

**WE ALREADY HAVE A “EUGENIC IMMIGRATION POLICY”:
AN IMMIGRATION LAWYER’S RESPONSE TO MARKO ELEZ’S REMARKS ON X**

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ABSTRACT

This is my open response to Marko Elez’s insinuation that the American immigration system is not already eugenic. At stake is America’s ability to observe the actual eugenic policies that are presently in place, as Mr. Elez appears to have offered himself to all major political leaders from far left to far right as a scape-goat rag with which to wipe off the eugenic aspects of their positions and policy stances. If these policies are faced, there is a pathway by implication of the Privileges and Immunities and Privileges or Immunities Clauses for federal courts to extend foreign citizenship rights through the law of nations to immigrants as U.S. citizenship rights were originally imported from international law.

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“I just want a eugenic immigration policy, is that too much to ask?”

Marko Elez, from Deleted X Post of December 2024

I’m having wicked dreams of leaving Tennessee

Hear Santa Monica, I swear it’s calling me

Won’t make my mama proud, it’s gonna cause a scene

She sees her baby girl, I know she’s gonna scream

CHAPPELL ROAN, *Pink Pony Club*,
on THE RISE AND FALL OF A MIDWEST PRINCESS (2023)

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Introduction: The Problem of Eugenics Deciding Immigration Policy in America

Newsflash to Gen-Z – the racist tactics used by your parents who are around 53-year-old “daddy” Elon Musk’s age are tired and boring. We have seen it before with the Boomers, who especially twisted it into every possible form that could exist—resulting in American racism’s final form of evolutionary greatness: Donald J. Trump. As a Millennial, I empathize with Marko Elez in so far that he believed that he was being original when he recapitulated one of Gen-X’s worst Boomer copycats to rehash some old idea or another. Most of us below the age of 45-or-so are and have been stuck in a wasteland of old thoughts and concepts that were already used up in yesteryears’ debates that landed us here in several constitutional crises.

Amid Marko Elez’s recent commentary over X that expressed a dogmatic belief in the supposed liberality of our current immigration system, my memory flashed back to my old college roommate’s love for *The Doors*. My roommate displayed his love for his father’s favorite band in band posters plastered across his half of our dorm to signal his side on the liberal end of the Boomer’s old fights with one another that primarily took place in the 60s. As such, Chappell Roan’s majestic tributes to the 80s as if that decade was more liberal than it was is only the current rendition of younger generations expressing love for their parents’ artistic contributions that maybe their parents do not actually deserve. As one who grew up in a conservative home outside of Los Angeles and then outside of Fresno among farms and orchards, I knew this side lost its political battles to send America in a more generous direction.

Yet, Roan’s song *Pink Pony Club* is a marvelous emigration story touting a dream of California that may never have existed until now. California has always been a land of dreams, some broken and sent away, but others realized and established. In fact, the word California given to us by the Spanish Empire was the name of a mythical island in a 1510 Spanish novel *Las Sergas*

de Esplandián by Garci Rodriguez de Montalvo. In that story, California was ruled by Queen Calafia, a mighty Black woman—so in California, perhaps, we always imagined that anything could be possible and it is no surprise that we would even imagine the counterrevolutionary English Queen Charlotte as a Black woman however unlikely that might have been in real life.

But our revisions of history as though the British Empire itself could be inclusive and antiracist became the battlefield into which trolls like Mr. Elez opened their mouths. It appears that California’s fanciful tributes to the past—our invitations to the world to revere the past as though it were liberal and free—caused conservative radicals to believe that every reform promised by progressives was antiracist and pro-woman. Or, perhaps, conservative radicals like Mr. Elez in the Gen-Z wing of the “Make America Great Again” crowd are merely in a struggle to claim the past as racist and horrible—to defeat all “Blue Caesars” including all fictional Black Queens from Charlotte to Calafia to Kamala Harris.

But, the imagination of California and of all Americans about California, has a troubling past as our progressives took the lead in the horrible eugenic policies of the early Twentieth Century that we never actually overcame. Progressive California sided with the North in the Civil War, but we had a fugitive slave law and returned runaways to their masters likely because of our deep seated eugenic beliefs.¹ California passed the first Chinese Exclusion Acts that were later recapitulated by Congress,² all because we imagined that human beings were split into different racial categories rather than being one race as the Bible attested and as Phillis Wheatley venerated to cause the American Revolution.³

¹ *Pilot Episode: California Fugitive Slave Law*, GOLD CHAINS PODCAST (Aug. 12, 2021), <https://www.aclunc.org/sites/goldchains/podcast/episodes/ep01-california-fugitive-law.html>.

² Mark Kanazawa, *Immigration, Exclusion, and Taxation: Anti-Chinese Legislation in Gold Rush California*, 65 J. ECON. HIST. 779, 784 (2005).

³ *Acts 17:26; Phillis Wheatley, To His Excellency General Washington, in THE COLLECTED WORKS OF PHILLIS WHEATLEY 145–46* (John C. Shields ed., 1988) (calling the human race “freedom’s heaven-defended race!”).

The eugenicists used cost-benefit balancing tests featured in *Jacobson v. Massachusetts* to extend non-consensual sterilization in *Buck v. Bell* throughout America to the pleasure of Nurse Ratched everywhere.⁴ But it must be remembered Nurse Ratched is a quintessential Californian depiction of American despotism. California never overcame these balancing tests symbolized by Nurse Ratched—in fact in *Madrigal v. Quilligan* the Ninth Circuit backed nonconsensual sterilizations of Latinas in the 1970s,⁵ and in the early 2000s Kelli Dillon uncovered mass forced sterilizations occurring in the California Department of Corrections and Rehabilitation.⁶

Yet renowned liberal immigration lawyers like Professor T. Alexander Aleinikoff characterized the “age of balancing” as though it were more liberal than it was.⁷ In effect, *Buck* was written out of the history of balancing presented by Prof. Aleinikoff when he falsely observed that “[b]alancing entered constitutional law like wild clover, not poison ivy.”⁸ So we see that the Boomers already dressed up our eugenic past as though it were more liberal than it was to help their parents save face, apparently hoping to avoid reckoning with the overwhelming reality that our immigration system is racist and based squarely upon eugenic ideals.

This false history where antiracists won in American politics is belied by the fact that the visage of President Obama is a blackface that white Boomer liberals slapped over the status quo eugenic system of immigration enforcement that has existed in more or less the same state since 1924.⁹ In 1965, the United States Congress amended the original 1924 law (which established the

⁴ *Buck v. Bell*, 274 U.S. 200, 207 (1927) (citing *Jacobson v. Massachusetts*, 197 U.S. 11 (1905)); see *Jacobson*, 197 U.S. at 24 (“[T]hey generally have considered the risk of such an injury too small to be seriously weighed as against the benefits coming from the discreet and proper use of the preventive.”).

⁵⁵ See Maya Manian, *The Story of Madrigal v. Quilligan: Coerced Sterilization of Mexican-American Women*, REPRODUCTIVE RIGHTS & JUSTICE STORIES (forthcoming 2019).

⁶ BELLY OF THE BEAST (Erika Cohn dir., 2020).

⁷ T. Alexander Aleinikoff, *Constitutional Law in the Age of Balancing*, 96 YALE L.J. 943, 963–64 (1987).

