

NOTES

THE PARTICULAR HARMS OF THE “GOOD IMMIGRANT” VERSUS “BAD IMMIGRANT” CONSTRUCTION ON BLACK IMMIGRANTS IN THE UNITED STATES

SOPHIA DENUYL*

ABSTRACT

In the fall of 2021, video and images surfaced of Border Patrol agents on horseback corralling and whipping Haitian migrants with their reins along the U.S.-Mexico border in Del Rio, Texas. These migrants were being rounded up for deportation under Title 42, a Trump-era provision invoked during the COVID-19 pandemic under the guise of public health. These events triggered outrage, including from the President of the National Association for the Advancement of Colored People, who pointed out that the images are disturbingly reminiscent of some of the darkest moments in our nation’s history.

This abuse was yet another wake-up call to the disproportionate obstacles and cruelty inflicted on Black immigrants by the U.S. government. This Note will examine the ways in which the U.S. immigration system has long led to disparate outcomes for Black immigrants, whether under an administration that openly espouses xenophobia and hate, or one which purports to be building a fair and humane immigration system. It will argue that the voices and stories of Black immigrants have long been ignored by the media, politicians, and even mainstream immigration advocates, and that this decentering can be traced, at least in part, to the harmful “good immigrant” versus “bad immigrant” myth that has come to overwhelm the national immigration debate.

* Sophia DenUyl is a third year J.D. Candidate at Georgetown University Law Center and holds a bachelor’s degree in Political Science from Barnard College.

TABLE OF CONTENTS

I.	INTRODUCTION	756
II.	THE ERASURE OF BLACK IMMIGRANTS IN THE MEDIA AND FROM THE NATIONAL CONSCIOUSNESS	758
	A. <i>President Biden's First Few Months</i>	758
	B. <i>Patterns Repeating Themselves</i>	760
III.	FACTORS CONTRIBUTING TO THE ERASURE OF BLACK IMMIGRANTS	761
	A. <i>Identity as "Immigrant" Overshadowed by Identity as "Black"</i>	761
	B. <i>The "Good Immigrant" versus the "Bad Immigrant"</i>	762
	1. "Shithole Countries"	764
	a. "Criminals"	765
	b. "Moochers"	768
	c. "They All Have AIDS"	771
	2. "I Think Islam Hates Us"	772
IV.	CONCLUSION	774

I. INTRODUCTION

Between February 1 and March 30, 2021, U.S. Immigration and Customs Enforcement (ICE) sent more than twenty-four flights, carrying between 1,300 and 1,500 people, back to Haiti.¹ In fact, in the first two months of their administration, President Biden and Vice President Harris deported more Haitian immigrants than the Trump administration did in all of fiscal year 2020.² The American Civil Liberties Union described the situation in Haiti as "lethal."³ Advocates called these deportations "death flights" due to the dire conditions and high risk of violence that these immigrants face upon return.⁴ Many advocates have noted the symbolic significance of the fact that the new administration spent the better part of Black History Month deporting Black immigrants.⁵

1. Marleine Bastien & Alix Desulme, *Biden Must Stop Deportations to Haiti. It's Inhumane—And Breaks His Promise to Us*, MIA, HERALD (Mar. 30, 2021, 10:09 AM), <https://perma.cc/8FLZ-M7WB>.

2. Julian Borger, *Haitian Deportation Soar as Biden Administration Deploys Trump-Era Health Order*, THE GUARDIAN (Mar. 25, 2021, 5:00 AM), <https://perma.cc/K3YB-EPT5>.

3. Press Release, Naureen Shah, Senior Advoc. & Pol'y Couns., Am. C.L. Union, ACLU Response to DHS Memo on Enforcement and Removals (Feb. 18, 2021), <https://perma.cc/32RJ-RMW7>.

4. See, e.g., Tina Vásquez, *Q&A: The Biden Administration Spent Black History Month Deporting Black Immigrants. Why Aren't People in the Streets?*, PRISM (Feb. 11, 2021), <https://perma.cc/7KD3-MLCD>.

5. *Id.*

The foreign-born Black population in the United States nearly doubled between 2000 and 2019, spiking from 2.4 million to 4.6 million.⁶ 88 percent of Black immigrants in the United States are from African or Caribbean countries (46 percent and 42 percent respectively), while 12 percent are from countries outside those regions (Guyana, Mexico, and Honduras are the top three).⁷ The anti-Blackness that penetrates every system and structure in America does not spare Black immigrants, regardless of their country of origin. As has been noted by various scholars and advocates, oftentimes when a Black immigrant steps foot in America, they feel that they are no longer seen as Haitian, Nigerian, or Cameroonian: they are seen as Black.⁸ Anti-Blackness in the immigration apparatus serves to disadvantage Black immigrants in countless ways. For example, Black immigrants make up less than 5.4 percent of the undocumented population but accounted for 10.6 percent of all deportation proceedings between 2013 and 2015.⁹ Black immigrants also face disproportionate asylum denial rates, significantly higher bond rates, and harsher detention conditions, among other obstacles.¹⁰

This Note will examine the ways in which anti-Blackness in the U.S. immigration system leads to disparate outcomes for Black immigrants—from those detained at the southern border upon arrival, to those who have resided in the country for decades. First, it will describe how the Biden-Harris administration began leaving Black immigrants behind from the moment it took office, despite its mission to restore humanity to U.S. immigration policy. This Note will then argue that the proclivity to render Black immigrants invisible is unfortunately nothing new: The stories of Black immigrants have long been erased by both activists and the media, and policies that harm them are often greeted with less public outrage. Specifically, this paper argues that Black immigrant voices have been decentered and ignored in large part due to the false, harmful “good immigrant” versus “bad immigrant” construction that has come to overwhelm the national immigration debate. While this dichotomy affects many immigrant groups, it arguably has an especially harmful effect on Black immigrants, in part due to the anti-Blackness embedded within the immigration reform movement itself. Finally, this Note will suggest that there is a strong need to center more activism that connects both the Black and immigrant movements.

6. CHRISTINE TAMIR, PEW RSCH. CTR., *THE GROWING DIVERSITY OF BLACK AMERICA* 18 (2021), <https://perma.cc/JJB6-SF3P>.

7. *Id.*

8. *See, e.g.*, Vásquez, *supra* note 4; Devon W. Carbado, *Racial Naturalization*, 57 *AM. Q.* 613 (2005); Katja M. Guenther, Sadie Pendaz & Fortunata Songora Makene, *The Impact of Intersecting Dimensions of Inequality and Identity on the Racial Status of Eastern African Immigrants*, 26 *SOCIO. F.* 98, 109 (2011).

