

# NOTES

## DEPORTABLE UNTIL ESSENTIAL: HOW THE NEOLIBERAL U.S. IMMIGRATION SYSTEM FURTHERS RACIAL CAPITALISM AND OPERATES AS A NEGATIVE SOCIAL DETERMINANT OF HEALTH

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### ABSTRACT

*This Note situates the U.S. immigration system itself as a negative social determinant of health that threatens the health and well-being of immigrants—particularly laborers and agricultural workers—through racialized expropriation and exploitation of their labor. Section I uses the Chinese Exclusion Act and Bracero Program as examples to demonstrate how U.S. immigration laws can create racialized patterns of economic disparities both within and across immigrant groups. Section II exposes the role of the carceral apparatus and criminalization of immigrants in maintaining the racialized economic hierarchy. Finally, Section III highlights how the racialized expropriation and exploitation of labor creates and sustains long-standing health disparities across generations of immigrants.*

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#### INTRODUCTION

Since 2016, the functioning of the U.S. immigration system has been under great scrutiny in part due to several xenophobic and racist policies issued by the Trump administration that treat immigrants as expendable.<sup>1</sup> However, this criminalization and exploitation of immigrants did not start nor end with the Trump administration. The United States has a long history of rendering immigrants exploitable and expendable, perpetuated and sustained through decades of racist and xenophobic policies (see Table 1 below).<sup>2</sup>

This intentional precaritization of immigrants has been at an even clearer display during the pandemic. At the beginning of the pandemic, the United States continued to scapegoat Asians and Asian Americans, specifically Chinese people, for the spread of infectious diseases and illnesses—a tactic used in the past.<sup>3</sup> As a result of this growing anti-Asian narrative regarding COVID-19 spread, there was a 150 percent increase in anti-Asian violence

1. Sarah Pierce & Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency*, MIGRATION POL’Y (July 30, 2020), <https://perma.cc/PS5L-RAVM>; Sarah Pierce, Jessica Bolter & Andrew Selee, *U.S. Immigration Policy under Trump: Deep Changes and Lasting Impacts*, MIGRATION POL’Y INST. (July 18, 2018), <https://perma.cc/S8KD-NL8M>.

2. Melina Juárez Pérez, *Treating Immigrants Like Criminals Has a Long History in the United States*, WASH. POST (July 21, 2019), <https://perma.cc/T7BY-TNQE>; MIGRATION POL’Y INST., *Major US Immigration Laws, 1790–Present* (Mar. 2013), <https://perma.cc/EGZ3-YXAN>; D’Vera Cohn, *How U.S. Immigration Laws and Rules Have Changed Through History*, PEW RES. CTR. (Sept. 30, 2015), <https://perma.cc/3CGP-LWGC>.

3. In the past, the same construction of Chinese women as “carriers” of infectious diseases and illnesses was used to justify the passage of the Immigration Act of 1875 (Page Law or Asian Exclusion Act).

and racism in 2020,<sup>4</sup> with over 3,795 incidents of anti-Asian violence reported to Stop AAPI Hate between March 19, 2020 and February 28, 2021.<sup>5</sup> While constructing negative perceptions about one immigrant group—in an attempt to criminalize and villainize them—the United States has continued to exploit the *essential* but expendable labor of another immigrant group: undocumented food system workers. Even during a pandemic that has disproportionately impacted food system workers—killing 91,717 of them<sup>6</sup>—workers were threatened with employment termination or deportation if they resisted putting their health on the line without any personal protective equipment.<sup>7</sup>

Using mechanisms such as anti-immigrant rhetoric, state-sanctioned violence, and exploitation—while evading responsibility—immigration laws create and sustain racialized patterns of economic inequities and differentially exploit immigrants to premature death.<sup>8</sup> In this Note, I will outline how racial capitalism manifests in the current functioning of the U.S. immigration system and ultimately threatens the health and well-being of immigrants. In other words, I will characterize and expose the U.S. immigration system itself as a negative social determinant of health. My exploration will primarily focus on immigrants who are laborers and agricultural workers.

Section I of this Note will explicate how U.S. immigration laws can create racialized patterns of economic disparities within the immigrant population. In this section, I will outline how past (and present) racist and xenophobic policies—through their indeterminate and temporal nature—have made immigrants exploitable, thereby reproducing economic disparities both within and across immigrant groups. Section II of this Note will build on this section, exposing the role of the carceral apparatus and criminalization of immigrants to maintain the racialized economic hierarchy. Finally, Section III of this Note will highlight how the racialized expropriation and exploitation of labor threatens the health and well-being of immigrants over the life course and creates long-standing health disparities among immigrant groups.

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4. Kimmy Yam, *Anti-Asian Hate Crimes Increased by Nearly 150% in 2020, Mostly in N.Y. and L.A., New Report Says*, NBC NEWS (Mar. 9, 2021), <https://perma.cc/W4Q6-UGG7>.

5. STOP AAPI HATE, *2020-2021 National Report* (Mar. 16, 2021), <https://perma.cc/J6HR-DLTP>.

6. Leah Douglas, *Mapping Covid-19 Outbreaks in the Food System*, FOOD & ENVIRON. REPORTING NETWORK (Apr. 22, 2020), <https://perma.cc/VZJ8-TGD5>.

7. Elizabeth Muñoz, *Farmworkers Put Their Lives at Risk During COVID-19*, SANTA BARBARA & VENTURA C.L. (Aug. 19, 2020), <https://perma.cc/AK3K-QX23>.

8. Ruth Wilson Gilmore defines racism as, “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.” RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 261 (2007).

TABLE 1. SOME MAJOR EXAMPLES OF XENOPHOBIC AND RACIST IMMIGRATION POLICIES IN THE UNITED STATES

Years	Examples of Racist or Xenophobic Laws and Policies
1700	<p><b>The 1790 Naturalization Act:</b> Limited naturalization to only “free White persons,” excluding all non-White people from being able to naturalize. This Act was amended to include naturalization rights for people of African origin in 1870 through the passage of the Naturalization Act of 1870.</p> <p><b>Alien Friends Act 1798:</b> One of the first laws authorizing deportation for immigrants. The president was given the authority to imprison or deport any “alien” who was deemed “dangerous” to the peace and safety of the United States. The law expired in 1800. However, a new law (<b>Alien Enemies Act 1798</b>) was introduced that authorized imprisonment or deportation of male citizens during World War II. This Act was used during World War II and still exists today, although in a modified version.</p>
1800	<p><b>Immigration Act of 1875 (Page Law or Asian Exclusion Act):</b> The first official restrictive immigration law prohibiting entry of Chinese women as a measure of “population control.” This law, formed on anti-immigrant rhetoric, continued scapegoating immigrants, specifically Chinese women, as carriers of infectious and venereal diseases and “moral death.”<sup>9</sup></p> <p><b>Chinese Exclusion Act of 1882:</b> The first and only law banning the immigration of a specific ethnic/national group. The law banned Chinese laborers from immigration for ten years in addition to deporting unauthorized Chinese immigrants. Under this law, residing Chinese nationals were ineligible to naturalize, and those who left the United States were not allowed to return. The Chinese Exclusion Act was not repealed for another sixty-one years.</p>
1900	<p><b>Immigration Act of 1924 (1924 National Origins Quota Act or Johnson-Reed Act):</b> Denied entry to anyone who was ineligible to become a citizen on the basis of race; only white people and people of African nativity or descent were eligible. The Act also introduced nationality quotas, favoring immigrants from northern and western European countries. Additionally, the Act included the Asia Exclusion Act, which effectively banned all immigration from Asian countries.</p>

9. Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 663 (2005); Jessica Pearce Rotondi, *Before the Chinese Exclusion Act, This Anti-Immigrant Law Targeted Asian Women*, HISTORY (Mar. 19, 2021), <https://perma.cc/C3ZS-8G4W>.

TABLE 1. CONTINUED

Years	Examples of Racist or Xenophobic Laws and Policies
	<p><b>Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996:</b> Increased border enforcement and surveillance of immigrants, including mandates to build fences at the Southwest border as well as added new grounds of inadmissibility and deportability. IIRIRA further opened the door to criminalize immigrants; the Act included provisions for expedited removal procedures, an expanded list of crimes that constitute an aggravated felony, and a limited scope of judicial review of immigration decisions. The law also restricted access to government benefits available to immigrants, in addition to increasing penalties for unauthorized immigrants and toughening procedural requirements for asylum seekers and other immigrants.</p>
2000	<p><b>Enhanced Border Security and Visa Entry Reform Act 2002:</b> Increased surveillance of immigrants by mandating the use of an electronic data system to monitor and present all information relevant to admissions and removability of immigrants. The Act also mandated the implementation of a visa entry-exit data system (i.e., US-VISIT).</p> <p><b>Homeland Security Act 2002:</b> Strengthened policing and surveillance of immigrants by establishing the Department of Homeland Security (DHS). In 2003, all the U.S. Immigration and Naturalization Service (INS) functions—including border enforcement, border inspection, and immigration services—were transferred to the DHS. DHS restructured to create three new agencies: the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).</p>

**Note:** This is not an exhaustive list; rather, it is an attempt to provide a historical overview of how immigrants have been criminalized, and rendered exploitable, over centuries through racist and xenophobic policies.

