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COMPETING PARADIGMS OF IMMIGRANT HUMAN RIGHTS IN AMERICA

Vienna Flores*

“GIVE me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me, I lift my lamp beside the golden door.”¹ These are the words chiseled onto the Statue of Liberty—the expression that has sculpted the free world; the promise carved into every crevice of American history. But the pride of a melting-pot society has worn away through fear and intolerance. To protect the homeland, the borders, and economic resources, natural human rights have been ignored and a sub-class of people has been created to live in the shadows. While the United States scrambles to agree on immigration reform, undocumented immigrants endure hostility and ignorance in America.

This report analyzes the competing paradigms of immigrant human rights in the United States in areas of economic well-being, education, healthcare, and discrimination. Part I addresses the history of immigration law and current rules in the United States. Part II explains the arguments against immigration. Part III discusses the contrasting paradigms of immigration law between the states, Trumpists, current administration, and United Nations. Part IV considers the human rights implications that come from different immigration law interpretations. Finally, the report deliberates on which paradigm would align with the protection of human rights.

I. CURRENT IMMIGRATION LAWS

“The history of the United States is in part made of the stories, talents, and lasting contributions of those who crossed oceans and deserts to come [to America].”² The founding fathers granted the power of immigration regulation to Congress in the Constitution.³ The federal govern-

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1. Emma Lazarus, *The New Colossus*, POETRY FOUND., <http://www.poetryfoundation.org/poem/175887> (last visited Feb. 2, 2016).

2. *Arizona v. U.S.*, 132 S. Ct. 2492, 2510 (2012).

3. U.S. CONST. ART. I, § 8.

ment oversees this delicate issue because it overlaps with international law concerns that require communication “with one national sovereign, not [fifty] separate [s]tates.”⁴ The Immigration and Nationality Act (INA) codifies immigration law in the United States, which is managed by the U.S. Citizenship and Immigration Services (USCIS) government agency.⁵ The INA allows for 675,000 permanent immigrants to lawfully migrate to the United States from all around the world each year.⁶ Immigration law in America focuses on certain guiding principles: (1) family unification; (2) admitting immigrants with valuable work skills; (3) diversifying the country; and (4) aiding refugees.⁷ Those principles are balanced with prioritizing national security, the safety of the homeland, and protecting the borders.⁸ But “one of the most important and delicate of all international relationships has to do with the protection of the just rights of a country’s own nationals when those nationals are in another country” and thus the government must treat foreign citizens with dignity and respect.⁹

To understand the current status of immigration laws in America, it is important to look at the history of their development. In 1790, the first U.S. naturalization law was passed for those “free white [aliens] ‘of good moral character’ who had lived in the [United States] for at least two years.”¹⁰ Immigration limitations were not established until 1875 and were mainly meant to deter prostitutes and criminals from entering the country.¹¹ The federal government’s exclusive power over matters of immigration was established the following year.¹² In 1916, an American lawyer, Madison Grant, attempted to logically establish racial superiority in *The Passing of the Great Race*, which ignited anti-immigration lobbyists to create “nationality-based restrictions.”¹³ The next policy shift came after World War I and brought two large changes: (1) a quota limiting the immigration numbers from each country to the total people of that na-

4. *Arizona*, 132 S. Ct. at 2498.

5. *Immigration and Nationality Act*, USCIS, <http://www.uscis.gov/laws/immigration-and-nationality-act> (last visited Sept. 28, 2015).

6. *How the US Immigration System Works: A Fact Sheet*, AM. IMMIGR. COUNCIL, <http://www.immigrationpolicy.org/just-facts/how-united-states-immigration-system-works-fact-sheet> (last visited Sept. 28, 2015). This count does not include refugee admissions, which are determined by Congress and the president. *Id.*

7. *Id.*

8. Jeh Johnson & Eric Holder, *Fixing our Broken Immigration System Through Executive Action – Key Facts*, DEP’T HOMELAND SEC. (Nov. 20, 2015), <http://www.dhs.gov/immigration-action>.

9. *Arizona*, 132 S. Ct. at 2498–99.

10. D’vera Cohn, *How U.S. Immigration Laws and Rules have Changed through History*, PEW RESEARCH CTR. (Sept. 30, 2015), <http://www.pewresearch.org/fact-tank/2015/09/30/how-u-s-immigration-laws-and-rules-have-changed-through-history/>.

11. CONG. BUDGET OFFICE, *Immigration Policy in the United States* 1 (2006), available at <https://www.cbo.gov/sites/default/files/109th-congress-2005-2006/reports/02-28-immigration.pdf>.

12. *Id.*

13. Jake Scobey-Thal, *Illegal Alien: A Short Story*, FOREIGN POL’Y (Aug. 27, 2014), <http://foreignpolicy.com/2014/08/27/illegal-alien-a-short-history/>.

tionality already in the United States;¹⁴ and (2) the establishment of the Border Patrol.¹⁵

Nationality-based restrictions and quotas were largely irrational, and grew from fears sown by pseudoscientists such as Madison Grant and general anxiety that foreign workers would steal domestic jobs in a competitive labor market.¹⁶ And they were the norm until 1965 when the INA “created a new system favoring family reunification and skilled immigrants, rather than country quotas.”¹⁷ But the INA was not perfect, and “also imposed the first” immigration limits on Latin Americans, who, up until that point, “had been allowed to enter the [United States] without many restriction.”¹⁸ More limits and restrictions have followed since, each sharing a seemingly central tenet to U.S. immigration policy over the years—conscious discrimination against certain classes of people.

