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# Resistance Strategies in the Immigrant Justice Movement

MARIELA OLIVARES\*

*Topics of immigration reform have created deep polarization. To some degree, these political and societal divisions regarding immigrants' place and ability to remain in the United States drove the Republican successes in the 2016 elections and carried Donald Trump to the White House. When political conservatives called for decreased migration and increased deportations of immigrants already in the United States, progressive politicians and advocates for immigrants did not present a unified and thoughtful response. I discuss this failed narrative strategy in an earlier publication, in which I decry this historic and contemporary lack of cohesive strategy. I end Narrative Reform Dilemmas by observing that the process of creating a cohesive strategy must include an understanding of what fuels contrasting viewpoints and a recognition that reform will only occur when it benefits the most politically powerful majority. Harkening to the pioneering work of Derrick A. Bell and the phenomenon of interest convergence, I discuss how immigrant advocates must consider how to create and effectuate a strategy that furthers humanitarian immigration reform while also incorporating the divergent views of other political and societal actors.*

*In this Article, I continue this discussion about crafting a strategic narrative. Part I begins by defining a goal for immigrant advocates. Setting a goal or purpose is a crucial first step for any group engaged in a strategic plan. Without delving deeply into the historic difficulties that constrain the struggle for equality for immigrants, which ultimately must question broad concepts of citizenship and borders (and is best left to another scholarly project), I discuss a framework for preliminary steps. At its foundation, success must embody justice for immigrants, which entails a legislative and political system that embraces fairness through membership identity. Membership would include affiliative and contractual aspects, as Hiroshi Motomura details in his writings, while also ascribing to humanitarian ideals of fairness and justice, as Joseph Carens and Martha Nussbaum espouse. But creating*

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*membership identity must not continue the ostracizing effects of past narrative tactics that only pay heed to seemingly positive attributes, as in some of the “Dreamer” and DACA strategies, which Elizabeth Keyes describes.*

*Part II then explores past efforts to craft immigration narratives for pro-immigrant reform and the ways in which these strategies consistently fell short. Despite well-intentioned efforts, each strategy failed in part by not confronting the deep history of racism and discrimination against immigrants that essentially makes comprehensive change only possible when the change mechanisms also benefit the political and societal majority. With this recognition, Part III emphasizes that immigrant advocates need to shift the strategy away from a passive normative framing and capitalize on the robust resistance movement currently moving reform conversations between new collaborators. This era of political resistance and awakening has led to new and vibrant connections between constituencies. By focusing on commonality of membership and the power of collaborative action, the road to reform will be smoothed. Part III provides case studies of organizations and movements that have successfully created connectivity between non-traditional partners and exhorts immigrant advocates to consider similar processes. Finally, Part IV provides a roadmap on what the new immigrant rights narrative strategy may contain. The narrative can be crafted through different means, but to be politically successful, it must acknowledge the past incomplete efforts and realize the fervor for change that is now gripping the nation. Moreover, we must critically examine the effects of crafting a narrative, including the common consequence that oppresses a sector of the community through efforts to uplift another sector. As this Article concludes, through this process, we will create a message that unifies diverse communities, actors and groups fighting for fair and just immigration reform.*

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## INTRODUCTION

In a recent long ride from the airport to my destination, I enjoyed conversation with the affable Uber driver, a middle-aged black man. From his tone, speech habits and lack of a foreign accent, I surmised—and he later confirmed—that he was a native-born U.S. citizen. As he asked me questions about my job, I gave the familiar answer about the focus of my scholarship and advocacy and my commitment to justice for immigrants. I did not hide my disdain for the Trump administration and its policies, assuming from the rest of our conversation and his race and age that he would be of the same political and social persuasion. And then, when I paused in my story, he replied, “Well, you know what? I think President Trump will go down as one of the best presidents in history.” A dramatic pregnant pause follows as I stumble with a response. “Huh?” I answer in a very non-professorial way. “Sorry, friend,” I finally manage, “I have to vehemently disagree with you.” He exclaimed, “Don’t get me wrong, he’s a deplorable human being without one seemingly positive characteristic!” At that point, I listened intently and, as we ended up getting lost in the Detroit suburbs, I realized we agreed.

He explained that Trump’s election had sparked resistance and drawn people out of complacency. As my wise driver noted, people who were once quiet observers to political division are now reacting and acting to the hate that Trump and his supporters stoke. He crafted an analogy:

You know when you don’t clean out your refrigerator for a while? And there is that one Tupperware container full of leftovers in the back that starts to smell badly. You know it’s there, but you ignore it. Days pass, and it gets smellier. But you still ignore it! And you ignore it because you don’t want to deal with it! But that rotten food is only going to get worse. That’s where we are now. Trump has forced people to confront that old rotten food and clean out their refrigerators!

He presciently and wisely concluded, “They just can’t ignore it anymore.”

Indeed, the current era of abrupt policy shifts—from one of typically measured discourse—to one of divisiveness and extreme ideology has reinvigorated a committed, if still unfocused, movement to resist the Trump administration’s efforts. Dana Fisher, a sociologist who studies political movements and protests, surveyed participants at the January 2017 Women’s March in Washington D.C., a protest of Trump’s 2017 inauguration.<sup>1</sup> Fisher

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1. Laura Sydell, *On Both the Left and Right, Trump is Driving New Political Engagement*, NPR (Mar. 3, 2017, 5:24 PM) <http://www.npr.org/2017/03/03/518261347/on-both>

found that a third of those surveyed had never before participated in a protest and were driven by various concerns—immigration reform, social justice, women’s rights, and/or environmental issues, for example.<sup>2</sup> As Fisher concluded in an interview with a media outlet: “Everybody’s pissed off, and they’re pissed off for different reasons. Trump is helping everybody to find common ground.”<sup>3</sup>

With this collective recognition that it is finally time to clean out the refrigerator and confront the food festering in the back, diverse constituencies finding this common ground of outrage are forming collaborative relationships to resist harmful actions and policies. For example, when Trump’s administration announced the January 2017 ban against the entry of certain foreign nationals from countries with Muslim-dominant populations, immigrant rights advocates reacted in vehement opposition, protesting publicly in the streets and in international airports.<sup>4</sup> Protestors decried the explicitly racist and intolerant policies that ripped families apart and left people with valid travel visas with no recourse from being denied entry, often after having spent life savings and leaving lives behind in their countries of origin. Similarly, this so-called “Travel Ban” provoked outcry from some of the largest U.S. and global corporations. Soon after its imposition, more than one hundred technology companies joined an amicus brief filed in the Ninth Circuit

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left-and-right-trump-is-driving-new-political-engagement [https://perma.cc/6K2T-JX2S] (noting the increase on both sides of the ideological spectrum of first-time political activists, all driven by Trump’s election).

2. *Id.*

3. *Id.*

4. Lauren Gambino, Sabrina Siddiqui, Paul Owen, and Edward Helmore, *Thousands protest against Trump travel ban in cities and airports nationwide*, THE GUARDIAN (Jan. 29, 2017, 19:01 EST), <https://www.theguardian.com/us-news/2017/jan/29/protest-trump-travel-ban-muslims-airports> [https://perma.cc/HCH8-JCQQ] (detailing protests that erupted across the country at airports in New York, D.C., Dallas, Detroit, and Miami, as well as protests on the streets of New York and D.C.); Wale Aliyu, *Coalition of Volunteers, Attorneys Camp Out at JFK in Wake of Trump Ban*, NBC4 NEW YORK, (Jan. 30, 2017, 7:25 PM), <http://www.nbcnewyork.com/news/local/No-Ban-JFK-Volunteers-Attorneys-Coalition-John-F-Kennedy-Airport-New-York-City-Trump-Immigration-Ban-412204223.html> [https://perma.cc/JG9V-T89Z] (describing the efforts of “No Ban JFK,” a coalition of lawyers and volunteers assembled in part through the efforts of the New York Immigration Coalition, who stayed at the New York City airport, advocating, protesting, and gathering stories from immigrants and their families). The organization set up a hotline for exchange of information. See *Muslim Immigration Ban Hotline*, No Ban JFK (Jan. 30, 2017), <https://muslimimmigrationhotline.squarespace.com/experiences1> [https://perma.cc/C8W3-GZ59] (sharing the experiences of detainees at JFK, including a father and son from Iran who were detained for 33 hours and offered the option of deportation with a five-year restriction from returning to the U.S. or indefinite detention. Though they were eventually released, they felt coerced into signing a document authorizing their detention).

Court of Appeals opposing the Travel Ban, asserting that immigrants were and continue to be critical to the success of the companies' financial success.<sup>5</sup>

Meanwhile, the Florida Immigrant Justice Coalition, a non-profit organization dedicated to immigrant justice through coalition building among various social and political actors, quickly mobilized to protest the administration's end to the Deferred Action to Childhood Arrivals (DACA) program, which afforded a measure of protection against deportation in addition to employment authorization (among other potential benefits) to certain young people in undocumented immigration status who arrived to the United States as children.<sup>6</sup> Florida Republican politicians, who had not before expressed public support for DACA recipients, suddenly spoke out in the media, expressing support for DACA.<sup>7</sup> This newfound interest is likely more about political gain as the public becomes more aware and sympathetic to the plight of DACA beneficiaries than a sincere change of policy belief. Even so, advocates are keen to utilize the political support—from whichever political

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5. Matt Drange, *Nearly 100 Tech Companies Join Forces In Court to Oppose Donald Trump's Immigration Ban*, FORBES, Feb. 6, 2017, Later, more companies joined the brief, bringing the total to 162 signatories. The brief stated: "Immigrants are leading entrepreneurs. . . . Immigrants or their children founded more than 200 of the companies on the Fortune 500 list . . . . Collectively, these companies generate annual revenue of \$4.2 trillion, and employ millions of Americans." Brief for Plaintiffs-Appellants at 6, *Int'l Refugee Assistance Project v. Trump*, No. 17-1351 2017 U.S. App. LEXIS 9109 (4th Cir. Apr. 19, 2017).

6. See Maya Rhodan, *Attorney General Jeff Sessions Says DACA Program Will Be Phased Out*, TIME (Sept. 5, 2017) <http://time.com/4927227/daca-undocumented-dreamers-jeff-sessions/> [<https://perma.cc/MDL5-5PDN>] ("Sessions said the program allowed immigrants to take jobs that would have otherwise gone to Americans."); see also U.S. Citizenship and Immigration Services, *Consideration of Deferred Action for Childhood Arrivals (DACA)*, DEPARTMENT OF HOMELAND SECURITY (last updated Oct. 6, 2017) <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca> [<https://perma.cc/H2T3-B6WG>] (providing the official information regarding the DACA process, including initial filing, renewal, eligibility, and travel information; though the page is archived, up-to-date information regarding DACA negotiations is provided).

7. George Bennett, *NEW: Trump guts Obama's DACA order; GOP under pressure to produce law*, PALM BEACH POST, <http://www.mypalmbeachpost.com/news/national-govt-politics/new-trump-guts-obama-daca-order-gop-under-pressure-produce-law/nA4II-RKezTiVqdeBUTqInK/> (last updated Sept. 5, 2017, 5:04 PM) [<https://perma.cc/HT4N-S3NT>] (highlighting some of the Florida Republicans calling on Congress to find a viable solution to the DACA debate, including Senator Marco Rubio, vocal Trump supporter Governor Rick Scott, and state senator Jack Latvala); see also Alex Leary, *DACA: Where do top Florida Republicans stand?*, THE TAMPA BAY TIMES (Sept. 4, 2017, 11:03AM), <http://www.tampabay.com/florida-politics/buzz/2017/09/05/daca-deadline-where-do-top-florida-republicans-stand/> [<https://perma.cc/TQH7-SJKY>] (providing an overview of Florida Republicans' stance on DACA, including state representative Ted Yoho, who noted: "For those who came to the United States as children and to no fault of their own, I support a window of time for them to come forward. . . . I support providing a way for Dreamers who have registered under DACA with DHS to obtain legal status.").

party—if it helps to bring justice for their clients.<sup>8</sup> The Trump administration’s discriminatory policies have created new alliances between actors and groups that perhaps had never found common ground. In this era of new-found diverse resistance movements, this Article argues that the time is ripe for a focused strategy aimed at justice for immigrants in the United States.

To be sure, topics of immigration reform have created deep polarization. To some degree, these political and societal divisions regarding immigrants’ place and ability to remain in the United States drove the Republican successes in the 2016 elections and carried Trump to the White House. When political conservatives called for decreased migration and increased deportations of immigrants already in the United States, progressive politicians and advocates for immigrants did not present a unified and thoughtful response. I discuss this failed narrative strategy in an earlier publication, in which I decry the historic and contemporary lack of cohesive strategy.<sup>9</sup> I end *Narrative Reform Dilemmas* by observing that the process of creating a cohesive strategy must include an understanding of what fuels contrasting viewpoints and a recognition that reform will only occur when it benefits the most politically powerful majority. Harkening to the pioneering work of Derrick A. Bell and the phenomenon of interest convergence, I discuss how immigrant advocates must consider how to create and effectuate a strategy that furthers just immigration reform while also incorporating the divergent views of other political and societal actors.

In this Article, I continue that discussion about crafting a strategic narrative. Part I begins by defining a goal for immigrant advocates. Setting a goal or purpose is a crucial first step for any group engaged in building a strategic plan. Without delving deeply into the historic difficulties that constrain the struggle for equality for immigrants, which ultimately must question broad concepts of citizenship and borders (and is best left to another

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8. In 2018, the bipartisan support to find a solution for the DACA eligible and DACA beneficiaries includes a push that Republicans come to the negotiation table or face possible backlash from their constituencies. Conservative commentator Jennifer Rubin cautions that without a fix,

[T]he 2018 midterm election year will be pockmarked with harrowing scenes . . . Trump’s amped up Immigration and Customs Enforcement (ICE) will be dragging illegal immigrants from homes, workplaces, schools and presumably the military as well. . . . The Republicans’ immigration ‘policy’ will be revealed for what it is—cruel, disruptive and downright inhumane. On a political note, Republicans can likely kiss goodbye competitive seats in Florida, Texas and California, where many of these scenes will play out.

Jennifer Rubin, *Trump backs Republicans into a corner on DACA*, WASH. POST, [https://www.washingtonpost.com/blogs/right-turn/wp/2018/02/06/trump-backs-republicans-into-a-corner-on-daca/?utm\\_term=.371a63ab37c7](https://www.washingtonpost.com/blogs/right-turn/wp/2018/02/06/trump-backs-republicans-into-a-corner-on-daca/?utm_term=.371a63ab37c7) [https://perma.cc/2975-HZBW].

9. See generally, Mariela Olivares, *Narrative Reform Dilemmas*, 82 MO. L. REV. 1089 (2018) [hereinafter *Narrative Reform Dilemmas*].

scholarly project), I discuss a framework for preliminary steps. At its foundation, success must embody justice for immigrants, which entails a legislative and political system that embraces fairness through membership identity. In other words, a just system of immigration law and policy would clearly spell out the terms of inclusion for membership in the U.S. community, equating to lawful immigration status. Membership would include affiliative and contractual aspects, as Hiroshi Motomura details in his writings, while also ascribing to humanitarian ideals of fairness and justice, as Joseph Carens and Martha Nussbaum espouse. But creating membership identity must not continue the ostracizing effects of past narrative tactics that only pay heed to seemingly positive attributes, as in some of the “Dreamer” and DACA strategies, which Elizabeth Keyes describes.<sup>10</sup>

Part II then explores past efforts to craft immigration narratives for pro-immigrant reform and the ways in which these strategies consistently fell short. Despite well-intentioned efforts, each strategy failed in part by not confronting the deep history of racism and discrimination against immigrants that essentially makes comprehensive change possible only when the change mechanisms also benefit the political and societal majority. With this recognition, Part III emphasizes that immigrant advocates need to shift the strategy away from a passive normative framing and capitalize on the robust resistance movement currently fueling reform conversations between new collaborators. This era of political resistance and awakening has led to innovative and vibrant connections between constituencies. By focusing on commonality of membership and the power of cooperative action, the road to reform will be smoothed. Part III provides case studies of organizations and movements that have successfully created connectivity between non-traditional partners and exhorts immigrant advocates to consider similar processes. Finally, Part IV provides a roadmap on what the new immigrant rights narrative strategy may contain. The narrative can be crafted through different means, but to be politically successful, it must acknowledge the past incomplete efforts and realize the fervor for change that is now gripping the nation. Moreover, we must critically examine the effects of crafting a narrative, including the common consequence that oppresses a sector of the community through efforts to uplift another sector. As this Article concludes, through this process, we will create a message that unifies diverse communities, actors and groups fighting for fair and just immigration reform.