### I. RACIALIZED EXPROPRIATION AND EXPLOITATION OF IMMIGRANT LABOR

The history of U.S. immigration law presents repeating patterns of both exploiting and criminalizing immigrant labor, often at the same time. Immigration laws and policies enjoy an indeterminate and temporal nature that suddenly and dramatically change the legal landscape and livelihood of many immigrants. This indeterminacy can play a crucial role in criminalizing immigrants—illegalizing their existence overnight or confining them in a legal limbo—which also makes immigrants exploitable. At the same time, immigration laws operate within a neoliberal regime, where they create racialized hierarchies to exploit labor, thus producing a vicious cycle of economic disparities among and across immigrant groups. In this section, I will

use the Chinese Exclusion Acts and the Bracero Program as sites to explicate the racialized expropriation and exploitation of immigrant labor.

A. *The Chinese Exclusion Act of 1882*

Chinese immigrants played an instrumental role in the labor workforce in the United States. In the 1850s—particularly during the California Gold Rush of 1848 to 1855—many Chinese workers migrated to the United States, taking jobs in gold mines, agricultural work, factory work, and garment industry. Particularly, Chinese immigrants played a crucial role in building the railroad systems in North America. This great migration—or emigration from China—was influenced by the collapse of the Chinese empire during the 1840s in part due to “the pressures imposed by other nations, rapid population increase, declining standards of living, and problems in the government,”<sup>10</sup> in addition to the growing need for “cheap” labor in the United States. Thus, during this migration, Chinese emigrants identified as “sojourners”—“people who intended to return to China rather than settle permanently in the places to which they had moved.”<sup>11</sup> In other words, Chinese immigrants temporarily moved to the United States in exchange for better working opportunities necessary for their survival.

As a result of the growing demand for labor in the American West during the late nineteenth and early twentieth centuries and the surrounding sociopolitical context of China, Chinese immigrants were routinely recruited and employed in dangerous work, and paid 30 to 50 percent lower wages than White workers, who “refused to do such backbreaking, hazardous work.”<sup>12</sup> It is critical to understand these refusals by White workers as part of the perpetual racial valuation scheme, making immigrant workers exploitable and expendable. Racialized communities are actively recruited for hazardous work—work that White people refuse to engage in—thereby justifying and encouraging the construction of such work as “low-skill” and dangerous work, maintaining miserable working conditions, and treating workers as disposable. Some estimates from 1864 reveal that Chinese laborers were paid \$26 a month, despite engaging in strenuous labor for long hours, six days a week.<sup>13</sup> The exploitation of Chinese labor is evident in the type of work asked of immigrants. Chinese laborers were expected to risk their health and lives by engaging in dangerous work such as tunneling and using explosives, in addition to facing physical abuse from employers. In fact, hundreds of laborers died from explosions, landslides, avalanches, accidents, and disease

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10. *Lesson Fifteen: Industrialization, Class, and Race; Chinese and the Anti-Chinese Movement in the Late 19th-Century Northwest*, CTR. FOR STUDY OF PAC. NW., <https://perma.cc/J8SK-EUSV> (last visited Dec. 20, 2021).

11. *Id.*

12. Lesley Kennedy, *Building the Transcontinental Railroad: How 20,000 Chinese Immigrants Made It Happen*, HISTORY (Apr. 30, 2020), <https://perma.cc/4CQ2-C3KR>.

13. *Id.*

due to the nature of this hazardous work.<sup>14</sup> Many of these deaths and injuries went unreported; “workers were often seen as another resource that the companies used and replaced as needed.”<sup>15</sup> Additionally, when laborers attempted to resist and retaliate against the long hours, unfair wages, and inhumane working conditions through organizing strikes, the employers cut off food, transportation, and supplies to the Chinese immigrants living in camps along the rail lines.<sup>16</sup> These historical instances—that are often erased from current epistemological knowledge—demonstrate the workings of neo-liberalism and racial capitalism: White employers exploited Chinese laborers and kept them at the bottom of the economic ladder. The passage of the Chinese Exclusion Act, then, sustained the hierarchy of the economic ladder.

The Chinese Exclusion Act was implemented in 1882, becoming the first and only law banning the immigration of a specific ethnic or national group over the course of sixty-one years. The Act was designed primarily to ban Chinese laborers from immigration (banned for ten years), in addition to deporting unauthorized Chinese immigrants. Thus, overnight, the “useful” and “cheap” labor of Chinese immigrants—without whom “it would [have] be[en] impossible to complete the western portion of th[e] great national enterprise”<sup>17</sup>—was illegalized. The law was amended over subsequent years to prohibit residing Chinese nationals from naturalizing in the United States and prohibit Chinese immigrants from returning to the United States, thereby confining them in a legal limbo.<sup>18</sup>

The passage of this xenophobic law was heavily influenced by the deliberate construction of Chinese laborers as a “competition” or “threat.”<sup>19</sup> During this time (and particularly during economic downturns), White laborers protested that Chinese immigrants were driving down their wages, diverting attention away from the constant exploitation of Chinese laborers and simultaneously scapegoating them as the problem.<sup>20</sup> Nonetheless, this fear of economic insecurity and competition played a critical role in constructing an anti-immigrant rhetoric, particularly aimed at Chinese immigrants, and resulted in spectacular violence against Chinese immigrants. For example, in 1871, a mob of 500 led the largest mass lynching of Chinese people in the United States, killing approximately 10 percent of the Chinese population in

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14. *Id.*; NAT'L PARK SERV., *A Legacy from the Far East - Golden Spike National Historical Park* (Dec. 20, 2021), <https://perma.cc/2RVE-VE6A>.

15. *Id.*

16. Kennedy, *supra* note 12.

17. *Id.*

18. *Chae Chan Ping v. United States*, 130 U.S. 581, 589 (1889).

19. Prashasti Bhatnagar & Maddy McKeague, *A Brief History of the API Community & State-Sanctioned Violence* (Mar. 26, 2021), <https://perma.cc/6T3A-83HK>; Allison Park, Miya Tada, Negar Esfandiari, Sharlene Daba-ay, Ariel Hsu & Maddy McKeague, *A Brief History of Asian Americans, Pacific Islanders, & State-Sanctioned Violence*, SUTORI (Apr. 26, 2021), <https://perma.cc/3G6N-H872>.

20. Park, Tada, Esfandiari, Daba-ay, Hsu & McKeague, *supra* note 19.

Los Angeles.<sup>21</sup> In 1885, White laborers led a riot and massacre of Chinese coal mine laborers in Sweetwater, killing at least twenty-eight Chinese miners, injuring about fifteen miners, and burning seventy-eight homes of Chinese laborers.<sup>22</sup> This deliberate construction or negative perception of Chinese laborers highlights the underpinnings of racial capitalism: the exploitation of Chinese laborers is “hidden” to construct a counter-narrative, where Chinese laborers are the “competition” and consequently, a threat and a problem. These negative perceptions of immigrants are then sustained and solidified through laws and policies, and they also stand the test of time; immigrants continue to be vilified for fallacies such as “stealing American jobs.”

The Chinese Exclusion Act arose as a reaction to “solve” the “problem” by strengthening a racialized economic hierarchy with White laborers at the top and exploitable Chinese laborers at the bottom. At the same time, by rendering Chinese laborers disposable through the immigration ban, the Act opened the door to sustain economic disparities across immigrant groups—by exploiting another immigrant group. Thus, the use of immigration bans here—through the Chinese Exclusion Act—serve as a mechanism to maintain inequality across immigrant groups and to maintain the dominance of the ruling class (White laborers). Shortly after the passage of the Chinese Exclusion Act, U.S. plantations (particularly sugar plantations) began importing Japanese men to make up for the loss of “cheap” Chinese labor. Similar to the exploitation of Chinese laborers, Japanese immigrants encountered “unforeseen hardships, inhumane conditions, and deplorable wages.”<sup>23</sup> Many Japanese immigrants worked twelve-hour days on the plantation for less than six cents an hour.<sup>24</sup> Moreover, the poor and unfair wages meant that immigrants working on sugar plantations did not have access to food,<sup>25</sup> causing a surge in illnesses, including malnutrition.<sup>26</sup> Notably, similar to Chinese laborers, Japanese workers also resisted exploitation by organizing historic strikes but they were met with a similar fate; any retaliation in the form of “breaking their contract” resulted in violence against the immigrants, including being beaten and jailed.<sup>27</sup> This aggressive response to retaliation also constructed a platform to accentuate the model minority myth. That is, many Japanese laborers strived to assimilate within whiteness (by adopting white norms, values, and conduct) in an attempt to evade the exploitation and abuse faced by Chinese laborers.<sup>28</sup> We can make sense of this deliberate

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21. *Id.*

22. *Id.*

23. *Strikers, Scabs, and Sugar Mongers: How Immigrant Labor Struggle Shaped the Hawai'i We Know Today*, DENSHO (Aug. 22, 2017), <https://perma.cc/QF2M-YA23>.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Park, Tada, Esfandiari, Daba-ay, Hsu & McKeague, *supra* note 19.

construction of inching closer to whiteness to gain legitimacy as a key mechanism to sustain tensions across immigrant groups, thereby maintaining the white hegemony.

