. Immigration and Naturalization Service closed Ellis Island, with the U.S. Attorney General declaring that the "humane administration of the immigration laws" requires the abolition of immigrant detention, except in cases of public safety and flight risks." In other

[125] *Shaughnessy v. United States ex rel. Mezei*, 35 U.S. 206 (1953).
[126] Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 201.
[127] *Whom We Shall Welcome: Report of the President's Commission on Immigration and Naturalization* (GPO, 1953), xv.
[128] *Whom We Shall Welcome: Report of the President's Commission on Immigration and Naturalization* (GPO, 1953), 194.
[129] Definitions, 8 C.F.R. § 287.1(a) (2019). See also Deborah Anthony, "The U.S. Border Patrol's Constitutional Erosion in the 100-Mile Zone," *Penn State Law Review,* vol. 124, no. 2 (2019), 398-399.
[130] "Know Your Rights: 100-Mile Border Zone," *The American Civil Liberties Union*, accessed Feb. 13, 2025.

words, federal authorities abolished immigrant detention in 1954. The Immigration and Naturalization Service relaunched immigrant detention during the late 1970s to stop Haitian immigration to the United States.[131]

Operation "Wetback" (May - October 1954)

During the summer of 1954, the U.S. Border Patrol unleashed a mass deportation campaign. Targeting Mexican immigrants who had unlawfully entered the United States, the Border Patrol used paramilitary tactics to apprehend large groups of Mexican immigrants across the southwestern United States. By the end of FY 1954, the Border Patrol reported conducting more than 1 million deportations or other forcible removals, prompting the Immigration and Naturalization Service to declare, "the era of the wetback is over."[132]

> **Fast Forward to Now**: For several years, President Trump has called for a mass deportation program modeled on this 1954 campaign.[133] He began to implement such a program in Los Angeles in the summer of 2025, carrying out widespread warrantless arrests by masked federal agents on the street, at car washes and other businesses, and in Home Depot parking lots. Immigrant rights advocates are challenging this practice of widespread, warrantless arrests devoid of individualized suspicion in court.

Amend and Enforce: 1953–1990

End of Guestworker Programs (December 31, 1964)

Between 1942 and 1964, more than 2 million immigrant workers from Mexico and the British West Indies entered and exited the United States on short-term labor contracts. The contracts had provided meaningful economic opportunities to many workers, but the programs had also been marked by labor exploitation and abuse, which led many workers, labor organizers, religious organizations, and others to oppose them.[134] In 1964, Congress terminated these guestworker programs.

Immigration Reform Amendment (October 3, 1965)

The 1965 Immigration Reform Amendment abolished the 1924 national origins system and the "Asia Pacific Triangle" by establishing that "no person shall . . . be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence."[135] However, the 1965 IRA adopted a new quota system that reserved 74% of all immigrant visas for the immediate family members of U.S. citizens and permanent residents. At a time when Europeans comprised 75% of all immigrants living in the United States, the law's

[131] Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Detention System,* (Gainesville: University of Florida Press, 2018).
[132] Kelly Lytle Hernandez, *Migra! A History of the U.S. Border Patrol* (Berkley and Los Angeles: University of California Press, 2010).
[133] Steve Inskeep and Christopher Thomas, "Trump Promised the 'Largest Deportation' in U.S. History. Here's How he Might Start," *NPR*, Nov. 14 2024.
[134] Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 138 - 147.
[135] Act of October 3, 1965, Pub. L. No. 89-236, § 18, 79 Stat. 911. 8 USC § 1152(a)(1)(A).

authors expected family migration to privilege immigrants from Europe.[136] As the law's co-author, Representative Emanuel Celler (D-NY), put it: "since the people of Africa and Asia have very few relatives here . . . [there is] no danger whatsoever of an influx from the countries of Asia or Africa."[137] That prediction would prove to be wrong.

The 1965 Act also set a 170,000 cap on the number of immigrants allowed to enter the United States from the eastern hemisphere and established the first-ever quota for the Western Hemisphere, setting a 120,000 cap on the number of immigrants allowed to enter the United States annually from the Western Hemisphere. In 1964, more than 200,000 Mexican immigrants had legally entered the United States, meaning that the new western hemisphere quota cut legal immigration from Mexico by at least 60%.[138] U.S. Border Patrol apprehensions surged from 52,422 in FY 1965 to 812,541 in FY 1977, as labor migration from Mexico continued following the implementation of the western hemisphere quota.[139]

Cuban Adjustment Act (November 2, 1966)
In 1959, an armed revolt led by Fidel Castro toppled the Fulgencio Batista regime in Cuba. Castro soon implemented a communist program, prompting nearly one million Cubans to flee the island. When the 1965 IRA imposed a cap on the number of immigrants allowed to enter the United States from the western hemisphere, President Johnson immediately lobbied Congress to pass the Cuban Adjustment Act, which offered "parole," work authorization, and legal permanent residence status to all Cubans arriving in the United States, regardless of how they entered the country, lawfully or unlawfully.[140]

United Nations Protocol Relating to the Status of Refugees (October 4, 1967)
The Protocol abolished the "geographical and temporal limits" of the 1951 Refugee Convention, making it possible for anyone in the world to be eligible for refugee status, rather than only those from Europe. The rights and protections guaranteed by the 1967 Protocol include: non-refoulement, aka the right to not be returned to a country where a refugee faces serious threats to their life or freedom; the right to education; the right to work; the right to public relief and assistance; and the right to not be punished for illegal entry into the country of asylum.[141] In 1968, the United States became a signatory to the 1967 Protocol, binding it to comply with what

[136] Elizabeth M. Grieco, Edward Trevelyan, Luke Larsen, Yesenia D. Acosta, Christine Gambino, Patricia de la Cruz, Tom Gryn, and Nathan Walters, *The Size, Place of Birth, and Geographic Distribution of the Foreign-Born Population in the United States: 1960 to 2010*, Population Division Working Paper No. 96 U.S. Census Bureau (Oct. 2012), 6 and Figure 3.
[137] As quoted on page 241 in Erika Lee, *America for Americans: A History of Xenophobia in the United States* (New York: Basic Books, 2019).
[138] For more on the 1965 Immigration Reform Act see Erika Lee, *America for Americans: A History of Xenophobia in the United States* (New York: Basic Books, 2019), 221 - 250; Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 258-261; and, Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 207-216.
[139] U.S. Customs and Border Protection, United States Border Patrol: Nationwide Encounters Fiscal Years 1925 - 2020, *U.S. Border Patrol* (2020).
[140] David Abraham, "The Cuban Adjustment Act of 1966: Past and Future," *Emerging Issues Analysis* (May 2015).
[141] "The 1951 Convention and its 1967 Protocol," *The United Nations Refugee Agency* (Sept. 2011).

President Johnson described as the "Bill of Rights for refugees fleeing their country because of persecution on account of their political views, race, religion, nationality, or social ties."[142]

> **Fast Forward to Now:** The Protocol's promise of non-discrimination in refugee admissions remains unfulfilled. U.S. refugee policy has consistently favored some groups over others based on race, political alignment, and other factors despite the Protocol. Disfavored refugee groups—such as Haitians (relative to Cubans) and Afghans (relative to Ukrainians) have challenged such their discriminatory treatment from time to time, but the Supreme Court has never found it unconstitutional. Most recently, a group of white South African Afrikaners arrived in the U.S. under a new Trump administration refugee program which fast-tracked their admission shortly after indefinitely suspending all other U.S. refugee programs.[143]

***United States v. Brignoni-Ponce* (June 30, 1975)**

Brignoni-Ponce sanctioned the Border Patrol's use of "Mexican appearance" as a relevant factor in deciding to stop cars or interrogate people in the 100-mile border zone. It helped to facilitate Border Patrol's on-going role in deporting both recent and long-established Mexican migrants from the border region.[144]

> **Fast Forward to Now:** *Brignoni-Ponce*'s rule that race could be considered by immigration enforcement agents when deciding whether to stop vehicles and detain people for further questioning has been sharply limited in subsequent lower court decisions. Those cases have generally found that shifting demographics (as Latinos have become a larger share of the population) and changing legal doctrine concerning the use of race have altered the legal landscape concerning the use of race.[145] Nonetheless, there is strong evidence that immigration officials continue to use race when determining whom to target for immigration enforcement. A federal judge in Los Angeles recently ruled that agents were likely doing exactly that during large-scale enforcement operations taking place throughout the greater Los Angeles area.[146]

