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# U.S. Settler Colonialism, White Supremacy, and the Racially Disparate Impacts of COVID-19

Monika Batra Kashyap\*

*This Essay contextualizes the racially disproportionate impacts of COVID-19 in the United States within a framework of settler colonialism in order to broaden the understanding of how structural inequality is produced, imposed, and maintained. A settler colonialism framework recognizes that the United States is a present-day settler colonial society whose laws, institutions and systems of governance continue to reenact the three processes upon which the United States was built—Indigenous elimination, anti-Black racism, and immigrant exploitation. This Essay connects these foundational processes—and their underlying White supremacist logics—to the disparate health impacts of COVID-19 on Indigenous, Black, and immigrant of color communities in the United States. By offering a framework that uncovers the root causes of ongoing patterns of systemic oppression, this Essay hopes to inspire reform efforts that seek to alter such patterns by advancing reform efforts that are grounded in truth, justice, and reconciliation.*

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## INTRODUCTION

The United States must be perceived and analyzed fundamentally as a settler colonial society created by settlers who arrived with a presumption of sovereign entitlement and an unshakeable belief in their right to establish a state over which they could exercise permanent and exclusive control.<sup>1</sup> This “unshakeable belief” was bolstered and supported by White supremacist logics in which European White men were understood as superior to all other races and thus, by definition, had a right to possess and control their land and labor.<sup>2</sup> Unlike in “classic colonialism” or “franchise colonialism” where the aim was to extract resources but where the colonists did not intend to settle permanently, U.S. settlers intended to permanently settle and form new ethnic and religious sovereign communities on the newly acquired land.<sup>3</sup> In order to do so, settlers first removed, dominated, destroyed, and replaced Indigenous populations; the settlers then made the invaded lands profitable by importing enslaved and exploitable labor.<sup>4</sup>

A settler colonialism framework recognizes that the United States is a present-day settler colonial society whose laws, institutions, and systems of governance continue to enact an ongoing “structure of invasion” that persists to this day.<sup>5</sup> Scholars across multiple disciplines have turned towards using a settler colonialism framework in their analyses to broaden understandings of how systems of subordination are structured in the United States.<sup>6</sup> A framework of settler colonialism understands that the three foundational processes upon which the United States was built—Indigenous elimination, anti-Black racism, and

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1. See Natsu Taylor Saito, *Tales of Color and Colonialism: Racial Realism and Settler Colonial Theory*, 10 FLA. A&M U. L. REV. 1 (2014) (arguing that the United States must be analyzed as a settler colonial society in order to accurately understand the structural dynamics of race and racism in America).

2. Shannon Speed, *The Persistence of White Supremacy: Indigenous Women Migrants and the Structures of Settler Capitalism*, 122 AM. ANTHROPOLOGY 77 (2020) (noting that the racial logics underpinning U.S. settler colonialism’s processes of Indigenous dispossession, slavery, and immigrant exploitation were fundamentally premised on White supremacy).

3. JÜRGEN OSTERHAMMEL, COLONIALISM: A THEORETICAL OVERVIEW 11, 15 (2005).

4. Saito, *supra* note 1, at 7.

5. Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RES. 388, 390 (2006) (“Settler colonizers come to stay: invasion is a structure not an event.”); LORENZO VERACINI, *THE SETTLER COLONIAL PRESENT* 9 (2015) (“[S]ettler colonialism forever proclaims its passing, but it never goes away.”).

6. See, e.g., Saito, *supra* note 1; Evelyn Nanako Glenn, *Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation*, 1 SOC. RACE & ETHNICITY 52 (2015) (using a settler colonialism framework to explain the structural dynamics of race and gender formation in the United States); KELLY LYTTLE HERNÁNDEZ, *CITY OF INMATES: CONQUEST, REBELLION, AND THE RISE OF HUMAN CAGING IN LOS ANGELES, 1771– 1965* (2017) (using a settler colonialism framework to explain the rise of mass incarceration in the United States); Speed, *supra* note 2 (using a settler colonialism framework to explore how White supremacy is structured into U.S. institutions and everyday social relations).

immigrant exploitation—are ongoing processes that continue to shape present-day systemic inequities.<sup>7</sup> In other words, a settler colonialism framework acknowledges the endurance of three ongoing “strategies of colonization” that continue to maintain settler colonialism’s structure of invasion: 1) strategies of elimination targeting Indigenous peoples; 2) strategies of subjugation targeting Black people (anti-Black racism); and 3) strategies of exploitation and exclusion targeting immigrants of color.<sup>8</sup>

Moreover, a settler colonialism framework acknowledges that the ongoing strategies of colonization continue to be fueled, enabled and bolstered by an elaborate set of racial logics that Andrea Smith describes as the “logics of White supremacy.”<sup>9</sup> Smith argues that White supremacy in the U.S. context is enacted through three primary interrelated logics: 1) the view of Indigenous people as necessarily disappearing;<sup>10</sup> 2) the view of Black people as enslavable;<sup>11</sup> and 3) the view of immigrants of color as inferior and permanent “threats to the empire” who must either be exploited or excluded.<sup>12</sup> While the manifestations of these White supremacist logics may change over time, “they remain as persistently present today as they were five hundred years ago.”<sup>13</sup>

This Essay will connect the persistent strategies, logics, and identities created by settler colonialism to the disparate health impacts of COVID-19 in Indigenous, Black, and immigrant of color communities in the United States. By offering a framework that uncovers the root causes of ongoing patterns of systemic oppression, this Essay hopes to inspire reform efforts that seek to alter such patterns by advancing reform efforts that are grounded in truth, justice, and reconciliation.