9. Jack Herrera, *Black Immigrants Matter*, *THE NATION* (Mar. 24, 2021), <https://perma.cc/4KU9-89SN>.

10. *Id.*

II. THE ERASURE OF BLACK IMMIGRANTS IN THE MEDIA AND FROM THE NATIONAL CONSCIOUSNESS

A. *President Biden's First Few Months*

President Biden and Vice President Harris came into office ready to tackle the “crisis at the border,” assuring advocates that the overt xenophobia and racism of the Trump years, as well as the mass deportations of the Obama years, was behind us.¹¹ Within his first few days in office, Biden signed a series of executive orders rolling back many of Trump’s most controversial immigration policies and made great strides toward reducing ICE deportation numbers overall.¹² However, the bulk of the administration’s actions were focused on easing access to the United States for Mexican and Central American immigrants, while leaving those coming from elsewhere—mainly Africa and the Caribbean—stranded in Mexico. In particular, Biden was lauded for his decision—though it was later walked back—to end to the Migrant Protection Protocols (MPP), also known as the “Remain in Mexico” program, one of Trump’s most controversial immigration policies that sent 65,000 immigrants back to Mexico.¹³

However, this move would not help non-MPP asylum seekers, many of whom are from Africa and the Caribbean, and who remained in limbo after having spent months or even years at the border.¹⁴ While stranded at the border, asylum seekers face language barriers, heightened police brutality, and targeted anti-Black violence and discrimination in Mexico.¹⁵ According to one survey, 61 percent of Haitian asylum seekers blocked from U.S. asylum were victims of crime while in Mexico.¹⁶ As of March 2021, there were an estimated 5,000 Black immigrants stranded in Tijuana alone, and 10,000 to 15,000 stranded border-wide.¹⁷ At the administration’s first major press conference, at which immigration was a dominant topic, neither President Biden nor the reporters in attendance mentioned the unique crisis confronting Black immigrants stranded at the border.¹⁸

11. See Anita Kumar & Alice Miranda Olstein, *Biden Pledged to Undo Trump's Immigration Policies. It Will Take Time.*, POLITICO (Dec. 7, 2020), <https://perma.cc/3RQ2-4JAJ>; Maria Sacchetti, *Biden Sees Obama's Mass Deportations As 'Big Mistake,' Plans to Pause Expulsions*, WASH. POST (Dec. 2, 2020), <https://perma.cc/6X4L-F453>.

12. Sushma Raman, *On Immigration, 'Building Back Better' Isn't Enough*, FOREIGN POLICY (Apr. 8, 2021), <https://perma.cc/KR4S-VEVA>. The latest federal data puts ICE on pace for fewer than 55,000 deportations for the 2021 fiscal year. This would be the first time that figure has fallen below 100,000. Nick Miroff, *ICE Deportations Fell in April to Lowest Monthly Level on Record, Enforcement Data Shows*, WASH. POST (May 5, 2021), <https://perma.cc/NH44-TUQR>.

13. Mimi Dwyer, *As Biden Winds Down Mexico Program, Many Migrants on U.S. Border Left in Limbo*, REUTERS (Mar. 12, 2021), <https://perma.cc/BQ6W-XBTV>.

14. Marjorie Cohn, *US-Made Border Crisis Persists Despite Biden's About-Face on Refugee Cap*, TRUTHOUT (May 7, 2021) (“The border isn’t open to Haitians and Africans,” noted one advocate.), <https://perma.cc/3CC4-ZJSY>.

15. REBECCA GENDELMAN, KENJII KIZUKA & JULIA NEUSNER, FAILURE TO PROTECT: BIDEN ADMINISTRATION CONTINUES ILLEGAL TRUMP POLICY TO BLOCK AND EXPEL ASYLUM SEEKERS TO DANGER, HUMAN RIGHTS FIRST 3 (2021).

16. *Id.*

17. Dwyer, *supra* note 13.

18. See *Presidential News Conference*, C-SPAN (Mar. 25, 2021), <https://perma.cc/U23P-PMH3>.

Additionally, the Biden administration carried over some of the harmful policies inflicted by the Trump administration on Haitian and African immigrants. For example, Biden was exceedingly slow to reinstate Temporary Protected Status (TPS) for Haiti, a program which had protected some 59,000 Haitians from deportation due to violence and civil unrest in Haiti.¹⁹ Nearly 500 advocates, human rights activists, and nonprofit organizations sent a letter to the administration at the end of April 2021 reiterating the urgency of protecting Haitian immigrants from deportation.²⁰ Further, the administration still has not designated TPS for Cameroon, despite the country’s humanitarian crisis and civil war creating conditions that make safe return impossible, and despite having already granted TPS protection to Venezuela and Myanmar.²¹ Perhaps most controversial is the administration’s continued abuse of expulsions under Title 42, despite the fact that then-Senator Kamala Harris openly condemned the policy.²² The Trump administration instituted the Title 42 policy at the beginning of COVID-19 to authorize the automatic deportation of non-citizens without any of the procedural safeguards required by law.²³

Finally, from the outset the Biden administration emphasized that it would end Trump-era policies that threatened all undocumented immigrants with deportation and focus instead on those who are seen as a threat to public safety or national security.²⁴ While narrowing the category of “deportable” immigrants seems laudable on its face, as made clear from a study by New York University School of Law’s Immigrant Rights Clinic and the Black Alliance for Just Immigration (BAJI), the tendency of the government to focus enforcement priorities on immigrants with criminal records disproportionately impacts Black immigrants, as they are statistically “more likely than immigrants from other regions to have criminal convictions, or at least to be identified through interactions with local law enforcement, because of rampant racial profiling.”²⁵

19. TPS provides foreign nationals in the United States with a work permit and permission to stay in the country if U.S. authorities determine that the conditions in their country of origin make it too dangerous to return. Rafael Bernal, *More Than 500 Advocates Call on Biden to Renew TPS for Haiti*, HILL (Apr. 27, 2021), <https://perma.cc/JJG3-U9WF>; Miriam Jordan, *Trump Administration Ends Temporary Protection for Haitians*, N.Y. TIMES (Nov. 20, 2017), <https://perma.cc/D55S-387S>.

20. Bernal, *supra* note 19. After overwhelming pressure, the Biden administration finally renewed TPS for Haiti on May 22, 2021. Tal Axelrod, *Biden Administration Renews Temporary Protected Status for Haiti*, HILL (May 22, 2021), <https://perma.cc/NE92-76DQ>.

21. See Letter from Congress Members to President Biden and Secretary Mayorkas, (Feb. 17, 2020), <https://perma.cc/5FB7-QZ8D>; Geneva Sands, *DHS Reviewing Humanitarian Protections for Haitians and Others in the U.S.*, CNN (Apr. 30, 2021), <https://perma.cc/QB9H-QA7N>.

22. Molly O’Toole, *Biden Promised Change at the Border. He’s Kept Trump’s Title 42 Policy to Close It and Cut Off Asylum*, L.A. TIMES (Mar. 19, 2021), <https://perma.cc/S2WC-9B9T>.

