REFLECTIONS ON THE RIGHT TO MOVE FREELY ACROSS BORDERS

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The essays in this symposium highlight the depth and breadth of the injustice and inhumanity of U.S. immigration law. While injustice in immigration law is nothing new, the hateful rhetoric that has been routinely directed toward immigrants from the highest levels of government, and the extreme policies that accompany this rhetoric, have elevated the *visibility* of this injustice. As Kevin R. Johnson notes in his essay in this issue, when the public bore witness to the sheer inhumanity of the immigration system in 2018 through a "picture of a toddler sobbing as Immigration and Customs Enforcement officers took her mother away," this "helped many Americans see at a most basic level the real life consequences of President Trump's no-holds-barred approach to immigration enforcement."[1] While Trump's approach to immigration issues was certainly more "hate-motivated" than others in recent history, as Julia Vázquez discusses in her essay,[2] the policies themselves are consistent with immigration law's long history in the United States.

The essays in this symposium address many different manifestations of the harms people face under U.S. immigration law. While the government's decision to separate infants and toddlers from their parents is the most visibly abhorrent immigration policy in recent years, the contributors to this issue examine a host of other troubling policies. Daniel Kanstroom examines the Supreme Court's decision not to review the asylum denial of a refugee seeking safety in the United States, whom a District Court judge believed had

* I am both honored and humbled that a group of people who I admire so much have not only read, but have also responded to, the stories and ideas I discussed in *Deported Americans*. I am very grateful to all of the contributors to this issue. Special thanks to Professor Danielle K. Hart, Abraham Bran, and Erica Jansson for being the driving forces behind this symposium.

1. Kevin R. Johnson, *Immigration Law Lessons from* Deported Americans: Life After Deportation in Mexico, 50 SW. L. REV. 305, 307 (2021).

2. Julia Vázquez, *The Impacted Immigration Lawyer in the Era of Trump: Empathy, Wellbeing, and Sustainable Lawyering*, 50 SW. L. REV. 275, 277-84 (2021).

been tortured in his country of origin.[3] The ramifications of this decision are serious and "may affect due process, habeas corpus, and the necessity of judicial review of agency action dangerously and corrosively."[4] Julia Vázquez addresses Trump's infamous travel ban, which targeted people based on religion and national origin.[5] She and Carrie Rosenbaum also discuss the government's efforts to rescind Deferred Action for Childhood Arrivals (DACA),[6] a move that reflects a lack of compassion even for a group of immigrants whom most Americans favor protecting.[7] Ragini Shah highlights recent governmental efforts to cancel Temporary Protected Status (TPS), a program that has long-protected people who have come to the United States fleeing conflict and disaster; this cancellation would affect hundreds of thousands of people.[8] And Professor Shah's discussion of undocumented people in the United States reminds us of the indiscriminate immigration enforcement efforts we have seen in recent years, where people have been targeted for arrest and deportation while taking their children to school, going to court, and otherwise going about their daily lives.[9]

Like the experiences of deported Americans that I focus on in the book, the experiences brought about by so many current immigration policies can best be described as "nightmare[s],"[10] with myriad policies attacking different subgroups of immigrants and, in the process, violating basic human rights, including liberty, safety, family unity, and even life itself. As Ingrid Eagly discusses in this issue, the United States now detains upwards of 50,000 immigrants per year in jail-like detention centers, up from under

3. Daniel Kanstroom, *Deportation in the "Shadows" of Due Process: The Dangerous Implications of* DHS v. Thuraissigiam, 50 SW. L. REV. 342 *passim* (2021) (discussing Dep't of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959 (2020)).

4. *Id.*

5. Vázquez, *supra* note 2, at 281.

6. *Id.* at 281-82, 289-90; Carrie L. Rosenbaum, *(Un)equal Immigration Protection*, 50 SW. L. REV. 231, 253-60 (2021).

