

Anti-Blackness in Immigration: A Comparative Analysis Between the United States of America and the United Mexican States [Estados Unidos Mexicanos]

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I.	INTRODUCTION	

Challenges within the United States' immigration system sat at the forefront of global discussions for change in 2020.¹ Some hoped that a new administration would usher in a reformed standard of decency for migrants venturing through the southern U.S. border.² However, on September 21, 2021, a video of Border Control agents on horseback, “rounding’ up” Black people with what were initially perceived to be whips, circulated on the Internet.³ Upon investigation, the Department of Homeland Security identified the people as Haitian migrants seeking asylum and the “whips” as horses’ reins.⁴ Further outrage arose when Border Control agents stated they were not whipping the migrants; rather, they were attempting to force them toward the Mexican side of the border using their horses and reins.⁵ Within days there was a call for reform and

1. Juan Escalante, *I'm an Undocumented Immigrant and My Future Relies on Your Vote*, INDEP. (Nov. 3, 2020, 3:50 PM), <https://www.independent.co.uk/voices/2020-election-immigration-trump-biden-b1536087.html>; Julian Borger, *United States/Haiti: US Steps Up Deportation of Haitians Ahead of Election, Raising COVID Fears*, GUARDIAN (Oct. 29, 2020, 6:00 PM), <https://www.theguardian.com/us-news/2020/oct/29/us-steps-up-deportation-haitians-coronavirus>.

2. Ted Hesson, *Fact Box: Here are Six Things Joe Biden Will Likely Do on Immigration*, REUTERS (Nov. 7, 2020, 7:03 PM), <https://www.reuters.com/article/us-usa-immigration-biden-factbox-idUSKBN27O00R>.

3. All Things Considered, *The Inquiry into Border Agents on Horseback Continues. Critics See a 'Broken' System*, NPR, at 7:00 (Nov. 6, 2021), <https://www.npr.org/2021/11/06/1052786254/border-patrol-agents-horseback-investigation-haitian-immigrants>.

4. *Id.*

5. Eileen Sullivan & Zolan Kanno-Youngs, *Images of Border Patrol's Treatment of Haitian Migrants Prompt Outrage*, N.Y. TIMES (Sept. 21, 2021), <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.

a conversation regarding anti-Blackness and immigration enforcement policies intensified.⁶ The Mexican government issued statements standing with the Haitian migrants and offered relief.⁷ With the United States' and Mexico's hyper focus on Central American migration, mainstream media heavily ignored the plight of Haitian migrants in 2020. However, this incident helped to highlight the thousands of Haitian migrants seeking protection by migrating to the United States through Mexico.⁸ Although past literature calls attention to anti-Blackness, more specifically anti-Haitian sentiments, this 2020 incident glaringly highlighted the thousands of Haitian migrants seeking protection in the United States.⁹ On the heels of the 2020 social and racial justice movement, the question of the relationship between anti-Blackness and immigration pushed itself to the forefront of the minds of many.¹⁰ As the first free Black republic in the Western Hemisphere, anti-Blackness in Haitian migration through the Americas has an undeniable history.¹¹ This Comment explores anti-Blackness in immigration policies and practices by focusing its attention on the treatment of Haitian migrants in Mexico and the United States. In order for there to be safe migration for Haitian people, countries must root their immigration policy and practices in proactive anti-racist ideology as the issues surrounding Black migrants are specific to their race *and* their immigration status. In Part II, this Comment discusses the history of immigration laws and the migration policies in the United States and Mexico and presents a comparative analysis of their anti-Black migration policies specifically aimed toward Haitians along with their responses to

6. Latino Rebels, *Haitian Advocacy Groups Call on Biden to End 'Cruel Asylum Policies'*, FUTURO MEDIA GRP. (Oct. 15, 2021, 6:22 PM), <https://www.latinorebels.com/2021/10/15/haitianadvocacygroupsbidencruelasylumpolicies/>; *US: Treatment of Haitian Migrants Discriminatory*, HUM. RTS. WATCH (Sept. 21, 2021), <https://www.hrw.org/news/2021/09/21/us-treatment-haitian-migrants-discriminatory#>.

7. *Mexico Prepared to Offer Asylum to 13,000 Haitians, Foreign Minister Tells Senate*, MEX. NEWS DAILY (Sept. 29, 2021), <https://mexiconewsdaily.com/news/mexico-prepared-to-offer-asylum-to-13000-haitians/>.

8. *US: Treatment of Haitian Migrants Discriminatory*, HUM. RTS. WATCH (Sept. 21, 2021, 2:49 PM), <https://www.hrw.org/news/2021/09/21/us-treatment-haitian-migrants-discriminatory>.

9. *Id.*; *See generally Mariel Boatlift of 1980*, IMMIGR. & ETHNIC HIST. SOC'Y THE UNIV. OF TX AT AUSTIN DEPT. OF HIST., <https://immigrationhistory.org/item/mariel-boatlift/> [hereinafter *Mariel Boatlift of 1980*].

10. Ashoka Mukpo, *For Black Immigrants, Police and ICE Are Two Sides of the Same Coin*, ACLU (Sept. 3, 2020), <https://www.aclu.org/news/criminal-law-reform/for-black-immigrants-police-and-ice-are-two-sides-of-the-same-coin/>.

11. *Haiti Country Profile*, BBC, (July 7, 2021), <https://www.bbc.com/news/world-latin-america-19548810>; *see generally* Lilia Obregón, *Empire, Racial Capitalism and International Law: The Case of Manumitted Haiti and the Recognition Debt*, 31 LEIDEN J. INT'L L., 597-615 (2018).

forced migration. In Part III, this Comment presents a brief history of the push and pull factors linked to Haitian migration to provide context of historical practices. Part IV provides policy recommendations borne out of the social justice movement for just immigration practices.

II. PREVALENCE OF ANTI-BLACKNESS FOUND IN IMMIGRATION LAW AND POLICIES

The purpose of this Comment is not to focus on the extensive history of immigration in North America. This Part provides a brief synopsis of immigration in the region to better conceptualize the problems migrants face and pinpoints practices that are inherently racist and present as anti-Black.

A. *Brief History of North American Migration Law*

The United States has long promoted the country as a land for immigrants.¹² The nation's first immigration laws passed in 1790 and set the parameters by which an immigrant could become a citizen of the "new nation."¹³ The first criterion established by the Nationality Act of 1790 mandated that in order to naturalize and become a U.S. citizen the "alien" in question must be white.¹⁴ The first statutory restrictions regarding race and immigration in the United States do not explicitly bar a particular ethnic group, rather they explicitly state the only allowable race.¹⁵ Less than 100 years later, the United States passed the Chinese Immigration and Chinese Exclusion Act.¹⁶ The Chinese Exclusion Act was the first—and remains the only—law to prevent members of a specific ethnic or national group from immigrating to the United States.¹⁷ In the following decades, the United States resorted to more covert immigration laws targeting the world's "undesirables" from immigrating.¹⁸ In the United States the national quota established in the 1924 National Origins Act was

12. "Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me." *The New Colossus*, NAT'L PARK SERV., <https://www.nps.gov/stli/learn/historyculture/colossus.htm>.

13. Nationality Act of 1790, Pub. L. No. 1-3, ch. 3, 1 Stat. 103.

14. *Id.*

15. *Id.*

16. Chinese Exclusion Act, Pub. L. No. 47-126, ch. 126, 22 Stat. 58 (1882).

17. *Id.*; Chinese Exclusion Act, NAT'L ARCHIVES (2022), <https://www.archives.gov/milestone-documents/chinese-exclusion-act>.