23. *Id.*

24. Nicole Narea, *Biden Is Trying to Rein in ICE with New Immigration Enforcement Priorities*, VOX (Feb. 19, 2021), <https://perma.cc/AK87-XDLD>.

25. JULIANA MORGAN-TROSTLE, KEXIN ZHENG & CARL LIPSCOMBE, THE STATE OF BLACK IMMIGRANTS, N.Y. UNIV. SCH. OF LAW & BLACK ALLIANCE FOR JUST IMMIGR. 1, 13 (2016).

B. *Patterns Repeating Themselves*

While immigration reform continues to be a contentious issue, few outlets report on the ways in which the Biden administration is leaving Black immigrants behind.²⁶ Some activists acknowledged a drop-off in energy in fighting for immigrants' rights in general once Trump left office.²⁷ Patrice Lawrence, Co-Director for the UndocuBlack Network, believes that if Trump had been reelected and spent the first few weeks of Black History Month deporting Black people, protesters would have filled the streets, pandemic or no pandemic. She argues that allies jumped at the opportunity to attack Trump because he was "in-your-face evil," but "to attack Biden is to attack yourself."²⁸

The erasure of Black immigrants more broadly, however, is a pattern that played out throughout the Trump presidency, and well before that. Trump's overtly racist and xenophobic immigration policies, from "kids in cages" to the Muslim ban, received overwhelming media attention, but the harm to Black immigrants was largely left out of the narratives. The first known family separation at the border under Trump was between a Congolese asylum seeker and her daughter.²⁹ On any given day in 2020, Haitians were the single largest nationality group in family detention.³⁰ It is precisely the erasure of these people and their stories that sparked Patricia Okoumou, a Black immigrant from the Republic of Congo, to climb the Statue of Liberty on July 4, 2018 to raise awareness of the fact that Black immigrants are being ignored.³¹ In an interview with the Nation, Okoumou said: "Systemic racism is embedded in our culture so badly, going back to slavery and the way Black children are treated. It's almost as if we [have] become numb to this reality."³²

Additionally, two of the seven States that were impacted by the first iteration of Trump's Muslim ban were majority Black African States. Yet, despite the enormous backlash, the ways in which the ban and related policies made Black Muslims particularly vulnerable were largely disregarded.³³ For instance, Section 3 of the Executive Order implementing the Muslim Ban suspended the Visa Interview Waiver program and instead made all visa applicants subject to a visa interview. This change heightened the possibility of bias informing the visa process given that the interview is a clear stage at which immigration officials can impose their own biases onto interviewees, which has a particularly negative impact on Black applicants.³⁴ In January of 2020, Trump added six more countries to the ban, four of which were African

26. See Vásquez, *supra* note 4.

27. *Id.*

28. *Id.*

29. *Id.*

30. Herrera, *supra* note 9.

31. *See id.*

32. *Id.*

33. See Emmanuel Mauleón, *Black Twice: Policing Black Muslim Identities*, 65 UCLA L. REV. 1326, 1385–86 (2018).

34. Bolatito Kolawole, *African Immigrants, Intersectionality, and the Increasing Need for Visibility in the Current Immigration Debate*, 7 COLUM. J. RACE & L. 373, 404–05 (2017).

nations. Thus, by the final iteration of the ban, which included thirteen countries, nearly half were located on the African continent.³⁵ While some organizations and media outlets began referring to the newest version as “the Muslim and Africa bans,” it was still more regularly referred to simply as “the Muslim ban.”³⁶

Activists explain that the harm done when Black immigrants are repeatedly erased from the news cycle is far-reaching, as reduced visibility leads to insufficient protection and advocacy on their behalf.³⁷ Indeed, there are only a handful of organizations that advocate for the particularized needs of Black immigrants.³⁸ Black lawyers have also noted the ways in which “well-meaning White attorneys” are often prejudiced towards Black clients. Black attorneys have noted that they often hear non-Black attorneys use words like “difficult” in describing Black immigrants.³⁹ For example, one attorney from the Refugee and Immigrant Center for Education and Legal Services (RAICES) noted that she has heard White attorneys say things like “Oh I don’t take clients from Benin, because those people are difficult to work with.”⁴⁰ Further, advocates have described that policymakers often decide what to “move the needle on” based on what the media is publishing.⁴¹ Black immigrant rights groups have been “screaming about” this erasure for years.⁴² Section III of this Note explores some of the factors that may contribute to the erasure of Black immigrants from the national immigration debate.

III. FACTORS CONTRIBUTING TO THE ERASURE OF BLACK IMMIGRANTS

A. *Identity as “Immigrant” Overshadowed by Identity as “Black”*

This section will explain that one cause of the erasure described above is that some Black immigrants have noted feeling as though their identity as an immigrant is rendered secondary to their identity as Black. In *Racial Naturalization*, Devon W. Carbado describes a time in which, as a Black immigrant from the United Kingdom born to parents from the West Indies,

35. *The Muslim and Africa Bans*, BRIDGE INITIATIVE, <https://perma.cc/S37F-97EY>.

36. See, e.g., Kailani Koenig & Yasmin Vozzoughian, *Biden Rescinded the ‘Muslim Ban.’ But Many Families Remain Stuck in the Backlog*, NBC NEWS (Mar. 20, 2021), <https://perma.cc/D87M-PHW9>; Nazita Lajevardi, Kassra AR Oskooii & Loren Collingwood, *Biden Reverses Trump’s ‘Muslim Ban.’ Americans Support the Decision*, WASH. POST (Jan. 27, 2021), <https://perma.cc/3GSX-5DYD>; Jayme Deerwester, *President Biden Ends Trump’s Muslim Travel Ban, Outlines What’s Next*, USA TODAY (Jan. 21, 2021), <https://perma.cc/3NMG-TPWM>.

37. See Breanne J. Palmer, *The Crossroads: Being Black, Immigrant, and Undocumented in the Era of #BlackLivesMatter*, 9 GEO. J.L. & MOD. CRITICAL RACE PERSP. 100–01 (2017).

38. These include: The Black Alliance for Just Immigration (BAJI), The UndocuBlack Network, Black LGBTQ Migrant Project, African Communities Together, and the Haitian Bridge Alliance. Peniel Ibe, *Immigration Is a Black Issue*, AM. FRIENDS SERV. COMM. (SEP 24, 2021), <https://perma.cc/3PL7-3HVV>.

39. Herrera, *supra* note 9.

40. *Id.*

41. Vásquez, *supra* note 4.

42. *Id.*

he “became a Black American.”⁴³ While driving with his brother in a predominantly Black neighborhood of Los Angeles, he was stopped by the police. After being forced to get out of the car and sit on the pavement, he asked why they had been stopped: “We have a right to know, don’t we? We’re not criminals after all.”⁴⁴ The officers quickly discerned he was not American, due in part to his accent, but mainly because of his lack of “racial etiquette.”⁴⁵ The officer then told Carbado’s brother, after asking how long he had been in America, that “if he doesn’t want to find himself in jail, he should shut the fuck up.”⁴⁶ It was in this moment, Carbado says, that he realized that any resistance to racial naturalization was “futile.”⁴⁷ Carbado’s story illustrates how no one is exempt from naturalization into American racial positions, regardless of actual citizenship status.