7. Jens Manuel Krogstad, *Americans Broadly Support Legal Status for Immigrants Brought to the U.S. Illegally as Children*, PEW RSCH. CTR. (June 17, 2020), https://www.pewresearch.org/fact-tank/2020/06/17/americans-broadly-support-legal-status-for-immigrants-brought-to-the-u-s-illegally-as-children/ (reporting that seventy four percent of Americans support providing permanent legal status to undocumented immigrants who came to the United States as children).

8. *See* Ragini Shah, *Laying the Legal Foundation for a Right to Stay in* Deported Americans, 50 SW. L. REV. 322, 326-28 (2021).

9. *See* Trevor Hughes, *Immigration Agents Accused of Targeting Parents Taking Their Kids to School*, USA TODAY (Feb. 27, 2020, 12:31 PM), https://www.usatoday.com/story/news/nation/2020/02/27/ice-criticized-detaining-parents-school-trump-enforcement-push/4891529002/.

10. Gabriel J. Chin, *Relief and Statutes of Limitation for Deportable Noncitizens Under Asian Exclusion, 1882-1948*, 50 SW. L. REV. 218, 218 (2021).

7,000 in 1994.[11] The massive scale of the U.S. immigration detention system is a clear indication of the inhumanity that characterizes the treatment of immigrants in the United States.

Reports of the conditions in immigration detention centers reveal that the United States systematically fails to provide for the health and safety of those it incarcerates while their immigration cases are pending. The Department of Homeland Security itself found "egregious violations" of its own standards in a 2019 inspection—violations "including moldy bathrooms, food safety issues, lack of hygiene items, and inadequate medical care."[12] COVID-19 has spread throughout ICE detention facilities, and despite clear evidence that the conditions within facilities make social distancing virtually impossible, ICE has only reduced its population by thirty percent in response to the pandemic.[13] Immigrant children have been detained for longer than ever. Whereas unaccompanied minors used to be allowed to live in the community with family or friends while their immigration cases were pending, children and teens are now spending more time in jail-like facilities, where many have been abused by staff.[14] And the Trump administration's changes to its procedures for considering asylum claims have resulted in over 50,000 asylum-seekers being forced to camp out on the Mexican side of the border while they wait—often for months—to request asylum.[15] Children sleep on sidewalks, and people stay in densely populated shelters where the risk of contracting COVID-19 is elevated.[16]

Reflecting on the nightmares triggered by current immigration law, as any reader of the essays in this symposium is forced to do, brings me back to an issue I wrestled with while writing the book—can incremental changes ever hope to address the deep and historical injustices that have shaped immigration law in the United States since its inception?

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11. *See* Ingrid Eagly, *Learning from Deported Americans*, 50 SW. L. REV. 333, 333, 336-40 (2021) (sharing her experiences as a deputy public defender representing individuals charged with illegal reentry and describing the history of illegal reentry law in the United States); J. Rachel Reyes, *Immigration Detention: Recent Trends and Scholarship*, CTR. FOR MIGRATION STUD. (Mar. 26, 2018), https://cmsny.org/publications/virtualbrief-detention/.

12. Parsa Erfani et al., *A Systematic Approach to Mitigate the Spread of COVID-19 in Immigration Detention Facilities*, HEALTH AFFS. (June 17, 2020), https://www.healthaffairs.org/do/10.1377/hblog20200616.357449/full/.

13. *Id.*

14. *Kids Caught in the Crackdown*, PBS FRONTLINE (Nov. 12, 2019), https://www.pbs.org/wgbh/frontline/film/kids-caught-in-the-crackdown/.

15. Max Rivlin-Nadler, *A Year of Trump's 'Remain-in-Mexico' Policy Leaves Migrants Desperate, Vulnerable*, KPBS (Feb. 14, 2020), https://www.kpbs.org/news/2020/feb/14/border-has-descended-darkness-year-remain-mexico/.