18. *See generally* Emergency Quota Act (Immigration Restriction Act of 1921), Pub. L. No. 67-5, 42 Stat. 5; Immigration Act of 1924 (Johnson-Reed Act), Pub. L. No. 68-139; 43 Stat. 153.

implemented to preserve the racial and ethnic make-up of the nineteenth century.¹⁹ The National Origins Act of 1924 used a racial quota system designed to discourage southern and eastern Europeans from entering the United States by implementing a new formula for calculating the number of visas allotted to people of British descent, which, in turn, increased the number of visas allotted to British descendants.²⁰ Black migrants' relationship to the United States differs from that of other ethnicities as the transatlantic slave trade brought the first enslaved Black people to the United States in 1619 and continued for nearly 200 years.²¹ The United States is not unique in its determination to keep the country predominately Anglo-Saxon Protestant, and passing legislation to further this goal is prevalent throughout American history.

Mexico, the United States' neighbor to the south, has had a different approach to immigration with the first immigration law passing only as recently as 1908.²² After the Mexican revolution, the country began to grow expeditiously²³ as a result of European immigrants utilizing Mexico to reach the United States.²⁴ Due to the boom in population, the government enacted the Migration Law of 1926. The law required the registration of foreigners intending to attract permanent immigration.²⁵ In the 1970s, Mexico faced another population growth issue and addressed it with the passage of the 1974 General Law of Population.²⁶ The law, which is still in effect today, lays out the rules governing migration to, from, and through Mexico.²⁷ There is a lack of scholarship highlighting policies specific to race, and this subpart is meant to highlight some of the race-specific policies, particularly anti-Black policies, implemented by the U.S. and Mexican governments across history.

The historical background of the plight of migrants in North America is important as it provides the foundation for anti-Black policies

19. *Id.*

20. Immigration Act of 1924 (Johnson-Reed Act), Pub. L. No. 68-139; 43 Stat. 153; *The Immigration Act of 1924*, HIST., ART & ARCHIVES U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/Historical-Highlights/1901-1950/The-Immigration-Act-of-1924/>.

21. *The First Africans*, JAMESTOWN REDISCOVERY, <https://historicjamestowne.org/history/the-first-africans/>.

22. Pablo Yankelevich, *Mexico for the Mexicans: Immigration, National Sovereignty and the Promotion of Mestizaje*, 68 AMERICAS 405, 408 (2012).

23. *Id.*

24. Gustavo Cabrera, *Demographic Dynamics and Development: The Role of Population Policy in Mexico*, 20 POP. & DEV. REV 105, 107 (1994).

25. *Id.*

26. *Id.*

27. Ley General de Población [LGP], Diario Oficial de la Federación [DOF] 07-01-1974 (Mex.); Ley de Migración [LM], Diario Oficial de la Federación [DOF] 05-25-2011 (Mex.).

today that plague Haitian immigrants. Western lawmakers contribute to anti-Blackness in immigration not only by drafting and creating exclusionary policies, but also by doing the same with race-neutral ones.²⁸ This lack of administrative support is indicative of the global nature of anti-Blackness in Western immigration history.

*B. Overview of Immigration Legal Landscape for Forced Migrants—
The United States*

The Refugee Act of 1980 formalized the refugee resettlement system in the United States to provide for the effective resettlement of refugees and to assist them in achieving economic self-sufficiency after arrival in the United States.²⁹ To establish eligibility for asylum or refugee status, a person must prove they fit the definition of “refugee.”³⁰ In 1981, President Ronald Reagan determined there was a continuing problem of “aliens”³¹ immigrating to the United States.³² This observation informed one of his Executive Orders, which directed the Secretary of State to prevent illegal migration of aliens to the United States by way of sea.³³ Former President Regan’s well-founded fear of migrants entering the United States by sea is a direct result of the U.S.’s intervention in both Haiti and Cuba, which caused an increase in asylum seekers from both countries to flee to the United States by boat.³⁴ Pursuant to this order, President Reagan authorized the Coast Guard to intercept ships on the high seas suspected of carrying undocumented immigrants.³⁵ In 1984, refugees called “Mariel refugees” from both Cuba and Haiti obtained permanent legal status under a revision to the Cuban Adjustment Act of

28. Tendayi Achiume, *Racial Borders*, 111 GEO. L.J. 5 (forthcoming 2022).

29. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 192 (codified as amended at 8 U.S.C.) (referring specifically to 8 U.S.C. §§ 1521-22 (previously known as INA §§ 411-12)).

30. 8 U.S.C. § 1158 (Petitioner must show they are either the victim of past persecution or they have a well-founded fear of future persecution).

31. Keith Cunningham Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545, 1557 (2011) (“‘Alien’ is now commonly considered a derogatory term for a foreign-born person and has extremely negative connotations ... [I]mmigration opinions often literalize these personal metaphors: through metaphor, the immigrant becomes the *alien*, the *alien* becomes the *illegal*, and the *illegal* becomes the *Mexican*.”).

32. See Interdiction of Illegal Aliens, Exec. Order No. 12324, 46 Fed. Reg. 48,109 (Oct. 1, 1981), <https://www.archives.gov/federal-register/codification/executive-order/12324.html>.

33. *Id.*

34. *Mariel Boatlift of 1980*, *supra* note 9

35. Exec. Order 12324.

1966.³⁶ However, this law did not classify Haitian entrants as political refugees. Instead, the law categorized Haitians as economic refugees. This categorization made Haitians ineligible for the same residency status as their predominately white Cuban counterparts despite immigrating under similar circumstances.³⁷ Status as economic refugees subjected Haitians to immediate deportation.³⁸ Contemporary U.S. asylum policies took shape in the 1970s, around the same time Haitian migrants traveled to the United States.³⁹ One can readily infer that President Regan's order specifically targeted Haitians from the influx of Haitian migrants on the U.S.'s shores and from the different refugee statuses given to Haitians and whiter Cuban counterparts.

Following the Immigration Act of 1990, Congress created Temporary Protective Status (TPS).⁴⁰ TPS is a temporary immigration status provided to nationals of designated countries that are confronting an ongoing armed conflict, environmental disaster, or temporary extraordinary conditions.⁴¹ Given for eighteen-month intervals, TPS is a response to circumstances faced by an entire nation, whereas asylum is a response to circumstances faced by an individual.⁴² TPS is granted to those who arrive in the United States before a specific date set by the U.S. government and provides protection against deportation and detention and permits work authorization.⁴³ TPS is a protection often heavily cited as a means to halt migration.⁴⁴ The DHS Secretary publishes a date to the Federal Register indicting a deadline date in which a person from a designated country must already be residing in the United States.⁴⁵ Meaning, if TPS is granted early in the beginning of a crisis, the date provided by DHS does not allow anyone who comes afterward to receive

36. *The Mariel Boatlift of 1980*, FLORIDA MEMORY, STATE LIBR. & ARCHIVES OF FLORIDA (2017), <https://www.floridamemory.com/items/show/332816> [hereinafter FLORIDA MEMORY].

37. *Id.*; Monika Gosin, *The Mariel Boatlift, Haitian Migration, and the Revelations of the "Black Refugees,"* 17 ANTHURIUM, 1, 3-5 (2021).

38. FLORIDA MEMORY, *supra* note 36.

39. Exec. Order 12324; Gosin, *supra* note 32 at 5.

40. H.R. REP. NO. 101-955 (1990) (Conf. Rep.), <https://www.congress.gov/bill/101st-congress/senate-bill/358#:~:text=Establishes%20a%20program%20for%20granting,or%20other%20extraordinary%20temporary%20conditions.>

41. 8 U.S.C. § 1254a.

42. *See* 8 U.S.C. § 1158; Temporary Protected Status, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status>.

43. *Id.*

44. Baranik de Alarcón et al., "We Are Asking Why You Treat Us This Way. Is It Because We Are Negroes?" A Reparations-Based Approach to Remediating the Trump Administration's Cancellation of Tps Protections for Haitians, 26 MICH. J. RACE & L. 1, 15-19 (2020).

45. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 42.

TPS protections and dissuades individuals from seeking refuge in the United States.

