



2017

Birthright Citizenship Under Attack: How Dominican Nationality Laws May be the Future of U.S. Exclusion

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BIRTHRIGHT CITIZENSHIP UNDER ATTACK: HOW DOMINICAN NATIONALITY LAWS MAY BE THE FUTURE OF U.S. EXCLUSION

EDIBERTO ROMÁN* AND ERNESTO SAGÁS**

Attacks on birthright citizenship periodically emerge in the United States, particularly during presidential election cycles. Indeed, blaming immigrants for the country's woes is a common strategy for conservative politicians, and the campaign leading up to the 2016 presidential election was not an exception. Several of the Republican presidential candidates raised the issue, with President Donald Trump making it the hallmark of his immigration reform platform. Trump promised that, if elected, his administration would "end birthright citizenship."

In the Dominican Republic, ending birthright citizenship and curbing immigration are now enshrined into law, resulting from a significant constitutional redefinition of Dominican citizenship and a major court decision. Essentially, the Dominican Republic both modified its constitutional equivalent of the Fourteenth Amendment to the U.S. Constitution and also ruled that change applied retroactively, leaving four generations of former citizens stateless.

Both the U.S. and the Dominican cases are driven by the same factors: fear and distrust of foreigners, historical xenophobia, selective interpretation of citizenship, and plain racial discrimination.

* Ediberto Román, Professor, and Director of Citizenship and Immigration Initiatives, Florida International University College of Law. I would like to thank Professor Sagás for his amazing contributions to this Article. I also would like to thank Librarian Marisol Flores for consistent invaluable assistance with my work. Finally, I dedicate this and all my work to my children; may they grow to provide voices for the voiceless.

** Ernesto Sagás, Associate Professor of Ethnic Studies at Colorado State University. Author, *Race and Politics in the Dominican Republic*. I would like to thank Professor Ediberto Román for his invaluable collaboration over the course of the past couple of years and for future projects still in the works.

In this Article, the authors examine the historical context of the Dominican Republic and the United States, including legal precedents and constitutional modifications and the actual and potential legal ramifications and social consequences of these changes. They conclude that in both cases, these changes are for the wrong socio-political reasons, are based on flawed legal arguments, and are harmful to constitutional and human rights. The authors call for inclusive, welcoming legal regimes that enhance—rather than undermine—citizenship rights.

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INTRODUCTION

Attacks on birthright citizenship periodically emerge in the domestic political landscape. More often than not, conservative politicians blame immigrants for the country's problems. For instance, on January 27, 2011, U.S. Senators Rand Paul (R-KY) and David Vitter (R-LA) proposed a constitutional amendment that would grant automatic citizenship to U.S.-born children in only three situations: when one parent is a U.S. citizen, when one parent is a legal immigrant, or when one parent is an active member of the U.S. military.¹ On the same day, Republican state legislators in Arizona introduced a law challenging U.S. citizenship for children born in the state when their parents are either undocumented migrants or another category of non-citizen.² Congressional opponents to birthright

1. Elizabeth Wydra, *Born Under the Constitution: Why Recent Attacks on Birthright Citizenship Are Unfounded*, CONST. ACCOUNTABILITY CTR. 1 (Mar. 31, 2011), https://www.theusconstitution.org/sites/default/files/briefs/20110331_Issue_Brief_Elizabeth_Wydra_Born_Under_the_Constitution.pdf#overlay-context=think-tank/issue-brief/born-under-constitution-why-recent-attacks-birthright-citizenship-are; see S.J. Res. 2, 112th Cong. (2011) (proposing amendment to United States Constitution birthright citizenship requirements).

2. See Wydra, *supra* note 1, at 1–2 (“[T]he Arizona anti-citizenship bill is based on model legislation crafted by a handful of state legislators across the country, who call themselves ‘State Legislators for Legal Immigration’ . . .”).

citizenship at the very least seem to be persistent: despite failing in 2011, four years later Senator Vitter reintroduced a bill to end birthright citizenship.³

Birthright citizenship is arguably the most important right: the right to have rights. It is a legal concept with textual roots in the U.S. Constitution's Fourteenth Amendment. Despite its importance, in recent times, it has come under consistent attack in recent presidential elections.⁴ In the 2008 election, for instance, several Republican presidential candidates expressed skepticism about whether the Constitution in fact grants birthright citizenship.⁵ Four years later, in 2012, several Republican candidates, continued expressing concern over birthright citizenship.⁶ The campaign leading up to the 2016 presidential elections did not break this pattern of attack. In fact, several of the Republican presidential candidates raised the issue, with Donald Trump making it the hallmark of his immigration reform platform.⁷ Trump promised that, if elected, his administration would "end birthright citizenship."⁸ In an election characterized by widespread anger stemming from the party's base, other Republican candidates shortly thereafter jumped onto the anti-immigrant bandwagon.⁹ In spite of the heated rhetoric, most of these candidates

3. Emily Crockett, *GOP Senator Attacks Birthright Citizenship During Human Trafficking Bill Abortion Fight*, REWIRE (Mar. 12, 2015, 9:18 AM), <https://rewire.news/article/2015/03/12/gop-senator-attacks-birthright-citizenship-human-trafficking-bill-abortion-fight>.

4. Justin Caruso, *6.8 Million: How Birthright Citizenship Is Changing U.S. Elections*, DAILY CALLER (Nov. 5, 2016, 1:47 PM), <http://dailycaller.com/2016/11/05/6-8-million-how-birthright-citizenship-is-changing-u-s-elections>.

5. See Wydra, *supra* note 1, at 2 n.6 (listing Mike Huckabee, Ron Paul, Tom Tancredo, Fred Thompson, and Mitt Romney).

6. James C. Ho, *Defining "American": Birthright Citizenship and the Original Understanding of the 14th Amendment*, 9 GREEN BAG 367, 367–68 (2006) (describing federal hearings and proposed laws).

7. Donald Trump, *Immigration Reform that Will Make America Great Again*, <https://assets.donaldjtrump.com/Immigration-Reform-Trump.pdf> (last visited Aug. 30, 2017) (claiming that birthright citizenship is the most significant factor in encouraging illegal immigration, and that both voters and members of Congress support ending it).

8. *Id.*

9. Sam Stein & Amanda Terkel, *A Good Chunk of GOP Field Wants to Repeal the 14th Amendment*, HUFFINGTON POST (Aug. 19, 2015), http://www.huffingtonpost.com/entry/a-good-chunk-of-gop-field-wants-to-repeal-the-14th-amendment_us_55d24915e4b055a6dab12015. Republican lawmakers who eventually affiliated themselves with the anti-immigrant movement include Governor Scott Walker (R-WI), Senator Rand Paul (R-KY), Governor Chris Christie (R-NJ), Senator Rick Santorum (R-PA), Governor Bobby Jindal (R-LA), Senator Lindsey

see repealing, or clarifying, the Fourteenth Amendment as an endeavor that will affect the children of undocumented immigrants in the future.¹⁰ Others, like Trump, take it a step further by broadly arguing that, for those children of undocumented immigrants, U.S. birthright citizenship can be effectively challenged in court, potentially stripping them of their U.S. citizenship.¹¹ Yet Trump's campaign promise—ending birthright citizenship—would require legal strategies that are unlikely to stand in court and a significant shift in U.S. public opinion.¹²

After his surprising win, President Trump appointed individuals with similar anti-immigrant and anti-birthright citizenship sentiments. For instance, the Trump administration appointed Julie Kirchner to serve as ombudsperson to the U.S. Citizenship and Immigration Service (USCIS).¹³ The troubling aspect of this appointment is that she was the former executive director of the Federation of American Immigration Reform (FAIR), a group some characterize as a hate group, known for its anti-immigrant and anti-birthright citizenship

Graham (R-SC), and Senator Ted Cruz (R-TX). *Id.* Of note, Senator Ted Cruz, a supporter of repealing birthright citizenship, was born in Canada and held dual citizenship until 2014, when he formally renounced his Canadian citizenship. Certificate of Renunciation of Citizenship for Rafael Edward Cruz, Government of Canada (May 14, 2014), <https://www.scribd.com/doc/229039536/Canadian-Renunciation-Letter>.

10. Stein & Terkel, *supra* note 9; *cf. infra* notes 18–20 and accompanying text (describing the Constitutional Tribunal of the Dominican Republic's 2013 landmark decision, which effectively revoked birthright citizenship from multiple generations of Dominican-born Haitians).

11. Inae Oh, *Donald Trump: The 14th Amendment Is Unconstitutional*, MOTHERJONES (Aug. 19, 2015, 2:57 PM), <http://www.motherjones.com/mojo/2015/08/donald-trump-has-some-thoughts-about-the-constitution> (discussing how Trump's team claimed to have found holes in the Fourteenth Amendment that would allow a route through which to take legal action against birthright citizenship).

12. See Eyder Peralta, *3 Things You Should Know About Birthright Citizenship*, NPR (Aug. 18, 2015, 1:24 PM), <http://www.npr.org/sections/thetwo-way/2015/08/18/432707866/3-things-you-should-know-about-birthright-citizenship> (explaining that birthright citizenship is rooted in the U.S. Constitution, and, as such, the purposeful creation of such a right by the Founding Fathers would make it difficult to rescind); *Public Favors Tougher Border Controls and Path to Citizenship: Little Change in Immigration Views*, PEW RES. CTR. (Feb. 24, 2011), <http://www.people-press.org/2011/02/24/public-favors-tougher-border-controls-and-path-to-citizenship> (finding that a majority of Americans do not favor amending birthright citizenship out from the Constitution).

13. See Allegra Kirkland, *Meet the Anti-Immigrant Crusader Trump Admin Tapped to Assist Immigrants*, TALKING POINTS MEMO (May 1, 2017, 6:26 PM), <http://talkingpointsmemo.com/dc/julie-kirchner-anti-immigrant-crusader-ombudsman-citizenship-immigration-services>.

stances.¹⁴ Ironically, her current role in the federal government is to assist immigrants that run into trouble with the USCIS.¹⁵ Further, Jon D. Feere, a national advocate for ending birthright citizenship, was hired as an advisor to the acting Director of U.S. Immigration and Customs Enforcement, Thomas D. Homan.¹⁶

Events in the Dominican Republic are perhaps as a harbinger of things to come in the United States. In the Dominican Republic, following a significant constitutional redefinition of Dominican citizenship and a major court decision, anti-immigrant policies have been enshrined in law. Although the Dominican Republic's 2010 Constitution retained the country's *jus soli* approach to citizenship,¹⁷ it also explicitly excluded the Dominican-born children of individuals "residing illegally in Dominican territory."¹⁸ After the implementation of the new constitution, the parents of children born in the Dominican Republic were required to show proof of lawful residence for their children to be entitled to Dominican citizenship.¹⁹ Later, a landmark

14. *Id.*; see Stephen Piggott, *Former Executive Director of Anti-Immigrant Hate Group FAIR Joins Trump Administration*, SOUTHERN POVERTY L. CTR. (Jan. 23, 2017), <https://www.splcenter.org/hatewatch/2017/01/23/former-executive-director-anti-immigrant-hate-group-fair-joins-trump-administration>. See generally EDIBERTO ROMÁN, *THOSE DAMNED IMMIGRANTS: AMERICA'S HYSTERIA OVER UNDOCUMENTED IMMIGRATION* 33 (2013) [hereinafter *THOSE DAMNED IMMIGRANTS*] (listing FAIR as one of three organizations that the Southern Poverty Law Center called "the Nexus of the American nativist movement").

15. See Kirkland, *supra* note 13.

16. See Spencer S. Hsu, *Advocate of Ending U.S. Birthright Citizenship May Be Joining Trump Administration*, WASH. POST (Jan. 26, 2017), https://www.washingtonpost.com/local/advocate-of-ending-us-birthright-citizenship-may-be-joining-trump-administration/2017/01/26/fc05d772-c32e-11e6-ba11-63c4b4fb5a63_story.html?utm_term=.5ecd2e53d8 (describing Feere as a "prominent advocate of ending U.S. birthright citizenship"); Maria Santana, *Hard-line Anti-illegal Immigration Advocates Hired at Two Federal Agencies*, CNN (Apr. 12, 2017), <http://www.cnn.com/2017/04/11/politics/trump-administration-immigration-advisers/index.html>.

17. "*Jus soli*" is defined as the "rule that a child's citizenship is determined by place of birth." *Jus soli*, BLACK'S LAW DICTIONARY (10th ed. 2014).

18. See CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA 2010, art. 18 *translated in Dominican Republic's Constitution of 2010*, CONSTITUTE PROJECT (June 6, 2017), https://www.constituteproject.org/constitution/Dominican_Republic_2010.pdf (rejecting the concept that being born in a country's territory is sufficient to trigger citizenship, and instead requiring citizenship to be passed down through two legal guardians); see also Peralta, *supra* note 12 (explaining the difference between territory-based *jus soli* citizenship as compared to the family line-based *jus sanguinis* citizenship).

19. AMNESTY INT'L, "WITHOUT PAPERS, I AM NO ONE": STATELESS PEOPLE IN THE DOMINICAN REPUBLIC 7–8 (2015), https://www.amnestyusa.org/files/without-papers_stateless-people-dominican-republic.pdf (describing how "those who [could

2013 decision by the Constitutional Tribunal of the Dominican Republic retroactively stripped the Dominican citizenship from children of undocumented immigrants all the way back to 1929, effectively rendering thousands of Dominicans of Haitian descent stateless.²⁰ In other words, not only did the Dominican Republic's legislature modify its constitutional equivalent of the United States' Fourteenth Amendment, but its judiciary also issued a decision making the constitutional modification retroactive, effectively stripping four generations of their Dominican citizenship.

Arguments in both the United States and the Dominican Republic are driven by the same anti-immigrant nationalistic factors: current and historical xenophobia, selective interpretations of citizenship, and plain racial discrimination. In this Article, we examine the historical context of the Dominican Republic and the United States, including legal precedents and constitutional modifications and the actual and potential legal ramifications and social consequences of these changes. We conclude that, in both countries, these changes harm the constitutional and human rights of affected individuals and are based on flawed socio-political and legal arguments. We call for inclusive, welcoming legal regimes that enhance—rather than undermine—citizenship rights.

I. DOMINICAN BIRTHRIGHT CITIZENSHIP

In 2010, the Congress of the Dominican Republic approved a new constitution that closed, what Dominican nationalists had considered, a legal loophole: the definition of Dominican citizens as “persons born in the territory of the Republic, with the exception of the legitimate children of foreigners residing in the country as diplomatic representatives or those that are in transit.”²¹ Birthright citizenship, or the principle of *jus soli*, has been a fixture of Dominican constitutions dating back to the nineteenth century. For example, the 1865 Constitution granted citizenship to “all those born or to be born in the

not] prove their parents' regular migration status at the time of birth [were] not considered Dominican nationals”).

20. *Sentencia TC/0168/13*, Tribunal Constitucional de la República Dominicana (2013), <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf>.

21. CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA 2002, art. 11 (translated from Spanish by authors); see also *id.* art. 16–26 (describing the structure of the Dominican Congress, which includes a Senate (Senado) whose members are apportioned by province, and a House of Representatives (Cámara de Diputados) whose members are apportioned from a set number according to the population of each province).

territory of the Republic, regardless of the nationality of their parents.”²² For decades, the children of immigrants, except for those born to diplomats or individuals traveling through the country, were legal citizens of the Dominican Republic.²³ This included thousands of children of Haitian immigrants, the country’s largest ethnic minority and a vital source of cheap labor for the Dominican economy.²⁴

Despite their increasingly significant role in the Dominican economy, Haitian workers and their families faced intense discrimination. Starting in the early twentieth century, Haitian immigrants became the preferred source of labor for the rapidly expanding Dominican sugar industry.²⁵ Thousands of Haitians toiled in Dominican sugar plantations owned by the private sector and the state, where they lived in barrack-like dwellings called *bateyes*.²⁶ These *bateyes* were located in sugar fields, far away from nearby towns, effectively spatially segregating and isolating Haitian workers and their families from Dominican society.²⁷

Out of sight and out of mind, Haitians were a peripheral population for most Dominicans until the country started undergoing rapid socioeconomic changes in the late 1970s. While Haiti experienced political and economic crises, the Dominican Republic enjoyed rapid urbanization and transitioned from relying on sugar as a primary export to embracing tourism and maquiladora factories as economic staples.²⁸ Though Haitians were still overrepresented in the sugar industry, they increasingly occupied new spaces in Dominican society and moved into other economic sectors, such as construction, informal vending, and small business.²⁹ Haitians became mainstream and their

22. CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA 1865, art. 5 (translated from Spanish by authors).

23. See STEVEN GREGORY, *THE DEVIL BEHIND THE MIRROR: GLOBALIZATION AND POLITICS IN THE DOMINICAN REPUBLIC* 22 (2007) (discussing the wave of immigrant migrant workers to the Dominican Republic during the early twentieth century).

24. *Id.*

25. *Id.*

26. FRANK MOYA PONS ET AL., *EL BATEY: ESTUDIO SOCIOECONÓMICO DE LOS BATEYES DEL CONSEJO ESTATAL DEL AZÚCAR* 17 (1986) [hereinafter *EL BATEY*].

27. *Id.* at 17–18, 27.

28. See GREGORY, *supra* note 23, at 57, 177–78 (noting that the decline in sugar production led the former *batey* workers away from the plantations and to the cities to find work in emerging industries, which increased the number of Haitians and the land area in which they lived).

29. *Id.* at 177–78.

descendants—legal citizens of the Dominican Republic, bicultural, and fluent in Spanish—sought to integrate themselves into Dominican society.³⁰

The expanding Haitian presence sparked a pushback by a nationalist political sector that saw Haitians and their descendants as a menacing alien force bent on retaking the Dominican Republic one immigrant—and one baby—at a time.³¹ These ultranationalist groups reminded Dominicans that Haiti annexed the eastern part of the island of Hispaniola from 1822–1844, that Dominican patriots had declared the country's independence from Haiti in 1844, and that, for fifteen years following 1844, Haitian armies sought to subdue the Dominican Republic by launching periodic invasions into Dominican territory.³² Moreover, Dominican ultranationalist sectors continued to employ the old trope of *antihaitianismo*, a racist ideology that portrayed Haitians and Dominicans as radically different—Haitians were viewed as poor, black immigrants with little cultural and social worth, while Dominicans saw themselves as superior because of their European stock and civilized, refined Western culture.³³

Anti-Haitian attitudes were widespread in Dominican society, and in the 1990s these sentiments helped derail the political aspirations of liberal presidential candidate José F. Peña Gómez, who was falsely accused of being of Haitian ancestry and a saboteur planning on surrendering Dominican sovereignty to Haiti upon winning the presidency.³⁴ Deportations of Haitian workers were commonplace throughout the 1990s and 2000s, and the Dominican authorities made it difficult for Haitian parents to obtain birth certificates and other official documents for their children born on Dominican territory.³⁵

30. *Id.* at 188–89 (providing the example of Eddie Dorsainville, a former cane field worker of Haitian descent, who moved to an urban area and secured stable employment because he could speak Spanish and English, something that allowed him to integrate more readily into Dominican society).

31. See, e.g., MANUEL NÚÑEZ, *EL OCASO DE LA NACIÓN DOMINICANA*, 310–11 (Alfa y Omega ed. 1990). The similarities to U.S. Hispanophobic claims of a Mexican *reconquista* conspiracy are uncanny.

32. Ernesto Sagás, *Black—but Not Haitian: Color, Class, and Ethnicity in the Dominican Republic*, in *COMPARATIVE PERSPECTIVES ON AFRO-LATIN AMERICA* 324–25 (Kwame Dixon & John Burdick eds. 2012) [hereinafter Sagás, *Black—but Not Haitian*].

33. *Id.*; Ernesto Sagás, *A Case of Mistaken Identity: Antihaitianismo in Dominican Culture*, WEBSTER, <http://faculty.webster.edu/corbetre/haiti/miscopic/dominican/antihaiti.htm> (last visited Aug. 30, 2017).

34. Ernesto Sagás, *Las Elecciones de 1994 y 1996 en la República Dominicana: Coyuntura Política y Crisis Postelectoral en el Ocaso de los Caudillos*, 11 *REVISTA MEXICANA DEL CARIBE* 155, 168, 172 (2010).

35. *Trabas a la Documentación Civil de los/as Dominicanos/as*, OBSERVATORIO DE DERECHOS HUMANOS, July–Dec. 2012, at 1, 5 [hereinafter *Trabas a la Documentación*].

The generalized poverty of Haitian immigrants also rendered them even more vulnerable in Dominican society. They lacked the resources to pay for government documents, to give kickbacks to clerks so that their cases would not languish in a file cabinet, to pay for transportation, to hire a lawyer, and to engage in many other small and large transactions that the government required and that mark the difference between a full-fledged citizen and a second-class one.³⁶

In 2004, Law 285-04, a Dominican immigration statute, defined temporary workers as non-residents.³⁷ This seemingly minor redefinition of the status of temporary workers set the stage for more momentous changes. Six years later, the 2010 Dominican Constitution made it explicitly clear that only the children of legal residents of the Dominican Republic were entitled to Dominican citizenship.³⁸

Law 285-04 and the 2010 Constitution created two notable issues. First, the term “temporary workers” applied to many workers, regardless of how long they had actually been in the country. From those that had just entered the Dominican Republic to those that had spent a lifetime working in its cane fields, the definition of temporary workers rendered all vulnerable and provided no legal redress. As non-residents, temporary workers were subject to repatriation at the end of their contracts, if they had them, or deportation, if the Dominican authorities or their employers wanted to get rid of them.³⁹ Time in the country did not matter because, in the eyes of the Dominican authorities, temporary workers had always been “in transit.”⁴⁰

Second, Haitian immigrant workers now transferred their illegality and vulnerability to their children, who were not Dominican citizens in spite of being born on Dominican soil.⁴¹ These children were now stateless and condemned to life at the margins of a society that despised them. These two legal changes also served to intimidate and socially control Haitian immigrants and their children, who now lived under the constant threat of deportation and had to endure hardships,

36. *Id.* at 3.

37. Ley General de Migracion No. 285-04, GACETA OFICIAL 10291 art. 36 (2004) (Dominican Republic) (focusing specifically on temporary workers in the sugar industry).

38. CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA 2010, art. 18.

39. *Repatriaciones en República Dominicana*, OBSERVATORIO DE DERECHOS HUMANOS, Jan.–June 2012, at 1, 4.

40. Ley General de Migracion No. 285-04, GACETA OFICIAL 10291 art. 36 (stating that individuals who enter the Dominican Republic to benefit from temporary work relating to production or the distribution of goods and services are “non-residents” and thus not eligible for citizenship).

41. *Id.*

discrimination, and abuse at the hands of employers, state officials, and those individuals with full Dominican citizenship.⁴²

Life for Haitian immigrants and their Dominican children only got worse in 2013. That year, a decision of the Constitutional Tribunal extended the application of the new “in transit” definition retroactively, all the way back to 1929.⁴³ For eighty-four years, at least four generations of Haitians and their descendants had been living and working in the Dominican Republic while somehow still legally “in transit.” Thousands of Dominicans of Haitian descent—an estimated 200,000 or more—were no longer Dominicans. With their Dominican citizenship stripped, they were simply rendered stateless because they also were not Haitian citizens.⁴⁴ Without documents proving their citizenship, they could not vote, run for office, attend school, travel abroad, obtain professional certifications, or accomplish dozens of other bureaucratic procedures that required legal documents.⁴⁵ They were condemned to second-class citizenship or, more precisely, no citizenship at all in their own country.⁴⁶

The decision of the Constitutional Tribunal sparked widespread condemnation from the international community and progressive sectors in the Dominican Republic.⁴⁷ While a country’s ability to define the parameters of its birthright citizenship is generally universally accepted,⁴⁸ the Dominican Tribunal’s decision to strip citizenship rights from thousands of Dominican-born individuals sent shock waves

42. *Repatriaciones en República Dominicana*, *supra* note 39, at 5.

43. *Sentencia TC/0168/13*, Tribunal Constitucional de la República Dominicana (2013), <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf>.

44. AMNESTY INT’L, *supra* note 19, at 7–8; Jonathan Clayton, *Dominican Republic Urged Not to Deport Stateless Dominicans*, UNHCR (June 19, 2015), <http://www.unhcr.org/en-us/news/latest/2015/6/5584221a6/dominican-republic-urged-deport-stateless-dominicans.html> (noting that the Dominican Republic has a stateless population of over 200,000 people).

45. *Id.*

46. *We Are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic*, HUM. RTS. WATCH (July 1, 2015), <https://www.hrw.org/report/2015/07/01/we-are-dominican/arbitrary-deprivation-nationality-dominican-republic>.

47. Ricardo Rojas, *Dominican Court Ruling Renders Hundreds of Thousands Stateless*, REUTERS (Oct. 12, 2013, 10:43 AM), <http://www.reuters.com/article/us-dominicanrepublic-citizenship-idUSBRE99B01Z20131012>.

48. *Citizenship*, UNESCO, <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/citizenship> (last visited Aug. 30, 2017) (explaining that citizenship laws necessarily require discriminating between citizens and resident foreigners).

through the international community.⁴⁹ On top of that, the retroactive nature of the court decision flew in the face of Dominican and international law.⁵⁰

The administration of Dominican President Danilo Medina, taken aback by the court decision and noting a surge of criticism, cobbled a legal patch of sorts: Law 169-14.⁵¹ The law was a sort of compromise that provided a legal path to citizenship for Dominicans of Haitian descent who had been denaturalized by the 2013 court decision.⁵² Under Law 169-14, former Dominican citizens had to file paperwork to be granted Dominican citizenship through a naturalization process.⁵³

The re-naturalization process was cumbersome and placed a financial strain on an impoverished segment of the population, despite the fact that the legal process was technically free. To re-naturalize, former Dominicans had to present documents proving that they had been born in the country, make several visits to state offices, and then wait for their paperwork to be processed—and they were the lucky ones.⁵⁴ Former citizens whose parents were too poor, too busy, or for some other reason did not register their children's births, had to somehow document to the satisfaction of the authorities that they had in fact been born on Dominican soil—a truly daunting process.⁵⁵ Needless to say, the process has been slow, inefficient, arbitrary, and offensive to Dominican citizens who now need to prove that they belong to a country that has historically sought to exclude them from the national mainstream.⁵⁶ Most individuals have simply given up or are slowly trying to navigate the byzantine process, hoping for the best.⁵⁷

49. Rojas, *supra* note 47.

50. Vienna Convention on the Law of Treaties, art. 23, May 23, 1969, 1155 U.N.T.S. 331, 338.

51. See Ley No. 169-14, GACETA OFICIAL 10756 (2014) (Dominican Republic).

52. *Id.* (calling for “a solution to the problem facing the people who . . . have acted their entire lives under the assumption that they enjoy Dominican citizenship and in exercise of that citizenship have developed an indisputable root in our society”) (translated from Spanish by authors).

53. CENTRO BONÓ, BALANCE GENERAL LEY 169-14: A 1 AÑO DE ESTAR EN VIGOR 13 (2015), https://issuu.com/dominicanospor derecho/docs/cartilla_balance_ley_169-14.

54. *Id.*

55. See *id.* at 13, 36–37.

56. Rachel Nolan, *Displaced in the D.R.: A Country Strips 210,000 of Citizenship*, HARPER'S MAGAZINE, May 2015, at 38, 45 (describing the convoluted process and the demanding level of proof that former Dominican citizens must present as a “Kafka-Orwellian jamboree”).

57. *Id.* at 38–47.

The Dominican Republic has continued the swift deportations of Haitians, including Dominicans of Haitian descent; however, many have self-deported out of fear of Dominican authorities.⁵⁸ By January 2016, an estimated 113,000 individuals returned to Haiti voluntarily, according to the Dominican authorities, and now refugee camps dot the Haitian border with the Dominican Republic.⁵⁹ Many of these individuals have not been back to Haiti for years and lack a place to live. For some, like those that were taken to the Dominican Republic as children or were born there, Haiti is a foreign country.⁶⁰

The 2004 immigration law, the 2010 Constitution, and the 2013 court decision are more than individual pieces of legislation and a court opinion. They should be examined together in the context of deep historical prejudices against Haitian immigrants and their offspring born in the Dominican Republic.⁶¹ These are laws purposely designed to affect the daily lives of the most exploited ethnic group in the nation. The objective of these laws is to force Haitians and Haitian-Dominicans into the shadows, where they can be economically exploited with no recourse. The laws are dehumanizing, based on flawed legal principles, and inherently violate human rights. They codify into law an existing regime of exploitation and extra-legal violence against Haitians and Haitian Dominicans, as well as decades of social, cultural, and racial discrimination against Haitians based on the intersection of their race, gender, class, and national origin.⁶² No other group in Dominican society has experienced such virulent and consistent discrimination. Although these laws refer to foreign aliens in general and never mention Haitians by name, it is quite clear that the Haitians and their Dominican-born children are the intended targets.

58. *Qué es el Centro de Detención de Haina?*, OBSERVATORIO DE DERECHOS HUMANOS, Jan.–Sept. 2013, at 1, 2–4.

59. Mariano Castillo, *Faces of a Divided Island*, CNN (Apr. 13, 2016, 3:22 PM), <http://www.cnn.com/2016/04/12/world/dominican-republic-haiti-immigration>.

60. Paleoconservative blogs such as American Thinker have lauded the Dominican Republic's new citizenship laws and how they have successfully sparked a wave of self-deportation. Newsmachete, *You'll Never Guess Where Self-Deportation of Illegals Actually Works*, AM. THINKER (July 15, 2015), http://www.americanthinker.com/blog/2015/07/youll_never_guess_where_selfdeportation_of_illegals_actually_works.html.

61. See Sagás, *Black—but Not Haitian*, *supra* note 32, at 324–25 (analyzing the tensions caused by class, color, and nationality differences between Dominicans and Haitians).

