

# **Populism and the Decline of Human Rights in the United States (2016–2025): Legal and Institutional Transformations under Political Pressure**

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## **Abstract**

This article investigates the erosion of human rights protections in the United States under populist governance between 2016 and 2025. Focusing on four core domains—freedom of expression, minority rights, immigration and asylum policy, and judicial independence—it examines how populist rhetoric and majoritarian narratives have reshaped legal norms and institutional behavior. Employing a qualitative methodology that integrates constitutional analysis, policy review, and critical discourse analysis, the study draws upon executive orders, legislative initiatives, court rulings, and public discourse to assess the scale and mechanisms of legal regression. The findings show that populist actors increasingly frame human rights as obstacles to the “will of the people,” using legal tools to consolidate power and marginalize vulnerable communities. While certain institutional checks persist, the cumulative effect has been a weakening of constitutional safeguards and democratic accountability. Positioned within a broader global context, the U.S. case illustrates how even established liberal democracies are susceptible to rights backsliding under sustained populist influence. The article concludes by calling for structural reforms and renewed civic engagement to protect rights-based governance in an era of populist retrenchment.

## **Keywords**

Populism, human rights, United States, democracy, legal norms, minority rights, freedom of expression, asylum policy, judicial independence, authoritarianism

## **1. Introduction**

The late 2010s witnessed a notable populist surge in U.S. politics, casting doubt on longstanding constitutional and human rights norms. Populism, broadly understood as an anti-establishment movement that claims to speak for “the people” against corrupt elites, often treats

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rights and pluralism as impediments to the majority's will.<sup>1</sup> This framing directly clashes with constitutional principles such as judicial review, minority protections, and the separation of powers, which are designed to limit majoritarian overreach. As Human Rights Watch noted in its 2017 annual report, populist leaders “treat rights as a needless obstacle to defending the nation from perceived threats,” frequently scapegoating immigrants and minorities while undermining protective legal structures.<sup>2</sup>

In the United States, this trajectory first emerged during Donald Trump's presidency (2017–2021) and has significantly deepened following his return to office in 2025. Since resuming power, Trump has reinstated—and in many cases intensified—measures that challenge the human rights framework. These include broad executive orders targeting asylum seekers, the restoration of family separation policies at the southern border,<sup>3</sup> expanded surveillance powers over civil society and advocacy groups,<sup>4</sup> prosecutions of leakers and journalists under the Espionage Act,<sup>5</sup> and inflammatory rhetoric undermining the legitimacy of the judiciary and the press.<sup>6</sup>

The administration has also backed legislation aimed at criminalizing protest activities, restricting academic freedom under the guise of national unity, and curbing online dissent through ideologically motivated regulation.<sup>7</sup> These actions go beyond reviving prior patterns of populist governance; they represent a more systematic and sustained assault on legal safeguards and democratic checks and balances. Legal scholars have described such tactics as manifestations of “autocratic legalism”—a process in which formal legal tools are weaponized to undermine liberal constitutionalism from within.<sup>8</sup>

This article critically examines the period 2016–2025 as a turning point for U.S. human rights protections under populist rule. It documents concrete legal and institutional changes—including executive actions, judicial appointments and decisions, legislation, and administrative practices—that have curtailed freedoms of speech and assembly, eroded minority protections, restricted access to asylum, and compromised judicial independence. The

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<sup>1</sup> Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction* (Oxford University Press 2017) 10–12.

<sup>2</sup> Human Rights Watch, *World Report 2017: United States Events of 2016* <https://www.hrw.org/world-report/2017/country-chapters/united-states> accessed 26 May 2025.

<sup>3</sup> New York Times, 'Trump Reinstates Family Separation for Border Crossers' (January 2025).

<sup>4</sup> Amnesty International, *USA 2025: Escalation of Surveillance and Shrinking Civic Space* (Report, March 2025).

<sup>5</sup> Human Rights First, 'Use of Espionage Laws Against Journalists Raises Alarms' (March 2025).

<sup>6</sup> Adam Serwer, 'The Authoritarian's Language' *The Atlantic* (March 2025).

<sup>7</sup> ACLU, 'New Federal Legislation Threatens Protest Rights Nationwide' (February 2025).

<sup>8</sup> Kim Lane Scheppele, 'Autocratic Legalism' (2018) 85 *University of Chicago Law Review* 545.

article situates these developments within broader discursive shifts, including the delegitimization of dissent and the reframing of rights as elite privileges obstructing the “will of the people.”

The study focuses on four interrelated domains:

1. Freedom of Expression – the targeting of press freedoms, regulation of digital platforms, and criminalization of dissent;
2. Minority Rights – especially in relation to racial/ethnic minorities and LGBTQ+ communities;
3. Immigration and Asylum Policies – the dismantling of humanitarian protections and due process guarantees;
4. Judicial Independence – attempts to politicize courts, restrict their authority, and delegitimize their rulings.

Within each domain, we analyze legal reforms and political discourse to reveal how populist actors strategically reinterpret rights protections. The article employs a qualitative methodology combining legal doctrinal analysis, policy review, and critical discourse analysis. Our sources include U.S. government records, judicial opinions, human rights reports, major media investigations, and peer-reviewed legal scholarship. Particular attention is paid to recent trends such as “anti-CRT” laws, protest-suppression bills, and state-level educational censorship, all of which signal a deeper trajectory of democratic backsliding.

## **2. Literature Review**

Populism has been the subject of increasing academic scrutiny in recent years, particularly with regard to its effects on democratic governance and the rule of law. Scholars such as Cas Mudde and Cristóbal Rovira Kaltwasser define populism as a thin-centered ideology that divides society into a “pure people” versus a “corrupt elite,” often relying on moralistic rather than institutional justifications for authority.<sup>9</sup> Legal scholars have noted that populist regimes

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<sup>9</sup> Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction* (Oxford University Press 2017) 6.

frequently attempt to erode judicial independence, politicize constitutional safeguards, and redefine rights frameworks to serve majoritarian goals.<sup>10</sup>

Bojan Bugaric and Mark Tushnet argue that populist constitutionalism tends to challenge the liberal democratic consensus by reframing rights as privileges rather than guarantees, especially when those rights are seen to benefit minorities or dissenters.<sup>11</sup> Similarly, Kim Lane Scheppele's research highlights how populist leaders may "legalize illiberalism" by using legislative processes to pass discriminatory laws under the guise of democratic legitimacy.<sup>12</sup> Her concept of "autocratic legalism" underscores how even formally democratic tools—elections, statutes, constitutional amendments—can be used to undermine liberal constitutionalism from within.<sup>13</sup>

In the U.S. context, scholars such as Yascha Mounk and Steven Levitsky have warned that populist attacks on independent institutions, including courts and media, risk creating an environment of competitive authoritarianism.<sup>14</sup> These warnings gained empirical traction during and after the Trump presidency, as legal institutions were repeatedly subject to partisan pressure, and public trust in judicial neutrality eroded.<sup>15</sup> The work of Aziz Huq and Tom Ginsburg is also relevant here, as they show how modern democratic backsliding often proceeds through the erosion of informal norms and gradual degradation of institutional checks, rather than overt constitutional collapse.<sup>16</sup>

This article builds on that literature by offering an empirical case study of the United States between 2016 and 2025, analyzing how populist rhetoric and legal actions have altered the architecture of rights protections across multiple domains. Unlike previous studies that focus primarily on executive power or media relations, this article takes a multidimensional approach by examining parallel erosions in expression, minority rights, immigration law, and judicial independence.