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10. Dreamer refers to those people who would potentially benefit from the proposed DREAM Act. The Dream Act of 2017, introduced most recently in Congress on July 20, 2017, failed to pass. *See* Dream Act of 2017, S. 1615, 115th Cong. (2017); Dream Act of 2017, H.R. 3440, 115th Cong. (2017). It was first introduced in Congress in 2001. H.R. 1918, 107th Cong. (2001); S. 1291, 107th Cong. (2001). DREAM stands for Development, Relief, and Education for Alien Minors and is legislation that would provide some measure of lawful status for certain undocumented young people who arrived at the United States as children.



## PART I: JUSTICE THROUGH MEMBERSHIP

The immigrant advocacy movement faces a unique dilemma. In crafting a narrative that will ultimately bring justice and equality for immigrants in the United States, we first query: what does justice and equality mean? If we seek political and legislative reform that *benefits* immigrants, *which* benefits are most important? Indeed, the diversity of immigrants underlies the difficulty in framing this question—in other words, one population (for example, highly-skilled employment visa holders) may seek different immigration outcomes than another population (for example, undocumented workers in the agricultural or service industries). A key challenge, then, is creating a focused strategy that acknowledges these differences and does not oppress one community's concerns for the perceived benefit of another community. Thus, at its core, crafting a renewed narrative strategy must adopt a common denominator even among the diversity.

In a recent publication, I discuss the “ways in which advocates and scholars could reframe the narrative regarding equality for immigrants.”<sup>11</sup> I wondered then, and, now as I build on that writing and tackle the work of creating the narrative, I more aggressively confront what I mean by equality for immigrants. Indeed, I do not aim in this Article to argue that immigrants should receive all of the same legally-constructed rights and responsibilities as U.S. citizens. I do not call for an end to the legal concept of citizenship and the benefits it affords. Broad questions of national citizenship and the efficiencies and inefficiencies of global geopolitical borders are beyond the scope of this Article and not my aim.<sup>12</sup> Citizenship, then, is not the goal.

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11. *Narrative Reform Dilemmas*, *supra* note 9, at 1090-91.

12. Scholars have tackled the difficult questions of law and policy behind the meaning of citizenship and how geopolitical borders frame and complicate the stories. *See, e.g.*, Hiroshi Motomura, *Immigration Outside the Law*, 108 COLUM. L. REV. 2037, 2038 (2008) (framing the immigration issue as an intersection of “the meaning of unlawful presence, the role of states and cities, and the integration of immigrants”); JOSEPH CARENS, *THE ETHICS OF IMMIGRATION* (Oxford Univ. Press 2015) (asserting from a philosophical standpoint that open borders are the only fundamentally just outcome for the global world order). In an interview, Carens summarized his argument in this way, “In my view, a just world would be one in which the economic and political differences between countries would be greatly reduced and people would be free to move (but not feel driven to do so). That is the sort of arrangement that could be justified to everyone.”; Gary Gutting & Joseph Carens, *When Immigrants Lose Their Human Rights*, N.Y. TIMES (Nov. 14, 2014), <https://opinionator.blogs.nytimes.com/2014/11/25/should-immigrants-lose-their-human-rights/> [https://perma.cc/C3P6-DTMD]. Carens asserts that this frame is philosophical but not politically viable. *Id.* Mai Ngai pushes the traditional boundary between illegal versus legal status and status, noting “illegal alienage is not a natural or fixed condition but the product of positive law; it is contingent and at times is unstable. The line between legal and illegal status can be crossed in both directions. . . . I suggest that shifts in the boundary between legal and illegal status might tell us a lot about how the nation has imagined and constructed itself over time.”; MAI M. NGAI,

To be sure, it is difficult to generalize the goals of immigrant advocates in terms of equality and justice. Certain groups seek formalized legal status for a particular community of immigrants—like coalitions fighting for the continuation and expansion of the DACA program that would directly affect those beneficiaries.<sup>13</sup> Others seek reform that will provide eventual citizenship or poverty-eradication efforts to help people globally to diminish the need for economic-fueled migration to the United States.<sup>14</sup> In contrast, a human rights framework or a humanitarian-focused approach strives for equal “legal protections and assurances of dignity” for all people.<sup>15</sup> For them, geopolitical borders and the concomitant rights afforded through legal citizenship are inept measures of fairness for immigrants. Traditional business and/or capitalist interests, however, call for reform mechanisms that will reward immigrants who possess sought-after educational pedigrees, skills or other marketable characteristics so that businesses can hire them and profit from their skill.<sup>16</sup> Thus, varied interests and groups advocate for strategic narratives in accordance with their respective aims and not necessarily with a goal of furthering immigrant rights for the betterment of immigrant communities. As this Article discusses, the lack of strategic cohesion has led to legislative stagnation and, indeed, increased oppressive measures against immigrants.

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IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 6 (Princeton Univ. Press 2004).

13. See, e.g., Patricia Guadalupe, *As DACA Deadline Looms, Supporters and Legislators Fight for Program*, NBC NEWS (Oct. 4, 2017, 4:20PM ET) <https://www.nbcnews.com/news/latino/daca-deadline-closes-supporters-legislators-fight-program-n807391> [<https://perma.cc/A8H2-JPNS>] (among the groups advocating for Dreamers are the Congressional Hispanic Caucus, which called for an extension of the DACA renewal deadline. Other groups in favor of protection for DACA recipients include the LIBRE Initiative, the Texas Federation of Hispanic Republicans, and the U.S. Hispanic Chamber of Commerce).

14. See, e.g., Bread for the World, *How to End World Hunger: Immigration Reform*, <http://www.bread.org/immigration-reform> [<https://perma.cc/A6YS-HX68>] (“Bread supports immigration reform because a substantial percentage of undocumented immigrants in the United States live in poverty and because comprehensive immigration reform would help them escape hunger. . . . And we anticipate that hundreds of thousands of people would be moved out of hunger and poverty almost immediately if they are given a pathway to citizenship.”).

15. Kate Englund, *Protecting the Human Rights of Unaccompanied Immigrant Minors*, UNIVERSITY OF CHICAGO ADVOCATES’ FORUM, 2011, <http://ssa.uchicago.edu/print/protecting-human-rights-unaccompanied-immigrant-minors> [<https://perma.cc/3SSD-Y7JD>].

16. See Catherine Shu, *Tech executives join more than 100 business leaders calling on Congress to move quickly on DACA*, TECHCRUNCH (Jan. 10, 2018), <https://techcrunch.com/2018/01/10/tech-executives-join-more-than-100-business-leaders-calling-on-congress-to-move-quickly-on-daca/> [<https://perma.cc/MJT8-S485>] (CEOs of Apple, Amazon, Google, and Facebook, along with other top executives of various multimillion dollar companies, signed an open letter to Congress pushing for a solution to the DACA standstill, citing economists who predicted a potential \$215 billion loss in the U.S.’s GDP).

I posit that a successful narrative strategy should embrace an American political and legal system in which immigrants are able to achieve promised and outlined outcomes through a path that is fair, just and clear. Legislative reform would embody fairness for immigrants who abide by the social and legal “contract” afforded to them through the immigration system. Importantly, reform must not unjustly target certain communities of immigrants—like religious minorities or undocumented immigrants. Fair and just immigration reform would value both the skilled engineer and the agricultural laborer; or the mother who risked her life through a perilous journey to better the lives of her children as much as the young person with promise who ran afoul of the law in a minor way. Justice would not punish these people. By relying upon this contractual and justice-centered framework, I argue that abiding immigrants should thus be granted rights associated with membership in the legal and socio-political American community.<sup>17</sup>

Membership may sound like an amorphous concept, but it is in fact exactly what our law already uses to craft who may enter our borders and who should be excluded. The Immigration and Nationality Act (INA) outlines the categories of inadmissibility and deportability, effectively legislating what kind, type, and characteristics of foreigners we want in the United States. Thus, we essentially create and then enforce the guidelines of belonging to our community. In this sense, immigrant advocates do not need to construct an end goal for immigration reform as formal legal citizenship, but rather that immigrants who are “membership eligible” and continue to abide with the terms with which they agreed should be treated fairly in the application of the immigration laws.<sup>18</sup> Law reform, then, must embrace a partnership

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17. Some scholars have attributed membership as one way to conceive of citizenship. *See, e.g.*, Jennifer Gordon & R.A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 *FORDHAM L. REV.* 2493, 2494-95 (2007) (in discussing the intersections between the race and immigration rights’ struggles, the authors note that their focus is not on “formal citizenship” but instead “[O]ur primary concern with citizenship as ‘belonging’—that is, with the realization by individuals and groups of genuine participation in the larger political, social, economic, and cultural community—and with the ways that race, ethnicity, and immigration status complicate the full achievement of citizenship in that sense.”).

18. Although some activists seek a so-called “path to citizenship” for undocumented immigrants, others note that the practical effect of membership ascription are more important for some undocumented immigrants than formalized citizenship. *See, e.g.*, Jeff Stein, *Immigration activists are about to put “everything on the line” for DACA*, *Vox* (Sept. 4, 2017, 1:10 PM), <https://www.vox.com/2017/9/4/16251634/daca-immigration-activists-trump> [<https://perma.cc/YFN4-CX7K>] (noting that activists planned efforts, including a hunger strike, to pressure lawmakers to pass legislation that would provide DACA recipients with a path to citizenship). *But see* Ruby Hellen, *Will Republicans End Up Fixing Immigration After All?*, *FOREIGN POLICY* (Oct. 5, 2017), [<https://perma.cc/9AEU-VVXT>] (quoting Art Acevedo, chief of the Houston Police Department, who interfaces with different political constituencies: “We all have to get in the mindset of give and take, and ultimately what’s in the best interests

concept among citizens, immigrants (whether they be temporarily present or permanently here), and the U.S. government. The strategy emphasizes the positive and important reasons why this system of inclusion would benefit the United States.

I am not suggesting anything new. Hiroshi Motomura proposes an inclusive system for lawful immigrants through membership ascription, analogizing the immigrant experience to a contractual relationship that embraces lawful immigrants with established ties of belonging who are progressing towards legal citizenship.<sup>19</sup> He describes the contractual nature of immigration law, asserting that by virtue of fairness principles inherent in contract law, lawful immigrants who abide by the terms of the contract should be afforded membership and eventual citizenship.<sup>20</sup> He notes that the immigrant contract is not a formalized one and not one of equal bargaining power because the immigrant typically has little negotiating power. Instead, “[t]he core idea is thinking about coming to America as a set of expectations and understandings that newcomers have of their new country, and their new country has of newcomers.”<sup>21</sup> In this sense, then, via expectations, reliance and performance, immigrants would be included in the community of U.S. membership.

Motomura further outlines how immigrant membership is also supported through concepts of affiliation ascription, meaning that as immigrants develop ties over time to the United States, they are more definitive members of the group.<sup>22</sup> He surmises: “The longer they are here, and the more they become enmeshed in the fabric of American life, the more these lawful immigrants and citizens should be treated equally.”<sup>23</sup> This immigration by affiliation context gained traction as there was a concomitant movement away from an “immigration as transition” conceptual framework, which treated immigrants as if they are in progress towards eventual citizenship. Immigration as transition “treats lawful immigrants as Americans in waiting, as if they would eventually become citizens of the United States, and thus confers

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of the people we’re trying to help,’ . . . He expressed frustration at activists on the left who focus on a pathway to full citizenship, including the right to vote and all other accoutrements of being an American. ‘If you talk to most of the people we’re trying to help, they don’t care about the right to vote, they don’t care about citizenship—they want legitimacy, they want to get a driver’s license, they want to be able to buy car insurance.’”

19. HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* (Oxford Univ. Press 2006).

20. *Id.* at 10. Importantly, Motomura couches his discussion of contractual fairness in the context of lawful immigrants, not inclusive of undocumented immigrants. He expands his discussion to unauthorized migrants in his subsequent book, *MOTOMURA, IMMIGRATION OUTSIDE THE LAW* (Oxford Univ. Press 2014), discussed more below.

21. MOTOMURA, *supra* note 12, at 2084.

22. MOTOMURA, *supra* note 19, at 10-11.

23. *Id.* at 11.

on immigrants a *presumed equality*.<sup>24</sup> In contrast, immigration as transition and immigration as affiliation, he writes, “redefine equality to mean access to equality. Immigration as affiliation allows lawful immigrants to earn a degree of equality as they develop ties in the United States. Immigration as transition presumes that lawful immigrants and citizens are equal until the immigrants decline to naturalize.”<sup>25</sup>

In *Americans in Waiting*, Motomura skillfully asserts that though contract and affiliation principles have become the normalized views undergirding immigration policy, the ideal framework would also (or instead) revert to treating immigrants as in process towards full citizenship and thus provide them with extensive benefits as viable members of the community.<sup>26</sup> Motomura comments that this framework is necessary to uphold America’s commitment to equality because “the permanent subordination of any group has no place in America. . . . Reciprocity, choice, and the offer of complete membership are all important [in understanding immigration and citizenship] because it is a hard road to come to America and to arrive at any sense of belonging.”<sup>27</sup> Thus, lawful immigrants who abide by the contractual and affiliative bargain should be treated as Americans in transition and enjoy certain rights of that identity.

Extending this discussion to unauthorized immigrants in a subsequent book, *Immigration Outside the Law*, Motomura argues that unauthorized immigrants should also be enveloped and welcomed into our American society, much like the Americans in transition who are in the country lawfully. Utilizing the “immigration as contract” and “immigration as affiliation” concepts in the unauthorized immigrant context, while weaving the arguments through the analytical framework of the groundbreaking case of *Plyler v. Doe*, Motomura asserts: “Based on some combination of contract- and affiliation-based arguments, many unauthorized migrants have been living and working in the United States long enough to be considered Americans in waiting . . . . Both views of immigration [contract and affiliation] combine to support claims based on fairness for the integration of unauthorized

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24. *Id.* at 9 (emphasis in original).

25. *Id.* at 152. Motomura explores this topic of equality in discussing the relevance and importance of national borders in effectuating equality, stating:

The equality compatible with national borders is not that every human being is treated exactly the same at any given moment in time. It is, rather, an equality grounded in providing human beings with two forms of equal opportunity. One is access to equality, even if equality is not immediate. The other is meaningful choice, so that differences reflect individual preferences rather than coercion or constraints.

Motomura, *supra* note 12, at 134.

26. See generally MOTOMURA, *supra* note 19.

27. *Id.* at 166-67.

migrants.”<sup>28</sup> Motomura artfully concludes that the contractual, affiliative and transitional characteristics of certain authorized and unauthorized immigrants support the conclusion of membership inclusion into the American social and political community.

Also tackling the issue of membership inclusion for the undocumented immigrant community, Elizabeth Keyes critiques aspects of the narrative strategy that continues to proliferate around the “Dreamers,” a group of young undocumented immigrants who would benefit from the beleaguered proposed immigration reform legislation known as The DREAM Act.<sup>29</sup> The typical Dreamer narrative surrounding the young would-be beneficiaries essentially states that the Dreamers should receive immigration benefits because they are “the best and brightest” and, because they came to the United States as children, are “innocent” of the wrongdoing of entering unlawfully.<sup>30</sup> Keyes discusses various theoretical models of citizenship conception and how such theories would apply to Dreamers, noting that each relies upon the desirable characteristics of the touted narrative, including the Dreamers’ ostensibly important connections and contributions to the United States. Thus, Keyes conceptualizes the membership model of societal and political inclusion to the Dreamer community.

These arguments approach the question of justice through the frame of contemporary controversies, offering models that question the implementation of current law and policies. Other theorists challenge the concept of justice at a foundational level, querying the moral underpinnings of immigration law and its focus on borders and exclusionary goals rather than one of membership ascription via affiliative ties and based on moral justifications.

Joseph H. Carens advocates for an inclusive citizenship inscription and an immigration system unbounded by geographic borders. While recognizing that the conventional widely-held belief is that nations are entitled to control their borders, Carens argues that “discretionary control over immigration is incompatible with fundamental democratic principles and that justice requires open borders.”<sup>31</sup> Relying upon three assumptions, he asserts that an open immigration system is morally justified and therefore immigrants here should be part of our larger citizenship and those who desire to come should be welcomed. “First,” he argues, “there is no natural social order.”<sup>32</sup> Thus, there is no inherent rationale for closed political borders. “Second, in evaluating the moral status of alternative forms of political and social

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28. Motomura, *supra* note 12, at 111-12.

29. Elizabeth Keyes, *Defining American: The DREAM Act, Immigration Reform and Citizenship*, 14 NEV. L.J. 101 (2013) [hereinafter *Defining American*]. See also discussion of the DREAM Act, *supra* note 10.