62. *Id.*

II. BIRTHRIGHT CITIZENSHIP IN THE UNITED STATES

In the 2016 presidential election year, Donald Trump, the Republican Party nominee and the eventual 45th President of the United States, seemed to be following the Dominican lead by calling for the end to birthright, or *jus soli*, citizenship.⁶³ Thus, not unlike what has thus far occurred in the Dominican Republic, President Trump hopes to end birthright citizenship.⁶⁴ If successful, the fallout in the United States would be monumental. The number of undocumented people in the United States would balloon from the estimated 11 million to over 25 million, as compared to the estimated 200,000 to 500,000 negatively affected by similar changes in the Dominican Republic.⁶⁵ President Trump has a political platform that is anti-immigrant and anti-birthright citizenship, and one that challenges the U.S. Constitution and Supreme Court decisions. Some respond to Trump's so-called platform as unlikely to succeed in light of our laws and prior practice. Sadly, however, the same could have been said in the Dominican Republic prior to the recent institutionalization of that country's anti-Haitian and anti-immigrant stances.⁶⁶

63. Robert Farley, *Trump Challenges Birthright Citizenship*, FACTCHECK.ORG (Nov. 13, 2015), <http://www.factcheck.org/2015/11/trump-challenges-birthright-citizenship>; see also Reena Flores, *Ted Cruz: Birthright Citizenship "Doesn't Make Sense,"* CBS NEWS (Aug. 23, 2015, 12:10 PM), <http://www.cbsnews.com/news/ted-cruz-birthright-citizenship-doesnt-make-sense> (mentioning Trump's proposal to do away with birthright citizenship).

64. Matt Ford, *Will the Supreme Court Defend Citizenship?*, ATLANTIC (May 2, 2017), https://www.theatlantic.com/politics/archive/2017/05/supreme-court-citizenship-maslenjak/525000/?utm_source=yahoo.

65. Max Ehrenfreund, *Understanding Trump's Plan to End Citizenship for Undocumented Immigrants' Kids*, WASH. POST (Aug. 17, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/08/17/understanding-trumps-plan-to-end-citizenship-for-undocumented-immigrants-kids> (noting that the undocumented population in the United States "would increase to 25 million if citizenship were denied to the offspring of . . . unauthorized immigrant[s]"); Leah Libresco, *The Dominican Republic's Revocation of Citizenship Creates 200,000 Stateless People*, FIVETHIRTYEIGHT (June 17, 2015, 4:54 PM), <https://fivethirtyeight.com/datalab/the-dominican-republics-revocation-of-citizenship-creates-200000-stateless-people>; see *supra* note 44 and accompanying text (discussing the denationalization of thousands of Dominican residents).

66. The Supreme Court recently decided the case of *Maslenjak v. United States*, which answered the question of whether a naturalized citizen could involuntarily be stripped of her citizenship for lying on her citizenship application. 137 S. Ct. 1918 (2017). The Court held that the government must show that the defendant performed an illegal act while attempting to acquire citizenship. *Id.* at 1923. When such an illegal act is a false statement, the government must show that the false statements were significant to the granting or denying of naturalization. *Id.*

Despite Trump's view, those who oppose his ideas and are in favor of preserving birthright citizenship in the United States have considerable legal support. The Fourteenth Amendment of the U.S. Constitution provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."⁶⁷ Historically, this language was understood to mean that all those born in the United States are automatically U.S. citizens by birth. Indeed, even one of the leading scholarly opponents of birthright citizenship, Professor Peter Schuck, once admitted that *jus soli* citizenship is "a right protected by the Fourteenth Amendment's Citizenship Clause."⁶⁸

Since the founding of the United States, all persons born within the territory of the country, and owing allegiance to the United States, were considered citizens. As one scholar recently put it, "the clear intent of the Reconstruction Framers [was] to grant U.S. citizenship based on the objective measure of U.S. birth rather than subjective political or public opinion."⁶⁹ This doctrine, known as *jus soli*, or the right of the soil, was recognized during pre-revolutionary English common law and by American courts as early as the eighteenth and nineteenth centuries.⁷⁰

The United States' constitutional framework of citizenship stems from the 1608 English *Calvin's Case*.⁷¹ In that case, the English court was asked to determine the status of the plaintiff, Robert Calvin, who was born in Scotland after 1603, the date when the English throne had devolved upon King James VI of Scotland as James I of England.⁷² At the commencement of his decision, Justice Coke acknowledged the "weight and importance" of the issue, which arose at a crucial point in the definition of modern nationhood when James I attempted to consolidate his formerly separate countries into Britain.⁷³ The argument against Calvin's citizenship basically asserted that Calvin owed allegiance not to James' natural body—which ruled both

67. U.S. CONST. amend. XIV.

68. Peter H. Schuck, *Re-evaluation of American Citizenship*, 12 GEO. IMMIGR. L.J. 1, 10 (1997).

69. See Wydra, *supra* note 1, at 1.

70. See *Calvin v. Smith* (*Calvin's Case*), 77 Eng. Rep. 377 (K.B. 1608); Polly J. Price, *Natural Law and Birthright Citizenship in Calvin's Case (1608)*, 9 YALE J.L. & HUMAN. 73, 142–43 (1997); Bernadette Meyler, Note, *The Gestation of Birthright Citizenship, 1868–1898 States' Rights, the Law of Nations, and Mutual Consent*, 15 GEO. IMMIGR. L.J. 519, 526 (2001).

71. *Calvin's Case*, 77 Eng. Rep. at 377.

72. *Id.* at 379.

73. *Id.*

England and Scotland—but, rather, to his two separate bodies politic.⁷⁴ Instead, Coke determined that Calvin was native born because he was born during James VI of Scotland's allegiance, and James VI of Scotland and James I of England shared the same natural body.⁷⁵ Therefore, *Calvin's Case* stands for the proposition that even children of migrants temporarily traveling within the territory of the British Isles would become British subjects at birth, receiving that status' legal protections.⁷⁶ Thus, the English doctrine of *jus soli* was fairly straightforward: those born within the dominion of the English monarch and who owed allegiance at birth were English subjects.⁷⁷ In fact, this principle extended to all persons born in any of England's territories.⁷⁸ Any person born in a territory who owed allegiance to the English crown at birth was, by both statute and common law, granted the status of a natural-born English subject.⁷⁹

This basis and framework is significant because the U.S. Supreme Court relied on it to interpret the constitutional meaning of "citizenship" in the absence of a constitutional definition.⁸⁰ Specifically, early American courts had to determine whether individuals born in the colonies, who had previously been British subjects, would be recognized as citizens of the United States.⁸¹ Much like the reasoning of *Calvin's Case*, U.S. courts found that the King's authority, and the colonists' allegiance, transferred to the new sovereign nation and, as a result, the colonists were now citizens of the United States.⁸²

74. *Id.* at 409.

75. Meyler, *supra* note 70, at 524–26.

76. *Id.* at 528.

77. *Calvin's Case*, 77 Eng. Rep. at 379, 403, 405, 409 (stating that Ireland, Normandy, Wales, and Scotland were English territories, and that the analysis for Calvin would hold in any one of those territories).

78. *Id.*

79. See Price, *supra* note 70, at 93 n.110.

80. See *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 72 (1872) ("No such definition [of citizenship] was previously found in the Constitution, nor had any attempt been made to define it by act of Congress."); Jonathan C. Drimmer, *The Nephews of Uncle Sam: The History, Evolution, and Application of Birthright Citizenship in the United States*, 9 GEO. IMMIGR. L.J. 667, 683–84 (1995) (emphasizing the United States' adherence to common law principles when characterizing birthright citizenship boundaries).

81. See, e.g., *Dawson's Lessee v. Godfrey*, 8 U.S. (4 Cranch) 321, 322–24 (1808) (applying common law to determine citizenship of British-born subjects in America).

82. See, e.g., *Kilham v. Ward*, 2 Mass. (1 Tyng) 236, 239 (1806) ("All persons therefore, who were then within the United States, and were parties to that declaration, must be considered as agreeing to the new political compact; and by virtue of it became citizens of the established government."). Many other cases from the eighteenth and nineteenth centuries confirm that persons born within the territory of

Well after *Calvin's Case*, U.S. courts continued to follow the decision's holding, respecting its *jus soli* principles.⁸³ In fact, the U.S. Supreme Court addressed *Calvin's Case* on several occasions to determine "whether those born before the Declaration of Independence who had allied themselves with Britain rather than the United States were natural-born citizens, and could therefore inherit property within the United States."⁸⁴ In those cases, the arguments were the same as the arguments in *Calvin's Case* because the individuals were all born before the Revolution, and therefore subject to British rule.⁸⁵

Several cases from the same time period elucidate this point. For example, in *Dawson's Lessee v. Godfrey*,⁸⁶ the Court declared that "[c]ommunity of allegiance once existing must . . . exist ever after," thus expanding the principles in *Calvin's Case* to U.S. citizens still holding property in Britain.⁸⁷ A Massachusetts case decided during the same period also upheld the principle of *jus soli*. In *Gardner v. Ward*,⁸⁸ a man born in Salem, Massachusetts left the country to live in Newfoundland for several years.⁸⁹ When he returned to Salem in 1781, he sued individuals who had prevented him from voting in a local election.⁹⁰ The court ruled that the man was, in fact, a citizen, and, as

and owing allegiance to the United States were citizens by right of the soil. See, e.g., *Inglis v. Sailor's Snug Harbor*, 28 U.S. (3 Pet.) 99, 164 (1830) ("[C]hildren even of aliens born in a country . . . are subjects by birth."); *United States v. Rhodes*, 27 F. Cas. 785, 789 (D. Ky. 1866) ("[A]ll persons born in the allegiance of the United States are natural born citizens."); *Gardner v. Ward*, 2 Mass. (1 Tyng) 244, 246 (1805) ("[A] man, born within the jurisdiction of the common law, is a citizen of the country wherein he is born. By this circumstance of his birth, he is subjected to the duty of allegiance . . . and becomes reciprocally entitled to the protection of that sovereign, and to the other rights and advantages which are included in the term citizenship."); *Leake v. Gilchrist*, 13 N.C. (2 Dev.) 73, 76 (1829) (stating that no matter "how accidental so ever his birth in that place may have been, and although his parents belong to another country," the country of one's birth "is that to which he owes allegiance").

83. See Meyler, *supra* note 70, at 528–29.

84. See *id.* at 528 (interpreting the claim that these citizen individuals should be capable of acquiring land in the United States); see also *Dawson's Lessee*, 8 U.S. at 322–23; *Lambert's Lessee v. Paine*, 7 U.S. (3 Cranch) 97, 97–98 (1805); *M'Ilvaine v. Cox's Lessee*, 6 U.S. (2 Cranch) 280, 286–87 (1805).

85. Meyler, *supra* note 70, at 528 (describing the argument for individuals subject to inheriting land in the United States).

86. 8 U.S. (4 Cranch) 321, 322–23 (1807).

87. *Id.* at 323.

88. 2 Mass. (1 Tyng) 244, 246 (1805).

89. *Id.* at 245.

90. Meyler, *supra* note 70, at 529 (referencing *Gardner v. Ward*, 2 Mass. (1 Tyng) 244, 246 (1805)).

a citizen, he should have been allowed to vote.⁹¹ The judge stated that common law precedent governed the court and that *Calvin's Case* established that:

[A] man, born within the jurisdiction of the common law, is a citizen of the country wherein he is born. By this circumstance of his birth, he is subjected to the duty of allegiance . . . and becomes reciprocally entitled to the protection of that sovereign and to the other rights and advantages, which are included in the term 'citizenship.' The place of birth is coextensive with the dominions of the sovereignty, entitled to the duty of allegiance . . . [and] the right of citizenship in the native soil . . . at the time of birth is a natural right, not affected by the after changes in the sovereignty.⁹²

U.S. courts viewed the Fourteenth Amendment's Citizenship Clause as constitutionalizing the federal common law principle of *jus soli* citizenship.⁹³ For example, in *McKay v. Campbell*,⁹⁴ the U.S. District Court for the District of Oregon weighed whether McKay was a U.S. citizen and whether he had the right to vote.⁹⁵ The defendants argued that McKay was British because he was born to a British subject when the United States and Britain jointly occupied the territory.⁹⁶ The court classified the issue as "turn[ing] upon [a] single point—was the plaintiff born subject to the jurisdiction of the United States—under its allegiance?"⁹⁷ Citing *Calvin's Case*, the court read the Fourteenth Amendment as "nothing more than declaratory of the rule of the common law," and thus, McKay's allegiance at birth had to be evaluated.⁹⁸

Several contemporary law review articles commented on the persistence of common law principles.⁹⁹ For instance, the *American Law Register* published a summary of *McKay v. Campbell* under "The Doctrine of Natural Allegiance," indicating the importance of the court's holding.¹⁰⁰ This importance was further bolstered by John A. Hayward's 1885 piece, "Who Are Citizens?," which discussed the consistent definitions of a U.S. citizen and a British subject.¹⁰¹ Hayward

91. *Gardner*, 2 Mass. at 246.

92. *Id.*

93. See Meyler, *supra* note 70, at 530.

94. 16 F. Cas. 161 (D. Or. 1871).

95. See Meyler, *supra* note 70, at 531.

96. *Id.* (citing *McKay*, 16 F. Cas. at 162).

97. *Id.* (citing *McKay*, 16 F. Cas. at 162).

98. *Id.* (citing *McKay*, 16 F. Cas. at 162).

99. *Id.* at 532.

100. See *id.* (pointing to common law principles as the main source of the doctrine of natural allegiance).

101. *Id.*

emphasized that, even after its passage, the Fourteenth Amendment largely left the common concept of birthright citizenship intact.¹⁰² The only common law exceptions to the Fourteenth Amendment's form of birthright citizenship (consistent with current constructions) are three categories of individuals: (1) children of ambassadors or other foreign diplomatic representatives;¹⁰³ (2) children of foreign invading armies;¹⁰⁴ and (3) children of members of indigenous peoples.¹⁰⁵

The birthright citizenship conclusion appears to have been cemented in the 1898 Supreme Court ruling, *United States v. Wong Kim Ark*.¹⁰⁶ In *Wong Kim Ark*, the Court held that "[e]very citizen or subject of another country, [who is] domiciled here, is within the allegiance and protection, and consequently subject to the jurisdiction of the United States."¹⁰⁷ The case originated with Chinese-American Wong Kim Ark, who was born in the United States to noncitizen Chinese parents.¹⁰⁸ Ark's birth in the United States should have automatically deemed him a citizen.¹⁰⁹ However, when Ark attempted to return to the United States after a trip to China, U.S. authorities denied him reentry.¹¹⁰ Inspired by strong national anti-Chinese sentiment, the United States government brought *Wong Kim Ark* as a "test case" to undermine the Fourteenth Amendment's birthright citizenship provision.¹¹¹ The Court's majority held that interpreting the Fourteenth Amendment to exclude from citizenship U.S.-born

102. *Id.*

103. *See, e.g.*, Thomas P. Stoney, *Citizenship*, 34 AM. L. REG. 1, 12-13 (1886) (citing *Elk v. Wilkins*, 112 U.S. 102 (1884) (delineating how the extraterritoriality of ambassadors or other foreign diplomatic representatives applies to their children as well); *see also* *Calvin v. Smith* (*Calvin's Case*), 77 Eng. Rep. 377 (K.B. 1608) (affirming that the children of English ambassadors are English citizens and do not adopt the foreign country's citizenship).

104. *Calvin's Case*, 77 Eng. Rep. at 399 (stating that children born in the King's dominion but not under the king's obedience are not citizens of the King).

105. *See* *United States v. Wong Kim Ark*, 169 U.S. 649, 682 (1898) (explicitly recognizing "children of members of Indian tribes" as excluded from the right to birthright citizenship by virtue of their "peculiar relation to the National Government").

106. 169 U.S. 649 (1898).

107. *Id.* at 693.

108. *Id.* at 653.

109. *Id.* at 652.