16. Robert McKee Irwin & Juan Antonio del Monte, *COVID-19 and Migrant Vulnerability in Tijuana: A Looming Crisis,* UC DAVIS GLOB. MIGRATION PROJECT, https://globalmigration.ucdavis.edu/covid-19-and-migrant-vulnerability-tijuana-looming-crisis (last visited Feb. 5, 2021).

In the conclusion to *Deported Americans*, I recommend some specific reforms, tailored to the problems I outlined in the book, with the hope that these incremental changes could minimize some of the harm that deportation causes. Even small changes can make huge differences in individual lives. Clearly, the solutions I propose in the book "focus[] on merely one segment of the deportation problem" and, as I acknowledge in the epilogue, "are far from the kind of comprehensive immigration reform that is truly needed to respond to the plurality of immigrant experiences."[17] But the bigger question remains whether reform or incremental change should be the goal when the entire system of immigration law is so deeply entrenched in systemic injustice that has always focused on excluding people of color and privileging whiteness.[18]

In the book's final paragraphs, I make the following argument for an alternative vision—one that asks the reader to question the legitimacy of deportation as a social practice:

> Through the lens of history, its legitimacy is suspect—it has been used as a tool for social cleansing and exclusion of marginalized populations. From the perspectives of people most affected by it, deportation looks inhumane. People compare the experience of deportation to losing their limbs, to being raped, and to death . . . Perhaps one hundred years from now, future generations will see the practice of deportation as we now see the practice of public execution—as inhumane, uncivilized, and wrong.[19]

Building on many of the ideas raised in this symposium, this essay develops this argument for a more radical shift in the entire framework of immigration law, from exclusive to inclusive, from closed to open, from inhumane to humane.

INJUSTICE PERMEATES THE U.S. IMMIGRATION SYSTEM

Deported Americans offers one lens through which to view the dehumanization that pervades popular discourse about immigration. Like the Humanizing Deportation Project that Leticia M. Saucedo draws upon in her essay, I hoped "to counter the narrative of deported individuals as 'criminals, drug dealers, rapists'" by sharing information about the nuanced realities of people's lives.[20] As Kevin Johnson writes, "the inhumane treatment of faceless, predatory 'aliens' is much easier to rationalize intellectually than

17. BETH C. CALDWELL, DEPORTED AMERICANS: LIFE AFTER DEPORTATION TO MEXICO 191 (2019).

18. Chin, *supra* note 10, at 219-22.

19. CALDWELL, DEPORTED AMERICANS, *supra* note 17.

20. Leticia M. Saucedo, *Activism, Identity and Rights in Deportee Communities*, 50 SW. L. REV. 263, 264 (2021).

similar treatment of flesh-and-blood people like us,"[21] whose stories I shared in order to force the reader to grapple with, in Ingrid Eagly's words, the "grisly picture of what the American immigration system has become."[22] I deliberately chose to center my analysis on people with criminal convictions because this group, widely referred to as "criminal aliens," is among the most demonized in contemporary U.S. society.

The book's specific focus on deported Americans, however, does not negate the fact that many immigrants "have strong claims that they should be able to stay in the United States for a variety of reasons that have nothing to do with their identification with or attachments to U.S. culture or society."[23] The dehumanization of immigrants of color has become far too normalized in popular discourse and in the law. The breadth of this othering, and the concurrent policy decisions, are evident in decisions to terminate programs that offer relief to immigrants with longstanding ties to the United States, such as the rescission of DACA,[24] or the government's attempt to cancel the longstanding TPS program.[25] This wholesale dehumanization of immigrants has also been painfully apparent in recent years as even children who come to the United States fleeing violence are framed as threats and are treated accordingly.[26]

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21. Johnson, *supra* note 1.

22. Eagly, *supra* note 11, at 334.

23. CALDWELL, *supra* note 17, at 190-91.

24. For a further discussion of the Trump administration's attempt to rescind DACA and the implications of Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020), see Rosenbaum, *supra* note 6.