The legal landscape in the context of forced migration has transformed in recent history. The creation of the Public Health Service Act of 1944 granted quarantine authority to health officials that would apply to everyone, including U.S. citizens, arriving from foreign countries.⁴⁶ During March of 2022, the Department of Health and Human Services issued an emergency regulation, Section 265 of U.S. Code Title 42, which permits the Director of the CDC to prohibit entry into the country when the director believes “there is serious danger of the introduction of [a communicable] disease into the United States.”⁴⁷ Although not geared specifically towards refugees or asylum seekers, lawmakers often use Title 42 against them.⁴⁸ Title 42 has arguably closed the U.S. border to nearly all asylum seekers.

Furthermore, the United States is a signatory of the 1967 Protocol Relating to the Status of Refugees.⁴⁹ Although the United States does not explore its own asylum policies until faced with Black immigrants, the rest of the world recognized the issue with the development of the 1951 Convention Relating to the Status of Refugees.⁵⁰ The 1951 Convention, created from Article 14 of the Universal Declaration of Human Rights of 1948, which recognizes the right of persons to seek asylum from persecution in other countries, is cited as the “centerpiece of international refugee protection today.”⁵¹ The core principal of the legislation is to ensure that States observe that the rights of refugees are respected and protected.⁵² As dictated by the 1951 Geneva Convention, a refugee is an individual who,

46. 42 U.S.C. § 265.

47. Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 16559 (Mar. 24, 2020) (to be codified at 42 C.F.R. pt. 71) [hereinafter Title 42].

48. *A Guide to Title 42 Expulsions at the Border*, AM. IMMIGR. COUNCIL (2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/title_42_expulsions_at_the_border_0.pdf.

49. U.N. High Comm’r for Refugees (UNHCR), *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, (July 25, 1951), <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf> [hereinafter UNHCR States Parties].

50. U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter Geneva Convention]; U.N. Protocol Relating to the Status of Refugees, Oct. 4, 1967, 606 U.N.T.S. 267 [hereinafter Geneva Protocol].

51. U.N. High Comm’r for Refugees, *Convention and Protocol Relating to the Status of Refugees*, Introductory Note, at 2 (2010), <https://www.unhcr.org/en-us/3b66c2aa10>.

52. *See generally* Geneva Convention, *supra* note 50.

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.⁵³

The United States government declined to sign the 1951 Refugee Convention yet ratified the standards and procedures for enacting the 1967 Protocol Relating to the Status of Refugees.⁵⁴ The 1967 Protocol incorporates the Refugee Convention, but the United States has taken note that the language of the Protocol by which the United States adheres to is not self-executing domestically.⁵⁵ The lack of self-execution means that Article 33 of the Refugee Convention does not impose any domestic legal obligations on the United States.

C. *Overview of Immigration Legal Landscape for Forced Migrants—Mexico*

The Mexican government does not have a long history with a developed written refugee and asylum law as compared to the United States. The drafting of the 1974 General Population Law and the 2011 Migration Law developed the country's current immigration rules.⁵⁶ Foreigners may remain in the territory, subject to certain conditions, as a "visitor[], temporary resident, or permanent resident."⁵⁷ Non-immigrant entry is defined as entry as a (i) tourist; (ii) trans-migrant; (iii) visitor; (iv) religious minister; (v) political asylum; (vi) refugee; (vii) student; or (viii) correspondent.⁵⁸ A temporary resident is defined as a legal immigrant having one of the following characteristics: "rentier, investor, professional, trust position, scientific, technical, family, artist and sportsman or assimilated."⁵⁹ Foreigners who have obtained immigration status will be treated as permanent residents.⁶⁰ The law differentiates

53. *Id.* at art. 1.

54. UNHCR States Parties, *supra* note 49, at 1. *See Legal Obligations of the United States Under Article 33 of the Refugee Convention*, Memorandum Opinion for the Legal Adviser Department of State (Dec. 12, 1991), <https://www.justice.gov/file/23326/download> [hereinafter Memorandum Opinion].

55. *See* Memorandum Opinion, *supra* note 54.

56. *See* Ley General de Población [LGP], Diario Oficial de la Federación [DOF] 07-01-1974 (Mex.); Ley de Migración [LM], Diario Oficial de la Federación [DOF] 05-25-2011 (Mex.).

57. Ley de Migración [LM], Chapter II Art. 52, Diario Oficial de la Federación [DOF] 05-25-2011 (Mex.).

58. *Id.* at Transient I-VI.

59. *Id.* at Transient V.

60. *Id.* at Transient VI.

between an immigrant and migrant, stating that an “individual who leaves, transits or arrives in the territory of a State other than that of their residence by any type of motivation” is a migrant.⁶¹

Mexico’s policy framework surrounding migrants developed further when Mexico became a signatory of the Refugee Convention.⁶² Mexico signed the 1951 Refugee Convention and its 1967 Protocol in 2000.⁶³ Additionally, Mexico signed on to the 1984 Cartagena Declaration on Refugees.⁶⁴ The Cartagena Declaration on Refugees is a non-binding agreement that the Colloquium on the International Protection of Refugees in Latin America adopted.⁶⁵ The 1984 declaration is an expansion of the 1951 Geneva Convention definition of “refugee.”⁶⁶ The Cartagena Declaration expands the definition of “refugee” to include “persons who have fled their countries because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”⁶⁷

In 2008, the UN refugee agency praised Mexico after the country’s President Felipe Calderón signed new legislation called “Law On Refugees, Complementary Protection And Political Asylum” into law.⁶⁸ Mexico’s own law, written with support from the Office of the United Nations High Commissioner for Refugees (UNHCR), incorporates the broader definition of “refugee” found in the Cartagena Declaration.⁶⁹ This action means that Mexico’s Law on Refugees grants protection for people whose lives have been threatened by violence or inhumane treatment and who would not otherwise be considered refugees under the 1951

61. *Id.* at art. 3, XVII.

62. UNHCR States Parties, *supra* note 49, at 1.

63. *Id.*; Mariana Ehandi, *UNHCR Hails Mexico as New Refugee Law Comes into Force*, UNCHR (Jan. 28 2011), <https://www.unhcr.org/en-us/news/latest/2011/1/4d42e6ad6/unhcr-hails-mexico-new-refugee-law-comes-force.html>.

64. Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, *Cartagena Declaration on Refugees* U.N. Doc. A/CONF.2/108 (Nov. 22, 1984), <https://www.unhcr.org/en-us/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html> [hereinafter *Cartagena Declaration on Refugees*].

65. *Id.*

66. Geneva Convention, *supra* note 50, at art. 1.

67. Cartagena Declaration on Refugees, *supra* note 64, at 36.

68. Ehandi, *supra* note 63; LEY SOBRE REFUGIADOS, PROTECCIÓN COMPLEMENTARIA Y ASILO POLÍTICO (2014).

69. Ley de Migración [LM], Art. 3 XXVI., Diario Oficial de la Federación [DOF] 05-25-2011, últimas reformas DOF 04-29-2022 (Mex.); Ley sobre Refugiados, Protección Complementaria y Asilo Político, art. 13, Diario Oficial de la Federación [DOF] 01-27-2011, últimas reformas 10-30-2014.

Convention, effectively creating broader protections for refugees in Mexico.⁷⁰ The legislation incorporates permission to work, access to health services and health insurance, access to education, and recognition of educational qualifications.⁷¹ Since the passage of the law, Mexico has gone from being characterized as a country of emigration and migration *in-transit* to becoming a country of refuge for thousands of refugees.⁷² Mexico's Commission for Refugee Assistance (COMAR), under the Ministry of Interior, is responsible for processing claims for refugee status alongside Mexico's National Institute for Migration (INM).⁷³ The portion of the procedure most relevant to movement is as follows:

All foreigners in national territory have the right to apply for refugee status, which must be submitted to COMAR or the National Institute for Migration, within in 30 days after entering national territory Likewise, the right to a hearing is guaranteed and at the end of said period, COMAR will issue a reasoned and motivated resolution regarding the recognition or not of refugee status as well as the granting of complementary protection.⁷⁴

Under the administration of President Andrés Manuel López Obrador, Mexico was the first country to adopt the U.N. Global Compact for Migration in order to ensure a safe, orderly, and regular flow of migrants.⁷⁵ Although the Mexican government has presented itself as a devoted adherent to the protection of refugees, the practices are not without its faults.⁷⁶

70. Ley sobre Refugiados, Protección Complementaria y Asilo Político, art. 13; Echandi, *supra* note 3.

71. Ley sobre Refugiados, Protección Complementaria y Asilo Político art. 44.

72. Guadalupe Chavez & Alexander Voisine, *The Implementation of Mexico's Refugee, Complementary Protection and Political Asylum Law*, E-INT'L RELATIONS 1, <https://www.e-ir.info/2021/07/05/the-implementation-of-mexicos-refugee-complementary-protection-and-political-asylum-law/>.

