

Abolishing the Toxic “Tough-on-Immigration” Paradigm

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“The greatest purveyor of violence in the world today [is] my own government.” – Dr. Martin Luther King (1967)¹

Abstract

This article contextualizes and examines the tough-on-immigration paradigm that has driven both Republican and Democratic immigration policies. First, this article traces the evolution of the sociopolitical construct of the undeserving criminal alien, a non-White person deemed a threat to White free personhood, to demonstrate how this construct legitimizes tough-on-immigration policy prescriptions. Second, the article demonstrates how elected officials since the Reagan administration have crafted immigration policies solely through the tough-on-immigration paradigm as a tactic to obtain political power. Third, this article illustrates how both political parties leading up to the 2020 presidential election continue to preserve the tough-on-immigration paradigm even in opposition to the Trump administration. Finally, the article proposes a new reparative justice paradigm for immigration policy that follows the lead of organizers and those directly impacted in order to address the root causes of human displacement.

Introduction

In October 2018, a caravan of about 7,000 people from Central America seeking refuge from extortion, state and gang violence, femicide, and the effects of climate change were violently met with hundreds of Federal Mexican Police forces on the Guatemala–Mexico border armed with tactical gear and training largely provided by the United States.^{2,3} As if preparing for war, Trump mobilized nearly 6,000 troops on the US–Mexico border, issued an executive order authorizing military personnel to use “force [including lethal force, where necessary],”⁴ and issued a proclamation suspending asylum rights for all people on the caravan because “the mass migration of aliens with no basis for admission . . . precipitated a crisis.”⁵ When the caravan arrived at San Ysidro, Customs and Border Patrol (CBP) shut down the border and fired rubber bullets and tear gas to prevent them from crossing. Meanwhile, on the US side of the border, nearly 15,000 children and thousands of adults, a majority of whom are from Central America, were held in cages, often up to 20 people in one, causing abuse, trauma, and the deaths of two children.^{6,7,8} In the backdrop, the government was shut down over Trump’s border wall by falsely declaring that

immigrants were flooding the border bringing crime, drugs, and violence.⁹

While Trump's actions against immigrants have been overwhelming, they are not new. Rather, they stem from the toxic cycle of tough-on-immigration policies built across multiple administrations. This cycle uses state-sanctioned violence such as military force, caging, and policing to separate families and control displaced people as an ordinary practice to maintain the dominant law-and-order system of subordination to divide social and political mobility on a global hierarchy by race, class, gender, sexuality, and citizenship status.^{10,11} The tough-on-immigration toxic cycle, a global phenomenon, begins with the false—but powerfully persuasive—dehumanizing narrative that “illegal (criminal) aliens,” particularly from non-European “shithole” countries, are invaders threatening the economic, social, moral, and political interests of the country's citizens. Once designated as threats and undesired populations, immigrants are systematically linked to criminality to facilitate their permanent exploitation and marginalization, positioned against a struggling poor White class.¹² This positioning then moves those with political power, i.e., poor White class, to legitimize the use of the police, prisons, and the criminal legal system to control or eliminate the “criminal alien.”^{13,14,15} Throughout this entire process, corporate shareholders, politicians, and social elites reap massive benefits from investing in the law-and-order system that punishes and removes the “criminal alien” as a means to regulate a stable global supply of labor to exploit from predominantly non-White people with little to no legal and political powers to resist, i.e., factory workers, farm laborers, and domestic workers.¹⁶ In doing so, elite corporate and political classes facilitate a global social stratification by creating a race to the bottom and social death of undesirable groups through state violence like private prisons or militarized borders, for example.^{17,18,19,20} At the

center of this toxic cycle are the millions of human beings whose dreams, hopes, and bodies are bruised, abused, and disposed as if they were meaningless byproducts of the law-and-order system of subordination.^{21,22}

Historically, despite state repression coalitions of multiethnic, immigrant, and working-class peoples, particularly along border states, immigrants have successfully organized to challenge the law-and-order system to secure labor, immigrant, and civil rights and liberties.²³ Such movements, often led by women and queer folk of color, have recognized that struggles against prisons, police, state violence, capitalism, imperialism, and military occupations are inextricably linked

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to the global immigrant struggle.^{24,25} Yet the dominant discourse for immigration reform is often presented as a binary that supports the deserving immigrant while punishing the undeserving “criminal alien” via increased border security and detention policies.²⁶ Such binary organizing has led to some temporary, and important, wins, such as the Deferred Action for Childhood Arrivals (DACA) program, the 1986 Immigration Reform and Control Act, stopping the 2005 Sensenbrenner Immigration Bill (H.R. 4437), suspending Sessions's zero-tolerance policy, sanctuary bills, and various state wins. However, as legal scholar Angelica Chazaro recently outlined, the binary framing has also widened who qualifies as the undeserving “criminal alien” and strengthened the deportation machine.²⁷ Today, both parties operate solely within the dominant binary evident by their immigration

policy proposals: both call for tougher border security, more funds for detention and deportation, and prioritized removals of the criminal alien, despite rejecting President Trump's demand for a physical border wall.²⁸ Ultimately, as immigrant-rights groups like United We Dream have recognized, tough-on-immigration politics only marginally help the small portion of immigrants characterized as deserving at the expense of feeding more and more people designated as criminal aliens through the deportation machine.²⁹