Relatedly, the sudden but temporal changing of immigration laws post Chinese Exclusion (ranging from banning immigration from Asian countries to the influx of “skilled” Asian immigrants in 1965 and 1990) serve as another site to expose the racialized patterns of economic disparities within and across immigrant groups. For example, by placing restrictions on who is allowed and from which country, immigration laws have played a key role in sustaining income inequalities within the Asian American community. Between 1970 and 2016, “the gap in the standard of living between Asian[] [immigrants] near the top and the bottom of the income ladder nearly doubled, and the distribution of income among Asian[] [immigrants] transformed from being one of the most equal to being the most unequal among America’s major racial and ethnic groups.”<sup>29</sup> For example, in 2015, the median household income within the Asian community varied from \$100,000 among Indian immigrants to \$36,000 among Burmese immigrants. Similarly, the Burmese community and Bhutanese community had some of the highest poverty rates (35 percent and 33 percent respectively).<sup>30</sup> At the same time, the construction of the model minority myth, as discussed above, maintains the racial inequality through economic disparities. According to a 2019 survey on median and mean wealth across races, Black families reported a median and mean wealth that was less than 15 percent of White families’ wealth (\$24,100 versus \$142,500).<sup>31</sup> Hispanic families also have considerably less wealth in comparison to White families (\$36,100 versus \$165,000).<sup>32</sup> Other racialized families reported higher wealth than Black and Hispanic families, but still lower wealth than White families.<sup>33</sup> Strikingly, “the same patterns of inequality in the distribution of wealth across all families are also evident within race/ethnicity groups; for each of the four race/ethnicity groups, the mean is substantially higher than the median, reflecting the concentration of wealth at the top of the wealth distribution for each group.”<sup>34</sup>

Situating the implementation and legacy of the Chinese Exclusion Act within a neoliberal regime, we can clearly observe how the law is not only a reaction to anti-immigrant rhetoric—created to characterize immigrants as the “problem” and evade responsibility—but also an apparatus to strengthen racialized economic hierarchies. The economic ladder that is an inherent

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29. Rakesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. Is Rising Most Rapidly Among Asians*, PEW RES. CTR. (July 12, 2018), <https://perma.cc/643E-5JYS>.

30. *Id.*

31. Neil Bhutta, Andrew C. Chang, Lisa J. Dettling & Joanne W. Hsu, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, BD. GOV. FED. RES. SYS. (Sept. 28, 2020), <https://perma.cc/VX3R-2XQK>.

32. *Id.*

33. *Id.*

34. *Id.*

product of neoliberalism and racial capitalism maintains economic disparities both within and across immigrant groups, such that White people are always at the top of this ladder (enjoying exploitation) and immigrant groups take turns at the lowest rung (being exploited).

B. *Mexican Farm Labor Agreement (Bracero Program) of 1942*

Mexican workers make up 83 percent of the agricultural workforce,<sup>35</sup> which also has one of the highest rates of injuries and death due to its hazardous and highly skilled nature of work.<sup>36</sup> However, agricultural work is seldom acknowledged as skilled or high-value work. As discussed in the previous section, this construction highlights the underpinnings of the scheme of racial valuation, where hazardous work is often considered “low-skilled” work because it is being done by racialized workers. This scheme of valuation and delegitimization is necessary in order to treat immigrant workers as exploitable and expendable. The particular overrepresentation of Mexican immigrants within farm labor (over 50 percent of whom are undocumented)<sup>37</sup> is largely a result of the legacy of the Mexican Farm Labor Agreement, also known as the Bracero Program, that both exploited and criminalized Mexican labor.

The Bracero Program was an attempt to create a guestworker program in the United States to fill the labor shortages resulting from World War I and II by recruiting farmworkers and laborers from Mexico. The United States created the guestworker program first in 1917, and then again in 1942. The first Bracero Program ended in 1922. Between 1942 and 1964, the second Bracero Program became the largest guestworker program in the United States, employing more than four million Mexican workers, including Indigenous Mexican workers.<sup>38</sup> Through this program, laborers from Mexico were allowed temporary entry into the United States to work in the fields and on railroads. In theory, the Bracero Program included multiple protections for Mexican workers, including “guaranteed payment of at least the prevailing area wage received by native workers; employment for three-fourths of the contract period; adequate, sanitary, and free housing; decent meals at reasonable prices; occupational insurance at employer’s expense; and free transportation back to Mexico at the end of the contract.”<sup>39</sup> However, in practice, the Bracero program became a site of exploitation of Mexican labor.

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35. *Facts About Agricultural Workers*, NAT’L CTR. FOR FARMWORKER HEALTH (Dec. 2020), <https://perma.cc/JV2X-V6TJ>.

36. CTRS. FOR DISEASE CONTROL & PREVENTION, *Agricultural Safety* (Oct. 25, 2021), <https://perma.cc/ZR9U-NF2G>.

37. Trish Hernandez & Susan Gabbard, *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers*, U.S. DEPT. OF LABOR (Jan. 2018), <https://perma.cc/3LD9-7SL8>.

38. FARMWORKER JUST., *Bracero Program*, <https://perma.cc/JLN6-QZP9> (last visited Dec. 20, 2021).

39. BRACERO HISTORY ARCHIVE, *About*, <https://perma.cc/UNU8-VNL5> (last visited Dec. 20, 2021).

In practice, employers ignored most of these “mandatory agreements,” resulting in several reports of abuse sustained by workers due to the program. Workers reported experiencing unsafe housing including overcrowding, overt racial discrimination, lack of health care services, lack of water or sanitary facilities, and wage theft.<sup>40</sup> According to an inspection conducted by the U.S. Department of Labor in 1963, workers “were not given enough to eat and were often served spoiled meat.”<sup>41</sup> Similarly, although workers were guaranteed a minimum wage of 50 cents per hour, “wages were not only low, but also frequently paid late or not at all.”<sup>42</sup> As a result of constant exploitation of Mexican labor, farm wages dropped significantly between the 1940s and mid 1950s.<sup>43</sup> In other words, farm owners—who were predominantly White—benefited from plentiful and cheap labor, while subjecting Mexican workers to inhumane conditions. Moreover, in the event that Mexican workers attempted to issue any complaints, they were threatened with employment termination and deportation.<sup>44</sup> This shameful history and legacy of the Bracero program highlights the workings of neoliberalism and racial capitalism, where Mexican workers were exploited to benefit the—mostly White—farm owners and as a result, were kept at the bottom of the economic ladder.

At the same time, the neoliberal apparatus sustained the racialized economic hierarchy by constructing negative narratives about Mexican workers, painting them as “carriers of disease,” in a deliberate attempt to distract from the exploitation of the workers. For example, during the first Bracero Program (in 1916), a Mexican laborer at a railroad camp came down with typhus, “an infectious disease caused by rickettsia (a bacteria-like microorganism) and transmitted to humans through lice and tick bites.”<sup>45</sup> Over a five-month period, twenty-six people contracted the disease (including twenty-two Mexican workers) and five people died (all of whom were Mexican).<sup>46</sup> It is well-documented that typhus epidemics thrive in unhygienic environments such as overcrowding, lack of facilities for bathing and washing clothes, and poor sanitation<sup>47</sup>—all conditions present alongside the camps as a result of negligent and unsatisfactory employer conduct. However, the neoliberal apparatus targeted Mexican workers—who ultimately died of the disease—as

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40. Sarah Goldman, Anna Aspenson, Prashasti Bhatnagar & Robert Martin, *Essential and in Crisis: A Review of the Public Health Threats Facing Farmworkers in the US*, CTR. FOR A LIVABLE FUTURE 10–11, 24 (May 2021), <https://perma.cc/A8GF-RXGT>; Natalia Molina, *Borders, Laborers, and Racialized Medicalization Mexican Immigration and US Public Health Practices in the 20th Century*, 101 AM. J. PUBLIC HEALTH 1024, 1026–28 (2011); Robert Longley, *The Bracero Program Recruited Millions of Mexicans to Work in the U.S.*, THOUGHTCO. (May 9, 2021), <https://perma.cc/J2DE-MSBV>.

