RENDITION TO A PLACE OF NO RETURN

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ABSTRACT

The rendition of 288 Venezuelan and Salvadoran men to the Salvadoran mega-prison known as CECOT tore a hole in the fabric of the American legal system. The intention behind the presidential proclamation authorizing the renditions seems to have been to send these men, many of whom had no criminal convictions and crossed the border in regular fashion, to a place beyond legal relief, a place of no return. Yet, this feature of the CECOT renditions, coupled with the four months of torture the men endured there, bears a startling resemblance to the practice of removal and rendition under antebellum slave law, particularly under the fugitive slave laws of 1793 and 1850. This resonance provides a window into the cruelties of the American immigration system and into the law's facility in enabling its own suspension, a recurrent motif from the earliest days of the American republic through the first year of the second Trump administration. This paper gives texture to that disturbing parallel, tracing the contours of Black removal and rendition before the Civil War alongside the exercises of rendition and third-country removal that have thrived in the twenty-first century. To reckon with this history is to come to terms with the forms of resistance that will be necessary to combat its afterlife in the present.

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INTRODUCTION

On the evening of March 14, 2025, more than 100 Venezuelan men held at the El Valle Detention Facility in Raymondville, Texas, were taken from their cells and told they would be deported to an undisclosed location the next day.[1] When asked where they were being taken, the "guards reportedly laughed and said that they did not know," or told the men they were headed to another detention facility, to Mexico, or back to Venezuela.[2] The men began boarding planes the next morning, at which point many "began to panic and beg officials for more information."[3] The planes departed that evening, stopped in Honduras, and made their final landing in El Salvador in the early hours of March 16.[4] Upon landing, the men were transferred to the Salvadoran mega-prison known as CECOT: el Centro de Confinamiento del Terrorismo, or the Center for Terrorism Confinement.[5] An estimated 238 Venezuelans and 23 Salvadorans were on the March 15 flights, followed by another 14 Venezuelans and 13 Salvadorans over the next month.[6]

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1. Trump v. J.G.G., 604 U.S. 670, 678 (2025) (Sotomayor, J., dissenting).
2. J.G.G. v. Trump, 786 F.Supp.3d 37, 45 (D.D.C. June 4, 2025).
3. *Id.*
4. Julie Turkewitz et al., *"You Are All Terrorists": Four Months in a Salvadoran Prison*, N.Y. TIMES (Nov. 8, 2025), https://www.nytimes.com/2025/11/08/world/americas/el-salvador-prison-migrants.html [https://perma.cc/J7VM-F2NA].
5. *J.G.G.*, 786 F.Supp.3d at 45.
6. *Tracking the CECOT Disappearances*, NAT'L IMMIGR. L. CTR. (last visited Apr. 10, 2026), https://www.nilc.org/resources/tracking-the-cecot-disappearances/ [https://perma.cc/9EW7-XRKT]. At least eight women and one Nicaraguan man were on one of the initial flights to CECOT but were reportedly refused entry by Salvadoran officials. Laura Romero, *Venezuelans Deported Last Week Included 8 Women Who Were Returned to US, Court Filings Say*, ABC NEWS (Mar. 24, 2025), https://abcnews.go.com/US/venezuelans-deported-week-included-8-women-returned-us/story?id=120111090 [https://perma.cc/CPF2-P8JA].

When they arrived at CECOT, the men were told, "You're going to die here."[7] For months they were confined in overcrowded cells, at times forced to sleep in "stress positions facing a wall, with their hands behind their necks."[8] They were regularly beaten by officers and the prison director himself.[9] At times, they were shot with rubber bullets and tear gas.[10] Andry José Hernandez Romero said he was sexually assaulted.[11] Extended acts of torture took place in an isolated zone called "la isla," or "the island."[12] One man, Tito Martínez, was beaten in the prison infirmary before being told by a medical professional, "Resign yourself. It's time for you to die."[13] The men were "terrorists," their keepers said, who "must be treated like this."[14]

Some men left CECOT with "fractured ribs, fractured fingers and toes, [and] marks from [their] handcuffs."[15] After his release, Juan José Ramos Ramos could still barely see through one of his eyes "from all the blows to [his] head."[16] Andrys Cedeño was hospitalized twice, once for an asthma attack and once for a heart attack, within three months of his return to Venezuela.[17] Other men reported shoulder, neck, and back pain; trouble seeing, breathing, and sleeping; and recurrent migraines and nightmares.[18]

The psychological effects of CECOT were profound.[19] According to Ysqueibel Penaloza, "The uncertainty of not knowing why [they] were there,

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7. Jonathan Blitzer, *Enemies of the State*, NEW YORKER (Sept. 8, 2025), https://www.newyorker.com/magazine/2025/09/15/enemies-of-the-state [https://perma.cc/84K9-SFWT]; Gerardo Del Valle et al., *Venezuelan Men and Their Families Share Experiences after CECOT Release*, TEX. TRIB. (Aug. 6, 2025), https://www.texastribune.org/2025/08/06/immigrants-imprisoned-trump-el-salvador-cecot/ [https://perma.cc/YZT5-U8LU]. Others said they were informed they had arrived in "hell" and could expect to leave "only in a body bag." Turkewitz et al., *supra* note 4.

8. Blitzer, *supra* note 7; Laura Romero, *"You're Going to See Real Hell": Venezuelan Men Allege Physical and Psychological Abuse at Salvadoran Prison*, ABC NEWS (July 25, 2025), https://abcnews.go.com/US/youre-real-hell-venezuelan-men-allege-physical-psychological/story?id=124036068 [https://perma.cc/F458-P9FW]; Turkewitz et al., *supra* note 4. Kilmar Armando Ábrego García said the metal bunks had no mattresses, and the cells were equipped with bright lights that stayed on twenty-four hours a day. *See* Alan Feuer, *Abrego Garcia Was Beaten and Tortured in El Salvador Prison, Lawyers Say*, N. Y. TIMES (July 2, 2025), https://www.nytimes.com/2025/07/02/us/politics/kilmar-abrego-garcia-el-salvador-trump-deportation.html [https://perma.cc/8V3F-WS34].

9. Blitzer, *supra* note 7; Del Valle et al., *supra* note 7. According to Francisco García Casique, "From the moment we arrived there, they would beat us, psychologically abuse us, telling us that our world was over, that we wouldn't get out of there." Romero, *supra* note 8.

10. Turkewitz et al., *supra* note 4.

11. Sergio Martínez-Beltrán & Manuel Rueda, *"Hell on Earth": Venezuelans Deported to El Salvador Mega-Prison Tell of Brutal Abuse*, NPR (July 27, 2025), https://www.npr.org/2025/07/27/nx-s1-5479143/hell-on-earth-venezuelans-deported-to-el-salvador-mega-prison-tell-of-brutal-abuse [https://perma.cc/3425-E6S9].

12. Blitzer, *supra* note 7. The description of such "identical methods of abuse" among victims tends to substantiate "the existence of an institutional policy and practice of torture." Turkewitz et al., *supra* note 4.

13. Turkewitz et al., *supra* note 4.

14. *Id.*

15. Trudy Ring, *Hernandez Romero Tells Mark Takano of Prison Abuse*, ADVOC. (Sept. 8, 2025), https://www.advocate.com/politics/andry-hernandez-romero-mark-takano [https://perma.cc/ZH3Z-9JZG].

16. Del Valle et al., *supra* note 7.

17. Turkewitz et al., *supra* note 4.

18. *Id.*

19. *See, e.g.*, CRISTOSAL & HUM. RTS. WATCH, "YOU HAVE ARRIVED IN HELL": TORTURE AND OTHER ABUSES AGAINST VENEZUELANS IN EL SALVADOR'S MEGA PRISON 79–80 (2025), https://www.

why [they] had been taken to that country, [and] why [they] had been brought to a terrorist prison, was extremely difficult."[20] Some of the men wrote messages of protest and appeal in their own blood.[21] Many of those incarcerated, Ramos said, "tried to end [their] lives inside. [They] said, 'I'd rather die or kill myself than keep living this experience.'"[22] Even after 252 men were finally released to Venezuela on July 18, 2025, as part of a prisoner swap, Wilmer Vega Sandia had still not "fully processed that [he was] free."[23] Twenty of those men have been detained by the Venezuelan government.[24] The 35 Salvadoran men rendered to CECOT in March and April remain within the prison's walls.[25]

According to multiple reports, around half of the men imprisoned in El Salvador insisted that "they came legally to the United States, with advanced . . . government permission, at an official border crossing point."[26] Many of them were working in the United States, as "construction laborers, pipe installers, cooks, delivery drivers, a soccer coach, a makeup artist, a mechanic, a veterinarian, a musician, and an entrepreneur."[27] Roughly half had no criminal convictions or charges on their records.[28] Only eight had been convicted of a violent or potentially violent offense.[29] None appeared on Venezuelan gang databases.[30]

Behind the physical and psychological brutalities the men endured lay a series of procedural cruelties. President Donald J. Trump issued Proclamation 10903, "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren de Aragua," in secret on March 14, 2025.[31] The proclamation characterized the Venezuelan gang Tren de Aragua as an effective arm of the Venezuelan state, one that had "unlawfully infiltrated the United States" and was responsible for "conducting irregular warfare and undertaking hostile actions" against it, in support of the "Maduro regime's goal of destabilizing

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hrw.org/report/2025/11/12/you-have-arrived-in-hell/torture-and-other-abuses-against-venezuelans-in-el [https://perma.cc/ZR5D-CGBD].

20. Romero, *supra* note 8.

21. Turkewitz et al., *supra* note 4.

22. Del Valle et al., *supra* note 7. According to Andry Hernandez, "Some of the prisoners removed clamps from the cell's piping and used them to cut themselves," smearing their blood on the walls and writing the letters "SOS." Martínez-Beltrán & Rueda, *supra* note 11.

23. Del Valle et al., *supra* note 7.

24. Turkewitz et al., *supra* note 4.

25. NAT'L IMMIGR. L. CTR., *supra* note 6.

26. David J. Bier, *50+ Venezuelans Imprisoned in El Salvador Came to US Legally, Never Violated Immigration Law*, CATO INST. (May 19, 2025), https://www.cato.org/blog/50-venezuelans-imprisoned-el-salvador-came-us-legally-never-violated-immigration-law [https://perma.cc/XU2N-HHNJ]. *See also* Del Valle et al., *supra* note 7.

27. Bier, *supra* note 26.

28. Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents Indicate Most Have No Apparent Criminal Records*, CBS NEWS (Apr. 6, 2025), https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/ [https://perma.cc/P3JQ-XWNL]; CRISTOSAL & HUM. RTS. WATCH, *supra* note 19, at 36.

29. CRISTOSAL & HUM. RTS. WATCH, *supra* note 19, at 36.

30. Blitzer, *supra* note 7.

31. Proclamation No. 10903, 90 Fed. Reg. 13033 (Mar. 14, 2025) [https://perma.cc/FQ69-H87A].

democratic nations in the Americas, including the United States."[32] Invoking the Alien Enemies Act, President Trump authorized the removal of "all Venezuelan citizens 14 years of age or older who are members of [Tren de Aragua], are within the United States, and are not actually naturalized or lawful permanent residents of the United States."[33] Building on the already-repressive Alien Enemies Act, Section 6 of the proclamation specified that "Alien Enemies" would be "subject to removal to any such location as may be directed by the officers responsible for the execution of these regulations."[34] The proclamation was made public just before the first flight took off.[35]

The timing of the order and the renditions suggests that the administration intended to deny these individuals any chance of contesting their removal to a foreign prison. As Justice Sonia Sotomayor described the government's actions in *Trump v. J.G.G.* (2025):

> In what can be understood only as covert preparation to skirt both the requirements of the [Alien Enemies] Act and the Constitution's guarantee of due process, the Department of Homeland Security (DHS) began moving Venezuelan migrants from Immigration and Customs

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32. *Id.* On May 1, 2025, the Southern District of Texas held that the "President's invocation of the [Alien Enemies Act] through the Proclamation exceeds the scope of the statute and is contrary to the plain, ordinary meaning of the statute's terms." J.A.V. v. Trump, 781 F. Supp. 3d 535, 541 (S.D. Tex. 2025). On May 16, the Supreme Court granted a temporary injunction over the removal of Venezuelan detainees in the Northern District of Texas under the Alien Enemies Act. A.A.R.P. v. Trump, 605 U.S. 91, 95 (2025). On September 2, the Fifth Circuit granted a preliminary injunction to prevent removal, finding "no invasion or predatory incursion." W.M.M. v. Trump, 154 F.4th 207, 237 (5th Cir. 2025). Judge Andrew Oldham dissented, urging that the "President's declaration of an invasion, insurrection, or incursion is conclusive." *W.M.M.*, 154 F.4th at 240 (Oldham, J., dissenting). Later that month, the decision was vacated and is now pending before the full court. Alan Feuer, *Full Federal Appeals Court to Hear Alien Enemies Act Case*, N.Y. TIMES (Oct. 1, 2025), https://www.nytimes.com/2025/09/30/us/politics/appeals-court-alien-enemies-act.html [https://perma.cc/7UHZ-HH73]. On February 12, 2026, the District Court for the District of Columbia ordered the government to facilitate the return of a class of Venezuelans sent to CECOT and then to Venezuela. J.G.G. v. Trump, No. 1:25-cv-00766 (D.D.C. Feb. 12, 2026).

33. *See supra* note 31, at 13034.

34. *Id.* at 13035. The Alien Enemies Act does authorize the President of the United States

> to direct the conduct to be observed on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom.

Alien Enemies Act of 1798, 50 U.S.C. § 21. Nevertheless, the Act also specifies that when an alien enemy

> is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

Alien Enemies Act of 1798, 50 U.S.C. § 22. The Trump administration would argue that their putative membership in Tren de Aragua indicates that these men are "chargeable with actual hostility, or other crime against the public safety," such that § 22 does not apply. *See* Proclamation No. 10903, *supra* note 31, at 13,034. None of those rendered to CECOT, however, had a chance to contest that membership before their removal. *See J.G.G.*, 604 U.S. at 678–79.

35. *J.G.G.*, 604 U.S. at 680 (Sotomayor, J., dissenting).

> Enforcement detention centers across the country to the El Valle Detention Facility in South Texas before the President had even signed the Proclamation."[36]

Knowing a class action lawsuit had been brought in anticipation of such covert action, the government loaded the detainees on planes in an apparent attempt "to rush plaintiffs out of the country before a court could decide whether the President's invocation of the Alien Enemies Act was lawful or whether these individuals were, in fact, members of Tren de Aragua."[37] A district court held an emergency hearing that afternoon and issued a temporary restraining order on any removals of Venezuelan noncitizens for fourteen days.[38] With the planes already in the air, however, the government refused to turn them around based on the belief that they were not bound by an oral order.[39]

Chief Judge James E. Boasberg of the District Court for the District of Columbia compared the situation of these men to Joseph K., who is arrested in the opening scene of Franz Kafka's *The Trial* (1925) without apparent reason or warrant.[40] Similarly, in the case of the 288 men sent to CECOT, the government rested its position on a marked absence of evidence beyond the President's own authority to make unreviewable factual determinations.[41] Some officials went so far as to suggest that the dearth of evidence proved the men's guilt. In the words of one Immigration and Customs Enforcement ("ICE") agent, the "lack of specific information about each individual actually highlights the risk they pose" and "demonstrates that they are terrorists with regard to whom we lack a complete profile."[42] Another government official insisted the men were "terrorists, human-rights abusers, gang members, and more—they just don't have a rap sheet in the U.S."[43]

Once imprisoned, the men were suspended in "a legal no man's land."[44] According to the Salvadoran government, the Venezuelan men remained under United States jurisdiction, yet the State Department disclaimed any responsibility for them or for the conditions they faced.[45] Even Kilmar

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36. *Id*. at 4.
37. *Id*. at 5.
38. *Id*. at 6.
39. *Id*. at 7.
40. *J.G.G.*, 786 F.Supp.3d at 44.
41. "In nearly every case," writes Jonathan Blitzer, "the Administration refused to present any evidence or specific charges against the men sent to El Salvador. This, after all, had been the point of using the Alien Enemies Act" to authorize the policy. Blitzer, *supra* note 7. *See also supra* note 31.
42. Laura Romero et al., *Timeline: Wrongful Deportation of Kilmar Abrego Garcia to El Salvador*, ABC NEWS (Oct. 10, 2025), https://abcnews.go.com/US/timeline-wrongful-deportation-kilmar-abrego-garcia-el-salvador/story?id=120803843 [https://perma.cc/N7M7-67FW]. The language of this immigration official echoes the conclusion of General John L. DeWitt's final report on Japanese internment, which found that the "very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken." As Justice Frank Murphy concluded, "[a]pparently, in the minds of the military leaders, there was no way that the Japanese Americans could escape the suspicion of sabotage." Korematsu v. United States, 323 U.S. 214, 241 n.15 (1944) (Murphy, J., dissenting).
43. Blitzer, *supra* note 7.
44. *J.G.G.*, 786 F.Supp.3d at 58.
45. Del Valle et al., *supra* note 7.

Armando Ábrego García, whom the government acknowledged had been sent to CECOT in "administrative error," remained trapped in El Salvador for nearly three months.[46] Just four days after the Supreme Court ordered the government to "facilitate" García's return, Attorney General Pam Bondi insisted it was "up to El Salvador" to send him back.[47] In the same Oval Office meeting, President Nayib Bukele of El Salvador disclaimed any "power to return [Ábrego García] to the United States."[48] Two months later, Bondi finally "presented El Salvador with an arrest warrant" for Ábrego García.[49] Even now, his status in the United States is contested; the government has expressed interest in deporting him to Uganda, Eswatini, Ghana, and Liberia, even as he has repeatedly indicated a preference for Costa Rica, which has agreed to receive him "under humanitarian conditions that guarantee the full respect for his rights and liberties."[50] On December 11, 2025, Judge Paula Xinis of the Federal District Court in Maryland ordered his release from immigration custody, determining that Ábrego García had been detained "without lawful authority."[51] The administration is likely to appeal that decision.[52]

The treatment of these men has alarmed the legal community. As Judge Boasberg concluded, "Our legal tradition is wholly incompatible with the establishment of a network of overseas prisons, shielded from the Great Writ by the facade of foreign control, to which the Government routinely exports detainees without due process."[53] Yet, their rendition closely resembles the treatment of a wide range of individuals, from the eighteenth century to the present, who were lawfully removed to a place of no legal return. Perhaps most strikingly, the rendition of Venezuelan noncitizens harks back to the rendition of free and enslaved Black Americans under the fugitive slave laws of 1793 and 1850.[54] In an echo of that history, some of the CECOT detainees and their families have referred to the experience they endured as a "kidnapping," a term abolitionists used to describe both enslavement and the fraudulent capture and sale of free Black individuals under federal laws designed to protect the institution of slavery.[55]

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46. Romero et al., *supra* note 42. *See* Noem v. Abrego Garcia, 604 U.S. ___, 2 (2025).
47. Romero et al., *supra* note 42.
48. *Id.*
49. *Id.*
50. Alan Feuer, *Abrego Garcia Is Released from ICE Detention After Judge's Order*, N.Y. TIMES (Dec. 11, 2025), https://www.nytimes.com/2025/12/11/us/politics/abrego-garcia-released.html [https://perma.cc/RQ7Z-UDRG]; Romero et al., *supra* note 42; Maria Sacchetti, *Costa Rica Says It Would Accept Kilmar Abrego García, Contradicting U.S.*, WASH. POST (Nov. 22, 2025), https://www.washingtonpost.com/immigration/2025/11/21/kilmar-trump-deport-costarica/ [https://perma.cc/9SYV-48TD].
51. *Abrego Garcia v. Noem*, No. 8:25-cv-02780-PX, slip op. at 1 (D. Md. Dec. 11, 2025).
52. *See* Feuer, *supra* note 50.
53. *J.G.G.*, 786 F.Supp.3d at 58.
54. *See, e.g.*, Jamelle Bouie, *America, This Is an Old and Brutal Tyranny*, N.Y. TIMES (Apr. 16, 2025), https://www.nytimes.com/2025/04/16/opinion/trump-court-order-constitution.html [https://perma.cc/LT5H-RX6Z].
55. *See* Lois E. Horton, *Kidnapping and Resistance*, *in* PASSAGES TO FREEDOM: THE UNDERGROUND RAILROAD IN HISTORY AND MEMORY 153 (David W. Blight ed., 2004). According to Wilson, "[t]he term also was used by pro-slavery advocates to refer to the practice of helping slaves escape to the North." CAROL WILSON, FREEDOM AT RISK: THE KIDNAPPING OF FREE BLACKS IN AMERICA, 1780–1865, 5 (1994). The term similarly appears in reportage on the renditions to CECOT. *See* Romero, *supra* note 8

Because nineteenth-century victims of kidnapping had no appeal once they were sent into slavery, there is no accurate count of how many spent their lives in unlawful bondage.[56] It took Solomon Northup, the subject of the narrative *Twelve Years a Slave* (1853), more than a decade even to post a letter to his wife in New York.[57] Children, poor Americans, and residents of border states like Delaware, Maryland, and Pennsylvania were particularly vulnerable to kidnapping by force and deceit.[58] Two brothers, Peter and Levin Still, were abducted at the ages of six and eight.[59] Levin died in slavery; it took Peter forty years to purchase his stolen freedom.[60]

Like those deemed "alien enemies" today, the individuals dragged to court as "fugitive slaves" had few procedural rights. As Sandra Rierson notes, the Fugitive Slave Act of 1793, like the draconian Fugitive Slave Act of 1850 that followed it, simply did not contemplate the due-process rights of Black Americans, nor did it ward off the real incentive the law produced to abduct free Black individuals and profit from the sale.[61] Because free Black Americans were vulnerable to capture, rendition did not simply mean the return of formerly enslaved individuals to the place of their enslavement to face the punishment that awaited them there. For free Black captives, rendition might instead mean removal to a place they had never been. For the formerly enslaved, rendition could also mean sale to a far-removed location, as enslavers had little reason to hold on to human property that was liable to run off.[62] Finally, for anyone rendered to the South, there was little possibility of finding legal remedy in a region

("Ysqueibel Penaloza told ABC News he believes the U.S. kidnapped him when he was sent to CECOT and prevented him from making phone calls or seeing a judge."); Blitzer, *supra* note 7 ("It was a kidnapping."). Workers detained for questioning in Los Angeles under the administration's "Operation At Large" immigration raids have similarly likened their short-term detentions to "kidnapping[s]." Noem v. Vasquez Perdomo, 606 U.S.___, 3 (Sotomayor, J., dissenting). Others refer to the measure as "an act of forced disappearance." Martínez-Beltrán & Rueda, *supra* note 11. Attorney Lindsay Toczylowski referred to her client, Andry José Hernandez Romero, as "disappeared." Vega, *supra* note 28. Reference to kidnapping also appears among those subject to immigration detention for criminal offenses. *See* Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, 18 VA. J. SOC. POL'Y & L. 608, 671, 709 (2011).

