

MIGRANT JUSTICE NOW

LETI VOLPP*

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| INTRODUCTION | 1163 |
| I. VISIONS AND TRUTHS..... | 1166 |
| A. <i>The Biden Plan</i> | 1166 |
| B. <i>The Platform</i> | 1170 |
| II. SPECIFIC ACTIONS | 1176 |
| A. <i>The Biden Plan</i> | 1176 |
| B. <i>The Platform</i> | 1180 |
| 1. “Equality and Inclusion for All People” | 1181 |
| 2. “Build Bridges, Not Walls” | 1185 |
| 3. “We Are Here Because You Were There” | 1187 |
| EPILOGUE..... | 1187 |

INTRODUCTION

I began drafting this Essay on the eve of the 2020 U.S. presidential election, not knowing its outcome. Some might argue that this is no time for critique, given the threat of fascism posed by the Trump Administration and the civil unrest the nation faced (and is still facing as of this writing). But even with the advent of a new administration in January 2021, we cannot relax into quiescence. To that end, I engage here with critique as articulated in a document called the “Migrant Justice Platform,” and juxtapose it with the immigration plan of the presidential campaign of Joe Biden. The “Migrant Justice Platform” (the “Platform”), released by a coalition of immigrants’ rights activists, is, at its core, a policy document, offering recommendations for an overhaul of the U.S. immigration system. But the Platform also seeks to expand our collective political imagination. Reading this document in relation to Biden’s immigration plan enables us to see the kinds of assumptions that underlie liberal reform policies. It will be all too easy, if we are able to turn away

*Robert D. and Leslie Kay Raven Professor of Law, UC Berkeley. Thank you to my Fall 2020 Immigration Law students for inspiration, and to Liz Anker, Sarah Domenick, Rianna Hidalgo, and the editors of the *University of Colorado Law Review* for their helpful comments.

from the disgustingly racist and nativist xenophobia of Trump, to experience such relief that we feel grateful for whatever change, no matter how limited, the Biden Administration manages to accomplish. But we cannot give up on criticism. Without critique, our vision is cramped: we naturalize subordination in the name of accepting what is pragmatic or reasonable, limiting the possibility for transformative change.

I will not rehearse here all of the horrors of the Trump Administration in relation to immigration policy.¹ More horrors were to come if Donald Trump had been reelected, with White House aide Stephen Miller apparently holding on to a wish list of policies too unpopular to be unveiled for a president seeking a second term.² But what will a Biden presidency do? And how would the Platform critique Biden's Plan?

In the Introduction to a volume titled *A Time for Critique*, Didier Fassin and Bernard Harcourt make clear that critique is not an "exclusive scholarly preserve," nor a "solely theoretical practice."³ Rather, critique is also for laypersons and can be a practical exercise of rights.⁴ Critique can manifest as "critical praxis" or as a space of "critique and praxis" where "practice and critical thought confront one another constantly."⁵ Critique can take the form of prisoners in solitary confinement forming a reading group or of prison abolitionists and anti-violence activists building new institutions and strategies.⁶ The Platform seems engaged in an analogous form of critique which, borrowing Harcourt's term, we could consider critical praxis.

1. For an early assessment, see Leti Volpp, *Passports in the Time of Trump*, 25 SYMPLOKĒ 155 (2017).

2. Amanda Holpuch, *Trump Aide Stephen Miller Preparing Second-Term Immigration Blitz*, GUARDIAN (Oct. 28, 2020, 2:15 AM), <https://www.theguardian.com/us-news/2020/oct/28/stephen-miller-trump-second-term-immigration-blitz> [<https://perma.cc/3QVG-DL3Y>].

3. DIDIER FASSIN & BERNARD E. HARCOURT, *A TIME FOR CRITIQUE* 7 (2019) [hereinafter *TIME FOR CRITIQUE*].

4. *Id.*

5. BERNARD E. HARCOURT, *CRITIQUE & PRAXIS: A CRITICAL PHILOSOPHY OF ILLUSIONS, VALUES, AND ACTION* 23 (2020).

6. For an analysis of the "Short Corridor Collective" reading group in the Pelican Bay State Prison Secured Housing Unit, see Allegra M. MacLeod, *Law, Critique, and the Undercommons*, in *TIME FOR CRITIQUE*, *supra* note 3, at 252; for an analysis of Critical Resistance and INCITE! as engaged in abolitionist action, see Andrew Dilts, *Crisis, Critique and Abolition*, in *TIME FOR CRITIQUE*, *supra* note 3, at 230.

The Platform was birthed by a group of over twenty individuals from various grassroots organizations, backgrounds, and communities. Members include activists, organizers, attorneys, undocumented immigrants, a day laborer, and a farm worker.⁷ Adopting the mantle of a “Blue Ribbon Commission,” the authors of the Platform launch a critique of current immigration policies in the United States, creating an “open-source effort” to develop a policy blueprint “for use by the next administration.”⁸ The Platform “centers and elevates grassroots voices and experts” and begins a “new conversation that must include impacted communities, remedy past mistakes, and see the whole of the global crisis.”⁹

This last statement suggests important dimensions to critique. These dimensions include centering the perspectives of impacted community members, thinking across a longer time frame both in relation to the past and the future, and contemplating a more capacious spatial frame that includes parts of the world often excluded from conversations about U.S. immigration policy.¹⁰ Such attentiveness to implicit ideas about membership, time, and space is important; otherwise, change to immigration policy risks being illusory or partial.¹¹ The Platform also reveals other key facets of critique: creativity and imagination. It offers

7. See *The Blue Ribbon Commission Blueprint*, MIGRANT JUSTICE PLATFORM, <https://www.migrantjusticeplatform.org/the-commission/> (last visited Jan. 10, 2021) [<https://perma.cc/EH6A-EK82>]. The authors of the Migrant Justice Platform are: Erika Andiola, Pablo Alvarado, Opal Tometi, Fernando Garcia, Angela Chan, Liduvina Magarin, José Palma, Jorge Gutierrez, Ana Avendaño, Jennifer (JJ) Rosenbaum, Neidi Dominguez, Gonzalo Mercado, Stefania Arteaga, Ahilan Arulanantham, Sadatu Mamah-Trawill, Alejandra Ancheitia, Benjamin Jornalero, Catalina Santiago, a member of the Coalition of Immokalee Workers, Kate Richardson, José Ramírez IV, and Ryan J. Suto.

8. See *A Unity Blueprint*, MIGRANT JUSTICE PLATFORM, <https://www.migrantjusticeplatform.org/the-platform/> (last visited Jan. 10, 2021) [<https://perma.cc/U9R9-6GE2>].

9. *Id.*

10. See Lori Allen, *Subaltern Critique and the History of Palestine*, in *TIME FOR CRITIQUE*, *supra* note 3, at 153, 154 (drawing attention to “the significance of the social position of critique’s articulation – of epistemological alterity – to the course of critique”).