This article has three aims. First, it traces the evolution of the sociopolitical construct of the undeserving criminal alien to demonstrate how it serves as the basis for the tough-on-immigration paradigm and, thus, toxic immigration policies. Second, this article demonstrates how the tough-on-immigration paradigm continues to shape immigration policy across both parties today. Third, this article calls for the abolition of the tough-on-immigration paradigm and highlights the calls of organizers for a new reparative justice paradigm. This new paradigm must reconcile how the US law-and-order capitalist system continues to produce mass global human displacement, violence, and instability, primarily from communities of color in the global south, for exploitative labor practices as well as how the criminal and immigration legal systems are used as a social death "purgatory" for people designated as undesirable or criminal aliens.³⁰

Constructing the Threat of the Alien Invader

In 1790, as a European settler-colonial state, Congress established citizenship as "free White persons of good character" who had resided in the United States for at least five years.³¹ This definition was designed to exclude Native Americans and Africans who were freed or enslaved as well as Asian and Latinx peoples, all deemed threats to freed White personhood. The state's role was to

protect and advance all economic, civil, and political interests of White citizens while denying, or at the expense of, noncitizens (i.e., non-Whites).^{32,33} Rooted in the historical practice of European conquest-violence and under the doctrine of Manifest Destiny, the myth of Anglo-Saxon superiority, embedded in US citizenship, was created by political and economic elites to convince a majority poor White populace that they were entitled to the lands, and fruits from those lands, they occupied by eliminating Native Americans and non-White Mexican peoples—both characterized as sub-species invaders who were inherently vicious and criminal without any right to land—as well as by subjecting Black people to slavery and bondage.^{34,35,36} Accordingly, in 1798, Congress passed the Alien and Sedition Acts, which made aliens "liable to be apprehended, restrained, secured, and removed" during wartime under orders of the president—a precursor to Trump's emergency powers.³⁷ By the 1820s, as the United States occupied western Mexican and Native lands, US settlers developed a complex and profitable system of leased convict labor in which those labeled as noncitizens or aliens, overwhelmingly Native, African, mulatto, and mestizo people, were imprisoned on public charges (e.g., sleeping on the street, requiring public assistance) or as enemies of war. This included criminalizing habits of immigrants that were deemed to threaten White people, like the Chinese Exclusion Act of 1882, which criminalized opium smoking on the notion that it threatened the moral system of Whites but also as a tactic to protect White laborers.³⁸ Once imprisoned, criminal aliens were forced to build and maintain new Western cities.³⁹ As more White citizens occupied these lands, entire classes of people who posed a challenge to this system were labeled as criminals and/or aliens and excluded from citizenship and state protection.^{40,41} This included anarchists, communists and/or socialists, the poor and illiterate, racial minorities, LGBTQ people, and

laborers from China, Southeast Asia, India, and the Middle East.⁴²

At the turn of the 20th century, as the growing capitalist society required more bodies to exploit for profit, vast numbers of immigrant groups were granted admission to fill the necessary role for White citizens to achieve a newly fabled American Dream mobility into a White middle class subsidized by high tax rates and redistributive policies.^{43,44,45,46} Specifically, the Immigration Act of 1924 created restrictive racial quotas, ensuring that over 90 percent of new arrivals were White Europeans, prevented immigrants from the global south countries to enter—with the large exception of noncitizen Mexican laborers—and created the border patrol to deport non-White immigrants through nearly 100 years of brutality and impunity.^{47,48} Accordingly, the United States subsidized the construction of White-flight cities for White citizens from the profits generated by exploited immigrant, Black, and Native labor while also creating local borders that segregated immigrants and non-White people to guarantee their legal and physical exclusion from the American Dream.^{49,50} As demonstrated by the Bracero Program and Operation Wetback, the constant threat of physical removal, or elimination, was the main state strategy to control an immigrant labor force and prevent labor unionizing.⁵¹ When immigrant groups were deemed undesirable or a threat to Whiteness, political and economic elites—some of whom were openly segregationist and White supremacist—characterized immigrants as hyper-violent, diseased, drug addicted, and criminal. This weaponized racial animus and economic instability to stir a panic of White extinction and, thus, legitimize state control or elimination of the criminal alien.^{52,53} Specifically, the War on Drugs, created by the Nixon administration in the 1960s, masterfully developed a massive military/police, prison, and legal apparatus to control/eliminate the non-White criminal alien under the veil of national security while never addressing the

root causes of drug addiction. During Cold War efforts, the United States intervened in Latin America, the Middle East, and East and Southeast Asia to advance US corporate interest (then extracting wealth to build White US cities) through supporting brutal dictatorships and police and prison infrastructures and controlling financial and monetary policies that created the conditions for civil wars, gang/cartel violence, human rights violations, corrupt governance, and human displacement.^{54,55,56,57} As displaced people sought refuge in the United States, the tough-on-immigration paradigm became the ordinary state practice cemented into law with the goal of creating a permanent class of human capital to exploit to sustain US capitalist and imperialist goals.^{58,59,60}

