NO ENTRY: The Muslim Ban and A US History of Exclusionary Immigration

Image description: Black and white logo, featuring a raised fist holding prayer beads interlaced with the dome of the US Congress and the shape of D.C., accompanying text reads: Justice for Muslims Collective
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The mission of Justice for Muslims Collective is to combat institutional and structural Islamophobia in the DC metro area through political education, grassroots organizing, mobilizations, and building alliances across movements.

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A RESOURCE GUIDE
ABSTRACT

The Muslim and Refugee Ban is not an aberration. It is the logical next step in a long-standing history of discriminatory immigration policies in the US that have targeted specific groups for exclusion.¹ The express purpose of such policies was to concentrate wealth and power among elites at the very top, through cultivating an entrenched system of white supremacy, buttressed by capitalism and sexism, and shaped by ableism. As we await an opinion from the Supreme Court on the constitutionality of President Trump’s Muslim and Refugee Ban, and as the administration ramps up its assaults on immigrant communities of all backgrounds, the JMC curated this resource list to contextualize these policies in the broader history of exclusionary immigration policies in the USA.

INTRODUCTION

What does labor productivity in immigration law have to do with white supremacy? Why has perceived deviancy and “idiocy” been grounds for immigration exclusion in the USA, and why do we know so little about this history? What is ableism, and how is it related to white supremacy, eugenics and immigration policy?

This resource list is a curated list of accessible content that teaches about the history of exclusionary immigration policies. These sources were chosen carefully because they don’t speak to a single-issue area or single case within immigration law (there are literally thousands), but instead use illustrative examples (like United States v. Bhagat Singh Thind or the case of John Punch in the 17th century settler colony of Virginia) to describe the larger interconnected structures at play which form the foundational frameworks for USA immigration policies. These resources prioritize lesser known/understood histories of disability, gender, sexuality and national security in exclusionary immigration laws. They also highlight the ways in which exclusionary immigration law based on national origin, race, white supremacy and anti-Blackness has been operationalized through ableism, real or perceived disability, and constructed notions of “deviancy.”

¹ Immigration to the United States, 1789-1930: Timeline and key dates. Accessible from Harvard University Library Open Collections Program
² This resource highlights voluntary Black migration to the U.S., primarily from the Caribbean, as early as the late 19th century. This resource serves to address lesser known/understood channels of Black migration to the U.S.
With the pending Supreme Court decision on the Muslim and Refugee Ban, JMC envisions this resource list as an introductory guide for unpacking USA immigration policies and better identifying interlocking structures of laws, court cases and executive orders. This resource squarely situates the Muslim and Refugee Ban within a long history of exclusionary immigration policies informed by the foundational white supremacy, capitalism, anti-blackness, racism and ableism this country is built upon.

➢ DEFINING OUR TERMS

A. WHITE SUPREMACY
   i. “According to critical race theorist Frances Lee Ansley, white supremacy is ‘a political, economic and cultural system in which whites overwhelmingly control power and material resources.’ Furthermore, according to Robin DiAngelo, a scholar of Whiteness Studies, white supremacy defines white people ‘as the norm or standard for human, and people of colour as an inherent deviation from that norm.’”
   Source: A US immigration history of white supremacy and ableism by Kristin Garrity Sekerci and Azza Altiraifi

B. DISABILITY and ABLEISM
   i. “Disability justice activist and educator Lydia X Z Brown defines ableism as ‘oppression, prejudice, stereotyping, or discrimination against disabled people on the basis of actual or presumed disability.’ Furthermore, Brown argues, ableism is ‘the belief that people are superior or inferior, have better quality of life, or have lives more valuable or worth living on the basis of actual or perceived disability.’”
   Source: A US immigration history of white supremacy and ableism by Garrity Sekerci and Altiraifi

C. EUGENICS
   i. “Charles Davenport, head of the Eugenics Record Office (ERO) at Cold Spring Harbor, defined eugenics as ‘the science of the improvement of the human race by better breeding.’”
   Source: The Black Politics of Eugenics by Ayah Nuriddin
Audio Resources

○ Race, white supremacy, and immigration exclusion
  - Seeing White - “Citizen Thind”
    ● Listen to the story of Bhagat Singh Thind (read more about his historic SCOTUS case here), and also of Takao Ozawa – Asian immigrants who, in the 1920s, sought to convince the U.S. Supreme Court that they were white in order to gain American citizenship. Learn about Thind’s “bargain with white supremacy,” and the deeply revealing results. The Court decided that these men didn’t fit the definition of White and belonged to groups that couldn’t assimilate into America.
  - Backstory Radio – “On the Outs”
    ● On this episode of BackStory, Ed, Brian, and Joanne look back at sweeping immigration restrictions in the 19th and 20th centuries, and how immigrant communities navigated these changing rules.
    ● In this episode of Backstory, the hosts explore how the federal government monitors and polices the undocumented. They consider the origins of illegal immigration, as well as how the government’s deportation powers have grown over time.