25. *See* Peniel Ibe & Kathryn Johnson, *Trump Has Ended Temporary Protected Status for Hundreds of Thousands of Immigrants. Here's What You Need to Know*, AM. FRIENDS SERV. COMM. (June 30, 2020), https://www.afsc.org/blogs/news-and-commentary/trump-has-ended-temporary-protected-status-hundreds-thousands-immigrants; *see also* Shah, *supra* note 8, at 324 ("Constitutional protections of TPS holders to their status is currently being litigated due to a decision by the Trump administration to terminate the benefit for many designated countries in early 2017." (citing *Challenges to TPS and DED Terminations and Other TPS-Related Litigation* CATH. LEGAL IMMIGR. NETWORK, INC., https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/challenges (Jan. 5, 2021))).

26. *See* Mariela Olivares, *The Rise of Zero Tolerance and the Demise of Family*, 36 GA. ST. U. L. REV. 287, 291 (2020) (tracing the origins of Trump's family separation policy to the "long-standing and now deeply entrenched process of dehumanization" of immigrants that is "reinforced and perpetuated by a strategic political narrative, bolstered by widely disseminated lies and misrepresentations."). *See generally* Mary Romero, *Constructing Mexican Immigrant Women as a Threat to American Families*, 37 INT'L J. SOCIO. FAMILY 49 (2011) (analyzing how immigrant women from Mexico have been constructed as a threat). For detailed discussion of the treatment of children and families in immigration law, see generally Stephen Lee, *Family Separation as Slow Death*, 119 COLUM. L. REV. 2319 (2019) (describing how policies that separate families are pervasive throughout the U.S. immigration system).

Daniel Kanstroom's analysis of the Supreme Court's decision in *Department of Homeland Security v. Thuraissigiam* reveals the chilling callousness to human suffering that characterizes immigration decisions even in the highest court. As Professor Kanstroom details, Vijayakumar Thuraissigiam had fled Sri Lanka after being kidnapped and tortured, claims which the district court judge who heard his case accepted as true.[27] He was taken from his farm by government officers, forced into a van, was "bound, beaten, and interrogated about his political activities" and then "endured 'additional torture.'"[28] Despite acknowledging that he had been tortured by government officials due to his political activities—which would ordinarily qualify an individual for asylum—the district court concluded that a government agent's initial determination that he did not have a credible fear was not subject to judicial review—at all. The Supreme Court agreed, ruling that noncitizens do not have the right to due process protections in cases like this.[29] Professor Kanstroom highlights Justice Alito's "rather callous and snarky observation"[30] in the Supreme Court opinion that "the Government is happy to release him—provided the release occurs in the cabin of a plane bound for Sri Lanka."[31] This passage reveals a profound lack of compassion with its cavalier dismissal of the severe consequences of the Court's decision to return a man to a government that had previously kidnapped and tortured him. This kind of apathy to the suffering of a fellow human being ties back to socially constructed notions of "us" and "them" and of the longstanding historical practice of constructing people—generally nonwhite people—as "other."

The *Thuraissigiam* opinion is not only problematic for its neglect of the humanity and wellbeing of a man seeking safety in the United States, but also for its broad dismissal of the rights of immigrants in general. It represents what Professor Kanstroom refers to as "a dangerous, worrisome trend" where "[t]he line between those with rights and the rightless seems to be moving ever further inward and ever further towards those with even longer stays."[32]

The consequences of the widespread dehumanization of immigrants, combined with the social construction of immigrants as a threat, extend beyond the law.[33] As Kevin R. Johnson writes, "campaign slogans for

27. Kanstroom, *supra* note 3.

28. *Id.* (quoting Thuraissigiam v. U.S. Dep't. of Homeland Sec., 287 F. Supp. 3d 1077, 1078 (S.D. Cal. 2018)).

29. Dep't of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959, 1983 (2020).

30. Kanstroom, *supra* note 3, at 349.

31. *Thuraissigiam*, 140 S. Ct. at 1970.

