**Affirmative Action: The Obama and Trump Presidencies**

**Chapter I --Introduction**

**This monograph has these objectives: (1) to clarify the complex issue of affirmative action; and (2) to provide information about the policies of Presidents Obama and Trump, and their Administrations where affirmative action was involved. The comparison of the two Presidents is common in the area of civil rights.[[1]](#footnote-1) The final chapter contains proposals as to how to cure Black problems which traditional affirmative action failed to do.**

 **First, an effort to define affirmative action.**

 **Affirmative action grants preferential benefits to groups on the basis of race, ethnicity, gender, disability, and sexual orientation/identity. The preferential assistance comes in various forms: outreach to groups which are deemed marginalized such as going to schools to attract minority applicants; social media advertisements meant to appeal to protected-group members; the use of race, gender, or ethnicity in college acceptances, or in hiring practices; overlooking deficiencies on the basis of race, gender or ethnicity. Statute law has been interpreted to allow affirmative action to both remedy society’s systemic, non-overt oppressiveness--the so called *disparate impact--* affecting protected groups, and to thwart overt, intentional discrimination (called *disparate treatment* in the law). Plaintiffs alleging disparate treatment are required by law to prove intent; whereas the allegation of disparate impact does not require proving that the defendants intended to discriminate. Overt, intentional discrimination is now almost universally condemned, and arguably the intent of the 1964 Civil Rights Law.[[2]](#footnote-2) Disparate impact law was initially created by the judiciary with the aid of administrators.[[3]](#footnote-3) Disparate-impact law is yet to be found by the U.S. Supreme Court to be in conformity with the Constitution. The question of affirmative action’s constitutional propriety focuses on the Equal Protection and Due Process Clauses of the Constitution. To conform with the dictates of those clauses, affirmative-action policy must be of a “compelling” nature, and that policy must be narrowly tailored to achieve this compellingness. The U.S. Supreme Court has not defined either “compelling” or “narrow tailoring.”**

 **Presidents Obama and Trump have not explained the nature of affirmative action as it relates to the areas emphasized in this monograph: employment, education, immigration, criminal justice, voting, and housing. Aside from that transparency, both Presidents share much in common-- both stressing transformational changes in some areas of affirmative action, while in other areas maintaining affirmative action as it developed during the last half century. Of course, they differed in where they sought transformations and maintenance of the status quo. It will be left to the reader to determine the merit of their affirmative action policies often conducted under the label of “diversity” and “inclusion” although the label “diversity” can be used to increase non-minority populations.[[4]](#footnote-4)**

 **Chapter II treats affirmative action in employment. Generally, Presidents Obama and Trump adopted the policy of essentially maintaining the status quo which involved the operations of an extensive affirmative-action apparatus inherited from the embellishment of Title VII of the 1964 Civil Rights Act which prohibits employment discrimination on the basis of race, national origin, sex, and religion.[[5]](#footnote-5) Of central importance to the implementation of Title VII are the Equal Employment Opportunity Commission, the Office of Contract Compliance Programs, and the Civil Rights Division of the Department of Justice.[[6]](#footnote-6) Aside from stressing the need for “diversity” in the Federal bureaucracy,[[7]](#footnote-7) President Obama left these agencies to pursue their aggressive affirmative-action policies in employment, which is surprising for Obama. He insisted in 2004 (in a speech to the Democratic nominating convention[[8]](#footnote-8) ) that there was one America, and that race did not matter. This speech made Obama well-known, and during his first term he tended to shy away from racial matters in public.[[9]](#footnote-9)**

 **President Trump’s policy of allowing the maintenance of a strong employment affirmative-action policy is also surprising.[[10]](#footnote-10) Trump has stressed the notion of one America,[[11]](#footnote-11) but he is widely regarded as a racist.[[12]](#footnote-12) Further, Trump was supported by white employed workers without college degrees who felt that people were getting ahead in the employment realm when they did not deserve it.[[13]](#footnote-13) Trump and Obama differed over the publication of previously unrequired pay data (meant to help increase salaries for women and minorities, (but the requirement was later judicially restored[[14]](#footnote-14)), as well as over the concept of “sex” in Title VII. In 2014, President Obama—in a trailblazing fashion-- incorporated the LGBT-desired sexual-orientation and gender-identity in the concept of sex contained in the Executive Order creating the Office of Contract Compliance Programs (which Executive Order barred Federal contractors and subcontractors from engaging in employment discrimination on the basis of race, national origin, religion, and sex.)[[15]](#footnote-15) The same sex augmentation was adopted by the EEOC,[[16]](#footnote-16) but not by President Trump and his Administration which argued that the concept of sex in Title VII was meant by its congressional framers to refer to biological sex at birth,[[17]](#footnote-17) and besides the Congress could have changed its approach many times over but did not do so.[[18]](#footnote-18) The U.S. Supreme Court agreed with the Obama approach[[19]](#footnote-19) as it did with President Obama’s LGBT policy of sexual freedom.[[20]](#footnote-20) Despite the opposition from the LGBT advocates, President Trump did partially support LGBT sexual freedom,[[21]](#footnote-21) but—among other anti-LGBT actions-- he drew the line on transgenders in the military, and in their use of K-12 facilities, both of which were supported by President Obama.[[22]](#footnote-22)**

