

---

# RESPONSE

## THE MEANING AND SIGNIFICANCE OF CRITICAL IMMIGRATION LEGAL THEORY<sup>†</sup>

KEVIN R. JOHNSON\*

### ABSTRACT

Critical Immigration Legal Theory by Kathleen Kim, Kevin Lapp, and Jennifer J. Lee identifies Critical Immigration Legal Theory (“CILT”) as a distinct body of immigration scholarship bringing critical legal analysis to bear on U.S. immigration law and policy. CILT analyzes how immigration law and policy function to subordinate noncitizens of color, women, LGBTQIA+ persons, and others. As this Essay discusses, Critical Legal Immigration Theory represents a significant contribution to our understanding of immigration law scholarship and, importantly, is part of a growing body of critical scholarship analyzing the subordination of vulnerable noncitizens. In mapping the field, the authors blaze a trail for future Critical Immigration Legal Theory scholarship.

---

<sup>†</sup> An invited response to Kathleen Kim, Kevin Lapp & Jennifer J. Lee, *Critical Immigration Legal Theory*, 104 B.U. L. REV. 1515 (2024).

\* Mabie/Apallas Professor of Public Interest Law and Chicana/o Studies, University of California, Davis, School of Law. I thank Kathleen Kim, Kevin Lapp, and Jennifer J. Lee for their provocative article and the editors of the *Boston University Law Review* for inviting me to provide this commentary. Immigration law scholars generally deserve credit for their general commitment to scholarship, activism, and community. Law student Hector Barron provided excellent research assistance.

CONTENTS

INTRODUCTION .....	1575
I. PERSPECTIVES ON CILT .....	1578
II. CILT.....	1583
III PRAXIS AND RESISTANCE .....	1589
CONCLUSION.....	1590

## INTRODUCTION

Every so often, a law review article comes along that jumps out for saying something incredibly insightful and significant. Kathleen Kim, Kevin Lapp and Jennifer J. Lee's visionary article *Critical Immigration Legal Theory*<sup>1</sup> is one of those rare articles. It identifies a growing body of immigration scholarship, which began to take off at the end of the twentieth century and flourishes today. To do so, the article synthesizes a large volume of immigration law scholarship and carefully identifies trends in that work.<sup>2</sup>

As set forth in the article, Critical Immigration Legal Theory ("CILT") is a brand of scholarship that critically scrutinizes U.S. immigration law and policy through a focus on race, gender, class, and other social markers that target these groups for subordination.<sup>3</sup> The authors methodically identify the emergence of CILT<sup>4</sup> and explain the movement's central, all-important organizing principle:

Often, U.S. immigration law and policy edify norms that exclude and subordinate noncitizens due to their race, gender, sexual orientation, and/or socioeconomic status. Indeed, immigration law has always been a place for Americans to enact their many prejudices. Until the late twentieth century, few legal scholars explored these complexities of immigration law. In the twenty-first century, however, the scholarly field of immigration law has flourished. . . . [and] a distinctive method of interrogating immigration law and policy has emerged. We call this analytic method Critical Immigration Legal Theory ("CILT").<sup>5</sup>

*Critical Immigration Legal Theory* insightfully analyzes a burgeoning critical body of immigration law and policy scholarship. The authors provide immigration scholars much food for thought in evaluating past and future scholarship. As is characteristic of path breaking works, the article makes an obvious, but brilliant, point that no scholar has previously made as clearly and comprehensively.

---

<sup>1</sup> Kathleen Kim, Kevin Lapp & Jennifer J. Lee, *Critical Immigration Legal Theory*, 104 B.U. L. REV. 1515 (2024) [hereinafter *Critical Immigration Legal Theory*]. In my estimation, the authors of the article themselves are influential Critical Immigration Legal Theory scholars.

<sup>2</sup> *See id.* at 1518-20.

<sup>3</sup> *See id.* at 1518. Although CILT analysis of racial discrimination is the focus of much of the discussion in this Essay, gender and other inequalities in the immigration laws also have been the subject of CILT inquiry. *See, e.g.*, FEMINIST JUDGMENTS: IMMIGRATION LAW OPINIONS REWRITTEN 2 (Kathleen Kim, Kevin Lapp & Jennifer J. Lee eds., 2023) (reimagining foundational immigration law jurisprudence through feminist lens); Mariela Olivares, *Unreformed: Towards Gender Equality in Immigration Law*, 18 CHAP. L. REV. 419, 419 (2015) ("[T]he origins of U.S. immigration law include formal and explicit restrictions against the migration and naturalization of people of color and of other political, racial, social, cultural, or ethnic minorities.").

<sup>4</sup> *See Critical Immigration Legal Theory*, *supra* note 1, at 1528-52.

<sup>5</sup> *See id.* at 1518 (footnote omitted).

Recent years have seen the emergence of a critical genre of immigration scholars who have slowly but surely transformed the field. They shine a light on the stark disparate racial, class, gender, and other outcomes generated by U.S. immigration law and policy.<sup>6</sup> CILT scholarship strives to get to the root of the subordination of noncitizens by the immigration laws.<sup>7</sup> Moreover, critical immigration law scholars demonstrate how courts and law facilitate, and do nothing to deter, the subordination of the most vulnerable groups of people.

Because of the way that the U.S. government has deployed immigration laws and policies, especially during the leadership of former President Donald Trump,<sup>8</sup> the new generation of CILT scholars have considerable grist for the academic mill. Although Congress over time has removed much of the blatant racism from the immigration laws, color-blind and race-neutral devices adversely affect—and in some instances punish—people of color who come from the developing world.<sup>9</sup> Political leaders, notably but not exclusively Trump, often rely on racial code, or dog whistles, to feed the flames of intolerance.<sup>10</sup> They advocate extreme, at times frightening, measures, such as

---

<sup>6</sup> See generally, KEVIN R. JOHNSON, *THE “HUDDLED MASSES” MYTH: IMMIGRATION AND CIVIL RIGHTS* (2004) (analyzing various forms of discrimination in U.S. immigration laws throughout U.S. history).

<sup>7</sup> In their scholarship, CILT scholars have built on the teachings of Critical Race Theory scholarship, including, at times, narrative scholarship. See, e.g., Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971, 971 (1991) (examining feminist narrative as distinct form of critical legal discourse); Margaret E. Montoya, Mascaras, Trenzas, y Greñas: *Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1, 2-15 (1994) (utilizing storytelling to support critical legal arguments).

<sup>8</sup> See Engy Abdelkader, *Immigration in the Era of Trump: Jarring Social, Political, and Legal Realities*, 44 HARBINGER 76, 76-77 (2020) (arguing that some Republican political leaders, including President Trump, have anti-immigrant bias that influence policy preferences); Kevin R. Johnson, *Trump’s Latinx Repatriation*, 66 UCLA L. REV. 1444, 1447 (2019) (demonstrating that the Trump administration employed immigration laws to target Latina/o peoples); Ernesto Sagás & Ediberto Román, *Build the Wall and Wreck the System: Immigration Policy in the Trump Administration*, 26 TEX. HISP. J.L. & POL’Y 21, 21-22 (2020) (arguing that Trump administration prioritized anti-immigration agenda through law and policymaking).