73. Procedimiento para ser Reconocido como Refugiado en México, GOBIERNO DE MEXICO (Feb. 29, 2016), <https://www.gob.mx/comar/acciones-y-programas/procedimiento-para-ser-reconocido-como-refugiado-en-mexico>.

74. *Id.*

75. Interior Ministry Joint Press Release, *Policy Is Sovereign, Seeks to Protect Migrants' Rights* Foreign Ministry, GOBIERNO DE MÉXICO, <https://www.gob.mx/sre/prensa/mexico-s-migration-policy-is-sovereign-seeks-to-protect-migrants-rights>.

76. See Catherine E. Shoichet, *In Mexico, Central American Immigrants Under Fire*, CNN (July 14, 2012), <https://www.cnn.com/2012/07/14/world/americas/mexico-immigrant-shelter/index.html> (acknowledging the anti-Central American rhetoric that is heavily prevalent in Mexico and had led to the deaths of too many.).

D. *Haitian Relations Issues Specific to Mexico and The United States*

This Comment focuses on Haitian migration in a comparative context because although Black migration to the United States and Mexico differs, both countries have long histories with the Republic of Haiti. Official ties between the governments of Mexico and Haiti date back to the 1882 establishment of consular relations.⁷⁷ Formal diplomatic relations between the two countries began in 1934.⁷⁸ There is a lack of evidence demonstrating a history of negative relations between Haiti and Mexico.

Juxtaposed, the United States has a long and bloody history with the small Caribbean island. Haiti proclaimed independence on January 1, 1804, after a successful uprising of enslaved people.⁷⁹ Independence was nearly a fifteen-year battle.⁸⁰ During that fifteen-year battle, in July of 1792, Secretary of State Thomas Jefferson wrote a letter to the Marquis de Lafayette assuring that “we [] sincerely wish [the] restoration” of Saint-Domingue to France and George Washington assured the French that the United States would “render every aid in their power . . . to quell ‘the alarming insurrection of Negros.’”⁸¹ The success of Haiti’s independence infuriated the United States and fueled concerns about uprisings throughout the Americas. For almost six decades, the fear of slave uprisings was the basis for the United States’ refusal to grant Haiti diplomatic recognition. The U.S. used policy to isolate Haiti.⁸² This refusal of recognition simply resulted from the United States’ disdain and fear of the birth of a free Black Republic in the Western Hemisphere.⁸³ A

77. Manual De Organización De La Embajada De México En Haití, SECRETARÍA DE RELACIONES EXTERIORES 3 (July 2004), <https://sre.gob.mx/images/stories/docnormateca/manexte/embajadas/MOEMHaiti.pdf>.

78. *Id.*

79. *Haitian Revolution*, ENCYCLOPEDIA BRITANNICA (Mar. 9, 2020), <https://www.britannica.com/topic/Haitian-Revolution>; Karen Jenkins, *Traumatized Societies: Social Cubism and the Predatory State of Haiti*, 8 ILSA J. INT’L & COMP. L. 901, 905 (2002).

80. *Id.*

81. *Jefferson on the French and Haitian Revolutions 1792*, GILDER LEHRMAN INST. AM. HIST., <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/jefferson-french-and-haitian-revolutions-1792>; Brandon R. Byrd, *Racism Has Always Driven U.S. Policy Toward Haiti*, WASH. POST (Jan. 14, 2018), <https://www.washingtonpost.com/news/made-by-history/wp/2018/01/14/racism-has-always-driven-u-s-policy-toward-haiti/>.

82. *The United States and the Haitian Revolution, 1791-1804*, U.S. DEP’T OF STATE, OFF. OF HISTORIAN, <https://history.state.gov/milestones/1784-1800/haitian-rev>.

83. Timothy M. Matthewson, *Diplomatic History*, 3 OXFORD UNIV. PRESS 321, 327 (1979); Frederick Douglass, *Dedication Ceremonies Delivered at the World’s Fair: Lecture on Haiti* (Jan. 2, 1893), faculty.webster.edu/corbetre/haiti/history/1844-1915/douglass.htm (noting

few decades later, on July 28, 1915, President Vilbrun Guillaume Sam of Haiti was assassinated.⁸⁴ The very same day, President Woodrow Wilson began a two decade long military coup sending U.S. Marines to occupy Haiti's capital Port-au-Prince and the United States seized the chance to create a Haiti that suited their needs, joining France in manipulating the country for decades.⁸⁵ The U.S. government used racist and discriminatory ideology to justify the invasion and occupation of Haiti from 1915 to 1934, making it no surprise that nearly 100 years later, men on horseback physically pushed Haitian migrants out of the United States.⁸⁶

Analyzing the historically racist rhetoric and actions by the U.S. against Haiti, and the lack thereof by Mexico, begs the question: why don't Haitians end their migration in Mexico?

III. THE PUSH AND PULL FACTORS OF HAITIAN MIGRANTS TO NORTH AMERICA

A. *Push Factors that Cause Haitian Citizens to Leave Haiti Are, in Part, Largely Contributed to by the United States*

Long before the United States Border Control went viral on the internet emulating slavery era overseers,⁸⁷ Haiti rightfully used the United States as a refuge for decades, fleeing political instability, disease, and natural disaster.⁸⁸ According to 2019 UN data, 1,585,681 Haitians, about

that in 1893 the U.S. diplomatic attaché to Haiti, Frederick Douglass, proclaimed that the United States has “never forgiven” Haiti for being Black.).

84. Secretary of Legation Davis to the Secretary of State, *Papers Relating to The Foreign Relations Of The United States, with the Address of the President to Congress*, DEP'T. OF STATE (December 5, 1916), <https://history.state.gov/historicaldocuments/frus1916/d352>.

85. *The U.S. Occupation of Haiti*, WOODROW WILSON PRESIDENTIAL LIBR. & MUSEUM (August 29, 2019), <https://www.woodrowwilson.org/blog/2019/8/29/the-us-occupation-of-haiti-mgcn5>; Haiti became the first and only country where the descendants of enslaved people paid the families of their former masters for generations, halting the country's ability to build a nation since independence. See Lazaro Gamio et al., *Haiti's Lost Billions*, N. Y. TIMES (May 20, 2022), <https://www.nytimes.com/interactive/2022/05/20/world/americas/enslaved-haiti-debt-timeline.html>.

86. Byrd, *supra* note 81; *Journalists' Video Shows Confrontations Between Border Patrol Agents, Haitian Migrants*, EL PASO TIMES (Sept. 25, 2021), <https://www.elpasotimes.com/story/news/2021/09/25/border-patrol-horseback-haitian-migrants-del-rio-el-paso-times/5850767001/>.

87. *Id.*

88. Rocio Cara Labrador & Diana Roy, *Haiti's Troubled Path to Development*, COUNCIL ON FOREIGN RELATIONS (Sept. 17, 2021, 8:00 AM), <https://www.cfr.org/backgrounder/haitis-troubled-path-development>.