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<sup>10</sup> Tom Ginsburg and Aziz Huq, *How to Save a Constitutional Democracy* (University of Chicago Press 2018) 47–52.

<sup>11</sup> Bojan Bugaric and Mark Tushnet, 'Populism and Constitutionalism: An Ideological View' (2019) 20(3) *German Law Journal* 403.

<sup>12</sup> Kim Lane Scheppele, 'Autocratic Legalism' (2018) 85(2) *University of Chicago Law Review* 545.

<sup>13</sup> Kim Lane Scheppele, 'The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work' (2013) 26(4) *Governance* 559.

<sup>14</sup> Yascha Mounk and Steven Levitsky, 'The End of Democratic Consolidation' (2017) 28(1) *Journal of Democracy* 5.

<sup>15</sup> Emily Bazelon, 'How Will Trump's Legal Legacy Shape American Democracy?' *New York Times Magazine* (October 2020).

<sup>16</sup> Aziz Z Huq and Tom Ginsburg, 'How to Lose a Constitutional Democracy' (2018) 65 *UCLA Law Review* 78.

### 3. Methodology

This study employs a qualitative, interdisciplinary approach combining legal analysis, policy review, and critical discourse analysis.<sup>17</sup> The methodology draws upon both primary and secondary sources to evaluate the impact of populist legal transformations in the United States between 2016 and 2025.

Primary sources include executive orders, federal and state legislation, constitutional amendments, court rulings, and official reports from human rights organizations such as Human Rights Watch and the American Civil Liberties Union (ACLU).<sup>18</sup> These sources provide the legal and institutional basis for tracking how populist leadership has influenced rights-based frameworks. The research also incorporates congressional records and Department of Justice communications when relevant.

Secondary sources consist of peer-reviewed legal scholarship, public law reviews, think tank publications (e.g., Brookings Institution, Brennan Center for Justice), and investigative journalism from reputable media outlets such as *The New York Times*, *ProPublica*, and *The Washington Post*.<sup>19</sup> These materials offer interpretive insight and empirical context to complement the formal legal texts.

The article is structured around four major legal domains: (1) freedom of expression, (2) minority rights, (3) immigration and asylum, and (4) judicial independence. Within each domain, the analysis tracks both formal legal changes and the role of populist rhetoric in shaping public discourse and institutional behavior. Particular attention is paid to the interaction between narrative framings and structural reforms, assessing how rhetorical delegitimization of courts, media, and minority claims has translated into legal reconfiguration.<sup>20</sup>

Judicial responses, where available, are examined through doctrinal analysis and citation tracking to measure institutional resistance or complicity. In addition, the study considers

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<sup>17</sup> Norman Fairclough, *Critical Discourse Analysis: The Critical Study of Language* (Routledge 2013); Reva Siegel, 'Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA' (2006) 94(4) *California Law Review* 1323.

<sup>18</sup> Human Rights Watch, *World Report 2023*, <https://www.hrw.org>; American Civil Liberties Union (ACLU), *Civil Liberties Docket*, <https://www.aclu.org>.

<sup>19</sup> Brennan Center for Justice, *Democracy & Justice Reports*, <https://www.brennancenter.org>; ProPublica, "Trump Administration Legal Tracker," <https://www.propublica.org/series/trump-town>.

<sup>20</sup> Jan-Werner Müller, *What Is Populism?* (Philadelphia: University of Pennsylvania Press, 2016), 40–52.

polling data, civil society reports, and academic opinion surveys to evaluate the extent to which democratic safeguards have shown resilience or fragility in the face of populist pressure.<sup>21</sup>

#### **4. Freedom of Expression and the Press**

Populist leaders frequently adopt a hostile stance toward independent media, portraying journalists as adversaries of the people and attempting to delegitimize critical reporting. The Trump administration exemplified this trend by labeling the press “the enemy of the people,” a rhetorical device that seeks to erode public trust in the media and normalize legal harassment. President Trump repeatedly employed defamation lawsuits and access restrictions to intimidate journalists and suppress dissenting coverage.

One illustrative episode involved a defamation suit filed by Trump against ABC News. The suit followed anchor George Stephanopoulos's misstatement of aspects of Trump's past. Although the legal claim was tenuous, ABC ultimately settled by contributing \$15 million to Trump's presidential library to avoid a protracted trial. Similarly, Trump sued Meta Platforms Inc. (Facebook's parent company) following his ban in the aftermath of the January 6 Capitol insurrection. The suit, despite its weak legal foundation, was resolved through a \$25 million settlement. Legal analysts have warned that such litigation reflects a broader effort to weaponize the judiciary to chill critical reporting, creating a precedent that undermines press freedom.<sup>22</sup>

Beyond the courtroom, the Trump administration took regulatory action to punish perceived media adversaries. In May 2020, President Trump signed an executive order targeting social media platforms after Twitter fact-checked his posts. The order sought to curtail protections afforded under Section 230 of the Communications Decency Act, exposing platforms to liability for user-generated content. Experts widely criticized the order as retaliatory and constitutionally questionable.<sup>23</sup>

From a constitutional perspective, such executive actions raise serious concerns under established First Amendment standards. Restrictions on freedom of expression must be justified by a legitimate governmental interest and must not operate as retaliatory or viewpoint-

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<sup>21</sup> Pew Research Center, “Trust in Government 1958–2023,” <https://www.pewresearch.org>; Larry Diamond, “Facing Up to the Democratic Recession,” *Journal of Democracy* 26, no. 1 (2015): 141–155.

<sup>22</sup> Jonathan Peters, ‘When Presidents Sue the Press: Legal Threats in the Age of Trump’ (March 2025) *Columbia Journalism Review* <https://www.cjr.org>

<sup>23</sup> Kate Klonick, ‘The President vs. Section 230’ (2020) 130 *Yale LJ Forum* 123

based interference with protected speech. The retaliatory nature of the executive order—issued in response to fact-checking—therefore raises substantial doubts about its constitutional validity, as it appears to target platforms for exercising editorial discretion protected under the First Amendment.