⁸ *Id.*

⁹ Cf. Alex Nowrasteh, *President Obama’s Mixed Legacy on Immigration*, CATO INSTITUTE (June 6, 2016), <https://www.cato.org/publications/commentary/president-obamas-mixed-legacy-immigration#>.

first U.S. visa system upon racial bases that were unabashedly eugenic), with a family based visa system explicitly for the purpose of keeping America white without explicitly referencing racial categories.¹⁰ The 1965 law did its eugenic job, and kept America white for at least two or three more generations—staving off the turning-over point from white to nonwhite indefinitely.¹¹

Ever since, referencing the oft-cited allegory about the man and the starfish, immigration lawyers have been relegated to the strategy of helping one “starfish” at a time hoping to make use of the limited benefits to immigrant families for all colors and creeds.¹² But our relegation to the fringe of the law *is* a successful eugenic plan to keep America white. America is still majority white, and would not be but for the immigration law that is still premised on the 1924 law.

Nevertheless, the privilege and immunity of all U.S. citizens to travel throughout the United States without needing to apply for visas under the Fifth and Fourteenth Amendments can be extended to non-citizens by virtue of their natural citizenship in foreign nations.¹³ There remains an opportunity for federal courts to extend these privileges and/or immunities to upend the eugenic system that presently exists.¹⁴ Yet, as long as the federal courts believe that they appear as liberal progressives when they defend the status quo immigration system that *is* a brainchild of eugenics they are unlikely to upend the status quo.

¹⁰ Tom Gjelten, *In 1965, A Conservative Tried To Keep America White. His Plan Backfired*, NPR: WEEKEND EDITION SATURDAY (Oct. 3, 2015, 6:57 AM), <https://www.npr.org/2015/10/03/445339838/the-unintended-consequences-of-the-1965-immigration-act>.

¹¹ *But see id.*

¹² *See, e.g., Saving Starfish: Making a difference in the lives of young immigrants, one by one*, IMMIGRATION LAW & JUSTICE NETWORK (Feb. 3, 2016), <https://iljnetwork.org/saving-starfish-making-a-difference-in-the-lives-of-young-immigrants-one-by-one/>.

¹³ *Saenz v. Roe*, 526 U.S. 489, 500–01 (1999); *cf.* Joshua J. Schroeder, “*Improve Your Privileges While They Stay*”: *A Guide to Improve the Privileges of U.S. Citizenship for Everybody*, 39 *TOURO L. REV.* 657, 707 (2024) (explaining how to use cases like *Saenz* “to reignite the pro-immigrant nature of U.S. citizenship itself”).

¹⁴ 1 JAMES WILSON, *COLLECTED WORKS OF JAMES WILSON* 642 (Kermit L. Hall & Mark David Hall eds., 2007) (“The power of retaining and of renouncing our rights of citizenship, is the most stable foundation of our liberties.”) (quoting Cicero, *Pro Balbo*); *cf.* Amy H. Kastely, *Cicero’s De Legibus: Law and Talking Justly Toward a Just Community*, 3 *YALE J. L. & HUMANITIES* 1, 15 (1991) (speaking of natural versus legal citizenship).

This Article will explain how immigrant habeas corpus can be used to extend the U.S. citizenship right to travel does not extend to immigrants announced in *Saenz v. Roe* as a basis to resist executive power grabs to destroy immigrant rights. President Trump’s announcement of an invasion, emergency, and use of military means to punish undocumented immigrants opens the door to habeas jurisdiction more widely than it has ever existed before. Now that immigrants are being treated broadly as military criminals in unprecedented executive actions to defend the hegemony of the white race in America, it is high time to isolate and distinguish *DHS v. Thuraissigiam* and uphold the fundamentals announced in *Boumediene v. Bush* for the entire immigrant population in the United States.

I. How to Behold the Errors of All Americans that Led to Seeing Trump-as-King

As Pliny the Younger once wrote, “many fear their reputations, few their conscience.”¹⁵ Famed superstar Chappell Roan may be one of the few who would follow her conscience to advocate that her rights to travel as a U.S. citizen should be reflected back to foreign immigrants to travel here for similar reasons as Roan by virtue of this right as an importation into the United States Constitution from the law of nations itself. And yet, liberals generally are so obsessed with virtue signaling they will not accept Karla Sofía Gascón as one of their own, because even as she is the first transsexual actress to be nominated for an Oscar for her performance in *Emelia Pérez*, she is or at least appears to have been a racist or bigot.¹⁶

The reality is that if Americans want the United States to instantly become a nonwhite nation they could easily make that happen. They could pass a law to accept the nonwhite individuals who want into the United States. However, these individuals (for the most part) hold

¹⁵ *Letters of Pliny* III.20.

¹⁶ Lisa Respers France, *Karla Sofía Gascón apologizes for past controversial posts*, CNN: ENTERTAINMENT (Jan. 31, 2025, 9:34 AM), <https://www.cnn.com/2025/01/31/entertainment/karla-sofia-gascon-apologizes-controversial-posts/index.html>.

or at least held problematic views perhaps most fashionably presented in MIA's marvelous and unforgettable song *Bad Girls*.¹⁷

The only thing that might turn these immigrants into allies of mainstream liberal Americans is the hideousness of trolls like Mr. Elez, and yet immigrants with conservative values still will not be united much less the monolith Mr. Elez likely perceives them to be. To varying degrees, most immigrants who want into the United States are on board with Mr. Trump's misogyny, racism, his totalitarian plans, and especially his greed.¹⁸ The problematic standpoints of Ms. Gascón are commonplace, as were Mr. Elez's—in fact they are the same.¹⁹

To be clear, Elon Musk is an African immigrant with extremely problematic views about race, gender, and politics. Musk was drawn into the United States by his dreams of establishing economic dominance symbolized by Trump in America. Musk is simply the latest import from the diverse British and Dutch empires that established New York according to their wars over the freedom of the sea that resulted in *Le Louis*'s horrid declaration of the free trade in human flesh.²⁰

Musk's unelected role in the U.S. government in 2025 begs the question of how much patience the American people have for foreigners who unequivocally satisfied the eugenic interests that pervade U.S. immigration law. Mr. Elez's role, like all of Musk's unpaid interns who are tasked with dismantling the U.S. government, is apparently to maintain the sheer hypocrisy of the U.S. government that believes its immigration system overcame eugenics at some point when it never did. Now the defenders of the eugenics status quo in America get to wipe their reputations

¹⁷ Cf. Yasmine El-Sabawi, *Muslim mayor's support for Trump stems from alienation by Democrats, conservative religious values*, MIDDLE EAST EYE (Sept. 23, 2024, 10:34, PM), <https://www.middleeasteye.net/news/michigan-muslim-mayors-support-trump-stems-alienation-democrats-conservative-religious-values>; Russell Contreras, *Exclusive poll: Latino support for border wall, deportations jumps*, AXIOS (Apr. 11, 2024), <https://www.axios.com/2024/04/11/poll-latino-support-border-wall-deportations-jumps>.

¹⁸ See, e.g., sources cited *supra* note 17.

¹⁹ See France, *supra* note 16.

²⁰ *Le Louis* (1817) 2 Dod. 210 (Eng.).

clean on Trump as if they stood for the rule of law all along, without dealing with their underlying support of the constitutionally suspect status quo eugenic system of America.

As the U.S. military is deployed to the U.S.-Mexico border to address a contrived emergency “invasion” under the Alien Enemies Act,²¹ immigrants are being deported in military planes,²² are being shipped off to and detained in Guantanamo Bay,²³ are being detained in traditional prisons,²⁴ deported and detained in a hotel and remote camp in Panama,²⁵ and as Trump continues to mull over President Nayib Bukele’s offer to imprison immigrants and U.S. citizens in El Salvador’s super-max prison with the remnants of MS-13²⁶— liberals appear to be venerating the resignations of conservatives like former SDNY prosecutor Hagan Scotten.²⁷ However, Mr. Scotten’s letter is the height of virtue signaling at the expense of immigrants. In fact, Mr. Scotten positioned his virtue as a prosecutor of Mayor Eric Adams as more important to note than the anti-immigration scheme Trump plans to carry out with the help of Mayor Adams.