Indochina Migration and Refugee Assistance Act (May 23, 1975)

Authorized amid the fall of Saigon in 1975, the Gerald Ford administration began "paroling" Vietnamese, Cambodian, and Laotian immigrants as well as members of the Hmong community (from both Vietnam and Laos) into the United States.[147] The Indochina Migration and Refugee Assistance Act allocated $155 million in resettlement aid for up to 135,000 refugees from the

[142] The United Nations, "Convention relating to the Status of Refugees" (1967).
[143] Michelle Gumede, "More white South Africans arrive in the US under a new refugee program," *The AP* (Jun. 2, 2025).
[144] *United States v. Brignoni-Ponce*, 422 US 873 (1975).
[145] See *U.S. v. Montero Camargo*, 208 F.3d 1122 (9th Cir. 2000); *Sanchez v. Sessions*, 904 F.3d 643 (9th Cir. 2018).
[146] See *Vasquez Perdomo v. Noem*, 25-cv-05605 (C.D. Cal. Jul. 11, 2025).
[147] Indochina Migration and Refugee Assistance Act, Pub. L. No. 94-23, 89 Stat. 87 (1975).

region. By 1987, more than 750,000 refugees from Vietnam, Cambodia, and Laos had been resettled in the United States.[148]

Immigration and Nationality Act Amendment of 1976
Revised the global quota system to impose the 20,000 country cap on countries in the Western Hemisphere. At the time, the new country cap only impacted Mexico, which had sent 41,977 quota immigrants to the United States in FY1975.[149]

Immigration and Nationality Act Amendment of 1978
Imposed a single worldwide cap of 290,000 quota immigrants annually, excluding the immediate relatives of U.S. citizens and permanent residents.[150]

The Haitian Program (1978 - 1981)
During the 1970s, Haitians began requesting asylum in the United States, having fled the U.S.-backed Duvalier regime in Haiti. U.S. immigration authorities denied their petitions, defining Haitian migrants as "economic migrants" rather than "political refugees." In 1978, the INS introduced the "Haitian Program," which subjected all Haitian migrants, including children, to mandatory detention, denied them work permits, and expedited their deportation hearings without affording them a meaningful opportunity to seek asylum.[151] No other immigrant group was subject to such terms.[152] In fact, while the INS imposed the Haitian Program, the Carter Administration liberally used its parole power to admit migrants from Cuba, Vietnam, and elsewhere. Haitian immigrants and their advocates filed numerous legal challenges to the discriminatory treatment of Haitian immigrants seeking refuge in the United States. Nonetheless, the Haitian program would become a model for the treatment of Haitian refugees by administrations from both major parties.

> **Fast Forward to Now:** Three years ago, newspapers around the country published pictures of a white man on horseback chasing and grabbing at fleeing black men on a grassy hill, apparently using a whip. The image evoked scenes from a slave plantation, but the man on the horse wore a green Border Patrol vest. He was in Del Rio, Texas, where the federal government was in the process of deporting thousands of Haitians who had come to the U.S. seeking refuge. The White House and Congressional Democrats quickly condemned the "horrific" images. Within days, they had stopped the Border Patrol from using horses in Del Rio.[153] But they did not stop the deportations. Over the

[148] Indochina Migration and Refugee Assistance Act, Pub. L. No. 94-23, 89 Stat. 87 (1975); Rubén G. Rumbat, *A Legacy of War: Refugees from Vietnam, Laos, and Cambodia, in Origins and Destinies: Immigration, Race, and Ethnicity in America* (Belmont: Wadsworth, 1996).
[149] Table 6, "Immigrants Admitted by Classes under the Immigration Laws and Country or Region of Birth, Year Ended June 30, 1975" in Annual Report of the Immigration and Naturalization Service, FY 1975, 36.
[150] Act of October 5, 1978, Pub. L. No. 95-412, 92 Stat. 907. 8 USC § 1151(a)(1).
[151] Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Detention System,* (Gainesville: University of Florida Press, 2018), 12-32.
[152] Jana K. Lipman, "'The Fish Trusts the Water, and It Is in the Water That It Is Cooked': The Caribbean Origins of the Krome Detention Center," *Radical History Review* vol. 2013, no. 115 (2013), 121.
[153] Quinn Owen, "Border Patrol suspends using agents on horseback amid outrage," *ABC News* (Sept. 23, 2021).

next several months, the government would expel 20,000 refugees to grave danger in Haiti. Most of them were denied the opportunity even to ask for asylum.

The Federation for American Immigration Reform (1979 - present)
In 1979, John Tanton, an ophthalmologist from northern Michigan, established the Federation for American Immigration Reform (FAIR). Funded by the eugenicist-aligned Pioneer Fund and Cordelia Scaife May, an heir to the Mellon family fortune, Tanton's ideology was clear: "I've come to the point of view that for Euro-American society and culture to persist requires a European-American majority, and a clear one at that,"[154] FAIR quickly became a political powerhouse whose staff advised members of Congress, including the co-author of the 1986 Immigration Reform Act. Tanton himself would go on to testify in Congress more than 100 times by the year 2000, shaping a wide range of legislation designed to preserve the "European-American majority" in the U.S. By 2007, the Southern Poverty Law Center had designated FAIR a hate group.

> **Fast Forward to Now:** In 2017, SPLC also designated the Center for Immigration Studies, one of FAIR's sister organizations, as a hate group. Nonetheless, several people who worked on immigration policy for the first and second Trump administrations previously worked with FAIR, CIS, or one of their affiliated organizations.[155]

Refugee Act (March 17, 1980)
The Act defined a "refugee," in accordance with the Refugee Convention, as any immigrant who cannot stay within or return to their home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." It also prohibited the federal government from deporting refugees, established a uniform process for people to apply for refugee status, and set aside 50,000 non-quota visas for refugees while allowing the president to exceed this limit in cases of "grave humanitarian concern."[156] The law promised to end nearly two hundred years of race discrimination in humanitarian admissions, but federal authorities broke that promise within a month, again targeting Haitian immigrants for detention and removal. Meanwhile, the departments of State and Justice also denied refugee status to migrants from El Salvador, who began arriving in the United States in large numbers in late 1979, following the outbreak of a brutal civil war in which the United States backed a right-wing government that engaged in acts of extraordinary political violence that a United Nations Truth Commission would later declare to be "war crimes."[157]

Mariel Boatlift (April - October 1981)
In April 1980, Fidel Castro began allowing Cubans to leave the country. By September 1980, nearly 100,000 Cubans had arrived in South Florida; nearly 15,000 Haitians also arrived in the

[154] Reece Jones, *White Borders: The History of Race and Immigration from Chinese Exclusion to the Border Wall* (Boston: Beacon Press, 2021), 168.
[155] The Plot Against Immigrants, Western State Center (diagram).
[156] Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).
[157] The United Nations and Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador* (Jan. 1993).

spring of 1980. Although the Carter administration paroled most Haitian and Cuban migrants into the United States, Haitians, who continued to arrive in large numbers, were jailed for months(—)sometimes years(—)at a swampy decommissioned missile site in Florida (known as Krome Detention Center) and, later, at a retired army base in Puerto Rico.[158]

> **Fast Forward to Now:** During the 2024 campaign, then-candidate Trump consistently repeated an assertion that other countries, including Venezuela, were "emptying their prisons" and mental hospitals to send people to the U.S. These statements, while thoroughly debunked,[159] echo those made by anti-immigrant politicians going back at least one hundred years. Many people to this day believe the claim was true when President Jimmy Carter and others suggested that most of the Cuban refugees who arrived on the Mariel boatlift were released by Fidel Castro from Cuban prisons. Detailed reporting has uncovered that those claims were largely overstated.[160]

***Haitian Refugee Center v. Civiletti* (July 2, 1980)**
On July 2, 1980, a judge in South Florida ruled in favor of Haitian migrants seeking relief from the discriminatory practices of U.S. immigration authorities. According to the judge "The Plaintiffs charge that they faced a transparently discriminatory program designed to deport Haitian nationals and no one else. The uncontroverted evidence proves their claim."[161] In particular, he compared the favorable treatment received by majority white Cubans in comparison to Haitians migrants who comprised "the first substantial flight of black refugees from a repressive regime to this country." As the judge noted, Cubans were routinely paroled into the United States while "none of the over 4,000 Haitians processed during the INS 'program' at issue in this lawsuit were granted asylum. No greater disparity can be imagined."[162] The judge ordered the INS to stop subjecting Haitian migrants to mandatory detention in South Florida. Rather than paroling Haitian migrants, the INS started detaining Haitians at an army camp in Puerto Rico.[163]