30. See Keyes, *supra* note 29, at 102.

31. CARENS, *supra* note 12, at 10.

32. *Id.* at 226.

organization,” he continues, “we must start from the premise that all human beings are of equal moral worth.”<sup>33</sup> Together with this third premise—“restrictions on freedom of human beings require a moral justification”—he concludes that there is no morally sound reason to distinguish between us (i.e., Americans) versus them (i.e. everyone else).<sup>34</sup> In his estimation, then, a just immigration system requires treating all people as equal. He concedes that his ideas are not politically feasible but argues that such a system would benefit nations politically, socially and economically.<sup>35</sup>

On this same end of the inclusivity spectrum in discussing membership (and, in legal terms, citizenship), Martha Nussbaum also utilizes a philosophical framework to argue that immigration systems’ ultimate goal should be one of “cosmopolitan humanity.”<sup>36</sup> Nussbaum states that an ethic of *cosmos* would embrace the individuals’ identities as a positive force for creating a society in the Stoic tradition of compassion for those who are different from us.<sup>37</sup> Indeed, one must take great care to cultivate what she calls “one’s own sphere” for both individual and universalist terms.<sup>38</sup> This concept, she asserts, would uphold American traditions of self-realization and respect for human dignity and equality because (as Carens also asserts) “[i]f we really do believe that all human beings are created equal and endowed with certain inalienable rights, we are morally required to think about what that conception requires us to do with and for the rest of the world.”<sup>39</sup> In other words, this framework is not grounded in mere self-sacrifice, but rather would benefit all of us as it recognizes and values all humanity. As Nussbaum theorizes:

The accident of where one is born is just that, an accident; any human being might have been born in any nation . . . . [W]e should not allow differences of nationality or class or ethnic membership or even gender to erect barriers between us and our fellow human beings. We should recognize humanity wherever it occurs, and give its fundamental

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33. *Id.*

34. *Id.* at 226-27.

35. *Id.* at 227-28 (arguing, for example, that open borders would lead to freedom of movement, which will bring equality of opportunities and the eradication of inequality generally).

36. Martha C. Nussbaum, *Patriotism and Cosmopolitan*, BOS. REV. (Oct. 1, 1994) <http://bostonreview.net/martha-nussbaum-patriot-and-cosmopolitanism> [<https://perma.cc/W9RE-E35L>].

37. *Id.*

38. *Id.* at 3.

39. *Id.* at 7. See CARENS, *supra* note 31, at 225 (stating, “It is never enough to justify a set of social arrangements governing human beings to say that these arrangements are good for us, without regard for others, whoever the ‘us’ may be. We have to appeal to principles and arguments that take everyone’s interests into account or that explain why the social arrangements are reasonable and fair to everyone who is subject to them.”).

ingredients, reason and moral capacity, our first allegiance and respect.<sup>40</sup>

Like Carens, Nussbaum asserts that humanitarian-centered systems should ground immigration policy and legislation.<sup>41</sup> In this sense, justice for immigrants is achieved through broad globally-defined ascriptions of membership, allowing for individuality while focusing on universal ideals.

Indeed, U.S. immigration law has included concepts of global citizenship and humanity-centric ideals within its original structure and as it has evolved. Although complicated by deeply-entrenched concerns about labor, land and economic rights and heavily influenced by U.S. historical practices of land-grabbing and slavery, immigration law contemplates the provision of rights to those fleeing danger or otherwise of sympathetic condition. As Matthew Lindsay writes, our historical record showcases that even the drafters at the First Constitutional Congress wrestled with “two fundamental but potentially incompatible aspirations: the creation of a national political fellowship sustained by the broadly shared republican value of ‘public virtue,’ and the revolutionary ideal of the American republic as an ‘asylum of liberty and a refuge to the victims of Old World oppression.’”<sup>42</sup> Interestingly, just as contemporary narratives employ themes of membership ascription as affiliative ties become stronger over time (hearkening to Motomura’s arguments) and themes of moral justice owed to certain communities of immigrants,<sup>43</sup> the first generation of legislators saw the act of migrating to the United States as an indicator of moral and political regeneration.<sup>44</sup> Focused, of course, on

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40. *Id.*

41. I have written about the use of humanity-centered arguments in calls for legal reform in the context of the same-sex marriage equality movement where some advocates strategized that heteronormative constructs resulted in ostracizing others in the community. *Narrative Reform Dilemmas*, *supra* note 9 at 1115. One scholar, for example, argues that “Humanization . . . does not require homogenization. Efforts toward humanization must include changing the cultural re-presentations of sexual minorities. This necessitates increasing visibility, combating untrue media representations, and replacing the dominant cultural images with more accurate portrayals of the lived experiences of lesbians, gays, bisexuals, and transsexuals.” Nancy Levit, *A Different Kind of Sameness: Beyond Formal Equality and Antisubordination Strategies in Gay Legal Theory*, 61 OHIO ST. L.J. 867, 870 (2000). Thus, appeals to humanity are a common theme in advocating for justice for oppressed or marginalized communities.

42. Matthew J. Lindsay, *Immigration, Sovereignty, and the Constitution of Foreignness*, 45 CONN. L. REV. 743, 751 (2013).

43. During one of the 2018 federal government shutdowns over budget negotiations, Marco Rubio spoke about DACA and opined that deportation is the wrong consequence because it is “immoral to have laws that punish anyone for the mistakes their parents made. It’s immoral to deport someone to a country they’ve never really lived in.” He further characterizes the proposed action of deporting DACA recipients as a “dark stain on our history.” *See Sen. Marco Rubio*, C-SPAN (Jan. 20, 2018).

44. *See* Lindsay, *supra* note 42, at 751.



primarily white Europeans, Lindsay asserts that this “narrative of immigration as regeneration,” coupled with the country’s need for more labor to settle and work the expanding territory would “transform the vast majority of European immigrants into patriotic American citizens.”<sup>45</sup> Thus, a membership ideology informed legislation and policy since the birth of the nation.

To conclude, what these theorists and scholars teach is that granting rights through a theory of membership is a sound strategy for immigration reform. Embracing an American political and legal system in which immigrants can achieve promised and outlined outcomes through a path that is fair, just and clear is grounded in practical, philosophical, humanitarian and historical roots. Thus, legislative reform must embody fairness for immigrants who abide by the social and legal “contract” afforded to them through the U.S. immigration system. Part II discusses past efforts to craft immigration narratives that, I argue, did not have sound basis and cohesive support. This discussion sets up Part III, which details how the current political climate presents a ripe opportunity to capitalize on resistance narratives grounded in this concept of membership due, in part, to the collaborative efforts already fomenting change.

## PART II: LEARNING FROM PAST STRATEGIES

Crafting a strategy that embraces a narrative of justice for immigrants based on membership ideology is a viable goal. Part III discusses the current political environment and nascent collaborative resistance movement that can help bring change. Before setting that stage, though, it is important to explore past efforts to craft pro-immigrant narratives that aimed for political and legislative reform but that consistently fell short. With this history and knowledge, contemporary efforts can avoid walking those same paths.

### A. CONTENDING WITH THE IDENTITY POLITICS OF IMMIGRATION LAW

As a first step towards collaboratively-created change, and as I have discussed in prior works, immigrant advocates must contend with the long history of racist policies and laws, which have worked explicitly (in a historical context) and implicitly (historically and contemporarily) to negatively target immigrants generally and specifically exclude and deport immigrants of color.<sup>46</sup> This history of racism and discrimination brands the immigrant an especially easy target for negative typecasting because “the immigrant” in

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45. *Id.* at 751-52.

46. See Mariela Olivares, *Intersectionality at the Intersection of Profiteering & Immigration Detention*, 94 NEB. L. REV. 963, 997 (2016) [hereinafter *Intersectionality at the Intersection*]; *Narrative Reform Dilemmas*, *supra* note 9, at 1094-1106.

the United States occupies the most marginalized of identities—that of a (perceived) criminal person of color.<sup>47</sup>

The criminality narrative as applied to immigrants is a politically volatile strategy that has been effectively employed by both major political parties.<sup>48</sup> Immigration and criminality have become inextricably linked in public and political media and discourse. Both dominant political parties rely on the narrative of the criminal alien to distance themselves from reform and advocacy that may seem too soft on those who violate the immigration laws. In the 2018 political climate of proposed immigration reform, calls to deport “criminal illegal aliens” and substantially restrict further immigration to deter “criminals” have spread far and wide. Trump relies on false claims of immigrant criminality to bolster this narrative, stating, for example, that “open borders have allowed drugs and gangs to pour into our most vulnerable communities. . . . Most tragically, they have caused the loss of many innocent lives.”<sup>49</sup>

In a similar vein, the Democratic party contributes to the narrative by basing its immigration reform platform in part on parsing the worthiness of immigrants, stating, “Democrats will continue to work toward comprehensive immigration reform that fixes our nation’s broken immigration system, improves border security, prioritizes enforcement so we are targeting criminals—not families, keeps families together, and strengthens our economy.”<sup>50</sup> This language refers to President Obama’s now infamous immigration language to support DACA, noting that law should target “felons, not families. Criminals, not children. Gang members, not a mom who’s working hard to provide for her kids.”<sup>51</sup>

These examples paint immigrants as criminal lawbreakers. While the Democrat narrative’s emphasis on immigrants’ latent criminality is powerful enough, Trump blatantly relies on misleading and false statements. This

47. See Olivares, *Intersectionality at the Intersection*, *supra* note 46, at 991.

48. See *id.* at 992-93. This discussion draws and quotes from this prior article.

49. CNN, *State of the Union 2018: Read the full transcript*, Jan. 31, 2018, <https://www.cnn.com/2018/01/30/politics/2018-state-of-the-union-transcript/index.html> [<https://perma.cc/H8W4-WVZ3>].

50. Democratic National Committee, *Immigration Reform*, <https://www.democrats.org/issues/immigration-reform> [<https://perma.cc/MZ6M-SEHB>].

51. President Barack Obama, *Address to the Nation on Immigration*, The White House Office of the Press Secretary (Nov. 20, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration> [<http://perma.cc/DED7-7H2Y>]. President Obama has otherwise spoken in terms of “good” versus “bad” immigrants. See Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, N.Y. TIMES (Apr. 6, 2014), [http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?\\_r=0](http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?_r=0), (discussing the high number of deportations in the years of the Obama Administration, and stating that though President Obama claimed to be deporting criminals, gang members, and other criminals, that is not actually the case).

typical and inaccurate rhetoric that conflates criminality with immigrant status is bolstered by the Democratic Party's familiar yet faulty assertion that some immigrants are worthy of relief while others are not.<sup>52</sup> Yet, despite the popular perception that typecasts immigrants as rule-breakers, research has routinely shown that immigrants do not commit crime at a higher rate than U.S. citizens,<sup>53</sup> bucking the myth that status as an immigrant somehow correlates to a criminal nature or propensity.<sup>54</sup> The consequences of using this false corollary go far beyond the philosophical, however, and have critical effects on individuals and families every day. Legislative or political reform that increases criminal effects on immigrants or expands the deportable offenses due to criminal conduct, or even *perceived* criminality as some have offered, would result in more immigrants deported.<sup>55</sup> It is therefore critical

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52. See, e.g., Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L.J. 207, 221–22 (2012) [hereinafter *Beyond Saints and Sinners*] (describing how the narrative of criminality and victimhood benefits certain immigrants (the perceived victims) and inordinately targets others (the perceived criminals) without suitable discretion for complexities); Mariela Olivares, *Renewing the Dream: DREAM Act Redux and Immigration Reform*, 16 HARV. LATINO L. REV. 79, 89–98 (2013) (asserting that advocates for DREAM Act legislation historically fell victim to the problems inherent in the narrative dilemma of good versus bad immigrant).

53. See WALTER A. EWING, DANIEL E. MARTÍNEZ & RUBÉN G. RUMBAUT, AM. IMMIGR. COUNCIL, *THE CRIMINALIZATION OF IMMIGRATION IN THE UNITED STATES* 4 (2015), <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states> [<https://perma.cc/XX5U-MRW8>] (surveying the data and showing: “[E]vidence that immigrants tend *not* to be criminals is overwhelming. . . . Crime rates in the United States have trended downward for many years at the same time that the number of immigrants has grown. Second, immigrants are *less* likely to be incarcerated than the native-born. And, third, immigrants are *less* likely than the native-born to engage in criminal behaviors that tend to land one in prison.”); see also César Cuauhtémoc García Hernández, *The Perverse Logic of Immigration Detention: Unraveling the Rationality of Imprisoning Immigrants Based on Markers of Race and Class Otherness*, 1 COLUM. J. RACE & L. 353, 362 (2012) (citing Ramiro Martínez, Jr., *Coming to America: The Impact of the New Immigration on Crime, Immigration and Crime: RACE, ETHNICITY, AND VIOLENCE* 1, 10–12 (Ramiro Martínez, Jr. & Abel Valenzuela, Jr. eds., 2006)) (noting evidence that immigrants are actually less prone to criminal behavior than U.S. citizens); Kevin R. Johnson, *It's the Economy, Stupid: The Hijacking of the Debate Over Immigration Reform by Monsters, Ghosts and Goblins (or the War on Drugs, War on Terror, Narcoterrorists, Etc.)*, 13 CHAP. L. REV. 583, 592 (2010) (same) (citing KEVIN R. JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* 155–58 (2007)).

54. See also Olivares, *Intersectionality at the Intersection*, *supra* note 46.

55. Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 30, 2017) (“the [DHS] ... shall prioritize for removal those aliens [who] have been convicted of criminal offense ... charged with any criminal offense, where such charge has not been resolved [and] have committed acts that constitute a chargeable criminal offense”). See also Memorandum from John Kelly, Sec’y of the Dep’t of Homeland Sec. to DHS Leadership 2-3 (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf) [<https://perma.cc/C3TB-YB62>] (directing Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP) and US

that a future strategy aiming for justice confronts this reality and avoids partaking in this seemingly easy sound-bite rhetoric.

In addition to the perceived identity of criminal, the explicitly and implicitly racist laws set the stage to more easily target immigrants of color. My past scholarship has detailed in depth the racist historical framework for the current immigration law and policy system.<sup>56</sup> From the 1888 Chinese Exclusion Act to racially biased quota systems and standards through the twentieth century, law and policy has oppressed immigrants of color. In more contemporary times, the Immigration Reform and Control Act (IRCA) of 1986 disproportionately negatively targets Mexican immigrants and the Secure Communities federal program mandates local law enforcement cooperation with federal immigration authorities to apprehend and jail immigrants.<sup>57</sup> These efforts exploit national security concerns to target immigrants of color for arrest, detention, and deportation.<sup>58</sup>

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Citizenship and Immigration Services (USCIS) to “issue further guidance to allocate appropriate resources” for these priorities). Angélica Cházaro has written poignantly about the critical effects of governmental and executive prioritization of “criminal” or “dangerous” aliens for deportation and the severe consequences these policies bring to immigrants caught in the narrative crossfire: “pushing for reforms that would focus enforcement on so-called dangerous criminals instead of innocent immigrants exempts immigration enforcement practices from critique by making them isolatable to so-called real immigrant criminality. This ends up shoring up both the criminal alien category and the problems with the criminal justice system itself.”). Angélica Cházaro, *Challenging the “Criminal Alien” Paradigm*, 63 UCLA L. REV. 594, 653-54 (2016).

56. See *Narrative Reform Dilemmas*, *supra* note 9, at 1094-1106; Olivares, *supra* note 46, at 1006-15.

57. See Leticia M. Saucedo, *Mexicans, Immigrants, Cultural Narratives, and National Origin*, 44 ARIZ. ST. L.J. 305, 330 (2012). See Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2050 (2007) (appropriating \$200 million to the Department of Homeland Security to enhance efforts to remove aliens from the United States after they are deemed deportable for being convicted of a crime or sentenced to imprisonment). See *Secure Communities*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <http://www.ice.gov/secure-communities#a1> [<https://perma.cc/5PDG-DE4Y>] (asserting that Secure Communities applies to all jurisdictions within the fifty states, the District of Columbia and five U.S. territories and that Secured Communities provides “clear and common-sense” priorities for immigration enforcement); see also Press Release, U.S. Dep’t of Homeland Sec., *ICE Unveils Sweeping New Plan to Target Criminal Aliens in Jails Nationwide* (March 28, 2008) (on file with author) (adding that one of the most important features of the plan is the distribution of integration technology that will link local law enforcement agencies to DHS and Federal Bureau of Investigations (“FBI”) biometric databases).