14.26% of the Haitian population, have emigrated in recent years.⁸⁹ On January 12, 2010, the single most severe earthquake ever recorded in the island's history (until 2021) hit Haiti.⁹⁰ In October of the same year, the island endured a massive cholera outbreak that spread rapidly.⁹¹ With three million people affected by the most devastating natural disaster ever in the region, 1.5 million people became displaced.⁹² The result was a mass migration out of the country.⁹³ Today, Haiti remains in turmoil with the assassination of President Jovenel Moïse, followed by a 7.2 magnitude earthquake, followed again by a tropical storm in 2021.⁹⁴ Most Haitians who reach the U.S. border are not fleeing these recent challenges; instead, they are part of a generation of Haitians who have migrated since the 2010 earthquake.⁹⁵

In addition to climate change and political corruption, the island of Haiti also bears the effects of racist colonial rule.⁹⁶ The former U.S. ambassador to Haiti from 2003 to 2005, James Foley, wrote an article in the Haitian digital media platform Rezo Nodwes, entitled “Une intervention américaine en Haïti pourrait être nécessaire” (An American intervention in Haiti could be necessary), citing foreign powers as responsible for the root causes of many of Haiti's “contemporary ills.”⁹⁷ Haiti's brutal history as a colony of France followed by the “crushing indemnity of that country” topped off by U.S. intervention during much of the nineteenth century is the reason for many of the issues Haiti faces today.⁹⁸ The modern day rationale for anti-Blackness in U.S. migration policies are rooted in hundreds of years of forced oppression.

The forced oppression of the Haitian people, coupled with environmental factors, lead to Haitian exodus from their home country. In 2007, the Olympic Committee officially named Brazil the 2014 FIFA

89. Olsen-Medina & Jeanne Batalova, *Haitian Immigrants in the United States*, MIGRATION POL'Y INST. (Aug. 12, 2020), <https://www.migrationpolicy.org/article/haitian-immigrants-united-states-2018>.

90. *Massive Earthquake Strikes Haiti*, HISTORY (Dec. 7, 2020), <https://www.history.com/this-day-in-history/massive-earthquake-strikes-haiti>.

91. *Haiti Earthquake: Facts, FAQs, and How to Help*, WORLD VISION, <https://www.worldvision.org/disaster-relief-news-stories/2010-haiti-earthquake-facts> [hereinafter WORLD VISION].

92. *Id.*

93. *Id.*; Olsen-Medina & Batalova, *supra* note 89.

94. WORLD VISION, *supra* note 91.

95. *Id.*

96. Labrador & Roy, *supra* note 88.

97. Peter Cornelius von Eyken, *The Invisibilization of Haiti*, NOTICIAS FINANCIERAS 1-2 (Feb. 13, 2022).

98. *Id.*

World Cup host.⁹⁹ Later, in 2009, the International Olympic Committee announced that Brazil would host the 2016 Summer Olympics.¹⁰⁰ Still reeling from the effects of the 2010 earthquake, Haitians began to migrate to Brazil in search of employment.¹⁰¹ In 2013, the Brazilian government responded to this increased Haitian migration by creating a humanitarian status for these migrants, distributing massive amounts of humanitarian visas.¹⁰² In 2015, Brazil had a massive economic recession.¹⁰³ Around the same time, rumors that the United States would revoke Temporary Protected Status from Haitian migrants began circulating.¹⁰⁴ In 2016, the Obama Administration reported that it would begin to fully resume deportations of undocumented Haitian immigrants.¹⁰⁵ In response, thousands of Haitian migrants took the journey from Brazil across South and Central America to Mexico, hoping to make it to the United States before the “borders closed.”¹⁰⁶ Haiti’s migration may be a result of natural disasters, economic distress, and internal political friction, but the United States plays an undeniable historical and contemporary role in Haitian migration.

B. The Relationship Between Mexico and Haiti has not Contributed to the Push Factors of Haitian Migration

After the 2010 earthquake, Haitian migrants in Mexico could apply for a temporary visa citing humanitarian grounds for up to one year with

99. Mike Collet, *Brazil Officially Named 2014 World Cup Hosts*, THOMSON REUTERS (Oct. 30, 2007, 8:39 AM), <https://www.reuters.com/article/uk-soccer-world-brazil-idUKL3026608120071030>.

100. *IOC Reaches Agreement for 2014 & 2016 Broadcast Rights in Brazil*, INT’L OLYMPIC COMM. (Aug. 27, 2009), <https://olympics.com/ioc/news/ioc-reaches-agreement-for-2014-2016-broadcast-rights-in-brazil>.

101. All Things Considered, *Amid Construction Boom, Migrants Flow Into Brazil*, NPR (June 26, 2013, 5:38 PM), <https://www.npr.org/sections/parallels/2013/06/27/191300066/with-brazils-economy-growing-illegal-migrants-flow-in>.

102. *Id.*

103. *Brazil, Preliminary Overview of the Economies of Latin America and the Caribbean*, ECON. COMM’N FOR LATIN AMERICA & THE CARIBBEAN 1 (2015), https://repositorio.cepal.org/bitstream/handle/11362/39559/67/1501279BPI_Brazil_en.pdf.

104. Kirk Semple, *U.S. to Step Up Deportations of Haitians Amid Surge at Border*, N. Y. TIMES (Sept. 22, 2016), <https://www.nytimes.com/2016/09/23/world/americas/haiti-migrants-earthquake.html?ref=world>.

105. *Id.*

106. *Id.*; Memorandum for the Secretary on Haiti’s Designation for Temporary Protected Status (Apr. 10, 2017) (on file with the *Miami Herald*).

the possibility of renewal.¹⁰⁷ Under normal circumstances, a migrant would have twenty days to leave the country; however, at the height of the 2016 migration, Mexico decided not to deport Haitian migrants until they received the legal documents necessary to enter the United States.¹⁰⁸ The country saw a steady increase in Haitian migration as the United States tightened restrictions on Haitian border crossings.¹⁰⁹

In 2021, Mexico took a similar stance once again and decided not to deport Haitians until they received the legal documents necessary to enter the United States.¹¹⁰ Due to an “unexpected” reaction of deportation by the U.S. government, the Mexican government discussed offering asylum to 13,000 Haitians.¹¹¹ Minister Marcelo Ebrard historically pronounced that the Mexican Commission for Refugee Assistance (COMAR) advised that 13,255 Haitians qualified or would qualify for asylum.¹¹² With a clear stance of support for migrants, Minister Ebrard stated “those who want refugee status will be given it.”¹¹³ Ebrard addressed the intricacies of Haitian migration in Mexico by recognizing Haitians were leaving Chile and Brazil, countries in which many were granted refugee status years ago, because they mistakenly believed they would qualify for asylum in the United States.¹¹⁴ In 2016, although the Mexican government was quick to express political solidarity towards Haitian refugees, they fell through on their promise as the government lacked capacity to lend support without the help of the United States.¹¹⁵ It seems as if this 2021 decision was an attempt to rectify past wrongs.

107. *Preguntas Frecuentes para Solicitar el Cambio a Visitante por Razones Humanitarias*, GOBIERNO DE MÉXICO, INSTITUTO NACIONAL DE MIGRACIÓN (May 19, 2016), <https://www.gob.mx/inm/documentos/preguntas-frecuentes-para-solicitar-el-cambio-a-visitante-por-razones-humanitarias>.

108. Jimena García Lira, *La Tragedia que Persigue a los Haitianos Hasta México*, EXPANSIÓN (Oct. 12 2016, 6:00 AM), <https://expansion.mx/nacional/2016/10/10/la-tragedia-que-persigue-a-los-haitianos-hasta-mexico>.

109. *Id.*

110. *Id.*

111. *Mexico Prepared to Offer Asylum to 13,000 Haitians, Foreign Minister Tells Senate*, MEXICO NEWS DAILY (Sept. 29, 2021), <https://mexiconewsdaily.com/news/mexico-prepared-to-offer-asylum-to-13000-haitians/>.

112. *Id.*

113. *Id.*

114. *Id.*

115. Ken Bredemeir, *US Ramps Up Haitian Deportation Flights, but Lets Other Migrants Stay*, VOA (Sept. 22, 2021, 12:54 PM), <https://www.voanews.com/a/us-ramps-up-haitian-deportation-flights-but-lets-other-migrants-stay-in-us/6241286.html>.