In all, the criminal alien invader is a racialized sociopolitical construct to facilitate subjugating non-White immigrant bodies.^{61,62} This construct is the foundation for the tough-on-immigration paradigm that causes immigrants to experience three major subjugations: (1) they experience poverty, violence, and displacement in their home countries largely created by interventionist policies that serve capitalist interests; (2) once forced to relocate to the United States through violent routes, immigrant labor is exploited to build wealth for predominantly White middle and upper classes, while immigrants are systematically denied the fruits of their labor; (3) if deemed unnecessary, immigrants are vilified for the economic, cultural, and social woes of the United States as a method to forcibly remove them and to draw attention away from how governance structures and policies overwhelmingly serve an elite class that pit working-class people against one another in a global race to the bottom.^{63,64} Today, this is best exemplified by Amazon, the fastest-growing and one of the most profitable companies in the world, whose business model relies on exploitative labor practices of undocumented immigrant and temporary

low-income workers worldwide while also demanding mass government corporate welfare that drains public resources intended to help the poor and investing millions to deport immigrants, prevent workers from unionizing, and segregate cities.^{65,66,67,68,69}

The Tough-on-Immigration Paradigm

Trump's "Make America Great Again" presidential campaign was a logical extension of centuries of the same law-and-order politics—specifically, the 1950s brand of conservatism.⁷⁰ Staying true to the principles of Manifest Destiny, Trump painted America as being invaded by Mexicans who were “rapists, criminals,” and responsible for America's economic demise and positioned himself as its only savior.⁷¹ He then enlisted his voters—the “forgotten [White] citizen”—to join him in the war to save America, build a wall, and reap the benefits of their future wins.⁷² Leading up to the 2018 midterm as his voters struggled financially, despite a \$1.5 trillion welfare subsidy for the rich, Trump and Republicans reignited the threat narrative, manufacturing a crisis that Central Americans were criminals “invad[ing] the US” to drain public resources and vote for Democrats.⁷³ Invoking the spirit of the Alien Enemies Act of 1798, Trump vowed to declare a national emergency to construct a wall that would secure America by apprehending and removing immigrants.

While Trump represents an explicit use of the tough-on-immigration paradigm, the tactic of rallying up voters by stirring fear that criminal aliens are invading to harm the United States is not new. Historically, the criminal alien threat has been used as a persuasive political tool by both parties to pass draconian tough-on-immigration measures harming *all* immigrants.⁷⁴ The paradigm is sustained by two major forces: (1) a nihilistic capitalist system that influences the political process to provide a steady stream of vulnerable non-citizen people to exploit for profit and (2) a two-party system that amasses political power

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Reaganomics, IRCA, and IIRIRA

Following decades of cyclical economic crises, Reaganomics revitalized the law-and-order system by providing mass subsidies to multinational corporations and increasing military and border patrol for interventions in Latin America and border wars against immigrants. Reagan's goal was to extract wealth globally, through multinational corporate sharecropping, and redistribute a small percentage of profits to “forgotten” White citizens.^{78,79} However, in a race to the bottom, Reaganomics led to mass wage cuts/stagnation and job insecurity through anti-union initiatives that positioned immigrants to replace workers for increasingly low-quality jobs while destabilizing Latin American and South Asian countries, causing mass displacement.^{80,81} In response to mass displacement, immigrant rights groups called for comprehensive immigration reform. As a result, the Immigration Reform and Control Act (IRCA) provided amnesty to three million “deserving” undocumented immigrants with no more than three misdemeanors, such as drug offenses or public intoxication, or a felony with proof they resided in the United States since 1982.^{82,83} IRCA also established that immigrants who would be public charges, meaning people who could become “primarily dependent on the government for subsistence,” be denied

legal status.⁸⁴ Concurrently, the law strengthened border security, expanded border patrol powers, made it illegal to hire undocumented laborers, and expanded the “illegal” category to all those who entered after 1986—over six million people.⁸⁵

From 1980 to 1996, as Republicans gained more seats from Democrats, particularly in southern border states, Reagan established the modern legal and political architecture of the tough-on-immigration paradigm, often veiled within the War on Drugs. This became the dominant political tactic for both parties to obtain power from a base of White voters while serving corporate interest.^{86,87} For example, George H.W. Bush signed the Immigration Act of 1990, which prioritized admission to deserving high-skilled laborers who could contribute to economic development while stiffening border security, expanding border patrol, and immigration prisons. Similarly, in 1994, California passed Proposition 187 with a multiethnic coalition that banned undocumented immigrants from accessing public services and required that Californians report anyone suspected of being undocumented.^{88,89} The nativist campaign blamed immigrants for California’s economic troubles to divert attention from years of corporate subsidies and tax cuts for the wealthy, which led to historic cuts to public services.^{90,91} Proposition 187 was used by wealthy elites to “terrorize the low-wage workforce [overwhelmingly Latinx] into accepting even worse working conditions and even lower wages” because they could not unionize, know their rights, or demand better work conditions with the threat of deportation.⁹²