58. See Yolanda Vázquez, *Constructing Crimmigration: Latino Subordination in a “Post-Racial” World*, 76 OHIO ST. L.J. 600, 650 (2015) (discussing how Secure Communities targeted a disproportionate number of Latino men); Katarina Ramos, *Criminalizing Race in the Name of Secure Communities*, 48 CAL. W. L. REV. 317, 341 (2012) (concluding that law enforcement and government authorities intimidate residents through the Secure Communities program by subjecting people typically unnoticed by ICE in removal proceedings, which creates a fearful group of second-class citizens). Indeed, this period is marked by a conflation of national security concerns with immigration, leading to the success of measures like Secure

The 2016 presidential election cycle, however, highlighted a new level of explicit racist and xenophobic messaging. Then-Republican presidential candidate Trump labeled Mexican immigrants as “people that have lots of problems . . . . They’re bringing drugs. They’re bringing crime. They’re rapists.”<sup>59</sup> His campaign boldly proclaimed: “Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.”<sup>60</sup> Although some challenged his statements,<sup>61</sup> his popularity and racist, xenophobic rhetoric catapulted him to the White House, where he continues to propagate divisive rhetoric. From calling for more immigration from countries “like Norway” and not from Africa, El Salvador, and Haiti, which he deemed “shithole countries,” Trump does nothing to hide his derision of immigrants of color.<sup>62</sup> His candidacy and success highlight that the practical effect of societal perceptions and stereotypes continue to support this ongoing racial, cultural, religious and ethnocentric oppression in society, law and policy.

#### B. THE “VULNERABLE AND INNOCENT CHILDREN” CASE STUDY

Immigrant advocates attempt to counter these discriminatory perceptions and racist policies by using normative ideology to craft successful reform strategies. As one example, activists have used the plight of “innocent”

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Communities under the guise of protecting communities from criminal threats, including security concerns. *See, e.g.,* Vázquez, *supra* note 58, at 648–49.

59. *Full Text: Donald Trump Announces a Presidential Bid*, WASH. POST (June 16, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/> [<https://perma.cc/VG9A-3UF7>]. As discussed *infra*, the data regarding immigrant criminality proves that immigrants do not commit crimes at higher rates than U.S. citizens.

60. Press Release, DONALD J. TRUMP FOR PRESIDENT, INC., Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015), <https://web.archive.org/web/20151207230751/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> [<https://perma.cc/Q6JY-MDJM>].

61. *See, e.g.,* Jonathan Martin, *Donald Trump’s Anything-Goes Campaign Sets an Alarming Political Precedent*, N.Y. TIMES (Sept. 17, 2016), <https://www.nytimes.com/2016/09/18/us/politics/donald-trump-presidential-race.html> (providing multiple examples of both Democrats and Republicans responding to the way Trump ran his campaign and predicting the likely negative outcomes if he were to win the presidency); Stephen Collinson, *Donald Trump’s Strange Campaign Gets Stranger*, CNN (Aug. 3, 2016, 4:04 PM), <http://www.cnn.com/2016/08/03/politics/donald-trump-paul-ryan-john-mccain-election-2016/> [<https://perma.cc/SDW8-BYL3>] (providing examples of well-known Republicans who made clear they were voting for Hillary Clinton because of Trump’s lack of fitness to be president).

62. *See* Josh Dawsey, *Trump derides protections for immigrants from ‘shithole’ countries*, WASH. POST (Jan. 12 2018), [https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94\\_story.html?utm\\_term=.93b926a0b8f4](https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.93b926a0b8f4) [<http://perma.cc/2VB7-QDZ8>].

immigrant children to push for benefits for DACA recipients and those eligible for DACA. Recently, immigration reform to assist DACA students motivated Democrat lawmakers to stall budget negotiations in 2018, including a day-long speech by House Minority Leader, Representative Nancy Pelosi, to encourage legislation that would benefit immigrant children.<sup>63</sup> Indeed, in the February 2018 Continuing Resolution that averted a federal government shutdown by passing a preliminary budget, lawmakers from both dominant political parties insisted on ongoing protections for the federally-funded Child Health Insurance Program (CHIP), which provides health insurance protections and assistance for children, many of whom do not have private health insurance and do not qualify for Medicaid programs.<sup>64</sup> In these examples, the focus is squarely on helping vulnerable youth—“innocent” immigrant youth and potentially uninsured American children. The strategy is seemingly smart—which politician wants to take away a child’s medical coverage or punish the young and promising immigrant?

The focus on the plight of immigrant children and families to advocate more broadly for immigrant rights was, in many ways, a sound strategic decision. When the majority politic was confronted with the reality that the U.S. government detains and deports children who have been here long-term and have no criminal history, response and action ensued. Thus, transforming the narrative in a normative context – from illegal alien criminal invader to blameless children– helps the advocate converge the fight for justice with the reality of the majority, often to legislative and political success.<sup>65</sup>

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63. See Steve Peoples & Alan Fram, *Pelosi stages 8-hour speech to push for vote for ‘dreamers,’* WASH. POST (Feb. 7, 2018), <https://www.cnbc.com/2018/02/07/pelosi-stages-8-hour-speech-to-push-for-vote-for-dreamers.html> [<https://perma.cc/VD35-JJ3B>] (it is important to note that this popular strategy has conflated the DREAM Act with DACA beneficiaries and DACA-eligible youth. The two programs are markedly different in scope and, as noted above, the DREAM Act has never become law); see *supra* note 10, at 4 (The efforts to combine the two rely on a focus of helping vulnerable children and youth, who, as the narrative explains, are innocent of their parents’ wrongdoing in bringing them to the country illegally).

64. See Kelly Whitener, *Bipartisan Budget Act Funds CHIP for Four More Years and Includes Other Important Health Care Provisions*, Georgetown University Health Policy Institute Center for Children and Families, SAY AHHH! BLOG (Feb. 9, 2018), <https://ccf.georgetown.edu/2018/02/09/bipartisan-budget-act-includes-several-health-care-provisions/> [<https://perma.cc/2QAG-VQ6G>] (noting the ongoing piecemeal efforts to salvage CHIP, “just two weeks ago, we wrote about how Congress passed a 6-year CHIP funding extension, which was good news but long overdue and shortsighted given the 10-year CBO score. We won’t take credit for Congress coming to its senses, but in the ACCESS Act, CHIP is extended for four more years.”).

65. See Olivares, *Intersectionality at the Intersection*, *supra* note 46 at 991, 999 (including to the narrative strategy in the family immigrant detention context as it pertains to the powerful identity politics surrounding immigrant rights). This strategy harkens strongly to the iconic work of Derrick Bell, who cautioned about the fealty to a reliance on an interest convergence strategy in the ongoing struggle for racial equality because “The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests

Advocates, however, have learned that relying on a narrative focused on the vulnerability of children has proven unsuccessful in immigration reform. In fact, as I have written, the “innocent and vulnerable” children narrative has consistently failed to get the DREAM Act passed despite historical bi-partisan support since its initial congressional introduction in 2001.<sup>66</sup> Although more recently the same strategy achieved a small measure of traction in calling attention to the plight of Central American mothers and children jailed in detention centers upon their arrival in the United States, as of this writing, the U.S. government continues to imprison families and children.<sup>67</sup> In the end, then, the narrative reliance on the vulnerability of women and children achieved incomplete success, and any public empathy towards this community has largely turned to apathy.

### C. INCOMPLETE STRATEGIES IN CRAFTING NARRATIVES

Why do narrative strategies often fail in the immigrant justice movement? In my last article, I wrote about the informed and calculated advocacy strategy towards same-sex marriage equality that eventually proved successful after decades of effort.<sup>68</sup> Immigrant advocates similarly have worked for years to craft a successful and sympathetic strategy, though, in contrast to the same-sex equality movement, have consistently failed. Lisa Martinez writes about how immigrant justice activists have changed the narrative framework over time and in line with social and political strategic goals, noting “[F]rames provide the conceptual bridges that link social psychological considerations with structural/organization goals. The goal for activists is to choose frames that will not only guide the movement’s action, but also

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of whites . . . [but] will not authorize a judicial remedy providing effective racial equality for blacks where the remedy sought threatens the superior societal status of middle and upper class whites.” Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980). I discuss more about this connection below.

66. See, e.g., *Narrative Reform Dilemmas*, *supra* note 9, at 1128-29.

67. See, e.g., Letter from Congress of the United States, House of Representatives, to Jeh Johnson, Secretary, U.S. Dep’t of Homeland Sec. (May 27, 2015) (expressing concern about the practice of detaining immigrant mothers and children in “jail-like facilities”), available at [https://lofgren.house.gov/uploadedfiles/family\\_detention.pdf](https://lofgren.house.gov/uploadedfiles/family_detention.pdf). Activists in 2016 were able to successfully sue to block the continued licensure of two of the Texas family detention facilities, effectively creating a roadblock (but not a complete halt) to the family detention regime. See *Grassroots Leadership, Inc. v. Texas Dep’t of Fam. and Protective Serv.*, No. D-1-GN-15-004336 (Travis Cty. Dist. Ct. Dec. 2, 2016); see also *Grassroots Leadership, Texas court blocks licensing of family detention camps as childcare facilities*, (Dec. 3, 2016), <http://grassrootsleadership.org/releases/2016/12/breaking-texas-court-blocks-licensing-family-detention-camps-childcare-facilities> [ <https://perma.cc/H5GK-H5ZT>]. Despite these efforts, family detention continues. See, e.g., Rebecca Sharpless, *Cosmopolitan Democracy and the Detention of Immigrant Families*, 47 N.M. L. REV. 19, 32-45 (2017).

68. See *Narrative Reform Dilemmas*, *supra* note 9.

resonate with target audiences, including policymakers and the general public.”<sup>69</sup> Yet, as non-citizens, concepts of citizenship are outside of the scope of viable narratives to assist immigrants.<sup>70</sup> Martinez writes that advocacy strategies in past decades focused on normative ideology, beckoning to the sympathetic political “middle” with themes of shared American identity, family unity and humanitarianism.<sup>71</sup> She notes that, more recently, frameworks have shifted to embrace other types of normative ideals, including “family separation . . . meritocracy, hard work and deservingness,” which she (as many others) cautions, plays into the divisive narrative of worthy versus unworthy and has critical negative consequences.<sup>72</sup> Importantly, then, in defining advocacy goals, we cannot be confined to simple sound-bite narratives of normative American ideology.

Moreover, as noncitizens, citizenship ideology—even one outside the goal of actual citizenship attainment—provides hollow gains for immigrants. Muneer Ahmad warns against a framework of what he deems “earned citizenship” that requires that the immigrant complete a set of normative and neo-liberal moralistic ideals to reach “American-ness,” akin to what Martinez notes were key parts of past advocacy movements.<sup>73</sup> Such a strategy ultimately pits the immigrant against a perhaps unobtainable ideal that no citizen is subjected to and that creates the counter-negative of the unworthy: “The substantive requirements of earned citizenship conjure and project an idealized citizen who is, fundamentally, a neoliberal actor, one who through economic and moral self-sufficiency is deemed worthy of reward. By conditioning benefits upon such performance, earned citizenship thus disciplines the previously unruly immigrant.”<sup>74</sup> Ahmad concludes that the earned citizenship

69. Lisa M. Martinez, *The Immigrant Rights Movement: Then and Now*, Mobilizing Ideas, (Dec. 3, 2015), <https://mobilizingideas.wordpress.com/2015/12/03/the-immigrant-rights-movement-then-and-now/> [<https://perma.cc/8QV4-2ZGG>] (citing David A. Snow, R. Burke Rockford, Jr., Steven K. Worden, & Robert D. Benford, *Frame Alignment Processes, Micromobilization, and Movement Participation* 51 AM. SOC. REV. 464 (1986); Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611 (2000); Daniel M. Cress & David A. Snow, *The Outcomes of Homeless Mobilization: The Influence of Organization, Disruption, Political Mediation, and Framing* 105 AM. J. SOC. 1063 (2000)).

70. See Olivares, *Intersectionality at the Intersection*, *supra* note 46, at 1001-06 (discussing the subordinating effect of lack of citizenship status).

71. Martinez, *supra* note 69 (describing activist strategies in the early 2000s).

72. *Id.* (citations omitted). I and other scholars and activists have similarly noted the collateral consequences of utilizing a worthy versus unworthy narrative. See *Narrative Reform Dilemmas*, *supra* note 9, at 1127 (citing Keyes, *supra* note 52, at 221–22).

73. Muneer I. Ahmad, *Beyond Earned Citizenship*, 52 HARV. C.R.-C.L. L. REV. 257, 261 (2017).

74. *Id.* at 262-63. Ahmad counters that this conception of unearned citizenship is in direct conflict with the most common forms of “earned” citizenship—that is through the “accident of birth.” *Id.* (“Such a citizenship regime suffers from a fundamental tension, as



frame has not only been an unsuccessful narrative strategy but actually leads to increased divisiveness and subordination of immigrants. Therefore, both conceptions—the normative ideology that equates immigrants as “just like us Americans,” or, on the path to achieving citizenship-esque qualities—have proven futile for reformers.

Thus, as I argue, rather than adopt goals that seek citizenship in either a legalistic or moralistic concept, activists may be better situated to seek inclusion in a membership framework. Indeed, Americans idealize and prioritize citizenship in such a way that affording immigrants the claim to citizenship has led to stalled negotiations and conflict. Although there may be bipartisan support for assisting certain groups of immigrants, calls for a “path to citizenship” often invoke protest akin to the opposition for any system labeled “amnesty.”<sup>75</sup> The call to narrow citizenship is perhaps most acute in the calls to end birthright citizenship by way of Constitutional amendment. As Ahmad writes, “in the same moment that restrictionists have pressed the case that legalization of undocumented immigrants is amnesty, they have engaged in a complementary strategy to eliminate citizenship for the children of undocumented parents.”<sup>76</sup> In crafting a new strategy that both captures the resistance and collaborative momentum, these lessons of unsuccessful movements regarding normative notions of American-ness and citizenship idealization are illustrative.

### PART III: STRATEGIZING COLLABORATIVELY

Discussions regarding past incomplete narratives push activists in this time of heightened resistance to carefully plan next moves. This Part discusses the current environment of activism and the interesting collaborations that have risen since the 2016 election. Section A begins by outlining the ways in which a strategy must consider the current environment of divisiveness. It is imperative to acknowledge and confront the language of all sides

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citizenship promises equality but its distribution is morally arbitrary. . . . Such asymmetric application of behavioral requirements to citizenship transmission is morally unstable, and invites pernicious social and political practices in order to justify the asymmetry.”).

75. The discussion regarding granting eventual citizenship to certain DACA recipients or DACA-eligible people (erroneously conflated with the “Dreamer” label) evokes popular rhetoric about how doing so would reward illegal behavior, as Senator Ted Cruz opined: “I do not believe we should be granting a path to citizenship to anybody here illegally, . . . ‘Doing so is inconsistent with the promises we made to the men and women who elected us.’” Sahil Kapur, *Cruz Blasts Citizenship Path for Dreamers Suggested by Trump*, BLOOMBERG (Jan. 25, 2018), available at <https://www.bloomberg.com/news/articles/2018-01-25/cruz-blasts-citizenship-path-for-dreamers-suggested-by-trump> [<http://perma.cc/LJZ3-GB32>].

76. Ahmad, *supra* note 73, at 292 (writing about the calls to limit *jus soli* citizenship by re-interpreting the Fourteenth Amendment to afford citizenship only to children of U.S. citizens, Lawful Permanent Residents, and in one proposal, to the children of non-citizens who are in active service with the U.S. military).

when, as I discuss in Part IV, collaborations form. Importantly, however, despite the opposition's strident rhetoric, there is steadily growing support for humanitarian immigration reform, especially as immigration crackdowns affect more people across the political spectrum. Section B argues that now is an ideal time to capitalize on the current political and societal resistance to nurture these active and successful collaborations for eventual progress, as discussed in Part IV.

#### A. SETTING UP THE STRATEGY

A key point in establishing a successful campaign for immigrant justice is acknowledging the deep social and political schisms that exist. Simply put, the election of Trump to the presidency despite his language of division and hate is ample support for the fact that many Americans condone targeting immigrants. From his campaign speeches in 2016 that propelled him to the White House to his ongoing campaign-style rallies, Trump's untrue and spiteful rhetoric about immigrants has been consistent. In one 2016 speech, Trump repeatedly referred to undocumented immigrants as "criminals," "dangerous," "less educated" and "low-skilled."<sup>77</sup> In a more recent speech, Trump riled up the crowd by referring to immigrants as "animals."<sup>78</sup> Such spiteful language meant to incite hate and create deeper social fissures had been missing in more contemporary times in which the political norm embraced a measure of diplomacy, leaving the name-calling to the far ends of the political spectrum. But the popularity of these deep biases unmasks a new political and societal norm that must be recognized and confronted.