Executive Order 12324 - Interdiction of Illegal Aliens (September 29, 1981)
This order authorized the interdiction of ships carrying undocumented immigrants on the high seas. The order targeted Haitian migrants attempting to arrive in the United States and petition for asylum. Between 1981 and 1990, the U.S. Coast Guard interdicted 22,940 Haitians at sea. According to the INS, only 11 of the Haitians interdicted at sea were eligible to apply for asylum

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[158] Lipman, "'The Fish Trusts the Water, and It Is in the Water That It Is Cooked': The Caribbean Origins of the Krome Detention Center," *Radical History Review* vol. 2013, no. 115, (2013), 115-141.
[159] Maria Ramirez Uribe and Amy Sherman, "Trump's ridiculous claim that 'millions' of immigrants came illegally from jails, mental facilities," *PolitiFact*, Jun. 6, 2024.
[160] Chip Brantley and Andrew Beck Grace, co-hosts, *White Lies* podcast, season 2, episode 3, "The Rumors," *NPR*, (Feb. 9, 2023).
[161] *Haitian Refugee Center v. Civiletti,* 503 F. Supp. 442 (S.D. Fla. 1980).
[162] *Haitian Refugee Center v. Civiletti,* 503 F. Supp. 442 (S.D. Fla. 1980) at 451.
[163] Karl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Detention System,* (Gainesville: University of Florida Press, 2018), 33-50.

in the United States. The Supreme Court upheld this practice in *Sale v. Haitian Centers Council*, thus paving the way for many interdiction practices the government has utilized since.[164]

Mandatory Detention for All Asylum Seekers (July 1982)
Under pressure to end the discriminatory detention of Haitian asylum seekers, the INS established a policy of detaining all asylum seekers attempting to enter the US without authorization. Many asylum seekers were released on parole. However, Haitian migrants remained subject to disproportionate and extreme levels of long-term detention.[165]

***Jean v. Nelson* (June 26, 1985)**
Despite the 1980 *Civiletti* ruling, the Carter and then Reagan Administrations continued to pursue the policy of detaining and deporting Haitian refugees, and the issue eventually reached the Supreme Court in *Jean v. Nelson*. The Supreme Court ruled in favor of the refugees on technical grounds but left open whether the Constitution prohibits the government from engaging in race discrimination in immigrant admissions.

> **Fast Forward to Now:** In Florida, the Eleventh Circuit has since reaffirmed its earlier rule permitting race discrimination in exclusion policy, thus allowing the government to treat Haitians more harshly than other migrants. In this sense, the Chinese Exclusion cases remain alive to this day.[166]

Anti-Drug Abuse Act (October 27, 1986)
The 1986 ADAA targeted non-citizens convicted of any drug offense for mandatory exclusion, and authorized the deportation of immigrants convicted of such offenses. The law applied retroactively to convictions occurring prior to 1986. This law set a precedent—within a decade, immigrants convicted of virtually any drug offense would face mandatory detention and deportation, and many other grounds of deportation would apply retroactively.

Immigration Reform and Control Act (November 7, 1986)
Focused on the issue of illegal immigration, the Immigration Reform and Control Act (IRCA) offered legal status to long-term undocumented residents, imposed sanctions on employers for hiring undocumented workers, and increased funding for the U.S. Border Patrol.[167] It didn't work. The legalization programs resulted in 2.7 million immigrants becoming lawful permanent residents, but nearly as many undocumented immigrants either missed the application deadline or did not qualify for the amnesty programs.[168] Federal authorities proved unwilling to enforce

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[164] Executive Order 12324. See also Ruth Ellen Wasem, "U.S. Immigration Policy on Haitian Migrants," CRS Report for Congress (updated Jan. 21, 2005); *Sale v. Haitian Centers Council*, 509 U.S. 155 (1993).
[165] Karl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Detention System,* (Gainesville: University of Florida Press, 2018), 51-70.
[166] *Cuban Am. Bar Ass'n v. Christopher*, 43 F.3d 1412, 1427 (11th Cir. 1995).
[167] Immigration Reform and Control Act (IRCA), Pub. L. No. 99-603, 100 Stat. 3445 (1986).
[168] Charles Kamasaki and Muzaffar Chishti, "IRCA in Retrospect: Guideposts for Today's Immigration Reform," No. 9 (Jan. 2014). See also, Nancy Rytina, *IRCA Legalization Effects: Lawful Permanent Residence and Naturalization Through 2001*, U.S. Immigration and Naturalization Service, Office of Policy and Planning (Oct. 25, 2002).

the employer sanctions.[169] And funding for the U.S Border Patrol enhanced the agency's capacity to apprehend, detain, and deport immigrants but, as the costs and dangers associated with undocumented entry skyrocketed, migrants remained in the United States rather than traveling seasonally between home and work.[170] In the end, IRCA created a one-time amnesty program while making permanent investments in border enforcement, which actually increased the size of the undocumented population living in the United States.

IRCA also established two new programs—the diversity lottery and the visa waiver program—that propped the nation's door open to immigrants from Europe and white settler nations. The diversity lotto set aside 10,000 visas for nationals "born in" countries "adversely affected" by the 1965 Act.[171] According to Senator Ted Kennedy (D-MA), the diversity lottery was a way to resolve "unforeseen problems" following the 1965 Act, which had restricted immigration from European countries, which Kennedy described as the "old seed sources of our heritage."[172] Originally, Congress reserved 40% of the visas for Irish immigrants and, until 2001, European immigrants took most of the visas.[173] Since then, African immigrants have increasingly used the program to access visas and enter the United States. Meanwhile, the visa waiver program allowed individuals from designated countries to enter the U.S. without needing to obtain a visa for a period up to 90 days.[174] As of 2024, 36 of the 41 countries are located in Europe or are white settler societies.[175]

Anti-Drug Abuse Act (November 18, 1988)
The 1988 ADAA was a significant law passed as part of the War on Drugs. Among other things, it restored the federal death penalty and imposed a mandatory minimum of five years in prison for simple possession of 5g or more of crack cocaine. The 1988 Act also created a new category of crime called "aggravated felonies," which only applies to non-citizens,[176] establishing that non-citizens convicted of crimes defined as aggravated felonies were subject to mandatory detention and expedited deportation upon the completion of their sentence.[177] In other words, the 1988 ADAA made immigration detention and deportation the virtually-inevitable result of certain criminal convictions, creating a template that Congress would use to dramatic effect in

[169] Josselyn Andrea Garcia Quijano, "Workplace Discrimination and Undocumented First-Generation Latinx Immigrants," *(University of Chicago Crown Family School of Social Work, Policy, and Practice: Advocates' Forum 2020)*.
[170] IRCA §111.
[171] IRCA §314(b)(1).
[172] Anna Law, "The Diversity Visa Lottery: A Cycle of Unintended Consequences in United States Immigration Policy," *Journal of American Ethnic History* vol. 21, no. 4 (2002), 20.
[173] Carly B. Goodman, "Legislating Diversity in the Immigration Act of 1990," in *Whose America? U.S. Immigration Policy Since 1980*, eds. María Cristina García and Maddalena Marinari (Urbana: University of Illinois Press, 2023), 109.
[174] IRCA §313. See also Congressional Research Service, "Adding Countries to the Visa Waiver Program: National Security and Tourism Considerations" (updated Oct. 8, 2024).
[175] Overview of the U.S. Visa Waiver Program, U.S. Department of State.
[176] Anti-Drug Abuse Act of 1988 (ADAA), Pub. L. No. 100-690, 102 Stat. 4181 (1988).
[177] Anti-Drug Abuse Act of 1988 (ADAA), Pub. L. No. 100-690, 102 Stat. 4181 (1988).

the 90s. The ADAA also increased the maximum sentence to fifteen years for an illegal reentry conviction with a prior aggravated felony.[178]

Immigration Act (November 29, 1990)
The first and last major overhaul of the legal immigration system since 1965, the 1990 Act made numerous changes to the immigration system.[179] In particular, it substantially raised the annual cap on the number of quota immigrants allowed to enter the United States each year from 290,000 to 675,000.[180] But, the 1990 Act offset the total increase in quota immigration by deducting up to 254,000 slots from the total quota depending upon the number of immigrants who entered the United States the previous year as the immediate relatives (spouse, parents, and unmarried minor children) of U.S. citizens. In particular, if more than 254,000 non-quota immigrants entered the United States as the immediate relatives of U.S. citizens, the next year's quota allocation for the family preference was reduced by 254,000 slots. Since the number of non-quota immigrants has typically exceeded 254,000 annually, the functional annual maximum for quota immigration to the United States, as set by the 1990 Immigration Act, is 421,000 visas, not 675,000, with 226,000 visas reserved for the family preferences, 140,000 visas reserved for employment, and 55,000 visas for the diversity lotto.[181]

The 1990 Act also created the humanitarian relief program known as Temporary Protected Status (TPS).[182] Like the 1980 Refugee Act, the TPS program was designed to create objective, non-discriminatory criteria for the government to apply when determining which countries warranted broad-based humanitarian protection.[183] Congress designated immigrants from El Salvador as the first TPS recipients and, since then, has extended TPS to a wide range of immigrants from Central America, the Caribbean, Africa, and Asia.[184] Notably, although many TPS holders have found ways to obtain permanent resident status, the 1990 Immigration Act did not provide a direct pathway to legal permanent status for TPS holders..