41. Molina, *supra* note 40, at 1028.

42. Jorge Macías, *Time Is Running Out for the Braceros*, CALMATTERS (Nov. 25, 2019), <https://perma.cc/9V54-UY2D>.

43. BRACERO HISTORY ARCHIVE, *supra* note 39.

44. Molina, *supra* note 40, at 1028.

45. *Id.* at 1025.

46. *Id.*

47. *Id.* at 1026.

the scapegoats. That is, instead of identifying and addressing the inhumane conditions that gave rise to the typhus epidemic, employers characterized Mexican workers as “carriers of disease” and criticized their “unclean habits.”

This deliberate construction of anti-immigrant rhetoric is a necessary step for making immigrants exploitable and expendable. Here, the exploitation of Mexican laborers is “hidden” to construct a counter-narrative, where Mexican laborers are “carriers of disease” and consequently, a threat to the United States and the general public. These negative perceptions of immigrants are then sustained and solidified through laws and policies, particularly within the Bracero program, where Mexican workers were expected to undergo invasive and dehumanizing “public health screenings” before entering the United States.<sup>48</sup> In addition to being maintained through laws and policies, the anti-immigrant rhetoric becomes a generally accepted “fact,” thereby allowing the United States to evade responsibility for exploitation while profiting off it. For example, former President Donald Trump consistently villainized Mexican immigrants, amplifying the same false rhetoric of Mexican immigrants bringing “tremendous infectious diseases”<sup>49</sup> to the United States, often in an attempt to justify their mistreatment.

Even though the xenophobic rhetoric around the “biological inferiority” of Mexican workers shifted the focus away from the constant exploitation of workers in the Bracero Program, the program was finally terminated in 1964. However, the immigration system quickly turned to new policies to maintain the dominance of whiteness in the United States.

While the sudden termination of the program in 1964 illegalized and criminalized the Mexican workers in the United States overnight, thereby confining them in a legal limbo, another temporary agricultural worker program—namely, the H-2 Temporary Agricultural Workers Visa—continued in its operation. The H-2 Visa program intended to eliminate labor shortages in the United States. Through this program, employers could offer temporary or seasonal jobs to foreign workers that could not be filled by U.S. workers. The program comprised two types of visas: H-2A visas for temporary agricultural workers<sup>50</sup> and H-2B visas for non-agricultural workers.<sup>51</sup> Despite the different name and structure, the H-2A Visa program is a new iteration of the Bracero program.

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48. *Id.* at 1029.

49. Rupert Neate & Jo Tuckman, *Donald Trump: Mexican Migrants Bring “Tremendous Infectious Disease” to US*, *GUARDIAN* (July 6, 2015), <https://perma.cc/GS64-RQRA>.

50. *H-2A Temporary Agricultural Workers*, U.S. CITIZENSHIP & IMMIGR. SERVS. (last updated Nov. 9, 2021), <https://perma.cc/2PW5-4CSF>.

51. *H-2B Temporary Non-Agricultural Workers*, U.S. CITIZENSHIP & IMMIGR. SERVS. (last updated Nov. 9, 2021), <https://perma.cc/2BP6-LW8N>.

Like the Bracero Program, the H-2A Visa program reproduces similar cycles of exploitation, poverty, and human rights abuses.<sup>52</sup> Several investigations have revealed that the program actively suppresses farmworker wages and requires workers to remain in substandard working and living conditions, among other human rights violations.<sup>53</sup> For example, farmworkers on H-2A visas, who rely on employer-provided housing, are often provided with substandard and hazardous housing, including overcrowding, rodent infestations, lack of heat, electrical problems, and poor water quality.<sup>54</sup> Similarly, the program maintains economic disparities by paying farmworkers using the Adverse Effect Wage Rate (AEWR). While the AEWR is based on a mandated wage standard with the primary goal of preventing underpayment, farmworkers on H-2A visas “are even worse off, with limited labor rights and heightened vulnerability to wage theft and other abuses due to their immigration status.”<sup>55</sup>

The continued exploitation and expropriation of immigrant labor begs the question: *whose* “underpayment” is being prevented by using AEWR? In 2020, the AEWR was even lower than the unfairly low national average wage paid to farmworkers (\$13.68 per hour in comparison to \$14.62 per hour).<sup>56</sup> The national average farmworker wages (\$14.62 per hour) themselves were so low that “farmworkers earned just under 60 [percent] of what comparable workers outside of agriculture made in 2020—a wage gap that was virtually unchanged since the previous year.”<sup>57</sup> As a result, the poverty rate within farmworker communities (particularly migrant and unauthorized farmworker families) is almost twice the poverty rate of the United States as a whole.<sup>58</sup> Thus, the functioning of the H-2 Visa program—carrying forward the abusive legacy of the Bracero Program—reveals how immigration status and laws are manipulated to reproduce cycles of poverty. This economic inequality sustains the racialized economic ladder, with immigrant labor and safety at the bottom.

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52. CENTRO DE LOS DERECHOS DEL MIGRANTE, *Ripe for Reform: Abuse of Agricultural Workers in the H-2A Visa Program* (2020), <https://perma.cc/R4Q8-FUF6>.

53. *Id.*

54. Kathleen Sexsmith, *Exit, Voice, Constrained Loyalty, and Entrapment: Migrant Farmworkers and the Expression of Discontent on New York Dairy Farms*, 20 CITIZENSHIP STUD. 311 (2016); Dana C. Mora, Sara A. Quandt, Haiying Chen & Thomas A. Arcury, *Associations of Poor Housing with Mental Health Among North Carolina Latino Migrant Farmworkers*, 21 J. AGROMED. 327 (2016); Julie Postma & Cristian Ramon, *Strengthening Community Capacity for Environmental Health Promotion Through Photovoice*, 33 PUBLIC HEALTH NURSING 316 (2016); Kai Zhang, Rony F. Arauz, Tsun-Hsuan Chen & Sharon P. Cooper, *Heat Effects Among Migrant and Seasonal Farmworkers: A Case Study in Colorado*, 73 OCCUPATIONAL & ENVTL. MED. 324 (2016); Thomas A. Arcury, Grisel Trejo, Cynthia K. Suerken, Edward H. Ip & Sara A. Quandt, *Stability of Household and Housing Characteristics among Farmworker Families in North Carolina: Implications for Health*, 19 J. IMMIGR. & MINORITY HEALTH 398 (2019).

55. Daniel Costa, *The Farmworker Wage Gap Continued in 2020*, ECON. POL'Y INST. (July 20, 2021), <https://perma.cc/43V5-SLAY>.

56. *Id.*

57. *Id.*

58. *Id.*; Hernandez & Gabbard, *supra* note 37; FARMWORKER JUST., *Farmworkers' Low Wage Rates Have Risen Modestly, Now Congress May Pass a Law to Lower Them*, <https://perma.cc/6P6L-AYBD> (last visited Dec. 20, 2021).

It is important to conceptualize the purpose of the immigration system as a mechanism or method to aid in the functioning of the neoliberal regime. In 1994, the United States implemented the North American Free Trade Agreement (NAFTA), which played a crucial role in displacing workers from Mexico. Under NAFTA, the United States—implicitly and explicitly—exercised dominance by only subsidizing the corn produced in the United States, making U.S. corn cheaper to buy in Mexico.<sup>59</sup> As a result of this policy that phased out trade barriers, over fifteen million Mexican workers, particularly Mexican smallholder farmers, lost their ability to make a living from agriculture.<sup>60</sup> At the same time, the enlarged U.S. agricultural subsidies to American producers increased the labor demand in the United States. With the termination of the Bracero Program and active destabilization of economic markets in Mexico, the United States played an active role in creating a cycle of poverty and displacement for agricultural workers in Mexico, and created a surge of unauthorized migration to the United States.<sup>61</sup>

Simultaneously, the immigration system capitalized on this exploitation by reframing the increase in undocumented workers crossing the border—whom they actively recruited to meet the growing labor demand—as a “criminal surge.” That is, while creating the conditions for displacement and also enjoying the exploitation of Mexican labor (particularly those who were undocumented), the United States also criminalized this labor through policies like Operation Gatekeeper—which was implemented the same year as NAFTA—and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996.<sup>62</sup> Through these policies, the United States increased border enforcement and surveillance of immigrants in an attempt to “solve” the “problem” of “illegal immigration” that it created and benefited from. The creation of this “illegal immigration crisis” for capitalist interests and simultaneously playing victim to the “crisis” is an intentional act to maintain the white hegemony—by placing immigrant workers at the bottom of the economic ladder.

Similar to the Chinese Exclusion Act, situating the implementation and legacy of the Bracero program (continued through the H-2 Visa program) within a neoliberal regime once again reveals that immigration laws are not only a reaction to anti-immigrant rhetoric—created to characterize immigrants as the “problem” and evade responsibility—but also an apparatus to strengthen racialized economic hierarchies. The economic ladder that is an inherent product of neoliberalism and racial capitalism maintains economic

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59. See Goldman, Aspenson, Bhatnagar & Martin, *supra* note 40, at 11; HARSHA WALIA, UNDOING BORDER IMPERIALISM 1, 42, 43 (2013).