32. Kanstroom, *supra* note 3, at 358.

33. For a discussion of the social construction of immigrants as threats, see CALDWELL, *supra* note 17, at 23-31.

increased immigration enforcement are not simply words but battle cries for violence against people of color."[34] This violence is evident in the increase in hate crimes against Latinx and Muslim people in the United States in recent years.[35] This violence was most apparent in the mass shooting at a Walmart in El Paso in 2019, where the shooter specifically targeted people from Mexico, and posted his support for Trump's plans for a border wall right before the attack.[36]

The dehumanization of immigrants is so severe that government agents have been allowed to kill with impunity, not only in the past, but also in the present. In 2010, Border Patrol officers beat Anastasio Hernandez-Rojas to death at the San Ysidro port of entry, where he was attempting to enter the United States to reunite with his family after he had been deported. Despite videos of multiple officers beating him while he lay on the ground, the Department of Justice decided to take no action. The Inter-American Commission on Human Rights recently decided to consider the case as a potential human rights violation.[37] Also in 2010, a border patrol officer standing on the U.S. side of the border shot and killed fifteen-year-old Sergio Adrián Hernández Guereca while he stood on Mexican soil.[38] If the border patrol agent is to be believed, he shot and killed the teenager because the teen and his friends had thrown rocks at the agent and were trying to enter U.S. territory.[39] Although the teenager was unarmed—aside from the alleged rocks—the Department of Justice declined to take any action against the agent who killed him. Just last year, the Supreme Court determined that his surviving family members could not recover damages because Sergio was not within the territory of the United States when he was killed, even though the agent who killed him was.[40] The acceptance of these killings of unarmed people by government agents reflects a general devaluation of the lives of immigrants, in particular Latinx immigrants.

These attacks on immigrants have expanded to the point where even reporters and immigration attorneys have been targeted by the government

34. Johnson, *supra* note 1, at 318.

35. Brad Brooks, *Victims of Anti-Latino Hate Crimes Soar in U.S.: FBI Report*, REUTERS (Nov. 12, 2019, 1:27 PM), https://www.reuters.com/article/us-hatecrimes-report-idUSKBN1XM2OQ.

36. Jasmine Aguilera, *One Year After Mass Shooting, El Paso Residents Grapple with White Supremacy: 'It Was There the Whole Time'*, TIME (Aug. 3, 2020, 11:43 AM), https://time.com/5874088/el-paso-shooting-racism/.

37. Kate Morrissey, *International Tribunal Rules it has Authority in Case of Man Killed by US Border Officials*, SAN DIEGO UNION-TRIB. (July 31, 2020, 2:47 PM), https://www.sandiegouniontribune.com/news/immigration/story/2020-07-31/international-tribunal-border-officials.

38. Hernandez v. Mesa, 140 S. Ct. 735, 740 (2020).

39. *Id.*

40. *Id.* at 749-50.

as a result of their work on immigration issues.[41] And as Julia Vázquez describes, anti-immigrant attacks by the Trump administration "can feel like attacks against an entire profession, particularly if you represent your own community."[42] According to Kevin R. Johnson, "the modern immigration enforcement machinery allows for nothing less than an ethnic cleansing of Latinx immigrants from the United States."[43] In the face of the enormity of the injustices brought about by the immigration system, and its deep and seemingly intractable historical roots, the kinds of incremental reforms I suggest in *Deported Americans* feel inconsequential in many respects.

LIMITED CAPACITY OF REFORMS IN LIGHT OF CENTURIES OF RACIALLY TAINTED EXCLUSIONS

Gabriel J. Chin's essay in this issue traces the history of U.S. deportation law and some of the provisions that have allowed for relief from deportation at different points in history.[44] The essay articulates the ways in which immigration law's exclusionary power has systematically been employed to privilege whiteness, and to exclude people of color from relief. In striking detail, Professor Chin chronicles the evolution of the law, from a time "when most immigrants were White, and thus when most people subject to deportation were White, [when] relief was much more readily available than it is today."[45] He concludes that, "from 1882 to today, there has been a spirit in the air. U.S. immigration law that is willing to consider the situations of Whites on a case-by-case basis, but draws rigid lines in rules affecting members of other groups."[46] Professor Chin's essay highlights the inherent limitations of efforts to reform a system that is rooted in racism and exclusion.