56. *See* Sandra L. Rierson, *Fugitive Slaves and Undocumented Immigrants: Testing the Boundaries of Our Federalism*, 74 MIA. L. REV. 598, 660 (2020); Wilson, *supra* note 55, at 6; Julie Winch, *Philadelphia and the Other Underground Railroad*, 111 PA. MAG. HIST. & BIOGRAPHY 3, 3–4 (1987). Nevertheless, Wilson concludes, "although it may be sparse, there is a record from both blacks and whites, kidnappers and victims, southerners and northerners, abolitionists and politicians, sufficient to indicate the nature, extent, and significance of kidnapping. We know that it occurred over a geographical area covering virtually the entire settled United States, from the earliest years of the Republic through the Civil War." Wilson, *supra* note 55, at 7–8.

57. *See* SOLOMON NORTHUP, TWELVE YEARS A SLAVE: NARRATIVE OF SOLOMON NORTHUP, A CITIZEN OF NEW-YORK, KIDNAPPED IN WASHINGTON CITY IN 1841, AND RESCUED IN 1853, FROM A COTTON PLANTATION NEAR THE RED RIVER IN LOUISIANA 228, 291 (David Wilson ed., 1853).

58. Horton, *supra* note 55, at 152; Wilson, *supra* note 55, at 9–10; Winch, *supra* note 56, at 5.

59. Wilson, *supra* note 55, at 14.

60. *Id*.

61. *See* Rierson, *supra* note 56, at 611–12.

62. In the notorious case of Margaret Garner, for instance, the eight members of the Garner family were sent back to Kentucky from Cincinnati under the watch of U.S. Marshal Hiram H. Robinson and hundreds of deputy marshals. Fearing that the Garners would be extradited back to Ohio, Archibald and Thomas Gaines sold them further south. Mark Reinhardt, *Who Speaks for Margaret Garner? Slavery, Silence, and the Politics of Ventriloquism*, 29 CRITICAL INQUIRY 8 (2010).

that precluded Black testimony and tightly circumscribed the rights of enslaved and free Black Americans alike.[63]

Abolitionists observed that it was the institution of slavery, and the legal deprivations it required, that enabled the widespread and illegal kidnapping of free Black northerners.[64] In a similar sense, U.S. immigration law has created conditions in which the executive may, in defiance of those laws, remove individuals without due process to foreign prisons from which they might never emerge.[65]

This paper charts the disturbing parallels between rendition in the nineteenth century and rendition in the twenty-first. In both cases, the full machinery of the federal government has been deployed to banish individuals to a place of no return, whether that be a southern plantation or a foreign prison. The targets of these state actions are racialized, but the terms of their racialization are malleable. They are criminalized, but their crimes are just as often invented as they are functions of legalized oppression. Ultimately, these renditions show the law at its most powerful where it claims to be powerless, subjecting individuals to the horrors of law's vacuum.

The fact that rendition has been a recurrent feature of the American legal system should disturb collective notions of the stability and longevity of procedural justice in the United States. But it should also alert us to the power of rebuke, by state actors and ordinary Americans, against law's descent into the abyss.

Part I describes the many forms removal took for Black Americans in the early national and antebellum periods—including transportation, exclusion, and colonization—and reflects on how antebellum removal served as a precursor to federal immigration controls. Part II delves into the federally sanctioned practice of rendition under the fugitive slave laws and the modes of oppositional organizing that arose in response to it. Part III traces the long afterlife of these policies as they have been weaponized in the early twenty-first century, in the indefinite detention of refugees, "aliens designated as enemy combatants," and "criminal aliens" at Guantánamo Bay, and in the renditions and third-country removals pursued by the second Trump administration.[66] In conclusion, this paper reflects briefly on the collective practices that will be necessary to contest the federal government's ongoing exercise of removal to a place of no return.

I. BLACK REMOVAL BEFORE THE CIVIL WAR

The power of removal has a long heritage in Anglo-American law. In early modern Britain and its colonies, as Kunal Parker has shown, the poor and criminally convicted were particularly vulnerable to dislocation, liable to be

63. *See, e.g.*, GABRIEL'S CONSPIRACY: A DOCUMENTARY HISTORY 11, 15 (Philip J. Schwarz ed., 2012); Wilson, *supra* note 55, at 7; Winch, *supra* note 56, at 4.

64. *See* Wilson, *supra* note 55, at 17.

65. *See* discussion *infra* Conclusion.

66. Boumediene v. Bush, 553 U.S. 723, 732 (2008); Hamed Aleaziz & Carol Rosenberg, *Trump Says U.S. Will Hold Migrants at Guantánamo*, N.Y. TIMES (Jan. 30, 2025), https://www.nytimes.com/2025/01/29/us/politics/trump-migrants-guantanamo.html [https://perma.cc/Q974-9TEJ].

"transported against their will to places so far away that their hopes of returning to their communities were effectively extinguished."[67] The logic of banishment was not a far cry from the logic of enslavement. As Justice Richard D. Rice of the Maine Supreme Judicial Court observed in 1856,

> The pauper may be transported from town to town, and place to place, against his will; he loses the control of his family, his children may be taken from him without his consent; he may himself be sent to the work-house, or made the subject of a five years contract, without being personally consulted. In short, the adjudged pauper is subordinated to the will of others, and reduced to a condition but little removed from that of chattel slavery, and until recently, by statute of 1847, . . . like the slave, was liable to be sold upon the block of the auctioneer, for service or support.[68]

While a diverse cross-section of early Americans experienced both exclusion and exploitation, however, Black and Native Americans bore the brunt of removal.[69]

The practice of excising Black Americans, in particular, from the body politic took many forms in the early national and antebellum periods. This Part surveys these different practices—transportation, exclusion, and

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67. KUNAL M. PARKER, MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600–2000, 23 (2015).

68. Portland v. Bangor, 42 Me. 403, 411 (1856) (Rice, J., dissenting). *See* PARKER, *supra* note 67, at 86.

69. Simultaneous with the pursuit of Black exploitation and expulsion was the state and federal push for "Indian removal." *See generally* GRANT FOREMAN, INDIAN REMOVAL: THE EMIGRATION OF THE FIVE CIVILIZED TRIBES OF INDIANS (1953). In 1830, Congress codified this policy, "steadily pursued for nearly thirty years," in "[a]n Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi," or the Indian Removal Act. Andrew Jackson, On Indian Removal, Congress (Dec. 6, 1830) (on file with Center for Legislative Archives, Presidential Messages, Records of the U.S. Senate, Record Group 46). *See* Act of May 28, Pub. L. No. 21–148 § 4, Stat. 411 (1830). While federal removal policy was ostensibly premised on Native consent, it was preceded and followed by a combination of fraudulent agreements and forcible removals by both state and federal governments. The Treaty of New Echota, which authorized the removal of the Cherokee from Georgia, was signed by individual Cherokees "without any authority from the council or people of the Nation," as 3,352 Cherokee petitioners informed Congress. Cherokee Petition in Protest of the New Echota Treaty (1836), *reprinted by* NAT'L ARCHIVES, https://docsteach.org/document/cherokee-petition-protest-new-echota-treaty/ [https://perma.cc/P924-67V7]. An estimated 4,000 Cherokees died on the ensuing "Trail of Tears." FERGUS M. BORDEWICH, KILLING THE WHITE MAN'S INDIAN 47 (1997). Around the time Congress was considering the Thirteenth Amendment, the federal government oversaw the "Long Walk," the forced march and internment of more than 11,000 Navajos. GARY CLAYTON ANDERSON, ETHNIC CLEANSING AND THE INDIAN 240 (2015). Only when Congress turned its attention to a new "Era of Allotment and Assimilation" did the era of Indian removal come to an end. *See* General Allotment Act, Pub. L. No. 49–105 § 119, 24 Stat. 388 (1887); Nell Newton, *Federal Power over Indians: Its Sources, Scope, and Limitations*, 132 U. PA. L. REV. 195, 206 (1984). The arguments that motivated such policies are familiar to scholars of slavery and immigration alike, including the professed danger and burden of Native presence and the promised "civilizing" influence of their removal. *See* Jackson, On Indian Removal. The consequences of the expulsion of Native Americans from their homelands to foreign places designated "Indian Territory" were as stark as those of Black transportation, exclusion, and colonization. *See generally* CLAUDIO SAUNT, UNWORTHY REPUBLIC: THE DISPOSSESSION OF NATIVE AMERICANS AND THE ROAD TO INDIAN TERRITORY (W. W. Norton & Co., Inc. 2021). These practices also invited an extreme permission structure from the federal judiciary in the form of "plenary power," or unchecked authority, that continues to haunt federal immigration policy and federal Indian law to this day. *See* DANIEL KANSTROOM, DEPORTATION NATION 70–74 (2010); Haaland v. Brackeen, 599 U.S. 255, 326–29 (2023) (Gorsuch, J., concurring).

colonization—to highlight the consistency of removal as a local, state, and federal policy directed at free Black and rebellious enslaved Americans before the Civil War. Paradoxically, the practice of removal heightened the vulnerability of these groups to further exploitation and enslavement.

A. *Transportation for Crime and Rebellion*

In the immediate aftermath of Gabriel's Rebellion, white Virginians reacted with fear and vengeance. Led by the enslaved artisan Gabriel, his brothers Solomon and Martin, and a man named Jack Bowler (or Jack Ditcher), the plan was to march on Richmond in three phalanxes: one to set a diversionary fire, another to secure weapons, and the last to take Governor James Monroe hostage, forcing a negotiation for the rebels' collective liberation.[70] The night of the planned insurrection, however, brought a torrential downpour, which prevented the recruits from assembling and crossing into the city.[71] That day, two participants, Pharaoh and Tom, informed on the conspiracy, and local authorities began arresting suspects.[72] In the end, the state put twenty-six men to death for conspiring to rise up in the fall of 1800.[73]

The Virginia authorities made a show of following legal form in their prosecution of alleged participants. Apprehending suspects and informers could "only be done by the civil authority," Monroe reminded the mayor of Richmond.[74] Free and enslaved defendants alike were represented by counsel, some of whom mounted successful legal defenses. A Baptist preacher named George was saved by a 1786 law that required a unanimous verdict.[75] Samuel Bird was fully discharged "for want of evidence, it being decided that people of his own colour, in slavery, could not give testimony against him."[76] That bar had no protections to offer Bird's enslaved son, however, who was executed the day before Bird's release.[77]

This display of legal formalism was belied by the use of patent coercion and vengeful terror. One former Revolutionary War general called for a declaration of martial law: "My opinion is that when there is any reason to believe that any person is concerned, they ought immediately to be hanged, quartered and hung up on trees on every road as a terror for the rest," he wrote to Monroe. It would "not do to be too scrupulous now, but to slay them all where there is any reason to believe they are concerned, let they be whites,

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70. *See* GABRIEL'S CONSPIRACY, *supra* note 63, at xi–xii; Philip J. Schwarz, *The Transportation of Slaves from Virginia, 1801–1865*, 7 SLAVERY & ABOLITION 215, 220 (1986).
71. DOUGLAS R. EGERTON, REBELS, REFORMERS, AND REVOLUTIONARIES, 51 (2013).
72. *Id*. at 51–52.
73. *See generally* GABRIEL'S CONSPIRACY, *supra* note 63.
74. *Id*. at 13.
75. *Id*. at 83. *See* 12 WILLIAM WALLER HENING, THE STATUTES AT LARGE 345 (1823).
76. GABRIEL'S CONSPIRACY, *supra* note 63, at 164–65.
77. *Id*.

mulattoes, or negroes, perhaps."[78] The relentless progression of executions did not draw much local protest, even from the enslavers of the accused because the state compensated them for their losses.[79]

Thomas Jefferson, then Secretary of State, recognized the broader cost of Virginia's violent reaction. Writing to Monroe from Monticello, he urged that there was "strong sentiment that there has been hanging enough, the other states & the world at large will for ever condemn us if we indulge a principle of revenge, or go one step beyond absolute necessity."[80] Rather than execution, Jefferson thought "surely the legislature would pass a law for their exportation, the proper measure on this & all similar occasions?"[81] Jack Bowler, the last leader to be tried, was transported along with eight other alleged participants, and in early 1801, the General Assembly passed "An Act to Empower the Governor to Transport Slaves Condemned, When It Shall be Deemed Expedient."[82]

When South Carolina prosecuted Vesey's Conspiracy in 1822, it pursued a similar course. The state executed thirty-five men, including Denmark Vesey himself, and transported thirty-seven others for sale outside the United States (two more died in custody).[83] Among those transported after perfunctory trials were Vesey's son Sandy, another leader named Monday Gell who agreed to name participants, and others whom the court found, "though not convicted," "morally guilty."[84] As Douglas Egerton notes, recourse to transportation served the "pretense of benevolent mercy," although the exile it imposed was absolute; those so condemned were "not to return under penalty of death."[85] Nevertheless, transportation enabled free men like Quash Harleston and Prince Graham to set out for the West African colony of Liberia, established by the American Colonization Society in 1821.[86]

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78. *Id*. at 251. Another general wrote to his wife, "[m]y heart bleeds for them, and yet this severity is necessary. How dreadful the situation!! to be obliged to be cruel, and unjust, as the only means of self defense." *Id*. at 48.

79. *See id*. at 33 n.19; Schwarz, *supra* note 70, at 216.

80. GABRIEL'S CONSPIRACY, *supra* note 63, at 89.

81. *Id*. Jefferson had proposed the transportation of convicted bondspeople as early as 1779. *See* Schwarz, *supra* note 70, at 217.

82. GABRIEL'S CONSPIRACY, *supra* note 63, at 12, 134, 154. The 1801 law empowered the governor to sell those enslaved persons who had been sentenced to death, so long as the buyer secured a bond for $500 to transport them outside of the United States. Those transported returned on penalty of death. Schwarz, *supra* note 70, at 216.

83. DOUGLAS R. EGERTON, HE SHALL GO OUT FREE: THE LIVES OF DENMARK VESEY 200 (1999).

84. *Id*. at 199; THE DENMARK VESEY AFFAIR: A DOCUMENTARY HISTORY 86 (Douglas R. Egerton & Robert L. Paquette eds., 2017).

85. EGERTON, *supra* note 83, at 194–95. Embedded in these "motives of policy and feelings of humanity" was the implicit recognition that, because the law precluded Black testimony against white individuals, death sentences imposed may be unjust. Virginia authorities also seemed to conclude that transportation was an effective deterrence to resistance. In addition, the state had economic incentive to sell rather than execute a condemned bondsperson. *See* Schwarz, *supra* note 70, at 218, 220.

86. EGERTON, *supra* note 83, at 201; MARTHA S. JONES, BIRTHRIGHT CITIZENS 37 (2018). Liberia was hardly a safe haven; of the 4,472 migrants who moved to Liberia between 1820 and 1843, nearly half had died by the 1843 census, primarily of infectious diseases. *See* Antonio McDaniel & Samuel H. Preston, *Patterns of Mortality by Age and Cause of Death Among Nineteenth-Century Immigrants to Liberia*, 48 POPULATION STUD. 99, 101, 105 (1994). *See* discussion *infra* Section I.C for more on the American Colonization Society.

The year after Vesey's Conspiracy, the Virginia General Assembly passed a law that required transportation for any enslaved person who was convicted of intentional and malicious assault.[87] Between 1801, the year of the state's first transportation act, and 1858, the year the law was reformed, more than nine hundred Black Virginians were transported out of the state.[88] Little is known about the fate of these individuals aside from their intended destinations, including Cuba, Spanish Florida, and the Deep South.[89] As United States territory expanded and the international slave trade contracted, traders increasingly sold these individuals into states like Georgia, Mississippi, and Louisiana, which passed laws against the practice to little effect.[90]

Transportation, in sum, offered southern states a way to expel bondspeople who had been convicted of particular crimes, particularly conspiracy and insurrection, without bearing the political and economic costs of excessive execution. As the nineteenth century progressed, however, the possibility of transportation abroad diminished, and traders found it preferable to sell those persons in their custody into the lower South. For those captured, convicted, and sold, transportation even within the territorial bounds of the United States meant radical displacement from family and community alongside the dreaded abuses associated with forced labor in the Deep South.[91] Transportation, in the end, remained a form of harsh and devastating punishment, an exile one step short of death.[92]

B. *Exclusion from the State's Body Politic*

Black removal was not limited to those convicted of crimes. As avenues for emancipation expanded in the North and Upper South, freedom itself became cause for expulsion and exclusion.[93] This process began in earnest in the

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87. PHILIP J. SCHWARZ, TWICE CONDEMNED: SLAVES AND THE CRIMINAL LAWS OF VIRGINIA, 1705–1865, 27 (1998). As Schwarz notes, the penalty for this offense became death without benefit of clergy after Nat Turner's Revolt in 1831. *Id.*

88. *Id.* at 28; Schwarz, *supra* note 70, at 231. Schwarz notes the extent to which transportation was a "*de facto* procedure" prior to 1801. Schwarz, *supra* note 70, at 217. In 1858, the legislature "declared that enslaved laborers who would previously have been condemned to sale and transportation could now benefit the public as state-owned laborers on public works." SCHWARZ, *supra* note 87, at 29. This policy shift prefaced the state's reliance on the convict-lease system after the ratification of the Thirteenth Amendment in 1865. Schwarz, *supra* note 70, at 231.

89. SCHWARZ, *supra* note 87, at 29.

90. Schwarz, *supra* note 70, at 225–26. Even before the abolition of slavery in the British West Indies in 1834, planters resisted the importation of convicted insurrectionaries. *See id.* at 223. One man, John, was to be transported out of the United States but was brought to New Orleans, where he was confiscated and sold at public auction; no more is known about his fate. Another man, Bob, was transported to Florida and then brought to Georgia, where he escaped. After returning to Virginia, Bob was sentenced once more and sold to another trader, from whom Bob escaped in Tennessee. *See id.* at 215–16, 224–25.

91. *See id.* at 218.

92. *See id.* at 231. Daniel Kanstroom equates transportation with deportation: "Slave states had long used transportation abroad as a specific punishment against slaves—in effect, the first systematic international deportation regime in the United States." KANSTROOM, *supra* note 69, at 75.

93. Opportunities for emancipation increased in the late eighteenth century with the passage of gradual emancipation laws in Pennsylvania (1780), Connecticut (1784), Rhode Island (1784), New York (1799), and New Jersey (1804) and the temporary loosening of restrictions on manumission in Virginia (1782) and elsewhere. *See, e.g.*, Paul Finkelman, *The First Civil Rights Movement: Black Rights in the Age of the Revolution and Chief Taney's Originalism in Dred Scott*, 24 J. CONST. L. 685, 701 n.102

late eighteenth century. Shortly after the formal abolition of slavery in Massachusetts, the state legislature authorized "any Justice of the Peace" to warn out any "African or Negroe, other than a subject of the Emperor of *Morocco*, or a citizen of some one of the United States," who "tarr[ied]" within the state for more than two months.[94] Anyone who continued their residence ten days after being warned out was subject to hard labor and whipping.[95]

Notably, when the Virginia legislature liberalized manumission in 1782, opening pathways for individual acts of emancipation, it did not require those emancipated to leave the state.[96] As Paul Finkelman notes, this policy contributed to an explosion of the free Black population in Virginia, which grew from an estimated 2,000 in 1780 to more than 30,000 by 1810.[97] This policy, however, was the exception that proved the rule: Virginia required manumitted bondspeople to leave the colony as early as 1691 and reinstated this policy in 1806, mandating that free Black Virginians leave the state within twelve months of emancipation.[98] Indeed, most southern states excluded manumitted residents from their midst.[99] In some cases, these laws required removal from the country.[100]

Many states used the threat of re-enslavement to enforce exclusion and removal. In Georgia, an 1818 law prohibited all persons of color from entering the state on penalty of fine and, absent the ability to pay, sale "by public outcry, as a slave or slaves."[101] A law passed in Arkansas in 1859 prohibited all free Black

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(2022); Benjamin Joseph Klebaner, *American Manumission Laws and the Responsibility for Supporting Slaves*, 63 VA. MAG. HIST. & BIOGRAPHY 444 (1955). Southern states were so jealous of their power to exclude free Black residents, Kunal Parker argues, that a federal immigration regime was not possible until after the Civil War. *See* PARKER, *supra* note 67, at 11. For Black Americans, in this sense, to become free was to become foreign, and therefore removable by the state. *See* PARKER, *supra* note 67, at 24. *See also* ARIELA J. GROSS & ALEJANDRO DE LA FUENTE, BECOMING FREE, BECOMING BLACK: RACE, FREEDOM, AND LAW IN CUBA, VIRGINIA, AND LOUISIANA (2020).