60. See Goldman, Aspenson, Bhatnagar & Martin, *supra* note 40, at 11–12; WALIA, *supra* note 59, at 42–43.

61. See Goldman, Aspenson, Bhatnagar & Martin, *supra* note 40, at 11–12; WALIA, *supra* note 59, at 42–43.

62. WALIA, *supra* note 59, at 43.

disparities through exploitation of immigrant labor, and in doing so, maintains the white, capitalist hegemony.

## II. CHARACTERIZING IMMIGRANTS AS “DEPORTABLE UNTIL ESSENTIAL”

In addition to creating a racialized economic hierarchy, the immigration system sustains the hierarchy using the carceral apparatus. That is, the immigration apparatus makes immigrant labor exploitable by offering “protections” that are either indeterminate and temporary or completely non-existent. Alongside these limited or absent protections, employers institutionalize a culture of fear (for example, through threatened termination, deportation, or incarceration) in an attempt to punish any possible retaliation. In this section, I will use agricultural workers as a case study to expose how employers exploit undocumented agricultural workers using fear of enforcement and in doing so, maintain the racialized economic hierarchy.

In general, the carceral apparatus plays a critical role in enforcing immigration laws. As discussed in the previous section, the United States passed several laws that criminalized migration (e.g., Operation Gatekeeper in 1994 and IIRIRA in 1996) and strengthened border militarization in an attempt to solve the “problem” of increased migration from Mexico despite being responsible for causing displacement of workers in the first place. While characterizing immigrants as the “problem,” the United States constructed itself as the “victim”—evading responsibility while actively participating in exploiting “cheap” immigrant labor. As a result, the average daily population of detained immigrants in the United States “increased from approximately 7,000 in 1994, to 19,000 in 2001, and to over 50,000 in 2019. After three decades of expansion, the detention system now captures and holds as many as 500,000 immigrants each year.”<sup>63</sup> These numbers have not halted even during a pandemic despite ICE detention centers becoming a hotspot for COVID-19 outbreaks.<sup>64</sup>

Both the examples of the Chinese Exclusion Act and Bracero Program elucidate how overnight changes to laws leave immigrants with either temporary or no protections. The lack of these protections creates additional precarity for workers, making immigrants exploitable. That is, employers capitalize on the lack of protections, often translating into lack of oversight, by institutionalizing a culture of fear, which plays a key role in sustaining the racialized hierarchy. For example, in both cases of the Chinese Exclusion Act and Bracero Program, workers organized historic strikes to resist injustices such as low wages and hazardous conditions. Employers—and White labor unions—not only displaced these workers through evictions, but they also

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63. *Immigration Detention 101*, DETENTION WATCH NETWORK, <https://perma.cc/4R37-Y8UV> (last visited Dec. 20, 2021).

64. U.S. IMMIGR. & CUSTOMS ENFT., *ICE Guidance on COVID-19*, <https://perma.cc/YZ3M-MFJG> (last visited Dec. 19, 2021); Mia Salenetri, *VERIFY: ICE Detentions Increase to Pre-Pandemic Levels Under Biden*, WUSA9 (Sept. 4, 2021), <https://perma.cc/PH5R-FEV4>.

threatened to fire and deport them—a risk many workers could not afford to take due to their socioeconomic realities.

This exploitation and working of the carceral apparatus to maintain the racialized economic hierarchy is particularly visible in the undocumented farmworker experience. As illustrated in the introduction, the pandemic has exposed the many ways in which employers exploit “essential” and “cheap” labor. During the pandemic, employers compromised the safety of particularly undocumented immigrants—who comprise the majority of agricultural workers, grocery workers, and janitorial staff—by requiring them to work as “essential workers” without adequate hazard compensation or other workers’ compensation benefits,<sup>65</sup> safe workplace conditions, reliable COVID-19 testing, or access to personal protective equipment.<sup>66</sup> In fact, some workplaces implemented strict attendance policies; workers who expressed fear of coming into work were at the risk of being fired during a pandemic.<sup>67</sup> Other employers, such as Tyson Food managers, organized a “cash buy-in, winner-take-all betting pool for supervisors and managers to wager how many employees would test positive for COVID-19.”<sup>68</sup> Accordingly, amid fear of being reported to immigration enforcement or losing their job—risks that they cannot afford<sup>69</sup>—undocumented workers are less likely to report safety concerns, sexual harassment, and injuries, and less likely to retaliate against injustices.<sup>70</sup>

Another way in which employers use the carceral apparatus to exploit immigrants is through the creation of ghost workers (*trabajando fantasma*).<sup>71</sup> Many agribusiness companies recruit undocumented migrant workers and require them to work using valid documentation that belongs to someone else in order to mask their identity from authorities.<sup>72</sup> Through this practice, companies are able to exploit child labor, suppress workers’ compensation

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65. REUTERS, *Meatpackers Deny Workers Benefits for COVID-19 Deaths, Illnesses*, NBC NEWS (Sept. 29, 2020), <https://perma.cc/SB76-STTF>.

66. Muñoz, *supra* note 7; Ruqaiyah Yearby & Seema Mohapatra, *Structural Discrimination in COVID-19 Workplace Protections*, HEALTH AFF. (May 29, 2020), <https://perma.cc/SBF7-D7FA>; *Washington Farm Fined \$2M for Virus Rule Violations*, INSURANCE J. (Dec. 28, 2020), <https://perma.cc/F6PA-VYRN>.

67. Heather Schlitz, *Meatpacking Workers Say Attendance Policy Forces Them to Work with Potential Covid-19 Symptoms*, INVESTIGATE MIDWEST (Oct. 20, 2020), <https://perma.cc/6F2Y-SQUF>.

68. Laurel Wamsley, *Tyson Foods Fires 7 Plant Managers Over Betting Ring on Workers Getting COVID-19*, NPR (Dec. 16, 2020, 5:30 PM), <https://perma.cc/T5GH-3DU6>; Nicole Greenfield, *COVID-19 Has Exposed the Gross Exploitation of Meatpacking Workers*, NRDC (Oct. 30, 2020), <https://perma.cc/QM3Q-SPWM>.

69. Shawn Fremstad, Hye Jin Rho & Hayley Brown, *Meatpacking Workers Are a Diverse Group Who Need Better Protections*, CTR. FOR ECON. & POL’Y RES. (Apr. 29, 2020), <https://perma.cc/G4BB-NPUP>.

70. Komala Ramachandra, *US Meatpacking Workers Face Crisis, Slashed Safety Protections During Pandemic*, HUM. RTS. WATCH (Apr. 24, 2020, 12:00 PM), <https://perma.cc/35QY-CV2N>.

71. Sarah B. Horton, *Ghost Workers: The Implications of Governing Immigration Through Crime for Migrant Workplaces*, 37 ANTHROPOLOGY WORK REV. 11, 13 (2016).

72. Emily Williams, *Researcher Finds “Ghost Workers” Common in Migrant Farm Work*, CU DENVER NEWS (June 28, 2016), <https://perma.cc/L7AQ-R6Y9>; *see also* Horton, *supra* note 71.

claims, and avoid paying overtime wages—without any consequences.<sup>73</sup> For example, participants in a 2016 qualitative study conducted by Horton in the Central Valley of California reported how employers evade responsibility for paying overtime wages by making employees work under a different identity on particular days of the week:

Participant #5: I say that also what's bad is that they only let me work Monday to Saturday. And sometimes you need to work Sunday, but on Sunday[,] they make you work another . . .

Participant #2: Another name.

Participant #5: The Social Security number of another person.

Participant #2: Exactly.

Participant #3: To pay less.

Participant #5: To not have to pay us “overtime.” And if not, they look at you as if to say, “I’m going to lay Fulana off, she won’t work until Monday . . .” They make you lose a day [of work]. They lay you off on Sunday or you work under another name.<sup>74</sup>

At the same time, law enforcement routinely surveils undocumented immigrants who are working with forged, loaned, or stolen documents—which has been made into a job requirement by many employers—to charge immigrants with identify theft and consequently, detain or deport them.<sup>75</sup> As a result, many immigrants remain terrified of being discovered and decide against reporting the injustices they face, including low wages, long hours, injuries sustained, and hazardous working conditions.<sup>76</sup>

Through this construction of ghost workers, employers erase the humanity of undocumented workers (by masking their identities) to exploit their labor while accentuating their “criminality” (by relying on the carceral apparatus to prosecute them for working with forged, loaned, or stolen document). In doing so, the immigration system reproduces and sustains cycles of exploitation and poverty.

