

Framing Race and Religion in an Era of Hardened Borders

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2026 reflects a critical juncture when it comes to the intersections of race, religion, law, and migration in the European Union and United States. Borders have hardened across both continents due to political sentiment, and reinforced by the power of law. The U.S. government pursues an unrelenting mass deportation agenda that has acutely harmed communities of color, and both the U.S. and various E.U. states have responded to the challenge of global migration by ending access to asylum. In some quarters, religious freedom is flourishing, especially for conservatively-oriented Christians. Both race and religion have served as markers of national identity, so that certain religious communities experience the brunt of racial discrimination on top of skepticism around their religious freedom claims. From the perspective of those advocating for the humanity and rights of migrants on the ground, the terrain is filled with urgency and regression.

This symposium's focus on race, religion and the law of migration in the European and United States, approached through a range of disciplines, thus takes on a formidable task. Race, religion, and migration are increasingly political and polarizing. Backlash, resistance, frustration and discomfort can arise in conversations about race, as well as around religious freedom. Additionally, identifying clear solutions based on comparative and interdisciplinary approaches can present challenges. After all, each context—the US, the EU, and individual EU member states—brings its own history and series of political moments. While similarities can be drawn across countries and regions, the temptation to overgeneralize and overlook important nuances from each context remains. The symposium's interdisciplinary nature, which draws from a range of fields including theology, law, sociology, creates a space in which to reimagine

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possibilities and rethink interventions. However, interdisciplinary work can also lead to gaps in knowledge and communication.

Despite the challenges, this symposium sheds light on key questions facing scholars of migration, race and religion, and offers a fresh series of insights. In this Comment, I draw attention to two central issues that emerge from the symposium, and do so from the perspective of a legal scholar whose primary focus is U.S. immigration law. The first issue involves race. How should law and discourse approach race and racism, and how might frameworks governing race affect practical interventions around migration? The second issue centers on religion. What does religion do to enhance our understanding of how race and racism operate against the backdrop of migration? The symposium addresses important dimensions of these questions, and the rise of authoritarianism in the West means that they will continue to generate a host of additional issues for future exploration.

I. FRAMING RACE AND RACISM

Scholars have long addressed the implications of approaching race from a color-blind perspective or engaging in a more explicit acknowledgment of race, especially the existence of structural forms of racism.¹ The context of migration—both forced and voluntary—has served as a recurring background to these conversations. Acute hostility towards engaging in race-conscious efforts to acknowledge and remedy racial discrimination against communities of color has developed in the last several years. Accordingly, laying out the case for why explicit acknowledgment of racism against immigrants and non-white people matters has taken on particular urgency.

¹ In the U.S. legal context, scholars of critical race theory have long argued that racism operates as a series of systemic and structural phenomena that are woven into law and social systems, rather than simply a collection of individual biases, such that neutral or “color-blind” legal standards tend to mask and perpetuate racial inequity. See generally *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberle Crenshaw et al., eds., 1995).

Several of the papers engage with the question of how directly to approach race and the existence of racism in crafting practical solutions and governing legal frameworks. Van den Bosch and Schmiedel critique the 2024 EU Compact on Migration because it adopts a neutral approach to managing migration that treats EU members as the central actors working in solidarity with each other as states, to the detriment of migrants.² They contend that the Migration Pact's colorblindness "allows the EU to ignore how race and religion continue to function as categories of deservingness."³ Accordingly, they contend that taking the realities of past and present racial discrimination would more effectively bring about corrective justice.⁴ Their critique focuses not only on the logistical framework set forth by the Migration, but contends with its Rawlsian approach to justice. They therefore engage with a pillar of Western political philosophy, given the tremendous influence of John Rawls.⁵

Berger, writing in the European context with a specific focus on the Netherlands, observes that social scientists appear to prefer the language of "racism" whereas jurists adopt the term "discrimination."⁶ Berger thus explores the merits of framing the modern experience of Muslim immigrants in the Netherlands under the rubric of discrimination versus racism. After tracing historical and contemporary trends in the Netherlands, Berger emphasizes that discrimination against Muslims (who are also perceived as racially distinct) is not simply "individual and social," but also "institutional," "depersonalized," and "unaccountable."⁷ Berger concludes that "racism" is the more appropriate term to describe current events. Van den Bosch & Schmiedel and Berger thus both arrive at similar points, contending that legal interventions and discursive frameworks should directly acknowledge the

² Dianne van den Bosch & Ulrich Schmiedel, *Neutralizing Justice: 'Race' and 'Religion' in the EU Migration Pact*, 25 RUTGERS J. L. & REL. 12 (2026).