Building from Reagan’s welfare cuts and national nativist sentiment, Bill Clinton campaigned on a tough-on-crime platform to win over moderates and nativists in California, stating that he promised to “stiffen[] border patrol, . . . sanctions on employers who knowingly hire illegal immigrants, . . . get illegal immigrants out of the workforce, [and] deport

people who have committed crimes who are illegal immigrants.”^{93,94} Clinton delivered by signing the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, which created expedited removal proceedings, expanded mandatory detention for more offenses (including nonviolent drug offenses), increased border patrol, reduced welfare benefits available to immigrants, restricted asylum procedures, and established procedures to verify an employee’s immigration status.⁹⁵ Notably, IIRIRA created the 287(g) program, which allowed local police to enforce immigration law and set the foundation SB 1070 in Arizona, SB 4 in Texas, and Georgia House Bill 87, all notorious for racially profiling Latinx people.⁹⁶ IIRIRA, which was heavily lobbied by private interests, ultimately passed with bipartisan support because it included language that further criminalized and deported immigrants.^{97,98} Rep. Lamar Smith (R-Texas), a staunch anti-immigrant conservative, lauded IIRIRA because it ensured that “the forgotten Americans—the citizens who obey the law, pay their taxes, and seek to raise their children in safety—will be protected from the criminals and terrorists who want to prey on them.”⁹⁹ Later, Clinton similarly boasted: “We must not tolerate illegal immigration. Since 1992, we have increased our Border Patrol by over 35%; deployed underground sensors, infrared night scopes and encrypted radios; built miles of new fences; and installed massive amounts of new lighting.”¹⁰⁰

War on Terror and Obama, “Deporter in Chief”

After September 11, a bipartisan Congress and President Bush expanded the racialization of the criminal alien to include Arab and Muslim communities. Congress ratcheted up state surveillance, which included a mandatory registration tracking system,¹⁰¹ border militarization, expanded immigration detention to black sites, and created the largest federal police force: Immigration and Customs Enforcement (ICE).^{102,103} The criminal alien invader now

legally included anyone *suspected* of terrorism or threats to national security and expanded the executive branch's power to neutralize them.¹⁰⁴

In the backdrop, Bush instituted mass tax cuts to the wealthy and sought to provide a steady stream of cheap labor from immigrants. In a State of Union in 2008, Bush stated: "America needs to secure our borders—and with your help, my administration is taking steps to do so. We're increasing worksite enforcement, deploying fences and advanced technologies to stop illegal crossings . . . Yet we also need to acknowledge that we will never fully secure our border until we create a lawful way for foreign workers to come here and support our economy. This will take pressure off the border and allow law enforcement to concentrate on those who mean us harm."¹⁰⁵

When President Obama entered office, he had virtually unchecked powers to further expand the tough-on-immigration paradigm at home and abroad in light of more displacement people and unaccompanied children migrating to the United States, particularly from Central America, fleeing civil wars, gang violence, and poverty largely caused by US interventions. Obama declared a crisis and campaigned on a "felons not families" strategy to garner the support of White voters and corporate interests.^{106,107} Congress instituted a bed quota in immigration prisons as well as expanded ICE and technology for the border wall.¹⁰⁸ Obama expanded his enforcement authority to deport people, including for a newly created "significant misdemeanors" category that included offenses such as DUIs.^{109,110} After Congress failed to pass the DREAM Act, the immigrant community organized to pressure Obama to scale back the deportation machine. However, since the deserving immigrant category was substantially narrowed, DACA became the only politically viable option, providing deferred deportation relief, limited work and education authorization, and some legal protections to 7.2 percent of the entire undocumented population.¹¹¹ In all,

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A Global Paradigm

US foreign policies and politicians have actively exported the tough-on-immigration toxic cycle, often folded into drug, trade, and security policies.¹¹³ In Europe, both burgeoning wealth inequality and US/European interventions in the Middle East—with legacies of colonization—have led to mass civil wars and regional instability, causing human displacement and migration to Europe through deadly routes.¹¹⁴ Because of the high demand to enter Europe illegally, trafficking cartels have risen across Europe, leading to abuses and death.¹¹⁵ However, state responses developed within a tough-on-immigration paradigm, from rightwing and moderate neoliberal politicians, have created drastic anti-immigrant policies, leading to militarized borders, immigrant police forces, imprisonment (and abuses), and deportations of predominantly non-White immigrants. Immigrants in Europe now account for over a quarter of the prison population.¹¹⁶

In Mexico, US foreign policies have exported the tough-on-immigration paradigm that overwhelmingly targets Central Americans, Native people, and those globally displaced who enter through Mexico, causing migrants to use violent routes when heading toward the United States.^{117,118} Notably, under the Obama administration, Mexico received substantial financial and technical support to militarize its Guatemalan southern border and train federal police forces as a method to

prevent people from migrating to the United States.¹¹⁹ Since 2008, the United States has ramped up hundreds of millions of dollars to security assistance through the Central American Security Initiative (CARSI). Most recently, Mexican nationalists, including some militia members, violently protested and called for the removal of Central Americans in the caravan, characterized as vagrant potheads by the mayor of Tijuana and as criminal illegal alien invaders by other protestors.^{120,121,122} Since migrating into the United States via safe ports is made virtually impossible by the United States, drug-trafficking organizations monopolize migration routes, leading to kidnappings, extortion, forced labor, and abuse.¹²³ These conditions, caused by the tough-on-immigration paradigm, are what forced migrants to mobilize to the United States via a caravan.