<sup>9</sup> See, e.g., Immigration and Nationality Act § 202, 8 U.S.C. § 1152(a) (2024) (imposing annual ceilings on number of immigrants from each country); see also Bernard Trujillo, *Immigrant Visa Distribution: The Case of Mexico*, 2000 WIS. L. REV. 713, 713-15 (analyzing how per country ceilings result in delays of many years for prospective Mexican immigrants).

<sup>10</sup> See Stephen Nuño-Pérez, Opinion, *Trump Is Latest Pied Piper of Dog Whistle Politics*, NBC NEWS, <https://www.nbcnews.com/news/latino/opinion-trump-latest-pied-piper-dog-whistle-politics-n397326> [<https://perma.cc/NQW2-7HD7>] (last updated July 23, 2015, 3:20 PM) (citing IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014) (contending that politicians frequently employ racial code—so-called dog whistles—to generate public passion for anti-minority laws and policies)).

closing the U.S.-Mexico border,<sup>11</sup> mass removals of noncitizens of color,<sup>12</sup> and other heartless measures, such as tearing migrant children away from their parents in an effort to deter future migration.<sup>13</sup>

In clear, concise, and insightful fashion, *Critical Immigration Legal Theory* analyzes the new Critical Immigration Legal Theory scholarship and explains its academic place and significance.<sup>14</sup> The article sheds much light on this emerging genre of critical scholarship.

Moreover, as discussed by Professors Kim, Lapp, and Lee, Critical Immigration Legal Theory scholars call for concrete and meaningful reform to promote social justice in the U.S. immigration system.<sup>15</sup> CILT scholars believe that change is urgently needed to dismantle the system that subordinates vulnerable noncitizens. They seek to move the nation toward more just immigration outcomes. The prescriptions of these scholars run the gamut, from admitting larger numbers of noncitizens<sup>16</sup> to ending immigrant detention,<sup>17</sup> and

---

<sup>11</sup> See Yeganeh Torbati & Jeff Mason, *Trump Threatens to Shut U.S.-Mexico Border*, REUTERS, <https://www.reuters.com/graphics/USA-IMMIGRATION-TRUMP/0100919N1TG/index.html> [<https://perma.cc/L76T-Z3LH>] (last updated Apr. 3, 2019) (reporting President Trump's plan to close U.S. border with Mexico). Invoking an obscure public health law known as Title 42, President Trump in fact closed the U.S.-Mexico border during the COVID-19 pandemic. See Deepa Shivaram, *What to Know About Title 42, The Trump-Era Policy Now Central to the Border Debate*, NPR (Apr. 24, 2022, 5:00 AM), <https://www.npr.org/2022/04/24/1094070784/title-42-policy-meaning> [<https://perma.cc/87DF-HXPJ>] (stating that Congress enacted Title 42 in 1944 to help prevent spread of communicable diseases such as tuberculosis). President Biden lifted the Title 42 order. See *Biden Administration Ends Title 42. What Now?*, NPR (May 14, 2023, 5:00 PM), <https://www.npr.org/2023/05/12/1175865631/biden-administration-ends-title-42-what-now> [<https://perma.cc/C4Z5-68M2>].

<sup>12</sup> See Muzaffar Chishti & Sarah Pierce, *Trump's Promise of Millions of Deportations Is Yet to Be Fulfilled*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/article/trump-deportations-unfinished-mission> (last updated Feb. 3, 2021) (discussing Trump administration's deportation efforts).

<sup>13</sup> See Mariela Olivares, *Family Detention and Family Separation: History, Struggle, and Status*, 9 BELMONT L. REV. 512, 516-17 (2022) (discussing so-called "zero tolerance policy" as strategy to target removal of migrant families to deter immigration, including separating parents from their children). Until a public outcry required the practice to be discontinued, the Trump administration separated families at the U.S.-Mexico border. See *id.* at 519 ("[T]he program continued until President Trump signed an executive order on June 20, 2018, ending the Family Separation prong of the deterrence operation.").

<sup>14</sup> *Critical Immigration Legal Theory*, *supra* note 1, at 1521.

<sup>15</sup> See, e.g., *id.* at 1541.

<sup>16</sup> See, e.g., Kevin R. Johnson, *Protecting National Security Through More Liberal Admission of Immigrants*, 2007 U. CHI. LEGAL F. 157, 160-62.

<sup>17</sup> See generally CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISON: AMERICA'S OBSESSION WITH LOCKING UP IMMIGRANTS* (2019) (analyzing critically U.S. government's increased use of immigrant detention as immigration enforcement tool).

even calling to abolish Immigration and Customs Enforcement (“ICE”), the primary immigration enforcement arm of the U.S. government.<sup>18</sup>

*Critical Immigration Legal Theory* proceeds sequentially. Part I cogently examines the rise of CILT scholarship.<sup>19</sup> Part II explains the context surrounding the development of CILT and how it responds to the fact that “immigration law and policy has functioned as a *tool of subordination, from the earliest federal legislation to modern immigration enforcement practices.*”<sup>20</sup> The anti-subordination principle,<sup>21</sup> which is at the heart of Critical Race Theory, is the undeniable tie that binds CILT scholarship. That principle warrants the full attention of all those committed to social justice. Part III maps CILT scholarship.<sup>22</sup> Finally, Part IV analyzes its implications, including suggesting a path for future scholarship.<sup>23</sup>

Parts I and II of this Essay discusses how *Critical Immigration Legal Theory* brands a genre of critical immigration scholarship that challenges the subordination of noncitizens. Part III analyzes how CILT endorses praxis, activism, and engagement as the solutions. In no uncertain terms, this body of scholarship is nothing less than a call to arms to fight for justice for immigrants.

#### I. PERSPECTIVES ON CILT

An increase in the number of immigration scholars (and their diversity) and classes and clinics at law schools, as well as the seemingly endless immigration and immigrant laws and policies to analyze, have contributed to the dramatic, if not explosive, growth of immigration scholarship. With its growth, trends can now be identified. *Critical Immigration Legal Theory* identifies one impactful trend. Inspired by Critical Race Theory and related critical genres, *Critical Immigration Legal Theory* identifies the field that, at a fundamental level, questions the subordination of disfavored groups of noncitizens by U.S. immigration law and policy. In this way, CILT is unmistakably based on the same commitment to anti-subordination as its sister movement of Critical Race

---

<sup>18</sup> See, e.g., Peter L. Markowitz, *Abolish ICE . . . and Then What?*, 129 YALE L.J.F. 130, 137-46 (Nov. 7, 2019), [https://www.yalelawjournal.org/pdf/Markowitz\\_AbolishICEandThenWhat\\_p1ypp1i9.pdf](https://www.yalelawjournal.org/pdf/Markowitz_AbolishICEandThenWhat_p1ypp1i9.pdf) [<https://perma.cc/3E57-3WZY>] (considering future of immigration enforcement after ICE); Allison Crennen-Dunlap, *Abolishing the ICEberg*, 96 DENV. L. REV. ONLINE 148, 155-57 (2019) (advocating end to immigrant detention as alternative to dissolving ICE).