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7. See generally Saito, *supra* note 1; Glenn, *supra* note 6.

8. See Saito, *supra* note 1, at 47-64 (discussing the three specific “strategies of colonialization” that have been used to institutionalize colonial relations in the United States).

9. Andrea Smith, *Indigeneity, Settler Colonialism, White Supremacy*, in RACIAL FORMATION IN THE TWENTY-FIRST CENTURY 66-90 (2012) (setting forth the three “logics of white supremacy” that enable settler colonialism); see also Speed *supra* note 2, at 78 (noting that the racial logics that underpin Indigenous dispossession, slavery, and “successive waves of labor exploitation” are fundamentally premised on White supremacy).

10. Smith, *supra* note 9, at 67 (explaining that this logic holds that Indigenous peoples must always be disappearing in order to enable non-Indigenous peoples’ “rightful” claim to Indigenous land).

11. *Id.* (noting that while the forms of slavery may change over time—from explicit slavery to sharecropping to systems that regard Black people as permanent property of the state such as mass incarceration—the logic itself has remained consistent).

12. *Id.* (noting that this logic is evident in the anti-immigration movements within the U.S. that target immigrants of color as foreign threats no matter how long they have resided in the U.S., particularly during war time); see also Speed, *supra* note 2, at 78 (noting that this logic currently constructs immigrants as criminals, terrorists, rapists, “bad hombres,” and bad parents and underpins policies of racialized exclusion such as the Muslim bans, family separation, and pursuit of the border wall).

13. Speed, *supra* note 2, at 77-78 (discussing the persistence of the White supremacist logics underpinning settler colonialism and arguing that “they remain as persistently present today as they were five hundred years ago.”).

## I.

STRATEGIES OF INDIGENOUS ELIMINATION: THE IMPACTS OF COVID-19 ON  
INDIGENOUS COMMUNITIES

Settler colonialism has eliminated Indigenous peoples in the United States through a host of strategies meant to obtain and maintain territorial control of the settler state.<sup>14</sup> As historian Patrick Wolfe explains, settler colonialism “requires the elimination of the owners of that territory, but not in any particular way.”<sup>15</sup> Elimination strategies employed by settler colonialism include genocidal violence, biological warfare through the introduction of infectious diseases, forced removal and relocation, confinement to reservations, child abduction, religious conversion, forced resocialization in residential boarding schools, and intricate biological and cultural assimilation programs that strip Indigenous people of their culture and replace it with settler culture.<sup>16</sup>

White supremacist logics support the idea that Indigenous people are “nonhuman wild savages unsuited for civilization” who must therefore be eliminated, rendered expendable, or made invisible in order to justify dispossessing them of their lands.<sup>17</sup> These logics continue to underpin the removal of Indigenous people from settler spaces in both literal and conceptual ways.<sup>18</sup> For example, despite the fact that Indigenous peoples are killed in police encounters at a higher rate than any other racial or ethnic group, these deaths rarely gain the national spotlight, and are instead rendered invisible.<sup>19</sup> Moreover, contemporary popular narratives that designate European settlers as the “founding fathers” and refer to the United States as a “nation of immigrants” erase the existence of Indigenous peoples and render them invisible.<sup>20</sup>

Another significant way in which settler colonialism’s ongoing strategy of Indigenous elimination manifests today is through devastating health disparities in Indigenous communities, which result in higher death rates for Indigenous peoples.<sup>21</sup> Important medical research implicates settler colonialism in

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14. Saito *supra* note 1, at 48-53.

15. Wolfe, *supra* note 5, at 388, 402.

16. *Id.* at 388; *see also* Glenn, *supra* note 6, at 57-58.

17. Smith, *supra* note 9, at 69; Speed, *supra* note 2, at 77; *see also* Eric Kades, *History and Interpretation of the Great Case of Johnson v. M’Intosh*, 19 L. & HIST. REV. 67, 72 (2001) (describing how early settlers, in justifying taking land from indigenous people, analogized Indians to “wild beasts in the forest” who “range and wander up and down the country without any law or government.”).

18. *See* LORENZO VERACINI, *SETTLER COLONIALISM, A THEORETICAL OVERVIEW* 35-50 (2010).

19. *See* Elise Hansen, *The Forgotten Minority in Police Shootings*, CNN (Nov. 13, 2017), <https://www.cnn.com/2017/11/10/us/native-lives-matter/index.html> [<https://perma.cc/HE8C-NEX9>] (“Native Americans are killed in police encounters at a higher rate than any other racial or ethnic group, according to data from the Centers for Disease Control and Prevention. Yet rarely do these deaths gain the national spotlight.”).

20. *See* Leti Volpp, *The Indigenous as Alien*, 5 U.C. IRVINE L. REV. 289, 323-34 (2015).