In a recent piece that advocates for bolder measures of resistance against Trump policies, Daniel Morales discusses the entrenched divisions that exist

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77. Philip Bump, *Here's what Donald Trump said in his big immigration speech*, THE WASH. POST (Aug. 31, 2016), available at [https://www.washingtonpost.com/news/the-fix/wp/2016/08/31/heres-what-donald-trump-said-in-his-big-immigration-speech-annotated/?utm\\_term=.5b5887b94cee](https://www.washingtonpost.com/news/the-fix/wp/2016/08/31/heres-what-donald-trump-said-in-his-big-immigration-speech-annotated/?utm_term=.5b5887b94cee). Part of Trump's narrative in this Arizona campaign-style speech was that of the ideal immigrant, stating that "not everyone who seeks to join our country will be able to successfully assimilate . . . It's our right, as a sovereign nation to chose [sic] immigrants that we think are the likeliest to thrive and flourish and love us." *Id.* He blamed the Obama administration and Hillary Clinton for crimes committed by undocumented immigrants, saying "[c]ountless Americans who have died in recent years would be alive today if not for the open border policies of this administration." *Id.*

78. Alana Abramson, *I Can Be More Presidential Than Any President. Read Trump's Ohio Rally Speech*, TIME (July 26, 2017), <http://time.com/4874161/donald-trump-transcript-youngstown-ohio/> [<http://perma.cc/BB6H-Q5XJ>] (Trump stated, "One by one we are finding the illegal gang members, drug dealers, thieves, robbers, criminals and killers. And we are sending them the hell back home where they came from . . . The predators and criminal aliens who poison our communities with drugs and prey on innocent people, these beautiful, beautiful, innocent young people will, will find no safe haven anywhere in our country." Trump later analogizes these immigrants to "animals torturing their victims before they kill them.").

between the far-right nationalist populous and the political left.<sup>79</sup> As he notes, “[t]he way that white nationalism pervades the American subconscious amplifies the power of anti-immigrant dissenters. . . . The grip of white supremacy on the white American subconscious puts the mainstream immigration left on the defensive.”<sup>80</sup> Morales points out that this discord has deep roots—discussing, for example, the rise and popularity of politician and political commentator Pat Buchanan in the 1990s, noting, “For all the shock and awe of Donald Trump’s campaign, his brand of law and order white nationalism was never far below the surface.”<sup>81</sup> Indeed, as explained above, the history of immigration law is a history of discrimination.<sup>82</sup> In that respect, then, the current wave of white nationalism and the vehemently anti-immigrant political right is simply carrying the long-lit torch of racism that fuels immigration law and policy.

Morales advocates for a reframing of the political left’s call for immigrant justice by eschewing the pragmatic status quo, exemplified by Carens’ call to philosophically sound but not politically viable measures.<sup>83</sup> Morales instead intreats “changing our stance and orientation towards immigration reform, and rethinking the limits of the legal tools at our disposal.”<sup>84</sup> He argues that immigrant advocates must take on their efforts with the same emotionally-charged fervor as the political right employs and reconceive the possibilities of reform through other means, like city and state regulatory control and provisions.<sup>85</sup> Thus, just as there is renewed zeal for oppressive measures against immigrants from the far right, now is an ideal time to capitalize on the wave of resistance politics to fight for immigrant justice.

In fact, recent polls indicate that most Americans support justice-minded immigration reform. A 2016 CNN poll reported that 88% of Americans support immigration reform, including mechanisms for citizenship acquisition for certain undocumented immigrants.<sup>86</sup> Similarly, another 2016

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79. Daniel I. Morales, *Dissent in Immigration*, LAW, CULTURE, AND THE HUMANITIES (June 2017).

80. *Id.* at 16.

81. *Id.* at 13.

82. *See infra* at Part II.

83. *See CARENS, supra* note 12.

84. Morales, *supra* note 79, at 20.

85. *Id.* (noting “citizen advocacy on behalf of noncitizens [who are neither citizens nor voters] must be powered by a supercharged version of the emotional sustenance required of any push for social justice.” . . . “Re-imagining immigration law as a local issue to be settled by smaller polities grants anti-immigrant communities a feeling of control over their destinies . . . while freeing pro-immigrant communities, like sanctuary cities, to live up to the liberal ideal that sanctuary implies, and welcome far more immigrants than national control permits.”).

86. *See CNN Poll: 88% of Americans Support Immigration Reform with a Path to Citizenship*, AMERICA’S VOICE (Sept. 7, 2016), [http://americasvoice.org/press\\_releases/cnn-](http://americasvoice.org/press_releases/cnn-)

Gallup poll found that 84% of Americans support “allowing immigrants living in the U.S. illegally the chance to become U.S. citizens.”<sup>87</sup> In contrast, approximately 11% of those polled favored immigrant deportation as a priority.<sup>88</sup> Fifty-eight percent of those surveyed opposed the creation of a new border wall (as favored by Trump), compared to the 52% that were in favor of such a wall in a 2015 poll.<sup>89</sup> A 2017 Quinnipiac poll corroborates these findings: 59% of the surveyed registered voters were in favor of the government granting undocumented immigrants lawful permission to remain in the United States and eventually allow them to apply for US. citizenship.<sup>90</sup> Further, while support for legalizing the undocumented population is higher among those people who identify politically as Democrats, multiple polls reflected support among Republicans for a path to legal status, albeit with “certain requirements.”<sup>91</sup> Similarly, a 2018 CNN poll finds high bipartisan support for continuing the DACA program with 83% of those polled in favor of the program’s continuation, including 94% of Democrats, 83% of Independents and even 64% of Republicans voicing their support.<sup>92</sup>

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poll-88-americans-support-immigration-reform-path-citizenship/ [https://perma.cc/Z6GT-S2SJ].

87. See Jeffrey M. Jones, *More Republicans Favor Path to Citizenship Than Wall*, GALLUP (July 20, 2016), available at [http://news.gallup.com/poll/193817/republicans-favor-path-citizenship-wall.aspx?g\\_source=immigration%20citizenship%20wall&g\\_medium=search&g\\_campaign=tiles](http://news.gallup.com/poll/193817/republicans-favor-path-citizenship-wall.aspx?g_source=immigration%20citizenship%20wall&g_medium=search&g_campaign=tiles) [https://perma.cc/39ST-7YDG].

88. *Id.*; see also Karlyn Bowman, *Reading the Polls: Welcome to America? What Americans Say About Immigration*, FORBES (Feb. 14, 2017) (providing comparative statistics that reflect some changing immigration attitudes and more recent statistics reflecting increasing support for immigration levels and paths to legal status for undocumented immigrants), <https://www.forbes.com/sites/bowmanmarsico/2017/02/14/reading-the-polls-welcome-to-america-what-americans-say-about-immigration/#3d0fc30324e6> [https://perma.cc/3QRG-HHZN].

89. See Bowman, *supra* note 88.

90. See *id.*; *American Voters Want Second Opinion On Obamacare, Quinnipiac University National Poll Finds; Voters Support Immigrants, But Also Back Muslim List*, Quinnipiac University (Jan. 12, 2017), <https://poll.qu.edu/national/release-detail?ReleaseID=2416> [https://perma.cc/SZ8H-Q6B4].

91. See Bowman, *supra* note 88; see also *In Depth Topics: A to Z, Immigration*, GALLUP (certain requirements include “paying taxes and a penalty, passing a criminal background check and learning English”), <http://news.gallup.com/poll/1660/immigration.aspx> (last visited Sep. 16, 2018).

92. Jennifer Agiesta, *CNN Poll: 8 in 10 back DACA, supporters hold Trump, GOP responsible for not extending program*, CNN.COM (Feb. 28, 2018), available at <https://www.cnn.com/2018/02/28/politics/cnn-poll-immigration-daca-trump/index.html> [https://perma.cc/C4CF-XBXQ]. To put these high polling numbers in context, in a September 2017 Morning Consult poll, only 46% of Republicans said they wanted Congress to pass a law allowing Dreamers to be eligible for U.S. citizenship. See *National Tracking Poll #170904*, Morning Consult (Sept. 07-11, 2017), available at <https://morningconsult.com/wp-content/uploads/2017/09/National-Tracking-Poll-170904.pdf#page=1&zoom=auto,-16,800> [https://perma.cc/6LSJ-QU4V]. Another 24% said legal status should be given to Dreamers,

Importantly, these findings highlight shifts over time in American attitudes towards immigration reform. Polling regarding the public mindset on immigration law and policy has been tracked since the enactment of the Immigration and Naturalization Act in 1965.<sup>93</sup> For example, when polled about deportation policies, polling data between 2006-2015 indicates increased support for just measures. Participants in this timeframe were asked whether the U.S. government should: deport all undocumented immigrants; allow them to remain in the United States to work for a limited amount of time; or create a pathway to become citizenship.<sup>94</sup> Fifty-nine to sixty-five percent of respondents favored a pathway to citizenship, while 16-24% favored deporting all undocumented immigrants.<sup>95</sup> Furthermore, U.S. polling data show that attitudes have shifted away from believing that law enforcement should increase its efforts to facilitate more deportations. Pew Research Center polls covering the years 2014-2016 reported that 74-76% of respondents favored increased national law enforcement efforts to deport illegal immigrants, while only 22-24% opposed such a measure.<sup>96</sup> These numbers changed in

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while only 20% said they favored legislation to deport Dreamers. *Id.* In a 2015 GALLUP poll, 50% of Republicans backed a path to citizenship for undocumented immigrants living in the United States. See Jeffrey M. Jones, *In U.S., 65% Favor Path to Citizenship for Illegal Immigrants*, GALLUP (August 12, 2015), available at <http://news.gallup.com/poll/184577/favor-path-citizenship-illegal-immigrants.aspx> [<https://perma.cc/5D4N-WSQK>]. The following year, another GALLUP poll showed 76% of Republicans favor giving undocumented immigrants the chance to become U.S. citizens. See Jeffrey M. Jones, *More Republicans Favor Path to Citizenship Than Wall*, GALLUP (July 20, 2016), available at [http://news.gallup.com/poll/193817/republicans-favor-path-citizenship-wall.aspx?g\\_source=immigration%20citizenship%20wall&g\\_medium=search&g\\_campaign=tiles](http://news.gallup.com/poll/193817/republicans-favor-path-citizenship-wall.aspx?g_source=immigration%20citizenship%20wall&g_medium=search&g_campaign=tiles) [<https://perma.cc/MH6D-SEPS>].

93. *Welcome to America? Public Opinion on Immigration Issues*, AEI Political Report Vol. 3, Issue 2 (Feb. 2017), available at <http://www.aei.org/wp-content/uploads/2017/02/Political-Report-February-2017.pdf> [<https://perma.cc/J3UV-3NMD>] (compiling recent poll results from various sources regarding contemporary immigration issues, including the border wall and immigration ban).

94. *Id.*

95. *Id.*

96. See *Pew Research Center for the People & the Press Political Typology Survey*, PEW RESEARCH POLL DATABASE (Jan. 2014), available at [https://ropercenter.cornell.edu/psearch/question\\_view.cfm?qid=1851411&pid=50&ccid=50#top](https://ropercenter.cornell.edu/psearch/question_view.cfm?qid=1851411&pid=50&ccid=50#top) [<https://perma.cc/C9PA-MW94>]; *Pew Research Center for the People & the Press Political Typology Survey*, PEW RESEARCH POLL DATABASE (Sept. 2015), available at [https://ropercenter.cornell.edu/psearch/question\\_view.cfm?qid=1869969&pid=50&ccid=50#top](https://ropercenter.cornell.edu/psearch/question_view.cfm?qid=1869969&pid=50&ccid=50#top) [<https://perma.cc/D388-2549>]; *Pew Research Center for the People & the Press Political Typology Survey*, PEW RESEARCH POLL DATABASE (Mar. 2016), available at [https://ropercenter.cornell.edu/psearch/question\\_view.cfm?qid=1877884&pid=50&ccid=50#top](https://ropercenter.cornell.edu/psearch/question_view.cfm?qid=1877884&pid=50&ccid=50#top) [<https://perma.cc/74SX-FXPJ>]; *Pew Research Center for the People & the Press Political Typology Survey*, PEW RESEARCH POLL DATABASE (Feb. 2017), available at [https://ropercenter.cornell.edu/psearch/question\\_view.cfm?qid=1893977&pid=50&ccid=50#top](https://ropercenter.cornell.edu/psearch/question_view.cfm?qid=1893977&pid=50&ccid=50#top) [<https://perma.cc/D7SZ-EGLH>].

2017, when most respondents (62%) rejected a national law enforcement effort to deport immigrants while 36% supported the efforts.<sup>97</sup> But, in a 2018 poll, a solid 40% of polled respondents favored overall *decreased* levels of immigration.<sup>98</sup> Thus, while the partisan divide about immigration reform remains and has been solidified since the 2016 campaign and election, empirical data show a strong base of growing resistance to the current administration's policies.

Moreover, as immigrants have settled across the country, their community involvement and integration via marriage to U.S. citizens and having U.S. citizen children familiarize and normalize their presence. Thus, when they are friends and neighbors (as opposed to a faceless threat) and are placed in the immigration enforcement crosshairs, it becomes harder to vocally support harsh immigration measures. For example, Helen Beristain, an Indiana resident and staunch Trump supporter, supported anti-immigration policies, even though her husband, Roberto, was an undocumented immigrant.<sup>99</sup>

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Interestingly, in a 1965 Gallup poll, 71% of respondents stated that employment skills and ability were the most important factors in determining which immigrants should be admitted to the United States. See *In Depth Topics: A to Z*, Immigration, GALLUP, available at <http://news.gallup.com/poll/1660/immigration.aspx> [<https://perma.cc/8BKC-K7JJ>]. In contrast, 55% felt that immigrants with U.S. citizen family members should be prioritized. *Id.* In 1965, 39% of respondents said immigration should be kept at its present level; 7% said it should be increased; 33% said it should be decreased, and 20% had no opinion. *Id.* From that time until 1995, Americans answering that they wanted to keep immigration at its present level decreased – to 37% in 1977; 35% in 1986; and 24-27% in 1995. *Id.* During that same span of time, Americans wanting to *decrease* immigration levels doubled, rising to 40% by 1986 and to 62% in 1995. *Id.* From 1965 to 1995, Americans wanting to *increase* immigration remained steady at 6-7% of the responding population, while responders with no opinion dropped from 20% in 1965 to only 4% in 1995. *Id.* From 1999 until 2017, a relatively steady average of 36.4% of respondents stated that they would like to keep immigration at its present level – 41% from 1999-2001; 31-34% in 2005; 34% in 2010; 40% in 2015; and 38% in 2017. *Id.* But Americans desiring to *increase* immigration has risen from 10% in 1999 to 15% in 2005; 17% in 2010; and 24% in 2017. *In Depth Topics: A to Z*, *supra* note 96. Respondents who want to decrease immigration increased from 44% in 1999 to 58% in 2001; then, decreased to 46-51% in 2005. *Id.* In 2008, the number of those favoring decreasing immigration lowered to 39%, rising back to 50% in 2009, and then drastically lowering to 35% in 2017. *Id.*

97. See *Pew Research Center for the People & the Press Political Typology Survey*, (Feb. 2017), *supra* note 96.

98. Domenico Montanaro, *NPR Poll: 2 in 3 Support Legal Status for DREAMers; Majority Oppose Building a Wall*, NPR (Feb. 6, 2018), <https://www.npr.org/2018/02/06/583402634/npr-poll-2-in-3-support-legal-status-for-dreamers-majority-oppose-building-a-wall> [<https://perma.cc/5ECJ-MZ7V>] (noting that 62% of Republicans said that the number of immigrants in the United States should be decreased, driving up the overall 40% affirmative response rate. This represents a “21-points increase for Republicans from 2016 and 26 points higher than in 2015.”).