³ *Id.*

⁴ *Id.* at 37.

⁵ *Id.* at 17-18.

⁶ Maurits Berger, *The Poisonous Cocktail of Race, Religion, and Migration in Dutch Society*, 25 RUTGERS J. L. & REL. 165 (2026).

⁷ *Id.* at 194.

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existence and impact of racism, and that racism is embedded structurally into various systems.

Other scholars take as a starting point that race is, and has long been, central to the project of building national identity. Hafez provides a litany of examples to assert that the second Trump administration is advancing a “whites first politics,” which is especially pronounced in the immigration field but not at all limited to immigration.⁸ While Hafez’s attention is directed principally towards the U.S., he also draws from parallel experiences in Germany and other E.U. states as examples of global support for the politics of white supremacy.⁹ Allard presents the United States Supreme Court’s decision in the Chinese Exclusion Act case¹⁰ from the late 1800s as one of multiple “founding moments” in the creation of the American national identity.¹¹ He situates Chinese Exclusion against powerful expressions of racial subordination directed towards African Americans and indigenous people in the U.S., which also constitute founding moments for the country. Hafez and Allard provide unflinching critiques of where the U.S. has been, and where the country is today when it comes to the hope of racial equity.

Pieces in this symposium also examine specific examples of how racism surfaces in the law of migration in narrow but important contexts. Focusing on Poland, Bobrowicz suggests that Poland’s experience as both an imperialist state (in the 16th and 17th centuries) and as an occupied state (subject to the Russian, Prussian and Austrian empires) helps explain Poland’s decision to end all asylum applications in 2025.¹² Bobrowicz suggests that Poland’s national identity as a “besieged empire” as well as an “empire-

⁸ Farid Hafez, *Make the World White Again: Notes on Race, Religion, and Immigration Across the Atlantic*, 25 RUTGERS J. L. & REL. 195 (2026).

⁹ *Id.* at 196.

¹⁰ *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

¹¹ Silas Allard, *A Constellation of Foundings: Chae Chan Ping, Chinese Exclusion, and the Making of America*, 25 RUTGERS J. L. & REL. 38-39; 68 (2026).

¹² Ryszard Bobrowicz, *Humanity Suspended: A Brief History of How Poland Suspended Asylum Rights in Pursuit of Imperial Status*, 25 RUTGERS J. L. & REL. 70 (2026).

in-the-making” has facilitated a public discourse that treats Muslim immigrants of color as “foreign invader[s].”¹³ To this end, “‘religion’ prevailed as a racializing category of division” in modern Poland.¹⁴ Writing about U.S. asylum policy, Alexander interrogates the idea that the U.S. is a “haven for persecuted Christians” and committed to religious freedom.¹⁵ Alexander discusses U.S. asylum policy as well as detention practices. She also analyzes the historical and modern influence of White Christian nationalism to examine how “racist stereotypes influence the notion of who ‘counts’ as a ‘proper’ Christian immigrant,” especially amongst American Christians.¹⁶ Bobrowicz and Alexander both provide ways of explaining and critiquing how broader historical and social context give rise to specific policies that today affect migrants seeking safety.

The second Trump administration’s pursuit of mass deportations suggests that the U.S. is experiencing a period of sharp regression when it comes to racial justice, and that the law of migration plays a critical role in that backwards movement. Immigration enforcement’s reliance on criminalization has long had an outsized impact on immigrants of color. Sometimes, immigration enforcement policies have allowed racial hierarchies within the U.S. to flourish. For instance, the Supreme Court’s unsigned decision in 2025 to permit immigration enforcement agents to use race as a factor in stopping people they suspect of having engaged in immigration violations has unleashed widespread racial profiling of citizens and noncitizens alike.¹⁷ Indeed, the Court’s order stayed a lower court decision with an administrative record filled with stark examples of such racial profiling. The negative impact of the Court’s decision for immigration policing was hardly a surprise to many commentators, particularly given the cavalier

¹³ *Id.* at 85; 88.

¹⁴ *Id.* at 77.