11. In other writing, I examine how immigration law’s failure to recognize preexisting indigenous peoples is accomplished not only through the way in which the “nation of immigrants” masks settler colonialism but also through its conceptualization of membership, space, and time. Leti Volpp, *The Indigenous as Alien*, 5 U.C. IRVINE L. REV. 289, 293–300 (2015) [hereinafter *Indigenous as Alien*].

a vision of a world that is, in many ways, very different from our present reality.

I. VISIONS AND TRUTHS

In reading the Biden Plan (the “Plan”) and the Platform together, we can already glimpse different underlying commitments through their choice of title and articulation of introductory statements.

A. *The Biden Plan*

The Plan, which appears on Joe Biden’s presidential campaign website, is titled “The Biden Plan for Securing Our Values as a Nation of Immigrants.”¹² This title links together various value-laden concepts: “securing” (invoking “security”);¹³ “our values” (suggesting a “we” that is American as well as a presumptively nationalist frame); and “a nation of immigrants” (proposing a particular foundational myth about the United States).¹⁴ In other words, the Plan is shaped by the interests of its intended beneficiary, which is the United States. In contrast, the Platform, simply titled “Migrant Justice Platform,” makes plain its desire to benefit migrants. The use of the term “migrant” rather than “immigrant” in the title of the Platform also appears significant. The word “migrant” suggests that the Platform considers its community of concern to include persons who may not be incorporated into political bodies as members or prospective members and who may not be present in the United States for a long period of time. Typically, those designated as migrants are only temporarily present; unlike the migrant, the immigrant is potentially here to stay.¹⁵

12. *The Biden Plan for Securing Our Values as a Nation of Immigrants*, BIDEN FOR PRESIDENT, <https://joebiden.com/immigration/> (last visited Jan. 11, 2021) [<https://perma.cc/K2V5-W9BG>] [hereinafter *The Biden Plan*].

13. For an analysis of how the concept of security (with its concomitant militarization and surveillance) has come to govern everyday life, see INDERPAL GREWAL, *SAVING THE SECURITY STATE: EXCEPTIONAL CITIZENS IN TWENTY-FIRST-CENTURY AMERICA* (2017).

14. *Indigenous as Alien*, *supra* note 11, at 320–25.

15. For an exploration of these two different terms, with the migrant moving to a country that is not his own, as compared to the immigrant who is doing so (linguistically impossible but capturing the idea of settler colonialism), see *id.* at 319–20. Of course, the term “immigrant” does not necessarily always suggest the

The rhetorical and substantive contrast between these two titles continues in the introductory prologue to each document. The Plan, penned as a campaign document, emphasizes how the Biden approach to immigration differs from that of Trump. The introductory statement of the Plan begins by listing the impact of Trump's immigration policies on families and on children, typically considered the most sympathetic members of broader immigrant communities. The Plan starts, "It is a moral failing and a national shame when a father and his baby daughter drown seeking our shores."¹⁶ This refers to the case of Óscar Alberto Martínez Ramírez and Angie Valeria, a father and child turned away from an international border checkpoint due to the Trump Administration's "metering" program. They then drowned trying to cross the Rio Grande. The introductory statement also describes an array of immigration policies that incited national outrage: children denied toothbrushes and soap while held in overcrowded detention centers, family separation, massive raids that broke up families, the targeting of immigrants at sensitive locations like schools, and the deaths of children in custody.

The Plan then states that Trump has waged "an unrelenting assault on our values and our history as a nation of immigrants."¹⁷ The juxtaposition of this statement to the list of traumatic abuses that the Trump Administration inflicted upon families and children yokes those events to "our values" and "our history," so that these abuses are positioned as oppositional to who *we* are and have been. This presumptive opposition belies a very long history of abuses, including family separation, in the United States.¹⁸ And note the focus on *we*. Even while the Plan

positive valence of the "nation of immigrants"; for example, when modified by the adjective "illegal," the immigrant is transformed from one presumptively belonging to the nation to one presumptively not.

16. *The Biden Plan*, *supra* note 12.

17. *Id.* The Trump Administration's waging war on the idea of the United States as a nation of immigrants was made manifest not only in myriad policies, but also in the 2018 removal of language stating that U.S. Citizenship and Immigration Services (USCIS) "secures America's promise as a nation of immigrants." This language was replaced with text clarifying USCIS's mission to be "securing the homeland." Richard Gonzales, *America No Longer 'A Nation of Immigrants,' USCIS Says*, NPR (Feb. 22, 2018, 6:18 PM), <https://www.npr.org/sections/thetwo-way/2018/02/22/588097749/america-no-longer-a-nation-of-immigrants-uscis-says> [<https://perma.cc/X2PZ-WX5L>].

18. On the history of family separations, see LAURA BRIGGS, *TAKING CHILDREN: A HISTORY OF AMERICAN TERROR* (2020) (describing how Black, Native, Latinx, and poor children have all been seized from their kin and caregivers).

takes pains to emphasize that the United States is a “nation of immigrants,” there is a repeated distinction made between immigrants and the *we* of the Plan.

The Plan continues: unless “your ancestors were native to these shores, or forcibly enslaved and brought here as part of our original sin as a nation,” Americans “can trace their family history back to a choice . . . to leave . . . in search of new opportunities . . . to claim their own piece of the American Dream.”¹⁹ Precisely echoing Bonnie Honig’s assessment that immigrants play a key role in revitalizing “we the people,” the Plan states “[The movement of immigrants to America is] the reason we have constantly been able to renew ourselves, to grow better and stronger as a nation, and to meet new challenges.”²⁰ This is a vision of an America created through repeated acts of consent, aligning with the notion of a democracy founded through a social contract rather than a nation-state founded through violence. The immigrants choosing to move to the United States desire America and seek their “own piece of the American Dream,” key to ideas of American exceptionalism.²¹ The desiring immigrant elides other foundational histories in creating America, including what the Plan refers to as “part of our original sin as a nation,” namely, slavery. It is not clear what other acts and events constitute other parts of “our original sin” to the authors of the Plan. Even while “ancestors” who “were native to these shores” appear in the introductory statement, the settler genocide foundational to the creation of America implicitly appears outside that phrasing. In any case, immigrants appear here as useful to help shore up the American nation—to rejuvenate and improve it.

The Plan’s introductory statement then pivots to the question of border security. It explains Trump’s failure to invest in “smarter border technology” for cargo screening, criticizing his obsession with constructing a border wall.²² The wall is costly, the Plan asserts, while failing to address security challenges. What are these security challenges? The Plan states: “Most

19. See *The Biden Plan*, *supra* note 12.

20. BONNIE HONIG, *DEMOCRACY AND THE FOREIGNER* (2001); see *The Biden Plan*, *supra* note 12.

21. See *The Biden Plan*, *supra* note 12. On the desiring of America by the immigrant providing an “energy of desire and labor that perpetually turns American into itself[,]” see LAUREN BERLANT, *THE QUEEN OF AMERICA GOES TO WASHINGTON CITY: ESSAYS ON SEX AND CITIZENSHIP* 195, 198–99 (1997).