94. ACTS AND LAWS OF THE COMMONWEALTH OF MASSACHUSETTS 626 (1893).

95. *Id*. The Massachusetts Supreme Judicial Court officially ruled on the unconstitutionality of slavery in the case of *Commonwealth v. Jennison* (1783), but individuals were still enslaved within the state into the 1790s. *See, e.g*., Gloria McCahon Whiting, *Emancipation Without the Courts or Constitution: The Case of Revolutionary Massachusetts*, 41 SLAVERY & ABOLITION 3, 461–62 (2020). According to Kunal Parker, "Northern states' legislation prohibiting the entry of free blacks appears to have been enforced only sporadically. But such sporadic enforcement allowed communities to intimidate and exploit blacks, subject them to violence, and render their presence insecure." PARKER, *supra* note 67, at 96.

96. 11 WILLIAM WALLER HENING, THE STATUTES AT LARGE 39–40 (1823).

97. Finkelman, *supra* note 93, at 706.

98. Klebaner, *supra* note 93, at 448.

99. *Id*. at 449.

100. In 1852, Louisiana required that all manumitted bondspeople be sent to Liberia within a year of manumission, before banning manumission altogether in 1857. GROSS & DE LA FUENTE, *supra* note 93, at 151, 166; Klebaner, *supra* note 93, at 449.

101. In 1824, the state legislature repealed "[a]ll laws and parts of laws which authorize the selling of free persons of color into slavery." OLIVER HILLHOUSE PRINCE, A DIGEST OF THE LAWS OF THE STATE OF GEORGIA: CONTAINING ALL STATUTES AND THE SUBSTANCE OF ALL RESOLUTIONS OF A GENERAL AND PUBLIC NATURE, AND NOW IN FORCE, WHICH HAVE BEEN PASSED IN THIS STATE, PREVIOUS TO THE SESSION OF THE GENERAL ASSEMBLY OF DEC. 1837 795, 800 (Ga. Laws 1837). South Carolina enacted a similar policy to Georgia's 1818 law in 1820, subjecting free Black entrants to public sale for a term of five years if they were unable to pay a twenty-dollar fine. 7 THE STATUTES AT LARGE OF SOUTH CAROLINA 459 (David J. McCord, ed., A. S. Johnson 1840). *See also* Gabriel Chin & Paul Finkelman, *Birthright Citizenship, Slave Trade Legislation, and the Origins of Federal Immigration Regulation*, 54 U.C. DAVIS L. REV. 2215 (2021).

residents over the age of twenty-one; those who remained would be detained and hired out for a year before they could choose between leaving the state and being sold into slavery.[102]

Ariela Gross and Alejandro de la Fuente note that such laws "were never enforced systematically, but they could be invoked punitively."[103] As late as the Civil War, a local court in Indiana convicted six men of violating the state's exclusionary law, sentencing them to sale at public auction.[104] When one of the men, Nelson, appealed the decision, the Indiana Supreme Court upheld the law as a "rightful exercise" of the state's police power.[105]

Some southern states went so far as to mandate the incarceration of free Black sailors while at port.[106] This practice began in South Carolina. In the aftermath of Vesey's Conspiracy, the state legislature passed "An Act for the better regulation and government of Free Negroes and Persons of Color," which refused reentry to free Black residents who left the state, imposed an annual tax of fifty dollars on recent entrants, required every free Black man to find a "guardian, who shall be a respectable freeholder of the district," and mandated that Black seamen who landed at port "be seized and confined in jail until said vessel shall clear out and depart from this State."[107] For violations of any of these provisions, free Black individuals, including citizens of other nations, could be "taken as absolute slaves, and sold."[108] As an incentive for enforcement, officials and informers were granted a portion of the sale.[109]

Supreme Court Justice William Johnson invalidated the law in *Elkison v. Deliesseline*, a circuit court case brought by a free British sailor arrested in Charleston's ports. Nevertheless, Justice Johnson could not remedy Henry Elkison's confinement under state law from the federal bench.[110] Elkison, as a result, remained in jail until the captain of his ship paid the costs of his detention and he was finally released.[111] Other captains were not so accommodating.[112] And despite Justice Johnson's ruling, South Carolina's law remained on the books until the Civil War.[113]

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102. ORVILLE TAYLOR, NEGRO SLAVERY IN ARKANSAS 257–58 (2000). Taylor concludes that this law was likely not strictly enforced, and it was suspended early in 1861.

103. GROSS & DE LA FUENTE, *supra* note 93, at 163.

104. Kate Masur, *State Sovereignty and Migration before Reconstruction*, 9 J. CIV. WAR ERA 603 (2019).

105. *Id.*

106. *See, e.g.*, GROSS & DE LA FUENTE, *supra* note 93, at 146.

107. 7 THE STATUTES AT LARGE OF SOUTH CAROLINA 461–62 (David J. McCord, ed., A. S. Johnson 1840).

108. *Id.* at 461.

109. *Id.*

110. A federal court could not issue a writ of habeas corpus for a prisoner held on state authority under the Judiciary Act of 1789, and Elkison's alternative request for a writ of personal replevin could not be brought against Charleston Sheriff Francis Deliesseline because federal suits against state officials were barred under the Eleventh Amendment. Scott Wallace Stucky, *Elkison v. Deliesseline: Race and the Constitution in South Carolina, 1823*, 14 N.C. CENT. L. REV 385–86 (1984).

111. *Id.*

112. *See* Wilson, *supra* note 55, at 58.

113. In 1823, the South Carolina legislature amended the law, replacing the enslavement provision with whipping and banishment and exempting federal warships and foreign vessels. In an unpublished

Other states imposed the equivalent of deportation on recent entrants. After a free Black merchant was arrested for distributing *Walker's Appeal, in Four Articles* (1829), the Louisiana legislature passed a law that subjected recent immigrants of color to removal.[114] Some states went further, debating removal plans for all free Black residents, regardless of when they had arrived.[115] After Nat Turner's Rebellion in 1831, the Virginia legislature seriously considered a sweeping removal policy on the logic that the state's free Black population was detrimental to the state's "peace and welfare."[116] While the state did not ultimately adopt the plan, the legislature agreed to appropriate $18,000 per year for the colonization of free Black Virginians to Africa.[117] In 1850, the state imposed an annual tax on free Black adult men to subsidize the "removal of free Negroes," for which it appropriated $30,000 per year.[118]

Some states offered manumitted individuals the option of re-enslavement, which some chose in desperate circumstances.[119] Other free residents petitioned for permission to remain. Arthur from Chesterfield County, Virginia, appealed to the state legislature on the basis of family and community ties. "What is liberty to the white man," he challenged,

> if he, to enjoy it, is to be banished from his home, his wife, . . . his children, as dear as his own life's blood, his fellows, with whom he has labored day after day for half a century, his friends, who have stuck to him as close as a brother, to be driven into exile.[120]

Others still (as many as a third of free Black Virginians) stayed in the state illegally.[121] In any case, freedom in the Upper South was precarious; even those who obtained formal authorization to stay could have that permission revoked for any reason.[122]

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opinion from 1831, then–Attorney General Roger Taney held that southern states would never have agreed to give up the right to pass such laws, which were necessary for self-preservation. In 1835, the enslavement provision was reinstated; in 1856, it was revoked once more. Stucky, *supra* note 110, at 393, 397, 399. In the 1840s, this issue vexed Massachusetts officials in particular; even Daniel Webster, in articulating his support for the Compromise of 1850, complained of this "tangible, and irritating cause of grievance, at the North," that "free colored men," when at southern ports, "are taken on shore, by the police or municipal authority, imprisoned, and kept in prison, till the vessel is again ready to sail." JOHN C. RIVERS, 21 SKETCHES OF THE DEBATES AND PROCEEDINGS OF THE FIRST SESSION OF THE THIRTY-FIRST CONGRESS, CONG. GLOBE 31st Cong., 1st Sess. 482 (1850).

114. As Ariela Gross and Alejando de la Fuente note, "[e]nforcement of the new law was weak, and the legislature walked back elements of it soon afterward, but it signaled heightened levels of concern that free people of color might foment slave rebellion." GROSS & DE LA FUENTE, *supra* note 93, at 142.

115. *See*, *e.g.*, KANSTROOM, *supra* note 69, at 75, 85–86.

116. GROSS & DE LA FUENTE, *supra* note 93, at 147.

117. IRA BERLIN, SLAVES WITHOUT MASTERS 202 (1992). *See* discussion *infra* Section I.C.

118. GROSS & DE LA FUENTE, *supra* note 93, at 149; KANSTROOM, *supra* note 69, at 85.

119. *See* GROSS & DE LA FUENTE, *supra* note 93, at 164, 166. *See also An Act Relating to the People of Color in This State*, 1832 Md. Laws ch. 281, 345–46.

120. GROSS & DE LA FUENTE, *supra* note 93, at 158.

121. *Id.* at 164.

122. *Id.* at 164–65.

This precarity, and the severity of its consequences, motivated Black organization and protest. Residents of Ohio, Iowa, Kentucky, and Tennessee petitioned Congress for relief from exclusionary laws that subjected "free colored citizens" to slavery "without having committed any crime."[123] Across the period, Black Americans continued to assert their right to remain in the face of laws that subjected them to one of two stark penalties: removal or public sale.[124]

C. *Colonization Beyond the United States*

Northerners and southerners who supported the voluntary colonization of Black Americans subscribed to the same implicit idea that underpinned exclusion: Black Americans were not at home in the land of their birth.[125] Calls for colonization recurred throughout the nineteenth century. During the Civil War, Abraham Lincoln signed a bill ending slavery in the District of Columbia, compensating enslavers up to $300 for each emancipated person, and appropriating $100,000

> to aid in the colonization and settlement of such free persons of African descent now residing in said District, including those to be liberated by this act, as may desire to emigrate to the Republic of Hayti or Liberia, or such other country beyond the limits of the United States as the President may determine.[126]

Lincoln's personal support for colonization continued into 1863, when he facilitated the transportation of 450 individuals to Île-à-Vache off the coast of Haiti, where almost one hundred Black Americans died before the rest were brought back to the United States.[127]

Colonization had a long heritage in the United States. Thomas Jefferson, in his *Notes on the State of Virginia* (1785), engaged in an extensive diatribe on Black inferiority to justify colonization. "When freed," he concluded, the enslaved were "to be removed beyond the reach of mixture."[128] The

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123. WILSON, *supra* note 55, at 58.

124. GROSS & DE LA FUENTE, *supra* note 93, at 167.

125. *See* KANSTROOM, *supra* note 69, at 84–85; PARKER, *supra* note 67, at 23. According to Kanstroom, "[i]t is more than coincidental that both Thomas Jefferson and Abraham Lincoln used the term 'deportation' to describe massive plans to remove freed slaves from America." KANSTROOM, *supra* note 69, at 246. *See generally* PHILLIP W. MAGNESS & SEBASTIAN N. PAGE, COLONIZATION AFTER EMANCIPATION: LINCOLN AND THE MOVEMENT FOR BLACK RESETTLEMENT (2011).

126. The District of Columbia Emancipation Act, 37th Cong., Sess. 2, ch. 54, 12 Stat. 376 (1862). Lincoln's Preliminary Emancipation Proclamation also included a preamble indicating that the "effort to colonize persons of African descent, with their consent, upon this continent, or elsewhere, with the previously obtained consent of the Governments existing there, [would] be continued." 5 ABRAHAM LINCOLN, THE COLLECTED WORKS OF ABRAHAM LINCOLN 434 (Roy P. Basler et al. eds., 1953). *See* KANSTROOM, *supra* note 69, at 89.

127. *See* KANSTROOM, *supra* note 69, at 89–90.

128. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 154 (Bos., Lilly and Wait, 1832). Lincoln delivered a similar message when he met with a group of Black leaders in 1862: "It is better for us both, therefore, to be separated." Eric Foner, Opinion, *The Emancipation of Abe Lincoln*, N.Y. TIMES

American Colonization Society (ACS), whose officers included multiple United States presidents and Supreme Court chief justices, was formed in 1816 and established the West African colony of Liberia in 1821.[129] Between 1821 and 1861, around 12,000 Black Americans were sent to Liberia.[130]

The federal government participated in this project from the outset. In 1819, Congress appropriated $100,000 in support of colonization as part of a broader anti–slave trade measure.[131] As Gabriel Chin and Paul Finkelman write, this form of colonization was hardly consensual: illegally trafficked Africans were subject to deportation to the coast of Africa (and to Liberia, specifically, after 1822) regardless of where they were from, how long they had been in the United States, or whether they would have preferred to stay put.[132] In the interim, they could be required to work without compensation for the government, or for parties to whom they were hired.[133]

Under the auspices of the ACS, colonization was always ostensibly consensual, in that it "did not call for large-scale, forced banishment from the United States."[134] Still, as Martha Jones notes, there was a difference between emigration, which involved the voluntary decision to seek out a new home, and colonization, which undermined the right of Black Americans to remain in the United States if they so chose.[135] In the words of one resolution, approved unanimously by some 3,000 Black men meeting at the Mother Bethel African Methodist Episcopal Church in Philadelphia: "Whereas our ancestors (not of choice) were the first cultivators of the wilds of America, we their descendants feel ourselves entitled to participate in the blessings of her luxuriant soil, which their blood and sweat manured."[136] Condemning the ACS project of "exile," the collective resolved to "view with deep abhorrence the unmerited stigma attempted to be cast upon the reputation of the free people of color, by the promoters of this measure, 'that they are a dangerous and useless part of the community.'"[137] Increasingly, free Black Americans organized

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(Dec. 31, 2012), https://www.nytimes.com/2013/01/01/opinion/the-emancipation-of-abe-lincoln.html [https://perma.cc/A9JC-EQ8C].

129. JONES, *supra* note 86, at 37; KANSTROOM, *supra* note 69, at 85; NATHANIEL WEYL & WILLIAM MARINA, AMERICAN STATESMEN ON SLAVERY AND THE NEGRO 109–10 (1971).

130. GROSS & DE LA FUENTE, *supra* note 93, at 148. *See* discussion *supra* note 86.

131. KANSTROOM, *supra* note 69, at 85.

132. Chin & Finkelman, *supra* note 101, at 2226, 2236.

133. *Id*. at 2237. In the famous case of the *Amistad* revolt, the Supreme Court determined that the ship was in the control of the African captives when it came into American waters; as a result, the federal government was not responsible for transporting them back to Africa. United States v. The Amistad, 40 U.S. 518, 596–97 (1841). Without the aid of the United States government, it took the captives and their abolitionist supporters nearly a year to raise enough money to send a mission to Sierra Leone. MARCUS REDIKER, THE AMISTAD REBELLION: AN ATLANTIC ODYSSEY OF SLAVERY AND FREEDOM 211–15 (2012).

134. JONES, *supra* note 86, at 37.

135. *See id*. at 37.

136. WILLIAM LLOYD GARRISON, THOUGHTS ON AFRICAN COLONIZATION 9 (1832); LAMONT D. THOMAS, RISE TO BE A PEOPLE: A BIOGRAPHY OF PAUL CUFFE 115 (1986).

137. GARRISON, *supra* note 136; THOMAS, *supra* note 136. Some Black Americans did support colonization; Paul Cuffe, for instance, petitioned Congress in 1813 for authorization to transport "[f]ree people of colour in Baltimore Philadelphia, New York and Boston" to the British colony of Sierra Leone in response to their continued exclusion from the body politic. Paul Cuffe, *Letter to James Madison* (June

against colonization, going so far as to track down potential emigrants in port cities and board departing ships to convince them to stay.[138]

Activists also drew explicit comparisons to Indian removal.[139] The authors of "An Address to the Citizens of New-York," drafted in 1831 at the behest of "a public meeting of the colored citizens of New-York," hoped

> that those who have so eloquently pleaded the cause of the Indian, will at least endeavor to preserve consistency in their conduct. They put no faith in Georgia, although she declares that the Indians shall not be removed but '*with their own consent*.' Can they blame us if we attach the same credit to the declaration, that they mean to colonize us 'only with our consent?' They cannot use force; that is out of the question. But they harp so much on 'inferiority,' 'prejudice,' 'distinction,' and what not, that there will no alternative be left us but to fall in with their plans.[140]

Any reference to consent in the projects of Indian removal and Black colonization alike, these activists argued, was illusory.

Despite strong Black opposition to colonization, state-level colonization efforts found traction in the Upper South.[141] Virginia's General Assembly frequently approved funding for colonization efforts in response to petitions claiming that free Black residents were both dangerous and burdensome to the state.[142] According to these petitioners, free people of color were "degraded, profligate, vicious, turbulent and discontented"; they held no "attachment to our laws & institutions or any sympathy with our people" and represented a "highly injurious" and "intolerable burthen" on them.[143]

After Nat Turner's Rebellion, in particular, state legislatures in Virginia, Maryland, and Tennessee appropriated funds to support colonization efforts. Maryland, most notably, appropriated $200,000 for colonizing its free Black

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16, 1813) Founders Online, National Archives, https://founders.archives.gov/documents/Madison/03-06-02-0375 [https://perma.cc/Y9CA-AKUG]. Cuffe supported the ACS before his death in 1817. *See* THOMAS, *supra* note 136, at 113–19. As Martha Jones writes, "not all black men and women were of one mind in the 1820s, and in Baltimore they returned time and again to debates over colonization." JONES, *supra* note 86, at 38. Black support for emigration extended into the Civil War. In 1862, a group of free Black men petitioned Congress to be sent to Central America, where they hoped to find an "honorable position in the families of God's great world" yet remain proximate to the "land of our birth." KANSTROOM, *supra* note 69, at 87. Martin Delany also supported emigration to Central America, while rejecting the American Colonization Society and the "emigration scheme of the so called Republic of Liberia." *See* MARTIN ROBINSON DELANY, THE CONDITION, ELEVATION, EMIGRATION, AND DESTINY OF THE COLORED PEOPLE OF THE UNITED STATES, POLITICALLY CONSIDERED 160, 169, 178 (1852).

138. *See* BERLIN, *supra* note 117, at 204–07; JONES, *supra* note 86, at 37.

139. *See* JONES, *supra* note 86, at 43–44.

140. *An Address to the Citizens of New-York*, LIBERATOR (Feb. 12, 1831), at 25 (on file with Fair Use, https://fair-use.org/the-liberator/1831/02/12/the-liberator-01-07.pdf) [https://perma.cc/86UG-DMNX].

141. *See* BERLIN, *supra* note 117, at 202. Berlin notes that the funds states appropriated were insufficient to sustain any systematic colonization project. *See id.* at 203.

142. GROSS & DE LA FUENTE, *supra* note 93, at 148.

143. *Id.* at 149–50.

population over twenty years.[144] The legislative scheme behind this financial support reveals the compulsory side of colonization. Under the law passed in 1832, a board of managers, who were to be members of the Maryland Colonization Society, were tasked with removing recently manumitted and free people of color from the state.[145] The law mandated that every county clerk who recorded an act of manumission send that information to the board, which was then responsible for facilitating the removal of the freed individual, with or without their consent:

> [I]n case the said person or persons shall refuse to be removed to any place, beyond the limits of this state, and shall persist in remaining therein, then it shall be the duty of said board to inform the sheriff of the county wherein such person or persons may be, of such refusal, and it shall thereupon be the duty of the said sheriff forthwith to arrest or cause to be arrested the said person or persons so refusing to emigrate from this state, and transport the said person or persons beyond the limits of this state[.][146]

Any manumitted person who wished to remain could either opt for re-enslavement or apply for an annual permit from an orphan's court, so long as "the said courts may be satisfied by respectable testimony, that such slave or slaves so manumitted, deserve such permission on account of their extraordinary good conduct and character."[147] County sheriffs were also required to submit a list of every free Black resident to the board of managers and send a report of any individuals willing to leave the state.[148]

In Maryland, as in other southern states, colonization was tightly linked to both forced removal and re-enslavement. In 1832 and again in 1851, state legislators proposed removal measures that involved even more extreme forms of re-enslavement than the voluntary measure included in the 1832 law. Early in 1832, Octavius Taney (brother to future Supreme Court Chief Justice Roger Taney) proposed full removal of free Black Marylanders, with an interim term of forced servitude "to prevent their absconding."[149] In 1851, Curtis Jacobs took Taney's ideas further, insisting on the "right to re-enslave our free negro population" because the freedom granted by manumission was conditional on the will of the state.[150] While neither measure took effect, they both indicated the extent to which colonization was compatible with both projects, forced removal and enslavement, that deprived Black Marylanders of all autonomy. The apparent paradox of this position, the desire to both

144. An Act Relating to the People of Color in This State, ch. 281, 1832 Md. Laws 344, 346–47. *See* BERLIN, *supra* note 117, at 203.
145. An Act Relating to the People of Color in This State, ch. 281 at 343–44.
146. *Id*. at 344–45.
147. *Id*. at 345–46.
148. *Id*. at 347–49.
149. JONES, *supra* note 86, at 47.
150. *See id*. at 144.

expel and retain the Black population of the state, was resolved by its central aim: to eliminate the presence of free Black Americans altogether.

D. *Black Removal as Immigration Policy*

Scholars have drawn attention to the connections between state and federal regulations of slavery before the Civil War and burgeoning immigration policies in the late nineteenth century.[151] While these antebellum laws were designed to preserve the institution of slavery, they undeniably imposed restrictions on the mobility of free and enslaved populations, in part to restrict the supply of cheap labor.[152] And when Congress passed the Chinese Exclusion Act of 1882 and the follow-on Geary Act of 1892, the restrictions they codified plainly echoed those that regulated Black Americans in the antebellum period.[153] As a result, Black removal policies should be understood as important precursors to modern immigration regimes, with a few key differences.

First, unlike with the federal government's plenary power over immigration today, states were the primary locus of this regulation precisely because of its overlap with the institution of slavery, over which states exercised primary power. As Kunal Parker writes, "Before the Civil War, slave states anxious to preserve slavery were insistent on their right to exclude free blacks from their territories and fearful that conferring immigration powers upon the federal government would rob them of that right."[154] Nevertheless, the federal government did participate in exclusion and deportation through nineteenth-century anti–slave trade legislation, as Gabriel Chin and Paul Finkelman argue.[155]

Second, these policies were imposed on individuals who could claim to be "home-born citizens of the United States."[156] Despite being born in the United States and asserting their right to birthright citizenship, free Black Americans often found themselves relegated to a status somewhere between foreigner and slave.[157] According to the Supreme Court of Georgia, the free

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151. *See, e.g.*, Chin & Finkelman, *supra* note 101; GROSS & DE LA FUENTE, *supra* note 93, at 224; KANSTROOM, *supra* note 69, at 7, 74–80; Masur, *supra* note 104; PARKER, *supra* note 67, at 11, 77, 95.