21. *See* David K. Epsy et al., *Leading Causes of Death and All-Cause Mortality in American Indians and Alaska Natives*, 104 AM. J. PUB. HEALTH 303 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4035872/pdf/AJPH.2013.301798.pdf>

contributing to poor health outcomes and high mortality rates in Indigenous communities in the United States.<sup>22</sup> This research highlights the devastating health impacts resulting from the brutal dispossession of traditional lands, the forced relocation to unproductive and polluted lands contaminated by heavy metals and industrial waste, the introduction of infectious settler diseases, and the introduction of harmful substances such as tobacco and alcohol.<sup>23</sup> This research also affirms a report previously published by the World Health Organization finding that Indigenous health is significantly affected by factors related to loss of language and connection to the land, environmental deprivation, and spiritual, emotional, and mental disconnectedness resulting from the loss of Indigenous traditions, culture, and identity.<sup>24</sup> The research concludes that these “oppressive factors” caused by colonialism perpetuate “severe inequalities in Indigenous health status, unsatisfactory disease and vital statistics, impaired emotional and social wellbeing, and poor prospects for future generations.”<sup>25</sup>

The devastating health impacts resulting from settler colonialism’s strategy of Indigenous elimination have led to disproportionately high rates of pre-existing health conditions such as asthma, diabetes, hypertension and heart

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[<https://perma.cc/J2HB-SY43>] (finding that death rates of Indigenous peoples in the United States are nearly 50% greater than rates in Whites); see also U.S. COMM’N ON CIVIL RIGHTS, A QUIET CRISIS: FEDERAL FUNDING AND UNMET NEEDS IN INDIAN COUNTRY (2003), <https://www.usccr.gov/pubs/na0703/na0204.pdf> [<https://perma.cc/WMS3-CDR4>] (finding that Indigenous peoples living the U.S. are 670 percent more likely to die from alcoholism, 650 percent more likely to die from tuberculosis, 318 percent more likely to die from diabetes, and 204 percent more likely to suffer accidental death when compared with other groups).

22. See Michael Gracey & Malcolm King, *Indigenous Health Part 1: Determinants and Disease Patterns*, 374 LANCET 65, 65 (2009) (“We need to understand how colonization affected the lives of Indigenous peoples to understand their health today.”) [hereinafter *Indigenous Health Part 1*]; Michael Gracey et al., *Indigenous Health Part 2: The Underlying Causes of the Health Gap*, 374 LANCET 76 (2009) (arguing that Indigenous-specific factors related to colonization such as loss of language and culture and disconnection from the land lead to the health inequalities of Indigenous peoples) [hereinafter *Indigenous Health Part 2*]; see also Epsey et al., *supra* note 21, at 303 (noting that “alarming health disparities” represent a “negative manifestation” of a “long legacy of injustice and discrimination” endured by Indigenous peoples in the United States).

23. *Indigenous Health Part 1*, *supra* note 22, at 66, 73; see also Epsey et al., *supra* note 21, at 307 (noting that abuse of alcohol and the high prevalence of smoking in the Indigenous community in the United States contributes to high rates of Indigenous death from chronic liver disease and lung cancer).

24. See generally *Indigenous Health Part 2*, *supra* note 22; see also Clive Nettleton, Dora A. Napolitano & Carolyn Stephens, *An Overview of Current Knowledge of the Social Determinants of Indigenous Health: Symposium on the Social Determinants of Indigenous Health*, WORLD HEALTH ORG. (2007); Epsey et al., *supra* note 21, at 307 (noting that the cultural devastation most Indigenous communities have experienced in the past 150 years has resulted in understandably high homicide and suicide rates).

25. *Indigenous Health Part 1*, *supra* note 22, at 66.

disease<sup>26</sup> that put Indigenous peoples at a higher risk of death by COVID-19.<sup>27</sup> And historical and structural inequities in federal funding—such as lack of support for municipal plumbing systems—have further exacerbated the health disparities that put Indigenous peoples at higher-risk in the COVID-19 crisis.<sup>28</sup> For example, 40 percent of Navajo households do not have access to running water, making it difficult to comply with handwashing recommendations.<sup>29</sup> As a result, Indigenous communities who were previously decimated by the imposition of settler diseases such as measles, whooping cough, small-pox, influenza, and tuberculosis continue to be eliminated by health disparities that make them disproportionately vulnerable to a new disease: COVID-19.<sup>30</sup> Today, Indigenous peoples in the United States are dying 3.2 times the rate of White people as a result of COVID-19.<sup>31</sup>

## II.

### STRATEGIES OF SUBJUGATION AND ANTI-BLACK RACISM: THE IMPACTS OF COVID-19 ON BLACK COMMUNITIES

The strategies deployed by settler colonialism to subjugate Black people in the United States have evolved over time based on the shift in settler policy from the initial drive to create an ever-expanding slave labor force to generate profits—to the perception of Black people as a “surplus” population that need to be contained and controlled.<sup>32</sup> These strategies of subjugation and anti-Black racism

26. See *Profile: American Indian/Alaska Native*, OFF. OF MINORITY HEALTH, U.S. DEP'T HEALTH & HUM. SERVS. (2018), <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=62> [<https://perma.cc/PF8J-7J5V>] (noting that among the leading diseases and causes of death for Indigenous peoples in the U.S. are heart disease, diabetes, and stroke).

27. *Nine Ways Indigenous Rights Are at Risk during the COVID-19 Crisis*, CULTURAL SURVIVOR (May 20, 2020), [www.culturalsurvival.org/news/9-ways-indigenous-rights-are-risk-during-covid-19-crisis](http://www.culturalsurvival.org/news/9-ways-indigenous-rights-are-risk-during-covid-19-crisis) [<https://perma.cc/PUX8-D2L5>].

