Ave Maria School *of* Law
Moot Court Board Journal

THE GAVEL

2025-2026
Volume 18

ACROSS THE BORDER:
Law on Immigration and Tariffs

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AVE MARIA
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INSIDE THIS ISSUE

LETTER FROM THE
President

Dear Reader:
Serving as President of the Moot Court Board for the 2025-2026 year was a great honor. This role was challenging, rewarding, and everything in between. This experience deepened my love for Moot Court and advocacy. Although this year was demanding, I had a great team around me, so I want to start by expressing my gratitude.

First, I would like to extend a special thank you to our faculty advisor, Professor Mark H. Bonner. The time and care you give to moot, coach, and advise every team throughout every competition means more than words can express. I am also grateful to the faculty advisors whose support helped strengthen this program over the past year. A personal thank you to Professor Stephen Wagner, who stepped in to coach three separate external competitions.

This year was a great success due to the sacrifice and hard work of every coach, volunteer, judge, and Moot Court Member. From Emily Mougros, Vice President of Internals, running the successful Robert H. Bork Appellate Internal Competition, where every new member competed, to our Vice President of Events, Lili Rodriguez, and Vice President of Operations, Sawyer Lecius, organizing thoughtful events and rounding out the Moot Court program... what an extraordinary year.

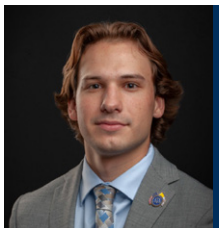
That success carried over into the external competition season, where most of the credit for the operation of our external events belongs to our Vice President of External Competitions, Madisen Maring. This leadership was something to be proud of and provided easy transitions for our competitors. This year we competed at the William and Mary Spong, Jr. Competition, Madisen Maring, Madison Dietz, and Joseph Collins III advanced to the Final 32, while Anthony Calello, Nicholas Callis, and I were named Octofinalists. At the Seton Hall Competition, Sawyer Lecius, Shannon Stamp, and Morgan Kelly also claimed Octofinalist honors, representing Ave Maria School of Law with distinction. Every competitor, regardless of outcome, reflected the preparation, professionalism, and excellence that define our program.

Finally, to every member of this Moot Court Board: thank you. Your hard work made this year's success possible. I look forward to seeing everything you all accomplish next year.

I hope you enjoy this edition of *The Gavel*. Quinten Zak, our Vice President of Publications, and the Publications Committee put in a tremendous amount of work to bring this issue together. A special thank you to our guest author, Professor Jennifer Jenkins. Your willingness to contribute means a lot to this program and our continued success.

It has truly been an honor to serve as your President. *Ite, inflammate omnia*!

Respectfully,
James P. Mrnacaj
President
Moot Court Board, Ave Maria School of Law



LETTER FROM THE
Editor

Dear Reader:
The theme of the 2025–2026 edition of *The Gavel*, Across the Border: Immigration and Tariff Law, engages two of the most consequential and widely debated issues of our time. In recent years, public discourse has been shaped by the imposition of tariffs, the responses they provoke abroad, and the far-reaching implications of immigration policies. These topics, often marked by sharp division, have dominated headlines, legislative agendas, and government shutdowns.

In this edition, *The Gavel* enters that conversation with the purpose to not merely echo prevailing narratives, but to examine these issues critically and, at times, to challenge the perspectives advanced by major media outlets. Through rigorous analysis, this publication offers a distinct voice from a Catholic and conservative perspective.

Despite the depth of disagreement these subjects often inspire, there remains a unifying truth: we are afforded the freedom to express, debate, and refine our views. At Ave Maria School of Law, this freedom is enriched by our Catholic tradition, which calls us to pursue truth, uphold human dignity, and serve the common good. For these blessings, both civic and spiritual, we are profoundly grateful to God.

It is in this spirit that the members of the Moot Court Board have contributed to this volume. The articles within do not shy away from complexity or controversy. Rather, they confront pressing legal questions surrounding tariffs and immigration through Catholic and conservative lenses. Topics range from *de minimis* exemptions in trade law to the procedural safeguards inherent in deportation proceedings. Comparative analyses further illuminate the strengths and shortcomings of domestic policy in a global context. Throughout, each contribution is guided by a commitment to the common good, informed by the enduring moral framework that is the backbone of our nation's Judeo-Christian heritage.

This edition reflects countless hours of sacrifice and effort. I extend my sincere gratitude to every member of the Moot Court Board for their diligence and commitment. I am equally thankful to the Publications Committee for their sacrifice of valuable time to uphold the high standards of our institution. Finally, I offer my deepest appreciation to our faculty advisor, Professor Mark H. Bonner, whose wisdom and guidance have been invaluable throughout this process.

It is my honor to present to you the 2025–2026 edition of *The Gavel*. Thank you for your continued support, and God bless.

Sincerely,
Quinten D. Zak
Editor-in-Chief, *The Gavel*
Vice President of Publications
Moot Court Board, Ave Maria School of Law

Is It Legal to Treat Certain Countries of Origin as a "Negative Significant Factor" in Discretionary Benefits Determinations?

By Professor Jenkins

Recently, two federal judges enjoined the U.S. Citizenship and Immigration Services (USCIS)[1] from delaying adjudication of green-card applications for dozens of immigrants, contrary to President Trump's Executive Order 1461 of January 20, 2025, "Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats"; Presidential Proclamation 10949 of June 4, 2025, "Restricting the Entry of Certain Foreign Nationals"; and Presidential Proclamation 10998 of December 16, 2025, "Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States." Critics of the Order and Proclamations point to disruption and uncertainty for thousands of immigrants legally in the U.S.

In January 2017 President Trump issued the controversial Executive Order 13,769 "Protecting the Nation from Foreign Terrorist Entry Into the United States[2]." Section Three of the Order banned the entry of nationals from Iraq, Iran, Sudan, Libya, Somalia, Syria, and Yemen for 90 days.[3] In Section Five, the Order indefinitely postponed the admission of Syrian refugees[4], gave preference to "refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's county of nationality[5]," and suspended the Refugee Admissions Program for 120 days[6]. Immediately, legal challenges ensued contending that the Order exceeded the statutory and constitutional authority of the President of the United States and violated the Establishment Clause of the First Amendment. A few days after the Order was signed, the states of Washington and Minnesota challenged it in the District Court for the Western District of Washington.[7] Judge James Robart ruled in favor of the states and issued a nationwide injunction against enforcement of the Order.[8] The President moved in the Ninth Circuit to stay the injunction, but the court denied the motion, reasoning that the Order was likely a violation of the Immigration and Nationality Act of 1965 (INA) and declined to reach the Establishment Clause issue.[9] In March 2017 President Trump rescinded the Order and replaced it with Executive Order 13,780,[10] which removed Iraq from the list of banned countries in the Original Order, but kept the 90-day ban for the other seven countries[11]; removed the indefinite ban of Syrian refugees, but kept the 120-day suspension of all refugees[12]; authorized exceptions to the ban[13]; and eliminated the provision giving preference to members of minority religions. In June 2017, the Supreme Court—taking up two new challenges to the Revised Order—ordered a partial stay, holding that the Revised Order could only be enforced against foreign nationals "who can[not] credibly claim a bona fide relationship with a person or entity in the United States."[14] In June 2018, the Supreme Court of the United States, in a 5-4 decision, *Trump v. Hawaii*, 585 U.S. 667, reversed the Ninth Circuit's affirmation of the injunction, holding no "likelihood of success on the merits' existed for the challengers on either their statutory (INA) or constitutional claims.

When President Trump was reelected, he issued Executive Order 1461 of January 20, 2025, establishing "[e]nhanced [v]etting and [s]creening [a]cross [a]gencies" involved in visa admissions and directing the Secretary of State, "in coordination with the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence" to "promptly . . . identify[] countries throughout the world for which vetting and screening information is so deficient as to warrant a partial or full suspension on the admission of nationals from those countries pursuant to section 212(f) of the INA . . .". On June 4, 2025, President Trump issued Presidential Proclamation 10949, suspending the entry (fully or partially) of nationals (both immigrants and nonimmigrants) from 19 countries[15], based on the recommendations directed by the Executive Order. On November 26, 2025, an Afghan national shot two members of the National Guard who were deployed in Washington D.C. The following day, USCIS adopted a policy (Policy Alert 2025-26) of treating an individual's nationality from one of the countries restricted in the Proclamation as a "significant negative factor" in adjudicating their application ("significant negative factor policy"). On December 1, 2025 the U.S. Department of Homeland Security (DHS) announced the planned deportation of six Afghan nationals accused of terrorism-related activities and violent crimes. On December 16, 2025, President Trump issued Proclamation 10998, adding another 20 countries and the Palestinian Authority to the restricted list.[16] In December 2025 and January 2026, USCIS issued Policy Memoranda establishing a hold on the adjudication of applications of persons from the restricted countries, and all asylum applications (subject to certain exceptions) ("adjudicative hold policy"). On May 3, 2026 the DHS exempted physicians from the Proclamations' restrictions.

On April 24th and 30th, respectively, of 2026, Judge George L. Russell, III, Chief U.S. District Judge for the District of Maryland and Judge Julia E. Kobick, U.S. District Judge for the District of Massachusetts, enjoined the federal government from enforcing the adjudicative hold policy against the plaintiffs. Judge Kobick additionally enjoined the federal government from enforcing against the plaintiffs, as the first court to consider the issue, the significant negative factor policy.

Judge Kobick reasoned that the plaintiffs were likely to succeed on their claim that the significant negative factor policy, as applied to those plaintiffs with adjustment of status and work authorization applications, violates Section 1152(a)(1)(A) of the Immigration and Nationality Act of 1965, which provides that barring Congressional

authorization, "no person shall . . . be discriminated against in the issuance of an immigrant visa because of the person's . . . nationality."[17] In *Trump v. Hawaii*[18], the Supreme Court upheld President Trump's restricting of the entry of nationals of certain countries. Judge Kobick distinguishes the instant case from *Trump v. Hawaii* by referencing the Court's explanation that admissibility and entry "operate in [a] different spher[e]" than the allocation of visas.[19] The order notes that no dispute exists that Section 1152(a)(1)(A) "bears on the plaintiffs' applications for adjustment of status and work authorization, because those applications depend on visa availability" and that "in particular, the government does not dispute that [the INA provision's] application to 'immigrant visa[s]' covers those work authorization applications at issue in this case." However, the issuances of visas is distinct from both the adjustments of status and the granting of work authorization applications. A foreign national in possession of an immigration visa may still be denied a change of status for various reasons, including overstaying his visa, possessing a criminal record, or having certain health issues. Work authorization can be granted in some circumstances without any type of visa, and a visa does not automatically grant work authorization.

Even if a prohibition against discriminating in the issuance of visas can be interpreted as prohibiting discrimination in adjudicating discretionary benefits requests, such as adjustments of status and work authorizations, other provisions of the Immigration and Nationality Act of 1965 shed light on what the Act means by "discriminating" against a person because of his nationality. These other portions of the Act expressly discriminate based on national origin. Section 1187(a)(12)(A)(ii) excepts from a visa waiver program Iraqi and Syrian nationals and nationals from other countries designated as areas of concern by administrative agencies.[20] Notably, the significant negative factor policy, make one's nationality merely probative, not dispositive for his claim; it only provides that country-specific considerations are one factor, albeit a significant one. Similarly, Section 1152(a)(2)(A) of the Act sets quotas limiting the number of immigrants from each country.[21] This treats potential immigrants differently based on their national origin. A national from a country from which many desire to immigrate to the U.S. (such as Mexico) generally must wait much longer than someone from a country from which fewer chose to immigrate (such as Switzerland).[22] A reading of Section 1152(a)(1)(A) that prohibited the "significant negative factor policy" seems inconsistent with other portions of the same Act.

It appears from the other portions of the INA of 1965 described above that by "discriminated against . . . because of the person's . . . nationality," Congress meant not that the government cannot consider nationality in the issuance of visas. Perhaps it is more likely that Congress was referring to invidious discrimination, that is, unequal treatment of a group based on malice or hostility, rather than a legitimate reason. The INA of 1965 abolished the national origins quota system, developed in the 1920's. That system prioritized immigrants from northwestern Europe and limited or excluded immigration from other parts of the world, such as Asia and Africa. Evaluating whether the policy discriminates invidiously seems similar to the "arbitrary and capricious" analysis under which the two district judges invalidated the adjudicative hold policy. The significant negative factor policy appears to be based on legitimate reasons, that certain, identified countries fail or lack the capability to adequately vet their citizens to avoid extending discretionary benefits to those who might present a serious national security risk.

Additionally, Section 1152(a)(1)(B) contains an exception for procedures: "Nothing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications[23]." This carve-out may imply that the government possesses the discretion to establish what factors to consider, even if those factors are "country-specific facts and circumstances." This provision is an example of the deference Congress gave to the Executive branch for immigration decisions in the INA.

Contrary to the decisions of the district judges of the Districts of Maryland and Massachusetts, the significant negative factor policy, likely complies with Section 1152(a)(1)(A) of the Immigration and Nationality Act of 1965. ○

References:

1 A component of the Department of Homeland Security (DHS).
2 Exec. Order No. 13,769 § 1, 82 Fed. Reg. 8977 (Jan. 27, 2017) (revoked & replaced with Exec. Order 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017)).
3 *See Id.* § 3(c).
4 *Id.* § 5(c).
5 *Id.* § 5(b).
6 *Id.* § 5(a).
7 Washington v. Trump, No. C17-0141JLR, 2017 U.S. Dist. LEXIS 16012 at *2 (W.D. Wash. Feb. 3, 2017), aff'd, 847 F.3d 1151 (9th Cir.), cert. denied, Golden v. Washington, 138 S. Ct. 448.
8 *Id*. at *3, *10.
9 *See generally* Washington v. Trump, 847 F.3d 1151 (9th Cir. 2017), cert. denied, Golden v. Washington, 138 S. Ct. 448.
10 Exec. Order No. 13,780, 82 Fed. Reg. 13,209, 13,212 (Mar. 9, 2017) (replacing the Original Order).
11 *Id*. § 1(f), (g), at 13,211–12.
12 *See Id*. § 6(a), at 13,215.
13 The revised order specified that it was inapplicable to lawful permanent residents, persons with valid visas on the effective date of the original order or the revised order, or refugees scheduled for travel to the United States before the effective date of the revised order. It also authorized the Secretary of State and Secretary of Homeland Security to jointly make case-by-case exceptions to the refugee suspension and consular officials. *Id*. § 3(b)(i), § 3(a)(ii), § 3(a)(iii), at 13,213; § 6(a), at 13,215; § 6(c), at 13,216; § 3(c), at 13,214.
14 Trump v. Int'l Refugee Assistance Project, 137 S. Ct. 2080, 2089 (2017).
15 The proclamation identifies seven "partially" restricted countries: Barundi, Cuba, Laos, Sierra Leone, Togo, Turkmenistan, and Venezuela. Nationals from Afghanistan, Burma, Chad, Republic of the Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Libya, Somalia, Sudan, and Yemen are "fully suspended" ("subject to [certain] categorical exceptions and case-by-case waivers.")
16 Nationals from the following countries were added and "full[y]" suspended ("subject to [certain] categorical exceptions and case-by-case waivers"): Burkina Faso, Mali, Niger, South Sudan, Syria, Palestinian Authority (those with documents issued by the Palestinian Authority). Nationals from Angola, Antigua and Barbuda, Benin, Cote d 'Ivoire, Dominica, Gabon, The Gambia, Malawi, Mauritania, Nigeria, Senegal, Tanzania, Tonga, Turkmenistan, Zambia, Zimbabwe were "partially" restricted. Laos and Sierra Leone were moved from the "partially" restricted to the "fully" suspended list. The Proclamation lifted the partial entry ban for Turkmenistan for nonimmigrant visas, but retained the ban for immigrant visas.
17 8 U.S.C. § 1152(a)(1)(A).
18 585 U.S. 667 (2018).
19 Hawaii, 585 U.S. at 695.
20 8 U.S.C. § 1187(a)(12)(A)(ii) (2012).
21 8 U.S.C. § 1152(a)(2)(A) (2012).
22 *See* Josh Blackman, The Statutory Legality of Trump's Executive Order on Immigration: Part IV, Josh Blackman's Blog (Feb. 11, 2017), http://joshblackman.com/ blog/2017/02/11/the-statutory-legality-of-trumps-executive-order-on-immigration.
23 8 U.S.C. § 1152 (a)(1)(B) (2012).

13th Annual Robert H. Bork
MEMORIAL APPELLATE COMPETITION

Left to right: Joseph Collins III, Dean Czarnetsky, Caroline Funk, Marie Carney, The Honorable Kyle C. Dudek, Mr. Rich Montecalvo, Jacob Wade

Finalists

Petitioners: Joseph Collins III & Jacob Wade | **Respondents:** Caroline Funk & Marie Carney

Champions
Caroline Funk and Marie Carney

Best Oralist
Caroline Funk

Best Brief
Joseph Collins III and Jacob Wade

EXTERNAL COMPETITION HIGHLIGHTS

Left to Right: James Mrnacaj, Madisen Maring, and Quentin Abbott

NYC BAR COMPETITION

James Mrnacaj, Madisen Maring, and Quentin Abbot traveled to Fort Lauderdale for the regional rounds of the NYC Bar Moot Court Competition. The team consisted of James and Madisen as oralists and Quentin as brief writer for this challenging Fourth Amendment seizure issue. This team accompanied by Professor Wagner honorably represented Ave Maria in a highly competitive competition.

Left to Right: Professor Stephen Wagner, Corwin Hooley, Emily Mougros, and Lili Rodriguez

GEORGE MASON COMPETITION

Students Emily Mougros, Lili Rodriguez, and Corwin Hooley and Professor Stephen Wagner represented our school at the John L. Costello Trial Advocacy Competition at George Mason Scalia Law School in Virgina. During one of the rounds Emily and Corwin both received best oralist advocates! The team consisted of Emily and Corwin as attorneys and Lili as a witness for this mock criminal trial that resulted in nine hours of courtroom experience!

Left to Right: Nicholas Callis, Anthony Calello, James Mrnacaj, Joseph Collins III, Madisen Maring, Madison Dietz, and Professor Mark Bonner

WILLIAM B. SPONG JR. MOOT COURT COMPETITION

Two teams attended the William B. Spong Jr. Moot Court Competition at William and Mary Law School in Virigina. Team one consisted of Madisen Maring, Madison Dietz, and Joseph Collins III. Team two consisted of Anthony Calello, James Mrnacaj, and Nicholas Callis. This competition involved an Establishment Clause issue with a tax component. Both teams proudly advanced to the last 32 teams and team two made it to the Octofinal round!

EXTERNAL COMPETITION HIGHLIGHTS

Left to Right: Quentin Abbott, Professor Stephen Wagner, Annabelle Bruno, and Alejandro (Al) Ulbrich

SEIGENTHALER-SUTHERLAND CUP NATIONAL FIRST AMENDMENT MOOT COURT COMPETITION AT CATHOLIC UNIVERSITY OF AMERICA

Quentin, Annabelle, and Alejandro (Al) argued a First Amendment issue regarding an anti-doxxing statute. The team, coached by Professor Wagner, beat George Washington and Seton Hall in the oral argument portion.

Left to Right: Professor Connolly, Miller Whitten, J.D., Ethan West, J.D., Professor Mark Bonner

ROBERT ORSECK MOOT COURT COMPETITION

Miller Whitten, J.D., Ethan West, and Quinten Zak, coached by Professor Bonner, argued a niche issue involving fully autonomous vehicles in Florida. In addition, the team argued a double jeopardy issue, beating two out of three teams in oral arguments.

Left to Right: Sawyer Lecius, Shannon Stamp, Morgan Kelly

JOHN J. GIBBONS CRIMINAL PROCEDURE MOOT COURT COMPETITION AT SETON HALL

Sawyer, Shannon, and Morgan, coached by Dean Emeritus Milhizer, advanced to the octofinals, making it to the top 16 out of 42 teams.

President Trump's Recent Immigration Policies: Constitutionally Consistent Or Executive Encroachment?

By: Joseph Collins III

The current United States federal government bears little resemblance to what the Framers originally envisioned when ratifying the Constitution in 1789. The Framers wanted a federal government with separated powers that deliberately sacrificed governmental efficiency for the protection of liberty and encouraged cooperation among the branches without usurping each other's delegated powers.[1] However, throughout the history of the United States, these delegated powers became intertwined, especially the distinction between executive orders issued by the president and legislative acts passed by Congress. Recently, this has come to a head over President Trump's executive orders enforcing his immigration policies.[2] Some federal judges have challenged these executive orders on constitutional grounds, stating that President Trump's executive orders are a violation of the separation of powers mandated by the Constitution.[3] Other federal judges have challenged these executive orders as violations of due process under the Fifth Amendment for the immigrants affected.[4]

But that begs the question: are President Trump's executive orders on immigration an overreach of his executive power and an encroachment upon a power of Congress, or are they consistent with his constitutionally delegated authority to execute the laws of the nation? The relevance of this inquiry is paramount given the political discourse surrounding President Trump's current immigration policies.[5]

To answer this question, we must first analyze the text of the Constitution itself to determine what explicit authority is given to the Executive and Legislative Branches regarding immigration, border security, and respective authorities to make and enforce those laws. The Constitution states that Congress has the power to "establish a uniform Rule of Naturalization," which includes immigration policies.[6] Through the Necessary and Proper Clause, Congress has the authority to make laws governing naturalization and immigration policies in the United States.[7] On the other hand, the president is delegated the power to "take Care that the Laws be faithfully executed," including immigration laws passed by Congress.[8] This is fundamental separation of powers; however, because of the nature of immigration and border security, sometimes more deference is given to one branch to manage this policy area.

In *Trump v. Hawaii*, the Supreme Court established that deference is often given to the president in the realm of national security because of the unique role the president's foreign affairs powers allow him to have in that area.[9] If the current political landscape reveals anything, President Trump certainly believes that border security is a paramount national security interest.[10] Additionally, the type of presidential power the president is exercising factors into how much authority he has over immigration and border security. This framework of presidential power was outlined in Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*. First, when the president is acting with the express support of Congress, his power is at its maximum because it includes all his independent, constitutional authority plus any additional power that Congress delegates to him.[11] Second, absent a congressional grant or denial of authority, the president operates in a "zone of twilight" because the president and Congress may have concurrent authority, or the distribution of that authority is uncertain.[12] Third, when the president's actions are incompatible with the express or implied will of Congress, the president's power is at its lowest ebb, and he is limited only to the powers expressly conferred to him in the Constitution.[13]

Additionally, the Immigration and Nationality Act of 1952 broadly delegates power to the president, specifically regarding the entry of immigrants into the country. Section 212 subsection (f) states that if the president determines that "the entry of any aliens . . . into the United States would be detrimental to the interests of the United States," the president may "suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate[,]" for as long as the president believes is necessary.[14] This substantial power grants the president the ability to pass executive orders and enforce immigration laws targeted on the entry of immigrants into the United States, which is exactly what President Trump has done.[15]

Following this standard for presidential power, President Trump is likely acting under the first category of presidential power, where his power is at its maximum potential, because Congress has expressly authorized the president to act regarding immigration entry policies.[16] Although some specific members of Congress have expressed their opposition to President Trump's immigration policies, President Trump has the authority to issue these policies pursuant to his presidential powers in the Constitution.[17] These presidential powers were raised to their maximum potential under the express grant of authority given to the president in section 212 subsection (f) of Immigration and Nationality Act of 1952.[18] Therefore, based on current federal legislation and the powers delegated to the president and Congress respectively by the Constitution, it appears that President Trump's current immigration policies are consistent with his constitutional powers and not an intrusion upon an area traditional within the realm of Congress.

The president has a unique role in national security matters, which includes immigration and border security. This allows the president to act swiftly and decisively on turbulent issues facing the country, such as the current immigration crisis.[19] If the president were deprived of this power, it would be uncertain when and how Congress would act, given their constitutionally required bicameral process and current political gridlock. Therefore, despite the political challenges they have faced, President Trump's current immigration policies are in line with his constitutional powers and are a valid exercise of his executive authority. ○

References:

1 *See* The Federalist No. 51 (Alexander Hamilton, James Madison).
2 Exec. Order No. 14159, 90 Fed. Reg. 8443 (Jan. 20, 2025).
3 Jasmine Garsd, *Federal judge strikes down Trump's order suspending asylum access at the southern border*, NPR (July 2, 2025, 8:19 PM), https://www.npr.org/2025/07/02/nx-s1-5455076/judge-rules-against-trump-asylum-ban.
4 Louis Casiano, *Federal judge blocks Trump's expanded deportation plan over due process concerns for illegal immigrants*, Fox News (Aug. 29, 2025, 10:03 PM), https://www.foxnews.com/politics/federal-judge-blocks-trumps-expanded-deportation-plan-due-process-concerns-illegal-immigrants.
5 *Mass Deportation: Analyzing the Trump Administration's Attacks on Immigrants, Democracy, and America,* American Immigr. Council (July 23, 2025), https://www.americanimmigrationcouncil.org/report/mass-deportation-trump-democracy/.
6 U.S. Const. art. I, § 8, cl. 4.
7 U.S. Const. art. I, § 8, cl. 18.
8 U.S. Const. art. II, § 3.
9 *Trump v. Hawaii*, 585 U.S. 667, 668-9 (2018).
10 Exec. Order No. 14159, *supra* note 1, at Sec. 1.
11 *Youngstown Sheet & Tube Co. v. Sawyer* (Steel Seizure), 343 U.S. 579, 635-37 (1952) (Jackson, J. concurring).
12 *Id.* at 637-38.
13 *Id.* at 637-39.
14 Immigration and Nationality Act, 8 U.S.C. § 1182(f) (1952).
15 Exec. Order No. 14159, *supra* note 1.
16 *Youngstown*, 343 U.S. at 637-38.
17 U.S. Const.. art. II, § 3.
18 Immigration and Nationality Act, *supra* note 14 at § 1182(f).
19 Exec. Order No. 14159, *supra* note 1, at Sec. 1.

The Citizenship Clause and The Doctrine Of *Jus Sanguinis*: National Citizenship As Fundamentally Familial In Nature

By Quentin J. Abbott

Traditional notions of citizenship are based primarily on two different doctrines: *jus sanguinis* and *jus soli*.[1] The former determines who has citizenship on the basis of whether the individual's parents possess citizenship, whereas the latter determines citizenship on the basis of the individual's country of birth.[2] While the current political debate over birthright citizenship often centers on this Clause,[3] a more fundamental debate concerns which model of citizenship best promotes the common good of the nation, as well as which model best comports with the dignity of the human person.[4]

The Citizenship Clause of the Fourteenth Amendment to the U.S. Constitution[5] has been understood to embrace *jus soli* citizenship, but Congress has granted *jus sanguinis* citizenship in a few select circumstances.[6] In dissenting from the U.S. Supreme Court's recent holding that the issuance of "universal injunctions"[7] against the Executive Branch exceeded the authority given to the federal district courts by Congress,[8] Justice Sonia Sotomayor asserted that being "subject to the jurisdiction"[9] of the United States consists only in "being bound to [the United States's] authority and its laws."[10] The principal dissent further maintained that the plain text of the Citizenship Clause prohibited the government from denying the rights of citizenship to any person born on American soil, and implied that denying this fact is tantamount to impermissible discrimination under the Constitution.[11] Yet, whatever the true interpretation of the Clause, there is also a legitimate question whether human dignity requires or implies birthright citizenship. Indeed, scholars have pointed out that the Citizenship Clause was meant as a direct response to the Court's infamous decision in *Dred Scott v. Sanford*,[12] which held that blacks were not citizens within the meaning of the Constitution.[13] Given this historical backdrop, it would be foolish to ignore the fact that laws about which persons are entitled to the dignity of American citizenship have been abused for invidious, discriminatory purposes.

The United States Conference of Catholic Bishops (USCCB) has voiced its opposition to attempts to abolish birthright citizenship.[14] After describing the current landscape of Citizenship Clause jurisprudence, the USCCB's office of Migration Policy and Public Affairs stated that, "The Church believes that a repeal of birthright citizenship would create a permanent underclass in U.S. society, . . .undermining the human dignity of innocent children who would be punished though they did nothing wrong; . . . ."[15] In other words, the U.S. Bishops appear to argue that repealing birthright citizenship is inimical to human dignity.[16] However, the Bishops do not condemn a *jus sanguinis* form of citizenship as a matter of principle, as they do not say that limiting citizenship to those whose parents are citizens[17] is immoral.

To the contrary, the Church has consistently upheld the right of nations to control immigration in their respective countries.[18] A nation's focus on kinship of blood connotes not simply a desire to maintain a similar genetic make-up but an emphasis on the commonality of national identity within a particular community and an effort to preserve national culture. Opponents of birthright citizenship invoke the importance of an individual's national allegiance as a means of defining citizenship.[19] By requiring a physical link to the nation, a *jus sanguinis* approach to citizenship recognizes the familial nature of the political community, which is comprised of members who share a common bond with one another and who naturally seek to advance the common good of their fellow countrymen. And while there may exist much room for debate over the proper interpretation of the Fourteenth Amendment's Citizenship Clause, the principle of *jus sanguinis* communicates an essential anthropological truth, which is that man is meant to live in a family. Defining citizenship to require only that individuals be "bound to [U.S.] authority and its laws" ignores this truth. ○

References:

1 Katherine Nesler, *Resurgence of the Birthright Citizenship Debate*, 55 Wash. U. J.L. & Pol'y 215, 215 (2017).
2 *Id.*
3 *See, e.g.*, Samuel Breidbart & Maryjane Johnson, *Birthright Citizenship Under the U.S. Constitution*, Brennan Cent. for Justice (Dec. 5, 2025), https://www.brennancenter.org/our-work/research-reports/birthright-citizenship-under-us-constitution (on file with the Ave Maria Moot Court).
4 *See, e.g.*, *Dignitatis Humanae, [On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious]*, ¶ 2 (1965).

5 U.S. Const. amend. XIV, § 1 (All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.").
6 Nesler, *supra note* i, at 215-16.
7 *See* Trump v. CASA, Inc., 606 U.S. 831, 841 (2025) (defining a "universal injunction" as "district courts asserting the power to prohibit enforcement of a law or policy against *anyone* [sic].").
8 *Id.*
9 U.S. Const. amend. XIV, § 1.
10 *Id.* at 881 (Sotomayor, J., dissenting) (citing to N. Webster, An American Dictionary of the English Language 732 (C. Goodrich & N. Porter eds. 1865).
11 *Id.* at 881 (Sotomayor, J., dissenting).
12 *See* Nesler *supra* note i, at 218-19.
13 *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393, 407 (1857) ("In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.").
14 Cynthia M. Smith, *The Catholic Church's Position on Birthright Citizenship*, U.S. Conf. Cath. Bishops https://www.usccb.org/issues-and-action/human-life-and-dignity/immigration/catholicchurchandbirthrightcitizenship (on file with the Ave Maria Moot Court).
15 *Id.*
16 *Id.*
17 *See* Nesler *supra* note i, at 215.
18 *See* Catechism of the Catholic Church ¶ 2241 (2d ed. 1997).
19 *See, e.g.,* William M. Stevens, *Jurisdiction, Allegiance, and Consent: Revisiting the Forgotten Prong of the Fourteenth Amendment's Birthright Citizenship Clause in Light of Terrorism, Unprecedented Modern Population Migrations, Globalization, and Conflicting Cultures*, 14 Tex. Wesleyan L. Rev. 337, 344 (2008) (arguing that the Supreme Court's decision in United States v. Wong Kim Ark, 169 U.S. 649 (1898) "confus[ed] 'subject to the jurisdiction thereof' (allegiance to the United States) with 'jurisdiction' (the right of the United States to enforce its laws)" [sic].").
20 Catechism of the Catholic Church ¶ 2207 (2d ed. 1997) ("The family is the original cell of social life.").
21 *Trump*, 606 U.S. at 881 (Sotomayor, J., dissenting).