○ Eugenics, disability/ableism, and immigration exclusion
  - Seeing White – “Skulls and Skin”
    ● Episode 8 of the Seeing White series, exploring the history of “race science” and eugenics in the US, and how it today continues to inform and shape race relations and immigration policy

○ On proto-immigration laws: slavery & indigenous genocide
  - Seeing White – “Made In America”
In this episode, learn about the how chattel slavery in the United States, with its distinctive – and strikingly cruel – laws and structures, took shape over many decades in colonial America. The innovations that built American slavery are inseparable from the construction of Whiteness as we know it today.

- **Seeing White – “Little War on the Prairie”**
  - Episode 5 of the Seeing White series uncovers the history of the mass execution of 38 Dakota warriors in 1862 - the largest mass execution in US history.

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**WRITTEN & MULTIMEDIA RESOURCES**

**On ableism, white supremacy and exclusionary immigration:**

I. “Disability and the Justification of Inequality in American History” by Dr. Douglas Baynton, Univ. of Iowa
II. “A US Immigration History of White Supremacy and Ableism” by Kristin Garrity Sekerci and Azza Altiraifi, published on AJE
III. “Eugenics, Race, and Immigration Restriction” by University of Minnesota
IV. “Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the Immigration System” by ACLU National. (CW: ableism, descriptions of abuse)
V. “Eugenics, Forced Sterilization and US Immigration Restrictions” PBS
VI. “Growing Up at the Intersection of Disabled and Immigrant” by Conchita Hernandez Legorreta
VII. “10-year-old disabled immigrant detained after immigration agents stop her on way to surgery” by Clark Mindock in Independent
VIII. “It Took A Eugenicist To Come Up With 'Moron'” by Joella Straley, published in NPR
IX. “Braceros: History, Compensation” - Rural Migration News
X. “Return Of The Bracero Program” Published in Washington Post
XI. Caribbean Migration: Overview - Schomburg Center for Research in Black Culture

XII. Disability & Immigration Law in the United States of America by Council of Canadians with Disabilities resource

○ On gender, sexuality, white supremacy and exclusionary immigration
  i. “(1808) An Act to Prohibit the Importation of Slaves into any Port or Place Within the Jurisdiction of the United States” - BlackPast
  ii. “That Time American Women Lost Their Citizenship Because They Married Foreigners” - NPR CodeSwitch by Tanya Ballard Brown
  iii. Unreformed: Towards Gender Equality in Immigration Law by Mariela Olivares (peer-reviewed, academic article)
  vi. Amicus Brief filed by Tahirih Justice Center and other organizations that document the impact of the Muslim and refugee ban on survivors of gender-based violence.
      1. Summary: Based on government documents the ACLU obtained from 2009-2014, there is a pervasive culture of abuse of youth in immigration detention facilities.
      1. 1875 Page Act law [PDF and text versions]

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2 This resource highlights voluntary Black migration to the U.S., primarily from the Caribbean, as early as the late 19th century. This resource serves to address lesser known/understood channels of Black migration to the U.S. beyond the involuntary and horrific histories of kidnapping and enslavement of Africans, brutally and forcibly migrated to the U.S.
ix. A “Gathering Storm”: The U.S. State Department’s Worldwide War on Mormonism [Part 1 | Part 2 | Part 3 - The Keeapitchinin

x. Brief Of Scholars Of Mormon History & Law As Amici Curiae In Support Of Neither Party - submitted to SCOTUS for Muslim Ban case


xii. “Trump’s Muslim ban recalls restrictions on gay, HIV-positive people” by Chris Johnson in Washington Blade

○ On exclusionary immigration laws based on national origin

I. From 1917 to 2017: Immigration, Exclusion, and National Security by Seema Sohi, accessed from South Asian American Digital Archive. Article explores the history of the “Asiatic Barred Zones Act” otherwise known as the Immigration Act of 1917, which sought to restrict immigration of “undesirables” from other countries.