### III. U.S. IMMIGRATION SYSTEM OPERATES AS A NEGATIVE SOCIAL DETERMINANT OF HEALTH

Together, the racialized expropriation and exploitation of labor threatens the health and well-being of immigrants. The previous sections explain how anti-immigrant rhetoric and practice, sustained through laws, has led to both structural and physical violence against immigrants, thereby endangering

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73. Horton, *supra* note 71, at 17.

74. *Id.*

75. Williams, *supra* note 72.

76. *Id.*

their lives and health. Beyond inciting violence, the U.S. immigration system also contributes to negative health outcomes for immigrants over the life course by criminalizing immigrants and reproducing cycles of poverty, economic disparities, and discrimination.

### A. *Health Impacts of Criminalization*

Structural discrimination—including xenophobia, misogyny, and racism—is evident in the immigration laws passed since the 1700s. Accordingly, immigration enforcement has become a key function of the U.S. immigration system to criminalize and control immigrants. This trend has only strengthened over the years. For example, both CBP and ICE funding have nearly tripled since their inception—CBP funding increased from \$5.9 billion in 2003 to \$17.7 billion in 2021, while ICE funding increased from \$3.3 billion in 2003 to \$8.3 billion in 2021.<sup>77</sup>

This increased funding of immigration enforcement has continued despite mounting evidence confirming its harmful impacts on physical and mental health. Research has consistently shown that short- and long-term detention can lead to chronic stress, trauma, and deteriorating mental health including Post-Traumatic Stress Disorder (PTSD), depression, and anxiety in both adults and children.<sup>78</sup> In fact, the fear of enforcement policies alone is associated with increased stress and mental health distress.<sup>79</sup> Especially for children, detention contributes to detrimental long-lasting impacts on early child development.<sup>80</sup>

In addition to increasing the propensity of negative mental health outcomes, ICE detention centers expose immigrants to unsanitary and unsafe conditions, thereby increasing the risk for infectious diseases and outbreaks.<sup>81</sup>

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77. AM. IMMIGR. COUNCIL, *The Cost of Immigration Enforcement and Border Security* (Jan. 20, 2021), <https://perma.cc/TBY5-57ZS>.

78. See, e.g., Julie M. Linton, Marsha Griffin, Alan J. Shapiro & COUNCIL ON CMTY. PEDIATRICS, *Detention of Immigrant Children*, 139 PEDIATRICS 1, 6 (2017); Arlin Cuncic, *The Psychological Effects of Being in a Detention Center*, VERYWELL MIND (Dec. 27, 2020), <https://perma.cc/ERC9-FYAV>; Chloe Reichel, *How Detention Centers Affect the Health of Immigrant Children*, JOURNALIST'S RES. (July 22, 2019), <https://perma.cc/EG3Y-LMW9>.

79. Julia Shu-Huah Wang & Neeraj Kaushal, *Health and Mental Health Effects of Local Immigration Enforcement*, 53 INT'L MIGRATION REV. 970, 971–72, 974–76, 984–87 (2019); Samantha Sabo & Alison Elizabeth Lee, *The Spillover of US Immigration Policy on Citizens and Permanent Residents of Mexican Descent: How Internalizing "Illegality" Impacts Public Health in the Borderlands*, 3 FRONTIERS IN PUBLIC HEALTH 1, 3–8 (2015).

80. Rhitu Chatterjee, *Lengthy Detention of Migrant Children May Create Lasting Trauma*, *Say Researchers*, NPR (Aug. 23, 2019), <https://perma.cc/64LY-DCU6>; *What Research Shows About Long-Term Psychological Damage of Immigrant Children Being Detained Indefinitely*, KAISER HEALTH NEWS (Aug. 23, 2019), <https://perma.cc/W5X9-BBAF>; see also Prashasti Bhatnagar, *Children in Cages: A Legal and Public Health Crisis*, 34 GEO. IMMIGR. L.J. 181, 182–83 (2019).

81. Nathan C. Lo, Sindiso Nyathi, Lloyd A. C. Chapman, Isabel Rodriguez-Barraquer, Margot Kushel, Kirsten Bibbins-Domingo & Joseph A. Lewnard, *Influenza, Varicella, and Mumps Outbreaks in US Migrant Detention Centers*, 325 JAMA 180, 180–82 (2021); J. David McSwane, *ICE Has Repeatedly Failed to Contain Contagious Diseases, Our Analysis Shows. It's a Danger to the Public*, PROPUBLICA (Mar. 20, 2020, 5:00 AM), <https://perma.cc/F7RK-C4CT>; see also Prashasti Bhatnagar, *Public Health As Pretext: The Evisceration of Asylum Law and Protections During a Pandemic*, 35 GEO. IMMIGR. L.J. 317, 321–23 (2020).

For example, in 2019, there were several outbreaks of infectious diseases, such as scabies, shingles, chickenpox, and influenza in detention facilities in Texas.<sup>82</sup> The harsh conditions at ICE detention facilities have also been fatal: between 2017 and 2018, at least twenty-two detained immigrants died in ICE custody.<sup>83</sup> Additionally, women immigrants are particularly at risk of abuse and trauma in ICE detention facilities.<sup>84</sup> Several reports have revealed ICE officers as perpetrators of sexual abuse against women including children,<sup>85</sup> forced hysterectomies,<sup>86</sup> and gross medical neglect in detention facilities.<sup>87</sup>

In light of the hazardous conditions within ICE detention facilities, it was unsurprising that these facilities became a massive COVID-19 hotspot in 2020. Between April to late May 2020, COVID-19 cases spiked nearly 500 percent, endangering the lives of many immigrants held in custody.<sup>88</sup> According to conservative estimates (likely to be undercounts) shared by ICE detention centers,<sup>89</sup> as of January 27, 2022, there were 37,155 confirmed positive cases of COVID-19 across the nation with at least eleven detained immigrants deaths and 3,110 confirmed cases under isolation or monitoring in custody.<sup>90</sup> Despite being in the third year of this pandemic, the United States has continued to compromise the health and safety of immigrants in detention centers. In fact, at the start of 2022, detention centers continued to endanger the lives of immigrants, with COVID-19 cases surging by 520 percent.<sup>91</sup>

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82. Christina Potter, *Outbreaks in Migrant Detention Facilities*, OUTBREAK OBSERVATORY (July 11, 2019), <https://perma.cc/HNS5-RZRP>.

83. Lisa Riordan Seville, Hannah Rappleye & Andrew W. Lehren, *22 Immigrants Died in ICE Detention Centers During the Past 2 Years*, NBC NEWS (Jan. 6, 2019), <https://perma.cc/766S-TP38>.

84. Nora Ellmann, *Immigration Detention Is Dangerous for Women's Health and Rights*, CTR. FOR AM. PROGRESS (Oct. 21, 2019), <https://perma.cc/CU3A-Q8VK>.

85. See AM. CIVIL LIBERTIES UNION, *Sexual Abuse in Immigration Detention*, <https://perma.cc/XQC9-GS64> (last visited Dec. 20, 2021); Matthew Haag, *Thousands of Immigrant Children Said They Were Sexually Abused in U.S. Detention Centers, Report Says*, N.Y. TIMES (Feb. 27, 2019), <https://perma.cc/9WAK-K3VY>; Lomi Kriel, *ICE Guards "Systematically" Sexually Assault Detainees in an El Paso Detention Center, Lawyers Say*, PROPUBLICA (Aug. 14, 2020), <https://perma.cc/9QCF-J7VG>.

86. See Rachel Treisman, *Whistleblower Alleges "Medical Neglect," Questionable Hysterectomies of ICE Detainees*, NPR (Sept. 16, 2020), <https://perma.cc/5VH3-YKGF>; Catherine E. Shoichet, *The US Has a Horrifying History of Forced Sterilizations*, CNN (Sept. 16, 2020), <https://perma.cc/AKA5-PR99>; Moira Donegan, *ICE Hysterectomy Allegations in Line with US's Long and Racist History of Eugenics*, GUARDIAN (Sept. 17, 2020), <https://perma.cc/BW2M-QLQ6>.

87. Ellmann, *supra* note 85.

88. Eric Katz, *ICE Struggles to Protect Detained Immigrants as Coronavirus Spreads in Its Facilities*, GOVT. EXEC. (June 24, 2020), <https://perma.cc/5XDQ-48H7>.

89. See Nina Siulc, *Vera's New Prevalence Model Suggests COVID-19 is Spreading through ICE Detention at Much Higher Rates than Publicized*, VERA INST. (June 4, 2020), <https://perma.cc/TJB8-Y8B8>; Tom Jawetz & Nicole Prchal Svajlenka, *Data on the Coronavirus Outbreak in Immigration Detention Offer More Questions than Answers*, CTR. FOR AM. PROGRESS (June 16, 2020), <https://perma.cc/XDQ4-J33L>.

90. U.S. IMMIGR. & CUSTOMS ENFT., *supra* note 64.

91. Camilo Montoya-Galvez, *Coronavirus Infections Inside U.S. Immigration Detention Centers Surge By 520% in 2022*, CBS NEWS (Jan. 14, 2022), <https://perma.cc/G8RR-QBDQ>.