IV. POLICY RECOMMENDATIONS TO COMBAT ANTI-BLACKNESS IN MIGRATION

Answering the question “why don’t Haitians end their migration in Mexico?” would unjustly imply that Mexico is the model for addressing forced migration. It is a question that a critic cannot possibly answer with a blanket statement, and it would commit an injustice to Haitian migrants in an attempt to do so. This Comment draws attention to the historical and policy backgrounds that are undeniably rooted in anti-Blackness and are, at the same time, race neutral. As discussed, rhetoric and policy are so deeply intertwined within the U.S.’s framework that a plan for safe migration for Haitians would need to start with the dismantling of anti-Black systems in the United States in its entirety. Mexico declares superior refugee policies than the United States, but it would be irresponsible to market the country as the template for pro-Black and protective immigration.

A. *The Social Justice Movement Borne from Anti-Blackness in Immigration*

This Part attempts to analyze how the social justice movement borne in response to anti-Blackness and fueled by the trans-border treatment of Haitians affects policies in both the United States and Mexico. The nature of Black migration to the United States is different than that of other racial groups due to the trans-Atlantic slave trade.¹¹⁶ Some of the first Black people to touch the shores of America did so in slave ships after being stolen from their lands by European conquerors.¹¹⁷ Voluntary Black migration began to increase as U.S. immigration laws became less restrictive towards non-Western European people in the middle of the twentieth century.¹¹⁸ A few decades years later, the effect of this decision was felt in 2020, when a global racial justice movement turned all eyes toward the United States.¹¹⁹ After the brutal killing of George Floyd and Breonna Taylor, it continues to be glaringly obvious that African Americans endure institutionalized and structural racism, even as citizens

116. Beth Austin, *1619: Virginia’s First Africans*, HAMPTON HIST. MUSEUM (December 2019), <https://hampton.gov/DocumentCenter/View/24075/1619-Virginias-First-Africans?bidId=>.

117. *Id.*

118. *Black Immigrants in the United States: Status, Challenges, and Impacts*, BOUNDLESS (2021), <https://www.boundless.com/research/black-immigrants-in-the-united-states-status-challenges-and-impacts/>.

119. Amy Guina et al., *The Racial Reckoning Went Global Last Year. Here’s How Activists in 8 Countries Are Fighting for Justice*, TIME (May 11, 2021, 6:30 AM), <https://time.com/6046299/fighting-injustice-world/>.

in their own country.¹²⁰ Around the same time, the United States faced a mass migration movement at the southern border.¹²¹ The question then became, how do Black immigrants and other immigrants operate in the same system? Activists began to name the relationship between anti-Blackness and anti-immigrant resentment in the United States.¹²² In a report conducted by the Black Alliance for Just Immigration (BAJI), statistical data shows that Black immigrants comprise approximately 8.7% of the total foreign-born population in the United States.¹²³ Data from Pew Research cites Africa as having the fastest growth in the U.S. Black immigrant population, with the Caribbean being the largest origin region.¹²⁴ Together, these two regions accounted for 88% of all Black foreign-born people in the United States in 2019.¹²⁵ In a discussion hosted by New York University (NYU), Nana Gyamfi, the creator of BAJI, and Alina Das, co-director of NYU's Immigrant Rights Clinic, identify Black immigrants in the United States as suffering the dual consequences of anti-Black racism and the historical criminalization of immigrants.¹²⁶ That historical criminalization of Black Americans is why a Black immigrant with a criminal conviction has a 76% chance of being deported compared to 45% chanced faced by the immigrant population overall.¹²⁷ If that person is from the Caribbean, the percentage increases to 83%.¹²⁸ For

120. *Black Lives Taken: George Floyd, Breonna Taylor, And Ahmaud Arbery*, DO SOMETHING, <https://www.dosomething.org/us/articles/black-lives-taken>.

121. John Gramlich & Alissa Scheller, *What's Happening at the U.S.-Mexico Border in 7 Charts*, PEW RSCH. CTR. (Nov. 9, 2021), <https://www.pewresearch.org/fact-tank/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/>; Anna Flagg & Andrew Rodriguez Calderón, *500,000 Kids, 30 Million Hours: Trump's Vast Expansion of Child Detention*, MARSHALL PROJECT (Oct. 30, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/10/30/500-000-kids-30-million-hours-trump-s-vast-expansion-of-child-detention>; *World Migration Report 2022*, THE INT'L ORG. FOR MIGRATION, <https://publications.iom.int/books/world-migration-report-2022>.

122. See generally BLACK ALLIANCE FOR JUST IMMIGRATION, <https://baji.org> [hereinafter BAJI]; UNDOCUBLACK, <https://undocublack.org>; HAITIAN BRIDGE ALLIANCE, <http://haitianbridgealliance.org>.

123. Juliana Morgan-Trostle et al., *The State of Black Immigrants*, BAJI (2022), <https://www.immigrationresearch.org/system/files/sobi-fullreport-jan22.pdf> [hereinafter BAJI Report].

124. Christine Tamir, *Key Findings About Black Immigrants in the U.S.*, PEW RSCH. CTR., ¶ 4 (Jan. 27, 2022), <https://www.pewresearch.org/fact-tank/2022/01/27/key-findings-about-black-immigrants-in-the-u-s/>.

125. *Id.*

126. See generally *Anti-Blackness and the Criminalization of Immigrants*, N.Y.U. SCH. OF L. (Oct. 20, 2020), <https://www.jeanvnelson35.org/anti-blackness-and-the-criminalization-of-immigrants-part-one>.

127. Morgan-Trostle et al., *supra* note 123, at 21.

128. *Id.*

these reasons alone, immigration and Blackness should not and cannot be separated.¹²⁹ Racial justice advocates in the twenty-first century have begun to call out the historical nuances of Black migration to the Americas.¹³⁰ This discussion between race and immigration is borne from the shocking disparate treatment faced by Black immigrants.¹³¹ During the beginning of the COVID-19 pandemic the United States consistently detained more Haitian families in 2020 than any other nationality.¹³² This phenomenon is not unique to 2020, as data shows that immigrants from Africa and the Caribbean made up about 3.6% of people in ICE detention from 2012 to 2017, yet represented 24.74% of all solitary confinement lockups during that time.¹³³ Among the ten nationalities with the most asylum decisions from 2012-2017, Haitians had the second-highest denial rate at 87%.¹³⁴ Leaders like BAJI, UndocuBlack, and the Haitian Bridge Alliance call for immigration reform that centers Black voices.¹³⁵ BAJI alone released statements asking President Biden to investigate the Border Patrol attack on Haitian Asylum Seekers, called on the President to grant Humanitarian Parole to Haitians, expand Haitian TPS, and cease deportation of Haitians.¹³⁶ A discussion surrounding policy change in the United States cannot take place without the inclusion of their [Haitian] voices.¹³⁷

Mexico's relationship to immigration is fairly new; however, the presence of anti-Blackness in Mexico has the power to poison the immigration landscape. President Enrique Peña Nieto has gone so far as to insinuate that Mexico is a post-racial society and proposes that

129. *Id.* (While 7% of non-citizens in the U.S. are Black, they make up a full 20% of those facing deportation on criminal grounds.)

130. See generally BAJI, *supra* note 122.; UNDOCUBLACK, *supra* note 122.; HAITIAN BRIDGE ALLIANCE, *supra* note 122.

131. *Black Immigrant Lives Are Under Attack*, RAICES, THE REFUGEE AND IMMIGRANT CENTER FOR EDUCATION AND LEGAL SERVICES (2022), <https://www.raicetexas.org/2020/07/22/black-immigrant-lives-are-under-attack/> [hereinafter RAICES].

132. *Id.*

133. Konrad Franco et al., *Punishing Status and the Punishment Status Quo: Solitary Confinement in U.S. Immigration Prisons*, 24 PUNISHMENT & SOC'Y 1, 13 (2020).