As immigration law has developed, so too have its legal statuses. Among those are: (1) immigrant; (2) non-immigrant; and (3) “illegal alien.” Immigrant and permanent resident status applies to any person in the United States who is not under a non-immigrant visa.¹⁹ It includes those people who want to remain in America permanently and allows a pathway to citizenship.²⁰ Non-immigrant status applies to aliens that have been given permission by USCIS to remain in the United States on a temporary basis.²¹ This is often the type of visa used by students, workers, and tourists.²² Finally, “illegal alien” status applies to people who have entered the country either illegally or legally but have since “fallen ‘out of status’ and [are] deportable.”²³ Other immigration statuses, such as refugee/asylee and deferred action, also exist.²⁴

The federal government exercises “discretion in the enforcement of immigration law [by embracing] immediate human concerns.”²⁵ The humanitarian factors used to determine a person’s deportability include his or her family status, likelihood of criminal behavior, ties to the community, military service, and having an American child.²⁶ The government also considers whether the person’s home country is engaged in a civil

14. *Id.*

15. *History of U.S. Immigration Laws*, FED’N FOR AM. IMMIGR. REFORM, http://www.fairus.org/facts/us_laws (last updated Jan. 2008).

16. Scobey-Thal, *supra* note 13.

17. Cohn, *supra* note 10.

18. *Id.*

19. *Permanent Resident Alien*, USCIS, <http://www.uscis.gov/tools/glossary/permanent-resident-alien> (last visited Oct. 1, 2015).

20. *Immigration Terms and Definitions Involving Aliens*, IRS, <http://www.irs.gov/Individuals/International-Taxpayers/Immigration-Terms-and-Definitions-Involving-Aliens> (last visited Sept. 28, 2015).

21. *Id.*

22. *Directory of Visa Categories*, U.S. DEP’T OF STATE, <http://travel.state.gov/content/visas/en/general/all-visa-categories.html> (last visited Nov. 1, 2015).

23. *Immigration Terms and Definitions Involving Aliens*, *supra* note 20.

24. *See Refugees and Asylum*, USCIS, <https://www.uscis.gov/humanitarian/refugees-asylum> (last visited Feb. 3, 2016).

25. *Arizona*, 132 S.Ct. at 2499.

26. *Id.*

war that exposes him or her to a real risk of harm or where political persecution is inevitable.²⁷ But even with extensive immigration policies, the country remains divided on migrant control.

II. ARGUMENTS AGAINST IMMIGRATION

Immigration is a polemic issue in both the United States and world as a whole. The stigma surrounding undocumented immigrants stems from their illegal entry into the country, which in turn makes them allegedly “criminal.”²⁸ Media, unprecedented findings, and coarse rhetoric fuel this notion.²⁹ Interestingly enough, the Pew Research Center reported in 2014 that only seventeen percent of Americans supported deportation of all undocumented immigrants.³⁰ Yet the historical bias against immigrants prevails, and opponents still argue that undocumented immigration imports criminals that burden society economically and socially.

Most people opposed to immigration believe that, from the time an immigrant steps onto U.S. soil without proper documentation, he or she is a criminal.³¹ Some media outlets have gone as far as reporting that undocumented persons account for over thirty percent of murders in many states.³² The recent murder of a San Francisco woman by an undocumented immigrant brought that strain to a fever pitch.³³ But a 2011 report by the U.S. Government Accountability Office found just the opposite of the manipulated reporting by the media—the majority of offenses committed by undocumented immigrants were related to immigration, drugs, traffic violations, and obstructions of justice.³⁴ These are non-violent offenses. And of the nearly three million arrests of undocumented immigrants, less than one percent were attributed to homicide.³⁵

The perception of immigrants continues to skew into an image of a freeloader—living on welfare, taking American jobs, and failing to pay taxes. This is just another impression painted by misguided media. Reality shows that the majority of immigrants come to America for employ-

27. *Id.*

28. *The State of Hate: Escalating Hate Violence Against Immigrants*, THE LEADERSHIP CONFERENCE, <http://www.civilrights.org/publications/hatecrimes/escalating-violence.html?referrer=https://www.google.com/> (last visited Nov. 1, 2015).

29. *Id.*

30. Sara Kehaulani Goo, *What Americans want to do about Illegal Immigration*, PEW RESEARCH CTR. (Aug. 24, 2015), <http://www.pewresearch.org/fact-tank/2015/08/24/what-americans-want-to-do-about-illegal-immigration/>.

31. Maria Santana, *5 Immigration Myths Debunked*, CNN MONEY (Nov. 20, 2014, 7:12 PM), <http://money.cnn.com/2014/11/20/news/economy/immigration-myths/>.

32. Tom Tancredo, *Illegal Alien Crime Account for over 30% of Murders in Many States*, BREITBART (Aug. 8, 2015), <http://www.breitbart.com/big-journalism/2015/08/08/illegal-alien-crime-accounts-for-over-30-of-murders-in-some-states/>.

33. Steve Almasy ET AL., *Suspect in killing of San Francisco Woman had been deported five times*, CNN (July 4, 2015, 12:21 PM), <http://www.cnn.com/2015/07/03/us/san-francisco-killing-suspect-immigrant-deported/>.

34. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-187, CRIMINAL ALIEN STATISTICS 21 (2011), available at <http://www.gao.gov/assets/320/316959.pdf>.

35. *Id.*

ment opportunities that will significantly alter their lives.³⁶ And that employment that leads to undocumented immigrants paying taxes: In 2010, undocumented immigrants “paid an estimated \$10.6 billion to state and local taxes.”³⁷ Additionally, the majority of immigrants that enter the country are not taking in-demand jobs but the “low-skilled jobs” that most Americans rebuff.³⁸ The United States has effectively passed the blame of their problems to a group of people that cannot lawfully defend themselves.

III. THE PARADIGMS OF IMMIGRATION LAW

There are an estimated 11.3 million undocumented immigrants in the United States as of 2014.³⁹ About 5.6 million of those immigrants are from Mexico.⁴⁰ These large numbers, and their combined threat to homeland security, have ignited a never-ending kitchen table debate. The states, presidential candidates, current administration, and the United Nations all seem to be at ends on the issue and resolution seems elusive.