The Path to Reunion: How a 1970s Immigration Story Can Guide Today's Reform

By: Anthony Calello

In 1971, my grandfather left southern Italy alone, carrying a visa, a suitcase, and a promise. His sister and brother-in-law, American citizens, sponsored him under the Immigration and Nationality Act of 1965. For nearly a year, he lived apart from his wife and three children, including my father, while he worked to secure a job and an apartment. In 1972, after months of paperwork and waiting, the rest of the family finally joined him.

Their reunion was joyful but precarious, made possible only because the law at that time recognized two key principles: that families should not be permanently divided, and that new workers could strengthen the country. Family and skills continue to provide the framework for U.S. immigration law. However, backlogs and fixed limits have led the system to operate very differently from what was intended by the immigration systems enacted by Congress. This demonstrates why reform is necessary.

The Immigration and Nationality Act of 1965, known as the Hart-Celler Act, made my family's reunion legally possible. Passed during the civil rights era, it abolished the old national-origin quotas that "favored those from northern and western Europe"[1] and replaced them with a system built around family reunification and employment skills.[2]

Although enacted sixty years ago, that same framework continues to govern immigration law. Family reunification and the admission of needed skilled workers are two of the four "major principles" underlying current immigration policy.[3] Family admissions remain the majority class. From fiscal years 2014 to 2023, family admissions averaged just under two-thirds of all new lawful permanent residents.[4] Congress has not undertaken a significant revision to the framework since the Immigration Act of 1990.[5]

The timeframe in my grandfather's case, roughly one year, is no longer a reality. Even though the framework that allowed that reunion has not been significantly changed, the conditions in which it operates have. Two facts illustrate the shift. First, demand has exploded. For example, last year, "[four] million prospective family-sponsored preference immigrants possessed approved immigrant petitions" had to wait abroad for a "statutorily numerically limited immigrant visa."[6] Second, the wait times for backlogs are measured not in months but in decades. As of 2021, married adult children of U.S. citizens faced a wait time that had increased by 900% since 1991, reaching nearly thirteen years of waiting.[7] For Mexican unmarried adult children of U.S. citizens, the wait has "increased more than 1,700% since 1991," with some applicants finally receiving their green card after waiting more than twenty-two years.[8]

The two most substantial obstacles to entry are the statutory numerical limits and the long waits for "federal agencies to process their petitions and applications."[9] Due to these considerably long wait times, the impact is often significant as those waiting may miss "weddings, graduations, or the birth of grandchildren, and some people pass away before being able to be together with their loved ones."[10] The statute still promises reunion, but in practice delivers delay.

The contrast between my grandfather's year-long path to reunion and today's decades-long wait demonstrates how the same legal framework can produce starkly different outcomes. To repair it, we can borrow the Hart-Celler Act's core lesson: reform succeeds when law aligns with national ideals and current realities. In 1965, Congress eliminated discriminatory national-origin quotas and grounded admission in family unity and skills.[11] This was an explicit civil rights era correction that modernized an antiquated system.[12] That combination of morality and pragmatic redesign should guide the next revision.

First, recalibrate the numbers to reality. Statutory ceilings set in 1990 have not kept pace with demand. The annual family sponsorship cap and the seven percent per-country limit have remained unchanged for thirty-five years, resulting in multi-decade-long waits for qualified applicants.[13] When Congress updated immigration law in 1965, it modernized a quota system that had outlived its purpose and should do the same today. Congress can modernize the green card system by updating statutory limits and having the caps increase proportionally per category.[14] The Reuniting Families Act would implement that reform to shorten the backlog.[15]

Second, recapture and prevent the waste of already authorized visas. This process would not "increase immigration or authorize new green cards," it "would simply ensure that green cards that Congress had allocated in previous years end up being used."[16] This solution could potentially provide hundreds of thousands of green cards for families stuck waiting.[17] The Reuniting Families Act proposed an amendment to the Immigration and Nationality Act to implement this idea.[18]

Third, modernize adjudication and consular processing. Backlogs today arise not only from statutory limits but also from administrative inefficiencies within the agencies that process the applications. Data demonstrates that filings have surged from roughly 6.9 million to 10.5 million annually over the past decade, while cases pending have tripled.[19] Families from some countries experience these delays for years rather than months.[20] To reduce its growing backlog, U.S. Citizenship and Immigration Services (USCIS) needs additional targeted congressional appropriations to hire and train additional staff capable of handling the increased volume.[21] USCIS should also fully implement electronic filing and paperless processing to improve efficiency, accountability, and timeliness in adjudications.

Finally, families should be kept together while they wait. Congress should protect children in backlogged categories from "aging out" and permit conditional reunification during prolonged delays. This would be consistent with the Hart-Celler Act's family unity principle and can be accomplished under the America's Children Act of 2023 if passed.

Each year of waiting magnifies the distance between families. This turns legal eligibility into uncertainty, forcing many to build their lives apart while paperwork moves slowly through the system. The Hart-Celler Act of 1965 teaches that strong principles can shape reform. Updating numerical caps, recapturing wasted visas, modernizing adjudication, and protecting families in the queue would restore the law's original promise of timely reunification rather than indefinite delay. ○

References:

1 Lesley Kennedy, *How the Immigration Act of 1965 Changed the Face of America*, History (Aug. 12, 2019), https://www.history.com/articles/immigration-act-1965-changes/.
2 William A. Kandel, Cong. Rsch. Serv., R43145, U.S. Family-Based Immigration Policy, at 2 (2018).
3 William A. Kandel, Cong. Rsch. Serv., R42866, Permanent Legal Immigration to the United States: Policy Overview, at 1 (2024).
4 *Id.* at 5.
5 *Id.* at 1.
6 *Id.*
7 Andrew Moriarty, *Family-Based Immigration Backlogs: 5 Things to Know*, FWD.us (Sept. 14, 2022), https://www.fwd.us/news/family-based-immigration-backlogs/.
8 *Id.*
9 Kandel, *supra* note 3, at 14.
10 Moriarty, *supra* note 7.
11 Kennedy, *supra* note 1.
12 *Id.*
13 Kandel, *supra* note 3, at 14-15.
14 David J. Bier, *Green Card Approval Rate Reaches Record Lows*, Cato Institute (Feb. 15, 2024), https://www.cato.org/briefing-paper/green-card-approval-rate-reaches-record-lows.
15 Reuniting Families Act, H.R. 5560, 118th Cong. § 103 (2023).
16 Andrew Moriarty, *Green Card Recapture and Reform Would Reduce Immigration Backlogs*, FWD.us (Jan. 30, 2025), https://www.fwd.us/news/green-card-recapture/.
17 *Id.*
18 H.R. 5560, *supra* note 15, at § 101.
19 William A. Kandel, Cong. Rsch. Serv., R48021, U.S. Citizenship and Immigration Services (USCIS): Operations and Issues for Congress, at 17 (2024).
20 Alison Moodie, *Green Card Processing Times – FY 2025*, Boundless (April 1, 2025), https://www.boundless.com/immigration-resources/average-green-card-wait-times/.
21 Muzaffar Chishti & Julia Gelatt, *Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes*, Migration Policy Institute (Feb. 23, 2022), https://www.migrationpolicy.org/article/us-immigration-backlogs-mounting-undermine-biden/.
22 Muzaffar Chishti & Julia Gelatt, *Antiquated U.S. Immigration System Ambles into the Digital World*, Migration Policy Institute (Nov. 29, 2023), https://www.migrationpolicy.org/article/us-immigration-backlog-digital-world/.
23 Andrew Moriarty, *Children of Immigrants in Green Card Backlogs Face Uncertain Futures in the U.S.*, FWD.us (Jan. 31, 2024), https://www.fwd.us/news/children-of-immigrants-in-green-card-backlogs-face-uncertain-futures-in-the-u-s/.
24 America's Children Act of 2023, H.R. 3442, 118th Cong. (2023).

Deterring Data Appropriation: The National Security Benefits of Eliminating the De Minimis Exemption

By: Jacob Wade

In July of 2025, President Donald Trump signed into law the long-awaited One Big Beautiful Bill Act.[1] This Bill was subject to considerable political controversy due to its widespread effects on taxation, healthcare, retirement, and other sweeping categories.[2] Section 70531(b) specifically affected a long-standing exemption to international trade policy by putting a complete and total end to the *de minimis* exemption.[3] When President Trump eliminated *de minimis* exceptions for China and Hong Kong via executive order, this revision expanded what Trump began in May of 2025.[4] The main purpose of eliminating this trade concession was to prevent contraband and counterfeit goods from entering the country.[5] While the elimination of this exemption will certainly have an effect on the entry of physical contraband, there is a broader, underlying national security benefit to eliminating this international trade provision.

Within the past decade, Chinese e-commerce has generated a considerable demand and presented a substantial burden on U.S. customs.[6] The data shows a generous majority of Americans have purchased exported goods from the Chinese marketplace, with many Americans purchasing from well-known international sellers like *Temu, Shein, TikTok Shop,* and *AliExpress.*[7] Recently, there has been an increased demand for goods from these e-commerce sellers, and this demand has caused undue strain at U.S. points of entry with the total number of *de minimis* shipments exceeding 1.36 billion in 2024 alone.[8] Such an overwhelming volume originates from a previous allotted value increase under the exemption from $200 to $800 per shipment, which was implemented close to a decade before eliminating the exemption in its entirety.[9]

Such a high volume of shipments presented several challenges for United States border security. The high quantity of shipments under the *de minimis* exemption have caused less scrutiny imposed at the points of entry, and less security has allowed narcotics, counterfeit goods, and other hazardous or illicit items to flood into the country.[10] Along with an exponential increase in shipment volume, diminished security screenings have resulted from short staffing at points of entry, despite severe risk presented through contraband, disease, weapons, and counterfeit goods.[11] Preventing entry of these harmful items was the predominant justification for eliminating the *de minimis* exemption.[12]

Despite these real and immediate challenges threatening American prosperity, a broader threat to American data and economic welfare has also found traction in the *de minimis* exemption. Many Chinese e-commerce companies have sought to undercut the United States market on consumer goods, often offering household products at prices well below the domestic market value.[13] Many of these companies have faced scrutiny for unethical business practices, intellectual property violations, and sustainability concerns, but there is an additional growing concern for consumer data protection and the risks created by supporting these sellers.[14]

For instance, *Shein* relies on user data and artificial intelligence to discern preferences and patterns, which in turn are used to manufacture and deliver products ahead of other competitors.[15] While this gives *Shein* a competitive edge in the market, the company has poorly handled consumer data and exposed the personal information of 39 million accounts.[16] *Temu* has had similar issues when its parent company, PDD holdings, incorporated invasive malware into other mobile applications that gleaned private messages, changed security settings, and viewed data from other applications.[17] *TikTok* and its parent company *ByteDance* have also faced pushback for sweeping data collection, a lack of transparency in data management, and the risk that the data collected could be used by the Chinese government.[18]

Notwithstanding aggressive data collection and poor data protection practices, the greatest concern consists of the Chinese state's looming power over Chinese e-commerce companies. Throughout the last decade, the Chinese Communist Party (CCP) has set forth several data collection policies.[19] These policies require the installation of backdoors in software, the disclosure of stored data to the People's Republic of China (PRC), the expansion of the CCP's access to data, and the assistance of organizations in counterespionage operations.[20]

Such negligent supervision and data mismanagement has led to serious international scrutiny. An Australian advocacy group recently filed suit over failure to comply with data transparency as requested by users.[21] The European Union has expressed similar concerns over data integrity and levied a $620 million fine against *TikTok* for failing to properly secure customer data and failing to accurately represent data protection measures.[22] In 2025, the U.S. Department of Education even launched investigations into academia, stating that China seeks to leverage technology research and subsequent data to undermine U.S. national security.[23]

U.S. officials have exhibited longstanding concerns over data breaches, spanning from recent legal action against *TikTok* to earlier concerns over consumer technology manufacturers like *Huawei, Xiaomi,* and *ZTE.*[24] There are four primary concerns identified through Chinese data management: (1) espionage and data security risks, (2) the influence of political campaigns, (3) cyber-attacks on infrastructure and government operations, or (4) the potential for physical attacks. Concerns with private information databases involve Chinese national security laws, which give the state power to compel companies to surrender any information requested in the name of national security.

The threat to American data is a bi-partisan issue only partially addressed through a "patchwork of executive actions and politicized bans" that have failed to adequately address a broader vulnerability issue. The United States has nevertheless made notable progress to address data security issues by identifying threats, limiting data

and technology infiltration, and working to reduce the influence of Chinese e-commerce companies. However, American foreign data policies still require substantial revision, and comparison to our European allies shows that we need to implement broader data protections for consumers. The elimination of the *de minimis* exemption provided a rapid, economic deterrent to the influence exerted over the United States by companies seeking to undercut the domestic market for consumer goods and exploit the privacy of Americans. ○

References:

1 *See* Brandon Drenon & Nadine Yousif, *What are the Key Items in Trump's Sprawling Budget Bill?*, BBC (July 4, 2025), https://www.bbc.com/news/articles/c0eqpz23l9jo; *see also* Jordan Carney & Meredith Lee Hill, *Trump: Megabill's Name 'not Good for Explaining' what it Does*, Politico (Aug. 26, 2025), https://www.politico.com/news/2025/08/26/trump-megabills-name-not-good-for-explaining-what-it-does-00527379 (showing the bill titled as the "one big, beautiful bill" and "One Big Beautiful Bill Act").

2 *Id.*

3 One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, 139 Stat. 283.

4 *See Executive Order – Tariff on De Minimis Shipments from China,* U.S. Customs & Border Prot. (Nov. 4, 2025), https://www.help.cbp.gov/s/article/Article-1915.

5 *See Fact Sheet: President Donald J. Trump is Protecting the United States' National Security and Economy by Suspending the De Minimis Exemption for Commercial Shipments Globally,* the white house (July 30, 2025), https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-is-protecting-the-united-states-national-security-and-economy-by-suspending-the-de-minimis-exemption-for-commercial-shipments-globally/ (showing that the main goal of eliminating the exemption was to stop fentanyl, contraband, and other illicit drugs and materials from entering America).

6 *Id.*

7 *See 70% of Americans Have Shopped at Temu, Shein, or Other Chinese Marketplaces in the Past Year, 1 in 5 Shop There at Least Once a Week,* Omnisend (June 11, 2024), https://www.omnisend.com/latest-news/70-of-americans-have-shopped-at-temu-shein-or-other-chinese-marketplaces-in-the-past-year-1-in-5-shop-there-at-least-once-a-week/.

8 *See CBP Proposes New Rule to Strengthen Enforcement and Limit Duty Exemption for Low-Value Shipments,* U.S. Customs & Border Prot. (Jan. 17, 2025), https://www.cbp.gov/newsroom/national-media-release/cbp-proposes-new-rule-strengthen-enforcement-and-limit-duty.

9 Elena Patel, *Small Parcels, Big Problems: Modernizing De Minimis in a Global Economy*, Brookings (Aug. 28, 2025), https://www.brookings.edu/articles/small-parcels-big-problems-modernizing-de-minimis-in-a-global-economy/.

10 *Executive Order – Tariff on De Minimis Shipments from China, supra*, at Note 5.

11 Marcy Mason, *Buyer Beware: Bad Actors Exploit De Minimis Shipments,* U.S. Customs & Border Prot. (Aug. 26, 2025), https://www.cbp.gov/frontline/buyer-beware-bad-actors-exploit-de-minimis-shipments.

12 *Executive Order – Tariff on De Minimis Shipments from China, supra*, at Note 5.

13 *See* Minhelle Toh & Nathaniel Meyersohn, *'Too Good to be True?' As Shein and Temu Take off, so Does the Scrutiny,* CNN (Apr. 24, 2023), https://www.cnn.com/2023/04/23/tech/temu-shein-us-concerns-intl-hnk.

14 Nicholas Kaufman, *Issue Brief: Shein, Temu, and Chinese E-commerce: Data Risks, Sourcing Violations, and Trade Loopholes,* U.S. China Econ. Sec. Rev. Comm'n (Apr. 14, 2023), https://www.uscc.gov/sites/default/files/2023-04/Issue_Brief-Shein_Temu_and_Chinese_E-Commerce.pdf.

15 *Id.*

16 *Id.*

17 *Id.*

18 Eric Baerren, *What are the Main Security Concerns Surrounding TikTok?*, Cent. Mich. Univ. (Mar. 12, 2025), https://www.cmich.edu/news/details/what-are-the-main-security-concerns-surrounding-tiktok.

19 *See The Chinese Communist Party (CCP): A Quest for Data Control,* Ctr. Internet Sec. (Aug. 14, 2024), https://www.cisecurity.org/insights/blog/the-chinese-communist-party-ccp-a-quest-for-data-control.

20 *Id.*

21 *See Privacy Group Files Complaint Against AliExpress, TikTok and WeChat,* Reuters (July 17, 2025), https://www.reuters.com/sustainability/boards-policy-regulation/privacy-group-files-complaint-against-aliexpress-tiktok-wechat-2025-07-17/.

22 *See* Kelvin Chan, *TikTok Faces Fresh European Privacy Investigation over China Data Transfers,* AP (July 10, 2025), https://apnews.com/article/tiktok-european-union-data-privacy-gdpr-5f1dcb8187a1c90c1ea10c287beb06f2.

23 William Ferreira, et al., *U.S. Academic and Research Institutions Face Mounting Scrutiny Over China Ties,* Hogan Lovells (Sept. 4, 2025) https://www.hoganlovells.com/en/publications/us-academic-and-research-institutions-face-mounting-scrutiny-over-china-ties.

24 *See* Peter Harrell, *Managing the Risks of China's Access to U.S. Data and Control of Software and Connected Technology,* Carnegie Endowment for Int'l Peace (January 30, 2025), https://carnegieendowment.org/research/2025/01/managing-the-risks-of-chinas-access-to-us-data-and-control-of-software-and-connected-technology?lang=en.

25 *Id.*

26 *Id.*

27 Samm Sacks & Graham Webster, *Address Data Security Risks from China with Comprehensive Legislation*, John Hopkins School Advanced Int'l Studies (Feb. 2025), https://acf.sais.jhu.edu/address-data-security-risks-china-comprehensive-legislation.html.

28 *Id.*

29 *Id.*

30 *See* Casey Hall & Lisa Barrington, *End of Tax-Free Loophole for Low-Value Goods Disrupts Air Shipments to US from China*, Reuters (July 4, 2025), https://www.reuters.com/business/autos-transportation/end-tax-free-loophole-low-value-goods-disrupts-air-shipments-us-china-2025-07-04/.

The Effects of Rocket Dockets on Immigration Courts: Balancing Efficiency and Due Process

By: Shannon Stamp

Immigration courts are overworked and face serious backlogs. Multiple administrations and Congress have sought to mitigate the problem and ease the strain on the immigration court system.[1] One approach to mitigate the problem is the use of rocket dockets.[2] Rocket dockets are a method of expedited schedules to fast-track certain cases to remove them from the judicial docket.[3] The growing immigration court backlog has pushed recent administrations to rely on rocket dockets more heavily than ever before.[4] While this strategy increases efficiency and helps to reduce overwhelming dockets, it also makes it harder for people to obtain effective counsel and threatens due process rights.[5] The expedited system adds additional strain on judges, courts, and attorneys.[6] The growing reliance on rocket dockets reveals a tension between efficiency and justice in the immigration system, without adequate safeguards for due process rights, thereby compromising the integrity of the immigration court system.

One of the main consequences of the two-million-case backlog is a delay in justice. Rocket dockets aim to allow individuals to spend their time in court more efficiently than they would otherwise.[7] They achieve the intended goal of expediting cases and reducing backlogs by providing quick hearings.[8] These quicker hearings result in a large number of pro se cases that are disposed of almost 500 days sooner than those with legal representation.[9] Specifically, cases without representation are disposed of in 183 days, compared to 667 days for cases with legal representation.[10] Many of these expedited cases result in removal orders, often due to failure to appear, which allows cases to be moved off the docket more quickly and permanently.[11] However, this improved efficiency of dockets threatens due process rights and thus the American legal system.

Immigration law is complex and difficult for even seasoned attorneys, and rocket dockets often do not allow individuals time to obtain legal counsel.[12] Having many unrepresented individuals causes issues with confusion and missed dates, deadlines, and other proceedings that can be avoided with proper counsel.[13] Legal counsel helps to prevent undue delay, promote compliance, and avoid unfair proceedings that violate due process rights.[14] Specifically, about 70 percent of those placed on rocket dockets proceed without representation, even though immigrants with counsel are five to ten times more likely to secure relief than those without.[15] This disparity raises serious concerns about the protection of due process for individuals who could have benefited from access to legal counsel.

Although the rocket docket system is intended to minimize detainment time and provide faster access to legal proceedings, it often falls short of that goal. Individuals in detention with representation are four times more likely to be released than those without counsel, suggesting that proper representation not only improves outcomes but also reduces costs associated with prolonged detention.[16] This is especially significant given that 86 percent of detained immigrants lack legal counsel.[17] With better access to representation, detention periods could be substantially reduced, ensuring a more efficient use of government resources and stronger adherence to due process principles.

The due process analysis provided by *Matthews v. Eldridge* is useful for evaluating rocket dockets.[18] The test of due process is a balancing that weighs the individual's interest at stake, the government's interest at stake, the risk of error under the current method, and how much additional procedures will cost.[19] Here, the individual interests are at stake because, without proper representation, immigrants are less likely to obtain adequate relief. The government's interest is in preserving due process rights and maintaining the integrity of the immigration court system. The government is also spending large portions of funding on detention rather than programs that would help families appear in court. Addressing the problems in immigration cases caused by the rapid pace of rocket dockets could help reduce costs associated with prolonged detention by enabling individuals to obtain counsel and comply with court requirements.

To effectively address the immigration court backlog while also protecting due process, judges should have greater discretion to grant appropriate continuances to individuals seeking representation. Representation helps protect due process rights for all individuals, reduces detention rates, and minimizes inefficiencies caused by confusion and unfamiliarity with the legal system.[20] Allowing additional time would also help mitigate the immense pressure on immigration attorneys who struggle to meet the overwhelming demand for counsel.[21] Greater discretion in granting continuances would relieve attorneys of the extreme stress caused by excessive caseloads and unrealistic deadlines, enabling them to provide the zealous advocacy their clients deserve and thus protect due process rights.[22] This additional time strengthens the fairness and integrity of the justice system.[23] While rocket dockets are effective at clearing cases, they often do so at the expense of due process and the immigration courts' ability to ensure adequate relief and fair outcomes rather than mass dismissals. ○

References:

1 Muzaffar Chishti & Julia Gelatt, *Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes*, MIGRATION POL'Y INST. (Feb. 23, 2022), https://perma.cc/6UX9-E8DE.

2 Emily R. Summers, *Prioritizing Failure: Using the 'Rocket Docket' Phenomenon to Describe Adult Detention* 102 Iowa L. Rev. 851 (2017).

3 Katy Murdza, *Rushing Immigration Court Cases Through 'Rocket Dockets' Deprives Families of Due Process*, IMMIGR. IMPACT (Aug. 9, 2019), https://immigrationimpact.com/2019/08/09/immigration-court-rocket-docketsdue-process.

4 *Id.*

5 Margaret McKeown & Allegra McLeod, *The Counsel Conundrum: Effective Representation in Immigration Proceedings*, *in* Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform 286, 290 (Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag eds., 2009).

6 Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 J.

Nervous & Mental Disease 946 (Dec. 2011).
7 Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, Special Rep. (Am. Immigr. Council) Sep. 2016, at 3, 6.
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 *Id.*
18 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (citing *Goldberg v. Kelly*, 397 U.S. 254, 263-71 (1970)).
19 *Id.*
20 Eagly & Shafer, *supra* note 7.
21 *See* Levin et al., *supra* note 6.
22 *Id.*
23 *See* Murdza *supra* note 3.

The Defiance of a Nation's Laws: Executive Authority, Immigration Enforcement, and the Common Good

By: Marie Carney

"There is a difference between constitutional government and judicial dictatorship. And I think it's time we remembered that our Constitution was not put together in order to establish the sovereignty of the judges, it was framed in order to guarantee the sovereignty of the people."

–Alan Keyes[1]

In the United States, the President's authority to control U.S. borders and protect national security trumps judicial overreach in matters of citizenship and immigration. Despite the widespread opposition to deportations and executive action on immigration, ultimately grounded in the Constitution, enforcement of immigration policies is essential to both a nation's survival and to the preservation of the common good.

To understand the balance of power, it is necessary to understand the separation of powers established by the Constitution.[2] Under Articles I, II, and III, the authority to make the laws is given to Congress, the authority to execute the laws is vested in the President, and the authority to interpret the laws is "vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."[3]

Since the U.S. Constitution divides the government into three branches, each branch must do its own job and not infringe on the duties of the other branches of government. This separation of powers is critical to "control the abuses of government."[4] More recently, judicial overreach has become very prevalent in the immigration law sector.[5] Judges, in the lower federal courts, are explicitly using their power to stop lawful executive orders by the President and to block the enforcement of immigration law.[6] As stated by the Constitution, these lower courts are inferior courts.[7] Inferior courts exist only because Congress created them through the Judiciary Act of 1789, which gave them narrow jurisdiction and preserved the constitutionally defined original jurisdiction vested in the Supreme Court.[8] Judges are meant to decide cases, not infringe upon the President's authority to enforce immigration laws.[9]

One recent example of judicial overreach was in the case of *Trump v. CASA Inc.* where several district courts issued nationwide injunctions against Executive Order 14160, regarding birthright citizenship.[10] The Supreme Court held that such universal relief likely exceeds the equitable powers historically granted to federal courts, which are generally limited to resolving disputes between the parties before them.[11] Congress did not grant these lower courts such power to issue universal injunctions.[12] Thus, these inferior courts were acting as *de facto* policymakers, going beyond their constitutional role by effectively halting a presidential order nationwide, and simultaneously usurping an authority constitutionally granted to the legislature, not the judiciary.[13]

Altogether, U.S. immigration law requires that noncitizens enter and remain in the country only through lawful procedures and with proper documentation; those who do not comply are subject to removal.[14] Due to the influx of illegal immigrants in recent years, Immigration and Customs Enforcement (ICE) has acted in accordance with the law to carry out deportations.[15] According to an August 2025 Pew Research report, there were approximately 14 million illegal immigrants in the United States as of July 2023, representing a record high.[16] In direct opposition to the Immigration and Nationality Act (INA) enacted by Congress, some state and local officials have refused to cooperate with ICE, directly denying the President's constitutional authority to enforce federal law.[17] For example, New York Governor Kathy Hochul reinstated a state executive order to shield dangerous criminal illegal aliens from accountability.[18] Governor Hochul also supported New York's Green Light Law, which allows undocumented immigrants to obtain driver's licenses and restricts federal access to DMV data without a warrant.[19]

These failures to uphold federal immigration law illustrate a deeper problem: a disregard for the very purpose of law itself. Fundamentally, the law is "an ordinance of reason for the common good, made by him who has care of the community, and promulgated."[20] Accordingly, immigration law exists to protect the nation from illegal entry and invasion, just as a person does not open his home to strangers without limits. Immigration laws logically promote security and order directed toward the common good. If borders are left open and laws against unlawful entry are ignored, the very concept of the law itself begins to erode. Those who cross illegally demonstrate disregard for the country's legal framework from the outset, undermining respect for the rule of law. Allowing such conditions unchecked would completely undermine the requirement that every new citizen swear an allegiance to the U.S. Constitution.[21] Additionally, a society that fails to enforce its own laws invites disorder and weakens the protections that citizens rely on for security and the common good.[22]

In *Manuale Theologiae Moralis*, Fr. Dominic Prümmer, O.P. states: "The right of a sovereign state to regulate the entry and settlement of foreigners is derived from its obligation to promote the common good of its people. It would be contrary to justice and prudence to allow unrestricted immigration when such would lead to disorder or harm to the established community."[23] Immigration enforcement, therefore, is not only constitutional but morally required.[24] Judicial interference undermines the common good by preventing lawful authority from keeping the country safe and secure. It undermines the executive's constitutional authority to execute the laws of the U.S., and it undermines Congress' policymaking responsibilities.[25] Catholic social teaching affirms both the human dignity of migrants and the duty of governments to preserve order.[26] While lawful asylum must be available, ignoring immigration laws invites disorder and undermines justice. Without law, society cannot function, and without order, the common good cannot be achieved.

While Congress may establish inferior courts,[27] those courts were never meant to wield unchecked power to obstruct the executive's duty. Judicial intervention that halts lawful enforcement of immigration statutes and presidential orders undermines both the rule of law and the sovereignty of the people. Immigration enforcement is not arbitrary; it is a constitutional necessity, rooted in the Constitution's goal to preserve the common good. To secure the nation, enforce the rule of law, and uphold justice, it is the duty of the executive branch, the legislative branch, and of the citizens to prevent judges from violating their constitutional oaths to support and defend the laws of the United States and the U.S. Constitution.[28] ○

References:

1 Alan Keyes, Speech at the 31st Annual Conservative Political Action Conference (Jan. 24, 2004) (transcript available in the Alan Keyes archives).
2 U.S. Const. art. I–III.
3 *Id.*
4 U.S. Const. art. I–III; The Federalist No. 51 (James Madison).
5 *See generally* Trump v. CASA Inc., 606 U.S. 831 (2025).
6 *Id.*
7 U.S. Const. art. III, § I.
8 Judiciary Act of 1789, ch. 20, 1 Stat. 73.
9 *CASA Inc.,* 606 U.S. at 860 (holding that universal injunctions "exceed the authority conferred by the Judiciary Act.").
10 *Trump v. CASA Inc.,* 606 U.S. 831 (2025); Exec. Order No. 14160, 90 Fed. Reg. (2025).
11 *CASA Inc.,* 606 U.S. at 837 ("No one disputes that the Executive has a duty to follow the law. But the Judiciary does not have unbridled authority to enforce this obligation… Observing the limits on judicial authority—including, as relevant here, the boundaries of the Judiciary Act of 1789—is required by a judge's oath to follow the law." *CASA Inc.,* 606 U.S. at 858.).
12 *CASA Inc.,* 606 U.S. at 841.
13 *Id.* at 860 ("But federal courts do not exercise general oversight of the Executive Branch; they resolve cases and controversies consistent with the authority Congress has given them. When a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too."); *see also* Trump v. J. G. G., 604 U.S. 670, 671–72 (2025) (holding that the district court exceeded its authority by issuing class wide injunctive relief against executive removals where Congress required challenges to proceed by habeas corpus and in the district of confinement).
14 8 U.S.C. §1325–1326 (2022).
15 *History of ICE*, U.S. Immigration and Customs Enforcement (Sep. 11, 2025), https://www.ice.gov/history.
16 Jeffrey S. Passel and Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Rsch. Ctr. (Aug. 21, 2025), https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/; *see also Worldwide Threats to the Homeland Before the H. Comm. on Homeland Sec.,* 119th Cong. (2025) (statement of Rep. Eli Crane (R-AZ)) (stating that approximately 15-20 million people came into the US illegally under the Biden administration).
17 Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163; *see* Press Release, *Hearing Wrap-Up: Sanctuary State Governors Endanger American Lives by Defying Federal Immigration Enforcement Efforts,* H. Comm. on Oversight & Accountability (Jun. 12, 2025).
18 *Hearing Wrap-Up, supra* note XVII.
19 *Id.*
20 *Thomas Aquinas*, Summa Theologiae, I-II, Q. 90, Art. 2.
21 *See Worldwide Threats to the Homeland* (statement of Rep. Eli Crane (R-AZ)) ("[W]hen we invite people into this country and they become citizens, they swear an oath to defend and support the Constitution and the laws of the United States of America and against all enemies, foreign and domestic."); *See also* Naturalization Oath of Allegiance to the United States of America, USCIS (July 5, 2020), https://www.uscis.gov/citizenship/learn-about-citizenship/the-naturalization-interview-and-test/naturalization-oath-of-allegiance-to-the-united-states-of-america.
22 *See* Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting) ("If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."); *see also* Abraham Lincoln, Address Before the Young Men's Lyceum of Springfield, Ill. (Jan. 27, 1838) ("Let every American, every lover of liberty, every well wisher to his posterity, swear by the blood of the Revolution, never to violate in the least particular, the laws of the country; and never to tolerate their violation by others.").
23 Matthew Plese, *The Catholic Teaching on Borders, Immigration, and Human Dignity*, The Fatima Center (Jan. 31, 2025), https://fatima.org/news-views/catholic-apologetics-298/.
24 *Id.*
25 U.S. Const. art. I–II.
26 Plese, *supra* note XXIII.
27 U.S. Const. art. III, § I.
28 U.S. Const. art. I–III; *see also* 28 U.S.C. § 453 (2022).