 **At the same time, President Trump pursued the transformational policy of restoring an appreciation for religious-freedom attitudes. At the President’s direction, Attorney General Sessions sent a seventeen-page memo (complete with twenty bolded delineations stressing the free exercise of religion) to all the Federal executive departments and agencies.[[23]](#footnote-23) And the U.S. Supreme Court fully backed the Trump support of religious pluralism.[[24]](#footnote-24)**

 **Chapter III is devoted to affirmative action in education—both K-12 and post secondary. In K-12, President Obama focused on a “top-down” centralized effort to improve public schooling (called “Race to the Top”) involving the distribution of large sums of Federal monies to school districts that showed particular promise in improving public school education.[[25]](#footnote-25) The Congress responded in 2015 (the Every Student Succeeds Act[[26]](#footnote-26)) to insist on a primarily decentralized approach to K-12 public school education. President Trump continued to urge local control, including the “super- decentralist” policy of “school choice,”[[27]](#footnote-27) that is, all parents should be able to choose which schools are best for their children—public, charter, or private (supported, if need be, by vouchers). Here Trump was buoyed by a 2020 U.S. Supreme Court opinion[[28]](#footnote-28) which said that public money for private schools is not required, but if it is provided, religious schools must also be aided. A tax credit for individual subsidies for private school costs was involved in this case. And President Trump had urged similar tax credits at the Federal level.[[29]](#footnote-29)**

 **In terms of affirmative-action policies affecting marginalized minorities and females, the Obama Administration bombarded the K-12 apparatus with regulations (disguised as suggestions) insisting on the application and the maintenance of neglected civil rights.[[30]](#footnote-30) But the basic implementation of school integration was not substantially advanced by the Obama Administration according to UCLA scholars.[[31]](#footnote-31) Two focal points of the Obama efforts in this connection were: overcoming K-12 discipline disproportionately impacting minority children; and enabling transgender children freedom to use the K-12 facilities they pleased.**

 **Insisting on local[[32]](#footnote-32) and parental control of a child’s education, the Trump Administration abandoned the Obama civil rights guidance,[[33]](#footnote-33) starting with the transgender freedom to use K-12 facilities; and later the school discipline approach of the previous Administration.[[34]](#footnote-34) In doing so, the Trump Administration rejected the transformational guidance efforts of the Obama years, and pledged itself to the restoration of the traditional decentralist ways.**

 **Restoring the old ways –which was transformational in itself--was also a feature of the Trump Administration in the realm of post-secondary education. New rules regarding sexual assault on campus were closer to traditional due process than were those of the Obama years which gave females a strong upper-hand in sex assault cases on college campuses.[[35]](#footnote-35) And the use of “race” in university admissions was rejected by the Trump Administration, while the Obama people supported its use in admissions.[[36]](#footnote-36) Likewise, the Obama Administration abandoned loan obligations (largely affecting minorities) for students at failed for-profit schools. The Trump Administration did not, maintaining the traditional approach that debtors pay their debts, unless students could prove intentional deception (or reckless disregard of the truth), and that they suffered financially from that deception.[[37]](#footnote-37)**

 **Chapter IV is concerned with immigration policy. President Obama’s *Audacity of Hope* volume published while he was a U.S. Senator[[38]](#footnote-38) promised an immigration policy benefiting illegals. But as President, Obama seemed to comply with existing immigration operations which involved an aggressive approach to the deportation of immigrants deemed not legally residing in the United States.[[39]](#footnote-39) To be sure, President Obama was called the Deporter in Chief by immigrant-rights exponents,[[40]](#footnote-40) and indeed the peak-years of interior deportations (but not asylum denials) during the Obama Administration is yet to be exceeded by the Trump Administration headed by a President dedicated to immigration limitation.[[41]](#footnote-41)**

 **A more liberal approach to immigration was taken by the Obama Administration on the eve of his second term when he announced his DACA (Deferred Action for Childhood Arrivals).[[42]](#footnote-42) Presented as a temporary expedient, DACA permitted hundreds of thousands of children who entered the U.S. as youngsters to stay and work in America for as long as they wanted, given the emotional, heartbreaking barrier to removing them. Obama’s transformative change in immigration policy—conducted through administrative action-- was attributed to the political desire of attracting Hispanic voters to support Obama’s 2012 presidential campaign.[[43]](#footnote-43) Also attributed to political desires[[44]](#footnote-44) (help from Hispanics in elections) was the DAPA (Deferred Action for the Parents of Americans and Permanent Residents) policy which offered temporary stays from deportation for illegals. DAPA was eliminated through judicial action,[[45]](#footnote-45) and the Obama Administration’s internal deportation policy, during its second term, was changed to a policy of restraint. Deportable were those attempting to cross the U.S. border illegally, along with the most serious of felons,[[46]](#footnote-46) and, indeed this policy reduced deportations.[[47]](#footnote-47)**

**Trump was elected in 2016 primarily because Republican party members supported him, but important to his base was the white-working class which was motivated by cultural values which included such notions as minorities getting ahead because of their skin color, and immigrants changing American values.[[48]](#footnote-48) Trump seized upon the immigrant value-changing dimension and sought to pursue the transformative objective of limiting immigration, particularly asylum seekers seeking admission at the Southern U. S. border. These asylum-seekers were regarded by the President as largely phony petitioners who brought crime, and were a threat to the ability of Americans to acquire jobs. It should be noted that apparently the Trump primary focus on securing the border conformed with a longtime public desire.[[49]](#footnote-49) The people apprehended (inadmissibles) at the border during the Trump years far exceeded those of the Obama presidency.[[50]](#footnote-50)**