²¹ Lolita C. Baldor, *More active duty troops will head to US-Mexico border, bringing the total to 3,600*, AP NEWS (Feb. 7, 2025), <https://apnews.com/article/immigration-troops-border-trump-eb2dbf0bc15397a195033583c15df943>; *Declaring a National Emergency at the Southern Border of the United States*, WHITE HOUSE WEBSITE (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-emergency-at-the-southern-border-of-the-united-states/>; see Alien Enemies Act, 50 U.S.C. § 21.

²² Kimmy Yam, *U.S. military plane carrying about 100 undocumented immigrants lands in India*, NBC NEWS (Feb. 5, 2025, 11:49 AM), <https://www.nbcnews.com/news/asian-america/100-indian-immigrants-deported-lands-india-rcna190661>.

²³ Tom Phillips, *‘A human rights disaster’: immigrants sent into Guantánamo black hole despite no proof of crime*, GUARDIAN (Feb. 14, 2025, 6:00 AM), <https://www.theguardian.com/us-news/2025/feb/14/trump-guantanamo-bay-migrants>.

²⁴ Michael R. Sisak, *Federal prisons being used to detain people arrested in Trump’s immigration crackdown*, CORRECTIONS1 (Feb. 11, 2025, 4:25 PM), <https://www.corrections1.com/federal-prison/federal-prisons-being-used-to-detain-people-arrested-in-trumps-immigration-crackdown>.

²⁵ Yong Xiong et al., *‘We are in danger’: Migrants deported from US were locked in hotel and held at remote camp in Panama, lawyers say*, CNN: WORLD (Feb. 22, 2025), <https://www.cnn.com/2025/02/22/americas/migrants-deported-camp-panama-intl-latam/index.html>.

²⁶ Stefano Pozzebon et al., *El Salvador offers to house violent US criminals and deportees of any nationality in unprecedented deal*, CNN: WORLD (Feb. 4, 2025, 2:59 AM), <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk/index.html>.

²⁷ Joyce Vance, *The Face of Courage*, CIVIL DISCOURSE WITH JOYCE VANCE (Feb. 14, 2025), <https://joycevance.substack.com/p/the-face-of-courage>; cf. Dahlia Lithwick, *What to Make of the DOJ’s Attempt to Strong-Arm Its Prosecutors Into Dismissing the Eric Adams Charges*, SLATE (Feb. 14, 2025, 4:23 PM), <https://slate.com/news-and-politics/2025/02/eric-adams-charges-dispute-doj-sdny-resignations.html>.

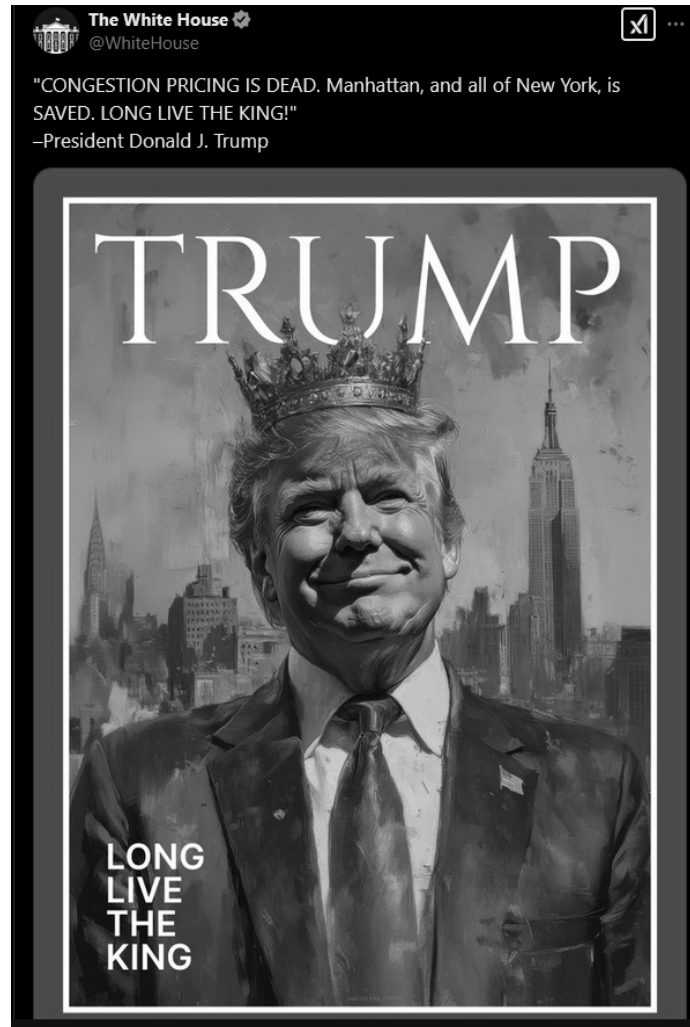
Our best thinkers are so obsessed with virtue signaling that Trump’s plan to use criminal mayors to carry out unconstitutional schemes that directly violate the Tenth Amendment according to Justice Scalia’s decision in *Printz v. United States* is going almost unnoted.²⁸ And even if it is noted somehow, the note probably will not break through into the mainstream conversation as it indicates a constitutional crisis that does not easily fit into the overly simplified political divisions between Republicans and Democrats that dominate whatever broken discourse still exists between Americans today. The way is open for Trump to use the crimes of bad men like Mr. Adams to control the states through Trump’s strategic decision not to prosecute unless they disobey Trump, and if it works California’s cities and other liberal bastions may be put under the thrall of Trump as though the Tenth Amendment and federalism does not exist.

As most Americans appear frozen in shock, major American publishers note how it only took Adolf Hitler 53-days to dismantle democracy in Germany.²⁹ The breakneck speed at which Trump’s second term is progressing, by using an immigrant billionaire to hire and mostly fire large segments of the federal workforce without regard to the law, seems to match the mid-century pattern that occurred in Germany. However, Trump’s attempts to lay hold of New York especially in the early weeks of his second presidency by issuing prophetic manifestations through White House social media accounts on Truth Social and X stating “Manhattan, and all of New York, is SAVED. LONG LIVE THE KING!” with an AI-created image of him donning a crown can still be avoided (image below).³⁰

²⁸ *Printz v. United States*, 521 U.S. 898, 934–35 (1997).

²⁹ Timothy W. Ryback, *How Hitler Dismantled a Democracy in 53 Days*, ATLANTIC (Jan. 8, 2025), <https://www.theatlantic.com/ideas/archive/2025/01/hitler-germany-constitution-authoritarianism/681233/>.

³⁰ Benjamin Oreskes, ‘*Long Live the King*’: *Trump Likens Himself to Royalty on Truth Social*, N.Y. TIMES (Feb. 21, 2025), <https://www.nytimes.com/2025/02/19/us/politics/trump-king-image.html>; Theo Burman, White House Shares Photo of Donald Trump Dressed as a King, NEWSWEEK (Feb. 20, 2025, 3:59 PM), <https://www.newsweek.com/white-house-donald-trump-king-time-2033574>.



II. How to Use Habeas Corpus to Resolve Constitutional Crises Wrought by Elon Musk

Due to President Trump's citation of the Alien Enemies Act,³¹ his use of military means to punish undocumented immigrants,³² and his detention of immigrants in the Guantanamo Bay Military Prison³³ strongly indicates that the bases upon which the U.S. Supreme Court decided *DHS v. Thuraissigiam* are officially over.³⁴ Now that the *Thuraissigiam* Court's attempt to

³¹ Catherine E. Shoichet, *Trump says he'll use a 1798 law to crack down on cartels. He could face an uphill battle in court*, CNN POLITICS (Jan. 20, 2025, 2:03 PM), <https://www.cnn.com/2024/11/14/politics/alien-enemies-act-1798-trump-cec/index.html>.