152. *See, e.g.*, KANSTROOM, *supra* note 69, at 87; Christopher N. Lasch, *Rendition Resistance*, 92 N.C. L. REV. 229 (2013).

153. *See* Henry S. Cohn & Harvey Gee, *"No, No, No, No!": Three Sons of Connecticut Who Opposed the Chinese Exclusion Acts*, 3 CONN. PUB. INT. L. J. 1, 2–3 (2003); Kevin R. Johnson, *Exclusion and Deportation of Racial Minorities,* in THE HUDDLED MASSES MYTH: IMMIGRATION AND CIVIL RIGHTS 13, 16–19 (2004); PARKER, *supra* note 67, at 127; *see also* CAREY MCWILLIAMS, BROTHERS UNDER THE SKIN (Little, Brown 1942). The Supreme Court rejected this argument in *Hodges v. United States,* 203 U.S. 1, 19 (1906) (citing *Fong Yue Ting* and finding that "at no time during the progress of the litigation, and by no individual, counsel, or court connected with it was it suggested that the requiring of such a certificate was evidence of a condition of slavery, or prohibited by the Thirteenth Amendment").

154. PARKER, *supra* note 67, at 11.

155. *See* Chin & Finkelman, *supra* note 101 at 2221 (arguing that the framers of the Fourteenth Amendment contemplated federal exclusion and deportation, and birthright citizenship should therefore extend to unauthorized immigrants).

156. *See* JONES, *supra* note 86, at 40.

157. *See* JONES, *supra* note 86, at 1; PARKER, *supra* note 67, at 95.

Black American was a resident "stranger."[158] While "not in a condition of chattelhood," he was "constantly exposed to it."[159] As a result, his civic inclusion could not be presumed but would require "an act of sovereignty, just as much as naturalizing a foreign subject" would.[160] The Supreme Court of Indiana explicitly equated free Black entrants with "foreigners."[161] The Supreme Court of Mississippi, while determining that free people of color were "natives, and not aliens," in 1858, reversed course a year later, finding the formerly enslaved to be "alien friend[s], or alien enemies '*permissi*,'" whereas free "persons of color, not so specially permitted," were "to be regarded as alien enemies or strangers *prohibiti*, and without the pale of comity."[162]

Because of the insecurity produced by this status—the constant liability to be removed, enslaved, or both—many free Black Americans carried papers documenting their freedom.[163] These papers offered a tenuous form of security. "Local court records are filled with requests for duplicate papers from free people of color who had lost theirs," write Ariela Gross and Alejandro de la Fuente, "as well as writs of habeas corpus from people who claimed wrongful enslavement based on lost papers."[164] Even those who had "free papers," like Solomon Northup, could still find themselves stripped of them and sold into slavery.[165] The reliance of free Black Americans on precarious documentation echoes the modern requirement that noncitizens carry proof of registration status on their persons at all times.[166] Under the second Trump administration, it seems increasingly important for non-white citizens to carry identification papers just the same.[167]

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158. Bryan v. Walton, 14 Ga. 185, 202 (1853).

159. *Id.*

160. *Id.* at 201.

161. PARKER, *supra* note 67, at 98.

162. Heirn v. Bridault, 37 Miss. 209, 229–33 (1859); JONES, *supra* note 86, at 135.

163. *See* JONES, *supra* note 86, at 52–53 (describing documentation carried by sailors in port, such as federally issued certificates to document their citizenship).

164. GROSS & DE LA FUENTE, *supra* note 93, at 165.

165. NORTHUP, *supra* note 57, at 32; WILSON, *supra* note 55, at 7.

166. *See* 8 U.S.C. § 1304(e). In the late nineteenth century, the Chinese Exclusion Acts began to require Chinese laborers authorized to remain in the United States to obtain a "certificate of residence" and carry it on their person at all times. Act of May 5, 1892, ch. 60, § 6, 27 Stat. 25 (Geary Act). As of 1909, every person of Chinese descent was required to carry a certificate of identity. PARKER, *supra* note 67, at 39.

167. During the federal government's "Operation At Large" raids conducted in Los Angeles in June 2025, for instance, agents forcibly detained United States citizens and refused to release them until they verified the forms of identification they had on their person. As Justice Sotomayor wrote in her dissent in Noem v. Vasquez Perdomo, 146 S. Ct. 1, 5 (2025) (Sotomayor, J., dissenting) (citations omitted):

> Agents released [Jason] Gavidia only after he offered up his REAL ID. That ID was never returned to him. . . . On one occasion, an agent questioned [Jorge] Viramontes, asking if he is a citizen and requesting that he show his ID. Viramontes replied that he is a dual U. S. and Mexican citizen and supplied his California driver's license. The agent said the ID was insufficient, "grabbed [his] arm," escorted him to a vehicle, and drove him to a "warehouse area" for further questioning. . . . Agents detained Viramontes for 20 minutes while they made calls to verify his U. S. citizenship and examined his Mexican ID before eventually driving him back to work.

Third, the state's removal power was imbricated in the many avenues that existed for enslavement, as detailed above.[168] After the ratification of the Thirteenth Amendment, these forces transformed. Black exclusion became more localized in the guise of Jim Crow laws, while Black exploitation took the form of sharecropping, convict leasing, and eventually mass incarceration.[169] Federal immigration laws, meanwhile, hardened against foreign nationals, beginning with the policy of Chinese exclusion.[170] As Kunal Parker has persuasively argued, the insider versus outsider distinction that once applied to different groups among the native-born has increasingly attached to the citizen and alien, respectively.[171] In the hard-fought and ongoing effort to secure rights for women, Black Americans, and poor Americans, the category of "citizen" has taken on outsized weight, rendering those outside its protections increasingly vulnerable to the nearly unlimited federal powers of exclusion and deportation.[172]

At bottom, however, the entanglement of removal and enslavement in the nineteenth century reveals an overlooked dimension of modern immigration law: the shadow of exploitation behind the power of exclusion. It was no accident that the Geary Act of 1892 provided that any "person of Chinese descent, convicted and adjudged to be not lawfully entitled to be or remain in the United States, shall be imprisoned at hard labor for a period not exceeding one year, and thereafter removed from the United States."[173]

The Supreme Court struck down the hard labor provision in *Wong Wing v. United States* (1896), determining that it constituted criminal punishment and the "involuntary servitude" proscribed by the Thirteenth Amendment ("except as a punishment for crime whereof the party shall have been duly convicted").[174] But the Court upheld the policy of Chinese exclusion in *Chae Chan Ping* (1889) and affirmed the deportation of three long-time residents (Fong Yue Ting, Wong Quan, and Lee Joe) in *Fong Yue Ting v. United States* (1893), finding that deportation was "not a banishment."[175] In upholding the draconian form of Chinese exclusion expressed in the Chinese Exclusion Acts, the Court paid little attention to what it might mean for long-

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168. *See* discussion *supra* sections I.A–C. This coupling also took the form of antebellum convict leasing, as when free African Americans convicted of a crime were sold out of state for a term of years. *See, e.g.*, JONES, *supra* note 86, at 67; WILSON, *supra* note 55, at 69.

169. *See generally* MICHELLE ALEXANDER, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* 213–52 (2012) (describing the "evolution" of U.S. racial caste systems from slavery to Jim Crow to mass incarceration); DOUGLAS A. BLACKMON, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (2008); PARKER, *supra* note 67, at 119–20 (describing how, after the Civil War, a "regime of internal borders" and "hardening borders of segregation" rendered Black Americans "strangers in their own country" despite their formal citizenship).

170. *See* PARKER, *supra* note 67, at 19.

171. *Id.* at 11.

172. *Id.* at 11–12.

173. Act of May 5, 1892, ch. 60, § 4, 27 Stat. 25.

174. 163 U.S. 228, 238, 242 (1896).

175. 149 U.S. 698, 730 (1893). *See* Gabriel J. Chin, Chae Chan Ping *and* Fong Yue Ting*: The Origins of Plenary Power*, in IMMIGRATION LAW STORIES 17 (David A. Martin & Peter H. Schuck eds., 2005).

term American residents to be expelled from the United States and sent to China, a country where, by the terms of the 1892 statute, some deportees might never have lived.[176]

As for these residents, to be removed as a Black American in the nineteenth century was not simply to be returned to the place from which one came. In most cases, removal meant forcible ejection from one's home to a place that was alien and in many cases hostile to one's freedom of movement and self-determination. Nowhere was this fate as clear as in the rendition of alleged fugitive slaves. The next section details the federal government's involvement in rendition and the widespread forms of resistance that arose in response. Rendition, as Part II illustrates, embroiled the federal government in the notorious practice of "slavecatching" and kidnapping long before it took on the mantle of hunting down noncitizens in the nation's interior.[177]

II. RENDITION IN THE NINETEENTH CENTURY

Kidnapping free Black Americans was illegal in most states, even where slavery was institutionalized.[178] Yet a wide variety of state laws permitted what was in effect legalized kidnapping, as Carol Wilson notes.[179] States like Kentucky produced slavery out of the fiction of fugitivity.[180] Take the case of James Waggoner, a free man seized in Cincinnati and jailed as an alleged fugitive across the river in Newport, Kentucky.[181] Once in jail, Waggoner was suspended in legal purgatory: he was not claimed by any enslavers, but nor could he sufficiently prove his free status to the authorities who held him captive.[182] After six months, unable to pay his jail fees, Waggoner was sold at public auction to a man who immediately sent him to Lexington for another sale.[183] Ultimately, Waggoner was able to sue for his freedom.[184] Others were not so fortunate. By virtue of such laws across the South, "newspapers were

176. Citizens from countries other than China were to be deported to that country, unless it exacted a tax on removal; in that case, "he or she shall be removed to China." Act of May 5, 1892, ch. 60, 27 Stat. 25.

177. Frederick Douglass, *The Fugitive Slave Law, Speech to the National Free Soil Convention at Pittsburgh, August 11, 1852*, *in* FREDERICK DOUGLASS: SELECTED SPEECHES AND WRITINGS 208 (Philip Foner and Yuval Taylor eds., 1999). *See, e.g.*, Chin, *supra* note 175, at 18; KANSTROOM, *supra* note 69, at 4–6.

178. WILSON, *supra* note 55, at 2.

179. *See id.*

180. *See id.* at 45.

181. SAMUEL MAY, THE FUGITIVE SLAVE LAW AND ITS VICTIMS 137 (1861).

182. *Id.* As Carol Wilson notes, judges in some cases, such as that of John Jones, dismissed free papers as evidence because of the possibility of forgery. *See* WILSON, *supra* note 55, at 43–44. A further irony of the case lay in the fact that the two men who seized Waggoner were jailed on the charge of kidnapping, although their charges were eventually dismissed because no one appeared against them. MAY, *supra* note 181, at 137.

183. MAY, *supra* note 181, at 138. *See* WILSON, *supra* note 55, at 45. Tennessee, similarly, authorized the sale of those imprisoned as fugitives yet unclaimed after twelve months. *Id.* at 63. In fact, "any free black, once jailed, was liable to enslavement to pay jail fees. Sailors, unclaimed suspected fugitives, and even debtors, therefore, could be legally enslaved because of lack of money." WILSON, *supra* note 55, at 41.

184. MAY, *supra* note 181, at 139.

replete with advertisements offering for sale black people who claimed to be free."[185]

The federal government engaged in a more subtle form of this legal transfiguration, by which the law became a mechanism to, in effect, launder free people into slavery.[186] This section reviews the two federal laws passed in 1793 and 1850 that established a summary procedure for the rendition of alleged fugitive slaves. It also surveys the forms of organizing, resistance, and constitutional argument that emerged in direct response to the fugitive slave laws and to the Supreme Court's refusal to enforce the constitutional protections of due process, trial by jury, and the writ of habeas corpus in *Prigg v. Pennsylvania* and *Ableman v. Booth*.[187]

A. *Opposition to the Fugitive Slave Act of 1793*

Article IV, Section 2, Clause 3 of the original Constitution, also known as the Fugitive Slave Clause, established a baseline for the federal government's involvement in the rendition of the enslaved:

> No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Embedded in Article IV rather than Article I, the Fugitive Slave Clause neither required nor authorized congressional action on the subject of rendition.[188] Nevertheless, in 1793, the Second Congress passed the Fugitive Slave Act, which authorized an enslaver or "his agent or attorney" to "seize or arrest" an alleged fugitive and bring him before any federal judge or local magistrate within the state.[189] Once that judge had received sufficient proof of the individual's status, "either by oral testimony or affidavit," he was responsible for producing a certificate that served as a warrant of removal.[190]

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185. WILSON, *supra* note 55, at 63.

186. There were myriad ways in which Black Americans could be lawfully deprived of their freedom. Maryland and Virginia provided for the enslavement of free Black residents charged with crimes eligible for imprisonment; all it took in North Carolina was failure to pay one's taxes. In Florida, being deemed "idle and dissolute" was enough. *Id.* at 63. The process of manumission could also be unwound in various ways, including for repayment of a former enslaver's debts. *See id.* at 40.

187. *See* Paul Finkelman, Prigg v. Pennsylvania *and Northern State Courts: Anti-Slavery Use of a Pro-Slavery Decision*, 25 CIV. WAR HIST. 9 (1979).

188. Finkelman, *supra* note 187, at 9. Finkelman notes that the Fugitive Slave Clause was the "least debated and the least important" of the clauses designed to abet slavery. *Id.* at 13. "It was added at the very end of the convention, and it is likely the Constitution would have been accepted without it. Unlike slave importation, the South would not have lost any rights by accepting the Constitution without this clause." *Id.*

189. Fugitive Slave Act of 1793, ch. 7, § 3, 1 Stat. 302, 302–03 (repealed 1864).

190. *Id.* at 303–04.

Anyone who tried to "obstruct or hinder" that removal, or to "harbour or conceal" a fugitive, was subject to a fine of $500.[191]

Congress passed these measures, Don Fehrenbacher writes, with little debate and "scarcely a serious thought about the implications of its action."[192] The bill initially emerged in response to a dispute between Virginia and Maryland over criminal extradition.[193] Because the extradition of fugitives from justice and the rendition of fugitives from service had been linked in the Constitution, Congress included both forms of rendition within the law.[194] When it came to fugitive slave rendition, Congress paid little heed to state sovereignty, due process, or the rule of law. Instead, it seemed to welcome the conduct of any individual who crossed state lines and seized another individual at any time, based on little more than a claim of ownership and a judge's stamp of approval.[195] If the claimant neglected to go to court altogether, there were no provisions to punish that behavior or to protect Black Americans wrongfully claimed.[196] The law, as a result, amounted to an "invitation to kidnapping, whether as a result of honest error or deliberate fraud."[197]

The Fugitive Slave Act of 1793 drew immediate responses from Black and white Americans, particularly in Philadelphia, the site of the nation's capital from 1790 to 1800 and an early center of Black and abolitionist organizing.[198] In the spring of 1787, as delegates to the Constitutional Convention were making preparations to travel to Philadelphia, Absalom Jones, Richard Allen, and six other community leaders formed the Free African Society, a mutual aid organization.[199] A few years later, Jones and Allen broke away from the white Methodist church to found the African Episcopal Church of St. Thomas and the Mother Bethel African Methodist Episcopal Church, respectively.[200]

These institutions offered a novel foundation for community organizing against slavery, particularly against the fugitive slave law. In January 1797, Jacob Nicholson, Jupiter Nicholson, Job Albert, and Thomas Pritchet submitted

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191. *Id*. at 305.

192. DON E. FEHRENBACHER, SLAVERY, LAW, AND POLITICS: THE DRED SCOTT CASE IN HISTORICAL PERSPECTIVE 21 (1981).

193. *Id*. at 20.

194. *Id*. Christopher Lasch notes that these issues had been linked for more than a century prior to constitutional ratification. *See* Lasch, *supra* note 152, at 163.

195. FEHRENBACHER, *supra* note 192, at 21.

196. *Id*.

197. *Id*.

198. *See* WILLIAM M. WIECEK, THE SOURCES OF ANTISLAVERY CONSTITUTIONALISM IN AMERICA, 1760–1848 at 85–86 (1977); Nicholas P. Wood, *A "Class of Citizens": The Earliest Black Petitioners to Congress and Their Quaker Allies*, 74 WM. & MARY Q. 141–42 (2017). Richard Newman, Roy Finkenbine, and Douglass Mooney argue that the 1790s were an intense period of activism for Black Philadelphians for this reason: "Knowing that the national government would meet in Philadelphia until 1800, the city's black community sought to mobilize a federally backed program of emancipation." Richard S. Newman, Roy E. Finkenbine & Douglass Mooney, *Philadelphia Emigrationist Petition, Circa 1792: An Introduction*, 64 WM. & MARY Q. 161 (2007).

199. RICHARD S. NEWMAN, FREEDOM'S PROPHET: BISHOP RICHARD ALLEN, THE AME CHURCH, AND THE BLACK FOUNDING FATHERS 73–74 (2008).

200. *See id*. at 82–84.

a petition to Congress.[201] The men had been manumitted by Quakers in North Carolina, they said, but fled north to secure their freedom.[202] Even in Philadelphia, the Fugitive Slave Act encroached on their liberty, as evidenced by "the singular case of a fellow-black now confined in the jail of this city, under sanction of the act of General Government, called the Fugitive Law."[203] The petitioners thought the "stretch of power" represented by the Act to be, "morally and politically, a Governmental defect, if not a direct violation of the declared fundamental principles of the Constitution," and requested a "remedy for an evil of such magnitude."[204]

The House of Representatives dismissed the petition by a vote of fifty to thirty-three, arguing that it could not determine whether the petitioners were legally free and therefore eligible to petition.[205] Three years later, Absalom Jones and Richard Allen joined two of the 1797 petitioners and sixty-seven other "People of Colour, Freemen, within the City and Suburbs of Philadelphia" to petition Congress once more.[206] The bulk of the petition was devoted to the wrongs committed through the slave trade, by those "employed in kidnapping those of our Brethren that are free."[207] In closing, the petitioners addressed the "Law not long since enacted by Congress called the Fugitive Bill":

> many of our afflicted Brethren in order to avoid the barbarities wantonly exercised upon them, or thro fear of being carried off by those Men-stealers, have been forced to seek refuge by flight; they are then hunted by armed Men, and under colour of this law, cruelly treated, shot, or brought back in chains to those who have no just claim upon them.[208]

The 1799 petition, like the 1797 petition, provoked heated debate. Nevertheless, after two days of consideration, the House resolved eighty-five to one that those "parts of the said petition which invite Congress to legislate upon subjects from which the General Government is precluded by the Constitution, have a tendency to create disquiet and jealousy, and ought therefore to receive no encouragement or countenance from this House."[209]

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201. CONG. GLOBE, 31st Cong., 2nd Sess. 2016–17 (1849).

202. *Id*. North Carolina had tightly restricted manumission since 1723 and authorized the sale of any individual who had been unlawfully manumitted or who failed to "depart this Province within Six Months." Wood, *supra* note 198, at 110.

203. CONG. GLOBE, *supra* note 201, at 2017. This man, Moses Gordon, ultimately chose to "drown himself rather th[a]n being Sold from his Connections." Wood, *supra* note 198, at 110.

204. CONG. GLOBE, *supra* note 201, at 2018.

205. *See* Wood, *supra* note 198, at 129–31. Under the common law, the group should have been free to petition Congress regardless of their status. *See* Emma Brush, *Common-Sense Constitutionalism and Abolition in the Early American Republic*, 36 YALE J.L. & HUMAN. 92 (2025).

206. *Petition of Absalom Jones, and Others, People of Color, and Freemen Against the Slave Trade*, National Archives Catalog https://catalog.archives.gov/id/301681416?objectPanel=extracted [https://perma.cc/P9EA-DC8T] (last visited Apr. 10, 2026).

207. *Id*.

208. *Id*. at 2.

209. CONG. GLOBE, 32ND CONG., 1ST SESS. 245 (1851). Congress did take limited action to consider the slave trade. *See* Wood, *supra* note 203, at 138–39.

In response to the federal government's refusal to address the procedural shortcomings of the Fugitive Slave Act, northern states began to pass "personal liberty laws."[210] These laws imposed criminal penalties on kidnappers and, over time, provided procedural protections for those dragged into court as fugitive slaves, including the right to a jury trial and to bring a writ of habeas corpus.[211] In 1826, Pennsylvania passed one such law, titled "An Act to give effect to the provisions of the constitution of the United States, relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping." The law made it a felony to seize Black residents without process, punishable by a fine ranging from $500 to $1,000 (half of which was payable to the person prosecuting the case) and a term of hard labor between seven and twenty-one years.[212] Anyone who wished to claim another as property had to apply for a warrant from a state judge, justice of the peace, or alderman with an authenticated affidavit from the claimant.[213] A sheriff or constable was then responsible for arresting the alleged fugitive and bringing them before a state judge to determine their status, provided that no oath of an enslaver or "other person interested" be introduced as evidence in the case.[214] Finally, to ensure that state law would govern such determinations, the law stripped aldermen and justices of the peace of jurisdiction over enforcement of the Fugitive Slave Act, on penalty of misdemeanor liability and fine.[215]

In 1842, the Supreme Court struck down Pennsylvania's personal liberty law and upheld the Fugitive Slave Act.[216] The result of the Court's decision in *Prigg v. Pennsylvania*, however, was not less northern antagonism but more: a proliferation of personal liberty laws and a fortification of community organizations designed to protect Black Americans where the law failed to do so or, worse, invited their capture.[217]

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210. *See* THOMAS D. MORRIS, FREE MEN ALL: THE PERSONAL LIBERTY LAWS OF THE NORTH, 1780–1861 (2001).

211. *See* Rierson, *supra* note 56, at 615, 617–18.