22. See *The Biden Plan*, *supra* note 12.

contraband comes in through our legal ports of entry. It's estimated that nearly half of the undocumented people living in the U.S. today have overstayed a visa, not crossed a border illegally."²³ This is an important corrective to the popular assumption that all undocumented persons are "border crossers" and not "visa overstayers." However, the placement of the sentence in relation to contraband positions undocumented people as a "security challenge," even while the introductory statement takes pains to emphasize that the "real threats to our security" are "drug cartels and human traffickers."²⁴ Here the framing is *our security* and whether immigrants threaten that security.

The Plan then turns to how immigrants can help *us* in what Lawrence Downes once called a "cold, utilitarian argument for immigration."²⁵ As the Plan states, "For generations immigrants have fortified our most valuable competitive advantage—our spirit of innovation and entrepreneurship."²⁶ The Plan describes how key sectors of the U.S. economy, including agriculture and technology, rely on immigration.²⁷ Working-age immigrants, the Plan contends, keep our economy growing and our country "moving forward."²⁸ Here, immigrants are necessary not to revive national imaginaries about American exceptionalism, but for economic purposes in a world of competing markets. Because the purpose of the Plan is securing *our* values, it should come as no surprise that immigrants appear not as beneficiaries of the Plan but as the means of conveying a benefit to *us*, namely, the United States.

The introductory section of the Plan closes by invoking the border wall, family separation, and the denial of asylum to people fleeing persecution and violence. It asserts that Biden will deliver "real" leadership and solutions on day one by addressing the "Trump-created humanitarian crisis at our border," "bringing our nation together," "reasserting our core values," and "reforming our immigration system."²⁹ Again, the "we" being

23. *Id.*

24. *Id.*

25. Lawrence Downes, Opinion, *Turning 'Them' into 'Us'*, N.Y. TIMES (Jan. 22, 2013, 12:26 PM), <https://takingnote.blogs.nytimes.com/2013/01/22/turning-them-into-us/> [<https://perma.cc/6P6H-LP8C>].

26. See *The Biden Plan*, *supra* note 12.

27. *Id.*

28. *Id.*

29. *Id.*

addressed by the Plan is the United States. Immigrants function as the object but not the subject. By conceptualizing immigrants as the means of increasing or decreasing *our* wellbeing instead of actors whose own wellbeing matters, any changes in immigration policy will not benefit immigrants who are envisioned as possible threats to U.S. prosperity and security. And the focus here remains tightly on the abuses engendered by the Trump Administration. The Plan's introductory statement already signals that the action items to come will be limited in their transformative potential.

B. The Platform

In contrast, the Migrant Justice Platform presumes a different “we.” The Platform contains two introductory sections, titled “A Vision Towards Justice” and “Fundamental Truths: Our Approach to this Work and Blueprint.” The Platform begins:

There always has been and always will be migration, within national boundaries, and across national borders. People migrate for a myriad of reasons, often by choice, but more often outside of any individuals' control. The question is how, as a global community do we choose to understand it, to manage it.³⁰

At this moment in the Platform, the “we” is the global community, not the national “we” of the Biden Plan. Here, the Platform indicates that the salient membership is belonging to the world, not the nation-state. Once the frame is widened in this way, immigrants can no longer be conceptualized as helpful to a national “us.” The movement of human bodies within and across nation-states is also naturalized in the Platform—it has always happened and will always happen. Time here appears as a long

30. BLUE RIBBON COMM'N, MIGRANT JUSTICE PLATFORM 6 (2019), https://www.migrantjusticeplatform.org/wp-content/uploads/2019/11/MigrantJusticePlatform_17Nov.pdf [<https://perma.cc/GN9S-V2J5>]. The idea that migration can be “managed” is one of the few moments in the Platform which appear orthogonal to the idea of critique. While the first sentence of the Platform resounds with a critical approach to migration theory known as Autonomy of Migration, which seeks to shift attention away from apparatuses of state control toward migrant mobility (“There . . . always will be migration across national borders”), its closing words, which feel awkwardly tacked on (suggesting that migration can be “managed”), do not. *See id.* at 6, 33.

arc in relation to human movement across space. Conversely, in the Plan, time and space appear in relation to “our history” or “our future” bounded by the “we” of the nation-state.

While both the Plan and the Platform speak in a register of morality, what each document points to as a moral failure differs. The Plan limits its moral castigation to the specific impact of Trump Administration immigration policies on children, which it describes as “a moral failing and a national shame.”³¹ The Platform criticizes a much more extensive array of policies—which long predate the Trump Administration—as “unacceptable, unlawful, and immoral.”³² It lists four: conceding to white supremacy, creating migrant prison camps to deter families, militarizing law enforcement, and banning individuals based on their religion or country of origin.³³ This reaching back in time characterizes the broader scope of the Platform versus the Plan. One sees here the willingness of the Platform to point to some of the root causes of current immigration policies: white supremacy, the carceral state, militarization, and the banning of people based upon identity.

The Platform then explicitly states: “Our vision must see beyond what is wrong.”³⁴ Here we see that critique can be imaginative, and radically so, in not just lamenting the status quo but in building new futures. By engaging in this creative process, the Platform bridges different communities of concern, toggling back and forth between those already in the United States and those who are not. The Platform asserts, “We must imagine policies that celebrate, defend, and encourage the experiences and nationalities of those who already exist in the United States” but that also improve “the lives of all working people, across race, gender, class, and nationality” and recognize “our shared planet, climate and histories—whether you live in the United States or not.”³⁵ The Platform thus acknowledges that there is something specific about those who “already exist in the United States,” but also makes clear that those who live somewhere else on our shared planet are within the ambit of concern. This is a theme to which we will return.

31. See *The Biden Plan*, *supra* note 12.

32. BLUE RIBBON COMM’N, *supra* note 30, at 6.

33. *Id.*

34. *Id.*

35. *Id.*

Whether one is an immigrant worker “in France, the United States or Saudi Arabia,” the vision underlying the Platform would demand “the same human rights and recognition of the same worth.”³⁶ And, in this vision, the borderlands are not a site of security threat but rather “a place of encounter, where two worlds meet, trade, interact, and embrace one another.”³⁷ This phrasing suggests both transnational solidarity among workers and equality between “two worlds” that engage in an encounter, an encounter that may even take the form of an embrace. The divergence between the idea of an embrace and Trump’s border wall is startling, but it is also evident in the contrast between an embrace and the border surveillance required by the Plan’s “smarter border technology.” The Platform then calls for a “policy reset” rooted in the communities that currently live and work in the United States, built on principles of solidarity and self-determination.³⁸ Here again we see the articulation of communities of concern. Those already here will have the Platform rooted in their perspectives and interests. The solidarity and self-determination specified may be principles that govern communities already in the United States, but they may also be proffered to those who are outside U.S. borders.