<sup>19</sup> See *Critical Immigration Legal Theory*, *supra* note 1, at 1521-28.

<sup>20</sup> *Id.* at 1521 (emphasis added); see *id.* at 1528-41.

<sup>21</sup> See generally Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 PHIL. & PUB. AFF. 107 (1976); Ruth Colker, *The Anti-Subordination Principle: Applications*, 3 WIS. WOMEN'S L.J. 59 (1987); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

<sup>22</sup> See *Critical Immigration Legal Theory*, *supra* note 1, at 1541-64.

<sup>23</sup> *Id.* at 1564-71.

Theory.<sup>24</sup> Indeed, “Critical Race Theory is best understood as an anti-subordination project in the production of legal scholarship.”<sup>25</sup>

Immigration law is a body of law that, by design, designates favored and disfavored groups and legalizes the differential treatment of noncitizens.<sup>26</sup> By deciding who is entitled to admission into the country and who is subject to removal from it, immigration law and policy legitimates discrimination against noncitizens. Consider one example. Motivated by racism, Congress, in the Chinese exclusion laws of the late 1800s, barred the admission and facilitated the deportation of Chinese immigrants.<sup>27</sup> Courts refused to intervene to disturb these blatantly racist laws, and Congress expanded the exclusion of Chinese immigrants to bar virtually all Asians from immigrating to the United States.<sup>28</sup> Such lawful discrimination has had ripple effects on the civil rights of groups in U.S. society that share characteristics with those disfavored by immigration law.<sup>29</sup> That can be seen in the diminished civil rights of groups targeted by immigration law, especially people of color, who are treated as foreigners in the United States<sup>30</sup> and, even if U.S. citizens, treated as less than full members of U.S. society.<sup>31</sup>

Reading *Critical Immigration Legal Theory* reminded me that I have been an immigration law scholar for many years, having written on the subject as a law

---

<sup>24</sup> See generally Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 N.Y.U. L. REV. 1003 (1986).

<sup>25</sup> Elizabeth M. Iglesias, *Global Markets, Racial Spaces and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis*, 45 VILL. L. REV. 1037, 1073 (2000).

<sup>26</sup> See Carrie Rosenbaum, *Unequal Protection in Immigration Law*, YALE J. ON. REGUL. (July 22, 2020), <https://www.yalejreg.com/nc/unequal-protection-in-immigration-law-by-carrie-rosenbaum/> [<https://perma.cc/G53P-EJJM>] (analyzing limits on bringing equal protection challenges to provisions of immigration laws).

<sup>27</sup> See, e.g., *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 610-11 (1889) (refusing to invalidate Chinese Exclusion Act of 1882 and immunizing immigration laws from judicial review).

<sup>28</sup> See Irene Hsu, *The Echoes of Chinese Exclusion*, NEW REPUBLIC (June 28, 2018), <https://newrepublic.com/article/149437/echoes-chinese-exclusion> [<https://perma.cc/542M-CCVL>] (examining, inter alia, Chinese Exclusion Act’s expansion to include all Asian immigrants to United States).

<sup>29</sup> See *id.* (examining Chinese Exclusion Act (and progeny)’s lingering effects on Asian community in U.S. society). See generally BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990* (1993) (analyzing historical impacts on Asian American community’s evolution due to U.S. immigration law and policy).

<sup>30</sup> See generally JOHNSON, *supra* note 6 (analyzing history of discrimination against people of color, women, political minorities, and other disfavored groups in U.S. immigration laws and its impacts on citizens sharing disfavored characteristics).

<sup>31</sup> See generally MING HSU CHEN, *PURSuing CITIZENSHIP IN THE ENFORCEMENT ERA* (2020) (analyzing different perspectives on meaning of citizenship for immigrants); LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (2006) (analyzing different “faces” of citizens and immigrants wear in U.S. society).

professor since 1989.<sup>32</sup> I had previous experience handling immigration, primarily asylum, cases as an attorney.<sup>33</sup> The article generously treats me as a Critical Immigration Law Theorist.<sup>34</sup> My scholarship has sought to bring Critical Race Theory (“CRT”), Critical Latina/o (“LatCrit”) Theory, and related critical approaches to bear on the analysis of immigration law and policy.<sup>35</sup> Those analytical tools reveal how race animates much immigration law and policy. Critical analysis has improved with time. When I started writing in immigration law, Critical Race Theory was in its early years.<sup>36</sup> As CRT matured, my thinking about immigration law did as well. One of my most recent articles contends that systemic racism—and the subordination of noncitizens—is deeply embedded in contemporary immigration law and policy.<sup>37</sup>

As *Critical Immigration Legal Theory* makes clear, there was not a very large body of immigration law scholarship until the 1980s.<sup>38</sup> That decade saw the publication of the first true immigration law casebook, which began the process of bringing immigration law into the mainstream.<sup>39</sup> Over time, immigration scholarship has become viewed as a legitimate field of scholarly inquiry. Most law school faculties today include one or more immigration scholars and have courses in immigration law; a growing number of law schools also have immigration clinics. Consequently, immigration law currently is experiencing an ever-growing body of scholarship, including the branch now known as CILT.

By way of comparison, when I was in law school in the early 1980s, immigration law was not a course that I found on the curriculum. Immigration

---

<sup>32</sup> See KEVIN R. JOHNSON, HOW DID YOU GET TO BE MEXICAN?: A WHITE/BROWN MAN’S SEARCH FOR IDENTITY 117-18 (1999).

<sup>33</sup> See *infra* text accompanying note 94-96.

<sup>34</sup> See *Critical Immigration Legal Theory*, *supra* note 1, at 1546.

<sup>35</sup> See, e.g., Kevin R. Johnson, *The End of “Civil Rights” as We Know It?: Immigration and Civil Rights in the New Millennium*, 49 UCLA L. REV. 1481 (2002) [hereinafter Johnson, *The End of “Civil Rights”*]; Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525 [hereinafter Johnson, *Race Matters*].

<sup>36</sup> See generally CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995) (reprinting foundational Critical Race Theory scholarship); CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002) (compiling essays analyzing CRT’s evolution).

<sup>37</sup> See generally Kevin R. Johnson, *Systemic Racism in the U.S. Immigration Laws*, 97 IND. L.J. 1455 (2022) (analyzing how systemic racism in U.S. immigration law, facilitated by constitutional immunity of U.S. immigration laws, were generated by *The Chinese Exclusion Case* and other Supreme Court decisions).