Carbado describes that, when Black immigrants undergo this inevitable racial naturalization, their “immigrant-ness” may become eclipsed by their “Blackness” in a sense. Though Carbado does not explicitly deal with this, it seems likely that the immigrant portion of one’s identity might in some cases also give way to the Black portion of one’s identity before one even crosses the border, because of the way in which the anti-Blackness of the United States writ large is embedded within each layer of its immigration apparatus. For instance, a Black immigrant might undergo a “racial naturalization” through an interaction with an ICE officer at the border, during a visa vetting interview, or through learning that they have been barred from even attempting to enter the United States due to an executive order aimed at people from majority-Black nations. The next section of this Note will explain how the anti-Blackness of U.S. immigration law and policy is perpetuated through the harmful “good immigrant” versus “bad immigrant” narrative.

B. *The “Good Immigrant” versus the “Bad Immigrant”*

This section will explain the problems created by the “good immigrant” versus “bad immigrant” myth that has become commonplace in the media and beyond. It will then focus on the particular harm this false narrative causes for Black immigrants.

In February 2021, the Congressional Black Caucus wrote to the newly confirmed Department of Homeland Security (DHS) Secretary Alejandro Mayorkas to demand answers about the ongoing deportation flights to Haiti.⁴⁸ The Caucus expressed outrage that these flights fell outside of the new administration’s immigration enforcement priority: focusing on

43. Carbado, *supra* note 8, at 633.

44. *Id.*

45. *Id.* at 634.

46. *Id.* at 634.

47. *Id.* at 633.

48. Chantal Da Silva, *Lawmakers Call on ICE to Stop Deporting ‘Planes Full of Black People’ in Breach of Biden Order*, FORBES (Feb. 9, 2021, 9:25 AM), <https://perma.cc/2K74-T4ZE>.

immigrants with serious criminal convictions.⁴⁹ This letter is striking for the way in which it plays seamlessly into the good/bad immigrant distinction so prevalent in today’s national discourse surrounding immigration. This stereotype was also featured heavily in the Biden-Harris immigration platform. For example, the administration highlighted how alongside President Obama, Vice President Biden took steps to “prioritize enforcement resources on removing threats to national security and public safety, not families.”⁵⁰

This fixation with the notion of the “good immigrant” impacts the experience and outcomes of many, if not all, racialized immigrant populations. The prototypical example of the “good immigrant” is the Deferred Action for Childhood Arrivals (DACA) recipient: high-achieving, likely to contribute to the national economy, well-assimilated, patriotic, and unthreatening.⁵¹ Many politicians remark that Dreamers should not be punished for the decisions of their parents—the ones who dared come to this country “illegally.”⁵² However, the good/bad immigrant narrative creeps into the immigration debate in far more subtle ways than just documented versus undocumented. For example, while thousands poured into the streets to protest the Muslim ban, few are troubled by programs that surveil and spy on Muslim and other predominately immigrant communities.⁵³ Similarly, countless observers condemned Trump’s policy of separating children from their families at the southern border, but we see little to no outrage regarding policies that subject young adults to detention and deportation based on alleged gang involvement.⁵⁴ In essence, we are conditioned to stop caring about immigrants as soon as they pose *any* risk—small or large, proven or baseless, real or imagined—to our physical or fiscal security.

The good/bad immigrant frame successfully reinforces a neoliberal consensus that is eager to receive new immigrants it considers “high value” and exclude those it considers “low value.”⁵⁵ In the wake of Trump’s decision to rescind DACA, policymakers immediately sounded alarms over the loss in gross domestic product (GDP) that would result (apparently a loss of \$460.3 billion from the GDP over 10 years and the loss of some 685,000 workers).⁵⁶ While likely true that a permanent end to DACA would mean significant damage to national economy, the sounding of these alarm bells reflected the neoliberal consensus that views immigrants as labor, rather than humans.

49. *See id.*

50. *The Biden Plan For Securing Our Values as a Nation of Immigrants*, BIDEN HARRIS, <https://perma.cc/RKB3-K4UT>.

51. *See, e.g.*, Barack Obama, FACEBOOK, (Sep. 5, 2017), <https://perma.cc/UP49-9T3W>.

52. *See id.*

53. *See, e.g., Why Countering Violent Extremism Programs Are Bad Policy*, BRENNAN CTR. (Sep. 9, 2019), <https://perma.cc/N9BM-UBQF>.

54. *See, e.g., Hannah Dreier, He Drew His School Mascot—and ICE Labeled Him a Gang Member*, PROPUBLICA (Dec. 27, 2018), <https://perma.cc/D5ZW-FK59>.

55. Thank you to Professor Sherally Munshi for suggesting this framing.

56. Sujatha Fernandes, *We Need to Fight for All Undocumented Migrants, Not Just Dreamers*, NATION (Sept. 8, 2017), <https://perma.cc/854X-F2W5>.

Similarly, scholars have illustrated the way in which neoliberal ideology serves as a “guiding strategy” for the DREAM Act, which would grant *conditional* permanent resident status to undocumented immigrant minors who agree to attend college or serve in the military.⁵⁷ From a neoliberal perspective, the economic benefits of the DREAM Act can be seen as a means to “reduce potential social tensions” between U.S. citizens and undocumented minors, who would otherwise be seen as a liability (“bad immigrants”), by transforming them into an “economic engine” benefiting U.S. society (“good immigrants”).⁵⁸

More broadly, neoliberal ideology is a substantial driver of migration to the United States and of policies seeking to regulate it. Grace Cheng offers a variation on the classic “push/pull” theory of immigration as one driven largely by neoliberalism.⁵⁹ In the first place, the effects of neoliberal economic policies on impoverished and indebted nations effectively force people to migrate to the United States in order to survive. Once here, policies like welfare, immigration, and labor laws interlace with those neoliberal policies to “capture” migrants as cheap, highly exploitable labor.⁶⁰ Thus, an overwhelming hidden, or at least not publicized, agenda shaping U.S. immigration policy is to create and maintain a labor force of highly exploitable workers, who are “captured” via denial of benefits and protections in order to “identify them as undeserving non-citizen criminals.”⁶¹ Here, the construction of the good versus the bad immigrant—the “good” immigrants being the “legal” guest workers and the “bad” immigrants being the undocumented ones—serves to drum up support for “otherwise untenable, inhumane public policy.”⁶² Moreover, by perpetuating this good/bad immigrant distinction, the United States can expand both the neoliberal economic policies that force migration and the guest worker policies that generate an exploitable workforce, while at the same time assuring the American people that it is securing the country from “criminal” immigrants and safeguarding jobs and benefits for American citizens.⁶³

1. “Shithole Countries”

The good/bad immigrant construction is harmful for many immigrant populations, but arguably even more so for Black immigrants. Marybeth Onyeukwu, community organizer and undocumented immigrant from Nigeria, argues that the “immigrants are not criminals” refrain, and the framing of immigration as the “new civil rights movement” is largely predicated

57. Adalberto Aguirre, Jr. & Jennifer K. Simmers, *The DREAM Act and Neoliberal Practice: Retrofitting Hispanic Immigrant Youth in U.S. Society*, 38 SOC. JUST. J. 3, 3, 9-10 (2012).