Across all cases, immigrants are characterized as alien invaders and demonized as interest-based threats (i.e., economic and security) and identity-based threats to the dominant White citizen culture and institutions protecting that identity.¹²⁴ The threat narrative is purposeful, persuasive, and effective at maintaining our current system at the expense of human suffering. Yet this same system also causes economic, social, and environmental instability globally, leading to mass displacement abroad.¹²⁵ These politics create policies that set up violent infrastructures that make it difficult for displaced people to seek refuge or reject an exploitative economic order by forcing people to choose either to stay or to traverse through some of world's deadliest and most violent borders.¹²⁶ If they do decide to seek a better life and survive the journey, they are subject to punishment through mass incarceration, policing, and deportation.¹²⁷

Preserving the Tough-on-Immigration Paradigm

Per the plenary power doctrine, Congress has the absolute and unqualified power to determine the manner in which it legally and

physically admits and removes immigrants—or whether it does so at all.^{128,129} It also has the power to bestow immigrants with as many social, political, and legal rights as it desires.¹³⁰ In essence, Congress can abolish the current system and build a humane and reparative alternative. However, Congress has maintained an inhumane, punitive, exploitative, and exclusionary system for the purposes of preserving a status quo law-and-order system that uses the deserving immigrant for their labor and punishes the criminal alien.¹³¹ Members of Congress are indebted—through massive corporate campaign financing from groups profiting from this paradigm—to preserve such a system because it is the platform upon which both parties build their political power.¹³² Since the 18th century, and with Reagan's revitalization, the tough-on-immigration paradigm has been core to appealing to the White voting base and corporate interests. Both parties develop immigration and economic policies within the tough-on-immigration paradigm, even in rhetorical rebuke to Trump, that include more militarized borders,¹³³ family separations,¹³⁴ policing,¹³⁵ mandatory detention, and deportation as well as economic instability via massive transfers in wealth.^{136,137}

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position on immigration is “comprehensive immigration reform that fixes our nation's broken immigration system, improves border security, prioritizes enforcement so we are targeting criminals - not families,[sic] keeps families together, and strengthens our economy.”¹³⁸ The Democratic Congressional Campaign Committee (DCCC) position is the same. DCCC Chair Rep. Ben Ray Lujan

(R-New Mexico) articulated their position—reminiscent of Rep. Lamar Smith’s 1996 floor speech—as “tough and fair and that encourages people to come forward but that makes sure that they get in line. That they are paying taxes. We also know that a strong comprehensive immigration reform would be positive for America’s economy. That also includes investments in border security. Our candidates have been clear from the very beginning that they support strong policies that lead to strong, smart, and fair border security policies.”¹³⁹

2020 Democratic presidential candidates align with the tough-on-immigration paradigm by calling for more border security, technology, and mass surveillance programs (e.g. ankle monitors for asylum seekers), as well as prioritizing criminal

aliens or people who pose a “real threat” and offering limited relief only for deserving immigrants.^{140,141,142} For example, Julian Castro’s “keep families together” policy is a replica of Obama’s “families not felons” approach.

Similarly, the Republican National Committee’s official stance is that “immigrants have undeniably made great contributions to our country, but any national immigration policy must put the interests of our existing citizens first. To start, our border must be absolutely secured and illegal immigration must be stopped. Then, and only then, can we begin reforming our system in a way that lets new immigrants experience the American Dream without causing economic hardships to American citizens.”¹⁴³

While the Democratic and Republican parties differ in how they brand their policies, both operate only within the tough-on-immigration paradigm.¹⁴⁴ For example, by using language such as “improves border security, prioritizes enforcement so we are targeting criminals . . . and strengthens our economy,” Democrats are signaling a decades-long commitment to maintain the deportation regime

in the same way as Republicans. For example, Rep. Chuck Schumer (D-New York) and Rep. Nancy Pelosi’s (D-California) counteroffer to Trump’s border wall, included in the \$1.6 billion budget bill they passed on their first day, called for tougher (virtual) border security, funding for more ICE personnel and equipment, and more immigration judges. The bipartisan support to preserve the deportation machine is best illustrated by H.R. 4796 (2018), introduced by Rep. Hurd (R-Texas). H.R. 4796 would increase immigration judges,

protect DACA, and provide conditional permanent resident status only to those who arrived before age 18 and resided since 2013. It also calls on DHS to deploy the most practical and effective

technology available along the border and creates Operation Stonegarden in DHS to provide border security grants to law enforcement agencies involved in border protection operations.¹⁴⁵ In all, both Democrats and Republicans differ little in the substance of their immigration policies—with the key exception of Trump’s border wall.

Currently, the Democratic Party is minimally divided on how to approach immigration between those who want limited relief only for Dreamers and temporary protected status (TPS) recipients and those who want more pathways to citizenship.¹⁴⁶ All proposals are within the tough-on-immigration paradigm. For example, while the Justice Democrats, a new progressive Democrat wing, campaigned on abolishing ICE, these members voted to fund it on their first day in office and at most want to replace ICE by expanding the reach of the criminal legal system, including state and local policing powers, to detain and deport immigrants.¹⁴⁷ They also offer a limited pathway to citizenship to a limited pool of deserving immigrants (replicating Reagan’s amnesty).¹⁴⁸ Meanwhile, Democrats in state legislatures, rather than outright ban the use of private

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prisons, only want to improve prison conditions, meanwhile other states ramp up baby jails.^{149,150} In this context, Trump's counteroffer to end the shutdown by offering limited relief to DACA and TPS recipients in exchange for a \$5.7 billion border wall makes sense. Without any substantially different proposals from the Democrats outside the tough-on-immigration paradigm, both sides are only refining who is deserving of relief while bolstering the deportation machine—which both agree in principle should exist but differ in how to do it: physical border wall versus a modern, virtual one.¹⁵¹

