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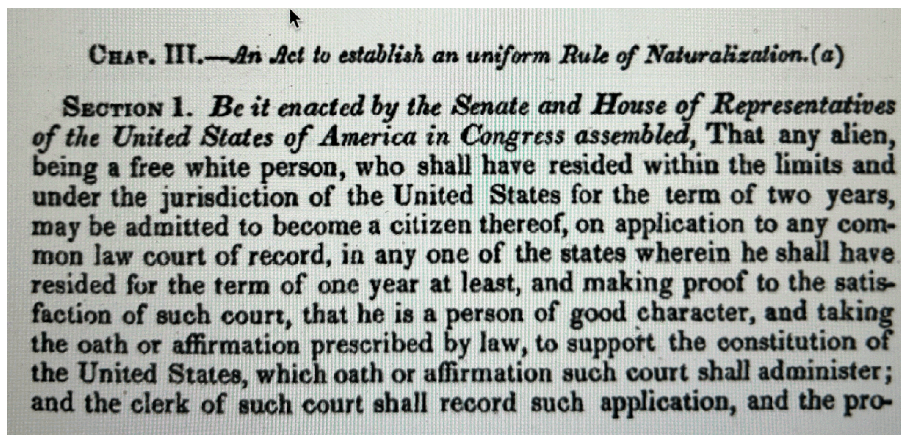
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1. Executive summary

The current paper aims to provide an overview of the legal framework that governs cases of migration, from an international perspective while also expanding on the domestic statutory law. Furthermore, the analysis will explore the inevitable conflict between the right of States to protect their sovereignty with what one may call the opposing right of immigrants to seek asylum, a right enshrined in international human rights charters. Beyond the legal framework the paper will present some of the ethical dilemmas behind State's decision to restrict entry from the lens of neo-colonialism theory and that of non-discrimination. Furthermore, it provides a historical overview of the US restrictive immigration policies alongside the rise of the nativism movement that justify measures perceived to be borderline discriminatory. Lastly, the paper delves into concrete cases introducing statistical data for migration law breaches undertaken by the US government through various policies.

2. Historical overview of immigration policies over the years

The prominent attitude towards the immigration topic before the civil war was rather negative with a sense of profound white-supremacy and hostility towards non-white immigrants. The difference in the treatment of people based on skin-color, reflecting also the back-then values can be observed in the Naturalization Act of 1790, which established the admission of applications for naturalisation purposes of strictly white people¹.



¹ <https://immigrationhistory.org/item/1790-nationality-act/>

Another relevant example of how the law mirrored the societal values of the time was the Alien and Sedition Acts of 1798, enacted in turbulent times of an expected war with France. The most important provision of which is Section 3 which reads, “it shall be lawful for the President of the United States, whenever he may deem it necessary (for the public safety, to order to be removed out of the territory thereof, any alien who may or shall be in prison in pursuance of this act; and to cause to be arrested and sent out of the United States such of those aliens as shall have been ordered to depart therefrom and shall not have obtained a license as aforesaid, in all cases where, in the opinion of the President, the public safety requires a speedy removal.”

The statute granted discretionary powers to the President to decide what amounts to dangers of public safety. This is a recurring argument used by right-wing parties against the later discussed natural “*ius migrandi*”² developed by philosophers like Hugo Grotius. Although it was a provisional act which was supposed to have a validity of 2 years, its influence on future immigration policies will not be indifferent.

In 1868 only three years after the end of the Civil war marked the adoption of an important legal document which further illustrates the welcoming nature towards immigrants, namely the Expatriation Act. “Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations ³...” With this act the “*ius migrandi*” or the right to migrate was officially recognised as a natural right of all people, reflecting the influence of the Enlightenment in the pursuit of reconstruction through legal thought. The philosopher whose ideas were subsequently reflected in the Constitution during the Founding era, was John Locke and his idea about the fundamental rights of people for property, life and liberty. Although it is arguably challenging to accredit concrete contributions of philosophers and how they shaped the movement towards democratic ideas, some do stand out. One of which was Francis Hutcheson, a hedonist by nature, he proposed that “the intention of moral philosophy is to direct men to that course of action which tends most effectively to promote their greatest happiness and perfection⁴.” His works were widely studied in “all the main colonial American educational establishments” influencing also the Founding Fathers of the USA like John Adams⁵.

² <https://www.archives.gov/milestone-documents/alien-and-sedition-acts>

³

<https://www.unife.it/giurisprudenza/giurisprudenza/studiare/storia-delle-costituzioni-e-delle-codificazioni-moderne/materiale-didattico/corso-a-a-2016-2017/expatriation-act-1868>

⁴ <https://plato.stanford.edu/entries/hutcheson/#VirtHappHedo>

⁵ <https://www.acton.org/francis-hutcheson>

It may be argued that the recognition of expatriation as a natural right represented an implicit extension of Enlightenment ideas concerning liberty and the pursuit of happiness. The right to happiness encompasses also the means through which one can pursue and achieve it and in this sense migration becomes a legitimate means of its fulfillment.

The dissemination of the Enlightenment ideas is a cornerstone of the initiation of progressive immigration policies. The shift towards the open-door policy that was adopted in the USA right after the Civil war is reflected also in the main symbol and representation of the new era for the country, namely the Statue of Liberty. Under it, reads "Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!", a line from the poem *The New Colossus* by Emma Lazarus.

The huddled masses connotes the masses of immigrants that arrived in the 1880s through the port of New York. The true meaning and intentions of the lines is further revealed by diving into the background of the writer and her political activism towards the protection of Jews seeking refuge as a result of the anti-semitic persecutions at the time.

This way the famous Statue of Liberty, originally intended to represent the turn towards a democratic system and celebrate the abolition of slavery, soon became a symbol of hope and opportunities.

3. What marks the shift towards more restrictive measures?

Throughout its history, the USA was confronted with several major influxes of masses of people such as the California Gold Rush in 1849. It experienced a big entry of Chinese people reaching its peak in the 1880s when China was confronted with a sociopolitical turmoil defined by poverty, droughts, famines and political conflicts. The years between the 1870s and 1900s faced an immigration boom with around 12 million immigrants entering the country, driven by both push and pull factors.

Consequently the socio-labour landscape of the USA quickly mutated, resulting in an imminent backlash to the Enlightenment ideas of Reconstruction in the ambit of immigration. Tensions arose as the volumes of people arriving increased.