28. Randall Akee, *How COVID-19 Is Impacting Indigenous People in the U.S.*, PBS NEWS HOUR (May 13, 2020), [www.pbs.org/newshour/nation/how-covid-19-is-impacting-indigenous-peoples-in-the-u-s](http://www.pbs.org/newshour/nation/how-covid-19-is-impacting-indigenous-peoples-in-the-u-s) [<https://perma.cc/5F2Y-DNH7>].

29. DigDeep and US Water Alliance, *Closing the Water Access Gap in the United States: A National Action Plan* (2020), [https://www.closethewatergap.org/wp-content/uploads/2019/11/Dig-Deep\\_Closing-the-Water-Access-Gap-in-the-United-States\\_EXECUTIVE-SUMMARY-1.pdf](https://www.closethewatergap.org/wp-content/uploads/2019/11/Dig-Deep_Closing-the-Water-Access-Gap-in-the-United-States_EXECUTIVE-SUMMARY-1.pdf) [<https://perma.cc/D5TC-MSBK>].

30. See John Blake, *Native Americans Were Already Decimated By a Virus: They're Scared it Could Happen Again*, CNN (April 14, 2020), <https://www.cnn.com/2020/04/14/us/native-americans-coronavirus-blake/index.html> [<https://perma.cc/L4J9-PZAN>].

31. APM Research Lab Staff, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM RESEARCH LAB (updated November 12, 2020), [www.apmresearchlab.org/covid/deaths-by-race](http://www.apmresearchlab.org/covid/deaths-by-race) [<https://perma.cc/W38Q-8JKM>] [hereinafter APM RESEARCH LAB]. The APM researchers note that the data relied upon related to the total number of Indigenous deaths “is a known under-count” given the fact that “numerous states report Indigenous deaths in the Other category.”)

32. Saito, *supra* note 1 at 52-58; see also PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 6 (2017) (“Throughout the existence of America, there have always been legal ways to keep Black people down. Slavery bled into the Old Jim Crow, the Old Jim Crow bled into the New Jim Crow.”) [hereinafter BUTLER]; MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE*

are reinforced by White supremacist logics in which Black people are rendered inherently enslavable by the settler colonial state.<sup>33</sup> Under these logics, Black people are viewed as “barbaric wild animals with savage natures” as evidenced not only by colonial slave codes,<sup>34</sup> but also by explicit associations made between Black men and primates by police officers—as well as by frequent caricatures of President Barack Obama and Michelle Obama as apes.<sup>35</sup> These White supremacist logics not only enabled the system of slavery, but they continue to enable systems that treat Black people as the permanent property of the state such as discriminatory police violence and mass incarceration.<sup>36</sup>

Settler colonialism’s strategies of subjugation and anti-Black racism include the trans-Atlantic slave trade in which Africans were captured, stolen, and torn from their lands and culture and forced to extract profits for settlers,<sup>37</sup> as well as slave codes that instituted perpetual hereditary slavery, denied all basic political rights to persons of African descent, forbade their ownership of property, prohibited their education, limited their freedom of movement, and proscribed any means of self-defense.<sup>38</sup> These slave codes eventually became “Black codes,” which criminalized activities such as idleness, vagrancy, and “disrespect” of White people in order to entrap newly emancipated and freed Blacks into a system of convict labor that served essentially the same purposes as chattel slavery.<sup>39</sup> Legalized discrimination and segregation through Jim Crow laws further served to keep Black people as the “bondsmen of subjugation and exploitation.”<sup>40</sup> Anti-Black racism has also been further perpetuated by discriminatory law enforcement policies and practices such as stop and frisk and

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AGE OF COLORBLINDNESS (2010) (describing the system of mass incarceration of Black people in the United States as the “New Jim Crow”) [hereinafter ALEXANDER].

33. Smith, *supra* note 9 at 68.

34. WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO: 1550-1812*, 109-10 (1968) (noting that South Carolina’s slave code declared enslaved Africans to be “of barbarous, wild, savage natures” and therefore “wholly unqualified” to be governed). The South Carolina slave code was a model for other colonial state slave codes. *Id.*

35. BUTLER, *supra* note 32 at 23.

36. *Id.*; see also Smith, *supra* note 9 at 68.

37. For a discussion of the African slave trade as part of U.S. settler colonialism, see HOWARD ZINN, *A PEOPLE’S HISTORY OF THE UNITED STATES 1492–PRESENT* 25–26 (2003).

38. Saito, *supra* note 1 at 41; see also Carlton Waterhouse, *Avoiding Another Step in a Series of Unfortunate Legal Events: A Consideration of Black Life Under American Law from 1619 to 1972 and a Challenge to Prevailing Notions of Legally Based Reparations*, 26 B.C. THIRD WORLD L.J. 207, 230-46 (2006).

39. Saito, *supra* note 1 at 41-42; see also THEODORE BRANTNER WILSON, *THE BLACK CODES OF THE SOUTH* 41 (1965) (noting that a combination of the mass of “anti-free-Negro” legislation and extra-legal customs and practices entrapped the newly emancipated and freed Blacks in the same position they were in before the war); *Slaughter-House Cases*, 83 U.S. 36, 70-71 (1872) (noting that Black codes had been passed so that “the condition of the slave race would . . . be almost as bad as it was before.”).