212. "An Act to Give Effect to the Provisions of the Constitution of the United States, Relative to Fugitives from Labor, for the Protection of Free People of Color, and to Prevent Kidnapping", in ACTS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, 150 (1826).

213. *Id.* at 151–52.

214. Any sheriff or constable who refused or willfully neglected to arrest an alleged fugitive could be fined up to $500 or subjected to a term of hard labor not exceeding six months. *Id.* at 152–53.

215. *See supra* note 212, at 153–54. *See also* James A. Kraehenbuehl, *Lessons from the Past: How the Antebellum Fugitive Slave Debate Informs State Enforcement of Federal Immigration Law*, 78 U. CHI. L. REV. 1465, 1475 (2011).

216. Prigg v. Pennsylvania, 41 U.S. 539, 622 (1842).

217. *See* Finkelman, *supra* note 187, at 21; MANISHA SINHA, THE SLAVE'S CAUSE: A HISTORY OF ABOLITION 384–85 (2016).

B. *Anti-Kidnapping Measures and* Prigg v. Pennsylvania *(1842)*

Prigg v. Pennsylvania began in the forcible seizure and removal of Margaret Morgan and her children, residents of York County, Pennsylvania.[218] Morgan had lived in Pennsylvania for five years with her husband, a free man named Jerry Morgan.[219] In the 1830 census, the whole family was listed as free.[220] In the winter of 1837, Edward Prigg and three other Maryland men traveled across the border, procured a warrant from Justice of the Peace Thomas Henderson, and, with the aid of a constable, seized the family in the middle of the night.[221] Henderson, however, refused to adjudicate the case.[222] Disregarding the state law requirements, the men carried Margaret and her children back to Maryland anyway.[223] "[B]y the morning light," according to the state's attorney in *Prigg*, the family was "sold to a negro trader and in a calaboose ready for shipment to the South."[224] Shortly thereafter, the York County prosecutor brought indictments against the men for kidnapping, and the governor of Maryland eventually agreed to extradite Prigg. After his conviction in Pennsylvania, Prigg appealed the case to the Supreme Court, which ultimately decided in Prigg's favor.[225]

As Paul Finkelman has argued, Justice Joseph Story brushed past the facts of the case in *Prigg*, which indicated that Morgan had not "escaped and fled from Maryland," as the Pennsylvania jury found, but had rather lived her life in virtual freedom and moved to Pennsylvania five years before her seizure with the full knowledge of her claimants.[226] There was good evidence, moreover, to suggest that at least one of Morgan's children was born in Pennsylvania and was therefore free according to the state's laws.[227] Despite these facts, Story showed no regard for Morgan or her children in the text of his decision, nor for those thousands of Black northerners rendered newly vulnerable by the Court's invalidation of Pennsylvania's personal liberty law.[228]

If anything, Story seemed to welcome such an outcome, discovering in the Constitution the "existence of a positive, unqualified right on the part of the owner" to the "immediate possession of the slave."[229] For that reason, he had

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218. Paul Finkelman, *Story Telling on the Supreme Court:* Prigg v Pennsylvania *and Justice Joseph Story's Judicial Nationalism*, 1994 SUP. CT. REV. 247, 252 (1994).

219. *Id.* at 275.

220. *Id.*

221. ARGUMENT OF MR. HAMBLY, OF YORK (PA.) IN THE CASE OF EDWARD PRIGG, PLAINTIFF IN ERROR, VS. THE COMMONWEALTH OF PENNSYLVANIA, DEFENDANT IN ERROR: IN THE SUPREME COURT OF THE UNITED STATES, WASHINGTON, D.C., at 9 (1842); Finkelman, *supra* note 218, at 275–76.

222. ARGUMENT OF MR. HAMBLY, *supra* note 221, at 8. *See also* Prigg v. Pennsylvania, 41 U.S. 539, 609.

223. ARGUMENT OF MR. HAMBLY, *supra* note 221, at 8–9.

224. *Id.* at 9. Hambly indicates that Margaret and her children were deemed slaves by a Maryland court and sold, while Jerry died in an incident after a visit to the Pennsylvania governor. *Id.* at 9–10.

225. Finkelman, *supra* note 218, at 252; Prigg v. Pennsylvania, 41 U.S. 539, 625 (1842).

226. *Prigg*, 41 U.S. at 609. *See* ARGUMENT OF MR. HAMBLY, *supra* note 221, at 8; Finkelman, *supra* note 218, at 275, 278–79.

227. *See* ARGUMENT OF MR. HAMBLY, *supra* note 221, at 8; Finkelman, *supra* note 218, at 280. *See also Prigg*, 41 U.S. at 609.

228. *See* Finkelman, *supra* note 218, at 253.

229. *Prigg*, 41 U.S. at 612.

> not the slightest hesitation in holding that, under and in virtue of the Constitution, the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave whenever he can do it without any breach of the peace or any illegal violence.[230]

Finkelman describes Story's sanction of self-help as an "open invitation for the kidnapping of free blacks."[231] Story was well aware of the potentially irrevocable consequences for those summarily seized from their homes and ushered into slavery. As Justice John McLean pointed out in dissent, "may not the assertion of the master be erroneous . . . and, if so, how is his act of force to be remedied? The colored person is taken and forcibly conveyed beyond the jurisdiction of the State."[232]

In holding that the "power of legislation" on the subject of fugitive slave rendition was "exclusive in Congress," however, Story opened the door to state nullification of the Fugitive Slave Act.[233] Because the Fugitive Slave Clause did not identify "any state functionaries, or any state action, to carry its provisions into effect," the states could not "be compelled to enforce them, and it might well be deemed an unconstitutional exercise of the power of interpretation to insist that the States are bound to provide means to carry into effect the duties of the National Government, nowhere delegated or entrusted to them by the Constitution."[234] In passing, Story even seemed to suggest that states might legitimately enact laws prohibiting state officials from enforcing the Fugitive Slave Act.[235]

In response to *Prigg*, northern state legislatures from Vermont to Pennsylvania did just that.[236] Pennsylvania's new personal liberty law, passed in 1847, not only prohibited state officials from hearing cases under the Fugitive Slave Act but stripped their authorization to issue warrants and certificates of removal and precluded the use of any state jail or prison for the

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230. *Id*. at 613.

231. Finkelman, *supra* note 187, at 11.

232. *Prigg*, 41 U.S. at 672 (McLean, J., dissenting). New York Chancellor Reuben Walworth described similar consequences in his decision *Jack v. Martin*, which found the Fugitive Slave Act unconstitutional and was known to Story:

> I find it impossible to bring my mind to the conclusion that the framers of the constitution have authorized the congress of the United States to pass a law by which the certificate of a justice of the peace of the state, shall be made conclusive evidence of the right of the claimant, to remove one who may be a free native born citizen of this state, to a distant part of the union as a slave; and thereby to deprive such person of the benefit of the writ of *habeas corpus*[.]

Jack v. Martin, 14 Wend. 507, 527–28 (N.Y. 1835). *See* Finkelman, *supra* note 218, at 271–72.

233. *Prigg*, 41 U.S. at 625. *See* Finkelman, *supra* note 187, at 14–15; Rierson, *supra* note 56, at 624.

234. *Prigg*, 41 U.S. at 615–16.

235. Story noted that "state magistrates may, if they choose, exercise that authority" to hear cases under the Fugitive Slave Act "unless prohibited by state legislation." *Prigg*, 41 U.S. at 622. Chief Justice Roger Taney rejected this concession in his concurrence: "Indeed, if the state authorities are absolved from all obligation to protect this right [of recaption], and may stand by and see it violated without an effort to defend it, the act of Congress of 1793 scarcely deserves the name of a remedy." *Prigg*, 41 U.S. at 630 (Taney, C.J., concurring).

236. Finkelman, *supra* note 187, at 21.

same.[237] In other states, judges disclaimed the ability to hear cases under the Fugitive Slave Act.[238] Individuals who attempted to seize alleged fugitive slaves on their own continued to face prison terms for kidnapping.[239]

At the same time, community institutions that originated in the effort to protect free and fugitive residents found new life. The earliest antislavery organizations were formed in the late eighteenth century to protect against kidnapping.[240] In 1788, Prince Hall, founder of the first African Lodge in Boston, led Black activists in petitioning the Massachusetts legislature to intercede in the kidnapping of "Three of our Brethren free citizens of the Town of Boston," along with others "that have Entred on bord of vessles as seamen *and* have ben sold for Slaves."[241] Ninety white ministers submitted their own petition in support, insisting on a "total abolition of that nefarious traffic which, to the disgrace of civilized nations, professing Christianity, has too long been permitted."[242] These efforts resulted in the return of the three kidnapped men and the passage of "An Act to prevent the Slave-Trade, and for granting Relief to the Families of such unhappy Persons as may be kidnapped or decoyed away from this Commonwealth," authorizing suits for damages.[243]

As the institution of slavery expanded in the nineteenth century, Black communities in the North rallied to protect their free and fugitive members from kidnapping.[244] These groups were not afraid to use force and, increasingly, assembled armed crowds to rescue fugitives and chase off slavecatchers.[245] Some attempts, like the attack on officers transporting George Latimer from Story's own courthouse in the fall of 1842, were unsuccessful.[246] After the passage of the Fugitive Slave Act of 1850, however, armed acts of resistance multiplied.

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237. *An Act to Prevent Kidnapping, Preserve the Public Peace, Prohibit the Exercise of Certain Powers Heretofore Exercised by Judges, Justices of the Peace, Aldermen and Jailors in This Commonwealth, and to Repeal Certain Slave Laws*, 1847 Pa. Laws 207.

238. Finkelman, *supra* note 187, at 22. As Finkelman notes, "Story only declared that he doubted Congress had the constitutional power to compel state judges to enforce the federal act. Arguments in Northern courts soon restated this to mean that state officials *lacked any jurisdiction* over fugitive slaves." *Id*. at 25.

239. *Id*. at 28–29.

240. Horton, *supra* note 55, at 151.

241. HERBERT APTHEKER, A DOCUMENTARY HISTORY OF THE NEGRO PEOPLE IN THE UNITED STATES 20 (1951).

242. PHILIP S. FONER, BLACKS IN THE AMERICAN REVOLUTION 87 (1975).

243. W. E. B. DU BOIS, THE SUPPRESSION OF THE AFRICAN SLAVE-TRADE TO THE UNITED STATES OF AMERICA, 1638-1870, at 231 (1904); Foner, *supra* note 242, at 88.

244. Horton, *supra* note 55, at 152.

245. *See* R. J. M. Blackett, *"Freemen to the Rescue!" Resistance to the Fugitive Slave Law of 1850*, *in* PASSAGES TO FREEDOM: THE UNDERGROUND RAILROAD IN HISTORY AND MEMORY 142 (David W. Blight ed., 2004); Horton, *supra* note 55, at 156–57.

246. Story ordered that Latimer be detained while his claimant sent for proof of identity. Massachusetts Supreme Judicial Court Chief Justice Lemuel Shaw, meanwhile, refused to issue a writ of personal replevin on Latimer's behalf. ROBERT M. COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS 169 (1975). Boston abolitionists ultimately purchased Latimer's freedom and petitioned for the passage of a personal liberty act forbidding the use of state officials or facilities to capture fugitive slaves, which was passed the following year. Horton, *supra* note 55, at 157–58.

C. *Resistance After the Fugitive Slave Act of 1850*

In 1850, the Thirty-first Congress passed a series of bills constituting an ostensible compromise between North and South. Among these laws was the Fugitive Slave Act of 1850, which escalated federal involvement in fugitive slave rendition. As Henry Clay of Kentucky urged from the Senate floor, the Fugitive Slave Clause was "not limited in its operation to the Congress of the United States," contrary to the holding in *Prigg*, but "extends to every State in the Union and to the officers of every State in the Union." In fact, he insisted, it "extends to every *man* in the Union, and devolves upon him the obligation to assist in the recovery of a fugitive slave from labor."[247] This amendment to the Fugitive Slave Act of 1793 responded to northern recalcitrance, in the form of personal liberty laws and armed resistance.[248] "A recent example occurred in the city of Cincinnati," Clay explained:

> One of our most respectable citizens having visited—not Ohio at all—but having visited Covington, on the opposite side of the river, a little slave of his escaped over to Cincinnati. He pursued it, recovered it—having found it in a house where he was concealed—took it out; but it was rescued by the violence and force of a negro mob from his possession—the police of the city standing by, and either unwilling or unable to afford assistance to him.[249]

Daniel Webster of Massachusetts concurred: in regard to fugitive slave rendition, he urged, "[T]he South is right, and the North is wrong."[250]

Under the amended fugitive slave law, federal marshals were charged with enforcing the capture of alleged fugitives, and federal commissioners presided over summary hearings for their rendition.[251] The commissioners were authorized to appoint "any one or more suitable persons" to execute warrants and to "summon and call to their aid the bystanders, or posse comitatus of the proper county, when necessary to ensure a faithful observance" of the Fugitive Slave Clause.[252] Commissioners received a doubled fee for rendition, and their determinations were "conclusive," admitting no right of appeal or "molestation"

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247. APPENDIX TO THE CONGRESSIONAL GLOBE: 31ST CONG., 1ST SESS. 122 (1850). Clay thought it was "impossible" for the Supreme Court to decide that state authorities could not aid and assist in the enforcement of the Fugitive Slave Act. "The court has not said so; and even if they had said so, they would have transcended their authority, and gone beyond the case which was before them." *Id.* at 123.

248. *See id.* at 123–24.

249. *Id.* at 123.

250. *Id.* at 274. Webster, like Clay, took some issue with *Prigg* but concluded that congressional action would resolve the problem. *Id.* Story himself recognized the need for a similar outcome; as he wrote in a letter to a Georgia senator in 1842, Congress could pass a bill that would allow federal commissioners to hear fugitive slave cases. Finkelman, *supra* note 187, at 15–16.

251. Fugitive Slave Act of 1850, ch. 60, 9 Stat. 462, §§ 1–5 (repealed 1864) [hereinafter Fugitive Slave Act of 1850].

252. *Id.*

from state proceedings.[253]

At a procedural level, the law offered asymmetrical protection to enslavers. The testimony of alleged fugitives was prohibited, while a claimant's "deposition or affidavit" might serve as "satisfactory proof" of former enslavement.[254] The law also deputized the broader public to enforce the law, subjecting anyone who assisted alleged fugitives to a maximum fine of $1,000 or a prison term of six months, requiring them to further "pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars for each fugitive so lost."[255] Any marshal who obstructed the process was subject to a fine of $1,000, and if an alleged fugitive escaped, "whether with or without the assent of such marshal or his deputy, such marshal [was] liable, on his official bond, to be prosecuted, for the benefit of such claimant, for the full value of the service or labor of said fugitive."[256]

Reactions in the North were swift. Personal liberty laws appeared on the books in Maine, Ohio, Michigan, Wisconsin, and Minnesota to prevent state assistance in fugitive rendition.[257] Mass meetings were convened to protest the law and to strategize forms of resistance, including the use of force if necessary.[258] In the 1850s, crowds took to the streets to prevent the capture and rendition of individuals such as Shadrach Minkins, Thomas Sims, and Anthony Burns in Boston; William (Jerry) Henry in Syracuse; Noah Buley, Nelson Ford, George Ford, and Joshua Hammond in Christiana, Pennsylvania; John Price in Oberlin, Ohio; and Charles Nalle in Troy, New York.[259]

Black and white participants took part in these collective acts of resistance, women alongside men.[260] In the murder of enslaver Edward Gorsuch during the Christiana Riot, William Parker recalled, it was the "*women*" who "*put an end to him*."[261] During the rescue of Charles Nalle in 1860, similarly, Harriet Tubman and other unnamed women played an integral role:

> Tubman, who had been standing with the excited crowd, rushed amongst the foremost to Nalle, and running one of her arms around his manacled arm, held on to him without ever loosening her hold . . . In

253. *Id.* §§ 6, 8. *See* Rierson, *supra* note 56, at 633.
254. Fugitive Slave Act of 1850, *supra* note 251, § 6.
255. *Id.* § 7.
256. *Id.* § 5.
257. Finkelman, *supra* note 187, at 21.
258. *See* Horton, *supra* note 55, at 158–60.
259. *See* GARY COLLISON, SHADRACH MINKINS: FROM FUGITIVE SLAVE TO CITIZEN (2009); Horton, *supra* note 55, at 171; HARRIET TUBMAN: THE LIFE AND THE LIFE STORIES 40–41 (2006); KELLIE CARTER JACKSON, FORCE AND FREEDOM: BLACK ABOLITIONISTS AND THE POLITICS OF VIOLENCE 39–63 (2019); ANGELA F. MURPHY, THE JERRY RESCUE: THE FUGITIVE SLAVE LAW, NORTHERN RIGHTS, AND THE AMERICAN SECTIONAL CRISIS (2014); ALBERT J. VON FRANK, THE TRIALS OF ANTHONY BURNS: FREEDOM AND SLAVERY IN EMERSON'S BOSTON (1999). Lois Horton estimates that more than eighty publicized rescue attempts occurred in the North during the decade of the 1850s. Horton, *supra* note 55, at 166.
260. Horton, *supra* note 55, at 167.
261. William Parker, *The Freedman's Story (Continued)*, ATLANTIC (Feb. 1866), at 288.

> the melee, she was repeatedly beaten over the head with policemen's clubs, but she never for a moment released her hold, but cheered Nalle and his friends with her voice, and struggled with the officers until they were literally worn out with their exertions, and Nalle was separated from them.[262]

Nalle was subsequently recaptured and sequestered in a judge's office, but the crowd followed him there: "when the men who led the assault upon the door . . . were stricken down, Harriet and a number of other colored women rushed over their bodies, brought Nalle out, and putting him in the first wagon passing, started him for the West."[263]

The need for 150 armed guards to smuggle Thomas Sims back into slavery illustrates the force levied by the state in response to the resistance levied by community groups.[264] During the rendition of Anthony Burns, the government assembled for that purpose

> two battalions of dragoons, eight regiments of artillery, twelve companies of infantry, the whole constabulary force of the city police, the entire disposable marine of the United States, [. . .] one hundred and twenty friends and associates of the U. S. Marshal, with loaded pistols and drawn swords, and in military costume and array.[265]

Legal prosecutions followed in the wake of such displays. After the rescue of eighteen-year-old John Price in Oberlin, Ohio, thirty-seven men, white and Black, were indicted; twenty were jailed for up to a year.[266]

Increasingly, abolitionists reconciled themselves to the use of force.[267] Vigilance committees formed before 1850 found new members and supporters after the passage of the Fugitive Slave Act.[268] Even those opposed to violence seemed to acknowledge the necessity of force in such cases. "When I saw poor Jerry in the hands of the official kidnappers," the Reverend Samuel May wrote to William Lloyd Garrison, "I could not preach nonresistance very earnestly to the crowd who were clamoring for his release."[269] Black

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262. SARAH H. BRADFORD, SCENES IN THE LIFE OF HARRIET TUBMAN, 101–02 (1869).
263. *Id*. at 102.
264. *See* Horton, *supra* note 55, at 165.
265. LYDIA MARIA CHILD, THE DUTY OF DISOBEDIENCE TO THE FUGITIVE SLAVE ACT: AN APPEAL TO THE LEGISLATORS OF MASSACHUSETTS, 29 (1860).
266. *Id*. at 171. The Christiana rescue resulted in another thirty-six indictments on charges of treason, murder, riot, and violations of the Fugitive Slave Act; among those prosecuted were white men who refused to muster on the state's behalf. *Id*. at 168.
267. *Id*. at 155–56; JACKSON, *supra* note 259, at 7, 52.
268. *See* Blackett, *Freemen to the Rescue*, *supra* note 245, at 136–37; JACKSON, *supra* note 259, at 52; SINHA, *supra* note 217, at 388. In addition to vigilance committees, R. J. M. Blackett argues, other Black community organizations, including churches, mutual aid societies, and Masonic lodges, supported and reactivated "networks of resistance" in response to the Fugitive Slave Act of 1850. Blackett, *Freemen to the Rescue*, *supra* note 245, at 136.
269. JACKSON, *supra* note 259, at 65.

abolitionists most often initiated these acts of resistance, but white northerners came to understand that their own liberty was eroded by the "constant danger which impends over every colored citizen of the Northern States, fast threatening to include white citizens also."[270]

This resistance came to a head in Wisconsin, where in the late 1850s state courts engaged in a series of escalating acts of federal nullification. These encroachments on federal power were overturned but not defused by the Supreme Court's response in *Ableman v. Booth* at the end of the decade.