134. RAICES, *supra* note 131.

135. *Civil Rights Complaint Reveals Ice Abuse Of "The Wrap" Restraints To Facilitate Deportations To Cameroon*, UNDOCUBLACK (Oct. 13, 2021), <https://undocublack.org/press-releases/2021/10/13/the-wrap-complaint>.

136. See generally *Statements*, BAJI, <https://baji.org/our-work/statements/>.

137. *Id.*

racial mixing is the future for humanity.¹³⁸ Until 2020, the Mexican government did not include race on their census.¹³⁹ The lack of racial categories, *inter alia*, contributes to the history of ignoring and erasing the Black population in Mexico.¹⁴⁰ The denial is so blatant that the head of the government office in charge of Afro-Mexicans in Oaxaca recalls two Black Mexicans being deported to Honduras and Haiti because the police insisted that “there are no Black people in Mexico.”¹⁴¹ Despite the lack of racial recognition given to Black Mexicans, there is still a history of systemic racism that darker Mexicans endure.¹⁴² A 2011 report authored by the Center for Research and Teaching in Economics pulled data from the Americas Barometer Mexico survey, which utilized racial and phenotypic measures to illustrate dark peoples’ negative experiences in Mexico.¹⁴³ In 2017, Mexico’s National Institute of Statistics used an INEGI color palette for the first time to measure individuals’ skin tone. The data uncovered that Mexicans with darker skin tones have lower education, decreased schooling, possess less wealth, and are ranked lower socioeconomically in comparison to their whiter Mexican counterparts.¹⁴⁴ Their results show that race is an important determinant of a Mexican citizen’s economic and educational status.¹⁴⁵ Data and statistics help create a picture of anti-Blackness in Mexico; however, the true strength in this data and these statistics stems from the movement birthed by Afro-Mexicans who demand to be recognized and racism be named.¹⁴⁶ As

138. “*Mestizaje, futuro de la humanidad*,” *Dice Peña Nieto*, CHI. TRIB. (Sept. 19, 2016, 12:55 PM), <https://www.chicagotribune.com/hoy/ct-hoy-8713534-mestizaje-futuro-de-la-humanidad-dice-pena-nieto-story.html>.

139. See generally, *Census of Population and Housing 2020*, NAT’L INST. OF STAT., GEOGRAPHY & INFORMATICS, <https://en.www.inegi.org.mx/programas/ccpv/2020/>.

140. Arlene Gregorius, *The Black People ‘Erased from History,’* BBC NEWS (Apr. 16, 2016), <https://www.bbc.com/news/magazine-35981727>.

141. *Id.*

142. Daniel Zizumbo-Colunga & Iván Flores Martínez, *Is Mexico a Post-Racial Country? Inequality and Skin Tone Across the Americas*, CTR. FOR RSCH. AND TEACHING IN ECON., CIDE 2 (2017), <https://www.vanderbilt.edu/lapop/insights/ITB031en.pdf>.

143. *Id.*

144. Rosario Aguilar, *The Tones of Democratic Challenges Skin Color and Race in Mexico*, CTR. FOR RSCH. & TEACHING IN ECON., CIDE 8-15 (2011).

145. *Id.*

146. Randal C. Archibold, *Negro? Prieto? Moreno? A Question of Identity for Black Mexicans*, N.Y. TIMES (Oct. 25, 2014), <https://www.nytimes.com/2014/10/26/world/americas/negro-prieto-moreno-a-question-of-identity-for-black-mexicans.html>; Kiko Martinez, *Mexico’s 2020 Census Is the First Time Afro-Mexicans Have Been Acknowledged & Counted as Such*, REMEZCLA (Feb. 11, 2021, 4:29 PM), <https://remezcla.com/culture/mexico-2020-census-results-historical-addition-of-afro-mexicans/>; David Agren, *‘We Exist. We’re Here’: Afro-Mexicans*

demonstrated by the United States, a country's relationship with its own Black citizens is directly indicative of how they will treat their Black migrants.

B. As the Presence of Haitian Citizens Grows in Mexico, the Country Must Develop a Plan to Better Serve This Population

In Mexico, the government was initially supportive of Haitian migrants. However, the Mexican government was not prepared to handle mass migratory movements, and, slowly, the rhetoric around Haitian asylum seekers has changed as resources in border cities are stretched thin.¹⁴⁷ At the height of Haitian forced migration to Mexico, news reporters followed Haitian migrants in various cities.¹⁴⁸ These reports highlight stories of migrants who are told they cannot leave the southernmost city in Mexico without proper travel documents or a humanitarian visa that allows them to travel freely through the country.¹⁴⁹

Mexican officials have urged others to apply for refugee status or asylum, but there are fewer than fifty asylum claim officers in Mexico's refugee assistance program.¹⁵⁰ Mexican immigration agents have told Haitians in Ciudad Acuña that they must return to Tapachula, Chiapas, to apply for asylum in Mexico but many Haitian migrants are dissuaded by a lack of job opportunities, overwhelmed migrant services and long wait times at the Mexican Commission for Refugee Assistance.¹⁵¹ Although the National Migration Institute is overwhelmed, the state of the Mexican border is unacceptable as Mexico has long been under pressure to do more.¹⁵²

The influx of migrants coupled with push back from the United States creates an obligation for Mexico to stay true to their words and protect Haitian migrants. Policy wise, Mexico must start developing programs to sustain migrants on their borders paying special attention to the discrimination practices that take place in their own country. Private

Make the Census After Long Struggle for Recognition, GUARDIAN (Mar. 19, 2020, 5:00 PM), <https://www.theguardian.com/world/2020/mar/19/afro-mexicans-census-history-identity>.

147. Maria Verza, *In Mexico, Some Haitians Find a Helping Hand*, AP NEWS (Sept. 26, 2021), <https://apnews.com/article/immigration-mexico-texas-africa-haiti-649990eb3016537e024e5ea3dec43acc>.

148. Carrie Khan, *On Mexico's Southern Border, the Latest Migration Surge is Haitian*, NPR (Dec. 18, 2021, 11:07 AM), <https://www.npr.org/2021/12/18/1065135970/on-mexicos-southern-border-the-latest-migration-surge-is-haitian>.

149. *Id.*

150. *Id.*

151. *Id.*

152. Khan, *supra* note 148.

Mexican citizens should not be the ones assembling free food and services for migrants, and, instead, the government should address the larger migration issue.¹⁵³ There should be a country-wide support system installed, not a plan to push people toward the United States in hopes that they will be accepted. As of 2022, the migration corridor between Mexico and the United States is the largest in the world, comprising of nearly eleven million people.¹⁵⁴ Although Mexico may not currently have the infrastructure to handle this level of migration, it must be developed.

The Mexican government recognizes that their role has to change but has yet to address the specific challenges that Haitian migrants face as Black individuals.¹⁵⁵

C. *The United States has a Duty to Enact Policy that Uplifts and Protects Haitian Migrants*

Although it may seem easy to fault Mexico for their lack of preparedness, the United States has a plethora of policies and rules that are weaponized against Haitian migrants. Title 42 grants the U.S. government authority to expel migrants that do not pass the mandated health criteria, and a leaked DHS memorandum admits to screening Haitian immigrants and expelling them even if there is a basis for asylum.¹⁵⁶ After President Biden took office more Haitians were expelled in the first weeks of the administration than during all of Fiscal Year 2020.¹⁵⁷ Under Title 42, Black asylum seekers are being expelled to the

153. *'They Have Nothing to Eat: ' Mexicans Step Up with Aid for Haitian Migrants*, MEXICO NEWS DAILY (Sept. 27, 2021), <https://mexiconewsdaily.com/news/they-have-nothing-to-eat-mexicans-step-up-with-aid-for-haitian-migrants/>; Press Release, The White House, Fact Sheet: Strategy To Address The Root Causes Of Migration In Central America (July 29, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-strategy-to-address-the-root-causes-of-migration-in-central-america>.

154. *World Migration Report 2022*, supra note 121, at 26.