## B. *Health Impacts of Poverty and Economic Disparities*

Alongside the direct impacts of criminalization and the carceral apparatus, the U.S. immigration system maintains cycles of poverty (as explained in previous sections), which itself is a negative social determinant of health. Decades of public health research demonstrate that poverty and health are inextricably connected; low income is associated with lower birth weight, reduced life expectancy, increased risk of both chronic and acute diseases, such as cardiovascular disease, diabetes, respiratory illness, increased risk of mental illnesses, among other negative health outcomes.<sup>92</sup> Notably, health disparities as a result of income inequalities “emerge early in life and can be transmitted across generations”<sup>93</sup> and also lead to “adverse consequences across the life course.”<sup>94</sup> At the same time, poor health arising as a result of economic disparities also contributes to poverty, thereby creating a negative feedback loop—also referred to as the health-poverty trap.<sup>95</sup>

Racial health disparities exist even after controlling for poverty. In general, socioeconomic status indicators such as income, employment, and education serve as protective factors against mortality.<sup>96</sup> However, the protective effects of socioeconomic status indicators are systemically smaller for Black people than White people due to the wear and tear of racism, along with the burden of coping.<sup>97</sup> Specifically, research has shown that when Black people experience racism—which happens across the income scale—it leads to inflammation<sup>98</sup> and a higher allostatic load score, which is “the cumulative wear and tear on the body’s system brought on by the repeated adaptation to stressors.”<sup>99</sup> As a result, Black people are more likely to suffer from chronic illnesses such as heart attacks, neurodegenerative disease, and metastatic

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92. See, e.g., Dhruv Khullar & Dave A. Chokshi, *Health, Income, & Poverty: Where We Are & What Could Help*, HEALTH AFF. (Oct. 4, 2018), <https://perma.cc/C9HP-VT8K>; Sorsha Roberts, *Key Facts: Poverty and Poor Health*, HEALTH POVERTY ACTION (Jan. 10, 2018), <https://perma.cc/XE87-S5QU>; Lisa Esposito, *The Countless Ways Poverty Affects People’s Health*, U.S. NEWS & WORLD REPORT (Apr. 20, 2016), <https://perma.cc/KU6T-YSSU>.

93. Khullar & Chokshi, *supra* note 93.

94. *Id.*

95. *Id.*

96. See, e.g., Jennifer B Dowd, Jeremy Albright, Trivellore E Raghunathan, Robert F Schoeni, Felicia LeClere & George A Kaplan, *Deeper and Wider: Income and Mortality in the USA over Three Decades*, 40 INT’L J. EPIDEMIOLOGY 183 (2011); Sarah A. Burgard, Michael R. Elliott, Kara Zivin & James S. House, *Working Conditions and Depressive Symptoms: A Prospective Study of U.S. Adults*, 55 J. OCCUPATIONAL ENVTL. MED. 1007 (2013).

97. See, e.g., Melissa M. Farmer & Kenneth F. Ferraro, *Are Racial Disparities in Health Conditional on Socioeconomic Status?* 60 SOC. SCI. MED. 191 (2005); Shervin Assari, *Unequal Gain of Equal Resources Across Racial Groups*, 7 INT’L J. HEALTH POL’Y MANAGEMENT 1 (2018); see also Shervin Assari, *Health Disparities Due to Diminished Return Among Black Americans: Public Policy Solutions*, 12 SOC. ISSUES POL’Y REV. 112 (2018).

98. See, e.g., April D. Thames, Michael R. Irwin, Elizabeth C. Breen & Steve W. Cole, *Experienced Discrimination and Racial Differences in Leukocyte Gene Expression*, 106 PSYCHONEUROENDOCRINOLOGY 277 (2019); UNIV. S. CAL., *Racism Has a Toxic Effect: Study May Explain How Racial Discrimination Raises the Risks of Disease Among African Americans*, SCIENCE DAILY (May 31, 2019), <https://perma.cc/M28Y-UGKN>.

99. Jamila Taylor, *Racism, Inequality, and Health Care for African Americans*, CENTURY FOUND. (Dec. 19, 2019), <https://perma.cc/ZD69-49ZL>.

cancer, regardless of income levels.<sup>100</sup> The prevalence of racial health disparities also demonstrates the “double jeopardy” that most racialized immigrants face in the United States: the “wear and tear” caused by racism is further compounded by discrimination and xenophobia.<sup>101</sup>

### C. *Health Impacts of Discrimination*

The direct health impacts of the structural harm created due to U.S. immigration enforcement do not exist in a vacuum. These health impacts and disparities are further compounded by discrimination—including xenophobia—operating on institutional and interpersonal levels. Immigrants experience discrimination on an institutional level through barriers to health care access.<sup>102</sup> Many immigrants including refugees have to wait for five years before becoming qualified to access health care insurance options such as Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplaces. Undocumented immigrants, on the other hand, are permanently barred from all of these insurance options, thereby leaving them vulnerable to high rates of uninsurance.<sup>103</sup> In fact, in 2017, nearly 45 percent of undocumented immigrants in the United States were uninsured, compared to 23 percent of lawfully present immigrants and 10 percent of U.S. citizens being insured.<sup>104</sup>

In addition to health care access barriers, immigrants—especially undocumented immigrants—experience discrimination in medical settings as well as fear of being reported to the authorities (e.g., ICE).<sup>105</sup> Due to this interpersonal discrimination, immigrants often delay or completely avoid seeking necessary care, which can lead to worse health outcomes over the long-term.<sup>106</sup> Additionally, extensive research has shown that discrimination itself is associated with adverse physical and mental health outcomes such as chronic cardiovascular diseases, substance abuse, depression, anxiety, PTSD, and suicidal ideation.<sup>107</sup>

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100. Thames, Irwin, Breen & Cole, *supra* note 99; UNIV. S. CAL., *supra* note 99.

101. See discussion *infra* Section III.C.; see, e.g., Valerie Lacarte, *Black Immigrants in the United States Face Hurdles, but Outcomes Vary by City*, MIGRATION POL’Y INST. (Feb. 10, 2022), <https://perma.cc/JTS4-ZMBQ>; JULIANA MORGAN-TROSTLE, KEXIN ZHENG & CARL LIPSCOMBE, *THE STATE OF BLACK IMMIGRANTS*, NYU L. IMMIGRANTS RTS. CLINIC & BLACK ALL. FOR JUST. IMMIGR., <https://perma.cc/JCK8-4K3K> (last visited May 5, 2022).

102. Samantha Artiga & Maria Diaz, *Health Coverage and Care of Undocumented Immigrants*, KFF (July 15, 2019), <https://perma.cc/7U3R-KUWP>.

103. *Id.*; RAND CORP., *Health Newsletter: Undocumented Immigrants Are Most Likely to Be Uninsured*, <https://perma.cc/N5QZ-LZ3R> (last visited Dec. 20, 2021); CTR. FOR REPRODUCTIVE RTS., *Discrimination Against Immigrants in Access to Health Care, Including Sexual and Reproductive Health Services and Information* (2018), <https://perma.cc/6BPD-4JW9>.

104. Artiga & Diaz, *supra* note 103.

105. See, e.g., ROBERT WOOD JOHNSON FOUND., *Immigration, Health Care and Health* (Sept. 12, 2017), <https://perma.cc/39HX-84AN>; Diane S. Lauderdale, Ming Wen, Elizabeth A. Jacobs & Namratha R. Kandula, *Immigrant Perceptions of Discrimination in Health Care: The California Health Interview Survey 2003*, 44 MED. CARE 914 (2006).

106. Artiga & Diaz, *supra* note 103.

107. See, e.g., Brigette A. Davis, *Discrimination: A Social Determinant of Health Inequities*, HEALTH AFF. (Feb. 25, 2020), <https://perma.cc/3GUK-ZTZE>; Korin Miller, *What Is Xenophobia—And How Does It Affect a Person’s Health? Here’s What Experts Say*, HEALTH.COM (Mar. 19, 2021), <https://>

As discussed above, xenophobia and racial capitalism operate across structural, institutional, and interpersonal levels within the U.S. immigration system. Accordingly, the current functioning of the system causes violence against immigrants on a structural level, restricts their access to care on an institutional level, in addition to subjecting immigrants to interpersonal discrimination and racism, especially in medical settings. Additionally, the system reproduces cycles of poverty and economic disparities through constant exploitation and criminalization of immigrants. These forces work in tandem to accumulate over time and contribute to long-lasting negative physical and mental health outcomes over the life course of immigrants.<sup>108</sup>

#### D. *Case Study: Farmworker Health Challenges*

The direct relationship between racial capitalism and negative health outcomes can be evidently observed in the socio-legal-political challenges facing farmworkers, who are arguably the most exploited group by the U.S. immigration system and employers.