<sup>38</sup> See *Critical Immigration Legal Theory*, *supra* note 1, at 1521-24. “Among the leading immigration law scholars in the 1980s were David A. Martin, T. Alexander Aleinikoff, Stephen H. Legomsky, Gerald L. Neuman, and Peter H. Schuck.” *Id.* at 1524 n.29.

<sup>39</sup> See THOMAS ALEXANDER ALEINIKOFF & DAVID A. MARTIN, IMMIGRATION: PROCESS AND POLICY (1st ed. 1985). Today, many immigration law casebooks are on the market.

clinics, ever so popular today, were just then gaining a foothold in law schools.<sup>40</sup> One wonders whether the race and class of many noncitizens subject to the immigration laws contributed to a perceived lack of prestige and value that warranted serious academic attention. Times unquestionably have changed. Teaching an appreciation for immigration law, client skills, and social justice are important goals of immigration classes and clinics, now staples of the law school curriculum.

CILT recognizes the deep connections between immigration law and social justice. The historical and modern treatment of immigrants by law and policy make this clear. For that reason, a casebook on immigration law and social justice can be found.<sup>41</sup> Lawyers have secured immigration reforms that promote social justice.<sup>42</sup> The *Critical Immigration Legal Theory* article shows how CILT scholarship shares a clear social justice orientation.

As I have written previously,<sup>43</sup> my thinking about immigration began as a child growing up in the greater Los Angeles area, the so-called Latino metropolis created by migration that remains a destination hub for many migrants.<sup>44</sup> My mother was born on just this side of the U.S.-Mexico border and, during summers we occasionally visited family, including my great-grandmother, in Mexico.<sup>45</sup> I thus literally saw the U.S.-Mexico border from both sides and knew enough persons of Mexican ancestry to appreciate that, contrary to what anti-immigrant advocates preach today, many were respectable, decent, and hard-working people. I gained a better understanding of immigration and my own family history and racial identity through Chicana/o Studies, sociology, and other courses as an undergraduate.<sup>46</sup>

As a professor, Chicana/o Studies and LatCrit theory scholarship have fueled my interest, as well as understanding, of immigration law.<sup>47</sup> These fields have

---

<sup>40</sup> See Kevin R. Johnson & Amagda Pérez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423, 1427, 1430-31, (1998) (noting that in 1981, UC Davis School of Law created immigration law clinic among first in U.S. law schools).

<sup>41</sup> See BILL ONG HING, JENNIFER M. CHACÓN & KEVIN R. JOHNSON, IMMIGRATION LAW AND SOCIAL JUSTICE (2d ed. 2021).

<sup>42</sup> See Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464, 1490-95 (2017) (analyzing role of attorneys in immigrant social movements); see also Kevin R. Johnson, *Teaching Racial and Social Justice in the Immigration Law Survey Course*, 67 ST. LOUIS U. L.J. 473, 482-86 (2023) (outlining social justice approach to teaching immigration law).

<sup>43</sup> See JOHNSON, *supra* note 32, at 86-87.

<sup>44</sup> See VICTOR M. VALLE & RODOLFO D. TORRES, LATINO METROPOLIS 15-41 (2000) (analyzing cultural and political emergence of Los Angeles with its large Latina/o population).

<sup>45</sup> See JOHNSON, *supra* note 32, at 53-56.

<sup>46</sup> See *id.* at 96-97.

<sup>47</sup> See Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIA. L. REV. 1143, 1154-61 (1999) (tracing LatCrit theory's roots to Chicana/o studies scholarship and activism).

influenced the emergence of CILT. Scholars in those fields understand immigration as a pressing civil rights concern and have carefully studied immigration law and its impacts on Latina/os, Asian Americans, and other people of color.<sup>48</sup> Immigrant detention,<sup>49</sup> racial profiling in immigration enforcement,<sup>50</sup> removals of immigrants convicted of crimes,<sup>51</sup> and removals generally are examples of the civil rights issues raised by U.S. immigration law and its enforcement. Relying on that scholarship, I have written about the civil rights issues implicated by immigration law and enforcement.<sup>52</sup>

Today, Critical Immigration Legal Theory scholars analyze the civil rights implications of the operation of immigration law and policy.<sup>53</sup> That analysis is sorely needed in a time of former President Trump's racist invective and extreme immigration policies; those developments justify careful scrutiny and have received it.<sup>54</sup> In his campaign for a second term as President, Trump has promised to double down on immigration enforcement.<sup>55</sup>

The growing racial diversity of immigration law scholars has helped establish a new body of Critical Immigration Law Theory scholarship. The number of Latina/o and Asian American immigration scholars, who were basically nonexistent in legal academia in the 1980s, has grown significantly. The late Professor Michael Olivas's efforts to add Latina/os to the legal academy contributed to the increase in the number of law professors interested in

---

<sup>48</sup> See, e.g., Evelyn Marcelina Rangel-Medina, *Citizenism: Racialized Discrimination by Design*, 104 B.U. L. REV. 831, 839 (2024).

<sup>49</sup> See source cited *supra* note 17.

<sup>50</sup> See sources cited *infra* note 74.

<sup>51</sup> See, e.g., Yolanda Vázquez, *Constructing Crimmigration: Latino Subordination in a "Post-Racial" World*, 76 OHIO ST. L.J. 599, 604 (2015).

<sup>52</sup> See Johnson, *The End of "Civil Rights," supra* note 35; Johnson, *Race Matters, supra* note 35.

<sup>53</sup> See, e.g., Tina Al-kharsan & Azadeh Shahshahani, *From the Chinese Exclusion Act to the Muslim Ban: An Immigration System Built on Systemic Racism*, 17 HARV. L. & POL'Y REV. 131, 136 (2022) (documenting racial discrimination in U.S. immigration law); see also Carrie L. Rosenbaum, *Systemic Racism and Immigration Detention*, 44 SEATTLE U. L. REV. 1125, 1175-76 (2021) (analyzing possible interpretation of discriminatory intent doctrine of Equal Protection law to improve equal protection remedy to racial discrimination in detention).

<sup>54</sup> See, e.g., Michele Goodwin & Erwin Chemerinsky, *The Trump Administration: Immigration, Racism, and COVID-19*, 169 U. PA. L. REV. 313, 318-321 (2021) (arguing that Trump administration's COVID-19 and immigration policies reflected racism and xenophobia); see also Karla McKanders, *Immigration and Blackness: What's Race Got to Do with It?*, 44 HUM. RTS. 20, 20-22 (2019) (examining anti-Black motivations and outcomes of U.S. immigration law).