40. See HERBERT HILL, *BLACK LABOR AND THE AMERICAN LEGAL SYSTEM: RACE, WORK, AND THE LAW* 14 (1985) (noting that, among other things, the proliferation of the Black Codes and Jim Crow laws kept newly freed slaves as “the bondsmen of subjugation and exploitation.”).

the war on drugs resulting in the mass incarceration of Black people.<sup>41</sup> Moreover, anti-Black redlining practices and racially restrictive covenants<sup>42</sup> have resulted in racially segregated neighborhoods in which Black people are over-policed and lack access to healthy food options, healthcare resources, green spaces, clean air,<sup>43</sup> clean water, recreational facilities, and safe schools.<sup>44</sup>

As a result of these strategies of subjugation and anti-Black racism, Black people in the United States have a shorter overall life expectancy than White people and are nearly twice as likely to die from heart disease, stroke, and diabetes.<sup>45</sup> Public health law scholar Dayna Bowen Matthew highlights the correlative relationship between residential segregation and racial health disparities in Black communities.<sup>46</sup> Matthew explains that residential segregation not only increases exposure to health hazards such as mold, asbestos, and air pollution, but also decreases access to higher-quality healthcare.<sup>47</sup> As a result, Black people living in segregated neighborhoods experience higher infant mortality rates, lower birth weights, shorter life expectancy, poorer mental health, more coronary heart disease, higher rates of asthma,<sup>48</sup> and greater prevalence of infectious diseases such as tuberculosis.<sup>49</sup>

Matthew also connects racially disparate incarceration rates to racial health disparities.<sup>50</sup> She explains that incarceration not only leads to heightened risk for transmission of infectious diseases and mental illness among the incarcerated, but it also affects the mental and physical health of families left behind who

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41. See generally BUTLER, *supra* note 32; see also ALEXANDER, *supra* note 32 at 5-6 (discussing the devastating impact of the War on Drugs on Black families and communities).

42. See Rachel D. Godsil, *Viewing the Cathedral from Behind the Color Line: Property Rules, Liability Rules, and Environmental Racism*, 53 EMORY L.J. 1807, 1838-1851(2004) (discussing racially restrictive covenants and federal redlining programs that established and perpetuated racial residential segregation starting in the early 1900's); see also DOUGLAS MASSEY ET AL., *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 36 (1993).

43. See LUKE W. COLE & SHEILA R. FOSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* 167-84 (2001) (listing studies that document the disproportionate burden of pollution upon Black communities ranging from toxic waste dumps, air pollution, lead, and pesticides).

44. See generally BUTLER, *supra* note 32.

45. David Williams, *Miles to Go Before We Sleep: Racial Inequities in Health*, 53 J. HEALTH & SOC. BEHAV. 279, 280 (2012) ("Racial disparities in health are a stark symbol of the historic and ongoing racial inequalities in society.").

46. See Dayna Bowen Matthew, *Structural Inequality: The Real COVID-19 Threat to America's Health and How Strengthening the Affordable Care Act Can Help*, 108 GEO. L.J. 1679, 1697-1703 (2020) [hereinafter Matthew].

47. *Id.* at 1699.

48. See Elizabeth R. Woods et al., *Community Asthma Initiative to Improve Health Outcomes and Reduce Disparities Among Children with Asthma*, 65 MORBIDITY & MORTALITY WKLY. REP. 11S, 12S (2016), [https://www.cdc.gov/mmwr/volumes/65/su/su6501a4.htm?s\\_cid=su6501a4\\_w](https://www.cdc.gov/mmwr/volumes/65/su/su6501a4.htm?s_cid=su6501a4_w) [<https://perma.cc/SVY6-7UZR>] (noting that Black children suffer from asthma at disproportionately high rates from greater exposures to mold, asbestos, lead and air pollution in racially segregated neighborhoods).

49. Matthew, *supra* note 46 at 1699.

50. *Id.* at 1703-05.

experience increased incidence of mental illness such as depression and anxiety disorders.<sup>51</sup> In fact, emerging public health research shows that the stress caused by experiencing discrimination and racism can—in and of itself—lead to an increased risk of heart attacks, neurodegenerative diseases, and metastatic cancer in Black people.<sup>52</sup>

Moreover, public health scholar Stephen Thomas argues that the unequal treatment of Black people by the health care delivery system in the United States represents a “contemporary vestige” of the same racism and discrimination that fueled slavery and Jim Crow.<sup>53</sup> A landmark study entitled *Unequal Treatment* published by the National Academy of Medicine in 2003 shows that Black people are less likely to be given appropriate cardiac medications or to undergo bypass surgery, and are less likely to receive kidney dialysis or transplants compared to White people.<sup>54</sup>

Accordingly, as a result of settler colonialism’s strategies of subjugation and anti-Black racism, Black people in the United States are more likely than White people to develop medical conditions that make them more susceptible to death by COVID-19 such as asthma, hypertension, obesity, diabetes, and kidney failure.<sup>55</sup> As a result of settler colonialism’s strategy of residential segregation and the resultant increased exposure to pollution, Black people are more vulnerable to death by COVID-19.<sup>56</sup> Furthermore, because of settler colonialism’s strategy of mass incarceration, Black prisoners are doubly at risk of death by COVID-19.<sup>57</sup> Consequently, Black people in the United States are dying at 3 times the rate of White people as a result of COVID-19.<sup>58</sup>

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51. *Id.* at 1703-04.