II. United States V. Wong Kim Ark (March 1898) - PBS MULTIMEDIA SOURCE Learn more about this landmark case, which in 1898 ruled that the fourteenth amendment to the US Constitution recognized and safeguarded birthright citizenship for the children of immigrants.

III. The Chinese Exclusion Act (1882) was the first immigration law that explicitly targeted and excluded individuals of Chinese origin from entry into the US. This remained in effect for more than 60 years. Watch this free PBS documentary exploring the history and impact of this infamous law.

IV. Emergency Quota Act or Emergency Immigration Act of 1921: An important turning point in immigration history that creates numerical limits and establishes quotas on immigration (3% of the total number of foreign-born persons from that country recorded in the 1910 United States Census). This quota system drastically reduced the number of individuals immigrating to the US.

V. 1918 War Time Measure: Act required anyone entering or leaving the US to follow rules set out by the President. Every US citizen needed to have a US Passport if they entered or left the country.

VI. Alien Registration Act of 1940 (June 1940): The Act was passed by Congress to monitor the political activities of immigrants. The act made it illegal for anyone to advocate, teach, or support the overthrow of the US government. The act required all alien residents who were 14 and older
to register their political views, personal and professional information. The Act resulted in the registration of over 4 million individuals in the span of 4 months. This information was used to deny citizenship and result in deportation of individuals.

VII. **Japanese Internment:** After Pearl Harbor and during World War II, Pres. Roosevelt signed Executive Order 9066 requiring all persons of Japanese ancestry (including those with American citizenship) to be forcibly relocated and incarcerated in internment camps.

A. This infamous order eventually led to the US Supreme Court case [Korematsu v. US](https://www.law.cornell.edu/supreme-court/cases/1944/327): Fred Korematsu refused to comply with the internment orders, leading to his arrest. The ACLU decided to represent Korematsu and to challenge the constitutionality of the executive order. The Supreme Court ruled that Korematsu’s detention was lawful, due to the demands of war, and the state’s compelling national security interests.

VIII. **Immigration and Nationality Act (1952):** Organized multiple immigration laws into one body of text. The Act preserved a quota system, which is built upon preference for certain racial and ethnic groups that can perform the type of labor desired by the dominant White American community. The Act creates three categories of immigrants: refugees (mainly from European nations), immigrants who had special skills, and a quota of 270,000 for “average immigrants.” The Act uplifted the ban on immigrants from Asiatic zones but capped immigration from Asia at 2000 per year. In addition, the Act was used to ban communists and anyone engaging in subversive activities against the state, and religions that practiced polygamy.

IX. **The Refugee Relief Act of 1953:** The Act was passed by Congress to allow for temporary relief for Europeans fleeing wars. It allowed for resettlement of 214,000 individuals.

X. **Migration and Refugee Assistance Act of 1962:** The Act authorizes funding to support refugee resettlement for groups fleeing communism in Western Europe and Cubans. The Act is used by the Clinton Administration to grant funds to support refugees from the Balkans and Nepal.

XI. **Immigration and Nationality Act of 1965:** The 1965 Immigration Act is considered one of the most important immigration acts that ended the quota system. It is considered the immigration act that resulted in a major shift in US demographics and opened up family-based immigration
on a larger scale. While the original intent of the act was to keep a steady flow of immigration from Europe, certain subset of non-European communities begin migrating to the US. Of course this act does prioritize immigration of a specific group of immigrants who are considered to be high-functioning and able to perform certain specialized skills. People are granted admission based on their relationship with a US citizen, legal permanent resident, or US employer. Caps are placed on how many individuals can enter each year, except for immediate relatives of US citizens. Significant populations of immigrants from Mexico, India, the Philippines, China, Vietnam, El Salvador, Cuba, Dominican Republic, and Guatemala immigrate to the US, and based on MPI’s data on largest groups of immigrants from the 1960s-to present, end up comprising of nearly 60% of the total immigrant population.

The intersection of criminalization, immigration enforcement, and national security laws (1980s – Present)

I. Immigration Act (1990) – The law is used to establish the Diversity Visa Program, TPS, and creates H-1B visas for individuals considered highly skilled temporary workers. It also creates a H-2B visas for seasonal non-agricultural workers. The Act creates a hierarchy in immigrant communities, and uses the skill-laborer category to create divisions. It increases the annual number of immigration cap to 700,000.