Although the industrialisation period post-civil war benefited from this expansion, the societal negative repercussions due to a commonly shared fear of the competition for jobs, impeded the proper integration of the immigrants. This common shift was reflected also in the

laws passed at the time with the first clear example of the perpetuated hatred and hostility being the Chinese Exclusion Act 1882, signed by President Chester Arthur. This was the first significant federal law restricting immigration on the basis of nationality passed by the Congress. The first lines of the legislation read as follows, “That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or having so come after the expiration of said ninety days to remain within the United States.”⁶

The practice of the US Supreme Court also affirmed this alien exclusion movement with its ruling in the case of *Shaughnessy v. United States ex rel. Mezei (1953)*⁷. The case was about an alien, resident of the USA, who was out of the country for 19 months. His return back to the country however resulted in an order pursuant to 22 U.S.C. § 223 by the Attorney General for his exclusion without a hearing. The legal system had the mechanisms to exclude him, but the legal outcome remained controversial. With this decision the court cemented the “entry fiction” doctrine where it distinguished between two types of categories of people: a lawfully resident alien who has constitutional protections like due process of law and an entrant alien who despite physically being in the country does not have these rights⁸. Consequently, people classified in the latter category were not only denied access to hearings but also refused the right to challenge the exclusion decision through a habeas corpus petition filed before the court.

The recurring argument, previously mentioned in this paper regarding the justification of anti-immigration policies for public safety reasons, reappeared again in the 1875 with the Page Act which excluded entry of “persons who are undergoing a sentence for conviction in their own country of felonious crimes other than political or growing out of or the result of such political offenses, or whose sentence has been remitted on condition of their emigration, and women "imported for the purposes of prostitution.”⁹

This turnaround gave birth to American Nativism and the WASP identity, abbreviated for White Anglo-Saxon Protestant. The huge waves of immigrants were followed by internal processes of Americanisation through assimilation with the WASP culture like the American name allocation process upon entry. Xenophobic ideas were already circulating which were expressed through the legislation.

⁶ <https://www.archives.gov/milestone-documents/chinese-exclusion-act>

⁷ <https://supreme.justia.com/cases/federal/us/345/206/>

⁸ <https://supreme.justia.com/cases/federal/us/345/206/>

⁹ <https://loveman.sdsu.edu/docs/1875Immigration%20Act.pdf>

Fast-forward the beginning of the 21st century, with the attacks of 9/11 in 2001, resulting in more restrictive measures in the immigration. Urgent security concerns also resulted in the introduction of new surveillance programs.

Then Trump's first and consequently second administration perpetuated the anti-immigration policies through the lens of protection of public safety, national security and traditional values. Traditionalism is another common tool used by the Republican party aiming to uphold the order created by the Founding Fathers by focusing on the long-standing values of Americans. The structure of the US branches which enables the enactment of such policies is examined in detail in the following paragraphs.

4. Domestic legal framework

For the purposes of this paper, it is crucial to understand the legal tools which enable presidential discretion in matters of immigration, going beyond the already established law, thereby becoming the ultimate decisional figure.

4.1 The “take care” clause and the implied power of executive orders

In order to truly understand the legal means through which President Trump fulfills his political campaign, one must understand what executive orders are and how they work in practice. This is crucial since findings reveal that unsurprisingly Trump has become the President with the highest number of executive orders issued in the last 20 years. To give the accurate numbers, President Trump has 220 orders from his first term and 221 orders as of his first year of the second term in the White House. To compare it with previous Presidents, Joe Biden has issued 162, Barack Obama 277 and George Bush 291 both of whom served a second term of presidency.

This trend is concerning as it concentrates considerable policymaking power within the executive branch while enabling the executive to actively shape, rather than merely reflect, societal attitudes toward immigration.

All of the executive orders commence with, “By the authority vested in me as President by the Constitution and the laws of the United States of America”. The Constitution does not mention anything about executive orders, yet it is claimed that these orders stem from it. So what type of powers does the US Constitution grant to the President? The most important provision of the Constitution for this matter is the so-called “take care” clause, enshrined in

Article 2 Section 3, “he shall take Care that the Laws be faithfully executed”¹⁰. Executive practice dates back to George Washington, whose administration found an implied dimension of this power and accordingly the first directive was issued ¹¹. Despite not having the same form as the modern executive orders, it set an important legal understanding of the scope of this provision.

Historically, executive orders have been used both for ethical purposes like putting an end to slavery by President Lincoln but also used as a political tool to put forward controversial policies without direct oversight. The executive orders do not create new statutes but simply dictate how the current ones are to be implemented. Since very often they become effective immediately they propose a fast track for the accomplishment of political campaigns without the expected delay that would come with the approval of both the chambers. Furthermore, the executive orders very rarely face political scrutiny by the US Supreme Court or through reversal bills by the Congress which makes them a powerful political tool in the hands of one figure - the President.

At this point of history, it is arguable to what extent the laws passed by the US Congress truly reflect the societal needs and represent the population which they were entrusted to do. Instead the presidential influence over such matters becomes radical with the voice of the people being left out, seen also by the mass demonstrations against the Immigration and Customs Enforcement’s (ICE) blatant aggression and violence.

So to what extent has then President Trump instrumentalised his constitutionally conferred “take care” power to bypass Congress and put forward his political agenda? One may ask if Trump is acting on the common good of the US people, then why is he trying to circumvent the democratically elected Congress whose primary purpose is to represent the interests of the people? The answer may find itself in a severe divergence of understanding of the common good between that of the current President with that of the people and thus or at least in theory of the Congress.

The answer to this question becomes very evident with the recent negative repercussions that the ICE officials were faced with. Thousands of demonstrators around the country presented their resentment towards these policies. In fact, a survey reveals that as of October 2025, 53% compared to March where 44% of Americans viewed that the Trump administration is doing “too much” when it comes to deportation of immigrants living in the United States illegally. This shift of opinions is a rather recent trend which is also reflected by the increase in more severe immigration handling practices.

¹⁰ https://constitution.congress.gov/browse/essay/artII-S3-3-1/ALDE_00001160/

¹¹ <https://www.governing.com/now/the-executive-order-a-history-of-its-rise-and-slow-decline.html>

It is well known how easily political actors can instill fear when seeking to reshape political attitudes through controlling the narrative. This may help explain the recent increase in concerns surrounding immigration. Currently immigration has transformed itself into a partisan matter with just 30 percent of Republicans saying immigrants strengthened the country, compared with more than 80 percent of Democrats¹².