110. *Id.* at 653; *see* Fred Barbah, *Donald Trump Meet Wong Kim Ark, the Chinese American Cook Who Is the Father of "Birthright Citizenship,"* WASH. POST (Aug. 31, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/08/31/donald-trump-meet-wong-kim-ark-the-chinese-american-cook-who-is-the-father-of-birthright-citizenship>.

111. *Id.*

children of noncitizens would be to deny citizenship to thousands of residents, including “persons of English, Scotch, Irish, German, or other European parentage who have always been considered and treated as citizens of the United States.”¹¹²

Subsequent U.S. Supreme Court decisions, as well as other federal court decisions, also provide support for birthright citizenship.¹¹³ For instance, in *Plyler v. Doe*,¹¹⁴ the Court specifically rejected punishing U.S.-born children for the wrongs of their undocumented parents, and considered it as a given that children born in the United States are U.S. citizens.¹¹⁵ The *Plyler* court struck down Texas’ attempt to deny free public education to undocumented children.¹¹⁶ The Texas law singled out school districts that enrolled non-U.S. citizens or children born to immigrants legally residing in the country and denied state funds to

112. *Wong Kim Ark*, 169 U.S. at 694.

113. See, e.g., *McCreery’s Lessee v. Somerville*, 22 U.S. (9 Wheat.) 354, 356 (1824) (determining that children born in the United States were native-born citizens of the United States and, therefore, eligible to inherit land from noncitizen family members); *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118–19 (1804) (presuming that all persons born in the United States were citizens); *Lynch v. Clarke*, 1 Sand. Ch. 583, 588–89 (N.Y. Ch. 1844) (holding that a child born in New York during a temporary stay by alien parents was a citizen of the United States and concluding that every person born within the dominions and allegiance of the United States was a natural-born citizen); FREDERICK VAN DYNE, *CITIZENSHIP OF THE UNITED STATES* 6–7 (1904) (“It is beyond doubt that, before the enactment of the civil rights act of 1866 . . . or the adoption of the constitutional amendment, all white persons, at least, born within the sovereignty of the United States, whether children of citizens or foreigners, excepting only children of ambassadors or public ministers of a foreign government, were native-born citizens of the United States.”); Letter to Mr. Mason, U.S. Minister to France, from Mr. Marcy, U.S. Secretary of State (June 6, 1854), in 2 FRANCIS WHARTON, *DIGEST OF THE INTERNATIONAL LAW OF THE UNITED STATES* 394 (2d ed. 1886) (“In reply to the inquiry which is made by you . . . whether ‘the children of foreign parents born in the United States, but brought to the country of which the father is a subject, and continuing to reside within the jurisdiction of their father’s country, are entitled to protection as citizens of the United States,’ I have to observe that it is presumed that, according to the common law, any person born in the United States, unless he be born in one of the foreign legations therein, may be considered a citizen thereof until he formally renounces his citizenship.”); *Citizenship of Children Born in the United States of Alien Parents*, 10 Op. Att’y Gen. 328 (1862) (stating that a child born in the United States of alien parents who have never been naturalized is, by fact of birth, a native-born citizen of the United States); *Id.* at 389 (1862) (reaffirming the general principle of citizenship by birth in the United States and rejecting the existence under law of a class of persons intermediate between citizens and aliens).

114. 457 U.S. 202 (1982).

115. *Id.* at 202.

116. Michael A. Olivas, *Storytelling Out of School: Undocumented College Residency, Race, and Reaction*, 22 HASTINGS CONST. L.Q. 1019, 1039 (1995) (citing *Plyler v. Doe*, 457 U.S. 202, 206 (1981)).

those districts. According to Justice Brennan, Texas' argument regarding tuition charges was "nothing more than an assertion that illegal entry, without more, prevents a person from becoming a resident for purposes of enrolling his children in the public schools."¹¹⁷ After using an equal protection analysis to hold that discriminatory classifications that "merely . . . defin[e] a disfavored group as nonresident" are invalid, Justice Brennan dismissed all of Texas's arguments in favor of the challenged statute.¹¹⁸ In fact, in a footnote in *Plyler*, the plurality interpreted the *Wong Kim Ark* rule to benefit the children of both illegal and legal aliens.¹¹⁹

In *INS v. Rios-Pineda*,¹²⁰ the Court similarly recognized birthright citizenship in deportation proceedings instituted against the respondents.¹²¹ By the time the proceedings commenced, the respondents had a child born in the United States.¹²² The *Rios-Pineda* Court observed, with little question or equivocation, that because the child was born in the United States, the child was in fact a citizen.¹²³

The *jus soli* doctrine also finds considerable support in the legislative history of the Fourteenth Amendment. The debates in the Senate over the Fourteenth Amendment confirm that the Citizenship Clause was aimed at assuring, as a constitutional matter, that all persons born in the United States are citizens.¹²⁴ Two months after President Andrew

117. *Id.* at 1040.

118. *Id.*

119. See *Plyler*, 457 U.S. at 211 n.10 ("[N]o plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful."); see also Christopher L. Eisgruber, *Birthright Citizenship and the Constitution*, 72 N.Y.U. L. REV. 54, 64 (1997) (noting how the *Plyler* Court's interpretation is the prevailing understanding of the Fourteenth Amendment's Citizenship Clause).

120. 471 U.S. 444 (1985).

121. *Id.* at 446.

122. *Id.*

123. *Id.*; see also *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159-60 n.10 (1963) (confirming that the Citizenship Clause "is to be interpreted in light of pre-existing common-law principles governing citizenship"); *Morrison v. California*, 291 U.S. 82, 85 (1934) (citing *United States v. Wong Kim Ark*, 169 U.S. 649, 649 (1898)) (noting that although persons of Japanese descent were not eligible to become citizens through naturalization, a person of Japanese descent is a United States citizen if he was born within the United States); 4 CHARLES GORDON ET AL., *IMMIGRATION LAW AND PROCEDURE* § 92.03[2][e] (rev. ed. 1995) (stating that the outcome of *Wong Kim Ark* clarified any uncertainty regarding the applicability of the *jus soli* rule to children born in the United States).

124. See CONG. GLOBE, 39th Cong., 1st Sess. *passim* (1866) (grappling with the notion that the government was created for all people, regardless of color, and discussing parentage of children and exceptions to birthright citizenship).

Johnson vetoed the Civil Rights Act, Congress sought to end the debate by incorporating birthright citizenship into the Fourteenth Amendment.¹²⁵ Senator Jacob Howard (R-MI) proposed adding the Citizenship Clause, explaining that his proposed addition would enshrine “that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States.”¹²⁶

Many of Senator Howard’s contemporaries agreed with his proposed addition of the Citizenship Clause to the Fourteenth Amendment. While discussing the Citizenship Clause, Senator John Henderson (R-MO) argued that the Clause did not greatly impact the traditional interpretation of citizenship.¹²⁷ According to Senator Henderson, the Citizenship Clause “makes plain only what has been rendered doubtful by the past action of the Government.”¹²⁸ Senate Judiciary Committee Chairman, Lyman Trumbull (D-IL), announced that the Fourteenth Amendment recognized that persons born in the United States and owing no allegiance to any foreign Power are citizens regardless of color.¹²⁹

It is telling that, during the 1860s, these Senators made such inclusive proclamations concerning the new constitutional amendment because, during this era, acceptance of other races and ethnicities was hotly debated. While both opponents and proponents of the Amendment recognized that it granted birthright citizenship, that grant led opponents to fight against the Amendment’s passage.¹³⁰ Indeed, Senator Edgar Cowan (R-PA) used xenophobic comments to justify his opposition to the Amendment. He observed that, by granting birthright citizenship to their children, the Amendment would expand the number of Chinese in California and Gypsies in his home state of Pennsylvania—the children of those who owe no allegiance to the United States and routinely commit “trespass” within the United States.¹³¹

125. Linda R. Monk, *National Citizenship and the Fourteenth Amendment*, A.B.A.: INSIGHTS ON L. & SOC’Y, <https://www.americanbar.org/publications/insights-on-law-and-society/2017/winter2017/national-citizenship-and-the-14th-amendment.html> (last visited Aug. 30, 2017).

126. CONG. GLOBE, 39th Cong., 1st Sess. at 2890.

127. *Id.* at 3031.

128. *Id.*

129. *Id.* at 574.

130. *Id.* at 2890–91 (debating the social, cultural, and political impact of granting citizenship to individuals born in the United States to foreign-born or non-citizen parents).

131. *Id.*

The xenophobic tenor of Senator Cowan did not carry the day when the Amendment was passed. Reflecting the views of the majority of Senators, Senator John Conness (D-CA) spoke out in favor of birthright citizenship, saying,

The proposition before us . . . relates simply in that respect to the children begotten of Chinese parents in California, and it is proposed to declare that they shall be citizens. . . . I am in favor of doing so. . . . We are entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection before the law with others.¹³²

In the Senate debate over the constitutional amendment, Senator Cowan, who is often cited by opponents of birthright citizenship, questioned whether it was wise to grant birthright citizenship to children of Asian descent.¹³³ In particular, Senator Cowan asked Senator Trumbull, a proponent of the new Citizenship Clause, whether the language of "being born and not subject to any foreign power" would make children of the Chinese and the Gypsies, who were born in this country, U.S. citizens.¹³⁴ Trumbull replied, "Undoubtedly."¹³⁵ Trumbull unequivocally rejected Cowan's xenophobic remarks with "the child of an Asiatic is just as much a citizen as the child of a European."¹³⁶ Senator Trumbull further observed, "birth entitles a person to citizenship, [and] every free-born person in this land is, by virtue of being born here, a citizen of the United States."¹³⁷ Senator Justin Smith Morrill (R-ME), in a similar fashion to Trumbull's, asked his fellow representatives: "As a matter of law, does anybody deny here or anywhere that the native born is a citizen, and a citizen by virtue of his birth alone?"¹³⁸ Senator Morrill further observed, "the grand principle both of nature and nations, both of law and politics, [is] that birth gives citizenship of itself."¹³⁹ He went on to observe that citizenship derives from birth's inherent force

132. CONG. GLOBE, 39th Cong., 1st Sess. 2891-92 (1866).

133. *See id.* at 2768 (highlighting Cowan's concern that the Chinese empire would seize control over California if children of Chinese heritage were granted birthright citizenship).

134. *See* CONG. GLOBE, 39th Cong., 1st Sess. 498 (1866).

135. *Id.*

136. *Id.*

137. *Id.* at 600.

138. *Id.* at 570.

139. *Id.*

and energy.¹⁴⁰ Thus, at the time of the passage of the Fourteenth Amendment, the floor debates strongly suggest Congress recognized that children born in the United States, even of parents who were not and could not be citizens, were themselves citizens by virtue of being born in the United States.

This conclusion was also consistent with the Civil Rights Act of 1886, which similarly addressed citizenship.¹⁴¹ At the time of the passage of the Fourteenth Amendment, Congress looked closely to the Civil Rights Act of 1886, which included a nearly identical citizenship provision.¹⁴² Thus, the Reconstruction Framers' interpretation of birthright citizenship can be discerned not only from their debates over the Fourteenth Amendment, but also from their discussions about the Civil Rights Act. As one scholar recently observed, "these debates establish two points fatal to the claims against birthright citizenship: first, that the drafters of the Reconstruction Amendments understood citizenship to be conferred automatically by birth;" and second, that all children born on U.S. soil were citizens, regardless of whether their parents "were aliens, citizens, or slaves brought illegally into the country."¹⁴³

Senator Trumbull, the sponsor of the Civil Rights Act, recognized this point.¹⁴⁴ He responded to a question regarding citizenship for children of Gypsies posed by Senator Cowan, an opponent of both diversity and immigrants,¹⁴⁵ by unequivocally stating that Gypsies too would be U.S. citizens by birth.¹⁴⁶ Senator Benjamin Wade (R-OH) said, "I have always believed that every person, of whatever race or color, who was born within the United States was a citizen."¹⁴⁷ The subsequent exchange sheds even more light on the issue. Evidently, Senator Wade observed, "[Senator Pitt (R-ME)] suggests to me, in an undertone, that persons may be born in the United States and yet not

140. *Id.*

141. See Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27 (1866) ("[A]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.").

142. See John Eastman & Ediberto Román, *Debate on Birthright Citizenship*, 6 FLA. INT'L U. L. REV. 293, 296 (2011) (discussing the similarities between the language of the Civil Rights Act of 1866 and the Fourteenth Amendment).

143. Wydra, *supra* note 1, at 5.

144. See CONG. GLOBE, 39th Cong., 1st Sess. 498 (1866).

145. See *id.* at 500 (statement of Sen. Cowan) (arguing that the granting of citizenship to the "barbarian races" of Asia or Africa will signal the end to republican government).

146. *Id.* at 498 (statement of Sen. Trumbull).

147. *Id.* at 2768.

be citizens of the United States. Most assuredly they would be citizens of the United States unless they went to another country and expatriated."¹⁴⁸

The legislative history leaves little question that Congress, when amending the Constitution to include the Fourteenth Amendment, intended *jus soli*, without condition, to be a means to obtain U.S. citizenship. Senator Fessenden (R-ME) asked, "[What if] a person is born here of parents from abroad temporarily in this county[?]"¹⁴⁹ Senator Wade responded by stating that the laws of citizenship should not be altered for the few instances when this would occur.¹⁵⁰ Specifically, he stated,

I know that is so in one instance, in the case of the children of foreign ministers who reside "near" the United States, in the diplomatic language. By a fiction of law such persons are not supposed to be residing here, and under that fiction of law their children would not be citizens of the United States, although born in Washington. I agree to that, but my answer to the suggestion is that that is a simple matter, for it could hardly be applicable to more than two or three or four persons; and it would be best not to alter the law for that case.¹⁵¹

The integration of the Chinese immigrants was the central citizenship issue of the day. Senator Conness (D-CA), representing California, the state that was most affected by Chinese immigration, argued that these children should be deemed citizens because all children born in the United States, of any parentage, should be considered U.S. citizens. He drafted the Fourteenth Amendment to unequivocally state that children born in the United States, even if they were children of those that were not citizens, were themselves citizens pursuant to *jus soli*, or birthright, citizenship.¹⁵²

President Andrew Johnson was historically known for his lack of compassion for immigrants and people of color. During this period, he opposed, and arguably feared, the consequences of birthright citizenship under the Civil Rights Act. Therefore, he vetoed the provision.¹⁵³ In Johnson's message informing Congress of his veto, he stated that a provision of the bill, which declared that everyone born in the United States and not subject to a foreign state was a U.S. citizen, would extend citizenship to African Americans, Asians, Gypsies and

148. *Id.* at 2769.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 498.

153. *Id.* at 6.

mulattoes.¹⁵⁴ President Johnson thus understood that the bill provided that “[e]very individual of those races, born in the United States, is by the bill made a citizen of the United States.”¹⁵⁵

Another significant piece of evidence, drafted at the time of the passage of the Fourteenth Amendment, sheds considerable light on Congress’s understanding of birthright citizenship during that era. In a letter to President Johnson, Senator Trumbull, the sponsor of the Civil Rights Act and advocate for the Fourteenth Amendment, stated that birthright citizenship is dependent on whether the parents of the children born in the United States were permanently living, or domiciled, in the United States.¹⁵⁶ The letter, therefore, indicates that citizenship by virtue of one’s birth in the territory of the United States was the generally accepted view when the Fourteenth Amendment was written and adopted.