<sup>55</sup> See Ted Hesson, *How Would Trump Crack Down on Immigration in a Second Term?*, REUTERS, <https://www.reuters.com/world/us/how-trump-would-crack-down-immigration-second-term-2023-11-14/> (last updated Sept. 10, 2024, 6:00 AM) (reporting on Trump's stated intentions for immigration policy upon reelection).

immigration law.<sup>56</sup> Today, there are a significant number of prominent Asian American and Latina/o immigration law scholars.<sup>57</sup>

## II. CILT

With an interdisciplinary approach, CILT is eclectic in its mode of analysis of immigration law and policy. Eschewing an exclusively doctrinal approach, CILT analysis pushes immigration law scholars to grapple with issues of race, racism, and civil rights in immigration law, just as the nation confronts these issues more generally across the legal spectrum. In doing so, as *Critical Immigration Legal Theory* lays out, CILT has altered the trajectory of immigration law scholarship.

At a fundamental level, CILT strives to bring greater racial justice to immigrants,<sup>58</sup> with its anti-subordination analysis of immigration law and policy.<sup>59</sup> Moreover, in the pursuit of the greater good, CILT scholars often are devoted to praxis and make practical contributions to change.<sup>60</sup>

CILT reminds us of the human impacts on the ground level from the nuts-and-bolts of immigration law and policy. The concern with the subordination of different groups of noncitizens by the immigration laws leads naturally to a focus on the often harsh human impacts of their operation.

To begin with, the terminologies “alien” and “illegal alien” are employed to strip people of their humanity and rationalize their harsh treatment under the law.<sup>61</sup> Former President Donald Trump is a famous example of a leader who

---

<sup>56</sup> See Kevin R. Johnson, *Michael Olivas’s Fight for Civil Rights for All*, 61 HOUS. L. REV. 933, 936 (2024) (“Professor Olivas built an institutional structure to nurture Latina/o law professors.”).

<sup>57</sup> See Brian Leiter, *10 Most-Cited Immigration Law Faculty in the U.S., 2016-2020 (Corrected)*, BRIAN LEITER’S L. SCH. REPS. (Oct. 29, 2021), <https://leiterlawschool.typepad.com/leiter/2021/10/10-most-cited-immigration-law-faculty-in-the-us-2016-2020.html> (listing most-cited immigration scholars).

<sup>58</sup> See, e.g., Bill Ong Hing, *Addressing the Intersection of Racial Justice and Immigrant Rights*, 9 BELMONT L. REV. 357, 359 (2022) (explaining “why the battle for immigrant and refugee rights should be viewed as an important part of the battle for racial justice”); Stephen Lee, *Racial Justice for Street Vendors*, 12 CALIF. L. REV. ONLINE 1, 5-7 (June 2021) (showing how immigration law is tool for racialization demonstrated by California street vending laws).

<sup>59</sup> See *supra* text accompanying notes 24-25.

<sup>60</sup> See *Critical Immigration Legal Theory*, *supra* note 1, at 1541 (describing scholarly contributions of various CILT scholars).

<sup>61</sup> See Kevin R. Johnson, “Aliens” and the U.S. Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIA. INTER-AM. L. REV. 263, 272-73 (1996) (criticizing use of term “alien” as dehumanizing); Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545, 1570 (2011) (“Because aliens were defined as ‘hostile’ and ‘strange,’ early legislatures enacted laws to protect citizens from the other-worldly threat depicted by these metaphoric representations.”); D. Carolina Núñez, *War of the Words: Aliens, Immigrants, Citizens, and the Language of Exclusion*, 2013 BYU L. REV. 1517, 1519-20 (2014) (arguing that term

dehumanizes immigrants. He attacked the humanity of Mexican immigrants by calling them criminals and rapists in announcing his 2016 campaign for the presidency.<sup>62</sup> He later made Mexican migrants targets for immigration enforcement. As President, he denigrated Haiti and El Salvador as “s\*\*\*-hole” countries that should not be permitted to send their migrants to the United States.<sup>63</sup> He later eliminated Temporary Protected Status relief from removal for Haitians and Salvadorans,<sup>64</sup> which President Biden later restored.<sup>65</sup> In the 2024 presidential campaign, Trump claimed that immigrants were “poisoning the blood of our country,” a chilling statement reminiscent of those made by Adolf Hitler about Jewish people that Nazi Germany targeted for genocide.<sup>66</sup> Candidate Trump promised to bring back even tougher immigration

---

“alien” connotes low status for noncitizens in social hierarchy); *see also* Raquel E. Aldana, *Taming Immigration Trauma*, 44 CARDOZO L. REV. 387, 456 (2022) (analyzing how United States might limit impacts of trauma from border enforcement on noncitizens). *See generally* MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (updated ed. 2014) (chronicling emergence of “illegal aliens” in national imagination).

<sup>62</sup> *See* Adam Gabbatt, *Donald Trump’s Tirade on Mexico’s ‘Drugs and Rapists’ Outrages US Latinos*, GUARDIAN (June 16, 2015, 4:00 PM), <https://www.theguardian.com/us-news/2015/jun/16/donald-trump-mexico-presidential-speech-latino-hispanic> [<https://perma.cc/7RBG-XMV3>]; Suzanne Gamboa, *Donald Trump Announces Presidential Bid by Trashing Mexico, Mexicans*, NBC NEWS, <https://www.nbcnews.com/news/latino/donald-trump-announces-presidential-bid-trashing-mexico-mexicans-n376521> [<https://perma.cc/8G2S-P4AJ>] (last updated June 16, 2015, 3:22 PM).

<sup>63</sup> *See* Alan Fram & Jonathan Lemire, *Trump: Why Allow Immigrants from ‘Shithole Countries’?*, AP NEWS (Jan. 12, 2018, 12:09 AM), <https://apnews.com/article/immigration-north-america-donald-trump-ap-top-news-international-news-fdda2ff0b877416c8ae1c1a77a3cc425>.

<sup>64</sup> *See* HILLEL R. SMITH, CONG. RSCH. SERV., LSB10070, UPDATE: TERMINATION OF TEMPORARY PROTECTED STATUS FOR SUDAN, NICARAGUA, HAITI, AND EL SALVADOR: KEY TAKEAWAYS AND ANALYSIS 2 (2018) (“From September 2017 through January 2018, [the Department of Homeland Security] successively announced the impending termination of [Temporary Protected Status] for Sudan, Nicaragua, Haiti, and El Salvador.”); *see also* Saget v. Trump, 345 F. Supp. 3d 287, 291-92 (E.D.N.Y. 2018) (challenging termination of Temporary Protected Status for Haitian immigrants announced in November 2017), *appeal dismissed sub nom.* Saget v. Biden, No. 19-1685, 2021 U.S. App. LEXIS 40673, at \*3, \*4 (2d Cir. Oct. 5, 2021).

<sup>65</sup> *See* Mohamad Moslimani, *How Temporary Protected Status Has Expanded Under the Biden Administration*, PEW RSCH. CTR. (Mar. 29, 2024), <https://www.pewresearch.org/short-reads/2024/03/29/how-temporary-protected-status-has-expanded-under-the-biden-administration/> [<https://perma.cc/B7MF-WG57>].