4.2 The Immigration and Nationality Act (INA)

The Immigration and Nationality Act was enacted in 1952 and it is a collection of many provisions regarding immigration previously dispersed. It also reorganised the structure of immigration laws. The INA is part of the United States Code (U.S.C.) which is the collection of all the laws of the US. Title 8 of the U.S. Code covers "Aliens and Nationality."

Throughout the years the INA has been amended many times as it has been seen in the US Patriot Act. The INA defined the grounds for forced removal out of the country, namely in the cases of violations of visa conditions, records of criminal activity or security concerns. These security concerns will later be widely used as legal reasons presented for the mass undergoing deportations.

4.3 The US Patriot Act (2001)

The US Patriot Act (2001) with a full name "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001" was signed by President Bush on 26th October after the 9/11 attack. One of the measures it introduced was the increased surveillance including the "authority to intercept wire, oral, and electronic communications". The Act intervened significantly in Muslims' private lives by enabling the FBI to monitor mosques, and religious gatherings. It also established an amendment to the INA, granting ample power to the Attorney General to single-handedly interpret what amounts to "reasonable grounds" that render an individual a threat to the public safety¹³. Determination of such grounds give the power to the latter to take into custody any alien classified as a "menace".

The nature of this provision becomes more problematic with the way the Attorney General is elected due to the highly politically charged nature as it will be seen in the upcoming paragraph.

But firstly who is the Attorney General?

¹² <https://www.nytimes.com/2025/11/19/polls/how-americans-feel-immigration.html>

¹³ <https://www.govinfo.gov/content/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf>

The Attorney General is “the head of the Department of Justice (DOJ) and chief law enforcement officer of the Federal Government” and serves as the main legal adviser of the president¹⁴. The current Attorney General is Pam Bondi who was appointed in January 2025 before the current Secretary of Homeland Security (HS). Similar to the position of the Secretary of Homeland Security, the Attorney General is directly appointed by the President with the advice and consent of the Senate, raising concerns about the post’s independence. It is well known how easily political actors can instill fear when seeking to reshape political attitudes through controlling the narrative. This may help explain the recent increase in concerns surrounding immigration.

According to Al Jazeera, “The United States President-elect Donald Trump has picked another loyalist to be the next attorney general after his first choice, firebrand former Congressman Matt Gaetz, withdrew from contention after days of controversy”¹⁵. Bondi’s rigidity in politics and ideology, aligned with Trump’s views, can also be seen in his comment after her appointment, “For too long, the partisan Department of Justice has been weaponised against me and other Republicans – Not anymore. Pam will refocus the DOJ to its intended purpose of fighting Crime, and Making America Safe Again”. Additionally she was an open supporter and defender of Trump and endorsed him in his first presidential campaign in 2016. Before becoming the Attorney General, she also served in his transition team, proving the existence of the strong political affiliation.

4.4 The Homeland Security Act (2002)

The Homeland Security Act (2002) is another important legal act that must be discussed. It was drafted as a response towards the 9/11 attack in 2001 and was signed by President Bush. It created the Department of Homeland Security (DHS) and brought together the previously dispersed security apparatuses of the US¹⁶. It is important to mention that the department is headed by the Secretary of HS who is directly appointed by the President with the advice and consent of the Senate (a fact that will become very relevant taking also in consideration the surrounding facts and the dominance of the Republicans in the Senate)¹⁷.

The current Secretary of HS Kristi Noem was appointed in January 2025 with a vote of 59 out of 100 by the Senate. The vote was distributed as follows: 52 / 53 Republicans in the Senate voted for her with one that did not vote while only 7/45 Democrats supported her¹⁸.

¹⁴ <https://www.justice.gov/doj/organization-mission-and-functions-manual-office-attorney-general>

¹⁵ <https://www.aljazeera.com/news/2024/11/22/who-is-pam-bondi-trumps-new-nominee-for-us-attorney-general>

¹⁶ <https://www.britannica.com/topic/Homeland-Security-Act>

¹⁷ https://www.congress.gov/bill/107th-congress/house-bill/5005?utm_source=

¹⁸ <https://www.nytimes.com/interactive/2025/01/25/us/politics/noem-senate-confirmation-vote.html>

Having a majority in the Senate, Republicans were certain of fulfilling Trump's political agenda.

Consequently, the outcome is having a conservative Republican as a President with the simple majority vote required that can be reached by the Republicans alone for the appointment of federal officers, creating also a conservative executive body.

Though who is Kristi Noem?

She became a state governor of South Dakota in 2018 and already in the Covid pandemic became very prominent with her conservative views which later became broadly aligned with those of the Republican party. In fact, before the elections many people thought that she might run for the position of Vice-President with Trump, revealing her proximity with him. For a long time she was also considered his vocal supporter.

In January when she entered her office some of the first statements she gave were, “One of my top priorities is achieving President Trump’s mandate from the American people to secure our southern border and fix our broken immigration system. The Trump Administration will once-again empower our brave men and women in law enforcement to do their jobs and remove criminal aliens and illegal gangs from our country. We will fully equip our intelligence and law enforcement to detect and prevent terror threats and will deliver rapid assistance and disaster relief to Americans in crisis¹⁹.”

These statements provide an early indication of the enforcement priorities she intended to pursue.

5. The legal issue of separation of powers

The offices of the Secretary of HS and the Attorney General point to a crucial issue of separation of power, where those that would be directly enforcing the law are first nominees of the President but second and most important are individuals who enjoy the President's political confidence.

¹⁹ <https://www.dhs.gov/news/2025/01/25/us-senate-confirms-kristi-noem-secretary-homeland-security>

6. Immigration and Customs Enforcement body (ICE)

6.1 What is ICE and how does it operate?

ICE or the U.S Immigration and Customs Enforcement, created in 2003 with the merging of “of the investigative and interior enforcement elements of the former U.S. Customs Service and the Immigration and Naturalization Service.²⁰” Its work is subdivided into three law enforcement branches: Homeland Security Investigations (HSI), Enforcement and Removal Operations (ERO) and Office of the Principal Legal Advisor (OPLA). The fourth branch is dedicated to Management and Administration (M&A) with the aim to advance the ICE mission.