The threat to press freedom further escalated with the use of subpoenas and surveillance against journalists. In 2021, Attorney General Merrick Garland implemented a policy barring the bulk seizure of journalists' communications, reinforcing constitutional protections for the press.<sup>24</sup> However, in April 2025, Attorney General Pam Bondi reversed this directive, citing national security concerns related to government leaks.<sup>25</sup> Press freedom advocates condemned the move as politically motivated and a regression that permits broader targeting of journalists.

Populist efforts to suppress dissent, framed as measures to protect “the people” from allegedly disruptive or illegitimate minorities, have extended to protest rights. In the wake of movements like Black Lives Matter and pro-Palestinian demonstrations, numerous federal and state lawmakers introduced “anti-protest” legislation imposing excessive penalties. Some laws criminalize participation in certain protests, including classifying as felonies acts like “intimidating” pipeline construction or wearing face coverings at public demonstrations.<sup>26</sup> The ACLU warned in 2025 that such laws have a chilling effect on the exercise of First Amendment rights and amount to criminalizing lawful political expression.<sup>27</sup>

Further encroachment on expressive freedom has been seen in executive efforts to deport foreign students engaged in political activism. In January 2025, President Trump issued Executive Order 14098, authorizing the revocation of student visas for individuals labeled as “ Hamas sympathizers” or “pro-jihadist.”<sup>28</sup> This order created the “Catch and Revoke” program. Under this program, the State Department used AI tools to scan social media activity and identify international students for deportation.<sup>29</sup> By April 2025, over 1,000 individuals had lost their visa status.

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<sup>24</sup> US Department of Justice, ‘Policy Reforms on Press Subpoenas’ (July 2021) <https://www.justice.gov>

<sup>25</sup> Freedom of the Press Foundation, ‘Attorney General Bondi Reverses Press Protections’ (April 2025) <https://freedom.press>

<sup>26</sup> Brennan Center for Justice, ‘State Legislative Threats to Protest Rights: 2017–2025’ <https://www.brennancenter.org>

<sup>27</sup> ACLU, ‘New Anti-Protest Laws Threaten Free Speech’ (March 2025) <https://www.aclu.org>

<sup>28</sup> Executive Order 14098, ‘On Protecting National Security from Terror-Affiliated Student Movements’ (15 January 2025)

<sup>29</sup> *New York Times*, ‘Visa Cancellations for Protesters Spark Backlash’ (10 April 2025) <https://www.nytimes.com>

Constitutionally, this approach raises questions under the doctrine of emergency powers. Even in exceptional circumstances, executive discretion must be grounded in statutory authorization. Scholars argue that bypassing individualized due process—especially through automated surveillance—conflicts with the elimination clause principle, which prohibits the implicit suspension of fundamental rights unless explicitly legislated.<sup>30</sup> Civil rights groups argue that such measures violate speech protections and evoke the surveillance culture of the McCarthy era.<sup>31</sup>

Despite mounting pressures, the U.S. judiciary has, in several key cases, upheld expressive freedoms. Federal courts have blocked attempts to dismantle net neutrality, defended the rights of protesters, and invalidated statutes infringing on free expression.<sup>32</sup> Yet the judiciary's deference to executive authority in cases like *Trump v. Hawaii*—which upheld the travel ban on several Muslim-majority countries—has raised concerns about institutional susceptibility to populist narratives framed in national security terms.<sup>33</sup>

Overall, while legal protections for free speech persist, the cumulative effect of populist hostility, litigation strategies, regulatory actions, and surveillance measures has strained the First Amendment. The precedents established during this period risk normalizing repression and narrowing the civic space for dissenting voices.

## 5. Minority Rights

### 5.1 Racial and Ethnic Minorities

Populist policies have had pronounced effects on racial and ethnic minority rights in the U.S. From 2016 to 2025, protests against police violence—particularly after the murder of George Floyd in 2020—triggered nationwide debates on systemic racism. Yet by mid-2025, over 30 states had enacted “anti-mob” laws, criminalizing protest behaviors such as highway obstruction or wearing face coverings during demonstrations. Critics contend that these laws disproportionately target racial justice protests and chill free expression.<sup>34</sup>

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<sup>30</sup> David Dyzenhaus, ‘The State of Emergency in Legal Theory’ in Victor V Ramraj (ed), *Emergency Powers in a Globalised World* (CUP 2010) 45

<sup>31</sup> Human Rights Watch, *Crackdown on Dissent: US Protest Laws* (February 2025) <https://www.hrw.org>

<sup>32</sup> *Mozilla Corp v FCC*, 940 F.3d 1 (DC Cir 2019)

<sup>33</sup> *Trump v Hawaii*, 138 S Ct 2392 (2018)

<sup>34</sup> American Civil Liberties Union, *Protest Laws and the Chilling Effect on Free Speech* (May 2025).

From a constitutional standpoint, such legislation raises serious concerns under established First Amendment standards. Restrictions on protest-related expression must be justified by a legitimate governmental interest and must avoid overbreadth or content-based interference that unduly chills protected political activity

At the federal level, responses diverged by administration. While the Biden Justice Department promoted equity and pursued civil rights litigation, the Trump administration reversed course. In January 2025, President Trump rescinded numerous Biden-era executive orders addressing racial justice and criminal reform.<sup>35</sup>

Education policy has similarly been reshaped by a populist backlash. As Human Rights Watch reported, state legislatures in 2024–25 enacted sweeping laws censoring discussions of race, gender, and sexual orientation in classrooms. These included bans on teaching structural racism or gender identity.<sup>36</sup> These efforts were framed as protecting students from “indoctrination.” Yet civil rights groups argue that they erase minority histories and violate democratic principles.<sup>37</sup>

Electoral law developments have further disadvantaged racial minorities. Following *Shelby County v. Holder* (2013), many states implemented restrictive voting measures.<sup>38</sup> In 2024, the Supreme Court permitted a racially gerrymandered map to stand. In *Trump v. United States* (2024), the Court ruled that a sitting president is immune from prosecution for “official acts.”<sup>39</sup> These rulings—alongside the Court’s conservative majority, solidified by Trump’s appointments—have alarmed civil rights groups concerned about future abuses of power.

The Court’s reluctance to intervene in racially gerrymandered districts also raises constitutional concerns under the Equal Protection Clause. Legal commentators argue that such deference allows for entrenched racialized voter suppression, undermining the democratic principle of political equality.<sup>40</sup>

A particularly far-reaching case was *Students for Fair Admissions v. Harvard* (2023), which invalidated affirmative action programs at Harvard and UNC.<sup>41</sup> Chief Justice Roberts

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<sup>35</sup> White House Press Office, ‘Executive Orders Signed by President Trump, January 2025’ (WhiteHouse.gov, 2025).

<sup>36</sup> Human Rights Watch, ‘United States: Education Gag Orders Undermine Rights’ (March 2025).

<sup>37</sup> *ibid.*

<sup>38</sup> Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (FSG 2015) 203.

<sup>39</sup> *Trump v. United States*, 602 US 593 (2024).