52. See David Williams et al., *Discrimination and Racial Disparities in Health: Evidence and Needed Research*, 32 J. BEHAV. MED.20 (2009) (reviewing emerging public health research evidencing that discrimination and racism can lead to adverse changes in health); see also April Thames et al., *Experienced Discrimination and Racial Differences in Leukocyte Gene Expression*, 106 PSYCHONEUROENDOCRINOLOGY 277 (August 2019) (finding that racial discrimination triggers an inflammatory response among African Americans at the cellular level, leading to an increased risk of chronic inflammation which can promote heart attacks, neurodegenerative diseases, and metastatic cancer).

53. Stephen Thomas et al., *The Burdens of Race and History on Black People’s Health 400 Years After Jamestown*, 109 AM. J. OF PUB. HEALTH 1346-1347 (2019).

54. BRIAN SMEDLEY ET AL., *UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE* (2003); see also DAYNA BOWEN MATTHEW, *JUST MEDICINE: A CURE FOR RACIAL INEQUALITY IN AMERICAN HEALTH CARE* 1, 10 (2015).

55. Matthew, *supra* note 46 at 1685.

56. See Braun Wu et al., *Air Pollution and COVID-19 Mortality in the United States: Strengths and Limitations of an Ecological Regression Analysis*, SCIENCE ADVANCES (2020) (finding that people with COVID-19 who live in U.S. regions with high levels of air pollution are more likely to die from the disease than people who live in less polluted areas).

57. *Racial Disparities in Jails and Prisons: COVID-19’s Impact on the Black Community*, AM. C.L. UNION W. VA. (Jun. 12, 2020, 1:00 PM), <https://www.acluww.org/en/news/racial-disparities-jails-and-prisons-covid-19s-impact-black-community> [<https://perma.cc/4XHE-BGSF>] (noting that “by May 14, Black inmates encompassed 60 percent of COVID-19 deaths in New York’s prison system, even though they were around 50 percent of the state’s incarcerated population”).

58. APM RESEARCH LAB, *supra* note 31.

## III.

## STRATEGIES OF IMMIGRANT EXPLOITATION AND EXCLUSION: THE IMPACTS OF COVID-19 ON IMMIGRANT OF COLOR COMMUNITIES

Settler colonialism has also subjected immigrants of color in the United States to strategies of immigrant exploitation and exclusion.<sup>59</sup> These strategies include the enforcement of laws and policies that facilitate the importation of exploitable immigrant labor in order to further settler economic expansion—only to be followed by exclusionary policies in response to economic downturns or times of war.<sup>60</sup> For example, in the nineteenth and twentieth centuries, the United States recruited workers from China, Japan, and Mexico to work for little money in construction, laundry services, and agricultural industries.<sup>61</sup> Such targeted recruitment was soon followed by the subsequent “degradation of the recruited people” through race-based exclusionary immigration laws aimed at the Chinese, race-based internment policies aimed at the Japanese, and through racist mass deportation programs aimed at Mexicans.<sup>62</sup>

These strategies are reinforced by White supremacist logics in which immigrants of color are deemed inferior and permanent “threats to the empire,” whose only value is to work in difficult and dangerous conditions and who must either be exploited or excluded.<sup>63</sup> Historian Erika Lee explains that these logics are rooted in the anti-Asian framework that emerged during the Chinese exclusion era in which immigrants were perceived to be racially inferior, culturally unassimilable, and a threat to the Anglo-Saxon nation.<sup>64</sup> Lee argues that these logics have been repeatedly recycled and refashioned to apply to succeeding groups of immigrants—including Mexican and other Asian immigrants.<sup>65</sup>

Today, settler colonialism’s strategies of exploitation and exclusion—and their underlying White supremacist logics—continue to impact immigrants of color, particularly those who are undocumented. For example, U.S. policies restricting “legal” immigration to numbers far below the perceived labor needs of the agricultural and service sectors have resulted in high numbers of

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59. Saito, *supra* note 1, at 58-64.

60. *Id.* at 59.

61. See Gerald P. López, *Don't We Like Them Illegal?*, 45 U.C. DAVIS L. REV. 1711, 1742-73 (2012).

62. *Id.* (discussing the Chinese Exclusion Act of 1882, the policies of Japanese internment in the 1940s, and the 1954 blatantly racist mass deportation program officially named “Operation Wetback” in which over one million Mexicans were deported).

63. Smith, *supra* note 9, at 69.

64. Erika Lee, *The Chinese Exclusion Example: Race, Immigration, and American Gatekeeping, 1882- 1924*, 21 J. AM. ETHNIC HIST. 36 (2002) (arguing that the Chinese exclusion era established a framework for further racializing other threatening, excludable, and undesirable immigrants – including immigrants from Mexico and other parts of Asia).