ICE agents are authorized to “stop, detain and arrest people they suspect of being in the US illegally...Agents can detain US citizens in limited circumstances, such as if a person interferes with an arrest, assaults an officer, or ICE suspects the person of being in the US illegally.²¹”

ICE agents derive their authority from the US Constitution, INA and DHS regulations. Under the Constitution, the use of lethal force is permitted “if the person poses a serious danger to them or other people, or the person has committed a violent crime.”

However this in-the-moment discretionary power has been expanded by the US Supreme Court over the years as they have been granted a bigger decisional margin.

Additionally, in a policy memo issued by DHS in 2023, it was mentioned that the use of deadly force is justifiable when the officer has "a reasonable belief that the subject of such force poses an imminent threat of death or serious bodily injury" to themselves or another person. As it will be seen, this is one of the main instruments used by both the President and the Secretary of Homeland as a defense against public attacks.

6.2 How are ICE officials appointed?

The most problematic fact of all is the way these law enforcement federal officials are appointed. Similar to the Attorney General and the Secretary of HS, the director gets nominated by the President. It is evident that the main and leading figures in the ambit of immigration are everything but independent from political pressures and influences. Similarly, like other law-enforcement federal agents, ICE agents enjoy immunity which in the current context of mass killings becomes problematic.

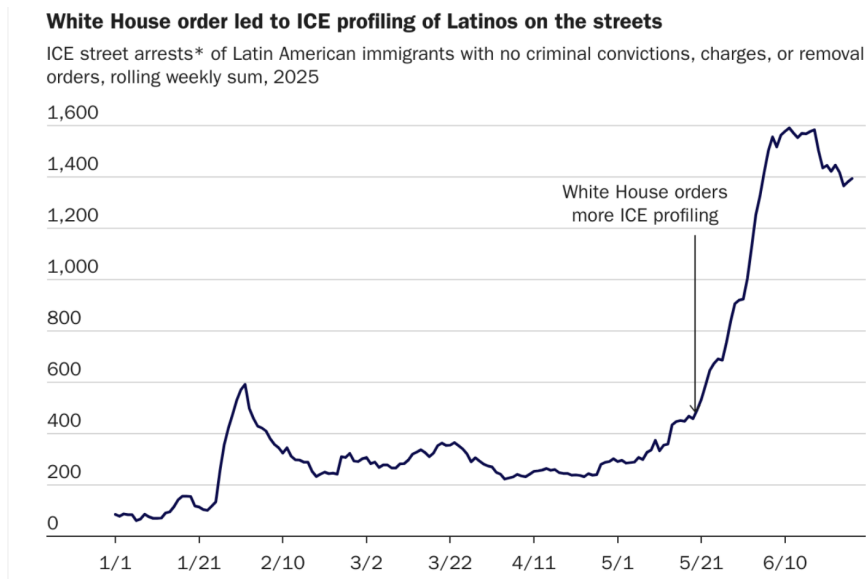
²⁰ <https://www.ice.gov/about-ice>

²¹ <https://www.bbc.com/news/articles/cp80ljjd5rwo>

6.3 How does someone become an ICE agent?

The ICE has published a document which was amended in 2008 with the procedure of becoming an ICE agent including the compulsory training. The examination back then included both a Spanish test and the Detention and Removal Operations Basic Immigration Law Enforcement Training Program (ICE-D) which lasted 13 weeks and included a physical ability assessment and other specialised training for first aid, firearms, etc²².

The fact that there was and still is a mandatory Spanish course to be taken during the training program of all ICE agents which can be waived only by a Spanish Language Proficiency Test, may reflect the operational focus of repressing Spanish-speaking immigrants as it will also be seen by the ICE campaign posters. This operational focus should however be distinguished from the separate question of whether enforcement disproportionately targets Latino populations. In that regard the table below released by the Immigration and Customs Enforcement, ERO LESA Statistical Tracking Unit, showing a drastic increase in the street arrests of Latin Americans immigrants with no criminal convictions, charges, or removal orders for the year 2025²³:



Recently there was a leak of information that the training of ICE agents has been reduced under the Trump's administration from 13 weeks to 47 days²⁴. However no public information can be found on how exactly that significant change was brought about legally speaking, nor how the current training is carried out. Unlike the previously discussed document which was

²² https://www.ice.gov/doclib/about/offices/ero/pdf/ice_d_handbook.pdf

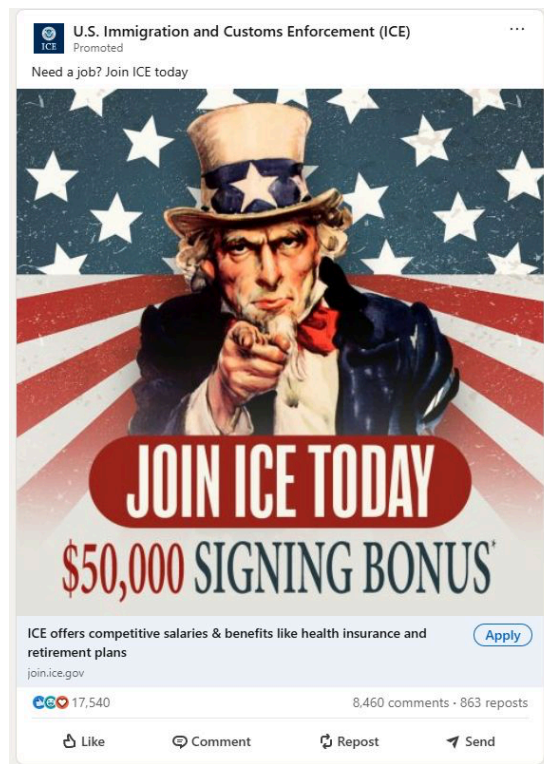
²³ https://www.latinopublicpolicy.org/2025/08/one-in-five-ice-arrests-are-latinos-on-the-streets-with-no-criminal-past-or-removal-order/?utm_source=chatgpt.com

²⁴ <https://www.aljazeera.com/news/2026/1/13/has-us-ice-officer-training-been-reduced-to-47-days>

made public no such information can be found and it remains a mystery how and what happened to the more extensive training plan.

Despite the significantly increased yearly budget towards ICE as it will be discussed in greater details later, the lower training time and thus threshold for becoming an ICE agent combined with the mass recruitment campaign really reveals the true priorities of the agency and question its integrity.

Furthermore the current recruitment campaign of ICE agents cannot be overlooked with advertisements that were published on various social media including Spotify, LinkedIn, etc, offering promising benefits²⁵.