Despite the strength and support for the arguments above, the legislative history of the Amendment is not free from other interpretations. For instance, opponents of birthright citizenship have looked to the same congressional record and have taken the position that the Fourteenth Amendment’s Citizenship Clause has two components: (1) being born in the United States; and (2) being subject to the laws of the United States.¹⁵⁷ They note that when Senator Trumbull was asked what the phrase “and subject to the jurisdiction thereof” meant, Trumbull responded: “That means ‘subject to the complete jurisdiction thereof.’”¹⁵⁸

According to one current opponent of birthright citizenship “complete jurisdiction thereof” means “[n]ot owing allegiance to anyone else. . . . Only U.S. citizens owe ‘complete allegiance’ to the United States. Everyone present in the United States is subject to its

154. *Id.* (quoting CONG. GLOBE, 39th Cong., 1st Sess. 1679 (1866)).

155. *Id.* (quoting CONG. GLOBE, 39th Cong., 1st Sess. 1679 (1866)).

156. Mark Shawhan, Comment, *The Significance of Domicile in Lyman Trumbull’s Conception of Citizenship*, 119 YALE L.J. 1351, 1351–52 (2011) (citing Letter from Sen. Lyman Trumbull, Chairman, Senate Judiciary Comm., to President Andrew Johnson, in *Andrew Johnson Papers*, Reel 45, Manuscript Div., Library of Congress, Washington D.C.); see CONG. GLOBE, 39th Cong., 1st Sess. 1679 (1866) (reading the President’s objections to birthright citizenship on the floor).

157. Eastman & Román, *supra* note 142, at 296.

158. See John Pullman, *What Did the 14th Amendment Congress Think About “Birthright Citizenship”?*, LIBR. L. & LIBERTY (Aug. 21, 2015), <http://www.libertylawsite.org/2015/08/21/what-did-the-14th-amendment-congress-think-about-birthright-citizenship> (quoting CONG. GLOBE, 39th Cong., 1st Sess. 2893 (1866)).

laws (and hence its 'jurisdiction' in a general sense)."¹⁵⁹ According to other opponents, Senator Howard evidently agreed with Trumbull's explanation: "I concur entirely . . . that the word 'jurisdiction' . . . ought to be construed so as to imply a full and complete jurisdiction on the part of the United States."¹⁶⁰

Despite birthright citizenship's 150-year-old practice, and the U.S. Supreme Court's acknowledgement of that right, the attack against U.S. birthright citizenship is alive and well.¹⁶¹ For instance, Former Chapman Law School Dean John Eastman, argues that "[t]he question of whether birthright citizenship should be abolished is based on the faulty premise that our Constitution actually mandates it."¹⁶² According to Eastman, arguing that being born in the United States confers citizenship

[s]imply does not comport with either the text or the history surrounding adoption of the Citizenship Clause, nor with the political theory underlying the Clause. Textually, such an interpretation would render the entire "subject to the jurisdiction" clause redundant—anyone who is "born" in the United States is, under this interpretation, necessarily "subject to the jurisdiction" of the United States—and it is a well-established doctrine of legal interpretation that legal texts, including the Constitution, are not to be interpreted to create redundancy unless any other interpretation would lead to absurd results.¹⁶³

Another aspect of the anti-birthright citizenship position is the argument that citizenship necessarily contains an allegiance

159. *Id.*

160. *Id.*

161. See, e.g., Eisgruber, *supra* note 119, at 55 (discussing how politicians have criticized the Fourteenth Amendment and have recently held hearings on further amendments); Monica Diaz Greene, Note, *Birthright Citizenship: Should the Right Continue?*, 9 J. L. & FAM. STUD. 159, 163–69 (2007) (arguing that the United States should join other nations and limit birthright citizenship); Justin Lollman, Note, *The Significance of Parental Domicile Under the Citizenship Clause*, 101 VA. L. REV. 455, 488 (2015) (concluding that automatic birthright citizenship is too inclusive after analyzing the policy advantages of a parental residency requirement).

162. John Eastman, *Birthright Citizenship Is Not Actually in the Constitution*, N.Y. TIMES (Dec. 22, 2015, 11:59 AM), <http://www.nytimes.com/roomfordebate/2015/08/24/should-birthright-citizenship-be-abolished/birthright-citizenship-is-not-actually-in-the-constitution>.

163. John C. Eastman, *Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11*, 42 U. RICH. L. REV. 955, 959 (2008).

component.¹⁶⁴ These opponents refer to mentions of allegiance in the legislative history of the Fourteenth Amendment.¹⁶⁵ Yet, that same legislative history also demonstrates that birthright and allegiance are not inconsistent concepts “because a person ‘owes allegiance to the country of his birth, and that country owes him protection.’”¹⁶⁶

Mark Pullman, the editor of the Law and Liberty blog, rejects the evidence that supports birthright citizenship.¹⁶⁷ Pullman argues that interpreting the Constitution as conferring birthright citizenship is erroneous, despite the contrary evidence.¹⁶⁸ He characterizes the issue as whether U.S.-born children automatically gain citizenship, even if their parents are non-citizens who illegally entered the United States.¹⁶⁹ In answer to this, Pullman argues that, while current law supports “birthright citizenship,” neither the Constitution nor the U.S. Supreme Court mandates this.¹⁷⁰

Pullman is not alone in his opinion; Peter Schuck and Rogers Smith have made the same argument.¹⁷¹ Among their criticisms, Schuck and Smith argue that the Fourteenth Amendment has two requirements: (1) being born in the United States and (2) being subject to the jurisdiction of the United States.¹⁷² They attack the wisdom of the concept of birthright citizenship, arguing that *jus soli* is a vestige feudal belief linked to arcane medieval thinking.¹⁷³ Influential conservative federal Judge Richard Posner has called the current practice of birthright citizenship an “anomal[y]” that Congress “should rethink”

164. See James C. Ho, *Birthright Citizenship, the Fourteenth Amendment, and the Texas Legislature*, 12 TEX. REV. L. & POL. 161, 163 (2007) (arguing that it is unreasonable to interpret “subject to jurisdiction” as meaning allegiance).

165. See *id.* at 163–64 (asserting that Congress agreed that the amendment would guarantee citizenship to people who did not owe allegiance to the United States, and that they only debated the soundness of that policy).

166. See Wydra, *supra* note 1, at 10 (quoting CONG. GLOBE, 39th Cong., 1st Sess. 570 (1866)).

167. See Pullman, *supra* note 158.

168. *Id.*

169. *Id.*

170. *Id.*

171. See generally PETER H. SCHUCK & ROGER M. SMITH, *CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY* 76 (1985).

172. *Id.* (“The jurisdiction requirement[] . . . clearly suggests that it was meant to narrow the scope of the birthright citizenship principle . . .”).

173. *Id.* at 2 (“[B]irthright citizenship originated as a distinctively feudal status intimately linked to medieval notions of sovereignty, legal personality, and allegiance.”).

because it “makes no sense.”¹⁷⁴ Judge Posner went on to state: “We should not be encouraging foreigners to come to the United States solely to enable them to confer U.S. citizenship on their future children.”¹⁷⁵ Moreover, Posner even went as far as to state he “doubt[ed]” whether a constitutional amendment was necessary to change the current practice of birthright citizenship.¹⁷⁶

The two-part disjunctive test proposed by Shuck, Smith, and Eastman appears to carry considerable weight; however, as the lead author here noted when he debated Eastman on the very subject, Eastman and his allies simply fail to focus on the entirety of the legislative history of the Fourteenth Amendment.¹⁷⁷ If they had done so, perhaps they would have had to struggle with the fact that the debate, with respect to the “subject to” language in the Citizenship Clause, merely confirmed a legal fiction then (and still) in existence concerning indigenous people as being subject to another jurisdiction—their own.¹⁷⁸ As one commentator recently noted:

Some scholars have more recently criticized this territorial view for interpreting “subject to the jurisdiction” more narrowly than the historical record would justify. These revisionist commentators point out that, in Fourteenth Amendment debates, key Republican legislators argued that, for citizenship purposes, an individual had to be subject to the “full and complete jurisdiction,” of the United States, to the “same . . . extent and quality as applies to every citizen,” while “[n]ot owing allegiance to anybody else.” They read such statements as distinguishing between mere “territorial” jurisdiction (applicable to everyone) and the more “complete, political jurisdiction” over an individual that flows from the individual’s “allegiance to the sovereign.”

* * *

Yet this understanding, while based in significant part on statements made by Senator Trumbull, is inconsistent with Trumbull’s actual emphasis on domicile rather than consent as the determinant of birthright citizenship.¹⁷⁹

What the opponents of birthright citizenship fail to recognize is the “subject to” language in question was part of the legislative history

174. *Oforji v. Ashcroft*, 354 F.3d 609, 619–21 (7th Cir. 2003) (Posner, J., concurring).

175. *Id.* at 621.

176. *Id.*

177. See Eastman & Román, *supra* note 142, at 299–301 (providing an in-depth analysis of various parts of the legislative history of the Fourteenth Amendment).

178. *Id.* at 301.

179. Shawhan, *supra* note 156, at 1355–57.

because certain legislative leaders were “seeking to confirm the fiction associated with the treatment of indigenous people would still be in place after the passage of the Fourteenth Amendment; the fiction of a sovereign within a sovereign, which created an illogical and even absurd paradox.”¹⁸⁰ The congressional debate concerning the “subject to” language was accordingly merely an “effort to be consistent with an already recognized exception to the Fourteenth Amendment”—namely the exclusion of indigenous people.¹⁸¹ A letter from Senator Trumbull to President Andrew Jackson sheds light on the very question of the meaning of the “subject to” language. Senator Trumbull noted that the language was addressing the very legal fiction mentioned above: “Untaxed Indians” refers to the Indians who belong to their own government and who are not under the U.S. government’s jurisdiction.¹⁸²

The legislative history of the Fourteenth Amendment confirms that the “subject to” language was not creating a new rule or interpretation on the citizenship status of persons born in the United States. The Fourteenth Amendment should be viewed to have codified the centuries-old common law doctrine of *jus soli*.¹⁸³ And much like the interpretation of the Civil Rights Act of 1886 and the Fourteenth Amendment itself, the exceptions to the doctrine were the same, focusing on native peoples, foreign diplomats, and foreign combatants.¹⁸⁴ The congressional debate concerning the “subject to” language was merely lawmakers’ effort to continue to make exceptions to the Fourteenth Amendment, including the exclusion of Native Americans.¹⁸⁵

Perhaps the most relevant statement relating to the “subject to” language came from Senator Jacob Howard, a sponsor of the Fourteenth Amendment. His statement confirmed that the “subject to” language was referring to indigenous people and whether they were under complete authority of the United States.¹⁸⁶ Senator Howard remarked that “jurisdiction” should be understood to encompass complete jurisdiction, and that the government does not

180. Eastman & Román, *supra* note 142, at 301.

181. *Id.*

182. CONG. GLOBE, 39th Cong., 1st Sess. 572 (1866) (statement of Sen. Trumbull). Thus, tribal Indians living in U.S. territory were nonetheless formally not domiciled in the United States.

183. Eastman & Román, *supra* note 142, at 301.

184. See Civil Rights Act of 1866, ch. 31, § 1 14 Stat. 27.

185. Eastman & Román, *supra* note 142, at 301.

186. See CONG. GLOBE, 39th Cong., 1st Sess. 2895 (1866) (statement of Sen. Howard) (directing discussions about “subject to the jurisdiction” on the premise that Indians were not under the complete authority of the United States).

have the authority to prosecute Indians who are members of tribes.¹⁸⁷ Howard was thus referring to U.S. control over native peoples who had allegiance to their own lands, treating Native peoples much like diplomats, who were subject to the laws of another sovereign.¹⁸⁸

Congress at the time was not at all questioning an allegiance or a domicile issue. Senator Howard and others who addressed the issue were merely questioning the United States' authority over the recently colonized native peoples in the United States, and the legal fiction of dual sovereignty associated with that relationship. Thus, as one recent work on the subject noted, the debates raised two points fatal to opposition against birthright citizenship: "first, that the drafters of the Reconstruction Amendments understood citizenship to be conferred automatically by birth, and second, that any child born on U.S. soil was a citizen" regardless of his or her parents' place of birth.¹⁸⁹ Professor John Yoo recently came to the same conclusion, noting:

"[S]ubject to the jurisdiction thereof" refers to certain discrete categories of people excluded from citizenship, even though they might be born on U.S. territory. These include the children of diplomats and enemy soldiers at war who are occupying territory. These individuals could be on U.S. territory, but are not subject to U.S. law. A third and obvious category was American Indians. At the time of the 14th Amendment, American Indians were still considered semi-sovereigns who governed themselves with their own laws and made treaties with the United States. But "subject to the jurisdiction thereof" did not grant Congress the power to pick and choose among different ethnic and national groups for citizenship. Instead, the phrase recognized a few narrow exceptions to the general principle of birthright citizenship that has prevailed throughout American history.¹⁹⁰

Likewise, Shuck and Smith's "subject to" two-part test for citizenship was recently brilliantly refuted by Professor Bernadette Meyler's analysis when she aptly observed:

Throughout *Citizenship Without Consent*, the authors emphasize that consent must not be one-sided. The problems arising from this necessity for a mutual consent in the case of expatriation suggest a more general difficulty with their theory. At several points, the

187. *Id.*

188. *See id.*

189. Wydra, *supra* note 1, at 5.

190. John Yoo, *On Citizenship, the "Birthers" Are Right: Constitutional Law, Tradition, and Fairness All Argue in Favor of Birthright Citizenship*, NAT'L REV. (Aug. 22, 2015, 4:00 AM), <http://www.nationalreview.com/article/422914/citizenship-birthers-are-right-john-yoo>.

authors raise the specter of unlimited expatriation, both as an incentive towards ensuring more mutual consent and as a possible drawback of their own position. This unlimited expatriation could occur only if the consent of the sovereign body—which could be destroyed through such emigration—were not required. Thus, despite their emphasis upon the symmetrical relation of political body and citizen and their insistence that consensual principles should govern both joining and detaching from a nation, Schuck and Smith cannot avoid both prioritizing the moment of entry into the polity over that of exit, and the consent of the individual over that of the state. Acknowledging that a pure principle of mutual consent would allow the United States to evict its members at will would demonstrate the arbitrary exercise of power that actually is entailed in the concept of the state's consent—a type of tyranny resembling the absolute power of the King that [, in *Calvin's Case*, Justice] Coke himself had sought to deny. Indeed, the consent of the prince, as envisioned by Webster, could be withheld at the sovereign's whim, thereby annihilating the will of the individual who wished to depart.¹⁹¹

Accordingly, it seems fairly straightforward that the “subject to” language of the Fourteenth Amendment was addressing the authority over certain peoples, not allegiance of certain people, as conservative anti-birthright citizenship scholars now suggest. Thus, the arguments brought by Eastman, Pullman, and others who cite the congressional debate concerning the “subject to” language for support and argue that Congress was worried about those who did not owe allegiance to the United States are simply misplaced.¹⁹²

III. REASON FOR CONCERN

For those that still doubt that what has happened in the Dominican Republic could occur in the United States, they need only look to this country's history to recall that the issue is not whether such things like mass roundups and mass deportations can happen; the fact of the matter is that they have already happened in the United States with devastating effects.