D. *"Positive Defiance" of* Ableman v. Booth *(1859)*

In the spring of 1858, farm owner and slaveholder Benammi Garland of Missouri traveled to Racine, Wisconsin, with a certificate of removal and federal warrant for Joshua Glover, who had escaped from him two years prior.[271] Six men—two marshals and their four assistants—arrested Glover by force.[272] When word of Glover's arrest spread, the local sheriff arrested one of the marshals and his assistant on charges of kidnapping, assault, and battery.[273] Abolitionists, meanwhile, convened a protest meeting calling for a jury trial and the repeal of the "Slave catching law of 1850."[274] When Glover was moved to Milwaukee, abolitionist editor Sherman Booth published a handbill on the arrest and summoned residents to the courthouse to protest it. Ultimately, a crowd of more than a hundred used a battering ram to break open the jail and liberate Glover; on his way out, Glover reportedly cried, "Glory, Hallelujah."[275]

Although Booth had not called for the use of force, he faced a series of charges under the Fugitive Slave Act for "aiding and abetting" in Glover's escape.[276] At his first trial, Booth apparently delivered a speech in which he insisted that he would "prefer to see every Federal officer in Wisconsin hanged" than to "have the great constitutional rights and safeguards of the people—the writ of *habeas corpus*, and the right of trial by jury—stricken down by the fugitive slave law."[277] Before a verdict was rendered in the federal case, he applied to Justice Abram Smith of the state supreme court for a writ of habeas corpus.[278] Booth's attorney, Byron Paine, urged that the Fugitive Slave Act was unconstitutional.[279] Smith found for Booth, holding that the Constitution conferred no authority on Congress to pass such a law,

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270. MAY, *supra* note 181, at 41. *See* Blackett, *Freemen to the Rescue*, *supra* note 245, at 137.
271. SINHA, *supra* note 217, at 520.
272. *Id.*
273. *Id.*
274. *Id.*
275. *Id.* at 521.
276. VROMAN MASON, THE FUGITIVE SLAVE LAW IN WISCONSIN, WITH REFERENCE TO NULLIFICATION SENTIMENT 128 (1895); SINHA, *supra* note 217, at 521.
277. MASON, *supra* note 276, at 129.
278. *Id.*
279. Specifically, Paine argued that the Fugitive Slave Clause was a matter of interstate comity, that the Fugitive Slave Act of 1850 denied alleged fugitives a trial by jury, and that it improperly vested the judicial power of the United States in federal commissioners. *Id.* at 129–30.

that it required a trial by jury to determine whether "such service or labor [was] due," and that the summary proceedings under the Fugitive Slave Act of 1850 violated the constitutional guarantee of due process.[280] In the process, Smith argued that individual citizens had a right to test the constitutionality of the laws and to resist unconstitutional ones, and that states had a right to challenge federal laws that encroached on state sovereignty.[281]

Shortly after his release, Booth was indicted by a federal grand jury and sentenced to one month's imprisonment, a $1,000 fine, and the costs of prosecution.[282] In response, a Milwaukee collective passed a set of resolutions insisting that the Fugitive Slave Act had "no binding effect upon us or ours, and [repudiated] all obligation to obey its unlawful and unconstitutional requirements."[283] Another group resolved that they were "*prepared to resist, even at the expense of life*, the encroachment of this 'sum of all villainies.'"[284]

The state court again stepped in and released Booth in early February 1855.[285] As Chief Justice Edward Whiton explained, without the power to issue writs of habeas corpus, and with it the "power to release a citizen of the State from illegal imprisonment," the state "would be stripped of one of the most essential attributes of sovereignty, and would present the spectacle of a State claiming the allegiance of its citizens, without the power to protect them in the enjoyment of their personal liberty upon its own soil."[286]

But the state court went further in asserting its sovereignty. When the United States Supreme Court granted certiorari in the case later that year, the Wisconsin Supreme Court "ordered their clerk to disregard and refuse obedience to the writ of error."[287] Ultimately, the United States Supreme Court heard the case, *Ableman v. Booth*, on a certified copy of the proceedings rather than on the official record.[288] Even after the Court reversed and ordered Booth's return to federal custody, the state court refused to comply.[289] As Chief Justice Roger Taney concluded, the Wisconsin Supreme Court had asserted its own supremacy in a case "arising under the Constitution and laws of the United States."[290]

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280. *Id.* at 130–31. The full Wisconsin Supreme Court eventually discharged Booth, although only two of three justices agreed that the Fugitive Slave Act was unconstitutional. *Id.* at 132.

281. *Id.* at 130–32. For discussion of popular constitutionalism, *see generally* Saul Cornell, *Mobs, Militias, and Magistrates: Popular Constitutionalism and the Whiskey Rebellion*, 81 CHI.-KENT L. REV. 883 (2006); Saul Cornell, *The People's Constitution vs. the Lawyer's Constitution: Popular Constitutionalism and the Original Debate over Originalism*, 23 YALE J.L. & HUMAN. 295 (2011); LARRY D. KRAMER, THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW (2004).

282. MASON, *supra* note 276, at 134.

283. *Id.* at 134–35.

284. *Id.* at 135.

285. *Id.* at 136.

286. *Id.* at 137.

287. Ableman v. Booth, 62 U.S. 506, 514 (1858).

288. MASON, *supra* note 276, at 138.

289. *Id.* at 140. Booth was arrested again in 1860 but was rescued from the U.S. Custom House where he was detained. Booth turned himself in later that year and was finally pardoned by President James Buchanan in March 1861. Glover, meanwhile, lived the rest of his life in Canada. SINHA, *supra* note 217, at 522.

290. *Ableman v. Booth*, 62 U.S. at 514.

Any time a court acted beyond its jurisdiction in such a way, he wrote, amounted to "nothing less than lawless violence."[291]

In 1859, the Wisconsin legislature stepped in and adopted a joint resolution condemning the United States Supreme Court's assumption of jurisdiction in *Ableman v. Booth* as an "arbitrary act of power, unauthorized by the Constitution," and "therefore without authority, *void and of no force*."[292] Quoting from the Kentucky Resolution of 1799, Wisconsin insisted on its right not only of nullification but of "*positive defiance*" of "all unauthorized acts done or attempted to be done under color" of the Constitution.[293] Issued on the eve of the Civil War, the joint resolution signaled the extent to which the state legislature, like the state judiciary before it, was willing to directly contravene federal authorities.

By the end of the decade, the Fugitive Slave Act had escalated existing tensions between the North and the South, the states and the federal government, and individuals and the authorities who purported to govern them. Despite its asymmetrical support for enslavers, the Fugitive Slave Act likely did little to stem the tide of those who fled from slavery.[294] And while the operations of both "underground railroads," the one by which individuals escaped from slavery, and the one by which they were forced back into it, were obviated by the Civil War and the ratification of the Thirteenth Amendment, their logics have found new expression in the twenty-first century.[295]

III. THE LEGACY OF RENDITION

Rendition has had a long afterlife. This section traces the parallels that extend from rendition under the fugitive slave laws to two extreme forms of federal removal in the twenty-first century: indefinite detention at Guantánamo Bay and renditions and other third-country removals under the second Trump administration.

In the first years of the twenty-first century, "aliens designated as enemy combatants" were forcibly transported to a United States military base at Guantánamo Bay, where they were held in a legal purgatory defined by indeterminate jurisdiction and subjected to abuses afforded by the absence of law—an absence facilitated, as in slavery, by the law itself.[296] Little more than a year into President Trump's second term, his administration has similarly overseen the rendition of 252 Venezuelan and 36 Salvadoran men to CECOT and the removal of hundreds of men, women, and children to countries with which they have no connection, a practice known as third-country

291. *Id.* at 524.
292. MASON, *supra* note 276, at 142–43.
293. *Id.*
294. Rierson, *supra* note 56, at 636–37.
295. Winch, *supra* note 56, at 3.
296. *See Boumediene*, 553 U.S. at 732.

removal.[297] These radical actions have exposed many individuals, including those who have violated no laws or regulations, to inhumane conditions, family separation, systemic abuse, and torture.[298] While these actions have been challenged in federal court, they have accomplished their primary task: to suspend these individuals in "law-free zones" where they are effectively deprived of legal recourse.[299] The Supreme Court has done little to mitigate these "expansive black holes in the law."[300] The result is a legalized deprivation of rights, an evacuation of the law itself, that harks back to the law of slavery.

A. *Indefinite Detention at Guantánamo Bay*

A few months after the September 11 terrorist attacks, the United States government began incarcerating men detained in Afghanistan at Naval Station Guantánamo Bay on the southeastern coast of Cuba.[301] That year, President George W. Bush's Department of Justice took the position that, because Guantánamo was "outside the sovereign territory of the United States," those imprisoned there had no right to a writ of habeas corpus in an American court.[302] Under the terms of the 1903 lease agreement for the naval base, Cuba retained "ultimate sovereignty" over the lands in question, while the United States was to "exercise complete jurisdiction and control."[303] The result of this arrangement was not a surfeit of jurisdiction but an absence of it: Guantánamo Bay fell outside the jurisdiction of every court in the United States.[304]

As Amy Kaplan notes, Guantánamo has long figured as a "lawless zone," a "legal black hole, a legal limbo, a prison beyond the law."[305] The naval base

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297. *See supra* note 6 and accompanying text. As of May 2025, the Trump administration had sent 200 third-country nationals, including 81 children, to Costa Rica; 299 to Panama; and an Iraqi man to Rwanda. The government has also pursued third-country removal arrangements with Libya, Saudi Arabia, Benin, Eswatini, Moldova, Mongolia, Kosovo, Angolo, and Equatorial Guinea. *See* Michael Garcia Bochenek, *"The Strategy Is to Break Us": The US Expulsion of Third-Country Nationals to Costa Rica*, HUMAN RTS. WATCH (May 22, 2025) 60–63, https://www.hrw.org/report/2025/05/22/the-strategy-is-to-break-us/the-us-expulsion-of-third-country-nationals-to-costa [https://perma.cc/X3CA-VAWT].

298. Bochenek, *supra* note 297, at 1–6; CRISTOSAL & HUMAN RIGHTS WATCH, *supra* note 19, at 1–5. *See supra* note 28.

299. *See* William N. Eskridge Jr., *Trump 2.0 Removal Cases & the New Shadow Docket*, U. CHI. L. REV. ONLINE (Sept. 23, 2025), https://lawreview.uchicago.edu/online-archive/trump-20-removal-cases-new-shadow-docket [https://perma.cc/N7EC-SFV3]. *See also supra* note 41 and accompanying text.

300. *Id. See* Muneer I. Ahmad, *Resisting Guantanamo: Rights at the Brink of Dehumanization*, 103 NW. U. L. REV. 1727 (2009).

301. *Boumediene*, 553 U.S. at 732*; see* Amy Kaplan, *Where Is Guantánamo?*, 57 AM. Q. 831 (2005).

302. Memorandum from Patrick F. Philbin, Deputy Assistant Att'y Gen., and John C. Yoo, Deputy Assistant Att'y Gen., to William J. Haynes II, Gen. Counsel, Dep't of Def., Re: Possible Habeas Jurisdiction over Aliens Held in Guantanamo Bay, Cuba (Dec. 28, 2001), https://nsarchive2.gwu.edu/torturingdemocracy/documents/20011228.pdf [https://perma.cc/AUW9-C7DN] [hereinafter Memorandum re Possible Habeas Jurisdiction].

303. *Id.* at 6. Ironically, as Amy Kaplan writes, the Cuban government has long contested the American occupation of Guantánamo, as the lease was imposed on the nation as a condition of its independence. *See* Kaplan, *supra* note 301, at 836–37 ("Thus as a territory held by the United States in perpetuity, over which sovereignty is indefinitely deferred, the temporal dimensions of Guantánamo's location make it a chillingly appropriate place for the indefinite detention of unnamed enemies in what the administration calls a perpetual war against terror.").

304. Memorandum re Possible Habeas Jurisdiction, *supra* note 302, at 5.

305. Kaplan, *supra* note 301, at 831.

was designed to occupy a "liminal national space, in, yet not within, Cuba, . . . not clearly under the sovereignty of either nation, nor seemingly subject to national or international law."[306] The advantage of such an arrangement, one with colonial origins, has always been to evade accountability before the law and the local populace.[307] When Cuban worker Lorenzo Salomón Deer was imprisoned on the base in 1954, a union leader said it was "as if he had been swallowed by the earth."[308]

In the 1990s, Guantánamo served as a detention camp for Haitian and Cuban refugees, a way station between the homes they fled and the country they hoped to reach.[309] The tens of thousands of individuals detained in makeshift camps endured such extreme and dangerous conditions that some attempted suicide.[310] Others led demonstrations, hunger strikes, escapes, and uprisings.[311] The detainees were "treated like animals," one said: "I was beaten, handcuffed, and they spat in my face. I was chained, made to sleep on the ground."[312] When they arrived, soldiers burned their personal possessions and documents.[313] A subset of Haitian refugees were physically quarantined in an "H.I.V. prison camp," where they received inadequate and even coercive medical treatment.[314] Children born there were rendered stateless, citizens of no country.[315]

In response to legal challenges, the federal government maintained the position that Guantánamo was "not United States territory," and that those held there had "no judicially cognizable rights in United States courts."[316] Judge Sterling Johnson, Jr., of the United States District Court for New York's Eastern District, objected to such logic, which would allow the state

306. *Id*. at 832.

307. *Id*. at 837.

308. Deer was allegedly beaten in detention and denied access to a lawyer. He was released two weeks later; the Navy conceded that his detention was "excessive." Paul Kramer, *A Useful Corner of the World: Guantánamo*, NEW YORKER (July 30, 2013), https://www.newyorker.com/news/news-desk/a-useful-corner-of-the-world-guantnamo [https://perma.cc/F224-VZS5].

309. *See* Kaplan, *supra* note 301, at 839.

310. PAUL FARMER, PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS, AND THE NEW WAR ON THE POOR 65 (2010); Kaplan, *supra* note 301, at 839.

311. FARMER, *supra* note 310, at 56, 63–65; Kramer, *supra* note 308. One detainee, Yolande Jean, recalled barbed wire, rats, maggot-infested food, and drinking water that caused diarrhea. FARMER, *supra* note 310, at 52, 61.

312. FARMER, *supra* note 310, at 56.

313. *Id*. at 58.

314. *Id*. at 54, 62–63; Kaplan, *supra* note 301, at 839; Lizzy Ratner, *The Legacy of Guantánamo*, NATION (July 14, 2003), https://www.thenation.com/article/archive/legacy-guantanamo/ [https://perma.cc/RR67-Z536]; Mary B. W. Tabor, *Judge Orders the Release of Haitians*, N.Y. TIMES (June 9, 1993), https://www.nytimes.com/1993/06/09/nyregion/judge-orders-the-release-of-haitians.html [https://perma.cc/Y6TG-QMA3]. One immigration official told the Associated Press: "They're gonna die anyway, right?" FARMER, *supra* note 310, at 64.

315. Ratner, *supra* note 314.

316. Barbara Crossette, *Lawyers Say U.S. Has Lost Haitian Refugee Files*, N.Y. TIMES (Apr. 8, 1992), https://www.nytimes.com/1992/04/08/world/lawyers-say-us-has-lost-haitian-refugee-files.html [https://perma.cc/6J82-DJ43]; Kramer, *supra* note 308. *See* FARMER, *supra* note 310, at 57 ("Guantánamo thus became a place where non-U.S. nationals could be stowed away in a sort of lawless limbo, out of reach of U.S. or international law.").

> to take, kidnap, or abscond, whatever you want to call it, take a group and put them into a compound, whether you call it a humanitarian camp or a prison, keep them there indefinitely while there has been no charge leveled against them and there is no light at the end of the tunnel.[317]

The Eleventh Circuit disregarded that possibility two years later, deciding that the base continued under Cuban sovereignty and that migrants held at Guantánamo were "without legal rights that are cognizable in the courts of the United States."[318] As a result, in the years leading up to the "war on terrorism," Guantánamo had become "juridically no man's land."[319]

The first prisoners from Afghanistan arrived, hooded and shackled, in January 2002, where they were detained in wire cages.[320] From 2002 to 2008, an estimated 780 prisoners, representing almost 50 countries, were held at Guantánamo.[321] Secretary of Defense Donald Rumsfeld described them as the "worst of the worst."[322] In reality, the "vast majority were either Taliban foot soldiers, recruited to fight an inter-Muslim civil war in Afghanistan that began long before 9/11, or humanitarian aid workers, religious teachers and economic migrants, who were, for the most part, sold to the Americans by their allies in Afghanistan and Pakistan."[323]

An "abundance of law," Muneer Ahmad suggests, has ironically enabled and perpetuated such detentions in an ostensibly "law-free zone."[324] From the outset, the Bush administration classified those it detained as "unlawful

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317. Kramer, *supra* note 308.

318. Cuban Bar Ass'n, Inc. v. Christopher, 43 F.3d 1412, 1430 (11th Cir. 1995). The Court observed, seemingly without a trace of irony, that the refugees were "nonetheless beneficiaries of the American tradition of humanitarian concern and conduct." *Id*. The Second Circuit, by contrast, concluded that migrants held at Guantánamo were entitled to procedural protections. *See* Haitian Ctrs. Council v. McNary, 969 F.2d 1326, 1343 (2d Cir. 1992). The Supreme Court reversed the Second Circuit in Sale v. Haitian Ctrs. Council Inc., 509 U.S. 155 (1992).

319. Kramer, *supra* note 308; *Remarks by the President Upon Arrival*, OFFICE OF THE PRESS SEC'Y, WHITE HOUSE (Sept. 16, 2001), https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010916-2.html [https://perma.cc/W73V-AFU7].

320. REPORT ON TORTURE AND CRUEL, INHUMAN, AND DEGRADING TREATMENT OF PRISONERS AT GUANTÁNAMO BAY, CUBA, 3, 14 (Ctr. for Constitutional Rights 2006) [hereinafter REPORT ON TORTURE]; Mary Robinson, *Statement of High Commissioner for Human Rights on Detention of Taliban and Al Qaida Prisoners at US Base in Guantanamo Bay, Cuba*, U.N. HIGH COMM'R FOR HUM. RTS. (Jan. 16, 2002), https://www.ohchr.org/en/statements-and-speeches/2009/10/statement-high-commissioner-human-rights-detention-taliban-and-al [https://perma.cc/6VKC-CRB3]. The detainees were moved into more permanent structures in April 2002. REPORT ON TORTURE, at 14.

321. *The Guantánamo Docket*, N.Y. TIMES (Nov. 19, 2025), https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html [https://perma.cc/AXY8-MRTK].

322. Katharine Q. Seelye, *Threats and Responses: The Detainees; Some Guantánamo Prisoners Will Be Freed, Rumsfeld Says*, N.Y. TIMES (Oct. 23, 2002), https://www.nytimes.com/2002/10/23/world/threats-responses-detainees-some-guantanamo-prisoners-will-be-freed-rumsfeld.html [https://perma.cc/L7AQ-986H].

323. ANDY WORTHINGTON, THE GUANTANAMO FILES: THE STORIES OF THE 774 DETAINEES IN AMERICA'S ILLEGAL PRISON xiii (2007). *See* REPORT ON TORTURE, *supra* note 320, at 14. In 2004, Brigadier General Martin Lucenti stated that the majority of the 550 prisoners then detained at Guantánamo "weren't fighting. They were running." According to the Center for Constitutional Rights, an active interrogator similarly stated that "dozens of prisoners" had "no meaningful connection to al-Qaida or the Taliban." REPORT ON TORTURE, *supra* note 320, at 3.

324. Ahmad, *supra* note 300, at 1705.

combatants" of non-state actors (al Qaeda and the Taliban) rather than prisoners of war entitled to protection under the Geneva Convention and American law.[325] A suite of "torture memos" from the Office of Legal Counsel narrowed the definition of torture to acts that inflicted physical pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," justified the use of torture in the case of "necessity," and determined that the Fifth and Eighth Amendments did not reach "alien enemy combatants held abroad."[326]

For these prisoners, as for those who preceded them, Guantánamo Bay was designed to be impenetrable physically, politically, and legally.[327] "You are in a place where there is no law," an intelligence officer told prisoner Hadj Boudella: "[W]e are the law."[328] For almost two years, detainees remained suspended without recourse, neither prisoners of war nor defendants charged with crimes that would afford them access to a lawyer or a tribunal.[329] It was not until 2004, after the Supreme Court held in *Rasul v. Bush* that the men were entitled to contest their detention in federal courts, that lawyers gained access to the prison.[330] In response, the government contended that, while the federal courts may have jurisdiction to hear prisoners' claims, the prisoners themselves had no statutory or constitutional rights for the courts to protect.[331]

In both *Hamdan v. Rumsfeld* (2006) and *Boumediene v. Bush* (2008), the Court rejected this argument, recognizing the detainees' right to contest their detention.[332] Still, the Court did not rule on the nature or extent of their constitutional rights, and in the years it took to litigate these cases, those detained at Guantánamo endured torture, humiliation, degradation, and abuse that

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325. Memorandum from John Yoo, Deputy Assistant Att'y Gen., and Robert J. Delahunty, Special Counsel, for William J. Haynes II, Gen. Counsel, Dep't of Def., Application of Treaties and Laws to al Qaeda and Taliban Detainees (Jan. 9, 2002) (on file with author); Memorandum from President George W. Bush to the Vice President, et al., Humane Treatment of Taliban and al Qaeda Detainees (Feb. 7, 2002) (on file with author).

326. Memorandum for Alberto R. Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A, U.S. DEP'T OF JUST. (Aug. 1, 2002) (on file with author); Memorandum for William J. Haynes II, Gen. Counsel of the Dep't of Def., Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States, U.S. DEP'T OF JUST. (Mar. 14, 2003) (on file with author); Jeffrey Rosen, *The Struggle Over the Torture Memos*, N.Y. TIMES (Aug. 15, 2004), https://www.nytimes.com/2004/08/15/weekinreview/the-nation-the-struggle-over-the-torture-memos.html [https://perma.cc/T7VC-HLYJ].

327. *See* Ahmad, *supra* note 300, at 1701.

328. REPORT ON TORTURE, *supra* note 320, at ii.

329. *See* Rasul v. Bush, 542 U.S. 466, 472 (2004).

330. *Rasul v. Bush*, 542 U.S. at 484; *see* Ahmad, *supra* note 300, at 1706, 1717; REPORT ON TORTURE, *supra* note 320, at 3.

331. Ahmad, *supra* note 300, at 1707. After *Rasul*, Congress passed the Detainee Treatment Act, which stripped federal courts of jurisdiction over the prisoners held at Guantánamo. Detainee Treatment Act, Pub. L. No. 109–148, § 1005(e)(2), 119 Stat. 2739, 2742 (2005). The Supreme Court rejected the law's application to cases pending in federal court in 2006. Hamdan v. Rumsfeld, 548 U.S. 557, 584 (2006). Congress subsequently passed the Military Commissions Act (MCA) of 2006, which extended the jurisdiction-stripping provision to all cases, pending or otherwise. Military Commissions Act, 28 U.S.C. § 2241(e)(7)(b), 120 Stat. 2636 (2006). The Supreme Court held that the MCA violated the Suspension Clause of the Constitution. *Boumediene*, 553 U.S. at 798.