58. *Id.* at 10.

59. Grace Chang, *Precious Cargo*, 52 U.C. DAVIS L. REV. 81, 87 (2018).

60. *Id.* at 87.

61. *Id.* at 88 (citation omitted).

62. *Id.*

63. *Id.* at 89.

on anti-Blackness.⁶⁴ In particular, she explains that historically mainstream immigrants’ rights leaders have long chosen to embrace anti-Black rhetoric out of the flawed belief that immigration reform cannot happen without doing so. For example, in 2013 the Executive Director for Reform Immigration America published a statement which read as follows: “In 2005, with the rise of the Minutemen and fresh attention from Capitol Hill, many in the Republican Party started to turn immigration into a wedge issue. They demonized hardworking immigrants as criminals and moochers.”⁶⁵

Onyeukwu points out that these words, “criminal and moochers,” are just racially coded words for Black. In other words, immigrants’ right activists, politicians, and allies, sometimes subconsciously but often consciously, attempt to advance the outcomes for non-Black immigrants by emphasizing the distance from deeply rooted stereotypes most often associated with Black immigrants.⁶⁶ Of course, the desire to implement racist policies without explicitly referring to race is nothing new. In her piece describing a “transnationalization” of racialized immigration policy, Vilna Bashi notes that one of the main themes of the post-war period of anti-Blackness in Western immigration policy was finding new ways to restrict the entry of Black migrants without specifically using racial language or appearing racist.⁶⁷

Indeed, in referring to Haiti and African countries as “shithole countries” and complaining that immigrants from Nigeria after seeing America would never “go back to their huts,” Trump did not use the word “Black” or even “majority Black countries.”⁶⁸ Rather, by categorizing these countries as “shithole countries,” he was tapping into deeply entrenched stereotypes equating Blackness with criminality, poverty, and disease. There is nothing new about perpetuating the false notions that Black immigrants are inherently “criminal,” prone to become an economic burden, and pose a threat to public health. This section will examine the pervasiveness of some of the false narratives often associated with the “bad immigrant” that affect the outcomes of Black immigrants in the United States. Specifically, it will describe the ways in which these stereotypes are often rooted in anti-Blackness, some of the harms they have caused, and how these harms serve to perpetuate the stereotypes themselves.

a. “Criminals”

This section examines how the stereotype which associates Blackness with criminality affects the experience and outcomes of Black immigrants. As

64. Marybeth Onyeukwu, *Black Immigrants’ Lives Matter: Disrupting the Dialogue on Immigrant Detention*, TRUTHOUT (July 22, 2015), <https://perma.cc/9SA5-YKJK>.

65. *Id.*

66. *See id.*

67. Vilna Bashi, *Globalized Anti-Blackness: Transnationalizing Western Immigration Law, Policy, and Practice*, ETHNIC AND RACIAL STUDIES, Vol. 27 No. 4 (2004), at 592.

68. *See* Ali Vitali, Kasie Hunt & Frank Thorp V, *Trump Referred to Haiti and African Nations as ‘Shithole’ Countries*, NBC NEWS (Jan. 11, 2018), <https://perma.cc/Z4KD-EQ5K>.

noted above, the Biden administration announced early on that it was seeking to narrow immigration enforcement to focus primarily on immigrants who fall into three categories: national security, border security, and public safety.⁶⁹ The national security category includes anyone suspected of terrorism or espionage; the border security group includes anyone apprehended along the border or point of entry, or who entered after November 1, 2020; and the public safety category includes any immigrant convicted of an “aggravated felony” or a crime that involved “active” participation in gang activity.⁷⁰ Notably, aggravated felonies have historically included a wide array of offenses—including filing a false tax return or failing to appear in court.⁷¹ While the new guidelines direct law enforcement to consider the “seriousness” of the conviction and how long ago it occurred, this still leaves individual immigration officers with a huge deal of discretion.⁷² This is especially concerning given that there have been reports of ICE as an agency going “rogue.”⁷³ The American Civil Liberties Union criticized the policy, noting that the priorities will lead to the continued disproportionate deportations of Black and Brown immigrants by “import[ing] the injustices of the criminal legal system.”⁷⁴

Additionally, the administration’s major immigration reform bill currently pending in Congress, the American Dream and Promise Act, fails to remove “criminalization bars,” which are sections of the criminal code that make conviction for various crimes grounds for deportation.⁷⁵ Under this bill, immigrants are precluded from obtaining lawful status, with very few exceptions, if they have been convicted at any point in their life of any three misdemeanors, including things like jaywalking, disorderly conduct, or street vending without a license. This provision fails to consider that the accrual of multiple offenses is often a direct result of living in an over-policed area.⁷⁶ Further, anyone who has been convicted of a felony—which could include a second shoplifting offense, possession of a small quantity of drugs, petty theft, joyriding, and failure to disclose even a very small amount of income on a public assistance application—is also barred from applying for lawful status.⁷⁷ BAJI has called the American Dream and Promise Act “anti-Black”

69. Memorandum from Tae D. Johnson, Acting Director U.S. Immigration and Customs Enforcement, on ICE Interim Guidance: Civil Immigration Enforcement and Removal Priorities (Feb. 18, 2021), <https://perma.cc/87S4-JX7Y>.

70. *Id.*

71. Nicole Narea, *Biden Is Trying to Rein in ICE with New Immigration Enforcement Priorities*, VOX (Feb. 19, 2021), <https://perma.cc/XA4X-R2A3>.

72. ASSOCIATED PRESS, *Biden Administration Reverts to Targeted Immigration Enforcement*, NBC NEWS (Feb. 19, 2021), <https://perma.cc/87S4-JX7Y>.

73. Julian Borger, *New Claims of Migrant Abuse as Ice Defies Biden to Continue Deportations*, GUARDIAN (Feb. 2, 2021), <https://perma.cc/D6C6-VTP7>.

74. Naureen Shah, *ACLU Response to DHS Memo on Enforcement and Removals*, AM. C.L. UNION (Feb. 18, 2021), <https://perma.cc/4DRG-CJ3J>.