The name “Trump” appears nowhere in “A Vision Towards Justice.” A forward-looking and affirmative vision cannot be thematically organized around the name “Trump” because couching a vision in relation to Trump cabins it as reactive. The Platform’s critical lens instead extends its timeline both backwards, directed at political acts and systemic problems that long predate the Trump Administration, and forwards, thinking creatively into the future.

A direct example of this wider lens is how the Platform quickly turns its critique beyond Trump-era policies. “A Vision Towards Justice” is followed by the Platform’s four “Fundamental Truths.” The first truth is that “we don’t believe some must suffer for others to advance. We are in this together.”³⁹ Here the

36. *Id.*

37. *Id.* at 7. The borderlands echoes Gloria Anzaldúa’s *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987). The idea of “encounter” also echoes a major theme of Pope Francis. See Michael Sean Winters, *Pope Francis & Encounter*, NAT’L CATH. REP. (Aug. 19, 2013), <https://www.ncronline.org/blogs/distinctly-catholic/pope-francis-encounter> [<https://perma.cc/Y875-3XDK>].

38. BLUE RIBBON COMM’N, *supra* note 30, at 7.

39. *Id.* at 9.

Platform points first to Trump's assertion that protecting immigrants' or refugees' rights implies "taking from others." But then the Platform immediately pivots to President Obama. The Platform describes how, in an attempt to garner Republican support for immigration reform, Obama lent credibility to a narrative of "good" and "bad" immigrants by targeting "felons, not families."⁴⁰ The Platform then states that after five million deportations in less than ten years, "it should be clear that we cannot deport our way to the negotiating table in Congress." Here, the Platform references the failed political calculus made by President Obama that showing a commitment to heightened border enforcement—a commitment that led to the label "Deporter-in-Chief"—would pave the way to comprehensive immigration reform.⁴¹ While the Senate passed comprehensive immigration reform in 2013, the House balked. This left President Obama's legacy in the immigration realm as one of enforcement without any legalization program, for which he tried to compensate with the creation of DACA and DAPA.⁴² The Platform states that, going forward, there will be "no carve outs or exceptions" in the recognition of humanity in every individual.⁴³ This combats the presumption of a hierarchy of value of immigrants, with so-called "criminal aliens" at the bottom of the hierarchy, leading to their prioritization for removal ("felons, not families") and their exclusion from proposals for immigration reform. This is a problem that long predates the Trump Administration.

We might pause here to consider the fact that Joe Biden was Barack Obama's Vice President. How does the Biden Plan reference this history? An acknowledgment appears in a bracketed box immediately following the Plan's introductory statement before the appearance of detailed action items. The text in the box begins, "Joe Biden understands the pain felt by every family across the U.S. that has had a loved one removed from the country, including under the Obama-Biden Administration, and he believes we must do better to uphold our laws humanely and preserve the dignity of immigrant families, refugees, and asylum-seekers." This *mea culpa* is the only text in the box that admits any failing under the Obama Administration. The

40. *Id.* In case it is necessary to point this out, felons also have families.

41. Leti Volpp, *Immigrants Outside the Law: President Obama, Discretionary Executive Power, and Regime Change*, 3 CRITICAL ANALYSIS L. 385, 393 (2016).

42. *Id.*

43. BLUE RIBBON COMM'N, *supra* note 30, at 10.

remainder of the text in the box expresses positive statements about actions taken, such as the support for comprehensive immigration reform and the creation and expansion of DACA and DAPA.⁴⁴ A critic might suggest that the prefatory “I feel your pain” gives quite short shrift to the detrimental impact of the Obama Administration on the lives of immigrants and their loved ones. More immigrants were subject to removal while President Obama was in office than during any other administration before or since.⁴⁵ These deportations spurred the national campaign known as Not1More Deportation, which used protest tactics such as tying oneself to deportation buses and forming human chains around detention centers.⁴⁶

Turning back to the Platform’s Fundamental Truths, its second truth is that white supremacists have been reanimated by the Trump Administration, normalizing a “worldview that seeks to make non-white people disappear.”⁴⁷ This direct acknowledgement of white supremacy is important. It leads to an inspired proposal that the next administration, “as in other post-conflict areas,” should implement a process akin to transitional justice, a method used in societies emerging from civil war or authoritarian rule to address past human rights violations. This is required, the Platform states, because the administration itself has committed and incited violence, causing deaths,

44. *The Biden Plan*, *supra* note 12. The Plan also describes the Central American Minors program and the creation of a White House task force to support “new Americans”; the prioritization of enforcement resources on “removing threats to national security and public safety, not families” and the issuance of a guidance to end mass workplace raids and to stop enforcement at sensitive locations; and the bringing of “high-level attention” to root causes of “irregular migration from the Northern Triangle countries of Central America” culminating in a bipartisan \$750 million aid package to these countries that was “beginning to deliver results and reduce migration rates” until Trump froze funding. *Id.*

45. Kathleen Hennessey, *Obama Legacy: Immigration Stands as Most Glaring Failure*, AP NEWS (June 30, 2016), <https://apnews.com/article/898a599f75354323bd107d49f3c4337c> [<https://perma.cc/LK6U-YYWD>]; Sarah Gonzalez, *No One Expected Obama Would Deport More People Than Any Other U.S. President*, WNYC NEWS (Jan. 19, 2017), <https://www.wnyc.org/story/no-one-thought-barack-obama-would-deport-more-people-any-other-us-president/> [<https://perma.cc/LN85-BZCS>]; Alicia A. Caldwell & Louise Radnofsky, *Why Trump Has Deported Fewer Immigrants Than Obama*, WALL ST. J. (Aug. 3, 2019, 5:30 AM), <https://www.wsj.com/articles/why-trump-has-deported-fewer-immigrants-than-obama-11564824601> [<https://perma.cc/8WB9-JWXJ>].

46. See Kathryn Abrams, *Contentious Citizenship: Undocumented Activism in the Not1More Deportation Campaign*, 26 LA RAZA L.J. 46, 59–60 (2016).

47. BLUE RIBBON COMM’N, *supra* note 30, at 10.

destroying lives, and traumatizing thousands.⁴⁸ This analogy between the United States and other post-conflict areas that require transitional justice efforts ruptures the benign vision of the United States as a nation exporting democracy and the rule of law; rather, the United States needs such assistance itself.

The third Fundamental Truth is that migrant workers are an “integral part of the world economy. We are already a part of it. Not just a little.”⁴⁹ The Platform states that the United States must publicly acknowledge the reality that the agriculture, textile, and construction industries depend on “and thrive with” immigrant workers.⁵⁰ The Platform continues: a country that benefits from immigrant labor “has a moral obligation to recognize . . . migrants as human beings with full equality and civic participation.”⁵¹ This is an important rephrasing of the more typical demand for “rights” for immigrant workers. Here, “full equality and civic participation” signals both full rights of various dimensions and the ability to engage actively in the public sphere. What is not clear at this point in the Platform is whether civic participation is intended to also mean political participation or political representation and what kind of political obligation the Platform believes the United States bears to immigrants residing in the United States.