332. *Hamdan v. Rumsfeld*, 548 U.S. at 583; *Boumediene*, 553 U.S. at 733.

gave rise to hunger strikes and mass suicide attempts.[333] Today, more than twenty-four years since the first detentions, fifteen prisoners remain at Guantánamo Bay, three of whom were sent there in 2002.[334]

Nor does the story of Guantánamo end with these men. Days into his second term, President Trump signaled his plan to detain up to 30,000 of the worst "criminal illegal aliens threatening the American people" at Guantánamo.[335] In early February 2025, a military plane transported the first group of migrants from El Paso to the prison.[336] Then–Secretary of Homeland Security Kristi Noem and Secretary of War Pete Hegseth echoed Rumsfeld's claim that the facility was reserved for the "worst of the worst."[337] The administration maintained that the men were members of the Venezuelan gang Tren de Aragua.[338] While technically in the custody of Immigration and Customs Enforcement (ICE), the *New York Times* reported that the men were overseen by military officers and subjected to strip searches, shackling, and solitary confinement.[339] Six were restrained after suicide attempts.[340] Later that month, the administration repatriated 177 men from the base to Venezuela and transported one more back to an immigration facility in the United States.[341] On March 20, less than a week after the administration began to fly Venezuelans to CECOT,

333. *Boumediene*, 553 U.S. at 733; *see* Ahmad, *supra* note 300, at 1691, 1713; Jackie Northam, *Guantanamo Detainees Attempted Mass Suicide in 2003*, NPR (Jan. 24, 2005), https://www.npr.org/2005/01/24/4464452/guantanamo-detainees-attempted-mass-suicide-in-2003 [https://perma.cc/FW8R-AVD3]; REPORT ON TORTURE, *supra* note 320, at 4–6, 9–10, 13–30.

334. *The Guantánamo Docket*, *supra* note 321.

335. Aleaziz & Rosenberg, *supra* note 66; *see Memorandum for the Secretary of Defense and the Secretary of Homeland Security, Re: Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity*, WHITE HOUSE (Jan. 29, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/expanding-migrant-operations-center-at-naval-station-guantanamo-bay-to-full-capacity/ [https://perma.cc/2B7K-MHM5].

336. Hamed Aleaziz & Eric Schmitt, *U.S. Begins Flying Migrants to Guantánamo*, N.Y. TIMES (Feb. 4, 2025), https://www.nytimes.com/2025/02/04/us/politics/migrants-guantanamo-trump.html [https://perma.cc/5FZG-BLD5].

337. Marc Tamasco, *Pete Hegseth Confirms 'Worst of the Worst' Criminal Migrants Will Be Sent to Guantanamo Bay*, FOX NEWS (Jan. 31, 2025), https://www.foxnews.com/media/hegseth-confirms-worst-worst-criminal-migrants-sent-gitmo-all-options-table [https://perma.cc/2XXM-H6XB].

338. Doug Mills & Carol Rosenberg, *A Tent City Is Rising at Guantánamo Bay*, N.Y. TIMES (Feb. 8, 2025), https://www.nytimes.com/2025/02/08/us/politics/guantanamo-bay-migrants.html [https://perma.cc/KAD9-HJ2A]; Eric Schmitt et al., *U.S. Is Holding Migrants in Cells That Once Held Al Qaeda Suspects*, N.Y. TIMES (Feb. 6, 2025), https://www.nytimes.com/2025/02/05/us/politics/migrants-trump-guantanamo-prison.html [https://perma.cc/G4TN-TZC4].

339. Karoun Demirjian, *Judge Rejects Attempts to Temporarily Stop Migrant Detention at Guantánamo*, N.Y. TIMES (Mar. 15, 2025), https://www.nytimes.com/2025/03/14/us/politics/judge-guantanamo-detention-migrants.html [https://perma.cc/V8BN-XGSS]; Carol Rosenberg & Charlie Savage, *Some Migrants Sent by Trump to Guantánamo Are Being Held by Military Guards*, N.Y. TIMES (Feb. 13, 2025), https://www.nytimes.com/2025/02/12/us/gitmo-migrants-trump.html [https://perma.cc/D5B2-5WKY]; Carol Rosenberg & Charlie Savage, *ICE Returns All Migrants From Guantánamo to Stateside Facilities*," N.Y. TIMES (Mar. 12, 2025), https://www.nytimes.com/2025/03/12/us/politics/ice-migrants-guantanamo.html [https://perma.cc/X688-T74G].

340. Rosenberg & Savage, *supra* note 339.

341. Hamed Aleaziz et al., *Trump Administration Abruptly Clears Out Migrants It Sent to Guantánamo*, N.Y. TIMES (Feb. 20, 2025), https://www.nytimes.com/2025/02/20/us/politics/guantanamo-venezuelans-trump-migrants.html [https://perma.cc/V57W-W37R].

it sent another group of some twenty Venezuelan migrants to Guantánamo.[342] By the end of 2025, roughly 730 men had been temporarily held at the base.[343]

Today, Guantánamo is widely understood as a "legal black hole," an "anomalous zone" that has been used over the past three decades to sequester human beings who are at once criminalized and rendered beyond the protections afforded to criminal defendants, individuals who are subjected to absolute military force and yet figured outside the bounds of national or international laws of war.[344] For today's "criminal aliens" as much as for yesterday's "unlawful combatants," the law, for significant swaths of time, has amounted to little more than executive prerogative.[345]

Their treatment in the twenty-first century calls back to the legal world of chattel slavery, in which state and federal courts alike concluded that Black Americans "had no rights which the white man was bound to respect," that the "power of the master must be absolute, to render the submission of the slave perfect."[346] For the "slave" as for the "criminal alien," whether at Guantánamo or CECOT, the law became a mechanism capable of propelling the individual beyond the law's own reach. Just as free and enslaved individuals could find scarce legal recourse once rendered to the South, those trafficked to Guantánamo had little hope of accessing an American court or lawyer to secure any meaningful relief.[347]

B. *Rendition and Third-Country Removals Under Trump 2.0*

The Door of No Return on Senegal's Gorée Island symbolizes the point at which those trafficked in the transatlantic slave trade were irrevocably removed from the land of their birth and any respite they might find there.[348] Such a door, and the abyss it beckons, serves as an equally stark reminder of the kinds of governmental procedures that American authorities have used for centuries to expel racialized individuals, depriving them in the process of almost any legal recourse.[349] The rendition of 288 men to the CECOT prison

342. Carol Rosenberg et al., *Trump Administration Sends a New Group of Migrants to Guantánamo Bay*, N.Y. TIMES (Mar. 20, 2025), https://www.nytimes.com/2025/03/20/us/politics/more-migrants-guantanamo-bay.html [https://perma.cc/9AY4-9U9T].

343. Carol Rosenberg, *U.S. Sends Cubans to Naval Station at Guantánamo Bay*, N.Y. TIMES (Dec. 16, 2025), https://www.nytimes.com/2025/12/16/us/politics/cubans-deportations-guantanamo-bay.html [https://perma.cc/8ABT-N3LT].

344. Gerald L. Neuman, *Anomalous Zones*, 48 STAN. L. REV. 1197, 1201 (1996); Charlie Savage, *Immigrant Aid Groups Seek Access to Migrants Sent by Trump to Guantánamo*, N.Y. TIMES (Feb. 12, 2025), https://www.nytimes.com/2025/02/12/us/guantanamo-trump-lawsuit-migrants-venezuela.html [https://perma.cc/E7PC-VD8D].

345. *See* Ahmad, *supra* note 300, at 1710; Kaplan, *supra* note 301, at 852.

346. *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1856); *State v. Mann*, 13 N.C. 263, 266 (1829); *see* Ahmad, *supra* note 300, at 1751.

347. *See supra* note 66 and accompanying text.

348. *See* DIONNE BRAND, *A Map to the Door of No Return* 27 (2024).

349. Kaplan, *supra* note 301, at 840.

facility in El Salvador in the spring of 2025 stands as the latest innovation on that legal tradition.[350]

The throughline between these cases is not any one particular legal mechanism or actor, although each has relied on coordinated action across branches of government. Fugitive slave rendition was a legislative priority enforced by the executive and enabled by the judiciary. President Trump pursues his own policy of rendition by executive fiat, relying on the purported authority of the Alien Enemies Act and limited sanction from the Supreme Court.[351] In *Trump v. J.G.G.* (2025), specifically, the Court determined that because the Alien Enemies Act "largely 'preclude[s] judicial review,'" challenges to removal must be brought in habeas proceedings in the district of confinement.[352] As a result of this holding, Justice Sotomayor argued in dissent, "detainees scattered across the country must each obtain counsel and file habeas petitions on their own accord, all without knowing whether they will remain in detention where they were arrested or be secretly transferred to another location."[353]

Whatever the primary motivation behind the renditions to CECOT, their function has been to deny judicial relief to those subject to removal. Evidence suggests that this denial is by design: in a memorandum to law enforcement officers on implementing the Alien Enemies Act, then–Attorney General Pam Bondi advised that an "alien determined to be an Alien Enemy and ordered removed" was "not entitled to a hearing before an immigration judge, to an appeal of the removal order to the Board of Immigration Appeals, or to judicial review of the removal order in any court of the United States."[354] As of January 12, 2026, the administration continues to contest habeas proceedings for a class of CECOT detainees because the federal courts lack "jurisdiction over the claims of class members who were detained by a separate sovereign and have since transferred to their home country."[355] Most notably,

> circumstances in Venezuela have materially changed since the Court issued its order. Nicolas Maduro is now in United States custody awaiting trial; the situation on the ground in Venezuela is in flux; and the United States' relations with the regime of Maduro's successor, so-called Acting President Delcy Rodríguez, are at an extraordinarily sensitive juncture. In response to the Court's order, given the fluid situation

350. *See supra* note 6 and accompanying text.

351. *See* Proclamation No. 10903, *supra* note 31; *J.G.G.*, 604 U.S. at 672 (2025).

352. *J.G.G.*, 604 U.S. at 672.

353. *Id.* at 21 (Sotomayor, J., dissenting). As William Eskridge, Jr., concludes, "[a]llowing Trump 2.0 to get away with a lawless interpretation of a statute and farming out disputes to scattered habeas proceedings risks entrenching that lawless interpretation and emboldening further executive exercises of power beyond traditional authorization." Eskridge, *supra* note 299.

354. *Memorandum for Law Enforcement Officers, Re: Guidance for Implementing the Alien Enemies Act*, ATT'Y GEN. OFF. (Mar. 14, 2025), https://www.documentcloud.org/documents/25915967-doj-march-14-memo-alien-enemies-act/ [https://perma.cc/87JV-M7UA].

355. J.G.G. v. Trump, No. 1:25-cv-00766-JEB, Response to Court Order at 1 (D.D.C. filed Jan. 12, 2026).

> in Venezuela, [the administration does] not believe there is any feasible way to allow class members to file habeas petitions at this time.[356]

As a result of the administration's own intervention in Venezuela, in other words, individuals sent to Venezuela after a four-month stint in a torture prison should have no access to a United States court.[357]

The administration has adopted a similar policy in pursuing third-country removals. As the District Court of Massachusetts found in *D.V.D v. DHS*, the administration has "taken the position that there is *no* due process entitled to any alien, under any method of removal, prior to removal to a third country regardless of any potentiality that such an alien will be tortured or murdered upon arrival."[358] Where the lower court issued a preliminary injunction requiring the administration to provide due process to such individuals, the Supreme Court granted an emergency stay of that injunction.[359] As a result, on July 4, 2025, the administration removed eight men it deemed "barbaric criminal illegal aliens" to South Sudan, "without regard for the likelihood that they [would] face torture or death."[360]

As with rendition, third-country removals have targeted asylum-seekers and lawful residents as much as "illegal aliens."[361] The result for those subjected to summary removal has been not only deprivation but dehumanization. One thirty-year-old man, Baseem P. from Afghanistan, was among 200 third-country nationals deported to Costa Rica in February 2025 after weeks in detention in the United States.[362] "I felt like a criminal," he told Human Rights Watch of being shackled and chained in front of his children. "I felt that I no longer had an identity, that I was without a country."[363] According to Clement F., forty-three years old from the Democratic Republic of Congo, "They treated us with utter inhumanity. They treated us like slaves."[364]

C. *Rendition Then and Now*

Scholars have noted the "uncanny resemblances" between rendition under the fugitive slave laws and the deportation of undocumented

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356. *Id*. at 2.

357. *See* Julian E. Barnes et al., *Inside 'Operation Absolute Resolve,' the U.S. Effort to Capture Maduro*, N.Y. TIMES (Jan. 3, 2026), https://www.nytimes.com/2026/01/03/us/politics/trump-capture-maduro-venezuela.html [https://perma.cc/JN7B-MFXT].

358. D.V.D. v. Dep't of Homeland Sec., No. 25-10676-BEM, Order at 33 (D. Mass. Apr. 18, 2025).

359. Dep't of Homeland Sec. v. D.V.D., 606 U.S. ___, ___, slip op. at 1 (2025).

360. *8 Barbaric Criminal Illegal Aliens Finally Deported to South Sudan After Weeks of Delays by Activist Judges*, DEP'T OF HOMELAND SEC. (July 5, 2025), https://www.dhs.gov/news/2025/07/05/8-barbaric-criminal-illegal-aliens-finally-deported-south-sudan-after-weeks-delays [https://perma.cc/7GNC-M4FB]; *D.V.D*., slip op. at 2 (Sotomayor, J., dissenting).

361. CRISTOSAL & HUM. RTS. WATCH, *supra* note 19, at 38–39; Bochenek, *supra* note 297, at 1.

362. Bochenek, *supra* note 297, at 1–2.

363. *Id*. at 2.

364. *Id*. at 28.

immigrants in the twenty-first century.[365] Rendition in both cases, Christopher Lasch argues, "has been used as a weapon to counter the free migration of laborers of color."[366] Both fugitive slave rendition and contemporary immigration laws raise questions of federalism that arise as a result of individuals whose presence, and presumptive pursuit of freedom and opportunity, has been made unlawful by the federal government.[367] Such federal actions have in turn generated state, local, and individual practices of resistance, including personal liberty laws, the Underground Railroad, and vigilance committees in the nineteenth century, and sanctuary cities, humanitarian aid at the border, and ICE resistance networks today.[368]

Under the first and second Trump administrations, these parallels seem to multiply. "That the Trump administration has announced new nationwide

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365. Eric Foner, *What the Fugitive Slave Act Teaches Us About How States Can Resist Oppressive Federal Power*, NATION (Feb. 8, 2017), https://www.thenation.com/article/archive/what-the-fugitive-slave-act-teaches/ [https://perma.cc/4DB5-RSYG]; *see* Bouie, *supra* note 58; Shikha Dalmia, *How Today's pro-Immigrant Activists Are Adopting the Tactics of Abolitionists*, THE WEEK (Mar. 2, 2017), https://theweek.com/articles/676729/how-todays-proimmigrant-activists-are-adopting-tactics-abolitionists [https://perma.cc/36S3-FSMJ]; Andrew Delbanco, Editorial, *The Long Struggle for America's Soul*, N.Y. TIMES (Nov. 3, 2018), https://www.nytimes.com/2018/11/02/opinion/the-long-struggle-for-americas-soul.html [https://perma.cc/L9V9-XUJ6]; Daniel Farbman, *"An Outrage upon Our Feelings": The Role of Local Governments in Resistance Movements*, 42 CARDOZO L. REV. 2097, 2097–2182 (2020); Kraehenbuehl, *supra* note 215; Lasch, *supra* note 152; Roberto Lovato, *Juan Crow in Georgia*, NATION (May 8, 2008), https://www.thenation.com/article/archive/juan-crow-georgia/ [https://perma.cc/8Z5C-7DMD]; Kate Masur, Opinion, *Chicago's Resistance to ICE Raids Recalls Northern States' Response to the Fugitive Slave Act*, CHI. TRIBUNE (July 15, 2019), https://www.chicagotribune.com/2019/07/15/commentary-chicagos-resistance-to-ice-raids-recalls-northern-states-response-to-the-fugitive-slave-act/ [https://perma.cc/CGL9-RSKA]; Karla M. McKanders, *Immigration Enforcement and the Fugitive Slave Acts: Exploring Their Similarities*, 61 CATH. U. L. REV. 921, 921–54 (2012); Harold Meyerson, *There Are Echoes of the Fugitive Slave Act in Today's Immigration Debate*, AM. PROSPECT (Mar. 6, 2018), https://prospect.org/api/content/5f70603d-b036-509a-a882-84209d12f674/ [https://perma.cc/WMA7-LEMV]; Rierson, *supra* note 56; Manisha Sinha, *The New Fugitive Slave Laws*, N.Y. REV. BOOK (July 17, 2019), https://www.nybooks.com/online/2019/07/17/the-new-fugitive-slave-laws/ [https://perma.cc/5F6U-HGJD]; Jacqueline Stevens, *Habeas Corpus and the New Abolitionism*, *in* OPEN BORDERS: IN DEFENSE OF FREE MOVEMENT 110 (Reece Jones ed., 2019).

366. Lasch, *supra* note 152, at 154. Karla McKanders refers to these individuals as "unskilled workers," which does not necessarily reflect the type of person who was best positioned to run from slavery. *See* McKanders, *supra* note 365, at 921. Frederick Douglass, for instance, was employed as a ship caulker in Baltimore, while James Pennington was a blacksmith; both also became skilled orators and writers after escaping slavery. *See* FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE 127 (Benjamin Quarles ed. 1845); JAMES W. C. PENNINGTON, THE FUGITIVE BLACKSMITH; OR EVENTS IN THE HISTORY OF JAMES W. C. PENNINGTON, PAST OF A PRESBYTERIAN CHURCH, NEW YORK, FORMERLY A SLAVE IN THE STATE OF MARYLAND, UNITED STATES (1849); *see also* GERALD W. MULLIN, FLIGHT AND REBELLION: SLAVE RESISTANCE IN EIGHTEENTH-CENTURY VIRGINIA 36–38 (1972).

367. *See* Farbman, *supra* note 365, at 2172 n.235; Kraehenbuehl, *supra* note 215, at 1466; Masur, *supra* note 365; Rierson, *supra* note 56, at 603–04; Stevens, *supra* note 365, at 113. Even Justice Kavanaugh, in diminishing the rights of undocumented Americans last term, "recognize[d] and fully appreciate[d] that many (not all, but many) illegal immigrants come to the United States to escape poverty and the lack of freedom and opportunities in their home countries, and to make better lives for themselves and their families." Noem v. Vasquez Perdomo, No. 25A169, slip op. at 8 (US Sept. 8, 2025) (Kavanaugh, J., concurring).

368. *See* Julie Bosman, *How ICE Crackdowns Set Off a Resistance in American Cities*, N.Y. TIMES (Jan. 14, 2026), https://www.nytimes.com/2026/01/14/us/ice-protests-activism.html [https://perma.cc/E4JA-KGAN]; Dalmia, *supra* note 365; Foner, *supra* note 365; Rierson, *supra* note 56, at 637–59; Sinha, *supra* note 365; Stevens, *supra* note 365, at 120–23; *see generally* Farbman, *supra* note 365; Lasch, *supra* note 152.

raids by ICE agents recalls the kidnappings and roundups by nineteenth-century slave-catchers and federal marshals," writes Manisha Sinha.[369] Consider the words of Wisconsin Supreme Court Justice Abram Smith, writing in 1854, in the context of the federal immigration raids in Minneapolis in early 2026.[370] The state would never, Smith urged, "consent that a slave-owner, his agent, or an officer of the United States, armed with process to arrest a fugitive slave from service, [be] clothed with entire immunity from State authority, to commit whatever crime or outrage against the laws of the State."[371] Nor would it consent to be

> invaded by Federal forces, the houses of their citizens searched, the sanctuary of their homes invaded, their streets and public places made the scene of tumultuous and armed violence; and State sovereignty succumb, paralyzed and aghast, before the process of an officer unknown to the Constitution and irresponsible to its sanctions.[372]

Much as the Fugitive Slave Act of 1850 sowed terror among Black communities in the North, the administration's immigration raids have "sparked 'panic and fear,'" as well as widespread resistance, across the cities affected by them.[373]

As Eric Foner notes, Canada and other neighboring countries once did and still do provide "refuge to those unable to enjoy freedom in the United States."[374] The writ of habeas corpus, similarly, was one of the few legal tools available to prevent rendition under the fugitive slave laws, just as habeas is the only mechanism available to those sent to CECOT under *Trump v. J.G.G.* today.[375] At the same time, the arbitrary and distributed nature of the relief afforded in *J.G.G.* recalls the children of Peyton Polly, who were forcibly abducted in Ohio and sold in both Kentucky and Virginia.[376] Those in Kentucky were declared free by a chancery court over a year later.[377] The children in Virginia were declared free as well, but an appeals court determined that the writ of habeas corpus was brought in the wrong county.[378] After almost a decade, their case was dismissed and they remained enslaved.[379]

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369. Sinha, *supra* note 365.

370. *See generally* Thomas Fuller & Jazmine Ulloa, *'Like a Military Occupation': Clashes Rise with Federal Agents in Minneapolis*, N.Y. TIMES (Jan. 13, 2026), https://www.nytimes.com/2026/01/13/us/ice-videos-minnesota-trump-immigration.html [https://perma.cc/4VFG-U3N6] (describing the Minneapolis immigration raids).

371. MASON, *supra* note 276, at 131.

372. *Id.* at 132.

373. According to Justice Sotomayor, "[m]any are 'struggl[ing] to make ends meet' because they are 'afraid to go to work.' . . . Others are 'reluctant to attend school meetings' and 'pick their children up from school' for fear of being detained." Noem v. Vasquez Perdomo, No. 25A169, slip op. at 3–4 (US Sept. 8, 2025) (2025) (Sotomayor, J., dissenting) (citations omitted). *See* Bosman, *supra* note 368.

374. Foner, *supra* note 365.

375. *See id.*; *supra* note 352.

376. WILSON, *supra* note 55, at 76–77.

377. *Id.* at 77.

378. *Id.* at 78.

379. *Id.* at 79.