6.4 How has ICE transformed to become one of the most funded law enforcement departments?

The data provided by the American Immigration Council suggests an increase in the yearly budgets allocated to ICE²⁶.

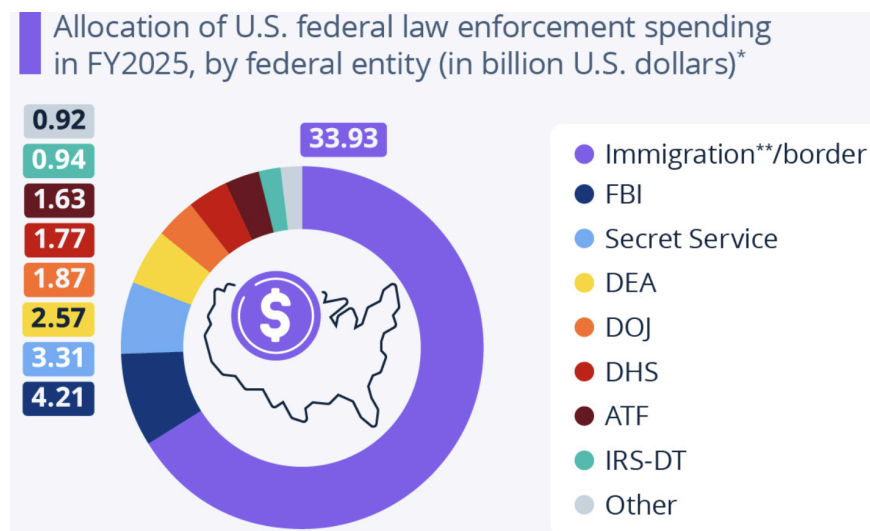
²⁵ [1759345341819](https://www.ice.dhs.gov/join)

²⁶ https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/cost_of_immigration_enforcement_factsheet_2024.pdf

This increase in the annual budget transformed ICE into the highest-funded law enforcement agency, which aligns with promises made by Trump during his 2024 presidential campaign, when he stated: “The day I take the oath of office, the migrant invasion ends.”²⁷²⁸

Another very controversial quote comes from Tom Homan, the former acting director of ICE, in response to the passed bill for the augmented funds allocated to ICE, "The more beds that we have, the more bad guys we arrest."

The table below extracted from Statista.com illustrates the allocation of U.S federal law enforcement spending in the fiscal year of 2025 by federal entity, showing that the immigration / border one received the highest public funding.



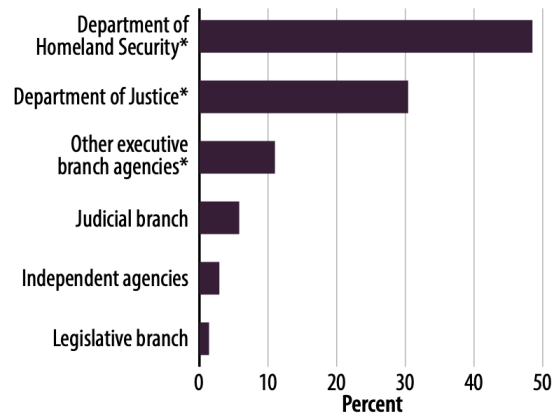
Furthermore, the first term of Trump’s Presidency marks a spike in the newly employed agents at the Department of HS. Only in the fiscal year 2020, there were “137,000 full-time federal law enforcement officers who were authorised to make arrests, carry firearms, or both according to the census conducted by the Bureau of Justice Statistics under the U.S Department of Justice²⁹.

²⁷ <https://apnews.com/projects/trump-campaign-promise-tracker/>

²⁸ <https://www.statista.com/chart/34767/allocation-of-us-federal-law-enforcement-spending-by-federal-entity/?srsltid=AfmBOorn4rDjOgg1DpqlAulZtucO6SGgvolXO378iou5Obg3iKrjECEX>

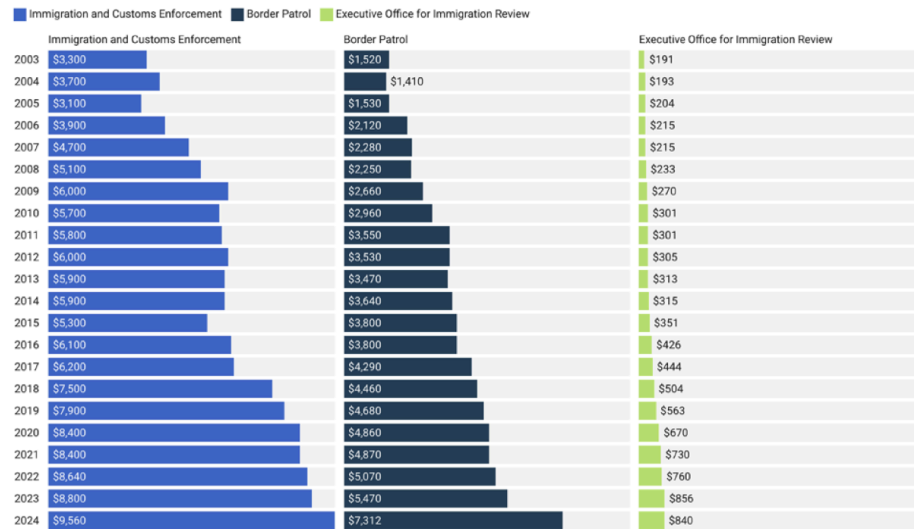
²⁹ <https://bjs.ojp.gov/document/fleo20st.pdf>

Distribution of full-time federal law enforcement officers, by Government Branch or Department, FY 2020



The table below coming from the American Immigration Council depicts the systematic trend of increased annual budget from 2017 to the present time of the Immigration and Customs Enforcement.

FIGURE 3: ANNUAL BUDGETS OF ICE, BORDER PATROL, AND EOIR, IN MILLIONS OF DOLLARS



7. But how does it work in practice?

Going back to the previously discussed INA and for the purposes of simplification, the legal procedure can be summarised as follows.