A. THE STATE’S PARADIGM

Whether it is a bipartisan war or a legitimate concern, immigration is a prominent issue that the states feel they must address. States do not believe that the federal government does enough to prevent undocumented immigration.⁴¹ For that reason, many have made the fight their own by passing state laws to deter unauthorized immigration.⁴² As of 2011, thirty states had proposed laws that targeted immigration.⁴³ One of the first of these laws was Section 21.031 of the Texas Education Code, which provided that undocumented children should be denied enrollment into public schools unless they paid tuition.⁴⁴ Texas passed the law to save money, deter undocumented immigration, and prevent immigrant children from hindering education due to their limited understanding of English.⁴⁵

36. *From Anecdotes to Evidence: Setting the Record Straight on Immigrants and Crime*, AM. IMMIGR. COUNCIL (July 25, 2013), <http://www.immigrationpolicy.org/just-facts/anecdotes-evidence-setting-record-straight-immigrants-and-crime-0>.

37. Santana, *supra* note 31 (explaining that IRS reports show 50% to 75% of all undocumented immigrants “file and pay income taxes each year”).

38. *Id.*

39. Manuel Krogstad & Jeffrey S. Passel, *5 Facts about Illegal Immigration in the U.S.*, PEW RESEARCH CTR. (Nov. 19, 2015), <http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/>.

40. *Id.*

41. John Vettease, *Illegal Immigration: Is it a State or Federal Issue?*, ANNENBERG CLASSROOM, <http://www.annenbergclassroom.org/speakout/illegal-immigration-is-it-a-state-or-federal-issue> (last visited Oct. 1, 2015).

42. *Immigrant Policy Project*, Nat’l Conference of State Leg. (Aug. 27, 2012), <http://www.ncsl.org/research/immigration/omnibus-immigration-legislation.aspx>.

43. *Id.*

44. *Plyler v. Doe*, 457 U.S. 202, 205 (1982).

45. *Id.* at 206–7.

Under an equal protection challenge, the U.S. Supreme Court found Texas law was preempted by federal law, and that undocumented immigrants were protected by the Fourteenth Amendment.⁴⁶ The Court declared that education was not a fundamental right and that states could not pass that type of law because immigration issues were the sole responsibility of the federal government.⁴⁷ Notably, although the Court found that states did not have a right to deny undocumented immigrant children the right to free public education, it implied that Congress could pass a law to that effect.⁴⁸ The Court then reasoned that it would be unwise to discontinue education for undocumented immigrants and reprimanded Texas for attempting to “promot[e] the creation and perpetuation of a subclass of illiterates within [U.S.] boundaries.”⁴⁹

In 2011, Alabama passed the Beason-Hammon Alabama Taxpayer and Citizen Protection Act.⁵⁰ The Beason-Hammon Act, among other things, criminalized “failure to complete or carry an alien registration [card]” by an undocumented immigrant,⁵¹ allowed police officers with “reasonable suspicion” to investigate the immigration status of a detained individual,⁵² created state crimes penalizing people harboring, transporting, or encouraging immigration,⁵³ asked school officials to determine the status of children,⁵⁴ and prohibited the enforcement of a contract with any undocumented immigrant that could not be completed within twenty-four hours.⁵⁵ Alabama passed the Beason-Hammon Act because of the “economic hardship and lawlessness” caused by illegal immigration,⁵⁶ even though only 2.5 percent of Alabama was undocumented.⁵⁷ But the Eleventh Circuit preempted most of the Act in 2012, keeping just the provision that allowed police to investigate a detained person’s immigration status if an officer had “reasonable suspicion” to do so.⁵⁸ The Court also noted that prohibition of contract enforcement would deprive humans of “basic necessities” and preservation of a “minimal existence” solely for Alabama’s purpose of disgoring itself of undocumented people.⁵⁹

46. *Id.* at 209–10.

47. *Id.* at 223, 225.

48. *Id.* at 226–27.

49. *Id.* at 230.

50. Beason-Hammon Alabama Taxpayer and Citizen Protection Act, ALA. CODE § 31-13-1 (2011).

51. Ala. Code § 31-13-10 (2011), *invalidated by* U.S. v. Alabama, 691 F.3d 1269 (11th Cir. 2012).

52. Ala. Code § 31-13-12 (2011).

53. *Id.* § 31-13-13, *invalidated by* Alabama, 691 F.3d at 1280.

54. *Id.* § 31-13-27, *invalidated by* Alabama, 691 F.3d at 1280.

55. *Id.* § 31-13-26, *invalidated by* Alabama, 691 F.3d at 1280.

56. *Id.* § 31-13-2.

57. CAP Immigration Team, *The 10 Numbers you need to know about Alabama's Anti-Immigrant Law*, CENTER FOR AM. PROGRESS (Nov. 14, 2011), <https://www.americanprogress.org/issues/immigration/news/2011/11/14/10588/the-10-numbers-you-need-to-know-about-alabamas-anti-immigrant-law/>. Undocumented immigrants paid \$130 million in taxes to Alabama in 2010; it would cost Alabama more than twenty times that amount to deport them. *Id.*

58. *Alabama*, 691 F.3d at 1280.

59. *Id.* at 1293.

Alabama's Beason-Hammon Act mimicked Arizona's Support Our Law Enforcement and Neighborhoods Act, which contained many of the same anti-immigrant regulations and empowered police officers to arrest people on the "basis of possible removability" from the country.⁶⁰ Arizona levied a similar argument in support of its statute: A large number of criminals and cartel members were illegally entering the country, putting American lives in danger, and casting an economic and social burden on the state education and incarceration systems.⁶¹ And it is not just states that are inspired by Arizona's anti-immigrant sentiment. In 2013, the City of Farmers Branch, Texas tried to prevent undocumented immigrants from renting homes or apartments by authorizing building inspectors to look into each person's immigration status.⁶² The Fifth Circuit, in turn, held that federal law preempted the ordinance.⁶³ This was no surprise because the ordinance's "sole purpose [was] not to regulate housing but to exclude undocumented aliens, specifically Latinos, from the City of Farmers Branch," which was "an impermissible regulation of immigration."⁶⁴ Yet states continue to try to undermine federal immigration policy, especially now with the lingering paranoia of terrorism consuming the masses. As of today, thirty-one states have declared their opposition to Syrian refugees because of an impending threat of terrorism and interest in keeping the homeland safe.⁶⁵ So continues the schism between state and federal government.