In the final chapter of *Deported Americans*, I recommend some legislative and judicial reforms that, I hope, could "minimize some of the harms" that deported Americans experience. Legislatively, I suggest reverting to the pre-1996 rules for assessing whether an individual qualifies for relief from deportation and creating a mechanism for allowing people to return to the United States after they have been deported—even if they have been convicted of an aggravated felony—once they have been outside the

41. *See* Lauren Carasik, *The Government is Targeting Immigration Lawyers, Activists, and Reporters*, BOS. REV. (Apr. 24, 2019), http://bostonreview.net/global-justice/lauren-carasik-government-targeting-immigration-lawyers-activists-journalists.

42. Vázquez, *supra* note 2, at 277.

43. Johnson, *supra* note 1, at 313.

44. *See* Chin, *supra* note 10.

45. *Id.* at 230.

46. *Id.*

country for a specified period of time.[47] I also recommend two changes courts could make in their constitutional analysis. First, I suggest that deportation should be recognized as a punishment and that the deportation of people with significant ties to the United States ought to be prohibited as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, akin to the treatment of citizens.[48] Second, I argue that the Constitution should limit deportations in cases where a family member is a citizen and the deportation violates the citizen's right to marriage or family unity.[49]

On the one hand, these reforms are both "reasonable and moderate."[50] On the other hand, these policies are aspirational, and would seem virtually impossible to enact, because they are premised on the inclusion of immigrants with criminal convictions which remains, over a decade after I began work on the book, one of the most demonized populations in the United States.

But even if my proposal to reinstate judicial discretion so that immigration judges could make individual determinations on a case-by-case basis were enacted, it is unlikely to do much good for most immigrants—in particular immigrants of color—when considered in light of the history that Gabriel J. Chin's essay examines. We need look only to the U.S. criminal justice system to see the limited potential of judicial discretion. Judges in criminal courts wield tremendous discretion and have used that discretion to sentence people of color to prison at unparalleled rates. Implicit biases shape decision-making at all levels of the criminal justice system, and there is no reason to think that the same biases would not affect decision-making in the immigration realm if discretion were restored in the ways that I suggest. This brings me back to the need for making more radical changes to the entire structure of the immigration system.

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47. Diego Vigil's essay in this symposium highlights the importance of these kinds of individualized determinations in the criminal context and shows how considerations of an individual's background, culture, and life experiences have the potential to shape judicial decision-making, and imbue a deeper understanding of culture into judicial decision-making on a case-by-case basis. *See* Diego Vigil, *Culture and Borders: Place and Self*, 50 SW. L. REV. 296 (2021).

48. I should note that I agree with Ragini Shah's point, articulated in this issue, that there is no reason to limit this argument to lawful permanent residents. *See* Shah, *supra* note 8, at 321.

49. This argument is a limited solution that would only be available to families where at least one member is a U.S. citizen. I have narrowed this proposal based on citizenship not because I think the law should be limited in this way, but because I have tried to construct an argument within the constraints of the law as it currently stands.

50. Johnson, *supra* note 1, at 317.

THE RIGHT TO MOVE FREELY ACROSS BORDERS

In the introduction to *Deported Americans*, I wrote that the book is, at its core, "about membership, and its opposite—exclusion."[51] At its bottom line, the function of immigration law is to exclude.[52] It divides "us" from "them," those who can enter from those who cannot, those who can stay from those who are forcibly removed. These lines have historically been, and continue to be, shaped by social constructions of merit, deservingness, or belonging, which are inextricably tied to race and national origin, at least in the United States. The purpose of this entire area of law—to divide—and the ways in which it has been enforced—to uphold white privilege—are so endemic that reforms to specific rules and doctrines can do little to contest these overarching problems.