75. Carla Gomez, Hena Mansori & Sophia Gurulé, *Biden Has a Chance to End the Jail-To-Deportation Pipeline*, NATION (Apr. 12, 2012), <https://perma.cc/2BQP-5BQH>.

76. *Id.*

77. *Id.*

because this bill and other legislation like it “prioritize the policing & criminalization of Black people as the primary trade-off for the path to citizenship.”⁷⁸ BAJI points specifically to the fact that Black immigrants, like all Black people in America, are “over-represented [in the criminal system] from arrest rates to sentencing” and that seventy-six percent of Black immigrants are deported because of contact with the police.⁷⁹

Mainstream immigration reform agenda helps reinforce the stereotype of the “criminal” immigrant. The conceptual framework for immigration reform is one that relies on a concrete delineation between “deserving immigrants” and those who have been convicted of a criminal offense.⁸⁰ In other words, convicted non-citizens are often used as “foils” for immigrants seen as more worthy of protection.⁸¹ Even if some reformers believe that people should not be deported for petty crimes, few see any issue with deporting immigrants who are seen as “the worst of the worst,” even if they are lawfully present in the United States, and even if they have already served their time in the criminal penal system.⁸²

An illustrative example can be found in the story of Ronald Beauchamp, a U.S. lawful permanent resident from Haiti, who was convicted of attempted murder for attacking his ex-girlfriend. After the attack he tried to kill himself by drinking battery acid, which destroyed his esophagus so significantly that he now uses a feeding tube. After serving his sentence, he lived with his family in New Jersey, became a regular churchgoer, and worked as a cab driver. As of 2016, he was facing deportation to Haiti.⁸³ One must wonder what purpose the deportation of Mr. Beauchamp could possibly have, given that he completed his sentence, showed clear signs of rehabilitation, and was medically quite vulnerable. In large part, the answer lies in the fact that by deporting immigrants like Mr. Beauchamp, leaders may continue to send the signal that they use deportation not as a means to make America whiter, but merely as a means to make America “safer.”

Pursuing immigration reform within the “crime control ideology,” including prioritizing deportations based on the severity of the crime, ignores the underlying structures that give rise to hyper incarceration and excessive law enforcement practices.⁸⁴ The “felons, not families” refrain made popular under Obama failed to acknowledge that felonies have been “legally constructed with astounding breadth” and that the defective constructions have

78. @BAJI, TWITTER (April 1, 2021, 1:50 PM), <https://perma.cc/AAY5-MQ2Y>; BLACK ALL. FOR JUST IMMIGR., *BAJI: The Dream and Promise Act Is Anti-Black*, <https://perma.cc/2F2T-R8LL>.

79. *Id.*

80. Rebecca Sharpless, “Immigrants Are Not Criminals”: Respectability, Immigration Reform, and Hyperincarceration, 52 HOUS. L. REV. 691 (2016).

81. *Id.* at 692.

82. *See id.* at 699.

83. *Id.* at 699–700.

84. *Id.* at 765.

been unequally distributed through racially discriminatory policing.⁸⁵ Further, many scholars have noted the ways in which the expansion of the “crimmigration” apparatus is a direct outgrowth of anti-Black practices in criminal enforcement developed as a mechanism to control Black bodies. Particularly due to a series of three laws passed in 1996, the civil immigration system has absorbed the punitive aspects of the criminal system, and at the same time the federal criminal system ramped up targeting of migration-related crimes.⁸⁶ These three laws advanced the objective of purportedly “small-government” neoliberalism, yet in reality they expanded the state, namely the carceral state, and used neoliberal rhetoric to justify this expansion at the expense of the welfare state.⁸⁷ Of course, the criminalization of immigrants at the forefront of more recent draconian immigration policies has deep historical roots. The United States has removed non-citizens for “moral transgressions” since the days of slavery. By using tropes of the Negro, Rascal, Sambo, and coon, racists justified the enslavement and removal of Black people.⁸⁸

Finally, it is worth noting how the narrative of Black immigrants as “criminal” creates a vicious cycle. The anti-Blackness embedded in our policing, both by ICE and local law enforcement, and our legal systems, both criminal and immigration, leads to the overcriminalization of Black immigrants. This overcriminalization, which is often portrayed by the media not as a product of inherently racist systems, but merely as a method of crime control and protecting public safety, reinforces the false narrative that Black immigrants are prone to criminality. The stronger this narrative becomes, the more easily policymakers can get away with implementing immigration enforcement priorities that disproportionately harm Black immigrants.

b. “Moochers”

Often going hand-in-hand with the stereotype of the “criminal” immigrant, the stereotype of the immigrant as a “drain on the system” has long had a deeply harmful effect for Black immigrants. In the last two decades, asylum seekers from Haiti, Jamaica, and Somalia have had some of the highest rates of asylum denial for any nationality. For example, between 2012 and 2017, 87 percent of Haitian applicants were denied asylum—the highest denial rate of any nationality besides Mexicans, whose denial rate is eighty-eight

85. Jennifer Chacón, *The 1966 Immigration Laws Come of Age*, 9 DREXEL L. REV. 297, 315-16 (2017).

86. *Id.* at 302-03. These “1996 laws” are the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the Antiterrorism and Effective Death Penalty Act (AEDPA), and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). *Id.* at 298. Additionally, INA § 287(g), which allows state and local governments to share immigration enforcement responsibilities with the federal government, was a product of the 1996 laws. *Id.* at 307.

87. *Id.* at 299.

88. Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 U.C. DAVIS L. REV. 171, 177-78 (2018).

percent.⁸⁹ Haiti, Jamaica, and Somalia have all experienced violent political unrest, among other challenges. Conditions in Haiti—including political instability, street gang violence, and a 200 percent increase in kidnapping—have caused the United States to issue a level four travel advisory, the label used for dangerous conflict zones.⁹⁰ Nevertheless, immigration judges, who have enormous amounts of discretion in these cases, automatically assume that those seeking asylum from these countries fall under the “economic migrant” category.⁹¹ This is not a new phenomenon. Starting in the 1970s, Haitians were consistently denied asylum because they were stamped as economic migrants rather than political refugees, and many others were sent back to Haiti without an accurate asylum determination through the Interdiction Program.⁹²

Strikingly, the very same groups of asylum seekers who are branded as merely fleeing a perilous economy are also subject to higher bond rates. Again, this is due in part to the enormous discretion afforded to judges, who can unilaterally determine bail for an asylum seeker. Many attorneys have found that the bonds for their Black clients are set up to tens of thousands of dollars higher than bonds for other clients.⁹³ According to RAICES, between 2018 and 2020, the average bond for clients of immigration rights organizations was \$10,500 across all clients, but \$16,000 for Haitian clients. Astronomical bond rates for African and Caribbean migrants, often above \$50,000, have resulted in family separations and years-long detentions.⁹⁴ Among cases reviewed by a reporter from the Nation, the longest period spent in immigration detention was by a Rwandan national (ten years), followed by a Kenyan national (nine years). In comparison, the average stay in immigration detention is fifty-five days.⁹⁵ This phenomenon reflects the criminalization of poverty we see in the U.S. criminal legal system, which also causes disproportionate lengths of confinement for Black people.⁹⁶

The economic burden stereotype can be pervasive even for Black immigrants who have been lawfully present in the United States for years. In November 2017, the Trump administration ended Temporary Protected Status (TPS) for Haitian immigrants.⁹⁷ TPS is a temporary immigration status provided to nationals of certain countries confronting problems—specifically

89. Herrera, *supra* note 9.

90. NICOLE PHILLIPS & TOM RICKER, QUIXOTE CTR., *THE INVISIBLE WALL: TITLE 42 AND ITS IMPACT ON HAITIAN MIGRANTS* 31 (2021), <https://perma.cc/D87C-YX8Z>.