99. Mayra Cuevas, *Undocumented husband of Indiana Trump supporter deported to Mexico*, CNN (Apr. 6, 2017), available at <http://www.cnn.com/2017/04/05/us/undocumented-husband-deported/index.html> [<https://perma.cc/W4FV-HWXG>] (explaining how Helen

Roberto Beristain entered the United States from Mexico in 1988; met and married his wife and settled in Fort Wayne Indiana with their three U.S. citizen children.<sup>100</sup> The family was seemingly living the American dream—eventually the Beristains bought the restaurant where Mr. Beristain had worked for years. And though they had convinced themselves that ICE enforcement was focused on the supposed “bad hombres” that Trump decried, ICE deported Mr. Beristain to Mexico late one night in 2017.<sup>101</sup> The deportation of her husband, who had no criminal history, left family and friends betrayed and bewildered.<sup>102</sup> Similarly, a Syrian-American family who supported Trump’s policies felt the visceral effects of Trump’s 2017 Travel Ban when their visa-carrying Syrian family members were barred from entering the United States upon their arrival at the Philadelphia airport.<sup>103</sup> Facing the reality of the harsh policies, Ms. Assali (the Syrian-American petitioning for her family) queried how Trump could “send someone back to a war zone.”<sup>104</sup> Ultimately, through the help of the American Civil Liberties Union and other pro bono legal help, the Syrian family was able to use their visas to enter the country.<sup>105</sup> As a final example, a community in Bethesda, Maryland rallied around two young brothers from El Salvador, who despite living in the United States for almost a decade with no criminal history, were deported in

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Beristain thought Trump’s deportation policies would be focused on the “bad hombres” as opposed to breaking up families).

100. *Id.*

101. See Elizabeth Gurdus, *Trump: ‘We have some bad hombres and we’re going to get them out’*, CNBC (Oct. 19, 2016), available at <https://www.cnbc.com/2016/10/19/trump-we-have-some-bad-hombres-and-were-going-to-get-them-out.html> [<https://perma.cc/B77U-NHF4>].

102. See CBS News, *Deported Man’s Wife and Friends Rethink Voting for Trump*, 60 Minutes (May 7, 2017), available at <https://www.cbsnews.com/news/trump-immigration-crackdown-causes-some-to-rethink-their-vote/> [<https://perma.cc/ER7C-LQDV>] (interviewing Helen Beristain and close family friends, most of whom voted for Trump, who were surprised that Roberto, who was following all of the rules imposed by ICE, was detained, as he did not fit the profile of the so-called “bad hombre.”). A March 2018 update of the story details that many of the same people who decried his deportation have moved on, while some struggle with conflicted feelings about the family’s demise. Robert Samuels, *His American Dream died. His Town got over it.*, WASH. POST (March 11, 2018), available at [https://www.washingtonpost.com/news/national/wp/2018/03/11/feature/a-beloved-restaurant-owner-was-deported-a-community-was-in-uproar-then-it-moved-on/?utm\\_term=.81193d953a1a](https://www.washingtonpost.com/news/national/wp/2018/03/11/feature/a-beloved-restaurant-owner-was-deported-a-community-was-in-uproar-then-it-moved-on/?utm_term=.81193d953a1a) [<https://perma.cc/W5VP-44DS>]. Mr. Beristain’s wife and children followed him to Mexico and all are trying to lawfully return to the United States. *Id.*

103. David Chang, Alicia Victoria Lozano, & Gabe Gutierrez, *Family of Syrians Deported from Philadelphia Supported Donald Trump*, NBC NEWS (updated Feb. 1, 2017), available at <http://www.nbcphiladelphia.com/news/local/Assali-Family-Syria-Donald-Trump-Vote-Allentown-Immigration-Ban-Travel-Order-412238593.html> [<https://perma.cc/8GPG-MQBS>] (detailing the story of the Assali family).

104. *Id.*

105. *Id.*

2017.<sup>106</sup> Their friends, teachers, soccer club teammates and Democratic politicians advocated for their relief and raised funds to help them remain and attend college in the United States.<sup>107</sup> Instead, the young men are struggling in El Salvador to assimilate to a culture and country with which they no longer identify.<sup>108</sup>

Along with the empirical polling data showing changes in societal ideology, these real-world examples bring the harsh rhetoric home in a way that political philosophizing cannot accomplish. As more people are moved out of Obama-era complacency when confronted with the effects of unjust policies and law, the push for collaborative resistance is buoyed.<sup>109</sup> As discussed, the narrative employed must move beyond unsuccessful normative frameworks that do not adequately converge with the interests of the majority.<sup>110</sup> Leaving behind these stale, pragmatic ideals, advocates must accept that quick soundbites will not lead to viable change because the system does not view immigrants as politically equal or even worthy beneficiaries of just treatment.<sup>111</sup> Therefore, eschewing the stories of, for example, the innocent child or the hard-working immigrant who deserve the ultimate citizenship prize, we can more openly work with renewed vigor and in collaboration with

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106. Maria Sacchetti, *He had a college scholarship, but was deported. Now the former soccer star must build a life in El Salvador*, WASH. POST (Aug. 22, 2017), available at [https://www.washingtonpost.com/local/immigration/he-had-a-college-scholarship-but-was-deported-now-the-former-soccer-star-must-build-a-life-in-el-salvador/2017/08/21/743d1c12-8368-11e7-b359-15a3617c767b\\_story.html?utm\\_term=.d13599e751d4](https://www.washingtonpost.com/local/immigration/he-had-a-college-scholarship-but-was-deported-now-the-former-soccer-star-must-build-a-life-in-el-salvador/2017/08/21/743d1c12-8368-11e7-b359-15a3617c767b_story.html?utm_term=.d13599e751d4) [<https://perma.cc/DFS5-ZMKR>] (detailing the story of two brothers from El Salvador who were deported in August after being in the country since 2009).

107. *Id.*

108. *Id.* (describing the harsh transition back to El Salvador: “At night [the brothers] sleep in one of their aunt’s houses, with bars on the windows and guard dogs at the door. The brothers say they are trying to blend into their new country, but they clearly stand out.”).

109. Importantly, and unsurprisingly, the 2016 election has sparked political engagement with right extremists and more moderate conservative constituencies. *See, e.g.,* Sydell, *supra* note 1 (describing the bilateral effect of the election: “Trump supporters are in fact planning rallies across the country on Saturday. They’re being organized by Main Street Patriots, a conservative group started by members of the Tea Party. Debbie Dooley, one of the organizers, says that a lot of conservative political newcomers are energized by Trump,” a finding supported by sociological research later cited and discussed in the article).

110. *See supra* Part II; *Narrative Reform Dilemmas, supra* note 9, at 1136 (“couching immigration activism in a traditional litigation and protest framework will not sustain justice goals when the normative view does not include immigrants as worthy. As long as immigrants remain outsiders and their interests do not adequately converge with the interests of the majority while purportedly straining common resources, traditional reform frameworks are futile.”).

111. *See also, Morales, supra* note 79, at 12 (“The mainstream immigration left is fundamentally conservative, trying to resist the ravanchism of the right in order to preserve the high immigration levels of the status quo. This stance is grounded in a reputedly pragmatic assessment of political possibility, but Trump’s ascent may illustrate the folly of this approach.”).



like-minded constituencies. In other words, as we ignored the burgeoning political and societal divisiveness during the Obama presidency—much like we ignore the rotting food at the back of the refrigerator because the other fare was pleasantly abundant—the time is upon us to proactively create a renewed strategy for justice and throw away the old ones.

#### B. NOW IS THE TIME FOR REFORM

In November 2016, a movement was born in the United States. After Trump's inauguration, millions of people gathered across the country to protest the election, expressing disbelief and outrage at the results.<sup>112</sup> The protests resulted in discernable political and social change.<sup>113</sup> Though Trump and his administration's efforts to repress opposition and to affect discriminatory measures continue on a daily basis, public and legal challenges have been successful in stopping or slowing some of those campaign promises.<sup>114</sup> Keys to these resistance victories are creations of new collaborations that employ innovative active-minded strategies (as opposed to passive efforts of the past) and that aim to have expansive effects, including at the grassroots level and in personal, familiar ways.

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112. Chris McGreal, *The anti-Trump resistance takes shape: 'Government's supposed to fear us'*, THE GUARDIAN (Nov. 20, 2016), available at <https://www.theguardian.com/us-news/2016/nov/20/donald-trump-protests-economy-opposition> [https://perma.cc/2HA6-5XWJ] (“The tide of protests that swept US cities was matched by a wave of individual acts of resistance. Some rallied on the streets and online under the banner Not My President. Facebook groups popped up to plan how to challenge Trump over climate change and misogyny. Donations to civil liberties groups surged in defence of Muslims, immigrants and freedom of speech.”).

113. As just one of the many examples, in Massachusetts, the Attorney General established a hate crimes hotline; officials expressed state noncompliance with federal immigration efforts; and reproductive justice and health care advocacy groups vowed to fight legal challenges regarding safe access. See Steve LeBlanc, *Massachusetts becomes hub of resistance after Donald Trump's win*, BOSTON.COM (Nov. 19, 2016), available at <https://www.boston.com/news/politics/2016/11/19/massachusetts-becomes-a-hub-of-resistance-after-donald-trumps-win> [https://perma.cc/K3LM-TTXX].

114. See, e.g., Matthew Yglesias, *The big lesson of Trump's first 2 weeks: resistance works*, VOX (Feb. 6, 2017), available at <https://www.vox.com/policy-and-politics/2017/2/6/14473482/resistance-works-anti-trump-protests> [https://perma.cc/6XEW-VL5C] (focusing on ways the Trump administration has lost on key issues, such as the repeal of Obamacare, the early attempts at the Travel Ban, and the removal of the Congressional Ethics Office).

### 1. Collaborative efforts and surprising allies

It is well-known among long-time immigrant advocates that deportations continued at a quick pace under Obama's presidency.<sup>115</sup> And although activists certainly fought for political change during the Obama years, there was a marked environment of complacency and unwillingness to openly attack Obama policies, as the administration was otherwise sympathetic to progressive causes. As one immigrants' rights organizer commented, "Now [post-Trump's election] it's convenient for Democrats to shame a deportation" because Democrats who were once unwilling to oppose Obama could now do so openly and with broad support.<sup>116</sup> As organizer Carlos Garcia, of the Phoenix-based immigrant advocacy group Puentes, noted, Trump's ascendancy to office has actually given advocates a strategic advantage in that new alliances were formed, and people from around the country sought out Puentes's advice on protest and resistance.<sup>117</sup> As the *New York Times* reported on Puentes, "When Garcia helped assemble the coalition United Against Hate after Trump's victory in November, 56 groups signed up. That same month, Paul Penzone defeated Joe Arpaio at the polls."<sup>118</sup> Thus, the collaborative protests resulted in tangible results, including the birth of a new social organization and a political victory.

Other already established civil rights and legal aid groups have experienced substantial growth in their membership and impact since the 2016 election.<sup>119</sup> The Advancement Project, a national organization dedicated to

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115. Muzaffar Chishti, Sarah Pierce, Jessica Bolter, *The Obama Record on Deportations: Deporter in Chief or Not?*, MIGRATION POLICY INSTITUTE (Jan. 26, 2017), available at <https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not> [<https://perma.cc/PX6E-VU88>].

116. Marcela Valdes, *Is it Possible to Resist Deportation in Trump's America?*, NY TIMES (May 23, 2017), available at <https://www.nytimes.com/2017/05/23/magazine/is-it-possible-to-resist-deportation-in-trumps-america.html> [<https://perma.cc/CEB6-4KFM>] (quoting Carlos Garcia, executive director of Phoenix-based Puentes, a non-profit organization that advocates for immigrants).

117. *Id.* (noting that, after the 2016 election, Garcia travelled around the country at the invitation of others looking to begin or ramp up efforts to resist the Trump administration).

118. *Id.* Joe Arpaio is the former sheriff of Maricopa County in Arizona, who was infamous for his anti-immigrant policies and politics. See Simon Romero, *Joe Arpaio, Ex-Sheriff Pardoned by Trump, Announces Senate Run in Arizona*, WASH. POST (Jan. 9, 2018), available at <https://www.nytimes.com/2018/01/09/us/joe-arpaio-senate-arizona.html> [<https://perma.cc/MF3F-JEHL>] ("In almost a quarter-century in that office, Mr. Arpaio developed a reputation for severe correctional practices and a tireless crusade against illegal immigration . . . 'Arpaio was Trump before Trump was Trump,' said David Berman, professor emeritus of political science at Arizona State University.").

119. As noted, political engagement has increased on the political right, too. See Sydeell, *supra* note 1 (stating that "Trump's blustery style and politically incorrect language are what's driving both anti-Trump activists and pro-Trump activists," citing and quoting sociologist and researcher Sarah Sobieraj: "Saying those things and acting that way brought people

implementing grassroots collaborative models to change law and policy,<sup>120</sup> has been a strong voice in the immigrant justice movement, responding most recently to Trump's Travel Ban and other Executive Order proposals. Key to the Advancement Project's "Theory of Change" is the use of local and national litigation, policy, organizing and communication strategies to "connect partners doing similar work across geographies" to influence public opinion on issues of racial social justice.<sup>121</sup> In its immigration project, the organization works to bridge their work for larger racial equality with the fight for immigrant justice, noting that "[t]he struggle for immigrant justice is part of the broader struggle for racial justice. US immigration policy has historically been rooted in racism with entry restrictions and exploitation based on race."<sup>122</sup> Thus, their campaigns highlight how, for example, ICE infiltration of schools is another illustration of the school to prison (or, in this case, immigration detention) pipeline.<sup>123</sup> Bringing together several immigrant activist organizations in a new collaborative effort, the Advancement Project created and disseminated a webinar and toolkit for schools and others to help dismantle schools' ongoing and dangerous partnerships with ICE.<sup>124</sup>

Importantly, part of the messaging of this and other pro-immigrant campaigns is that immigration enforcement foisted upon cities, communities and even schools is an example of unnecessary and unwarranted federal intervention in areas or issues that are decidedly within the realm of local control. In this sense, then and as discussed more below in the context of the sanctuary city movement, the collaborative model extends to those traditionally conservative or libertarian constituencies that are opposed to the federal government intruding upon local turf.

Indeed, the unique and new alliances after the 2016 election went beyond the immigration law arena. For example, faced with a Trump campaign promise to repeal "Obama Care," the colloquial name for the Affordable Care Act, lawmakers from both political parties ultimately recognized the detrimental effect that repeal would have on their constituencies and worked together to craft an alternative healthcare plan. Colorado governor John Hickenlooper, a Democrat, and Ohio governor John Kasich, a Republican, put

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out because they felt validated by someone who sees the world the way they see it, feeling at last as though someone was really telling the truth without apology."').

120. See ADVANCEMENT PROJECT, *Mission and Vision*, <https://advancementproject.org/about-advancement-project/> [https://perma.cc/47FX-ASNR].

121. *Id.*

122. ADVANCEMENT PROJECT, *Immigrant Justice*, <https://advancementproject.org/issues/immigrant-justice/> [https://perma.cc/KFN5-N6FL].

123. ADVANCEMENT PROJECT, *Webinar and Action Kit: Combatting ICE Enforcement in Schools*, <https://advancementproject.org/resources/webinar-mini-action-kit-stopping-school-deportation-pipeline-combatting-ice-enforcement-public-schools/> [https://perma.cc/2EUH-V74G].

124. *Id.*

aside party divisions and worked to draft a proposed bill, which they presented during the 2017 congressional session.<sup>125</sup> When that failed, and Obama Care was not repealed, other efforts continued. Republican senator Lamar Alexander and Democrat Senator Patty Murray jointly sponsored a healthcare reform provision as part of a new spending bill that they planned to introduce in 2018.<sup>126</sup> Having learned from the failed repeal efforts, politicians and constituencies generally agree that bipartisan cooperation is necessary to create viable legislation.<sup>127</sup>

Moreover, resistance to Trump's tactics have sprung up on both sides of the political spectrum. Some Republicans have criticized him and his decisions, including his refusal to release his tax returns.<sup>128</sup> Republican Congressman Mark Sanford proposes legislation that would require presidents to release their tax returns.<sup>129</sup> While Sanford's proposal has not garnered widespread support from fellow Republicans, other efforts to limit Trump's powers to veto or modify congressional efforts were cheered.<sup>130</sup> Because of

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125. Rachel Estabrook, *Governors Preparing Bipartisan Health Care Plan for Congress to Consider*, NPR (Aug. 22, 2017), available at <https://www.npr.org/2017/08/22/545307530/governors-preparing-bipartisan-health-care-plan-for-congress-to-consider> [<https://perma.cc/YK3K-L53R>] (interviewing the governors, who agree that the most important thing is to “restore stability to our nation’s health insurance system”).

126. Jordan Buie, *Sen. Lamar Alexander says bipartisan health care proposal should pass soon*, THE TENNESSEAN (Jan. 12, 2018), available at <https://www.tennessean.com/story/news/2018/01/12/lamar-alexander-tennessee-bipartisan-health-care-proposal/1029558001/> [<https://perma.cc/58YC/9A3C>] (discussing the proposed reform measures).