¹⁵ Laura E. Alexander, *Migration, Christianity, Race, and the ‘American Dream’ of Religious Freedom*, 25 RUTGERS J. L. & REL. 94 (2026).

¹⁶ *Id.* at 96.

¹⁷ *See, e.g.,* Noem v. Vasquez Perdomo, 146 S. Ct. 1, 1 (2025)

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discussion of race-based stops by immigration officers in the single written opinion issued by one member of the Court.¹⁸

However, the broader context of mass deportation is also seeped in race, such that abrupt changes in immigration enforcement—whether the rampant detention of immigrants,¹⁹ the termination of immigration benefits and protections,²⁰ the treatment of noncitizen lives as disposable, or any number of policy shifts—impact our understandings of membership along racial lines. Efforts to end birthright citizenship in the U.S., which the Supreme Court rejected in 2026, had the potential to bring about about massive shifts in equality and membership.²¹ Even with the Court’s resolution of the Trump Administration’s first effort to end birthright citizenship, the campaign to eliminate it has generated levels of support that would not have been anticipated even several years ago and placed the viability of arguments against birthright citizenship once

¹⁸ See *Id.* (Kavanaugh, J., concurring). See also Pamela Levy, *The Monster of 2025: Kavanaugh Stops*, MOTHER JONES, Jan. 2026, <https://www.motherjones.com/politics/2026/01/monster-of-2025-kavanaugh-stops/> (discussing term coined by Drexel law professor Anil Kalhan to describe use of race to engage in immigration stops).

¹⁹ For instance, the second Trump administration has actively sought to limit eligibility of detained noncitizens for release on bond, which has prompted extensive litigation in the federal courts. See *In re Yajure-Hurtado*, 29 I. & N. Dec. 216, 217–29 (B.I.A. 2025); *Maldonado Bautista v. Santacruz Jr.*, 5:25-cv-01873-SSS-BFM, 2025 WL 3713987, at *2, *22, *32 (C.D. Cal. Dec. 18, 2025) (certifying a nationwide class and granting partial summary judgment in favor of a class-action challenge to validity of DHS interpretation of persons who entered unlawfully as ineligible for custody redetermination hearings), *appeal filed*, No. 25-7958 (9th Cir. Dec. 19, 2025); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026) (reversing district courts’ grant of bond hearings or release).

²⁰ See, e.g., *Noem v. National TPS Alliance*, 606 U.S. ____ (2025) (permitting termination of Temporary Protected Status for Venezuelan nationals).

²¹ See *Trump v. Barbara*, 146 S. Ct. 2438, 225 L.Ed.2d 876 (2026).

considered to occupy the fringe.²² The current Supreme Court has expressed an unwillingness to acknowledge the existence of racism in the contemporary immigration policy, though. Despite a factual record replete with statements indicating that race-based hostility towards Haitian immigrants motivated efforts to end Temporary Protected Status for Haitian immigrants, the Court's majority opinion found that none were "overtly racial."²³ Thus, the range of viewpoints adopted in this symposium—weighing the merits of race-neutral versus race-conscious frameworks, starting from the assumption that race is inseparable from nation-building, or scrutinizing specific examples in which race impacts migration law—will continue to matter.

II. HIGHLIGHTING THE ROLE OF RELIGION IN THE OPERATION OF RACE AND RACISM

A second theme throughout the symposium is how *religion* shapes our understandings of race in an era of authoritarianism and restricted migration on both continents. Several papers suggest that religion plays a distinct role in the racial othering of religious minorities and serves as a proxy for the production of racial identity, racial hierarchy and national identity along racial lines. Hafez, Alexander and Allard specifically identify efforts in the U.S. to produce a white, Christian nation, in which whiteness is prioritized as much as if not more than Christianity. As noted, Alexander's examination of U.S. asylum policies suggests that the "American social imagination" views whiteness as a component of authentic, genuine Christianity.²⁴ Hafez documents multiple harms that flow from white Christian

²² For instance, twenty-five states filed an amicus brief in support of the government's position in *Trump v. Barbara*, the birthright citizenship case. See Amicus Brief of Tennessee, Iowa, 23 Other States, and Guam in Support of Petitioner, *Trump v. Barbara*, No. 23-365 (2026). While partisanship amongst state attorneys general when it comes to Supreme Court litigation is nothing new, the notion of ending birthright citizenship was considered a fringe theory up until several years ago.