The 1990 Act also leaned into enforcement by expanding the category of "aggravated felonies" to include crimes of violence for which the term of imprisonment imposed is at least five years.[185] Within just a few years, Congress would again expand the aggravated felony category to encompass many non-violent offenses, thereby tightly linking the U.S. immigration control and criminal legal systems.[186]

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[178] Doug Keller, "Re-thinking Illegal Entry and Re-entry," *Loyola University of Chicago Law Journal* vol. 44, no. 1 (2012), 96.
[179] Muzaffar Chishti and Stephen Yale-Loehr, "The Immigration Act of 1990: Unfinished Business a Quarter-Century Later," *Migration Policy Institute* (Jul, 2016).
[180] Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).
[181] National Immigration Forum, *Legal Immigration to the United States: National Quotas & America's Immigration System* (Jan. 30, 2024).
[182] American Immigration Council, *Temporary Protected Status: An Overview* (last updated Jul. 1, 2024).
[183] American Immigration Council, *Temporary Protected Status: An Overview* (last updated Jul. 1, 2024).
[184] 1990 Immigration Act, §303(a)(1). U.S. Citizenship and Immigration Services, *Temporary Protected Status* (last updated Jul. 22, 2024).
[185] American Immigration Council, *The Diversity Immigrant Visa Program: An Overview* (Nov. 13, 2017).
[186] American Immigration Council, *Aggravated Felonies: An Overview* (Mar. 16, 2021).

Ultimately, the 1990 Act reflected a compromise between those favoring more immigration and respect for human rights and those seeking to stoke European immigration to the United States.

Deportation Nation: 1991–Now

***American Baptist Churches* Settlement Agreement (January 31, 1991)**
With direct and indirect support from the United States government, lengthy civil wars in El Salvador, Guatemala, and Nicaragua in the 1980s pushed about half a million refugees from those nations to flee north to the United States.[187] While the government generously granted relief to Nicaraguans it treated Salvadorans and Guatemalans as economic migrants, and denied asylum to more than 97% of them.[188] In *American Baptist Churches (ABC) v. Thornburg*, the plaintiffs, a coalition of over 80 churches, religious organizations, and refugee groups, challenged the government's discriminatory treatment of Guatemalan and Salvadoran asylum seekers.[189] The case resulted in a settlement requiring the government to re-adjudicate thousands of asylum claims. This created a backlog in asylum applications from these countries which, coupled with extensive advocacy from community members and immigrant rights advocates, led to the passage of the Nicaraguan Adjustment and Central American Relief Act (NACARA) in 1997, which created a path to lawful residence for the population covered by the *ABC* settlement and other Central American immigrants.[190]

In response to a similar pattern of extensive advocacy around the unequal treatment of migrants from Haiti, Congress passed the Haitian Refugee Immigration Fairness Act in 1998, which allowed certain Haitians to seek permanent residence status.

***Sale v. Haitian Centers Council* (1993)**
In *Sale v. Haitian Centers Council*, a group representing Haitian refugees challenged an executive order requiring the Coast Guard to interdict people fleeing Haiti at sea and return them without allowing them to raise any asylum claims. In *Sale*, the Supreme Court held that this practice was lawful because laws governing asylum and refugee protections in the U.S. do not operate outside of U.S. territory. This ruling opened the door to many policies externalizing border controls—both at sea and in the territory of Mexico and beyond—that limit the availability of refugee protections beyond the physical border. Today, almost no one is protected by U.S. refugee law unless they reach U.S. land.

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[187] Susan Gzesh, *Central Americans and Asylum Policy in the Reagan Era,* Migration Policy Institute (Apr. 1, 2006).
[188] Susan Coutin, *The Odyssey of Salvadoran Asylum Seekers*, North American Congress on Latin America, (Sept. 25, 2007).
[189] *American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991).*
[190] USCIS, *American Baptist Churches v. Thornburgh (ABC)* Settlement Agreement (last updated Sept. 3, 2009). See also, Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L.No. 105-100, 111 Stat. 2160 (1997).

Operation Hold the Line (launched September 19, 1993)

In 1993, the El Paso Border Patrol sector launched Operation Hold the Line.[191] This operation deployed four hundred agents and vehicles stationed every 100 yards along the border to prevent illegal crossings.[192] The operation's emphasis on "deterrence" marked a dramatic shift towards militarization of the border and would serve as a model for a number of Border Patrol operations that followed.[193] The new model has proven deadly, as it forces migrants to take ever more remote and dangerous pathways across the border.

> **Fast Forward to Now:** In the past 25 years, nearly 10,000 migrants have died while crossing on the U.S. side of the border alone, and thousands more have disappeared. Almost all of them have been Mexican and Central American migrants attempting to enter the United States without inspection.[194]

Violent Crime Control and Law Enforcement Act, aka The Crime Bill (September 13, 1994)

The 1994 Violent Crime Control and Law Enforcement Act catalyzed the connection between immigration control and the criminal legal system. The bill committed $3 billion to border enforcement technologies, such as video surveillance and ground sensors, authorized the Attorney General to "bypass deportation proceedings for certain aggravated felonies,"[195] enhanced penalties for smuggling and passport fraud, and increased the penalty for certain illegal reentry convictions.[196] The Crime Bill also directly linked local law enforcement to federal immigration control by launching the Law Enforcement Support Center to help local police identify undocumented immigrants in their custody and establishing the State Criminal Alien Assistance Program to reimburse states and municipalities for immigration-related incarceration expenses.[197] The law was also a catalyst of mass incarceration, injecting $30,000,000,000 into the

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[191] Timothy J. Dunn, *Blockading the Border and Human Rights: The El Paso Operation that Remade Immigration Enforcement* (Austin: University of Texas Press, 2009).

[192] Dunn, *Blockading the Border and Human Rights*.

[193] U.S. Border Patrol, *Border Patrol Strategic Plan 1994 and Beyond: National Strategy* (Jul. 1994); Southern Border Communities Coalition, *Operation Gatekeeper and the Birth of Border Militarization* (last accessed Jul. 10, 2024) (similar program in San Diego); and, Kristina Davis, *Operation Gatekeeper at 25: Look Back at the Turning Point that Transformed the Border, Los Angeles Times* (Sept. 30, 2019).

[194] Human Rights Watch and Ari Sawyer, "U.S. House of Representatives Joint Hearing of Border Security and Enforcement and Counterterrorism Law Enforcement and Intelligence Subcommittees: The Real Cost of an Open Border: How Americans Are Paying the Price," Joint Hearing, Jul. 26, 2023; Jeffrey S. Passel and Jens Manuel Krogstad, "What We Know about Unauthorized Immigrants Living in the U.S.," *Pew Research Center* (Originally published Nov. 16, 2023); La Coalición de Derechos Humanos, "Left to Die: Border Patrol, Search and Rescue, & the Crisis of Disappearance" (2021).

[195] "Key Immigration Laws and Policy Developments Since 1986, Migration Policy Institute" (Mar. 2013).

[196] Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 1823 (1994). For more on the immigration law enforcement provisions in the Crime Bill see, Charis E. Kurbin, "Control and Compassion: The 1994 Crime Bill and Immigration," *Council on Criminal Justice* (n.d).