The US grants two types of visas - immigrant visa and non-immigrant one. If a person receives an immigrant visa, asylum or refugee status, they can apply to get the Lawful Permanent Residence (LPR). The US immigrant visas have a set cap per year of 675,000 as prescribed by INA³⁰. Upon arrival, individuals holding that visa become LPR. 5 years of residence in the country, make that LPR eligible for a US citizenship. **Important to say is that these LPRs have the right to remain permanently in the country but are still subject to immigration laws. Thus the possibility for a premature deportation upon reasonable grounds (mentioned above) is not excluded. Pursuant to INA, previously considered people as legal, can still undergo deportations, expedited removals, etc. in specific circumstances.**

The visas are granted by the US Department of State, however the Attorney General has the power to deny an immigrant visa of certain individuals if he/she “**knows or has reason to believe**” that the applicant is a substance trafficker, or is involved in money laundering. Along with the Secretary of HS, they can deny visas again based on the “reasons to believe” the individual is involved in human trafficking or poses a threat to the security of the US³¹.

In short, the process of granting a visa although independent of DHS is not indifferent to the control and oversight of the Secretary of HS and the Attorney General who retain the final say. Additionally, due to lack of legal certainty that the person originally is in possession of an immigrant visa and LPR will remain such, the LPR are in a constant threat of expedited removals, border detention upon arrival or immediate deportation without process.

All of these violations have been widely observed in recent times.

8. A glimpse of some of the executive orders issued by President Trump in the ambit of immigration

During both of his terms, President Trump has issued numerous executive orders in the field of immigration undoubtedly aiming to impose severe restrictions on entry. This paper will examine some of the most important ones in chronological order.

³⁰

<https://www.americanimmigrationcouncil.org/fact-sheet/how-united-states-immigration-system-works-fact-sheet/>

³¹ <https://www.govinfo.gov/content/pkg/COMPS-1376/pdf/COMPS-1376.pdf>

After the 9/11 attack, there was a rapid move towards islamophobic views which is still present to this day. In fact this can be observed by looking at the list of countries with restricted entry to the country, partially discussed in the next paragraph. The executive order 13769 was signed again by Trump, named “Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States”

Through this executive order, individuals from certain countries had their entry in the US suspended, “I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States” The specific provision is the following, “Not present in Iraq, Syria, or any other country or area of concern”³². Furthermore in the same title 8 of INA, called Aliens and Nationality, it is mentioned that government officials hold discretionary power to determine “whether the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States”

The incompatibility of Islamic people with the native American people, is further strengthened with arguments about the founding principles, “In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles.”

Executive order 14159 from 20 January 2025 called “Protecting the American People Against Invasion”, already signaling the negative attitude towards the incoming aliens, affirms that “national security and public safety” are the main priorities of the Federal Government. The preamble emphasises the threat posed by the immigrants through the claim they are “committing vile and heinous acts against innocent Americans. Others are engaged in hostile activities, including espionage, economic espionage, and preparations for terror-related activities.”

As a result, this executive order following the INA grants power to the Secretary of HS to “take all appropriate action, to apply, **in her sole and unreviewable discretion**, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II). Further, the Secretary of HS shall promptly take appropriate action to use all other provisions of the immigration laws or any other Federal law, including, but not limited to sections 238 and 240(d) of the INA (8 U.S.C. 1228 and 1229a(d)), **to ensure the efficient and expedited removal of aliens from the United States**³³.

³²<https://www.govinfo.gov/content/pkg/USCODE-2024-title8/pdf/USCODE-2024-title8-chap12-subchapII-partII-sec1187.pdf>

³³<https://www.federalregister.gov/documents/2025/01/29/2025-02006/protecting-the-american-people-against-invasion>

“Sec. 10 The Secretary of Homeland Security shall promptly take all appropriate action and allocate all legally available resources or establish contracts to construct, operate, control, or use facilities to detain removable aliens. The Secretary of HS, further, shall take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country, to the extent permitted by law.”

Research however reveals alarming information regarding the third parties with which the Secretary of HS has exchanged contractual obligations for the purposes of fulfilling sec 10 of the EO..

Not surprisingly in line with his current political views, in 2019 during Trump’s first Presidency, the US Department of HS concluded several contracts with countries like Guatemala, Honduras and El Salvador for the establishment of detention centres within their own territories³⁴.

The legal basis for this power granted to DHS stems from the Immigration and Nationality Act (INA) § 208(a)(2)(A) which says, “Safe third country Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection³⁵”

The provision has been criticised for creating potential gaps with parts of the fundamental bases of the non-refoulement principle, allowing for cases in which an individual faces unjust treatment based on outside of the abovementioned grounds. As a result it provides a legal gap for all the other cases in which an individual faced unjust treatment

Since it may be difficult to prove that the basis for the unjust treatment faced by the refugee seeker fits in any of the above categories, the escape of culpability in those cases can be easily observed.

According to the fact sheet provided by DHS, one of the types of agreements was the Asylum Cooperative Agreements which prompted that this cooperation would “allow migrants

³⁴https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf?utm_source=chatgpt.com

³⁵

<https://www.womenslaw.org/laws/estatutos-seleccionados-federales/immigration-laws-current-through-pl-112-283-approved-1-15-7>

to seek protection within the region (...) to expand their systems for offering humanitarian protections.” This sugar-coated claim as it would be discussed later diverges from the reality and the actual implementation of the agreements under the second term of the Presidency of Trump.

The xenophobic fear is further exemplified with sec. 15 of the same EO, “The Secretary of HS shall direct the Director of U.S. Immigration and Customs Enforcement (ICE) to take all appropriate and lawful action to reestablish within ICE an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens, and those victims' family members.”

Another example of how the US is undergoing a human rights decay also with regards to its international obligations, is the executive order 14199 of February 4, 2025, named “Withdrawing the United States From and Ending Funding to Certain United Nations Organizations and Reviewing United States Support to All International Organizations”. With this EO, Trump withdrew the US from key UN bodies including the United Nations Human Rights Council which provides periodic reviews of the human rights situations in the Member States³⁶.

9. The weaponisation of AI as a propaganda tool by the White House to reshape public opinion.

One of the most concerning facts of all is how this sudden shift of hostility towards immigrants was constructed and how the whole narrative was meticulously remoulded. Through the use of AI generated images, the White House has disseminated its anti-immigration propaganda while also defending the artificially built reputation of ICE officials as the guardians and servants of the US people³⁷. Below it can be observed some of the photos that were directly used by the White House added to their official profile in the social media platform X.com:

³⁶<https://www.federalregister.gov/documents/2025/02/10/2025-02504/withdrawing-the-united-states-from-and-ending-funding-to-certain-united-nations-organizations-and>

³⁷

<https://www.theguardian.com/us-news/2026/jan/29/the-slopaganda-era-10-ai-images-posted-by-the-white-house-and-what-they-teach-us>

This image was also released as part of the same AI campaign, illustrating a woman that would generally be accepted to be an “alien” due to her phenotype, likely coming from a Latino country, being arrested by an ICE agent. This phenotypic detail adds to the previous premise about how one of the main target groups of ICE are Spanish-speaking people.