³² Yam, *supra* note 22.

³³ Phillips, *supra* note 23.

³⁴ *DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1981 (2020) (“*Boumediene* is not about immigration at all.” (distinguishing *Boumediene v. Bush*, 553 U.S. 723, 746, 779 (2008))).

distinguish *Boumediene v. Bush* is palpably untenable,³⁵ there is absolutely no reason for the federal courts to continue delaying the application of all six holdings of *Boumediene* to immigrant habeas corpus filings in order to release immigrants.³⁶ To begin with, immigration law is not civil law, it is and always was as Immigration Judge Dana Leigh Marks long explained—an often illegitimate application of military or feudal law.³⁷

Habeas corpus anciently exists for the express purpose of ensuring that civil law control military law and not the other way around and especially in the context of the ancient struggles between Crown and Court embodied by feudal law’s failed attempts to overawe common law as *gravior lex*.³⁸ The Suspension Clause of the U.S. Constitution does not allow the privilege of habeas corpus to be suspended except by Congress in response to an invasion or rebellion.³⁹ The U.S. Supreme Court reviewed the meaning of invasion and rebellion in *Ex parte Milligan* and *Duncan v. Kahanamoku* and found that such an invasion or rebellion must be actual and so strong as to have physically shuttered the doors of the judiciary.⁴⁰ No president can proclaim or order such an invasion or rebellion to exist by his own power—these circumstances must exist as a practical reality before Congress can constitutionally suspend habeas corpus.⁴¹ In fact, the

³⁵ *Id.*

³⁶ Joshua J. Schroeder, *A Candle in the Labyrinth: A Guide for Immigration Attorneys to Assert Habeas Corpus after DHS v. Thuraissigiam*, 49 HASTINGS CONST. L.Q. 237, 241–42 (2022) [hereinafter Schroeder, *A Candle*] (citing *Boumediene*, 553 U.S. at 732–33, 751, 762–64, 779, 786–87, 792–94).

³⁷ *Id.* at 245 n.31 (quoting a remark of former IJ Dana Leigh Marks); *id.* at 246 (“Going forward, no distinction should be made between aliens held in military prisons like Guantanamo Bay and those held in immigrant detention facilities.”).

³⁸ Joshua J. Schroeder, *The Body Snatchers: How the Writ of Habeas Corpus was taken from the People of the United States*, 35 QUINNIPIAC L. REV. 1, 11 (2016) [hereinafter Schroeder, *The Body*].

³⁹ U.S. CONST. art. I, § 9, cl. 2.

⁴⁰ *Duncan v. Kahanamoku*, 327 U.S. 304, 324 (1946); *Ex parte Milligan*, 71 U.S. 2, 140–41 (1866).

⁴¹ Schroeder, *The Body*, supra note 38, at 44 (“[U]nder the open-door ruling in *Ex parte Milligan*, any legal limitation upon the Court’s exercise of habeas is void unless there is actual, present military violence shuttering the doors of the court.”).

operation of the Enemy Aliens Act itself requires a declaration of war that cannot properly be supplanted by a president's mere orders or proclamations.⁴²

We know this, because Congress tried to suspend habeas corpus regarding those suspected of being enemy combatants in the war on terror and the U.S. Supreme Court struck down the suspension in *Boumediene v. Bush*.⁴³ As a result, several suspected terrorists were released from Guantanamo Bay and freed despite suspicion of being foreign enemies detained outside the geographic limits of the United States.⁴⁴ Under existing precedent, President Trump's orders and proclamations of an invasion of undocumented immigrants does not suspend and cannot be the basis for suspending habeas corpus.⁴⁵

Moreover, habeas corpus jurisdiction runs to the custodian—not the detainee.⁴⁶ Thus, if the U.S. Supreme Court has jurisdiction over the jailers and other government officials in Guantanamo Bay, then habeas corpus may be filed to order them to release unjustly held individuals in those locations.⁴⁷ If the U.S. government is controlling other governments including

⁴² Alien Enemies Act, 50 U.S.C. § 21; U.S. CONST. art. I, § 8, cl. 11; *cf.* Sarnoff v. Shultz, 409 U.S. 929, 930 (1972) (Douglas, J., dissenting) (noting the issue of Congress's power to declare war is undecided (citing *Flast v. Cohen*, 392 U.S. 83 (1968))).

⁴³ *Boumediene v. Bush*, 553 U.S. 723, 770 (2008) (“We hold that Art. I, § 9, cl. 2, of the Constitution has full effect at Guantanamo Bay.”); *id.* at 792 (striking down MCA § 7 as an “unconstitutional suspension of the writ,” which allowed the petitioners to advance their “request [for] an order of release”).

⁴⁴ *Id.* at 734; *Boumediene v. Bush*, 579 F. Supp. 2d 191, 198–99 (D.D.C. 2008) (“ORDERED that Respondents are directed to take all necessary and appropriate diplomatic steps to facilitate the release of Petitioners Lakhdar Boumediene, Mohamed Hechla, Hadj Boudella, Mustafa Ait Idir, and Saber Lahmar forthwith.”), *rev'd in part by* *Bensayah v. Obama*, 610 F.3d 718, 727 (D.C. Cir. 2010) (remanding to the district court to reconsider also releasing the sixth petitioner); *Bensayah v. Obama*, No. 1:04N1166, 2014 WL 395693, at *1 (D.D.C. Feb. 3, 2014) (“On December 5, 2013, Bensayah was transferred from Guantanamo to the custody of the Government of Algeria, effectively mooted his habeas request. . . . ORDERED that petitioner's case is DISMISSED as moot.”).

⁴⁵ Schroeder, *The Body*, *supra* note 38, at 44.

⁴⁶ *Id.* at 43; *Boumediene*, 553 U.S. at 745–46 (“The important fact to be observed in regard to the mode of procedure upon this [habeas] writ is, that it is directed to, and served upon, not the person confined, but his jailer.” (quoting *In re Jackson*, 15 Mich. 417, 439–40 (Cooley, J., concurring))); *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 395 (1973) (“[T]he language of § 2241(a) requires nothing more than the court issuing the writ have jurisdiction over the custodian.”), *overruling* *Ahrens v. Clark*, 335 U.S. 188 (1948) (using geography to deny habeas corpus to German immigrants disappeared onto Ellis Island).

⁴⁷ See source and cases cited *supra* note 46.

the Republic of Panama into detaining immigrants for the United States, then these government officials may be ordered by and through habeas corpus writs to release immigrants.⁴⁸

Common law habeas corpus release means release *into* the United States, pending other legitimate charges or reasons for detention or removal.⁴⁹ This reality was vindicated by *Holmes v. Jennison*, in which a state writ of habeas corpus released a Canadian murderer into the United States despite Canada’s attempts to extradite the murderer into Canada from Vermont.⁵⁰ This holding was expressly extended in *United States v. The Amistad* to release African immigrants into the United States despite a Spanish Queen’s attempts to extradite them to Cuba to be re-enslaved or put to death.⁵¹ In fact, release or “discharge” into the United States was the common law remedy properly applied in the first major habeas corpus decision of the U.S. Supreme Court in *Ex parte Bollman*, which involved a German immigrant extradited into the United States from the Louisiana Territory defeating President Thomas Jefferson’s deportation (i.e., extradition) orders.⁵² Erick Bollman’s foreign citizenship was not broached in *Bollman*, because it was immaterial as the privilege of habeas corpus protects any person regardless of their citizenship status.⁵³

However, immigration rights as they were originally conceived in 1776 America involved the foreign citizen’s right to leave—i.e., their right to relinquish their former citizenship.⁵⁴ Thus, in the 1790 Pennsylvania Constitution, the immigration right to leave Pennsylvania was explicitly named.⁵⁵ This right, originally defended, drafted, and expounded by the inaugural Justice of the

⁴⁸ See source and cases cited *supra* note 46; cf. KIDNAPPED FOR CHRIST (Slamdance 2014) (noting that habeas corpus was successfully filed to release gay children and young adults held against their will in the Dominican Republic).