We Choose to go to Artificial Intelligence: The Race between China and the United States for AI Dominance

By: Quinten Zak

In the 1960s, the United States found itself in the middle of a technological race to the moon against the Soviet Union.[1] The Soviet Union punched first with the successful launch of Sputnik 1, the first Earth-orbiting satellite.[2] The Soviet Union was dominating the United States until the death of Sergei Korolev, the Soviet Union's lead rocket engineer.[3] After Korolev's death, it left a gap in the Soviet Union's space program, ultimately leading to the United States winning the race with the first men to ever walk on the moon in 1969.[4] This marked the end of the Space Race, which sparked great technological innovation in space exploration such as surrounding the Earth in satellites for weather, GPS, and communication systems.[5] Although the Space Race ended in 1969, the United States has chosen a new moon to explore, Artificial Intelligence ("AI"), with a new opponent, China. Just like the race to the moon, the race for AI dominance has fractured into many different races. Thus, this article will focus on the race for chip supply and its materials between the United States and China and both countries' tariff response to gain an advantage.

First, to understand the race for AI chip dominance, one must first understand the importance of AI chips. In its simplistic form, AI Chips function as the brain of AI by delivering the computational power to the transistors, which act as small arms that represent the binary code that basically run AI models.[6] In other words, the better the AI chip, the better the AI system. These AI chips are essential for "cost-effectively implementing AI at scale" and are "thousands of times faster and more efficient than CPUs"[7] Thus, the country who has the better AI chip has the better AI system. And as of now, the United States dominates the AI chip market due to companies such as NVIDIA and AMD.[8] Furthermore, the United States's close friend, Taiwan, produces nearly 90% of advanced AI chips.[9] Thus, it seems clear that the United States dominates the AI chip market, however, you need the materials to develop AI chips.

To develop AI chips, raw material is needed such as Silicon, Gallium, Copper, Zinc and Germanium.[10] These materials are mined worldwide, but those materials need to be refined into semiconductor-grade material. However, there is one country that dominates the processing system: China.[11] China controls processing over materials Gallium, Germanium, which are essential for semi-conductors, sensors, and advanced AI chips.[12] China recognized this importance and decided to act. The realization of refinery dominance coupled with the United States's lead in the AI chip market caused China to make a strategic move by restricting exports in an attempt to gain an advantage over the United States.[13]

In December of 2024, China banned exports of materials critical for AI chip production such as Gallium and Germanium, declining exports by around 97% to the United States[14] This caused the United States to go elsewhere to get these essential materials, but cost them a 150% price increase for Gallium and 26% for Germanium, "leading to a $3.4 billion decrease" to the United States's GDP.[15] In response, as President Trump assumed office, the United States imposed a 10% tariff on all Chinses goods effective February 4, 2025, and then escalated that percentage to 20% in March 2025.[16] These tariffs escalated tensions between the United States and China, especially in the AI market. However, both countries recognize each country holds important pieces to foster continued innovation and production of AI chips. Thus, in October of 2025, China and the United States stick a deal to ease tariffs which included critical minerals such as Germanium and Gallium.[17]

Although this deal eased tensions, China continued to pass laws to foster their own AI Chips by favoring domestic firms such as Huawei and SMIC. These laws show China's fear of rising tariff tensions and their recognition of their gap in the AI chip market by their continued push for AI chip self-sufficiency. However, this push caught the attention of United States's lawmakers. Rep. Michael Baumgartner, Republican from Washington, introduced the bipartisan "Multilateral Alignment of Technology Controls on Hardware (MATCH) Act" in the House of Representatives.[18] This act would tightly control the tools for AI chips—the tools needed for China to become self-sufficient.[19] Another piece moved in this chess match.

Both countries continue to make economic moves to restrict the other country's ability to foster AI growth in this race for AI chip dominance. This competition, despite the tariffs, has skyrocketed AI chip innovation in both countries. Both the United States and China have seen heavy private investments in their AI chip infrastructure, fostering new innovation and major breakthroughs.[20] Yet, this competition has created two separate ecosystems causing reinvention and fragmentation of standards and hardware—something the United States has seen before in the race to the moon in the 1960s.[21]

As China and the United States continue to race to AI chip dominance, it has sparked increased tensions, fractured ecosystems, but also major innovation, breakthroughs, and new partnerships in the AI chip market. As of right now, AI seems to be the future, and both countries want to dominate that future. Thus, the importance of AI chips is elevated to an all-time high and the United States must continue to win this race. As President John F. Kennedy stated in his speech at Rice University regarding the race to the moon "The exploration...will go ahead, whether we join in it or not, and it is one of the great adventures of all time, and no nation which expects to be the leader of other nations can expect to stay behind in the race."[22]

References:

1 *Space race timeline*, Royal Museums Greenwich, https://www.rmg.co.uk/stories/space-astronomy/space-race-timeline (last visited Apr. 3, 2026).
2 *Id.*
3 Ethan Siegel, This Is Why The Soviet Union Lost 'The Space Race' To The USA https://www.forbes.com/sites/startswithabang/2019/07/11/this-is-why-the-soviet-union-lost-the-space-race-to-the-usa/.
4 *Space race timeline, supra* note 1.
5 *Id.*

6 *See* Saif M. Khan & Alexander Mann, AI Chips: Why They Are and Why They Matter (Center for Security and Emerging Technology, Apr. 2020).
7 *Id.*
8 Ellen Zentner, *Who Is Leading the Global AI Race?*, Morgan Stanley (Jan. 2026), https://www.morganstanley.com/insights/articles/global-ai-race-us-vs-china-investment-opportunities#:~:text=The%20U.S.%20leads%20the%20world,Chinese%20models%20gain%20global%20traction.
9 *Id.*
10 Saif M. Khan & Alexander Mann, *supra* note 6.
11 Erich Grunewald, *How AI Chips Are Made*, Institute for AI Policy and Strategy (Sep. 4, 2025), https://www.iaps.ai/research/how-ai-chips-are-made; Hannah Ritchie & Pablo Rosado, *Which countries have the critical minerals needed for the energy transition?*, Our World in Data (Mar. 2026), https://ourworldindata.org/countries-critical-minerals-needed-energy-transition#:~:text=the%20chart%20below.-,Reserves,the%20chart%20and%20map%20below.
12 Heidi E. Crebo-Rediker & Mahnaz Khan, Leapfrogging China's Critical Minerals Dominance: How Innovation Can Secure U.S. Supply Chains (Council on Foreign Relations, Feb. 2026).
13 Sarah Godek, *China's Germanium and Gallium Export Restrictions: Consequences for the United States*, Stimson (Mar. 19, 2025), https://www.stimson.org/2025/chinas-germanium-and-gallium-export-restrictions-consequences-for-the-united-states/.
14 *Id.*
15 *Id.*
16 William F. Burkhart & Keigh E. Hammond, Cong. Rsch. Serv., R48549, Presidential 2025 Tariff Actions: Timeline and Status (2026).
17 Dylan Butts, *China suspends some critical mineral export curbs to the U.S. as trade truce takes hold*, CNBC (Nov. 9, 2025), https://www.cnbc.com/2025/11/10/china-suspends-some-critical-mineral-export-curbs-to-the-us-as-trade-truce-takes-hold.html.
18 Jared Perlo, *Bill to ban sale of key AI chipmaking equipment to China introduced in House*, NBC News (Apr. 2, 2026), https://www.nbcnews.com/tech/tech-news/senate-bill-ban-sale-key-ai-chipmaking-machines-china-rcna265186.
19 *Id.*
20 *See* Junhua Zhu, Elina Sinkkonen & Mikael Mattlin, *Strategic technology competition revisited: A National Innovation System rationale for China's artificial intelligence standardization strategy*, 50 Telecommunications Policy 2–5 (2026).
21 *Id.*
22 John F. Kennedy, *We Choose to go to the Moon*, Rice University, https://www.rice.edu/jfk-speech (last visited Apr. 3, 2026).

'Good Moral Character' and the Common Good: Assessing Trump's Newly Reformed Naturalization Requirement in Light of Catholic Social Teaching

By: Caroline Funk

Over the last decade, 7.9 million+ individuals have become naturalized citizens of the United States.[1] In 2024 alone, the U.S. Citizenship and Immigration Services (USCIS), "welcomed 818,500 new citizens . . . during naturalization ceremonies held across in the United States and around the world."[2]

To become a naturalized citizen, an applicant must meet essential criteria set forth in 8 USC § 1427[3] and 8 CFR § 316.2.[4] Applicants must, among other things,[5] be 18 years old, have "been lawfully admitted as a permanent resident," and "hav[e] resided continuously within the United States from the date of application for naturalization up to the time of admission to citizenship."[6] Critically too, applicants must "be a person of *good moral character* . . . and [be] favorably disposed toward the good order and happiness of the United States."[7]

Federal law provides for unconditional and permanent bars to good moral character ("GMC"), including convictions of murder,[8] aggravated felony,[9] torture, and genocide.[10] The law also includes a "catch-all clause," allowing officials to find that an applicant lacks GMC even without a record of a disqualifying offense.[11]

In practice, however, the catch-all clause fell into disuse, and GMC determinations became "a firm checklist" following the 1990s.[12] Findings for GMC became primarily violation-driven, turning almost exclusively on whether an applicant had committed an enumerated offense.[13] Officials effectively "equated GMC with the absence of statutory disqualifications rather than the presence of positive moral conduct and character."[14]

This approach shifted with the Trump Administration's issuance of PM-602-0188 on August 15, 2025.[15] The memorandum directs USCIS to restore a pre-1900s framework for evaluating GMC—a framework that "treated the [permanent] bars . . . as minimum disqualifiers, not as exclusive criteria" for GMC.[16] Under this restored framework, USCIS must return to a "holistic approach" and "account for an [applicant's] positive attributes and not simply the absence of misconduct."[17]

The policy specifically directs the USCIS to "review the complete history of [applicants] seeking naturalization" and to "place greater emphasis on . . . positive factors" and affirmative evidence of GMC.[18] These include: "sustained community involvement and contributions in the United States, family caregiving, responsibility, and ties in the United States, educational attainment, stable and lawful

employment history . . . [and] compliance with tax obligations and financial responsibility."[19] The memorandum also requires officials to consider rehabilitative evidence, such as "rectifying overdue child support payments or other family obligations, compliance with probation or other conditions imposed by a court, [and] community testimony from credible sources attesting to [] GMC."[20]

Critics have expressed concern over this policy change.[21] However, when viewed through the lens of Catholic Social Teaching, the restored GMC framework reflects important teachings on human dignity and the legitimate authority of the U.S. to regulate immigration for the common good.

The Catechism of the Catholic Church teaches that "the more prosperous nations are obliged, to the extent they are able, to welcome the foreigner in search of the security and the means of livelihood which he cannot find in his country of origin [and] . . . [p]ublic authorities should see to it that the natural right is respected."[22] At the same time, the Catechism teaches that "[p]olitical authorities, for the sake of the common good for which they are responsible, make the exercise of the right to immigrate subject to various juridical considerations, especially with regard to the immigrants' duties toward their country of adoption."[23] Indeed, "human society can be neither well-ordered nor prosperous unless it has some people invested with legitimate authority to preserve its institutions and to devote themselves as far as is necessary to work and care for the good of all."[24]

These teachings highlight the balance between a nation's moral obligation to treat immigrants with dignity and its own right to regulate citizenship in a way that promotes the common good.

The 2025 restored GMC framework reflects this balance. As the "people invested with legitimate authority to preserve its institutions," the Trump Administration in issuing PM-602-0188 has exercised its right to impose "juridical considerations" on the naturalization process.[25] In doing so, its stated purpose is to ensure that applicants admitted to citizenship in the United States are prepared and "are worthy [to] assum[e] [its] rights and responsibilities."[26]

Simultaneously, the comprehensive evaluation for GMC respects human dignity. By meaningfully evaluating an applicant's positive actions, the revised policy advances a fuller understanding of GMC. A naturalization process that looks beyond a checklist of criminal activity to the "totality"[27] of an individual's actions better reflects proper judgment of character.[28] After all, we are called to "use our judgment and use it to determine the right or wrong actions of [others]."[29] So long as officials are judging the *actions* of applicants to determine their eligibility to become a U.S. citizen, and not the state of their souls, that is permitted by Catholic Social Teaching, since the "latter judgment belongs only to God."[30]

Moreover, by requiring officials to consider rehabilitative evidence, the policy affirms that applicants are not a mere product of their past failures, which again aligns with Catholic teaching on grace, forgiveness, and redemption.

Overall, the reformed policy demonstrates that the common good involves both the respect of the human person, as well as "the stability and security of a just order." In its application, it is important that officials treat all applicants with dignity and that the policy be applied uniformly across all persons and cultures, consistent with the Catholic Church's clear teaching against discrimination. ○

References:

1 *Naturalization Statistics*, *Citizenship Resource Center*, USCIS, https://www.uscis.gov/citizenship-resource-center/naturalization-statistics (last visited Apr. 4, 2026).
2 *Id.*
3 8 USC § 1427.
4 8 CFR § 316.2.
5 Applicants for naturalization must take an English language test and a civics test. *See Study for the Test*, *Citizenship Resource Center*, USCIS, https://www.uscis.gov/citizenship/find-study-materials-and-resources/study-for-the-test (last visited Apr. 4, 2026).
6 8 CFR § 316.2.
7 *Id.* (Emphasis added).
8 *Chapter 4 – Permanent Bars to Good Moral Character*, *Policy Manual*, USCIS, https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-4#footnote-1(last visited Apr. 4, 2026) (citing 8 CFR 316.10(b)(1)(i)).
9 *Id* (citing 8 CFR 316.10(b)(1)(ii)).
10 *Id.*
11 *PM-602-0188*, USCIS (Aug. 15, 2022), https://www.uscis.gov/sites/default/files/document/policy-alerts/08.15.2025-Restoring_a_Good_Moral_Character_Evaluation_Standard_for_Aliens_Applying_for_Naturalization-Policy_Memorandum_FINAL.pdf (last visited Apr. 4, 2026).
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 *Id.*
21 Jarvis DeBerry, The Trump administration's worrisome new focus on this group's 'good moral character', MS NOW (Aug. 20, 2025), https://www.ms.now/opinion/msnbc-opinion/trump-uscis-citizenship-moral-character-rcna225846/.
22 Catechism of the Catholic Church § 2241.
23 *Id.*
24 Catechism of the Catholic Church § 1897.
25 *Id*; Catechism of the Catholic Church § 2241.
26 *Id.*
27 *Id.*
28 Catechism of the Catholic Church § 1777 ("Moral conscience, present at the heart of the person, enjoins him at the appropriate moment to do good and to avoid evil. It also judges particular choices, approving those that are good and denouncing those that are evil.").
29 Dr. Edward Sri, *Is It Loving to Judge*, ASCENSION (Feb. 8, 2022), https://ascensionpress.com/blogs/podcasts/is-it-loving-to-judge?srsltid=AfmBOorjTxLLFGHMwhHK0V08DpSjWNMNKrXRmlV7U5rFxSskpGzapBXX (discussing the difference between judging others and using good judgment).
30 Jim Blackburn, *It's Okay for Catholic to Judge*, Catholic Answers (Nov. 19, 2021), https://www.catholic.com/magazine/online-edition/judge-not-2 (citing John 5:22-30).
31 Catechism of the Catholic Church §§ 1988-1989 ("Moved by grace, man turns toward God and away from sin, thus accepting forgiveness and righteousness from on high.").
32 The Catechism of the Catholic Church §§ 1907-1908.
33 The Catechism of the Catholic Church § 1935.

When the Law Doesn't See Children: The Asylum System's Age-Blind Approach

By: Madisen Maring

Every year, thousands of immigrant children arrive in the United States seeking asylum.[1] Many of these children arrive unaccompanied, having fled from threats such as forced participation in armed conflict, trafficking networks, and gang recruitment.[2] However, upon arrival to the United States, these children encounter a legal system that makes no distinction between their experiences and those of adults.[3] The Immigration and Nationality Act ("INA") does not differentiate between children and adults in defining "refugee."[4] This has created a gap between what the law actually requires and what courts are starting to deem as necessary, an age-sensitive approach to asylum law. While some courts and agencies have recognized the need to evaluate asylum from a child's perspective, inconsistent application undermines uniform protection for child asylum seekers. Since this standard remains at the discretion of individual judges, it results in uneven application and uncertainty for vulnerable children.

The 1951 Refugee Convention created a definition of "refugee" interpreted primarily through adult experiences.[5] The United States adopted this through the 1980 Refugee Act in creating INA § 101(a)(42), which defines a refugee as a person outside their country who has a "well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group."[6] This definition contains no reference to the applicant's age.[7] Further, applicants bear the burden of proving refugee status, which is a challenge in and of itself for adults, let alone for children.[8]

This definition reflects an outdated interpretation of children as rights holders. The traditional approach, and the approach the United States still takes, is one where the term refugee is interpreted in light of an adult experience.[9] This results in child cases being assessed incorrectly.[10] In 1989, the modern understanding of children and individual rights holders emerged.[11] This established that a child's best interests must be a primary consideration in any judicial action that affects them.[12] Many countries have ratified this understanding and adopted special frameworks for children seeking asylum.[13] However, the United States has not adopted this reasoning in child asylum-seeking cases.

As a result of the lack of guidance by immigration statutes, some federal courts have adopted their own child-centered approaches in immigration cases. The Ninth Circuit has acknowledged that children experience threats differently than adults; therefore, harm that might not be considered persecution for an adult could be for a child.[14] The First Circuit has also adopted this acknowledgment in finding that persecution must be evaluated from the child's perspective through an age-sensitive framework.[15]

These decisions reflect the understanding that children experience unique forms of persecution. Gang recruitment targets children specifically because of their vulnerability.[16] Trafficking networks take advantage of a child's inability to escape or resist.[17] Children forced into armed conflict or criminal activity may still experience persecution while also being labeled as perpetrators.[18] Still, this is not reflected in federal statutory law. As a result, immigration judges continue in their discretion on whether or not to apply the child-centered framework. This results in a child's chance of protection depending less on the merits and more on which judge decides their case.

To combat this uneven application, Congress could codify developing judicial decisions and amend INA § 101(a)(42) to require a child-centered analysis. Congress could also mandate regulations requiring a child-centered approach to all cases involving children seeking refuge. This would also be in line with the framework in the Flores Settlement Agreement,[19] which already mandates a child-centered approach for immigrant children in detention. This would address the unique vulnerabilities of a refugee child, create uniform judicial interpretation, and reflect the modern understanding of children as rights holders. The current asylum framework fails to recognize that children experience persecution differently than adults. Without statutory guidance, judicial interpretations remain inconsistent, leaving children's safety dependent on which judge hears their case rather than the merits of their claims. ○

References:

1 *Asylum in the United States*, Am. Immig. Council (May 9, 2025), https://www.americanimmigrationcouncil.org/fact-sheet/asylum-united-states/.
2 *Id.*
3 8 U.S.C. § 1101(a)(42).
4 *Id.*
5 Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 150.
6 Refugee Act of 1980, Pub. L. No. 96-212, § 201(a), 94 Stat. 102 (codified at 8 U.S.C. § 1101(a)(42)).
7 8 U.S.C. § 1101(a)(42)
8 8 C.F.R. § 208.13(a)
9 *Id.*
10 U.N. High Comm'r for Refugees, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees ¶ 1*, U.N. Doc. HCR/GIP/09/08 (Dec. 22, 2009).
11 Convention on the Rights of the Child art. 3(1), Nov. 20, 1989, 1577 U.N.T.S. 3.
12 *Id.*
13 *Id.*
14 *Hernandez-Ortiz v. Gonzales,* 496 F.3d 1042, 1046 (9th Cir. 2007).
15 Mejilla-Romero v. Holder, 614 F.3d 572, 580–81 (1st Cir. 2010), Santos-Guaman v. Sessions, 891 F.3d 12, 18 (1st Cir. 2018).
16 Frank Paz, *Children Seek Refuge from Gang-Forced Recruitment: How Asylum Law Can Protect the Defenseless*, 42 Fordham Urb. L.J. 1063 (2015).
17 C. M. Rizen, *Are Juvenile Gang Members Victims of Labor Trafficking?*, 43 Loy. Chi. L.J. 1087 (2015).
18 Katherine Kaufka Walts, Meghan Scholnick & Joanne Curley, *Perpetrators or Victims? The U.S. Response to the Forced Criminality of Children*, 25 Child. Rts. Litig. 1 (2023).
19 Flores v. Reno, Stipulated Settlement Agreement, No. CV 85-4544-RJK (C.D. Cal. Jan. 17, 1997).

Trade, Tech, and Free Speech: The Reach of Section 301 Tariffs

By: Elizabeth Pope

Section 301 of the Trade Act of 1974 authorizes the United States Trade Representative (USTR), at the President's discretion, to impose tariffs where an "act, policy, or practice of a foreign country" is "unreasonable or discriminatory and burdens or restricts United States commerce[.]"[1] Section 301 has historically served as a principal statutory tool for addressing foreign trade practices viewed as harmful to U.S. economic interest, particularly in technology, intellectual property, and digital services. Prior to the Trump Administration, the U.S. primarily used Section 301 to pursue dispute settlement at the WTO.[2] During the first Trump Administration, USTR initiated six investigations under Section 301.[3] Only the investigations targeting China and the European Union (EU) resulted in tariffs, including duties imposed in 2020 on aircraft-related EU imports.[4]

A significant development occurred in 2017, when, at President Trump's direction, USTR investigated China's conduct related to "technology transfer, intellectual property, and innovation."[5] USTR concluded that China engaged in unreasonable and discriminatory conduct constituting a violation under Section 301's standards.[6] President Trump accordingly instructed USTR to take "all appropriate action[,]" resulting in an initial tranche of 25% on approximately $50 billion in Chinese imports.[7]

In *the Section 301 Cases,* the U.S. Court of International Trade considered whether the Trump Administration's tariffs were subject to notice-and-comment obligations under the Administrative Procedure Act (APA) or fall within the statute's foreign affairs exemption.[8] The Court held that the exemption did not apply.[9] On remand, the Court later sustained USTR's explanation and upheld the tariffs.[10]

The statutory four-year review of the China tariffs concluded in 2024 under President Biden.[11] Following that review, USTR chose to maintain existing China tariffs, and increase rates on certain products, including electric vehicles.[12] The Biden administration also initiated three Section 301 investigations: (1) labor conditions in Nicaragua; (2) China's semiconductor policies; and (3) China's conduct in the shipping and shipbuilding sectors.[13] These investigations continued the use of Section 301 to address both traditional trade concerns and emerging geopolitical issues tied to industrial capacity and supply chain.

Another key focus under Section 301 involved digital service taxes (DSTs) enacted by several U.S. trading partners.[14] During President Trump's first term, USTR investigated DSTs adopted by Austria, France, India, Italy, Spain, Turkey, and the United Kingdom.[15] USTR found in each instance that the DSTs "discriminated against U.S. digital companies, were inconsistent with principles of international taxation, and burdened U.S. companies."[16] USTR announced 25% tariffs covering approximately $3.4 billion in imports, but immediately suspending implementation to allow time for multilateral negotiations.[17]

DSTs impose taxes on certain gross revenues earned by large digital platforms.[18] A White House fact sheet at the time explained that DSTs "allow foreign governments to collect tax revenue from American companies simply because they operate in foreign markets," even when such companies are "not otherwise subject to foreign jurisdiction."[19] The fact sheet warned that these regimes were adopted to "raise revenue for their own government spending" and could result in collection of "billions" from U.S. companies."[20]

President Trump has since directed the USTR to renew and expand DST-related investigations.[21] This includes renewed review of the DSTs imposed by "France, Austria, Italy, Spain, Turkey, and the United Kingdom[,]" and authorization to investigate any additional country that uses a DST to discriminate against U.S. companies.[22] In a significant policy expansion, President Trump further directed USTR to "investigate whether any act, policy, or practice of any country in the European Union or the United Kingdom has the effect of requiring or incentivizing the use or development of United States companies' products or services in ways that undermine freedom of speech and political engagement[.]"[23] The Administration stated it would review measures that "incentivize[] U.S. companies to develop or use products and technology that undermine free speech or foster censorship."[24] A White House fact sheet identified the EU's Digital Market Act (DMA) and Digital Services Act (DSA) as policies that "will face scrutiny."[25]

The EU has described the DSA as a framework to "regulate[] online intermediaries and platforms[,]" with the goal of preventing "illegal and harmful activities online and the spread of disinformation."[26] U.S. policymakers, however, have expressed concern that these measures may pressure U.S. technology companies to restrict speech.[27] The DSA "departs from centuries-old principles of free speech that serve as the foundation of modern-day liberal democracies."[28]

As Section 301 evolves to reach beyond traditional trade interests and into the governance of digital expression, it demonstrates that trade law can serve as a vehicle for protecting free speech in the global digital economy. ○

References:

1 19 U.S.C. § 2411(b).
2 Danielle M. Trachtenberg, *Section 301 of the Trade Act of 1974*, Cong. Rsch. Serv. (Sept. 30, 2025), https://www.congress.gov/crs-product/IF11346..
3 *Id.*
4 *Id.*
5 Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 82 Fed. Reg. 40,213 40,213 (Aug. 24, 2017); Addressing China's Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology, 82 Fed. Reg. 39,007, 39,007 (Aug. 17, 2017).
6 off. of the u.s. trade representative, exec. off. of the president, findings of the investigation into china's acts, policies, and practices related to the technology transfer, intellectual property, and innovation under section 301 of the trade act of 1974 (2018).
7 In re *Section 301* Cases, 570 F. Supp. 3d 1306, 1318 (Ct. Int'l Trade 2022).
8 *Id.* at 1335.
9 *Id.*
10 *See In re Section 301* Cases, 628 F. Supp. 3d 1235 (Ct. Int'l Trade 2023).
11 Danielle M. Trachtenberg, *supra* note 2.

12 *Id.*
13 *Id.*
14 *USTR Announces, and Immediately Suspends, Tariffs in Section 301 Digital Services Taxes Investigations*, Office of the United States Trade Representative (June 2, 2021), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/ustr-announces-and-immediately-suspends-tariffs-section-301-digital-services-taxes-investigations; Danielle M. Trachtenberg, supra note 2.
15 *Id.*
16 *Id.*
17 Danielle M. Trachtenberg, supra note 2.
18 Elke Asen, *FAQ on Digital Services Taxes and the OECD's BEPS Project*, Tax Found. (Jan. 30, 2020), https://taxfoundation.org/blog/oecd-beps-digital-tax/.
19 *Fact Sheet: President Donald J. Trump Issues Directive to Prevent the Unfair Exploitation of American Innovation*, The White House (Feb. 21, 2025), https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/.
20 *Id.*
21 Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties, 90 Fed. Reg. 10,685, 10,686 (Feb. 21, 2025).
22 *Id; Fact Sheet: President Donald J. Trump Issues Directive to Prevent the Unfair Exploitation of American Innovation*, The White House (Feb. 21, 2025), https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/.
23 Defending American Companies, supra note 21.
24 Fact Sheet, *supra note* 19.
25 *Id.*
26 *The Digital Services Act*, Eur. Comm'n, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en (last visited Oct. 31, 2025).
27 House Judiciary Committee, *Foreign Censorship Threat: How The European Union Digital Services Act Compels Global Censorship and Infringes on American Free Speech* (July 25, 2025), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2025-07/DSA_Report%26Appendix%2807.25.25%29.pdf.
28 *Id.*

The Immigration Playbook: Nil Earnings Vs. Immigration Enforcement

By: Jessica Puk

The NCAA and its evolving Name, Image, and Likeness ("NIL") landscape has opened new opportunities and provided financial benefits for collegiate athletes. However, international NCAA student-athletes on F-1 visas are a different story, facing many challenging legal constraints resulting from new NIL opportunities.

As of July 1, 2025, the *House v. NCAA* settlement has allowed schools to share athletic department revenues with their varsity athletes[1] under the NCAA revenue sharing model.[2] The NCAA revenue sharing model enables schools to make payments directly to athletes up to $20.5 million per year with an "annual cap [to] increase to around $32 million over the next ten years."[3] It also removes scholarship restrictions and instead applies roster limits to all Division I sports.[4]

NIL policies empower student-athletes to benefit financially and earn income from business ventures and their own personal brand while still in school.[5] Examples of NIL activities include "social posts or content for a brand, autograph signing, camps or clinics . . . appearances in commercials or promotional events, and endorsement or sponsorship agreements."[6] While student-athletes in the United States can build their personal brands and profit from their NIL, international student-athletes continue to navigate a complex and evolving legal landscape due to restrictions placed on F-1 student visas.

As of 2024, there are more than 25,000 international students studying and competing at NCAA schools.[7] To be able to compete, "[t]he F-1 Visa (Academic Student) allows [the international student-athlete] to enter the United States as a full-time student at an accredited college[] [or] university . . . ."[8] However, international student-athletes on F-1 visas face strict limits on earning income as the term "employment" is broadly defined under federal law.

Under 8 C.F.R. § 274a.1(h), "[t]he term employment means any service of labor performed by an employee for an employer within the United States . . . ."[9] Employment under an F-1 visa, in the context of being an international student-athlete, becomes more challenging and contextually broad as there is no explicit limit as to what constitutes employment for an international student-athlete profiting from NIL opportunities.[10] F-1 students can obtain on-campus employment that "must either be performed on the school's premises . . . or at an off-campus location that is educationally affiliated with the school.[11] F-1 students may work off-campus after having been in F-1 status for one full academic year, but this is limited to Curricular Practical Training ("CPT"), Optional Practical Training ("OPT"), Science, Technology, Engineering, and Mathematics ("STEM"), or severe economic hardship work authorization.[12] None of these options explicitly pertain to F-1 international student-athletes.