10. Concrete violations by Trump’s administration

Migrants are one of the most vulnerable social groups, with little safeguards for their rights, which are further infringed with the common disregard of the principle of habeas corpus. In fact, their destinies often depend on the good will of the receiving state to apply the international standards of fair hearings to determine on a case by case basis the circumstances of the individual. Oftentimes, as it will be discussed, this is not the case with the suspension of hearings or the imposition of short hearing periods often accompanied by holding individuals in custody with life-threatening conditions, thus disregarding the due process of law.

The first 7 months of Trump’s second Presidential term, were met with nearly 200,000 people being deported to various places including also to the above-mentioned detention centres in third countries⁴⁰. The previously discussed Alien Enemy Act was used to justify these expedited removals often without hearings.

Following one of the agreements between the US and countries like El Salvador, many detainees have been sent to the Mega-prison (CECOT) in El Salvador which is well known publicly for its harsh conditions and the fact that it holds some of the biggest criminals oftentimes with life sentences. So how is the act and its gravity of exercising one’s right to migrate comparable to the offences committed by the prisoners there?

⁴⁰ https://en.wikipedia.org/wiki/Deportation_in_the_second_Trump_administration

There are many examples of detainees who were subjected to systematic physical beatings, torture, denial of access to food, water and life-vital medication for certain detainees who consequently end up dying due to the conditions in which they were being held. Each individual, carrying their own story which will probably never see life due to the mass propaganda undertaken by President Trump's administration and labelled them as "criminals".

These deportations to third countries like the abovementioned El Salvador, Honduras, etc. not only violate the principle of non-refoulment due to the serious risk for the safety of the person in that country but also breach the essence of habeas corpus.

Needless to mention is also the amount of time they are being held in custody, oftentimes without proper access to lawyers or even rendering phone calls impossible.

Recently, ICE agents have overstepped their powers by opening fire on unarmed individuals. It has resulted in the death of innocent individuals. Upon inquiry, the facts of the case were tweaked to justify the use of deadly force under the pretext of necessary defense. Several publicly available videos have been released which show **innocent non-violent people being recklessly shot dead by ICE agents**. Later in the comments by both the Secretary of HS and Trump the use of lethal force as a necessary measure, resulting in all of these atrocities, was upheld.

This systematic purge is not unknown to history with the Nazi regime first framing the Jewish issue as an urgent threat by instilling fear among people against them, growing into their "justified" expulsion which lastly as also seen in the US turned into a mass killing machine.

11. The paradox: an anti-immigration nativism-oriented President versus the foundations of USA

The very essence of the Nativism doctrine is wrecked due to the historical context in which the US was founded. Migration as a natural right of people has been exercised back in the days with the discovery of America and the first ships coming to the country with European settlers.

Although the current US President has foreign non-native origins with the first settler from his family, namely his grand-father Friedrich Trump (after which the whole family started a new life in the US), the former has strong white centered nativist views regarding who has a right to stay in the US. Friedrich was born in Bavaria, Germany and when he moved to the US, he

anglicised his name. ⁴¹Indeed his German grandfather sought a better life and new opportunities when he moved to the US (which he also achieved as he became a very successful entrepreneur). Yet other non-white people doing also in the pursuit of the American dream are highly unwelcomed.

As a result this Nativist approach of Donald Trump towards the matter of immigration falls completely short.

12.The inherent conflict between the right of a State to protect its sovereignty and consequently its borders versus the enshrined fundamental rights of people to seek asylum.

The main legal conflict presented is whether national sovereignty and immigration are two concepts completely incompatible like the administration of Trump is convinced it is.

So what exactly is state sovereignty?

Sovereignty as a term derives from the Latin “superanus” and was originally understood as a supreme power over a territory. The concept finds its origins back in the 16th century when Jean Bodin used it to boost the power of the then French king over rebellious feudal lords.

More interesting is however the notions of sovereignty defended by John Locke and Jean-Jacke Rousseau, which later found expression in the Declaration of Independence and the subsequent US Constitution.

The concept of popular sovereignty as the expressed will of people to entrust a governing body through a social contract remains purely imaginative in the sense that no such conferring of powers by a set number of people can be found in history. As a result, the whole argument that bases itself on the defense of sovereignty cannot be justified due to the impossibility of defining the subjects.

So how can one claim to protect a state sovereignty when it is not really clear who were the people that engaged in the so-called social contract?

Going back to the definition of state sovereignty, in simple terms it is defined as the exclusive power of a state over its territory and nation. State sovereignty however is also understood to include the protection of its borders, its cultural heritage, values, etc.

⁴¹<https://www.miningnewsnorth.com/story/2024/12/06/mining-history/frederick-trump-and-the-american-dream/8821.html>

So how exactly does immigration threaten this principle? Throughout the years as previously discussed this conflict was framed with the incompatibility of immigrants to fit into the US cultural context without diluting the well-established values of the Founding Fathers.

In fact Laura Thompson, the Deputy Director General of International Organization for Migration in her paper published also in the UN chronicle, claims that it is actually the opposite, “Migration management laws that protect the human rights of migrants can effectively work to enhance state sovereignty by protecting national security and public order. For instance, by developing laws and practices that protect the human rights of irregular migrants, such as victims of trafficking and smuggling, states can better address issues of corruption and transnational organised crime which are often associated with trafficking or smuggling in persons.⁴²”

13. Counterargument against the anti-immigration policies: Neo-colonialism in the African continent and immigration rights of victims as the natural rebalancing of political and economic forces

Another question that should be asked is whether the USA has the moral right to suppress these immigration processes when it is part of the neo-colonialistic oppressors with multinational corporations which vastly exploit the resources and labour-force of third-world countries perpetuating further the level of social inequality and poverty.

Proponents of the famous counter-argument of anti-immigration policies suggest that countries exercising political and economical control over sovereign states through the abovementioned large-scale production corporations, have the inherent moral responsibility to have their doors open towards the exploited countries.