<sup>40</sup> Erwin Chemerinsky, *Presumed Guilty: How the Supreme Court Empowered the Police and Subverted Civil Rights* (Liveright 2021).

<sup>41</sup> NAACP Legal Defense Fund, ‘After Affirmative Action: The Fight for Racial Justice in Education’ (July 2023).

emphasized “colorblind” admissions criteria. This marked a reversal of longstanding precedent. Critics argue the ruling will reduce minority representation in elite institutions and undermines tools designed to address systemic inequality.<sup>42</sup>

Adding to this legal landscape, former President Trump used the Harvard ruling to publicly attack the university and its leadership. In July 2023, Trump accused Harvard of “anti-white discrimination” and called for investigations into its DEI (Diversity, Equity, and Inclusion) programs.<sup>43</sup> In May 2025, Trump escalated these attacks by announcing plans to revoke Harvard’s tax-exempt status, citing the university’s “failure to address antisemitism” and “bias against conservatives.”<sup>44</sup> The administration also froze over \$2 billion in federal funding and threatened to limit international student visas. Harvard denounced the move as a political attack on academic independence and filed suit against the administration.<sup>45</sup>

Broadly speaking, racial justice has been deprioritized in national policy under populist leadership, particularly where equality-oriented measures are rhetorically reframed as illegitimate departures from merit, tradition, or the interests of the “real” people. Human Rights Watch’s 2025 report noted that the U.S. made “far too little” progress on racial equality. It also emphasized that health and environmental harms—such as in Louisiana’s “Cancer Alley”—continue to disproportionately affect Black communities.<sup>46</sup>

## 5.2 LGBTQ+ Rights

The years 2016–2025 witnessed escalating attacks on LGBTQ+ rights. The Trump administration rescinded Obama-era protections for transgender students and banned transgender individuals from military service. By 2025, Trump signed an executive order defining sex as strictly binary for all federal purposes. This denied recognition of gender identity in official documents and administrative decisions. The move was accompanied by the repeal of dozens of Biden-era DEI policies that had promoted LGBTQ+ rights.<sup>47</sup>

From a constitutional standpoint, such executive actions raise serious concerns under the Equal Protection Clause of the Fourteenth Amendment. Courts have increasingly recognized that

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<sup>42</sup> *ibid.*

<sup>43</sup> NPR, ‘Trump Slams Harvard after Affirmative Action Ruling’ (2 July 2023) <https://www.npr.org/2023/07/02/trump-harvard-affirmative-action>.

<sup>44</sup> Reuters, ‘Trump Says He Will Strip Harvard’s Tax-Exempt Status’ (2 May 2025) <https://www.reuters.com/world/us/trump-take-away-harvards-tax-exempt-status-2025-05-02/>.

<sup>45</sup> *Washington Post*, ‘Trump Confirms Plans to Revoke Harvard’s Tax Exemption’ (2 May 2025).

<sup>46</sup> Human Rights Watch, *World Report 2025: United States* (January 2025).

<sup>47</sup> Center for American Progress, ‘Federal Rollbacks in LGBTQ+ Health Policy’ (January 2025).

gender identity is a protected characteristic. Policies enforcing a binary-only definition may not withstand constitutional scrutiny, especially when they fail to serve a legitimate governmental interest in a rational and narrowly tailored manner.<sup>48</sup>

Legislatively, attempts to pass comprehensive protections—like the Equality Act—have stalled in Congress. Meanwhile, many states enacted laws that ban gender-affirming care for minors. Others restricted transgender participation in sports or legalized discrimination under broad religious exemptions.<sup>49</sup> Legal scholars contend that these legislative trends reflect a resurgence of moral conservatism, amplified by populist narratives that depict LGBTQ+ rights not merely as moral deviations, but as elite-driven impositions undermining the values, family structures, and cultural identity of the “ordinary” people. Within this framing, restrictions on gender-affirming care or transgender inclusion are presented as acts of democratic reclamation rather than as limitations on minority rights.<sup>50</sup>

Such laws also raise serious constitutional concerns under established U.S. constitutional doctrine. Blanket restrictions on access to gender-affirming care implicate principles of equal protection and substantive due process, particularly where they lack a rational and evidence-based justification. Medical experts have consistently affirmed that gender-affirming care is evidence-based and necessary for the well-being of transgender youth. Accordingly, sweeping bans generate significant legal and ethical challenges under both U.S. constitutional law and international human rights standards.

Judicial rulings on LGBTQ+ rights during this period have been inconsistent. In *Bostock v. Clayton County* (2020), the Supreme Court held that Title VII of the Civil Rights Act protects LGBTQ+ workers from employment discrimination.<sup>51</sup> However, subsequent rulings suggest growing judicial deference to discriminatory state policies. For example, the Court declined to block Tennessee’s anti-drag law in 2024, despite arguments that it violated First Amendment and equal protection guarantees.<sup>52</sup>

Federal agencies have also narrowed their guidance on LGBTQ+ issues. Between 2024 and 2025, reports documented efforts to restrict sexuality education and remove protections in

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<sup>48</sup> Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (6th edn, Wolters Kluwer 2019).

<sup>49</sup> American Bar Association, ‘LGBTQ+ Legal Developments in the States’ (2024–2025 Review).

<sup>50</sup> David Paternotte and others, ‘Populist Anti-Gender Ideology and Its Effects on LGBTQ+ Rights in Europe and the U.S.’ (2022) 29(3) *Social Politics* 420.

<sup>51</sup> *Bostock v Clayton County*, 590 US 644 (2020).

<sup>52</sup> Alesha E Doan and Rachel Paine Donaghy, ‘Policy Backlash and LGBTQ Rights under U.S. Populism’ (2023) 19(1) *Politics & Gender* 93.

federal health programs.<sup>53</sup> Analysts note that populist rhetoric has increasingly scapegoated LGBTQ+ communities, framing them as ideological adversaries in a broader culture war. This framing reinforces social stigma and enables the codification of discrimination.<sup>54</sup>

Across racial, ethnic, and LGBTQ+ communities, the populist era has coincided with a retrenchment of rights protections. Whether through executive action, judicial passivity, or legislative rollback, vulnerable groups have faced growing legal uncertainty and cultural scapegoating. These developments raise fundamental concerns about the durability of equal protection principles in a constitutional order increasingly shaped by populist majoritarianism.<sup>55</sup>

## **6. Immigration and Asylum Policies**

Immigration became a central pillar of populist policy under President Trump, and it continues to be so into 2025. The Trump administration carried out an aggressive crackdown on migrants and asylum-seekers, often flouting long-standing legal norms. Most infamously, the “zero tolerance” policy of 2018 mandated criminal prosecution of any undocumented border crossers. This resulted in the forcible separation of thousands of families.<sup>56</sup>

Human rights groups condemned this practice as a blatant violation of international and domestic legal standards. Amnesty International declared that tearing children from their parents “brazenly violated the human rights of these families,” describing the trauma as “nothing short of torture” under U.S. and international law.<sup>57</sup> While Trump signed an executive order in June 2018 purporting to end the separations under legal pressure, critics noted that family detention and other harsh practices continued.<sup>58</sup>

From a legal perspective, the family separation policy raises serious concerns under the principle of non-refoulement, codified in the 1951 Refugee Convention and recognized under U.S. law. The policy inflicted severe psychological harm on children as a means of deterrence, raising serious due process concerns and calling into question the legitimacy of using family separation as an enforcement tool. Legal scholars argue that the tactic weaponized

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<sup>53</sup> *ibid.*

<sup>54</sup> Keeanga-Yamahtta Taylor, ‘The End of Identity Liberalism?’ (2022) *Boston Review*.