65. *Id.* at 43-44; see also Sherally Munshi, *Immigration, Imperialism, and the Legacies of Indian Exclusion*, 28 YALE L.J. & HUMAN. 51, 70-72 (2015) (discussing legislative attempts to pass a “Hindu Exclusion Act” to exclude immigrants from India, which was modeled after the Chinese Exclusion Act).

undocumented immigrants in highly exploitative labor industries—and often subjected to dangerous and unhealthy working conditions.<sup>66</sup> At the same time, these immigrants are prevented from receiving the full benefits of citizenship such as minimum wage, health insurance, paid sick leave, childcare, or unemployment insurance. These strategies of exploitation and exclusion that are imposed upon undocumented immigrants reinforce their “perpetual foreignness” and normalize the idea that they may be “disappeared by governmental authorities at any time.”<sup>67</sup>

As a result of their overrepresentation in exploitative labor industries with dangerous working conditions, immigrants of color are also at a particularly heightened risk of contracting COVID-19. For example, more than one-half of frontline meatpacking workers in the United States are immigrants.<sup>68</sup> In April 2020, the Center for Disease Control and Prevention (CDC) issued a report finding a heightened risk of COVID-19 infection at meatpacking plants due to difficulties with workplace physical distancing and adhering to heightened hygiene guidance.<sup>69</sup> Immigrants are also overrepresented in the nursing home industry where they work as health aides, personal care aides, and nursing assistants.<sup>70</sup> Nursing homes have served as the consistent epicenters of fatal COVID-19 outbreaks, with staff members at an especially high risk of contracting COVID-19 due to their direct care roles, poor infection protocols and protective gear shortages.<sup>71</sup> As of September 2020, forty percent of all COVID-related deaths were linked to nursing homes.<sup>72</sup>

And yet despite their overrepresentation in exploitable labor industries with heightened risk of COVID-19 infection, undocumented immigrants of color are excluded from federal disaster assistance provided by the Coronavirus Aid,

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66. See AVIVA CHOMSKY, UNDOCUMENTED: HOW IMMIGRATION BECAME ILLEGAL 63 (2014); see also Jens Manuel Krogstad et al., *A Majority of Americans Say Immigrants Mostly Fill Jobs U.S. Citizens Do Not Want*, PEW RES. CTR. (Jun. 10, 2020), [www.pewresearch.org/fact-tank/2020/06/10/a-majority-of-americans-say-immigrants-mostly-fill-jobs-u-s-citizens-do-not-want/](http://www.pewresearch.org/fact-tank/2020/06/10/a-majority-of-americans-say-immigrants-mostly-fill-jobs-u-s-citizens-do-not-want/) [<https://perma.cc/UN4W-PGPX>].

67. Saito, *supra* note 1, at 63-4.

68. Hayley Brown et al., *Meatpacking Workers are a Diverse Group Who Need Better Protections*, CTR. FOR ECON. & POL'Y RES. (April 29, 2020), <https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections/> [<https://perma.cc/BF9Q-9FXP>]; see also Maria Sacchetti, *ICE Raids Meatpacking Plant in Rural Tennessee; 97 Immigrants Arrested*, WASH. POST (Apr. 6, 2018), [https://www.washingtonpost.com/local/immigration/ice-raids-meatpacking-plant-in-rural-tennessee-more-than-95-immigrants-arrested/2018/04/06/4955a79a-39a6-11e8-8fd2-49fe3c675a89\\_story.html](https://www.washingtonpost.com/local/immigration/ice-raids-meatpacking-plant-in-rural-tennessee-more-than-95-immigrants-arrested/2018/04/06/4955a79a-39a6-11e8-8fd2-49fe3c675a89_story.html) [<https://perma.cc/6Y9Q-7FZY>] (describing an U.S. Immigration and Customs Enforcement raid of a meatpacking plant in Tennessee ordered by the Trump Administration in which nearly 100 immigrants were arrested and detained).

69. Jonathan W. Dyal, MD et al., *COVID-19 Among Workers in Meat and Poultry Processing Facilities – 19 States, April 2020*, 69 MORBIDITY & MORTALITY WKLY. REP. 557, 558 (2020).

70. Caroline Lee et al., *Long-Term Care Facilities Must Prioritize Immigrant Workers' Needs to Contain COVID-19*, HEALTH AFFAIRS BLOG (Sept. 18, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200914.520181/full/> [<https://perma.cc/9CPB-9TPL>].

71. *Id.*

72. *Id.*

Relief, and Economic Security (CARES) Act.<sup>73</sup> And without health insurance, paid sick leave, childcare, or unemployment insurance, these immigrants are left with little option but to put their lives at risk in their already-high risk occupations.<sup>74</sup> Moreover, because they are deemed to be perpetual foreign “threats to the empire,” many immigrants fear that going to a public hospital to seek COVID-19 treatment or testing will either jeopardize their immigration status or put them in danger of deportation.<sup>75</sup> Finally, those immigrants who are officially “excluded from the empire”—and detained as a result—are more susceptible to COVID-19 as a result of overcrowded and unsanitary conditions and lack of healthcare inside the detention centers.<sup>76</sup>

Therefore, as a result of settler colonialism’s strategies of exploitation and exclusion, immigrants of color in the United States are dying 3 times (Latinx), 2.3 times (Pacific Islanders)<sup>77</sup> and 1.1 times (Asian) the rate of White people as a result of COVID-19.<sup>78</sup>

#### CONCLUSION

The World Health Organization attributes health disparities within countries to the “the conditions in which people are born, grow, work, live and age” which are “shaped by the distribution of money, power and resources at global, national and local levels.”<sup>79</sup> These conditions are referred to as the “social determinants of health.”<sup>80</sup> Similarly, the U.S. Department of Health and Human Services (HHS) defines “social determinants of health” as “the conditions in the