 **As Chapter IV points out, President Trump and his administrators sought to limit both legal and illegal immigration, but the undocumented children of DACA troubled the President. Ultimately, he decided to afford the Congress a six-month opportunity to establish a policy governing childhood-arrivals before he abolished the Obama DACA program.[[51]](#footnote-51) The U.S. Supreme Court determined that the abolition of DACA was improperly made.[[52]](#footnote-52) The response of the Trump Administration was to prohibit new applicants from participating in DACA.[[53]](#footnote-53) The existing DACA program was kept subject to comprehensive review as to its merit.[[54]](#footnote-54)**

 **Chapter V covers criminal justice. Both Obama and Trump limited the use of their clemency authority during the first term, maintaining the practice of a number of their presidential predecessors.[[55]](#footnote-55) It remains to be seen whether Trump will follow Obama’s abundant use of clemency during the second term when President Obama exceeded the clemency-use of eleven of his immediate predecessors.[[56]](#footnote-56)**

 **The Obama Administration investigated numerous police departments, and helped establish some two-dozen consent decrees, that is, court-orders establishing new protocols for police departments regarding their conduct. A major** [**objective**](https://www.vox.com/future-perfect/2018/12/18/18140973/state-of-the-union-trump-first-step-act-criminal-justice-reform) **was the transformative one of stopping racial profiling and police excessive use of force.[[57]](#footnote-57) Trump administrators ordered Federal officials to be very reluctant in the creation of consent decrees.[[58]](#footnote-58) The objective was to maintain local control over police departments. This objective was pursued by President Trump in an Executive Order promulgated after the death of George Floyd.[[59]](#footnote-59) This Executive Order sought the creation of investigatory units by the U.S. Attorney General which would make recommendations to local police departments as to the correction of misconduct. This element of Federal presence was supplemented by the stationing of extra Federal police in several cities to protect Federal property, and to aid local police in crime-reduction. But in Portland, Oregon, Federal police were charged with exceeding their appropriate duties by going beyond guarding Federal property[[60]](#footnote-60) and arresting peaceful demonstrators.[[61]](#footnote-61) On July 22, 2020, President Trump emphasized that violence had increased in American cities, requiring the sending of federal agents to help to help police.[[62]](#footnote-62) Critics regarded sending Federal agents for police work as a political ploy meant to shore up Trump’s sagging electoral support. Allegedly, too, the use of Federal agents for police work prompted the uprisings experienced in a number of cities.[[63]](#footnote-63)**

 **President Trump emphasized a Federal criminal-justice reform statute instrumental in achieving a release of thousands of prisoners.[[64]](#footnote-64) This transformational statute (The First Step Act[[65]](#footnote-65)) augmented the change in the U.S. Sentencing Commission rules which also operate to release thousands of additional prisoners.[[66]](#footnote-66) One must wonder whether these transformational sentencing policies conformed with the need for law and order particularly in the minority areas.**

 **Chapter VI deals with voting. The Voting Rights Act of 1965[[67]](#footnote-67) (VRA). The VRA has operated to increase Black voting to the extent that their voting capacity (as explained in *Shelby v. Holder* (2013[[68]](#footnote-68)) had grown (and had even exceeded White voting registration in several States) when the preclearance apparatus was withdrawn as outdated. (Preclearance required States targeted by the initial VRA to get the permission Federal officials before making any electoral changes.) Additionally, the VRA has prompted a dramatic increase in the number of Black elected officials, and has helped create numerous majority-minority congressional districts.[[69]](#footnote-69)**

 **President Obama supported the VRA and its effects. Surely, President Obama profited as he was supported overwhelmingly by Black voters, many of whom were newly enfranchised by the VRA.[[70]](#footnote-70) Of course, he objected to *Shelby* but noted that another section of the VRA protected minorities against vote dilution. Likewise, President Obama sought to end interferences with voting.[[71]](#footnote-71)**

 **President Trump seemed to generally accept the VRA. He expressed no opposition to it. He recognized that minorities had become a major electoral force. It is clear that he continually sought more minority voters for his 2020 campaign, citing (before the pandemic) the decrease in minority unemployment, among other things.[[72]](#footnote-72) At the same time, he was concerned about illegal voting which he felt was responsible for his failure to achieve a popular majority in 2016.[[73]](#footnote-73) Thus, he opposed all measures which might advance voting illegality or interfered with Republican electoral success.[[74]](#footnote-74) Thus, the U.S. opposition to the Texas voter-identification was dropped during the Trump Administration.[[75]](#footnote-75) However, minority voting-rights advocates insisted that measures requiring voter-identifications; the purging of voter-rolls of those who had not voted for long periods; and restrictions on early voting would hurt minority voting.[[76]](#footnote-76) Evidence to that effect is lacking.**