<sup>55</sup> *ibid.*

<sup>56</sup> Doris Meissner and Claire Bergeron, ‘The Case Against Immigration Raids and Family Separations’ (Migration Policy Institute, 2019).

<sup>57</sup> Amnesty International, ‘USA: Family Separation Amounts to Torture’ (June 2018).

<sup>58</sup> Holly Barcus, ‘Family Separation, Detention, and the Criminalization of Immigration’ (2020) 19(3) *Journal of Human Rights* 261.

administrative enforcement to deter lawful asylum claims, undermining both constitutional protections and treaty obligations.<sup>59</sup>

Trump also imposed strict asylum restrictions. In 2017, he issued a “travel ban” barring entry from several Muslim-majority countries.<sup>60</sup> The ban was upheld by the Supreme Court in a 5–4 decision, despite concerns about its discriminatory intent. In 2019, his administration introduced the “Remain in Mexico” policy (officially the Migrant Protection Protocols, or MPP). Under this program, asylum seekers were forced to wait in Mexico for their U.S. immigration hearings.<sup>61</sup>

When President Biden attempted to terminate MPP in 2021, Texas and Missouri challenged the move. In *Biden v. Texas* (2022), the Supreme Court allowed the Biden administration to end the policy.<sup>62</sup> However, litigation persisted in lower courts, and Texas judges intermittently mandated partial reinstatement of the program. These continued legal challenges operated within a populist narrative that framed restrictive border enforcement as an expression of popular will against perceived federal leniency and elite-driven humanitarian commitments.

Another major populist measure was the use of public-health powers to suspend asylum rights. Under the Trump administration’s “Title 42” order—justified as a COVID-19 response—border authorities summarily expelled migrant families and children without affording them due process.<sup>63</sup> The ACLU sued to challenge the practice. In *P.J.E.S. v. Wolf* (2020), a federal court barred the application of Title 42 to unaccompanied minors. The ruling described the policy as “unprecedented and illegal,” accusing the government of using the pandemic “to flout [U.S.] obligations to children fleeing persecution.”<sup>64</sup>

Despite this judicial intervention, Title 42 remained in effect through 2021 and was not lifted until 2023. During that time, the Department of Homeland Security pursued other restrictive measures, including the expansion of family detention, accelerated removals, and sharp cuts in refugee admissions. Government data show that the refugee cap during this period dropped to historic lows.<sup>65</sup>

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<sup>59</sup> Hiroshi Motomura, *Immigration Outside the Law* (OUP 2014).

<sup>60</sup> Human Rights Watch, ‘Trump’s Second-Term Immigration Agenda’ (November 2020).

<sup>61</sup> Ingrid V Eagly, ‘Remote Adjudication in Immigration’ (2019) 109(4) *Northwestern University Law Review* 933.

<sup>62</sup> *Biden v Texas*, 597 US 785 (2022).

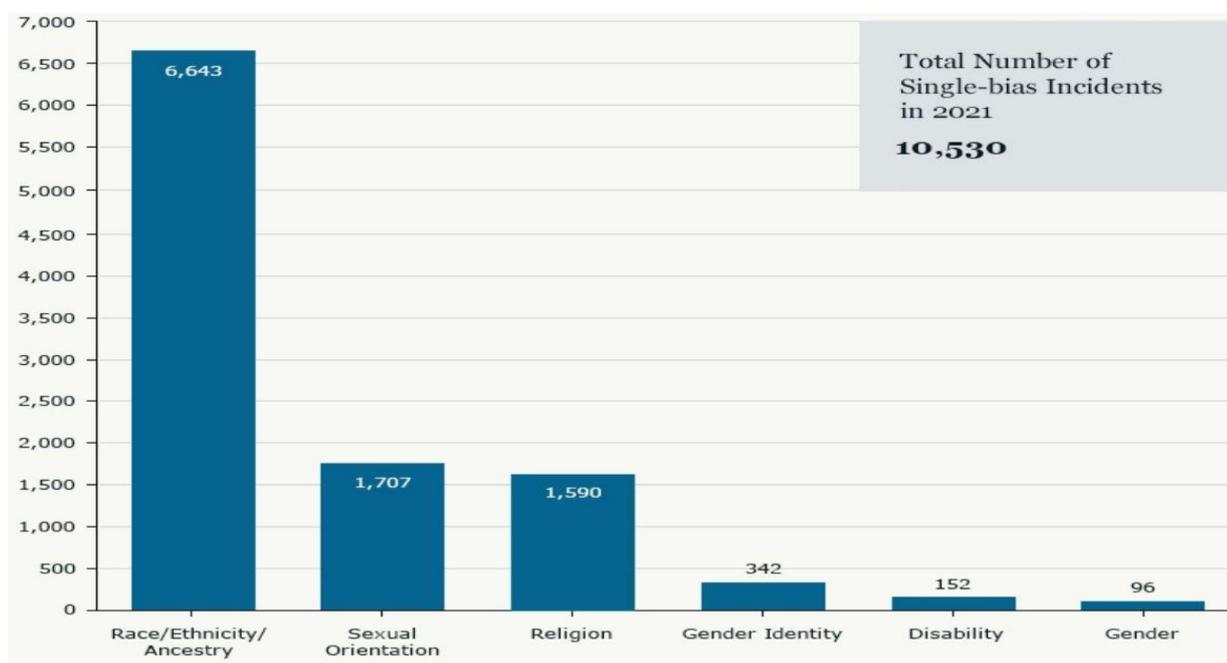
<sup>63</sup> American Civil Liberties Union, ‘Title 42 and the Illegal Expulsion of Migrants’ (2020).

<sup>64</sup> *PJES v Wolf*, 502 F Supp 3d 492 (DDC 2020).

<sup>65</sup> US Department of State, ‘Refugee Admissions Report, FY2017–2019’.

In sum, the populist period saw a systematic dismantling of the U.S. asylum system. Metrics reflect this regression. From 2017 to 2019, the number of refugees admitted annually fell from 53,716 to 11,814—the lowest level in decades.<sup>66</sup> One legal analysis warned that Trump’s second-term proposals—such as mandatory 60-day detention limits for asylum seekers—would constitute an even harsher turn.<sup>67</sup>

In January 2025, *Reuters* reported on plans for mass ICE raids and immediate removals at the southern border.<sup>68</sup> Photos from that period, showing migrants packed into detention centers well beyond legal deadlines, underscored how drastically U.S. policy shifted under populist pressure.