⁴⁹ Schroeder, *A Candle*, *supra* note 36, at 264.

⁵⁰ *Id.* at 267–68.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ PENN. CONST. 1790, art. IX, § 25, *quoted by* 1 WILSON, *supra* note 14, at 644 (“Upon the whole it appears, that the right of emigration is a right, advantageous to the citizen, and generally useful even to the state. . . . By the constitution of Pennsylvania, it is declared ‘that emigration from the state shall not be prohibited.’”).

⁵⁵ See sources cited *supra* note 54.

U.S. Supreme Court James Wilson was extended into the U.S. Constitution through the law of nations to foreign citizens.⁵⁶ It was imported from the law of nations into the U.S. Constitution as Privilege and Immunity in the Fifth Amendment,⁵⁷ which was repeated in the Fourteenth Amendments Privileges or Immunities Clause.⁵⁸

President Trump’s executive action to destroy birthright citizenship that will soon be heard by the U.S. Supreme Court is intended to end this immigration right through a terrible reinterpretation of the Privileges or Immunities Clause most stridently advocated by former Professor John C. Eastman in an attempt to delegitimize U.S. citizenship to attack certain Americans including Yasar Esam Hamdi as public enemies without due process.⁵⁹ Justice Clarence Thomas’s old clerk Eastman has enjoyed an outsized influence over several of the most heinous decisions of the U.S. Supreme Court to date through his activism in the Supreme Court from his position at the Claremont Institute in California.⁶⁰ Eastman’s theory, readily adopted by Justice Thomas,⁶¹ was originally coined the “slavery argument” by *Plessy v. Ferguson* referencing *The Slaughterhouse Cases*’ extension of *Dred Scott v. Sandford*’s Hegelian interpretation of the Declaration of Independence as taking the term “all men” to mean only rich, propertied, white

⁵⁶ See sources cited *supra* note 54; Henfield’s Case, 11 F. Cas. 1099, 1120 (C.C.D. Pa. 1793) (No. 6360) (Opinion of Wilson, J.) (“Emigration is, undoubtedly, one of the natural rights of man.”).

⁵⁷ Privilege and Immunities Clause, U.S. CONST. amend. V.

⁵⁸ Privilege or Immunities Clause, U.S. CONST. amend. XIV.

⁵⁹ Protecting the Meaning and Value of American Citizenship (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/>; see John C. Eastman, *Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11*, 42 U. RICHMOND L. REV. 955, 956–57 (2008), *disagreeing with* Hamdi v. Rumsfeld, 542 U.S. 507 (2004).

⁶⁰ John C. Eastman Bio, CLAREMONT INST., <https://www.claremont.org/bio/john-c-eastman/> (last visited Feb. 23, 2025).

⁶¹ Eastman, *supra* note 59, at 961; see, e.g., Brief of Amicus Curiae the Claremont Institute’s Center for Constitutional Jurisprudence in Support of Petitioners at 10, 12, *Dobbs v. Jackson Women’s Health Org.*, 141 S. Ct. 2619 (2021) (No. 19–1392) (“*Janus* provides some guidance for when stare decisis should not bind future courts.”), followed by *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2111, 2257–58, 2264–65, 2268, 2271 (2022) (overruling *Roe* and *Casey*’s interest-balancing test with *Janus*’s anti-stare decisis balancing test).

men—which is a blatant contradiction.⁶² This completely untenable “slavery argument” is the basis of many of the most grotesque postbellum Supreme Court opinions including *Plessy*, *Bradford*, and *Happersett* among others.⁶³

Eastman’s pet project of convincing the U.S. Supreme Court to readopt the slavery argument would require it to overrule *United States v. Wong Kim Ark* to decide that the Citizenship Clause of the Fourteenth Amendment *only* applied to former Black slaves—not immigrants.⁶⁴ Under such a grotesque re-interpretation, U.S. citizenship privileges and immunities to travel or communicate between the states (to get an abortion for example or to send or receive abortifacients) could be destroyed under the Comstock Act as well.⁶⁵ Eastman developed the *Janus v. AFSCME* cost-benefit balancing test strategy to systematically destroy *stare decisis* for this reason.⁶⁶ Eastman wants the U.S. Supreme Court to radically decimate the current immigration law in order to destroy the U.S. citizenship privileges and immunities as a necessary consequence, by calling the immigration status of millions of U.S. citizens into question, including second and third generation Americans living in the United States—potentially including white people—definitely including any person disfavored by the current sitting president.⁶⁷

In this project, Eastman expressed significant concern over Justice Stevens controlling decision in *Saenz v. Roe*,⁶⁸ which left the door wide open for citizenship privileges and/or

⁶² *Plessy v. Ferguson*, 163 U.S. 537, 542–43 (1896) (defining the “slavery argument” as derived from *The Slaughterhouse Cases* 83 U.S. 36 (1873) and as restated by *The Civil Rights Cases*, 109 U.S. 3, 24 (1883)).

⁶³ See cases cited *supra* note 62; *Bradford v. Illinois*, 83 U.S. 130 (1873); *Minor v. Happersett*, 88 U.S. 162 (1874).

⁶⁴ Eastman, *supra* note 59, at 963, *disagreeing with* *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

⁶⁵ Comstock Act, 18 U.S.C. § 1461; see Shefali Luthra, *Two states are coming after a New York doctor for mailing abortion pills. Here’s what’s next.*, RHODE ISLAND CURRENT (Feb. 18, 2025, 5:00 AM), <https://rhodeislandcurrent.com/2025/02/18/two-states-are-coming-after-a-new-york-doctor-for-mailing-abortion-pills-heres-whats-next/>.

⁶⁶ John C. Eastman, *Stare Decisis: Conservatism’s One-Way Ratchet Problem*, in *THE COURTS AND THE CULTURE WARS* 127 (Bradley C. A. Watson ed., 2002).

⁶⁷ Margaret Stock & Nahal Kazemi, *The Non-Controversy Over Birthright Citizenship: Defending the Original Understanding of Jus Soli Citizenship*, 24 *CHAPMAN L. REV.* 1, 2, 14 (2021).

⁶⁸ John C. Eastman, *Re-evaluating the Privileges or Immunities Clause*, 6 *CHAPMAN L. REV.* 123, 126 (2003).

immunities vindicated in *United States v. Guest* and *Edwards v. California* to be extended to immigrants implicitly through the law of nations by common law and due process.⁶⁹ Indeed, the interstate travel vindicated by Chappell Roan in *Pink Pony Club* to make West Hollywood her home is the same rights of immigration, not merely privileges and/or immunities, vindicated by *The Slaughterhouse Cases*.⁷⁰ Before Roan, Joan Didion's friend Eve Babitz vindicated Hollywood as our angels' halo, where her mother was able to relocate her family from a desperate situation in Sour Lake, Texas.⁷¹ In return, Babitz explained the glorious existence of the next generation that arose out of that emigration to be at the zenith of worldliness and prestige throughout the earth despite such criticisms about Los Angeles being a mere wasteland.⁷²

The right to travel, cognized by the federal courts as a privilege and/or immunity, was imported from the law of nations that contains what James Wilson termed the natural or fundamental right to immigrate.⁷³ Hannah Arendt called this the most fundamental right to move.⁷⁴ Indeed, all Western philosophy regarding the legitimacy of free governments is premised upon the right to leave or move if one disagrees or dissents.⁷⁵

⁶⁹ Saenz v. Roe, 526 U.S. 489, 498 (1999) (citing *United States v. Guest*, 383 U.S. 745, 757 (1966); *Edwards v. California* 314 U.S. 160 (1941)); *id.* at 514 (citing *Crandall v. Nevada*, 73 U.S. 35 (1867)); *cf. Enemy of Mankind*, MORE PERFECT (Oct. 24, 2017), <https://www.wnycstudios.org/podcasts/radiolabmoreperfect/episodes/enemy-of-mankind>, *explaining* *Republica v. De Longchamps*, 1 U.S. 111, 117 (1784).