The final Fundamental Truth is that immigration is not only a domestic policy issue. The Platform maintains: “We are here because you are there.”⁵² This is a more recent iteration of the phrase “We are here because you *were* there,” referring to colonial histories that produced migration. “We are here because you are there,” through its shift in verb tense, tells us that migration is also a product of contemporary military intervention, neocolonialism, and imperialism.⁵³ Instead of a vision of autonomous, walled-off nation-states, the Platform asserts that survival is interconnected, and that our histories, whether colonial, imperial, or interventionist, are shared.⁵⁴ Through this phrasing

48. *Id.*

49. *Id.* at 11.

50. *Id.*

51. *Id.*

52. *Id.*

53. See E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509 (2019) (generating a theory of sovereignty obligating former colonial powers to open borders to former colonial subjects).

54. BLUE RIBBON COMM’N, *supra* note 30, at 11–12.

the Platform conceptualizes immigration policy beyond the conventional idea that immigration starts and ends at the border—that it only needs to concern itself with the problem of managing the movement of those seeking to come and those who don't deserve to stay. In contrast, the Platform contends that we live on a shared planet, with shared histories and shared futures. The Platform here points to the #ClimateStrike and the recognition of millions of young people that our fates are entwined. And the Platform notes that “our histories are often rooted in indigenous, rural, and migrating peoples who grew with their lands, who often fought to keep that land, and just as often lost that land and had to migrate elsewhere.”⁵⁵ Although the Platform does not explicitly say this, its language acknowledges that immigration policy presumes that present-day borders are fixed and people are in motion. But borders also move. As is said, “we didn't cross the border, the border crossed us.”

II. SPECIFIC ACTIONS

Turning to how the Plan and the Platform seek to implement their sometimes overlapping but often disparate visions, we find radically distinct conceptualizations of how to change immigration policy, premised on contrasting assessments of who counts, how far back in time and how far beyond U.S. borders to travel, and how differently we might imagine our shared future.

A. *The Biden Plan*

The Plan spans six broad areas of work: (1) “Take urgent action to undo Trump's damage and reclaim America's values”; (2) “Modernize America's immigration system”; (3) “Welcome immigrants in our communities”; 4) “Reassert America's commitment to asylum-seekers and refugees”; (5) “Tackle the root causes of irregular migration”; and (6) “Implement effective border screening.”⁵⁶

The first area of work (“Take urgent action”) provides a long list of Trump Administration policies that would be reversed in the first 100 days of a Biden Administration. Indeed, Biden implemented several of these reversals within hours of being sworn

55. *Id.* at 11.

56. *The Biden Plan*, *supra* note 12.

in. The list includes ending prosecuting parents for illegal entry, which resulted in family separation; ending metering at the border; reinstating DACA; rescinding the Muslim ban; and surging humanitarian resources to the border.⁵⁷ These are all laudable developments that would essentially reset immigration policy to where it was before Trump became president, yet they would not create systemic change. These action items end or undo modifications implemented under Trump. Almost all of these items could be accomplished within the Executive Branch, without the participation of Congress.

Second, the Biden Plan would also “modernize America’s immigration system” to “finally deliver legislative immigration reform.”⁵⁸ The legislative reform mentioned in the Plan specifies both legalization programs for those who are currently undocumented and reforms to the current system of admitting lawful immigrants.⁵⁹ The Plan fails to mention that comprehensive immigration reform as contemplated in Congress has historically involved three components: a legalization program, reform to the lawful admission system, and more enforcement, which typically is so draconian that some question whether it is worth pursuing comprehensive reform. In other words, the Platform’s Fundamental Truth, “we don’t believe some must suffer for others to advance,” would be belied by any version of immigration reform that legalizes some at the cost of deporting others.

57. *Id.* The list also includes ending prolonged detention of families; reversing Trump’s public charge rule; stopping the Border wall; reviewing Temporary Protected Status (TPS) (presumably with an eye to restoring TPS); reversing Trump’s asylum restrictions; restoring sensible enforcement priorities (towards threats to public safety and national security, away from sensitive locations and not through engaging in workplace raids); ensuring that ICE and CBP personnel abide by professional standards; protecting and expanding opportunities for people who risked their lives in military service with a parole process for veterans deported by the Trump Administration; improving the naturalization process for lawful permanent residents; revitalizing the Task Force on New Americans to prioritize integration, civil engagement, language instruction, and immigrant entrepreneurship; and convening a regional meeting of North American leaders to propose a regional resettlement solution. *Id.*

58. *Id.*

59. *Id.* Other legislative changes supported in the Biden Plan are the preservation of diversity visas; an increase in the number of employment-based visas; the creation of “a new visa category to allow cities and counties to petition for higher levels of immigrants to support their growth”; ensuring “employers are not taking advantage of immigrant workers” who in turn are not undercutting U.S. citizen workers; the extension of U-visa protections; the ending of delays to VAWA self-petitions, U visas, and T visas; and the tripling of the current cap on U visas. *Id.*

The third area of the Biden Plan seeks to “welcome immigrants” through reestablishing the Task Force for New Americans initially created during the Obama Administration, which would support community efforts to welcome immigrants. Next, the Plan would “[p]ush to repeal extreme, anti-immigrant state laws,” of particular concern for having a “chilling effect on the ability of immigrant domestic violence, sexual assault survivors, and other victims of crimes to seek safety and justice[.]” This ties enforcement to gendered violence, *contra* abolitionist urgings, and implies that anti-immigrant state laws are not otherwise of concern.⁶⁰ Lastly, the Plan would “welcome immigrants” through expanding protections for farmworkers and domestic workers currently left out of labor rights and protections. While the idea of welcoming immigrants is certainly a salutary shift from the Trump Administration, it positions the nation as the host and the immigrant as the guest, which renders the immigrant vulnerable. The idea of immigrants being present because of the nation’s hospitality can be traced to foundational Supreme Court decisions from *Chae Chan Ping* to *Harisiades*.⁶¹ In these decisions, it is made clear that the immigrant is here as a matter of privilege, not as a matter of right, and is in possession of a mere license.⁶² A license is a fragile interest and can be revoked at the whim of the host. Thus, the host/guest metaphor, and the idea of hospitality or welcome, underlie the juridical limitations on the ability of immigrants to contest U.S. immigration power. Once again, we see the “we” of the nation-state as the main character in the Plan, either extending largesse to immigrants, as in the case of welcoming them, or discerning when it is in the nation’s interest to restrict their movement.

The fourth area of the Plan is to reassert “America’s Commitment to Asylum-Seekers and Refugees.”⁶³ The Plan would “surge” asylum officers to efficiently review the cases of recent border crossers; restore asylum eligibility for domestic violence survivors; double the number of immigration judges, court staff, and interpreters; end for-profit detention centers; and increase the numbers of overseas refugees to 125,000 per year (currently

60. *Id.*

61. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889); *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952).