91. Herrera, *supra* note 9.

92. Sarah E. Baranik de Alarcón, David H. Secor, Norma & Fuentes-Mayorga, “*We Are Asking Why You Treat Us This Way. Is It Because We Are Negroes?*” *A Reparations-Based Approach to Remedying the Trump Administration’s Cancellation of TPS Protections for Haitians*, 26 MICH. J. RACE & L. 1, 12 (2020).

93. Herrera, *supra* note 9.

94. *Id.*

95. *Id.*

96. See, e.g., *Criminalization of Poverty as a Driver of Poverty in the United States*, HUM. RIGHTS WATCH (Oct. 4, 2017, 12:00 AM), <https://perma.cc/U9RY-CC79>.

97. See Jordan, *supra* note 19.

ongoing armed conflict, environmental disaster, or “extraordinary and temporary conditions”—which make it difficult or unsafe for nationals to be deported.⁹⁸ TPS has faced criticism as being one of many immigration policies that creates a second-class status for immigrants of color. Unlike the asylum program, for example, there is no direct path to stable immigration status.⁹⁹ Still, TPS offered some 59,000 Haitian immigrants at least a minimal level of protection, having permitted them to live and work in the United States since an earthquake ravaged the country in 2010.¹⁰⁰

Several lawsuits illustrate that the Trump administration’s decision was not the product of an objective review of country conditions, which is legally how the designation is supposed to be determined, but rather the decision was based on anti-Black animus against Haitian immigrants.¹⁰¹ The administration sought to justify its decision to rescind protection by casting Haitian immigrants as a burden on the American economy. It began by seeking crime and welfare data on Haitian TPS holders, even though TPS recipients are ineligible for welfare.¹⁰² Secretary John Kelly allegedly noted during deliberations that Haitian people are “not a bad people, but they are welfare recipients.”¹⁰³ In an April 2017 email, United States Citizenship and Immigration Services (USCIS)’s Office of Policy and Strategy Chief directed her staff to compile “details on how many [Haitian] TPS holders [were] on public and private relief” and how many were “out of work.”¹⁰⁴

Finally, it is clear that the narrative of the Black immigrant as an economic burden can serve to perpetuate the actual poverty of Black immigrants and the countries from which they come. For example, the Trump administration failed to publish its decision to revoke TPS for Haitian immigrants in the Federal Register until January 18, 2018, which caused many Haitian people to lose their jobs due to uncertainties about their legal capacity to continue working in the United States.¹⁰⁵ Further, due in part to unfounded suspicions that Haitian immigrants have come to the United States solely for economic relief, judges set their bonds to levels that create the choice between being detained, potentially for years, or finding some way to scrape the money together and wipe out their savings or put them in debt in the process.

98. *Temporary Protected Status: An Overview*, AM. IMMIGR. COUNCIL (Sept. 14, 2021), <https://perma.cc/B2EY-P7KY>.

99. Baranik de Alarcón, *supra* note 92, at 17.

100. See Jordan, *supra* note 19, at 17.

101. See Raymond Audain, *Not Yet Forgiven for Being Black: Haiti’s TPS, LDF, and the Protean Struggle for Racial Justice*, 52 LOY. L.A. L. REV. 409, 428 (2019); Jacqueline Charles, *Haitians in South Florida Sue Trump for Terminating TPS*, TAMPA BAY TIMES (Mar. 15, 2018), <https://perma.cc/F79G-3RP3>.

102. Baranik de Alarcón, *supra* note 92, at 19.

103. Audain, *supra* note 101, at 428.

104. *Id.* at 417.

105. Baranik de Alarcón, *supra* note 92, at 22.

c. “*They All Have AIDS*”

At the beginning of COVID-19, the Trump administration began automatically turning away migrants at the border, even if they feared for their life upon return, under the guise of public health.¹⁰⁶ As noted above, this policy, which is illegal, has been carried over into the Biden-Harris administration despite ample, well-founded criticism.¹⁰⁷ As of April 8, 2021, the United States had already expelled over 1000 Haitian immigrants from the country under the Title 42 program, despite an internal DHS report concluding that they may face harm upon return due to political instability and violence.¹⁰⁸ There have also been reports of Haitian immigrants being expelled to Mexico, where they are especially vulnerable to anti-Black racism and violence.¹⁰⁹

The Trump administration’s alleged justification for invoking this policy was to protect U.S. Customs and Border Patrol (CBP) officers from COVID-19, as well as to reduce the number of people in congregate settings. Public health experts explain that this justification is blatantly a pretext and that there is no sound public health rationale for the policy.¹¹⁰ For instance, experts note that Title 42 does not prevent detention in congregate settings, as migrants spend up to two weeks detained before they are expelled. Experts explain that DHS could process, test, quarantine, and release the migrants on parole to shelter in place in a shorter timeframe than currently used to detain them prior to removal.¹¹¹ In other words, revoking this provision and adopting basic precautions, many of which have already been implemented to facilitate international travel of American citizens and non-citizens, “might prevent *less* risk to border agents.”¹¹² Additionally, this policy has shown to be exacerbating the health crises in the countries to which migrants are deported.¹¹³ In other words, the United States, in deporting migrants under the guise of disease control, is exporting disease to countries like Haiti, which it has long branded unfairly as being riddled with disease.

U.S. immigration law and policy has a long history of stoking false fears about immigrants carrying disease to restrict or bar non-White immigrants and asylum seekers.¹¹⁴ For example, the United States tapped into fears of

106. See Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 20, 2020).

107. Q&A: *US Title 42 Policy to Expel Migrants at the Border*, HUM. RIGHTS WATCH (Apr. 8, 2021), <https://perma.cc/BVR8-WWUH>.

108. *Id.*

109. *Id.*

110. Phillips, *supra* note 90, at 7.

111. *Id.* at 14.

112. *Id.*

113. See Diego Oré & Andre Paultre, *Exporting Coronavirus? Infections among U.S. Deportees Reach Haiti, Mexico*, REUTERS (Apr. 20, 2020), <https://perma.cc/SUB5-W9CG>; Editorial, *Why Is the United States Exporting Coronavirus?*, N.Y. TIMES (June 18, 2020), <https://perma.cc/7VPG-2BP8>.