B. THE TRUMPISM PARADIGM

In the midst of this turmoil, an American presidential election looms. An election where a man whose staunch disregard for vexatious political correctness—or factual correctness for that matter—has changed the perception of immigrants in America. Donald Trump launched his campaign with distorted and unfounded allegations of Mexican immigrants as criminals, drug dealers, and rapists.⁶⁶ Trump seeks to "make America

60. Ariz. Rev. Stat. Ann. § 13-3883 (2010), *invalidated by Arizona v. United States*, 132 S.Ct. 2492, 2493 (2012).

61. See Brief for Petitioners at 2–9, *Arizona*, 132 S.Ct. 2492 (2012) (No. 11-182).

62. *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 726 F.3d 524, 526 (5th Cir. 2013).

63. *Id.* at 538–29.

64. Omar Jadwat, *Appeals Court Rules Anti-Immigrant in Farmers Branch, Texas, is Unconstitutional*, ACLU (Mar. 22, 2012, 3:36 PM), <https://www.aclu.org/blog/appeals-court-rules-anti-immigrant-housing-law-farmers-branch-texas-unconstitutional>; see also Marisa Bono, *Don't You Be My Neighbor: Restrictive Housing Ordinances as the New Jim Crow*, THE MODERN AM., Summer-Fall 2007, at 31, available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1070&context=tma> (stating Farmers Branch passed the ordinance because it was concerned with the increase in Latino—not undocumented—population from twenty percent to thirty-seven percent in the 1990s).

65. Ashley Fantz & Ben Brumfield, *More than Half the Nation's Governors say Syrian Refugees not Welcome*, CNN (Nov. 19, 2015, 3:20 PM), <http://www.cnn.com/2015/11/16/world/paris-attacks-syrian-refugees-backlash/>.

66. Michelle Ye Hee Lee, *Donald Trump's False Comments Connecting Mexican Immigrants and Crime*, WASH. POST (July 8, 2015), <https://www.washingtonpost.com/>

great again” with an immigration policy that entails building a wall between the United States and Mexico and deporting all undocumented immigrants.⁶⁷ He also wants to undermine the significance of the Fourteenth Amendment of the Constitution by ending birthright citizenship; the very concept that changed the history of African Americans in this country.⁶⁸ And most recently, Trump urged a ban on Muslim travel into the country and denounced any admittance of Syrian refugees.⁶⁹ Trump’s immigration stance and reckless comments stem from his belief that immigrants take jobs from Americans, increase crime rates, burden the country socially, and drain the economy.⁷⁰ While immigration control is never a bad idea, Trump peddles in meritless ideas based on xenophobic fears.

With the extreme support that Trump received on his comments about immigrants, the other Republican candidates have followed his lead. Most support his initiative to end birthright citizenship and promote “tougher enforcement against ‘anchor babies.’”⁷¹ Those candidates who once supported a path to citizenship quickly dismissed the idea, even those who have immigrant roots.⁷² The Senate’s “Gang of Eight” Immigration Bill, which was endorsed by Marco Rubio and supports a path to citizenship for many undocumented immigrants through a provisional visa program and fine collection,⁷³ has been deeply criticized by Trump and other candidates as being too “weak on immigration.”⁷⁴ Trumpists and Republicans alike have incited a ruthless debate that rebukes anyone with a more rational plan.

C. THE CURRENT ADMINISTRATION’S PARADIGM

Despite the never-ending spew of propaganda about immigration, the current administration has adhered to more diplomatic methods that abide by American immigration principles. The government believes in family unification, deporting felons, and preventing continued undocu-

news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime/.

67. *Immigration Reform that will make America Great Again*, TRUMP, <https://www.donaldjtrump.com/positions/immigration-reform> (last visited Nov. 1, 2015).

68. *Id.*

69. Igor Bobic, *Donald Trump Calls for ‘Complete Shutdown’ of Muslims Entering U.S.*, HUFFINGTON POST (Dec. 8, 2015, 4:39 PM), http://www.huffingtonpost.com/entry/donald-trump-muslim-immigration-us_5665f75de4b072e9d1c7252b.

70. *Immigration Reform that will make America Great Again*, *supra* note 67.

71. Philip Elliott & Alex Altman, *The Republican 2016 Field Takes a Hard Right on Immigration*, TIME (Aug. 20, 2015, 4:42 PM), <http://time.com/4005245/republican-president-immigration/>.

72. *Id.*

73. Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (as passed by Senate, June 27, 2013); *see also* Byron York, *The immigration system Marco Rubio wanted*, WASHINGTON EXAMINER (Nov. 12, 2015, 5:51 PM), <http://www.washingtonexaminer.com/the-immigration-system-marco-rubio-wanted/article/2576240>.

74. Pam Key, *Trump: Rubio a ‘Clown’*, BREITBART (Sept. 25, 2015), <http://www.breitbart.com/video/2015/09/25/trump-rubio-a-clown/>.

mented immigration.⁷⁵ In November 2014, President Obama announced the expansion of Deferred Action for Childhood Arrivals (DACA) to include the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).⁷⁶ DACA provides that children who immigrate to the United States will be awarded deferred action status if they met certain criteria; put another way, kids that come to the United States will neither be deported nor have lawful status.⁷⁷ DAPA would have allowed parents of children who were either U.S. citizens or lawful permanent residents to remain in the country without fear of deportation, and provided eligibility for a work permit during the temporary period.⁷⁸ But those protections have yet to materialize because a district court in the Southern District of Texas awarded Texas and twenty-five other states an injunction against DAPAs' implementation on February 16, 2015.⁷⁹ The Fifth Circuit Court of Appeals affirmed the order; it is currently awaiting review by the Supreme Court.⁸⁰ This backlash to a major step in immigration law came from partisan beliefs and the perceived need to protect states "from economic and safety implications of illegal amnesty," a concern DAPA did not implicate.⁸¹ These beliefs epitomize state action in attempting to find any way to keep immigrants out, even if it means infringing and discriminating against an insular minority.