191. Meyler, *supra* note 70, at 550–51.

192. See *supra* notes 151, 163 and accompanying text. For a similar anti-birthright citizenship argument, see Lino A. Graglia, *Birthright Citizenship for Children of Illegal Aliens: An Irrational Public Policy*, 14 TEX. REV. L. & POL. 1, 7–8 (2009), which claims that the drafters of the Fourteenth Amendment did not believe a clause specifically excluding Indians was necessary because “subject to the jurisdiction thereof” already excluded those who owe allegiance to other nations.

During the 1990s, Dominican authorities went beyond the scope of the intent of their immigration laws.¹⁹³ Dominican officials rounded up individuals between the ages of sixteen and sixty who looked Haitian.¹⁹⁴ This effort is eerily similar to the United States xenophobic efforts of the 1930s–1950s, during both the “Mexican Repatriation” and “Operation Wetback.”¹⁹⁵ In the United States, like in the Dominican Republic today, the basis for our roundups and eventual deportations were that the individuals looked foreign, or something other than American—i.e., Mexican.¹⁹⁶ Targeted minorities in the Dominican Republic now face what was previously chronicled concerning the United States.

Operation Wetback began in the mid-1950s, and was purportedly established to “monitor the presence of Mexicans in the United States and deport any Mexican who resided unlawfully in the United States.”¹⁹⁷ This program occurred during a period of heightened fear of non-citizens by specifically targeting individuals of Mexican descent.

193. See AM. WATCH & NAT’L COALITION FOR HAITIAN REFUGEES, A TROUBLED YEAR: HAITIANS IN THE DOMINICAN REPUBLIC 8 (Oct. 1992), <http://ufdc.ufl.edu/AA00000872/00001> (discussing how undocumented Haitians, Dominico-Haitians, and “Dominican-born children of Haitian origin who are entitled under Dominican law to Dominican citizenship” were deported from the Dominican Republic).

194. *Id.*

195. See THOSE DAMNED IMMIGRANTS, *supra* note 14, at 120 (describing how Mexican Americans were the victims of invidious discrimination during the “Mexican Repatriation” and “Operation Wetback”). Mexican Repatriation was a series of raids and deportations by federal, state, and local governments, in which about one million Mexicans were forcibly removed. *Id.* Operation Wetback was a mass deportation policy instituted by President Eisenhower. Eyder Peralta, *It Came Up in the Debate: Here Are 3 Things to Know About “Operation Wetback,”* NPR (Nov. 11, 2015, 3:54 PM), <http://www.npr.org/sections/thetwo-way/2015/11/11/455613993/it-came-up-in-the-debate-here-are-3-things-to-know-about-operation-wetback>.

196. See THOSE DAMNED IMMIGRANTS, *supra* note 14, at 120.

197. *Id.* at 119; see also Mae M. Ngai, *The Strange Career of the Illegal Alien: Immigration Restriction and Deportation Policy in the United States, 1921–1965*, 21 L. & HIST. REV. 69, 75–76 (2003) (“Quotas were allocated to countries in proportion to the numbers that the American people traced their ‘national origin’ to those countries . . .”). It should be noted that data on apprehensions and deportations do not represent all unlawful entries and are further skewed by policy decisions to police certain areas or populations and not others. On methodologies employed, see INS, 1998 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 241 (1998); BARRY EDMONSTON ET. AL, UNDOCUMENTED MIGRATION TO THE UNITED STATES: IRCA AND THE EXPERIENCE OF THE 1980S 16–18, 27 (1990), which states that the amount of illegal immigrants in the United States was greatly overstated by the media and politicians, and that empirical studies found that the actual number was millions less than reported.

Throughout this massive campaign, the U.S. government deported over one million Mexican immigrants, U.S. citizens of Mexican ancestry, and undoubtedly other Hispanic U.S. citizens.¹⁹⁸

During Operation Wetback, the United States treated individuals of Mexican ancestry similar to the way it treated Mexican Americans a couple of decades earlier during the repatriation of the 1930s.¹⁹⁹ It is estimated that one million immigrants and non-immigrants were deported throughout the 1930s.²⁰⁰ Scholars have pointed out, however, that it was not a repatriation because sixty percent of the people of Mexican descent who were deported were United States

198. See JUAN RAMON GARCÍA, *OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954*, 40, 169, 230–31 (1980) (“There were nearly 856,000 recorded expulsion cases in the last half of the 1940s as against a little over 57,000 in the first half of that decade.”); JULIAN SAMORA & PATRICIA VANDEL SIMON, *A HISTORY OF THE MEXICAN-AMERICAN PEOPLE* 136–37 (1977) (describing how over four hundred thousand Mexicans were deported in the years after the great depression worsened).

199. See generally LINDA B. HALL & DON M. COERVER, *REVOLUTION ON THE BORDER: THE UNITED STATES AND MEXICO, 1910–1920* 140 (1988) (“In the Texas of this period, even native-born persons of Mexican culture were not really thought of as ‘Americans,’ much less citizens.”); Oscar J. Martinez, *Filibustering and Racism in the Borderlands*, in *U.S.-MEXICO BORDERLANDS: HISTORICAL AND CONTEMPORARY PERSPECTIVES* 46, 48 (1996) (“Mexican Americans were subjected to continuous harassment, miscarriages of justice, land invasions, swindles, thefts, rapes, murders, and lynchings.”); ANDRÉS RESÉNDEZ, *CHANGING NATIONAL IDENTITIES AT THE FRONTIER: TEXAS AND NEW MEXICO, 1800–1850* (2004); RACHEL ST. JOHN, *LINE IN THE SAND: A HISTORY OF THE WESTERN U.S.-MEXICO BORDER* 191 (2005) (“Throughout the early 1930s immigration officials . . . conducted immigration sweeps that rounded up undocumented immigrants and spread fear through ethnic Mexican communities.”); Alexandra Minna Stern, *Nationalism on the Line: Masculinity, Race, and the Creation of the U.S. Border Patrol*, in *CONTINENTAL CROSSROADS: REMAPPING US-MEXICO BORDERLANDS HISTORY* 299, 318 (2004) (explaining how the border patrol was perceived as the “benevolent protector of the body politic,” which led to the Mexican repatriation in the 1930s and “Operation Wetback,” where deportation became associated with anticommunism); Jeremy Adelman & Stephen Aron, *From Borderlands to Borders: Empires, Nation-States, and the Peoples in Between in North American History*, 104 *AM. HIST. REV.* 814 (1999) (providing an analysis regarding the difficulty of integrating cultures); Ramón Gutiérrez & Elliott Young, *Transnationalizing Borderlands History*, 41 *WESTERN HIST. Q.* 27, 42 (2010) (associating Mexicans with disease and dirt assisted in the mass repatriations of Mexicans).

200. See FRANCISCO E. BALDERRAMA & RAYMOND RODRÍGUEZ, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930S* 151 (2006) (noting that one million was a conservative estimate).

citizens. Many of these citizens were children who were effectively forced to leave when their parents were deported.²⁰¹

Professor Michael Olivas provides insight on how Los Angeles was targeted during the Repatriation:

Los Angeles was targeted for mass deportations for persons with Spanish-sounding names or Mexican features who could not produce formal papers, and over 80,000 Mexicans were deported from 1929–1935. Many of these persons had the legal right to be in the country, or had been born citizens but simply could not prove their status In addition, over one-half million Mexicans were also “voluntary” repatriated, by choosing to go to Mexico rather than remain in the United States, possibly subject to formal deportation.²⁰²

Thus, the treatment of the Mexican American community in the United States was much like what is occurring today in the Dominican Republic. Operation Wetback placed “the burden of proving citizenship . . . totally upon people of Mexican descent.”²⁰³ Like the Dominican Republic deported those without proper documentation to Haiti, individuals unable to present proof of U.S. citizenship were arrested and deported to Mexico.²⁰⁴

Ultimately, Operation Wetback did not solve the immigration problem in the United States, but what it did was deport approximately one million individuals, many of whom were legal residents or U.S. citizens.²⁰⁵ Further, Operation Wetback did nothing but highlight this country’s failed effort to rid itself of a much-needed labor force.

At present, if the Republican anti-immigrant leadership has its way, the criticism of human rights violations against immigrants and citizens will not be limited to the recent calls to end the Dominican Republic’s draconian constitutional measures that have left hundreds of thousands stateless. Indeed, while running for office, President Trump stated that he had a solution for our country’s so-called

201. THOSE DAMNED IMMIGRANTS, *supra* note 14, at 118 (citing Kevin R. Johnson, *The Forgotten “Repatriation” of Persons of Mexican Ancestry and lessons for the “War on Terror,”* 26 PACE L. REV. 1, 4 (2005)).

202. Michael A. Olivas, *The Chronicles, My Grandfather’s Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425, 437–38 (1990).

203. THOSE DAMNED IMMIGRANTS, *supra* note 14, at 120 (citing EDIBERTO ROMÁN, CITIZENSHIP AND ITS EXCLUSIONS: A CLASSICAL, CONSTITUTIONAL, AND CRITICAL RACE CRITIQUE 136 (2010)).

204. *Id.*

205. See *supra* notes 198–200 and accompanying text.

immigration problem: the reinstatement of what he calls “the Eisenhower Plan.”²⁰⁶—Trump’s term for Operation Wetback.²⁰⁷

As recently observed by an NBC opinion piece:

Although Trump glibly describes “Operation Wetback” as moving undocumented immigrants “waaay south,” this program was at best inhumane and at worst horrific. Back then, the government rounded up suspected undocumented immigrants and sent them deep into the Mexican interior, where they were abandoned with next to nothing. The transports across the border were reportedly “indescribable scenes of human misery and tragedy.” In one instance, [eighty-eight] deportees died from heat stroke in the desert. Other deportees were sent to the Mexican Gulf Coast by ship, in vessels described by historians as an “eighteenth century slave ship” or “penal hell ship.” As Rolling Stone Magazine noted, “nearly a million human beings were terrorized by our government and treated with less dignity than farm animals.”²⁰⁸

If Trump had his way and birthright citizenship ended in the United States, millions would face statelessness. Further, the millions of stateless people would create a humanitarian crisis. While analyzing Trump’s plan, *Mother Jones* described the humanitarian crises of other stateless people:

Around the world... some 10 million people are stateless, according to the UN High Commissioner for Refugees. They lack citizenship in the country where they were born, and they have nowhere to go where they can receive legal status. Stateless individuals cannot participate in any political process anywhere. They’re often subject to arbitrary detention. They have limited access to health care and education. They are especially vulnerable to crime and have little legal recourse if they are victimized. They

206. See Roque Planas, *Donald Trump Wants to Relive “Operation Wetback,”* HUFFINGTON POST (Sept. 29, 2015, 3:31 PM), http://www.huffingtonpost.com/entry/donald-trump-operation-wetback_us_560ad09ae4b0768126ff58d7. According to Professor of Law and civil rights specialist Gilbert Paul Carrasco, “Operation Wetback” violated the civil liberties and human rights of American citizens through questionable deportations characterized by rudeness, intimidation, disrespect, and extortion. *Id.*; see also Phillip Bump, *Donald Trump Endorsed “Operation Wetback,” but Not by Name*, WASH. POST (Nov. 11, 2015), https://www.washingtonpost.com/news/the-fix/wp/2015/11/11/donald-trump-endorsed-operation-wetback-but-not-by-name/?utm_term=.80c4496ce280; Michael Tomasky, *Trump’s “Operation Wetback” Delusion*, DAILY BEAST (Nov. 11, 2015, 3:15 PM), <http://www.thedailybeast.com/articles/2015/11/11/trump-s-operation-wetback-delusion.html>.

207. See Planas, *supra* note 206.

208. Raul A. Reyes, *Opinion: Sorry Trump, “Operation Wetback” was a National Disgrace*, NBC NEWS (Nov. 11, 2015, 2:20 PM), <http://www.nbcnews.com/news/latino/opinion-sorry-trump-operation-wetback-was-national-disgrace-n461586>.

have no economic rights and few job prospects. In extreme cases, as with the Rohingya Muslims of Burma, and the Hill Tribe population of Thailand, they're exposed to increased rates of human trafficking. . . . If Trump and other Republicans got their way, the number of stateless people born in the United States would skyrocket. Birthright citizenship is the "most important safeguard that any country can have against statelessness"²⁰⁹

IV. CURRENT ANTI-IMMIGRANT NARRATIVES MATTER

Both the recent Dominican Republic and not-so-recent United States examples demonstrate that anti-immigrant rhetoric, fueled by ignorance and hate, can lead to horrific consequences. It is for this reason that this cautionary tale is set forth here—to remind readers that anti-immigrant rhetoric has demonized citizen minority groups in the past and may very well do so in the future. In the Dominican Republic, the tragic consequences stem from the mass retroactive denaturalization that has resulted in hundreds of thousands of former citizens of Haitian descent becoming stateless overnight.²¹⁰ The United States has similarly attacked largely voiceless minorities that resulted in the persecution and deportation of up to one million persons, the majority of whom were U.S. citizens and legal permanent residents.²¹¹ If leading Republican figures have their way, the United States may very well be on the verge of following the sad and unprincipled historical example of the Dominican Republic.

The appeal and ease with which individuals like President Trump can garner support with xenophobic statements also comes with real, and often shameful, consequences. As this country's history has demonstrated time and time again, the first step in the persecution of a minority, especially an unknown or disliked one, is to solidify that target group as an "Other" within a society. The Third Reich, for instance, was tragically and horrifically successful at propagating hate, thereby making it easy for the enactment of laws targeting German

209. Bryan Schatz, *This Is What Would Happen if We Repealed Birthright Citizenship*, MOTHER JONES (Aug. 26, 2015, 6:00 AM), <http://www.motherjones.com/politics/2015/08/donald-trump-immigration-birthright-citizenship> (asserting that Trump's proposal could lead to a humanitarian crisis affecting hundreds of thousands, if not millions, of innocents).

210. See Ricardo Rojas, *Dominican Court Ruling Renders Hundreds of Thousands Stateless*, REUTERS (Oct. 12, 2013, 10:43 AM), <http://www.reuters.com/article/us-dominicanrepublic-citizenship-idUSBRE99B01Z20131012>.

211. See Kevin R. Johnson, *The Forgotten "Repatriation" of Persons of Mexican Ancestry and Lessons for the "War on Terror"*, 26 PACE L. REV. 1, 4–5 (2005).

Jews, among others, and eventually leading to genocide.²¹² More recently, Serbian leaders used similar xenophobic nationalistic fervor to promote hate, sounding eerily similar to Trump's rants over immigrants, citizen children of immigrants, Muslims, and the Chinese.²¹³ The Serbian leaders' rhetoric promoted hate that consequently led to a transition from hateful language to practices aimed at persecuting the subjects of that hate—Muslims—which resulted in mass murders.²¹⁴ Closer to home, critical race theorist Cheryl Harris observed that the social construction of blacks in opposition to whites in the United States was a necessary step in justifying and enabling slavery.²¹⁵ Likewise, both history and immigration scholars have warned that the use of labels, markers, or other indicators to isolate, demonize, or scapegoat a group can, and often does, have devastating effects.²¹⁶ Such actions, typically starting only with hateful words, can foster and feed the creation of explicit bias, as well as lead to the unconscious phenomenon of implicit bias.²¹⁷

V. THE CREATION OF THE OUTSIDER

The fields of law, history, social psychology, and anthropology highlight that the creation of an "other," or "outsider," facilitates both explicit and implicit bias. Attitudes or beliefs that one endorses at a

212. See Nicholas O'Shaughnessy, *How Hitler Conquered Germany*, SLATE (Mar. 14, 2017, 11:59 AM), http://www.slate.com/articles/news_and_politics/fascism/2017/03/how_nazi_propaganda_encouraged_the_masses_to_co_produce_a_false_reality.html ("Propaganda was the operational method of the Third Reich.").