²³ *Mullin v. Doe*, 146 S. Ct. 2121, 225 L.Ed.2d 594 (2026).

²⁴ Alexander, *supra* note 16, at 101.

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nationalism, and reminds readers of the practical effect of invoking religion to reorder social power. As he puts it, religion is an “identity marker [that] manifests not only in symbolism, but also in political action.”²⁵ And for Allard, the formulation of American national identity is both a political and social process, as well as “a theological project.”²⁶ As such, the Chinese Exclusion Act case serves as a founding moment that “constructs a white Christian nation.”²⁷ Indeed, Allard’s piece injects a religious component into existing binaries around race. Cognizant of the fact that scholars have developed various such frameworks around race (e.g., black/white, citizen/foreigner), Allard employs the framework of “heathen/chosen” to incorporate religion into existing conversations about migration and the production of racial identity.²⁸ These authors remind us that the production of racial hierarchy involves many inputs, which include religion.

The experiences of Muslim immigrants receive significant and necessary attention in this symposium and illustrate the interconnectedness of race and religion in the context of migration. For Hafez, various expressions of Islamophobia showcase how appeals to religious difference can strengthen visions of white supremacy.²⁹ Berger addresses portrayals of Islam in the European collective memory that have shaped the rise of hostility towards Muslim communities in the Netherlands.³⁰ Similarly, Bobrowicz describes longstanding anti-Muslim stereotypes in Poland. He views Poland as a country that does not have a strong discourse around race, but where *religion* has come to “pave the way for racialization.” Van den Bosch and Schmiedel cite the work of Anya Topolski to discuss a “race-religion constellation” in which racial

²⁵ Hafez, *supra* note 9, at 197.

²⁶ Allard, *supra* note 12, at 44.

²⁷ *Id.* at 38.

²⁸ *Id.* at 69.

²⁹ See Hafez, *supra* note 9, at 199; 208-209; 212; 221. (discussing Islamophobia).

³⁰ See Berger, *supra* note 7, at 174-175; 177, (identifying the influence of images of the prophet, the Quran, the role of women, and the perception of Islam as an aggressive religion).

classifications rely on religious difference. They suggest that today, “migrants and Muslims” are viewed as “interchangeable,” in which “Muslimness” then emerges as the new marker that connects ‘race’ and ‘religion’ in the current configuration of the race-religion constellation.... Religion is racialized. Race is religionized.” These papers collectively suggest that racism’s shape-shifting nature can lead to unique manifestations for certain groups, and that the experience of immigrant communities associated with Islam warrants focused scrutiny.

In addition to examining the treatment of Muslim communities, the operation of Christianity as the dominant religion in the U.S. and E.U. also receives attention. Nagy analyzes the adjudication of religion-based refugee claims based on conversion to Christianity in the E.U., writing in the context of the Netherlands.³¹ She asks how an inherently theological process (faith conversion) is treated in a modern bureaucracy governed by law, and critiques the power imbalances in the process that require individuals to conform their life stories into narratives that the authorities are willing to find authentic.³² She also suggests that the adjudication of conversion claims has tended to reflect an evangelical Christian understanding of conversion in the legal system’s effort to identify authentic claims, which overlooks broader understandings of the theological process of conversion. Other pieces also touch on implications of migration discourse for Christianity. Bobrowicz suggests that despite high levels of Roman Catholicism in Poland, Christianity serves as a “symbol of ethnic freedom, historical struggles or independence, and certain commonality” rather than faithfulness to Christian teaching, such that followers “ignor[e] their calls to treat all migrants in a humanitarian manner.” Similarly, both Alexander (writing about the U.S.) and Berger (describing the Netherlands) suggest that

³¹ Dorottya Nagy, *Creating Credibility – Performing Plausibility: Interdisciplinary Challenges in Practices of Assessment of surrogate Cases of Conversion to Christianity within the EU+ Countries with Particular Attention to the Netherlands*, 25 RUTGERS J. L. & REL. 134 (2026).

³² See *Id.* at 152.