Because NIL-related financial benefits are not explicitly addressed within the definition of "employment" under immigration law, the distinction between permissible NIL activity and unauthorized work remains unclear for international F-1 student-athletes, creating significant uncertainty and risk of noncompliance. Noncompliance with F-1 visas has serious consequences. In general, acceptance of unauthorized employment in violation of F-1 visa status renders aliens deportable under 8 U.S.C. § 1227.[13] Accordingly, an international student athlete who engages in unauthorized NIL employment risks violating their F-1 visa status and being removed from the United States under 8 U.S.C. § 1227.[14]

However, a P-1A visa applies to those "coming temporarily to the United States solely for the purpose of performing at a specific athletic competition as: (1) [a]n individual athlete at an internationally recognized level of performance; (2) [p]art of a group or team at an internationally recognized level of performance; (3) [a] professional athlete; or (4) [a]n athlete or coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association."[15] Recently, on September 19, 2025, in the case of *Poa v. Jaddou*, a federal judge denied the United States government's argument to block international student-athletes from obtaining a P-1A visa.[16] An Australian women's basketball player at Louisiana State University athlete, Last-Tea Poa, filed a NIL lawsuit after she was denied a P-1A visa.[17] Last-Tea Poa's success in surpassing a

motion to dismiss may be instrumental in the future of international student-athlete compensation.[18] The P-1A visa, if approved, would allow international student-athletes to receive compensation as professional athletes are able to under this classification.

Yet, absent an explicit solution addressing the scope of NIL compensation for international student-athletes, the boundaries of their F-1 visa status remain ambiguous as NIL opportunities expand with each passing year. It will be interesting to see how the *Poa* case develops as the litigation proceeds. Until then, international student-athletes remain on the NIL sideline as they watch their domestic counterparts take advantage of NIL opportunities. O

References:

1 House v. NCAA, 545 F. Supp. 3d 804 (N.D. Cal. 2021).
2 Patrick O'Rourke, *Estimated Revenue Sharing,* NIL-NCAA, https://nil-ncaa.com/ (last visited Oct. 27, 2025).
3 *Id.*
4 *Id.*
5 *NIL (Name, Image, Likeness)*, NCAA, https://www.ncaa.org/sports/2021/7/9/name-image-likeness.aspx (last visited Nov. 25, 2025).
6 *Id.*
7 *International Student-Athlete Handbook,* NCAA, https://ncaaorg.s3.amazonaws.com/inclusion/inter/INC_IntlStudentHandbook.pdf (last visited Oct. 29, 2025).
8 *Students and Employment*, U.S. Citizenship and Immigration Services, https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment (last visited Oct. 29, 2025).
9 8 C.F.R. § 274a.1(h).
10 *Id.*
11 8 C.F.R. § 214.2(f)(i).
12 8 C.F.R. § 214.2(f)(iI); *Students and Employment*, U.S. Citizenship and Immigration Services, https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment (last visited Oct.29, 2025).
13 8 U.S.C. § 1227.
14 *Id.*
15 P-1A Athlete, U.S. Citizenship and Immigration Services, https://www.uscis.gov/working-in-the-united-states/temporary-workers/p-1a-athlete (last visited October 29, 2025)
16 Dan Murphy, *Judge rules against U.S. government in NIL-visa lawsuit*, ESPN (September 19, 2025), https://www.espn.com/womens-college-basketball/story/_/id/46315688/judge-rules-us-government-nil-visa-lawsuit
17 *Id; see also* Connor T. Bean, *The Blocking of International Student-Athletes from Earning NIL Opportunities in College Athletics*, Sports Litigation Alert, https://sportslitigationalert.com/the-blocking-of-international-student-athletes-from-earning-nil-opportunities-in-college-athletics/ (April 18, 2025).
18 Connor T. Bean, *supra* note 16.

Visas, Dignity, and Diplomacy: Crossroads between the United States & Brazil Immigration Laws

By: Miller Whitten

Few areas of law expose the tension between executive authority and national dignity as clearly as immigration. In early 2025, the United States' deportation of dozens of Brazilian nationals incited protests in Brasília and revived debate over how far a nation may go to enforce its borders without offending the sovereignty of other nations.[1] The episode underscored a growing divide between the United States' unilateral use of immigration power and Brazil's emphasis on reciprocity and human dignity.[2] Brazilian immigrants in the United States form a distinct community. They are among the most educated immigrant groups, with 44% holding at least a bachelor's degree and many entering through family and employment-based visas.[3] However, despite these characteristics, Brazilian immigrants are subject to the same rigid enforcement structure found in the Immigration and Nationality Act ("INA"), which vests sweeping authority in the executive branch to detain and deport noncitizens.[4]

The Supreme Court has long upheld this framework under the plenary power doctrine, which shields immigration decisions from judicial scrutiny. In *Chae Chan Ping v. United States*, the Court established that Congress possesses near-total power over exclusion decisions.[5] That principle was reaffirmed in *Fiallo v. Bell*, where the Court deferred to Congress' discretion in defining family-based immigration categories.[6] More recently, in *Trump v. Hawaii,* the Supreme Court reaffirmed that the President's authority to exclude groups based on nationality is virtually unreviewable.[7] These cases collectively frame immigration as an extension of national sovereignty rather than as a question of individual rights.

On the other hand, Brazil approaches immigration as a matter of human dignity and reciprocal respect.[8] Its 1988 Constitution names the "dignity of the human person" as a founding principle of the Republic and commits the nation's foreign policy to sovereignty and reciprocity.[9] In 2017, Brazil codified this perspective in its Migration Law, which emphasizes human rights, family unity, and equality of treatment for foreigners.[10] In 2025, Brazil reinstated an electronic visa requirement for United States, Canadian, and Australian nationals—a move the government described as an act of reciprocity since those countries still require visas from Brazilians.[11] This decision marked not only a diplomatic response but also a constitutional one, aligning with Brazil's legal emphasis on sovereign equality. While Brazil projects sovereignty through reciprocal policy, the United States exerts influence more subtly. Through the United States Agency for International Development ("USAID") and the State Department, the United States has funded and shaped Brazil's border management policies, particularly regarding migration from Venezuela and Haiti.[12] This indirect influence raises questions about how independent Brazil's migration policy truly is.

At the same time, high-profile deportations from the U.S. have strained bilateral relations—illustrating the diplomatic consequences of immigration enforcement.[13] The legal contrast between the two systems is striking. United States courts interpret immigration through the lens of executive discretion and deference, while Brazil's courts read migration laws alongside constitutional guarantees of dignity.[14] Under the International Covenant on Civil and Political Rights, both nations are bound by principles of due process and humane treatment, yet Brazil has incorporated these norms more directly into domestic law.[15] By contrast, in the United States, judicial doctrine has largely insulated immigration from such scrutiny, treating it as a political question rather than a rights-based one.[16] This divergence reflects two competing models of sovereignty. The United States treats immigration as an assertion of power and the right to exclude, while Brazil treats it as a dialogue grounded in reciprocity and respect. Each approach carries consequences: the U.S. model invites diplomatic backlash when enforcement actions appear heavy-handed, while Brazil's model risks compromising autonomy when external influence shapes policy. The 2025 deportation dispute shows that immigration law, far from being a domestic affair, can serve as both a mirror and a measure of international respect. At its core, the contrast between these two nations reminds us that the law of borders often reveals more about a country's values than its geography. ○

References:

1 Thiago Alves, *Brazil protests 'inhumane' deportations under Trump*, Brazil Reports (Jan. 29, 2025), https://brazilreports.com/brazil-protests-inhumane-deportations-under-trump/6811/.
2 Ernesto Londoño & Bryan Pietsch, *Brazil Creates Task Force After U.S. Deportation Flight of Brazilians Draws Criticism*, N.Y. Times (Jan. 15, 2025),
3 *Brazilian Immigrants in the United States*, Migration Policy Inst., https://www.migrationpolicy.org/article/brazilian-immigrants-united-states (last visited Sept. 18, 2025).
4 8 U.S.C. §§ 1101–1537 (2018 & Supp. 2022).
5 Chae Chan Ping v. United States, 130 U.S. 581, 608-09 (1889).
6 Fiallo v. Bell, 430 U.S. 787, 797 (1977).
7 Trump v. Hawaii, 585 U.S. 667, 710 (2018).
8 C.F. art. 1, III; art. 4, II (Braz.).
9 *Id.*
10 Lei No. 13.445, de 24 de Maio de 2017, D.O.U. de 25.5.2017 (Braz.).
11 Bryan Harris & Michael Stott, *The Unprecedented Feud Between the U.S. and Brazil*, Fin. Times (July 15, 2025), https://www.ft.com/content/7f6bbdc8-c4aa-48b9-94cb-5d6b58af66fd.
12 *Bureau of Population, Refugees, and Migration, U.S. Engagement in Migration Policy in Brazil*, U.S. Dep't of State (2024), https://www.state.gov/.
13 Kaleah Haddock & Diana Roy, ICE and Deportations: How Trump is Reshaping Immigration Enforcement, cfr (Feb. 27, 2026), https://www.cfr.org/articles/ice-and-deportations-how-trump-reshaping-immigration-enforcement.
14 C.F. art. 1, III; art. 4, II (Braz.).
15 International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
16 See *Chae Chan Ping supra* note 4; *Fiallo supra* note 5; *Trump supra* note 6.

Deferred Action, Defined Limits: The Legal Unraveling of DACA

By: Morgan Kelly

Deferred Action of Childhood Arrivals ("DACA") permits young immigrants who were brought to the United States illegally by their parents to seek temporary protection from deportation.[1] DACA recipients are not granted lawful immigration status. DACA is not, in and of itself, a pathway to permanent residency.[2] However, a DACA recipient may attempt to obtain lawful immigration status through an existing lawful immigration pathway if eligible.[3] The U.S. Citizenship and Immigration Services ("USCIS") has the sole discretion to determine whether an applicant has met the threshold criteria for eligibility and therefore merits a favorable exercise of prosecutorial discretion.[4]

The basic eligibility requirements for DACA benefits require that potential recipients have arrived in the U.S. before the age of 16 and have continuously resided in the U.S. since June 15, 2007.[5] Potential recipients must have graduated from high school, obtained a GED, or been honorably discharged from the military.[6] Finally, potential recipients must not have been convicted of a felony, significant misdemeanor, or three or more misdemeanors.[7]

DACA was established in 2012 by the Obama Administration.[8] At the time, the Secretary of the Department of Homeland Security, Janet Napolitano, announced the creation of DACA through a memorandum dated June 15, 2012.[9] The USCIS, an agency of the Department of Homeland Security ("DHS"), began accepting DACA applications the following August.[10] The DHS subsequently released a memorandum that described the guidelines for granting or reviewing each application for deferred action.[11] A supplemental memorandum was released in November 2014, providing additional guidelines and amendments to the original memorandum released in 2012.[12] Since the creation of DACA, the Trump Administration has issued several memoranda seeking to rescind DACA, while the Biden Administration has sought to codify and preserve DACA.[13]

The basis for deferred action is prosecutorial discretion.[14] Prosecutorial discretion is a power delegated to the Executive Branch of the Federal Government by Article II of the United States Constitution.[15] Prosecutorial discretion has been interpreted very broadly, granting the executive branch the authority to decide whether to prosecute or decline to prosecute certain crimes.[16] Thus, when an agency decides to delay or defer an individual's deportation, it is exercising prosecutorial discretion.[17] There are three theories behind the use of prosecutorial discretion in the context of immigration: (1) economic, (2) humanitarian, and (3) the relationship between congressional inaction and the public demand for an administrative solution.[18] The third theory of prosecutorial discretion is what led to the creation of DACA in 2012.[19]

Critics argue that DACA exceeds the executive branch's authority by bypassing Congress.[20] Article I, Section 8, of the United States

Constitution delegates the power to make laws about immigration and naturalization to Congress.[21] Critics argue that because the Obama Administration created DACA after the 2010 and 2011 rejections of the DREAM Act, the Administration was attempting to bypass Congress's legislative authority.[22] Since its 2012 implementation, there have been various lawsuits challenging the Constitutionality of DACA.[23]

In the recent case of *Texas v. United States*, the court held that DACA is unlawful because it violated the notice-and-comment rulemaking requirements of the Administrative Procedure Act ("APA") and the Immigration and Nationality Act ("INA"), stating "DACA remains 'manifestly contrary to the INA.'"[24] Courts have often ruled on whether DACA or its rescission followed the proper procedures laid out in APA.[25] Still, there has yet to be a case that has clarified with any degree of certainty whether DACA is constitutional under either Article II or the Take Care Clause.

Many critics, in fact, point to the Take Care Clause of Article II, Section 3, of the United States Constitution to argue that DACA is unconstitutional.[26] The argument is that DACA undermines the Take Care Clause by circumventing Congress and declining to broadly enforce the immigration laws in place to combat illegal immigration.[27] Critics of DACA point to recent data to bolster their argument against DACA and to show that DACA itself does nothing to combat the problem of illegal immigration and may even incentivize further unauthorized entries.[28] The most recent data suggests that of the 14 million illegal immigrants estimated to be in the United States, only about 6 million had some form of temporary protected status that delayed their deportation.[29] That leaves roughly 8 million illegal immigrants without legal permission to be in the United States.

The Court in *Texas* issued a stay pending appeal and reaffirmed the illegality of the 2022 DHS rule that attempted to codify DACA.[30] Following the decision in *Texas*, USCIS continues to accept and process renewal requests from current DACA recipients, as well as accompanying employment authorization applications.[31] USCIS also continues to accept initial DACA requests but is not currently processing them.[32] This issue is likely to be revisited by the Supreme Court.

As of March 31, 2025, there were 525,210 active DACA recipients.[33] Data suggests a decline in the number of DACA recipients between December 21, 2024, and March 31, 2025. The data also suggests that the decrease in the number of DACA recipients is connected to processing delays by USCIS.

Since the ruling in *Texas*, DACA remains in legal limbo. DACA could be strengthened by congressional action, but a permanent legislative solution has not yet been addressed. Some scholars have suggested implementing a tiered legalization system in which undocumented immigrants could pay a set fee to obtain a work permit and remain in the United States legally, without having to obtain citizenship. Other scholars have suggested a form of rolling legalization in which undocumented immigrants who have been in the United States for more than ten years could apply for legalization, which would not include a path to citizenship but would allow them to remain in the country legally. Executive action has so far failed to preserve and codify DACA or to address the reality of the presence of a large population of undocumented immigrants. Ultimately, Congressional inaction could lead to the end of DACA. ○

References:

1 *Deferred Action for Childhood Arrivals (DACA)*, USA.gov (Nov. 17, 2025), https://www.usa.gov/daca.
2 *Id.*
3 *Id.*
4 *Consideration of Deferred Action for Childhood Arrivals (DACA)*, USCIS (Jan. 24, 2025), https://www.uscis.gov/DACA.
5 *Id.*
6 *Id.*
7 *Id.*
8 *Understanding Prosecutorial Discretion in Immigration Law,* American Immigration Council (May 26, 2011), https://www.americanimmigrationcouncil.org/fact-sheet/understanding-prosecutorial-discretion-immigration-law.
9 Nicole Hallett, Rethinking Prosecutorial Discretion in Immigration Enforcement, 42 Cardozo L. Rev. 1765, 1808 (2021).
10 Understanding Prosecutorial Discretion in Immigration Law, *supra* note 6.
11 *Id.*
12 *Defending DAPA and Expanded DACA Before the Supreme Court,* American Immigration Council (Apr. 11, 2016), https://www.americanimmigrationcouncil.org/report/defending-dapa-and-expanded-daca-supreme-court.
13 Hallett, *supra* note 7, at 1785-88.
14 *Id.* at 1767-69.
15 U.S. Const. art. II, § 3.
16 *Understanding Prosecutorial Discretion in Immigration Law, supra* note 6.
17 *Id.*
18 *See id.*; Hallett, *supra* note 7, at 1765-70.
19 Hallett, *supra* note 7, at 1807.
20 Peter Margulies, *The Fifth Circuit Holds That DACA Exceeds Executive Authority*, Lawfare (Oct. 7, 2022), https://www.lawfaremedia.org/article/fifth-circuit-holds-daca-exceeds-executive-authority.
21 U.S. Const. art. I, § 8, cl. 4.
22 Hallett, *supra* note 7, at 1807-12.
23 *See Texas v. United States*, 126 F.4th 392, 401-02 (5th Cir. 2025).
24 *Id.* at 418.
25 *Id.* at 402-04.
26 *Id.*
27 *See Defending DAPA and Expanded DACA Before the Supreme Court, supra* note 10.
28 Lora Ries, *DACA May Help "Dreamers," but Illegal Immigration Hurts U.S. Workers, Taxpayers, and Wages*, The Heritage Foundation (Oct. 14, 2020), https://www.heritage.org/border-security/commentary/daca-may-help-dreamers-illegal-immigration-hurts-us-workers-taxpayers.
29 Jeffrey S. Passel & Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Research Center (Aug. 21, 2025), https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023.
30 *Texas*, 126 F.4th at 421-22.
31 *Consideration of Deferred Action for Childhood Arrivals (DACA)*, *supra* note 2.
32 *Id.*
33 Steven A. Camarota & Karen Zeigler, *Estimating the Illegal Immigrant Population Using the Current Population Survey*, Ctr. for Immigr. Stud. (Mar. 29, 2022), https://cis.org/Report/Estimating-Illegal-Immigrant-Population-Using-Current-Population-Survey.
34 *Id.*
35 *Id.*
36 *What Immigration Reform Should Look Like*, The Heritage Foundation, https://www.heritage.org/border-security/heritage-explains/what-immigration-reform-should-look (last visited Mar. 4, 2026).
37 Dante Chinni, *Surprising Consistency on a Path to Citizenship for Long-Term Immigrants*, Am. Communities Project (Jan. 6, 2026), https://www.americancommunities.org/surprising-consistency-on-a-path-to-citizenship-for-long-term-immigrants.

AI and Technology in Immigration Enforcement: Balancing Innovation with Constitutional Guarantees

By: Sawyer Lecius

Controversies surrounding immigration policies and enforcement are longstanding in the United States, predating the current administration. Although political priorities continuously shift, concerns about regulating immigration persist. Enforcement occurs at the border and during the application process, consistently remaining a federal priority even as new administrations adopt different approaches. Regardless of political affiliation, lawmakers face a new challenge: the rapid rise of artificial intelligence (AI). From facial recognition at borders to social media screening tools used during the application process, AI has become a vital component of immigration enforcement.[1] As these technologies expand, American law must balance the government's interest and reliance on these tools with constitutional guarantees.

AI has become central to immigration enforcement at borders through biometric screening, surveillance systems, and predictive analytics. Biometric identification uses unique physical or behavioral characteristics to verify identity.[2] U.S. Customs and Border Protection (CBP) uses facial recognition tools to match travelers against existing records or alerts, supporting the Department of Homeland Security's (DHS) broader effort to generate a Person-Centric Identity Services system linking multiple immigration databases.[3] Additionally, AI-driven surveillance technologies, like drones and sensor networks, give authorities an aerial view to identify suspicious vehicles or individuals.[4] Predictive analytics systems, such as CBP's "Babel" platform, use AI to scan open-source data and flag potential security risks related to specific travelers.[5] Collectively, these technologies have transformed border enforcement into a data-driven operation, expanding government oversight.

AI is also deeply embedded in the immigration application process. According to the DHS AI Use Case Inventory, the United States Citizenship and Immigration Services (USCIS) has a use case (DHS-17) focused on immigration benefit fraud detection and national-security screening through the FDCS-DS NextGen system, which detects fraud, analyzes applicant history, and prioritize cases involving security concerns.[6] Further, the American Immigration Council reports that AI tools, such as "Babel," also analyze large volumes of data, including social media content to assess applicant credibility.[7] Additional tools, such as USCIS's virtual assistant "Emma," streamline applicant communication, reducing administrative workloads.[8] These technologies reflect federal goals outlined OMB Memo M-25-21, which aim to improve efficiency, transparency, and accuracy.[9]

Proponents for AI use argue that it provides significant benefits to immigration enforcement.[10] Biometric systems allow CBP to verify identities within seconds, reducing the time required to verify documents and screen travelers.[11] AI-enabled surveillance increase situational awareness by letting agents monitor larger areas with fewer personnel.[12] Drones provide real-time imaging and detect irregular activity, expanding officers' reach while conserving resources.[13] Similarly, during the immigration application process, DHS uses AI to streamline case management, offering potential gains in administrative efficiency.[14]

However, these benefits come with significant constitutional and ethical concerns. At the border, the expansion of digital and biometric surveillance challenges long-standing privacy expectations.[15] Although courts recognize a diminished privacy expectation at international borders, scholars warn that facial recognition and continuous monitoring risk expanding this exception too far.[16] The reliance on these systems may also dehumanize immigrants by reducing individuals to data profiles.[17] Similar concerns arise in the application process, where many DHS AI tools are "rights-impacting," and may influence immigration outcomes without meaningful transparency.[18] This raises due process concerns under the Fifth Amendment, as applicants often lack insight into how data is used or how decisions are made.[19] Biased algorithms or unequal data inputs may also generate discriminatory outcomes, undermining Equal Protection principles.[20] These concerns underscore the need for oversight, transparency, and human accountability across all uses of AI in immigration.

Core immigration statutes predate modern AI, granting the DHS broad authority over admission, exclusion, and removal of immigrants, but offering little guidance on algorithmic systems.[21] Although DHS publicly reports some AI use through the AI Use Case Inventory, details about system functioning, decision-making, and accuracy remain limited.[22] Meanwhile, the Office of Management and Budget encourages AI adoption but focus primarily on management and procurement, rather than establishing rules for how AI use in immigration decisions.[23]

To address the risks posed by AI-driven enforcement, a series of reforms is necessary. First, DHS should expand public, plain-language disclosures explaining how AI influences screening, fraud detection, and adjudication, strengthening public trust and helping applicants understand the process.[24] Second, agencies should adopt stronger oversight and bias mitigation measures for biometric, surveillance, and fraud-detection systems, which scholars argue currently operate with insufficient safeguards.[25] Third, DHS should develop clearer internal guidelines for rights-impacting AI, ensuring that systems such as facial recognition, FDNS-NextGen, and Babel do not undermine due process protections.[26] Finally, Congress should enact statutory standards that regulate AI use in immigration enforcement, providing courts with a clear framework for reviewing agency decisions involving algorithmic tools, while still allowing the use of AI to improve efficiency.[27]

AI has become an indispensable tool in modern immigration enforcement, offering the government new capabilities in identity verification, surveillance, and case management. However, those innovations create issues regarding privacy, due process, and equal

protection. As AI becomes further embedded in border operations and immigration adjudications, policymakers must adopt transparent, accountable, and equitable rules that safeguard constitutional rights. Reasonable oversight, through statutory reform and clear guidelines, can ensure that AI strengthens enforcement rather than diminishing the fairness and integrity of the U.S. immigration system. ○

References:

1 *Biometrics*, Homeland Security (Aug. 28, 2025), www.dhs.gov/biometrics.
2 *Id.*
3 Steven Hubbard, *Invisible Gatekeepers: DHS' Growing Use of AI in Immigration Decisions*, American Immigration Council (May 12, 2025), www.americanimmigrationcouncil.org/blog/invisible-gatekeepers-dhs-growing-use-of-ai-in-immigration-decisions/; Hasalyn Modine, *DHS Launches Sweeping AI Immigration Plan: A Major Shift for 2025 and Beyond.*, Boundless, (Mar. 26, 2025), www.boundless.com/blog/dhs-launches-sweeping-ai-immigration-plan-a-major-shift-for-2025-and-beyond/.
4 *Border Patrol Drone: How Are Drones Used for Border Security?*, JOUAV (July 25, 2025), www.jouav.com/blog/border-patrol-drone.html.
5 Steven Hubbard, *supra* note 3.
6 *United States Citizenship and Immigration Services – AI Use Cases*, Homeland Security (Feb. 24, 2025), www.dhs.gov/ai/use-case-inventory/uscis.
7 Steven Hubbard, *supra* note 3.
8 *Meet Emma, Our Virtual Assistant*, Uscis (Apr. 3, 2018,) www.uscis.gov/tools/meet-emma-our-virtual-assistant.
9 Russell T. Vought, M-25-21 – *Accelerating Federal Use of AI through Innovation, Governance, and Public Trust*, Executive Office of the United States (Apr. 3, 2025), www.whitehouse.gov/wp-content/uploads/2025/02/M-25-21-Accelerating-Federal-Use-of-AI-through-Innovation-Governance-and-Public-Trust.pdf.
10 Saba Mengesha, *The Rise of AI and Technology in Immigration Enforcement.*, The Regulatory Review (Aug. 20, 2024), www.theregreview.org/2024/03/23/the-rise-of-ai-and-technology-in-immigration-enforcement/.
11 Anthony Kimery, *DHS Expands Biometric Entry-Exit, CBP to Photograph All Noncitizens at US Borders: Biometric Update*, Biometrics News (Oct. 27, 2025), www.biometricupdate.com/202510/dhs-expands-biometric-entry-exit-cbp-to-photograph-all-noncitizens-at-us-borders.
12 *Border Patrol Drone: How Are Drones Used for Border Security?*, *supra* note 4.
13 *Id.*
14 *United States Citizenship and Immigration Services – AI Use Cases, supra* note 6.
15 *Artl.S8.C18.8.7.2 Aliens in the United States,* Constitution Annotated, constitution.congress.gov/browse/essay/artl-S8-C18-8-7-2/ALDE_00001262/ (last visited Apr. 2, 2026); Saba Mengesha, *supra* note 10.
16 Saba Mengesha, *supra* note 10.
17 Chris Gosier, *How Should AI Be Used in Immigration? Cautiously, Experts Say,* Fordham Now (Mar. 13, 2025), www.now.fordham.edu/university-news/how-should-ai-be-used-in-immigration-cautiously-experts-say/.
18 Steven Hubbard, *supra* note 3.
19 *Artl.S8.C18.8.7.2 Aliens in the United States, supra* note 15.
20 Chris Gosier, *supra* note 17.
21 *Artl.S8.C18.8.7.2 Aliens in the United States, supra* note 15.
22 *United States Citizenship and Immigration Services – AI Use Cases, supra* note 6.
23 *White House Releases New Policies on Federal Agency AI Use and Procurement,* The White House (Apr. 7. 2025), www.whitehouse.gov/articles/2025/04/white-house-releases-new-policies-on-federal-agency-ai-use-and-procurement/.
24 *United States Citizenship and Immigration Services – AI Use Cases, supra* note 6.
25 Steven Hubbard, *supra* note 3; Saba Mengesha, *supra* note 10; Chris Gosier, *supra* note 17.
26 *Biometrics, supra* note 1; Steven Hubbard, *supra* note 3; *Border Patrol Drone: How Are Drones Used for Border Security?, supra* note 4.
27 Hasalyn Modine, supra note 3; *White House Releases New Policies on Federal Agency AI Use and Procurement, supra* note 23; *Artl.S8.C18.8.7.2 Aliens in the United States, supra* note 15.

From Preserve to Patrol: Immigration, Security, and the National Park Service

By: Nicholas Callis

Following what many now call the Biden-Harris border crisis, the Department of Homeland Security (DHS) reported nearly three million unauthorized-migrant encounters in 2024 and 10.8 million since 2021, with the majority, 8.7 million, occurring along the Southwest border.[1] Crucially, these totals are those detected—leaving an unknown number of additional migrants uncounted. While about 45% of the unauthorized population are visa overstays, the remainder arrived illegally—most often smuggled through checkpoints or by trekking across desert terrain.[2] On paper, the story is blurry, but the land keeps the receipts—footpaths carved through fragile desert, vehicle ruts beyond established roads, and abandoned campsites polluting sensitive habitats. The illegal immigration has reshaped national parks and adjacent federal lands along the southern border. Thus, the need to protect these places becomes apparent with the solution hinging on tighter, routine, resource-aware coordination between the National Park Service (NPS) and the U.S. Border Patrol (USBP).

For context, the agencies mentioned above sit in different cabinet families with missions that overlap on the ground. The NPS is a bureau within the Department of the Interior (DOI), alongside other bureaus such as BLM and USFWS. In addition to the sixty-three congressionally designated national parks, the NPS also manages nearly 400 other sites—historic parks, national monuments, recreation areas, and more—including the Boston National Historical Park, the Gateway Arch in St. Louis, and the Statue of Liberty National Monument in NYC, just to name a few.[3] By contrast, USBP is the uniformed arm of U.S. Customs and Border Protection (CBP), which sits within the Department of Homeland Security (DHS) and is responsible for securing the border between all ports of entry.[4] As CBP's jurisdiction extends to 100 air miles from all points of our national border, many parks and other federal lands fall inside USBP's operational area.[5] Effective management therefore requires formal coordination so USBP can execute border security while NPS fulfills its statutory duty to preserve the land.

For decades, federal land managers have warned that unauthorized crossings do not skirt public lands—they run through them. Long before today's surge, the Public Lands Foundation documented hundreds of illegal roads and footpaths, abandoned vehicles, wildfire ignitions, and clusters of garbage that unauthorized migrants left across millions of BLM and park-adjacent acres in Arizona's border zone.[6] "Soiled baby diapers, empty food containers and water bottles, clothes, human waste and other personal items are just a few of the things left [behind]," polluting the already scarce water sources that the desert ecosystem greatly depends on.[7] A San Diego State University study of the Cleveland National Forest in eastern San Diego County, California, found that for every 1,000 unauthorized immigrants crossing a given patch of wilderness, an

average of 772 meters of new trail were created; 656 square meters of ground were disturbed; fifty kilograms of litter were left behind; eleven illegal campfires were ignited; and 1.7 hectares of land were burned in wildfires attributed to such crossings.[8] Federal agencies saw the same on wildlife refuges. The U.S. Fish & Wildlife Service reported that over 100,000 illegal border crossers were arrested on national wildlife refuges in 2005 and more than 167,000 pounds of marijuana were seized there that year—figures that, again, capture only detected activity.[9] Today, as these pressures have only intensified, the National Park Service has issued explicit warnings for parks prone to such activity, noting how illegal immigration often coincides with other unlawful and dangerous practices. For example, Coronado National Memorial warns visitors that undocumented crossings and smuggling are common and includes numerous warnings as to what activities parkgoers should avoid doing, such as hiking alone, hiking down "well-used but unofficial 'trails,'" and steering clear of areas with "heavy border activity."[10]

As the issue of illegal immigration continues to grow, Congress has not been blind to the role federal lands will inevitably play in a possible solution. In November 2023, the House Natural Resources Committee condemned proposals to use National Park Service sites as migrant encampments[11] and advanced legislation to prohibit housing migrants on national parks and other federal lands, citing conflicts with conservation mandates.[12] At the same time, upstream conditions underscore the environmental stakes. The Darién Gap, a roadless expanse of rainforest and swamp between Colombia and Panama, saw roughly half a million crossings in 2023 as migrants headed north to the U.S. Mexico border. The event left 2,500 tons of trash and a cleanup bill in the tens of millions in addition to irreversible biodiversity losses that no amount of money can restore.[13] Recognizing the growing friction between resource protection and border enforcement, the DOI has now called for interagency approaches that safeguard both missions on and adjacent to park lands.[14]

A step in the right direction, albeit far from the border, came on August 20, 2025, when DOI Secretary Doug Burgum announced a service-wide deputization of CBP officers to work alongside the NPS's U.S. Park Police at NPS sites in Washington, D.C.[15] The move formalized cross-agency authority and joint patrols on NPS property, clarifying roles, tightening communications, and reducing operational gray zones.[16] While the D.C. deployment targeted local public-safety needs rather than border migration, the mechanism—targeted cross-deputization and coordinated operations on NPS lands—is a scalable template for border-adjacent parks where conservation and interdiction missions routinely intersect.