The negative impact of these corporations mainly in the area of textile, mining and electronics, is undeniable with evident exploitation of the natural resources leaving the country completely depleted of unleashing its potential⁴³. Furthermore these corporations operate on highly exploitative contracts with the local workers with poor working conditions, low salaries and long work hours which perpetuates and deepens the social inequality among people. Practices of violence and human rights violations are very common also among some of the biggest market leaders like Apple, Tesla, Microsoft, Dell.

⁴²

https://www.iom.int/sites/g/files/tmzbdl2616/files/2018-07/DDGs_commentary_Protection_of_Migrants.pdf

⁴³ <https://www.rosalux.co.za/publications/transnational-corporations-and-human-rights-in-africa>

The Democratic Republic of Congo for instance has faced egregious human rights violations with detrimental child labor practices in the extraction of cobalt. In one of the lawsuits brought against the abovementioned firms, the plaintiff families stated that “their children were driven by extreme poverty to seek work in large mining sites, where they claim they were paid as little as \$2 (£1.50) a day for backbreaking and dangerous work digging for cobalt rocks with primitive tools in dark, underground tunnels.” Some of the children were even killed in tunnel collapses and others were paralysed or suffered permanent injuries⁴⁴.

In addition Western countries including the US, have engaged in a long-standing practice of waste-dumping bilateral agreements in the continent causing further ecological disasters to a land that is generally considered fertile. As a matter of fact in 2019, the US exported its waste to 96 countries one of which was Kenya. This has led to a huge increase in the tonnage of mismanaged waste from 4.4 million metric tons in 2010 to 10.5 million metric tons in 2025 in the continent, further harming the people living in the territory. Despite the Basel Convention from 2021 which aimed to limit plastic waste-dumping to low- and middle-income countries, the systematic waste-dumping continued⁴⁵.

In the end it turns out to be a vicious cycle in which the Western world through the establishments of multinational corporations in the African continent exploit both the natural resources belonging to the country as well as its peoples all while at the same time shutting down the borders for these same people. While White people have unlimited free access to these countries, they also try to use all legal means to prevent entry in their own country.

Finally, one must also consider the political outcomes of having countries that have become dependent on the big foreign investors, that the policies would try to favour them more than taking care of its own people to foster a welcoming arena for potential new investments. Consequently, the argument of the Republicans regarding the invasion of immigrants of the USA and the reciprocal need for a response, can be applied to this case where African countries are being oppressed by the US “invaders” contributing to both ecological, political, economical and human rights crisis while also infringing on their state sovereignty.

In the end, such unjustified restrictive migration policies create a deadlock for the people that suffer the consequences of the more powerful, thus questioning the amount of autonomy the people have. Naturally to restore this balance of political and economic forces and remedy for the injustices suffered by the people on the African continent, restrictions in the migration towards the US cannot find justifiable grounds.

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<https://www.theguardian.com/global-development/2019/dec/16/apple-and-google-named-in-us-lawsuit-over-congolese-child-cobalt-mining-deaths>

⁴⁵ <https://www.theafricareport.com/51072/kenya-is-not-a-dumping-ground-for-us-plastic/>

14.Pluralism and its benefits to society

In addition to the above-mentioned argument, the benefits of a society which welcomes and accommodates pluralism are indisputable. A pluralistic society which has ensured that its legal system has integrated well the immigrants broadens the horizons of the society.

The presence of different cultures allows for the collision of ideas and opinions which opens a more diverse and even representative political arena. Only through such an open approach can people improve their cognitive skills and critical reasoning.

Not only that but a government which accommodates these natural processes instead of trying to instill fear and hostility, brings about a positive change, namely in the creation of a more tolerant society which strives for growth and inclusion.

15.Conclusion

One of the main reasons for the current era of deteriorating rights of immigrants is the way the constitutional framework of the US works, enabling a tyranny of the majority as seen with the voting in the Senate with which the Secretary of DHS was elected. As seen before, most of the federal positions come with the nomination of the president with the “advice and consent of the Senate” which if dominated by the same party of the president, also render the enforcement body of the law aligned with their own political views. This results in cases like the current situation where the president is part of the Republican, with both chambers dominated by the Republicans and an executive federal body which consequently results also to be Republican. Undoubtedly, all this brings into question the principle of separation of powers on which the US Constitution is built.

Furthermore, through the broad interpretation of the “take care” clause and the limited constitutional tools of scrutiny often accompanied with difficult procedures, the president has become quasi the ultimate legislator in the fields of immigration enabling the fulfillment of his political agenda. This secures a space for an easy navigation and fulfillment of the political campaign of the president amid turbulent times. At this point it is not clear to what extent is the Congress truly representing the societal values and ideas which cannot but leave the question “if the shared public opinion towards these restrictive policies and the installed violence is rather negative and the Congress being an elected body does not reverse these executive orders, then how can popular sovereignty remain alive?”

In fact, the decay of the constitutional values paradoxically becomes the result of the implementation of the very provisions aimed at limiting entry of people viewed as a threat to the latter.

Additionally, the wide constitutional immunities of federal agents open space for bigger violations of human rights as seen including blatant violence and killings, and deepen the issue of non-impunity of the latter. Such practices cannot be justified under international human rights law.

In addition to the institutionalised tools which enable this campaign, the White House has also weaponised AI to reverse the negative repercussions against ICE agents by changing the narrative using commonly associated symbols of heroic figures.

Not only that these officials do not face legal charges but from an international perspective impunity looks inevitable with the recent withdrawal of the US from the UN Human Rights Council.

So the real question that must be asked is whether there is truly a conflict between immigration and state security and sovereignty or it's just yet another institutionalised tool of highly nationalistic leaders framing it as such. Are they actually incompatible like they are presented or there can be a balance between the two? And how can a country like the US with such a commanding political and economic presence in so many other countries, often with a rather negative impact, have a legitimate right to restrict entry to its own land?

Instead of narrowing down the scope of protection against one of the most vulnerable groups, namely the migrants through the circumvention of the will of the people with the issuance of executive orders, the country should strive to restore the natural "*ius migrandi*". A priority should be trying to integrate the immigrants socially and economically into the society instead of racially secluding them.

16.About GICJ

Geneva International Centre for Justice is a non-profit, non-governmental organisation, headquartered in Geneva, Switzerland and governed by the Swiss Civil Code and its statutes, that has the mission to promote and reinforce commitments to the principles of equity and non-discrimination, respect for human rights, judicial independence, rule of law and human rights. In doing so, it bases its work on documenting human rights violations with the ultimate mission to raise awareness and combat impunity all while striving to obtain justice for the victims.