**Figure 1:** FBI data on single-bias hate crime incidents in 2021, by bias category. Victims targeted for race/ethnicity/ancestry bias accounted for 64.5% (6,643 incidents) of reported incidents in 2021, versus immigration figure per se, this chart underscores that bias-motivated crimes (often tied to xenophobic or racist populist rhetoric) surged during this period, disproportionately affecting racial and LGBT minorities.

However, not all populist immigration measures have remained intact. Courts and the Biden administration reversed some of the harshest policies. As noted above, MPP ended in 2022,

<sup>66</sup> *ibid.*

<sup>67</sup> Human Rights Watch, ‘Trump’s Second-Term Immigration Agenda’ (November 2020).

<sup>68</sup> *Reuters*, ‘Trump Plans Mass ICE Raids’ (January 2025).

<sup>69</sup> Federal Bureau of Investigation, ‘Hate Crime Statistics, 2021.’

and Title 42 finally expired in 2023. President Biden promised a more humane immigration stance, reinstating DACA protections for Dreamers and raising the refugee admissions ceiling to 125,000 for FY2022.<sup>70</sup>

Nonetheless, Biden's presidency has not been immune to populist pressures. Southern border apprehensions surged in 2021–2022, fueling Republican criticism and prompting partial policy reversals. For instance, the Biden administration maintained some Trump-era asylum restrictions on transit refugees and relied heavily on Mexico and other neighboring countries to curb migration flows.<sup>71</sup>

In practice, even modest humanitarian reforms—such as ending family separations—have faced institutional resistance. New constraints emerged from Congress, state legislatures, and courts, limiting the federal government's capacity to shift course. In a striking example of state-level populism, hardline governments in Texas and Arizona began transporting migrants to Democratic-led cities between 2022 and 2024 as a form of political protest.<sup>72</sup> These acts tested the boundaries of federal-local authority and raised constitutional questions about the use of migrants as political instruments.

The broader trend has been clear: the populist era—and continuing into 2025—has seen the normalization of “abusive border policies and denials of the rights of migrants and asylum seekers.”<sup>73</sup> Widespread deportations, the criminalization of migration, and harsh asylum restrictions have become routine. These measures are often framed as exercises of national sovereignty under slogans like “build that wall” or “enforce our laws.”<sup>74</sup>

Legal scholars caution that many such policies violate the United States' treaty obligations under the 1951 Refugee Convention and its 1967 Protocol, both of which prohibit refoulement, or the return of individuals to places where they face persecution.<sup>75</sup> They also argue that the scope and severity of enforcement under Trump represent a paradigmatic case of autocratic

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<sup>70</sup> Deborah E Anker, ‘The Trump Administration and the U.S. Asylum System’ (2021) 135 *Harvard Law Review Forum* 1.

<sup>71</sup> Adam B Cox and Cristina M Rodriguez, ‘The President and Immigration Law Redux’ (2015) 125(1) *Yale Law Journal* 104.

<sup>72</sup> Ruth Bloch Rubin, ‘How Populist Are the Populists? Reexamining Populist Governance in the Trump Era’ (2022) 20(2) *Perspectives on Politics* 437.

<sup>73</sup> Human Rights Watch, ‘US: Abusive Border Policies Continue’ (March 2025).

<sup>74</sup> Amnesty International, ‘USA: Human Rights Under Attack’ (December 2024).

<sup>75</sup> Alison Mountz, *The Death of Asylum: Hidden Geographies of the Enforcement Archipelago* (University of Minnesota Press 2020) 120–134.

legalism, where executive powers are used—legally but illiberally—to dismantle humanitarian protections.<sup>76</sup>

In early 2025, the Trump administration escalated immigration enforcement. On April 28, White House Press Secretary Karoline Leavitt announced the launch of large-scale deportation operations. She stated that 538 undocumented immigrants had been apprehended, including a suspected terrorist, four members of the Tren de Aragua gang, and several individuals convicted of sex crimes against minors.<sup>77</sup>

Later that same day, White House border czar Tom Homan reported that approximately 139,000 migrants had been deported since President Trump’s inauguration on January 20. He added that undocumented immigrants who failed to register with the Department of Homeland Security or update their address information would now be treated as criminals and face prosecution, including daily fines of up to \$998.<sup>78</sup>

These measures signal a clear continuation of the administration’s hardline immigration approach into 2025. Analysts note that rather than adjusting to legal or humanitarian norms, the administration has doubled down on enforcement. This posture—combining bureaucratic power, executive orders, and public rhetoric—illustrates how populist governance can reconfigure immigration law to reflect ideological goals rather than constitutional or treaty-based standards.<sup>79</sup>

## **7. Judicial Independence and the Administrative State**

The populist period also raised acute challenges to judicial independence and the broader rule of law. On one hand, U.S. courts have frequently acted as a check on populist overreach, preventing the consolidation of authoritarian rule. As one study notes, throughout Trump’s first term, “the courts... were bulwarks against his creeping authoritarianism,” reflecting a persistent American consensus on judicial independence.<sup>80</sup>

Federal judges—from district courts to appellate panels—repeatedly blocked executive actions, such as issuing nationwide injunctions against the travel ban or halting rollbacks of environmental protections. Courts also protected civil liberties, for instance by refusing to strip

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<sup>76</sup> *ibid.*

<sup>77</sup> Politico, ‘Homan Presses Undocumented Immigrants to Self-Deport, Threatening Prosecution’ (28 April 2025).

<sup>78</sup> The White House, ‘Promises Made, Promises Kept: Border Security Achieved in Fewer Than 100 Days’ (28 April 2025).

<sup>79</sup> Cox and Rodríguez (n 2).

<sup>80</sup> Center for American Progress, ‘How Democracies Defend Themselves Against Authoritarianism’ (April 2025).

Miranda rights from arrestees or stopping unlawful deportations. Even when rulings were unfavorable to civil rights advocates, the consistent issuance of independent decisions demonstrated that the judiciary remained beyond direct populist control.<sup>81</sup> However, scholars caution that these institutional norms are “undoubtedly fraying,” and that the resilience of democratic structures is “far from certain.”<sup>82</sup>

From a constitutional perspective, these developments underscore the importance of judicial independence as a cornerstone of the separation of powers. According to Article III of the U.S. Constitution, federal judges hold lifetime appointments to shield them from political influence.<sup>83</sup> Any attempt—rhetorical or procedural—to weaken this insulation poses risks not only to individual rights but to the principle of legality, which mandates that governmental power be exercised according to law, not partisan will.<sup>84</sup>

Nevertheless, populist actors have strained the system of checks and balances. President Trump openly defied judicial rulings and disparaged judges who ruled against him. Famously, he referred to a federal judge of Mexican descent as biased in 2017 and repeatedly denounced the courts as populated by “Obama judges” who lacked legitimacy.<sup>85</sup> While such attacks did not directly change the law, they undermined public confidence in impartial adjudication and fed into a broader populist narrative of institutional distrust.