127. *Schumer Floor Remarks on the Need for Bipartisanship on Health Care, Tax Reform and the Withdrawal of the Nomination of Rep. Marino*, Senate Democrats (Oct. 17, 2017), available at <https://www.democrats.senate.gov/news/press-releases/schumer-floor-remarks-on-the-need-for-bipartisanship-on-health-care-tax-reform-and-the-withdrawal-of-the-nomination-of-rep-marino-> [<https://perma.cc/2PXR-FRX7>] (Senator Schumer implored his fellow legislators: “On health care, we in Congress should continue to shore up the healthcare markets and lower premiums in a bipartisan way. . . That’s where it has to go, no side wins everything they want. That is not how the founding fathers set up this country, otherwise we’d be a dictatorship or a country without checks and balances. We ought to work together, together to improve our healthcare system, to lower costs for people and ensure more people have access to health coverage.”).

128. *Legislation Would Require Future Presidents-Elect To Release Their Tax Returns*, NPR POLITICS (July 31, 2017), available at <https://www.npr.org/2017/07/31/540516973/legislation-would-require-future-presidents-elect-to-release-their-tax-returns> [<https://perma.cc/8G5D-FT8V>] (interview with Rachel Martin, discussing Mark Sanford’s stance on Trump’s refusal to release his tax returns, predicting more discussion of separation of powers during the president’s term).

129. *Id.*

130. *Id.* (discussing a proposal to limit presidential power to veto congressional votes to sanction Russia for interference in the U.S. 2016 election); see also James Hohmann, *The Daily 202: Trump Stumbles Are Undercutting Executive Power, Which May Be Healthy for America Long-Term*, WASH. POST: POWERPOST (Aug. 3, 2017)

Trump's political inexperience and ineptitude, members of Congress are openly collaborating to pursue efforts to limit his powers, especially when his personal biases and interests are clearly implicated. To be sure, even Republican Senators have specifically spoken out, joining their Democrat colleagues. As South Carolina Republican Senator Tim Scott concluded, "We work for the American people. We don't work for the president."<sup>131</sup> With these new collaborations and surprising allies, political movements for reform, including for immigrant justice, are viable.

2. *Resistance at the grassroots and with familiar and individualized effects*

As the effects of draconian immigration enforcement measures are affecting more people, the resistance efforts have proliferated, leading to marked change. One of the most important outcomes is the Democratic victories in 2017 and 2018 elections around the country, including in states that are traditionally dominated by Republicans.<sup>132</sup> Voters in Virginia elected the state's first openly transgender representative to the Virginia legislature.<sup>133</sup> Alabama elected the first Democrat Senator since 1992 when Doug Jones bested Republican Roy Moore.<sup>134</sup> In the Senate primary in Texas, which skews Republican by an overwhelmingly wide margin, Democrat voter turnout was 87% higher than the 2014 state-wide primary.<sup>135</sup> Other Democratic

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[https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2017/08/03/daily-202-trump-stumbles-are-undercutting-executive-power-which-may-be-healthy-for-america-long-term/5982599430fb045fdaef10e2/?utm\\_term=.f7b54241e48d](https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2017/08/03/daily-202-trump-stumbles-are-undercutting-executive-power-which-may-be-healthy-for-america-long-term/5982599430fb045fdaef10e2/?utm_term=.f7b54241e48d) [https://perma.cc/UH53-5AM8] (discussing how the executive has recently been more powerful than the other branches, but with proposed sanctions against Russia, congressional confidence in executive powers and executive decision making has been greatly diminished).

131. Hohmann, *supra* note 130.

132. Philip Lewis & Willa Frej, *Here's A List of Historic Victories Democrats Had on Election Day*, HUFFINGTON POST: POLITICS (Nov. 8, 2017), [https://www.washingtonpost.com/entry/democratic-victories-firsts-election-day\\_us\\_5a026c51e4b092053058cf38](https://www.washingtonpost.com/entry/democratic-victories-firsts-election-day_us_5a026c51e4b092053058cf38) [https://perma.cc/3AJ9-3APJ] (highlighting the countrywide Democratic wins that made history on Election Day, attributing the success of the party to a greater resistance against Trump's election).

133. *Id.*

134. See Sean Sullivan, David Weigel & Michael Scherer, *Doug Jones Declared Victor in Alabama Race for Senate; Roy Moore May Seek Recount*, WASH. POST (Dec. 13, 2017), [https://www.washingtonpost.com/powerpost/voters-head-to-the-polls-in-contentious-senate-race-in-alabama/2017/12/11/26e36b56-deb7-11e7-8679-a9728984779c\\_story.html?utm\\_term=.2155ba513d61](https://www.washingtonpost.com/powerpost/voters-head-to-the-polls-in-contentious-senate-race-in-alabama/2017/12/11/26e36b56-deb7-11e7-8679-a9728984779c_story.html?utm_term=.2155ba513d61) [https://perma.cc/5F6T-DTV6].

135. See David Weigel, *Four More Lessons from the Texas Primaries*, WASH. POST (March 7, 2018), [https://www.washingtonpost.com/news/powerpost/wp/2018/03/07/four-more-lessons-from-the-texas-primaries/?utm\\_term=.556f295d830f](https://www.washingtonpost.com/news/powerpost/wp/2018/03/07/four-more-lessons-from-the-texas-primaries/?utm_term=.556f295d830f) [https://perma.cc/GAU8-YTQF] (noting that although Republican turnout also increased by 15%, the Democrat

victories were in New Jersey (first African-American woman lieutenant governor); Manchester, New Hampshire (first woman mayor); Hoboken, New Jersey (first Sikh-American mayor); and the election of Seattle's first lesbian mayor.<sup>136</sup> As one political pundit summarized, these and other historic victories represented “a backlash to Trump and Trumpism, pure and simple.”<sup>137</sup>

In another vein, Americans expressed their disappointment after Trump's election with significant increases in charitable giving to progressive causes. In the three days after the 2016 election, 80,000 donations poured in to the coffers of Planned Parenthood.<sup>138</sup> The ACLU received a staggering \$7.2 million in donations in five days<sup>139</sup> and a large amount of first-time donors gave to the Anti-Defamation League.<sup>140</sup> More than 500 volunteers applied to assist the Council on Islamic-American Relations (CAIR), and the Sierra Club “nearly quadrupled its monthly donation record” within a week of the election.<sup>141</sup> These effects mirrored the spike in law school applications after the election. From 2016 to 2017, there were significantly more people taking the LSAT, the entrance exam for law school admission.<sup>142</sup> Legal

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numbers in the March 2018 primary represented a long-term reversal in what had been declining Democratic participation).

136. Lewis & Frej, *supra* note 132.

137. Christina Wilkie, *Democrats Win Big in Elections Widely Viewed as Referendums on Trump*, CNBC News (Nov. 8, 2017), <https://www.cnn.com/2017/11/08/democrats-win-up-and-down-the-ballot-in-legislative-mayoral-and-governors-races.html> [<https://perma.cc/S8S5-P9QT>] (exploring some of the reasoning of Democratic success in the 2017 elections and quoting Larry Sabato, University of Virginia's Director for the Center for Politics). To be sure, in other cases, the Trump effect has led to Republican wins, including in one of the first elections held after Trump assuming office. In the 2017 Georgia special election to fill a spot in the House of Representatives, a race which many thought could result in a Democratic win as a show against Trump, the long-time Republican stronghold remained in Republican control. See Alex Isenstadt & Eliana Johnson, *Trump Spikes the Ball After Georgia Election Win*, POLITICO (June 21, 2017), <https://www.politico.com/story/2017/06/21/donald-trump-georgia-election-karen-handel-239790> [<https://perma.cc/R5EY-WZ9H>] (quoting Newt Gingrich, former House Speaker, Georgia representative and informal Trump adviser: “He [Trump] may be resonating with people in a way that some don't get . . . Maybe there's a whole new conversation taking place in a way that none of us understand.”).

138. Adam Chandler, *The Post-Election Surge in Donations*, THE ATLANTIC (Nov. 14, 2016), <https://www.theatlantic.com/business/archive/2016/11/donald-trump-donations/507668/> [<https://perma.cc/PQH3-PCBQ>] (highlighting spikes in donations for organizations, including the Council for Islamic-American Relations (CAIR), the Sierra Club, and the ACLU).

139. *Id.*

140. *Id.*

141. *Id.*

142. Corilyn Shropshire, *After Trump's Election, More Students Consider Law School, Hoping to Make a Difference*, CHI. TRIB. (Nov. 17, 2017), <http://www.chicagotribune.com/business/ct-biz-lsat-registration-up-trump-bump-20171116-story.html> [<https://perma.cc/AV7U-TJRD>] (detailing the statistics of people taking the LSAT after the 2016 election, as well as factors that have played into the increase. Increase in test takers in

professionals and law school administrators have pointed to the election as a cause, with some deeming the increased applications the “Trump bump.”<sup>143</sup> Indeed, prospective future lawyers all along the political spectrum are applying—those opposing Trump’s policies are motivated to fight against the unjust policies; conservative supporters are emboldened by the win and strive to defend these gains.<sup>144</sup>

### 3. *Innovative strategic moves from passivity to action*

The newly formed collaborations and individual efforts and contributions have resulted in a renewed focus on vocally engaging in resistance efforts. This strategy began to foment toward the end of Obama’s tenure in office as immigration reform benefitting immigrants became less possible, while immigrant detention and deportations continued at a strong clip. Activists seeking the passage of the DREAM Act or the extension and expansion of DACA reframed their strategy away from a narrative of innocence and towards one of shaming. Kathryn Abrams notes that the “Not1More Deportation” movement, a national coalition of activists seeking an end to unjust deportations,<sup>145</sup> refined its call at this time to “invoke neither the hopeful petition of the distinctive aspirant to membership, nor the determined objection of people unable to pursue educational and professional goals. They are

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2016 to 2017 were 5.4% increase for the February test; 19.8% increase for the June exam; 10.7% increase in September; and over 21% in December).

143. *Id.* (noting that new candidates for admission identify from all along the political spectrum—both progressives and conservatives).

144. *Id.* Specifically, the Trump January 2017 Travel Ban inspired many law school applicants, who saw the work of lawyers as critical in fighting the unconstitutional efforts. *Id.* As another anecdote of the “Trump effect” the Washington Post reported on a couple who ended up beginning a romantic relationship after the election when Cameron Chang accidentally confessed his feelings about Laura directly to her instead of to his friends via a misdirected text message. Mr. Chang, who reports that he was in shock and depressed about the election at the time of the text snafu, wrote about the happy accident: “maybe it was just Donald Trump. Because if Clinton had been elected, I would have been thinking more clearly.” Cameron Chang, *We were Just Friends – then Donald Trump’s Election Helped Start Our Romance*, WASH. POST (July 31, 2017), [https://www.washingtonpost.com/news/solo-ish/wp/2017/07/31/we-were-just-friends-then-donald-trumps-election-helped-start-our-romance/?utm\\_term=.012ffc5aa066](https://www.washingtonpost.com/news/solo-ish/wp/2017/07/31/we-were-just-friends-then-donald-trumps-election-helped-start-our-romance/?utm_term=.012ffc5aa066), [https://perma.cc/X8R9-KCA5].

145. See #NOT1MORE DEPORTATION, *About* (last visited Sept. 11, 2018), <http://www.notonemoredeportation.com/about/> [https://perma.cc/8ZDB-XWR3]. The organization describes itself as “#Not1More builds collaboration between individuals, organizations, artists, and allies to expose, confront, and overcome unjust immigration laws. . . #Not1More weaves together all of our voices in a central location so that local efforts to stop deportations and build community are strengthened and accompanied by cultural creations that illustrate the ugliness of criminalization and the beauty of our communities.” *Id.* “Together we say: not one more family destroyed, not one more person left behind, not one more indifferent reaction to suffering, not one more deportation.” *Id.*

instead the outraged witnesses to, and victims of, a government that violates the humanity of residents who seek to live their lives without fear, in the company of those they love.”<sup>146</sup> In exploring the politics of dissent grounded in the status of being undocumented immigrants, Morales discusses how this active “in your face” movement exemplified by Not1More Deportation emphasizes “the agency of migrants in deportation proceedings—not just their status as victims. In this group’s dissenting imaginary, grounded in the legitimacy of ‘illegal’ migration, the undocumented do not just take what they can get; they migrate in defiance of their exclusion, they arrive, they work, and they fight for more.”<sup>147</sup>

As the historic passive efforts proved fruitless, one organizer detailed their own style of dissent: “we got to a point where the legal strategy, the political strategy wasn’t working . . . so we had to begin using our bodies in civil disobedience.”<sup>148</sup> Thus, activists with the Arizona Dream Act Coalition stopped ICE buses transporting immigrants awaiting deportation and staged hunger strikes outside an ICE field office.<sup>149</sup> In short, as increased collaborations and allies unite to fight against Trump’s unjust policies, this strategic emphasis on active resistance could galvanize stronger, more direct efforts.<sup>150</sup>

Importantly, this active movement embraces traditionally persuasive political causes, including the call for strengthening federalism and keeping the U.S. government out of state and community legislating. Invoking the 10<sup>th</sup> Amendment, states and localities that seek to become “sanctuary cities” and refuse certain levels of cooperation with ICE have employed familiar states-rights arguments. The U.S. Department of Justice sued California in March 2018, asserting that the state’s new legislation prohibiting certain types of state collaboration with ICE is an unconstitutional infringement on

146. Kathryn Abrams, *Contentious Citizenship: Undocumented Activism in the Not1More Deportation Campaign*, 26 LA RAZA L.J. 46 (2016).

147. Morales, *supra* note 79, at 13.

148. Valdes, *supra* note 116 (quoting activist Erika Andiola).

149. *Id.*

150. Morales, *supra* note 79, at 12. Morales asserts that at the root of the complacency lies immigration lawyers, scholars and other activists’ need to keep the calls for change minute and conventional for self-preservation. Instead, he argues that:

[I]t is time to consider recentering our aspirations on the vision of the dissenting left—on immigration law’s abolition; on an affirmation of the magic and mystery in the way mere presence within the American territory can turn a person condemned to poverty or illiteracy beyond our borders into a Stanford graduate; on an embrace of the ‘wretched refuse’ of the shores that teem around the globe; on a devolution of control over American membership to individual human beings who wish to migrate—a truly liberal immigration policy.

*Id.*



the federal government's plenary power over immigration law.<sup>151</sup> California authorities shot back that the federal government may not dictate how California chooses to spend its state-allocated funding and force cooperation, noting, for example: “We are doing what we believe is best to make sure the people of California are safe . . . We are doing nothing to intrude on the work of federal government to do immigration enforcement.”<sup>152</sup> In this sense, immigrant advocates give credence to traditionally conservative ideals of state's rights and local control.<sup>153</sup> Thus, supporters have portrayed the sanctuary movement as rooted in local control—and one which the federal government has no right to usurp.

Morales discusses this strategy as an example of the move towards active resistance “where some localities might move in the direction that #Not1More Deportation would like” and “use law to create and design spaces where a love for migrants can be further cultivated; legally-empowered spaces that can eventually yield more progressive immigration law and policy.”<sup>154</sup> Indeed, one recent study confirms that the number of local law enforcement agencies that are actively working with ICE to identify and detain non-violent immigrants and handing them over to immigration custody has

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151. Complaint, *United States v. California*, No. 2:18-CV-00490-JAM-KJN (E.D. Calif. Mar. 6, 2018), <http://www.caed.uscourts.gov/caednew/assets/File/1-Complaint.pdf> [<https://perma.cc/W5S3-59ZP>] (The lawsuit alleges that three of California's laws are illegal infringements upon federal power. The legislation include: the Immigrant Worker Protection Act, Assembly Bill 450 (prohibiting private employers in California from voluntarily cooperating with federal officials who seek information relevant to immigration enforcement that occurs in places of employment); Assembly Bill 103 (creating an inspection and review scheme that requires the Attorney General of California to investigate the immigration enforcement efforts of federal agents; and Senate Bill 54 (limiting the ability of state and local law enforcement officers to provide the United States with basic information about individuals who are in their custody and are subject to federal immigration custody or to transfer such individuals to federal immigration custody)). *Id.*

152. Evan Halper, *Trump Administration Sues California Over Laws Protecting Immigrants*, L.A. TIMES, (Mar. 6, 2018), <http://www.latimes.com/politics/la-na-pol-trump-california-immigration-20180306-story.html> [<https://perma.cc/KGQ8-EVB3>] (quoting California Attorney General Xavier Becerra and as summarized in California state senate counsel's (Former U.S. Attorney General Eric H. Holder, Jr.) statement upholding the measure: “The federal government has the authority to enforce its immigration laws, but doesn't have the power to draft California officials into helping.”).