Although it may appear that the current administration is more sympathetic towards the immigration issue, the Affordable Care Act (ACA) and other healthcare programs prove otherwise. The ACA prevents undocumented immigrants from purchasing low-cost health insurance through the marketplace that would provide preventative and primary care.⁸² Under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, undocumented immigrants do not have the right to Medicaid to "remove the incentive of illegal immigra-

75. *Immigration*, THE WHITE HOUSE, <https://www.whitehouse.gov/issues/immigration> (last visited Nov. 1, 2015).

76. *The Obama Administration's DAPA and Expanded DACA Programs*, NAT'L IMMIGRATION LAW CTR. (Mar. 2, 2015), <https://www.nilc.org/dapa&daca.html>.

77. DACA allows people under the age of thirty-one as of June 15, 2012 to apply if they: (1) arrived in America before their sixteenth birthday; (2) physically resided in the United States on June 15, 2012; (3) had no lawful status; (4) attended school or attained a GED; (5) and have not been convicted of a felony. See *DACA Frequently Asked Questions*, USCIS (June 15, 2015), <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>.

78. *The Obama Administration's DAPA and Expanded DACA Programs*, *supra* note 76.

79. *Texas v. United States*, 86 F.Supp.3d 591 (S.D. Tex. 2015).

80. *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), *cert. granted*, No. 15-674, 2016 WL 207257 (U.S. Jan. 19, 2016).

81. Elise Foley, *Over Half the States Are Suing Obama for Immigration Actions*, HUFFINGTON POST (Jan. 27, 2015, 12:59 PM), http://www.huffingtonpost.com/2015/01/26/states-lawsuit-immigration_n_6550840.html.

82. *Immigrants and the Affordable Care Act*, NAT'L IMMIGR. LAW CTR., <http://www.nilc.org/immigrantshcr.html> (last updated Jan. 2014).

tion provided by the availability of public benefits.”⁸³ There is also a five-year delay on Medicaid, SNAP, and other federal subsidies for documented immigrants that came to the United States after the enactment of PRWOR.⁸⁴ Fortunately, under the Emergency Medical Treatment and Active Labor Act (EMTALA), undocumented immigrants may receive medical services without an upfront cost if there is an emergency medical condition that requires stabilization of a patient.⁸⁵ Every aspect of immigration law requires a balance with human rights concerns, especially considering America’s prominence within the United Nations.

D. THE INTERNATIONAL/UNITED NATIONS PARADIGM

The United Nations and its Member States aligned to commit to universal respect of inalienable human rights.⁸⁶ The UN does not believe that migration policies should consider only “security and border control,” instead, they must also recognize “obligations under international law including international human rights law.”⁸⁷ Human rights committees have found the United States in clear violation of immigrants’ human rights.⁸⁸ Specifically, the Special Rapporteur reported in 2008 that America “lacks a clear, consistent, long-term strategy to improve respect for the human rights of migrants.”⁸⁹ This atmosphere of intolerance condemns immigrants to become a vulnerable class subject to abuse. The UN constantly raises concerns related to the education, discrimination, and health of immigrants in the United States.⁹⁰ Notably, the International Convention on the Elimination of all forms of Racial Discrimination has been deemed to include protecting non-citizens as well.⁹¹ “The existence of human rights helps secure the peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democra-

83. Personal Responsibility Work Opportunity Reconciliation Act, Pub. L. No. 104-193 § 400(6), 110 Stat. 2105, 2260 (1996) (codified at 8 U.S.C. § 1601 (1996)).

84. KARINA FORTUNY & AJAY CHAUDRY, URBAN INS., A COMPREHENSIVE REVIEW OF IMMIGRANT ACCESS TO HEALTH AND HUMAN SERVICES 3–6 (June 2011), available at <http://www.urban.org/research/publication/comprehensive-review-immigrant-access-health-and-human-services>.

85. 42 U.S.C. § 1395dd (2006).

86. Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810 (Dec. 16, 1948).

87. Jonathan Lynn, *UN Warns States on Illegal Immigrant Rights*, REUTERS (Sept. 30, 2010, 8:07 AM), <http://www.reuters.com/article/us-rights-migrants-idUSTRE68T2OT20100930>.

88. See Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development*, 2, U.N. Doc. A/HRC/7/12/Add.2 (Mar. 5, 2008).

89. *Id.*

90. Human Rights Comm., *Human Rights Committee Considers Report of the United States*, U.N. (Mar. 2014), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14383&LangID=E>.

91. Comm. on the Elimination of Racial Discrimination, *General Recommendation 30: Discrimination Against Non-Citizens*, U.N. Doc. CERD/C/64/Misc.11/rev.3 (Mar. 12, 2004).

cies, and prevent humanitarian crisis.”⁹²

III. THE IMPACT ON IMMIGRANT HUMAN RIGHTS

Unfortunately, the different ideals on combating undocumented immigration ignore principles of humanity and preserving the standards America has supported. The United States, as a member of the United Nations, has a duty to respect human rights and set an example for the rest of the world.⁹³ Even at the center of the world stage, the United States trails behind many democracies when it comes to ratifying international human rights treaties, which sends the message that the economic and social rights of humans are not of utmost importance in America.⁹⁴ This theme is apparent in the conflicting paradigms of immigrant human rights. The proposed and current ideals endorse concepts that infringe on economic well-being and the right to education and healthcare, and generate a class of people prone to discrimination.