In the conclusion of *Deported Americans*, I wrote about political theorist Joseph H. Carens' theory of the right to stay.[53] Specifically, I argue that people should have the right to stay in a country where they have set down roots, and where they identify as being home. I agree with Ragini Shah's interpretation of this right to stay—that it should be broadly construed to apply to people regardless of their formal immigration status as the law defines it.[54] In the book, I tie the right to stay to people's sense of identity, to the length of time they have spent in the United States, and to social ties that bind them to family and community. As Professor Shah notes, there is nothing about these criteria that should be limited by one's immigration status under the law. Rather, the focus should be on the individual's experience.

This right to stay need not be limited to those who have spent a significant amount of time in the United States, nor to those who have extensive ties to the country. The right to move across borders, and to live where one chooses, ought to be recognized as a fundamental human right. In addition to theorizing the right to stay that I have just discussed, Joseph H. Carens has long argued for freedom of movement across borders—for open borders.[55] While this may sound like a radical idea, we can distinguish open

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51. CALDWELL, DEPORTED AMERICANS, *supra* note 17, at 4.

52. Although immigration law is often described as ascribing membership, "the flip side of membership that culminates in US citizenship, at least in the immigration sphere, has always been deportation." Angélica Cházaro, *The End of Deportation*, 67 UCLA L. REV. (forthcoming 2021) (manuscript at 11) (on file with author).

53. *See* JOSEPH H. CARENS, IMMIGRANTS AND THE RIGHT TO STAY (2010).

54. *See* Shah, *supra* note 8, at 321, 323-25 (arguing for an expansive interpretation of the application of the right to stay discussed in *Deported Americans*).

55. Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 REV. POLITICS 251, 251 (1987).

borders—which would grant people the freedom to move between nations, but would still allow nations to regulate immigration—from the concept of no borders, which "articulates a fundamental critique of the bordered territorial nation state that is far more radical than the open-borders idea."[56] If the world functioned with open borders, territorial nations would continue to exist, but "all people should be able to cross international borders and remain temporarily or permanently in a destination country."[57] While this may sound even more unlikely than my proposal to enact incremental reforms that would provide relief to immigrants with criminal convictions,[58] considering an abolitionist perspective in the context of immigration law is warranted by the cruelty and violence that this exclusive framework has engendered over generations.[59]

Ingrid Eagly points out in her contribution to this symposium that, "[s]ome immigrant rights groups have begun to advocate a deeper recognition of the racial violence imposed by existing structures of immigration enforcement, including by 'abolishing ICE' and 'ending deportation.'"[60] Angélica Cházaro argues that deportation should be abolished because "deportation only expands and swells the indefensible and illegitimate uses of state force."[61] According to Professor Cházaro, "[w]hile deportation and violence may be inseparable, deportation is not inevitable."[62] Expanding this argument beyond the deportation context, excluding people from entering the country is not inevitable either.

There is a rich body of scholarship that explores the concept of the freedom of movement across borders. Some theorize this freedom of movement as a basic human right. While this idea may sound jarring at first, "free movement has been the historical norm in human society, from classical antiquity until recently when nativism began shaping restrictive migration

56. Harald Bauder, *Perspectives of Open Borders and No Border*, 9 GEOGRAPHY COMPASS 395, 400 (2015).

57. *Id.*

58. Interestingly, there is burgeoning support for this idea in different political spheres. Charles Koch, for example, favors open borders, and Bryan Caplan, "a libertarian economist," recently published a graphic novel making the case for open borders. *See* Zoey Pull, *The Case for Open Borders*, NEW YORKER (Feb. 20, 2020), https://www.newyorker.com/culture/annals-of-inquiry/the-case-for-open-borders.

59. Cházaro, *supra* note 52 (manuscript at 22-33) (arguing for the importance of recognizing the violence of deportation).

60. Eagly, *supra* note 11, at 343; *see also* CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, MIGRATING TO PRISON: AMERICA'S OBSESSION WITH LOCKING UP IMMIGRANTS 139-64 (2019) (advocating abolishing immigration detention).