213. See Tim Marshall, *Racism has yet to Be Understood in Serbia*, SKY NEWS (Oct. 17, 2012, 1:43 PM), <http://news.sky.com/story/racism-has-yet-to-be-understood-in-serbia-10466925> (asserting that Serbia is one of the most nationalistic countries in Europe and exhibits much xenophobia).

214. See Thomas Escritt, *Bosnian Serb Leader Blames Muslims for "Preparing for War,"* REUTERS (Dec. 9, 2016), <http://www.reuters.com/article/us-warcrimes-bosnia-idUSKBN13Y15S> (recounting that a Serbian leader led his forces to murder about 8000 male Muslims due to his belief that there can be no peace between the Islam and non-Islamic social and political institutions).

215. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1717 (1993) (explaining how typical social relations created a stigma that even though not all African Americans were slaves, no slaves were white; this resulted in official rules that made being black a "sufficient justification for enslavability").

216. See Lisette Partelow, *The Ubiquitous Nature of Implicit Bias*, U.S. NEWS (Oct. 19, 2016, 3:00 PM), <https://www.usnews.com/opinion/knowledge-bank/articles/2016-10-19/dangerous-to-deny-implicit-bias-and-its-consequences-for-people-of-color> (discussing the social consequences and impact of implicit bias).

217. See *id.*

conscious level are considered explicit bias.²¹⁸ Beliefs that are automatic or occur at an unconscious level are considered implicit bias.²¹⁹ Accordingly, explicit bias is conscious behavior that we are aware of and can control.²²⁰

In terms of the relationship between implicit and explicit bias, there is no definitive answer to the issue of which type of bias precedes the development of the other.²²¹ At least one study has found that the long-term exposure to stereotypes can affect or create implicit bias, and that implicit bias in turn can become the basis for explicit bias.²²² In that study, the researcher found “[l]ong-term exposure to local television news, wherein African Americans are depicted stereotypically as criminals, predicted implicit attitudes. Thus, heavy viewers show more negative automatic affective reactions toward African Americans. Implicit attitudes, in turn, were used as a basis for explicit attitudes.”²²³ However, there is reason to believe that explicit attitudes may eventually become implicit attitudes and that the two biases may develop at similar stages.²²⁴

In either case, promoting hate fosters and encourages creating both explicit and implicit bias against targeted groups. Performing hateful acts creates an environment in which showing overt or explicit bias against the target of the bias is viewed as both safe and appropriate. This perhaps helps explain the fervor and ferocity with which Trump supporters act against protestors at Trump rallies, in what has now become a common media occurrence at such rallies.²²⁵

218. Thomas DeMichelle, *Understanding Explicit Bias and Implicit Bias*, FACT/MYTH (Nov. 18, 2016), <http://factmyth.com/understanding-explicit-bias-and-implicit-bias>.

219. *Id.*

220. *Id.*

221. See Zoe Koch, *Understanding the Relationship Between Implicit and Explicit Bias and Racial Stereotypes*, PREZI (Nov. 13, 2012), <https://prezi.com/ry0ayhp9ypm1/understanding-the-relationship-between-implicit-and-explicit-bias-and-racial-stereotypes>.

222. Florian Arendt & Temple Northup, *Effects of Long-Term Exposure to News Stereotypes on Implicit and Explicit Attitudes*, 9 INT’L J. COMM. 2370, 2379 (2015), <http://ijoc.org/index.php/ijoc/article/viewFile/2691/1325>.

223. *Id.*

224. *Id.*

225. See John Culhane, *Did Trump Intentionally Incite Violence at a Campaign Rally?*, SLATE (Apr. 6, 2017, 4:50 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/04/a_case_against_trump_for_inciting_violence_goes_to_trial.html (reporting on a pending lawsuit against President Trump after he responded to protestors at a campaign rally by yelling, “Get ‘em outta here!” inciting at least three rally attendees to push and shove protestors); see also Ben Mathis-Lilley, *A Continually Growing List of Violent Incidents at Trump Events*, SLATE (Apr. 25, 2016, 11:45 AM),

Bias is not a recent phenomenon, yet it has significant consequences. Indeed, society tends to rationalize laws that have devastating impacts on others because society ultimately concludes that its decisions, which are reflected in policies and laws, are overall for the good of society. In his groundbreaking work entitled *Stigma: Notes on the Management of Spoiled Identity*, Erving Goffman observed that “[s]ociety establishes the means of categorizing persons and the complement of attributes felt to be ordinary and natural for members of each of these categories.”²²⁶ He also noted that, when we encounter strangers, their first appearances allow us to place them in categories and anticipate their attributes. According to Goffman, we do not consciously acknowledge these initial assumptions until an “active question” arises as to whether the assumptions will be fulfilled.²²⁷

As legal theorist Margaret Russell aptly noted, the power of stigma is its ability to project stereotypes and biases as essential “truths.”²²⁸ Russell’s work is relevant to today’s anti-birthright/anti-immigrant lobby, and her work explains how it has been so easy for demagogues like President Trump to make baseless assertions, such as his campaign accusation about Mexican rapists crossing our borders²²⁹ and the mass influx of undocumented pregnant mothers crossing those same borders in order to take advantage of this country and its people.²³⁰ The effective treatment of immigrants and U.S.-born children of those immigrants as “others,” which occurred throughout the twentieth

http://www.slate.com/blogs/the_slate/2016/03/02/a_list_of_violent_incidents_at_donald_trump_rallies_and_events.html; Ben Schreckinger, *Trump Cracks Down on Protesters*, POLITICO (Mar. 8, 2016, 11:50 AM), <http://www.politico.com/story/2016/03/donald-trump-rally-protester-crack-down-220407>.

226. ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 2 (1986).

227. *Id.*

228. Margaret M. Russell, *Race and the Dominant Gaze: Narratives of Law and Inequality in Popular Film*, 15 *LEGAL STUD. F.* 243, 244 (1991).

229. See Jake Miller, *Donald Trump Defends Calling Mexican Immigrants “Rapists,”* CBS NEWS (July 2, 2015, 3:07 PM), <http://www.cbsnews.com/news/election-2016-donald-trump-defends-calling-mexican-immigrants-rapists> (“When Mexico sends its people, they’re not sending their best They’re sending people that have lots of problems . . . they’re bringing drugs, they’re bringing crime. They’re rapists.”).

230. See Aaron Klein, *Donald Trump: No More Anchor Babies!*, WORLD NET DAILY (Aug. 3, 2015, 8:50 PM), <http://www.wnd.com/2015/08/donald-trump-no-more-anchor-babies> (explaining Trump’s theory that undocumented pregnant mothers travel to the U.S. to give birth so that their babies will be born U.S. citizens and thus eligible for all of the benefits that accompany U.S. citizenship).

century,²³¹ is a prime example of the power of stigma and how it effectively creates easy targets in both social and legal settings.

In addition to sociological theories, psychological constructs are useful tools for analyzing the legal implications of the rhetoric and scapegoating. One such example is transference, the construct in which feelings about one person are refocused to another.²³² Transference, as Dean Kevin Johnson explains, "ordinarily occurs unconsciously in the individual."²³³ He argues that, as a result of transference, rather than attack *citizens* of color, the general public attacks *non-citizens* of color.²³⁴ As non-citizens, the general public can assert that the attacks are based on non-racial "neutral factors," which energize the general public's restrictionist goals.²³⁵ Thus, Dean Johnson argues that these "attacks amount to transference of frustration from domestic minorities to immigrants of color."²³⁶

Dean Johnson also highlighted the psychological construct of displacement. He argued that this helps explain the ease with which those in a society can attack others that are perceived to be outside the accepted groups in that society.²³⁷ He stated, "[d]isplacement' is a defense mechanism in which a drive or feeling is shifted upon a substitute object, one that is psychologically more available."²³⁸ Further, he emphasized that "aggressive impulses may be displaced, as in 'scapegoating,' upon people (or even inanimate objects) who are not sources of frustration but are safer to attack."²³⁹ These examples

231. See THOSE DAMNED IMMIGRANTS, *supra* note 14, at 131-40 (discussing the pattern of stigmatization from political and social leaders that immigrants faced during the twentieth century).

232. Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111, 1154-55 (1998) (internal quotations omitted).

233. *Id.* at 1155.

234. *Id.* at 1154-55.

235. *Id.*

236. *Id.*

237. *Id.* at 1155.

238. *Id.*

239. *Id.* To bolster his point, Dean Johnson also pointed to psychological studies that show how displaced frustration may unconsciously result in the development of racial prejudice. He stated,

[O]ne famous study of displaced aggression found that negative attitudes toward persons of Japanese and Mexican ancestry increased after a tedious testing session that caused children to miss a trip to the movies. Animosity was displaced from the test-givers, immune from attack because of their positions of authority, to defenseless racial minorities.

Id.

square with the history of societies scapegoating immigrants for the social problems of the day.²⁴⁰

Thus, stereotyping and stigma can have a significant impact on public policy. Once part of society is stigmatized through negative attitudes, it is easier to create policies targeting these stigmatized groups.²⁴¹

The current anti-immigrant climate, ushered by the force and zeal given to it by President Trump, could easily result in new punitive policies unless rational alternatives are found. Indeed, Trump's attacks and arguments for "legal reform" include stripping U.S. citizens of the birthright membership, thereby making them stateless, virtually overnight.²⁴² Truly, the prognostications here are far from a stretch of the imagination.

Immigrants across the United States are currently facing the consequences of Trump's hateful rhetoric. A Southern Poverty Law Center (SPLC) report observed, less than two weeks after President Trump's victory, over 850 cases of hate-based harassment and intimidation were reported.²⁴³ The SPLC report stated that "[o]f the 867 hate incidents collected by the SPLC, 280, or 32%, were motivated by anti-immigrant sentiment."²⁴⁴

240. *Id.* at 1156 (noting "the U.S. economy went south in the late 1800s and the frustration was displaced from diffuse economic causes to Chinese immigrants"). While analyzing the origins of prejudice toward particular groups, Gordon Allport offered a most apt example of this scapegoating. *Id.* (quoting Gordon W. Allport, *THE NATURE OF PREJUDICE* 352 (1954) ("Most Germans did not see the connection between their humiliating defeat in World War I and their subsequent anti-Semitism' Frustration was displaced from complex real-world causes to a simple—and defenseless—solution.")).

241. *THOSE DAMNED IMMIGRANTS*, *supra* note 14, at 132 ("There is ample evidence of this in U.S. domestic jurisprudence relating to immigrant groups, including the national origin quota system and the establishment of 'whiteness' as a prerequisite for naturalization, which effectively excluded Asian immigrants from the United States. Later examples included the internment of Japanese immigrants and Japanese Americans, regardless of their citizenship, during World War II; the refusal to accept many European Jewish refugees fleeing the Holocaust; and the 1950s 'Operation Wetback' campaign resulting in mass deportations of people of Mexican ancestry. The Immigration Act of 1965 imposed draconian limits on migration from the Western Hemisphere.").

242. See *supra* notes 7–8 and accompanying text (detailing President Trump's support for ending birthright citizenship).

243. Holy Yan et. al, "Make America White Again": Hate Speech and Crimes Post-Election, CNN (Dec. 22, 2016, 4:24 PM), <http://www.cnn.com/2016/11/10/us/post-election-hate-crimes-and-fears-trnd/index.html>.

244. *Ten Days After: Harassment and Intimidation in the Aftermath of the Election*, S. POVERTY L. CTR. (Nov. 29, 2016), <https://www.splcenter.org/20161129/ten-days-after-harassment-and-intimidation-aftermath-election#antiimmigrant>.

The SPLC reported several specific instances of hate crimes and escalating racial tension related to deportation. In Florida, a dispute between a Hispanic family and a reckless driver escalated when the driver told the family they “should all be deported.”²⁴⁵ In Dallas, Texas, a white man walked by a Hispanic man and, unprovoked, screamed, “Go back to Mexico!”²⁴⁶ An onlooker noted that, although most witnesses looked surprised, no one intervened.²⁴⁷ In Tuscola County, Michigan, a Latino family was shocked to find a wall of boxes graffitied with “Trump,” “Take America Back,” and “Mexicans suck.”²⁴⁸ In Silver Spring, Maryland, a female shopper berated a Latino worker for not working fast enough and demanded to know where he was from.²⁴⁹ Although the worker was born in the United States, the vitriolic shopper repeatedly yelled, “This is my country,” while referring to him as “El Salvador.”²⁵⁰ Unfortunately, even children have become the targets of adult strangers in public places. On a beach in California, a middle-aged white man approached a ten-year-old boy and called him “beaner,” telling the boy to “get the fuck out” of the country.²⁵¹

The numerous historical and recent examples raised above, along with the social science studies on stigma and stereotyping, elucidate that words matter.²⁵² They have an impact internally by the victim, and can also have significant impact externally when they are institutionalized through public policy. The creation of the “Other,” as horrifically witnessed during World War II, both abroad and at home, can lead to shame and even attempts at genocide. While a genocide in the United States during the twenty-first century is improbable, there is little doubt that massive human and civil rights abuses may follow when President Trump tries to sugarcoat national scars, such as Operation Wetback, with palatable labels, such as the “Eisenhower Plan.”²⁵³

President Trump’s words have fueled hateful xenophobic sentiments, and have given license to hate. It is this sort of license that makes it easier to view the victim or focus of the attack as less than

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. See note 226 and accompanying text.

253. See notes 206–09 and accompanying text (discussing President Trump’s description of “Operation Wetback”).

human, or at least less than equals. In turn, this license makes it significantly easier, at both the institutional as well as the individual level, to act horrifically against the targeted group, as the atrocities of the World War II Holocaust sadly taught us.

CONCLUSIONS

In many ways, the Dominican case represents the ultimate aspirations of U.S. racist xenophobes. First, Dominican ultranationalist elites have created a legal regime that solves many of the “problems” that U.S. xenophobes have with U.S. birthright citizenship laws. With the 2010 Constitution and its new re-definition of citizenship, the Dominican Republic maintains *jus soli* for its “pure stock” Dominican population, while conveniently excluding from it the Haitian “other,” whether this “Other” is a Haitian immigrant or a Dominican citizen of Haitian descent.²⁵⁴ Second, Dominican courts have applied this narrow definition of citizenship retroactively back to 1929, stripping Haitian Dominicans of their birthright citizenship.²⁵⁵ On top of that, a timid Dominican Executive offered a legal remedy (Law 169-14) that is notoriously cumbersome, ineffective, and deeply offensive to citizens, while deportations continue.²⁵⁶ Thus, Dominican authorities have seemingly solved the issue of undocumented immigration and “anchor babies” in one sweeping stroke. By comparison, if these Dominican acts took place in the United States, it would be as if Congress and the Supreme Court had acted in concert to strip millions of Mexican Americans of their U.S. citizenship, applying the ruling all the way back to the 1924 Immigration Act, while in the meantime continuing deportations. The consequences would have been catastrophic for millions of former U.S. citizens and their families.