There are fragmented steps toward a new paradigm addressing root causes of displacement. For example, the progressive Congressional Caucus call for reforming US trade policies that have contributed to forced migration and to providing aid to Central American countries for community-led sustainable economic development.^{152,153} Sen. Kamala Harris (D-California) introduced a bill to prohibit the expansion of new federal immigration prisons.¹⁵⁴ Rep. Lou Correa (D-California) has called, but never introduced legislation, for a new Marshall plan to “stabilize Central America.”¹⁵⁵ Finally, some Democrats have suggested that an open border policy would allow people to move toward better ways.¹⁵⁶

Democrats and Republicans are choosing to amass political power by preserving the toxic cycle of tough-on-immigration politics. Such nihilistic concept of political power lacks accountability for how their politics and policies perpetuate human suffering. If Congress actually wants to address the root causes of human displacement, they must move to a new paradigm.

Toward a New Paradigm

Our current immigration system is morally bankrupt. It is meant to maximize human suffering as the sole deterrent and punitive strategy to minimize, or entirely prevent, displaced peoples from seeking refuge.¹⁵⁷ In developing an alternative paradigm, policy makers must

be guided by those most directly impacted and organizations working to uplift those voices through a reparatory justice model, such as the one recently articulated by the California Immigrant Youth Justice Alliance.¹⁵⁸ As many scholars, organizers, and immigrants argue, a new paradigm must abolish the deserving–undeserving binary and fully defend the “criminal alien” by challenging the underlying moral presumptions embedded in this system while still holding those who commit harms in our communities accountable through non-carceral and anti-violent ways.

Criminalizing, segregating, and persecuting immigrants by placing them in cages and subjecting them to state-sanctioned abuses is antithetical to life, liberty, and happiness

Recently, Michelle Alexander added that in order for the United States to move toward an actual humane immigration system, we must grapple with the moral contradictions embedded in the mythical notion of US exceptionalism, which claims that *all* people, not just White men with property, are “‘created equal’ with ‘inalienable rights’ including ‘life, liberty and the pursuit of happiness.’” As Alexander continues to say, “[but] [i]f this is true, on what moral grounds can we greet immigrants with tear gas and lock them in for-profit detention camps, or build walls against the huddled masses yearning to breathe free?” Criminalizing, segregating, and persecuting immigrants by placing them in cages and subjecting them to state-sanctioned abuses is antithetical to life, liberty, and happiness. One need only listen to the screams of children as their parents are torn away from them, to the cries of mothers sleeping on frigid concrete floors of prisons, or to the shouts of families waking up from nightmares of trauma to know that the US immigration system has been, and is, inhumane.

The United States will never be able to fully create an actual humane immigration system, let alone achieve its mythical exceptional moral vision for itself, if it does not first fully address these inherent contradictions. It must come to terms with its role in destabilizing regions across the world and in creating conditions leading to mass violence, environmental degradation, genocide,¹⁵⁹ capitalist exploitation, fractured political systems, and human displacement.¹⁶⁰

While there are various specific policy proposals necessary to create a humane immigration system, this article seeks to provide the framing for a new paradigm. First, we must imagine a world beyond politically and economically constructed borders. We must reject a status quo where human beings are subject to criminalization, detention, and abuse but capital and profits flow unrestrained. Second, we must work toward a world where workers can collectively bargain internationally and own means of their own production in order to self-determine their life as they best see fit. Interestingly, it was the Trump administration who demonstrated that such policy prescriptions are possible as evidenced in the United States–Mexico–Canada Agreement (USMCA), which in an effort to protect jobs for US workers, included minimum-wage provisions and the right for Mexican workers to unionize. Congress must take the bolder step by moving toward an international human right of free movement for all people, not just those from Western hegemonies. Such a system must guarantee basic human, labor, legal, and civil rights and liberties, including the right to vote, legal counsel, and due process. Third, all must work toward replacing our current economic world order, which maintains global caste systems of exploitation, dehumanization, and elimination for the self-interests of an elite few who are increasingly concentrating more wealth and political power in their hands. We need to fundamentally question whether the global capitalist system as it exists today, where

an increasingly small elite of corporate board members make decisions affecting billions of people, is truly democratic, just, or the best method to produce and redistribute wealth. The answer is likely no. Fourth, we must recognize that criminal legal and prison systems, and the for-profit industries connected to it, must be abolished not only as an economically better alternative but as a moral imperative. As many scholars, activists, and survivors have demonstrated, these are systems not designed for justice or to hold people accountable for the harms they committed but rather designed to control, dehumanize, and eliminate undesired peoples. As many groups have historically recognized, we must acknowledge that holding people accountable for the harms they commit and placing someone in a cage are two different things. We must look toward non-carceral and anti-violent reparative practices, like those developed by Survived & Punished and Common Justice, who have models for addressing interpersonal violence, repairing pain, and rehabilitating those who cause harm by also addressing systemic conduits to violence. Moreover, Congress must reject the influence of for-profit prisons or special interests who continue to peddle tough-on-immigration policies as a business strategy. Fifth, Congress must stop supporting policies that militarize the border, forcing people to traverse violent paths, and must instead create humane physical pathways of migration supported by humanitarian aid, health services, and legal services. Finally, Congress needs to entirely abolish the caste system created by the legal and political construct of citizenship, which alienates noncitizens from basic human rights of life, liberty, and pursuit of happiness as well as basic legal, political, and labor rights—calling into question the current form of American democracy. Instead, we must view that in order to call ourselves a true democracy—a system where the people self-determine their destiny—we must allow those most marginalized, as a precondition to truth,

to be heard and participate in shaping our destiny. A real democratic dialogue requires the basic affirmative ethical commitment to recognizing the citizenship and humanity of those most at the margins—the more than 11 million undocumented immigrants and those currently held in immigration prisons.