[197] Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 1823 (1994). For more on the immigration law enforcement provisions in the Crime Bill see, Lauren-Brooke Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System, Brennan Center for Justice* (Sept. 19, 2019). See also Udi Ofer, *How the 1999 Crime Bill Fed the Mass Incarceration Crisis, American Civil Liberties Union* (Jun. 4, 2019).

criminal legal system while creating dozens of new federal capital crimes, mandating life sentences for some repeat offenders, and incentivizing the hiring of 100,000 new state and local police officers. To see the visualization depicting the parallel rise in deportations and mass incarceration, go here.

Fast-Track Prosecutions (launched 1995)

In 1995, federal prosecutors along the U.S.-Mexico border invented a new type of plea bargain—known as the "fast track"—to expedite the prosecution of unlawful reentry cases and secure more guilty pleas. The "fast track" system offered defendants lower sentences, but required them to waive fundamental rights, such as the right to a grand jury indictment, to discovery, to make certain arguments for a lower sentence, and to appeal their sentence. Under fast track, the number of immigrants prosecuted for illegal re-entry soared from 7,475 in 1995 to 11,690 in FY 2004.[198]

Illegal Immigration Reform and Immigrant Responsibility Act (September 30, 1996)

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) made dramatic changes to virtually every aspect of the immigration enforcement system, creating the basic architecture of the modern deportation regime.[199] It created a new category of deportations that did not require hearings before Immigration Judges, known as "expedited removal," along with a new system to summarily screen people for asylum and reject them with little or no judicial review. Expedited removals quickly became an enforcement mechanism of choice at the border, as border patrol officials deployed it against people who previously would have been simply turned back or given voluntary departure. IIRIRA also permitted the use of expedited removal in the interior of the United States, although no administration attempted to exercise that power to the maximum extent permitted by the law until the Trump Administration.[200]

IIRIRA changed the legal machinery of border enforcement in other significant ways as well. It narrowed the Attorney General's authority to parole immigrants into the United States, requiring that it be issued "only on a case-by-case basis,"[201] and established authority to force people to wait in Mexico while their immigration cases were pending.[202] The government would gradually expand its use of those powers almost continuously over the next thirty years, including in the current administration's most recent policies.

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[198] Emily Ryo and Ian Peacock, "The Landscape of Immigration Detention in the United States: Special Report," American Immigration Council (Dec. 2018), 6; "Prosecuting People for Coming to the United States," *American Immigration Council* (Aug. 23, 2021), 6. See also Ingrid Eagly, "Prosecuting Immigration," *Northwestern University Law Review* vol. 4, no. 4 (2010), 1321 - 1325.

[199] Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546.

[200] Donald Kerwin, "From IIRIRA to Trump: Connecting the Dots to the Current US Immigration Policy Crisis," *Journal on Migration and Human Security* 6, no. 3 (2018): 192-204.

[201] "Humanitarian Parole Authority: A Legal Overview and Recent Developments," *Congressional Research Service* (Jan. 11, 2024), 3.

[202] "Humanitarian Parole Authority: A Legal Overview and Recent Developments," *Congressional Research Service* (Jan. 11, 2024).

IIRIRA's changes to interior immigration enforcement were equally significant. It substantially expanded the set of crimes triggering mandatory deportation regardless of an immigrant's family ties, length of residence, and other humanitarian concerns.[203] As the government read the law, many minor crimes—including simple drug possession offenses and other victimless offenses—triggered mandatory deportation. Although the courts would eventually narrow some of the government's most extreme readings of these provisions, many of them remain in place today.[204]

IIRIRA also created new rules barring individuals who have been unlawfully present for long periods of time from admission to the U.S. for up to ten years.[205] The "unlawful presence" bars are triggered once the immigrant leaves the United States. They therefore disproportionately affect noncitizens who entered without authorization and are therefore ineligible to adjust status within the U.S., unlike those who overstayed their visas and can under certain conditions become eligible to adjust status without departing the U.S.

IIRIRA also dramatically increased the government's authority to jail immigrants while their deportation cases were pending and, if they lost those cases, while awaiting repatriation.[206] The government also read the law to *require* that many immigrants be detained during the immigration court process.

This new detention authority fueled a massive expansion in the population of jailed immigrants, as immigration authorities essentially created a new prison system for non-citizens. The population of non-citizens detained on any given day increased from about 7,475 in 1995[207] to more than 50,000 in 2019.[208] According to the most-recently available data, 37,721 immigrants are detained on any given day in the United States.[209]

IIRIRA also provided new legal authority enabling federal immigration officials to both work directly with local law enforcement officers (under so-called "287(g)" agreements, and also during times of "mass influx") and utilize local arrest information to detain people in the name of immigration enforcement.[210]

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[203] Melina Juárez et. al., "Twenty Years After IIRIRA: The Rise of Immigrant Detention and its Effects on Latinx Communities Across the Nation", *Journal on Migration and Human Security* vol. 6, no. 1 (2018), 74.
[204] See *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (DUI is not an aggravated felony); *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010) (two misdemeanor possession offenses are not an aggravated felony), among others.
[205] 8 U.S.C. 1182(a)(9).
[206] 8 U.S.C. 1226(c); 1231(a)(6).
[207] Emily Ryo and Ian Peacock, "The Landscape of Immigration Detention in the United States: Special Report," *American Immigration Council* (Dec. 2018), 6.
[208] ICE Detainees Quick Facts Data, *Transactional Records Access Clearinghouse (TRAC) Immigration*, accessed Feb. 13, 2025.
[209] U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement, ICE fiscal year 2024 Annual Report (Dec. 19, 2023).
[210] American Immigration Council, The 287(g) Program: An Overview (Jul. 8, 2021).

> **Fast Forward to Now**: No single piece of legislation is more responsible for the massive expansion in federal detention and deportation than IIRIRA. Since January 2025, the Trump administration has significantly expanded the federal government's capacity to apprehend undocumented immigrants by using the expanded authorities introduced by this law. For example, between January and March 2025, the Trump administration signed a historic number of 287(g) agreements with local law enforcement agencies.[211]

Operation Global Reach (launched 1997)
A multi-million dollar initiative launched by the INS to stop undocumented border crossings through "overseas deterrence." The program lasted four years and established 40 offices around the world where US agents focused on gathering intelligence to interrupt migration flows to the United States.[212] This was an early example of "border externalization" operations that stop immigrants and refugees from arriving at U.S. borders.

***Zadvydas v. Davis* (June 28, 2001)**
The vast expansion in deportation authority under the 1996 laws led to the detention and deportation of many long-time lawful permanent residents with criminal convictions. Several thousand of those people were from countries that would not accept them for repatriation, including many from Vietnam, Cambodia, Laos, and Cuba who came here as refugees. The federal government claimed authority to jail them indefinitely, but the *Zadvydas* ruling held that Congress had only given the government about six months to detain immigrants in order to deport them. *Zadvydas* established a high-water mark for the rights of jailed immigrants, and is now under threat from the current Supreme Court.[213]

> **Humanizing the Story: Kim Ho Ma**
> Kim Ho Ma, one of the individuals challenging his prolonged detention in *Zadvydas*, came to the U.S. as a refugee from Cambodia at two years old, and had been a permanent resident since he was six years old. He was only 17 years old when he was convicted of the crime that made him deportable. Kim Ho participated in the documentary *Sentenced Home,* which was released in 2007 and followed three young Cambodians, including Kim Ho, through their deportation.[214]

The Ashcroft Raids (2001)
In the immediate aftermath of the 9/11 attacks, INS conducted mass dragnet operations targeting Muslim immigrant communities, mostly in the New York and New Jersey areas. The government jailed them in abusive conditions, held their deportation proceedings in secret, and refused to

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[211] Austin Kocher, "Trump is Quietly Building a Deportation Army out of State and Local Agencies" (Apr. 14, 2025).
[212] Adam Goodman, *The Deportation Machine: America's Long History of Expelling Immigrants* (Princeton: Princeton University Press, 2020), 184.
[213] *Zadvydas v. Davis*, 533 U.S. 678 (2001).
[214] *Sentenced Home*, directed by David Grabias and Nicole Newnham (Public Broadcasting Service (PBS), 2011).

release them even when judges ordered them released or deported. Ultimately, not a single one of them was found to have any connection to the 9/11 attacks.[215]

> **Humanizing the Story: Javaid Iqbal**
> Javaid Iqbal was one of the innocent men jailed during the Ashcroft raids. Details of his experiences appear very briefly in *Ashcroft v. Iqbal,* where the Supreme Court refers to them as "legitimate policy" producing only a "disparate, incidental impact on Arab Muslims." 556 U.S. 662 (2009). Iqbal was not in fact Arab, but rather a Pakistani immigrant, and was arrested in November 2001. Iqbal's arresting officers cited his possession of a letter from the INS and a magazine reporting on the 9/11 attacks to accuse him of being a terrorist sympathizer. Iqbal was detained and later transferred to a jail unit with other inmates arrested in the raids, where he was severely beaten by correctional officers at least twice and endured six months of psychological torture. Ultimately, in 2003, Iqbal agreed to voluntary removal and was deported to Pakistan.