 **Chapter VII is concerned with housing. A long-standing advocacy has been that the Federal government should (as it has not done) promote housing integration on the theory that minorities would benefit economically and scholastically by living in White areas.[[77]](#footnote-77) In July, 2015, the Department of Housing and Urban Development (HUD) required reports as to how localities had promoted housing integration, and what they planned to do to overcome integration deficiencies.[[78]](#footnote-78) Housing integration was supported by President Obama.[[79]](#footnote-79) This potentiality of transformation was opposed by Ben Carson who regarded the effort as social engineering.[[80]](#footnote-80) As Secretary of HUD, he helped promulgate a regulation –supported by President Trump—calling for minorities to live where they wanted and could afford. The Obama effort at integration was also abandoned by President Trump, who cited the need to maintain state and local control over who could live in the suburbs .[[81]](#footnote-81) Previously, the Trump Administration stopped the Obama practice of suing –on disparate-impact grounds--mortgage lenders for allegedly engaging in predatory lending.[[82]](#footnote-82) President Obama had promised to limit mortgage defaulting, but his efforts in that realm were only partially successful.[[83]](#footnote-83) Additionally, HUD, during the Trump years, has proposed a new regulation regarding disparate impact which would require proof that the practices of housing owners and developers –-before being judicially required to pay damages — have been arbitrary, artificial, and unnecessary[[84]](#footnote-84) obliterating the distinction between disparate impact and disparate treatment.**

 **The final chapter summarizes efforts to treat Black misfortune which affirmative action has failed to address on a major scale. A number of approaches in this connection are provided. President Trump’s proposal that the answer that jobs for Blacks is the key—a theory which argues that an improvement in the overall economy “raises all boats.” This approach should be compared with that of President Obama’s second term emphasis on “My Brother’s Keeper” (kept by the Obama post-presidential Foundation) which appeared to continue traditional affirmative action for Blacks and Hispanics.[[85]](#footnote-85) The final chapter also summarizes the negative views of Jason Riley as to social welfare programs for Blacks, as well the reparations approach of Nikole Hannah-Jones.**

 **The reader should note that the citations appended to each chapter incorporate 1. traditional formatting, and 2. links to internet documents where possible. If the internet links do not “work” ; either traditional citations may be used to acquire documents; or an attempt might be made to search for the title, author, and date/name of the document on Google Chrome.**