61. Cházaro, *supra* note 52 (manuscript at 6).

62. *Id.* (manuscript at 33).

policies by modern nation states."[63] In her contribution to this issue, Leticia M. Saucedo focuses on the "rights-bearing identit[ies]" that so many people who have been deported carry with them across borders.[64] One of the implications of the rights-based identities she traces in the stories of many who have been deported is the "groundbreaking and potentially culture-changing" possibilities that could come from incorporating Latin American movements that focus on protecting human rights with the understanding of individual rights deportees bring with them from the United States, such as a belief in the right to be protected from discrimination, or "the right to seek work, ability to move freely, and right to assembly."[65] The right to move freely across borders is one of the rights most frequently evoked in the stories I heard from deported Americans in Mexico. In the book, I characterize decisions to return to the United States in spite of the law as acts of resistance or civil disobedience, where people choose to exercise this right despite laws to the contrary.

Recognizing the freedom to move freely across borders as a basic human right would ultimately mean that borders would become more fluid, that walls dividing nations would serve no purpose, and that traditional notions of sovereignty would need to be relaxed. However unlikely this may seem, it is an important vision to imagine, and to plant the seeds for, and is a powerful way to contest the solidification of the nativist tendencies that are taking hold in countries throughout the world. Ultimately, making incremental changes to a system that has always privileged whiteness, and that continues to cause enormous harm to people of color, is unlikely to ever result in meaningful systemic change for all.

Angela Davis's reflections on abolishing prisons are instructive here. Rather than trying to construct "one single alternative to the existing system . . . we might envision an array of alternatives that will require radical transformations of many aspects of our society."[66] And in the process, we may be better situated to challenge the dehumanization of people of color in the United States more broadly.

While acknowledging the importance of articulating a vision for the future where borders matter less, and the free movement of people is allowed, it is also impossible to ignore the suffering that people continue to endure under immigration laws that need not be so harsh and inhumane. Ultimately, my commitment to helping some people overcome the problems that

63. Bauder, *supra* note 56, at 396 (citing Satvinder S. Juss, *Free Movement and the World Order*, 16 INT'L J. REFUGEE L. 289, 292 (2004)).

64. Saucedo, *supra* note 20, at 264.

65. *Id.* at 273.

66. ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 108 (2003).

immigration law has created in their lives reinforces my belief in the importance of advocating for incremental reforms that have potential to minimize some of the harms deported Americans experience, at least in the short-term. Although I have just made the case that such incremental reforms have little hope of bringing about the depth and breadth of change that is needed, these baby steps still have the potential to improve individual lives. And this matters. Ragini Shah's arguments to protect TPS holders from deportation could help hundreds of thousands of people, and her argument to protect undocumented people from deportation could affect eleven million people who have made their homes in the United States. Carrie Rosenbaum's legal strategy to eliminate discrimination by race or religion under immigration law could change the landscape of immigration law in crucial ways. And as Julia Vázquez's essay highlights, the outcome of a single immigration case has profound implications not only for the individual, but also for the entire network of people whose lives intersect with theirs.

CONCLUSION

In making the case for abolishing immigration law as we know it, for opening borders to the flow of people, and for challenging the legitimacy of sovereign states to exclude, I am inspired by my children, who ask innocent yet insightful questions about the border that divides the United States from Mexico every time we cross it. They pepper me with questions about why the border between the United States and Mexico exists, about why people can enter Mexico from the United States without even stopping, but the reverse is not the same, and about why people they love cannot cross this invisible line. Most recently, while we sat in the car waiting to cross the border from Mexico into the United States, my five-year-old asked me, "Who came up with the idea to have a border anyway?"

When we step away from our social conditioning and look at the existence of exclusionary borders as a choice, rather than a foregone conclusion, we open up to more possibilities. And while there are challenges in entering into this conversation, to be sure, it is an important conversation to have.