A. THE RIGHT TO ECONOMIC WELL-BEING

The main goal of human rights as a discipline is to secure economic and social well-being so as to attain fundamental needs.⁹⁵ Economic and social rights include the right to education, food, health, housing, social security, and work.⁹⁶ As part of Article Twenty-Three of the Universal Declaration of Human Rights, America has promised to maintain a country where people have the right to work for equal pay without discrimination.⁹⁷ Although the Declaration is just an expression of fundamental values and is not legally binding, it remains an important statement that the United States should stand by.⁹⁸ Other treaties that specifically enforce the protection of these rights include the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of a Child, both of which United States has signed but not ratified.⁹⁹ The signature is a passive gesture that demonstrates support of the initiative and to uphold its value but fails to execute the power of it through ratification.¹⁰⁰

92. Hope Lewis, *Human Rights Implications of Arizona v. United States*, SCOTUS BLOG (July 14, 2011, 12:48 PM), <http://www.scotusblog.com/2011/07/human-rights-implications-of-arizona-v-united-states/>.

93. *The UN in Brief*, U.N., <http://www.un.org/Overview/uninbrief/about.shtml> (last visited Nov. 1, 2015).

94. THOMAS BUERGENTHAL ET AL., *INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL* 413 (4th ed. 1988).

95. *Economic and Social Rights*, NESRI, <https://www.nesri.org/human-rights/economic-and-social-rights> (last visited Nov. 1, 2015).

96. *Id.*

97. Universal Declaration of Human Rights, *supra* note 86.

98. *What is the Universal Declaration on Human Rights*, AUSTRALIAN HUMAN RIGHTS COMM'N, <https://www.humanrights.gov.au/publications/what-universal-declaration-human-rights> (last visited Nov. 1, 2015).

99. *See id.*

100. *Signature, Ratification and Accession*, UNICEF (May 19, 2014), http://www.unicef.org/crc/index_30207.html.

But the United States has signed and ratified the Convention on the Elimination of All forms of Racial Discrimination (CERD), “which prohibits discrimination in economic and social fields, but does not guarantee economic and social rights.”¹⁰¹ This ratification holds America legally accountable for ensuring that the Convention is implemented and executed properly.¹⁰² The Alabama initiatives clearly violated this treaty. The laws disregarding contracts with undocumented immigrants were a transgression on the right to economic and social rights that failed to acknowledge immediate human concerns. Alabama failed in its effort to prevent undocumented immigrants from working and taking American jobs, and instead cost non-immigrant farmers thousands of dollars.¹⁰³ The inability to contract for housing, electricity, water, or school also hinders undocumented immigrants’ humanity. “The ability to contract is not merely an act of legislative grace; it is a capability that, in practical application, is essential for an individual to live and conduct daily affairs.”¹⁰⁴

B. THE RIGHT TO EDUCATION

In complete contrast to the Supreme Court’s ruling in *Plyler v. Doe*, the United Nations considers education a fundamental right.¹⁰⁵ So too, then, should the United States. Education sophisticates citizens by developing “human personality” and promoting “understanding, tolerance and friendship among all nations, racial or religious groups” to empower a universal respect for human rights.¹⁰⁶ Again, the United States has signed agreements that further protect education but has failed to ratify them.¹⁰⁷ In particular, the ICESCR promotes free primary and secondary education, and suggests that higher education be accessible to all people as well.¹⁰⁸ As a member of CERD, America has a legal obligation to enforce education for everyone regardless of race, color, national, or ethnic origin.¹⁰⁹

But once again, United States commitments under CERD have not been satisfied. Although the holding in *Plyer* was correct, the reasoning was not. The Texas law that forbade undocumented children from attending school was contrary to U.S. federal law, but the Court did not reason that it also would be contrary to human rights initiatives.¹¹⁰ The Court even left the door open to congressional action that could possibly

101. *Economic and Social Rights*, *supra* note 95.

102. *Signature, Ratification and Accession*, *supra* note 100.

103. CAP Immigration Team, *supra* note 57 (noting that one farmer lost \$100,000 in one month).

104. *Alabama*, 691 F.3d at 1293.

105. Universal Declaration of Human Rights, *supra* note 86.

106. *Id.*

107. *What is the Human Right to Education*, NESRI, <https://www.nesri.org/programs/what-is-the-human-right-to-education> (last visited Nov. 1, 2015).

108. International Covenant on Economic, Social, and Cultural Rights arts. 11–12, Dec. 16, 1966, 993 U.N.T.S. 3.

109. International Convention on the Elimination of all Forms of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195, *ratified by the United States* Nov. 20, 1994.

110. *Plyler*, 102 S.Ct. at 2400–02 (1982).

discontinue education of undocumented children.¹¹¹ This would leave innocent children who did not make the choice to come to this country undocumented without any opportunity to become productive citizens.¹¹² Additionally, Alabama law caused thousands of children to miss class in fear of mandatory immigration status checks on students.¹¹³ Although CERD allows a state party to differentiate between citizens and those that are undocumented, the United States has been criticized for violating CERD through its treatment of immigrants.¹¹⁴ Simply put, “U.S. policies preventing immigrant children from attaining higher education by preventing them from working or receiving in-state tuition and/or by causing them to be afraid of deportation violate CERD obligations.”¹¹⁵ Not only do American states demean undocumented immigrants, but these sorts of initiatives also prevent them from ever having the chance to prosper.

C. RIGHT TO HEALTH AND HEALTHCARE

The right to health and healthcare is a fundamental human right, and encompasses the right to housing, aliment, and the environment.¹¹⁶ “Health care has been characteri[z]ed as a basic necessity and as such is recogni[z]ed in international human rights law as a social right inherent in human dignity.”¹¹⁷ This right “means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment.”¹¹⁸ The Universal Declaration of Human Rights encourages health in all aspects of life.¹¹⁹ The ICESCR establishes that health is of utmost importance to increase infant survival, improve conditions within the workplace, and secure the ability to receive needed medical attention.¹²⁰

But once again, CERD is the only convention that could hold the United States accountable by enforcing measures that prevent discrimi-

111. *Id.* at 2398.

112. *Id.* at 2401.

113. The first day of class following the Beason-Hammon Act’s passage, some 2,285 Hispanic students were absent from school. CAP Immigration Team, *supra* note 57.

114. HALLELAND LEWIS NILAN ET. AL, RIGHTS OF IMMIGRANTS AND MIGRANTS TO THE UNITED STATES: A CRITICAL LOOK AT THE U.S. AND ITS COMPLIANCE UNDER THE CONVENTION 32 (2007), available at www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN3.doc.