155. Francisco Garduño Yáñez, commissioner of Mexico's National Immigration Institute, has stated Mexican authorities will ferry Haitians "by air and ground" back to the country's southern border, so that migrants who have claimed asylum can "continue their process" in the states where they first filed their cases. Mexican authorities will also "support them with their safe return to their country of origin." See Kevin Sieff & Paulina Villegas, *Surge of Haitian Migrants at the U.S. Border Challenges Mexico, Too*, WASH. POST (Sept. 23, 2021), <https://www.washingtonpost.com/world/2021/09/23/mexico-haitians-border-deportation/>.

156. See Dara Lind, *COVID-19 CAPIO*, PROPUBLICA (2020), <https://s3.documentcloud.org/documents/6824221/COVID-19-CAPIO.pdf>.

157. Nicole Phillips & Tom Ricker, *The Invisible Wall: Title 42 and Its Impact on Haitian Migrants*, QUIXOTE CTR. 7 (Katrina Bleckley et al. eds., 2021.), <https://www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf>. ICE removed 895 people to Haiti during all of FY2020, however Quixote reported that, based on sources in Haiti's immigration authority, they

countries where they fled persecution and torture or sent to dangerous border regions of Mexico.¹⁵⁸ DHS has expelled over one thousand Haitian migrants, including asylum seekers, to Haiti despite findings that Haitian citizens may face harm due to political instability and violence.¹⁵⁹ The role of anti-Blackness in migration is historically under-discussed due to the focus on anti-Latine immigration sentiments aimed at the U.S.-Mexico border.¹⁶⁰ Professor McKanders of Vanderbilt University Law School discusses legal scholars who study the intersections of criminal justice and race, and yet their scholarship is focused only on Latino immigrants to the exclusion of those from other ethnic and racial backgrounds.¹⁶¹ The first step in fixing anti-Blackness in immigration is recognizing how even race-neutral policies affect the larger legal and political landscape in the context of forced migration.

For example, though the Title 42 Order is the most consistent example of U.S. public health officials wielding their authority to help reenforce anti-Black immigration policies, this type of rhetoric is not new. In the 1980s the United States battled through the HIV/AIDS epidemic, which was closely and unfairly associated with Haitian immigrants and asylum seekers.¹⁶² Although enacted during the Trump Administration, the Biden Administration has also used Title 42, hiding behind the COVID-19 virus, to unjustly deter not just Haitians from entering the country as it originally aimed to do, but all people.¹⁶³ On April 1, 2022, the CDC publicly recognized the injustices brought by Title 42 in immigration law and terminated the Order Suspending the Right to

were able to confirm 963 removals from February 1, 2020, to February 21, 2021. In March they estimate 500+ removals based on communications with people who had knowledge of flights. ICE Air Operations refuses to confirm information. *See* Immigration and Customs Enf't, U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report 29 (2021).

158. Human Rights Watch has previously witnessed and documented CBP agents performing illegal “turnbacks” of migrants exercising their right to seek asylum. *See Q&A: US Title 42 Policy to Expel Migrants at the Border*, HUM. RTS. WATCH (Apr. 8, 2021, 4:15 PM), <https://www.hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border#As.>”

159. *Id.*

160. *In the Story Of U.S. Immigration, Black Immigrants Are Often Left Out*, NPR (Feb. 27, 2021, 7:54 PM), <https://www.npr.org/2021/02/27/972056955/in-the-story-of-u-s-immigration-black-immigrants-are-often-left-out>.

161. Karla McKanders, *Immigration and Racial Justice: Enforcing the Borders of Blackness*, 37 GA. L. REV. 1139, 1146 (2021).

162. HUM. RTS. WATCH, *supra* note 158.

163. Joel Rose, *Border Patrol Apprehensions Hit a Record High. But That's Only Part of the Story*, NPR (Oct. 23, 2021, 7:47 AM), <https://www.npr.org/2021/10/23/1048522086/border-patrol-apprehensions-hit-a-record-high-but-thats-only-part-of-the-story>.

Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists.¹⁶⁴ The termination of this policy demonstrates that fixing issues that affect Black individuals creates safer immigration policies for all.

Although the termination of Title 42 is a step in the right direction, more action must materialize to ensure immigration practices are not anti-Black or race-neutral. In short, TPS is one of the administrative policies that must undergo a systemic change. The United States granted Haiti TPS after the 2010 earthquake.¹⁶⁵ During President Trump's leadership, the administration overturned Haitian TPS, citing the lack of need and added fuel to the fire by calling Haiti, among others, a "shit hole" country.¹⁶⁶ With the change in the Biden Administration, Haiti received designation once again.¹⁶⁷ Individuals applying for TPS must be Haitian citizens, have arrived in the United States before July 29, 2021, and not be subject to any of the bars set forth by the government.¹⁶⁸ Although this designation protects Haitian immigrants in the United States and attempts to right the wrongs of former President Donald Trump, TPS is a highly flawed system.¹⁶⁹ It only provides safety and protection for individuals who arrived in the United States *before* July 29, 2021,¹⁷⁰ leaving the current population vulnerable and subject to deportation or denial of entry.

Policy has to work for the people, not against them. Currently, it seems there is a complete lack of policy that is possibly beneficial for a

164. See Press Release, Centers for Disease Control and Prevention, CDC Public Health Determination and Termination of Title 42 Order (Apr. 1, 2022), <https://www.cdc.gov/media/releases/2022/s0401-title-42.html> (Order 42 U.S.C. §§ 265, 268 and 42 C.F.R. § 71.40 Regarding the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists).

165. Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. 41863, (Aug. 3, 2021).

166. *Id.*; Ryan Teague Beckwith, *Trump Called El Salvador, Haiti 'Shithole Countries*, TIME (Jan. 11, 2018), <https://time.com/5100058/donald-trump-shithole-countries/>.

167. Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. at 41863; Tal Axelrod, *Biden Administration Renews Temporary Protected Status for Haiti*, HILL (May 22, 2021, 5:55 PM), <https://thehill.com/latino/554928-biden-administration-renews-tps-for-haiti/>.

168. Temporary Protected Status Designated Country: Haiti, U.S. CITIZENSHIP AND IMMIGR. SERVICES, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti>.

169. TPS provides protection for extra ordinary and temporary conditions, at any point the government has the power to not redesignate. See Benjamin M. Haldeman, *Discretionary Relief and Generalized Violence in Central America: The Viability of Non-Traditional Applications of Temporary Protected Status and Deferred Enforced Departure*, 15 CONN. PUB. INT. L.J. 185, 200-02 (2016).

170. Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. at 41863.

Black migrant. In the most radical sense, it would not be feasible if one were to propose an open refugee concept that allows all people to seek refuge in the United States.¹⁷¹ The United States is currently facing a backlog issue of 1.6 million cases due to a broken system that cannot support the current immigrant population.¹⁷² This backlog is a complete disservice to the world's most marginalized people.

V. CONCLUSION

Black people are not separated from larger immigration issues because their race often exposes them to more risk. Blackness must not be separate from immigration because anti-Black policies, such as enforcement officers on horseback violently pushing people out of the country, are built within the framework of the United States. Whether Title 42, TPS, or another policy is responsible for keeping these individuals from gaining entry, it has become increasingly clear that policy garnered from the colonial era is rooted in anti-Blackness and race-neutrality. To ensure the safe migration of Haitian immigrants there must be a cultural shift.

Looking at immigration from Haiti comparatively between Mexico and the United States, it becomes glaringly obvious that safe migration is pro-Black migration. The crux of immigration policies modeled after the United Nations recommendations do not specifically address the unique issues that stem from race. To ensure just migration, countries must begin working towards an actively anti-racist reconstruction of their policies.

171. Muzaffar Chishti & Julia Gelatt, *Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes*, MIGRATION POL'Y INST. (Feb. 23, 2022), <https://www.migrationpolicy.org/article/us-immigration-backlogs-mounting-undermine-biden>.

172. *Id.*