<sup>66</sup> *See* Ginger Gibson, *Trump Says Immigrants Are ‘Poisoning the Blood of Our Country.’ Biden Campaign Likens Comments to Hitler.*, NBC NEWS (Dec. 17, 2023, 11:18 AM), <https://www.nbcnews.com/politics/2024-election/trump-says-immigrants-are-poisoning-blood-country-biden-campaign-likens-rcna130141> [<https://perma.cc/7ZLD-GM4S>].

enforcement than seen in his first term.<sup>67</sup> Critical Immigration Legal Theorists have forcefully challenged the racist dehumanization of immigrants that is employed to rationalize this harsh, inhumane treatment.<sup>68</sup>

Trump's attacks on immigrants make it clear that, when it comes to social justice, immigration law and policy regularly offers much to analyze, both historically and in modern times. Professor Jack Chin, for example, has mined history to reveal the discriminatory treatment of immigrants.<sup>69</sup> Immigration laws and policies historically have discriminated against people of color, the poor, women, members of the LGBTQIA+ community, criminals, and many other disfavored groups.<sup>70</sup> As a matter of contemporary constitutional law, U.S. citizens could never be treated in the ways that noncitizens often are.<sup>71</sup>

The Supreme Court has offered unchecked authority, which it calls plenary power, to Congress to act as it sees fit in the realm of immigration; the Court went so far as to extend a constitutional immunity—that lives to this day—to shield substantive congressional immigration decisions from judicial review.<sup>72</sup> The foundational legal doctrine immunizing the immigration laws from review was forged in cases upholding blatantly racist laws in a time when Jim Crow ruled the United States.<sup>73</sup> Similarly, the Supreme Court in more recent years has held that race can be a factor in immigration enforcement, thus authorizing immigration officers to engage in racial profiling.<sup>74</sup> Although contemporary

---

<sup>67</sup> See *With a Second Term, Trump Would Take His Immigration Crackdown Further*, NPR (Feb. 11, 2024, 4:36 PM), <https://www.npr.org/2024/02/11/1198910374/trump-immigration-policy-crackdown-second-term> [<https://perma.cc/97W5-ZCSP>].

<sup>68</sup> See, e.g., Francisco Valdes, Steven W. Bender & Jennifer J. Hill, *Preparing for the Reckoning of Law with Justice: Organizing LatCrit Hemispherically for Systemic and Material Power*, 22 SEATTLE J. FOR SOC. JUST. 823, 833-36 (2024) (analogizing right-wing political leaders such as former President Trump to racial supremacists of Jim Crow South and Germany's Third Reich).

<sup>69</sup> See generally Gabriel J. Chin & Paul Finkelman, *The "Free White Person" Clause of the Naturalization Act of 1790 as Super-Statute*, 65 WM. & MARY L. REV. 1047 (2024).

<sup>70</sup> See generally JOHNSON, *supra* note 6 (analyzing systemic discrimination against various disfavored groups under U.S. immigration law).

<sup>71</sup> See *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976) ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.").

<sup>72</sup> See *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 602 (1889) (establishing plenary power doctrine shielding immigration laws from judicial review: "[t]he question whether our government is justified in disregarding its engagements with another nation is not one for the determination of the courts").

<sup>73</sup> See Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 13-15 (1998) (discussing racist foundations of Chinese Exclusion Act and legal doctrines upholding it).

<sup>74</sup> See, e.g., *United States v. Brignoni-Ponce*, 422 U.S. 873, 885-87 (1975) (stating "Mexican appearance" of passengers in automobiles is relevant, although not sufficient, factor in immigration stop). See generally Kevin R. Johnson, *How Racial Profiling in America*

immigration laws and policies are generally color-blind and race-neutral, systemic discrimination persists, with the courts providing little relief from that discrimination.<sup>75</sup>

CILT scholars offer many immigration reform possibilities. Some proposals are broad in scope, such as the abolition of ICE,<sup>76</sup> allowing more liberal immigrant admissions,<sup>77</sup> and comprehensive immigration reform, with a path to legalization for some undocumented immigrants.<sup>78</sup> Other proposals are narrower in scope, such as easing restrictions on asylum seekers, expanding work visas, and limiting removals.<sup>79</sup> CILT scholars also call for constitutional and other remedies to the systemic subordination of noncitizens.<sup>80</sup>

Put simply, from a variety of vantage points, Critical Immigration Legal Theorists analyze the modern forms of discrimination in immigration laws and policies. They offer future direction about progressive policy initiatives and likely will prove to be on the right side of history.

As discussed, the mostly color-blind and race-neutral contemporary immigration laws, as enforced, frequently have racially disparate impacts.<sup>81</sup> For

---

*Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005 (2010) (analyzing how racial profiling became authorized through series of Supreme Court decisions).

<sup>75</sup> See Johnson, *The End of "Civil Rights," supra* note 35, at 1483-84; Charles Kamasaki, *US Immigration Policy: A Classic, Unappreciated Example of Structural Racism*, BROOKINGS (Mar. 26, 2021), <https://www.brookings.edu/articles/us-immigration-policy-a-classic-unappreciated-example-of-structural-racism/> [<https://perma.cc/358L-Y87Y>].

<sup>76</sup> See sources cited *supra* note 18.

<sup>77</sup> See generally KEVIN R. JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* (2007) (advocating for more liberal immigration admissions); Daniel I. Morales, *Dissent in Immigration*, 16 LAW, CULTURE & HUMANITIES 250, 259-67 (2020) (advocating for United States to adopt open-border model).

<sup>78</sup> See, e.g., Peter L. Markowitz, *After ICE: A New Humane & Effective Immigration Enforcement Paradigm*, 55 WAKE FOREST L. REV. 89, 129-43 (2020) (proposing more humane immigration and border enforcement system).

<sup>79</sup> See, e.g., Denise Gilman, *Making Protection Unexceptional: A Reconceptualization of the U.S. Asylum System*, 55 LOY. U. CHI. L.J. 1, 65-82 (2023) (offering suggestions on reconceiving U.S. asylum system and making reconception mainstream); Shoba Sivaprasad Wadhia, *Darksided Discretion in Immigration Cases*, 72 ADMIN. L. REV. 367, 372-73 (2020) (proposing that when administrative remedy, such as relief from removal, involves discretionary component, such discretion should favor noncitizens).

<sup>80</sup> See, e.g., David C. Koelsch, *Embracing Mercy: Rehabilitation as a Means to Fairly and Efficiently Address Immigration Violations*, 8 INTERCULTURAL HUM. RTS. L. REV. 323, 329 (2013) ("U.S. immigration laws should demonstrate greater respect than existing U.S. laws for the human capacity to change, make amends, express regret and, ultimately, be embraced as a productive member of U.S. society.").