1. For an example see Niquel Ellis, *End of a Decade. …* USA Today, December 23, 2019 at <https://www.usatoday.com/story/news/nation/2019/12/23/what-2010-s-obama-and-trump-meant-civil-rights-movement/4352581002/> [↑](#footnote-ref-1)
2. Pub. L. 88-352; 78 Stat. 241 at <https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg241.pdf#page=1> [↑](#footnote-ref-2)
3. See *Griggs v. Duke Power,* 401 ­U.S. 424 (1971) at <https://supreme.justia.com/cases/federal/us/401/424/> and Samuel Leiter and William M. Leiter, *Affirmative Action in Antidiscrimination Law and Policy: An Overview and Synthesis* (State University of New York Press, 2002), pp. 43-44. [↑](#footnote-ref-3)
4. Ellen Berrey, *The Enigma of Diversity: The Language of Race and the Limits of Racial Justice* (The University of Chicago Press, 2015), pp. 127-191. [↑](#footnote-ref-4)
5. U.S., Equal Employment Opportunity Commission, *Title VII of the Civil Rights Act of 1964* at <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964#:~:text=Title%20VII%20prohibits%20employment%20discrimination,Rights%20Act%20of%201991%20(Pub.> [↑](#footnote-ref-5)
6. Samuel Leiter and William M. Leiter, *Affirmative Action in Antidiscrimination Law and Policy: An Overview and Synthesis* (State University of New York Press, 2002), chps. 2 and 3; and U.S. Commission on Civil Rights, *Are Rights a Reality?—Federal Enforcement of Civil Rights,* 2019, chp. 2 at <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf> [↑](#footnote-ref-6)
7. Federal Register, Vol 76, No 163, Part III, August 23, 2011. Accessible at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-23/pdf/2011-21704.pdf> [↑](#footnote-ref-7)
8. Washington Post Transcript of *U.S. Senate Candidate Barack Obama’s Speech at the Democratic National Convention*, July 27, 2004 at <http://www.washingtonpost.com/wp-dyn/articles/A19751-2004Jul27.html> [↑](#footnote-ref-8)
9. Peter Baker, *Obama Finds A Bolder Voice on Race Issues,* The New York Times, May 4. 2015 at <https://www.nytimes.com/2015/05/05/us/politics/obama-my-brothers-keeper-alliance-minorities.html> [↑](#footnote-ref-9)
10. For examples see Gerald L. Maatman, Christopher J. DeGroff, and Matthew J. Gagnon,*EEOC-Initiated Litigation 2oo18* (Seyfarth Shaw, 2019) at https://images.law.com/contrib/content/uploads/documents/390/28858/2019-EEOC-Book-PDF-; and Roy Maurer, *Trump’s OFCCP Collects Millions in Back Wages,* Human Resources Report, October 11, 2019 at <https://humanresources.report/news/trumps-ofccp-collects-record-millions-in-back-wages/6502>Preview-1.pdf [↑](#footnote-ref-10)
11. U.S., The White House, *President Trump’s Inaugural Address,* January 20, 2017 at <https://www.whitehouse.gov/briefings-statements/the-Snaugural-address/> [↑](#footnote-ref-11)
12. Ronald Brownstein, *The Limits of Trump’s White Identity Politics,*  The Atlantic, August 15, 2019 at <https://www.theatlantic.com/politics/archive/2019/08/trump-2020-democrats-racism/596155/> [↑](#footnote-ref-12)
13. Daniel Cox, Rachel Lienesch, and Robert P. Jones, *Fears of Cultural Displacement Pushed the White Working Class to Trump,* The Atlantic, May9, 2017 at <https://www.prri.org/research/white-working-class-attitudes-economy-trade-immigration-election-donald-trump/> [↑](#footnote-ref-13)
14. Suzy Khimm, *Trump Halted Obama’s Equal Pay Rule. …,l,* ABC News, August 31, 2017 at <https://www.nbcnews.com/politics/white-house/trump-killed-obama-s-equal-pay-rule-what-it-means-n797941> [↑](#footnote-ref-14)
15. *Executive Order 13672, July 21, 2014*, Wikipedia at <https://en.wikipedia.org/wiki/Executive_Order_13672> [↑](#footnote-ref-15)
16. U.S., Equal Employment Opportunity Commission, *Facts About Discrimination. …*at <https://www.eeoc.gov/federal-sector/facts-about-discrimination-federal-government-employment-based-marital-status> [↑](#footnote-ref-16)
17. Melissa Legault, et. al., *Landmark U.S. Supreme Court Ruling Prohibits Sexual Orientation and Gender Identity-Based Discrimination in Employment,(US), June 15, 2020,* (Squire Patton Boggs, Employment Law Worldview), at <https://www.employmentlawworldview.com/landmark-u-s-supreme-court-ruling-prohibits-sexual-orientation-and-gender-identity-based-discrimination-in-employment-us/> [↑](#footnote-ref-17)
18. Chris Cioffi, *The Equality Act Has Languished in McConnell’s Senate. …*Roll Call, June 1, 2020 at <https://www.rollcall.com/2020/06/01/the-equality-act-has-languished-in-mcconnells-senate-but-sponsor-says-its-still-historic/> [↑](#footnote-ref-18)
19. *Bostock v. Clayton, no, 17-1618* (2020) at <https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf> [↑](#footnote-ref-19)
20. U.S. The White House, Office of the Press Secretary, *Fact Sheet: Obama Administration.s Record and the LGBT Community,* June 9, 2020 at <https://obamawhitehouse.archives.gov/the-press-office/2016/06/09/fact-sheet-obama-administrations-record-and-lgbt-communityBeachBoard_files> [↑](#footnote-ref-20)
21. Katie Rogers, *Trump Celebration of L.G.B.T. Rights is Met With Criticism,* The New York Times, June 1, 2019 at <https://www.nytimes.com/2019/06/01/us/politics/trump-lgbt-rights.html> [↑](#footnote-ref-21)
22. *Social Policy of Donald Trump,* Wikipedia at <https://en.wikipedia.org/wiki/Social_policy_of_Donald_Trump> , U.S., White House, *President Obama’s January 20, 2015 State of the Union Address.* [↑](#footnote-ref-22)