62. See Rose Cuison Villazor, *Chae Chan Ping v. United States: Immigration as Property*, 68 OKLA. L. REV. 137 (2015).

63. *The Biden Plan*, *supra* note 12.

capped at 15,000), among other changes. It is apparent from this list of action items that the Plan would largely maintain the status quo of the current system, but would run it more efficiently.⁶⁴

The fifth area of the Plan is the commitment to “Tackle the Root Causes of Migration.”⁶⁵ Here we see a possibly significant expansion of the spatial dimension of immigration policy outside the nation-state. But it is articulated very differently than in the Platform. Here Biden seeks to address root causes “by fostering greater security, economic development, and respect for the rule of law in Central America.”⁶⁶ This would include a \$4 billion package of assistance with aid linked to reductions in violence, improvement in legal and educational systems, and implementation of anti-corruption measures. The onus here is on Central America, as if violence and poverty in Central America and mass migration from the region are a self-generated problem with zero relationship to the long history of U.S. intervention.⁶⁷ But, “we are here because you are/were there.”

Lastly, Biden would “Implement Effective Border Screening.”⁶⁸ Reading the statements, one could wonder what exactly is being suggested. This section begins: “Like every nation, the U.S. has a right and a duty to secure our borders and protect our people against threats.”⁶⁹ Here, the Plan indicates that the United States should and will engage in some form of border enforcement. But, the Plan continues, it is “irresponsible and un-American” to use xenophobia to scare voters; “we know that immigrants and immigrant communities are not a threat to our security.”⁷⁰ The threat is rather posed by illegal drugs and criminal organizations.⁷¹ To ferret out the true threat, the Plan calls for “smart, sensible” policies that invest in new surveillance technology, including improving screening with cameras,

64. At the time of writing President Biden appeared to be reneging on the promise to increase the number of overseas refugees to 125,000.

65. *The Biden Plan*, *supra* note 12.

66. *Id.*

67. See Leisy J. Abrego, *Central American Refugees Reveal the Crisis of the State*, in OXFORD HANDBOOK OF MIGRATION CRISES 213 (Cecilia Menjivar et al. eds., 2018).

68. *The Biden Plan*, *supra* note 12.

69. *Id.*

70. *Id.*

71. *Id.*

sensors, large-scale X-ray machines, and fixed towers.⁷² Lest anyone fear their privacy might be violated by this surveillance, these advancements would be coupled with border privacy protections.⁷³ Could the Biden Plan actually be indicating that immigrants will be subjected to less screening at the border? It seems doubtful. Considering the campaign context in which this text was penned, it is apparent that immigrants will still be subject to screening at the border, it will just be more “effective” than the Trumpian xenophobic rhetoric and border wall. This interpretation is buttressed by the fact that earlier in the Plan, in addressing what Trump Administration policies the Biden Administration would undo, the Plan specifies the need to restore “sensible enforcement priorities” toward threats to public safety and national security.⁷⁴

The Plan concludes: the border should not be treated like a war zone but “a place where effective governance and cooperation between our two countries helps our communities thrive and grow together”⁷⁵ Cross-agency collaboration with agencies that combat people smuggling, arms smuggling, and illegal narcotics is to be improved, and the United States must work with Mexico and Canada as partners, not adversaries. We could contrast this to the words of the Platform describing the borderlands as not a site of security threat but rather “a place of encounter, where two worlds meet, trade, interact, and embrace one another.”⁷⁶ “Thrive and grow together” doesn’t quite suggest an embrace, and is further cabined by the invocations of “effective governance” and “cooperation,” which may in fact be limited to cross-agency collaboration to combat trafficking.

B. The Platform

The Platform carves out its areas of work differently. It identifies three areas of focus: at home, at the southern border, and abroad, illustrating how differently the Platform spatially conceptualizes the issue of U.S. immigration law, often treated as a purely “domestic” issue. The titles of these three areas, “Equality and Inclusion for All People,” “Build Bridges, Not

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. BLUE RIBBON COMM’N, *supra* note 30, at 7.

Walls,” and “We are Here Because You Were There,” also echo important dimensions of critique: a focus on membership, time and space, imagination, and aspiration.

1. “Equality and Inclusion for All People”

The Platform’s first area of focus begins with the massacre in El Paso, in which a white nationalist gunman targeted Mexicans at a Walmart store, killing twenty-two people. The Platform identifies this shooting as a turning point that clarified the white supremacist worldview underlying Trump’s immigration agenda. This made apparent that we need “drastic measures” to protect all people living and working in the United States.⁷⁷ While the Migrant Justice Platform, like the Biden Plan, seeks to reverse Trump Administration policies, it emphatically looks beyond the last four years. According to the Platform, the task is to “repair the damage,” not just to “reverse” or “undo” policies.⁷⁸ Merely turning around Trump’s innovations and resetting to the pre-Trump order will not be enough. This is both because damage preceded the Trump Administration, and because the Platform’s conceptualization of what is necessary for migrant justice imagines a future that requires not just undoing of policy but investment in reconstruction.

Recall that the Biden Plan would engage in “sensible enforcement priorities” that would target immigrants considered threats to public safety and national security, even while the Plan states that “we know that immigrants and immigrant communities are not a threat to our security.”⁷⁹ In contrast, the Platform calls for “an immediate moratorium on all deportations.” All ICE enforcement would be immediately suspended, including deportation, detentions, checkpoints, raids, and surveillance.⁸⁰

Both the Plan and Platform would stop prosecuting immigrants for minor immigration violations such as illegal entry and illegal re-entry—prosecutions that led to the family separation policy. Yet while the Plan would simply stop prosecuting these cases, the Platform would stop criminalizing the act of migrating

77. *Id.* at 14.

78. *Id.* at 16–26.

79. *The Biden Plan*, *supra* note 12.

80. BLUE RIBBON COMM’N, *supra* note 30, at 16.

altogether. Obviously, a legislative change is a more durable response than a shift in prosecutorial discretion. The Platform also expands the term “family separation” to call for a necessary reprieve from “family separation in all forms.”⁸¹ This suggests that all undocumented persons in the United States suffer from family separation, whether through their inability to see family overseas, or because of the deportation of family members. To address these family separations, the Platform would provide “immigration status and work authorization . . . to all undocumented immigrants currently in the country,” along with people who have already been “unjustly deported,” possibly, the Platform suggests, through use of the President’s parole power.⁸²

The Platform simultaneously calls for an end to immigration detention altogether and for a more immediate goal of releasing everyone currently held under discretionary detention who is either eligible for parole, has a substantial defense to the charges of removal, or is eligible for any form of relief from removal. In contrast, the Biden Plan would pursue more minimal changes. The Plan would end prolonged detention, although it does not clearly state if the reference here is just to the detention of children or all immigrants. The Plan would instead end for-profit detention centers, and invest in case management programs as alternatives to “detaining families.” Critical abolitionists point to the focus on private prisons as diverting attention away from a broader abolitionist project; we could make a similar critique of the focus on private detention facilities in relation to immigration prisons more generally, even while private facilities play a relatively greater role in the context of immigration imprisonment.⁸³

While the Plan expresses concern about state-level anti-immigrant measures that reduce public trust and safety, the Plan

81. *Id.*

82. *Id.* The President has the authority to administratively allow noncitizens into the United States, without their being lawfully admitted; historically, this has been done on a large scale for refugee programs, and today typically on a smaller scale as what is known as humanitarian parole or parole-in-place.