While the Dominican case seems exceptional and one would be inclined to believe that it could not happen in the United States, there are aspects of the Dominican experience that bear striking similarities with the anti-immigrant hysteria that we have witnessed in the last two decades in the United States. First, the xenophobic discourse stemming from conservative ideologues in both countries is eerily similar. For example, bestselling publications in each country that rally against immigrants in their respective countries present dovetailing narratives of their nations and people as quasi-static cultural entities under attack by internal enemies in the form of

254. See *supra* note 35–36 and accompanying text.

255. See *supra* note 20 and accompanying text.

256. See *supra* notes 45–50 and accompanying text.

unassimilable immigrants and their culturally-distinct children. These domestic aliens undermine the vulnerable, weakened cultural fabric of the nation, and will eventually bring it down with their foreign values, ghettoizing a once strong, proud nation-state.²⁵⁷ Other more extremist movements, including hate groups in both nations, go beyond the academic and cultural arguments and employ well-known tropes of immigrants as lazy, dishonest, sexually promiscuous, dirty, disease carrying, criminally inclined, undermining wages, undemocratic, disloyal, and/or lacking genuine love for the nation.²⁵⁸ Not only do writers in both nations seem to be taking cues from each other (and from European xenophobes like Jean-Marie Le Pen and his daughter, Marine),²⁵⁹ but if one were to randomly replace the words “Haitians” and “Mexicans” with each other, oftentimes it would be hard to determine the precise country of origin of the discourse.

This nationalist rhetoric is pseudo-scientific, simplistic, and produced by ideologues who profess to have the best interest of their respective countries in mind. They carefully calibrate their message so as not to appear racially biased in order to appeal to mainstream audiences. In turn, hate groups in both countries have taken this rhetoric to extreme levels by engaging in an ugly and dehumanizing discourse that appeals to basic instincts of fear, racial discrimination, and xenophobia.²⁶⁰ Although the discourse may be tweaked in order

257. See, e.g., SAMUEL P. HUNTINGTON, WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY xvi–xvii (2004) (describing immigrants as a “recurring threat” to Anglo-Protestant, American society's existence).

258. See MEDIA MATTERS ACTION NETWORK, FEAR AND LOATHING IN PRIME TIME: IMMIGRATION MYTHS AND CABLE NEWS (2008), http://mediamattersaction.org/reports/fearandloathing/online_version (analyzing the validity of the myths surrounding immigrants such as high crime rates and abuse of social services).

259. Jean-Marie Le Pen is the former president (1972–2011) of the right-wing French political party National Front; his daughter Marine was also formerly President of the National Front (2011–2017). Marysia Nowak, *France elections: What Makes Marine Le Pen Far Right?*, BBC (Feb. 10, 2017), <http://www.bbc.com/news/world-europe-38321401> (outlining Le Pen's immigration platform, which includes her beliefs that undocumented immigrants are criminals, citizenship should be “inherited or merited,” and that the French government should not provide free education to children of undocumented immigrants); see also Adam Nossiter, *Marine Le Pen Leads Far-Right Fight to Make France “More French,”* N.Y. TIMES (Apr. 20, 2017), https://www.nytimes.com/2017/04/20/world/europe/france-election-marine-le-pen.html?_r=0 (quoting Marine Le Pen at a rally saying, “Just watch these interlopers from all over the world come and install themselves in our home . . . They want to transform France into a giant squat”).

260. In the United States, the Southern Poverty Law Center maintains an online database of hate groups, including those with anti-immigrant views. See *Active Anti-*

to appeal to different audiences, the objective is the same: to foster an anti-immigrant climate that will support authoritarian solutions for their removal and/or denationalization.

Second, both U.S. and Dominican xenophobes have turned legal arguments on their head to rid their countries of individuals deemed undesirable. For decades, they have resorted to speculative interpretations of their laws to try to keep “others” from becoming citizens and full-fledged members of their respective nations. In the case of the Dominican Republic, these arguments revolved around the interpretation of the “in transit” clause of the Dominican constitution.²⁶¹ For decades until the 2010 Constitution strictly defined Dominican citizenship as applying only to the children of legal residents born on Dominican soil, politicians, legal scholars, and public figures chipped in to make their case regarding who was a Dominican citizen.

Similarly, in the United States, the Fourteenth Amendment to the U.S. Constitution has been the object of repeated attempts to interpret it as strictly limited to U.S. legal residents (“subject to the jurisdiction thereof”) and not to undocumented immigrants and their children.²⁶² In both countries, these debates and calls for action have come at times of heightened awareness of immigrants, economic crises, and/or significant political events (e.g., a presidential race).²⁶³ Likewise, in both countries, immigrants are people of color who are seen by the host nation as needed cheap labor, but otherwise unbefitting of membership in the polity. Historically, both Haitians and Mexicans have been needed as cheap labor, mercilessly exploited, and discarded when no longer needed. Both ethnic groups have also been portrayed as racialized others by their host nations; foreigners that are culturally alien to the imagined national community and that should not and cannot be integrated.²⁶⁴

Immigrant Hate Groups in 2016, SOUTHERN POVERTY L. CTR. (last visited Aug. 30, 2017), <https://www.splcenter.org/fighting-hate/extremist-files/ideology/anti-immigrant>. No such list exists in the Dominican Republic.

261. See *supra* notes 43–44 and accompanying text.

262. See *supra* notes 83–112 and accompanying text (exploring common law notions of citizenship and its development through interpretations of the Fourteenth Amendment).

263. Both the Dominican Republic and the United States elected new presidents in 2016; the Dominican Republic in May and the United States in November.

264. In both countries, right-wing elites “imagine” the nation as white (or white-like), Western, Christian, conservative, monolingual, and straight. See generally BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD*

Thus, we argue that these nationalist legal arguments have more to do with racial animus and xenophobia than with a heartfelt desire to enforce the law. Calls to enforce our laws are but a legal veneer that serves as dog whistling in an age when racial discrimination may provoke a political backlash. Xenophobes in the United States, unable to openly express racial prejudices because of their high political cost, nowadays claim to be racially blind²⁶⁵ and present themselves as zealous defenders of the nation's laws, public safety, the English language, the environment, and American workers.²⁶⁶ While they do not claim to be Hispanophobes, their arguments are clearly directed at Latino immigrants, specifically Mexicans, who represent the largest number of Latino immigrants in the United States.²⁶⁷ In the Dominican Republic, groups of self-proclaimed patriots make similar arguments for enforcement of Dominican laws and expulsion of "illegal" Haitian immigrants, arguing that Haitian immigrants do not speak the Spanish language, they steal jobs from Dominican workers, bring in diseases, commit crimes, and seek to undermine Dominican sovereignty.²⁶⁸ The

OF NATIONALISM 6–7 (2006) (theorizing that nations are imagined communities in which humans are connected to others of their kind).

265. EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* 25 (2d ed. 2006) (arguing that whites in modern America utilize indirect tactics to target and suppress African Americans).

266. See, e.g., *About Us*, NUMBERS USA, <https://www.numbersusa.com/about> (last visited Aug. 30, 2017) (describing itself as an organization devoted to limited permanent immigration, while limiting illegal immigration and reducing overall immigration); *About U.S. English*, U.S. ENG., <https://www.usenglish.org/about-us> (last visited Aug. 30, 2017) (labeling itself the nation's "oldest, largest citizens' action group" that promotes the use and role of the English language); *Who We Are*, FED'N FOR AM. IMMIGR. REFORM, <http://www.fairus.org/about> (last visited Aug. 30, 2017) (characterizing itself as a non-profit, non-partisan organization dedicated to the advocacy of limited immigration because, according to the organization, immigration threatens "every social cause").

267. See Seth Motel, *The 10 Largest Hispanic Origin Groups: Characteristics, Rankings, Top Countries*, PEW RES. CTR. (June 27, 2012), <http://www.pewhispanic.org/2012/06/27/the-10-largest-hispanic-origin-groups-characteristics-rankings-top-counties> (listing Mexicans as the largest Hispanic origin group as of 2010).

268. See, e.g., *Movimiento Los Protectores' de la Patria*, FACEBOOK, https://www.facebook.com/pg/Movimiento-Protectores-de-la-Patria-905694739453052/about/?ref=page_internal (last visited Aug. 30, 2017) (promoting Dominican-only citizenship); *Movimiento Patriótico Independiente*, FACEBOOK, https://www.facebook.com/pg/www.movimientopatrioticorepdomlibre.com.do/about/?ref=page_internal (last visited Aug. 30, 2017) (same).

solutions put forward are, not surprisingly, very similar: elimination of birthright citizenship, mass deportations, and even building a border wall.²⁶⁹

Third, in spite of the nationalist rhetoric and the calls for extremist solutions stemming from right-wing groups (such as the building of a costly, impractical border wall), attrition seems to be the preferred strategy used by the authorities in both cases, not only because it rids the nation of some undesirable aliens, but it also keeps the ones that remain behind on a tight leash.²⁷⁰ Even in the (more extreme) Dominican case, the deportation of Haitians does not seem to be a significant priority for the government. The massive deportations that many feared after the 2013 decision of the Constitution Tribunal never took place.²⁷¹ Haitian workers were still being deported, but it was just business as usual. If anything, thousands of Haitians and Haitian-Dominicans self-deported in fear of being caught in raids by the Dominican military and then losing their hard-earned possessions.²⁷² Just like the U.S. economy, the globalized economy of the Dominican Republic depends on cheap immigrant labor to keep costs down, maintain profit margins, and remain competitive. It would be economically unsound and potentially ruinous, not to mention logistically impossible, for these two countries to deport all of their undocumented immigrants. Thus, attrition seems to represent a better strategy to manage the issue and keep racialized others in their place as cheap, subordinated labor.

269. Donald Trump made building a border wall between the United States and Mexico one of his presidential campaign's signature issues. In copycat fashion, people in the Dominican Republic are now calling for a border wall between Haiti and the Dominican Republic. See Orlando Gómez Torres, *El Costo del Gran Muro Fronterizo*, EL NACIONAL (Sept. 16, 2015), <http://elnacional.com.do/el-costo-del-gran-muro-fronterizo> (highlighting the importance of independent citizenship).

270. See Mark Krikorian, *Attrition Through Enforcement*, NAT'L REV. (June 30, 2016), <http://www.nationalreview.com/corner/437349/illegal-immigration-attrition-through-enforcement> ("Allow ICE and Border Patrol to do their jobs, sanction crooked employers, rein in sanctuary cities, remove illegals who come to the attention of the police, curb overstays, improve border fencing, and other conventional law-enforcement activities.").

271. See Edwidge Danticat, *Fear of Deportation in the Dominican Republic*, NEW YORKER (June 17, 2015), <http://www.newyorker.com/news/news-desk/fear-of-deportation-in-the-dominican-republic>.

272. But see *id.* (noting that self-deportation is not a possibility for many people). During the 2012 presidential race, candidate Mitt Romney proposed self-deportation as the solution to America's undocumented immigration crisis. See Lucy Madison, *Romney on Immigration: I'm for "Self-Deportation,"* CBS NEWS (Jan. 24, 2012), <http://www.cbsnews.com/news/romney-on-immigration-im-for-self-deportation>.

In the United States, attrition takes the form of dozens of state, county, and municipal laws put in place to make the lives of immigrants difficult. These laws make it harder, or impossible, for undocumented immigrants to rent an apartment, own a car, get insurance, and get an education.²⁷³ In the Dominican case, the lack of documents prevents Haitian immigrants and their Dominican children from doing many of these things, too.²⁷⁴ For undocumented immigrants in both countries, attrition laws mean living life in the margins of society, just scraping a living, and always living in fear of being deported at any given time.

Fourth, these developments are taking place at a moment when democracies throughout the world have been consistently expanding and enhancing their citizens' rights. Particularly in Latin America, new and progressive constitutions have sought to refine democracy in a region that just a few decades ago was characterized by authoritarian regimes. Currently, constitutions throughout Latin America grant their citizens the right to work and earn a decent living wage, to recreation, to live in a clean environment, to express their sexual orientation, and to preserve their distinct cultures, among other rights.²⁷⁵ And while many of these rights exist just in theory, these constitutions stand as examples of the notion that constitutions ought to guarantee and enhance the rights of citizens, rather than curtail them. In this sense, the Dominican Republic presents a mixed, troubling case of a new 2010 constitution that enhances the rights of its citizens while excluding from the benefits of citizenship an entire category of unwanted, racialized "others."²⁷⁶

Finally, both cases affect all of us as citizens living in democratic societies. These anti-immigrant laws, discourses, and practices violate basic human rights—rights enshrined in democratic conventions and

273. See, e.g., *ACLU Joins Lawsuit Challenging Anti-Immigrant Law SB4*, AM. CIVIL LIBERTIES UNION (May 25, 2017), <https://www.aclu.org/news/aclu-joins-lawsuit-challenging-anti-immigrant-law-sb4> (explaining a challenge to a Texas law that requires local government employees to enforce federal immigration law); *N.C. Senate One Vote Away From Passing Anti-Immigrant Bill*, AM. CIVIL LIBERTIES UNION (June 28, 2016), <https://www.aclu.org/news/nc-senate-one-vote-away-passing-anti-immigrant-bill> (pending North Carolina bill would allow the state to withhold funding for schools' infrastructure from local governments that violate state immigration laws).

274. See *Trabas a la Documentacion*, *supra* note 35, at 1, 5 (emphasizing the difficulties and obstacles in acquiring documents or an attorney to help with the process).

275. See, for example, the new, progressive constitutions of Ecuador and Bolivia, CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR 2008; CONSTITUCIÓN POLÍTICA DEL ESTADO 2009 [Bolivia].

276. See *supra* notes 38–46 and accompanying text.

in our civic institutions. Whether they take place in the Dominican Republic or in the United States, nationalist xenophobia and racial discrimination are undemocratic and dangerous to societies based on the concept of equality under the law. Calls for the unequal treatment of immigrants and their children not only strip them of their human rights; they also chip away at our democratic institutions. The harsh, authoritarian solutions employed by both the United States and the Dominican Republic in dealing with immigrant populations and their descendants have led to human rights violations, separation of families, economic losses, and widespread anguish among those families affected by these draconian measures.

Moreover, the elimination of birthright citizenship by arbitrary interpretation is wrong, unfair, and does a disservice to nations that depend on immigrant labor. These laws only serve to create an underclass of racialized immigrant workers—and their families—that live in the shadows of society, where they can be more easily exploited. Such a development would be tragic and against the best interest of both countries. The United States is a country of immigrants from all over the world, and the Dominican Republic is a melting pot of Caribbean races. In the United States, wave after wave of immigrants have built this nation. In the Dominican Republic, hundreds of thousands of Dominicans have moved overseas since the 1960s, most of them to the United States.²⁷⁷ The immigrant experience, therefore, is not alien to their national culture. Quite the opposite, it is ingrained in their social fabric. As such, both nations should embrace their immigrants and strive to assimilate them into the polity.

Calls to deport, denationalize, and reject immigrants are but the swan song of a dwindling, but vocal, minority bent on maintaining their racial and class privilege in the face of social change. The case of the Dominican Republic should serve as a cautionary tale for the United States in a period of rising anti-immigrant rhetoric.

In an effort to perhaps thwart what some will try to make inevitable, we pray this counter-narrative will shed light on darkness. We ultimately hope our accounts and arguments will affect minds and hearts, and will ultimately lead to the rejection of illogical, bias-driven, and economically tragic policies that target the most vulnerable among us.

277. ERNESTO SAGÁS & SINTIA E. MOLINA, DOMINICAN MIGRATION: TRANSNATIONAL PERSPECTIVES 1 (2004).