23. U.S., The Office of the Attorney General, *Memo to Federal Departments and Agencies on Federal Law Protections of Freedom of Religion,* October 6, 2017 at <https://www.justice.gov/opa/press-release/file/1001891/download> [↑](#footnote-ref-23)
24. Michael McConnell, *On Religion, The supreme Court Protects the Right to Be Different,* The New York Times, July 9, 2020 at <https://www.nytimes.com/2020/07/09/opinion/supreme-court-religion.html> [↑](#footnote-ref-24)
25. Valerie Strauss, *Obama’s Real Education Legacy. …* The Washington Post, October 21, 2016 at <https://www.washingtonpost.com/news/answer-sheet/wp/2016/10/21/obamas-real-education-legacy-common-core-testing-charter-schools/> [↑](#footnote-ref-25)
26. Pub. L. 114-95, 129 Stat 1802. [↑](#footnote-ref-26)
27. Wesley Whistle, *Trump :School Choice is the Civil Rights Statement of the Year,* Forbes Magazine, June 16, 2020 at <https://www.forbes.com/sites/wesleywhistle/2020/06/16/trump-school-choice-is-the-civil-rights-statement-of-the-year/#7e97a59f3f46> [↑](#footnote-ref-27)
28. *Espinoza v. Montana, no.18-1195(2020)* at <https://www.supremecourt.gov/opinions/19pdf/18-1195_g314.pdf> [↑](#footnote-ref-28)
29. *The Trump/DeVos Voucher Plan,* National Coalition for Public (2018) at <https://www.ncpecoalition.org/trump-voucher-plan> [↑](#footnote-ref-29)
30. R. Shep Melnick, *How Civil Rights Enforcement Got Swept Into the Culture Wars. …*Education Next, March 6, 2017 at <https://www.educationnext.org/how-civil-rights-enforcement-got-swept-into-the-culture-wars-and-what-a-new-administration-can-do-about-it/> [↑](#footnote-ref-30)
31. Gary Orfield, John Kuesera, and Genevieve Siegel-Hawley, *E Pluribus…Deepening Double Segregation For More Students*, UCLA Civil Rights Project, September, 2012, pp. 5, 7, 11 XVI. [↑](#footnote-ref-31)
32. Erica L. Green, *Trump Orders Review of Education Policies to Strengthen Local Control,* The New York Times, April 26, 2017 at <https://www.nytimes.com/2017/04/26/us/politics/trump-education-policy-review.html> [↑](#footnote-ref-32)
33. U.S., Department of Justice, Office of Public Affairs, *Sessions Rescinds Guidance Documents, July 3, 2018* at <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-24-guidance-documents> ; and U.S., The white House, *Executive Order on Promoting the Rule of Law…, October 9, 2019* at <https://www.whitehouse.gov/presidential-actions/executive-order-promoting-rule-law-improved-agency-guidance-documents/> [↑](#footnote-ref-33)
34. Andrew Kreighbaum, *Transgender Protections Withdrawn,* Inside Higher Ed, February 23, 2017 at <https://www.insidehighered.com/news/2017/02/23/trump-administration-reverses-title-ix-guidance-transgender-protections> ; and *DeVos to Rescind Obama-Era Guidance on School Discipline,* NPR, December 18, 2018 at <https://www.npr.org/2018/12/18/675556455/devos-to-rescind-obama-era-guidance-on-school-discipline> [↑](#footnote-ref-34)
35. Erica L. Green, *DeVos’s Rules Bolster Rights of Students Accused of Sexual Misconduct,*  The New York Times, May 6, 2020 at Bhttps://www.nytimes.com/2020/05/06/us/politics/campus-sexual-misconduct-betsy-devos.htmleachBoard\_files [↑](#footnote-ref-35)
36. *Trump Rejects the Use of Race in College Admissions,* PBS News, July 3, 2018 at [https://www.pbs.org/newshour/education/race-in-college-admissions-read-the-trump-administrations-statement-on-reversing-policiesBlackboard Academic Suite\_files](https://www.pbs.org/newshour/education/race-in-college-admissions-read-the-trump-administrations-statement-on-reversing-policiesBlackboard%20Academic%20Suite_files) [↑](#footnote-ref-36)
37. Stacy Crowley, *Students Duped by Colleges Lose Automatic Loan Reprieve,* The New York Times, National Ed., August 31, 2019, B6 at <https://www.nytimes.com/2019/08/30/business/betsy-devos-student-loan-forgiveness.html> [↑](#footnote-ref-37)
38. (Vintage Books, 2008), ch. 7. [↑](#footnote-ref-38)
39. Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Data* *Show*, The New York Times, National. Edition., April 7, 2014, A12 at <http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?_r=0> [↑](#footnote-ref-39)
40. Muzaffar Chisti, Sarah Pierce, and Jessica Bolter, *The Obama Record on Deportations. …*Migration Policy Institute, January 26, 2017 at <https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not> [↑](#footnote-ref-40)
41. John Gramlich, *Trump: Border Apprehensions and Interior Deportations,* FactTank: Pew Research, March 2, 2020 at <https://www.pewresearch.org/factTtank/2020/03/02/how-border-apprehensions-ice-arrests-and-deportations-have-changed-under-trump/> [↑](#footnote-ref-41)
42. U.S., The White House, *Remarks by the President on Immigration,* June 12, 2012. See:<http://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration> [↑](#footnote-ref-42)
43. Julia Preston and Helene Cooper, *Atter Chorus of Protests, New Tune on Deportations,* The New York Times, June 17, 2012 at <https://www.nytimes.com/2012/06/18/us/politics/deportation-policy-change-came-after-protests.html>; and Matt Barreto and Gary M. Segura, *Latino America: How America’s Most Dynamic Population is Posed to Transform the Politics of the Nation* (Public Affairs, 2014), 151-152. [↑](#footnote-ref-43)