The remedy is not to force a choice between conservation and enforcement, but to make them work together where the land is most vulnerable, and where crossings are currently the least enforceable. While most proposed solutions turn a blind eye to one end of the argument or the other—such as environmentalists opposing a border wall outright or proposals to warehouse migrants in remote, ecologically irreplaceable habitats while they await due process—the durable path is coordinated, resource-aware enforcement.[17] Put simply, border-adjacent parks need to adapt the D.C.-style playbook to their desert realities: standing NPS–USBP operating plans; targeted cross-deputization between USBP agents and NPS park rangers; NEPA-aware pursuit and access protocols that minimize off-road damage; and rapid restoration of any affected land after incidents do occur. Only then might we be able to secure the border without sacrificing the landscape that defines it. ○

References:

1 *Startling Stats Factsheet: Fiscal Year 2024 Ends With Nearly 3 Million Inadmissible Encounters, 10.8 Million Total Encounters Since FY2021*, Homeland Security Republicans (Oct. 24, 2024), https://homeland.house.gov/2024/10/24/startling-stats-factsheet-fiscal-year-2024-ends-with-nearly-3-million-inadmissible-encounters-10-8-million-total-encounters-since-fy2021/.

1 *Modes of Entry for the Unauthorized Migrant Population*, Pew Research Center (May 22, 2006), https://www.pewresearch.org/race-and-ethnicity/2006/05/22/modes-of-entry-for-the-unauthorized-migrant-population/.

1 *About Us: National Park System* National Park Service, https://www.nps.gov/aboutus/national-park-system.htm (last visited Sep. 25, 2025).

1 8 C.F.R. § 287.1 (2025).

1 *Id.*

1 *Public Land Being Destroyed by Illegal Immigration*, Public Lands Foundation (July 18, 2010), https://www.publicland.org/wp-content/uploads/2016/08/PLF_Position_Statement_2010-08__Public_Lands_Being_Destroyed_by_Illegal_Immigration.pdf.

1 *Id.*

1 David L. McIntyre & John R. Weeks, *Environmental Impacts of Illegal Immigration on the Cleveland National Forest in California*, 54 Professional Geographer 392 (2002).

1 Mitch Ellis, *The Impacts of Illegal Immigration on Public Lands*, U.S. Fish & Wildlife Service (June 15, 2006), https://www.fws.gov/testimony/impacts-illegal-immigration-public-lands.

1 *Coronado National Memorial Arizona: Safety*, National Park Service (Jan. 22, 2024), https://www.nps.gov/coro/planyourvisit/safety.htm.

1 Press Release, Committee Press Office, Committee Condemns Migrant Camps in National Parks (Sep. 27, 2023).

1 Press Release, House Committee on Natural Resources, House Passes Legislation Preventing Biden Administration from Housing Migrants in National Parks (Nov. 30, 2023).

1 Megan Janetsky & Matias Delacroix, *Few Migrants Remain in the Darien Gap, But an Environmental Crisis Has Been Left Behind.* AP (May 5, 2025), https://apnews.com/article/darien-gap-environment-pollution-trash-migration-crisis-1b117a9f73db9ad36f0d6e7664e5d631.

1 Michael T. Reynolds, National Parks and Border Security: Securing Our Border, Saving Our National Parks, U.S. Dep't of the Interior (Oct. 18, 2023), https://www.doi.gov/ocl/national-parks-and-border-security.

1 Rachel Frazin, *Interior Deputizes Border Agents to National Park Sites Amid DC Takeover*, The Hill. (Aug. 20, 2025), https://thehill.com/policy/energy-environment/5462417-border-patrol-nps-national-parks-trump-dc-takeover-burgum/#:~:text=This%20includes%20both%20tourist%2Dheavy,Creek%20and%20Meridian%20Hill%20parks.

1 *Id.*

1 Friends of the Everglades, Inc. v. Noem, 796 F. Supp. 3d 1234 (S.D. Fla. 2025).

Law, Morality, and the Border: Evaluating U.S. Border Policy Under St. Thomas Aquinas

By: Greyson Whiting Slicker

The law is promulgated words, by public authority, that is an ordinance of reason, for the common good.[1] Here, the current border policy of the United States aligns with the natural law. Thomas Aquinas teaches us there are four kinds of law: Eternal Law, Natural Law, Divine Law, and Human Law.[2] Law shapes human behavior by forming habits that, over time, alter a people's customs, and it does so through four effects: commanding, prohibiting, permitting, and punishing.[3] Here, President Trump has prohibited the illegal aliens participating in the invasion of the southern border from being admissible in the United States.[4]

The Eternal Law is divine wisdom or providence, which directs all things to their due end, and was imprinted by God onto the human soul.[5] Man's rational engagement with the Eternal law is called the natural law and is expressed through the seven precepts of the natural law.[6] Additionally, the eternal law is reflected in Divine law, revealed through the ordinances and commandments of both the Old and New Testaments.[7] Finally, the eternal law manifests in the "Law of Nature" as the *law* governing irrational beings, though such creatures cannot rationally comprehend or observe it.[8]

The Natural Law is man's rational participation in God's eternal law.[9] The first precept of the natural law is to first do good and avoid evil, and when applied to the six inclinations of man, the other six precepts reveal themselves.[10] Second, the preservation of self, using ordinary and reasonable means to preserve your life.[11] Third, the preservation of the species and to be fruitful and multiply reasonably, understanding that you are a gift of self to your spouse.[12] Fourth, to know truth and live by it.[13] Fifth, to live in society relationally, honoring friendship and solidarity.[14] Sixth, to refine the material riches of the universe as a gift of self in general. Seventh, to contemplate beauty and be thankful for it.[15]

These seven precepts lead us to the general principles of natural law. One may never do evil that good may come of it; whatever is intrinsically evil can never become good through motive or circumstance.[16] If an act is hostile to the flourishing of life, then it is intrinsically evil. Intrinsically evil acts can become more or less evil depending on the change in motive or circumstance but can never become good.[17] Intrinsically good acts can become more or less good depending on a change in motive or circumstance and can even become evil.[18] Circumstances will always turn indifferent acts into good or evil.[19] Those principles further lead us to conclusions about the natural law.[20]

There are two types of conclusions of natural law. Proper conclusions like divine authority and the Ten Commandments, and remote conclusions which are implicit in the conclusions of natural law, which are not generally known unless well-trained.[21] For example, thou shalt not steal is easy to see and understand, but returning lost goods takes more development.[22] Those natural law conclusions lead us to specifications or determinations of human law which rest on human authority alone.[23] While they do not always logically flow from the natural law principles, they must never contradict them.[24] One precept of the natural law cannot be advanced at the expense of another, and for a law (determination) to be good, it must vertically align with the conclusions, principles, and precepts that guide it.[25]

There are three sources of morality. The object chosen or the moral deed can be intrinsically good, evil, or neutral.[26] The end in view or intention and motive, the moral object is the end of the object, and the motive of the agent is the end of the subject.[27] The circumstances of the action condition the moral object because they determine the kind of concrete human act, or at least the degree or intensity of the act.[28] When applying the three sources of morality, if all three are not good, then the act is not a good act.[29]

The immigration act of August 3, 1882, allowed the Secretary of the Treasury to empower those who boarded ships to examine the immigrants therein.[30] If they found a passenger was a "convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge," then the ship was not permitted to land.[31] The modern categories for inadmissible aliens include health-related grounds, criminal and related grounds, security-related grounds, those who would become a public charge, illegal entrants and immigration violators, draft evaders, aliens previously removed, practicing polygamists, and child traffickers.[32] Most of the modern categories that determine who is inadmissible and who is not have their own exceptions more closely tied to reason than they were in 1892.

President Donald J. Trump issued Presidential Proclamation No. 10888 on January 20th, 2025, declaring the situation at the southern border as an invasion under Article IV, Section 4 of the Constitution while acting at his "maximum" authority under Article II powers.[33] Under Aquinas's framework, the morality of stopping mass illegal immigration must be evaluated through the three sources of morality: the object chosen, the intention, and the circumstances.[34]

The object chosen, arresting and deporting an unlawful alien, is likely intrinsically good, or at the very least neutral. To remove a person from a place they do not belong, as defined by rational law, is intrinsically good.

The intention and motive are likely intrinsically good because preservation of self, family, and country by rational means is a good act and violates no natural law precept or principle. It advances living relationally and the preservation of self because an ordered society enables people and families to flourish in peace, security, and friendly obligation, all of which further the common good.

The circumstances of 2024 determined the degree and intensity of good in the President's proclamation. The president described the

circumstances that made this order necessary: a massive number of illegal crossings overwhelmed immigration systems, threatened national security, strained public resources, and endangered public health.[35] St. Thomas Aquinas examined how the Old Testament addressed foreigners, putting them into three categories: passers-through, resident aliens, and those from hostile nations. Aquinas's analysis, therefore, focuses on two groups relevant to mass illegal immigration: those seeking residency and those from hostile nations.[36] Residency seekers had to wait for their citizenship until the common good was firmly at heart. This was because "if foreigners were allowed to meddle with the affairs of a nation as soon as they settled down in its midst, many dangers might occur, since the foreigners not yet having the common good firmly at heart might attempt something hurtful to the people."[37] The government could exclude people from hostile nations in perpetuity, and those eventually allowed entry had to wait for generations and make a positive demonstration of an act of virtue. Therefore, the severity of the circumstances in 2024 intensified the moral weight of exclusionary measures, rendering the President's proclamation consistent with Aquinas's understanding of a good and moral act.

In sum, the current border policy of the United States aligns with the natural law, as articulated by St. Thomas Aquinas. President Trump's proclamation to suspend the entry of unlawful aliens was an inherently good act. The executive and legislative action surrounding the border crisis in 2024 was an objectively good and reasonable act that was *right* with reason. ○

References:

1 St. Thomas Aquinas, *Summa Theologiae*, I-II, Q. 95, Art. 4
2 *Id.* at I-II, Q. 91
3 *Id.* at I-II, Q. 95–Q. 97
4 Presidential Proclamation No. 10888, *Guaranteeing the States Protection Against Invasion*, 90 Fed. Reg. 8333 (Jan. 20, 2025).
5 D. Brian Scarnecchia, Bioethics, Law, and Human Life Issues: A Catholic Perspective on Marriage, Family, Contraception, Abortion, Reproductive Technology, and Death and Dying 36-38 (2010).
6 *Id.*
7 J. Budziszewski, Commentary on Thomas Aquinas's Treatise on *Law* (Cambridge Univ. Press 2014) xviii; D. Brian Scarnecchia, Bioethics, Law, and Human Life Issues: A Catholic Perspective on Marriage, Family, Contraception, Abortion, Reproductive Technology, and Death and Dying 40 (2010).
8 J. Budziszewski, Commentary on Thomas Aquinas's Treatise on Law (Cambridge Univ. Press 2014) xviii
9 D. Brian Scarnecchia, *supra* note 5.
10 *Id.* at 38-39.
11 *Id.* at 39.
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.* at 57.
17 *Id.* at 58.
18 *Id.* at 59.
19 *Id.*
20 St. Thomas Aquinas, *Summa Theologiae*, I-II, Q. 95, Art. 2
21 *Id.* at I-II, Q. 95, Art. 4
22 *Id.* at I-II, Q. 95, Art. 2
23 *Id.* at I-II, Q. 95, Art. 2
24 *Id.* at I-II, Q. 91, Art. 3
25 St. Thomas Aquinas, *Summa Theologiae*, I-II, Q. 94, Art. 2
26 D. Brian Scarnecchia, *supra* note 5, at 52.
27 *Id.* at 53-55.
28 *Id.* at 55-56.
29 *Id.* at 56.
30 Nishimura Ekiu v. U.S., 142 U.S. 651, 660 (1892).
31 *Id.* at 661.
32 8 U.S.C. 1182
33 Presidential Proclamation No. 10888, *Guaranteeing the States Protection Against Invasion*, 90 Fed. Reg. 8333 (Jan. 20, 2025); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson Concurrence)
34 D. Brian Scarnecchia, *supra* note 5, at 51.
35 Presidential Proclamation No. 10888, *Guaranteeing the States Protection Against Invasion*, 90 Fed. Reg. 8333 (Jan. 20, 2025).
36 John M. Grondelski, *Pondering the Wisdom of St. Thomas Aquinas on Immigration,* Catholic World Report (Oct. 8, 2025), https://www.catholicworldreport.com/2025/10/08/pondering-the-wisdom-of-st-thomas-aquinas-on-immigration/
37 St. Thomas Aquinas, *Summa Theologiae*, II-II, Q. 103, Art. 3
38 John M. Grondelski, *supra* note 36.

The Evolution of U.S. Tariff Policy and Its Philosophical Motivations

By: Ethan West

In 1824, Henry Clay gave a speech to the United States House of Representatives on the state of American Industry.[1] Clay focused his speech on whether the United States should leverage more "adequate protection" for the American industry through tariffs.[2] Clay noted that the critics opposing tariffs viewed them as a "monster, huge and deformed, — a wild beast, endowed with tremendous powers of destruction, about to be let loose among our people, if not to devour them, at least to consume their substance."[3] Many contemporary critics also share this sentiment, with some even viewing tariffs as outright immoral.[4] However, as Clay and other proponents argued in response: "[t]he sole object of the tariff is to tax the produce of foreign industry, with the view of promoting American industry," and that without any tariffs, America may "condemn its own industry and commerce to pay a ruinous tribute to those of other nations."[5] Since the founding of the United States of America, the philosophies that underpin tariffs have evolved into differing iterations, and yet the reason for applying tariffs has remained the same. From Alexander Hamilton to the Trump Administration, the evolution of tariffs demonstrates the necessity for tariffs to protect American industry. The tariff is a tool that a nation utilizes to ensure a nation's continued relevancy and survival on the global stage.

Beginning in 1790, Alexander Hamilton, then the Secretary of Treasury, gave a report to Congress on manufacturing and its importance for a nascent nation.[6] Hamilton spoke of how industry is inseparably connected to a nation's security.[7] "Not only the wealth; but the independence and security of a Country, appear to be materially connected with the prosperity of manufactures. Every nation, with a view to those great objects, ought to endeavor to possess within itself all the essentials of national supply."[8] Thus, a nation's industry is not to primarily generate wealth for the nation and its citizens but instead it can lessen a nation's dependence on other countries when its industry is appropriately reinforced and protected. To

strengthen a nation's industry, "[tariffs must] . . . evidently amount to a virtual bounty on the domestic [goods] since by enhancing the charges on foreign [goods], they enable the National Manufacturers to undersell all their foreign Competitors."[9] Hamilton perceived tariffs as beneficial because the domestic industry could operate independently from foreign competitors. Hamilton's perspective thus championed tariffs to facilitate growth of a nation's industry from its earliest stages.

Tariffs also serve to combat national crises. President Herbert Hoover, in his speech on approving the Smoot-Hawley Tariff Act in 1930, commented on the absolute necessity for the tariff bill.[10] This particular Act responded to previous legislation that Congress enacted in 1922 which empowered the United States President to unilaterally impose tariff rates.[11] President Hoover, however, noted the issues facing the American farmer and other industries when the President arbitrarily imposed the tariff rate within the confines of the 1922 Tariff Act.[12] Amid the Great Depression, President Hoover advocated for a revision to "further [the] protection to agriculture and labor" so that a quick recovery for businesses could occur by "returning [to] normal conditions."[13] Ultimately, the Smoot-Hawley Tariff Act implemented a more "scientific and businesslike method" to decisively combat national economic crises by limiting the President to either approve or veto the tariff committee's recommendation.[14] This use of the tariff differed from Hamilton's philosophy in that the tariff is no longer used to protect a young and emerging industry from foreign competitors, but rather to respond efficiently and systematically to national economic emergencies.

Another philosophy of tariffs that has been recently adopted is that of protecting the United States commerce from unfair trade practices. Congress enacted the Trade Act of 1974 that included § 2411 which permitted a United States Trade Representative to "impose duties or other import restrictions on the goods of . . . such foreign country for such time as the Trade Representative determines appropriate . . . ."[15] Additionally, Congress enacted § 1862 that granted authority to the United States President to "adjust imports of an article and its derivatives" if such article threatens national security upon an appropriate determination.[16] President Donald Trump imposed a tariff on steel after the Secretary of Commerce reported that "many domestic steel mills had been driven out of business due to declining steel prices, global overcapacity, and unfairly traded steel" while any "remaining steel mills were financially dis-tressed."[17] This predicament threatened national security because it "jeopardize[ed] domestic steel production" when the national defense relied on steel.[18] Therefore, the contemporary reasoning for imposing tariffs is to combat unfair trading practices because such practices may imperil other aspects of a nation like national security.

Tariffs have evidently been utilized by stimulating young industries, mitigating national crises and counteracting unfair trade practices. Although each philosophy differs for imposing tariffs, the United States of America reaps benefits when tariffs are judiciously applied to reinforce its independence on a global scale. Thus, a country should consider using or continuing to use tariffs to ensure its vitality and development. ○

References:

1 Daniel Webster et Al., *State Papers And Speeches On The Tariff* (Frank William Taussig ed., Cambridge, Mass., Harvard University 1892), https://oll.libertyfund.org/titles/taussig-state-papers-and-speeches-on-the-tariff.
2 *Id.*
3 *Id.*
4 *See* Jaana Woiceshyn, *The Moral Case Against Tariffs – and for Free Trade*, CAPITALISM MAGAZINE (Mar. 21, 2025), https://capitalismmagazine.com/2025/03/the-moral-case-against-tariffs-and-for-free-trade.
5 Webster, *supra* note 2.
6 *Id.*
7 *Id.*
8 *Id.*
9 *Id.*
10 *June 16, 1930: Message regarding the Smoot-Hawley Tariff Act*, Miller Center, https://millercenter.org/the-presidency/presidential-speeches/june-16-1930-message-regarding-smoot-hawley-tariff-act (last visited Sep. 18, 2025).
11 Tariff Act of 1922, Pub. L. 318, 42 Stat. 959, 941-942.
12 *Message regarding the Smoot-Hawley Tariff Act, supra* note 10.
13 *June 16, 1930: Message regarding the Smoot-Hawley Tariff Act*, Miller Center, https://millercenter.org/the-presidency/presidential-speeches/june-16-1930-message-regarding-smoot-hawley-tariff-act (last visited Sep. 18, 2025).
14 *Id.*; *see also* Tariff Act of 1930, Pub. L. 361, 46 Stat. 590, 701-703.
15 19 U.S.C. § 2411.
16 19 U.S.C. § 1862.
17 *Am. Inst. for Int'l Steel, Inc. v. United States*, 806 F. App'x 982, 986 (Fed. Cir. 2020).
18 *Id.*

The Intersectionality Between Recent changes to Immigration Law and Implications to Human Trafficking Reforms

By: Abigail Ross

Changes to policy create a 'ripple effect' that is evident across areas of reform. Today, immigration is a highly debated topic across the political, ethical, and legislative arenas. Recent changes in administrations and immigration law have raised legal considerations illuminating the intersectionality between immigration reform and human trafficking implications. "[H]uman trafficking, also known as trafficking in persons, is a crime that involves compelling or coercing a person to provide labor or services, or to engage in commercial sex acts."[1] Immigration is often associated with human trafficking. Human traffickers target vulnerable individuals and marginalized populations including "[p]ersons who do not have lawful immigration status in the United States."[2]

Immigration is a cornerstone of American history. Conversations surrounding immigration enforcement and its inherent effects have evolved from discourse on Ellis Island to those of the modern era. In 1952, Congress enacted the Immigration and Nationality Act (INA) within the United States Code Title 8 to address immigration rates in the United States and assert basic procedures for United States immigration law.[3] INA demonstrates the basic requirements surrounding immigration policy and enforcement such as the allocation of immigrant visas, procedures to grant immigrant status, revoking petitions, asylum, sponsors, detention, deportation, temporary protected status, powers of officers etc . . . .[4] Significantly, the INA's provisions have undergone numerous amendments throughout the years to mirror the needs of rising rates of immigration and evolving legislation.[5] It is important to look back at where you have been to know where you are going.

Today, approximately "51.9 million immigrants liv[e] in the U.S making up 15.4% of the nation's population."[6] Legislators, politicians, and advocates have responded to immigration in ways that are often mixed and controversial. Recent changes have prompted legislators and executive officials to propose new immigration reforms. In January, President Trump released an executive order titled "Protecting the American People from Invasion" demanding strict enforcement of immigration law and rescinding the previous administration's programs.[7] Some of the changes proposed include stricter border control, enhanced vetting requirements to obtain visas, restrictions on asylums, and the increased creation of detention facilities.[8] Additionally, the legislative branch has also proposed legislation to govern immigration including the Proposed Dignity Act of 2025 and the Proposed Stop Human Trafficking of Migrant Children Act.[9][10][11] Notably, in July of this year, The Big Beautiful Bill passed "[r]epresenting one of the most aggressive overhauls of immigration enforcement in recent years . . .[appropriating] $45 billion for immigration detention facilities and $46 billion for border wall expansion."[12]

The pressing question remains: how do such changes impact human trafficking reforms? And why should we, as advocates remain attentive? The answer appears in the form of positive and adverse implications.

Few are gifted the ability to use the law as a meaningful tool. These new policies and legislation have created opportunities for continued advocacy. The Department of Homeland Security (DHS) recently identified a "[a] backlog of more than 65,000 reports regarding children who came across the border unaccompanied" that could be attributed to different administrative attentions.[13] In response, DHS revealed efforts to rectify these administrative failures and victimization through the implementation of stronger enforcement.[14] Other examples include: Homeland Security Investigation efforts finding a child involved in labor exploitation by noncitizens that had never been able to receive an education.[15] These efforts identified and arrested a man for illegally trafficking a teenager across the border.[16] DHS also identified an impregnated teenager living with an unrelated, noncitizen sponsor.[17] Accordingly, the DHS has updated the report system to properly process and address all reports of violations of immigration law and trafficking.[18] Secretary of Homeland Security, Kristi Noem acknowledged the "[e]vil of human trafficking cannot be overstated. It's modern-day slavery . . . We have a once-in-a-generation opportunity to eradicate human trafficking operations targeting the United States . . ."[19]

However, increasingly aggressive enforcement may also exaggerate victim's vulnerabilities.[20] In criminology, *the dark figure of crime* refers to "[t]he significant gap between the number of crimes that actually occur and those that are recorded in official statistics."[21] Numerous external influences can affect this issue including an "[u]nwillingness to report crimes due to a distrust in law enforcement."[22] As immigration enforcement strengthens, experts predict a decline in reports of sex trafficking and forced labor.[23] Moreover, the correlation between stricter enforcement and rising fears of deportation may pose another barrier to reporting and the potential exploitation of a victim's lack of legal status.[24] As a result, victims may be left to rely on their perpetrators to avoid deportation.[25]

As advocates, we must confront these complex realities when shaping legislation. The intersectionality between recent changes to immigration law and implications for human trafficking reform exemplifies the prevalence of the legal and ethical challenges raised by developing policies. Addressing these issues demands a humanistic lens to ensure justice, security, and dignity for future reform efforts. ○

References:

1 *What is Human Trafficking*, U.S. Department of Justice (June 26, 2023), https://www.justice.gov/humantrafficking/what-is-human-trafficking.

2 *Id.*

3 *How the United States Immigration System Works,* American Immigration Council (June 24, 2024) https://www.americanimmigrationcouncil.org/fact-sheet/how-united-states-immigration-system-works-fact-sheet/.

4 *Immigration and Nationality Act*, U.S. Citizenship and Immigration Services (July 7, 2019), https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act.
5 *Id.*
6 Stephanie Kramer & Jeffery Passel, *What the Data says about Immigrants in the U.S.*, Pew Research (May 3, 2017), https://www.pewresearch.org/short-reads/2025/08/21/key-findings-about-us-immigrants/
7 Exec. Order No. 14159, 3 C.F.R. § 301 (2025).
8 Mary Margulis-Ohnuma et. al., Report on the Trump Administration's 2025 Changes to Immigration Law (The Assoc. of the Bar of the City of NY, 2025).
9 Proposed Dignity Act, H.R.4393, 119th Cong. (2025).
10 Proposed Stop Human Trafficking of Migrant Children Act, S. 286, 119th Cong. (2025).
11 Dmitry Gordon, *Key Changes in Immigration Laws 2025*, Eisner Gorin LLP (Aug. 11, 2025) https://www.egattorneys.com/immigration-laws-for-2025.
12 *Id.*
13 *DHS Leads Efforts to Rescue Child Victims of Sex and Labor Trafficking*, Department of Homeland Security (July 25, 2025), https://www.dhs.gov/news/2025/07/25/dhs-leads-efforts-rescue-child-victims-sex-and-labor-trafficking.
14 *Id.*
15 *Id.*
16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 Carter Quinley, *Along The Borderline: The Critical Links Between Human Trafficking and U.S. Mexico Immigration*, The International Affairs Review (July 12, 2021), https://www.iar-gwu.org/print-archive/ikjtfxf3nmqgd0np1ht10mvkfron6n-bykaf-ey3hc-rfbxp-dpte8.
21 Tyler Biscontini, *Dark Figure of Crime*, EBSCO (2024), https://www.ebsco.com/research-starters/law/dark-figure-crime.
22 *Id*.
23 Julie A. Dahlstrom & Rachel J. Wechsler, *Pouring Fuel on The Fire: Implications on Trump's Executive Actions For Human Trafficking Victimization and Vulnerability*, Oxford Human Rights Hub (May 20, 2025) https://ohrh.law.ox.ac.uk/pouring-fuel-on-the-fire-implications-of-trumps-executive-actions-for-human-trafficking-victimization-and-vulnerability/.
24 *What is Labor Trafficking, U.S. Committee for Refugees and Immigrants*, United States Committee for Refugees and Immigrants (Jan. 23, 2025), https://refugees.org/what-is-labor-trafficking-2025/
25 *Id*.

The Fourth Estate at the Border: Media's Role in Public Perception and Immigration Law

By: Laurel Major

Mass media narratives have historically shaped public perception of immigration by influencing both policy and enforcement practices in the United States, essentially acting as quasi-governmental participants in immigration lawmaking. By tracing how media framing, surveillance technologies, and sociopolitical pressures recur across different historical moments, this article demonstrates how immigration law and policy are created and applied in a mediated environment, raising constitutional questions about due process, equal protection, and the role of public opinion in shaping legal systems.[1] Spanning a range of historical moments, each example illustrates the same underlying mechanism: media discourse sets the terms of political urgency, constructs perceived threats, and thereby influences how lawmakers, agencies, and courts define and enforce immigration law.

Historically, exclusionary policy arose alongside hostile storytelling. The Chinese Exclusion Act of 1882 emerged amid national agitation portraying Chinese laborers as unassimilable threats.[2] Officials later described the Act as the first broad restriction and the foundation for subsequent measures, embedding a racialized legal regime that endured until 1943.[3]

Media spectacle similarly shaped mid-20th-century enforcement policies. In 1954, "Operation Wetback" relied on choreographed raids and militarized imagery, sweeping up even U.S. citizens of Mexican descent.[4] This revealed that the policy operated more as a publicity-driven spectacle rather than a deliberate law enforcement effort.[5]

Contemporary political communication research further shows how news framing structures public preferences. National survey experiments demonstrate that when immigration reporting provokes anxiety and cues Latino identity, white respondents shift toward greater restrictionism and political mobilization through emotional induction rather than belief change.[6] Related studies find that negative national coverage heightens immigration salience and fuels local hostility, especially in rapidly diversifying communities.[7] Thus, tone and salience become inputs in a political feedback loop lawmakers heed.

This cycle also legitimizes new enforcement tools. Media depictions of autonomous towers, AI-assisted sensors, and wide-area camera networks as hallmarks of modern border control normalize these technologies as necessary and inevitable. In 2020, U.S. Customs and Border Protection (CBP) designated Autonomous Surveillance Towers as a formal "Program of Record," signaling long-term institutionalization.[8] However, federal auditors have repeatedly

found CBP ill-positioned to assess whether these systems actually improve mission outcomes, underscoring a gap between imagery and evidence.[9]

Media narratives also play a central role in shaping screening practices. As the Department of Homeland Security (DHS) began piloting and expanding social media vetting for immigration benefits in the mid-2010s, news coverage framing online expression as a security threat helped build public support for the program. Yet Inspector General reports found the early pilots lacked performance metrics, and Privacy Impact Assessments showed reliance on publicly available information.[10] Together with repeated media amplification, these documents help normalize a practice with significant civil liberties implications.

Empirical assessments also complicate media framings of enforcement. Studies of "Secure Communities," a program heavily promoted as a crime-control measure, showed no meaningful reductions in index or violent crime attributable to the program.[11] These findings indicate that while crime-heavy media can prompt punitive policy responses, the most visible enforcement initiatives do not necessarily yield measurable safety gains.

This mediated policymaking raises constitutional concerns only partly addressed by the courts. Under *Bolling v. Sharpe*, equal protection principles apply to the federal government through the Fifth Amendment's Due Process Clause, and bar facially neutral rules enforced with discriminatory intent.[12] At the same time, the court requires full criminal process before imposing an "infamous punishment" on a noncitizen, yet continues to treat detention and removal as nonpunitive civil measures.[13] The court affords extraordinary deference to Congress and the Executive Branch, upholding broad citizen/noncitizen distinctions and permitting only limited review of expedited removal.[14] Such deference sits uneasily with media-driven panics indicating that when rules are forged in response to publicity and then insulated by judicial deference, majoritarian passion can displace individualized adjudication.

The due-process implications are particularly pronounced in detention. In *Zadvydas v. Davis,* the court construed a post-removal statute to avoid indefinite civil confinement by reading in a presumptive six-month limitation. Yet, the routine administrative decisions that determine custody, surveillance, and removal continue to unfold within a media climate saturated by "crisis" narratives.[15] When agencies and adjudicators use the same imagery as voters, the line between legal judgment and public relations becomes blurred.

Ultimately, the media operate not simply as observers, but as co-producers of immigration governance, actively shaping the policies, priorities, and public perceptions that drive enforcement. They set salience, stigmatize groups, legitimize surveillance, and channel anxiety into policy, functioning quasi-governmentally in a field marked by deference to political branches and thin procedural safeguards. Courts and policymakers should scrutinize the uptake of media narratives in statutes, screening, and surveillance, and protect individualized adjudication from being eclipsed by rhetoric and imagery. While immigration law falls within the purview of the federal government, it is inexorably shaped by the contours of public discourse and mass communication, rather than formed in isolation from them. ○

References:

1 *See generally* Daniel J. Hopkins, *Politicized Places: Explaining Where and When Immigrants Provoke Local Opposition*, 104 Am. Pol. Sci. Rev. 40, 40–41 (2010) (theorizing interaction between national rhetoric and local change).