⁷⁰ *The Slaughterhouse Cases* 83 U.S. 36, 79 (1873) (quoting *Crandall*, 73 U.S. at 36).

⁷¹ EVE BABITZ, *EVE'S HOLLYWOOD* 1, 16 (1974) ("My mother emigrated to Los Angeles as a young girl in the Depression.").

⁷² *Id.* at 3–4.

⁷³ 1 WILSON, *supra* note 14, at 644; *Henfield's Case*, 11 F. Cas. 1099, 1120 (C.C.D. Pa. 1793) (No. 6360) (Opinion of Wilson, J.) ("Emigration is, undoubtedly, one of the natural rights of man.").

⁷⁴ 2 HANNAH ARENDT, *THE LIFE OF THE MIND* 5 (1978) (distinguishing the "idea" of freedom and the feeling of freedom from the one's basic "freedom to move his limbs").

⁷⁵ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (requiring the consent of the governed, which implies the right of the governed to leave rather than consent), *explained by* 1 WILSON, *supra* note 14, at 641 ("[A] citizen has an unquestionable right to renounce his country, and go in quest of a settlement in some other part of the world."). See Stephanie DeGooyer, *The Right to Leave*, LAPHAM'S Q., <https://www.laphamsquarterly.org/migration/right-leave>, *noting the* Universal Declaration of Human Rights, adopted and proclaimed by G.A. Res. 217 A (III) of 10 Dec. 1948, art. 13, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> ("Everyone has the right to leave any country, including his own, and to return to his country.").

Not only did the Americans defend this right in the Revolution of 1776, but it continued to defend it in the War of 1812 where they sacrificed the first White House, meeting houses of Congress, and Washington, D.C. to the occupying forces of Great Britain who fought for their right to enslave young men and boys into Naval servitude.⁷⁶ Thousands of Americans sacrificed their lives alongside Englishmen, Scotsmen, and Irishmen who fought for their right to leave the empire at will.⁷⁷ So today, Americans may need to fight for the right of the inhabitants of the Empire State to leave its geography at will to make their home in California if they so choose.⁷⁸

The freedom cause of the three nonwhite and one white Naval Officers of the *U.S.S. Chesapeake* Jenkins Ratford, William Ware, Daniel Martin, and John Strachan inspired this move of the diverse Black, brown, and white British Empire to fight in favor of the United States in the War of 1812.⁷⁹ President Thomas Jefferson claimed all four of these men as legitimate U.S. citizens and officers of the U.S. Navy.⁸⁰ And President Madison claimed their cause as America's own when he successfully asked Congress to declare war on Great Britain for impressing Americans into its illegitimate wars to own the sea.⁸¹

The rights of mostly nonwhite British subjects to immigrate into the United States to serve in the U.S. military or in Congress or as Supreme Court Justices or to serve in any other governmental post other than the presidency itself was so vital to the United States that it risked

⁷⁶ Curator Division, *A Most Magnificent Ruin: The Burning of the Capitol during the War of 1812*, ARCHITECT OF THE CAPITOL (Aug. 1, 2023), <https://www.aoc.gov/explore-capitol-campus/blog/most-magnificent-ruin-burning-capitol-during-war-1812>.

⁷⁷ THEODORE ROOSEVELT, *THE NAVAL WAR OF 1812*, at 37–39 (1894).

⁷⁸ See Hannah Rahim, *The Constitutionality of Banning Interstate Travel for Abortion*, PETRIE-FLOM CTR., <https://petrieflom.law.harvard.edu/2023/10/16/the-constitutionality-of-banning-interstate-travel-for-abortion/>.

⁷⁹ JOSEPH T. WILSON, *THE BLACK PHALANX* 68 (1888).

⁸⁰ *Id.*; Thomas Jefferson, *Proclamation in Response to the Chesapeake Affair* (July 2, 1807), <https://millercenter.org/the-presidency/presidential-speeches/july-2-1807-proclamation-response-chesapeake-affair> (“[T]he seaman demanded were native citizens of the United States.”).

⁸¹ James Madison, *Special Message to Congress on the Foreign Policy Crisis – War Message* (June 1, 1812), <https://millercenter.org/the-presidency/presidential-speeches/june-1-1812-special-message-congress-foreign-policy-crisis-war>.

death twice to secure these rights from the injustice of British impressment.⁸² In fact, Justice James Wilson fought to allow immigrants to also hold the post of President of the United States, but perhaps wiser minds won out during the constitutional drafting debates judging from President George Washington's clear warning about men like Elon Musk who appears in the very image of Citizen Genêt who set up highly controversial French Prize Courts in the United States in his day:

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy to be useful must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests.⁸³

There is plenty of evidence that Musk may be an unregistered agent of China, which is a serious crime.⁸⁴ After Elon Musk dismantles the United States, he can go to China or whatever other country we learn he has been acting as an agent on behalf of in the United States.⁸⁵ This entire situation gives rise to serious questions about the sufficiency of the natural born requirement to protect the United States from these foreign interests, especially when the eugenic immigration system prefers white boys like Musk capable of pulling billions of dollars in government contracts out of the United States only to use that money to position himself as a powerful agent of the president in order to dismantle the U.S. government.⁸⁶

⁸² 1 WILSON, *supra* note 14, at 140.

⁸³ GEORGE WASHINGTON, WASHINGTON'S FAREWELL ADDRESS 25–26 (2000).

⁸⁴ 22 U.S.C. § 618; *see* Igor Patrick et al., Elon Musk, China's 'top puppet', poses US national security risks: House Democrats, SCMP (Feb. 12, 2025), <https://www.scmp.com/news/china/article/3298293/elon-musk-chinas-top-puppet-poses-us-national-security-risks-house-democrats>.

⁸⁵ *Cf.* Ryan Cooper, *Elon Musk's China Threat*, AM. PROSPECT (Feb. 10, 2025), <https://prospect.org/world/2025-02-10-elon-musks-china-threat/>.

⁸⁶ @elonmusk, X (Sept. 29, 2023, 10:26 AM), <https://x.com/elonmusk/status/1707809181426921762>.