44. Peter H. Schuck, *One Nation Undecided: Clear Thinking About Five Hard Issues That Divide Us* (Princeton University Press, 2017), 163, and Nate Cohn, *Obama’s Immigration Move Benefits Where It Counts,* The New York Times, National. Edition.. December 13, 2014 at [http://www.nytimes.com/2014/12/14/us/obamas-V.D.continues-1](http://www.nytimes.com/2014/12/14/us/obamas-immigration-move-benefits-democrats-where-it-counts.html?_r=2&abt=0002&abg=0#story-continues-1) [↑](#footnote-ref-44)
45. Muzaffar Chisishti & Faye Hipsman, *Supreme Court DAPA Ruling A Blow to Obama Administration, Moves Immigration Back To Political Realm,* Migration Policy Institute, June 29, 2016 at <https://www.migrationpolicy.org/article/supreme-court-dapa-ruling-blow-obama-administration-moves-immigration-back-political-realm> [↑](#footnote-ref-45)
46. Muzaffar Chisti, Sarah Pierce, and Jessica Bolter, *The Obama Record on Deportations. …*Migration Policy Institute, January 26, 2017 at <https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not> [↑](#footnote-ref-46)
47. Id. [↑](#footnote-ref-47)
48. Daniel Cox, Rachel Lienesch, & Robert P. Jones, *Beyond Economics: Fears of Cultural Displacement Pushed the Whit- Working Class to Trump,* The Atlantic Magazine, May 9. 2017 at <https://www.prri.org/research/white-working-class-attitudes-economy-trade-immigration-election-donald-trump/> [↑](#footnote-ref-48)
49. Peter H. Schuck, *One Nation Undecided: Clear Thinking About Five Hard Issues That Divide Us* (Princeton University Press, 2017), 183-184. [↑](#footnote-ref-49)
50. John Gramlich, *Trump: Border Apprehensions and Interior Deportations,* FactTank: Pew Research, March 2, 2020 at <https://www.pewresearch.org/factTtank/2020/03/02/how-border-apprehensions-ice-arrests-and-deportations-have-changed-under-trump/> [↑](#footnote-ref-50)
51. Michael D. Shear & Julie Hirschfield Davis, *Trump Moves to End DACA and Calls for 587Congress to Act.* The New York Times, September 5, 2017 at <https://www.nytimes.com/2017/09/05/us/politics/trump-daca-dreamers-immigration.html> [↑](#footnote-ref-51)
52. *Department of Homeland Security v. Regents of University of California* (2020), no. 18-587 at <https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf> [↑](#footnote-ref-52)
53. Molly O’Toole, *Despite Supreme Court Ruling, Trump Administration Rejects New DACA Applicatioons,* Los Angeles Times, July 16, 2017 at <https://www.latimes.com/politics/story/2020-07-16/trump-refuses-new-daca-supreme-court> [↑](#footnote-ref-53)
54. Michael D. Shear & Caitlin Dickerson, *Trump Delays Effort to End Protections for Immigrant Dreamer,* The New York Times, July 28, 2020 at <https://www.nytimes.com/2020/07/28/us/politics/trump-daca.html> [↑](#footnote-ref-54)
55. Douglas A. Berman, *Turning Hope and Change Talk into Clemency Action for Nonviolent Drug Offenders*, 36 N.E. J. On Crim. & Civ. Con. (Winter, 2010), 59-73 at <http://offerofproof.net/wp-content/uploads/Volumes/Volume%2036/36.1/36-1.3-Article-Turning-Hope-and-Change-Talk-Into-Clemency-Action-for-Nonviolent-Drug-Offenders-Douglas-A.-Berman.pdf>; Margaret Colgate Love, *The Twilight of the Pardon Power*, 100 J. Crim. L. & Criminology, 1169-1212 (2010) at <http://scholarlycommons.law.northwestern.edu/jclc/vol100/iss3/15/>;Jeffery Crouch, *The President’s Power to Commute: Is It Still Relevant?* 9 U. St. Thomas L. J. 681-697 (2012) at <http://ir.stthomas.edu/ustlj/vol9/iss3/3/> [↑](#footnote-ref-55)
56. John Gramlich & Kirsten Bialik, *Obama Used Clemency Power More Often Than Any President Since Truman,* Facttalk: Pew Research, January 20, 2017 at <https://www.pewresearch.org/fact-tank/2017/01/20/obama-used-more-clemency-power/> [↑](#footnote-ref-56)
57. Ian Millhiser, *Trump’s Justice Department Has a Powerful Tool To Fight Police Abuse. It Refuses to Use It,* Vox, June 30, 2020 at <https://www.vox.com/2020/6/30/21281041/trump-justice-department-consent-decrees-jeff-sessions-police-violence-abuse> [↑](#footnote-ref-57)
58. Id. [↑](#footnote-ref-58)
59. U.S., The White House, *Executive Order on Safe Policing for Safe Communities, June 16, 2020* at <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/> [↑](#footnote-ref-59)
60. Mike Baker, *Chaotic Scenes in Portland as Backlash to Federal Deployment Grows,*The New York Times, July 21, 2020 at <https://www.nytimes.com/2020/07/21/us/portland-protests.html> [↑](#footnote-ref-60)
61. Brian Gottfried, *Portland Protests Draw U.S. Agents,* Los Angeles Times, July 18-19, 2020, A3. [↑](#footnote-ref-61)
62. U.S. The White House, *Remarks by President Trump on Operation LeGend: Combatting Violence and Crime in American Cities, July 22, 2020*  at<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-operation-legend-combatting-violent-crime-american-cities/> [↑](#footnote-ref-62)
63. Melissa Etehad & Laura King, *Unrest Widens Over Federal Agents,* Los Angeles Times, July 27, 2020. A1, A7. [↑](#footnote-ref-63)
64. German Lopez, *The First Step Act Explained,* Vox, February 5, 2019 at <https://www.vox.com/future-perfect/2018/12/18/18140973/state-of-the-union-trump-first-step-act-criminal-justice-reform> [↑](#footnote-ref-64)
65. Pub. L. 115-391. [↑](#footnote-ref-65)