Although Congress has demonstrated an unwillingness to substantially change the status quo, history has shown its willingness to respond when pressured. Evoking such a response from Congress will require a large-scale intersectional, intergenerational, global, and multiethnic social movement led by those most marginalized. Even in the face of constant state repression in the form of constant surveillance, policing, and detention, the peoples' *movimiento* will never stop.¹⁶¹ For example, the national mobilization against the 2006 Sensenbrenner Immigration Bill (H.R. 4437) and increased work raids, deportations, and hate crimes demonstrates both the effectiveness of mass organizing but also the pitfalls of not sustaining the movement beyond a legislative or electoral campaign, as undocumented people were arguably more under attack after the mass marches as anti-immigrant sentiment escalated.¹⁶²

The fact remains that as long as people are kept at the margins as a necessary means to preserve a law-and-order capitalist system, human suffering will continue. But so will organized efforts to change it. If Congress truly wants to appeal to its exceptionalist moral principles, then it must abandon the tough-on-immigration paradigm. Ultimately, Congress has a choice to make in exercising the full limits of its plenary power: do they remain complicit in preserving the toxic tough-on-immigration paradigm for the purpose of preserving political power, or do they create an alternative humane and reparative system?

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⁸⁴ A specific statutory provision for immigrants seeking legalization under IRCA establishes a special rule for such individuals even if they are found, under the totality of the circumstances test, to be public charges. 8 U.S.C. § 1225a(d)(2)(B)(iii). This special rule focuses on a prospective determination that includes the “past acceptance of public cash assistance within a history of consistent employment.” *Id.*, see also 8 C.F.R. § 245a.3(g) (4)(iii). Non-cash benefits were explicitly excluded from this assessment. 8 C.F.R. § 245a.1(i).

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⁸⁶ John F. Cogan and David Brady, “The 1996 House Elections: Reaffirming the Conservative Trend,” Hoover Institution, Stanford University, 1 March 1997, <https://www.hoover.org/research/1996-house-elections-reaffirming-conservative-trend>

⁸⁷ Clyde Hughes and Danielle Haynes, “Nancy Pelosi quotes Ronald Reagan in return as House speaker,” UPI, 3 January 2019, https://www.upi.com/Top_News/US/2019/01/03/Pelosi-quotes-Reagan-in-return-to-House-

speakership/6241546526410/. In her speech, Speaker Pelosi said, “He [Reagan] said, ‘If we ever close the door to new Americans, our leadership role in the world will soon be lost.’ Our common cause is to find and forge a way forward for our country. Let us stand for the people to promote liberty and justice for all as we pledge every day. And always, always keep our nation safe from threats old and new, from terrorism and cyber warfare overseas and here at home to protect and defend.”

⁸⁸ Ruben J. Garcia, “Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law,” *Chicano-Latino Law Review*, 17 (1995): 118–54.

⁸⁹ “Prop. 187 Approved in California,” *Migration News* 1, no. 11 (1994), <https://migration.ucdavis.edu/mm/more.php?id=492>. White (64% in support), Hispanic (31%), Asian (57%), and African-American (52%) voters. Exit poll data showed that only 40% of voters believed the measure was racist or anti-Latinx.

⁹⁰ Michael J. New, “The Tax Revolt Turns 25,” *CATO Institute*, 29 May 2003, <https://www.cato.org/publications/commentary/tax-revolt-turns-25>. “Indeed, after California’s expenditure limit was raised in the early 1990s, spending soared, nearly doubling between 1990 and 2001. As a result, California has had to raise the income tax, the sales tax, and taxes on beer, wine, gasoline, and cigarettes to keep pace with these rising expenditures. In fact, during the early 1990s, Gov. Pete Wilson even proposed hiking taxes on snack foods. This cycle of spending and taxing is the root cause of California’s current fiscal problems.”

⁹¹ Robert Reinhold, “California Forced to Turn to I.O.U.’s,” *The New York Times*, 2 July 1992, <https://www.nytimes.com/1992/07/02/us/california-forced-to-turn-to-iou-s.html>.

⁹² George Lipsitz, “Immigrant Labor and Identity Politics,” in *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia: Temple University Press, 2006), 48–69.

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⁹⁴ Mary Pilon, “How Bill Clinton’s Welfare Reform Changed America,” *History Stories*, 26 April 2018, <https://www.history.com/news/clinton-1990s-welfare-reform-facts>.

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⁹⁶ A. Elena Lacayo, “The Impact of Section 287(g) of the Immigration and Nationality Act on the Latino Community,” *National Council of La Raza, Issue Brief* no. 12, 12 August 2010, <http://publications.unidosus.org/handle/123456789/1067>.

⁹⁷ Donald Kerwin, “From IIRIRA to Trump: Connecting the Dots to the Current US Immigration Policy Crisis,” *Journal on Migration and Human Security*, DOI: 10.1177/2331502418786718.