<sup>81</sup> See, e.g., Carrie L. Rosenbaum, *(Un)Equal Immigration Protection*, 50 SW. L. REV. 231, 232 (2021) ("[T]he way in which plenary power in immigration equal protection cases creates a barrier . . . resulting in racialized harm."); Abel Rodríguez, *Lethal Immigration*

example, the objective per country ceilings that limit annual immigrant admissions from any single nation have dramatic impacts on potential immigrants from Mexico, India, the Philippines, and China.<sup>82</sup> Migrants from developing nations with high immigration demand face long waits of many years for admission into the United States.

Moreover, although removal grounds are generally applicable and race-neutral, “[y]oung Latino men [are] the group that disproportionately bears the brunt of the immigration detention and removal apparatus.”<sup>83</sup> In sum, the systemic racial, class, and gender injustices resulting from the operation of the immigration laws and policies have generated growing demands for racial justice.<sup>84</sup>

The effort to critically analyze subordination through the law is central to various critical movements, including Critical Race Theory, Critical Latina/o Theory, ClassCrits,<sup>85</sup> and more. CILT fits comfortably into those movements. CILT scholars employ a critical lens to analyze immigration law. Raquel Aldana, Angelica Cházaro, Jennifer Chacón, Ingrid Eagly, César García, Pratheepan Gulasekaram, Carrie Rosenbaum, Rick Su, Rose Cuison Villazor, and many others fall into this category.<sup>86</sup>

My initial forays into immigration law and policy focused on the subordination of people of color. As CRT grew in influence, I saw more clearly

---

*Enforcement*, 109 CORNELL L. REV. 465, 468 (2024) (arguing that modern immigration policy paradigms “render migrants of color expendable”).

<sup>82</sup> See, e.g., Trujillo, *supra* note 9, at 716-22 (discussing disparate racial impacts of per country ceilings).

<sup>83</sup> Angélica Cházaro, *Challenging the “Criminal Alien” Paradigm*, 63 UCLA L. REV. 594, 610 (2016); see, e.g., Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportations*, 52 U.C. DAVIS. L. REV. 171, 176 (2018) (analyzing racism embedded in crime-based removals); Eisha Jain, *Policing the Polity*, 131 YALE L.J. 1794, 1800-01 (2022) (contending that immigration surveillance and detention effectively target nonwhites).

<sup>84</sup> See generally Jennifer J. Lee, *Immigration Disobedience*, 111 CALIF. L. REV. 71 (2023) (reviewing resistance efforts to modern immigration system); Mariela Olivares, *Resistance Strategies in the Immigrant Justice Movement*, 39 N. ILL. U. L. REV. 1 (2018) (urging reform, collaboration, and strategic resistance to discriminatory immigration policies).

<sup>85</sup> See, e.g., Angela P. Harris, *From Precarity to Positive Freedom: ClassCrits at Seven*, 44 SW. L. REV. 621, 622 (2015).

<sup>86</sup> See generally CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *WELCOME THE WRETCHED: IN DEFENSE OF THE “CRIMINAL ALIEN”* (2024); Aldana, *supra* note 61; Jennifer M. Chacón, *Immigration and the Bully Pulpit*, 130 HARV. L. REV. F. 243 (May 2017), [https://harvardlawreview.org/wp-content/uploads/2017/05/vol130\\_Chacón.pdf](https://harvardlawreview.org/wp-content/uploads/2017/05/vol130_Chacón.pdf) [<https://perma.cc/VW5V-UQQ6>]; Angélica Cházaro, *The End of Deportation*, 68 UCLA L. REV. 1040 (2021); Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U. L. REV. 1281 (2010); Rosenbaum, *supra* note 81; Pratheepan Gulasekaram, Rick Su & Rose Cuison Villazor, *Anti-Sanctuary and Immigration Localism*, 119 COLUM. L. REV. 837 (2019); Rose Cuison Villazor & Pratheepan Gulasekaram, *Sanctuary Networks*, 103 MINN. L. REV. 1209 (2019).

how race plays a central role in shaping the immigration laws as effective tools of discrimination and subordination. Indeed, the entire global border system has been characterized as enforcing racial borders between the white and nonwhite world.<sup>87</sup>

With a commitment to action beyond scholarship, CILT holds the promise of bringing justice to immigration law and will take us into the future.<sup>88</sup> Thanks to *Critical Immigration Legal Theory*, it is now a branded movement devoted to positive justice. As such, CILT scholarship should be lauded and encouraged.

There undoubtedly is a future need for CILT. Subordination and discrimination will no doubt continue to be a feature of the operation of immigration laws and policies. Those characteristics have blemished U.S. immigration law for centuries.<sup>89</sup> CILT thus has a clear target for future scholarly attention and intervention. It goes without saying that immigration will likely remain a site of fierce contention for the indefinite future.

In short, Critical Immigration Legal Theory promises to bring greater justice to the immigration laws. Justice is much needed and warrants our most careful attention. Immigration law is no less than a racial, class, and gender battleground. Noncitizens are dehumanized, punished, and marginalized under color of law. Immigration policies have become so extreme that harsh policies like those of former President Trump have become normalized. Deaths at the border are largely ignored,<sup>90</sup> and former President Trump's call for a revival of

---

<sup>87</sup> See E. Tendayi Achiume, *Racial Borders*, 110 GEO. L.J. 445, 449 (2022); see also Jennifer M. Chacón, *Legal Borderlands and Imperial Legacies: A Response to Maggie Blackhawk's The Constitution of American Colonialism*, 137 HARV. L. REV. F. 1, 12-13 (2023) ("The result [of contemporary legal notions of sovereignty] is a global immigration law regime that creates racial borders around moving bodies in ways that replicate racialized, colonial patterns of subordination.").

<sup>88</sup> See Chacón, *supra* note 87, at 17-18 (discussing principles of immigration law as possible targets for justice-seeking reform).

<sup>89</sup> See generally JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925* (2d ed. 2002) (chronicling anti-immigrant movement in early 1900s as reason behind passage of restrictive and discriminatory 1924 immigration law); ERIKA LEE, *AMERICA FOR AMERICANS: A HISTORY OF XENOPHOBIA IN THE UNITED STATES* (2019) (reviewing various xenophobic episodes in U.S. history); IMMIGRANTS OUT!: *THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* (Juan F. Perea ed., 1996) (offering perspectives on growth of nativism in United States during 1990s); EDIBERTO ROMÁN, *THOSE DAMNED IMMIGRANTS: AMERICA'S HYSTERIA OVER UNDOCUMENTED IMMIGRATION* (2013) (analyzing various anti-immigrant outbursts in U.S. history).