2 *Chinese Immigration and the Chinese Exclusion Acts*, Office of the Historian, https://history.state.gov/milestones/1866-1898/chinese-immigration (last visited Mar. 29, 2026) (noting Exclusion as "the first in American history to place broad restrictions on immigration").

3 *Id.*

4 Kelly Lytle Hernandez, *Operation Wetback (1953–1954)*. Immigr. History, https://immigrationhistory.org/item/operation-wetback/. (last visited Mar. 29, 2026)(noting deportations swept in U.S. citizens); Kelly Lytle Hernández, *Migra!: A History of the U.S. Border Patrol* (Univ. of Cal. Press 2010) (contextualizing Operation Wetback as a publicity-heavy campaign).

5 *Id.*

6 Ted Brader, Nicholas A. Valentino & Elizabeth Suhay, *What Triggers Public Opposition to Immigration? Anxiety, Group Cues, and Immigration Threat*, 52 Am. J. Pol. Sci. 959, 961, 966–67 (2008).

7 Hopkins, *supra* note 1, at 40–41, 58 (finding stronger anti-immigrant reactions when immigration is nationally salient and coverage is negative).

8 Press Release, U.S. Customs & Border Prot., *CBP's Autonomous Surveillance Towers Declared a Program of Record Along the Southwest Border* (July 2, 2020).

9 U.S. Gov't Accountability Off., GAO-18-119, *Border Patrol Is Deploying Surveillance Technologies but Needs to Improve Data Quality and Assess Effectiveness* 1–2, 28–31 (2017) (finding CBP not positioned to assess contributions); *see also* U.S. Gov't Accountability Off., GAO-17-331, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing's Contributions* 26–28 (2017).

10 U.S. Dep't of Homeland Sec., Off. of Inspector Gen., OIG-17-40, *DHS' Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-Term Success (Redacted)* 1, 3–4 (2017); U.S. Dep't of Homeland Sec., DHS/USCIS/PIA-068, *Refugee Case Processing and Security Vetting* 5 (July 21, 2017).

11 Thomas J. Miles & Adam B. Cox, *Does Immigration Enforcement Reduce Crime? Evidence from Secure Communities*, J. L. & Econ. (2014) (finding no meaningful reduction in crime); see also Elina Treyger, Aaron Chalfin & Charles Loeffler, *Immigration Enforcement, Policing, and Crime: Evidence from the Secure Communities Program*, 13 Criminology & Pub. Pol'y 285, 285–87 (2014) (similar null effects).

12 *See* Bolling v. Sharpe, 347 U.S. 497, 499 (1954) (holding that the Fifth Amendment's Due Process Clause incorporates equal protection principles); *see also* Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (explaining that the Equal Protection Clause protects "all persons within the territorial jurisdiction," including noncitizens).

13 *See* Kennedy v. Mendoza-Martinez, 372 U.S. 144, 167–69 (1963) (requiring full criminal process when a sanction is punitive); Zadvydas v. Davis, 533 U.S. 678, 690 (2001) (reaffirming that immigration detention is a civil, nonpunitive measure tied to removal objectives).

14 *See* United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 543 (1950) (describing admission decisions as a "fundamental act of sovereignty" largely immune from judicial control); Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."); Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. ___, 140 S. Ct. 1959, 1983–85 (2020) (upholding severely limited judicial review of expedited removal determinations).

15 Zadvydas v. Davis, 533 U.S. 678, 701 (2001) (reading statute to avoid indefinite civil detention by adopting a presumptive six-month limit).

Lines of Authority: Federalism and Immigration Law

By: Emily Mougros

While immigration law in the U.S. has long been a contentious issue, recent changes in administration and immigration policy have further polarized the nation. As a result, some states have ideologies that conflict with the federal scheme. This raises an important discussion about the authority of both the states and the federal government. There is tension regarding whether states can actively create and enforce their own immigration policies and whether they can refuse to cooperate with the federal scheme. The U.S. Constitution and recent case law clarify where the boundaries lie, explain what each party's role is, and inform what Americans can expect in the future. Although the federal government has primary control over immigration in the U.S., states and individuals play a crucial role in shaping how immigration law is experienced on the ground through local policies and enforcement.

Generally, foreign relations, which include immigration policy, are an inherently federal power.[1] The Executive branch, specifically, has broad authority to act as a representative for the U.S. in foreign relations. This means the President can pass Executive Orders that comply with the Immigration and Nationality Act (INA) or are rationally related to a legitimate immigration purpose.[2]

The Constitution's Supremacy Clause establishes that federal Immigration law preempts conflicting State law or state law that regulates a field Congress has determined must be exclusively governed by federal law.[3] For example, recently, Texas S.B. 4 was preempted by federal law.[4] Texas passed S.B. 4 in 2023, which criminalized entering Texas through an unlawful port as well as re-entry after removal.[5] The bill also authorized state and magistrate judges to remove persons who violated one or both aforementioned crimes.[6] Lastly, the bill allowed for the prosecution of such an individual, regardless of whether that person had a pending federal determination of their immigration status.[7]

In February 2024, a federal district court blocked the implementation of S.B. 4.[8] The court found that the Texas law overlaps with federal laws 8 U.S.C. §§1325(a) and 1326(a), which wholly occupy the field; the state law's lack of discretion in punishing entry and re-entry contradicts the federal statutes; and finally, the Texas law infringes on the federal government's role in managing foreign affairs.[9]

However, the Tenth Amendment prohibits the federal government from commandeering the states.[10] In other words, the Federal government cannot force states to participate in enforcing federal laws.[11]

Recently, the Ninth Circuit upheld California's S.B. 54, "which limits the cooperation between state and local law enforcement and federal immigration authorities."[12] Specifically, S.B. 54 prohibits state and local law enforcement agencies from "[i]nquiring into an individual's immigration status," "[d]etaining an individual on the basis of a hold request," "[p]roviding information regarding a person's release date or" other "personal information," such as "the individual's home address or work address"; and "[a]ssisting immigration authorities" in certain activities.[13]

The United States argued that the bill obstructs the enforcement of federal immigration laws.[14] The Ninth Circuit ultimately affirmed the District Court's denial of a preliminary injunction, holding that the doctrine of obstacle preemption did not apply.[15] The court found that the INA does not require any specific action from the states.[16] Further, "refusing to help is not the same as impeding."[17] Therefore, any inconvenience that S.B. 54 causes is perfectly consistent with the Tenth Amendment's Anti-commandeering doctrine.[18]

The checks and balances embedded in the Constitution—including Article IV and the Tenth Amendment— are ultimately to protect individual freedom. It is important for Americans to understand what authority the federal and state governments have regarding immigration and hold their state representatives accountable to represent their interests while upholding the US Constitution. ○

References:

1 *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 321 (1936).
2 *Trump v. Hawaii*, 585 U.S. 667, 683-84 (2018); Immigration and Nationality Act, 8 U.S.C. §§ 1101–1537 (2018).
3 U.S. Const. art. VI, cl. 2; *Arizona v. United States*, 567 U.S. 387, 399 (2012).
4 Alejandra Aramayo, Cong. Rsch. Serv., LSB11330, Federal Preemption and Texas S.B. 4 (June 26, 2025).
5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.*
9 *Id.*
10 U.S. Const. amend. X.
11 *Murphy v. NCAA*, 584 U.S. 453, 463 (2018).
12 *United States v. California*, 921 F.3d 865, 876 (9th Cir. 2019).
13 Cal. Gov't Code § 7284.6(a)(1).
14 *United States v. California*, 921 F.3d at 886.
15 *Id.* at 889.
16 *Id.*
17 *Id.* at 888.
18 *Id.* at 889.

From Drug Trafficking to Foreign Terrorist: The Impact of Recategorization of Drug Cartels

By: Annabelle Bruno

The changing of the guard between U.S. Presidents creates new policies and customs that affect our social, political, and economic state. In January 2025, President Donald Trump was inaugurated for his second term. President Trump's proactive stance on anti-illegal immigration immediately took form upon his return to the White House. To combat the ever-growing opioid epidemic, President Trump signed into effect an Executive Order to designate cartels and other drug trafficking organizations as foreign terrorist organizations and specially designated global terrorists.[1]

Drug-Trafficking Organizations (DTOs) or Transnational Criminal Organizations (TCOs) are organizations that produce and traffic excessive amounts of highly dangerous illicit drugs, engage in violent behavior, and increase the flow of illegal people and contraband into the United States.[2] These groups have historically created an unsafe environment for American citizens which have led to catastrophic results such as the opioid epidemic.[3] Fulfilling promises to make America safer, President Trump upped the ante and recategorized these dangerous organizations as terrorist groups who threaten national security.[4]

To show an organization is qualified as a Foreign Terrorist Organization (FTO) it must be an: (a) organization that is foreign, (b) engages in terrorism activity, supports terrorism or terrorist materials, and (c) poses a threat to the security of U.S. nationals or national security.[5] DTOs can be recategorized to FTOs because both types of organizations engage in continuous violent and threatening behavior to the American people.[6] A DTO can achieve FTO status through their continuing threat to U.S. security by engaging in routine drug trafficking and incidents of violence, such as assault or murder.[7] Since President Trump's return to office, there have been 12 DTOs now designated as FTOs via his Executive Order.[8] Additionally, these 12 groups are now subject to additional legal consequences, such as racketeering (RICO) charges and terrorism charges.[9] The reclassification is important to the legal charges these groups now face. FTOs can be charged with acts of terrorism under 18 U.S.C. § 2339 in which it is illegal to provide material support or resources to designated foreign terrorist organizations.[10] This specific statute covers a broad type of conduct that easily would implicate any member of an FTO. For example, any drug transaction with a designed foreign terrorist organization is a form of terrorism. Although the punishment might seem severe, the escalation of charges is vital to lead our society out of the opioid epidemic and discourage the actions of these groups.

As follow up after the Executive Order, President Trump approved military actions against the newly categorized groups. On September 2nd, 2025, President Trump had the military launch a strike in the Caribbean on a boat holding Tren de Aragua gang members and suspected illicit drugs.[11] The Tren de Aragua gang received their FTO status back in February 2025.[12] The strike was permitted against the group because the contraband aboard constituted a national security threat. The FTO designation allows military action to combat the threat. Since this initial strike, other military actions have been ordered against boats headed to the United States that are suspected of containing FTO members.[13] President Trump's actions have sent a message to the cartels and other TCOs to stop bringing illicit drugs into our country.

As President Trump's term progresses into his second year, there will be an even bigger impact from the Executive Order designating cartels and other organizations as Foreign Terrorist Organizations. The deportation orders of members of the FTOs will increase to save time on the process of a criminal prosecution.[14] Additionally, the process of criminal prosecutions has pursued, the Attorney's General Office will file indictments to punish the organizations for attacking the United States. Recently, the Justice Department charged five leaders of the United Cartels.[15] The purpose of charging these individuals is to uphold the promises of the Executive Order.

The impact of the Executive Order calling for the recategorization of certain DTOs, such as cartels, to FTOs has minimized threats to the United States. The goal of the order was to help make the United States a safer environment, leading to a future solution to combat the opioid epidemic. President Trump's goal is to eventually lead to a total eradication of cartels and TCOs that cause harm to the American people.[16] A decrease in trafficking illicit drugs from these terrorist groups would lead to significantly less opioid related deaths.[17]

There will be even more actions taken against FTOs in the future. In 2024, law enforcement seized 14,000 kilograms of fentanyl at the border of United States and Mexico.[18] The presence of fentanyl has contributed to 69% of the total drug overdose deaths in America.[19] With the help of President Trump's Executive Order, the devastating impact of fentanyl will decrease and lead to a healthier American society. ○

References:

1 Executive Order 14157, 90 FR 8439 (Jan. 20, 2025).
2 Drug Enforcement Agency, 2025 National Drug Threat Assessment (2025).
3 *Id.*
4 *See* Designating Cartels, *supra* note 1.
5 *Foreign Terrorist Organizations*, U.S. Dep't of State (2025), https://www.state.gov/foreign-terrorist-organizations.
6 *Id.*
7 *Id.*
8 Executive Order 14157, *supra* note 1.
9 *Id.*
10 18 U.S.C. §2339B.
11 *Trump says the U.S. military destroyed a boat operated by the Tren de Aragua off Venezuela. Here's what to know about the gang*, CBS News (Sept. 4, 2025), https://www.cbsnews.com/news/trump-boat-tren-de-aragua-gang-venezuela/.
12 Bureau of Counterterrorism, *supra* note 4.
13 Joshua Barajas, *All the U.S. military strikes against alleged drug boats*, PBS News (Oct. 31, 2025), https://www.pbs.org/newshour/world/all-the-u-s-military-strikes-against-alleged-drug-boats.

14 *Memorandum for the Total Elimination of Cartels and Transnational Criminal Organizations*, Office of the Attorney General (Feb. 5, 2025), https://www.justice.gov/ag/media/1388546/dl?inline.
15 *Justice Department Charges Five Senior Leaders of the United Cartels, a Designated Foreign Terrorist Organization*, U.S. Dep't. of Just. (Aug. 14, 2025), https://www.justice.gov/opa/pr/justice-department-charges-five-senior-leaders-united-cartels-designated-foreign-terrorist.
16 *Memorandum for the Total Elimination of Cartels and Transnational Criminal Organizations, supra* note 12.
17 National Drug Threat Assessment, *supra* note 2.
18 *Id.*
19 *Id.*

Birthright and Birth Tourism: Preserving the Integrity of American Identity

By: Meghan Giffin

Permitting automatic citizenship to children born in the United States to non-citizen parents, whether their presence is lawful or unlawful, undermines the integrity of national citizenship, strains public resources intended for citizens, and incentivizes illegal immigration. The Fourteenth Amendment's Citizenship Clause states that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens. . . ."[1] Nonetheless, the drafters of the Constitution never meant for this to extend citizenship to the children of foreign nationals who owe and pledge allegiance elsewhere. To preserve the meaning and responsibilities of citizenship, birthright citizenship should continue only for children born to at least one U.S. citizen parent.

Birthright citizenship undermines the culture, unity, and patriotism historically tied to American citizenship. However, in 1898, the Supreme Court ruled that a child born in the U.S. to Chinese parents permanently domiciled in but not citizens of the United States, was a citizen.[2] Unfortunately, the Supreme Court relied on English common-law principle of *jus soli*, citizenship by place of birth, rather than an American understanding of allegiance and belonging.[3] Under the English rule, "every person born within the dominions of the Crown, no matter whether of English or of foreign parents . . . was an English subject."[4] Clearly, this interpretation better fits a monarch's need for subjects, not a republic's need for self-governing citizens united by culture, civic duty, and loyalty.

Interpretations extended far beyond the Court's original intent in the Supreme Court's decision in *Wong Kim Ark*, effectively turning citizenship into a transactional good. Well-connected and knowledgeable families equipped with the financial means, exploit the original intent of the Fourteenth Amendment and engage in birth tourism.[5] Women travel temporarily to the United States to give birth for the sole purpose of the child's claim to American citizenship.[6] These types of vacations, also known as maternity vacations, privilege wealth over loyalty and allow foreign nationals to purchase citizenship without any commitment to the country.

This practice creates inequities among immigrants and imposes burdens on the American public. The commercialization of birth tourism through modern globalization of travel places disproportionate strain on U.S. hospitals and public services which must provide care regardless of immigration status.[7] Both state and local governments bear increased costs for healthcare and education, resources that could otherwise serve citizens and veterans—those who show true allegiance to the United States. This practice also raises national security concerns, as automatic citizenship may create legal loopholes for individuals with dubious purposes for building a connection to the United States. The Supreme Court reiterated that even citizens affiliated with enemy combatants present difficult challenges for national security, resulting in American citizens receiving treatment as though they are the enemy.[8] When foreigners can acquire citizenship merely by birth on U.S. soil, without allegiance or integration, the country's ability to ensure loyalty and accountability weakens.

Requiring at least one U.S. citizen parent restores the link between citizenship and allegiance. Such a rule preserves the integrity of citizenship reflecting a genuine connection between the individual and the nation. Conferring citizenship on a child born abroad to U.S. citizen parents reflects the enduring tie between the citizen parent and the republic.[9] The Supreme Court supported this logic when it upheld that citizenship born abroad depended on whether the parent was a citizen or not, emphasizing that a citizen parent provides the critical link that assures that the child and the citizen parent have demonstrated tie to the U.S.[10] Parental citizenship guarantees cultural, linguistic, and civic ties to the United States that mere birth location, or purchased citizenship, cannot.

Requiring a citizen parent would reduce fraudulent claims of citizenship and simplify verification processes. Birth certificates alone do not always confirm lawful citizenship, nor loyalty to the U.S. When citizenship attaches to parentage, it provides a verifiable lineage that reinforces security and cultural authenticity. A parent-based rule of citizenship reflects a deliberate act of membership rather than an accident of geography.[11]

Critics argue that restricting birthright citizenship is unnecessary because birth tourism does not directly enable parents to gain U.S. citizenship. Some say that most Americans misunderstand immigration law, noting that a child's citizenship does not immediately confer any immigration benefits on the parents.[12] While technically true, this argument overlooks the long-term effects of jus soli citizenship. Once a child becomes an adult, they can petition for their parents' permanent residency, thereby transforming temporary visas into default pathways for family-based immigration… all because they exploited the United States Constitution.[13] Further, though birth tourism itself is not expressly illegal, many participants falsify their travel purposes to obtain visas under a pretense shrouded in lies. While birth tourism exists in a gray area of the law, its practice is grounded in fraudulent claims undermining American morals and the integrity of the U.S. immigration system.[14]

Defenders of birthright citizenship sometimes assert humanitarian motives and argue that mothers seek safe deliveries and better lives for their children. Yet this reasoning confuses compassion with entitlement. The United States already extends humanitarian protections through asylum and refugee systems designed to

aid those facing persecution, not those people of wealth seeking convenience.[15] Expanding citizenship by accident of birth risks diluting privileges and obligations that distinguish American citizens from non-citizens.

Citizenship is more than a mere legal status. It is a covenant of mutual responsibility between the individual and the nation. The framers of the Fourteenth Amendment sought to guarantee citizenship to freed slaves and their descendants, not to international visitors or those unlawfully entering the country. The principle of *jus soli* serves to bind together those who live, work, and contribute to American society. Extending that rule indiscriminately undermines the purpose of the concept of belonging based on a shared loyalty. Reframing birthright citizenship does not diminish American ideals, but restores them, ensuring that citizenship remains tied to allegiance, community, and participation in self-government, rather than illegality or wealth.

Automatic birthright citizenship for children of non-resident parents distorts the original purpose of the Fourteenth Amendment, burdens public resources, and weakens national integrity. Requiring that at least one parent be a U.S. citizen preserves the connection between citizenship and allegiance, prevents abuse through birth tourism and reinforces fairness toward those pursuing citizenship lawfully. Citizenship should signify more than a geographic region. It should embody an enduring commitment to the United States. In an era of global mobility, reaffirming this principle ensures that the rights of citizenship belong to those who truly share in the nation's responsibilities and ideals. ○

References:

1 U.S. Const. amend. XIV, §1.1.2.
2 United States v. Wong Kim Ark, 169 U.S. 649, 705 (1898).
3 *Id.*
4 *Id*. at 706.
5 Amy Swearer, *The Political Case for Confining Birthright Citizenship to Its Original Meaning*, The Heritage Foundation (Sep. 6, 2019), https://www.heritage.org/the-constitution/report/the-political-case-confining-birthright-citizenship-its-original-meaning.
6 *Id.*
7 Leslie F. Goldstein, *Technologies of Travel, Birth Tourism, and Birthright Citizenship*, 79 Md. L.R. 177, 177-190 (2019).
8 Hamdi v. Rumsfeld, 542 U.S. 507, 510 (2004).
9 *Chapter 4 – Automatic Acquisition of Citizenship after Birth (INA 320),* U.S. Citizenship and Immigr. Servs., https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-4 (last visited Mar. 4, 2026).
10 Tuan Anh Nguyen v. INS, 533 U.S. 53, 65 (2001).
11 Peter H. Schuck & Rogers M. Smith, *The Question of Birthright Citizenship*, Summer Nat'l. Affs (2018), https://www.nationalaffairs.com/publications/detail/the-question-of-birthright-citizenship.
12 Sonia L. Canzater, *Anchor Babies, Birth Tourism, and Most Americans' Complete Ignorance of Immigration Law*, O'Neill Institute (Jan. 22, 2018), https://oneill.law.georgetown.edu/anchor-babies-birth-tourism-and-most-americans-complete-ignorance-of-immigration-law/.
13 *Child Status Protection Act (CSPA)*, U.S. Citizenship and Immigr. Servs., https://www.uscis.gov/green-card/green-card-processes-and-procedures/child-status-protection-act-cspa (last visited Mar. 4, 2026).
14 Matthew D. Kugler, *Current Developments in Immigration Law: The Debate Surrounding Birth Tourism*, 32 Geo. Immigr. L.J. 326, 321-327 (2018).
15 Diana Roy, Claire Klobucista, & James Mcbride, *How Does the U.S. Refuge System Work*, Council on Foreign Relations (Nov. 3, 2025), https://www.cfr.org/backgrounders/how-does-us-refugee-system-work-trump-biden-afghanistan.

Tariffs as Tools: Defending the Border Through the Executive Branch

By: Taylor Greenwald

Over the last few decades, United States presidents have started utilizing tariffs as leverage against foreign adversaries. The executive branch has been given broad authority when it comes to foreign affairs.[1] The White House threatens and often does impose tariffs against foreign adversaries to force negotiations and extract concessions within a short period of time.[2] While tariffs have generally been an effective bargaining tool for securing short-term foreign-policy concessions, the results can be short lived.

Under 19 U.S.C § 1862, the President has broad discretion to take action when faced with national security threats, and this discretion includes imposing quotas, tariffs, sanctions, and other measures to mitigate these threats.[3] Section 232(b) authorizes the President to "take such action as he deems necessary to adjust the imports of [an] article to a level that will not threaten to impair the national security."[4] Under 19 U.S.C. § 2411, the United States Trade Representative, established within the Executive Office the President, has broad authority when taking action against foreign countries whose trade practices are deemed unfair and burdensome or restrict United States commerce.[5] The United States trade representative is allowed to impose duties, fees, import restrictions on foreign goods and services to combat these unfair practices. Furthermore, under the International Emergency Economic Powers Act ("IEEPA"), the President has broad authority to address unusual and extraordinary threats to national security, foreign policy, or economy of the United States.[6] The threat must originate in whole or substantial part outside of the United States.

In May 2019, President Trump announced that under the IEEPA he planned to impose a five percent (5%) tariff on all goods imported from Mexico beginning in June 2019.[7] He threatened to gradually increase the tariffs until Mexico took action to help alleviate the illegal migration crisis of illegal aliens crossing the border from Mexico into the United States.[8] Following this, the U.S.-Mexico Joint Declaration was signed on June 7, 2019.[9] Under the U.S.- Mexico Joint Declaration, Mexico agreed to take "unprecedented steps to increase enforcement to curb irregular migration."[10] In addition, Mexico made a commitment to process refugees and to further investigation into their domestic laws to help limit the irregular influx of illegal immigrants crossing into the United States.[11] The ninety days following the joint declaration, irregular migration fell. Mexico reportedly had deployed 25,000 National Guard troops, apprehended 81,000 illegal migrants from crossing the border, accepted 62,000 illegal migrants and returned them to their country of origin, and received 39,000 migrants from the United States that would stay in Mexico pending their U.S. asylum request.[12]

By contrast, while President Biden was in office, his approach against Mexico was much quieter but still maintained some of the same

effects. The Biden administration utilized the United States-Mexico-Canada Agreement ("USMCA").[13] Under the USMCA, the Biden administration leveraged market-access, labor, and environment to garner Mexican cooperation.[14] While the USMCA did not garner great success with the illegal migration issue, it did keep a relationship with Mexico and helped open the way during negotiations. [15]

Tariffs and other tools available to the executive branch have proved to be effective sources of control in international relations. They generate swift border cooperation because presidents can threaten market access under their broad foreign security authority. However, the benefits come with risks. In *V.O.S. Selections, Inc. v. Trump,* the Federal Circuit Court of Appeals affirmed that IEEPA does not authorize the President to impose unlimited tariffs and that the power to "regulate" does not include the power to impose tariffs.[16] In addition, sources have identified that tariffs have reduced the number of imported varieties, and because of foreign competition being curbed, U.S. producers were able to raise prices and amplify their costs that are born almost entirely by U.S. consumers.[17]

Tariff threats have proved to be effective tools to prompt immediate cooperation. It helps produce rapid enforcement as seen with the U.S.-Mexico Joint Declaration in 2019 which helped migration issues by increased cooperation between the US and Mexico. Tariff leverage is not free. Courts have now held that the IEEPA does not authorize indefinite, sweeping tariff programs, limiting the executive power. Other evidence shows that tariff programs costs have passed to American companies and consumers, in addition to reduced import variety and higher domestic markups in protected sectors. This issue remains an interesting topic of debate as ongoing litigation continues, and the USMCA joint review comes up in 2026.

References:

1 United States v. Curtiss-Wright Exp. Corp., 299 U.S. 304 (1936).
2 *Fact Sheet: President Donald J. Trump Addresses the Threat to National Security from Imports of Medium and Heavy-Duty Vehicles, Parts, and Buses*, The White House (Oct. 17, 2025), https://www.whitehouse.gov/fact-sheets/2025/10/fact-sheet-president-donald-j-trump-addresses-the-threat-to-national-security-from-imports-of-medium-and-heavy-duty-vehicles-parts-and-buses/.
3 19 U.S.C. § 1862 (2018).
4 Fed. Energy Admin. v. Algonquin SNG, Inc., 426 U.S. 548 (1976).
5 19 U.S.C. § 2411 (2018).
6 Cong. Rsch. Serv., *The International Emergency Economic Powers Act (IEEPA) and Tariffs: Historical Background and Key Issues*, CRS Insight No. IN11129 (Jan. 31, 2025).
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*
12 Andrew Selee et al., *One Year after the U.S.-Mexico Agreement: Reshaping Mexico's Migration Policies*, Migration Policy Inst. (2020), https://www.migrationpolicy.org/sites/default/files/publications/OneYearAfterUS-MexAgreement-EN-FINAL.pdf.
13 Diego Marroquín Bitar et al., *USMCA Review 2026: Pathways, Risks, and Strategic Considerations for North America's Economic Future,* CSIS (Aug. 2025), https://www.csis.org/analysis/usmca-review-2026
14 *Id.*
15 *Id.*
16 V.O.S. Selections, Inc. v. Trump, No. 25-1812 (Fed. Cir. Aug. 29, 2025).
17 Susan Milligan, *Harvard Research: U.S. trade tariffs are increasing prices,* Harvard Bus. Sch.(Oct. 24, 2025), https://www.hbs.edu/bigs/us-trade-tariffs-increasing-prices.

Don't Trade on Me: Immigration Control Through Tariffs

By: Corwin Hooley

Turning on the television today, you see pundits from across the political spectrum debating tariffs and immigration. Indeed, it seems to be a hot-button issue that all sides weaponize against each other. But what is a tariff? According to the *Merriam-Webster Dictionary*, a tariff is a schedule of duties imposed by the government on the goods imported from specific countries.[1]

In recent years, tariffs have been seen as an additional tool in the arsenal of the government to influence immigration trends, given their international effect. Throughout his first presidency and as recently as 2025, President Donald J. Trump used the powers granted by the International Emergency Economic Powers Act (IEEPA) to impose tariffs on Canada, Mexico, and China in response to threats of illegal drug trafficking and illegal immigration.[2] The IIEPA is an act of Congress that allows the President to regulate or prohibit imports once a national emergency is declared regarding the United States' economy, national security, or foreign policy with its source originating outside the country.[3] By declaring a national emergency to address the issues of illegal immigration and drug trafficking, President Trump sought to incentivize these countries to put more resources and effort into curbing illicit activities.[4]

However, this aggressive use of the IIEPA is being met with several legal challenges.[5] Many of the cases brought forward in response to the imposition of these tariffs take issue with the separation of powers between the Executive and Legislative branches.[6] They resist the President's interpretation of the IIEPA, stating that only Congress has the express power to impose tariffs and the IIEPA does not grant sufficiently clear authority to the Executive branch.[7] Without clear delegation of powers by Congress, the President's use of the IIEPA is vulnerable to judicial attack. But is there a better way to bring about the same goals?

Through 19 U.S.C. § 1862, the President has a more effective tool at his disposal to ensure his policy goals. To achieve the goals of applying economic pressures to curb immigration, 19 U.S.C. § 1862 ("Section 232") presents the strongest basis of authority to justify tariffs if they impact a credible national security concern. Section 232 has a defined process that requires several steps.

First, the Department of Commerce investigates and prepares a report evaluating whether imports of an article are being imported "in such quantities or under such circumstances" as to harm national security.[8] This report must consider several national security factors.[9] The factors include domestic production needed for defense, the economic welfare of industries critical to security, and the "impact of foreign competition on the economic welfare of individual domestic industries."[10] This report is compiled with the assistance of the Secretary of Defense and other appropriate officers of the United States.[11]

Within 270 days the report must be submitted to the President, identifying a link between a specific import and a valid national security concern.[12] Once the President has the report, he has 90 days to consider its findings.[13] Depending on his findings, the President must submit a written statement to Congress with his decision to act, what measures will be taken, and their justifications.[14] The President might argue that unchecked migration flows, if facilitated or ignored by trading partners, indirectly threatens the United States' internal stability and border integrity; directly implicating U.S. national security. Under that interpretation, the President could impose tariffs to "adjust" certain imports from nations failing to cooperate on border security.

In the end, there may be domestic hurdles from Congress. Congress has periodically discussed limiting the reach of Section 232, through legislation exempting certain products or more clearly defining a national security threat under the act.[15] Through legislation, there could be some limitations on the act itself. However, the use of Section 232 was upheld as constitutional by the Supreme Court in *Fed. Energy Admin. v. Algonquin SNG, Inc.*, finding that it does not violate the non-delegation doctrine and provides sufficient guidance, through factors for consideration, that protect its validity.[16] The Court found that the narrow criterion coupled with the factual support of the required report weigh in favor of validity.[17] In this way, if the report is validly linked to express findings aimed at a specific import and valid concerns, the use of Section 232 will likely be upheld by the Judiciary.

Ultimately, the use of 19 U.S.C. § 1862, when done properly, is less vulnerable to judicial scrutiny than the use of IIEPA. If the Commerce Report has valid findings, the President could enact measures to use economic pressures to curb the immigration issue. The domestic hurdles would not be insurmountable, and the Supreme Court precedent reinforces the validity of the President's actions. However, there may still be international hurdles and pressures, through the WTO and other trading partners. Regardless of resistance, Section 232 remains the strongest tool in the President's arsenal to achieve his tariff goals. ○

References:

1 Tariff, *Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/tariff? (last visited Oct. 31, 2025).
2 *Court Decisions Regarding Tariffs Imposed Under the International Emergency Economic Powers Act (IEEPA)*, Cong. Research Serv (Sept. 15, 2025), https://www.congress.gov/crs-product/LSB11332.
3 50 U.S.C. §§ 1701.
4 *Statement from the President Regarding Emergency Measures to Address the Border Crisis,* White House (May 30, 2019), https://trumpwhitehouse.archives.gov/briefings-statements/statement-president-regarding-emergency-measures-address-border-crisis/.
5 Cong. Research Serv., *supra* note 2.
6 *Id.*
7 *Id.*
8 19 U.S.C. § 1862.
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.*
15 *Section 232 of the Trade Expansion Act of 1962*, Cong. Research Serv. (Oct. 15, 2019), https://www.congress.gov/crs-product/IF13006.
16 Fed. Energy Admin. v. Algonquin SNG, Inc., 426 U.S. 548, 571 (1976).
17 *Id.* at 570.