As discussed in previous sections, over 50 percent of farmworkers in the United States are without legal documentation.<sup>109</sup> This overrepresentation of unauthorized labor is partly a result of the abusive legacy of the Bracero Program (sustained through the current H-2A Visa program) as well as the implementation of NAFTA that pushed many Mexican workers into poverty. Farmworkers, who are recruited to fulfill the labor demand in the United States at “cheap” rates, are typically paid by a “piece rate,” instead of an hourly wage. That is, they are paid based on the volume of fruit or vegetables they harvest.<sup>110</sup> This type of payment model thrives in neoliberalism, where there is a great emphasis on individualization, economic value, and generating profits. As a result, farmworkers receive unfairly low wages despite engaging in highly skilled and strenuous physical labor under hazardous conditions.<sup>111</sup> Even then, there are several examples of employers exploiting the lack of legal status and/or protections by limiting pay and in some cases, completely withholding it.<sup>112</sup> In this way, farmworkers are kept at the bottom of the economic ladder, producing economic disparities within farmworker communities in order to maintain the white hegemony. As discussed above, poverty itself is a predictor of poor health and directly associated with an increased risk of several negative health outcomes over the life course and across generations.<sup>113</sup>

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perma.cc/C5SC-KBQ6; Xinqi Dong, Ruijia Chen & Melissa A. Simon, *Experience of Discrimination Among U.S. Chinese Older Adults*, 69 J. GERONTOLOGY S76 (2014).

108. *Xenophobia, Racism, and Health in Immigrant Communities*, SCILINE (Aug. 27, 2020), <https://perma.cc/KJ8G-V327>.

109. Hernandez & Gabbard, *supra* note 37.

110. See Goldman, Aspenson, Bhatnagar & Martin, *supra* note 40, at 23–24.

111. Costa, *supra* note 55.

112. CENTRO DE LOS DERECHOS DEL MIGRANTE, *supra* note 52; Horton, *supra* note 71.

113. Khullar & Chokshi, *supra* note 93.

At the same time, the “piece rate” income model—which is a mechanism of exploitation and a product of racial capitalism—prevents farmworkers from taking necessary work breaks in order to maintain and maximize their pay.<sup>114</sup> Accordingly, farmworkers continue working for long hours in the field without meaningful breaks or rest. Working overtime without any break is directly associated with serious health conditions such as acute kidney illness and chronic kidney disease,<sup>115</sup> in addition to chronic health problems such as depression,<sup>116</sup> thereby endangering the health and well-being of farmworkers.

Similarly, the lack of protections in the form of rest, breaks, and shade leave farmworkers vulnerable to prolonged heat exposure, thereby exposing them to several heat-related illnesses such as heat cramps, heat syncope, heat exhaustion, fatigue, nausea, dizziness, dehydration, and heat strokes.<sup>117</sup> In fact, extensive research has confirmed that agricultural workers are twenty times more likely to experience heat-related deaths at an annual rate than all civilian workers in the United States.<sup>118</sup> The risks associated with prolonged heat exposure and working for long periods of time are only likely to worsen

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114. See, e.g., Alondra J. Vega-Arroyo, Diane C. Mitchell, Javier R. Castro, Tracey L. Armitage, Daniel J. Tancredi, Deborah H. Bennett & Marc B. Schenker, *Impacts of Weather, Work Rate, Hydration, and Clothing in Heat-Related Illness in California Farmworkers* 62 AM. J. INDUSTRIAL MED. 1038, 1038–39 (2019); Diego J. Aguilar & Magdalena Madero, *Other Potential CKD Hotspots in the World: The Cases of Mexico and the United States*, 39 SEMINARS IN NEPHROLOGY 300, 302–04 (2019); John S. Luque, Brian H. Bossak, Caroline B. Davila & Jose Antonio Tovar-Aguilar, “I Think the Temperature Was 110 Degrees!”: *Work Safety Discussions Among Hispanic Farmworkers*. 24 J. AGROMED. 1, 7–8 (2019).

115. See, e.g., Aguilar & Madero, *supra* note 114; Sally Moyce, Diane Mitchell, Tracey Armitage, Daniel Tancredi, Jill Joseph & Marc Schenker, *Heat Strain, Volume Depletion and Kidney Function in California Agricultural Workers*, 74 OCCUPATIONAL ENVTL. MED. 402 (2017).

116. See, e.g., Athena K. Ramos, Gustavo Carlo, Kathleen Grant, Natalia Trinidad & Antonia Correa, *Stress, Depression, and Occupational Injury Among Migrant Farmworkers in Nebraska*, 2 SAFETY 1 (2016); PEW CHARITABLE TRUSTS & JOHNS HOPKINS BLOOMBERG SCH. PUBLIC HEALTH, *Putting Meat on the Table: Industrial Farm Animal Production in America* (2008), <https://perma.cc/DYN9-PPQU>.

117. See, e.g., Vega-Arroyo, Mitchell, Castro, Armitage, Tancredi, Bennett & Schenker, *supra* note 115; Abby D. Mutic, Jacqueline M. Mix, Lisa Elon, Nathan J. Mutic, Jeannie Economos, Joan Flocks, Antonio J. Tovar-Aguilar & Linda A. McCauley, *Classification of Heat-Related Illness Symptoms Among Florida Farmworkers*, 50 J. NURSING SCHOLARSHIP 74 (2018); Gregory D. Kearney, Hui Hu, Xiaohui Xu, Marla B. Hall & Jo Anne G. Balaney, *Estimating the Prevalence of Heat-Related Symptoms and Sun Safety-Related Behavior among Latino Farmworkers in Eastern North Carolina*, 21 J. AGROMED. 15 (2016); Valerie Vi Thien Mac & Linda A. McCauley, *Farmworker Vulnerability to Heat Hazards: A Conceptual Framework*, 49 J. NURSING SCHOLARSHIP 617 (2017).

118. See, e.g., Mutic, Mix, Elon, Mutic, Economos, Flocks, Tovar-Aguilar & McCauley, *supra* note 117; Grant Quiller, Jennifer Krenz, Kristie Ebi, Jeremy J. Hess, Richard A. Fenske, Paul D. Sampson, Mengjie Pan & June T. Spector, *Heat Exposure and Productivity in Orchards: Implications for Climate Change Research*, 72 ARCHIVES ENVTL. OCCUPATIONAL HEALTH 313 (2017); Diane C. Mitchell, Javier Castro, Tracey L. Armitage, Alondra J. Vega-Arroyo, Sally C. Moyce, Daniel J. Tancredi, Deborah H. Bennett, James H. Jones, Tord Kjellstrom & Marc B. Schenker, *Recruitment, Methods, and Descriptive Results of a Physiologic Assessment of Latino Farmworkers: The California Heat Illness Prevention Study*, 59 J. OCCUPATIONAL ENVTL. MED. 649 (2017); CTRS. FOR DISEASE CONTROL & PREVENTION, *Heat-Related Deaths Among Crop Workers—United States, 1992–2006* (2008), <https://perma.cc/XCB2-LMTW>.

due to climate change,<sup>119</sup> rendering farmworkers disproportionately vulnerable and expendable.

#### CONCLUSION

The history and current implementation of immigration laws demonstrate that immigration laws have come to create and sustain racialized patterns of economic inequities using mechanisms of anti-immigrant rhetoric, state-sanctioned violence, and exploitation—while evading responsibility. In this Note, I expose the U.S. immigration system itself as a negative social determinant of health, threatening the health and well-being of immigrants, particularly laborers and agricultural workers. The Chinese Exclusion Act and Bracero Program serve as two key examples to explicate how immigration laws both exploit and criminalize immigrant labor, thereby creating a racialized economic hierarchy, with White people at the top (enjoying exploitation) and immigrant groups taking turns at the lowest rung (being exploited). The immigration system sustains this racialized economic hierarchy using the carceral apparatus and criminalization of immigrants. Together, the racialized expropriation and exploitation of labor threatens the health and well-being of immigrants over the life course and creates long-standing health disparities among immigrant groups.

Immigrants are *always* essential—beyond a pandemic, and beyond the labor they produce. We need to reflect this reality in our systems and policies by radically reimagining the U.S. immigration system, in addition to abolishing our reliance on the carceral apparatus and the neoliberal regime that consistently compromises immigrant safety and well-being.

Immigrant labor has always been essential; it is critical we treat immigrant lives as essential, too.

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119. See *Anthropogenic Climate Change*, GLOBAL GREENHOUSE WARMING, <https://perma.cc/GH6K-T2RX> (last visited Dec. 20, 2021); UNION OF CONCERNED SCIENTISTS, *Global Warming Is Happening and Humans Are the Primary Cause* (Jan. 9, 2018), <https://perma.cc/99Y7-RT5D>; Gerrit Hansen & Dáithí Stone, *Assessing the Observed Impact of Anthropogenic Climate Change*, 6 NAT'L CLIMATE CHANGE 532 (2016).