83. About 8 percent of prisoners are held in privately-owned prisons. See Mia Armstrong, *Here’s Why Abolishing Private Prisons Isn’t a Silver Bullet*, MARSHALL PROJECT (Sept. 12, 2019, 8:53 PM), <https://www.themarshallproject.org/2019/09/12/here-s-why-abolishing-private-prisons-isn-t-a-silver-bullet> [https://perma.cc/P8AQ-QFNT]. In contrast, about 65 percent of immigrant detainees are held in private facilities. See CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISON: AMERICA’S OBSESSION WITH LOCKING UP IMMIGRANTS* 15 (2019).

fails to address the myriad ways state and local law enforcement collaborate with federal immigration enforcement. The Platform would terminate all agreements that permit such enforcement and information sharing, which function as “force multipliers” to federal enforcement.

The Platform also addresses questions of due process and representation that go unmentioned in the Biden Plan. Because noncitizens in immigration court do not have a right to government-funded immigration counsel, many noncitizens face removal without representation. The Platform would provide an attorney to every immigrant in a removal hearing and would also issue a moratorium on all removals of immigrants who had no representation at their hearings.⁸⁴

Importantly, the Platform would also take us back in time to an era before the worst draconian excesses of immigration law were enacted. The Platform would repeal the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) by passing the New Way Forward Act.⁸⁵ IIRAIRA, signed by President Clinton, made detention and deportation mandatory for immigrants with criminal histories without the possibility of a waiver; expanded the range of immigration offenses that could be criminally prosecuted; created expedited removal; and provided for the mandatory detention of asylum seekers. This would be a repeal that would have a tremendous impact.

Reflecting the social position of the members of the Blue Ribbon Commission that generated this critique, the Platform robustly directs its attention to workers’ rights in a way that is absent in the Plan. The funds currently used to criminalize and incarcerate immigrants would instead be directed to enforce workplace rights through buttressing wage and hour enforcement and improve workplace protections for everyone. Additionally, the Platform would rewind the clock to an earlier era. In 1986, Congress passed the Immigration Reform and Control Act (IRCA), which created employer sanctions as a means of

84. For an explanation of the problems this lack of representation poses not just to immigrants themselves but to federal courts hearing appeals of these cases, see generally Robert A. Katzmann, *When Legal Representation Is Deficient: The Challenge of Immigration Cases for the Courts*, 143 *DAEDALUS* 37 (2014).

85. H.R. 5383, the New Way Forward Act, was introduced in the House in December 2019 and has forty-four cosponsors, all Democrats. *H.R. 5383 (116th): New Way Forward Act*, GOVTRACK (last updated Apr. 14, 2020), <https://www.govtrack.us/congress/bills/116/hr5383/summary> [<https://perma.cc/QS7G-GKV5>].

delegating to employers the responsibility of curbing immigrants from working without authorization. This was an attempt to destroy the “magnet” of jobs in order to decrease “future unauthorized migrant flows.”⁸⁶ The Platform would repeal IRCA, restoring immigrants to a time when immigration status bore no relation under federal law to whether one was authorized to work. The Platform would also create various measures to protect immigrant workers from facing retaliation when they organize for improvements in their workplaces. Workers could self-petition for temporary status and work authorization based upon a labor dispute. In addition, the Platform calls for Transnational Labor Citizenship, which would provide immigrant workers with access to collective worker organizations both in their home countries and in the countries where they work.⁸⁷ Immigration status renders workers vulnerable in an economic system that relies upon their exploitation. These measures would both arm workers with means to protect themselves against exploitation and repeal employer sanctions, which simultaneously facilitates labor abuse and does not achieve its stated intent of curbing the hiring of workers without authorization.

As with the Plan, the Platform seeks to address the millions of undocumented immigrants in the United States. Recall, the Plan references “a roadmap to citizenship,” leaving unclear how many years one would have to travel that road. The Platform articulates this as “opportunities to gain U.S. citizenship” for all undocumented people, as well as for people with liminal status such as DACA, TPS, and DED. Both the Plan and the Platform seek to strengthen family reunification laws, to make it easier for family members to immigrate to the United States, and to reduce family separation. However, unlike the Plan, the Platform does not call to increase employment-based visas, since the workers that are its primary focus would be largely ineligible for these visas.⁸⁸

86. RUTH ELLEN WASEM, CON. RSCH. SERV., RL 33874, UNAUTHORIZED ALIENS RESIDING IN THE UNITED STATES: ESTIMATES SINCE 1986, at 2 (2014).

87. The idea of “Transnational Labor Citizenship” first appeared in Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503 (2006).

88. T and U visas are also an area of concern—as with the Plan, the Platform would expedite their processing, but would, in addition, amend the visas to remove the requirements of government certification and cooperation for an immigrant to

Lastly, the Platform would create a coordinated intergovernmental specialized taskforce to audit for white supremacist activity in the White House, DHS, USCIS, CBP, and ICE leadership. The Platform would dismantle the DHS agencies responsible for family separations, unlawful arrests, and the national crisis of racist profiling.⁸⁹ The Platform also addresses legal decisions that may have been influenced by white supremacy. The Board of Immigration Appeals (BIA) is the appellate body that reviews decisions by immigration judges, but the attorneys general may certify decisions to themselves with sweeping implications for the direction of immigration law and policy. The Platform would rescind any BIA decisions by any Trump attorney general with ties to hate groups or with contempt for the rule of law, which potentially includes a very large number of decisions.⁹⁰ In contrast, the Plan only mentions rescinding the attorney general decisions that pertain to asylum.

2. “Build Bridges, Not Walls”

In the Platform’s second area of focus, it describes how the border has been made “a symbol of hatred.”⁹¹ While the border has been made “a monument to [Trump’s] racist agenda,” the Platform is careful to point out that its excessive militarization began during the Clinton Administration, leading to the incarnation of Customs and Border Patrol as a “paramilitary agency.”⁹² The Platform calls for a “Truth, Reunification, and Reconciliation Commission” with a broad mandate: immediate family reunifications; public hearings on the impact of white supremacy and its connection to Trump Administration border policies; a re-envisioning of border economies; an audit of U.S.

qualify for such visas. And, as with the Plan, the Platform would end the Muslim ban.

89. It is unstated whether this inevitably means dismantling ICE and CBP altogether: this would be the logical conclusion.

90. See *Comprehensive List of AG Certified Opinions in Trump Administration to Date*, IMMIGRATIONPROF BLOG (Nov. 9, 2020), <https://lawprofessors.typepad.com/immigration/2020/11/comprehensive-list-of-ag-certified-opinions-in-trump-administration-to-date.html> [<https://perma.cc/YC6G-6CZV>] (listing twenty-seven decisions in the Trump Administration, in contrast to four during President Obama’s eight years in office).