The Invisible Shield: Why U.S. Chip Production is Critical for our Nation's Defense

By: Ben Dellacono

To echo the words of a discerning mind, "[a]ll current problems of the world are information problems, and all future problems of the world will be created by information."[1] We are currently living in an age where we face an unquantifiable risk to the safety and liberty of the United States of America. A risk, exposed by a global pandemic, that has revealed our greatest vulnerability. This vulnerability hides within our most threatening, powerful, and technologically advanced weaponry: our information systems. Data and information are the sole drivers of our military systems, yet they remain the most inadequately protected assets of our nation's defense.

Semiconductor production is not just an economic concern; it is a national security necessity because "[a]ll major U.S. defense systems and platforms rely on semiconductors for their performance."[2] As the backbone of our modern defense systems, semiconductors serve as a foundational element and are vital for various aspects of our military.[3] They are essential to our communication systems, radar, navigation, encryption, missile guidance, and data processing in fighter jets.[4] Therefore, our military's vulnerability is semiconductor and chip sustainability, as "92% of the world's most advanced chips are manufactured in Taiwan, while the Netherlands holds a monopoly on the extreme ultraviolet (EUV) lithography machines required to produce them."[5] The harsh truth is that "modern military power relies on a current supply chain that may not survive geopolitical crises,"[6] which was first exposed by COVID-19.

Recently, the current administration implemented two strategic efforts to bring semiconductor production back to domestic soil. President Trump said, "his administration would impose tariffs on semiconductor imports from companies [that will not shift] production to the U.S."[7] The current tariffs, if imposed, would tariff 100% on imported semiconductors, but not on companies that have committed to manufacturing in the U.S.[8] As a result, "Chipmakers Taiwan Semiconductor Manufacturing Company and Nvidia have each unveiled plans to invest billions of dollars in the U.S."[9] Additionally, "[t]he Trump Administration is currently conducting a Section 232 investigation into semiconductor imports to assess their impact on national security."[10] The current administration's plans are an added implementation alongside the CHIPS Act to combat the semiconductor crisis.

The CHIPS Act, or the Creating Helpful Incentives to Produce Semiconductors for America, establishes and provides funding to carry out activities relating to the creation of incentives to produce semiconductors in the United States.[11] It provides $52.7 billion in federal subsidies allocated to support chip manufacturing domestically.[12] Enacted in August of 2022, the funding serves as a mitigation tool to combat the drop in U.S. semiconductor manufacturing capacity, which has dropped from 40% to 12% since 1990.[13] "The CHIPS Act prohibits funding recipients from expanding semiconductor manufacturing in China and countries defined by US law as posing a national security threat to the United States."[14] In September 2022, the Department of Commerce formed the Industrial Advisory Committee to oversee the domestic semiconductor industry, which announced in February 2023, concrete guidelines on how to apply for funding.[15] The federal funding quickly gained traction by the end of 2023, and there were already 500 statements of interest with over 100 "pre-applications."[16] In addition, the White House had reached a $35 million preliminary funding deal with BAE Systems, an aerospace company, to modernize and further develop their New Hampshire fabrication plant, which would "quadruple the production of chips necessary for critical defense programs, including the F-35 fighter jet program."[17] The White House also announced another preliminary deal with Microchip Technology Inc., for $162 million in funding to support the expansion of their facilities in Colorado and Oregon and transfer their supply chains to domestic soil.[18] Soon thereafter, the deals kept pouring in with a $1.5 billion preliminary deal with Global Foundries, an $8.5 billion preliminary deal with Intel, a $6.6 billion preliminary deal with TSMC, and a $6.4 billion preliminary deal with Samsung.[19] As of late, President Trump announced that TSMC announced a plan for a $100 billion investment in the U.S.[20]

As China, South Korea, Japan, and other nations are creating policies to pursue complete semiconductor independence, the current U.S. administration needs to find a balance between making domestic front-end fabrication facilities (fab) cheaper, and the job force behind this industry greater paying; a balance that will not be reached without correctly apportioned incentives.[21] According to the Boston Consulting Group, a ten-year total cost of ownership of a new fab located in the U.S. is 30% higher than Taiwan and 50% higher than China, of which 40% to 70% of the cost differential is attributable to government incentives.[22] In China, "incentives can make up 30% to 40% of a new fab's total cost of ownership" through land, grants, and tax credits.[23] Boston Consulting Group estimated the total cost of a new fab without government incentives to be up to $15 billion for advanced analog fabs and up to $40 billion for advanced logic or memory fabs.[24] The cost of these advanced fabs within the U.S. and companies seeking the most valuable margins is why the U.S. has lost its market share in this realm. Without strategic incentives, the U.S. will continue to fall behind.

The White House took its first major step this past February with an investment of $5 billion in the National Semiconductor Technology Center (NSTC), which is "a public-private partnership focused on improving semiconductor R&D and expanding the semiconductor workforce in the United States."[25] Although this is an essential step to achieve semiconductor independence, our nation needs to fuel a talent pipeline to attract young, talented engineers, circuit designers, and manufacturing technicians. This all starts with marketing the worth and value of this industry within our education system. Furthermore, according to the Semiconductor Industry Association, the current manufacturing incentives would create up to 70,000 jobs.[26]

The most valuable weapon of the United States is information, and we currently have lost the backbone to that very weapon. Domestic semiconductor manufacturing independence is not just an initiative, but it is a strategic imperative for safeguarding our nation during times of war and other global crises. Through the CHIPS Act, tariffs, and strategic federal incentives, we can bring that industry that was once dominated back to domestic soil. I encourage the current administration to excite this movement by attracting these major companies. Tariffs will start the movement in the right direction, but companies won't be fully attracted until major strategic incentives are put into place. Business is business, and we need an accessible market through ironclad contracts that portray tempting margins. ○

References:

1 Drew Bartkiewicz, Unseen Liability (2018).
2 Sujai Shivakumar & Charles Wessner, *Semiconductors and National Defense: What are the Stakes?*, Csis. (June 8, 2022), https://www.csis.org/analysis/semiconductors-and-national-defense-what-are-stakes.
3 Mark Stone, *An Overview of Military Semiconductor Applications*, City Labs (Jan. 2024), https://citylabs.net/military-semiconductor-applications/.
4 *Id.*
5 *Semiconductors: A National Defense Priority*, Microchip USA (Aug. 6, 2025), https://www.microchipusa.com/industry-news/semiconductors-a-national-defense-priority?srsltid=AfmBOooIxiBAuvjdRi71SaMOMjb2QoCu9UIG0C6iSLCHMlQtvmjVWMW0.
6 *Id.*
7 Jeff Mason & Kanishka Singh, *Trump to impose tariffs on semiconductor imports from firms not moving production to US*, REUTERS (Sept. 4, 2025), https://www.reuters.com/world/china/trump-impose-tariffs-semiconductor-imports-firms-not-moving-production-us-2025-09-05/.
8 *Id.*
9 *Id.*
10 *Id.*
11 CHIPS and Science Act, H.R. 4346, 117th Cong. (2022).
12 *The CHIPS Act: What it means for the semiconductor ecosystem*, PWC, https://www.pwc.com/us/en/library/chips-act.html (last visited Mar. 3, 2026).
13 *Id.*
14 *Id.*
15 Bita Rahebi, *Early Impact of the CHIPS Act*, Morrison Foerster (May 10, 2024). https://www.mofo.com/resources/insights/240510-early-impact-chips-act.
16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 *Chip-Maker TSMC Announces Plans for $100 Billion Investment in U.S.*, Wall Street J. (Mar. 3, 2025), https://www.wsj.com/video/chip-maker-tsmc-announces-plans-for-100-billion-investment-in-us/55D0E50D-71EA-41F3-8C63-399D0A17EE68?mod=deals_videos_pos4.
21 Antonio Varas, Raj Varadarajan, Jimmy Goodrich, & Falan Yinug, Government Incentives and US Competitiveness in Semiconductor Manufacturing (2020).
22 *Id.*
23 *Id.*
24 *Id.*
25 *Id.*
26 *Turning The Tide For Semiconductor Manufacturing In The U.S.*, Semiconductor Industry Assoc., https://www.semiconductors.org/turning-the-tide-for-semiconductor-manufacturing-in-the-u-s/ (last visited Mar. 3, 2026).

Pathway to Citizenship Through Service: The Continued Promise of Acceptance Under INA §§ 328 and 329 with the Recent Amendments

By: Robert Weesner

Throughout American history, there has been an enduring promise given to the foreign service members willing to give their time, efforts, and potentially even their lives for this country. Congress throughout history has honored these noncitizen service members with an accelerated path to citizenship.[1] This promise was codified in the Immigration and Nationality Act ("INA") §§ 328 and 329 and continues to evolve alongside the nation's immigration principles.[2] Recent amendments to the U.S. Citizenship and Immigration Services ("USCIS") policy have had a positive impact by broadening eligibility and improving access to citizenship pathways. These amendments help to encourage and support noncitizen service members to participate in and reap the benefits of military service.

Dating back to the Civil War, there has been an initiative to help those who have honorably served become citizens. In the Civil War, more than twenty percent of the Union Army was comprised of foreign-born service members.[3] After World War I, 192,000 immigrants were granted citizenship for their service, and after World War II, over 100,000 immigrants were naturalized.[4] In 1942, Congress enacted a provision that enabled noncitizen service members who served "honorably" to bypass traditional immigration requirements, including age, length of residence, and other educational requirements.[5]

In 1952, the INA was introduced, providing two pathways to citizenship for service members.[6] The first pathway was to complete three years of honorable service in the military; the second pathway was for any length of honorable service in either World War I or World War II.[7] These changes were embodied in INA §§ 328 and 329 and have been the standard since. However, the National Defense Authorization Act of 2004 amended the INA and reduced the service time for naturalization from three years to one year of honorable service.[8]

Finally, in 2008, the Department of Defense (now the Department of War) implemented the Military Accessions Vital to the National Interest (MAVNI) program.[9] This program enabled noncitizen service members with skills "either in medical specialties or in certain languages" to apply for and receive expedited naturalization, provided they met all the criteria including their skill being deemed vital to the national interest.[10] Although the MAVNI program was suspended in 2017 due to security concerns, it shows a continued effort to provide naturalization assistance to noncitizen service members.[11] The history of naturalization of veterans and foreign service members has shown the lasting respect and desire to embrace those who have given so much for this country.

Over the last three years, USCIS has amended its policy, affecting the implementation of INA §§ 328 and 329 by broadening the opportunity for eligibility and simplifying the naturalization process.

In 2022, USCIS amended its policy to broaden the discharge characterizations acceptable under INA §§ 328 and 329.[12] Originally, the requirement was interpreted to include only those with honorable discharges to be eligible.[13] However, with this amendment, the characterizations now include Honorable and General (Under Honorable Conditions).[14] The service also implemented the *Calixto* settlement[15] for MAVNI enlistees, fixing the mishandling of their verification paperwork.[16] The 2022 amendments allowed those who served honorably but did not serve perfectly to be eligible for citizenship.

Next, in 2023, USCIS amended its policy regarding verification of service characterization. The amendment required only currently serving noncitizen members to file a Form N-426: "Request for Certification of Military or Naval Service" to confirm their honorable service status.[17] If a noncitizen had prior service, they are only required to submit their discharge paperwork (DD-214), National Guard Report of Separation and Record of Service (NGB Form 22), or other discharge documentation.[18] This amendment helped to expedite the process for both current and past noncitizen service members.

Finally, the most recent guidelines in 2025 have changed how the USCIS will review "uncharacterized" discharges. These guidelines dictate that, after August 1, 2024, an "uncharacterized" discharge no longer meets the requirement for naturalization under INA §§ 328 and 329.[19] This constituted a significant change for current service members but not past service members as those who had been issued an "uncharacterized" discharge before Aug. 1, 2024 would still qualify.[20] These guidelines indicate a shift towards a higher standard for those seeking naturalization.

The process has been responsible for naturalizations of more than 187,000 military service members since 2002.[21] These naturalizations have occurred both abroad and at home.[22] Finally, over the last five years, more than 52,000 naturalizations have occurred. In 2024 alone, there were 16,290.[23] This again shows that the modern process is helping many find their way to citizenship.

As the 2025 guidelines are still being implemented, there is no information yet on the effect this will have on naturalizations. Although these recent guidelines narrow access to military naturalizations, they also underscore the proud tradition and honor of §§ 328 and 329. It is preserving the honor and commitment of those who have served, maintaining a continued promise that sacrifice is rewarded. Ultimately, this pathway to citizenship reflects an effort to preserve the integrity of military naturalizations and continue respecting the historic and enduring role between service to this country and citizenship. ○

References:

1 Kim Scarlet, *One Year Later, U.S. Service Members Are Still Awaiting Their Promised Pathway to Citizenship,* Aclu (Aug. 20, 2021), https://www.aclu.org/news/civil-liberties/one-year-later-u-s-service-members-are-still-awaiting-their-promised-pathway-to-citizenship#:~:text=For%20hundreds%20of%20years%2C%20and,within%2030%20days%20upon%20request.
2 *See* Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).
3 *Immigrants in the Military: A History of Service*, Bipartisan Policy Center (Aug. 16, 2017), https://bipartisanpolicy.org/blog/immigrants-in-the-military-a-history-of-service/.
4 *Id.*
5 Christopher Clifton, *Naturalization Through Military Service: Who Decides*, 36 Geo. Immigr. L.J. 1061, 1064 (2022).
6 *Id.*
7 *Id.*
8 National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, §1701 (2003).
9 Holly, Straut-Eppsteiner, Cong. Rsch. Serv., R43366, Military Naturalizations (2024).
10 *Id.*
11 *Id.*
12 *USCIS Updates Interpretation of "Under Honorable Conditions" for Military Naturalization*, U.S. Citizenship & Immigr. Servs. (Aug. 02, 2022), https://www.uscis.gov/archive/uscis-updates-interpretation-of-under-honorable-conditions-for-military-naturalization.
13 *Id.*
14 *Id.*
15 *See Calixto v. United States Dep't of the Army*, Civil Action No. 18-1551 (PLF), 2022 U.S. Dist. LEXIS 171363 (D.D.C. Sep. 22, 2022).
16 *USCIS Updates Military Naturalization Guidance for Calixto Class Members*, U.S. Citizenship & Immigr. Servs. (Oct. 07, 2022), https://www.uscis.gov/newsroom/alerts/uscis-updates-military-naturalization-guidance-for-calixto-class-members.
17 *USCIS Form and Policy Updates for Applying for Naturalization Based on Military Service,* U.S. Citizenship & Immigr. Servs. (Mar. 22, 2023), https://www.uscis.gov/newsroom/alerts/uscis-form-and-policy-updates-for-applying-for-naturalization-based-on-military-service.
18 *Id.*
19 *USCIS Updates Guidance on Military Naturalization,* U.S. Citizenship & Immigr. Servs. (Sept. 26, 2025), https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-on-military-naturalization.
20 *Id.*
21 *Military Naturalization Statistics,* U.S. Citizenship & Immigr. Servs. (Nov. 6, 2024), https://www.uscis.gov/military/military-naturalization-statistics.
22 *Id.*
23 *Id.*

Protecting U.S Citizen Children: Constitutional Gaps in Deportation and Custody Law

By: Savannah Woodland

As the number of deportations continues to rise, it is vital to ensure non-citizens retain their constitutional right to due process. In the United States today, approximately 16.7 million people have at least one undocumented family member.[1] Of that number, 6 million are children under the age of 18.[2] When a parent is deported, that person loses custody and visitation rights because he or she is not present at the custody proceeding.[3] Therefore, the other parent automatically acquires custody of that child.[4] This is done through a child-custody proceeding.

In child-custody proceedings, courts focus on the "best interest of the child."[5] Courts do not primarily consider the immigration status of the parents.[6] However, when a parent is absent due to deportation, then a court must consider his or her absence.[7] U.S. children face prolonged separation from their deported parent because deportation can terminate the legal parental rights.[8] This is especially true in cases involving divorced or separated immigrant parents, where children are placed with the U.S. citizen parent, thus leaving the other parent without the ability to exercise his or her parental rights.[9] Consequently, courts must consider whether separation from a deported parent can be in the "best interest of the child" when deportation deprives the parent of due process rights necessary to contest custody.[10]

The Fourteenth Amendment states, "no State shall deprive any person of life, liberty, or property without due process of law."[11] The Supreme Court has been clear that the Fourteenth Amendment protections apply to "anyone, citizen or stranger."[12] Accordingly, even a non-citizen who is unlawfully in the United States retains a constitutionally protected fundamental right to family unity.[13] The liberty protected under the Fourteenth Amendment includes the right to "bring up children."[14] Although the Fourteenth Amendment applies to state actions, the same rights apply under the Due Process Clause of the Fifth Amendment in a federal deportation hearing.[15] Thus, in the situation where parents are separated from their children "without a determination that the parent is unfit or presents a danger to the child violates the parents' substantive due process rights to family integrity under the Fifth Amendment."[16]

This treatment towards families continued with the Trump administration's "zero-tolerance policy" which resulted in thousands of children being separated from their families for years.[17] Even two years after the policy ended, thousands of children remained separated from their families.[18]

In response, the Biden administration created a Family Reunification Task Force.[19] As a result of children still being separated, ICE

implemented Parental Interest Directives throughout the years.[20] Currently, the 2025 ICE directive focuses on preserving family unity and parental rights.[21] Although there are policies in place to allow parents to arrange care for deportation or be brought back into the U.S to attend a hearing on the termination of their parental rights,[22] authorities fail to adequately enforce the policies.[23] The lack of enforceability has caused children to be abandoned and experience trauma.[24]

While policies have been put in place for overall separation between parents and children, there remains a gap when parents are divorced or separated with different legal statuses.[25] In this situation, the U.S. parent acquires sole custody, leaving the non-citizen parent without an opportunity to make a custody agreement before deportation.[26] Although there are policies in place to help the deported parent be involved in child custody proceedings, there are few that are enforced to make sure their rights are protected.[27] Since participating in custody proceedings from abroad is difficult and there is no requirement that ICE inform family courts of the deported parent's location, the U.S. citizen children remain at risk of being placed with no input from the deported parent.[28] However, federal law mandates termination of parental rights if the child "has not been in the custody of one of their parents for 15 of the past 22 months."[29] Since deported parents are not able to see their children for an extended amount of time, they could lose custody for this reason.[30] Ultimately, children and parents are suffering from the lack of procedural safeguards to protect their rights under the Fifth Amendment. ○

References:

1 *Child Custody Laws in Mixed-Status Families,* LegalMatch, https://www.legalmatch.com/law-library/article/child-custody-laws-in-mixed-status-families.html (last visited Oct. 31, 2025).
2 *Id.*
3 *Id.*
4 *Id.*
5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 USCS Const. Amend. 14
12 Plyler v. Doe, 457 U.S. 202, 202 (1982).
13 *Id.*
14 Meyer v. Nebraska, 262 U.S. 390, 399 (1923); *see also* Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510, 534 (1925) (holding that the upbringing and education of a child are fundamental rights belonging to parents).
15 USCS Const. Amend. 5
16 L. v. United States Immigration & Customs Enf't ("ICE"), 310 F. Supp. 3d 1133, 1142 (S.D. Cal. 2018).
17 *Family Separation Policy,* AM. IMMIGRATION COUNCIL (2019), https://www.americanimmigrationcouncil.org/report/family-separation-policy/.
18 *Id.*
19 Family Reunification Task Force, U.S. Dept. of Homeland Security., https://www.dhs.gov/family-reunification-task-force (last visited Oct. 31, 2025).
20 *ICE Directive Fails to Provide Protections for Immigrant Families*, Am. Immigration council (2022), https://www.americanimmigrationcouncil.org/blog/ice-directive-fails-protections-for-immigrant-families/
21 *Id.*
22 *Id.*
23 Sebastian Murdock, *Migrant Raids Leave Children Abandoned and Families Separated*, HuffPost (Aug. 8, 2019), https://www.huffpost.com/entry/us-migrant-raids-defense-abandoned-kids-separated-families_n_5d4cde98e4b01e44e477ddec.
24 *Id.*
25 *Navigating Child Custody When One Parent Is a Non-U.S. Citizen*, Petrelli Law (2024), https://www.petrellilaw.com/navigating-child-custody-when-one-parent-is-a-non-us-citizen/.
26 *Id.*
27 *Child Custody Laws in Mixed-Status Families supra* note 2
28 *U.S. Citizen Children Impacted by Immigration Enforcement,* Am. Immigration council (2019), https://www.americanimmigrationcouncil.org/fact-sheet/us-citizen-children-impacted-immigration-enforcement/.
29 *Id.*
30 *Id.*

GIVE TO GET: The Legal and Moral Foundations of Military Naturalization

By: Christopher Hosack

From our Nation's earliest need for protection, being an American is not defined by birth or status but by service and commitment. Judicial interpretation of Sections 328 and 329 treats honorable military service as the legal expression of Congress's moral judgment, and the Armed Forces give that judgment a practical force by forming the civic qualities that make service a meaningful test of American citizenship. Allowing noncitizens to obtain citizenship through honorable military service exemplifies the American ethic of earning membership through duty and sacrifice. This principle can be directly found within Congress's statute.[1] Under the Immigration and Nationality Act of 1952, a lawful permanent resident, who serves honorably for one year, may be naturalized without having resided in the United States continuously for five years.[2] Likewise, Section 329 authorizes naturalization "*at any time*" for those who serve honorably during hostilities.[3] By tying citizenship eligibility to verified honorable service, Congress made military service itself the evidentiary test of allegiance and civic virtue.[4] Through service, Americans—native and naturalized alike—discover and personify the core values that define our Nation.

Sections 328 and 329 treat honorable military service as the functional equivalent of sustained residence, recognizing that a person who risks life for the Nation has already demonstrated the qualities of citizenship.[5] Congress intended for these provisions to reward commitment and encourage civic integration through service.[6] This legal history shows a consistent aim: to honor those whose commitment to the Constitution precedes their formal membership in society.

In *Banaag v. United States*, the United States Court of Appeals for the Ninth Circuit reaffirmed that eligibility under § 329 requires strict compliance with statutory conditions, including lawful admission

and timing of service, even while acknowledging honorable military service as central to Congress's purpose.[7] The noncitizen veteran in *Banaag* was denied naturalization because his service began after the World War II eligibility period, and he had not been lawfully admitted for permanent residence.[8] This decision demonstrates the courts' adherence to the statutory text, even where the petitioner's service reflected genuine loyalty. By contrast, courts have emphasized that § 329 reflects Congress's deliberate decision to eliminate durational residency requirements for wartime service members, while still enforcing the statute's express eligibility conditions.[9] Taken together, these cases show both the rigidity and moral aim of the "citizenship through service" framework.

Judicial interpretation of sections 328 and 329 consistently reflects Congress's choice to reward wartime military service through relaxed naturalization requirements, without extending eligibility beyond the statute's express terms.[10] Instead, courts have recognized that Congress defined honorable wartime service as sufficient to remove traditional residency barriers while leaving other statutory requirements intact.[11] Although *Banaag* applied a strict statutory reading, the court's reasoning underscored that Congress's moral design rested on the recognition of service as the truest measure of commitment.[12]

Each branch of the Armed Forces articulates a moral code that parallels the virtues expected of American citizens. For example, the U.S. Army defines the *Army Profession* as a vocation founded on character, competence, and commitment, in which leaders act as stewards of the Constitution and the American people.[13] The Marine Corps teaches Honor, Courage, and Commitment as universal virtues guiding all Marines.[14] Together, these values form a unified moral lexicon that mirrors the Republic's civic ideals.

The moral framework of military service reflects the same civic virtues expected of citizens: respect for law, personal courage, and selfless service to the community. As Army Regulation 600–100 explains, the Army profession rests on "character, competence, and commitment."[15] The Marine Corps defines its ethos through honor, courage, and commitment.[16] These organizational values personify the very ideals that form the core of American citizenship. Military service does more than attest to an individual's commitment; it forms that commitment by building habits of discipline and public duty. Through the daily practice of adherence to lawful authority and responsibility for others, service members—whether native-born or immigrant—learn to place duty above self. In this way, the armed forces serve as both the proving ground and the classroom of American civic character.

Courts have also served as protectors of that promise when administrative agencies have faltered. In *Kulkarni*, the court defined different characterizations of service and upheld that the plaintiff must have served honorably, reinforcing the principle that citizenship reflects genuine adherence to military and civic ethics.[17] In *Samma*, the court struck down the Department's 180-day service-time rule as arbitrary, capricious, and contrary to law, restoring the statutory promise of immediate eligibility and reaffirming that allegiance, once demonstrated, must be honored without delay.[18]

Citizenship through honorable service symbolizes what it means to be an American, commitment repaid. Through service, Americans and future Americans will discover and represent the core values that define our nation: courage, integrity, and devotion to the common good. The law, like the Republic itself, endures when it honors those who give before they get. O

References:

1 8 U.S.C. § 1440.
2 8 U.S.C. § 1439.
3 8 U.S.C. § 1440.
4 Samma v. DOD, 136 F.4th 1108 at 111 (D.C. Cir. 2025).
5 Santamaria-Ames v. INS, 104 F.3d 1127, 1128 (9th Cir. 1996).
6 Petition of Yiu Nam Donn, 512 F.2d 808, 809 (3d Cir. 1975).
7 Banaag v. United States, 695 F.2d 1133, 1135 (9th Cir. 1983).
8 *Id.*
9 *Donn*, 512 F.2d at 809.
10 Samma v. DOD, 136 F.4th 1108 at 111 (D.C. Cir. 2025).
11 *Id.* at 256-58.
12 *Banaag*, 695 F.2d at 1135.
13 U.S. Dep't of Army, Reg. 600-100: Army Profession and Leadership Policy (Mar. 2025).
14 U.S. Marine Corps, Marine Corps Reference Publ. 6-10B: Marine Corps Values — Leading Marines (Aug. 2024).
15 U.S. Dep't of Army, *supra* note 13.
16 U.S. Marine Corps, *supra* note 14.
17 Kulkarni v. Wolf, 503 F. Supp. 3d 908, 909 (W.D. Wash. 2020).
18 Samma v. DOD, 136 F.4th 1108 at 111 (D.C. Cir. 2025).

U.S. Duty-Free Foreign Policy: Exporting Canadian Immigration and Tariff Law

By: Alejandro (AL) Ulbrich

The United States often influences the world and, more specifically, Canada's policy decisions. When the United States proposes foreign policy, Canada often reacts by changing its own immigration and trade policies. Due to that trend, it seems President Donald Trump may be taking advantage of this historical precedent. For example, President Trump stated that Canada should become the fifty-first state. This may have seemed like a joke at the former Prime Minister Justin Trudeau's expense,[1] however, this small comment led to the toppling of Trudeau's minority government within a month.[2]

It started when Chrystia Freeland, Trudeau's Deputy Prime Minister and Finance Minister, resigned shortly after Trump's comments responding to Trudeau's mishandling of President Trump' 25% tariffs on Canadian goods.[3] Then, President Trump imposed more tariffs in an attempt to limit the amount of illegal immigration and restrict the flow of fentanyl into the U.S from Canada.[4] Recently, Fentanyl has entered the U.S. from British Columbia due to their government decriminalizing up to 2.5 grams of fentanyl (and other hard drugs) for personal use.[5]

Canada tried to push back when Trudeau's successor, Prime Minister Mark Carney, was recently elected on his promise to stand up against Trump's tariffs.[6] While Carney initially imposed many retaliatory tariffs on U.S. goods, he continues to gradually decrease them, indicating that Canada is backing down.[7]

Why is this such an important international legal issue between Canada and the U.S.? Well, there have been several trade agreements between Canada and the U.S. that have directly impacted Canadian trade policy. For example, the original 1989 Canada-United States Free Trade Agreement (FTA) eliminated all tariffs between Canada and the U.S. and "reduce[d] many non-tariff barriers, liberalize[d] investment practices, and cover[ed] trade in services" in Canada.[8] Another example is the 2018 United States-Mexico-Canada Agreement (USMCA), which continued, until recently, to remove "all U.S. tariffs on Canadian-origin goods."[9] Thus, President Trump's tariffs have disregarded such trade agreements when he imposed these tariffs.

The most significant tariffs between Canada and the U.S. have been on the automotive industry. The United States-Canada Auto Agreement allows the importation of "motor vehicles and original equipment parts that qualify as 'Canadian articles' [originating in Canada under NAFTA for commercial manufacturing use in the U.S.] and they are duty-free."[10]

Recent tariffs between Canada and the U.S. on the automotive industry have been the subject of the most heated debate. In response to Trump's 25% of tariffs on Canadian auto imports, Ontario Premier[11] Doug Ford went from stating Canada must "maximize the pain for Americans … [and to] fight like we've never fought before"[12] to suggesting the auto tariffs were not as bad as he initially thought because "vehicles from Canada that are made with less than 50 per cent American-made parts [would] be tariffed at [only] 12.5 per cent."[13] Trump has most recently imposed 35% tariffs on all Canadian exports not exempted under USMCA and sector-specific levies, including a 50% levy on metals and 25% on automobiles.[14]

Where does that leave Canada and the U.S.?[15] In the U.S., under Article I, Section 8 of the United States Constitution, "[t]axing imports is an enumerated power of Congress … [which] cannot be delegated to the executive branch without legislated limits."[16] Executive actions that are against express or implied congressional authority are "scrutinized with caution" by appellate courts.[17]

Under this enumerated power, a recent 7-4 ruling by the U.S. Court of Appeals for the Federal Circuit held many of Trump's import tariffs were illegal[18] because Trump lacked the authority conferred by Congress to impose tariffs which "did not fit IEEPA's [International Emergency Powers Act of 1977] statutory definition of an emergency tariff" as Congress defined.[19] Notwithstanding, the Appellate Judges did not strike down the tariffs and will keep them in effect until October 14, 2026[20] as the appeal proceeds to the Supreme Court of the United States.[21] D. John Sauer, Trump's Solicitor General has appeared before the Supreme Court in oral argument and left all nine justices skeptical about Trump's power to tariff, considering taxation as a congressionally enumerated power and not an executive power of regulation.[22]

Meanwhile, in Canada, Ford has taken a hardline stance by completely banning American-origin alcohol from Ontario shelves until Canada and the U.S. enter a new free-trade agreement.[23] Quebec has imposed a similar boycott of U.S. alcohol with the same demands.[24] Ford also paid around $75 million dollars to air an ad that features Ronald Reagan explaining how tariffs hurt American workers on U.S. TV stations during the World Series.[25] After Trump retaliated to the ad by canceling trade talks and raising tariffs on Canadian exports by an additional 10%,[26] Carney demanded that Ford remove the ad to reopen trade negotiations[27] and apologized to Trump in a private dinner.[28]

Carney has taken the more moderate approach by matching Trump's tariffs and removing all of Canada's tariffs on U.S. goods covered under USMCA and permitting an "exemption for U.S. goods starting in September as part of an effort to revive stalled trade deal talks."[29] Carney also canceled a Digital Services Tax on U.S. technology companies, including Google, Apple, and Amazon.[30] As one commentator quipped: "it's still not a negotiated deal; he's backing down in search of an exit strategy."[31]

Carney's exit strategy was to meet with The Association of Southeast Asian Nations (ASEAN) to negotiate a free-trade agreement and gradually distance Canada from dependence on U.S. trade.[32] Canada continues to grow closer to China as a steady trading partner.[33] While Carney still maintains tariffs on U.S. steel, aluminum, and automobiles,[34] the European Union (EU) and Japan have reached trade agreements with Trump.[35] Trump has lowered tariffs on South Korean goods from 25% to 15%.[36] Even China has reached a deal with Trump on trading rare-earth metals and soy beans and preventing fentanyl from passing U.S. entry ports.[37]

Despite reversing his election promises of enforcing retaliatory tariffs on Trump, polling data indicates Carney's support derives from the 55+ age group, the group most insulated from Trump's tariffs, whereas the under-55 group remains divided over Carney's first 150 days of governance due to concerns over immigration, cost of living, and housing affordability.[38]

Despite this, the Canadian economy shrank by 1.6%, including a 7.5% decrease in exports to the U.S. and a 25% decrease in the international shipments of passenger cars and light trucks, which was more than expected in the second quarter according to a Statistics Canada report. Carney predicts the Canadian economy will shrink nearly 2% in subsequent years all things being equal.