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Christianity receives favored treatment in ways that may undercut its public witness.³³

These accounts challenge the idea that religious freedom norms are intended to benefit members of all religions. While this symposium casts a critical eye towards the operation of Christianity as a dominant religion, the papers hint at glimmers of hope that lie within the core commitments of the faith—for instance in the form of care for the dignity and humanity of all, biblical teaching around the stranger, the creation of safe havens, and the mysteries of conversion that enable all to approach the faith. After all, Christian organizations, leaders and advocates have argued that Christianity compels welcoming and humane immigration policies.³⁴ On the ground, Christian churches and faith-based networks that include Christians have done critical work through grassroots organizing, mutual aid, community support networks, and bearing moral witness to the harms of immigration enforcement. Certain Christian lawyers, too, take the call to care for the immigrant and the marginalized seriously and carve out careers in the pursuit of social justice.³⁵

Perhaps the Christian faith, which is rooted in the redemption of sin and the inherent worth of each person, might also call for a deeper integration of redemption principles in the immigration system. In doing so, Christianity could provide moral resistance to the U.S. government's insistence that deportations are necessary in order to target the so-called “worst of the worst.” That claim has proven to be dubious as an

³³ See, e.g., Alexander, *supra* note 16, at 100 (discussing rise of white Christian nationalism); Berger, *supra* note 7, at 182 (describing perception of Muslim individuals living in separate communities as a threat, despite long Dutch “tradition of orthodox Christian and Jewish communities who live in isolation” being generally accepted).

³⁴ See Jennifer Lee Koh, *Immigration from a Christian Perspective: The Challenge and Imperative of Racial Justice*, 23 POL. THEOLOGY 471 (2024) (describing Christian calls for humanity and fairness in immigration, and arguing that efforts to craft a distinctly Christian approach to immigration should also include racial justice goals).

³⁵ See Jennifer Lee Koh, *Christian Lawyers in the Public Interest and Outside the Political Right*, 51 B.Y.U. L. REV. 1289 (2026).

empirical matter, given that the majority of those targeted for deportations in the U.S. have no criminal record at all.³⁶ But the logic that noncitizens with serious criminal convictions are, in fact, the “worst” and are permanently incapable of belonging to society should also be subjected to scrutiny, both because of its impact on racial minorities as well as its inconsistency with longstanding Christian commitments to redemption.³⁷

III. CONCLUSION

Questions of racial and religious inequity also surface connections between the present and the past. What are the benefits and tradeoffs of framing the current political moment as an exceptional one versus as an extension of the past? All of the papers engage with history to some degree, and the symposium reflects a strong consensus that the past is imperative to understanding the present.³⁸ Understanding mass deportations in the U.S. requires an appreciation for how centuries-old doctrine enabled the rise of an immigration law system in which constitutional norms do not necessarily bind the government when it comes to the admission and removal of noncitizens. It also requires engagement with decades-old statutes enacted by Congress thirty years ago, under Democratic president Bill Clinton, and steady

³⁶ See Transactional Records Access Clearinghouse, Immigration Detention Quick Facts, <https://tracreports.org/immigration/quickfacts/#:~:text=50%2C259%20out%20of%2068%2C289%E2%80%944or,minor%20offenses%2C%20including%20traffic%20violations> (reporting that as of February 2026, 73 percent of people detained by ICE had no criminal convictions); *Maldonado-Bautista v. Santacruz*, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026) (criticizing federal government’s claims that Immigration and Customs Enforcement is prioritizing the “worst of the worst” in enforcement operations).

³⁷ See Jennifer Lee Koh & Tin Nguyen, *Deportation After Death by Incarceration: A Right to Redemption*, 114 KENTUCKY L.J. 669 (2026) (arguing for immigration law to incorporate redemption principles, and drawing from lived experience of one author).

³⁸ Hafez appears to argue against exceptionalism, viewing that the rise of the Make American Great Again (MAGA) movement in the U.S. *not* as something fundamentally out of order, but rather as a reoccurrence of the past. See Hafez, *supra* note 9, at 226.

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expansions to immigration enforcement capacity over multiple Presidents. And yet at the same time, the hardening of borders—not to mention hearts—on the U.S. side against immigrants would suggest that the current era is unique and unprecedented given the concurrence with authoritarian governance across the U.S. and E.U., even if it builds upon old laws and structures.

The issues of race, religion and migration addressed here will no doubt continue to present challenges long into the future, either as borders continue to harden or as countries consider tempering the effects of heavy enforcement policies. This symposium does important work by bridging multiple fields and contexts. It will hopefully encourage future comparative scholarship at the intersection of law, religion, migration, race, theology and related fields.