115. *Id.*

116. *What is the Human Right to Health and Healthcare?*, NESRI, <http://www.nesri.org/programs/what-is-the-human-right-to-health-and-health-care> (last visited Nov. 1, 2015).

117. Sylvie da Lomba, *Immigration Status and Basic Social Human Rights: A Comparative Study of Irregular Migrants’ Right to Health Care in France, the UK and Canada*, 28 Neth. Q. HUM. RTS. 6, 7 (2010).

118. *What is the Human Right to Health and Healthcare?*, *supra* note 116.

119. Universal Declaration of Human Rights, *supra* note 86.

120. International Covenant on Economic, Social, and Cultural Rights, *supra* note 108, art. 12.

nation in matters of health and housing.¹²¹ Criticism of the United States failure to enforce and further the interests of CERD has been constant, especially after the passage of the ACA.¹²² The ACA's prevention of undocumented immigrants purchasing affordable healthcare for themselves and their children fails to meet the standards of CERD.¹²³ Most of these immigrants work in physically intensive jobs that may require frequent visits to the doctor's office.¹²⁴ Yet the general belief evolving around America characterizes undocumented people as "illegally present," meaning that they have no right to be in the country and in effect no benefits.¹²⁵ Trump's assault on birthright citizenship pushes undocumented immigrants' already limited access to healthcare further towards the brink. Undocumented expecting mothers can currently access social programs such as the Children's Health Insurance Program (CHIP) to attain pre-natal care.¹²⁶ These programs aim to protect the life of a soon-to-be American child; they may also be put at risk due to Trump's efforts. To prevent them is to contravene the thrust of human rights treaties because it undermines a woman's ability to receive healthcare for her child.

When states attempt to limit undocumented immigration by passing ordinances like the one in Farmers Branch, they violate undocumented immigrants' right to housing, which in turn impedes their health. "It is the government's obligation to guarantee that everyone can exercise the right to live in security, peace, and dignity."¹²⁷ But that burden becomes difficult to shoulder when a state's elected method of preventing undocumented immigration perverts human rights and interferes with the essential need for shelter. All the more because of the complicated immigration system in which even those people who are not subject to deportation under DACA, DAPA, or other programs might be turned away from renting a home because they do not technically have lawful status.¹²⁸ The reality of the matter is that the United States has created a

121. International Convention on the Elimination of all Forms of Racial Discrimination, *supra* note 109, art. 5.

122. Marjorie Cohn, *US Slammed for Failure to Fulfill Legal Obligations to Eliminate all Forms of Racial Discrimination*, HUFFINGTON POST (Sept. 9, 2014, 10:14 AM), http://www.huffingtonpost.com/marjorie-cohn/us-slammed-for-failure-to_b_5777674.html.

123. *Id.*

124. John B. Judis, *Documented Flaws*, NEW REPUBLIC (May 29, 2013), <https://newrepublic.com/article/113295/immigration-bill-denies-obamacare-undocumented-workers>.

125. See James Dwyer, *Illegal Immigrants, Health Care, and Social Responsibility*, in 5 HASTINGS CTR. REPORT 34, 34 (Feb 2007), available at <http://www.upstate.edu/bioethics/pdf/faculty/dwyerj-Hastings-Center-Report-2004-34-1.pdf>.

126. Rachel Fabi, *Undocumented Immigrants in the United States: Access to Prenatal Care*, UNDOCUMENTED PATIENTS, <http://www.undocumentedpatients.org/issue-brief/undocumented-immigrants-in-the-united-states-access-to-prenatal-care/> (last updated Sept. 29, 2014).

127. *What is the Human Right to Housing*, NESRI, <https://www.nesri.org/programs/what-is-the-human-right-to-housing> (last visited Nov. 1, 2015).

128. *Anti-Immigrant Ordinances: Farmers Branch, Texas*, ACLU (2015), <https://www.aclu.org/print/node/26520>.

subclass of humans who are neither deportable nor illegal but suffer everyday in a country where their basic human rights lay unprotected.

D. DISCRIMINATION THAT HINDERS HUMAN RIGHTS

Finally, almost every single paradigm violates the basic principles of CERD. The quintessential premise of CERD is the prevention of “racial discrimination” in “any distinction, exclusion, restriction or preference based on race, [color], descent, or national or ethnic origin” that unequivocally hampers fundamental protections of human rights.¹²⁹ At the Convention’s inception, CERD established that a state party’s regulation of citizens and non-citizens would not be affected as long as there was no discrimination in terms of nationality.¹³⁰ But in later recommendations, the Committee emphasized that CERD should apply with equal force to “non-citizens regardless of their immigration status.”¹³¹ But even if CERD did not apply to undocumented immigrants, the approaches that Americans have taken towards migrants have exploited people of similar nationalities through racial profiling. Racial profiling clearly violates the Convention’s initiative to “combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of . . . racial discrimination.”¹³²

Arizona’s attempt to deter undocumented immigration was heavily scrutinized by the U.N. CERD Committee, especially after finding that people of Hispanic descent were 2.5 times more likely to be searched when stopped than white drivers.¹³³ Arizona S. B. 1070 targeted those of perceived Latino origin and unnecessarily harassed them.¹³⁴ But it is not a criminal offense to remain in the country as an undocumented immigrant.¹³⁵ So allowing a police officer to detain someone based on “probable cause” that they are removable violates a core tenet of immigration law: Each person may attend a removal hearing to determine whether there is a sufficient reason for him or her to stay.¹³⁶ As previously stated, U.S. immigration policies must take international relations into account to avoid adverse consequences. That said, even Mexico filed an *amicus curiae* brief to the Supreme Court stressing that Arizona’s regulations would violate the “civil and human rights of Mexican nationals” traveling to the state or those of Hispanic descent residing in the state, and would

129. Buergeth et al., *supra* note 94, at 85.

130. International Convention on the Elimination of all Forms of Racial Discrimination, *supra* note 109, art. 1.

131. Comm. on the Elimination of Racial Discrimination, *supra* note 91.

132. International Convention on the Elimination of all Forms of Racial Discrimination, *supra* note 109, art. 1.

133. Chandra Bhatnagar, *Arizona violating Treaty Ratified by U.S.*, CNN (May 21, 2010, 10:51 AM), <http://www.cnn.com/2010/OPINION/05/19/bhatnagar.arizona.violation/>.