Immigrant habeas corpus can prompt the federal courts to extend *Saenz* to immigrants' right to leave their countries of origin to travel to the United States.⁸⁷ Vindicating the rights of immigrants to travel to the United States as a natural right recognized by common law in the law of nations will help stabilize the global world order by ensuring that people dissatisfied with their countries are not trapped within those countries.⁸⁸ For generations the United States has led a world order that allowed immigration away from oppressive regimes as these rights are the origin of the United States in the Revolution of 1776—it is an existential issue for the United States.⁸⁹

In fact, in *Caignet v. Pettit*, the U.S. Supreme Court recognized that even a stateless person has the right to be stateless—to leave and abandon systems they disagree with for whatever reason especially if life and limb are threatened.⁹⁰ Again, Justice Wilson riding circuit in Pennsylvania in *Collet v. Collet* interpreted the Naturalization Clause of the U.S. Supreme Court as establishing a maximum standard under the first federal naturalization law preemptively mandated that white men can freely naturalize.⁹¹ This maximum standard precluded the fledgling states from excluding white men from naturalizing,⁹² but it did not preclude the states from establishing more gracious standards of naturalization that the federal government was bound to respect. From time to time, these bases for state naturalization included the rights of women and nonwhite people to naturalize that were established to benefit Black people escaping slavery in the South as Pennsylvania was a sanctuary state for former slaves. The open naturalization of Black emigrants in Pennsylvania was

⁸⁷ Cf. Joshua J. Schroeder, “*Improve Your Privileges While They Stay*”: *A Guide to Improve the Privileges of U.S. Citizenship for Everybody*, 39 *TOURO L. REV.* 657, 706 (2024).

⁸⁸ 1 *WILSON*, *supra* note 14, at 140; *Henfield’s Case*, 11 F. Cas. 1099, 1120 (C.C.D. Pa. 1793) (No. 6360).

⁸⁹ THE DECLARATION OF INDEPENDENCE para. 9 (U.S. 1776) (noting the king’s “obstructing the Laws for Naturalization of Foreigners” and “refusing to pass others to encourage their migrations hither” as reason to separate from the mother country).

⁹⁰ *Caignet v. Pettit*, 2 U.S. 234, 235 (1795).

⁹¹ *Collet v. Collet*, 2 U.S. 294, 295–96 (D.C.C. Penn. 1792). In previous writings I called this a “maximum standard,” but this was from the perspective of how much a state could narrow its naturalization policy by law, this standard is also a minimum in relation to the general ability for, at a minimum, white men to be able to naturalize.

⁹² *Id.*; U.S. Const., art. I, § 8, cl. 4.

struck down in the unjust and indecorous decision *Prigg v. Pennsylvania* that re-enslaved an escaped slave named Margaret Morgan and her children born in Pennsylvania as free citizens all to satisfy an unconstitutional and completely unjust fugitive slave law of the foreign state of Maryland as if the U.S. Constitution favored slavery to freedom when it did not.⁹³

Moreover, naturalization is the act of becoming a citizen, and as *Caignet* held there were no federal bars to immigration of any color or gender of human being from traveling into the United States in the early republic.⁹⁴ This reality later became symbolized by *The Amistad*'s implicit overruling of the illicit and unconstitutional decision of the U.S. Supreme Court in *The Antelope* to stand by as a district court *casted lots* to decide the freedom and slavery of Black people illegally imported into the United States by pirates.⁹⁵ Former President John Quincy Adams announced this situation was wrong in his three day argument before the Supreme Court in *The Amistad*, which the Court finally corrected accordingly.⁹⁶

John C. Eastman wants to reestablish *Prigg*'s demolition of immigrant rights in free states according to the slavery argument of *The Slaughterhouse Cases* and *Elk v. Wilkins*.⁹⁷ The United States may continue to destroy itself along the lines of *Prigg* and *Dred Scott* as if the South won the civil war according to the fetid activism of men like Eastman.⁹⁸ Or the United States might finally overrule the errors of *Prigg* and *Dred Scott* in favor of Justice Wilson's founding decisions in cases like *Collet*, *Henfield's Case*, and *Chisholm v. Georgia*.⁹⁹

⁹³ *Prigg v. Pennsylvania*, 41 U.S. 539 (1842).

⁹⁴ *Caignet*, 2 U.S. at 235.

⁹⁵ *United States v. The Amistad*, 40 U.S. 518, 553 (1841).

⁹⁶ See JOHN QUINCY ADAMS, ARGUMENT OF JOHN QUINCY ADAMS, BEFORE THE SUPREME COURT OF THE UNITED STATES : IN THE CASE OF THE UNITED STATES, APPELLANTS, VS. CINQUE, AND OTHERS, AFRICANS, CAPTURED IN THE SCHOONER AMISTAD, BY LIEUT. GEDNEY 83 (1841) (arguing the casting of lots in *The Antelope* was clearly "Lawless and tyrannical.").

⁹⁷ Eastman, *supra* note 59, at 956–57.

⁹⁸ *Id.*

⁹⁹ See, e.g., *Chisholm v. Georgia*, 2 U.S. 419, 455–56 (1793).

The forum created by *Boumediene v. Bush* for immigrants newly oppressed by the Trump Administration 2.0 is the proper venue to settle all these issues in favor of the undoubted rights of immigrants.¹⁰⁰ These rights were vindicated by even the most conservative founders including George Mason who “was for opening a wide door for emigrants.”¹⁰¹ Nevertheless, Mason and his allies successfully convinced the Continental Congress to adopt the natural born requirement for all Presidents of the United States as a symbol of the extreme liberality of the United States toward immigrants as they could fill all other government roles save the presidency.¹⁰²

Despite America’s pro-immigrant history, it appears that Mr. Elez’s role is to be the dirty rag that current political figures from far left to far right all wipe their reputations down with so that they appear as though they aren’t as bad as Mr. Elez in order to keep the very eugenic system Mr. Elez said he wants, including Governor Gavin Newsom who recently vetoed AB 15, a pro-immigration bill that might have stifled Trump’s plans.¹⁰³ This logical circularity *is* the madness of self-hatred that Thomas Hobbes capitalized upon in his totalitarian tract *Leviathan*.¹⁰⁴ Yet it is quintessentially American as Toni Morrison observed about her fictional character Pecola Breedlove: “All of us—all of us who knew her—felt so wholesome after we cleaned ourselves on her. We were so beautiful when we stood astride her ugliness.”¹⁰⁵ Upon this unabashed paradox of American self-hatred, we may crown our first king and so end our experiment in republicanism, all to keep America white.

¹⁰⁰ *Boumediene v. Bush*, 553 U.S. 723, 746, 765 (2008) (“[T]he writ of habeas corpus is itself an indispensable mechanism for monitoring the separation of powers.”).

¹⁰¹ 1 WILSON, *supra* note 14, at 140.

¹⁰² *Id.*

¹⁰³ Taryn Luna, *Newsom vows to veto immigration enforcement bill again*, LA TIMES (Feb. 14, 2025, 12:01 PM), <https://www.latimes.com/california/story/2025-02-14/newsom-threatens-to-veto-immigration-bil>

¹⁰⁴ THOMAS HOBBS, *LEVIATHAN* 46–47 (A.R. Waller ed., 1904).

¹⁰⁵ TONI MORRISON, *THE BLUEST EYE* 205 (1970).

Conclusion: How to Let Eve Babitz Beat Joan Didion as True Hollywood Prophetess

In Donald Trump it would appear that the dark prophecies of Joan Didion are completed finally, whose experience of California in the 1960s and 70s was more like Cameron Diaz in *The Counselor* than Emma Stone in *La La Land*. But even Didion seemed to tip her hand toward Eve Babitz when she wrote of California: “[T]hings better work here, because here, beneath the immense bleached sky, is where we run out of continent.”¹⁰⁶ Didion’s more hopeful, if somewhat even more delusional, friend and rival Eve assured America that things can work out in Hollywood especially for emigrant families like hers.¹⁰⁷

Author Lili Anolik told us that despite the several opposing binaries that Babitz and Didion appeared to embody, it is very important for America to acknowledge that they are two sides (perhaps of the same coin).¹⁰⁸ Anolik was also very clear to say: We need to let Babitz finally win the lifelong tussle she had with Didion.¹⁰⁹ This is a huge development for a New Yorker to allow an optimistic viewpoint of the “wasteland” of Los Angeles,¹¹⁰ as it appears that New Yorkers and other out-of-staters finally see the benefits of treating California with more generosity than previous generations who snubbed Eve’s optimism for Didion’s doom saying apparently because it satisfied their self-consciousness for not living in the free-wheeling paradise that Hollywood was and continues being.¹¹¹

Choosing Joan over Eve was the doing of the New York publishing establishment to which Anolik herself belongs. You can hear a tone that almost betrays Anolik’s desperation chiming throughout Anolik’s treatment of New York’s old review of LA’s women writers—a lost hope in

¹⁰⁶ JOAN DIDION, *SLOUCHING TOWARDS BETHLEHEM* 172 (1990).