114. See, e.g., Howard Markel & Alexandra Minna Stern, *The Foreignness of Germs: The Persistent Association of Immigrants and Disease in American Society*, 80 MILBANK Q. 757 (2002).

disease for decades by kindling a false narrative of African and Haitian immigrants as carrying HIV/AIDS into the country. This directly impacted immigration policy in several ways. Between 1981 and 1990, the United States did not accept a single Haitian refugee or asylee for permanent refugee status. In 1982, the Centers for Disease Control and Prevention (CDC) singled out Haitian immigrants as being at high risk for the disease just by virtue of their national identity, and in 1990, the Food and Drug Administration issued a ban on Haitian blood donations.¹¹⁵ In November 1991, the U.S. Coast Guard began sending Haitian asylum seekers to Guantanamo Bay in terrible holding conditions and eventually repatriated them without credible fear interviews, which violated international law.¹¹⁶ By the time the CDC finally stopped singling out Haitian people, they had already become extensively associated with the disease. This myth has survived to present day and continues to be exploited by politicians to restrict Black migration. Indeed, upon hearing that 15,000 Haitian immigrants were going to be allowed to enter the United States, President Trump knew that all he needed to say was that they “all have AIDS.”¹¹⁷

Policies seeking to restrict the flow of migrants under the guise of public health are rarely about preventing disease, but rather about stoking racist sentiments to keep non-White immigrants out. In a recent study, scientists found that there is a link between fear of disease and anti-immigrant bias based on the false view that migrants are more likely to carry viruses. In both the United States and Denmark, researchers found that, even after taking participants’ political ideology into account, “contamination disgust” correlated with “opposition to immigration.”¹¹⁸ A couple of years later, another study found that Americans who live in states with higher rates of infectious diseases are more likely to hold racist views. Among White people who were highly germ-averse, looking at infection-related images increased explicit levels of anti-Black prejudice.¹¹⁹ These studies taken together suggest that Black immigrants in the United States might be particularly vulnerable to these notions equating disease with both migrants and Black Americans. Undoubtedly, lawmakers will continue to stir and exploit such notions to drum up support for anti-immigrant, anti-Black policies.

2. “I Think Islam Hates Us”

Thus far, this section has explored some of the ways in which Black immigrants are especially harmed by the good/bad immigrant construction. It is

115. Audain, *supra* note 101, at 421.

116. Baranik de Alarcón, *supra* note 92, at 12-13.

117. See Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. TIMES (Dec. 23, 2017), <https://perma.cc/9JHY-FEUE>.

118. Tom Jacobs, *The Biology-Based Roots of Anti-Immigrant Bias*, PAC. STANDARD (Jun. 14, 2017), <https://perma.cc/LW56-GFBC>.

119. Tom Jacobs, *New Research Suggests Fear of Disease Is at the Root of Racism*, PAC. STANDARD (Jul. 22, 2019), <https://perma.cc/B6DS-TR2M>.

worth considering how Black Muslim immigrants take on an additional layer of this narrative by also being branded as unpatriotic, unassimilable, and most of all, as “terrorists.” When implementing the Muslim ban, the Trump administration relied upon a deeply engrained false belief equating Muslims with terrorism, which originated long before the 9/11 attacks. Muslims, throughout history, have been racialized as non-white.¹²⁰ Emmanuel Mauleón describes that Muslims have also been racialized as “anti-Christian” and therefore “religiously Black.” Thus, he argues, a Black Muslim is “marked Black twice” and put in a “racialized double-bind.”¹²¹ In particular, both Black Americans and Muslim Americans have been subject to over policing and mass surveillance. While Black Americans experience *Terry* stops, excessive driving citations, and mass incarceration, and Muslim Americans experience mass surveillance, invasive wiretaps and Transportation Security Administration (TSA) screenings, Black Muslims are likely subject to both experiences.¹²²

Arguably then, Black Muslim immigrants are placed into a “triple-bind.” This is demonstrated through Trump’s particular hatred for and persistent attacks throughout his campaign and presidency on Somali refugees, including Representative Ilhan Omar, who he has referred to as an “America-hating socialist.”¹²³ Indeed, Somali Black Muslims are in a unique racialized intersection, which leaves them vulnerable to violence and policing strategies employed against Muslims, immigrants, and Black people.¹²⁴ For example, Muslim Somali immigrants swiftly became one of the largest targets for the government’s controversial “Countering Violent Extremism” (CVE) programs, which recruit community leaders, social workers, teachers, and public health providers purportedly to help the government find and “off-ramp” individuals “at risk” of becoming terrorists.¹²⁵

Despite the compound risk of harm from being placed in this “triple bind,” politicians and the media rarely address the needs of this distinct population. Much like the way Black immigrants are erased in the immigration debate, dialogue regarding anti-Blackness within immigrant Muslim communities often renders the experience of African immigrant communities invisible. Advocates note that this is due in part to most Black American Muslims being African American.¹²⁶ This challenge further illustrates the importance of a truly intersectional approach to advocacy in immigration, criminal justice, and national security reform.

120. See Mauleón, *supra* note 33, at 1332.

121. *Id.*

122. *Id.* at 1331.

123. See John Bowdon, *Trump Attacks Omar as 'America-Hating Socialist' at Minnesota Rally*, HILL (Oct. 10, 2019, 10:02 PM), <https://perma.cc/99LD-X7RK>.

124. Mauleón, *supra* note 33, at 1370.

125. *Id.* at 1361; BRENNAN CTR., *supra* note 53.

126. Akinyi Ochieng, *Black Muslims Face Double Jeopardy, Anxiety in the Heartland*, NAT’L PUB. RADIO (Feb. 25, 2017, 6:01 AM), <https://perma.cc/D9NJ-T5X3>.

IV. CONCLUSION

This Note has sought to expose the ways in which Black immigrants, from asylum seekers to longtime residents, are consistently erased in the national immigration debate—whether under an openly racist, xenophobic administration, or under an administration which believes in “securing our values as a nation of immigrants.”¹²⁷ In particular, it is clear that Black immigrants are often rendered invisible because of America’s deeply-rooted anti-Blackness that can be seen throughout immigration policy by taking a closer look at the “good immigrant” versus “bad immigrant” construction. Thus, advocates for Black immigrants have increasingly called for more forms of intersectional activism, which can be seen in organizations like BAJI and the UndocuBlack Network.¹²⁸ The work of such organizations must be publicized and prioritized by the broader immigration reform movement, the media, politicians, and the countless allies who took to the streets chanting “Black Lives Matter” and to the airports shouting, “No Ban, No Wall.”

127. BIDEN HARRIS, *supra* note 50.

128. *See* Palmer, *supra* note 37, at 99.