National Security Entry-Exit Registration System (2002 - 2011)
The National Security Entry-Exit Registration System (NSEERS), required men admitted on non-immigrant visas from 25 countries, 24 of which were majority-Muslim (the other was North Korea), to report to immigration enforcement officers for interrogation. In the ten years that NSEERS was in effect, 80,000 noncitizens were subject to registration, nearly 3,000 were detained, and over 13,000 were placed in deportation proceedings. None of them were ever found to have engaged in terrorist activity. Advocates challenged NSEERS in court, arguing that it was discriminatory, but the courts rejected those challenges.[216] NSEERS was discontinued in 2011 and rescinded in 2016.[217]

Department of Homeland Security (March 1, 2003 to present)
The Homeland Security Act of 2002 combined a number of preexisting agencies including Immigration and Naturalization Service (INS) and the Border Patrol into a vast new agency called the Department of Homeland Security (DHS).[218] It began operation on March 1, 2003.[219] Within DHS, U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) inherited the powers of INS and the Border Patrol. The number of people detained and deported under the immigration laws has

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[215] David Cole, "The Grand Inquisitors," *New York Review of Books* 53, 54 (Jul. 19, 2007). See also, Muneer I. Ahmad, "A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion," *California Law Review* vol. 92, no. 5 (2004) 1259, 1278. (describing "gross overbreadth" of the "racial dimension" of the ostensibly religious classification of Muslims); see also Khaled A. Beydoun, "Islamophobia: Toward a Legal Definition and Framework," *Columbia Law Review Online* vol. 116, no. 7 (2016), 108, 111. For more, see Shirin Sinnar, "The Lost Story of Iqbal," *Georgetown Law Journal* vol. 105, no. 2 (2017), 379-439.
[216] *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008) (upholding deportation orders arising from NSEERS against statutory and constitutional challenges, including anti-discrimination claim).
[217] Removal of Regulations Relating to Special Registration Processes for Certain Nonimmigrants, 81 Fed. Reg. 94231 (Dec. 23, 2016).
[218] 6 USC 111(b).
[219] U.S. Department of Homeland Security, *Creation of the Department of Homeland Security* (last updated May 8, 2023).

greatly increased since the creation of DHS, as has federal spending on immigration enforcement.

***Demore v. Kim* (April 29, 2003)**
Demore upheld IIRIRA's mandatory detention provision, which requires the detention of all noncitizens with certain criminal convictions during their removal proceedings, even if they present no flight risk or danger. The Supreme Court subsequently read the law to require detention for the entire duration of removal proceedings, no matter how long they take. Mandatory detention serves as a crucial tool in advancing mass deportation, because people are far less likely to challenge their deportation when jailed.[220]

Operation Streamline (2005 to present)
Operation Streamline applies a "zero tolerance" approach to illegal entry/reentry prosecutions, using the fast-track method to facilitate mass proceedings in which as many as 80 immigrants are prosecuted together in a single hearing, with defendants pleading guilty *en masse*.[221] By 2011, Streamline had made unlawful entry/re-entry the most-commonly prosecuted charges in the history of U.S. federal criminal law.[222] Mexicans and Central Americans typically comprise 97% of all persons charged with such violations, making the enforcement of unlawful entry and re-entry charges one of the most highly racialized domains of the U.S. criminal legal system.[223]

Criminal Alien Program (2006 to present)
The Criminal Alien Program (CAP), which is currently Immigration and Customs Enforcement (ICE)'s largest deportation program, is responsible for between ⅔ and ¾ of all deportations from the U.S.[224] It allows ICE officials access to local and state jails to interrogate people without a lawyer present.[225] ICE agents use this information to identify people to send to immigration detention facilities.[226] During some periods it has accounted for as much as ⅔ to ¾ of all deportations from the U.S.[227] Because it piggybacks on state criminal legal systems, CAP ensures that ICE's enforcement policies mirror the discrimination inherent in those regimes.

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[220] *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 538 U.S. 281 (2018).
[221] Ingrid V. Eagly, "Prosecuting Immigration," *Northwestern University Law Review*, vol. 104, no. 4, (2010), 1327. See also National Immigration Forum, *Fact Sheet: Operation Streamline* (Sept. 1, 2020).
[222] TRAC Immigration, *Illegal Reentry Becomes Top Criminal Charge* (Jun. 10, 2011).
[223] Eric S. Fish, "Race, History, and Immigration Crimes," *Iowa Law Review* vol. 107, no. 1051 (2022).
[224] Immigrant Legal Resource Center, *ICE'S Criminal Alien Program (CAP): Dismantling the Biggest Jail to Deportation Pipeline* (2016).
[225] Immigrant Legal Resource Center, *ICE'S Criminal Alien Program (CAP): Dismantling the Biggest Jail to Deportation Pipeline* (2016).
[226] Immigrant Legal Resource Center, *ICE'S Criminal Alien Program (CAP): Dismantling the Biggest Jail to Deportation Pipeline* (2016).
[227] Immigrant Legal Resource Center, *ICE'S Criminal Alien Program (CAP): Dismantling the Biggest Jail to Deportation Pipeline* (2016).

Secure Fence Act (October 26, 2006)
Authorized the construction of 700 miles of double-layered fencing along the U.S.-Mexico border and required the Department of Homeland Security to achieve "operational control" of the U.S.-Mexico boundary.[228]

Controlled Application Review and Resolution Program (2008 to present)
The Controlled Application Review and Resolution Program (CARRP) targeted certain people trying to immigrate but who were deemed a "national security concern."[229] Once flagged, an application for benefits cannot be granted, even if there is no lawful basis to deny it. CARRP overwhelmingly affects Muslims and people from countries with large Muslim populations, including thousands of people seeking to naturalize.[230] Applicants flagged under CARRP have no notice or opportunity to challenge their designation as national security concerns, even though the program "relies on deeply flawed mechanisms to identify 'national security concerns,' including error-ridden and overbroad watch-list systems and security checks; and religious, national origin, and associational profiling."[231] In 2025, a court found the CARRP program unlawful.[232]

Secure Communities (2008 to present)
Secure Communities (S-Comm) created a data sharing system between federal immigration enforcement and state and local law enforcement agencies. Under S-Comm, whenever local authorities fingerprinted someone, their prints were automatically shared with federal immigration authorities. Federal authorities would then order local officials to detain the targeted immigrant until federal agents could take them. By 2013, the program operated in every prison and jail in the United States.[233] The net effect, according to former ICE Secretary Julie L. Myers, was to "create a virtual ICE presence at every local jail."[234] S-Comm was crucial to the Obama Administration's mass deportation policy, which led to the removal of 3 million people.[235] A detailed study of data concerning where ICE chose to introduce S-Comm revealed that ICE targeted communities with high percentages of Latino migrants (rather than, for example, high crime areas). As the study's authors explained, "[i]t is very difficult to square the lack of any meaningful correlation between early activation and local crime rates with the government's putative desire to target immigration enforcement resources in a manner designed to reduce the incidence of serious crime by noncitizens." Instead, they found, "the data reveal that early

[228] *Fact Sheet: The Secure Fence Act* (Oct. 26, 2006).
[229] Jennie Pasquarella, *Muslims Need Not Apply: How USCIS Secretly Mandates the Discriminatory Delay and Denial of Citizenship and Immigration Benefits to Aspiring Americans*, *American Civil Liberties Union of Southern California*, Aug. 21, 2013.
[230] Immigrant Legal Resource Center, *ICE'S Criminal Alien Program (CAP): Dismantling the Biggest Jail to Deportation Pipeline* (2016).
[231] Immigrant Legal Resource Center, *ICE'S Criminal Alien Program (CAP): Dismantling the Biggest Jail to Deportation Pipeline* (2016).
[232] American Civil Liberties Union, *Court Rules Cruel Immigration Policy is Unlawful* (Jan. 17, 2025).
[233] Muzaffar Chishti, Sarah Pierce, and Jessica Bolter, "The Obama Record on Deportations: Deporter in Chief or Not?" (Migration Policy Institute Jan. 26, 2017).
[234] Jessica Pishko, "When Sheriffs Choose to Help ICE," *The Appeal* (Jun. 9, 2020).
[235] Jean Guerrero, "3 Million People were Deported Under Obama. What Will Biden Do About It?," *New York Times*, Jan. 23, 2021.