⁹⁸ Margaret H. Taylor, “The Story of Demore V. Kim: Judicial Deference to Congressional Folly,” in

Immigration Stories, David A. Martin and Peter H. Schuck, eds. (St Paul, MN: Foundation Press, 2005).

⁹⁹ Congressional Record, vol. 142, H. 3605, 3617, 104th Congress, 2nd Session, April 18, 1996 (Mr. Smith.)

¹⁰⁰ Bill Clinton, *Between Hope and History* (New York: Random House, 1996), 134.

¹⁰¹ The National Security Entry-Exit Registration System (NSEERS) operated as a tracking program that set forth registration requirements for noncitizen males 16 years and older—specifically those who were nonimmigrants, such as visitors, students, green card holders, and asylum/refugee status seekers (67 Fed. Reg. 52584 [12 August 2002]). This only applied to individuals from Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

¹⁰² Louise A. Cainkar, *Homeland Insecurity: The Arab American and Muslim American Experience After 9/11* (New York: Russell Sage Foundation, 2009).

¹⁰³ Matt Ford, “Dismantle the Department of Homeland Security,” *The New Republic*, 21 February 2018, <https://newrepublic.com/article/147099/dismantle-department-homeland-security?fbclid=IwAR1KZlqfmgpYQw9KGH-B5xRWCbPvB9DAO3Q06b8E3M7lXeIwGv7KSijda>.

¹⁰⁴ Randy Capps et al., *Rewing Up the Deportation Machinery: Enforcement under Trump and the Pushback* (Washington, DC: Migration Policy Institute, 2018).

¹⁰⁵ George W. Bush, President of the United States, *State of the Union Address* (28 January 2008).

¹⁰⁶ Jonathan Chait, “Dan Pfeiffer’s Exit Interview: How the White House Learned to Be Liberal,” *New York Magazine*, 8 March 2015, <http://nymag.com/intelligencer/2015/03/dan-pfeiffer-exit-interview.html>. In a 2015 interview with *New York Magazine*, Dan Pfeiffer, a top advisor to Obama for seven years, said: “Whenever we contemplate bold progressive action, whether that’s the president’s endorsement of marriage equality, or . . . on immigration . . . you get a lot of hemming and having in advance about what this is going to mean: Is this going to alienate people? Is this going to hurt the president’s approval ratings? What will this mean in red states?”

¹⁰⁷ Steve Phillips, *Brown Is the New White: How the Demographic Revolution Has Created a New American Majority* (New York: The New Press, 2016): 60–77.

¹⁰⁸ “Immigration Detention Bed Quota Timeline,” National Immigrant Justice Center, January 2017 [PDF file]. In 2010, Congress enacted a bed quota that required the DHS to “maintain a level of not less than 33,400 detention beds” per year, despite opposition from the immigrant community.

¹⁰⁹ Lazaro Zamora, “Comparing Trump and Obama’s Deportation Priorities,” Bipartisan Policy Center,

27 February 2017, <https://bipartisanpolicy.org/blog/comparing-trump-and-obamas-deportation-priorities/>.

Priority 1: Persons engaged in or suspected of terrorism or espionage, or who otherwise pose threat to national security; Convicted gang members; Persons apprehended at the border attempting to unlawfully enter the country; Persons convicted of a felony (other than offenses related to person’s immigration status) or aggravated felonies. Priority 2: Persons convicted of three or more misdemeanors (other than minor traffic offenses or offenses related to person’s immigration status); Persons convicted of a significant misdemeanor (domestic violence, sexual abuse/exploitation, burglary, unlawful possession or use of a gun, drug distribution or trafficking, DUI); Persons who entered or reentered unlawfully after January 1, 2014; Persons who have significantly abused visa programs. Priority 3: Persons with a final order of removal issued on or after January 1, 2014.”

¹¹⁰ Jeh C. Johnson, Secretary, U.S. Department of Homeland Security, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” Memorandum to Thomas S. Winkowski, R. Gil Kerlikowske, Leon Rodriguez, and Alan D. Bersin, 20 November 2014 [PDF file]. Categorizing the second-highest priority individuals for deportation for ICE: “aliens convicted of a ‘significant misdemeanor,’ which for these purposes is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above, one for which the individual was sentenced to time in custody of 90 days or more (the sentence must involve time to be served in custody, and does not include a suspended sentence). . . .”

¹¹¹ “Consideration of Deferred Action for Childhood Arrivals (DACA),” U.S. Citizenship & Immigration Services, last updated 13 September 2016, <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca>. In creating the application process for DACA, DHS created a new crime-based category disqualifying applicants for the immigration benefit: the significant misdemeanor. Consideration of Deferred Action for Childhood Arrivals (DACA). Conviction of a felony offense, significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct precludes DACA consideration.

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world/2018/nov/22/hillary-clinton-europe-must-curb-immigration-stop-populists-trump-brexit.

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¹²³ Luis Gómez Romero, “Dozens of migrants disappear in Mexico as Central American caravan pushes northward,” *The Conversation*, 15 November 2018, <https://theconversation.com/dozens-of-migrants-disappear-in-mexico-as-central-american-caravan-pushes-northward-106287>.

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inalienable right of every sovereign and independent nation.”

¹²⁹ *Nishimura Ekiu v. United States*, 142 U.S. 651, 662 (1892). Justice Gray wrote, “It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.”

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