The hard truth: Trump has continued the historical precedent of effectively dictating Canadian immigration and trade policy since even before he took office for his second presidential term. Prime Minister Pierre Elliott Trudeau once quipped that Canada, by living alongside the U.S., "is affected by [its] every twitch and grunt." ○

References:

1 John Paul Tasker, Trump's quip about Canada becoming 51st state was a joke, says minister who was there, CBC NEWS (Dec 3, 2024), https://www.cbc.ca/news/politics/trudeau-poilievre-leader-briefing-mar-a-lago-1.7399534.
2 Bill Chappel, Canada's Justin Trudeau says he will resign as party leader and prime minister, NPR (Jan 6, 2025), https://www.npr.org/2025/01/06/nx-s1-5249766/justin-trudeau-resignation-canada.
3 Mike Wendling, Nadine Yousif, & John Sudworth, Canada's Justin Trudeau cites 'internal battles' as he ends nine-year run, BBC NEWS (Jan 6, 2025), https://www.bbc.com/news/articles/c878ryr04p8o.
4 Kathleen Wong, Trump's tariffs on Canada could mean higher prices for Americans. Here's why he did it., USA Today (Mar. 5, 2025), https://www.usatoday.com/story/money/2025/03/05/why-is-trump-putting-tariffs-on-canada/81371633007/
5 Government of British Columbia, Decriminalizing people who use drugs in B.C., GOVERNMENT OF B.C. (June 26, 2025), https://www2.gov.bc.ca/gov/content/overdose/decriminalization.
6 Mike Blanchfield & Ari Hawkins, Carney's promise to take on Trump on trade will have to wait, POLITCO (Apr. 30, 2025), https://www.politico.com/news/2025/04/30/carney-trump-trade-canada-00319020.
7 Max Zahn, A timeline of the U.S.-Canada trade dispute, ABC NEWS (June 30, 2025), https://abcnews.go.com/Business/timeline-us-canada-trade-dispute/story?id=123335160.
8 1 US Customs and International Trade Guide § 13.15 (2nd 2025).
9 Id.
10 Id.
11 For non-Canadian readers, a provincial premier has similar political jurisdiction to a U.S. state governor but is elected differently. A provincial premier is elected as the head of the political party with the most seats in the provincial legislature; a state governor is elected with the most votes by the state's citizens.
12 Ashleigh Fields, Doug Ford on Canadian response to Trump tariffs: 'Maximize the pain for Americans,' THE HILL (March 28, 2025), https://thehill.com/policy/international/5219506-doug-ford-donald-trump-canada-us-tariffs/.
13 Ethan Lang, U.S. auto tariffs may be less severe than initially thought, says Doug Ford, MSN (Mar. 27, 2025), https://www.msn.com/en-ca/news/canada/u-s-auto-tariffs-may-be-less-severe-than-initially-thought-says-doug-ford/ar-AA1BNDtG?apiversion=v2&noservercache=1&domshim=1&renderwebcomponents=1&wcseo=1&batchservertelemetry=1&noservertelemetry=1.
14 Max Matza, Trump raises tariffs on Canadian goods over Reagan advert, BBC (Oct. 26, 2025), https://www.bbc.com/news/articles/cx2ljgrm78zo
15 For the most updated information on Trump's global tariffs: Tony Romm, Lazaro Gamio, Agnes Chang and Jacqueline Gu, Tracking Trump Tariffs on Countries and Products, NYT (Oct. 30, 2025), https://www.nytimes.com/interactive/2025/07/28/business/economy/trump-tariff-tracker.html.
16 Dominic Pino, The Hidden Damage from Tariffs, NATIONAL REVIEW (Aug. 21, 2025), https://www.nationalreview.com/magazine/2025/10/the-hidden-damage-from-tariffs/.
17 Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637 (1952) (Jackson, J., concurring).
18 Tony Romm & Ana Swanson, Trump's Sweeping Tariffs Invalidated by Appeals Court, NYT, (Aug. 29, 2025), https://www.nytimes.com/2025/08/29/business/economy/trump-tariffs-appeals-court.html
19 Dan McLaughlin, Divided Federal Circuit Gets It Right on Trump's Unlawful Tariffs, NATIONAL REVIEW (Aug. 29, 2025), https://www.nationalreview.com/corner/divided-federal-circuit-gets-it-right-on-trumps-unlawful-tariffs/
20 Id.
21 Romm & Swanson, supra note 18.
22 Doug Palmer, Josh Gerstein, & Daniel Desrochers, Justices appear skeptical of Trump's broad tariffs, POLITICO (Nov. 5, 2025), https://www.politico.com/news/2025/11/05/supreme-court-tariffs-donald-trump-oral-arguments-00637544.
23 Liam Casey, Ford says Ontario will maintain U.S. booze ban, THE GLOBE AND MAIL (Aug .27, 2025), https://www.theglobeandmail.com/canada/video-ford-says-ontario-will-maintain-us-booze-ban/.
24 Stéphane Rolland, Quebec liquor board prepares to destroy $300K worth of American alcohol, CBC (Aug. 21, 2025), https://www.cbc.ca/news/canada/montreal/american-alcohol-saq-1.7614774.
25 See the anti-tariff ad Doug Ford has been airing in the U.S., CBC NEWS (Oct. 24, 2025), https://www.cbc.ca/player/play/video/9.6951639.
26 Matina Stevis-Gridneff, Trump Announces Tariff Increase on Canada Over Reagan Ad Spat, NYT (Oct 25, 2025), https://www.nytimes.com/2025/10/25/world/canada/trump-tariffs-reagan-ad.html.
27 Marina Dunbar, Trump raises tariffs on Canada by 10% in retaliation for anti-tariff TV ad, THE GUARDIAN (Oct. 25, 2025), https://www.theguardian.com/us-news/2025/oct/25/trump-tariffs-canada-ronald-reagan.
28 Ian Austen, Carney Says He Apologized to Trump Over Ad Reviving Reagan's Tariff Criticism, NYT (Nov. 1, 2025), https://www.nytimes.com/2025/11/01/world/canada/carney-trump-apology-tariffs-reagan-ad.html.
29 Barbara Patrocinio, Ford wants to 'fight fire with fire' against U.S. tariffs, but PM wants to be 'strategic in the game,' IPOLITICS (Aug. 27, 2025), https://www.ipolitics.ca/2025/08/27/ford-wants-to-fight-fire-with-fire-against-u-s-tariffs-but-pm-wants-to-be-strategic-in-the-game/.
30 Matina Stevis-Gridneff, Canada Will Scrap Tax That Prompted Trump to Suspend Trade Talks, NYT (June 29, 2025), https://www.nytimes.com/2025/06/29/world/canada/trump-digital-services-tax.html.
31 Dan McLaughlin, Canada Knuckles Under, National Review (Aug. 22, 2025), https://www.nationalreview.com/corner/canada-knuckles-under/.
32 Ian Austen, Facing Lost Trade With the U.S., Carney Heads to Asia, NYT (Oct. 25, 2025), https://www.nytimes.com/2025/10/25/world/canada/canada-trade-mark-carney-asia.html.
33 Lex Harvey, Trump's trade war is pushing Canada closer to China, CNN (Nov. 13, 2025), https://www.cnn.com/2025/11/13/china/china-canada-us-trade-trump-analysis-hnk-intl.
34 Blake, Cassels & Graydon LLP, U.S.-Canada Tariffs: Timeline of Key Dates and Documents, Lexology (Oct. 20, 2025), https://www.lexology.com/library/detail.aspx?g=14d51111-da11-462e-9926-8eed3c67f12f.
35 Matina Stevis-Gridneff, 'Elbows Down'? Canada's Leader Struggles to Find the Answer to Trump., NYT (Sept. 15, 2025), https://www.nytimes.com/2025/09/15/world/canada/canada-mark-carney-trump-tariffs.html.
36 Choe Sang-Hun & Daisuke Wakabayashi, South Korea Says U.S. Agreed to Lower Tariffs and to Ease Investment Terms, NYT (Oct. 29, 2025), https://www.nytimes.com/2025/10/29/us/politics/tariff-trump-south-korea-trade.html?searchResultPosition=3.
37 Katie Rogers & Erica L. Green, Trump and Xi Ease Off the Trade War, but New Nuclear Threat Brings a Chill, NYT (Oct 30, 2025), https://www.nytimes.com/2025/10/30/us/politics/trump-xi-trade-meeting.html.
38 Tristin Hopper, FIRST READING: Mark Carney is pleasing older people and basically nobody else, NATIONAL POST (Aug. 5, 2025), https://nationalpost.com/opinion/first-reading-mark-carney-is-pleasing-old-people-and-basically-nobody-else.
39 Peter Wells & Ilya Gridneff, Canada's GDP shrinks more than expected as Donald Trump's tariffs hit, NPR (Aug 29, 2025), https://www.ft.com/content/e089f4cb-ff20-4323-a43c-97551a3f98d7.
40 Liezel Once, Carney warns of economic drag from US tariffs, urges action on growth, CMP (Nov. 10, 2025), https://www.mpamag.com/ca/mortgage-industry/industry-trends/carney-warns-of-economic-drag-from-us-tariffs-urges-action-on-growth/556060
41 Margaret MacMillan, Sleeping with a very cranky elephant: The history of Canada-U.S. tensions, CBC RADIO (June 15, 2018), https://www.cbc.ca/radio/sunday/the-sunday-edition-june-17-2018-1.4692469/sleeping-with-a-very-cranky-elephant-the-history-of-canada-u-s-tensions-1.4699017.

Tariffs as a Tool for Immigration Control: Lessons from Mexico and Turkey

By: Lili Rodriguez

The Trade Act of 1974, codified at 19 U.S.C.S. §2251, authorizes the President of the United States to impose tariffs when necessary for national security reasons.[1] In practice, the President can adjust tariffs and other trade mechanisms to preserve the United States' economy and advance national security objectives.[2]

In recent years, the United States has reintroduced or expanded tariff restrictions under President Trump's authority.[3] These tariffs have been implemented not only to reduce dependence on foreign labor, but also to influence patterns of immigration.[4] Most recently, President Trump's administration has leveraged 2025 tariffs against Mexico, aiming to encourage stronger participation from the Mexican government in controlling its borders.[5] Comparing parallel United States precedents regarding tariff actions allows for a prediction of recent tariffs' effectiveness in shaping and altering immigration patterns and advancing national security goals. Consequently, the only way to evaluate the potential success of President Trump's latest 2025 tariffs is to evaluate the outcomes of comparable initiatives with different policy goals.

Evaluating these analogous initiatives requires recognizing that tariff policy often operates as both an economic and diplomatic tool. Although tariffs traditionally do serve economic goals, their relationship to diplomacy and immigration arises through a national security rationale.[6] Because immigration patterns affect border control and drug trafficking, which are national security concerns, the President can deem tariff actions necessary to address security issues tied to immigration.[7]

Researching how other countries have utilized tariffs for immigration control appears to show no parallels to President Trump's modern-day tariff threats. In fact, the 2019 tariff threat against Mexico seems to be the first instance in which the United States has explicitly imposed trade restrictions with the purpose of a direct impact on immigration policy. As such, President Trump's tactics represent an innovative application of tariff authority in immigration reform.

In 2019, President Trump used the threat of additional tariffs as leverage to influence Mexico's immigration enforcement policies.[8] He announced that the United States would impose an additional tariff of up to 25 percent "on all goods imported from Mexico" unless the Mexican government took substantial actions to mitigate "the illegal inflow of aliens coming through its territory."[9] In response, the Mexican government took significant actions "aimed at curbing unauthorized migration into the United States," including "increasing its efforts to stem the flow of unauthorized immigration through its borders and assent[ing] to the U.S. expansion of its Migrant Protection Protocols."[10]

However, despite Mexico's efforts to restrain its citizens' unauthorized migration, since the agreement in 2019, the United States has seen a "sustained influx of illegal aliens and illicit opioids and other drugs," endangering the lives of United States citizens.[11] As a result of this new data and perceived illicit drug use, President Trump issued a new executive order in 2025, leveraging tariffs against Mexico once again to encourage "cooperative enforcement actions."[12]

In addition to the 2019 tariffs, President Trump's 2021 tariffs on Turkey demonstrate how trade policy can be used to target other countries. Similar to his latest threats on Mexico, President Trump also increased tariffs on steel imported from Turkey from 25 percent to 50 percent with the purpose of increasing domestically produced steel.[13] In *Transpacific Steel LLC*, the plaintiff challenged these tariffs, but the Court upheld President Trump's authority to impose the tariffs as binding.[14] While the purpose of the tariffs against Turkey seemed to be fulfilled by improving the rates of domestic capacity utilization of steel, the Court reasoned that the connection was plausible, not definite.[15] And while the objective of increasing domestic steel capacity utilization cannot directly compare to the goals of immigration reform, the Court's reasoning in *Transpacific Steel LLC* supplies precedent to support that tariffs fall within President Trump's authority.[16] As Commander in Chief, it is within President Trump's power to implement tariffs to address threats to national security.[17] *Transpacific Steel LLC* cited *Trump v. Hawaii* in its reasoning, stating that policy on foreign trade is permitted when it is "plausibly related to the Government's stated objective to protect national security."[18]

President Trump's 2019 tariffs on Mexico successfully heightened the efforts by the Mexican government to take a stronger stance and implement more safeguards to prevent illegal immigration into the United States.[19] Likewise, his 2021 tariffs on Turkey plausibly increased domestically produced steel.[20] Despite being minimal, those results, as the first of their kind, indicate that Trump's latest 2025 tariff threats against Mexico are likely to be met with similar success. However, even if the 2025 tariffs do not meet their objective of Mexican immigration reform, they represent a decisive and appropriate use of presidential authority. As such, President Trump is acting with his authority as Commander in Chief to leverage trade policy in his effort to protect national security by defending the United States' borders. ○

References:

1 19 U.S.C.S. § 2251.
2 *Id.*
3 *Trump Administration Takes Domestic and International Measures to Restrict Asylum*, 113 Am. J. Int'l L. 833 (2019).
4 *Id.*
5 Executive Order 14194, *Imposing Duties To Address the Situation at Our Southern Border*, 90 Fed. Reg. 9117 (Feb. 7, 2025).
6 Transpacific Steel LLC v. United States, 4 F.4th 1306, 1313 (Fed. Cir. 2021).
7 *Id.*
8 *Trump Administration Takes Domestic and International Measures to Restrict Asylum, supra* note 3.
9 *Statement from the President Regarding Emergency Measures to Address the Border Crisis*, The White House (May 30, 2019), https://trumpwhitehouse.archives.gov/briefings-statements/statement-president-regarding-emergency-measures-address-border-crisis/.

10 *Trump Administration Takes Domestic and International Measures to Restrict Asylum, supra* note 3.
11 Exec. Order No. 14194, 90 Fed. Reg. at 9117.
12 *Id.*
13 Transpacific Steel LLC v. United States, 4 F.4th 1306, 1313 (Fed. Cir. 2021).
14 *Id.* at 1336.
15 *Id.* at 1331.
16 *Id.*
17 *Id.*
18 *Id.* at 1333 (quoting *Trump v. Hawaii*, 138 S. Ct. 2392, 2420 (2018)).
19 *Trump Administration Takes Domestic and International Measures to Restrict Asylum, supra* note 3.
20 Transpacific Steel LLC, 4 F.4th at 1331.

Family Ties vs. Skilled Workers: Contrasting U.S. and Canadian Immigration Systems

By: James Mrnacaj

While the United States is trying a new approach in modernizing the political realm, many of the struggles with the current United States immigration system come from an outdated system, which allows people to enter the country.[1] The issue of migrating to the United States of America is currently in contention right now, in comparison to other countries like Canada. Part of this reason is their point-based merit driven program, known as "Express Entry."[2] This point-based merit driven program prioritizes those workers who are skilled in their profession and who can contribute to the economy.[3] This article will compare Canada's Express Entry system with the United States's system, highlighting what functions work most effectively.

Beginning with the American Immigration system, individuals looking to immigrate to the United States can apply to become a lawful permanent resident (LPR), which is a status that allows non-citizens to permanently live in America.[4] This is only after they are granted an immigration visa or another form of residency.[5] After residing in the United States for five years, with a few exceptions, a LPR can apply for citizenship, granting an opportunity to work almost all jobs in the United States.[6] Additionally, these visas are afforded to immediate relatives of a United States citizen.[7]

Canada, on the other hand, has a different and rather unique process for immigrants to earn citizenship. Canada's immigration policy states that it "selects immigrants for their potential to contribute to the economy based on their skills, language abilities and gaps that exist in Canada's labour market. We also reunite families and help people in vulnerable situations find safety in Canada. [. . .] As a part of this process, the public, including newcomers, Indigenous Peoples, provinces, territories, and businesses and organizations that work with immigrants, have an opportunity to tell us what they think about the targets before they are finalized."[8]

The Canadian government allows people to enter their country by using a point-based system that was introduced in the late 1960s and early 1970s.[9] This system gives a "preference to younger candidates with job offers and high levels of education, experience, and language proficiency (i.e. English or French). Approximately every two weeks, the government invites top-ranking individuals to apply for permanent residency, an expensive and comprehensive process that includes language testing and biometric screening."[10]

This system is unique to an immigration system because it focuses on those who are better or more qualified to help boost the average citizenship of Canada.[11] By focusing on people who are more qualified in the eyes of Canada, they can do more screening and be more selective with who they allow to enter the country.[12] Canada screens out those who have: (a) committed a serious crime, (b) are in poor health, or (c) if they violated a serious human or international right.[13] To strengthen their borders, Canada enforces this extensive immigration screening to check if there are any security risks that the immigrant can pose to their country.[14] When comparing the immigration systems between the United States of America and Canada, Canada enforces a different and arguably stricter system.[15]

These two systems are pertinent in today's legal landscape. With such a lack of effort on the immigration policy and border control that was conducted under the Biden administration, President Donald Trump is trying to actively fix all the issues that he inherited in his second term.[16] Trump started with implementing a mass deportation system that would remove those who entered the United States illegally or who overstayed their visa, removing their eligibility to enter this country.[17] While Canada's immigration process may seem effective, the issue of illegal immigration should be addressed before shifting the focus to implementing a new system. Further, the emphasis on criminal history screening helps ensure Trump's mass deportation system remains in good health.

Overall, while Canada and the United States of America differ on immigration policies, both countries can learn from each other in regard to removing people who are not in the country legally and allowing people in through a heightened security and screening process. The United States has faced issues with both legal and illegal immigration for many years, but both the United States and Canada continue refining their respective systems to ensure a peaceful society for all citizens. ○

References:

1 *See Fact Sheet: Immigration Primer*, Nat'l. Immigr. F. (Dec. 16, 2019), https://forumtogether.org/article/immigration-primer/.
2 *See Express Entry*, Gov't of Can. (Feb. 02, 2025), https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry.html.
3 *Id.*
4 *Lawful Permanent Resident*, U.S. Citizenship and Immigr. Serv., https://www.uscis.gov/glossary-term/50728 (last visited Mar. 9, 2025).
5 *Chapter 1 – Purpose and Background*, U.S. Citizenship and Immigr. Serv. (Feb. 03, 2026), https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-1.
6 Immigration and Nationality Act § 316(a); 8 U.S.C. § 1427(a)
7 *How the United States Immigration System Works*, Am. Immigr. Council (June 24, 2024), https://www.americanimmigrationcouncil.org/fact-sheet/how-united-states-immigration-system-works-fact-sheet/.
8 *See Canada's Immigration System*, Gov't of Can. (Nov. 04, 2025), https://www.canada.ca/en/immigration-refugees-citizenship/campaigns/immigration matters/

system.html#selection.

9 A.E. Challinor, *Canada's Immigration Policy: A Focus on Human Capital,* Migration Pol'y. Inst. (Sept. 15, 2011), https://www.migrationpolicy.org/article/canadas-immigration-policy-focus-human-capital.

10 Diana Roy & Amelia Cheatham, *What Is Canada's Immigration Policy?*, Council on Foreign Relations (Oct. 17, 2025), https://www.cfr.org/backgrounder/what-canadas-immigration-policy.

11 *See Canada's Immigration System*, Gov't of Can. (Nov. 04, 2025), https://www.canada.ca/en/immigration-refugees-citizenship/campaigns/immigration matters/system.html#selection.

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.*

16 *See SECURING OUR BORDERS*, The White House Wash. (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/securing-our-borders/.

17 *Id.*

Earmarking Tariff Revenue: Constitutional or Not?

By: Madison Dietz

Tariffs have always been a staple of federal financing in the United States.[1] Today, the resurgence of political dependence on tariffs has propelled the legal treatment of the revenue that tariffs generate back into the constitutional limelight. Of constitutional controversy is the practice of tariff revenue earmarking. Earmarking is when Congress gives funds to certain programs rather than depositing the funds into the general Treasury.[2] Even though Congress enjoys much freedom based on its taxing and spending powers, earmarking attempts to link the tariff collections directly to narrowly specified policy results, which raises important separation of powers concerns and questions regarding fundamental constitutional principles.[3]

The core issue with earmarking tariffs is the constitutional boundary of targeted spending. Although Congress is generally allowed to earmark tariff revenue to the extent the resulting spending serves the "general welfare," modern efforts to link these funds directly to specific, targeted outcomes which create constitutional tension that sharply underscore the critical need for clearer doctrinal limits.[4] The power of Congress to raise and spend revenue is subject to specific requirements, which have the purpose of ensuring fiscal accountability and restraint.[5] Understanding the limits of earmarking requires examining three central constitutional provisions found in Article I.

First, the foundation for Congress's fiscal authority is the Taxing and Spending Clause, which gives Congress the power to lay and collect Taxes and to pay the debts and provide for the common Defense and general Welfare of the United States.[6] The Supreme Court has traditionally evaluated "general Welfare" as a substantive limitation on the spending power of Congress.[7] In United States v. Butler, the Court addressed the scope of general welfare in spending, holding that Congress cannot impose taxes for purposes that violate state sovereignty or fall outside of its constitutional authority.[8] Later cases reexamined this power, establishing Congress's authority to impose conditions on the receipt of federal funds.[9] Under its spending authority, Congress may impose restrictions on the use of federal funds, so long as they (a) advance the general welfare, (b) are clear, (c) are connected to a government interest in a national project or program, and (d) do not conflict with other constitutional requirements.[10] However, the spending power is not limitless; the Court later established that congressional spending cannot be so coercive as to effectively compel states into federal regulation.[11] When tax revenue is being earmarked, there must be some demonstration of targeted expenditures that meet this general welfare standard, thus programs meeting the needs of only a select, narrow interest group may not be constitutional.

Next is the Appropriations Clause, which requires that "no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."[12] This clause is essential for separation of powers, ensuring all expenditures, even those generated by earmarked tariff revenue, must be explicitly preauthorized by Congress.[13]

Lastly, the Origination Clause provides that "all Bills for raising Revenue shall originate in the House of Representatives."[14] The scope of bills "for raising revenue," within the meaning of that requirement, was considered in United States v. Munoz-Flores, determining whether a particular assessment or levy is a bill for raising revenue.[15] Depending on how the revenue mechanism is designed and where the legislation originates, the earmarking of tariff collections can present potential Origination Clause issues.

This debate over the proper use of tariff revenue is not only a far-fetched hypothetical, but highly timely, given recent political practice and a renewed reliance on tariffs. The tariffs imposed by the Trump Administration on imports originating from China, and those levied on steel and aluminum, raised billions of dollars in revenue.[16] This generated dispute among both Congress and the Executive Branch as to how to use this revenue source for particular purposes. Various proposals such as funding for immigration enforcement, including the frequently discussed border wall, and providing specialized relief to farmers hit hard by retaliatory tariffs, were considered.[17] The idea of using tariff revenue for these specific, identified purposes, such as the border wall or farmer subsidies, raises constitutional tensions over whether such targeted spending satisfies the requisite limits of the general welfare.[18] Executive Branch proposals or attempts to impose targeted spending via earmarked tariff funds in the absence of clear or specific congressional direction bring into play issues of executive overreach and possible violation of the Appropriations Clause.

There is a general grant of authority to Congress to earmark funds, but as the practice now exists, applying particular tariff revenue directly to narrowly targeted policy outcomes puts the entire matter in a constitutional "gray zone."[19] The constitutional outlines of this practice remain unclear, especially where the Taxing and Spending

Clause intersects with the Appropriations Clause and the Origination Clause. These modern legislative and executive efforts to directly tie tariff collections to narrowly targeted policy objectives suggest that clearer doctrinal limits are urgently needed. Whether this resolution comes through judicial clarification by the courts addressing the limits of general welfare, or through legislative action by Congress clarifying the rules governing revenue designation, the constitutional boundaries for earmarking tariff revenue require resolution to maintain clarity in fiscal federalism and separation of powers. ○

References:

1 U.S. CONST. art. I, § 8, cl. 1.
2 *What Are Earmarks and What Purpose Do They Serve?*, PETER G. PETERSON FOUND. (June 17,2025), https://www.pgpf.org/article/what-are-earmarks-and-what-purpose-do-they-serve-in-the-federal-budget/.
3 *Id.*
4 CONG. RSCH. SERV., SECTION 301 TARIFFS: OVERVIEW AND ECONOMIC IMPACT (2020).
5 *See* PRINCIPLES OF FEDERAL APPROPRIATIONS LAW (4th ed. 2016).
6 U.S. CONST. art. I, §§ 7, 9.
7 U.S. CONST. art. I, § 8, cl. 1; See South Dakota v. Dole, 483 U.S. 203 (1987).
8 United States v. Butler, 297 U.S. 1, 65–66 (1936).
9 *Id.*
10 South Dakota v. Dole, 483 U.S. 203, 210 (1987).
11 *Id.* at 207–08.
12 U.S. CONST. art. I, § 9, cl. 7.
13 Office of Pers. Mgmt. v. Richmond, 496 U.S. 414, 424 (1990).
14 U.S. CONST. art. I, § 9, cl. 7.
15 *See* United States v. Munoz-Flores, 495 U.S. 385 (1990).
16 CHRISTOPHER A. CASEY, CONG. RSCH. SERV., IF11030, U.S. TARIFF POLICY: OVERVIEW (2025).
17 *Id.*
18 *Id.*
19 U.S. CONST. art. I, § 9, cl. 7; Office of Pers. Mgmt. v. Richmond, 496 U.S. 414, 424 (1990).

SPEAKER EVENTS

SPEAKER: The Honorable Sheri P. Chappell

Moot Court had the honor of hosting The Honorable Sheri P. Chappell who serves as a District Judge, for the United States District Court for the Middle District of Florida. The Honorable Sheri P. Chappell discussed her career path from an Assistant State Attorney to a Federal District Judge, and provided valuable insight into Federal Courts.

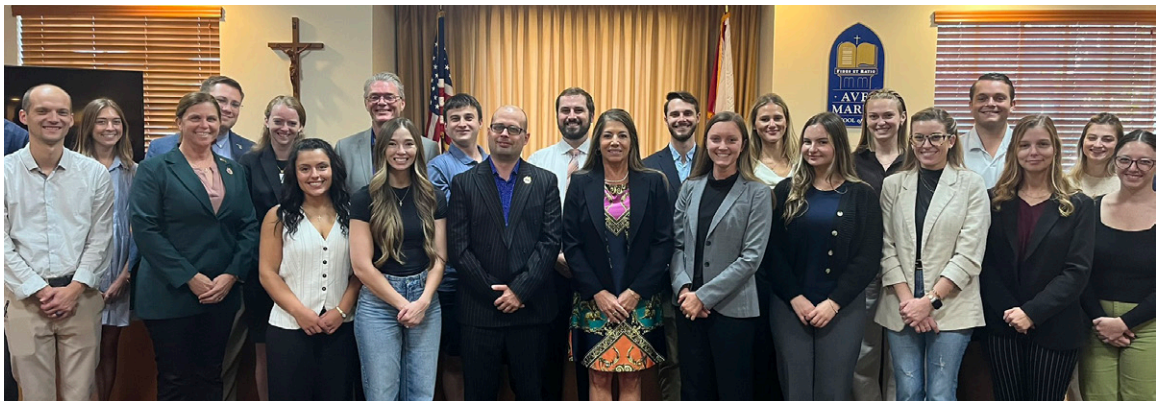
SPEAKER: Amira Fox, Rich Montecalvo, and Abe Thornburg

Moot Court has the pleasure of hosting three speakers from the Office of the State Attorney, Twentieth Judicial Circuit. Amira Fox, State Attorney; Rich Montecalvo; Chief Assistant State Attorney; and Abe Thornburg, Deputy Chief Assistant State Attorney. State Attorney Amira Fox and her team discussed life as a prosecutor and their role in keeping Southwest Florida safe.

SPEAKER: The Honorable Amanda Levy-Reis

The Honorable Amanda Levy-Reis, circuit judge for the Twentieth Judicial Circuit Court, discussed her role as a judge with the Moot Court Board, and the “do’s and don’ts” of the court room.

SPEAKER EVENTS



SPEAKER: The Honorable Tara P. Paluck

The Honorable Tara P. Paluck, County Judge for the Lee County Court of Florida, walked students through the day-to-day life of a County Judge and gave great advice on starting your career in the legal profession.

SPEAKER: Asma Anwar

Asma Anwar, a criminal defense attorney, engaged the students in a productive conversation about the criminal justice system and the morality implications of representing a defendant.

SOCIAL EVENTS

The 2025-2026 Moot Court Board and Law Review held a joint social event at the Pub in Mercato!

Left to Right: The Honorable Amanda Levy-Reis and Lili Rodriguez

Our Vice President of Events invited The Honorable Amanda Levy-Reis to discuss her position as a Circuit Judge in Collier County. Students learned about the process of family court, civil domestic court, and probate.

Left to Right: Jessica Puk, Abigail Ross, and Elizabeth Pope

Some of our 2L Moot Court Board members after our event featuring notable alumni who participated in Moot Court during their time at Ave. The alumni shared valuable intel on how Moot Court has helped their careers and prepared them for the practice of law.

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