66. Judge Patti B. Saris, Chair of U.S. Sentencing Commission, *A Generational Shift in Federal Drug Sentencing,* November 1, 2014 at <http://www.ussc.gov/sites/default/files/pdf/news/speeches-and-articles/article_saris_112014.PDF> The numbers to be released are subject to dispute. Thus the U.S. Council of Economic Advisors estimated in 2016 that only 6,000 would be released over five years. U.S., Executive Office of the President, Council of Economic Advisers, *Economic Perspectives on Incarceration and the Criminal Justice System,* April, 2016, 60-61 at <https://www.whitehouse.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf> [↑](#footnote-ref-66)
67. Pub. L.89-110; 79 Stat. 437. [↑](#footnote-ref-67)
68. 570 U.S. 529. [↑](#footnote-ref-68)
69. Jason L. Riley, *Please Stop Helping Us: How Liberals Make it Harder for Blacks to succeed*  (Encounter Bookds, 2014), 25-30. [↑](#footnote-ref-69)
70. Id. at 7-10. [↑](#footnote-ref-70)
71. U.S. The White House, *Remarks by the President on the Voting Rights Act,* August 6, 2015 at <https://www.whitehouse.gov/the-press-office/2015/08/06/remarks-president-voting-rights-act> ; and *Joe Madison Talks With President Obama About the Voting Rights Act*, Sirius XM Radio, February 22, 2013.<http://politic365.com/2013/02/22/joe-madison-talks-with-obama-on-sequestration-voting-rosa-parks-and-tiger-woods/> [↑](#footnote-ref-71)
72. For example see U.S., The White House, *Remarks by President Trump in Listening Session with African American Leaders, Ypsilanti, Mi, May 21, 2020* at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-listening-session-african-american-leaders-ypsilanti-mi/> [↑](#footnote-ref-72)
73. Charles Danner, *Donald Trump Falsely Blames PopularVote Loss on voter Fraud,* New York Magazine: Intelligencer, November 27, 2016 at <https://nymag.com/intelligencer/2016/11/donald-trump-blames-popular-vote-loss-on-voter-fraud.html> [↑](#footnote-ref-73)
74. Aaron Rupar, *Trump Isn’t Even Trying To Hide His Self-Interested Reasons for Opposing Mail-In Votting,* Vox, April 8 ,2020 at <https://www.vox.com/2020/4/8/21213416/trump-mail-in-voting-wisconsin-coronavirus> [↑](#footnote-ref-74)
75. Manny Fernandez & Eric Lichtblau, *Justice Dept. Drops Key Objection to Texas Voter ID Law,* The New York Times, February 27. 2017 at <https://www.nytimes.com/2017/02/27/us/justice-dept-will-drop-a-key-objection-to-a-texas-voter-id-law.html> [↑](#footnote-ref-75)
76. Terry Gross, *Republican Voter Supression Efforts Are Targeting Minorities, Journalists Say,* NPR, October 23, 2018 at <https://www.npr.org/2018/10/23/659784277/republican-voter-suppression-efforts-are-targeting-minorities-journalist-says> [↑](#footnote-ref-76)
77. Thomas Edsall, *Where Should a Poor Family Live?* The New York Times, Opinion Pages, August 5, 2015 at <http://www.nytimes.com/2015/08/05/opinion/where-should-a-poor-family-live.html> [↑](#footnote-ref-77)
78. Handel Destinvil, *Obama Administration Introduces New Administrative Rule on Fair Housing,* American Bar Association, August 13, 2015 at <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2015/obama-administration-introduces-new-administrative-rule-fair-housing/#:~:text=In%20July%202015%2C%20the%20Obama,to%20develop%20approved%20goals%20to> [↑](#footnote-ref-78)
79. U.S., The White House, *Weekly Address: Making Our Communities Stronger Through Fair Housing, July 11, 2015* at <https://obamawhitehouse.archives.gov/the-press-office/2015/07/11/weekly-address-making-our-communities-stronger-through-fair-housing> [↑](#footnote-ref-79)
80. Ben Carson, *Experimenting With Failed Social ism Again,* The Washington Times, July 23, 2015 at <https://www.washingtontimes.com/news/2015/jul/23/ben-carson-obamas-housing-rules-try-to-accomplish-/> [↑](#footnote-ref-80)
81. Chris Megerian, Liam Dillon, & Eli Stokols, *Trump Kills Rule Meant to Foster Integration,* Los Angeles Times, July 21, 2020, A4; and Glen Trush, *Trump Attacks Suburban Housing Program. Critics See A Play For White Votes,* The New York Times, July 1, 2020 at <https://www.nytimes.com/2020/07/01/us/politics/trump-obama-housing-discrimination.html> [↑](#footnote-ref-81)
82. The Editorial Board, *There’s Only One Way to Stop Predatory Lending,* The New York Times, May 2, 2019 at <https://www.nytimes.com/2019/05/22/opinion/trump-cfpb.html> [↑](#footnote-ref-82)
83. U.S., Special Inspector General, *Quarterly Report to Congress,* October 29, 2013, p. 75 at <https://www.sigtarp.gov/Quarterly%20Reports/October_29_2013_Report_to_Congress.pdf> ; Alan S. Blinder, *When the Music Stopped: The Financial Crisis, The Response, and the Work* 333-336 (Penguin Press, 2013) ; and <http://www.harp.gov/> . [↑](#footnote-ref-83)
84. U.S. Federal Register, Reconsideration of HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard, June 20, 2018, Vol. 83, No. 119 p. 28560 at <https://www.federalregister.gov/documents/2018/06/20/2018-13340/reconsideration-of-huds-implementation-of-the-fair-housing-acts-disparate-impact-standard> [↑](#footnote-ref-84)
85. See U.S. White House, *Remarks by President Trump at Ownens & Minor… Allentown,Pa.,* May 14, 2020 at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-owens-minor-inc-distribution-center-allentown-pa/>; and Obama Foundation, *My Brother’s Keeper Alliance,* July 18, 2020 at <https://www.obama.org/mbka/> [↑](#footnote-ref-85)