Scholars have been quick to note that these resemblances do not minimize the differences between enslavement and deportation. "[D]espite their travails," Foner writes, "today's refugees are not fleeing conditions as horrific as American slavery."[380] Procedurally, deportation functions differently from fugitive slave rendition. The federal government's enforcement of individual "property" rights would also seem to raise different questions than its enforcement of laws about permissible entry into and presence within United States territory.[381] "Being exiled to slavery," finally, "is different from being exiled to another country."[382]

But the specter of rendition and other forms of third-country removal under the second Trump administration forges a tighter bond between the fugitive and the immigrant.[383] Just as unknown numbers lost their liberty and lives to slavery, so too does the possibility exist that "scores of individual lives may be irretrievably lost" in the Trump administration's pursuit of rendition.[384] Similarly, in its recourse to third-country removals, particularly to places where the deportee was previously tortured or to countries wracked by political instability and conflict, the government traffics in "matters of life and death."[385]

Nor is the threat restricted to the undocumented, just as the possibility of removal and rendition was never restricted to the formerly enslaved. Justice Sotomayor heard in the government's argument in *Noem v. Abrego Garcia* (2025) that "it could deport and incarcerate any person, including U.S. citizens, without legal consequence, so long as it does so before a court can intervene."[386] Judge Boasberg, too, concluded that, absent judicial intervention, the "Government could snatch anyone off the street, turn him over to a foreign country, and then effectively foreclose any corrective course of action."[387] Trump himself has mused about the possibility of sending American citizens, "homegrown criminal[s]," to a place like CECOT.[388]

Abolitionists articulated a similar fear that anyone was liable to be snatched by kidnappers—free or fugitive, white or Black.[389] To Wendell Phillips, white northerners were also "at the mercy of prowling kidnappers, because there [were] multitudes of white as well as black slaves on Southern

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380. Foner, *supra* note 365.

381. *See* Delbanco, *supra* note 365; KANSTROOM, *supra* note 69, at 77–78; Kraehenbuehl, *supra* note 215, at 1485.

382. Farbman, *supra* note 365, at 2172 n.235.

383. *See* Bouie, *supra* note 54.

384. *J.G.G.*, 604 U.S. at 690 (Sotomayor, J., dissenting).

385. *D.V.D.*, slip op. at 1 (Sotomayor, J., dissenting).

386. Noem v. Abrego Garcia, 604 U.S. ___, ___ (2025) (slip op. at 3) (Sotomayor, J., statement). *See also J.G.G.*, 604 U.S. at 682 (slip op. at 8) (Sotomayor, J., dissenting) ("The implication of the Government's position is that not only noncitizens but also United States citizens could be taken off the streets, forced onto planes, and confined to foreign prisons with no opportunity for redress if judicial review is denied unlawfully before removal.")

387. *J.G.G.*, 786 F.Supp.3d at 67.

388. Zolan Kanno-Youngs, *El Salvador's Leader Says He Won't Return Wrongly Deported Maryland Man*, N.Y. TIMES (Apr. 14, 2025), https://www.nytimes.com/2025/04/14/us/politics/trump-bukele-prison-deported-migrants.html [https://perma.cc/529D-VPZE].

389. A group of more than 300 Chicagoans urged that the "tendency of the Fugitive Slave Bill" was "to enslave every colored man in the United States." Farbman, *supra* note 365, at 2135.

plantations."[390] Slavery was an institution that was both predicated on race and shaped by creative constructions of what racial identity meant.[391] The law of American slavery, specifically, altered the common law to ensure that the status of the child followed the condition of the mother; in codifying the principle of *partus sequitur ventrem*, colonies beginning with Virginia in 1662 ensured that children fathered by white enslavers would remain enslaved.[392] Abolitionists, as a result, frequently noted the presence of the "white slave" on southern plantations.[393]

At the same time, the visible presence of Blackness, however malleable, was enough to render a person acutely vulnerable to rendition in the eyes of the law. As a Virginia court held in 1806,

> In the case of a person visibly appearing to be a negro, the presumption is, in this country, that he is a slave, and it is incumbent on him to make out his right to freedom: but in the case of a person visibly appearing to be a white man, or an *Indian*, the presumption is that he is free, and it is necessary for his adversary to shew that he is a slave.[394]

This "presumption of illegality based on racial identity," Karla McKanders argues, equally characterizes the nature of racial profiling in contemporary immigration enforcement.[395] Under the Trump administration, racial targeting is often explicit. During the "Operation At Large" raids in Los Angeles, immigration officers were instructed to make investigative stops on the basis of four factors: place of work, type of work, language ("speaking Spanish or speaking English with an accent"), and "apparent race or ethnicity."[396] In September, the Supreme Court stayed a lower court order prohibiting these stops.[397] Writing in concurrence, Justice Brett Kavanaugh clarified that "apparent ethnicity alone cannot furnish reasonable suspicion," but "it can be a 'relevant factor' when considered along with other salient factors. . . . Under this Court's precedents, not to mention common sense, those circumstances taken together can constitute at least reasonable suspicion of illegal presence in the United States."[398]

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390. Finkelman, *supra* note 187, at 17–18. Chicago Alderman Amos Throop feared that "not only fugitive slaves, but white men, owing to service to another in another State . . . may be captured and carried off summarily and without legal recourse of any kind." Farbman, *supra* note 365, at 2136.

391. *See, e.g.*, Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109 (1998).

392. *See* Taunya Lovell Banks, *Dangerous Woman: Elizabeth Key's Freedom Suit—Subjecthood and Racialized Identity in Seventeenth Century Colonial Virginia*, 41 AKRON L. REV. 799, 812–16 (2008).

393. *See, e.g.*, WILLIAM WELLS BROWN, CLOTEL; OR, THE PRESIDENT'S DAUGHTER: A NARRATIVE OF SLAVE LIFE IN THE UNITED STATES 153 (1853).

394. Hudgins v. Wright, 11 Va. (1 Hen. & M.) 134, 141 (1806).

395. McKanders, *supra* note 365, at 947.

396. Noem v. Vasquez Perdomo, 606 U.S. ___, ___ (slip op. at 2–3) (2025) (Kavanaugh, J., concurring) (citations omitted).

397. *Id.* (slip op. at 1).

398. *Id.* at 3 (citation omitted).

The markers of "illegal presence" in the case of the men rendered to CECOT have been both more specific and more arbitrary than typical immigration raids. Expressly targeting young Venezuelan men by the terms of the president's executive order, the administration has relied on symbolic marks that purportedly boast allegiance to Tren de Aragua, such as tattoos, social media posts, graffiti, hand signs, and clothing style, including any "insignia, logos, notations, drawings, or dress known to indicate allegiance" to the gang.[399] Other indicators seem to include residency in the state of Aragua, entry into the United States with someone else accused of Tren de Aragua membership, or attendance at particular events, including specific parties and concerts.[400] Already focused on a specific national identity, the Trump administration has devised a method for detecting alleged gang membership that, despite the appearance of systematicity in its "Alien Enemy Validation Guide," risks sweeping virtually anyone from Venezuela into its mix.[401] As some of the men imprisoned in CECOT wrote on their bedsheets, in their own blood: "Being Venezuelan is not a crime."[402]

The racialized targets of federal rendition, in the case of both "fugitive slaves" and "criminal aliens," are subjected to forms of law that exist beyond both criminal and civil procedure. Much as the fugitive slave laws denied alleged fugitives the protections constitutionally afforded to criminal defendants, so does immigration law today ostensibly exist in the realm of regulation.[403] This determination harks back to *Fong Yue Ting*, in which a majority on the Supreme Court determined that deportation was not punishment, although the dissenting justices in that case urged the opposite: "Everyone knows that to be forcibly taken away from home and family and friends and business and property, and sent across the ocean to a distant land, is punishment, and that oftentimes most severe and cruel."[404] Today, the subjects of third-country removal are explicitly "told that a trial had already taken place in [their] cases and [they] were found guilty of violating the US border."[405] Even the compound labels of "fugitive slave" and "illegal alien" capture the

399. Declaration of Oscar Sarabia Roman at 8, J.G.G. v. Trump, No. 1:25-CV-00766-JEB (D.D.C. filed Mar. 28, 2025) (referring to Exhibit S from J.G.G.'s motion for preliminary injunction.).

400. *See* Blitzer, *supra* note 7; Victor Romero-Hernandez, *President Trump Invokes the Alien Enemies Act: What to Know Now*, INNOVATION L. LAB (Mar. 17, 2025), https://innovationlawlab.org/news-and-analysis/statement-innovation-law-lab-presidential-election-results [https://perma.cc/22JD-65YN]; CRISTOSAL & HUM. RTS. WATCH, *supra* note 19, at 2; *see also J.G.G.*, 604 U.S. at 677 (2025) (Sotomayor, J., dissenting).

401. Declaration of Oscar Sarabia Roman, *supra* note 399, at 7.

402. Blitzer, *supra* note 7.

403. *See* KANSTROOM, *supra* note 69, at 19; Lasch, *supra* note 152, at 219; PARKER, *supra* note 67, at 167; Rierson, *supra* note 56, at 660, 664–65.

404. Fong Yue Ting v. U.S., 149 U.S. 698, 740 (1893) (Brewer, J., dissenting). Deportation is "not a punishment for crime," wrote Justice Horace Gray. "It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions" of his residence. *Id.* at 730. The legacy of this determination extends into the present. "Even deportation for a criminal conviction," Gabriel Chin notes, "is not punishment." Chin, *supra* note 175, at 29 n.128. *See also* PARKER, *supra* note 67, at 167.

405. Bochenek, *supra* note 297, at 36.

hybrid quality of their status, both subject to extreme forms of punishment as a result of their unlawful presence yet not entitled to the rights and protections afforded to criminal defendants.

The illegality of these individuals in the eyes of the state condemns them to a legal domain in which little or no remedy is contemplated. As Justice Kavanaugh wrote in his concurrence in *Noem v. Vasquez Perdomo*, "[t]he interests of individuals who are illegally in the country in avoiding being stopped by law enforcement for questioning is ultimately an interest in evading the law. That is not an especially weighty legal interest."[406] Jimmy Percival, General Counsel of DHS, went one step further in defending ICE's reliance on "administrative warrants" to raid private homes.[407] "Illegal aliens" who have received a final order of removal are "fugitives from justice," Percival wrote in the *Wall Street Journal*'s pages in January 2026.[408] This practice is "consistent with broad judicial recognition that illegal aliens aren't entitled to the same Fourth Amendment protections as U.S. citizens."[409] As with the law of slavery, the contemporary immigration regime hinges on what Christopher Lasch calls "formal legal boundaries."[410] To cross those borders and remain, whether in the United States or the free North, is to become unlawful oneself and, in the process, to be thrust beyond the law's protections altogether.

For those smuggled into slavery, as for the men disappeared to CECOT, officials did gesture at a deferred form of relief. In the 1819 state court case of *Wright v. Deacon*, which upheld the Fugitive Slave Act of 1793, the Supreme Court of Pennsylvania reasoned that if an alleged fugitive "had really a right to freedom, that right was not impaired by this proceeding; he was placed just in the situation in which he stood before he fled, and might prosecute his right in the state to which he belonged."[411] Yet the idea that the plaintiff might successfully pursue his claim in Maryland was illusory, not least because Black testimony was largely precluded in any case "wherein any Christian white person was concerned."[412]

Family members frantically searching for their brothers, husbands, and sons in the wake of the federal government's renditions to CECOT received

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406. Noem v. Vasquez Perdomo, 146 S. Ct. 1, 5 (2025) (Kavanaugh, J., concurring).

407. Jimmy Percival, *How the Deep State Thwarted ICE Administrative Warrants*, WALL ST. J. (Jan. 22, 2026), https://www.wsj.com/opinion/how-the-deep-state-thwarted-ice-administrative-warrants-1a847297 [https://perma.cc/28HW-KFSA]; *see also* Rebecca Santana, *Immigration Officers Assert Sweeping Power to Enter Homes without a Judge's Warrant, Memo Says*, ASSOCIATED PRESS (Jan. 21, 2026), https://apnews.com/article/ice-arrests-warrants-minneapolis-trump-00d0ab0338e82341fd91b160758aeb2d [https://perma.cc/5S5N-3J9A].

408. Percival, *supra* note 407.

409. *Id.*; *see* Steve Vladeck, *"Administrative Warrants" and the Percival Op-Ed*, ONE FIRST (Nov. 8, 2025), https://www.stevevladeck.com/p/206-administrative-warrants-and-the [https://perma.cc/Z566-WC9T].

410. Lasch, *supra* note 152, at 233; *see also* Angelo Martins Junior & Julia O'Connell Davidson, *Tacking towards Freedom? Bringing Journeys out of Slavery into Dialogue with Contemporary Migration*, 48 J. ETHICS & MIGRATION STUD. 1479, 1492 (2022) (identifying the "violence of borders more generally").

411. Wright v. Deacon, 5 Serg. & Rawle 62 (Pa. 1819).

412. A Supplementary Act to the Act Relating to Servants and Slaves, 1717 Md. Laws ch. 13, 46. *See* Eric Eisner, *Free Black Witnesses in the Antebellum UpperSouth*, 42 LAW & HIST. REV. 297, 308–13 (2024). *See also supra* note 63 and accompanying text.

similarly empty assurances from ICE operators, if they were lucky enough to reach them:

> Relative: . . . I am asking you if there is a complaints page or a claims page, because how is it possible that you go to ICE, who were the ones who took him, and they don't give you information, not in the detention centers and not here either?
> Operator: That's why I'm telling you if you want to complain, complain to your Venezuelan embassy and you can give that information to them. . ..[413]

As Cristosal and Human Rights Watch note, Venezuela has not had an embassy or consulate in the United States since 2023.[414] The Trump administration's position remains that it had no custody or control over the men once they were transferred to CECOT and that "El Salvador chose, of its own volition," to return them to Venezuela.[415]

Ultimately, the federal government's insistence on the "rule of law" in both cases ends up authorizing an "escalating—and, paradoxically, ever more lawless—use of state violence."[416] The cruel irony is that this use of state violence is directed at individuals guilty of little more than "asserting a fundamental human right—the right to personal freedom."[417] In its deployment, that violence unveils the sheer force that emerges in law's absence. "To use the law to place someone outside of it," Muneer Ahmad writes, "is to reveal law's limit, the lawlessness of law."[418] It also suggests that law is at its most brutally powerful when it claims to be powerless.

CONCLUSION

There is another story to be told here, a story about resistance to these coercive and brutal actions by the federal government and its agents: resistance at the individual, local, and state level, resistance with the potential to kneecap the policy of rendition. Lawsuits in federal court have been a particularly effective way to halt the Trump administration's rendition policy, affecting hundreds of potential detainees.[419] Nevertheless, the administration has fast-tracked third-country removals of asylum seekers and continued its intermittent transfer of migrants to Guantánamo Bay.[420] Its ongoing attempt to overturn birthright citizenship by executive order could also expose children to

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413. CRISTOSAL & HUM. RTS. WATCH, *supra* note 19, at 44–45.
414. *Id*. at 45.
415. Response to Court Order, *supra* note 355,at 2.
416. Dalmia, *supra* note 365.
417. Masur, *supra* note 365.
418. Ahmad, *supra* note 300, at 1727.
419. *See supra* note 33.
420. Eskridge, *supra* note 299. *See* Lisa Fernandez, *Trump Has a New Deportation Strategy: Fast-Tracking Third-Country Removals*, KTVU FOX 2 (Dec. 15, 2025), https://www.ktvu.com/news/trump-deportation-third-country-removals [https://perma.cc/9UWW-UZ2Y]; Rosenberg, *supra* note 343.

"deportation to countries they have never visited."[421] As in the nineteenth century, effective resistance to these policies will necessarily take the form of both legal action and extralegal protest, advocacy, and coordination.

To recognize the parallels between rendition then and rendition now is not to sanction violence, as former DHS Secretary Kristi Noem attests.[422] But it is to acknowledge the acute need for immediate intervention, by whatever means available. That necessity is produced by the yawning legal abyss the law itself has created and continues to create, in producing racialized forms of fugitivity that invite, more than the violence of the criminal state, the vertiginous power to remove and condemn to a place of no return.

It is not surprising that the tactics of protesters surrounding ICE facilities and anti-ICE "rapid-response" groups have come to resemble those employed by vigilance committees and armed crowds in opposition to the fugitive slave laws.[423] Participants in these movements, Julie Bosman reports, are compelled by the "urge to protect their neighbors, many of whom are in the country without authorization but have no criminal backgrounds, and also to push back against what they see as a violent and overreaching federal government."[424] Such authoritarian measures have galvanized American publics, much as escalating enforcement of the fugitive slave laws did in the decade before the Civil War.[425]

In the end, everyone's freedom was menaced by the introduction of a summary pathway to unfreedom in the late eighteenth century. As Jamelle Bouie has argued, "[t]he status of all Americans was, in truth, threatened by the existence of a class of people whose rights could be arbitrarily stripped from them, if they even had rights to begin with."[426] The existence of a class of Americans with nonexistent or contingent rights was not an accident; it was a creature of state and federal law and policy, perpetuated by all three branches of government.

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421. Exec. Order 14160, 90 Fed. Reg. 8449 (2025); Preliminary Injunction Order, N.H. Indonesian Community Support v. Trump, Civil No. 25-cv-38-JL-TSM, Opinion No. 2025 DNH 014 P, slip op. at 10 (D.N.H. Feb. 11, 2025). *See* Amy Howe, *Supreme Court Agrees to Hear Trump's Challenge to Birthright Citizenship*, SCOTUSBLOG (Dec. 5, 2025), https://www.scotusblog.com/2025/12/supreme-court-agrees-to-hear-trumps-challenge-to-birthright-citizenship/ [https://perma.cc/F3E3-88GS].

422. *DHS Issues Statement on Targeted Attack on Dallas ICE Facility*, U.S. DEP'T OF HOMELAND SEC. (Sept. 24, 2025), https://www.dhs.gov/news/2025/09/24/dhs-issues-statement-targeted-attack-dallas-ice-facility [https://perma.cc/2Y6L-GCY6]. ("Comparing ICE [d]ay-in and day-out to the Nazi Gestapo, the Secret Police, and slave patrols has consequences.").

423. *See* discussion *supra* Part II. *See, e.g.*, Bosman, *supra* note 368; State of Oregon v. Trump, No. 25-6268, D.C. No. 3:25-cv01756-IM, slip op. at 6–7 (9th Cir. 2025) (citations omitted). ("Officers were forced to barricade themselves inside the building and protesters placed chains on the exterior doors. . . . Eventually, the protesters attempted to breach the front door and broke the front door's glass.").

424. Bosman, *supra* note 368.

425. *See* Rierson, *supra* note 56, at 604. These responses, as Daniel Farbman notes, operate within the realm of "'normal' political struggle," as much as abolitionist activism did. Farbman, *supra* note 365, at 2105. James Kraehenbuehl writes, "Absent a secession movement over immigration, the only method to resolve the immigration debate will be through congressional compromise." Kraehenbuehl, *supra* note 215, at 1501. Yet passage of the Fugitive Slave Act of 1850 only escalated sectional tensions. *See* discussion *supra* Part II.C–D.

426. Bouie, *supra* note 54.

In the same way, the vulnerability of those the Trump administration has targeted for rendition and third-country removal is a function of contemporary immigration policy and the administration's own willingness to exploit it. Under federal immigration law, noncitizens may be deported for a vast array of reasons, from anywhere in the country, no matter how long they have lived in the United States.[427] They are entitled to little due process and few rights of appeal.[428] Those convicted of crimes, suspected of terrorist activity, or detained at the border or its "functional equivalents" are subject to even more expedited forms of removal, with even fewer procedural protections.[429] As one immigrant in detention for a drug offense observed, "[b]eing shackled constantly for hours on end, dragged up and down those hallways, you get the feeling of every person who was in captivity and led to slavery."[430]

Jacqueline Stevens has found that tens of thousands of American citizens have been misclassified as aliens and deported in the twenty-first century.[431] Much as free Black Americans anticipated theft or suspicion of their free papers, Border Patrol agents at the southern border have been reported to tear up or disregard the birth certificates of Mexican American citizens.[432] Yet there is little recourse for such abuses. Since the Chinese Exclusion cases of the late nineteenth century, the Supreme Court has granted the political branches plenary power over immigration, leaving governmental action in this domain nearly immune from judicial review.[433] President Trump, in seeking to send immigrants wherever he chooses, with "no Judges or Court cases," merely extends the logic of the plenary power doctrine.[434]

The specter of rendition has haunted the United States from its earliest days. Its reemergence under the second Trump administration is as disturbing as it is predictable. Hundreds have already been irreparably affected by the cruelty of the administration's pursuit of rendition and third-country removal. To the extent that we abide their summary expulsion to a place of no return, we are all complicit and vulnerable in equal measure.

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427. *See* KANSTROOM, *supra* note 69, at 3.

428. *See id.* at 4; Lasch, *supra* note 152, at 223–24; Rierson, *supra* note 56, at 660; Stevens, *supra* note 365, at 655–56.

429. *See* Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973); KANSTROOM, *supra* note 69, at 10–13.

430. *See* Lasch, *supra* note 152.

431. Stevens, *supra* note 55, at 608.

432. *Id.* at 656. *See supra* note 165 and accompanying text.

433. In *Chae Chan Ping*, the Court decided it was for Congress to determine whom to exclude; the federal government's "determination" in such matters was "conclusive upon the judiciary." Chae Chan Ping v. U.S., 130 U.S. 581, 603, 606 (1889). The Court affirmed this doctrine in *Fong Yue Ting v. U.S.* (1893) and *Wong Wing v. U.S.* (1896): "the right to exclude or to expel aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, is an inherent and inalienable right of every sovereign and independent nation." Wong Wing v. U.S., 163 U.S. 228, 231 (1896) (citing Fong Yue Ting v. U.S., 149 U.S. 698 (1893)). *See* Chin, *supra* note 175, at 7, 21; KANSTROOM, *supra* note 69, at 228–29, 232. *See also id.* at 17 (recognizing the ways the "Court has mitigated some of the harshest implications of the plenary power doctrine").

434. *See* Rierson, *supra* note 56, at 670.