II. The 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA) – In combination with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), these two laws passed in 1996 played a central role in increasing the incarceration of non-citizens and the build-up of today’s deportation machine. The 1996 anti-terrorism and effective death penalty act gutted many of the protections around due process. The law required mandatory detention of non-citizens for minor infractions and offenses. This increased the number of non-citizens who were held in detention, even in cases where non-citizens were eligible for relief for deportation. This law and IIRIRA were also passed on the heels of the 1994 Violent Crime And Control Act, which resulted in the mass incarceration build-up in America. These laws demonstrate the interconnectedness of criminalization, immigration enforcement,
national security. The law was passed after the terrorist attack in Oklahoma.

III. **Illegal Immigration Reform and Immigrant Responsibility Act (1996)** - This law is considered one of the major immigration laws behind today’s deportation system that criminalizes non-citizens. The law has wreaked havoc for the past 30 plus years and separated millions of families. According to the ACLU, by 2007, 1.6 million individuals were deported as a result of the law. Under Obama, these numbers grew with him being labeled “deporter in chief.” The law resulted in an expansion of crimes that could result in deportation and eliminated key forms of defense against deportations.

IV. **PATRIOT Act (2001)** - The PATRIOT Act expanded the 1996 anti-terrorism and death penalty act. It is one of the cornerstone laws of the War on Terror. The law exponentially increased the government’s power to surveil Muslim, Arab, and South Asian communities and gut due process rights in the name of counter-terrorism. It also gave the state the right to detain and arrest anyone if they were suspected of supporting terrorism. The provisions of the PATRIOT Act don't have any set limits for expiring. Congress has re-authorized this act on numerous occasions.

V. **The Homeland Security Act (2002)** - This act created the Department of Homeland Security (DHS), a federal agency tasked with fighting terrorism and coordinating other agencies’ response to terrorism. It brought under the purview of one organization, 20 plus federal agencies. DHS oversees and coordinates with agencies responsible for policing the border, transportation and entry points into the country, and intelligence agencies. At its inception, DHS employed 170,000 individuals.

VI. **National Security Entry-Exit Registration System (NSEERS) (2002-2016)** - Arab American Institute | Penn State Law Immigrants’ Rights Clinic and Rights Working Group

VII. **The Secure Fence Act (2006)** - The law authorized the build-up of the wall at the border between the US and Mexico. Trump has cited this law in his executive order to build the wall.

VIII. **Registries and Databases Used by Federal and Local Law Enforcement To Deport Communities**: NILC created an important resource that outlines ways ICE works with state and local agencies for immigration enforcement, the use of gang databases to harm immigrant communities, the use of mobile biometric devices to identify individuals for enforcement purposes, and the lack of accountability around how
federal agencies are using their data. This resource is particularly helpful and useful as there are concerns being raised about the 2020 Census and ways current data that is stored in federal and local government agencies can be used for targeting immigrant communities.

1. Databases:
   a. FBI’s Next Generation Identification (NGI) database
   b. DHS’s Automated Biometric Identification System (IDENT)
   c. National Crime Information Center (NCIC database) – A FBI crime database that includes criminal and civil immigration records.
   d. FALCON – TL: A DHS Homeland Security Investigations database that includes suspicious reports. ICE and local/state law enforcement have access to this database
   e. Criminal Alien Program (CAP)
   f. ICE has access to local and state criminal enforcement data and networks they can check who have been arrested and convicted.
   g. ICE, US Customs And Border Protection, and local/state law enforcement agencies collaborate and share data, including facial recognition technology. Informal ways of communicating with each other that also includes using driving stops to check on the status of someone.

IX. Muslim Bans (2017-current): Executive Order 13769 | Executive Order 13780 | Presidential Proclamation 9645

X. Enhancing Public Safety in the Interior of the US (Executive Order Passed on January 25th, 2017 by Trump: This executive order brings back Secure Communities program and dismantles PEP. It drastically expands what is considered an immigration enforcement hence opening up the door to target more noncitizens for deportations.

XI. "Overcriminalizing Immigration:" This article looks at how immigration has become increasingly criminalized and the use of criminal law as a source of immigration control.

XII. "Policing Immigration:" Examines the role of policing in the control of immigrants in addition to impunity in immigration policing while suggesting ways to gain right for immigrants.

XIII. "A Short, Brutal History of ICE:" This article looks at the creation of ICE post 9/11 and the merging between immigration and national security.