More substantively, Trump sought to reshape the judiciary through constitutionally authorized judicial appointments, a power exercised by all U.S. presidents. What distinguished this process under populist governance, however, was not the act of appointment itself, but the surrounding political rhetoric and strategic framing of the judiciary as either aligned with or obstructive of the “will of the people.” Over the course of his first term, Trump appointed three justices to the Supreme Court—Gorsuch, Kavanaugh, and Barrett—and dozens of conservative judges on lower courts, reshaping the ideological composition of the federal judiciary and culminating in a 6–3 conservative majority on the high court.<sup>86</sup>

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<sup>81</sup> Jed Shugerman, ‘The Trump Judges and the Threat to Judicial Independence’ (2022) 39 *Yale Journal on Regulation* 213.

<sup>82</sup> Stephen M Griffin, *Broken Trust: Dysfunctional Government and Constitutional Reform* (University Press of Kansas 2022) 156–159.

<sup>83</sup> US Constitution art III.

<sup>84</sup> Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (6th edn, Wolters Kluwer 2019).

<sup>85</sup> Reuters, ‘These Judges Ruled Against Trump. Then Their Families Came Under Attack’ (2 May 2025).

<sup>86</sup> Neal Devins and Lawrence Baum, *The Company They Keep: How Partisan Divisions Came to the Supreme Court* (OUP 2019) 114–116.

These appointments laid the groundwork for pivotal rulings such as the affirmative action decision, *Trump v. United States*, and others that rolled back key aspects of post-2010 civil rights jurisprudence.<sup>87</sup> Critics argue that this long-term transformation aligns with a populist model of legal instrumentalism, where the law is used not to constrain power but to consolidate it.<sup>88</sup>

Another key dimension of populist governance is the health of the administrative state. Scholars of public administration have noted that Trump's approach involved "delegitimization, deconstruction, and control" of government agencies.<sup>89</sup> He appointed adversaries of regulatory missions to lead federal agencies, slashed budgets, and openly derided career civil servants as "bureaucrats" or members of the "deep state."

Many protections—covering the environment, labor rights, and consumer safety—were rolled back through executive orders and deregulatory procedures.<sup>90</sup> In practice, this eroded the federal government's ability to enforce basic rights. For example, the Civil Rights Division's anti-discrimination enforcement, labor inspection regimes, and environmental justice policies were all weakened.

Perhaps more troubling from a constitutional standpoint, the Trump administration emphasized loyalty to political patrons over professional expertise. Whistleblower protections were undermined, and senior officials were reportedly expected to pledge allegiance to the president.<sup>91</sup> These trends collectively signaled a politicization of the administrative apparatus, threatening the principle of neutral competence that undergirds the rule of law in administrative governance.<sup>92</sup>

When loyalty supplants legality, even courts that issue rulings against executive policies may find their decisions thwarted by a fragmented or uncooperative bureaucracy. This constitutes

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<sup>87</sup> Mark Tushnet, *Taking Back the Constitution: Activist Judges and the Next Age of American Law* (Yale University Press 2020) 71–84.

<sup>88</sup> Jack Goldsmith, *In Hoffa's Shadow: A Stepfather, a Disappearance in Detroit, and My Search for the Truth* (Farrar, Straus and Giroux 2019) 285–292.

<sup>89</sup> Donald Moynihan, 'Delegitimization, Deconstruction and Control: Undermining the Administrative State' (2022) *The ANNALS of the American Academy of Political and Social Science*.

<sup>90</sup> Mark Tushnet, *Taking Back the Constitution: Activist Judges and the Next Age of American Law* (Yale University Press 2020).

<sup>91</sup> Jack Goldsmith, *In Hoffa's Shadow: A Stepfather, a Disappearance in Detroit, and My Search for the Truth* (FSG 2019).

<sup>92</sup> Peter L Strauss, 'The Place of Agencies in Government: Separation of Powers and the Fourth Branch' (1984) 84(3) *Columbia Law Review* 573.

what legal theorists describe as "institutional erosion", in which the form of legality is preserved, but its substance is hollowed out.<sup>93</sup>

As Donald Moynihan observes, Trump took “three phenomena that undermine the U.S. administrative state” to their extreme: fostering suspicion of the public sector (“delegitimization”), hollowing out capacity (“deconstruction”), and demanding political loyalty (“control”).<sup>94</sup> Each of these actions impairs the impartial enforcement of law and weakens the structural foundations of democratic accountability.

In sum, the populist years have subjected American institutions to unprecedented stress. Courts and some executive branch entities have held firm—but not without strain. Populist leaders nominated ideologically aligned judges, disparaged adverse rulings, and sought legislative mechanisms to punish judicial independence. The justice system itself—including prosecutors, federal investigators, and the FBI—faced overt attempts at political subordination.

Meanwhile, Congress remained sharply polarized and often inactive, ceding significant discretionary power to the executive. Scholars warn that while constitutional safeguards have thus far prevented outright autocracy, their effectiveness depends entirely on the commitment of political actors to uphold them in practice.<sup>95</sup>

In 2024, Human Rights Watch warned that Trump’s re-election “raised serious concerns about the threats his second term would pose to a wide range of human rights and to the democratic institutions tasked with upholding them.”<sup>96</sup> As the second Trump administration intensifies its efforts, the independence of the judiciary and the integrity of law enforcement have become central to debates about the future of U.S. democracy.

## **8. Democratic Implications and Public Discourse**

The erosion of rights under populism carries deep democratic consequences. Majoritarian populism tends to elevate identity politics and scapegoating, which heightens polarization. In the U.S., the period studied saw bitter partisan divides over basic facts. Conspiracy theories (e.g. QAnon, “Stop the Steal”) gained ground, undermining public trust in elections.<sup>97</sup>

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<sup>93</sup> Stephen M Griffin, *Broken Trust: Dysfunctional Government and Constitutional Reform* (University Press of Kansas 2022).

<sup>94</sup> Moynihan (n 1).

<sup>95</sup> Neal Devins and Lawrence Baum, *The Company They Keep* (OUP 2019) 114–116.

<sup>96</sup> Human Rights Watch, ‘US: Second Trump Term a Threat to Rights in US, World’ (6 November 2024).

<sup>97</sup> Russell Muirhead and Nancy L. Rosenblum, *A Lot of People Are Saying: The New Conspiracism and the Assault on Democracy* (Princeton University Press, 2019), 45–67.