91. BLUE RIBBON COMM’N, *supra* note 30, at 22.

92. *Id.* For a discussion of the history of this militarization, see generally Wayne A. Cornelius, *Controlling “Unwanted” Immigration: Lessons from the United States, 1993–2004*, 31 J. ETHNIC & MIGRATION STUD. 775 (2005).

international law violations with respect to refugees and asylum seekers; public reporting on migrant deaths in detention and border operations; and an investigation of migrant deaths in the desert and in detention during the Trump Administration.⁹³ As the Platform indicates, multivalent transitional justice processes, such as those proposed here, are typically implemented in post-conflict areas.

The Platform also offers the imaginative proposal that the border wall should be repurposed as a historical memory site. It would serve as a memorial to immigrants who died in ICE custody and who died while trying to cross into the United States during the Trump administration. Both the Truth, Reunification, and Reconciliation Commission's work and the transformation of the border wall highlight the necessity for documenting trauma and speaking truth in order to grapple with the past and move forward. Similar transformation is envisioned for Customs and Border Patrol, which would be restructured with a humanitarian and social service mission so that ports of entry would be transformed into "Welcoming Centers."⁹⁴

The Platform would also undo Trump policies related to refugees and the asylum process, such as closing *hieleras* and *perreras* (temporary holding cages) and ending the interlocking policies created in order to deter refugees from reaching U.S. territory. These policies include the "Remain in Mexico" program, the third-party safe country agreements with Central American countries, and metering at the border.⁹⁵ In addition, the Platform would make other changes that would make it easier for those seeking refuge to be granted protection. Gender would be added as a cognizable particular social group under U.S. asylum law—a change which would greatly facilitate the claims of refugees fleeing gender-based persecution.⁹⁶ The number of admissions for overseas refugees would be increased beyond previous levels, while the Biden Plan would cap overseas refugees at 125,000, the last level allowed by President Obama. The Platform would also end programs that allow for the summary exclusion of immigrants, such as expedited removal and temporary expedited court hearings along the border.

93. BLUE RIBBON COMM'N, *supra* note 30, at 22–24.

94. *Id.* at 24.

95. *Id.*

96. *Id.* at 26.

3. “We Are Here Because You Were There”

The Platform’s third area of focus corrects the prevalent assumption that immigration is a domestic policy issue. It points both to the ways in which the United States has spurred migration by creating global instability and to the ways in which a global human rights crisis is being created by governmental responses to immigration. Global migration is clearly linked to climate change, and the Platform calls for the United States to reenter the Paris Agreement. The Platform calls to end “deportation diplomacy,” whereby the Trump Administration pressured Mexico, Guatemala, and El Salvador to take refugees who are seeking asylum in the United States: a “country with mass graves . . . is not a safe third country.”⁹⁷ In addition to insisting upon global human rights and worker and environmental protections, the Platform calls for the creation of “New Migration Pathways” between the United States and countries in the region.⁹⁸ These New Migration Pathways would enable workers who choose to migrate to fill temporary jobs, work, and then return to their home countries, if that is their preference. And they would enable those who want to stay in the United States to do so.

Recall the Platform’s call for policies that improve the lives of all working people and that recognize our shared planet, the human rights and worth of all workers, and the inevitability of migration. Here, the Platform espouses a mechanism that is grounded in those underlying values and realities. This might mean a bilateral agreement between a neighboring country and the United States to create visas for such movement.⁹⁹

EPILOGUE

The Platform explicitly roots its charge in the perspective of “communities already living and working across the United

97. BLUE RIBBON COMM’N, *supra* note 30, at 29.

98. *Id.* at 31.

99. For advocacy of new migration pathways between Africa and the EU, see SOLIDAR, LEGAL PATHWAYS FOR MIGRATION: SETTING THE RIGHT PRIORITIES FOR A SUSTAINABLE EU-AFRICA PARTNERSHIP, <https://www.solidar.org/system/downloads/attachments/000/001/174/original/legal-pathways-v07.pdf?1610027058> [<https://perma.cc/39ZP-8969>] (last visited Jan. 1, 2021).

States,”¹⁰⁰ which is the social position from which it renders its critique, or its “epistemological alterity.”¹⁰¹ Yet, this also appears to cabin the Platform’s vision. If the Biden Plan is limited in its perspective by not including immigrants at the center of a national *we*, might the Platform be similarly limited by its choice of framing? What if the Platform rooted its agenda in the perspective of communities who are not already located in the United States? The would-be immigrants yet to come to the United States appear in the Platform as deserving of solidarity and human rights, as sharing a linked fate, and as future beneficiaries of New Migration Pathways. But nowhere in the Platform is there an explicit call for free movement across borders or for the abolition of nation-state borders.¹⁰² Instead, the document engages with, at times, quite imaginative proposals while maintaining the apparatus of immigration law and articulating challenges to its current incarnation from within that framework.

In puzzling this out, the closing statement of the Platform (“Where Do We Go From Here?”) provides a clue. In this “exercise to expand our political imagination,” the Platform seeks to show “how much our political representatives have not done.” In making that statement, the Platform contends that “[t]he federal government has the authority and capacity to do everything in this document, and much more.”¹⁰³ Thus, even while some of these proposals seem difficult to envision, they are, in fact, either administrative or legislative changes that the federal government can actually implement. This quite pragmatic underpinning of the Platform both narrows what it can imagine and also fuels its demand: these are “*our* political representatives” upon whom we can call to act. Thus, the “we the people” of the Platform, while not the national “we” of the Plan, is still circumscribed by the nation-state.

If critique enables us to “imagine otherwise,” the brilliance and creativity of the Migrant Justice Platform facilitates a

100. BLUE RIBBON COMM’N, *supra* note 30, at 7.

101. See ALLEN, *supra* note 10, at 154.

102. See, e.g., Joseph Carens, *Aliens and Citizens: The Case for Open Borders*, 49 REV. POL. 251 (1987); HARSHA WALIA, *BORDER AND RULE: GLOBAL MIGRATION, CAPITALISM, AND THE RISE OF RACIST NATIONALISM* (2021).

103. BLUE RIBBON COMM’N, *supra* note 30, at 33.

powerful critique of the Biden Plan.¹⁰⁴ But we would not want to immunize the Platform itself from critique. If we are attentive to the presumptions about membership and space that underlie the Platform and visualize a longer time horizon, we may be able to glimpse a different future altogether that does not maintain the apparatus of immigration law.¹⁰⁵ To quote the final words of the Platform: “The seeds to change course are everywhere, and they’ll bloom if given a chance.”¹⁰⁶

104. KANDICE CHUH, *IMAGINE OTHERWISE: ON ASIAN AMERICANIST CRITIQUE* (2003).

105. See Angélica Cházaro, *The End of Deportation*, *UCLA L. REV.* (forthcoming, 2021).

106. BLUE RIBBON COMM’N, *supra* note 30, at 33.