<sup>90</sup> See Carine Hajjar, Opinion, *Does Anyone Care that Kids Are Still Drowning in the Rio Grande?*, BOS. GLOBE, <https://www.bostonglobe.com/2023/12/09/opinion/us-mexico-border-deaths-trump-biden/> (last updated Dec. 9, 2023, 3:00 AM) (arguing public is desensitized to border tragedies).

a mass removal campaign similar to “Operation Wetback” of 1954 generates little outrage.<sup>91</sup>

### III. PRAXIS AND RESISTANCE

Praxis and activism are fundamental principles of Critical Race Theory.<sup>92</sup> The new Critical Immigration Legal Theorists are generally committed to public service, change, and social justice. They, for example, submit amicus briefs pushing for change in the courts.<sup>93</sup> Some represent noncitizens facing removal from the United States. The activist bent of CILT has greatly influenced the trajectory of immigration scholarship.

Many CILT scholars have hands-on experience as immigration attorneys and have engaged in public service relating to immigration and immigrants. Many clinical immigration faculty do such work on a daily basis. In those and other respects, immigration law scholars as a group may do more than the average law professor in terms of public service. The service of CILT scholars in the name of change distinguishes CILT from other scholarly movements.

I have found that immigration law provides many service activities. In addition to my immigration scholarship, I served as cocounsel for the California State Bar in a California Supreme Court case that sought to ensure the licensing of an undocumented immigrant to practice law.<sup>94</sup> Working with former Department of Homeland Security Janet Napolitano, who served as president of the entire University of California (“UC”) system, I helped create the Immigrant Legal Services Center, which provides legal services to all immigrant students, and their parents, on the UC campuses.<sup>95</sup> I helped organize the drafting of an amicus brief submitted to the Supreme Court in connection with the Trump

---

<sup>91</sup> See Philip Kennicott, *Trump Is Already Numbing Us to the Horrific Images His Plans Would Create*, WASH. POST (July 2, 2024, 6:00 AM), <https://www.washingtonpost.com/entertainment/art/2024/07/03/trump-images-photographic-conscience/> (comparing Trump’s deportation plan to Eisenhower administration’s “Operation Wetback”).

<sup>92</sup> See Keith Aoki & Margaret Chon, *Introduction: Critical Race Praxis and Legal Scholarship*, 5 MICH. J. RACE & L. 35, 35-38 (1999).

<sup>93</sup> See, e.g., Brief for Immigration Law Scholars on the Text and Structure of the Immigration and Nationality Act as Amici Curiae Supporting Respondents, *Trump v. Hawaii*, 585 U.S. 667 (2018) (No. 17-965).

<sup>94</sup> See *In re Garcia*, 315 P.3d 117, 117 (Cal. 2014) (listing Kevin R. Johnson as attorney of record for Respondent Committee of Bar Examiners of State Bar of California).

<sup>95</sup> See Kevin R. Johnson, *California Dreaming? The Integration of Immigrants into American Society*, BOOM CAL. (Oct. 29, 2017), <https://boomcalifornia.org/2017/10/29/california-dreaming-the-integration-of-immigrants-into-american-society/> [<https://perma.cc/XA7D-YSC3>] (“Created by UC President Janet Napolitano . . . the Immigrant Legal Services Center serves the unique legal needs of undocumented students and their parents.”).

administration's unsuccessful effort to rescind the Deferred Action for Childhood Arrivals policy.<sup>96</sup>

To take a step back, I first learned professionally of the intricacies of immigration law through pro bono work for Central American asylum seekers during a time when civil war and strife plagued the region.<sup>97</sup> My immigration focus broadened in academia. I currently blog daily about immigration law developments and the need for change in immigration law and policy,<sup>98</sup> write commentary on immigration and civil rights matters, and have testified on immigration issues before legislative bodies.<sup>99</sup> My scholarship has focused on the U.S.-Mexico border,<sup>100</sup> how to reform the immigration laws,<sup>101</sup> and civil rights and immigration.<sup>102</sup>

Many other CILT scholars also have an activist bent, which makes the field practical as well as interesting and important. They offer programs and classes to educate attorneys, students, and community members about immigration law. It may be that immigration is ideally situated for CILT activism. It involves subordinated and marginalized people in need of help. Political action is needed to change that dynamic. Law is of limited utility in bringing about change to immigration law. Political action and praxis are needed.<sup>103</sup> The dehumanization of immigrants has been normalized in U.S. society.

#### CONCLUSION

*Critical Immigration Law Theory* by Kathleen Kim, Kevin Lapp, and Jennifer J. Lee helps us make sense of the growing body of critical immigration law scholarship. An important contribution to the canon of immigration law scholarship, it undoubtedly will help frame future immigration law scholarship.

---

<sup>96</sup> See Brief for Immigration Law Scholars as Amici Curiae Supporting Respondents, Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1 (2020) (No. 18-587).

<sup>97</sup> See JOHNSON, *supra* note 32, at 113 (describing author's experience taking an impact "case in which Central Americans who had fled violent civil wars in El Salvador and Guatemala were in effect being coerced by Immigration and Naturalization Service (INS) to leave the United States 'voluntarily'").

<sup>98</sup> See, e.g., LAW PROFESSORS BLOG NETWORK, <https://lawprofessors.typepad.com/immigration/> (last visited Sept. 29, 2024).

<sup>99</sup> See, e.g., Dean Johnson Testifies Before California Senate Judiciary Committee on Immigrants' Rights, U.C. DAVIS SCH. L. (Mar. 6, 2017), <https://law.ucdavis.edu/news/dean-johnson-testifies-california-senate-judiciary-committee-immigrants-rights> [<https://perma.cc/9H9Y-S5SL>].

<sup>100</sup> See, e.g., KEVIN R. JOHNSON & BERNARD TRUJILLO, IMMIGRATION LAW AND THE US-MEXICO BORDER: ¿SÍ SE PUEDE? (2011).

<sup>101</sup> See, e.g., JOHNSON, *supra* note 77.

<sup>102</sup> See, e.g., Johnson, *The End of "Civil Rights," supra* note 35.

<sup>103</sup> See Kevin R. Johnson, *Bringing Racial Justice to Immigration Law*, 116 NW. U. L. REV. ONLINE 1, 1, 11 (2021), [https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1308&context=nulr\\_online](https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1308&context=nulr_online). (arguing that enforcement of immigration laws "unmistakably impacts people of color from the developing world").

The article parses the critical strands of contemporary immigration law scholarship. In so doing, the authors of *Critical Immigration Legal Theory* have offered important insights and performed a great service.

Immigration law is in important respects an ideal setting for CILT. The use of immigration law to subordinate vulnerable minorities is the norm. Courts offer Congress and the Executive Branch unquestioned and unreviewable power over immigration and immigrants. Moreover, the growing diversity of immigration law professors, widespread clinical activity, and commitment to praxis distinguishes immigration law from other areas of law.

By identifying CILT as a scholarly movement, Kathleen Kim, Kevin Lapp, and Jennifer J. Lee have moved forward our understanding of immigration law scholarship. *Critical Immigration Legal Theory* offers an excellent roadmap for future scholarship. The future of CILT is for them, and us, to write.