Politicians and media outlets on the populist right routinely labeled opponents as “traitors,” while populist commentators accused career civil servants or judges of being unpatriotic. This charged rhetoric erodes the social consensus that rights exist to protect even those we dislike. As HRW notes, populists have portrayed rights as protecting “suspects or asylum seekers... at the expense of the safety, welfare, or preferences of the majority.”<sup>98</sup> Such framing creates a climate where laws against discrimination or torture are seen not as safeguards, but as unfair advantages given to marginalized groups.

Public protests and responses have reflected this shift. The Black Lives Matter movement initially galvanized broad support for racial justice. However, populist leaders and media counter-movements (e.g. “Blue Lives Matter,” “All Lives Matter”) reframed the conversation in terms of law-and-order.<sup>99</sup> Similarly, pro-immigrant marches and refugee solidarity efforts often faced oppositional rallies demanding strong borders. Polling shows rising distrust of immigrants and Muslims between 2016 and 2025, trends that feed back into policy.<sup>100</sup> The upshot is that democratic discourse has become more tribal: compromise or dialogue across divides is rare.

Moreover, civic norms have frayed. The events of January 6, 2021 – when a mob attacked the U.S. Capitol – exemplify the breakdown of democratic discourse. The insurrection was fueled by populist falsehoods about the election,<sup>101</sup> and it generated no small degree of sympathy or denial among populist segments of the public. The attempts by some officials to overturn or contest the 2020 vote (through lawsuits, certification challenges, or pressure campaigns) illustrated how rule-of-law principles can be subverted by populist fantasies of a “rigged” system. Even after Biden’s inauguration, a significant minority of Republicans continued to question his legitimacy,<sup>102</sup> which bodes poorly for the acceptance of outcomes in any populist era.

These trends have been noted by observers concerned with democracy. A *Foreign Affairs* commentary warned that populist threats to democracy “start at the top”: attacks on

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<sup>98</sup> Human Rights Watch, *World Report 2020: United States*, <https://www.hrw.org/world-report/2020/country-chapters/united-states>.

<sup>99</sup> Rashawn Ray and Andre M. Perry, “Why We Need to Keep Talking About ‘All Lives Matter,’” *Brookings Institution*, July 2020, <https://www.brookings.edu/articles/why-we-need-to-keep-talking-about-all-lives-matter/>.

<sup>100</sup> Pew Research Center, “Americans Express Increasingly Warm Views of Religious Groups,” September 2022, <https://www.pewresearch.org/religion/2022/09/28/>.

<sup>101</sup> Dana Milbank, *The Destructionists: The Twenty-Five-Year Crack-Up of the Republican Party* (New York: Doubleday, 2022), 189–194.

<sup>102</sup> ABC News/Ipsos Poll, “Majority of Americans Say Biden Was Legitimately Elected,” January 2021.

independent institutions (courts, media, elections) and promotion of loyalty to a charismatic leader weaken the separation of powers.<sup>103</sup> In the U.S., while the judiciary has largely resisted, other pillars are weaker: public trust in Congress is below 20%, and trust in the press and courts has hit historic lows.<sup>104</sup> Meanwhile, civil society has become a battleground: human rights NGOs (like the ACLU, Human Rights Watch, Amnesty) have been vilified by some populists as “leftist activists,” even as they document rights abuses. This delegitimization of rights advocates parallels the undermining of the administrative state described above.

Despite these challenges, many Americans remain committed to rights-based governance. Polls indicate that a large majority still support freedom of the press and equality under law in principle, even if they disagree on policies. Elections in 2022 and 2024 saw voters in some states enact ballot measures to enshrine abortion rights or reject anti-protest laws, indicating a resilience of democratic impulse.<sup>105</sup> Yet, as HRW’s January 2025 report highlights, the populist narrative now centers many critical issues (immigration, voting, LGBTQ+ rights) in terms of “threats” rather than rights.<sup>106</sup> The incoming administration’s policies (or the threat thereof) must be understood as not just policy differences but as reflections of a deeper contest over what democratic government stands for.

In sum, the period from 2016 to 2025 in the United States has seen substantive backsliding in human rights protections under the banner of populism. Freedoms of speech and assembly have been curtailed through lawsuits and new laws; minority and asylum rights have been rolled back via legislation and executive policy; and checks on power have been weakened by attacks on courts and the civil service. These shifts are not isolated events but part of a pattern: populist discourse privileges the “general will” of a favored group while presenting checks on power and protections for others as impediments. As one scholar phrased it, when populists “deconstruct” the administrative state and “delegitimize” institutions, they disrupt the conditions in which rights can be meaningfully enforced.<sup>107</sup>

Looking forward, the trajectory is uncertain. By 2025, some populist changes were partly reversed (e.g. MPP ended, Title 42 lifted), but a second Trump term – as presaged by many

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<sup>103</sup> Yascha Mounk, “The Dictator’s Learning Curve,” *Foreign Affairs*, March/April 2021.

<sup>104</sup> Gallup, “Confidence in U.S. Institutions,” 2023, <https://news.gallup.com/poll/1597/confidence-institutions.aspx>.

<sup>105</sup> Ballotpedia, “2022 and 2024 State Ballot Measures on Abortion and Protest Rights,” <https://ballotpedia.org>.

<sup>106</sup> Human Rights Watch, *World Report 2025: United States*, January 2025.

<sup>107</sup> Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018), 136–140.

analysts and the HRW World Report – threatens a return to even harsher policies.<sup>108</sup> Many legal battles continue (on immigration, voting, schooling). For human rights advocates, the challenge is twofold: to defend the remaining legal frameworks (through courts and public pressure) and to rebuild public consensus in favor of those rights. The U.S. experience in these years shows how quickly norms can be eroded, and how difficult it is to restore them once broken. It also underscores that rights – once deemed settled – require constant vigilance, especially when they become politicized in populist rhetoric.

## **9. Conclusion**

This study has explored how the rise of populism in the United States from 2016 to 2025 has directly contributed to the erosion of human rights protections. Through critical legal analysis and an institutional review of political practices, it has shown that populist movements—driven by exclusionary nationalism, anti-elitist narratives, and identity-based polarization—have systematically undermined core democratic norms.

Institutions once considered resilient—such as the judiciary, the administrative state, and the press—have endured significant strain. The strategic use of executive orders, restrictive immigration measures, and anti-protest laws illustrates how populist actors can manipulate legality to entrench illiberal agendas, not merely bypass the law but weaponize it.

These findings highlight the pressing need to reinforce institutional safeguards, uphold constitutional norms, and cultivate civic engagement in defending human rights. The U.S. experience offers a cautionary reminder: even established democracies can backslide when constitutional checks are eroded by populist dominance. Future research should closely examine how courts, legislatures, and civil society respond to ongoing legal restructuring under populist leadership, with particular attention to the shifting balance between executive discretion and rights protection. In an age of resurgent populism, legal resilience may prove the final frontier for safeguarding democratic freedoms.

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<sup>108</sup> HRW, *World Report 2025*.

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