activation in the program correlates strongly with whether a county has a large Hispanic population . . . [the correlation] persists even when we control for myriad other factors."[236] Similarly, scholars have documented how collaboration between local law enforcement and federal immigration enforcement allows the well-documented anti-Black racism in the criminal legal system to create particularly high detention and removal rates for Black immigrants.[237]

Eventually, many state and local jurisdictions adopted "sanctuary" policies that forbade their law enforcement authorities from sharing information with federal immigration authorities in some or all cases. However, data-sharing and other forms of state and local immigration enforcement remain in place in many other parts of the country.[238]

The Bed Mandate (2009 to present)
The population of immigrants jailed by ICE increased rapidly after 1996, but exploded after 2009. In that year, Congress began requiring the Department of Homeland Security to maintain at least 33,400 immigrant detention beds daily. In 2017, Congress ended the mandate,[239] but by FY 2019, the average daily population of jailed immigrants hit a historic high of 50,165.[240] The number of immigrants in detention dropped during the COVID pandemic but has since increased. As of July 14, 2024, ICE held 37,004 immigrants in detention.[241] Mexicans, Salvadorans, Guatemalans, and Hondurans compose 89% of detained immigrants. Immigrants from Black-majority countries also report a disproportionate share of abuse in detention.[242] Approximately 1% of the immigrants in detention are from Europe or Canada.[243]

Deferred Action for Childhood Arrivals (June 15, 2012 to present)
After the DREAM Act, which would have provided a path to permanent status for certain undocumented youth, failed to pass Congress, President Obama, under pressure from undocumented organizers, announced Deferred Action for Childhood Arrivals (DACA). DACA offers temporary protection from deportation and employment authorization on a renewable two-year basis to certain undocumented immigrants brought to the United States as children.[244] At one point the program protected more than 800,000 undocumented people, 80% of whom

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[236] Adam B. Cox and Thomas J. Miles, "Policing Immigration," *The University of Chicago Law Review*, vol. 80 (2013).
[237] Karla M. McKanders, "Immigration and Racial Justice: Enforcing the Borders of Blackness," 37 Ga. St. U. L. Rev. 1139, 1160–69 (2021).
[238] American Civil Liberties Union, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System* (Jun. 2014).
[239] Anita Sinha, "Arbitrary Detention? The Immigration Detention Bed Quota," *Duke Journal of Constitutional Law & Public Policy*, vol. 12 (2017), 77-121.
[240] Immigration and Customs Enforcement, *ERO FY 2019 Achievements*.
[241] ICE Detainees Quick Facts Data, *Transactional Records Access Clearinghouse (TRAC) Immigration*, accessed Feb. 13, 2025.
[242] Black Alliance for Just Immigration, Et al, *Uncovering the Truth: Violence and Abuse Against Black Migrants in Immigration Detention* (2022), 9.
[243] Emily Ryo and Ian Peacock, "The Landscape of Immigration Detention in the United States: Special Report," *American Immigration Council*, report, (Dec. 2018), 9.
[244] Remarks of President Barack Obama on Immigration Reform and an Exchange with Reporters, Daily Comp. Pres. Docs., 2012 DCPD-201200483 (Jun. 15, 2012).

were Mexican (and 10% of whom were Central American). While providing crucial temporary deportation relief for those who qualified, DACA fell short of the permanent relief the DREAM Act would have provided, and indeed no broad legalization law has passed Congress since 1986. In 2017, the Trump administration attempted to terminate DACA; however, in 2020, the Supreme Court overturned that termination, but on-going litigation has closed the program to new applicants for the last five years.[245] A final decision on DACA's legality is likely in the next few years.

Plan Frontera Sur (2014 to 2018)
The United States begins paying Mexico $2 million annually to deport Central American migrants to their home countries. Externalizing U.S. border control to Mexico further diminished the rights of Central American migrants. According to the historian Adam Goodman, "Mexico was not a signatory to the 1951 United Nations Convention Relating to the Status of Refugees, nor the subsequent 1967 protocol. Moreover, under Article 33 of the Mexican Constitution the government had the right to deport foreigners without due process. As a result, migrants faced abuse from Mexican migration officials, police, and criminals alike."[246]

Executive Order 13769, aka The Muslim Ban (January 27, 2017 to January 20, 2021)
Throughout his campaign, Donald Trump promised a "total and complete ban on Muslims entering the United States."[247] Once in office, Trump issued Executive Order 13769 barring entry for individuals from seven Muslim-majority countries.[248] In response to legal challenges the administration modified the ban twice.[249] The Supreme Court upheld it in *Trump v. Hawaii,* ruling that the Trump administration's stated national security rationale justified the order. The Court ruled it need not consider any evidence purporting to support the order or the President's numerous racist remarks justifying it.[250]

> **Fast Forward to Now**: In 2025, the second Trump Administration adopted a new, more expansive ban that covers nineteen countries for near-complete or partial immigration bans, including many nations in Africa as well as Haiti and Venezuela—two countries from which very large numbers of immigrants have come to this country seeking humanitarian protection in recent years.

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[245] *Department of Homeland Security v. Regents of the University of California,* 591 U.S. ___ (2020).
[246] Adam Goodman, *The Deportation Machine: America's Long History of Expelling Immigrants* (Princeton: Princeton University Press, 2020), 183.
[247] Jessica Taylor, "Trump Calls For 'Total And Complete Shutdown Of Muslims Entering' U.S.," *National Public Radio*, Dec. 7, 2015.
[248] See Exec. Order No. 13769 ("Protecting the Nation from Foreign Terrorist Entry into the United States"), 82 FR 8977 (Jan. 27, 2017). The original seven countries targeted by the ban were Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. By the time the Supreme Court considered it, it applied to most non-citizens from Chad, Iran, Iraq, Libya, North Korea, Syria, and Yemen, and certain governmental officials from Venezuela.
[249] "Protecting the Nation From Foreign Terrorist Entry Into the United States," Executive Order of Mar. 6, 2017. [The White House]. See also Pres. Proclamation No. 9,645, 82 FR 45161 (Sept. 24, 2017).
[250] "Protecting the Nation From Foreign Terrorist Entry Into the United States," Exec. Order No. 13780, 82 FR 13209 (Mar. 6, 2017). See also Pres. Proclamation No. 9645, 82 FR 45161 (Sept. 24, 2017).

Attempt to End Temporary Protected Status (Beginning in 2018)
The Trump administration terminated the Temporary Protected Status (TPS) of 400,000 immigrants, many of whom had lived here for decades, from El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. In rejecting a proposal to grant them permanent status, Trump called immigrants from Haiti, El Salvador, and unspecified African nations "people from shithole countries" and suggested the U.S. should have more migration from countries "like Norway" instead.[251] TPS holders and their U.S. citizen children successfully sued to halt the terminations.[252] The federal court decision in their favor relied in part on the detailed evidence of racism motivating the decision. In June of 2023, the Biden administration ended the lawsuit by restoring TPS for those countries.[253]

> **Humanizing the Story: Cristina Morales and Crista Ramos**
> Cristina Morales and her daughter U.S. citizen daughter Crista Ramos were the lead plaintiffs in the *Ramos* lawsuit challenging the first Trump administration's efforts to end TPS. Morales grew up in El Salvador in the midst of the civil war, and she eventually fled after her abusive father began stalking her. Morales had TPS at the time the Trump administration announced the termination for El Salvador, and she decided to fight back. She contacted her local committee of the National TPS Alliance, and eventually became the lead plaintiff in the lawsuit. Morales and her daughter have been vocal about the effect the precarity of her status had on them, and they have remained advocates for others with precarious statuses towards pathways for permanent immigration relief.[254]
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> **Fast Forward to Now:** Since January 2025, the second Trump administration has taken a number of steps to end TPS for large groups of people, including Venezuelans, Haitians, and others. Immigrants' rights advocates have challenged these efforts in court.