153. Indeed, the U.S. Department of Justice lawsuit against California's legislation invokes the winning arguments made by the Obama administration in the 2012 litigation against Arizona's anti-immigrant legislation, which eventually was largely struck down by the U.S. Supreme Court. See Adam Liptak, *Sessions Targets California Immigrants Using a Ruling That Protected Them*, N.Y. TIMES (Mar. 7, 2018), <https://www.nytimes.com/2018/03/07/us/politics/jeff-sessions-california-lawsuit.html> [<https://perma.cc/6YKZ-GSDC>]; *Arizona v. United States*, 567 U.S. 387 (2012).

154. Morales, *supra* note 79, at 21.

decreased.<sup>155</sup> The Immigrant Legal Resource Center tracks how U.S. counties cooperate with federal law enforcement immigration measures by analyzing certain county-specific policies and noted that “410 counties decreased their voluntary engagement with ICE in 2017.”<sup>156</sup> Thus, local constituent pushes to discontinue their local enforcement cooperation with federal efforts to detain and deport have resulted in some tangible successes.

To be sure, the opposition continues to gain ground in other localities. As the Immigrant Legal Resource Center also concludes in its report, approximately 74% of U.S. counties “generally grant ICE whatever help they ask for,’ often without assessing the legal and policy implications.”<sup>157</sup> And just like there is resistance to the newly-enacted sanctuary laws in California—most of the state’s county sheriffs have directly and openly opposed the laws<sup>158</sup>—there are similar controversies in other states and communities.<sup>159</sup> Thus, a strategy grounded solely in a local control argument may be ill-advised for this very reason—it is one that can be used as a sword against immigrants as easily as it can be used as a shield for them, as the current California controversy illustrates. Instead, the local control argument should be just one legal and rhetorical framework, employed as needed.

Thus, strategic efforts for just immigration reform must capitalize on each of the key components to fuel the movement: (1) the emergence of new

155. Tory Johnson, *Mapping the Local Response to Aggressive Immigration Enforcement*, AM. IMMIGR. COUNCIL: IMMIGR. IMPACT (Feb. 7, 2018), <http://immigrationimpact.com/2018/02/02/local-response-immigration-enforcement/> [<https://perma.cc/MM8Y-JBLM>] (noting that “States, localities and communities continue to hold their ground against the aggressive and punitive immigration enforcement agenda touted by President Trump and his administration. Compared to a year ago, more U.S. counties have limited their involvement with federal immigration enforcement.”).

156. *Id.*

157. *Id.*

158. See Jasmine Ulloa, *Most California Sheriffs Fiercely Opposed The ‘Sanctuary State’ Law. Soon they’ll have to Implement it*, L.A. TIMES (Nov. 12, 2017), <http://www.latimes.com/politics/la-pol-ca-sanctuary-state-california-sheriffs-20171112-htmlstory.html> [<https://perma.cc/BJ3P-B849>] (quoting one sheriff’s remarks as indicative of most of the other 57 sheriffs in the state: “We are not anti-immigrant working with ICE . . . we are anti-criminal activity.”).

159. For example, the Virginia Senate passed an anti-sanctuary city bill even though there are no cities or localities in Virginia that have declared itself a sanctuary city. See Associated Press, *Virginia Senate Passes Sanctuary Cities Bill*, US NEWS (Mar. 6, 2018) <https://www.usnews.com/news/best-states/virginia/articles/2018-03-06/virginia-senate-passes-sanctuary-cities-bill> (noting that “Republicans said the bill is needed to show that Virginia respects the rule of law and that undocumented immigrants are not entitled to special privileges.”). As CNN reported in 2017, at least seven states had some sort of anti-sanctuary city law at that time with more considering such a move. Catherine E. Shoichet, *These States Have Banned Sanctuary Cities*, CNN POLITICS (May 8, 2017), <https://www.cnn.com/2017/05/08/politics/sanctuary-city-state-bans/index.html> [<https://perma.cc/DM8D-PFV6>].

and surprising allies; (2) the real-world consequences of harsh policies that affect more Americans in an ever-more localized world; and (3) the push for dynamic efforts. Importantly, however, activists must construct a narrative that also speaks to and answers the rhetoric of the opposition. It is a fool's errand to believe that lasting change will result from denigrating or even ignoring the identity politics of the moderate right.<sup>160</sup> As Part IV explains, the strategy should consider how to frame the rhetoric so as to speak to the interests of the majority—for only when the powerful majority deems the needs of the marginalized as essential to their own powerful interests will deep transformation occur. More practically, we cannot ignore that millions of Americans voted for Trump; and millions continue to support him and his policies regarding harsh immigration measures. Although a feasible goal is clearly not to have complete agreement for just immigration reform, a movement focused on lasting change should dialogue with opposing viewpoints and maximize commonality of interests.

#### PART IV: THE HARD PARTS OF COLLABORATION: OPPOSITION DIALOGUE AND CRITIQUING THE NARRATIVE EFFECTS

To craft a new narrative that leads to lasting and just immigration reform, we must acknowledge the past incomplete advocacy efforts and realize the fervor for change that is now gripping the nation. As Part III concluded and as discussed more below, in employing an active strategy that moves away from the complacency of status quo efforts and instead engages the passion of resistance collaborators, we need to engage with seeming political opponents and recognize that success typically lies where the interests of both sides intersect. Finally, as explored here in Part IV, it is critically important to examine the effects of crafting a narrative—most importantly, the common collateral consequence of oppressing one sector of the community through efforts to uplift others.

Recently, I attended a book tour event with political commentator, Van Jones, who was discussing his newest book, *Beyond the Messy Truth: How We Came Apart, How We Come Together*.<sup>161</sup> The audience was discernibly

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160. Even Republican strategist and one-time Trump adviser Steve Bannon remarked that Democrats would be wise to ignore the far-right nationalists—whom he dubbed as “clowns”—and focus instead on economic policies rather than identity politics, stating that “[i]f the left is focused on race and identity, and we go with economic nationalism, we can crush the Democrats.” Robert Kuttner, *Steve Bannon, Unrepentant*, THE AM. PROSPECT (Aug. 16, 2017), <http://prospect.org/article/steve-bannon-unrepentant> [<https://perma.cc/H7GG>NNL4>] (including the transcript of a phone call interview with Bannon to The American Prospect, a credible, liberal media outlet. Some speculated after the interview that it was one of the reasons Bannon was soon ousted from the White House).

161. VAN JONES, *BEYOND THE MESSY TRUTH: HOW WE CAME APART; HOW WE COME TOGETHER* (Ballantine Books, 2017).

politically left and progressive, cheering when Jones and his interviewer, CNN commentator Jake Tapper, made any sort of derisive comment about Trump.<sup>162</sup> Jones' message is a familiar one, albeit one that many active in the anti-Trump resistance movement may find hard to adopt. Jones deems it the "Love Army" movement, which requires that the political left take a harsh look at its own elite biases and engage with the large number of moderate Republicans—those people who he notes "held their nose and voted for Donald Trump—despite his bigotry, not because of it."<sup>163</sup> The existence of this large cohort of moderates who share interests with the political left "should be reason," he concludes, "for some more confidence [in progressive successes] than people have been showing recently."<sup>164</sup>

The movement towards just reform must speak to and include this moderate side, rather than denigrate it. To begin, the narrative of membership would focus on contractual and affiliative principles that tie immigrants into the wider vision of what it means to be an American. Using key principles outlined above—sociological data showing a shift towards welcoming immigrants; the familiarization of the immigrants in communities; and a focus on active framing and advocacy—activists should also recognize the moderate political opposition's own frameworks and rhetoric to strengthen collaborations. One key component in this hard work of creating collaborations is exploring commonalities. Kevin R. Johnson writes about the power of common experience, even in the face of explicit and implicit racist immigration law and policy:

Race unquestionably is not the full story behind the various restrictionist measures; class, social, and economic considerations also factor into the analysis. People, including U.S. citizens who are members of racial minority groups, worry about competition from cheap immigrant labor. Concerns that poor immigrants will sap public resources in a myriad of ways also enter the mix.<sup>165</sup>

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162. *Van Jones in Conversation with Jake Tapper*, SIXTH & I, <https://www.sixthandi.org/event/van-jones/> [<https://perma.cc/PR8S-2DQ9>].

163. Tim Dickinson, *Van Jones: Only a 'Love Army' Will Conquer Trump*, ROLLING STONE (Dec. 6, 2016), <https://www.rollingstone.com/politics/politics-features/van-jones-only-a-love-army-will-conquer-trump-113138/> [<https://perma.cc/S4Y6-TN9Q>] (stating "I think sometimes progressives think that all 60 million people who voted for him [Trump] have signed on to an Alt-Right, white nationalist agenda. They think that we now live in a country with 60 million neo-Nazis. That's just not true!").

164. *Id.*

165. Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525, 533 (2000).

In this sense, then, exploring where the interests of people, who appear to be diametrically opposed to each other, *intersect* is a fundamental step in creating a narrative that will speak to various constituencies. These commonalities may take the form of class, social or economic concerns, but should not be discounted. As Derrick Bell teaches, it is only where majority interests converge with the minority's demands that change benefitting the minority will be considered.<sup>166</sup>

But compromise will not be easy, even in the presence of common purpose. Van Jones summarizes the power and difficulty of such dialogue:

That doesn't mean we're going to agree. On a whole bunch of policies, we're going to disagree beautifully and passionately. That's democracy. But we don't have to hate each other, and we don't have to call each other the worst names we can think of in every debate. We can have constructive disagreement. Trump cannot survive in an atmosphere of constructive disagreement. Trump desperately needs everybody screaming at each other so he can get away with his agenda.<sup>167</sup>

Such is the work of Jones' "Love Army." To combat the hate that surrounds the Trump loyalist and fringe right, he asserts that the people who are now actively engaged in resistance must check their values and vitriolic rhetoric and include those on the right with whom they share the experience of suffering from Trump's policies. Jones states:

Rural people, . . . people in coal country, red-state and industrial Heartland voters who are also going to be let down by Trump, who are also going to be in a lot of pain. If you're building a Love Army that includes all of the usual suspects that Trump went after and also people that Trump tricked, you start building a majority movement. . . . The people that Trump attacked, but also the people that Trump duped.<sup>168</sup>

This first critical step is inviting the opposition to dialogue. Then, when commonalities of purpose and interest are uncovered—buoyed by the ways in which harsh immigration policies are touching more lives—strategic narrative creation and dissemination thrives.

Importantly, however, commonality of purpose cannot rely on normative models that oppress those outside the narrative of the "ideal immigrant." When crafting advocacy or narratives that rely on commonality of experience, usually via attaching a normative lens to the immigrant experience such that the majority also embraces the cause, it is critical that advocates are keenly aware of possible collateral consequences that may accompany such efforts. As discussed, this phenomenon is present in the popular "best and

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166. Bell, *supra* note 65.

167. Dickinson, *supra* note 163.

168. *Id.*

brightest” framing in the push to pass the DREAM Act and the emotional pull of the “innocent and vulnerable children” framing in the fight to end family detention and to pass DACA reform.<sup>169</sup> In particular, and using the same-sex marriage equality strategy as a model:

Employing a chosen narrative in the immigration equality movement has similarly stark real-world consequences. By painting the worthy immigrant in a very particular light, the effects on those outside the ideal go far beyond internalized feelings of otherness or humiliation. Because the narrative affects legislative change that is remarkably stagnant – comprehensive immigration reform happens over decades, if that – and affects people’s literal ability to remain in the country, it behooves immigration equality advocates to be cautious in their strategic maneuverings.<sup>170</sup>

Elizabeth Keyes also discusses the unintended consequences of the Dreamer narrative, one in which the “best and the brightest” of immigrants should be feted and awarded immigration benefits.<sup>171</sup> She notes, though, that this narrative creates negative effects on other immigrant communities, including the parents of Dreamers who are perceived as “guilty” of bringing their children to the United States or of having them remain in the country unlawfully.<sup>172</sup> Moreover, other immigrants who are not military members or college students, including those who may have run afoul of the criminal law in minor ways, are excluded from the narrative.<sup>173</sup>

Indeed, the majority of immigrants are not the prototypical “innocent” Dreamers, who are present (as the narrative goes) “through no fault of their own.”<sup>174</sup> Advocates are struggling with this consequence as well, most recently in the flurry of negotiations surrounding DACA in the 2018 federal government shutdown debacle.<sup>175</sup> As one Arizona Dreamer activist summarized, “A lot of us feel like we sort of shot ourselves in the foot. . . . Because we started that narrative like ‘I was brought here by my parents, not my fault, poor me, I was here as a child’ that kind of created blame on our parents.”<sup>176</sup>

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169. *Narrative Reform Dilemmas*, *supra* note 9, at 1125.

170. *Id.*

171. Keyes, *supra* note 29, at 152.

172. *Id.*

173. *Id.*

174. *Id.*

175. *See supra* note 63.

176. Valdes, *supra* note 116 (quoting Erika Andiola, the first president of the Arizona Dream Act Coalition and noting the frustration of another organizer who “was irritated by the Dreamers’ tendency to portray themselves as innocent victims, a tactic that opened the door for conservatives to speak of Dreamers with empathy even as they cracked down on their parents as ‘criminals.’”).

Going forward, then, activists must recognize and avoid these crucial collateral consequences of a poorly-crafted narrative. If not, and as is exemplified by the Dreamer strategy, we risk creating an othered and “less worthy” community of immigrants.

#### CONCLUSION

Is it possible for advocates to capitalize on the wave of resistance politics to achieve just immigration reform? Is refocusing our efforts with a goal of membership inclusion the right path? Mai Ngai cautions that even when advocates and allies broaden their focus on affiliative or membership principles to further the narrative of just immigration reform, immigration law and policy is always beholden to political caprice.<sup>177</sup> This reality highlights the entrenched interconnectedness between the socio-political and legislative processes in immigration law and policy decisions and gives fuel to the argument that opposition dialogue and collaborations among new allies will be crucial to success. As I teach the students in my Immigration Law course every year, immigration law is a creation of political whim, informed by the values of the legislators who write it and, ostensibly, their constituency. Despite what may be the best policy or practice, political expediency—including self-preservation—is a constant influence. To that end, then, gathering divergent constituencies to work together in this era of political resistance is key to convincing legislators to pass just reform.

As Van Jones and Kevin Johnson assert, commonality of purpose and experience can be powerful. Critically important is engagement instead of vitriolic argument, expanding on a sense of community membership that should include immigrants. To avoid the othering collateral consequence, the narrative would focus not on conforming to an idealized narrative of “we’re just like you,” but instead proclaim, “we’re a community together.” In this sense, then, contributing members of the American community can be lauded for the benefits that they bring to the group—whatever those benefits are. Each new member need not be, then, the valedictorian or military hero (because so few are), but rather can come in all stripes. We need the computer genius *and* the landscaper; teachers, nurses, entrepreneurs, housekeepers and caretakers are all essential to a vibrant community.

The coalition to build a new membership narrative must engage and include divergent voices and stories, though it need not exhaust itself trying to convince the far-right extremists or even the entrenched left. Indeed, as described above in Part III, there are already models of young, yet successful collaborations in this era of resistance. Respectful—though certainly passionate dialogue—will help to create what Jones deems “constructive disagreement” that still leads to legislative and/or policy reform. Importantly,

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177. MAI M. NGAI, *supra* note 12, at 82-90.

dynamic activism should be encouraged; and new voices are invited to the dialogue. At the same time, advocates must challenge the fake mythology surrounding immigrants—most critically, it is essential to fight against the criminalization of immigrant status and racist and discriminatory proposals.

Most importantly, this time to engage in meaningful change should not be squandered. The vitriol and hate against immigrants that began to take shape in the 2016 campaign and stoked by Trump's win in 2017 brought shocking political measures—from Trump's Travel Bans targeting Muslims to the end of the DACA program and temporary protected status relief for certain long-time immigrants in the United States.<sup>178</sup> Unless advocates recognize that we can no longer accept the complacent status quo of ignoring the food at the back of the refrigerator,<sup>179</sup> the onward march by the anti-immigrant faction will continue. Instead, we must engage in the important steps necessary to effectuate change and resist the politics of hate.

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178. See, e.g., Brennan Weiss, *The Trump Administration has ended Protections for Immigrants from 4 Countries—Here's when they will have to leave the US*," BUS. INSIDER (Jan. 21, 2018), <http://www.businessinsider.com/trump-has-ended-temporary-protection-status-for-4-countries-2018-1> [<https://perma.cc/QGQ5-BF7N>] ("In recent months, the Department of Homeland Security has announced that it will end TPS for four countries, including El Salvador, Haiti, Nicaragua, and Sudan[.]").

179. With my sincere thanks to the wise Uber driver for opening my eyes that day in Detroit.