134. Lewis, *supra* note 92.

135. *Arizona*, 132 S. Ct. at 2505.

136. *Id.*

alter international relations between the two countries.¹³⁷ Alabama's similar laws brandished blatant discrimination with the arrest of two men without licenses that led to suspicion of faulty immigration status, only to be humiliated shortly after when it was revealed that both were directors for Mercedes-Benz and Honda Motor Company and legally allowed to be in the country.¹³⁸

The effort to prevent undocumented immigration will have dire consequences with foreign relations if this treatment continues. Provocative rhetoric and inflated statistics concerning undocumented immigrants have only reinforced human rights concerns. Every reference as "illegal" or "criminals" dehumanizes and replaces feelings of sympathy with prejudice, discrimination, and xenophobia. The United Nations General Assembly, European Commission, and other human rights groups have heavily discouraged the use of "illegal" because it "is most certainly dehumanizing."¹³⁹ But the effect of hate speech extends beyond dehumanization. Take, for instance, the palpable effects of Trump's absurd comments. In Boston, two men beat a homeless Hispanic man with a pipe and urinated on him while spewing anti-immigrant hyperbole.¹⁴⁰ When arrested, the men said that "Trump was right" about deporting illegals.¹⁴¹ But there was just one problem: He wasn't undocumented.¹⁴²

It is apparent that the negative connotations that arise from these terms have incorrectly "shaped public opinion on immigration policy."¹⁴³ The term "illegal immigrant" has roots in the Holocaust as a racial slur used to demean Jewish refugees.¹⁴⁴ Yet it is an expression that persists in America and the rest of the world. The words do not imply that a person's actions are criminal, but that his or her very existence is unlawful.¹⁴⁵ "Illegal Alien" preserves the support for laws that violate natural human rights because there is no compassion or enlightenment about why these people have risked their lives to come to a country that criminalizes their very existence. The bottom line is that human beings deserve to have their rights respected because there are no national boundaries in natural law.

137. Brief for United Mexican States as Amici Curiae Supporting Respondents at 2, *Arizona v. U.S.*, 132 U.S. 2492 (2012) (No. 11-182), 2012 WL 1098267, at *6.

138. Ed Pilkington, *Alabama Red-Faced as Second Foreign Car Boss Held Under Immigration Law*, THE GUARDIAN (Dec. 2, 2011, 1:31 PM), <http://www.theguardian.com/world/2011/dec/02/alabama-car-boss-immigration-law>.

139. Bill Frelick, *Dispatches: Why We Should Outlaw "Illegal,"* HUMAN RIGHTS WATCH (June 24, 2014), <https://www.hrw.org/news/2014/06/24/dispatches-why-we-should-outlaw-illegal>.

140. Lorenzo Ferrigno, *Donald Trump: Boston Beating is 'Terrible'*, CNN (Aug. 21, 2015, 6:05 PM), <http://edition.cnn.com/2015/08/20/politics/donald-trump-immigration-boston-beating/>.

141. *Id.*

142. *Id.*

143. Shahid Haque-Hausrath, *Elie Wiesel: "No Human Being is Illegal"*, BORDER CROSSING LAW (Feb. 27, 2009), <http://nohumanbeingisillegal.com/Home.html>.

144. Charles Garcia, *Why 'Illegal Immigrant' is a slur*, CNN (July 6, 2012, 12:14 PM), <http://www.cnn.com/2012/07/05/opinion/garcia-illegal-immigrants/>.

145. Haque-Hausrath, *supra* note 143.

V. THE PARADIGM TO CHANGE THEM ALL

Contrary to popular belief, it is possible to protect American borders and prevent further unauthorized immigration while also respecting the human rights of immigrants currently residing in the United States. Immigration is one of the most complicated areas of law and requires consideration of international and foreign relations. As the world leader, the United States must responsibly and humanely approach the issue of fixing a broken immigration system. The DACA and DAPA plans are a realistic approach to undocumented immigration that favors family unification. Even though the methods only defer deportation, they are a step in the direction of creating a path to citizenship. The Pew Research Center reported in 2015 that seventy-two percent of Americans surveyed believed in formulating a plan to help undocumented immigrants stay in the country legally.¹⁴⁶ A path to citizenship makes sense because expecting undocumented immigrants to follow the current immigration system is ludicrous with a scheme so incredibly backed up—a major reason people take the risk of being undocumented in the first place.¹⁴⁷ America should learn from past paranoia-induced mistakes and recognize human rights as a major factor in the treatment of immigrants.¹⁴⁸ “Whatever burdens we think that irregular migrants can properly suffer as a result of having entered the society by some unauthorized route, forfeiting one or more of their human rights is not among them.”¹⁴⁹

146. Kehaulani Goo, *supra* 30.

147. *Why Don't They Just Get in Line?*, AM. IMMIGR. COUNC. (Mar. 14, 2013), <http://www.immigrationpolicy.org/just-facts/why-don%E2%80%99t-they-just-get-line>.

148. During World War II, President Roosevelt ordered Japanese-Americans to leave the West Coast and displaced them into internment camps because of fear and anxiety among American people. *Japanese-American Relocation*, in THE READER'S COMPANION TO AMERICAN HISTORY (Eric Foner and John A. Garraty eds., Houghton Mifflin Harcourt Publishing 1991), available at <http://www.history.com/topics/world-war-ii/japanese-american-relocation>.

149. David Miller, *Irregular Migrants: An Alternative Perspective*, 22 ETHICS & INT'L AFFAIRS 193, 195 (2008), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2008.00143.x/epdf>.