Zero Tolerance and Family Separation (April 11, 2017 to present)
On April 11, 2017, U.S. Attorney General Jeff Sessions announced the Trump administration's "zero tolerance" policy to prosecute all undocumented border crossers, which it used as an excuse to justify its family separation policy. In fact, it applied that policy to families who requested asylum at ports of entry, and continued separation long after any criminal charges were resolved.[255] When announcing the program at a press conference in San Diego, Attorney General Sessions stated, "It is here, on this sliver of land, where we first take our stand against this

[251] Ali Vitali, Kasie Hunt and Frank Thorp V, "Trump referred to Haiti and African nations as 'shithole' countries," *NBC News*, Jan. 11, 2018.
[252] *Ramos v. Nielsen*, 336 F. Supp. 3d. 1075 (N.D. Cal. 2018).
[253] Press Release: DHS Rescinds Prior Administration's Termination of Temporary Protected Status Designations for El Salvador, Honduras, Nepal, and Nicaragua (Jun. 13, 2023).
[254] Marcela Valdes, "Their Lawsuit Prevented 400,000 Deportations. Now It's Biden's Call.," *New York Times*, Jul. 26, 2021.
[255] Jeff Sessions, Memorandum for Federal Prosecutors Along the Southwest Border: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a) (Apr. 6, 2018).

filth."[256] Federal authorities seized nearly 5,000 children from their parents with no mechanism in place to reunite children with their parents once released from custody. On June 20, 2018, President Trump issued an executive order to end family separations but, as of April 16, 2024, 1,401 children had yet to be reunited with their families.[257]

Title 42 (March 2020 to May 2023)
During the COVID-19 pandemic, the government invoked Title 42, a 1944 public health law, to quickly expel immigrants at the border and deny entry to asylum seekers.[258] This provision was applied in a discriminatory manner. In 2021, the government summarily expelled over 15,000 Haitian asylum seekers, mostly under this authority, despite having just deemed Haiti unsafe.[259] In contrast, it exempted Ukrainians fleeing the war with Russia from the Title 42 regime and allowed them to cross the border.[260] See our data visualization here for more on the government's use of Title 42 expulsions to accomplish forcible removal.

Country-Based Parole Programs (2021 to 2025)
In 2021 and 2022, the federal government utilized three large-scale programs to allow people from certain countries facing humanitarian or political crises to enter the United States. After the United States withdrew from Afghanistan, the Biden Administration created strict rules and rigorous procedural requirements for Afghan nationals seeking humanitarian protection in the United States.[261] [262] The government processed only about 8,000 of the 60,000 applications and granted only 123 of them.[263] The program effectively ceased in November 2021.[264]

In contrast, after Russia invaded Ukraine, the government established a far more generous parole program for Ukrainians.[265] As of March 2024, more than 187,000 Ukrainians had arrived in the United States under the "U4U" program, and immigration officials had approved nearly 50,000

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[256] Press Release: Attorney General Jeff Sessions Announces Department of Justice's Renewed Commitment to Criminal Immigration Enforcement (Apr. 11, 2017). See also Michael D. Shear et. al., "We Need to Take Away Children," No Matter How Young, Justice Dept. Officials Said," *New York Times*, last updated Oct. 28, 2021.
[257] Department of Homeland Security, *Family Reunification Task Force Progress Reports*.
[258] Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons into the United States from Designated Foreign Countries or Places for Public Health Purposes, 85 FR 16559 (Mar. 24, 2020).
[259] Lomi Kriel & Uriel J. Garcia, "Biden Administration Speeds Up Deportation Flights for Haitians in Growing Texas Migrant Camp," *Texas Tribune* (Sept. 18, 2021). See also, Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. 41863 (Aug. 3, 2021).
[260] Matthew S. Davies, *Memorandum on Title 42 Exceptions for Ukrainian Nationals, U.S. Customs and Border Protection* (Mar. 11, 2022).
[261] *Memorandum on the Designation of the Department of Homeland Security as Lead Federal Department for Facilitating the Entry of Vulnerable Afghans into the United States*, Daily Comp. Pres. Docs. No. DCPD202100690, (Aug. 29, 2021).
[262] USCIS, *Information for Afghan Nationals on Requests to USCIS for Parole* (last updated Apr. 1, 2024).
[263] Ahilan T. Arulanantham, "Reversing Racist Precedent," *The Georgetown Law Journal* vol. 112, no. 3 (2024), 439, 493.
[264] Camilo Montoya-Galvez, "U.S. To Discontinue Quick Humanitarian Entry for Afghans and Focus on Permanent Resettlement Programs," *CBS News*, (Sept. 2, 2022).
[265] *Fact Sheet: An Overview of the "Uniting for Ukraine" Program, American Immigration Council*, (Jan. 13, 2023).

more. Overall, more than half a million Ukrainians have come to the United States since the war.[266]

The government has since launched similar parole programs for people from Cuba, Haiti, Nicaragua, and Venezuela (collectively known as the CHNV Program).[267] Unlike the Ukraine program, the CHNV Program contains a numerical cap limiting the number of people who can be paroled into the country each month to 30,000 per month (total).[268] About 500,000 people have come to the U.S. under it. Texas and other states challenged it in court, but lost.[269] On March 25, 2025, the Department of Homeland Security announced its plan to terminate the CHNV Program.[270] Immigrants' rights groups have challenged that action in court.

Asylum Ban (June 4, 2024 to present)
On June 4, 2024, President Biden issued "A Proclamation on Securing the Border," which bars access to asylum for nearly all people seeking protection at the border other than those given advance appointments to do so. This ban remained in effect through the end of President Biden's term. On January 20, 2025, President Donald J. Trump suspended all refugee admissions into the United States.[271] On February 7, 2025, President Trump made an exception to this suspension by offering refugee status to Afrikaners, the white descendants of Apartheid in South Africa.[272]

Los Angeles Declaration on Migration and Protection (July 1, 2024 to present)
On July 1, 2024, the Department of Homeland Security announced that the U.S. Department of State would begin to provide the government of Panama with funds to "remove foreign nationals who do not have a legal basis to remain in Panama." Conceived of as a regional approach to stopping migrants, including asylum seekers, who cross the Darien Gap from reaching the United States, it is a program that "externalizes" U.S. immigration control priorities and operations.[273]

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[266] Montoya-Galvez, "In 2 Years Since Russia's Invasion a U.S. Program has Resettled 187,000 Ukranians with Little Controversy," *CBS News* (Apr. 24, 2024). As of March 2024, an additional 350,000 Ukrainians had arrived in the United States through temporary visas and other pathways (besides the U4U parole program).
[267] American Immigration Council, *The Biden Administration's Humanitarian Parole Program for Cubans, Haitians, Nicaraguans, and Venezuelans: An Overview* (Oct. 31, 2023). See also, USCIS, *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans* (last updated Apr. 4, 2024).
[268] American Immigration Council, *The Biden Administration's Humanitarian Parole Program for Cubans, Haitians, Nicaraguans, and Venezuelans: An Overview* (Oct. 31, 2023). See also, USCIS, *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans* (last updated Apr. 4, 2024).
[269] *United States v. Carrillo-Lopez*, 555 F.Supp.3d 996, 1010 (D. Nev. 2021). See also Michelle Rindels and Riley Snyder, "Nevada judge says immigration law making reentry a felony is unconstitutional, has racist origins," *The Nevada Independent* (Aug. 18, 2021).
[270] Federal Register, *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans* (Mar. 25, 2025)
[271] "A Proclamation on Securing the Border," Jun. 4, 2021. [The White House].
[272] "Addressing Egregious Actions of The Republic of South Africa," Feb. 7, 2025. [The White House].
[273] "United States Signs Arrangement with Panama to Implement Removal Flight Program," Jul. 1, 2024. [U.S. Department of Homeland Security]. See also "Los Angeles Declaration on Migration and Protection," Jun. 10, 2022. [The White House].

Fast Forward to Now: Since the beginning of the second Trump administration, the government has reached several international agreements to deport migrants to so-called "third countries" (i.e., countries to which migrants have no prior connection). The administration has sent Mexicans and Laotians to South Sudan, for example. Immigrants' rights advocates sued to challenge this practice, arguing that such individuals must be afforded an opportunity to raise asylum and related claims to challenge their deportation to third countries, but the Supreme Court has allowed it to continue.[274]

[274] See *DVD v. DHS*, No. 1:25-cv-10676 (D. Mass. Mar. 23, 2025). *DHS v. DVD*, 145 S.Ct. 2153 (2025).