¹⁰⁷ BABITZ, *supra* note 71, at 1, 16.

¹⁰⁸ LILI ANOLIK, *DIDION & BABITZ* 200 (2024).

¹⁰⁹ *Id.* at 291.

¹¹⁰ BABITZ, *supra* note 71, at 1.

¹¹¹ ANOLIK, *supra* note 108, at 319.

the rectifying of a situation caused by New York needs to happen to save New York's soul—a soul very important to Anolik's career, but not to either of her subjects. Didion used New York as much as it used her, and Anolik need not worry about Eve, as California women—most of whom follow in Eve's hopeful gambits for sex and happiness—are strong enough to withstand the rejection of ungrateful audiences from the religion-addled East Coast with its *#MeToo* obsession with sobriety and abstinence that was wholesale rejected by Eve. Californian writers remain more substantial to the topic of California than the sort visitors who fly in from New York trying to interview them to save New York's reputation as their elected Mayor Eric Adams falls under the thrall of a ridiculous wannabe king—and this preoccupation with herself caused Anolik to misread the circumstances of California itself that does not immediately jump off the page.

One aspect of the Babitz-Didion relationship that was lost upon Anolik was that Didion was from Central California—a place despised and mistreated by Angelinos.¹¹² Hollywood made Didion as much as it did Babitz—but one huge difference was that Didion was an intrastate emigrant that could see the ways in which California internally betrayed its own—especially those residing in the expanse known as the San Joaquin Valley. The SoCal disdain for the rural Central Valley is no secret and it is written throughout Hollywood blockbusters like *Con Air* that literally dumped bodies on Fresno to the sick gratification of elitists in Hollywood and elsewhere as attested in the third season of Billy Bob Thornton's remarkable work *Goliath*.

The disrespect of the rich and famous for the simple and common and uneducated in the Central Valley recently manifested in Trump's order to waste reserved water, delusively believing that it would flow to the Pacific Palisades to rescue the richest and most affluent Californians

¹¹² See Mark Arax, *In California's Heartland a New Resistance Movement is Taking Root*, N.Y. TIMES MAG. (June 1, 2023), <https://www.nytimes.com/2023/06/01/magazine/fresno-politics-poverty.html>.

during the recent super-fires in Los Angeles.¹¹³ The water release hurt Californian farmers and did exactly what local Republicans opposed. However, in all these things no recognition is made for the approximately 1 million Californians who primarily live in the San Joaquin Valley that do not have safe drinking water due to the waste of wealthy Angelinos like the CEO of the Wonderful Company Stewart Resnick who is worth \$6.3 billion according to Forbes and whose billions were earned by stealing the drinking water of less fortunate Californians to overproduce food, less-fortunate Californians who may hear Didion's dark prophecies and feel hope that maybe the end of this injustice will come soon.¹¹⁴

Babitz, whose only experiences of California were of privilege and refuge from rough conditions experienced by her mother from Sour Lake, Texas and her father's rather charmed transition as a professional violinist from Brooklyn to Los Angeles gave Eve no real access to understand the meaning of Didion's works to Californians wronged by Babitz's idealized Hollywoodland.¹¹⁵ It was beyond Anolik's or any out-of-stater's capacity to understand this—but Didion had as much reason to believe that Babitz betrayed rural California as Babitz had for believing Didion betrayed Hollywood and it is not clear that *The Year of Magical Thinking* was the out-and-out betrayal Anolik seemed to think it was even though it at least appeared to steal Eve's "thing" of making believe things were better than they actually were in order to survive.¹¹⁶ And yet, despite the internal, sister-like disputes among California's most delusive writers Joan and Eve, California is still (delusion-or-not) the primary bastion of hope for most Americans living under horrific conditions in the South or in rural towns in the Midwest or East Coast. It is no small

¹¹³ Ella Nilsen, *2.2 billion gallons of water flowed out of California reservoirs because of Trump's order to open dams*, CNN CLIMATE (Feb. 3, 2025, 6:50 PM), <https://www.cnn.com/2025/02/03/climate/trump-california-water-dams-reservoirs/index.html>.

¹¹⁴ WATER & POWER: A CALIFORNIA HEIST (Nat'l Geo. 2017).

¹¹⁵ BABITZ, *supra* note 71, at 1–2.

¹¹⁶ ANOLIK, *supra* note 108, at 314–15.

thing for California to keep its doors open to all Americans who want to make a go of it here—to try to realize their dreams like Chappell Roan who deservedly won her first Grammy in 2025, in part for celebrating the role of California-as-bastion for pink pony girls:



The impending doom of America espoused by Didion is part of the story for the wretched many that California wrongs in its Central Valley especially—but even those of us from the Central Valley keep our doors open to those who would come and stay with us. Californian conservatism is primarily sparked by the mistreatment of Blue San Francisco and Los Angeles rather than actual loyalty to Trump who has so little idea of how California works that he let 2.2 billion gallons of much needed water reserved for Central Valley farmers run into the sea at a time when farmers could not even make use of it. The tension between Didion and Babitz is a symbol of a real Californian opposition between the elite and the downtrodden, and this opposition between mistreated Californians and their oppressors is especially felt when their mistreatment appears to

be swept away underneath the greater currents of hopeful dreamers piling into our great cities from other states trying to achieve stardom at the perceived expense of those who are already here.

To be clear, Eve’s brand of optimism at the expense of Central California is the more likely cause of California’s contribution of several of the most vitriolic insurrectionists to assist in Trump’s attempted coup d’état of January 6, 2021.¹¹⁷ Nevertheless, the importance of free intrastate, interstate, and international immigration can be addressed and the problems with the immigration system symbolized by Elon Musk can be acknowledged while continuing to honor the place of California as a sanctuary for travelers of all kinds.¹¹⁸ Anolik is correct, America needs to let Babitz win, but that includes Anolik who should concede to Babitz her greatest delusion of Babitz’s close friendship with Didion by allowing Babitz and all those like her to imagine love where there was probably no love at all.¹¹⁹

In the same spirit of Chappell Roan, the eternally youthful Eve busted out of the unbearable strictures of racist 1950s Hollywood according to her marvelous imaginary love, and Eve would probably agree that what matters most is that all may follow their imaginations to California in hopes of finding love or at least happiness—to make their stars rise into the infinite heavens and to say what needs to be said across the planet as Hollywood has proven its platform easily spans the entire globe. To do this, California needs to address its own role in establishing the eugenic policies that created the opportunity for Elon Musk to lay hold of the U.S. government through a puppet president. By doing so, through habeas corpus review, California may finally come into

¹¹⁷ See Nic Garcia, *Trump’s Jan. 6 pardons could include two Central California men*, ABC30 (Jan. 21, 2025), <https://abc30.com/post/trumps-jan-6-pardons-could-include-central-california-men/15823702/>

¹¹⁸ California Values Act, SB 54, Cal. Gov. Code § 7284.2 (“Immigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.”).

¹¹⁹ ANOLIK, *supra* note 108, at 306–08.

its own as what it has always been—a land for artist-dreamers to ply their craft and make real what was only so far imagined through hard work and individualism.