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73. Fernando Wilson & Jim Stimpson, *US Policies Increase Vulnerability of Immigrant Communities to the COVID-19 Pandemic*, 86 ANNALS GLOB. HEALTH 1, 1(2020), (noting that the CARES Act does not provide any social safety net to the millions of undocumented immigrants and “most recent authorized immigrants” as well) [hereinafter US Policies]; Muzaffar Chishti & Jessica Bolter, *Vulnerable to COVID-19 and in Frontline Jobs, Immigrants Are Mostly Shut Out of U.S. Relief*, MIGRATION POL’Y INST. (Apr. 24, 2020), [www.migrationpolicy.org/article/covid19-immigrants-shut-out-federal-relief](http://www.migrationpolicy.org/article/covid19-immigrants-shut-out-federal-relief) [https://perma.cc/82CF-8M59].

74. See Paul Watanabe & Eva A. Millona, *Opinion: Rectify an Injustice in First CARES Act – Exclusion of Undocumented Workers From Receiving Benefits*, TELEGRAM.COM (Sept. 22, 2020), <https://www.telegram.com/news/20200922/opinion-rectify-injustice-in-first-cares-act--exclusion-of-undocumented-workers-from-receiving-benefits> [https://perma.cc/W4MA-Q5SR].

75. *Id.*; see also Miriam Jordan, *‘We’re Petrified’: Immigrants Afraid to Seek Medical Care for Coronavirus*, N.Y. TIMES (May 12, 2020) <https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html> [https://perma.cc/H4HU-HYH2].

76. Wilson & Stimpson, *supra* note 73 (noting that overcrowded and unsanitary conditions and lack of healthcare in immigrant detention centers have led to uncontained infection spread of COVID-19); see also Catherine Shoichet, *The Death Toll in ICE Custody is the Highest It’s Been in 15 Years*, CNN (Sept. 30, 2020), <https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html> [https://perma.cc/TUQ2-E7DW].

77. APM RESEARCH LAB, *supra* note 31. The APM researchers note that the data relied upon related to the total number of Pacific Islander deaths “is a known under-count” given the fact that “numerous states report Pacific Islander deaths in the Other category.”)

78. *Id.*

79. See *About Social Determinants of Health*, WORLD HEALTH ORG., [https://www.who.int/social\\_determinants/sdh\\_definition/en/](https://www.who.int/social_determinants/sdh_definition/en/) (defining “social determinants of health.”)

80. *Id.*

environments where people live, learn, work, and play that affect a wide range of health and quality-of-life risks and outcomes.”<sup>81</sup> HHS offers numerous examples of “social determinants of health” including historic and current inequities in healthcare treatment, access to educational, economic, and job opportunities, access to health care services, exposure to crime and violence, racism and discrimination, concentrated poverty, residential segregation, and literacy skills.<sup>82</sup> What is missing from the HHS list of social determinants of health is “the impact of the ongoing strategies of U.S. settler colonialism.”<sup>83</sup>

When settler colonialism is viewed as a social determinant of health, the disproportionate impacts of COVID-19 in Indigenous communities can engender reform efforts that acknowledge and compensate for the lasting health-related impacts of the residential boarding school program—impacts that increase susceptibility to COVID-19.<sup>84</sup> Similarly, the disproportionate impacts of COVID-19 in Black communities can engender reform efforts that acknowledge and compensate for the lasting health-related impacts of slavery, Jim Crow, and mass incarceration—impacts that increase susceptibility to COVID-19.<sup>85</sup> And the disproportionate impacts of COVID-19 in immigrant of color communities can engender reform efforts that acknowledge and compensate for the lasting health-related impacts of exclusion, exploitation, family separation, and detention—impacts that increase susceptibility to COVID-19.

Understanding the disparate impacts of COVID-19 through a lens of settler colonialism not only helps explain how structural inequality operates in this country, it also helps push forward remedial efforts that are rooted in truth, justice, and reconciliation.

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81. See *Social Determinants of Health*, OFF. DISEASE PREVENTION & HEALTH PROMOTION, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health> [<https://perma.cc/YMX6-3B75>].

82. *Id.*

83. See e.g., Denise Jaworsky, *A Settler Physician Perspective on Indigenous Health, Truth, and Reconciliation*, 9 CAN. MED. EDUC. J. 101, 101-06 (2018) (arguing that settler colonialism should be conceptualized as a social determinant of health); see also Karina Czyzewski, *Colonialism as a Broader Social Determinant of Health*, INT’L INDIGENOUS POL’Y J. 1, 1-14 (2011).

84. See e.g., Lorie M. Graham, *Reparations, Self-Determination, and the Seventh Generation*, 21 HARV. HUM. RTS J. 47, 87-88 (describing the Indian Residential Schools Settlement Agreement, the largest class action settlement in Canadian history, which allocated two billion dollars for reparations payments to former students of the residential boarding schools, mandated the creation of a Truth and Reconciliation Commission, and also allocated 125 million dollars to mental health and healing services for former students of the residential schools).

85. See e.g., Kaimipono David Wenger, *1200 Dollars and a Mule: COVID-19, The CARES Act, and Reparations for Slavery*, 68 UCLA L. REV. DISC. 204, 213 (2020) (making the case that the disparate health impacts of COVID-19 on the Black community underscore the need for reparations for slavery).